Nos. 22-CV-274, 22-CV-301

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

Felicia M. Sonmez,

Appellant/Cross-Appellee,

v.

WP Company LLC et al.,

Appellees/Cross-Appellants.

On Appeal from a Final Judgment of the Superior Court of the District of Columbia, Civil Division, No. 2021 CA 003866 B
(The Honorable Anthony C. Epstein)

Brief of Boston Globe Media Partners, LLC, E.W. Scripps Co., Los Angeles Times Communications LLC, The Maryland-Delaware-DC Press Association, The National Association of Broadcasters, The National Press Club, The National Press Club Journalism Institute, National Review Institute, and Yelp Inc. as Amicus Curiae in Support of Appellees/Cross-Appellants and Reversal of the Superior Court Judgment

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CORPORATE DISCLOSURE STATEMENT

Boston Globe Media Partners, LLC is wholly owned by Algonquin Acquisition Company, LLC. No public company owns more than 10% of its stock.

E.W. Scripps Company (Scripps) is a publicly traded company with no parent company. No individual stockholder owns more than 10% of its stock.

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The National Press Club Journalism Institute is the non-profit affiliate of the National Press Club, which has no parent corporation, and no stock.

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INTERESTS OF THE *AMICI CURIAE*

Amici consist of national and regional press organizations, as well as multiple organizations engaged in in the production of news, entertainment, and opinion content. They submit this *amicus* brief in support of appellees/cross appellants to urge affirmance of the decision below on one particular ground – that the claims of appellant Felicia M. Sonmez fall within the scope of the D.C. anti-SLAPP Act, D.C. Code § 16-5501 *et seq.*, and that she failed to meet her burden under the anti-SLAPP Act to submit evidence in support of her claims.

Amici have an interest in the scope of D.C.'s anti-SLAPP Act, and, in particular, its application to claims challenging acts of editorial discretion and not just acts of publication in a narrow sense. That is because *amici*, and/or the organizations they represent, regularly engage in reporting and content production in and about D.C., and they understand that the intent of the anti-SLAPP Act was to grant the fullest protection to all such activities, including the editorial choices that go into creating their publications.

Amici have authority to file this brief under D.C. Court Rule 29(a)(2) because all parties have consented to its filing.

The identity of the *amici* are as follows:

Boston Globe Media Partners, LLC is the publisher of the Boston Globe, the largest metropolitan daily newspaper circulated in Massachusetts. The Boston Globe maintains the website www.bostonglobe.com a leading source of national and international news.

E.W. Scripps Company is one of the nation's largest local TV broadcasters, operating 61 stations serving 41 communities across the country with quality, objective local journalism. It reaches nearly every American through its national networks business, including news outlets Court TV and Scripps News and entertainment brands ION, Bounce, Grit, Laff and ION Mystery. Scripps also is the longtime steward of the Scripps National Spelling Bee. Founded in 1878, Scripps has held for decades to the motto, "Give light and the people will find their own way."

Los Angeles Times Communications LLC is the publisher of the Los Angeles Times, the largest metropolitan daily newspaper circulated in California. The Los Angeles Times maintains the website www.latimes.com, a leading source of national and international news. The Los Angeles Times appears as one of the key news sources in Apple News+ and other large digital distribution channels, reaching millions of readers around the country.

The Maryland-Delaware-DC Press Association is the regional press association for Maryland, Delaware and the District of Columbia and represents the policy interests of the news media. Founded in 1908, its membership includes metro dailies such as The Baltimore Sun, The News Journal (Wilmington, DE) and The Washington Post as well as over 100 other publications and online news outlets.

The National Association of Broadcasters (NAB) is a nonprofit incorporated trade association, organized in 1923, representing local radio and television stations and broadcast networks. NAB advocates for its membership before Congress, the courts, the Federal Communications Commission, and other governmental entities. NAB works to safeguard our members' ability and rights under the First Amendment to gather and distribute news and informational programming to viewers and listeners across the United States.

The National Press Club is the world's leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year, the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

The National Press Club Journalism Institute is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life, empowering engaged citizens to shape democracy. The Institute promotes and defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

National Review Institute (NRI) is the publisher of the National Review, a conservative publication founded in 1955 by William F. Buckley Jr. It publishes a magazine 24 times a year in several formats, including print and digital, and employs some of the central figures in conservative letters. National Review also produces a 24/7 website, www.nationalreview.com, which publishes conservative commentary on major political and cultural issues on a daily basis, and publishes multiple slideshows, podcasts, and videos on its website every day.

