

Election SLAPPs: Applying Anti-SLAPP Law Against Election Lawsuits That Damage Democracy

Ethan M. Schafer*

INTRODUCTION

SLAPPs (Strategic Lawsuits Against Public Participation)¹ are lawsuits that are not intended to succeed on the merits but to financially punish a defendant or to deter others from similar conduct.² SLAPPs are usually brought by wealthy plaintiffs who use the court system to silence those who criticize them, creating significant chilling effects on constitutional rights.³ Wanting to protect these rights, many states have implemented anti-SLAPP laws that protect those who are forced to respond to these lawsuits.⁴ These laws usually protect defendants who exercise their First Amendment rights by ensuring that the lawsuit does not get past the pleading stage when it is not designed to win on the merits.⁵ Anti-SLAPP laws have often succeeded at protecting the First Amendment rights of those who want to participate in public discourse.⁶

* J.D. Candidate, 2026, Sandra Day O'Connor College of Law at Arizona State University; Executive Note and Comment Editor, *Arizona State Law Journal*, 2025–2026. Special thanks to Jonathan Green for being an excellent faculty advisor and to Kyndal Pirtle Calhoon and Victoria Warkins for guiding me through this process. Thank you as well to Caitlin Millat and Kyrah Berthiaume for your very helpful edits and suggestions, and to everyone else who discussed this topic with me. All views and errors are my own.

1. Penelope Canan & George W. Pring, *Strategic Lawsuits Against Public Participation*, 35 SOC. PROBS. 506, 506 (1988).

2. Daniel E. Rauch, *Defamation as Democracy Tort*, 172 U. PA. L. REV. 1453, 1513 (2024).

3. Martin H. Redish & Julio Pereyra, *Resolving the First Amendment's Civil War: Political Fraud and the Democratic Goals of Free Expression*, 62 ARIZ. L. REV. 451, 483–84 (2020); Angel Eduardo, *Why 'SLAPP' Lawsuits Chill Free Speech and Threaten the First Amendment*, FIRE (Jan. 16, 2025), <https://www.thefire.org/research-learn/why-slapp-lawsuits-chill-free-speech-and-threaten-first-amendment> [<https://perma.cc/R643-7WB3>].

4. See Rauch, *supra* note 2, at 1514.

5. See *id.*

6. See *id.* at 1478–79, 1513–14.

Another way people participate in public discourse is through electing candidates for public office.⁷ In every election, from the President of the United States to a local city council member, one candidate wins office, and many more lose.⁸ American participatory democracy⁹ has ultimately resulted in an open system where anyone can run for and win political office if the candidate is “first-past-the-post,” receiving the most votes.¹⁰ However, this system’s openness has led to gamesmanship,¹¹ disenfranchisement,¹² and other evils.¹³ While America has attempted to protect against racial discrimination in voting¹⁴ and other ways to manipulate the system, some political actors have taken their cases to the courtroom to try to get an advantage.¹⁵

Political actors have always tried to win elections in the courtroom.¹⁶ But political actors are today taking bigger and bolder swings in the judicial

7. See James Weinstein, *Participatory Democracy as the Central Value of American Free Speech Doctrine*, 97 VA. L. REV. 491, 497–98 (2011).

8. Josh Franklin, *First Past the Post Voting: Our Elections Explained*, COMMON CAUSE COLO. (June 22, 2020), <https://www.commoncause.org/colorado/articles/first-past-the-post-voting-our-elections-explained> [<https://perma.cc/EY4U-NTYP>].

9. Democracy does not have a set definition, but this Comment defines democracy idealistically: a neutral electoral system where everyone has an equal say in the political community. See Rauch, *supra* note 2, at 1457, 1464; see also Weinstein, *supra* note 7, at 497–99 (advocating for participatory democracy as the fundamental value of the First Amendment). See generally Gilda R. Daniels, *Democracy’s Distrust: The Supreme Court’s Anti-Voter Decisions as a Threat to Democracy*, 134 YALE L.J.F. 1062, 1063 (2025) (noting that democracy is difficult to define); JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* (Harv. Univ. Press rev. ed. 1980) (discussing the role of judicial review in American democracy).

10. This is also called a plurality system, in contrast to majority systems like France. Paul David Webb et al., *Plurality and Majority Systems*, BRITANNICA (Apr. 16, 2026), <https://www.britannica.com/topic/election-political-science/Plurality-and-majority-systems> [<https://perma.cc/9U93-SSW3>]; Franklin, *supra* note 8.

11. 1. *The Biggest Problems and Greatest Strengths of the U.S. Political System*, PEW RSCH. CTR. (Sept. 19, 2023), <https://www.pewresearch.org/politics/2023/09/19/the-biggest-problems-and-greatest-strengths-of-the-u-s-political-system> [<https://perma.cc/J2QW-QM9C>].

12. See Kareem Crayton, *The Voting Rights Act, Explained*, N.Y.U.: BRENNAN CTR. FOR JUST. (July 17, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-rights-act-explained> [<https://perma.cc/ATE5-RG79>].

13. *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966) (referring to the “systematic resistance to the Fifteenth Amendment” as “evil”).

14. See generally Voting Rights Act of 1965, 52 U.S.C. §§ 10101–702 (designed to eliminate racial discrimination in voting).

15. See Sara Loving & Corey Dukes, *The Big Lie Dressed-Up as “Data Science”*, PROTECT DEMOCRACY (Oct. 29, 2024), <https://protectdemocracy.org/work/the-big-lie-dressed-up-as-data-science> [<https://perma.cc/59GH-AYRU>].

16. See, e.g., *People ex rel. Hasbrouck v. Bd. of Sup’rs of Dutchess Cnty.*, 32 N.E. 242 (N.Y. 1892) (challenging privacy in voting law); *Hunt v. Campbell*, 169 P. 596 (Ariz. 1917)

system to overturn results,¹⁷ play politics,¹⁸ and/or shift society to their vision.¹⁹ President Donald Trump, for example, filed over sixty lawsuits after his 2020 presidential loss in an attempt to overturn valid election results.²⁰ Texas Attorney General Ken Paxton filed an original jurisdiction suit in the United States Supreme Court, suing Pennsylvania, Michigan, Wisconsin, and Georgia for failure to follow proper election procedures during the COVID-19 pandemic in a veiled attempt to overturn the results in President Trump's favor.²¹ Sidney Powell, lawyer for other "Kraken"²² claims, later stated in federal court that no reasonable person would conclude that her statements about the 2020 election were truly factual.²³

(challenging an Arizona governor election); *Bush v. Gore*, 531 U.S. 98 (2000) (challenging the 2000 presidential election).

17. *Bowyer v. Ducey*, 506 F. Supp. 3d 699 (D. Ariz. 2020) (challenging the results of the 2020 presidential election in Arizona).

18. See John Paredes, *Why Using "Zombie Lawsuits" to Challenge Election Results Will Fail*, PROTECT DEMOCRACY (Nov. 1, 2024), <https://protectdemocracy.org/work/zombie-lawsuits-will-fail> [<https://perma.cc/9M9H-L9G3>].

19. See Anna Dorman & Kenneth Parreno, *Noncitizen Voting Lies, Explained*, PROTECT DEMOCRACY (Sept. 10, 2024), <https://protectdemocracy.org/work/noncitizen-voting-lies-explained> [<https://perma.cc/56CJ-AJU6>].

20. Daniel Barnes, *How Trump's Challenges to the 2020 Election Unfolded in the Courtroom*, NBC NEWS (Nov. 2, 2024), <https://www.nbcnews.com/politics/2024-election/trumps-challenges-2020-election-unfolded-courtroom-rcna175490> [<https://perma.cc/B8Z8-TEVV>]; see also *infra* notes 127–136 and accompanying text (discussing the safety of election systems). Ultimately, he only won one procedural case in Pennsylvania. Barnes, *supra*.

21. Scott Dodson, *Texas v. Pennsylvania and the Political-Question Doctrine*, 2021 U. ILL. L. REV. ONLINE 141, 141 <https://illinoislawreview.org/online/texas-v-pennsylvania-and-the-political-question-doctrine> [<https://perma.cc/6XP6-MUNK>]; Adam Liptak, *Supreme Court Rejects Texas Suit Seeking to Subvert Election*, N.Y. TIMES, <https://www.nytimes.com/2020/12/11/us/politics/supreme-court-election-texas.html> (Jan. 15, 2021). The United States Supreme Court dismissed this suit for lack of Article III standing, finding that Texas had not demonstrated a judicially cognizable interest in how the named states conducted their elections. *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020) (opinion dismissing case).

22. The "Kraken" claims were "sprawling, unsubstantiated" lawsuits that were brought in attempt to overturn the 2020 Presidential election. *The Kraken: What Is It and Why Has Trump's Ex-Lawyer Released It?*, BBC NEWS (Nov. 27, 2020), <https://www.bbc.com/news/election-us-2020-55090145> [<https://perma.cc/KA59-HNZM>].

23. *The Kraken Cracks Under Pressure: Sidney Powell Claims No Reasonable Person Would Conclude that [Her] Statements Were Truly Statements of Fact*, GA. SEC'Y OF STATE BRAD RAFFENSPERGER (Mar. 23, 2021), <https://sos.ga.gov/news/kraken-cracks-under-pressure-sidney-powell-claims-no-reasonable-person-would-conclude-her> [<https://perma.cc/5DP9-NPQF>].

Local and state actors also filed hundreds of lawsuits in both 2020 and 2022, attempting to use the judicial system for political gain,²⁴ overturn valid election results,²⁵ or fundraise for their political party by acting to right a supposed wrong.²⁶ The judicial branch is meant to be independent and apolitical, yet certain actors have attempted to use this branch for political purposes.²⁷ And while some such political lawsuits are dismissed early in the process, others clear procedural thresholds and make it into the judicial system.²⁸ These lawsuits waste time, cause uncertainty, and allow candidates with nothing left to lose the opportunity to keep an election alive long after the results have been declared.²⁹ These “SLAPPs against democracy,” or Election Strategic Lawsuits Against Public Participation (Election SLAPPs),³⁰ are designed to attack our elections and democracy itself.

However, recognizing an Election SLAPP is like wrestling with a shadow: these cases lose political subtext when a party presents a seemingly meritorious legal argument. Election SLAPPS turn political battles into legal battles to achieve a political effect.³¹ Lawsuits that are clearly illegitimate can

24. See, e.g., *Lake v. Hobbs*, 623 F. Supp. 3d 1015, 1027–29 (D. Ariz. 2022) (dismissing plaintiff’s allegations of vulnerable and inadequate voting systems in Arizona due to lack of standing).

25. See, e.g., *Mast v. Mayes*, No. 1 CA-CV 24-0442 A, 2024 WL 4603801, at *6 (Ariz. Ct. App. 2024) (rejecting the third lawsuit challenging the 2022 Arizona Attorney General race).

26. *Arizona Voter Rolls Contain 500,000 Unqualified Voters. We’re Suing to Clean Them Up*, ARIZ. FREE ENTER. CLUB (June 6, 2024), <https://azfree.org/blog/2024/06/06/arizona-voter-rolls-contain-500000-unqualified-voters-were-suing-to-clean-them-up> [https://perma.cc/8LRM-YUV9] (including a fundraising request in a lawsuit announcement).

27. See Gerald N. Rosenberg, *Judicial Independence and the Reality of Political Power*, 54 REV. POL. 369, 371 (1992) (“The judiciary is independent . . . to the extent its decision-making is free from domination by the preferences of elected officials.”); *Lewis v. Casey*, 518 U.S. 343, 349 (1996) (“[I]t is not the role of the courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution.”); THE FEDERALIST NO. 78 (Alexander Hamilton); see also Curtis E.A. Karnow, *Neutrality Can Be Maddening to the Public. And to Judges, Too*, JUDICATURE, 2023 no. 1, at 82, 83 (“[I]f the judge follows the correct process, the ‘right’ result is likely. This is our neutrality.”); Dmitry Bam, *Seen and Heard: A Defense of Judicial Speech*, 11 LIBERTY U. L. REV. 765, 775 (2017) (“[J]udicial impartiality is not just an ethical rule; it is a constitutional requirement and the foundation of the American legal system.”).

28. See *infra* Section II.B.2.

29. See *Mast*, 2024 WL 4603801, at *1–2 (affirming dismissal of third lawsuit challenging the same election results, filed thirteen months after canvass).

