

119TH CONGRESS
1ST SESSION

S. _____

To amend title 28, United States Code, to establish a procedure to dismiss strategic lawsuits against public participation brought by governments, agents, instrumentalities, and entities of foreign adversaries and other countries that have engaged in a pattern of frivolous litigation against United States persons intended to deter the free exercise of rights under the First Amendment to the Constitution of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. SHAHEEN (for herself and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 28, United States Code, to establish a procedure to dismiss strategic lawsuits against public participation brought by governments, agents, instrumentalities, and entities of foreign adversaries and other countries that have engaged in a pattern of frivolous litigation against United States persons intended to deter the free exercise of rights under the First Amendment to the Constitution of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “End Foreign Abuse
3 of United States Courts Act”.

4 **SEC. 2. MEASURES TO END STRATEGIC LAWSUITS AGAINST**
5 **PUBLIC PARTICIPATION BROUGHT BY CER-**
6 **TAIN FOREIGN ACTORS.**

7 (a) IN GENERAL.—Part VI of title 28, United States
8 Code, is amended by inserting after chapter 181 the fol-
9 lowing:

10 **“CHAPTER 182—PROCEDURE TO DISMISS**
11 **STRATEGIC LAWSUITS AGAINST PUB-**
12 **LIC PARTICIPATION BROUGHT BY**
13 **CERTAIN FOREIGN ACTORS**

“Sec.

“4201. Definitions.

“4202. Special motion to dismiss a strategic lawsuit against public participation
brought by certain foreign actors.

“4203. Exceptions.

“4204. Interlocutory appeal.

“4205. Attorney’s fees and costs; punitive damages.

“4206. No limit on other remedies.

“4207. Removal and remand.

14 **“§ 4201. Definitions**

15 “In this chapter:

16 “(1) CLAIM.—The term ‘claim’ means any civil
17 action, complaint, cause of action, counterclaim, or
18 other court filing seeking damages, declaratory re-
19 lief, or equitable relief.

20 “(2) COVERED CLAIM.—The term ‘covered
21 claim’ means a claim—

1 “(A) brought by—

2 “(i) the government of a covered
3 country;

4 “(ii) a foreign agent or foreign instru-
5 mentality of the government of a covered
6 country; or

7 “(iii) a covered foreign person; and

8 “(B) that is based on, or in response to—

9 “(i) a political opinion of a party; or

10 “(ii) covered protected speech or polit-
11 ical activity by a party.

12 “(3) COVERED COUNTRY.—The term ‘covered
13 country’ means—

14 “(A) a country the government of which is
15 listed as a foreign adversary under section
16 791.4 of title 15, Code of Federal Regulations,
17 or any successor regulation; or

18 “(B) a country the government or citizens
19 of which have been determined by the Secretary
20 of State to have engaged in a pattern of frivo-
21 lous litigation against people in the United
22 States that is intended to deter the free exercise
23 of rights under the First Amendment to the
24 Constitution of the United States.

1 “(4) COVERED FOREIGN PERSON.—The term
2 ‘covered foreign person’ means—

3 “(A) an individual who—

4 “(i) is a citizen of a covered country,
5 which shall be determined in the same
6 manner as citizenship is determined for
7 purposes of section 1332; and

8 “(ii) is not lawfully admitted for per-
9 manent residence, and domiciled, in the
10 United States; or

11 “(B) a corporation, partnership, associa-
12 tion, joint-stock company, limited liability com-
13 pany, business trust, or similar entity that is
14 substantially owned by or subject to the control
15 of 1 or more individuals described in subpara-
16 graph (A).

