SLAPP Suit Impact Statement Poggioli March 2023.pd
Uploaded by: Beth Poggioli
Position: FAV

Beth Poggioli
2740 Greene Road
Baldwin, Maryland 21013
410-458-0171

SLAPP SUIT IMPACT STATEMENT

March 15, 2023

As an active community member with PTA and Greater Fallston Association, I was familiar with local government and decisions made by elected representatives that could directly affect me and my community.

Stephanie Flasch and I decided in March 2016, a petition would be the best way to alert neighbors about Harford County's 2016 strategic planning and zoning land use document called Harford NEXT. The process proposed an expansion of public water and sewer system, known as the "Development Envelope". The administration (Harford County Government) asked for input from the community.

After completing the petition, we met with our district's councilman, Mr. Joe Woods and a follow up meeting with County Executive Barry Glassman and Brad Killian, the Director of Planning & Zoning. The printed petition was submitted to our elected officials via the public participation process for Harford NEXT.

The week after that first meeting, a lawsuit was filed the following week specifically against Stephanie and me by a developer whose property would be directly impacted by the public water and sewer expansion, even though we had said nothing about him specifically.

I was shocked, dismayed and completely confused as to how my First Amendment right to free speech could be potentially silenced by another person using what was to me, legal extortion.

My family and friends were stressed and nervous about the bully tactic. We are a middle-class family with kids in school. We simply did not have the same resources as a well-heeled developer with access to high priced lawyers. We incurred legal expenses totaling $8000+ and started a GOFUNDME page before the American Civil Liberties graciously took our case.

Regrettably, citizens in the community were negatively affected and withdrew from participation. With the support of the ACLU, we provided input at a June 2016 public hearing, with guarded comments.

The developer did not drop the suit until September 2016 and each day that summer brought new anxiety about what would happen next. This frivolous lawsuit was wrong on multiple levels and should never happen again in Maryland.

The proposed anti-SLAPP legislation would both provide some assurance to citizens who speak out, by creating a way to dismiss weak suits at an early stage before the speaker's costs get completely out of hand and to provide lawyers who defend against SLAPP's to get paid on a contingency basis. At the same time, anti-SLAPP laws discourage weak lawsuits directed at suppressing free speech without any real expectation of winning based on merit.

SB 619 - Support - to JPR - SLAPP Suits 3-15-23.pd
Uploaded by: Henry Bogdan
Position: FAV

MARYLAND NONPROFITS
marylandnonprofits.org

1500 Union Avenue | Suite 2500 | Baltimore, MD 21211
410.727.6367 | 800.273.6367 | Fax 410.235.2190

March 15, 2023

Testimony on Senate Bill 619
Courts - Strategic Lawsuits Against Public Participation
Senate Judicial Proceedings Committee

Position: Favorable

Maryland Nonprofits is a statewide association of more than 1500 nonprofit organizations and institutions. We urge you to support Senate Bill 619 to limit meritless lawsuits filed to for the purpose of cutting off public opposition and preventing the exercise of First Amendment rights.

"SLAPP", or strategic lawsuits against public participation, 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 28 other states, passed anti-SLAPP laws. However, Maryland's anti-SLAPP law is outdated, and in need of reform.

Senate Bill 619 will provide the necessary updates by redefining SLAPP lawsuits and by providing grounds for dismissal, expedited motions to dismiss, and awards of attorney's fees against the filing party. This is necessary 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.

We urge you to continue the effort to protect weaker defendants, ranging from community groups to environmental advocates, and to victims of crime and abuse, from oppressive and intimidating litigation.

We ask that you give Senate Bill 619 a Favorable Report.

2023 Senate Testimony - Anti-SLAPP (SB 619).pdf
Uploaded by: Jim McLaughlin
Position: FAV

MARYLAND GENERAL ASSEMBLY

Senate Judicial Proceedings Committee

Testimony of James A. McLaughlin[*] on behalf of
The Washington Post in support of Senate Bill 619

(Courts – Strategic Lawsuits Against Public Participation)

March 15, 2023

Chairman Smith, Vice-Chairman Waldstreicher, and members of the Committee, thank you for the opportunity to testify today. The Washington Post supports Senate Bill 619. This bill would update Maryland's aging anti-SLAPP law for a modern environment in which, increasingly, libel suits are being used as a tool of aggression to silence unwelcome speech about matters of public importance.

Senate Bill 619 is substantially the same as last year's Senate Bill 315, which was co-sponsored by Senators Hettleman, Smith and Waldstreicher. Both last year and this year, the House passed the cross-filed equivalent by large majorities. (House Bill 70 passed by 96-36 vote in February 2021; this year's House Bill 129 passed by a 98-39 vote on March 2.) This legislation represents a moderate – but sorely needed – attempt to bring Maryland's law into the mainstream of the anti-SLAPP protections offered by 31 other states and the District of Columbia.

The problem that anti-SLAPP laws seek to address has only gotten worse in recent years – namely, the growing use of libel suits not to redress true injury to reputation, but to punish and deter constitutionally protected speech simply by inflicting the financial pain of litigation. A recent white paper by Media Law Resource Center documents the rise in such lawsuits.[1] MLRC's study, which was co-authored by eminent First Amendment lawyers including Floyd Abrams and Lee Levine, presents data about the "weaponization" of libel suits, disproving the misperception that such cases are effectively foreclosed by the "actual malice requirement" of *New York Times v. Sullivan*, 376 U.S. 254 (1964). It is supported by real-world examples of how such claims are used to dissuade newsgathering and reporting.

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[*] Deputy General Counsel and Director of Government Affairs, The Washington Post; Adjunct Professor, Georgetown University Law Center (teaching First Amendment and media law).

[1] *See* Media Law Resource Center, "New York Times v. Sullivan: The Case for Preserving an Essential Precedent, available at https://medialaw.org/issue/new-york-times-v-sullivan-the-case-for-preserving-an-essential-precedent/.

No single piece of legislation can solve these problems, of course. But Senate Bill 619 would make several common-sense, incremental improvements to address the most glaring defects in a law that has fallen into near-total disuse.[2] These measures include:

(1) It would replace the existing statute's requirement that a lawsuit is not a SLAPP unless it was brought with subjective "bad faith" by the plaintiff. Currently, Maryland appears to be the only state anti-SLAPP law in the nation that contains such a requirement – and for good reason, as any inquiry into the plaintiff's subjective mindset is likely to be fact-specific, requiring costly discovery and defeating the purpose of anti-SLAPP protection.

(2) It would increase the likelihood of fee-shifting when an anti-SLAPP motion is successful, directing that the court "shall award costs and reasonable attorney's fees to the moving party if the court determines that equity and justice require it." Fee-shifting – or even the strong prospect of it – can level the playing field by preventing a deep-pocketed "libel bully" from threatening smaller publishers or ordinary citizens with lawsuits that, even if unsuccessful, would break them financially. Notably, Senate Bill 619's fee-shifting provision is still more limited than that of model anti-SLAPP laws which impose mandatory fee-shifting whenever the anti-SLAPP movant prevails.

(3) It would refine the existing statute's "early look" procedures for efficiently resolving litigation, by directing courts to rule "expeditiously" on anti-SLAPP motions and to stay discovery – expressly excepting any limited discovery necessary to decide the anti-SLAPP motion itself.

Crucially, Senate Bill 619 – like anti-SLAPP laws generally – does not favor speech of any particular viewpoint. Anti-SLAPP laws can be, and regularly are, invoked by speakers and commentators across the political spectrum. One of the first major cases interpreting the District of Columbia's Anti-SLAPP Act, *Mann v. National Review*, involved a conservative publication, The National Review, that had harshly criticized a climate scientist. Supported by numerous media *amici* (including The Washington Post), The National Review invoked the protections of the D.C. Anti-SLAPP Act to defend itself. Nor is the Post's current support of Senate Bill 619 connected to any individual case, contrary to the claims of some of the bill's opponents (who have asserted a link to the Nicholas Sandmann case). The Post has publicly testified in support of versions of this legislation since at least 2014, long before the Sandmann case arose. More fundamentally, any libel plaintiff with a reasonably good case will have little trouble surviving an anti-SLAPP motion under Senate Bill 619's standard, as they need only show that the complaint "has substantial justification in law and fact." This is

[2] In his testimony on House Bill 129, Paul Alan Levy of Public Citizen noted that there is only *one* reported decision in which a case has been dismissed under the Maryland Anti-SLAPP Act, which has been on the books since 2004.

a much less demanding test than having to show an actual likelihood of success on the merits (as some anti-SLAPP laws require, necessitating a showing as to each essential element in the claim). A plaintiff who cannot show even a "substantial justification in law and fact" for their complaint should not have filed it, frankly.

For all these reasons, the Post urges a favorable report of Senate Bill 619. We thank Senator Hettleman for her continued leadership on this issue in the Senate, and Delegate Rosenberg for authoring and supporting the legislation in the House.

SB 0783 FNL Testimony JWB 03092022.pdf
Uploaded by: John Breen
Position: FAV

STATEMENT SUPPORTING MD EHRA SB 0783 Submitted March 9 2022

I am an attorney in Annapolis MD. I ask for a favorable report on SB 0783.

THESE FACTS ARE NOT IN DISPUTE.

The city of Annapolis, the harbor and the Naval Academy are threatened by sea level rise (SLR). This flooding will damage the growth and economy of your capital city. The salient facts are published in the City of Annapolis/ NSA Annapolis CLIMATE RESILENCE CONTEXT.

EXHIBIT 1 is the title page of this report. The report is available on the city website.

Exhibit 2 holds two graphs. The **DSLR SELECTED PROJECTIONS** from est. 2030 to 2100 shows projected sea level rise with a 1 ft low on 2030 to a high of 8 ft 2100. The median level of rise at 2050 appears to estimate slr at 2050 at 1.9 - 2.0 ft. **The second design level graph suggests a seawall of 5.2 ft is required to protect the Naval Academy and Annapolis harbor.**

Exhibit 3 is a summary of two findings in the 2022 SEA LEVEL RISE TECHNICAL REPORT published by the NOAA on their website. The Northeast coast line (includes MD) may average a slr of between 14 to 18 inches by 2050. THE NOAA report also finds **FAILURE TO CURB EMISSIONS between 2022 and 2100 could cause an additional sea level rise from 1.5 ft to 5 ft of slr for a total slr of 3.5 ft to 7 ft in 2100.**

WE CAN AGREE the duty of legislators is to protect the common good. WE CAN AGREE that the OPINION WORKS POLL finds 76 % of MD voters favor the EHRA.

