



March 30, 2023

Representative Jeff Leach
Chairman of the House Committee on Judiciary & Civil Jurisprudence
Texas House of Representatives
Room GN.11
P.O. Box 2910
Austin, TX 78768
Via Email

Re: Texas SB 896/HB 2781

Dear Chairman Leach:

The Electronic Frontier Foundation respectfully urges you to oppose SB 896/HB 2781, which would negate the automatic stay of a case under existing law if the anti-SLAPP motion to dismiss was determined to be untimely, frivolous, or subject to an exemption. This bill will waste judicial resources.

The Texas Citizens Participation Act, or TCPA, has been one of the strongest laws in the nation protecting citizens against SLAPP lawsuits, in which the legal claims are a pretext for silencing or punishing individuals who speak up on public matters. The TCPA safeguards “the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law” without impairing a person’s right “to file meritorious lawsuits for demonstrable injury.” TEX. CIV. PRAC. & REM. CODE § 27.002.

Since its passage in 2011, the TCPA has protected a wide variety of Texas residents. It has stopped meritless lawsuits, including a [case against a Dallas couple who were sued by a pet-sitting company](#)¹ over a negative Yelp review; a lawsuit against individuals who used Facebook [to complain about a cosmetic medical treatment](#)²; and two lawyers’

¹ “\$1M lawsuit dismissed against Plano couple who gave 1-star Yelp review to pet-sitting company,” The Dallas Morning News, Aug. 30, 2016. Available at: <https://www.dallasnews.com/news/courts/2016/08/31/1m-lawsuit-dismissed-against-plano-couple-who-gave-1-star-yelp-review-to-pet-sitting-company/>

² “Continued Issues with Nondisparagement Clauses in Form Consumer Contracts,” Paul Alan Levy, Public Citizen Consumer Law & Policy Blog, March 29, 2018. Available at: <https://pubcit.typepad.com/clpblog/2018/03/continued-issues-with-nondisparagement-clauses-in-form-consumer-contracts.html>

attempt to unmask [anonymous speakers who posted online comments](#)³ about Texas' family court system.

The existing automatic stay is integral to the TCPA's protections. While the anti-SLAPP motion is pending, all discovery and other hearings or motions (and thus, burdens on the speaker) are required to be stayed, by default. Otherwise, both the underlying SLAPP and the anti-SLAPP motion would be in litigation at the same time.

Unfortunately, we have grave concerns about the provisions relating to the timeliness of motions and to exemptions. Recent Texas Supreme Court cases such as *Kinder Morgan v. Scurry County*, 622 S.W.3d 835 (Tex. 2021) and *Montelongo v. Abrea*, 622 S.W.3d 290, 293-94 (Tex. 2021), show that both trial courts and courts of appeal can easily decide timeliness issues incorrectly.

Similarly, as to statutory exemptions, the Legislature in 2019 added a list of new exemptions to the TCPA—the contours of which are still being sorted out by the courts. *Castleman v. Internet*, 546 S.W.3d 684 (Tex. 2018) (per curiam), shows how difficult TCPA exemptions can be to parse; though the “commercial speech” exemption was part of the original TCPA, courts were still unsure of its meaning years later. *Id.* at ___ (“The Texas courts of appeals are divided on the proper interpretation and application of this exemption.”).

The point is simple. If this bill were law, the underlying SLAPP suit against the speaker would proceed while the speaker was appealing the denial of the anti-SLAPP motion, and ultimately whoever won on appeal would have to go back to get whatever happened at trial undone, and there would be a tremendous waste of judicial and litigant resources and time.

Respectfully,

Lee Tien
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Electronic Frontier Foundation

³ DeAngelis v. Protective Parents Coalition, No. 02-16-00216-cv. 556 S.W.3d 836 (2018) Available at: <https://www.leagle.com/decision/intxco20180803562>