The Evolution of Colorado's Anti-SLAPP Statute

Sifting Out Meritless Claims and Allowing Meritorious Claims to Proceed

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This article traces the history of Colorado's anti-SLAPP statute and discusses relevant case law.

In 2019, Colorado became the 30th state in the nation (including the District of Columbia)[1] to adopt an "anti-SLAPP" statute—a law that provides an expedited procedural mechanism to challenge the adequacy of certain tort claims premised on the defendant's exercise of constitutionally protected rights of free speech or petitioning the government. The stated goal of such statutes is to prevent the mere pendency of such litigation from "chilling" the exercise of those fundamental rights.

Now that Colorado's anti-SLAPP statute has been in place for more than half a decade, several cases have worked their way up to our state's court of appeals and supreme court, requiring them to interpret and enforce it. This article explains the origins of the anti-SLAPP statute and surveys the emerging body of published precedents interpreting its terms.[2]

Origins of Anti-SLAPP Laws—Colorado's Connection

"SLAPP" stands for "Strategic Lawsuit Against Public Participation." The term was coined by George "Rock" Pring,[3] a law professor at the University of Denver Sturm College of Law. Concerned by a growing number of lawsuits filed against environmental activists who challenged real estate development in the late 1970s, Pring joined forces with a sociologist, Penelope Canan, and launched the Political Litigation Project at Denver University in 1984. They conducted the first nationwide study on SLAPPs, examining more than 100 cases.[4] In 1996, Pring and Canan coauthored their seminal book, *SLAPPs: Getting Sued for Speaking Out*, which included a model anti-SLAPP statute as an appendix. Thus, Colorado can legitimately claim to be "the birthplace" of a national movement to fight SLAPPs that continues to this day. As of this writing, 38 states have adopted anti-SLAPP legislation.[5]

Anti-SLAPP Arrives in Colorado

In 2016, Pete Kolbenschlag, an environmental activist on Colorado's Western Slope, posted a reader comment on a newspaper's website in which he accused a Texas-based oil company, SG Interests, of having been "fined" by the US government for rigging bids on BLM oil leases.[6] In fact, in 2013 SG Interests had agreed to pay the US government half a million dollars to settle an antitrust case and a related qui tam action, but it had not admitted any wrongdoing in the underlying settlement agreement. Notably, years before Kolbenschlag posted his reader comment, some 16 other publications, including *The National Law Review*, the *Aspen Daily News*, and the *Crested Butte News*, had all published that SG Interests had paid fines to settle with the government.[7] Nevertheless, SG Interests sued only Kolbenschlag for defamation based on his reader comment.

Kolbenschlag filed a motion to dismiss and attached numerous court records from the Department of Justice's antitrust action to establish the substantial truth of his reader comment. The district court judge refused to take judicial notice of those federal court documents and instead converted the motion into one for summary judgment, ultimately granting it. But, because the case was not dismissed under CRCP 12(b)(5),[8] Kolbenschlag had no statutory right to recover his attorney fees.[9] As a professional community organizer and activist, Kolbenschlag succeeded in generating a significant amount of press attention for his protracted and successful legal battle with the oil company. Kolbenschlag's case became "Exhibit A" for why Colorado needed an anti-SLAPP statute.[10]

Toward the end of the 2018–19 legislative term, three Democratic legislators introduced

HB 19-1324.[11] The bill tracked, almost verbatim, California's anti-SLAPP statute:[12] it provides for a "special motion to dismiss" in cases where the defendant is sued on account of any "act in furtherance of a person's right of petition or free speech," including "any written or oral statement or writing made in . . . a public forum in connection with an issue of public interest."

Unlike the experience in some other states, where plaintiffs' bar associations vigorously opposed such legislation, HB 19-1324 faced no opposition and was passed unanimously by the Colorado Senate, and with only two "no" votes in the Colorado House. Governor Jared Polis signed the anti-SLAPP legislation into law on June 30, 2019, and it took effect the next day.

How the Statute Is Designed to Work

Colorado's anti-SLAPP law declares that

> it is in the public interest to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, to protect the rights of persons to file meritorious lawsuits for demonstrable injury.[13] The statute strikes that balance by establishing a procedure that allows the district court to "make an early assessment about the merits of claims brought in response to a defendant's . . . petitioning or speech activity."[14]

To challenge a lawsuit under the anti-SLAPP statute, a defendant must file a "special motion to dismiss" within 63 days of service of the complaint.[15] Once filed, the court must conduct a two-prong analysis. Under the first prong, the court must determine whether the defendant has demonstrated that the anti-SLAPP statute applies to the plaintiff's claims—that is, that the pleaded claims arise from "any act in furtherance of [the defendant's] right of petition or free speech . . . in connection with a public issue."[16]

If that initial showing has been made, the court then proceeds to consider the second prong, which requires that the motion be granted (dismissing the claims), "unless the court determines that the plaintiff has established that there is a reasonable likelihood that the plaintiff will prevail on the claim."[17] Just as under the California statute, the court must determine the motion based on supporting and opposing affidavits filed in connection with the briefing on the motion.[18]

The filing of a special motion to dismiss automatically stays all discovery (unless good cause is shown for authorizing limited, "specified" discovery), and the court must set the "hearing"—which is limited to oral argument of counsel—within 28 days of the filing of the motion, unless the court's docket does not allow for such a setting.[19]

If the special motion to dismiss is granted, the defendant is entitled to an award of reasonable attorney fees and costs.[20] A grant or denial of a special motion to dismiss entitles the losing party to an immediate interlocutory appeal of that ruling as of right.[21]

Colorado's Appellate Courts Interpret the Anti-SLAPP Statute

As of the date of this writing, Colorado's appellate courts have resolved approximately 48 appeals arising from the granting or denial of special motions to dismiss under the anti-SLAPP statute, only about half of which have been officially published.[22] Colorado's Supreme Court has thus far addressed only two such cases.

