

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE SANSON, AN INDIVIDUAL;
AND ROB LAUER,
AN INDIVIDUAL,

Appellants,

v.

LAWRA KASSEE BULEN,

Respondent.

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May 28 2021 01:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE NO. 82393

Dist. Court Case No. A-18-784807-C

**ADDENDUM TO APPELLANTS' OPENING BRIEF ON APPEAL FROM
THE EIGHTH JUDICIAL DISTRICT COURT**

VOLUME III

ADAM J. BREEDEN, ESQ.

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Attorney for Appellants

DESCRIPTION OF DOCUMENT	VOL.	PAGE(S)
<i>Banerjee v. Cont'l Inc.</i> Case No. 2:17-cv-00466-APG-GWF	I	ADDENDUM000001 – ADDENDUM000010
Legislative History of Senate Bill 286	I/II	ADDENDUM000011 – ADDENDUM000220
Legislative History of Senate Bill 6395	III	ADDENDUM000221 – ADDENDUM000262

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Breeden & Associates, PLLC, and on the 28th day of May, 2021, a true and correct copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system.

Additionally, a hard copy of the Appendix with all documents on CD-ROM was served on Respondent by placing a copy in the US Mail, postage pre-paid, on the same date to:

Brandon L. Phillips, Esq.
BRANDON L. PHILLIPS ATTORNEY AT LAW PLLC
1455 E. Tropicana Avenue, Suite 750
Las Vegas, Nevada 89119
Attorneys for Respondent

/s/ Kristy L. Johnson
Attorney or Employee of
Breeden & Associates, PLLC

SENATE BILL REPORT SB 6395

As Reported by Senate Committee On:
Judiciary, January 20, 2010

Title: An act relating to lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

Brief Description: Addressing lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

Sponsors: Senators Kline, Kauffman and Kohl-Welles.

Brief History:

Committee Activity: Judiciary: 1/12/10, 1/19/10, 1/20/10 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6395 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Gordon, Hargrove, Kohl-Welles and Roach.

Staff: Lidia Mori (786-7755)

Background: Strategic lawsuits against public participation, or SLAPPs, are initiated to intimidate or retaliate against people who speak out about a matter of public concern. Typically, a person who institutes a SLAPP suit claims damages for defamation or interference with a business relationship resulting from a communication made by a person or group to the government or a self-regulatory organization that has been delegated authority by the government. A 2003 Gonzaga law review article describes most SLAPPs as occurring in the commercial context with the lawsuits being filed against people or groups alleging environmental or consumer protection violations.

In 1989 the Legislature addressed the use of SLAPPs by creating immunity from civil liability for people who in good faith communicate a complaint or information to an agency of the federal, state, or local government or to a self-regulatory organization that has been delegated authority by a government agency. In 2002 the anti-SLAPP statutes were amended to remove the requirement that the communication be in good faith and to allow statutory damages of \$10,000 to a person who prevails against a lawsuit based on a communication to

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

a government agency or organization. The 2002 legislation also included a policy statement recognizing the constitutional threat of SLAPP litigation.

Summary of Bill (Recommended Substitute): The Legislature asserts that it is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process. The Legislature affirms its concern regarding lawsuits brought primarily to chill freedom of speech and petition, also known as strategic lawsuits against public participation.

An action involving public participation and petition is defined as including any oral or written statement submitted in connection with an issue under consideration by a legislative, executive, judicial, or other proceeding authorized by law. It also includes any oral or written statement that is reasonably likely to encourage or enlist public participation in the consideration or review of an issue in a legislative, executive, judicial, or other proceeding authorized by law. Any oral or written statement submitted in a public forum in connection with an issue of public concern is also an action involving public participation and petition. Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern is also considered to be an act involving public participation and petition.

A procedure is created for the speedy resolution of strategic lawsuits against public participation. The court is directed to hold a hearing with all due speed on any motion to deny a claim based on an action involving public participation and petition and to render its decision no later than seven days after the hearing is held. A person who is successful in pursuing a motion to deny a claim based on an action involving public participation and petition is awarded costs of litigation, reasonable attorneys' fees, and \$10,000. The court may award additional relief such as sanctions upon the moving party and its attorneys if it determines they are necessary to deter repetition of the conduct. If the court finds the motion to deny a claim is frivolous or is intended to cause unnecessary delay, it will award costs of litigation, reasonable attorneys' fees, and an amount of \$10,000.