30. This term was used by Leah McGowan Kelly to describe how Democrats embroiled Ralph Nader’s 2004 presidential election campaign in so much litigation that he lost his campaign funding. Leah McGowan Kelly, *Election SLAPPs: Effective at Suppressing Political Participation and Giving Anti-SLAPP Statutes the Slip*, 66 ME. L. REV. 191, 192–93 (2013); see also *infra* Section II.A.1.

31. See *infra* Section II.A.1.

be defeated by procedural motions and can be dissuaded by sanctions,³² and lawsuits that are clearly legitimate deserve to be heard in court. Election SLAPPs fall on neither end, leading to a procedural gap that courts struggle to deal with.

To curtail Election SLAPPs and to protect democracy, rules of civil procedure should include anti-SLAPP laws for election litigation, or what this Comment calls an Election SLAPP statute. State governments or courts should create laws and procedures that shift the burden of proof at the initial stages of election litigation from the defendant to the plaintiff making the claim. This procedural mechanism could help guard democracy and our electoral institutions; it could also shield government actors from warranted criticism if misused. While there are risks, an Election SLAPP statute would bolster our democracy and ensure better self-governance.

Part I explains how anti-SLAPP statutes work and surface First Amendment considerations attending SLAPP procedure. Part II explains election litigation's sliding scale, describing how Election SLAPPs are neither frivolous nor legitimate litigation. Part III argues that existing mechanisms are not effective to combat Election SLAPPs and sets forth a new procedural mechanism to do just that—an Election SLAPP statute. Part III further explains why the First Amendment does not prevent such a novel procedure, and, finally, its benefits and drawbacks.

I. SLAPPS, ANTI-SLAPP LAWS, AND THE FIRST AMENDMENT

This Part identifies how SLAPPs and anti-SLAPP laws work, highlighting California's model anti-SLAPP procedure. It then explains the First Amendment considerations attending these procedural mechanisms, surfacing the "thorny 'speech-speech' balance"³³ when the government is sued.

A. *SLAPPs and Anti-SLAPP Laws*

Strategic Lawsuits Against Public Participation (SLAPPs) seek to chill First Amendment rights, especially the right to free speech.³⁴ Plaintiffs who have allegedly been wronged will file a suit against a defendant to intimidate

32. See *infra* Section II.B.

33. Rauch, *supra* note 2, at 1479.

34. See Dennis Hetzel & Brandi M. Snow, *SLAPP Suits*, FREE SPEECH CTR., <https://firstamendment.mtsu.edu/article/slapp-suits> (Mar. 31, 2025) [<https://perma.cc/3DYZ-5KAP>].

the speaker, drain their financial resources, and/or deter others from similar conduct.³⁵ SLAPPs are anti-democratic in the sense that, by their very nature, they restrict the right to be informed and to express thoughts freely.³⁶ These political lawsuits choke public criticism, weaken accountability, and threaten the marketplace of ideas, all of which are inconsistent with the First Amendment.³⁷

But a SLAPP can be disguised as meritorious on its face, making it difficult for courts to understand that the suit is not designed to win on the merits.³⁸ Anti-SLAPP laws fix this problem through an expedited procedural process.³⁹ Thirty-eight states and the District of Columbia have anti-SLAPP statutes, but no two look exactly alike in procedure and vary in effectiveness.⁴⁰ For example, Arizona's anti-SLAPP statute puts the burden on the defendant to "establish[] prima facie proof that the legal action was substantially motivated by a desire to deter, retaliate against or prevent the lawful exercise of a constitutional right."⁴¹ Other states, like Hawaii, put the burden on the plaintiff who brought the suit to show a prima facie case for all elements of their claim in an expedited evidentiary hearing.⁴² Some state actors are not allowed to file anti-SLAPP motions,⁴³ presumably because of the First Amendment's Petition Clause.⁴⁴

At least thirteen states have modeled their anti-SLAPP statutes after California's novel approach⁴⁵ due to how well it safeguards defendants from damaging litigation.⁴⁶ California's anti-SLAPP statute allows defendants to file a motion to strike that puts the burden on the judge to initially determine whether the lawsuit is frivolous.⁴⁷ Procedurally, a judge undertaking this

35. *See id.*

36. *See* 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, 52 (2023).

37. *Id.* at 56.

38. Aaron Smith, Note, *SLAPP Fight*, 68 ALA. L. REV. 303, 308 (2016).

39. Rauch, *supra* note 2, at 1513–14.

40. *Anti-SLAPP Legal Guide*, REPS. COMM. FOR FREEDOM OF THE PRESS, <https://www.rcfp.org/anti-slapp-legal-guide> [<https://perma.cc/43WB-2L2V>].

41. ARIZ. REV. STAT. ANN. § 12-751(B) (2026).

42. HAW. REV. STAT. § 634G-6(a)(1) (2026).

43. *See, e.g.*, ARIZ. REV. STAT. ANN. § 12-751(B)(1) (2026). *But see* THOMAS R. BURKE, ANTI-SLAPP LITIGATION § 2:33 (2025) (noting that California's anti-SLAPP statute is available for government use).

44. *See infra* Section I.B.2.

45. BURKE, *supra* note 43, § 8:1.

46. *See* Nicole J. Ligon, *Solving SLAPP Slop*, 57 U. RICH. L. REV. 459, 475 (2022).

47. CAL. CIV. PROC. CODE § 425.16(b)(1) (West 2026). This is unlike the Arizona or Hawaii statutes, where the burden is on the defendant and plaintiff, respectively. *See* ARIZ. REV. STAT. ANN. § 12-751(B) (2026); *see also* HAW. REV. STAT. § 634G-6 (2026).

analysis will engage in a two-part inquiry. First, the judge will consider whether the movant has shown that the cause of action against it arises from protected constitutional activity, most commonly when the defendant speaks negatively about the initial plaintiff.⁴⁸ If the movant is successful, the nonmoving party must show that it can meet its burden of proof for the claim, something akin to summary judgment.⁴⁹ The statute also includes an automatic stay on discovery, so plaintiffs are stuck with their complaint.⁵⁰ If the anti-SLAPP motion is successful, the case is dismissed.⁵¹ The moving party automatically gets fees from the other side, and the respondent to the motion can immediately appeal.⁵²

When considering an anti-SLAPP motion, California judges are empowered to consider both the pleadings and affidavits upon which the liability or defense is based.⁵³ This allows quick and easy resolution, “the single most important component of any court or statutory scheme to prevent SLAPPs.”⁵⁴ And while a judge decides the motion, all other parts of the proceeding are stopped.⁵⁵ If the motion is unsuccessful, the judge’s findings on the motion cannot be used later in the proceedings, dissuading misuse of the anti-SLAPP motion itself.⁵⁶

B. SLAPPs and the First Amendment

SLAPPs infringe on the First Amendment’s Speech and Petition Clauses. Anti-SLAPP laws dissuade wealthy plaintiffs from infringing on an ordinary citizen’s First Amendment rights.⁵⁷ As the Election SLAPP statute critic may

48. Ryan Stahl, *California’s Anti-SLAPP Statute: A Powerful Tool for Litigators*, S.F. ATT’Y, Summer 2016, at 52, 53.

49. *Id.* Summary judgment occurs when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(a). In the anti-SLAPP context, judges only use pleadings and affidavits to consider whether the plaintiff has a valid claim. Stahl, *supra* note 48, at 53.

50. Jeff Lewis, *SLAPPs, SLAPPbacks, and SMACCS: California’s Anti-SLAPP Law Tips and Strategies!*, YOUTUBE (Aug. 22, 2023), <https://www.youtube.com/watch?v=V6bj2DS7Rq4> [<https://perma.cc/JL6T-PH4U>].

51. *Id.*

52. CAL. CIV. PROC. CODE. §§ 425.16(i) & 904.1(13) (West 2026).

53. Redish & Pereyra, *supra* note 3, at 484.

54. *Id.* at 483–84.

55. CAL. CIV. PROC. CODE § 425.16(g) (West 2026).

56. Stahl, *supra* note 48, at 53.

57. *See generally* Canan & Pring, *supra* note 1 (analyzing 100 SLAPP cases to examine how civil tort suits are used to challenge citizens’ political activity).

claim such a statute violates the First Amendment, this Section analyzes how these First Amendment Clauses and SLAPPS interact.⁵⁸

1. The Speech Clause

The Speech Clause prevents Congress from making laws that “abridg[e] the freedom of speech.”⁵⁹ While the language is simple, the Supreme Court has held that the Clause protects the right to speak about all matters of public concern without punishment or fear thereof.⁶⁰ Speaking on public issues is the “highest rung of the hierarchy of First Amendment values,” entitled to special protection.⁶¹ Filing a lawsuit is also speech protected by the First Amendment; litigation is a “form of political expression. . . . [and] litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.”⁶² Political speech has greater protection than normal speech and is “at the core of what the First Amendment is designed to protect.”⁶³

The extent to which speech is protected depends largely on where the speaker is physically asserting their rights, or which forum they are in.⁶⁴ There are three different forum types: traditional public forums, limited public forums, and nonpublic forums.⁶⁵ Traditional public forums are public spaces like parks and sidewalks that have traditionally been used for debates.⁶⁶ Designated, or “limited” public forums, are communicative spaces

58. When it comes to political speech, the rights to assemble and associate may also be implicated. *See* NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 460 (1958). However, the right to participate in political activities is not absolute, and if the State has a sufficiently important interest, associational freedoms can be interfered with. *See* Buckley v. Valeo, 424 U.S. 1, 25 (1976).

59. U.S. CONST. amend. I.

60. Smith, *supra* note 38, at 307 (quoting Thornhill v. Alabama, 310 U.S. 88, 101–02 (1940)).

61. Connick v. Myers, 461 U.S. 138, 145 (1983) (quoting NAACP v. Claiborne Hardware Co., 458 U.S. 886, 913 (1982)).

62. NAACP v. Button, 371 U.S. 415, 429–30 (1963); *see also* Chen v. Holder, 607 F.3d 511, 513 (7th Cir. 2010) (“[L]itigation is protected by the [F]irst [A]mendment as one of the ways by which the people may petition for redress of grievances. . . . [But a] court is the forum in which legal rights are vindicated, and people who use litigation solely as a pulpit for political protest may be penalized if the suit is objectively baseless.”).

63. Morse v. Frederick, 551 U.S. 393, 403 (2007) (quoting Virginia v. Black, 538 U.S. 343, 365 (2003)).

64. *Amdt1.7.7.1 The Public Forum*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt1-7-7-1/ALDE_00013542 [<https://perma.cc/SXX6-YGTK>].

65. *Id.*

66. *Id.*

reserved for certain groups.⁶⁷ Nonpublic forums are spaces that are not traditionally public spaces for communication or designated as nonpublic by the government.⁶⁸ The government has broad flexibility to restrict content-based speech in nonpublic forums, “including restrictions that exclude political advocates and forms of political advocacy.”⁶⁹ As long as the regulation of speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view, the government can restrict speech there.⁷⁰ The First Amendment does not guarantee access to property just because the property is “owned or controlled by the government.”⁷¹

This includes courthouses, widely considered nonpublic forums where speech is restricted within the courtroom.⁷² The public can observe public court proceedings, but the public cannot walk beyond the bar and interrupt an ongoing trial.⁷³ For litigants who get to trial, the Federal Rules of Civil Procedure and the Federal Rules of Evidence restrict the right to make certain claims or use certain evidence.⁷⁴ The Supreme Court has noted that

Where a statute does not directly abridge free speech, but—while regulating a subject within the State’s power—tends to have the incidental effect of inhibiting First Amendment rights, it is well settled that the statute can be upheld if the effect on speech is minor in relation to the need for control of the conduct and the lack of alternative means for doing so.⁷⁵

67. *Id.*

68. *Id.*

69. *Minn. Voters All. v. Mansky*, 585 U.S. 1, 12 (2018); *see also* *Davenport v. Wash. Educ. Ass’n*, 551 U.S. 177, 189 (2007) (“[I]t is also black-letter law that, when the government permits speech on government property that is a nonpublic forum, it can exclude speakers on the basis of their subject matter, so long as the distinctions drawn are viewpoint neutral and reasonable in light of the purpose served by the forum.”).

70. *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 46 (1983).

71. *U.S. Postal Serv. v. Greenburgh Civic Ass’n*, 453 U.S. 114, 129 (1981).

