Pennsylvania House Judiciary Committee
December 16, 2019
Anti-SLAPP Hearing
Testimony submitted by: Michael E. Baughman

Good morning, Chairman Kauffman, Chairman Briggs and Members of the House Judiciary Committee. Thank you for the opportunity to present testimony in support of the "Anti-SLAPP" legislation that is contemplated by House Bill 95 and Senate Bill 95. This important legislation would promote and protect the public's right to express their opinions on speech about matters of public concern, by deterring "SLAPP" lawsuits – strategic lawsuits against public participation. Broadly speaking, SLAPP suits are retaliatory lawsuits aimed at silencing and deterring speech – through fear of litigation costs, burdens and possibly unwarranted judgments – by those who would speak out in the public sphere. While Pennsylvania currently has an anti-SLAPP law, it is extremely narrow, limited to matters "relating to participation in environmental law or regulation."[1] Pennsylvania should follow the lead of numerous other states, including California, Colorado, Indiana, Louisiana, Oregon, Oklahoma, and Tennessee, which more broadly provide protection against lawsuits that seek to chill the exercise of freedom of expression. House Bill 95 and Senate Bill 95 would do this by, among other things, requiring courts to carefully weigh the merits of lawsuits involving speech on matters of public concern at the outset of the case, before litigants are put to the potentially massive expensive of discovery.

As I will explain, it is well settled that the unchecked risk of lawsuits over protected speech can chill that speech. Those who wish to speak on matters of public concern, but face threats of years of litigation, with burdensome discovery and massive attorney fees, may decide to forego even truthful, important speech to avoid these risks and costs. Those in the

public eye, particularly public officials and public figures, should not be able to use the threat of litigation alone to deter protected speech with which they disagree. Thus, the Supreme Court of the United States and courts in this Commonwealth have repeatedly emphasized that courts should independently ensure – before cases go to juries – that the speech at issue in the lawsuit falls outside the realm of constitutional protection.

Unfortunately, in my experience, it is rare that defendants in cases involving protected speech can get a substantive decision on the merits of their constitutional defenses, at least until after expensive, burdensome discovery. Courts rarely grant initial motions – preliminary objections – even in cases where there are fairly clear constitutional defenses. House Bill 95 and Senate Bill 95 would allow courts to decide these important issues at the outset of the case, making it less likely that plaintiffs could simply use the threat of expensive discovery to obtain an unwarranted settlement or quell speech altogether. The Bills would also allow for immediate appeals of these preliminary decisions, ensuring both additional legal review of the questions by appellate court judges and careful analysis by the trial court, who will have to write a decision in support of their position if an appeal is filed. Finally, the Bills would appropriately require plaintiffs to internalize the risk of filing lawsuits over protected speech by requiring them to shoulder the costs of the defense of such claims where they are proven to involve protected speech. This important legislation should be passed, to ensure that the citizens of this Commonwealth have the information they need to effectively govern themselves and feel free to responsibly discuss matters of public concern.

I. *My Background*

Having practiced in the area of First Amendment law for over two decades, I have particular experience in the types of lawsuits which will be implicated by this Legislation. I am a

Partner in Pepper Hamilton's Philadelphia office, and co-chair of the Pepper's First Amendment and Newsroom Practice Group. I have been litigating cases involving First Amendment issues for all of my 20-plus years of practicing law, representing newspapers, television stations and other media organizations in defamation litigation and issues involving freedom of speech. During my career, I have litigated dozens of complex defamation actions, primarily in Pennsylvania state courts, on behalf of news organizations. These include lawsuits brought by elected officials, persons seeking elected office, and prominent public figures. I have also defended individuals in defamation litigation and other matters involving freedom of speech and expression. I am listed in Best Lawyers for First Amendment Litigation and Media Law, and have been named Best Lawyer's "Philadelphia Lawyer of the Year "for Media Law (2018) and First Amendment Litigation (2015). I also handle other complex litigation matters in Pennsylvania state courts and am very familiar with Pennsylvania state court practice. In 2019, I was selected as a local litigation star in Pennsylvania by *Benchmark Litigation*.