The general purpose of the law to protect participants in public controversies from an abusive use of the courts is to be applied and construed liberally.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): The court may award additional relief such as sanctions upon the responding party and its attorneys if it determines they are necessary to deter repetition of the conduct.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Washington was the first state to create a statute addressing strategic lawsuits against public participation. Now we find that Washington is lagging behind other states in the protection afforded to people who engage in free speech and public participation. This bill is designed to inhibit lawsuits that are aimed at preventing public participation and petition. Claims that are valid can go forward in a timely manner but those that are initiated to hamper people who are exercising their right to speak out can be able to be resolved quickly.

Persons Testifying: PRO: Rowland Thompson, Allied Daily Newspaper; Bruce Johnson, law firm of Davis, Wright, Tremaine.

SENATE BILL REPORT SSB 6395

As Passed Senate, February 16, 2010

Title: An act relating to lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

Brief Description: Addressing lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, Kauffman and Kohl-Welles).

Brief History:

Committee Activity: Judiciary: 1/12/10, 1/19/10, 1/20/10 [DPS].

Passed Senate: 2/16/10, 46-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6395 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Gordon, Hargrove, Kohl-Welles and Roach.

Staff: Lidia Mori (786-7755)

Background: Strategic lawsuits against public participation, or SLAPPs, are initiated to intimidate or retaliate against people who speak out about a matter of public concern. Typically, a person who institutes a SLAPP suit claims damages for defamation or interference with a business relationship resulting from a communication made by a person or group to the government or a self-regulatory organization that has been delegated authority by the government. A 2003 Gonzaga law review article describes most SLAPPs as occurring in the commercial context with the lawsuits being filed against people or groups alleging environmental or consumer protection violations.

In 1989 the Legislature addressed the use of SLAPPs by creating immunity from civil liability for people who in good faith communicate a complaint or information to an agency of the federal, state, or local government or to a self-regulatory organization that has been delegated authority by a government agency. In 2002 the anti-SLAPP statutes were amended to remove the requirement that the communication be in good faith and to allow statutory

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damages of \$10,000 to a person who prevails against a lawsuit based on a communication to a government agency or organization. The 2002 legislation also included a policy statement recognizing the constitutional threat of SLAPP litigation.

Summary of Substitute Bill: The Legislature asserts that it is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process. The Legislature affirms its concern regarding lawsuits brought primarily to chill freedom of speech and petition, also known as strategic lawsuits against public participation.

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The general purpose of the law to protect participants in public controversies from an abusive use of the courts is to be applied and construed liberally.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Washington was the first state to create a statute addressing strategic lawsuits against public participation. Now we find that Washington is lagging behind other states in the protection afforded to people who engage in free speech and public participation. This bill is designed to inhibit lawsuits that

are aimed at preventing public participation and petition. Claims that are valid can go forward in a timely manner but those that are initiated to hamper people who are exercising their right to speak out can be able to be resolved quickly.

Persons Testifying: PRO: Rowland Thompson, Allied Daily Newspaper; Bruce Johnson, law firm of Davis, Wright, Tremaine.

FINAL BILL REPORT

SSB 6395

C 118 L 10
Synopsis as Enacted

Brief Description: Addressing lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, Kauffman and Kohl-Welles).

Senate Committee on Judiciary
House Committee on Judiciary

Background: Strategic lawsuits against public participation, or SLAPPs, are initiated to intimidate or retaliate against people who speak out about a matter of public concern. Typically, a person who institutes a SLAPP suit claims damages for defamation or interference with a business relationship resulting from a communication made by a person or group to the government or a self-regulatory organization that has been delegated authority by the government. A 2003 Gonzaga law review article describes most SLAPPs as occurring in the commercial context with the lawsuits being filed against people or groups alleging environmental or consumer protection violations.

In 1989 the Legislature addressed the use of SLAPPs by creating immunity from civil liability for people who in good faith communicate a complaint or information to an agency of the federal, state, or local government or to a self-regulatory organization that has been delegated authority by a government agency. In 2002 the anti-SLAPP statutes were amended to remove the requirement that the communication be in good faith and to allow statutory damages of \$10,000 to a person who prevails against a lawsuit based on a communication to a government agency or organization. The 2002 legislation also included a policy statement recognizing the constitutional threat of SLAPP litigation.

