IN THE DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA
FOURTH DISTRICT

On Appeal from the Nineteenth Judicial Circuit
in and for Martin County, Florida

CASE NO.: 4D18-1221
L.T. CASE NO.: 2013-001321-CA

MAGGY HURCHALLA,

Appellant,

vs.

LAKE POINT PHASE 1, LLC,
and LAKE POINT PHASE II, LLC,
Florida limited liability companies,

Appellees.
_____/

MOTION OF DR. PENELOPE CANAN, PROFESSOR EMERITA OF SOCIOLOGY, UNIVERSITY OF CENTRAL FLORIDA, AND GEORGE W. PRING, PROFESSOR EMERITUS OF LAW, UNIVERSITY OF DENVER, FOR LEAVE TO FILE AN *AMICI CURIAE* BRIEF IN SUPPORT OF THE POSITION OF THE APPELLANT, MAGGY HURCHALLA

Movants, DR. PENELOPE CANAN, PROFESSOR EMERITA OF SOCIOLOGY, UNIVERSITY OF CENTRAL FLORIDA, AND GEORGE W. PRING, PROFESSOR EMERITUS OF LAW, UNIVERSITY OF DENVER, file this Motion for Leave to File an *Amici Curiae* Brief in support of the Appellant, MAGGY HURCHALLA, pursuant to Rule 9.370, Fla. R. App. Pro., and state:

1. Movants Penelope Canan and George W. Pring are university educators and socio-legal scholars who have collaborated for more than 30 years on the empirical study of the First Amendment's Right to Petition the Government for a Redress of Grievances (U.S. Const. Amend. I) and its role in lawsuits, such as this one, that are based on people's communications to government.[1] They have studied hundreds of civil lawsuits filed against individuals, businesses, or organizations for **expressing their views to government to promote or discourage government action**, which is exactly what Appellant Maggy Hurchalla did in this case.

2. Professors Canan and Pring created the University of Denver's Political Litigation Project in 1984. Supported by grants from the Hughes Foundation and the U.S. Government's National Science Foundation (# SES 87-14495), they identified, named, and conducted the first nationwide study of "Strategic Lawsuits Against Public Participation" in government or "SLAPPs"[2] – civil lawsuits brought against defendants because of their communications to

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[1] Their resumes are at https://sciences.ucf.edu/sociology/people/canan-penelope/ and http://www.law.du.edu/faculty-staff/george-pring, respectively.

[2] "Pring and Canan originally came up with the term, which is now a widely used acronym," Samuel J. Morley, Florida's Expanded Anti-SLAPP Law: More Protection for Targeted Speakers, 90 *Fla. Bar J.* 16 n. 3 (Nov. 2016).

government and government officials on public issues. Their research, articles, and their book – George W. Pring & Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (1996) – are still considered leading authorities in the field.

3. Canan and Pring have had their *amicus* briefs accepted in appellate and supreme courts. They have been cited in numerous federal and state court opinions, testified as experts in courts and legislative hearings, advised legislatures on drafting anti-SLAPP statutes (now adopted laws in 31 states, including Florida, and territories),[3] taught courses at universities, been quoted in national and local media, and addressed numerous public conferences and academic meetings concerning their research and findings on this topic.

4. Their peer-reviewed research revealed that people, organizations, and businesses were being sued, frequently for millions of dollars, for such political activities as circulating a petition, speaking at a public hearing, writing to government officials, lobbying for legislation, reporting violations of law, filing a public interest lawsuit, peacefully demonstrating, or otherwise trying to influence government action. They identified these lawsuits as violating the Petition Clause

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[3] Florida's anti-SLAPP statute is § 768.295, Fla. Stat., (original adopted in 2000; significantly expanded in 2015); for discussion *see* Morley, *supra* note 2. The website of the Public Participation Project, www.anti-SLAPP.org, has a current list, citations, and descriptions of state anti-SLAPP statutes.

