

SB 568 - WLCMD - FAV.pdf

Uploaded by: Catherine OMalley

Position: FAV

BILL NO: Senate Bill 568
TITLE: Courts – Civil Actions – Strategic Lawsuits Against Public Participation
COMMITTEE: Judicial Proceedings
HEARING DATE: February 20, 2024
POSITION: **SUPPORT**

Senate Bill 568 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 568 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 568 will help prevent litigation abuse, the Women's Law Center of Maryland, Inc. SUPPORTS Senate Bill 568.

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.

SB0568_SLAPP_Lawsuits_MLC_FAV.pdf

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0568 COURTS - STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

Bill Sponsor: Senator Hettleman

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0568 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists, and our Coalition supports well over 30,000 members.

Strategic Lawsuits Against Public Participation (SLAPP) are lawsuits with no real basis in fact that are designed to cause the party being sued to waste a lot of time and money proving that there was never any basis for the lawsuit. These suits are a drain on the resources of the courts as well as on the party being sued. In some cases, they will damage the reputation of the person being sued even though the allegations made in the lawsuit are false.

This bill, if enacted, would strengthen further define SLAPP lawsuits and update the current SLAPP statute by -

- Ensuring that the court will rule EXPEDITIOUSLY when the defendant requests the suit to be dismissed
- Requires the plaintiff to show that they have substantial justification for the suit
- If the discovery period for the suit is not extensive, the court may allow it to go forward, but the plaintiff now has to pay for it
- If the court grants an anti-SLAPP motion, the defendant will be able to recover costs and attorney fees
- If the court determines that the defendant's request to dismiss the suit was frivolous, it can award costs and attorney fees to the plaintiff

These are all reasonable measures that will help clear up some of the frivolous lawsuits that are currently jamming up our legal system. It also will level the playing field so that those with the resources to undertake a SLAPP suit in order to force those without the resources to defend themselves will be penalized.

We support this bill and recommend a **FAVORABLE** report in committee.

SLAPP Testimony Phelps.pdf

Uploaded by: Connie Phelps

Position: FAV

SB568/HB330 (2024): Favorable

Strategic Lawsuits Against Public Participation

Written Testimony, Connie Phelps, IPV Survivor

Like many other survivors of intimate partner violence (IPV) I have been threatened with defamation lawsuits, which are intentionally weaponized by abusers to keep us from speaking about our own experiences, or using those experiences to educate others and advocate for policies which would better our society. This government-enabled form of legal abuse is intertwined with the financial cost of defense against civil action (no matter how frivolous), forming the rope that effectively strangles the 1st Amendment rights of any victim whose abuser uses or threatens to use their participation in civil discourse against them. [SLAPP](#) suits are one of many methods of perpetrator manipulation of the legal system *to control and terrorize their target*, frequently after separation.

By passing a favorable vote on [SB568](#) and giving teeth to Maryland's anti-SLAPP statute, you have the opportunity to close an avenue of oppression, easily and without costing the State anything. You can return to me and thousands of others our basic rights to free expression as Americans.

I published a [couple](#) of [short pieces](#) in mainstream media outlets in 2021 on topics of general public interest from the point of view of a survivor, and wrote a blog. I have received formal letters threatening legal action for my truthful writings about abuse. Between that and media coverage of the risks of survivor voice, I have not published anything under my name since then – I'm now limited to an *anonymous* blog. Imagine all that society is not learning from survivors about what is really happening behind closed doors and how to solve it, because those who have actually lived it cannot participate in public discussion. Abusers do not give receipts for what they do in private, so the expected burden of proof in defamation suits is a purposeful trap in which we can become ensnared even if we never publicized the name of our abusers, and sometimes even if they've been convicted of some part of their acts.

