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DOCKET NO. 42321-9-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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TERRY A. TOWNSEND, Appellant,

v.

STATE OF WASHINGTON, Defendant,

and

KERMIT B. WOODEN, Respondent.

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APPELLANT'S BRIEF

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### **III. ASSIGNMENT OF ERROR & ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

1. The trial court erred in holding Ms. Townsend is not protected by the anti-SLAPP statute because she is a plaintiff in a lawsuit seeking personal relief. CP 56-57.
  - a. Does Washington's anti-SLAPP law provide immunity to a State employee from a supervisor's lawsuit based on the employee's reporting of the supervisor's discriminatory conduct to their State agency employer?
  - b. Does a person who is a plaintiff in a lawsuit retain civil immunity under Washington's anti-SLAPP law where her pre-lawsuit protected communications are subsequently the basis for counterclaims made against her in the lawsuit?

### **IV. STATEMENT OF THE CASE**

Plaintiff/Appellant Terry Townsend is a State employee since 1995, with Washington State Department of Transportation ("WSDOT") since 2006. CP 4, CP 8. In 2009, Ms. Townsend was employed in WSDOT's Office of Human Resources under its (now former) Director, Defendant/Respondent Kermit Wooden. CP 3-4, CP 7-8.

Based on Mr. Wooden's conduct toward her while employed under him, Ms. Townsend filed a lawsuit against him and WSDOT in January 2011, alleging violations of federal and state employment discrimination laws. CP 3-6.

With his answer to the complaint, Mr. Wooden filed two counterclaims against Ms. Townsend, for Invasion of Privacy/False Light (CP 9) and for Defamation (CP 10). Wooden based his counterclaims, as stated, on Ms. Townsend's communications to their State agency employer regarding her concerns that he engaged in discrimination/retaliation:

5.2 The Plaintiff, TERRY A. TOWNSEND, intentionally invaded the right of privacy of the Defendant, KERMIT WOODEN, when she falsely claimed that he had engaged in discrimination or retaliation including gender-based harassment, and/or engendering a hostile working environment for the Plaintiff, causing him mental suffering, shame and humiliation.

5.3 By virtue of her action and/or conduct the Plaintiff unreasonably intruded into the private affairs of the Defendant KERMIT WOODEN through unwanted publication of the false allegations she made to his employer and administrators at the Defendant DOT. This conduct held him in a false light before his supervisors and peers at the agency.

5.4 The intentional actions of the Plaintiff caused damage to the Defendant, KERMIT WOODEN in an amount to be proved at trial.

CP 9-10.

6.2 The Plaintiff, Terry Townsend, intentionally published and/or disseminated communications to the administrative officers of the Defendant DOT false allegations concerning his conduct and actions in regard to the Plaintiff without the consent of the Defendant KERMIT WOODEN or privilege;

6.3 The Plaintiff intentionally published and/or disseminated false allegations that were designed to injury [*sic.*] or destroy the reputation and career of the Defendant, KERMIT WOODEN;

6.4 The Plaintiff intentionally published and/or disseminated false allegations with actual knowledge that Defendant had not engaged in gender-based discrimination, harassment or retaliation or did so with reckless disregard of the truth.

6.5 The Plaintiff intentionally or recklessly caused damage to the Defendant and his reputation by virtue of her actions and conduct, in an amount to be proved at trial.

CP 10.

Ms. Townsend answered Mr. Wooden's counterclaims against her and asserted immunity under Washington's anti-SLAPP (Strategic Lawsuit Against Public Participation) statute as an affirmative defense.

CP 15. She subsequently brought a special motion pursuant to the process

set forth in RCW 4.24.525 for early dismissal review of Wooden's counterclaims. CP 17, RP 3.

At the conclusion of the hearing on the special motion, the trial court questioned whether the anti-SLAPP statute applies when an employee complains about discriminatory treatment they received by their supervisor within a government agency and whether the anti-SLAPP statute applied if the supervisor files a counterclaim. RP 15-16. The trial court took the issue under advisement. RP 16.

The trial court later rendered its decision in the form of a letter opinion, holding that the anti-SLAPP statute did not apply because Ms. Townsend was a plaintiff in a lawsuit seeking personal relief. CP 56-57.

