Uniform Public Expression Protection Act

Summary of Purpose and Provisions of the Act and Why it is Needed to Replace Minn. Stat. Secs. 554.01-554.06 that the Minnesota Supreme Court Determined to be Unconstitutional in 2017.

Beginning in the 1980s, courts have struggled with an increasing volume of lawsuits aimed at chilling public participation on issues of public concern by initiating legal actions that lack merit but intimidate defendants. These suits are characteristically brought against public participants exercising their First amendment rights of speech, freedom of the press, or the right to petition in governmental proceedings on public issues when the public expression reflects unfavorably on the plaintiff. The term "SLAPP" (Stategic Lawsuits against Public Participation) was coined to refer to this type of litigation that stifles constitutionally protected public expression by entangling a defendant in expensive and protracted litigation where there is often disproportionate legal access and economic resources among the parties (e.g., large publicly traded companies against individual private citizens).

- State Anti-SLAPP Legislation

States responded to these threats of costly legal fees, shrinking of civic space, and misuse of limited court resources, by enacting anti-SLAPP legislation. By 2020, more than half of the U.S. States and territories had anti-SLAPP statutes providing various levels of protection.

Although the acts differed significantly in coverage and procedures, the basic framework was to provide specific definitions for the covered activity, a method to determine whether the plaintiff's claim was sufficiently meritorious to proceed, and a procedural mechanism for efficient disposition of frivolous suits. States wanted to stop the meritless litigation at the earliest stages, but permit legitimate claims to proceed. The standards by which plaintiffs were required to substantiate the merits of their lawsuits varied from state to state.

- Minnesota's anti-SLAPP Legislation

Minnesota enacted anti-SLAPP legislation in 1994. The current provisions can be found at Minn. Stat. Secs. 554.01 to 554.06. The act contained a broad procedural section that provided that (1) plaintiffs responding to a defendant's invocation of the state's anti-SLAPP laws had the burden of proof and persuasion, (2) the standard of proof required "clear and convincing evidence," and (3) the dismissal determination was to be made by the court.

Early concerns emerged about whether these provisions allowing a court determination applying a clear and convincing burden of proof violated the right to jury trial on issues of fact. In 2017 that issue reached the Minnesot Supreme Court. In *Leiendecker v. Asian Women United of Minnesota,* 895 N.W. 2d 623 (Minn. 2017) the court determined that Clauses 2 and 3 of Subdivision 2 of Section 554.02 were unconstitutional under the Minnesota Constitution because they impaired the right to trial by jury. The court further determined that without those provisions the entire statute is functionally unconstitutional.

- Uniform Law Commission Drafts **Uniform Public Expression Protection Act**

In response to requests from various organizations, including the American Bar Association, the Uniform Laws Commission began work on an act to refine and unify the best practices of anti-SLAPP laws. After extensive research and analysis, the ULC approved the Uniform Public Expression Protection Act at its 2020 annual meeting. The act has been well received and the first enactment occurred in the state of Washington, the

only state other than Minnesota where an anti-SLAPP act had been determined to be unconstitutional. Since then it has been adopted in Hawaii, Kentucky, and Washington and has been introduced in Missouri, New Jersey, Oregon, and Utah.

- Why it is important that Minnesota enact UPEPA

  - The same abusive lawsuits that prompted Minnesota's 1994 legislation continue. In September 2022 hearings before the U.S. House Oversight and Reform Committee witnesses introduced statistics from the Human Rights Resource Center, that identified more than 355 cases between 2015 and 2021 brought by businesses against individuals as SLAPP suits. Many of these were related to the environment and to human rights. Testimony from Earth Rights International provided evidence that the fossil fuel industry has used SLAPP tactics to target more than 150 people and organizations over the past 10 years. And over 50 have been targeted in the last five years alone.

