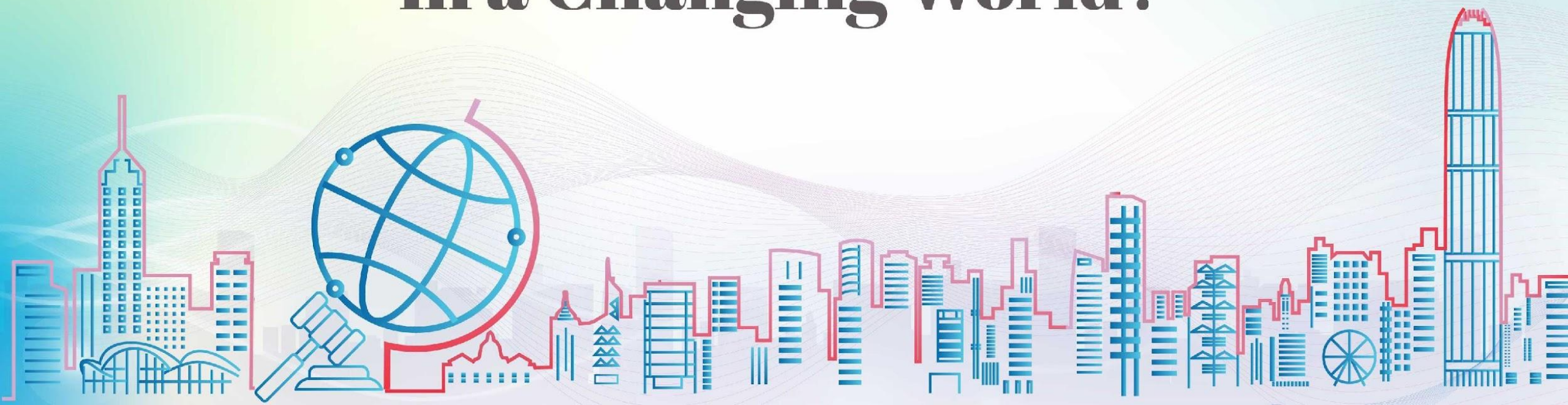




## **International Conference of Legal Regulators 2025**

# **New Ways to Regulate in a Changing World?**





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# SLAPP in the U.S.

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# Brief History of Anti-SLAPP (U.S.)

- 1980s: Term “SLAPP” popularized by Penelope Canan & George W. Pring from a 1988 article describing such suits.
  - Suits existed long before this stemming from tension with First Amendment Right to “petition for redress of grievances”
- Early 1990s: States begin enacting anti-SLAPP; California adopts § 425.16 in 1992.
- 1990s–2010s: Wider adoption throughout states with each state having different statutes
  - Federal-court applicability splits by circuit.
- 2020s: Push towards UPEPA harmonization.

