



# LSP *Myth Buster* #63

An ongoing Land Stewardship Project series on ag myths and ways of deflating them.

Updated: July 2023

## → **Myth: Lawsuits Are Always About Winning**

### → **Fact:**

Legendary football coach Vince Lombardi was fond of saying, “Winning isn’t everything; it’s the only thing.” But when it comes to legal battles, “winning” is not always the ultimate goal. Or, more precisely, the definition of what we would traditionally think of as winning is turned on its head; sometimes, just making the other side lose is enough.

Take, for example, something called a SLAPP, which is an acronym for “strategic lawsuit against public participation.” When a SLAPP is filed, winning the suit is not the ultimate goal. Rather, it’s an attempt to tie the defendant in legal knots that are expensive, stressful, and, most importantly, intimidating. The goal is to simply exhaust the party being sued to the point that they drop out of public participation. And public participation is important when people are working to determine a positive future for their communities.

Filing lawsuits, even frivolous ones, is not cheap, and a SLAPP can drag on for years. Who has the financial resources to fund an open-ended legal attack? Big Business, that’s who. So it’s no surprise such enterprises are fond of using SLAPP litigation to silence their critics. SLAPP targets are almost always grassroots organizations, individual citizens, even local government bodies such as townships and counties — entities not known for having big legal war chests at their disposal.

Law experts say SLAPPs suppress freedom of speech, threaten to bankrupt individuals and grassroots organizations, and have a general chilling effect on people who want to have a say in what kind of economic activity takes place in their community. This includes people who may serve on a local planning and zoning board, as well as those who simply write a letter-to-the-editor or speak at a public meeting.

The multimillion-dollar suits can be camouflaged as being about “defamation,” “interference with business,” or “conspiracy.” Another characteristic of a SLAPP is the

plaintiff’s demand for extensive “discovery” documents, even if they have little, or no, connection to the main lawsuit. The discovery phase of a legal battle can be extremely time consuming and expensive for defendants, and distracts from the main work a grassroots group or local government body does in fulfilling its mission. “Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined,” wrote New York Supreme Court Justice Nicholas Colabella in reference to SLAPPs.

### **SLAPPs & CAFOs**

In the Midwest, owners and backers of large concentrated animal feeding operations (CAFOs) have turned to the SLAPP strategy to silence and intimidate people who speak out against the environmental and economic threats these facilities pose. The news site *Grist* recently documented several examples of local governing bodies being sued after they put in place ordinances regulating CAFOs. In Wisconsin, industry groups like Venture Dairy Cooperative and the Wisconsin Dairy Alliance (the latter group’s slogan: “Fighting for CAFOs Every Day”) have sent letters threatening lawsuits to communities that dared to pass ordinances or moratoriums. As a result, some local governments have backed off attempting to regulate large livestock facilities.

Minnesota’s communities have significant power to utilize local government to control harmful development. But that hasn’t deterred Big Ag from SLAPPING local residents, grassroots groups, and governing bodies. For example, southeastern Minnesota’s Winona County is in the midst of a yearslong legal battle that has all the makings of a SLAPP.

For over 20 years, Winona County has had a policy in place to cap livestock farms at 1,500 animal units (about 1,071 milk cows) to protect the region’s vulnerable geography and to keep small and mid-sized farmers from being forced out by CAFOs. In 2018, Daley Farm requested a variance to the law that would allow it to expand its dairy

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herd to nearly four times the current limit. Winona County LSP members are concerned about the impact such an expansion could have on drinking water and the local community in general. People have made their voices heard by talking to their neighbors, writing letters-to-the-editor, and holding public rallies.

The Winona County Board of Adjustment carefully considered and denied Daley Farm's request for a variance. Daley then took to the courts in an attempt to overrule the decision; the Minnesota Court of Appeals declined to take up the case, and in 2022, the Board of Adjustment again denied the variance.

Frustrated in its attempts to sue Winona County's government, Daley took a new legal tack. In October 2022, it filed a lawsuit that named individuals who were current and former County Board members, as well as former members of the Board of Adjustment, along with individual organizers who had worked for LSP and the organization itself. The lawsuit accused individuals and LSP as an organization of a "conspiracy" to deny Daley its due process rights

and sought damages for supposed "lost profits" due to the expansion's denial. In short, taking steps to protect one's community is now considered a conspiracy, according to this legal argument.

Daley dropped this latest lawsuit in March 2023, two weeks before the District Court was to hear the case. In the meantime, significant time, money, and other resources have been spent fighting the lawsuit, and the farm's owners have announced publicly that they may take it up again in the future.

Winona County residents, as well as LSP, are refusing to back down. They are maintaining that they have a right to speak up and work for their community's future, even if their activities run counter to the desires of a special interest with powerful allies in industry and state government.

That's important, because when people participate in self-censorship, it really doesn't matter what the final legal judgement is — the damage is done. SLAPPs may not be about winning, but there's no doubt they result in a loss for democracy.

## More Information

- "The Big Chill: Are Public Participation Rights Being Slapp-Ed?," *Pace Environmental Law Review*, [digitalcommons.pace.edu/pelr](https://digitalcommons.pace.edu/pelr).
- "A tiny Wisconsin town tried to stop pollution from factory farms. Then it got sued," *Grist*, [grist.org/accountability/what-happens-when-citizens-try-regulate-factory-farms](https://grist.org/accountability/what-happens-when-citizens-try-regulate-factory-farms).

## More Myth Busters

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## LSP Fact Sheets

Want a quick primer on everything from regenerative farming techniques and the negative repercussions of factory farming to how to write a letter-to-the-editor and make sure a lease agreement meets your stewardship goals?

Check out the Land Stewardship Project's collection of fact sheets on our website at <https://landstewardshipproject.org/fact-sheets>. For paper copies, contact Brian DeVore at 612-816-9342 or [bdevore@landstewardshipproject.org](mailto:bdevore@landstewardshipproject.org).