  - Minnesota statutes need to be clarified and accurate. Currently there is a Note in Chapter 554, following Sec. 554.02 that says that this section was found unconstitutional in *Leiendecker v. Asian Women United of Minnesota,* 895 N.W. 2d 623 (Minn. 2017). But the final paragraph of the *Leiendecker* majority opinion further concludes that the unconstiutional provisions are inseparable from the remaining provisions and without the provisions there is no procedure. Consequently all of the statutory provisions are unenforceable. We need the comprehensive structure and provisions of UPEPA to make the protections enforceable and the statute functional.

  - UPEPA has the same goals and purposes as the 1994 legislation but it does not have the constitutional infirmities. The more carefully drafted procedures and evidentiary standards do not jeopardize the constitutional right to jury trial on factual determinations or provide a higher burden-of-proof standard than the preponderance-of-the-evidence standard that would apply if the case went to trial.

  - Enactment of the uniform provisions of UPEPA would prevent the type of forum shopping referred to as litigation tourism when there are significant differents in anti-SLAPP law from state to state.

  - UPEPA is strongly supported by a wide range of community organizations and businesses. Twenty-eight organizations signed and submitted "An Open Letter in Support of the Uniform Law Commission's Uniform Public Expression Protection Act." A copy of this letter with the signatures and the reasons for support is attached to this Information Sheet. A separate support letter from the Motion Picture Association is also attached.

    ATTACHMENTS:

    Copy of the proposed act

    ULC two-page Summary of UPEPA's provisions and procedures

    Open Letter in Support of UPEPA signed by 28 organizations and businesses and letter from Motion Picture Industry

    Additional letters of support from attorneys who are familiar with the act

Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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Chicago, IL 60602
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THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT (2020)

- A Summary -

The Uniform Public Expression Protection Act ("UPEPA") is designed to prevent an abusive type of litigation called a "SLAPP," or "strategic lawsuit against public participation." A SLAPP may be filed as a defamation, invasion of privacy, nuisance, or other type of claim, but its real purpose is to silence and intimidate the defendant from engaging in constitutionally protected activities, such as free speech. The uniform act contains a clear framework for the efficient review and dismissal of SLAPPs. Below is a summary of how the motion procedure operates under the uniform act.

Phase 1 – Filing of the Motion and Scope of the Act

First, the party targeted by the SLAPP (the party who has been sued) files a motion for expedited relief under Section 3 of the uniform act. The filing of the motion stays, or freezes, all proceedings between the moving party and responding party (unless the court grants specific relief from the stay) until the court rules on the motion. The moving party must file the motion within 60 days after being served with a complaint, crossclaim, counterclaim, or other pleading that asserts a cause of action to which the act applies. Section 2 of UPEPA explains that the act applies if the cause of action asserted against a person is based on the person's:

1. Communication in a legislative, executive, judicial, administrative, or other governmental proceeding;
2. Communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or
3. Exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or the State constitution, on a matter of public concern.

Section 2(c) provides exemptions from the scope of the act; the act does *not* apply to a cause of action asserted:

1. Against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;
2. By a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety; or
3. Against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person's sale or lease of the goods or services.

Once the motion is filed, the responding party may argue that the action does *not* fall within the scope of the act. If the court finds that the action is *not* within the scope, the moving party loses the motion and may appeal immediately. However, if the court finds the action *is* within the scope, then the parties move to the second phase of the motion process.

Phase 2 – Prima Facie Viability
In this phase, the responding party must show that the cause of action states a prima facie case as to each essential element of the claim. In short, the responding party must provide evidence sufficient as a matter of law to establish a given fact if it is not rebutted or contradicted. If the respondent cannot establish a prima facie case, then the court must grant the motion and the cause of action (or portion of the cause of action) must be dismissed. If the responding party *does* establish a prima facie case, then the court moves to phase three of the motion procedure.

