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Fighting Dirty: The New Frontier of Competitors' Conduct in Zoning Disputes

By Donna Pugh, Esq. and Alexandra Lucas

Donna Pugh is a partner at Foley & Lardner's Chicago office, where she focuses on obtaining land use and zoning entitlements on behalf of her retail, health care, and corporate clients. Alexandra Lucas is a J.D. Candidate at the University of Chicago Law School and will join Foley & Lardner as an associate in the fall of 2013.

I. INTRODUCTION

Two recent cases out of the Seventh Circuit's jurisdiction—*Rubloff Development Group v. SuperValu*[1] and *Mercatus Group v. Lake Forest Hospital*[2]—expanded the boundary of permissible conduct by objectors in zoning disputes when their objections are based on competitive concerns. Both plaintiffs saw their development projects derailed by objectors, but in these cases NIMBY whims were not the culprit: the opposition was driven by highly motivated and resourceful businesses seeking to keep competitors out of their area. Although the competitors' opposition tactics were at times extreme, the courts denied liability in both cases.

Rubloff and *Mercatus* prompt a reexamination of the legal standards surrounding such disputes. Given the volume of zoning applications processed across the country, it is possible that zoning and land use practitioners may find themselves in similar situations. This article serves as a primer on this area of law to those who may become party to such disputes, including zoning applicants, competitors, and governmental parties. It first describes the recent benchmarks of acceptable protester conduct by detailing the fact patterns and holdings of *Rubloff* and *Mercatus*. It then discusses the claims and defenses available to parties to this type of litigation,

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highlighting issues that may be challenging to litigants where appropriate.

II. The Rubloff Case

In *Rubloff*, the District Court for the Northern District of Illinois held that the defendant was not liable for secretly funding citizen opposition that interfered with the plaintiff's development opportunities. This holding is surprising given the extreme tactics used by the defendant to stop the plaintiff's development, and practitioners should take note of the facts that resulted in this determination.

Plaintiff Rubloff was a commercial real estate developer that planned to develop a shopping center in suburban Chicago that would include a Wal-Mart.[3] It began talking to nearby landowners about the prospective development in December 2005, but encountered no opposition to the project.[4] It planned to start construction in 2007 and open the center in 2008.[5]

Rubloff's planned Wal-Mart location would have created competition with SuperValu's nearby grocery store.[6] Eager to stop the development, SuperValu hired Saint Consulting, a "Walmart killer" whose business is "protecting clients from unwanted competition."[7] Saint sent employee Leigh Mayo to serve as an "*agent provocateur*" and stir up local opposition to the shopping center.[8] Mayo went by the name "Greg Olson", and even operated an email account using his assumed name.[9] He posed as a beneficent, concerned citizen, and hired attorney William Graft to represent local landowners.[10]

Graft began objecting to the proposed development in zoning hearings and in court.[11] In the fall of 2007, he represented two groups of landowners who sued the city, alleging

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that its approval of Rubloff's zoning requests violated their due process rights.[12] One of the groups also sued Rubloff in January 2009 for nuisance and trespass.[13] The city and Rubloff finally settled the cases in January 2011, but the suits delayed construction and cost Rubloff millions in lost profits.[14]

Rubloff learned of Saint's involvement while these legal battles were ongoing. In August 2009, Mayo contacted Rubloff and revealed Saint's role in the citizen opposition.[15] Mayo provided documents that exposed Graft's gleeful reactions to the development's delays, his covert communication with a judge, the rewriting of expert reports used in litigation, and Graft's attempt to delay resolution by belatedly communicating Rubloff's settlement offer to the landowner plaintiffs.[16] Rubloff subsequently sued Saint and SuperValu, alleging antitrust violations, Racketeer Influenced and Corrupt Organizations Act (RICO) violations, tortious interference with economic advantage, common law fraud, abuse of process, and conspiracy to commit overt tortious and unlawful acts.[17]

After examining Rubloff's arguments, the court granted the defendants' motion to dismiss Rubloff's claim in its entirety.[18] It held that Noerr-Pennington immunity protected SuperValu from Rubloff's antitrust and RICO claims, noting that even without this protection Rubloff had no standing to make either allegation.[19] It also applied Noerr-Pennington to immunize SuperValu from the tortious interference count.[20] The court dismissed the abuse of process and fraud claims because of Rubloff's failure to establish causation, and it struck the conspiracy claim because there were no remaining substantive claims for it to rely on.[21]

Rubloff represents the far extreme of conduct where the protester presented himself as a fictitious person to all parties involved. In spite of this, all of the protester's conduct was supported by the court. *Rubloff*'s result is useful to zoning applicants and protesters as a benchmark of acceptable conduct in land use and zoning disputes. Involved governmental parties, including zoning boards, city councils, and courts, should also take note of the possibility that the landowners participating in such disputes may be backed by corporations with hidden motives.

