

# ***FLADE V. CITY OF SHELBYVILLE***

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## INTRODUCTION

Does Tennessee’s legal framework give preference to plaintiffs, potentially threatening fairness to defendants? This question is spotlighted in *Flade v. City of Shelbyville*.<sup>1</sup> According to the Tennessee Supreme Court’s decision in *Flade*, so long as a plaintiff voluntarily dismisses his claim before a Tennessee Public Participation Act (TPPA) petition is adjudicated, the case must be dismissed without prejudice, giving no recourse to the defendant or his TPPA petition.<sup>2</sup> Although *Flade* was correctly decided under Tennessee law and precedent,<sup>3</sup> the decision exposes a critical loophole permitting plaintiffs to burden defendants with litigation costs and face no repercussions.

This case note explores the implications of *Flade* and argues that legislative action is needed to address this dangerous loophole. The note begins by providing a background of the Tennessee Public Participation Act and voluntary dismissal in Tennessee. Next, it discusses the issues contemplated in *Flade* and how the court

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1. See 699 S.W.3d 272, 302 (Tenn. 2024).

2. *Id.*

3. *Id.* at 301–02.

correctly decided the case. Then, it explains how despite the correctness of the decision, *Flade* creates a new problem and unfairly strengthens plaintiffs' rights. Finally, the paper offers solutions to the issue, mainly a call to action for the Tennessee legislature to amend the Tennessee Public Participation Act. Overall, this note serves as a reminder that new pieces of legislation may not always work as intended. Courts cannot use statutory interpretation to read words that were never written.

### I. BACKGROUND

In response to free speech concerns, many states have implemented "Anti-SLAPP" laws, also known as Strategic Lawsuits Against Public Participation.<sup>4</sup> These laws address fear mongering tactics used by plaintiffs who appropriate the court system and hurl legal threats solely to intimidate those exercising their First Amendment rights.<sup>5</sup> While each state's Anti-SLAPP protections vary somewhat, the laws function in a similar way across the board.<sup>6</sup> Under most laws, the defendant, or the individual being sued, files an Anti-SLAPP claim—a motion to strike on the grounds that the suit involves an attack on free speech.<sup>7</sup> After the Anti-SLAPP claim is filed, the plaintiff must make a prima facie case showing they could prevail at trial.<sup>8</sup> If the plaintiff does not meet their burden, the case is dismissed.<sup>9</sup> Otherwise, the case moves forward to trial.<sup>10</sup> In order to further protect defendants against frivolous claims, many states will also allow an award of attorney's fees and court costs to the defendant if they prevail on their motion.<sup>11</sup>

Tennessee's Anti-SLAPP law is known as the "Tennessee Public Participation Act" or the "TPPA."<sup>12</sup> The TPPA's purpose is to

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4. *Anti-SLAPP Legal Guide*, REPS. COMM. FOR FREEDOM OF THE PRESS, <https://www.rcfp.org/anti-slapp-legal-guide/> (last visited Sept. 7, 2025) (explaining what an "Anti-SLAPP" law is).

5. *Understanding Anti-SLAPP Laws*, REPS. COMM. FOR FREEDOM OF THE PRESS, <https://www.rcfp.org/resources/anti-slapp-laws/> (last visited Sept. 7, 2025).

6. See *Anti-SLAPP Legal Guide*, *supra* note 4.

7. See *Understanding Anti-SLAPP Laws*, *supra* note 5.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Todd Hambidge et al., *Speak Up: Tennessee's New Anti-SLAPP Statute Provides Extra Protections to Constitutional Rights*, TBA (Aug. 26, 2019),

“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 and, at the same time, protect the rights of persons to file meritorious lawsuits for demonstrable injury.”<sup>13</sup> The TPPA works similarly to other Anti-SLAPP laws by discouraging frivolous lawsuits through sanctions and allowing courts to adjudicate lawsuits at an earlier stage to thwart the threat of substantial litigation expenses.<sup>14</sup> When a TPPA petition is filed, the burden of proof is placed on the plaintiff to make a prima facie case for all essential elements of his claims.<sup>15</sup> If the plaintiff meets his burden the case will go forward unless the defendant establishes a valid defense for the claims.<sup>16</sup> If the court decides to dismiss the action, either because the plaintiff failed to meet his burden or the defendant established valid defenses, the claims are dismissed with prejudice.<sup>17</sup> If an action is dismissed under the TPPA, the plaintiff is also held liable for the defendant’s court costs, reasonable attorney’s fees, and other expenses incurred in responding to the claim.<sup>18</sup> The court may also deem it necessary for the plaintiff to be sanctioned and pay a reasonable amount to deter repetition of his conduct.<sup>19</sup>

