SLAPPed into Silence: A Call for Federal Protection in Response to "Cancel Culture"

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INTRODUCTION

Over the last few decades, there has been a growing trend of individuals being sued for simply exercising their constitutional right to speak freely.[1] These lawsuits, called Strategic Lawsuits Against Public Participation ("SLAPPs"), are often meritless suits filed by powerful figures with the goal of chilling public discourse by burying those who speak out against them in legal fees.[2] The term SLAPP was coined by legal researchers George W. Pring and Penelope Canan in 1988, and it initially only referred to lawsuits filed against individuals for speaking out in opposition of certain political interests.[3] Today, SLAPPs are widely understood as meritless lawsuits brought to shut down free speech on matters of public interest, whether or not those matters are political.[4] Powerful plaintiffs use SLAPPs as an

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1. *See, e.g.*, George W. Pring & Penelope Canan, *"Strategic Lawsuits Against Public Participation" ("SLAPPs"): An Introduction for Bench, Bar and Bystanders*, 12 BRIDGEPORT L. REV. 937, 938 (1992).

2. While SLAPPs eventually fail due to their baseless claims, defendants are still forced to engage in costly litigation in the meantime to avoid defaulting, thus incurring significant legal expenses that the average citizen cannot afford. *See* Angel Eduardo, *Why 'SLAPP' Lawsuits Chill Free Speech and Threaten the First Amendment*, FIRE, https://www.thefire.org/research-learn/why-slapp-lawsuits-chill-free-speech-and-threaten-first-amendment (Jan. 16, 2025) [https://perma.cc/TX9T-QL4E]; *SLAPPs: The Greatest Free Expression Threat You've Never Heard of?*, PEN AM. (Oct. 30, 2017), https://pen.org/slapps-free-expression-threat/ [https://perma.cc/N6KD-E34P].

3. Penelope Canan & George W. Pring, *Strategic Lawsuits Against Public Participation*, 35 SOC. PROBS. 506, 506–07 (1988); Pring & Canan, *supra* note 1, at 939.

4. *See, e.g.*, Alyssa R. Leader, *A "SLAPP" in the Face of Free Speech: Protecting Survivors' Rights to Speak Up in the "Me Too" Era*, 17 FIRST AMEND. L. REV. 441, 447–48 (2019) (discussing SLAPPs filed in response to victims speaking out against their sexual abusers); Robert D. Richards, *A SLAPP in the Facebook: Assessing the Impact of Strategic Lawsuits Against Public Participation on Social Networks, Blogs and Consumer Gripe Sites*, 21 DEPAUL J. ART, TECH. & INTELL. PROP. L. 221, 224–26 (2011) (discussing SLAPPs filed in response to consumers leaving negative business reviews).

intimidation tactic to silence critics with far fewer resources and considerably less power, scaring them away from daring to exercise their constitutional right to free speech.[5] And once the lawsuit is initiated, SLAPP plaintiffs often seek to drive up defendants' legal costs by stretching out proceedings and making invasive discovery demands, furthering the chilling effect on free speech.[6]

In response to this disturbing abuse of the judicial system to infringe on individuals' constitutional rights, thirty-eight states and the District of Columbia have implemented anti-SLAPP legislation to offer defendants a solution.[7] The particular solution offered by anti-SLAPP legislation varies amongst states, but it generally enables defendants to obtain swift dismissals of SLAPPs before the expensive discovery phase starts, allows defendants to recover attorney's fees and costs if their anti-SLAPP motion succeeds, automatically halts discovery upon filing of the motion, and permits immediate appeals if a trial court denies the motion.[8] In essence, anti-SLAPP laws save defendants from incurring even more costly legal fees from defending themselves against frivolous claims, preventing the chilling of public discourse that the SLAPP sought to impose.[9]

There is currently no federal anti-SLAPP law.[10] This means that federal SLAPP defendants are often left unprotected from these meritless yet intimidating suits, chilling the exercise of free speech.[11] This is especially problematic in today's digital age, where public discourse predominantly takes place online.[12] Social media platforms increase the possibility of parties

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5. *See, e.g.*, Laura Lee Prather, *SLAPP Suits: An Encroachment on Human Rights of a Global Proportion and What Can Be Done About it*, 22 NW. J. HUM. RTS. 49, 53–54 (2023).

6. *See What Are Strategic Lawsuits Against Public Participation (SLAPP)?*, GLOB. CLIMATE LEGAL DEF. (Mar. 28, 2025), https://www.climatelegaldefense.org/blog/what-are-slapps [https://perma.cc/U4R6-RQKK].

7. *See Anti-SLAPP Legal Guide*, REPS. COMM. FOR FREEDOM OF THE PRESS, https://www.rcfp.org/anti-slapp-legal-guide/ [https://perma.cc/8ETC-QLF6].

8. *Id.*

9. *Id.*

10. *E.g.*, Shannon Jankowski & Charles Hogle, *SLAPP-ing Back: Recent Legal Challenges to the Application of State Anti-SLAPP Laws*, AM. BAR ASS'N (Mar. 16, 2022), https://www.americanbar.org/groups/communications_law/publications/communications_lawyer/2022-winter/slapping-back-recent-legal-challenges-the-application-state-antislapp-laws/#2 [https://perma.cc/L5PZ-83J9].

11. Several federal courts have declined to apply relevant state anti-SLAPP laws in diversity cases, leaving those defendants without the anti-SLAPP protection they otherwise would have received in state court. For a current and comprehensive list of cases where federal courts declined to apply state anti-SLAPP laws, see Theodore Z. Wyman, Annotation, *Applicability of State Anti-SLAPP Statutes in Federal Diversity Cases*, 45 A.L.R. Fed. 3d Art. 4 (2019).

12. *See, e.g.*, Lauren Bergelson, *The Need for a Federal Anti-SLAPP Law in Today's Digital Media Climate*, 42 COLUM. J.L. & ARTS 213, 214–15 (2019).

with diverse citizenship engaging in such discourse, making SLAPPs ripe for federal jurisdiction.[13] Alarmingly, many federal courts have declined to apply state anti-SLAPP laws while adjudicating diversity cases, leaving SLAPP defendants with no choice but to engage in expensive litigation over baseless claims.[14]

This Comment asserts that a federal anti-SLAPP law is necessary to address this issue and protect important public discourse taking place on social media. Any federal legislation must learn from recent amendments to state anti-SLAPP laws to strike a delicate balance between being overinclusive and underinclusive. A federal law must have a broad scope, reflecting the recent trend of states expanding their formerly narrow anti-SLAPP laws.[15] A broad scope ensures adequate protection of individuals' constitutional rights to speak freely about the bad acts of public figures on social media. However, any federal law must also include limiting features to prevent abuse.

Part I provides background information on the prevalence of public discourse on social media, focusing on social media's "cancel culture" of holding public figures accountable for their bad acts, as well as the social benefits the phenomenon can provide.[16] Part II discusses the origin and evolution of SLAPPs using the recent case *X Corp. v. Center for Countering Digital Hate, Inc.* as an illustration and subsequently provides an overview of state anti-SLAPP legislation and the emerging trend of amendments.[17] Part III combines these discussions and argues for similar anti-SLAPP legislation at the federal level given increased public discourse on social media and unpredictability regarding the application of state anti-SLAPP statutes in federal courts. Part IV then turns to the recent amendments to state anti-

13. *See* Todd McMurtry, *Federal Court Jurisdiction in Internet Defamation Cases*, HEMMER WESSELS MCMURTRY PLLC (Sept. 30, 2022), https://www.hemmerlaw.com/blog/federal-court-jurisdiction-in-internet-defamation-cases/ [https://perma.cc/6Z5N-BNYP].

14. *See infra* Part III.

15. *See infra* Section II.B.2.

16. *See* Aja Romano, *Why We Can't Stop Fighting About Cancel Culture*, VOX, https://www.vox.com/culture/2019/12/30/20879720/what-is-cancel-culture-explained-history-debate [https://perma.cc/2F2N-ZMVT] (Aug. 25, 2020).