of the First Amendment, "the right of the people . . . to petition the Government for a redress of grievances," rather than simply a violation of the Free Speech Clause. U.S. Const. Amend I.[4]

5. Their research found SLAPP filers typically rely on six legal claims to mask their intent and to pass the SLAPP off as ordinary business litigation: (1) defamation (libel, slander), (2) business torts (such as interference with contract or economic expectation, antitrust violations), (3) process violations (malicious prosecution, abuse of process), (4) conspiracy, (5) civil rights violations, and (6) other torts (nuisance, emotional harm, trespass). These claims have the effect of transforming a public political dispute into a private judicial dispute to punish past and discourage future opposition to a proposal or practice of the plaintiff.

6. The issue in this appeal is of concern to Professors Canan and Pring because their study found that virtually all defendants in the hundreds of SLAPPs studied were measurably **chilled from further participation in public issues and the chill extended to a larger population of other citizens, likewise ceasing their civic participation, simply from hearing about the SLAPP**.[5] The Petition

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[4] Florida's Constitution contains the comparable Petition Clause in Art. I, § 5.

[5] *See*, *e.g.*, Caryn Yost-Rudge, Letters to the Editor, Verdict against Hurchalla chills public dissent in Martin County, Treasure Coast Palm, Mar. 11, 2018, https://www.tcpalm.com/story/opinion/readers/2018/03/11/verdict-against-hurchalla-chills-public-dissent-martin-county/398313002/.

Clause protects the very basis for democracy, which requires the lines of communication between citizens and the government to be open, free-flowing, and without fear. Their study has made Movants keenly concerned that, by blocking those lines of communication, "SLAPPs threaten democracy."

7. The issue Professors Canan and Pring wish to address is the infringement of the constitutional rights of SLAPP defendants and the public and the reduction of people's willingness to participate in democracy that results from the failure to dismiss these SLAPP lawsuits.

8. They offer this *amici* brief to summarize their study's scientific findings about SLAPPs and SLAPP effect on democracy. In this way, they hope to provide the Court with a rational and dispositive basis for reversing the trial court and dismissing this case, thus sending a needed message that Florida citizens can participate in and contribute to good governance without fear of SLAPPs.

9. Counsel for Movants has contacted counsel for the parties and represents that Appellant consents to the filing of this *amici* brief by Professors Canan and Pring; however, the Appellees do not consent to the filing of an *amici* brief.

WHEREFORE, PROFESSORS CANAN AND PRING, request leave to file the attached *Amici Curiae* Brief in support of Appellant MAGGY HURCHALLA.

Respectfully submitted this 13th day of August , 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Motion for Leave to File an *Amici Curiae* Brief in Support of the Position of the Appellant, Maggy Hurchalla, with the *Amici Curiae* Brief attached, has been filed through the Florida eDCA Portal and served via electronic mail and U.S. Mail, on counsel of record listed below this 13th day of August, 2018.

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/s/Richard Grosso /s/

CERTIFICATE OF COMPLIANCE

I certify that the foregoing has been prepared in Times New Roman 14 point font, in compliance with Fla. R. App. P. 9.210(a) (2).

/s/Richard Grosso /s/

IN THE DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA
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AMICUS CURIAE BRIEF
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IN SUPPORT OF THE APPELLANT

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TABLE OF CONTENTS

Pages

TABLE OF CITATIONS

Pages

Constitutions

Statutes

Cases

Other Authorities

STATEMENT OF INTEREST OF AMICI CURIAE

Amici Curiae, DR. PENELOPE CANAN, PROFESSOR EMERITA OF SOCIOLOGY, UNIVERSITY OF CENTRAL FLORIDA, AND GEORGE W. PRING, PROFESSOR EMERITUS OF LAW, UNIVERSITY OF DENVER, are university educators and socio-legal scholars who have collaborated for more than 30 years on the empirical study of the First Amendment's Right to Petition the Government for a Redress of Grievances (U.S. Const. Amend. I), and its role in lawsuits, such as this one.[1] They have studied hundreds of civil lawsuits filed against individuals, organizations, or businesses for **expressing their views to the government to promote or discourage government action on pubic issues**, exactly what Appellant Maggie Hurchalla did in this case.

