

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

STEVEN,

Plaintiff,

v.

MARIA, and
SNORE-EGONIAN NEWSPAPERS,
INC.,

Defendants.

Case No. 12-34567

**SPECIAL MOTION TO STRIKE
PURSUANT TO ORS 31.150
(ANTI-S.L.A.P.P. STATUTE)**

(Oral Argument Requested)

UTCR INFORMATION

Certificate of Compliance: Undersigned counsel certifies that she conferred with opposing counsel, and the parties were unable to resolve this dispute.

Oral Argument Requested: Yes

Estimated Time: 30 Minutes

Court Reporter Requested: Yes

1 **MOTION**

2 Pursuant to ORS 31.150, defendant Maria moves to strike all claims brought
3 against her in the above-captioned case by plaintiff Steven on the grounds and
4 for the reasons set forth herein.

5 This motion is also supported by the accompanying “Declaration of Erin K.
6 Olson in Support of Special Motion to Strike Pursuant to ORS 31.150 (Anti-
7 S.L.A.P.P. Statute)”.

8 Marie is entitled to attorney fees and costs pursuant to ORS 31.152(3).

9 **FACTS RELEVANT TO MOTION**

10 Maria described to police the rape and assault perpetrated against her by
11 plaintiff when they contacted her in response to a mandatory child abuse report
12 made by her youngest child’s teacher. Maria later submitted a FAPA petition
13 containing the same description of plaintiff’s rape and assault of her as she
14 described to police. Plaintiff sued her for defamation, describing Maria’s
15 statements as related in documents filed by the prosecutor in the criminal case
16 filed against him, as well as those in Maria’s FAPA petition.

17 Plaintiff is the elected mayor of the City of Beaverton, a suburb of Portland,
18 Oregon. His arrest and prosecution for raping and assaulting Maria were
19 reported in the largest newspaper in Oregon, the Snore-egonian.

1
2 **ARGUMENT**

3 **1. The Legal Standard for Special Motions to Strike Pursuant to ORS**
4 **31.150.**

5 ORS 31.150 *et seq.* is Oregon’s remedy to SLAPP litigation (“Strategic
6 Lawsuits Against Public Participation”). The relevant provisions of ORS 31.150
7 read as follows:

8 (1) A defendant may make a special motion to strike
9 against a claim in a civil action described in subsection
10 (2) of this section. The court shall grant the motion
11 unless the plaintiff establishes in the manner provided
12 by subsection (3) of this section that there is a
13 probability that the plaintiff will prevail on the claim.
14 The special motion to strike shall be treated as a motion
15 to dismiss under ORCP 21 A but shall not be subject to
16 ORCP 21 F. Upon granting the special motion to strike,
17 the court shall enter a judgment of dismissal without
18 prejudice.

19 (2) A special motion to strike may be made under this
20 section against any claim in a civil action that arises out
of:

(a) Any oral statement made * * * in a * * * executive
or judicial proceeding or other proceeding authorized
by law;

(b) Any oral statement made * * * in connection with
an issue under consideration or review by a * * *
judicial body or other proceeding authorized by law;

(c) Any oral statement made, or written statement
or other document presented, in a place open to the

1 public or a public forum in connection with an issue of
2 public interest; or

3 (d) Any other conduct in furtherance of the exercise
4 of the constitutional right of petition or the
5 constitutional right of free speech in connection with a
6 public issue or an issue of public interest.

7 (3) A defendant making a special motion to strike
8 under the provisions of this section has the initial
9 burden of making a prima facie showing that the claim
10 against which the motion is made arises out of a
11 statement, document or conduct described in
12 subsection (2) of this section. If the defendant meets
13 this burden, the burden shifts to the plaintiff in the
14 action to establish that there is a probability that the
15 plaintiff will prevail on the claim by presenting
16 substantial evidence to support a prima facie case. If
17 the plaintiff meets this burden, the court shall deny the
18 motion.

19 (4) In making a determination under subsection (1) of
20 this section, the court shall consider pleadings and
supporting and opposing affidavits stating the facts
upon which the liability or defense is based.