In *Flade v. City of Shelbyville*, The Tennessee Supreme Court examined a TPPA claim.<sup>20</sup> The plaintiff, Flade, bought a duplex, planning to renovate and sell it.<sup>21</sup> Unbeknownst to Flade, the duplex was occupied.<sup>22</sup> He was later contacted by a tenant advocacy organization who told Flade his tenants in the duplex were without water and needed him to fix it.<sup>23</sup> Since the plaintiff did not see himself as a landlord, he told the organization his only plans were to renovate and resell the property.<sup>24</sup> As a result, the advocacy organization went to social media, making disparaging marks about Flade and even

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<https://www.tba.org/?pg=Articles&blAction=showEntry&blogEntry=35290>.

13. TENN. CODE ANN. § 20-17-102 (West 2019).

14. See Hambidge, *supra* note 11.

15. TENN. CODE ANN. § 20-17-105(b) (West 2019).

16. *Id.* § 20-17-105(c).

17. *Id.* § 20-17-105(e).

18. TENN. CODE ANN. § 20-17-107(a)(1) (West 2019).

19. *Id.* § 20-17-107(a)(2).

20. 699 S.W.3d 272, 276 (Tenn. 2024).

21. *Id.* at 277.

22. *Id.*

23. *Id.*

24. *Id.*

exposing his personal phone number.<sup>25</sup> Flade then filed claims against the advocacy agency and its constituent who made the social media posts for libel per se, intentional interference with business, intentional infliction of emotional distress, stalking, and harassment.<sup>26</sup>

Defendants filed a TPPA petition arguing the plaintiff was unable to make a prima facie case for all the elements of his claim.<sup>27</sup> The plaintiff then filed a response to the TPPA petition asserting that he did in fact meet his burden of making a prima facie case.<sup>28</sup> However, before the hearing on the TPPA petition, the plaintiff filed a “Notice of Voluntary Dismissal” under Rule 41.01(1) of the Tennessee Rules of Civil Procedure.<sup>29</sup> The trial court entered an order of dismissal without prejudice, but the defendants argued that under Rule 41.01(1) and existing caselaw, the court was required to adjudicate the TPPA petition.<sup>30</sup> While there are exceptions to voluntary dismissal under Rule 41.01, the trial court determined the existence of the TPPA petition at the time of dismissal did not qualify as such.<sup>31</sup> When the defendants appealed the trial court’s ruling, the intermediate appellate court also found that the filing of a TPPA petition does not limit the availability of a voluntary nonsuit.<sup>32</sup> Accordingly, the defendants appealed, and the Tennessee Supreme Court granted a writ of certiorari to hear the case.<sup>33</sup>

## II. ISSUE

The primary legal issue in *Flade* was whether the filing of a TPPA petition restricts a plaintiff’s right to voluntary dismissal.<sup>34</sup> Tennessee Rule of Civil Procedure 41.01 grants the plaintiff a “unilateral and absolute” right to a nonsuit without prejudice, with limited exceptions.<sup>35</sup> However, certain exceptions to Rule 41.01 take precedence over the plaintiff’s right to voluntary dismissal. The court

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25. *Id.*

26. *Id.* at 278.

27. *Id.*

28. *Id.* at 279.

29. *Id.*

30. *Id.*

31. *Id.* at 280.

32. *Id.*

33. *Id.* at 281.

34. *See id.*

35. *Id.* (quoting LAWRENCE A. PIVNICK, TENNESSEE CIRCUIT COURT PRACTICE § 23:1, at 1039 (2009)).

addressed these exceptions, specifically analyzing whether the TPPA limits a plaintiff's right to voluntary dismissal.<sup>36</sup>

