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Members of the Iowa State Senate Judiciary
Committee

Re: HF177

Dear Chairman Zaun, Vice Chairman Garrett and Members of the Senate Judiciary Committee

I write in support of HF177.

I am Uniform Law Commissioner from Indiana and a member of the ULC Drafting Committee that proposed a uniform law, the Uniform Public Expression Protection Act, upon which HF177 is based. The Uniform Law Commission is a bipartisan organization made up of Commissioners appointed by the state governments of each state. I spoke to the Senate Judiciary Subcommittee last year in support of the Uniform Public Expression Protection Act (known as "UPEPA"), and I had hoped to do so again last month in favor of HF177, but I was unable to get through on Zoom during the subcommittee hearing.

I am an attorney in private practice with The Bopp Law Firm, P.C. I serve as General Counsel for the National Right to Life Committee and our firm has represented numerous conservative and Republican organizations throughout the Nation, including the Republican National Committee, for which I was elected as Vice Chairman and served as Special Counsel. I have a very extensive litigation practice representing conservative and Republican organizations and individuals, resulting winning nine cases in the United States Supreme Court, on their behalf. *See* bopplaw.com.

Most importantly here is the fact that I have represented conservative and Republican organizations in almost a dozen cases where the Plaintiff sued them, often for defamation, in order to punish and to chill their free speech. Fortunately, in most of these cases, the state involved had an Anti-SLAPP law, like HF177, which expedited the dismissal of these frivolous cases. When there was no Anti-SLAPP law, the successful resolution of the case was significantly delayed to great cost to the organization.

I write to you in support of HF177, however, not because I am a Republican but because I am an ardent supporter of the First Amendment and because I think such laws are essential to a healthy and functioning democracy, since they provide an expeditious procedure and remedy to protect the exercise of 1st Amendment rights—freedom of speech and the press, the right to petition the government for redress of grievances, freedom of association, and right of lawful assembly—and people’s public participation in matters of public concern who exercise those rights.

Too often in the last few decades we have seen private interests try to discourage people from engaging or persisting in the exercise of those First Amendment rights through lawsuits, called SLAPP (“Strategic Litigation Against Public Participation”) suits, and the costly, time-consuming, lengthy litigation that can ensue. These are designed not really to prevail on the merits but instead to dissuade one from exercising his or her rights and participating in public discourse on a matter of public concern, in other words, to prevent one from being heard. Two thirds of the States have enacted Anti-SLAPP statutes, like HF177. They provide crucial procedural protections for the exercise of 1st Amendment rights.

The Uniform Law Commission reviewed state Anti-SLAPP statutes, and litigation under them, and, in open meetings with not only Commissioners but also numerous Observers and Advisors, drafted, debated, and approved the UPEPA, which HF177 is based upon. UPEPA drew the best from these statutes and addressed issues and any questions that may have arisen under them.

As both a trial and appellate lawyer, I would point out these important aspects of UPEPA which, taken together, make it the best Anti-SLAPP bill available for consideration.

1. *HF177 Authorizes a Special Motion.* It provides for the importance of the case promptly, not later than 60 days after a party is served, to be brought to the attention of the court by authorizing a Special Motion for Expedited Relief to dismiss the claim or cause of action. (Section 3). Iowa Rules of Civil Procedure, and other States’ as well, provide for a motion to dismiss to be filed, but none of those States’ rules expressly envisions and communicates a constitutional claim and an explicit prayer for expedited relief. (See Section 2(2), defining the Scope of HF177.)
2. *HF177 Provides for an Expedited Process.* Civil litigation can drag on, is not cheap, and expense can mount. Time is on the side of the party that wants to squelch the exercise of 1st Amendment rights, especially if the plaintiff bringing the suit (typically a defamation action or public nuisance suit) has deep pockets, and the defendant (very often just an individual speaking out one way or another on a matter of public interest, a blogger, a columnist, a local newspaper or broadcast station, or a group of people who comprise a nonprofit association or interest group) does not. To counteract this reality, HF177 requires the court to hold a hearing within 60 days of the motion (Section 5), and it requires the trial court to rule on the motion within 60 days after the hearing. (Section 8). The Iowa Rules of Civil Procedure do not require such a process or time frame.

3. *HF177 Provides for Discovery to be Stayed.* What is called “Discovery” in civil litigation—interrogatories, requests for production of documents, depositions and subpoenas to bring documents, “e-discovery” asking for review and production of relevant texts, emails, and electronic records—is a source of major expense and draws out litigation. HF177 provides for discovery to be stayed—no discovery—unless the court for good cause shown, for a specific purpose, allows it. (Section 4). The Iowa Rules of Civil Procedure do not provide for such a stay. They allow for discovery, subject to motions for protective orders because discovery sought is not relevant or would be unduly burdensome or is privileged or for some other reason—all of which “motion practice” protracts the litigation and compounds expense, inclining one having to defend the exercise of 1st Amendment rights to quit, which is the point of a SLAPP.
4. *HF177 Provides Clear Guidance for the Parties as to How Proceed at the Hearing and for the Court to Rule on the Motion.* (Section 7). First, the parties are heard, and the trial court determines whether HF177 applies. Second, the plaintiff (or claimant) must establish that it has pled and can establish a prima facie case as to each essential element of its cause of action. Third, the party making the special motion to dismiss and for expedited relief must show *either* that the plaintiff has failed to state a cause of action upon which relief can be granted under the law, *or* that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law; if so, the trial court must dismiss the action. These two standards for dismissal have been the law in the federal courts since the 1930s and, I am told, in Iowa since 1975. In either of these cases there is *no* question of fact for a jury to decide, and the moving party is entitled to judgment as a matter of law.
5. *HF177 Provides That a Party May Appeal as a Matter of Right From an Order Denying, in Whole or in Part, the Special Motion.* (Section 9). Appeals can take months or even years, and under Iowa’s, and most States’, Rules of Procedure, there is no right of appeal if a motion to dismiss is denied, although an appellate court has discretion to grant leave to appeal. Generally, one only has a right to appeal from a “final judgment.” But HF177 accords the moving party a *right* to appeal from the denial of relief of the protection sought for the exercise of 1st Amendment rights, in recognition of their crucial place in our democracy and the Rule of Law.
6. *HF177 Provides That “The Court Shall Award Court Costs, Reasonable Attorney Fees, and Reasonable Litigation Expenses Related to the Motion” to the Moving Party If the Moving Party Prevails on the Motion.*” (Section 10). A moving party may hang in there and win the case, but the victory may well be pyrrhic because the cost, distraction from one’s life and business, and simply the time consumed have been inordinate and otherwise uncompensated. That is the point of many SLAPP suits, namely, to make it painfully or too expensive to maintain a defense. Under the Iowa Rules of Civil Procedure and what is known as the “American Rule,” the party making and prevailing on the motion to dismiss and for expedited relief would *not* be entitled to reasonable attorney fees and litigation expenses. But to make the moving party whole, and just as important, to deter SLAPP suits, HF177 provides for that relief.

Thus, HF177 is a straight-forward *procedural* statute, but it protects and secures critically important *substantive* rights, namely, the right of freedom of speech and of the press, the right to assemble and to petition government, and the right of association. Some 34 States have enacted Anti-SLAPP laws, and since the ULC approved UPEPA just two years ago, Washington, Hawaii, Kentucky, and Utah have adopted it, with others, like Iowa, considering it.

I urge you to support HF177.

Sincerely,

THE BOPP LAW FIRM, PC

/s/ James Bopp, Jr.

James Bopp, Jr.