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Before the Senate Judicial Proceedings Committee of the Maryland General Assembly February 15, 2012

Testimony of Lucy A. Dalglish, Executive Director
Reporters Committee for Freedom of the Press
In support of SB 221, protecting citizen participation in government

The Reporters Committee for Freedom of the Press welcomes the opportunity to support the passage of Senate Bill 221, an amendment to the state's law protecting citizens and journalists from being silenced by Strategic Lawsuits Against Public Participation. The Reporters Committee is a 42-year-old non-profit association based in Arlington, Va., that works nationwide to protect the rights of journalists to gather and publish news and information. Over the years, Reporters Committee staff members have developed considerable expertise regarding Anti-SLAPP statutes.

Twenty-eight states, along with the District of Columbia and the U.S. Territory of Guam, have enacted laws to protect citizen participation in government.¹ Of those, only Maryland requires that a defendant show that the lawsuit was filed in bad faith in order to qualify as a SLAPP. By removing that requirement, SB 221 will bring Maryland into harmony with other states' laws and provide significant protection for Maryland citizens to participate in government.

SB 221 will also bring Maryland in line with other states on the issue of fee shifting. The bill would require a court to award litigation costs and reasonable attorney's fees to a defendant who prevails on a motion to dismiss under the anti-SLAPP law, and gives judges the discretion to sanction a plaintiff in order to deter repetition of this conduct by others similarly situated. This is not an unusual provision: 21 states provide for the mandatory awarding of attorney's fees and costs to prevailing SLAPP defendants.² Nine states provide for sanctions beyond attorney's fees/costs, in the form of a mandatory statutory money damages award, discretionary sanctions, or the right to file a SLAPP back lawsuit for actual and punitive damages.³

Although anti-SLAPP statutes are intended to accelerate and streamline litigation to make it less burdensome for the parties, Maryland's

“bad faith” requirement actually makes it remarkably more difficult to fight a SLAPP suit because judges have typically required significant discovery on the bad faith element. SB 221 provides for a stay of discovery and all pending hearings or motions upon the filing of a motion to dismiss. This provision also is consistent with other states: Twenty states expressly provide for discovery stays upon the filing of a motion to dismiss a lawsuit as a SLAPP.⁴ Of those, three provide for absolute stays that the trial court has no discretion to lift, even for good cause shown.⁵ SB 221 also is consistent with the majority of states, which allow a court to lift the discovery stay if necessary to resolve the motion.

Citizen participation acts have been supported by groups from across the political and business spectrum. They favor no political ideology, but rather ensure that all citizens, whatever their political beliefs, are able to speak out on issues of public concern without fear of financial ruin by a vindictive plaintiff. Last June, for example, Texas became the 28th state to have an anti-SLAPP law when it passed the Citizen Participation Act. That law was supported by such diverse groups as the Texas Trial Lawyers Association and Texans for Lawsuit Reform, the American Civil Liberties Union and the Texas League of Conservative Voters, public interest law firms like the Institute for Public Justice, and business interests such as the Better Business Bureau. Such broad-based and bi-partisan support helped propel that law to unanimous passage by the Texas Legislature.

Make no mistake, the damage SLAPP suits bring is palpable. In 2010, a man who had applied for a license to open a taxicab franchise was sued for defamation by his former employer for statements he made at a city council meeting when trying to get his franchise. The lawsuit was dismissed for lack of evidence, but the employer appealed before ultimately losing, creating further litigation costs for the defendant. *Means v. ABCABCO, Inc.*, 315 S.W.3d 209 (Tex. App. 2010). And a housewife in Texas who began blogging about environmental problems she witnessed at a ranch she lived on that happened to be part of an ExxonMobil and Coronado Energy E&P oilfield was sued by those companies for tortious interference with contract and revealing trade secrets. That expensive lawsuit lasted three years. *Coronado Energy E&P Co. v. McGill*, No. 08-06-47106-CV (79th Dist. Ct., Jim Wells County, Tex. July 1, 2008).

Even if a defendant ultimately prevails on their claim, the cost of defending the lawsuit can be ruinous. SB 221 will alleviate that problem by providing defendants with an expeditious means of dismissing the lawsuit, and forcing plaintiffs to bear the cost of their meritless suits. Just as importantly, plaintiffs who have a viable claim will still have a strong vehicle to bring suit under the language of SB 221.

Thank you for the opportunity to appear before the committee in support of this very important bill.