Do the members of this committee have the courage to act and publicly vote on SB 0783 or are they coopted by fear? One of those fears may be fear of party discipline (unlikely in this crisis) or the fear of the costs of such remedies. The cost of remediation will likely share 50% of the burden with the NSA. The cost of doing nothing will be catastrophic, as we slowly watch businesses, homes, and the Naval Academy continue to deteriorate, and be abandoned or sold at substantial losses. Growth in the city economy will substantially fall and fail. It is clear public opinion supports passage of SB 0783, and your support.

I refer you to The WATER WILL COME by Jeff Goodell available on Kindle.

CITY OF ANNAPOLIS /
NSA ANNAPOLIS

CLIMATE RESILIENCE CONTEXT

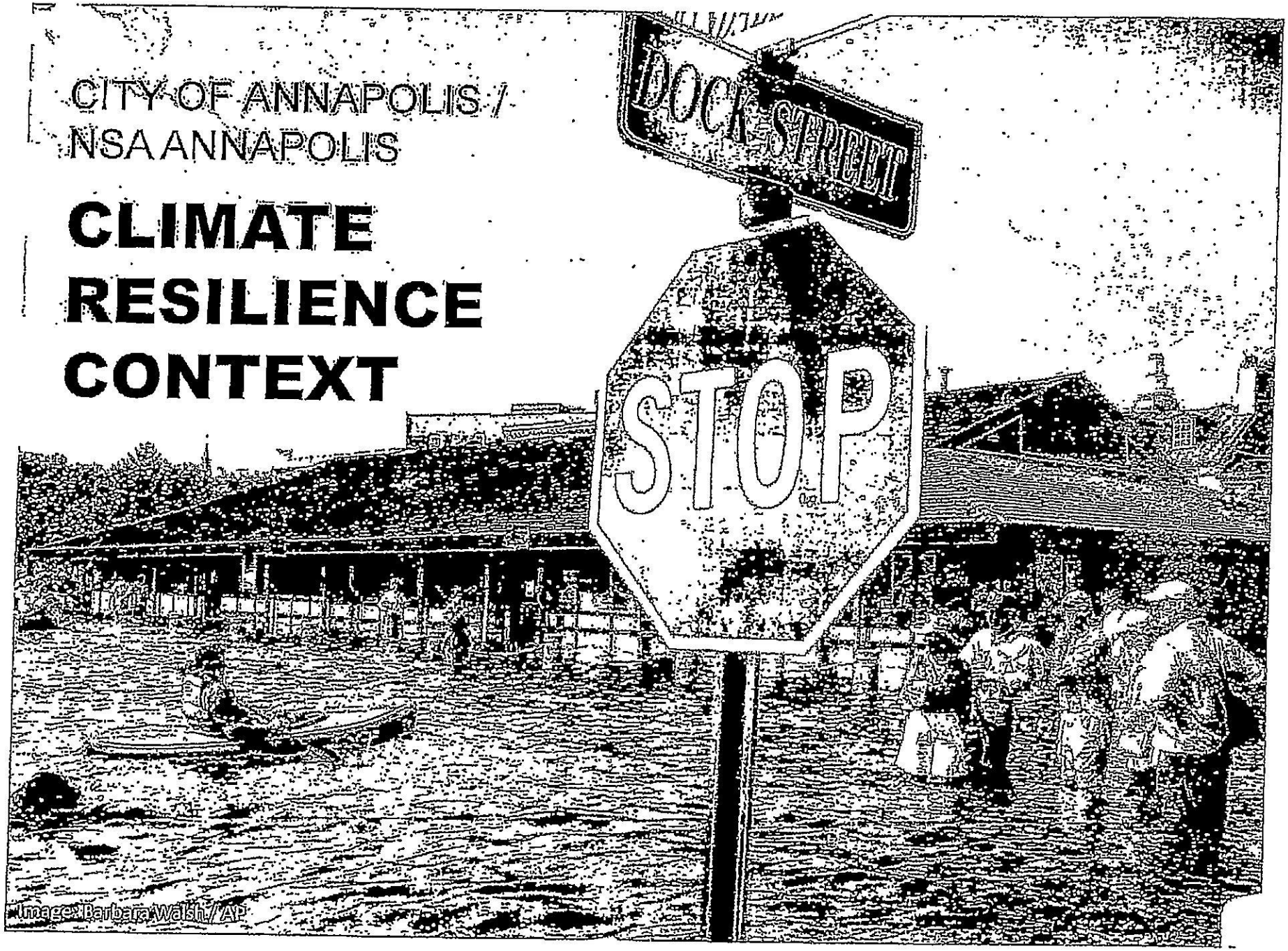


Exhibit 1. A Naval Academy Study of this century's projected sea level rise projects about 1.9 feet of Mean Seal Level (MSL) rise by 2050. The 2022 NOAA Sea Level Report moderated that to about 1.0 foot, only IF emissions are curbed. If not, it projects similar 5-7 feet rise by 2100.

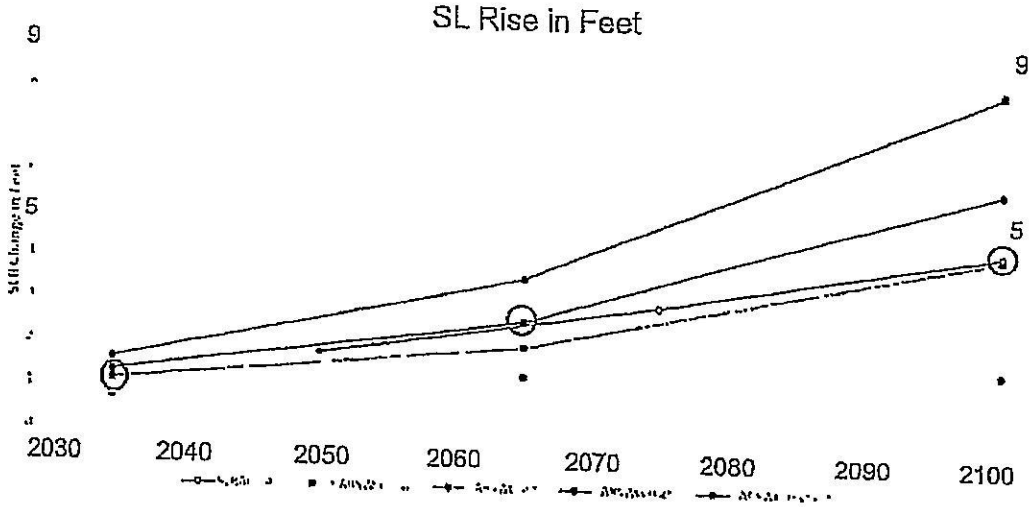
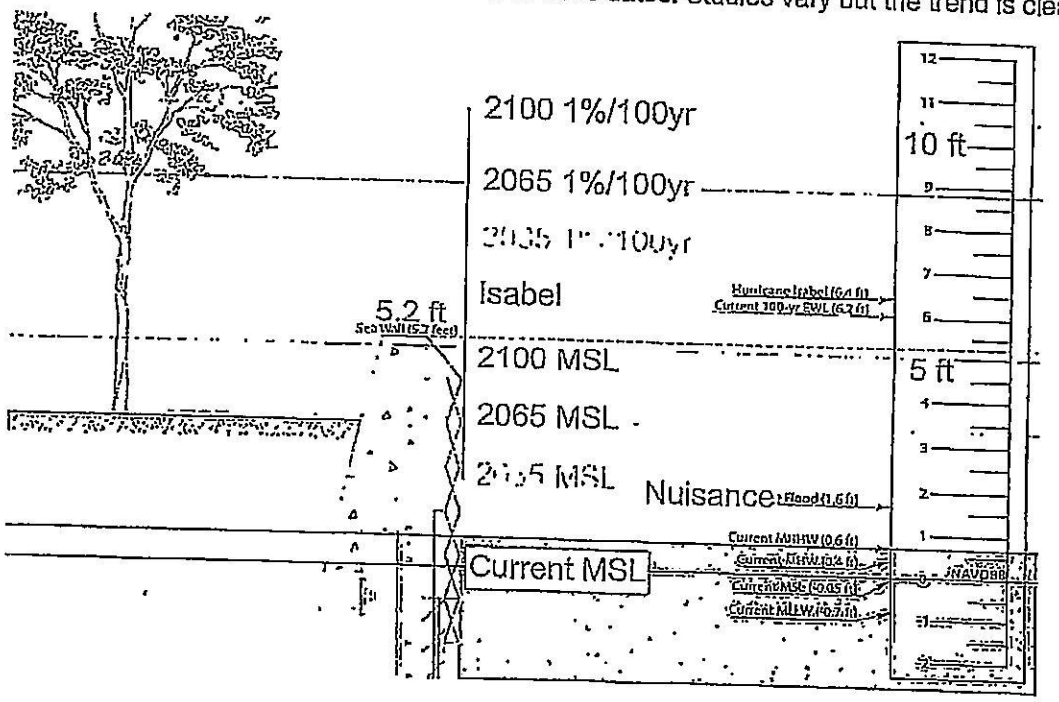


Exhibit 2. the recommended seawall is 5.2 feet above current MSL Future MSL and 100 year flood levels based on rising MSL are shown at three dates. Studies vary but the trend is clear.



NOAA REPORT

2022 SEA LEVEL RISE TECHNICAL REPORT

1

THE NEXT 30 YEARS

Sea Level Rise along the U.S. Coast Line is projected to rise, on average, 10 -12 inches in the next 30 years (2020 – 2050), which will be as much as the rise measured over the last 100 years (1920 – 2020). Sea level Rise will vary regionally along US coasts because of changes in both land and sea level height.

Rise in the next three decades (to 2050) is anticipated to be, on average: 10 to 14 inches for the East coast .....

3

EMISSIONS MATTER

Current and future emissions matter. About 2 feet of sea level rise along the U.S. coastline is increasingly likely between 2020 and 2100 because of emissions to date. Failing to curb future emissions could cause an additional 1.5 to 5 feet of seal level rise for a total of 3.5 -7 ft by the end of the century (2100).

MAJ Position Paper -- SB619 --2023.pdf
Uploaded by: Josh Howe
Position: FAV

Maryland Association for Justice, Inc.
2023 Position Paper

SB 619- Courts –Strategic Lawsuits Against Public Participation (SLAPP)

SUPPORT

The Maryland Associations for Justice (MAJ) supports SB 619 which modernizes the existing SLAPP statute, Courts §5-807, by modifying Maryland's law to be consistent with other SLAPP statutes in other jurisdictions.

During the shortened 2020 Legislature, the MAJ worked with Del. Rosenberg and other supporters to modify the then-proposed SLAPP bill to modify and improve it. SB 619 incorporate those changes.