II. ***Freedom of Speech on Matters of Public Concern is Essential to Our Democracy and Risks of Litigation Can Quell That Speech.***

A core principle of our democratic system is that "that debate on public issues should be uninhibited, robust, and wide-open."[2] "That is because speech concerning public affairs is more than self-expression; it is the essence of self-government."[3] In a democracy, the free flow of information about matters of public concern must be vigilantly protected, so that citizens have the information they need in order to make intelligent decisions about how their government – which belongs to them – should function. Citizens must have the right to criticize their government, to challenge the actions of those elected to serve them, and to broadly discuss the matters of the day. The Supreme Court of the United States emphasized this point in *New York Times v. Sullivan*:

> The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, "was fashioned to assure unfettered interchanges of ideas for the bringing about of political and social changes desired by the people." . . . The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.[4]

If expression on matters of public concern is at the heart of the First Amendment[5] criticism of government and those in charge of it is at its core:

> Criticism of government is at the very center of the constitutionally protected area of free discussion. Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized.[6]

These principles are embedded not only in the federal constitution, but also in this Commonwealth's Constitution and our long history and traditions, dating back to before the founding of the Nation. Indeed, the Pennsylvania Supreme Court has "long construed the freedom of expression provision in Article I, § 7 as providing greater protection of expression than its federal counterpart."[7] Pennsylvania's constitutional protection for freedom of speech "is an ancestor, not a stepchild, of the First Amendment,"[8] and has "special meaning for this Commonwealth, whose founder, William Penn, was prosecuted in England for the 'crime' of preaching to an unlawful assembly and persecuted by the court for daring to proclaim his right to a trial by an uncoerced jury."[9] As one commentator has noted, Pennsylvania was "the flagship of free expression in the early Republic," and many other states modeled their constitutional protections for free speech and press on those adopted in this Commonwealth.[10] Thus, it is not surprising that during the debates on amendments to the Pennsylvania Constitution in 1873, the delegates repeatedly emphasized the importance of protecting the rights of citizens in this

Commonwealth to speak on and receive information on matters of public importance, so that government may be responsive to the will of the people.[11]

In light of the critical importance to our democracy of speech on matters of public concern, the United States Supreme Court and the Supreme Court of Pennsylvania have put substantial restrictions on the ability of public officials and public figures to sue for defamation, and for lawsuits otherwise involving speech on matters of public concern to proceed. As one court has put it, "[m]erely because an official is not pleased with the reporting done by a newspaper or because [she] might become the object of editorial discussion does not entitle [her] to assail the printed word under the guise of defamation."[12] Thus, in *New York Times v. Sullivan*, the Supreme Court held that public officials cannot sue for defamation absent clear and convincing evidence that the speaker acted with actual malice – knowledge that the statement was false or reckless disregard as to truth,[13] a rule which was later expanded to include public figures.[14] The U.S. Supreme Court has also added additional constitutional limitations to defamation liability over the years, including that the plaintiff has the burden of proving falsity in cases involving matters of public concern,[15] that statements on matters of public concern which are not provably false are constitutionally protected,[16] and that statements which are substantially true cannot form the basis of a defamation claim.[17]

The U.S. Supreme Court has also recognized that ***judges*** play a critical gate keeping role in ensuring that protected speech cannot be the subject of a defamation verdict. As our Commonwealth's Supreme Court recognized in *Tucker v. Philadelphia Daily News*: "'judges, as expositors of the Constitution, have a duty to independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of "actual malice."'"[18] Notably,

Tucker involved an appeal from a decision which granted preliminary objections – the lower court had dismissed the complaint before discovery – which shows that our Commonwealth's Supreme Court believes courts should perform this gatekeeping function at the earliest stages of the case. Indeed, courts in this Commonwealth have said that "[i]n the First Amendment area, summary procedures are even more essential. For the stake here, if harassment succeeds, is free debate."[19]

Early, summary proceedings are important in cases involving speech on matters of public concern not only because judges have an independent responsibility to ensure that free speech is protected, but also because the threat of lawsuits can itself deter free expression. Part of the U.S. Supreme Court's reasoning for enacting the actual malice rule in *New York Times v. Sullivan* was that "would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt . . . whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which "steer far wider of the unlawful zone."[20] Litigation is expensive, and the very threat of having to spend hundreds of thousands of dollars – or more – to defend a defamation claim, even if baseless, may deter people from speaking their minds. As Justice Samuel Alito very recently put it:

> [R]equiring a free speech claimant to undergo a trial after a ruling that may be constitutionally flawed is no small burden. . . . A journalist who prevails after trial in a defamation case will still have been required to shoulder all the burdens of difficult litigation and may be faced with hefty attorney fees. Those prospects may deter the uninhibited expression of views that would contribute to healthy public debate.[21]

In sum, it is well established that to protect the free flow of information necessary to a self-governing society, judges must play an important gate-keeping role, early in the case, to

ensure that constitutionally protected expression is protected rather than chilled. Allowing cases to proceed to discovery or trial, where the speech is, in fact, constitutionally protected, risks discouraging that protected speech for fear of the costs and burdens of defending litigation.