17. X Corp. v. Ctr. for Countering Digit. Hate, Inc., 724 F. Supp. 3d 948 (N.D. Cal. 2024).

SLAPP legislation in New York,[18] Utah,[19] and Delaware[20] to make the case that a federal law must incorporate broad language similar to California's initial anti-SLAPP law,[21] while also including specific limitations modeled after California's subsequent anti-SLAPP statute[22] to avoid the pitfalls of an overly broad scope. This proposed framework restricts the potential for abuse of a federal anti-SLAPP law while still ultimately providing SLAPP defendants with broad, adequate protection of free speech regarding the bad acts of public figures. Finally, Part V concludes that the proposed structure allows any potential federal anti-SLAPP legislation to hit the "sweet spot" between being too broad and too narrow.[23]

I. SOCIAL MEDIA'S "CANCEL CULTURE"[24]

Social media: the home of funny memes, interactions with friends, and predominantly, everyone's opinion on everything—ranging from a celebrity's new haircut to a politician's policy goals. Social media gives all users a platform to share their opinions freely, making it an integral tool in exercising one's right to free speech.[25] Over recent years, there has been an

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18. *See Anti-SLAPP Guide: New York*, REPS. COMM. FOR FREEDOM OF THE PRESS, https://www.rcfp.org/anti-slapp-guide/new-york/ [https://perma.cc/965V-5NWG]; *Latest Developments: Recent Changes in State Anti-SLAPP Laws*, REPS. COMM. FOR FREEDOM OF THE PRESS, https://www.rcfp.org/anti-slapp-guide/latest-developments/ [https://perma.cc/2JSB-92LP].

19. *See Anti-SLAPP Guide: Utah*, REPS. COMM. FOR FREEDOM OF THE PRESS, https://www.rcfp.org/anti-slapp-guide/utah/ [https://perma.cc/RU8F-6PGM].

20. *See Delaware Strengthens Free Speech Protections with Passage of Uniform Public Expression Protection Act*, INST. FOR FREE SPEECH (Sept. 15, 2025), https://www.ifs.org/blog/delaware-strengthens-free-speech-protections-with-passage-of-uniform-public-expression-protection-act/ [https://perma.cc/Y7JQ-5MSJ].

21. CAL. CIV. PROC. CODE § 425.16 (West 2025).

22. *Id.* § 425.17 (West 2012).

23. This Comment's proposal for federal anti-SLAPP legislation to incorporate features of recent state amendments focuses solely on features related to the legislation's scope of protected conduct. Discussion of the additional features of anti-SLAPP protection is beyond the scope of this Comment.

24. It is important to note that scholarship on cancel culture is limited, and the concept can be amorphous with individuals having different understandings of it. *See* Krista Hill Cummings et al., *#Canceled! Exploring the Phenomenon of Canceling*, J. BUS. RSCH., Jan. 2025, at 1–2. This Comment advances one conception of cancel culture solely to highlight the valuable public discourse taking place on social media.

25. However, speech on social media is ultimately subject to the platform's own content guidelines. *See* Moody v. NetChoice, LLC, 603 U.S. 707, 734–38 (2024) (recognizing that social media platforms have their own First Amendment rights expressed through their content curation and guidelines).

emerging trend of social media users using the platform to hold public figures accountable for their "bad" acts in the interest of social activism.[26] This trend has been dubbed "cancel culture."[27] Users "cancel" businesses and celebrities alike by promoting a cultural boycott against them on social media.[28] In other words, users attempt to strip those figures of a platform as a means of holding them accountable for their harmful actions.[29] The goal of cancel culture is to deter harmful behavior by calling widespread attention to those actions.[30]

Social media gives users a platform to voice their disapproval of harmful behavior under the protection of the First Amendment.[31] However, exercising one's First Amendment right against a public figure comes with the risk of SLAPPs brought to shut down the critical speech.[32] This Part addresses the tension between the good-faith purpose of cancel culture and its reality by recognizing cancel culture's harmful effects while also highlighting its social benefits. It ends by setting the stage for the argument that these benefits cannot reach their fullest potential without federal SLAPP protection.[33]

A. The Double-Edged Sword of Cancel Culture

As an initial matter, this Comment focuses on uses of cancel culture that align with its intended purpose: calling attention to the harmful actions of public figures as a means of holding them publicly accountable for the harm they have caused, hoping to serve as a deterrent for similar future behavior.[34]

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26. *See, e.g.*, Jonah E. Bromwich, *Everyone Is Canceled*, N.Y. TIMES (June 28, 2018), https://www.nytimes.com/2018/06/28/style/is-it-canceled.html.

27. *Id.*; Romano, *supra* note 16.

28. *See, e.g.*, Romano, *supra* note 16.

29. Cummings et al., *supra* note 24. This often involves unfollowing and no longer giving business to the canceled figure or entity. *Id.*; Vlad Demsar et al., *Calling for Cancellation: Understanding How Markets Are Shaped to Realign with Prevailing Societal Values*, 43 J. MACROMARKETING 322, 323 (2023) ("[C]ancellations represent a new form of active consumer resistance that seeks to withdraw all support for a brand to (re)align markets and marketing practices with prevailing societal values and logics.").

30. *See* Cummings et al., *supra* note 24.

31. "While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the 'vast democratic forums of the Internet' in general, and social media in particular." Packingham v. North Carolina, 582 U.S. 98, 104 (2017) (citation omitted).

32. *See SLAPPs: The Greatest Free Expression Threat You've Never Heard of?*, *supra* note 2.

33. As such, the goal of this Comment is to advocate only for the protection of the good-faith, accountability-oriented aims of cancel culture.

34. *See, e.g.*, *supra* notes 28–30 and accompanying text; Emily A. Vogels et al., *Americans and 'Cancel Culture': Where Some See Calls for Accountability, Others See Censorship, Punishment*, PEW RSCH. CTR. (May 19, 2021), https://www.pewresearch.org/internet/2021/05/19/

However, it would be remiss not to address the unfortunate reality of cancel culture—that it is often not used in good faith for its intended purpose.[35] Social media's cancel culture can be taken to an extreme by users who, in bad faith, harass and bully the "canceled" figure under the guise of holding them accountable.[36] While it is one thing to hold a public figure accountable for their unethical actions by calling attention to them, it is quite another to flood their platform with dismissive hate and harmful speech of the user's own. The latter strays away from the goal of cancel culture in deterring harmful social behavior by misusing it as a means of engaging in a different form of harmful social behavior.[37]

Hate speech is not conducive to the social benefits of cancel culture. Whether it is the public figure engaging in hate speech or the users seeking to hold them accountable, this type of behavior has no place in being protected by anti-SLAPP legislation.[38] To support the good-faith purpose of cancel culture in giving power to marginalized voices and fostering a culture of accountability and informed growth,[39] many note the importance of the

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americans-and-cancel-culture-where-some-see-calls-for-accountability-others-see-censorship-punishment/ [https://perma.cc/KY8H-3C4C].

35. It is important to note that not everyone agrees that cancel culture has a good-faith purpose. Some believe that cancel culture is intended to be mean-spirited and a form of censorship. Vogels et al., *supra* note 34. For an overview of Americans' divergent views on the nuanced concept of cancel culture, see *id.*

36. *See, e.g.*, Cheselle Jan L. Roldan et al., *Cancel Culture in a Developing Country: A Belief in a Just World Behavioral Analysis Among Generation Z*, ACTA PSYCHOLOGICA, Aug. 2024, at 1, 2 ("[C]ancel culture easily becomes a slippery slope towards cyberbullying, especially for teens, as the act may narrow down the path to empathy and forgiveness towards the errant individual or organization."); Viktoriya Sus, *Is Cancel Culture Toxic? Pros & Cons*, COLLECTOR (Aug. 15, 2023), https://www.thecollector.com/is-cancel-culture-toxic/ [https://perma.cc/L4AZ-T5MV].

37. *See* Roldan et al., *supra* note 36 (discussing the harmful social behavior exhibited by bad actors).

38. This is because anti-SLAPP protection is generally reserved for conduct arising from one's exercise of their free speech or petition rights on matters of public significance. *See infra* Section II.B.2. Those acting in bad faith and using the guise of accountability to inflict harm are not serving any matter of public concern. No legitimate public issue is advanced when, for example, bad-faith users falsely report an emergency to trigger a SWAT ambush at a "canceled" public figure's home—a phenomenon that is increasingly occurring. *See, e.g.*, Shuhan Wang, *The Escalating Threats of Doxxing and Swatting: An Analysis of Recent Developments and Legal Responses*, NAT'L ASS'N ATT'YS GEN. (Aug. 12, 2025), https://www.naag.org/attorney-general-journal/the-escalating-threats-of-doxxing-and-swatting-an-analysis-of-recent-developments-and-legal-responses/ [https://perma.cc/Z4XK-HD5Z]. As such, bad-faith acts hiding behind the mask of cancel culture are not of the kind being promoted by this Comment.

39. *See generally* Marissa Traversa et al., *Cancel Culture Can Be Collectively Validating for Groups Experiencing Harm*, FRONTIERS PSYCH. (July 20, 2023),

canceled figures being given an opportunity to learn from and right their wrongs based on the feedback they have received.[40] As such, this Comment calls only for the protection of online discourse that supports the good-faith social intentions of cancel culture through anti-SLAPP protection.

