

12-3-2023

SLAPP Suits: An Encroachment on Human Rights of a Global Proportion and What Can Be Done About It

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Laura Lee Prather, *SLAPP Suits: An Encroachment on Human Rights of a Global Proportion and What Can Be Done About It*, 22 NW. J. HUM. RTS. 49 (2023).

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SLAPP SUITS: AN ENCROACHMENT ON HUMAN RIGHTS OF A GLOBAL PROPORTION AND WHAT CAN BE DONE ABOUT IT

By Laura Lee Prather¹

ABSTRACT—Freedom of expression is the underpinning of all other freedoms. Yet, increasingly, journalists, citizens, advocacy groups, whistleblowers, academics, and media organizations are being targeted and subjected to judicial harassment for informing the public about matters of public concern, denouncing authoritarian regimes, and exposing wrongdoing. These meritless lawsuits do not seek to right a wrong, but rather to silence and intimidate critics. They are known as “Strategic Lawsuits Against Public Participation” (“SLAPP” suits) and are on the rise globally.² Because SLAPP suits are designed to inhibit ongoing investigations, stifle informed public debate, and prevent legitimate public interest reporting, they present a threat to democracy and strike at the core of human rights.

The antidote to SLAPP suits is the passage of Anti-SLAPP legislation. While the United States has a vast body of state legislative experiences passing Anti-SLAPP laws over the last thirty years, the passage of a federal Anti-SLAPP law has remained elusive. More recently, the European Union and the United Kingdom recognized the dangers SLAPP suits present to democracy, and both have catapulted into action to address them. Much can be learned from the swift international action of raising awareness, educating lawmakers and judges, pursuing accountability for lawyers, and maintaining best practices in the implementation of Anti-SLAPP laws.

Still, because this phenomenon is a global one,³ we should consider mining the lessons learned from the U.S. experience and scaling the EU

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² See MAPPING MEDIA FREEDOM, <https://www.mappingmediafreedom.org> (last visited Sept. 1, 2023) (The Index on Censorship map demonstrates the prevalence of SLAPP suits).

³ See *SLAPPED but not silenced: Defending Human Rights in the Face of Legal Risks*, BUSINESS & HUMAN RIGHTS RESOURCE CENTER, (June 2021), https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v657.pdf [hereinafter *Slapped but not silenced*].

and UK models to impede “forum shopping”⁴ by perpetrators who are willing to punish their expositors. The need to establish infrastructures for the development of supranational policies and consider best practices for addressing the rise of SLAPP suits is not just about protecting journalists from abusive behavior, but also about preserving the ability of the public to obtain accurate information, considering diverse interests and perspectives, and engage in vital discourse about their governments and communities.

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⁴ Forum shopping is the practice of strategically choosing to file a complaint in a jurisdiction where the complainant believes the laws or other aspects of litigation are more favorable to their intentions, regardless of the connection to the dispute at issue.

INTRODUCTION

SLAPPs are used in every region of the world to intimidate people into silence.⁵ The litigants attack public watchdogs for speaking out about or protesting against them, with protracted legal proceedings intended to bury them with paperwork and high financial costs, cast doubt on their allegations, and, ultimately, stifle debate and frighten others. Journalists are often the targets of SLAPPs because they bring information to light.⁶ A staggering 73% of investigative journalists surveyed reported they received communications threatening legal action as a result of information they published.⁷ After losing a libel suit against a journalist who said he was not a “billionaire,” former President Donald J. Trump famously boasted to the *Washington Post* that he did not mind losing after five years of litigation.

*“I spent a couple of bucks on legal fees but they spent a whole lot more. I did it to make [the journalist’s] life miserable, which I’m happy about.”*⁸

Former President, Donald J. Trump

This demonstrates both the nefarious purpose behind SLAPP suits and the punitive financial and psychological burden intended for their victims. The fact that the case languished for five years and took time and resources from an already over-crowded court system exposes another strain SLAPP suits place on society. In addition, the role of lawyers who knowingly file these meritless cases highlights how the current asymmetry harms the rule of law.

Society is waking up to the scourge of SLAPPs. Given that the aim of SLAPPs is to stifle public participation and suppress truth-tellers, any ordinary citizen critical of those with power is at risk. Because the cornerstone of democracy is a society’s right to be informed and express

⁵ See *SLAPPed but not silenced*, *supra* note 3, at 6.

⁶ While journalists and media organizations are the most common targets of SLAPPs, activists, academics, and everyday citizens often find themselves in the crosshairs of a SLAPP suit for exposing wrongdoing, challenging the *status quo*, or providing their opinion. See generally Rebecca Bonello Ghio et al., *Shutting Out Criticism: How SLAPPs Threaten European Democracy*, THE COALITION AGAINST SLAPPs IN EUROPE 2 (Mar. 2022), <https://www.the-case.eu/wp-content/uploads/2023/04/CASEREportSLAPPsEurope.pdf>.

⁷ *Unsafe for Scrutiny: Examining the pressures faced by journalists uncovering financial crime and corruption around the world*, FOREIGN POLICY CENTER AND JUSTICE FOR JOURNALISTS (Mar. 2020), <https://fpc.org.uk/publications/unsafe-for-scrutiny/>; see also Bonello Ghio et al., *supra* note 6, at 4 (The most affected defendants in SLAPP cases are journalists (34.2%), media outlets (23%), editors (9.4%), publishers (6.1%), TV (1.9%)—collectively 74.6%).

⁸ Paul Farhi, *What really gets under Trump’s skin? A reporter questioning his net worth*, WASH. POST (Mar. 8, 2016), https://www.washingtonpost.com/lifestyle/style/that-time-trump-sued-over-the-size-of-hiswallet/2016/03/08/785dee3e-e4c2-11e5-b0fd-073d5930a7b7_story.html.

themselves freely, today's stark reality further demonstrates the ubiquitous anti-democratic threat SLAPPs pose. This paper identifies steps that are being taken in some countries and that can be implemented globally to help combat SLAPPs by raising awareness, engaging governments in the discussion, educating judges in recognizing SLAPPs, and holding lawyers accountable for ravaging the rule of law.

I. THE CORE HUMAN RIGHTS OF FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

On December 10, 1948, after the end of World War I and II, while society was forging a peaceful path forward, the United Nations was formed and adopted the Universal Declaration of Human Rights (UDHR). This eight-page document declared that human rights, recognized as the inalienable rights of all, are the foundation of freedom, justice, and peace in the world and, as such, should be protected by the rule of law. The, at the time fifty-eight (now 193), Member States pledged themselves to achieve, "in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms."⁹ Included in the UDHR are:

Article 19 – Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20 – 1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association.¹⁰

This document sets the stage for a common understanding of inalienable and inviolable rights of all members of humanity and creates an obligation for their global protection.¹¹

A functioning democracy is defined by various characteristics, including freedom of speech, equality, human rights, and rule of law, amongst others. Lawsuits brought to intimidate speakers, drain the resources of community members, and silence journalists and others who speak out in support of matters of public concern are an abuse of the legal system and an encroachment on human rights. The impact can have a broad chilling effect, deterring others from speaking out against abuse. This article aims to suggest ways to address this form of judicial harassment.

⁹ G.A. Res 217 (III) A, Universal Declaration of Human Rights, Preamble (Dec. 10, 1948).

¹⁰ *Id.* at art. 19-20.

¹¹ G.A. Res 2200A (XXI), The International Covenant on Civil and Political Rights, Articles 19 and 21 (Dec. 16, 1966) (codifying these portions of the UDHR).

II. HALLMARKS OF SLAPPS: A DESTRUCTIVE FORCE AGAINST DEMOCRACY

SLAPP actions chill information and harm the public at large. In 1988, University of Denver professors George Pring and Penelope Canan coined the term SLAPP when they brought to light a troubling trend of people getting sued for speaking out about matters of public concern.¹² Their research demonstrated that thousands of people engaging in public debate and citizen involvement in government had been and would be the targets of multi-million-dollar lawsuits for the purpose of silencing them and dissuading others from speaking out in the future. Professors Pring and Canan catalogued a tsunami of SLAPP suits filed by public officials, real estate developers, and businessmen against environmentalists, consumers, women’s rights advocates, and more.¹³ They also provided a proposed legislative cure in the form of Anti-SLAPP laws.¹⁴ As discussed below, many states in the U.S. have followed the suggestion of Pring and Canan and adopted Anti-SLAPP laws.¹⁵

During the thirty-five years since the term “SLAPP” was coined, various studies have been conducted to help identify the prototypical perpetrator, the issues that are most commonly at the forefront of SLAPP cases, the most frequent SLAPP victims, and the common hallmarks of SLAPP suits. While there is no singular answer to these questions, SLAPP suits are often filed by individuals or corporations in positions of power,

¹² Penelope Canan & George W. Pring, *Strategic Lawsuits Against Public Participation*, 35 SOC. PROBS. 506 (1988); *see also* Penelope Canan, *The SLAPP from a Sociological Perspective*, 7 PACE ENVIR. L. REV. 1 (1989).

¹³ GEORGE W. PRING & PENELOPE CANAN, *SLAPPS: GETTING SUED FOR SPEAKING OUT* 8-10 (Temple Univ. Press 1996).

¹⁴ *Id.* at 188-207.

¹⁵ *See* ARIZ. REV. STAT. ANN. §§ 12-751–12-752 (2012); ARK. CODE ANN. §§ 16-63-501–16-63-508 (2010); CAL. CIV. PROC. CODE § 425.16 (2023); COLO. REV. STAT. ANN. § 13-20-1101 (2019); CONN. GEN. STAT. § 52-196(a) (2021); DEL. CODE ANN. tit. 10, § 8136–38 (2012); D.C. CODE §§ 16-5501–16-5505 (2020); FLA. STAT. ANN. §§ 720.304(4), 768.295 (2023); GA. CODE ANN. § 9-11-11.1 (2010); HAW. REV. STAT. §§ 634F-1–634F-4(2014) 735 ILL. COMP. STAT. ANN. 110/1–110/99 (2007); IND. CODE ANN. §§ 34-7-7-1–34-7-7-10 (2021); KAN. STAT. ANN. § 60-5320 (2021); KEN. REV. STAT. ANN. §§ 454.460–454.478 (2023); LA. CODE CIV. PROC. ANN. Art. 971 (2011); ME. REV. STAT. tit. 14, § 556 (2012); MD. CODE ANN., CTS. & JUD. PROC. § 5-807 (2013); MASS. GEN. LAWS ANN. ch. 231, § 59H (2022); MINN. STAT. §§ 554.01–554.06 (2022); MO. REV. STAT. § 537.528 (2012); NEB. REV. STAT. §§ 25-21,241–25-21,246 (2023); NEV. REV. STAT. §§ 41.635-670 (2023); N.M. STAT. ANN. §§ 38-2-9.1–38-2-9.2 (2011); N.Y. CIV. RIGHTS LAW §§ 70-a, 70-b, 76-a (2020); N.Y. C.P.L.R. 3211(g) (CONSOL. 2021); OKLA. STAT. ANN. tit. 12, §§ 1430-40 (2014); OR. REV. STAT. § 31.150 (2011); 27 PA. CONS. STAT. §§ 7707, 8301-05 (2010); 9 R.I. GEN. LAWS ANN. §§ 9-33-1–9-33-4 (2010); TENN. CODE ANN. § 20-17-101–20-17-110 (2019); TEX. CIV. PRAC. & REM. CODE ANN. §§ 27.001-011 (2011); UTAH CODE ANN. §§ 78B-6-1401–1405 (2008) (Repealed); 12 VT. STAT. ANN. tit. 12, § 1041 (2012); VA. CODE ANN. § 8.01-223.2 (2023); WASH. REV. CODE § 4.24.500-525 (2021); 7 GUAM CODE ANN. §§ 17101–17108 (2019).

including businesspersons, politicians, public figures, and corporations, looking to cover up the truth or silence debate.¹⁶ The issues that are most commonly at the forefront of SLAPP cases include allegations of corruption or wrongdoing, illicit financial gains, and criminal behavior by people or corporations with resources or connections to hide such misdeeds.¹⁷ According to a report by the Coalition Against SLAPPS in Europe (CASE), “SLAPPs are generally characterized by two core elements: a claim arising due to public participation on a matter of public concern and the claim’s lack of legal merit.”¹⁸

Journalists are the most likely to be targeted, but activists, human rights defenders, and academics are also high on the list of those who are faced with SLAPPs for bringing information to light or challenging the *status quo*.¹⁹ These frivolous legal actions are aimed to professionally discredit their targets, drain their financial resources, and dissuade watchdogs from investigating abuses of power. Freelance journalists are particularly vulnerable because they lack institutional support, which facilitates the SLAPP filer’s goal of isolating the victim so they may not even realize they are the victim of a SLAPP suit and lack a harness of support.

Because this intimidation tactic is so prevalent against journalists, the Index on Censorship developed an interactive questionnaire to help legal threat recipients determine whether they are on the receiving end of a SLAPP. It asks a series of questions aimed at helping journalists understand whether the legal threat or action they are facing might be classified as a SLAPP and provides them with avenues for support.²⁰

In cases against the media, the impact of a SLAPP is four-fold: (1) the financial strain of unwarranted, protracted litigation imposed on an already struggling industry; (2) the psychological harm to the individual journalist sued; (3) the distraction in the newsroom caused by the litigation, using time that would otherwise be spent reporting newsworthy events to the public; and (4) SLAPP permeation of the media landscape and intimidation of other journalists or watchdogs from investigating, publishing, or speaking out about similar topics for fear of being sued.²¹ The chilling effects of SLAPPs reverberates loudly and immeasurably. Freedom of

¹⁶ See generally Bonello Ghio et al., *supra* note 6, at 2.

¹⁷ *Id.*

¹⁸ *Id.* at 11.

¹⁹ *Id.*

²⁰ To take the quiz go to: <https://www.indexoncensorship.org/am-i-facing-a-slapps-lawsuit/>. The questions asked in this assessment are based on research conducted by Index on Censorship into how SLAPPs against journalists most commonly manifest themselves.

²¹ See Bonello Ghio et al., *supra* note 6, at 30-31.

expression scholars have recognized the immense danger posed by SLAPPs: “Quantifying the number of suits, delineating their parameters, and calculating damages is an easy task compared to the nearly impossible task of measuring the chilling effect that this type of lawsuit may have on public debate.”²² This “ripple effect” is a universal threat because it means that access to information is suffocated. As explained by the European Court of Human Rights, “[n]ot only do the media have the task of imparting such information and ideas: the public also has a right to receive them.”²³

The Business & Human Rights Resource Centre is an organization dedicated to advancing human rights in business, eradicating abuse, and assisting human rights defenders in speaking out against businesses related to human rights and environmental abuses. In its 2021 first-ever analysis of lawsuits bearing the hallmarks of SLAPPs brought or initiated by business actors globally, it evaluated them based on the following indicia:

- The lawsuit was brought or initiated by a private party (such as a company, owner of a company, or employees at a company);
- The lawsuit targets acts of public participation related (but not limited) to human rights, social justice, and environmental protection, including public criticism or opposition campaigns. Public participation can encompass a range of activities, from peaceful protest to writing blogs—assuming the latter is in the public interest; and
- The lawsuit came after the defender or organization expressed a critique of the claimant’s economic activities by publishing a report, posting on social media, participating in an event or interview, launching a campaign, organizing a demonstration, or another peaceful means.²⁴

The Resource Centre also took into account a set of criteria developed by Greenpeace International²⁵ to identify the improper use of lawsuits:

- Remedies sought are aggressive or disproportionate to the conduct targeted by the lawsuit or sanctions are severe (*e.g.*, large amounts of monetary damages or long prison sentences);

²² Alice Glover & Marcus Jimison, *S.L.A.P.P. Suits: A First Amendment Issue and Beyond*, 21 N. C. CENT. L. REV. 122,143 (1995).

²³ *The Sunday Times v. the U.K.*, App. No. 6538/74, (Apr. 26, 1979).

²⁴ *SLAPPed but not silenced*, *supra* note 3, at 29.

²⁵ *Sued into Silence*, GREEN PEACE (Jul. 2020), <https://www.greenpeace.org/static/planet4-eu-unit-stateless/2020/07/20200722-SLAPPs-Sued-into-Silence.pdf>.