Submitting this testimony under my name may put me at legal risk, and there are countless others not testifying because of that risk. That is a reality that this legislation would rectify directly. Cornell University Professor Kate Manne has written that manual strangulation,

a common and especially dangerous form of intimate partner assault, results in a fear that leads to “testimonial smothering,” of which there are many forms:

You can stuff her mouth and cheeks full of deferential platitudes. You can threaten to make her eat certain words that she might say as a prophylactic against her testifying or so much as recognizing what is happening to her and others. You can make her utterances doomed to fail, less than hollow. You can train her not to say ‘strangle’ but rather ‘choke,’ or better yet ‘grab,’ or best of all nothing. It was nothing, nothing happened. (Down Girl, 2018, p. 5)

Judicial precedent calls power-based intimidation of free speech a “chilling effect,” which is just a gentler way of saying the same thing. I cannot tell you if I was strangled during abuse, or if I was beaten, or threatened with a gun, or sexually assaulted, or subjected to other types of legal abuse; the more serious the offense, the more legally dangerous it is for the victim to relate in public unless under oath.

We protect the free speech of pornographers and KKK members with zeal, but as a survivor of intimate partner violence my writings/speech about my actual experiences are not protected by law, even if I do not name my abuser. What happened to me is not only a personal problem - it is a public health syndrome that causes the death of half of the women murdered in the United States. Our country’s landmark free speech case, [New York Times v. Sullivan](#) (1964), was decided in a time when public speech mainly occurred through official media outlets, so that was the group the U.S. Supreme Court sought to protect from legal bullying. Those outlets are dwindling, and public discourse is now more direct and online. With a favorable vote on SB568 the members of the Judicial Proceedings Committee can bring survivors of IPV/DV and sexual assault, as well as many other types of regular folk fighting the arrogant, powerful or unscrupulous, into the fold of the modern 1st Amendment. We are only asking for the chance to speak for ourselves.

SLAP suits - senate testimony - 2024 - MCASA SB56

Uploaded by: Lisae C Jordan

Position: FAV



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 568
Lisae C. Jordan, Executive Director & Counsel
February 20, 2024

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 568.

Senate Bill 568 -- 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 SB568 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 568**

Mishkin Testimony in Support of Senate Bill 568.pd

Uploaded by: Maxwell Mishkin

Position: FAV

MARYLAND GENERAL ASSEMBLY

Senate Judicial Proceedings Committee

Testimony of Maxwell S. Mishkin* in Support of Senate Bill 568

(Courts – Strategic Lawsuits Against Public Participation)

February 20, 2024

Mr. Chair, Mr. Vice-Chair, and Members of the Committee, thank you for the opportunity to submit this testimony in support of Senate Bill 568, which would strengthen Maryland’s commitment to freedom of expression by updating our state’s anti-SLAPP law. Robust anti-SLAPP statutes protect the reporting, advocacy, commentary, and debate that we all need to be informed members of our participatory democracy.

I submit this testimony only on my own behalf, but my views are 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 that SLAPP suits pose to free speech only continues to grow. My former colleague Lee Levine, one of the nation’s leading First Amendment attorneys and scholars, has observed that “public officials and other powerful people and entities are now instituting libel

* 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)).

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 568 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 568, 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 568 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

Two Justices of the Supreme Court, however, have in recent years sought to overturn or otherwise revisit *Sullivan*.⁶ Libel 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.”⁷

Senate Bill 568 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

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 *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).

⁷ See *supra* note 3 at iii.

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 568 backstops *Sullivan* and reaffirms that Maryland will remain a leader in protecting free speech and a free press.⁸

Senate Bill 568 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 have claimed 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.⁹ 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, Bill 568 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 for Senate Bill 568 and urge the Committee to report it favorably.

⁸ See, e.g., *Blankenship v. NBCUniversal, LLC*, 144 S. Ct. 5 (2023) (Thomas, J., concurring in denial of certiorari) (stating that lawsuit was not “an appropriate case” to “reconsider *New York Times*” where plaintiff’s “claims are independently subject to an actual-malice standard as a matter of state law”).

⁹ Cf. *Nat’l Rev., Inc. v. Mann*, 140 S. Ct. 344, 348 (2019) (Alito, J., dissenting from denial of certiorari) (“A journalist who prevails after trial in a defamation case will still have been required to shoulder all the burdens of difficult litigation and may be faced with hefty attorney’s fees. Those prospects may deter the uninhibited expression of views that would contribute to healthy public debate.”).

