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No. CAAP-26-0000076
IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

KENNETH LAWSON,

Plaintiff-Appellant,

v.

UNIVERSITY OF HAWAII AT MĀNOA,
CAMILLE NELSON in her individual capacity,
MICHAEL BRUNO in his individual capacity,
JOHN DOES 1–10, JANE DOES 1–10, DOE
CORPORATIONS 1–10, DOE PARTNERSHIPS
1–10, DOE UNINCORPORATED
ORGANIZATIONS 1–10, DOE ENTITIES 1–10,
and DOE GOVERNMENTAL AGENCIES 1–10,

Defendants.

CAMILLE NELSON,

Counterclaimant-Appellee,

v.

KENNETH LAWSON,

*Counterclaim-
Defendant/Appellant.*

Civil No. 1CCV-25-0000036 (KLH)
(Other Civil Action)

APPEAL FROM THE:

ORDER DENYING
PLAINTIFF/COUNTERCLAIM-
DEFENDANT KENNETH LAWSON'S
MOTION FOR DISMISSAL OF
DEFENDANT CAMILLE NELSON'S
COUNTERCLAIM AGAINST
PLAINTIFF KENNETH L. LAWSON
FILED ON JANUARY 21, 2026 [DKT.
114 ORDD]; CERTIFICATE OF
SERVICE

FIRST CIRCUIT COURT

Trial Date: None
Judge: Hon. Karin L. Holma

**BRIEF OF *AMICUS CURIAE* FOUNDATION FOR INDIVIDUAL RIGHTS AND
EXPRESSION IN SUPPORT OF PLAINTIFF/COUNTERCLAIM-DEFENDANT
KENNETH LAWSON**

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SUMMARY OF ARGUMENT

This case concerns speech at the heart of the First Amendment’s protection: commentary as a citizen on matters of public concern—and here, speech about the governance of public institutions. The Hawai‘i legislature sought to protect the “rights of citizens to vigorously participate in government” by passing the Hawai‘i Public Expression Protection Act (“HPEPA”) in 2022, *codified at* HRS §§ 634G-1, *et seq.* But in denying the motion to dismiss the defendant’s speech-targeting counterclaims, the circuit court negated that statutory protection by erroneously relying on inapposite public employee speech and tort standards instead of applicable HPEPA law.

In February 2023, Kenneth Lawson, a tenured law professor at the University of Hawai‘i at Manoa Law School, criticized law school dean Camille Nelson at a faculty meeting for failing to include any black panelists in a planned Black History Month event. In the ensuing exchange, he questioned Nelson’s understanding of American racism because, as a black woman born and raised in Jamaica, she did not personally experience the Civil Rights Movement, Jim Crow segregation, or forced bussing. After the meeting, in coordination with the Black Law Students’ Association, Lawson emailed the Law School listserv calling for a boycott of the event. He also accused Nelson of being “highly dismissive of the pain” the planned panel’s composition caused. After Lawson filed this action against Nelson and the University of Hawai‘i in the First Circuit Court for breach of contract and other state law claims arising from a salary dispute, Nelson counterclaimed against Lawson for defamation and intentional infliction of emotional distress based on this lawsuit, his comments at the February 2023 faculty meeting, and his subsequent emails.

That’s exactly when HPEPA should have come in. It empowers courts to take swift action to “protect citizens from the chilling effect of retributive strategic lawsuits against public

participation” (“SLAPPs”) by providing “clearer instructions for the courts on how to fairly and expeditiously dispose of SLAPP claims.” S.B. No. 3329 § 1, 2022 Haw. Sess. Laws. In that way, HPEPA gives courts a vital gatekeeping tool to ensure that retaliatory lawsuits—like Nelson’s counterclaims here—do not threaten protected speech with the pain of financial loss.

Time and again, FIRE has seen the chilling cost of SLAPP suits filed against ordinary citizens across the country for participating in public debate. A robust anti-SLAPP statute like HPEPA discourages plaintiffs from abusing the courts to punish their critics with the cost of defending meritless legal claims—but only if the courts fulfill their statutory obligation and apply anti-SLAPP laws as legislatures intended.