Professors Canan and Pring created the University of Denver's Political Litigation Project in 1984. Supported by grants from the Hughes Fund and the U.S. Government's National Science Foundation (# SES 87-14495), they identified, named, and conducted the first nationwide study of "Strategic Lawsuits Against Public Participation" in government or "SLAPPs."[2] Their research,

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articles, and their book – *SLAPPs: Getting Sued for Speaking Out*[3] – are still considered leading authorities in the field. The research protocol for the multi-phased study is presented in the following table:[4]

OVERVIEW OF RESEARCH PROTOCOL: 1985-1992
POLITICAL LITGATION PROJECT, UNIVERSITY OF DENVER
(Data Sets Used for This Article Indicated by *)

CASES[1]	RESEARCH PHASE	RESEARCH METHODS
100→241	**LEGAL STATICS DATA BASE***	Legal Documents and Cases Public Records (Quantitative)
100 Cases	**COUNTY DESCRIPTORS**	Census Bureau Data (Quantitative)
11 Cases 98 Rs	**INDEPTH CASE STUDIES*** **SOCIAL DYNAMICS OF DISPUTING**	Face-to-Face Interviews Verbatim Transcripts Public and Personal Documents (Qualitative)
129 Cases 268 Rs	**4-DIMENSIONAL MODEL TESTING** **DISPUTANTS' BACKGROUND** Socio-Economic Status* Community Context Political Experience* Litigation Experience* **CONTEMPORARY DISPUTE** Balance of Power Disputing Style Motives* View of Opponents* Stakes Social Support **DISPUTING ARENAS** Nature of Disputing Forum Characteristics Evaluation of Players **SOCIAL & LEGAL OUTCOMES** Financial, Physical, Mental Lawsuit Disposition	Hour Long Telephone Interviews & Lengthy Mailback Questionnaire (Quantitative & Qualitative)
128 Cases 268 Rs 928 Vs	**POLITICAL OUTCOMES "CHILL"** Filers* Targets* Ripple Effects Untouchables	Mailback Questionnaire Vignette Factorial Survey (Quantitative)

[1] Numbers in the Cases column refer to the number of SLAPP cases; additionally, Rs = Respondents; Vs = Vignettes in the factorial survey.

[3] *George W. Pring & Penelope Canan, SLAPPS: Getting Sued for Speaking Out* (1996).

[4] Penelope Canan, Martin Kretzmann, Michael Hennessy & George W. Pring, Using Law Ideologically: The Conflict between Economic and Political Liberty, 8 *J. of Law and Policy* 539, 545 (1992).

Canan and Pring have had their *amicus* briefs on SLAPPs accepted in appellate and supreme courts. They have been cited in numerous federal and state court opinions, testified as experts in courts and legislative hearings, advised legislatures on drafting anti-SLAPP statutes (now adopted laws in 31 states, including Florida, and territories),[5] taught courses at universities, been quoted in national and local media, and addressed numerous public conferences and academic meetings concerning their research and findings on this topic.

Their peer-reviewed research revealed that people, organizations, and businesses were being sued, frequently for millions of dollars, for such political activities as circulating a petition, speaking at a public hearing, writing to government officials, lobbying for legislation, reporting violations of law, filing a public interest lawsuit, peacefully demonstrating, or otherwise trying to influence government action. They identified these lawsuits as violating the Petition Clause of the First Amendment, "the right of the people . . . to petition the Government for a redress of grievances," rather than simply a violation of the Free Speech Clause. U.S. Const. Amend I.[6]

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[5] Florida's anti-SLAPP statute is at § 768.295, Fla. Stat. (original adopted in 2000; significantly expanded in 2015); *for discussion see* Morley, *supra* note 2. The website of the Public Participation Project, www.anti-SLAPP.org, has a current list, citations, and descriptions of state anti-SLAPP statutes.

