

118TH CONGRESS
2D SESSION

S. 5438

To amend title 28, United States Code, to establish a procedure to dismiss and deter strategic lawsuits against public participation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2024

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to establish a procedure to dismiss and deter strategic lawsuits against public participation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Speech Protection
5 Act”.

1 **SEC. 2. MEASURES TO END STRATEGIC LAWSUITS AGAINST**
 2 **PUBLIC PARTICIPATION.**

3 (a) IN GENERAL.—Part VI of title 28, United States
 4 Code, is amended by adding after chapter 181 the fol-
 5 lowing new chapter:

6 **“CHAPTER 182—PROCEDURE TO DISMISS**
 7 **AND DETER STRATEGIC LAWSUITS**
 8 **AGAINST PUBLIC PARTICIPATION**

“Sec.

“4201. Definitions.

“4202. Special motion to dismiss a strategic lawsuit against public participation.

“4203. Exceptions.

“4204. Fees.

“4205. Preservation of rights.

9 **“§ 4201. Definitions**

10 “In this chapter:

11 “(1) STRATEGIC LAWSUIT AGAINST PUBLIC
 12 PARTICIPATION; SLAPP.—The term ‘strategic lawsuit
 13 against public participation’ or ‘SLAPP’ means the
 14 use of the court system to silence or intimidate a
 15 party who is engaged in the constitutional exercise
 16 of one or more of the acts described in section
 17 4202(c)(2), by subjecting that party to meritless liti-
 18 gation.

19 “(2) CLAIM.—The term ‘claim’ means any civil
 20 action, complaint, cause of action, counterclaim, or
 21 other court filing seeking damages, declaratory re-

1 lief, or equitable relief, including any individual
2 causes of action.

3 “(3) MATTER OF PUBLIC CONCERN.—The term
4 ‘matter of public concern’ means an issue that—

5 “(A) can be fairly considered as relating to
6 any matter of political, social, health or safety,
7 or other concern to the community;

8 “(B) is of legitimate news interest; or

9 “(C) is a subject of general interest and of
10 value and concern to the public.

11 “(4) GOVERNMENT ENTITY.—The term ‘gov-
12 ernment entity’ means—

13 “(A) the Government of the United States;

14 “(B) a State or subdivision of a State, in-
15 cluding a county or municipality;

16 “(C) a Federal or State government cor-
17 poration, branch, department, or agency;

18 “(D) a public institution; or

19 “(E) a federally or State recognized Tribe.

20 “(5) STATE.—The term ‘State’ means each of
21 the several States, the District of Columbia, and any
22 commonwealth, territory, or possession of the United
23 States.

1 **“§ 4202. Special motion to dismiss a strategic lawsuit**
 2 **against public participation**

3 “(a) SPECIAL MOTION TO DISMISS.—

4 “(1) NOTICE OF INTENT TO FILE.—Not later
 5 than 5 days before the filing of a special motion to
 6 dismiss a claim alleged to be a strategic lawsuit
 7 against public participation under this chapter, the
 8 moving party shall provide written notice to the re-
 9 sponding party of its intent to file such a special
 10 motion to dismiss with respect to a claim. The mov-
 11 ing party may not file a special motion to dismiss
 12 until the day after the expiration of the 5-day pe-
 13 riod, before which the responding party may with-
 14 draw or amend the claim in accordance with applica-
 15 ble court rules.

16 “(2) FILING.—A special motion to dismiss pur-
 17 suant to this chapter shall be filed not later than the
 18 date that is the later of—

19 “(A) 60 days after the date of service of
 20 the pleading that states the claim alleged to be
 21 a SLAPP; or

22 “(B) 60 days after the date of removal of
 23 the case to Federal court.

24 “(3) GOOD CAUSE.—Upon motion by either
 25 party and for good cause, the court may extend the
 26 period described under paragraph (2).