Phase 3 – Legal Viability
In this phase, the burden shifts back to the moving party to either show that:

1. The responding party failed to state a cause of action upon which relief can be granted; or
2. There is no genuine issue as to any material fact and the party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

If the moving party meets this burden, then the moving party wins and the cause of action is stricken with prejudice (Section 7). The responding party may appeal at the conclusion of the case. If the moving party fails to meet its burden (the court finds the responding party's case to be viable as a matter of law), then the moving party will lose the motion and may appeal immediately (Section 9).

Costs, Attorney's Fees, and Expenses
Section 10 of UPEPA states that if the moving party wins on the motion, then the court must award it costs, reasonable attorney's fees, and reasonable litigation expenses related to the motion. If the responding party wins and the court finds that the SLAPP motion was frivolous or filed solely with intent to delay the proceeding, then the responding party will get its costs, fees, and expenses.

UPEPA offers to enacting states a comprehensive, efficient framework for the resolution of SLAPPs. The uniform act's broad scope also provides more protection to citizens than most existing anti-SLAPP statutes. States that have already adopted a SLAPP law should consider updating their existing law by adopting the uniform act.

For more information about UPEPA, please contact ULC Legislative Counsel Kaitlin Wolff at (312) 450-6615 or kwolff@uniformlaws.org.

An Open Letter in Support of the Uniform Law Commission's Uniform Public Expression Protection Act

The undersigned organizations represent an array of views across the political spectrum, which often results in disagreements on certain issues. Yet protection from meritless lawsuits to punish speech, known as Strategic Lawsuits Against Public Participation ("SLAPP"), is one principle that we all agree on. Our organizations strongly support robust anti-SLAPP laws modeled after the Uniform Law Commission's ("ULC") Uniform Public Expression Protection Act ("UPEPA").

The First Amendment protects our right to freedom of speech, press, assembly, and petition, which are fundamental to free expression, liberty, and democracy. Some individuals and entities seek to suppress or punish speakers, artists, or publishers through SLAPPs. Such unscrupulous litigants will start expensive and meritless litigation in an effort to intimidate and harass a speaker into silence.

Anti-SLAPP laws protect the public from frivolous lawsuits that arise from speech on matters of public concern. These laws protect speakers by providing special procedures for defendants to defeat weak or meritless claims. The stronger the statute, the more deterrence there is against filing SLAPP lawsuits.

Already, 32 states have anti-SLAPP statutes, though most could be significantly improved by adopting some or all of the UPEPA's language. Every state should adopt an anti-SLAPP law that follows the provisions in the UPEPA to provide national uniformity against abusive litigation that undermines First Amendment-protected freedom of expression.

The following six features in the UPEPA are necessary for an effective anti-SLAPP law:

1. Protection of all expression on matters of public concern.

Strong anti-SLAPP statutes protect a wide spectrum of speech. The best statutes protect all speech on matters of public concern in any forum, as the UPEPA does.

2. Minimization of litigation costs by allowing defendants to file an anti-SLAPP motion in court.

Under the UPEPA, the filing of an anti-SLAPP motion automatically halts discovery and all other proceedings until the court rules on the motion. Discovery, which includes document production and depositions, imposes expensive and invasive burdens on defendants. Instructing courts to rule promptly on the anti-SLAPP motion minimizes the cost of meritless lawsuits that harm free expression rights.

3. Requiring plaintiffs to show they have a legitimate case early in the litigation.

The UPEPA puts the burden of proof on the plaintiff when responding to an anti-SLAPP motion to "establish a prima facie case as to each essential element" of the lawsuit. It forces plaintiffs to substantiate their claims, and demonstrate that they can overcome any applicable First Amendment protection, at an early stage of the litigation. Alternatively, the defendant can win the anti-SLAPP motion by showing that the plaintiff "failed to state a claim" or that "there is no genuine issue as to any material fact and the [defendant] is entitled to judgment as a matter of law." If the court approves the anti-SLAPP motion, the case is dismissed.

To combat this problem, 32 states and the District of Columbia have enacted so-called anti-SLAPP ("Strategic Lawsuit Against Public Participation") statutes, which provide a powerful tool for those who are unjustly sued for the exercise of their free speech rights on public issues. The MPA's members, as well as their affiliated news organizations, are frequent users of such statutes, which help ensure that their First Amendment rights to entertain and inform the public are not chilled by meritless lawsuits.

