Laura Prather in Law360: Anti-SLAPP Circuit Split Makes State Protections Uncertain

By Laura Lee Prather | August 28, 2020

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The movement to better protect citizens' First Amendment rights won two big victories this summer, when the Uniform Law Commission and the New York Legislature each approved new anti-SLAPP measures. Anti-SLAPP laws aim to safeguard individuals from the chilling effect of strategic lawsuits against public participation, or SLAPP suits, brought in retaliation for the exercise of protected First Amendment activities.

The victories at the ULC and in New York came as legislators in eight states introduced anti-SLAPP measures over the past year. Although many of these measures were stalled due to the pandemic, the proposals largely reflected a new consensus over the best ways to discourage SLAPP suits. Some of the bills are still being considered, and others, although not passed, garnered strong legislative support that could carry over into future sessions.

But meanwhile, courts are still grappling with the issue of whether to apply state anti-SLAPP laws in federal court, with a significant circuit split emerging on the issue and, in some instances, a split concerning laws within the circuit.

Significant Legislative and Judicial Anti-SLAPP Activity

There has been a flurry of recent activity in the world of anti-SLAPP laws. On July 15, after more than two years of work, the Uniform Law Commission voted to enact a model anti-SLAPP bill entitled the Uniform Public Express Protection Act, or UPEPA.

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