Washington Post Supports SB 315.pdf
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MARYLAND GENERAL ASSEMBLY

Senate Judicial Proceedings Committee

Testimony of James A. McLaughlin[*] on behalf of the Maryland-Delaware-D.C. Press Association and The Washington Post in support of Senate Bill 315

(Civil Actions – Strategic Lawsuits Against Public Participation)

February 9, 2022

Thank you for the opportunity to testify today on Senate Bill 315, which would provide a much-needed strengthening of Maryland's anti-SLAPP statute. I am here on behalf of both The Washington Post, where I serve as newsroom counsel and head of government affairs, and the Maryland-Delaware-D.C. Press Association, a trade association whose members include all of the daily and most of the non-daily newspapers in Maryland, Delaware and the District of Columbia. I have testified over a half-dozen times in recent years in support of various proposals to modernize Maryland's Anti-SLAPP Act, which was a cutting-edge statute when enacted in 2004, but has become increasingly outdated.

Of the two "hats" I wear today – The Washington Post and the Press Association – it is clearly the latter group, the Press Association, that has the most vital need for a stronger anti-SLAPP law in Maryland. While no publisher wants to have to spend tens or hundreds of thousands of dollars (at minimum) fending off meritless libel suits, The Washington Post has the resources to do so without compromising its news coverage or acquiescing to legal threats. But the majority of news organizations doing business in Maryland – and, I should note, paying taxes in Maryland, employing Maryland citizens, and providing a public good in the form of news coverage of their local communities – simply do not have the ability to withstand calculated legal attacks in which the true goal of the defamation plaintiff is not to win the case, but simply to inflict the pain of litigation itself – and, ultimately, to punish and deter speech. A conservative estimate of the cost of defending a run-of-the-mill libel case against a news organization is $50,000 to $100,000 for initial case evaluation, answers, and 12(b)(6) motions, and while such amounts might be part of the cost of doing business for larger media companies, they can be absolutely back-breaking for smaller ones. That is the very real

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problem that House Bill 70 seeks to address – the use of abusive litigation to intimidate, punish, and suppress speech on matters of public concern.

Notably, though SLAPP suits often arise in a news media context, anti-SLAPP laws are at least equally important for securing the rights of average citizens. When the concept of "SLAPPs" was being developed in the late 1980s, the prototypical SLAPP situation was a real estate developer seeking to quelch opposition to a building project by filing defamation claims against individuals who dared speak out against the proposed plans. More recently iterations include:

- The increasingly common spectacle of wealthy foreign nationals – often Russian or Ukrainian oligarchs or Middle East oil executives – having firms on retainer that monitor their clients' press coverage and send dozens of threatening letters to US publications demanding take-down or correction and/or disputing accurate coverage – generally in an effort to get a message across that it's "not worth it" to write about that subject;

- Politically and ideologically motivated lawsuits – often for libel or false light invasion of privacy – against publications based on extremely thin, sometimes nonexistent, references to them in news coverage (example: the Lokhova lawsuit in which a friend of former National Security Adviser Lt. Gen. Michael Flynn is suing dozens of news outlets for libel, even though some – like the Post – did not ever mention her name in coverage);

- In the consumer protection area, efforts by businesses, hotels, restaurants, and other service providers to squelch negative reviews on platforms such as Yelp! and Angie's List, often by suing or threatening to sue for libel any individuals who post negative reviews. Even if the review is accurate, it is rarely an appealing option for the posters to defend their reviews court.

No statute could perfectly prevent all of these scenarios from ever happening again. But House Bill 70 immeasurably improves the existing Maryland Anti-SLAPP Act in several ways:

(1) by replacing the prior Act's "bad faith" requirement – which was difficult if not impossible to prove, and out of sync with literally all other state anti-SLAPP laws – with an objective standard based on the content of the communication, its context, and whether the plaintiff can demonstrate that the lawsuit has "substantial justification in both law and fact" (Section E(2));

(2) by providing mandatory, presumptive fee-shifting when a special motion to dismiss on Anti-SLAPP grounds is granted (Section E(4)), which would immediately level the playing

field when a much deeper-pocketed libel plaintiff seeks to bully a citizen or small news outlet by threatening litigation which will bankrupt it (as in the Dan Snyder/City Paper example); and;

(3) by refining the Act's "early look" procedures (Section E(1(I))), in which courts deciding anti-SLAPP motions are directed to rule expeditiously, and stay discovery during the pendency of the underlying government proceeding to which the communication at issue relates – all of which is designed to ensure that the act of litigation itself does not chill or, worse, "freeze" speech about a particular controversy.

