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In Texas, plaintiffs have claimed 106 times since the Texas Citizens Participation Act was enacted in 2011 that defamation defendants’ motions to dismiss were frivolous. In 76 of those 106 cases, trial judges ruled that the anti-SLAPP motion was not frivolous. In the 30 other cases in which trial judges ruled the defendant’s motions to dismiss under the law were frivolous, the appeal courts later reversed 17 times, according to Prather.

“Anti-SLAPP laws are working exactly as they were intended, and they are protecting the free speech of Texas citizens and the news media,” Prather says.

Hermes says some states, such as Massachusetts, are strengthening their anti-SLAPP laws. But handful of states—Florida, Nevada and Texas—have experienced efforts by some political leaders to scale back anti-SLAPP protections.

“Some plaintiffs have challenged anti-SLAPP laws as violating the right to trial by jury, and others have tried adding nondefamation pleadings to try to get around anti-SLAPP provisions,” Hermes says. “But we are in our third generation of anti-SLAPP laws, and they are clearer and still effective. But free speech advocates must remain vigilant.”

The bottom line, according to media law experts, is that defamation laws and protections remain strong and effective despite a few outlying cases.

Instead, the problem may be the expectations of the public.

“The biggest misunderstanding is this: Defamation cases by their nature do not decide the truth,” Hermes says. “Just because a reporter publishes some things that turn out to be false doesn’t mean that the reporter knew it was false. But treating defamation cases as a search for the truth is a flawed idea that needs to be better understood.”

