
HORWITZ

LAW PLLC

DANIEL A. HORWITZ
DANIEL@HORWITZ.LAW

4016 WESTLAWN DR.
NASHVILLE, TN 37209
WWW.HORWITZ.LAW

SARAH L. MARTIN
SARAH@HORWITZ.LAW

LINDSAY E. SMITH
LINDSAY@HORWITZ.LAW

O: (615) 739-2888

LAURA E. CANTWELL
LAURA@HORWITZ.LAW

The Tennessee Public Participation Act Almanac¹

In 2019, the Tennessee General Assembly enacted “the ‘Tennessee Public Participation Act’” (TPPA),² Tennessee’s first meaningful anti-SLAPP statute.³ The TPPA ushered in a host of critical protections for people who are sued for defamation (libel or slander), false light invasion of privacy, [malicious prosecution](#), [abuse of process](#), and a host of other speech- and petition-based torts. The purpose of this whitepaper is to catalogue Tennessee’s TPPA jurisprudence on every issue that matters to litigators.

A. THE THREE-STEP TPPA ADJUDICATION PROCESS

TPPA petitions to dismiss must be adjudicated in discrete steps according to the statute’s “delineated” “dismissal procedure.”⁴ Appellate authority sometimes

¹ By [Daniel A. Horwitz](#), Horwitz Law, PLLC. This whitepaper is current through March 4, 2026. It is not intended to be legal advice, and it should not be relied on for that purpose. It is copyrighted material, however, and it should not be reprinted without consent. To cite this whitepaper, please use the following citation: Daniel A. Horwitz, *The Tennessee Public Participation Act Almanac*, HORWITZ.LAW (Mar. 4, 2026), <https://horwitz.law/the-tennessee-public-participation-act-almanac>.

² See [Tenn. Code Ann. § 20-17-101](#).

³ “The term ‘SLAPP’ stands for ‘strategic lawsuits against public participation,’ meaning lawsuits which might be viewed as ‘discouraging the exercise of constitutional rights, often intended to silence speech in opposition to monied interests rather than to vindicate a plaintiff’s right.’” *Nandigam Neurology*, 639 S.W.3d at 657. Tennessee has had a limited version of an anti-SLAPP statute since 1997. See [Tenn. Code Ann. § 4-21-1001](#), *et seq.*

⁴ *Reiss v. Rock Creek Constr., Inc.*, No. E2021-01513-COA-R3-CV, 2022 WL 16559447, at *8 (Tenn. Ct. App. Nov. 1, 2022) (“[W]hen a party files a motion to dismiss based on the TPPA, the dismissal procedure delineated in the TPPA should be followed regarding the respective claims.”).

refers to this procedure as a “two-step” process⁵ and sometimes refers to it as having “th[ree]” steps.⁶

The better framing—which matches the steps included at [Tennessee Code Annotated sections 20-17-105\(a\), \(b\), and \(c\)](#)—is that the TPPA’s dismissal procedure is a three-step process. When applying this framework:

[**First**,] the petitioning party has the burden of making a prima facie case that the lawsuit is based on that party's exercise of the right to free speech, right to petition, or right of association. [Tenn. Code Ann. § 20-17-105\(a\)](#). [**Second**,] if this burden is met, the court will dismiss the lawsuit unless the responding party can establish a prima facie case for each essential element of its claims. [Tenn. Code Ann. § 20-17-105\(b\)](#). [**Third**], the court will still dismiss the lawsuit under the TPPA if the petitioning party can establish a valid defense. [Tenn. Code Ann. § 20-17-105\(c\)](#).⁷

1. TPPA Step One

Under [Tennessee Code Annotated section 20-17-105\(a\)](#), “[t]he petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party’s exercise of the right to free speech, right to petition, or right of association.”⁸ These terms are statutorily defined. Appellate authority also has developed the contours of each of them.

⁵ “Courts engage in a two-step analysis to rule on a TPPA petition.” [Charles v. McQueen](#), 693 S.W.3d 262, 267 (Tenn. 2024).

⁶ See [Pragnell v. Franklin](#), No. E2022-00524-COA-R3-CV, 2023 WL 2985261, at *12 (Tenn. Ct. App. Apr. 18, 2023) (discussing “the third step of the TPPA’s dismissal procedure”); cf. [Doe v. Roe](#), No. M2023-00045-COA-R3-CV, 2024 WL 3887272, at *7 (Tenn. Ct. App. Aug. 21, 2024) (quoting [Tenn. Code Ann. § 20-17-105\(c\)](#)) (“As the final step of the TPPA burden-shifting framework, once a TPPA respondent establishes a prima facie case for each essential element of their claim, the burden shifts back to the TPPA petitioner to ‘establish[] a valid defense to the claims in the legal action.’”), *appeal denied* (Dec. 11, 2024); [Garner v. S. Baptist Convention](#), No. E2024-00100-COA-R3-CV, 2025 WL 48205, at *16 (Tenn. Ct. App. Jan. 8, 2025), *appeal granted in part*, No. E2024-00100-SC-R11-CV, 2025 WL 1731793 (Tenn. June 20, 2025) (“[T]he last step of the TPPA burden-shifting framework provides that the trial court ‘shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.’”).

⁷ [Kent v. Glob. Vision Baptist, Inc.](#), No. M2023-00267-COA-R3-CV, 2023 WL 8621102, at *2 (Tenn. Ct. App. Dec. 13, 2023).

⁸ [Tenn. Code Ann. § 20-17-105\(a\)](#).

a. Exercise of the Right of Free Speech.

Under the TPPA, “[e]xercise of the right of free speech’ means a communication made in connection with a matter of public concern or religious expression that falls within the protection of the United States Constitution or the Tennessee Constitution[.]”⁹ In turn, “[m]atter of public concern’ includes an issue related to:

- (A) Health or safety;
- (B) Environmental, economic, or community well-being;
- (C) The government;
- (D) A public official or public figure;
- (E) A good, product, or service in the marketplace;
- (F) A literary, musical, artistic, political, theatrical, or audiovisual work; or
- (G) Any other matter deemed by a court to involve a matter of public concern[.]”¹⁰

Applying these definitions, Tennessee appellate courts have held explicitly¹¹

⁹ [Tenn. Code Ann. § 20-17-103\(3\)](#).

¹⁰ [Tenn. Code Ann. § 20-17-103\(6\)](#).