72. *See, e.g., Berner v. Delahanty*, 129 F.3d 20, 26 (1st Cir. 1997) (“A courthouse—and, especially, a courtroom—is a nonpublic forum.”); *Mezibov v. Allen*, 411 F.3d 712, 718 (6th Cir. 2005) (“The courtroom is a nonpublic forum where the First Amendment rights of everyone (attorneys included) are at their constitutional nadir.”); *Huminski v. Corsones*, 396 F.3d 53, 90 (2d Cir. 2005) (“The building housing the Rutland District Court is a nonpublic forum.”).

73. Paul Bergman, *Criminal Courtroom Layout*, NOLO, <https://www.nolo.com/legal-encyclopedia/criminal-courtroom-layout.html> (Jan. 16, 2025) [<https://perma.cc/R6XV-H7PJ>].

74. *See generally* FED. R. CIV. P. 8, 9, 12 (setting forth baseline pleading standards, special pleading rules for particular allegations, and mechanisms for pre-answer defenses); FED. R. EVID. 407–15 (limiting relevant evidence); FED. R. EVID. 801–15 (limiting hearsay evidence).

75. *Younger v. Harris*, 401 U.S. 37, 51 (1971) (citations omitted).

States can implement their own rules into their judicial systems, provided states do not violate due process or other constitutional rights.⁷⁶ This includes anti-SLAPP statutes, which restrict litigation speech rights.⁷⁷ In this sense, anti-SLAPP statutes balance litigation rights against speaking on matters of public concern; successful anti-SLAPP motions give greater protection to the latter.

2. The Petition Clause

The Petition Clause also prevents Congress from making laws that restrict the right “to petition the Government for a redress of grievances.”⁷⁸ The Petition Clause has also been interpreted to “enshrine[] as a right” the ability to petition for public and private grievances.⁷⁹ At the Founding, petitioning was meant to encompass “political receptiveness to public concern,” allowing the people to instruct the government on public issues.⁸⁰ Today, the Clause is meant to protect legal attempts to promote or discourage government action, including filing lawsuits.⁸¹

Court access under the Petition Clause begins with the *Noerr-Pennington* doctrine, an antitrust doctrine with First Amendment dimensions.⁸² This doctrine establishes immunity from retaliation when an individual or a business files litigation, unless the litigation is a “sham.”⁸³ Retaliation

76. *Davenport v. Wash. Educ. Ass’n*, 551 U.S. 177, 189 (2007).

77. See Carson Hilary Barylak, Note, *Reducing Uncertainty in Anti-SLAPP Protection*, 71 OHIO ST. L.J. 845, 845 (2010) (“[V]alues underlying First Amendment protections . . . demand that individuals and groups have the opportunity to make their voices heard, without the threat of retaliation by those equipped with greater financial or institutional power.”).

78. U.S. CONST. amend. I; see also *United States v. Cruickshank*, 92 U.S. 542, 552 (1875) (“The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.”).

79. Heidi K. Waugh, Comment, *First Amendment Rights—“See Ya in Boston, Bruh”*: *Making the Link Between the Right to Petition, Activism, and the Massachusetts Anti-SLAPP Statute*, 41 W. NEW ENG. L. REV. 141, 150 (2019).

80. *Id.* at 151–52.

81. *Id.* at 152–53.

82. See *E.R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 (1965); *Cal. Motor Trans. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) (“The right of access to the courts is indeed but one aspect of the right of petition.”); see also Carol Rice Andrews, *A Right of Access to Court Under the Petition Clause of the First Amendment: Defining the Right*, 60 OHIO ST. L.J. 557, 580 (1999).

83. Steven J. André, *Anti-SLAPP Confabulation and the Government Speech Doctrine*, 44 GOLDEN GATE U. L. REV. 117, 121–22 (2014).

typically occurs when the target of antitrust action (usually a small business) files suit against the larger business targeting them.⁸⁴

Noerr-Pennington's "sham exception" removes immunity from retaliation when two prongs are met.⁸⁵ First, the lawsuit must be objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits.⁸⁶ If the litigation is objectively baseless, then the court can examine the litigant's subjective motivation: was the lawsuit brought with the specific intent to use governmental process to further wrongful conduct?⁸⁷ If both prongs are met, then a lawsuit against the original filer is allowed, but if either is lacking, then the retaliatory suit is dismissed.⁸⁸ This structure is similar to the California anti-SLAPP procedure, except that *Noerr-Pennington* applies in a different proceeding rather than the original lawsuit. The Supreme Court later applied the doctrine outside antitrust in *Bill Johnson's Restaurants v. NLRB*.⁸⁹ The Petition Clause has been interpreted as a general right of access to the courts ever since.⁹⁰ In fact, some federal courts apply *Noerr-Pennington* as a form of anti-SLAPP protection, as there is no federal anti-SLAPP statute.⁹¹

The First Amendment guarantees that people have the right to petition their government for a redress of grievances, including filing SLAPPS against the government; it does not guarantee that the government must listen to their complaints or that the petition will be granted.⁹² Indeed, the First Amendment does not protect those filing baseless litigation.⁹³ Moreover, filing a lawsuit is only the first step; state and federal rules of civil procedure provide defenses for unwilling litigants.⁹⁴ Anti-SLAPP laws filter out cases that are not meant for the judicial system—a proper government interest in restricting

84. *Noerr*, 365 U.S. at 144.

85. *Pro. Real Est. Invs., Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60–61 (1993).

86. *Id.* at 60.

87. *Nader v. Democratic Nat'l Comm.*, 567 F.3d 692, 696 (D.C. Cir. 2009).

88. *Id.*

89. 461 U.S. 731, 743 (1983).

90. *See Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896–97 (1984); *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011).

91. *See Barylak, supra* note 77, at 857–58.

92. 2 RODNEY A. SMOLLA, SMOLLA & NIMMER ON FREEDOM OF SPEECH § 16:3 (2025).

93. *McDonald v. Smith*, 472 U.S. 479, 484 (1985) (quoting *Bill Johnson Rests., Inc.*, 461 U.S. at 743).

94. *See* FED. R. CIV. P. 12.

speech.⁹⁵ In this framework, procedural mechanisms like anti-SLAPP laws do not impinge the Petition Clause either.⁹⁶

3. Anti-SLAPP's First Amendment Balance When Suing the Government

Anti-SLAPP statutes protect those who exercise their free speech and petition rights under the Constitution.⁹⁷ However, there is a First Amendment tension at play with lawsuits against the government. Merited critiques of government officials should be encouraged, but wrongfully discrediting our electoral systems damages democracy, a “thorny ‘speech-speech’ balance.”⁹⁸

The rights to free speech and petition are “cognate rights,” overlapping in analysis.⁹⁹ The First Amendment protects the right to participate in “matters of public concern.”¹⁰⁰ The Supreme Court has not defined “matters of public concern” well, but “subject[s] of general interest and of value and concern to the public” qualify.¹⁰¹ People petition their government on these matters of public concern; the government is meant to be “by the people, for the people, and of the people” and petitioning the government is an inherent part of participatory democracy.¹⁰² The government acts for the people, and effective representation depends to a large extent on the people’s ability to make their wishes known to governmental officials acting on their behalf.¹⁰³

95. A comparison here might be to 12(b) defenses, as they also filter out cases that do not belong in the judicial system; these procedural mechanisms do not bar filings altogether and therefore do not violate the Petition Clause. *See* FED. R. CIV. P. 12(b). *But see* Andrews, *supra* note 82, at 560 (“An undefined right of judicial access under the First Amendment could call into question any law that purports to limit or regulate civil findings, including existing rules of procedure.”).

96. André, *supra* note 83, at 121–22.

97. 123 AM. JUR. PROOF OF FACTS 3D *Establishing Proof in Filing of Anti-SLAPP Motion* § 5 (2025).

98. Rauch, *supra* note 2, at 1478–79; *see also* Redish & Pereyra, *supra* note 3, at 458 (“[T]he challenge for legislatures seeking to regulate political fraud is finding a way to navigate the Supreme Court’s false speech jurisprudence Doing so requires effectively protecting critical political speech, while at the same time acknowledging government’s very legitimate interest in deterring political fraud.”).

99. Smith, *supra* note 38, at 306 (quoting *Thomas v. Collins*, 323 U.S. 516, 530 (1945)).

100. *Id.* (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758–59 (1985)).

101. *City of San Diego v. Roe*, 543 U.S. 77, 83–84 (2004).

102. Waugh, *supra* note 79, at 148 (quoting *GEORGE W. PRING & PENELOPE CANAN, SLAPPS: GETTING SUED FOR SPEAKING OUT* 8 (1996)).

103. AM. JUR. PROOF OF FACTS 3D, *supra* note 97, § 5 (citing *Protect Our Mountain Env’t, Inc. v. Dist. Ct. In and For Jefferson Cnty.*, 677 P.2d 1361 (Colo. 1984)).

This is especially true when it comes to elections and political activity. In facing the “speech-speech” balance, the Supreme Court has held that “a State has a legitimate interest in upholding the integrity of the electoral process itself. But when a State seeks to uphold that interest by restricting speech, the limitations on state authority imposed by the First Amendment are manifestly implicated.”¹⁰⁴ The Supreme Court has also found “practically universal agreement” that a major First Amendment purpose is to protect free discussion of government affairs,¹⁰⁵ and that the “heart of American constitutional democracy” is political speech on the campaign trail.¹⁰⁶

If an anti-SLAPP statute is given to the government, the fox could guard the henhouse by preventing discussion of government affairs in the courtroom.¹⁰⁷ The First Amendment prevents chilling effects on speech and activism, especially when it comes to political activism.¹⁰⁸ Anti-SLAPP statutes therefore could entrench recalcitrant government actors who use an anti-SLAPP statute as a scapegoat. While the First Amendment “supports regulation for truth” by government actors, problems may arise when the government, through an anti-SLAPP motion, gets to decide what that truth is.¹⁰⁹

Nonetheless, the First Amendment has its limits. The First Amendment protects political speech, but “protecting speech that undermines the democratic process by distorting voter perceptions—and therefore their decision-making . . . seriously endangers the proper functioning of the democratic process.”¹¹⁰ This is the “thorny ‘speech-speech’ balance”: the government cannot intrude on political speech, but the government must be able to defend itself against political lawsuits.¹¹¹

“At the core of the First Amendment are certain basic conceptions about the manner in which political discussion in a representative democracy should proceed.”¹¹² In other words, the First Amendment’s “deepest

104. *Brown v. Hartlage*, 456 U.S. 45, 52 (1982).

105. *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

106. *Brown*, 456 U.S. at 53.

107. Amanda Shanor, *Election Lies*, 56 ARIZ. ST. L.J. 1313, 1321 (2024) (“[Political] speech is protected ‘not so much because it is so valuable, but instead the government is so dangerous in its capacity to abuse its regulatory power.’” (quoting Helen Norton, *Distrust, Negative First Amendment Theory, and the Regulation of Lies*, KNIGHT FIRST AMEND. INST. COLUM. UNIV. (Oct. 19, 2022), <https://knightcolumbia.org/content/distrust-negative-first-amendment-theory-and-the-regulation-of-lies> [<https://perma.cc/N9JM-XC9M>])).

108. *See City of San Diego v. Roe*, 543 U.S. 77, 83 (2004).

109. Shanor, *supra* note 107, at 1322.

110. Redish & Pereyra, *supra* note 3, at 454.

111. *See infra* Section III.C for further discussion.

