

1 The Onslaught of SLAPPs

We shudder to think of the chill . . . on . . . freedom of speech and the right to petition were we to allow this lawsuit to proceed. The cost to society . . . is beyond calculation. . . . Competing social and economic interests are at stake. To prohibit robust debate on these questions would deprive society of the benefit of its collective thinking and, in the process, destroy the free exchange of ideas which is the adhesive of our democracy. . . . It is exactly this type of debate which our federal and state constitutions protect; debate intended to increase our knowledge, to illustrate our differences, and to harmonize those differences. . . . We see this dispute . . . as . . . more properly within the political arena than in the courthouse.

—West Virginia Court of Appeals
in *Webb v. Fury*,
282 S.E. 2d 28, 43 (W.Va. 1981)

A new breed of lawsuits is stalking America. Like some new strain of virus, these court cases carry dire consequences for individuals, communities, and the body politic. Americans by the thousands are being sued, simply for exercising one of our most cherished rights: the right to communicate our views to our government officials, to "speak out" on public issues. Today, you and your friends, neighbors, co-workers, community leaders, and clients can be sued for millions of dollars just for telling the government what you think, want, or believe in. Both individuals and groups are now being routinely sued in multimillion-dollar damage actions for such "all-American" political activities as circulating a petition, writing a letter to the editor, testifying at a public hearing, reporting violations of law, lobbying for legislation, peacefully demonstrating, or otherwise attempting to influence government action. And even though the vast majority of such suits fail in court, they often succeed in the "real

world" by silencing citizens and groups, with potentially grave consequences for the future of representative democracy.

As a nation, we have prided ourselves on having, in the U.S. Supreme Court's words, "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."¹ Our system encourages us to speak out, to petition, advocate, criticize, lobby, and argue. The American Revolution was fought for the freedom to criticize the Crown. We have resisted censorship, Nazism, McCarthyism, and suppression of thought and belief in all forms. From city hall to Congress, neighborhood to nation, soapbox to sit-in, picket lines to prime time, Americans feel they have a "right" to speak out on important issues, to each other and to their government officials. We accept the risk of equally public and hard-hitting rebuttal from the other side, but we assume that the system, which encourages us to speak out, will protect us when we do.

That assumption is no longer valid. The ominous new risk for those who express their views to the government is that opponents—not content with rebuttal in the same public forums—will drag citizens out of the political arena and into the courthouse with staggering personal lawsuits. The "chilling" effect this new breed of cases on public debate and citizen involvement is already significant; the possible effect on the future of our society and its public-participatory form of government is even more threatening.

The University of Denver's Political Litigation Project—an interdisciplinary project of the Department of Sociology and the College of Law—has been studying and reporting on these lawsuits for more than 10 years.² We have found citizens being sued for

- writing a letter to the president of the United States opposing a political appointment;³
- testifying against a real estate development at a zoning hearing;⁴
- reporting violations of environmental laws to federal agencies;⁵
- complaining to a school board about unfit teachers;⁶
- filing a complaint with a government safety, consumer, civil rights, or equal employment office;⁷
- recommending county acquisition of open space;⁸
- reporting official misconduct;⁹
- demonstrating peacefully for or against government action;¹⁰
- testifying before Congress or a state legislature;¹¹
- reporting a violation of law to health authorities;¹²
- filing a nonmonetary, public-interest lawsuit against the government;¹³

- lobbying for local, state, or federal legislation;¹⁴
- campaigning for or against a ballot issue;¹⁵
- reporting workplace sexual harassment to government authorities;¹⁶
- rating judicial candidates for the voters (on the part of a bar association);¹⁷
- collecting signatures on a petition.¹⁸

When we began studying these cases, there was virtually no recognition—by the legal profession, courts, academia, government, or the public—of their similarity or linkage.¹⁹ The tendency was (and often still is) to view them as unrelated and to apply conventional legal labels: a “libel” case, a “business interference” case, a “conspiracy” case. Looking deeper, we found what they had in common: every case was triggered by defendants’ attempts to influence government action—the exact activity covered by the Petition Clause of the First Amendment.