Summary: The Legislature asserts that it is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process. The Legislature affirms its concern regarding lawsuits brought primarily to chill freedom of speech and petition, also known as strategic lawsuits against public participation.

An action involving public participation and petition is defined as including any oral or written statement submitted in connection with an issue under consideration by a legislative, executive, judicial, or other proceeding authorized by law. It also includes any oral or

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written statement that is reasonably likely to encourage or enlist public participation in the consideration or review of an issue in a legislative, executive, judicial, or other proceeding authorized by law. Any oral or written statement submitted in a public forum in connection with an issue of public concern is also an action involving public participation and petition. Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern is also considered to be an act involving public participation and petition.

A procedure is created for the speedy resolution of strategic lawsuits against public participation. The court is directed to hold a hearing with all due speed on any motion to deny a claim based on an action involving public participation and petition and to render its decision no later than seven days after the hearing is held. A person who is successful in pursuing a motion to deny a claim based on an action involving public participation and petition is awarded costs of litigation, reasonable attorneys' fees, and \$10,000. The court may award additional relief such as sanctions upon the moving party and its attorneys if it determines they are necessary to deter repetition of the conduct. If the court finds the motion to deny a claim is frivolous or is intended to cause unnecessary delay, it will award costs of litigation, reasonable attorneys' fees, and an amount of \$10,000.

The general purpose of the law to protect participants in public controversies from an abusive use of the courts is to be applied and construed liberally.

Votes on Final Passage:

Senate	46	0
House	96	0

Effective: June 10, 2010

SENATE BILL 6395

State of Washington

61st Legislature

2010 Regular Session

By Senators Kline, Kauffman, and Kohl-Welles

Read first time 01/13/10. Referred to Committee on Judiciary.

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

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

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

6 (a) It is concerned about lawsuits brought primarily to chill the
7 valid exercise of the constitutional rights of freedom of speech and
8 petition for the redress of grievances;

9 (b) Such lawsuits, called "Strategic Lawsuits Against Public
10 Participation" or "SLAPPs," are typically dismissed as groundless or
11 unconstitutional, but often not before the defendants are put to great
12 expense, harassment, and interruption of their productive activities;

13 (c) The costs associated with defending such suits can deter
14 individuals and entities from fully exercising their constitutional
15 rights to petition the government and to speak out on public issues;

16 (d) It is in the public interest for citizens to participate in
17 matters of public concern and provide information to public entities
and other citizens on public issues that affect them without fear of
reprisal through abuse of the judicial process; and

1 (e) An expedited judicial review would avoid the potential for
2 abuse in these cases.

3 (2) The purposes of this act are to:

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

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

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

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

14 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

--- END ---

SUBSTITUTE SENATE BILL 6395

By Senate Judiciary (originally sponsored by Senators Kline, Kauffman, and Kohl-Welles)

Addressing lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

HOUSE

SENATE

Filed/Received

1st Reading {Date/Com}

Reported Out of Committee {Date}

Majority Recommendation

Minority Recommendation

Referred to Committee on {Date}

Reported Out of Committee {Date}

Majority Recommendation

Minority Recommendation

2nd Reading {Date}

Adopted Amendments:

Rules 3

3rd Reading {Date/Action}

Final Passage {Date/Vote}

Notice of Reconsideration

Reconsideration #1 {Date/Vote}

Reconsideration #2 {Date/Vote}

Chief Clerk/Secretary

ADDENDUM000232

1 AN ACT Relating to lawsuits aimed at chilling the valid exercise of
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3 to chapter 4.24 RCW; creating new sections; and prescribing penalties.

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

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8 petition for the redress of grievances;

9 (b) Such lawsuits, called "Strategic Lawsuits Against Public
10 Participation" or "SLAPPs," are typically dismissed as groundless or
11 unconstitutional, but often not before the defendants are put to great
12 expense, harassment, and interruption of their productive activities;

13 (c) The costs associated with defending such suits can deter
14 individuals and entities from fully exercising their constitutional
15 rights to petition the government and to speak out on public issues;

16 (d) It is in the public interest for citizens to participate in
17 matters of public concern and provide information to public entities
18 and other citizens on public issues that affect them without fear of
19 reprisal through abuse of the judicial process; and

1 ~~(e) An expedited judicial review would avoid the potential for~~
2 ~~abuse in these cases.~~

3 (2) The purposes of this act are to:

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

7 (b) Establish an efficient, uniform, and comprehensive method for
8 speedy adjudication of strategic lawsuits against public participation;
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10 (c) Provide for attorneys' fees, costs, and additional relief where
11 appropriate.

