



## MEDIA AND ENTERTAINMENT LAW NEWSLETTER

SEPTEMBER 2015

### “Sine Die” 2015 Texas Legislative Session Wrap-up

As the Texas Legislative Session wrapped up on June 1, significant strides were made in the free speech and transparency areas.



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### Reporting on Whistleblower Allegations

The most important legislative victory for journalists was the passage of Senate Bill 627 which codifies a defense for the news media’s accurate reporting of third-party allegations. Accurate reporting on such allegations had been protected under Texas common law for 25 years but was called into question in a recent Texas Supreme Court ruling, *Neely v. Wilson*. SB 627 protects the media’s ability to inform the public about potential wrongdoing without the fear of reprisal if the allegation later turns out to be false. This sort of reporting is critical when it comes to shining a light on issues that the government might not yet be investigating. One need look no further than the media’s uncovering of abuse at the Texas Youth Commission and in Texas special education classrooms, exposure of financial mismanagement at CPRIT and improper government bidding with the 21 CT contract, and bringing public attention to prosecutorial misconduct in the cases of Anthony Graves and Michael Morton to see the significance of this reporting. Fortunately, Texas lawmakers saw the importance of preserving the media’s ability to perform this vital function in our democracy.

### New Publication

Laura Lee Prather and Justice Jane Bland, *Bullies Beware: Safeguarding Constitutional Rights Through Anti-SLAPP in Texas*, 47 TEX. TECH. L. REV. 725 (Summer 2015).

Chairman Todd Hunter (R-Corpus Christi) and Senator Joan Huffman (R-Houston) co-sponsored SB 627. Chairman Hunter, a stalwart supporter of free speech efforts in Texas who has been instrumental in passing seminal First Amendment legislation in the last four legislative sessions, mediated discussions of all stakeholders concerning the bill. Several journalists provided crucial testimony that helped lawmakers see the importance of this legislation.

The Freedom of Information Foundation of Texas (FOIFT) worked together with the Texas Press Association (TPA) and the Texas Association of Broadcasters (TAB) to obtain an agreed upon bill that received unanimous support in both Chambers and became law upon Governor Greg Abbott’s signature on May 28, 2015.

## Private University Campus Police and the Public Information Act

After a Rice University police officer beat a man suspected of stealing a bicycle and a University of Incarnate Word officer killed a student during a traffic stop off campus, both schools refused to produce materials in response to open records requests about the use of force, claiming that the campus police departments are part of a private university and, therefore, exempt from the Texas Public Information Act. Sen. John Whitmire, D-Houston, sponsored SB 308 which provides that “A campus police department of a private institution of higher education is a law enforcement agency and a governmental body for purposes of Chapter 552, Government Code,” meaning records of private university campus police departments will be public to the same extent as those of a public university. The law goes into effect on September 1, 2015. FOIFT assisted with ensuring passage of the bill.

## Access to Motor Vehicle Accident Reports

HB 2633, intended to crack down on barratry, or ambulance chasing, would have placed restrictions on the ability of journalists to access motor vehicle accident reports. However, journalists were able to get the language amended to maintain the right of news organizations to access the reports. The bill passed both Chambers unanimously but has yet to be signed by the governor.

## What Didn't Happen

For journalists, the success of a legislative session is also measured by the bills that did not pass, such as those that would have encroached upon transparency. This session was no exception, with attacks on publishing historically accurate criminal history information, public notice in newspapers, and the

right to record. Journalists blocked a bill that would have imposed requirements on journalists to comply with expunction orders, which are orders directed at certain government bodies to remove records of criminal history from certain government records.

Also, there were multiple bills affecting photography rights, including one that would have created a 25-foot buffer zone within which photography of police would be prohibited. The sponsor of that bill ultimately dropped it after enormous public outcry and objection from the media industry. Still another bill that would have prohibited the publication of an image without the individual's consent died in committee after strong opposition from the press. Haynes and Boone associate and former photojournalist, Alicia Wagner Calzada, played an instrumental role in fighting against these bills.

Finally, the session saw an unprecedented number of bills that attempted to do away with public notice in newspapers. Newspapers and other proponents of government transparency successfully fought off more than ten measures to limit public notice, including one so all-encompassing that it would have allowed all public notices to be published “on the internet,” with no specificity as to where or when to do so. Another unsuccessful bill would have moved public notices to a central state-run database, taking them out of the local communities that are affected by actions related to the notice.

Haynes and Boone's government relations team worked diligently on behalf of FOIFT on a pro bono basis to assist with these legislative efforts.



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