

111TH CONGRESS
1ST SESSION

H. R. 4364

To protect first amendment rights of petition and free speech by preventing States and the United States from allowing meritless lawsuits arising from acts in furtherance of those rights, commonly called “SLAPPs”, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2009

Mr. COHEN introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect first amendment rights of petition and free speech by preventing States and the United States from allowing meritless lawsuits arising from acts in furtherance of those rights, commonly called “SLAPPs”, 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 “Citizen Participation
5 Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds and declares that—

1 (1) the framers of our Constitution, recognizing
2 participation in government and freedom of speech
3 as inalienable rights essential to the survival of de-
4 mocracy, secured their protection through the First
5 Amendment to the United States Constitution;

6 (2) the communications, information, opinions,
7 reports, testimony, claims and arguments that indi-
8 viduals, organizations and businesses provide to the
9 government are essential to wise government deci-
10 sions and public policy, the public health, safety, and
11 welfare, effective law enforcement, the efficient oper-
12 ation of government programs, the credibility and
13 trust afforded government, and the continuation of
14 America's representative democracy;

15 (3) civil lawsuits and counterclaims, often
16 claiming millions of dollars in damages, have been
17 and are being filed against thousands of individuals,
18 organizations, and businesses based upon their valid
19 exercise of the rights to petition or free speech, in-
20 cluding seeking relief, influencing action, informing,
21 communicating, and otherwise participating with
22 government, the electorate, or in matters of public
23 interest;

24 (4) such lawsuits, called Strategic Lawsuits
25 Against Public Participation or SLAPPs, are often

1 ultimately dismissed as groundless or unconstitu-
2 tional, but not before the defendants are put to
3 great expense, harassment, and interruption of their
4 productive activities;

5 (5) it is in the public interest for individuals,
6 organizations and businesses to participate in mat-
7 ters of public concern and provide information to
8 public entities and other citizens on public issues
9 that affect them without fear of reprisal through
10 abuse of the judicial process;

11 (6) the threat of financial liability, litigation
12 costs, destruction of one's business, loss of one's
13 home, and other personal losses from groundless
14 lawsuits seriously impacts government, interstate
15 commerce, and individual rights by significantly
16 chilling public participation in government, public
17 issues, and in voluntary service;

18 (7) SLAPPs are an abuse of the judicial proc-
19 ess that waste judicial resources and clog the al-
20 ready over-burdened court dockets;

21 (8) while some courts and State legislatures
22 have recognized and discouraged SLAPPs, protec-
23 tion against SLAPPs has not been uniform or com-
24 prehensive; and

1 (9) some SLAPP victims are deprived of the re-
2 lief to which they are entitled because the current
3 bankruptcy law allows for the discharge of fees,
4 costs and damages awarded against a party for
5 maintaining a SLAPP.

6 **SEC. 3. IMMUNITY FOR PETITION ACTIVITY.**

7 (a) IMMUNITY.—Any act of petitioning the govern-
8 ment made without knowledge of falsity or reckless dis-
9 regard of falsity shall be immune from civil liability.

10 (b) BURDEN AND STANDARD OF PROOF.—A plaintiff
11 must prove knowledge of falsity or reckless disregard of
12 falsity by clear and convincing evidence.

13 **SEC. 4. PROTECTION FOR PETITION AND SPEECH ACTIV-**
14 **ITY.**

15 Any act in furtherance of the constitutional right of
16 petition or free speech shall be entitled to the procedural
17 protections provided in this Act.

18 **SEC. 5. SPECIAL MOTION TO DISMISS.**

19 (a) IN GENERAL.—A party may file a special motion
20 to dismiss any claim arising from an act or alleged act
21 in furtherance of the constitutional right of petition or free
22 speech within 45 days after service of the claim if the
23 claim was filed in Federal court or, if the claim was re-
24 moved to Federal court pursuant to section 6 of this Act,
25 within 15 days after removal.

1 (b) BURDENS OF THE PARTIES.—A party filing a
2 special motion to dismiss under this Act has the initial
3 burden of making a prima facie showing that the claim
4 at issue arises from an act in furtherance of the constitu-
5 tional right of petition or free speech. If the moving party
6 meets this burden, the burden shifts to the responding
7 party to demonstrate that the claim is both legally suffi-
8 cient and supported by a sufficient prima facie showing
9 of facts to sustain a favorable judgment.

