

The \$300M Lawsuit That Could Crush Dissent

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Ariana Brocious: I'm Ariana Brocious.

Kousha Navidar: I'm Kousha Navidar.

Ariana Brocious: And this is Climate One.

[music change]

Ariana Brocious: Hey Kousha, have you ever heard of a SLAPP lawsuit?

Kousha Navidar: Yes! I learned about SLAPP suits from the same place many of us get our news: John Oliver. He had a whole segment on his show about SLAPPs after he was sued by coal executive Bob Murray for critical coverage.

John Oliver Clip: Now, obviously, the lawsuit was a b*****t effort to silence us, perhaps best exemplified by a motion that Murray filed to try and get a gag order to prevent us from rebroadcasting the story or even having it up online. And for the record, the piece is still on the internet, big time, and you can actually find it at stillontheinternetbigtime.com.

Ariana Brocious: The episode, and it's really worth your time to watch it, aired in 2019 after Oliver won the SLAPP defamation lawsuit against him.

Kousha Navidar: SLAPP. It stands for Strategic Lawsuit Against Public Participation. It sounds aggressive, and it kind of is. The point of a SLAPP suit seems to be to intimidate the targets of the lawsuit in order to chill dissent.

Ariana Brocious: Right, because if you lose that lawsuit, paying for damages can be costly, and even defending against lawsuits is expensive and time consuming. So SLAPP suits are a go-to tactic of those with deep pockets who want to flex their power.

PICKUP Kousha Navidar: And as the John Oliver example makes clear, even the famous aren't immune. Oprah did a show about mad cow disease, and then she was sued by the Texas beef lobby. 60 minutes was SLAPP-ed by a group of Washington apple farmers. And the list goes on.

Ariana Brocious: And that acronym, SLAPPED, really has a very visual component, right?

Kousha Navidar: Hear it.

Ariana Brocious: Yeah, hear it, that's better. And there are two real concerns. First is that powerful people and individuals can use the courts to silence the people they are suing. But perhaps more worrisome is that such suits send stark warnings to **everyone**: don't challenge us, and keep your mouth shut - or face the consequences. So in recent years more than two-thirds of U.S. states have passed laws to help prevent these so-called SLAPP suits.

Kousha Navidar: Today we're going to talk about a current lawsuit that could have far-reaching implications for climate action for years to come.

[music change]

Ariana Brocious: You might not have heard of a company called Energy Transfer Partners. But you've probably heard of something they built: The Dakota Access Pipeline, now carrying crude oil from North Dakota to Illinois. In 2016 and 2017, there were **major** protests against this pipeline at Standing Rock in North Dakota. It captured the public's attention.

[ambient tape of protests]

Kousha Navidar: I remember around that time, I was working as a speechwriter in DC and everyone was talking about the protests. And two things really stuck out: first was the variety of people that showed up at the protests. And the second was the length of time these protests were happening and just the volume of people that were protesting. It went on for a while.

Ariana Brocious: Yeah, it did. Now, almost a decade later, Energy Transfer is suing Greenpeace for 300 million dollars -- with potential damages up to **one billion dollars** -- for the organization's involvement in the protests. Greenpeace told the New York Times \$300 million is more than 10 times the group's annual budget. The trial began THIS WEEK in Morton County, North Dakota.

Kousha Navidar: Wow, that's a lot of money on the line. In their suit, Energy Transfer alleges that, in part, <quote> "Greenpeace orchestrated an unlawful and violent scheme to cause financial harm to Energy Transfer and Dakota Access, to cause physical harm to their employees and infrastructure, and to disrupt and prevent the company's construction of the Dakota Access pipeline..." endquote .

Ariana Brocious: Greenpeace alleges the suit is a SLAPP suit, but the court has not ruled on whether it qualifies as one. We reached out several times to Energy Transfer over the past six weeks, inviting them to discuss the suit. They did not respond.

Greenpeace's National Campaigns Director Rolf Skar firmly disputes the pipeline company's allegations.

Rolf Skar: Their flimsy foundational claim is that Greenpeace somehow orchestrated the entire

resistance at standing rock. And that's ludicrous on its face. Anyone who was there or understands that this was, you know, an indigenous-led resistance movement would, you know, see right through that claim. That's the foundational claim, is that Greenpeace somehow orchestrated everything. That's insulting and it's also racist because it attempts to rewrite the history of the indigenous led resistance there. You know, it was the largest gathering of indigenous activism in modern history and it should be celebrated, not wiped away with a different narrative and a different story.

Ariana Brocious: We'll hear more from Rolf Skar later in the show, but first, let's go back to 2016 and refresh our memories of what happened at Standing Rock.

[WCCO News Tape]

Reporter 1: Nearly 150 people have been arrested for protesting the Dakota Access Pipeline.

Reporter 2: Law enforcement officers have fired beanbags and used pepper spray to clear people from private land. Video of the clashes between police and protesters have spread across social media.

Ariana Brocious: Montgomery Brown was 25 years old when he first learned about the Dakota Access Pipeline. The pipeline was set to cross under the Missouri River, which could threaten the water supply for his tribe, the Standing Rock Sioux.

Montgomery Brown: If there was a breakage with the pipeline under the Missouri River, it would take like 10 minutes to get into the water water pipelines that supply water to the Cannonball, North Dakota community. I think it was 25 to 30 minutes to get into the next kind of district town, Fort Yates, North Dakota, which is the headquarters of Standing Rock Sioux Reservation. And then I think it was like 50 minutes to get into the water intake down in Wakpala, South Dakota, which is where my mother was living at the time and she still lives there.

