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## **JAMES A. HEMPHILL**

Shareholder

**APPELLATE LAW, CIVIL LITIGATION,  
INTELLECTUAL PROPERTY, INTERNET &  
INFORMATION SECURITY, MEDIA, FIRST  
AMENDMENT & PUBLIC ACCESS,  
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## **ABOUT**

Jim Hemphill is a trial and appellate lawyer who helps clients find creative solutions to complex problems. His commercial litigation practice often involves matters with unique facts and novel legal issues that require inventive analytical and strategic approaches, ranging from landfill and environmental issues to bad-faith insurance claims-handling allegations.

Jim's long-standing practice in First Amendment, media, and open-government law is enhanced by his experience as a newspaper and television journalist. He is recognized in The Best Lawyers in America in the category of First Amendment law.

Jim has an extensive appellate practice and is Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization. He has argued several cases before state and federal appellate courts in a variety of matters, including First Amendment cases, arbitration issues, and appeals from administrative agency rulings.

In addition to handling first-chair duties in trial and appellate courts, Jim also frequently serves as legal and appellate counsel during trials, responsible for legal issues such as evidence and testimony admissibility, as well as handling error preservation and jury charge duties as a key player on the trial team.

## **PROFESSIONAL QUALIFICATIONS**

Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization.

Jim received his Doctor of Jurisprudence degree, with high honors, from The University of Texas School of Law in 1993. While in law school, he was selected as a member of the academic honor societies the Chancellors and the Order of the Coif. He also served as Editor in Chief of the *Texas Law Review*. After law school, he was a law clerk to the Hon. R. Lanier Anderson III on the U.S. Court of Appeals for the Eleventh Circuit.

Jim received a Bachelor of Arts degree, with distinction, from Iowa State University in 1983, with a major in journalism and mass communication and a minor in English. He also did graduate studies in journalism at Iowa State.

Before law school, Jim was a practicing journalist with experience in newspapers, magazines, television, and radio. He also taught reporting at Iowa State University's journalism school.

He is admitted to practice in all state and federal courts in Texas, as well as the U.S. Supreme Court and the U.S. Court of Appeals for the Fifth Circuit.

## **REPRESENTATIVE EXPERIENCE**

### **Commercial litigation, trial and appellate:**

Successfully defended an apartment lease agreement in the Texas Supreme Court. Lower court rulings had overturned a key risk-allocation provision of the Texas Apartment Association form lease, which governed the relationship between millions of Texans and their landlords, *Philadelphia Indemnity Ins. Co. v. White*, 490 S.W.3d 468 (Tex. 2016).

Obtained dismissal of claim against client because an administrative agency had exclusive jurisdiction over the dispute. *In re Texas Mutual Ins. Co.*, 510 S.W.3d 552 (Tex. App. – El Paso 2016, orig. proceeding).

Reversal of state administrative agency's decision regarding operating hours of a landfill. *Heritage on the San Gabriel Homeowners Association v. Texas Commission on Environmental Quality*, 393 S.W.3d 417 (Tex. App. – Austin 2012, pet. denied).

Received substantial jury verdict and judgment for actual and punitive damages based on the distribution by a business competitor of false statements about client's environmental record. *Waste Management of Texas, Inc. v. Texas Disposal Systems Landfill, Inc.*, 434 S.W.3d 142 (Tex. 2014).

### **Constitutional and media law:**

In a case that set the standard for the constitutional protection of political satire and parody in

Texas, obtained dismissal for a newspaper, its editor, and its reporter in a defamation claim brought by a judge and district attorney. *New Times, Inc. v. Isaacks*, 146 S.W.3d 144 (Tex. 2004), *cert. denied*, 545 U.S. 1105 (2005).

Dismissal under Texas Anti-SLAPP statute of libel claim against newspaper by physician who claimed that an article portrayed him as a “vitriolic” doctor who caused or contributed to the deaths of his patients through over-prescribing pain medication. *Cox Media Group, LLC v. Joselevitz*, 524 S.W.3d 850 (Tex. App. – Houston [14th Dist.] 2017, no pet.).

