

117TH CONGRESS  
2D SESSION

# H. R. 8864

To amend title 28, United States Code, to establish a procedure to dismiss, punish, and deter strategic lawsuits against public participation, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2022

Mr. RASKIN (for himself and Mr. COHEN) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 28, United States Code, to establish a procedure to dismiss, punish, and deter strategic lawsuits against public participation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “Strategic Lawsuits Against  
5 Public Participation Protection Act of 2022” or the  
6 “SLAPP Protection Act of 2022”.

1 **SEC. 2. MEASURES TO END STRATEGIC LAWSUITS AGAINST**  
 2 **PUBLIC PARTICIPATION.**

3 (a) IN GENERAL.—Part VI of title 28, United States  
 4 Code, is amended by adding after chapter 181 the fol-  
 5 lowing new chapter:

6 **“CHAPTER 182—PROCEDURE TO DISMISS,**  
 7 **PUNISH, AND DETER STRATEGIC LAW-**  
 8 **SUITS AGAINST PUBLIC PARTICIPA-**  
 9 **TION**

“Sec.

“4201. Special motion to dismiss a Strategic Lawsuit Against Public Participa-  
 tion.

“4202. Exceptions.

“4203. Fees.

“4204. Choice of law.

“4205. Definitions.

10 **“§ 4201. Special motion to dismiss a Strategic Lawsuit**  
 11 **Against Public Participation**

12 “(a) NOTICE PERIOD.—Not later than five days be-  
 13 fore the filing of a special motion to dismiss a claim al-  
 14 leged to be a strategic lawsuit against public participation  
 15 under this chapter, the moving party shall provide written  
 16 notice to the responding party of its intent to file such  
 17 a special motion to dismiss with respect to a claim. Until  
 18 the moving party has filed a special motion to dismiss,  
 19 the responding party may withdraw or amend the claim  
 20 in accordance with applicable court rules.

21 “(b) TIMING OF MOTION.—

1           “(1) IN GENERAL.—A special motion to dismiss  
2 pursuant to this chapter shall be filed not later than  
3 the date that is the later of the following:

4           “(A) 60 days after the date of service of  
5 the pleading that states the claim alleged to be  
6 a SLAPP.

7           “(B) 60 days after the date of removal of  
8 the case to Federal court.

9           “(2) GOOD CAUSE.—Upon motion by either  
10 party and for good cause, the court may extend the  
11 period described under paragraph (1).

12           “(c) STAY OF PROCEEDINGS.—

13           “(1) IN GENERAL.—Except as provided under  
14 paragraph (2), upon the filing of a special motion to  
15 dismiss under this chapter, all other proceedings be-  
16 tween the moving party and responding party that  
17 are related to the claim, including discovery pro-  
18 ceedings and any pending hearing or motions, shall  
19 be stayed until notice of entry of an order disposing  
20 of the special motion to dismiss.

21           “(2) EXCEPTIONS.—

22           “(A) GOOD CAUSE.—Upon motion by ei-  
23 ther party, the court may allow limited and  
24 specified discovery related to the motion, as de-  
25 termined by the court, for good cause.

1           “(B) MOTION FOR REMAND.—Proceedings  
2 relating to a motion to remand filed pursuant  
3 to section 1447 may proceed pending consider-  
4 ation by the court of the special motion to dis-  
5 miss.

6           “(d) CONSIDERATION OF MOTION.—The court shall  
7 grant the special motion to dismiss and dismiss the claim  
8 with prejudice if—

9           “(1) the moving party presents evidence estab-  
10 lishing that the claim at issue is based on, or in re-  
11 sponse to, the party’s lawful exercise of the constitu-  
12 tional right of petition, freedom of the press, peace-  
13 ful assembly, free speech on a matter of public con-  
14 cern, or other expressive conduct on a matter of  
15 public concern;

16           “(2) the responding party fails to establish that  
17 an exception under section 4202 applies; and

18           “(3) either—

19           “(A) the responding party fails to present  
20 evidence establishing a prima facie case as to  
21 each essential element of the claim under the  
22 standard of Federal Rule of Civil Procedure 56;  
23 or

24           “(B) the responding party has presented  
25 evidence establishing a prima facie case as to

1 each element of the claim under subparagraph  
2 (A), but the moving party has established that  
3 there is no genuine issue of material fact and  
4 the party is entitled to judgment as a matter of  
5 law on the claim or complaint under the stand-  
6 ard of Federal Rule of Civil Procedure 56.