We coined the name “strategic lawsuits against public participation” in government, or SLAPPs, to call attention to these cases in an emphatic way, to illuminate simultaneously both their cause and effect, and to encourage lawyers, judges, government leaders, and parties to look beyond labels and deal with them as a new, unitary type of litigation. The acronym is now widely used by judges in court opinions,²⁰ by lawyers and academics,²¹ in the media,²² and even on television’s *L.A. Law*.²³

Though we have called these a “new breed” of lawsuits, the type actually appeared first in the political infighting of our young country shortly after the Revolution, when there were scattered cases of citizens being sued when they criticized corrupt government officials. But courts generally made short work of these early attempts to squelch public debate and reform.²⁴ The practice seems not to have caught on with the private sector—corporations, developers, and the like—and largely died out until some 150 years later. SLAPPs were “reborn” in the political activism of the 1960s and 1970s; they grew and multiplied in the 1980s; and in the 1990s they are a major threat to involved citizens. By no means limited to extremists, radicals, or professional activists, they have struck thousands of typical, middle-class, middle-of-the-road Americans in just the last few years. They are found in every state; they erupt at every government level, in every type of political action, and on every public issue of consequence. And even though many have failed in court, their victims are now legion: in the last two decades, we conservatively estimate that thousands have been sued into silence, and that more thousands who heard of the SLAPPs will never again participate freely and confidently in the public issues and governance of their town, state, or country.

Cases in Point

Betty Johnson scarcely viewed herself as politically active—she was, in her own words, “just a housewife”—the night she attended her first city planning commission meeting in her Denver, Colorado, suburb of Louisville.²⁵ She was motivated to go because she had heard that a large residential development was being proposed for the vacant farmland next to her house. Sitting quietly in the audience, she was surprised at the “pro-growth” bias of the commission. She found herself agreeing with a dissident city councilman who was urging a “moratorium” on further annexation and development pending a study of what urban sprawl was doing to their town. The planning commission turned a deaf ear.

Aroused, Betty Johnson started looking into growth issues in Louisville. She researched, asked questions, and conducted a poll in her neighborhood, finding that 93 percent of her neighbors supported a building moratorium. She went back to the planning commission with her data—and hit a stone wall: “Basically, they said, ‘Thank you, now go back to your dishes.’ [My own] councilman . . . told me I was ‘a special interest group.’” The planning commission and city council went on to approve the development of Klubert Warembourg’s 92-acre farm, abutting the Johnsons’ house. American Continental Corp., a huge national developer doing business as “Medema Homes,” planned a 400-home residential development on that land.

Betty Johnson and her neighbors were stunned that the city’s leaders would go against the clear desires of their citizens, but this was only their first shock. The neighbors regrouped and like generations of Americans before them, decided to circulate a petition, gather signatures, and force a popular election to overturn the city go-ahead. They succeeded: two weeks after they filed their petitions and before an election could be held, the city council caved in and repealed Medema’s approval. Johnson and her friends congratulated themselves. They felt they had “worked within the system” and won. A few days later, however, “I was in New Orleans for a funeral, and my brother-in-law called and said that he had read in the newspaper that four folks had been sued for an ‘undetermined amount.’ And my name was one of them! I was freaked out! Was I going to lose my house? I thought, ‘They can’t do that!’” But real estate developers and property owners like Medema Homes and Klubert Warembourg can and do. They had not only sued the city and city officials—a normal and unobjectionable appeal step for those denied government permits—but had named as defendants the four residents who were the official circulators of the petitions, charging that the citizens’ act of petition-

ing their city government had violated the developers' "constitutional rights" to develop the land and constituted "restraint" of their business.²⁶

The citizens were "terrified." None had ever been sued; they could not afford the legal fees; and the city refused to defend them. Fortunately, the American Civil Liberties Union of Colorado stepped in. Its legal director, David Miller, was outraged at this violation of First Amendment rights, calling it a "tactic aimed at silencing legitimate citizen participation in local government annexation proceedings." He and the ACLU took on the residents' defense without charge. Judge Michael Enwall agreed with the victims, and a record-short four months after the suit was filed, he dismissed it with a stinging rebuke for the developers:

The activity which is the subject matter of this litigation is . . . political, protected, First Amendment activity. . . . I don't know how any activity could be more First Amendment activity than that engaged in by the individual defendants in this case. The existence . . . of this lawsuit has a chilling effect on that activity. . . . [The citizens'] motive in filing . . . petitions is irrelevant. . . . I find that those [lawsuit] claims are frivolous and groundless. The law is so overwhelming, it is so undisputed, that it would seem to me to be impossible for the [developers] to file [this lawsuit] seeking monetary damages against these individuals . . . in good faith.²⁷

The developers eventually dropped their suit against the city as well and soon abandoned the project.

