

**HOUSE OF REPRESENTATIVES  
COMPILATION OF PUBLIC COMMENTS**

Submitted to the Committee on Judiciary & Civil Jurisprudence  
For SB 896

Compiled on: Wednesday, April 26, 2023 8:45 PM

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Hearing Date: April 26, 2023 8:00 AM

Joe Ellis  
KVUE  
Austin, TX

This bill would enable trial courts to silence free speech of individuals and place undue financial and logistical burden on them and their representatives when fighting against a "strategic lawsuit against public participation" (SLAPP). This bill would severely weaken the Texas Citizens Participation Act which protects individuals from SLAPP suits and protects their right to publicly participate and associate, to speak freely against corruption and wrong-doing, and openly ask the government for help. This would have an extreme chilling effect and defeat the very purpose of the Texas Citizens Participation Act, which the Texas Legislature passed in 2011 to protect people from retaliation and intimidation by private interests on matters of public concern. **PLEASE DO NOT PASS THIS BILL! THIS BILL IS NOT GOOD FOR TEXANS!**

Stephen Dwyer  
West Mermis, attorney/partner  
Houston, TX

The proposed language ending the blanket automatic stay to denied Anti-SLAPP motions is long overdue. I am not here to debate the justness or necessity of the Anti-SLAPP law. But it is well known in the legal community that the law can be, and often is, used to delay justice for meritorious disputes purely due to the automatic stay provision. This fact is clear when one looks to the number of appellate court cases addressing interlocutory appeals denying Anti-SLAPP motions. I admit I have not done the statistics, but based on what I have seen in legal research for my own clients, I would be willing to assume a majority of denials are upheld rather than overturned. This proposed legislation attempts to correct that flaw.

For example, today, a Texas court of appeals issued an opinion where a defendant my client sued lost on every argument he made invoking Anti-SLAPP. My client, a homeowners association, has dozens and dozens of homes it is responsible for that are under threat due to faulty bulkheads supporting the ground the homes are built upon. This defendant, responsible for selling new homes in this neighborhood, admitted to my client he had known of this issue for years but was not disclosing it to new homeowners. He held up the litigation for 14 months using Anti-SLAPP and the automatic stay as a sword against my client. Due to the automatic stay, the entire litigation, which involves nearly a dozen defendants, could not move forward for 14 months. One defendant should not be allowed to do this, especially when such an act is frivolous.

The bill will not eliminate the opponents' ability to appeal a denied motion. If they find themselves in court due to exercising their First Amendment right, they still have this statute as a vehicle to jettison the claims against them quickly. But they are not the only ones this statute has impacted. Many defendants have weaponized the language to their advantage merely because a plaintiff's claim alleged words were spoken. This bill corrects that wrong under three limited exceptions. This is a good middle ground for both sides. Moreover, this allows inundated courts at both the trial court and appellate court level to move their dockets more expeditiously.

I thank you for your time.

Anthony Gutierrez  
Common Cause Texas  
Austin, TX

Common Cause Texas is one of the state's leading pro-democracy advocacy organizations. We have over 50,000 members in Texas and work on a range of democracy reform issues, including free speech. We believe this bill erects insurmountable obstacles for victims of SLAPP in various ways, including exponentially increasing the cost of litigation for all SLAPP victims, individuals would likely find the cost of fighting suits to be cost-prohibitive, and media companies could find themselves litigating at multiple levels of the court system simultaneously. In sum, the bill would provide trial court's with a weapon to silence speech it didn't agree with by denying the motion to dismiss as untimely, frivolous, or subject to an exemption so that the speaker would be subject to debilitating expenses in the litigation process which would defeat the purpose of the TCPA in its entirety.

Courtney Corbello  
Institute for Free Speech  
Cedar Park, TX

The Institute for Free Speech opposes SB 896. If passed, the proposed legislation would erode the Texas Citizens Participation Act (“TCPA”) and chill speech in Texas.

The TCPA protects citizens from frivolous lawsuits looking to censor speakers called strategic lawsuits against public participation. These are more commonly known as SLAPP suits.

The TCPA provides some of the best anti-SLAPP protections in the country. The Institute rated all 50 states on anti-SLAPP laws, and Texas is ranked seventh best nationally with a score of 93%. If Texas enacts SB 896, your state’s excellent free speech rating of anti-SLAPP laws would significantly decline.