¹¹ Many cases have skipped over the explicit step one analysis while making clear that it was satisfied. *See, e.g., Charles v. McQueen*, 693 S.W.3d at 279; *SmileDirectClub, Inc. v. NBCUniversal Media, LLC*, 708 S.W.3d 556, 563 (Tenn. Ct. App. 2024). In others, the issue was not contested or presented on appeal after a trial court determination. *See, e.g., Long v. Beasley*, No. M2024-00444-COA-R3-CV, 2025 WL 782310, at *9 (Tenn. Ct. App. Mar. 12, 2025) (“Here, the parties do not dispute that Officer Long is a public official or that the Beasleys, as the petitioning parties under the TPPA, met their burden to show that Officer Long's defamation action against them ‘relates to, or is in response to [the Beasleys]’ exercise of the right to free speech, right to petition, or right of association.”); *Kedalo Constr., LLC v. Ward*, No. M2024-00224-COA-R3-CV, 2024 WL 4892032, at *2 (Tenn. Ct. App. Nov. 26, 2024) (“[T]he plaintiffs made no claim that the defendants did not meet their burden under [Tenn. Code Ann. § 20-17-105\(a\)](#). Rather, the plaintiffs’ response jumps right into meeting the requirements of [Tenn. Code Ann. § 20-17-105\(b\)](#). We find that the plaintiffs waived any claim that the defendants did not meet their burden under [Tenn. Code Ann. § 20-17-105\(a\)](#).”); *Pragnell*, 2023 WL 2985261, at *9

that a TPPA petitioner exercised the right of free speech in the following cases:

1. A Yelp! review about a doctor. *See Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 668 (Tenn. Ct. App. 2021) (“[T]he communication at issue was an exercise of Defendant's right of free speech as that right is defined for purposes of the TPPA.”).
2. A Title IX complaint. *See Doe v. Roe*, 638 S.W.3d 614, 620 (Tenn. Ct. App. 2021) (“Roe’s filing of her Title IX complaint is an exercise of free speech that comes within the purview of the TPPA.”).
3. Statements about “concerns and ongoing conditions and issues occurring in [a] community[.]” *See Charles v. McQueen*, No. M2021-00878-COA-R3-CV, 2022 WL 4490980, at *4 (Tenn. Ct. App. Sept. 28, 2022), *aff'd in part, rev'd in part*, 693 S.W.3d 262 (Tenn. 2024).
4. Statements related to the regulation of franchisors. *See Goldberger v. Scott*, No. M2022-01772-COA-R3-CV, 2024 WL 3339314, at *7 (Tenn. Ct. App. July 9, 2024) (“[W]e conclude that Mr. Scott made a prima facie case that his communications fell within the statute's scope. Mr. Scott’s communications were not restricted to private, existing business relationships but were also published over the internet and were made in connection with an issue related to the regulation of franchisors, which is a matter of public concern.”).
5. An “ethics complaint” about a realtor. *See Gersper v. Turner*, No. M2022-01136-COA-R3-CV, 2024 WL 4554706, at *4 (Tenn. Ct. App. Oct. 23, 2024), *appeal denied* (Apr. 17, 2025)
6. Allegations about “aggressive actions by a doctor toward a scrub tech.” *See Blythe v. Forsythe*, No. M2023-01463-COA-R3-CV, 2025 WL 3095415, at *1, *5 (Tenn. Ct. App. Nov. 6, 2025).

By contrast, Tennessee appellate courts have held explicitly that a TPPA petitioner did *not* exercise the right of free speech in the following cases:

1. Allegations about a private security’s guard’s misconduct. *McMurtrie v. Sarfo*, No. E2023-01825-COA-R3-CV, 2024 WL 4164252, at *2 (Tenn. Ct. App.

(“Plaintiffs’ failure to argue that the statements did not constitute protected speech at the trial court level forecloses our ability to address this question on appeal.”).

Sept. 12, 2024).

b. Exercise of the Right of Petition.

Under [Tennessee Code Annotated section 20-17-103\(4\)](#):

“Exercise of the right to petition” means a communication that falls within the protection of the United States Constitution or the Tennessee Constitution and:

(A) Is intended to encourage consideration or review of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body; or

(B) Is intended to enlist public participation in an effort to effect consideration of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body[.]¹²

“Unlike the right of free speech, the right to petition does *not* require that the matter be one of public concern.”¹³ Applying these definitions, Tennessee courts have held that a TPPA petitioner exercised the right of petition in the following cases:

1. A Title IX complaint. *See Doe v. Roe*, 638 S.W.3d at 623 (“Roe’s actions constitute her ‘right to petition’ under the TPPA.”).

2. A “police report and report to . . . Tennessee Health Related Boards[.]” *See Blythe*, 2025 WL 3095415, at *5.

3. A report to the Department of Children’s Services (DCS). *See Black v. Baldwin*, No. M2024-00151-COA-R3-CV, 2025 WL 1566392, at *5 (Tenn. Ct. App. June 3, 2025), *appeal denied* (Oct. 8, 2025).

4. “[A] safety report to the FAA[.]” *See Secure Air Charter, LLC v. Barrett*, No. M2025-00312-COA-R3-CV, 2026 WL 473237, at *4 (Tenn. Ct. App. Feb. 19, 2026).

c. Exercise of the Right of Association.

Under the TPPA, “[e]xercise of the right of association’ means exercise of the constitutional right to join together to take collective action on a matter of public

¹² [Tenn. Code Ann. § 20-17-103\(4\)](#).

¹³ *See Doe v. Roe*, 638 S.W.3d at 622.

concern that falls within the protection of the United States Constitution or the Tennessee Constitution[.]”¹⁴ To date, no Tennessee appellate authority has expressly found (or rejected) a claim that a TPPA petitioner was exercising the right of association.

d. Additional Step One Considerations

In determining whether a legal action is “based on, relates to, or is in response to” protected activity, “relate” means “having to do with.”¹⁵ Thus, a communication need not “be of public concern or even . . . be about a matter of public concern” to trigger the TPPA; the statute requires only that a communication be “made in connection with” an issue related to any matter deemed by a court to involve a matter of public concern.”¹⁶ This “broad language” is paired with a statutory directive “to construe the statute’s language broadly to effectuate its purposes and intent[.]”¹⁷ Further, a TPPA petitioner can help show that a legal action was “in response to” protected activity by demonstrating temporal proximity between the exercise of protected activity and the litigation (that the action “was filed shortly after[ward]”).¹⁸ A mere pre-suit demand or threat to sue does not qualify as an “action” that enables a plaintiff to proactively initiate TPPA litigation in an attempt to prevent, though.¹⁹

“For purposes of considering whether [TPPA petitioners have] made [their] prima facie showing” at step one of the TPPA’s dismissal procedure, “the evidence is considered in [the] light most favorable to” *the petitioner*.²⁰ Thus, a plaintiff’s

¹⁴ [Tenn. Code Ann. § 20-17-103\(2\)](#).

¹⁵ [Goldberger](#), 2024 WL 3339314, at *5.

¹⁶ *Id.* at *6.

¹⁷ *Id.* at *7 (quoting [Tenn. Code Ann. § 20-17-102](#)).

¹⁸ [Black](#), 2025 WL 1566392, at *5, *appeal denied* (Oct. 8, 2025).

¹⁹ [Boyd v. Jakes](#), No. 4:25-CV-63, 2026 WL 562103, at *1 (E.D. Tenn. Jan. 22, 2026) (“The TPPA permits a court to dismiss a “legal action” filed in response ‘to a party’s exercise of the right of free speech, right to petition, or right of association.’ [Tenn. Code Ann. § 20-17-104\(a\)](#)). Even assuming the Court could apply the TPPA in the manner Plaintiff requests, a threat to sue does not qualify as ‘legal action.’ *Id.* at § 20-17-103(5).”).

