

September 11, 2017

The Honorable Claire Cronin
Chairwoman, Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

The Honorable William Brownsberger
Chairman, Joint Committee on the Judiciary
State House, Room 504
Boston, MA 02133

Dear Chairwoman Cronin and Chairman Brownsberger,

We are writing to you on behalf of the Information Technology and Innovation Foundation (ITIF) to respectfully request that the Joint Committee on the Judiciary strengthen the Massachusetts anti-SLAPP laws by giving a favorable report to both H2263 and S756. ITIF is a nonprofit, nonpartisan public policy think tank committed to articulating and advancing a pro-productivity, pro-innovation, and pro-technology policy agenda internationally, in Washington, DC, and in the states. Through its research, policy proposals, and commentary, ITIF is working to advance and support public policies that boost innovation, e-transformation, and productivity.

Each year, Americans are sued or threatened with lawsuits simply for speaking out on the issues they feel are important—whether it is in an unsatisfactory online review or a public forum. This type of legal maneuver, called a strategic lawsuit against public participation (SLAPP), effectively censors public speech by invoking the court system to intimidate critics.¹ Faced with the time and attorney’s fees involved in defending against frivolous lawsuits, the easier path for a defendant often is to retract an unflattering statement about a merchant or service provider, even if the statement is true. Sometimes such claims serve not just to silence criticism, but also to retaliate against business competitors, political opponents, or newspapers that have published negative stories about a business or official.

¹ Daniel Castro and Laura Drees, “Why We Need Federal Legislation To Protect Public Speech Online” (Information Technology and Innovation Foundation, May 2015), <http://www2.itif.org/2015-anti-slapp.pdf>.

There is no way to measure the exact scale of the SLAPP problem, in part due to the numerous forms that these suits can take, from accusations of defamation, business interference, and privacy or intellectual-property violations. While the majority of SLAPPs are dismissed when they go to court or are appealed, even when defendants prevail, they may still suffer financial or reputational damage from the litigation process.²

State law is the most important defense against these threats to free speech. Massachusetts currently has an anti-SLAPP law on its books, but that law still leaves many individuals and businesses within the commonwealth exposed to the threat of a SLAPP. The current law allows parties to file a special motion to dismiss a SLAPP only if the speech in question is made directly to the government and involves government proceedings.³ In short, this law does not protect all free speech that relates to matters of public concern, such as speech made in a public forum that is not intended to effect any government change. There is no federal law to fill in these gaps.

The pending bills, H2263 and S756, would broaden the scope of the Massachusetts anti-SLAPP law to include a defendant's rights to freedom of speech or freedom of expression in connection with any matter of public concern. By expanding this definition beyond government proceedings, the Massachusetts legislature would broaden protections for speech in the commonwealth. To prevent misuse of the court system to silence criticism and uphold freedom of speech, please consider giving a favorable report to both H2263 and S756 in the Joint Committee on the Judiciary. Thank you for your time.

Sincerely,

Daniel Castro
Vice President, The Information Technology and Innovation Foundation

Alan McQuinn
Research Analyst, The Information Technology and Innovation Foundation

² An older study found that as many as two thirds are dismissed the first time they appear in court. See, George William Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (Philadelphia: Temple University, 1996), 218.

³ M.G.L. c. 231, § 59H.