Anti-SLAPP statutes like the TCPA are designed to address a structural problem within American law: an unscrupulous litigant can use litigation strategically to suppress or punish speech they dislike. Such a litigant would typically claim that the speech constituted defamation and then sue others to harass, silence, or force them to bear significant litigation costs. Defendants must pay these costs even when faced with lawsuits that plaintiffs have a minimal chance of winning.

Citizens deserve protection when speaking on matters of public concern and, more particularly, they deserve protection against the expenses that SLAPPs can force defendants to bear.

SB 896 would undermine the TCPA because it proposes to weaken an essential procedural protection for speakers; the right of an immediate appeal, called an interlocutory appeal, if a trial court denies an anti-SLAPP motion. Providing a right of interlocutory appeal creates strong protection for First Amendment liberties because it blunts the force of lawsuits that target speech.

The proposal would create several exceptions to the right to an immediate appeal. While some may argue that these exceptions are narrow and reasonable, the fact is that trial courts do make mistakes. Such uncorrected errors will have a significant impact on free speech.

If such an error is made and can’t be immediately appealed, a speaker will be unnecessarily exposed to expensive and stressful litigation that will not be resolved for many years.

It is essential to note that protections are already built into the law to protect plaintiffs against frivolous anti-SLAPP motions, making a major portion of this bill unnecessary. The TCPA says that if “the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, the court may award court costs and reasonable attorney’s fees to the responding party.”

Texans should take pride in the fact that the TCPA is one of the strongest free-speech laws in the country. We urge the Committee to reject the changes and keep the law intact so that Texas will continue to be a national leader in free speech.

Chris Cobler, CEO and Publisher

Fort Worth Report

Fort Worth, TX

I am writing to urge you to protect "anti-SLAPP," the Texas Citizen Participation Act, signed in 2001 by Gov. Rick Perry. This is an essential protection for all Texans. I am now the publisher and CEO of the Fort Worth Report, a nonprofit and nonpartisan news organization. Previously, I was editor and publisher of the Victoria Advocate.

The anti-SLAPP law protected the Victoria Advocate when a doctor sued the independent family-owned newspaper. The newspaper had accurately reported the actions of the Texas Medical Board taken against the doctor, but he still filed a \$2 million libel case.

A judge dismissed the case after the first hearing because it was clear the newspaper should be free to report in the public interest. The judge also cited the anti-SLAPP law in ordering the doctor to pay the newspaper's attorney fees.

Without such protection, a small independent news organization could be crippled by attorney fees. Texas and the country need more independent journalism than ever before.

Thank you for sharing this experience and my concerns with your committee. I am traveling visiting family out of state this week, or I would be testifying before your committee Wednesday.

Brenda De Anda-Swann

KVIA-TV - El Paso

El Paso, TX

Dear members of the Committee,

I'm writing to share my OPPOSITION against SB 896 as it is deeply concerning because it could have a chilling effect in the exercise of free speech.

Texas' Anti-SLAPP statute has been a model emulated across the country because it helps sift frivolous litigation from the system before costly litigation tangles the parties.

If SB 896 passes, media organizations and newsrooms like mine would have to fight at the trial court and appellate court levels at the same time should we be faced with a punitive lawsuit filed by someone who didn't agree with our reporting.

It would exponentially increase the cost of litigation for all SLAPP victims. For individuals, it would make the cost to fight suits completely cost-prohibitive. For media companies, it could result in litigating at 2 or 3 levels of the court system simultaneously and potentially being faced with decisions over confidential sources and work product materials being unnecessarily disclosed in a case that ultimately is found to have no merit.

In sum, the bill would provide trial court's with a weapon to silence speech it didn't agree with by denying the motion to dismiss as untimely, frivolous, or subject to an exemption so that the speaker would be subject to debilitating expenses in the litigation process which would defeat the purpose of the TCPA in its entirety.

For that reason, I join the Freedom of Information Foundation and its coalition in opposing SB 896.

