

114TH CONGRESS  
1ST SESSION

# H. R. 2304

To amend title 28, United States Code, to create a special motion to dismiss strategic lawsuits against public participation (SLAPP suits).

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## IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2015

Mr. FARENTHOLD (for himself, Ms. ESHOO, Mr. ISSA, Mr. FRANKS of Arizona, and Mr. POLIS) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 28, United States Code, to create a special motion to dismiss strategic lawsuits against public participation (SLAPP suits).

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing Participation,  
5 Engagement, and Knowledge Freedom by Reducing Egre-  
6 gious Efforts Act of 2015” or the “SPEAK FREE Act  
7 of 2015”.

1 **SEC. 2. SPECIAL MOTION TO DISMISS STRATEGIC LAW-**  
 2 **SUITS AGAINST PUBLIC PARTICIPATION.**

3 (a) IN GENERAL.—Part VI of title 28, United States  
 4 Code, is amended by adding after chapter 181 the fol-  
 5 lowing new chapter:

6 **“CHAPTER 182—SPECIAL MOTION TO DIS-**  
 7 **MISS STRATEGIC LAWSUITS AGAINST**  
 8 **PUBLIC PARTICIPATION**

“Sec.

“4201. Strategic lawsuit against public participation defined.

“4202. Motion to dismiss strategic lawsuit against public participation.

“4203. Discovery.

“4204. Interlocutory appeal.

“4205. Motion to quash.

“4206. Removal.

“4207. Fees, costs, and sanctions.

“4208. Definitions.

9 **“§ 4201. Strategic lawsuit against public participation**  
 10 **defined**

11 “In this chapter, the term ‘strategic lawsuit against  
 12 public participation’ or ‘SLAPP suit’ means a claim that  
 13 arises from an oral or written statement or other expres-  
 14 sion, or conduct in furtherance of such expression, by the  
 15 person against whom the claim is asserted that was made  
 16 in connection with an official proceeding or about a matter  
 17 of public concern.

18 **“§ 4202. Special motion to dismiss strategic lawsuit**  
 19 **against public participation**

20 “(a) IN GENERAL.—Except as provided in subsection  
 21 (b), a person against whom a SLAPP suit is asserted may

1 file a special motion to dismiss. If the party filing a special  
2 motion to dismiss a SLAPP suit makes a prima facie  
3 showing that the claim at issue arises from an oral or writ-  
4 ten statement or other expression by the defendant that  
5 was made in connection with an official proceeding or  
6 about a matter of public concern, then the motion shall  
7 be granted and the claim dismissed with prejudice, unless  
8 the responding party demonstrates that the claim is likely  
9 to succeed on the merits, in which case the motion shall  
10 be denied.

11 “(b) EXCEPTIONS.—

12 “(1) ENFORCEMENT ACTIONS.—The court shall  
13 not grant a special motion to dismiss under this sec-  
14 tion if the claim is an enforcement action brought by  
15 an agency or entity of the Federal Government or a  
16 State or local government.

17 “(2) COMMERCIAL SPEECH.—Except as pro-  
18 vided in subsection (c), the court shall not grant a  
19 special motion to dismiss under this section if the  
20 claim is brought against a person primarily engaged  
21 in the business of selling or leasing goods or services  
22 where such claim arises from the statement or con-  
23 duct of such person and such statement or con-  
24 duct—

1           “(A) consists of representations of fact  
2           about such person’s or a business competitor’s  
3           goods or services, that is made for the purpose  
4           of obtaining approval for, promoting, or secur-  
5           ing sales or leases of, or commercial trans-  
6           actions in, the person’s goods or services, or the  
7           statement or conduct was made in the course of  
8           delivering the person’s goods or services; and

9           “(B) arises out of the sale or lease of  
10          goods, services, or an insurance product, insur-  
11          ance services, or a commercial transaction in  
12          which the intended audience is an actual or po-  
13          tential buyer or customer.