²⁰ [Blythe](#), 2025 WL 3095415, at *5 (emphasis added) (“Accordingly, even if we assume arguendo that Dr. Blythe’s contention regarding false statements being unprotected is correct, his argument that Ms. Forsythe failed to make her prima facie case would remain unavailing. For purposes of considering whether Ms. Forsythe has made her prima facie showing, the evidence is considered in a light most favorable to her. In other words, for purposes of considering whether she has made her prima facie case, her assertions are true, not false. Therefore, Dr. Blythe’s contention that he has more convincing evidence that the statements are false than

countervailing evidence at step one is “of no consequence.”²¹ TPPA petitioners must show that they have been sued for “pursuing *their own* expressive or associational interests[.]” however.²²

2. TPPA Step Two

“If the petitioning party meets” its burden at step one of the TPPA’s dismissal procedure, then “the court shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action[.]”²³ “[T]o make this step-two showing[.] . . . ‘a party must present enough evidence to allow the jury to rule in his favor’” as to each essential element of the plaintiff’s claim.²⁴

Many plaintiffs fail at this step, which “is analogous to” Tennessee Rule of Civil Procedure 56’s summary judgment standard.²⁵ Thus, at this step as well, “the court should view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence.”²⁶ If a plaintiff fails to meet its burden at step two, dismissal is “mandatory[.]”²⁷

3. TPPA Step Three

“[T]he third step of the TPPA’s dismissal procedure” addresses whether a TPPA petitioner has “establish[ed] a valid defense to the claims in the legal

Ms. Forsythe has that they are true is of no consequence regarding resolution of step one of the TPPA analysis.”).

²¹ *Id.*; see also *Charles v. McQueen*, 693 S.W.3d at 281 (“[T]he court should view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence.”); *Gersper*, 2024 WL 4554706, at *4 (“Respectfully, this argument places the cart before the horse. At this point, there has been no finding that Defendant’s claims were false or that Defendant intentionally misrepresented the facts. Plaintiff’s allegation that Defendant’s statements were false does not prevent Defendant from making a prima facie case as required by the TPPA’s first prong.”), *appeal denied* (Apr. 17, 2025).

²² *Cartwright v. Thomason Hendrix, P.C.*, No. W2022-01627-SC-R11-CV, 2025 WL 3523045, at *6 (Tenn. Dec. 9, 2025) (emphasis added).

²³ Tenn. Code Ann. § 20-17-105(b).

²⁴ *Blythe*, 2025 WL 3095415, at *6–7 (quoting *Charles*, 693 S.W.3d at 281).

²⁵ See *SmileDirectClub*, 708 S.W.3d at 572 (“[T]he TPPA’s prima facie case requirement is analogous to the evidentiary requirements in Rules 50.01 and 56 of the Tennessee Rules of Civil Procedure[.]”).

²⁶ *Charles v. McQueen*, 693 S.W.3d at 281.

²⁷ *Nandigam Neurology*, 639 S.W.3d at 668.

action.”²⁸ “[T]he third step”—[Tennessee Code Annotated section 20-17-105\(c\)](#)—“does not contain [the same] qualifying ‘prima facie’ language[,]” however.²⁹ As a result, the Tennessee Court of Appeals has ruled that, “with respect to establishing a defense” under [section 20-17-105\(c\)](#), a TPPA petitioner is “required to make more than a prima facie demonstration in order to achieve dismissal[.]”³⁰

To date, Tennessee’s appellate courts have not directly adjudicated a “valid defense” claim under the TPPA. But several trial courts have.³¹ It also is easy to imagine several valid defenses—for example, the statute of limitations, or a showing of substantial truth—that would uncontroversially qualify.

B. PROCEDURE, TIMING, AND EVIDENCE

A TPPA petition must “be filed within sixty (60) calendar days from the date of service of the legal action or, in the court’s discretion, at any later time that the court deems proper.”³² Tennessee’s appellate courts have not yet considered the scope of a trial court’s discretion to extend the deadline under this provision. However, persuasive authority instructs that courts should exercise their discretion to permit a late-filed TPPA petition unless the delay is attributable to tactical manipulation or produces significant prejudice (such as when extensive litigation has already taken place or discovery has begun).³³ TPPA petitions may not be filed or heard for the first time after a motion to dismiss has already been granted, though.³⁴

²⁸ [Pragnell, 2023 WL 2985261, at *12](#) (quoting [Tenn. Code Ann. § 20-17-105\(c\)](#)).

²⁹ [Pragnell, 2023 WL 2985261, at *12](#).

³⁰ *Id.*

³¹ *See, e.g., Black, 2025 WL 1566392, at *2* (“The court further found that Plaintiffs had not established a prima facie claim for each essential element of their claims in the legal action and that Defendant had established valid defenses to any such claims.”), *appeal denied* (Oct. 8, 2025); Memorandum Opinion and Order, *Foshee v. Hansen*, No. 9395 (Tenn. Cir. Ct. Sept. 24, 2025), <https://tnfreespeech.com/wp-content/uploads/2026/02/Order-Granting-TPPA-Petition.pdf>.

³² [Tenn. Code Ann. § 20-17-104\(b\)](#).

³³ *See, e.g., Hampton-Stein v. Aviation Fin. Grp., LLC*, No. CV1003897RGKPJWX, 2010 WL 11601037, at *3 (C.D. Cal. Oct. 1, 2010) (“Upon reviewing the procedural history, the Court finds it proper to exercise its discretion and extend the filing period.”); *Pathak v. United States*, No. CV098287GHKDTBX, 2010 WL 11596724, at *1, n.4 (C.D. Cal. Mar. 16, 2010) (“Although facially untimely, Defendants’ anti-SLAPP motion was filed before discovery commenced and has not been challenged by Plaintiff. Accordingly, we exercise our discretion and accept Defendants’ anti-SLAPP motion.”).

³⁴ *Horst v. Gaar*, No. W2023-00442-COA-R3-CV, 2024 WL 4972013, at *11 (Tenn. Ct. App. Dec. 4, 2024) (“[T]he fact that a party may file a Rule 12 motion to dismiss

“Once a TPPA petition is filed, ‘[a] response to the petition, including any opposing affidavits, may be served and filed by the opposing party no less than five (5) days before the hearing[.]’”³⁵ Thus, “[f]rom the natural and ordinary meaning of the words in the statute, five days before the hearing is the latest [a plaintiff] can file a response to the petition.”³⁶ Additionally, “[e]verything that plaintiffs file related to the hearing on the petition is a response to the petition, even an affidavit. The same would be true of a deposition.”³⁷ As a result, anything filed after a TPPA hearing is untimely, and untimely evidence will not be considered at the TPPA stage.³⁸

To be considered, evidence filed in support of or in opposition to a TPPA petition also must be “admissible[.]”³⁹ Thus, evidence submitted on “belief” does not count.⁴⁰ Neither will “[c]onclusory statements”—“that is assertions that are ‘devoid of facts or details’”—be considered, as such statements “do ‘not rise to the dignity of evidence’” under Tennessee law.⁴¹ Instead, “[f]acts, not conclusory statements, are what is needed.”⁴² “[E]videntiary objections that [a]re not raised in the trial court . . . are waived[.]” though.⁴³

Trial courts should—and perhaps must—make adequate findings when adjudicating a TPPA petition so as to enable appellate review.⁴⁴ When a trial court

and a TPPA petition . . . does not in our view mean that a party has a right to have an unheard TPPA petition adjudicated if the party has already obtained dismissal by way of Rule 12.”).

