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No. 90233-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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KENT L. and LINDA DAVIS; JEFFREY and SUSAN TRININ; and
SUSAN MAYER, derivatively on behalf of OLYMPIA FOOD
COOPERATIVE,

Petitioners,

v.

GRACE COX; ROCHELLE GAUSE; ERIN GENIA; T.I. JOHNSON;
JAYNE KASZYNSKI; JACKIE KRZYZEK; JESSICAN LAING; RON
LAVIGNE; HARRY LEVINE; ERIC MAPES; JOHN NASON; JOHN
REGAN; ROB RICHARDS; SUZANNE SHAFER; JULIA SOKOLOFF;
and JOELLEN REINECK WILHELM,

Respondents.

BRIEF OF AMICUS CURIAE
WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION

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**I. INTRODUCTION AND INTEREST
OF AMICUS CURIAE**

The Washington Employment Lawyers Association (WELA) is a chapter of the National Employment Lawyers Association. WELA is comprised of more than 150 attorneys who are admitted to practice law in the State of Washington. WELA advocates in favor of employee rights in recognition that employment with fairness is fundamental to the quality of life.

The facts of this particular case do not arise within the employment law context. The Washington Anti-SLAPP statute, RCW 4.24.525, however, does arise within the employment context. WELA recognizes a strong potential for the abuse of the anti-SLAPP statute by powerful employers to deny employees access to courts and the vindication of basic civil rights. That strong potential is reflected by the wide variety of cases in which the statute has been raised and the routine training offered for defense attorneys to aggressively apply the statute. It is in WELA's interest to prevent the application of this statute to legitimate and well recognized employee claims. Indeed, WELA has appeared as amicus curiae in *Henne v. City of Yakima*, 177 Wn. App. 583, 313 P. 3d 1188, *review granted*, 179 Wn.2d 1022 (2014)(whether the internal investigation process of the police department constitutes "public participation," and whether the anti-SLAPP statute applies to municipal corporations).

II. SUMMARY OF ARGUMENT

The Washington anti-SLAPP statute, RCW 4.24.525, imposes a burden on the First Amendment right to petition the government for redress of grievances. Any restriction of First Amendment rights is subject to strict scrutiny; it must (1) serve a compelling governmental interest; and (2) be narrowly tailored to achieve that interest. The anti-SLAPP statute is overbroad and no apparent attempt was made to narrowly tailor it to achieve its purpose of preventing abuse of the civil justice system. As a result, the statute has been abused to punish and deter legitimate legal claims. The statute's overbreadth is compounded by its vagueness.

A statute may be challenged for facial vagueness where, as here, it implicates First Amendment rights. "Public participation" includes "*any other lawful conduct* in furtherance of the exercise of the constitutional right of free speech. . . ." RCW 4.24.525(2)(e) (emphasis added). An interpretation of this language was central to the lower court's ruling. Not only does it demonstrate the statute's overbreadth, the language is unconstitutionally vague. There exists no support for the Court of Appeal's adoption of California law for the meaning of this language, and reasonable people are left to guess at its meaning. The statute is void for vagueness.

The statute's defenders have argued that 30 states have enacted an anti-SLAPP statute and none have been found

unconstitutional. And, both the statute's defenders and the lower courts have consistently relied upon California law, which they insist is the model for Washington's statute. But a fair survey of the other states' anti-SLAPP statutes reveals a wide variety, many of which are much more narrowly tailored and much more limited in scope. Indeed, Washington's statute is one of the broadest and most extreme in the country. In particular, California's statute, which is similar in certain respects, differs in significant ways from Washington's statute. This Court should avoid relying upon California law interpreting a statute which has significantly different language, and has been amended to curtail its widespread abuse. *See* Cal.Code.Civ.Pro. 425.17(a) ("The Legislature finds and declares that there has been a disturbing abuse of Section 425.16, the California Anti-SLAPP Law, which has undermined the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances . . .").

III. ARGUMENT

A. Strict Scrutiny and Overbreadth Standards Apply

"Over the course of centuries, our society has settled upon civil litigation as a means for redressing grievances, resolving disputes, and vindicating rights when other means fail. There is no cause for consternation when a person who believes in good faith and on the basis of accurate information regarding his legal rights

that he has suffered a legally cognizable injury turns to the courts for a remedy.” *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 642-46 (1985). The First Amendment protects the right of access to courts. *See Borough of Duryea, Pa. v. Guarnieri*, 131 S. Ct. 2488, 2494 (2011) (“[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government”) (citing *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896-897 (1984)). Without the right of access to courts the vindication of all other rights would be impossible. *See Chambers v. Baltimore & Ohio Railroad*, 207 U.S. 142, 148 (1907) (“The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship. . . .”). It is for that reason that attempts to restrict access to courts are subject to strict scrutiny.

While it may be possible to draft a statute narrowly tailored to curtail abuse by powerful special interests, the Washington anti-SLAPP statute is not narrowly tailored. To the contrary, it is overbroad and sweeps within its reach legitimate claims not in any way motivated to deter speech.

1. The Statute Does Not Survive Strict Scrutiny

The constitutional standards applicable to the right to petition for redress of grievances are the same as the standards applicable to content-based restrictions on the First Amendment. *See Akrie v. Grant*, 178 Wn. App. 506, 513, 315 P.3d 567, 571 (2013) (“As the first amendment right to petition and the first amendment right of free speech are generally subject to the same constitutional analysis, the standards applicable to regulation of content-based speech are equally applicable to the right to petition”), *rev. granted*, 180 Wn.2d 1008, 325 P.3d 913 (2014) (citations omitted). “[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002) (internal quotation marks omitted). Such content-based prohibition is “presumptively invalid.” *United States v. Stevens*, 559 U.S. 460, 468 (2010).

Because the Act imposes a restriction on the content of protected speech, it is invalid unless [Washington] can demonstrate that it passes strict scrutiny—that is, unless it is justified by a compelling government interest and is narrowly drawn to serve that interest. . . . The State must specifically identify an “actual problem” in need of solving, . . . and the curtailment of free speech must be actually necessary to the solution,

Brown v. Entm't Merchants Ass'n, 131 S. Ct. 2729, 2738 (2011) (citations omitted). *See also Rickert v. State, Pub. Disclosure*

Comm'n, 161 Wn.2d 843, 849, 168 P.3d 826, 828-29 (2007) (Statutes that regulate protected first amendment activity based on its content are subject to strict scrutiny). “That is a demanding standard. ‘It is rare that a regulation restricting speech because of its content will ever be permissible.’” *Id.* (Citations omitted). To satisfy this highest of constitutional standards, “the State must demonstrate that [statute] “‘is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.’” *Id.* (quoting *Burson v. Freeman*, 504 U.S. 191, 198 (1992)). *See also City of Bellevue v. Lorang*, 140 Wn.2d 19, 29-30, 992 P.2d 496 (2000) (“The burden is on the government to establish that an impairment of a constitutionally protected right is necessary to serve a compelling state interest....”).

The State of Washington likely can articulate a compelling state interest; to prevent harm caused by filings of lawsuits that are frivolous or motivated solely to harass, vex, or silence legitimate criticism—the core purpose of a true Anti-SLAPP law. *Cf. Stilp v. Contino*, 613 F.3d 405, 415 (3d Cir. 2010) (finding it likely that state “has a compelling interest in preventing harm caused by frivolous or wrongful [ethics] filings” against judicial officers). But the state likely cannot show that section .525 is narrowly drawn and the least restrictive means to achieve those interests. “To the extent the state has a compelling interest in preventing

harm caused by frivolous or wrongful filings, Section 1108(k) is not narrowly-tailored to achieve that interest” because “[a] blanket prohibition on disclosure of a filed complaint stifles political speech near the core of the First Amendment” *Id.*

Washington’s statute explicitly states that its purpose is to “[s]trike 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.” RCW 4.24.525. But the United States Supreme Court has pointedly rejected government proposals that “a claim of categorical exclusion should be considered under a simple balancing test.” *United States v. Stevens*, 559 U.S. 460, 470 (2010). The Supreme Court declared:

The First Amendment’s guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs.

Id. Indeed, “[o]ur Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it.” *Id.* “From 1791 to the present [] the First Amendment has “permitted restrictions upon the content of speech in a few limited areas,” and has never “include[d] a freedom to disregard these traditional limitations.” *Id.* But the Washington legislature has made the unconstitutional judgment that conduct that it classifies

as “public participation” has greater value than the First Amendment right of access to courts, and it makes that judgment with no pretense of narrowly drawing the statute to protect access to courts.

In order to be narrowly tailored and least restrictive the statute must require a finding that the legal claim to be dismissed is frivolous, a sham, or motivated solely to silence legitimate criticism.¹ As written “the anti-SLAPP statute does not sanction and frustrate only claims that are frivolous. Rather, the statute mandates dismissal of all claims based on protected activity where the plaintiff cannot prove by clear and convincing evidence a probability of prevailing on the merits.” *Akrie*, 178 Wn. App. at 513. The statute is the opposite of narrowly drawn. It applies to a wide swath of “public participation,” to innumerable types of legal claims, and must be liberally construed.

Even lawsuits that are motivated solely to silence legitimate criticism—ostensibly, *the* target of the statute—survive the special motion to strike so long as the plaintiff can, without discovery, show by “clear and convincing” evidence they are likely to prevail at trial. In other words, the statute fails to dismiss lawsuits

¹ See *White v. Lee*, 227 F. 3d 1214, 1231 (9th Cir. 2000) (“With respect to petitions brought in the courts, the Supreme Court has held that a lawsuit is unprotected only if it is a ‘sham’—i.e., ‘objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits.’”) (citing *Professional Real Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60 (1993)).

motivated to deter free speech that are strong from the start, but dismisses all others regardless of their motive, without the benefit of discovery.² The Statute correlates poorly with the Legislature's stated goal and with any compelling interest of the State-- this is the opposite of a narrowly drawn statute.

2. The Statute is Substantially Overbroad

A government's overly-broad restriction on speech is invalid on its face "if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" *Stevens*, 559 U.S. at 473 (citation omitted). *See also City of Seattle v. Huff*, 111 Wn.2d 923, 925, 767 P.2d 572, 573 (1989) ("In determining overbreadth, 'a court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct'").

"[I]t is clear that the anti-SLAPP statute sweeps into its reach constitutionally protected first amendment activity." *Akrie*, 178 Wn. App. at 513; *City of Seattle v. Slack*, 113 Wn.2d 850, 856, 784 P.2d 494, 497 (1989) (Washington's Constitution, Article 1, § 5, "has already been interpreted as providing greater protection for

² Lawsuits challenging tortious conduct (e.g., tortious interference with business, defamation, malicious prosecution, discrimination, violation of privacy rights) in an exceedingly broad range of contexts ("public participation") that are merely likely to prevail *must* be dismissed under the statute. The dismissal of legitimate legal claims that would prevail at trial illustrates that the statute is not narrowly tailored. And swept into the maelstrom are large numbers of cases that are: (1) a close call; (2) at least before discovery is conducted—weak or an uphill battle under the facts or law, but are nowhere near frivolous; or (3) legitimate efforts to break new ground legally, to extend existing law to new facts, plaintiffs, or defendants, to overturn precedent, or to pursue novel theories.

speech than its federal counterpart.”). Indeed, access to courts is its exclusive target. As explained above in the section on strict scrutiny, the anti-SLAPP statute mandates dismissal of a large swath of protected First Amendment activity.³

Notably, while “an element of specific intent” could shield a law from being overbroad, *City of Seattle v. Slack*, 113 Wn.2d 850, 856, 784 P.2d 494, 497 (1989), this statute lacks a specific intent requirement. Moreover, “[r]ewriting the statute is a job for the [] legislature, if it is so inclined, and not the court.” *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 249 (1989); *see also Foti v. City of Menlo Park*, 146 F.3d 629, 639 (9th Cir.1998) (“Although we must consider the City's limiting construction of the ordinance, we are not required to insert missing terms into the statute or adopt an interpretation precluded by the plain language of the ordinance.”). RCW 4.24.525 interferes with and chills too much protected speech to survive constitutional scrutiny.

³ *Bevan v. Meyers*, 334 P.3d 39 (Wash. Ct. App. 2014) is a telling example of the overbroad application. In *Bevan*, the parties disputed who owns the land on which the defendant placed her well and removed trees. The Plaintiff filed suit seeking to quiet title to the property and sent a property survey to the County, which then halted development. But when defendant counter-claimed for quiet title and for damages, the Court found that the act of sending the survey to the County was an act of “public participation,” and granted the plaintiff's anti-SLAPP motion effectively punishing the defendant for petitioning for relief from their dispute. No one could seriously contend that the counterclaim in *Bevan* was filed to deter First Amendment activity, which is the principal purpose of the anti-SLAPP statute. This case is illustrative of how the broad language of the statute is being abused to penalize the vindication of legitimate disputes.

B. Void for Vagueness - "Lawful Conduct in Furtherance of Free Speech."

The due process clause of the Fourteenth Amendment requires that citizens be afforded fair warning of proscribed conduct. *City of Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). "Under the due process clause, an ordinance is unconstitutionally vague if a challenger demonstrates, beyond a reasonable doubt, either (1) that the ordinance does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed, or (2) that the ordinance does not provide ascertainable standards of guilt to protect against arbitrary enforcement." *Id.* (citing *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)). An ordinance is unconstitutionally vague if either requirement is not satisfied. *Id.*

The degree of vagueness tolerated in a statute varies with its type: economic regulations are subject to a relaxed vagueness test, laws with criminal penalties to a stricter one, and laws that might infringe constitutional rights to the strictest of all. *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-99 (1982). "[T]he most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights. If, for example, the law interferes with the right of free speech or of association, a

more stringent vagueness test should apply.” *Id.* at 499.⁴ Insofar as the Washington anti-SLAPP statute creates a direct burden on the First Amendment right to petition the government for redress of grievances (access to courts), it is held to the strictest of clarity standards, even greater than the standards for criminal statutes.

A Due Process challenge on the grounds of vagueness may be facial or as applied. Where the conduct does not implicate constitutionally protected activity, the statute will survive a vagueness challenge if any of its applications are not vague so long as a “hard core” of the statute exists. Where the conduct does implicate constitutionally protected speech the statute is subject to a facial challenge even if there are applications that are not vague.

In a facial challenge to the overbreadth and vagueness of a law, a court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct. If it does not, then the overbreadth challenge must fail. The court should then examine

⁴ When a statute regulates constitutionally protected conduct, “we permit a facial challenge if a law reaches a substantial amount of constitutionally protected conduct.” *Kolender v. Lawson*, 461 U.S. 352, 358 n.8 (1983); *California Teachers Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1152 (9th Cir. 2001). The standard of a court’s review is more stringent when, as here, “the uncertainty induced by the statute threatens to inhibit the exercise of constitutionally protected rights.” *Colautti v. Franklin*, 439 U.S. 379, 391 (1979) (citations omitted). While “perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity,” *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989), “government may regulate in the area” of First Amendment freedoms “only with narrow specificity,” *NAACP v. Button*, 371 U.S. 415, 433 (1963). *See also State v. Bahl*, 164 Wn.2d 739, 193 P. 3d 678, 685 (2008) (“when a statute or other legal standard, such as a condition of community placement, concerns material protected under the First Amendment, a vague standard can cause a chilling effect on the exercise of sensitive First Amendment freedoms.... For this reason, courts have held that a stricter standard of definiteness applies if material protected by the First Amendment falls within the prohibition.”) (Citation omitted).

the facial vagueness challenge and, assuming the enactment implicates no constitutionally protected conduct, should uphold the challenge only if the enactment is impermissibly vague in all of its applications.

Hoffman Estates, 455 U.S. at 494.⁵ In this case, the Washington anti-SLAPP statute directly addresses First Amendment activity--the right of access to courts. The statute, therefore, is subject to a facial challenge and is unconstitutionally infirm regardless of whether it is vague in all of its applications.

Of particular concern in the Washington statute is its definition of “public participation” as “any other lawful conduct in furtherance of the constitutional right of free speech” RCW 4.24.525(2)(e). This is the language relied upon by the Defendants in support of their assertion that the boycott is an “action involving public participation.” *See* Slip Opinion, at 10.

In the Court of Appeals “the Members argue[d] that adopting the boycott was not ‘lawful’ because the board violated the Boycott Policy in doing so.” Slip Opinion at 10. In response to this argument, the Court of Appeals ruled: “[W]hen a defendant’s assertedly protected activity *may or may not be* criminal activity, the defendant may invoke the anti-SLAPP statute unless the activity is criminal as a matter of law.” *Id.* at 11 (*citing*

⁵ *See also City of Spokane v. Douglass*, 115 Wn.2d at 182 (“when a challenged ordinance does not involve First Amendment interests, the ordinance is not properly evaluated for facial vagueness.”); *State v. Hendrickson*, 129 Wn.2d 61, 917 P. 2d 563, 794 (1996)(same); *State v. Coria*, 120 Wn. 156, 163, 839 P. 2d 890 (1992)(same).

California law) (emphasis original). The Court of Appeals concluded that because the Members did not assert that the decision to boycott was illegal as a matter of law, but only in contravention of the governing rules of the Co-op, “the Directors’ adoption of the boycott was ‘lawful’ under the first step of the anti-SLAPP statute.” *Id.*

But the California anti-SLAPP statute relied upon by the Court of Appeals does not require that the conduct at issue be “lawful.” Cal.Code.Civ.Pro. 425.16. The Washington statute does, and does not require that the conduct must be criminal as a matter of law. Given the language of the Washington statute, it is too much to expect members of the public seeking to vindicate civil legal claims to intuit that “lawful” really means “not criminal as a matter of law” based on California case law interpreting a statute with different language.

Within the criminal context, Washington Courts have found statutes that turn on obeying a “lawful order” (or a similar standard) unconstitutionally vague. *See City of Seattle v. Rice*, 93 Wn.2d 728, 731, 612 P. 2d 792 (1980) (“The term ‘lawful order’ in the Seattle criminal trespass ordinance is not sufficiently specific to inform persons of reasonable understanding of what conduct is proscribed”); *Bellevue v. Miller*, 85 Wn.2d 539, 545, 536 P. 2d 603 (1975) (“Legislation which purports to define illegality by resort to

such inherently subjective terms as 'unlawful purpose' or 'alarm' . . . is vague because there can be no prior notice of what conduct an individual officer will find sufficiently suspicious to warrant arrest"); *State v. Richmond*, 102 Wn.2d 242, 243, 683 P. 2d 1093 (1984) ("We agree with the trial judge that the statute is unconstitutionally vague under the due process clause of U.S. Const. amend. because the 'without lawful excuse' element has not been sufficiently clarified by statute or case authority").