14          “(3) PUBLIC INTEREST.—Except as provided in  
15          subsection (c), the court shall not grant a special  
16          motion to dismiss under this section if the claim is  
17          a public interest claim.

18          “(c) LIMITATIONS ON EXCEPTIONS.—Paragraphs (2)  
19          and (3) of subsection (b) shall not apply as to—

20                 “(1) any claim against a person or entity en-  
21                 gaged in the dissemination of ideas or expression in  
22                 any book or academic journal, while engaged in the  
23                 gathering, receiving, or processing of information for  
24                 communication to the public;

1           “(2) any claim against any person or entity  
2 based upon statements or conduct concerning the  
3 creation, dissemination, exhibition, advertisement, or  
4 other similar promotion of journalistic, consumer  
5 commentary, dramatic, literary, musical, political, or  
6 artistic works, including motion pictures, television  
7 programs, or articles published online or in a news-  
8 paper or magazine of general circulation; or

9           “(3) any claim against a nonprofit organization  
10 that receives more than 50 percent of annual rev-  
11 enue grants or awards from, programs of, or reim-  
12 bursements for services rendered to the Federal,  
13 State, or local government.

14           “(d) TIME LIMIT.—Unless the court grants an exten-  
15 sion, a motion to dismiss a SLAPP suit shall be filed—

16           “(1) not later than 45 days after the date of  
17 service of the claim, if the claim is filed in a Federal  
18 court; or

19           “(2) not later than 30 days after the date of re-  
20 moval, if the claim is removed to Federal court  
21 under section 4206.

22           “(e) HEARING.—

23           “(1) IN GENERAL.—Except as provided in para-  
24 graphs (2) and (3), the court shall set a hearing on  
25 a special motion to dismiss a SLAPP suit on a date

1 not later than 30 days after the date of service of  
2 the special motion to dismiss a SLAPP suit.

3 “(2) HEARING POSTPONED.—Except as pro-  
4 vided in paragraph (3), the court may postpone the  
5 hearing for up to 60 days, but shall set the hearing  
6 on a date that is not later than 90 days after the  
7 date of service of the special motion to dismiss a  
8 SLAPP suit, if—

9 “(A) the docket conditions of the court re-  
10 quire a later hearing;

11 “(B) there is a showing of good cause; or

12 “(C) the parties agree to postpone the  
13 hearing.

14 “(3) EXTENSION FOR DISCOVERY.—If the court  
15 allows specified discovery under subsection (a) of  
16 section 4203, the court may extend the hearing date  
17 to allow specified discovery under that subsection,  
18 but the court shall set the hearing on a date not  
19 later than 120 days after the date of service of the  
20 special motion to dismiss a SLAPP suit.

21 “(f) RULING.—The court must rule on a special mo-  
22 tion to dismiss a SLAPP suit not later than 30 days after  
23 the date on which the final paper is required to be filed  
24 or the date argument is heard, whichever is later.

25 “(g) EVIDENCE.—

1           “(1) IN GENERAL.—In determining whether a  
2           legal action should be dismissed under this chapter,  
3           the court shall consider the pleadings and affidavits  
4           stating the facts on which the liability or defense is  
5           based.

6           “(2) DISCOVERY.—If the court has ordered  
7           specified discovery pursuant to section 4203, the  
8           court may consider such discovery.

9           **“§ 4203. Stay of discovery**

10          “(a) IN GENERAL.—Except as provided in subsection  
11 (b), upon the filing of a special motion to dismiss under  
12 section 4202, discovery proceedings in the action shall be  
13 stayed until a final and unappealable order is entered on  
14 such motion unless good cause is shown for specified dis-  
15 covery.

16          “(b) EXCEPTION.—A stay issued under subsection  
17 (a) based on the filing of a special motion to dismiss under  
18 section 4202, that only seeks dismissal of a third-party  
19 claim or a cross claim asserted by a defendant shall only  
20 apply to discovery that is requested by the party asserting  
21 the third-party claim or cross claim or discovery that re-  
22 lates solely to the third-party claim or cross claim.

