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Government Operations and  
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Joint Committee on Administrative,  
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Testimony of Delegate Samuel Rosenberg  
Before the House Judiciary Committee  
In support of

House Bill 0070

Courts-Civil Actions-Strategic Lawsuits Against Public Participation

Mister Chairman and Members of the Committee:

The goal of one developer's lawsuit against Baltimore citizens was clearly stated. The suit was filed after community homeowner boards testified against a proposed development at public hearings. The plaintiff-developer sought \$25 million in punitive damages: to "deter such conduct in the future." The trial court and appellate court found that the landlord's suit was a SLAPP suit.

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

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

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

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

House Bill 70’s primary purpose is to eliminate the “bad faith” requirement from a SLAPP suit. The existing bad faith requirement in the current anti-SLAPP statute places an undue burden upon the vulnerable defendant, and provides an unnecessary protection for the plaintiff, which is contrary to the purpose of the law. The bad faith requirement not only asks the defendant to show that the suit brought against them is meritless, but that the suit is so meritless that it rises to the level of bad faith. At times this requirement may be simple to prove in context with the original suit, but as the Court of Appeals noted in its decision in *MCB Woodberry Developer v. Council of Owners of Millrace Condominium*, “We do not suggest that bad faith will be apparent always on the face of the pleadings.”

Requiring vulnerable defendants to show that the suit brought against them was brought in bad faith, when there is already a requirement that they show the suit was intended to suppress their constitutionally protected communications is not only redundant but also contradictory to the purpose of the law itself. The aims of the anti-SLAPP statute were to allow courts to dismiss meritless suits, which aim to stifle free speech and intimidate helpless defendants. The bad faith requirement makes both of these objectives less achievable in every SLAPP suit that is brought in Maryland Today.

Last year a bill similar to House Bill 70 was heard by this committee and passed the House, but it was never voted on by the Senate. This legislation alters the conditions under which a lawsuit is considered a SLAPP suit, as well as the conditions under which a defendant in a SLAPP suit is not civilly liable for certain communications. It also establishes standards and requirements relating to a motion to dismiss an alleged SLAPP suit.

I respectfully urge the Committee to give HB-0070 a favorable report.

January 17, 2022