- The plaintiff is engaged in procedural maneuvers that appear intended to drag out the case;
- The plaintiff appears to be exploiting its economic advantage to put pressure on the defendant;
- The lawsuit targets individuals as well as the organizations for whom they work;
- The arguments relied on are factually or legally baseless;
- The plaintiff uses the litigation process to harass third-party critics (*e.g.*, through the discovery process);
- The lawsuit appears to be part of a wider public relations offense designed to retaliate against, bully, or intimidate critics; and
- The plaintiff has a history of SLAPPs or legal intimidation.²⁶

Many of these are tactics designed to maximize the ability of the lawsuit to intimidate and harass the target. Significantly, SLAPPs are different from other intimidatory legal actions because their intent is to silence critical voices from raising matters of public concern, thereby discouraging public debate. As a consequence, those targeted and those who might have also expressed themselves are stopped from speaking out, fearing high financial costs and emotional drain involved. Whether petitioning the government, writing an investigative report, or commenting on the quality of a consumer business, citizen involvement in the exchange of ideas benefits our society.²⁷ Citizen participation is at the heart of a democracy, but meritless lawsuits are designed to choke public criticism, weaken accountability, and threaten the marketplace of ideas.

III. UNITED STATES LEADS THE WAY IN PROTECTING AGAINST SLAPPS

In the United States, SLAPPs are recognized as a violation of citizens' rights under the First Amendment, namely the right to speak freely, the right to a free press, the freedom to petition the government, the right to associate, and the right to assemble. These rights run even deeper than those bestowed upon Americans by way of the Constitution and instead flow from one's existence as a human. SLAPP suits are brought in retaliation against one for exercising these core human rights.

As time would tell, the phenomenon identified by Pring and Canan was at its infancy—before the internet was ubiquitous and everyone could

²⁶ *SLAPPed but not silenced*, *supra* note 3, at 29.

²⁷ GEORGE W. PRING & PENELOPE CANAN, *SLAPPS: GETTING SUED FOR SPEAKING OUT* 1-2 (Temple Univ. Press 1996).

be a publisher. The problem has increased by orders of magnitude since that time, with the media and protestors at the forefront and the receiving end of SLAPP suits. When those with power or wealth can manipulate the legal system to mute journalists and activists from voicing their concerns on matters of public interest, an asymmetry results that stifles public debate and reduces accountability.

As recommended by Pring and Canan, the antidote to the rising tide of SLAPP suits has been the passage of Anti-SLAPP laws, which help to protect and restore the ability of civil society to comment on public events and matters of public concern. In the U.S., at least thirty-four states and the District of Columbia have worked to restore this balance through the passage of Anti-SLAPP laws.²⁸ Most of these laws include mechanisms for filing motions to dismiss at an early stage of the litigation, requiring the plaintiff to meet a merits test before proceeding, suspension of the discovery process, and recovery of litigation costs for successful movants. Some state statutes, however, are narrow in their scope of protection, applying only to certain topics of discussion or to statements made in a specific type of proceeding. Other statutes do not have the procedural mechanisms to allow the court to put an end to the case or make the SLAPP victim whole.²⁹ As a result, this checkerboard of state laws provides varied protection for SLAPP victims and promotes forum shopping by SLAPP filers.³⁰

To address this concern, in 2020, the Uniform Law Commission passed the Uniform Public Expression Protection Act (UPEPA)—a model Anti-SLAPP law,³¹ which, like other uniform laws, is meant to provide consistency among state Anti-SLAPP laws. The Model Act has all the talismans of a strong Anti-SLAPP law: it is broad in the scope of its protection against SLAPP suits, including substantive protections for the freedom of expression through a procedural framework providing for expedited dismissal upon a showing the case lacks merit, a stay of the proceedings while the court makes its determination on the dismissal

²⁸ Laura Lee Prather & Robert T. Sherwin, *The Changing Landscape of the Texas Citizens Participation Act*, 52 TEX. TECH. L. REV. 163, 165 (2020), <https://ttu-ir.tdl.org/bitstream/handle/2346/85588/Prather-Sherwin-The-Changing-Landscape-of-the-Texas-Citizens-Participation-Act.pdf?sequence=1&isAllowed=y>.

²⁹ Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, *The Use of SLAPPs to Silence Journalists, NGOs and Civil Society*, Study requested by the JURI committee, European Parliament, June 2021, [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU\(2021\)694782_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU(2021)694782_EN.pdf).

³⁰ See, e.g., Daniel A. Horwitz, *The Need for a Federal Anti-SLAPP Law*, N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM (June 15, 2020); *Reporters Committee Q&A unpacks anti-SLAPP law*, <https://www.rcfp.org/anti-slapp-law-q-and-a/>.

³¹ UNIF. PUB. EXPRESSION PROT. ACT (UNIF. L. COMM'N 2020).

motion, the right to an immediate appeal if the motion is denied, and recoupment of fees to make the SLAPP victim whole.³² In 2021, the American Bar Association adopted a resolution approving UPEPA.³³ So far, it has been adopted in: Washington, Oregon, Hawaii, Kentucky, Utah, and New Jersey.³⁴

SLAPP suits filed in federal court present a greater problem. After fourteen years of trying, a federal Anti-SLAPP law in the U.S. continues to be elusive.³⁵ This compounds the problem of forum shopping because courts across the country disagree about whether state Anti-SLAPP provisions apply in federal diversity cases.³⁶ This confusion has led to rampant forum shopping by zealous plaintiffs who want to avoid the reach of Anti-SLAPP laws and willingly make spurious jurisdictional allegations to circumvent their protections.³⁷

The flagrant use of SLAPP suits to silence those exposing corruption has not gone unnoticed by the American government. Notably, in December 2021, the U.S. Administration in its Strategy on Countering Corruption recognized the link between SLAPPs and investigative media exposing corruption. The Administration included the need for reform measures in the form of Anti-SLAPP laws as part of its pillars to protect anti-corruption actors:

Countering Strategic Lawsuits Against Public Participation (SLAPP): Departments and agencies will work to counter nuisance suits against journalists and activists, and will seek additional authorities, working with the Congress if needed, to advance Anti-SLAPP programs and policies. When possible, the United States will coordinate actions with partner countries taking similar steps.³⁸

³² *Id.*

³³ American Bar Association, Resolution (Feb. 22, 2021), <https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2021/108b-midyear-2021.pdf>.

³⁴ Uniform Law Commission, *Public Expression Protection Act* (last visited Sept. 23, 2023), <https://www.uniformlaws.org/committees/community-home?CommunityKey=4f486460-199c-49d7-9fac-05570be1e7b1#:~:text=The%20Uniform%20Public%20Expression%20Protection,to%20silence%20and%20intimidate%20the>.

³⁵ See Appendix A *infra* (timeline of federal Anti-SLAPP efforts).

³⁶ See *Map of Applicability in federal courts*, ANTI-SLAPP LAWS (last visited Sept. 23, 2023), <https://antislapplawyers.com/federal/courts/map-of-applicability-in-federal-court/>; see also Laura Prather, *An Active Year in Anti-SLAPP Developments*, HAYNES BOONE (Aug. 9, 2021), <https://www.haynesboone.com/news/publications/an-active-year-in-anti-slapp-developments>.

³⁷ See *e.g.*, *Nunes v. NBCUniversal Media*, 582 F. Supp. 3d 387 (E.D. Tex. 2022).

³⁸ BIDEN ADMINISTRATION, UNITED STATES STRATEGY ON COUNTERING CORRUPTION, (Dec. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

With this backdrop, on September 15, 2022 Congressman Jamie Raskin, Chairman of the Subcommittee on Civil Rights and Civil Liberties, introduced H.R. 8864, the Strategic Lawsuits Against Public Participation (SLAPP) Protection Act to establish a mechanism for dismissing and deterring strategic lawsuits against public participation and punishing entities that attempt to use this type of litigation to stifle First Amendment protected speech.³⁹ Prior to introducing the bill, the subcommittee on Civil Rights and Civil Liberties held a hearing on “Free Speech Under Attack (Part 3): The Legal Assault on Environmental Activities and the First Amendment”⁴⁰ at which witnesses testified about the use of RICO (and other federal claims) against activists in an attempt to equate advocacy work to organized crime.⁴¹ The testifiers described how the risk of RICO’s treble damages and the aggressive tactics of the SLAPP filers were causing an existential threat to the targeted NGOs.⁴²

The need for a federal law is clear for several reasons: to prevent the circumvention of federal laws such as RICO, to alleviate the disproportionate burden placed on the federal court system by litigants seeking to avoid Anti-SLAPP laws, and to close the aperture created to judicially harass and silence those who speak truth to power and expose wrongdoing through meritless claims filed in federal court.

The SLAPP Protection Act aims to help ensure that people can speak up and participate in decisions affecting their lives without fear of being silenced through judicial harassment.⁴³ It will protect community leaders, the media, activists, and everyday citizens across the political spectrum who rely on their First Amendment rights when speaking up about important issues. It will not undercut current protection provided by state Anti-SLAPP laws, but instead will ensure that state Anti-SLAPP laws currently applying in federal court continue to do so, while providing new protection in those federal courts that do not currently recognize state Anti-SLAPP protection.⁴⁴ This is accomplished through a savings clause in the legislation that says: “Except as provided for in this chapter, nothing in this chapter shall reduce or limit any substantive claim, remedy, or defense to a

³⁹ SLAPP Protection Act of 2022, H.R. 8864, , 117th Cong. (2022).

⁴⁰ *Free Speech Under Attack (Part III): The Legal Assault on Env’t Activists and the First Amendment: Hearing Before the H. Comm. on Oversight and Reform*, 117th Cong. 21-22 (2022).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Chairman Raskin Introduces Legislation Establishing Federal Anti-SLAPP Statute to Protect First Amendment Rights*, JAMIE RASKIN (Sept. 15, 2022), <https://raskin.house.gov/2022/9/chairman-raskin-introduces-legislation-establishing-federal-anti-slapp-statute-to-protect-first-amendment-rights> [<https://perma.cc/28DR-W6TP>].

⁴⁴ *Id.*

SLAPP under any other Federal law or under the laws of any State or locality.”⁴⁵

Between more states’ adoption of UPEPA and the potential passage of the SLAPP Protection Act, the United States is well on its way to providing fundamental protection for the core human rights found in the First Amendment to the U.S. Constitution and in the Uniform Declaration of Human Rights.

IV. WAKEUP CALLS ACROSS THE POND CATAPULT ACTION

A. *The European Union Advances an EU-Wide Anti-SLAPP Directive*

There are seeds of discontent toward online publishers, investigative journalists, human rights defenders, and civil society. Now, the European Union, a jurisdiction not as well-known as the U.S. for excessive litigation, can magnify their voices through social media and the internet.

The tipping point came when Maltese investigative journalist and blogger, Daphne Caruana Galizia, was assassinated with a car bomb on October 16, 2017.⁴⁶ For years before she was murdered, Caruana Galizia published articles exposing wrongdoing, including information and allegations relating to several Maltese politicians and the Panama Papers scandal.⁴⁷ She was subjected to vicious harassment and open intimidation, unlawful arrests, asset freezes, attempts to burn her house down, and a litany of tactics to dehumanize her.⁴⁸ There were forty-eight libel lawsuits against her—including one in the U.S. (and several legal threats from the UK)—pending at the time of her death.⁴⁹

After Caruana Galizia’s death, the European Union could no longer turn a blind eye to these atrocities including judicial harassment and worse, against those whose job it is to inform citizens about issues of public interest and keeping those in power in check. Shortly after Caruana Galizia’s death, recognizing the critical nature of the press and civil society in maintaining democratic principles, members of the European Parliament

⁴⁵ H.R. 8864, 117th Cong. § 4204 (2022).

⁴⁶ Juliette Garside, *Malta car bomb kills Panama Papers journalist*, THE GUARDIAN (Oct. 16, 2017, 1:33 PM), <https://www.theguardian.com/world/2017/oct/16/malta-car-bomb-kills-panama-papers-journalist> [<https://perma.cc/8YWE-VF38>].

⁴⁷ *Id.*

⁴⁸ Irene Baqué et al., *Journalism Was Her Life: Daphne Caruana Galizia’s Family Speak Out—Video*, THE GUARDIAN (Apr. 17, 2018, 12:01 PM), <https://www.theguardian.com/world/video/2018/apr/17/journalism-was-her-life-daphne-caruana-galizias-family-speak-out-video>.

⁴⁹ *Justice Delayed: The Assassination of Daphne Caruana Galizia and Malta’s Deteriorating Press Freedom Climate*, REPORTERS WITHOUT BORDERS AND THE SHIFT NEWS (Oct. 15, 2019), https://rsf.org/sites/default/files/rapport_2019_v4.pdf.

began calling for legislative reforms. In May 2020, thirty-four members of the European Parliament sent a letter to Parliament expressing concerns and asking for action.⁵⁰

The continued persecution of human rights defenders and journalists, like Caruana Galizia, coupled with the disparity in laws and rise in threats against press freedoms simultaneously led to an outcry by NGOs throughout the EU.⁵¹ They called for reform to uphold the principles in Article 19 of the Universal Declaration of Human Rights.⁵² They made the point that the ability of the public to obtain accurate information and engage in vital discussions that impact global communities is at stake, so in May 2020, twenty-six NGOs sent an open letter to the European Commission requesting a “commitment to address the threat of vexatious litigation against journalists, activists and others.”⁵³ In June 2020, NGOs throughout Europe combined forces to demand an EU-wide Anti-SLAPP Directive.⁵⁴ By December 2020, a formal proposal for an EU-wide Anti-SLAPP Directive was submitted.⁵⁵

By the end of 2020, the EU issued its Democracy Action Plan with pillars dedicated to the safety of journalists, including proposing an initiative to curb abusive use of lawsuits against public participation (SLAPPs).⁵⁶ Additionally, in December 2020, the European Commission’s Directorate General for Justice and Consumers announced the formation of an Expert Group Against SLAPPs to assist the Commission in the preparation of legislative proposals and policy initiatives.⁵⁷

The momentum continued throughout 2021 with the Council of Europe’s Commissioner for Human Rights calling for action against

⁵⁰ *Strategic Litigation Against Public Participation*, EUROPEAN CENTRE FOR PRESS & MEDIA FREEDOM, (last visited Sept. 20, 2023), [https://perma.cc/6LP9-8MSF].

⁵¹ *Open letter to the European Commission Concerning the Threat of Vexation Litigation Against Journalists*, European Centre for Press & Freedom, (May 19, 2020), https://www.ecpmf.eu/letter-to-the-european-commission-concerning-the-threat-of-vexatious-litigation-against-journalists-activists-and-others/ [https://perma.cc/88BP-3MEV].

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Rights groups demand an EU-wide anti-SLAPP directive*, IFEX (June 8, 2020), [https://perma.cc/FHV3-5MUW].

⁵⁵ *A Proposal of an EU Anti-SLAPP Law*, EUROPEAN CENTRE FOR PRESS & MEDIA (Dec. 1, 2020), https://www.ecpmf.eu/a-proposal-for-an-eu-anti-slapp-law/ [https://perma.cc/9XUU-HE2V].

⁵⁶ *European Democracy Action Plan*, EUROPEAN COMMISSION, (last visited Sept. 20, 2023), https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan_en [https://perma.cc/DND4-WJ62].

⁵⁷ *Register of Commission Expert Groups and Other Similar Entities*, EUROPEAN COMMISSION (Feb. 18, 2023), https://ec.europa.eu/transparency/expert-groups-register/screen/home?lang=en [https://perma.cc/SQZ5-9XVW].

SLAPPs⁵⁸ and the European Parliament adopting a report proposing measures to counteract the threat of SLAPPs.⁵⁹ In October and November 2021, the EU Commission held a public consultation about SLAPPs, receiving 178 replies (nearly three quarters of which were from NGOs and citizens). From November through January 2022, it conducted a targeted consultation of national judges with 130 replies.⁶⁰ The drumbeat continued; the need for swift reform was evident. The 2021 Annual Report by the partner organizations to the Council of Europe Safety of Journalist Platform urged “urgent action against abusive legal actions” by “drafting and adopting as soon as possible a self-standing recommendation on the protection of the right to freedom of expression and unfettered public participation from the threat of abusive and vexatious legal proceedings.”⁶¹

1. EU Commission proposes Anti-SLAPP Directive⁶²

After working with an expert group for more than a year, on April 27, 2022, the EU Commission issued its proposed EU-wide Anti-SLAPP Directive⁶³ along with complementary recommendations to guide Member States in aligning their rules with the proposed law for domestic cases and in all proceedings.⁶⁴ Much like the federal/state court system in the U.S., the EU has laws dealing with cross-border issues and their Member States have laws dealing with what happens within their borders. The EU-wide Anti-SLAPP Directive would govern cross-border issues and the recommendations issued by the Commission guide the Member States in adopting their own laws within each country. The recommendations also call on Member States to implement a range of other measures, such as training and awareness raising, to fight against SLAPPs.⁶⁵

⁵⁸ See *Time to take action against SLAPPs*, COUNCIL OF EUROPE (Oct. 27, 2020), [https://perma.cc/5DWE-WKLG].