The first voluntary dismissal issue the court wrestles with is whether the TPPA falls under the “subject to the provisions of any statute” exception of Rule 41.01.<sup>37</sup> Under Rule 41.01, voluntary dismissal is “subject to the provisions of Rule 23.05, Rule 23.06, or Rule 66 or any statute,” hence the court seeks to answer the question of whether the TPPA falls under the “any statute” exception.<sup>38</sup> In previous caselaw, other courts have found the “subject to any statute” exception to refer “only to those statutes that specifically limit a party's right to obtain a voluntary nonsuit or otherwise relate specifically to the effect of a voluntary nonsuit.”<sup>39</sup> One court held the TPPA was not a statutory exception under Rule 41.01 because the phrase “of any statute” only refers to statutes specifically limiting the right to voluntary dismissal or relating to the effect of voluntary dismissal.<sup>40</sup> Another court also reached the same conclusion, explaining how the TPPA was not the type of statute contemplated by Rule 41.01 because the TPPA does not “specifically limit a party's right to obtain a voluntary nonsuit or otherwise relate specifically to the effect of a voluntary nonsuit.”<sup>41</sup> Therefore, previous caselaw examining whether the TPPA falls under the “statute” exception of Rule 41.01 maintains the TPPA is not an applicable exception.<sup>42</sup>

The next question the Court examines is whether the TPPA creates a “vested right,” an implied exception to Rule 41.01(1).<sup>43</sup> Under Tennessee law, the right to voluntary dismissal is limited to the “restriction that the granting of the nonsuit will not deprive the defendant of some right that became vested during the pendency of the case.”<sup>44</sup> The Court further explains how a vested right is a right

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36. *See id.*

37. *Id.* at 284.

38. TENN. R. CIV. P. 41.01(1).

39. *Flade*, 699 S.W.3d at 287 (quoting *Solomon v. Solomon*, No. M2021-00958-COA-R3-CV, 2023 WL 3730597, at \*2 (Tenn. Ct. App. May 31, 2023)).

40. *Solomon*, 2023 WL 3730597, at \*5–6.

41. *Adamson v. Grove*, No. M2020-01651-COA-R3-CV, 2022 WL 17334223, at \*57 (Tenn. Ct. App. Nov. 30, 2022) (quoting *Clark v. Werther*, No. M2014-00844-COA-R3-CV, 2016 WL 5416335, at \*13 (Tenn. Ct. App. Sept. 27, 2016)).

42. *See, e.g., Solomon*, 2023 WL 3730597, at \*5–6; *Adamson*, 2022 WL 17334223, at \*57; *Flade*, 699 S.W.3d at 287.

43. *Flade*, 699 S.W.3d at 291.

44. *Id.* (quoting *Anderson v. Smith*, 521 S.W.2d 787, 790 (Tenn. 1975)).

the state must recognize and protect so an individual is not deprived arbitrarily without injustice in violation of his or her due process rights.<sup>45</sup> At this point in time, only one other authority from the state of Tennessee has addressed a vested rights exception argument for a TPPA claim pending at the time of a voluntary dismissal.<sup>46</sup> In *Solomon v. Solomon*, the court likened the pending TPPA petition to a pending motion to dismiss.<sup>47</sup> The court reasoned since a pending motion to dismiss does not proffer a vested right, neither does a pending TPPA petition.<sup>48</sup> In conclusion, the Court held due process does not guarantee the adjudication of every TPPA petition.<sup>49</sup>

Finally, the Court in *Flade* considered whether filing a TPPA petition can be characterized as a counterclaim.<sup>50</sup> The third exception to the right of voluntary dismissal allows the defendant to proceed with their counterclaim if it has been filed prior to the plaintiff's voluntary dismissal.<sup>51</sup> *Blake v. Plus Mark, Inc.* is the leading authority in Tennessee regarding when a counterclaim may proceed after voluntary dismissal.<sup>52</sup> The *Blake* Court found that a counterclaim precluding dismissal of a claim would ask for "affirmative relief."<sup>53</sup> Affirmative relief is more than a defense, but operates to defeat the plaintiff's cause of action.<sup>54</sup> In a previous decision by the Tennessee Court of Appeals, the court treated a TPPA petition as a counterclaim under Rule 41.01.<sup>55</sup> The court reasoned the TPPA petition went beyond a mere denial of the plaintiff's action because the petition sought affirmative relief through attorney's fees and sanctions.<sup>56</sup> In contrast, *Flade* determined TPPA petitions were not counterclaims because the TPPA makes clear it does not create a private right of action.<sup>57</sup>

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45. *Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999).

46. *See Solomon*, 2023 WL 3730597, at \*3–4.

47. *Id.* at \*8.