³⁵ *Nandigam Neurology*, 639 S.W.3d at 659 (quoting *Tenn. Code Ann. § 20-17-104(c)*).

³⁶ *Kedalo Constr.*, 2024 WL 4892032, at *3.

³⁷ *Id.*

³⁸ *Id.*; see also *Nandigam Neurology*, 639 S.W.3d at 668 (a plaintiff who failed to file a timely response “essentially failed to respond to Defendant's TPPA petition at all.”).

³⁹ *Tenn. Code Ann. § 20-17-105(d)*; see also *PMC Squared, LLC v. Gallo*, No. E2023-00524-COA-R3-CV, 2024 WL 3757839, at *3 (Tenn. Ct. App. Aug. 12, 2024) (“[A]ny evidence considered by the trial court when analyzing the burden-shifting framework set forth in section 20-17-105(a)–(c) must be admissible.”).

⁴⁰ *PMC Squared*, 2024 WL 3757839, at *4.

⁴¹ *Blythe*, 2025 WL 3095415, at *7.

⁴² *Id.*

⁴³ See, e.g., *Charles v. McQueen*, 693 S.W.3d at 273 n.4 (“Any evidentiary objections that were not raised in the trial court and preserved in the Court of Appeals are waived.”).

⁴⁴ *Kedalo Constr.*, 2024 WL 4892032, at *2 (“[M]aking findings of fact is always the best option, whether required or not.”); *Richman v. Debity*, No. E2022-00908-COA-

grants a TPPA petition and dismisses a plaintiff's claim, the dismissal also must be with prejudice.⁴⁵

C. DISCOVERY.

Under [Tennessee Code Annotated section 20-17-104\(d\)](#), “[a]ll discovery in the legal action is stayed upon the filing of a [TPPA] petition[.]”⁴⁶ “The stay of discovery remains in effect until the entry of an order ruling on the petition.”⁴⁷ However, “[t]he court may allow specified and limited discovery relevant to the petition upon a showing of good cause.”⁴⁸

Tennessee's appellate courts have barely engaged with this standard, though they have confirmed trial court orders permitting limited discovery based on a plaintiff's showing of a need for discovery.⁴⁹ Tennessee's appellate courts also have consistently refused to consider interlocutory appeals concerning TPPA discovery disputes,⁵⁰ even though [section 20-17-104\(d\)](#)'s presumptive discovery stay is central to the TPPA's utility.

D. WAIVER

“A respondent's failure to respond [to a TPPA petition] does not relieve the TPPA petitioner of their obligation to meet their initial burden.”⁵¹ When a TPPA

R3-CV, [2023 WL 4285290](#), at *4 (Tenn. Ct. App. June 30, 2023) (“Because the trial court's written order does not contain the reasoning for its denial of the TPPA Petition, we vacate and remand for entry of an order explaining the trial court's decision.”) (non-citable Memorandum Opinion).

⁴⁵ [Tenn. Code Ann. § 20-17-105\(e\)](#).

⁴⁶ [Tenn. Code Ann. § 20-17-104\(d\)](#).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ [Doe v. Roe](#), No. M2023-00045-COA-R3-CV, [2024 WL 3887272](#), at *3 (Tenn. Ct. App. Aug. 21, 2024) (“Given Doe's explanation for his need for limited discovery and the procedural posture of this matter on remand, we conclude that the trial court did not abuse its discretion in denying Roe's Rule 54.02 motion and allowing Doe to conduct limited discovery.”), *appeal denied* (Dec. 11, 2024).

⁵⁰ *See, e.g.*, M2023-01029-COA-R10-CV; M2024-00151-SC-R11-CV; M2021-01479-COA-R10-CV; M2021-01479-SC-R10-CV; M2024-01576-SC-R10-CV; M2024-01576-COA-R10-CV.

⁵¹ [PMC Squared](#), [2024 WL 3757839](#), at *5; *see also* [Cartwright](#), [2025 WL 3523045](#), at *4 n.4 (“The Mitchells argue that Cartwright waived this argument by failing to designate it as an issue in his briefing here or in the Court of Appeals. The Mitchells' argument is a non-starter. It is the Mitchells who bear the burden under the TPPA to establish that Cartwright's suit was filed in response to their exercise

petitioner has supported a TPPA petition at step one and a plaintiff does not oppose (or concedes) that the statute applies, though, a plaintiff's step-one opposition may be deemed waived.⁵² Other waiver doctrines also apply normally in TPPA cases, including through appeal.⁵³

E. NONSUITS

The Tennessee Supreme Court has held that [Tennessee Rule of Civil Procedure 41.01](#) permits plaintiffs to take nonsuits as a matter of right in the face of a TPPA petition.⁵⁴ Accordingly, plaintiffs who cannot overcome a TPPA petition generally are permitted to nonsuit without prejudice in response to a TPPA petition. Doing so enables plaintiffs to avoid the statute's otherwise significant consequences, including mandatory dismissal with prejudice, attorney's fees, and potential sanctions. The tactic has been abused by plaintiffs many times.⁵⁵

Exceptions apply, though. For instance, plaintiffs may not nonsuit without leave of court while a TPPA appeal is pending, and TPPA petitioners have "a vested right to appellate review of the trial court's denial of their TPPA claim" beyond that.⁵⁶ Nor may plaintiffs nonsuit as of right after a TPPA petition has been adjudicated and an appellate court has remanded.⁵⁷ Plaintiffs may not nonsuit without leave while a motion for summary is pending, either.⁵⁸

of the right to petition.").

⁵² See, e.g., [Kedalo Constr.](#), 2024 WL 4892032, at *2 ("We find that the plaintiffs waived any claim that the defendants did not meet their burden under [Tenn. Code Ann. § 20-17-105\(a\)](#)"); [Secure Air Charter](#), 2026 WL 473237, at *6 ("Secure Air's own pleadings establish that the lawsuit was filed in response to a safety report to the FAA, and it has waived, for failure to argue, any contention that a safety report to the FAA is not protected under the TPPA.").

⁵³ See, e.g., [Charles v. McQueen](#), 693 S.W.3d at 273 n.4 ("Any evidentiary objections that were not raised in the trial court and preserved in the Court of Appeals are waived."); [Black](#), 2025 WL 1566392, at *5, ("Plaintiffs have waived review of the trial court's dismissal of the action pursuant to the TPPA by failing to appeal all alternative grounds of dismissal.") *appeal denied* (Oct. 8, 2025); [Lee v. Mitchell](#), No. M2022-00088-COA-R3-CV, 2023 WL 5286117, at *8 (Tenn. Ct. App. Aug. 17, 2023) ("[W]ith the exception of his argument regarding the TBI Reports and the newspaper articles, we find the issue is waived.").

⁵⁴ [Flade v. City of Shelbyville](#), 699 S.W.3d 272, 284–301 (Tenn. 2024).

