Laura Prather in Law360: Ruling Could Limit Anti-SLAPP Law

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A 5th U.S. Circuit Court of Appeals decision against *The New York Times* has cast doubt on whether state Anti-SLAAP laws apply in federal court, stirring concern among media lawyers that defendants in defamation litigation and similar suits would be put at a disadvantage and could face forum shopping if the circuit doesn't enforce the state laws, *Law360* reported.

A panel of the court on Aug. 15 revived a defamation suit brought against the newspaper by Loyola University professor Walter Block, who claimed he was quoted in a way that made it sound like he was defending slavery. Crucially, the panel said in its per curiam decision that "the applicability of state anti-SLAPP statutes in federal court is an important and unresolved issue in this circuit."

That statement came as a surprise to media lawyers who thought the circuit had previously staked out a position recognizing the applicability of Louisiana's state free speech statute, referred to as an anti-SLAPP law. The acronym stands for strategic lawsuits against public participation and generally refers to meritless lawsuits intended to chill protected speech. By opening the door to the possibility that similar state laws, including the Texas Citizens Participation Act, wouldn't apply in federal court, the circuit could be inviting forum shopping by plaintiffs and could leave defendants with costly discovery bills and increased litigation costs, lawyers say.

In 2009, the 5th Circuit applied the Louisiana anti-SLAPP statute in *Henry v. Lake Charles American Press LLC*, and later said in the 2012 case *Brown v. Wimberly* that the circuit "has adopted the use of the statute in federal court." The *Lake Charles* decision has been cited by other federal circuit courts as standing for the conclusion that state anti-SLAPP statutes are enforceable in federal proceedings. …

Those rulings led lawyers to believe the issue was decided, at least for Louisiana's state law, said Laura Prather, a partner at Haynes Boone. But with one line and an extended footnote in the *Block* decision describing the issue as an "open question," the 5th Circuit has undone that confidence, she said.

"I think the Block decision is particularly troubling because it calls into question whether or not the 5th Circuit has actually applied the Louisiana SLAPP statute in a diversity case," Prather said. "It calls into question something that had been established law and doesn't provide insight into why."

According to a 2015 law review article written by Prather, Arizona, California, Georgia, Illinois, Indiana, Maryland, Nevada, Oregon, Utah, Vermont and Washington have also applied state anti-SLAPP statutes in federal court. Federal courts in the District of Columbia, Massachusetts and Georgia have barred application of those jurisdictions' anti-SLAPP statutes.

In the Lone Star State, all four federal districts have recognized the Texas Citizens Participation Act's applicability in some way, including a 2014 ruling by U.S. District Judge Nelva Gonzales Ramos in *Williams v. Cordillera Communications* that said the procedural features of the TCPA are

designed to prevent substantive consequences, including the impairment of First Amendment rights and the time and expense of defending against meritless litigation.

Excerpted from *Law360*. To read the full article, click here.