IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SHORELINE TOWERS CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation, and EDWARD FRISCHHOLZ, as President of the Board of Directors of the Shoreline Towers Condominium Association, an Illinois not-for-profit corporation,	)	Case No. 07 CH 06273
	)	Judge Kathleen M. Pantle
Plaintiffs,	)	
v.	)	
DEBRA GASSMAN, an individual,	)	
Defendant.	)	

BRIEF *AMICUS CURIAE* OF
THE ANTI-DEFAMATION LEAGUE

NOW COMES the Anti-Defamation League ("ADL"), by its undersigned counsel, and submits its brief *amicus curiae* regarding the Motion to Dismiss filed by Defendant Debra Gassman ("Gassman"), as follows:

INTEREST OF *AMICUS*

For more than ninety years, ADL has been one of this Nation's leading voices in defending and advancing the fundamental democratic principles of equality, fairness, and justice. ADL's mission, first enunciated in 1913, "is to stop, by appeals to reason and conscience and, if necessary, by appeals to law, the defamation of the Jewish people," with the "ultimate purpose ... to secure justice and fair treatment to all citizens alike and to put an end forever to unjust and unfair discrimination against and ridicule of any sect or body of citizens." *ADL Charter* (October 1913). Today, with a network of thirty regional and satellite offices in the United States and abroad, ADL carries out its mission through education, open dialogue, and public participation at all levels of government. As a premier advocate of civil rights and human relations, ADL fights

anti-Semitism and all forms of bigotry, defends democratic ideals, and strives to protect civil rights for all.

Consistent with its mission, ADL encourages and promotes citizen participation to confront discrimination of all kinds. ADL believes, and has seen its belief confirmed on countless occasions, that the courageous actions of a single citizen in standing up to bigotry and prejudice can and do make a difference in advancing justice and fair treatment for all. Accordingly, ADL has become deeply concerned with the proliferation of Strategic Lawsuits Against Public Participation ("SLAPP suits"), an insidious phenomenon wherein individuals and entities employ private lawsuits as a blunt instrument to intimidate and suppress those who would otherwise challenge unjust conduct. Illinois has recently joined a majority of the States in passing legislation, the Citizen Participation Act, 735 ILCS 110/1 *et seq.*, to protect its residents against such SLAPP suits. The Citizen Participation Act is a valuable tool in preserving the people's rights of petition, speech, association, and government participation against indirect restraint and encroachment, and should be applied vigorously in furtherance of that purpose.

ADL submits this brief as a non-partisan friend of the Court to explore (1) what a SLAPP suit is, with particular attention to the allegations of the present case; (2) the danger that SLAPP suits pose to citizen participation; and (3) the value of the Citizen Participation Act in confronting such suits.

ARGUMENT

I. The Definition of a "SLAPP Suit" Includes Claims Directed at a Citizen Who Exercises Her Rights of Petition in Furtherance of a Sacred Religious Observance

One of the first challenges a court faces in applying anti-SLAPP legislation like the Citizen Participation Act is determining whether the lawsuit at issue is in fact a SLAPP suit. "Asserted SLAPP plaintiffs obviously do not describe themselves as such." Kathleen L. Daerr-

Bannon, *Causes of Action: Bringing and Defending Anti-SLAPP Motions to Strike or Dismiss*, 22 Causes of Action 317, § 3 (2007). SLAPP suits "'masquerade as ordinary lawsuits' and thus are not easy to recognize, even by the courts." Kathryn W. Tate, *California's Anti-SLAPP Legislation: A Summary of and Commentary on its Operation and Scope*, 33 Loy. L.A. L. Rev. 801, 804 (2000) (*quoting* Pring, *SLAPPs: Strategic Lawsuits Against Public Participation*, 7 Pace Envtl. L. Rev. 3, 8-9 (1989)). Indeed, it is common for plaintiffs confronted with a motion to dismiss under an anti-SLAPP statute to argue, as Plaintiffs do in this case, that their action is not a SLAPP suit and lies beyond the reach of the anti-SLAPP statute's remedial provisions. (*See* Pl. Response, at 7-9). Consequently, when presented with an anti-SLAPP motion, a court must initially determine whether the lawsuit before it is a SLAPP suit at all.

