

Florida Environmentalist Bruised in Supreme Court SLAPP Fight

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On January 11, 2021, the United States Supreme Court denied certiorari in *Maggy Hurchalla v. Lake Point Phase I, LLC*, a Florida-based contractual interference case. The denial left the Petitioner – an individual environmental activist – liable for a \$4.4 million jury verdict. The case originated when the Petitioner, Maggy Hurchalla, allegedly made false statements to five county commissioners about a proposed limestone mining and water treatment project, resulting in an adverse decision by the commission. According to the Respondents, Hurchalla, a former commissioner herself, allegedly engaged in back door discussions and provided critical information that she either knew was false, or provided with reckless disregard for the truth. For her part, Hurchalla asserted that the damages award against her violated her First Amendment rights to free speech and petition of the government where her statement to government officials could be construed as a “verifiable and true assertion or as an unverifiable opinion, when the speaker genuinely believed the statement, and when there is no evidence that the statement caused the adverse governmental action.” The Supreme Court denied cert without commenting on the merits of the case.

Amicus briefs filed in the case expressed concerns that the tort suit was a “strategic lawsuit against public participation” or SLAPP. Such lawsuits are frequently criticized for their chilling effect on public comments on controversial projects, and come up frequently in the context of projects with environmental impacts. Some states have promulgated anti-SLAPP statutes to preclude tort liability and protect individuals’ First Amendment rights related to participation in governmental decisions. On the other side, many stakeholders and business groups complain that individual members of the public have a relatively low (some might say non-existent) evidentiary hurdle to delay or torpedo legitimate development projects. In the absence of tort liability or some other form of accountability, regulated businesses can be financially damaged by malicious acts masquerading as public participation, and have no recourse whatsoever.

South Carolina currently lacks an anti-SLAPP statute. In fact, recent legislation by the South Carolina General Assembly has limited the class of persons that can bring public challenge to some types of environmental permitting decisions. In 2018 Act 139, the General Assembly limited the class of persons that could challenge DHEC's issuance of some permits for agricultural animal operations to "property owners with standing within a one-mile radius of the proposed ... facility, who is challenging [the decision] on his own behalf[.]" The same year, Act 134 was passed, amending the prior law governing automatic stays of DHEC permitting decisions during the pendency of a contested case hearing. The new law shifted the burden of maintaining the status quo to the party challenging the decision. While these statutory changes address circumstances far narrower in scope than the type of public commenting at issue in *Hurchalla*, critics say they chill citizen participation in governmental decision-making because concerned parties have a limited ability to follow through on their public participation in a legal setting.

SLAPP suits, or at least the use of that label, are not likely to go away anytime soon. Under the Trump administration, the push for environmental deregulation made all manner of public participation more difficult to come by. President Biden has committed to unwinding much of the deregulation of his predecessor, which presumably will increase public participation in environmental decisions. This in turn will likely result in more opportunities for governmental decisions adverse to those seeking licenses, permits, and other governmental authorizations, which will result in more potential damages and more potential suits. In the absence of broader anti-SLAPP protections, expect to see more cases like *Hurchalla*.