But did the citizens really "win"? "I won't circulate another petition, and my husband wants me to get out of [community issues]," one resident admitted. Another, who felt "defenseless," might participate in civic activities in the future, but "I don't want my name on anything." The community was polarized: some onlookers were "mad," "disgusted," and ready to fight; others withdrew from public involvement. Betty Johnson admits that she was stressed and frightened; she attributes her divorce in part to the strains of the SLAPP. But, paradoxically, it also turned her on politically; she subsequently ran for and was elected to the Louisville City Council on a slow-growth slate.

Many SLAPP victims do not fare that well either in court or afterward. While Betty Johnson was slugging it out with Medema Homes, a similar developer-community debate was occurring only a few miles away. "Protect Our Mountain Environment," or POME, a local environmental group in the foothills west of Denver, was shocked by a proposal from developer Gayno Inc. for a huge 507-acre residential-commercial "new town" in a pristine alpine meadow north of Evergreen. POME leaders testified against county approval and, when the county commissioners granted a

go-ahead over their objections, filed the customary appeal.²⁸ In response, the developer filed a \$40,000,000 suit accusing the group, individual leaders, and even their lawyer of "conspiracy" and "abuse of process."²⁹

The lawsuit dragged on for nearly four years, taking a tremendous toll in stress, lost time and work, and mounting legal costs. POME's leaders ceased being environmental watchdogs in their community and withdrew from public life; some literally moved out of town. Popular support for POME faded, contributions dried up, and the organization died. Ironically, the development has never been built, and in 1995 community and county leaders are completing plans to acquire and preserve the property as open space—exactly what POME wanted in the first place. Still, a decade later, environmental campaigns in that county can be withered by the phrase: "Remember POME" (for more on the case, see Chapter 3).

The two Colorado cases are anything but unique. Consider the diversity of issues, locations, and participants in these typical SLAPPs.

In 1995, residents of West Covina, California, protested to the city about operations at a 583-acre landfill. The landfill countered with a federal court lawsuit against the group "RACoon" (Residents Against Contamination of Our Neighborhoods), twelve neighbors, and city officials, claiming that the protests violated the company's "civil rights."³⁰

Even while Congress was wrestling with "tort reform," the tort reform movement was SLAPPED. A Sapulpa, Oklahoma, attorney filed a 1995 class action on behalf of the state's trial lawyers against "Citizens Against Lawsuit Abuse," sponsors, and newspapers, alleging that their campaign for a state referendum to limit lawsuits "libels" lawyers.³¹

Two retirees in Huntington Beach, California, spoke out before the city council against "inflated" city pensions. Two city policemen testified against them, using language that the citizens regarded as personally threatening. When they filed protests with the city, they were promptly sued for unspecified damages by the two cops.³²

In 1994 a Dallas, Texas, resident wrote city officials complaining that a city contractor was dumping building waste next to his property. The contractor promptly sued the resident for \$90,000 plus punitive damages for "libel."³³

An anthropology professor fought to preserve an ancient Indian village found on his California State University campus, before the university buried it in apartment buildings and retail stores. He wrote letters to government officials protesting lack of compliance with California's Environmental Quality Act and was sued for \$570,000 by the university's consulting firm for "negligent interference with contractual relations," "libel," "slander," and "trade libel."³⁴

Pennsylvania parents, alarmed over reports of unsafe school buses, voiced their concerns at a school board meeting. The bus company filed a \$680,000 suit for "libel" against 68 parents.³⁵

In 1992 a North Kingston, Rhode Island, homeowner reported to government authorities her concern that a local landfill was contaminating the area's drinking water. The owners sued her for "defamation" and "contractual interference."³⁶

Collier County, Florida, taxpayers opposed a housing development at public hearings and in letters to the county commissioners. The developer sued them for \$1,000,000 for defamation and "abuse of right to speak."³⁷

In 1991, an Iowa county sued "all . . . persons protesting . . . [this] fiscal year budget and future such budgets."³⁸ The county dismissed the action three months later.