#### **V. SUMMARY OF THE ARGUMENT**

Under Washington's anti-SLAPP laws, State employees are immune from civil liability for claims made against them based on their internal complaints on matters reasonably of concern to their employing agency. Plaintiff is immune from civil liability for communications to administrative officers at her employing agency regarding her concerns about discrimination by its HR Director.

Under Washington's anti-SLAPP laws, Plaintiffs in private lawsuits retain civil immunity from counterclaims brought against them

that are based on protected communications, as opposed to counterclaims that are based on their filing of a lawsuit.

## **VI. ARGUMENT**

### **a. Standard of Review**

The issues in this appeal are subject to de novo review. Statutory interpretation is a question of law that is reviewed de novo. *State v. Williams*, 158 Wn.2d 904, 908, 148 P.3d 993 (2006) (citing *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004)). The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent and purpose. *Williams*, 158 Wn.2d at 908 (citing *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)). This is done by considering the statute as a whole, giving effect to all that the legislature has said, and using related statutes to help identify the legislative intent embodied in the provision in question. *Id.*

### **b. State Employees Who Communicate Matters Reasonably of Concern to Their Employing Agency Are Immune from Civil Liability for Claims Based on Those Communications**

As noted, the trial court questioned whether the anti-SLAPP statute applies when an employee complains about discriminatory treatment they received by their supervisor within a government agency. RP 15. The legislative history of the original anti-SLAPP statute, the supplementary

anti-SLAPP statute the legislature passed in 2010, and recent case law require that it does apply in such circumstances.

Washington state adopted the first modern anti-SLAPP (Strategic Lawsuit Against Public Participation) law in 1989. In adopting the law, the Legislature found “Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government.” RCW 4.24.500. The term “efficient operation of government” is particularly broad. *Bailey v. State*, 147 Wn.App. 251, 260, 191 P.3d 1285 (2008).

RCW 4.24.510, known as the Anti-SLAPP statute, contains the operative part of the legislative scheme. *Bailey*, 147 Wn.App. at 261, 191 P.3d 1285. It provides, in pertinent part:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization.

RCW 4.24.510.

The legislature enacted RCW 4.24.510 to encourage the reporting of potential wrongdoing to governmental entities. *Gontmakher v. City of Bellevue*, 120 Wn.App. 365, 85 P.3d 926 (2004). “The purpose of the statute is to protect citizens who provide information to government

agencies by providing a defense for retaliatory lawsuits.” *Valdez-Zontek v. Eastmont Sch. Dist.*, 154 Wn.App. 147, 167, 225 P.3d 339 (2010).

Former RCW 4.24.510 (1999) contained a good faith requirement. In 2002 the legislature amended the statute, deleting the phrase “in good faith” preceding “communicates a complaint or information” in the first sentence. Laws of 2002, ch. 232, §2. In amending RCW 4.24.510, “the legislature provided that ‘good faith’ was no longer an element of the SLAPP defense...” *Segaline v. Dep’t of Labor & Indus.*, 169 Wn.2d 467, 480, 238 P.3d 1107 (2010) (Madsen, C.J., concurring). The removal of the “good faith” requirement in 2002 brought Washington’s law in line with U.S. Supreme court decisions recognizing that the U.S. Constitution protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making. Laws of 2002, ch. 232, §1.

In 2010, the Washington legislature passed the Washington Act Limiting Strategic Lawsuits Against Public Participation, RCW 4.24.525, another Anti-SLAPP statute. One purpose of the act was to provide for the speedy adjudication of SLAPPs. Laws of 2010, ch. 118, §1(2)(b). The Act “shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts.” Laws of 2010, ch. 118, §3.

RCW 4.24.525 is supplementary to the older Anti-SLAPP statute, RCW 4.24.510. *Castello v. City of Seattle*, 2010 WL 4857022, at \*4 n.2 (W.D. Wash., 2010). The newer statute not only broadened the scope of protected communication, but created a procedural device to swiftly curtail any litigation found to be targeted at persons lawfully communicating on matters of public or governmental concern. *Id.*, 2010 WL 4857022, at \*3.

The 2010 Act also defined who could bring a special motion under the statute: “‘Moving party’ means a person on whose behalf the [anti-SLAPP] motion...is filed seeking dismissal of a claim.” RCW 4.24.525(c). “‘Person’ means an individual, corporation, business trust, estate, trust partnership, limited liability company, association, joint venture, or any other legal or commercial entity.” RCW 4.24.525(e).