B. Protecting the Social Benefits of Cancel Culture

When used for its intended purpose, cancel culture has been shown to produce socially beneficial outcomes by boosting marginalized voices and fostering a culture of accountability and growth.[41] Specifically, social media pressure has prompted cultural shifts and institutional reforms in the context of sexual violence and unethical or problematic corporate conduct.[42] The tangible social benefits stemming from cancel culture demonstrate the underlying value of public discourse, particularly within the sphere of social media. But this sort of public discourse, while valuable, can expose participants to the risk of legal retaliation in the form of a SLAPP.

1. The #MeToo Movement

The most prominent example of the social benefits of cancel culture is illustrated by the #MeToo movement, where victims began using social media to share their sexual violence experiences and call out their powerful abusers.[43] By empowering victims to speak openly about their experiences, prominent abusers finally began to face repercussions.[44] And more importantly, a sense of solidarity emerged amongst those who were previously shamed into silence.[45]

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https://pmc.ncbi.nlm.nih.gov/articles/PMC10399695/ [https://perma.cc/7F4R-WGPP] (detailing study results regarding the positive effects of cancel culture in amplifying marginalized voices).

40. *See, e.g.*, Roldan et al., *supra* note 36.

41. *See* Traversa et al., *supra* note 39.

42. *See infra* Sections I.B.1–2.

43. Leader, *supra* note 4, at 445. Some of the most notable public figures who have been canceled as part of the movement include Harvey Weinstein and Bill Cosby. *See* Jocelyn Noveck & Maryclaire Dale, *#MeToo Leaders Take Stock of the Movement 5 Years Later*, PBS NEWS (Oct. 14, 2022), https://www.pbs.org/newshour/nation/5-years-on-metoo-leaders-take-stock-of-the-movement [https://perma.cc/3FFG-L6UG].

44. *See* Audrey Carlsen et al., *#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women*, N.Y. TIMES, https://www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html (Oct. 29, 2018).

45. *See, e.g.*, Phumzile Mlambo-Ngcuka, *The #TimeIsNow for Solidarity and Sisterhood*, U.N. CHRON. (Aug. 3, 2018), https://www.un.org/en/chronicle/article/timeisnow-solidarity-and-sisterhood [https://perma.cc/Y4DQ-UR8V].

The awareness generated by the #MeToo movement helped prompt a cultural shift away from victim-blaming and suppression and toward awareness of society's pervasive rape culture.[46] This shift has been solidified with legislation passed at both the federal and state level aimed at ensuring victims of sexual violence are empowered to publicly voice their stories.[47] The movement similarly prompted an institutional shift within the corporate world—CEO employment agreements now increasingly contain "MeToo termination rights" to ensure greater institutional accountability for sexual misconduct by powerful corporate officers.[48] The widespread impact of the #MeToo movement exemplifies the kind of social progress that cancel culture is capable of furthering.[49]

As victims use social media to share their stories, however, they risk retaliation in the form of litigation that aims to silence them once again.[50] Many individuals have been sued by their alleged abusers after speaking out against them.[51] Often, the alleged abuser will bring a libel action where they dispute the sexual assault allegation.[52] One high-profile example is that of the musical artist Kesha Rose Sebert, who spoke out through press releases and social media, claiming that she was sexually assaulted by her former music

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46. This is most strongly demonstrated by national shifts in the law in accord with the movement. *See* Rebecca Beitsch, *#MeToo Has Changed Our Culture. Now It's Changing Our Laws*, STATELINE (July 31, 2018), https://stateline.org/2018/07/31/metoo-has-changed-our-culture-now-its-changing-our-laws/ [https://perma.cc/9G7P-PG33].

47. In 2022, President Biden signed into law the Speak Out Act which restricts the enforcement of nondisclosure or nondisparagement agreements in cases involving sexual assault or harassment. *See* 42 U.S.C. § 19403. Various related laws have been passed at the state level. *See, e.g.*, Beitsch, *supra* note 46 (discussing various state legislative responses to the #MeToo movement).

48. Rachel Arnow-Richman et al., *Do Social Movements Spur Corporate Change? The Rise of "MeToo Termination Rights" in CEO Contracts*, 98 IND. L.J. 125, 133, 151 (2022).

49. This is not to say that the #MeToo movement's impact was without its critics. Some did not find the impact of the movement socially desirable and instead felt that it opened the door for false accusations and offended the presumption of innocent until proven guilty. *See* Anna Brown, *More Than Twice as Many Americans Support Than Oppose the #MeToo Movement*, PEW RSCH. CTR., https://www.pewresearch.org/social-trends/2022/09/29/more-than-twice-as-many-americans-support-than-oppose-the-metoo-movement/ [https://perma.cc/9LT3-S4NX] (Sept. 29, 2022); *see also* Donald J. Trump (@realDonaldTrump), X (Feb. 10, 2018), https://x.com/realDonaldTrump/status/962348831789797381 [https://perma.cc/3UT9-5KW3].

50. *See, e.g.*, Leader, *supra* note 4, at 442.

51. *See* Shaina Weisbrot, *The Impact of the #MeToo Movement on Defamation Claims Against Survivors*, 23 CUNY L. REV. 332, 352–56 (2020) (discussing specific examples of high-profile defamation claims brought in response to sexual assault allegations); Julia Jacobs, *#MeToo Cases' New Legal Battleground: Defamation Lawsuits*, N.Y. TIMES (Jan. 12, 2020), https://www.nytimes.com/2020/01/12/arts/defamation-me-too.html.

52. *See* sources cited *supra* note 51.

producer after staying silent for nearly a decade.[53] In response, her alleged abuser sued her for defamation and strongly denied the allegation—a move seen by Kesha's attorneys as nothing more than a retaliatory SLAPP brought in an effort to force her back into silence, evidenced by their request to file a counterclaim under New York's anti-SLAPP law.[54] The case ultimately settled before the court determined whether the suit was indeed a SLAPP or whether the sexual assault allegation was true.[55] Even so, Kesha's case highlights the broader possibility that even high-profile individuals risk facing a SLAPP for sharing their stories.

Although high-profile parties generally are better positioned to defend themselves from a SLAPP, the harm is magnified for individuals with fewer resources. Indeed, everyday individuals have similarly faced defamation claims for speaking out about their stories on social media.[56] And for most, the cost of defending themselves from such a claim is too high to bear.[57] One woman reported her legal fees in such a situation as "reach[ing] as high as $6,000—more than twice her monthly income."[58] Put simply: any victim, famous or not, risks facing an intimidatory lawsuit for sharing their story on social media.[59]

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53. Gottwald v. Sebert, 40 N.Y.3d 240, 248–49, 255 (2023). Kesha's alleged abuser denied the sexual assault allegation as part of his defamation claim. *Id.* at 249.

54. *See id.* at 250–51 (appealing to the court for leave to file a counterclaim under New York's newly amended anti-SLAPP law).

55. Jennifer Peltz, *Pop Star Kesha and Producer Dr. Luke Settle Longstanding Legal Battle Over Rape, Defamation Claims*, ASSOCIATED PRESS (June 22, 2023), https://apnews.com/article/kesha-dr-luke-producer-lawsuit-metoo-settlement-4ae950638a9fe0e2eafff930fef1e1bd [https://perma.cc/C68Q-JCUV].

56. One such example occurred in the Southern District of New York, where a junior-level art director used social media to share her story of being sexually assaulted by her agency's Chief Creative Officer. Watson v. NY Doe 2, No. 19 Civ. 533 (DEH), slip op. at 6 (S.D.N.Y. Sept. 17, 2025). In response, he sued her for defamation. *Id.* at 1. Ultimately, the court found that the defamation claim was a baseless SLAPP brought in an abuse of the judicial process. *Id.* at 18; *see also* Johnson v. Freborg, 995 N.W.2d 374, 379 (Minn. 2023) (involving a defamation claim based upon a dancer's social media posts accusing her dance instructor of sexual assault).

57. Tyler Kingkade, *As More College Students Say "Me Too," Accused Men Are Suing for Defamation*, BUZZFEED NEWS (Dec. 5, 2017), https://www.buzzfeednews.com/article/tylerkingkade/as-more-college-students-say-me-too-accused-men-are-suing/ [https://perma.cc/LD5J-KKXT].

58. *Id.*

59. *See, e.g.*, Elizabeth Bruenig, *How to Make #MeToo Offenders Pay*, ATLANTIC (Aug. 8, 2024), https://www.theatlantic.com/ideas/archive/2024/08/me-too-lawsuits-retaliation-slapp/679381/.

