

111TH CONGRESS  
1ST SESSION

# H. R. 4364

To protect first amendment rights of petition and free speech by preventing States and the United States from allowing meritless lawsuits arising from acts in furtherance of those rights, commonly called “SLAPPs”, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2009

Mr. COHEN introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To protect first amendment rights of petition and free speech by preventing States and the United States from allowing meritless lawsuits arising from acts in furtherance of those rights, commonly called “SLAPPs”, and for other purposes.

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 “Citizen Participation  
5       Act of 2009”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds and declares that—

1           (1) the framers of our Constitution, recognizing  
2           participation in government and freedom of speech  
3           as inalienable rights essential to the survival of de-  
4           mocracy, secured their protection through the First  
5           Amendment to the United States Constitution;

6           (2) the communications, information, opinions,  
7           reports, testimony, claims and arguments that indi-  
8           viduals, organizations and businesses provide to the  
9           government are essential to wise government deci-  
10          sions and public policy, the public health, safety, and  
11          welfare, effective law enforcement, the efficient oper-  
12          ation of government programs, the credibility and  
13          trust afforded government, and the continuation of  
14          America's representative democracy;

15          (3) civil lawsuits and counterclaims, often  
16          claiming millions of dollars in damages, have been  
17          and are being filed against thousands of individuals,  
18          organizations, and businesses based upon their valid  
19          exercise of the rights to petition or free speech, in-  
20          cluding seeking relief, influencing action, informing,  
21          communicating, and otherwise participating with  
22          government, the electorate, or in matters of public  
23          interest;

24          (4) such lawsuits, called Strategic Lawsuits  
25          Against Public Participation or SLAPPs, are often

1 ultimately dismissed as groundless or unconstitu-  
2 tional, but not before the defendants are put to  
3 great expense, harassment, and interruption of their  
4 productive activities;

5 (5) it is in the public interest for individuals,  
6 organizations and businesses to participate in mat-  
7 ters of public concern and provide information to  
8 public entities and other citizens on public issues  
9 that affect them without fear of reprisal through  
10 abuse of the judicial process;

11 (6) the threat of financial liability, litigation  
12 costs, destruction of one's business, loss of one's  
13 home, and other personal losses from groundless  
14 lawsuits seriously impacts government, interstate  
15 commerce, and individual rights by significantly  
16 chilling public participation in government, public  
17 issues, and in voluntary service;

18 (7) SLAPPs are an abuse of the judicial proc-  
19 ess that waste judicial resources and clog the al-  
20 ready over-burdened court dockets;

21 (8) while some courts and State legislatures  
22 have recognized and discouraged SLAPPs, protec-  
23 tion against SLAPPs has not been uniform or com-  
24 prehensive; and

1           (9) some SLAPP victims are deprived of the re-  
2       lief to which they are entitled because the current  
3       bankruptcy law allows for the discharge of fees,  
4       costs and damages awarded against a party for  
5       maintaining a SLAPP.

6   **SEC. 3. IMMUNITY FOR PETITION ACTIVITY.**

7       (a) IMMUNITY.—Any act of petitioning the govern-  
8       ment made without knowledge of falsity or reckless dis-  
9       regard of falsity shall be immune from civil liability.

10      (b) BURDEN AND STANDARD OF PROOF.—A plaintiff  
11      must prove knowledge of falsity or reckless disregard of  
12      falsity by clear and convincing evidence.

13   **SEC. 4. PROTECTION FOR PETITION AND SPEECH ACTIV-**  
14                           **ITY.**

15      Any act in furtherance of the constitutional right of  
16      petition or free speech shall be entitled to the procedural  
17      protections provided in this Act.

18   **SEC. 5. SPECIAL MOTION TO DISMISS.**

19      (a) IN GENERAL.—A party may file a special motion  
20      to dismiss any claim arising from an act or alleged act  
21      in furtherance of the constitutional right of petition or free  
22      speech within 45 days after service of the claim if the  
23      claim was filed in Federal court or, if the claim was re-  
24      moved to Federal court pursuant to section 6 of this Act,  
25      within 15 days after removal.

1       (b) BURDENS OF THE PARTIES.—A party filing a  
2 special motion to dismiss under this Act has the initial  
3 burden of making a prima facie showing that the claim  
4 at issue arises from an act in furtherance of the constitu-  
5 tional right of petition or free speech. If the moving party  
6 meets this burden, the burden shifts to the responding  
7 party to demonstrate that the claim is both legally suffi-  
8 cient and supported by a sufficient prima facie showing  
9 of facts to sustain a favorable judgment.