III. The Mercatus Case

In *Mercatus*, the Seventh Circuit held that the defendant was not liable for launching an allegedly misleading public relations campaign and making allegedly false statements to the plaintiff's business associates. Though it did not feature a covert funder like SuperValu in *Rubloff*, the permissibility of the defendant's tactics may be educational to interested practitioners.

In 2004, plaintiff Mercatus began making plans to develop a physician's center in Lake Bluff, Illinois.[22] Nearby Lake Forest Hospital believed the proposed physician's center would be a dangerous competitor in the local medical services market and initiated a fierce campaign to halt development.[23]

The hospital employed several strategies in its plan to derail the Mercatus development. It lobbied members of the Board of Village Trustees in both public and private meetings and urged them to reject Mercatus's approval.[24] It launched a publicity campaign that depicted Mercatus as a "threat to charity care and general health services" and encouraged members of the community and hospital staff

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to oppose the new development.[25] As part of this campaign, it sent a letter to a local newspaper, drafted by its public relations firm but signed by physicians, urging residents to speak out against Mercatus. It also told Mercatus's venture partner to stay out of Lake Bluff and made other allegedly derogatory statements about Mercatus to the venture partner and other healthcare providers.[26] Further, it offered incentives to physician groups who planned to move to Mercatus's new center in an attempt keep their practice at the hospital,[27] though it did not follow through on these promises once the threat had passed.[28]

As a result of the hospital's efforts, the Village Board denied Mercatus's zoning petitions, the venture partner ended its relationship with Mercatus, and the physician practice groups pulled out of their conditional contracts with Mercatus.[29] Left with no option, Mercatus abandoned its development project.[30]

Mercatus subsequently sued the hospital, alleging that it had violated antitrust laws.[31] The district court dismissed some of Mercatus's claims at the pleading stage and the rest at summary judgment.[32] On appeal, the Seventh Circuit affirmed.[33] It held that any misrepresentation by the hospital in its publicity campaign or before the Village Board was protected by the Noerr-Pennington doctrine because of its political nature.[34] It reasoned further that the hospital's derogatory statements to Mercatus's venture partner and other healthcare providers were mere speech and thus not actionable.[35] Finally, it concluded that the hospital's attempts to lure physicians away from the new center did not rise to the level of predatory conduct required for antitrust redress.[36]

Mercatus, like *Rubloff*, involved a highly motivated protester who was capable of devoting considerable resources to its opposition tactics. Yet, as in *Rubloff*, the court extends immunity on almost every count because of the Noerr-Pennington doctrine. It too serves as a point of reference for zoning applicants, protesters, and governmental parties with regard to acceptable opposition behavior.

IV. Possible claims by zoning applicants

For zoning applicants, facing opponents like those in *Rubloff* and *Mercatus* can mean a death knell to proposed development activities. If the applicant feels sufficiently injured by the protester-driven opposition, it may choose to seek legal remedies. However, there are a number of hurdles associated with bringing a claim on any of the theories commonly invoked by applicants. This section attempts to provide a toolbox to those who seek to litigate against competitive opposition by briefly discussing commonly-brought claims and noting the challenges to applicant-plaintiffs. Its analysis of the contours and legal hurdles of each claim may also be useful to competitive protesters anticipating litigation and governmental parties who wish to learn the typical limits of legal conduct.