The text of the Citizen Participation Act sets forth the General Assembly's understanding of a SLAPP suit under Illinois law. The Act applies to any claim that "is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." 735 ILCS 110/15. It places a wall of immunity around the exercise of one's constitutional rights of participation: "Acts in furtherance of the constitutional rights to petition, speech, association, and participation in government are immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome." *Id*. This protection is unqualified; the statute "shall be construed liberally to effectuate its purposes and intent fully." 735 ILCS 110/30(b). In short, the rights immunized under the Citizen Participation Act are co-extensive with the constitutional rights that it is designed to protect.

There is no limit to the diversity of claims that a creative plaintiff can assert in a SLAPP suit. The potential breadth of such claims and the contexts in which SLAPP suits can arise has been the subject of considerable attention, in terms remarkably prescient of the present suit:

> ***Libel and slander***, ***tortious interference*** with contract or business advantage, ***conspiracy***, antitrust violations, restraint of trade or unfair competition are only the most frequent claims alleged in SLAPP complaints. Additionally, process violations of ***malicious prosecution***; judicial or administrative abuse of process; ***constitutional and civil rights violations***; and other violations of the law such as trespass, nuisance, ***emotional harms***, attacks on tax exemptions are common, but not exclusive, claims. ***The SLAPP action may encompass allegations of a myriad number of claims, and "shotgun" pleading is frequent. Most cases are filed in state rather than federal courts and, in fact, the disputes are essentially local in nature***.

Daerr-Bannon, 22 Causes of Action 317, § 3 (emphasis added). *See also* Tate, 33 Loy. L.A. L. Rev. at 804-05 ("The most frequent type of SLAPP suit is for ***defamation***, but the causes of action are myriad. They include business torts (such as ***interference*** with contractual rights or with prospective economic advantage), anti-trust, ***intentional infliction of emotional distress***, invasion of privacy, ***civil rights violations***, constitutional rights violations, ***conspiracy***, nuisance, judicial process abuse, and ***malicious prosecution***.") (emphasis added).

California has the most developed body of anti-SLAPP precedent, and its cases are instructive with regard to the nature of SLAPP suits and the diversity of circumstances in which such claims may arise. The courts of California have recognized the existence of SLAPP suits in a number of contexts (landlord-tenant issues, zoning issues, homeowner association issues, etc.) involving a variety of claims asserted against both individuals and citizens' groups for acts pertaining to both public and private speech and conduct relating to matters of public interest. *See* 2 Law of Defamation § 9:107; *Briggs v. Eden Council for Hope and Opportunity*, 969 P.2d 564 (Cal. 1999) (public organization assisting tenants to pursue legal claims against landlord falls under anti-SLAPP statute); *Walsh v. Peskin*, No. A097306, 2002 WL 1897986, at * 2 - * 3 (Cal. Ct. App. 2002) (condominium association board member's act of encouraging tenants to file an action for wrongful eviction was in furtherance of the constitutional right of petition and, therefore, was protected by the anti-SLAPP statute); *Dowling v. Zimmerman*, 85 Cal. App. 4th 1400, 1418-20 (Cal. Ct. App. 2001) (actions conducted by lessees and lawyer in defense of

condominium owner's forcible detainer actions protected by anti-SLAPP statute); *Foothills Townhome Ass'n v. Christiansen*, 65 Cal. App, 4th 688, 694-95 (Cal. Ct. App. 1998) (suit in retaliation for homeowner challenging assessment involved matters of sufficient public interest to invoke the protections of the anti-SLAPP statute). The experience of California teaches that SLAPP suits are identified not through a bright-line test of the types of claims asserted or the relief sought, but rather based on a reasoned examination of the circumstances of the case to determine whether the suit is ultimately directed at conduct falling within the defendant's rights of petition, speech, association, or participation.

