

CAUSE NO. 18-003225-CV-272

MARGARET MEECE,
Plaintiff,

v.

GABRIEL GARCIA
Defendant,

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IN THE

272ND DISTRICT COURT

BRAZOS COUNTY, TEXAS

**DEFENDANT’S REPLY TO PLAINTIFF’S RESPONSE TO
DEFENDANT’S MOTION TO DISMISS ANTI-SLAPP ACTION**

COMES NOW, Defendant, Gabriel Garcia, and files his Reply to Plaintiff’s Response to Defendant’s Motion to Dismiss Anti-SLAPP Action, respectfully requesting that the Court dismiss all claims asserted against him, as follows:

I. INTRODUCTION

1. Plaintiff’s Response to Defendant’s Motion to Dismiss Anti-SLAPP Action (the “Response”) misstates the protections afforded under the Texas Citizens Participation Act (the “TCPA”), attempts to flip the burdens clearly delineated in the TCPA, and continues to obfuscate the actual civil claims with baseless and uncorroborated criminal allegations. However, as Gabriel Garcia (“Garcia”) showed in his Motion to Dismiss, Plaintiff’s claims should be dismissed pursuant to the TCPA.

A. Plaintiff impermissibly limits the TCPA to protections afforded by the Texas Constitution and United States Constitution.

2. Throughout the Response, Plaintiff claims the TCPA is inapplicable because Garcia did not show a constitutionally protected interest necessary to invoke the TCPA. *See, e.g.,* Response at ¶ 3.1.¹ Plaintiff’s argument is premised on the statutory purpose included in the

¹ In the Response, Plaintiff invokes constitutionally protected conduct twenty-seven times when trying to limit the applicability of the TCPA in this matter. *See* Response at ¶¶ 3.1, 3.3, 3.4, 3.7, 3.7A–3.7J, 3.8, 3.12, 3.13A–3.13J, 3.14.

TCPA, which is to “encourage and safeguard the constitutional rights of person to petition, speak freely, associate freely, and otherwise participate in the government. . . .” Response at ¶ 3.3. However, Plaintiff’s flawed logic is not new to Texas courts, and it has been regularly found that the TCPA is not constrained or bound to the protections provided under the Texas or United States Constitutions.

3. While early applications of the TCPA in Texas courts showed deviations in the breadth of the TCPA’s application and the limits of the protections afforded under the TCPA, the Texas Supreme Court slammed the door on Plaintiff’s argument logic in its decision in *ExxonMobil Pipeline Company v. Coleman*. See *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895 (Tex. 2017) (per curiam). In *Coleman*, the Texas Supreme Court confirmed that a court must apply a plain-meaning construction of the definitions contained in the TCPA, without regard to the TCPA’s broader purposes or background jurisprudence. See *Cavin v. Abbott*, 545 S.W.3d 47, 62 (Tex. App.—Austin 2017, no pet.) (citing *Coleman*, 512 S.W.3d at 898–901). This approach is required, even when it results in an expanded definition of free speech, petition, or association identified with the Texas Constitution and United States Constitution. *Id.* Emphasizing this plain-meaning approach, the Texas Supreme Court stated that courts cannot read “language into the statute that is not there.” *Coleman*, 512 S.W.3d at 901.

4. As noted by the *Cavin* court, “among the implications of these Texas Supreme Court precedents . . . is that the TCPA’s definitions of ‘exercise of the right of free speech,’ petition, and association extend considerably beyond—and largely without regard to—the parameters of expression that would actually be protected by the First Amendment of the Texas Constitution.” *Cavin*, 545 S.W.3d at 63 (citing *Elite Auto Body LLC v. Autocraft Bodywerks, Inc.*, 520 S.W.3d 191, 195 (Tex. App.—Austin 2017, pet. dismissed)). Accordingly, in light of the *Coleman* decision, appellate courts in Texas have not limited the scope of the TCPA to the First

Amendment or the Texas Constitution. *See Cavin*, 545 S.W.3d at 63; *Abatecola v. 2 Savages Concrete Pumping, LLC*, 2018 WL 3118601 *7 (Tex. App.—Houston [14th Dist.] June 26, 2018, no pet. h.); *Holt Texas, Ltd. V. M&M Crushed Stone Products, Inc.*, 2018 WL 3998661 *4 (Tex. App.—San Antonio Aug. 22, 2018, no pet. h.). Moreover, the Texas Supreme Court has recently reaffirmed its position, stating that the TCPA’s “statutory definition is not fully coextensive with the constitutional free–speech right protected by the First Amendment to the U.S. Constitution and article I, section 8 of the Texas Constitution.” *Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 892 (Tex. 2018).

