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## Maine's New Anti-SLAPP Law: the Uniform Public Expression Protection Act (UPEPA)

In 1995 Maine enacted a statute (14 M.R.S. § 556) designed to deter “strategic litigation against public participation” (so-called “SLAPP suits”). But the courts have struggled to interpret and consistently apply the law. Not long ago, Judge Levy wrote that the anti-SLAPP statute had “engendered considerable confusion and conflicting interpretations.”<sup>1</sup> Instead of short-circuiting lawsuits intended to punish or silence constitutionally protected petitioning activity, too many anti-SLAPP motions ended up generating little more than delay and legal expense. That should come to an end with Maine's recent adoption of the Uniform Public Expression Protection Act (UPEPA), 14 M.R.S. §§ 731-742. UPEPA clarifies procedural aspects of anti-SLAPP practice and expands anti-SLAPP protections beyond the right to petition the government to protect expressive activity more generally.

The new statute brings Maine into the mainstream of anti-SLAPP practice nationwide. With the adoption of UPEPA, Maine joined New Jersey, Oregon (substantially similar), Utah, Hawaii, Kentucky, and Washington.<sup>2</sup> And the list of UPEPA states is growing, with Minnesota, Pennsylvania, and Ohio adopting their own versions after Maine, and 10 other states introducing bills modeled after UPEPA.<sup>3</sup>

Maine's version of the statute modifies the text of UPEPA only to conform to Maine statutory conventions. The Legislature's stated intent is for the law to be interpreted substantively the same as UPEPA, and it accepted the Uniform Comments drafted by the National Conference of Commissioners on Uniform State Laws as part of UPEPA.<sup>4</sup> The statute had

bipartisan support, although it became law without the Governor's signature. It took effect on January 1, 2025, and applies to any civil action filed or cause of action asserted in a civil action on or after that date.<sup>5</sup>

UPEPA changes Maine law in several important ways. First, Section 556 was narrower in scope than UPEPA, covering only the constitutionally protected right to petition the government. Because of that limitation, courts declined to extend the law's protections to, for example, reports to governmental entities<sup>6</sup> and statements not directed at governmental entities,<sup>7</sup> even though that kind of speech may be just as important as speech that petitions the government. Recognizing this, UPEPA broadly applies to a party's “[e]xercise of the right of freedom of speech or of the press, the right to assemble petition or the right of association, guaranteed by the United States Constitution or by the Constitution of Maine, on a matter of public concern.”<sup>8</sup> It is not limited to the right to petition.

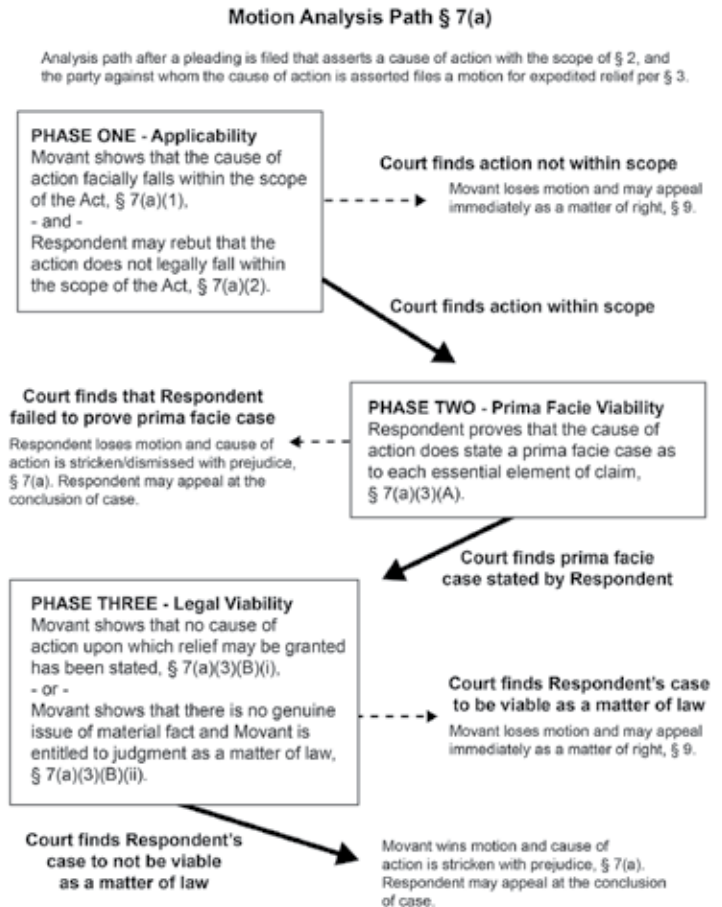
UPEPA protects journalism. Because the old statute applied only to “the moving party's exercise of the moving party's right of petition,” courts in Maine held that 14 M.R.S. § 556 was “not applicable to newspaper articles unless those articles constitute the newspaper petitioning on its own behalf or the party seeking to invoke the anti-SLAPP statute is a party that used the newspaper to broadcast the party's own petitioning activities.”<sup>9</sup> In *Gaudette v. Mainely Media, LLC*, the Law Court reasoned that where a newspaper is merely documenting current events—including others' exercise of their right to petition—the newspaper is not exercising its own right to

