

Public Participation Protection Act

Anchorage Reading Summer 2019

Summary of Concerns/Suggestions

TOPIC	CONCERN/SUGGESTION	LOCATION
Title	Should have the word “constitutional” in it.	15:24-16:7
	Suggestion: “Act to Protect Constitutional Rights to Public Participation”	Note 1
	Should this be a model act or a uniform act? Would a model act be better due to diversity in proceedings?	16:8-11
Definitions and Terminology	Conflict/confusion in defining “person” to exclude government, but then by implication suggesting that governmental actions that aren’t enforcement actions could be subject to the statute	16:22-17:22
	Government should be exempted from the statute	45:5-46:4; 49:12-18
	Does an individual legislator constitute a person? Is he an individual or the government?	39:23-40:13
	Definitions of “moving party” and “responding party should require them to be actual parties to the case. Otherwise, anyone could file a motion or a response.	Note 2
	Is a political action committee a “person”? They’re not legal entities.	22:20-23:8
	Calling it a special motion may be confusing (special appearance). What about “Protective Motion to Dismiss”?	70:7-14; 92:1-3; 100:24-101:2; Note 3; Note 4, Note 5
	The term “cause of action” is used in different ways—to the claim as a whole, and as a pleading.	77:16-79:1
	How do we mean to define “pleadings” in Section 10 (Proof)?	117:11-23
	Do we need a definition of state in brackets? We use the term in Section 4(b)(2)(C), Section 10, and Section 12(a).	Note 6
	Add 12(c) motions to the bracketed “dismiss/strike” language of Section 5.	Note 5

Substantive Nature of Statute	Section 3 shouldn't be in statute; should be a comment. Creates confusion; won't work. Trying to change federal law. Find another way to do it. Maybe try to say that there is a right to speak in public proceedings or judicial actions. If intent is provide immunity, say so. Rather than say that it is substantive, say why it's substantive. One way may be to have the court "determine" rather than a party "establish." Also, be more clear about what this applies to.	23:19-24:6; 25:10-26:4; 27:10-28:2; 31:2-12; 107:27- 108:15; 113:12-22; Note 7
Anti-SLAPP as Rules	Should these be rules instead? Or a combination of rules and statute? The legislature shouldn't be telling judges how to do their jobs.	29:15-30:19; 68:9-69:2; 79:11-80:1; 80:5-20; 107:1-18; 110:5-111:12; 117:5-8
Matter of Public Concern	Need a comment about what the scope of it is.	33:13-35:15; 36:13-20; 39:8-12
	Maybe delete "public concern" altogether? Doesn't its inclusion limit the scope of the act?	Note 1
Applicability	Need a section of exemptions for cases like family law, evictions, disciplinary proceedings, etc.	40:19-42:2
	Add specific protection for free press.	49:23-50:6
	Statute is too broad (different examples)	51:3-25
	Should cross-claims, counterclaims, and interventions be included?	56:18-57:25; 64:3-65:11
	Are class-action suits included?	73:7-17
Commercial Speech Exemption	Does goods and services include intellectual property? What about real estate brokerage? Real property?	44:12-45:2; 48:9-16; Note 8
	Language is too broad—it covers anyone who sells goods and has no connection to the claim.	46:23-48:6
	Unclaimed Property Act may be of help; they considered a business-to-business transaction exemption.	Note 9
	Cut "general circulation" from Goods or Services definition in 4(a)(1).	Note 10
Three-Step Procedure	The statute doesn't make clear what the burden of the movant is, or how you "establish" things. Being more clear about what it applies to may make it more substantive.	60:25-62:13; 92:4-93:15; 95:12-18;

		104:24-106:23; 107:21-108:15; 113:12-22
	How are Sections 9(1) and 9(2) different from FRCP 12(c) and motions for summary judgment? The statute ought to clarify the relationship between this and those other types of remedies. They seem like two different ways to achieve the result, as opposed to a sequence of burden shifting	84:3-88:22
	Should Sections 9 (Dismissal) and 10 (Proof) be switched?	86:18-22; 95:2-11; 96:6-16; 113:23-114:2
	A lot of what this statute does are things already authorized by the FRCP, and as a result, it's confusing as to what a court is supposed to do, and we shouldn't be bossing courts around	97:5-99:23; 101:11-19; 102:3-103:5; 103:20-104:15; 111:15-113:8; 114:3-8
Discretion	Stay ought to be discretionary	56:1-4; Note 3
	What would an unrelated motion look like under Section 6(c)?	58:3-59:22
	Does court have to hold a hearing? A note is needed to make intent clear.	69:9-70:2
	Fees should be discretionary if a party nonsuits with prejudice. What if it's a legitimate claim but the plaintiff just doesn't want to pursue anymore?	74:3-9; 81-1:18
	Attorneys fees should be discretionary or bracket shall and may	29:24-131:10; Note 11
	What if judges don't rule in accordance with timelines set by act? Should the motion be overruled by operation of law after a period of time?	119:5-120:4; 125:20-25
Interlocutory Appeals	Concern about piecemeal litigation if a motion is granted as to only one claim	119:5-120:4; 125:20-25; Note 3
	Concern that Sections 12(a) and (b) don't go together, because (a) allows for interlocutory appeal, and (b) allows for writs. You can't have both.	126:15-127:9

Timing	Isn't this deadline to file (60 days) too long? Shouldn't it be the first thing you have to do? What if you've already answered? What if discovery has already been propounded?	76:3-77:15
Nonsuit	Does Section 8(a) present case or controversy issues?	72:4-73:4; 73:21-74:2
Repeals	Would this statute repeal or work with other protections already granted by a state? For example, a state that has already provided some sort of substantive immunity?	50:10-21