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Silencing SLAPPs: An Examination of Proposed Legislative Remedies and a "Solution" for Florida

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TABLE OF CONTENTS

I. SLAPPs 101: AN INTRODUCTION TO THE SLAPP .......... 489
   A. What Are SLAPP Suits? .................................. 489
   B. Why Are SLAPPs Filed? ............................... 492
   C. "Desire To Intimidate" Cannot Be Pled: How Are SLAPPs Filed? ............................... 492
   D. What Provokes the Filing or Threat of a SLAPP? 493
   E. Effects of a SLAPP: If the Targets Win, What’s the Problem? ............................... 494

II. REMEDIES FOR INDIVIDUAL SLAPPED DEFENDANTS .... 496
   A. Early Dismissal and/or Sanctions on Filer and Attorney ........................................... 496
   B. Countersuit: The SLAPP-Back! ......................... 498

III. SYSTEMWIDE REMEDIES AGAINST SLAPPs ........... 499
   A. Heightened Awareness of SLAPPs .......................... 499
   B. Judicial Remedies ........................................ 500
   C. Legislative Attempts To Deal with SLAPP Suits .. 502
      1. Limited Civil Immunity for Certain Types of Public Participation ............................ 502
         a. Washington: The Earliest Response to a SLAPP .............................................. 502
         b. California: Try, Try Again .......................... 504
         d. New Jersey: Extended Protection for Public Participants ............................... 508
         e. New York: Addressing Nonprosecution: SLAPPs That Are Not Prosecuted Can Hurt Just As Much ............................... 509
      2. Preferential Hearing of Motions in Public Participation Suits and Expedited Dismissal of Non-Meritorious Claims .................. 513
         a. Virginia: Let the Filer Beware .................. 513
         b. Texas: Testing the Waters ....................... 514

IV. A SOLUTION FOR FLORIDA ................................ 516
   A. The Need .............................................. 516
B. Proposed Legislation ........................................ 517
C. Londono v. Turkey Creek: Florida Rejects the POME Standard ........................................... 523
V. CONCLUSION...................................................... 523
SILENCING SLAPPs: AN EXAMINATION OF PROPOSED LEGISLATIVE REMEDIES AND A "SOLUTION" FOR FLORIDA

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I. SLAPPs 101: AN INTRODUCTION TO THE SLAPP

Although the United States is a country known for the strength of its democratic system and Constitution, the judicial system is being used in an attempt to silence citizens who exercise their right to free speech. Strategic Lawsuits Against Public Participation, or SLAPPs, can be a surprisingly effective way to control or limit the small-scale public debate that is an essential part of the democratic process.

While not filed in epidemic proportions, SLAPPs are attracting attention in Florida. Attorney General Robert Butterworth's staff has studied the phenomenon in the state and identified at least eighteen suits that could be characterized as SLAPPs. Also, Florida lawmakers have begun to realize the importance of addressing the problem legislatively: Two anti-SLAPP bills were filed in the 1992 legislative session. Although neither bill passed, the problems caused by SLAPPs are serious enough that the bills should be revised and reintroduced in the 1993 session.

A. What Are SLAPP Suits?

SLAPPs are civil suits filed against non-governmental individuals and/or groups, often because of communications with a government body, official, or the electorate, on an issue of some public interest or concern. Many SLAPP targets are citizens who have spoken out about environmental issues such as continued development in a residential area or the location of hazardous waste sites. Targets often

1. Professor Penelope Canan of the University of Denver College of Sociology and Professor George Pring of the University of Denver College of Law were the first to identify these suits. They have researched the phenomenon of SLAPP suits under the sponsorship of the National Science Foundation Law and Social Science Program, Grant No. SES-8714495. Penelope Canan, The SLAPP from a Sociological Perspective, 7 PACE ENVTL. L. REV. 23, n.* (1989).
2. See infra notes 178-83 and accompanying text.
5. See Canan, supra note 1, at 25, identifying SLAPP targets as those who have challenged a proposed new economic venture or government license application on one of four grounds: (1) environmental concerns, such as threats to wilderness, natural areas, or endangered species; (2) neighborhood concerns about siting of undesirable businesses in the area; (3) disgruntled consumers or tenants; or (4) opponents of development.
include animal rights activists,6 newspapers,7 critical employees,8 consumer advocates,9 citizens who sue police officers,10 and even Ku Klux Klan members.11 Some suits are filed against entire groups and multiple "John Doe" defendants—a warning to others that their names could be substituted should they begin or continue involvement.12

Typical targets of SLAPPs are citizens who have become involved in the political process to oppose a single local issue. For example:

• A New York couple who petitioned village officials to force a shopping-strip developer to close off a driveway leading from his project to their residential street was sued for $3 million on allegations of libel, defamation, and interference with business.13

• A Florida man who protested the rezoning of a neighbor's property from "agricultural" to "light industrial" at a county commissioners' meeting was sued for more than $500,000 for defamation and commission of a prima facie tort.14

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6. Abuse of Dolphins, or Abuse of Process, MASS. L. WLKLY., Sept. 30, 1991, at 29 [hereinafter Abuse of Dolphins] (the New England Aquarium filed a $5 million defamation countersuit against three animal rights groups that had sued, alleging the aquarium failed to obtain a required permit before transferring a captive dolphin to another institution).

7. Alex S. Jones, The Media Business: Press; Libel Threat Is Increasing Even for Small Publications, N.Y. Times, Feb. 3, 1992, at D8 (newspaper that published an article entitled How Safe Is Your Insurance was sued by an insurance company that had been listed as "shaky").

8. Judith Nemes, Humana To Ask Judge To Overturn Award, MOD. HEALTHCARE, Dec. 16, 1991, at 3 (Chief of staff at a Humana hospital in Las Vegas was sued for criticizing the corporation for, among other things, outlandish markups on ancillary services. He countersued for abuse of process and was awarded nearly $10 million in compensatory and punitive damages.).


10. Todd Woody, Police Advocates: Officers May Fight King-Type Suits, RECORDER, July 1, 1991, at 1 (police officer cleared of brutality charges at an arbitration hearing sued the man who had accused him and the law firm that represented the accuser for $2.1 million).

11. Leigh, supra note 9. The filers and targets do not always fall into a clear "big business" versus "activist" relationship; even labor activist Cesar Chavez has filed an alleged SLAPP. Chavez v. Citizens for a Fair Farm Labor Law, 148 Cal. Rptr. 278 (Cal. 1978), identified as a SLAPP in Pring, supra note 4, at 5 n.3. At least one commentator has suggested that Pring and Canan were unconsciously biased in their identification of SLAPP suits and did not recognize suits by environmentalists who have abused the legal process. See Richard O. Brooks, Les Mains Sales: The Ethical and Political Implications of SLAPP Suits, 7 PACE ENVTL. L. REV. 61, 66 (1989).

12. See John J. Fried, Debate Rages Over Developers' Lawsuits To Hinder Public Participation, CHI. TRIB., June 23, 1991, at 1G.


14. Before the suit was filed the defendant received a letter dated January 30, 1991, from the plaintiff's attorney. The letter said the plaintiff wished to resolve the matter amicably, "[h]owever, if [the defendant] persists in the continuous harassment of [the plaintiff, . . . he] will no longer employ a mere defensive strategy in dealing with this dispute."
SILENCING SLAPPs

- A California man who successfully opposed a proposed incinerator project in his neighborhood was hit with a $42 million SLAPP.15

- A League of Women Voters branch in California, which wrote a letter to the editor criticizing a proposed condominium project and supporting a voter initiative to stop it, was SLAPPed with a $63 million libel suit.16

- A New York man who petitioned a judge to rule on a town planning board's approval of a proposed townhouse project because of concerns about inadequate studies on the impact on the water supply, sewage disposal, roads, and schools, was sued by the developer for $64 million.17

Some SLAPPs arise as counterclaims or cross claims, filed in response to the target's initiation of law-reform or government-challenge lawsuits.18 In most SLAPP suits, however, the filer is the plaintiff, and the defendant a person who had no intention of becoming involved in litigation.19 More than 1800 private citizens and groups have been SLAPPed20 in suits demanding an average of $9 million in damages.21 These suits took an average of thirty-six months to resolve,22 but in the end more than two-thirds of the SLAPP targets prevailed in court.23

draft complaint that was later filed in circuit court in Wakulla County, Florida. The court dismissed case No. 91-44 with prejudice on May 17, 1991, for failure to state a cause of action (letter, complaint, motions, and order on file with the Fla. Att'y Gen.'s Office).

15. See Putting a Stop to Unfair Suits, S.F. CANON., Oct. 9, 1991, at A16 (editorial). In this case, the defendant was able to find lawyers who defended him for free, avoiding the price of prevailing in that SLAPP: $23,000 in attorney's fees.


17. See Boyle, supra note 16. This suit also targeted the citizen's group, naming the group's president, vice president, and multiple John and Jane Does. It eventually was dropped. Id.

18. Pring, supra note 4, at 8 n.10. See also Note, Counterclaim and Countersuit Harassment of Private Environmental Plaintiffs: The Problem, Its Implications, and Proposed Solutions, 74 MICH. L. REV. 106 (1975).

19. Note, supra note 18. Throughout this Comment, the terms "filer" and "target" will be used uniformly to denominate the "instigators" and "victims" often identified by the media.

20. Canan, supra note 1, at 25. The suits identified by Canan and Pring involved people who spoke out to governmental agencies or officials about new economic ventures, governmental licensing or permitting processes, or about the performance of a public servant. Id.

