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Georgia Anti SLAPP Research Guide

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Georgia Anti SLAPP Research Guide

By Rachael Reed

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Introduction, Scope, and Jurisdiction

GEORGIA'S ANTI-SLAPP STATUTE

Georgia enacted new Anti-SLAPP legislation in 2016. The law aims to protect people who engage in lawful free speech from having to litigate frivolous claims, also known as SLAPPs.

Disclaimer

This research guide is a starting point for a law student or an attorney to research the area of Anti-SLAPP. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law Library or consult an attorney.

Background: SLAPPs and Anti-SLAPP Legislation

“SLAPP” stands for “strategic lawsuit against public participation.”

In broad terms, a SLAPP is any lawsuit that intends to use the burden of litigation to chill the speech of a party with an adverse position on a matter of public concern. Common attributes of SLAPPs include:

- Lack of merit/lawfulness of the targeted speech
- Litigation serves as a tool to stifle speech
- Targeted speech addresses an issue of public interest or concern

SLAPP suits are often brought as defamation claims, but can come in a variety of forms, including other state tort claims, contract claims, or even trademark infringement under federal law.

To combat against the negative implications of SLAPP litigation, many states, including Georgia, enacted Anti-SLAPP statutes that identified categories of protected speech and created procedural mechanisms to weed out SLAPPs at an early stage of litigation.

General Information Resources for SLAPPs and Anti-SLAPP Legislation

Black's Law Dictionary

- "SLAPP"
- "anti-SLAPP"

Strategic Lawsuits Against Public Participation—SLAPP Actions in Establishing Proof in Filing of Anti-SLAPP Motion
123 Am. Jur. Proof of Facts 3d 341

Cause of Action: Bringing and Defending Anti-SLAPP Motions to Strike or Dismiss
22 Causes of Action 2d 317

This article contains a list of all states with anti-SLAPP statutes and citations to those code sections.

Public Participation Project

The Public Participation Project is an organization that advocates for the passage of anti-SLAPP legislation, including at the federal level. In addition to discussing anti-SLAPP advocacy, the website includes general information about SLAPPs, provides examples of SLAPP cases, and some useful tools for comparing legislation across states.

PPP Homepage

<https://anti-slapp.org/>

Reference Charts Comparing Anti-SLAPP Laws Across States

<https://anti-slapp.org/your-states-free-speech-protection/#reference-chart>

Primary Sources

Georgia's Anti-SLAPP Statute

O.C.G.A. 9-11-11.1

<http://www.lexisnexis.com/hottopic/gacode/Default.asp>

Georgia's current Anti-SLAPP statute, enacted in July 2016, was modeled after and closely mirrors California's anti-SLAPP statute.

- California Code of Civil Procedure Section 425.16
- http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=425.16

The statute contains a substantive component that defines and then identifies categories of speech and conduct entitled to Anti-SLAPP protection, and a procedural component that provides SLAPP defendants an opportunity to seek an early resolution of claims against them.

- Protected Speech

The Georgia statute offers procedural protections for acts "in furtherance of the person's or entity's right of petition or free speech" and "in connection with an issue of public interest or concern" O.C.G.A. 9-11-11.1(b)(1).

O.C.G.A. 9-11-11.1(c) defines the scope of these acts, listing four categories of protected activities:

1. Any written or oral statement or writing or petition made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;
2. Any written or oral statement or writing or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;
3. Any written or oral statement or writing or petition made in a place open to the public or a public forum in connection with an issue of public interest or concern; or
4. Any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public concern.

- Procedural Provisions

Georgia's statute allows defendants to seek an early resolution of potential SLAPPs through the use of a special motion to strike. The motion stays all other proceedings, including discovery, and forces the plaintiff to demonstrate the meritorious nature of the claim

O.C.G.A 9-11-11.1(b), (b.1), (d), (e), and (h) provide the procedures through which a defendant can raise a challenges to a potential SLAPP.

Motion to Strike

Claims arising from protected conduct and speech—as defined by the statute—“shall be subject to a motion to strike unless the court determines that the nonmoving party has established that there is a probability that the nonmoving party will prevail on the claim.”

Automatic Stay of Discovery

Filing the motion to strike stays discovery and pending hearings or motions until the court reaches a final decision on the motion to strike. The court must hear the motion to strike within 30 days of service. O.C.G.A. 9-11-11.1(d).

Award of Fees and Expenses

If a SLAPP defendant succeeds on a motion to strike (plaintiff unable to show likelihood of success on the merits) the defendant will be granted attorney's fees and expenses. Fees and expenses must be requested by motion within 45 days of a final decision. O.C.G.A. 9-11-11.1(b.1), (h).

Direct Appeal

Orders granting or denying a motion to strike are subject to direct appeal. O.C.G.A. 9-11-11.1(e).

Case Law

Because the current provisions of Georgia's anti-SLAPP statute only went into effect in July 2016, case law interpreting the new, substantive provisions of the law has not yet developed.