III. *Under Current Pennsylvania Law and Practice, Defendants in Litigation Over Speech on Matters of Public Concern Face Daunting Burdens and Expense to Convince Courts That Their Speech Is Constitutionally Protected*

In my experience litigating complex defamation actions over many years, establishing to the Court that the speech at issue is constitutionally protected is a costly, time consuming process. Given the enormous dockets the trial courts in Pennsylvania face, it is often difficult to obtain a fulsome ruling on a case until at least the summary judgment stage, and often not until trial. Many public officials and public figures – and their attorneys who specialize in this area – know this and, not surprisingly, use the costs associated with litigation as leverage to try to prevent speech on matters of public concern or to gain unwarranted settlements. They are free to use litigation to punish those who criticize them because there are little to no consequences in filing such claims, and little likelihood that the claims will be dismissed until after discovery. This chills speech on matters of public concern.

First, in my experience, it is very rare that trial courts will grant preliminary objections to dismiss defamation claims at the outset of litigation, even in cases involving opinions and commentary about the official actions of elected public officials. As noted above, in *Tucker v. Philadelphia Daily News*, the Pennsylvania Supreme Court upheld a decision granting preliminary objections, and suggested that, even at the preliminary objection stage, courts should carefully evaluate whether the speech at issue is constitutionally protected, including whether actual malice can be established by clear and convincing evidence. But even after *Tucker*, courts rarely grant preliminary objections, even in public official libel cases and

even where substantial arguments are made that the speech is constitutionally protected. Statistics show that the courts of common pleas have mammoth dockets. According to 2018 data from the Administrative Office of the Pennsylvania Courts, as of January 1, 2018, there were over 225,000 civil cases pending in the Pennsylvania Courts of Common Pleas.[22] Of the approximately 165,000 cases processed in calendar year 2018, less than 5% were processed by way of dispositive motion.[23] The available data does not show which of those dispositive motions were at the summary judgment stage, as opposed to the preliminary objection stage, nor does the data break down the type of cases that were disposed of by dispositive motion. But the evidence clearly shows that dispositive motions are rarely granted, and in my experience that is particularly so as to preliminary objections. When preliminary objections are denied, in my experience it is extremely uncommon to receive a written decision explaining the basis for the decision – which may well be attributable to the judges' massive dockets.

It typical litigation, it may make sense that preliminary objections are often denied, even if the case may be a good candidate for a summary judgment motion at the close of discovery. In considering preliminary objections, courts must take all of the allegations in the complaint as true and the plaintiff has not had the opportunity to develop any facts that may support their claim. But discovery is expensive, time consuming and burdensome. As explained above, in the area of freedom of expression, those burdens put at risk the free flow of information and ideas about matters of public concern. The costs of getting through discovery to summary judgment and the opportunity for a more fulsome consideration of a dispositive motion may well deter individuals from engaging in the speech at all.

I have handled many defamation cases involving public figures and public officials where preliminary objections were denied in a single sentence order, and summary

judgment was later granted on the grounds that the articles in suit were constitutionally protected. Obtaining summary judgment, however, came at substantial costs and burden, usually after over a year of discovery. Taking a defamation case through discovery costs hundreds of thousands of dollars, and sometimes more. Depositions of journalists are burdensome, and sometimes put at risk source information protected by Pennsylvania law. While decisions on summary judgment ultimately showed that the speech at issue in these cases was constitutionally protected, substantial expenditures of attorney fees and countless hours of the parties' time could have been avoided if these issues had been decided at the outset of the case.

I have also handled defamation cases brought by public officials where summary judgment has been denied, and even verdicts entered in the plaintiffs' favor by a jury, only to be reversed once an appellate court determined that the speech was constitutionally protected as a matter of law. Trying a complex defamation case can take weeks and costs hundreds of thousands of dollars, over and above what was spent in discovery. While, in my experience, defendants in defamation cases in state court stand a better chance of winning summary judgment than preliminary objections, I have still handled many cases where summary judgment motions have been denied in one line orders. While trial court judges in this Commonwealth are heavily burdened with busy dockets, careful consideration of issues can sometimes be difficult where the decision maker is not required to provide a written, reasoned decision. Writing requires one to carefully consider all of ones' arguments, to test the logic of them, and to provide an analysis that can be tested and challenged. In my experience, a defendant in a case involving free speech is exponentially more likely to win a summary judgment motion in federal court, where dockets are less crowded, and judges typically issue written decisions.