A. Antitrust Violation

An aggrieved applicant could allege that a competitive protester violated antitrust laws. To prevail, the plaintiff must first establish antitrust standing. This is accomplished by demonstrating that it is a direct participant in the market the defendant tried to restrict and that it is the best-situated party to sue. Relevant factors in determining standing are (1) the causal connection between the plaintiff's injury and the alleged violation, (2) the nature of the plaintiff's injury and its relationship to

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the defendant's activity, and (3) the speculative nature of the plaintiff's damages claim and the potential for duplicative or complex damages.[37] Making this threshold showing is difficult for retail developers when the defendant stirred opposition in order to prevent a specific retailer from operating on the property, as was the case in *Rubloff*. In this scenario, the defendant acts to restrain prices in that particular retail market, and courts may consider this too far removed from the plaintiff's injury—loss or delay of a development opportunity—to find standing.

If the plaintiff establishes standing, it must then prove that it suffered an antitrust injury. Two issues arise in this requirement. First, the plaintiff's injury must be of the type antitrust laws were meant to address, such as increased prices or decreased competition.[38] Competitive opposition tactics should easily satisfy this prong, since they endeavor to eliminate a competitor from entering the defendant's market. Second, the defendant's actions must be a but-for cause of the plaintiff's injury.[39] The unpredictable nature of citizen and government approval for development projects may make this element more difficult for plaintiffs to prove. Careful documentation of communications with residents and municipal officials before the competitor's involvement may bolster this argument.

B. RICO Violation

An applicant could also claim that the competitive protester committed a RICO violation. This claim is highly technical, and most RICO pleadings are dismissed for failing to state a claim. It is therefore extremely important for both applicant-plaintiffs and protester-defendants to make careful preliminary filings with regard to RICO claims.

First, the plaintiff must first establish RICO standing by showing that the alleged RICO violation was a proximate cause of the plaintiff's harm[40] and that the damages are concrete instead of speculative.[41] The plaintiff's showing of standing may be complicated by the uncertain nature of land development, since it could have experienced delay and incurred cost without the defendant's involvement. Courts may consider the damages speculative for this reason and decline to extend RICO standing. As noted above, careful documentation of communications before the competitor's involvement may be helpful.

To prevail on the substantive claim, the plaintiff must prove that the opposition was the conduct of an enterprise that conducted a pattern of racketeering activity.[42] Generally, the alleged racketeering activity is mail and wire fraud.[43] For these counts, the plaintiff must show that the defendant participated in a scheme to intentionally defraud the plaintiff and communicated over the phone, email, or postal mail in furtherance of that scheme.[44]

Schemes to defraud are defined "incredibly broad[ly],"[45] requiring only "a willful act by the defendant with the specific intent to deceive or cheat, usually for the purpose of getting financial gain for oneself or causing financial loss to another."[46] The *Rubloff* court suggests covert actions by competitive protesters satisfy the statute,[47] and material misrepresentations by any competitive protester are likely sufficient as well. However, plaintiffs must plead this claim with sufficient particularity to satisfy the heightened requirements for fraud allegations.[48]

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C. Fraudulent Misrepresentation

If a competitor stirs opposition covertly and the applicant does not learn of the competitor's role in the opposition before the damage to the project is done, the applicant could attempt to hold the competitor liable for fraudulent misrepresentation. This claim requires that the defendant fraudulently misrepresented information to the plaintiff in order to induce the plaintiff to act in reliance on that information, and that the plaintiff's justifiable reliance on the misrepresentation caused it harm.[49] The relevant misrepresentation in covert opposition cases is that the defendant hid its role in mobilizing landowner opposition. However, the plaintiff will likely struggle to convince the court that it was the lack of transparency about the defendant's involvement, and not the protesting it orchestrated, that derailed or delayed development. Further, it may be difficult for the plaintiff to prove that it actually relied on the defendant's misrepresentation, since applicants rarely rely on the statements of opponents.

D. Tortious Interference

An applicant could also claim that a competitive protester tortiously interfered with its prospective economic gain. The plaintiff must establish that the defendant intentionally and improperly interfered with the plaintiff's opportunity for economic gain and that the defendant's interference caused the loss of the prospective gain.[50] Some jurisdictions do not allow an action for tortious interference based on the defendant's filing of a lawsuit, so this claim may be of limited use to applicants whose core harm came from expensive and prolonged lawsuits.[51] Still, these jurisdictions often offer statutory remedies for abusive litigation.[52]

Applicants who pursue a tortious interference claim may have difficulty proving that the competitor acted improperly.[53] A defendant who interferes with a plaintiff-competitor in order to advance its business interests is entitled to the competitor's privilege, which narrows impermissible conduct to "physical violence, fraud, civil suits, and criminal prosecutions."[54] In most competitive opposition cases, then, plaintiffs can successfully plead tortious interference only when they successfully plead fraudulent misrepresentation, discussed above, or when the defendants have filed lawsuits as part of their opposition tactics.

