

The Philadelphia Crosstown Coalition

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PHILADELPHIA CROSSTOWN COALITION TESTIMONY FOR APRIL 24 SENATE JUDICIARY COMMITTEE MEETING.

My name is Stephen Huntington and I am the interim Treasurer of the Philadelphia Crosstown Coalition, a group that is currently comprised of 21 Philadelphia civic associations. The communities represented by our member Associations are concentrated in the area between the Delaware and the Schuylkill Rivers from as far north as Fishtown to as far south as Packer Park but we also have active members in East Falls, Overbrook Farms and Powelton Village. All of our members are volunteer run and operated although four of the larger members have one paid staffer who provides office support for their operations.

The Coalition originally formed in 2008 to address the zoning reform initiative sponsored by the Nutter administration. Old City Civic Association and Joe Schiavo were key participants in the Coalition's response to the zoning code reforms. Over the course of 4 years members of the Coalition attended more than 40 public meetings of the Zoning Code Commission and, further, prepared approximately 200 pages analyzing the former Zoning Code and the proposed changes.

After the Code was enacted in August of 2012 we regrouped and expanded our membership in early 2013 to address the Actual Value Initiative, a program to reassess the City's real estate on a market value basis. As part of our effort, we prepared a 35 page analysis of the proposed reassessment package, held press conferences, spoke one on one with individual members of the administration and City Council, and made public statements in Council, in the press, through our website and via the electronic media.

I firmly believe that the advocacy of the volunteer civic associations who comprise the membership of the Crosstown Coalition resulted in improved versions of both the Zoning Code and in the implementation of the AVI program.

Within the last two months, we have formalized our hitherto ad hoc efforts by creating a nonprofit corporation, the Philadelphia Crosstown Coalition, which is to hold its initial organizational meeting this Saturday.

Participating in the Coalition:

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Over the course of the last 5 years, I have served as one of the coordinators of the Coalition acting as the representative of Center City Residents' Association. As one of the coordinators, I have dealt regularly with the representatives of each of the member civics.

Each of our members regularly participates in landuse/zoning/licensing operations. Consequently, the news regarding the shutdown of Old City Civic Association after it was subjected to SLAPP suits initiated by parties who had been involved in such operations caused concern for all of our members.

The proposed Bill, by penalizing those who initiate SLAPP claims, addresses many of the concerns of our members and deserves the support of the members of the Crosstown. Having said this, the current draft could be improved with the following revisions in addition to those set forth in the comments of Center City Residents' Association:

1. A Preamble/Legislative Intent Section: The remedies provided in the Bill might be made easier to implement if a preamble described the legislative intent. Such a preamble might state something like "This legislation is enacted to address lawsuits seeking damages as a result of statements made by or on behalf of persons deemed immune herein"
2. A Judicial Action Clause: Some consideration should be given to adding a section specifying when a court should implement the provisions of the Bill. Section (c) on page 5 advises the court that it may act after the filing of either (1) a preliminary objection, a term, presumably modified by the phrase "on the basis of immunity" or (2) a "motion on the basis of immunity". This instructs the Judge as to when procedurally the remedies provided by the Bill should be delivered - after a preliminary injunction or a motion - but it does not provide a laundry list of what elements are needed before action is taken. A provision could be added providing that:

"The court shall assess the monetary penalties prescribed in this statute against any person who files a lawsuit which is dismissed because one of the defendants is deemed immune herein. or dismissed because an essential element of the claim

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presented in the lawsuit is action taken "in furtherance of the right of advocacy in issues of public interest" as that phrase is defined herein"

3. Syntax of Immunity Provision: Section (a) (1) would be more readable if on page four it commenced with the phrase "Immunity is provided under this Act to persons who:
 - i. act in furtherance etc. . . .
 - ii. make a communication etc . . .

4. Immediate Relief: Section (b) on draft page 5 should not only empower the court to issue punitive/treble dollar damages as called for in the CCRA comments, it should enable the court to assess damages immediately upon resolving the motion or preliminary objections contemplated in section (b). In this fashion, a SLAPP plaintiff would be confronted early on in the litigation process with the prospect of paying damages to the SLAPP defendant and, perhaps more important, a SLAPP plaintiff who files a suit then quickly discontinues it would be subject to financial exposure. In this connection, review the comments at paragraph 8.