In its published decisions, the Colorado Court of Appeals has primarily grappled with three recurring legal questions: (1) what standard of review applies to a trial court's ruling on a special motion to dismiss, (2) what burden of proof must the plaintiff meet to defeat an anti-SLAPP motion, and (3) may trial judges and appellate courts "weigh the evidence" in deciding such motions. The first two questions have been resolved uniformly by the court of appeals. The third question, on the other hand, has generated a split among appellate panels, with two court of appeals judges expressing their views, in concurrences, that only one interpretation is faithful to both the language and purpose of the anti-SLAPP statute.

Most recently, the Colorado Supreme Court has provided lower courts with a definitive explication of what constitutes "speech in connection with a public issue" under the anti-SLAPP statute, thereby clarifying the preliminary threshold inquiry (prong 1) for determining whether a particular claim is subject to a special motion to dismiss under the statute.

What Standard of Appellate Review Applies to a Trial Court's Ruling on an Anti-SLAPP Motion?

Every Colorado Court of Appeals decision to date has applied a de novo standard of review to the denial or grant of an anti-SLAPP motion.[23] The most in-depth and definitive explication for why a de novo standard applies was set forth by the court of appeals in its first published opinion applying the anti-SLAPP statute, *Salazar v. Public Trust Institute*, which addressed a district court's denial of an anti-SLAPP motion aimed at a claim for malicious prosecution.[24]

In *Salazar*, former state representative Joseph Salazar sued Suzanne Staiert, a former director of the nonprofit Public Trust Institute for filing two allegedly specious administrative complaints against him for purported violations of lobbying laws.[25] The defendants moved to dismiss the complaint both under CRCP 12(b)(5) and the then barely one-year-old anti-SLAPP statute. The district court denied both motions, and an appeal followed.[26]

The Colorado Court of Appeals recognized that it was facing two issues regarding the appropriate standard of review. First, it determined that the standard as to interpreting the anti-SLAPP statute itself was de novo, as is typical for all statutory interpretation.[27] And second, it needed to determine the standard for its review of the district court's conclusion that Salazar had demonstrated "a reasonable likelihood of success," which justified denying the special motion to dismiss.[28] The latter was a question of first impression in Colorado at that time.

On the second question, the court of appeals noted that a special motion to dismiss under the anti-SLAPP statute shared common characteristics with other, similarly situated preliminary motions. For example, it noted that a "special motion to dismiss is just that—a motion to dismiss. It seeks an early end to the litigation based, essentially, on the assertion that the plaintiff will ultimately, and inevitably, lose."[29] Such Rule 12(b)(5) motions are reviewed de novo.

Yet the court also recognized that the anti-SLAPP statute permits the district court to consider, along with the pleadings, any "supporting and opposing affidavits stating the facts upon which the liability or defense is based."[30] In that way, a special motion is like a motion for summary judgment, which too is reviewed de novo.[31]

The court also noted that "an anti-SLAPP special motion to dismiss is similar to a request for injunctive relief, as the moving party is essentially seeking to enjoin the nonmoving party's lawsuit."[32] Such motions seeking injunctive relief are likewise based on whether a party "can demonstrate a reasonable likelihood of success."[33] Unlike Rule 12(b)(5) and Rule 56 motions, motions seeking injunctive relief are ordinarily subject to an abuse of discretion standard.[34]

Finally, the court noted that on an anti-SLAPP motion, the district court does not make "factual findings in the traditional sense," as it does not have any unique ability to observe witnesses, but rather focuses on a review of "documents alone."[35] In fact, a district court's findings on an anti-SLAPP motion are not "final" and are inadmissible on any future legal or factual issues should the case be permitted to proceed.[36] Having surveyed the landscape, the court concluded that because the question on an anti-SLAPP motion is whether the case should be dismissed with prejudice, deferring to a district court's factual findings would be inappropriate. For that reason, it held that "we review de novo a district court's ruling on a special motion to dismiss to determine whether the plaintiff has established a reasonable likelihood of prevailing on the claim."[37]

Though the Colorado Supreme Court has yet to weigh in directly on the standard of review for determinations on an anti-SLAPP motion, it recently applied a de novo review to the legal question whether statements made during the course of a Title IX proceeding were subject to a common law absolute privilege, the merits of which were the subject of documentary evidence submitted by the parties on an anti-SLAPP motion.[38] Likewise, in addressing the interpretation of the anti-SLAPP statute's first prong, the court noted that "statutory interpretation involves questions of law, which we review de novo."[39]

What Is the Plaintiff's Burden to Defeat an Anti-SLAPP Motion?

CRS § 13-20-1101(3)(a) provides that once a defendant demonstrates that the anti-SLAPP statute applies, the claims must be dismissed "unless the court determines that the plaintiff has established that there is a reasonable likelihood that the plaintiff will prevail . . . ." The courts have grappled with what exactly the plaintiff must show to demonstrate a "reasonable likelihood" of success.

