



Legislative Testimony

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Written Testimony Opposing Senate Bill 981, An Act Concerning Strategic Litigation Against Public Participation And A Special Motion To Dismiss

Representative Tong, Senator Doyle, Senator Kissel, and distinguished members of the Judiciary Committee. My name is David McGuire, and I am the executive director of the American Civil Liberties Union of Connecticut (ACLU-CT). I submit this testimony in opposition to Senate Bill 981 in its current form. The ACLU-CT praises the committee for raising this bill and supports the passage of a carefully calibrated anti-SLAPP legislation.

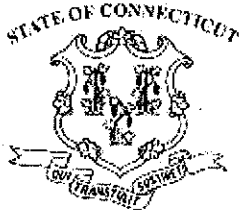
Free speech is the cornerstone of our democracy. The First Amendment guarantees free speech rights and the ability petition the government. A Strategic Lawsuit Against Public Participation, better known as a SLAPP suit, is a civil lawsuit or counterclaim filed against individuals or organizations who speak out on issues of public interest or concern. These suits chill free speech and limit public discourse. Over 20 states have enacted anti-SLAPP statutes that provide special protection for targets of these lawsuits.

Senate Bill 981 is derived from a template promulgated by the American Legislative Exchange Council (ALEC), a group that bills itself as devoted to enacting state legislation that furthers free markets. That focus is reflected in the bill, which as written would elevate commercial advertising to the pantheon of protected political speech and provide businesses with a way to avoid consumer protection litigation.

The bill defines speech broadly enough to sweep in advertising of goods or services. Doing so would equate commercial advertising with legislative testimony or a constituent's letter to a select board. Although commercial speech is not without protection, it should not be elevated to the zone of core political speech that Nutmeggers enjoy to express themselves on subjects of public concern.

The bill would place the superior court in a position to weigh evidence at the motion to dismiss stage. As written, the bill requires the trial court to find whether evidence exists to believe that the allegedly tortious conduct comprised speech, and whether the claimant can show the chance of victory by a preponderance of evidence. A number of courts across the country have found that similar evidence-weighting provisions at the motion to dismiss stage violates the right to trial by jury. We must not abridge that right in Connecticut.

We believe the state would benefit from an anti-SLAPP law. We have respectfully attached suggested language changes that address the abovementioned issues. Thank you for your time and consideration.



General Assembly

January Session, 2017

Raised Bill No. 981

LCO No. 4928



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

AN ACT CONCERNING STRATEGIC LITIGATION AGAINST PUBLIC PARTICIPATION AND A SPECIAL MOTION TO DISMISS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage and applicable to any civil*
2 *action pending on or filed after the effective date of this section*) (a) As used
3 in this section:

4 (1) "Matter of public concern" means an issue related to (A) health or
5 safety, (B) environmental, economic or community well-being, (C) the
6 government, (D) a public official or public figure, or (E) a good,
7 product or service in the marketplace;

8 (2) "Right of free speech" means communicating, or conduct
9 furthering communication, in a public forum on a matter of public
10 concern where such communication or conduct does not propose a
11 commercial transaction;

12 (3) "Right to petition the government" means (A) communication in
13 connection with an issue under consideration or review by a
14 legislative, executive, administrative, judicial or other governmental

15 body, (B) communication that is reasonably likely to encourage
16 consideration or review of a matter of public concern by a legislative,
17 executive, administrative, judicial or other governmental body, or (C)
18 communication that is reasonably likely to enlist public participation
19 in an effort to effect consideration of an issue by a legislative,
20 executive, administrative, judicial or other governmental body;

21 (4) "Right of association" means communication between
22 individuals who join together to collectively express, promote, pursue
23 or defend common interests; and

24 (5) "Special motion to dismiss" means the motion permitted
25 pursuant to this section.

26 (b) In any civil action in which a party files a complaint,
27 counterclaim or cross claim against an opposing party that is based on
28 the opposing party's exercise of its right of free speech, right to petition
29 the government, or right of association under the Constitution of the
30 United States or the Constitution of this state in connection with a
31 matter of public concern and such exercise of rights does not comprise
32 speech proposing a commercial transaction, such opposing party may
33 file a special motion to dismiss the complaint, counterclaim or cross
34 claim.

