

Laura Prather in Law360: New York Got An Anti-SLAPP Law. Will Federal Courts Use It'

November 19, 2020 Laura Prather

PRACTICES Anti-SLAPP and First Amendment Rights, Media and Entertainment Litigation, Litigation

Law360 quoted Haynes Boone Partner [Laura Prather](#) in an article about how the effectiveness of New York's recently passed anti-SLAPP law remains clouded by ongoing uncertainty about whether it can be used in federal litigation.

Here is an excerpt:

Signed last week by Gov. Andrew Cuomo, the new legislation expanded New York's narrower existing statute into a full-throated anti-SLAPP law — a type of law passed in dozens of states that allows judges to quickly end defamation lawsuits that threaten to stifle speech.

New York's New Law

The other key change in New York's new law concerns how courts dole out legal fees to a defendant who successfully beats a SLAPP case. The earlier statute said that judges "may" award such compensation if a case was not well-supported; the new version says that they "shall" do so.

Such a fee-shifting provision is critical to an effective anti-SLAPP statute, experts say, since the prohibitive expense of litigation is the very dynamic that enables abuse of the court system.

"Even if you defeat a lawsuit, they've already won," said Laura Lee Prather, the head of the media law group at Haynes Boone, speaking of the need for fee-shifting. "If you have to go take a second mortgage on your home, if you need to cash out your 401(k), then the plaintiff has already won."

In addition to compensating a defendant, Prather said the threat of those awards also serves as "a deterrent to people who are contemplating using the judicial system to harass people."

Anti-SLAPP Circuit Split

In the meantime, for anti-SLAPP advocates, the next major battleground might be Washington, D.C. A federal statute was proposed in August, and January will see a new administration in the White House.

"Given the significant use of the judicial system to harass individuals for exercising their free speech rights, the new administration might want to make this a priority," said Prather, the Haynes Boone attorney. "We need it more than ever right now."

To read the full article, click [here](#). (Subscription required)