

## Media, Entertainment and First Amendment Newsletter, January 2016

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January 28, 2016 Laura Prather, Thomas Williams

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PRACTICES Media and Entertainment Litigation

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### **A Congressional Anti-Gag Maneuver: Senate Unanimously Approves the Consumer Review Freedom Act**

By [David A. Bell](#) and [Tiffany Ferris](#)

On December 14, 2015, the United States Senate unanimously approved The Consumer Review Freedom Act. The proposed law, if passed, would outlaw so-called "gag clauses," contract provisions used by businesses that prohibit or restrict a consumer's ability to write reviews of products and services.

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### **Fifth Circuit Finds No First Amendment Violation for Denial of Discretionary Film Funding**

By [Catherine Robb](#)

On December 28, 2015, the Fifth Circuit Court of Appeals upheld a Texas District Court's ruling that Texas' denial of state funding to the film "Machete Kills" under Texas' film incentives program did not violate the First Amendment or Texas Constitution. Pursuant to the State's Moving Industry Image Incentive Program ("Incentive Program"), a grant program to promote film, television, and multimedia industries in Texas, the state may deny funding to a project that contains "inappropriate content or content that portrays Texas or Texans in a negative fashion."

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### **Dallas Appeals Court Allows Libel Claim Against Columnist to Proceed**

By [Thomas J. Williams](#) and Nick Nelson

Public figure plaintiffs suing media entities for libel must prove, by clear and convincing evidence, that the defendant published a false and defamatory statement with "actual malice," i.e., with knowledge of its falsity or with reckless disregard for its truth or falsity. Even plaintiffs who are not public figures must establish actual malice to recover exemplary damages.

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