

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

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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.” After determining that “Machete Kills” contained “inappropriate content,” the state denied “Machete Kills” grant request, leading the production company for “Machete Kills” to sue the current and former Texas Film Commissioners for injunctive, declaratory, and monetary relief – claiming that the denial was based on viewpoint discrimination, thus violating the film production company’s First Amendment rights. In affirming the district court, the Fifth Circuit held that it is not clearly established that the First Amendment requires a state with an incentive program like the one at issue to fund films that cast the state in a negative light. Specifically, the court found that the state’s denial did not prevent the production company from filming, producing, or distributing the film, and did not prevent the production company’s speech or hinder the production company’s First Amendment expression. The court went on to state that the discretionary nature of the program allowed the state to selectively fund some programs to the exclusion of others without violating the United States or Texas Constitutions.