1 “(b) STAY OF PROCEEDINGS.—

2 “(1) IN GENERAL.—Except as provided under
3 paragraph (2), upon the filing of a special motion to
4 dismiss under this chapter, all other proceedings be-
5 tween the moving party and responding party that
6 are related to the claim, including discovery pro-
7 ceedings and any pending hearing or motions, shall
8 be stayed until notice of entry of an order disposing
9 of the special motion to dismiss.

10 “(2) STAY INVOLVING ANOTHER PARTY.—On
11 motion by the moving party, the court may stay a
12 hearing or motion involving another party, or dis-
13 covery by another party, if the hearing or motion
14 would adjudicate, or the discovery would relate to,
15 an issue material to the motion under this section.

16 “(3) EXCEPTIONS.—

17 “(A) LIMITED DISCOVERY.—Upon motion
18 by either party, the court may allow limited dis-
19 covery related to the motion if a party shows
20 that specific information is necessary to estab-
21 lish whether a party has satisfied or failed to
22 satisfy a burden under subsection (c) and the
23 information is not reasonably available unless
24 discovery is allowed. The court may not allow
25 discovery of information about the confidential

1 sources of a reporter or work product, or any
 2 other information that is privileged under State
 3 or Federal law.

4 “(B) MOTION FOR REMAND.—Proceedings
 5 relating to a motion to remand filed pursuant
 6 to section 1447 may proceed pending consider-
 7 ation by the court of the special motion to dis-
 8 miss.

9 “(c) CONSIDERATION OF MOTION.—The court shall
 10 grant the special motion to dismiss and dismiss the claim
 11 with prejudice if—

12 “(1) the responding party fails to establish that
 13 an exception under section 4203 applies;

14 “(2) the moving party presents evidence estab-
 15 lishing that the claim at issue is based on, or in re-
 16 sponse to, the party’s—

17 “(A) exercise of a constitutional right in a
 18 legislative, executive, judicial, administrative, or
 19 other governmental proceeding;

20 “(B) exercise of a constitutional right to
 21 communicate on an issue under consideration or
 22 review in a legislative, executive, judicial, ad-
 23 ministrative, or other governmental proceeding;
 24 or

1 “(C) exercise of the constitutional right of
 2 freedom of speech or of the press, the right to
 3 assemble or petition, or the right of association,
 4 on a matter of public concern; and

5 “(3)(A) the responding party fails to present
 6 evidence establishing a prima facie case regarding
 7 each element of the claim; or

8 “(B) the moving party establishes that—

9 “(i) the responding party failed to state a
 10 claim upon which relief can be granted; or

11 “(ii) there is no genuine issue of material
 12 fact and the moving party is entitled to judg-
 13 ment as a matter of law on the claim.

14 “(d) NO REQUIREMENT FOR MOVING PARTY TO
 15 DEMONSTRATE INTENT.—The moving party does not
 16 need to demonstrate the responding party’s intent to si-
 17 lence or intimidate the moving party in order to prevail
 18 on the motion.

19 “(e) EXPEDITED RULING.—The court shall rule on
 20 a special motion to dismiss not later than 90 days after
 21 the date on which the motion is filed, unless the court
 22 determines that docket conditions, any specified discovery,
 23 or other good cause requires a ruling at a later date.

1 **“§ 4203. Exceptions**

2 “(a) IN GENERAL.—Except as provided under sub-
3 section (b), this chapter shall not apply to any claim that
4 is brought—

5 “(1) against a person primarily engaged in the
6 business of selling or leasing commercial goods or
7 services if the claim arises out of the person’s sale,
8 lease, or representation of commercial goods or serv-
9 ices;

10 “(2) by a government official or entity acting in
11 an official capacity or under color of law, or against
12 a government official or entity sued in an official or
13 individual capacity for acts or omissions conducted
14 on behalf of a government entity or under color of
15 law;

16 “(3) under the citizen suit provision of a Fed-
17 eral or state statute;

18 “(4) under the Securities and Exchange Act of
19 1934 (15 U.S.C. 78a et seq.), the Securities Act of
20 1933 (15 U.S.C. 77a et seq.), or a State securities
21 law and based on filings or communications with
22 government regulatory agencies;

23 “(5) for recovery for wrongful death, except for
24 a claim arising solely out of a constitutional right of
25 a moving party listed in section 4202(c)(2);

1 “(6) by an employee against that individual’s
2 employer or former employer for an issue arising
3 from the employment relationship; or

4 “(7) by a whistleblower under a Federal or
5 State whistleblower statute, including any claim
6 brought under the section 3729, 3730, 3731, 3732,
7 or 3733 of title 31.

