

## SLAPP Law: Protecting Free Speech

"Don't criticize a man until you've walked a mile in his boots."

-- One of the 101 most frequently used American proverbs, from "Random House Dictionary of Popular Proverbs and Sayings" (1996) by Gregory Y. Titelman (Random House, New York, 1996).

"Before you criticize people, you should walk a mile in their shoes. That way, when you criticize them, you're a mile away. And you have their shoes."

-- J K Lambert (book designer and illustrator)

This year marks the 10-year anniversary of the free speech law called the "Tennessee Anti-SLAPP Act of 1997." This column answers some questions about this little-known law.

### Q. What is a "SLAPP"?

"SLAPP" means a Strategic Lawsuit Against Public Participation. A "SLAPP" is designed to discourage, or retaliate for, a person or group's expression of free speech.

### Q. What happens when a SLAPP is used?

Imagine a situation where citizens exercise their right to make comments in opposition to a proposed corporate initiative or a proposed land development. An example might be a zoning review board or a planning commission meeting.

Now imagine that the corporation or land developer files a lawsuit against these persons in an attempt to scare them into dropping their objections. In the lawsuit, the corporation or developer might claim that it has been damaged due to libel or slander, or interference with its business.

Such a lawsuit might ask the court to award the corporation or land developer hundreds of thousands or even millions of dollars. The unstated purpose of such a lawsuit is to silence members of the public, or to retaliate against and punish citizens, who wish to exercise their rights of free speech. Such a lawsuit is indeed a harsh SLAPP to the persons who are sued.

SLAPP lawsuits may often involve the local environment -- for example, area residents who legally speak out against a real estate development might be sued in a SLAPP suit.

### Q. Does Tennessee have any protection against a SLAPP?

Yes. Fortunately, the Tennessee legislature passed a law ten years ago called the "Tennessee Anti-SLAPP Act of 1997."

### Q. What does this "Anti-SLAPP" law say?

The law says that any person who communicates information to any federal, state, or local government body regarding another person or a business, in connection with a public or governmental issue, shall be immune from civil liability due to the person's communication.

"Immune from civil liability" means that a court cannot act on a lawsuit and hold a person liable, or legally responsible, for having to pay money for damages.

The law also says that citizens who are sued for exercising their constitutional rights of free speech or petition may ask the court to make the corporation pay for their defense costs and attorney fees.

### Q. Are there any exceptions to the Anti-SLAPP law?

Yes. The person who communicates the information to the federal, state, or local government is not immune from liability if the person:

- (1) Knew the information to be false; or
- (2) Communicated information in reckless disregard of its falsity; or
- (3) Was negligent in failing to determine whether the information was false, if the information involves a person or entity other than a "public figure." (The phrase "public figure" is a legal term that generally refers to persons who are highly visible, such as politicians, celebrities, or business leaders.)

Bottom line: Remember the famous motto of "public figure" Davy Crockett: "Be sure you are right, then go ahead."

by Jim Hawkins, Managing Attorney,  
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**Note:** This column is not intended to take the place of legal advice. All cases are different and need individual attention. Consult with a private attorney of your choice to review the facts and law specific to your case.

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