Ariana Brocious: LaDonna Brave Bull Allard, a member of the Mandan, Hidatsa, and Arikara Nations living on the Standing Rock Sioux Reservation, was concerned about the pipeline construction. She donated a portion of her land to support other community members who shared those concerns. People from surrounding reservations came to camp out in the area.

Montgomery Brown: They call it the Sacred Stone Camp, a lot of it was just, we have to keep an eye on things, monitoring pipeline construction just to keep the public aware.

Ariana Brocious: People from the camp began circulating petitions throughout the community to stop the pipeline's construction.

Montgomery Brown: And mind you, this is just, your grandma, your grandpa down the street, it was just concerned citizens that wanted to raise awareness for a very serious issue.

Ariana Brocious: And at the same time, photos and videos from the camp and community started to circulate on social media.

Montgomery Brown: They were posting pictures, sharing videos, they started the Respect Our Water campaign. just short brief videos, they interviewed some kids from the Boys and Girls Club located on Standing Rock Reservation. They post like pictures, with children holding up glasses of oil filled water. And, what would you do if this was your water from your community.

Ariana Brocious: In the Spring of 2016, the community decided to blend traditional relay races into their awareness campaign, to raise consciousness and deliver their petition calling for the end of the

pipeline construction.

Montgomery Brown: So our people, like Dakota Lakota people we used to share messages to our neighboring tribes, right? Or bands, I guess, in layman's terms, the band of San Francisco would need a message delivered to LA, so we would select a group of people that would run on foot, 100 miles, several hundred miles, It's like a relay run. So you stack up people in a line. Could be two, could be three, could be ten. And then you just, you run at the head. And you set the pace, and then once you get tired, you just fall in behind. The way we styled it was how our ancestors used to do it.

Ariana Brocious: In late April 2016, a handful of Native and non-Native runners set out on a 500-mile relay run from Sacred Stone Camp in North Dakota to the Army Corps of Engineers Midwest Headquarters in Omaha, Nebraska. They were asking them to deny the Dakota Access Pipeline permission to cross the Missouri River.

Montgomery Brown: The beauty of it was, Something like this has not been done at this capacity for, who really knows how long, right? Or even done in this manner with this intention. There was a sense of community, all these tribes that used to historically hunt together, fish together, celebrate together, kids, high school, middle school level, 12, 13, 14, 17, 16 year old kids, right? They're participating, they're running, they're helping to carry this message, but mind you, like, when we talk grassroots. There's no NGO funding. There's nobody's rich uncle nobody's coming in you know riding on a horse to be like look I'll pay for it. We'll pay for everything, you can go. So it's it's fry bread sales. It's 50-50 raffles. It's fundraisers.

Ariana Brocious: A series of relay runs continued throughout the spring and summer to deliver more petitions declaring opposition to the Dakota Access Pipeline. One group ran over 1500 miles from Sacred Stone Camp to the Army Corps of Engineers headquarters in Washington, DC. They were met by a one star general and were given time to share their messages.

Montgomery Brown: A lot of them had handwritten letters. They'd been opposing this for the past year and it was something that they held near and dear to their hearts. They were from some pretty tough neighborhoods and they weren't the most well off kids. So this is what we have. This is all we have, and this is what we're here to defend.

Ariana Brocious: When he got back from DC, Montgomery Brown wanted to stay involved with the movement.

Montgomery Brown: I get home, I just found myself wanting to just keep pressing forward with everybody else. So I packed up what I could in my Jeep. I moved out of my apartment and I moved to Sacred Stone. I ended up staying with an elderly woman. She had a teepee. I just rolled out a couple blankets on the ground. One pillow, just that was it.

Ariana Brocious: The camp was small at first, but the messages being shared on social media about the Dakota Access Pipeline and the potential harm it could cause began to resonate with people from all over.

Montgomery Brown: Sacred Stone Camp went from 20 to 30 people to several hundred people like overnight. The protest site was right off of Highway 1806 on the east side. And it was just right up to this gate that was all that it was. And on the other side of that gate, was where they were putting the pipeline into the ground. Like what it just looked like for us was people gathering in a ditch. and singing and protesting and not a lot of violence for sure. Not a lot of back and forth, not, nothing crazy like that at that time.

Ariana Brocious: People from all over the world started to show up at Standing Rock to support the effort to protect the water and sacred land, and stop the construction of the Dakota Access Pipeline. The protests were largely nonviolent, though tensions did escalate at times. The protests reached their height in 2016 when tens of thousands of people, including members of more than 300 tribal nations, went to Standing Rock to stand and protest in solidarity. Celebrities joined the cause too.

Montgomery Brown: In the beginning Shailene Woodley came, Susan Sarandon, Riley Q came. The Justice League movie was coming out around then and so like Ben Affleck, Gal Gadot, Henry Cavill, they all took this picture with Aquaman 2. They all took this picture Respect Our Water No Dakota Access Pipeline. And then they posted it on their Instagrams.

Ariana Brocious: Brown says the protests had a strong spiritual element that bound people together.

