

The Women's Legal Defense and Education Fund

Memorandum in Support of House Bill 7206

Grants an affirmative defense for certain privileged communications, including communications made by an individual, without malice, regarding an incident of sexual assault, harassment, or discrimination.

Legal Momentum, The Women's Legal Defense and Education Fund, the nation's first and longest-serving advocacy organization dedicated to advancing women's rights, submits this memorandum in strong support of HB7206. For over 50 years, Legal Momentum has worked through strategic litigation, public policy advocacy, and education to combat gender-based violence and discrimination. This bill is a critical step toward protecting survivors of sexual violence from retaliatory defamation lawsuits designed to silence them.

Since the rise of the #MeToo movement in 2017, survivors have courageously come forward to share their experiences of sexual harassment, assault, and abuse. Unfortunately, this progress has been met with significant backlash. Retaliatory defamation lawsuits filed by alleged perpetrators have emerged as a disturbing trend aimed at intimidating survivors, imposing financial burdens, and deterring others from speaking out.¹

Research indicates that nearly half of all defamation lawsuits filed against survivors in the U.S. from 2014 to 2020 occurred after the #MeToo movement gained widespread attention in late 2017.² These lawsuits weaponize the civil legal system to punish survivors, undermine their credibility, and prolong their trauma. Legal Momentum has represented survivors defending against such claims and witnessed firsthand the profound re-traumatization and severe financial hardship these suits cause—even when survivors receive pro bono representation. The drawn-out nature of these cases exacerbates survivors' distress, and the public scrutiny involved often exposes private and sensitive information.

The intent behind these retaliatory lawsuits is clear: to punish and silence survivors and dissuade others from coming forward, ultimately chilling free speech and undermining legislative protections against discrimination and abuse. Even when these defamation claims lack merit, the substantial cost of legal defense and the threat of public exposure effectively serve as punishment for survivors seeking justice. Survivors often face overwhelming emotional and financial hardships, with legal costs reaching tens of thousands of dollars over years of litigation.³ The threat or reality of retaliatory litigation disproportionately harms individuals from

¹ Legal Momentum, *A Guide to Defamation for Survivors of Sexual Assault or Harassment* (2023), <https://www.legalmomentum.org/library/guide-defamation-survivors-sexual-assault-or-harassment>; Bryce Covert, *Years After #MeToo, Defamation Cases Increasingly Target Victims Who Can't Afford to Speak Out*, *The Intercept* (July 22, 2023), <https://theintercept.com/2023/07/22/metoo-defamation-lawsuits-slapp/>.

² Madison Pauly, *She Said, He Sued: How Libel Law is Being Turned Against MeToo Accusers*, *Mother Jones* (Mar./Apr. 2020), <https://www.motherjones.com/crime-justice/2020/02/metoo-me-too-defamation-libel-accuser-sexual-assault/>.

³ See Alyssa R. Leader, *A "SLAPP" in the Face of Free Speech: Protecting Survivors' Rights to Speak Up in the "Me Too" Era*, 17 *First Am. L. Rev.* 441, 448–49 (2019) (describing studies on costs of defending civil litigation and citing one survivor's experience of a defamation lawsuit after a university quasi-judicial process found that abuser had committed rape that cost the survivor "twice her monthly income, reaching \$20,000 even in the early stages of the lawsuit" to defend).

marginalized communities, who already encounter systemic barriers to reporting abuse and obtaining support.

More than 200,000 women in Rhode Island will become victims of sexual violence in their lifetime.⁴ However, reporting rates for sexual assault are only 2% in high school,⁵ 10-12% in college,⁶ and about 6-13% in the workplace.⁷ One of the biggest reasons survivors stay silent is fear of retaliation.⁸

Rhode Island's current anti-SLAPP law does not sufficiently protect survivors. Rhode Island's anti-SLAPP law only protects statements made in a government proceeding, about an issue being considered by a government proceeding, or about an issue of "public concern."⁹ It fails to adequately protect survivors from retaliatory defamation lawsuits, in large part because many disclosures occur outside of official government proceedings—such as on social media or in personal conversations—and because many courts have wrongly held that sexual assault is a purely private issue rather than an issue of "public concern."

HB7206 addresses a critical legal gap by offering two key protections for Rhode Islanders. First, by protecting survivors. HB7206 ensures that individuals who speak out about sexual assault, harassment, or other forms of discrimination are safeguarded from baseless defamation lawsuits—so long as their statements are made in good faith ("without malice or gross negligence.") Secondly, protecting the falsely accused. At the same time, HB7206 preserves the right of individuals who are falsely accused to seek justice through defamation claims, provided they can demonstrate that the allegations were made in bad faith (with "malice or gross negligence.")

For these reasons, Legal Momentum strongly urges the Committee to issue a favorable report on HB7206 and uphold survivors' rights to speak out free from the threat of retaliatory lawsuits and financial devastation.

⁴ Ctrs. for Disease Control & Prevention, *National Intimate Partner and Sexual Violence Survey: 2016/2017 State Report 25* (Dec. 2023), <https://bit.ly/3CDYv7a>.

⁵ Kayla Patrick & Neena Chaudhry, NWLC, *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Harassment and Sexual Violence 2* (2017), <https://bit.ly/3wD6Vs4>.

⁶ David Cantor et al., *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct*, Westat, A7-27, A7-30 (revised Jan. 17, 2020), <https://bit.ly/3TBtQwE>.

⁷ *Select Task Force on the Study of Harassment in the Workplace*, EEOC, II.C (June 2016), <https://bit.ly/4cgDc8l>.

⁸ *Female Victims of Sexual Violence, 1994–2010*, Dep't of Justice - Bureau of Justice Stats., 7 (revised May 31, 2016), <https://bit.ly/3IRTyXV>.

⁹ R.I. Gen. Laws § 9-33-2(e).