21. Id. at 26.

22. Id. Although the average suit is resolved in three years, it could continue longer if the SLAPPed defendant chooses to fight back. One SLAPP in California lasted nine years. After the original libel suit was dismissed, the defendants countersued for malicious prosecution and won an $11.1 million award. See Philip Hager, Appeal of Milestone Damages Case Fails, L.A. TIMES, Oct. 4, 1991, at A3.

B. Why Are SLAPPs Filed?

Generally, it will not be obvious from the face of the pleadings whether a suit is truly a SLAPP because it is the motives behind the filing of the suit that determine its character. University of Denver Sociology Professor Penelope Canan has identified four categories of motivating factors for SLAPP filings:

1. the intent to retaliate for successful opposition on an issue of public interest;
2. the attempt to prevent expected future, competent opposition on subsequent public policy issues;
3. the intent to intimidate and, generally, to send a message that opposition will be punished; and
4. a view of litigation and the use of the court system as simply another tool in a strategy to win a political and/or economic battle.

SLAPPs are a phenomenon stemming from a citizenry accustomed to running to the judicial system every time a dispute cannot be easily and immediately resolved. The filing of SLAPPs to quell opposition is justified, some say, because citizen activism can ruin businesses. However, the costs that are monumental for a target are likely an affordable business expense for a corporation. And, the threat of multimillion-dollar judgments presents an intolerable financial risk to private citizens and grass-roots groups, who become cautious or even silent. SLAPP filers seek—through intimidation—to stifle legitimate political expression.

C. "Desire To Intimidate" Cannot Be Pled: How Are SLAPPs Filed?

Notwithstanding any underlying motivations, SLAPPs almost without exception have some basis in law, however de minimis. They do

24. Id. at 30.
25. Fried, supra note 12. A lobbyist for a state building association concluded that many SLAPPs are filed by small developers who have the approval of officials and most of the community, but who are held up by a small group of activist opponents whose opposition threatens the developers' financial futures. Id. See generally Brooks, supra note 11. While in some cases the citizen-activists themselves are guilty of abusing or manipulating the governmental petition process to achieve personal goals, an analysis of that problem and its remedies is beyond the scope of this Comment.
27. See Robert Abrams, Strategic Lawsuits Against Public Participation (SLAPP), 7 PACE ENVT'L. L. REV. 33 (1989) (Attorney General of New York State's address presented during Strategic Lawsuits Against Public Participation (SLAPPs)—Protecting Property or Intimidating Citizens, the Fall 1989 Colloquium of the Pace University School of Law's Center for Environmental Legal Studies, Oct. 14, 1989).
not come neatly packaged and identified as retaliatory suits, but are
disguised as a variety of claims. Examples include tortious interfer-
ence with business or contract,\textsuperscript{28} libel, slander, or defamation, civil
conspiracy or abuse of process,\textsuperscript{29} abuse of property rights and reputa-
tion,\textsuperscript{30} disparagement,\textsuperscript{31} interference with economic advantage,\textsuperscript{32} or a
combination of these.\textsuperscript{33} It is often difficult to determine whether a suit
is actually a SLAPP, especially during the preliminary stages of litiga-
tion, when a well-pleaded SLAPP complaint is "well-protected
against allegations that the suit is frivolous."\textsuperscript{34}

\textbf{D. What Provokes the Filing or Threat of a SLAPP?}

The defendant is charged, among other things, with the following
acts of malice: She organized. She agitated. She distributed fliers.
She knocked on her neighbors' doors and requested their support in
a campaign to stop developers from squeezing two houses onto a lot
where there used to be one. It gets worse. She collected petitions.
According to the $6.6 million suit filed by the developer, Terra
Homes, the defendant even "made telephone calls to various
agencies of the Town of Hempstead."\textsuperscript{35}

Many SLAPPs identified by Canan and University of Denver Law
Professor George Pring were sparked by activities generally consid-
ered protected under the Petition Clause of the \textit{United States Consti-
tution},\textsuperscript{36} such as proposing a building moratorium at a public
meeting,\textsuperscript{37} speaking out in public hearings,\textsuperscript{38} telephoning public

\begin{itemize}
\item \textsuperscript{28} See City Strikes at Environmental Delay, \textit{ENGINEERING NEWS-REC.}, Jan. 20, 1992, at 15.
\item \textsuperscript{29} See Pring, \textit{supra} note 4, at 9.
\item \textsuperscript{30} See Shaman, \textit{supra} note 13.
\item \textsuperscript{31} See Katherine Long, \textit{Slander or Just a SLAPP? Developer Sues His Critic—Repeated
\item \textsuperscript{32} See Karl Olson & Erin Daly, \textit{A Slap at SLAPP Suits Is a Signature Away}, \textit{RECODAR},
\item \textsuperscript{33} See Pring, \textit{supra} note 4, at 8-9.
\item \textsuperscript{34} Ralph Stein, \textit{SLAPP Suits: A Slap at the First Amendment}, 7 \textit{PACE ENVTL. L. REV.} 45, 52 n.15 (1989).
\item \textsuperscript{35} See Paul Vitello, \textit{And Then There Was Just One}, \textit{NEWSDAY}, Mar. 1, 1992, at 6.
\item \textsuperscript{36} "Congress shall make no law . . . abridging . . . the right of the people peaceably to
assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.
The citizens of most states also have this right under their state constitutions. See, e.g. \textit{Fla.
\item \textsuperscript{37} See Greg Braxton, \textit{Builder's Suit Mires Activist in Court Fight}, \textit{L.A. TIMES}, July 15,
\item \textsuperscript{38} See Fried, \textit{supra} note 12.
\end{itemize}
officials, testifying before commissions, or lobbying for legislation. Apparent SLAPPs also have been filed for writing letters to the editor, distributing fliers, and sending a fund-raising letter.

**E. Effects of a SLAPP: If the Targets Win, What’s the Problem?**

Although filers generally do not win SLAPP suits, the final verdict may not be indicative of the real winner. Even before the suit is filed, the mere threat of multimillion-dollar litigation can deter public participation, especially if targets are unfamiliar with the legal process. For many, the desire to oppose the clearing of a scenic wooded area for a strip mall does not survive the threat of a lawsuit. This fear makes it far less likely that a citizen activist will continue to speak out, and, even if she persists, she may be more cautious with both words and actions. This intimidation factor also may keep others from joining with the activist. In the event of an ongoing project, such as an airport expansion, an early show of force likely will quell later opposition.

There are tremendous financial costs involved once a SLAPP is filed. The defense of a simple libel action, without even taking into account the possibility of an unfavorable judgment, can cost more than $20,000. The suit can bring opposition to a grinding halt simply by tying up vital resources. Targets can face bankruptcy, loss of credit, and foreclosure as they attempt to deal with mounting attorney’s fees for the legal assistance they need, no matter how frivolous the suit. Costs also involve more than dollars, as a lawsuit can sap time and energy, causing stress and inconvenience. It is not surprising

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39. *Id.*
40. *Id.*
42. See Braxton, *supra* note 37.
43. See Fried, *supra* note 12.
45. Although SLAPP targets and filers are of both sexes, feminine pronouns will be used throughout this Comment.
46. See Jones, *supra* note 7, at D8. Notwithstanding the availability of defense money for a SLAPP, neither an individual nor an organization would consider money spent defending a frivolous, unwarranted lawsuit well-spent. However, some individuals can find partial relief through homeowner’s insurance policies. See Shaman, *supra* note 13.
47. A woman who wrote a letter to a newspaper opposing the sale of dogs from animal shelters to research firms was sued for libel. She was on the verge of losing her home until the $300,000 judgment against her was settled for $15,000. This seems to suggest the judgment was inflated and the recovery of money was not the purpose of the suit. See Sam Atwood, Activists Pay Price for Speaking Out, *USA Today*, Dec. 18, 1990, at 10A.
that some targets abandon their principles to dispose of a suit—agreeing to a financial settlement, to refrain from further opposition, or both.

However, the worst effects of SLAPPs are their social costs. Although they are not yet filed in epidemic proportions, SLAPPs are not geographically isolated and play a part in court overcrowding nationwide. This affects not only people waiting to have legitimate grievances heard in court, but taxpayers in general. Also, SLAPPs defeat the intent of many recent environmental laws which are geared, through notices and hearings, to public participation and comment. They make a mockery of the judicial system by using it to bully unwanted opposition. And SLAPPs interfere with the democratic process by chilling debate on public and political issues. Public participation decreases as people who might otherwise make important points and raise valid concerns remain silent. Organizations involved in SLAPPs have seen membership and participation drop to the point where the organizations nearly disband. Even after a suit is resolved, people may be reluctant to become involved again; therefore, the ripple effect of one SLAPP can place a severe limitation on public debate and the free flow of information.

Although it may be obvious to the respondents that a particular suit is a SLAPP, that usually is not easy for courts to determine conclusively. This causes much of the problem. Until now, very few courts have identified suits as SLAPPs in published opinions, which is at least in part because many are dismissed due to lack of prosecution. However, one court has acknowledged that "the mere pendency of the action [brought as a result of privileged petitioning activity] will threaten the petitioners' free exercise of their right to petition the

48. Canan and Pring have found SLAPPs in every state and in the District of Columbia. Pring, supra note 4, at 7 n.6.


50. See Stein, supra note 34, at 53. In one typical example, a California homeowner's association successfully pushed for a referendum resulting in a one-year moratorium on hillside development. A developer sued for $40 million, alleging distribution of a defamatory flier before the election. Within one year membership in the association fell from 550 to 100, and by the second year of the suit only 25 members remained. The rest had disassociated themselves for fear that mere membership would expose them to liability. The suit was eventually dismissed for lack of prosecution and one of the targets recovered $260,000. See Boyle, supra note 16, at 6.

government . . . .”32 Therefore, once a SLAPP has been filed, regardless of whether prosecution of the suit has begun, an unjustly accused target needs a way to fight back. At the same time, people or corporations with legitimate grievances must not be denied access to the courts.

