

March 28, 2023

Via Electronic Mail

Chairman Jeff Leach
House Judiciary Committee
Room GN.11
P.O. Box 2910
Austin, TX 78768

Chairman Leach:

We are the editors of the *Houston Chronicle*, the *San Antonio Express-News*, the *Beaumont Enterprise*, and the *Laredo Morning Times*. We 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 stands to have a particularly detrimental effect on media organizations and our 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. Removing the stay for denials based on timeliness and applicability of statutory exemptions could subject news media organizations to needless legal expenses simply for covering important events in their communities.

No matter how thoughtfully and carefully it may have been drafted, no statute can fully anticipate all circumstances in which it may arise in litigation. The result is that even matters such as the timeliness of an anti-SLAPP motion or the application of a statutory exemption, which may seem straightforward at first glance, often present novel or complex questions of law that have confounded the trial courts, leading to incorrect rulings only corrected upon appellate review.

For instance, in the case of *Hearst Newspapers, LLC v. Status Lounge Inc.*, the *Houston Chronicle* was sued by a local bar over a brief article concerning a shooting that occurred near the establishment. The article, based on public reports from the Houston Police Department, is the kind of reporting that forms the backbone of local news coverage. Plaintiff’s claims were completely without merit; as the Court of Appeals later confirmed, the *Chronicle*’s article “substantially mirror[ed] the police report.” And yet, because the trial court erroneously ruled that the *Chronicle*’s motion was untimely,¹ it was almost *five years* before the *Chronicle* was able to get a court to consider the merits of its motion to dismiss and find that the claims were baseless.²

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

² 639 S.W.3d 752 (Tex. App.—Houston [14th Dist.] 2021, no pet.).

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In *Status Lounge*, the trial court failed to properly analyze the relationship between the anti-SLAPP deadlines and a statutory abatement period. Trial courts also have struggled to correctly apply the timeliness rule in litigations involving amended pleadings.³ And 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.⁴

Recent amendments to the anti-SLAPP statute have only compounded the novel and complex issues of statutory interpretation facing the trial courts. Eight new exemptions were added to the anti-SLAPP statute in 2019, and the Texas courts are just now starting to grapple with the contours of the new exemptions. And because the newly added DTPA exemption includes an abatement period, it is a prime candidate for confusion by trial courts moving forward as to the timeliness of anti-SLAPP motions to dismiss. 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. Further statutory changes at this time would be premature and would only cause further confusion.

Eliminating the stay in these cases also has the practical effect of severely undermining one of the anti-SLAPP statute's most critical protections: the ability for litigants to seek immediate, interlocutory appellate review of the denial of an anti-SLAPP motion before incurring needless legal expenses. Although anti-SLAPP appeals are considered expedited, it can still take several months for a Court of Appeals to reach its decision. And if further appellate proceedings are involved, it can be *years* before the appellate process reaches its conclusion. For example, in the *Status Lounge* litigation, it took over seven months for the Court of Appeals to correct the trial court's improper denial of the *Chronicle*'s motion to dismiss, and **five years**—and a subsequent appeal—for the *Chronicle* to obtain a decision in its favor on the merits of its motion.

If HB 2781 had been in effect during the *Status Lounge* litigation and other similar cases, the *Chronicle* and other defendants would have been forced to choose between, on the one hand, incurring months or even years of significant legal expenses from simultaneous litigations at the appellate level while also in the throes of costly and intrusive discovery in the trial court, or, on the other hand, pursuing settlement of claims that appellate courts would ultimately deem meritless efforts to punish the lawful exercise of their constitutional rights. The anti-SLAPP statute was enacted specifically to avoid putting defendants in this intolerable situation.

At the same time, HB 2781 threatens to cause needless confusion within the court system. In the absence of a stay, the parties would proceed to discovery in the trial court, even as the appellate courts review the denial of a motion to dismiss. When a trial court has erroneously denied a motion

³ *Kinder Morgan SACROC, LP v. Scurry Cnty*, 622 S.W.3d 835 (2021); *Montelongo v. Abrea*, 622 S.W.3d 290 (2021).

⁴ See *Castleman v. Internet Money Ltd.*; 546 S.W.3d 684 (Tex. 2018); *MacFarland v. Le-Vel Brands LLC*, No. 05-17-00968-CV, 2018 WL 2213913 (Tex. App.—Dallas May 15, 2018, no pet.).

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to dismiss—as in the above cases—the defendant’s reward for having prevailed on appeal would be the administrative headache and backbreaking costs of attempting 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.

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, in particular, media organizations vulnerable to the legal process when covering controversial issues of significant interest to Texans.

We had the pleasure of working with your office in 2019 as part of the Protect Free Speech Coalition, and we, once again, appreciate your consideration of our concerns. We respectfully ask that HB 2781 be amended to focus only on frivolous motions to dismiss. Eliminating the stay in those frivolous cases would significantly improve the statute, without the collateral consequences for news media organizations and the Texans we strive to serve.

Thank you for your consideration.

Best regards,

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