

## POINTS OF VIEW

## SLAPP suits hit hard at right to speak out

ANDREW NICKELHOFF  
GUEST COLUMNIST

The people living along Power Road never thought they'd be "SLAPPED." Power Road is a short stretch of dirt road, rolling through a pastoral woodland hidden away in the middle of Farmington Hills. The homes lining Power Road are set far back from the road and from each other; they are not ostentatious. Power Road has been designated a Natural Beauty Road by our city. Most of the road's residents view it as an enclave from suburban bustle, and you can appreciate the atmosphere of seclusion and serenity when you drive down it.

Last year, however, one large property owner along Power Road decided he saw the area as the perfect place for a new subdivision. He applied to the city planning commission for permission to build 41 homes on 23 acres. Many of the residents viewed the proposed development, with its concentrated density and inevitable traffic, as a threat to the pastoral environment they cherished. Some of them decided to work through the system to protect Power Road. They circulated a petition. They held meetings in their living rooms. They organized their neighbors, and petitioned city hall

for a zoning change to keep building density low. The residents wrote letters and spoke at planning commission and city council meetings, giving reasons why the zoning change they requested was appropriate and consistent with prevailing land use in the area. The developer worked through the system as well. He argued why the zoning should not change and the development should be permitted.

The city council eventually agreed with the Power Road residents and changed the zoning to preserve the road's unique character.

The issue, however, was not settled. The developer sued the city to force it to restore the old zoning, and for \$400,000, claiming he was owed that much as compensation for the lost property value he would have reaped by replacing woodlands with a subdivision on Power Road, had the city not changed the zoning.

The developer also sued some of the individual residents who had organized their neighbors and spoken out at meetings as well as other "unknown individuals doing business as Philbrick Farms North Power Road Homeowners Association." He sued his neighbors for \$1 million — jointly and severally (meaning

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each defendant could potentially be liable for the entire amount.)

It might seem surprising that people can be sued for exercising their civic and constitutional right to petition the government for a change in the law. But it happens all the time.

In fact, such lawsuits against citizens are so common, they have been given a name: "SLAPP" suits (standing for Strategic Lawsuits Against Public Participation). SLAPPs are filed more and more frequently, by developers, big corporations, and the like, who see their business threatened by citizens working through the system to change or enforce the law. A recent issue of the Journal of the American Bar Association cites a study of SLAPP lawsuits, which found that the biggest category of SLAPPs are those involving real estate development, land use questions, and zoning.

The people living on Power Road never suspected they would be SLAPPED with a million-dollar lawsuit. Being served with a million-dollar complaint is an unsettling experience. The lawsuit against the Power Road residents eventually was dismissed volun-

tarily by the plaintiff. But even if a SLAPP suit is dismissed (as most SLAPP suits are, because they have no legal basis), those who are sued still must hire a lawyer and suffer the expense, anxiety and aggravation of litigation.

Those who file the SLAPP suits (and their lawyers) count on this, of course. Indeed, that is the reason most SLAPP suits are filed — to punish and intimidate everyday people who are bold enough to think they can take on powerful and wealthy interests by working through the democratic system. People who speak out on civic issues should not have to pay the price of defending a SLAPP suit. There are things we can do to stop such litigation.

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The Legislature took one step in its

last session. Our former Representative, Jan Dolan, helped enact the "Protection of Volunteer Directors" bill. That law extends the law's protection of volunteer (unpaid) directors of non-profit corporations against liability for actions taken in good faith, to directors and officers of incorporated homeowners associations. The Council of Homeowner Associations of Farmington Hills (COHA) went on record supporting this legislation. However, the law only protects directors and officers of homeowners associations which are incorporated.

Second, our legislature should enact an anti-SLAPP law. Currently nine states now have such laws, which typically require an early review by the court to determine if the lawsuit has some real basis or is just for harassment; some make the plaintiff pay the defendant's legal fees if the suit is thrown out. An anti-SLAPP law must be carefully written. It should take account of the right to file a lawsuit. And it must protect citizens against becoming million-dollar defendants simply because they exercise their constitutional rights to speak out and petition their government.

Andrew Nickelhoff lives in Farmington Hills.

## Push for school takeovers lacks common sense

To understand Gov. John Engler, you must grasp that he is more interested in peddling ideology than in solving practical problems of education.

That is why he is targeting 10 public school districts for a state takeover instead of the so-called "charter schools," which are mostly former private schools getting state money.

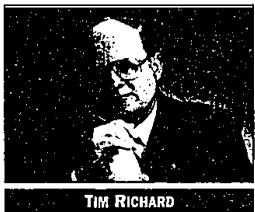
Many charter schools are losers. Check the latest round of Michigan Educational Assessment Program tests of math and reading taken by 120,000 fourth and seventh graders. Of those, 96 percent were in true public schools, with elected school boards and PTAs, so the state totals are roughly the same as the public school totals.

In fourth grade math, 60.5 percent of the total got "satisfactory" scores versus 35.4 percent of charter pupils.

"Low" scores were recorded by 18.1 percent of the total and 41.4 percent of the charter pupils. In every category, public schools as a group did better than charter schools as a group.