Other Washington cases have ruled a statute that defines criminal conduct in terms of obeying a "lawful command" is not unconstitutional on grounds of vagueness. See *State v. Smith*, 111 Wn.2d 1, 5-6, 759 P.2d 372, 374-75 (1988) ("None of our decisions, fairly read, establishes that the concept of 'lawfulness' is inherently unconstitutionally vague"); *State v. Aver*, 109 Wn.2d 303, 745 P.2d 479 (1987) (statute upheld which criminalizes obstructing a train which was "lawfully operated"). These cases, however, do not stand for the proposition that the use of the term "lawful conduct" is always permissible, only that it is not always impermissible. The cases cited above were upheld because the conduct at issue fell within the "hard core" of the statute. Where First Amendment rights are implicated, however, the term "lawful conduct" is unconstitutionally vague even though there are applications within its "hard core." Moreover, because none of the

cases upholding a statute based upon a standard of “lawfulness” involved First Amendment rights, less vagueness is tolerated here.

Because reasonable people are left to guess at what constitutes “lawful conduct in furtherance of free speech,” the statute is void for vagueness.

C. Survey of Other States’ Statutes⁶

The Defendants have argued that 30 states have passed anti-SLAPP statutes and that none have been found unconstitutional. *See, e.g.*, Resp. Supp. Br. at 19-20. This argument is disingenuous. There is no “model” statute. The provisions and standards of these statutes vary widely. RCW 4.24.525 stands out as one of the broadest and most extreme,⁷ so the survival of other statutes does not implicate the validity of Washington’s statute. And likewise, a ruling that section .525 is unconstitutional would not imply other statutes are invalid.

1. Lower Standards to Survive Motion

Section 525 requires a Plaintiff to prove by “clear and convincing evidence” a likelihood that she will prevail. In

⁶ WELA has reviewed anti-SLAPP statutes from 29 other states. The statutory citations and the statutes themselves are in the Appendix to this brief so, for brevity, WELA lists only the states here.

⁷ The **Minnesota** statute is one of the most similar to Washington’s. However, the Minnesota Supreme Court has expressed doubt as to the constitutionality of that statute. *See Leiendecker v. Asian Women United of Minnesota*, 848 N.W.2d 224, 232 (Minn.), *as modified (Sept. 3, 2014), reh’g granted*, 855 N.W.2d 233 (Minn. 2014).

contrast, other statutes require the Plaintiff only to “certify” or simply state a claim is not frivolous and not brought for an improper purpose, essentially mirroring Civil Rule 11. *See* **Arkansas, Georgia, Maine, Massachusetts, Nebraska, New York, Utah.**

Other statutes demand that the *moving* party meet much more stringent standards than Washington does, or afford more lenient standards to the *non-moving* party than does Washington. *See* **Colorado** (moving party must show plaintiff’s action “devoid of reasonable factual support or, if so supported, is lacking a cognizable basis in law”); **Hawaii** (affording responding party right to amend pleadings in response to motion); **Indiana** (summary judgment standard after limited discovery to defend the motion); **Louisiana** (responding party need show only a “probability” of success; no “clear and convincing evidence” requirement); **Maryland** (no statutory penalty or fees); **Missouri** (no “clear and convincing evidence” requirement);, **Oregon** (no “clear and convincing” requirement);; **Utah** (*moving* party must show “clear and convincing evidence that the primary reason for the filing of the complaint was to interfere with the first amendment right of the defendant”).

2. Much Narrower Scope

Whereas Section 525 covers a broad range of speech and conduct, other states' statutes are limited to very specific types or contexts of speech. *See Arizona* (speech "made as part of an initiative, referendum or recall effort" *or* made or submitted to executive or legislative governmental body); *Arkansas* (speech pursuant to official duty, opinions and criticisms of government); *Delaware* ("public applicant" speech related to land use); *Florida* (prohibiting *only* lawsuits brought by governments against citizens for redress activities); *Hawaii* (submissions to a governmental body); *Illinois* (protects only acts "genuinely aimed at procuring favorable government action, result, or outcome."); *Maryland* (protects communications with government entities or "the public at large" regarding issue of public concern); *New York* (addresses only actions brought by "a public applicant or permittee"); *New Mexico* (limited to speech "in connection with a public hearing" or a meeting held by a state or local government entity); *Pennsylvania* (actions to enforce environmental laws or regulations); *Tennessee* (applies only to communications made "to any agency of the federal, state or local government regarding a matter of concern to that agency").

D. California vs. Washington

One state deserves particular attention, as many of the Washington appellate courts to address Section 525 have looked to California, which they typically assert was the model for Washington's law. *E.g. Henne v. City of Yakima*, 177 Wn. App. 583, 313 P. 3d 1188 (2013) (citing numerous California cases for a variety of propositions) (review granted). That assertion is only partially accurate. While California and Washington's statutes share features in common they differ in very significant respects. California's statute contains no "clear and convincing" standard. In Washington, attorney fees are awarded if the moving party prevails "in part or in whole," but not under California law. The California statute does not contain a statutory penalty, and has no discretionary provision for additional relief, including sanctions upon the responding party and its attorneys and law firms.

Moreover, two years after California enacted its anti-SLAPP statute, harmful misuse of the statute (like what is happening in Washington) became evident, so the California legislature amended the law specifically for the purpose of curtailing those abuses. *See* Cal.Code.Civ.Pro. 425.17(a) (**"The Legislature finds and declares that there has been a disturbing abuse of Section 425.16, the California Anti-SLAPP Law, which has undermined the exercise of the constitutional rights**

of freedom of speech and petition for the redress of grievances . . .”). In enacting an even broader law than the former California statute, the Washington legislature flat out ignored California’s experience with abuses and its subsequent statute designed to reduce them. So it is not surprising that the abuses experienced in California are now being visited upon the people of Washington State.

Given the substantial differences in the statutory text between the California and Washington statutes, and California’s self-recognition of the problems and abuses associated with a broad anti-SLAPP law, this Court should not rely on California case law interpreting California law in deciding the important constitutional issues in Washington.

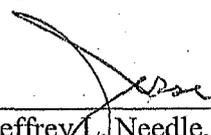
IV. CONCLUSION

On several grounds, the Court should hold that RCW 4.24.525 is unconstitutional.

Respectfully submitted this 17th of December, 2014.

WASHINGTON EMPLOYMENT LAWYERS
ASSOCIATION

By: _____


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Jesse Wing, WSBA #27751
Joe Shaeffer, WSBA #33273
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DECLARATION OF SERVICE

Brina Carranza states and declares as follows:

I am over the age of 18, I am competent to testify in this matter, and am a legal assistant for the Petitioner's attorney of record. I make this declaration based on my personal knowledge and belief. On December 17, 2014, I caused to be delivered via email to the following individual(s) a copy of the **BRIEF OF AMICUS CURIAE WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION.**

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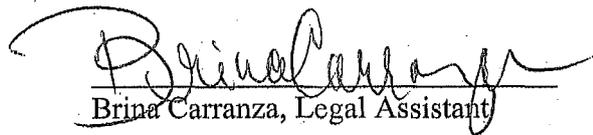
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I declare under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

DATED this 17th day of December, 2014, at Seattle, King County,
Washington.


Brina Carranza, Legal Assistant

SUPREME COURT
STATE OF WASHINGTON
Dec 17, 2014, 12:56 pm
BY RONALD R. CARPENTER
CLERK

APPENDIX B

RECEIVED BY E-MAIL

TO
BRIEF OF AMICUS CURIAE
WASHINGTON EMPLOYMENT
LAWYERS ASSOCIATION

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*(To Brief Of Amicus Curiae
Washington Employment Lawyers Association)*

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ARIZONA

Arizona Revised Statutes Annotated
Title 12. Courts and Civil Proceedings
Chapter 6. Special Actions and Proceedings by Individual Persons
Article 15. Public Participation in Government (Refs & Annos)

A.R.S. § 12-751

§ 12-751. Definitions

Effective: April 28, 2006

Currentness

In this article, unless the context otherwise requires:

1. "Exercise of the right of petition" means any written or oral statement that falls within the constitutional protection of free speech and that is made as part of an initiative, referendum or recall effort or that is all of the following:

(a) Made before or submitted to a legislative or executive body or any other governmental proceeding.

(b) Made in connection with an issue that is under consideration or review by a legislative or executive body or any other governmental proceeding.

(c) Made for the purpose of influencing a governmental action, decision or result.

2. "Governmental proceeding" means any proceeding, other than a judicial proceeding, by an officer, official or body of this state and any political subdivision of this state, including boards and commissions, or by an officer, official or body of the federal government.

3. "Legal action" means any action, claim, cross-claim or counterclaim for damages that is based on the defendant's exercise of the right of petition.

Credits

Added by Laws 2006, Ch. 234, § 1, eff. April 28, 2006.

A. R. S. § 12-751, AZ ST § 12-751

Current through the Second Regular and Second Special Sessions of the Fifty-first Legislature

Arizona Revised Statutes Annotated
Title 12. Courts and Civil Proceedings
Chapter 6. Special Actions and Proceedings by Individual Persons
Article 15. Public Participation in Government (Refs & Annos)

A.R.S. § 12-752

§ 12-752. Strategic lawsuits against public participation; motion to dismiss

Effective: April 28, 2006

Currentness

A. In any legal action that involves a party's exercise of the right of petition, the defending party may file a motion to dismiss the action under this section. When possible, the court shall give calendar preference to an action that is brought under this subsection and shall conduct an expedited hearing after the motion is filed with the court and notice of the motion has been served as provided by court rule.

B. The court shall grant the motion unless the party against whom the motion is made shows that the moving party's exercise of the right of petition did not contain any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual compensable injury to the responding party. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating facts on which the liability or defense is based. At the request of the moving party, the court shall make findings whether the lawsuit was brought to deter or prevent the moving party from exercising constitutional rights and is thereby brought for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation. If the court finds that the lawsuit was brought to deter or prevent the exercise of constitutional rights or otherwise brought for an improper purpose, the moving party is encouraged to pursue additional sanctions as provided by court rule.

C. The motion to dismiss may be filed within ninety days after the service of the complaint or, in the court's discretion, at any later time on terms that the court deems proper.

D. If the court grants the motion to dismiss, the court shall award the moving party costs and reasonable attorney fees, including those incurred for the motion. If the court finds that a motion to dismiss is frivolous or solely intended to delay, the court shall award costs and reasonable attorney fees to the prevailing party on the motion. For the purposes of this subsection, "costs" means all costs that are reasonably incurred in connection with a motion to dismiss pursuant to this section and includes filing fees, record preparation and document copying fees, documented time away from employment to confer with counsel or attend case related proceedings, expert witness fees, travel expenses and any other costs that the court deems appropriate.

E. This article does not:

1. Affect, limit or preclude the right of the moving party to any remedy otherwise authorized by law.
2. Apply to an enforcement action that is brought in the name of this state or a political subdivision of this state.

3. Create any privileges or immunities or otherwise affect, limit or preclude any privileges or immunities authorized by law.
4. Limit or preclude a legislative or executive body or a public agency from enforcing the rules of procedure and rules of order of the body or agency.

Credits

Added by Laws 2006, Ch. 234, § 1, eff. April 28, 2006.

Notes of Decisions (5)

A. R. S. § 12-752, AZ ST § 12-752

Current through the Second Regular and Second Special Sessions of the Fifty-first Legislature

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ARKANSAS

West's Arkansas Code Annotated
Title 16. Practice, Procedure, and Courts
Subtitle 5. Civil Procedure Generally (Chapters 55 to 79)
Chapter 63. Pleadings and Pretrial Proceedings
Subchapter 5. Citizen Participation in Government Act

A.C.A. § 16-63-503

§ 16-63-503. Definitions

Currentness

As used in this subchapter:

(1) "An act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern" includes, but is not limited to, any written or oral statement, writing, or petition made:

(A) Before or to a legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government; or

(B) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or other body authorized by a state, regional, county, or municipal government; and

(2)(A) "Privileged communication" means a communication made:

(i) In, to, or about an issue of public concern related to any legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government;

(ii) In the proper discharge of an official duty; and

(iii) By a fair and true report of any legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government, or anything said in the course of the proceeding.

(B) "Privileged communication" also includes:

(i) All expressions of opinion or criticisms in regard to any legislative, executive, or judicial proceeding, or other proceeding authorized by a state, regional, county, or municipal government; and

(ii) All criticisms of the official acts of any and all public officers.

(C) "Privileged communication" does not include a statement or report made with knowledge that it was false or with reckless disregard of whether it was false.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-503, AR ST § 16-63-503

Current through 2014 2nd Ex. Sess. and the Nov. 4, 2014, election, including changes made by the Ark. Code Rev. Comm. received through 11/15/2014.

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Title 16. Practice, Procedure, and Courts
Subtitle 5. Civil Procedure Generally (Chapters 55 to 79)
Chapter 63. Pleadings and Pretrial Proceedings
Subchapter 5. Citizen Participation in Government Act

A.C.A. § 16-63-504

§ 16-63-504. Immunity from suit

Currentness

Any person making a privileged communication or performing an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern shall be immune from civil liability, unless a statement or report was made with knowledge that it was false or with reckless disregard of whether it was false.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-504, AR ST § 16-63-504

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Chapter 63. Pleadings and Pretrial Proceedings
Subchapter 5. Citizen Participation in Government Act

A.C.A. § 16-63-505

§ 16-63-505. Verification requirement

Currentness

For any claim asserted against a person or entity arising from possible privileged communication or an act by that person or entity that could reasonably be construed as an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern, the party asserting the claim and the party's attorney of record, if any, shall be required to file contemporaneously with the pleading containing the claim a written verification under oath certifying that:

- (1) The party and his or her attorney of record, if any, have read the claim;
- (2) To the best of the knowledge, information, and belief formed after reasonable inquiry of the party or his or her attorney, the claim is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
- (3) The act forming the basis for the claim is not a privileged communication; and
- (4) The claim is not asserted for any improper purpose such as to suppress the right of free speech or right to petition government of a person or entity, to harass, or to cause unnecessary delay or needless increase in the cost of litigation.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-505, AR ST § 16-63-505

Current through 2014 2nd Ex. Sess. and the Nov. 4, 2014, election, including changes made by the Ark. Code Rev. Comm. received through 11/15/2014.

West's Arkansas Code Annotated
Title 16. Practice, Procedure, and Courts
Subtitle 5. Civil Procedure Generally (Chapters 55 to 79)
Chapter 63. Pleadings and Pretrial Proceedings
Subchapter 5. Citizen Participation in Government Act

A.C.A. § 16-63-506

§ 16-63-506. Failure to properly verify

Currentness

(a) If a claim governed by § 16-63-505 is not verified as required by § 16-63-505, the claim shall be stricken unless it is verified within ten (10) days after the omission is called to the attention of the party asserting the claim or his or her attorney of record.

(b)(1) If a claim is verified in violation of § 16-63-505, the court, upon motion or upon its own initiative, shall impose upon the persons who signed the verification, a represented party, or both, an appropriate sanction, which may include dismissal of the claim and an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the claim, including a reasonable attorney's fee.

(2) Other compensatory damages may be recovered only upon the demonstration that the claim was commenced or continued for the purpose of harassing, intimidating, punishing, or maliciously inhibiting a person or entity from making a privileged communication or performing an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the United States Constitution or the Arkansas Constitution in connection with an issue of public interest or concern.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-506, AR ST § 16-63-506

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Chapter 63. Pleadings and Pretrial Proceedings
Subchapter 5. Citizen Participation in Government Act

A.C.A. § 16-63-507

§ 16-63-507. Procedure

Currentness

(a)(1) All discovery and any pending hearings or motions in an action for a claim governed by § 16-63-505 shall be stayed upon the filing of a motion to dismiss or a motion to strike under § 16-63-506.

(2) A hearing on a motion filed under § 16-63-506 shall be conducted not more than thirty (30) days after service unless emergency matters before the court require a later hearing.

(b) The court, upon motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted notwithstanding the provisions of subsection (a) of this section.

Credits

Acts of 2005, Act 1843, § 1, eff. Aug. 12, 2005.

A.C.A. § 16-63-507, AR ST § 16-63-507

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Code of Civil Procedure (Refs & Annos)
Part 2. Of Civil Actions (Refs & Annos)
Title 6. Of the Pleadings in Civil Actions
Chapter 2. Pleadings Demanding Relief (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

West's Ann. Cal. C.C.P. § 425.16

§ 425.16. Anti-SLAPP motion

Effective: January 1, 2011 to December 31, 2014

Currentness

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c)(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of Section 6259, 11130.5, or 54690.5¹.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j)(1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

Credits

(Added by Stats.1992, c. 726 (S.B.1264), § 2. Amended by Stats.1993, c. 1239 (S.B.9), § 1; Stats.1997, c. 271 (S.B.1296), § 1; Stats.1999, c. 960 (A.B.1675), § 1, eff. Oct. 10, 1999; Stats.2005, c. 535 (A.B.1158), § 1, eff. Oct. 5, 2005; Stats.2009, c. 65 (S.B.786), § 1; Stats.2010, c. 328 (S.B.1330), § 34.)

Notes of Decisions (3268)

Footnotes

§ 425.16. Anti-SLAPP motion, CA CIV PRO § 425.16

1 So in enrolled bill. Probably should be "54960.5".

West's Ann. Cal. C.C.P. § 425.16, CA CIV PRO § 425.16

Current with all 2014 Reg.Sess. laws, Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

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Chapter 2. Pleadings Demanding Relief (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

West's Ann. Cal. C.C.P. § 425.17

§ 425.17. Legislative findings and declarations regarding California Anti-SLAPP Law; application of § 425.16

Effective: January 1, 2012

Currentness

(a) The Legislature finds and declares that there has been a disturbing abuse of Section 425.16, the California Anti-SLAPP Law, which has undermined the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to the purpose and intent of Section 425.16. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process or Section 425.16.

(b) Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist:

(1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. A claim for attorney's fees, costs, or penalties does not constitute greater or different relief for purposes of this subdivision.

(2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons.

(3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff's stake in the matter.

(c) Section 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist:

(1) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services.

(2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, or the statement or conduct arose out of or within the context of a regulatory approval process, proceeding, or investigation, except where the statement or conduct was made by a telephone corporation in the course of a proceeding before the California Public Utilities Commission and is the subject of a lawsuit brought by a competitor, notwithstanding that the conduct or statement concerns an important public issue.

(d) Subdivisions (b) and (c) do not apply to any of the following:

(1) Any person enumerated in subdivision (b) of Section 2 of Article I of the California Constitution or Section 1070 of the Evidence Code, or any person engaged in the dissemination of ideas or expression in any book or academic journal, while engaged in the gathering, receiving, or processing of information for communication to the public.

(2) Any action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including, but not limited to, a motion picture or television program, or an article published in a newspaper or magazine of general circulation.

(3) Any nonprofit organization that receives more than 50 percent of its annual revenues from federal, state, or local government grants, awards, programs, or reimbursements for services rendered.

(e) If any trial court denies a special motion to strike on the grounds that the action or cause of action is exempt pursuant to this section, the appeal provisions in subdivision (i) of Section 425.16 and paragraph (13) of subdivision (a) of Section 904.1 do not apply to that action or cause of action.

Credits

(Added by Stats.2003, c. 338 (S.B.515), § 1. Amended by Stats.2011, c. 296 (A.B.1023), § 36.5.)