Salazar proposed that the "question is not whether undisputed facts demonstrate that one party is entitled to judgment but whether any material disputes of fact are reasonably likely to be resolved in the plaintiff's favor."[40] A different panel of the court of appeals suggested that this burden is akin to a summary judgment-like procedure in which the court reviews the pleadings and the evidence to determine "whether the plaintiff has stated a legally sufficient claim and [has] made a prima facie factual showing sufficient to sustain a favorable judgment."[41] In the prototypical defamation case, because the anti-SLAPP statute applies to claims arising from an act by a person "in connection with a public issue," in virtually all circumstances a plaintiff will need to prove certain elements of their claim (like material falsity and actual malice) at trial by clear and convincing evidence.[42] This, however, does *not* mean that a plaintiff must produce "clear and convincing evidence" in response to an anti-SLAPP motion.[43]

Rather, as multiple court of appeals opinions have held, at the anti-SLAPP stage, plaintiffs must "establish a probability that they will be able to produce clear and convincing evidence" of each of the elements of their cause of action at trial.[44] Courts have since recognized various versions of this standard, using other phrases like "reasonable probability"[45] and "reasonable likelihood"[46] interchangeably.[47] The court in *L.S.S. v. S.A.P.* suggested that this rule "appropriately balances the competing interests . . . of safeguarding the rights 'to petition, speak freely, associate freely, and otherwise participate in government' [while] . . . at the same time, . . . 'protect[s] the rights of persons to file meritorious lawsuits for demonstrable injury.'"[48]

While the plaintiff's bar has argued that anti-SLAPP statutes, both here in Colorado and throughout the country, make it virtually impossible to sustain a defamation claim, the reality is that numerous such claims have survived the anti-SLAPP gauntlet and proceeded to summary judgment and even trial.[49] In addition to *Salazar*, where the plaintiff was able to demonstrate a reasonable likelihood of prevailing on the malicious prosecution claim,[50] in just the first six years of Colorado's anti-SLAPP statute, no fewer than nine cases have been remanded by the court of appeals for further litigation after finding a denial of the anti-SLAPP motions was appropriate.[51] Thus, the lament that meritorious claims cannot survive an anti-SLAPP motion has been demonstrably shown to be unfounded.

May the Courts "Weigh the Evidence" When Resolving an Anti-SLAPP Motion?

CRS § 13-20-1101(3)(b) provides that in resolving an anti-SLAPP motion, "the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based."[52] And, § 13-20-1101(6) provides that, despite an automatic stay on discovery, a court may permit "specified discovery" upon a showing of good cause. But whether these provisions permit the court to *weigh* the underlying "evidence" in light of those pleadings and affidavits has led to a split of authority in the court of appeals.

Salazar was the first court of appeals case to consider the scope of the court's evidentiary review under the anti-SLAPP statute. Having noted the similarities between such an anti-SLAPP motion and a motion for summary judgment, the court found that its task on appeal was akin to a "review of the sufficiency of the evidence."[53] And, further, when such documents are tendered in support of the special motion to dismiss, "the question is not merely whether the claim asserts a plausible basis for relief, . . . but whether the plaintiff has a reasonable likelihood of success"; that is, "whether *any material disputes of fact* are reasonably likely to be resolved in the plaintiff's favor."[54] This might be construed as the court's "weighing" of the competing documentary evidence to determine whether the plaintiff has produced sufficient evidence to meet its burden

of proof under the applicable law (e.g., "clear and convincing evidence" of actual malice).[55]

In *L.S.S.*, a different panel of the court of appeals, while purporting to expand on the discussion in *Salazar*, acknowledged that it was to consider the pleadings and supporting and opposing affidavits, but then expressly held that to determine "whether the plaintiff has stated a legally sufficient claim," the court may not weigh the evidence or resolve factual conflicts.[56] Subsequent courts have recognized that while the allegations in the complaint need not be accepted as true, "once affirmed in an affidavit, the plaintiff's assertions are no longer mere allegations; they are evidence. And that evidence must be accepted as true."[57] And the defendant's affidavit evidence is assessed "only to determine if it defeats the plaintiff's claim as a matter of law."[58] Thus, as the court of appeals has noted, "we do not make any determination as to which evidence . . . is more credible. When, as here, there is competing evidence, we may not weigh the evidence at all."[59]

This approach would seemingly permit a plaintiff to simply submit an affidavit stating that a defendant's statements were false despite unequivocal contrary evidence, that historical facts did not actually occur, or some other easily discredited notion, and that would be sufficient to defeat the anti-SLAPP motion. But, perhaps in recognition of this paradox, cases subsequent to *L.S.S.* have recognized that while "a court may not make credibility determinations as to the evidence submitted, that does not mean that a court cannot make 'determinations as to the reliability of [the] account'" by a party "based upon the evidence presented . . . ."[60] This approach was deemed to be "part of the substantive legal analysis as to whether [the plaintiff] had established a reasonable likelihood of prevailing . . . ."[61] Thus, when a plaintiff relies purely on an affidavit that recounts their allegations of a complaint (or submits a verified complaint), "if those allegations are refuted by a defendant's affidavits or other evidence, the plaintiff will not have established a 'reasonable likelihood [of] prevail[ing] . . . .'"[62]

While the consequences of the bar on "weighing evidence" from *L.S.S.* and its progeny are far from certain, two court of appeals judges have specially concurred to note that the two competing lines of evidentiary analysis from *Salazar* and *L.S.S.* appear to be irreconcilable, and that only *Salazar*'s approach, allowing for weighing of competing evidence, is faithful to the anti-SLAPP's statutory language and purpose.

> "The defendants filed a special motion to dismiss, arguing that their online comments about their experiences at the veterinary clinic were protected statements of opinion on a matter of public interest."

