

Pennsylvania's new law 'SLAPPs' back at frivolous suits over free speech

By Michael Berry

We are blessed to live in a country with strong First Amendment freedoms. Thanks to bipartisan legislation enacted this summer, the people of Pennsylvania now have even more protection when they exercise those freedoms.

For many years, powerful public figures have sought to use lawsuits as a weapon to squelch speech on important public issues. They do so by filing baseless complaints against their critics, recognizing that the cost of defense can be crippling and the threat of a large verdict can deter others from speaking out. These SLAPP suits – strategic lawsuits against public participation – chill citizens from exercising their First Amendment freedoms and stifle public debate.

In July, Pennsylvania enacted a law that seeks to put an end to SLAPP suits. Act 72 builds on the experience of the more than 30 states that already have anti-SLAPP laws, while also accounting for unique features of Pennsylvania's legal practice.

The law provides broad immunity for people who are sued when they speak out on matters of public concern. It protects the press for its reporting, commentators for their critiques, and anyone else who speaks their mind in print, online, on the air, or anywhere else.

So, the immunity can be invoked if a newspaper is sued for reporting on an issue impacting a local community or editorializing about the actions of a public official. The

immunity also can be invoked by a person who is sued for criticizing a political candidate or complaining about a local officeholder.

The law's protection is straightforward. When a suit seeks to hold someone liable for something that they have written or said about a matter of public interest, the plaintiff must show that the lawsuit has merit. If there is no evidence to support the claim, or if the suit is barred by the law, the case is dismissed.

The law has two other important protections. First, any determination of whether the immunity applies can be appealed immediately. This provides a safeguard for people whose rights to the immunity were denied erroneously. Allowing an immediate appeal ensures that they will not be subjected to the burdens of continuing litigation if the case against them should have been dismissed at the outset.

Second, anyone who is immune from suit under the law is entitled to recover attorneys' fees and the costs they incur in defending themselves.

The promise of attorneys' fees is significant. It guarantees that speakers who are forced to defend against baseless claims are not also forced to bear the cost of litigating cases that never should have been brought. They no longer will be out of pocket after defending themselves from baseless claims. The promise of attorneys' fees also serves to deter people from filing SLAPP suits to silence their critics in the first place. After all, if the suit is dismissed, those people will need to foot the bill for their own lawyer and for the other side's lawyer too.

Just as importantly, the law includes a provision to make sure it is not abused – if people invoke the law's immunity frivolously or solely to delay the proceeding, they will be obliged to pay the other side's attorneys' fees.

The law also provides for a new motion designed to swiftly decide whether a claim might be meritorious. This procedure would allow courts to quickly dismiss claims that have no likelihood of succeeding, saving both judges and litigants time and expense.

While the motion is pending, other proceedings in the case would be stayed. This pause in the litigation would relieve people subjected to SLAPP suits from the financial, emotional, and other burdens associated with full factual discovery – an expensive process that can take many months or years. Rather than engaging in fact-finding that might not matter to a case’s ultimate outcome, judges and litigants can focus on the key legal issues at the outset of the case.

These key provisions of the law – the new motion and the stay of proceedings – will only go into effect if the state Supreme Court allows them. The rest of the law – the immunity, attorneys’ fees, and immediate appeal – all went into effect as soon as the law was signed by the governor.

The new anti-SLAPP law levels the playing field. It makes sure that potentially meritorious cases move forward, while stopping meritless claims before they get off the ground. With its protections, all Pennsylvanians will be able to speak more freely.

Michael Berry is a partner at Ballard Spahr LLP in Philadelphia. He was instrumental in drafting the anti-SLAPP law.