7 “(e) EXPEDITED RULING.—The court shall rule on  
8 a special motion to dismiss not later than 90 days after  
9 the date on which the motion is filed, unless the court  
10 determines that docket condition, any specified discovery,  
11 or other good cause requires a ruling at a later date.

12 **“§ 4202. Exceptions**

13 “(a) IN GENERAL.—Except as provided under sub-  
14 section (b), this chapter shall not apply to any claim that  
15 is brought—

16 “(1) against a person primarily engaged in the  
17 business of selling or leasing commercial goods or  
18 services if the communication on which the claim is  
19 based arises out of the person’s sale or lease of com-  
20 mercial goods or services;

21 “(2) by a government official or entity acting in  
22 an official capacity or under color of law, or against  
23 a government official or entity sued in an official or  
24 individual capacity or under color of law for acts or

1 omissions conducted on behalf of a government enti-  
2 ty;

3 “(3) under Federal, State, or local civil rights  
4 statute or ordinance, or to enforce such a statute or  
5 ordinance;

6 “(4) for recovery for bodily injury, wrongful  
7 death, or survival damages;

8 “(5) by a whistleblower under a Federal or  
9 State whistleblower statute, including any claim  
10 brought under the section 3729, 3730, 3731, 3732,  
11 or 3733 of title 31, United States Code;

12 “(6) under the citizen suit provision of a Fed-  
13 eral or State environmental protection statute;

14 “(7) by a consumer in a private enforcement  
15 action under a State unfair trade and deceptive  
16 practices statute;

17 “(8) by a customer or employee alleging misuse  
18 of that individual’s personal information in violation  
19 of a Federal or State data protection statute;

20 “(9) under the Securities and Exchange Act of  
21 1934, the Securities Act of 1933, or a State securi-  
22 ties laws;

23 “(10) in response to a civil action brought by  
24 a shareholder on behalf of a corporation; or

1           “(11) for an alleged violation of antitrust laws  
2           (as defined by section 1(a) of the Clayton Act (15  
3           U.S.C. 12(a))) or a State antitrust law.

4           “(b) CERTAIN ADDITIONAL EXCEPTIONS.—This  
5 chapter may apply to a claim asserted under paragraph  
6 (1), (4), (7), or (8) of subsection (a) if the claim is brought  
7 against—

8           “(1) any publisher, editor, reporter, or other  
9           person who is or was connected with or employed by  
10          a radio station, television station, newspaper, maga-  
11          zine, internet-based publication, or other periodical  
12          publication, or by a press association or wire service,  
13          if the person against whom the claim was asserted  
14          was acting with respect to such connection or em-  
15          ployment; or

16          “(2) any person or entity based on the person’s  
17          or entity’s creation, dissemination, exhibition, adver-  
18          tisement, or other similar promotion of any dra-  
19          matic, literary, musical, political, journalistic, or ar-  
20          tistic work.

21       **“§ 4203. Fees**

22          “(a) ATTORNEY’S FEES AND COSTS.—If the moving  
23 party prevails on the special motion to dismiss, there shall  
24 be a rebuttable presumption that the moving party is enti-  
25 tled to an award of reasonable attorneys’ fees and costs.

1 Such a presumption can be rebutted by a showing that  
2 such an award would be unreasonable or that special cir-  
3 cumstances exist that would make such an award unjust,  
4 as determined by the court.

5 “(b) PREVAILING PARTY.—For the purposes of sub-  
6 section (a), the moving party is considered to have pre-  
7 vailed on the special motion to dismiss if the court grants  
8 the special motion to dismiss under section 4201(d), and  
9 if the responding party did not amend or withdraw the  
10 claim until after the end of the 5-day notice period set  
11 forth in section 4201(a).

