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New Jersey Enacts Anti-SLAPP Legislation

Lawsuits filed to intimidate or punish those who are engaged in constitutionally protected activity by, in effect, suing them into submission or silence through the prospect of expensive and time-consuming litigation are commonly referred to as strategic lawsuits against public participation (SLAPP). On September 7, 2023, Governor Murphy signed [New Jersey's first anti-SLAPP legislation](#), which is designed to thwart such lawsuits by providing a process for early dismissal of these suits and an award of costs and counsel fees to a prevailing moving party. New Jersey now joins 32 other states that have enacted some form of anti-SLAPP legislation.

The legislation applies to a civil cause of action against a person based on the person's: (1) communications during a legislative, executive, judicial, administrative, or other governmental proceeding; (2) communications on an issue under consideration or review by such a body; or (3) engagement in any other activity that is protected by the First Amendment freedoms guaranteed by the United States Constitution or New Jersey Constitution and that relates to a matter of public concern.

Modeled after the [Uniform Public Expression Protection Act](#) (UPEPA), the New Jersey legislation:

- permits a SLAPP defendant to file an early application for an order to show cause to dismiss the cause of action in whole or in part
- establishes a presumption that, upon the filing of such an application and except in limited circumstances, all other proceedings in the case, including discovery, may be stayed
- provides for an appeal as of right from an order denying, in whole or in part, the order to show cause
- awards to the prevailing party court costs, reasonable attorney fees, and reasonable litigation expenses related to the order to show cause, except that, in the case of a prevailing plaintiff, the court must also find that the order to

show cause was frivolous or filed solely with intent to delay the proceeding.

The enactment of this legislation will further the free speech rights that, historically, this state has recognized liberally and protected fiercely.

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