Washington’s legislative history, statutory language and notes establish the legislature’s increasingly clear intent to provide broad protection for communications made to a government agency regarding matters reasonably of concern to that agency, and to provide immunity from SLAPPs based on those communications.

Here, Mr. Wooden’s counterclaims as pled clearly state they are based upon Ms. Townsend’s communications to WSDOT. Specifically, he asserts Ms. Townsend invaded his privacy and held him in a false light

“through unwanted publication of the false allegations [regarding his discrimination/retaliation] she made to his employer and administrators at the Defendant DOT.” CP 9.

Likewise, he asserts Ms. Townsend defamed him when she “intentionally published and/or disseminated communications to the administrative officers of the Defendant DOT false allegations concerning his [discriminatory/retaliatory] conduct and actions in regard to the Plaintiff.” CP 10. Accordingly, Wooden’s counterclaims as stated are based upon Ms. Townsend’s communications to WSDOT regarding her concerns about his discriminatory and retaliatory conduct. Discrimination/retaliation by its Director of Human Resources is certainly a matter of reasonable concern to the agency and Townsend’s communications fall squarely under the immunity provided by Washington’s anti-SLAPP statutes.

The fact that Ms. Townsend’s concerns and communications arose in the context of her employment at a State agency does not, as the trial court questioned, remove her from the protections afforded by anti-SLAPP laws. As noted, the newer statute defines a “person” who may bring an anti-SLAPP motion to include an “individual,” such as Ms. Townsend.

Furthermore, while our State Supreme Court has determined that a government agency is not a “person” entitled to immunity under RCW

4.24.510, it based its decision on the statute's purpose to protect the exercise of individuals' First Amendment rights and the fact that a government agency does not have free speech rights. *Segaline*, 169 Wn.2d at 473, 238 P.3d 1107.

It is well established that public employees do not lose their rights as citizens to participate in public affairs by virtue of their government employment. *Connick v. Myers*, 461 U.S. 138, 144-45, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983); see also *Frietag v. Ayers*, 468 F.3d 528, 545 (9<sup>th</sup> Cir., 2006) (a public employee "does not lose her right to speak as a citizen simply because she initiated the communications while at work or because they concerned the subject matter of her employment"); *Benjamin v. WSBA*, 138 Wn.2d 506, 980 P.2d 742, 748 (1999) (discussing the "dual capacities" of government employees as "simultaneously a citizen and an employee"). Here, Ms. Townsend is an individual who possesses First Amendment rights, and who is therefore entitled to immunity under the anti-SLAPP statute.<sup>1</sup>

Indeed, the U.S. District Court for the Western District of Washington recently analyzed Washington's anti-SLAPP legislation and granted civil immunity to government employees of the Seattle Fire

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<sup>1</sup> "While the comment to the statute does state that SLAPP lawsuits, in general, are meant to curb the exercise of the First Amendment rights, it does not restrict the scope of the statute." *Gontmakher*, 120 Wn.App. at 371 n.9.

Department (“SFD”) against their former co-worker’s defamation and false light claims against them based on their internal complaints about him to officers of the SFD. *Castello*, 2010 WL 4857022, at pp. \*1-2. Similarly here, Ms. Townsend is entitled to civil immunity from Mr. Wooden’s defamation and invasion of privacy/false light claims against her based on her internal complaints to administrative officers of WSDOT.

**c. Plaintiffs Seeking Personal Relief in a Lawsuit Retain Civil Immunity from Counterclaims Based on Their Protected Communications To A Government Agency**

Citing *Saldivar v. Momah*, 145 Wn.App. 365, 186 P.3d 1117 (2008), the trial court held that the anti-SLAPP statute does not apply because Ms. Townsend is a plaintiff in a lawsuit seeking personal relief. CP 56-57.

In the *Saldivar* case, a patient and her husband accused a physician defendant of sexually assaulting her during office visits. 145 Wn.App. at 373-375. The plaintiffs sued for negligence, lack of informed consent, breach of fiduciary duty, violation of the Consumer Protection Act, and outrage. *Id.* The physician counterclaimed for outrage, negligence, and abuse of process, claiming the plaintiff’s complaint in the lawsuit as well as her complaint to MQAC and Federal Way police, were “‘without good cause and for [the] improper motive[],’ of ‘obtain[ing] money’ from him under ‘false pretenses.’” *Id.* at 375.

