

## Memorandum in Support

### COMMITTEE ON MEDIA LAW

Media #1

June 5, 2017

S. 2183

By: Senator Alcantara

A. 5292

By: M. of A. Weinstein

Senate Committee: Codes

Assembly Committee: Codes

Effective Date: 30<sup>th</sup> day after it shall have  
become a law

**AN ACT** to amend the civil rights law, in relation to actions involving public petition and participation.

**LAW AND SECTIONS REFERRED TO:** Article 70-a of the civil rights law.

#### **THE COMMITTEE ON MEDIA LAW SUPPORTS THIS LEGISLATION**

The New York State Bar Association Media Law Committee, which consists primarily of lawyers specializing in First Amendment and media law and litigation, strongly endorses this bill, which would update and strengthen New York's current anti-SLAPP statute. Passage of the Bill would not alter substantive New York tort law in any way. But, it would help ensure that all New York citizens and businesses are able to exercise their free speech rights without risk of incurring substantial legal fees to defend unmeritorious lawsuits, while respecting the ability of those who have been harmed to seek redress in the courts. Critically, these businesses include media companies based in New York that play an important role in informing the citizenry through news and entertainment content.

Strategic lawsuits against public participation ("SLAPP" suits) are baseless lawsuits that seek to silence those who exercise their First Amendment rights. In general, these laws provide a mechanism for SLAPP suits to be dismissed quickly and efficiently, so all of those involved – the judicial system, defendants, and plaintiffs – do not end up spending substantial time and resources litigating a case that ultimately will be dismissed. Importantly, anti-SLAPP statutes only affect the process by which these lawsuits are litigated. They provide a mechanism for judges to consider all relevant information early in the case, but they do not alter the substantive requirements. If a plaintiff's claim has a reasonable basis in fact and law, nothing in an anti-SLAPP statute, including the pending Bill, will preclude that claim.

Unfortunately, a bi-product of our increasingly polarized political landscape, as well as the nature of our legal system, has been an increase in efforts seeking to prohibit or punish speech. Both the news media and companies producing entertainment content face unprecedented threats from those who want to silence others who present information that does not fit a specific narrative or viewpoint. Anti-SLAPP legislation protects the free press, including magazines, book publishers, newspapers, websites, and film and television producers, as well as all citizens who seek to be heard, from those who otherwise would use the legal system to attempt to harass, or, most importantly, to silence them.

The Bill would improve New York’s existing anti-SLAPP statute in two important ways. First, it would expand the scope of the statute to cover claims involving “any communication in a place open to the public or a public forum in connection with an issue of public concern” and “any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.” This language would help ensure that New York’s anti-SLAPP statute will apply to the types of meritless claims that target the First Amendment-protected speech that media companies routinely engage in. This language, accordingly, would ensure that New York’s anti-SLAPP statute encompasses all types of cases where a plaintiff is seeking to punish a defendant for speech the plaintiff does not like or disagrees with, so that defendants do not have to spend vast amounts in attorneys’ fees defending their right to speak freely. This is crucial to New Yorkers’ exercise of their First Amendment and New York State Constitutional rights.

Second, the Bill would strengthen the attorneys’ fees provision by replacing the “may” be recovered in the existing statute with “shall.” The law would still require a showing that the action “was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law.” This provision would be particularly helpful in preserving judicial resources, as it will deter meritless lawsuits targeting free speech from being filed in the first place.

New York has a long and proud tradition of protecting free speech rights. It is considered by many to be the media capital of the world – home to the publishing industry, a number of the largest daily newspapers in the United States including *The New York Times* and *The Wall Street Journal*, as well as many national television and cable news organizations. It also is the fastest-growing technology hub in the United States.<sup>1</sup> More recently, New York has become home to a growing number of film and television productions, which provide significant economic benefits to the state.<sup>2</sup>

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<sup>1</sup> See <http://www1.nyc.gov/site/internationalbusiness/industries/technology-and-media-industry.page>.

<sup>2</sup> See <http://www.nysfilm.com/>.

Approximately 30 states across the political spectrum have enacted anti-SLAPP statutes in the past 25 years. Many of those states, from California, Nevada, and Oregon, to Texas, Georgia, and Oklahoma, have anti-SLAPP statutes that are considerably stronger than New York's current law. The relatively modest proposed changes to the existing statute would bring New York law more in line with other states, and provide improved protection for the free speech rights of all New Yorkers, including entertainment companies and the news media.

Based on the forgoing, the New York State Bar Association's Committee on Media Law **SUPPORTS** this legislation.