Notes of Decisions (93)

West's Ann. Cal. C.C.P. § 425.17, CA CIV PRO § 425.17

Current with all 2014 Reg.Sess. laws, Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on 2014 ballots

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DELAWARE

West's Delaware Code Annotated
Title 10. Courts and Judicial Procedure
Part V. Limitation of Actions
Chapter 81. Personal Actions

10 Del.C. § 8136

§ 8136. Actions involving public petition and participation

Currentness

(a) For purposes of this section, the following terms shall have the meaning ascribed herein:

(1) An "action involving public petition and participation" is an action, claim, cross-claim or counterclaim for damages that is brought by a public applicant or permittee, and is materially related to any efforts of the defendant to report on, rule on, challenge or oppose such application or permission.

(2) "Public applicant or permittee" shall mean any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission.

(3) "Communication" shall mean any statement, claim or allegation in a proceeding, decision, protest, writing, argument, contention or other expression.

(4) "Government body" shall mean the State and any county, city, town, village or any other political subdivision of the State; any public improvement or special district, public authority, commission, agency or public benefit corporation; any other separate corporate instrumentality or unit of State or local government; or the federal government.

(b) In an action involving public petition and participation, damages may only be recovered if the plaintiff, in addition to all other necessary elements, shall have established by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue.

(c) Nothing in this section shall be construed to limit any constitutional, statutory or common-law protection of defendants to actions involving public petition and participation.

Credits

68 Laws 1992, ch. 391, § 1.

10 Del.C. § 8136, DE ST TI 10 § 8136

Current through 79 Laws 2014, ch. 443. Revisions to 2014 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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West's Delaware Code Annotated
Title 10. Courts and Judicial Procedure
Part V. Limitation of Actions
Chapter 81. Personal Actions

10 Del.C. § 8137

§ 8137. Standards for motion to dismiss and summary judgment
in certain cases involving public petition and participation

Currentness

(a) A motion to dismiss in which the moving party has demonstrated that the action, claim, cross-claim or counterclaim subject to the motion is an action involving public petition and participation as defined in § 8136(a)(1) of this title shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

(b) A motion for summary judgment in which the moving party has demonstrated that the action, claim, cross-claim or counterclaim subject to the action is an action involving public petition and participation as defined in § 8136(a)(1) of this title shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

Credits

68 Laws 1992, ch. 391, § 1.

10 Del.C. § 8137, DE ST TI 10 § 8137

Current through 79 Laws 2014, ch. 443. Revisions to 2014 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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West's Delaware Code Annotated
Title 10. Courts and Judicial Procedure
Part V. Limitation of Actions
Chapter 81. Personal Actions

10 Del.C. § 8138

§ 8138. Recovery of damages in actions involving public petition and participation

Currentness

(a) A defendant in an action involving public petition and participation, as defined in § 8136(a)(1) of this title, may maintain an action, claim, cross-claim or counter-claim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

(1) Costs, attorney's fees and other compensatory damages may be recovered upon a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law; and

(2) Punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.

(b) The right to bring an action under this section can be waived only if it is waived specifically.

(c) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.

Credits

68 Laws 1992, ch. 391, § 1.

10 Del.C. § 8138, DE ST TI 10 § 8138

Current through 79 Laws 2014, ch. 443. Revisions to 2014 Acts by the Delaware Code Revisors were unavailable at the time of publication.

DISTRICT OF COLUMBIA

West's District of Columbia Code Annotated 2001 Edition
Division II. Judiciary and Judicial Procedure
Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
Chapter 55. Strategic Lawsuits Against Public Participation.

DC ST § 16-5501

§ 16-5501. Definitions.

Effective: September 26, 2012
Currentness

For the purposes of this chapter, the term:

(1) "Act in furtherance of the right of advocacy on issues of public interest" means:

(A) Any written or oral statement made:

(i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or

(ii) In a place open to the public or a public forum in connection with an issue of public interest; or

(B) Any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.

(2) "Claim" includes any civil lawsuit, claim, complaint, cause of action, cross-claim, counterclaim, or other civil judicial pleading or filing requesting relief.

(3) "Issue of public interest" means an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place. The term "issue of public interest" shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker's commercial interests rather than toward commenting on or sharing information about a matter of public significance.

(4) "Personal identifying information" shall have the same meaning as provided in § 22-3227.01(3).

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 2, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Notes of Decisions (14)

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DC CODE § 16-5501

Current through November 5, 2014

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West's District of Columbia Code Annotated 2001 Edition
Division II. Judiciary and Judicial Procedure
Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
Chapter 55. Strategic Lawsuits Against Public Participation

DC ST § 16-5502

§ 16-5502. Special motion to dismiss.

Effective: September 26, 2012

Currentness

(a) A party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest within 45 days after service of the claim.

(b) If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

(c)(1) Except as provided in paragraph (2) of this subsection, upon the filing of a special motion to dismiss, discovery proceedings on the claim shall be stayed until the motion has been disposed of.

(2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

(d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 3, 58 DCR 741; Apr. 20, 2012, D.C. Law 19-120, § 201, 58 DCR 11235; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Notes of Decisions (20)

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DC CODE § 16-5502

Current through November 5, 2014

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Division II. Judiciary and Judicial Procedure
Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
Chapter 55. Strategic Lawsuits Against Public Participation.

DC ST § 16-5503

§ 16-5503. Special motion to quash.

Effective: September 26, 2012

Currentness

(a) A person whose personal identifying information is sought, pursuant to a discovery order, request, or subpoena, in connection with a claim arising from an act in furtherance of the right of advocacy on issues of public interest may make a special motion to quash the discovery order, request, or subpoena.

(b) If a person bringing a special motion to quash under this section makes a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the party seeking his or her personal identifying information demonstrates that the underlying claim is likely to succeed on the merits, in which case the motion shall be denied.

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 4, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Notes of Decisions (1)

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Division II. Judiciary and Judicial Procedure
Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
Chapter 55. Strategic Lawsuits Against Public Participation

DC ST § 16-5504

§ 16-5504. Fees and costs.

Effective: September 26, 2012

Currentness

(a) The court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or § 16-5503 the costs of litigation, including reasonable attorney fees.

(b) The court may award reasonable attorney fees and costs to the responding party only if the court finds that a motion brought under § 16-5502 or § 16-5503 is frivolous or is solely intended to cause unnecessary delay.

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 5, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

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DC CODE § 16-5504

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West's District of Columbia Code Annotated 2001 Edition
Division II. Judiciary and Judicial Procedure
Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
Chapter 55. Strategic Lawsuits Against Public Participation.

DC ST § 16-5505

§ 16-5505. Exemptions.

Effective: September 26, 2012

Currentness

This chapter shall not apply to any claim for relief brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct from which the claim arises is:

- (1) A representation of fact made for the purpose of promoting, securing, or completing sales or leases of, or commercial transactions in, the person's goods or services; and
- (2) The intended audience is an actual or potential buyer or customer.

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 6, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

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Division II. Judiciary and Judicial Procedure
Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
Chapter 55. Strategic Lawsuits Against Public Participation.

DC ST § 16-5505

§ 16-5505. Exemptions.

Effective: September 26, 2012

Currentness

This chapter shall not apply to any claim for relief brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct from which the claim arises is:

- (1) A representation of fact made for the purpose of promoting, securing, or completing sales or leases of, or commercial transactions in, the person's goods or services; and
- (2) The intended audience is an actual or potential buyer or customer.

Credits

(Mar. 31, 2011, D.C. Law 18-351, § 6, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

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DC CODE § 16-5505

Current through November 5, 2014

FLORIDA

West's Florida Statutes Annotated
Title XLV: Torts (Chapters 766-774) (Refs & Annos)
Chapter 768: Negligence (Refs & Annos)
Part I: General Provisions

West's F.S.A. § 768.295

768.295. Strategic Lawsuits Against Public Participation (SLAPP) suits by governmental entities prohibited

Effective: June 2, 2000

Currentness

(1) This section may be cited as the "Citizen Participation in Government Act."

(2) It is the intent of the Legislature to protect the right of Florida's citizens to exercise their rights to peacefully assemble, instruct their representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that "Strategic Lawsuits Against Public Participation" or "SLAPP" suits, as they are typically called, have increased over the last 30 years and are mostly filed by private industry and individuals. However, it is the public policy of this state that government entities not engage in SLAPP suits because such actions are inconsistent with the right of individuals to participate in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by governmental entities will preserve this fundamental state policy, preserve the constitutional rights of Florida citizens, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

(3) As used in this section, "governmental entity" or "government entity" means the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof.

(4) No governmental entity in this state shall file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against a person or entity without merit and solely because such person or entity has exercised the right to peacefully assemble, the right to instruct representatives, and the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(5) A person or entity sued by a governmental entity in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may petition the court for an order dismissing the action or granting final judgment in favor of that person or entity. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the governmental entity's lawsuit has been brought in violation of this section. The governmental entity shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from the governmental entity's violation of this act. The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(6) In any case filed by a governmental entity which is found by a court to be in violation of this section, the governmental entity shall report such finding and provide a copy of the court's order to the Attorney General no later than 30 days after such order is final. The Attorney General shall report any violation of this section by a governmental entity to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. A copy of such report shall be provided to the affected governmental entity.

Credits

Laws 2000, c. 2000-174, § 1, eff. June 2, 2000.

West's F. S. A. § 768.295, FL ST § 768.295

Current through Ch. 255 (End) of the 2014 2nd Reg. Sess. and Sp. "A" Sess. of the Twenty-Third Legislature

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GEORGIA

West's Code of Georgia Annotated
Title 9. Civil Practice
Chapter 11. Civil Practice Act (Refs & Annos)
Article 3. Pleadings and Motions

Ga. Code Ann., § 9-11-11.1

§ 9-11-11.1. Certification that claim arising from act in furtherance of right of free speech or to petition government for redress of grievances is well grounded in fact and warranted by law

Currentness

(a) The General Assembly of Georgia finds and declares that it is in the public interest to encourage participation by the citizens of Georgia in matters of public significance through the exercise of their constitutional rights of freedom of speech and the right to petition government for redress of grievances. The General Assembly of Georgia further finds and declares that the valid exercise of the constitutional rights of freedom of speech and the right to petition government for a redress of grievances should not be chilled through abuse of the judicial process.

(b) For any claim asserted against a person or entity arising from an act by that person or entity which could reasonably be construed as an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern, both the party asserting the claim and the party's attorney of record, if any, shall be required to file, contemporaneously with the pleading containing the claim, a written verification under oath as set forth in Code Section 9-10-113. Such written verification shall certify that the party and his or her attorney of record, if any, have read the claim; that to the best of their knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; that the act forming the basis for the claim is not a privileged communication under paragraph (4) of Code Section 51-5-7; and that the claim is not interposed for any improper purpose such as to suppress a person's or entity's right of free speech or right to petition government, or to harass, or to cause unnecessary delay or needless increase in the cost of litigation. If the claim is not verified as required by this subsection, it shall be stricken unless it is verified within ten days after the omission is called to the attention of the party asserting the claim. If a claim is verified in violation of this Code section, the court, upon motion or upon its own initiative, shall impose upon the persons who signed the verification, a represented party, or both an appropriate sanction which may include dismissal of the claim and an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.

(c) As used in this Code section, "act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern" includes any written or oral statement, writing, or petition made before or to a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, or any written or oral statement, writing, or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law.

(d) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a motion to dismiss or a motion to strike made pursuant to subsection (b) of this Code section. The motion shall be heard not more than 30 days after service unless the emergency matters before the court require a later hearing. The court, on noticed motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted notwithstanding this subsection.

(e) Nothing in this Code section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, statute, law, or rule.

(f) Attorney's fees and expenses under this Code section may be requested by motion at any time during the course of the action but not later than 45 days after the final disposition, including but not limited to dismissal by the plaintiff, of the action.

Credits

Laws 1996, p. 260, § 1; Laws 1998, p. 862, § 2.

Notes of Decisions (125)

Ga. Code Ann., § 9-11-11.1, GA ST § 9-11-11.1
Current through Acts 343 to 669 of the 2014 Regular Session.

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HAWAII

West's Hawaii Revised Statutes Annotated
Division 4. Courts and Judicial Proceedings
Title 34. Pleadings and Procedure
[Chapter 634F]. [Citizen Participation in Government]

HRS § 634F-1

[§ 634F-1]. Definitions

Currentness

As used in this chapter, unless the context otherwise requires:

“Governmental body” 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.

“Judicial claim” or “claim” includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

“Lacks substantial justification” means substantially frivolous, substantially groundless, or substantially vexatious.

“Motion” includes any motion to dismiss, for summary judgment, for judgment on the pleadings or to strike, a demurrer, or any other judicial pleading filed to dispose of a judicial claim.

“Moving party” means any person on whose behalf the motion described in section 634F-2 is filed seeking dismissal of the judicial claim.

“Person” includes any individual, corporation, association, organization, partnership, two or more persons having a joint or common interest, or other legal entity.

“Public participation” means any oral or written testimony submitted or provided to a governmental body during the course of a governmental proceeding.

“Responding party” means any person against whom the motion described in section 634F-2 is filed.

“SLAPP” means a strategic lawsuit against public participation and refers to a lawsuit that lacks substantial justification or is interposed for delay or harassment and that is solely based on the party's public participation before a governmental body.

Credits

Laws 2002, ch. 187, § 2.

Notes of Decisions (4)

HRS § 634F-1, HI ST § 634F-1

Current through Act 235 [End] of the 2014 Regular Session of the Hawai'i Legislature.

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West's Hawaii Revised Statutes Annotated
Division 4. Courts and Judicial Proceedings
Title 34. Pleadings and Procedure
[Chapter 634F]. [Citizen Participation in Government]

HRS § 634F-2

[§ 634F-2]. Required procedures; motion

Currentness

Notwithstanding any law to the contrary, including rules of court, upon the filing of any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or involves public participation and is a SLAPP lawsuit:

- (1) The motion shall be treated as a motion for judgment on the pleadings, matters outside the pleadings shall be excluded by the court, and the court shall expedite the hearing of the motion;
- (2) The moving party shall have a right:
 - (A) To an immediate appeal from a court order denying the motion; and
 - (B) To file an application for a writ of mandamus if the court fails to rule on the motion in an expedited fashion;
- (3) Discovery shall be suspended, pending decision on the motion and appeals;
- (4) The responding party shall:
 - (A) Without leave of court, have seven days to amend its pleadings to be pled with specificity, and shall include such supporting particulars as are peculiarly within the supporting pleader's knowledge; and
 - (B) Have the burden of proof and persuasion on the motion;
- (5) The court shall make its determination based upon the allegations contained in the pleadings;
- (6) The court shall grant the motion and dismiss the judicial claim, unless the responding party has demonstrated that more likely than not, the respondent's allegations do not constitute a SLAPP lawsuit as defined in section 634F-1;
- (7) Any governmental body to which the moving party's acts were directed or the attorney general in the case of a state governmental body, or the county attorney or corporation counsel in the case of a county governmental body may intervene to defend or otherwise support the moving party in the lawsuit;

(8) The court shall award a moving party who prevails on the motion, without regard to any limits under state law:

(A) Actual damages or \$5,000, whichever is greater;

(B) Costs of suit, including reasonable attorneys' and expert witness fees, incurred in connection with the motion; and

(C) Such additional sanctions upon the responding party, its attorneys, or law firms as the court determines shall be sufficient to deter repetition of the conduct and comparable conduct by others similarly situated; and

(9) Any person damaged or injured by reason of a claim filed in violation of their rights under this chapter may seek relief in the form of a claim for actual or compensatory damages, as well as punitive damages, attorneys' fees, and costs, from the person responsible.

Credits

Laws 2002, ch. 187, § 2.

Notes of Decisions (3)

H R S § 634F-2, HI ST § 634F-2

Current through Act 235 [End] of the 2014 Regular Session of the Hawai'i Legislature.

West's Hawai'i Revised Statutes Annotated
Division 4. Courts and Judicial Proceedings
Title 34. Pleadings and Procedure
[Chapter 634F]. [Citizen Participation in Government]

HRS § 634F-3

[§ 634F-3]. Relationship to other laws

Currentness

Nothing in this chapter shall limit or preclude any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

Credits

Laws 2002, ch. 187, § 2.

HRS § 634F-3, HI ST § 634F-3

Current through Act 235 [End] of the 2014 Regular Session of the Hawai'i Legislature.

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West's Hawai'i Revised Statutes Annotated
Division 4, Courts and Judicial Proceedings
Title 34, Pleadings and Procedure
[Chapter 634F] [Citizen Participation in Government]

HRS § 634F-4

[§ 634F-4]. Rule of construction

Currentness

This chapter shall be construed liberally to fully effectuate its purposes and intent.

Credits

Laws 2002, ch. 187, § 2.

H R S § 634F-4, HI ST § 634F-4

Current through Act 235 [End] of the 2014 Regular Session of the Hawai'i Legislature.

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ILLINOIS

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/1

110/1. Short title

Effective: August 28, 2007
Currentness

§ 1. Short title. This Act may be cited as the Citizen Participation Act.

Credits

P.A. 95-506, § 1, eff. Aug. 28, 2007.

Notes of Decisions (13)

735 I.L.C.S. 110/1, IL ST CH 735 § 110/1
Current through P.A. 98-1125 of the 2014 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated

Chapter 735. Civil Procedure

Act 110. Citizen Participation Act

735 ILCS 110/5

110/5. Public policy

Effective: August 28, 2007

Currentness

§ 5. Public policy. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence. The information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement, the operation of government, the making of public policy and decisions, and the continuation of representative democracy. The laws, courts, and other agencies of this State must provide the utmost protection for the free exercise of these rights of petition, speech, association, and government participation.

Civil actions for money damages have been filed against citizens and organizations of this State as a result of their valid exercise of their constitutional rights to petition, speak freely, associate freely, and otherwise participate in and communicate with government. There has been a disturbing increase in lawsuits termed "Strategic Lawsuits Against Public Participation" in government or "SLAPPs" as they are popularly called.

The threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights. This abuse of the judicial process can and has been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs.

It is in the public interest and it is the purpose of this Act to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government; to protect and encourage public participation in government to the maximum extent permitted by law; to establish an efficient process for identification and adjudication of SLAPPs; and to provide for attorney's fees and costs to prevailing movants.

Credits

P.A. 95-506, § 5, eff. Aug. 28, 2007.

Notes of Decisions (3)

735 I.L.C.S. 110/5, IL ST CH 735 § 110/5

Current through P.A. 98-1125 of the 2014 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735 Civil Procedure
Act 110, Citizen Participation Act

735 ILCS 110/10

110/10. Definitions

Effective: August 28, 2007
Currentness

§ 10. Definitions. In this Act:

“Government” includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, a subdivision of a state, or another public authority including the electorate.

“Person” includes any individual, corporation, association, organization, partnership, 2 or more persons having a joint or common interest, or other legal entity.

“Judicial claim” or “claim” include any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing alleging injury.

“Motion” includes any motion to dismiss, for summary judgment, or to strike, or any other judicial pleading filed to dispose of a judicial claim.