[6] Florida's Constitution includes a comparable Petition Clause in Art. I, § 5.

Their research found SLAPP filers typically rely on six legal claims to mask their intent and to pass the SLAPP off as ordinary business litigation: (1) defamation (libel, slander), (2) business torts (such as interference with contract or economic expectation, antitrust violations), (3) process violations (malicious prosecution, abuse of process), (4) conspiracy, (5) civil rights violations, and (6) other torts (nuisance, emotional harm, trespass). These claims have the effect of transforming a public political dispute into a private judicial dispute to punish past and discourage future opposition.

The issue in this appeal is of concern to Professors Canan and Pring because their study found that virtually all defendants in the hundreds of SLAPPs studied were measurably **chilled from further participation in public issues and the chill extended to a larger population of other citizens, likewise turning off their civic participation, simply from hearing about a SLAPP**.[7] The Petition Clause protects the very basis for democracy, which requires the lines of communication between citizens and the government to be open, free-flowing, and without fear. Their study has made them keenly concerned that, by blocking those lines of communication, "SLAPPs threaten democracy."

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[7] *See*, *e.g.*, Caryn Yost-Rudge, Letters to the Editor, Verdict against Hurchalla chills public dissent in Martin County, *Treasure Coast Palm*, Mar. 11, 2018, https://www.tcpalm.com/story/opinion/readers/2018/03/11/verdict-against-hurchalla-chills-public-dissent-martin-county/398313002/.

The issue Professors Canan and Pring wish to address is the infringement of the constitutional rights of SLAPP defendants and the public and the reduction of people's willingness to participate in democracy that results from the failure to dismiss these SLAPP lawsuits. They offer this *amici* brief to summarize their study's scientific findings about SLAPPs and SLAPP effects on democracy. In this way, they hope to provide the Court with a rational and dispositive basis for reversing the trial court and dismissing this case, thus sending a needed message that Florida citizens can participate in and contribute to good governance without fear of SLAPPs.

SUMMARY OF THE ARGUMENT

Professors Canan and Pring can confirm that this case is a typical "Strategic Lawsuit Against Public Participation" in government, or "SLAPP," a type of lawsuit they have studied for more than 30 years through the University of Denver SLAPP Study. They conclude it should have been dismissed by the court below as a remarkably obvious violation of the Constitution's First Amendment Right to Petition the Government for a Redress of Grievances. The Petition Clause protects people from SLAPPs, which, simply put, are civil lawsuits directed at people's **communications to government officials made to influence government action or outcome**.

The Petition Clause protects the very foundation of democracy, the lines of communication between the government and the governed. Government needs this input to do its job, to understand community concerns on public and private issues, to preserve the peace, and to be held accountable.

Typically losers in court, SLAPPs are winners in the real world, chilling public involvement in government decision making, as the study found.

Appellant Maggy Hurchalla expressed her concerns about the Lake Point Appellees' development proposal, in conversations and emails, to the exact local government officials charged with deciding whether to approve the proposal or not, as is her right under the Petition Clause. The Petition Clause protects and encourages people to communicate with the government and government officials using any peaceful means of speaking out – petitions, letters, telephone, email, public hearing testimony, demonstrations, conversations, the internet, billboards, *et al.* The right covers people's speech to government whether true or false, accurate or incorrect, exact or overstated, and regardless of intent, so long as it is aimed at procuring government action, according to the leading U.S. Supreme Court cases.

Lake Point Appellees' complaints charge Ms. Hurchalla principally with making "false statements" in "meetings with various government officials," which is a classic charge by opponents against Petition Clause-protected activity. Opponents are free to make those arguments to government decision makers in the

public political arena, but not to attempt to silence petitioning activity by transforming it into a private judicial dispute. It is the job of the decision-making government itself to determine the truth or falsity, accuracy or inaccuracy, relevance or unhelpfulness of people's communications with it. It is not appropriate to put the courts in the position of **censoring** people's communications with their government. The constitutional justification for this is that the court would be permitting its legal system to be used as a tool to suppress core political communication.