II. REMEDIES FOR INDIVIDUAL SLAPPED DEFENDANTS

A. Early Dismissal and/or Sanctions on Filer and Attorney

Once a SLAPP has been filed, prompt dismissal of the suit can minimize its negative impact on the target by allowing her to immediately return to her pre-suit activities. However, current remedies for early dismissal cannot address the specific problem of SLAPPs. Attempts to achieve early dismissal in federal court for failure to state a cause of action under the Federal Rules of Civil Procedure,33 or in a Florida court under the Florida Rules of Civil Procedure,34 generally would not be successful because SLAPPs contain a legally cognizable claim, even if that claim was not the true basis for filing the suit. Likewise, a motion under Federal Rule of Civil Procedure 56,35 which also provides for accelerated dismissal of nonmeritorious claims, would fail for the same reason. Absent a foolproof method of looking beyond the pleadings to identify SLAPPs without erroneously misclassifying legitimate suits, targets must rely on other remedies.

Targets might be tempted to seek sanctions against the filers and their attorneys under Federal Rule of Civil Procedure 11.36 While this

32. Webb v. Fury, 282 S.E.2d 28, 34 (W. Va. 1981). A coal company sued a nonprofit corporation for defamation after statements in the defendant’s newsletter about the environmental impact of the plaintiff’s mining activities. The defendant sought a writ of prohibition to prevent the action from proceeding, claiming protection under the Petition Clause and the Noerr-Pennington doctrine. In granting the writ, the Supreme Court of Appeals of West Virginia stated: [W]e shudder to think of the chill our ruling would have on the exercise of the freedom of speech and the right to petition were we to allow this lawsuit to proceed. . . . To prohibit robust debate on [questions of public concern] 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.

Id. at 43.

33. FED. R. CIV. P. 12(b)(6).

34. FLA. R. CIV. P. 1.140(b)(6).

35. FED. R. CIV. P. 56.

36. FED. R. CIV. P. 11. Rule 11 provides in relevant part: The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer’s knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension,
often-used disciplinary measure superficially seems tailor-made to address SLAPPs, the apparently legitimate tort claims under which they are filed could shield both the filer and attorney from liability. Sophisticated filers also might be able to conceal improper motives from their attorneys in order to proceed with the suit. Additionally, sanction awards in most jurisdictions are limited by statute and would not pose an obstacle to SLAPP filers with deep pockets. 57

Rule 3.1 of the ABA Model Rules of Professional Conduct, 58 and Rule 4-3.1 of the Rules Regulating the Florida Bar, 59 also address the filing of frivolous suits. The comment to each of these rules defines an action as frivolous:

if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law. 60

This definition aptly describes SLAPPs. Again, however, the burden of proving that the primary purpose is harassment can be an onerous one, especially because clients might not be candid with their lawyers about underlying, improper motives for the suit.

The ABA Model Rules of Professional Conduct and the Rules Regulating the Florida Bar neither have the force of law nor reach beyond the lawyer. 61 Unless there is a longstanding business relationship between the lawyer and the client, most clients have little reason to care

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57. See Stein, supra note 34, at 58.
58. MODEL RULES OF PROFESSIONAL CONDUCT Rule 3.1 (1992). Rule 3.1 provides that: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

61. But see FED. R. CIV. P. 11.
if their lawyer is disciplined or sanctioned. Because the goals of true SLAPPs—intimidation and harassment—are often achieved regardless of the outcome of a lawsuit, sanctions against the filing attorneys or a reversal due to attorney misconduct has little practical affect.

In Florida, the prevailing party in a civil suit may recover fees in limited circumstances. Under section 57.105(1), Florida Statutes, courts have discretion to award fees and costs if the court finds "a complete absence of a justiciable issue of either law or fact raised by the complaint or defense of the losing party." This also is a close-to-impossible burden of proof when a SLAPP masquerades as a tort claim.

B. Countersuit: The SLAPP-Back!

Perhaps the most aggressive remedy for a defendant who has been SLAPPed is to fight back with either a counterclaim or a subsequent lawsuit. Pring views these SLAPP-backs as the most effective long-range tool for discouraging SLAPPs. However, while some victims of SLAPP suits have won large jury verdicts, choosing to fight back in court may not be a realistic option for targets whose financial and emotional resources have been exhausted by the initial suit.

Should a target choose to continue the dispute in court, there are often alternative causes of action that can be raised. Malicious prosecution, abuse of process, or conspiring to violate the constitutional right to free speech are usually viable possibilities. The claim alleged in the SLAPP-back would depend on the timetable and resources of the target, as well as state law. In Florida, for example, a malicious prosecution suit may not be filed until the original defendant has won the suit in question, although a target may counterclaim during that

63. Pring, supra note 4, at 19.
64. See id. at 19-20 nn.57-59 and accompanying text.

In Leonardini v. Shell Oil Co., 264 Cal. Rptr. 883, 892 (Cal. App. 1989), rev. denied, 264 Cal. Rptr. 883, cert. denied, 111 S. Ct. 293 (1990), the target fought back after Shell Oil Company filed an alleged SLAPP suit claiming trade libel against a plumbers' union attorney. The attorney had reported to state health officials that Shell's pipe resin contained an allegedly cancer-causing ingredient. The total award for attorney's fees, compensatory and punitive damages was $5.197 million. The decision was appealed and the U.S. Supreme Court refused to hear the case.

65. See Abuse of Dolphins, supra note 6, at 29.
suit for abuse of process. Another potential drawback of an action for malicious prosecution is that the instigator of the suit may be immunized; at least one Florida case has held that reliance on the advice of counsel provides an absolute defense. Furthermore, a target who originally had no intention of being involved in litigation might balk at spending more money in an attempt to vindicate herself, however frivolous the original claim.

Any litigation is costly and time-consuming and, because of the apparent validity of the initial suits, SLAPP-backs are difficult to win. Knowing that the initial suit was a SLAPP does not guarantee that the target will win a SLAPP-back, nor does prevailing in the alleged SLAPP. Often, SLAPP suits are "won" by targets simply due to the filer's non-prosecution or withdrawal of the suit. While winning SLAPP-back suits will provide a certain amount of satisfaction to targets who choose to file countersuits, systemwide remedies are needed to deal effectively with the problem.

III. SYSTEMWIDE REMEDIES AGAINST SLAPPs

A. Heightened Awareness of SLAPPs

Judges, lawyers, and the general public must know what SLAPPs are and why the suits are filed in order to address the problem effectively. Judges and attorneys should be educated about the phenomenon at state and federal forums, with emphasis on ferreting out SLAPPs for prompt dismissal or accelerated trial dates. At least one law school has held a conference on SLAPPs, and bar journals nationwide have published articles on the phenomenon. This exposure

68. See Blue v. Weinstein, 381 So. 2d 308 (Fla. 3d DCA 1980), cited in Amundsen & Schwartz, supra note 67, at 53.
69. See Royal Trust Bank, N.A. v. Von Zamft, 511 So. 2d 654 (Fla. 3d DCA 1987), rev. denied, 520 So. 2d 586 (Fla. 1988).
70. Stein, supra note 34, at 57.
71. Although this would not eliminate the problem of SLAPP suits, it would limit the negative effects. See supra notes 45-52 and accompanying text.
72. See generally Strategic Lawsuits Against Public Participation (SLAPPs)—Protecting Property or Intimidating Citizens, 7 PACE ENVTL. L. REV. 1 (1989) (addressing SLAPP lawsuits at the Fall Colloquium of Pace University School of Law's Center for Environmental Legal Studies).
has by no means been limited to the legal profession, as articles about SLAPPs have appeared in the journals of several other professions as well.\textsuperscript{74} The general public has become more aware of these types of suits, as numerous articles have appeared in the nation's major newspapers and magazines within the past two years.\textsuperscript{75} SLAPPs have even been the topic of discussion on episodes of \textit{20/20},\textsuperscript{76} \textit{the MacNeil/Lehrer News Hour},\textsuperscript{77} and \textit{L.A. Law}.\textsuperscript{78} Also, New York activists formed a Citizens Legal Defense Fund to provide financial assistance to SLAPP targets.\textsuperscript{79}

As the general public becomes more aware of its rights, SLAPPs will become less intimidating, and thus less effective. The increase in publicity surrounding SLAPPs also might make filers less hasty in using a lawsuit as an intimidation tactic. However, publicity alone is not an adequate remedy. At least one state court has addressed the problem.