“Moving party” means any person on whose behalf a motion described in subsection (a) of Section 20 is filed seeking dismissal of a judicial claim.

“Responding party” means any person against whom a motion described in subsection (a) of Section 20 is filed.

Credits

P.A. 95-506, § 10, eff. Aug. 28, 2007.

Notes of Decisions (2)

735 I.L.C.S. 110/10, IL ST CH 735 § 110/10
Current through P.A. 98-1125 of the 2014 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735 Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/15

110/15. Applicability

Effective: August 28, 2007

Currentness

§ 15. Applicability. This Act applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government.

Acts in furtherance of the constitutional rights to petition, speech, association, and participation in government are immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome.

Credits

P.A. 95-506, § 15, eff. Aug. 28, 2007.

Notes of Decisions (64)

735 I.L.C.S. 110/15, IL ST CH 735 § 110/15

Current through P.A. 98-1125 of the 2014 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated

Chapter 735. Civil Procedure

Act 110. Citizen Participation Act

735 ILCS 110/20

110/20. Motion procedure and standards

Effective: August 28, 2007

Currentness

§ 20. Motion procedure and standards.

(a) On the filing of any motion as described in Section 15, a hearing and decision on the motion must occur within 90 days after notice of the motion is given to the respondent. An appellate court shall expedite any appeal or other writ, whether interlocutory or not, from a trial court order denying that motion or from a trial court's failure to rule on that motion within 90 days after that trial court order or failure to rule.

(b) Discovery shall be suspended pending a decision on the motion. However, discovery may be taken, upon leave of court for good cause shown, on the issue of whether the movants acts are not immunized from, or are not in furtherance of acts immunized from, liability by this Act.

(c) The court shall grant the motion and dismiss the judicial claim unless the court finds that the responding party has produced clear and convincing evidence that the acts of the moving party are not immunized from, or are not in furtherance of acts immunized from, liability by this Act.

Credits

P.A. 95-506, § 20, eff. Aug. 28, 2007.

Notes of Decisions (14)

735 I.L.C.S. 110/20, IL ST CH 735 § 110/20

Current through P.A. 98-1125 of the 2014 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735 Civil Procedure
Act 110 Citizen Participation Act

735 ILCS 110/25

110/25. Attorney's fees and costs

Effective: August 28, 2007
Currentness

§ 25. Attorney's fees and costs. The court shall award a moving party who prevails in a motion under this Act reasonable attorney's fees and costs incurred in connection with the motion.

Credits

P.A. 95-506, § 25, eff. Aug. 28, 2007.

Notes of Decisions (10)

735 I.L.C.S. 110/25, IL ST CH 735 § 110/25
Current through P.A. 98-1125 of the 2014 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/30

110/30. Construction of Act

Effective: August 28, 2007

Currentness

§ 30. Construction of Act.

(a) Nothing in this Act shall limit or preclude any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

(b) This Act shall be construed liberally to effectuate its purposes and intent fully.

Credits

P.A. 95-506, § 30, eff. Aug. 28, 2007.

735 I.L.C.S. 110/30, IL ST CH 735 § 110/30
Current through P.A. 98-1125 of the 2014 Reg. Sess.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 110. Citizen Participation Act

735 ILCS 110/35

110/35. Severability

Effective: August 28, 2007

Currentness

§ 35. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Credits

P.A. 95-506, § 35, eff. Aug. 28, 2007.

735 I.L.C.S. 110/35, IL ST CH 735 § 110/35

Current through P.A. 98-1125 of the 2014 Reg. Sess.

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INDIANA

West's Annotated Indiana Code
Title 34: Civil Procedure (Refs & Annos)
Article 7: General Provisions
Chapter 7: Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of
Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of
Indiana in Connection with a Public Issue

IC 34-7-7-1

34-7-7-1 Applicability

Currentness

Sec. 1. (a) This chapter applies to an act in furtherance of a person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue or an issue of public interest that arises after June 30, 1998. This chapter does not apply to an action that was filed and is pending before July 1, 1998.

(b) This chapter does not apply to an enforcement action brought in the name of the state of Indiana by the attorney general, a prosecuting attorney, or another attorney acting as a public prosecutor.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-1, IN ST 34-7-7-1

The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly.

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West's Annotated Indiana Code
Title 34. Civil Procedure (Refs & Annos)
Article 7. General Provisions
Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of
Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of
Indiana in Connection with a Public Issue

IC 34-7-7-2

34-7-7-2 "Act in furtherance of a person's right of petition or free speech under the Constitution of the
United States or the Constitution of the State of Indiana in connection with a public issue" defined

Currentness

Sec. 2. As used in this chapter, "act in furtherance of a person's right of petition or free speech under the Constitution of the
United States or the Constitution of the State of Indiana in connection with a public issue" includes any conduct in furtherance
of the exercise of the constitutional right of:

(1) petition; or

(2) free speech;

in connection with a public issue or an issue of public interest.

Credits

As added by P.L. 114-1998, SEC. 7.

I.C. 34-7-7-2, IN ST 34-7-7-2

The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular
Technical Session of the 118th General Assembly.

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West's Annotated Indiana Code
Title 34: Civil Procedure (Refs & Annos)
Article 7: General Provisions
Chapter 7: Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of
Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of
Indiana in Connection with a Public Issue

IC 34-7-7-3

34-7-7-3 "Claim" defined

Currentness

Sec. 3. As used in this chapter, "claim" means:

- (1) a lawsuit;
- (2) a cause of action;
- (3) a petition;
- (4) a complaint;
- (5) a cross claim;
- (6) a counterclaim; or
- (7) any other judicial pleading or filing;

that requests legal or equitable relief.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-3, IN ST 34-7-7-3

The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly.

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West's Annotated Indiana Code
Title 34: Civil Procedure (Refs & Annos)
Article 7: General Provisions
Chapter 7: Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of
Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of
Indiana in Connection with a Public Issue

IC 34-7-7-4

34-7-7-4 "Person" defined

Currentness

Sec. 4. As used in this chapter, "person" means any of the following:

- (1) An individual.
- (2) Any other legal entity.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-4, IN ST 34-7-7-4

The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly.

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West's Annotated Indiana Code
Title 34. Civil Procedure (Refs & Annos)
Article 7. General Provisions
Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of
Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of
Indiana in Connection with a Public Issue

IC 34-7-7-5

34-7-7-5 Conditions under which rights of petition or free speech may be used as defense

Currentness

Sec. 5. It is a defense in a civil action against a person that the act or omission complained of is:

- (1) an act or omission of that person in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana in connection with a public issue; and
- (2) an act or omission taken in good faith and with a reasonable basis in law and fact.

Credits

As added by P.L. 114-1998, SEC. 7.

Notes of Decisions (18)

I.C. 34-7-7-5, IN ST 34-7-7-5

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West's Annotated Indiana Code
Title 34. Civil Procedure (Refs & Annos)
Article 7. General Provisions
Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of
Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of
Indiana in Connection with a Public Issue

IC 34-7-7-6

34-7-7-6 Discovery; stay pending motion to dismiss

Currentness

Sec. 6. All discovery proceedings in the action are stayed upon the filing of a motion to dismiss made under this chapter, except for discovery relevant to the motion.

Credits

As added by P.L.114-1998, SEC.7.

I.C. 34-7-7-6, IN ST 34-7-7-6

The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly.

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West's Annotated Indiana Code
Title 34. Civil Procedure (Refs & Annos)
Article 7. General Provisions
Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of
Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of
Indiana in Connection with a Public Issue

IC 34-7-7-7

34-7-7-7 Costs and attorney fees; defendant successful in motion to dismiss

Currentness

Sec. 7. A prevailing defendant on a motion to dismiss made under this chapter is entitled to recover reasonable attorney's fees and costs.

Credits

As added by P.L. 114-1998, SEC. 7.

Notes of Decisions (4)

L.C. 34-7-7-7, IN ST 34-7-7-7

The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly.

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West's Annotated Indiana Code
Title 34. Civil Procedure (Refs & Annos)
Article 7. General Provisions
Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of
Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of
Indiana in Connection with a Public Issue

IC 34-7-7-8

34-7-7-8 Costs and attorney fees; defendant unsuccessful in motion to dismiss

Currentness

Sec. 8. If a court finds that a motion to dismiss made under this chapter is:

(1) frivolous; or

(2) solely intended to cause unnecessary delay;

the plaintiff is entitled to recover reasonable attorney's fees and costs to answer the motion.

Credits

As added by P.L. 114-1998, SEC.7.

I.C. 34-7-7-8, IN ST 34-7-7-8

The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly.

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West's Annotated Indiana Code
Title 34. Civil Procedure (Refs & Annos)
Article 7. General Provisions
Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of
Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of
Indiana in Connection with a Public Issue

IC 34-7-7-9

34-7-7-9 Motion to dismiss; procedures and determination

Currentness

Sec. 9. (a) If a person files a motion to dismiss under this chapter, the court in which the motion is filed shall do the following:

(1) Treat the motion as a motion for summary judgment.

(2) Establish a reasonable time period, not to exceed one hundred eighty (180) days, to expedite and rule on the motion.

(3) Specify time limits for the discovery of evidence to respond to material issues raised in the motion.

(b) The person who files a motion to dismiss must state with specificity the public issue or issue of public interest that prompted the act in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana.

(c) The court shall make its determination based on the facts contained in the pleadings and affidavits filed and discovered under the expedited proceeding.

(d) The motion to dismiss shall be granted if the court finds that the person filing the motion has proven, by a preponderance of the evidence, that the act upon which the claim is based is a lawful act in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Indiana.

(e) The court must act on the motion to dismiss within thirty (30) days from the submission of evidence made by motion to the court that is discovered within the specific expedited time period allowed.

(f) If a court does not act within the thirty (30) days provided in subsection (e), the person filing the motion may appeal the matter based on the court's failure to rule on the motion.

Credits

As added by P.L.114-1998, SEC.7.

Notes of Decisions (3)

I.C. 34-7-7-9, IN ST 34-7-7-9

The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly.

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West's Annotated Indiana Code
Title 34. Civil Procedure (Refs & Annos)
Article 7. General Provisions
Chapter 7. Defense in Civil Actions Against Persons Who Act in Furtherance of the Person's Right of
Petition or Free Speech Under the Constitution of the United States or the Constitution of the State of
Indiana in Connection with a Public Issue

IC 34-7-7-10

34-7-7-10 Remedy in addition to other remedies provided by law

Currentness

Sec. 10. The remedy provided by this chapter is in addition to other remedies provided by law.

Credits

As added by P.L. 114-1998, SEC. 7.

I.C. 34-7-7-10, IN ST 34-7-7-10

The statutes and Constitution are current with all 2014 Public Laws of the 2014 Second Regular Session and Second Regular Technical Session of the 118th General Assembly.

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LOUISIANA

West's Louisiana Statutes Annotated
Louisiana Code of Civil Procedure (Refs & Annos)
Book II. Ordinary Proceedings
Title I. Pleading (Refs & Annos)
Chapter 4. Written Motions (Refs & Annos)

LSA-C.C.P. Art. 971

Art. 971. Special motion to strike

Effective: August 1, 2012

Currentness

A. (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim.

(2) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability of success on the claim, that determination shall be admissible in evidence at any later stage of the proceeding.

B. In any action subject to Paragraph A of this Article, a prevailing party on a special motion to strike shall be awarded reasonable attorney fees and costs.

C. (1) The special motion may be filed within ninety days of service of the petition, or in the court's discretion, at any later time upon terms the court deems proper.

(2) If the plaintiff voluntarily dismisses the action prior to the running of the delays for filing an answer, the defendant shall retain the right to file a special motion to strike within the delays provided by Subparagraph (1) of this Paragraph, and the motion shall be heard pursuant to the provisions of this Article.

(3) The motion shall be noticed for hearing not more than thirty days after service unless the docket conditions of the court require a later hearing.

D. All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this Article. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. Notwithstanding the provisions of this Paragraph, the court, on noticed motion and for good cause shown, may order that specified discovery be conducted.

E. This Article shall not apply to any enforcement action brought on behalf of the state of Louisiana by the attorney general, district attorney, or city attorney acting as a public prosecutor.

F. As used in this Article, the following terms shall have the meanings ascribed to them below, unless the context clearly indicates otherwise:

(1) "Act in furtherance of a person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue" includes but is not limited to:

(a) Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.

(b) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official body authorized by law.

(c) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.

(d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(2) "Petition" includes either a petition or a reconventional demand.

(3) "Plaintiff" includes either a plaintiff or petitioner in a principal action or a plaintiff or petitioner in reconvention.

(4) "Defendant" includes either a defendant or respondent in a principal action or a defendant or respondent in reconvention.

Credits

Added by Acts 1999, No. 734, § 1. Amended by Acts 2004, No. 232, § 1; Acts 2012, No. 449, § 1.

Editors' Notes

LEGISLATIVE INTENT AND CONSTRUCTION--ACTS 1999, NO. 734

<Section 2 of Acts 1999, No. 734 (§ 1 of which enacted this article) provided:>

<"Section 2. The legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. The legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, it is the intention of the legislature that the Article enacted pursuant to this Act shall be construed broadly.">

Notes of Decisions (118)

LSA-C.C.P. Art. 971, LA C.C.P. Art. 971

Article 1 of the Constitution, Titles 32, 40, 44, 46, and 56 of the Revised Statutes, as they relate to the Criminal Law Handbook, are current through the 2014 Regular Session. Titles 1, 2, 4, 8, 14, 15, 16, 19, 21, 25, 27, 31, 34, 35, 41, 43, and 51 of the Revised Statutes, the Code of Criminal Procedure, Code of Evidence and Children's Code are current through the 2014 Regular Session. Titles 10 and 45 of the Revised Statutes, the Civil Code and Code of Civil Procedure are current through the 2014 Regular Session with Acts effective on or before December 31, 2014. All other statutes and codes and Constitution Articles are current through the end of the 2013 Regular Session.

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MAINE

Maine Revised Statutes Annotated
Title 14. Court Procedure--Civil
Part 2. Proceedings Before Trial
Chapter 203. Process (Refs & Annos)
Subchapter 1. General Provisions

14 M.R.S.A. § 556

§ 556. Special motion to dismiss

Effective: August 30, 2012

Currentness

When a moving party asserts that the civil claims, counterclaims or cross claims against the moving party are based on the moving party's exercise of the moving party's right of petition under the Constitution of the United States or the Constitution of Maine, the moving party may bring a special motion to dismiss. The special motion may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. The court shall grant the special motion, unless the party against whom the special motion is made shows that the moving party's exercise of its right of petition was devoid of any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual injury to the responding party. In making its determination, the court shall consider the pleading and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

The Attorney General on the Attorney General's behalf or on behalf of any government agency or subdivision to which the moving party's acts were directed may intervene to defend or otherwise support the moving party on the special motion.

All discovery proceedings are stayed upon the filing of the special motion under this section, except that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery remains in effect until notice of entry of the order ruling on the special motion.

The special motion to dismiss may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms the court determines proper.

If the court grants a special motion to dismiss, the court may award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters. This section does not affect or preclude the right of the moving party to any remedy otherwise authorized by law.

As used in this section, "a party's exercise of its right of petition" means any written or oral statement made before or submitted to a legislative, executive or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

Credits

1995, c. 413, § 1; 2011, c. 559, § A-13.

Notes of Decisions (52)

14 M. R. S. A. § 556, ME ST T. 14 § 556

Current with legislation through the 2013 Second Regular Session of the 126th Legislature. The Second Regular Session convened January 8, 2014 and adjourned May 2, 2014. The general effective date is August 1, 2014.

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MARYLAND

West's Annotated Code of Maryland
Courts and Judicial Proceedings
Title 5. Limitations, Prohibited Actions, and Immunities (Refs & Annos)
Subtitle 8. Immunities and Prohibited Actions—Miscellaneous (Refs & Annos)

MD Code, Courts and Judicial Proceedings, § 5-807

§ 5-807. Strategic lawsuits against public participation (SLAPP)

Effective: October 1, 2010
Currentness

SLAPP suit defined

(a) In this section, "SLAPP suit" means a strategic lawsuit against public participation.

SLAPP suits, generally

(b) A lawsuit is a SLAPP suit if it is:

- (1) Brought in bad faith against a party who has communicated with a federal, State, or local government body or the public at large to report on, comment on, rule on, challenge, oppose, or in any other way exercise rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern;
- (2) Materially related to the defendant's communication; and
- (3) 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.

Communications with federal, State, or local government bodies or the public

(c) A defendant in a SLAPP suit is not civilly liable for communicating with a federal, State, or local government body or the public at large, if the defendant, without constitutional malice, reports on, comments on, rules on, challenges, opposes, or in any other way exercises rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern.

Motions to dismiss or stay proceedings

(d) A defendant in an alleged SLAPP suit may move to:

- (1) Dismiss the alleged SLAPP suit, in which case the court shall hold a hearing on the motion to dismiss as soon as practicable; or
- (2) Stay all court proceedings until the matter about which the defendant communicated to the government body or the public at large is resolved.

Construction and application of section

(e) This section:

- (1) Is applicable to SLAPP suits notwithstanding any other law or rule; and
- (2) Does not diminish any equitable or legal right or remedy otherwise available to a defendant in a SLAPP suit.

Credits

Added by Acts 2004, c. 279, § 1, eff. Oct. 1, 2004; Acts 2004, c. 280, § 1, eff. Oct. 1, 2004. Amended by Acts 2010, c. 368, § 1, eff. Oct. 1, 2010; Acts 2010, c. 369, § 1, eff. Oct. 1, 2010.

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MD Code, Courts and Judicial Proceedings, § 5-807, MD CTS & JUD PRO § 5-807
Current through the 2014 Regular Session of the General Assembly.

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MASSACHUSETTS

Massachusetts General Laws Annotated
Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)
Title II. Actions and Proceedings Therein (Ch. 223-236)
Chapter 231. Pleading and Practice (Refs & Annos)

M.G.L.A. 231 § 59H

§ 59H. Strategic litigation against public participation; special motion to dismiss

Currentness

In any case in which a party asserts that the civil claims, counterclaims, or cross claims against said party are based on said party's exercise of its right of petition under the constitution of the United States or of the commonwealth, said party may bring a special motion to dismiss. The court shall advance any such special motion so that it may be heard and determined as expeditiously as possible. The court shall grant such special motion, unless the party against whom such special motion is made shows that: (1) the moving party's exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law and (2) the moving party's acts caused actual injury to the responding party. In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

The attorney general, on his behalf or on behalf of any government agency or subdivision to which the moving party's acts were directed, may intervene to defend or otherwise support the moving party on such special motion.

All discovery proceedings shall be stayed upon the filing of the special motion under this section; provided, however, that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery shall remain in effect until notice of entry of the order ruling on the special motion.

Said special motion to dismiss may be filed within sixty days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper.

If the court grants such special motion to dismiss, the court shall award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters. Nothing in this section shall affect or preclude the right of the moving party to any remedy otherwise authorized by law.