- Searching for Case Law (Westlaw, LexisAdvance)
- Use the annotated version of the Georgia Code to find cases citing to the anti-SLAPP statute, O.C.G.A. 9-11-11.1.
- Using the date features to filter for cases decided after 7/1/2016--the statute's effective date--is recommended if looking for cases addressing the motion to strike or the scope of protected speech and conduct.
- But note, cases decided after 7/1/2016 may still be decided under a previous version on the statute.
- References to “verification” filings are one indication that a case is not relying on the most up to date version of the statute.

- Searching for Case Law (Fastcase)
- Use the “advanced caselaw search” to search for “9-11-11.1”
- Use the Individual Jurisdictions filter to limit results to Georgia state courts, Georgia's federal district courts, the 11th Circuit, and/or the U.S. Supreme Court.
- Use the Date filter to limit search results to cases decided after 7/1/2016, or sort your results by date to look for the most recent cases.

- Searching Dockets in Bloomberg Law
- Use the “Dockets Search” advanced options to search for “9-11-11.1”
- Select the “All Courts” tab and then use the “select courts” feature to limit results to the “Eleventh Circuit and District Courts” and all Georgia state court dockets.
- Use the “Filing Date” filter to limit search results to cases filed after 7/1/2016, or sort your results by date to look for the most recent cases.

Legislative History

Georgia significantly amended its anti-SLAPP statute in 2016. The amended statute took effect July 1, 2016. The law was initially introduced during the 2015-16 Legislative Session as HB 513.

HB 513 expanded the scope of protected activities from speech directly connected with government proceedings and initiatives to any speech related to an issue of public concern.

Current Law	Prior Law
<p>Qualifying acts include:</p> <p>(1) Any written or oral statement or writing or petition made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;</p> <p>(2) Any written or oral statement or writing or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;</p> <p>(3) Any written or oral statement or writing or petition made in a place open to the public or a public forum in connection with an issue of public interest or concern; or</p> <p>(4) Any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public concern.</p>	<p>Qualifying acts include:</p> <p>(1) Any written or oral statement, writing, or petition made before or to a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; or</p> <p>(2) Any written or oral statement, writing, or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law.</p>

The bill also eliminated a provision requiring potential SLAPP plaintiffs and their attorneys to file a written verification certifying that their claims were not frivolous. It replaced this procedure with a motion to strike that requires plaintiffs to make an actual showing that their claims will probably prevail on the merits

Current Law	Prior Law
<p>A claim for relief against a person or entity arising from any act of such person or entity which could reasonably be construed as an act in furtherance of the person's or entity's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern shall be subject to a motion to strike unless the court determines that the nonmoving party has established that there is a probability that the nonmoving party will prevail on the claim.</p>	<p>For any claim asserted against a person or entity arising from an act by that person or entity which could reasonably be construed as an act in furtherance of the right of free speech or the right to petition government for a redress of grievances under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern, both the party asserting the claim and the party's attorney of record, if any, shall be required to file, contemporaneously with the pleading containing the claim, a written verification under oath as set forth in Code Section 9-10-113. Such written verification shall certify that the party and his or her attorney of record, if any, have read the claim; that to the best of their knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law . . . and that the claim is not interposed for any improper purpose such as to suppress a person's or entity's right of free speech or right to petition government, or to harass, or to cause unnecessary delay or needless increase in the cost of litigation.</p>

Other Resources

Georgia General Assembly

In addition to the text of the bill, basic legislative history including sponsors, vote counts, and bill tracking information for HB 513 can be found on the Georgia General Assembly webpage.

<http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/513>

Session Law

2016 Ga. Laws 341

Video Recording of House Non-Civil Judiciary Committee Meeting, Feb. 24, 2016 discussing HB 513
<http://www.house.ga.gov/Committees/en-US/CommitteeArchives146.aspx>

Georgia State University Law Review

The GSU Law Review's Peachsheets compile Georgia legislative history and provide analysis of key bills considered during each legislative session. The 2016-17 Peachsheets Issue contains an analysis of HB 513.

33 Ga. St. U. L. Rev. 109

Secondary Sources

Georgia Secondary Sources

Many Georgia treatises do not yet reflect the change in Georgia law allowing SLAPP defendants to file a special motion to strike. Most contain sample forms to aid SLAPP plaintiffs in filing now defunct verification affidavits.

Treatises that reflect the changes in the law include:

Georgia Practice and Procedure

Matters requiring special pleading—Certification of claims arising from act in furtherance of rights of petition and free speech
Ga. Practice & Procedure § 7:15 (2016-2017 ed.)

Similarities Between California and Georgia Anti-SLAPP Legislation

Despite the lack of up-to-date Georgia specific resources, SLAPP litigants with claims arising under Georgia law may find it helpful to consult California resources. The Georgia statute was modeled after California's and contains many of the same substantive provisions. Case law interpreting the California statute is well developed and there are an abundance of secondary sources that focus on SLAPP litigation.

Both laws allow defendants to address potential SLAPP suits by filing a motion to strike.

