MARYLAND GENERAL ASSEMBLY

Senate Judicial Proceedings Committee

Testimony of Maxwell S. Mishkin[*] in Support of Senate Bill 251

(Civil Actions – Maryland Uniform Public Expression Protection Act)

January 29, 2026

Mr. Chair, Mr. Vice-Chair, and Members of the Committee, thank you for the opportunity to submit this testimony in support of Senate Bill 251, which would reinvigorate Maryland's commitment to freedom of expression by replacing our outdated and ineffective anti-SLAPP law with the modern and far more robust Uniform Public Expression Protection Act ("UPEPA"). The UPEPA statute, which has already been adopted by more than a dozen states – including several of our neighbors – powerfully protects 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]

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[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)).

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 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]

Enacting the UPEPA in Maryland would not solve all of these problems, but it would substantially protect important speech in several significant ways, including:

1) The UPEPA allows a defendant facing a frivolous defamation suit to file a "special motion" to dismiss early in the case, which flips the burden onto the plaintiff to show that the case is not meritless.

2) The UPEPA stops defamation plaintiffs from quickly imposing costs on defendants in frivolous cases by pausing the discovery process unless the plaintiff can show that the case has merit.

3) The UPEPA provides that when a SLAPP suit is dismissed, the plaintiff must pay the attorneys' fees and costs that the defendant has reasonably incurred in the case.

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 filtering out the frivolous ones designed to harass, punish, and chill speakers on matters of public concern.

Senate Bill 251 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. In short, Senate Bill 251 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."[4]

With thanks in particular to Senator Love and Senator Hettleman for sponsoring this legislation, I very much appreciate the opportunity to offer my support for Senate Bill 251 and urge the Committee to report it favorably.

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

[4] *New York Times v. Sullivan*, 376 U.S. 254, 269 (1964) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).