These definitional principles are better understood as applied to the specific allegations of the present case. Plaintiffs herein have brought a ten-count Complaint--what might be termed a "shotgun" pleading--against Gassman, asserting four counts of injunction predicated on interference, defamation, or infliction of emotional distress (Counts I, III, V, and VII), two counts of defamation (Counts II and IV), one count of intentional infliction of emotional distress (Count VI), one count of civil conspiracy (Count VIII), one count of malicious prosecution (Count IX), and one count of civil rights violations (Count X). These are all recognizable SLAPP claims. *See* Daerr-Bannon, 22 Causes of Action 317, § 3; Tate, 33 Loy. L.A. L. Rev. at 804-05; 2 Law of Defamation § 9:107. Moreover, the Complaint is unambiguously predicated upon acts of petition, speech, association, and participation by Gassman, alleging as grounds for liability:

- Gassman filed a religious discrimination complaint against Plaintiff Shoreline Towers Condominium Association (the "Association") with the City of Chicago Commission on Human Relations for barring her from displaying a *mezuzah* on the doorpost of her condominium unit (Complaint ¶¶ 18-19);
- Gassman filed a religious discrimination complaint against the Association with the Attorney General of the State of Illinois (*Id*. ¶¶ 20-21);
- Gassman filed a religious discrimination claim against the Association with the Illinois Department of Human Rights (*Id*. ¶¶ 22-24);

- Gassman filed a religious discrimination claim against the Association in federal court (*Id*. ¶¶ 25-30);

- Gassman supplied information used in the publication of articles in the *Jewish Star*, which Plaintiffs allege contained false characterizations of Plaintiffs' policies (*Id*. ¶¶ 36-39);

- Gassman discussed her claims with the Association's employees (*Id*., ¶¶ 59, 62, 64, 66-67); and

- Gassman associated with Lynn Bloch, who also filed a religious discrimination lawsuit against the Association (*Id*., ¶ 96).

The right to petition, of course, "extends to all departments of the Government." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). In this case, the Complaint alleges as grounds for civil liability that Gassman filed claims of religious discrimination with four departments of government, provided information used by a public newspaper in the publication of articles regarding Gassman's claims of religious discrimination, discussed her claims with others, and associated with a person who filed a similar claim. By their own allegations, therefore, Plaintiffs seek to penalize Gassman for exercising her rights of petition, speech, association, and participation in connection with a dispute regarding core rights of religious expression--whether the Association could bar Gassman from displaying a *mezuzah* on the doorposts of her home in accordance with Jewish law.

In evaluating the participatory nature of Gassman's acts, and her service of the public interest in pursuing her claims of religious discrimination, it is noteworthy that Gassman's claims resulted both in a change of policy on the part of the Association and in the commencement of a change in the law to better protect the public's freedom of religious expression and observance. The hanging of a *mezuzah* on one's door is a sacred observance to members of the Jewish faith. A *mezuzah* is commanded by Jewish law to be placed on every door in a home or business owned by a Jewish person. 14 *Encyclopedia Judaica 2nd Edition*, 156 – 57. This command is

derived from Deuteronomy 6:9 and 11:20 in which the Jewish people are instructed, "…you shall write them on the doorposts of your house and upon your gates." A *mezuzah* is therefore not a decorative choice for observant Jews; it is a sanctified obligation. In practice, the *mezuzah* is "one of the most widely observed commandments of Judaism." *Id*. at 157.

Here, the Association's regulations mandated that Gassman choose between her religious beliefs and the complying with the rules of the Association, and Gassman responded by petitioning several departments of government--what Plaintiffs characterize as a "redundant overuse of the legal system" (Pl. Response, at 8)--to change the regulations. Plaintiffs concede that Gassman's actions resulted in an amendment to the Association's rules to permit the display of religious items on the doorposts of condominiums in Plaintiffs' building, and that the publication of her efforts further resulted in the introduction of a city ordinance to incorporate the protection of such religious observances into the law. (Complaint ¶¶ 21, 25, 84 , Exh. 6). Thus, Gassman's participatory efforts resulted in a tangible change promoting and protecting the core value of free religious expression. These are precisely the types of circumstances the Citizen Participation Act was enacted to remedy--preventing a private citizen from being penalized through burdensome, expensive, and distracting litigation for exercising her First Amendment participatory rights and thereby promoting the public good.