UPEPA draws from the best of the existing anti-SLAPP statutes in states such as California, Texas, Georgia, and Tennessee, and provides an excellent model for those states that either have no anti-SLAPP statute on the books, or whose statutes are too narrow in scope to protect the First Amendment rights of their citizens, journalists, businesses, nonprofit organizations, and others when they speak out on matters of public concern. The MPA wholeheartedly endorses the Uniform Law Commission's efforts to enact UPEPA in states that currently lack strong anti-SLAPP protections, and stands ready to assist in those legislative efforts.

Thank you for your work on this and other issues of concern to the MPA's members, and we look forward to working with the Uniform Law Commission to help transform UPEPA into law.

Very truly yours,

Vans Stevenson

cc: MPA member studios
Kaitlin Wolff, ULC Legislative Counsel

MOTION PICTURE ASSOCIATION

MOTION PICTURE ASSOCIATION, INC.
1600 Eye St. NW, Washington DC 20006
(202) 293-1966

Vans Stevenson
Senior Vice President, State Government Affairs

VIA EMAIL ONLY
Carl H. Lisman
President
Uniform Law Commission
111 N. Wabash Avenue, Suite 1010
Chicago, Illinois 60602

December 2, 2020

Re: Uniform Public Expression Protection Act

Dear Mr. Lisman:

The Motion Picture Association, Inc. ("MPA") strongly endorses the Uniform Law Commission's ("ULC") Uniform Public Expression Protection Act ("UPEPA"), which establishes a robust set of mechanisms to protect defendants sued for exercise of their First Amendment rights on matters of public concern.

The MPA is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry. Since that time, MPA has advanced the business and art of storytelling, protecting the creative and artistic freedoms of storytellers, and bringing entertainment and inspiration to audiences worldwide. The MPA's member companies are: Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, Warner Bros. Entertainment Inc., and Netflix Studios, LLC. In addition, several of the MPA's members have as corporate affiliates major news organizations (including ABC, NBC, and CBS News, and CNN) and dozens of owned-and-operated local television stations with broadcast news operations.

The MPA's members and their affiliates are in the business of engaging in free speech on matters of public concern, whether they tell stories through fictional films, television documentaries, or news broadcasts of national or local interest. Unfortunately, that speech sometimes results in defamation or other lawsuits by individuals and businesses unhappy with how they are portrayed. These lawsuits—even if ultimately unsuccessful—can be expensive and burdensome to defend against, and have the especially pernicious effect of chilling constitutionally protected speech on controversial topics, for fear that it will result in litigation, however meritless.

4. The right to an immediate appeal of an anti-SLAPP motion ruling.

The UPEPA and strong anti-SLAPP statutes also reduce the coercive and punitive nature of litigation by providing the defendant with the right to immediately appeal a denial of an anti-SLAPP motion. This is important because lower courts can err in judgment, and a successful appeal of a ruling denying an anti-SLAPP motion can avoid an expensive and stressful trial that would burden a speaker's First Amendment rights.

5. Award of costs and attorney fees.

Strong anti-SLAPP statutes, like the UPEPA, require the court to award costs and reasonable attorney's fees to a prevailing defendant. This is a vital deterrent against SLAPP lawsuits. Without an award, a defendant might win the lawsuit, but still suffer financial devastation from costs owed to their lawyers. Every state should reduce the punishment that unscrupulous litigants can mete out to their critics and adversaries. Automatic costs and attorney's fee awards do just that. Importantly, such fee-shifting also enables more attorneys to represent those with limited means fighting a SLAPP.

6. Broad judicial interpretation of anti-SLAPP laws to protect free speech.

The UPEPA and several state anti-SLAPP statutes instruct judges to read the statute broadly and/or liberally to protect free expression rights.