Yelp Inc. (Yelp) owns and operates Yelp.com, a popular social networking and search website, mobile website, and related mobile applications for users to share information about their communities. Yelp provides and publishes a forum for members of the public to read and write reviews about local businesses, services, and other entities including restaurants, doctors, auto mechanics, plumbers, churches and government agencies. One of Yelp's founding principles is that the best source for information about a local community is the community members themselves, and through its features Yelp helps the public make more informed choices about local businesses and activities. As of December 31, 2021, Yelp's users have contributed over 244 million cumulative reviews, written by people using Yelp to share their everyday local community experiences, giving voice to consumers and bringing "word of mouth" online. The Yelp app was on an average of approximately 33 million unique devices monthly in 2021.

INTRODUCTION

Amici submit this brief in support of the position of appellees (collectively, the "Post") that the Superior Court erred in ruling that the District of Columbia's anti-SLAPP Act does not apply Ms. Sonmez's claims. *Amici*, which include producers and distributors of news and entertainment content in the United States, know that the creative and editorial decision-making process begins with the selection of the people who create the art and the journalism. *Amici* thus believe the Superior Court's holding that Ms. Sonmez's claims challenging her reassignment from one topic to another fall outside the anti-SLAPP Act because they do not arise out of an "act in furtherance of the right of advocacy on issues of public interest" reflects a fundamental misconception both of the law and the nature of the speech activities it is intended to protect. If permitted to stand, the ruling could significantly dilute the legal protections applicable to all forms of creative and editorial products.[1]

In its ruling, the Superior Court expressly acknowledged that Ms. Sonmez's claims were directed at the Post's "exercise of editorial discretion concerning the assignment of reporters or enforcement of its code of ethics" regarding reporter conduct. JA174. It also acknowledged that "a newspaper's

[1] *Amici* take no position as to the merits of Ms. Somnez's claims. They only maintain that such claims properly fall within the ambit of D.C.'s anti-SLAPP Act.

decision about assignment of reporters or about adoption and enforcement of a code of ethics for its reporters is protected by the First Amendment and that these actions are in furtherance of a newspaper's constitutionally protected freedom of the press." JA173. Despite these correct observations about how a news organization works, the court held the anti-SLAPP Act does not apply to Ms. Sonmez's because, according to the court, "exercising this discretion is not actual speech or expressive conduct." JA174.

The hard-and-fast line the Superior Court drew between an organization's "speech," in the narrow sense of the publications it produces, and the creative and editorial decisions that underlie those publications is fundamentally untenable. As the Post notes in its brief, the Superior Court's analysis eliminates the explicit distinction the statute draws between "expression" and "expressive conduct," each of which is separately protected by the law. *See* Post Br. at 18 (citing to *Close It! Title Servs., Inc. v. Nadel*, 248 A.3d 132, 145 n.55 (D.C. 2021) for "basic principle of statutory interpretation that a court must give effect to all of the [statutory] provisions"). But, more fundamentally, the Superior Court's line drawing reflects a misunderstanding of the editorial or creative process, in which the myriad decisions that go into the production of what the Superior Court narrowly defined as "speech" are an inextricable part of the "speech" itself.

The result of the Superior Court's crabbed reading of the law is essentially to limit the application of D.C.'s anti-SLAPP Act to publication-based torts, such as defamation or the publication of embarrassing private facts. That means that decisions by organizations that create content about, for instance, how to conduct their research, what reporters to assign what stories, who to cast in a movie, or when to write a character out of television program, will receive none of the protections that the D.C. Council clearly intended. And, it will expose content creators and platforms subject to D.C. law to greater risk than elsewhere in the country. That is precisely the result the D.C. anti-SLAPP Act is designed to prevent – *i.e.*, circumstances in which the threat of litigation is used to exercise undue influence over the creation of speech, including by pushing news and artistic organizations away from controversial projects out of concern for they staffing disputes they can cause.

Amici urge this Court to reverse the portion of the Superior Court's decision holding that Ms. Sonmez's claims fall outside the scope of D.C. anti-SLAPP Act.

