

State high court: Yakima can't use anti-SLAPP law to dismiss lawsuit

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Yet another lawsuit stemming from the troubled tenure of former Yakima police Chief Sam Granato is winding its way through the court system.

But unlike four earlier lawsuits that prompted the city and its insurers to pay out \$890,000, this case reached the state Supreme Court, where it attracted the attention of cities across the state, news organizations, employment lawyers and the American Civil Liberties Union.

At its heart, the lawsuit is like several of the others dating to Granato's tenure from 2003 to 2010: A police officer claims he was a victim of retaliation.

However, the case has broad implications for First Amendment advocates and others who see it as the first of several tests of a 2010 state law intended to prevent people from using litigation to silence public discourse. Such litigation goes by the acronym SLAPP, short for Strategic Lawsuits Against Public Participation.

Washington is one of 28 states with anti-SLAPP legislation designed to protect people from being sued solely because they spoke out in a public meeting or to government.

An example of SLAPP is a resident sued by a developer after speaking about a zoning issue in a city council meeting, according to Jeffrey Needle, a Seattle attorney representing the ACLU and the Washington Employment Lawyers Association.

While the suit may be dismissed as frivolous, the defendant has to deal with the expense of defending himself, he said.

Washington's anti-SLAPP law allows a quick dismissal of such suits. If it's shown that the lawsuit was solely filed to silence speech, the plaintiff must pay the defendant's court costs and legal fees, as well as \$10,000 in punitive costs.

"It's a nascent statute, and we're trying to ensure that it is enforced," said Rowland Thompson, executive director of the Allied Daily Newspapers of Washington, an organization representing newspapers around the state and which filed a friend of the court brief.

While the police officer's lawsuit hasn't yet been heard, the case has helped define who is protected by the anti-SLAPP law. In this case, it is not the city of Yakima, which

unsuccessfully argued the statute protected it from a lawsuit filed by Yakima police Sgt. Michael Henne.

Henne, who joined the Yakima Police Department in 1998, sued the city in 2011, saying he had been the target of harassment and retaliation because some in police leadership did not like him. The lawsuit does not cite a specific damage amount sought, but Henne's initial complaint to the city sought \$4 million in damages, according to city attorney Jeff Cutter.

The city responded to his lawsuit by invoking the anti-SLAPP statute. It argued that Henne's suit was trying to squelch complaints by a lieutenant and several sergeants, alleging, among other points, that Henne had lied, failed to broadcast emergency information about a suspect's location and illegally searched a suspect's car. The internal investigations eventually cleared him and he remains with the department.

In a 2012 ruling that Henne's lawsuit could move forward, Yakima County Superior Court Judge Blaine Gibson rejected the city's arguments, writing: "If this statute can be used to recover penalties and attorney's fees from an individual who's petitioning the government for redress of grievances, that's exactly the opposite of the purpose of the statute."

However, in the same ruling Gibson allowed Henne to amend his lawsuit in order to avoid having it classified as a SLAPP suit. The amended lawsuit dropped references to the internal investigations prompted by the other officers' allegations. Instead, it alleged the city failed to supervise Granato and other police officials.

The city appealed the ruling, and a state appellate court upheld Gibson's decision, but only because Henne's amended suit eliminated the SLAPP question.

The city then appealed to the state Supreme Court.

That generated a flurry of interest from a wide range of groups.

In its friend of the court brief, Allied Daily Newspapers asked the court to provide clear guidance on how to apply the law. It argued that Henne's original lawsuit should never have been allowed to be amended.

"Allowing such gamesmanship would completely undermine the statute's clear purpose, by making an amended complaint a cheap, quick and easy way for a plaintiff to avoid his burden under the act," the brief stated.

The ACLU of Washington and the employment lawyers association, in its joint friend of the court brief, argued that government does not have a First Amendment right, and thus cannot seek protection under the anti-SLAPP statute.

The Washington State Association of Municipal Attorneys also argued that Henne should not have been allowed to amend his lawsuit.

In the end, the high court found it wasn't the city of Yakima that made the statements against Henne, so it couldn't invoke the law to have the lawsuit dismissed. If Henne had sued the individual officers who filed the complaints, the city could have taken legal action under the statute to protect them, but that was not the case in Henne's suit, which listed the city as the only defendant.

So far, legal fees for the city have totaled \$115,048, with the city's insurance carrier picking up anything above the city's \$99,000 deductible.

Cutter said the decision means the city and Henne will go back to court on the original suit, which claims that the city allowed police officials to harass Henne.