¹ See Ariz. Rev. Stat. Ann. §§ 12-751–12-752 (2011); Ark. Code Ann. §§ 16-63-501–16-63-508 (2010); Cal. Civ. Proc. Code § 425.16 (2010); Del. Code Ann. tit. 10, §§ 8136–8138 (2011); Anti-SLAPP Act of 2010, D.C. Law 18-0351 (2011); Fla. Stat. Ann. §§ 720.304(4), 768.295 (2011); Ga. Code Ann. §§ 9-11-11.1, 51-5-7(4) (2010); 7 Guam Code Ann. §§ 17101–17109 (2010); Haw. Rev. Stat. §§ 634F-1–634F-4 (2011); 735 Ill. Comp. Stat. Ann. 110/15–110/25 (2011); Ind. Code Ann. §§ 34-7-7-1–34-7-7-10 (2011); La. Code Civ. Proc. Ann. art. 971 (2010); Me. Rev. Stat. Ann. tit. 14, § 556 (2011); Md. Code Ann., Cts. & Jud. Proc. § 5-807 (2011); Mass. Gen. Laws Ann. ch. 231, § 59H (2011); Minn. Stat. Ann. §§ 554.01–554.05 (2011); Mo. Ann. Stat. § 537.528 (2011); Neb. Rev. Stat. §§ 25-21,241–25-21,246 (2010); Nev. Rev. Stat. Ann. §§ 41.637, 41.650–41.670 (2010); N.M. Stat. Ann. § 38-2-9.1 (2011); N.Y. Civ. Rights Law §§ 70-a, 76-a, N.Y. C.P.L.R. 3211(g) (McKinney 2011); Okla. Stat. Ann. tit. 12, § 1443.1 (2011); Or. Rev. Stat. Ann. §§ 31.150–31.155 (2011); 27 Pa. Cons. Stat. Ann. §§ 7707, 8301–8303 (2011); R.I. Gen. Laws Ann. §§ 9-33-1–9-33-4 (2010); Tex. Civil Prac. & Rem. Code § 27 (2011); Utah Code Ann. §§ 78B-6-1401–78B-6-1405 (2011); Vt. Stat. Ann. tit. 12, § 1041 (2011); Wash. Rev. Code Ann. §§ 4.24.510–4.24.525 (2011).

² Ariz. Rev. Stat. Ann. 12-751 (2011); Ark. Code Ann. 16-63-506 (2010); Cal. Civ. Proc. Code 425.16 (2010); Fla. Stat. 57.105 (2011) (general fee shifting statute for meritless or frivolous plaintiffs' claims); Ga. Code Ann. 9-11-11.1 (2010); Haw. Rev. Stat. 634F-1 (2011); 735 Ill. Comp. Stat. 110/15 (2011); Ind. Code 34-7-7-5, -7 (2011); La. Code Civ. Proc. Ann. art. 971 (2010); Mass. Gen. Laws ch. 231, 59H (2011); Minn. Stat. 554.03, .04 (2011); Mo. Rev. Stat. 537.528 (2011); Nev. Rev. Stat. 41.650, .670 (2010); N.M. Stat. Ann. 38-2-9.1 (2011); 27 Pa. Cons. Stat. 7707, 8301–03 (2011); R.I. Gen. Laws 9-33-2 (2010); Tenn. Code Ann. 4-21-1003 (2011); Tex. Civil Prac. & Rem. Code § 27 (2011); Vt. Stat. Ann. tit. 12, 1041 (2011); Wash. Rev. Code 4.24.525 (2011).

³ Ark. Code Ann. 16-63-506 (2010); Cal. Civ. Proc. Code 425.16, .18 (2010); Fla. Stat. 57.105 (2011) (general fee shifting statute for meritless or frivolous plaintiffs' claims); Haw. Rev. Stat. 634F-1 (2011); Minn. Stat. 554.03, .04 (2011); Nev. Rev. Stat. 41.650, .670 (2010); R.I. Gen. Laws 9-33-2 (2010); Tex. Civil Prac. & Rem. Code § 27 (2011); Wash. Rev. Code 4.24.525 (2011).

⁴ Ark. Code Ann. 16-63-507 (2010); Cal. Civ. Proc. Code 425.16, .18 (2010); D.C. Law 18-0351 (2011); Ga. Code Ann. 9-11-11.1 (2010); Haw. Rev. Stat. 634F-1 (2011); 735 Ill. Comp. Stat. 110/15 (2011); 735 Ill. Comp. Stat. 110/20 (2011); Ind. Code 34-7-7-5, -7 (2011); La. Code Civ. Proc. Ann. art. 971 (2010); Me. Rev. Stat. tit. 14, 556 (2011); Mass. Gen. Laws ch. 231, 59H (2011); Minn. Stat. 554.03, .04 (2011); Mo. Rev. Stat. 537.528 (2011); Nev. Rev. Stat. 41.650, .670 (2010); Or. Rev. Stat. 31.150, .152 (2011); 27 Pa. Cons. Stat. 7707, 8303 (2011); R.I. Gen. Laws 9-33-2 (2010); Tex. Civil Prac. & Rem. Code § 27 (2011); Utah Code Ann. 78B-6-1404; Vt. Stat. Ann. tit. 12, 1041 (2011); Wash. Rev. Code 4.24.525 (2011).

⁵ Haw. Rev. Stat. 634F-1 (2011); Mo. Rev. Stat. 537.528 (2011); Nev. Rev. Stat. 41.650, .670 (2010).