Lawyers who specialize in plaintiff defamation claims know that claims are unlikely to be dismissed until after expensive, burdensome discovery or trial. This means that even before an article is published, my clients have received letters threatening expensive and costly litigation if an article is published. The threat of expensive discovery also can be used to seek unwarranted settlements to avoid the cost of the litigation. This is particularly so because there is little risk to the plaintiff or his lawyer in filing the litigation in the first instance, unless the claim is so frivolous as to warrant the extraordinary tool of sanctions or a suit under Pennsylvania's Dragonetti Act. And while the costs of litigation are daunting to the media industry, they are perhaps even more daunting to individuals who are threatened with litigation over protected speech, who may lack insurance or the resources to defend such claims. Their voices are just as important.

IV. *Pennsylvania Should Follow the Lead of Numerous Other States That Have Adopted Anti-SLAPP Legislation to Combat the Use of Lawsuits to Chill Free Speech and Expression*

Scholars have shown how lawsuits can be used to stifle public debate. For example, Penelope Canan and George Pring analyzed 100 SLAPP lawsuits from across the country. In their initial study, Canan and Pring examined types of people and groups that file these suits, alleged injuries in the suits, duration of the suits from filing to disposition, defenses, and legal outcomes.[24] Through continued studies regarding SLAPP suits, Canan and Pring concluded that lawsuits aimed at stifling unpopular viewpoints, and the damage sought in such cases, could have a ripple effect in discouraging others from participating in free speech and debate. Specifically, they note that SLAPP suits impose immediate and substantial costs on defendants, further burdened the overcrowded court system, undercut government programs

which rely on public participation, chill public discussion and political involvement, and remove speech from the public decision-making forum to judicial forums.[25]

In response to the chilling effect created by lawsuits implicating the exercise of free speech, states began to enact anti-SLAPP legislation. Although these statutes vary from state to state, the most effective statutes provide a quick and inexpensive means to seek early dismissal of lawsuits over the exercise of constitutionally protected activity, and often provide for reimbursement of legal fees.[26]

Today, more than a quarter of the states, including Pennsylvania, have some form of anti-SLAPP statutes on the books.[27] But Pennsylvania's current statute provides for recovery of "reasonable attorney's fees and the costs of litigation" only if a person successfully defends against a SLAPP action "relating to participation in environmental law or regulation."[28] In contrast, other states, such as California, offer far greater protections under their anti-SLAPP laws.[29] California law provides that a defendant can file a special motion to strike for a claim "arising out of any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue or an issue of public concern."[30] The filing of the motion to strike stays discovery until the motion is resolved.[31] Once the motion is filed, a judge may "decide at the outset of the suit" if the plaintiff is likely to prevail, and, if not, dismiss the case.[32] Other states, including Colorado, Indiana, Louisiana, Oregon, Oklahoma, and Tennessee have taken similar broad approaches and follow California's model.[33]

The pending Pennsylvania bill has some similarities to California's anti-SLAPP law,[34] which has been important to the protection of free speech in California.[35] House Bill 95

recognizes the "disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." HB 95 at § 1. Broadly speaking, the Bill would permit a defendant in a lawsuit to seek early dismissal of the case where the conduct at issue constitutes a "constitutionally protected communication." The Bill broadly defines "constitutionally protected communication" to be communications that seek to influences government action or otherwise "falls within the protection of the right to petition government or the right to free speech under the Constitution of the United States of the Constitution of Pennsylvania." *Id.* at § 8340.4(g).

The proposed legislation would help remedy a number of the concerns I identified above and I urge the Legislature to pass it.

First, the Bill would require courts to carefully assess whether the conduct at issue in the litigation is constitutionally protected at the outset of the case, which, as I noted above, rarely happens today. Requiring judges to decide at the outset of the case whether the case involves constitutionally protected activity would reinforce the U.S. and Pennsylvania Supreme Courts' instruction that judges should be gatekeepers of the Constitution, and that the question of whether conduct is constitutionally protected should be decided before the parties are put to the expense of discovery. The Bill as written would allow a motion to dismiss to be filed before or up to 30 days after the filing of a responsive pleading.[36] Importantly, the Bill would also allow the parties to submit appropriate evidence in support of their positions, while otherwise staying broad discovery. Thus, courts that might be reluctant to grant preliminary objections without some factual development will be able to consider specific, focused factual issues as part of the motion, without the expense and burden of months or years of discovery.