⁵⁹ *EU Rules Needed Against Abusive Lawsuits Targeting Critical Voices*, EUROPEAN PARLIAMENT (Nov. 11, 2021), <https://www.europarl.europa.eu/news/en/press-room/20211108IPR16838/eu-rules-needed-against-abusive-lawsuits-targeting-critical-voices> [https://perma.cc/DV8Z-7YKM].

⁶⁰ Rafal Mánko, *Strategic lawsuits against public participation (SLAPPs)* (Brief), EPRS (Jul. 2023), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI\(2022\)733668_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI(2022)733668_EN.pdf).

⁶¹ COUNCIL OF EUROPE, ANNUAL REPORT BY THE PARTNER ORGANISATIONS TO THE COUNCIL OF EUROPE PLATFORM TO PROMOTE THE PROTECTION OF JOURNALISM AND SAFETY JOURNALS (2021), <https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>.

⁶² See Appendix B *infra* for a timeline of events.

⁶³ *Proposal For a Directive of The European Parliament and of The Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)*, COM (2022) 177 final (Apr. 27, 2022) [https://perma.cc/HZ98-5GXT].

⁶⁴ Commission Recommendation 2022/758, 2022 O.J. (L 138) 30 (EU) [https://perma.cc/CHH9-LZ3D].

⁶⁵ *Id.*

The proposed Anti-SLAPP Directive covers SLAPPs in civil matters with “cross-border implications.”⁶⁶ Under the Directive, a matter is considered to have cross-border implications unless both parties are domiciled in the same Member State as the court, which indicates that the matter is purely domestic.⁶⁷ This follows the universal reach of the internet wherein speech is instantaneously published worldwide. Still, even when both parties are domiciled in the same Member State as the court, the matter can still be considered to have cross-border implications in two scenarios: (1) if the act of public participation at stake is “relevant to more than one Member State” or (2) if the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State.⁶⁸

In broad strokes, the Directive applies to cases brought against anyone to prevent, restrict, or penalize public participation⁶⁹ which are either manifestly unfounded or abusive. It applies to civil and commercial matters with cross-border implications and enables judges to swiftly dismiss the case. It also establishes several procedural safeguards and remedies, such as the burden of costs falling upon the claimant if the case is dismissed as abusive, the right for the defendant to claim and obtain full compensation for damages, dissuasive penalties on claimants for launching abusive cases in court, and protection against third country judgments. The Directive gives third parties (including NGOs) the right to intervene to support the defendant or provide information to the tribunal. Before it becomes law, it must pass through the European Parliament and the Council of the European Union (the “Council”). Both entities have approved their versions and are entering the final stretch, the so-called “trilogues”: inter-institutional negotiations in which the EU Parliament, EU Commission, and the Council hash out their positions to agree on the final shape of the law

⁶⁶ *Id.* ¶ 21.

⁶⁷ *Proposal for a Directive of the European Parliament and of the Council*, *supra* note 63.

⁶⁸ *Id.*

⁶⁹ “Public participation” is defined as any activity in which one is engaged in the exercise of right to freedom of expression and information on a matter of public interest. *See Proposal for a Directive of the European Parliament and of the Council*, *supra* note 63, at Article 3(1). “Matter of public interest” is something that “affects the public to such an extent that the public may legitimately take an interest in it” and then provides a list of examples such as public health, safety, the environment, allegations of corruption, fraud or criminality, matters under public consideration by a governmental body, activities of a person in the public eye or of public interest. *Id.* at Article 3(2).

before it enters into force.⁷⁰ The goal is to bring the discussions to a conclusion by December 31, 2023.⁷¹

2. *EU Commission proposes Member States Recommendations*

While nonbinding, the Recommendations for Member States calls upon them to not only ensure their civil procedure laws are in line with the proposed Anti-SLAPP Directive, but also includes recommendations about reforming criminal law, data protection, and rules governing the conduct of legal professionals, *i.e.*, remove prison sentences for defamation from their legal framework.

The key features for the Recommendations to Member States include:

- Similar level of safeguards for domestic cases of SLAPPs;
- Training and awareness raising for judges, legal professionals, journalists, and human rights defenders; and
- Systemic monitoring and data collection of SLAPP suits.⁷²

In other words, the Recommendations seek to level the playing field by providing similar protections in each Member State,⁷³ raising awareness,⁷⁴ collecting data,⁷⁵ and providing training⁷⁶ and support.⁷⁷ They also call for modifying the disciplinary rules and codes of conduct for attorneys who bring such actions.⁷⁸

Awareness raising on SLAPPs is key to sensitizing both the public and legal professionals, in particular judges and lawyers, to the issue. The Recommendations propose that Member States be required to provide both general and specialist training to judges and lawyers to increase their awareness of SLAPP suits. Integrating ethics rules and standards, including by providing for disciplinary measures, may deter lawyers from engaging in SLAPP litigation. At the same time, training can substantively contribute to building knowledge and capacity in how to deal with SLAPPs, and the threat thereof. SLAPP targets and potential targets, such as journalists and

⁷⁰ Kjeld Neubert & Nathalie Weatherald, *High stakes as EU anti-SLAPP directive enters final negotiations*, EURACTIV (July 12, 2013), <https://www.euractiv.com/section/media/news/high-stakes-as-eu-anti-slapp-directive-enters-final-negotiations/>.

⁷¹ *Id.*

⁷² Commission Recommendation 2022/758, *supra* note 64.

⁷³ *See Id.* ¶¶ 2-7.

⁷⁴ *See Id.* ¶¶ 19-23.

⁷⁵ *See Id.* ¶¶ 29-32.

⁷⁶ *See Id.* ¶¶ 10-18.

⁷⁷ *See Id.* ¶¶ 24-28.

⁷⁸ *See Id.* ¶ 9.

civil society actors, should also benefit from training on their rights and obligations in the face of SLAPP threats.

Member States are also instructed to ensure SLAPP victims have support. That support can come in the form of direct financial and legal support for SLAPP victims and support of the NGOs that provide guidance to these targets.

Finally, Member States are asked to collect data on the number of SLAPPs initiated in their jurisdiction, and to report this information annually to the Commission starting by end of 2023. Encouraging data collection will help provide information regarding the implementation of the new rules and should include relevant statistics of a qualitative and quantitative nature on disputes, court decisions, and the implementation of preventive, supportive, and deterrent measures.

3. Council of Europe

In addition to the twenty-seven countries comprising the EU, the broader European community is also taking the issue of SLAPPs seriously, with the Council of Europe (comprised of forty-six Member States) agreeing in late 2021 to establish a Committee of Experts on Strategic Lawsuits against Public Participation to draw up a recommendation on combating SLAPPs throughout Europe.⁷⁹ The committee is tasked with presenting a draft recommendation on SLAPPs by the end of 2023.

B. The UK Joins the Fight Against SLAPPs⁸⁰

On January 30, 2020, when Brexit took effect and the UK left the European Union, prior discussions about being a part of the EU Democracy Action Plan ceased. Despite being a well-known haven for defamation plaintiffs, the UK did not begin taking a serious look at this form of judicial harassment until the war in Ukraine broke out. It was then that the British took stock of the unabashed use of the UK court system by Russian oligarchs intent on punishing those who spoke the truth about their ties to Putin or corruption. This concerted effort to control and manipulate the narrative about the war through the UK courts forced the country to look inward at how it catered to Russian oligarchs (and others) who were using the UK judicial system to harass and silence investigative journalists.⁸¹

⁷⁹ See Eur. Consult. Ass., *MSI-SLP Comm. of Experts on Strategic Lawsuits against Public Participation*, <https://rm.coe.int/terms-of-reference-of-the-committee-of-experts-on-strategic-lawsuits-a/1680a4ee6c>.

⁸⁰ See Appendix C *infra* for a timeline of events.

⁸¹ According to the CASE report, *Shutting Out Criticism: How SLAPPs Threaten European Democracy*, most of the cross-border cases involving forum shopping were recorded in the United Kingdom. Bonello Ghio et al., *supra* note 6, at 23.

High-profile cases like those against journalist Catherine Belton and her publisher HarperCollins by Russian oligarch Roman Abramovich over the book “*Putin’s People: How the KGB Took Back Russia and then Took on the West*,”⁸² and against journalist Tom Burgis and his publisher over the book “*Kleptopia: How Dirty Money is conquering the World*,” clearly demonstrate how those in power used their gains to punish those who uncovered the sources of their money and tax havens. Shortly after her well-sourced book was published in 2020, Belton and HarperCollins were subject to five lawsuits filed in the UK by four Russian oligarchs (including Abramovich) and the Russian state-owned oil company, Rosneft. In June 2021, Abramovich also lodged a defamation action against HarperCollins in Australia.⁸³ HarperCollins and Belton’s lawyer Caroline Kean commented that while she had “worked on cases as complex as one of these . . . never have we come across a coordinated attack on a book in this way.”⁸⁴ It was estimated that if Abramovich’s libel trial had gone ahead in the UK and Australia, the legal bill was likely to have exceeded over £5 million.⁸⁵ Instead, each of the claims was resolved with no damages or costs payable by HarperCollins, and minor amendments made to the book, with the main claims remaining intact.⁸⁶ All the claimants who brought cases against Belton and HarperCollins have since been sanctioned in the aftermath of the Russian invasion in Ukraine.⁸⁷ Speaking to the Committee for the Economic Crime and Corporate Transparency Bill in October 2022, Belton explained:

The UK, like many other countries, really welcomed capital from places like Russia with open arms for the past twenty years. It’s certainly a place that Russian oligarchs have flocked to, partly because they want to be part of the UK establishment, but also because they have obviously taken advantage of our lax legislation and lax regulation . . . Without enabling journalists, and other financial watchdogs to be able to look at these entities without fear of getting crushed by enormous lawsuits, that are going to . . . cost more than

⁸² Another lawsuit over the same book was filed by Russian state-owned energy company, Rosneft. Catherine Belton, *Journalist and Author of ‘Putin’s People: How the KGB Took Back Russia and Then Took on the West,’* FOREIGN POLICY CENTER (Feb. 15, 2023), <https://fpc.org.uk/catherine-belton-journalist-and-author-of-putins-people-how-the-kgb-took-back-russia-and-then-took-on-the-west/>.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

anyone's budget allows, then we are going to be open to this type of abuse of our system forever.⁸⁸

Similarly, Tom Burgis was subject to two legal cases in the UK related to the publication of his book (published by HarperCollins) and related newspaper articles published in the Financial Times⁸⁹ brought by the Eurasian Natural Resources Corporation Limited (ENRC), whose business dealings were examined in *Kleptopia*, including the suspicious death of certain witnesses to alleged misdeeds by ENRC. After the UK court dismissed ENRC's case against Burgis and HarperCollins, finding their claim that Burgis had defamed the company was without merit because only individuals, and not corporations, can commit murder, the judge awarded sanctions against ENRC and refused the company permission to appeal.⁹⁰ Less than two weeks after this loss, ENRC withdrew its remaining case against Burgis and the Financial Times.⁹¹ Burgis stated at the time, "[i]t's harder to imagine a higher public interest than reporting on the deaths of potential witnesses in a major criminal corruption case."⁹² In November 2022, both Burgis and Belton spoke about their experiences at the 2nd UK Anti-SLAPP Conference, organized by the Foreign Policy Center, Justice for Journalists Foundation, and the International Bar Association's Human Rights Institute.⁹³

The carnage does not end with best-selling authors who reside in the UK like Belton and Burgis. The UK has proven to be the jurisdiction of choice for the most Anti-SLAPP cross-border cases filed between 2010-2021.⁹⁴ Recently, a U.S. investigative journalist with Forensic News, Scott Stedman, was sued in the UK based on a meager six subscriptions

⁸⁸ Catherine Belton, Oral Evidence to the Committee for the Economic Crime and Corporate Transparency Bill, Parliamentlive.tv (Oct. 2022), <https://parliamentlive.tv/event/index/e93a30e9-e069-4d0f-9637-5403c7b735b2>.

⁸⁹ *Index condemns lawsuits brought by ENRC against Tom Burgis*, INDEX ON CENSORSHIP (Oct. 2021), <https://www.indexoncensorship.org/2021/10/index-condemns-lawsuits-brought-by-enrc-against-tom-burgis/>.

⁹⁰ Dominic Casciani, *Journalist wins 'kleptocrat' book High Court libel case*, BBC NEWS (Mar. 2, 2022), <https://www.bbc.com/news/uk-60595266>. <https://www.bbc.co.uk/news/ukh-60595266>.

⁹¹ *Tom Burgis, Investigative journalist and author of 'Kleptopia: How dirty money is conquering the world'*, FOREIGN POLICY CENTRE (Feb. 15, 2023), <https://fpc.org.uk/tom-burgis-investigative-journalist-and-author-of-kleptopia-how-dirty-money-is-conquering-the-world/>.

⁹² *Id.*

⁹³ Foreign Policy Centre, *Day 1 Panel 1: The UK's Anti-SLAPP Reforms – a big enough step in the right direction?*, YOUTUBE (Dec. 21, 2022) <https://www.youtube.com/watch?v=CcKYd82xvmY>; Foreign Policy Centre, *Day 2 Evening Panel: The Great Enabler: SLAPPs, Sanctions & the UK's Kleptocracy Problem*, YOUTUBE (Dec. 6, 2022), <https://www.youtube.com/watch?v=oRHp2TMEt2Y>.

⁹⁴ Bonello Ghio et al., *supra* note 6, at 23.

stemming from the jurisdiction.⁹⁵ He was sued by British-Israeli security consultant and businessman, Walter Soriano, after reporting on alleged ties to Russian oligarch, Oleg Deripaska.⁹⁶ Soriano, no stranger to litigation, not only sued Forensic News and four of its individual reporters (including Stedman) in the UK, but also sued investigative journalists in France and Israel, as well as Twitter in Ireland. Forensic News and Stedman have been forced to crowdfund for the defense.⁹⁷

Confronted by the stark reality that the UK judicial system was being abused by powerful individuals, on January 20, 2022, the UK Parliament held a debate on “Lawfare and the UK Court System.”⁹⁸ Shortly thereafter, on March 17, 2022, the UK Ministry of Justice issued a Call for Evidence on Strategic Lawsuits Against Public Participation (SLAPPs).⁹⁹ In the meantime, in April 2022, the Foreign Policy Centre and Article 19 published a report examining the issue of legal intimidation and legal actions, initiated in the UK against journalists and media outlets with the purpose, or effect, of stifling scrutiny and debate on matters of public interest.¹⁰⁰ On July 20, 2022, after receiving 120 responses to its Call for Evidence on SLAPPs, the Ministry issued its Response.¹⁰¹

Like the European Union, the UK Ministry of Justice recommended much-needed reform to stymie what was termed “Lawfare.” In broad strokes, the mandate is for the UK Parliament to develop a statutory early dismissal process and costs protection scheme to fight against SLAPP suits.¹⁰² Simultaneously, as discussed in more detail below, the UK Solicitors Regulation Authority began taking an interest in the role of lawyers in propagating SLAPPs.¹⁰³

⁹⁵ *Lawsuit brought against Forensic News and Scott Stedman deemed a SLAPP*, IPI MEDIA (Feb. 18, 2022), <https://ipi.media/lawsuit-brought-against-forensic-news-and-scott-stedman-deemed-a-slapp/>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ David Davis MP, *David Davis holds debate on Lawfare and the UK Court System*, YOUTUBE (Jan. 2022), <https://www.youtube.com/watch?v=fK5vmeCxxhXQ&t=2s>.

⁹⁹ MINISTRY JUST., STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION: A CALL FOR EVIDENCE (Mar. 2022), https://consult.justice.gov.uk/digital-communications/strategic-lawsuits-against-public-participation/supporting_documents/slappscallforevidencweb.pdf.

¹⁰⁰ Susan Coughtie et al., *‘London Calling’: The issue of legal intimidation and SLAPPS against media emanating from the United Kingdom*, FOREIGN POL’Y CTR. & ARTICLE 19 (Apr. 2022, updated June 2022), <https://fpc.org.uk/publications/london-calling-the-issue-of-legal-intimidation-and-slapps-against-media-emanating-from-the-united-kingdom/>.

¹⁰¹ MINISTRY JUST., *supra* note 99.

¹⁰² *Id.*

¹⁰³ *See generally SLAPPs and abusive litigation*, SOLIC. REGUL. AUTH., <https://www.sra.org.uk/home/hot-topics/slapps-abusive-litigation/>.

