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for purposes of identification.*

By email

July 20, 2020

The Honorable Jamaal T. Bailey
Chair, Standing Committee on Codes
New York State Senate
Legislative Office Building, Room 609
Albany, NY 12247

The Honorable Andrew J. Lanza
Ranking Member, Standing Committee on Codes
New York State Senate
Legislative Office Building, Room 606
Albany, NY 12247

The Honorable Brad Hoylman
Chair, Standing Committee on Judiciary
New York State Senate
Legislative Office Building, Room 606
Albany, NY 12247

The Honorable Helene Weinstein
Chair, Standing Committee on Ways and Means
New York State Assembly
Legislative Office Building, Room 923
Albany, NY 12248

Re: Support for S. 52-A (Hoylman) / A. 5991-A (Weinstein)

Dear Chairman Bailey, Ranking Member Lanza, Chairman Hoylman, and
Chairwoman Weinstein:

The Reporters Committee for Freedom of the Press strongly supports
A. 5991-A (Weinstein) and S. 52-A (Hoylman), which would significantly
improve protections in New York for journalists and others facing frivolous
“Strategic Litigation Against Public Participation,” or SLAPP, lawsuits.
SLAPP suits—brought by plaintiffs as an effort to suppress protected speech,
not in an expectation of succeeding on the merits—significantly restrict the
free flow of newsworthy information to the public.

The Reporters Committee was founded by leading journalists and
media lawyers in 1970 when the nation’s news media faced an unprecedented
wave of government subpoenas forcing reporters to name confidential
sources. Today, its attorneys provide pro bono legal representation, amicus

curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

Effective anti-SLAPP laws allow defendants who have been sued for speech on matters of public interest to dismiss the case early, before incurring significant legal fees, and require those who bring SLAPP suits to pay fees and costs, which serves to deter unmeritorious cases. New York's current law is unduly narrow. It only covers speech regarding a "public applicant or permittee," which removes journalists from its scope.

The bills under consideration—A. 5991-A and S. 52-A—would extend the law to statements on matters of "public interest" more broadly, made in places open to the public, public forums, or in furtherance of the exercise of free speech or the right to petition. Section 2 also confirms that "public interest" should be construed broadly.

The legislation would also crucially provide for a stay of discovery and other proceedings upon the filing of a motion to dismiss a SLAPP suit, and it would then expedite consideration of the anti-SLAPP claim. This is essential for defendants, including media defendants, as SLAPP suits often seek to burden the defendants with litigation costs as part of the effort to suppress public participation.

Finally, the legislation changes the current permissive fee-shifting in existing law, where a court "may" award fees and costs to a successful defendant, to the approach used in the most effective anti-SLAPP laws, where fees and costs "shall" be awarded if the defendant prevails in establishing that the action was, in fact, a SLAPP. The mandatory fee-shifting is an important deterrent for SLAPPs, and is the approach taken in states with the most effective anti-SLAPP laws, such as California.

Unmeritorious SLAPP suits continue to proliferate in New York and around the country. For instance, late last month, the Reporters Committee, joined by the Association of American Publishers, and PEN America filed an amicus brief in New York Supreme Court in opposition to a lawsuit filed by Robert Trump, President Trump's brother, seeking to block publication of a book by niece Mary Trump on the president.¹ Earlier, in May, the Reporters Committee joined a brief filed by the NCTA – The Internet and Television Association seeking dismissal of a consumer protection claim against Fox News based on its reporting around COVID-19, in which the plaintiff argued that cable news providers are undeserving of First Amendment protections at all.²

¹ Amicus Curiae Brief of the Reporters Committee for Freedom of the Press, the Association of American Publishers, Inc., and PEN American Center, Inc. in Support of Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction and Temporary Restraining Order, *Trump v. Trump*, No. 2020-51585 (N.Y. Sup. Ct. filed June 30, 2020), <https://www.rcfp.org/mary-trump-book-prior-restraint/>.

² See Gabe Rottman, *Fox News Lawsuit Would Strip First Amendment Protection from Cable News and the Internet*, Reporters Comm. for Freedom of the Press (May 18, 2020), <https://www.rcfp.org/fox-news-washlite-lawsuit-analysis/>.

We thank the New York Assembly and Senate for your attention to this important issue, and urge you to pass S. 52-A and A. 5991-A. Please do not hesitate to contact me at grottman@rcfp.org with any questions.

Sincerely,

Gabe Rottman
Director of the Technology and Press Freedom Project
Reporters Committee for Freedom of the Press

cc: Members of the Standing Committee on Codes