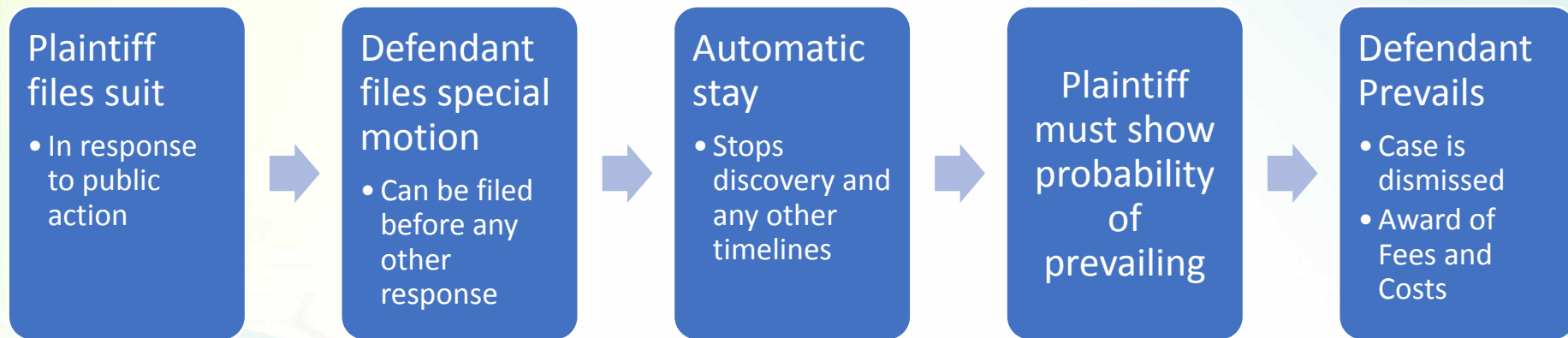


# How the U.S. Does Anti-SLAPP (Today)



- Core functions of anti-SLAPP right now are seen at the judicial level
- States with anti-SLAPP procedures utilize a special motion to allow defendants to terminate the lawsuit
  - Key factors
    - Motion has a very short timeline for hearing and decision
    - Prioritized over all other motion practice (usually stops discovery)
    - The defendant only need show that the lawsuit involved “protected activity,” after which the plaintiff must show that they are likely to succeed in their suit
    - Success by the defendant gets the case dismissed with and award of *attorney’s fees* and costs (attorney fee cases are not as frequent in the US)

# Anti-SLAPP: Typical Motion Flow



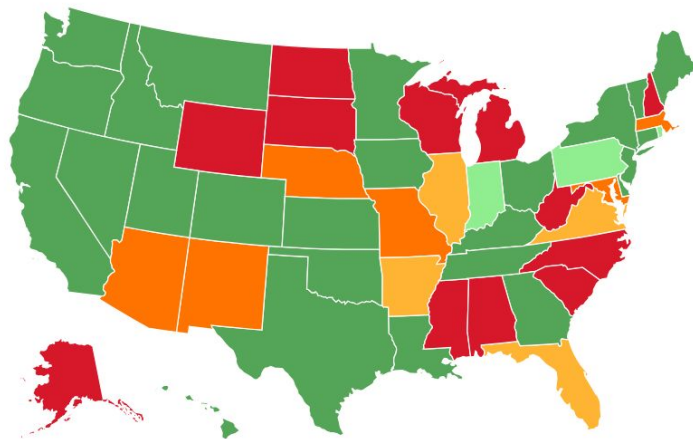
# Patchwork Across States & the UPEPA Trend

- Anti-SLAPP coverage varies widely by scope, burdens, stays, and fee rules
- Uniform Public Expression Protection Act (UPEPA) seeks harmonization
- Adoption is growing; evaluate the specific statute where you practice



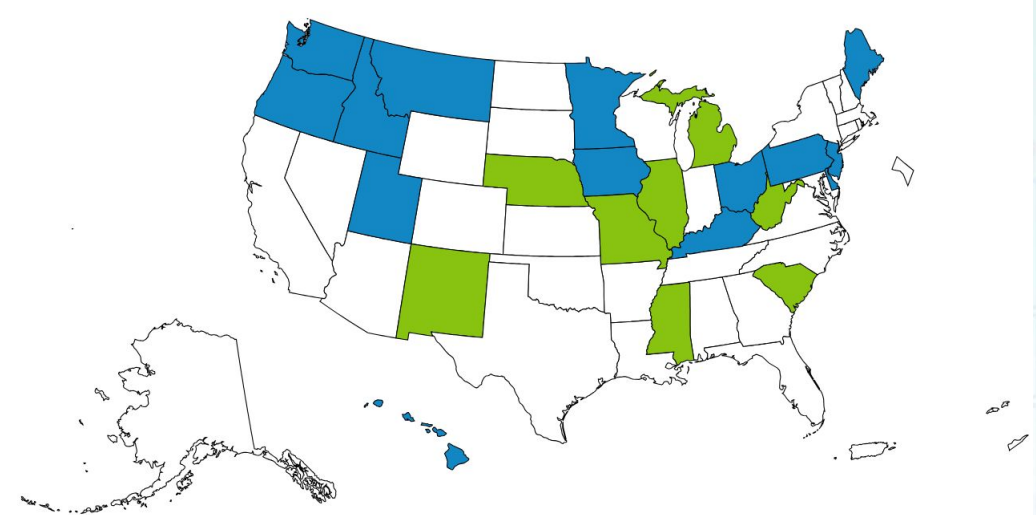
# Patchwork Across States & the UPEPA Trend

## Anti-SLAPP Statutes



From Institute for Free Speech Anti-SLAPP Report - <https://www.ifs.org/anti-slapp-report/>