112. *Brown v. Hartlage*, 456 U.S. 45, 52 (1982).

commitment” is safeguarding democracy and the right to be informed.¹¹³ SLAPPs themselves are “deeply offensive to merited critique,” offending the First Amendment’s purpose when used for personal gain.¹¹⁴ When it comes to government actors responding to SLAPPs, the Petition Clause should not stop the government from responding with a procedural motion.¹¹⁵ Ultimately, anti-SLAPP laws do not violate the First Amendment because they are narrowly tailored to protect free speech, and with it, democracy.¹¹⁶

II. ELECTION LITIGATION’S SLIDING SCALE

While anti-SLAPP laws do not violate the First Amendment, government entities do not often use them in response to political litigation.¹¹⁷ These entities possibly fear violating First Amendment rights or would rather focus on the merits of the suit in front of them.¹¹⁸ Another explanation is that government actors do not realize that these are Election SLAPPs, as we traditionally think of lawsuits as either frivolous or legitimate.¹¹⁹

SLAPPs challenge this paradigm. Instead of this “light switch” approach, election litigation against state actors should be viewed as along a sliding scale that ranges from frivolous to legitimate litigation. Clearly frivolous election litigation can subject lawyers to sanctions and often do not survive a Federal Rule of Civil Procedure (“FRCP”) 12(b)(6) motion or state equivalent.¹²⁰ Legitimate and clearly non-frivolous election litigation, like requests to keep the polls open longer than statute allows, should be heard in court.¹²¹ Election SLAPPs fall in the middle of this spectrum, as they seem to have a legal basis, but are too politically charged to be considered legitimate. Like SLAPPs themselves, these seem meritorious on their face but have an

113. Shanor, *supra* note 107, at 1326.

114. Rauch, *supra* note 2, at 1513–14.

115. BURKE, *supra* note 43, § 2:33.

116. Redish & Pereyra, *supra* note 3, at 454.

117. Some states explicitly prohibit it. *See, e.g.*, ARIZ. REV. STAT. § 12-751 (2026). *But see* BURKE, *supra* note 43, § 2.33 (“The [California] anti-SLAPP statute is also available to a government official or the government itself.”).

118. *See* André, *supra* note 83, 119–121.

119. *See* Smith, *supra* note 38, at 307–08.

120. This includes most of the 2020 Trump cases. *See* Barnes, *supra* note 20.

121. *See, e.g.*, Jen Fifield, *Under Pressure, Arizona Sees Bomb Threats and Lines, but Delivers Straightforward Election Day*, VOTEBEAT (Nov. 5, 2024), <https://www.votebeat.org/arizona/2024/11/06/election-day-navajo-nation-extended-hours-bomb-threats> [<https://perma.cc/N8E3-YALF>] (noting that a judge ordered some Navajo County voting locations to stay open later due to ballot printer issues).

ulterior motive. Also like SLAPPS themselves, these lawsuits damage democracy.¹²²

This Part first explains how American democracy and election administration interact in the context of election lawsuits. Then, drawing on case studies, it explains how some election lawsuits (including Election SLAPPS) can negatively impact democratic institutions and candidates. Finally, it outlines the spectrum of election litigation, defining Election SLAPPS and following recent Election SLAPP proceedings.

A. Democracy and Election Litigation

In parliamentary democracies, citizens vote for one or two elected representatives, who then choose a prime minister or other head figure.¹²³ Voters in these countries have few offices to vote for on election day, as their administrators often split elections into separate days.¹²⁴ This leads to individual ballots having only a few candidates for one or two offices, which makes counting votes quick and easy.¹²⁵

The United States's system is vastly different, as Americans have a near oversaturation of offices and candidates to choose from.¹²⁶ In the 2023–2024 voting cycles, for example, Chicago alone had over one hundred offices on the ballot, including President of the United States, Congressional representatives, state representatives and senators, various district and board commissioners, court clerks, appellate court judges, subcircuit judges, and

122. See *supra* Section I.A.

123. See, e.g., *How the UK Parliament Works*, UK PARLIAMENT, https://www.parliament.uk/globalassets/documents/commons-information-office/leaflets/how_the_uk_parliament_works_june22.pdf [<https://perma.cc/D6YK-EX2G>].

124. See *Canada's Political System*, ELECTIONS CAN., <https://www.elections.ca/content.aspx?section=vot&dir=bkg&document=polsys&lang=e> [<https://perma.cc/NVL4-J6RV>]; EUGENE A. FORSEY, *HOW CANADIANS GOVERN THEMSELVES* 3–4 (10th ed. 2020), https://publications.gc.ca/collections/collection_2021/bdp-lop/X9-11-2020-eng.pdf [<https://perma.cc/SB7M-LMVD>].

125. See Tyler Bloomfield, *Why Elections Canada Still Uses Paper Voter Lists and Hand Counts Ballots for Federal Elections*, CBC NEWS (Sept. 9, 2021), <https://www.cbc.ca/news/politics/ask-paper-voter-lists-hand-counting-ballots-election-1.6167809> [<https://perma.cc/CKF7-PQAN>].

126. Called the ballot information problem, American voters have so many offices and candidates to choose from that it's nearly impossible to be informed on every issue on a ballot. See Leslie Graves, *The Pathfinder: The Ballot Information Problem*, PBS: PRESERVING DEMOCRACY, <https://www.pbs.org/wnet/preserving-democracy/2024/02/27/the-ballot-information-problem> [<https://perma.cc/K7RJ-U4LY>].

the Chicago School Board.¹²⁷ Some precincts in Maricopa County, Arizona, had up to eighty-seven contests in November 2024.¹²⁸ In states with direct democracy, citizens' initiatives or legislative referendums can also appear on ballots, further complicating the knowledge a general voter must have to engage in their civic duty.¹²⁹ There are 10,000 different ballots and elections jurisdictions across the country, each with their own rules.¹³⁰

In short, voting in America is complicated and confusing.¹³¹ To ensure that elections meet their goal of ensuring the candidate with the most support wins office, elections officials create ballots, run the polls on election day, and ensure that all ballots are safely counted.¹³² Despite attempts to destabilize these processes, our election administration system is incredibly secure.¹³³ Election administrators, from state election directors down to volunteering poll workers, have to comply with federal and state statutory guidelines.¹³⁴ The statutory safeguards in place ensure that insiders cannot change election

127. CHI. VOTES, 2024 GENERAL ELECTION VOTER GUIDE 4 (2024), <https://chicagovotes.com/wp-content/uploads/2024/10/Chicago-Votes-2024-General-Election-Voter-Guide-zine-format.pdf> [<https://perma.cc/97SZ-7GHG>]. Chicago also has fifty wards, each electing an alderman to represent them on the City Council. Kelly Bauer, *Here's Every Candidate Running in the 2023 Chicago Aldermanic Election*, BLOCK CLUB CHI., <https://blockclubchicago.org/2023/01/25/heres-every-candidate-running-in-the-2023-chicago-aldermanic-election> (Jan. 31, 2023) [<https://perma.cc/5BAJ-EPN8>].

128. *Maricopa County Unveils Two-Page Ballot for November Election*, MARICOPA CNTY. ELECTIONS (Sept. 4, 2024), <https://elections.maricopa.gov/news-and-information/elections-news/two-page-ballot2024-general-election.html> [<https://perma.cc/G3LS-DDGX>].

129. Direct democracy is a process by which voters place a new law or constitutional amendment on a ballot: if enough voters approve, the voters can circumvent the government and implement new laws. *See, e.g., Arizona*, ST. DEMOCRACY RSCH. INITIATIVE (Oct. 19, 2023), <https://statedemocracy.law.wisc.edu/directdemocracy50-state/2023/arizona/> [<https://perma.cc/P8G9-KX7K>].

130. *Election Administration at State and Local Levels*, NAT'L CONF. OF ST. LEGISLATURES, <https://www.ncsl.org/elections-and-campaigns/election-administration-at-state-and-local-levels> (Jan. 13, 2025) [<https://perma.cc/QB6J-KLW7>].

131. This confusion can affect election outcomes. For example, Florida's infamous "butterfly ballot" may have cost Al Gore the Presidency in 2000. *See* Spenser Mestel, *How Bad Ballot Design Can Sway the Result of an Election*, GUARDIAN (Nov. 19, 2019), <https://www.theguardian.com/us-news/2019/nov/19/bad-ballot-design-2020-democracy-america> [<https://perma.cc/L3JK-4XY7>].

132. *Election Administration at State and Local Levels*, *supra* note 130.

133. *See, e.g.,* Clint Swift & Sara Loving, *Analyzing Mass Voter Challenges in 2024*, PROTECT DEMOCRACY (Oct. 9, 2024), <https://protectdemocracy.org/work/analyzing-mass-voter-challenges-in-2024> [<https://perma.cc/W78S-UD72>].

134. Federally, this includes provisions like the Voting Rights Act ("VRA"), National Voter Registration Act ("NVRA"), and Help Americans Vote Act ("HAVA"). *See* C.R. DIV., U.S. DEP'T OF JUST., KNOW YOUR VOTING RIGHTS: YOUR GUIDE TO FEDERAL VOTING RIGHTS LAWS 2-4, <https://www.justice.gov/crt/media/1229951/dl?inline=> [<https://perma.cc/Y8RL-4NVD>].

outcomes while administering an election.¹³⁵ This system ensures that votes are accurate, counts are correct, and the proper elected officials are certified.¹³⁶

While our system successfully ensures that democracy is fair, some who want power will take steps to manipulate democratic institutions from the outside.¹³⁷ This is not a new phenomenon,¹³⁸ but the growing partisan chasm¹³⁹ has emboldened more plaintiffs to use litigation to gain political advantage. Rather than attacking candidates or policy positions, some candidates, political parties, or special interest groups attack the system itself, commonly claiming fairness (their position is disadvantaged by the supposedly neutral system) or election integrity (the system is not safe) as bases for lawsuits.¹⁴⁰ These lawsuits may attack statewide laws and policies,¹⁴¹ but others may attack smaller governmental units like counties or even townships¹⁴² for failing to follow the law.¹⁴³ Thus, politics enter the courtroom through election litigation.

Election integrity and fairness are the main avenues for election litigation, but these lawsuits are filed against different actors. Typically, political actors

135. *But see* Sharon Sullivan, *Tina Peters, Former Mesa County Clerk, Sentenced to 9 Years in Prison over Voting Systems Breach*, COLO. NEWSLINE (Oct. 3, 2024), <https://coloradonewsline.com/2024/10/03/tina-peters-former-mesa-county-clerk-sentenced-to-9-years-in-prison-over-voting-systems-breach> [<https://perma.cc/WVC6-8BNS>] (describing how county election official breached elections system to try to prove far-right election claim).

136. Requirements mostly include logic and accuracy testing, requiring party observers, decentralized vote count centers, and more. *See, e.g., Systems Check: A Guide to Testing Election Technology*, ELECTIONS GRP., <https://electionsgroup.com/resource/logic-and-accuracy-testing> (July 28, 2025) [<https://perma.cc/R736-HUBS>].

137. *See infra* Section II.B.2.

138. For example, gerrymandering (drawing district lines for political advantage) is a historical practice. *See* Michael Li, *Gerrymandering Explained*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/gerrymandering-explained> (Aug. 9, 2025) [<https://perma.cc/3QEF-3P8P>].

139. *See generally* LEE DRUTMAN, *BREAKING THE TWO-PARTY DOOM LOOP: THE CASE FOR MULTIPARTY DEMOCRACY IN AMERICA* (2020) (describing the growing partisan gap).

140. *See infra* Section II.B.2.

141. *Am. Encore v. Fontes*, No. 24-01673, 2024 WL 4333202, at *1 (D. Ariz. Sept. 27, 2024), *aff'd in part, vacated in part, rev'd in part*, 152 F.4th 1097 (9th Cir. 2025) (challenging Arizona election regulations).

142. Most states subdivide into counties (who usually administer elections), but some states have even smaller subdivisions called townships that administer elections. *Townships in the U.S.*, MICH. TWPS. ASS'N, <https://michigantownships.org/townships-in-the-u-s> [<https://perma.cc/F9UD-9SRA>].

143. *E.g., Wayne Schutsky, Maricopa County Settles Lawsuit over Vote Tabulation Equipment*, KJZZ (Aug. 13, 2024), <https://www.kjzz.org/kjzz-news/2024-08-13/maricopa-county-settles-lawsuit-over-vote-tabulation-equipment> [<http://perma.cc/3QCK-U7XH>] (describing Republican lawsuit challenging county failure to properly test voting machines).

attack democratic institutions by claiming that the system is not safe, while political actors claim fairness when attacking other candidates. Each is explored in turn.