The Bill would also require the court to hold a hearing, which will require courts to carefully focus on the issues raised by the motion.

Second, the Bill would allow the decision on the motion to be immediately appealable. This has several important benefits. It would ensure that the constitutional question is subject to careful review by the judiciary at the outset of the case. Where constitutional protections are at stake, parties should be entitled to immediate appellate review.[37] Moreover, allowing immediate appeals may encourage trial judges to be particularly rigorous in their analysis, in light of the fact that the decision is likely going to be subject to immediate review by the appellate court. Among other things, if an appeal is filed, the trial court would be required to issue an opinion in support of its decision, which is otherwise rarely done. *See* Pa. R. App. P. 1925. As I note above, in my view, careful analysis of issues is often aided by reducing the decision to writing.

Third, the Bill would create disincentives to filing SLAPP claims by allowing the defendant to recover their attorney fees if they prevail on the anti-SLAPP motion. As I note above, there is currently little downside to filing a defamation action. Preliminary objections are rarely granted, and plaintiffs seeking to punish even constitutionally protected speech can use the threat of enormous legal fees in discovery to leverage unwarranted settlement or to dissuade someone from making a protected communication in the first instance. By creating a cost to filing non-meritorious claims, the Bill would require persons seeking to bring claims based on free expression to carefully evaluate the merits of their claims before filing suit. Not all speech is constitutionally protected, and HB 95 would not immunize speech that is not. But it would require would-be plaintiffs to carefully analyze the merits of a lawsuit before filing suit, and

would properly allocate the costs associated with defending claims that do involve protected speech, as determined by the courts.

For all of these reasons, I urge the Legislature to adopt House Bill 95 and protect the free flow of information, so citizens of this Commonwealth have the information they need to effectively govern themselves, and feel safe publicly discussing matters of public importance.

I am happy to take any questions.

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[1] 27 Pa. Const. Stat. § 7707; *see also* 27 Pa. C.S. §§8301 – 8305.
[2] *New York Times v. Sullivan*, 376 U.S. 254, 271 (1964).
[3] *Snyder v. Phelps*, 131 S. Ct. 1207, 1215 (2011) (internal quotation marks omitted).
[4] *Sullivan*, 376 U.S. at 269 (quoting *Roth v. United States*, 354 U.S. 476 (1957) and *Stromberg v. California*, 283 U.S. 359, 369 (1931). *See also* Alexander Meiklejohn, *Free Speech and its Relation to Self Government* 88 (1948) (The First Amendment's "purpose is to give every voting member of the body politic the fullest possible participation in the understanding of those problems with which the citizens of a self-governing society must deal."); James Hart Ely, *Democracy and Distrust* 93-94 (1980) (noting that the First Amendment was "centrally intended to help make our government processes work, to ensure the open and informed discussion of political issues, and to check our government when it gets out of bounds.").
[5] *Hustler Magazine v. Falwell*, 485 U.S. 46, 50 (1988)
[6] *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966).
[7] *Pap's A.M. v. City of Erie*, 812 A.2d 591, 601 (Pa. 2002).
[8] *Id.* at 605.
[9] *Commonwealth v. Tate*, 432 A.2d 1382, 1388 (Pa. 1981).
[10] Seth F. Kreimer, *The Pennsylvania Constitution's Protection of Free Expression*, U. Pa. J. Const. L. 12, 15 (2002).
[11] *See, e.g.*, IV Debates on the Convention to Amend the Constitution of Pennsylvania 691 (1873) ("the whole community should have a public right to receive, through the organs of public opinion, the reflex of different views of information . . . upon all matters of public importance."); *Id.* at 726 ("The public welfare requires that the people should have early and accurate information of the conduct of their servants whom they have elevated into positions of trust and profit. The public welfare requires that everything, the information that of which would advance the public weal, shall be made known at the earliest possible time.")
[12] *Neish v. Beaver Newspapers, Inc.*, 398 Pa. Super. 588, 581 A. 2d 619, 624 (Pa. Super. Ct. 1990).
[13] 376 U.S. at 271-79.
[14] *See, e.g., Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).
[15] *See Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776-77 (1986).
[16] *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-20 (1990).
[17] *Masson v. New Yorker Magazine., Inc.*, 501 U.S. 496, 516-17 (1991).
[18] 848 A.2d 113, 131 (Pa. 2004) (quoting *Harte-Hanks*, 491 U.S. at 685-86) (emphasis and some internal quotation marks omitted).
[19] *Mosley v. Observer Publ'g Co.*, 427 Pa. Super. 471, 629 A.2d 965, 967 (Pa. Super. Ct. 1993); *see First Lehigh Bank v. Cowen*, 700 A.2d 498, 502 (Pa. Super. Ct. 1997) (same).
[20] *Sullivan*, 376 U.S. at 279.