## UPEPA Adoption

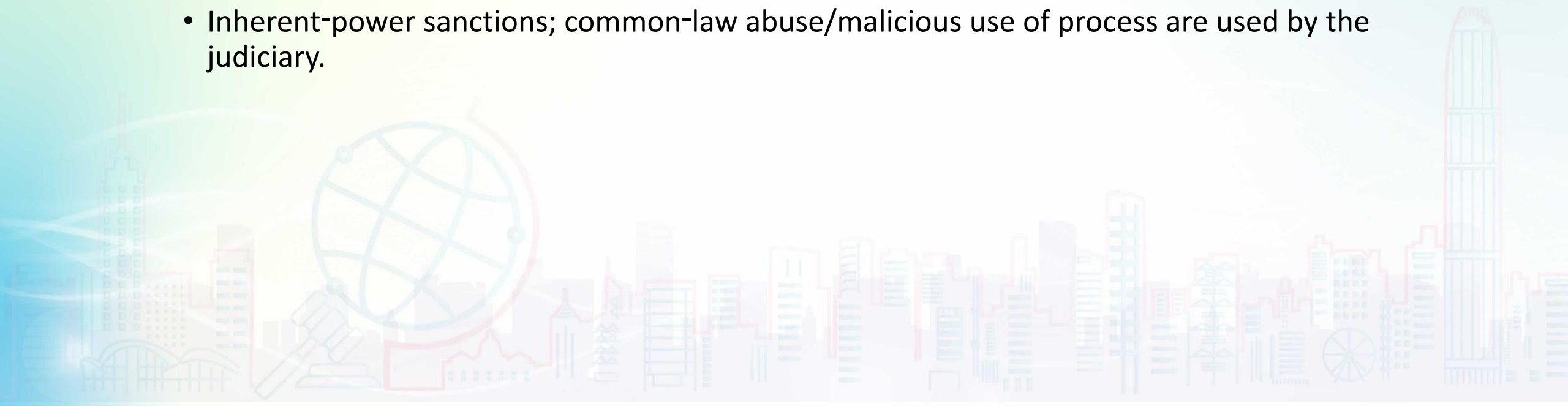


From Uniform Law Commission - <https://www.uniformlaws.org/committees/community-home?CommunityKey=4f486460-199c-49d7-9fac-05570be1e7b1>



# Other Options

- In states without anti-SLAPP, dependent on current options
  - Rule 12/56 – Motions to dismiss
  - Rule 11 – Motion for sanctions
  - 28 U.S.C. § 1927 (costs for vexations or unreasonable litigation)
  - Inherent-power sanctions; common-law abuse/malicious use of process are used by the judiciary.





# Other Options

On the regulatory side, the focus tends to certain Rules of Professional Conduct related to abuse of the process

- Rule 3.1 – Meritorious Claims
- Rule 3.2 – Expediting litigation
- Rule 3.3 – Candor to the tribunal
- Rule 3.4 – Fairness to opposing party/counsel
- Rule 4.4(a) – No means that have no substantial purpose other than to burden
- Rule 8.4(d) – Conduct prejudicial to the administration of justice

# Sanction ≠ Discipline

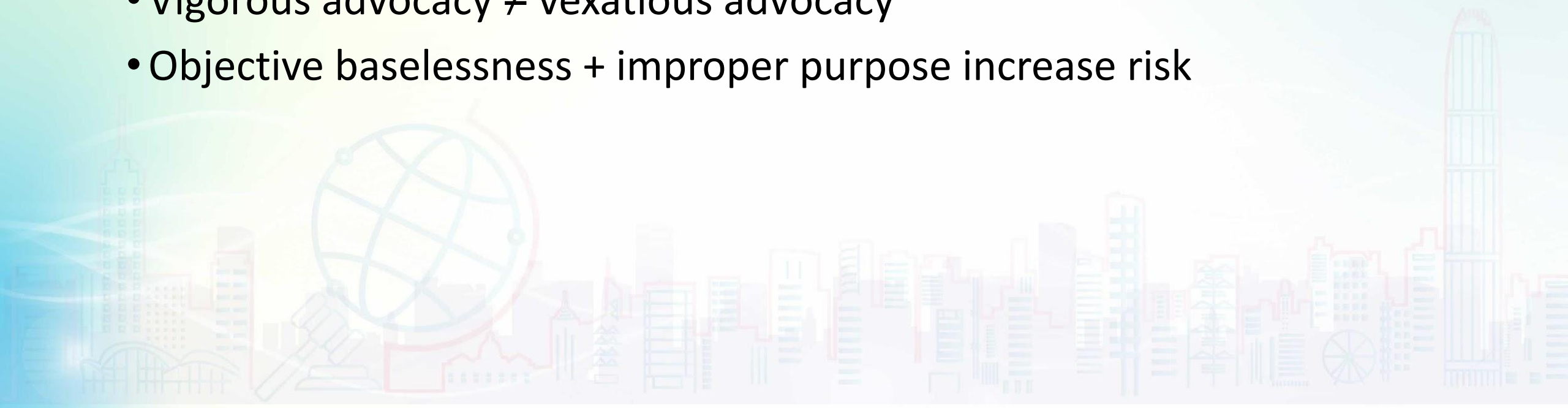


- Rule 3.1 is generally the focus, but is limited in its ability
- Court sanctions do not automatically equal Rule 3.1 violations
- Disciplinary authorities conduct independent assessments
- Focus: abuse of process determined through
  - Intent
  - Continued pattern
  - Harm
  - Mitigation