We appreciate the work of the Uniform Law Commission to craft the UPEPA and support its passage in states across the country with weak or no anti-SLAPP laws. Please share this letter with those working to enact or improve anti-SLAPP laws. Our organizations are ready and willing to lend support to such efforts.

Sincerely,

Organizing Signers:

American Civil Liberties Union
Institute for Free Speech
Institute for Justice
Public Participation Project
Reporters Committee for Freedom of the Press

Joined by:

American Society of Journalists and Authors
Authors Guild
Center for Biological Diversity
Center for Individual Freedom
Comic Book Legal Defense Fund
Competitive Enterprise Institute
Defending Rights & Dissent
Electronic Frontier Foundation
Foundation for Individual Rights and Expression
International Association of Better Business Bureaus
James Madison Center for Free Speech
League of Conservation Voters
Motion Picture Association, Inc.
National Association of Broadcasters
National Coalition Against Censorship
National Right to Life Committee
National Taxpayers Union
News Leaders Association
News Media Alliance
PEN America
R Street Institute
Society of Professional Journalists
Woodhull Freedom Foundation

January 2023

Washington State Court Issues Nation's First Appellate Decision on the Uniform Public Expression Protection Act

By Caesar Kalinowski IV, Shontee Pant, and Bruce E.H. Johnson

PUBLISHED IN: MediaLawLetter January 2023

TOPICS : Anti-SLAPP, Defamation

In 2019, Varisha Khan made political history in Washington when she became one of the first Muslim women elected to public office in the state. Little did the Redmond city council member know, but her campaign would also take on historic legal significance. Years after her election, Khan was sued for statements she made in an article written during the campaign. Refusing to withdraw the article, Khan instead defended her speech rights using the Uniform Law Commission's new anti-SLAPP statute: the Uniform Public Expression Protection Act (UPEPA).

Passed by Washington in 2021 and other states since, UPEPA provides expedited procedures and substantial protections to protect expressive rights against abusive litigation. Thanks to this new law, Khan's rights have now been vindicated. Her case has also resulted in the first appellate UPEPA decision in the country, *Jha v. Khan*, 520 P.3d 470 (Wash. Ct. App. 2022), providing a strong roadmap for how the law should be applied to protect expression.

The story of Khan's historic candidacy and campaign speech is similar to many SLAPP stories involving individuals with money and questionable scruples who dislike critical speech. As part of her campaign against multi-term incumbent Hank Myers, Khan published an article on medium.com calling for Redmond's citizens to "[v]ote for ethical, bold leadership." *Id.* at 475. In her article, Khan voiced concerns she heard while campaigning that Redmond's elected officials were "bought by developers" who cared more about business interests than "the needs and voices of the people who live and work here." The article went on to give recent examples underlying this concern, noting where "Myers voted in support of developer proposals whom he took money from" like "Sidd Jha, who gave the $1,000 maximum donation and was recently involved in a legal case of revenge porn and abuse of his ex-girlfriend." Ultimately, Khan provided her opinion about Myers' votes and Jha's contribution, which she believed "threaten[ed] to create a dangerous precedent where developers can disregard public transparency."

Notwithstanding the existence of a lawsuit against him or public records about his contribution, Jha took issue with Khan's "unflattering statements" and sued her and her spouse for defamation, invasion of privacy, and intentional infliction of emotional

distress. *Id.* After giving written notice of intent to file a dispositive motion under UPEPA, Khan waited more than the 14 days required by Washington's law—providing Jha an opportunity to either remove his meritless claims or assert meritorious ones—before filing her motion and requesting summary dismissal on all grounds. *Id.* (citing RCW 4.105.020(1)). Although UPEPA's automatic stay of "[a]ll other proceedings" was already in effect, RCW 4.105.030; UPEPA § 4, Jha's rotating cast of attorneys nevertheless began filing multiple motions and requests for amendment to circumvent Khan's request for dismissal of the suit with prejudice. Statute notwithstanding, the trial court allowed Jha's amendments—and more confusingly—denied Khan's motion by asserting that Jha had established a *prima facie* case as to falsity, there were genuine disputes as to the alleged falsity of her statement, and the First Amendment could not be applied before resolution of those disputes by a jury.