Over the course of the next several months and a series of new prime ministers, the UK Parliament has remained invested in getting an Anti-SLAPP law passed. On October 17, 2022, MP David Davis held an adjournment debate on Lawfare and Investigative Journalism outlining the urgent need for action.¹⁰⁴

On November 24, 2022, a Model Anti-SLAPP law was presented to Parliament by the UK Anti-SLAPP Coalition.¹⁰⁵ The Coalition outlined three conditions necessary for any law to be effective: (1) SLAPPs must be “disposed of as quickly as possible in court,” (2) the costs “for SLAPP targets are kept to an absolute minimum,” providing for a full indemnity, and (3) “[C]osts for SLAPP filers are sufficiently high to deter further SLAPP[s],” including award of exemplary damages where the “claimant has exhibited particularly egregious conduct.”¹⁰⁶ Then, it presented a Model Law providing for a broad definition of what constitutes an “act of public participation” and what is considered a “matter of public interest.” The Model Law outlines a dismissal mechanism if the claimant cannot establish the claim is likely to prevail at trial and that the harm suffered outweighs the public interest in dismissal. It provides for a stay of the proceedings while the court makes this determination and empowers the judge to award costs on a full indemnity basis. It also tempers the defendant’s disclosure obligations to “known adverse documents” and key documents on which the parties have relied or are necessary to understand the claim or defense.¹⁰⁷ The Model Law has been endorsed by a large swath of free speech and anti-corruption organizations, leading editors, journalists, publishers, lawyers, and other experts throughout the UK.¹⁰⁸

In an interesting turn of events, in June 2023, the UK Parliament committed to adding an amendment to the Economic Crime and Corporate Transparency Bill to protect against SLAPP suits arising out of reporting on economic crimes and corporate transparency.¹⁰⁹ The UK Parliament has recognized SLAPP suits being “used prominently by Russian oligarchs to

¹⁰⁴ David Davis MP, *David Davis MP on Lawfare and Investigative Journalism*, YOUTUBE (Oct. 2022), <https://www.youtube.com/watch?v=yncZrNgICRM>.

¹⁰⁵ *UK Anti-SLAPP Coalition: Model Anti-SLAPP Law*, ENGLISH PEN (Nov. 24, 2022), <https://www.englishpen.org/posts/campaigns/uk-anti-slapp-coalition-model-anti-slapp-law/>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Letter to Justice Secretary: Adoption of a UK Anti-SLAPP Law*, INDEX ON CENSORSHIP, (Nov. 11, 2022), <https://www.indexoncensorship.org/2022/11/letter-to-justice-secretary-adoption-of-a-uk-anti-slapp-law/>.

¹⁰⁹ *Crackdown on criminals silencing critics to be added to Economic Crime Bill* (Press Release), GOV.UK (June 13, 2023), <https://www.gov.uk/government/news/crackdown-on-criminals-silencing-critics-to-be-added-to-economic-crime-bill#:~:text=The%20amendments%20show%20the%20government,rapidly%20thrown%20out%20by%20judges.>

silence critics including investigative journalists, writers and campaigners to avoid scrutiny, often on bogus defamation and privacy grounds that prevent the publication of information in the public interest.”¹¹⁰ As a result, the bill will be amended to create a “new early dismissal process within the court system which will allow SLAPPs about economic crime to be rapidly thrown out by judges.”¹¹¹

In addition, although it has not committed to a specific date, the UK Ministry of Justice committed to primary legislation (in the form of a stand-alone bill) to enable clearer identification of SLAPPs according to common characteristics, such as aggressive pre-action communications and targeting individuals where their publisher would be more appropriate, rather than a fixed definition.¹¹² It has also committed to “introduce an early dismissal process in statute which will effectively stop complainants from financially and psychologically exhausting their opponents via abusive means cutting short cases which have no merit potentially via a 3-part test.”¹¹³ According to the Ministry, the crippling costs currently borne by SLAPP defendants will be addressed through a new cost protection scheme, which will ensure journalists will be able to litigate without fear of bankruptcy.¹¹⁴ This will be done through secondary legislation.¹¹⁵

V. WHAT THE U.S. CAN LEARN FROM THE EU AND UK

After spending years advocating for the passage of Anti-SLAPP laws at the state and federal level in the U.S., four best practices emerged for raising awareness, providing tools to stamp out SLAPPs, and holding perpetrators and those who contribute to the abuse of the rule of law accountable.

The basic framework of what constitutes an effective Anti-SLAPP law is clear: broad substantive protections for acts of public participation, including speaking about matters of public concern; an expedited review by the trial court to determine if lawsuits challenging such acts have merit, a stay of discovery during the merits analysis (at the trial and appellate level), an immediate appeal of the denial of a motion; reimbursement of fees and costs for SLAPP victims (since they should not have been sued to begin

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *David Davis MP on Lawfare and Investigative Journalism, supra* note 104.

¹¹³ *Id.* at 23:38-28:58.

¹¹⁴ *Id.* at 28:59-29:13; *see also*, UK PARLIAMENT, LAWFARE AND INVESTIGATIVE JOURNALISM (Debate) (Oct. 17, 2022), <https://hansard.parliament.uk/Commons/2022-10-17/debates/9EF8B914-AF94-41AE-A792-0242A7414F96/LawfareAndInvestigativeJournalism>.

¹¹⁵ *David Davis MP on Lawfare and Investigative Journalism, supra* note 104 at 29:14-29:17.

with), and the ability of a court to enter additional sanctions against the claimant when appropriate.

Despite the increase in the number of states adopting Anti-SLAPP laws over the last decade, passage of a federal law over that same time frame has proven elusive—leading to rampant forum shopping. The United Nations Human Rights Office of the High Commissioner describes the trend in America in grave terms:

The SLAPP trend has been particularly pronounced in the U.S., fueled and aided by exorbitant legal fees, the ‘American rule’ of costs apportionment (whereby each party to a lawsuit is responsible for its own attorney fees), and an absence of caps on damages. In a recent report, the free speech group Index on Censorship identified civil litigation as one of a number of growing threats to U.S. press freedom. The growth of Anti-SLAPP statutes . . . is largely attributable to a growing recognition of this trend.¹¹⁶ A worrying new approach has been the use of the Racketeering Influenced and Corrupt Organizations Act (RICO) to intimidate advocacy groups and activists by enabling corporations to smear these groups as ‘criminal enterprises,’ while claiming exorbitant damages (RICO entitles plaintiffs to claim treble damages as a punitive measure) for the ‘harm’ they claim to have suffered.¹¹⁷

Given this, what can the U.S. learn from the EU and UK about how to increase the likelihood of initiating, passing, and implementing federal legislation?

A. *The Importance of Mapping*

First, it is important to document the scourge of SLAPPs to raise awareness, analyze patterns, and encourage discussions to help identify the most effective solutions.¹¹⁸ For instance, when the Texas Anti-SLAPP law was passed in 2011, it was not difficult to find examples of demonstrated need. Due to a lack of procedural safeguards, including no mechanism for filing motions to dismiss at the time, Texas proved a fertile ground for employing judicial harassment against journalists and average citizens. Many of these SLAPP victims came to testify before the Legislature about

¹¹⁶ Section 5 of the Illinois Citizen Participation Act, for example, notes “there has been a disturbing increase in lawsuits termed ‘Strategic Lawsuits Against Public Participation.’” Illinois’ Citizen Participation Act, 735 ILCS 110/1. A similar recognition can be found in California’s Anti-SLAPP law: “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.” California Code of Civil Procedure, § 425.16(a).

¹¹⁷ Annalisa Ciampi, *SLAPPs and FoAA Rights*, UNHR (Info Note), <https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx>.

¹¹⁸ In addition to the existing mapping platforms already developed in Europe, the EU Commission’s Member State Recommendation provides for systematic monitoring of SLAPP suits. Commission Recommendation 2022/758, *supra* note 64.

their experiences.¹¹⁹ The testimony from more than one decade ago proved to be just the tip of the iceberg, as evidenced by the droves of SLAPP victims that came to testify eight years later when the law was under fire and powerful lobby groups were trying to effectively repeal or neuter it.¹²⁰ The message here is clear: help lawmakers understand the problem and give the government a reason to care about finding a solution. European states have figured out how to do this and, in doing so, have engaged governments in the discussion about the problem and how to solve it in a way that can serve as a model to others. The U.S. is currently behind in this regard but has the capability, through existing tracking mechanisms and statutory models that could be expanded, to accomplish the same goal.

1. *Council of Europe Safety of Journalists Platform*

Recognizing what a high-risk profession journalism had become and that journalists and other media actors play a vital part in preserving a democratic society, in 2012, the Council of Europe began exploring “modalities for the creation of an Internet-based platform aimed at facilitating the compilation, processing, and dissemination of information” in order to establish rapid response mechanisms to instances of threats or violence against journalists or other media actors and provide them with assistance.¹²¹ “[O]n April 30, 2014, the [European] Committee of Ministers decide[d] to facilitate the development of an Internet-based platform drawing on information supplied by interested media freedom organizations to record and publicize information on possible infringements of the rights guaranteed by Article 10 of the European Convention on Human Rights.”¹²²

¹¹⁹ Laura Lee Prather & Justice Jane Bland, *Bullies Beware: Safeguarding Constitutional Rights Through Anti-SLAPP in Texas*, 47 TEX. TECH. L. REV. 725, 732-34 (2015).

¹²⁰ Texas House Judiciary & Civil Jurisprudence committee hearing on HB 2730, TEX. HOUSE REPRESENTATIVES (Apr. 1, 2019), https://tlchouse.granicus.com/MediaPlayer.php?view_id=44&clip_id=16843.

¹²¹ Eur. Consult Ass., *Thematic debate on the “Safety of journalists – further steps for the better implementation of human rights standards*, SG/Inf(2013)32 (2013).

¹²² The original partner organizations were International Federation of Journalists, Association of European Journalists, Reporters Without Borders Article 19, and Association of European Journalists. COUNCIL EUR., MEMORANDUM OF UNDERSTANDING ON THE SETTING-UP OF AN INTERNET-BASED FREEDOM OF EXPRESSION PLATFORM TO PROMOTE THE PROTECTION OF JOURNALISM AND SAFETY OF JOURNALISTS BETWEEN THE COUNCIL OF EUROPE AND THE FOLLOWING PARTNER ORGANISATIONS: IFJ, AEJ, RPB, ARTICLE 19. Today 14 international NGOs and associations of journalists are partners to the platform. *Platform for the Safety of Journalists*, COUNCIL EUR., [https://www.coe.int/en/web/civil-society/platform-for-the-safety-of-journalists#:~:text=The%20Platform%20for%20the%20safety,Council%20of%20Europe%20member%20states; See also COUNCIL EUR., INTERNET-BASED PLATFORM TO PROMOTE THE PROTECTION OF JOURNALISM AND SAFETY OF JOURNALISTS \(Oct. 10, 2014\), https://perma.cc/X2WZ-V887](https://www.coe.int/en/web/civil-society/platform-for-the-safety-of-journalists#:~:text=The%20Platform%20for%20the%20safety,Council%20of%20Europe%20member%20states; See also COUNCIL EUR., INTERNET-BASED PLATFORM TO PROMOTE THE PROTECTION OF JOURNALISM AND SAFETY OF JOURNALISTS (Oct. 10, 2014), https://perma.cc/X2WZ-V887).

On December 4, 2014, the Council of Europe and the Partner Organisations signed a Memorandum of Understanding, and the platform was launched in 2015. The Safety of Journalists Platform (the “Platform”) describes itself as:

[A] unique mechanism which helps the dialogue between the governments and the organizations of journalists, with the aim of stopping violations to press freedom in the member states of the Council of Europe and enabling journalists to exercise their profession without the risk of compromising their safety.¹²³

The Platform’s “objectives and actions include documenting and recording serious concerns about media freedom and journalists’ rights, raising awareness, assisting in legislative and policy development, training, and taking steps to address [the issues raised].”¹²⁴ The information collected on the Platform falls within one of the following thematic areas: instances of violence, threats to physical integrity and security of journalists and other media actors, threats to confidential sources, threats to journalists’ privacy, and chilling effects on media freedom, in particular related to judicial harassment and political intimidation of journalists. After an alert is posted, a dialogue between non-state actors, state actors, and the Council is encouraged. The Council then prepares an annual report submitted to the Committee of Ministers and to the Parliamentary Assembly outlining trends from the data submitted together with comments made by Member States concerned.¹²⁵ In this manner, policy initiatives are supported by data.

When submitting an alert to the Platform, the partner organizations—who invited international NGOs and associated journalists—ensure that certain criteria are met to verify the alert involves a serious concern about media freedom and safety of journalists in Council of Europe Member States, as guaranteed by Article 10 of the European Convention on Human Rights. Within the Platform, every violation is described according to the country where it took place, the category of violation, the source of threat, and the alert level. The Platform has two alert levels: Level 1 covers the most severe and damaging violations of media freedom, including killings

¹²³ See also SAFETY OF JOURNALISTS PLATFORM, WHO WE ARE, <https://fom.coe.int/en/apropos>.

¹²⁴ COUNCIL EUR., *supra* note 122, at 2, no. 5.

¹²⁵ *Id.* at Art. 8. See, e.g., COUNCIL EUR., ANNUAL REPORT BY THE PARTNER ORGANISATIONS TO THE COUNCIL OF EUROPE PLATFORM TO PROMOTE THE PROTECTION OF JOURNALISM AND SAFETY OF JOURNALISTS (2023), <https://rm.coe.int/prems-019323-gbr-2519-annual-report-by-the-partner-organisations-to-th/1680aa743d>; see also SAFETY OF JOURNALISTS, 2023 PARTNERS’ REPORT (2023), <https://fom.coe.int/en/rapports/detail/18>.

and physical assaults, and Level 2 covers all other serious threats to media freedom, including, among others, SLAPP suits.¹²⁶

The Platform enables the Council of Europe to be alerted in a systematic way when media freedom is compromised in a Member State so that it may take timely and coordinated action when necessary. Dialogue with the Member States is critical. The Member States are expected to act on and address the issues and inform the Platform on the actions taken in response to the alert. The Platform also highlights the work carried out by the Council of Europe in the field of media freedom, such as texts prepared by the Parliamentary Assembly, standards adopted by the Committee of Ministers, relevant case-law of the European Court of Human Rights, and the work of the Commissioner for Human Rights.¹²⁷ Finally, the Platform helps the Council of Europe identify trends and propose adequate policy responses in the field of media freedom.

2. *Mapping Media Freedom Platform*

In addition to the Platform, in May 2014, Mapping Media Freedom, a joint undertaking with the European Federation of Journalists and Reporters Without Borders, partially funded by the European Commission, launched to document threats to media freedom across Europe.¹²⁸ It allows anyone—from members of the public to journalist unions—to submit reports of media freedom violations for verification. The Media Freedom Rapid Response (MFRR) is a Europe-wide model that tracks, monitors, and reacts to press and media freedom violations (since March 2022) in EU member states, candidate countries, and Ukraine.¹²⁹ It covers both a broader geographic reach and a broader array of harms than the Platform, ranging from intimidation and preventing access to information, including through SLAPP suits, to murder. Rather than focus on the response to the alerts by governments, the MFRR platform, co-funded by the European Commission, provides legal support, practical support, and public advocacy to protect journalists and media workers, and to advance press freedoms.

¹²⁶ SAFETY JOURNALISTS PLATFORM, *supra* note 123.

¹²⁷ SAFETY JOURNALISTS PLATFORM, WHO WE ARE, <https://fom.coe.int/en/apropos>.

¹²⁸ Mapping Media Freedom report: journalists increasingly attacked in Europe, <https://europeanjournalists.org/blog/2016/08/03/mapping-media-freedom-report-journalists-increasingly-attacked-in-europe/>. The current project partners are ARTICLE 19 Europe, the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), the European Centre for Press and Media Freedom (ECPMF), the International Press Institute (IPI) and the Osservatorio Balcani e Caucaso Transeuropa (OBCT).

¹²⁹ See MEDIA FREEDOM RAPID RESPONSE, <https://www.mfrr.eu/>.