The U.S. Supreme Court's *Noerr-Pennington* line of Petition Clause cases makes it crystal clear that views expressed to government officials and agencies are protected as long as they are seeking "a government result."

This lawsuit has all of the most common and obvious characteristics of a SLAPP, which Professor Canan's and Pring's study brought to light.

Even worse than the brutal effects of SLAPPs, like this, on the citizen(s) targeted in the lawsuit, is the enormous chilling effect on all other persons who learn of the risk of SLAPPs through the media, internet, and other means, as the study demonstrated scientifically. Another civic cost of SLAPPs is that hearing about them deflates civic pride in American institutions and promotes a reluctance to trust in the Rule of Law. They unsettle and intimidate everyone who believes in the American ethos of balancing fair play with political equality.

SLAPPs are an abuse of both the courts and citizens to dampen citizen political involvement in government decision making, pointing to the need for the courts vigilantly to reaffirm and reinforce the constitutional Right of Petition. The decision below should be reversed for these reasons, and dismissed with prejudice as a classic SLAPP, a lawsuit filed in violation of Appellant Maggy Hurchalla's rights under the Petition Clause of the First Amendment.

ARGUMENT

The Court should reverse the judgment and dismiss the proceedings below against Appellant Maggy Hurchalla as a quintessential "Strategic Lawsuit Against Public Participation" in government or "SLAPP," violating the Constitution's First Amendment Right to Petition the Government for a Redress of Grievances. U.S. Const. I.

In the 30 years Professors Canan and Pring have studied SLAPPs, they have rarely seen a case that so obviously fits the definition, so clearly violates the First Amendment's Petition Clause, and yet was unrecognized and mishandled by the trial court. SLAPPs' defining characteristic is that they are civil lawsuits that involve another's **communications to government officials made to influence government action or outcome**.[8] In their 1996 book, they conservatively

[8] Pring & Canan, *SLAPPs: Getting Sued for Speaking Out, supra* note 3, at 8; Lori Potter & W. Cory Haller, SLAPP 2.0: Second Generation of Issues Related to Strategic Lawsuits Against Public Participation, 45 Envtl L. Rptr. 10136 (2015); Margaret Graham Tebo, Offended by a SLAPP: As Lawsuits Against Citizens

estimated that thousands of Americans have been SLAPPed, and many more thousands have been muted or silenced by the threat.[9]

The Petition Clause protects the very foundation of democracy, predating the 1215 Magna Carta in English law by almost 300 years. It actually is a conservative principle, supporting access to government rather than the repressive conditions that generate violent social unrest. Democracy depends on the relationship between the government and the governed. Governments – local, state, or national – need the input of their constituents, the "governed," in order to do their job by understanding constituents' concerns, opinions, knowledge, experience, and desires. Government "of the people, by the people, for the people" needs the public's input to be informed about a host of public and private issues, like development projects, crime, hazardous roads, service outages, dangerous conditions, schools, public safety, environmental problems, corruption, and a myriad of other important matters. Good government has to have citizen input and involvement to do its job, to preserve the peace, and to be held accountable for the public good. Of necessity, the lines of communication between citizens and the government must be open, free-flowing, and without fear.

Expand, Countermeasures Are Rolled Out, Am. Bar Assn J. 16 (Feb. 2005).

[9] Pring & Canan, *supra* note 3, at 3.

The Lake Point Appellees sued Appellant Maggy Hurchalla precisely for expressing her views to government officials about a public issue – the developers' proposed project – *as is her right and duty as a citizen*. In doing so, the Lake Point Appellees created the risk of squandered judicial time and resources; punished Appellant Maggy Hurchalla for exercising her constitutional right, diverted her time, resources, and attention from other private and public business; consumed the time and plans of community members on the jury; deflected community deliberation about serious land use issues; crowded the Court's docket, creating delays for other cases; and sent a chilling message to everyone in the community, and beyond.

