

PRESENTED AT

32<sup>nd</sup> Annual Conference on State and Federal Appeals

June 16-17, 2022  
Austin, Texas

## **What *Landry's* Means for Press Statements**

**Marc Fuller**  
**Jackson Walker LLP**

Author Contact Information:

Marc Fuller  
Jackson Walker LLP  
Dallas, Texas  
[mfuller@jw.com](mailto:mfuller@jw.com)  
214.953.5793

Last year, the Texas Supreme Court resolved a split among intermediate courts of appeals on the issue of whether attorneys' statements to the press and public are covered by the "judicial proceedings" privilege and attorney immunity. *Landry's, Inc. v. Animal Legal Defense Fund*, 631 S.W.3d 40 (Tex. 2021). The Court held that such statements are not absolutely privileged and are not covered by attorney immunity, and thus must be analyzed under traditional defamation principles. This paper discusses *Landry's* and highlights other privileges, defenses, and doctrines that attorneys should consider when determining whether to engage with the press.

### ***Landry's***

Landry's, Inc. owns the Downtown Aquarium in Houston, where four white Bengal tigers live. In 2015, a radio station owner took a behind-the-scenes tour of the tiger enclosure and later contacted the Animal Legal Defense Fund ("ALDF") about the tigers' condition. An attorney at the ALDF, along with the organization's outside counsel, sent Landry's a 60-day notice of intended suit ("Notice Letter") under the Endangered Species Act, 16 U.S.C. § 1540(g)(2)(A)(i). Copies of the Notice Letter were sent to the Secretary of the Interior, as required under the Act, and to the mayor of Houston. ALDF also posted a press release on its website describing the Notice Letter and linking to it. ALDF further disseminated the Notice Letter and press release to the *Houston Chronicle* and to a local television station in Denver, where Landry's owned another tiger exhibit. The *Chronicle* and the television station reported on the allegations by ALDF, as

did other media. Finally, ALDF, its in-house attorney, and its executive director posted on social media about the tigers.

Landry's sued the radio station owner, ALDF, and ALDF's in-house counsel for defamation, business disparagement, and various other torts. ALDF and its in-house counsel responded by filing a motion to dismiss under the Texas Citizens' Participation Act ("TCPA"), Tex. Civ. Prac. & Rem. Code § 27.001 *et seq.* The moving defendants argued that Landry's could not satisfy its burden under the TCPA to submit clear and specific evidence for each essential element of its claims because the judicial proceedings privilege and attorney immunity barred Landry's claims.

The trial court granted the motion to dismiss, and the Fourteenth Court of Appeals affirmed. *Landry's, Inc. v. Animal Legal Defense Fund*, 566 S.W.3d 41 (Tex. App.—Houston [14th Dist.] 2018), *rev'd* 631 S.W.3d 40 (2021). The court of appeals held that the judicial proceedings privilege shielded the defendants, stating that the privilege applied because the challenged statements bore "some relation to an existing or proposed judicial proceeding," were "related to the proposed litigation," and the anticipated suit was "actually contemplated in good faith." The court of appeals recognized that there was a split in authority regarding the extent to which statements made to the press or in press releases were covered by the privilege. *Id.* (citing *Daystar Residential, Inc. v. Collmer*, 176 S.W.3d 24, 27-29 (Tex. App.—Houston [1st Dist.] 2004, pet. denied) (comments on result of autopsy report privileged where made to newspaper by attorney retained to file suit against same company based on a different but similar

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: What Landry's Means for Press Statements

Also available as part of the eCourse

[2022 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the  
32<sup>nd</sup> Annual Conference on State and Federal Appeals session  
"What *Landry's* Means for Press Statements "