

# Colorado Adopts Anti-Slapp Statute

## *New Law Based on California's Protective Statute*

By Steven D. Zansberg

On July 1, 2019, Colorado became the thirtieth state (including the District of Columbia) to have an anti-SLAPP statute. On June 3, 2019, [House Bill 19-1324](#) was [signed into law](#) by Colorado's Governor Jared Polis. The bill, modeled after (copied almost verbatim from) California's anti-SLAPP statute, was spurred by a recent highly-publicized SLAPP case that actually ended quite well for the SLAPPED defendant.

### SLAPP Case That Prompted the Act

In 2016, Pete Kolbenschlag, an environmental activist on the Western Slope of Colorado, posted a [reader comment on a newspaper's website](#) in which he accused a Texas-based oil company, SG Interests, of having been "fined" by the U.S. government for rigging bids on BLM oil leases. In fact, in 2013 SG Interests had agreed to pay the U.S. government a half a million dollars to settle an anti-trust case and a related *qui tam* action, but it had not admitted any wrongdoing. Notably, years before Kolbenschlag posted his reader comment, some sixteen other publications, including [The National Law Review](#), [The Aspen Daily News](#), and the [Crested Butte News](#), had all published that SG Interests had paid fines. Nevertheless, [SG Interests sued only Kolbenschlag](#) for defamation based on his reader comment three years later.

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**Environmental activist Peter Kolbenschlag, front center, was the defendant in the SLAPP case that prompted the Act.** Image courtesy of Peter Kolbenschlag

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Kolbenschlag filed a motion to dismiss and attached numerous pleadings from the DOJ’s anti-trust action to establish the substantial truth of his reader comment. The district court judge refused to take judicial notice of those federal court pleadings, and instead converted the motion to one for summary judgment, ultimately granting it. *See SG Interests I Ltd. v. Kolbenschlag*, No. 2017-cv-30026, 46 Media L. Rptr. 1941 (Colo. Dist. Ct. June 20, 2108). But, because the case was not dismissed under Rule 12(b) – which, under existing Colorado law, would have entitled Kolbenschlag to his attorneys’ fees – he did not have a statutory *right* to recover those fees. (Subsequently, after SG Interests appealed the grant of summary judgment, the district court judge [awarded](#) Kolbenschlag his fees upon finding that [SG Interests’ lawsuit was both groundless and vexatious.](#)) As a professional community organizer and activist, Kolbenschlag succeeded in [generating](#) a significant amount of [press attention](#) for his protracted and successful legal battle with the oil company. Kolbenschlag’s case became “Exhibit A” for [why Colorado needs an anti-SLAPP statute.](#)

### Colorado’s Legislature Responds

Towards the end of the 2018-2019 legislative term (with exactly one month remaining), three Democratic legislators (Sen. Mike Foote (D. Boulder), Rep. Lisa Cutter (D. Littleton), and Rep. Shannon Bird (D. Westminster)) introduced HB 19-1324. The bill tracks, almost verbatim, California’s Anti-SLAPP Act: it provides for a “special motion to dismiss” in cases where the defendant is sued on account of any “act in furtherance of a person’s right of petition or free speech,” including “any written or oral statement or writing made in . . . a public forum in connection with an issue of public interest.”



**Steve Zansberg and Peter Kolbenschlag testifying before the Colorado House** Image courtesy Jeff Roberts, CFOIC

Upon the filing of such a “special motion to dismiss,” if the court finds that the defendant demonstrated the first prong under the statute, the claims must be dismissed “unless the court determines that the plaintiff has established that there is a reasonable likelihood that the plaintiff will prevail on the claim.” Just as in California, the court may determine the motion based upon supporting and opposing affidavits filed in connection with the motion. And, if the motion is granted, the defendant is entitled to an award of his or her attorneys’ fees. Like the California statute, the filing of such a motion stays all discovery and a denial of such a special motion is subject to an interlocutory appeal, as of right.

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*(Continued from page 28)***The Process**

In contrast to the detailed recitation of the strategy and tactics employed by our colleagues in Tennessee, (*see* article on page 8 of last month's *Media Law Letter*), the blow-by-blow narrative of how Colorado's anti-SLAPP bill became law is far less involved (or interesting). Shortly after the bill was introduced in Colorado's House of Representatives, a hearing was set before the House Judiciary Committee.

Both Pete Kolbenschlag and his attorney testified in support of the bill. (*see* photo inset) Kolbenschlag recounted the personal toll he had endured over the past two years as a defendant in SG Interests' SLAPP suit. Two other environmental activists testified about their experience having filed an action under Colorado's Open Records and Open Meetings Laws, only to be countersued for more than \$100 million by a different oil and gas company who intervened in that lawsuit.

A representative of the ACLU also testified in support of the bill. The bill was voted out of committee on a 10-1 vote, and, with no opposition from the Colorado Trial Lawyers Association or anyone else, the bill was passed by the House of Representatives on a 60-2 vote. Following a hearing before the Senate Judiciary Committee, before whom I was the only witness, the bill was passed unanimously by the Senate on the last day of the legislative session, May 3, 2019.

**The bill tracks, almost verbatim, California's Anti-SLAPP Act**

**Forty Years in the Making & The Road Ahead**

Although the anti-SLAPP bill moved swiftly, with literally *no opposition*, through both houses of the Colorado legislature and on to the Governor's desk, [others](#) have noted that, to some extent, Colorado's new law was 40 years in the making. The reason for that observation is that the term "SLAPP" – Strategic Lawsuit Against Public Participation – was actually coined by a law professor at the University of Denver Sturm College of Law, [George "Rock" Pring](#).

Concerned by a growing number of lawsuits filed against activists who challenged real estate development in the late 1970s, Rock Pring joined forces with a sociologist, Penelope Canan, and launched the Political Litigation Project at Denver University in 1984. They conducted the first nationwide study on SLAPPs, examining more than one hundred cases. *See* Pring, *SLAPPs: Strategic Lawsuits Against Public Participation*, [7 Pace Enviro. L. Rev. 1](#) (1989). In 1996, Pring and Canan co-authored their seminal [book](#), *SLAPPs: Getting Sued for Speaking Out*, which included a model anti-SLAPP statute as an appendix.

Thus, Colorado can legitimately claim to be "the birthplace" of a national movement to fight SLAPPs that, as of July 1 (with the addition of Tennessee and Colorado), includes 29 states and

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the District of Columbia. That leaves 21 more states and, of course, the federal government, to go. Onward!

***Addendum:***

On June 27, 2019, Colorado's Court of Appeals [affirmed](#) the Delta County District Court's order granting summary judgment to Pete Kolbenschlag, and ordered SG Interests and its counsel jointly to pay Kolbenschlag's attorneys fees incurred in defending a frivolous appeal.

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