Thank you,

Brenda De Anda-Swann

General Manager

KVIA-TV / ABC-7 - El Paso

Linda Pavlik

League of Women Voters of Texas

Fort Worth, TX

SB 896 strikes at the core protections of the Texans Citizens Participation Act (Anti SLAPP statute)

John Bridges

Self, journalism lecturer and retired newspaper editor, Freedom of Information Foundation of Texas board member  
Austin, TX

As a Texas journalist for more than 30 years, I value the free flow of information and discourse, especially on matters of public interest. The anti-SLAPP Texas Citizens Participation Act has worked well for a decade to limit the frivolous or malicious use of our court system to stifle speech. The proposed change is unnecessary and runs counter to the intent of the anti-SLAPP law by making it more likely that defendants will incur prohibitive legal costs to fight unmeritorious lawsuits. And this could help encourage big-pocket interests to use and abuse the court system to punish less-funded people and organizations for speaking out or reporting on important subjects. I voice my opposition to these proposed changes and ask that the intent of the anti-SLAPP law be preserved.

Thomas Leatherbury

Self - Attorney  
Dallas, TX

Thank you, Mr. Chair, Madam Vice-Chair, and Members of the Committee, for considering my earlier letter objecting to Senate Bill 896, as passed by the Senate, and these supplemental comments objecting to the Committee substitute that I understand will be offered at the hearing.

Senate Bill 896 and the Committee substitute are solutions in search of a problem. Parties opposing a TCPA motion to dismiss can obtain discovery upon a showing of good cause, and that happens routinely. To the extent the discovery stay on appeal presents a problem, amending the interlocutory appeal statute to lift the discovery stay when the trial court finds that the TCPA motion to dismiss was frivolous or filed solely to delay solves that problem. This solution also covers situations where motions to dismiss are clearly not timely filed, so SB896, as passed, and the Committee substitute, are overkill where Texans' First Amendment rights also protected by the TCPA are involved. Amending the interlocutory appeal statute to provide a 45-day stay (that has nothing to do with the real logistics of appellate and motion practice) in two other circumstances multiplies litigation and wastes judicial and party resources. It virtually guarantees that the parties in those cases will be litigating in two forums simultaneously.

TCPA appeals are accelerated by statute. I have represented parties in TCPA appeals that are decided within months (not years) of the filing of the notice of appeal. Appellants have 20 days to file a notice of appeal. To take the time to brief a motion to stay into account, this Committee substitute would make a careful lawyer file the motion to stay when she files the notice of appeal. The trial court record, including any hearing transcript, does not have to be filed for some days after the notice of appeal is filed. Both the parties and the court of appeals will want the benefit of the full record to decide a motion to stay, particularly with the standard included in the Committee substitute (likely to succeed or in the interest of justice). The motion to stay may not be decided within 45 days.

And then what happens if a party wants to challenge the court of appeals' decision on a motion to stay? Does that party appeal to the Texas Supreme Court? Does it file a petition for writ of mandamus with the Texas Supreme Court? Does it do both out of an abundance of caution? All of these machinations waste valuable judicial resources and party resources, and, in my experience, often the TCPA movant is the David who has spoken out against the Goliath seeking to silence protected speech. Our hard-working court of appeals justices would be better served by not having to respond to artificial statutory deadlines to decide an emergency motion in an accelerated appeal on incomplete briefing. They deserve the time to get it right.

I urge the Committee not to pass either SB896, as written, or the Committee substitute.

Thank you again.

Jorge Garrett  
Self - individual  
Austin, TX

I am against SB 896 because it is likely to chill consumer speech about Texas businesses, service providers, and other entities like government agencies and nonprofits. Because granting a CPA motion results in the dismissal of a lawsuit on the merits, an appellate reversal of an order denying such a motion may similarly result in a dismissal. Such an appellate outcome is irreconcilable with a judgment for the plaintiff on that cause of action following a proceeding on the merits. Moreover, such a proceeding is inherently inconsistent with the appeal because the appeal seeks to avoid that very proceeding. Indeed, as I understand it, one of the original points of the CPA statute is that Texas citizens have a right not to be dragged through the courts because of the exercise of free speech rights.

Tom Giovanetti, President  
Institute for Policy Innovation  
Irving, TX

The Institute for Policy Innovation (IPI), a 35 year-old conservative public policy research organization based in Dallas, is concerned about the unnecessary disruptions SB 896 would cause in Texas' very successful and prudent anti-SLAPP, tort reform regime.

We observe that there is a significant and bipartisan coalition that has registered concerns about the bill, while only a very small number of stakeholders seem to be pushing for this change in law, which is suspicious.

