



Unfavorable Statement HB650/SB251
Civil Actions - Maryland Uniform Public Expression Protection Act
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We Respectfully Oppose HB650/SB251

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

On behalf of our chapters and members across the state, we oppose HB650/SB251. The Maryland General Assembly enacted the underlying statute to defend the exercise of free speech against frivolous Strategic Lawsuits Against Public Participation and has rejected similar bills year over year. We respectfully urge you to protect free speech and the integrity of this Assembly, by rejecting this bill and its **expansion of SLAPP suits**.

CONTENT DISCRIMINATION INFRINGES ON CONSTITUTIONAL RIGHTS

It is our position that this bill will empower the State to infringe upon this right in order to suppress political or ideological opponents. The bill could make pro-life citizens and others, victims of endless lawfare.

The First Amendment exists to protect the rights of citizens to speak out against the actions of their Government. Anti-SLAPP laws should ensure equal protection to all citizens, particularly those with whom the Government disagrees. The current statute achieves that with no need for amendment.

However, this bill proposes to **repeal the operative language of the existing statute, and with it remove the First Amendment protections** currently cited in Section 5-8007(b)(d) of the Courts and Judicial Proceedings Article which states that a SLAPP suit is a suit “Intended to inhibit or inhibits the exercise of rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights.”

THE BILL UNDERMINES THE INTENT OF THE GENERAL ASSEMBLY

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.

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 and create judicial backlogs with frivolous lawsuits.

The bill would weaken the original statute and create a legal loophole by empowering the State to deny defendants the affirmative defense that the suit is frivolous, when the State itself is the plaintiff. The bill carves out an exception to existing protections, when the State brings a suit to “enforce a law to protect against an imminent threat to public health or safety”, without defining what activity may constitute a threat or whether even speech that does not incite violence, could be considered a threat.

In addition to removing the reference to the First Amendment, the particular language that we oppose is as follows:

SUBTITLE 13.

5-1302

(B) THIS SUBTITLE DOES NOT APPLY TO A CAUSE OF ACTION ASSERTED:

(2) BY A GOVERNMENTAL UNIT OR AN EMPLOYEE OR AGENT OF A GOVERNMENTAL UNIT ACTING IN AN OFFICIAL CAPACITY TO ENFORCE A LAW TO PROTECT AGAINST AN IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY;

5-1304

(G) DURING A STAY UNDER THIS SECTION, THE COURT FOR GOOD CAUSE SHOWN MAY HEAR AND RULE ON:

(2) A MOTION SEEKING A SPECIAL OR PRELIMINARY INJUNCTION TO PROTECT AGAINST AN IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY.

THE BILL CREATES AN INEQUITABLE AND UNENFORCEABLE JUDICIAL STANDARD

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 content discrimination and personal or political value judgments. What may or may not pose “an imminent threat to public health or safety” is not a settled matter of law and is subject to prejudices of political partisans. All defendants should have the opportunity to file a special motion with the courts for an affirmative defense and expedited relief. The courts retain the right to deny the motion.

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

FEDERAL PRECEDENT PROHIBITS TARGETING PRO-LIFE SPEECH

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 did not prevail.

NOTE ON LEGISLATIVE INTENT

This bill is based on the **Uniform Public Expression Protection Act (UPEPA)** which is model uniform legislation drafted by the Uniform Law Commission. According to a drafter of the uniform act:

“Of course we did not intend, when we wrote this bill to apply this exception to speech (as violence) or as speech itself as being a threat to public health and safety, unless it is "incitement" or a "true threat" which are not protected by the First Amendment.”

While the current bill sponsor suggests similar legislative intent, we do not have confidence that the legislative intent will be enough to restrain the judicial branch or protect defendants against the court's political or ideological biases when applying the law if enacted.

The Maryland General Assembly enacted the existing statute to defend the exercise of free speech against Strategic Lawsuits Against Public Participation. We respectfully urge you to protect that right for all and to preserve the integrity of this Assembly, by rejecting HB650/SB251 and its expansion of frivolous SLAPP suits that will infringe of First Amendment free speech.

Respectfully Submitted,
Laura Bogley, JD
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