Established that the widow of Tammy Wynette’s widower, who voluntarily appeared on television programs to discuss ongoing controversy about Tammy Wynette’s estate, was a “public figure” subject to the Texas Anti-SLAPP statute when she sued a citizen who commented on the issue in various Internet forums. *McManus v. Richey*, 2016 WL 4045078 (Tex. App. – Waco July 27, 2016, no pet.).

Dismissal on the pleadings for a newspaper in case alleging defamation and violation of the Tax Code over publication of details regarding the plaintiff’s prosecution for tax evasion. *Shanklin v. Fernald et al.*, 539 F.Supp.2d 878 (W.D. Tex. 2008).

Dismissal on the pleadings of libel lawsuit brought by law enforcement officer against alternative newspaper/website and reporter. *King v. Phoenix New Times LLC et al.* (Ariz. Sup. Ct., Pinal County 2012).

Dismissal of lawsuit alleging that publication of plaintiff’s publicly-acknowledged HIV status violated Texas Communicable Disease Prevention and Control Act. *New Times, Inc. v. Doe*, 183 S.W.3d 122 (Tex. App. – Dallas 2006, no pet.).

Primary author of merits briefing in United States Supreme Court for prevailing party in Fourth Amendment case. *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

Obtained trial-court dismissals in numerous cases under Texas’ Anti-SLAPP statute, the Texas Citizens Participation Act, including *Bovee v. Houston Press, et al.* (Johnson County Dist. Ct. 2015); *Satterwhite v. Houston Press, LP* (Harris County Dist. Ct. 2015); *Barnes v. Austin American-Statesman* (Travis County Dist. Ct. 2015); *Pennie v. Dallas Observer LP* (Dallas County Dist. Ct. 2014); *Thuesen v. Scholar et al.* (Harris County Dist. Ct. 2013); *Merklin v. Houston Press* (Harris County Dist. Ct. 2013).

## **PROFESSIONAL AFFILIATIONS**

Jim is a member of the American Bar Association (including litigation and communication law forums), the State Bar of Texas, and the Austin Bar Association (including litigation and appellate sections). He is also active in the Freedom of Information Foundation of Texas and the national

Media Law Resource Center.

## **AWARDS AND HONORS**

- 2019 Austin Lawyer of the Year for Litigation – First Amendment as listed in *The Best Lawyers in America*<sup>®</sup>
- Listed in *The Best Lawyers in America*<sup>®</sup> published by Woodward/White, Inc., Litigation – First Amendment, (2005 – 2019)
- AV<sup>®</sup> Preeminent<sup>™</sup> Peer Review Rating, Martindale.com

## **COMMUNITY**

In addition to providing *pro bono* representation to clients such as Texas RioGrande Legal Aid and through Volunteer Legal Services of Central Texas, Jim is proud to serve in several volunteer capacities for community and professional organizations.

- Member and Former Chair, Board of Directors, Easterseals of Central Texas
- Vice President and Director, Freedom of Information Foundation of Texas
- Treasurer, Texas Law Review Association
- Co-chair, Litigation Committee, Media Law Resource Center

## **PUBLICATIONS AND PRESENTATIONS**

Jim's writings on defamation and online liability issues have been published in the *Texas Law Review* and the *Texas Intellectual Property Law Journal*.

He has given presentations and appeared on panels addressing a variety of trial law topics, including a State Bar of Texas seminar on litigation issues for intellectual property transactional lawyers, talks on the Texas Anti-SLAPP statute at the State Bar of Texas and the Austin Bar Association, open records and meetings presentations at a seminar for Texas criminal court judges and at the Agricultural Law Conference, a speech on Internet liability issues for the Practising Law Institute's computer law conference, and a seminar on liability issues for national computer users' group. Jim gives guest lectures on media and First Amendment law regularly at area colleges and universities.

He is also a frequent panelist at national media law seminars.