ARGUMENT

The Superior Court's narrow interpretation of the application of the D.C. anti-SLAPP Act, D.C. Code § 16-5501 *et seq.* ("D.C. Act") is unsupported by the law and threatens to undermine the interests the law is designed to protect. The

Superior Court's ruling that Ms. Sonmez' claims fall outside the scope of the Act should be reversed.

A. The D.C. Act Is a Broad Statute That Applies Early Scrutiny To Claims Based on a Defendant's Exercise of First Amendment Rights

The D.C. Act does not bar lawsuits that may involve speech or expression. Rather, the Act applies a heightened standard of review to cases arising from "expression or expressive conduct," D.C. Code § 16-5501(1)(B), to ensure early dismissal of those that are meritless. *See generally Am. Studies Ass'n v. Bronner*, 259 A.3d 728, 740 (D.C. 2021) ("[t]he anti-SLAPP special motion to dismiss is essentially an expedited summary judgment motion"); *Competitive Enterprise Inst. v. Mann*, 150 A.3d 1215, 1229 (D.C. 2016) ("the circumstances under which the Anti-SLAPP Act creates immunity from trial is a meritless SLAPP").

The D.C. Act provides that, once a defendant makes a "*prima facie* showing" that the claim at issue arises out of "an act in further of the right of advocacy on issues of public interest," the burden then shifts to the plaintiff to "demonstrate[] that the claim is likely to succeed on the merits." D.C. Code § 16-5502(b) & (d). The Act expressly defines "an act in further of the right of advocacy on issues of public interest" to include not only "written or oral statement[s]" relating to issues of public interest, but also "[a]ny other expression or *expressive conduct* that involves . . . communicating views to members of the

public in connection with an issue of public interest." *Id.* § 16-5501(1)(B) (emphasis added).

As this Court has explained, the D.C. Act creates a "procedural mechanism . . . to quickly and equitably end a meritless suit" so as to deter lawsuits that "chill or silence speech." *Doe No. 1 v. Burke*, 91 A.3d 1031, 1033, 1036 (D.C. 2014). That procedural mechanism "protect[s] a particular value of a high order – the right to free speech guaranteed by the First Amendment – by shielding defendants from meritless litigation that might chill advocacy on issues of public interest." *Mann*, 150 A.3d at 1231 (internal marks omitted); *see also id.* at 1239 ("the special motion to dismiss in the Anti-SLAPP act must be interpreted as a tool calibrated to take due account of the constitutional interests of the defendant who can make a prima facie claim to First Amendment protection"). Thus, the D.C. Act is premised on a recognition that lawsuits directed against speech activities present special dangers, even when lacking in merit, because simply their threat – implicit or otherwise – can be used as a means to deter, and exercise undue influence over, speech.

To that end, the D.C. Act is meant to be interpreted broadly so as to provide maximum protection to defendants exercising their "constitutionally protected rights." *Fridman v. Orbis Bus. Intelligence Ltd*., 229 A.3d 494, 502 (D.C. 2020); *see also Fells v. SEIU*, 281 A.3d 572, 581 (D.C. 2022) (D.C. Act should be

interpreted "broadly"); *Khan v. Orbis Bus. Intelligence Ltd.*, No. 2018CA002667B, 2018 D.C. Super. LEXIS 140, at *11 (D.C. Super. Ct. Aug. 20, 2018) (D.C. Act's "legislative history indicates that the Council intended the Act to apply . . . broadly"); *Farah v. Esquire Magazine, Inc.*, 863 F. Supp. 2d 29, 36 (D.D.C. 2012) (D.C. Act "is broad").

B. The Superior Court's Narrow Interpretation of the D.C. Act Is Contrary to the Act Itself, Its Purpose and Legislative History, and the Long Line of Cases Establishing that a Final "Expression" Cannot Be Separated from the Process that Creates It

The Superior Court acknowledged that Ms. Sonmez's claims were directed at the Post's "exercise of editorial discretion concerning the assignment of reporters," and that such activity is "protected by the First Amendment." JA174. Yet it nonetheless held that Ms. Sonmez's claims are not subject to the D.C. Act because "exercising this discretion is not actual speech or expressive conduct." *Id*. In other words, the Superior Court held that the D.C. Act protects only "speech" in the narrow sense of publication, which means the law applies only to publication-based torts.