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 568_MNADV_FAV.pdf

Uploaded by: Melanie Shapiro

Position: FAV



BILL NO: Senate Bill 568
TITLE: Courts - Strategic Lawsuits Against Public Participation
COMMITTEE: Judicial Proceedings
HEARING DATE: February 20, 2024
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 568.**

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 HB 330 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 568.**

MDDC Support SB 568.pdf

Uploaded by: Rebecca Snyder

Position: FAV



Maryland | Delaware | DC Press Association

P.O. Box 26214 | Baltimore, MD 21210

443-768-3281 | rsnyder@mddcpres.com

www.mddcpres.com

To: Judicial Proceedings Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: February 19, 2024

Re: **SB 568 - FAVORABLE**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of news media, 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 The Baltimore Banner, MarylandReporter.com and Baltimore Brew.

The Press Association is pleased to support Senate Bill 568, 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.

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.

For a more in-dept discussion of SLAPP suits, please refer to the [newest episode](#) of MDDC's Five Dubs podcast, where our guest is Max Mishkin of Ballard Spahr.

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 2022, 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



**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

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. We urge a favorable report.

Testimony in support of SB0568.pdf

Uploaded by: Richard KAP Kaplowitz

Position: FAV

SB0568_RichardKaplowitz_FAV
2/20/2022

Richard Keith Kaplowitz
Frederick, MD 21703-7134

TESTIMONY ON SB#0568 - POSITION: FAVORABLE
Courts - Strategic Lawsuits Against Public Participation

TO: Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

FROM: Richard Keith Kaplowitz

My name is Richard Kaplowitz. I am a resident of District 3. I am submitting this testimony in support of SB#0568, Courts - Strategic Lawsuits Against Public Participation

This bill is an attempt to prevent the use of the legal system by those who can afford to use it to create an uneven playing field for their opponents. SLAPP is an assault on free speech using economic pressures to stop those who would sue to rein in or prevent conduct that could be harming them.

As outlined in an article from iadclaw.org, “In a nutshell, the purpose of a SLAPP is to discourage outspoken critics from expressing controversial opinions on matters of public interest. SLAPPs are frequently used to exhaust defendants’ resources for attorney fees, with hopes that the time and expense of defending the SLAPP will ultimately silence the defendant’s speech.”¹ It is a favored technique to stop people and organizations from receiving legal assistance to right a wrong.

This bill is an attempt to restore a balance between those harmed by business actions and those who could benefit if the court were to find they were harmed in some way. The court can then declare specific relief from and punishment for the illegal conduct. It makes civil liability dependent on a presentation of the facts and not on the ability to afford to present and prosecute that case.

I respectfully urge this committee to return a favorable report on SB0568.

1

https://www.iadclaw.org/assets/1/17/Business_Litigation_March_2020.pdf#:~:text=In%20a%20nutshell%2C%20the%20purpose%20of%20a%20SLAPP,the%20SLAPP%20will%20ultimately%20silence%20the%20defendant%E2%80%99s%20speech.

Position HB330, SB568 - Courts – Civil Actions – S

Uploaded by: Ronald Jarashow

Position: FAV



2024 POSITION PAPER

SB/HB HB330, SB568

HB330, SB568 - Courts – Civil Actions – SLAPP FAVORABLE

The Maryland Association for Justice (MAJ) supports HB330 and SB568 which modernize the existing SLAPP statute, Courts §5-807, by updating Maryland law to be consistent with other SLAPP statutes in 34 other jurisdictions.

During the shortened 2020 Legislature, the MAJ worked with Del. Rosenberg and other supporters to modify the then-proposed SLAPP bill to make it consistent with other states' laws. These proposed bills incorporate those changes. Updating Maryland law is overdue.

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 of a public official. SLAPP statutes exist in 34 other states to protect people from lawsuits that have a purpose of suppressing free speech against government officials by providing grounds for dismissal, expedited motions to dismiss, and awards of attorney's fees against the filing party. Attorney's fees are also available if the lawsuit is meritorious.

Maryland scores zero in 4 out of 5 categories compared to 34 other states' SLAPP laws. See attached "State Anti-Slapp Laws" for a chart comparing SLAPP laws in 35 states (State Anti-SLAPP Law Scorecard 2023 from The Institute for Free Speech), <https://anti-slapp.org/your-states-free-speech-protection/#scorecard>

These proposed bills update Maryland law to better protect free speech rights by discouraging litigants from commencing a lawsuit with suppressive intent.