3. *U.S. Press Freedom Tracker*

In 2017, after a series of attacks against journalists, including those covering protests and riots like those in Ferguson, Missouri following the fatal shooting of Michael Brown by police officer Darren Wilson, the Freedom of Press Foundation and Committee to Protect Journalists launched the U.S. Press Freedom Tracker (the “Tracker”).¹³⁰ The Press Freedom Tracker is a database of recorded press freedom incidents in the U.S. involving arrests of journalists, seizure of equipment, denial of access, assaults, subpoenas, and border investigations. It does not, however, track judicial harassment against journalists in the form of legal threats or litigation. The Tracker categorizes offenses by year and advisory board member.¹³¹ The Reporters Committee for Freedom of the Press publishes a detailed annual report analyzing press freedom violations confirmed by the Tracker’s researchers each year, highlighting the Reporters Committee’s work to protect journalists and the public’s right to access information.¹³² Unlike the European models, the U.S. Press Freedom Tracker is privately funded through donors and does not currently function to track SLAPPs.¹³³

4. *California Statutory SLAPP Reporting Requirements*

California’s Anti-SLAPP law, originally passed in 1992, was one of the first in the nation; to date, California is still the only state to embed in its law a unique tracking mechanism. California Civil Procedure §§ 425.16(j)(1) and (2) provide:

(1) Any party who files a[n] [Anti-SLAPP motion], and any party who files an opposition . . . , shall, promptly upon so filing, transmit to the Judicial Council . . . a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order . . . granting or denying [the Anti-SLAPP motion], discovery, or fees.

¹³⁰ See *The U.S. Press Freedom Tracker*, <https://pressfreedomtracker.us/>.

¹³¹ See *id.*; see also Kirstin McCudden, *Another record year for press freedom violations in the US*, U.S. PRESS FREEDOM TRACKER BLOG (Jan. 12, 2022), https://pressfreedomtracker.us/blog/another-record-year-for-press-freedom-violations-in-the-us/?utm_medium=rcfp_reports&utm_source=email&utm_campaign=press_freedom_report_2021.

¹³² See, e.g., *Press Freedoms in the United States 2020: A Review of the U.S. Press Freedom Tracker*, REP. COMM. FREEDOM PRESS (2021), https://www.rcfp.org/wp-content/uploads/2021/05/Press-Freedom-Tracker-2020_FINAL.pdf?utm_medium=rcfp_reports&utm_source=email&utm_campaign=press_freedom_report_2021.

¹³³ See *The U.S. Press Freedom Tracker*, *supra* note 130; see generally, *Frequently Asked Questions*, <https://pressfreedomtracker.us/frequently-asked-questions/#:~:text=CPJ%20provides%20major%20funding%20to,Borders%20and%20Index%20on%20Censorship>. (The Committee to Protect Journalists provides major funding to the project, and private donations are accepted through their website).

(2) The Judicial Council shall maintain a public record of information transmitted . . . for at least three years . . .¹³⁴

While this provision does not help facilitate the passage of Anti-SLAPP laws in the first instance, it does work to establish their worth and withstand subsequent attempts to encroach upon or repeal these laws. For instance, when rumblings arose about the California law being “systematically abused” and urging legislative reform, this data was used to show that the reverse was true.¹³⁵

While the California statutory provision is a novel idea worthy of consideration when passing future Anti-SLAPP legislation, the U.S. appears lightyears behind the EU in mapping the problem of SLAPPs and using such forums to foster discussions with government actors. Significantly, the Council of Europe recognized from inception the significance of the information published on the Platform serving as a basis for “an upstream dialogue with Member States concerned regarding proposals for possible protective or remedial action.”¹³⁶ For instance, in 2021, through mapping, the Council of Europe was able to observe “a notable increase of SLAPP-related alerts over the previous year, both in numbers of alerts and jurisdictions concerned.”¹³⁷ Without this type of tracking, it is difficult to demonstrate the reach of the problem surrounding SLAPPs and facilitate an informed discussion about best solutions.

B. Awareness Raising: Naming and Shaming

Another way to raise awareness of SLAPPs is through “naming and shaming.” Because of the significant potential for silos of silence discussed below, one of the key ways to show resilience in the face of SLAPPs is to spread awareness of those who abuse the system. Sarah Clarke, Head of Europe and Asia at Article 19, explained: “naming and shaming of those firms that bring SLAPPs is important as it ensures that their names are out there, and people know.”¹³⁸

¹³⁴ CAL. CIV. PROC. §§ 425.16(j)(1)-(2).

¹³⁵ Felix Shafir, Jeremy B. Rosen & David Moreshead, *California’s Anti-SLAPP Law Is Not Systematically Abused*, LAW 360, (June 30, 2016), https://www.horvitzlevy.com/R5FD3S351/assets/files/News/2016-06-30%20FS_JBR%20-%20California’s%20Anti-SLAPP%20Law%20Is%20Not%20Systematically%20Abused%20-%20Law360.pdf.

¹³⁶ COUNCIL EUR., MEMORANDUM OF UNDERSTANDING 3, Art. 2 (2014), <https://rm.coe.int/1680479b43>.

¹³⁷ COUNCIL EUR., *supra* note 61.

¹³⁸ Faith Miyandazi, *How to stop SLAPPs – the intentional silencing of critical voices*, ECPMF, <https://www.ecpmf.eu/how-to-stop-slapps-the-intentional-silencing-of-critical-voices/>.

In the tongue-and-cheek fashion of a Britcom, the Coalition Against SLAPPs in Europe (CASE)¹³⁹ has developed an ingenious way to raise awareness about SLAPP bullies through their European SLAPP Contest (loosely patterned after the European Song Contest).¹⁴⁰ It engages government officials to serve as contest judges and solicits nominees in various categories featuring the most abusive lawsuits and litigants throughout Europe.¹⁴¹ The 2022 SLAPP contest reflected the wide-ranging impact of SLAPPs and recognized the following powerful individuals and corporations who contributed to this phenomenon in six different categories:

Corporate Bully of the Year – Awarded to the corporation that has most aggressively pursued SLAPPs and legal intimidation tactics against its critics.

2022 Winner – Afribank (France). Afribank is a Cameroonian bank that launched a campaign of harassment and intimidation against whistleblowers and transparency campaigners following the publication of a joint report by two NGOs in July 2020. Alongside controversial mining businessman Dan Gertler, the bank has filed multiple criminal complaints in Paris in response to the report, which involved rigorous source-checking and separate reporting by Bloomberg, Le Monde, Haaretz and others. The bank also pursued a criminal complaint in the DRC against the two former bank employees who first blew the whistle, leading to a death sentence being imposed against them *in absentia*.¹⁴²

SLAPP Politician of the Year – Awarded to the politician who has proven most reliant on SLAPPs and legal intimidation to respond to opposition, dissent, or efforts at accountability.

2022 Winner – Grigoris Dimitriadis (Greece). Dimitriadis, the then-Secretary General to the prime minister (as well as his nephew) has filed expensive lawsuits against Reporters United, Efimerida ton Syntakton (EfSyn), and three journalists, after media stories were published about allegedly illegal practices by the government.¹⁴³

SLAPP Country of the Year – Awarded to the country which has provided the most favorable conditions for SLAPPs.

¹³⁹ CASE is a coalition of over 100 advocacy groups from across Europe united together in solidarity against SLAPPs.

¹⁴⁰ See generally EUROPEAN ANTI-SLAPP CONFERENCE, *The European SLAPP Contest*, <https://anti-slapp-con.ecpmf.eu/the-european-slapp-contest/>.

¹⁴¹ See CASE Team, *The European SLAPP Contest 2022*, ECPMF (Oct. 20, 2022), <https://www.the-case.eu/latest/the-european-slapp-contest-2022/>; see also ECPMF, *European Anti-SLAPP Conference 2022*, YOUTUBE (Oct. 20, 2022), https://www.youtube.com/watch?v=NGSuX2_xpgE (8:40-9:12).

¹⁴² *The European SLAPP Contest*, *supra* note 140.

¹⁴³ *Id.*

2022 Winner – Poland. According to the American think-tank Freedom House, Poland is the country that has witnessed the biggest democratic decline in Europe in the last five years. Throughout these years, independent media have been regularly hit with SLAPPs and spurious legal threats which has resulted in many smaller outlets and freelancers self-censoring their publications. In 2021, CASE documented twenty-nine SLAPP cases in Poland. In 2022, the newspaper *Gazeta Wyborcza* faced approximately seventy-five lawsuits, many of which have been brought by individuals associated with the ruling Law and Justice Party (PiS).¹⁴⁴

Bully Lawyer of the Year – Awarded to the lawyer or legal organization that has facilitated the most abusive and aggressive legal strategies or intimidation tactics on behalf of their clients.

2022 Winner – Judge Zvonko Vrban (Croatia). Vrban is one of the most powerful judges in Croatia, presiding over the Country Court on Osijek, one of the largest courts in the country. He has filed six civil lawsuits in less than two years against *Telegram*, its editor in chief Jelena Valentić, and Drago Hedl, the award-winning Croatian journalist and author of articles investigating suspected ethical misconduct on the part of the judge. The total amount sought in the complaints is around €120,000 in damages.¹⁴⁵

Cross-Border Bully of the Year – Awarded to the most shameless efforts by an international plaintiff to use European courts to silence criticism and dissent.

2022 Winner – the Kingdom of Morocco. In 2021, the Kingdom of Morocco filed civil defamation lawsuits as well as an injunction and a slander lawsuit in France, Germany, and Spain against several NGOs, newspapers, radio broadcasters and individual journalists and reporters after they published investigative work alleging that the Moroccan administration used Pegasus spyware to spy on the mobile phones of politicians, journalists, and activists.¹⁴⁶

Oppressive Oligarch of the Year (Bonus category) – In 2022, the European SLAPP awards added a bonus category (in tribute to Ukraine) to the Russian legal bullies who tenaciously pursued SLAPPs against those who tried to expose their links to the Putin regime.

2022 Winner – Yevgeniy Prigozhin. In 2021, Russian oligarch Prigozhin, also known as “Putin’s Chef,” filed a lawsuit with the High Court of England against the founder of Bellingcat, Eliot Higgins. The proceedings concerned several tweets from Higgins’ personal Twitter account about

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

Prigozhin’s ties to the paramilitary Wagner Group, which linked to articles published on respected news websites. The case was dismissed for repeated non-compliance with Court orders, but only after Higgins spent tens of thousands of pounds defending himself. Since the case’s dismissal, Prigozhin has admitted founding the Wagner Group, saying he was “proud” of his role in the group’s activities.¹⁴⁷

People’s Choice Award: Legal Bully of the Year Award – Selected by public vote. In 2022, over 50,000 people participated in the People’s Choice Award.

2022 Winner – Roman Abramovich. Abramovich received 37,923 votes.¹⁴⁸ He is the Russian oligarch and politician who filed a civil defamation lawsuit in March 2021 against Catherine Belton, journalist and author of the book *Putin’s People*, and its publisher, HarperCollins. The lawsuit concerns statements in the book, which he claimed were untrue or inaccurate. While Abramovich’s lawyer denied any sort of coordination, the lawsuit was one of five filed in the same week by Russian oligarchs—three of whom were represented by the same lawyer—as well as the state oil company Rosneft. Had the libel trial gone forward in the High Court, the legal bill was expected to exceed £10 million.¹⁴⁹

During the European SLAPP Contest, the SLAPP victim “accepts the award” for each related category and explains why the winner is deserving of the title. It is a light-hearted way to bring attention to a sobering problem.

C. The Role of Lawyers in Upholding the Rule of Law

The real damage that’s being done here is all the stories we are not talking about because we don’t even know about it. The ones of great public interest that are being spiked every day because the journalists are too scared to do them; their editors are too scared to run them; and because London law firms—whose senior partners wield power equivalent to that of a Fleet Street editor in deciding what we get to read and what we don’t get to read – are making just those decisions every day on behalf of clients whose interests are completely inimical to democracy.¹⁵⁰

Tom Burgis, author of Kleptopia: How Dirty Money is Conquering the World.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 9:10:30-9:10:40

¹⁴⁹ *Id.*

¹⁵⁰ Foreign Policy Center, *The UK’s Anti-SLAPP reforms – a big enough step in the right direction?*, YOUTUBE (Dec. 21, 2022), <https://youtu.be/CcKYd82xvmY?t=765>.

The reality is SLAPPs would not be possible without law firms and lawyers threatening or filing them.¹⁵¹ Although law firms are obligated to adhere to the same United Nations Guiding Principles on Business and Human Rights requiring them to avoid infringing on the rights of others and to identify, prevent, and mitigate human rights risks,¹⁵² this obligation sometimes gets lost behind the guise of “zealous advocacy.”

The UK has taken aim at the role of lawyers who are upending the rule of law and abusing the legal system. When aggressive legal threats are used, very often the acts of public participation are shut down even before a lawsuit is initiated because the victims are so fearful of getting sued that they are silenced. To further compound the problem, attorneys often unilaterally dictate that their pre-suit correspondence is “private and confidential,” to further intimidate the recipient into not disclosing the receipt or contents of the legal threat. This has the broader impact of creating silos of silence where victims, the government, and the public at large are not aware of the pattern of abuse by many SLAPP bullies or their legal representatives.

Recognizing this power and the misuse of it, the UK Solicitors Regulation Authority (SRA), the regulatory authority for lawyers in England and Wales, has gotten involved in the SLAPP discussion and leaned into meaningful reform. The SRA recognized that SLAPP lawsuits and other forms of legal intimidation are a menace to societies’ right to know, to freedom of expression, and to the right to public participation.

1. Solicitors Regulation Authority Guidance

On March 4, 2022, the SRA issued Guidance to help lawyers understand their ethical obligations and the application of the Principles and Code of Conduct, as well as to highlight the different duties attorneys owe to the court, to clients, and to third parties (such as witnesses and opponents) in litigation.¹⁵³ It clarified the conduct which would attract regulatory sanctions when dealing with disputes and discussed SLAPPs, in

¹⁵¹ In its analysis of 355 global SLAPPs brought or initiated by companies and businesspeople against primarily human rights defenders associated with mining, agribusiness, logging and palm oil industries, the Business & Human Rights Resource Center identified 19 law firms and lawyers involved in cases bearing the hallmarks of SLAPPs. *SLAPPed but Not Silenced*, *supra* note 3.

¹⁵² A group of 44 institutions with combined assets of US \$270 billion, Investor Alliance for Human Rights, issued a Statement on SLAPPs calling on companies and investors to act on their responsibility to avoid infringing on human rights through SLAPPs. *Investment on Strategic Lawsuits Against Public Participation (SLAPPs)*, INVESTOR ALLIANCE FOR HUMAN RIGHTS (June 11, 2021), https://investorsforhumanrights.org/sites/default/files/attachments/2021-06/Investor%20Statement%20on%20SLAPPs_11%20June%202021.pdf.

¹⁵³ *Guidance: Conduct in Disputes*, SOLICITORS REGULATION AUTHORITY (Mar. 4, 2022), <https://www.sra.org.uk/solicitors/guidance/conduct-disputes/>.

particular, describing them as “the misuse of the legal system, and the bringing or threatening of proceedings, in order to discourage public criticism or action.”¹⁵⁴ The Guidance reminded attorneys of their guiding principles, including to maintain the constitutional principle of the rule of law and the proper administration of justice in a way that upholds public trust and confidence in the profession, to act with independence, honesty, and integrity, and to act in the best interest of each client.¹⁵⁵ The overarching message conveyed was “should the principles come into conflict, those which safeguard the wider public interest take precedence over an individual client’s interests.”¹⁵⁶

The SRA Guidance provides examples where attorneys have failed to properly balance duties owed in the public interest, to the court, to their client, and to certain third parties—many of which harken SLAPP *indicia*. These include making wholly unfounded claims; threatening inflated cost consequences over what can realistically be recovered; using legal processes for improper purposes such as making allegations without merit where the sole purpose is to stifle public discourse; or using litigation tactics which have the aim of driving up costs, hindering processes, or intimidating an opponent.¹⁵⁷

The SRA Guidance repeatedly explains that, although the rule of law and our legal system provide a right to legal advice and representation for all, proceedings must be pursued properly, which that means making sure that duties to a client do not override wider public interest obligations and duties to the court. As Juliet Oliver, SRA General Council and Executive Director, explained, lawyers “must not act as a hired gun for their client no matter what The key ethical principles include obligations to promote the public interest and rule of law and to safeguard the independence and integrity of the legal profession Where there is a conflict those principles, that further the public interest prevail over the principle to act in the best interest of your client.”¹⁵⁸

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ ForeignPolicyCentre, *Day 2 Panel 7: What are the practical steps media should take to push back against SLAPPS?*, YOUTUBE (Dec. 6, 2022), <https://www.youtube.com/watch?v=1M4M98qRX4k&list=PLkyoi4eRgiLbpZtr3RgTE3ZqqMjcCCR4x&index=12>.

