

IN THE SUPREME COURT
OF THE STATE OF GEORGIA

RECEIVED
MAY 13 2004
BY: _____

ATLANTA HUMANE SOCIETY, ET AL.)
)
)
) Petitioners,)
) Case No.
)
) v.)
) S04C0613
)
) BARBARA L. HARKINS,)
)
) Respondent.)
)

ATLANTA HUMANE SOCIETY, ET AL.)
)
)
) Petitioners,)
) Case Nos.
)
) v.)
) S04C0684, S04C0685
)
) KATHI MILLS, a/k/a FERRARI, ET AL.,)
)
) Respondent.)
)

**BRIEF OF AMICUS CURIAE GEORGIA LEGAL WATCH IN
SUPPORT OF RESPONDENTS BARBARA HARKINS and KATHI MILLS**

COMES NOW Georgia Legal Watch as *Amicus Curiae* and pursuant to Georgia Supreme Court Rule 23 presents the following in support of the response of the Respondents Barbara L. Harkins and Kathi Mills, showing as follows.

I. Identity and Interest of Amicus Curiae

Georgia Legal Watch ("GLW") is a public interest organization concerned about the proper application of laws directed at ensuring public participation in governmental affairs. GLW, under its former name the Georgia Center for Law in the Public Interest,

assisted in drafting the key statute at issue in this appeal, O.C.G.A. § 9-11-11.1. For these reasons, GLW files this Brief of *Amicus Curiae* in support of the Respondents in this matter.

II. Argument and Citation of Authorities

Central to this matter is the question of whether Georgia's anti-SLAPP Statute, O.C.G.A. § 9-11-11.1, creates substantive protections for citizens who speak out on matters of public concern. The legislative history of this provision clearly indicates that the General Assembly intended to create such substantive rights in addition to specific procedural safeguards in passing the anti-SLAPP statute.

GLW's Executive Director, Douglas P. Haines, drafted the original version of Georgia's anti-SLAPP statute, which was introduced as a Bill during the 1995 session of the General Assembly and ultimately passed during the 1996 session. Haines asked Senator Mary Margaret Oliver to introduce the Bill in 1995. Ms. Oliver was then representing Georgia Senate District ~~47~~⁴² and serving as the chair of the Senate Judiciary Committee.

In presenting the anti-SLAPP legislation, GLW's intent was to amend the Georgia Civil Practice Act and create a new privilege for statements made in good faith as part of an act in furtherance of the right of free speech or the right to petition government. The statute, and the new privilege created at the same time for statements of "public interest or concern" were and are intended to provide additional substantive grounds for dismissal and additional remedies, above and beyond those available from the dismissal and

summary judgement mechanism already existent in the Civil Practice Act. See generally **EX. A** (R-64 [Douglas Haines Affidavit]).

Senator Oliver introduced and led the passage of the GLW's proposed anti-SLAPP legislation. As Senator Oliver stated in her affidavit earlier in this case, the legislature's intent in passing this legislation was to "create a new substantive right; it is intended to encourage participation by citizens in matters of public significance and to encourage the valid exercise of free speech and the right to petition government." **EX. B** (R-63 [Mary Margaret Oliver Affidavit at ¶ 7]).

III. Conclusion

Given this background, it is clear that the anti-SLAPP statute and the related privilege of § 51-5-7(5) create substantive rights for the people of Georgia. Accordingly, *Amicus Curiae* Georgia Legal Watch urges the Court to find in Respondents' favor. Specifically, GLW asks the Court to (1) find that the anti-SLAPP statute and corollary privilege create substantive rights, (2) allow for dismissal of actions at a very early juncture in order to ensure that free speech is not chilled, (3) require that the Complaint itself meet the anti-SLAPP statute's requirements, and (4) find that the trial court erred in this case in failing to dismiss a defamation lawsuit that wholly lacked the necessary grounding in fact and law and was filed to chill free speech.

Respectfully submitted, this 19th day of April, 2004.



Douglas C. Haines
Georgia Bar No. 317199

Georgia Legal Watch
Amicus Curiae
387 W. Rutherford Street
Athens, Georgia 30606
706/355-3200

EXHIBIT A
(R-64: Douglas Haines Affidavit)

IN THE SUPERIOR COURT OF COBB COUNTY
COBB JUDICIAL CIRCUIT
STATE OF GEORGIA

ATLANTA HUMANE SOCIETY
and
SOCIETY FOR PREVENTION OF
CRUELTY TO ANIMALS, INC.
and
BILL GARRETT,

Plaintiffs,

v.

