

Laura Prather in the Media Law Resource Center: Does the Texas Anti-SLAPP Law Apply in Federal Court' ? Stay Tuned

February 6, 2019 Laura Prather

PRACTICES Media and Entertainment Litigation, Litigation

Courts' views of whether state anti-SLAPP statutes apply in federal court continue to be a judicial checkerboard across the country, and the United States Supreme Court again in December declined to take the opportunity to clarify the issue.

Since Texas considers itself its own country, not surprisingly, the state has its own judicial checkerboard as to whether the Texas Citizens Participation Act ("TCPA") applies in federal court. The Southern and Northern district courts have applied the TCPA, while the Eastern and Western district courts have refused to do so. This inconsistent approach by the Texas courts was further evidenced in a January decision by Eastern District Judge Amos Mazzant – his third such ruling.

Williams v. Cordillera was the first case in which a federal court in the Fifth Circuit directly addressed the issue of whether the TCPA applies in federal court, holding that it does. 2014 WL 2611746 at *1. In *Williams*, a high school teacher, who had repeatedly been accused of improper behavior with his students, filed a lawsuit in response to a local television station's investigative series about him. The defendant filed a TCPA motion to dismiss, and the plaintiff responded arguing that the TCPA does not apply in federal court.

In ruling on the motion, the court conducted an Erie analysis, determining that, although there were procedural components to the statute, "these procedural features are designed to prevent substantive consequences—the impairment of First Amendment rights and the time and expense of defending against litigation that has no demonstrable merit under state law." The court then looked to the Fifth Circuit decision in *Henry v. Lake Charles American Press* in which Louisiana's anti-SLAPP law was applied, noting no material differences between the Louisiana and Texas statutes. 566 F.3d 164, 170 (5th Cir. 2009) ...

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