2. *Solicitors Regulation Authority Warning Notice*

On November 28, 2022, the SRA issued a Warning Notice¹⁵⁹ specifically on SLAPPs:

SLAPPs pose a significant threat to the rule of law, free speech and a free press. The public rightly expect that solicitors should act with integrity. They should not be misusing litigation to prevent legitimate scrutiny from journalists, academics and campaigners.

This warning notice again makes clear our expectations. The right for clients to bring legitimate claims and for solicitors to act fearlessly in their interest is important. Yet representing your client's interests does not override public interest obligations, so when solicitors cross the line into SLAPPs, we will take action.¹⁶⁰

Paul Philip, SRA Chief Executive

The Warning Notice highlights the red flags for firms to be cognizant of so that they can identify when they might be asked to bring a SLAPP and avoid acting on problematic instructions in the first place.¹⁶¹ The SRA identifies the following features, which are commonly associated with SLAPPs, cautioning that they might not by themselves be evidence of misconduct, nor will they necessarily be present in all cases. Nonetheless, they are meant to help identify a proposed SLAPP.

- “The target is a proposed publication on a subject of public importance, such as academic research, whistle-blowing, or investigative journalism.
- Your instructions are to act solely in a public relations capacity, for example by responding to pre-publication correspondence with journalists about a story which is true and does not relate to private information.
- The client asks that the claim is targeted only against individuals (where other corporate defendants are more appropriate), is brought under multiple causes of action or jurisdictions/fora, and/or in a jurisdiction unconnected with the parties or events.”¹⁶²

¹⁵⁹ *Warning Notice: Strategic Lawsuits against Public Participation (SLAPPs)*, SOLICITORS REGULATION AUTHORITY (Nov. 28, 2022), <https://www.sra.org.uk/solicitors/guidance/slapps-warning-notice> [hereinafter Warning Notice].

¹⁶⁰ *News Release: Solicitors warned about involvement in SLAPPs*, SOLICITORS REGULATION AUTHORITY (Nov. 28, 2022), <https://www.sra.org.uk/sra/news/press/2022-press-releases/solicitors-warned-slapps/>.

¹⁶¹ See Warning Notice, *supra* note 159.

¹⁶² *Id.*

The Warning Notice also highlights improper actions, such as bringing a defamation claim when the publication is true, bringing a claim in a forum with little to no connection to the publication at issue, or using misleading labels in pre-suit correspondence when inappropriate. The SRA went on to outline litigation conduct that is cause for concern and likely to result in regulatory action including:

- Seeking to threaten or advance meritless claims, including pre-action correspondence.
- Claiming remedies to which the client would not be entitled on the facts.
- Making unduly aggressive and intimidating threats.
- Sending an excessive number of letters that are disproportionate to the issues in dispute.
- Sending correspondence with restrictive labels that are intimidating but inaccurate.
- Pursuing unnecessary and onerous procedural applications intended to waste time or increase costs.¹⁶³

Alongside the Warning Notice, the SRA published a companion piece for SLAPP victims about how to make a report to the SRA and how to obtain legal support.¹⁶⁴

The Warning Notice makes the SRA's expectations of lawyers clear: "[w]e expect you to be able to identify proposed courses of action (including pre-action) that could be defined as SLAPPs, or are otherwise abusive, and decline to act in this way. We expect you to advise clients against pursuing a course which amounts to abusive conduct, including making any threats in correspondence which are unjustified or illegal."¹⁶⁵

3. *SRA Investigations and Enforcement*

Attorneys have an affirmative obligation to promote the public interest and rule of law. The SRA has a dedicated team looking into SLAPPs. They have forty open matters investigating twenty-five firms.¹⁶⁶ If the SRA investigates and finds that a lawyer or law firm has engaged in any form of abusive litigation conduct, it can take the following actions:

¹⁶³ *Id.*

¹⁶⁴ *Legal Threats from a Solicitor or Law Firm*, SOLICITORS REGULATION AUTHORITY (Nov. 28, 2022), <https://www.sra.org.uk/consumers/problems/fraud-dishonesty/legal-threats-solicitor/>.

¹⁶⁵ See Warning Notice, *supra* note 159.

¹⁶⁶ Elizabeth Bingham & Duncan Calow, *Solicitors Regulation Authority investigates 40 suspected 'SLAPPs'*: *DLA Piper*, LEXOLOGY (Jan. 31, 2023), <https://www.lexology.com/library/detail.aspx?g=3fc a63b7-de82-4e68-a4e5-887941e377c3>.

- Impose warnings about future conduct.
- Impose sanctions such as fines.
- Control how solicitors work.
- Refer a case to the Solicitors Disciplinary Tribunal to suspend or remove a lawyer from practice.
- Make orders to restrict people from being employed by law firms the SRA regulates or remove a law firm's permissions.
- Close a law firm with immediate effect.¹⁶⁷

In addition to the individual investigations, in February 2023, the SRA completed its preliminary thematic review¹⁶⁸ to better explore how well the risk of abusive litigation techniques is understood, and how they are identified and prevented by firms. The SRA visited a sampling of twenty-five firms that act for claimants and defendants chiefly in reputation management, speaking with persons in charge of that work and reviewing a selection of their files. The thematic review was conducted after the SLAPPs Warning Notice was issued, and its aim was to obtain a baseline understanding of how law firms act in regard to SLAPPs, identifying themes or risks that they should be aware of to instruct future work.¹⁶⁹ The initial findings showed some solicitors were not aware of the latest guidance on SLAPPs and law firms lacked specific training in this area. It also showed that too many solicitors had a poor understanding of their professional obligations to report the potential misconduct of others. The SRA will conduct a further thematic review in order to, among other things, assess competence in the area of SLAPPs, training on SLAPPs and conduct in disputes, and examine the relationships between law firms, “reputation managers,” public relations companies, and private investigators.¹⁷⁰ In addition, the SRA is working with the Ministry of Justice and raising with it the need for judges to report behavior inconsistent with the Warning Notice to the SRA.¹⁷¹

¹⁶⁷ See *Legal Threats from a Solicitor or Law Firm*, *supra* note 164.

¹⁶⁸ *Conduct in Disputes Thematic Review*, SOLICITORS REGULATION AUTHORITY (Feb. 14, 2023), www.sra.org.uk/conduct-disputes.

¹⁶⁹ ForeignPolicyCentre, *supra* note 158.

¹⁷⁰ Solicitors Regulation Authority, *supra* note 160.

¹⁷¹ ForeignPolicyCentre, *Day 2 Panel 7: What are the practical steps media should take to push back against SLAPPS?*, YOUTUBE (Dec. 6, 2022), <https://www.youtube.com/watch?v=1M4M98qRX4k&list=PLkyoi4eRgiLbpZtr3RgTE3ZqqMjcCCR4x&index=12>. (45:11-45:51).

D. Judicial Training to Identify SLAPPs

Judges, too, play an important role in maintaining the rule of law and, as such, it is critical for them to recognize that SLAPPs are an abuse of the law and legal process, since they are filed with the improper purpose of shutting down acts of public participation. Because SLAPPs are a blight on our judicial system brought by legal bullies not to vindicate legal rights, but instead to take advantage of the court system to silence, intimidate, and drain time and resources of their target (and by extension the courts), it is paramount that judges be trained to identify SLAPPs.

The *Aaron Banks v. Carole Cadwalladr* case¹⁷² demonstrates the lack of understanding of SLAPPs by the judiciary. Although Cadwalladr won the case at trial,¹⁷³ the judge commented the matter was not a SLAPP despite its exhibiting all the hallmarks of such an action. Banks, a person with disproportionate means, filed a vexatious claim intended to silence Cadwalladr's public interest reporting. He deliberately sued her as an individual—rather than suing the publisher or platform—based on statements she made in a single sentence during a TED Talk and on Twitter.¹⁷⁴ Rather than going after her newspaper, *The Observer*, which published the series of reports she was discussing during the TED Talk and on Twitter, Banks chose to sue Cadwalladr individually. As the UK Anti-SLAPP Coalition wrote, “[i]n compounding the power imbalance between him and the defendant, [Banks] decision to take legal action against [Cadwalladr] as an individual adds weight to the categorization of the case as a SLAPP.”¹⁷⁵ This case helps to demonstrate the disconnect of understanding about SLAPPs—a misconception remedied by judicial training.

The Center for Justice and International Law implores “judiciaries to take decisive measures to verify and ensure that judicial proceedings initiated by state or non-state actors do not become tools to harass, silence

¹⁷² *Banks v. Cadwalladr*, [2022] EWHC 1417 (QB) (Eng.).

¹⁷³ *Id.*, Banks has since appealed, and the Court of Appeal has upheld Banks' argument that the continued publication of the TED Talk had the potential to harm his reputation, but it dismissed two other grounds of his appeal, upholding the initial decision to dismiss the claim in respect of Cadwalladr's Tweet. *See also* *Banks v. Cadwalladr*, [2023] EWCA Civ 219 (Ct. App. Civ. Div. Feb. 28, 2023), available at <https://www.judiciary.uk/judgments/banks-v-cadwalladr-3/>. Due to the vagaries of British law, Cadwalladr is both responsible for a court-imposed meaning she never said and still liable for the continued publication of a TED Talks, dissemination of which she does not control (despite Banks not suing the publisher of TED Talks).

¹⁷⁴ Justice for Journalist Foundation, *DAY 1: Anti-SLAPP Conference 'Spotlighting Solutions*, YOUTUBE (Nov. 28, 2022), <https://www.youtube.com/watch?v=yLBySMRrtRQ&t=7s>.

¹⁷⁵ *UK Anti-SLAPP Coalition Reiterates Its Support for Carole Cadwalladr*, PEN INTERNATIONAL, <https://www.pen-international.org/news/uk-anti-slapp-coalition-reiterates-its-support-for-carole-cadwalladr> (last visited Sept. 29, 2023).

and obstruct” human rights.¹⁷⁶ The Council of Europe has recognized these potential harms and already provides training on Articles 8, 10, and 12 of the European Convention on Human Rights: training to recognize SLAPPs would fit nicely within this regime.¹⁷⁷ The European Union and the Council of Europe have also initiated a joint program targeting specific needs in the field of freedom of expression and the media in South-East Europe. JUFREX comprises a series of training activities targeting the judiciary and the role of the media in helping to raise awareness of the significant importance for freedom of expression and exercise of human rights, in line with European standards.¹⁷⁸ The program currently serves the Western Balkans region and Turkey.¹⁷⁹

Further, in issuing its proposed Anti-SLAPP Directive and Member State Recommendations, the European Commission prioritized closing this gap in knowledge in the judiciary and included training judges to recognize the key features of a SLAPP in its proposal. In its Recommendations to Member States, the Commission set forth requirements for training the judiciary on building expertise in detecting manifestly unfounded or abusive court proceedings against public participation and reacting appropriately. The Commission indicated that the training could include testimonials from targets of SLAPP suits and could make use of the knowledge developed within the framework of the EU expert group against SLAPPs, fostering the exchange of experience among Member States.¹⁸⁰

Judges should welcome such training to avoid being an accomplice to this form of judicial harassment and to keep the court system from wasting its time on superfluous legal processes. On a broader scale, when the judicial system does not take an active role in case management and push back against SLAPPs from inception, it can contribute to a harmful narrative that these lawsuits are a legitimate use of the legal system.

¹⁷⁶ Viviana Krsticevic, Executive Director, Center for Justice and International Law (CEJIL) as cited in “SLAPPed but not silenced,” *Business and Human Rights Resource Centre*, at 26 (2021) [hereinafter *SLAPPed but not silenced*], https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v657.pdf.

¹⁷⁷ See European Commission, *Training Justice Professionals and Training Practices*, https://commission.europa.eu/law/cross-border-cases/training-justice-professionals-and-training-practices_en (last visited Sept. 29, 2023).

¹⁷⁸ Council of Europe Portal, *SOUTH-EAST EUROPE Freedom of expression (JUFREX)*, <https://www.coe.int/en/web/freedom-expression/promoting-freedom-of-expression-in-south-east-europe> (last visited Sept. 29, 2023).

¹⁷⁹ *Freedom of Expression: JUFREX: two day training for judges and prosecutors on defamation and protection of reputation*, COUNCIL OF EUROPE (Nov. 24, 2020), <https://www.coe.int/en/web/freedom-expression/-/jufrex-two-day-training-for-judges-and-prosecutors-on-defamation-and-protection-of-reputation>.

¹⁸⁰ Commission Recommendation 2022/758, *supra* note 64.

Training programs like these can help raise awareness among the judiciary and empower them to properly identify and purge their courts of these meritless actions and ensure the rule of law and human rights for all are protected.

VI. SLAPPS ARE A GLOBAL PHENOMENON THAT NEED A GLOBAL SOLUTION

Although all people are owed respect for their human rights, the encroachment of the right to peacefully assemble, speak freely, and associate freely as well as the right to access information and engage in public debate is under siege with SLAPP suits filed world-wide.¹⁸¹

A. Recognizing SLAPPs as a Global Affront to Human Rights

SLAPPs are a global problem. According to recent research by the Business & Human Rights Resource Center, the highest number of cases bearing the hallmark of SLAPPs brought by the business community against human rights defenders were in Latin America (39%), followed by Asia and the Pacific (25%), Europe & Central Asia (18%), North America (9%), and Africa (8.5%).¹⁸² The picture concerning actions against journalists appears just as bleak. According to a 2020 survey undertaken by the Foreign Policy Centre among sixty-three investigative journalists working in forty-one countries, 73% of them received communications threatening legal action over their journalistic work.¹⁸³ While SLAPPs most often take the form of defamation charges with disproportionate damages claims used to deter journalists from advancing their work,¹⁸⁴ many times SLAPP suits are part of a larger coordinated campaign. By way of example:

Brazil – In Brazil, journalist Joao Paulo Cuenca, faced 143 lawsuits (in twenty-six out of twenty-seven federal states in Brazil) for a tweet he issued against the current government. This placed tremendous strain on Cuenca, not only by draining his financial resources, but also by exhausting

¹⁸¹ See *id.* § 1; see also *SLAPPED but not silenced*, *supra* note 3.

¹⁸² *SLAPPED but not silenced*, *supra* note 3.

¹⁸³ Susan Coughtrie & Poppy Ogier, *Unsafe for Scrutiny: Examining the Pressures Faced by Journalists Uncovering Financial Crime and Corruption Around the World*, FOREIGN POLICY CENTRE (2020), <https://fpc.org.uk/publications/unsafe-for-scrutiny/>; see also Peter Noorlander, *Fighting SLAPPs: What Can Media, Lawyers, and Funders Do?*, CENTER FOR INTERNATIONAL MEDIA ASSISTANCE (Dec. 15, 2022), <https://www.cima.ned.org/publication/fighting-slapps-what-can-media-lawyers-and-funders-do/>.

¹⁸⁴ Besides journalists, SLAPPs also often target human rights defenders, academics, activists, domestic violence victims, online critics, and other actors seeking to reveal issues pertaining to corruption, environmental concerns, crime, consumer protection issues, etc.

his psychological wherewithal and his ability to dedicate necessary time to his work. Brazilian law requires defendants to appear in person for proceedings—in this circumstance, actions in twenty-six states.¹⁸⁵ Cuenca’s ability to defend himself was intentionally made virtually impossible.¹⁸⁶ Brazil currently has no Anti-SLAPP law, but the sheer overreach by the claimants has acted as a catalyst for the federal prosecutor to investigate claims with a view toward shutting down predatory litigation like this at an early stage.¹⁸⁷ The regulatory body of judges is looking into this as well.¹⁸⁸

Slovenia – In Slovenia, thirty-nine lawsuits were filed by a friend of the Prime Minister against a three-person news outlet over a two-month period of time.¹⁸⁹ Slovenia has no Anti-SLAPP protection.

Poland – In Poland, the biggest daily newspaper *Gazeta Wyborcza* was targeted by a string of more than sixty civil and criminal cases over the past few years, many of which are by politicians and individuals or groups associated with their political party.¹⁹⁰ Poland has no Anti-SLAPP law.

Some of these campaigns have a transnational dimension—involving multiple claims in several foreign jurisdictions simultaneously. Others involve a claimant who simply chooses to file in the location with the most favorable laws, or perhaps with the least convenience for the defendants, to increase the chance of success and imposition of pain the SLAPP causes. This technique of “forum shopping” is rampant in the U.S., where cases are increasingly filed in federal court to avoid the reach of state Anti-SLAPP laws.¹⁹¹ A few examples of egregious international forum shopping:

Australia – Not satisfied with the prospect of victory in the London High Court, Roman Abramovich simultaneously sued author Catherine

¹⁸⁵ Justice for Journalists Foundation, *DAY 1: Anti-SLAPP conference*, YOUTUBE (Nov. 22, 2021), <https://www.youtube.com/watch?v=6LAXvNDnqzk&t=17155s>.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Over 104 Lawsuits Filed Against Journalist Joao Paulo Cuenca in Brazil*, (Feb. 26, 2021), <https://www.mediadefence.org/news/over-140-lawsuits-filed-against-journalist-joao-paulo-cuenca-in-brazil/>.