SLAPP actions are, as the acronym implies, a strategic lawsuit against public participation. Some litigants file a SLAPP lawsuit intended to suppress a citizen's expressing free speech and criticism. SLAPP statutes exist in 29 states to protect people from lawsuits that have a purpose of suppressing free speech by providing grounds for dismissal, expedited motions to dismiss, and awards of attorney's fees against the filing party. See https://anti-slapp.org/your-statesfreespeech-protection/#scorecard . SB 619 updates the Maryland law to provide better protection for free speech rights by discouraging litigants from commencing a lawsuit with the suppressive intent.

MAJ requests a FAVORABLE Committee Report.

6240 Old Dobbin Ln, Ste 100 | Columbia, MD 21045 | (410) 872-0990 | info@marylandassociationforjustice.com

SLAP suits - senate testimony - 2023 - MCASA SB61
Uploaded by: Lisae C Jordan
Position: FAV

MCASA
Maryland Coalition Against Sexual Assault

Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
www.mcasa.org

Testimony Supporting Senate Bill 619
Lisae C. Jordan, Executive Director & Counsel
March 15, 2023

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 Senate Bill 619.

Senate Bill 619 -- 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 SB619 will help discourage this type of litigation abuse.

The Maryland Coalition Against Sexual Assault urges the Judicial Proceedings Committee to report favorably on Senate Bill 619

Mishkin Testimony in Support of SB619.pdf
Uploaded by: Maxwell Mishkin
Position: FAV

MARYLAND GENERAL ASSEMBLY

Senate Judicial Proceedings Committee

Testimony of Maxwell S. Mishkin[*] in Support of Senate Bill 619

(Courts – Strategic Lawsuits Against Public Participation)

March 15, 2023

Mr. Chair, Mr. Vice-Chair, and Members of the Committee, thank you for the opportunity to testify in support of Senate Bill 619, which would strengthen Maryland's commitment to freedom of expression by updating our state's anti-SLAPP law. I am here today to attest that robust anti-SLAPP statutes protect the reporting, advocacy, commentary, and debate that we all need to be informed members of our participatory democracy.

I am speaking today only on my own behalf, but my testimony is informed by my experience as an attorney in the Media and Entertainment Law Group at Ballard Spahr LLP, where my colleagues and I have the privilege of counseling and litigating on behalf of clients that range from global news and entertainment companies to local newspapers and freelance journalists, as well as nonprofits, documentary filmmakers, and other content creators of all stripes. Our work includes regularly defending against SLAPP suits in jurisdictions with strong anti-SLAPP laws and in jurisdictions with weak or no anti-SLAPP laws whatsoever.

SLAPPs – Strategic Lawsuits Against Public Participation – are a powerful weapon for plaintiffs looking to attack and ultimately chill speech that they find undesirable. For one, it takes far less resources to *file* libel lawsuits than it takes to *defend* such lawsuits, even when they are meritless. Frequent libel plaintiff Donald Trump admitted as much in speaking to the press in 2016 about his unsuccessful defamation case against a journalist who reported on his net worth: "I spent a couple of bucks on legal fees, and they spent a whole lot more. I did it to make his life miserable, which I'm happy about."[1] For another, even the threat of a libel lawsuit can discourage important speech. As the federal appellate court for the District of Columbia observed, "[u]nless persons . . . desiring to exercise their First Amendment rights are assured freedom from the harassment of lawsuits, they will tend to become self-censors," and such "self-censorship affecting the whole public is 'hardly less virulent for being privately administered.'"[2]

The threat to free speech that SLAPP suits pose is not static – it continues to grow. My recently retired colleague Lee Levine, one of the nation's leading First Amendment attorneys and scholars, wrote last year that "public officials and other powerful people and entities are now

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[*] Associate, Ballard Spahr LLP, https://www.ballardspahr.com/people/attorneys/m/mishkin-max.

[1] Paul Farhi, *What really gets under Trump's skin? A reporter questioning his net worth*, The Washington Post (Mar. 8, 2016), https://www.washingtonpost.com/lifestyle/style/that-time-trump-sued-over-the-size-of-hiswallet/2016/03/08/785dee3e-e4c2-11e5-b0fd-073d5930a7b7_story.html.

[2] *Washington Post Co. v. Keogh*, 365 F.2d 965, 968 (D.C. Cir. 1966) (quoting *Smith v. California*, 361 U.S. 147, 154 (1959)).

instituting libel actions at an unprecedented and deeply troubling rate," and that "the vast majority of these cases has been brought, not to secure compensation for actual injury to reputation, but rather to punish the press for speaking truth to power and to dissuade it from doing so in the future, lest it pay the price of the burdens and enormous expense of litigation, regardless of the merits of the claim."[3]

Senate Bill 619 would not solve all these problems, but it would protect important speech in several significant ways. If updated, Maryland's anti-SLAPP law would place the burden on the plaintiff at the initial stage of the case to show that the lawsuit "has substantial justification in law and fact," making it far more likely that meritless defamation actions on matters of public concern will be dismissed promptly and efficiently. Moreover, under Senate Bill 619, the anti-SLAPP law would provide that when a SLAPP suit is dismissed, the plaintiff should be obliged to pay the defendant's reasonable attorneys' fees and costs. These changes have been adopted by many other states around the country, and they help achieve the right balance between allowing claims with merit to survive while weeding out the frivolous ones designed to harass speakers.

Senate Bill 619 is important for another reason as well. In the landmark case *New York Times v. Sullivan*,[4] the Supreme Court held that the First Amendment requires public official libel plaintiffs to prove not just that the speech at issue is false, but that those statements had been published with knowledge of their falsity or despite a high degree of awareness of their probable falsity. This standard, known as "actual malice" or "constitutional malice," is a demanding one, but it is expressly intended to serve our "profound national commitment" to promoting "debate on public issues," even though it "may well include vehement, caustic, and sometimes unpleasantly sharp" speech.[5]

One noted legal scholar called the *Sullivan* decision "an occasion for dancing in the streets."[6] An esteemed South African advocate, preparing to take the bench in his country after the end of apartheid, said this American ruling "'shone like lanterns to illuminate the role that judges should play in keeping society open and strengthening democracy.'"[7] But two Justices of the Supreme Court have in recent years sought to overturn or otherwise revisit *Sullivan*.[8] Libel

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[3] *See* New York Times v. Sullivan: *The Case for Preserving an Essential Precedent* at 193, Media Law Resource Ctr. (Mar. 2022), https://medialaw.org/new-york-times-v-sullivan-the-case-for-preserving-an-essential-precedent/.

[4] 376 U.S. 254 (1964).

[5] *Id.* at 270-72.

[6] *See supra* note 3 at iii (quoting Harry Kalven Jr., *The New York Times Case: A Note on the "Central Meaning of the First Amendment,"* 1964 S. Ct. Rev. 191, 221 n.125).

[7] *See id.* (quoting Lee C. Bollinger & Geoffrey R. Stone, *The Free Speech Century* 182 (2019)).

[8] *See McKee v. Cosby*, 139 S. Ct. 675 (2019) (Thomas, J., concurring in denial of certiorari); *Berisha v. Lawson*, 141 S. Ct. 2424 (2021) (Thomas, J., dissenting from denial of certiorari); *id.* at 2425 (Gorsuch, J., dissenting from denial of certiorari); *Coral Ridge Ministries Media, Inc. v. SPLC*, 142 S. Ct. 2453 (2022) (Thomas, J., dissenting from denial of certiorari).

plaintiffs have quickly responded by asking the Supreme Court to lift the actual malice requirement. As Floyd Abrams put it, *Sullivan* thus finds itself "newly controversial and even potentially at risk."[9]

Senate Bill 619 would mitigate this danger as well by providing that a "defendant in a SLAPP suit is not civilly liable for communicating with a federal, State, or local government body or the public at large, if the defendant, without constitutional malice, acted in furtherance of the defendant's right of petition or free speech under the United States Constitution or the Maryland Constitution or Declaration of Rights regarding any matter within the authority of a government body or any public issue or issue of public interest." By requiring proof of actual malice as a matter of state law, therefore, Senate Bill 619 backstops *Sullivan* and reaffirms that Maryland will remain a leader in protecting free speech and a free press.

Senate Bill 619 is a rare proposal in that it benefits everyone who speaks or publishes on matters of public concern: individuals and organizations, long-established institutions and fast-growing startups, for-profits and nonprofits, conservatives and liberals, the bipartisan and the nonpartisan and the apolitical alike. On that point, I understand that opponents of this bill claim that a stronger anti-SLAPP law would suppress the speech of pro-life activists and organizations. But the truth is that anti-SLAPP laws protect pro-life and pro-choice speakers equally against any meritless libel lawsuits aimed at silencing them. I have seen that firsthand in helping pro-life authors file a motion under California's anti-SLAPP law when they faced a meritless defamation lawsuit brought against them for criticizing a sitting state court judge.[10]

In short, Senate Bill 619 benefits the public by protecting the "freedom of expression upon public questions" necessary "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."[11]

With thanks in particular to Senator Hettleman for sponsoring this legislation, I very much appreciate the opportunity to offer my support today for SB619 and urge the Committee to report it favorably. I would be glad to answer any questions on this important matter.

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[9] *See supra* note 3 at iii.

[10] *See* Defendants' Special Motion to Strike the Complaint Pursuant to California's Anti-SLAPP Law, *Minehart v. McElhinney*, No. 17-cv-3349 (E.D. Pa. May 21, 2018), ECF No. 50.

[11] *Sullivan*, 376 U.S. at 269 (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).

SB 619_MNADV_FAV.pdf
Uploaded by: Melanie Shapiro
Position: FAV

BILL NO: Senate Bill 619
TITLE: Courts - Strategic Lawsuits Against Public Participation
COMMITTEE: Judicial Proceedings
HEARING DATE: March 15, 2023
POSITION: **SUPPORT**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Judicial Proceedings Committee to issue a favorable report on SB 619.**

Domestic violence abusers use countless forms of manipulation and abuse against their victims including the court system. Abusers use the court system as a way to maintain power and control over their victims bringing their victims into court countless times or threatening them with lawsuits if they seek protective orders. Victims should not fear seeking safety such as in the form of a protective out of fear of legal retaliation from their abuser. While not all of these retaliatory suits will qualify as SLAPP suits, some will, and SB 619 will help discourage this type of litigation abuse and allow victims access to justice.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on SB 619.**

For further information contact Melanie Shapiro ■ Public Policy Director ■ 301-852-3930 ■ mshapiro@mnadv.org

1997 Annapolis Exchange Parkway, Suite 300 ■ Annapolis, MD 21401
Tel: 301-429-3601 ■ E-mail: info@mnadv.org ■ Website: www.mnadv.org

SB 619 - WLCMD - FAV.pdf
Uploaded by: Michelle Siri
Position: FAV

Women's Law Center of Maryland
JUSTICE FAIRNESS EQUALITY
305 West Chesapeake Avenue, Suite 201 Towson, MD 21204
phone 410 321-8761 fax 410 321-0462 www.wlcmd.org

BILL NO:	Senate Bill 619
TITLE:	Courts – Civil Actions – Strategic Lawsuits Against Public Participation
COMMITTEE:	Judicial Proceedings
HEARING DATE:	March 15, 2023
POSITION:	**SUPPORT**

Senate Bill 619 clarifies the exercise of constitutional rights to petition the courts, and exercise free speech, by amending existing law regarding SLAPP Suits – Strategic Lawsuits Against Public Participation. These lawsuits intentionally target survivors, whistleblowers, and advocates who speak out against powerful perpetrators, creating a chilling effect on other victims who may seek to do the same. They have become an all-too common tool at silencing criticism and intimidating victims.

