

" [CHAPTER 634F  
CITIZEN PARTICIPATION IN GOVERNMENT]

Section

- 634F-1 Definitions
- 634F-2 Required procedures; motion
- 634F-3 Relationship to other laws
- 634F-4 Rule of construction

## Law Journals and Reviews

Hawai'i's Response to Strategic Litigation Against Public Participation and the Protection of Citizens' Right to Petition the Government. 24 UH L. Rev. 411 (2001).

### Case Notes

Given the allegations in plaintiff's complaint, the filing of the office of disciplinary counsel (ODC) complaint by defendant against plaintiff did not constitute "public participation" before a governmental body, as defined in §634F-1, because the ODC complaint did not involve "oral or written testimony" but rather set forth allegations and was a request to the ODC for an investigation. Based on the plain meaning of "testimony", even when liberally construed, the ODC complaint and allegations contained therein were not "testimony" and were not protected under this chapter; legislative history of chapter discussed. 129 H. 95 (App.), 294 P.3d 1081 (2013).

With respect to plaintiff's claims based on defendant siblings' communications with the mayor, the mayor's assistant, and members of the county council, the communications did not constitute "testimony" submitted or provided "during the course of a governmental proceeding" and did not constitute a strategic lawsuit against public participation. Even under a liberal construction of §634F-1, nothing in this chapter suggests that an individual's unsolicited and informal communication with a government official, when there is no formal process or procedure in progress, constitutes "testimony submitted or provided to a governmental body during the course of a governmental proceeding"; legislative history of chapter discussed. 129 H. 95 (App.), 294 P.3d 1081 (2013).

" **[§634F-1] Definitions.** As used in this chapter, unless the context otherwise requires:

"Governmental body" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority.

"Judicial claim" or "claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

"Lacks substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

"Motion" includes any motion to dismiss, for summary judgment, for judgment on the pleadings or to strike, a

demurrer, or any other judicial pleading filed to dispose of a judicial claim.

"Moving party" means any person on whose behalf the motion described in section 634F-2 is filed seeking dismissal of the judicial claim.

"Person" includes any individual, corporation, association, organization, partnership, two or more persons having a joint or common interest, or other legal entity.

"Public participation" means any oral or written testimony submitted or provided to a governmental body during the course of a governmental proceeding.

"Responding party" means any person against whom the motion described in section 634F-2 is filed.

"SLAPP" means a strategic lawsuit against public participation and refers to a lawsuit that lacks substantial justification or is interposed for delay or harassment and that is solely based on the party's public participation before a governmental body. [L 2002, c 187, pt of §2]

### **Case Notes**

Given the allegations in plaintiff's complaint, the filing of the office of disciplinary counsel (ODC) complaint by defendant against plaintiff did not constitute "public participation" before a governmental body, as defined in this section, because the ODC complaint did not involve "oral or written testimony" but rather set forth allegations and was a request to the ODC for an investigation. Based on the plain meaning of "testimony", even when liberally construed, the ODC complaint and allegations contained therein were not "testimony" and were not protected under chapter 634F. 129 H. 95 (App.), 294 P.3d 1081 (2013).

With respect to plaintiff's claims based on defendant siblings' communications with the mayor, the mayor's assistant, and members of the county council, the communications did not constitute "testimony" submitted or provided "during the course of a governmental proceeding" and did not constitute a strategic lawsuit against public participation. Even under a liberal construction of this section, nothing in chapter 634F suggests that an individual's unsolicited and informal communication with a government official, when there is no formal process or procedure in progress, constitutes "testimony submitted or provided to a governmental body during the course of a governmental proceeding". 129 H. 95 (App.), 294 P.3d 1081 (2013).

" **[§634F-2] Required procedures; motion.** Notwithstanding any law to the contrary, including rules of court, upon the filing of any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or involves public participation and is a SLAPP lawsuit:

- (1) The motion shall be treated as a motion for judgment on the pleadings, matters outside the pleadings shall be excluded by the court, and the court shall expedite the hearing of the motion;
- (2) The moving party shall have a right:
  - (A) To an immediate appeal from a court order denying the motion; and
  - (B) To file an application for a writ of mandamus if the court fails to rule on the motion in an expedited fashion;
- (3) Discovery shall be suspended, pending decision on the motion and appeals;
- (4) The responding party shall:
  - (A) Without leave of court, have seven days to amend its pleadings to be pled with specificity, and shall include such supporting particulars as are peculiarly within the supporting pleader's knowledge; and
  - (B) Have the burden of proof and persuasion on the motion;
- (5) The court shall make its determination based upon the allegations contained in the pleadings;
- (6) The court shall grant the motion and dismiss the judicial claim, unless the responding party has demonstrated that more likely than not, the respondent's allegations do not constitute a SLAPP lawsuit as defined in section 634F-1;
- (7) Any governmental body to which the moving party's acts were directed or the attorney general in the case of a state governmental body, or the county attorney or corporation counsel in the case of a county governmental body may intervene to defend or otherwise support the moving party in the lawsuit;
- (8) The court shall award a moving party who prevails on the motion, without regard to any limits under state law:
  - (A) Actual damages or \$5,000, whichever is greater;
  - (B) Costs of suit, including reasonable attorneys' and expert witness fees, incurred in connection with the motion; and
  - (C) Such additional sanctions upon the responding party, its attorneys, or law firms as the court

determines shall be sufficient to deter repetition of the conduct and comparable conduct by others similarly situated; and

- (9) Any person damaged or injured by reason of a claim filed in violation of their rights under this chapter may seek relief in the form of a claim for actual or compensatory damages, as well as punitive damages, attorneys' fees, and costs, from the person responsible. [L 2002, c 187, pt of §2]

" **[\$634F-3] Relationship to other laws.** Nothing in this chapter shall limit or preclude any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions. [L 2002, c 187,pt of §2]

" **[\$634F-4] Rule of construction.** This chapter shall be construed liberally to fully effectuate its purposes and intent. [L 2002, c 187, pt of §2]