Georgia	California
O.C.G.A. § 9-11-11.1(b)(1)	Cal. Civ. Proc. Code § 425.16(b)(1)

<p>A claim for relief against a person or entity arising from any act of such person or entity which could reasonably be construed as an act in furtherance of the person's or entity's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern shall be subject to a motion to strike unless the court determines that the nonmoving party has established that there is a probability that the nonmoving party will prevail on the claim.</p>	<p>A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.</p>
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Both statutes also outline the types of documents litigants can use to support or oppose a motion to strike.

<p>Georgia</p>	<p>California</p>
<p>O.C.G.A. § 9-11-11.1(b)(2)</p>	<p>Cal. Civ. Proc. Code § 425.16(b)(2)</p>
<p>In making the determination as provided for in paragraph (1) of this subsection, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based; provided, however, that if there exists a claim that the nonmoving party is a public figure plaintiff, then the nonmoving party shall be entitled to discovery on the sole issue of actual malice whenever actual malice is relevant to the court's determination under paragraph (1) of this subsection.</p>	<p>In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.</p>

Finally, the California and Georgia statutes employ the same language to define the scope of protected speech and conduct.

<p>Georgia</p>	<p>California</p>
<p>O.C.G.A. § 9-11-11.1(c)</p>	<p>Cal. Civ. Proc. Code § 425.16(e)</p>
<p>“act in furtherance of the person's or entity's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern”</p>	<p>“act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue”</p>
<p>Qualifying acts include:</p> <ul style="list-style-type: none"> (1) Any written or oral statement or writing or petition made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) Any written or oral statement or writing or petition made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) Any written or oral statement or writing or petition made in a place open to the 	<p>Qualifying acts include:</p> <ul style="list-style-type: none"> (1) Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; or

public or a public forum in connection with an issue of public interest or concern; or
(4) Any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public concern.

(4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

California Sample Motions and Memoranda

Streisand v. Adelman, Motion to Strike and Brief in Support

This motion arises out of a suit filed by Barbara Streisand against a man who published an aerial photograph of the Malibu coastline that included her estate. The defendant had published the photograph as part of an effort to preserve the California coastline. The motion addresses the “public interest” component of the law and provides several examples of how to attack the merits of the potential SLAPP plaintiff’s claims.

<http://www.californiacoastline.org/streisand/motion-anti-slapp-adelman.pdf>

Demitriades v. Yelp, Inc., Motion to Strike and Brief in Support

Yelp, Inc. filed this motion in response to being sued for publishing third-party reviews. It addresses both the “public interest” component of the law, characterizing Yelp as a public forum that publishes information of public interest, and the lack of merit in the plaintiff’s claims.

<http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1287&context=historical>

Sample Motions from Secondary Sources

West’s Cal. Code Forms, Civ. Pro. § 425.16 Form 1 (7th ed.)

- This provides a sample form for giving notice of a motion to strike plaintiff’s complaint for infringing on party’s right of petition or free speech. It also contains a substantive comment about the provisions of the California anti-SLAPP statute and specific litigation issues with citations to case law. For Georgia litigants, the comment could aid in predicting how Georgia case law might develop.

Civ. Prac. Guide Ca. Law and Motion Model Forms § 53

- This treatise provides a fill-in-the-blank sample motion, memorandum with citations, declaration, and a proposed order. These provide a useful outline for defendants whose speech is connected to an issue of public interest.

Cal. Prac. Guide Civ. Pro. Before Trial Forms, Form 7B:1 and 7B:2

- Form 7B:1 provides a basic example of the motion to strike. Form 7B:2 provides a sample declaration in opposition to the motion to strike.

Litigating SLAPP Claims in Federal Court

Under Georgia’s previous anti-SLAPP law, putative SLAPP plaintiffs had to submit verification, in the form of an affidavit, certifying that their claims were not frivolous. The 11th Circuit found that Georgia’s verification requirements conflicted with Rule 11 of the Federal Rules of Civil Procedure. Rule 11 states that “a pleading need not be verified or accompanied by an affidavit.” Because of this conflict, defendants could not utilize Georgia’s anti-SLAPP procedures in federal court.

See: Practical Law: State Anti-SLAPP Statute Does Not Apply in Federal Court: Eleventh Circuit, Practical Law Litigation, July 14, 2014.

Georgia’s present anti-SLAPP statute contains no verification requirements, reopening the possibility that it could apply in federal court. A majority of circuit courts have found that special motions to strike are permissible in federal court. However, the applicability of Georgia’s new provisions to cases brought in the 11th Circuit is not guaranteed. Georgia’s revised anti-SLAPP provision, specifically its creation of a special motion to strike, creates potential conflicts with Federal Rules 8, 12, and 56.

For a discussion of this issue see:

Hamp Watson, *An Erie Split: Anti-Slapp Laws, Rule 12, and Rule 56*, SUNDAY SPLITS (Sept. 25, 2013),

<http://sundaysplits.com/2016/09/25/an-erie-split-anti-slapp-laws-rule-12-and-rule-56/>

Yando Peralta, Note, *State Anti-Slapps and Erie: Murky, but Not Chilling*, 26 Fordham Intell. Prop. Media & Ent. L.J. 769 (2016)

