

## Florida environmental 'gladiator' wants U.S. Supreme Court to hear 'SLAPP' case

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They could take her clunker and her two kayaks, but never her grit.

Maggy Hurchalla lost them in a seven-figure jury award in 2018 to Lake Point, a rock mining company. She would eventually get back the Toyota Camry with over 200,000 miles on it and her two kayaks because Lake Point decided they really weren't worth the trouble of storing or selling them.

Now, Hurchalla, the sister of the late Janet Reno — attorney general under former President Bill Clinton — is trying to get the \$4.4 million jury verdict against her overturned.

Hurchalla got "slapped" in 2018 with the seven-figure jury award after Lake Point sued her for what they argued was her interference in a deal with Martin County that they said cost them millions.

Hurchalla and her supporters countered that Lake Point's lawsuit amounted to what's called a SLAPP (Strategic Lawsuits Against Public Participation). SLAPPs are designed to chill public dissent by intimidation and/or exhausting their opponent's financial resources on a legal defense. Critics of the practice see the suits as an attempt to undermine 1st Amendment protections.

"The disturbing thing in Maggy's case is that the corporation who brought forth the lawsuit actually won," said Leesa Souto, executive director of the nonprofit Marine Resources Council, which joined a legal brief urging the U.S. Supreme Court to hear Hurchalla's case.

"The precedent set in this case is terrifying because of its potential to silence those willing to speak up," Souto added.

A key milestone in her ongoing legal odyssey comes next month, on Jan. 8, when the Supreme Court is expected to decide whether to grant Hurchalla's request to hear her case, deny her request, or delay the decision until a subsequent conference.

Hurchalla and her supporters are looking to the nation's highest court to overturn the judgement against her on free-speech grounds. The Marine Resources Council, based in Palm Bay, sees her case as crucial to the public's right to fight for a cleaner Indian River Lagoon and other environmental issues.

Hurchalla, who turns 80 this month and lives in Stuart, hopes in the bigger picture to remove the muzzling effect of SLAPP suits.

"I can't get Christmas presents. I can't earn money. I can't own anything," Hurchalla, said, referring to the \$4.4 million in damages awarded against her. "They can't take your homestead in Florida, and my family will make sure I don't starve."

Last year, sheriff's deputies seized her two kayaks and her 15-year-old Toyota Camry that has chalked up more than 200,000 miles. Her neighbors gave her other kayaks in support, until her kayaks and car were ultimately returned. The specter of financial ruin looms but Hurchalla remains unfazed.

"Basically it came down to the fact that they were the only things in my name," Hurchalla said of the car and kayak seizure. "They were quite obviously not worth the legal cost and impoundment cost of seizing them. I bought both kayaks secondhand many years ago. The Camry was appraised at \$900. SLAPP suits are about 'crushing' and 'intimidating.' "

### **The origins of the case**

The 2018 jury verdict stems from concerns Hurchalla, herself a former commissioner, expressed to Martin County commissioners in 2013, about Lake Point's mining project near Indiantown. Property owners Lake Point I, LLC and Lake Point II, LLC sued Hurchalla, arguing their business lost millions because she knowingly sent directives to county commissioners based on information she knew was false.

They say Hurchalla had "malevolent intent to harm Lake Point," via a series of emails to county commissioners. They successfully argued that she sabotaged their business plans by knowingly misleading commissioners. They point to one January 2013 email in particular in which she said the rock pit project's water storage and treatment benefits had not been scientifically demonstrated, while she was aware of a preliminary study that had documented those benefits.

Hurchalla, however, said she never explicitly stated there was no study at all, but that there was no comprehensive "peer-reviewed" study to verify the project's benefits.

Lake Point also sued Martin County for breaching their agreement. The county settled the suit, paying \$12 million for 400 acres of non-appraised land it didn't want and issuing an apology to Lake Point, including to George Lindemann Jr., according to the Palm Beach Post.

Lindemann, a key partner in Lake Point Restoration, is son of a cellphone and cable TV magnate.

### **Florida's highest court refuses to hear appeal**

In April, when the Florida Supreme Court rejected Hurchalla's appeal, Lake Point's Tampa attorney, Ethan Loeb, told Treasure Coast Newspapers they're "glad it's over" and Hurchalla's appeal should end.

"She has put her argument about the First Amendment before I don't know how many judges now," Loeb said at the time, "and none of them have agreed with her argument ... this has been going on long enough."

His position still stands.

"We've had so many courts review this case, and they've all said the same thing," Loeb told FLORIDA TODAY in a recent telephone interview. "We don't think the U.S. Supreme Court is going to arrive at a different decision."

In their rebuttal to Hurchalla's brief, Lake Point's attorneys argue that the First Amendment "does not protect someone who secretly uses false information to convince (county) commissioners to breach a contract not terminable at will."

### **The project to reduce phosphorus**

The idea was for Lake Point to mine limestone, then use the remaining pits from the excavation to store lake water and filter its pollution.