1. Attacking Democratic Institutions

Elections for federal and state office are run and administered at the state level, per the Constitution.¹⁴⁴ Some federal laws implement certain requirements,¹⁴⁵ but states otherwise have wide latitude to implement changes as prescribed by their legislatures.¹⁴⁶ Due to their own histories and traditions, each state administers elections differently.¹⁴⁷ On one extreme, some states have deeply centralized election systems, whereby one official administers everything.¹⁴⁸ On the other extreme, some states have systems that are entirely dispersed among counties, or into even smaller subunits like townships, with the only oversight being by a state elections board.¹⁴⁹ State election systems most commonly fall between these two extremes, having loosely centralized systems by which counties administer elections with oversight by the state's chief election official.¹⁵⁰

In any system, political actors may attack the system from the outside for political gain. They may attack federal laws that regulate voter rolls, state laws that affect the conducting of elections, or even local laws that regulate polling hours.¹⁵¹ But the point is that in the many systems that are not tightly controlled by a single state actor, there often are no election lawyers to navigate the complex election systems and regulations.¹⁵² If a local precinct has a lawyer at all, he or she is usually a county attorney, an underpaid generalist who handles everything the county needs.¹⁵³ In contrast, those who may sue the county (especially in a politically divisive jurisdiction) hire high-powered and highly paid lawyers with expertise in election law.¹⁵⁴ This is like

144. U.S. CONST. art. I, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . .”).

145. C.R. DIV., U.S. DEP’T OF JUST., *supra* note 134, at 1–3.

146. *Election Administration at State and Local Levels*, *supra* note 130.

147. *Id.* (finding more than 10,000 election administration jurisdictions in the U.S.).

148. *Id.*

149. *Id.*

150. *Id.*

151. Examples of each of these are explored below when defining Election SLAPPs. *See infra* Section II.B.

152. Telephone Interview with Dax Goldstein, Couns., States United Democracy Ctr. (Mar. 5, 2025).

153. *Id.*

154. *Id.*

taking the local rec-league basketball player and dropping him into the National Basketball Association (“NBA”) Finals.

County attorneys often do not have the expertise, money, or resources to handle most election lawsuits, legitimate or not.¹⁵⁵ Non-profits have picked up some slack¹⁵⁶ and some counties and boards hire big law firms to represent them,¹⁵⁷ but these jurisdictions are incredibly vulnerable to Election SLAPPS. The Constitution requires that elections be dispersed into local areas, which means using local resources to defend against election challenges.¹⁵⁸ Those with local resources have a much harder time combating a major political party’s machinations, who have time and resources in abundance.

2. Attacking a Candidate Through Litigation

Political actors also use election litigation to attack political opponents.¹⁵⁹ Naturally, Democrats and Republicans often sue each other to gain electoral advantage.¹⁶⁰ Losing candidates themselves sometimes sue the candidate who beat them in an attempt to overturn election results.¹⁶¹ But most importantly for democracy, political parties will attack third party candidates who may be taking votes away from their candidate.

155. *Id.* But see *Election Administration at State and Local Levels*, *supra* note 130 (“The job of an election administrator has evolved from a largely clerical position to become a multifaceted managerial position with lots of moving parts . . .”).

156. Organizations like Protect Democracy and States United have started to step in and provide counsel and resources for these jurisdictions. See *Protecting Free & Fair Elections*, PROTECT DEMOCRACY, <https://protectdemocracy.org/our-work/protecting-elections> [<https://perma.cc/L9R9-2U9W>].

157. Telephone Interview with Dax Goldstein, *supra* note 152.

158. *Id.*

159. See, e.g., William Roberts, *The US Election Litigation Battlefield*, INT’L BAR ASS’N (July 24, 2024), <https://www.ibanet.org/The-US-election-litigation-battlefield> [<https://perma.cc/XS2M-VDX6>].

160. See, e.g., *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423 (2020); *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, 673 F.3d 192 (3d Cir. 2012); *Ariz. Democratic Party v. Ariz. Republican Party*, No. CV-16-03752-PHX-JJT, 2016 WL 8669978 (D. Ariz. Nov. 4, 2016); *Penn. Democratic Party v. Republican Party of Penn.*, Civ. No. 16-16-5664, 2016 WL 6582659 (E.D. Penn. Nov. 7, 2016); *Dall. Cnty. Republican Party v. Dall. Cnty. Democratic Party*, No. 05-18-00916-CV, 2019 WL 4010776 (Tex. Ct. App. Aug. 26, 2019); *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 727 S.E.2d 418 (S.C. 2012).

161. For example, the 2022 Republican Arizona Attorney General candidate challenged his election loss three times but did not succeed. Caitlin Sievers, *Appeals Court Rejects Abe Hamadeh’s Third Challenge to His 2022 AG Loss*, AZ MIRROR (Apr. 11, 2024), <https://azmirror.com/2024/04/11/appeals-court-rejects-abe-hamadehs-third-challenge-to-his-2022-ag-loss> [<https://perma.cc/NX85-6C3P>].

For example, the Democratic Party used election litigation to attack Ralph Nader's 2004 independent Presidential campaign.¹⁶² Nader, a famed consumer advocate, had played spoiler to Democrats in his 1996 and 2000 Presidential campaigns.¹⁶³ The Democrats viewed Nader as a serious political contender who threatened to take votes from their candidate, John Kerry.¹⁶⁴ In order to stifle his political participation, the Democrats forced Nader to defend against twenty-nine lawsuits in nineteen different jurisdictions.¹⁶⁵ In a contemporary interview with the New York Times, a former Democratic congressman explicitly said that they were going "to drain [Nader] of resources and force him to spend his time and money."¹⁶⁶ On the merits, Nader won twenty-three lawsuits, but the Democrats achieved their intended goal—neutralizing Nader's campaign by diverting resources that would have otherwise been spent gaining ballot access and speaking to voters.¹⁶⁷

After his 2004 loss, Nader sued the Democratic Party.¹⁶⁸ He and his campaign alleged that the earlier lawsuits were baseless and designed to drain his funds, interfering with his right to run for office.¹⁶⁹ But the trial court found that Nader's claims were based on the Democrats' First Amendment right to petition and that Nader failed to show how the Democrats' challenges lacked an arguable basis in law.¹⁷⁰ However, when the Democrats moved for attorney's fees, the court only granted them one dollar.¹⁷¹ The court found that the case

involve[d] a candidate for national elective office seeking to put forth his ideas to the national electorate for their consideration and approval and the [Democrats'] alleged calculated efforts to interfere, discourage and impede public exposure to that candidacy

162. See Kelly, *supra* note 30, at 192.

163. 2004 *Vote Profile: Ralph Nader*, ABC NEWS (Oct. 19, 2004), <https://abcnews.go.com/Politics/story?id=178532&page=1> [<https://perma.cc/H67J-E5MX>]. Nader was such a spoiler in 2000 that Republicans were running ads for him close to the election. Kelly, *supra* note 30, at 199.

164. Kelly, *supra* note 30, at 201.

165. *Id.* at 192.

166. Katherine Q. Seelye, *Convictions Intact, Nader Soldiers On*, N.Y. TIMES (Aug. 2, 2004), <https://www.nytimes.com/2004/08/02/us/convictions-intact-nader-soldiers-on.html?searchResultPosition=1>.

167. Kelly, *supra* note 30, at 192.

168. *Id.* at 209.

169. *Id.* at 211. Ironically, one of these suits was dismissed using Maine's anti-SLAPP statute. *Id.*

170. *Id.* at 212.

171. *Id.*

and those ideas. Those efforts are central to the functioning of this democracy.¹⁷²

Nader's plight shows how damaging Election SLAPPs can be to democracy. An independent candidate who had received national attention in previous Presidential elections was defeated not only by the voters' will, but also by a major political party using their resources to defeat his campaign in the courtroom. The judicial system's purpose is to resolve actual disputes, not for a political party to defeat opponents.¹⁷³ That should be left to the campaign trail.

B. Wrestling with a Shadow: Defining Election SLAPPs

This Section explains election litigation's aforementioned sliding scale.¹⁷⁴ First, this Section touches on the spectrum's sanctionable and frivolous end. Second, it describes the other end of the spectrum and what makes litigation legitimate. Finally, the last Section attempts to position Election SLAPPs on the sliding scale, situating them between these two poles.

1. Sanctionable, Frivolous, and Legitimate Election Litigation

a. Sanctionable Litigation

Attorneys are subject to discipline when they violate ethics rules or engage in sanctionable conduct.¹⁷⁵ Courts award sanctions when a judge deems that an attorney has misused their position and the judicial system in a way that warrants punishment.¹⁷⁶ These punishments fit the crime and are meant to deter those who are "similarly situated."¹⁷⁷ Federal Rule of Civil Procedure 11 and its state equivalents guide sanctionable conduct.¹⁷⁸ Rule 11(b) requires that lawyers not present claims for improper purposes or bring frivolous claims.¹⁷⁹ Rule 11(c) usually requires a motion by a party before a court can

172. *Id.* at 212–13 (quoting *Nader v. Me. Democratic Party*, WASSC-CV-09-57, at 2 (Me. Super. Ct., Was. Cty., Nov. 15, 2010)).

173. *See infra* Part III.

174. *See supra* Section II.

175. *See* MODEL RULES OF PRO. CONDUCT rs. 8.3, 8.4, 8.5 (AM. BAR ASS'N 1983); FED. R. CIV. P. 11(c).

176. MODEL RULES FOR LAW. DISCIPLINARY ENF'T r. 10 (AM. BAR ASS'N 2002).

177. FED. R. CIV. P. 11(c)(4).

178. *See, e.g., id.*

179. *Id.* (b)(1)–(2).

impose sanctions onto an attorney or firm.¹⁸⁰ Regardless, deterrence is the lodestar for imposing sanctions; judges should only impose sanctions when they fear other attorneys will act similarly.¹⁸¹

While a court can impose sanctions on its own accord, it is incredibly unlikely to do so in election cases due to the case's political nature.¹⁸² A political party could easily spin a judge's apolitical decision to impose sanctions into a political one, especially if the judge was appointed by the opposing political party.¹⁸³ For example, a Democrat who is sanctioned by a Republican appointed judge can simply claim that the sanctions are meritless and that the judge is playing politics, and vice versa.

Although this could happen, the reality is that sanctions are an extraordinary remedy that judges do not grant lightly.¹⁸⁴ One election case involving sanctions stems from Arizona's 2022 gubernatorial election, where Democrat Katie Hobbs narrowly defeated Republican Kari Lake by approximately 17,000 votes, less than 1% of the electorate.¹⁸⁵ In *Lake v. Hobbs*,¹⁸⁶ Lake brought claims in federal court that Arizona's electronic voting machines were not properly tested and verified, seeking a preliminary injunction.¹⁸⁷ Lake claimed that the voting machines were "'rife' with cybersecurity vulnerabilities" and that unauthorized people could manipulate the vote count.¹⁸⁸ The court granted the defendant's motion to dismiss, however: even upon drawing all reasonable inferences in Lake's favor, the purported injuries were much too speculative and unproven to grant Lake standing.¹⁸⁹

180. *Id.* (c)(2).

181. *See* Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990); United Nat'l Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1115 (9th Cir. 2001) ("Judges therefore should impose sanctions on lawyers for their mode of advocacy only in the most egregious situations, lest lawyers be deterred from vigorous representation of their clients.").

182. *See* Ariz. Republican Party v. Richer, 547 P.3d 356, 364 (Ariz. 2024) (allowing "long shot" elections arguments without fear of sanctions).

183. *See* Shanor, *supra* note 107, at 1354.

184. *Lake v. Hobbs*, 643 F. Supp. 3d 989, 1012 (D. Ariz. 2022), *aff'd in part, rev'd in part sub nom.* *Lake v. Gates*, 130 F.4th 1054 (9th Cir. 2025).

185. *See Arizona Governor Election Results*, N.Y. TIMES (Dec. 5, 2022), <https://www.nytimes.com/interactive/2022/11/08/us/elections/results-arizona-governor.html>.

186. 623 F. Supp. 3d 1015 (D. Ariz. 2022).

187. *Id.* at 1020.

188. *Id.*

189. *Id.* at 1028.