Long Island, New York, residents testified against a proposed residential development on the beach. The developer sued 9 groups and 16 individual residents for \$11,200,000 for "libel," "prima facie tort," and "conspiracy."³⁹

Baltimore neighbors protested a liquor license renewal for a controversial tavern. The owner filed an \$8,000,000 suit against them for "business interference."⁴⁰

The Beverly Hills League of Women Voters successfully campaigned against sale of city property for a high-rise condominium. The builders sued the League's leaders for \$64,000,000 for "libel."⁴¹

The Sierra Club appealed the government's plans to clear-cut a California wilderness. A logger countersued for money damages for "interference with contract."⁴²

Conservative religious parents complained to school authorities about a liberal grade school teacher in a suburb of Denver. The teacher won a \$250,000 jury verdict for their "defamation."⁴³

A South Carolina woman filed a sex harassment complaint against her male supervisor, which the federal government found valid. He retaliated with a \$1,500,000 lawsuit for "defamation," "invasion of privacy," and "malicious abuse of process."⁴⁴

Peaceful demonstrators protested a California nuclear power plant. The county responded with a \$2,891,000 lawsuit, demanding that demonstrators repay its costs for arresting and jailing them.⁴⁵

A Maryland homeowner filed an official complaint with the state over a shoddy home improvement job. The contractor retaliated with an \$800,000 suit for "libel."⁴⁶

And these are just the tip of the iceberg. SLAPPs are now occurring not only in the United States but in Canada, Australia, England, and Singa-

pore.⁴⁷ Their message is unmistakable: There is a price to be paid for voicing one's views to the government. The price can be a multimillion-dollar personal lawsuit, which, even if successfully defended, can mean enormous expense, lost time, insecurity, risk, fear, and all the other stresses of extended litigation. That is an ominous message for every American, because SLAPPs threaten the very future of "citizen involvement" or "public participation" in government, long viewed as essential in our representative democracy.⁴⁸

The Definition: What Are "SLAPPs"?

Most lawsuits intimidate. Many are strategic, not just tactical. Many are motivated by retaliation, or filed to stop particular behavior, punish certain speech, or counter political activities. And many pressure tactics other than lawsuits are used to suppress political behavior. Our first challenge, then, was to decide exactly what we meant by "SLAPPs": what we wanted our study to cover and what not. To focus our research, we devised a clear-cut, objective definition. The key to defining SLAPPs, we found, did not lie either with the parties' subjective motives or good faith or with who was right or wrong on the merits. Contrary to what one might expect, we found "good" people who file SLAPPs without intending to harm constitutional rights, and "bad" people who get SLAPPED yet still merit constitutional protection.

We asked, "Why do we care about these cases?" The answer, we concluded, lay in their cause and effect: we care about them because they happen when people participate in government, and they effectively reduce future public participation. It is the single element of reaction to political action that distinguishes SLAPPs from the everyday retaliatory lawsuits seen in the business, labor, contract, and other arenas. Our definition focuses on that key factor: whether defendants were engaged in activity covered by the Petition Clause, which is both the cause and the effect that should concern us. Our definition thus avoids subjective judgments about "motives" or "intent," "good or bad faith," "truth or falsity," "rightness or wrongness." The real value at stake is, quite simply, whether our nation will continue to encourage, to protect, and to be a government "of the people, by the people, and for the people."

To qualify as a SLAPP for our study, then, we required that a lawsuit meet one primary and three secondary criteria. Primarily, it had to involve communications made to influence a governmental action or outcome, which, secondarily, resulted in (a) a civil complaint or counterclaim (b) filed against nongovernment individuals or organizations (NGOs) on

(c) a substantive issue of some public interest or social significance. These criteria provide a neutral, manageable, easily applied definition whereby even opponents can agree whether a case is a SLAPP or not. Although the Petition Clause covers even more (criminal cases, government officials, private interest petitioning), this four-part definition captures the core of "self governance" that our Constitution's drafters sought hardest to protect (see Chapter 2).

