

INSIGHTS + NEWS

Josh Lewin Quoted in Bloomberg Law’s “Broken State Speech Shield Unites Courts, Lawmakers Seeking Fix”

BY JOSHUA A. LEWIN • APRIL 13, 2023

Most states have anti-SLAPP laws, or laws against Strategic Lawsuits Against Public Participation, to create a pathway for courts to quickly and inexpensively dismiss meritless lawsuits that seek to intimidate people exercising their First Amendment rights. Massachusetts, however, has a relatively weak law compared to other states and recent state high court decisions have weakened First Amendment protections by making it easier for plaintiffs to move forward with retaliatory lawsuits. Additionally, the law only covers speech related to a person’s right to petition the government and doesn’t fully protect all free speech.

Massachusetts lawmakers and the judiciary now have the opportunity to reconsider the law. The Supreme Judicial Court is soliciting amicus briefs on whether to revise its framework for evaluating special motions to dismiss under the anti-SLAPP statute. At the same time, the legislature is considering a bill that would expand the statute to protect more types of speech.

Josh Lewin spoke with *Bloomberg Law* about the state’s anti-SLAPP law:

Josh noted that previously, “it was very difficult for a plaintiff” to proceed because the defendant could simply argue they had legitimate reasons for their petitioning.

The court, however, altered the framework in *Blanchard v. Steward Carney Hospital* in 2017 and 2019, adding another path plaintiffs can use to avoid having their claims thrown out. They only need to convince a judge that they have another legitimate primary motive in filing their claims, and that the claims aren’t brought for the purpose of chilling First Amendment rights.

Josh told Bloomberg Law that the change “has just thrown everything into complete disarray and, in my view, left things, untenable.” He stated, “The biggest issue is the uncertainty involved in bringing these motions now. Whereas the original standard was pretty cut and dry and you could advise a client on the likely outcome, now, it’s much more complicated, difficult, and expensive to litigate.”

Continue reading “[Broken State Speech Shield Unites Courts, Lawmakers Seeking Fix](#)” on the *Bloomberg Law* website.