Montgomery Brown: Cause that's like what a lot of Dakota Lakota's peoples, like our teachings and our upbringings are rooted in spirituality. When I met people at camp who come from other continents, like Africa and Europe, some of them from Asia, some of them would just be standing there with the backpack on their back, and the clothes they got on and they shared stories are like, I just felt like I heard this voice calling me and I was in the marketplace downtown and I just seen it happening on the news and I just felt I had to be here. And after we'd settle down for the night we would circle up. Every time have a different person say a prayer for us and we'd smudge off in the morning and at night and just something about it just is just completely magical is the only way I can really put it. When the people really had a message to say, or wanted to stand up for themselves, it's just testimony to the amount of power that we really hold in unity.

Ariana Brocious: I asked Montgomery Brown what he thought about The company building the pipeline, Energy Transfer Partners, suing Greenpeace over the Dakota Access Pipeline protests and alleging, among other things, that Greenpeace was instrumental in organizing those protests.

Montgomery Brown: I think Energy Transfer is really just looking for somebody to blame at this point. And for whatever their reasons are, however malicious they may be, they lost millions and millions of dollars because of the opposition that was placed in their way. They probably didn't consider the fact that they were breaking several laws, federal treaty laws. And they just thought they could buy their way into building that pipeline. And so when the community stood up for itself and Indian Country stood up for themselves as well, they didn't really think of a backlash for that, but obviously they're in another litigation battle with the Standing Rock Sioux tribe and with Cheyenne River Sioux tribe. So they have several other battles going on with other entities across the country not just for the DAPL fight itself, but for all the other pipelines that they've constructed that are leaking currently. As of today, to my knowledge, I believe there's already been [multiple leakages](#) in that Dakota access pipeline So as far as Greenpeace being a head organizer or the main person in charge I can't ever see that. For one, it takes away from the narrative that it was Indigenous people. It was BIPOC people as well that stood up for themselves, that drew a line in the sand and said, Hey, you can. You can come here and think you're going to do what you're going to do. But at the end of the day, this is a drinking source for, close to 18 million people down river. So this is definitely something that we have to protect. I didn't really see a lot of outside folks that were there like trying to stir the pot or trying to instigate violence or things like that. It always just seemed for whatever reason, the police usually instigated a lot of those incidents that occurred.

Ariana Brocious: The reason that this Greenpeace lawsuit has been given a lot of attention is because the theory is that the effort is to really criminalize protests and to really silence people who are objecting to things. And so if they are successful in this lawsuit, the thinking is that will really,

make a lot of other protesters second guess whether they want to take something on like this. Regardless of Greenpeace's involvement in this particular protest, I'm curious how you feel about that. Like you, you remain involved opposing the pipeline. Do you think it's does this kind of litigation is like a threat? Does it bother you? Are you worried about being involved?

Montgomery Brown: Yeah, I would say there's a definitely a cause for concern. But just with the repercussions of speaking out against it, it is something that's definitely attacking our first amendment rights. And it's from a lot of these corporations who have the money to spend. It's not like the the everyday person can't put up a battle against a big corporation like that because they have the millions and millions of dollars to spend. It's basically, the big bully in the yard just saying look, this is what I can do to you. This is what happens to you if you speak out, this is what happens to you if you decide to take these chances and make these choices. For myself personally, I think it's a personal decision that we all have to make and I look back at those times as challenging, but also I do show a deep appreciation for all the people that showed up. Because so many people made the effort to come and to to stand with all of us and support an Indigenous cause.

[music cue]

Kousha Navidar: We're gonna take a quick break. When we come back, we hear from Greenpeace about the possible implications of the lawsuit against them.

Rolf Skar: What is at play here could have a chilling effect on other speech and peaceful protest.

Kousha Navidar: That's up next, on Climate One.

Ariana Brocious: Help others find our show by leaving us a review or rating. Thanks for your support!

This is Climate One. I'm Ariana Brocious. At the heart of the case Energy Transfer Partners is bringing against Greenpeace is their claim that Greenpeace organized the Standing Rock Protests. Greenpeace National Campaigns Director Rolf Skar says that just isn't true.

Rolf Skar: Greenpeace played a very small role in the resistance movement, which was indigenous led and really captured not only the country, but the world's imagination at the time. You know, people stood up as water protectors all over the world, celebrities and activists. And, Greenpeace like just about every other environmental advocacy group, spoke up, we tweeted, we blogged about the issues, and a small group of staff, worked with the Indigenous Peoples Power Project to put on a, non violence direct action training, which is something that we have some expertise in, how to express yourself peacefully, how to do de escalation, and stick to the principles of non violent action and peaceful protest. So that was just a handful of staff. That were there at one period of time. You know, estimates are that 100,000 people cycled through North Dakota and the protest camps in 2016, 2017.

Ariana Brocious: And then also there was some funding Greenpeace provided. And where did that go? What was that used for?

Rolf Skar: It was in order to support that training and, there were things like clothing drives, you know, as the weather got colder, there was calls out on social media to donate warm clothes and that sort of thing. So, there's some donations that we provided, when the call was put out to folks to, to help support those who were on the ground at standing rock.

Ariana Brocious: Rolf Skar says there are three prongs to the lawsuit against them, all of which could have a chilling effect on other organizations or public protest.