\section*{B. Judicial Remedies}

The Supreme Court of Colorado, when faced in 1984 with a SLAPP suit, adopted a "sham" exception that called for heightened

\begin{itemize}
\item \textsuperscript{74} See, e.g. Tobi Lippin, \textit{Uncivil Suits; Strategic Lawsuits Against Political Participation Trends}, 94 MA\textit{s.s. TECH. REV.}, Apr. 1991, at 14; \textit{City Strikes at Environmental Delay}, supra note 28; \textit{Furrier Sues Activist}, \textit{FUR AGE WKLY.}, Feb. 12, 1990, at 6; Leigh, supra note 9; Nemes, supra note 8; Skip Tate, \textit{Zoning by Intimidation Growing National Trend}, \textit{CINCINNATI BUS. COURIER}, Mar. 12, 1990, at 16.
\item \textsuperscript{76} \textit{Slapped Into Silence} (ABC television broadcast, May 25, 1990), \textit{available in LEXIS}, Nexis Library, OMNI file.
\item \textsuperscript{77} \textit{Getting SLAPPed} (PBS television broadcast, \textit{NEWS HOUR}, Feb. 19, 1990, transcript \#3671), \textit{available in LEXIS}, Nexis Library, OMNI file.
\item \textsuperscript{78} See Lisa Gibbs, \textit{Getting SLAPPed Around; These Suits Are Aimed at Quieting Critics}, \textit{LEGAL TIMES}, Dec. 24, 1990, at 10 ("discussion of SLAPPs has even turned up this season on the television series 'L.A. Law'").
\item \textsuperscript{79} Abrams, supra note 27, at 43. Although New York State Attorney General Abrams lauded this group, such a fund serves merely as a bandage on a wound that never should have existed.
\end{itemize}
scrutiny of suits jeopardizing the rights protected by the Petition Clause. In *Protect Our Mountain Environment v. District Court*, an environmental group, known as POME, filed an action in a county court seeking to overturn an approval of a developer's application by the county commission. After POME lost both the initial decision and an appeal, the developer filed a claim against POME for abuse of process and civil conspiracy. POME's motion to dismiss based on the Petition Clause was summarily denied, and POME appealed to the state supreme court. In ruling that the motion should not have been summarily denied, the Colorado Supreme Court adopted a new standard for cases involving the Petition Clause.

This standard applies when a defendant is sued for abuse of the administrative or judicial processes of the government and subsequently files a motion to dismiss based on the constitutional right to petition. To survive the motion, the plaintiff must prove that the defendant's actions were not immunized from liability under the Petition Clause of the First Amendment because:

1. the defendant's administrative or judicial claims were devoid of reasonable factual support, or, if so supportable, lacked any cognizable basis in law for their assertion; and
2. the primary purpose of the defendant's petitioning activity was to harass the plaintiff or to effectuate some other improper objective; and
3. the defendant's petitioning activity had the capacity to adversely affect a legal interest of the plaintiff.

This test is based on U.S. Supreme Court precedents. The Colorado Supreme Court apparently believed it would adequately address the constitutional needs of both plaintiffs and defendants in this situation. However, it can only protect a specific category of SLAPP targets in a limited way. The court's "solution" is incomplete as it offers no real financial disincentives to filers, and does not provide for the award of attorney's fees or damages in a case failing the POME test.

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80. 677 P.2d 1361 (Colo. 1984).
81. *Id.* at 1363.
82. *Id.* at 1364.
83. *Id.* at 1370.
84. This standard would not apply in a case such as that discussed *supra* note 47, where a citizen was sued based on the contents of a letter to the editor.
85. Protect Our Mountain Env't v. District Court, 677 P.2d 1361, 1369 (Colo. 1984) (emphasis added).
No other state has yet adopted the POME test, but many have chosen to attack the problem legislatively.

C. Legislative Attempts To Deal with SLAPP Suits

Anti-SLAPP legislation has been proposed in several states over the past few years, including California, Florida, New Jersey, New York, Maryland, Rhode Island, Texas, Virginia, and Washington. Of course, anti-SLAPP legislation cannot completely prohibit the filing of certain types of suits because the federal, as well as most state constitutions, guarantee access to the courts for redress of injury. And, in the case of SLAPPs, there generally is an injury of some sort that, at least superficially, validates the filing. Therefore, instead of attempting to impose a blanket prohibition on certain types of claims, the proposed legislation has either attempted to define protected conduct and the situations in which targets can recover damages, or has provided guidelines for dismissal of certain claims. While all of the proposed legislation is aimed at hindering intimidation lawsuits, the bills have neither been uniformly drafted nor uniformly accepted. Before the 1992 legislative sessions, only the State of Washington had enacted a law specifically aimed at curbing SLAPPs.

1. Limited Civil Immunity for Certain Types of Public Participation

a. Washington: The Earliest Response to a SLAPP

The Washington Legislature enacted sections 4.24.500-.520 of the Revised Code of Washington in 1989. The original bill was introduced at the request of Governor Booth Gardner and Attorney General Kenneth O. Eikenberry in direct response to a widely publicized

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87. The Florida Attorney General urged the adoption of this standard in an amicus curiae brief filed with the Florida Supreme Court in Londono v. Turkey Creek, Inc. See infra notes 222-27 and accompanying text.
88. See supra note 36.
89. See supra notes 28-34 and accompanying text.
That alleged SLAPP suit was filed by a real estate developer against a married couple who had reported his tax violations to a state agency. When the agency took enforcement action against the developer, he sued the couple for slander and libel, even though the information they reported was factual. The Washington Legislature quickly responded with the first law directed specifically at curbing SLAPPs.

The Legislature intended to "protect individuals who make good-faith reports to appropriate governmental bodies." The law provides that "[a] person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency." This language addresses the majority of the situations in which SLAPPs arise, and should provide potential targets with some assurance that they can speak without being sued.

Prevailing parties under the law are entitled to recover costs and reasonable attorney's fees incurred in establishing the defense.


94. 1989 Wash. Laws 234 (Governor's explanation of partial veto).

95. The lawsuit was filed in 1987 and the resulting law was enacted in 1989. See supra text accompanying note 93.


97. Id. § 4.24.510.

98. The Legislature intended to provide additional protection for SLAPP targets with the following section, which was vetoed by the Governor:

If an agency fails to reasonably respond to a person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency, the person shall be immune from civil liability on claims arising from the communications of such complaint or information which the person genuinely and reasonably believed to be true. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.

1989 Wash. Laws 234 § 3.

In his explanation of the partial veto, the Governor expressed concern that the section could be interpreted as conferring immunity even for statements that extended beyond the original communication to the agency, such as inferences made about the character of an individual. See 1989 Wash. Laws 234 (Governor's explanation of partial veto). However, the Legislature's apparent intent was to immunize citizens who made reports to an agency that did not follow up on those reports, either due to lack of resources or a belief that the reports did not merit investigation. See 1989 Wash. Laws 234, new section, §3.

However, targets might be unable to avoid the initial outlay of funds to pay an attorney's retainer and court costs. Also, in the event of an appeal, reimbursement from the filer might be held up for months or years.10

The last part of the law, section 4.25.520, provides for state-funded legal assistance.101 Agencies receiving complaints or information under the previous section may intervene in and defend against any suit precipitated by the communication to the agency; and should the agency decide not to intervene, the state attorney general may do so.102 If the agency proves the defense, it is entitled to collect costs and reasonable attorney's fees; but if it is not successful the agency is liable for the opposing party's costs and fees incurred in proving the defense inapplicable or invalid.103

The bill obviously was enacted too late to help the original targets of the Washington suit. And it is impossible to determine the law's effect as it has not yet been tested in court.104 Doubtless, however, it will merely be the first in a long line of anti-SLAPP laws, as many other states are considering similar measures.

b. California: Try, Try Again

The California Legislature began consideration of anti-SLAPP bills in 1990. Senate Bill 2313, introduced by Senator Bill Lockyer,105 would have completely barred the filing of suits involving certain First Amendment activities unless they met a delineated pre-filing standard of proof. The bill passed, but was vetoed by then-Governor George Deukmejian.

In 1991 Senator Lockyer again attempted to address the problem of SLAPPs with Senate Bill 341,106 part of which was essentially a more-easily-understood version of his 1990 bill. This improved bill passed the Senate unanimously, and passed the California Assembly 54-20. It was also vetoed, this time by Governor Pete Wilson, who apparently wanted a lower evidentiary standard for continuing the suit. Similarly,
the California Builders Association and a Loyola Law School professor expressed concern that the bill as drafted would unfairly limit developers' free access to the courts. Lockyer, however, found no problem with "kind of purposefully tilting toward protection of First Amendment rights," and reintroduced an identical bill, Senate Bill 1264, in the 1992 session. An amended version of this bill was signed by Governor Wilson on September 16, 1992.

The 1992 Lockyer bill contained a legislative intent section, which acknowledged the problem of SLAPP suits, albeit not by name, and addressed causes of action arising from acts "in furtherance of [a] person's right of petition or free speech under the United States or California Constitution."

The most important distinction was the removal of the "pleading hurdle." Under the 1990 bill, a plaintiff would have been prevented from filing the action containing the alleged SLAPP until after she had "established that there is a substantial probability that . . . [she would] prevail on the claim." This section raised constitutional concerns because it could have, in effect, barred certain claims from ever reaching court. The 1992 version permitted the initial filing of such claims, but provided that they "shall be subject to a motion to strike, unless the court determines that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim." The bill also contained timetables for hearing of the motions, and provided for stays of discovery proceedings until such

107. Such acts were defined as including
   any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any official proceeding authorized by law;
   or any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.


109. See Assembly Subcommittee on the Administration of Justice, Report on SB 341, comments by the California State Bar's Committee on the Administration of Justice, at 4 (hereinafter Hearing Report on SB 341).

110. Cal. SB 1264, at 5 (1992). Defendants prevailing under a motion to strike are entitled to recover attorney's fees and costs. However, if the motion is found to be frivolous or solely interposed to cause delay, the plaintiff may recover attorney's fees and costs. Id.
motions would be decided. Relieving the targets of the potential financial burden of discovery is a good idea; however, the bill lacked any great financial disincentive to filers, as there was no provision for awards of compensatory or punitive damages to persons targeted with SLAPP suits.

