

Prather in WyoFile: Wyoming Remains Without a Law to Prevent Lawsuits Intended to Silence Free Speech

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PRACTICES Anti-SLAPP and First Amendment Rights

Haynes Boone Partner [Laura Prather](#) spoke with *WyoFile* as a piece of Wyoming legislation seeking to curb lawsuits intended to deter public critique and scrutiny died for the second year in a row, with lawmakers citing concerns that the bill was drafted by an out-of-state attorney and “imbalanced.”

According to Prather, an American Bar Association advisor to the Uniform Law Commission’s Model Anti-SLAPP Committee and advisor to The SLAPP Back Initiative, substantive state laws can be applied in federal court, while state laws that conflict with federal procedures will not be applied.

Substantive laws focus on the “what,” such as under what law someone can be sued, versus procedural laws, which focus on the “how,” like motions to dismiss such lawsuits. For anti-SLAPP laws, “substantive” is used to describe laws that focus on “immunity” from suit, for example, while “procedural” is used to describe laws that focus on quickly dismissing weak cases.

“When UPEPA was being drafted, these issues were taken into consideration so that UPEPA mirrors, rather than conflicts, with the federal rules under Federal Rule of Civil Procedure 12 and 56,” Prather said. (Rule 12 refers to motions to dismiss and 56 to summary judgments.) “In that way, the goal was to give UPEPA the strongest likelihood of being applied in federal court.”

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This legislation differs from other successfully enacted anti-SLAPP laws, including UPEPA, as this immunity provision contrasts with other laws’ quick-dismissal procedural frameworks.

“I think that the immunity provision could be problematic since other states have found similar provisions unconstitutional,” Prather said. “I would also be concerned that there were no guardrails in the bill to ensure active case management by the judiciary at the outset of the case to ensure that constitutional rights are being protected.” This means the legislation lacks strict timelines and deadlines for filing, allowing a case to sit on a docket rather than being resolved quickly.

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And while committee members voiced concerns about having legislation drafted by outside attorneys, Prather doesn’t think their reluctance to pass this particular bill will adversely affect any future adoption potential of UPEPA.

“One of the amazing things about the Uniform Law Commission Process is that they engage practitioners, judges, and lawmakers from all 50 states to first, decide what areas of the law would benefit from uniformity, next evaluate what is working and not working in the states that already have legislation in that area when drafting the model law, and finally, present and debate the drafted model before the entire [conference] of ULC Commissioners from all over the country,” she

said. “That process alone ensures that every uniform law can be embraced as a collaborative approach to best practices, and UPEPA is a perfect example of that.”

To read the full article from *WyoFile*, click [here](#).