

## Laura Prather Talks With Media About Free Speech Protections

---

April 3, 2019 Laura Prather

---

**PRACTICES** Media and Entertainment Litigation, Litigation

---

Haynes Boone Partner [Laura Prather](#) has talked with several news outlets recently about court decisions that have weakened Texas' open government standards and about proposed Texas legislation that could erode free speech rights. Prather is head of the firm's Media Law Practice Group.

Publications include [The Texas Tribune](#), the [Austin American-Statesman](#), [The Facts.com](#) and [ABC News](#).

Here is an excerpt:

"[The decision] created a loophole that a Mack truck can drive through. ... I can tell you it is being abused all over the state and in ways in which I feel certain the court never anticipated," said Laura Prather, a First Amendment attorney in Austin and member of the Freedom of Information Foundation of Texas. "You can no longer find out how your taxpayer dollars are being spent. It's that simple."

Prather said the Boeing decision can hurt small businesses. Without being able to see the winning contract, she said, companies that lose bids won't know how to be more competitive in future deals, which could discourage competition.

But for citizens, she said, the Boeing loophole leaves taxpayers unable to serve as a check on local governments.

"When we think about all the economic development incentives that go out there, and companies say, 'We're going to provide 50,000 jobs and we're going to do X, Y and Z for the community,' you can no longer check to see if they're going to do those things because you can't get that information," Prather said.

She also talked with the *Austin American-Statesman* and *The Facts.com* about House Bill 2730. Critics say the legislation would effectively gut the 2011 Texas Citizens Participation Act, known as the anti-SLAPP law. The act allows judges to quickly dismiss meritless suits designed to silence opponents by drowning them in legal bills, according to the *Statesman*.

Here is an excerpt:

All sides agree the law has been effective at its original intention of strengthening free speech rights by keeping people from going broke if businesses sue them, for example, for protesting a polluting power plant or leaving a negative restaurant review on Yelp.

But [Rep. Jeff] Leach and Texans for Lawsuit Reform, which published a report in December calling on lawmakers to amend the act, say that its broad wording has allowed it to be applied in circumstances not envisioned by the Legislature. They pointed to instances when the law has been

invoked in child custody disputes and in a case in which a company attempted to sue a former employee for stealing trade secrets but had its lawsuit dismissed under the anti-SLAPP law.

A coalition of Texas newspapers, TV stations and open government advocates is opposing Leach's bill.

Laura Lee Prather, a lawyer with the Haynes Boone firm who specializes in First Amendment issues and is working with the media coalition, said the primary way Leach's bill could weaken the law's free speech protections is by deleting a series of legal definitions that make the statute enforceable.

"He removes the definitions — for 'exercise of free speech,' 'exercise of right of petition,' 'matter of public concern' — and then says that only constitutionally protected speech is protected" under the anti-SLAPP law, Prather said. "The problem is there are five categories of unprotected speech under the Constitution: defamation, invasion of privacy, obscenity, fighting words, indecency."

Deleting the definitions of what is protected by the act could allow companies to find ways to sue people by claiming the speech in question is not protected by the Constitution, she said.

"It has a very real possibility of carving out protection for defamation lawsuits, which is the heart and soul of the law," she said.

The *Statesman* article was picked up by publications such as *Newstex Blogs*, *WebNews*, *Pro Football Weekly*.

Prather also was quoted in an article by the [Freedom of the Press Foundation](#). Here is an excerpt:

First Amendment attorney Laura Prather was involved with the passage of the 2011 statute, and she continues to fight against SLAPP in Texas.

"People were seeing that there was a rush of litigation against individuals and public interest groups when they spoke out, and there was interest at that time in preserving people's free speech rights," Prather said of the political climate in the Texas legislature at the time the statute was passed.

Now, she says, vocal opponents are pushing for the law to be narrowed in a way that strikes at the heart of the law, which would undermine the important protections it has codified. The legislative effort by lobbying group Texans for Lawsuit Reform to weaken TCPA — HB 2730/SB 2162 — is outwardly an attempt to cut down on the instances in which the law is used to dismiss "legitimate" libel lawsuits, but Prather notes that the vast majority of the time, the statute is used as intended.

"The citizens have overwhelmingly benefitted from this law," she said. "You can't even measure the amount of times it has deterred SLAPP lawsuits." Any refinement of the statute, according to Prather, should be done with a scalpel rather than a sledgehammer.

Other media mentions include:

[ABC News](#)

[Texas Association of Broadcasters](#)