In sum, House Bill 70 is a welcome effort to put some teeth into Maryland's venerable, but aging, Anti-SLAPP Act. Passage of the bill would be in the finest traditions of Maryland as historically one of the leaders in protecting freedoms of speech and press. This is a stronger, better bill than previous Anti-SLAPP proposals, and I urge the Committee to report it favorably. I thank Delegate Rosenberg, who has been the key lawmaker on anti-SLAPP protection since the original 2004 bill. I would be glad to answer questions.

SB 315 Testimony.pdf
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Advancing Human Rights and Justice for All

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February 7, 2022

The Honorable William C. Smith, Jr.
Chairman of the Judicial Proceedings Committee
Miller Senate Office Building
Annapolis, Maryland 21401

RE: Maryland Legal Aid Written Testimony in Support of SB 315 – Courts-Strategic Lawsuits Against Public Participation

Dear Chairperson Smith and Committee Members:

Thank you for the opportunity to present testimony regarding this bill which seeks to address the right of the public to participate in issues that affect their community. Maryland Legal Aid (MLA) is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents. MLA's 12 offices serve residents in each of Maryland's 24 jurisdictions. MLA handles various civil legal matters, including family law, housing, public benefits, consumer law (e.g., bankruptcy and debt collection), and criminal record expungements to remove barriers to obtaining child custody, housing, a driver's license, and employment. This letter serves as notice that Gregory Countess, Esq., will testify on behalf of Maryland Legal Aid at the request of Senator Shelly Hettleman.

MLA represents community groups concerned about proposals by businesses or entities to construct projects in their communities. MLA clients have opposed large and small development projects that strain their communities and often lead to the displacement of long-time residents or gentrification. These community groups need protection from bad faith lawsuits that curtail their voices. SB 315 protects the public's right to express their good faith opposition to development projects that harm the public good, in the opinion of those groups or individuals.

For example, a community group opposed a development proposal in their neighborhood that promised to build 14,000 residential units and provide space for commercial use on a site next to the community represented by the group. These units were to house high-income residents. The

community represented by MLA, has a median income which is among the lowest median incomes for all communities in Baltimore.[1]

The community believed that the development of the 14,000 residential units and the development of businesses in the proposed development might bring increased employment opportunities. However, it would invariably heat the housing market, leading to higher rents, and though it would raise the value of homes would lead to the displacement of those in their community as had developments in similar low-income communities in Baltimore. These developments had led to increased home values which pushed low-income renters and homeowners out of their neighborhoods.

The community opposed the planned development unless the developers recognized the potential gentrifying impact of the planned development and worked with the community to provide training programs to ready community residents for employment opportunities and provide financial support to build affordable housing. This opposition brought the developer to the negotiation table. The parties were able to negotiate a community benefits agreement that provided benefits to the community, like the development of low-income housing and an agreement to provide training and hiring opportunities for persons residing in the neighborhood.

This bill will help further ensure that, like the community group MLA represented, other groups and their members can use their right to freedom of speech to ensure low-income communities have a voice in what is built in or near their community.

For these reasons, MLA urges a favorable report on SB 315.

/s/ Gregory Countess
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[1] https://bniajfi.org/wp-content/uploads/2016/04/VitalSigns14_Census.pdf

SB 315 - Courts - Civil Actions - Strategic Lawsui

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BILL NO:	Senate Bill 315
TITLE:	Courts – Civil Actions – Strategic Lawsuits Against Public Participation
COMMITTEE:	Judicial Proceedings
HEARING DATE:	February 9, 2022
POSITION:	**SUPPORT**

Senate Bill 315 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 SB 315 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 SB 315 will help prevent litigation abuse, the Women's Law Center of Maryland, Inc. SUPPORTS Senate Bill 315.

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.