They would prevent phosphorus-rich Lake Okeechobee water from flowing to the St. Lucie Estuary, which often triggers harmful algae blooms. The pits-turned-lakes would then be donated to the South Florida Water Management District in phases, at no cost, subject to 20-years of mining rights.

"Accordingly, Lake Point purchased the property for approximately \$50 million," the company's lawyers wrote in their rebuttal to Hurchalla's U.S. Supreme Court brief.

But as the plan evolved, Hurchalla became suspicious of the project's environmental benefits. She emailed her concerns to county commissioners. She tried to convince them to drop the agreement with Lake Point. She cited wetlands worries and lack of a "peer-reviewed" study scientifically proving the project's environmental benefits or exploring potential impacts to Everglades restoration.

In 2018, a jury found in favor of Lake Point. Then in June 2019, an appeals court upheld the \$4.4 million judgment. The order from the three-judge appeals court panel said Hurchalla demonstrated express malice, citing emails she sent "commissioner friends" in which she gives them detailed instructions on what to do at board meetings "to work toward voiding" the agreement, signing off as 'Deep Rockpit,' and referring to herself as 'Ms. Machiavelli.' "

In April of this year, a one-paragraph order from the Florida Supreme Court declined to hear the case, but did not explain why.

### **Hurchalla's plea to the U.S. Supreme Court**

Throughout Hurchalla's legal ordeal, environmental groups remained aghast at the implications.

In September, Hurchalla's attorneys petitioned the U.S. Supreme Court to hear the case. Then last month, the Civil Liberties Defense Center in Oregon and the Protect the Protest (PTP) task force filed a friend-of-the-court brief also asking the nation's highest court to hear her case.

Other groups that signed onto the brief include MRC; the Institute for Justice; the Cato Institute; Friends of the Everglades; Bullsugar.org; the Conservation Alliance of St. Lucie County; Florida Wildlife Federation; Martin County Conservation Alliance; Small World Adventures, LLC; The Pegasus Foundation; and Waterkeepers.

Their brief argues the decision of the Florida Supreme Court should be overturned "due not only to its factual and legal errors but also because of the extreme chilling effect it will have for citizen engagement with government officials," CLDC said in a prepared statement. "This case shows just how far big corporations will go to silence their opposition."

According to their brief, Hurchalla's remark that the Lake Point project's benefits had not been documented was not made with intentional or reckless regard for the truth.

"The lower courts holding that an individual advocate, with a good-faith belief in the truth of her statement, can be financially liable to a multinational corporation for such speech significantly undermines that protections of the First Amendment and creates an alternate reality in which citizens will silence themselves, thinking they must be 'experts' before they speak out on matters of import to government," their brief says. "The chilling effect of the lower court's decision cannot be overstated."

Hurchalla's attorneys argue that in her email Hurchalla was referring to a particular type of study performed by a team administering a federal program for the protection of the Everglades. "That study was undisputedly never performed, and Ms. Hurchalla considered the preliminary study inadequate to demonstrate the project's benefits — a view corroborated by an expert witness at trial," the brief says.

In other states, some litigious companies have gotten hit hard in SLAPP suit reversals.

In April, a California judge ordered logging giant Resolute Forest Products to reimburse Greenpeace about \$816,000 in attorneys' fees and costs associated with dismissed legal claims against the group, ostensibly to quell its criticisms of the company's environmental record. It was one of the largest awards ever under California's anti-SLAPP law.

Hurchalla is cautiously optimistic that the Supreme Court will hear her case.

"In terms of the importance of the case," she said, "it's an everybody political case, I'm very hopeful."

For her and her supporters, the case represents a shot across the bow of every controversial local zoning hearing, and every company looking to use SLAPP suits as cannonballs to sink any dissent.

"It works in zoning battles," Hurchalla said of SLAPP suits. "Everybody in the audience would be guilty."

Brevard's most prominent environmental group sees Hurchalla's case as key to the future of the Indian River Lagoon.

"Essential to MRC's mission is empowering and encouraging citizens to stand up for the natural resources that are important to them," Leesa Souto, MRC's executive director, said.

"They are illegal in most states, including Florida, because they violate citizens' constitutional rights to free speech (1st Amendment)," Souto said.

Souto sees Hurchalla's case as hovering at the core of MRC's mission.

"We have a long uphill climb to bring our lagoon back to health," Souto said, "and without the voices of our community speaking for protective actions and against polluting industries, all hope is lost."

Hurchalla remains hopeful, though, especially with groups like MRC joining her cause. "I'm so proud to have them on my side."

To Hurchalla, whitewater kayaking is her biggest indulgence. So the rough rapids of all the legal warfare and financial risk don't spook her a bit.

If anything, this ride's been anything but dull.

"Good grief," Hurchalla said. "Lots of old ladies feel bored."

But how confident is she that the nation's highest court will hear her case or that she, like her older sister — the first female U.S. Attorney General — will make some history?

"Realistically, I know it's a long shot," Hurchalla said of the Supreme Court taking the case. "In terms of the importance of the case ... it's an everybody political case, I'm very hopeful."