After the plaintiff rested at trial, the court granted the defendant's motion to dismiss her claims. *Saldivar*, 145 Wn.App. at 383. The physician defendant also moved for a directed verdict on his counterclaims, which the court denied. *Id.* During oral argument on the motion for a directed verdict, the plaintiff asserted for the first time that she was entitled to civil immunity under RCW 4.24.510. *Id.*

At the conclusion of trial, the court awarded the physician \$2.8 million in damages on his counterclaims for abuse of process and outrage. *Saldivar*, 145 Wn.App. at 384. The plaintiff appealed, arguing the defendant's counterclaims for abuse of process and outrage arose from their privileged communications to MQAC and that RCW 4.24.510 immunized them from civil liability. *Id.* at 386.

However, the court of appeals distinguished between the plaintiff's complaints to MQAC and the police, and her filing of the lawsuit, "While RCW 4.24.510 protects the Saldivars from liability arising from actions taken by MQAC or police in response to their complaints, it is not applicable to private lawsuits for private relief: the Saldivars are not immune from liability for that portion of the judgment related to the filing of the lawsuit." *Saldivar*, 145 Wn.App. at 386.

In other words, the court of appeals found that the filing of a lawsuit does not constitute protected communication under the anti-

SLAPP statute because “[a] plaintiff who brings a private lawsuit for private relief is not seeking official governmental action, but rather redress from the court.” *Saldivar*, 145 Wn.App. at 387 (citing *Reid v. Dalton*, 124 Wn.App. 113, 126, 100 P.3d 349 (2004)).

In *Reid*, the plaintiff/appellant argued that he was entitled to anti-SLAPP immunity from an award of the respondent’s attorney fees under the frivolous litigation statute, RCW 4.84.185. *Reid*, 124 Wn.App. at 119. Rejecting the argument, the court of appeals noted that under such interpretation, “every lawsuit ever filed is immune. It is a complaint filed with the court (a branch of government) relating to a matter of interest to the court (a lawsuit).” *Id.* at 126.

Unlike these cases, Wooden’s counterclaims as stated are not based on Ms. Townsend’s filing of this lawsuit, but on her communications to “to his employer and administrators at the Defendant DOT” (CP 9) and “to the administrative officers of the Defendant DOT” (CP 10) about his discriminatory conduct when he was the HR Director. The immunity under the anti-SLAPP statute is with respect to “communications made to a public officer who is authorized to act on the communication.” *Saldivar*, 145 Wn.App. at 387 (citations omitted).

Finally, the Legislature has made clear that a claim, including a counterclaim, based on such communications, should be dismissed. In

fact, the global statement that the anti-SLAPP statute does not apply to a plaintiff in a lawsuit seeking private relief contradicts the case law discussed above and both the older and newer anti-SLAPP statutes. The legislative notes following RCW 4.24.510 and the definitions included in RCW 4.24.525(a) specifically reference a “counterclaim” as a type of claim or lawsuit that can be dismissed under the statutes. If the legislature had not intended a plaintiff in a lawsuit seeking private relief to have civil immunity from counterclaims based on protected communications, it would not have included a “counterclaim” as a type of SLAPP subject to dismissal under the statutes.

**d. Plaintiff Should Be Awarded Reasonable Attorney’s Fees under the Anti-SLAPP Statutes and RAP 18.1**

Both anti-SLAPP statutes provide for statutory damages of \$10,000.00 to a prevailing moving party, as well as costs of litigation and reasonable attorney fees in connection with the special motion. RCW 4.24.510; RCW 4.24.525(6)(a)(i),(ii).

Pursuant to RAP 18.1, Plaintiff requests her reasonable attorney fees and costs associated with this appeal of the trial court’s denial of her special motion.

**VII. CONCLUSION**

Ms. Townsend’s communications to administrative officers at her employing agency regarding discrimination by its HR Director were of

reasonable concern to the agency and she is immune from civil liability for the Director's counterclaims against her based on those communications.

Appellant should be awarded her attorney's fees on this appeal. The decision of the Superior Court should be reversed and this case remanded for further proceedings in accordance with this Court's rulings.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of November, 2011.

**Law Office of Andrew P. Green, PLLC**

/s/ Andrew P. Green  
Andrew P. Green, WSBA #32742  
Attorney for Appellant

**VIII. APPENDIX**

**4.24.500. Good faith communication to government agency--  
Legislative findings--Purpose**

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.