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ACLU Maryland

Testimony for the House Judiciary Committee

February 9, 2022

SB 315 Courts - Civil Actions - Strategic Lawsuits Against Public Participation

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The ACLU of Maryland supports SB 315, which would strengthen Maryland's anti-SLAPP law to better protect free speech rights against lawsuits intended to stifle debate of matters of public concern.

Strategic Lawsuits Against Public Participation, or "SLAPP" lawsuits are designed for individuals in positions of power to censor, intimidate, and silence their critics by burdening them with expensive, baseless lawsuits and threats of huge damage awards. Advocates, journalists, consumers, and concerned residents are forced to defend in court against abusive litigation, simply because they offended the wrong person while exercising their Constitutional rights. Freedom of speech necessarily protects speech that some find offensive. However, free speech rights and the right to petition are such fundamental rights, because they allow us to fully participate in our democracy and the process of self-government. It is therefore vital to have robust safeguards to protect against those who use their power to infringe on such important individual rights.

This bill balances the competing rights of free speech with legitimate concerns about defamation, misrepresentation, and fraud. It helps ensure that people with lawful claims have their day in court without silencing critics in the public square.

In particular, this bill:

- clarifies the definition of a SLAPP suit, particularly removing a "bad faith" provision and aligning language around the Constitutional rights of free speech and petition;
- provides to parties a new opportunity to appeal a ruling on a motion to dismiss; and
- shifts attorneys' fees.

In so doing, the bill lessens the legal and financial barriers for those who find themselves facing unconstitutional claims, and makes it easier for courts to

dismiss those frivolous claims without forcing individuals through a lengthy and costly trial.

SB 315 addresses one of the most fundamental rights of what it means to live in this country: the right to speak our minds and engage in public debate on government policies, political candidates, and other matters of public interest. The result of SLAPP lawsuits is a system in which only those with means are afforded their full Constitutional rights. This bill is an important step toward ensuring that these rights are afforded to all.

For the foregoing reasons, we urge a favorable report on SB 315.

2022 Maryland Anti-SLAPP position statement SB 315

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Position: FAV

Written Statement of Paul Alan Levy
Public Citizen Litigation Group
on Senate Bill 315

It is indeed good news that Maryland is again 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 Senators Hettleman, Smith and Waldstreicher takes important steps in that direction.

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. That is, strong anti-SLAPP laws provide 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 315.

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.

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 paper's owner 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.

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 315, 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 meritless 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.

Several examples of SLAPP suits filed with an eye to state anti-SLAPP laws were recently considered in Virginia. California Congressman Devin Nunes has filed lawsuits in state court in Virginia against the Fresno Bee, a newspaper located in his home district in California's central valley, which has carried several articles about him and run editorials criticizing him. He has also sued Twitter (a company based in San Francisco), and some anonymous Twitter users who have been making fun of him, identifying themselves as "Devin Nunes's Cow" and "Devin Nunes's Mom." He has filed other suits in Virginia against other detractors. It is likely, I think, that he files these lawsuits in Virginia, rather than in California where the newspaper, Twitter and, so far as I can tell, the Twitter users, are located, because California has a robust anti-SLAPP law under which his lawsuits would likely be dismissed quickly. Meanwhile, Nunes's Virginia lawyer has issued threats to sue additional detractors, such as a member of Congress from California, and a California prosecutor who ran against Nunes in 2018. This sort of threat is intended to have consequences—to make the recipient worry that he or she is going to have to

find a lawyer all the way across the country to defend against a lawsuit, unless she drops her criticisms.

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 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 federal prison, 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 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 other prospective defendants who did not want to run up their legal expenses defending against him.

Just last year, a Baltimore developer filed a lawsuit against residents of a condominium and row house community that it had built. *VS Clipper Mill v. Council of Unit Owners of the Millrace Condominium*, 2020 WL 7348633 (Balt. Cir. Ct. Nov. 23, 2020). 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. The Maryland Court of Special Appeals affirmed in December. *MCB Woodberry Developer v. Council of Owners of Millrace Condo,* — A.3d —, 2021 WL 5937413 (Md. Spec. App. Dec. 16, 2021). I believe that this case is the **first** time the Maryland anti-SLAPP law has ever produced a court-ordered dismissal. the limitation of the statute to bad faith lawsuits has made the law ineffective to protect speech against abusive litigation.