The basic difference between the two bills is that although the same "heightened scrutiny" is applied, the later version allows filing before meeting the heightened standard, while the earlier version did not. From a practical standpoint, the 1990 bill was more favorable to targets as it insulated them, to some extent, from the judicial process. Under the later bill the target at least would have to hire counsel to file the motion to strike, although upon prevailing she would be entitled to recover attorney's fees and costs associated with the motion. The heightened burden of "substantial probability" was problematic for members of the Subcommittee on the Administration of Justice, who suggested during the 1991 session that a more appropriate standard would be a "no reasonable and substantial basis for bringing the cause of action" test.

The 1992 bill also streamlined language outlining how the courts would make the determination of probable success on the merits. The bill stated that "[i]n making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based."4

c. Connecticut: Giving Up So Soon?

Connecticut also has seen multiple versions of anti-SLAPP bills, with less persistence and success. Three bills dealing with SLAPPs were proposed in 1991, but were neither raised in committee nor refiled in subsequent sessions. Raised Bill 7374, filed by the Judiciary Committee, provided that:

111. Id. ("the plaintiff...[must establish] that he or she will prevail on the claim").
112. Id.
114. The 1990 bill read: "[t]he court may allow the filing of a pleading that includes that claim following the filing of a verified petition therefor [sic] accompanied by the proposed pleading and supporting affidavits stating the facts upon which the liability or defense is based." Cal. SB 2313, at 2 (1990).
116. The General Statutes of Connecticut already contain a section entitled "[D]amages for groundless or vexatious suit or defense." CONN. GEN. STAT. § 52-568 (1987). This title is somewhat misleading, as the section applies only to suits in which there is want of probable cause for either the filing or the defense. Id. Probable cause exists if reasonable people would be justified in thinking there were reasonable grounds for commencing and prosecuting the original action. Id. Therefore, harassment suits filed as legitimate tort claims would not be actionable under this section. Anti-SLAPP legislation filed in 1991 would have changed that.
117. Two of the 1991 bills were quite vague. Senate Bill 161 would have amended section 52-
[A]ny person who testifies or submits books, papers or other evidence at a meeting of a public agency shall be immune from civil liability for damage or injury resulting from such testimony or evidence unless (1) such testimony or evidence constitutes defamation of character, or (2) it is demonstrated by clear and convincing evidence that such person's primary purpose in testifying or submitting evidence was to cause unnecessary delay or otherwise impede the agency's consideration of the matter before it to the detriment of a party.\textsuperscript{119}

The language of this bill seems to have been carefully crafted to avoid potential infringement on the rights of filers. Only very restricted types of communications would be protected, and a trial could still be necessary to determine the motivation of the speaker and whether the communication in question was protected or defamatory.

Section 2 of that bill provided that any person who, without probable cause, commenced and prosecuted any civil action because of another person's use of rights guaranteed by the United States or Connecticut Constitutions would be required to pay actual damages, punitive damages, and reasonable attorney's fees.\textsuperscript{120} The use of the phrase "without probable cause" probably would immunize many SLAPP filers. The bill also provides that persons filing actions "in [their] own name or in the name of others"\textsuperscript{121} could be held liable under the section, leaving open the question of whether filing attorneys would be liable as well as their clients.

Although the three bills introduced in Connecticut were not "model" anti-SLAPP bills, the mere fact that they were introduced at all suggests a need for such legislation in that state. Perhaps the Connecticut Legislature will choose to introduce an improved version, modeled after legislation introduced in another state.

\textsuperscript{568} of the General Statutes of Connecticut to provide that filers of suits commenced and prosecuted in retaliation against the exercise of constitutionally protected rights shall pay damages, including punitive damages. Conn. SB 161 (1991). No damages would have been awarded in the case of suits which were filed but not prosecuted. Senate Bill 439 included the same flaw. It provided only that "any person who commences and prosecutes a civil action primarily to intimidate, harass or retaliate against another person on account of such other person's participation in proceedings before a public agency shall be liable for actual damages, treble punitive damages and attorney's fees." Conn. SB 439 (1991) (emphasis added). Both of these bills failed to recognize that the mere filing of SLAPPs might cause the desired result without any further action on the part of the plaintiff.

\textsuperscript{118} Conn. Raised Bill 7374 (1991).
\textsuperscript{119} Id. at 1.
\textsuperscript{120} Id. The requirement of actual prosecution was repeated from another Connecticut bill.
\textsuperscript{121} Id. at 2.
d. New Jersey: Extended Protection for Public Participants

The New Jersey Legislature has considered anti-SLAPP legislation in three sessions. In 1990 identical anti-SLAPP bills were filed in both the Assembly and the Senate.122 The following year, an identical bill passed the Senate but failed in the House. This anti-SLAPP bill, which was refiled in the 1992 session,123 served as a model for the Florida bill,124 discussed in Section IV.

Assembly Bill 190 (1992) identified the hazards associated with SLAPP suits, albeit not by name, for both the government and targets.125 Substantively, the bill provided that "a person who in good faith communicates a complaint or information to any public entity regarding any matter reasonably of concern to that entity shall be immune from liability for damages arising out of the communication,"126 thus providing protection for a typical SLAPP target. The bill also extended protection to public comments not necessarily made directly to an agency, providing that "a person who in good faith and without actual malice127 expresses an opinion or belief concerning a public issue which affects the person shall be immune from liability for damages arising out of the communication."128 This language would shield people whose letters to the editor might otherwise provoke the filing of a SLAPP.129 Furthermore, costs and attorney's fees are awarded to persons prevailing under this defense.130

The bill provided that a public entity that receives a complaint under this section may intervene and defend against any suit for damages arising out of the communication to the public entity. Also, the attorney general may intervene and defend against such suit if the

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124. See Fla. SB 2188 (1992); infra notes 190-222 and accompanying text.
125. Section 1 of Assembly Bill 190 stated in part that:
   The Legislature finds and declares that information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The threat of a civil action for damages can be a deterrent to citizens who wish to report information to federal, state or local agencies or who wish to speak out about a public issue that affects them.

Problems with this language, which was used in Florida Senate Bill 2188 (1992), are discussed infra notes 192-224 and accompanying text.
127. In the Senate version that passed in January 1991, the words "and without actual malice" were deleted. See N.J. SB 3136 (first reprint), at 1 (1990).
129. See, e.g., supra note 47.
public entity fails to do so. Although this leaves the citizen who is SLAPPed for writing a letter to the editor on her own financially, it would provide for much-needed financial support in the most common incidents—retaliation for speaking out to a government agency—and would protect the strong state interest in public input in its decision-making processes.

Unlike anti-SLAPP legislation in Washington, California, and Connecticut, Assembly Bill 190 also included a legislative definition. The question of whether to place such legislative definitions into state law rather than leaving them to judicial interpretation is difficult. The risk of specifying the meaning of terms is that the definitions might be manipulated by attorneys attempting to prove that suits that should be treated as SLAPPs do not fit into the statutory definitions. On the other hand, not providing any legislative guidance could leave a state with multiple interpretations of words or phrases until the matter is resolved by the state's highest court. However, problems from legislative definitions are unlikely and the bill probably would be a good deterrent to SLAPPs.

e. New York: Addressing Nonprosecution: SLAPPs That Are Not Prosecuted Can Hurt Just As Much

New York has recently acknowledged a need for anti-SLAPP legislation because "there is no existing effective remedy" for SLAPP targets in that state. In the 1989-90 session Assemblyman Maurice

131. Id.
132. The term "public entity" is defined as "the federal government, the State of New Jersey, and any county, municipality, district, public authority, public agency and any other political subdivision or public body in the State." N.J. AB 190, at 1 (1992). Counterclaims are sometimes filed against environmental plaintiffs who speak out or file suits with or against federal agencies attempting to enforce federal environmental laws. See Note, supra note 18. One could argue that the bill does not protect people making complaints to federal environmental agencies because, while state agencies are specifically listed in the bill, federal agencies are not. Although such an argument may seem trivial, anything that could extend a lawsuit would further a SLAPP filer's goals.

Another problem might arise with interstate issues. The language of the bill restricts immunity to complaints made to agencies located within the state. Although there currently is no proof of the occurrence of interstate SLAPPs, they could occur. Arguably, a New Jersey resident who traveled to New York to oppose an incinerator project would not be granted immunity, even if sued in New Jersey, merely because of the geographic location of the public entity receiving the complaint. This is true despite the potential negative effects the incinerator could have on residents of New Jersey.

133. New York State Assembly 1990 Committee Bill Memorandum on AB 11948, Section V (unpaginated) [hereinafter Memorandum on AB 11948]. New York law currently provides for recovery of costs for frivolous claims and counterclaims only in personal injury, injury to property, or wrongful death actions—categories which do not exemplify typical SLAPPs. See New
Hinchey\textsuperscript{134} introduced anti-SLAPP legislation. This bill, Assembly Bill 9744, did not pass and has not been reintroduced.\textsuperscript{135}

Another anti-SLAPP bill, Assembly Bill 4299, finally passed upon third consideration in 1992.\textsuperscript{136} Although directed generally at the problem of SLAPPs, this bill only addressed situations in which government regulatory or permitting processes are involved.\textsuperscript{137} It offered both limited immunity and awards of damages to targets, and expedited hearings for certain motions.\textsuperscript{138}

The New York Legislature found that the threat of damages "can be and has been used as a means of harassing, intimidating or punishing individuals . . . who have involved themselves in public affairs."\textsuperscript{139} While not as forceful as the California language, these findings are a good way of emphasizing that such suits will not be looked on with favor in the state.