SB 896 strikes at the core protections of the Texans Citizens Participation Act (Texas' Anti-SLAPP statute or TCPA), which was designed to protect Texans against spurious and frivolous lawsuits designed to silence and intimidate. It thus threatens to chill free speech.

SB 896 does away with the stay in anti-SLAPP cases when the trial court rules the motion is "untimely, frivolous, or subject to an exemption." Seemingly benign, the bill weaponizes trial court's to chill voices they don't agree with and defeat the purpose of the TCPA in its entirety. It would increase the cost of litigation for all SLAPP victims forcing them to defend against meritless lawsuits in 2 or 3 different courts simultaneously.

SB 896 is contrary to tort reform and judicial economy because lawsuits that may ultimately be found to lack merit under the TCPA would clog the trial courts while appeals are simultaneously proceeding. It would be a boon to trial lawyers, which is not exactly a Republican constituency.

Because the cost of litigation will increase substantially as a result of SB 896, so too will media liability insurance premiums. If the costs are perceived as too high, it could result in insurers pulling out of the market entirely.

Media companies will become entangled in unnecessary satellite litigation over the discovery of confidential sources and journalistic work product materials in what ultimately will be deemed meritless cases.

We urge the committee to set aside SB 896 and keep intact Texas' successful tort reform regime which includes the anti-SLAPP laws currently in place.

Kevin Welch, President

EFF-Austin

Austin, TX

Dear Chairman Leach and Representatives of the Committee,

My name is Kevin Welch, and I am the current president of the board at EFF-Austin, an Austin-based Texas nonprofit and digital civil liberties organization. We are closely affiliated with and collaborate with Electronic Frontier Foundation (EFF), based in San Francisco, the nation's oldest and largest digital civil liberties advocacy organization.

I am writing you today to register EFF-Austin's opposition to SB 896 on free speech and expression grounds. I could tell from this morning's testimony that free speech is very important to the members of the committee, and given that he is the author of last session's HB 20 on regulating speech on social media, I know that free speech is also important to Senator Hughes. It is EFF-Austin's belief that SB 896's weakening of the anti-SLAPP shield in the Texas Citizens Participation Act (TCPA), will not protect speech but massively weaken the legal protections that Texans currently enjoy under this law.

The TCPA in its current form is a wonderful law and a model for the nation. Thanks to this law, I as a private citizen can speak my mind on social media and in digital spaces, and not have to worry if my comments will result in a costly lawsuit that I don't have the time or money to deal with. The vast majority of speech uttered by people online is not defamatory, it is at most a legitimate difference of opinion over subjective aspects of life, and the TCPA correctly understands this, blocking SLAPP suits unless an appellate court finds that there is substantial evidence of real slander and libel on the part of the defendant. Furthermore, the strong protections of the law in its current form mean that private citizens don't have to understand the legal minutiae of timeliness, frivolity, and exemptions to know if they are protected or not from a SLAPP suit when they voice their opinion. The TCPA did its job when it protected a Dallas couple from a \$1 million lawsuit filed by a pet sitting company simply because they posted a 1-star YELP review of the company.

It is also insufficient to say that a stay of 45 days will work as a compromise when it comes to the issue of real abuses of the TCPA. It is highly unlikely that the appellate court could reach its conclusion in that brief period of time before the stay would be over and the defendant would be dealing with two court proceedings at the same time, a massive waste of time and money for all involved parties. Also, as *Kinder Morgan v. Scurry County* and *Montelongo v. Abrea* show, it is not a hypothetical issue that appellate appeals frequently find that the initial denial of stay incorrectly determined timeliness issues. If the issue is worry about overloading the appellate courts, the solution is to provide more resources to the courts to do their work quicker, not to weaken the free speech protections of all Texans.

Thank you for your time, and I hope my words have been helpful to you.