Rolf Skar: They have almost three lawsuits in one. One is around defamation, alleging that Greenpeace made false statements that somehow cost them millions and millions of dollars, about the route of the pipeline, about the cultural resources of the Standing Rock Sioux tribe and others, and about violence at the protest. They are also alleging that there's tortious interference, and this is communications with the financial sector. So one example of that is that Greenpeace signed on to a letter that was written by a different organization and had over 500 other organizations signed on to it to educate parts of the financial sector that were either investing in or considering investing in the pipeline to point out that what was going on at Standing Rock might not meet their own standards, so banks and financial institutions often have principles what they'll invest in and what they won't. And we thought it was important to add our name to the hundreds of others. So that's another act that they're alleging because Greenpeace did it cost them millions and millions of dollars. None of the statements in sort of the defamation side of things were statements that we came up with after doing research or, you know, coming up with new ideas, these were claims that were already widely circulated in the media by the time we made them. Statements by the Standing Rock Sioux tribe and other indigenous water protectors, et cetera. And then there's a third group of claims around trespass. And the idea there is, you know, because Greenpeace led the protests, which we didn't, and because we did a training that therefore we're liable for anything anyone else did, including third parties that we don't know, unidentified individuals, if someone burned tires or damaged construction equipment that's Greenpeace that has to pay for that because we should be collectively responsible for anything that happens at a protest that goes on multiple years and has tens of thousands of people involved.

And so if you unpack some of these claims, you can see the danger to speech and to advocacy, the idea of collective responsibility if you participate in a protest, the idea that signing on to a letter to financial institutions, sometimes somehow makes you liable for millions of dollars and repeating the claims, for example, from the Standing Rock Sioux tribe and indigenous water protectors, just repeating those claims puts you at risk. So that's an attack right on in solidarity with Indigenous peoples. And that's why we've been saying this is an attack on Greenpeace. But really, it's an attack on speech and advocacy in America.

Ariana Brocious: But if all of these other hundreds of organizations were involved, in that letter, many organizations were involved in supporting the protests. Why do you think Greenpeace is being singled out?

Rolf Skar: It's a good question for the company. It doesn't make sense on its face. I remember at the time I was on staff at Greenpeace, not working on pipelines or the Dakota Access Pipeline in particular, but I thought, my goodness, look how huge this is. It's capturing the world's attention and we're just, we're barely weighing in on it. I felt like we were missing out a little bit. In hindsight, what I realized is we were showing up in the right way. We weren't trying to make it about us and it wasn't our fight. You know, it's an Indigenous-led fight that continues to this day and really predated 2016 and 2017. So why they singled us out, I'm not sure. But I will say that I was personally named in a similar lawsuit. I had some eerie similarities that was started by the same law firm at the time, just the year before. So it included things like the trying to use The Racketeer Influenced and Corrupt Practices Act, RICO charges in a civil context against Greenpeace. It started in that previous lawsuit and it was copied and pasted seemingly into this one. And so, I'm not sure why, but it seems like if companies felt like they could send a message and silence Greenpeace, it might have a knock-on effect for others who would raise their voice and try to hold powerful people and corporations accountable.

Ariana Brocious: I'd like to play a clip of Kelsey Warren, chairman and CEO of Energy Transfer Partners. So this is him being interviewed on CNBC News and we'll have your reaction after we hear the clip.

Kelsey Warren: “What happened to us was tragic. I mean, uh, that lies were being told, tens of millions of dollars were being raised by Greenpeace and others based on these lies that, that, that is clear. I mean, that the facts will show that they knew that the things that they were saying about us. things like we were on, um, Indian property, uh, things that we didn't communicate with the Standing Rock Sioux, things like that. I mean, it was just crazy stuff that they were saying and we were greatly harmed by that, Brian. [And how were you harmed, Kelsey?] Well, they, first of all, they torched a lot of our equipment costing us millions of dollars. They, they attempted to cut holes in our pipeline. I mean, Brian, think about that. I mean, here's the people that are saying we're going to poison their water and they're trying to cut holes in our pipeline so that it'll leak so that they can say, yeah, look, look what you did. I mean, they, and not only that, our, our project was delayed by, let's say about 90 days and we, we lost millions of dollars as a result of this.”

Ariana Brocious: So what goes through your mind hearing all that?

Rolf Skar: Well, I'm not sure where to start in terms of fact checking. It feels like we could have a whole episode on that. But it's consistent with the communications that we've seen from them publicly. And in the actual legal briefs, it's a bunch of nonsense. It's like fossil fuel fan fiction. Some of the things that the chairman described us as having said or did were never things that we said or did. He jumped around from, you know, saying, Oh, we, they, they destroyed. You know, equipment when there's no evidence of any of that from, you know, to back up their allegations. So it feels like they're conflating issues lumping us all together with, you know, anyone who showed up at the protest. And then, you know, misappropriating a lot of the cause and effect here. Like the idea that the project was delayed. This was, these are decisions that had to be made by the federal government, the Obama administration, that, you know, Greenpeace certainly didn't have any significant influence over at the time. So, it's disappointing to hear the chairman describe the organization I work for and believe in as, as violent as, you know, doing things that are dead set against our principles. Peace is part of our name and that's how we show up. So, this is, these are baseless and senseless allegations.

Ariana Brocious: One of the other parties named in the lawsuit is the Red Warrior Society. In the lawsuit, Energy Transfer alleges that, quote, Red Warrior Society is a front organization for Greenpeace USA, intended to provide cover for Greenpeace USA's support of and engagement in illegal, violent, direct action against the Dakota Access Pipeline. What's your response to that?

