



**Written Testimony of
Kaitlin Wolff, ULC Legislative Program Director
In Support of
HB 5788
Before the House Criminal Justice Committee
Tuesday, June 11, 2024**

Dear Chair Hope, Vice Chair Andrews, and Committee Members:

Thank you for the opportunity to share my support for House Bill 5788, which would enact the Uniform Public Expression Protection Act. The Uniform Law Commission (“ULC”) drafted this bill to address the problem of strategic lawsuits against public participation, or “SLAPPs.” I serve as the ULC’s Legislative Program Director and have the pleasure of working with our commissioners nationwide. Below I offer some details about how HB 5788 works and how it can benefit Michigan.

“SLAPPs” and “Anti-SLAPP” Statutes

First, what is a “SLAPP” suit and what is an “anti-SLAPP” statute? A SLAPP suit—or Strategic Lawsuit Against Public Participation—is a lawsuit brought not to seek legal redress or relief for harm, but instead, for the purpose of subjecting a citizen to lengthy and expensive litigation. In essence, it’s using the legal system to silence someone for exercising their First Amendment rights. Anti-SLAPP statutes provide an expedited process to deal with SLAPPs and serve as a deterrent to filing SLAPPs in the first place.

Thirty-four states, plus the District of Columbia and Territory of Guam, have some version of an anti-SLAPP statute. Some of the older statutes are narrow in scope, designed to protect persons under limited circumstances, such as from statements made in testimony before a zoning board or planning commission. Michigan, unfortunately, has no anti-SLAPP statute at all, leaving its citizens vulnerable to attack for exercising their First Amendment rights.

Modern anti-SLAPP statutes have a much wider scope, covering speech and conduct in a wide variety of circumstances. These modern statutes encompass any action that arises out of a person’s exercise of free speech rights on issues of public import, no matter the forum. HB 5788 contains this broad scope, covering *all* constitutionally protected communication about issues of public concern, including blog posts or tweets, for example. A broad statute is incredibly important given how quickly methods of communication have evolved and will continue to evolve as technology advances.

Why Uniformity Matters

Addressing SLAPP suits in a uniform way is important for several reasons. One significant reason for uniformity is because it will prevent “libel tourism.” Libel tourism is a type of forum shopping by which a plaintiff who has choices among the states in which to bring a libel action—the most common type of “SLAPP” suit—will file in a state that does not have an anti-SLAPP law or has a “weak” or

narrow one. Given the significant differences among state statutes—which, aside from scope, include differing burdens of proof assigned to the parties, different rules relating to discovery, and different remedies for prevailing parties—uniformity is sorely needed. The adoption of a uniform act among the states will not only reduce the incidence of and the motivation for forum shopping, but it will clarify to all what kinds of protections citizens have when they choose to participate in public discourse.

Key Features of HB 5788

HB 5788 includes the following key features:

1. Creates a specific vehicle for filing a motion to dismiss/strike early in the litigation process;
2. Requires an expedited hearing on the motion, coupled with a stay or limitation of discovery until after the motion is heard;
3. Requires the plaintiff to demonstrate the case has some degree of merit;
4. Imposes cost-shifting sanctions that award attorney's fees and other costs when the plaintiff is unable to carry its burden; and
5. Allows for an interlocutory appeal of a decision to deny the defendant's motion.

Support for HB 5788

Many stakeholders shared their expertise and participated in the drafting of this uniform act. Stakeholders included participants from government and industry, First Amendment advocates, the Motion Picture Association of America, Inc., the National Center for State Courts, the Public Participation Project, the American Association for Justice, and the American College of Real Estate Lawyers. UPEPA has enjoyed wide, bipartisan support across the states. Attached is a support letter from nearly 30 organizations in support of the bill. UPEPA has been enacted in eight states so far: Hawaii, Kentucky, Maine, Minnesota, New Jersey, Oregon, Utah, and Washington. UPEPA legislation has also been introduced in Delaware, Idaho, Iowa, Missouri, Nebraska, Ohio, Pennsylvania, South Carolina, and West Virginia this year.

Thank you for your consideration of House Bill 5788. The bill would provide Michigan citizens much needed protection for their Constitutional rights to fully participate in governmental proceedings and exercise their rights to freedom of speech, freedom of the press, and petition the government, without fear of frivolous litigation.

Thank you for your time and consideration of HB 5788, and I urge a favorable vote.

Respectfully Submitted,



Kaitlin Wolff
ULC Legislative Program Director

An Open Letter in Support of the Uniform Law Commission's Uniform Public Expression Protection Act

The undersigned organizations represent an array of views across the political spectrum, which often results in disagreements on certain issues. Yet protection from meritless lawsuits to punish speech, known as Strategic Lawsuits Against Public Participation ("SLAPP"), is one principle that we all agree on. Our organizations strongly support robust anti-SLAPP laws modeled after the Uniform Law Commission's ("ULC") Uniform Public Expression Protection Act ("UPEPA").