17 “(5) COVERED PROTECTED SPEECH OR POLITI-
18 ICAL ACTIVITY.—The term ‘covered protected speech
19 or political activity’ means—

20 “(A) a communication in a legislative, ex-
21 ecutive, judicial, administrative, or other gov-
22 ernmental proceeding in the United States or a
23 foreign country;

24 “(B) a communication on an issue under
25 consideration or review, or recommending con-

1 sideration of an issue, in a legislative, executive,
2 judicial, administrative, or other governmental
3 proceeding in the United States or a foreign
4 country;

5 “(C) a complaint made to a law enforce-
6 ment agency, to licensing board, or through a
7 grievance mechanism in the United States or a
8 foreign country;

9 “(D) a communication about a public offi-
10 cial, public figure, or other natural or legal per-
11 son of the United States or a foreign country
12 whose act, omission, fame, notoriety, or celeb-
13 rity has become a public issue; or

14 “(E) the exercise of the right of freedom of
15 speech or of the press, the right to assemble or
16 petition, or the right of association guaranteed
17 by the Constitution of the United States on a
18 matter of public concern.

19 “(6) FOREIGN AGENT; FOREIGN INSTRUMEN-
20 TALITY.—The terms ‘foreign agent’ and ‘foreign in-
21 strumentality’ have the meanings given those terms
22 in section 1839 of title 18.

23 “(7) POLITICAL OPINION.—The term ‘political
24 opinion’—

1 “(A) means the manifestation or expres-
2 sion, either overt or imputed, of political beliefs;
3 and

4 “(B) shall have the same meaning given
5 the term ‘political opinion’ for purposes of sec-
6 tion 101(a)(42) of the Immigration and Nation-
7 ality Act (8 U.S.C. 1101(a)(42)).

8 **“§ 4202. Special motion to dismiss a strategic lawsuit**
9 **against public participation brought by**
10 **certain foreign actors**

11 “(a) MOTION.—A court shall grant a special motion
12 to dismiss and dismiss a claim with prejudice if—

13 “(1) the moving party presents evidence estab-
14 lishing that the claim at issue is a covered claim;

15 “(2) the responding party fails to establish that
16 an exception under section 4203 applies; and

17 “(3) the responding party—

18 “(A) fails to present evidence establishing
19 a prima facie case as to each essential element
20 of the claim under the standard of rule 56 of
21 the Federal Rules of Civil Procedure; or

22 “(B) presents evidence establishing a
23 prima facie case as to each element of the
24 claim, but the moving party has established
25 that there is no genuine issue of material fact

1 and the moving party is entitled to judgment as
2 a matter of law on the claim under the stand-
3 ard of rule 56 of the Federal Rules of Civil
4 Procedure.

5 “(b) NOTICE PERIOD.—Not later than 5 days before
6 the filing of a special motion to dismiss a claim alleged
7 to be a covered claim, the moving party shall provide writ-
8 ten notice to the responding party of the intent of the mov-
9 ing party to file such a special motion to dismiss with re-
10 spect to the claim.

11 “(c) TIMING OF MOTION.—A special motion to dis-
12 miss pursuant to this chapter shall be filed not later
13 than—

14 “(1) for a claim filed in Federal court, 60 days
15 after the date of service of the pleading that states
16 the claim alleged to be a covered claim; or

17 “(2) for a claim removed to Federal court that
18 is alleged to be a covered claim, 60 days after the
19 date of removal.

20 “(d) STAY OF PROCEEDINGS.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), upon the filing of a special motion to dis-
23 miss under this chapter with respect to a claim, all
24 other proceedings between the moving party and re-
25 sponding party that are related to the claim, includ-

1 ing discovery proceedings and any pending hearing
2 or motions, shall be stayed until notice of entry of
3 an order disposing of the special motion to dismiss.

4 “(2) EXCEPTIONS.—

5 “(A) GOOD CAUSE.—Upon motion by ei-
6 ther party, the court may allow limited and
7 specified discovery related to a special motion to
8 dismiss under this chapter, as determined by
9 the court, for good cause.

10 “(B) MOTION FOR REMAND.—Proceedings
11 relating to a motion to remand filed pursuant
12 to section 1447 may proceed pending consider-
13 ation by the court of the special motion to dis-
14 miss.