Judge Berger, in a special concurrence in *Jogan Health, LLC v. Scripps Media*, which upheld an anti-SLAPP dismissal of a defamation claim, noted that under *Salazar*, the court neither

> simply accept[s] the truth of the allegations nor make[s] an ultimate determination of their truth. Instead, ever cognizant that we do not sit as a preliminary jury, we assess whether the allegations and defenses are such that it is reasonably likely that a jury would find for the plaintiff.[63]

He further noted that *L.S.S.*'s prohibition on weighing evidence "ties the hands of the district courts" and none of the cases that follow it "define what it is to 'weigh' evidence."[64] And, while the *L.S.S.* formulation might provide clarity and more certainty to the outcome of anti-SLAPP motions, Judge Berger lamented that premise comes at the price of sacrificing the First Amendment purposes of the anti-SLAPP statute, which he deemed an unacceptable tradeoff.[65] He called upon the courts to reject *L.S.S.*'s "no weighing of evidence" approach.[66]

In *Coomer v. Salem Media of Colorado, Inc.*, Judge Tow also specially concurred, echoing many of the same "irreconcilable inconsistencies" between *Salazar* and *L.S.S.*[67] He expounded further that despite the anti-SLAPP statute placing the burden on a plaintiff to demonstrate a reasonable likelihood of prevailing, *L.S.S.*'s formulation effectively shifted the burden to the defendant to show the "plaintiff cannot possibly prevail."[68] Judge Tow argued that *L.S.S.* effectively reduced an anti-SLAPP motion to an ordinary motion to dismiss, and concluded that the "*L.S.S.* rubric abrogates the protections the General Assembly intended to provide to defendants who are being sued as a result of their 'participation in matters of public significance'" and "the special motion to dismiss becomes nary a speed bump in the path of a plaintiff who seeks to 'chill [such participation] through abuse of the judicial process.'"[69]

Because the Colorado Court of Appeals has accurately described a special motion to dismiss supported by documentary evidence as presenting "a summary judgment-like procedure in which the court reviews the pleadings and the evidence to determine whether the plaintiff has . . . made a . . . *factual showing sufficient to sustain a favorable judgment*,"[70] perhaps the apparent "conflict" between the *Salazar* and *L.S.S.* approaches is more ephemeral than real. After all, district court rulings on summary judgment motions, which are routinely made by considering both parties' evidentiary submissions, are reviewed by appellate courts de novo[71] to determine whether the plaintiff has,

or has not, presented a sufficient quantum of evidence from which a jury could reasonably rule in the plaintiff's favor. Likewise, California's appellate courts have repeatedly held that, under that state's identical statutory text, courts deciding whether a plaintiff has established a reasonable probability of prevailing must "bear in mind the higher clear and convincing standard of proof" applicable at trial.[72]

Unlike summary judgment motions under Rule 56, however, a plaintiff seeking to overcome an anti-SLAPP motion need not *actually produce* "clear and convincing evidence" of all elements of its claims that require that burden of proof at trial, but must instead establish "a reasonable likelihood of being able to produce" that quantum of evidence. And that is precisely the standard that the Colorado Court of Appeals has repeatedly applied to both the material falsity and actual malice elements of defamation claims premised on publications that addressed matters of legitimate public interest or concern.[73]

And, as to Judge Tow's concern described in his concurrence in *Coomer*, it is firmly established that "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."[74]

When Is Speech "in Connection With a Matter of Public Interest"?

As noted above, under the first prong of the anti-SLAPP statute, the burden is on the defendant to demonstrate that the plaintiff's claims arise from the defendant's speech or petitioning activity in connection with a public issue. And, where the plaintiff's claims fall under the "any other conduct or communication" catchall, the defendant must demonstrate that their speech was "in connection with a public issue or an issue of public interest."[75] Over the course of the decades since anti-SLAPP statutes have been enacted across the country, courts have struggled with the distinction between speech on a matter of purely "private" interest versus speech that reasonably implicates a "public issue," particularly with regard to postings to consumer review sites like Yelp that recount individual customers' negative marketplace experiences.

In December 2025, the Colorado Supreme Court issued its first published decision interpreting Colorado's anti-SLAPP statute. In that ruling, the court clarified the nexus required between a defendant's challenged statements and a "public issue" to satisfy prong 1 of the anti-SLAPP statute.

In *Tender Care Veterinary Center, Inc. v. Lind-Barnett*,[76] two pet owners posted comments to Facebook and Google discussion groups about their "horrid" experiences at a veterinary clinic. Among the first of the defendants' posts was this one:

> The vets here are not only incompetent, but cruel. When I tried to address a SERIOUS issue of malpractice with them they used LIES and INTIMIDATION methods to try and shut me up. One of my clients was threatened with a lawyer by them for speaking out publicly about their awful clinic. Apparently, speaking the truth in [sic] now called slander. I don't care about a lawsuit and in fact, if they do come after me I will gladly take them down in court.
> . . . .
> Thankfully I have a background in healthcare and didn't listen to their bullying and ignorance. I was able to save my dog's life after they almost killed her through their ignorance. And then of course tried to blame me for their lack of care. [laughing crying emoji].
> . . . .
> Tender care . . . ha! There is nothing about them that resonates with tender OR care. More like belligerence and avoidance. Do yourself a favor, drive the extra 20 minutes for the best care possible and AVOID a travesty in your home and a hole in your pocket.[77]

Shortly thereafter, the other defendant responded to this post, saying:

> I was just there this past weekend when I needed someplace close . . . . [N]ot only did they misdiagnose my dog but they sent me home with blood work that indicated a near fatal level of potassium. I took her elsewhere and they were in shock my dog was discharged. Thankfully my girl survived and is on the mend. Between my experience this past weekend and what you say, I am totally done. It seems going to no vet is better than [going to] them.[78]

Those comments led to other members of the public sharing their own similar, negative experiences with their pets' treatment at that same clinic. Indeed, the defendants' posts prompted no fewer than 140 responsive comments and dozens of additional reactions.[79] One community member wrote: "[Lind-Barnett] is using the community page to warn our community about her very serious experience with a business in our community. It is exactly what this page is for—sharing information about our community." Another commented: "Thank you for posting this. It may save lives."[80]

The veterinary clinic demanded the two defendants remove their posts and pay the clinic $25,000 each. When they refused, the clinic sued them for defamation.