⁵⁵ See, e.g., *id.*; [Garramone v. Dugger](#), No. M2023-00677-COA-R3-CV, 2024 WL 4880377, at *1 (Tenn. Ct. App. Nov. 25, 2024); [Solomon v. Solomon](#), No. M2021-00958-COA-R3-CV, 2023 WL 3730597, at *1 (Tenn. Ct. App. May 31, 2023).

⁵⁶ [Long](#), 2025 WL 782310, at *6.

⁵⁷ [Richman](#), 2025 WL 1454842, at *5.

⁵⁸ [Dugger](#), 2024 WL 4880377, at *6–7.

F. INTERLOCUTORY APPEALS

A trial court’s “order dismissing or refusing to dismiss a legal action pursuant to a petition filed under this chapter is immediately appealable as a matter of right to the court of appeals. The Tennessee Rules of Appellate Procedure applicable to appeals as a matter of right governs such appeals.”⁵⁹

Based on this provision, an appeal of an order granting or denying a TPPA petition *must* be taken within 30 days or be lost as waived.⁶⁰ At least some other issues—including the denial of a motion to amend because a claim has been dismissed under the TPPA—may be included in a TPPA appeal as a matter of right, too.⁶¹ A TPPA appeal must actually arise from “a dismissal or a refusal to dismiss a legal action pursuant to [a] TPPA petition[.]” though.⁶² And under [Tennessee Code Annotated section 20-17-106](#), even TPPA orders entered in General Sessions courts—which normally would be subject to de novo review in Circuit Court—must

⁵⁹ [Tenn. Code Ann. § 20-17-106](#).

⁶⁰ *Cf. Emmel v. Mid-Am. Apartment Communities, Inc.*, No. M2025-00343-COA-R9-CV, 2025 WL 3268283, at *3 (Tenn. Ct. App. Nov. 24, 2025) (“Even though the arbitration provision in the parties’ residential lease agreement is governed by the FAA, our jurisdiction is founded on the TUAA. *See Morgan Keegan & Co. v. Smythe*, 401 S.W.3d at 607. The TUAA, by authorizing an appeal “as from an order or a judgment in a civil action,” created an appeal as of right for those orders specified in the TUAA. [Tenn. Code Ann. § 29-5-329\(b\)](#). An appeal of right must “be taken by timely filing a notice of appeal with the clerk of the appellate court as provided in [Tennessee] Rule [of Appellate Procedure] 4.” [Tenn. R. App. P. 3\(e\)](#). So Mid-America was required to file a notice of appeal within 30 days of the order denying its motion to compel arbitration of the claims of Mr. and Mrs. Emmel. *Id.* 4(a). Because it did not, this appeal is untimely, so we lack subject matter jurisdiction. *Ball*, 288 S.W.3d at 836.”).

⁶¹ [Secure Air Charter](#), 2026 WL 473237, at *5 (“In the present case, it is unnecessary to fully delineate the precise metes and bounds of this jurisdictional scope. The trial court found, in one single order, both that the Complaint should be dismissed pursuant to the TPPA and that the motion was moot because the court was dismissing the Complaint under the TPPA. The mootness analysis was predicated upon and part and parcel to the TPPA analysis. Accordingly, insofar as the denial of amendment here was predicated on mootness in connection with TPPA determination, that ruling is inextricably intertwined with the dismissal. Thus, wherever the precise jurisdictional boundaries of TPPA appeals lie, this is within the lines.”).

⁶² [Kent](#), No. M2023-00267-COA-R3-CV, 2023 WL 8621102, at *1 (Tenn. Ct. App. Dec. 13, 2023).

be appealed directly to the Tennessee Court of Appeals.⁶³

G. ATTORNEY'S FEES

Tennessee Code Annotated section 20-17-107(a)(1) provides that:

(a) If the court dismisses a legal action pursuant to a petition filed under this chapter, the court shall award to the petitioning party:

(1) Court costs, reasonable attorney's fees, discretionary costs, and other expenses incurred in filing and prevailing upon the petition[.].⁶⁴

Thus, a successful TPPA petitioner's full legal expenses "incurred in filing and prevailing upon the petition" must be awarded.⁶⁵ This provision also has been construed broadly to encompass "fees incurred for other purposes, such as sanctions other than dismissal, defense on the merits of the original claims, or prosecuting the assessment of attorney's fees[.]"⁶⁶

A TPPA petitioner may recover attorney's fees on appeal if the ultimate outcome is that the petitioner's TPPA petition is granted.⁶⁷ If a plaintiff abandons an appeal of an order granting a TPPA petition, a TPPA petitioner also is entitled to attorney's fees through that point.⁶⁸

H. SANCTIONS

Tennessee Code Annotated section 20-17-107(a)(2) provides that:

⁶³ *Nandigam Neurology*, 639 S.W.3d at 667 ("Appeals pursuant to section 20-17-106 lie in this Court whether the order is final or interlocutory, and regardless of whether the case is appealed from general sessions or circuit court."); *see also Garramone v. Curtsinger*, No. M2023-01010-COA-R3-CV, 2025 WL 354708, at *1 (Tenn. Ct. App. Jan. 31, 2025) ("This Court has 'exclusive jurisdiction' over the appeal of an order disposing of a TPPA petition 'regardless of whether the case is appealed from general sessions or circuit court.'" (cleaned up)).

⁶⁴ Tenn. Code Ann. § 20-17-107(a)(1).

⁶⁵ *Id.*

⁶⁶ *Dugger*, 2024 WL 4880377, at *11.

⁶⁷ *See, e.g., Nandigam Neurology*, 639 S.W.3d at 669–70; *Black*, 2025 WL 1566392, at *6, *appeal denied* (Oct. 8, 2025); *Secure Air Charter*, 2026 WL 473237, at *7 (Tenn. Ct. App. Feb. 19, 2026).

⁶⁸ *Small v. Law*, No. M2024-00255-COA-R3-CV, 2024 WL 3665755, at *1 (Tenn. Ct. App. Aug. 6, 2024) (non-citable Memorandum Opinion).

(a) If the court dismisses a legal action pursuant to a petition filed under this chapter, the court shall award to the petitioning party:

...

(2) Any additional relief, including sanctions, that the court determines necessary to deter repetition of the conduct by the party who brought the legal action or by others similarly situated.⁶⁹

Tennessee's appellate courts have not yet determined the criteria that inform when sanctions are appropriate to award under this provision. Appellate authority confirms that the matter is discretionary and that significant sanctions may be awarded for SLAPP-suit abuse, however.⁷⁰

Separately, under [Tennessee Code Annotated section 20-17-107\(b\)](#):

If the court finds that a petition filed under this chapter was frivolous or was filed solely for the purpose of unnecessary delay, and makes specific written findings and conclusions establishing such finding, the court may award to the responding party court costs and reasonable attorney's fees incurred in opposing the petition.⁷¹

To date, no Tennessee appellate court has found that a petitioner's TPPA petition was frivolous or was filed solely for the purpose of unnecessary delay, nor has any Tennessee appellate court defined the standards that would guide such a determination.