Here, the circuit court failed to perform its gatekeeping role. Despite the legislature’s stated intention that courts should liberally apply HPEPA to protect free speech, the court below *restricted* the statute’s scope by ignoring its matter-of-public-concern standard. Instead, it borrowed the standard from cases involving public employer discipline of employee speech, simply because the case involves a law professor and his law school’s dean. This Court should thus reverse the decision below and remand for the circuit court to evaluate Lawson’s motion to dismiss Nelson’s claims under the proper legal standards. By so doing, the Court will avoid encouraging further vexatious litigation targeting Hawai‘i citizens for speech protected by the First Amendment.

ARGUMENT

I. Courts must construe HPEPA to further its purpose of protecting the exercise of free-speech rights.

States adopt statutes like HPEPA because too often, powerful people facing criticism on matters of public concern abuse the legal system to silence their critics. It is beyond dispute that “speech on public issues occupies the highest rung of the hierarchy of First Amendment values.”

Snyder v. Phelps, 562 U.S. 443, 452 (2011) (citation omitted). Yet FIRE has seen firsthand attempts to abuse civil litigation to silence such speech and has defended those sued for speaking out on matters of public concern.

From the President suing a political pollster,¹ to a well-heeled landowner suing those who opposed his controversial airstrip,² to a state senator suing a historian in what should have simply been an academic dispute,³ public officials and others use SLAPPs to bully critics into silence. The playbook is simple: Force the speaker into a no-win choice of either self-censoring or facing the financial burden of litigating to defend their First Amendment rights, while chilling other critics from daring to speak out.⁴

The Hawai‘i Legislature recognized “the rise in SLAPP suits nationally and the need to strengthen protection for citizen participation in government.” S.B. 3329 § 1, 2022 Haw. Sess. Laws. And it recognized that Hawai‘i’s existing anti-SLAPP law, passed in 2002, had failed to protect citizen participation in government “despite the broad intentions of the legislature that the law ‘shall be construed liberally to fully effectuate its purposes and intent.’” *Id.* So the legislature redoubled its efforts, passing a stronger anti-SLAPP law to provide “clearer instructions for the courts on how to fairly and expeditiously dispose of SLAPP claims.” *Id.* To ensure Hawai‘i citizens

¹ Adam Steinbaugh & Conor Fitzpatrick, “FIRE’s defense of pollster J. Ann Selzer against Donald Trump’s lawsuit is First Amendment 101,” FIRE (Jan. 7, 2025), <https://perma.cc/Y8F3-MHCX>.

² *VICTORY! Court dismisses Trump appointee’s speech-chilling lawsuit against Idaho conservation officer*, FIRE (June 29, 2026), <https://perma.cc/29JU-3T9P>.

³ *LAWSUIT: Historian fights back after Pennsylvania state senator sues him for criticizing book*, FIRE (Sept. 19, 2024), <https://perma.cc/M8FM-AWDS>.

⁴ For instance, President Trump, despite losing his lawsuit against an author who suggested Trump’s net worth was lower than he claimed, told a reporter he was happy with the result because he made the author “miserable” and forced him to spend a significant sum on legal fees. Paul Farhi, *What really gets under Trump’s skin? A reporter questioning his net worth*, THE WASH. POST (Mar. 8, 2016), https://www.washingtonpost.com/lifestyle/style/that-time-trump-sued-over-the-size-of-hiswallet/2016/03/08/785dee3e-e4c2-11e5-b0fd-073d5930a7b7_story.html.

would have strong protection against SLAPP claims, the legislature adopted in full the model Uniform Public Expression Protection Act drafted by the Uniform Law Commission and instructed courts to interpret the statute's provisions liberally to protect freedom of speech. *Id.* at §§ 1, 2(10).

In other states, strong anti-SLAPP laws like HPEPA have helped speakers protect their expressive freedoms in a range of contexts. *See, e.g., Paul v. Friedman*, 95 Cal. App. 4th 853, 864 (Cal Ct. App. 2002) (providing examples). This has included an employee sued for speaking about alleged workplace misconduct, *Comstock v. Aber*, 212 Cal. App. 4th 931, 954 (Cal. Ct. App. 2012), and a woman who protested an assisted living facility's treatment of her brother, *LMV-AL Ventures, LLC v. Hemphill*, 2020 WL 1146403, at *2 (Tex. App. March 6, 2020).