As a statewide legal services organization, we strongly believe in the right to petition the courts. Yet, we also believe a balanced approach is necessary when individuals, particularly those wielding power, utilize the courts as a weapon against those who speak out against abuse. The Women's Law Center has received an alarmingly increasing number of inquiries and requests for support in cases where survivors across the country are facing lawsuits brought to discourage them from exercising their rights in college sexual misconduct proceedings, or for bringing protective orders in response to intimate partner violence. The result of those malicious lawsuits is to discourage survivors from continuing their pursuit of safety and recourse. While not all of these retaliatory suits will qualify as SLAPP suits, some will and SB619 will help discourage this type of litigation abuse and allow victims access to justice.

Our courts and judicial system must not be allowed to be weaponized against victims. Because SB619 will help prevent litigation abuse, the Women's Law Center of Maryland, Inc. urges a favorable report on Senate Bill 619. For more information, please contact Michelle Siri at msiri@wlcmd.org.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change, working to ensure physical safety, economic security, and bodily autonomy for women in Maryland.

2023 Maryland Anti-SLAPP position statement Senate

Uploaded by: Paul Levy

Position: FAV

Written Statement of Paul Alan Levy
Public Citizen Litigation Group
on Senate Bill 619

It is indeed good news that the Senate is again considering taking steps to bolster its anti-SLAPP law to provide the level of protection for speech on matters of public interest that many other states, as well as the District of Columbia, provide against abusive litigation. The bill offered by Senator Hettleman takes important steps in that direction.

A good anti-SLAPP law provides important support for the right of Americans to participate in the process of self-government as well as to alert other consumers to problems encountered with businesses and others in the marketplace. It provides, that is, important protection for a vigorous marketplace of ideas. Too often consumers and citizen activists have been victimized by merciless litigation filed over their criticism of powerful figures who object to the criticism.

First, a little bit about us. Public Citizen is a public interest organization based in Washington, D.C. It has members and supporters in all fifty states, including about 13,000 in Maryland. Since its founding in 1971, Public Citizen has encouraged public participation in civic affairs, and its lawyers have brought and defended numerous cases involving the First Amendment rights of citizens who participate in civic affairs and public debates. *See generally* https://www.citizen.org/topic/justice-the-courts/first-amendment. Public Citizen Litigation Group, the litigation arm of Public Citizen Foundation, has litigated anti-SLAPP motions on behalf of parties, filed amicus briefs in cases about the meaning or application of anti-SLAPP statutes, and represented or advised parties facing SLAPP suits, in California, Florida, Georgia, Massachusetts, Nevada, New York, Rhode Island, Texas, Washington, and the District of Columbia, each of which has an anti-SLAPP law. And often, we help speakers look for counsel in SLAPP cases; in doing so, it has been significantly easier for people to find counsel in cases

where a good anti-SLAPP law would provide support, as opposed to cases where there is either no anti-SLAPP law, or only a weak anti-SLAPP law. In addition, we are involved in litigation around the country helping consumers protect their right of access to court to obtain redress against companies seeking to avoid accountability for injuries caused by their products. All of these experiences inform our views about Senate Bill 619.

The Need for Anti-SLAPP Statutes

Anti-SLAPP statutes are not intended to be a general protection for everything allegedly protected by the First Amendment. Rather, they are a response to a particularly abusive form of litigation—Strategic Litigation Against Public Participation—in which powerful local (or larger) interests seek to suppress public participation in debate about matters of public interest. In this sort of case, the plaintiff seeks not so much to obtain a remedy for wrongful speech as to stop the criticism, and intimidate future critics, by imposing the costs of litigation on the critics. Generally, the plaintiffs in SLAPP suits tend to be wealthy and/or powerful, while the defendants tend to be individuals, non-profit groups, or publications that have less financial ability to sustain a lengthy litigation than the plaintiff does. A plaintiff's knowledge that the targets of litigation can't afford to defend increases the incentive to sue.

In a SLAPP suit, the speaker loses just by having to litigate—that is, by having to spend money on lawyers with no hope of recovering those expenses, not to speak of suffering the anxiety that comes with being a defendant. If the challenged speakers were plaintiffs, who stood to recover an award of damages, they might be able to afford counsel by entering into a contingent fee agreement; but it is hard to conceive of how a contingent fee agreement for the defense against a lawsuit would work. Given the fact that SLAPP suits are intended to do their work by wearing down the critic, the result is too often that, rather than continue to engage in

effective criticism, the critic accepts a settlement such as withdrawing or retracting true statements, and/or paying a small amount to the plaintiff. At the same time, the fact that the critic has had to back down—or spent tens of thousands of dollars to litigate the case—sends a message to other potential critics that this is a company, or a political figure, that is just too expensive to criticize. So SLAPPs are an effective means of suppressing criticism both in the short run and in the long run; and they deprive the community of valuable commentary that elected officials and their appointed agencies can use to formulate public policy, and that members of the public can use effectively to help decide what candidates or policies to support, what businesses to patronize, and what goods or services to buy or avoid.

Although Maryland was one of the first states to adopt an anti-SLAPP law, its narrow scope and relatively cumbersome standards and procedures have prevented it from working effectively, and roughly half of the states now have stronger anti-SLAPP laws. And, indeed, the Uniform Law Commission recently adopted a uniform "Public Expression Protection Act" which has begun to be adopted in several states without their own anti-SLAPP laws.

Some Local Examples of SLAPPs

A well-known example of a SLAPP lawsuit in our area was brought in the District of Columbia several years ago by football team owner Dan Snyder over critical coverage in a local free newspaper, the Washington City Paper. After the newspaper's sports reporter published a number of stories, Snyder brought suit against the reporter and against the City Paper's owner, a small company that owned five similar "free" papers around the country. Snyder also named as a defendant a hedge fund that had acquired the holding company's assets in a bankruptcy proceeding. Snyder then baldly warned the hedge fund that the cost of the litigation would

exceed the value of its investment in the paper.[1]

The impact of a good anti-SLAPP statute on a case like Snyder's is well-illustrated by the case's procedural history. Snyder could have sued in Washington D.C. in the first place, because that is where the Washington City Paper and the individual reporter were located, but instead he sued in New York, the home of the hedge fund that owned the City Paper's parent company. Notably, New York's anti-SLAPP statute at the time was very narrow and would not have applied to Snyder's lawsuit. (New York upgraded its anti-SLAPP law, in a manner very similar to Senate Bill 619, in 2020.) When Snyder apparently recognized that he had no legitimate claim against the hedge fund, he refiled lawsuit in D.C., where he faced an anti-SLAPP motion filed by the remaining defendants. Before that motion could be granted, he dismissed his case. I have talked both with the City Paper's publisher at the time, and with its lawyers, and there is no doubt that the DC anti-SLAPP statute played a crucial role in protecting free speech in that case. This is a case in which a very small and underfunded newspaper was able to avoid sinking all of its revenues into the defense of a merciless libel suit, and risking all of its assets at the same time, and in which a powerful local figure was playing on such prospects to try to intimidate the publisher.

Another local SLAPP suit was filed a few years ago by Karen Williams and Paul Wickre, a Bethesda, Maryland couple, against a pair of bloggers, residents of West Virginia and Indiana, respectively, one of whom worked for the American Legion, whose web site for veterans

[1] His counsel said, "Mr. Snyder has more than sufficient means to protect his reputation and defend himself and his wife against your paper's concerted attempt at character assassination. We presume that defending such litigation would not be a rational strategy for an investment fund such as yours. Indeed, the cost of the litigation would presumably quickly outstrip the asset value of the Washington City Paper." *See* Carr, *Ridiculed, an N.F.L. Owner Goes to Court***,** (New York Times Feb. 7. 2011), https://www.nytimes.com/2011/02/07/business/media/07carr.html

specialized in blowing the whistle on people who make false claims about military service. After the blog focused its attention on a large-scale military contractor who, the blog alleged, lied about being a Navy Seal, the contractor hired Wickre to find a way to take down the blog. In pursuit of this objective, Wickre began threatening the bloggers with having the American Legion summoned to appear on Capitol Hill. Wickre's email cc'd his wife, Williams, who was a Congressional staff member, using her official House of Representatives email account. The blog turned its attention to Wickre and Williams, suggesting among other things that Wickre might be wrongfully using his wife's political connections, which spurred some strong comments among the blog's readers. Wickre and Williams then initiated "peace order" proceedings seeking a broad prior restraint against any mention of either one of them on the blog. A hearing officer split the baby, dismissing Wickre's peace order claim but granting an injunction against any mention of Karen Williams on any internet site. Only after the bloggers appealed to the Circuit Court for Montgomery County, and traveled to Maryland to appear at the de novo trial in the case, did Williams withdraw her peace order claim. I have heard of a number of other situations in which people who are unhappy about the ways in which they have been criticized on blogs have misused Maryland's peace order procedures to try to quiet online criticism. Abuse of similar processes in other states that provide simplified procedures to obtain civil orders of protection against bothersome neighbors or spouses is an increasing source of concern around the country

Yet another example of SLAPP litigation involves a Maryland resident named Brett Kimberlin. After being released from prison for his involvement in a bombing at the Indianapolis Speedway, where he developed skills as a jailhouse lawyer, Kimberlin settled in Maryland, where he began filing pro se defamation lawsuits in state and federal courts in

Maryland. *E.g.*, *Kimberlin v. Nat'l Bloggers Club*, 2015 WL 1242763, at *14 (D. Md. Mar. 17, 2015), *appeal dismissed*, 604 F. App'x 327 (4th Cir. 2015), *dismissed sub nom. Kimberlin v. Frey,* 2017 WL 3141909 (D. Md. July 21, 2017), *aff'd*, 714 Fed. Appx. 291 (4th Cir. 2018); *Kimberlin v. Walker*, 2016 WL 392409, at *1 (Md. Ct. Spec. App. Feb. 2, 2016). My understanding from talking to some publishers whom he sued is that he managed to exact confidential settlements from some critics who worried about the fact that, as a pro se plaintiff, he might have nothing better to do than to write complaints and motion papers, while it costs them a great deal of money to hire counsel to defend themselves. Kimberlin then boasted of these "confidential settlements" to intimidate new prospective defendants who did not want to run up their legal expenses defending against him.