I. MISCELLANEOUS

1. The TPPA applies on a per-claim basis.

Plaintiffs sometimes assert that if they can overcome a TPPA petition as to *any* claim asserted, then a petitioner's TPPA petition must be denied in its entirety. That view is incorrect. Instead, TPPA petitions apply on a per-claim basis.

The TPPA's text explicitly contemplates partial grants.⁷² The TPPA also

⁶⁹ [Tenn. Code Ann. § 20-17-107\(a\)\(2\)](#).

⁷⁰ See [Black](#), 2025 WL 1566392, at *6, (affirming \$40,000 sanction), *appeal denied* (Oct. 8, 2025).

⁷¹ [Tenn. Code Ann. § 20-17-107\(b\)](#).

⁷² See [Tenn. Code Ann. § 20-17-105\(e\)](#) ("If the court dismisses a legal action pursuant to a petition filed under this chapter, the legal action *or the challenged*

expressly defines “legal action[.]”⁷³ and the definition is not “a plaintiff’s entire lawsuit[.]” Instead, the TPPA defines a “legal action” as “a *claim, cause of action, petition, cross-claim, or counterclaim* or any request for legal or equitable relief initiated against a private party.”⁷⁴ Thus, each “claim” or “cause of action” in a plaintiff’s lawsuit constitutes a “legal action” for TPPA purposes, and as a result, each such claim or cause of action is subject to dismissal under the TPPA.⁷⁵

Precedent uniformly supports the TPPA’s text on this point. For example, the Tennessee Supreme Court has explained that the TPPA’s dismissal procedure applies to “claims.”⁷⁶ The Tennessee Court of Appeals has similarly instructed that TPPA petitions may be granted in part and only as to some claims in a case.⁷⁷ Persuasive authority supports the same conclusion.⁷⁸

claim is dismissed with prejudice.”) (emphasis added).

⁷³ [Tenn. Code Ann. § 20-17-103\(5\)](#).

⁷⁴ *Id.* (emphases added).

⁷⁵ See [Tenn. Code Ann. § 20-17-105\(e\)](#).

⁷⁶ *Charles v. McQueen*, 69 S.W.3d at 267 (“Like many other anti-SLAPP statutes, the TPPA establishes a procedure for swift dismissal of non-meritorious *claims*.”) (emphasis added).

⁷⁷ See, e.g., *Charles v. McQueen*, 2022 WL 4490980, at *10–13 (Tenn. Ct. App. Sept. 28, 2022) (ordering partial grant of TPPA petition that affirmed dismissal of false light claim while allowing defamation claim to proceed), *aff’d in part, rev’d in part on other grounds*, 2024 WL 3286527 (Tenn. July 3, 2024); cf. *Reiss*, 2022 WL 16559447, at *8 (remanding with instructions to “apply the dismissal procedure outlined in the TPPA” to a plaintiff’s defamation claims alone).

⁷⁸ For example, California’s and Texas’s courts—which have for years construed the anti-SLAPP statutes on which the TPPA was modeled and are treated as persuasive authority in this context—expressly hold that their anti-SLAPP statutes apply on a claim-by-claim basis. See, e.g., *Walgreens v. McKenzie*, 676 S.W.3d 170, 175 (Tex. App. 2023) (applying Texas’ version of the TPPA, which contains a materially identical definition of “legal action,” and holding that “dismissal under the TCPA is determined on a claim-by-claim basis.”); *Cavin v. Abbott*, No. 03-18-00073-CV, 2018 WL 2016284, at *2 (Tex. App. Apr. 30, 2018) (observing that the Texas Court of Appeals’ “partial grant of the TCPA dismissal motion necessitated further proceedings on remand”); *Sarao v. Barker*, No. B294816, 2020 WL 1041544, at *1 (Cal. Ct. App. Mar. 4, 2020) (“We therefore reverse the trial court’s order and instruct the court to enter a revised order that only partially grants the anti-SLAPP motion and strikes the portions of the cross-complaint we identify in the disposition below.”); *Downtown Sunnyvale Residential, LLC v. Wells Fargo Bank, N.A.*, No. H039332, 2015 WL 2406081, at *3 (Cal. Ct. App. May 19, 2015), *as modified on denial of reh’g* (June 12, 2015) (“Downtown Sunnyvale appealed from the trial court’s partial grant of the anti-SLAPP motion, and Wells Fargo appealed from the trial court’s partial denial of the anti-SLAPP motion.”).

J. IMPORTANT UNSETTLED QUESTIONS

1. Whether the TPPA applies in federal court.

Multiple federal district courts in Tennessee have ruled that the TPPA’s “self-evidently procedural nature poses an obstacle to simply importing the TPPA in its unvarnished entirety into a case filed in federal court.”⁷⁹ However, “[n]o appellate court within the Sixth Circuit has ruled on whether a Defendant can pursue a motion to dismiss under the TPPA in federal court.”⁸⁰ And “[b]eyond the Sixth Circuit, there appears to be a circuit split on the issue.”⁸¹ Thus, despite several early Tennessee district court rulings on the matter, a large number of other federal courts have concluded differently that anti-SLAPP statutes—or elements of them—do apply in federal court.⁸²

The early Tennessee district court decisions that held the TPPA does not apply in federal court are only partly correct. It is true that *some* components of the

⁷⁹ *Mucerino v. Martin*, No. 3:21-CV-00284, 2021 WL 5585637, at *6 (M.D. Tenn. Nov. 30, 2021); *see also Apex Bank v. Rainsford*, No. 3:20-CV-198, 2020 WL 12840460, at *5 (E.D. Tenn. Sept. 16, 2020); *Santoni v Mueller*, No. 3:20-CV-00975, 2022 WL 97049, at *14 (M.D. Tenn. Jan. 10, 2022); *Hughes v. Gupta*, 613 F. Supp. 3d 1054, 1058 (W.D. Tenn. 2021).

⁸⁰ *Hughes*, 613 F. Supp. 3d at 1057.

⁸¹ *Id.* (collecting authority).

⁸² *See, e.g., Godin v. Schencks*, 629 F.3d 79, 81, 92 (1st Cir. 2010); *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 973 (9th Cir. 1999); *Caranchini v. Peck*, 355 F. Supp. 3d 1052, 1061 (D. Kan. 2018) (“The court therefore finds that the Act, although procedural in nature, applies in federal diversity actions because it ‘exist[s] to influence substantive outcomes, and . . . is so bound up with the state-created right or remedy that it defines the scope of that substantive right or remedy.’”) (quoting *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 419–20 (2010) (Stevens, J., concurring)); *MyWebGrocer, Inc. v. Adlife Mktg. & Commc’ns Co., Inc.*, No. 5:16-CV-310, 2018 WL 8415139, at *3 (D. Vt. Jan. 30, 2018) (“The court concludes that Erie concerns about the consistent application of state law strongly favor the application of the state anti-SLAPP measure in federal court in a diversity case.”); *Tobinick v. Novella*, 108 F. Supp. 3d 1299, 1305 n.4 (S.D. Fla. 2015) (“The Court recognizes that as of April 24, 2015, there exists a circuit split on whether or not states’ anti-SLAPP acts’ pretrial dismissal provisions apply in federal court notwithstanding Federal Rules of Civil Procedure 12 and 56.”); *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 836 (9th Cir. 2018) (Gould, J., concurring), *amended*, 897 F.3d 1224 (9th Cir. 2018), *cert. denied sub nom.*, 587 U.S. 918 (2019); *Paucek v. Shaulis*, 349 F.R.D. 498, 505 (D.N.J. 2025).