As used in this section, the words "a party's exercise of its right of petition" shall mean any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive, or judicial body or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

Credits

Added by St.1994, c. 283, § 1. Amended by St.1996, c. 450, § 245.

Notes of Decisions (210)

§ 59H. Strategic litigation against public participation; special..., MA ST 231 § 59H

M.G.L.A. 231 § 59H, MA ST 231 § 59H
Current through Chapter 379 of the 2014 2nd Annual Session

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MINNESOTA

Minnesota Statutes Annotated
Declaratory, Corrective and Administrative Remedies (Ch. 553-569)
Chapter 554: Free Speech; Participation in Government

M.S.A. § 554.01

554.01. Definitions

Currentness

Subdivision 1. Scope. The definitions in this section apply to this chapter.

Subd. 2. Government. “Government” includes a branch, department, agency, official, employee, agent, or other person with authority to act on behalf of the federal government, this state, or any political subdivision of this state, including municipalities and their boards, commissions, and departments, or other public authority.

Subd. 3. Judicial claim; claim. “Judicial claim” or “claim” includes any civil lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing seeking damages for an alleged injury. “Judicial claim” does not include a claim solely for injunctive relief.

Subd. 4. Motion. “Motion” includes any motion to dismiss, motion for summary judgment, or any other judicial pleading filed to dispose of a judicial claim.

Subd. 5. Moving party. “Moving party” means any person on whose behalf the motion described in section 554.02, subdivision 1, is filed seeking dismissal of an action under this chapter.

Subd. 6. Public participation. “Public participation” means speech or lawful conduct that is genuinely aimed in whole or in part at procuring favorable government action.

Subd. 7. Responding party. “Responding party” means any person against whom a motion described in section 554.02, subdivision 1, is filed.

Credits

Laws 1994, c. 566, § 1.

Notes of Decisions (9)

M. S. A. § 554.01, MN ST § 554.01

Current with legislation through the end of the 2014 Regular Session.

Minnesota Statutes Annotated
Declaratory, Corrective and Administrative Remedies (Ch. 553-569)
Chapter 554. Free Speech; Participation in Government

M.S.A. § 554.02

554.02. Protection of citizens to participate in government

Currentness

Subdivision 1. Applicability. This section applies to any motion in a judicial proceeding to dispose of a judicial claim on the grounds that the claim materially relates to an act of the moving party that involves public participation.

Subd. 2. Procedure. On the filing of any motion described in subdivision 1:

(1) discovery must be suspended pending the final disposition of the motion, including any appeal; provided that the court may, on motion and after a hearing and for good cause shown, order that specified and limited discovery be conducted;

(2) the responding party has the burden of proof, of going forward with the evidence, and of persuasion on the motion;

(3) the court shall grant the motion and dismiss the judicial claim unless the court finds that the responding party has produced clear and convincing evidence that the acts of the moving party are not immunized from liability under section 554.03; and

(4) any governmental body to which the moving party's acts were directed or the attorney general's office may intervene in, defend, or otherwise support the moving party.

Credits

Laws 1994, c. 566, § 2.

Notes of Decisions (10)

M. S. A. § 554.02, MN ST § 554.02

Current with legislation through the end of the 2014 Regular Session.

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Minnesota Statutes Annotated
Declaratory, Corrective and Administrative Remedies (Ch. 553-569)
Chapter 554. Free Speech; Participation in Government

M.S.A. § 554.03

554.03. Immunity

Currentness

Lawful conduct or speech that is genuinely aimed in whole or in part at procuring favorable government action is immune from liability, unless the conduct or speech constitutes a tort or a violation of a person's constitutional rights.

Credits

Laws 1994, c. 566, § 3.

Notes of Decisions (25)

M. S. A. § 554.03, MN ST § 554.03

Current with legislation through the end of the 2014 Regular Session.

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Minnesota Statutes Annotated
Declaratory, Corrective and Administrative Remedies (Ch. 553-569)
Chapter 554. Free Speech; Participation in Government

M.S.A. § 554.04

554.04. Fees and damages

Currentness

Subdivision 1. Attorney fees and costs. The court shall award a moving party who prevails in a motion under this chapter reasonable attorney fees and costs associated with the bringing of the motion.

Subd. 2. Damages. (a) A moving party may petition the court for damages under this section in conjunction with a motion under this chapter.

(b) If a motion under this chapter is granted and the moving party demonstrates that the respondent brought the cause of action in the underlying lawsuit for the purpose of harassment, to inhibit the moving party's public participation, to interfere with the moving party's exercise of protected constitutional rights, or otherwise wrongfully injure the moving party, the court shall award the moving party actual damages. The court may award the moving party punitive damages under section 549.20. A motion to amend the pleadings under section 549.191 is not required under this section, but the claim for punitive damages must meet all other requirements of section 549.191.

Credits

Laws 1994, c. 566, § 4. Amended by Laws 1995, c. 186, § 98.

M. S. A. § 554.04, MN ST § 554.04

Current with legislation through the end of the 2014 Regular Session.

Minnesota Statutes Annotated
Declaratory, Corrective and Administrative Remedies (Ch. 553-569)
Chapter 554: Free Speech, Participation in Government

M.S.A. § 554.045

554.045. Action in district court

Currentness

A person may bring an action under this section in state district court against a respondent who has brought a claim in federal court that materially relates to public participation by the person. If the person demonstrates that the respondent's action in federal court was brought for the purpose of harassment, to inhibit the person's public participation, to interfere with the person's exercise of protected constitutional rights, or otherwise wrongfully injure the person, the court shall award the person actual damages and reasonable attorney fees and costs. The court may award the person punitive damages under section 549.20.

Credits

Laws 1997, c. 209, § 1.

M. S. A. § 554.045, MN ST § 554.045

Current with legislation through the end of the 2014 Regular Session.

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Minnesota Statutes Annotated
Declaratory, Corrective and Administrative Remedies (Ch. 553-569)
Chapter 554. Free Speech; Participation in Government

M.S.A. § 554.05

554.05. Relationships to other law

Currentness

Nothing in this chapter limits or precludes any rights the moving party or responding party may have under any other constitutional, statutory, case, or common law, or rule.

Credits

Laws 1994, c. 566, § 5.

M. S. A. § 554.05, MN ST § 554.05

Current with legislation through the end of the 2014 Regular Session.

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MISSOURI

Vernon's Annotated Missouri Statutes
Title XXXVI, Statutory Actions and Torts
Chapter 537, Torts and Actions for Damages (Refs & Annos)

V.A.M.S. 537.528

537.528. Actions for conduct or speech at public hearings and
meetings to be considered on expedited basis--procedural issues

Effective: August 28, 2012

Currentness

1. Any action against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting, in a quasi-judicial proceeding before a tribunal or decision-making body of the state or any political subdivision of the state is subject to a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation. Upon the filing of any special motion described in this subsection, all discovery shall be suspended pending a decision on the motion by the court and the exhaustion of all appeals regarding the special motion.
2. If the rights afforded by this section are raised as an affirmative defense and if a court grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment filed within ninety days of the filing of the moving party's answer, the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action. If the court finds that a special motion to dismiss or motion for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the party prevailing on the motion.
3. Any party shall have the right to an expedited appeal from a trial court order on the special motions described in subsection 2 of this section or from a trial court's failure to rule on the motion on an expedited basis.
4. As used in this section, a "**public meeting in a quasi-judicial proceeding**" means and includes any meeting established and held by a state or local governmental entity, including without limitations meetings or presentations before state, county, city, town or village councils, planning commissions, review boards or commissions.
5. Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation.
6. If any provision of this section or the application of any provision of this section to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.
7. The provisions of this section shall apply to all causes of actions.

Credits

(L.2004, S.B. No. 807, § A(§ 537.800). Amended by L.2012, S.B. No. 628, § A.)

Notes of Decisions (6)

V. A. M. S. 537.528, MO ST 537.528

Statutes are current through the end of the 2014 Second Regular Session of the 97th General Assembly, pending corrections received from the Missouri Revisor of Statutes. Constitution is current through the November 6, 2012 General Election.

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NEBRASKA

West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,241

25-21,241. Legislative findings and declarations

Currentness

The Legislature finds and declares that:

- (1) It is the policy of the state that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence. The information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement, the operation of government, the making of public policy and decisions, and the continuation of representative democracy. The laws, courts, and other agencies of this state must provide the utmost protection for the free exercise of these petition, speech, and association rights;
- (2) Civil actions for damages have been filed against citizens and organizations of this state as a result of the valid exercise of their constitutional rights to petition, speech, and association. There has been a disturbing increase in such strategic lawsuits against public participation in government;
- (3) The threat of strategic lawsuits against public participation, personal liability, and burdensome litigation costs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights. This abuse of the judicial process can and has been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs; and
- (4) It is in the public interest and it is the purpose of sections 25-21,241 to 25-21,246 to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speech, and association, to protect and encourage public participation in government to the maximum extent permitted by law, to establish an efficient process for identification and adjudication of strategic lawsuits against public participation, and to provide for costs, attorney's fees, and actual damages.

Credits

Laws 1994, LB 665, § 1.

Notes of Decisions (1)

Neb. Rev. St. § 25-21,241, NE ST § 25-21,241
Current through End of 2014 Regular Session

West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,242

25-21,242. Terms, defined

Currentness

For purposes of sections 25-21,241 to 25-21,246:

- (1) Action involving public petition and participation shall mean an action, claim, cross-claim, or counterclaim for damages that is brought by a public applicant or permittee and is materially related to any efforts of the defendant to report on, comment on, rule on, challenge, or oppose the application or permission;
- (2) Communication shall mean any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention, or other expression;
- (3) Government body shall mean a city, a village, a political subdivision, a state agency, the state, the federal government, or a public authority, board, or commission; and
- (4) Public applicant or permittee shall mean any person who has applied for or obtained a permit, zoning change, lease, license, certificate, or other entitlement for use or permission to act from any government body or any person with an interest, connection, or affiliation with such person that is materially related to such application or permission.

Credits

Laws 1994, LB 665, § 2.

Neb. Rev. St. § 25-21,242, NE ST § 25-21,242

Current through End of 2014 Regular Session

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West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,243

25-21,243. Defendant in action involving public petition and participation; action authorized; costs, attorney's fees, and damages; authorized; waiver; section, how construed

Currentness

(1) A defendant in an action involving public petition and participation may maintain an action, claim, cross-claim, or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action. Costs and attorney's fees may be recovered upon a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law. Other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of petition, speech, or association rights.

(2) The right to bring an action, claim, cross-claim, or counterclaim under this section may be waived only if it is waived specifically.

(3) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by common law or by statute, rule, or regulation.

Credits

Laws 1994, LB 665, § 3.

Notes of Decisions (3)

Neb. Rev. St. § 25-21,243, NE ST § 25-21,243

Current through End of 2014 Regular Session

West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,244

25-21,244. Action involving public petition and participation;
damages; standard of proof; section, how construed

Currentness

(1) In an action involving public petition and participation, the plaintiff may recover damages, including costs and attorney's fees, only if he or she, in addition to all other necessary elements, has established by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, if the truth or falsity of such communication is material to the cause of action at issue.

(2) Nothing in this section shall be construed to limit any constitutional, statutory, or common-law protections of defendants to actions involving public petition and participation.

Credits

Laws 1994, LB 665, § 4.

Neb. Rev. St. § 25-21,244, NE ST § 25-21,244
Current through End of 2014 Regular Session

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West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,245

25-21,245. Action involving public petition and participation; motion to dismiss; when granted; duty to expedite

Currentness

A motion to dismiss based on a failure to state a cause of action shall be granted when the moving party demonstrates that the action, claim, cross-claim, or counterclaim subject to the motion is an action involving public petition and participation unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification, or reversal of existing law. The court shall expedite and grant preference in the hearing of such motion.

Credits

Laws 1994, LB 665, § 5.

Neb. Rev. St. § 25-21,245, NE ST § 25-21,245

Current through End of 2014 Regular Session

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West's Revised Statutes of Nebraska Annotated
Chapter 25. Courts; Civil Procedure
Article 21. Actions and Proceedings in Particular Cases
(BB) Public Petition and Participation

Neb.Rev.St. § 25-21,246

25-21,246. Action involving public petition and participation; motion for summary judgment; when granted

Currentness

A motion for summary judgment shall be granted when the moving party has demonstrated that the action, claim, cross-claim, or counterclaim subject to the motion is an action involving public petition and participation unless the party responding to the motion demonstrates that the action, claim, cross-claim, or counterclaim has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification, or reversal of existing law. The court shall grant preference in the hearing of such motion.

Credits

Laws 1994, LB 665, § 6.

Neb. Rev. St. § 25-21,246, NE ST § 25-21,246

Current through End of 2014 Regular Session

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NEVADA

West's Nevada Revised Statutes Annotated
Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)
Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons (Refs & Annos)
Liability of Persons Who Engage in Right to Petition or Free Speech in Direct Connection with an Issue
of Public Concern (Refs & Annos)

N.R.S. 41.635

41.635. Definitions

Currentness

As used in NRS 41.635 to 41.670, inclusive, unless the context otherwise requires, the words and terms defined in NRS 41.637 and 41.640 have the meanings ascribed to them in those sections.

Credits

Added by Laws 1997, p. 1364. Amended by Laws 1997, p. 2593.

N. R. S. 41.635, NV ST 41.635

Current through End of 28th Special Session (2014)

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West's Nevada Revised Statutes Annotated
Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)
Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons (Refs & Annos)
Liability of Persons Who Engage in Right to Petition or Free Speech in Direct Connection with an Issue of Public Concern (Refs & Annos)

N.R.S. 41.637

41.637. "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" defined

Effective: October 1, 2013

Currentness

"Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:

1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;
2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
4. Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood.

Credits

Added by Laws 1997, p. 1364. Amended by Laws 1997, p. 2593; Laws 2013, c. 176, § 1.

Notes of Decisions (1)

N. R. S. 41.637, NV ST 41.637

Current through End of 28th Special Session (2014)

West's Nevada Revised Statutes Annotated
Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)
Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons (Refs & Annos)
Liability of Persons Who Engage in Right to Petition or Free Speech in Direct Connection with an Issue
of Public Concern (Refs & Annos)

N.R.S. 41.640

41.640. "Political subdivision" defined

Currentness

"Political subdivision" has the meaning ascribed to it in NRS 41.0305.

Credits

Added by Laws 1993, p. 2848. Amended by Laws 1997, pp. 1365, 2593.

N. R. S. 41.640, NV ST 41.640

Current through End of 28th Special Session (2014)

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West's Nevada Revised Statutes Annotated

Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)

Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons (Refs & Annos)

Liability of Persons Who Engage in Right to Petition or Free Speech in Direct Connection with an Issue of Public Concern (Refs & Annos)

N.R.S. 41.650

41.650. Limitation of liability

Effective: October 1, 2013

Currentness

A person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication.

Credits

Added by Laws 1993, p. 2848. Amended by Laws 1997, pp. 1365, 2593; Laws 2013, c. 176, § 2.

Notes of Decisions (4)

N. R. S. 41.650, NV ST 41.650

Current through End of 28th Special Session (2014)

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West's Nevada Revised Statutes Annotated
Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)
Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons (Refs & Annos)
Liability of Persons Who Engage in Right to Petition or Free Speech in Direct Connection with an Issue
of Public Concern (Refs & Annos)

N.R.S. 41.660

41.660. Attorney General or chief legal officer of political subdivision may defend or provide support to person sued for engaging in right to petition or free speech in direct connection with an issue of public concern; special counsel; filing special motion to dismiss; stay of discovery; adjudication upon merits

Effective: October 1, 2013
Currentness

1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern:

(a) The person against whom the action is brought may file a special motion to dismiss; and

(b) The Attorney General or the chief legal officer or attorney of a political subdivision of this State may defend or otherwise support the person against whom the action is brought. If the Attorney General or the chief legal officer or attorney of a political subdivision has a conflict of interest in, or is otherwise disqualified from, defending or otherwise supporting the person, the Attorney General or the chief legal officer or attorney of a political subdivision may employ special counsel to defend or otherwise support the person.

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;

(b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has established by clear and convincing evidence a probability of prevailing on the claim;

(c) If the court determines that the plaintiff has established a probability of prevailing on the claim pursuant to paragraph (b), ensure that such determination will not:

(1) Be admitted into evidence at any later stage of the underlying action or subsequent proceeding; or

- (2) Affect the burden of proof that is applied in the underlying action or subsequent proceeding;
 - (d) Consider such evidence, written or oral, by witnesses or affidavits, as may be material in making a determination pursuant to paragraphs (a) and (b);
 - (e) Stay discovery pending:
 - (1) A ruling by the court on the motion; and
 - (2) The disposition of any appeal from the ruling on the motion; and
 - (f) Rule on the motion within 7 judicial days after the motion is served upon the plaintiff.
4. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

Credits

Added by Laws 1993, p. 2848. Amended by Laws 1997, pp. 1365, 2593; Laws 2013, c. 176, § 3.

Notes of Decisions (4)

N. R. S. 41.660, NV ST 41.660
Current through End of 28th Special Session (2014)

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West's Nevada Revised Statutes Annotated
Title 3. Remedies; Special Actions and Proceedings (Chapters 28-43)
Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons (Refs & Annos)
Liability of Persons Who Engage in Right to Petition or Free Speech in Direct Connection with an Issue
of Public Concern (Refs & Annos)

N.R.S. 41.670

41.670. Award of reasonable costs, attorney's fees and monetary relief under certain circumstances; separate action for damages; sanctions for frivolous or vexatious special motion to dismiss; interlocutory appeal

Effective: October 1, 2013

Currentness

1. If the court grants a special motion to dismiss filed pursuant to NRS 41.660:

(a) The court shall award reasonable costs and attorney's fees to the person against whom the action was brought, except that the court shall award reasonable costs and attorney's fees to this State or to the appropriate political subdivision of this State if the Attorney General, the chief legal officer or attorney of the political subdivision or special counsel provided the defense for the person pursuant to NRS 41.660.

(b) The court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount of up to \$10,000 to the person against whom the action was brought.

(c) The person against whom the action is brought may bring a separate action to recover:

(1) Compensatory damages;

(2) Punitive damages; and

(3) Attorney's fees and costs of bringing the separate action.

2. If the court denies a special motion to dismiss filed pursuant to NRS 41.660 and finds that the motion was frivolous or vexatious, the court shall award to the prevailing party reasonable costs and attorney's fees incurred in responding to the motion.

3. In addition to reasonable costs and attorney's fees awarded pursuant to subsection 2, the court may award:

(a) An amount of up to \$10,000; and

(b) Any such additional relief as the court deems proper to punish and deter the filing of frivolous or vexatious motions.

4. If the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court.

Credits

Added by Laws 1993, p. 2848. Amended by Laws 1997, pp. 1366, 2593; Laws 2013, c. 176, § 4.