Plaintiffs may also struggle to convince the court that their project would have proceeded successfully if not for the defendant's involvement. Since land development is often controversial among local landowners, there is always a possibility that opposition would have formed independently of the interference. Again, documentation of communications with residents and officials may be wise.

E. Defamation

If a competitor distributes misinformation about an applicant as part of a competitive opposition scheme, the applicant could argue that the competitive protester is liable for defamation. Although defamation is commonly pled by applicant-plaintiffs in zoning opposition cases, courts frequently dismiss this claim at the pleading stage. To sufficiently plead a claim for defamation, the plaintiff must show that the defendant harmed the plaintiff

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by making a false and defamatory statement about the plaintiff to a third party.[55]

Defamation claims are difficult to make in land use opposition cases for a variety of reasons. Plaintiffs may struggle to convince the court that the defendant's statement was one of material fact instead of opinion. They may also have to show intent if the defendant was a public figure. Further, courts generally extend immunity to defendants who made an allegedly defamatory statement in the context of petitioning government.[56] In some states, this immunity can be defeated by proving the defendant's "knowledge or reckless disregard as to falsity."[57] Plaintiffs may therefore need to present strong evidence of the defendant's state of mind in order to meet this heightened standard.

F. Abuse of Process

One may also claim that a competitive protester is liable for abuse of process. The plaintiff must establish (1) that the defendant used a legal process against the plaintiff to accomplish a purpose for which the process is not designed and (2) that the plaintiff was harmed by the misuse of that process.[58] Used here, "process" means some act by the court or administrative body, such as ordering discovery or issuing an injunction. Initiating a proceeding or receiving a judgment, however, are not "process" and so fall outside of this tort's scope.[59]

In typical competitive opposition cases, the competitor uses court or administrative processes properly even though their reasons for filing the lawsuit or initiating an administrative proceeding could be characterized as improper. Unless the competitive protester used some onerous court or administrative order to intimidate or harass the plaintiff into changing its development plans, this tort is likely untenable in a competitive opposition case.

V. Defendant immunity

Even if applicants plead their claims sufficiently, their action may be dismissed if the defendant's conduct is immune to liability. Zoning and land use opposition is an exercise of free speech and so a constitutionally protected activity. This section discusses the two primary mechanisms that confer this protection in similar disputes: the Noerr-Pennington doctrine and anti-SLAPP statutes. But, since these immunities are not absolute, it also addresses the circumstances under which they can be removed.

A. Noerr-Pennington Doctrine

The Noerr-Pennington doctrine provides absolute immunity to private entities for their attempts to petition government, regardless of their motive or intent. In the zoning context, it is generally invoked to protect attempts to influence local zoning bodies and related court cases. Though the doctrine was originally formulated as a defense in antitrust actions,[60] several jurisdictions extend its protection to other theories of liability.[61] The breadth of its application varies quite widely in both state and federal courts, and interested practitioners should consult local case law to learn its scope. Jurisdictions also differ in how the doctrine is pled. Most require that plaintiffs demonstrate the doctrine's inapplicability in their complaint,[62] but some consider its application an affirmative defense.[63]

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1. The Sham Exception

Once a defendant properly invokes Noerr-Pennington protection, the plaintiff's claims are dismissed unless it can show that the petitioning activity does not qualify for immunity. The most widely accepted method of accomplishing this is to prove that the activity falls within Noerr-Pennington's sham exception,[64] which denies immunity when the defendant uses the petitioning activity itself, and not its result, to frustrate competition.[65] As a threshold matter, a plaintiff may only invoke this exception if they can show that the sham petitioning was objectively baseless; that is, it had no probability of success.[66] Petitioning that successfully influences government action, even if unintentionally, is not considered a sham.[67]

