

**TESTIMONY OF REPRESENTATIVE CAMILLE "BUD" GEORGE**

**HOUSE BILL 281**

**AUGUST 13, 1996**

GOOD MORNING. I AM PLEASED TO PRESENT THE FOLLOWING TESTIMONY ON HOUSE BILL 281, COMMONLY REFERRED TO AS THE ANTI-SLAPP BILL. I INTRODUCED A SIMILAR VERSION OF THIS LEGISLATION LAST SESSION WHICH PASSED THE HOUSE OF REPRESENTATIVES UNANIMOUSLY. IT WAS NEVER CONSIDERED BY THE STATE SENATE.

BEFORE I GET INTO MY TESTIMONY, I WANT TO RELATE A SHORT STORY TO YOU ABOUT AN EVENT THAT OCCURRED IN MY DISTRICT. AN ELDERLY WIDOW WHO HAD LIVED IN HER HOME FOR DECADES, NOTICED THAT RED WATER BEGAN SEEPING INTO HER BASEMENT SOMETIME AFTER A MAJOR MINING OPERATION BEGAN ADJACENT TO HER HOME. EVENTUALLY, THE WATER IN HER BASEMENT REACHED SIX FEET HIGH, AND SHE WAS FORCED TO MOVE OUT OF HER HOME. SHE CONTACTED THIS LEGISLATOR AND THE DEPARTMENT OF ENVIRONMENTAL RESOURCES TO INVESTIGATE THE PROBLEM, AND TO FIND THE RESPONSIBLE PARTY. IN THE COURSE OF THE INVESTIGATION, THE DEPARTMENT ORDERED THE MINING OPERATOR TO SET UP EQUIPMENT TO DETERMINE IF THE SEEP INTO THE WOMAN'S BASEMENT WAS AS A RESULT OF THEIR OPERATION.

RATHER THAN OBEYING THE ORDER, THE MINING OPERATOR DECIDED TO FILE SUIT AGAINST THIS WIDOW AND HER SON FOR INTERFERENCE WITH THEIR BUSINESS. HER CRIME? CONTACTING HER ELECTED REPRESENTATIVE AND AN EXECUTIVE AGENCY FOR HELP. NOT WANTING TO MAKE IT EASY FOR THIS WOMAN, THE CASE WAS FILED IN PITTSBURGH, SO THAT THE WOMAN WOULD BE INCONVENIENCED AS WELL AS BEING INTIMIDATED. AFTER SEVEN YEARS AND LEGAL COSTS AND EXPENSES IN EXCESS OF \$27,000, THE COURT URGED BOTH PARTIES TO SETTLE THE MATTER. MY QUESTION IS "COULD WE IN THE GENERAL ASSEMBLY DO ANYTHING TO PUT AN END TO THIS TYPE OF ABUSE OF OUR LEGAL SYSTEM?"

#### **WHAT IS A SLAPP SUIT?**

WHAT I JUST DESCRIBED TO YOU IS ONE EXAMPLE OF A SLAPP SUIT. THERE ARE THOUSANDS MORE. SLAPP IS AN ABBREVIATION FOR STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION. HOWEVER, YOU'LL NEVER GO TO A COURT DOCKET AND FIND A "SLAPP" SUIT FILED. THEY TAKE THE FORM OF DEFAMATION AND LIBEL SUITS, INTERFERENCE WITH COMMERCE SUITS, OR A HOST OF OTHER LEGAL CHALLENGES. ALL THAT CAN BE SAID IS THAT SLAPP SUITS MOST OFTEN INVOLVE DISPUTES SURROUNDING ENVIRONMENTAL AND DEVELOPMENT MATTERS, AND THAT THEY CAN BE DEVASTATING TO THOSE THAT ARE TARGETS. HOUSE BILL 281 TAKES DIRECT AIM AT THOSE CASES

WHICH INVOLVE ENVIRONMENTAL ISSUES THAT MAY INCLUDE ZONING DISPUTES, AND THOSE ISSUES WHERE A PERMIT OR LICENSE FROM THE DEPARTMENT OF ENVIRONMENTAL PROTECTION IS REQUIRED.

### **WHY IS LEGISLATION NEEDED?**

SLAPP SUITS, BY THEIR VERY DEFINITION, ARE DESIGNED TO GET INDIVIDUALS OR GROUPS TO STOP THEIR OPPOSITION TO A PARTICULAR PROJECT OR OPERATION. THEY ARE DESIGNED TO STOP PERSONS FROM EXERCISING THEIR FIRST AMENDMENT RIGHTS OF FREE SPEECH AND PETITIONING THE GOVERNMENT FOR REDRESS OF GRIEVANCES. PLAIN AND SIMPLE, THEY'RE DESIGNED TO INTIMIDATE PEOPLE AND TO SHUT THEM UP.

