

SLAPP-HAPPY: THE BROAD REACH OF TCPA APPEALS

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26th Annual Conference on State and Federal Appeals
June 10, 2016

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OUTLINE

The TCPA

- Anti-SLAPP Statutes
- The Provisions of the TCPA

Recent TCPA Cases in Texas Courts

- *Lipsky* Clarifies “Step Two”
- Open Questions Remain for “Step One”
- Attorneys’ Fees

Recent TCPA Cases in the Fifth Circuit

- Application of the TCPA in Federal Court
- Availability of Immediate Appeal

THE TCPA

ANTI-SLAPP STATUTES

- “SLAPP”: strategic lawsuit against public participation
- Anti-SLAPP statutes
- More than half of states have specific anti-SLAPP laws.
- Texas Citizens Participation Act,
Tex. Civ. Prac. & Rem. Code § 27.001 *et seq.*

THE TCPA – PURPOSE

“The purpose of [the TCPA] is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.”

Tex. Civ. Prac. & Rem. Code § 27.002.



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THE TCPA – BURDEN-SHIFTING FRAMEWORK

- Step One: Defendant must show by a **preponderance of the evidence** that the TCPA applies. § 27.005(b).
- Step Two: Plaintiff must show by **clear and specific evidence** a prima facie case for each essential element of the claim. § 27.005(c).
- “Evidence” includes pleadings. § 27.006(a).



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First appeared as part of the conference materials for the

26th Annual Conference on State and Federal Appeals session

"SLAPP-Happy: The Broad Reach of Texas Citizens' Participation Act Appeals"