

The Texas Citizens Participation Act: The Effect of the 2019 Amendments and the Use of the Act in Employment Litigation

David C. Holmes



The obligatory SLAPP pun.

This presentation has three parts.

- How the TCPA substantive provisions – the three “rights” – changed as a result of the 2019 amendments.
- How the TCPA applies in employment cases before and after the amendments.
- An overview of the procedural process for a TCPA motion after the 2019 amendments.

What is the TCPA?

- The TCPA is an anti-SLAPP statute.
- SLAPP = Strategic Lawsuit Against Public Participation
- This term comes from Professors Canan and Pring of the University of Denver.
- At least 28 states have passed an anti-SLAPP statute. Congress has not.
- The TCPA applies only in state court. The Fifth Circuit held that the TCPA is “procedural” for purposes of *Erie*. *Klocke v. Watson*, 936 F.3d 240 (5th Cir. 2019)

The 2019 Amendments

- The amendments became effective on September 1, 2019.
- “An action filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.”
- To date, there is no case law under the amendments. We are still making educated guesses about how they will be interpreted.
- Could the old statute apply to a claim that is asserted on or after September 1, 2020? YES. It is the date of the “action” that controls, not the date of a claim.

The Scope of the TCPA, Before and After

- PRE-AMENDMENT: The TCPA applies if a “legal action” is “based on, relates to, or is in response to” a party’s exercise of the three protected rights. “Legal action” is broadly defined, and “Based on, relates to, or is in response to” has been expansively interpreted.
- The 2019 Amendment removes “relates to” from statutory language, narrowing applicability
- The 2019 Amendment narrows “legal action” to exclude:
 - Procedural actions/motions that do not amend or add claims
 - ADR proceedings
 - Post-judgment enforcement actions

Questions Regarding Scope (Part 1 of 2)

- Rule 202 motions: Courts were split under the original statute. The 2019 amendment does not clearly resolve the issue. Is a Rule 202 motion a procedural action that does not add a claim?
- Multiple remedies are not multiple legal actions. Example: If the plaintiff seeks both damages and injunctive relief for the same claim, there is only one legal action. *Van Der Linden v. Khan*, 535 S.W.3d 179 (Tex. App.—Fort Worth 2017, pet. denied) (“Because when a legal action is dismissed pursuant to the TCPA, all remedies available under that legal theory disappear with the dismissal of the action itself, a chapter 27 challenge to a request for injunctive relief should be directed at the underlying legal action, not at the requested remedy.”).

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First appeared as part of the conference materials for the
2020 Litigation Strategies and Employment Law session

"Texas Citizen's Participation Act: Recent Statutory and Decisional Developments"