23           **“§ 4204. Interlocutory appeal**

24           “An aggrieved party may take an immediate inter-  
25 locutory appeal from an order granting or denying in

1 whole or in part a special motion to dismiss under section  
2 4202.

3 **“§ 4205. Motion to quash**

4 “A person whose personally identifying information  
5 is sought in connection with a claim subject to the proce-  
6 dure described in section 4202(a) may at any time file  
7 a motion to quash the order to produce the information.  
8 If the party filing a motion to quash makes a prima facie  
9 showing that the order is for personally identifying infor-  
10 mation, then the motion shall be granted and the order  
11 to produce the personally identifying information shall be  
12 quashed, unless the responding party demonstrates with  
13 an evidentiary showing that the claim is likely to succeed  
14 on the merits of each and every element of the claim, in  
15 which case the motion to quash shall be denied. No deter-  
16 minations made in deciding a motion to quash under this  
17 section shall impede or otherwise diminish the availability  
18 of the procedures described in section 4202(a).

19 **“§ 4206. Removal**

20 “(a) SPECIAL MOTION TO DISMISS SLAPP SUIT.—

21 “(1) IN GENERAL.—Except as provided in para-  
22 graph (2), a civil action in a State court that raises  
23 a claim described in section 4202(a) may be removed  
24 to the district court of the United States for the ju-  
25 dicial district and division embracing the place where

1 the civil action is pending. The grounds for removal  
2 provided in this section need not appear on the face  
3 of the complaint but may be shown in the petition  
4 for removal.

5 “(2) EXCEPTION.—Removal may not be re-  
6 quested under paragraph (1) on the basis of a third-  
7 party claim or a cross claim asserted by a defendant.

8 “(3) REMAND.—If a civil action is removed  
9 under paragraph (1) and an order denying in its en-  
10 tirety a motion to dismiss filed under section 4202  
11 is not appealed within the time permitted by law or  
12 all potential appellate proceedings have been ex-  
13 hausted, the court shall remand the remaining  
14 claims to the State court from which the civil action  
15 was removed. The remaining claims shall not be re-  
16 manded to State court if the order granted a motion  
17 to dismiss in part and such order is not appealed  
18 within the time permitted by law or all potential ap-  
19 pellate proceedings have been exhausted.

20 “(b) MOTION TO QUASH.—A proceeding in a State  
21 court in which a request or order that reasonably appears  
22 to be a request or order described in section 4205 is  
23 sought or issued may be removed to the district court of  
24 the United States for the judicial district and division em-  
25 bracing the place where the civil action is pending by any

1 person that seeks to file a motion to quash under section  
2 4205 and asserts a defense based on the First Amendment  
3 to the Constitution or laws of the United States.

4 **“§ 4207. Fees, costs, and sanctions**

5       “(a) ATTORNEYS FEES.—Except as provided in sub-  
6 section (c), a court shall award a person that files and  
7 prevails on a motion to dismiss under section 4202 or a  
8 motion to quash under section 4205, litigation costs, ex-  
9 pert witness fees, and reasonable attorneys fees. A party  
10 shall be a prevailing party as to a special motion to dismiss  
11 or to quash if a claim or discovery request is voluntarily  
12 dismissed or withdrawn after the filing of a special motion  
13 to dismiss.

14       “(b) FRIVOLOUS MOTIONS TO DISMISS.—Except as  
15 provided in subsection (c), if a court finds that a motion  
16 to dismiss under section 4202, a motion to quash under  
17 section 4205, or a notice of removal under section 4206  
18 is frivolous or is solely intended to cause unnecessary  
19 delay, the court shall award litigation costs, expert witness  
20 fees, and reasonable attorneys fees to the party that re-  
21 sponded to the motion or notice.