12 “(c) BAD FAITH FILINGS.—If a court finds that a  
13 special motion to dismiss was filed in bad faith and solely  
14 intended to cause delay, there shall be a rebuttable pre-  
15 sumption that the responding party is entitled to an award  
16 of reasonable attorneys’ fees and costs incurred in re-  
17 sponding to the special motion to dismiss. Such a pre-  
18 sumption can be rebutted by a showing that such an  
19 award would be unreasonable or that special cir-  
20 cumstances exist that would make such an award unjust,  
21 as determined by the court.

22 **“§ 4204. Choice of law**

23 “Except as provided for in this chapter, nothing in  
24 this chapter shall reduce or limit any substantive claim,



1 remedy, or defense to a SLAPP under any other Federal  
2 law or under the laws of any State or locality.

3 **“§ 4205. Definitions**

4 “In this chapter:

5 “(1) STRATEGIC LAWSUIT AGAINST PUBLIC  
6 PARTICIPATION; SLAPP.—The term ‘strategic lawsuit  
7 against public participation’ or ‘SLAPP’ means the  
8 use of the court system to silence or intimidate a  
9 party who is engaged in the lawful exercise of the  
10 constitutional right of petition, freedom of the press,  
11 peaceful assembly, free speech on a matter of public  
12 concern, or other expressive conduct on a matter of  
13 public concern, by subjecting that party to meritless  
14 litigation.

15 “(2) CLAIM.—The term ‘claim’ means any civil  
16 action, complaint, cause of action, counterclaim, or  
17 other court filing seeking damages, declaratory re-  
18 lief, or equitable relief.

19 “(3) MATTER OF PUBLIC CONCERN.—The term  
20 ‘matter of public concern’ means any communication  
21 or expressive conduct undertaken with the purpose  
22 of—

23 “(A) participating in or seeking to influ-  
24 ence a legislative, executive, judicial proceeding,  
25 or other proceeding authorized by law;

1           “(B) commenting on an issue under con-  
2 sideration or review, or recommending consider-  
3 ation of an issue, by a legislative, executive, or  
4 judicial body;

5           “(C) raising a concern or complaint with a  
6 law enforcement agency, licensing board, or  
7 grievance mechanism created under a Federal,  
8 State, or local anti-discrimination statute or or-  
9 dinance; or

10           “(D) commenting about a public official,  
11 public figure, or other natural or legal person  
12 whose act, omission, fame, notoriety, or celeb-  
13 rity has become a public issue.

14           “(4) GOVERNMENT ENTITY.—The term ‘gov-  
15 ernment entity’ means the Government of the  
16 United States, a government corporation, branch,  
17 department, agency, State, or subdivision of a State  
18 or a federally or State recognized Tribe.

19           “(5) STATE.—The term ‘State’ means each of  
20 the several States, the District of Columbia, and any  
21 commonwealth, territory, or possession of the United  
22 States.”.

23           (b) CLERICAL AMENDMENT.—The table of chapters  
24 for title 28, United States Code, is amended by adding  
25 after chapter 181 the following:

“182. Procedure to Dismiss, Punish, and Deter Strategic Lawsuits Against Public Participation.”.

1 **SEC. 3. RULE OF CONSTRUCTION.**

2       This Act and the amendments made by this Act shall  
3 be broadly construed and applied to protect the exercise  
4 of the constitutional right of petition, freedom of the press,  
5 peaceful assembly, free speech on a matter of public con-  
6 cern, and other protected expressive conduct on a matter  
7 of public concern.

8 **SEC. 4. EFFECTIVE DATE; APPLICABILITY.**

9       This Act and the amendments made by this Act shall  
10 take effect on the date of the enactment of this Act and  
11 apply to any action filed on or after the date of the enact-  
12 ment of this Act regardless of whether the conduct at issue  
13 occurred prior to the date of the enactment of this Act.

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