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Testimony of Delegate Samuel I. Rosenberg
Before the Senate Judicial Proceedings Committee
In Support of
House Bill 308

Courts-Civil Actions-Strategic Lawsuits Against Public Participation

Mister Chairman and Members of the Committee:

The goal of one developer's lawsuit against Baltimore citizens was clearly stated.¹ The suit was filed after community homeowner boards testified against a proposed development at public hearings. The plaintiff-developer sought \$25 million in punitive damages in order "to deter such conduct in the future."² The trial court found that this was a SLAPP suit, but the plaintiff has filed an appeal.³

This lawsuit was a Strategic Lawsuit Against Public Participation ("SLAPP"). It makes a mockery of our judicial system and threatens to curb the free speech of countless Marylanders. It is a meritless lawsuit filed to silence opposition and prevent an individual or group from exercising their First Amendment rights.

These frivolous but intimidating lawsuits typically involve an affluent plaintiff attempting to suppress a weaker defendant's First Amendment right to speak freely on matters of public concern.⁴ Plaintiffs use the litigation process to financially drain these defendants until they agree to muzzle themselves or apologize for their prior statements.⁵ The likelihood of success is an incidental matter for the plaintiff; it is a financial and emotional burden for the defendant.

¹ Baltimore Brew, "Clipper Mill developer Larry Jennings files \$25 million lawsuit against residents who testified against his projects," 2020, available at <https://baltimorebrew.com/2020/07/25/clipper-mill-developer-larry-jennings-files-25-million-lawsuit-against-residents-who-testified-against-his-projects/>

² *Id.*

³ Baltimore Brew, "Developer Larry Jennings loses his \$25 million suit against Clipper Mill residents," 2020, available at <https://baltimorebrew.com/2020/12/01/developer-larry-jennings-loses-his-25-million-suit-against-clipper-mill-residents/>

⁴ Public Participation Project, "What is a SLAPP?," 2018, available at <https://anti-slapp.org/what-is-a-slapp/>

⁵ *Id.*

The purpose of Maryland's anti-SLAPP law is to enable a judge to dismiss such suits early in the litigation process, doing away with the burden of lengthy and costly litigation and preserving the defendants' right to free speech.

Although Maryland was one of the first states to enact such a law, we have fallen behind the curve. Thirty other states have enacted anti-SLAPP legislation.⁶ Our anti-SLAPP law is relatively weak, earning a "D" rating by the Public Participation Project.⁷

HB 308, was a crossfile of Senator Hettleman's SB 162. It would broaden the definition of 1st Amendment activity that would be protected from a SLAPP suit. It would also delete the requirement that a party who has been SLAPP'ed demonstrate that the suit was brought in bad faith.

Both bills would also provide that a SLAPP suit cannot be asserted by a defendant who "made a statement or engaged in conduct that consisted of representations of fact about the defendant's or a business competitor's business operations, goods or services." Without this exception, ordinary consumer litigation over false and deceptive trade practices and product liability claims could be subjected to anti-SLAPP remedies.

As amended, HB 308 would provide that if the court determines that justice and equity require it, costs and reasonable attorney's fees shall be awarded. On the other hand, if the court finds that the anti-SLAPP motion is frivolous or solely intended to cause unnecessary delay, it may awards costs and attorney's fees to the other party.

This legislation not only protects individuals from prohibitively costly litigation that infringes upon First Amendment rights. It deters frivolous lawsuits that waste the courts' limited time and resources.

The bill also offers protection for news organizations and reporters, who must defend against lawsuits regarding their reporting on matters of public concern. The threat of litigation should not be used to silence journalists and curtail the reporting they undertake to inform the public. HB308 ensures that Maryland citizens or reporters cannot be silenced for making public statements related to issues of public concern, that are protected by the First Amendment.

I respectfully urge the committee to give HB 308 a favorable report.

March 31, 2021

⁶ Reporters Committee for Freedom of the Press, "*Introduction to Anti-SLAPP laws*", date accessed January 8, 2021, available at <https://www.rcfp.org/introduction-anti-slapp-guide/>.

⁷ Public Participation Project, "Maryland" 2020, available at <https://anti-slapp.org/maryland>. (last visited Jan 28, 2020).