Hobbs motioned for sanctions, and in the follow up case,¹⁹⁰ the federal court found that three claims brought by Lake’s counsel were sanctionable for being “factually baseless” and false.¹⁹¹ The court noted that the plaintiffs “baselessly kicked up a cloud of dust” and “forced Defendants and their counsel to spend time and resources defending this frivolous lawsuit rather than preparing for the elections.”¹⁹² The court ultimately granted the defendants’ motion for sanctions to deter others from making false and unproven claims in court.¹⁹³ Even in this case, where the plaintiffs brought three false claims, the court was hesitant to grant sanctions because sanctions are an extraordinary remedy.¹⁹⁴

b. Frivolous Litigation

Compared to the extreme remedy of sanctions, FRCP 12(b)(6) motions to dismiss election litigation are extremely common. FRCP 12(b)(6) allows defendants to move to dismiss a case if the plaintiff fails to state a claim for which relief can be granted.¹⁹⁵ A 12(b)(6) motion is proper when plaintiffs fail to properly allege elements of the asserted cause of action, or has offered legal conclusions rather than showing how the defendant violated the law or was wronged.¹⁹⁶ At the 12(b)(6) stage, the judge must accept the plaintiff’s facts as true when ruling on the motion.¹⁹⁷ While some cases are improperly dismissed at this stage, many election cases dismissed at this point are frivolous.¹⁹⁸

As election litigation occurs in civil courts, these Federal Rules or their state equivalents apply. One of the more famous “Kraken” cases¹⁹⁹ was *Bowyer v. Ducey*, filed in the District of Arizona.²⁰⁰ Discontent with the 2020 Presidential election results, three registered voters and eleven Republican nominees to be Arizona’s presidential electors challenged the election, seeking a temporary restraining order to force the governor to “de-certify”

190. *Lake v. Hobbs*, 643 F. Supp. 3d 989 (D. Ariz. 2022), *aff’d in part, rev’d in part sub nom. Lake v. Gates*, 130 F.4th 1054 (9th Cir. 2025). A “consultant” on the case, Alan Dershowitz, appealed the sanction: relief was granted only as to him. *Gates*, 130 F.4th at 1058.

191. *Lake*, 643 F. Supp. 3d at 1001–03, 1009–10 (“[T]he Court does not find that Plaintiffs have acted appropriately in this litigation.”).

192. *Id.* at 1012.

193. *Id.* at 1012–13.

194. *Id.* at 997.

195. FED. R. CIV. P. 12(b)(6).

196. *Id.*

197. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

198. *See Barnes*, *supra* note 20.

199. *See BBC NEWS*, *supra* note 22.

200. 506 F. Supp. 3d 699 (D. Ariz. 2020).

the election results.²⁰¹ The plaintiffs brought four causes of action, the most notable being “Wide-Spread Ballot Fraud,” claiming that specific voting machines were hacked and that votes were stolen.²⁰²

Like almost every other Kraken case, this lawsuit was dismissed on a 12(b)(6) motion.²⁰³ The plaintiff’s allegations were “based on anonymous witnesses, hearsay, and irrelevant analysis of [other] elections.”²⁰⁴ The Republican plaintiffs presented no proof that voting machines were hacked and failed to present any plausible allegations of fraud.²⁰⁵ This 12(b)(6) motion was properly used to dismiss a frivolous election case.

c. Legitimate Litigation

The other end of the election litigation spectrum houses clearly legitimate litigation. Legitimate litigation could include challenges to voter identification laws,²⁰⁶ Voting Rights Act violations,²⁰⁷ and even requests to keep the polls open longer than normal due to threats.²⁰⁸ Certainly, a legitimate challenge is warranted when a state actor fails to fulfill their duties as an election official.²⁰⁹ Whether maliciously or not, vote counters make mistakes and votes may not be counted, which could require judicial intervention.²¹⁰ In most respects, election litigation is like any other litigation; however, some election cases have expedited timelines.²¹¹ When a case is close enough to an election and a legitimate challenge to a procedure or

201. *Id.* at 706–07.

202. *Id.* at 707. Because they were claiming fraud, the plaintiffs had to plead under FRCP 9(b), which requires extra particularity in their complaint. *See* FED. R. CIV. P. 9(b).

203. *Bowyer*, 506 F. Supp. 3d at 724.

204. *Id.* at 721–22.

205. *Id.* at 721, 724 (“Plaintiffs append over three hundred pages of attachments, which are only impressive for their volume Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court.”)

206. *See, e.g., Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 185–87 (2008).

207. *See, e.g., Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 653 (2021) (challenging a law under section 2 of the VRA).

208. *See, e.g., Fifeild, supra* note 121.

209. Matt Cohen, *What Happens When Election Officials Refuse to Certify Results?*, DEMOCRACY DOCKET (Aug. 1, 2024), <https://www.democracydocket.com/analysis/what-happens-when-election-officials-refuse-to-certify-results> [<https://perma.cc/8C2S-XFDW>].

210. Derek Tisler & Gowri Ramachandran, *To Prevent Chaos and Confusion, Judges Must Prepare for Election Emergencies*, STATE CT. REP. (Oct. 1, 2024), <https://statecourtreport.org/our-work/analysis-opinion/prevent-chaos-and-confusion-judges-must-prepare-election-emergencies> [<https://perma.cc/ZBC2-A7XS>].

211. *See* Richard Hasen & Matthew Queen, *What Judges Should Know About Election Law*, JUDICATURE, 2024 no. 1, at 35, 37.

process could change the outcome, courts will generally order an expedited procedural timeline, crunching months of work into a week or two.²¹²

For example, Maricopa County Recorder Stephen Richer initiated a legitimate election lawsuit against Secretary of State Adrian Fontes in 2024.²¹³ In 2004, Arizona voters approved Proposition 200, requiring documented proof of citizenship (“DPOC”) to vote in state elections.²¹⁴ Due to various challenges to the law, voters without DPOC can vote for federal candidates, but not state candidates.²¹⁵ In line with the National Voter Registration Act’s “motor-voter” provision, citizens can register to vote when they receive or update their driver’s license.²¹⁶ Those who were issued a driver’s license before October 1st, 1996, and then received an updated license afterwards, may not have shown proper DPOC, as elections officials assumed that voters had DPOC if they already had a driver’s license.²¹⁷ Due to this oversight, approximately 218,000 voters had not provided DPOC before voting, technically violating the law.²¹⁸

Richer filed a lawsuit to ask the Arizona Supreme Court to allow those affected to vote in Arizona’s elections.²¹⁹ Fontes could not direct county recorders to break the law and allow those without DPOC to vote, but these voters thought that they were properly registered; litigation was therefore required to figure out how these voters could vote in the 2024 general election.²²⁰ Ultimately, the two parties got a clear legal answer from the Arizona Supreme Court: these voters could vote in 2024, but would need to provide DPOC to vote after.²²¹ Richer and Fontes would not have been able

212. *Id.* However, courts generally do not change the law too close to an election. This is called the *Purcell* principle. See Casey P. Schmidt, Note, *Disrupting Election Day: Reconsidering the Purcell Principle as a Federalism Doctrine*, 110 VA. L. REV. 1493, 1495 (2024).

213. Emergency Petition for Special Action, *Richer v. Fontes*, No. CV-24-0221-SA, 2024 WL 4299099 (Ariz. Sept. 20, 2024).

214. *Id.* at 2.

215. Gloria Rebecca Gomez, *GOP, Fontes Ask AZ Supreme Court Not to Disenfranchise 97,000 Improperly Registered Voters*, AZ MIRROR (Sept. 18, 2024), <https://azmirror.com/2024/09/18/gop-fontes-ask-az-supreme-court-not-to-disenfranchise-97000-improperly-registered-voters> [<https://perma.cc/MU9Z-T7EX>].

216. *Id.*

217. Emergency Petition for Special Action, *supra* note 213, at 3.

218. *Id.* at 4; see also Melissa Blasius, *Arizona Gov. Hobbs Accuses Secretary of State Fontes of Finger-Pointing in Non-Citizen Voter Probe*, ABC NEWS 15, <https://www.abc15.com/news/local-news/investigations/arizona-gov-hobbs-accuses-sos-fontes-of-finger-pointing-in-non-citizen-voter-probe> (Jan. 30, 2025) [<https://perma.cc/KD64-VJKD>].

219. Emergency Petition for Special Action, *supra* note 213, at 4.

220. *Id.*

221. Blasius, *supra* note 218.

to properly administer the election without judicial intervention, making this a legitimate lawsuit.

Judicial intervention is required in many other election cases. Perhaps none of these is as famous as *Bush v. Gore*, where the Supreme Court essentially decided the 2000 Presidential election.²²² Other cases involve laws that purportedly attack the right of minorities to vote, such as *Ohio Democratic Party v. Husted*, where state law removed some early voting, which purportedly affected black voters more than others.²²³ While legitimate lawsuits are hard to define, the party bringing the claim, their purported purpose, and the requested remedy can help judges figure it out. In short, not every election lawsuit is an Election SLAPP.

2. Election SLAPPs: Not Frivolous, but Not Legitimate

Election SLAPPs fall somewhere in the middle of the spectrum outlined above. Election SLAPPs are not sanctionable, as they do not completely misuse the legal system.²²⁴ The lawyers who bring Election SLAPPs have a purported basis in law for doing so, even if the ultimate purpose is something else. In addition, some Election SLAPPs may be dismissed on a 12(b)(6) motion, but others survive.²²⁵ Like normal SLAPPs, Election SLAPPs that have a plausible legal claim on their face may sneak past this pleading stage.²²⁶ Also like SLAPPs themselves, Election SLAPPs are not designed to win on the merits.

The recent rise in Election SLAPPs allegedly stems from President Trump's defeat in 2020.²²⁷ Before the 2024 Presidential election, some Republican lawsuits were allegedly meant to lay the groundwork in case he lost the Presidential election.²²⁸ Some of President Trump's opponents said the goal was not to win these lawsuits, but rather to sanitize false claims and

222. See 531 U.S. 98, 111 (2000). However, at least one Justice later felt that the Court's intervention was not necessary. Jeffrey Toobin, *Justice O'Connor Regrets*, NEW YORKER (May 6, 2013), <https://www.newyorker.com/news/daily-comment/justice-oconnor-regrets> (quoting Justice O'Connor: "Maybe the Court should have said, 'We're not going to take it, goodbye.'").

223. 834 F.3d 620, 623 (6th Cir. 2016). The voters lost their challenge under a balancing scheme known as *Anderson-Burdick*. *Id.* at 635.

224. See Kelly, *supra* note 30, at 209.

225. Swift & Loving, *supra* note 133.

226. See *supra* Section I.A.

227. Danny Hakim et al., *Trump Allies Bombard the Courts, Setting Stage for Post-Election Fight*, N.Y. TIMES (Sept. 29, 2024), <https://www.nytimes.com/2024/09/29/us/politics/trump-2024-presidential-campaign-election-lawsuits.html>.

228. *Id.*

add legitimacy to Republican positions.²²⁹ Another source says that these were meant to be “zombie lawsuits,” dead on arrival but capable of revival if President Trump had lost.²³⁰ In essence, these lawsuits were meant as a fallback provision, a way to claim that Republicans attempted to fix the “broken election system” before the election happened.²³¹ To their credit, Republicans claimed that these lawsuits were aimed at creating more confidence in the electoral system.²³² Taken at face value, Republican messaging indicated that the lawsuits were to protect democracy, not damage it.

This illustrates the trouble in defining an Election SLAPP. Lawyers who successfully defeat a motion to dismiss believe that their clients have a legitimate legal claim. Opponents who respond to Election SLAPPs think the lawsuits are frivolous and political. Judges must accept non-conclusory claims as true at the pleading stage²³³ and facts that allow a claim to survive in court make an Election SLAPP feel legitimate. Trying to define whether a lawsuit is an Election SLAPP is like wrestling with a shadow, attempting to define something amorphous and within the eye of the beholder.

Courts frequently wrestle with Election SLAPPs and this balance. For example, *Mussi v. Fontes* was recently decided at the District of Arizona.²³⁴ The National Voter Registration Act (“NVRA”) requires election officials to periodically remove voters from registration lists to ensure that the rolls are accurate.²³⁵ Bringing over one hundred pages of “expert statistical analysis,”²³⁶ the Arizona Republican Party claimed that the Arizona Secretary of State (Fontes) violated the law by failing to remove dead voters from voter rolls.²³⁷ According to the Republicans’ data scientist, registration numbers in some counties represented over one hundred percent of the county’s residents, indicating that Fontes had not done his duty.²³⁸ The plaintiffs’

229. *Id.*

230. Ben Raderstorf, *The Lurking Danger of Zombie Lawsuits*, IF YOU CAN KEEP IT (Oct. 4, 2024), <https://www.ifyoucankeepit.org/p/the-lurking-danger-of-zombie-lawsuits>.

231. *Id.*

232. Hakim et al., *supra* note 227.

233. *See* Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

234. *Mussi v. Fontes*, No. CV-24-01310-PHX, 2024 WL 4988589 (D. Ariz. Dec. 5, 2024), *aff’d* No. 25-1427, 2026 WL 753171 (9th Cir. Mar. 17, 2026).

235. 52 U.S.C. §§ 20501–5011; Ben Gips & Anna Dorman, *Voter List Maintenance, Explained*, PROTECT DEMOCRACY (Nov. 4, 2024), <https://protectdemocracy.org/work/voter-list-maintenance-explained> [<https://perma.cc/TM3J-GVTD>].