10       (c) STAY OF DISCOVERY.—Upon the filing of a spe-  
11 cial motion to dismiss, discovery proceedings in the action  
12 shall be stayed until notice of entry of an order disposing  
13 of the motion, except that the court, on noticed motion  
14 and for good cause shown, may order that specified dis-  
15 covery be conducted.

16       (d) EXPEDITED HEARING.—The court shall hold an  
17 expedited hearing on the special motion to dismiss, and  
18 issue a ruling as soon as practicable after the hearing. The  
19 parties may submit the pleadings and affidavits stating  
20 the facts upon which the liability or defense is based. The  
21 court shall explain the reasons for its grant or denial of  
22 the motion in a statement for the record. If the special  
23 motion to dismiss is granted, dismissal shall be with preju-  
24 dice.

1 (e) IMMEDIATE APPEAL.—The defendant shall have  
2 a right of immediate appeal from a district court order  
3 denying a special motion to dismiss in whole or in part.

4 **SEC. 6. FEDERAL REMOVAL JURISDICTION.**

5 (a) IN GENERAL.—A civil action commenced in a  
6 State court against any person who asserts as a defense  
7 the immunity provided for in section 3 of this Act, or as-  
8 serts that the action arises from an act in furtherance of  
9 the constitutional right of petition or free speech, may be  
10 removed by the defendant to the district court of the  
11 United States for the district and division embracing the  
12 place wherein it is pending.

13 (b) REMAND OF REMAINING CLAIMS.—A court exer-  
14 cising jurisdiction under this section shall remand any  
15 claims against which the special motion to dismiss has  
16 been denied, as well as any remaining claims against  
17 which a special motion to dismiss was not brought, to the  
18 State court from which it was removed.

19 (c) TIMING.—A court exercising jurisdiction under  
20 this section shall remand an action if a special motion to  
21 dismiss is not filed within 15 days after removal.

22 **SEC. 7. SPECIAL MOTION TO QUASH.**

23 (a) IN GENERAL.—A person whose personally identi-  
24 fying information is sought in connection with an action  
25 pending in Federal court arising from an act in further-

1   ance of the constitutional right of petition or free speech  
2   may make a special motion to quash the discovery order,  
3   request or subpoena.

4       (b) **BURDENS OF THE PARTIES.**—The person bring-  
5   ing a special motion to quash under this section must  
6   make a prima facie showing that the underlying claim  
7   arises from an act in furtherance of the constitutional  
8   right of petition or free speech. If this burden is met, the  
9   burden shifts to the plaintiff in the underlying action to  
10  demonstrate that the underlying claim is both legally suffi-  
11  cient and supported by a sufficient prima facie showing  
12  of facts to sustain a favorable judgment. This standard  
13  shall apply only to a special motion to quash brought  
14  under this section.

15 **SEC. 8. FEES AND COSTS.**

16       (a) **ATTORNEY’S FEES.**—The court shall award a  
17  moving party who prevails on a special motion to dismiss  
18  or quash the costs of litigation, including a reasonable at-  
19  torney’s fee.

20       (b) **FRIVOLOUS MOTIONS AND REMOVAL.**—If the  
21  court finds that a special motion to dismiss, special motion  
22  to quash, or the removal of a claim under this Act is frivo-  
23  lous or is solely intended to cause unnecessary delay, the  
24  court may award a reasonable attorney’s fees and costs  
25  to the responding party.

1 (c) GOVERNMENT ENTITIES.—A government entity  
2 may not recover fees pursuant to this section.

3 **SEC. 9. BANKRUPTCY NONDISCHARGABILITY OF FEES AND**  
4 **COSTS.**

5 Fees or costs awarded against a party by a court for  
6 the prosecution of any claim finally dismissed pursuant  
7 to this Act, or any subpoena or discovery order quashed  
8 pursuant to this Act, or any claim finally dismissed pursu-  
9 ant to a State anti-SLAPP law, shall not be dischargeable  
10 in bankruptcy under section 1328 or section 523 of title  
11 11, United States Code.

12 **SEC. 10. EXEMPTIONS.**

13 (a) PUBLIC ENFORCEMENT.—Sections 4 through 8  
14 of this Act shall not be available in any action brought  
15 solely on behalf of the public or solely to enforce an impor-  
16 tant right affecting the public interest.