SLAPPs like this, the study found, are typically losers in the courthouse, but winners in the real world, punishing past and chilling future public involvement in government decision making.[10]

What makes this case such a classic and obvious SLAPP? Over the past decade, Lake Point Appellees submitted a series of development proposals for their property to Martin County and other government agencies for approval, as is their

[10] SLAPPs are dismissed at the trial court level in approximately 2/3 of the cases; if the trial court fails to do that, the first appeals court typically reverses, bringing the dismissal rate to over 3/4. The remainder, "failure model" cases, generally end because of the victim's capitulation. Pring & Canan, *supra* note 3, at 218. But, even with dismissals, SLAPPs can last a long time, an average of 40 months for final judicial resolution, and the chill can last longer, the study found. *Id.*

right. The government agencies relied on their own expertise, outside consultants, and citizens to help them make a public decision, as is their duty.

Appellant Maggy Hurchalla expressed her concern about the final development proposal, in conversations and emails, to the exact local government officials charged with deciding whether to approve it or not, as is her right under the Petition Clause. People may communicate with the government and government officials using any peaceful means of speaking out – petition signing, letters, email, telephone, public hearing testimony, demonstrations, street or living-room conversations, the internet, billboards, *et al*.; the Petition Clause does not restrict people to one channel, such as public hearings. It also does not require petitioners to be "right" (although here, local government agencies agreed she <u>was right</u> and adopted her position, according to Appellees' complaints). It would be totally unacceptable if citizens silenced themselves, thinking they had to be "experts" before they stepped up to report questionable activities or conditions to the government.

Lake Point Appellees countered that what Ms. Hurchalla said was wrong, *as is their right in the public political arena*. However, in the context of statements made in the public political arena, the law and courts must protect the public from the transformation of that petitioning into a private litigation liability.

The Right to Petition covers people's communications to government whether true or false, accurate or incorrect, relevant or unhelpful, and regardless of intent *when that communication seeks to achieve a government result*. It is the job of the government to determine the truth or falsity, accuracy or inaccuracy, relevance or unhelpfulness, and motive of people's communications to that government and to act accordingly. It is not appropriate to put the courts in the position of **censoring** people's communications with their government. The constitutional justification for this protection is that the court would be permitting its legal system to be used as a tool to suppress core political communication. Nor is it the right of any private group to use the courts to eliminate competing public opinions, that is, to control which citizens can express their views to the government.

Professor Canan's and Pring's study documented that all SLAPPs are classic examples of strategic "dispute transformation." Citizens communicate their views to a government actor (government official, employee, or agency or the voters). Opponents, concerned they are losing or may lose ground in the public political arena, file a lawsuit against those citizens. The lawsuit immediately transforms the public policy debate from a political controversy into a judicial one, transforms the forum from the public governmental arena (where the dispute can be decided) into the private judicial arena (where it cannot), and transforms the issue from the

public's concerns (government decision about development, the environment, public safety, *etc.*) to the opponent's claimed personal injuries (dollar amounts to compensate for alleged harms, typically torts). These transformations effectively block consideration of who is right in the public dispute and frustrate its resolution.

If the citizens counter the lawsuit by raising their Petition Clause-protected rights, they typically win dismissal immediately. They have succeeded in re-transforming the private judicial action back into a public political dispute, by reminding the court that First Amendment rights typically outweigh personal injury claims of opponents. However, if the citizens, their lawyers, or the trial court, fail to see the political rights issue, no re-transformation occurs, the case is adjudicated as an ordinary legal dispute, and meritorious citizens may lose, as in this case.