The plaintiff must also prove that the petitioning was in fact a sham. In the judicial or administrative context, this is generally established by the filing of a baseless, repetitive lawsuits or administrative actions intended to prevent a competitor's full and fair access to the court or agency.[68] However, some courts hold that a single sham lawsuit can remove Noerr-Pennington protection,[69] and others consider a single sham lawsuit sufficient when it involves serious misconduct.[70] Further, some jurisdictions require the plaintiff to show that the defendant's petitioning actually barred the plaintiff's access to an agency or the court.[71]

Sham petitioning is less often found in the legislative or executive context, reflecting courts' reluctance to dampen unbridled free speech in the political arena.[72] Still, *Noerr* itself suggests that political campaigns that are only created to harm competition, not to influence the passage of laws, are not entitled to immunity.[73] This notion has since been effectuated by lower courts.[74]

2. The Fraud Exception

Although not explicitly condoned by the Supreme Court, many jurisdictions read a fraud exception into Noerr-Pennington. Under this theory, a plaintiff can defeat the defendant's immunity if it proves the defendant made intentional and material misrepresentations in an adjudicative proceeding.[75] Since the fraud exception does not apply to political proceedings, the plaintiff must establish that the petitioning occurred in an adjudicative context.[76] This inquiry centers on such factors as the level of decision-making discretion, the breadth of the decision's impact, and the process's resemblance to either court or politics.[77]

The plaintiff must also demonstrate that the misrepresentation was material in the sense that it actually altered the outcome of the proceeding.[78] This requirement is often problematic, as it may be difficult to convince courts that the misrepresentation was the only reason a zoning-related decision was delayed or denied.

B. Anti-SLAPP Statutes

Defendants can also seek immunity from state laws that protect individuals from strategic lawsuits against public participation (SLAPPs). The paradigmatic SLAPP involves a zoning applicant who files lawsuits against protesting landowners in order to intimidate or financially exhaust them into silence. However, competitive protesters have successfully invoked anti-SLAPP statutes to protect their opposition tactics, including the covert stirring of landowner opposition.[79] These statutes are relatively common: to date, thirty states

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have enacted anti-SLAPP statutes. Though the potency of this defense varies by jurisdiction,[80] most protester-defendants invoke these statutes when they are available.

The precise pleading procedure varies by state, but generally the defendant files an anti-SLAPP motion requesting the court to dismiss the plaintiff's complaint.[81] Defendants must establish in this motion that the challenged activity is protected under the statute.[82] Activity is usually protected if it involves the defendant's exercise of free speech or the right to petition, though some states require the defendant's petitioning activity to have some basis in law or fact.[83] In cases where the defendant merely funds or encourages landowner protesting its arms-length involvement in the public participation may raise issues in court, but at least one jurisdiction holds that removed benefactors of public participation efforts are entitled to anti-SLAPP protection.[84]

Once the defendant establishes it is entitled to protection, most jurisdictions shift the burden to the plaintiff to demonstrate a probability of prevailing on the claim.[85] This requirement can be problematic if the plaintiff does not yet have sufficient evidence of the defendant's involvement in the land owner opposition. Since the policy of anti-SLAPP statutes is to swiftly dispose frivolous suits, courts are unlikely to provide much time for discovery.

VI. Conclusion

Rubloff and *Mercatus* provide points of reference to governmental parties and competitive protesters by illustrating the range of acceptable conduct in zoning and land use disputes. The cases demonstrate that legal remedies may be difficult for applicants to obtain, even in the face of extreme conduct by competitors. *Rubloff*'s holding, in particular, should prompt zoning applicants and municipalities to be vigilant and proactive in discovering the source of opposition.

To prepare themselves for the possibility of becoming involved in a competitive opposition scenario, zoning applicants, competitors, and governmental parties should all be familiar with the contours of the various claims and defenses available to parties to this type of litigation. In particular, all parties should be aware that the claims commonly brought by applicants are very difficult to sustain. Knowing the nuances of pleading requirements can help frame how these participants conduct themselves during the zoning application phase in anticipation of satisfying certain legal standards in court. The stakes are high for both zoning applicants and competitors, and *Rubloff* and *Mercatus* indicate that a careful, methodical approach to these zoning disputes is essential.

NOTES

1. *Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784 (N.D. Ill. Mar. 27, 2012).
2. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834 (7th Cir. 2011).
3. *Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *1 (N.D. Ill. Mar. 27, 2012).
4. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *1 (N.D. Ill. Mar. 27, 2012).
5. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *1 (N.D. Ill. Mar. 27, 2012).
6. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *1 (N.D. Ill. Mar. 27, 2012).