II. SLAPP Suits Are a Serious and Ongoing Threat to Citizen Participation

It is a fundamental premise of American constitutional law that "the rights to assemble peaceably and to petition for a redress or grievances are among the most precious of the liberties safeguarded by the Bill of Rights." *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967). These rights "are intimately connected both in origin and in purpose, with the other First Amendment rights of free speech and free press. 'All these, though not identical, are inseparable.'" *Id*. (*quoting Thomas v. Collins*, 323 U.S. 516, 530

(1945)). Thus, the right of assembly to petition for a redress of grievances "is a right cognate to those of free speech and free press and is equally fundamental." *De Jonge v. State of Oregon*, 299 U.S. 353, 364 (1937). *See also United States v. Cruikshank*, 92 U.S. 542, 552 (1875) ("The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances."). The Supreme Court memorialized the interrelationship and inviolability of the rights of speech, assembly, and petition in *Schneider v. Smith*, 390 U.S. 17, 25 (1968):

> The First Amendment's ban against Congress 'abridging' freedom of speech, the right peaceably to assemble and to petition, and the 'associational freedom' that goes with those rights creates a preserve where the views of the individual are made inviolate. This is the philosophy of Jefferson that "(t)he opinions of men are not the object of civil government, nor under its jurisdiction * * *. (I)t is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order * * *."

Id. (*quoting* A Bill for Establishing Religious Freedom, *Jeffersonian Cyclopedia* 976 (1900)).

Courts have long recognized the practical reality that indirect restraints pose as great a threat to the people's rights of petition, speech, association, and participation as direct legal prohibitions. "The First Amendment would ... be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such." *United Mine Workers*, 389 U.S. at 222. That is the danger created by SLAPP suits; they are actions that exploit the apparatus of the courts through private lawsuits for defamation, malicious prosecution, and like causes of action to harass, intimidate, and discourage citizens engaged in the lawful exercise of their First Amendment rights. Though SLAPP suits often lack merit on the facts or the law, and the defendant is typically the prevailing party, the financial hardship and psychological toll of such suits indirectly restrains individuals from exercising their rights of petition, speech, association, and participation for fear of entanglement in years of retaliatory litigation. The perpetual threat

of SLAPP suits thus acts to cow dissent and to suppress beneficial citizen participation.

The phenomenon and rising incidence of SLAPP suits has drawn considerable attention from legal commentators and the courts. No scholars have contributed more to the body of literature on SLAPPs than Professors George Pring and Penelope Canan of the University of Denver, who in 1988 first coined the term "SLAPP" and described the emergence and exponential growth of SLAPP suits as a means to intimidate citizen advocates. *See* Pring and Canan, *Strategic Lawsuits Against Public Participation*, 35 Soc. Probs. 506 (1988); Pring and Canan, *Studying Strategic Lawsuits Against Public Participation: Mixing Qualitative and Quantitative Approaches*, 22 L. & Soc'y Rev. 384 (1988).

Pring and Canan conducted an intensive, ten-year interdisciplinary study of SLAPP suits, finding that there had been a "litigation explosion" of such actions. Pring and Canan, *SLAPPs: An Overview of the Practice*, 935 A.L.I./A.B.A. 1, 1-3 (1994). From their analysis of the empirical data, Pring and Canan concluded that SLAPP suits constitute "a new breed of lawsuits that is stalking America," under which ordinary citizens concerned about public issues are being "sued into silence … by the thousands" simply for "speaking out on political issues." Pring and Canan, *SLAPPS: Getting Sued for Speaking Out* 1-3 (1996). Pring and Canan warned that this trend carries, "an ominous message for every American, because SLAPPs threaten the very future of 'citizen involvement' or 'public participation' in government, long viewed as essential in our representative democracy." *Id*. at 28-29. In the scholars' assessment, "[t]he real value at stake is, quite simply, whether our nation will continue to encourage, to protect, and to be a government 'of the people, by the people, and for the people.'" *Id*. *See also* 2 Law of Defamation § 9:107 (2d ed. 2007) ("Such a 'strategic' suit against those participating in the process of government may have a chilling effect on the grass-roots exercise of First Amendment rights, such as petitioning the government for a redress of grievances.").