Rolf Skar: A couple things. First, in the court of law, you can't sue something that's not a thing. So there is no entity, organization or otherwise, that is red warrior society. They've looked for Red Warrior Society and can't find it. So that's the first thing that's, it's not a thing. Second, Greenpeace is very straightforward about what we are and, you know, what we stand for and we accept responsibility for the advocacy that we do. So if Greenpeace activists peacefully blockade a road or a bridge, we're not trying to hide those things. We're not trying to get away with things secretly. So that's also just completely against our 50 year track record of owning our activism, you know, with no bones about it. They're simply put, they have no evidence. There was anything to the contrary going on here and that will come out in court.

Ariana Brocious: In 2017, Energy Transfer filed a complaint in the North Dakota federal court against Greenpeace International and its U.S. entities. That court, the federal court, dismissed the case. But then Energy Transfer essentially repackaged many of the same complaints and filed them in North Dakota state court. So why do you think The company believed they could have more success in the state court after they'd already been dismissed at the federal level.

Rolf Skar: This is just guesswork. But you know, there's states in this country that have some level of protections against what we call SLAPP lawsuits, these egregious lawsuits that are not based in

reality and are really not designed to win. They're meant to silence their critics.

Ariana Brocious: And I want to just interject and say SLAPP stands for: Strategic Lawsuit Against Public Participation.

Rolf Skar: Yes, that charming acronym was coined by some legal professors. And so it's not really the catchiest thing, but the idea is there's a difference between real lawsuits, you know, real defamation, real copyright infringement, those sorts of things. And lawsuits that you know, the process of defending yourself against them is the punishment, and they're clearly designed just to shut people up. So in Greenpeace's case again, unfortunately, we'd seen a similar lawsuit just started about a year before this one. We have a legal team. We have insurance. We're ready to defend ourselves. A lot of times, people who are the target of these kinds of SLAPP lawsuits are individuals or small organizations who can't possibly defend themselves for seven, eight years and, you know, through the legal process just to get to trial in the hopes of being vindicated.

So that's why so many, the majority of U.S. States have protections against these lawsuits, because this is a problem. And this is not partisan. This is, you know, this goes both ways. Doesn't, you know, you're not insulated from these sorts of legal attacks based on your political opinions. Unfortunately there's no national protections yet. And North Dakota is one of the minority of states that don't have protections against these kinds of lawsuits. What's common in SLAPP lawsuits is that the company or the individual that files the case does what's called legal venue shopping. They look for the place where they hope it'll be a little bit easier for them. So I can't speak to the motivations of the company there, but, you know, North Dakota is a place that doesn't have those SLAPP protections. You know, presumably it'd be easier to proceed with this case without it getting thrown out.

Ariana Brocious: Okay, so as you say, you know, Greenpeace is prepared for legal fights. It has resources, it has lawyers, and I have to imagine Greenpeace has been sued many times. What makes this case different? Is it this idea of trying to silence Greenpeace? What makes this one stand out?

Rolf Skar: A couple things stand out. You know, the fact that what is at play here could have a chilling effect on other speech and peaceful protest. So the defamation claims, you know, repeating the claims of indigenous water protectors, like the idea that you're held liable for that simple act that could have a chilling effect on organizations and individuals standing with Indigenous activists. Second, you know, the tortious interference, like will organizations think twice before signing on to a letter that has hundreds of other organizations that they didn't write for fear that they'll be held liable for millions and millions of dollars. And then the idea of this collective responsibility if you participate in or, you know, help with a training at a protest and somebody you don't know and have no control over does something that creates property destruction or harm. You're responsible for them. Huge chilling effect. And again, these are not restricted to one side of the political perspective or the other. This would affect and could affect all Americans and establishing case law around this sort of thing could have a knock on effect and encourage similar lawsuits in the future.

Ariana Brocious: So just to take that one step further, what you're essentially saying is that if energy transfer prevails in this lawsuit and wins against Greenpeace, then that verdict will set precedent for future cases where other organizations, other individuals could similarly be held liable in this sort of broad collective sense for things, just being a participant in demonstration a nonviolent peaceful protest or movement.

Rolf Skar: Yeah, that's right. Exactly. So, what they're alleging, what they have evidence of us doing like blogging about the Standing Rock protests and putting out statements on social media to amplify statements that were already made by others and reported on widely in national and international media. If doing that means you have to pony up 300 million, 300 million. That could

have a huge chilling effect on organizations, not just environmental organizations either. What we're seeing is organizations and leaders in, in different, you know, sectors coming to our defense because they see the threat that this poses more broadly to speech and peaceful protest.

Ariana Brocious: Energy Transfers website has the following statement about the case: "Our lawsuit against Greenpeace is not about free speech as they are trying to claim. It is about them not following the law. We support the rights of all Americans to express their opinions and lawfully protest. However, when it is not done in accordance with our laws, we have a legal system to deal with that. Beyond that, we will let our case speak for itself." What do you make of that?

Rolf Skar: I think they're scared and maybe embarrassed by this lawsuit. And they're worried that if people take a look at what they're claiming and the obvious facts, like the fact that Greenpeace did not secretly orchestrate this entire resistance movement, that they will be embarrassed by this lawsuit. Because attacking free speech is one of the least American things you can do. And as polarized as our politics are, I think most people still agree that protecting speech is fundamental to this country and to our democracy. So of course they're running away from that and trying to pivot to something else about us breaking laws.

