

# Texas Appeals Court Orders Dismissal of Lawsuit Against ProPublica, Texas Tribune

An appeals court ruled that MRG Medical filed its lawsuit against the news organizations past the statute of limitations.



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by **Perla Trevizo**

Co-published with [ProPublica](#) and [The Texas Tribune](#)

May 23, 10:30 a.m. CDT

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A Texas state appeals court on Wednesday ordered the dismissal of a 2022 disparagement lawsuit against ProPublica and The Texas Tribune filed by MRG Medical LLC., a health care services company. The court ruled that the defamation claims were barred by the one-year statute of limitation.

Writing on behalf of a three-judge panel of the 3rd Court of Appeals, Judge Rosa Lopez Theofanis sent the case back to the lower court to consider the news organizations' request for court costs, attorneys fees and sanctions.

MRG Medical filed the suit in September 2022 challenging a [2020 Texas Tribune and ProPublica article](#) about efforts by the company and its founder, Kyle Hayungs, to secure contracts from local governments during the COVID-19 pandemic. The investigation, based on dozens of interviews and a review of hundreds of emails, audio recordings and social media posts, found local elected officials hadn't disclosed the extent of their relationships with Hayungs as they tried to persuade their governments to work with him or companies he hoped to partner with.

Hayungs, who founded MRG Medical in 2017, claimed the news organizations and the three reporters who worked on the story included statements or information in the article that disparaged the company and interfered with current and prospective contracts. Hayungs based his lawsuit on what he purported to be implications in the story that the company was illegally avoiding competitive public procurement by keeping contracts under \$50,000, that he was selling unreliable non-FDA-authorized COVID-19 tests

and that he was bribing elected officials.

The authors of the investigation, Vianna Davila, Jeremy Schwartz and Lexi Churchill, were also named as defendants in the lawsuit.

In May 2023, a Texas district court denied the news organizations' motion to dismiss pursuant to the Texas Citizens Participation Act. The act protects speech on matters deemed of "public concern" by authorizing courts to quickly review the legal merit of lawsuits that seek to stifle speech through the imposition of civil liability damages.

Attorneys for the news organizations appealed the decision, arguing MRG Medical's claims were baseless. "MRG remains unable to point to any false statement in the entire Article, relying instead on alleged 'gists and implications' that are contradicted by the Article's text," the attorneys for the news organizations wrote.

MRG Medical had further argued that the article was of no public relevance because the company had not secured a contract with the government. However, in the appeals court ruling, Theofanis wrote that the TCPA did apply because the dispute centered around the proper allocation of public funds, "and where the public's purse goes, so goes the public's concern." Moreover, the article also raised concerns about the accuracy and usefulness of COVID-19 tests promoted by Hayungs, which, she wrote, were intended to be part of the government's response to the pandemic.

Theofanis also agreed with the news organizations' argument that the nature of MRG Medical's claims were not for business disparagement but for defamation, which carries a one-year statute of limitation. The suit was filed past that deadline.

"The public has a fundamental right to know how its leaders act during a crisis and who they help potentially profit from the uncertainty," said Jeremy Kutner, ProPublica's general counsel. "We are thrilled the court has tossed this baseless case and protected this meticulous and illuminating article from those who sought to silence it."

MRG Medical's attorney did not immediately respond to a request for comment.

ProPublica and the Tribune were represented by Marc Fuller and Maggie Burreson of Jackson Walker LLP.

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