236. *But see* Loving & Dukes, *supra* note 15 (noting that the “Big Lie” of election theft can be manipulated by bogus statistical analysis).

237. Complaint at 2–3, *Mussi v. Fontes*, No. CV-24-01310-PHX, 2024 WL 4988589 (D. Ariz. Dec. 5, 2024).

238. *Id.* at ex. 1.

purported injury was that this failure dilutes their vote and erodes confidence in election administration.²³⁹ The requested injunctive relief would have forced Fontes to comply with the NVRA and remove the dead voters from the rolls.²⁴⁰ If Republicans were correct, Fontes was violating federal law.

This was not a one-off lawsuit; many other vote dilution or failure to maintain proper voter roll claims were filed by the Republican National Committee (“RNC”) and related groups in 2024.²⁴¹ These claims take years to resolve and can be incredibly expensive on all parties.²⁴² Indeed, some organizations have even pointed out that this is the “Big Lie” of election insecurity taking the form of data science.²⁴³ To their credit, Republicans and associated groups say they bring these lawsuits to increase confidence in election systems and ensure that our government is duly performing its duties.²⁴⁴

However, *Mussi v. Fontes* and these other lawsuits arguably were not aimed to force election officials to comply with the NVRA, but to gain support for Republican political causes.²⁴⁵ Three days after filing *Mussi*, one plaintiff in that case put out a statement about the suit, advocating for people to join their network and influence bills at the state legislature.²⁴⁶ This may have been part of their political messaging, saying that the Democrats in charge were not doing their job.²⁴⁷ The plaintiff may have also made money by asking for donations when announcing the litigation, another possible reason for the lawsuit.²⁴⁸

The answering and amicus briefs in *Mussi* also argue that the plaintiffs litigated the case as a part of a political agenda. In his first answering brief, Fontes pointed out that “this is one of a number of cookie-cutter lawsuits . . . roaming the country,” but otherwise did not focus on the litigation’s political

239. *Id.* at 4–5.

240. *Id.* at 19.

241. *See, e.g.*, Complaint, United Sovereign Ams., Inc. v. Benson, No. 24-cv-12256, 2025 WL 1285806 (E.D. Mich. May 2, 2025); Complaint, Judicial Watch, Inc. v. Weber, 146 S. Ct. 292 (Oct. 14, 2025); Complaint, Republican Nat’l Comm. v. Aguilar, No. 2:24-cv-00518, 2024 WL 4529358 (D. Nev. Oct. 18, 2024); Complaint, United Sovereign Ams., Inc. v. Schmidt, No. 1:24-CV-1003, 2025 WL 675453 (M.D. Pa. Mar. 3, 2025); *see also* Loving & Dukes, *supra* note 15 (describing a similar suit brought in Georgia).

242. In another case from Florida, the litigation and appeal took over three years to settle this issue, basically finding that the case should’ve been dismissed from the beginning. *See Bellitto v. Snipes*, 935 F.3d 1192, 1196 (11th Cir. 2019).

243. *See* Loving & Dukes, *supra* note 15.

244. Hakim et al., *supra* note 227.

245. ARIZ. FREE ENTER. CLUB, *supra* note 26.

246. *Id.*

247. *Id.*

248. *Id.*

aspect.²⁴⁹ Fontes’ second reply claimed that the “votes Plaintiffs view as legitimate (and in favor of their preferred candidates) may be outnumbered by votes from voters that Plaintiffs view as illegitimate (and against their preferred candidates). This is not federally cognizable harm.”²⁵⁰

Not surprisingly, the Democratic National Committee (“DNC”) filed an amicus brief and focused much more on the litigation’s political aspect.²⁵¹ Calling the suit “political stagecraft” and stating that the plaintiff’s objective “[was] political theater rather than the vindication of federal law,” the DNC did what Fontes would not by calling out the lawsuit’s partisan animus.²⁵² The DNC took it even one step further, claiming that the litigation was meant to “advance a political agenda premised on distrust and suspicion as November approaches,” arguing that the litigation’s objective was to eventually undermine the 2024 election results.²⁵³

The court ultimately dismissed the case for lack of standing, but the court first wrestled with the suit’s nature.²⁵⁴ Discussing injury for Article III standing, the court noted that other courts have rejected similar claims, but also noted that some courts found injury on similar facts.²⁵⁵ However, the complaint “conspicuously fail[ed] to allege that any [failure to follow the NVRA has] actually occurred in Arizona—instead, it simply speculates that the alleged lack of voter-list maintenance means ‘ineligible voters have an opportunity to vote in Arizona elections, *risking* the dilution of Plaintiffs’ legitimate votes.’”²⁵⁶ However, the court also noted that this is specific to these plaintiffs: other plaintiffs under different facts might have been able to show that vote dilution gave them standing.²⁵⁷

The claim in *Mussi* is potentially an Election SLAPP. Republicans argue that the lawsuit and others like it were meant to ensure election integrity around the country, certainly a worthwhile endeavor.²⁵⁸ Cutting against the

249. Defendant’s Motion to Dismiss at 8, *Mussi v. Fontes*, No. CV-24-01310-PHX, 2024 WL 4988589 (D. Ariz. Dec. 5, 2024).

250. Defendant’s Reply in Support of Motion to Dismiss at 3, *Mussi*, 2024 WL 4988589 (D. Ariz. Dec. 5, 2024).

251. Amicus Brief of the Democratic National Committee and Arizona Democratic Party in Support of Dismissal at 1, *Mussi*, 2024 WL 4988589 (D. Ariz. Dec. 5, 2024).

252. *Id.*

253. *Id.* at 2–3.

254. *Mussi v. Fontes*, No. CV-24-01310-PHX, 2024 WL 4988589, at *9 (D. Ariz. Dec. 5, 2024), *aff’d* No. 25-1427, 2026 WL 753171 (9th Cir. Mar. 17, 2026).

255. *Id.* at *3.

256. *Id.* at *5.

257. *Id.* at *6.

258. Emily Holshouser, *Republicans Sue to Purge at Least 500,000 People from Arizona’s Voter Rolls*, AZ MIRROR (June 10, 2024), <https://azmirror.com/briefs/republicans-sue-to-purge-at-least-500000-people-from-arizonas-voter-rolls> [<https://perma.cc/8KZF-ATUH>].

Republican's position are the "cookie-cutter" lawsuits around the country and the plaintiff's funding request. Democrats believed the NVRA lawsuits that were percolating around the country may not have been to force compliance with federal law but were meant to attack democratic institutions and voters who vote Democrat. *Mussi* may also have been a zombie lawsuit, dead on arrival but meant to challenge the election if President Trump had lost. Cutting against the Democrats' argument is the statistical data and the fact that other courts have found standing in these claims.²⁵⁹ It is not clear how to deal with lawsuits like *Mussi*, but anti-SLAPP law may provide a solution.

III. APPLYING ANTI-SLAPP LAW TO ELECTION LITIGATION

If one major party is using the judicial system to advance a political agenda, it makes sense that the other major party should wrestle with the shadows of partisanship. Neutral state actors, especially those who administer elections, should avoid partisanship. Election SLAPPs show the difficulty that government respondents have in responding to political lawsuits. They cannot call out a lawsuit for being political without looking political themselves. Their only option is to hope that a judge grants their motion to dismiss, which can take quite a long time or not happen at all. Election SLAPP statutes can shorten this time, weeding out lawsuits that are not meant to be decided on the merits. However, Election SLAPP statutes must be designed in a way that allows legitimate lawsuits to move forward, as unfairly removing a legitimate lawsuit only exacerbates the problem.

This Part examines why Election SLAPP statutes are unique and different from other procedural motions, followed by what such a procedural motion would look like. Then, this Part explains why the First Amendment would not be violated by such motions. Finally, this Part will consider the benefits and drawbacks of an Election SLAPP statute.

A. Current Laws Are Not Enough

Election SLAPPs evade current procedural mechanisms for keeping sanctionable and frivolous claims out of court. Because sanctions are an extreme remedy not to be given unless an attorney has misused their position and the judicial system in a way that warrants punishment, sanctions are

259. *Mussi*, 2024 WL 4988589, at *3 (collecting cases). *But see id.* at *9 n.4 (noting that lower court cases finding standing may no longer be good law).

generally not an option for most Election SLAPPs.²⁶⁰ Some election litigation, like *Lake v. Hobbs* and *Bowyer v. Ducey*—those that have no purported basis where a court may perceive the lawsuit as legitimate—do not need an extra procedural mechanism because the procedural mechanisms already exist. Sanctions and 12(b)(6) motions can properly deal with claims on that end of the election law spectrum. Legitimate lawsuits like *Richer v. Fontes* face little to no procedural hurdles when a claim is properly asserted. But a procedural gap arises between these ends of the spectrum if a case is neither frivolous nor legitimate.

An Election SLAPP statute fills the procedural gap, helping to dismiss lawsuits that may have a legal basis to survive a 12(b)(6), but are not designed to win on that legal basis. Normal SLAPPs are disguised as meritorious on their face but restrict the right to be informed and express thoughts freely.²⁶¹ Election SLAPPs are disguised as meritorious on their face, restrict the right to be informed, and attack at democracy's edges.

Election SLAPPs include the lawsuits that plagued Ralph Nader's 2004 campaign and the lawsuits that allegedly laid the groundwork to challenge a 2024 Trump election loss. *Mussi v. Fontes*, ultimately dismissed on a 12(b)(1) motion,²⁶² may have been an Election SLAPP. But the court may not have even had to wrestle with the shadows of that suit if the defendants were able to use an Election SLAPP statute. Election SLAPPs and other “zombie lawsuits” attack democratic institutions and American democracy itself. An Election SLAPP statute (should a defendant use it) could fill the gap to protect democracy.

Care must be taken to not sift out legitimate lawsuits using an Election SLAPP motion. Lawsuits that challenge illegal or ill-advised government activity need to be heard in court, otherwise the provision entrenches bad actors into powerful positions. An Election SLAPP statute, designed to protect democracy, could become a sword to attack democracy. California's anti-SLAPP model should help prevent this.

B. California's Anti-SLAPP Model Applied to Election Litigation

The California Anti-SLAPP mechanism allows those with less time and resources than the plaintiff to quickly dismiss a suit from court when the suit's aim is to dissuade the defendant from speaking out. Election SLAPPs are in

260. See *supra* Section II.B.1.

261. Prather, *supra* note 36, at 51–52.

262. *Mussi v. Fontes*, No. CV-24-01310-PHX, 2024 WL 4988589, at *9 (D. Ariz. Dec. 5, 2024), *aff'd* No. 25-1427, 2026 WL 753171 (9th Cir. Mar. 17, 2026).

lockstep with normal SLAPPs: those with more resources (the major political parties and candidates) use the judicial system not to resolve legal disputes, but to take advantage of those with less time and resources (county officials).²⁶³ As much as we cheer for David to beat Goliath, state and county officials do not have the metaphorical stone to deter these lawsuits.

A procedural mechanism like California's anti-SLAPP statute would protect government actors. Procedurally, the judge should engage in a two-part inquiry. First, the judge should consider whether the movant/defendant has shown that the cause of action against it arises from a non-legal purpose. For a case like *Mussi*, movants could point to several factors: the case may have been a zombie lawsuit to later challenge election results, the other "cookie cutter claims roaming the country,"²⁶⁴ Fontes' claim that the suit was to disenfranchise Democrat voters, and the DNC amicus calling the suit political theater could be considered. These factors are not necessarily dispositive on their own, but perhaps considering the totality of the circumstances could convince a judge that this was an Election SLAPP. If the defendants could successfully show that the lawsuit had a non-legal purpose, the non-moving party/plaintiffs would have to show that they could meet the legal burden for their claim, a process akin to summary judgment.²⁶⁵ If defendants can meet their burden, it essentially accelerates the suit to the summary judgment stage, avoiding discovery's time and expense. While this is happening, the judge would consider both the pleadings and affidavits, staying discovery while the motion is pending. This allows quick and easy resolution, the single most important component of any court or statutory scheme to prevent Election SLAPPs.

