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Federal Lawsuit Challenges Texas Drone Law That Unconstitutionally Restricts Visual Journalists

Austin, Tx. – The National Press Photographers Association, the Texas Press Association and an independent journalist filed a lawsuit today in Austin federal court challenging a Texas law—[Texas Government Code Chapter 423](#)—that makes it a crime for visual journalists and others to use drones for newsgathering and other similar activities.

Texas’s drone law is among the most restrictive in the country. Chapter 423 makes it a crime and imposes civil penalties on journalists’ use of drones to capture images of a person or privately owned real property, regardless of where the drone is located. The restriction is on “intent to conduct surveillance,” a phrase not defined in the statute that is vague enough to include most newsgathering activities and chill legitimate speech.

A subsection of the code provides more than 21 exemptions – including oil and gas, agribusiness, and real estate brokers – from the criminal and civil liability otherwise imposed, but notably *does not* exempt the use of drones to capture images for the purpose of visual journalism or newsgathering. The penalties for violating Chapter 423 range from a \$500 fine to a fine of up to \$2,000 and/or 180 days in jail for a single image; each image constitutes a separate offense, both when captured and again if it is used or distributed.

The lawsuit also challenges a provision of Texas’ drone law that completely bans all drone use at an altitude lower than 400 feet (above ground level) for any purpose above “critical infrastructure facilities,” “correctional facilities,” and “sports venues.” “Critical infrastructure facilities” are defined as 19 different kinds of facilities, including oil and gas drilling sites and pipelines, correctional facilities, animal feedlots, and petroleum and alumina refineries. The 400-foot floor acts as a per se ban of drone operations because under Federal Aviation Administration regulations, drones are not permitted to fly higher than 400 feet above ground level.

The suit alleges that the law violates the First Amendment because it is a restriction on speech that is not narrowly tailored in furtherance of a substantial governmental interest. The suit also argues that the law violates the Supremacy Clause because it infringes upon the FAA’s exclusive primacy over national airspace.

The real purpose of the law, the suit argues, is to suppress news coverage of potentially dangerous or embarrassing conditions at these sites of public interest. This includes, for example, the negative environmental impacts of some oil, gas and chemical manufacturing facilities.

Alicia Calzada, NPPA’s deputy general counsel, testified against the bill at a 2013 legislative hearing. “We advised the legislature of the chilling impact of this law when they were considering it and our warnings have come true. Our members worry about the legal risk every

time they put a drone in the air—and some of our members avoid using drones in this state altogether.”

The Texas Legislature passed Chapter 423 in 2013 over forceful opposition from visual journalists across the state, including the National Press Photographers Association and the Texas Press Association, who advised the Legislature of the unconstitutional restrictions the proposed law would impose and the chilling effect it would have on newsgathering activities and speech.

The Texas Legislature amended Chapter 423 in 2015, 2017 and 2019. The amendments added additional exemptions from the law’s surveillance provisions—but not for journalists—and added two sections that ban the use of Unmanned Aerial Vehicles above any location classified as “a correctional facility, detention facility, or critical infrastructure facility” or a “sports venue.” Independent journalist and Plaintiff Joseph Pappalardo covered the barriers created by Chapter 423 for visual journalists in Texas for the *Dallas Observer* in an [award-winning investigative piece](#).

“The National Press Photographers Association has been an active stakeholder in the use of drones for newsgathering for many years, working cooperatively with the FAA and other government agencies as well as first responders and news organization to create common-sense rules,” said Mickey H. Osterreicher, NPPA general counsel. “It is extremely unfortunate that Texas has chosen to impose such ‘constitutionally suspect’ restrictions on drone use despite our best efforts,” he added.

Texas’s Drone Law has had a serious chilling effect on visual journalists in the State of Texas and is unquestionably hampering important newsgathering activities. For example, NPPA member Brandon Wade was hired by the Center for Investigative Reporting to photograph a facility housing immigrant children where CIR reported children had been mistreated. Because of the restrictions and vagueness of Texas’s drone law, Wade had to limit where he flew his drone, which hampered his efforts to capture newsworthy images of the treatment center. NPPA member Billy Calzada was using a drone to capture images of the aftermath of a deadly fire that killed six people in San Marcos, Texas when he was threatened by police with Ch. 423.

These are just a few examples of the chilling effects of Texas’s Drone Law. Had its restrictions not been in place, the suit alleges, plaintiff Pappalardo would have used his drone to take aerial photographs to aid in coverage of newsworthy topics like Hurricane Harvey (including a panic at the gasoline pumps that the storm caused); flood and wind damage in other storms, house fires, construction projects; urban sprawl; the removal of homeless encampments; the route a proposed toll road would take dumping sites for dead animals; and the removal of a Confederate statute from a public park. Instead, Pappalardo allowed his federal drone license to expire, since Chapter 423 prevented him from using his drone from journalistic purposes.

You can view the complaint [here](#). Joseph Pappalardo and NPPA members Brandon Wade and Billy Calzada, visual journalists in the State of Texas, are also available to speak about their experiences and the importance of this lawsuit to the public interest.

The plaintiffs in the case are represented by Yale Law School's Media Freedom and Information Access Clinic (MFIA), Public Justice, and Jim Hemphill of Austin law firm Graves Dougherty Hearon & Moody, P.C.



Public Justice pursues high-impact lawsuits to combat social and economic injustice, protect the Earth's sustainability, and challenge predatory corporate conduct and government abuses.



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Yale Law School's Media Freedom and Information Access Clinic (MFIA) is a law school clinic dedicated to increasing

government transparency, defending the essential work of news gatherers, and protecting freedom of expression through impact

litigation, direct legal services, and policy work. The clinic is a program of the Abrams Institute for Freedom of Expression and the Information Society Project.



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disparagement, privacy, copyright, trademark and advertising cases, as well as the law governing newsgathering and access to courtrooms, government documents and meetings.



NPPA
THE VOICE OF
VISUAL JOURNALISTS

Since its founding in 1946, the **National Press Photographers Association (NPPA)** is the Voice of Visual Journalists, a 501(c)(6) non-profit professional organization dedicated to the advancement of visual journalism, its creation, editing and distribution in all news media. NPPA vigorously advocates for and protects the Constitutional rights of journalists as well as freedom of the press and speech in all its forms, especially as it relates to

visual journalism. Its members include still and television photographers, editors, students, and representatives of businesses serving the visual journalism community.



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Texas Press Association is the voice of the state's newspaper industry. The association promotes the welfare of Texas newspapers, encourages higher standards of journalism, and plays an important role in protecting the public's right to know as an advocate of First Amendment liberties. TPA is one of the nation's oldest and largest newspaper trade associations. TPA represents more than 400 paid-circulation newspapers.