The defendants filed a special motion to dismiss, arguing that their online comments about their experiences at the veterinary clinic were protected statements of opinion on a matter of public interest.[81] The district court denied that motion, finding that the defendants' online comments were about a "private business dispute" and were not made in connection with "matters of public interest or a public issue."[82]

The Colorado Court of Appeals affirmed the district court's decision. The unanimous appellate panel noted that while Facebook and other social media sites are "public forums," "not every post . . . involves a public issue."[83] While it acknowledged that online comments about the quality of medical care *might* implicate an issue of public concern, for such comments to be in connection with the "public interest," the panel held, it must "contribute to the public debate." In concluding no such nexus existed with the statements at issue, the court of appeals focused almost exclusively on what it believed was the defendants' motivation, "to exact revenge" on the veterinary clinic by seeking to put it out of business.[84]

Defendants filed a petition for certiorari to the Colorado Supreme Court, which was granted. Three organizations filed amicus briefs in support of the plaintiffs'/petitioners' position: Public Citizen, the Public Participation Project, and Yelp Inc.

The Colorado Supreme Court reversed the lower courts' holdings that the defendants' statements were addressed exclusively to a private dispute and were not in connection with an issue of public interest. Recognizing that the question of "what qualifies as speech . . . 'in connection with a public issue or an issue of public interest'" was a matter of first impression in Colorado, the court looked to California's similarly worded anti-SLAPP statute and its extensive case law for guidance. The Colorado Supreme Court decided that, like in California, a two-step inquiry applies.[85]

Under the first step, "a court must determine whether an objective observer could reasonably understand that the speech . . . considered in light of its content and context, is made in connection with a public issue . . . , *even if it also implicates a private dispute*."[86] According to the court, a defendant's anti-SLAPP motion fails on the first step "[o]nly when an expressive activity, viewed in context, cannot reasonably be understood as implicating a public issue."[87] The court then listed non-exhaustive categories of statements that "tend[ed]" to implicate a public issue, such as those addressing (1) the conduct of a person or entity in the "public eye," (2) conduct that directly affects a large number of people beyond just the speaker, and (3) a topic of widespread public interest.[88] The court also noted an additional consideration is whether the underlying issue addressed by the statements is subject to extensive media coverage.[89]

The court then cautioned that statements are rarely about a single issue, and that while a speaker may be addressing their own experiences, that does not mean "an objective observer could not reasonably understand [their] story, in context, to implicate societal issues"; so, even statements arising from or describing a private dispute can, in many instances, implicate a public issue under the statute.[90] This observation is consistent with Colorado's precedents in defamation and invasion of privacy cases on what constitutes a matter of legitimate public interest or concern.

If a defendant's speech meets this first "objective observer" test, then, under the second step, the court looks to the relationship between the challenged speech and the public issue" and determines whether the speech "contributed to the public discussion or debate" by examining the intended audience, the speaker, and the location and purpose of the speech.[91]

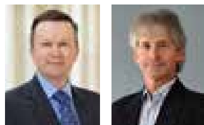
Applying the newly announced criteria to the facts of the case, the supreme court held that the lower courts had correctly recognized that the defendants' statements describing their pets' mistreatment at the plaintiff's facility "could reasonably be understood, in context, to implicate a public issue . . . regarding the quality of services and care at a licensed veterinary facility."[92] But, the high court stated that the lower courts erred by weighing the number of defendants' statements "airing a private grievance" against the number that discussed issues of interest to the public in receiving information regarding the clinic: "Simply put, the [court below] decided that because *most* of the petitioners' statements expressed personal animosity toward TCVC, *none* of their statements were protected by the anti-SLAPP statute." Rather, the court held, "there is no reason why speech cannot be made in connection with both a private dispute and a public issue."[93]

Turning, then, to the second "nexus" step under prong 1, the court found that "by garnering more than 140 comments and receiving dozens of reactions, the [defendants'] posts prompted members of the community to consider TCVC's veterinary practices" and thus the speech "contributed to the public discussion" on a matter of public interest.[94]

Finally, the court found that the speaker's motive—that is, their reason for making the allegedly defamatory comments—was not relevant to the first prong of Colorado's anti-SLAPP statute.[95] The court departed from California's case law on this front, finding that a "defendant's motive for speaking, whether objectively reasonable or not, doesn't answer whether the challenged speech is made in connection with a public issue or an issue of public interest," nor does it answer whether the challenged speech contributes to the public discussion.[96] The court reasoned that any other approach would lead to "illogical results" with respect to identical statements by two putative defendants—one defendant's statements, motivated by animus, would be deemed not in connection with a public issue, but another's identical words, lacking any ill motive, would fall within the first prong of the anti-SLAPP protection.[97] To the extent a defendant's motive is relevant, the court held, its relevancy is limited to only whether "a plaintiff has demonstrated a reasonable likelihood of prevailing on their claim," which is prong 2 of the anti-SLAPP statute.[98]

Conclusion

With only six years of experience under Colorado's anti-SLAPP statute, the growing body of trial and appellate court rulings construing that law demonstrate that it has, thus far, fulfilled its stated twin objectives of quickly weeding out meritless claims premised on constitutionally protected rights of speech and petition, while permitting meritorious claims causing actual injury to proceed. As the Colorado-based co-creators of the term "SLAPP," and of proposed legislation to address such claims declared decades ago, providing an additional procedural mechanism to quickly resolve the merits of such claims furthers the public interest by allowing non-actionable speech on matters of public interest and concern to reach the general public, rather than being "chilled" by unmeritorious litigation. CL



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NOTES

1. Since that time, nine additional states have adopted anti-SLAPP statutes. *See* http://www.rcfp.org/anti-slapp-legal-guide.