Look, there were plenty of criminal prosecutions and things like that. Like, this was years ago that the protests happened. This is not about people breaking laws on the ground. This is the company now asking for money that we don't have money that they didn't need for a pipeline that was already operating and making them money, when they filed their initial lawsuit. So, this doesn't seem to be about the money. They know we don't have 300 million. They are very profitable and by the time they decided to file this, the pipeline already had fossil fuels flowing through it. It's obviously an attempt to silence their critics and to make sure that, you know, no one speaks up against their projects going forward for fear of being sued into submission.

Ariana Brocious: So, I have to ask, this is, could Greenpeace have done anything to avoid this lawsuit?

Rolf Skar: I've been asked that before by allies and organizations who frankly are wondering, like, we don't want to be the next one. And that's a testament to the fact that, yes, if we don't stand together, these sorts of lawsuits can have a chilling effect. We're not going to let it, but people are worried these days, you know, am I next? I can't imagine what we could have done differently. We had so little to do with the indigenous led protests. And by the way, I just want to say that this is not a finger pointing exercise here. Like it is legal in this country to speak truth to power and to call out powerful corporations and industries and individuals and to criticize them vociferously. And so it is not as if, you know, who done it? That's not the question here. By the limited participation that we had in, in the Standing Rock protests and the movement against the Dakota Access Pipeline. I can't imagine how much less we could have done other than to disappear entirely, and we're not signing up for that. We're an advocacy. Organization. We believe in the need for a green and peaceful future. And we would rather. Advocate and continue to fight, even if it involves, you know, these sorts of slap lawsuits because otherwise, what are we here for? Speech is our business. Advocacy is our business. And we would prefer that it stays in the court of public opinion rather than a courthouse in North Dakota. But we're going to continue to defend ourselves in both places going forward.

Ariana Brocious: Rolf Skar is national campaigns director for Greenpeace. Thank you so much for joining us on Climate One.

Ariana Brocious: We reached out to Energy Transfer Partners multiple times to request an interview. They didn't respond.

Coming up, until the federal government addresses SLAPP suits, the practice is likely to continue..

Laura Prather: We're seeing people go and file lawsuits in federal court to avoid anti SLAPP laws. They're still, they're still the same basic premise, trying to sue somebody into silence, but they're able to get around the system by filing it in federal court.

Ariana Brocious: That's up next, when Climate One continues.

Kousha Navidar: This is Climate One. I'm Kousha Navidar. Strategic Lawsuits Against Public Participation - or "SLAPP suits" - aren't just an issue for big environmental organizations— they can target anyone. The lack of a federal anti-SLAPP law has allowed certain states to become safe havens for those wealthy enough to bring lawsuits against their perceived enemies.

[music cue]

Laura Prather is Chair of First Amendment Practice at the law firm Haynes Boone, and is recognized in the legal community as an authority on SLAPP suits and anti-SLAPP laws. I asked her to start at the start:

Kousha Navidar: Explain like I'm five. What is a SLAPP suit?

Laura Prather: I love that you said that, explain like I'm five, because five year olds understand what bullies are. And SLAPP suits are like the bully on the playground, except they use the courthouse to silence their dissenters.

Kousha Navidar: So they use the SLAPP suit as the form of bullying, you're saying, right? Tell me about that. How is it bullying? Tell, break it down a little

Laura Prather: Yeah. Well, I mean, think about it. If you're, if you're a kid on the playground and somebody who's bigger and more powerful comes up to you and they try to just beat you into submission, right? They usually do that with their fists or they do that with, with, you know, nasty, nasty ways to, to talk about you and make fun of you and things like that. Right? Well, for slap suits, you've got somebody generally who's more powerful. Maybe a bigger entity, maybe somebody who has more money, suing somebody who's generally not as powerful, who said something that the bully doesn't like. And so they go to court and they file a lawsuit against them. And that lawsuit is completely frivolous. It has no merit. But, they know by filing it, the person who is weaker, who has less money, who doesn't have the resources to fight against it, they're just gonna give up. That's what happens with bullies.

Kousha Navidar: So it's kind of like a David and Goliath situation. Like if I'm David and I'm saying something that I feel like needs to be said about Goliath, Goliath can say, Hey, I don't like that. I'm ready. Mire you in the court system where I know you don't have enough money to fight back And that's where I'm gonna make the fight kind of dwindle down. Is that fair?

Laura Prather: Absolutely. And, and, and back to your analogy. So back to the playground, back to the children on the playground, right? So not only are you beating me into submission because of something that I said that you didn't like, you're scaring everyone else on the playground, not to test you, not to fight you, because they're seeing that I'm getting beat to a pulp. And so all of those other people that might have wanted to say something or bring out some issue that the public has the right to know, they're going to be too scared to talk.

Kousha Navidar: Yeah, so that kind of makes me wonder what kinds of entities, what kind of people get caught up in SLAPP suits to begin with. I mean, I read your article in the Journal of Human

Rights. It said that journalists seem to be high on the list of people targeted in these suits. What other kinds of people and organizations are targeted and why?