The Election SLAPP motion would be defeated if either the defendant could not prove ulterior motive or the plaintiff could legally rebut such ulterior motive. Like a California anti-SLAPP motion, the judicial proceeding would continue as if the Election SLAPP motion never happened. This advantages both plaintiffs and defendants, as clearing this hurdle indicates a legitimate lawsuit while not prejudicing any other defense that may be brought. This dissuades governmental actors from using this mechanism in every election case brought against them.

263. See AM. JUR. PROOF OF FACTS 3D, *supra* note 97, § 5.

264. Defendant's Motion to Dismiss, *supra* note 249, at 8.

265. See *supra* note 49 and accompanying text.

C. Election SLAPP Statutes Do Not Violate the First Amendment

The government has an interest in dissuading litigation filed against it, but this interest implicates the First Amendment. The First Amendment's Speech and Petition Clauses are cognate rights,²⁶⁶ connected to protect the right to participate in matters of public concern. Arguably, matters of public concern could include Election SLAPPs, as most election litigation qualifies as "a subject of general interest and of value and concern to the public."²⁶⁷ However, despite the "thorny 'speech-speech' balance,"²⁶⁸ an Election SLAPP statute would not violate either Clause.

An Election SLAPP statute would not violate the First Amendment's Speech Clause. Litigation is speech under the First Amendment, especially when it comes to political litigation.²⁶⁹ Normal anti-SLAPP statutes balance First Amendment rights to litigation against speech on matters of public concern, weighing speech against speech.²⁷⁰ On the other hand, political lawsuits against the government are both at once. This presents a different balance for courts to weigh in an Election SLAPP motion.

Despite this different balance, political speech can be restricted in a non-public forum like a courtroom, if the restriction is viewpoint neutral and reasonable. The judicial system's purpose is to present an apolitical forum for resolving disputes,²⁷¹ a purpose that an Election SLAPP law would serve well. The judicial system would not be opposing the speaker's view but would consider the claim's veracity. Public officials like state and local actors may oppose a speaker's view, but these public officials are likely to be in the government's executive or legislative branches rather than judicial. The First Amendment does not stop these government officials from using civil defenses already. If procedural motions violate the First Amendment, then the entire system collapses. This surely cannot be what the First Amendment protects.

Nor would an Election SLAPP statute violate the First Amendment's Petition Clause. The immediate argument is that an Election SLAPP statute violates the *Noerr-Pennington* doctrine, as the government is "retaliating" against a political group for bringing a lawsuit. Moreover, *Noerr-Pennington*'s "sham" exception would not be met, as political litigants realistically could objectively expect success on the merits, and they could

266. *Thomas v. Collins*, 323 U.S. 516, 530 (1945).

267. *City of San Diego v. Roe*, 543 U.S. 77, 83–84 (2004).

268. Rauch, *supra* note 2, at 1479.

269. *NAACP v. Button*, 371 U.S. 415, 429–30 (1963).

270. See *supra* Section I.B.1.

271. See Shanor, *supra* note 107, at 1354–55.

argue that they subjectively have a good faith basis for bringing their lawsuit. However, the difference from *Noerr-Pennington* is that doctrine arguably applies only when retaliation takes place as a *different* lawsuit. Anti-SLAPP and other procedural motions do not violate *Noerr-Pennington* because it is the *same* lawsuit. As this Comment is the first to advocate for this mechanism, it is unclear whether a court would find the same reasoning, especially considering the different First Amendment balance at play.

Within the same idea, a crafty political litigant may claim the Election SLAPP statute's mechanism is some kind of "Strategic Motion Against Public Participation." As the plaintiff is asserting their right to petition the government, they could claim they are restricted by the Election SLAPP motion. Under this framework, the political plaintiff has a colorable argument that this textually violates the First Amendment. However, the Petition Clause is not absolute: "baseless litigation is not immunized by the First Amendment."²⁷² Election SLAPPs are not necessarily baseless and may even have a sound legal argument, but the Petition Clause only protects litigants seeking to get into court.²⁷³ It does not protect them from procedural mechanisms while there. Petitioning activity does not automatically create a burden on the government to listen. If it did, the level of political chicanery in the court system would likely be much worse than it is now.

The California model should not be completely copied for election matters due to potential error. In the California system, the movant who wins an anti-SLAPP motion automatically gets attorney's fees.²⁷⁴ The same should not apply to Election SLAPP statutes, as automatically giving attorney's fees may venture too far into punishment for speaking about matters of public concern. While dissuading political speech in a non-public forum is allowed, punishing political speech would likely violate the First Amendment and *Noerr-Pennington*. Automatic attorney's fees may also add insult to injury if a legitimate suit is erroneously dismissed by an Election SLAPP statute. Other aspects should be considered, but as it stands, an Election SLAPP statute would not violate the First Amendment.

272. *McDonald v. Smith*, 472 U.S. 479, 484 (1985) (quoting *Bill Johnson's Rests., Inc. v. NLRB*, 461 U.S. 731, 743 (1983)).

273. *See supra* Section I.B.2.

274. CAL. CIV. PROC. CODE § 425.16(c) (West 2026).

D. An Election SLAPP Statute's Benefits and Drawbacks

As explained, an Election SLAPP statute could procedurally and legally work, at least if following the California model. Election SLAPP statutes also reflect a sound policy to ensure that politics remain out of the courtroom. But there are concerns. On one hand, the mechanism may be necessary to fill the current procedural gap, protecting democracy in the process. On the other, if government actors use the mechanism maliciously, we risk eroding representative democracy even further, entrenching those who misbehave. Weighing the benefits and drawbacks indicates that this is a good idea.

1. Benefits of Election SLAPP Statutes

An Election SLAPP statute would help protect democracy. The longer Election SLAPPS percolate in the judicial system, the more potent a brew for those who are attacking democracy. If the goal is to sanitize false claims and add legitimacy to their positions, the longer a claim sits in court, the more legitimacy accrues and sanitization occurs. Further, the longer a zombie lawsuit survives before being sent to its grave, the greater influence it has when later revived.

An Election SLAPP statute would curtail at least some of these issues. If a lawsuit like *Mussi v. Fontes* was really brought to fundraise and bring attention to a political cause (such as “election integrity is diminished because the state isn’t following the law”), a quick dismissal through an Election SLAPP statute counteracts those non-legal purposes. Those who are easily influenced may hear about a quick dismissal and realize that the suit was not legally accurate. If *Mussi* truly were a zombie lawsuit, a quick dismissal deeming it an Election SLAPP would diminish its veracity upon revival.

Further, counties and candidates would have more time for democratic efforts. American democracy is spread into thousands of jurisdictions across all fifty states.²⁷⁵ Each has its own systems and procedures; in systems where election administration is decentralized and given to local officials, expertise and resources are usually lacking. These jurisdictions are vulnerable to Election SLAPPS, as again, having county attorneys defend against the major political parties is like placing the local rec-league basketball player into the NBA Finals. If these counties and small jurisdictions have a procedural mechanism to quickly dismiss Election SLAPPS, American democracy is strengthened. These county and local attorneys would not have to hire outside counsel or attempt to navigate election law’s statutory complexities—

275. NAT’L CONF. OF ST. LEGISLATURES, *supra* note 130.

provided these attorneys know about the Election SLAPP statute, they could attempt to use it before taking other steps.

Candidates at an Election SLAPP's mercy could also benefit, as evidenced by Ralph Nader's 2004 Presidential campaign. There, the Democrats' lawsuits were designed to drain Nader's time and funds through the judicial system's financial burdens. An Election SLAPP statute would have curtailed the problems that Nader ran into. If this procedural tool were available, Nader may not have had to defend against twenty-nine lawsuits in nineteen different jurisdictions. He could have used his funds to run his campaign, advertise in other states, and continue to make his case to the American people. Nader was likely not going to win, but he was one of two third party candidates who had an actual chance to defeat the major parties within the last century.²⁷⁶ To this end, Election SLAPP statutes support democracy by giving the electorate a greater choice of candidate.

Election SLAPP statutes would also protect the judicial system's integrity by filtering out lawsuits that are not designed to gain a decision on the merits. They would also increase judicial efficiency by keeping legitimate lawsuits in court and filter out those that are there for a non-legal purpose. Finally, an Election SLAPP statute's exposure adds to the resolute description of a fair and free democracy, as even the existence of such a mechanism discourages Election SLAPPs.

2. Drawbacks of Election SLAPP Statutes

An Election SLAPP statute could shield officials from merited critique. A government actor may misuse the mechanism to continue to violate the law for political gain. Legitimate lawsuits could be dismissed under this procedure and further entrench illegal election activity. But much like normal SLAPP motions, it is not an automatic win. Plaintiffs can still plead sufficiently to avoid the Election SLAPP motion and judges can decide if a lawsuit is designed to win on the merits.

Further, judges may themselves be political, which may exacerbate the problem. Judges are human and fallible, they acquire their positions through a political process, and the judiciary itself, for all its ideals, is increasingly politicized.²⁷⁷ Election SLAPPs seem meritorious on their face, allowing an

276. The other was Ross Perot in 1992, winning no Electoral College votes but winning nearly 20% of the popular vote. Michael Levy, *United States Presidential Election of 1992*, BRITANNICA (Feb. 23, 2026), <https://www.britannica.com/event/United-States-presidential-election-of-1992> [https://perma.cc/4K8S-CR44].

277. Shanor, *supra* note 107, at 1354.

“apolitical” judge to continue a lawsuit for political reasons. Non-neutral judicial review of an Election SLAPP motion has its own risks. A cynical view would be that judges could put their hand on the scale when reviewing an Election SLAPP motion; less cynically, courts may in good faith get things wrong, or an election might be stolen but there is not enough evidence to prove it.²⁷⁸ However, courts have significant advantages when sifting evidence, assessing credibility, and requiring truthful testimony under threat of perjury.²⁷⁹ Both federal and state courts and judges, across all ideological lines, rejected false claims of election fraud following the 2020 election.²⁸⁰ This indicates that the norm of an apolitical judiciary retains some force and that we can trust judges to make proper decisions. While non-neutral review is a risk, we must trust judges not to misuse their position. Otherwise, we reduce the court’s institutional legitimacy. If judges can look past the law, they can correctly apply this system; if judges get it wrong, the losing party can just appeal their decision.

Appeals themselves present a problem. California’s anti-SLAPP system protects plaintiffs who have their claim dismissed on an anti-SLAPP motion by allowing them to immediately appeal.²⁸¹ The same must apply for Election SLAPP statutes, for both the judicial risk outlined and because litigants hold the general right to appeal. However, if the goal is to quickly dismiss these lawsuits from court, an appeal just exacerbates the wait and attention that Election SLAPPs get. After all, if an Election SLAPP’s goal is to draw attention to a political issue, sending a case up to a higher court on appeal may make the claim seem more legitimate. Further, complex civil cases like Election SLAPPs naturally move slower in appellate courts. If the wait is happening at the appellate level, then the same result occurs as at the trial level: those sanitizing an Election SLAPP continue to do so, just in a higher court.

However, those subject to Election SLAPPs can just show their victory in the lower court. This is about political media strategy (beyond this Comment’s scope), but defendants could theoretically proclaim their victory in the resulting media war. If plaintiffs who bring Election SLAPPs are trying to accrue political attention, then an Election SLAPP’s influence is softened at the higher court should it lose below. This political neutralization allows higher courts to focus purely on the legal issues.

278. *Id.* This is extremely unlikely considering the amount of security surrounding equipment and the testing that happens before and after an election. See ELECTIONS GRP., *supra* note 136.

279. Shanor, *supra* note 107, at 1354.

280. *Id.* at 1355.

281. CAL. CIV. PROC. CODE. §§ 425.16(i) & 904.1(13) (West 2026).

While a good idea in theory, an Election SLAPP statute could present significant problems. An Election SLAPP system may risk entrenching harmful government positions, and the judiciary may not be as apolitical as it seems, but election administrators and our electoral systems need to have a way to protect democracy. The problems presented by an Election SLAPP statute are curtailed by having trust in our democracy and our judiciary. These benefits outweigh the risks that an Election SLAPP statute would bring.

IV. CONCLUSION

Political actors use the judicial system to legitimize their political positions in court. These Election SLAPPs ultimately erode democracy, using a forum meant to be non-partisan and neutral to attack political institutions and gain political favor. Current laws do not adequately solve the problem: civil procedure should include an Election SLAPP statute as the solution. An Election SLAPP statute provides a procedural mechanism that allows state and local actors to quickly dismiss Election SLAPPs from court. While there are risks, an Election SLAPP statute would bolster our democracy and ensure better self-governance.