2. The authors have represented parties in the following cases discussed or cited in this article: *SG Interests I, Ltd. v. Kolbenschlag* (Zansberg was lead counsel for defendant/appellee); *Jogan Health, LLC v. Scripps Media, Inc.*, (Zansberg Beylkin was counsel for defendants/appellees); *Tender Care Veterinary Ctr., Inc. v. Lind-Barnett* (Zansberg Beylkin was co-counsel for defendants-appellants); *Gonzales v. Hushen* (Zansberg Beylkin was counsel for defendants-appellants/cross-appellees); and *Daleiden v. Ginde* (Zansberg was co-counsel for defendant/appellee).

3. http://www.law.du.edu/faculty-staff/george-pring.

4. *See* Pring, "SLAPPs: Strategic Lawsuits Against Public Participation," 7 *Pace Env't L. Rev.* 1 (1989).

5. Reporters Committee for Freedom of the Press, "Anti-SLAPP Legal Guide," http://www.rcfp.org/anti-slapp-legal-guide. *See also* http://slappback.org (database collecting SLAPP cases filed across the nation).

6. Summerlin, "SG Interests Files Libel Lawsuit Against Environmental Activist Kolbenschlag," *Post Indep.* (Mar. 8, 2017), http://www.postindependent.com/news/local/sg-interests-files-libel-lawsuit-against-environmental-activist.

7. *See, e.g.*, Dubrow et al., "Natural Gas Companies Settle Antitrust Suit Stemming From Joint Bidding," *Nat'l L. Rev.* (Apr. 28, 2013), http://www.natlawreview.com/article/natural-gas-companies-settle-antitrust-suit-stemming-joint-bidding; Mutrie, "Powerful Natural Gas Companies Agree to a Larger Antitrust Fine," *Aspen Daily News* (Apr. 21, 2013, updated Dec. 18, 2017), http://www.aspendailynews.com/powerful-natural-gas-companies-agree-to-a-larger-antitrust-fine/article_be895862-0637-537b-8db1-fe94517ba2be.html; "North Fork Gas Drillers Fined by Feds for Collusion," *Crested Butte News* (Feb. 22, 2012), http://crestedbuttenews.com/2012/02/north-fork-gas-drillers-fined-by-feds-for-collusion.

8. *See* CRS § 13-17-201(1).

9. After SG Interests appealed the grant of summary judgment, the district court judge awarded Kolbenschlag his fees upon finding that SG Interests' lawsuit was groundless and vexatious. The Colorado Court of Appeals affirmed the district court's grant of summary judgment and its award of attorney fees against SG Interests. *SG Interests I, Ltd. v. Kolbenschlag*, 2019 COA 115.

10. *See* Kolbenschlag, "Kolbenschlag Column: Strategic Lawsuits Against Public Participation," *Post Indep.* (Apr. 30, 2019), http://www.postindependent.com/opinion/columns/kolbenschlag-column-strategic-lawsuits-against-public-participation.

11. Strategic Lawsuits Against Public Participation, HB 19-1324, 72nd Gen. Assemb., 1st Reg. Sess. (Colo. 2019), http://leg.colorado.gov/bills/hb19-1324.

12. Cal. Civ. Proc. Code § 425.16 (2025).

13. CRS § 13-20-1101(1)(b).

14. *Rosenblum v. Budd*, 2023 COA 72, ¶ 23 (quoting *Salazar v. Pub. Tr. Inst.*, 2022 COA 109M, ¶ 12).

15. CRS § 13-20-1101(5).

16. CRS § 13-20-1101(3)(a).

17. *Id.*

18. CRS § 13-20-1101(3)(b).

19. CRS §§ 13-20-1101(5), (6).

20. CRS § 13-20-1101(4)(a).

21. CRS § 13-20-1101(7).

22. *See generally* http://research.coloradojudicial.gov.

23. *See Salazar*, 2022 COA 109M, ¶ 21 ("we review de novo a district court's ruling on a special motion to dismiss to determine whether the plaintiff has established a reasonable likelihood of prevailing on the claim"). *See also Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, ¶ 16; *Jogan Health, LLC v. Scripps Media, Inc.*, 2025 COA 4, ¶ 15; *Hebert v. Ritter*, No. 24CA1035, ¶ 10, http://law.justia.com/cases/colorado/court-of-appeals/2025/24ca1035.html; *L.S.S. v. S.A.P.*, 2022 COA 123, ¶ 19; *VOA Sunset Hous. LP v. D'Angelo*, 2024 COA 61, ¶ 11; *Rosenblum*, 2023 COA 72, ¶ 26; *Creekside Endodontics, LLC v. Sullivan*, 2022 COA 145, ¶ 24; *Anderson v. Senthilnathan*, 2023 COA 88, ¶ 8; *Wright v. TEGNA Inc.*, 2024 COA 64M, ¶ 23; *Tender Care Veterinary Ctr., Inc. v. Lind-Barnett*, 2023 COA 114, ¶ 15, *rev'd on other grounds*, 2025 CO 62; *Gonzales v. Hushen*, 2023 COA 87, ¶ 26; *Coomer v. Giuliani*, No. 22CA0843, 2024 Colo. App. LEXIS 1708, at *6 (Colo.App. Nov. 14, 2024); *Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, ¶ 64; *Murphy Creek Dev., Inc. v. Matise*, No. 24CA0230, 2024 Colo. App. LEXIS 1801, at *5 (Colo.App. Nov. 14, 2024); *Petrocco v. Sharkey*, No. 21CA1493, 2023 Colo. App. LEXIS 2081, at *8 (Colo.App. June 1, 2023); *Daleiden v. Ginde*, No. 21CA1625, 2023 Colo. App. LEXIS 2035, at *11 (Colo.App. Feb. 16, 2023); *Morrow v. Lewis*, No. 20CA1505, 2023 Colo. App. LEXIS 2948, at *7 (Colo.App. Feb. 9, 2023); *I.L.M. Props., LLC v. Tibbetts*, No. 22CA0490, 2023 Colo. App. LEXIS 3517, at *6 (Colo.App. Apr. 27, 2023).