More recently, a Baltimore developer filed a lawsuit against residents of a condominium and row house community that it had built. *MCB Woodberry Developer v. Council of Owners of Millrace Condo.*, 265 A.3d 1140 (Md. Spec. App. 2021). Those residents successfully opposed efforts by the developer to introduce new construction which, the residents believed, would make their community less pleasant. The developer contended that the terms of the community declaration, which provided that the community as a whole could not take a public position without the consent of a board on which the developer maintained the majority of the votes, also barred individual residents from expressing their opinions publicly, and hence that, when residents exercised their own First Amendment rights to seek redress from city officials, they were in breach of contract. The complaint sought compensatory damages and attorney fees, and specifically pleaded a demand for $25 million in punitive damages. The trial court had no difficulty in finding that the community declaration did not bar the residents' free speech, and dismissed the suit under the anti-SLAPP law because the amount of punitive damages pleaded in

the complaint was so plainly designed to have an in terrorem effect on the defendants that its inclusion showed bad faith on the part of the plaintiff, and the Court of Special Appeals affirmed this ruling. This is the **first** time the Maryland anti-SLAPP law has ever been used successfully, despite its limitation to bad faith lawsuits. But the standard for finding cases to be within the scope of the anti-SLAPP law is so difficult that Court of Appeals rightly likened case to an asteroid strike hitting the planet Earth, like the Cretaceous-Paleogene extinction event. 265 A.3d at 1144.

How Anti-SLAPP Laws Like SB 619 Combat Such Lawsuits

Anti-SLAPP statutes employ strong measures that are intended to better enable SLAPPed speakers to resist such litigation, and to make it harder for SLAPPing plaintiffs to prevail by the simple measure of wearing down their critics. Senate Bill 619 takes a large step toward applying such measures.

First, Section A(3) of the bill expands the scope of Maryland's anti-SLAPP law by making explicit that it covers speech on matters of public interest beyond those pending before government bodies, such as posts on blogs, consumer review sites such as Yelp, the comment sections of newspaper articles, community listservs, and the like. All of these sources provide a rich vein of public commentary as well as providing useful information on which members of the community can draw in making sound decisions as consumers and as citizens about what businesses they should patronize, what goods and services they should buy, and what political figures or other political issues deserve their votes or their support. And lawsuits, or threatened lawsuits, against those who provide useful information for their fellow citizens to consider can deprive the marketplace of ideas of valuable information. It is good to see the Maryland legislature considering a SLAPP bill that will protect Marylanders who engage in such speech,

while at the same time making it possible for those whose interests are hurt by false and malicious speech to retain access to the courts to protect themselves when they can show actual malice and the other elements of a defamation or other claim.

An amendment made to a previous House bill, in response to a suggestion from representatives of the Maryland Association for Justice, who testified in the House Judiciary Committee in favor of the bill, added specific protection for speech made in communications to government officials, in the form of a new subsection (A)(3)(4); we support including that provision. It is worth noting that the Maryland Association for Justice has testified without reservation in favor of the bill.

Second, Section C of the bill excludes from the application of anti-SLAPP remedies lawsuits brought in the public interest or on behalf of the general public, and lawsuits that are brought over commercial communications by individuals or companies. Public Citizen strongly supports those exclusions; anti-SLAPP laws administer powerful medicine to discourage the bringing of weak and meritless claims over protected speech, and it is important not to make such remedies available to discourage ordinary consumers and workers from protecting their rights against companies that they believe have wronged them. Without those exceptions, ordinary consumer litigation over false and deceptive trade practices and product liability claims could be subjected to anti-SLAPP remedies—imagine a tort claim brought over a product advertised as being safe but which fails to warn consumers of an unreasonable risk of injury, *e.g. Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992), or a false advertising claim against Nike for falsely claiming that its sportswear is not made with child labor or in sweatshops, as in *Nike, Inc. v. Kasky*, 539 U.S. 654 (2003). Such cases ought not be subjected to anti-SLAPP remedies.

Third, Section A(3) of the bill, in combination with Section (E)(2), eliminates the former

limitation of anti-SLAPP treatment to lawsuits that are brought in bad faith; instead, it imposes an objective test that gives that plaintiff an opportunity to show that there is a substantial justification in law and fact for the lawsuit. It is almost impossible for a defendant to establish, at the outset of the litigation and without any discovery, that a lawsuit has been brought in bad faith. Bad faith in litigation is most commonly addressed after the lawsuit is over, when the defendant asks to have attorney fees awarded under the "bad faith" exception to the American Rule that litigants bear their own fees. But this is a very high standard, and the judge can assess whether there was bad faith by assessing the course of the litigation. But the purpose of an anti-SLAPP law is to protect speakers from being dragged through a litigation defense in the first place, and force to suppress their speech to avoid having to defend. The very fact that the dismissal in the *Clipper Mill* case mentioned above at page 6 is the first time Maryland's anti-SLAPP law has **ever** produced a dismissal shows how ineffective this statute has been, because of the bad faith provision. (Presumably, future plaintiffs will avoid that developer's mistake of pleading an outrageously high damages amount in the complaint). Although the bill is not explicit about what will be required of the plaintiff at the prompt hearing that the bill requires, we hope that the Committee report will make clear that the bill requires a plaintiff to make an evidentiary showing.

Fourth, as all good anti-SLAPP statutes do, Section (E)(1) of the bill responds to the "wear-down-the-defendant" objective by requiring a court to take an "early look" at the merits of the case, and Section (E)(2) allows the defendant to seek a stay of further proceedings pending resolution of the anti-SLAPP motion. In many states, anti-SLAPP laws expressly cut off discovery during the pendency of an anti-SLAPP motion unless good cause is shown to seek discovery as needed to meet the plaintiff's burden. Unlike most cases, where it is enough to

plead generally and then use discovery to obtain the evidence needed to take the case to trial, in this special class of case it is fair to expect the plaintiff not to come to court in the first place unless it has evidence of the civil wrong of which it complains. Rather than entirely cutting off discovery, this bill leaves the issue of discovery to the trial judge's informed discretion to allow "specified discovery" that is not "unduly burdensome." At the same time, as previously amended during the course of consideration, the bill borrows a feature of the District of Columbia's anti-SLAPP law by providing for cost-shifting during discovery, so that the plaintiff is required to cover any expenses that the discovery imposes on the defendant. We agree that this amendment represents a sensible compromise among the competing interests.

Fifth, the bill responds to the intimidation and inability-to-afford-a-defense factors that make SLAPP suits so effective by providing a financing mechanism for the defense against SLAPPs, in the form of an award of attorney fees. In this respect, anti-SLAPP statutes are similar to Title VII, the anti-trust laws, and various environmental and whistleblower statutes that provide for a presumptive award of attorney fees in favor of the plaintiff. The very adoption of a fees provision in these statutes encourages lawyers to develop expertise in the subject matter and to show a willingness to take on cases with the hope of recovering attorney fees through the statutes' fee shifting provisions. The attorney fee provision of an anti-SLAPP statute represents a public policy judgment that causes of action addressed to speech on public issues are disfavored, at least to the extent that they are brought without having evidence at hand at the outset.

Finally, a decision to adopt an anti-SLAPP statute represents a judgment that people who speak out on public issues need special protection against abusive litigation. The test set forth in the statute is an objective one. And although the archetypical case is a suit for defamation, good

anti-SLAPP statutes are not specific to one cause of action, because otherwise plaintiffs hoping to use oppressive lawsuits based on ultimately meritless claims to suppress speech whose content irks or offends them would simply plead a different cause of action: false light invasion of privacy, intentional infliction of emotional distress, intentional interference in business relationships, trademark infringement, trademark dilution, misappropriation of name and other causes of action. Indeed, the *Clipper Mill* case was a breach of contract claim, with the plaintiff contending that the community declaration contained a non-disparagement clause (even though § 14-1325 of the Maryland Commercial Code forbids non-disparagement clauses in consumer contracts). The bill takes the right approach by making the statute apply whenever a lawsuit is brought over speech of a certain protected character, instead of trying to enumerate causes of action to which it does and does not apply.

Rebutting Criticisms of the Bill

At the hearing of the Judicial Proceedings Committee last year, the committee heard from two types of opponents. One set of opponents were disappointed plaintiffs who had brought lawsuits against their critics in other jurisdictions where they had to deal with anti-SLAPP motions, and who contended that anti-SLAPP laws were unfair to them, and to plaintiffs with meritorious claims. That criticism is wrong – plaintiffs who bring meritorious lawsuits against their critics should have no difficulty overcoming anti-SLAPP motions. Some examples are provided by recent high-profile lawsuits brought against Alex Jones in Texas and by Sarah Palin in New York. Texas has a strong anti-SLAPP law, but the parents who sued Jones for falsely claiming that they had made up the story about their children being murdered at Sandy Hook Elementary School had no trouble overcoming the Jones anti-SLAPP motion; then they recovered a huge jury verdict against him. And Sarah Palin apparently had more than enough

evidence against the New York Times to get to trial on her libel suit attacking an editorial that blamed an advertisement she had run for an incident in which Republican Senators and Representatives were targeted during a baseball practice in Virginia. But she lost the jury verdict.

What anti-SLAPP laws do is create a financial disincentive for the bringing of **weak** claims over speech. The danger of facing an award of attorney fees if an anti-SLAPP motion is granted creates a financial incentive for plaintiffs to settle instead of pursuing litigation to the bitter end, just as the danger of an award of damages, not to speak of the cost of defending litigation, creates an incentive for defendants to settle when suits are brought over their allegedly wrongful speech. In a world where we prefer to let the marketplace of ideas and an informed electorate decide who is right and who is wrong about matters of legitimate public debate, a law which creates counter-incentives to weak lawsuits directed at speech is a good thing.

And if those opponents testify again this year, we would urge members of the committee to listen with a skeptical ear and to ask the witnesses whether they were, in the end, able to achieve favorable settlements of their cases. I looked at the cases of the witnesses who testified last year and my conclusion was that they got results from their litigation (both cases were settled, but one of the settlements was confidential). If these witnesses testify again I can share this research with the committee.

On the other hand, last year two representatives of local anti-abortion groups criticized the proposed anti-SLAPP amendments as allegedly helping only major allegedly liberal media companies such as the Washington Post, and enable liberals to "weaponize the courts" against conservative and religious speakers.