How Laws Like SB 315 Combat SLAPP 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. House Bill 70 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 in a previous year had expressed some qualms about that year's bill, added specific protection for speech made in communications to government official, in the form of a new subsection (A)(3)(4); we support including that provision. It is worth noting that at this year's hearing, the Maryland Association for Justice testified in the House of Delegates 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 court-ordered 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 by the House Judiciary Committee in a previous session, 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 language 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 House Judiciary Committee on January 19, two representatives of local anti-abortion groups criticized HB 70 as allegedly helping only major allegedly liberal media companies such as the Washington Post, and enabling liberals to "weaponize the courts" against conservative and religious speakers. In the event that they repeat those claims here, I would urge members of the committee to reject their claims, which, I believe, are ill-informed

and, indeed, out of step with what knowledgeable conservatives believe about these laws.

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 five 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. 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 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).

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 President Trump was able to

secure dismissal under the Texas anti-SLAPP law of a lawsuit brought by porn star "Stormy Daniels" that accused him 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.

Thus, contrary to the testimony on January 19, anti-SLAPP legislation both merits and enjoys wide support from conservatives. Americans for Prosperity, for example, is a strong supporter of anti-SLAPP legislation, as discussed on its web site. https://americansforprosperity .org/anti-slapp-protecting-protest-free-speech/. Eugene Volokh, a leading First Amendment scholar who heads the First Amendment clinic at UCLA Law School and is frequently a featured speaker at the Cato Institute as well as at Federalist Society gatherings, and whose Volokh Conspiracy blog at Reason.com is probably the most prominent blogging platform for conservative law faculty, has told me that although he regrets not being able to prepare testimony given his other commitments, he supports HB 70 and SB 315. James Bopp, the long-time counsel of National Right to Life, who has represented that movement many times in the Supreme Court, is one of the many conservative supporters of anti-SLAPP legislation, *see* https://anti-slapp.org/individuals, which is not surprising considering that he regularly uses anti-SLAPP laws to protect local right-to-life groups and Christian speakers against abusive litigation seeking to suppress their speeches. *E.g.*, *Wingard v. Oregon Family Council*, 417 P.3d 545 (Or. App. 2018); Bopp Law Firm, *Victory for Freedom of Speech in California!*, (Jan 21, 2022), https://www.bopplaw.com/victory-for-freedom-of-speech-in-california/.

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 ("CIR"), 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.[1] That is why statements by opponents of the bill about the defamation action filed by Nicholas Sandmann against the Washington Post in federal court in Kentucky are 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

[1] Concern was during the House of Delegates 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).

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. Senate Bill 315, 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 Senate Bill 315.

Whatever one might think about the Washington Post and about its owner, that example provides no reason to oppose the bill.

A Few Suggestions for Improving the Bill

First, there appears to be a drafting error. In the current section 5-807, there is subsection (a), (b), (c), (d) and (e); subsection (b) has a subsection [A]. The revision eliminates the numbering [A] in subsection (b) (at page 1, line 19), inserting the reference "SUBJECT TO SUBSECTION (C) OF THIS SECTION). And a new subsection (C) appears beginning at page 2, line 23, and subsections (D), (E) and (F) replace subsections (c), (d) and (e) respectively. But there is no subsection (A) and no subsection (B). We are worried that this could lead to judicial confusion.

Second, there is one change from the bills that have come before this committee in some past years that represents, as we see it, an unfortunate step backward. 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. This provision is 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.

Third, in Section E(2), lines 31 and 32, 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 315.pdf
Uploaded by: Rebecca Snyder
Position: FAV

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To: Judicial Proceedings Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: February 9, 2022

Re: SB 315 - 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 315, 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. This same legislation was passed by this committee and the House in 2021.

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.

They also pose burdens for individuals. For instance, last year, 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 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. We urge a favorable report.

MAJ - Civil Actions SLAPP SB315 hb70.pdf
Uploaded by: Ronald Jarashow
Position: FAV

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SB 315
Courts – Civil Actions – SLAPP

FAVORABLE

The Maryland Associations for Justice (MAJ) supports SB 315 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 315 incorporates 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 "State Anti-Slapp Laws" https://anti-slapp.org/your-states-free-speech-protection/#scorecard.

SB 315 updates the Maryland law to provide better protection for free speech rights by discouraging litigants from commencing a lawsuit with the suppressive intent.