TPPA—for instance, its automatic interlocutory appeal procedure⁸³ and its automatic statutory discovery stay⁸⁴—cannot apply in federal court without conflicting with federal rules of procedure.⁸⁵ But whether the TPPA must be imported “in its unvarnished entirety into a case filed in federal court” is not the pertinent question.⁸⁶ Instead, as the U.S. District Court for the District of New Jersey recently explained:

The correct question is “whether a particular state’s anti-SLAPP law[s] unique text and structure” conflicts with the Federal Rules. Matthew L. Schafer & Tanvi Valsangikar, *The Application of the New York Anti-SLAPP Scheme in Federal Court*, 2 J. FREE SPEECH L. 573, 583 (2023); *Reed v. Chamblee*, 2024 WL 69570, at *6 (M.D. Fla. Jan. 5, 2024), *appeal dismissed in part*, 2024 WL 806194 (11th Cir. Feb. 27, 2024) (“The specific requirements and language in each state’s anti-SLAPP statute must be analyzed individually[.]”). Some do. Some do not.⁸⁷

With this clarification in mind, the “pertinent question” is whether *the TPPA’s dismissal and fee-shifting provisions* may apply in federal court without conflicting with federal rules of procedure.⁸⁸ The correct answer is yes. Answering that question also is especially easy when considering a [Rule 12\(b\)\(6\)](#) dismissal for failure to state a claim, which does not present even a theoretical conflict with the Federal Rules of Civil Procedure (and, instead, complements them). That is because “[f]ailure to state a claim is a ‘defense cognizable at law’ and therefore meets the requirement of a meritorious defense.”⁸⁹ Thus, a successful [Rule 12\(b\)\(6\)](#) defense—or a successful [Rule 12\(c\)](#) defense—is a valid defense to liability.

The TPPA, for its part, instructs that “the court shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action.”⁹⁰ Nothing prevents the TPPA and standard judicial rules of civil procedure from being “harmonized[.]” either.⁹¹ Thus, there is no conflict between a [Rule](#)

⁸³ [Tenn. Code Ann. § 20-17-106](#).

⁸⁴ [Tenn. Code Ann. § 20-17-104\(d\)](#).

⁸⁵ *Cf. Gopher Media LLC v. Melone*, 154 F.4th 696, 704 (9th Cir. 2025) (explaining why “the collateral order doctrine does not extend to denials of anti-SLAPP motions under the California statute”).

⁸⁶ [Mucerino](#), 2021 WL 5585637, at *6.

⁸⁷ [Paucek](#), 349 F.R.D. at 512.

⁸⁸ *See id.*

⁸⁹ *Pavuk v. U.S. Bank Nat’l Ass’n ND*, No. 2:09-CV-00514, 2010 WL 518165, at *3 (S.D. Ohio Feb. 3, 2010).

⁹⁰ [Tenn. Code Ann. § 20-17-105\(c\)](#).

⁹¹ [Reiss](#), 2022 WL 16559447, at *7.

12(b)(6) dismissal and a TPPA dismissal under [Tennessee Code Annotated section 20-17-105\(c\)](#) for failure to state a claim upon which relief can be granted; the former necessarily dovetails with the latter whenever the TPPA applies and a plaintiff who has filed a qualifying federal claim has failed to state a cognizable claim for relief.

Although a harder question, the same is true of a [Rule 56](#) dismissal.⁹² Federal authority holding otherwise predates Tennessee jurisprudence clarifying that “the TPPA’s prima facie case requirement is analogous to the evidentiary requirements in Rules 50.01 and 56 of the Tennessee Rules of Civil Procedure[,]” which are identical to federal summary judgment rules.⁹³ Thus, unlike (for example) California’s anti-SLAPP statute—which requires a non-movant to establish “a *probability* that the plaintiff will prevail on the claim”⁹⁴—the TPPA’s evidentiary dismissal framework does not.⁹⁵ Instead, just like the procedure contemplated by [Federal Rule of Civil Procedure 56](#), the Tennessee Supreme Court has explained that, “[a]s is the case when a court rules on a motion for summary judgment . . . , the court should view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence.”⁹⁶ And beyond that, like many other anti-SLAPP statutes, the TPPA provides “substantive” remedies anyway.⁹⁷ That partly explains why so many federal courts do not share the view that anti-SLAPP statutes do not apply in federal court.⁹⁸

For these reasons, though unsettled, the better conclusion is that the TPPA’s dismissal provisions apply in federal court. And because there is not even a theoretical conflict between the TPPA’s attorney’s fee-shifting provision and federal rules of procedure,⁹⁹ so does its fee-shifting provision.

⁹² Cf. [Paucek](#), 349 F.R.D. at 505 (“[W]hile some provisions of the statute conflict with the Federal Rules of Civil Procedure, the statute’s fee-shifting provision—awarding fees, costs, and expenses to a defendant who prevails under Federal [Rule 12](#) or Federal Rule 56—does not. Because New Jersey law governs all of the claims in this case, Shaulis can shift fees, costs, and expenses, if he can successfully dismiss the complaint under [Rule 12 or Rule 56](#).”).

⁹³ See [SmileDirectClub](#), 708 S.W.3d at 572; see also [Rye v. Women’s Care Ctr. of Memphis, M PLLC](#), 477 S.W.3d 235, 238 (Tenn. 2015) (“We hereby overrule Hannan and return to a summary judgment standard consistent with [Rule 56 of the Federal Rules of Civil Procedure](#).”).

⁹⁴ See Cal. Civ. Proc. Code § 425.16(b)(1) (emphasis added).

⁹⁵ See Tenn. Code Ann. §§ 20-17-105(b), (d).

⁹⁶ [Charles v. McQueen](#), 693 S.W.3d 262, 281 (Tenn. 2024).

⁹⁷ See Tenn. Code Ann. § 20-17-109.

⁹⁸ See *supra* n.82.

⁹⁹ [Paucek](#), 349 F.R.D. at 517 (“[M]andatory fee shifting under a state anti-SLAPP statute is “unproblematic” because fee-shifting statutes apply in diversity actions as

2. Whether the TPPA applies in arbitrations.

No Tennessee court has yet determined whether the TPPA applies in arbitration settings. But the TPPA is “an additional substantive remedy” available under the statutory law of the State of Tennessee.¹⁰⁰ Thus, when parties have contracted to apply Tennessee law to their disputes, it presumptively should apply even in arbitrations.