Here are the rationales for our criteria. *Lawsuits only*: We recognize that there are other tactics for suppressing political opposition—employment sanctions (the "whistleblower" syndrome, for example), boycotts, societal shunning, physical violence, and many other pressure tactics can be used and have been studied—but what surprised and intrigued us was that no one had studied the use of litigation to achieve political intimidation. *Petition Clause only*: Certainly lawsuits are used to attack many other forms of constitutionally protected actions and beliefs—rights of speech, press, association, religion, equal protection, due process, on and on—but these have been extensively studied, whereas no one had empirically examined the use of lawsuits against Petition Clause-protected activities. *Civil cases only*: Criminal prosecutions can be similarly used to suppress political activity, and individuals have contacted us about their "criminal SLAPPs." They are beyond the scope of what we could accomplish in this research but certainly merit study. *NGOs only*: Government officials and employees are also protected by the Petition Clause, but other citizens are far less protected. Government personnel have different and more diverse legal protections, in-house legal resources, public financial backing, social supports, job expectations, differing career impacts. Moreover, lawsuits against government personnel have already been extensively studied. *Substantive issues only*: By focusing on "issue" politics, we exclude election campaigns for political office, but do so only to keep the study manageable; many election-to-office SLAPPs came to our attention, making this another area that deserves study. *Public issues*: Concededly, the Petition Clause also protects the self-interested (even venal and greedy) seeker of private, personal advantage, and concededly, in many cases it is hard to distinguish between self-interest and public interest. Our personal sympathies, however, are with the effect of litigation on issues of societal and political significance, more common to us all, and without being overly compulsive about it, we have attempted to focus on the cases that evidence attributes beyond simple self-interest.⁴⁹

To denote SLAPP parties we have found it clarifying to use the terms "filers" (rather than "plaintiffs") and "targets" (rather than "defendants") for, respectively, the initiators and the objects of SLAPPs. The majority of

SLAPPs are new case complaint filings, where the filers are the plaintiffs and the targets are the defendants; some SLAPPs, however, reverse these customary labels by being filed in a defendant's counterclaim or cross-claim,⁵⁰ making filers and targets clearer designations.

The Process: How SLAPPs Work

We found that a SLAPP typically evolves in three stages as the dispute moves back and forth between the political and judicial arenas. In the first stage, citizens develop a position about some public concern, then communicate their views to some government decision-maker: official, employee, agency, or voters. This is classic "political" behavior protected by the Petition Clause of the First Amendment of the U.S. Constitution. In communicating a position, however, the citizens are opposing someone else's interests or plans, and that opposition makes enemies.

In the second stage, the enemies reach a point where they have "had enough" opposition and file a suit that targets defendants precisely because of their political, Petition Clause-protected activity (whether mentioned or not). This immediately "transforms" the situation in three ways that are advantageous for filers, disadvantageous for targets. "Dispute transformation," by characterizing the targets' conduct as some technical, legalistic injury (such as libel, business interference, or conspiracy), efficiently transforms the dispute from a political controversy into a legal one. "Forum transformation" moves the dispute from a public forum (where it can be politically resolved) to a private judicial one (where only the technicalities can be addressed). Finally, "issue transformation" shifts the emphasis from citizens' perceived injuries (deriving from a new housing development or the like) to the filer's claimed injuries (from slander, restraint of business, or whatever). These transformations serve to suppress the issue of who is right in the underlying dispute; they block solution.

The third stage is the disposition of the case. If the targets counter with a claim of constitutional political rights, they typically win dismissal. They have succeeded in retransforming the "private" and "legal" action back into a "public" and "political" one by reminding the court that First Amendment political rights ordinarily outweigh personal injury claims and, indeed, that claims of injury from another's exercise of First Amendment rights are generally rejected. But if the targets (or their lawyers, or the court) fail to recognize the case as a "political" one, no retransformation occurs, and the case is settled or adjudicated as though it were an ordinary legal dispute. When this happens, the targets typically lose—both in court and in the real world.

Perhaps the best description of SLAPPs comes from New York trial judge J. Nicholas Colabella; they are, he says,

suits without substantial merit that are brought . . . to "stop citizens from exercising their political rights or to punish them for having done so" [citing authors' study]. . . . SLAPP suits function by forcing the target into the judicial arena where the SLAPP filer foists upon the target the expenses of a defense. The longer the litigation can be stretched out, the more litigation that can be churned, the greater the expense that is inflicted and the closer the SLAPP filer moves to success. The purpose of such gamesmanship ranges from simple retribution for past activism to discouraging future activism. Needless to say, an ultimate disposition in favor of the target often amounts merely to a Pyrrhic victory. Those who lack the financial resources and emotional stamina to play out the "game" face the difficult choice of defaulting despite meritorious defenses or being brought to their knees to settle. The ripple effect of such suits in our society is enormous. Persons who have been outspoken on issues of public importance targeted in such suits or who have witnessed such suits will often choose in the future to stay silent. Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined.⁵¹