Anti-SLAPP laws also weed out vexatious claims, reduce cluttered dockets, and provide courts a vital tool to preserve the expressive rights guaranteed by the First Amendment. A vigilant court is the principal barrier between a SLAPP and the threat it poses to speech about important public issues. Anti-SLAPP laws facilitate that role, directing courts to assess the viability of a speech-targeting lawsuit *before* the costs of discovery and trial sink in. *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 839 (9th Cir. 2001).

To effect these laws' high purpose, courts must apply them faithfully, broadly interpreting what speech the statute protects and carefully evaluating the merits of the plaintiff's claims. But the court below instead construed narrowly the limits of protected speech that HPEPA safeguards, evaluating Lawson's speech under an inapposite public employer discipline standard. Only by correcting this error and properly evaluating Nelson's claims with an eye toward HPEPA's speech-protective aims can this Court protect expression across the state and fulfill the legislature's intent in enacting HPEPA.

II. Lawson's speech was protected within the meaning of HPEPA.

The circuit court failed to properly perform its HPEPA gatekeeper role. It allowed Nelson's claims to overcome Lawson's anti-SLAPP motion by limiting the breadth of statutory protection through the improper importation of a standard from public employer cases concerning workplace discipline. That error ignored the very purpose of HPEPA, which the legislature intended to apply to all claims brought against speech that addresses a matter of public concern and does not fall into one of the narrow categories of unprotected speech. FIRE thus urges this Court to apply the standard adopted by the Hawai'i legislature in § 634G-2(a)(3) to hold that Lawson and other state employees receive the same protection from SLAPP suits as other Hawai'ians do.

A. The speech HPEPA protects is not limited to public employee speech the First Amendment shields from employer discipline.

The court below applied the wrong standard to Lawson's anti-SLAPP motion by confusing HPEPA's protection for speech on matters of public concern with a similar criterion taken from the test for determining when a public employer may constitutionally sanction an employee's speech. First Amendment jurisprudence protecting public employees from workplace discipline for their speech analyzes whether they spoke as citizens on a matter of public concern and, if so, whether their interest in speaking outweighs the public employer's interests in efficiently delivering public services. *Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Pickering v. Bd. of Ed.*, 391 U.S. 563, 568 (1968). Under the *Garcetti/Pickering* line of cases, state employers may discipline employees for speech undertaken as part of their employment or speech as a private citizen on a matter of public concern that "impairs discipline by superiors or harmony among co-workers" or interferes with regular workplace operations. *Rankin v. McPherson*, 483 U.S. 378, 388 (1987). But absent such a showing by the employer, the First Amendment protects such speech outside of job functions.

The circuit court relied on these public employer precedents to hold HPEPA did not bar Nelson’s claims, because (as the court saw it) Lawson’s speech “constituted ‘personal and inflammatory confrontation’” that was neither fully protected nor on a manner of public concern. Order Denying Lawson’s Motion for Dismissal of Nelson’s Counterclaim, Dkt. 114 at 7. But limiting HPEPA’s protection to employee speech that the First Amendment shields from *workplace discipline*, as the circuit court did, not only disregards the statutory definition the Hawai‘i legislature adopted, but undermines the law’s purpose of protecting debate on public issues from the costs of private litigation.