Out-of-jurisdiction authority holding that anti-SLAPP statutes do not apply in arbitrations do not require a contrary outcome. One California decision holds that California’s anti-SLAPP statute “does not expressly make arbitration claims asserted only in an arbitral forum ‘subject to’ a[n anti-SLAPP] motion to strike.”¹⁰¹ But the basis for that holding was that California’s anti-SLAPP statute “makes a ‘cause of action’ in a ‘complaint’ . . . ‘subject to’ a motion to strike[.]” and none of those things encompasses “[a]rbitration claims filed only in an arbitral forum[.]”¹⁰²

By design, the TPPA’s text is far broader. Its definitions state: “‘Legal action’ means a claim, cause of action, petition, cross-claim, or counterclaim *or any request for legal or equitable relief initiated against a private party[.]*”¹⁰³ Applying this definition, an arbitration demand that includes a “request for legal or equitable relief initiated against a private party” ought to qualify as a “[l]egal action” within the meaning of the TPPA.¹⁰⁴

Federal jurisprudence refusing to apply the TPPA in federal court does not support a different conclusion, either, for two reasons.

First, as noted above, federal authority on this point predates Tennessee jurisprudence that holds “the TPPA’s prima facie case requirement is analogous to the evidentiary requirements in Rules 50.01 and 56 of the Tennessee Rules of Civil Procedure[.]”¹⁰⁵ And according to later cases that clarified Tennessee law, nothing prevents the TPPA and judicial rules of civil procedure from being “harmonized.”¹⁰⁶

Second, the TPPA “shall be construed broadly to effectuate its purposes and

part of a state's substantive law.”).

¹⁰⁰ See [Tenn. Code Ann. § 20-17-109](#).

¹⁰¹ [Sheppard v. Lightpost Museum Fund](#), 146 Cal. App. 4th 315, 322 (2006).

¹⁰² *Id.* at 323.

¹⁰³ [Tenn. Code Ann. § 20-17-103\(5\)](#) (emphasis added).

¹⁰⁴ *Id.*

¹⁰⁵ [SmileDirectClub](#), 708 S.W.3d at 572.

¹⁰⁶ [Reiss](#), 2022 WL 16559447, at *7.

intent.”¹⁰⁷ Given this statutory mandate, exempting from the TPPA’s ambit all claims asserted in arbitration would materially—and improperly—neuter the TPPA’s utility. The consequences of such a holding would be borne most heavily by consumers who (1) are subject to binding arbitration agreements that are included in adhesive consumer contracts and (2) incur retaliatory arbitrations when they speak critically about “[a] good, product, or service in the marketplace[.]”¹⁰⁸ Thus, for the TPPA to achieve its intended purpose “to encourage and safeguard the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law[.]”¹⁰⁹ it should apply to qualifying claims asserted in arbitration, too.

3. Whether a successful Rule 12 motion moots a TPPA petition.

Limited authority holds that—under some circumstances—a successful dispositive motion “moots” a TPPA petition.¹¹⁰ For that reason, trial courts have denied as moot or otherwise refused to rule on TPPA petitions after they have granted dismissal under Rule 12 or Rule 56.¹¹¹

When a TPPA petitioner has filed a TPPA petition *before* a trial court has adjudicated a Rule 12 or Rule 56 motion, though, there are strong arguments that a TPPA petition is not “moot.”¹¹² The issue will soon be resolved in a pending TPPA appeal.

K. SUCCESSFUL TPPA STRATEGY

The TPPA is a specialized statute that involves specialized strategic

¹⁰⁷ See [Tenn. Code Ann. § 20-17-102](#).

¹⁰⁸ See [Tenn. Code Ann. § 20-17-103\(6\)\(E\)](#); *cf.* [Nandigam Neurology](#), 639 S.W.3d at 654 (addressing SLAPP-suit filed in response to “an online Yelp! review”); [Kedalo Constr.](#), 2024 WL 4892032, at *1 (discussing SLAPP-suit filed in response to a “website and Facebook page criticizing the company.”); Michael H. Todisco, *Anti-SLAPP in Arbitration? A Closer Look*, L.A. B.J. (Nov. 30, 2021) <https://labusinessjournal.com/advertorials/anti-slapp-arbitration-closer-look/> (“To effectuate that purpose and to protect the First Amendment in all forums, the anti-SLAPP statute should be available in arbitration.”).

¹⁰⁹ See [Tenn. Code Ann. § 20-17-102](#).

¹¹⁰ [Horst](#), 2024 WL 4972013, at *11 (“[T]hat a party may file a [Rule 12](#) motion to dismiss and a TPPA petition . . . does not in our view mean that a party has a right to have an unheard TPPA petition adjudicated if the party has already obtained dismissal by way of [Rule 12](#).”).

¹¹¹ See, e.g., Order, [Allen v. Pitts](#), Nos. 24C1752, 24C3077 (Tenn. Cir. Ct. July 9, 2025); Order, [Goldberg v. Davis](#), No. 1-274-24 (Tenn. Cir. Ct. Mar. 26, 2025).

¹¹² See generally Brief for Eriana Pitts, [Allen v. Pitts](#), 2025 WL 3757969, at *29–45.

considerations. As a result, inexperienced or otherwise incapable attorneys who have tried their hand at the statute often botch TPPA cases—sometimes repeatedly and on both sides of the statute.¹¹³

Deployed properly, though, the TPPA enables any SLAPP-suit victim—regardless of wealth—to secure early dismissal of any SLAPP-suit filed against them, whether by billionaire developers,¹¹⁴ politicians,¹¹⁵ or anyone else. Because the strategic considerations that inform successful TPPA defenses ought not fall into the hands of SLAPP plaintiffs, though, this section requires paid access, and it is subject to a sworn affirmation that the user is not a plaintiff or representing one. To access this section, please email daniel@horwitz.law.

¹¹³ See, e.g., *PMC Squared*, 2024 WL 3757839, at *3 (unsuccessful TPPA defense handled by attorneys “Ben M. Rose, Brentwood, Tennessee, and Bennett Hirschhorn, Knoxville, Tennessee” due to counsel’s failure to present evidence in support of a TPPA petition); *Nandigam Neurology*, 639 S.W.3d at 668 (appeal arising from unsuccessful TPPA opposition handled by attorney Bennett Hirschhorn, who failed to timely present evidence in opposition to a TPPA petition); *Kent*, 2023 WL 8621102, at *2 (dismissing impermissible TPPA appeal taken by attorney “Ben M. Rose, Brentwood, Tennessee”).

¹¹⁴ [Michael Ray Taylor](https://www.nashvillescene.com/news/pithinthewind/thunder-thornton-suit-legal-fees/article_b33028fc-ddd7-11ef-8980-6ff6c3e93b23.html), *Thunder Thornton Ordered to Pay More Than \$200K in Legal Fees*, NASHVILLE SCENE, (Jan. 29, 2025), https://www.nashvillescene.com/news/pithinthewind/thunder-thornton-suit-legal-fees/article_b33028fc-ddd7-11ef-8980-6ff6c3e93b23.html.

¹¹⁵ Angele Latham, *Metro Council member gets win against defamation suit filed by former opponent*, THE TENNESSEAN, (July 13, 2023, 1:56 P.M.), <https://www.tennessean.com/story/news/politics/2023/07/13/metro-council-member-wins-against-defamation-suit-filed-by-former-opponent/70410241007/>.