The First Amendment protects our right to freedom of speech, press, assembly, and petition, which are fundamental to free expression, liberty, and democracy. Some individuals and entities seek to suppress or punish speakers, artists, or publishers through SLAPPs. Such unscrupulous litigants will start expensive and meritless litigation in an effort to intimidate and harass a speaker into silence.

Anti-SLAPP laws protect the public from frivolous lawsuits that arise from speech on matters of public concern. These laws protect speakers by providing special procedures for defendants to defeat weak or meritless claims. The stronger the statute, the more deterrence there is against filing SLAPP lawsuits.

Already, 33 states have anti-SLAPP statutes, though most could be significantly improved by adopting some or all of the UPEPA's language. Every state should adopt an anti-SLAPP law that follows the provisions in the UPEPA to provide national uniformity against abusive litigation that undermines First Amendment-protected freedom of expression.

The following six features in the UPEPA are necessary for an effective anti-SLAPP law:

1. Protection of all expression on matters of public concern.

Strong anti-SLAPP statutes protect a wide spectrum of speech. The best statutes protect all speech on matters of public concern in any forum, as the UPEPA does.

2. Minimization of litigation costs by allowing defendants to file an anti-SLAPP motion in court.

Under the UPEPA, the filing of an anti-SLAPP motion automatically halts discovery and all other proceedings until the court rules on the motion. Discovery, which includes document production and depositions, imposes expensive and invasive burdens on defendants. Instructing courts to rule promptly on the anti-SLAPP motion minimizes the cost of meritless lawsuits that harm free expression rights.

3. Requiring plaintiffs to show they have a legitimate case early in the litigation.

The UPEPA puts the burden of proof on the plaintiff when responding to an anti-SLAPP motion to "establish a prima facie case as to each essential element" of the lawsuit. It forces plaintiffs to substantiate their claims, and demonstrate that they can overcome any applicable First Amendment protection, at an early stage of the litigation. Alternatively, the defendant can win the anti-SLAPP motion by showing that the plaintiff "failed to state a claim" or that "there is no genuine issue as to any material fact and the [defendant] is entitled to judgment as a matter of law." If the court approves the anti-SLAPP motion, the case is dismissed.

4. The right to an immediate appeal of an anti-SLAPP motion ruling.

The UPEPA and strong anti-SLAPP statutes also reduce the coercive and punitive nature of litigation by providing the defendant with the right to immediately appeal a denial of an anti-SLAPP motion. This is important because lower courts can err in judgment, and a successful appeal of a ruling denying an anti-SLAPP motion can avoid an expensive and stressful trial that would burden a speaker's First Amendment rights.

5. Award of costs and attorney fees.

Strong anti-SLAPP statutes, like the UPEPA, require the court to award costs and reasonable attorney's fees to a prevailing defendant. This is a vital deterrent against SLAPP lawsuits. Without an award, a defendant might win the lawsuit, but still suffer financial devastation from costs owed to their lawyers. Every state should reduce the punishment that unscrupulous litigants can mete out to their critics and adversaries. Automatic costs and attorney's fee awards do just that. Importantly, such fee-shifting also enables more attorneys to represent those with limited means fighting a SLAPP.

6. Broad judicial interpretation of anti-SLAPP laws to protect free speech.

The UPEPA and several state anti-SLAPP statutes instruct judges to read the statute broadly and/or liberally to protect free expression rights.

We appreciate the work of the Uniform Law Commission to craft the UPEPA and support its passage in states across the country with weak or no anti-SLAPP laws. Please share this letter with those working to enact or improve anti-SLAPP laws. Our organizations are ready and willing to lend support to such efforts.

Sincerely,

Organizing Signers:

American Civil Liberties Union
Institute for Free Speech
Institute for Justice

Public Participation Project
Reporters Committee for Freedom of the
Press

Joined by:

American Society of Journalists and
Authors
Americans for Prosperity
Authors Guild
Center for Biological Diversity
Center for Individual Freedom
Comic Book Legal Defense Fund
Competitive Enterprise Institute
Defending Rights & Dissent
Electronic Frontier Foundation
Foundation for Individual Rights and
Expression
International Association of
Better Business Bureaus

James Madison Center for Free Speech
League of Conservation Voters
Motion Picture Association, Inc.
National Association of Broadcasters
National Coalition Against Censorship
National Right to Life Committee
National Taxpayers Union
News Leaders Association
News Media Alliance
PEN America
R Street Institute
Society of Professional Journalists
Woodhull Freedom Foundation