One of the most persuasive descriptions of all that is wrong with SLAPPs came from a New York trial court judge over a quarter-century ago:

> "SLAPP suits come in many forms camouflaged as ordinary lawsuits The conceptual thread that binds them is that they are suits without substantial merit that are brought by private interests to 'stop citizens from exercising their political rights or to punish them for having done so'. . . [citing Professor Canan and Pring's University of Denver study and other authorities]. SLAPP suits function by forcing the target [defendant] into the judicial arena where the SLAPP filer [plaintiff] foists upon the target the expenses of a defense. The longer the litigation can be stretched out, the more litigation that can be churned, the greater the expense that is inflicted and the closer the SLAPP filer moves to success. The purpose of such gamesmanship

> ranges from simple retribution for past activism to discouraging future activism. Needless to say, an ultimate disposition in favor of the target often amounts merely to a pyrrhic victory. Those who lack the financial resources and emotional stamina to play out the "game" face the difficult choice of defaulting despite meritorious defenses or being brought to their knees to settle. The ripple effect of such suits in our society is enormous. Persons who have been outspoken on issues of public importance targeted in such suits or who have witnessed such suits will often choose in the future to stay silent. Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined.
>
> . . . This case, like other SLAPPs, attempts to turn the Petition Clause on its head by using the right to petition to indirectly punish the prior exercise of the right to petition by others." [11]

The U.S. Supreme Court has created has created a "success model" for addressing SLAPPs. Under the Court's *Noerr-Pennington* line of antitrust/business torts cases, the Petition Clause provides a sweeping protective immunity for communications to influence public officials regardless of intent or purpose – even if improper means, deception, or dishonesty are used – if the communications are aimed at procuring favorable government action.[12] Antitrust and business tort allegations are among the recurrent claims SLAPP filers use, and the *Noerr-Pennington* doctrine has since been applied to civil rights and other

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[11] *Gordon v. Marrone*, 155 Misc. 2d 726, 735-37, 590 N.Y.S.2d 649, 656 (1992)

[12] The extensive *Noerr-Pennington* line of cases is explained, with citations, in *City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 379-85 (1991) and in Pring & Canan, *supra* note 3, at 24-28.

issues.[13] Applying this model, the Lake Point lawsuit should have been dismissed and never gone to a jury, since Appellant Maggy Hurchalla's activities were clearly aimed at procuring favorable government action.

This lawsuit has the most common characteristics of a SLAPP. Of the hundreds of SLAPPs analyzed, the study found:[14]

- Filers: Real estate developers generated 38% of the cases.
- Filers' Motives: Protection of their own economic interests, with reputation a close second.
- Petitioners: "concerned citizens" comprised 67% of the defendants. However, they represent all shades of political views, from radical to liberal to centrist to conservative to ultra-right-wing. SLAPPs target rich and poor, Republicans and Democrats, individuals and groups, nonprofits and businesses, reformers and protectors of the status quo.
- Petitioners' Motives: Civic or political principles, a sense of responsibility to their community, or to oppose perceived injustice.

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[13] *E.g.*, *Nat'l Ass'n for the Advancement of Colored People v. Claiborne Hardware Co.*, 458 U.S. 365 (1982) (civil rights).

[14] For details of the University of Denver SLAPP study methods and findings, see the Appendix in Pring & Canan, *supra* note 3, at 209-222, and the study's articles listed *infra* in notes 16-17. Research data are archived at the Inter-University Consortium for Political and Social Research at the University of Michigan-Ann Arbor and at the Penrose Library of the University of Denver.

- Injury claims: There are six telltale legal claims: (1) 53% defamation (libel, slander), (2) 33% business torts (interference with contract or economic advantage, antitrust), (3) 19% process violations (abuse of process, malicious prosecution), (4) 18% conspiracy, (5) 17% civil rights, (6) 32% other (nuisance, emotional harms, trespass).[15]
- Where: SLAPPs are found in all states, but appear most often in counties with good economies that encourage development and business expansion.
- Damages: In the majority of cases, enormous damage claims are made (typically in the millions, as here).