\textsuperscript{134} Dem., Saugerties.

\textsuperscript{135} Hinchey's bill provided for awards of costs and fees and possible punitive damages if an action, cross-claim or counterclaim was found to be malicious, "based upon the circumstances of the case." N.Y. AB 9744 (1990). A malicious action was defined as one: commenced or continued for the purpose of harassing, intimidating, punishing or otherwise inhibiting the prevailing party's free exercise of speech, petition, or association rights with respect to an issue of public concern . . . [and] . . . commenced or continued without a substantial basis in law or fact and could not be supported by a substantial argument for an extension, modification or reversal of existing law. \textit{Id.} (emphasis added).

The bill has two positive aspects. First, it specifically emphasized the need to look beyond the face of the pleadings to the "circumstances of the case." This is important because most often SLAPPs are facially valid suits filed to achieve malicious purposes. True SLAPPs would likely not withstand scrutiny that goes beyond the face of the pleadings. See supra notes 24-34 and accompanying text.

Second, while the Connecticut bills required both commencement and prosecution of the frivolous action, Hinchey’s bill would have given courts discretion to award costs for frivolous commencement or continuation of the suit, thus deterring plaintiffs from filing SLAPPs without any intention to prosecute but who know that the suits may still have the desired effects.

\textsuperscript{136} N.Y. AB 4299 (1992). In 1990, the same bill was introduced as New York Assembly Bill 11948. The bill failed in 1990, and was reintroduced in 1991 as Assembly Bill 4299. This bill also failed, and was carried over to the 1992 session. Assembly Bill 4299 passed the Assembly 140-0 on February 3, 1992, passed the Senate 53-5 on July 1, 1992, and was signed by Governor Mario Cuomo on August 3, 1992.

\textsuperscript{137} But not, for instance, the situation discussed supra note 47.

\textsuperscript{138} N.Y. AB 4299 (1992).

\textsuperscript{139} \textit{Id.} at 1.
Assembly Bill 4299 provided that defendants in harassment actions may recover damages, including costs and attorney's fees, in three situations. First, costs and fees may be recovered if "the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law." This language mirrors the ABA Model Rules of Professional Conduct and Federal Rule of Civil Procedure 11.

Second, damages may be recovered upon demonstration that "the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights." This language, like that in the Hinchey bill, offered excellent protection for targets by enabling them to recover damages in suits that, although filed in good faith, were unnecessarily prolonged to achieve other purposes. Realistically, even a filer who began a suit with valid objectives could decide to drag it out longer than necessary because of the added benefit of intimidation. It also addresses the need to deter plaintiffs who file SLAPPs without any intention to prosecute, in the hopes that the suits may still have the desired effects.

Finally, the bill provided for recovery of punitive damages "upon an additional demonstration that the action involving public petition and participation was commenced or continued for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights." SLAPP suits virtually always have some basis in law and can quite easily masquerade as valid suits. Requiring defendants to prove harassment is the sole purpose for the lawsuit will be virtually impossible in any case where the filing party has even the most obscure tort claim or a chance of obtaining any financial recovery. Substituting the word "primary" for "sole" would still protect good-faith plaintiffs against liability for damages while providing a larger disincentive for SLAPP filers. This new wording would offer a more realistic opportunity for targets to recover substantial punitive damages. Nonetheless, even the

140. *Id.* at 2 (emphasis added).
144. *See supra* notes 134-35 and accompanying text.
146. *See supra* notes 28-34 and accompanying text.
burden of proving the primary purpose of filing was not that stated in the pleadings would likely be difficult for most targets.

Assembly Bill 4299 also provided legislative definitions for four debated terms: "action involving public petition and participation," "public applicant or permittee," "communication," and "government body." This "laundry list" approach of defining relevant terms renews issues discussed in conjunction with the New Jersey bill, including the danger of over- or under-defining.

The bill also limited the plaintiff's right to recover damages in actions involving public petition and participation. Damages could be awarded only if the filer establishes by "clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue." This provision would shield persons who testify in good faith at public hearings and provide information that is later determined to be misleading.

The bill likewise raised the standard that must be met by the filer to survive a motion to dismiss or a motion for summary judgment in cases involving public participation. In such cases, a motion to dismiss shall be granted unless the responding party demonstrates that "the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification, or reversal of existing law." Likewise, a motion for summary judgment shall be granted unless the responding party demonstrates that the action "has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law." This standard, while stricter than the standards for motions not involving public participation, does not reach the heightened level

147. An "action involving public petition and participation" is defined as "an action, claim, cross claim or counterclaim for damages that is brought by a public applicant or permittee, and is materially related to any efforts of the defendant to report on, comment on, rule on, challenge or oppose such application or permission." A "public applicant or permittee" is "any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission." A "communication" is defined as "any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention or other expression." And, a "government body" is "any municipality, the state, any other political subdivision or agency of such, the federal government, any public benefit corporation, or any public authority, board, or commission." N.Y. AB 4299, at 2 (1992).

148. See supra note 132 and accompanying text.


150. Id. at 3.

151. Id.
of "substantial probability of prevailing" disapproved by the California Legislature and Governor.\textsuperscript{152} It is unlikely that someone with a valid claim would be hampered by this standard, although a SLAPP disguised as a valid claim might be unhampered as well.

Importantly, the bill directed courts to grant priority to the hearing of motions to dismiss and for summary judgment in such cases.\textsuperscript{153} Ideally, legislation would prevent the filing of SLAPPs, but once one is filed the suit should be disposed of quickly.\textsuperscript{154} Preferential hearings of motions in alleged SLAPP suits would be welcomed by targets who would have the opportunity to quickly eliminate the threat of the lawsuit. Likewise, filers with truly meritorious claims should welcome expedited hearings. The Texas and Virginia legislatures have recognized this; anti-SLAPP legislation in those states has dealt only with the preferential hearing of motions in cases involving public petition and participation.

2. Preferential Hearing of Motions in Public Participation Suits and Expedited Dismissal of Non-Meritorious Claims

a. Virginia: Let the Filer Beware

Virginia Senate Bill 424,\textsuperscript{155} filed by Senator Joe Gartlen,\textsuperscript{156} did not specifically provide for civil immunity for public participants. Instead, tracing the standard set forth in \textit{Protect Our Mountain Environment v. District Court},\textsuperscript{157} it provided for summary dismissal of certain claims, counterclaims or cross-claims if the right to petition under the \textit{Virginia} or \textit{United States Constitutions} has been properly raised as a defense.\textsuperscript{158} To qualify, the claimant must be a person who has applied for or obtained a "permit, zoning change, license, lease, certificate or other entitlement for use or permission to act" or a person with a materially related interest.\textsuperscript{159} Also, the respondent must be a nongovernmental individual or entity, and the claim must be based upon advocacy by the respondent that was directed toward the claimant

\begin{itemize}
  \item \textsuperscript{152} See supra note 113 and accompanying text.
  \item \textsuperscript{153} N.Y. AB 4299, at 3 (1992).
  \item \textsuperscript{154} See supra notes 45-52 and accompanying text.
  \item \textsuperscript{155} Va. SB 424 (1992). Virginia has a two-year legislative system, beginning in even-numbered years. Senate Bill 424 was not passed in the 1992 session, and will therefore be carried forward to the 1993 session.
  \item \textsuperscript{156} Dem., Mt. Vernon.
  \item \textsuperscript{157} 677 P.2d 1361 (Colo. 1984). See also supra notes 80-87 and accompanying text.
  \item \textsuperscript{158} Va. SB 424 (1992).
  \item \textsuperscript{159} id.
\end{itemize}
before a governmental individual or body on an issue of public or societal importance.\textsuperscript{160}

In a case meeting these criteria, there is a comparatively weak standard of proof required for dismissal under the Virginia legislation, although the burden of proof is on the target. The action shall be dismissed if three tests are met.\textsuperscript{161} First, the claimant's action or claim must have been brought maliciously and with intent to harass the respondent.\textsuperscript{162} This apparently does not require proof that harassment was a primary purpose, much less the sole purpose, as is the case in New York's Assembly Bill 4299.\textsuperscript{163} Virginia Senate Bill 424 favors targets by eliminating their burden of proving the extent of the filer's maliciousness or harassment in filing suit.

Second, the target's petitioning activities must have had "reasonable factual support or a cognizable basis in law for their assertion."\textsuperscript{164} This standard again seems advantageous to SLAPP targets as it requires only "reasonable" factual support, and not that they act in "good faith" in making the statements.

Third, the primary purpose of the respondent's activity must not have been "to harass the claimant or achieve another improper objective."\textsuperscript{165} This also favors the SLAPP target by permitting dismissal even if harassment or improper objectives were just some of the motives, as long as they were not the primary ones. Perhaps fairer language would be, "the respondent's activity was not intended to harass the claimant or effectuate another improper objective." It is possible that in attempting to provide protection for SLAPP targets this bill has gone too far. It could result in unwarranted dismissals.