10 (c) STAY OF DISCOVERY.—Upon the filing of a spe-
11 cial motion to dismiss, discovery proceedings in the action
12 shall be stayed until notice of entry of an order disposing
13 of the motion, except that the court, on noticed motion
14 and for good cause shown, may order that specified dis-
15 covery be conducted.

16 (d) EXPEDITED HEARING.—The court shall hold an
17 expedited hearing on the special motion to dismiss, and
18 issue a ruling as soon as practicable after the hearing. The
19 parties may submit the pleadings and affidavits stating
20 the facts upon which the liability or defense is based. The
21 court shall explain the reasons for its grant or denial of
22 the motion in a statement for the record. If the special
23 motion to dismiss is granted, dismissal shall be with preju-
24 dice.

1 (e) IMMEDIATE APPEAL.—The defendant shall have
2 a right of immediate appeal from a district court order
3 denying a special motion to dismiss in whole or in part.

4 **SEC. 6. FEDERAL REMOVAL JURISDICTION.**

5 (a) IN GENERAL.—A civil action commenced in a
6 State court against any person who asserts as a defense
7 the immunity provided for in section 3 of this Act, or as-
8 serts that the action arises from an act in furtherance of
9 the constitutional right of petition or free speech, may be
10 removed by the defendant to the district court of the
11 United States for the district and division embracing the
12 place wherein it is pending.

13 (b) REMAND OF REMAINING CLAIMS.—A court exer-
14 cising jurisdiction under this section shall remand any
15 claims against which the special motion to dismiss has
16 been denied, as well as any remaining claims against
17 which a special motion to dismiss was not brought, to the
18 State court from which it was removed.

19 (c) TIMING.—A court exercising jurisdiction under
20 this section shall remand an action if a special motion to
21 dismiss is not filed within 15 days after removal.

22 **SEC. 7. SPECIAL MOTION TO QUASH.**

23 (a) IN GENERAL.—A person whose personally identi-
24 fying information is sought in connection with an action
25 pending in Federal court arising from an act in further-

1 ance of the constitutional right of petition or free speech
2 may make a special motion to quash the discovery order,
3 request or subpoena.

4 (b) **BURDENS OF THE PARTIES.**—The person bring-
5 ing a special motion to quash under this section must
6 make a prima facie showing that the underlying claim
7 arises from an act in furtherance of the constitutional
8 right of petition or free speech. If this burden is met, the
9 burden shifts to the plaintiff in the underlying action to
10 demonstrate that the underlying claim is both legally suffi-
11 cient and supported by a sufficient prima facie showing
12 of facts to sustain a favorable judgment. This standard
13 shall apply only to a special motion to quash brought
14 under this section.

15 **SEC. 8. FEES AND COSTS.**

16 (a) **ATTORNEY'S FEES.**—The court shall award a
17 moving party who prevails on a special motion to dismiss
18 or quash the costs of litigation, including a reasonable at-
19 torney's fee.

20 (b) **FRIVOLOUS MOTIONS AND REMOVAL.**—If the
21 court finds that a special motion to dismiss, special motion
22 to quash, or the removal of a claim under this Act is frivo-
23 lous or is solely intended to cause unnecessary delay, the
24 court may award a reasonable attorney's fees and costs
25 to the responding party.

1 (c) GOVERNMENT ENTITIES.—A government entity
2 may not recover fees pursuant to this section.

3 **SEC. 9. BANKRUPTCY NONDISCHARGABILITY OF FEES AND**
4 **COSTS.**

5 Fees or costs awarded against a party by a court for
6 the prosecution of any claim finally dismissed pursuant
7 to this Act, or any subpoena or discovery order quashed
8 pursuant to this Act, or any claim finally dismissed pursu-
9 ant to a State anti-SLAPP law, shall not be dischargeable
10 in bankruptcy under section 1328 or section 523 of title
11 11, United States Code.

12 **SEC. 10. EXEMPTIONS.**

13 (a) PUBLIC ENFORCEMENT.—Sections 4 through 8
14 of this Act shall not be available in any action brought
15 solely on behalf of the public or solely to enforce an impor-
16 tant right affecting the public interest.