22       “(c) EXCEPTION.—The Federal Government and the  
23 government of a State, or political subdivision thereof,  
24 may not recover litigation costs, expert witness fees, or  
25 attorneys fees under this section.

1 **“§ 4208. Definitions**

2 “In this chapter:

3 “(1) MATTER OF PUBLIC CONCERN.—The term  
4 ‘matter of public concern’ means an issue related  
5 to—

6 “(A) health or safety;

7 “(B) environmental, economic, or commu-  
8 nity well-being;

9 “(C) the government;

10 “(D) a public official or public figure; or

11 “(E) a good, product, or service in the  
12 marketplace.

13 “(2) NONPROFIT ORGANIZATION.—The term  
14 ‘nonprofit organization’ means any organization that  
15 is described in section 501(c) of the Internal Rev-  
16 enue Code of 1986 and is exempt from tax under  
17 section 501(a) of such Code.

18 “(3) PUBLIC INTEREST CLAIM.—The term  
19 ‘public interest claim’ means a claim—

20 “(A) that is brought solely on behalf of the  
21 general public;

22 “(B) where private enforcement is nec-  
23 essary;

24 “(C) that places a disproportionate finan-  
25 cial burden on the plaintiff in relation to the  
26 plaintiff’s stake in the matter;

1           “(D) that, if successful, enforces an impor-  
 2           tant right affecting the public interest and con-  
 3           fers a significant benefit on the general public;  
 4           and

5           “(E) notwithstanding attorneys fees, costs,  
 6           or penalties, would provide relief only for the  
 7           general public or a class of which the plaintiff  
 8           is a member.

9           “(4) STATE.—The term ‘State’ means each of  
 10          the several States, the District of Columbia, each  
 11          commonwealth, territory, or possession of the United  
 12          States, and each federally recognized Indian tribe.”.

13          (b) TECHNICAL AND CONFORMING AMENDMENTS.—

14           (1) TABLE OF CHAPTERS.—The table of chap-  
 15          ters for part VI of title 28, United States Code, is  
 16          amended by inserting after the item relating to  
 17          chapter 181 the following new item:

**“182. Special Motion to dismiss strategic lawsuits  
           against public participation ..... 4201”.**

18           (2) INTERLOCUTORY DECISIONS.—Section  
 19          1292(a) of title 28, United States Code, is amend-  
 20          ed—

21           (A) in paragraph (1), by striking the semi-  
 22          colon at the end and inserting a period;

23           (B) in paragraph (2), by striking the semi-  
 24          colon at the end and inserting a period; and

1 (C) by adding at the end the following:

2 “(4) Interlocutory orders granting or denying in  
3 whole or in part special motions to dismiss under  
4 section 4202.”.

5 (3) EXCEPTIONS TO DISCHARGE.—Section  
6 523(a) of title 11, United States Code, is amend-  
7 ed—

8 (A) in paragraph (18), by striking “; or”  
9 at the end and inserting a semicolon;

10 (B) in paragraph (19), by striking the pe-  
11 riod at the end and inserting “; or”; and

12 (C) by inserting after paragraph (19) the  
13 following:

14 “(20) for litigation costs, expert witness fees, or  
15 reasonable attorney’s fees awarded by a court under  
16 chapter 182 of title 28 or under comparable State  
17 laws.”.

18 (c) RELATIONSHIP TO OTHER LAWS.—Nothing in  
19 this Act, or the amendments made by this Act, shall pre-  
20 empt or supersede any Federal or State statutory, con-  
21 stitutional, case, or common law that provides the equiva-  
22 lent or greater protection for persons engaging in activities  
23 protected by the First Amendment to the Constitution of  
24 the United States.

1       (d) RULE OF CONSTRUCTION.—This Act, and the  
2 amendments made by this Act, shall be construed broadly  
3 to effectuate the purpose and intent of this Act.

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