

Mark C. Walker

THE TEXAS ANTI-SLAPP LAW AND
THE TEXAS DEFAMATION MITIGATION ACT:
A BLACK HOLE FOR CLAIMS WITH COMMUNICATIONS

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WHAT IS A SLAPP?



“STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION” THE TEXAS CITIZENS PARTICIPATION ACT

- TCPRC Chapter 27.
- First enacted 2011, amended 2013.
- Expedited, dispositive motion based on pleadings (as evidence) as well as extrinsic evidence.



UNDERLYING PURPOSE

- History: “stop frivolous lawsuits aimed at silencing citizens who are participating in the free exchange of ideas.” – House Research Organization Bill Analysis
- No studies, evidence of any widespread SLAPP abuse.
- Not part of tort reform, and TLR uninvolved.
- No discussion of why existing R 13 and TCPRC 9 & 10 inadequate to address – what need unmet?
- No discussion of why existing MSJ inadequate.
- No need to prove suit was frivolous to be dismissed.
- Underlying purpose: Protection of Media Defendants.



CONCLUSION:

SOLUTION IN SEARCH OF A PROBLEM

- Of over 210 reported state cases so far, only one or two can fairly be called SLAPP cases.
- In most cases now, the party with greater resources is the one that files the motion to dismiss.
- Strategic Motions Against Citizen Suits - SMACS



TCPA – A GROWTH PRACTICE

3 of 26 oral arguments before SCOTUS in next 3 months will be TCPA appeals.

Over 70% of reported state cases find for the movant in whole or in part.

Overall, roughly 90% of cases result in grant of a TCPA motion to dismiss.

Applied to NDAs, UCC-1 filing statements, breach of contract, trade secrets.



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