2. Unethical or Problematic Corporate Practices

Another social benefit of cancel culture is shown by the cancellations of major corporations on social media for unethical or problematic business practices. Although it can be challenging for ordinary individuals to inspire reform within a large company, social media can be an effective vehicle for amplifying individual voices and driving institutional change.[60] Indeed, social media discourse has prompted corporations to reform unethical practices and better align their brands with societal values.[61]

Using social media pressure to achieve corporate reform is not a new phenomenon, but it has become more prevalent with the rise of cancel culture in recent years.[62] One modern example is demonstrated by Shein, a fast-fashion giant that is constantly under fire on social media for a range of unethical business practices.[63] One widespread critique, in particular, prompted the retailer to take a small step in an ethical direction. Shein has been publicly accused of stealing designs from small businesses and creators, passing the designs off as its own, and generating undeserved profit from its massive consumer base.[64] To address these accusations, Shein embarked on a $55 million initiative in 2021, named Shein X, to show the public that it

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60. *See* Demsar et al., *supra* note 29, at 341, 344 (discussing how macro social movements like cancellations have the power to inspire change within individual businesses and the market at large).

61. *Id.* at 341. Of course, cancel culture and the ensuing social media pressure are not the sole causes of such policy reforms. These changes are generally a product of several reasons that often bleed together, such as financial pressure due to a decline in business or pressure from other external actors. *See id.* at 322, 344. Ultimately, though, social media backlash often precipitates a brand's widespread reputational harm that initiates the domino effect, prompting the corporation to make changes. Indeed, the creation of financial and other external pressure is often part of the cancellation itself. *See id.* at 335 (describing how consumers mobilize a cancellation with such methods).

62. For example, one of the world's largest food processing companies, Nestlé, faced widespread social media backlash in 2010 due to unethical practices within its supply chain. Specifically, an investigation by an environmental advocacy organization revealed that Nestlé had been sourcing palm oil from suppliers whose practices had been linked to the destruction of high-conservation-value forests in Indonesia. *Nestlé Drives Rainforest Destruction Pushing Orangutans to Brink of Extinction*, GREENPEACE (June 7, 2010), https://www.greenpeace.org/usa/nestle-drives-rainforest-destr/ [https://perma.cc/FUS6-4YHS]. This backlash drove Nestlé to adopt a new sourcing policy—working toward a deforestation-free palm oil supply chain. *See What Is Nestlé Doing to Ensure Palm Oil Is Sourced Sustainably?*, NESTLÉ, https://www.nestle.com/ask-nestle/sustainable-sourcing/answers/palm-oil-sourcing [https://perma.cc/ZKA3-UWJ8].

63. *See* Jordyn Holman, *Shein, Fast Fashion Hit with Gen Z, Tries Charm to Counter Scrutiny*, N.Y. TIMES (May 2, 2023), https://www.nytimes.com/2023/05/02/business/shein-fast-fashion.html.

64. *Id.*

was dedicated to working with small designers to sell their designs, rather than profiting off of them through deceit.[65] Through the Shein X initiative, Shein gives independent designers a platform and resources to boost sales and generate profit for both businesses simultaneously.[66] This initiative reflects a beneficial change born out of criticism within the corporation.

Another notable example involved the luxury fashion brand, Gucci, when it released a clothing item in February of 2019 that appeared to resemble blackface.[67] Social media uproar ensued, with Gucci later apologizing and indicating that the resemblance was not intentional.[68] Rather, it was a product of an institutional deficiency in diversity training and oversight.[69] In response, Gucci created a four-step action plan that involved appointing its first-ever Global Head of Diversity, Equity, and Inclusion, hiring supporting regional directors, implementing new diversity and inclusion training, and establishing a multicultural scholarship program to create more employment opportunities for underrepresented groups.[70] These actions reflect structural and procedural reforms that aim to correct an institutional shortcoming.

Social pressure through social media's cancel culture can prompt positive changes and lead to socially beneficial outcomes. However, social media users run the risk of businesses bringing SLAPPs to shut down their critiques.[71] Indeed, a corporation could theoretically bring a meritless defamation lawsuit against any social media critic despite their criticism being lawful.[72] The litigation would aim simply to scare the critic and others away from daring to speak out in opposition of the brand without regard to whether the claim would actually prevail.[73] And this isn't just a theory—it's

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65. *Id.*

66. *Id.*

67. Amy Held, *Gucci Apologizes and Removes Sweater Following 'Blackface' Backlash*, NPR (Feb. 7, 2019), https://www.npr.org/2019/02/07/692314950/gucci-apologizes-and-removes-sweater-following-blackface-backlash [https://perma.cc/6AS2-V7NE].

68. *See id.*

69. *See* Ellie Violet Bramley, *Gucci Hires Diversity Chief After Criticism Over Insensitive Designs*, GUARDIAN (July 30, 2019), https://www.theguardian.com/fashion/2019/jul/30/gucci-hires-diversity-chief-after-criticism-over-insensitive-designs [https://perma.cc/5RCP-FHU8]; Brianne Garrett, *Gucci Names Its First-Ever Diversity Head After Blackface Controversy*, FORBES (Aug. 2, 2019), https://www.forbes.com/sites/briannegarrett/2019/08/02/gucci-names-its-first-ever-diversity-head-after-blackface-controversy/.

70. Janice Gassam Asare, *Will Gucci's Comprehensive Diversity and Inclusion Plan Repair the Company's Image?*, FORBES (Feb. 16, 2019), https://www.forbes.com/sites/janicegassam/2019/02/16/will-guccis-comprehensive-diversity-and-inclusion-plan-repair-the-companys-image/.

71. *See, e.g.*, Richards, *supra* note 4 (offering examples that demonstrate the issue).

72. *See id.*

73. For further discussion of the aims of SLAPPs, see *infra* Section II.A.

a reality.[74] Thus, this chilling effect can hinder public accountability of large businesses, reducing the opportunity for pressure that might otherwise lead to ethical changes.

II. FROM SILENCING SPEECH TO PROTECTING IT: SLAPPS AND ANTI-SLAPP LAW

SLAPPs can pose a threat to meaningful debate on matters of public significance—a threat which many jurisdictions have sought to put an end to by implementing anti-SLAPP statutes.[75] This Part begins with an overview of the evolution of SLAPPs and examines a modern example in the case *X Corp. v. Center for Countering Digital Hate, Inc.* It concludes with a discussion of the statutory solutions offered by various states, highlighting a trend in states expanding their formerly narrow scopes of protection that tracks the evolution of SLAPPs.

A. SLAPPs: A Wolf in Sheep's Clothing

The overarching features of a SLAPP are a frivolous lawsuit brought by a powerful party to punish their less-powerful critics, aiming to suppress the critics' exercise of First Amendment rights.[76] SLAPPs are effective at silencing the less-powerful because they masquerade as genuine lawsuits, allowing their lack of merit to go undetected in the early stages of litigation.[77] In the meantime, before the truth is revealed, the SLAPP forces the defendant to incur steep, and often unsustainable, legal fees to defend themself.[78] Thus, by emotionally and financially draining the defendant, the SLAPP serves its purpose even when the plaintiff inevitably loses their claim.[79] This calculated misuse of the judicial system has been threatening vital public discourse for decades.

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74. *See, e.g.*, Colocation Am., Inc. v. Garga-Richardson, No. B236873, 2012 WL 6098545, at *1 (Cal. Ct. App. Dec. 10, 2012) (involving a SLAPP filed by a corporation against an individual social media critic); Nat'l Tech. Sys., Inc. v. Schoneman, No. B162794, 2004 WL 214330, at *1 (Cal. Ct. App. Feb. 5, 2004) (involving the same).

75. *See* REPS. COMM. FOR FREEDOM OF THE PRESS, *supra* note 7.

76. Eduardo*, supra* note 2.

77. *Id.*

78. *Id.*

79. *Id.*

1. The Evolution of SLAPPs

The term SLAPP did not emerge until 1988, but SLAPPs were being filed far before then.[80] The originators of the term SLAPP, George W. Pring and Penelope Canan, noted in their initial research that the cases they identified as SLAPPs were filed as far back as 1958.[81] However, because SLAPPs are not conveniently labeled as such, and instead are disguised as regular tort claims, Pring and Canan noted it was difficult to locate them all.[82] Thus, it is likely that SLAPPs were appearing in court far before then.