There is no factual basis for these criticisms. Anti-SLAPP laws are viewpoint neutral;

they can be invoked by speakers of all persuasions, and they are most frequently invoked by individual speakers or bloggers and by small, thinly-capitalized entities, including public interest groups and small media companies, much more so than by major media companies. Of the four examples I gave at the beginning of my testimony, one of media defendants was a tiny newspaper that is distributed for free, making its revenue entirely from advertising (sued by Dan Snyder); in another case, the media defendants were conservatives such as Glenn Beck, Michele Malkin, and Breitbart.com. (I represented a conservative blogger called Ace of Spades because of the important free speech issues presented, even though I detested the blogger's point of view). In the latter case, the plaintiff had established himself as a proponent of liberal causes and the speech over which he sued involved accusations that liberals were hypocrites for accepting support from a convicted bomber, who had at one time expressed unconventional views about sex with minors. In another case, the defendants sued by Wickre and Williams were associated with a conservative veterans' organization. In each of these cases, conservative voices could have made effective use of an anti-SLAPP law to get baseless lawsuits dismissed quickly and cheaply. For example, the plaintiff in the Kimberlin case was allowed to stretch his conservative critics on the rack of litigation for four years until the last of the defendants finally obtained summary judgment against him, plus another year until that ruling was summarily affirmed on appeal. *Kimberlin v. Breitbart Holdings*, 735 Fed. Appx. 106 (4th Cir. 2018). And if anti-abortion groups testify along these lines again this year, members of the committee might ask them whether they are aware of the cases in which anti-abortion groups have successfully invoked anti-SLAPP laws in other states to protect their controversial speech. (Again, I can supply the committee with examples.)

The viewpoint neutrality of anti-SLAPP laws is well illustrated by the experiences of

Donald Trump in litigation in the federal courts in California, which have held that anti-SLAPP laws apply in federal courts. A libel claim filed by Trump University against students who criticized its fraudulent practices was held subject to California's anti-SLAPP law, *Makaeff v. Trump U.*, 715 F.3d 254, 263 (9th Cir. 2013), but a few years later Trump was able to secure dismissal under the Texas anti-SLAPP law of a lawsuit brought by porn star "Stormy Daniels" that accused Trump of defaming her in a tweet. *Clifford v. Trump*, 818 Fed. Appx. 746, 750 (9th Cir. 2020). As these examples show, the anti-SLAPP laws are viewpoint neutral.

Indeed, in the District of Columbia, two of the leading anti-SLAPP cases decided by the D.C. Court of Appeals involved conservative speakers who were sued for criticizing liberal opponents. In *Doe v. Burke*, 133 A.3d 569 (D.C. App. 2016), several anonymous Internet users were sued for statements placed in a Wikipedia article about a liberal lawyer known for bringing human rights lawsuits against big companies; the blogger was defended by the Center for Individual Rights, a conservative non-profit law firm. And in *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213, 1226 (D.C. App. 2016), *as amended* (Dec. 13, 2018), a conservative group was sued for defamation by a climate change scientist over its accusation that he had misrepresented the data in some foundational research that provided the basis for arguments about the dangers of global warming; the defendants were again defended by the Center for Individual Rights. In each case, the conservative defendants invoked the D.C. Anti-SLAPP law, successfully in *Doe v. Burke*, where CIR received a substantial award of attorney fees, but unsuccessfully in *CEI v. Mann*, because the plaintiff in that case was able to offer good evidence that the statements about him were false and uttered with actual malice, and hence the suit was allowed to proceed.

The result in *CEI v. Mann* provides an important reminder: Anti-SLAPP motions often

do not succeed; they only require the plaintiff to show that it has a strong enough legal argument, and supporting evidence, to warrant putting the defendant to the expense of defending. The aim of these laws is to weed out weak lawsuits directed at speech on matters of public importance, but not to prevent meritorious lawsuits from being pursued.[2] That is why the opposing witnesses' reference to the defamation action filed by Nicholas Sandmann against the Washington Post in federal court in Kentucky is a red herring. The Washington Post moved to dismiss in that case, not relying on a state anti-SLAPP law but on the ground that it had a good basis for its reporting, and the trial judge subjected the complaint to a searching examination, initially dismissing the complaint altogether, *Sandmann v. WP Co. LLC*, 401 F. Supp. 3d 781, 794 (E.D. Ky. 2019), but ultimately allowing Sandmann to pursue claims over three statements by the Post that the judge felt had enough chance of success that the case should be allowed to proceed into discovery. And Sandmann secured a substantial settlement against the Post. Senate Bill 619, similarly, gives judges the discretion to allow focused discovery where it appears from the parties' arguments, and from the evidence presented at an early stage, that specific discovery could enable the plaintiff to defeat an anti-SLAPP motion, and there is no reason to think that a Maryland judge would not have ruled similarly applying SB 619. Indeed, I read the briefs at the time, and it seemed to me that, even if there had been an anti-SLAPP law in Kentucky, the Post had made some mistakes in its earliest, contemporaneous reporting on the situation, and Sandmann seemed to have good evidence that some of the statements were false; thus it is quite

[2] In the House committtee, Delegate Arikan expressed concern during the hearing that an anti-SLAPP law could make it impossible to bring libel claims over false reviews about local businesses on Yelp. But such libel plaintiffs often succeed by defeating anti-SLAPP motions, in states like California that have strong anti-SLAPP laws, by presenting evidence that false statements of fact were made. *E.g.*, *Simoni v. Swan*, B290682, 2019 WL 5485209, at *7 (Cal. App. Oct. 25, 2019); *Dakhil v. Monnett*, B285044, 2019 WL 92755, at *9 (Cal. App. Jan. 3, 2019); *Bently Reserve LP v. Papaliolios*, 160 Cal. Rptr. 3d 423, 437 (Cal. App.. 2013) *Wong v. Jing*, 117 Cal. Rptr. 3d 747, 765 (Cal. App.. 2010).

likely that a motion to dismiss under an anti-SLAPP law like SB 619 could well have failed with respect to the few statements at issue.

Whatever one might think about the Washington Post and about its owner, animosity toward them does not provide a good reason to oppose the bill.

A Few Suggestions for Improving the Bill

First, SB 768, introduced by Senator Smith in 2019, contained an amendment to section 12-303 of the Maryland Code that would have authorized interlocutory appeals from decisions denying a motion to dismiss under the proposed anti-SLAPP law. These provisions are important, especially early in the life of an anti-SLAPP law, because in some states we have found that a number of trial judges are hostile to the entire concept of anti-SLAPP legislation, and hence are reluctant to grant dismissal of SLAPP suits at the outset of litigation or to award attorney fees against plaintiffs who have filed SLAPP suits, even after finding that they were unsupported by law or fact. The anti-SLAPP statutes in all of the states that have adopted strong ones include provisions for appeal. We urge the Committee to consider using the language that was originally proposed in SB 768, adding the following to section 12-303:

> (B) A party may appeal from a ruling or a failure to rule on a motion to dismiss an alleged SLAPP suit under § 5–807 of this article.

Second, in Section E(2), lines 32 to 34, the formulation of the showing that a plaintiff whose lawsuit is within the definitional scope of a SLAPP suit must make to avoid dismissal should be clarified. The bill uses the phrase "substantial justification in law and fact." Certainly a court could construe the term "law and fact" to demand the presentation of **evidence** in support of the factual allegations of a complaint, just as, for example, Maryland appellate courts commonly describe certain issues in litigation as presenting a "mixed question of law and fact." By that, they mean to formulate a standard for reviewing a court's analysis of evidence. To the

extent that the bill is intended to demand the presentation of evidence to support a claim based on protected speech, it should say so explicitly.

Thank you for allowing me to present this written testimony.

MDDC Support SB 619.pdf
Uploaded by: Rebecca Snyder
Position: FAV

Maryland | Delaware | DC Press Association
P.O. Box 26214 | Baltimore, MD 21210
443-768-3281 | rsnyder@mddcpress.com
www.mddcpress.com

To: Judicial Proceedings Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: March 14, 2023

Re: SB 619 - FAVORABLE

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of newspaper publications, from large metro dailies like the Washington Post and the Baltimore Sun, to hometown newspapers such as The Annapolis Capital and the Maryland Gazette to publications such as The Daily Record, Baltimore Jewish Times, and online-only publications such as MarylandReporter.com and Baltimore Brew.

The Press Association is pleased to support Senate Bill 619, which would strengthen Maryland's anti-SLAPP law by removing Maryland's unusual "bad faith" provision, clarifying the definition of a SLAPP suit and dismissal proceedings, and shifting of attorneys' fees. We feel this legislation respects and maintains the difficult balance of protecting citizens' free speech while avoiding overly punitive measures so as not to deter the filing of valid lawsuits and ensure every deserving party gets their day in court.

Maryland's anti-SLAPP law is at risk of falling into disuse and irrelevance unless it is reformed.

We need to ensure that Maryland – which historically has been a pioneer on free-speech issues – has a functioning anti-SLAPP law that at least meets the average standard of the 30 or so such laws in the United States. SB 619 would accomplish that. Substantially, the same bill passed the House by decisive majorities in 2021, 2022 and the current session.

SLAPPs stifle public debate, threaten news reporting and diminish civic engagement – principles fundamental to our democracy. This is especially important to members of the press because informing and engaging the public can leave publications vulnerable to frivolous lawsuits. As businesses, our members cannot absorb large litigation costs. Legal challenges can present a significant burden for news organizations, both financially, in the form of legal fees, and because responding to often-frivolous challenges can be a time-consuming distraction for editors, reporters, photographers and managers. That burden, in both money and time, diminishes our members' ability to cover the communities they serve.

We believe a strong news media is
central to a strong and open society.
Read local news from around the region at www.mddcnews.com

They also pose burdens for individuals. For instance, in 2021, residents of the Clipper Mill development in Baltimore were hit with a $25 million lawsuit by developer ValStone for opposing additional housing units within the condo development. Larry Jennings, ValStone's co-founder and senior managing director, called the five residents and two community associations named in the suit "obstructionists." In December, the Court of Special Appeals affirmed the lower court's decision in favor of the condo residents. Although the decision was favorable to the residents in this instance, it does not obviate the need to eliminate the obligation to demonstrate bad faith, which is an almost impossibly high bar. Many SLAPP lawsuits occur over development, with deep pocketed investors filing suit against individuals and homeowner associations.

Within our membership, SLAPP suits also take a toll. The Frederick News-Post, although fortunate in recent years to avoid the kind of drawn-out cases that can cost hundreds of thousands in legal fees, still has spent up to $45,000 a year responding to legal challenges, typically cases of alleged defamation. In some, there may be legitimate questions of law at stake. Most, however, are frivolous, like the time the local restaurant sued them because that quoted a police report that used the restaurant's name in describing the location of a shooting. Getting that dismissed cost about $7,500.

That is money that is not spent on reporting staff or on other investments to support their journalistic mission. For many news organizations, an expense like that could have a chilling effect on their willingness to report certain stories.