# Regulatory Framework: Rule 3.1



- Meritorious claims/defenses: good-faith basis in law and fact
  - Extremely broad to avoid the stifling of claims
  - An action is frivolous if the lawyer cannot make a good faith argument on the merits or support a good faith argument for change to existing law
- Vigorous advocacy ≠ vexatious advocacy
- Objective baselessness + improper purpose increase risk





# Discipline in Practice



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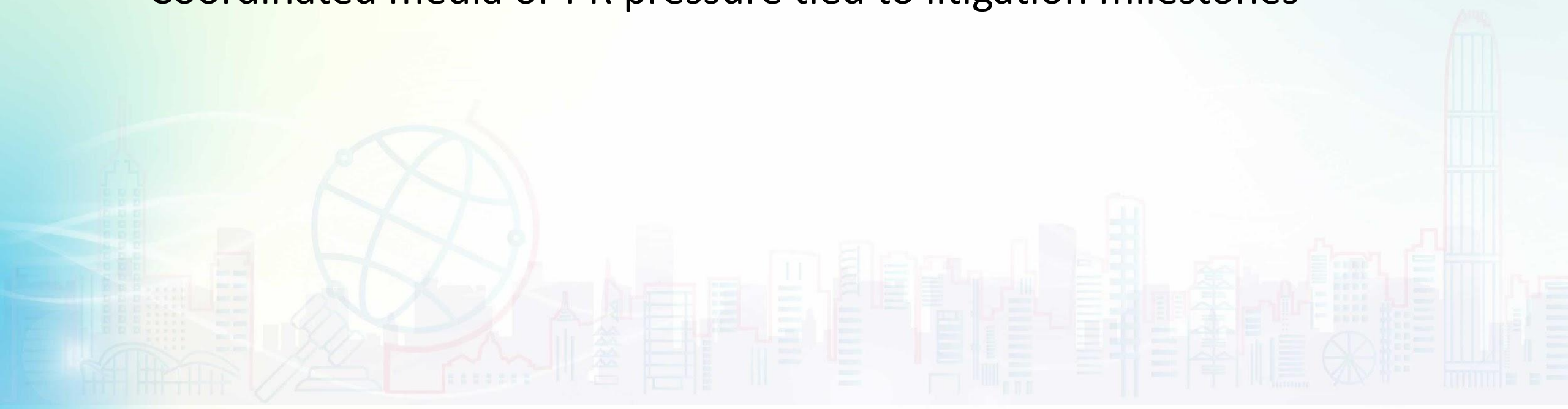
- Independent review of facts and purpose behind filings
- Patterns of meritless filings weigh heavily
- Sanctions already imposed by courts are relevant but not dispositive



# Red Flags for Regulators



- Objective baselessness + evidence of retaliatory motive
- Refilings after clear preclusion/jurisdictional loss
- Subpoenas aimed at identity or association with weak nexus
- Coordinated media or PR pressure tied to litigation milestones



# Oregon Lens: In re Ard



- In **January 2014**, Marlin Ard filed a new action for his client (high-school coach **Goertzen**) against the **school district** and two parents (**Moore** and **Corrigan**), while an earlier case filed in 2012 against other parents was still on appeal. The 2014 pleading raised claims the defense characterized as “**virtually identical**” to those in 2012 (centered on parent communications and a school-circulated **survey** about the coach’s performance).
- **Moore** and **Corrigan** filed an anti-SLAPP motion in court, and prevailed, recovering attorneys fees and costs.



# Oregon Lens: In re Ard

- Ard continued to litigate, filing a motion to set aside the Anti-SLAPP judgment based on “newly discovered evidence” in 2015
- The Court sanctioned Ard, noting that Ard falsely certified his motion and that it was not supported by facts or law
- Ard filed an action against the judge, alleging judicial misconduct and bias.
- The Bar subsequently charged Ard with RPC 8.4 – conduct prejudicial to the administration of justice – due to his false motion certification and continued proceedings against the judge.
- Ard was suspended for one year.