



TESTIMONY BEFORE HOUSE JUDICIARY COMMITTEE

Good morning Chairman Kauffman, Chairman Briggs and members of the House Judiciary Committee. Thank you for the opportunity to appear and offer testimony on House Bill 95 and Senate Bill 95, which would expand Pennsylvania law to protect citizens, journalists and media organizations from being silenced by SLAPP suits, or Strategic Lawsuits Against Public Participation.

My name is Melissa Melewsy, Media Law Counsel for the Pennsylvania NewsMedia Association (PNA), the statewide trade association for newspapers, online publications and other media organizations in the Commonwealth, with more than 300 print and digital media organizations as members. Joining me today are attorneys Michael Baughman, a partner at Pepper Hamilton, and Michael Berry, a partner at Ballard Spahr, both of whom represent journalists, media organizations and others involved in SLAPP litigation. I am going to speak briefly today and allow my co-panelists to use most of the allotted time, but I have submitted formal, written testimony that provides additional insight and I urge you to consider that as well.

PNA advocates for reforms in the state legislature and acts as amicus curiae in the appellate courts to improve newsgathering, increase transparency in state government and protect First Amendment rights. In addition to legislative and legal advocacy, we also provide a legal hotline for news organizations seeking advice on legal issues associated with their First Amendment functions. In this context, I hear about SLAPP suits and their negative impact on public discourse and the free flow of information. Our legal hotline receives approximately 2,000 inquiries a year, many of which deal with concerns about potential litigation resulting from news coverage, including threats of SLAPP litigation. It is not uncommon for news organizations to ask me to gauge the risk associated with an article and to estimate the cost of a SLAPP lawsuit. As part of those conversations, I talk about Pennsylvania's lack of an effective anti-SLAPP statute, and in

many cases, I refer our members to my co-panelists and other attorneys experienced in defamation law to address the financial implications of SLAPP litigation.

A Strategic Lawsuit Against Public Participation (commonly referred to as SLAPP suit) is a lawsuit that is intended to censor, intimidate, silence or punish critics by burdening them with the costs of litigation. The lawsuits are filed in an attempt to hush an outspoken critic or to stop the news media from reporting on matters of public concern. This type of retaliatory litigation is often filed against those who are exercising free speech rights and asking the government to review a perceived wrong, as well as news media organizations that cover this protected speech.

Anti-SLAPP legislation, such as HB 95 and SB 95, identifies protected speech and conduct – often defined as "action involving public participation and petition" – and provides a procedure for speedy review (and frequent dismissal) of lawsuits that are filed as a result. Anti-SLAPP statutes, also referred to as citizen participation acts, have been supported by groups from across the political and business spectrum. They favor no political ideology, but instead ensure that all citizens, no matter their political beliefs, are able to speak out on issues of public concern without fear of financial ruin.

There is no singular definition that triggers the label of a “SLAPP” suit, but typical SLAPP suits that name the media as defendants include claims for:

- Defamation. An individual or organization might file a defamation lawsuit in reaction to criticism published in a newspaper, letter to the editor, or even for online comments to an article.
- Interference with contract or economic advantage/tortious interference with business relations. This is similar to a defamation claim, as both individuals and organizations bring this claim in response to the publishing of negative information, claiming such statements harms their business.
- Intentional infliction of emotional distress (referred to as IIED). This versatile claim states that the defendant committed an outrageous act that caused them extreme emotional distress.

SLAPP suits are eventually dismissed or decided in favor of the defendants. Unfortunately, by the time they are dismissed, SLAPP suits can cost thousands of dollars in legal fees and take an immense amount of time, creating substantial financial and emotional tolls on defendants. The following are just a few examples of SLAPP suits:

— In Philadelphia,¹ a citizens group was formed to provide oversight of the city's zoning process and to ensure laws governing the city's historic buildings were enforced. The group was sued twice by developers for millions of dollars simply because they spoke out about zoning issues in their community. The lawsuits were eventually dismissed, like most SLAPP suits, but as a result of the litigation, the group lost its insurance coverage. Members of the group chose to disband rather than risk their homes and personal finances in future SLAPP suits. These SLAPP suits were lengthy and expensive, and as a result, speech intended to protect Pennsylvanians and enforce their laws was stifled.

— In another Pennsylvania case,² a **drunk driving victim's father was not properly notified of the driver's guilty plea**. He spoke out online and on local talk shows against the District Attorney handling the criminal case, and as a result the District Attorney filed a defamation suit. **The father's homeowner's insurance policy has been used to cover the costs of litigation, costs that would have otherwise bankrupted the father and ended his ability to defend speech about an elected official and matters of public concern.**

— In Iowa,³ a newspaper published an expose on a police officer's sexual misconduct with underage girls. The paper was then sued by the officer for defamation. The lawsuit was eventually dismissed because the news coverage was accurate; the officer admitted his conduct during depositions. Even though the newspaper's coverage was true and the lawsuit was dismissed, they are struggling to stay in business because of \$140,000 in court costs and expenses related to the lawsuit. Iowa, like Pennsylvania, has not enacted anti-SLAPP legislation that could have ended the lawsuit at an early stage.

¹ David Gambacorta, "Court-assisted terrorism"? How the powerful can muzzle free speech for about \$300", *Philadelphia Inquirer*, 5/24/19

² David Gambacorta, "Court-assisted terrorism"? How the powerful can muzzle free speech for about \$300", *Philadelphia Inquirer*, 5/24/19

³ <https://www.washingtonpost.com/nation/2019/10/10/iowa-newspaper-cop-investigation-leads-libel-lawsuit-financial-peril/>

These cases illustrate the damage SLAPP suits can cause as well as the deficiency in Pennsylvania laws that enabled them. Pennsylvania's current anti-SLAPP measures are narrow and only apply in situations where defendants have raised objections in environmental matters. Chapter 77 of Title 27 (Environmental Resources) provides for an award of attorney fees and costs of litigation if a person successfully raises a claim for immunity from civil liability. This narrow remedy would not be available in any of these cases mentioned above, nor in any case that does not involve environmental matters. The Public Participation Project,⁴ a non-profit organization working to pass federal anti-SLAPP legislation, recognized the limited scope of Pennsylvania's anti-SLAPP law and awarded the Commonwealth a "D" rank; the lowest rank available in its state anti-SLAPP rankings.⁵

Given this background, PNA supports Rep. Diamond and Senator Farnese's proposals to broaden the scope of Pennsylvania's anti-SLAPP statute to expand the class of defendants who may seek dismissal of retaliatory, bad-faith litigation and protection from the financial and emotional toll that SLAPP suits take on defendants.

Thank you on behalf of the Pennsylvania NewsMedia Association, and now I'll turn to Mr. Baughman and Mr. Berry to provide additional information and context on anti-SLAPP laws. We look forward to working with you on this issue and we are happy to answer questions.

⁴ <https://anti-slapp.org/who-we-are>

⁵ <https://anti-slapp.org/your-states-free-speech-protection#scorecard>