

Laura Lee Prather in Texas Bar Journal: Striking a Balance

April 2, 2020 Laura Prather

PRACTICES Anti-SLAPP and First Amendment Rights, Media and Entertainment Litigation

On September 1, 2019, significant changes to the Texas Citizens Participation Act, or TCPA, went into effect. The changes apply to actions filed on or after that date.

Background of TCPA

By way of background, courts, scholars, and free speech advocates have dubbed meritless lawsuits targeting the legitimate exercise of the rights to engage in truthful speech, lawful petitioning, and legal association as “Strategic Lawsuits Against Public Participation,” or SLAPP suits. This acronym was developed more than a quarter century ago after professors George W. Pring and Penelope Canan identified a disturbing litigation trend that sought to chill the rights of ordinary citizens to speak and associate freely and to petition the government for redress of grievances — all fundamental rights protected by the First Amendment. “After extensively studying this phenomenon, professors Pring and Canan concluded that tens of thousands of Americans had been victimized by such civil actions and that, although these lawsuits rarely succeeded on the merits, the mere fact of filing the lawsuit led to the goal of silencing those who had been speaking out.” Succinctly put, a SLAPP suit is the offensive use of a legal proceeding to prevent, or retaliate against, persons lawfully exercising their First Amendment rights.

In response to the rise in retaliatory litigation, at least 33 states, the District of Columbia, and the U.S. territory of Guam have passed some form of anti-SLAPP legislation. In 2011, the Texas Legislature, like those in other states, recognized this trend and unanimously voted to enact the TCPA.

It is important to note that an “Anti-SLAPP law acts as a gatekeeper, allowing a case to be quickly dismissed (before legal bills mount) if a judge finds no merit to the plaintiff’s arguments.” There is no prototypical SLAPP victim or type of claim, and anti-SLAPP laws are available to everyone. “Anti-SLAPP laws, including the TCPA, protect the conduct (protected speech), not individuals and entities. While these laws are primarily intended to help those with fewer resources defend against deep-pocketed plaintiffs, there are no income or other qualifications to meet to invoke anti-SLAPP” protections.

Excerpted from *Texas Bar Journal*. To read the full article, click on the PDF below.

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