The MAJ requests a FAVORABLE Committee Report.

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Uploaded by: Shelly Hettleman
Position: FAV

SHELLY HETTLEMAN
Legislative District 11
Baltimore County

Judicial Proceedings Committee

Joint Committee on Children, Youth, and Families

Joint Committee on the Chesapeake and Atlantic Coastal Bays Critical Area

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TESTIMONY OF SENATOR SHELLY HETTLEMAN
SB 315 – 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 315 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. 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.

TESTIMONY BEFORE THE SENATE JUDICIAL PROCEEDINGS C

Uploaded by: Claudia Barber

Position: UNF

TESTIMONY BEFORE THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

AGAINST SB 0315

Senate Bill 0315

To be presented February 9, 2022 at 1pm

BY: Claudia Barber, Attorney at Law

Good afternoon Mr. Chair and Vice Chair.

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 immunity.

Just last year, 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 and destroys individuals' livelihoods and reputations.

In 2016, someone 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 SLAPP act in another jurisdiction as a shield of immunity to protect him 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. It has been six years since this ethics complaint was filed, and I have spent an enormous amount of legal expenses trying to defend my reputation. My cases remain pending at this time.

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Uploaded by: Laura Bogley
Position: UNF

Opposition Statement SB 315/HB70
Courts – Civil Actions – Strategic Lawsuits Against Public Participation

Laura Bogley, JD
Director of Legislation, Maryland Right to Life

We Respectfully Oppose SB 315/HB70

On behalf of our chapters and members across the state, we strongly object to SB315/HB70.

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

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 in 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.

In 2021, the Washington Post testified in favor of this bill after a 2019 defamation lawsuit was filed against them by Nicolas Sandman, 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. In July 2020 the Washington Post reached a settlement with Sandman 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 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 personal or political value judgments. What may or may not be "in the public interest" or what may or may not "confer a significant benefit", is not a settled matter of law but a matter for debate.

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

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

We specifically object to the legal loophole created by the following proposed language:

> (C)**A LAWSUIT IS NOT A SLAPP SUIT IF**:(1) THE LAWSUIT IS BROUGHT IN THE PUBLIC INTEREST OR ON BEHALF OF THE GENERAL PUBLIC AND EACH OF THE FOLLOWING CONDITIONS EXISTS:(I) EXCEPT FOR CLAIMS FOR ATTORNEY'S FEES, COSTS, OR PENALTIES,THE PLAINTIFF DOES NOT

SEEK ANY RELIEF GREATER THAN OR DIFFERENT FROM THE RELIEF SOUGHT FOR THE GENERAL PUBLIC OR A CLASS OF WHICH THE PLAINTIFF IS A MEMBER;
(II)THE LAWSUIT, IF SUCCESSFUL, WOULD ENFORCE AN IMPORTANT RIGHT AFFECTING THE PUBLIC INTEREST AND WOULD CONFER A SIGNIFICANT BENEFIT, PECUNIARY OR NONPECUNIARY, TO THE GENERAL PUBLIC OR A LARGE CLASS OF PERSONS; AND (III) PRIVATE ENFORCEMENT IS NECESSARY AND PLACES A DISPROPORTIONATE FINANCIAL BURDEN ON THE PLAINTIFF IN RELATION TO THE PLAINTIFF'S STAKE IN THE MATTER; **OR**

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

The federal appeals court for the 4th Circuit affirmed the lower court's decision in favor of the pro-life pregnancy center, noting that ***"the City has considerable latitude in regulating public health and deceptive advertising. But Baltimore's chosen means here are too loose a fit with those ends, and in this case compel a politically and religiously motivated group to convey a message fundamentally at odds with its core beliefs and mission."*** The City also failed to establish that the pro-life pregnancy center was engaged in commercial or professional speech, which required the Court to apply higher scrutiny against the government action. Without proving the inefficacy of less restrictive alternatives, providing concrete evidence of deception, or more precisely targeting its regulation, the City was not able to prevail.

The Maryland General Assembly enacted the underlying statute to defend the exercise of free speech against Strategic Lawsuits Against Public Participation. We respectfully urge you to protect that right and the integrity of this Assembly, by rejecting Senate Bill 315 and its broad expansion of 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.