

Media, Entertainment, and First Amendment Newsletter, January 2018

By Laura Lee Prather, Catherine Robb | January 31, 2018

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Prather, Robb in *Law360*: Appeals Court Allows Defamation Suit Dismissal Motion

Haynes Boone Partner [Laura Lee Prather](#) and Counsel [Catherine Robb](#) helped Houston CBS affiliate KHOU-TV win an important appellate ruling in its effort to dismiss a defamation lawsuit.

Law360 [reported](#) that Texas' 14th Court of Appeals, calling it an issue of first impression in a Texas appeals court, sided with KHOU-TV and the *Houston Chronicle* and reversed a trial court's ruling that the motions they had filed to dismiss a defamation lawsuit under a state free speech law were untimely.

The report said that in its [Dec. 19 ruling](#), the panel wrote that because the TV station had filed a motion to abate the case for 60 days under the Defamation Mitigation Act, that tolled the deadline to file a motion to dismiss under the Texas Citizens Participation Act.

A motion to dismiss under the TCPA usually must be filed within 60 days of service. But in this case, the parties filed the motion within 120 days after service, but within the 60-day deadline taking into account the abatement period.

The trial court had ruled that the motion to dismiss was untimely because it was filed after the 60-day window. But the appellate panel reversed, writing that when an abatement occurs under the Defamation Mitigation Act, the deadline to file a TCPA motion is abated during that time period, so the TCPA motions by the TV station and newspaper were timely filed.

To read the full article, click [here](#) (subscription required).

Two Recent Developments on Federal Statutes Impacting the Media

While many federal officials – in both the executive and legislative branches – seem to make a habit of expressing hostility toward established First Amendment norms and the free press, there is some cause for optimism stemming from Congressional action – as two recent developments show. First, in California, a federal district court recently handed defamation defendants a key victory in the fight against libel tourism in *Electronic Frontier Foundation v. Global Equity Management (SA) Pty Ltd*. Applying the Federal SPEECH Act to an Australian injunction prohibiting a U.S. non-profit from speaking about a company's intellectual property, the decision held that the injunction was unenforceable because it could not pass constitutional muster in the United States. Second, in response to the Department of Justice's posture toward journalists and the press, two United States Representatives recently reintroduced the "Free Flow of Information Act of 2017," which seeks to establish a federal reporter's privilege and safeguard journalists' right to maintain confidential

source information. Both have the potential to be significant positive developments for journalists and media organizations in the coming year.

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