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Health Occupations and
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Testimony of Delegate Samuel Rosenberg

Before the Judiciary Committee

In Support of

House Bill 330

Courts – Strategic Lawsuits Against Public Participation

Mr. Chairman and Members of the Committee:

The goal of one developer's lawsuit against Baltimore residents was readily apparent. The action 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." Both the trial court and the appellate court found that the landlord had filed a SLAPP suit.

As this committee well knows, a Strategic Lawsuit Against Public Participation ("SLAPP") makes a mockery of our judicial system and threatens 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.

Robust participation from all citizens is vital to a functioning democracy. Suppression of public participation with oppressive lawsuits is a slap in the face to democracy. We need to strengthen protection against these aggressive acts of litigation. The proposed anti-SLAPP measures in this bill would strengthen those protections.

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.

Who will be next? It might be your local newspaper, your local community organization, or your average concerned citizen. Do we want citizens to pay for lawyers to defend against a SLAPP lawsuit, or do we want to disincentivize plaintiffs from using SLAPP lawsuits in the first place?

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. We need to make our anti-SLAPP statute stronger.

SLAPP suits take newsrooms' attention away from their core mission: reporting news and information important to their communities. For some smaller organizations, the threat of SLAPP suits can have a chilling effect on their willingness to report on certain stories. At a time when the public needs more information and accountability from those in power, Maryland's weak anti-SLAPP statute does a disservice to the public.

House Bill 330's primary purpose is to eliminate the "bad faith" requirement from a SLAPP suit. This requirement places an undue burden on the vulnerable defendant and provides an unnecessary protection for the plaintiff, contrary to the purpose of the law. The bad faith requirement not only asks defendants to show that the suit brought against them is meritless, but that it rises to the level of bad faith.

At times this requirement may be simple to prove, but as the Court of Appeals noted in its 2021 decision, *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 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 purpose of the anti-SLAPP statute is 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 330 was heard by this committee and passed

the House, but it was never voted on by the Senate.

I respectfully urge the Committee to give HB-330 a FAVORABLE report.

February 7, 2024