\textbf{b. Texas: Testing the Waters}\textsuperscript{166}

Texas House Bill 149 (1990)\textsuperscript{167} pertained only to summary judgment motions in limited circumstances. However, the burden was on the

\begin{enumerate}
\item \textit{Id.}
\item \textit{Id.}\textsuperscript{161}. The legislative language uses the word "shown" and does not indicate any heightened burden of proof. In fact, the choice of the word "shown," instead of "proven," seems to indicate a lower burden of proof.
\item Va. SB 424 (1992).
\item See supra note 143 and accompanying text.
\item Va. SB 424 (1992).
\item \textit{Id.}\textsuperscript{166}. Identical bills were filed during the first two special sessions of 1991 in order to ferret out opposition. Because none surfaced, the bill will likely be refiled in 1993. Telephone Interview with Scott Hochberg, Legislative Aide to Rep. Colbert (June 16, 1992).
\item \textit{Id.} Rep. Colbert filed this bill during the first special session of 1991 in response to problems reported by constituents. He filed an identical bill, House Bill 58, during the second special session, but it also was not considered. Colbert's legislative aide, Scott Hochberg, intended to run for Colbert's seat in 1992 and planned to file the bill in 1993 if elected. \textit{Id.}
\end{enumerate}
person against whom summary judgment is sought (i.e., the filer) to show that it should not be granted. Under this bill, the moving party must allege that the cause of action was based on a position taken or statements made by her in relation to a government proceeding, and was thus barred because the conduct complained of was protected by the right to petition the government for redress of grievances guaranteed by the United States or Texas Constitutions.168 "Governmental proceeding" was broadly defined as a "judicial, administrative, legislative, or other governmental proceeding,"169 which should avoid problems with statutory construction. However, the bill apparently would not protect a person who reports a problem that only later becomes the subject of a governmental proceeding,170 or one whose communication was not made at such a proceeding.

Under the Texas bill, summary judgment would be granted if the filer fails to produce evidence that would permit the court to reasonably conclude that the position taken or statements made by the target did not have a basis in fact or lacked any basis in law, that the primary purpose of the suit was to "harass . . . or otherwise wrongfully injure the respondent," and that the filer's actions "injured the respondent."171 This latter requirement of actual injury to the respondent is unique among the proposed legislation. The bill did not contain any explanatory language indicating the depth of the injury or whether a de minimis financial injury would qualify. If so, SLAPP filers whose work has been delayed or otherwise inconvenienced by the target's actions at a government hearing could easily meet this requirement.

Another unique aspect of the Texas bill was that a target may petition the court for damages in conjunction with a summary judgment filed under the law. If a successful target can demonstrate that the action was brought to harass or injure, or to inhibit her participation in a government proceeding, actual damages would be awarded. The court had discretion to award punitive damages as well.172 The question remains whether potential plaintiffs would hesitate to use the court system to vindicate real injuries for fear of being labeled as SLAPP filers and required to pay damages.

169. Id. at 1.
170. See, e.g., supra notes 93-95 and accompanying text (targets in Washington SLAPP suit).
172. Id. at 2-3.
IV. A Solution for Florida

A. The Need

The Florida Constitution gives an absolute constitutional right to petition the government for the redress of grievances and the law provides immunity for such petitioning. However, this constitutional right is not enough to protect against the threat, much less the filing, of a SLAPP. Also, a SLAPP is successful if the target must spend time and money in court proving the communication was protected.

Florida does not have a reliable remedy for SLAPPs. Certain types of retaliation suits are addressed in Florida's "Whistle-blower's Act of 1986." However, this Act is of minimal utility in the fight against SLAPP suits because it deals only with those actions taken by agencies or independent contractors in retaliation for the reporting of a violation which already has occurred. SLAPP targets who oppose future action at a public hearing are not shielded from liability by this Act. Florida needs a statewide method of addressing SLAPP suits.

Florida Attorney General Robert Butterworth's office has been conducting a study of the SLAPP phenomenon since 1989 to determine the extent of the problem in Florida. Initially, his office sent surveys to citizens' and environmental groups statewide, requesting information about any SLAPP suit in which the organization or its members were involved, and seeking copies of pleadings or other papers relating to actual lawsuits. After the initial mailing, additional questionnaires asked for the nature of the opposition that led to the threatened law-suit.
naires were sent based on leads supplied to the office.\textsuperscript{179}

As of July 1992, the office had received forty-three written responses to the more than 140 questionnaires mailed.\textsuperscript{180} Of these, twelve reported no experience with SLAPPs, eleven reported threats of suits that were never filed, and twenty reported threats and subsequent lawsuits.\textsuperscript{181} The Attorney General's Office believes that eighteen of the twenty suits filed were genuine SLAPPs.\textsuperscript{182} Some responses illustrated the extent of damage that can be done by SLAPP suits. For instance, more than thirty responses maintained that the organization or individual had been a target in a SLAPP suit, but that the target preferred not to give details of the action because of fear of a subsequent suit based on the reporting of the information to the Attorney General's Office.\textsuperscript{183}

\textbf{B. Proposed Legislation}

The Florida Legislature has the advantage of being able to consider bills proposed in other states when drafting appropriate language for this state. Two bills dealing with frivolous lawsuits were filed during the Florida Legislature's 1992 Regular Session,\textsuperscript{184} although one was not specifically directed at SLAPPs.

House Bill 759,\textsuperscript{185} introduced by Representative Bruce Hoffman,\textsuperscript{186} would have amended section 57.105(1), \textit{Florida Statutes}, to provide for an award of attorney's fees if an attorney or party brought or
defended an action that lacked substantial justification, or the action or defense was used for delay or harassment. This bill was influenced by the federal Equal Access to Justice Act, which requires courts to analyze the substantial justification of the losing party's argument in determining whether to award attorney's fees. This language would have been appropriate for dealing with SLAPPs because, although sometimes facially valid, they arguably lack substantial justification. Again, however, there would be the problem of proving that by a preponderance of the evidence. An advantage for targets was that the language of this bill did not require them to establish that the alleged harassment or attempt at delay was the sole or even primary purpose of the original lawsuit.

The bill that was specifically directed toward SLAPP suits, Senate Bill 2188, was filed by former Senator Sherry Walker in response to problems reported by a constituent. Walker's bill is similar in many ways to legislation proposed in other states. Subsection (1) of the bill recognized that:

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The Legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to public entities or who wish to speak out about a public issue that affects them. The costs of defending against such suits can be severely burdensome. The purpose of this act is to protect individuals who make good-faith reports to appropriate public entities or who in good faith and without actual malice exercise the right to petition the government for redress of grievances.

Such a legislative intent section—not infrequent in Florida legislation—is especially important because public and judicial...

190. Fla. SB 2188 (1992). The bill was not considered by the Senate Committee on the Judiciary, the first committee to which it was referred. FLA. LEGIS., PROVISIONAL LEGISLATIVE BILL INFORMATION, 1992 REGULAR SESSION, HISTORY OF SENATE BILLS at 246, SB 2188. Before former Senator Sherry Walker's announcement that she would not be seeking re-election in 1992, her office stated that she planned to refile the bill next year. Telephone interview with Eileen Patrick, aide to then-Senator Walker (May 13, 1992).
191. Dem., Waukeenah.
192. See supra note 190.
194. See, e.g., Fla. STAT. § 112.3187(2), discussed supra notes 174-77, and accompanying text.
awareness is one of the important tools in deterring or defeating SLAPPs. However, the first sentence seems unduly limiting. The phrase "concerning potential wrongdoing" should be removed. It adds nothing and suggests that the Legislature meant to deal with only a fraction of potential SLAPP suits, in direct contradiction to subsection (2) of the bill. Subsection (2) of the bill was similar to a provision in the Washington legislation and a proposed New Jersey bill. It provided that "[a] person who in good faith communicates a complaint or information to any public entity regarding any matter reasonably of concern to that entity is immune from liability for damages arising out of the communication." This language stems from the right to petition. While it is non-specific as far as kinds of communications and damages, it is specific enough to encompass most situations in which SLAPP suits can arise, including testimony at public hearings, communications to state agencies, and legislative lobbying.

To effectively address other situations in which SLAPPs might arise, such as after publication of a target's letter to the editor, the Florida bill again mirrored the New Jersey legislation, and surpassed the protection provided by the Washington law. The bill provided that "[a] person who in good faith and without actual malice expresses an opinion or belief concerning a public issue that affects the person is immune from liability for damages arising out of the communication." This language would protect SLAPP targets whose allegedly tortious conduct was a non-governmental communication, such as a letter to the editor. However, it would not interfere with a legitimate cause of action for defamation or slander because the bill provides several forms of protection for the subject of the communications: the target must not have "ulterior motives"; she must act in good faith and without actual malice; and her immunity is

195. By whose standards is "wrongdoing" to be judged? Circumstances surrounding SLAPPs involve hotly debated issues where there is no clear "right" and "wrong." The razing of trees to provide low-cost housing might be a travesty to some, while interfering with these plans could classify as "wrongdoing" to others.
196. See infra text accompanying notes 202-05.
199. The definition of "public entity" is discussed infra text accompanying notes 214-15.
201. N.Y. AB 4299, at 2 (1991) (defines "communication" as "any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention or other expression").
limited to communications that are "public issues." Obviously, a personal dispute between two parties that was aired either at a public meeting or in a letter to the editor would still be actionable.