Notes of Decisions (5)

N. R. S. 41.670, NV ST 41.670

Current through End of 28th Special Session (2014)

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NEW MEXICO

West's New Mexico Statutes Annotated
Chapter 38. Trials
Article 2. Pleadings and Motions

N. M. S. A. 1978, § 38-2-9.1

§ 38-2-9.1. Special motion to dismiss unwarranted or specious lawsuits; procedures; sanctions; severability

Currentness

A. Any action seeking money damages against a person for conduct or speech undertaken or made in connection with a public hearing or public meeting in a quasi-judicial proceeding before a tribunal or decision-making body of any political subdivision of the state is subject to a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment that shall be considered by the court on a priority or expedited basis to ensure the early consideration of the issues raised by the motion and to prevent the unnecessary expense of litigation.

B. If the rights afforded by this section are raised as an affirmative defense and if a court grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment filed within ninety days of the filing of the moving party's answer, the court shall award reasonable attorney fees and costs incurred by the moving party in defending the action. If the court finds that a special motion to dismiss or motion for summary judgment is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to the party prevailing on the motion.

C. Any party shall have the right to an expedited appeal from a trial court order on the special motions described in Subsection B of this section or from a trial court's failure to rule on the motion on an expedited basis.

D. As used in this section, a "public meeting in a quasi-judicial proceeding" means and includes any meeting established and held by a state or local governmental entity, including without limitations, meetings or presentations before state, city, town or village councils, planning commissions, review boards or commissions.

E. Nothing in this section limits or prohibits the exercise of a right or remedy of a party granted pursuant to another constitutional, statutory, common law or administrative provision, including civil actions for defamation or malicious abuse of process.

F. If any provision of this section or the application of any provision of this section to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Credits

L. 2001, Ch. 218, § 2.

Notes of Decisions (1)

NMSA 1978, § 38-2-9.1, NM ST § 38-2-9.1

§ 38-2-9.1. Special motion to dismiss unwarranted or specious..., NM ST § 38-2-9.1

Current through the end of the Second Regular Session of the 51st Legislature (2014).

End of Document

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NEW YORK

McKinney's Consolidated Laws of New York Annotated
Civil Rights Law (Refs & Annos)
Chapter 6. Of the Consolidated Laws
Article 7. Miscellaneous Rights and Immunities

McKinney's Civil Rights Law § 70-a

§ 70-a. Actions involving public petition and participation; recovery of damages

Currentness

1. A defendant in an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of this article, may maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

(a) costs and attorney's fees may be recovered upon a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law;

(b) other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights; and

(c) punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.

2. The right to bring an action under this section can be waived only if it is waived specifically.

3. Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by common law, or by statute, law or rule.

Credits

(Added L.1992, c. 767, § 2.)

Notes of Decisions (24)

McKinney's Civil Rights Law § 70-a, NY CIV RTS § 70-a
Current through L.2014, chapters 1 to 431.

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McKinney's Consolidated Laws of New York Annotated
Civil Rights Law (Refs & Annos)
Chapter 6. Of the Consolidated Laws
Article 7. Miscellaneous Rights and Immunities

McKinney's Civil Rights Law § 76-a

§ 76-a. Actions involving public petition and participation; when actual malice to be proven

Currentness

1. For purposes of this section:

(a) An "action involving public petition and participation" is an action, claim, cross claim or counterclaim for damages that is brought by a public applicant or permittee, and is materially related to any efforts of the defendant to report on, comment on, rule on, challenge or oppose such application or permission.

(b) "Public applicant or permittee" shall mean any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission.

(c) "Communication" shall mean any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention or other expression.

(d) "Government body" shall mean any municipality, the state, any other political subdivision or agency of such, the federal government, any public benefit corporation, or any public authority, board, or commission.

2. In an action involving public petition and participation, damages may only be recovered if the plaintiff, in addition to all other necessary elements, shall have established by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue.

3. Nothing in this section shall be construed to limit any constitutional, statutory or common law protections of defendants to actions involving public petition and participation.

Credits

(Added L.1992, c. 767, § 3.)

Notes of Decisions (35)

McKinney's Civil Rights Law § 76-a, NY CIV RTS § 76-a
Current through L.2014, chapters 1 to 431.

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OKLAHOMA

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1430

§ 1430. Short title--Oklahoma Citizens Participation Act

Currentness

A. This act may be known and shall be cited as the "Oklahoma Citizens Participation Act".

B. The purpose of the Oklahoma Citizens Participation Act is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.

Credits

Laws 2014, c. 107, § 1, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1430, OK ST T. 12 § 1430

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

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Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1431

§ 1431. Definitions

Currentness

As used in the Oklahoma Citizens Participation Act:

1. "Communication" means the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual or electronic;
2. "Exercise of the right of association" means a communication between individuals who join together to collectively express, promote, pursue or defend common interests;
3. "Exercise of the right of free speech" means a communication made in connection with a matter of public concern;
4. "Exercise of the right to petition" means any of the following:
 - a. a communication in or pertaining to:
 - (1) a judicial proceeding,
 - (2) an official proceeding, other than a judicial proceeding, to administer the law,
 - (3) an executive or other proceeding before a department or agency of the state or federal government or a political subdivision of the state or federal government,
 - (4) a legislative proceeding, including a proceeding of a legislative committee,
 - (5) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity,
 - (6) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue,
 - (7) a proceeding of the governing body of any political subdivision of this state,

- (8) a report of or debate and statements made in a proceeding described by division (3), (4), (5), (6) or (7) of this subparagraph, or
 - (9) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting,
 - b. a communication in connection with an issue under consideration or review by a legislative, executive, judicial or other governmental body or in another governmental or official proceeding,
 - c. a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial or other governmental body or in another governmental or official proceeding,
 - d. a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial or other governmental body or in another governmental or official proceeding, and
 - e. any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the Oklahoma Constitution;
5. "Governmental proceeding" means a proceeding, other than a judicial proceeding, by an officer, official or body of this state or a political subdivision of this state, including an agency, board or commission, or by an officer, official or body of the federal government;
6. "Legal action" means a lawsuit, cause of action, petition, complaint, cross-claim, counterclaim or any other judicial pleading or filing that requests legal or equitable relief;
7. "Matter of public concern" means an issue related to:
- a. health or safety,
 - b. environmental, economic or community well-being,
 - c. the government,
 - d. a public official or public figure, or
 - e. a good, product or service in the marketplace;

8. "Official proceeding" means any type of administrative, executive, legislative or judicial proceeding that may be conducted before a public servant; and

9. "Public servant" means a person elected, selected, appointed, employed or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed the person's duties:

- a. an officer, employee or agent of government,
- b. a juror,
- c. an arbitrator, referee or other person who is authorized by law or private written agreement to hear or determine a cause or controversy,
- d. an attorney or notary public when participating in the performance of a governmental function, or
- e. a person who is performing a governmental function under a claim of right but is not legally qualified to do so.

Credits

Laws 2014, c. 107, § 2, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1431, OK ST T. 12 § 1431

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1432

§ 1432. Motion to dismiss legal actions--Time limit for filing--Suspension of discovery

Currentness

A. If a legal action is based on, relates to or is in response to a party's exercise of the right of free speech, right to petition or right of association, that party may file a motion to dismiss the legal action.

B. A motion to dismiss a legal action under this section shall be filed no later than sixty (60) days after the date of service of the legal action. The court may extend the time to file a motion under this section on a showing of good cause.

C. Except as provided in Section 6 of the Oklahoma Citizens Participation Act, on the filing of a motion under subsection A of this section, all discovery in the legal action shall be suspended until the court has ruled on the motion to dismiss.

Credits

Laws 2014, c. 107, § 3, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1432, OK ST T. 12 § 1432

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

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Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1433

§ 1433. Time limits for hearing on motion to dismiss

Currentness

A. A hearing on a motion filed pursuant to Section 3 of the Oklahoma Citizens Participation Act shall be set no later than sixty (60) days after the date of service of the motion unless the docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties, but in no event shall the hearing occur more than ninety (90) days after service of the motion to dismiss, except as provided by subsection C of this section.

B. In the event that the court cannot hold a hearing in the time required by subsection A of this section, the court may take judicial notice that court docket conditions required a hearing at a later date, but in no event shall the hearing occur more than ninety (90) days after service of the motion to dismiss, except as provided by subsection C of this section.

C. If the court allows discovery under subsection B of Section 6 of this act, the court may extend the hearing date to allow discovery under that subsection, but in no event shall the hearing occur more than one hundred twenty (120) days after the service of the motion to dismiss.

Credits

Laws 2014, c. 107, § 4, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1433, OK ST T. 12 § 1433

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1434

§ 1434. Time limit for ruling on motion--Standard of proof

Currentness

A. The court shall rule on a motion filed pursuant to Section 3 of the Oklahoma Citizens Participation Act no later than thirty (30) days following the date of the hearing on the motion.

B. Except as provided by subsection C of this section, on the motion of a party filed pursuant to Section 3 of this act, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to or is in response to the party's exercise of:

1. The right of free speech;
2. The right to petition; or
3. The right of association.

C. The court shall not dismiss a legal action under this section if the party filing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

D. Notwithstanding the provisions of subsection C of this section, the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

Credits

Laws 2014, c. 107, § 5, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1434, OK ST T. 12 § 1434

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1435

§ 1435. Evidence to consider by court--Limited discovery

Currentness

A. In determining whether a legal action shall be dismissed under the Oklahoma Citizens Participation Act, the court shall consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.

B. On a motion by a party or on the court's own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion to dismiss.

Credits

Laws 2014, c. 107, § 6, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1435, OK ST T. 12 § 1435

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

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Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1436

§ 1436. Request for findings--Time limit to issue findings

Currentness

A. At the request of a party making a motion filed pursuant to Section 3 of the Oklahoma Citizens Participation Act, the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

B. The court shall issue findings under subsection A of this section no later than thirty (30) days after the date a request is made under subsection A of this section.

Credits

Laws 2014, c. 107, § 7, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1436, OK ST T. 12 § 1436

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

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Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1437

§ 1437. Failure to rule on motion--Expedited appeals

Currentness

A. If a court does not rule on a motion to dismiss filed pursuant to Section 3 of the Oklahoma Citizens Participation Act in the time prescribed by Section 5 of the act, the motion shall be considered denied by operation of law and the moving party may appeal.

B. An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action filed pursuant to Section 3 of this act or from a trial court's failure to rule on that motion in the time prescribed by Section 5 of this act.

Credits

Laws 2014, c. 107, § 8, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1437, OK ST T. 12 § 1437

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

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Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1438

§ 1438. Costs and fees--Sanctions

Currentness

A. If the court orders dismissal of a legal action under the Oklahoma Citizens Participation Act, the court shall award to the moving party:

1. Court costs, reasonable attorney fees and other expenses incurred in defending against the legal action as justice and equity may require; and
2. Sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in the Oklahoma Citizens Participation Act.

B. If the court finds that a motion to dismiss filed under the Oklahoma Citizens Participation Act is frivolous or solely intended to delay, the court may award court costs and reasonable attorney fees to the responding party.

Credits

Laws 2014, c. 107, § 9, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1438, OK ST T. 12 § 1438

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

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Oklahoma Statutes Annotated
Title 12: Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1439

§ 1439. Actions excluded

Currentness

The Oklahoma Citizens Participation Act shall not apply to:

1. An enforcement action that is brought in the name of this state or a political subdivision of this state by the Attorney General or a district attorney;
2. A legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct the action is based upon arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer;
3. A legal action seeking recovery for bodily injury, wrongful death or survival or to statements made regarding that legal action; or
4. A legal action brought under the Oklahoma Insurance Code or arising out of an insurance contract.

Credits

Laws 2014, c. 107, § 10, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1439, OK ST T. 12 § 1439

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

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Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 24A. Oklahoma Citizens Participation Act

12 Okl.St. Ann. § 1440

§ 1440. Application with other laws--Construction

Currentness

A. The Oklahoma Citizens Participation Act shall not abrogate or lessen any other defense, remedy, immunity or privilege available under other constitutional, statutory, case or common law or rule provisions.

B. The Oklahoma Citizens Participation Act shall be construed liberally to effectuate its purpose and intent fully.

Credits

Laws 2014, c. 107, § 11, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 1440, OK ST T. 12 § 1440

Current through Chapter 430 (End) of the Second Session of the 54th Legislature (2014)

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OREGON

West's Oregon Revised Statutes Annotated
Title 3. Remedies and Special Actions and Proceedings
Chapter 31. Tort Actions (Refs & Annos)
Special Motion to Strike

O.R.S. § 31.150
Formerly cited as OR ST § 30.142

31.150. Special motion to strike; availability; burden of proof

Currentness

(1) A defendant may make a special motion to strike against a claim in a civil action described in subsection (2) of this section. The court shall grant the motion unless the plaintiff establishes in the manner provided by subsection (3) of this section that there is a probability that the plaintiff will prevail on the claim. The special motion to strike shall be treated as a motion to dismiss under ORCP 21 A but shall not be subject to ORCP 21 F. Upon granting the special motion to strike, the court shall enter a judgment of dismissal without prejudice. If the court denies a special motion to strike, the court shall enter a limited judgment denying the motion.

(2) A special motion to strike may be made under this section against any claim in a civil action that arises out of:

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

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

(d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(3) A defendant making a special motion to strike under the provisions of this section has the initial burden of making a prima facie showing that the claim against which the motion is made arises out of a statement, document or conduct described in subsection (2) of this section. If the defendant meets this burden, the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case. If the plaintiff meets this burden, the court shall deny the motion.

(4) In making a determination under subsection (1) of this section, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(5) If the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim:

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

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

Credits

Formerly 30.142. Amended by Laws 2009, c. 449, § 1, eff. Jan. 1, 2010.

Notes of Decisions (31)

O. R. S. § 31.150, OR ST § 31.150

Current with 2014 Reg. Sess. legislation effective through 7/1/14 and ballot measures on the 11/4/14 ballot. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

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West's Oregon Revised Statutes Annotated
Title 3. Remedies and Special Actions and Proceedings
Chapter 31. Tort Actions (Refs & Annos)
Special Motion to Strike

O.R.S. § 31.152
Formerly cited as OR ST § 30.144

31.152. Time for special motion to strike; discovery; attorney fees

Currentness

(1) A special motion to strike under ORS 31.150 must be filed within 60 days after the service of the complaint or, in the court's discretion, at any later time. A hearing shall be held on the motion not more than 30 days after the filing of the motion unless the docket conditions of the court require a later hearing.

(2) All discovery in the proceeding shall be stayed upon the filing of a special motion to strike under ORS 31.150. The stay of discovery shall remain in effect until entry of the judgment. The court, on motion and for good cause shown, may order that specified discovery be conducted notwithstanding the stay imposed by this subsection.

(3) A defendant who prevails on a special motion to strike made under ORS 31.150 shall be awarded reasonable attorney fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to a plaintiff who prevails on a special motion to strike.

(4) The purpose of the procedure established by this section and ORS 31.150 and 31.155 is to provide a defendant with the right to not proceed to trial in cases in which the plaintiff does not meet the burden specified in ORS 31.150 (3). This section and ORS 31.150 and 31.155 are to be liberally construed in favor of the exercise of the rights of expression described in ORS 31.150 (2).

Credits

Formerly 30.144. Amended by Laws 2009, c. 449, § 3, eff. Jan. 1, 2010.

Notes of Decisions (7)

O. R. S. § 31.152, OR ST § 31.152

Current with 2014 Reg. Sess. legislation effective through 7/1/14 and ballot measures on the 11/4/14 ballot. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

West's Oregon Revised Statutes Annotated
Title 3. Remedies and Special Actions and Proceedings
Chapter 31. Tort Actions (Refs & Annos)
Special Motion to Strike

O.R.S. § 31.155
Formerly cited as OR ST § 30.146

31.155. Exempt actions; effect upon substantive law

Currentness

(1) ORS 31.150 and 31.152 do not apply to an action brought by the Attorney General, a district attorney, a county counsel or a city attorney acting in an official capacity.

(2) ORS 31.150 and 31.152 create a procedure for seeking dismissal of claims described in ORS 31.150 (2) and do not affect the substantive law governing those claims.

Credits

Formerly 30.146.

Notes of Decisions (2)

O. R. S. § 31.155, OR ST § 31.155

Current with 2014 Reg. Sess. legislation effective through 7/1/14 and ballot measures on the 11/4/14 ballot. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

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PENNSYLVANIA

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 27 Pa. C.S.A. Environmental Resources (Refs & Annos)
Part VI. Sanctions and Remedies
Subpart A. General Provisions
Chapter 77. Costs and Fees

27 Pa.C.S.A. § 7707

§ 7707. Participation in environmental law or regulation

Effective: February 20, 2001

Currentness

A person that successfully defends against an action under Chapter 83 (relating to participation in environmental law or regulation) shall be awarded reasonable attorney fees and the costs of litigation. If the person prevails in part, the court may make a full award or a proportionate award.

Credits

2000, Dec. 20, P.L. 980, No. 138, § 1, effective in 60 days.

27 Pa.C.S.A. § 7707, PA ST 27 Pa.C.S.A. § 7707

Current through 2014 Regular Session Acts 1 to 171, 173 to 198 and 200 to 204

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 27 Pa.C.S.A. Environmental Resources (Refs & Annos)
Part VI. Sanctions and Remedies
Subpart C. Immunity
Chapter 81. Good Samaritan (Refs & Annos)

27 Pa.C.S.A. § 8104

§ 8104. Definitions

Currentness

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Abandoned lands.” Land adversely affected by mineral or oil or gas extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition.

“Consideration.” Something of value promised, given or performed in exchange for something which has the effect of making a legally enforceable contract. For the purpose of this chapter, the term does not include a promise to a landowner to repair damage caused by a reclamation project or water pollution abatement project when the promise is made in exchange for access to the land.

“Department.” The Department of Environmental Protection of the Commonwealth.

“Eligible land and water.” Land and water adversely affected by mining or oil or gas extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition or left discharging water pollution and for which no person has a continuing reclamation or water pollution abatement obligation. The term shall also include land and water adversely affected by mining or oil or gas extraction and left in an unreclaimed or inadequately reclaimed condition or left discharging water pollution for which the Department of Environmental Protection has forfeited and collected the operators bonds and there is no outstanding litigation concerning the bond forfeiture.

“Landowner.” A person who holds either legal or equitable interest in real property.

“Mineral.” Any aggregate or mass of mineral matter, whether or not coherent, which is extracted by mining, including, but not limited to, limestone, dolomite, sand, gravel, slate, argillite, diabase, gneiss, micaceous sandstone known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay and anthracite and bituminous coal.

“Permitted mining activity site.” A site permitted by the Department of Environmental Protection pursuant to one or more of the following acts:

(1) the act of June 22, 1937 (P.L. 1987, No. 394),¹ known as The Clean Streams Law;

(2) the act of May 31, 1945 (P.L. 1198, No. 418),² known as the Surface Mining Conservation and Reclamation Act;

(3) the act of April 27, 1966 (1st Sp.Sess., P.L. 31, No. 1),³ known as The Bituminous Mine Subsidence and Land Conservation Act;

(4) the act of September 24, 1968 (P.L. 1040, No. 318),⁴ known as the Coal Refuse Disposal Control Act; or

(5) the act of December 19, 1984 (P.L. 1093, No. 219),⁵ known as the Noncoal Surface Mining Conservation and Reclamation Act.

