



Wait, I can get sued for protesting?

Understanding risks in civil courts

**These educational materials
do not constitute legal advice.
Contact a local attorney for
additional questions.**



In Baton Rouge, a police officer is suing an organizer for injuries that another protester allegedly caused



Doe v. McKesson: What is going on in Louisiana?

In 2016, police killed Alton Sterling in Baton Rouge, giving rise to uprisings. An organizer participated in protests. During one of the demonstrations, people threw objects at the police. One officer, John Doe, allegedly suffered serious injuries. Officer Doe sued the organizer, alleging he organized the protest, even though he is not accused of throwing anything at police. The trial court dismissed the case. After several appeals, the U.S. Supreme Court refused to consider the case, which means that the organizer may be held liable for other protesters' actions, and the case will move forward in trial court.



Fact-check:
**Doe v. McKesson ONLY applies to
the Fifth Circuit, and is based ONLY
on narrow Louisiana law**

The specific facts of this 2016 case, plus the complicated appellate history, means that the law has NOT changed in Texas or Mississippi. All it means is that the Fifth Circuit would allow for similar cases to move forward under the First Amendment.

**Do not give into fear-mongering:
You maintain the right to protest and dissent!**

How could police sue an organizer?

A dangerous expansion of negligence law in Louisiana

Negligence cases include medical malpractice, car crashes, slip and falls, jail staff mistreatment, etc.

- To be negligent, people need to have **a duty of care to others, based on foreseeable risks.**
 - **Example:** It is foreseeable that a bad driver would cause injury to other drivers, so the driver has a duty of care to other drivers.
 - In the pending case, the officer is alleging that the organizer is liable for the foreseeable risk of injury to the police based on the protest that took place.
 - In other words: **The officer is arguing that because the protest had a foreseeable risk of injury to police, the organizer had a duty of care to the police.**

This is a **dangerous and unacceptable expansion of civil liability.**

Civil lawsuits against protesters are not new, but they are mutating and becoming more frequent

Companies have used **Strategic Lawsuits Against Public Participation (SLAPPs)** against protesters to silence, bankrupt and/or intimidate them and their social movements.

SLAPPs are **civil lawsuits against activists, organizations, and social movements.**

Some states have anti-SLAPP laws, but many do not, and no federal law exists to protect activists.

Energy Transfer v. Greenpeace: What is going on in North Dakota?

In 2019, Big Oil company Energy Transfer sued Greenpeace for \$300 million over the 2016-17 Standing Rock resistance against the Dakota Access Pipeline. The lawsuit falsely claims that Greenpeace was responsible for the entire movement,. The suit is being used as a tool to silence dissent and burden the movement. After several years of legal battles, the case is set for trial in late summer 2024.

Civil liability is a loophole that allows private actors to stifle dissent despite constitutional protections

Constitutional protections and other laws are supposed to prevent the government from enforcing laws that suppress protests.

- However, **civil liability is a loophole** through which private actors can attack protesters by suing them for defamation, interference with contract, RICO, invasion of privacy, etc.
- Other examples of the government's use of private actors and side-stepping constitutional protections: Private right to sue abortion providers in Texas, private right to sue gender-affirming physicians in Arkansas, etc.



Assessing risks for this type of lawsuit is difficult, since the complaints are usually baseless

The purpose of these civil cases is to silence and intimidate, not to win in court!

- It is impossible to prepare for baseless or fringe lawsuits, because they are, by definition, not based on the current law.

But, being aware of civil liability can help organizers **prepare and create plans so that they are more protected and have resources to fight any legal attacks.**

Biggest risks: Protesting wealthy corporations, being a well-known organizer, known collaboration between private companies and law enforcement, and making public statements.

Take extra precautions on written and other statements

Many SLAPPs involve claims of defamation.

Risks emerge when putting out traceable statements, advisories, reports, etc.

Be mindful of what you, your organization, or collective puts out into the world!

- **Review communications** with an eye towards how the messaging could be misinterpreted.
 - Is there proof for facts asserted as truth?
 - Are opinions clearly opinions?
 - Are exaggerations, humor, or metaphorical language clearly not assertions of fact?

Be especially careful with language that could be misconstrued as calling for violence, threats, or public disorder.

**Practice good, proportionate, and
productive security culture!
Remaining safe and anonymous
can protect you.**

Resources:

- Defend Dissent: Digital Suppression and Cryptographic Defense of Social Movements
 - **<https://open.oregonstate.education/defenddissent/>**
- Electronic Frontier Foundation's Surveillance Self-Defense Guides
 - **<https://ssd EFF.org/>**

Questions? Find or start a local NLG chapter:

<https://www.nlg.org/chapters>

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