12 NEW SECTION. Sec. 2. A new section is added to chapter 4.24 RCW
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14 (1) As used in this section:

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

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

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

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

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

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2 is based on an action involving public participation and petition. As
3 used in this section, an "action involving public participation and
4 petition" includes:

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6 submitted, in a legislative, executive, or judicial proceeding or other
7 governmental proceeding authorized by law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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32 order on the special motion or from a trial court's failure to rule on
33 the motion in a timely fashion.

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

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38 in connection with each motion on which the moving party prevailed;

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

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

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17 necessary to deter repetition of the conduct and comparable conduct by
18 others similarly situated.

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

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

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

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

--- END ---

PSSB 6395

pink

Effect of Proposed Substitute: The options for relief are equal for whichever party prevails in a motion to dismiss an alleged SLAPP suit.

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

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

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

6 (a) It is concerned about lawsuits brought primarily to chill the
7 valid exercise of the constitutional rights of freedom of speech and
8 petition for the redress of grievances;

9 (b) Such lawsuits, called "Strategic Lawsuits Against Public
10 Participation" or "SLAPPs," are typically dismissed as groundless or
11 unconstitutional, but often not before the defendants are put to great
12 expense, harassment, and interruption of their productive activities;

13 (c) The costs associated with defending such suits can deter
14 individuals and entities from fully exercising their constitutional
15 rights to petition the government and to speak out on public issues;

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17 matters of public concern and provide information to public entities
18 and other citizens on public issues that affect them without fear of
19 reprisal through abuse of the judicial process; and

1 (e) An expedited judicial review would avoid the potential for
2 abuse in these cases.

3 (2) The purposes of this act are to:

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

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8 speedy adjudication of strategic lawsuits against public participation;
9 and

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

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

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

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

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

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

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33 estate, trust, partnership, limited liability company, association,
34 joint venture, or any other legal or commercial entity;

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2 is based on an action involving public participation and petition. As
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19 connection with an issue of public concern; or

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21 constitutional right of free speech in connection with an issue of
22 public concern, or in furtherance of the exercise of the constitutional
23 right of petition.

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

27 (4) (a) A party may bring a special motion to strike any claim that
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36 If the responding party meets this burden, the court shall deny the
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3 stating the facts upon which the liability or defense is based.

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7 of the determination may not be admitted into evidence at any later
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19 a later hearing. Notwithstanding this subsection, the court is
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PSSB 6395

blue

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30 persons or circumstances is not affected.

--- END ---

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-3426.3/10 3rd draft

ATTY/TYPIST: KT:cro

BRIEF DESCRIPTION: Addressing lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

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

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DO 03712

SENATE BILL REPORT

S-3426.3

As of January 11, 2010

Title: An Act Relating to lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

Brief Description: Regarding protecting the valid exercise of constitutional rights of speech and petition.

Sponsors:

Brief History:

Committee Activity: Judiciary

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: Strategic lawsuits against public participation, or SLAPPs, are initiated to intimidate or retaliate against people who speak out about a matter of public concern. Typically, a person who institutes a SLAPP suit claims damages for defamation or interference with a business relationship resulting from a communication made by a person or group to the government or a self-regulatory organization that has been delegated authority by the government. A 2003 Gonzaga law review article describes most SLAPPs as occurring in the commercial context with the lawsuits being filed against people or groups alleging environmental or consumer protection violations.

In 1989 the Legislature addressed the use of SLAPPs by creating immunity from civil liability for people who in good faith communicate a complaint or information to an agency of the federal, state, or local government or to a self-regulatory organization that has been delegated authority by a government agency. In 2002 the anti-SLAPP statutes were amended to remove the requirement that the communication be in good faith and to allow statutory damages of \$10,000 to a person who prevails against a lawsuit based on a communication to a government agency or organization. The 2002 legislation also included a policy statement recognizing the constitutional threat of SLAPP litigation.

