

March 27, 2023

Via Electronic Mail

Chairman Jeff Leach
House Judiciary Committee
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Chairman Leach:

I am the chief legal officer of Las Vegas Review-Journal, Inc.

I write to express our concerns with House Bill 2781. As currently written, HB 2781 would endanger the important free-speech protections in Texas's anti-SLAPP statute and thwart one of the law's core purposes of judicial economy. Weakening those protections will hurt all Texans and stands to have a particularly detrimental effect on media organizations and their ability to keep Texans informed about matters of public concern.

HB 2781 would eliminate the automatic stay of court proceedings when a motion to dismiss is found to be frivolous, untimely, or subject to a statutory exemption. While we understand that dealing with frivolous motions is up to the trial court's discretion, removing the stay for denials based on timeliness and applicability of statutory exemptions, both matters of law that need immediate appellate review, could subject news media organizations and anyone facing a SLAPP suit to needless legal expenses simply for covering or discussing important events in their communities.

Determining the timeliness of a motion to dismiss can be difficult in some cases especially when amended pleadings are involved as in the cases of *Kinder Morgan SACROC, LP v. Scurry Cnty.*¹ and in *Montelongo v. Abrea*.² In both cases, the Texas Supreme Court reversed trial courts that incorrectly ruled on the timeliness of a motion. Determinations of timeliness can also present a problem when determining the way in which statutory abatement periods interact with the anti-SLAPP deadlines. For instance, in the case of *Hearst Newspapers, LLC v. Status Lounge Inc.*, the trial court misapplied the law by insisting the anti-SLAPP motion should have been filed during the abatement period, something which had to be corrected through the appeal process.³ Because the newly added DTPA exemption has a similar abatement period, it is also a prime candidate for confusion by trial courts moving forward. Until these issues can be sorted out by the appellate courts, a stay of the proceedings is the better course of action because it promotes judicial economy and saves on unnecessary time and expense by litigants.

Similarly, trial courts have, at times, struggled to correctly apply the statutory exemptions. The Texas Supreme Court and Texas courts of appeals have overturned trial court rulings that improperly denied motions to dismiss based on incorrect applications of the exceptions. See *Castleman v. Internet Money Ltd.*,⁴ *MacFarland v. Le-Vel Brands LLC*.⁵ Further, because eight new exemptions were added to the anti-SLAPP statute in 2019, Texas courts are just now starting to grapple with the contours of the new exemptions, and a change in the law would be premature at this time.

¹ 622 S.W.3d 835 (Tex. 2021).

² 622 S.W.3d 290 (Tex. 2021).

³ 541 S.W.3d 881 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

⁴ 546 S.W.3d 684 (Tex. 2018).

⁵ No. 05-17-00968-CV, 2018 WL 2213913 (Tex. App.—Dallas May 15, 2018, no pet.).

Eliminating the stay in these cases would leave all Texans without the protections of the statute, even when the trial court has obviously erred in applying the law. This would severely undercut the free-speech protections in the statute, leaving media organizations vulnerable to the legal process when covering controversial issues.

HB 2781 also stands to cause confusion within the court system. Removing the stay would allow trial court proceedings to continue, even as the appellate courts review the denial of a motion to dismiss. When a trial court has erred—as in the above cases—the prevailing party on appeal will be forced to unwind any proceedings that occurred in the trial court. Courts typically seek to avoid these kinds of parallel proceedings, because of the havoc they cause for litigants and judges.

We respectfully ask that HB 2781 be amended so that Texas law continues to recognize the importance of a stay for cases that were dismissed, perhaps wrongly, for supposedly being untimely or subject to an exemption. Making this change would help avoid the collateral consequences for news media organizations and the Texans they strive to serve.

Thank you for your consideration.

Sincerely,

Ben Lipman

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