¹⁸⁹ *Slovenian Investigate News Outlet Necenzurirano Hit with 39 SLAPP Lawsuits*, EUROPEAN FEDERATION OF JOURNALISTS (Jan. 10, 2020), <https://ipi.media/slovenian-investigative-news-outlet-necenzurirano-hit-with-39-slapp-lawsuits/>.

¹⁹⁰ *The Gazeta Wyborcza Newspaper Received 63 Lawsuits and Legal Threats*, MAPPING MEDIA FREEDOM, (Nov. 11, 2025), <https://www.mapmf.org/alert/23957/>; see also *Defamation Lawsuit against Gazeta Wyborcza Editor-in-Chief by Polish Justice Minister Must be Dropped*, EUROPEAN FEDERATION OF JOURNALISTS (Mar. 24, 2021), <https://europeanjournalists.org/blog/2021/03/24/defamation-lawsuit-against-gazeta-wyborcza-editor-in-chief-by-polish-justice-minister-must-be-dropped/>.

¹⁹¹ Horwitz, *supra* note 30.

Belton and her publisher Harper Collins in Australia, too.¹⁹² Although nearly universally victorious at the meanings hearing in London, it cannot be denied that the fact the defendants had already spent over 1.5 million pounds in defense costs, and would have to continue fighting on two fronts and oceans apart, factored into Harper Collins' decision to settle the matters (on favorable terms) rather than continue to fight.¹⁹³

Ireland – American self-help guru, Tony Robbins, apparently sought to avoid the protections of U.S. Anti-SLAPP laws when he filed a lawsuit against BuzzFeed UK Ltd. in Dublin.¹⁹⁴ The lawsuit arose from an article published on the internet describing allegations of sexual misconduct, harassment, and bullying by Robbins against some of his employees and attendees at his events.¹⁹⁵ The article in question was published by a female American journalist based in the U.S. who works for a U.S.-based online news portal, BuzzFeed Inc., and the reports in the article took place in the U.S.¹⁹⁶ Still, Robbins was allowed to pursue his complaint in Ireland because the articles “were viewed as many as 13,382 times by users geolocated in Ireland.”¹⁹⁷

France – The Kingdom of Morocco filed various defamation suits in France against journalists from Forbidden Stories, Amnesty International, and other journalists/NGOs that worked on the Pegasus Project.¹⁹⁸

United Kingdom – As mentioned above, a lawsuit filed by British-Israeli security consultant and businessman Walter Soriano (with alleged ties to Russian oligarch, Oleg Deripaska) was allowed to proceed in London against a U.S. investigative journalist, Scott Stedman, based on a meager six subscriptions stemming from the jurisdiction.¹⁹⁹

Because SLAPP suits are rooted in judicial harassment and abuse of the rule of law, more and more courts are recognizing the term SLAPP and

¹⁹² Max Mason, *Billionaire Abramovich Sues Australian Publisher over Putin Claims*, FINANCIAL REVIEW (Jul. 1, 2021).

¹⁹³ *Day 2 Panel 7: What are the practical steps media should take to push back against SLAPPS?*, *supra* note 158.

¹⁹⁴ *See Robbins v. Buzz Feed UK Ltd.* (2021), Record No. 2019/9087 (Ir.).

¹⁹⁵ Tim Healy, *Buzzfeed Fails to Prevent Millionaire American Self-help Guru Tony Robbins Suing it for Defamation in the High Court Here*, IRISH INDEP. (Jun. 4, 2021), <https://www.independent.ie/news/buzzfeed-failsto-prevent-millionaire-american-self-help-guru-tony-robbins-suing-it-for-defamation-in-the-high-court-here-40503634.html>.

¹⁹⁶ *See id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Morocco Sues Several Media Outlets in France Following Pegasus Revelations*, SAFETY OF JOURNALISTS PLATFORM (Jul. 30, 2021), <https://go.coe.int/D8NU7>.

¹⁹⁹ *Lawsuit brought against Forensic News and Scott Stedman deemed a SLAPP*, ECPM (Feb. 18, 2022), <https://www.ecpmf.eu/fifteen-organisations-condemn-lawsuit-against-forensic-news-deeming-it-a-slapp/>.

identifying cases as such, with or without, Anti-SLAPP legislation being adopted. By way of example,

South Africa – Although there is no Anti-SLAPP law in South Africa, the High Court (Western Cape Division, Cape Town) recently dismissed a series of defamation lawsuits brought by the Australian mining company Mineral Commodities Ltd. (MRC) and its local subsidiary against six environmental activists as an abuse of the legal process.²⁰⁰ The Court explained, “SLAPP suits are still a relatively new phenomenon in most jurisdictions. Essentially its aim is to silence those challenging powerful corporates on issues of public concern. In essence the main purpose of the suit is to punish or retaliate against citizens who have spoken out against the plaintiffs.”²⁰¹

It went on to accept the defendants’ arguments and stated “corporations should not be allowed to weaponize our legal system against the ordinary citizen and activists in order to intimidate and silence them.”²⁰² The Court also argued that SLAPPs represent an abuse of the judicial process and undermine the fundamental notions of justice.²⁰³ This decision shows courts have the power to protect human rights defenders from this type of abusive litigation even in the absence of an explicit Anti-SLAPP law.

European Court of Human Rights – On March 15, 2022, the European Court of Human Rights delivered a judgment in which, for the first time, it referred to the notion of SLAPPs. The case, *OOO Memo v. Russia*,²⁰⁴ involved a civil defamation suit brought by a Russian regional state body against a media company. The ECHR decided that there was no basis for a large, taxpayer-funded executive body like the plaintiff to claim damage to its reputation.²⁰⁵ Instead, the Court expressed its concerns about the risk to

²⁰⁰ *S. Africa: Court Slams Mining Giant for Attempting to Use a SLAPP Suit to Silence Criticism and Environmental Activism*, BUS. & HUM. RIGHTS CTR. (Feb.10, 2021), <https://www.business-humanrights.org/en/latest-news/s-africa-court-slams-mining-giant-for-attempting-to-use-a-slapp-suit-to-silence-criticism-and-environmental-activism/>.

²⁰¹ *Mineral Sands Res. v. Reddel* Case No.: 7595/2017 1, 22 (Western Cape High Court, 2021).

²⁰² *Id.* at 35.

²⁰³ Dario Milo, *The Constitutional Court SLAPPs back in Mining Companies Mineral Sands Case, now it's Parliament's Turn*, DAILY MAVERICK (Dec. 12, 2022), <https://www.dailymaverick.co.za/article/2022-12-12-the-constitutional-court-slapps-back-in-mining-companies-mineral-sands-case-now-its-parliaments-turn/>; see also Dario Milo, *When David met Judge Goliath – SLAPPs in SA Law*, MUSINGS ON MEDIA (Feb. 24, 2021), <http://blogs.webberwentzel.com/2021/02/when-david-met-judge-goliath-slapps-in-sa-law/>; *A Momentous Legal Victory for Environmental Activism and Free Speech*, CTR. FOR ENV'T RIGHTS (Feb. 10, 2021), <https://cer.org.za/news/a-momentous-legal-victory-for-environmental-activism-and-free-speech>.

²⁰⁴ *OOO Memo v. Russia*, Application No. 2840/10 (Mar. 2022).

²⁰⁵ *Id.*

democracy created by court proceedings instituted with a view to limiting public participation, interfering with the freedom of expression by media, journalists, or other public watchdogs.²⁰⁶

Canada – Even prior to the passage of Anti-SLAPP legislation in Canada, some of its courts were recognizing the phenomenon and calling out the bad behavior. In *Fraser v. Corp of District of Saanich* (1993),²⁰⁷ the British Columbia Supreme Court provided the first acknowledgement of SLAPPs by a Canadian court, which defined it as a meritless suit to “silence or intimidate citizens who have participated in proceedings regarding public policy or public decision making.”²⁰⁸ Later, the *Fraser* court’s reasoning was relied on in *Scory v. Krannitz* (2011),²⁰⁹ when the British Columbia Supreme Court awarded special costs on the basis that the allegations in the claim could not be proven and the claim could be characterized as a SLAPP. Subsequently, three Canadian provinces adopted Anti-SLAPP laws: Quebec,²¹⁰ Ontario,²¹¹ and British Columbia.²¹² They followed the same general framework of providing expedited mechanisms for dismissal of meritless claims.

As this cornucopia of cases demonstrates, SLAPPs are not confined by borders,²¹³ nor are courts confined by Anti-SLAPP laws in recognizing the hallmarks of SLAPPs. The current environment presents tremendous asymmetry, and globally, reform measures need to be adopted to uphold the principles of Article 19 of the Universal Declaration of Human Rights. This will preserve the ability of the public to obtain accurate information and engage in vital discourse impacting global communities. This article proposes a roadmap for doing so.

²⁰⁶ Dirk Voorhoof, *OOO Memo v. Russia: ECTHR Prevents Defamation Claims by Executive Bodies*, STRASBOURG OBSERVERS (Apr. 1, 2022), <https://strasbourgoobservers.com/2022/04/01/ooo-memo-v-russia-ecthr-prevents-defamation-claims-by-executive-bodies/>.

²⁰⁷ *Fraser v. Saanich (District)*, [1999] B.C.J. No. 3100 (S.C.).

²⁰⁸ Rosario Soraide, *The “misuse” of the judicial system to attack freedom of expression: trends, challenges and responses*, UNESCO 14 (2022), <https://unesdoc.unesco.org/ark:/48223/pf0000383832>.

²⁰⁹ *Scory v. Krannitz*, 2011 CanLII BCSC 1344 (Can.).

²¹⁰ An Act to amend the Code of Civil Procedure to prevent improper use of the courts and promote freedom of expression and citizen participation in public debate, R.S.Q., c 12 (Can.).

²¹¹ Protection of Public Participation Act, S.O. 2015, c 23 (Can.).

²¹² *Id* at c 3.

²¹³ *See generally* ARTICLE 19, THE GLOBAL EXPRESSION REPORT 2022: THE INTENSIFYING BATTLE FOR NARRATIVE CONTROL, <https://www.article19.org/wp-content/uploads/2022/06/A19-GxR-Report-22.pdf> (June 2022); *see also* *SLAPPed but not silenced*, *supra* note 3.

B. *Global Organizations Should Lead the Way*

This global trend of judicial harassment has not gone unnoticed by international organizations such as the United Nations,²¹⁴ UNESCO,²¹⁵ and the Global Media Freedom Coalition.²¹⁶

1. *UN Resolutions and Recommendations*

The United Nations Human Rights Council has recognized the phenomenon of SLAPPs and, in recent years, issued multiple resolutions and recommendations against the use of SLAPPs to restrict legitimate expression and interfere with journalists' and human rights defenders' work.²¹⁷ Most recently, on September 30, 2022, the UN Human Rights Council issued the following resolution:

²¹⁴ The United Nations is an international organization founded in 1945. *Our Work*, UNITED NATIONS, <https://www.un.org/en/our-work> (last visited Sept. 23, 2023). Currently made up of 193 Member States, the UN and its work are guided by the purposes and principles contained in its founding Charter. *Member States*, UNITED NATIONS, <https://www.un.org/en/about-us/member-states> (last visited Sept. 23, 2023); *United Nations Charter*, UNITED NATIONS, <https://www.un.org/en/about-us/un-charter> (last visited Sept. 23, 2023).

²¹⁵ The United Nations Educational, Scientific and Cultural Organization (UNESCO) is a specialized agency of the United Nations. It was founded with the mission of contributing to peace and security by promoting international collaboration through education, science and culture. *UNESCO Spending by Result Area in 2022*, UNAIDS, <https://open.unaids.org/united-nations-educational-scientific-and-cultural-organization#:~:text=The%20United%20Nations%20Educational%2C%20Scientific,through%20education%2C%20science%20and%20culture> (last visited Sept. 23, 2013). During the Trump administration, the U.S. withdrew from UNESCO citing anti-Israeli actions (including full recognition of Palestine). See Thomas Adamson, *U.S. and Israel officially withdraw from UNESCO*, PBS NEWS HOUR (Jan. 1, 2019), <https://www.pbs.org/newshour/politics/u-s-and-israel-officially-withdraw-from-unesco>.

²¹⁶ The Global Media Freedom Coalition (MFC) is a partnership of countries working together proactively to advocate for media freedom at home and abroad. The MFC also advocates for the safety of journalists and media workers and holds to account those who harm journalists and severely restrict them from doing their job. *What is the MFC?*, MEDIA FREEDOM COALITION, <https://mediafreedomcoalition.org/about/what-is-the-mfc/> (last visited Sept. 23, 2023).

²¹⁷ See, e.g., G.A. Res. 39/6 (Sept. 27, 2018); G.A. Res. 45/18 (Oct. 6, 2020). See also Rep. of the Working Group on the issue of human rights and transnational corporations and other business enterprises, at 2, U.N. Doc. A/HRC/47/39/Add.2 (2021) (Recommendations for States, No. 8: "Take steps such that strategic lawsuits against public participation (SLAPPs) are not used to silence the voices of human rights defenders, and develop methods or protocols so that courts can address situations where civil lawsuits and claims are not made in good faith."). 2019 United Nations Human Rights Office report entitled "SLAPPs and FoAA rights, Special Rapporteur Report on Rights to Freedom of Peaceful Assembly and Association" (Recommendation 4a: "States should protect and facilitate the rights to freedom of expression, assembly and association to ensure that these rights are enjoyed by everyone by, *inter alia*, enacting anti-SLAPPs legislation, allowing an early dismissal (with an award of costs) of such suits and the use of measures to penalize abuse."). Nadim Howry, *Advice on Promoting More Effective Investigations Into Abuses Against Journalists*, INTERNATIONAL HUMAN RIGHTS ASSOCIATION HUMAN RIGHTS INSTITUTE (Report) 31-33, ¶ 71 (Nov. 25, 2020), <https://www.ibanet.org/MediaHandler?id=5A00CE8E-0D66-41E2-A04A-FFCC36F8C67D>.

Stressing the need for greater emphasis on prevention measures and the creation of enabling national legal frameworks consistent with the State’s international human rights obligations and commitments to ensure a safe and enabling environment for journalists and media workers, . . . *Call[ing] upon* States: . . . to take measures to protect journalists and media workers from strategic lawsuits against public participation, where appropriate, including by adopting laws and policies related to such cases that allow for early dismissal, limit the damages claimed, permit a public interest defence and provide legal support to victims.²¹⁸

The UN General Assembly’s Resolution 74/157 on “the safety of journalists and the issue of impunity” was adopted in December 2019 and urges States to ensure that defamation laws are not misused to censor and interfere with journalists’ work and, “where necessary, to revise and repeal such laws, in compliance with States’ obligations under international human rights law.”²¹⁹

2. UNESCO Safety of Journalists

Similarly, as the UN Plan of Action on the Safety of Journalists celebrated its tenth anniversary, UNESCO issued its report *The ‘misuse’ of the judicial system to attack freedom of expression* in December 2022, in which it noted as a “[k]ey trend” the rise in abusive practices such as “forum shopping” and “SLAPPs by powerful actors that want to silence critical voices and undermine scrutiny.”²²⁰ UNESCO’s report recognized the impediment SLAPPs cause to the dissemination of information, noting:

SLAPPs focused on defamation charges are very commonly used to deter journalists from advancing their work, preventing the publication of certain content or causing its removal, and discouraging others from covering the same issues. The threat of initiating legal action is often sufficient to stop journalistic research and reporting.²²¹

It also observed that these claims can be “domestic or also have a transnational dimension—involving for instance multiple claims in courts across a same country, or in one/several foreign jurisdictions.”²²² “Forum shopping” or “libel tourism” describes “the practice of choosing the court in which to bring an action based on the prospect of the most favourable outcome, even when there is no or only a tenuous connection between the

²¹⁸ U.N. Human Rights Council, Draft Res., U.N. Doc. A/HRC/51/L.14, at 5-6 (2022).

²¹⁹ G.A. Res. 74/157, ¶ 14 (Dec. 18, 2019).