Laura Prather: You know, Kousha, it can be anyone. And, and that's what makes it really, really scary. And so you mentioned journalists. Think about it. Journalists usually act as a conduit for the people. They're the ones that are telling the rest of us, what's going on. So yes, they are definitely a target. Protesters, people who are going against the grain, right? They're trying to effectuate change. Those are certainly targets, but it can also be people that are domestic violence victims that have outed their abusers or somebody who's put a comment or a review on Yelp because they didn't like the service they got at a restaurant or you can have somebody who's reporting on the poor treatment of one of their family members at an assisted living center and all of a sudden that assisted living center comes after them and says I don't like what you said to the state agency that you reported us to. So it comes in all forms and fashions and anyone can be a SLAPP target.

Kousha Navidar: You, you bring up the assisted living facility. I think there's a story behind that, you have experience with as your work in, in law, is that right?

Laura Prather: It was here in Texas and, and there's a woman here in Texas who had, unfortunately, her mother passed away and she was left to care for her brother. And her brother was in an assisted living facility where he wasn't getting cared for properly. And so she went to the assisted living facility and asked them to make some changes, make sure he gets his medicine on time, things like that. And they did not do what they were supposed to do. So she reported them to a state agency, she put a post on a senior living website and she wrote a letter to the facility saying here are the problems and for that she was sued and she ended up having to take out a second mortgage on her home, cash in her 401k to pay for a lawyer to be able to fight against this lawsuit and that same facility came to her three days before the court was to consider the case and said, Oh, we'll, we'll drop the suit if you'll just withdraw your complaint and take down your post so that none of the rest of the world knows what's happening here and just to top it all off, they evicted her brother from the facility,

Kousha Navidar: Bullying.

Laura Prather: Bullying.

Kousha Navidar: What ended up happening?

Laura Prather: So what happened was, thankfully, Texas, at least for now, has a very strong anti SLAPP law. We can get to that later. It is under assault with our legislature. But Texas has a very strong anti SLAPP law, and one of the provisions in that anti SLAPP law allows for somebody who has been on the receiving end of the SLAPP suit to get their fees back if they win. And that helps them get a lawyer. It helps them have access to justice. She was able to get a lawyer, that lawyer won the case at the trial court level, the assisted living facility still appealed, still caused her to incur all kinds of attorney's fees, and then the case was affirmed on appeal. And she was able to get her fees back, but only because we have what is called an anti SLAPP law here, which is a protection against these sorts of suits.

Kousha Navidar: Well, you know, it's interesting because you go back to that idea of the bully. I'm sure the bully would never come out and say, Hey, I'm a bully. They'll get in trouble. I wonder how that applies to SLAPP suits. Like both parties aren't going to say, Oh yeah, this is a SLAPP suit. That doesn't make sense. At what point in the court process does a SLAPP suit get labeled as an actual SLAPP suit?

Laura Prather: That's an interesting question because there have been some people that have said, well, you should have to be able to establish that they intended to silence you. Well, that's an impossible thing to have to do, right? Nobody's going to admit, Yeah, I'm a bully. I'm using the court system to silence you and you just need to shut up because I've sued you. No one is going to admit to that. So the way that anti SLAPP laws work is they have the court look at the case very shortly, like within the first 60, 90 days, depending on the law to see, does this case target somebody's free speech rights? And if it does, does it have any merit? And so if it doesn't have any merit, if it just is aimed at silencing somebody's free speech rights and it has no merit, then the court dismisses it out of hand. And that's when you can get your fees back, and the person who should have never been drug through the court system to begin with is made whole. It also has the added benefit of clearing up our already overburdened court systems of meritless cases; those cases shouldn't be clogging up our court system.

Kousha Navidar: Got it. You know, you're, you're a SLAPP suit expert. Like you are an authority on anti SLAPP suit laws. How did you become so passionate about this issue?

Laura Prather: Oh, that is a, that is a fantastic question. Um, so I, I represent the media, um, investigative journalists, sources. Folks who, who really sort of put their life on the line to get information out to the public. And I feel very passionate about what I do, and I feel like these folks are, you know, doing really good work, and they need to be protected when they do it. Personally speaking, I also experienced firsthand an athlete who, um, was accused of doping and that athlete everyone in his wake that was exposing the truth about him. And I saw firsthand the destruction that was caused to these truth tellers when they had no protection.

Kousha Navidar: Was this a case that you were defending somebody in where you were participating as a lawyer and you were seeing it, uh, through your work?

Laura Prather: No, it was through my personal experience.

Kousha Navidar: Oh wow, so you had a personal experience where you saw the bullying happening. Was it while you were already kind of a lawyer and you knew or did it blindside you?

Laura Prather: It was, um, already when I was a lawyer, and I had been involved with getting a reporter's privilege passed in Texas, um, and had done a little bit of policy work at our capitol, but I hadn't been involved in SLAPPs yet. SLAPP was a new concept to me. It was something that was, um, not really available in many states at that time. In about 2010, we started to see an influx, pretty much coinciding with, you know, everyone becoming a publisher on the internet. The internet's so ubiquitous, more and more people were getting sued for things like Yelp reviews and, you know, things where an average citizen posts something on on their social media and they are the subject of a lawsuit and they're like, whoa, wait How why did this happen? I was just expressing my opinion. And so you started to see more and more states, Texas being one of them. In 2011 I worked to help get an anti SLAPP law passed here. But since then 35 states now have anti SLAPP protections.

Kousha Navidar: I want to get into some of that anti SLAPP legislation now. I mean, like you said, more and more states are recognizing the need for this layer of protection. You mentioned the number 35. 35 states and the District of Columbia have anti SLAPP laws. What gives anti SLAPP laws their oomph?