For instance, Carroll County Times and reporter Brett Lake were defendants in a 2012 suit that claimed then-reporter Lake defamed the Chief Deputy State's Attorney Daggett in a series of articles that were fairly reported and substantiated by PIA requests and witness testimony. Under the existing anti-SLAPP law, Landmark Communications, the then-owner of the Carroll County Times, moved for summary judgement. Daggett appealed and the case dragged on for another three years, resolving in favor of the Carroll County Times in 2015. This suit placed a considerable burden on the publication and cost it hundreds of thousands of dollars in legal fees. This lawsuit could have been prevented with the appeals process contemplated in this bill.

For some of our members, one SLAPP suit could mean financial ruin. Many of our members are small business owners who have put everything they own into their publication because they believe in the importance of covering their local community. Susan Lyons, a long-time publisher of Coastal Point, is one of those members. Her weekly publication covers nine small communities and sometimes their reporter is the only person sitting in a small-town planning and zoning meeting. Coastal Point reports what happened so neighbors know that a gas station is being built on the property next door to them, that parking fees are going up, that the school is having overpopulation problems, that drug addicts are breaking into cars and garages in their neighborhood. Things that they need to know that no one else is going to tell them. Not radio, not TV, not even daily papers. Community news is the glue that binds non-profits, businesses, schools, local government and families together in an area. Susan believes a SLAPP suit would devastate her business and publication. Defending a suit and spending thousands of dollars on litigation - even if she knew she was in the right - is something to think long and hard about. She says:

> "I would have to take out loans (if I could even get them for something like this) and would have years of stress and worry that I might somehow lose. Would it be worth putting everything that I have worked so hard for on the line? It is my home, my reputation, my income, my family, my employees that depend on me that I am putting on the line. I can see where a small business could say that it is not worth the fight and just back off. Too much is at stake. **It is not right that whoever has the deepest pockets gets what they want even if it is not in the best interest of the community**."

Any journalistic organization that does its job will occasionally discomfort the subjects of its reporting. When there is harm and a real cause for action, there should be recourse. We support the proposed changes to Maryland's anti-SLAPP legislation as an important rebalancing that makes it harder to silence journalists. SB 619 is a rare proposal in that it benefits everyone who speaks or publishes on matters of public concern: individuals and organizations, long-established institutions and fast-growing startups, for-profits and nonprofits, conservatives and liberals, the bipartisan and the nonpartisan and the apolitical alike. And most importantly, it benefits the public by protecting the "freedom of expression upon public questions" necessary "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." (*New York Times v. Sullivan*, 376 U.S. 254, 269 (1964) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).

We urge a favorable report.

SB619_FAV_Hettleman.pdf
Uploaded by: Shelly Hettleman
Position: FAV

Shelly Hettleman
Legislative District 11
Baltimore County

Budget and Taxation Committee
Health and Human Services Subcommittee
Pensions Subcommittee
Vice Chair
Rules Committee

James Senate Office Building
11 Bladen Street, Room 203
Annapolis, Maryland 21401
410-841-3131 · 301-858-3131
800-492-7122 *Ext.* 3131
Shelly.Hettleman@senate.state.md.us

The Senate of Maryland
Annapolis, Maryland 21401

TESTIMONY OF SENATOR SHELLY HETTLEMAN
SB 619 COURTS – STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

A SLAPP suit, which stands for Strategic Lawsuit Against Public Participation, is a meritless lawsuit intended to shut down free speech. SLAPP suits are often filed as defamation suits but can also be disguised as anything from breach of contract to an interference with some economic benefit. They require broad discovery and seek crippling damages.

SB 619 clarifies that our anti-SLAPP statute extends to speech beyond just before governmental entities to include online reviews and bloggers, letters to the editor, and other venues commonly used by community members to share thoughts and ideas and to assist the community in choosing goods and services in the marketplace. (Section (A)(3))

The bill makes three very important improvements to our current anti-SLAPP statute:

1) It eliminates the requirement that a plaintiff demonstrate "bad faith" in bringing forth the suit. This was a unique provision in our law that proved difficult and costly, requiring extensive discovery and now earns our SLAPP law a "D" by the Public Participation Project. The current bill requires focus on a meritorious complaint. (Section (A)(3) and (E)(2))
2) It enables attorneys' fees to be shifted, which creates a deterrent to a deep-pocketed plaintiff. (Section (E)(4))
3) It requires courts to act promptly and hold discovery until there are expeditious rulings. (Section (E)(1) & (2))

It's important to note that none of these changes to current law would serve as a chilling effect to legitimate lawsuits. Expedited procedures would weed out meritless claims efficiently. By requiring courts to act promptly and rule expeditiously, and by removing the "bad faith" requirement, defendants avoid costly discovery and other pre-trial preparation, and SLAPP plaintiffs are stopped from wasting our courts' resources. Additionally, if it turns out that the anti-SLAPP motion is not granted and that the motion was intended to waste time, costs are awarded to the plaintiff.

This year's bill makes explicit that communication to a government official is covered (Section (A)(3)(4)). Another clarifying section ensures that certain commercial speech does not qualify under the SLAPP statute enabling appropriate product liability and deceptive trade suits to remain outside the SLAPP scope.

So far, at least 31 other states and D.C. have passed strong anti-SLAPP laws to preserve the right to speak freely. By passing SB 619, Maryland would enter the mainstream of being a First Amendment champion in our nation. This is not a partisan issue. It's a Maryland issue. It's an American issue.

I urge a favorable report on SB 619, and I thank you for your consideration.

SB619 Testimony Stephanie Flasch.pdf
Uploaded by: Stephanie Flasch
Position: FAV

SB619 - Testimony
Stephanie Flasch, 1902 Norwood Court, Fallston, MD 21047

Never did I imagine when I engaged in a bagel shop conversation that sparked the creation of a petition to encourage public participation in Harford County land use planning that I would be a defendant in a lawsuit one month later because of my efforts. As a prior military officer, member of several community advocacy groups, and a volunteer of community organizations, I understand the value of participating in county public hearings, following local government policies and being able to communicate with elected representatives for my community.

Beth Poggioli and I started a petition in March 2016 that informed neighbors of the possible "expansion of the development envelope" (approximately 5 miles south of my house in the Fallston area) being proposed in the HarfordNext, Harford County's 2016 Master Land Use Plan legislation. The petition encouraged the public to voice their opinions on the possible impacts on infrastructure and the precedent for other agricultural zoned properties in Harford County. I felt strongly about providing an informative petition after speaking with some County Councilmen who mentioned that citizens were not contacting them about the expansion proposed, which led them to assume that the minor expansion was okay with the community My only goal was to ensure citizens understood what the expansion meant for our community.

Beth and I were amazed at how quickly neighbors responded with the feedback of "I do not support" the expansion (over 1000 electronic signatures). So, Beth and I scheduled meetings; one with our district's Councilman Joe Woods and another with County Executive Barry Glassman and Mr. Brad Killian, the Director of Planning & Zoning. We shared our thoughts on HarfordNext and provided a printed copy of the petition. At meetings with local elected officials I was discouraged to hear the petition's feedback and comments being critically scrutinized for creditability instead of attention being paid to the important feedback given by the public. And I was just a little

disturbed when an official mentioned that a developer was very interested in who was behind the petition. But, overall we were pleased to have increased public participation, hopeful of citizen-driven changes to the proposed expansion and happy that our efforts provided much needed community statements to the County Council and County Executive.

When I received a phone call from the local paper asking how I felt about being named as a defendant on a lawsuit over materials we had distributed, I was at a loss for words. This surely must have been a mistake! But, shortly after getting this call, we were scheduled to meet with our district's Councilman Joe Woods, who encouraged us to meet in person with the plaintiff in the lawsuit, Mr. Michael A. Euler Sr., for resolution. Mr. Euler had a lawyer, and we did not; we both declined a meeting with Mr. Euler, and not long after a knock on my door delivered the lawsuit paperwork.

I was shocked, astonished, confused, panicked, and trying to understand why I was being sued for causing harm to a developer even though our petition never even identified a developer or business. We were accused of falsifying names on a petition, but the supposedly false names never specified. Plus, we were charged with having and acted with malice or disregard for the truth. And the claim for a judgement in excess of $75,000 was downright scary. I was overwhelmed with the reality that a deep pocket developer was going to shut down all public participation and I had no protections against this frivolous lawsuit without paying a fortune. I had to question my efforts and wonder, "was the community advocacy worth the cost"?

My husband and family were stressed about the financial burden and my kids (15 and 11 years old) were living in a household of constant duress. Friends were shocked and upset about the lawsuit but shied away from public support due to fear that the developer might retaliate against them too, with a lawsuit. We decided to stick to our guns and found a lawyer, running up $8,000 in legal expenses Happily, a GoFundMe secured some public support for our defense, and the ACLU eventually stepped in, but

not before Beth and I had to pay $1500 each for out of pocket legal services. Once the plaintiff found out that he could not drive us out of the public forum by running up our legal expenses, because the ACLU moved for dismissal of the lawsuit, the plaintiff dropped the suit against us instead of filing a response to the motion. You can find the docket of our case here: https://casesearch.courts.state.md.us/casesearch/inquiryDetail.jis?caseId=12C16001216&loc=56&detailLoc=ODYCIVIL. And here is the brief that the ACLU filed for us: https://www.aclu-md.org/sites/default/files/field_documents/pld.motion_to_dismiss_memo_0.pdf

I am beyond grateful for the ACLU's pro bono representation in our efforts for freedom of speech because the intimidation of a financial burden would eventually have influenced my level of public participation. Even so, I became hesitant in my advocacy efforts, relying on public comments to be reviewed by lawyers, and I noticed that the community withdrew from participating with the mindset that deep pocket developers will always triumph, so why bother? Not everybody can get pro bono help. A strong anti-SLAPP law is much needed in Maryland to protect all who have the courage to speak up.

TestimonySenateBill619.2023.pdf
Uploaded by: Claudia Barber
Position: UNF

TESTIMONY BEFORE THE SENATE JUDICIAL PROCEEDINGS COMMITTEE
WEDNESDAY, MARCH 15, 2023 AT 1 PM
SENATE BILL 619 – ANTI-SLAPP LAW

Presented by Claudia Barber, former candidate for judge, Circuit Court for Anne Arundel County

The Strategic Lawsuits Against Public Participation bill looks very meaningful on its face. However, it may have grave consequences against public figures by arming citizens with the right to report anything and everything to public entities and rewarding those citizens with ulterior motives, who do the reporting, with blanket immunity and attorney's fees. Not even civil rights litigants enjoy this special attention to resolve a case quickly by making a special motion.

We saw on January 6, 2021, how people engaged in conspiracy theories wrongly claimed First Amendment protection for their insurrectionist acts of terror. The First Amendment should never again be used as a reason to harm individuals or destroy human beings.