(5) If the court determines that the plaintiff has
established a probability that the plaintiff will prevail
on the claim:

(a) The fact that the determination has been made
and the substance of the determination may not be
admitted in evidence at any later stage of the case; and

(b) The determination does not affect the burden of
proof or standard of proof that is applied in the
proceeding.

1 **2. ORS 31.150(2)(b) Applies to Maria’s Statements to Police.**

2 Maria was interviewed by police investigating the mandatory child abuse
3 report made after her youngest child told a teacher she had overheard her
4 father assaulting her mother. Any statements made by Maria to the
5 investigating officer were “made * * * in connection with an * * * other
6 proceeding authorized by law. . .” ORS 31.150(2)(b).

7 A statement made in a criminal investigation, as with statements made in
8 other investigations that lead or may lead to litigation, are statements “made * *
9 * in connection with a proceeding authorized by law.” *Wollam v. Brandt*, 154 Or
10 App 156 (1998); *see also Ramstead v. Morgan*, 219 Or 383, 388-393 (1959)
11 (collecting cases); 3 Restatement, Torts, Vol. 3, §§ 587 (“A party to a private
12 litigation or a private prosecutor or defendant in a criminal prosecution is
13 absolutely privileged to publish false and defamatory matter of another in
14 communications preliminary to a proposed judicial proceeding, or in the
15 institution of or during the course and as a part of a judicial proceeding in
16 which he participates, if the matter has some relation thereto. . . .” and 588 (“A
17 witness is absolutely privileged to publish false and defamatory matter of
18 another in communications preliminary to a proposed judicial proceeding and
19 as a part of a judicial proceeding in which he is testifying, if it has some relation

1 thereto."); *Parker v. Title & Trust Co.*, 233 F.2d 505 (9th Cir. 1956), *rehearing denied*
2 237 F.2d 423). This is particularly so when the societal interest at issue is
3 significant, as in the case of a rape investigation:

4
5 "[The] privilege] rests upon the same idea, that conduct
6 which otherwise would be actionable is to escape
7 liability because the defendant is acting in furtherance
8 of some interest of social importance, which is entitled
9 to protection even at the expense of uncompensated
10 harm to the plaintiff's reputation. The interest thus
11 favored may be one of the defendant himself, of a third
12 person, or of the general public. If it is one of
13 paramount importance, considerations of policy may
14 require that the defendant's immunity for false
15 statements be absolute, without regard to his purpose
16 or motive, or the reasonableness of his conduct. * * *."

11 Prosser, Torts § 114, p 776 (4th ed 1971).

12 Additionally, plaintiff's complaint does not specifically set forth what
13 allegedly false statements Maria actually made. Rather, he lumps his
14 allegations against her with those against the Snore-egonian, accusing both of
15 falsely reporting he had sexually assaulted Maria. The only statements
16 referenced by plaintiff in his complaint are statements made in documents filed
17 by prosecutors in the criminal case and reported by the Snore-egonian.

18 Because the only external evidence of Maria's statements regarding
19 plaintiff are those that were made in court or those that were made during the

1 course of an investigation by law enforcement, she has met her initial burden of
2 making a *prima facie* showing that the claims against which this motion is made
3 “arise[] out of a statement * * * described in subsection (2) [of ORS 31.250].”
4 ORS 31.250(3). Having met this burden, “the burden shifts to the plaintiff in the
5 action to establish that there is a probability that the plaintiff will prevail on the
6 claim by presenting substantial evidence to support a prima facie case.” *Id.*

7 **3. ORS 31.150(2)(d) Also Applies to Maria’s Statements to Police.**

8 Maria’s statements to police were also “other conduct in furtherance of the
9 exercise of [her] constitutional right of petition * * * in connection with a public
10 issue or an issue of public interest.” ORS 31.250(d).