The "game" of SLAPPs is nothing if not paradoxical, however. Sometimes, as in Betty Johnson's case, it backfires, and the targets are provoked to even more determined and successful opposition. Some SLAPPs so shock the conscience of the community that it rises up to defeat the filers' plans. And more and more targets are suing back, winning multimillion-dollar jury verdicts against the filers for violating their political and civil rights—the cases we call "SLAPPbacks." Nevertheless, the lives of most SLAPP targets are dramatically altered and the political lives and futures of untold others in the community influenced by the "ripple effects"—predominantly the recommendation of those affected that others not speak out or participate in government decision-making.

Why Not SLAPPs? Sympathy for Filers

"There are two sides to every question," Protagoras teaches us, and that has presented our greatest set of challenges. "Doesn't the First Amendment's Petition Clause apply to the filer's lawsuit as well?" we are asked. "Doesn't the Seventh Amendment guarantee filers 'the right of trial by jury'?" "Aren't there cases where the filers have no choice but to sue or where targets deserve to be sued?"

SLAPPs may be a lopsided phenomenon but not one-sided. The answer to all those questions is a qualified yes. Citizens' constitutional right to political speech is not absolute; no constitutional right is. Other citizens also

have constitutional rights: to sue, to go to trial, to have their plans and reputations protected. But neither are those rights absolute. When two sides each have fundamental constitutional rights, they must be balanced, must somehow be qualified or limited so that each does not cancel out the other. Courts strike this balance in the overwhelming majority of SLAPPs (appropriately, we believe) by finding for the targets. This is because targets are generally seen as representing not only their own personal interests and injuries (like filers) but also (unlike filers) the additional, broader concerns of continued public participation in government, the viability of the representative political process itself.

Let's conjure up the most unsympathetic case we can against citizen petitioners, brought by the most sympathetic filer. Here is a composite of the toughest hypotheticals thrown at us.

People Concerned about AIDS, Inc. ("People"), a nonprofit, charitable corporation, purchases a building in a mixed residential-commercial area of town. People is a small, local, primarily volunteer organization, funded by individual donations and small grants and dedicated to providing a hospice for AIDS victims in the terminal stage of their condition. The building had been used for 30 years as a nursing home for the elderly, housing 25 patients. Gloria Goodworks, volunteer president of People, is a respected health-care professional with years of experience providing care for AIDS victims; she lost her own son to the disease in 1990. She is delighted with the building's ideal layout, comparable past use, and location in a community that in the past has supported other AIDS-treatment facilities.

Goodworks anticipates opposition but believes that cooler heads will ultimately prevail in this educated, socially conscious community. To her surprise, Bob Bigot, a retired resident on the same block, becomes very upset when he hears of the proposal and undertakes a vicious, dishonest, but ultimately successful campaign to block People's proposed hospice.

Bigot prints up a letterhead for a newly invented organization, Neighbors Opposed to Sickness ("NOS") and goes to work. He first circulates a petition in the neighborhood, drumming up hundreds of signatures in opposition and signing up hundreds of members for NOS; he then presents the petitions to the city zoning board at public hearings on the occupancy permit. Bigot tells neighbors that People plans to house 100 patients, build new wings, and have a walk-in clinic. He asserts that the hospice will attract "drug addicts, gay people, minorities, and violent criminals." He spreads rumors that People is a radical, extremist political organization, and Goodworks an inept bleeding heart. Bigot manipulates the local newspapers and TV and generates a number of anti-hospice stories. He files anonymous complaints about People with the U.S. Environmental Protection Agency, the state's Department of Health, and the county tax assessor. A substantial number of his statements are outright lies or matters he has no reason to believe.

After numerous meetings in the neighborhood and before various government bodies, most of which are dominated by Bigot and his cohorts lambasting People and Goodworks, the government officials yield to the political pressure and deny the required permits. Goodworks is personally devastated; she feels that her reputation has been hopelessly besmirched. People, as an organization, is devastated; it concludes that there is no way to beat this "tyranny of the majority" or to persuade local officials to allow an AIDS hospice after this debacle. AIDS victims and their families who have been counting on this facility are devastated; many have nowhere else to go. Goodworks consults her brother-in-law, a lawyer. His advice: "Sue."