35 (c) Any party filing a special motion to dismiss shall file such
36 motion not later than sixty days after the date of service of the
37 complaint, counterclaim or cross claim. The court, upon a showing of
38 good cause by a party seeking to file a special motion to dismiss, may
39 extend the time to file a special motion to dismiss.

40 (d) The court shall stay all discovery upon the filing of a special
41 motion to dismiss. The stay of discovery shall remain in effect until the
42 court grants or denies the special motion to dismiss and any
43 interlocutory appeal thereof. Notwithstanding the entry of an order to
44 stay discovery, the court, upon motion of a party and a showing of
45 good cause, or upon its own motion, may order specified and limited

46 discovery relevant to the special motion to dismiss.

47 (e) (1) The court shall conduct an expedited hearing on a special
48 motion to dismiss. The expedited hearing shall be held not later than
49 thirty days after the date of service of such special motion to dismiss,
50 unless, (A) the court orders specified and limited discovery pursuant
51 to subsection (d) of this section, in which case, the expedited hearing
52 shall be held not later than thirty days after the date on which such
53 specified and limited discovery must be completed, (B) the parties
54 agree to a hearing date that is beyond the thirty-day period, or (C) the
55 court, for good cause shown, is unable to schedule the hearing during
56 the thirty-day period.

57 (2) When ruling on a special motion to dismiss, the court shall
58 consider pleadings and supporting and opposing affidavits of the
59 parties attesting to the facts upon which liability or a defense, as the
60 case may be, is based.

61 (3) The court shall grant a special motion to dismiss if the moving
62 party makes an initial showing, ~~by a preponderance of the evidence,~~
63 that the opposing party's complaint, counterclaim or cross claim is
64 based on the moving party's exercise of its right of free speech, right to
65 petition the government, or right of association under the Constitution
66 of the United States or the Constitution of this state in connection with
67 a matter of public concern and such exercise of rights does not
68 comprise speech proposing a commercial transaction; unless the party
69 that brought the complaint, counterclaim or cross claim sets forth
70 with particularity the circumstances giving rise to the complaint,
71 counterclaim or cross claim and demonstrates to the court by
72 preponderance of the evidence, a probability of prevailing on the
73 merits of the complaint, counterclaim or cross claim.

74 (4) ~~Notwithstanding the provisions of subdivision (3) of this~~
75 ~~subsection, the court shall grant a special motion to dismiss if the~~
76 ~~moving party establishes each element of a valid defense to the~~

77 ~~complaint, counterclaim or cross claim.~~

78 (5) The court shall rule on a special motion to dismiss as soon as
79 practicable.

80 (f) (1) If the court grants a special motion to dismiss under this
81 section, the court shall award the moving party costs and reasonable
82 attorney's fees, including such costs and fees incurred in connection
83 with the filing of the special motion to dismiss.

84 (2) If the court denies a special motion to dismiss under this section
85 and finds that such special motion to dismiss is frivolous and solely
86 intended to cause unnecessary delay, the court shall award costs and
87 reasonable attorney's fees to the party opposing such special motion to
88 dismiss.

89 (g) The findings or determinations made pursuant to subsections (e)
90 and (f) of this section shall not be admitted into evidence at any
91 later stage of the proceeding or in any subsequent action.

92 (h) The provisions of this section shall not: (1) Apply to an
93 enforcement action that is brought in the name of the state or a
94 political subdivision of the state by the Attorney General; (2) affect or
95 limit the authority of a court to award sanctions, costs, attorney's fees
96 or any other relief available under any statute, court rule or other
97 authority; (3) affect, limit or preclude the right of a party filing a
98 special motion to dismiss to any defense, remedy, immunity or
99 privilege otherwise authorized by law; (4) affect the substantive law
100 governing any asserted claim; or (5) create a private right of action; or
101 (6) apply in an action brought against a person or entity primarily
102 engaged in the business of selling or leasing goods or services.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage and applicable to any civil action pending on or filed after the effective date of this section</i>	New section
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Statement of Purpose:

To establish a special motion to dismiss in civil proceedings involving a strategic lawsuit against public participation.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]