“Person.” A natural person, partnership, association, association members, corporation, political subdivision of the Commonwealth, an agency, instrumentality or entity of Federal or State Government or other legal entity recognized by law as the subject of rights and liabilities.

“Project work area.” That land necessary for a person to complete a reclamation project or a water pollution abatement project.

“Reclamation project.” The restoration of eligible lands and water to productive use by regrading and revegetating the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain with no highwalls, spoil piles or depressions to accumulate water and by plugging abandoned oil or gas wells and removing production or storage facilities, supplies and equipment from areas disturbed in siting, drilling, completing and producing such wells.

“Water pollution.” Pollution of the waters of this Commonwealth as defined in section 1 of the act of June 22, 1937 (P.L. 1987, No. 394),⁶ known as The Clean Streams Law, which was caused by mining activities or oil or gas extraction or exploration for these resources.

“Water pollution abatement facilities.” The methods for treatment or abatement of water pollution located on eligible lands and water. These methods include, but are not limited to, a structure, system, practice, technique or method constructed, installed or followed to reduce, treat or abate such water pollution.

“Water pollution abatement project.” A plan for treatment or abatement of water pollution located on eligible lands and water. These plans include, but are not limited to, the practices to be followed and the installation, operation and maintenance of facilities to reduce, treat or abate such water pollution.

Credits

1999, Dec. 15, P.L. 949, No. 68, § 1, eff. Dec. 31, 1999.

Footnotes

1 35 P.S. § 691.1 et seq.

2 52 P.S. § 1396.1 et seq.

3 52 P.S. § 1406.1 et seq.

4 52 P.S. § 30.51 et seq.

5 52 P.S. § 3301 et seq.

6 35 P.S. § 691.1.

27 Pa.C.S.A. § 8104, PA ST 27 Pa.C.S.A. § 8104

Current through 2014 Regular Session Acts 1 to 171, 173 to 198 and 200 to 204

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 27 Pa.C.S.A. Environmental Resources (Refs & Annos)
Part VI. Sanctions and Remedies
Subpart C. Immunity
Chapter 81. Good Samaritan (Refs & Annos)

27 Pa.C.S.A. § 8106

§ 8106. Landowner liability limitation and exceptions

Currentness

(a) **General rule.**--Except as specifically provided in subsections (b) and (c), a landowner who provides access to the land, without charge or other consideration, which results in the implementation of a reclamation project or a water pollution abatement project:

(1) Shall be immune from liability for any injury or damage suffered by the person implementing the reclamation project or the water pollution abatement project while the person is within the project work area.

(2) Shall be immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of an act or omission of a person implementing a reclamation project or water pollution abatement project which occurs during the implementation of the reclamation project or the water pollution abatement project.

(3) Shall be immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of a reclamation project or a water pollution abatement project.

(4) Shall not be deemed to assume legal responsibility for or incur liability for any pollution resulting from a reclamation project or water pollution abatement project.

(5) Shall not be subject to a citizen suit filed pursuant to section 601 of the act of June 22, 1937 (P.L. 1987, No. 394),¹ known as The Clean Streams Law, for pollution resulting from a reclamation project or water pollution abatement project.

(6) Shall be immune from liability for the operation, maintenance or repair of the water pollution abatement facilities constructed or installed during the project unless the landowner negligently damages or destroys the water pollution abatement facilities or denies access to those persons who operate, maintain or repair the water pollution abatement facilities.

(b) **Duty to warn.**--A landowner shall warn a person implementing a reclamation project or water pollution abatement project of known, latent, dangerous conditions located on the project work area which known, latent, dangerous conditions are not the subject of the reclamation project or the water pollution abatement project. Nothing in this chapter shall limit in any way or affect a landowner's liability which results from the landowner's failure to warn of such known, latent, dangerous conditions.

(c) **Exceptions to immunity.**--Nothing in this chapter shall limit in any way or affect a landowner's liability which results from a reclamation project or water pollution abatement project and which would otherwise exist:

(1) For injury or damage resulting from the landowner's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(2) Where the landowner charges an access fee or requires other consideration before allowing access to the land for the purpose of implementing a reclamation project or water pollution abatement project or to operate, maintain or repair water pollution abatement facilities constructed or installed during a water pollution abatement project.

(3) For the landowner's unlawful activities.

(4) For damage to adjacent landowners or downstream riparian landowners which results from a reclamation project or water pollution abatement project where written notice or public notice of the proposed project was not provided.

Credits

1999, Dec. 15, P.L. 949, No. 68, § 1, eff. Dec. 31, 1999.

Footnotes

1 35 P.S. § 691.601.

27 Pa.C.S.A. § 8106, PA ST 27 Pa.C.S.A. § 8106

Current through 2014 Regular Session Acts 1 to 171, 173 to 198 and 200 to 204

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Purdōn's Pennsylvania Statutes and Consolidated Statutes
Title 27 Pa.C.S.A. Environmental Resources (Refs & Annos)
Part VI. Sanctions and Remedies
Subpart C. Immunity
Chapter 81. Good Samaritan (Refs & Annos)

27 Pa.C.S.A. § 8107

§ 8107. Project liability limitation and exceptions

Currentness

(a) **General rule.**--Except as specifically provided in subsection (b), a person who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project:

(1) Shall be immune from liability for any injury to or damage suffered by a person which arises out of or occurs as a result of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(2) Shall be immune from liability for any pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project unless the person affects an area that is hydrologically connected to the water pollution abatement project work area and causes increased pollution by activities which are unrelated to the implementation of a water pollution abatement project.

(3) Shall not be deemed to assume responsibility for or incur liability for the operation, maintenance and repair of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(4) Shall not be subject to a citizen suit under section 601 of the act of June 22, 1937 (P.L. 1987, No. 394),¹ known as The Clean Streams Law, for pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(b) **Exceptions.**--

(1) Nothing in this chapter shall limit in any way the liability of a person who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project which liability results from the reclamation project or the water pollution abatement project and which would otherwise exist:

(i) For injury or damage resulting from the person's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(ii) For the person's unlawful activities.

(iii) For damages to adjacent landowners or downstream riparian landowners which result from a reclamation project or a water pollution abatement project where written notice or public notice of the proposed project was not provided.

(2) Nothing in this chapter shall limit in any way the liability of a person who the department has found to be in violation of any of the following acts:

(i) The act of May 31, 1945 (P.L. 1198, No. 418),² known as the Surface Mining Conservation and Reclamation Act.

(ii) The act of April 27, 1966 (1st Sp.Sess., P.L. 31, No. 1),³ known as The Bituminous Mine Subsidence and Land Conservation Act.

Credits

1999, Dec. 15, P.L. 949, No. 68, § 1, eff. Dec. 31, 1999.

Footnotes

1 35 P.S. § 691.601.

2 52 P.S. § 1396.1 et seq.

3 52 P.S. § 1406.1 et seq.

27 Pa.C.S.A. § 8107, PA ST 27 Pa.C.S.A. § 8107

Current through 2014 Regular Session Acts 1 to 171, 173 to 198 and 200 to 204

RHODE ISLAND

West's General Laws of Rhode Island Annotated
Title 9. Courts and Civil Procedure--Procedure Generally
Chapter 33. Limits on Strategic Litigation Against Public Participation

Gen.Laws 1956, § 9-33-1

§ 9-33-1. Findings

Currentness

The legislature finds and declares that full participation by persons and organizations and robust discussion of issues of public concern before the legislative, judicial, and administrative bodies and in other public fora are essential to the democratic process, that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances; that such litigation is disfavored and should be resolved quickly with minimum cost to citizens who have participated in matters of public concern.

Credits

P.L. 1993, ch. 354, § 1; P.L. 1993, ch. 448, § 1.

Notes of Decisions (10)

Gen. Laws, 1956, § 9-33-1, RI ST § 9-33-1

The statutes and Constitution are current through Chapter 555 of the January 2014 session.

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West's General Laws of Rhode Island Annotated
Title 9. Courts and Civil Procedure--Procedure Generally
Chapter 33. Limits on Strategic Litigation Against Public Participation

Gen.Laws 1956, § 9-33-2

§ 9-33-2. Conditional immunity

Currentness

(a) A party's exercise of his or her right of petition or of free speech under the United States or Rhode Island constitutions in connection with a matter of public concern shall be conditionally immune from civil claims, counterclaims, or cross-claims. Such immunity will apply as a bar to any civil claim, counterclaim, or cross-claim directed at petition or free speech as defined in subsection (e) of this section, except if the petition or free speech constitutes a sham. The petition or free speech constitutes a sham only if it is not genuinely aimed at procuring favorable government action, result, or outcome, regardless of ultimate motive or purpose. The petition or free speech will be deemed to constitute a sham as defined in the previous sentence only if it is both:

(1) Objectively baseless in the sense that no reasonable person exercising the right of speech or petition could realistically expect success in procuring the government action, result, or outcome, and

(2) Subjectively baseless in the sense that it is actually an attempt to use the governmental process itself for its own direct effects. Use of outcome or result of the governmental process shall not constitute use of the governmental process itself for its own direct effects.

(b) The court shall stay all discovery proceedings in the action upon the filing of a motion asserting the immunity established by this section; provided, however, that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion.

(c) The immunity established by this section may be asserted by an appropriate motion or by other appropriate means under the applicable rules of civil procedure.

(d) If the court grants the motion asserting the immunity established by this section, or if the party claiming lawful exercise of his or her right of petition or of free speech under the United States or Rhode Island constitutions in connection with a matter of public concern is, in fact, the eventual prevailing party at trial, the court shall award the prevailing party costs and reasonable attorney's fees, including those incurred for the motion and any related discovery matters. The court shall award compensatory damages and may award punitive damages upon a showing by the prevailing party that the responding party's claims, counterclaims, or cross-claims were frivolous or were brought with an intent to harass the party or otherwise inhibit the party's exercise of its right to petition or free speech under the United States or Rhode Island constitution. Nothing in this section shall affect or preclude the right of the party claiming lawful exercise of his or her right of petition or of free speech under the United States or Rhode Island constitutions to any remedy otherwise authorized by law.

(e) As used in this section, "a party's exercise of its right of petition or of free speech" shall mean any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; any written or

§ 9-33-2. Conditional immunity, RI ST § 9-33-2

oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; or any written or oral statement made in connection with an issue of public concern.

Credits

P.L. 1993, ch. 354, § 1; P.L. 1993, ch. 448, § 1; P.L. 1995, ch. 386, § 1.

Notes of Decisions (25)

Gen. Laws, 1956, § 9-33-2, RI ST § 9-33-2

The statutes and Constitution are current through Chapter 555 of the January 2014 session.

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West's General Laws of Rhode Island Annotated
Title 9. Courts and Civil Procedure--Procedure Generally
Chapter 33. Limits on Strategic Litigation Against Public Participation

Gen.Laws 1956, § 9-33-3

§ 9-33-3. Intervention

Currentness

Any governmental agency or subdivision to which the party's petition or free speech were directed or the attorney general may intervene to defend or otherwise support the party claiming lawful exercise of its right of petition or of free speech under United States or Rhode Island constitution.

Credits

P.L. 1993, ch. 354, § 1; P.L. 1993, ch. 448, § 1; P.L. 1995, ch. 386, § 1.

Gen. Laws, 1956, § 9-33-3, RI ST § 9-33-3

The statutes and Constitution are current through Chapter 555 of the January 2014 session.

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West's General Laws of Rhode Island Annotated
Title 9. Courts and Civil Procedure--Procedure Generally
Chapter 33. Limits on Strategic Litigation Against Public Participation

Gen.Laws 1956, § 9-33-4

§ 9-33-4. Construction of chapter

Currentness

Nothing contained in this chapter shall be construed to limit or affect any additional constitutional, statutory, or common law protections of defendants in actions involving their exercise of rights of petition or of free speech.

Credits

P.L. 1993, ch. 354, § 1; P.L. 1993, ch. 448, § 1; P.L. 1997, ch. 326, § 78.

Gen. Laws, 1956, § 9-33-4, RI ST § 9-33-4

The statutes and Constitution are current through Chapter 555 of the January 2014 session.

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TENNESSEE

West's Tennessee Code Annotated
Title 4. State Government
Chapter 21. Human Rights (Refs & Annos)
Part 10. Tennessee Anti-Slapp Act of 1997

T. C. A. § 4-21-1001

§ 4-21-1001. Short title

Currentness

This part shall be known and may be cited as the "Tennessee Anti-Slapp Act of 1997."

Credits

1997 Pub. Acts, c. 403, § 1, eff. June 6, 1997.

T. C. A. § 4-21-1001, TN ST § 4-21-1001

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West's Tennessee Code Annotated
Title 4. State Government
Chapter 21. Human Rights (Refs & Annos)
Part 10. Tennessee Anti-Slapp Act of 1997

T. C. A. § 4-21-1002

§ 4-21-1002. Intent and findings

Currentness

(a) It is the intent of the general assembly to provide protection for individuals who make good faith reports of wrongdoing to appropriate governmental bodies. Information provided by citizens concerning potential misdeeds is vital to effective law enforcement and the efficient operation of government.

(b) The general assembly finds that the threat of a civil action for damages in the form of a "strategic lawsuit against political participation" (SLAPP), and the possibility of considerable legal costs, can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. SLAPP suits can effectively punish concerned citizens for exercising the constitutional right to speak and petition the government for redress of grievances.

Credits

1997 Pub.Acts, c. 403, § 2, eff. June 6, 1997.

T. C. A. § 4-21-1002, TN ST § 4-21-1002
Current through end of the 2014 Second Reg. Sess.

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West's Tennessee Code Annotated
Title 4. State Government
Chapter 21. Human Rights (Refs & Annos)
Part 10. Tennessee Anti--Slapp Act of 1997

T. C. A. § 4-21-1003

§ 4-21-1003. Immunity; recovery of costs

Currentness

(a) Any person who in furtherance of such person's right of free speech or petition under the Tennessee or United States Constitution in connection with a public or governmental issue communicates information regarding another person or entity to any agency of the federal, state or local government regarding a matter of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency.

(b) The immunity conferred by this section shall not attach if the person communicating such information:

(1) Knew the information to be false;

(2) Communicated information in reckless disregard of its falsity; or

(3) Acted negligently in failing to ascertain the falsity of the information if such information pertains to a person or entity other than a public figure.

(c) A person prevailing upon the defense of immunity provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.

Credits

1997 Pub.Acts, c. 403, § 3, eff. June 6, 1997.

T. C. A. § 4-21-1003, TN ST § 4-21-1003

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West's Tennessee Code Annotated
Title 4. State Government
Chapter 21. Human Rights (Refs & Annos)
Part 10. Tennessee Anti--Slapp Act of 1997

T. C. A. § 4-21-1004

§ 4-21-1004. Intervention; governmental agency; attorney general

Effective: August 5, 2011
Currentness

(a) In order to protect the free flow of information from citizens to their government, an agency receiving a complaint or information under § 4-21-1003 may intervene and defend against any suit precipitated by the communication to the agency. In the event that a local government agency does not intervene in and defend against a suit arising from any communication protected under this part, the office of the attorney general and reporter may intervene in and defend against the suit.

(b) An agency prevailing upon the defense of immunity provided for in § 4-21-1003 shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish such defense, the party bringing such action shall be entitled to recover from the agency costs and reasonable attorneys' fees incurred in proving the defense inapplicable or invalid.

Credits

1997 Pub.Acts, c. 403, § 4, eff. June 6, 1997.

T. C. A. § 4-21-1004, TN ST § 4-21-1004
Current through end of the 2014 Second Reg. Sess.

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TEXAS

Vernon's Texas Statutes and Codes Annotated
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle B. Trial Matters
Chapter 27. Actions Involving the Exercise of Certain Constitutional Rights (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.001

§ 27.001. Definitions

Effective: June 17, 2011

Currentness

In this chapter:

- (1) "Communication" includes the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.
- (2) "Exercise of the right of association" means a communication between individuals who join together to collectively express, promote, pursue, or defend common interests.
- (3) "Exercise of the right of free speech" means a communication made in connection with a matter of public concern.
- (4) "Exercise of the right to petition" means any of the following:
 - (A) a communication in or pertaining to:
 - (i) a judicial proceeding;
 - (ii) an official proceeding, other than a judicial proceeding, to administer the law;
 - (iii) an executive or other proceeding before a department of the state or federal government or a subdivision of the state or federal government;
 - (iv) a legislative proceeding, including a proceeding of a legislative committee;
 - (v) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity;
 - (vi) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue;

(vii) a proceeding of the governing body of any political subdivision of this state;

(viii) a report of or debate and statements made in a proceeding described by Subparagraph (iii), (iv), (v), (vi), or (vii); or

(ix) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting;

(B) a communication in connection with an issue under consideration or review by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;

(C) a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;

(D) a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding; and

(E) any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the constitution of this state.

(5) "Governmental proceeding" means a proceeding, other than a judicial proceeding, by an officer, official, or body of this state or a political subdivision of this state, including a board or commission, or by an officer, official, or body of the federal government.

(6) "Legal action" means a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal or equitable relief.

(7) "Matter of public concern" includes an issue related to:

(A) health or safety;

(B) environmental, economic, or community well-being;

(C) the government;

(D) a public official or public figure; or

(E) a good, product, or service in the marketplace.

(8) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(9) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed the person's duties:

(A) an officer, employee, or agent of government;

(B) a juror;

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;

(D) an attorney or notary public when participating in the performance of a governmental function; or

(E) a person who is performing a governmental function under a claim of right but is not legally qualified to do so.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (23)

V. T. C. A., Civil Practice & Remedies Code § 27.001, TX CIV PRAC & REM § 27.001

Current through the end of the 2013 Third Called Session of the 83rd Legislature

Vernon's Texas Statutes and Codes Annotated
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Chapter 27. Actions Involving the Exercise of Certain Constitutional Rights (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.002

§ 27.002. Purpose

Effective: June 17, 2011

Currentness

The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (4)

V. T. C. A., Civil Practice & Remedies Code § 27.002, TX CIV PRAC & REM § 27.002

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V.T.C.A., Civil Practice & Remedies Code § 27.003

§ 27.003. Motion to Dismiss

Effective: June 17, 2011

Currentness

(a) If a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action.

(b) A motion to dismiss a legal action under this section must be filed not later than the 60th day after the date of service of the legal action. The court may extend the time to file a motion under this section on a showing of good cause.

(c) Except as provided by Section 27.006(b), on the filing of a motion under this section, all discovery in the legal action is suspended until the court has ruled on the motion to dismiss.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (15)

V. T. C. A., Civil Practice & Remedies Code § 27.003, TX CIV PRAC & REM § 27.003

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V.T.C.A., Civil Practice & Remedies Code § 27.004

§ 27.004. Hearing

Effective: June 14, 2013

Currentness

(a) A hearing on a motion under Section 27.003 must be set not later than the 60th day after the date of service of the motion unless the docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties, but in no event shall the hearing occur more than 90 days after service of the motion under Section 27.003, except as provided by Subsection (c).