**4.24.510. Communication to government agency or self-regulatory organization--Immunity from civil liability**

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local

government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

**LAWS OF 2002, ch. 232:**

WASHINGTON 2002 LEGISLATIVE SERVICE  
57th Legislature, 2002 Regular Session  
1768

Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted. Vetoed provisions within tabular material are not displayed.

CHAPTER 232  
S.H.B. No. 2699  
GOVERNMENTAL AGENCIES—COMMUNICATIONS

AN ACT Relating to communications with government branches or agencies and self-regulatory organizations; amending RCW 4.24.510; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF  
WASHINGTON:

NEW SECTION. **Sec. 1.** Strategic lawsuits against public participation, or SLAPP suits, involve communications made to influence a government action or outcome which results in a civil complaint or counterclaim filed against individuals or organizations on a substantive issue of some public interest or social significance. SLAPP suits are designed to intimidate the exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution.

Although Washington state adopted the first modern anti-SLAPP law in 1989, that law has, in practice, failed to set forth clear rules for early dismissal review. Since that time, the United States supreme court has made it clear that, as long as the petitioning is aimed at procuring favorable government action, result, product, or outcome, it is protected and the case should be dismissed. This bill amends Washington law to bring it in line with these court decisions which recognizes that the United States Constitution protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making.

Sec. 2. RCW 4.24.510 and 1999 c 54 s 1 are each amended to read as follows:

<< WA ST 4.24.510 >>

A person who <<-in good faith->> communicates a complaint or information to any <<+branch or+>> agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section <<-shall be->> <<+is+>> entitled to recover <<-costs->> <<+expenses+>> and reasonable attorneys' fees incurred in establishing the defense <<+and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith+>>.

Approved March 28, 2002.

Effective June 13, 2002.

**4.24.525. Public participation lawsuits--Special motion to strike claim--Damages, costs, attorneys' fees, other relief--Definitions**

(1) As used in this section:

(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;

(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

(f) "Responding party" means a person against whom the motion described in subsection (4) of this section is filed.

(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or

(e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.

(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.

(b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.

(c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the responding party has established a probability of prevailing on the claim:

(i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and

(ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.

(e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.

(5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.

(b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.

(c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.

(d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.

(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and

(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

**LAWS OF 2010, ch. 118:**

WASHINGTON 2010 LEGISLATIVE SERVICE  
61st Legislature, 2010 Regular Session

Additions are indicated by Text; deletions by  
Text.

CHAPTER 118  
S.S.B. No. 6395  
CLAIMS--CONSTITUTIONAL AMENDMENTS--PETITIONS

AN ACT Relating to lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition; adding a new section to chapter 4.24 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF  
WASHINGTON:

NEW SECTION. Sec. 1. (1) The legislature finds and declares that:

- (a) It is concerned about lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances;
- (b) Such lawsuits, called "Strategic Lawsuits Against Public Participation" or "SLAPPs," are typically dismissed as groundless or unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities;
- (c) The costs associated with defending such suits can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues;
- (d) It is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process; and
- (e) An expedited judicial review would avoid the potential for abuse in these cases.

(2) The purposes of this act are to:

- (a) Strike a balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons to participate in matters of public concern;

(b) Establish an efficient, uniform, and comprehensive method for speedy adjudication of strategic lawsuits against public participation; and

(c) Provide for attorneys' fees, costs, and additional relief where appropriate.

**NEW SECTION. Sec. 2.** A new section is added to chapter 4.24 RCW to read as follows:

<< WA ST 4.24 >>

(1) As used in this section:

(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;

(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

(f) "Responding party" means a person against whom the motion described in subsection (4) of this section is filed.

(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or

(e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.

(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.

(b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.

(c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the responding party has established a probability of prevailing on the claim:

(i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and

(ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.

(e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.

(5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.

(b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.

(c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.

(d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.

(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and

(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

**NEW SECTION. Sec. 3.** This act shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts.

**NEW SECTION. Sec. 4.** This act may be cited as the Washington Act Limiting Strategic Lawsuits Against Public Participation.

NEW SECTION. **Sec. 5.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Approved March 18, 2010.

Effective June 10, 2010.

CERTIFICATE OF SERVICE

I certify that on the 1<sup>st</sup> day of November, 2011, I caused a true and correct copy of this Appellant's Brief to be served on the following in the manner indicated below:

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