Pring and Canan's conception of SLAPPs was born out of the Petition Clause of the First Amendment, which protects citizens' rights of political advocacy by allowing them to petition the government and request that it address particular issues of public significance.[83] Early SLAPPs were seen as a form of political retaliation to stifle the efforts of citizens in exercising their First Amendment right to petition the government for redress of their grievances.[84] Early SLAPP filers baselessly claimed injury resulting from citizens' political efforts under the Petition Clause.[85] Unsurprisingly, the defendants in these SLAPPs typically prevailed in the end by asserting their right to petition,[86] but not without first incurring hefty legal fees in the process of defending themselves.[87] Though these actions were cleverly disguised as tort claims, they were really actions to shut down citizens' political expression and involvement.[88] In effect, SLAPPs posed a serious threat to democracy.[89]

Modern SLAPPs are often still political in context, though that is no longer a defining feature. The modern SLAPP is generally a baseless civil action brought by a powerful plaintiff seeking to shut down critical speech on matters of public significance.[90] The punishment imposed by a SLAPP is the SLAPP itself—forcing the defendant to engage in drawn-out, costly litigation to defend themself against baseless claims.[91] Indeed, powerful plaintiffs may be most concerned with imposing the burdens of litigation on their target,

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80. *See* Canan & Pring, *supra* note 3, at 506–07.
81. *See id.* at 507.
82. *Id.*
83. U.S. CONST. amend. I; Canan & Pring, *supra* note 3, at 506.
84. *See* Canan & Pring, *supra* note 3, at 506.
85. *See id.* at 507.
86. *Id.* at 514.
87. *Id.*
88. *See id.* at 514–15.
89. *See id.* at 506.
90. *See* sources cited *supra* note 3.
91. *See id.*

rather than actually winning the lawsuit.[92] Modern SLAPPs have targeted everyday citizens, non-profit organizations, media outlets, academics, and activists for sharing unfavorable information about a powerful plaintiff, regardless of whether that information is political in nature.[93] Because the average person cannot afford the cost of litigation, SLAPPs today serve as a deterrent to citizens exercising their right to free speech on a broad range of matters.[94]

2. Modern SLAPP: X Corp. V. Center for Countering Digital Hate, Inc.

An illustrative example of a modern SLAPP is *X Corp. v. Center for Countering Digital Hate, Inc.*—a powerful corporation backed by a billionaire brought a frivolous lawsuit against a defendant of substantially less power for exercising its right to free speech in the public interest.[95] The District Court for the Northern District of California deemed the lawsuit a SLAPP in March of 2024.[96]

X Corp., formerly known as Twitter, brought a slew of claims against a non-profit research group for its publication of a report that evidenced increased hate speech and misinformation on X's platform since billionaire Elon Musk took ownership.[97] X claimed the non-profit's report caused it

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92. For example, Donald Trump lost a libel lawsuit against a reporter. He later bragged to the press that he didn't care about losing despite spending years litigating because the lawsuit fulfilled its purpose in punishing the reporter. *See* Paul Farhi, *What Really Gets Under Trump's Skin? A Reporter Questioning His Net Worth*, WASH. POST (Mar. 8, 2016), https://www.washingtonpost.com/lifestyle/style/that-time-trump-sued-over-the-size-of-hiswallet/2016/03/08/785dee3e-e4c2-11e5-b0fd-073d5930a7b7_story.html ("I spent a couple of bucks on legal fees, and they spent a whole lot more. I did it to make [the reporter's] life miserable, which I'm happy about.").

93. For examples of SLAPPs involving each of these categories of defendants, see *SLAPP Stories*, PUB. PARTICIPATION PROJECT, https://anti-slapp.org/slapp-stories [https://perma.cc/HLR8-T6SN].

94. Suzanne Blake, *Middle-Class Americans Can't Afford to Lawyer Up*, NEWSWEEK (Jan. 24, 2024), https://www.newsweek.com/middle-class-afford-lawyer-fees-legal-help-1863747 [https://perma.cc/FFW7-SE3U].

95. *See* X Corp. v. Ctr. for Countering Digit. Hate, Inc., 724 F. Supp. 3d 948, 955–56 (N.D. Cal. 2024).

96. *Id.* at 987; *District Court Rules in Favor of Free Speech and Against X Corp in Case with Cyberlaw Clinic Amicus Brief*, HARV. CYBERLAW CLINIC (Apr. 4, 2024), https://clinic.cyber.harvard.edu/2024/04/04/district-court-rules-in-favor-of-free-speech-and-against-x-corp-in-case-with-cyberlaw-clinic-amicus-brief/ [https://perma.cc/KTP7-ZDJD].

97. *X Corp.*, 724 F. Supp. 3d at 955–60; *see also* Todd Spangler, *Elon Musk's X Loses Lawsuit Against Research Group That Reported Rise in Hate Speech, Racist Content on Social Network*, VARIETY (Mar. 25, 2024), https://variety.com/2024/digital/news/elon-musk-x-loses-

reputational damages in an amount of "at least tens of millions of dollars."[98] Being accused of owing such a staggering amount of money would be enough to intimidate anyone into being silent, nonetheless a non-profit group.

The court found that X Corp.'s intentions behind the lawsuit were less than pure upon a briefing of the SLAPP issue by the defendant's counsel.[99] In dismissing X Corp.'s unsupported and meritless claims, District Judge Charles Breyer captured the court's disdain for such a blatant SLAPP, stating:

> X Corp.'s motivation in bringing this case is evident. X Corp. has brought this case in order to punish CCDH for CCDH publications that criticized X Corp.—and perhaps in order to dissuade others who might wish to engage in such criticism.[100]

The dismissal was made possible by the defendant's motion under California's anti-SLAPP statute, which principally allows defendants to obtain early dismissal of SLAPPs before litigation costs grow to an unmanageable amount.[101] The federal district court in *X Corp.* applied California's state anti-SLAPP law and thus protected the non-profit from the full scope of harm associated with SLAPPs.[102]

B. SLAPPing Back: State Anti-SLAPP Statutes to the Rescue

In response to the harm caused by SLAPPs, many states have enacted anti-SLAPP legislation aimed at protecting defendants and their right to free speech.[103] As of June 2025, there are thirty-eight states with some form of anti-SLAPP legislation in place.[104] While the scope of state anti-SLAPP statutes varies, they generally offer defendants a procedural tool for the quick dismissal of SLAPPs and recovery of attorneys' fees if they prevail in showing the SLAPP claims arose out of their protected speech on matters of public significance.[105]

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lawsuit-against-research-group-hate-speech-racist-content-1235951153/ [https://perma.cc/3QHL-ZLYP].

98. *X Corp.*, 724 F. Supp. 3d at 966–67.

99. *Id.* at 955 ("Sometimes it is unclear what is driving a litigation . . . . Other times, a complaint is so unabashedly and vociferously about one thing that there can be no mistaking that purpose . . . . This case is about punishing the Defendants for their speech.").

100. *Id.* at 981.

101. *See id.* at 955, 987; CAL. CIV. PROC. CODE § 425.16 (West 2025).

102. *X Corp.*, 724 F. Supp. 3d at 961–82.

103. *See* REPS. COMM. FOR FREEDOM OF THE PRESS, *supra* note 7.

104. *Id.*

105. *See, e.g.*, CIV. PROC. § 425.16; ARIZ. REV. STAT. ANN. § 12-751 (2025); OR. REV. STAT. §§ 31.150–52 (2025); *see also* Jankowski & Hogle, *supra* note 10.

1. Evolving Conceptions and Varying Scopes of Protected Conduct

The first state anti-SLAPP statute was passed in Washington in 1989, just one year after the term was coined by Pring and Canan.[106] The trailblazing Washington law afforded speakers civil immunity from claims arising out of their good-faith complaint or communication of information regarding a matter of reasonable concern to a governmental entity.[107] The political character of the statute aligned with the early conception of SLAPPs addressed by Pring and Canan.[108]

As the public understanding of SLAPPs has evolved, so has the context of anti-SLAPP statutes. Washington's anti-SLAPP statute, for example, is no longer limited to protecting free speech concerning a governmental entity.[109] It now affords broad protection for an individual's "[e]xercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association . . . on a matter of public concern" in addition to protection of speech during or related to a governmental or judicial proceeding.[110] The law's broad scope mirrors the broad range of speech that SLAPPs are targeting in the modern era.

Although it was not the first, California's anti-SLAPP statute often receives the most attention due to its strong, broad protection of SLAPP defendants.[111] In line with Washington, California's statute protects against claims arising out of any act "in furtherance of [a] person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue."[112] It specifies that the protected acts are: (1) statements made before or related to an official proceeding, (2) statements made in a place open to the public or a public forum in connection with an issue of public interest, and (3) "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

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106. Immunity From Civil Liability–Reports of Possible Wrongdoing to Government Agencies, ch. 234, 1989 Wash. Sess. Laws 1119 (codified as amended at WASH. REV. CODE. ch. 4.24 (1989)).