(b) In the event that the court cannot hold a hearing in the time required by Subsection (a), the court may take judicial notice that the court's docket conditions required a hearing at a later date, but in no event shall the hearing occur more than 90 days after service of the motion under Section 27.003, except as provided by Subsection (c).

(c) If the court allows discovery under Section 27.006(b), the court may extend the hearing date to allow discovery under that subsection, but in no event shall the hearing occur more than 120 days after the service of the motion under Section 27.003.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011. Amended by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 1, eff. June 14, 2013.

Notes of Decisions (2)

V. T. C. A., Civil Practice & Remedies Code § 27.004, TX CIV PRAC & REM § 27.004

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Chapter 27. Actions Involving the Exercise of Certain Constitutional Rights (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.005

§ 27.005. Ruling

Effective: June 14, 2013

Currentness

(a) The court must rule on a motion under Section 27.003 not later than the 30th day following the date of the hearing on the motion.

(b) Except as provided by Subsection (c), on the motion of a party under Section 27.003, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of:

(1) the right of free speech;

(2) the right to petition; or

(3) the right of association.

(c) The court may not dismiss a legal action under this section if the party bringing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question.

(d) Notwithstanding the provisions of Subsection (c), the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011. Amended by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 2, eff. June 14, 2013.

Notes of Decisions (63)

V. T. C. A., Civil Practice & Remedies Code § 27.005, TX CIV PRAC & REM § 27.005
Current through the end of the 2013 Third Called Session of the 83rd Legislature

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Subtitle B. Trial Matters
Chapter 27. Actions Involving the Exercise of Certain Constitutional Rights (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.006

§ 27.006. Evidence

Effective: June 17, 2011

Currentness

(a) In determining whether a legal action should be dismissed under this chapter, the court shall consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.

(b) On a motion by a party or on the court's own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (3)

V. T. C. A., Civil Practice & Remedies Code § 27.006, TX CIV PRAC & REM § 27.006

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Chapter 27: Actions Involving the Exercise of Certain Constitutional Rights (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.007

§ 27.007. Additional Findings

Effective: June 17, 2011

Currentness

(a) At the request of a party making a motion under Section 27.003, the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

(b) The court must issue findings under Subsection (a) not later than the 30th day after the date a request under that subsection is made.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

V. T. C. A., Civil Practice & Remedies Code § 27.007, TX CIV PRAC & REM § 27.007

Current through the end of the 2013 Third Called Session of the 83rd Legislature

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Vernon's Texas Statutes and Codes Annotated
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle B. Trial Matters
Chapter 27. Actions Involving the Exercise of Certain Constitutional Rights (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.008

§ 27.008. Appeal

Effective: June 14, 2013

Currentness

(a) If a court does not rule on a motion to dismiss under Section 27.003 in the time prescribed by Section 27.005, the motion is considered to have been denied by operation of law and the moving party may appeal.

(b) An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action under Section 27.003 or from a trial court's failure to rule on that motion in the time prescribed by Section 27.005.

(c) Repealed by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 5.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011. Amended by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 5, eff. June 14, 2013.

Notes of Decisions (18)

V. T. C. A., Civil Practice & Remedies Code § 27.008, TX CIV PRAC & REM § 27.008

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Vernon's Texas Statutes and Codes Annotated
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle B. Trial Matters
Chapter 27. Actions Involving the Exercise of Certain Constitutional Rights (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.009

§ 27.009. Damages and Costs

Effective: June 17, 2011

Currentness

(a) If the court orders dismissal of a legal action under this chapter, the court shall award to the moving party:

(1) court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action as justice and equity may require; and

(2) sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.

(b) If the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, the court may award court costs and reasonable attorney's fees to the responding party.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (10)

V. T. C. A., Civil Practice & Remedies Code § 27.009, TX CIV PRAC & REM § 27.009

Current through the end of the 2013 Third Called Session of the 83rd Legislature

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Vernon's Texas Statutes and Codes Annotated
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle B. Trial Matters
Chapter 27. Actions Involving the Exercise of Certain Constitutional Rights (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.010

§ 27.010. Exemptions

Effective: June 14, 2013

Currentness

(a) This chapter does not apply to an enforcement action that is brought in the name of this state or a political subdivision of this state by the attorney general, a district attorney, a criminal district attorney, or a county attorney.

(b) This chapter does not apply to a legal action brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer.

(c) This chapter does not apply to a legal action seeking recovery for bodily injury, wrongful death, or survival or to statements made regarding that legal action.

(d) This chapter does not apply to a legal action brought under the Insurance Code or arising out of an insurance contract.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011. Amended by Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 3, eff. June 14, 2013.

Notes of Decisions (9)

V. T. C. A., Civil Practice & Remedies Code § 27.010, TX CIV PRAC & REM § 27.010

Current through the end of the 2013 Third Called Session of the 83rd Legislature

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Subtitle B. Trial Matters
Chapter 27. Actions Involving the Exercise of Certain Constitutional Rights (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 27.011

§ 27.011. Construction

Effective: June 17, 2011

Currentness

(a) This chapter does not abrogate or lessen any other defense, remedy, immunity, or privilege available under other constitutional, statutory, case, or common law or rule provisions.

(b) This chapter shall be construed liberally to effectuate its purpose and intent fully.

Credits

Added by Acts 2011, 82nd Leg., ch. 341 (H.B. 2973), § 2, eff. June 17, 2011.

Notes of Decisions (1)

V. T. C. A., Civil Practice & Remedies Code § 27.011, TX CIV PRAC & REM § 27.011

Current through the end of the 2013 Third Called Session of the 83rd Legislature

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UTAH

West's Utah Code Annotated
Title 78B: Judicial Code
Chapter 6: Particular Proceedings (Refs & Annos)
Part 14: Citizen Participation in Government Act

U.C.A. 1953 § 78B-6-1401
Formerly cited as UT ST § 78-58-101

§ 78B-6-1401. Title

Currentness

This part is known as the "Citizen Participation in Government Act."

Credits

Laws 2008, c. 3, § 1085, eff. Feb. 7, 2008.

U.C.A. 1953 § 78B-6-1401, UT ST § 78B-6-1401
Current through 2014 General Session.

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West's Utah Code Annotated
Title 78B, Judicial Code
Chapter 6, Particular Proceedings (Refs & Annos)
Part 14, Citizen Participation in Government Act

U.C.A. 1953 § 78B-6-1402
Formerly cited as UT ST § 78-58-102

§ 78B-6-1402. Definitions

Currentness

As used in this part:

- (1) "Action involving public participation in the process of government" means any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief to which this act applies.
- (2) "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.
- (3) "Moving party" means any person on whose behalf the motion is filed.
- (4) "Process of government" means the mechanisms and procedures by which the legislative and executive branches of government make decisions, and the activities leading up to the decisions, including the exercise by a citizen of the right to influence those decisions under the First Amendment to the U.S. Constitution.
- (5) "Responding party" means any person against whom the motion described in Section 78B-6-1403 is filed.

Credits

Laws 2008, c. 3, § 1086, eff. Feb. 7, 2008; Laws 2010, c. 254, § 12, eff. May 11, 2010.

Notes of Decisions (3)

U.C.A. 1953 § 78B-6-1402, UT ST § 78B-6-1402
Current through 2014 General Session.

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West's Utah Code Annotated
Title 78B, Judicial Code
Chapter 6, Particular Proceedings (Refs & Annos)
Part 14, Citizen Participation in Government Act

U.C.A. 1953 § 78B-6-1403
Formerly cited as UT ST § 78-58-103

§ 78B-6-1403. Applicability

Currentness

(1) A defendant in an action who believes that the action is primarily based on, relates to, or is in response to an act of the defendant while participating in the process of government and is done primarily to harass the defendant, may file:

(a) an answer supported by an affidavit of the defendant detailing his belief that the action is designed to prevent, interfere with, or chill public participation in the process of government, and specifying in detail the conduct asserted to be the participation in the process of government believed to give rise to the complaint; and

(b) a motion for judgment on the pleadings in accordance with the Utah Rules of Civil Procedure Rule 12(c).

(2) Affidavits detailing activity not adequately detailed in the answer may be filed with the motion.

Credits

Laws 2008, c. 3, § 1087, eff. Feb. 7, 2008.

Notes of Decisions (4)

U.C.A. 1953 § 78B-6-1403, UT ST § 78B-6-1403

Current through 2014 General Session.

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West's Utah Code Annotated
Title 78B, Judicial Code
Chapter 6, Particular Proceedings (Refs & Annos)
Part 14, Citizen Participation in Government Act

U.C.A. 1953 § 78B-6-1404
Formerly cited as UT ST § 78-58-104

§ 78B-6-1404. Procedures

Currentness

(1) On the filing of a motion for judgment on the pleadings:

(a) all discovery shall be stayed pending resolution of the motion unless the court orders otherwise;

(b) the trial court shall hear and determine the motion as expeditiously as possible with the moving party providing by clear and convincing evidence that the primary reason for the filing of the complaint was to interfere with the first amendment right of the defendant; and

(c) the moving party shall have a right to seek interlocutory appeal from a trial court order denying the motion or from a trial court failure to rule on the motion in expedited fashion.

(2) The court shall grant the motion and dismiss the action upon a finding that the primary purpose of the action is to prevent, interfere with, or chill the moving party's proper participation in the process of government.

(3) Any government body to which the moving party's acts were directed or the attorney general may intervene to defend or otherwise support the moving party.

Credits

Laws 2008, c. 3, § 1088, eff. Feb. 7, 2008.

Notes of Decisions (1)

U.C.A. 1953 § 78B-6-1404, UT ST § 78B-6-1404
Current through 2014 General Session.

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West's Utah Code Annotated
Title 78B, Judicial Code
Chapter 6, Particular Proceedings (Refs & Annos)
Part 14, Citizen Participation in Government Act

U.C.A. 1953 § 78B-6-1405
Formerly cited as UT ST § 78-58-105

§ 78B-6-1405. Counter actions--Attorney fees--Damages

Currentness

(1) A defendant in an action involving public participation in the process of government may maintain an action, claim, cross-claim, or counterclaim to recover:

(a) costs and reasonable attorney fees, upon a demonstration that the action involving public participation in the process of government was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification, or reversal of existing law; and

(b) other compensatory damages upon an additional demonstration that the action involving public participation in the process of government was commenced or continued for the purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of rights granted under the First Amendment to the U.S. Constitution.

(2) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.

Credits

Laws 2008, c. 3, § 1089, eff. Feb. 7, 2008.

Notes of Decisions (4)

U.C.A. 1953 § 78B-6-1405, UT ST § 78B-6-1405

Current through 2014 General Session.

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VERMONT

West's Vermont Statutes Annotated
Title Twelve: Court Procedure
Part 2: Proceedings Before Trial
Chapter 27: Pleading and Practice
Subchapter 2: Pleadings Generally

12 V.S.A. § 1041

§ 1041. Exercise of rights to free speech and to petition
government for redress of grievances; special motion to strike

Currentness

(a) A defendant in an action arising from the defendant's exercise, in connection with a public issue, of the right to freedom of speech or to petition the government for redress of grievances under the United States or Vermont Constitution may file a special motion to strike under this section.

(b) A special motion to strike under this section shall be filed with the court and served on all parties not more than 60 days after the filing of the complaint. A party may file a response to the motion not more than 15 days after the motion is served on the party. The court may extend the time limits of this subsection for good cause shown.

(c)(1) The filing of a special motion to strike under this section shall stay all discovery proceedings in the action. Except as provided in subdivision (2) of this subsection, the stay of discovery shall remain in effect until the court rules on the special motion to strike.

(2) The court, on motion and for good cause shown, may order that limited discovery be conducted for the purpose of assisting its decision on the special motion to strike.

(d) The court shall hold a hearing on a special motion to strike not more than 30 days after service of the motion unless good cause exists for an extension.

(e)(1) The court shall grant the special motion to strike, unless the plaintiff shows that:

(A) the defendant's exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law; and

(B) the defendant's acts caused actual injury to the plaintiff.

(2) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(f)(1) If the court grants the special motion to strike, the court shall award costs and reasonable attorney's fees to the defendant. If the court denies the special motion to strike and finds the motion is frivolous or is intended solely to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to the plaintiff.

(2) Neither the court's ruling on the special motion to strike nor the fact that it made such a ruling shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by the ruling.

(g) An order granting or denying a special motion to strike shall be appealable in the same manner as an interlocutory order under Rule 5 of the Vermont Rules of Appellate Procedure.

(h) This section shall not apply to any enforcement action or criminal proceeding brought by the State of Vermont or any political subdivision thereof.

(i) As used in this section, "the exercise, in connection with a public issue, of the right to freedom of speech or to petition the government for redress of grievances under the United States or Vermont Constitution" includes:

(1) any written or oral statement made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;

(2) any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;

(3) any written or oral statement concerning an issue of public interest made in a public forum or a place open to the public; or

(4) any other statement or conduct concerning a public issue or an issue of public interest which furthers the exercise of the constitutional right of freedom of speech or the constitutional right to petition the government for redress of grievances.

Credits

2005, Adj. Sess., No. 134, § 2.

12 V.S.A. § 1041, VT ST T. 12 § 1041

Current through the laws of the Adjourned Session of the 2013-2014 Vermont General Assembly (2014).

OFFICE RECEPTIONIST, CLERK

To: Brina M. Carranza
Cc: Jesse Wing; Joseph R. Shaeffer; Jeffrey Needle (Jeffrey Needle) (jneedlel@WOLFENET.COM); rsulkin@mcnaul.com; alipman@mcnaul.com; brucejohnson@dwt.com; ambikadoran@dwt.com; angelagalloway@dwt.com; amicus@list.justice.ORG; gahrend@trialappeallaw.com; rspitzer@gsblaw.com
Subject: RE: Case No. 90233-0; Davis v. Cox - (Revised) Pleading for filing with Court attached

Received 12-17-2014

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Brina M. Carranza [mailto:brinac@mhb.com]
Sent: Wednesday, December 17, 2014 12:48 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Jesse Wing; Joseph R. Shaeffer; Jeffrey Needle (Jeffrey Needle) (jneedlel@WOLFENET.COM); rsulkin@mcnaul.com; alipman@mcnaul.com; brucejohnson@dwt.com; ambikadoran@dwt.com; angelagalloway@dwt.com; amicus@list.justice.ORG; gahrend@trialappeallaw.com; rspitzer@gsblaw.com
Subject: Case No. 90233-0; Davis v. Cox - (Revised) Pleading for filing with Court attached

Good afternoon,

Pursuant to the Court's letter (attached for your reference), we are submitting the following for filing with your court in the matter of **Kent L. and Linda Davis, et al. v. Grace, Cox, et al.; Case No. 90233-0:**

1. (Revised) Brief of Amicus Curiae - Washington Employment Lawyers Association; and
2. Appendix B to Brief

Per request of the Court, a hard copy of Appendix B was previously mailed to the Court Clerk. Please let us know if you would like us to mail a duplicate copy.

I am sending this pleading, and attachment on behalf of Jesse Wing (WSBA #27751) and Joe Shaeffer (WSBA #33273) of MacDonald Hoague and Bayless. They can be reached by phone at 206/622-1604; or by e-mail at jessew@mhb.com and josephs@mhb.com.

All counsel of record are being served a copy of this pleading and attachment by copy of this e-mail.

Thank you.

Brina Carranza | Legal Assistant to:
Jesse Wing and Joe Shaeffer
MacDonald Hoague & Bayless
705 Second Avenue, Suite 1500

Seattle, WA 98104
206/622-1604 | Fax 206/343-3961
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THE SUPREME COURT

STATE OF WASHINGTON

NARDA PIERCE
COMMISSIONER

WALTER M. BURTON
DEPUTY
COMMISSIONER



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December 15, 2014

RECEIVED BY E-MAIL

RE: *Kent L. Davis, et al. v. Grace Cox, et al.*, Cause No. 90233-0

Dear Counsel:

The Chief Justice has granted the following motions to file amicus curiae briefs in this case:

The motion by Jessica L. Goldman and Bruce D. Brown, on behalf of the Reporters Committee for Freedom of the Press and 29 Others. Your brief has therefore been filed.

The motion by Sarah Dunne, Nancy L. Talner, Matthew J. Segal and Sarah C. Johnson, on behalf of the American Civil Liberties Union. Your brief has therefore been filed.

The motion by Alicia O. Young, on behalf of the State of Washington. Your brief has therefore been filed.

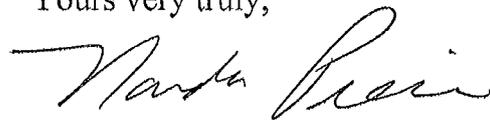
The Chief Justice has granted both the motion for amicus curiae and the motion to file an overlength brief in this case by George M. Ahrend, Bryan P. Harnetiaux, and David P. Gardner on behalf of the Washington State Association for Justice Foundation.

The Chief Justice has granted the motion to file an amicus curiae memorandum by Neil Fox, on behalf of the Jewish Voice for Peace, Palestine Solidarity Legal Support, National Lawyers Guild, American Muslims for Palestine, and International Jewish Anti-Zionist Network, but the proposed amicus curiae brief filed with the motion has been rejected for filing because it includes an appendix that does not conform to RAP 10.3(a)(8). An amended memorandum without an appendix may be served and filed no later than December 22, 2014.

The Chief Justice has granted the motion to file an amicus curiae memorandum by Jeffrey Needle, Jesse Wing, Joseph Schaeffer and Tiffany Cartwright, on behalf of the Washington Employment Lawyers Association, but the proposed amicus curiae brief filed with the motion has been rejected for filing because it includes an appendix that does not conform to RAP 10.3(a)(8). An amended memorandum without Appendix A may be served and filed no later than December 22, 2014.

Counsel for the parties are informed by this letter that January 8, 2015, will be the due date for any answers to these briefs. The case will be heard on January 20, 2015, as currently scheduled.

Yours very truly,



Narda Pierce
Commissioner

NP:hl

cc: Robert M. Sulkin
Avi J. Lipman
Bruce E. H. Johnson
Angela C. Galloway
Ambika K. Doran

Barbara M. Harvey
Steven Goldberg
Maria C. LaHood
Clerk

OFFICE RECEPTIONIST, CLERK

To: Brina M. Carranza
Cc: Jesse Wing; Joseph R. Shaeffer; Jeffrey Needle (Jeffrey Needle) (jneedlel@WOLFENET.COM); rsulkin@mcnaul.com; alipman@mcnaul.com; brucejohnson@dwt.com; ambikadoran@dwt.com; angelagalloway@dwt.com; amicus@list.justice.ORG; gahrend@trialappeallaw.com; rspitzer@gsblaw.com
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All counsel of record are being served a copy of this pleading and attachment by copy of this e-mail.

Thank you.

Brina Carranza | Legal Assistant to:
Jesse Wing and Joe Shaeffer
MacDonald Hoague & Bayless
705 Second Avenue, Suite 1500

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