

By Senator Grant

13-344-98

1 A bill to be entitled
2 An act relating to government; creating the
3 "Citizen Participation in Government Act" and
4 providing for its purposes; providing immunity
5 from civil liability; providing procedures for
6 the judiciary to respond to lawsuits relating
7 to the constitutional right to petition the
8 government for redress of grievances; defining
9 terms; providing an effective date.

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11 WHEREAS, the framers of our constitutions, recognizing
12 citizen participation in government as an inalienable right
13 essential to the survival of democracy, secured its protection
14 through the right to petition the government for redress of
15 grievances in the First Amendment to the U.S. Constitution and
16 Section 5 of Article I of the State Constitution, and

17 WHEREAS, the communications, information, opinions,
18 reports, testimony, claims, and arguments provided by citizens
19 to their government are essential to wise government decisions
20 and public policy in protecting the public health, safety, and
21 welfare, in providing effective law enforcement, and in
22 ensuring the efficient operation of government programs, and
23 are essential to the credibility and trust afforded government
24 and the preservation of our republican form of government
25 through representative democracy, and

26 WHEREAS, civil lawsuits and counterclaims, often
27 involving millions of dollars, have been and are being filed
28 against countless citizens, businesses, and organizations
29 because of their valid exercise of their right to petition,
30 including seeking relief, influencing action, informing,

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1 communicating, and otherwise participating with government
2 bodies, officials, or employees or the electorate, and

3 WHEREAS, such lawsuits, called "Strategic Lawsuits
4 Against Public Participation" or "SLAPPs," are typically
5 dismissed as unconstitutional, but often not before the
6 defendants are put to great expense, harassment, and
7 interruption of their duties, and

8 WHEREAS, the number of such lawsuits has increased
9 significantly over the past 30 years, and

10 WHEREAS, these lawsuits are an abuse of the judicial
11 process and are used to censor, intimidate, or punish
12 citizens, businesses, and organizations for involving
13 themselves in public affairs, and

14 WHEREAS, controlling these lawsuits will make a major
15 contribution to lawsuit reform, and

16 WHEREAS, the threat of financial liability, litigation
17 costs, destruction of one's business, loss of one's home, and
18 other personal losses from groundless lawsuits seriously
19 affects government, commerce, and individual rights by
20 significantly diminishing public participation in government,
21 in public discourse, and in voluntary public service, and

22 WHEREAS, while courts have recognized the harm from
23 such lawsuits and have discouraged them, protection of these
24 fundamental rights has been inadequate, and

25 WHEREAS, while some citizen communications to
26 government inevitably will be false or unsound or made out of
27 self interest or in bad faith, it is essential in our
28 democracy that the constitutional rights of citizens to
29 participate fully in the process of government be uniformly,
30 consistently, and comprehensively protected and encouraged,

31 NOW, THEREFORE,

1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Short title.--This act may be cited as the
4 "Citizen Participation in Government Act."

5 Section 2. Declaration of purposes.--The purposes of
6 this act are to:

7 (1) Protect and encourage citizen participation in
8 government to the maximum extent permitted by law;

9 (2) Create a more equitable balance between the rights
10 of persons to file lawsuits and to trial by jury and the
11 rights of persons to petition, speak out, associate, and
12 otherwise participate in their governments;

13 (3) Support the operations of and assure the
14 continuation of representative government in this country for
15 the protection and regulation of public health, safety, and
16 welfare by protecting public participation in government
17 programs and public policy decisions;

18 (4) Establish a balanced, uniform, comprehensive
19 process for speedy adjudication of "Strategic Lawsuits Against
20 Public Participation" as a major contribution to lawsuit
21 reform; and

22 (5) Provide for attorney's fees, costs, and damages
23 for persons whose citizen participation rights have been
24 violated by the filing of a "Strategic Lawsuit Against Public
25 Participation" against them.

26 Section 3. Immunity.--An act in furtherance of the
27 constitutional right to petition, including seeking relief,
28 influencing action, informing, communicating, and otherwise
29 participating in the processes of government, is immune from
30 civil liability, regardless of its intent or purpose, except

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1 when not aimed at procuring any governmental or electoral
2 action, result, or outcome.

3 Section 4. Applicability.--This act applies to any
4 motion to dispose of a claim in a judicial proceeding on the
5 grounds that the claim is based on, relates to, or is in
6 response to any act of the moving party in furtherance of the
7 moving party's rights as provided in section 3.

8 Section 5. Required Procedures.--On the filing of any
9 motion under section 4:

10 (1) The motion must be treated as one for summary
11 judgment in which:

12 (a) The trial court uses a time period appropriate to
13 preferred or expedited motions; and

14 (b) The moving party has a right of expedited appeal
15 from a trial court order denying such a motion or from a trial
16 court's failure to rule on such a motion in expedited fashion;

17 (2) Discovery is suspended, pending decision on the
18 motion and appeals;

19 (3) The responding party has the burden of proof, of
20 going forward with the evidence, and of persuasion on the
21 motion;

22 (4) The court must make its determination based upon
23 the facts contained in the pleadings and affidavits filed;

24 (5) The court must grant the motion and dismiss the
25 judicial claim, unless the responding party has produced clear
26 and convincing evidence that the acts of the moving party are
27 not immunized from liability by section 3;

28 (6) Any government body to which the moving party's
29 acts were directed or the Attorney General may intervene to
30 defend or otherwise support the moving party in the suit;

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1 (7) The court must award a moving party who is
2 dismissed, without regard to any limits under state law:

3 (a) Costs of litigation, including reasonable
4 attorney's fees and expert witness fees incurred in connection
5 with the motion; and

6 (b) Such additional sanctions upon the responding
7 party, its attorneys, or law firms as it finds will be
8 sufficient to deter repetition of such conduct and comparable
9 conduct by others similarly situated; and

10 (8) A person damaged or injured by reason of a claim
11 filed in violation of his or her rights under section 3 may
12 seek relief in the form of a claim for actual or compensatory
13 damages, as well as punitive damages, attorney's fees, and
14 costs from the person or persons responsible.

15 Section 6. Definitions.--As used in this act, the
16 term:

17 (1) "Government" means a branch, department, agency,
18 instrumentality, official, employee, agent, or other person
19 acting under color of law of the United States, a state, or
20 subdivision of a state or other public authority, including
21 the electorate.

22 (2) "State" means a state, the District of Columbia,
23 the Commonwealth of Puerto Rico, and each territory and
24 possession of the United States.

25 (3) "Judicial claim" or "claim" means any lawsuit,
26 cause of action, claim, cross-claim, counterclaim, or other
27 judicial pleading or filing requesting relief.

28 (4) "Motion" means any motion to dismiss, for summary
29 judgment, for judgment on the pleadings, to strike, demurrer,
30 or any other judicial pleading filed to dispose of a judicial
31 claim.

1 (5) "Moving party" means any person on whose behalf
2 the motion provided in section 4 is filed seeking dismissal of
3 the judicial claim.

4 (6) "Responding party" means any person against whom
5 the motion provided in section 4 is filed.

6 Section 7. This act shall take effect upon becoming a
7 law.

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SENATE SUMMARY

11 Creates the "Citizen Participation in Government Act."
12 Provides immunity from civil liability for any act in
13 furtherance of the constitutional right to petition the
government for redress of grievances. Provides procedures for
the judiciary to handle lawsuits dealing with the right to
petition government.

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