Interpreting the D.C. Act in so confined a manner is anathema to the purpose of the D.C. Act, which is to protect the "exercis[e of] First Amendment rights," *Mann*, 150 A.3d at 1239, not just "actual" publication, JA174. This is underscored by the legislative history of the statute, which points in the opposite direction of the

Superior Court's analysis. *See* JA172-73 (concluding that legislative history favors narrow reading of statute). As one D.C. court has explained, "the initial version of the Anti-SLAPP Act … defined protected activity to include 'any other conduct in furtherance of *the exercise of the constitutional right ... of free expression* in connection with an issue of public interest.'" *Khan*, 2018 D.C. Super. LEXIS 140, at *11 n.2 (emphasis added). The language was later changed to the current version, protecting "expression or expressive conduct" more generally, so as to provide even "*broader* protection" to defendants. *Id.* (emphasis added); *see also* Rept. on Bill 18-893, "Anti-SLAPP Act of 2010" ("Comm. Rept.") at 18, D.C. Comm. on Pub. Safety & Judiciary (Nov. 18, 2010), *available at* https://lims.dccouncil.gov/downloads/LIMS/23048/Committee_Report/B18-0893-CommitteeReport1.pdf.[2] In other words, because the statute is now broader, its use of the phrase "expression or expressive conduct" necessarily *includes* all parts of the expressive process which are "in furtherance of the exercise of the

[2] In *Bronner*, this Court suggested that the change to the text (which was suggested by the ACLU) made the scope of the Act "narrower." 259 A.3d at 748. Respectfully, this is a misinterpretation of the legislative history. As the Committee Report incorporating the ACLU's statement makes clear, the language change was intended to "provide *broader* protection" to expression and expressive activity so that defendants would not have to prove the constitutionality of the speech or conduct at issue before D.C. Act would apply. Comm. Rept. at 18 (emphasis supplied). There is nothing to suggest that, through the language change, the D.C. Council (and the ACLU) intended to *limit* the scope of First Amendment-protected activities covered by the statute.

constitutional right … of free expression," *Khan*, 2018 D.C. Super. LEXIS 140, at *11 n.2, and not just the final speech product itself. The Superior Court's analysis is inconsistent with the breadth of the protection offered by the D.C. Act.

That "speech" or "expression" necessarily encompasses the underlying conduct that goes into producing it has long been a staple of First Amendment jurisprudence. For instance, the U.S. Supreme Court has recognized that "*the creation* . . . of information [is] speech within the meaning of the First Amendment." *Sorrell v. IMS Health Inc*., 564 U.S. 552, 570 (2011) (emphasis supplied); *see also Citizens United v. FEC*, 558 U.S. 310, 336 (2010) ("[l]aws enacted to control or suppress speech may operate at *different points in the speech process*" (emphasis added)). That is, speech cannot be "disaggregate[d]" from the process that creates it. *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1203 (9th Cir. 2018); *see also id.* at 1204 (because speech and its "creation" are "inextricably intertwined," the two are treated as one and the same); *Fields v. City of Phila.*, 862 F.3d 353, 358 (3d Cir. 2017) (for protection of content "to have meaning[, it] must protect the act of creating that material"); *Turner v. Driver*, 848 F.3d 678, 689 (5th Cir. 2017) (unreasonable to "disconnect the end product" – *i.e.*, the speech itself – "from the act of [its] creation"); *ACLU v. Alvarez*, 679 F.3d 583, 595 (7th Cir. 2011) (speech rights "would be insecure, or largely ineffective, if the antecedent act of *making*" that speech is unprotected).

Case law applying California's anti-SLAPP statute[3] likewise has recognized that to properly protect "the exercise of First Amendment rights" (as the D.C. Act is also supposed to do, *see Mann*, 150 A.3d at 1239), an anti-SLAPP Act must protect the expressive process – i.e., "acts that 'advance or assist' the creation and performance of" constitutionally-protected expressive works, *see Symmonds v. Mahoney*, 31 Cal. App. 5th 1096, 1106 (2019) – not just those acts which may form the basis of a traditional publication tort like defamation. Thus, the California Court of Appeal held that a plaintiff's discrimination claim against CNN was subject to the California Act because its "staffing decision" about who should report the news "contribute[s]" to CNN's "discussion of public matters." *Wilson v. Cable News Network, Inc.*, 7 Cal. 5th 871, 898 (2019). Likewise, another California court applied the California Act to a discrimination claim based on "decisions regarding who was to report the news" because such decisions "help[] advance or assist … First Amendment expression." *Hunter v. CBS Broad., Inc.*, 221 Cal. App. 4th 1510, 1521 (2013). In a discrimination lawsuit challenging