²²⁰ Rosario Soraide, THE “MISUSE” OF THE JUDICIAL SYSTEM TO ATTACK FREEDOM OF EXPRESSION: TRENDS, CHALLENGES AND RESPONSES (2022), at 1, <https://unesdoc.unesco.org/ark:/48223/pf0000383832>.

²²¹ *Id.* at 12.

²²² *Id.*

legal issues and the jurisdiction.”²²³ The advantages for the claimant could be more favorable procedural rules or substantive law, higher legal awards available, or higher legal costs imposed on the defendant. These all are factored into the calculus of choosing foreign jurisdictions to make it difficult for the defendant to physically appear before a tribunal and increasing the financial and logistical burden imposed on the defense. The report observed, “given the cross-border nature of digital communications, a same allegedly defamatory statement can give way to multiple cases in diverse jurisdictions across countries, which naturally has a chilling effect.”²²⁴ Sometimes the legal demands have even served for “the privatization of State-driven suppression of journalism where members of government share interests with private sector actors.”²²⁵ Given the foregoing, the UNESCO report recommended that “safeguards should be put in place against SLAPPs and ‘forum shopping.’”²²⁶

3. *Media Freedom Coalition Unites Countries to Protect Against Threats on Media Freedom*

Finally, the Media Freedom Coalition (MFC) established in July 2019 at the Global Conference for Media Freedom that it is leading the way in collaboration against threats media freedom faces around the world.²²⁷ Members of the Coalition have signed the Global Pledge on Media Freedom,²²⁸ a written commitment to improving media freedom domestically and working together internationally. The Coalition now comprises over fifty Member States from six continents.²²⁹ MFC Member States work closely with civil society (through the Consultative Network), legal experts (through the High Level Panel of Legal Experts on Media Freedom²³⁰), and other international bodies such as UNESCO. Recognizing the encroachment on human rights presented by SLAPP suits, the MFC

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.* at 15.

²²⁷ UK GOV'T, MEDIA POLICY COALITION: AN OVERVIEW (Feb. 2, 2022), <https://www.gov.uk/government/publications/media-freedom-coalition-an-overview/media-freedom-coalition-an-overview>.

²²⁸ MEDIA FREEDOM COALITION, GLOBAL PLEDGE (2019), <https://mediafreedomcoalition.org/about/global-pledge/>.

²²⁹ MEDIA FREEDOM COALITION, <https://mediafreedomcoalition.org/>.

²³⁰ The work of the High Level Panel is supported by the Global Media Defense Fund, administered by UNESCO. INTERNATIONAL BAR ASSOCIATION, THE HIGH LEVEL PANEL OF LEGAL EXPERTS ON MEDIA FREEDOM, <https://www.ibanet.org/IBAHRIsecretariat>.

through its High Level Panel of Legal Experts on Media Freedom has also called for legislative reform.²³¹

All three organizations—the UN, UNESCO, and the MFC—have concluded that SLAPP suits are not aligned with international law and the standards set forth in the Universal Declaration of Human Rights. Thus, to avoid simply transplanting the problem of SLAPPs, the overarching goal is to obtain passage of Anti-SLAPP laws globally. To achieve this goal, any one of these three international organizations could scale these key elements for universal mapping, raising awareness, increasing accountability, and educating the judiciary for implementation on a global level.

C. *Global Recommendations to Address the Existential Threat of SLAPPs*

In researching the approaches taken in the U.S., EU and UK toward the passage of Anti-SLAPP laws, four best practices emerged.

Universal mapping platform – A platform like the Council of Europe Safety of Journalist Platform needs to be adopted globally. The Platform improves the protection of journalists and fosters dialogue with governments. It enables governments and institutions to be alerted timely, in a more systematic way so that coordinated action can be taken when necessary. If this Platform were replicated globally by an organization like the United Nations, UNESCO, or the Media Freedom Coalition, it could have a significant impact on protecting media freedoms and stamping out harassment—judicial and otherwise—against journalists on a worldwide level. The Platform, which serves as a public registry of cases (including names of individuals filing cases), would serve as a tool for enhancing response capacity of countries and for improving co-operation and co-ordination with international organizations.

In addition, the Platform would also be a tool for holding repeat offenders and forum shoppers to account. By providing quantifiable data on demonstrated need, the data collected could also facilitate with the passage of Anti-SLAPP legislation. As new legislation is passed, these Anti-SLAPP Laws should require reporting to the central registry, much like the

²³¹ INTERNATIONAL BAR ASSOCIATION HIGH LEVEL PANEL OF LEGAL EXPERTS ON MEDIA FREEDOM CALLS FOR LEGAL REFORMS AT ANTI-SLAPP CONFERENCE, <https://www.ibanet.org/High-Level-Panel-of-Legal-Experts-on-Media-Freedom-calls-for-legal-reforms-at-Anti-SLAPP-Conference>; Nick Hilborne, *Judges and lawyers call for curbs on misuse of SLAPPs*, LEGAL FUTURES (Nov. 30, 2021), <https://www.legalfutures.co.uk/latest-news/judges-and-lawyers-call-for-curbs-on-misuse-of-slapps>.

California law.²³² The Platform could be initially populated with information from NGOs similar to the Council of Europe Platform.

Awareness raising: Naming and shaming – As part of raising awareness of SLAPPs, repeat offenders must be identified so that silos of silence are stamped out and the spread of self-censorship is prevented. This can be done in part through the registry provided in a mapping platform, but it can also be done through tongue-and-cheek productions like the European SLAPP awards, which bring wider notoriety to the problem at large. The key in raising awareness is for primary offenders to be identified, aid to be provided to SLAPP victims, and public outcry to serve as a deterrent to future SLAPP filers.

Adopting universal professional standards – Core ethical standards like those adopted by the UK Solicitors Regulation Authority need to be adopted internationally to ensure that lawyers abide by the Rule of Law and to prevent a displacement of SLAPP actions. Further, universal standards need to apply to pre-litigation tactics as well, because the threat of initiating legal action is often sufficient to stop journalistic research and reporting. This damages the public's access to information and engagement in public debate without a lawsuit ever having been filed. Finally, attorneys should not be permitted to engage in unconscionable nondisclosure agreements suppressing one from speaking about legal threats and intimidation. All of these standards need to be adopted to create a universal solution to the scourge of SLAPPs.

Educate the judiciary – Presumably, if the lawyers are better held to account, there will be fewer SLAPP suits filed. Still, universal training on human rights issues, including Article 19, needs to be developed for judges, prosecutors, and lawyers around SLAPPs and how to identify them. This does not need to be developed from scratch, but rather could start by using the existing materials and training practices promoted on the UNESCO Global Toolkit for Judicial Actors.²³³ If judges are motivated to actively manage cases so that they ferret out the human rights offenders in the first instance, this will help stem the tide of violations. Even before that, if lawyers can be brought to think about their ethical obligations to promote the public interest and the Rule of Law, and to safeguard the independence and integrity of the legal profession, then perhaps SLAPPs may be extinguished before they reach the courtroom.

²³² See, e.g., Cal. Civ. Proc. §§ 425.16(j)(1) and (2).

²³³ See UNESCO, GLOBAL TOOLKIT FOR JUDICIAL ACTORS: INTERNATIONAL LEGAL STANDARDS ON FREEDOM OF EXPRESSION, ACCESS TO INFORMATION AND SAFETY OF JOURNALISTS (2021), <https://unesdoc.unesco.org/ark:/48223/pf0000378755>.

VII. CONCLUSION

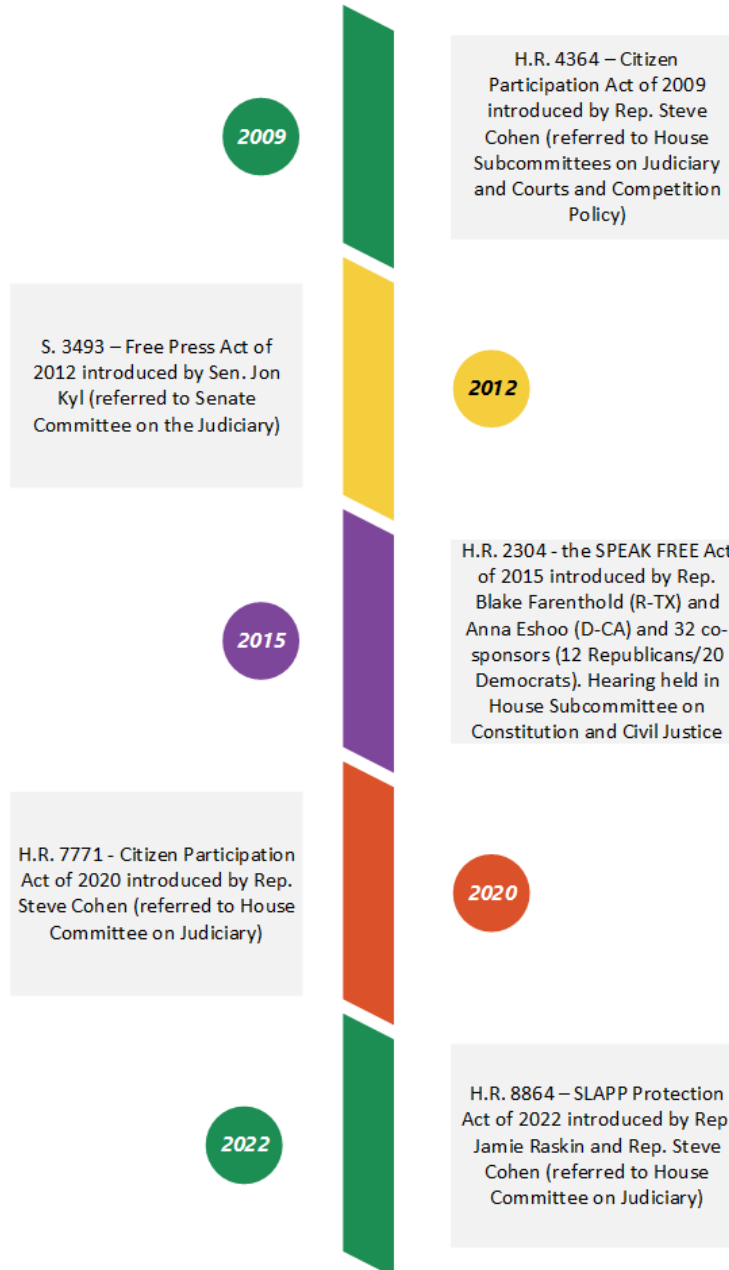
Strong and healthy democracies rely on public participation and accountability. Journalists, human rights defenders, and civil society are essential in this process. Their job is to inform citizens about issues of public concern and keep those in power in check. They are key for the functioning of our democracies. Progress in the EU, UK, and U.S. in adopting strong protections against SLAPP suits is encouraging. But, with more than a decade of decline in press freedoms, there presents a critical juncture in public interest reporting, access to information, and the life of democracy worldwide. This downward trajectory has been propelled, in part, by the proliferation of SLAPP suits and the resultant silencing of critical voices.²³⁴

Although Anti-SLAPP laws are often viewed as protections for the press, the reality is, they protect the core human rights recognized as “inalienable and inviolable rights” of freedom of expression and access to information. Thus, it behooves society at large to develop universal mechanisms and standards to assist with the passage of Anti-SLAPP laws. This includes: (1) mapping the problem and inviting discussion with governments, (2) raising awareness and identifying SLAPP filers so they cannot create silos of silence, (3) developing and updating ethical principles for lawyers to ensure bringing SLAPPs is a sanctionable offense, and (4) ensuring judges are trained to recognize SLAPPs. These are all ways in which an environment may be fostered to develop universal protections against SLAPP suits.

²³⁴ See, e.g., FREEDOM HOUSE, THE GLOBAL EXPANSION OF AUTHORITARIAN RULE (2022), <https://freedomhouse.org/report/freedom-world/2022/global-expansion-authoritarian-rule> (describing the threat to democracy as “the product of 16 consecutive years of decline in global Freedom.”).

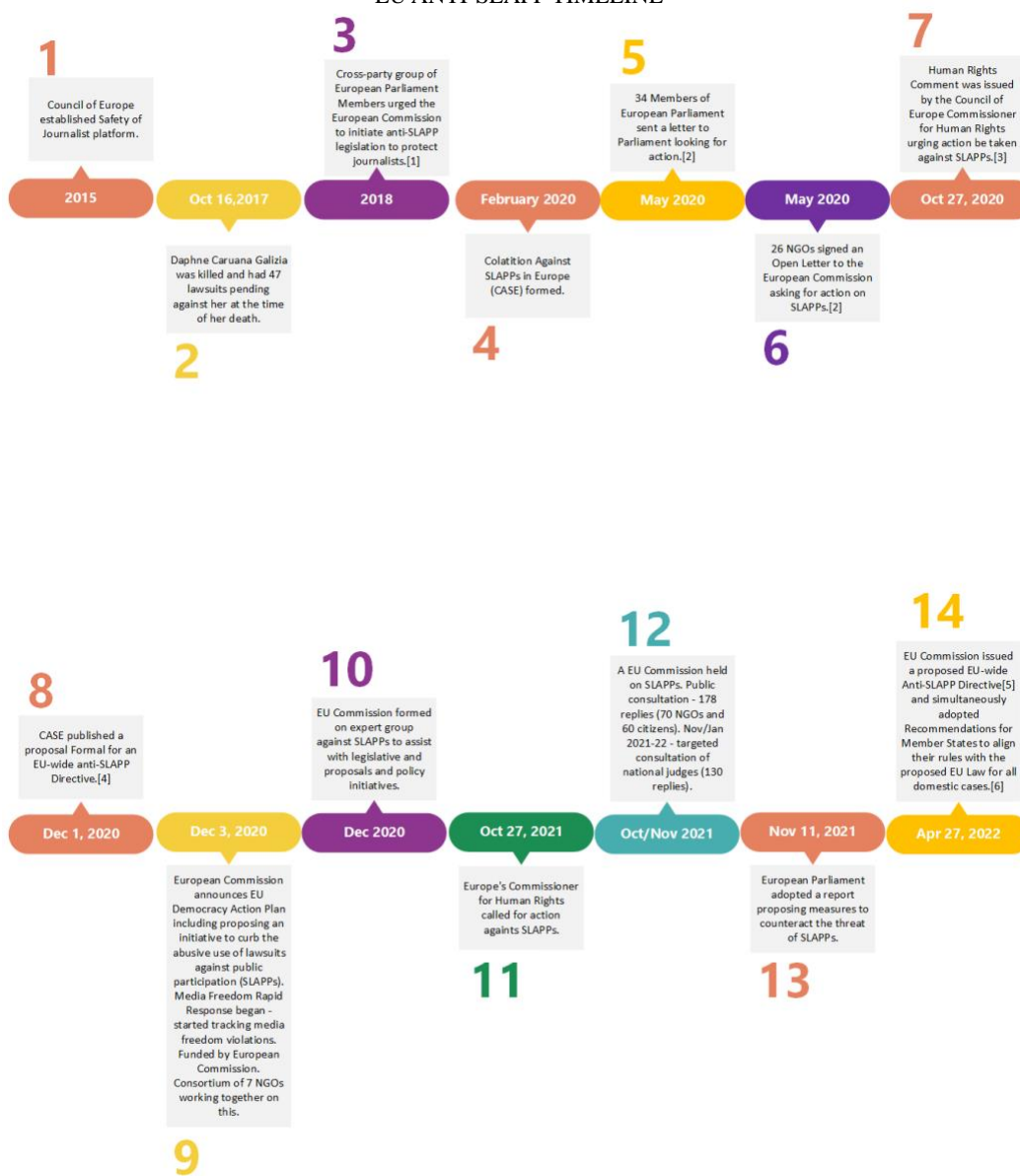
APPENDIX A

U.S. FEDERAL ANTI-SLAPP TIMELINE



APPENDIX B

EU ANTI-SLAPP TIMELINE



[1] <https://www.europarl.europa.eu/news/en/press-room/20180426IPR02615/tackle-online-and-offline-threats-to-media-pluralism-and-freedom-urge-meps>
 [2] <https://www.ecpmf.eu/engage/slapp/>
 [3] <https://www.ecpmf.eu/letter-to-the-european-commission-concerning-the-threat-of-vexatious-litigation-against-journalists-activists-and-others/>
 [4] <https://www.coe.int/en/web/commissioner/-/time-to-take-action-against-slapps>
 [5] <https://europeanjournalists.org/blog/2020/12/02/coalition-published-a-proposal-for-an-eu-anti-slapp-law/>
 [6] European Commission, 2022, 2022/0117(COD). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0177>
 [7] European Commission, 2022, C/2022/2428. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022H0758>

APPENDIX C

UK ANTI-SLAPP TIMELINE

