



March 28, 2023

Via Email

Representative Jeff Leach
Chairman, Judiciary & Civil Jurisprudence Committee
Texas House of Representatives
Room GN.11
P.O. Box 2910
Austin, TX 78768
jeff.leach@house.texas.gov

Re: H.B. No. 2781

Dear Chairman Leach,

Yelp encourages you to amend H.B. No. 2781, which proposes to make certain changes to the motion to dismiss that is authorized under the Texas Citizens Participation Act (“TCPA”). Specifically, Yelp encourages you to preserve the status quo automatic stay during an appeal when the motion to dismiss is denied on grounds that it was not timely filed or because the action is exempt under Civil Practice and Remedies Code section 27.010(a). Accordingly, Yelp supports the deletion of subsections (c-1)(1) and (c-1)(3) from the bill.

As I describe below, Yelp has borne the significant burden and expense of conducting discovery during litigation intended to curb free speech and public participation, before its motion to dismiss was finally resolved in Yelp’s favor. Yelp is concerned that its experience is emblematic of the consumer harm that would result if H.B. No. 2781 was adopted without amendment, and writes to share those concerns.

About Yelp

Founded in 2004, Yelp owns and operates Yelp.com, a popular local search website, mobile website, and related mobile applications for users to share information about their communities. Yelp, among other things, provides and publishes a forum for members of the public to read and write reviews about local businesses, services, and other entities including nonprofits and government agencies. One of Yelp’s founding principles is that the best source for information about a local community is the community members themselves. As of December 31, 2021, Yelp users have contributed a total of [244 million cumulative reviews](#).¹

Consumers have free speech rights to share their opinions on Yelp, whether positive or critical, about the businesses, services, and other entities with whom they interact. The TCPA helps

¹ Yelp Internal Data, 2021. Contributed reviews include those that are recommended, not recommended, or removed from Yelp's platform.

protect both Yelp and consumers from ill-advised lawsuits that seek to intimidate the consumers and eliminate or otherwise chill their speech. One way it protects Yelp and consumers is by staying discovery before a motion to dismiss a legal action based on the exercise of these rights is finally resolved, including actions “against a person related to the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses.”²

Yelp’s Experience

In 2018, a group of business people—including an interior designer, a tailor, and a urologist—brought a putative class action lawsuit against Yelp in California based on Yelp’s display of business information about the plaintiffs, allegedly without their permission. The plaintiffs sought substantial damages and [an injunction](#) that would have required Yelp to take down its web pages where consumers share their experiences with and opinions about each of the at-issue businesses.

Yelp brought an anti-SLAPP motion³ in response to the lawsuit, but the trial court lifted the automatic discovery stay to allow the plaintiffs to issue written discovery requests to Yelp and to depose a Yelp witness. Yelp [eventually prevailed](#) on the merits of its motion to dismiss, but it came at a substantial cost, with Yelp paying significant legal fees and expending time and other resources to respond to ultimately irrelevant discovery requests, while at the same time also paying significant legal fees and expending other resources relating to the motion to dismiss itself, in its efforts to protect consumers’ rights to express their opinions about plaintiffs’ respective businesses.

Although Yelp’s experience was with a single trial court and not in connection with an appeal, the consequences of lifting the automatic stay were the same as if the matter had been on appeal from denial of a motion to dismiss. As a result of the trial court proceeding not being stayed, Yelp had to spend far more money and time to defeat the plaintiffs’ strategic lawsuit against public participation than it would have had the stay remained in place.

Yelp’s Concerns

Yelp has far more resources available to it to fight unwarranted discovery than does the typical Texas consumer, and it is concerned that a change to Texas state law that will double or triple a consumer’s out-of-pocket cost of pursuing an appeal of an erroneously denied motion to dismiss will discourage meritorious appeals, chilling public participation and stifling consumer

² Civ. Prac. & Rem. Code § 27.010(b)(2).

³ The anti-SLAPP statute (Cal. C.C.P. § 425.16) is California’s version of the TCPA. Like the TCPA, the California anti-SLAPP statute automatically stays discovery while a motion to dismiss is pending and during the appeal of a trial court’s denial of the motion to dismiss. See Cal. C.C.P. § 425.16(g); *Varian Medical Systems, Inc. v. Delfino* 35 Cal.4th 180, 198 (2005).

speech. This is especially true considering that trial courts have erroneously denied motions to dismiss on both [timeliness](#) and [commercial speech exemption](#) grounds in the past.

Those erroneous denials were eventually reversed, but each appeal required the defendants to pursue the matter up to the Supreme Court of Texas. Had these defendants been forced to also incur the costs and expenses of discovery and other trial court proceedings during their appeals—up to and including a trial—they may well have made the reasonable and economically sound decision to abandon their meritorious appeals and prematurely concede defeat as to their free speech rights.

Yelp does not believe that the possibility of eventually recovering court costs and reasonable attorney's fees under Civil Practice and Remedies Code section 27.009(a)(1) adequately addresses these concerns. A potential award of fees and costs is inherently uncertain—particularly during the appeal of a motion to dismiss that has already been denied in the trial court—and in any event the Texas consumer facing such a lawsuit would still have to initially reach into his or her own pockets to pay for the legal fees and costs.

These are not hypothetical concerns for Yelp or consumers, even those who take steps to share their opinions anonymously. In 2022, private party plaintiffs issued legal demands to Yelp seeking information relating to 623 Yelp user accounts. In 2021, plaintiffs issued legal demands to Yelp seeking information relating to 734 such accounts. Yelp developed a microsite at <https://trust.yelp.com/> to report these statistics and to describe its trust and safety investments, which include Yelp's efforts to protect users' personal information in appropriate circumstances. While Yelp ultimately produced information for far fewer accounts, these statistics show that there is no shortage of private party plaintiffs who would seek to improperly use the law to chill consumer speech.

Yelp fears that, without an amendment, the proposed changes to Texas state law would give these plaintiffs another tool to ratchet up the pressure on Texas consumers expressing their constitutionally-protected opinions, making the internet a less useful place for those consumers and for other members of the public who would benefit from access to the opinions.

Thank you for your consideration, and please let us know if Yelp can be of further assistance with this matter.

Sincerely,



James Daire

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cc: Chief of Staff, Lauren Young (lauren.young@house.texas.gov)