

SLAP suits - house in senate testimony - 2021.pdf

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Testimony Supporting House Bill 308
Lisae C. Jordan, Executive Director & Counsel
March 31, 2021

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on House Bill 308.

House Bill 308 -- SLAPP Suits

This bill clarifies and supports the exercise of constitutional rights to petition and exercise free speech by amending the law regarding SLAPP Suits – Strategic Lawsuits Against Public Participation. Sexual assault survivors across the country are increasingly facing lawsuits brought to discourage exercising their rights in college sexual misconduct proceedings and related Title IX actions. Some survivors encouraged to speak out about sexual violence by the #MeToo movement have also been met with lawsuits designed to silence them. While not all of these retaliatory suits will qualify as SLAPP suits, some will and HB308 will help discourage this type of litigation abuse.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on House Bill 308**

2021-03-31 (Crossover) HB 308 (Support).pdf

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March 31, 2021

TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: The Office of the Attorney General

RE: (Crossover) HB0308 (SB0162) – Courts – Civil Actions – Strategic Lawsuits Against Public Participation – **Letter of Support**

The Office of the Attorney General urges the Judicial Proceedings Committee to favorably report House Bill 308. Strategic Lawsuits Against Public Participation (hereinafter, SLAPP) are antithetical to the right to speech and petition enshrined in the First Amendment to the United States Constitution, and are counter to the American belief in free speech and healthy debate.

SLAPP pleadings are lawsuits that are intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. A lawsuit is a SLAPP suit if it is brought against a person based on an act or statement of the person that was done or made in furtherance of the person's right of petition or free speech under the U.S. Constitution, the Maryland Constitution, or the Maryland Declaration of Rights in connection with a public issue or an issue of public interest. Unfortunately, these types of lawsuits became so pervasive and successful at chilling speech that Maryland, along with 24 other states, passed anti-SLAPP laws. However, Maryland's anti-SLAPP law is outdated, and in need of reform.

House Bill 308 will provide the necessary updates to the anti-SLAPP law to protect Marylanders' First Amendment rights, and ensure that Marylanders are not brought to court to defend meritless suits for expressing their beliefs and opinions.

For all of the foregoing reasons, the Office of the Attorney General urges the Committee to favorably report House Bill 308.

cc: Committee Members

HB308 - Del. Rosenberg - Written Testimony for Sen

Uploaded by: Rosenberg, Samuel

Position: FAV

SAMUEL I. "SANDY" ROSENBERG
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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).

HB308.UNFAVORABLE.MDRTL.L.Bogley.Senate.pdf

Uploaded by: Bogley, Laura

Position: UNF



Opposition Statement HB308
Courts – Civil Actions – Strategic Lawsuits Against Public Participation
Laura Bogley, JD
Director of Legislation, Maryland Right to Life

We Respectfully Oppose HB308

On behalf of our chapters and members across the state, we strongly object to HB308. The bill, as written would restrict free speech and deny legal remedy in conflict with the purpose of the original statute, which was enacted to *prevent* Strategic Lawsuits Against Public Participation or “SLAPP” suits. **Instead this bill will *enable* SLAPP suits and restrict the exercise of free speech in Maryland.**

The bill as written would amend the statute, and confuse the public purpose by imposing a subjective set of criteria to deny individuals and organizations legal remedy against SLAPP suits. The language would substitute free speech with personal or political value judgments. What may or may not be “in the public interest” or what may or may not “confer a significant benefit”, is not a settled matter of law but a matter for debate. Contrary to prior testimony of bill proponents, application of this bill would not be limited to consumer or trade practices.

The bill also would undermine the judicial requirement of **standing**, by allowing legal actions on behalf of the general population or some subset of the population otherwise loosely defined.

We specifically object to the following proposed language:

(C)A LAWSUIT IS NOT A SLAPP SUIT IF:(1) THE LAWSUIT IS BROUGHT IN THE PUBLIC INTEREST OR ON BEHALF OF THE GENERAL PUBLIC AND EACH OF THE FOLLOWING CONDITIONS EXISTS:(I) EXCEPT FOR CLAIMS FOR ATTORNEY’S FEES, COSTS, OR PENALTIES,THE PLAINTIFF DOES NOT SEEK ANY RELIEF GREATER THAN OR DIFFERENT FROM THE RELIEF SOUGHT FOR THE GENERAL PUBLIC OR A CLASS OF WHICH THE PLAINTIFF IS A MEMBER;
(II)THE LAWSUIT, IF SUCCESSFUL, WOULD ENFORCE AN IMPORTANT RIGHT AFFECTING THE PUBLIC INTEREST AND WOULD CONFER A SIGNIFICANT BENEFIT, PECUNIARY OR NONPECUNIARY, TO THE GENERAL PUBLIC OR A LARGE CLASS OF PERSONS; AND (III) PRIVATE ENFORCEMENT IS NECESSARY AND PLACES A DISPROPORTIONATE FINANCIAL BURDEN ON THE PLAINTIFF IN RELATION TO THE PLAINTIFF’S STAKE IN THE MATTER.

In conflict with federal court precedent, this bill attempts to authorize frivolous and costly suits that will likely **target pro-life speech which has been under attack as commercial speech** in Maryland. In *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore, 879 F.3d 101 (4th Cir. 2018)*, the City of Baltimore acting on behalf of abortion advocates, attempted unsuccessfully to put pro-life pregnancy centers out of business by enacting a targeted ordinance against **commercial** speech as "deceptive advertising".

The federal appeals court for the 4th Circuit affirmed the lower court’s decision in favor of the pro-life pregnancy center, noting that *“the City has considerable latitude in regulating public health and deceptive advertising. But Baltimore’s chosen means here are too loose a fit with those ends, and in*

this case compel a politically and religiously motivated group to convey a message fundamentally at odds with its core beliefs and mission.” The City also failed to establish that the pro-life pregnancy center was engaged in commercial or professional speech, which required the Court to apply higher scrutiny against the government action. Without proving the inefficacy of less restrictive alternatives, providing concrete evidence of deception, or more precisely targeting its regulation, the City was not able to prevail.

The Maryland General Assembly enacted the underlying statute to defend the exercise of free speech against Strategic Lawsuits Against Public Participation. We respectfully urge you to protect that right and the integrity of this Assembly, by rejecting House Bill 308 and its broad expansion of SLAPP suits.

Respectfully Submitted,

Laura Bogley, JD

MDRTL