

# Environmentalists and Corporations Struggle Over Boundaries of Free Speech

## Environmentalists sued for defamation after online comments

By [Tara MacIsaac](#), [Epoch Times](#) | October 10, 2016 | Last Updated: October 11, 2016 3:34 am



In a world where a single Facebook rant or Yelp review can reach thousands of readers, an individual's power of speech is arguably greater than ever. But when that speech has the power to destroy someone's business, how free should it be?

Though the First Amendment protects freedom of speech, business owners also have the right to sue for defamation or libel if they feel someone has knowingly lied about their business.

Activists and bloggers expressing concerns about the environmental practices of some companies have been hit with multi-million-dollar defamation suits.

For example, four residents in Uniontown, Alabama, are being sued for comments they made on Facebook about a local landfill. The company that operates the landfill is claiming \$30 million in damages to its business.

The highest court in Massachusetts heard arguments in a similar case on Oct. 7. Karen Savage and Cherri Foytlin wrote a blog post in 2013 alleging that scientific consulting company ChemRisk had oil industry ties. They had thus called into question a ChemRisk's study that declared cleanup workers at the Deepwater Horizon oil spill site were not exposed to harmful airborne chemicals.

In both cases—and hundreds of others popping up around the country every year—the defendants say the lawsuits were just meant to scare them into retracting their statements and discourage others from speaking out.

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In 28 states, defendants in such cases can appeal to anti-SLAPP laws. A strategic lawsuit against public participation (SLAPP) is a lawsuit that a company isn't likely to win if it goes to full trial. The company files anyway, though, to crush smaller opponents who would rather settle and retract their statements than engage in a costly legal battle.

The scope and interpretations of anti-SLAPP laws have varied from state to state. As this new kind of law takes hold in America, courts have had to decide exactly what kind of speech is protected by the First Amendment, and to what extent a company has the right to take someone to court under the Seventh Amendment.

A federal anti-SLAPP law is now being considered by Congress, and the wrinkles in the state laws are being ironed out to blanket the nation.

Lee Rowland, a lawyer at the American Civil Liberties Union (ACLU) representing the Uniontown residents, said people shouldn't be scared to speak out about environmental issues.

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— Lee Rowland, attorney specializing in free speech, American Civil Liberties Union

"Just think what a massive muzzle we'd all live with if we all thought we'd be sued at any moment if our opinions might be slightly inaccurate online," she said. "We all live online, particularly on Facebook pages people are very passionate. I don't want to live in a world where no one is passionate and no one is opinionated because they're worried they're going to get sued by a big company."

David Green, president of Green Group Holdings, the company that owns the Uniontown landfill in question, shared the perspective of companies being accused of SLAPP in an email to Epoch Times: "Neither the truth nor the facts are ever as tantalizing or sensational as the fears that are being raised by half truths and outright misrepresentations, nor do the truths and facts have a ready, willing, and able network of social media types to share that truth on Facebook or tweet and retweet our side of the story."

He continued: "All local residents have the right to oppose us and to exercise their free speech right to protest if they want. What they don't have is a right to intentionally make false and defamatory statements of fact that damage our reputation and our ability to do business—which is exactly what they have done."

## **Case: Uniontown Residents Vs. Coal Ash Landfill Company**

Coal ash from 33 states travels to Arrowhead landfill in Uniontown, Alabama. Uniontown is a poor, rural town in the South's Black Belt. ACLU's Racial Justice Program Director Dennis Parker said it's a classic case of impoverished black communities housing America's undesirable waste sites.

While Green Group has sued residents for defamation, residents have filed a separate racial justice suit against the company.

Parker said the defamation lawsuit against Uniontown residents Ben Eaton, Mary Schaeffer, Esther Calhoun, and Ellis Long, "is an abusive one that is meant to chill speech and to prevent people from complaining about environmental mistreatment."



The Water Avenue in Uniontown, Ala., on May 28, 2016. Uniontown is a poor rural town in the heart of the South's Black Belt. As of 2010, 91 percent of its population was Black, and the per capita annual income was less than \$10,000. (Edmund Fountain/ACLU)

Alabama is not one of the 28 states with anti-SLAPP legislation, so the residents must either settle out of court or go to trial and argue they were within their First Amendment rights. It's a good example of a case that could be expedited if anti-SLAPP legislation were in place, Parker said.

Green Group Holdings said many of the comments against the landfill that these residents made on Facebook and on the website for their local organization, Black Belt Citizens Fighting for Health and Justice, were opinion-based and thus protected by the First Amendment.

But, it said [in its complaint](#), some of the comments were blatantly false and the defendants published them "with reckless disregard for the truth, with an intent to disparage and demonize."

Particularly, it says the residents intentionally lied when they alleged that Green Group desecrated a historical cemetery near the landfill and that it deliberately discharged contaminants in toxic quantities into surface waters.

An example of one of the contested Facebook posts on the group's page was written Nov. 13, 2015: "Black Belt Citizens demand no more coal ash in Uniontown! Black Belt Citizens demand ADEM [Alabama Department



Benjamin Eaton, 56, stands for a portrait at his home in Uniontown, Alabama, on May 27, 2016. (Edmund Fountain/ACLU)

of Environmental Management] and EPA [Environmental Protection Agency] enforce their laws to prevent further discrimination against the community. The landfill is poisoning our homes and destroying our Black cemetery [sic].”

Green Group said it has met all state and federal regulations, passed all inspections, and taken appropriate measures to contain the waste.

In response to the accusation that he intentionally lied, Eaton told Epoch Times: “That’s ludicrous.”

He knows people who haven’t been able to find the graves of their loved ones in the cemetery, he said. He thus believes that vehicles from the landfill have damaged grave markers, which were then removed. “Are they desecrating the grave site? In my opinion, yes. I still believe what we say is right.”

Green said his company has instead helped preserve the cemetery.





New Hope Church Cemetery in Uniontown, Alabama, on May 27, 2016. (Edmund Fountain/ACLU)

Eaton said that, to his knowledge, a University of Birmingham study showed high levels of arsenic in a local creek. He has also seen water running off the landfill into surface waters (Green Group built ditches to divert this water after complaints). "Those are very good reasons, in my opinion, to believe it's toxic," he said.

Green said testing has shown "that there is no presence of metals or inorganics attributable to coal ash in that water."

Parker said, even if some of the comments were slightly inaccurate, which is not necessarily the case, "There's no requirement that you have to verify everything and be completely certain of your opinion. Part of the statements that they make are based on their experience living in the area and talking about the impact it had on their day-to-day lives."

Eaton said that, even though he lives about 4 miles from the landfill, his white vehicle was covered in black dust. "That's not normal dust," he said. "That's when the coal ash came in."

"I guess we just crazy, we won't shut up," said Eaton, a 56-year-old retired school teacher.

While Eaton may understand the consequences of his statements and continue to make them, some Uniontown residents may not clearly understand their rights, said Rhiannon Fionn, a filmmaker whose documentary "Coal Ash Chronicles" took her to Uniontown.

She felt many of the residents were hesitant to talk to her about the landfill, worried about legal consequences.

Rowland said that in the matter of coal ash disposal, controversy and community backlash is to be expected.

"If a company or its operating officers have thin skin, they probably should seek another avenue for their business than the highly contested management of a landfill that handles coal ash," she said. "You are voluntarily entering into a fairly controversial area of environmental management."

Green said Arrowhead is the most inspected landfill in Alabama and it has had no notices of violations, but "prospective customers do not want the adverse publicity resulting from these complaints to be attached to them, whether false or not."