BARBARA L. HARKINS,

Defendant.

Civil Action File No.:
01-1-10321-99

AFFIDAVIT

COMES NOW, **Douglas Haines**, Affiant in the above-styled matter and swears and affirms under oath as follows:

1.

My name is Douglas Haines.

2.

I am over the age of eighteen (18) years old, in good mental health, and understand that this affidavit is given for use in the above-styled case.

3.

I serve in the Georgia State Senate, representing Georgia Senate District 46 (D-Athens). I was elected in 2000.

4.

Prior to my service in the Georgia State Senate, I served full time as public interest lawyer

1.

and executive director of the Georgia Legal Watch (formerly known as the Georgia Center for Law
In the Public Interest).

5.

I drafted the original version of Georgia's anti-SLAPP statute, which I asked Senator Mary
Margaret Oliver to introduce as a bill in 1995. The anti-SLAPP statute ultimately passed in 1996.

6.

At the time the bill passed, I was a practicing lawyer with a significant amount of trial
experience. Therefore, I was well aware of the provisions of the Georgia Civil Practice Act, when I
authored the anti-SLAPP statute..

7.

The anti-SLAPP statute is a new mechanism, intended to amend the Georgia Civil Practice
Act. The anti-SLAPP statute, and the new privilege created at the same time for statements of
"public interest or concern" are intended to provide additional substantive grounds for dismissal and
additional remedies, above and beyond those available from the summary judgment and motion to
dismiss mechanisms. They are designed to afford special protection for speech about issues "of
public interest or concern. The anti-SLAPP statute intends to create a new substantive right; it is
intended to encourage participation by citizens in matters of public significance and to encourage the
valid exercise of free speech and the right to petition government.

FURTHER AFFIANT SAITH NOT.


Douglas Haines

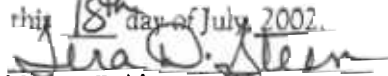
Sworn and subscribed before me
this 18th day of July, 2002.

Notary Public
(Seal)



EXHIBIT B
(R-63: Mary Margaret Oliver Affidavit)

IN THE SUPERIOR COURT OF COBB COUNTY
COBB JUDICIAL CIRCUIT
STATE OF GEORGIA

ATLANTA HUMANE SOCIETY	:	
and	:	
SOCIETY FOR PREVENTION OF	:	
CRUELTY TO ANIMALS, INC.	:	Civil Action File No.:
and	:	01-1-10321-99
BILL GARRETT,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BARBARA L. HARKINS,	:	
	:	
Defendant.	:	

AFFIDAVIT

COMES NOW, **Mary Margaret Oliver**, Affiant in the above-styled matter and swears and affirms under oath as follows:

1.

My name is Mary Margaret Oliver.

2.

I am over the age of ~~eighteen~~ (18) years old, in good mental health, and understand that this affidavit is given for use in the above-styled case.

3.

I served in the Georgia State Senate, representing Georgia Senate District 42 (D-Decatur), during the years 1993 through 1998. This followed my service in the Georgia State House of Representatives, representing Georgia House District 67 (D-Decatur), during the years 1987 through 1992.

4.

I was the Chairperson of the Georgia State Senate Judiciary Committee from the period 1992 through 1998.

5.

I introduced Senate Bill No. 1, now known as Georgia's anti-SLAPP statute, during the 1995 session of the Georgia General Assembly. Senate Bill 1 ultimately passed during the 1996 session of the Georgia General Assembly.

6.

At the time the bill passed, I was a practicing lawyer for approximately 20 years. Therefore, I was well aware of the provisions of the Georgia Civil Practice Act, when I introduced Senate Bill 1 and led its passage.

7.

The anti-SLAPP statute is a new mechanism, intended to amend the Georgia Civil Practice Act. The anti-SLAPP statute, and the new privilege created at the same time for statements of "public interest or concern" are intended to provide additional substantive grounds for dismissal and additional remedies, above and beyond those available from the summary judgment and motion to dismiss mechanisms. They are designed to afford special protection for speech about issues "of public interest or concern." The anti-SLAPP statute intends to create a new substantive right; it is intended to encourage participation by citizens in matters of public significance and to encourage the valid exercise of free speech and the right to petition government.

FURTHER AFFIANT SAITH NOT.


Mary Margaret Oliver

Sworn and subscribed before me
this 17 day of July, 2002.


Notary Public

(Seal)

