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OPINION

Today's Business: Defending First Amendment Rights Against Meritless Lawsuits

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Zachary Phillipps Contributed photo

You see it all the time: A powerful person tries to silence criticism by filing a lawsuit claiming defamation. Sometimes a public figure sues a political opponent for speaking out or a media company for negative press — like former President Donald Trump’s recently dismissed defamation suit against CNN. Sometimes a big business sues a dissatisfied customer for posting a negative review online. Other times a large developer sues a neighbor for testifying before a local land use agency. The speech in these scenarios is often protected by the First Amendment, but the speakers are still forced to suffer the cost, stress, and burdens of defending a lawsuit.

With an election on the horizon, it seems reasonable to expect new lawsuits aimed at suppressing opposing points of view.

Connecticut offers protections to people sued for exercising their First Amendment rights. That law is commonly referred to as an “anti-SLAPP” provision. The acronym, “SLAPP,” stands for “strategic lawsuit against public participation.” In other words, a meritless lawsuit based on a person’s constitutional right to free speech, to free association, or to petition the government. The anti-SLAPP law aims to deter these lawsuits and to provide a quick, cost-effective way to have them dismissed.

Rather than trying to win on the merits, a person filing a SLAPP often intends for the litigation itself to be the punishment. Defending a lawsuit —even a meritless one — through discovery and trial can be ruinously expensive for many, and insurance often will not cover it. Without an anti-SLAPP law, many people would not be able to properly defend against the suit and may stop engaging in protected speech altogether for fear of retaliatory litigation. This allows the plaintiff to silence public opposition and to punish those who speak out, even when there is no valid defamation claim.

Recognizing the real aim of these lawsuits, the Connecticut anti-SLAPP law allows defendants to file a special motion to dismiss within the first 30 days after the suit begins. To win, the defendant needs to show that the lawsuit is based on his or her right to free speech, free association, or to petition the government. These rights allow individuals to engage in public debate and to participate in state and local government proceedings, and they cover a broad variety of activities, including speaking at a school board or zoning meeting, publishing an opinion piece or letter to the editor, circulating a petition, reporting a crime to the police, leaving comments or reviews on public websites, protesting, reporting police misconduct, and supporting or joining a public interest group.

If the lawsuit is aimed at one of these protected rights, the court must dismiss the case unless the plaintiff can prove there is a valid claim that can actually succeed on the merits. Because the First Amendment provides significant protections against imposing civil liability for exercising these rights, many SLAPPs can be thrown out of court before the defendant has to bear the burdens of discovery and trial. Equally important is that, when a court grants a special motion to dismiss, the anti-SLAPP law requires the person who filed the lawsuit to pay the defendant’s legal costs and attorneys’ fees. This eliminates much of the incentive

for filing these lawsuits in the first place, and can make a defendant whole when his or her motion to dismiss is successful.

While there will likely continue to be people who try to use the court system to punish and silence those who hold opposing views, the anti-SLAPP law makes it possible to defend constitutional rights against such attacks in a quick and cost-effective manner.

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