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7. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *1 (N.D. Ill. Mar. 27, 2012).
8. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *2 (N.D. Ill. Mar. 27, 2012).
9. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *2 (N.D. Ill. Mar. 27, 2012).
10. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *2 (N.D. Ill. Mar. 27, 2012).
11. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *2 (N.D. Ill. Mar. 27, 2012).
12. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *2 (N.D. Ill. Mar. 27, 2012).
13. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *2 (N.D. Ill. Mar. 27, 2012).
14. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *2 (N.D. Ill. Mar. 27, 2012).
15. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *2 (N.D. Ill. Mar. 27, 2012).
16. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at **2–3 (N.D. Ill. Mar. 27, 2012).
17. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *1 (N.D. Ill. Mar. 27, 2012).
18. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *17 (N.D. Ill. Mar. 27, 2012).
19. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at **3–10 (N.D. Ill. Mar. 27, 2012).
20. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at **10–11 (N.D. Ill. Mar. 27, 2012).
21. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at **12–13 (N.D. Ill. Mar. 27, 2012).
22. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 837 (7th Cir. 2011).
23. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 837 (7th Cir. 2011).
24. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 837–38 (7th Cir. 2011).
25. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 838 (7th Cir. 2011).
26. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 838 (7th Cir. 2011).
27. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 838 (7th Cir. 2011).
28. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 853 (7th Cir. 2011).
29. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 838 (7th Cir. 2011).
30. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 838 (7th Cir. 2011).
31. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 838 (7th Cir. 2011).
32. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 838 (7th Cir. 2011).
33. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 838 (7th Cir. 2011).
34. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 838–39 (7th Cir. 2011).
35. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 839 (7th Cir. 2011).
36. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 839 (7th Cir. 2011).
37. See *Associated Gen. Contractors, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 537–46 (1983).
38. *See* William Holmes and Melissa Mangiaracina, *Antitrust Law Handbook* § 9:7 (Thomson Reuters 2011).
39. *See* William Holmes and Melissa Mangiaracina, *Antitrust Law Handbook* § 9:7 (Thomson Reuters 2011).
40. See *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 453 (2006).
41. *See Evans v. City of Chicago*, 434 F.3d 916, 932 (7th Cir. 2006).
42. *See* 18 U.S.C.A. § 1962(c).