People and Goodworks then jointly file a state court money-damages lawsuit against Bigot, NOS, and (not knowing all those involved) "100 John and Jane Does." The suit charges that the defendants have "defamed" the plaintiffs, committed "civil rights discrimination," engaged in "unlawful conspiracy," induced "breach of contract," interfered with plaintiffs' "future economic expectancies," and caused "restraint of trade."

This hypothetical case reverses the usual SLAPP stereotypes: Filers are sympathetic, and their project is worthy; the chief target appears reprehensible, and his campaign is based on lies. Two observations: First, this is a classic situation and not anomalous; second, even lies need protection if we want "citizen involvement" in our political governance. Let's examine the story from these two perspectives.

First, this not-so-hypothetical case represents some actual SLAPPs detailed in Chapter 6. In the *Adult Blind Home* case, residents were sued for blocking the conversion of a home for the blind into a home for the emotionally disturbed; the court dismissed the home's suit. In *Hotel St. George Assocs. v. Morgenstern*,⁵² a hotel for AIDS victims SLAPPED neighbors for alleged false reports about it to government authorities, as well as for race discrimination; the court dismissed the case. Targets' prejudice was blatant in *Weiss v. Willow Tree Civic Ass'n*: Ramapo, New York, neighbors blocked Hasidic Jews from building a housing development with a vile lobbying campaign against "the peculiar way of life of 'these people'"; the court, while evidencing its disgust for the defendants, nevertheless dismissed the Hasidic congregation's SLAPP. Clearly, the issue in these decisions was not the filers' sympathetic positions, the merits of their proposal, or the bad faith and untruths of the targets. Those were not determinants; bigger issues were at stake.

Second, protecting lying and bad motives may not seem attractive or altruistic until one thinks what the alternative implies. The alternative is censorship, judicial censorship of the political process. Constitutionally, we do not protect Bigot because he is a nice guy or right on the issues, any more than we protect Nazis marching through Skokie, Illinois, or Ku Klux Klan ravings or flag burnings because we like the message. Rather, we

protect them because any other rule would fail to protect the rest of us. In the SLAPPs context, if we were to make lying an exception to Petition Clause protection, every filer would claim that every target "lied," and even the most blatant SLAPP could not be dismissed short of a full-scale trial on that fact issue. Moreover, for political issues, it is the function and duty of the political process, not the courts, to provide a full and fair forum in which truth can be separated from falsehood, emotion from reason, wisdom from foolishness (see Chapter 2).

Now, let's turn up the lights on the Goodworks-Bigot hypothetical. Its sympathetic filer had every bit as full access to the decision-makers—neighbors, the zoning board, other government agencies—as did Bigot. She had every opportunity to get her proposal "accepted in the competition of the [political] market." She had full opportunity in the government hearings (and through media and public relations) to counter the rather easily rebuttable lies Bigot spread about her future clients. Even had those been not lies but real concerns that warranted public consideration, the filer still had access to an open political process for challenging, by way of zoning appeals, the government's decision. She still had numerous location, operation, and service alternatives, which the neighbors did not.

Why did she lose? Obviously, Bigot and the neighbors strongly opposed her development as inappropriate for their community and sought a government-denial outcome (as they had every right to do). Obviously, the political representatives were responsive to the community (as they should have been). It is not obvious that either would have responded differently if Bigot had told no lies. No proposal to change the status quo deserves more political opportunity than People got, let alone a judicial opportunity to punish the opposition. That is just substituting "Tyranny of the Judiciary" for "Tyranny of the Majority."

Thus, the hypothetical supports our position; it is a success story for the political process. We will not always like the issue outcome; we may even like a filer's proposal. But our country's representative democracy does not guarantee outcome. At best, it guarantees process, and that process has the greatest legitimacy when the greatest number of viewpoints are encouraged to contribute to it. "Representative" democracy has no more basic tenet. That is the central reason why SLAPPs are wrong: wrong shifting of political issues to court, wrong chilling of public participation in governance, wrong censoring of the Right to Petition. The constitutional right at stake is the fundamental, but little studied, right to petition the government for a redress of grievances, the Petition Clause of the First Amendment. The next chapter surveys the confusion of U.S. Supreme Court decisions on this most fundamental right, pinpointing the sounder ones that can lead us out of the confusion and solve the SLAPP problem.