Reviewing an Eventful Year in Anti-SLAPP

By Reid Pillifant | September 9, 2024

RELATED PRACTICES Anti-SLAPP and First Amendment Rights

Free-speech advocates have several victories to celebrate in 2024, with three states enacting robust new anti-SLAPP laws. In Minnesota, Maine, and Pennsylvania, citizens now have expanded protections for their First Amendment rights.

But not all the news is good. In Texas, powerful opponents of the state's anti-SLAPP law are gearing up to gut several key provisions of the law when the Legislature convenes next year.

Below is a brief update on an eventful year in anti-SLAPP law and a look ahead to next year.

Maine

In April, Maine became the seventh state to adopt an anti-SLAPP law based on the Uniform Public Expression Protection Act (UPEPA). UPEPA applies broadly to claims based on a person's exercise of their First Amendment rights on matters of public concern.

The Maine bill was introduced by state Sen. Mike Tipping, after a personal brush with a meritless defamation suit. In 2021, a political publication founded by Tipping was sued by The Epoch Times for referring to one of its executives as a "far-right media personality and conspiracy theorist." That case was dismissed in 2022 under New York's anti-SLAPP law.

While Maine has had an anti-SLAPP law in place since 1995, that law only protected statements made in the course of official government proceedings. The new law expands the First Amendment protections to speech writ large.

The bill drew support from the ACLU of Maine and the Motion Picture Association. It was opposed by the Maine Principals' Association, which argued that it "infringes on the rights of those being attacked" and would make it harder to stop abusive statements, including at contentious school board meetings.

Ultimately, the bill sailed through both chambers and became law on April 13. The statute takes effect on January 1, 2025.

Minnesota

One month later, Minnesota added another state to UPEPA's growing tally. While Minnesota also previously had an anti-SLAPP statute, that law protected such a narrow swath of speech that it was little help to the news media and average citizens. When it was declared unconstitutional in 2017, "[n]ews of its demise was met with a collective shrug from practitioners," according to one report at the time.

The new law promises much more robust protections. It passed in both chambers with relatively little fanfare, and it was signed by Gov. Tim Walz on May 25. The law takes effect immediately and it applies to cases pending at the time of enactment.

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Pennsylvania

Legislators in Pennsylvania also replaced a narrow anti-SLAPP statute with more robust protections. Previously, Pennsylvania's statute covered only speech related to environmental matters, and it was rarely invoked, despite being on the books for nearly 25 years. The new law expands those protections to speech on all matters of public concern.

The Pennsylvania law is the culmination of a decade-long fight to enhance First Amendment protections in the state. Since 2013, a number of bills had been introduced and defeated, in part due to opposition from the Pennsylvania Chamber of Business and Industry. But advocates assembled a broad coalition of supporters from across the political spectrum, including the state chapters of the ACLU and Americans for Prosperity, which helped push this year's bill across the finish line.

While Pennsylvania's law does not mirror the exact language of UPEPA (due to some unique aspects of Pennsylvania procedural law), the new statute contains all of UPEPA's key provisions and protections. Legislators also went beyond UPEPA in some respects; for instance, the new law specifying that a judge ruling on an anti-SLAPP motion must articulate the reasons for granting or denying the motion on the record, in order to create a record on appeal.

The new law also expressly separates the substantive and procedural portions of the bill, which conforms to Pennsylvania's practice for amending procedural rules. But advocates also hope that division—along with the classification of anti-SLAPP protections as an immunity—could make it easier for the law to apply in federal court.

2025

Anti-SLAPP supporters are optimistic that more states could soon join the ranks. In Ohio, an anti-SLAPP bill has already cleared the state Senate, and it has bipartisan support in the House. But lawmakers are currently on a lengthy recess that could make it difficult to beat a year-end deadline. Meanwhile, in Missouri, an anti-SLAPP bill was incorporated into a broader judicial reform bill which failed to advance this year, but advocates hope to re-file it next session.

Next year could also bring a battle to safeguard anti-SLAPP protections in at least one state. In 2023, a surprise assault on the state's anti-SLAPP statute left advocates scrambling to protect the law. A well-funded effort that would have removed the automatic stay provision—among other changes—advanced in the Texas House and Senate, but ultimately failed to pass on the floor. A broad array of media and business groups testified against changes to the bill.

Opponents of the law have made clear that they plan to redouble their efforts to amend the bill in next year's session. Texans for Lawsuit Reform has already notified its members that the anti-SLAPP bill will be a top target when the Texas Legislature convenes in January. But supporters of the law are also preparing for what promises to be a tough fight.

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