In Detroit, top takeover target, public school students had 48.7 and 29.1 percent "satisfactory" math scores in fourth and seventh grades. Sierra Leone Educational Outreach — which boasts "heterogeneous" classrooms, African studies, karate and computer technology in its curriculum — scored 8 and 8 in the same categories.

In Lansing, another in the state's top 10 bad list, public school pupils had 39.7 and 31 percent "satisfactory" scores in fourth and seventh grade math. Weak, but still better than Sankofa Shule, whose "African-centered liberal arts and science curriculum" resulted in scores of 29.4 percent



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"satisfactory" in the same categories. Oak Park public school pupils saw 62.1 and 78.2 percent satisfactory scores in math in fourth and seventh grades. Academy of Detroit Oak Park reported 5.2 and 5.2 percent satisfactory math scores.

Another comparison of suburban

schools not on Engler's hit list is Southfield, where public schools saw 63.1 and 52.7 percent satisfactory scores in math. AGBU Alex & Marie Manogian School, which stresses Armenian culture and bilingualism, recorded 46.7 and 46.7 percent satisfactory in the top math brackets. Academy of Detroit-Southfield, which lauds the "free enterprise system," had satisfactory math scores of 21.7 and 21.7.

The case for charter schools looks even grimmer when one examines some of the "Native American" schools. Nah Tah Wahah, which offers "native culture and language" in the Menominee County hamlet of Wilson, had zero satisfactory scores in reading and 11 percent satisfactory in math in both grades.

In a handful of cases, academics scored higher than local public

schools. Thomas-Gist Academy, located in the Inkster School District part of Westland, recorded 68.6 and 51.4 percent satisfactory grades in fourth grade math and reading, respectively — well ahead of Inkster's 24.5 and 23.1 and even ahead of Wayne-Westland's 52.1 and 43.2.

With a few exceptions, charter academics did badly. Engler won't admit it because he is pandering — "satisfying the expectations of the parents who choose to send their children to them," in the words of state superintendent Dr. Ellis Jan. 10 report on charter schools.

Now you also know why Engler's executive orders last December curbed the State Board of Education's powers over charter schools.

Tim Richard reports on the local implications of state and regional events.

## Engler's plan to privatize liquor drips with problems

On a trip to the California wine country last fall, Kathy and I visited the Carneros Alembic distillery, a place that makes French-style brandy in enormous (18 feet high) copper pot stills. We tried the product in the tasting room and found it excellent, certainly the equal of cognacs made in France.

Upon returning to Michigan, I looked for Carneros Alembic brandy at my local liquor store. Not there. "Can you order some?" I asked the proprietor.

"Nope," he said. "The state Liquor Control Commission decides what liquor to import into the state."

"Suppose I call them and ask to have some imported?" I asked, hopefully.

"Not a chance. You might like the stuff, but there isn't enough demand for that special brandy to bother the bureaucrats to order it."

"So what can I do?" I sighed.

"The next time you go to Chicago, you might find some. Remember, Illinois has an unregulated market for liquor, the prices there are lower, and the selection much greater than in Michigan."

That conversation has been rattling around in my head ever since Gov. John Engler tried to privatize the state-run wholesale liquor distribution system that warehouses booze and trucks the stuff to more than 13,000 retail bars, restaurants and party stores in Michigan.

His idea was to lay off nearly 400 state employees who work in the warehouses and drive the trucks, and let competitive contracts to private firms. Not surprisingly, unions representing the state workers sued to block the move, and the matter is now entangled in the slow coils of the courts.

Michigan has a Byzantine system to manage the sale and distribution of liquor that goes back to 1933, after Prohibition was repealed and the five-member state Liquor Control Commission (LCC) was created to control the sale of all liquor in the state.

The LCC not only manages the wholesale side of the business — warehousing and distribution — but also controls what brands of liquor are imported into Michigan and the retail prices. It is the LCC that sets the 65 percent markup on the wholesale price the state pays distillers, thereby regulating liquor pricing and earling the state a tidy \$80 million profit each year from its monopoly control over the liquor business.



PHILIP POWER

What is mystifying about Engler's move to privatize the system is that he has succeeded in obtaining the worst of both worlds.

Contracting out warehousing and distribution costs nearly 400 people their jobs, makes the unions mad and puts Democrats in the Legislature on the warpath. But attacking only warehousing and distribution does nothing whatsoever to attack the monopoly control exercised by the state over selection and price of liquor.

The governor is usually much smarter than this. I suspect the real reason behind his approach is that he doesn't want to kick away \$80 million annually in profits from the state liquor monopoly.

If we have learned anything as we approach the end of the century, it is that monopolies — whether controlled by business or government — are inherently bad. They drive up prices and drive down service; they shackle the workings of the market to provide customers with the products, prices and services they are willing to pay for. And the monopoly profits — whether going to a corporation or state government — are, at the end of the day, simply gouged from the pockets of ordinary consumers.

If Engler wants to do something serious about privatization, he should try to get the state entirely out of running the liquor business in Michigan.

Let the LCC regulate places that are licensed to sell liquor; enforce laws limiting sale to minors and collect liquor taxes. But let the workings of the market determine what kind of booze customers want to buy and at what prices.

Phil Power is chairman of the company that owns this newspaper. His Touch-Tone voice mail number is (313) 953-2047 ext. 1880.

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