24. *Salazar*, 2022 COA 109M.

25. *Id.* at ¶¶ 3–7.

26. *Id.* at ¶ 9.

27. *Id.* at ¶ 14.

28. *Id.* at ¶¶ 12–13.

29. *Id.* at ¶ 15.

30. *See* CRS § 13-20-1101(3)(b).

31. *Salazar*, 2022 COA 109M, ¶ 16.

32. *Id.* at ¶ 17.

33. *Id.* (comparing § 13-20-1101(3)(a) (providing that a special motion to dismiss is to be granted "unless the court determines that the plaintiff has established that there is a reasonable likelihood that the plaintiff will prevail on the claim"), with *In re Estate of Feldman*, 2019 CO 62, ¶ 17 (noting that a "prerequisite[] to preliminarily enjoining someone is a reasonable likelihood of the moving party's success on the merits")).

34. *Id.*

35. *Id.* at ¶¶ 18–19.

36. *Id.* at ¶ 19 (citing CRS § 13-20-1101(3)(c)) ("If the court determines that the plaintiff has established a reasonable likelihood that the plaintiff will prevail on the claim, neither that determination nor the fact of that determination is admissible in evidence at any later stage of the case or in any subsequent proceeding . . . .").

37. *Id.* at ¶ 21.

38. *Hushen v. Gonzales*, 2025 CO 37, ¶ 20.

39. *Lind-Barnett v. Tender Care Veterinary Cntr., Inc.*, 2025 CO 62, ¶ 20.

40. *Salazar*, 2022 COA 109M, ¶ 18.

41. *L.S.S.*, 2022 COA 123, ¶ 23. *See also Creekside Endodontics, LLC*, 2022 COA 145, ¶ 26.

42. *Walker v. Colorado Springs Sun*, 188 Colo. 86, 98–99; *Diversified Mgmt. v. Denv. Post*, 653 P.2d 1103, 1109 (Colo. 1982).

43. *E.g.*, *Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, ¶ 77.

44. *L.S.S.*, 2022 COA 123, ¶ 41. *See also id.* at ¶ 43 ("The rule we espouse is also consistent with Colorado cases applying the clear and convincing evidence standard at the summary judgment stage." (citing *DiLeo v. Koltnow*, 613 P.2d 318, 323 (Colo. 1980)); *Creekside Endodontics, LLC*, 2022 COA 145, ¶¶ 30–31; *Coomer v. Giuliani*, 2024 Colo.App. LEXIS 1708, *7.

45. *Salazar*, 2022 COA 109M, ¶¶ 22–23; *Coomer v. Giuliani*, 2024 Colo. App. LEXIS 1708, at *9.

46. *Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, ¶¶ 76 ("a plaintiff's burden is to make 'a prima facie showing' of evidence that—if later presented at trial—is reasonably likely to sustain a favorable judgment"); *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, ¶ 17.

47. *See L.S.S.*, 2022 COA 123, ¶ 23 n.3 (noting the interchangeable use of the various formulations).

48. *L.S.S.*, 2022 COA 123, ¶ 44.

49. *See* Solomon et al., "Jury Returns Verdict in MyPillow CEO Mike Lindell's Denver Defamation Trial," KUSA-TV (June 16, 2025), http://www.9news.com/article/news/politics/mypillow-lindell-verdict-coomer-election-rigging-claims/73-20baeac8-075c-4764-aac6-e6fe77ca092d.

50. Subsequently, Salazar's claims were dismissed on summary judgment.

51. *See Coomer v. Giuliani*, 2024 Colo. App. LEXIS 1708, *7 (defamation and IIED claims survive); *Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35 (defamation claims survive); *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2 (defamation claim survives, but civil conspiracy claim dismissed); *Wright*, 2024 COA 64M (vicarious liability claim survives, but negligent hiring and civil conspiracy claim dismissed); *Anderson v. Senthilnathan*, 2023 COA 88 (defamation

claim survives); *Rosenblum v. Budd*, 2023 COA 72 (misappropriation and defamation claims survive); *Morrow v. Lewis*, 2023 Colo. App. LEXIS 2948 (defamation, negligence, and IIED claims survive); *L.S.S.*, 2022 COA 123 (defamation claim survives).

52. *See Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, ¶ 78 ("The evidence in those affidavits may be considered if 'it is reasonably possible the proffered evidence . . . will be admissible at trial.'").

53. *Salazar*, 2022 COA 109M, ¶ 20.

54. *Id.* at ¶ 18.

55. *See, e.g.*, *DiLeo v. Koltnow*, 613 P.2d 318, 323 (Colo. 1980) (holding that the clear and convincing burden "applies equally at the summary judgment stage").

56. *L.S.S.*, 2022 COA 123, ¶ 23.

57. *Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, ¶¶ 68–69.

58. *Id.* at ¶ 72.

59. *Id.* at ¶ 144; *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, ¶ 18 ("When evaluating this evidence, neither the trial court nor we make factual findings, make credibility determinations, or weigh the evidence to resolve factual conflicts.").

60. *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, ¶ 38.

