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Supreme Court should hear Florida environmentalist's appeal

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The constitutional right of Americans to sound off to their governments is a fundamental issue that ought to unite everyone in its defense, and often does.

So it does again in an appeal that deserves to be heard by the U.S. Supreme Court, given the Florida Supreme Court's deplorable decision to duck the case.

The issue is whether a citizen can speak her mind without being SLAPPed with a ruinous lawsuit.

That's what happened to Maggie Hurchalla, a Martin County environmentalist, for trying to oppose a billionaire's deal to store water in his rock mine and sell it to Martin County. He sued her and won a $4.4 million judgment she is unable to pay.

SLAPP is the acronym for Strategic Lawsuits Against Public Participation, an all-too-common lethal weapon in the arsenal of corporate America in recent years.

Some states have laws that forbid using the courts to intimidate citizens into shutting up and minding their own business.

Florida doesn't. It should.

In that yawning void, Hurchalla has found significant allies from across the political spectrum.

One of the friend-of-the-court briefs supporting her appeal represents the Cato Institute, the Institute for Justice and the "Protect the Protest" Task Force.

Cato is an influential libertarian public policy shop devoted, according to the brief, "to advancing the principles of individual liberty, free markets and limited government." It was co-founded by Charles Koch, the petrochemical billionaire who has spent a good deal of his fortune pushing a right-wing agenda.

The Institute for Justice is a nonprofit public interest law firm often associated with conservative positions on school choice and government regulation. The "Protect the Protest" Task Force represents an array of mostly liberal organizations, including the ACLU.

Another brief has been filed on behalf of six environmental organizations, including the Florida Wildlife Federation, Friends of the Everglades, and Bullsugar, as well as a Colorado kayaking company and a Massachusetts nonprofit devoted to animal welfare. They share an interest in free speech. So do we all.

Along with Hurchalla, these disparate organizations challenge the use of business law to get around the court's disapproval of libel and slander lawsuits over public policy issues.

Essentially, the court long ago held that public figures must prove "actual malice" to collect damages. "Actual malice" means that not only what was said was harmful, but that it was said with reckless disregard for the truth.

Lake Point Restoration, owned by developer George Lindemann Jr., sued Hurchalla over what the company claimed were falsehoods in her complaints to Martin County commissioners that the project would harm wetlands and that no scientific study had been done. Lake Point contended that her claims had cost the mine customers. A trial judge and a panel of the Fourth District Court of Appeal agreed.

The outcome might have been different had Lindemann sued for defamation, instead of for "tortious interference" with his business. Among other differences, a defamation suit would have exposed his pre-existing reputation, which included prison time for paying someone to kill his horse for a $250,000 insurance payment.

Aside from First Amendment issues, the $4.4 million judgment seems exorbitant given that Martin County and the South Florida Water Management District ultimately settled with Lindemann and allowed the project to proceed. It was delayed, not denied.

But it's the constitutional issues that should compel the Supreme Court to make Hurchalla's appeal one of the relatively few cases it will accept this term.

As the brief for Cato and the others explains, if the constitutional issues aren't resolved, it will "result in significant chilling of First Amendment freedoms."

What's equally chilling in the lower court record is prejudice against Hurchalla, a former Martin County commissioner, for having used her personal e-mail to contact present commissioners who were friends of hers. So what if she did? When the commission officially found faults with the project, Lake Point was able to rebut them. Moreover, most Americans these days use email as a convenient form of expression. Objection to public policy should not be restricted to formal proceedings.

"If damages can be levied without regard to actual harm shown, such retaliatory lawsuits will eviscerate the right to petition the government afforded by the First Amendment," argues the brief from Cato et al.

The environmental organizations' brief makes a similar — and urgent — point:

"Their communications with public officials would all but cease if they face legal liability for good faith statements made to government decision-makers about scientific matters. The precedent … will effectively silence the voices of citizens who are exercising their fundamental rights to speak on behalf of a clean, health environment."

Corporations have rights, to be sure. But when they are making deals with the government — as in the Lake Point project — the public interest must be paramount and the public must be heard.

The Florida court rulings constitute a dire warning to the public to be very, very careful in what you say.

Hurchalla, 79, gained national attention for her case in a New York Times article that noted she would never be able to pay such a judgment, and that Lake Point had returned the old pickup truck and two kayaks it had seized from her.

“What I worry about now,” she said, “is dying before we win.”

She feels so strongly about the principles at stake that she has refused Lake Point’s offer to drop everything in exchange for an apology.

Hurchalla is the lone surviving sibling of the late Janet Reno, the first female attorney general of the United States.

Reno, we are confident, would approve her sister’s fight.

The Supreme Court turns away the great majority of the petitions it receives. Hurchalla’s must be an exception, lest the First Amendment become a dead letter in Florida and, indeed, throughout the nation.