17 (b) COMMERCIAL SPEECH.—This Act shall not apply  
18 to any claim for relief brought against a person primarily  
19 engaged in the business of selling or leasing goods or serv-  
20 ices, if the statement or conduct from which the claim  
21 arises is a representation of fact made for the purpose of  
22 promoting, securing or completing sales or leases of, or  
23 commercial transactions in, the person's goods or services,  
24 and the intended audience is an actual or potential buyer  
25 or customer.



1       (c) “SLAPP-BACK” SUITS.—This Act shall not be  
2 available to dismiss any action or claim arising from a  
3 claim that has been dismissed pursuant to this Act or to  
4 a State anti-SLAPP law.

5 **SEC. 11. DEFINITIONS.**

6       In this Act:

7           (1) ACT IN FURTHERANCE OF THE RIGHT OF  
8 FREE SPEECH.—The term “act in furtherance of the  
9 right of free speech” includes but is not limited to—

10           (A) any written or oral statement made in  
11 connection with an issue under consideration or  
12 review by a legislative, executive, or judicial  
13 body, or any other official proceeding author-  
14 ized by law;

15           (B) any written or oral statement made in  
16 a place open to the public or a public forum in  
17 connection with an issue of public interest; or

18           (C) any other conduct in furtherance of  
19 the exercise of the constitutional right of peti-  
20 tion or the constitutional right of free speech in  
21 connection with an issue of public interest.

22           (2) ACT OF PETITIONING THE GOVERNMENT.—  
23 The term “act of petitioning the government” in-  
24 cludes but is not limited to any written or oral state-  
25 ment—

1 (A) made or submitted before a legislative,  
2 executive, or judicial body, or any other official  
3 proceeding authorized by law; or

4 (B) any written or oral statement encour-  
5 aging a statement before a legislative, executive,  
6 or judicial body, or any other official proceeding  
7 authorized by law.

8 (3) CLAIM.—The term “claim” includes any  
9 civil lawsuit, claim, complaint, cause of action, cross-  
10 claim, counterclaim, or other judicial pleading or fil-  
11 ing requesting relief.

12 (4) GOVERNMENT ENTITY.—The term “govern-  
13 ment entity” includes the United States, a branch,  
14 department, agency, State, or subdivision of a State,  
15 or other public authority.

16 (5) ISSUE OF PUBLIC INTEREST.—The term  
17 “issue of public interest” includes an issue related to  
18 health or safety; environmental, economic or commu-  
19 nity well-being; the government; a public figure; or  
20 a good, product or service in the market place.  
21 “Issue of public interest” shall not be construed to  
22 include private interests, such as statements directed  
23 primarily toward protecting the speaker’s business  
24 interests rather than toward commenting on or shar-

1       ing information about a matter of public signifi-  
2       cance.

3           (6)   PERSONALLY   IDENTIFYING   INFORMA-  
4       TION.—The term “personally identifying informa-  
5       tion” means first and last name or last name only;  
6       home or other physical address including temporary  
7       shelter or housing and including a street name or  
8       ZIP Code; full date of birth; email address or other  
9       online contact information; telephone number; social  
10      security number; Internet protocol address or host  
11      name that identifies an individual, or any other in-  
12      formation that would serve to identify an individual.

13           (7) STATE.—The term “State” means each of  
14      the several States, the District of Columbia, and any  
15      commonwealth, territory, or possession of the United  
16      States.

17   **SEC. 12. CONSTRUCTION.**

18       This Act shall be liberally construed to effectuate its  
19      findings and purposes fully, except that the exemptions  
20      shall be construed narrowly.

21   **SEC. 13. RELATIONSHIP TO OTHER LAWS.**

22       Nothing in this Act shall preempt or supersede any  
23      Federal, State, constitutional, case or common law that  
24      provides the equivalent or greater protection for persons

1 engaging in activities in furtherance of the rights of peti-  
2 tion or free speech.

3 **SEC. 14. SEVERABILITY.**

4 If any provision of this Act or the application of any  
5 provision of this Act to any person or circumstance is held  
6 invalid, the application of such provision to other persons  
7 or circumstances and the remainder of this Act shall not  
8 be affected thereby.

9 **SEC. 15. EFFECTIVE DATE.**

10 This Act shall become effective upon enactment.

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