11 **A. Reporting Criminal Activity to Police is the Exercise of a**
12 **Constitutional Right to Petition the Government for a Redress of**
13 **Grievances.**

14 Maria’s statements to police were an exercise of her constitutional right to
15 petition the government for a redress of her grievance that plaintiff sexually and
16 physically assaulted her. Reporting criminal activity is protected by the First
17 Amendment¹ because the Supreme Court has made it clear that the right to

18 ¹ A similar provision exists in the Oregon Constitution, which is equally
19 applicable to Maria’s statements to police:

20 No law shall be passed restraining the free

Page 7 - SPECIAL MOTION TO STRIKE PURSUANT TO ORS 31.150
(ANTI-S.L.A.P.P. STATUTE)

LAW OFFICE OF ERIN OLSON, P.C.

1631 NE BROADWAY STREET #816, PORTLAND, OREGON 97232-1425
TEL (503) 546-3150 * EOLSON@ERINOLSONLAW.COM

1 petition includes “all departments of the Government.” *California Motor Transp.*
2 *Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *see also Gable v. Lewis*, 201 F.3d
3 769, 771 (6th Cir. 2000) (“Submission of complaints and criticisms to non-
4 legislative and nonjudicial public agencies like a police department constitutes
5 petitioning activity protected by the petition clause”); *Estate of Morris ex rel.*
6 *Morris v. Dapolito*, 297 F. Supp. 2d 680, 692 (S.D.N.Y. 2004) (swearing out a
7 criminal complaint against a high school teacher for assault and seeking his
8 arrest were protected First Amendment petitioning activities); *Lott v. Andrews*
9 *Ctr.*, 259 F.Supp.2d 564, 568 (E.D. Tex. 2003) (“There is no doubt that filing a
10 legitimate criminal complaint with law enforcement officials constitutes an
11 exercise of the First Amendment right”); *United States v. Hylton*, 558 F.Supp. 872,
12 874 (S.D. Tex. 1982) (same); *Curry v. State*, 811 So.2d 736, 743 (Fla. Dist. Ct. App.
13 2002) (complaints, though numerous, to law enforcement agencies are protected
14 First Amendment activity regardless of “unsavory motivation” of petitioner).

17 expression of opinion, or restricting the right to
18 speak, write, or print freely on any subject
19 whatever; but every person shall be responsible for
the abuse of this right.

20 Or. Const. Art. I, § 8.

**Page 8 - SPECIAL MOTION TO STRIKE PURSUANT TO ORS 31.150
(ANTI-S.L.A.P.P. STATUTE)**

LAW OFFICE OF ERIN OLSON, P.C.

1631 NE BROADWAY STREET #816, PORTLAND, OREGON 97232-1425
TEL (503) 546-3150 * EOLSON@ERINOLSONLAW.COM

1 Moreover, while Maria had no legal requirement to report plaintiff's sexual
2 and physical assaults of her, public policy has for centuries either required or
3 strongly encouraged private citizens to report criminal activity:

4 "Concealment of crime has been condemned
5 throughout our history. The citizen's duty to "raise the
6 'hue and cry' and report felonies to the authorities,"
7 *Branzburg v. Hayes*, 408 U.S. 665, 696 (1972), was an
8 established tenet of Anglo-Saxon law at least as early as
9 the 13th century. 2 W. Holdsworth, *History of English*
10 *Law* 101-102 (3d ed. 1927); 4 *id.*, at 521-522; *see* Statute
11 of Westminster First, 3 Edw. 1, ch. 9, p. 43 (1275);
12 Statute of Westminster Second, 13 Edw. 1, chs. 1, 4, and
13 6, pp. 112-115 (1285). The first Congress of the United
States enacted a statute imposing criminal penalties
upon anyone who, "having knowledge of the actual
commission of [certain felonies,] shall conceal, and not
as soon as may be disclose and make known the same
to [the appropriate] authority. . . ." Act of Apr. 30, 1790,
§ 6, 1 Stat. 113.^[2] Although the term "misprision of
felony" now has an archaic ring, gross indifference to
the duty to report known criminal behavior remains a
badge of irresponsible citizenship."