[3] The D.C. Act "is modeled" on California's Anti-SLAPP Act, Cal. Civ. Proc. Code § 425.16 (the "California Act"), and therefore California case law is "instructive." *Mann v. Nat'l Review, Inc.*, No. 2012CA008263B, 2013 D.C. Super. LEXIS 8, at *15 (D.C. Super. Ct. July 19, 2013); *see also, e.g., Bronner,* 259 A.3d at 746 (relying on California case law, noting that California has "similar anti-SLAPP statute"); *Boley v. Atl. Monthly Grp.*, 950 F. Supp. 2d 249, 255 (D.D.C. 2013) (courts interpreting D.C. Act "will look to decisions from other jurisdictions (particularly those from California, which has a well-developed body of anti-SLAPP jurisprudence) for guidance").

CNN's alleged failure to provide closed captioning in its short web videos, the Ninth Circuit explained that CNN's "decision to forego captioning is part of its editorial discretion and furthers CNN's free speech right to report the news." *Greater L.A. Agency on Deafness, Inc. v. CNN, Inc.*, 742 F.3d 414, 423 (9th Cir. 2014). The court emphasized that "not every action against a media organization" or "marginally related to a defendant's exercise of free speech" necessarily falls within the scope of the Act. *Id.* at 425. But, where "an action directly targets the way a content provider chooses to deliver, present, or publish news content on matters of public interest, that action is based on conduct in furtherance of free speech rights" and is therefore subject to anti-SLAPP protections. *Id.*; *see also Doe v. Gangland Prods., Inc.*, 730 F.3d 946, 953 (9th Cir. 2013) (California Act applies to "pre-publication or pre-production" acts); *Lieberman v. KCOP Television, Inc*., 110 Cal. App. 4th 156, 166 (2003) (claims brought under statute regulating surreptitious recordings subject to Act where defendant made recordings "in aid of … a broadcast in connection [with] a public issue").

California courts have also recognized that the state's anti-SLAPP statute is not limited to protecting news organizations' and reporters' editorial and newsgathering processes. It also naturally applies to the process of creating artistic works and other entertainment content. For example, the California Act applied to a discrimination claim brought against a band leader by the band's former

drummer because "[a] singer's selection of the musicians that play with him both advances and assists the performance of the music." *Symmonds*, 31 Cal. App. 5th at 1106. It applied to a negligence claim against a television production company based on its casting of a participant on a reality show because "the creation of a television show," including its "casting," is "an exercise of free speech." *Taylor v. Viacom Inc.*, No. CV17-3247, 2018 U.S. Dist. LEXIS 95391, at *8-9 (C.D. Cal. June 5, 2018). And, it applied to a discrimination claim brought by a former "Style Stage Correspondent" for Black Entertainment Television where the plaintiff's termination was based upon BET's "decisions" about "the creative process of developing and broadcasting the show." *Sessoms v. BET Networks, Inc.*, No. BC517318, 2014 Cal. Super. LEXIS 177, at *13 (Cal. Super. Ct. Apr. 17, 2014); *see also, e.g., Hyland v. Collins Ave. Entm't LLC*, No. BC536331, 2014 Cal. Super. LEXIS 206, at *18 (Cal. Super. Ct. Nov. 14, 2014) (California Act applied to claims for breach of implied covenant of good faith and fair dealing based on "defendant's acts of suspending plaintiff from" the television show "Dance Moms" because "creating a television show qualifies as an exercise of free speech").[4]

[4] Outside the anti-SLAPP context, courts likewise recognize that decisions about who to cast in entertainment programming are central to the creative process, and, therefore, are subject to the First Amendment protection. For example, a federal court in Tennessee dismissed a discrimination case brought against the producers of *The Bachelor*, finding "that casting decisions are part and parcel of the creative process behind a television program … thereby meriting First Amendment protection against the application of anti-discrimination statutes to that process."