Khan immediately appealed as of right under UPEPA, and ultimately, Division I of the Court of Appeals of the State of Washington reversed on all grounds. While noting that UPEPA requires its terms to "be broadly construed and applied to protect the exercise of" rights protected under the First Amendment and state constitution, RCW 4.105.901; UPEPA § 11, Judge Stephen J. Dwyer's opinion deftly handles a number of important issues of first impression. Carefully walking through UPEPA's multi-step analysis, the decision provides courts around the nation with guidance as to how to apply the uniform law—which expressly requires consideration for "the need to promote uniformity of the law with respect to its subject matter among states that enact it." RCW 4.105.902; UPEPA § 12.

As an initial matter, the Court determined that Khan's campaign article easily fell within the scope of UPEPA's protections because her speech was regarding the official activities of an elected official and so clearly involved a matter of public concern. 520 P.3d at 477 (citing RCW 4.105.010(2)); UPEPA § 2(b). Specifically, the Court noted that the article "posits that Myers votes in the interest of unsavory business interests and political financiers rather than his constituents and urges Redmond residents to vote for Khan as the better alternative." *Id.* at 478. At the same time, the Court rejected Jha's claim that his complaint arose from Khan's activities as a city council member because the suit was brought against her in an individual capacity based on her private campaign speech—which did not implicate UPEPA's exception for claims asserted against government officials acting in their official capacity. *Id.* at 482 n. 11 (citing RCW 4.105.010(3)(a)(i)); UPEPA § 2(c).

Moving on to the merits of Jha's claim—viewed under Rule 12 and 56 standards to avoid constitutional problems that plagued early anti-SLAPP statutes—the Court determined that Jha's lawsuit should have been dismissed on multiple grounds. First, Jha had not met his burden to establish a *prima facie* case regarding falsity because Khan's statements about his connection to allegations of abuse were true and, in the context of the political article in which they appeared, could not reasonably be read to imply anything false. *Id.* at 479-81. Second, the Court ruled that Jha necessarily failed his burden as to the article's concern regarding "public transparency" because Khan's predictive statement and fears about what might happen in the future were protected opinion—incapable of being false as a matter of law. *Id.* at 482. Last, citing a request

by amici (including the Reporters Committee for Freedom of the Press and 18 other media organizations), the Court reversed the trial court's refusal to apply the fair reporting privilege, holding that "the question of privilege must be addressed when ruling on a UPEPA motion" and waiting would defeat the legislative purpose in enacting UPEPA. *Id.* at 482-85.

The Court also vacated the lower court's decisions granting Jha's requests to file amended complaints, affirming that the attempted amendments were untimely under the plain language of Washington's law and a plaintiff should not be able to avoid dismissal under UPEPA simply by amending the challenged complaint. *Id.* at 485-86. As such, the Court held that UPEPA required dismissal with prejudice and Khan was entitled to mandatory fees, costs, and litigation expenses at both the trial and appellate level as the prevailing party. *Id.* at 486 (citing RCW 4.105.090(1)); UPEPA § 10. While Jha has already unsuccessfully moved for reconsideration and will no doubt continue to try to keep his suit alive through appeal, one thing is undisputable: attorneys in jurisdictions that have passed UPEPA now have a strong means to protect their clients' right to expression against meritless suits.

Varisha Khan and her spouse were represented by Caesar Kalinowski IV and Bruce E.H. Johnson of Davis Wright Tremaine LLP. Bruce was closely involved in negotiating the enactment of Washington's UPEPA bill and he serves as co-chair of the MLRC's anti-SLAPP committee alongside Texas lawyer Laura Prather. Shontee Pant is a media associate in Davis Wright's Seattle office.