petition.<sup>10</sup> A few years later, the Court doubled down on its ruling in *Gaudette*, making clear that the protection of the anti-SLAPP statute applied to newspaper publishers or other parties only when they were petitioning on their own behalf.<sup>11</sup> The net result was that the anti-SLAPP statute provided little protection to news outlets faced with SLAPP litigation, even though SLAPP suits are a tool used to attempt to silence and punish journalists and news outlets. That will now change under UPEPA.

The only apparent possible narrowing in the scope of anti-SLAPP protection under UPEPA is found in the requirement that the right to petition involve a “matter of public concern,” a requirement not found in the old law. UPEPA’s comments explain that the term “matter of public concern” should be construed consistently with caselaw of the Supreme Court of the United States and the state’s highest court. In general, a matter that is or should be the subject of public debate and a part of the nation’s free exchange of ideas is a matter of public concern.<sup>12</sup> Courts will look to the form, content, and context of the statement to determine whether it involves an issue of public concern.<sup>13</sup> This could be an area of future dispute.

UPEPA aims to provide a clear framework for the efficient review and dismissal of SLAPP suits.<sup>14</sup> Under the old statute the Law Court fashioned a multi-step procedure.<sup>15</sup> First, the defendant had to file a special motion to dismiss and establish, based on the pleadings and affidavits, that the claims were based on their exercise of the right to petition. If the defendant met this burden, the burden shifted to the plaintiff to establish, through the pleadings and affidavits, prima facie evidence that the defendant’s petitioning activity was devoid of any reasonable factual support or any arguable basis in law, and that the defendant’s petitioning activity caused actual injury to the plaintiff. The plaintiff’s failure to meet this burden required that the court grant the special motion to dismiss with no further procedure.

Under UPEPA, the court must dismiss with prejudice a cause of action if (A) the moving party establishes that UPEPA applies; (B) the responding party fails to establish UPEPA does not apply; and (C) either (1) the responding party fails to establish a prima facie case as to each essential element of the cause of action, or (2) the moving party establishes that (a) the responding party failed to state a cause of action upon which relief can be granted, or (b) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. UPEPA’s comments describe the analysis path as follows:



In short, a lawsuit will be dismissed if the court finds that the plaintiff failed to establish essential elements of their claim; that the plaintiff failed to state a claim upon which relief can be granted (the standard for a motion to dismiss); or that there is no genuine issue of material fact (the standard for summary judgment). Because UPEPA addresses SLAPP suits using established standards under Maine Rules of Civil Procedure 12(b)(6) and 56 it should survive constitutional review.

A few final notes about UPEPA. Attorney’s fees are no longer permissive, they are mandatory. Under the old law, the court was authorized to award fees but was not required to do so (“the court may award the moving party costs and reasonable attorney’s fees”). Under UPEPA, the award of attorney’s fees to a prevailing anti-SLAPP movant is mandatory (“the court shall award court costs, attorney’s fees and reasonable litigation expenses related to the motion”). This should serve as a deterrent to the filing of SLAPP suits.

UPEPA provides for interlocutory appeal of any order denying an anti-SLAPP motion in whole or part.<sup>17</sup>

UPEPA is intended to apply in federal court.<sup>18</sup> There is no federal anti-SLAPP law, but federal courts in Maine have concluded that the old anti-SLAPP law applied in federal court.<sup>19</sup> UPEPA should apply in federal court too.