Contrary to the circuit court’s reasoning, the employment relationship between the parties and the intemperate nature of the speech are irrelevant to determining whether speech satisfies § 634G-2(a)(3). *See Lowell v. Wright*, 369 Or. 806, 830–31 (Or. 2022) (distinguishing workplace discipline cases, in which the public concern inquiry is a tool for determining the parties’ relationship as either citizen-government or employer-employee, from defamation cases, where the object of the inquiry is whether the speech was on a matter of public concern). HPEPA’s application to claims against individuals who exercise their freedom of speech on a matter of public concern, § 634G-2(a)(3), derives from its overarching purpose of “protect[ing] citizens from the chilling effect of retributive strategic lawsuits against public participation” by “shift[ing] the burden of litigation back to the party bringing the SLAPP claim.” S.B. No. 3329 § 1. The statute does not contemplate the existence of special standards based on the relationship between the parties—public employer/public employee, or otherwise. To the contrary, the Hawai‘i legislature directed that § 634G “shall be construed liberally to fully effectuate its purposes and intent to protect the right of freedom of speech ... guaranteed by the United States Constitution or Hawai‘i State Constitution.” § 634G-10.

Correctly construed, HPEPA applies to all causes of action based on *any* speech that is protected by the U.S. or Hawai‘i constitutions and involves a matter of public concern. HRS § 634G-2(a)(3). That means HPEPA applies so long as the speech does not fall into one of the few narrowly defined categories of unprotected expression like obscenity or incitement, *United States v. Stevens*, 559 U.S. 460, 468–69 (2010), and it can in substance, as the Supreme Court put it in identifying what is of public concern, “be fairly considered as relating to any matter of political, social, or other concern to the community.” *See Snyder*, 562 U.S. at 453 (internal citation omitted).

The two public employer precedents the circuit court misguidedly relied on, *LeFande v. District of Columbia* and *Dunn v. Carroll*, considered the “personal and inflammatory” nature of employees’ speech only in the context of addressing whether the First Amendment protected a state employee *from workplace discipline* based on workplace speech. *See LeFande*, 841 F.3d 485, 496 (D.C. Cir. 2016); *Dunn*, 40 F.3d 287, 293 (8th Cir. 1994). This distinction is critical, because the question before this Court is not whether Lawson’s speech is protected by the First Amendment *in some other context*, but whether his speech falls within the statutory definition of speech protected by HPEPA—an inquiry which *LeFande* and *Dunn* cannot answer.

That definition is not limited by the parties’ employment relationship. Outside the narrow circumstances of workplace discipline, the First Amendment does not turn on the placidity of speech or the even-temperedness of the speaker. While a state employer is not required to tolerate employees’ intemperate speech (even on matters of public concern) if it is likely to disrupt the workplace, *Connick v. Myers*, 461 U.S. 138, 146, 154 (1983), the First Amendment otherwise “demands a tolerance of ‘verbal tumult, discord, and even offensive utterance,’ as ‘necessary side effects of ... the process of open debate.’” *Waters v. Churchill*, 511 U.S. 661, 672 (1994) (internal citation omitted); *Cohen v. California*, 403 U.S. 15, 26 (1971) (holding the First Amendment

protects the “emotive function” of expression, which “may often be the more important element of the overall message sought to be communicated”). There is no question that the First Amendment protects fiery rhetoric and ad hominem attacks specifically in the context of defamation and other tort claims. *See Snyder*, 562 U.S. at 454–55; *Dworkin v. Hustler Mag., Inc.*, 867 F.2d 1188, 1195 (9th Cir. 1989) (holding that ad hominem attacks “vilifying” an opponent uttered in the context of an ongoing political debate were protected speech on a matter of public concern and not subject to claims of defamation and intentional infliction of emotional distress). Consequently, they fall equally within the protection provided by HPEPA, which the circuit court should have faithfully applied.

B. Lawson spoke on a matter of public concern.

Viewed through the proper lens, HPEPA plainly protects Lawson because he spoke on a matter of public concern. Speech discusses matters of public concern when it “can be fairly considered as relating to any matter of political, social, or other concern to the community[.]” *Snyder*, 562 U.S. at 453 (internal citation omitted). Matters of public concern include even those topics in which only “a relatively small segment of the general public” may take interest. *Levinsky’s, Inc. v. Wal-Mart Stores, Inc.*, 127 F.3d 122, 132 (1st Cir. 1997) (internal citation omitted); *see also Jensen v. Brown*, 131 F.4th 677, 688 (9th Cir. 2025). Further, any statute regulating speech must be judged “against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Thus, a professor discussing the restructuring of his department, *Demers v. Austin*, 746 F.3d 402, 406–07 (9th Cir.