5. Plaintiff’s argument that the TCPA is not applicable in the instant matter is because Garcia “cannot show a constitutionally protected interest” in the alleged conduct. However, the caselaw is clear: the terms of the TCPA must be given the meaning as defined in the statute. *See Coleman*, 590 S.W.3d at 899. Therefore, there is no constitutional component that Garcia must establish to invoke the TCPA—he only must show that Plaintiff’s claims are “based on, relates to, or is in response to the party’s exercise of the right of free speech, the right to petition, or the right of association.” TEX. CIV. PRAC. & REM. CODE § 27.005. Garcia did establish this in his Motion to Dismiss; consequently, the TCPA is applicable to Plaintiff’s claims in this matter.

B. Plaintiff incorrectly states the burden Garcia must establish to demonstrate that Plaintiff’s claims are subject to the TCPA.

6. In addition to trying to amend the TCPA with a constitutional component, Plaintiff also incorrectly states the burden Garcia must establish to invoke the TCPA in this matter. Plaintiff claims that Garcia must show that he has a “constitutionally protected right as defined by the TCPA to” undertake the various conduct Plaintiff alleges in her petition. *See* Response at ¶¶ 3.4, 3.8, 3.12, 3.13A–3.13J. Plaintiff also argues that Garcia has a perceived limit on the rights afforded under the TCPA, which she claims are limited to “the maximum extent permitted under the law.”

See Response at ¶¶ 3.6, 3.7A–3.7J, 3.13. However, neither of Plaintiff’s suppositions are included

in the TCPA, and as a result, Plaintiff has incorrectly stated the burden imposed on Garcia by the TCPA.

7. The TCPA employs a burden-shifting mechanism to determine its applicability. *See Coleman*, 512 S.W.3d at 898–99; TEX. CIV. PRAC. & REM. CODE § 27.005. Under the TCPA, Garcia must show “by a preponderance of the evidence that the lawsuit is based on, relates to, or is in response to the party’s exercise of the right of free speech, the right to petition, or the right of association.” TEX. CIV. PRAC. & REM. CODE § 27.005(b). There is no requirement that Garcia establish a constitutionally protected right or a legal right as Plaintiff alleges. As stated above, Plaintiff cannot amend or rewrite the TCPA because she thinks that is what it *should* say. In fact, this approach to amend or rewrite limits into the TCPA has been wholly rejected by the Texas Supreme Court. *Coleman*, 512 S.W.3d at 901 (“We do not substitute the words of a statute in order to give effect to what we believe a statute should say; instead, absent an ambiguity, we look to the statute’s plain language to give effect to the Legislature’s intent as expressed through the statutory text.”).

8. Plaintiff’s claims involve election finance reports filed by Garcia as part of his campaign for the Brazos County District Clerk, personal financial statement and election finance reports filed by Garcia in his 2016 campaign for Brazos County Commissioner, online advertisements used during Garcia’s campaign for the Brazos County District Clerk, communications involving statements allegedly made by Garcia in the office of the Brazos County District Clerk, and allegations regarding the political contributions made to Garcia’s campaign and listed in Garcia’s election finance reports. Motion to Dismiss at ¶¶ 20, 26. In his Motion to Dismiss, Garcia established by a preponderance of the evidence that these claims are based on, relate to, or are in response to Garcia’s exercise of his right to free speech and right of association. Motion to Dismiss at ¶¶ 23, 27. Consequently, because Garcia met this burden, and because

Plaintiff did not provide clear and specific evidence establishing a prima facie case, Plaintiff's petition must be dismissed pursuant to the TCPA.

C. Plaintiff continues to mislead the Court by citing alleged conduct for which she cannot claim (and has not plead) relief for under the Texas Election Code.