Summary of Bill: The Legislature asserts that it is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

process. The Legislature affirms its concern regarding lawsuits brought primarily to chill freedom of speech and petition, also known as strategic lawsuits against public participation.

An action involving public participation and petition is defined as including any oral or written statement submitted in connection with an issue under consideration by a legislative, executive, judicial, or other proceeding authorized by law. It also includes any oral or written statement that is reasonably likely to encourage or enlist public participation in the consideration or review of an issue in a legislative, executive, judicial, or other proceeding authorized by law. Any oral or written statement submitted in a public forum in connection with an issue of public concern is also an action involving public participation and petition. Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern is also considered to be an act involving public participation and petition.

A procedure is created for the speedy resolution of strategic lawsuits against public participation. The court is directed to hold a hearing with all due speed on any motion to deny a claim based on an action involving public participation and petition and to render its decision no later than seven days after the hearing is held. A person who is successful in pursuing a motion to deny a claim based on an action involving public participation and petition is awarded costs of litigation, reasonable attorneys' fees, and \$10,000. The court may award additional relief such as sanctions upon the responding part and its attorneys if it determines they are necessary to deter repetition of the conduct. If the court finds the motion to deny a claim is frivolous or is intended to cause unnecessary delay, it will award costs of litigation, reasonable attorneys' fees, and an amount of \$10,000.

The general purpose of the law to protect participants in public controversies from an abusive use of the courts is to be applied and construed liberally.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-3426.3/10 3rd draft

ATTY/TYPIST: KT:cro

BRIEF DESCRIPTION: Addressing lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

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

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

5 NEW SECTION. Sec. 1. (1) The legislature finds and declares that:
6 (a) It is concerned about lawsuits brought primarily to chill the
7 valid exercise of the constitutional rights of freedom of speech and
8 petition for the redress of grievances;

9 (b) Such lawsuits, called "Strategic Lawsuits Against Public
10 Participation" or "SLAPs," are typically dismissed as groundless or
11 unconstitutional, but often not before the defendants are put to great
12 expense, harassment, and interruption of their productive activities;

13 (c) The costs associated with defending such suits can deter
14 individuals and entities from fully exercising their constitutional
15 rights to petition the government and to speak out on public issues;

16 (d) It is in the public interest for citizens to participate in
17 matters of public concern and provide information to public entities
18 and other citizens on public issues that affect them without fear of
19 reprisal through abuse of the judicial process; and

1 (e) An expedited judicial review would avoid the potential for
2 abuse in these cases.

(2) The purposes of this act are to:

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

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

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

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

14 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (c) All discovery and any pending hearings or motions in the action
25 shall be stayed upon the filing of a special motion to strike under
26 subsection (4) of this section. The stay of discovery shall remain in
27 effect until the entry of the order ruling on the motion.
28 Notwithstanding the stay imposed by this subsection, the court, on

29 motion and for good cause shown, may order that specified discovery or
30 other hearings or motions be conducted.

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

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

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

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

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

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

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

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

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

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

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

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

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Senate Committee Services — Testimony/Attendance Roster

Committee: TUD

Date: 11/2/10

Bill Number: S-3426-3

Short Title: Constitutional rights of Speech and petition

Testify?	Pro	Con	Other	Name	Organization (Full Name)	Mailing Address (Full Address Required)	Out of Town	Phone/E-mail
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>BRUCE JOHNSON</u>	<u>DAVIS WEIGHT TREMAYNE</u>	Street: <u>Sgt. 5200, 1201</u> City: <u>SCARLE 98101</u> Zip: <u>34000</u>	<input type="checkbox"/>	Phone: <u>206-757-8069</u> E-mail: <u>bjo@johnson21</u>
<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Please Print <u>ROWLAND THOMPSON</u>	<u>ALLISON DAILEY NEWSLETTERS</u>	Street: <u>P.O. Box 29</u> City: <u>OLYMPIA, WA 98507</u> Zip: <u>98507</u>	<input type="checkbox"/>	Phone: <u>360 951 2858 ext</u> E-mail: <u>AUGUST@PA.CELL@AOL.COM</u>
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Bill reports list the names of those who testify. If you sign up to testify, are not called, and submit written testimony within 24 hours, your name will be included in the bill report.