

July 17, 2020

**To: Governor Cuomo and Members of the New York State Legislature**

The First Amendment of the United States Constitution guarantees Freedom of Speech. Yet when the powerful file baseless lawsuits to punish critics, speech is not free. Rather, a toll must be paid to share information of public concern. Journalists, writers, academics, publishers, news organizations, film and television producers, candidates for political office, and ordinary citizens must have the freedom to speak truthfully on matters of importance to our society, without fear of retaliation.

SLAPP lawsuits are an intolerable form of private censorship. It is more critical than ever that New York, the media capitol of the world, provide robust protection against meritless claims designed to chill speech.

We join the New York State Bar Association Committee on Media Law in endorsing the Anti-SLAPP legislation put forward by Assemblywoman Weinstein and Senator Hoylman, for the reasons cited in their enclosed memorandum.

Respectfully,

**Advance Publications, Inc.**

**National Press Photographers Association**

**American Booksellers for Free  
Expression**

**NBCUniversal Media**

**Association of American Publishers**

**News Corp**

**The Authors Guild**

**New York Civil Liberties Union**

**BuzzFeed Inc.**

**New York News Publishers Association**

**Cornell Law School First Amendment  
Clinic**

**New York State Broadcasters  
Association, Inc.**

**Daily News, L.P.**

**NYP Holdings, Inc.**

**Dow Jones & Company**

**Penguin Random House**

**Gannett Co.**

**Radio Television Digital News Association**

**Hachette Book Group**

**Simon & Schuster**

**HarperCollins Publishers**

**Triangle House Literary**

**Macmillan Publishers**

**The Tully Center for Free Speech at  
Syracuse University**

**Miller Korzenik Sommers Rayman LLP**

**Victor Kovner**

**Media Law Resource Center**

**W.W. Norton & Company, Inc.**



# New York State Bar Association

## Committee on Media Law

---

DANIEL R. NOVACK, ESQ. – *Co-Chair*  
Penguin Random House LLC  
1745 Broadway, NY, NY 10019  
(201) 213-1425  
[dnovack@penguinrandomhouse.com](mailto:dnovack@penguinrandomhouse.com)

SANDRA BARON, ESQ. – *Co-Chair*  
Yale Law School  
140 Riverside Drive, NY, NY 10024  
(212) 874-4258  
[sandra.baron@yale.edu](mailto:sandra.baron@yale.edu)

### **Memorandum in Support of A.5991-A/S.52-A (Weinstein/ Hoylman)**

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 S.52-A/A.5991-A, which would update and strengthen New York’s current anti-SLAPP statute.

Strategic lawsuits against public participation (“SLAPP” suits) are baseless lawsuits that seek to silence those who exercise their First Amendment rights. The objective of a SLAPP suit is not to defend one’s reputation, but rather to harass. The message they send is that even truthful speech about a powerful individual comes at the expense of a lawsuit. Anti-SLAPP legislation is therefore urgently needed to protect 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 silence them.

It is important to note that passage of the bill would not upset or undermine New York’s tort regime. Rather, it would help ensure that all New York citizens and businesses - especially media companies, which play a critical role in informing the citizenry - are free to exercise their free speech rights without risk of incurring substantial legal fees to defend meritless lawsuits, while respecting the ability of those who have been harmed to seek redress in the courts.

In general, anti-SLAPP laws allow judges to consider relevant information at the earliest possible threshold in a case involving the exercise of free speech. That way, all of those involved – the judicial system, defendants, and plaintiffs – avoid spending substantial time and resources litigating a case that will ultimately be dismissed. However, in no way do anti-SLAPP statutes diminish the rights of truly aggrieved parties. Nothing in the bill would preclude any claim that has a reasonable basis in fact and law – or even a reasonable argument for extending, modifying, or reversing the law.

In recent years, our Committee has observed a dramatic expansion of SLAPP suits filed against reporters, filmmakers, candidates for political office, and even individuals commenting on social media. For example, after numerous cease and desist letters were sent to stations across the country, the Trump Campaign took the unprecedented step of suing a local television station for airing an advertisement critical of the President’s Coronavirus response<sup>1</sup>.

New Yorkers face unprecedented threats from those who want to silence people who present information that does not fit a specific narrative or viewpoint. Every time a powerful individual threatens a lawsuit, New Yorkers must put a literal price on their First Amendment rights. For such plaintiffs, spending hundreds of thousands of dollars to punish negative reporting or commentary is a mere line in a budget. Not so for the defendant. Depositions and

---

<sup>1</sup> See <https://deadline.com/2020/04/coronavirus-donald-trump-priorities-usa-1202906890/>

court appearances will keep them out of work, and funds that would have gone to reporters, editors, and producers are instead spent in defense of a lawsuit.

The pending bill would improve New York's existing anti-SLAPP statute by expanding 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 interest" and "any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition." This language will 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 all New Yorkers have a Constitutional right to engage in.

The bill further provides for a stay of proceedings once a defendant files an anti-SLAPP motion. This is essential to protect defendants from costly and time-consuming discovery, hearings, and briefing while the motion is under consideration.

By expanding the coverage of the law to those who need it most, the bill would discourage the filing of SLAPP lawsuits. First, it would provide a quick resolution to meritless cases, preventing a plaintiff from dragging out the suit to maximize the time and expense for a defendant. Second, by allowing defendants to recover their legal fees when prevailing against claims that have no substantial basis in fact or law, New Yorkers would no longer have to pay a devastating price to defend against meritless claims that attack free expression

New York has a long and proud tradition of protecting free speech rights. It is 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>2</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>3</sup>

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.

The Committee urges you to support this important legislation.

Very truly yours,

Daniel R. Novack, Esq.  
Sandra S. Baron, Esq.  
*Co-Chairs, NYSBA Committee on Media Law*

---

<sup>2</sup> See <http://www1.nyc.gov/site/internationalbusiness/industries/technology-and-media-industry.page>.

<sup>3</sup> See <http://www.nysfilm.com/>.