8 “(b) LIMITATIONS ON EXCEPTIONS.—This chapter
9 shall apply to a claim asserted under paragraph (1), (2),
10 (3), (4), or (5) of subsection (a) if the claim is brought
11 against—

12 “(1) any publisher, editor, reporter, or other
13 person who is or was connected with or employed by
14 a radio station, television station, newspaper, maga-
15 zine, internet-based publication, or other periodical
16 publication, or by a press association or wire service,
17 if the person against whom the claim was asserted
18 was acting with respect to such connection or em-
19 ployment; or

20 “(2) any person or entity based on the person’s
21 or entity’s creation, dissemination, exhibition, adver-
22 tisement, or other similar promotion of any dra-
23 matic, literary, musical, journalistic, or artistic work.

1 **“§ 4204. Fees**

2 “(a) ATTORNEY’S FEES AND COSTS.—If the moving
3 party prevails on the special motion to dismiss, there shall
4 be a rebuttable presumption that the moving party is enti-
5 tled to an award of reasonable attorneys’ fees and costs.
6 Such a presumption may be rebutted by a showing that
7 such an award would be unreasonable or that special cir-
8 cumstances exist that would make such an award unjust,
9 as determined by the court. The moving party does not
10 need to demonstrate the responding party’s intent to si-
11 lence or intimidate the moving party or other speakers to
12 be entitled to such an award.

13 “(b) PREVAILING PARTY.—For the purposes of sub-
14 section (a), the moving party is considered to have pre-
15 vailed on the special motion to dismiss if the court grants
16 the special motion to dismiss under section 4202(d) or the
17 responding party voluntarily withdraws the claim after the
18 motion is filed consistent with section 4202(a).

19 “(c) BAD FAITH FILINGS.—If a court finds that a
20 special motion to dismiss was filed in bad faith and solely
21 intended to cause delay, there shall be a rebuttable pre-
22 sumption that the responding party is entitled to an award
23 of reasonable attorneys’ fees and costs incurred in re-
24 sponding to the special motion to dismiss. Such a pre-
25 sumption may be rebutted by a showing that such an
26 award would be unreasonable or that special cir-

1 cumstances exist that would make such an award unjust,
 2 as determined by the court.

3 **“§ 4205. Preservation of rights**

4 “(a) SAVINGS CLAUSE.—“Except as provided for in
 5 this chapter, nothing in this chapter shall reduce or limit
 6 any substantive claim, remedy, or defense to a SLAPP
 7 under any other Federal law or under the laws of any
 8 State or locality.

9 “(b) SANCTIONS AND AWARD OF EXPENSES.—Noth-
 10 ing in this chapter shall preclude the parties from seeking
 11 sanctions or an award of expenses under rule 11 of the
 12 Federal Rules of Civil Procedure.”.

13 (b) CLERICAL AMENDMENT.—The table of chapters
 14 for title 28, United States Code, is amended by adding
 15 after chapter 181 the following:

**“182. Procedure to dismiss and deter strategic lawsuits
 against public participation 4201”.**

16 **SEC. 3. RULE OF CONSTRUCTION.**

17 This Act and the amendments made by this Act shall
 18 be broadly construed and applied to protect the exercise
 19 of rights under the U.S. Constitution.

20 **SEC. 4. EFFECTIVE DATE; APPLICABILITY.**

21 This Act and the amendments made by this Act shall
 22 take effect on the date of enactment of this Act and shall
 23 apply to any application for dismissal of a SLAPP, as de-
 24 fined in section 4201 of title 28, United States Code, as

1 added by section 2 of this Act, filed on or after the date
2 of enactment of this Act.

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