61. *Id.*

62. *Wright*, 2024 COA 64M, ¶¶ 26, 40. *But see Jogan Health*, 2025 COA 4, ¶ 64 (Berger, J., specially concurring) (positing "Does that mean that the court must treat as true any statement of historical fact included in an affidavit opposing the special motion to dismiss, regardless of how unsupported or weak that allegation might be? If so, isn't that a rather obvious invitation for any clever litigant to avoid the operation of the anti-SLAPP statute simply by filing an affidavit that says, in essence, 'I didn't do it'? That appears to be the plain result of the *L.S.S.* formulation.").

63. *Jogan Health*, 2025 COA 4, ¶ 60 (citing *Salazar* 2022 COA 109M, ¶ 21).

64. *Id.* at ¶¶ 63–64.

65. *Id.* at ¶ 72.

66. *Id.* at ¶ 76.

67. *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, ¶ 119 (Tow, J., specially concurring).

68. *Id.* at ¶ 121.

69. *Id.* at ¶ 125. *See also id.* at ¶¶ 122–23 (noting the *L.S.S.* formulation might "make[] it *more difficult* for a defendant to obtain a dismissal because instead of being left to fend off dismissal with only the complaint's allegations, the plaintiff is given the opportunity to shore up any weaknesses in the complaint by asserting yet more facts that would have to be accepted as true").

70. *L.S.S.*, 2022 COA 123, ¶ 23 (internal quotation marks and citation omitted) (emphasis added). *See also Anderson v. Liberty Lobby*, 477 U.S. 242, 249–50, 255 (1986) (holding that "*there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party*." (emphasis added) (internal citations omitted)); *Id.* at 255 (holding that "in ruling on a motion for summary judgment . . . a trial judge must bear in mind the actual quantum and quality of proof necessary to support liability. . . . [T]here is no genuine issue if the evidence presented in the opposing affidavits is of insufficient caliber or quantity to allow a rational finder of fact to find actual malice *by clear and convincing evidence*" (emphasis added)).

71. *Rocky Mountain Planned Parenthood, Inc. v. Wagner*, 2020 CO 51, ¶ 19 ("We review an order granting summary judgment de novo.").

72. *Rosenaur v. Scherer* 105 Cal. Rptr. 2d 674, 684 (Ct.App. 2001) (citation omitted). *See also Annette F. v. Sharon S.*, 15 Cal. Rptr. 3d 100, 114 (Ct.App. 2004) (because public figure plaintiffs must establish actual malice by clear and convincing evidence, they can successfully defend against an anti-SLAPP motion only by establishing "a probability that [they] will be able to produce clear and convincing evidence of actual malice."); *Reed v. Gallagher*, 204 Cal. Rptr. 3d 178, 193 (Ct.App. 2016) (same); *Christian Res. Inst. v. Alnor*, 55 Cal. Rptr. 3d 600 (Ct.App. 2007) (same); *Colt v. Freedom Commcn's, Inc.*, 1 Cal. Rptr. 3d 245 (Ct.App. 2003) (same); *Conroy v. Spitzer*, 83 Cal. Rptr. 2d 443 (Ct.App. 1999) (same); *Beilenson v. Super. Ct.*, 52 Cal. Rptr. 2d 357 (Ct.App. 1996) (same).

73. *See, e.g.*, *Rosenblum*, 2023 COA 72, ¶ 40 ("to withstand a special motion to dismiss where a showing of actual malice will be required at trial, a plaintiff must establish a reasonable probability that he will be able to produce clear and convincing evidence of actual malice at trial"); *Coomer v. Donald J. Trump for President, Inc.*, 2024 COA 35, ¶ 146 (same); *Coomer v. Salem Media of Colo., Inc.*, 2025 COA 2, ¶ 34 (same).

74. *Scott v. Harris*, 550 U.S. 372, 380 (2007) (emphasis added). *See also Dush v. Appleton Elec. Co.*, 124 F.3d 957 (8th Cir. 1997) (plaintiff's affidavit that contradicted her medical records and other evidence was insufficient to defeat summary judgment); *Kim v. Wasserstein Enters., LLC*, 984 N.Y.S.2d 632, 632 (Sup. Ct. 2012) ("Summary judgment cannot be defeated by affidavits . . . which contradict the documentary evidence before the Court.").

75. CRS § 13-20-1101(2)(a)(IV).

76. *Tender Care Veterinary Ctr., Inc. v. Lind-Barnett*, 2023 COA 114, *reversed and remanded by Lind-Barnett v. Tender Care Veterinary Ctr., Inc.*, 2025 CO 62.

77. *Lind-Barnett*, 2025 CO 62, ¶ 9.

78. *Id.* at ¶ 11.

79. *Id.* at ¶ 12.

80. *Id.*

81. *Id.* at ¶¶ 4–13.

82. *Id.* at ¶ 14.

83. *Id.* at ¶ 15.

84. *Id.* at ¶ 17.

85. *Id.* at ¶¶ 25–31 (citing *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 133 (Cal. 2019), and *Geiser v. Kuhns*, 13 Cal. 5th 1238, 1238 (Cal. 2022)).

86. *Id.* at ¶ 32 (emphasis added).

87. *Id.* (quoting *Geiser*, 515 P.3d at 634).

88. *Id.* at ¶ 33 (citing *Geiser*, 515 P.3d at 629–30).

89. *Id.* at ¶ 33 (citations omitted).

90. *Id.* at ¶ 34 (citations omitted).

91. *Id.* at ¶ 35.

92. *Id.* at ¶ 39.

93. *Id.* at ¶¶ 37, 38.

94. *Id.*

95. *Id.* at ¶¶ 40–45.

96. *Id.* at ¶ 44.

97. *Id.* at ¶ 45.

98. *Id.* at ¶ 40.