A lot of judicial effort had gone into figuring out just how to apply Maine's old anti-SLAPP statute. With the adoption of UPEPA that should all be in the rearview mirror. UPEPA clears up what has been a problematic area of Maine law, establishes a procedural framework that is consistent with existing motion to dismiss and summary judgment standards, and aligns Maine law with a best-practice statute adopted by a growing number of states. UPEPA is a welcome and powerful tool to deter and defeat meritless defamation, privacy, and other claims that threaten to chill the exercise of First Amendment rights in Maine.

#### ENDNOTES

1 See *Davis v. Theriault*, No. 1:22-CV-00275-JDL, 2023 WL 5628193, at \*6 (D. Me. Aug. 31, 2023) (noting that the anti-SLAPP statute “has engendered considerable confusion and conflicting interpretations” by the Maine Supreme Court).

2 <https://www.uniformlaws.org/committees/community-home?CommunityKey=4f486460-199c-49d7-9fac-05570be1e7b1>.

3 *Id.*; Michael Berry, Kaitlin M. Gurney, Pennsylvania Joins States Enacting Tough Anti-SLAPP Protections: The New Uniform Public Expression Protection Act, 96 Pa. B.A. Q. 1, 22 (2025).

4 See P.L. 2023, ch. 626, § 5, codified at 14 M.R.S. §§ 731-742.

5 See P.L. 2023, ch. 626, §§ 3, 4.

6 See *Hamilton v. Woodsum*, 2020 ME 8, ¶¶ 1, 18, 223 A.3d 904 (report of a neutral investigator, retained to provide a report to a governmental entity in a specific personnel matter, did not constitute a petitioning activity under 14 M.R.S. § 556).

7 *Hearts with Haiti, Inc. v. Kendrick*, 2019 ME 26, ¶¶ 12-13, 202 A.3d 1189 (statement aimed at third parties and not governmental entities did not constitute petitioning activity under 14 M.R.S. § 556).

8 14 M.R.S. 733(2)(C), available at <https://legislature.maine.gov/backend/App/services/getDocument.aspx?documentId=106362>.

9 *Gaudette v. Mainely Media, LLC*, 2017 ME 87, ¶ 17, 160 A.3d 539.

10 *Id.*, 2017 ME 87, ¶ 15.

11 *Franchini v. Investor's Bus. Daily, Inc.*, 2022 ME 12, ¶ 16, 268 A.3d 863 (citing *Gaudette v. Mainely Media, LLC*, 2017 ME 87, ¶ 17, 160 A.3d 539).

12 See *Levinsky's, Inc. v. Wal-Mart Stores, Inc.*, 127 F.3d 122, 132 (1st Cir. 1997); *Levinsky's, Inc. v. Wal-Mart Stores, Inc.*, 999 F. Supp. 137, 140 (D. Me. 1998). Because newsworthiness is an “editorial, not a judicial decision,” courts should generally be reluctant to deem a matter that merits news coverage to be a matter of only personal interest and therefore outside the realm of matters of public concern. *Doe v. Smith*, No. 2:23-CV-00423-JAW, 2024 WL 4297122, at \*7 (D. Me. May 8, 2024).

13 *Id.*

14 <https://legislature.maine.gov/backend/App/services/getDocument.aspx?documentId=106362>.

15 *Weinstein v. Old Orchard Beach Family Dentistry, LLC*, 2022 ME 16, ¶ 5, 271 A.3d 758.

16 Uniform Law Commission, *Uniform Public Expression Protection Act with Prefatory Note and Comments* (Oct. 2, 2020), at 4.

17 14 M.R.S. § 739.

18 See Uniform Law Commission, *Uniform Public Express Protection Act*; available at <https://legislature.maine.gov/backend/App/services/getDocument.aspx?documentId=106362> (explaining that the First Amendment rights UPEPA protects are substantive in nature).

19 See *Godin v. Schencks*, 629 F.3d 79, 92 (1st Cir. 2010); *Davis v. Theriault*, No. 1:22-CV-00275-JDL, 2023 WL 5628193, at \*5 (D. Me. Aug. 31, 2023).

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