

VPLC SUPPORTS HB 628 TO DETER AND PREVENT ABUSERS FROM USING THE COURTS TO FURTHER INTIMIDATE THEIR VICTIMS VIA SLAPP SUITS

The Problem: To intimidate their victims and deter them from seeking help or court protection, abusers sometimes use the justice system as a weapon by filing lawsuits alleging defamation and other wrongdoing by their victims. Such lawsuits are called “strategic lawsuits against public participation” — or SLAPP suits — and are filed because the abuser believes that the victim will not have the time, money or access to resources to fight such a court battle.

In a recent Virginia case, for example, a victim learned that her abuser—a convicted rapist—was getting out of jail soon. She filed a petition for a protective order requesting that the abuser be prohibited from making contact with or threatening her in the future. The abuser then filed a defamation suit against the victim for filing the petition for the protective order. While the suit was eventually withdrawn or deemed frivolous by the court and dismissed, the victim had to spend time, money and resources, not to mention lost wages for having to come to court, to defend herself against the frivolous claim. SLAPP suits are a tool in the arsenal the abuser uses to punish a victim for seeking protection or to deter them from seeking protection in the first place.

Background:

- 29 states¹ have enacted comprehensive anti-SLAPP laws.
- Virginia enacted a law to provide civil immunity to “persons at public hearings” in 2007.
- In 2016, that law was amended to allow the court to award “reasonable attorney fees and costs” to such persons.
- In 2017, the law was further amended to include frivolous defamation suits. But victims of domestic or sexual violence, especially low-income victims, need further protections from the claims of “malicious prosecutions” and “intentional infliction of emotional distress” levied at them by abusers with access to courts and legal representation.

What HB 628 Proposes and Why VPLC Supports It:

- Lines 34-38 state that attorney fees **may** be awarded. Currently, judges do not always award attorneys’ fees to victims who are successful in getting frivolous cases dismissed.

¹ Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Missouri, Nebraska, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Tennessee, Utah, Vermont. The District of Columbia and Guam also have anti-SLAPP statutes.

- Only by recouping legal fees are most legal aid offices able to devote scarce resources to these and other types of valid cases.
- Additionally, private attorneys would be more likely to take these defensive cases if attorney fees awards could be guaranteed. Most importantly, having to pay the victim's attorney fees will deter abusers from filing clearly frivolous lawsuits in the first place.
- It adds new Lines 39-46:

For purposes of this section, a pleading filed for an improper purpose includes any claim of defamation, intentional infliction of emotional distress, malicious prosecution, or abuse of process that is filed in retaliation for or in order to chill, discourage or limit any legitimate action taken by a victim of (i) family abuse; (ii) an act of violence, force, or threat; (iii) stalking; or (iv) sexual assault to obtain any order of protection or criminal charges based on such family abuse, act of violence, force, or threat, stalking, or sexual assault. Any such pleadings found by a court of competent jurisdiction to lack either justification in existing law or a good faith argument for the extension, modification, or reversal of existing law shall be presumed to be filed for an improper purpose.

- Addresses Issue in terms of "improper purpose" (as opposed to 2019 version using "immunity" language that made some members of the House Courts of Justice Subcommittee concerned about free speech infringement).
- Allows the court to be able to sanction **both** the attorney and the party (of course, the judge will consider the unassuming attorney who agrees to take on a frivolous suit without understanding that their client is a habitual frivolous suit filer).
- This language has a presumption of grounds for sanctions, not just attorney's fees.
- Would not matter if the case were later nonsuited because victim could still have file a sanctions motion.

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