17 (b) COMMERCIAL SPEECH.—This Act shall not apply
18 to any claim for relief brought against a person primarily
19 engaged in the business of selling or leasing goods or serv-
20 ices, if the statement or conduct from which the claim
21 arises is a representation of fact made for the purpose of
22 promoting, securing or completing sales or leases of, or
23 commercial transactions in, the person's goods or services,
24 and the intended audience is an actual or potential buyer
25 or customer.

1 (c) “SLAPP-BACK” SUITS.—This Act shall not be
2 available to dismiss any action or claim arising from a
3 claim that has been dismissed pursuant to this Act or to
4 a State anti-SLAPP law.

5 **SEC. 11. DEFINITIONS.**

6 In this Act:

7 (1) ACT IN FURTHERANCE OF THE RIGHT OF
8 FREE SPEECH.—The term “act in furtherance of the
9 right of free speech” includes but is not limited to—

10 (A) any written or oral statement made in
11 connection with an issue under consideration or
12 review by a legislative, executive, or judicial
13 body, or any other official proceeding author-
14 ized by law;

15 (B) any written or oral statement made in
16 a place open to the public or a public forum in
17 connection with an issue of public interest; or

18 (C) any other conduct in furtherance of
19 the exercise of the constitutional right of peti-
20 tion or the constitutional right of free speech in
21 connection with an issue of public interest.

22 (2) ACT OF PETITIONING THE GOVERNMENT.—
23 The term “act of petitioning the government” in-
24 cludes but is not limited to any written or oral state-
25 ment—

1 (A) made or submitted before a legislative,
2 executive, or judicial body, or any other official
3 proceeding authorized by law; or

4 (B) any written or oral statement encour-
5 aging a statement before a legislative, executive,
6 or judicial body, or any other official proceeding
7 authorized by law.

8 (3) CLAIM.—The term “claim” includes any
9 civil lawsuit, claim, complaint, cause of action, cross-
10 claim, counterclaim, or other judicial pleading or fil-
11 ing requesting relief.

12 (4) GOVERNMENT ENTITY.—The term “govern-
13 ment entity” includes the United States, a branch,
14 department, agency, State, or subdivision of a State,
15 or other public authority.

16 (5) ISSUE OF PUBLIC INTEREST.—The term
17 “issue of public interest” includes an issue related to
18 health or safety; environmental, economic or commu-
19 nity well-being; the government; a public figure; or
20 a good, product or service in the market place.
21 “Issue of public interest” shall not be construed to
22 include private interests, such as statements directed
23 primarily toward protecting the speaker’s business
24 interests rather than toward commenting on or shar-

1 ing information about a matter of public signifi-
2 cance.

3 (6) PERSONALLY IDENTIFYING INFORMA-
4 TION.—The term “personally identifying informa-
5 tion” means first and last name or last name only;
6 home or other physical address including temporary
7 shelter or housing and including a street name or
8 ZIP Code; full date of birth; email address or other
9 online contact information; telephone number; social
10 security number; Internet protocol address or host
11 name that identifies an individual, or any other in-
12 formation that would serve to identify an individual.

13 (7) STATE.—The term “State” means each of
14 the several States, the District of Columbia, and any
15 commonwealth, territory, or possession of the United
16 States.

17 **SEC. 12. CONSTRUCTION.**

18 This Act shall be liberally construed to effectuate its
19 findings and purposes fully, except that the exemptions
20 shall be construed narrowly.

21 **SEC. 13. RELATIONSHIP TO OTHER LAWS.**

22 Nothing in this Act shall preempt or supersede any
23 Federal, State, constitutional, case or common law that
24 provides the equivalent or greater protection for persons

1 engaging in activities in furtherance of the rights of peti-
2 tion or free speech.

3 **SEC. 14. SEVERABILITY.**

4 If any provision of this Act or the application of any
5 provision of this Act to any person or circumstance is held
6 invalid, the application of such provision to other persons
7 or circumstances and the remainder of this Act shall not
8 be affected thereby.

9 **SEC. 15. EFFECTIVE DATE.**

10 This Act shall become effective upon enactment.

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