107. *Id.*

108. *See id.*; Canan & Pring, *supra* note 3.

109. *See* Sarah Matthews & Maya Gandhi, *Anti-SLAPP Legal Guide: Washington*, REPS. COMM. FOR FREEDOM OF THE PRESS, https://www.rcfp.org/anti-slapp-guide/washington/ [https://perma.cc/4W5K-28ZS].

110. WASH. REV. CODE § 4.105.010(2) (2025).

111. *See Anti-SLAPP Guide: California*, REPS. COMM. FOR FREEDOM OF THE PRESS, https://www.rcfp.org/anti-slapp-guide/california/ [https://perma.cc/J5WX-YJCK].

112. CAL. CIV. PROC. CODE § 425.16(b)(1) (West 2025).

issue of public interest."[113] Notably, and in contrast to Washington's statute, it also directs that the law is to be construed broadly.[114] As such, California's anti-SLAPP statute provides comprehensive protection for SLAPP defendants, effectively addressing the chilling effect of SLAPPs on free speech.[115]

While a fair number of states' anti-SLAPP statutes have a broad scope similar to those of California and Washington, some still adhere to the original conception of SLAPPs—narrowly protecting speech related only to the right to petition the government.[116] For example, New Mexico's anti-SLAPP statute has a narrow scope and only applies to statements made in connection with a meeting established and held by a government entity.[117] As such, the New Mexico law only protects the "rights of its citizens to participate in quasi-judicial proceedings before local and state governmental tribunals."[118] Such a scope does not provide adequate protection from modern SLAPPs.[119] So, ultimately, with such large variations in the scope of protected conduct, national protection against SLAPPs is inconsistent at best.

2. Trend of Expanding Protected Conduct

While some states' anti-SLAPP protection remains tethered to the early conception of SLAPPs, there has been an emerging trend of states expanding their formerly narrow scopes of protected conduct. This trend reflects growing interest in providing citizens with adequate protection from the harm of contemporary SLAPPs, born out of recognition that a narrow scope is obsolete in the modern era.[120] Three state examples are illustrative.

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113. *Id.* § 425.16(e).

114. *Id.* § 425.16(a).

115. The California anti-SLAPP statute's broad scope initially came with drawbacks that were later resolved by the state legislature. For a discussion of the drawbacks and the legislature's subsequent solution, see *infra* Section IV.B.

116. David Keating et al., *Anti-SLAPP Statutes: A Report Card*, INST. FOR FREE SPEECH 11 (Sept. 2025), https://www.ifs.org/wp-content/uploads/2025/10/2025-Anti-SLAPP-Scorecard-HQ.pdf [https://perma.cc/78B2-JLAS].

117. *Id.*; N.M. STAT. ANN. § 38-2-9.1 (2025).

118. § 38-2-9.2.

119. Keating et al., *supra* note 116, at 50 (assigning New Mexico's anti-SLAPP law a grade of D). This is because modern SLAPPs are brought to shut down free speech on a wide variety of topics, not just speech related to the government. *See, e.g.*, sources cited *supra* note 4.

120. For a more thorough review of this state trend, see Keating et al., *supra* note 116, at 9–10.

a. New York's Expansion of Anti-SLAPP Protection

New York's anti-SLAPP statute protects defendants in legal actions "involving public petition and participation."[121] Prior to amendment, this term was defined as only including cases brought by plaintiffs seeking public permits, zoning changes, or other entitlements from a government body.[122] Under the old language, barely any claims were afforded anti-SLAPP protection, making it ineffective at protecting against the broad SLAPPs of today.[123]

In 2020, the definition was amended to cover cases involving "any communication in a place open to the public or a public forum in connection with an issue of public interest" or "any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest."[124] In adopting similar language to that of California, New York now provides sufficient protection of free speech on social media. Though the anti-SLAPP law does not explicitly direct that the entire section be construed broadly, like in California, it does specify that "public interest" is to be construed broadly, which allows for a similar level of protection.[125] New York's expanded anti-SLAPP statute has also earned an A+ rating from the Institute for Free Speech.[126]

b. Utah's Expansion of Anti-SLAPP Protection

Utah's original anti-SLAPP statute protected defendants from an action that "is primarily based on, relates to, or is in response to an act of the defendant while participating in the process of government and is done primarily to harass the defendant."[127] The original language only protected speech related to politics, and it also imposed a significant burden on the defendant in requiring them to prove by clear and convincing evidence that the SLAPP was brought to harass them.[128]

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121. N.Y. CIV. RIGHTS LAW § 70-a (McKinney 2020).

122. N.Y. CIV. RIGHTS LAW § 76-a (McKinney 1992) (amended 2020).

123. Alan R. Friedman, *New York Anti-SLAPP Law Enhances Free Speech Protections*, FOX ROTHSCHILD (Nov. 23, 2020), https://www.foxrothschild.com/publications/new-york-anti-slapp-law-enhances-free-speech-protections#:~:text=New%20York%20has%20enacted%20new%20legislation%20that,its%20formerly%20narrow%2C%20relatively%20toothless%20anti%2DSLAPP%20statute [https://perma.cc/3UPY-HXAU].

124. N.Y. CIV. RIGHTS LAW §§ 76-a(1)(a)(1)-(2) (McKinney 2020).

125. *Id.* § 76-a(1)(d).

126. Keating et al., *supra* note 116, at 51.

127. UTAH CODE ANN. § 78B-6-1403(1) (West 2008) (repealed 2023).

128. *See id.*; UTAH CODE ANN. § 78B-6-1404(1) (West 2022).

In 2023, the statute was repealed and replaced with a new statute to protect the "exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Utah Constitution, on a matter of public concern."[129] This expanded protection is similar to the broad language of California's anti-SLAPP statute, now providing adequate protection of free speech while engaging in online discourse. Also, like California, it specifies that it is to be construed broadly.[130] Utah's amended anti-SLAPP statute similarly earned an A+ rating from the Institute for Free Speech.[131]

c. Delaware's Expansion of Anti-SLAPP Protection

Delaware's original anti-SLAPP law only provided protection from SLAPPs against a "public applicant or permittee," defined as "any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other [government] entitlement."[132] Thus, it provided very narrow protection that would only apply to a small number of SLAPP defendants and a small subset of speech related to government activity.

In September of 2025, Delaware provided new protection to cover a much broader range of claims, now including actions arising from any person's exercise of free speech "on a matter of public concern."[133] It also directs that the anti-SLAPP section is to be construed broadly.[134] As such, Delaware not only expanded the class of parties protected by its anti-SLAPP law, but also the protected conduct. Due to the large similarity between Delaware's new anti-SLAPP law and those of other states, Delaware also earned an A+ rating from the Institute of Free Speech.[135] Under the amended version, individuals can more confidently engage in online discourse as the scope has adapted to modern times.

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129. UTAH CODE ANN. § 78B-25-102(2)(c) (West 2023). The Utah legislature repealed its anti-SLAPP statute by adopting the Uniform Public Expression Protection Act drafted by the Uniform Law Commission. *See* REPS. COMM. FOR FREEDOM OF THE PRESS, *supra* note 19.

130. UTAH CODE ANN. § 78B-25-111 (West 2023).

131. Keating et al., *supra* note 116, at 58.

132. DEL. CODE ANN. tit. 10, § 8136(a) (1992) (repealed 2025).

133. *Id.* § 6002(b)(3) (2025).

134. *Id.* § 6011.

135. Keating et al., *supra* note 116, at 33. Delaware updated its anti-SLAPP law by adopting the Uniform Public Expression Protection Act. *Id.*

III. A CALL FOR FEDERAL ANTI-SLAPP PROTECTION

In *X Corp.*, the California federal district court applied California's broad anti-SLAPP law, which allowed the non-profit defendant to strike X Corp.'s meritless claims.[136] However, not all defendants in federal court are so lucky, even when their state has an anti-SLAPP statute on the books. Some federal courts sitting in diversity refuse to apply relevant state anti-SLAPP laws to state law claims which they have jurisdiction over, leaving the defendants in those cases without protection from the harms of SLAPPs that their state legislature sought to provide.[137] This Part describes the inconsistent application of state anti-SLAPP laws in federal court and the unconstitutional harm such inconsistency produces, demonstrating the need for federal protection.