C. The Superior Court's Narrow Interpretation of the D.C. Act Leaves a Substantial Amount of Constitutionally-Protected Activity Uncovered

Adhering to the Superior Court's narrow view of the D.C. Act and interpreting the term "expression or expressive conduct" to exclude the *process* of creating expression – whether in news or entertainment – potentially removes all manner of constitutionally-protected acts from the D.C. Act's protection. Under the Superior Court's reasoning, the D.C. Act potentially would exclude not only acts of "editorial discretion" (such as who should report the news), but also other pre-speech acts vital to the publication and art-making process. *Amici* remain concerned that the under this reasoning, the following types of lawsuits would, in the D.C. courts' view, be entitled to no protection under the Act:

- a Logan Circle developer's lawsuit against a reporter claiming she "trespassed" on his property in the course of gathering news about him, if such newsgathering does not ultimately become a story;

Claybrooks v. ABC, Inc., 898 F. Supp. 2d 986, 993 (M.D. Tenn. 2012); *see also id*. at 993 (discrimination claim cannot be used to "regulat[e] the creative content" of television programming). It rejected the plaintiff's effort "to drive an artificial wedge between casting decisions and the end product" because "casting and the resulting work of entertainment are inseparable and must *both* be protected." *Id.* at 999.

- a D.C. Council candidate's lawsuit against a news organization, in an attempt to thwart its reporting about him, for "intrusion" or "intentional infliction of emotional distress;"
- a male actor's discrimination lawsuit against a Kennedy Center production company's failure to be cast in a production of *The Women*;
- a discrimination lawsuit arising out of the a D.C. television producer's decision to write a particular character out of a new show;
- a lawsuit against the 9:30 Club based on its decision not to book a particular heavy-metal band based on its view that the band's lyrics are too violent; or
- a lawsuit against a news organization based on its passive receipt of opposition research against a political candidate that it decides *not* to publish.

In all these examples, no matter how meritless the lawsuit may be, under the Superior Court's reasoning, the defendant content creator could be unable "to quickly and equitably end" that meritless suit. *Doe*, 91 A.3d at 1033. As a result, the defendant would then face potentially protracted litigation, including substantial discovery; it would unlikely be able to recover its attorneys' fees; and there would be no deterrent to plaintiffs bringing more such claims in the future.

These are the precise outcomes that the D.C. Act was meant to avoid – meritless lawsuits, based on the defendant's exercise of its "right to free speech guaranteed by the First Amendment," that lead to protracted litigation. *See, e.g., Mann*, 150 A.3d at 1231; *see also id.* at 1230, 1238 (D.C. Act intended to protect against "'expensive and time consuming discovery'" and to award such a defendant "attorney's fees" and "costs" in order to "deter a SLAPP plaintiff"); *Nadel,* 248 A.3d at 142 (D.C. Act's "procedural tools" against "meritless litigation" provide expedited protection against harassment for exercising freedom of expression protected by the First Amendment"); *Fridman*, 229 A.3d at 502 ("To mitigate 'the amount of money, time, and legal resources' that defendants named" in lawsuits involving the exercise of constitutionally protected rights "must expend, the Anti-SLAPP Act created substantive rights which accelerate the often lengthy processes of civil litigation." (citation omitted)).

CONCLUSION

The Superior Court's bright-line distinction between an organization's "speech," in the narrow sense of the publications it produces, and the myriad editorial and/or creative decisions that are part of the process of producing that speech, is not reasonable. The effect of disaggregating speech from process means that protected editorial and creative decisions will take place against a backdrop of potential litigation, which will inevitably shape and impact that protected decision-

making. That is precisely the result the D.C. Act is intended to avoid – one in which courts, and the threat of litigation, are used as vehicles for micromanaging the exercise of First Amendment rights by organizations in the business of producing news, editorial, or creative content.

For these reasons, and for the reasons stated by the Washington Post in its brief, *amici* urge this Court to hold that Ms. Sonmez's claims fall within the scope of the D.C. Anti-SLAPP Act.

Dated: January 20, 2023

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Amicus Curiae was sent via this Court's e-filing system, on January 20, 2023, to all counsel of record.

/s/ Charles D. Tobin
Charles D. Tobin (#455593)

D.C. Code § 16-5501

The Official Code is current through Dec. 12, 2022.

District of Columbia Official Code > Division II. Judiciary and Judicial Procedure. (Titles 11 — 17) > Title 16. Particular Actions, Proceedings and Matters. (Chs. 1 — 55) > Chapter 55. Strategic Lawsuits Against Public Participation. (§§ 16-5501 — 16-5505)

§ 16-5501. Definitions.