Lillian Gonzales  
Self  
San Antonio, TX

Dear Sirs and Madams,

Ist I ask your understanding and forgiveness for not being educated enough to understand this system enough to use it appropriately. I also apologize if my comment appears repetitively in other areas. I feel I need to be heard and I wasn't sure how to accomplish that here in the format I have been presented with. So I have done the best that I knew how to do. I am a 55 y/o surviving widow of deceased in active duty soldier. I have knowingly and willingly sacrificed more than most in representation of this country my country. I sacrificed my husband for this country my country our country and My Husband knowingly and willingly sacrificed His Life for his country this country OUR COUNTRY. So please forgive my entitlement to be heard whether I am educated enough to do it correctly or not. I want no misunderstanding despite the following statements or complaints I am about to make. I love my country. I am grateful to have the UNITED STATES OF AMERICA as my country. However I am disturbed and saddened at the refusal to acknowledge the failure of the systems that are currently in place. Please don't be offended by what I have said. I am not speaking on the people in charge of running these systems but if the systems themselves. Much like an automobile if the mechanical systems of a car are not correctly maintained by each owner. It's eventually going to breakdown no matter who's behind the wheel. I come to you today not about the inevitable breakdown of our systems that this country is trying to pretend isn't possible. I am coming to you today about an immediate life threatening defect within a particular system among these systems that keep our country running. The Justice system. The quite literal life threatening defect that needs immediate emergency attention is the system within this system referred to TDCJ as Ad. seg or Administrative Segregation or in reality as Solitary Confinement. It is quite literally taking the lives of Men and Women who were never been convicted of a life sentence. Really for real no exaggeration for dramatic effect. PEOPLE ARE DYING. Those that are blessed enough to physically survive Ad. Seg or Administrative Segregation or Solitary Confinement or torture or whatever you want to call it may not feel as blessed as you might assume they should. All is still not known about the permanent and lasting effects to a Man or Woman's psyche. What we do know thus far is that once this damage is done it's done. In MANY cases there is no coming back from the damage that Ad. Seg or Administrative Segregation or Solitary Confinement or torture or whatever it is you want to call what is currently and actively being done to Men and Women in the state of Texas. It is inhumane and cruel. It is often carried out in unusual ways and many times is done in an illegal manner. These facts alone make these common place procedure's of "rehabilitation" unconstitutional. I am begging you to please make this stop please.

Robert Sherwin, Professor  
Self (Law School Professor)  
Lubbock, TX

From 2017 through 2020, I served as the Reporter on the Uniform Law Commission's Drafting Committee on Anti-SLAPP Legislation. In that capacity, I was the primary scribe for what ultimately became the Uniform Public Expression Protection Act (UPEPA), which was adopted by the Commission in July 2020. Since then, I have served on the UPEPA Enaction Committee, where I have offered guidance to states considering whether to legislatively adopt the Act.

I write to express my concerns with SB 896, which seeks to modify the stay provision of Tex. Civ. Prac. & Rem. Code § 51.014(b) as it relates to interlocutory appeals of denials of motions brought under Tex. Civ. Prac. & Rem. Code § 27.003, also known as the Texas Citizens Participation Act (TCPA).

Plainly put, SB 896 is a dangerous bill that threatens to undermine the purpose and operation of the TCPA.

If an anti-SLAPP law didn't authorize an interlocutory appeal and stay, then there would be no recourse for a movant—who is typically attempting to protect his or her constitutional rights—when a judge incorrectly denies the motion to dismiss.

Because the order denying the motion is interlocutory, he or she wouldn't be able to immediately appeal. The case would proceed as normal, and the movant would have to wait until after a full trial on the merits to challenge the judge's denial of the motion. And here's the rub: Winning the appeal wouldn't provide any of the relief the TCPA intends, because the movant—albeit vindicated on appeal—will have nevertheless spent money and time defending itself against the frivolous litigation, and nothing in the statute would allow the movant to recover those expenses. Yes, the movant can recover its fees expended in pursuing the motion to dismiss. But those fees expended in the general defense of the case are not recoverable. That would be equally true if the law allowed an interlocutory appeal but simultaneously permitted the commencement of the trial or other proceedings in the trial court. Movants would be forced to spend unrecoverable valuable time and resources on discovery and trial preparation, effectively having to litigate the case in two courts—trial and appellate.

If the purpose of the TCPA is to protect the constitutional rights of Texas citizens, I can assure you that SB 896 does nothing but undermine that aim. It will leave judges free to deny meritorious TCPA motions while the defendants who are supposed to be protected by the law are subjected to costly discovery and trial expenses. To fully implement the goals of an anti-SLAPP law, the right to an interlocutory appeal and corresponding stay of proceedings must be unfettered. We easily recognized as much when drafting the Uniform Public Expression Protection Act, and in Section 4(c) of that Act, provided for a full stay that “remains in effect until the conclusion of the appeal.”

I urge you to reject SB 896 in its entirety.