Even more worrisome than the brutal effects of SLAPPs on the individual defendants, is the enormous chilling effect on all the other people who learn of the risk through the media, internet, or other means. At the University of Denver SLAPP project, researchers found that virtually all defendants in the hundreds of SLAPPs studied were politically chilled to the point that they would curtail their participation in government decision making and would advise other persons "not to get involved." To measure scientifically the political chill, a factorial survey method was used to compare/contrast a group of "SLAPP-savvy" citizens (including (1) plaintiff-filers, (2) defendant-targets, and (3) others who had heard

[15] Multi-claim complaints are common, resulting in the numbers adding to more than 100%.

of the risk of SLAPPs (aka the "Ripple Effects" group)) to a group of politically active citizens that had never heard of SLAPPs (the "Untouchables" group).[16] As survey respondents evaluating 928 randomly constructed dispute scenarios, the "SLAPP-savvy" group overwhelmingly would warn others NOT to speak out on public issues. This contrasts starkly with the encouragement for civic involvement expressed by the SLAPP-naive "Untouchables."[17]

The chilling effect of this Lake Point SLAPP is already appearing in numerous news articles and letters to the editor. One such ended with these ominous comments:

> *Can we now be sued and punished financially for redressing our grievances to the government?*

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[16] Penelope Canan, Michael Hennessy & George W. Pring, The Chilling Effect of SLAPPs: Legal Risk and Attitudes Toward Political Involvement, 6 *Research in Political Sociology* 347 (1992).

[17] Additional articles on the qualitative and quantitative research and findings of the University of Denver SLAPP Study are also available: Penelope Canan & George W. Pring, Strategic Lawsuits Against Public Participation, 35 *Social Problems* 506 (1988); Penelope Canan & George W. Pring, Studying Strategic Lawsuits against Public Participation: Mixing Quantitative and Qualitative Approaches, 22 *Law & Society Rev.* 385 (1988); George W. Pring, SLAPPs: Strategic Lawsuits against Public Participation, 7 *Pace Envtl L. Rev.* 3 (1989); Penelope Canan, Gloria Satterfield, Laurie Larson & Martin Kretzmann, Political Claims, Legal Derailment, and the Context of Disputes, 24 *Law & Society Rev.* 923 (1990); Penelope Canan, Martin Kretzmann, Michael Hennessy & George W. Pring, Using Law Ideologically, *supra* note 3; Penelope Canan & Chris Barker, Inside Land-Use SLAPPs: The Continuing Fight to Speak Out, 55 *Land Use Law & Zoning Digest* 3 (2003).

Martin County residents are going to have to think twice before sharing their constructive, beneficial knowledge with their own [county government] commissioners they elected.

God save our beautiful Martin County and our great country.[18]

CONCLUSION

SLAPPs are an abuse of the courts to dampen citizen involvement in government decision making, pointing to the need for the courts to vigilantly reaffirm and reinforce the constitutional Right of Petition. The decision below should be reversed for these reasons and dismissed with prejudice as a classic SLAPP, a lawsuit filed in violation of Appellant Maggy Hurchalla's rights under the Petition Clause of the First Amendment.

WHEREFORE, AMICI PROFESSORS CANAN and PRING request that the Court reverse the trial court's judgment based on the jury verdict, find that the lawsuit violates Appellant Maggy Hurchalla's rights under the Petition Clause of the First Amendment, and order the case dismissed with prejudice.

Respectfully submitted,

/s/Richard Grosso /s/
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[18] *Yost-Rudge, supra* note 7 (emphasis added); Martin Merzer, Maggy Hurchalla's free speech right just cost her millions, *Florida Politics* (April 24, 2018), http://floridapolitics.com/archives/261967-maggy-hurchallas-free-speech-right-just-cost-her-millions.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Motion for Leave to File an Amicus Curiae Brief in Support of the Position of the Appellant, Maggy Hurchalla, with the *Amicus Curiae* Brief attached, has been filed through the Florida eDCA Portal and served via electronic mail and U.S. Mail, on counsel of record listed below this 13th day of August , 2018.

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I certify that the foregoing has been prepared in Times New Roman 14 point font, in compliance with Fla. R. App. P. 9.210(a) (2).

/s/Richard Grosso /s/