For the purposes of this chapter, the term:

(1) "Act in furtherance of the right of advocacy on issues of public interest" means:

(A) Any written or oral statement made:

(i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or

(ii) In a place open to the public or a public forum in connection with an issue of public interest; or

(B) Any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.

(2) "Claim" includes any civil lawsuit, claim, complaint, cause of action, cross-claim, counterclaim, or other civil judicial pleading or filing requesting relief.

(3) "Issue of public interest" means an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place. The term "issue of public interest" shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker's commercial interests rather than toward commenting on or sharing information about a matter of public significance.

(4) "Personal identifying information" shall have the same meaning as provided in § 22-3227.01(3).

History

(Mar. 31, 2011, D.C. Law 18-351, § 2, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

End of Document

D.C. Code § 16-5502

The Official Code is current through Dec. 12, 2022.

District of Columbia Official Code > Division II. Judiciary and Judicial Procedure. (Titles 11 — 17) > Title 16. Particular Actions, Proceedings and Matters. (Chs. 1 — 55) > Chapter 55. Strategic Lawsuits Against Public Participation. (§§ 16-5501 — 16-5505)

§ 16-5502. Special motion to dismiss.

(a) A party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest within 45 days after service of the claim.

(b) If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

(c)

(1) Except as provided in paragraph (2) of this subsection, upon the filing of a special motion to dismiss, discovery proceedings on the claim shall be stayed until the motion has been disposed of.

(2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

(d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

History

(Mar. 31, 2011, D.C. Law 18-351, § 3, 58 DCR 741; Apr. 20, 2012, D.C. Law 19-120, § 201, 58 DCR 11235; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

End of Document

D.C. Code § 16-5503

The Official Code is current through Dec. 12, 2022.

District of Columbia Official Code > Division II. Judiciary and Judicial Procedure. (Titles 11 — 17) > Title 16. Particular Actions, Proceedings and Matters. (Chs. 1 — 55) > Chapter 55. Strategic Lawsuits Against Public Participation. (§§ 16-5501 — 16-5505)

§ 16-5503. Special motion to quash.

(a) A person whose personal identifying information is sought, pursuant to a discovery order, request, or subpoena, in connection with a claim arising from an act in furtherance of the right of advocacy on issues of public interest may make a special motion to quash the discovery order, request, or subpoena.

(b) If a person bringing a special motion to quash under this section makes a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the party seeking his or her personal identifying information demonstrates that the underlying claim is likely to succeed on the merits, in which case the motion shall be denied.

History

(Mar. 31, 2011, D.C. Law 18-351, § 4, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

End of Document

D.C. Code § 16-5504

The Official Code is current through Dec. 12, 2022.

District of Columbia Official Code > Division II. Judiciary and Judicial Procedure. (Titles 11 — 17) > Title 16. Particular Actions, Proceedings and Matters. (Chs. 1 — 55) > Chapter 55. Strategic Lawsuits Against Public Participation. (§§ 16-5501 — 16-5505)

§ 16-5504. Fees and costs.

(a) The court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or § 16-5503 the costs of litigation, including reasonable attorney fees.

(b) The court may award reasonable attorney fees and costs to the responding party only if the court finds that a motion brought under § 16-5502 or § 16-5503 is frivolous or is solely intended to cause unnecessary delay.

History

(Mar. 31, 2011, D.C. Law 18-351, § 5, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

End of Document

D.C. Code § 16-5505

The Official Code is current through Dec. 12, 2022.

District of Columbia Official Code > Division II. Judiciary and Judicial Procedure. (Titles 11 — 17) > Title 16. Particular Actions, Proceedings and Matters. (Chs. 1 — 55) > Chapter 55. Strategic Lawsuits Against Public Participation. (§§ 16-5501 — 16-5505)

§ 16-5505. Exemptions.

This chapter shall not apply to any claim for relief brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct from which the claim arises is:

(1) A representation of fact made for the purpose of promoting, securing, or completing sales or leases of, or commercial transactions in, the person's goods or services; and

(2) The intended audience is an actual or potential buyer or customer.

History

(Mar. 31, 2011, D.C. Law 18-351, § 6, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

End of Document

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/Charles D. Tobin
Signature

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Email Address

22-CV-274, 22-CV-301
Case Number(s)

January 20, 2023
Date