

# Commentary: Senate Bill would erode free speech in Texas

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If you are tweeting about a controversial issue, publishing an investigative news report or writing an online review of a local business, you could face a defamation lawsuit aimed at silencing your speech.

That lawsuit may be meritless. You are presenting truthful information or expressing your opinion without defaming anyone, but you will have to defend against the lawsuit anyway. That costs lots of money.

A SLAPP lawsuit, or “strategic lawsuits against public participation,” is meant to intimidate a speaker into being quiet or removing their comments, or to punish someone for speaking out. Fortunately, lawmakers passed the Texas Citizens Participation Act in 2011 to remedy this problem and protect free speech. Texas is one of 34 states with an anti-SLAPP statute, and ours is considered among the strongest in the nation.

That could change. [Senate Bill 896](#), authored by Sen. Bryan Hughes, R-Mineola, would diminish Texas’ law by removing, in many cases, an important automatic stay provision that requires action in the trial court to stop while a motion to dismiss the lawsuit is appealed. State Rep. Jeff Leach, R-Plano, is carrying the companion legislation, [House Bill 2781](#).

Under the proposed legislation, the speaker who was sued would have to then fight the case on two fronts while appealing the denial of a motion to dismiss. The legal costs would keep mounting in the original court and in the appeals court.

That person exercising their free speech rights would be “slapped” into silence by the costly burden of the dual tracks of litigation. And the trial courts would be immersed in discovery disputes and jury trials, all while the appellate court decides if the case had merit.

A large number of groups have urged Texas legislators not to tamper with the TCPA’s automatic stay provision because it strikes at the core protections in the law. Groups such as Texas Right to Life, Electronic Frontier Foundation and Texas-based Nexstar, the largest television ownership company in the country, all testified against the bill. Opponents — such as Americans for Prosperity and the American Civil Liberties Union — range the ideological spectrum but agree that this bill can weaponize the court to discriminate against voices with which it disagrees and can silence critical voices through unnecessary dual track litigation and ensuing costs.

The Better Business Bureaus and Yelp testified against the bill, explaining how their consumer-oriented services were affected by SLAPP lawsuits in which courts have misinterpreted commercial speech exemptions. Under S.B. 896 that would put them on the track to fighting on two fronts.

Advocates for this bill profess to be concerned about frivolous motions to dismiss being filed for the purpose of delay. If that is the concern, the bill should be limited to that specific scenario. Unfortunately, it goes well beyond “frivolous” motions and strikes at the heart of issues appellate courts are best suited to determine.

Senate Bill 896 catapults litigants whose motions have been denied as subject to an exemption or untimely into dual-track litigation fighting on two fronts. Many of those exemptions were only added to the law in 2019, and courts are determining their contours. And because the Texas Rules of Civil Procedure allow for late amended pleadings in lawsuits and the Texas Supreme Court’s emergency COVID-19 orders often put lawsuits on hold, the issue of timeliness in an anti-SLAPP motion is anything but black and white.

Moreover, the unintended consequences of S.B. 896 are significant. If the legislation passes, parties and courts will have to expend enormous resources only for an appellate court later to decide that the case lacked merit. In a letter to the House committee, Texas Supreme Court former Chief Justice Wallace Jefferson expressed concern that “SB 896 could strain an already overburdened court system, curtail the necessary checks and balances provided by Texas appellate courts, and cause needless increases in litigation costs for Texas citizens.”

The Legislature should not permit a few bad apples and their gamesmanship in filing frivolous motions to bleed over into pure matters of law that could compromise the free speech protections of all Texas citizens.

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