Since the publication of Pring and Canan's landmark study, more than 500 scholarly articles and more than 300 state and federal cases have discussed the existence, characteristics, prevalence, and remedies for SLAPP suits. Illinois courts at both the state and federal level have contributed to this body of literature. For example, in *Westfield Partners Ltd. v. Hogan*, 740 F. Supp. 523 (N.D. Ill. 1990), the district court noted "with a great deal of alarm" the "growing trend of what have come to be known as 'SLAPP suits'" as a means to "silence criticism[.]" *Id*. at 524-25. The court observed that "[t]he filing of such suits has seen increasing use over the past decade," and admonished that they should be viewed "with a great deal of skepticism." *Id*. at 525. Five years later, in *Levin v. King*, 271 Ill.App.3d 728 (1st Dist. 1995), the appellate court found that it was not empowered to recognize SLAPP suits as extraordinary civil litigation to satisfy the elements of a malicious prosecution suit, because "we believe this is a matter best left to either legislative debate or for our supreme court's rule making authority[.]" *Id*. at 735.

The reluctance of the *Levin* court to identify a remedy for SLAPP suits, though understandable, unquestionably had negative consequences for citizen participation in Illinois. Twelve years passed between the appellate court's ruling in *Levin* and the General Assembly's enactment of the Citizen Participation Act in 2007. During that time, "numerous civil actions have been filed in Illinois against citizens and organizations solely because of their valid attempts to petition the government, including residents who opposed development plans in their neighborhoods, and parents who criticized school officials." Mary Dixon and Adam Schwartz, *In Support of Senate Bill 1434 ("The Citizen Participation Act")* (June 18, 2007) (collecting cases) (available at www.aclu-il.org/legislative/alerts/sb1434memo.pdf). The defendants in these lawsuits, lacking the protection of anti-SLAPP legislation, bore the "burden, expense, and distraction of years of litigation" before they were able to extricate themselves from the SLAPP suits. *Id*. (*discussing, inter alia, Levin*, 271 Ill.App.3d 728; *Philip I. Mappa Interests, Ltd. v.*

Kendle, 196 Ill.App.3d 703 (1st Dist. 1990); *Kirchoff v. Curran*, No. 90-MR-190 (20th Judicial Circuit, St. Clair County); *Havoco of America, Ltd. v. Hollobow*, 702 F.2d 643 (7th Cir. 1983)). Illinois, in short, is squarely confronted with the question posed by Pring and Canan--whether this State will continue to encourage and to protect the rights of petition, speech, association, and participation, and thereby be a government "of the people, by the people, and for the people."

III. The Citizen Participation Act Is a Valuable Tool to Disarm SLAPP Suits

Against this backdrop of abusive litigation tactics to quell and silence dissent, the importance of the Citizen Participation Act as an instrument to protect citizen participation against the threat of SLAPP suits is manifest. The Citizen Participation Act brings Illinois in line with the majority of states, as protection against SLAPPs has been enacted by statute or common law in more than half of the states.[1] These states enacted anti-SLAPP legislation to prevent lawsuits from chilling the valid exercise of constitutional rights of freedom of speech, petition and assembly. One state leading the charge for the enforcement of anti-SLAPP legislation, California, included in its statute specific findings concerning the need for such legislation:

> The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that

[1] These states and one territory include: Arizona (Ariz. Rev. Stat. §§ 12-751 - 12-752); Arkansas (Ark. Code §§ 16-63-501 - 16-63-508); California (Cal. Civ. Proc. Code §§ 425.16-425.18); Delaware (Del. Code Ann. tit. 10, §§ 8136 to 8138; Florida (Fla. Stat. Ann. § 768.295); Georgia (Ga. Cod Ann. § 9-11-11.1); Guam (Guam Code Ann. tit. 7, §§ 17101 - 17109); Hawaii (Hawaii Rev. Stat. § 634F); Illinois (735 ILCS 110/1 - 110/99); Indiana (Ind. Code §§ 34-7-7-1 to 34-7-7-10); Louisiana (La. Code Civ. Pro. Ann. art. 971); Maine (Me. Rev. Stat. Ann. tit. 14, § 556); Maryland (Md. Code §5-807); Massachusetts (Mass. Gen. Laws Ann. ch. 231, § 59H); Minnesota (Minn. Stat. §§ 554.01 to 554.05), Missouri (RS Mo. 537.528); Nebraska (Neb. Rev. Stat. §§ 25-21-241 to 246); Nevada (Nev. Rev. Stat. §§ 41.635 to 41.670); New Mexico (N.M. Stat. Ann. §§ 38-2-9.1 and 9.2); New York (Civil Rights Law 70-1 and 76-a; N.Y.C.P.L.R. 3211(g) and 3212(h)); Oklahoma (Okla. Stat. Ann. tit. 12, § 1443.1); Oregon (Or. Rev. Stat. § 30.150 - 31.155); Pennsylvania (42 Pa Cons Stat §§ 27-77-7707, 27-83-8301 to 27-83-8305); Rhode Island (R.I. Gen Laws §§ 9-33-1 to 9-33-4); Tennessee (Tenn. Code Ann. §§ 4-21-1001 to 4-21-1004); Utah (Utah Code Ann. § 78-58-101 - 78-58-105); and Washington (Wash. Rev. Code Ann. §§ 4.24.500 to 4.24.520). *See* http://www.casp.net; 2 Law of Defamation at § 9:107. In addition, the courts in Colorado and West Virginia have adopted protections against SLAPPs. *See* http://www.casp.net; *Protect Our Environment, Inc. v. District Ct. In And For The County Of Jefferson*, 677 P.2d 1361 (Colo. 1984); *W.O. Brisben Cos. v. Krystkowiak*, 66 P.3d 133 (Colo. App. Aug. 29, 2002), *aff'd on other grounds*, *Krystkowiak v W.O. Brisben Cos.*, 90 P.3d 859 (Colo. 2004); *Webb v. Fury*, 282 S.E.2d 28 (W. Va. 1981); *Harris v. Adkins*, 432 S.E.2d 549 (W. Va. 1993). And Texas introduced anti-Slapp legislation in the 2007 legislative session. *See* http://www.casp.net; HB 1089, HB 1130.

> it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process.

See Cal. Civ. Proc. Code §425.16(a).

This public policy concern is mirrored in other states' anti-SLAPP statutes, including the Citizen Participation Act. Indeed, if anything, the General Assembly was even more expansive in describing the goals and scope of the Citizen Participation Act:

> Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence. The information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement, the operation of government, the making of public policy and decisions, and the continuation of representative democracy. The laws, courts, and other agencies of this State must provide the utmost protection for the free exercise of these rights of petition, speech, association, and government participation.
>
> Civil actions for money damages have been filed against citizens and organizations of this State as a result of their valid exercise of their constitutional rights to petition, speak freely, associate freely, and otherwise participate in and communicate with government. There has been a disturbing increase in lawsuits termed "Strategic Lawsuits Against Public Participation" in government or "SLAPPs" as they are popularly called.
>
> The threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights. This abuse of the judicial process can and has been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs.
>
> It is in the public interest and it is the purpose of this Act to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government; to protect and encourage public participation in government to the maximum extent permitted by law; to establish an efficient process for identification and adjudication of SLAPPs; and to provide for attorney's fees and costs to prevailing movants.

735 ILCS 110/5.

The Citizen Participation Act counters the threat of SLAPP suits by allowing the defendant targeted by such a suit to bring a motion "to dispose of a claim in a judicial proceeding

on the grounds that the claim is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." 735 ILCS 110/15. As discussed above, the statute expressly immunizes the exercise of one's constitutional rights of participation from suit, and is to be "construed liberally" to effectuate its purpose and intent. *Id.*; 735 ILCS 110/30(b).