A. Inconsistent or Unavailable Protection in Federal Courts

As a preliminary matter, federal courts have jurisdiction over state law claims when the parties are citizens of different states and the amount in controversy related to those claims exceeds $75,000.[138] This type of jurisdiction is called "diversity jurisdiction."[139] SLAPPs often involve state law tort claims, such as defamation, or state law breach of contract claims.[140] So, powerful SLAPP plaintiffs frequently allege several state law claims against their critics to reach the necessary amount in controversy, like the slew of claims brought in *X Corp.* which amounted to tens of millions of dollars.[141] This practice allows federal, rather than state, courts to hear the case. SLAPP plaintiffs with claims rooted in a state with anti-SLAPP legislation often try to have their SLAPP heard in federal court in hopes of avoiding the application of the defendant's anti-SLAPP protections.[142]

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136. X Corp. v. Ctr. for Countering Digit. Hate, Inc., 724 F. Supp. 3d 948, 987 (N.D. Cal. 2024).

137. *See* Wyman, *supra* note 11; Jankowski & Hogle, *supra* note 10.

138. 28 U.S.C. § 1332.

139. *See id.*

140. *See* Dennis Hetzel & Brandi M. Snow, *SLAPP Suits*, FREE SPEECH CTR., www.mtsu.edu/first-amendment/article/1019/slapp-suits (Mar. 31, 2025) [https://perma.cc/2DZR-3KWG].

141. *See X Corp.*, 724 F. Supp. 3d at 960–61.

142. *See* Daniel A. Horwitz, *The Need for a Federal Anti-SLAPP Law*, N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM, June 15, 2020, at 1, 1; *see, e.g.*, Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co., 276 U.S. 518, 523–25 (1928) (demonstrating one plaintiff's successful effort to avoid state court by organizing a company in a different state than that of defendant, creating diversity of citizenship).

Federal courts that decline to apply state anti-SLAPP laws do so because they claim the application conflicts with the Federal Rules of Civil Procedure.[143] Those federal courts generally start their analysis with whether a state anti-SLAPP law applies to the dispute by applying the doctrine laid down by the Supreme Court in *Erie Railroad Co. v. Tompkins*.[144] *Erie* directs federal courts sitting in diversity to apply state substantive law and federal procedural rules when adjudicating state law claims.[145] Thus, in applying *Erie*, a federal court must determine whether the anti-SLAPP law is a substantive law or a procedural law.[146] If the court classifies the anti-SLAPP law as procedural, it must then determine whether application of it would conflict with a federal rule.[147] If the federal rule, typically a Federal Rule of Civil Procedure, directly conflicts with the anti-SLAPP law, then the federal rule will apply to the exclusion of the anti-SLAPP law.[148] This is the point where many federal courts decide that the state anti-SLAPP law cannot apply.[149]

Of the courts that have determined application of the state anti-SLAPP law directly conflicts with a Federal Rule of Civil Procedure, the majority cite a conflict with Rule 56 and Rule 12.[150] Rule 56 provides the burden imposed on a plaintiff to survive a motion for summary judgment, which leads to a quick dismissal of the claim.[151] Similarly, Rule 12 provides the burden imposed on a plaintiff to survive a preliminary motion to dismiss.[152] State anti-SLAPP laws generally provide an initial burden on the defendant that must be met in order to obtain a quick dismissal of the SLAPP.[153] If the defendant meets that initial burden, the burden then shifts to the plaintiff to

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143. *See* Wyman, *supra* note 11, § 2.

144. *Id.*

145. *See* Hanna v. Plumer, 380 U.S. 460, 471 (1965); Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938).

146. Wyman, *supra* note 11, § 2.

147. *Id.*

148. *See id.* Additionally, the federal rule will only apply if it is valid under the Rules Enabling Act. *Id.*; 28 U.S.C. § 2072.

149. *See* Wyman, *supra* note 11, § 2.

150. *See, e.g.*, Carbone v. Cable News Network, Inc., 910 F.3d 1345, 1357 (11th Cir. 2018) (affirming lower court's refusal to apply state anti-SLAPP statute due to a conflict with Rules 56 and 12); Abbas v. Foreign Pol'y Grp., LLC, 783 F.3d 1328, 1337 (D.C. Cir. 2015) (affirming lower court's refusal to apply state anti-SLAPP statute due to a conflict with Rules 56 and 12); CDC Newburgh Inc. v. STM Bags, LLC, 692 F. Supp. 3d 205, 223–24 (S.D.N.Y. 2023) (declining application of state anti-SLAPP statute due to a conflict with Rules 56 and 12).

151. *See* FED. R. CIV. P. 56.

152. *See* FED. R. CIV. P. 12.

153. *See, e.g.*, Wyman, *supra* note 11, § 3 (discussing the mechanics of California's anti-SLAPP law).

overcome the SLAPP accusation and avoid dismissal of their claim.[154] This subsequent burden on the plaintiff is a much higher burden than those imposed on the plaintiff by Rule 56 and Rule 12.[155] Thus, those courts say the Federal Rules and the state anti-SLAPP law cannot apply in harmony.[156] And under *Erie*, the Federal Rules will apply to the exclusion of the anti-SLAPP law.[157]

Another way that SLAPP plaintiffs can manipulate their meritless suits to harm less-powerful defendants is by asserting claims under federal law, rather than claims under state law. Federal courts have original jurisdiction over claims arising under federal law.[158] Thus, when SLAPP plaintiffs assert federal law claims, the federal court does not engage in the complicated analysis described above as only federal law will apply to the dispute.[159] There is no federal anti-SLAPP law that could apply to the federal claims. So, SLAPP defendants are forced to engage in expensive litigation to defend themselves against meritless federal law claims.

B. The Unique Harms Produced by Federal SLAPPs

The unpredictability of the applicability of state anti-SLAPP laws in federal courts not only harms defendants through the obstruction of their free speech, but it also encourages forum-shopping and manipulation tactics by powerful SLAPP plaintiffs. As discussed, powerful plaintiffs use SLAPPs as an intimidation tactic against defendants with considerably less resources.[160] At the outset, powerful plaintiffs often have top-class legal teams skilled at manipulating the judicial system to give their client a significant advantage over defendants who may struggle to afford even basic representation.[161] When that power imbalance is coupled with a lack of anti-SLAPP protection at the federal level, powerful SLAPP plaintiffs are put in an even more unfairly advantageous position; the current system encourages them to

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154. *Id.*

155. *See* Intercon Sols. Inc., v. Basel Action Network, 969 F. Supp. 2d 1026, 1046–48 (N.D. Ill. 2013).

156. *See* cases cited *supra* note 150.

157. *See* cases cited *supra* note 150.

158. 28 U.S.C. § 1331.

159. For example, in *X Corp.*, the plaintiff asserted a federal claim under the Computer Fraud and Abuse Act which the court did not analyze under California's anti-SLAPP statute. *See* X Corp. v. Ctr. for Countering Digit. Hate, Inc., 724 F. Supp. 3d 948, 982–87 (N.D. Cal. 2024).

160. *See, e.g.*, Eduardo, *supra* note 2.

161. *See, e.g.*, Blake, *supra* note 94.

manipulate the system even further through artful pleading methods and forum-shopping between courts.

The effects of this injustice are exacerbated when examined through the perspective of the digital age, where discourse on issues of public interest is predominantly taking place on social media.[162] As noted above, federal courts have jurisdiction over state law claims when they exceed $75,000 in controversy and the parties are citizens of different states.[163] Social media connects people from all over the world, and it similarly gives those people a platform to comment on public figures who may be domiciled in a different state or country than them.[164] And when SLAPP plaintiffs artfully plead their claims, they likely will do so in a manner that meets the required amount in controversy for federal jurisdiction. So, SLAPPs regarding online discourse can easily end up in federal court where anti-SLAPP protection is either unpredictable or unavailable entirely.

When SLAPP defendants lack protection while engaging in online discourse, the resulting chilling effect on free speech will hinder the positive social outcomes of such discourse. Individuals will be less inclined to share their negative experiences with public figures or voice their disapproval of the public figure's harmful behavior, leading to less accountability and less deterrence of those kinds of behaviors being repeated. People will fear retaliation for speaking up, allowing public figures freedom to cause harm in secrecy.

This is especially concerning when examined through the stakes involved in *X Corp*. Without organizations and individuals being able to report on the spread of misinformation and online hate speech, these harms will continue in the shadows, affecting millions of people every day. Cancel culture gives the less powerful a voice to inspire change by amplifying the voices of marginalized communities who are often not heard on their own. Stripping that opportunity away through the uncontrolled use of intimidation tactics will undoubtedly have devastating effects on safety and democracy by allowing harm, hatred, and misinformation to spread undeterred. The exercise of free speech is an integral part of democracy, and the need for its protection can be traced all the way back to the origins of SLAPPs as they attempted to stifle political advocacy. The time for federal protection is now.