9. Even after Garcia addressed it in his Motion to Dismiss, Plaintiff continues to mislead the Court by citing alleged conduct for which she cannot recover damages under the Texas Election Code. In her petition, Plaintiff sought recovery for Garcia's alleged conduct under sections 253.131 and 254.231 of the Texas Election Code. Petition at ¶¶ 11–12. As Garcia noted in his Motion to Dismiss, section 253.131 allows for recovery if a candidate “knowingly makes or accepts a campaign contribution or makes a campaign expenditure in violation of *this chapter*.” TEX. ELECTION CODE § 253.131. Under section 254.231, recovery is permitted if a candidate “fails to report in whole or in part a campaign contribution or campaign expenditure as required by *this chapter*.” *Id.* at § 254.231. Garcia addressed Plaintiff's claims of recovery under sections 253.131 and 254.231 in his Motion to Dismiss, pointing out that Plaintiff did not have clear and specific evidence for those allegations, and even if she did, Garcia has established a defense to those claims by a preponderance of the evidence.

10. Garcia also noted that Plaintiff raised claims and made allegations that entitled her to no recovery under any applicable law. *See* Motion to Dismiss at ¶¶ 40–45. However, Plaintiff continues to claim relief for these claims surrounding alleged misrepresentations of identity and source in political advertising and misrepresentations of business and corporate ownership. Response at ¶¶ 4.4, 4.6. None of this alleged activity is governed by Chapter 253 or 254; therefore, none of it is recoverable under sections 253.131 and 254.231. Consequently, while Plaintiff has no ability to recover for this conduct (and was alerted to this result in Garcia's Motion to Dismiss), she continues to include these claims presumably to mislead the Court.

D. Garcia established his defense by a preponderance of the evidence to Plaintiff's claims.

11. Despite Plaintiff's distortions of Garcia's affidavit testimony, she cannot overcome that Garcia established defenses to Plaintiff's claims by a preponderance of the evidence. First, Plaintiff claims that Garcia provided no evidence that he did not knowingly accept the corporate contributions. Response at ¶ 5.4. Even a cursory review of Garcia's affidavit refutes Plaintiff's claim because Garcia testified that he wasn't aware the contributions had been made or received by his campaign. *See* Affidavit of Gabriel Garcia, attached as Exhibit 1 to the Motion to Dismiss, at ¶ 15. The pleadings and affidavits, which must form the basis of a TCPA Motion to Dismiss, *see* TEX. CIV. PRAC. & REM. CODE § 27.006(a), clearly establish that Garcia did not knowingly accept inappropriate donations or make inappropriate expenditures.

12. Second, Plaintiff argues that Garcia's testimony is inconsistent because corrected election reports were not filed in October 2018. Response at ¶¶ 5.5–5.6. However, this is a misrepresentation of Garcia's testimony. Garcia testified that he repaid the contributions to the corporations—he never stated that he was aware that his reports were inaccurate. *See* Affidavit of Gabriel Garcia, attached as Exhibit 1 to Garcia's Motion to Dismiss, at ¶¶ 15–16. It wasn't until this lawsuit was served on him that he realized his election finance reports did not indicate the return of those funds. *Id.* at ¶ 18. After investigating the issues asserted in Plaintiff's petition, Garcia timely filed amended reports correcting any inaccuracies that may have been present in the originally filed election finance reports. *Id.* at ¶ 19; *see* Exhibits 2–8 attached to Garcia's Motion to Dismiss. Consequently, any allegations surrounding Garcia's election finance reports were corrected in a timely fashion in accordance with the Texas Election Code and other applicable Texas law.

13. Garcia continues to refute that Plaintiff established every element of her claims with clear and specific evidence. However, even if she managed to clear that hurdle, Garcia established

a defense to every viable claim Plaintiff asserted by a preponderance of the evidence. Accordingly, Garcia's Motion to Dismiss should be granted, and Plaintiff's petition should be dismissed pursuant to the TCPA.

II. PRAYER

14. Garcia requests that the Court grant his Motion to Dismiss under the Texas Citizens Participation Act; award Garcia its reasonable attorney's fees and expenses; enter sanctions against Margaret Meece; and all further relief to which he may be justly entitled, at law or in equity.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

This is to certify that the above and foregoing document has been delivered as indicated below to counsel of record on January 29, 2019 to:

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