Senate Bill 2188 also provided that "[i]n addition to any other remedies at law, a person who prevails in defending a suit for damages under either of these circumstances is entitled to recover costs and reasonable attorney's fees incurred in establishing the defense." Both the New Jersey legislation and the Washington law provided for the recovery of damages, but neither specifically emphasized that the recovery of damages under the anti-SLAPP law would not supersede any other remedy. At worst this section is superfluous, and at best it may serve to remind the attorneys for potential SLAPP filers that their clients may be exposing themselves to additional liability by filing a harassment suit. Generally, courts in this country follow the American Rule, with each side responsible for its own legal fees. However, because much of the force behind the SLAPP is the financial cost imposed on the target for her defense, as well as the threatened multimillion-dollar judgment, requiring malicious filers to pay costs is a justifiable and appropriate sanction. Whether potential liability for costs and fees would serve as an adequate deterrent to the actual prosecution of SLAPPs is unknown.

For targets who may not be able to afford adequate legal representation, subsection (3) of the bill allowed a public entity to intervene in a lawsuit arising out of a complaint or information received by that entity. The state Attorney General also was permitted to intervene and defend against the suit regardless of whether or not the agency chose to do so. While other states' legislation has permitted intervention, Florida is unique in permitting discretionary intervention by the Attorney General in all cases. This provision is especially advan-

205. The phrase "public issue" might be open to judicial interpretation as it is defined neither in the Florida Statutes nor in any state court opinion. Difficulties which could arise include: how many people need be affected before something becomes a "public issue"?; what is the nature of a "public issue"?; and how closely must someone be involved in order to consider herself "affected"? The last question probably would require arguments similar to those in standing cases, and a person would have to prove a sufficient degree of involvement to have the "right" to make such a public statement. Proving standing to sue might be difficult, as the U.S. Supreme Court recently limited standing for environmental groups, at least in cases where the injury alleged is the possibility of not having the opportunity to observe endangered species in the future. See Interior Dep't v. Defenders of Wildlife, 112 S. Ct. 2130 (1992).
210. Id.
tageous for Florida targets because the Attorney General is familiar with the issues involved in SLAPP suits.

Of course, the public entity or Attorney General does not intervene without some "risk." If either succeeds in proving the defense, it is entitled to recover costs and reasonable attorney's fees incurred in establishing the defense. However, if unsuccessful, the party bringing the action (the alleged SLAPPer) would be entitled to recover costs and fees incurred in proving the defense inapplicable or invalid. Although Washington's law contains the same provision, it is still unclear whether the possibility of being held liable for opposing party's fees would make the agencies or attorney generals reluctant to get involved. Agencies with strained budgets or without much need for public participation might be reluctant to intervene. However, given the Florida Attorney General's experience with SLAPP suits, perhaps that office would be more likely to come to the aid of an apparent SLAPP target.

The last subsection of Senate Bill 2188 defines "public entity," the only term defined in the act, as "the Federal Government; the state, including any branch thereof; any county, municipality, district, public authority, public agency, or other political subdivision or public body in this state; or any officer or employee of the foregoing entities." The definition goes beyond that in the New Jersey bill to include "officers and employees," perhaps to reflect the obvious fact that one does not report violations to political subdivisions themselves. Nonetheless, exactly what is encompassed in the term "Federal Government" remains in question, as does the liability of people who register their complaints outside the state border.

Overall, this bill was one of the stronger pieces of anti-SLAPP legislation filed in any state. It did not unacceptably infringe upon the liberties of people whose rights are actually violated, intentionally or not, by an overzealous activist. It protected potential targets, but also put the checks of "good faith" and "without actual malice" on their behavior. It also required that to receive immunity for communications made to someone other than a public entity, the matter must be a "public issue" that "affects the person." If enacted, the bill should effectively deter at least some SLAPPs, especially from filers without extensive financial resources.

213. Id. at 2-3.
214. Id. at 3.
215. See supra note 132.
The bill was lacking in one area: It did not contain a provision for accelerated consideration of motions to dismiss or for summary judgment and, thus, possible prompt dismissal. Such a provision should be added and, ideally, the burden of proof in these motions should be on the plaintiff to show either that the target's action was not protected by the First Amendment or that the cause of action has a substantial basis in law.²¹⁶

Another way to strengthen the protection for potential targets without adversely affecting the rights of good-faith plaintiffs would be to impose increased responsibility on attorneys filing claims in which the Petition Clause could be raised as a defense. Attorneys could be required to go beyond the "reasonable inquiry" required by Federal Rule of Civil Procedure 11²¹⁷ in suits that might be defensible under subsection (2) of Senate Bill 2188 because of the dangers frivolous suits present. Then, if the attorney proceeded with the filing or prosecution of a suit that a reasonably prudent practitioner would have realized was a SLAPP, she could be sanctioned or disciplined accordingly, in addition to sanctions under Rule 11²¹⁸ and discipline under the Model Rules of Professional Conduct.²¹⁹

A provision for the recovery of punitive damages in addition to fees and costs also should be included. For those filers with extensive financial resources and purely malicious motives, higher sanctions are certainly appropriate. Punitive damages could be awarded in cases where it is proven that the filer has disregarded the target's right to petition the government and has filed suit for the primary purposes of harassment or retaliation.²²⁰ Although this would be difficult for most targets to prove, the provision would still add force to the bill and relieve targets of the burden of filing a new claim to recover punitive damages.

Finally, it also might be wise to include a legislative disclaimer advising that the bill does not preclude the right of recovery under com-

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²¹⁶ See, e.g., N.Y. AB 4299 (1992); see also supra note 149 and accompanying text.
²¹⁷ See supra note 56 and accompanying text.
²¹⁸ See supra note 56 and accompanying text.
²¹⁹ See supra notes 58-60 and accompanying text.
²²⁰ Anti-SLAPP legislation filed in Maryland in 1992 adopted this approach. Identical bills, SB 51 (1992) and HB 486 (1992), provided that the target may recover compensatory damages "if the SLAPP suit was started at least partly to harass, intimidate, punish, or otherwise maliciously inhibit the exercise of the [target's] First Amendment rights," and punitive damages if such harassment was "the only purpose of the SLAPP suit." Neither bill passed in 1992. Rhode Island's Senate Bill 2005 (1992) included similar language.
mon law, statute, or rule, and additionally that it is not intended to limit constitutional, statutory or common law protections available to targets.221

Incorporating these changes should deter the filing of SLAPPs and provide the best available remedies to targets. If there is to be additional protection for SLAPP targets in Florida, it will have to be achieved legislatively because the Florida Supreme Court declined to adopt the sham standard in a case decided in October 1992.222

C. Londono v. Turkey Creek: Florida Rejects the POME Standard

_Londono v. Turkey Creek_ arose as a result of a group of homeowners’ opposition to a developer’s requested zoning changes and to a pending purchase option by another development group. When the permit was denied, the developers sued for slander of title, malicious prosecution, tortious interference with a contract, tortious interference with an advantageous business relationship, and civil conspiracy, alleging that the denial was a direct result of the homeowners’ actions in appearing before various governmental boards and bodies.223

The trial court granted the homeowners’ motions to dismiss, but the First District Court of Appeal reversed,224 and the Florida Supreme Court affirmed.225 In his amicus curiae brief in support of petitioners, the Attorney General had characterized the developers’ suit as a SLAPP filed in retaliation for the homeowners’ efforts to protect their property values, and advocated the adoption of the POME standard in Florida.226 However, the Florida Supreme Court concluded that Florida law already provides adequate protection to persons petitioning the government,227 although the Attorney General’s survey results indicate that perhaps the court is mistaken.

V. Conclusion

Citizens can be denied neither the right to petition the government and be heard on public issues nor the right to redress of legitimate

223. Londono v. Turkey Creek, Inc., 577 So. 2d 1327 (Fla. Apr. 12, 1991) (No. 76,765).
224. Turkey Creek, Inc. v. Londono, 567 So. 2d 943 (Fla. 1st DCA 1990), jurisdiction accepted, 577 So. 2d 1327 (Fla. Apr. 12, 1991) (No. 76,765).
226. See Attorney General’s Amicus Curiae Brief at 6. Id. See also supra notes 80-87 and accompanying text (discussion of Protect Our Mountain Env’t Inc. v. District Court, 677 P.2d 1361 (Colo. 1984)).
injuries from an abuse of the petition process. However, because some see intimidation suits as an effective method of dealing with opposition, Florida needs a statewide remedy to fight SLAPPs and to ensure open public discussion and debate on issues crucial to the future of the state. Public debate on environmental issues, a common target of SLAPP suits, is especially critical in a state whose ecology and ecosystems are threatened by growing population and increasing development.

The citizens of Florida must be better educated about their rights and responsibilities when petitioning the government or speaking out on public issues. This will make them more confident, perhaps more likely to participate, and certainly less likely to abandon their principles at the first hint of a SLAPP.

Florida also needs a legal means to deter the SLAPPs, and a method of accelerated review and dismissal to dispose of the suits once they are filed. Anti-SLAPP legislation is the most feasible and flexible answer to the SLAPP problem, although it cannot offer a complete solution. Legislation must be carefully drafted to avoid potential infringement on the rights of persons with legitimate grievances; but no matter how carefully drafted, legislation cannot eradicate the intimidating effect of a threatened lawsuit that is never filed.

The Florida Legislature should enact a bill that is similar to Senate Bill 2188, but which also contains provision for accelerated review of preliminary motions in suits involving potentially protected speech. Notwithstanding the Florida Supreme Court’s reluctance to adopt a variation of the POME standard, the Attorney General’s study suggests a need for general anti-SLAPP legislation which also provides for attorney’s fees and protection for non-petitioning activities, such as letters to the editor. State legislators need to draft precise legislation that will effectively protect SLAPP targets and discourage misuse of the legal system, while still preserving the constitutional rights of the filers.