5. Inclusion of Counterclaim/Affirmative Defense: Section (b) on draft page 5 could be improved by adding after "legal insufficiency of a pleading" the phrase "including without limitation a counterclaim or New Matter" so as to specifically account for SLAPP suits that appear in counterclaims or answers responding to complaints filed by Coalition members.

6. Merits of Including "Substantial Likelihood" For Evaluating 8340.3 (b) Motions – Section (d) provides for the inadmissibility of a court finding that "the plaintiff has established . . . a substantial likelihood" of prevailing." This "substantial likelihood" test is not used to resolve preliminary objections under the demurrer provisions of Rule 1028 . The 1028 test is whether the complaint, on its face, sets forth a claim upon which relief may be granted. In theory, the "substantial likelihood" test could be the adjudicatory standard for the second procedural mechanism contemplated under section (b), i.e. a "motion on the basis of immunity". A motion (not a

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preliminary objection) which asserts that the complaint be dismissed because it is founded on immune communications would be granted absent a determination that there is a "substantial likelihood" that the plaintiff would succeed. Such a provision would certainly favor Crosstown members but probably would be seen as an unconstitutional taking of the SLAPP plaintiff's right to pursue a claim, where, in the eyes of the court, the plaintiff had a chance to win but not a substantial likelihood.

7. Multiple Standards For Awarding Damages - The CCRA comments deal with the duplication of including both section (g) and (i) which contain multiple and confusing standards. Section (g) penalizes both frivolous and dilatory *pleadings* AND dilatory and vexatious *conduct*. Section (i) does not make the pleading/conduct differentiation but adds a third standard "frivolous or intended to cause unnecessary delay." Note that in a choice between "dilatory conduct" and "intended to cause delay" it is easier to prove dilatory conduct than conduct "intended to cause delay".

Of more importance, note that under (g) and (i) a Judge/jury would have to conclude that a suit based on an immune transaction was "frivolous, dilatory, vexatious or intended to cause delay" in order to award monetary relief for the SLAPP defendant. Hence, a vigorously and courteously pursued claim against an immune defendant would not generate monetary relief unless such a claim were deemed "frivolous". The question of whether damages should be entered should not turn on the question of whether the suit was frivolous but whether the SLAPP suit was premised on "immune conduct"

8. Downside of "Prevailing Party" Standard - Section (i) provides recovery only for "the prevailing party" which would eliminate the assessment of court costs where the suit has been filed and then withdrawn. In those "file then withdraw" scenarios, the damage is done because the immune party places its insurer on notice of the filing before the withdrawal and therefore triggers an actuarial reassessment.
9. Time Limitation on Personal Information Protections -Section (h) provides that personal information need not be divulged by a SLAPP defendant. This section presents three issues. First, there is

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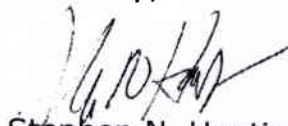
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no definition of personal information and, for purposes of clarity, the Bill should define "personal information". Second, "personal information", at least as that term is commonly used (i.e. name and address) is usually turned over in the course of discovery because it is needed to pursue litigation. Prohibiting the SLAPP plaintiff from seeking such information would, in many lawsuits, tread on the civil rights on the SLAPP plaintiff. A workaround would be to prohibit the provision of personal information pending the resolution of the motion contemplated in subsection (b). In this fashion, no personal information would be distributed if the complaint were dismissed. Finally, an action under (h) must be taken by "a person whose information is sought". This means that if a member civic association is the only named defendant in a SLAPP suit and the SLAPP plaintiff seeks the identity of a civic association officer, then the civic association could not assert the privilege, the officer would have to intervene in the lawsuit to assert this privilege.

10. Standing to Pursue Personal Information Protections – Paragraph (h) on page 6 provides that a request for personal information "shall be quashed on the motion of a person whose information is sought". This means that if Old City Civic is sued and it is asked to provide the names and addresses of its zoning committee members, those members must intervene and seek to quash. This result could be avoided if the phrase "on the motion of a person whose information is sought" is deleted.
11. Grammatical revisions in (j) (1): This section speaks about a person having the characteristics of "an executive committee" and a person, whether an individual or a corporation, is not an executive committee.

Thank you for considering these observations.

Sincerely,



Stephen N. Huntington, Esq.
Interim Treasurer of the
Philadelphia Crosstown Coalition

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