2014), and a math professor’s criticism of his department’s policies, *Jensen*, 131 F.4th at 688, both address matters of public concern.

Courts have long recognized that discussions of race and racism, and how universities should handle such discussions, are issues of significant public concern.⁵ *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021); *Reges v. Cauce*, 175 F.4th 1014 (9th Cir. 2026) (holding that professor’s inclusion of a mock land acknowledgment in his course syllabus was speech on a matter of public concern and protected from university discipline). Disputes over “racial, religious, or other such discrimination by public officials” involve the public’s “deep and abiding interest” in “governmental conduct.” *Alpha Energy Saves, Inc. v. Hansen*, 381 F.3d 917, 926–27 (9th Cir. 2004). Here, Lawson’s speech at the February 17, 2023 faculty meeting and in the emails sent after the meeting concerned university governance regarding presentation of racial issues and the Civil Rights Movement.

While Lawson’s comments about Nelson’s background may have touched on matters of personal identity, they did so in support of his argument about the importance of presenting the experiences and perspectives of American-born black individuals—an issue of public concern. Matters of “personal interest” are distinguished from those of public concern not by the mere

⁵ The media attention devoted to such issues demonstrates they are matters of intense public concern. See, e.g., Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, BROOKINGS INST. (Nov. 2021), <https://www.brookings.edu/articles/why-are-states-banning-critical-race-theory/> (discussing how critical race theory became a major “flash point” in cultural discussions of racism); Lilah Burke, *Black Workers and the University*, INSIDE HIGHER ED (Oct. 26, 2020), <https://www.insidehighered.com/news/2020/10/27/black-workers-universities-often-are-left-out-conversations-about-race-and-higher> (reporting on black workers at universities who argue that they are left out of conversations about racism); Beverley Daniel Taytum, *Together and Alone? The Challenge of Talking about Racism on Campus*, DAEDALUS (Oct. 1, 2019) <https://direct.mit.edu/daed/article/148/4/79/27267/Together-and-Alone-The-Challenge-of-Talking-about> (arguing that universities must develop programs to support the learning needs of both white and minority students in the context of majority-white institutions).

inclusion of personal biographical details, but because the comments address issues of “individual personnel disputes and grievances’ ... that would be of ‘no relevance to the public’s evaluation of the performance of governmental agencies’” as opposed to broader issues of social or political governance. *Desrochers v. City of San Bernadino*, 572 F.3d 703, 710 (9th Cir. 2009) (quoting *Coszalter v. City of Salem*, 320 F.3d 968, 973 (9th Cir. 2003)). Nor does the presence of ad hominem attacks or angry, inflammatory speech directed at specific individuals alter this calculus. *Dworkin*, 867 F.2d at 1191 (magazine’s derogatory and sexually explicit features mocking prominent anti-pornography advocate were on a matter of public concern because the images were “in the context of an ongoing political debate” and sought to belittle the advocate’s viewpoint).

Lawson addressed the presentation of racial issues within the university, a matter of clear public concern. Because his speech, including the statements directed at Nelson, occurred in the context of that larger discussion, it addressed in its entirety a matter of public concern. This means that the circuit court erred by relying solely on public employer precedents rather than under HPEPA’s matter-of-public-concern standard. This Court should remand for the circuit court to apply the proper legal standards.

CONCLUSION

The circuit court failed to appreciate the extent of HPEPA’s protection, disregarded the broad statutory definition of covered speech the Hawai‘i legislature adopted, and allowed the lawsuit to proceed even though that will only chill future criticisms of public officials. To ensure Hawai‘i’s anti-SLAPP law protects debate on public issues, this Court should reverse the decision below and remand for the circuit court to evaluate Lawson’s motion to dismiss Nelson’s claims under the proper standards. Only by doing so can the Court avoid encouraging further vexatious litigation that targets citizens in Hawai‘i for protected criticism of government officials.

Dated: Honolulu, Hawai'i, September 2, 2026.

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The undersigned hereby certifies that a copy of the above documents was duly served upon the following counsel and parties by way of JEFS on September 2, 2026:

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