One of the pitfalls of this legislation is that it does not protect innocent victims such as public figures or politicians who may have rivals instigating stories by using public records, resources and government agencies to create news stories to smear an opponent. It particularly impacts people of color and their communities when misinformation is spread to newspapers to criminalize them and destroy individuals' livelihood and reputation.

In 2016, an ex-judge filed an ethics complaint against me asking my employer to remove me from office because I ran in a partisan primary. What the complainant did not do is tell my employer that the office of judge for the Circuit Court for Anne Arundel County is not a partisan office. It was important to not tell this truth because that would have destroyed his plan to have me fired for an ethics violation, which was later used on campaign

literature by four sitting judges. The purpose of filing the ethics complaint was to harm my livelihood because the complainant demanded my employer terminate me. All this was done so four sitting judges could advance in their contested judicial election for a 15-year term.

After making Freedom of Information Act requests, I learned that the complainant's pursuit of my termination was deeper than just filing an ethics complaint. He provided my employer with multiple photos and documents that were intended to cast me in a negative light to my employer. For example, my presence at a festival where I was meeting and greeting voters at a democratic booth was intentionally misrepresented as engaging in partisan affairs, in hopes that would be sufficient evidence to include in a removal hearing.

When the complainant was sued for making many misrepresentations to my employer, he attempted to use the Anti-SLAPP act in another jurisdiction as a shield of immunity to protect himself from liability.

Before voting yes on this legislation, please reconsider the impact this legislation has on the community and on individuals. This legislation impacts people of color who are often powerless to challenge vengeful acts of this type bent on advancing other people's candidacy.

For all of the foregoing reasons, I ask that this committee issue an unfavorable report on this legislation.

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Thank you, Senate Judicial Proceedings Committee members, and Mr. Chairman for your time.

UNFAVORABLE.SB619.MDRTL.L.Bogley.pdf
Uploaded by: Laura Bogley
Position: UNF

Opposition Statement SB619
Courts – Civil Actions – Strategic Lawsuits Against Public Participation

Laura Bogley, JD
Executive Director, Maryland Right to Life

We Respectfully Oppose SB619

On behalf of our chapters and members across the state, we strongly object to SB619. The Maryland General Assembly enacted the underlying statute to defend the exercise of free speech against frivolous Strategic Lawsuits Against Public Participation. We respectfully urge you to protect that right and the integrity of this Assembly, by rejecting House Bill 129 and its broad expansion of SLAPP suits. This legal loophole would enable media outlets and others to target elected officials as well as nonprofits.

This bill will *enable* frivolous SLAPP suits and restrict the exercise of free speech in Maryland.

THE BILL UNDERMINES THE INTENT OF THE GENERAL ASSEMBLY

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, which waste public tax dollars and create judicial backlogs with frivolous lawsuits.

The bill would weaken the original statute and create a huge legal loophole for news outlets and other bad actors to evade legal liability for acts of defamation including libel and slander. The bill favors those with economic and political advantage who can afford to drag out costly litigation in an attempt to bring individuals and nonprofit organizations to bankruptcy.

CONTENT DISCRIMINATION INFRINGES ON CONSTITUTIONAL RIGHTS

In 2021, the ***Washington Post*** testified in favor of this bill after a 2019 defamation lawsuit was filed against them by Nicolas Sandmann, a Catholic pro-life teenager who was the target of misleading, biased news coverage during the National March for Life in Washington, D.C. in 2019. The young man and his family were threatened with violence and his school was closed in response to threats against Catholics resulting from the false reporting. In July 2020 the *Washington Post* reached a settlement with Sandmann for an undisclosed amount, after an independent investigation revealed that the Post's accusations against the teen were in fact, false. **READ MORE.**

THE BILL CREATES AN INEQUITABLE AND UNENFORCEABLE JUDICIAL STANDARD

The bill would unfairly burden individuals and organizations, by imposing a subjective set of criteria to deny only certain individuals and organizations legal remedy against SLAPP suits. This questionable standard would be impossible for courts to apply equitably and would be highly likely to have a discriminatory effect. The language would substitute free speech with content discrimination and 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 of subjective opinion. Our right to Freedom of Speech was designed to protect speech that is not popular.

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 undefined.

THE BILL BROADLY CHILLS SPEECH, NOT LIMITED TO COMMERCIAL SPEECH

Contrary to prior testimony of the bill proponents, application of this bill would not be limited to consumer or trade practices (as evidenced by the word "OR" in Subsection (c) III.)

We specifically object to the legal loophole created by the operative 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; **OR**

FEDERAL PRECECENT PROHIBITS TARGETTING PRO-LIFE SPEECH

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 did not 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 for all and to preserve the integrity of this Assembly, by rejecting Senate Bill 619 and its broad expansion of frivolous SLAPP suits.

Respectfully Submitted,

Laura Bogley, JD

MDRTL

Pro-Life Teen Nicholas Sandmann Wins Settlement From Washington Post For Smearing Him

National | *Micaiah Bilger* | Jul 24, 2020 | 1:15PM | *Washington, DC*

Covington Catholic High School teen Nicholas Sandman won a second defamation settlement against a major news outlet, he and his lawyers announced Thursday.

The pro-life teen was the target of misleading, biased news coverage during his Kentucky high school's trip to the March for Life in 2019. On Thursday, Sandmann said his lawyers and the Washington Post reached a settlement agreement, WLWT News 5 reports.

"On 2/19/19, I filed $250M defamation lawsuit against Washington Post. Today, I turned 18 & WaPo settled my lawsuit. Thanks to [attorneys Lin Wood and Todd McMurtry] for their advocacy. Thanks to my family & millions of you who have stood your ground by supporting me. I still have more to do," Sandmann wrote Friday on Twitter.

In the lawsuit, Sandmann accused the newspaper of "wrongfully targeting and bullying" him "because he was the white, Catholic student wearing a red 'Make America Great Again' souvenir cap on a school field trip to the Jan. 18 (2019) March for Life in Washington, D.C."

The details of the settlement were not released publicly. A spokesperson for The Washington Post told Fox News, "We are pleased that we have been able to reach a mutually agreeable resolution of the remaining claims in this lawsuit."

Many news outlets implied Sandmann and other Covington students were racist based on a short video showing a brief confrontation between them and Native American protester Nathan Phillips near the Lincoln Memorial. The negative publicity led to death threats and the temporary closure of his Catholic high school for several days due to security concerns.

Later, however, longer video footage of the incident disproved many of the claims against Sandmann and other students from the school.

Click Like if you are pro-life to like the LifeNews Facebook page!

Wood congratulated the teen on the settlement Friday and wished him a happy birthday, noting that their lawsuits against other news outlets are still pending. These include NBC, ABC, CBS, Rolling Stone, Gannett and the New York Times.

"More presents to be delivered to you this next year," Wood wrote on Twitter. "You deserve justice. We all deserve justice."

Earlier this year, Sandmann's lawyers reached a similar settlement with CNN.

The lawsuits came after an independent investigation confirmed that a group of Covington Catholic teens told the truth about their viral confrontation with a Native American man in Washington, D.C. The report by Greater Cincinnati Investigation, Inc. states that the pro-life teens did not initiate the confrontation or use any racial slurs against Native American Nathan Phillips or the Black Hebrew Israelites group.

"We found no evidence of offensive or racist statements by students to Mr. Phillips or members of his group," the report states. "We found no evidence that the students performed a 'Build the Wall' chant."

Previously, Wood said Phillips told "lies and false accusations" about Sandmann and other students after the Jan. 18, 2019 incident.

Phillips did not participate in the independent investigation. According to Townhall, he lied about the students chanting "Build the wall!" and his Vietnam service.

"We have attempted to reach out to Mr. Phillips by phone and by e-mail, informing him that we desired to interview him in person and that we were prepared to meet him in Michigan or any location he might prefer," the investigators wrote. "We also sent Mr. Phillips' daughter an e-mail as they both appear to be involved in the Native Youth Alliance and have shared their e-mail addresses after the event to thank everyone for reaching out and supporting them."

They said Phillips never responded.

"Mr. Phillip's public interviews contain some inconsistencies, and we have not been able to resolve them or verify his comments due to our inability to contact him," the investigators continued.

They said it was the Black Hebrew Israelite group that yelled racial slurs against the boys as well as Native Americans.

In an statement after the initial publicity, Sandmann said he was confused by the whole incident and he smiled only to let the other protesters know that he would not be intimidated.

"I am a faithful Christian and practicing Catholic, and I always try to live up to the ideals my faith teaches me – to remain respectful of others, and to take no action that would lead to conflict or violence," he said.

parental_rights_pflag.pdf
Uploaded by: Nicole Hollywood
Position: UNF

SALISBURY PFLAG
Parents, Families, Friends, and Allies United with LGBTQ+ People
moving equality forward!

LEGISLATIVE TESTIMONY

Bill: **SB566/HB666 Family Law- Fundamental Parental Rights**

Organization: PFLAG Salisbury Inc., PO Box 5107, Salisbury Maryland 21802

Submitted by: Nicole Hollywood, President of the Board

Position: **OPPOSE**

SALISBURY PFLAG OPPOSES THE SO CALLED PARENTAL RIGHTS ACT

I am submitting this testimony in OPPOSITION to SB566/HB666 on behalf of PFLAG Salisbury, the Salisbury, Maryland Chapter of PFLAG National.

At Salisbury PFLAG, we recognize that a robust curriculum builds knowledge and extends perspective. This means that students need to both be able to see themselves in what they're reading and studying as reflection of themselves and their histories, but they also must be encouraged to see outwards and consider perspectives and experiences vastly different from their own. We also know that exposing learners to only limited and skewed versions of history, health, or literature that neglect entire populations using insular and homogenous materials forces them to develop a skewed inaccurate version of the diversity of our society. This is problematic for underrepresented groups – particularly LGBTQIA+ students and students of color and the result is the creation of a hostile and unsupportive educational climate that research shows contributes to lower academic performance, lower GPA, increased absences, increased likelihood of school dropout, and less likelihood of attending an institution of higher.

When parents work to support teachers and schools the result enhances learner outcomes but, the Parents Bill of Rights does not seek to strengthen and support our educators. Rather, is seeks to promote parent involvement as a means to undermine educators' professional judgments, bully teachers, and advance narrow self-serving narratives. Should this bill pass, it will drive a chasm creating a wedge between parents and the education community that will lead to many highly qualified teachers exiting the profession.

Emboldening close-minded people with the opportunity to object to curriculum and other materials, including books, readings, workbooks, worksheets, handouts, and digital media based on beliefs about morality, religion, personal philosophy, or political ideology is dangerous and only promotes intolerance and tunnel vision. Accordingly, Salisbury PFLAG opposes this bill and recommends an UNFAVORABLE report in committee.