[21] *National Review, Inc. v. Mann*, 589 U.S. ___, ___, 2019 U.S. LEXIS 7193 at *10 (Nov. 25, 2019) (Alito, J., dissenting from the denial of certiorari); *see also Steaks Unlimited v. Deaner,* 623 F.2d 264, 280 n.76 (3d Cir. 1980) ("The cost of litigating a libel action, burdensome on even the largest news organizations, often can cripple smaller news operations.").

[22] *See 2018 Case Load Statistics of the Unified Judicial System* at 24 (Administrative Office of the Pennsylvania Courts, last modified Sept. 27, 2019).

[23] *Id.*

[24] Penelope Canan & George W. Pring, Strategic Lawsuits Against Public Participation, 34 Soc. Probs. 506, 510-15 (1988)

[25] George W. Pring & Penelope Canan, "Strategic Lawsuits Against Public Participation" ("SLAPPS"): An Introduction For Bench, Bar and Bystanders, 12 Bridgeport L. Rev. 937, 942-45 (1992).

[26] *Anti-SLAPP Statutes and Commentary,* https://www.medialaw.org/topics-page/anti-slapp?tmpl=component&print=1 (last visited December 3, 2019); Wright-Pegs, London, *The Media SLAPP Back: An Analysis of California's Anti-SLAPP Statute and the Media Defendant*, 16 UCLA Ent. L. Rev. 323, 329 (2009).

[27] *Anti-SLAPP Statutes and Commentary*, https://www.medialaw.org/topics-page/anti-slapp?tmpl=component&print=1 (last visited December 3, 2019).

[28] 27 Pa. Const. Stat. § 7707; *see also* 27 Pa. C.S. §§8301 – 8305.

[29] *See, e.g.*, Cal. Civ. Proc. § 425.16 (b) (offering procedural protections for any cause of action "arising from any act of that person in furtherance of the person's right of petition or free speech . . . in connection with a public issue"); NV Rev Stat § 41.637 (offering protections for "good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern").

[30] Cal. Civ. Proc. § 425.16(a).

[31] Cal. Civ. Proc. Code § 425.16(g).

[32] Cal. Civ. Proc. Code § 425.16(b)(3).

[33] *Anti-SLAPP Statutes and Commentary,* https://www.medialaw.org/topics-page/anti-slapp?tmpl=component&print=1 (last visited December 3, 2019); HB19-1324; Ind. Code §§ 34-7-7-1 et seq.; La. Code Civ. Proc. Ann. Art. 971; Or. Rev. Stat. §§ 31.150 - 31.155; Oklahoma Citizens Participation Act §12-1430; Tennessee Public Participation Act.

[34] *E.g., compare* HB No. 95 § 1 *with* Cal. Civ. Proc. § 425.16(a); HB No. 95 § 8340.4 *with* Cal. Civ. Proc. § 425.16(b).

[35] *See* Thomas R. Burke, *Last Year's Key California Anti-SLAPP Decisions* (February 3, 2017), https://www.law360.com/articles/888023/last-year-s-key-california-anti-slapp-decisions.

[36] The Legislature should consider amending the bill to require that a stay be put in place upon filing of such a motion, so that there is no need to also answer or otherwise respond to the complaint once the anti-SLAPP motion to dismiss is filed.

[37] In other contexts, our Commonwealth's Supreme Court has held that the decisions on constitutional issues might warrant it to exercise extraordinary jurisdiction to allow immediate appellate review by it. *Capital Cities Media, Inc. v. Toole*, 483 A.2d 1339, 1344 (Pa. 1984) (stating that the Court is "sensitive to the public importance of claims involving the right of the press to report on judicial proceedings" and that extraordinary jurisdiction "is available to obtain a prompt, direct adjudication of a constitutional claim by the state's highest court, bypassing the intermediate appellate court")