

TESTIMONY OF MICHAEL KEBEDE, ESQ.

LD 870 – Ought To Pass

**An Act to Strengthen Freedom of Speech Protections by Extending Laws
Against Strategic Lawsuits Against Public Participation**

Joint Standing Committee on Judiciary

April 3, 2023

Senator Carney, Representative Moonen and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Michael Kebede, and I am Policy Counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I urge you to support LD 870, legislation that expands Maine’s anti-SLAPP law to protect statements made in news publications, and any statement made in public on issues of public interest.

Strategic Lawsuits Against Public Participation are frivolous lawsuits intended to punish speech protected by the First Amendment. These lawsuits clog up our already burdened courts and can scare people from exercising their constitutional rights. Anti-SLAPP statutes remedy those harms by making it possible for courts to quickly dismiss SLAPP suits. Nonetheless, in 2017, the Law Court determined that Maine’s anti-SLAPP law does not protect most statements made in media publications.¹ That decision placed Maine in the minority of states with such laws. Most anti-SLAPP statutes throughout the country apply to statements made in newspapers, because courts acknowledge that the statutes must “protect against lawsuits brought primarily to chill the valid exercise of constitutional rights . . . , this purpose would not be served if” the statutes are inapplicable to newspapers or other public media.² This bill properly brings statements made in media publications back into the protection of the statute, a necessary First Amendment protection and correction of the Law Court’s finding.

Maine’s anti-SLAPP statute also currently does not apply to statements made at public protests, government reports on government activity,³ or statements not

¹ *Gaudette v. Mainely Media*, 2017 ME 87, ¶ 18, 160 A.3d 539.

² *Nygard, Inc. v. Uusi-Kerttula*, 159 Cal.App.4th 1027, 1038 (Cal. App. 2008);

³ *Hamilton v. Woodsum*, 2020 ME 8, ¶ 1, 223 A.3d 904.

directed at a government entity,⁴ even though those statements may be vital to the public interest and a valid exercise of constitutional rights. On this count, too, this bill corrects Maine's precedent and properly expands the statute to protect all statements made in public on matters of public interest.⁵

We urge you to vote *ought to pass*.

⁴ *Hearts with Haiti, Inc. v. Kendrick*, 2019 ME 26, ¶ 13 202 A.3d 1189 (finding defendant's statements did not fall into anti-SLAPP statute because, in part, they were not directed at any government entity).

⁵ However, this bill does not address the biggest problem facing Maine's anti-SLAPP statute: the Law Court's repeated alteration of the standard parties must meet when using the statute. The Law Court has changed the standard four times in twenty-two years, each time shifting the burden the parties must meet and each time finding a constitutional error in their previous standard. *Morse Bros., Inc. v. Webster*, 2001 ME 70, ¶ 19, 772 A.2d 842 *overruled by Nader v. Me. Democratic Party*, 2012 ME 57, 41 A.3d 551, *overruled by Gaudette v. Davis*, 2017 ME 86, 160 A.3d 1190, *overruled by Thurlow v. Nelson*, 2021 ME 58, 263 A.3d 494. The current standard is now the same standard the Law Court adopted in 2012—which the Law Court also found unconstitutional in 2017. *Thurlow*, 2021 ME 58, ¶ 19. This shifting ground makes it difficult for any person using Maine's anti-SLAPP law to know where they stand and how to best make their case. We encourage this committee to consider further amending this statute to reflect the procedure courts should utilize when applying the statute.