

Limitations of the Texas Citizens Participation Act

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The Texas Citizens Participation Act (TCPA), commonly referred to as the Texas Anti-SLAPP statute, provides litigants a valuable tool: an early opportunity to move to dismiss a lawsuit that infringes on their First Amendment rights, and if successful, an award of attorney fees.

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The Texas Citizens Participation Act (TCPA), commonly referred to as the Texas Anti-SLAPP statute, serves as a constitutional safeguard protecting the “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[s] the rights of a person to file meritorious lawsuits for demonstrable injury.” In other words, the statute provides litigants a valuable tool: an early opportunity to move to dismiss a lawsuit that infringes on their First Amendment rights, and, if successful, an award of attorney fees.

Although the Texas Supreme Court has previously described the TCPA as “casting a wide net,” recent changes to the statute’s

language, in effect since Sept. 1, 2019, have significantly narrowed its application:

- Prior to the amendments, a litigant could file a motion to dismiss under the TCPA if the “legal action is based on, relates to, or is in response to a party’s exercise of the right of free speech, right to petition, or right of association.” The amended statute omits the “relates to” language.
- The amendments limit “right of association” to matters “relating to a governmental proceeding or a matter of public concern.”
- The amended statute defines a “matter of public concern” as a statement or activity regarding a public official, public figure, or other person who has drawn substantial public attention due to the person’s official acts, fame, notoriety or celebrity; a matter of political, social or other interest to the community, or; a subject of concern to the public.

Although not an exhaustive list of the amendments to the TCPA, these changes are likely to be the most litigated, as evidenced by the Dallas Court of Appeals recent decision in *Vaughn-Riley v. Patterson*.

In *Patterson*, the Dallas Court of Appeals was asked to interpret the changes to the TCPA and determine whether the statute applies to claims related to alleged defamatory statements made by an actor, Terri Vaughn. Vaughn argued that her statements fell within the purview of the TCPA because they “concerned the quality and timeliness of the public performance of a theatrical work authored and produced by a limited purpose public figure and marketed to the public in Texas, Louisiana, and Oklahoma.” The appeals court, ultimately unpersuaded by Vaughn’s argument, focused on the amended definition of a “matter of public concern” and held that the statements were “not based on or in response to” Vaughn’s exercise of the right to free speech or right of association.

In the court's view, "Vaughn's actions and communications regarding one isolated performance that did not go on as scheduled is simply not a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public."

In light of the 2019 amendments to the TCPA and the resulting opinion in *Patterson*, the intent of the legislature and Texas courts could not ring louder—to rein in the circumstances to which the TCPA would apply. While the statute previously served as a frequently used sword in litigation, we will likely see courts less likely to apply it to cases in which the statute's application to the facts is not "black and white."

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