MOTION PICTURE ASSOCIATION

February 22, 2024

Chair Jamie Becker-Finn
House Committee on Judiciary Finance and Civil Law
Minnesota House of Representatives
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Dear Chairwoman Beck-Finn:

The Motion Picture Association, Inc. (MPA) strongly endorses HF 3309 which establishes a robust set of mechanisms to protect defendants sued for exercise of their First Amendment rights on matters of public concern and models the Uniform Law Commission's Uniform Public Expression Protection Act (UPEPA).

The MPA is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry. Since that time, MPA has advanced the business and art of storytelling, protecting the creative and artistic freedoms of storytellers, and bringing entertainment and inspiration to audiences worldwide. The MPA's member companies are: Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, Warner Bros. Entertainment Inc., and Netflix Studios, LLC. In addition, several of the MPA's members have as corporate affiliates major news organizations (including ABC, NBC, and CBS News, and CNN) and dozens of owned-and-operated local television stations with broadcast news operations.

The MPA's members and their affiliates are in the business of engaging in free speech on matters of public concern, whether they tell stories through fictional films, television documentaries, or news broadcasts of national or local interest. Unfortunately, that speech sometimes results in defamation or other lawsuits by individuals and businesses unhappy with how they are portrayed. These lawsuits—even if ultimately unsuccessful—can be expensive and burdensome to defend against and have the especially pernicious effect of chilling constitutionally protected speech on controversial topics, for fear that it will result in litigation, however meritless.

To combat this problem, 32 states and the District of Columbia have enacted so-called anti-SLAPP ("Strategic Lawsuit Against Public Participation") statutes, which provide a powerful tool for those who are unjustly sued for the exercise of their free speech rights on public issues. The MPA's members, as well as their affiliated news organizations, are frequent users of such statutes, which help ensure that their First Amendment rights to entertain and inform the public are not chilled by meritless lawsuits.

UPEPA draws from the best of the existing anti-SLAPP statutes in states such as California, Texas, Georgia, and Tennessee, and provides an excellent model for those states that either have no anti-SLAPP statute on the books, or whose statutes are too narrow in scope to protect the First

Amendment rights of their citizens, journalists, businesses, nonprofit organizations, and others when they speak out on matters of public concern.

The MPA wholeheartedly supports HF 3309 and stands ready to assist in those legislative efforts. Thank you for your work on this and other issues of concern to the MPA's members.

Sincerely,

Arlen Valdivia
Vice President, State Government Affairs
Motion Picture Association

MINNESOTA NEWSPAPER ASSOCIATION

February 21, 2024

Re: HF 3309 (Uniform Public Expression Act)

Dear Chair Becker-Finn and Members of the House Judiciary Finance & Civil Law Committee:

I write as executive director of the Minnesota Newspaper Association (MNA), to express our views on HF 3309. MNA represents more than 250 newspapers throughout the state, from the smallest to the largest.

MNA, its members, and Minnesota's news organizations more generally, strongly support HF 3309 and urge the Committee to approve it. Defamation lawsuits are one of the most serious financial threats that news organizations face. Even when such a lawsuit is poorly grounded in fact and law—which many are—the legal fees required by the litigation can run into the hundreds of thousands of dollars. Insurance to cover these costs has become hard to obtain, very expensive, and comes with high deductibles.

The polarization that has occurred in this country over the past several years has led to an increased risk of defamation lawsuits pursued mainly as a punitive measure, brought not only against news outlets, but against other organizations and citizens as well. In addition, the significant changes that have occurred in the news media caused by the development of the internet and social media has left newspapers and other traditional news organizations with considerably diminished financial resources, and thus more vulnerable to the impacts of a defamation lawsuit.

These developments make the protections that would be provided by HF 3309 especially important. We would therefore ask that the bill be approved and moved forward.

We appreciate your consideration of our views.

Sincerely,

Lisa Hills
Executive Director, Minnesota Newspaper Association

CC: Representative Cedrick Frazier

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