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43. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *9 (N.D. Ill. Mar. 27, 2012).
44. *See* 18 U.S.C.A. § 1341 (mail fraud statute); 18 U.S.C.A. § 1343 (wire fraud statute).
45. *Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *9 (N.D. Ill. Mar. 27, 2012).
46. *Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *9 (N.D. Ill. Mar. 27, 2012), *citing United States v. O'Connor*, 656 F.3d 630, 644 (7th Cir. 2011).
47. *See Rubloff Dev. Grp., Inc. v. SuperValu, Inc.*, No. 10 C 3917, 2012 WL 1032784, at *9 (N.D. Ill. Mar. 27, 2012).
48. *See* Fed. R. Civ. P. 9(b).
49. *See* Restatement (Second) of Torts § 525 (1977).
50. *See* Restatement (Second) of Torts § 766B (1979).
51. *See, e.g., BKJB Partnership v. Moseman*, 644 S.E.2d 874, 877 (Ga. Ct. App. 2007).
52. *See, e.g.*, OCGA § 51-7-85 et seq.
53. *See, e.g., Sussex Commons Outlets, L.L.C. v. Chelsea Prop. Grp., Inc.*, No. L-554-03, 2010 WL 3772543, at **6–7 (N.J. Super. Ct. App. Div. Sept. 23, 2010) (holding that covert funding of a citizen opposition group was not improper).
54. *See* Restatement (Second) of Torts § 768 cmt. e (1979).
55. *See* Restatement (Second) of Torts § 558 (1977).
56. *See Wilcox v. Superior Court*, 27 Cal.App.4th 809, 826 (Cal. Ct. App. 1994) (applying qualified immunity to the defendant even though it had merely financed the public petitioning).
57. *See* Restatement (Second) of Torts § 580B cmt. c (1977).
58. *See* Restatement (Second) of Torts § 682 (1977).
59. Allowing tort liability in these instances would conflict with the First Amendment's right to petition.
60. Eastern R. R. Presidents Conference v. Noerr Motor Freight, 365 U.S. 127 (1961); United Mine Workers v. Pennington, 381 U.S. 657 (1965).
61. Robert A. Zauzmer, Note, The Misapplication of the Noerr-Pennington Doctrine in Non-Antitrust Right to Petition Cases, 36 Stan. L. Rev. 1243 (1984).
62. See, e.g., *Alfred Weissman Real Est., Inc. v. Big V Supermarkets, Inc.*, 268 A.D.2d 101, 107 (N.Y. App. Div. 2000).
63. See, e.g., *RRR Farms, Ltd. v. American Horse Protection Ass'n, Inc.*, 957 S.W.2d 121, 129 (Tex. App. 1997).
64. See James M. Sabovich, Petition Without Prejudice: Against the Fraud Exception to Noerr-Pennington Immunity from the Toxic Tort Perspective, 17 Penn St. Envtl. L. Rev. 101, 106 (2008).
65. *See* William Holmes and Melissa Mangiaracina, *Antitrust Law Handbook* § 8:8 (Thomson Reuters 2011).
66. *Prof. Real Est. Investors, Inc. v. Columbia Pictures Ind., Inc.*, 508 U.S. 49, 60–61 (1993).
67. *See Davric Maine Corp. v. Rancourt*, 216 F.3d 143, 148 (1st Cir. 2000) (stating that because the defendants' efforts to lobby the legislature were in part successful, they cannot be considered shams).
68. *Prof. Real Est. Investors, Inc. v. Columbia Pictures Ind., Inc.*, 508 U.S. 49, 58 (1993), citing California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 513 (1972).
69. See, e.g., *Kottle v. Northwest Kidney Centers*, 146 F.3d 1056, 1060 (9th Cir. 1998).
70. See, e.g., *Razorback Ready Mix Concrete Co. v. Weaver*, 761 F.2d 484, 487 (8th Cir. 1985).
71. See, e.g., *Miracle Mile Assoc. v. City of Rochester*, 617 F.2d 18, 20–21 (2d Cir. 1980).
72. *Eastern R. Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127, 141 (1961).
73. See *Eastern R. Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127, 144 (1961).
74. See, e.g., *MCI Comm. Corp. v. Am. Tel. & Tel. Co.*, 462 F.Supp. 1072, 1103 (N.D. Ill. 1978).
75. See James M. Sabovich, Petition Without Prejudice: Against the Fraud Exception to Noerr-Pennington Immunity from the Toxic Tort Perspective, 17 Penn St. Envtl. L. Rev. 101, 111 (2008).
76. See James M. Sabovich, Petition Without Prejudice: Against the Fraud Exception to Noerr-Pennington Immunity from the Toxic Tort Perspective, 17 Penn St. Envtl. L. Rev. 101, 111 (2008).
77. See James M. Sabovich, Petition Without Prejudice: Against the Fraud Exception to Noerr-Pen-

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nington Immunity from the Toxic Tort Perspective, 17 Penn St. Envtl. L. Rev. 101, 111 (2008).

78. See *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 843 (7th Cir. 2011).
79. *See Ludwig v. Superior Court*, 37 Cal.App.4th 8 (Cal. Ct. App. 1995).
80. For instance, anti-SLAPP statutes are read very narrowly in Illinois, but California court commonly allow such motions.
81. *See, e.g.,* Cal. Civ.Proc. Code § 425.16(b) (West 2011).
82. *See, e.g., Melius v. Keiffer*, 980 So.2d 167, 171 (La. Ct. App. 2004).
83. *See* Mass. Gen. Laws Ann. 231 § 59H; R.I. Gen. Laws § 9-33-2. *See also Morse Bros., Inc. v. Webster*, 772 A.2d 842, 848 (Me. 2001) (noting that a plaintiff may defeat an anti-SLAPP motion if it can prove the defendant's petitioning activity had no support in fact or law).
84. *See Ludwig v. Superior Court*, 37 Cal.App.4th 8, 16–17 (Cal. Ct. App. 1995).
85. See, e.g., *Turner v. Vista Pointe Ridge Homeowners Ass'n*, 180 Cal.App.4th 676, 682 (Cal. Ct. App. 2009).

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