14 *Roberts v. United States*, 445 U.S. 552, 557-58 (1980). Indeed, such information has
15 been privileged for centuries: "[I]nformation which [a private citizen] has of the
16
17

18
19 ² The statute, as amended, is still in effect. 18 U.S.C. § 4. It has been construed
20 to require "both knowledge of a crime and some affirmative act of concealment
or participation." *See Branzburg v. Hayes*, 408 U.S. 665, 696, n. 36 (1972).

1 commission of an offence against [the laws of his country] * * * is a privileged
2 and confidential communication, for which no action of libel or slander will lie.”
3 *In re Quarles and Butler*, 158 U.S. 532, 535-36 (1895).

4 As to statements made in the FAPA petition, in Oregon, a statement made
5 during the course of a judicial proceeding is absolutely privileged. *Vasquez v.*
6 *Courtney*, 276 Or 1053 (1976) (“Absolute immunity attaches to all statements
7 made in the course of, or incidental to, a judicial proceeding, so long as they are
8 relevant to the proceedings.”).

9
10 **B. Maria’s Statements to Police Were Made in Connection
with a Public Issue or an Issue of Public Interest.**

11 A serious crime committed by an elected official – a person in whom the
12 public places its trust to uphold the law - is both a “public issue” and an “issue of
13 public interest.” *See State v. Durbin*, 335 Or 183 (2003) (referring to the public
14 interest in the observance of the law and the administration of justice); *see also In*
15 *Defense of Animals v. OHSU*, 199 Or App 160, 188 (2005) (“A matter or action is
16 commonly understood to be ‘in the public interest’ when it affects the
17 community or society as a whole, in contrast to a concern or interest of a private
18 individual or entity); *Black’s Law Dictionary* 1266 (8th ed 2004) (defining “public
19 interest” as the “general welfare of the public that warrants recognition and

1 protection" and as "[s]omething in which the public as a whole has a stake; esp.,
2 an interest that justifies governmental regulation"); accord *Unelko Corp. v. Rooney*,
3 912 F.2d 1049, 1056 (9th Cir. 1990) (defamatory statement a matter of public
4 concern because it "was of general interest and was made available to the general
5 public"). See also *Mullen v. Meredith Corp.*, 271 Or App 698, 705-708 and n. 2
6 (2015) (discussing what constitutes an issue of public interest); *Neumann v. Liles*,
7 295 Or App 340, 345 (2018) (published review of a wedding venue is an "issue of
8 public interest"); *Englert v. MacDonnell*, Civil Case No. 05-1863-AA, May 10, 2006
9 (Aiken, J.) (statements in an ethics complaint filed against a forensic scientist
10 with a professional association he belonged to "constituted an exercise of free
11 speech in connection with a public issue.").

12 While the right to petition the government for redress of grievances is not
13 absolute, e.g. *McDonald v. Smith*, 472 U.S. 479 (1985), for purposes of meeting her
14 initial burden under ORS 31.150(2)(d), Maria must only make a *prima facie*
15 showing that her statements to law enforcement and her FAPA petition
16 constituted "conduct in furtherance of the exercise of [his] constitutional right of
17 petition * * * in connection with a public issue or an issue of public interest." She
18 has met that burden, and now plaintiff must "establish that there is a probability
19

1 that [he] will prevail on the claim by presenting substantial evidence to support a
2 prima facie case." ORS 31.150(3).

3 **CONCLUSION**

4 For the reasons set forth herein and those to be presented at oral argument,
5 defendant Maria asks the court pursuant to ORS 31.150 to strike the claim against
6 her in this lawsuit.

7 Further, Maria asks the court to award her costs and attorney fees pursuant
8 to ORS 31.152(3).

9 Dated: December 31, 2022.

10 _____
11 Erin K. Olson, OSB 934776
12 Attorney for Defendant Maria

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2022, I served a true copy of the foregoing document on the following counsel of record by prepaid first-class mail:

Attorney for Steven

Attorney for Snore-egonian

Dated: December 31, 2022.

Erin K. Olson