In addition to substantive immunity for citizen participation and the right to bring a dispositive motion in response to the filing of a SLAPP suit, the Citizen Participation Act incorporates numerous procedural protections that facilitate the prompt dismissal of SLAPP suits while minimizing the litigation burden associated with such suits. Upon the filing of a motion to dismiss under Section 15 of the Act, a hearing and decision "must occur within 90 days after notice of the motion is given to the respondent," and the appellate court is to "expedite any appeal or other writ, whether interlocutory or not, from a trial court order denying that motion[.]" 735 ILCS 110/20(a). Discovery is suspended pending a decision on the motion. 735 ILCS 110/20(b). The standard for granting a dispositive motion brought under the Citizen Participation Act is permissive; "[t]he court shall grant the motion and dismiss the judicial claim unless the court finds that the responding party has produced clear and convincing evidence that the acts of the moving party are not immunized from, or are not in furtherance of acts immunized from, liability by this Act." 735 ILCS 110/20(c). Finally, the statute provides for the recovery of fees and costs on the part of the SLAPP suit defendant. "The court shall award a moving party who prevails in a motion under this Act reasonable attorney's fees and costs incurred in connection with the motion." 735 ILCS 110/25.

In sum, the Citizen Participation Act offers a broad and effective remedy against the chilling effect that SLAPP suits have had upon citizen participation in Illinois. Citizens who previously faced the threat of prolonged litigation at ruinous personal expense are now

immunized from liability for exercising their constitutional rights of participation. In furtherance of that immunity, defendants in SLAPP suits are empowered with a potent procedural mechanism to secure the dismissal of such suits expeditiously, without incurring costs of discovery, under a favorable legal standard that places the burden on the proponent of the SLAPP suit to justify its claims, and with the SLAPP plaintiff bearing the expense if the motion to dismiss is granted. It is difficult to overstate the value of this remedy in the context of anti-participatory SLAPP suits. Prior to the Citizen Participation Act, citizens who petitioned for a redress of grievances bore the risk that their efforts would ensnare them in years of time-consuming and financially burdensome litigation. Today, it is the SLAPP plaintiff who bears the risk that filing a retaliatory suit in response to citizen participation will result in prompt dismissal and payment of the defendant's fees and expenses. The Citizen Participation Act thus serves the dual goals of discouraging SLAPP suits and providing an effective remedy to individuals and organizations who are targeted by SLAPP litigation.

CONCLUSION

The United States today is home to more than 2,000 different faiths and denominations, and the United States Department of Justice has reported that religious discrimination is "a growing problem." U.S. Dept. of Justice, *Report on Enforcement of Laws Protecting Religious Freedom, Fiscal Years 2001-2006*, at 4. "The attacks of 9/11, and the resulting increase in bias crimes and discrimination against Muslims, as well as Sikhs and others mistakenly perceived to be Muslim, underscored the need for rigorous enforcement of religious civil rights laws." *Id*. From 1992 to 2005, for example, complaints of religious discrimination in employment rose by 69%. *Id*. *See also* U.S. EEOC, *Religion-Based Charges FY 1997 - FY 2006* (available at http://www.eeoc.gov/stats/religion.html). The Department of Justice has seen corresponding or even more pronounced increases in education discrimination cases involving religion, housing

discrimination cases involving religion, and litigation involving issues of religious freedom and discrimination. *Report on Enforcement of Laws Protecting Religious Freedom,* at 5, 17-18.

Faced with a potentially volatile national environment where incidents of religious discrimination are on the rise, there is a pressing need for citizen participation. The resources of the Department of Justice, the EEOC, and other public agencies, no matter how dedicated, can only reach so far. To confront the blight of religious discrimination and bigotry in its myriad forms will require participatory action by citizens of conscience. In that context, anti-SLAPP statutes like the Citizen Participation Act play an essential role in protecting those who exercise their rights of petition, speech, association, and participation, such that the threat of private litigation does not deter them from taking action to correct a wrong. Accordingly, ADL supports vigorous enforcement of the Citizen Participation Act to shield public participation.

Dated: February 13, 2008

THE ANTI-DEFAMATION LEAGUE

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