Laura Prather: So there are really three facets to an anti SLAPP law that, that really give them that oomph or that oomph that they need to provide sufficient protection. First of all, they need to be broad in scope. They need to cover somebody's speech, their petitioning activity, their association, you know, all of these things. It used to be that there were some very narrow anti SLAPP laws on the

books, for instance in New York, where it only covered testimony before a zoning board. Well, that is worthless for the vast majority of SLAPP victims.

Kousha Navidar: Right, because bullying takes on so many different forms.

Laura Prather: The second thing is there needs to be some mechanisms within the law that stop the bleeding. Right away. So, when a lawsuit is filed, a lot of times against a reporter, for instance, people are going to ask for depositions. They're going to ask for all of their notes. They're going to ask for all of their scripts. They're going to ask for anybody that they ever interviewed. And that's going to tie you up in a whole lot of reporters privilege fights and things along those lines. When the reality is the court probably can decide on the front end, does this case have any merit? without having to go through all of those mounds of discovery. Because this is just a first stop, right? If the court says, yeah, the case has the merit, it looks like you said something that wasn't true, then you move on down the road with the case. But if it's clear that the journalist is just reporting on a public record, for instance, you got the record, you got the investigation, and you can compare the two. You can continue to do your job while the court decides, is there any merit or is there not to this case in the first instance. So stop the bleeding, The third one is actually, it's sort of two parts. One is a check and balance on the trial court, think about this, trial courts have everything from slip and falls, to dog bites, to you know, traffic collisions to whatever. They are not necessarily constitutional scholars, but the appellate court is above it and, and they're more likely to be more familiar with free speech rights. And there's all kinds of statistics out there about how, about the reversal rate of trial courts on constitutional issues. And then kind of wrapping it all up in a bow, if the case should have never been brought to begin with. Then you need to make the slap victim whole. The person who should have never been drug through the court system to begin with needs to get their attorney's fees back.

Kousha Navidar: That seems to be very important and comprehensive. 35 states and D. C. have something like that, but not all 50. What do you think would be the potential for like, say, a federal Anti SLAPP law?

Laura Prather: Yeah, I think the federal anti SLAPP law is long overdue, um, because we are seeing forum shopping. We're seeing people go and file lawsuits in federal court to avoid anti SLAPP laws. They're still, they're still the same basic premise, trying to sue somebody into silence, but they're able to get around the system by filing it in federal court. There have been attempts, honestly, for about 15 years to get something passed federally, and it just has never made it across the finish line.

Kousha Navidar: Is it? There's just not enough buy in. Or is there an active push against anti slap laws? I mean, I think you also mentioned, uh, anti SLAPP laws. pushback and assault right now in Texas, right? Like, is that, is that, are those two connected at all? Or is it different?

Laura Prather: Oh, I don't think they're connected, but I do think there's a, there's a, um, there's sort of a prototype, right? Powerful and wealthy individuals typically want to use the court system to silence dissenters. And so if you have a powerful or wealthy individual or organization or corporation who doesn't like any anti SLAPP law, they're going to go to their lawmaker and they're going to say, Hey, we need to do something about this. This is, I don't, I don't like, this is an inconvenience for me. I don't like this. And so, for instance, in Texas right now, we have two bills that are pending. One that would take away the stop the bleeding. The discovery stay and one that would take away the attorney's fees. Two out of four of the things that give an anti slap law teeth.

Kousha Navidar: You know what the irony is? You mentioned wealthy and powerful people, uh, pushing back. I bet wealthy and powerful people also use, uh, anti SLAPP laws, right? Like, uh,

Donald Trump, maybe? Has he ever been on both sides of the slap coin?

Laura Prather: I mean, that's the, that's the, that's the craziest part of it is, you know, in talking to people, I have people say, Oh, well, this just helps the liberal media. And it's like, no, no, actually, Donald Trump has had the benefit of the Texas anti SLAPP law in the Ninth Circuit in the lawsuit that Stephanie Clifford, Stormy Daniels, filed against him. So the thing about free speech rights is they're across the political spectrum and we need to do whatever we can to preserve those rights for everyone so that the diversity of voices can continue to be heard. This isn't a right or a left issue. It truly isn't. And when people have a better understanding of that, they will have a better understanding of why anti SLAPP laws are so important.

Kousha Navidar: Laura Prather is the chair of first amendment practice at Haynes and Boone. Laura, thank you so much for talking to us.

Laura Prather: Thank you for having me.

Kousha Navidar: Greenpeace International has filed a countersuit against Energy Transfer in Dutch court. It is one of the first cases to use the EU's anti-SLAPP directive.

Meanwhile, Energy Transfer's case against Greenpeace just went to trial in North Dakota, one of the 15 states with no anti-SLAPP laws on the books. A verdict is expected in early April.

Ariana Brocious: And that's our show. Thanks for listening. Talking about climate can be hard, and exciting and interesting — and it's critical to address the transitions we need to make in all parts of society. Please help us get people talking more about climate by giving us a rating or review. You can do it right now on your device. Or consider joining us on Patreon and supporting the show that way.

Kousha Navidar: Climate One is a production of the Commonwealth Club. Our team includes Greg Dalton, Brad Marshland, Jenny Park, Ariana Brocious, Austin Colón, Megan Bisciegli, and Ben Testani. Our theme music is by George Young. I'm Kousha Navidar.