THE SAD PART OF THIS IS THAT IN ORDER TO WIN, AN ENTITY THAT FILES A SLAPP SUIT DOESN'T HAVE TO ACTUALLY WIN IN COURT. IN FACT, THE VAST MAJORITY OF CASES NEVER GET TO COURT. OFTENTIMES, THE CASE IS SETTLED OUT OF COURT, WITH PART OF THE AGREEMENT STATING THAT THE OPPOSITION TO THE PROJECT MUST CEASE AND A GAG ORDER IMPOSED ON ALL SIDES. IN THAT CASE, THE PERSON FILING THE SUIT HAS ULTIMATELY WON. IN ANY EVENT, SIMPLY FILING THE SUIT MAY CAUSE THE INDIVIDUAL TO BACK OFF OF THEIR OPPOSITION.

ANOTHER WAY THAT AN ENTITY CAN "WIN" A SLAPP SUIT IS TO KEEP THE CASE OPEN FOR MANY MONTHS OR EVEN YEARS. IN RESEARCH DONE BY GEORGE PRING AND PENELOPE CANAN, THE COUNTRY'S PRE-EMINENT SLAPP EXPERTS, THEY FOUND THAT THE AVERAGE DURATION OF A SLAPP SUIT WAS 36 MONTHS. BY DRAGGING OUT THE PROCESS, THE FILER CAUSES THE DEFENDANT TO USE UP RESOURCES DEFENDING THEMSELVES. THAT ALONE MAY BE ENOUGH TO GET AN INDIVIDUAL OR GROUP TO CEASE THEIR OPPOSITION.

ONE OTHER TRICK TO INTIMIDATE PEOPLE THAT IS USED BY THOSE ENTITIES FILING SLAPP SUITS IS TO FILE THE SUIT, AND THEN HAUL IN ANYONE EVEN REMOTELY INVOLVED WITH THE PARTICULAR GROUP FOR A DEPOSITION. IN THE COURSE OF THE DEPOSITION, THE FILERS' ATTORNEY WILL ASK QUESTIONS SUCH AS "WHAT IS THE VALUE OF YOUR PROPERTY?" OR WHAT IS YOUR FAMILY'S NET WORTH?" IT'S SIMPLY ANOTHER TACTIC TO SCARE PEOPLE OFF.

#### **ELEMENTS OF HOUSE BILL 281**

HOUSE BILL 281 CONTAINS THREE IMPORTANT ELEMENTS THAT ARE NECESSARY TO DETER THE PROMULGATION OF SLAPP SUITS. FIRST, THE LEGISLATION PROVIDES FOR IMMUNITY FROM LIABILITY FOR AN INDIVIDUAL

WHO ACTS IN THE FURTHERANCE OF THEIR FIRST AMENDMENT RIGHTS, UNLESS THE INTENT OF THEIR COMMUNICATION IS NOT GENUINELY AIMED AT PROCURING A FAVORABLE GOVERNMENTAL ACTION. THIS PROVISION AIMS DIRECTLY AT THE HEART OF THIS MATTER. IT STATES THAT YOU CANNOT BE HELD LIABLE FOR EXERCISING YOUR FIRST AMENDMENT RIGHTS.

SECOND, THE BILL PROVIDES THAT A CAUSE OF ACTION AGAINST AN INDIVIDUAL WHO IS EXERCISING THEIR FIRST AMENDMENT RIGHTS SHALL BE SUBJECT TO A SPECIAL MOTION TO STRIKE, UNLESS THE COURT DETERMINES THAT THE PLAINTIFF HAS ESTABLISHED THAT THERE IS A SUBSTANTIAL LIKELIHOOD THAT THEY WILL PREVAIL ON THE MERITS OF THE CASE. IT FURTHER PROVIDES THAT THE COURT SHALL ADVANCE ANY MOTION TO STRIKE SO THAT IT MAY BE HEARD AND DETERMINED WITH AS LITTLE DELAY AS POSSIBLE. THIS SECTION OF THE BILL IS DESIGNED TO ALLOW A COURT TO DISPOSE OF A CASE QUICKLY, BEFORE THE DEFENDANT HAS EXPENDED A GREAT DEAL OF THEIR FINANCIAL RESOURCES.

FINALLY, THE BILL STATES THAT A PERSON WHO SUCCESSFULLY DEFENDS THEMSELVES AGAINST A SLAPP SUIT SHALL BE AWARDED REASONABLE ATTORNEYS FEES AND COSTS OF LITIGATION. THIS SECTION IS AIMED AT MAKING IT LESS ATTRACTIVE TO AN ENTITY TO FILE A SLAPP SUIT IN THE FIRST PLACE, SINCE THEY MAY BE RESPONSIBLE FOR ATTORNEYS FEES IF THEY LOSE.