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162. *See* SAM BESTVATER ET AL., #BLACKLIVESMATTER TURNS 10, at 25–38 (2023), https://www.pewresearch.org/wp-content/uploads/sites/20/2023/06/PI_2023.06.29_BLM-turns-10_FINAL.pdf [https://perma.cc/5NJA-WB8C].

163. 28 U.S.C. § 1332.

164. *See* McMurtry, *supra* note 13.

IV. A PROPOSAL FOR FEDERAL ANTI-SLAPP LEGISLATION

In order to provide SLAPP defendants with adequate protection of their right to free speech online, a federal anti-SLAPP statute should be broad in terms of the speech it protects. However, it is critical that a federal anti-SLAPP statute incorporates certain limiting features to avoid the pitfalls of a broad scope that may leave it susceptible to abuse. In developing a federal anti-SLAPP statute, the legislation should learn from recent amendments to state anti-SLAPP laws and adopt those features to ensure it effectively protects free speech in online discourse while balancing the rights of all parties involved.[165] This Part discusses the trend in providing expansive anti-SLAPP protection along with pointed limitations. Such a trend which reflects years of state experimentation and learning that is invaluable to the development of a federal anti-SLAPP statute.

A. A Federal Anti-SLAPP Statute's Scope Should Be Broad . . .

An effective federal anti-SLAPP law must have a broad scope. The need for broad federal protection is illustrated by the recent trend of states amending their anti-SLAPP statutes with expansions of protected speech.[166] Analysis of those amendments makes it clear that federal legislation should be modeled after a state with strong anti-SLAPP protections in place: California.

Since its inception in 1992, California's anti-SLAPP statute has provided SLAPP defendants with broad protection,[167] earning it an A+ rating by the Institute for Free Speech.[168] Codified at California Code of Civil Procedure §§ 425.16–.18, the legislation allows SLAPP defendants to move for a special motion to strike the meritless claims early in the litigation and obtain an award for their attorneys' fees and costs.[169] California's statute directs courts to engage in a two-part inquiry where they first determine if the defendant has shown that the SLAPP claim arises from activity protected under the statute.[170] Importantly, the list of protected acts includes a broad catchall provision for "any other conduct in furtherance of the exercise of the

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165. *See generally* Akhil Reed Amar, *Five Views of Federalism: "Converse-1983" in Context*, 47 VAND. L. REV. 1229, 1233–36 (1994) (discussing the value of states acting as experimenters and educators on legislation).

166. *See supra* Sections II.B.2.a–c.

167. CAL. CIV. PROC. CODE § 425.16 (West 2025).

168. *See* Keating et al., *supra* note 116, at 32.

169. § 425.16.

170. *Id.*

constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest"[171] and a direction that the court is to construe the statute broadly.[172] It also requires the court to award a successful defendant costs and attorneys' fees, except in certain narrow circumstances.[173]

A federal anti-SLAPP law should mirror those features. Similar broad language is critical to offer adequate protection for public discourse online. Formerly narrow anti-SLAPP statutes like those of New York,[174] Utah,[175] and Delaware[176] failed to provide adequate free speech protection, prompting the state legislatures to amend those statutes.[177] To avoid the pitfalls created by narrow language, the federal anti-SLAPP law should be drafted in consideration of the scope changes made by these states. Specifically, it should be drafted to protect "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," which is California's catchall provision.[178] Similar broad language was implemented in the current versions of the anti-SLAPP statutes of New York,[179] Utah,[180] and Delaware,[181] which is a testament to its effectiveness in addressing modern threats.

B. . . . But Not Too Broad

While it is critical that a federal anti-SLAPP law has a broad scope, it is equally important that the law incorporates limiting features to avoid the pitfalls of its broad scope while still providing SLAPP defendants with adequate protection. A federal law should adopt the limits imposed by the California legislature in response to a concern regarding abuse of its anti-SLAPP statute.[182] In essence, parties were misusing California's anti-SLAPP

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171. *Id.* § 425.16(e)(4).
172. *Id.* § 425.16(a).
173. *Id.* § 425.16(c)(1).
174. N.Y. CIV. RIGHTS LAW § 76-a (McKinney 1992) (amended 2020).
175. UTAH CODE ANN. § 78B-6-1403(1) (West 2008) (repealed 2023).
176. DEL. CODE ANN. tit. 10, §§ 8136(a)(1), (4) (1992) (repealed 2025).
177. *See supra* Section II.B.2.
178. CAL. CIV. PROC. CODE § 425.16(e)(4) (West 2025).
179. N.Y. CIV. RIGHTS LAW § 70-a (McKinney 2020).
180. UTAH CODE ANN. § 78B-25-102(2)(c) (West 2023).
181. DEL. CODE ANN. tit. 10, § 6002(b)(3) (West 2025).
182. CAL. CIV. PROC. CODE § 425.17(a) (2012) ("The Legislature finds and declares that there has been a disturbing abuse of . . . the California Anti-SLAPP Law, which has undermined the

law to shut down lawsuits brought in the public interest, completely undermining the point of the anti-SLAPP law.[183] To prevent this misuse, a federal law should incorporate §§ 425.17(b)-(c), which exempts certain actions from anti-SLAPP protection.

The first category of actions exempted under California's limiting anti-SLAPP statute are lawsuits brought solely in the public interest, such as those that enforce important rights or confer significant benefits on the public or large groups.[184] This carveout ensures that important public interest cases are not derailed by anti-SLAPP motions. To allow early dismissal of lawsuits brought exclusively in the public interest would undermine the whole point of the anti-SLAPP law, which is to protect advocacy related to the public interest.[185] The second category of actions exempted under California's limiting anti-SLAPP statute are those involving commercial speech—specifically, actions against business defendants for statements they made in the context of selling goods or services.[186] This carveout prevents businesses from using the anti-SLAPP law to shield themselves from accountability for false or misleading statements they make when selling their products or services.

Implementing these carveouts in a federal anti-SLAPP law would restrict potential abuse while also promoting the interests of cancel culture and online discourse in accountability and encouraging open discussion on matters of public interest. The carveout for public interest actions supports public discourse by allowing individuals to challenge injustices or defend important rights without fear of premature dismissal of their claims. Thus, in terms of cancel culture, individuals seeking to expose systemic issues or harmful behaviors related to the public interest can do so online with increased confidence, contributing to the overall goal of societal growth. The carveout regarding commercial speech similarly supports public discourse by empowering individuals to call out deceptive business practices and hold them publicly accountable online. In the context of cancel culture, the exemption aligns with the goal of spotlighting unethical business actions to encourage businesses to act responsibly. Collectively, the carveouts support the broader goals of cancel culture and the subsequent social benefits of an involved, informed, and accountable public.

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exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, contrary to the purpose and intent of [California's Anti-SLAPP Law].").

183. *See id.*

184. *Id.* § 425.17(b).

185. *See id.* § 425.16(a).

186. *Id.* § 425.17(c).

V. CONCLUSION

The time for a federal anti-SLAPP law is now. Public discourse is an integral feature of the United States' democracy, and no longer are the days of that discourse taking place in the town square.[187] Important public discourse and civic engagement have found a new home in social media.[188] Social media's cancel culture has revitalized public discourse by strengthening marginalized voices, thereby enabling the social benefits of public discourse to flourish. To continue enjoying these benefits, social media users need confidence that their exercise of free speech online will be protected from retaliation in the form of SLAPPs.

This Comment proposes that Congress enact a federal anti-SLAPP law that has a broad scope with specific limitations. Such legislation will help protect important public discourse online while restricting the potential for abuse, thus providing social media users with sufficient protection and confidence without undermining the goal of anti-SLAPP legislation in promoting socially beneficial public discourse. Congress does not have to reinvent the wheel in implementing federal anti-SLAPP protections when there is a plethora of learned knowledge available at the state level.[189] A federal law that draws lessons from the trend of state anti-SLAPP amendments—expanding the scope of protected language while imposing targeted restrictions—is the most effective solution to counter the risk of SLAPPs brought in retaliation for online discourse. This proposal strikes a delicate balance between an overinclusive and underinclusive scope, providing effective protection of meaningful free speech online.

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187. *See, e.g.*, Robert C. Post, *Viewpoint Discrimination and Commercial Speech*, 41 LOY. L.A. L. REV. 169, 176 (2007).

188. *See* BESTVATER ET AL., *supra* note 162, at 25–38.

189. *See* Amar, *supra* note 165.