


IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

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LARRY L. HENRY, CLERK  
BY  DC

MIKE BEDSOLE, d/b/a TINY HOUSE  
CHATTANOOGA,

Plaintiff,

vs.

SINCLAIR BROADCAST GROUP,  
INC., et al.,

Defendants.

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DOCKET NO. 20C649

DIVISION IV

ORDER

This matter comes before the Court upon Plaintiff's facial challenge to the constitutionality of the Tennessee Public Participation Act found at T.C.A. § 20-17-101 et seq. The Court has reviewed the filings of the parties as well as that of the Attorney General and has heard the arguments of counsel.

A brief synopsis of the facts is sufficient for this constitutional challenge. Plaintiff is a Tennessee based manufacturer of tiny homes. Stories concerning an incident involving Plaintiff and a customer were broadcast (as well as an article published) by the ABC defendants and the Sinclair defendants. A complaint was filed alleging that the broadcasts and published articles were false, libelous and defamatory. All defendants filed petitions to dismiss pursuant to T.C.A. § 20-17-101 et seq. Plaintiff has now filed a pleading challenging the TPPA asserting that it is a procedural mechanism that conflicts with Tennessee Rules of Civil Procedure 8, 12 and 56; and maintaining that the entirety of the statute is unconstitutional under the separation of powers provisions of Article II, §§ 1 and 2 of the Tennessee Constitution.

We begin by recognizing that, when examining the constitutionality of a statute, courts are bound by the presumption that an act of the General Assembly is constitutional and must indulge every prescription and resolve every doubt in favor of the statute's constitutionality. Gallaher v. Elam, 104 S.W. 3<sup>rd</sup> 455, 459 (Tenn. 203). This is no small burden. Moreover, the Plaintiff's challenge to T.C.A. § 20-17-101 et. seq. is a "facial challenge." It is well settled that... "[a] facial challenge to a legislative Act is ... the most difficult challenge to mount successfully since the challenges must establish that no set of circumstances exist under which the Act would be valid." State v. Crank, 468 S.W. 3<sup>rd</sup> 15, 24-25 (Tenn. 2015).

The TPPA, at least in the eyes of this Court, is clearly predicated upon public policy concerns. "The purpose of this chapter is 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...", T.C.A. § 20-17-102. There can be no serious question that the intent of the legislature in passing this statute was to effect a more beneficial public policy. Given that the statute specifically addresses important public policy matters, deference must be given to the Legislature in enacting this statute. "Questions of public policy not determined by the [Tennessee] Constitution are within the exclusive power of the Legislature." Cooper v. Nolan, 19 S.W. 2d 274, 276 (Tenn. 1929). It is against this backdrop that we engage in a constitutional analysis.

Generally, the first step the Court must take in its analysis is to determine whether the statute is predominantly substantive, remedial, or procedural in nature. Substantive law has been defined by our Supreme Court as "...that part of the law that creates, defines and regulates rights; that which creates duties, rights and obligations; the law which relates to rights and duties which give rise to a cause of action." Remedial laws have been defined as providing means or

method whereby causes of action may be effectuated, wrongs redressed and relief obtained; a law that "... gives a party a new or different remedy when the existing remedy, if any, is inadequate." In re D.A.H., 142 S.W. 2d 267, 273 (Tenn. 2004). Procedural law, on the other hand, establishes the mode as proceedings by which legal rights are enforced.

The General Assembly provides at T.C.A. § 20-17-109 (Intent of Chapter) that their intent is to "provide an additional substantive remedy...". While the Legislature may not conclusively determine that a statute is substantive/remedial through the mere recitation of such phrase – they can and have indicated that this was the legislative intent underpinning the statute.

The Court looks first at the over-arching purpose of the statute: to provide protection to its citizens from S.L.A.P.P. lawsuits. The statute certainly adds an additional layer of protection at sections 20-17-104 and 20-17-105. Plaintiff argues that these sections, which are the guts of the entire legislation, are procedural. The Court disagrees. The statute at issue now provides for an award of attorney's fees previously unavailable to a defendant in a S.L.A.P.P. action. This additional remedy is significant. Pursuant to the terms of T.C.A. § 20-17-105 (b), (c), and (d), a greater burden has been placed upon the plaintiff than the mere requirements of Rules 8 and 12 of the Tennessee Rules of Civil Procedure. While this comparison with the T.R.C.P. may appear, at least on the surface, that the burden shifting language and heightened requirements of the statute render it procedural; this Court believes that is not the case. The provisions of the TPPA do not mandate any particular result but leave the ultimate decision within the discretion of the trial court. None of the provisions remove from the trial court its authority to interpret and apply the applicable law. In short, the TPPA does not infringe on the powers of the courts guaranteed under the separation of powers provisions of Article II, 1 and 2 of the Tennessee Constitution. To the contrary: not only is the trial court's discretion and decision making unimpaired – the statute

actually broadens the court's authority to move past the very low requirements of Rules 8 and 12, and to impose attorney's fees following a burden shift not previously available to the litigants.

Finally, and even assuming arguendo the statute is primarily procedural rather than substantive/remedial, this Court believes the public policy concerns addressed by the

legislature in this statute warrant deference to the extent there is any infringement on the Tennessee Supreme Court's inherent power to prescribe rules for practice and procedure in the state's courts. See Biscan v. Brown, 160 S.W. 3d 462, 474 (Tenn. 2005).

For the forgoing reasons, the Court finds that the Plaintiff has failed to establish a successful facial challenge to the TPPA and upholds the constitutionality of the same.

WHEREFORE, the constitutional challenge of the Plaintiff is DENIED.

ENTER this 24<sup>th</sup> day of February, 2021.



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KYLE E. HEDRICK, JUDGE  
Hamilton County Circuit Court  
Division IV

CLERK'S CERTIFICATE

The undersigned hereby certifies that a copy of this Order has been served on all parties or counsel to all parties in this cause.

This 24 day of Feb., 2021.

LARRY L. HENRY, CLERK

By:  , D.C.

- Cc: Robb Harvey  
Samuel Lipshie  
Jeffrey L. Allen  
Nathan Siegal  
Carl Mazurek  
Chad Bowman  
Emmy Parsons  
M. Buck Dougherty  
Phillip E. Fleenor  
Chanse E. Hayes