The Maryland Association for Justice urges a FAVORABLE Report

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

10440 Little Patuxent Parkway, Suite 250
Columbia, MD 21044

(410) 872-0990 | FAX (410) 872-0993
info@mdforjustice.com

mdforjustice.com

Jurisdiction	Anti-SLAPP Law Procedures					Subscore
	Suspension of Court Proceedings Upon an Anti-SLAPP Motion	Burden of Proof on Plaintiff to Defeat an Anti-SLAPP Motion	Right to an Immediate Appeal	Award of Costs and Attorney Fees	Expansive Statutory Interpretation Instruction to Courts	
	ULC Model Law	20	12	25	40	
Arizona	9	6	13	10	0	38
Arkansas	20	12	0	10	0	42
California	18	12	25	38	3	96
Colorado	18	12	25	36	0	91
Connecticut	18	12	20	36	0	86
Delaware	5	12	0	10	0	27
District of Columbia	0	12	20	25	0	75
Florida	5	6	0	10	0	21
Georgia	20	12	25	40	3	100
Hawaii	20	12	25	40	3	100
Illinois	18	12	25	36	3	94
Indiana	18	0	0	36	0	54
Kansas	20	12	25	36	3	96
Kentucky	20	12	25	40	3	100
Louisiana	18	12	0	40	0	70
Maine	18	12	20	10	0	60
Maryland	10	0	0	0	0	10
Massachusetts	18	12	20	36	0	86
Missouri	18	0	5	36	0	59
Nebraska	5	12	0	10	0	27
Nevada	18	12	25	36	0	91
New Jersey	12	12	25	40	3	92
New Mexico	5	6	25	36	0	72
New York	20	12	25	40	0	97
Oklahoma	18	12	25	36	0	91
Oregon	18	12	25	40	3	98
Pennsylvania	2	6	25	36	0	69
Rhode Island	18	6	0	36	0	60
Tennessee	18	12	25	36	0	91
Texas	18	12	25	40	3	98
Utah	20	12	25	40	3	100
Vermont	18	12	25	36	0	91
Virginia	0	0	0	10	0	10
Washington	20	12	25	40	3	100

SB568_Hettleman_FAV.pdf

Uploaded by: Shelly Hettleman

Position: FAV

SHELLY HETTLEMAN
Legislative District 11
Baltimore County

Chair
Rules Committee

Budget and Taxation Committee

Subcommittees

Health and Human Services

Pensions



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 568 COURTS – STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

A Strategic Lawsuit Against Public Participation, also known as a SLAPP suit, 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. These suits are intended to silence, intimidate, and cause finance damage.

SB 568 clarifies that Maryland’s 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.

The bill makes three significant 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.
2. It enables attorneys’ fees to be shifted, which creates a deterrent to a deep-pocketed plaintiff.
3. It requires courts to act promptly and hold discovery until there are expeditious rulings.

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.

The bill makes it explicit that communication to a government official is covered. 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. Many other states and D.C. have passed strong anti-SLAPP laws – Red states and Blue states - to preserve the right to speak freely. By passing SB 568, 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 568, and I thank you for your consideration.

SenateBill568.testimony2.19.2024.pdf

Uploaded by: Claudia Barber

Position: UNF

SENATE BILL 568

Senate Judicial Proceedings Committee

February 20, 2024 at 1:00 pm

OPPOSITION TO BILL

By Claudia Barber, Attorney at Law

I oppose Senate Bill 568. The Strategic Lawsuits Against Public Participation bill has 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. This is a win for book banning fanatics and those opposed to diversity, equity and inclusion policies using first amendment protections as dog whistle protections. Not even civil rights litigants enjoy this special attention to resolve a case quickly by making a special motion.

On January 6, 2021, now known as INSURRECTION DAY, we saw 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' livelihood and reputation.

In 2016, an ex-judge filed a dubious 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 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 in 2016.

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 more than six years since this ethics complaint was filed, and I have spent an enormous amount of legal expenses trying to defend my reputation. Many cases remain pending at this time. Just as Bryan Stevenson noted who authored JUST MERCY, and currently serves as the executive director for the Equal Justice Initiative, we cannot rely on the judiciary to protect the wrongly convicted. Nor can we rely on the judiciary to see ulterior motives and protect those innocently attacked as I was in 2016.