## SLAPP LEGISLATION IN OTHER STATES

SLAPP LEGISLATION HAS BECOME LAW IN NINE OTHER STATES (CALIFORNIA, DELAWARE, MASSACHUSETTS, MINNESOTA, NEBRASKA, NEVADA, NEW YORK, RHODE ISLAND, AND WASHINGTON). ADDITIONALLY, SLAPP BILLS ARE BEING CONSIDERED IN FLORIDA, GEORGIA, NEW JERSEY, TENNESSEE, AND TEXAS. THE ACTUAL LANGUAGE IN EACH STATUTE IS SLIGHTLY DIFFERENT, HOWEVER, THE KEY ELEMENTS DISCUSSED BEFORE ARE PART OF THOSE STATUTES.

WHILE THIS TYPE OF LEGISLATION IS RELATIVELY NEW, A NUMBER OF CHALLENGES, INCLUDING CHALLENGES TO ITS CONSTITUTIONALITY, HAVE BEEN HEARD BY STATES' HIGHEST COURTS, AND IT HAS BEEN UPHOLD IN EACH CASE. TO DATE, NO STATUTE HAS BEEN DECLARED UNCONSTITUTIONAL. IN FACT, THE MOST RECENT CHALLENGE OCCURRED TO THE RHODE ISLAND LAW IN *HOMETOWN PROPERTIES INC. VS. NANCY HSU FLEMING*(NO. 94-606-M.P. DECIDED JUNE 25, 1996). IN THIS CLASSIC SLAPP SUIT, AN INDIVIDUAL, MS. FLEMING, PROTESTED TO RHODE ISLANDS DEPARTMENT OF ENVIRONMENTAL MANAGEMENT THAT A LANDFILL NEAR HER HOME WAS POLLUTING THE GROUNDWATER. IN 1992, SHE WAS "SLAPPED" WITH A LAWSUIT FROM HOMETOWN PROPERTIES, THE OWNER OF THE LANDFILL, FOR INTERFERENCE

WITH CONTRACTUAL RELATIONS AND DEFAMATION. HER ATTORNEYS MADE A MOTION TO HAVE THE CASE DISMISSED, BUT THE JUDGE RULED AGAINST HER MOTION. AFTER THIS ACTION, THE RHODE ISLAND SLAPP LEGISLATION WAS SIGNED INTO LAW. SHE RE-FILED HER MOTION TO DISMISS, AND THIS TIME THE COURT RULED IN HER FAVOR. AFTER THAT, THE LANDFILL COMPANY BROUGHT THE SUIT TO THE RHODE ISLAND SUPREME COURT, ASKING THAT IT BE DECLARED UNCONSTITUTIONAL. THE COURT STRONGLY SUPPORTED THE CONSTITUTIONALITY OF THE LAW, RULING THAT THE STATUTE "WAS CONSISTENT WITH THE INDEPENDENCE AND INDIVIDUALISM THAT LED THIS STATE'S EARLIEST SETTLERS TO CREATE A FREE COMMUNITY OF SEEKERS OF THE TRUTH..."

#### **SUMMARY**

UNTIL SUCH TIME AS LEGISLATION SUCH AS HOUSE BILL 281 IS SIGNED INTO LAW, CASES LIKE THE ONE I DESCRIBED EARLIER WILL CONTINUE, AFFECTING THOUSANDS OF OUR CONSTITUENTS. IF THEY DON'T HAVE THE MONEY, THEY'LL GO INTO DEBT DEFENDING THEMSELVES. IF THEY DO, THEIR MONEY WILL BE SQUANDERED RATHER THAN PUT TO PRODUCTIVE USE.

ONE FINAL POINT, MY LEGISLATION WILL NOT PROHIBIT THE LEGITIMATE USE OF THE COURT SYSTEM BY ANYONE, INCLUDING A BUSINESS ENTITY THAT

FEELS THAT THEY HAVE BEEN AGGRIEVED. IT SIMPLY AFFIRMS THE INDIVIDUAL'S RIGHT TO EXPRESS THEIR VIEWS IN ACCORDANCE WITH THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND SECTIONS 7 AND 20 OF THE PENNSYLVANIA CONSTITUTION.

I APPRECIATE THE OPPORTUNITY TO PRESENT MY THOUGHTS ON THIS IMPORTANT PIECE OF LEGISLATION AND I WOULD BE HAPPY TO ANSWER ANY QUESTIONS THAT THE MEMBERS MIGHT HAVE.