15 “(e) EXPEDITED RULING.—Not later than 90 days
16 after the date on which a special motion to dismiss under
17 this chapter is filed with respect to a claim, the court shall
18 rule on the motion.

19 **“§ 4203. Exceptions**

20 ““This chapter shall not apply to any claim that is
21 brought—

22 “(1) against a person primarily engaged in the
23 business of selling or leasing commercial goods or
24 services if the communication on which the claim is

1 based arises out of the person's sale or lease of com-
2 mercial goods or services;

3 "(2) by an official, agent, or entity of the
4 United States Government acting in an official ca-
5 pacity or under color of law; or

6 "(3) for recovery for bodily injury, wrongful
7 death, or survival damages.

8 **"§ 4204. Interlocutory appeal**

9 "If a court denies a special motion to dismiss under
10 this chapter with respect to a claim, the party that filed
11 the special motion to dismiss may take an immediate in-
12 terlocutory appeal from the order denying the special mo-
13 tion to dismiss.

14 **"§ 4205. Attorney's fees and costs; punitive damages**

15 "(a) IN GENERAL.—If the moving party prevails on
16 a special motion to dismiss under this chapter, there shall
17 be a rebuttable presumption that the moving party is enti-
18 tled to an award of reasonable attorneys' fees and costs.

19 "(b) PUNITIVE DAMAGES.—If the moving party pre-
20 vails on a special motion to dismiss under this chapter
21 and the court determines that the claim was presented to
22 harass, cause unnecessary delay, or needlessly increase the
23 cost of litigation, the court may impose an award of puni-
24 tive damages. Any award of punitive damages under this
25 subsection shall be limited to what suffices to deter repeti-

1 tion of the conduct or comparable conduct by others simi-
2 larly situated.

3 “(c) NO FOREIGN-STATE IMMUNITY.—A foreign
4 state shall not be immune from fees, costs, or punitive
5 damages imposed under this chapter.

6 **“§ 4206. No limit on other remedies**

7 “Nothing in this chapter shall be construed to reduce
8 or limit any substantive claim, remedy, or defense to a
9 claim based on, or in response to, covered protected speech
10 or political activity by a party under any other Federal
11 law or under the laws of any State or local government.

12 **“§ 4207. Removal and remand**

13 “(a) IN GENERAL.—In addition to removal allowed
14 under section 1441, a defendant filing a colorable special
15 motion to dismiss under section 4202 may remove the case
16 to the district court of the United States for the district
17 and division within which such action is pending, without
18 regard to whether the party is a citizen of the State in
19 which the action is brought or whether the defense under
20 this chapter appears upon the face of the well-pleaded
21 complaint, after filing a notice of removal signed pursuant
22 to rule 11 of the Federal Rules of Civil Procedure.

23 “(b) DENIAL.—If an action is removed under this
24 section and the district court to which the action is re-
25 moved has denied in whole a special motion to dismiss

1 under section 4202, the court shall remand the action to
2 the State court from which the action had been removed.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

4 (1) Section 1292(a) of title 28, United States
5 Code, is amended—

6 (A) in paragraph (1), by striking the semi-
7 colon at the end and inserting a period;

8 (B) in paragraph (2), by striking the semi-
9 colon at the end and inserting a period; and

10 (C) by adding at the end the following:

11 “(4) Interlocutory orders denying in whole or in
12 part special motions to dismiss under section
13 4202.”.

14 (2) The table of chapters for title 28, United
15 States Code, is amended by inserting after the item
16 relating to chapter 181 the following:

**“182. Procedure to dismiss strategic lawsuits against
public participation brought by certain
foreign actors 4201”.**

17 **SEC. 3. EFFECTIVE DATE; APPLICABILITY.**

18 This Act and the amendments made by this Act
19 shall—

20 (1) take effect on the date of the enactment of
21 this Act; and

22 (2) apply to any claim filed on or after the date
23 of the enactment of this Act regardless of whether

1 the conduct at issue occurred prior to the date of en-
2 actment of this Act.