48. *Id.*

49. *Id.*

50. *Flade v. City of Shelbyville*, 699 S.W.3d 272, 296 (Tenn. 2024).

51. *Id.*

52. 952 S.W.2d 413, 416 (Tenn. 1997).

53. *Id.*

54. *Id.*

55. *Adamson v. Grove*, No. M2020-01651-COA-R3-CV, 2022 WL 17334223, at\*43 (Tenn. Ct. App. Nov. 30, 2022).

56. *Id.* at \*43–44.

57. *Flade v. City of Shelbyville*, 699 S.W.3d 272, 299 (Tenn. 2024).

## III. ANALYSIS

The Tennessee Supreme Court in *Flade v. City of Shelbyville* concluded the TPPA could not be adjudicated after voluntary dismissal.<sup>58</sup> While *Flade* was correctly decided, there are new issues stemming from the decision. This section dives into the three main issues of the case to further explain why the Court's decision was correct under Tennessee statutory law. However, the next section explains the negative implications arising from the Court's ruling. The current TPPA statute should not be recognized as an exception to Rule 41.01 and voluntary dismissal under existing Tennessee case law. Nevertheless, despite the Court's correct decision it still creates a loophole for plaintiffs with bad intentions and frivolous suits.

To start, it is important to note the permissiveness of voluntary dismissal in the state of Tennessee. Courts have noted that the Tennessee rule on voluntary dismissal is more liberal than in other courts and in federal jurisdiction.<sup>59</sup> Tennessee's rule encompasses the principle that the plaintiff is the "master of his suit."<sup>60</sup> The Court in *Flade* recognized this component of voluntary dismissal in its opinion and used this as a factor in its decision.<sup>61</sup> This aspect of Rule 41.01 is paramount for understanding how the Court's decision was correctly aligned with existing precedent and legislative intent. However, the commanding power of one's right to voluntary dismissal creates unanticipated complications.

A. *The "Statute Exception"*

The Tennessee Supreme Court correctly decided the "statute exception" to Rule 41.01. Both the Trial Court and the Appellate Court made the same determination, finding the TPPA was not the type of statute contemplated by Rule 41.01.<sup>62</sup> This is the correct conclusion because multiple lower courts had already found the TPPA to fall outside the statutory exception.<sup>63</sup> In these cases, the courts highlighted how the "statute exception" corresponds to statutes

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58. *Id.* at 302.

59. *Weedman v. Searcy*, 781 S.W.2d 855, 856–57 (Tenn. 1989).

60. *Rickets v. Sexton*, 533 S.W.2d 293, 294 (Tenn. 1976).

61. *Flade*, 699 S.W.3d at 282.

62. *Id.* at 280.

63. *See, e.g., Solomon v. Solomon*, No. M2021-00958-COA-R3-CV, 2023 WL 3730597, at \*5 (Tenn. Ct. App. May 31, 2023); *Adamson v. Grove*, No. M2020-01651-COA-R3-CV, 2022 WL 17334223, at \*57 (Tenn. Ct. App. Nov. 30, 2022).

specifically limiting one's right to voluntary dismissal.<sup>64</sup> This reasoning is logical because Rules 23.05 and 66 have language specifically referencing the right to voluntary dismissal.<sup>65</sup> In comparison, the TPPA language under § 20-17-105 mentions nothing about voluntary dismissal.<sup>66</sup> The word "dismissal" is used in the language of the statute, but the word only references dismissal of the *plaintiff's* action when the defendant has met his burden of proof under the TPPA petition.<sup>67</sup>

Other important points the Tennessee Supreme Court makes in its argument involve the principles of statutory construction. The Court makes a persuasive argument about the TPPA's statutory language and reasons that the right to voluntary nonsuit was well-established law when the TPPA was enacted.<sup>68</sup> Therefore, if the legislative intent was to use the TPPA as a barrier to voluntary dismissal after a TPPA petition has been filed, the legislature would have included that language in the statute. The Court also notes how the TPPA disrupts other parts of the judicial process, so if the legislators wanted to disrupt the right to voluntary dismissal, they would have been direct about it.<sup>69</sup> For example, under § 20-17-104(d) the discovery process is halted until the disposition of the TPPA claim.<sup>70</sup> Therefore, the statutory construction of the TPPA does not support the defendant's argument that the TPPA can obstruct the plaintiff's right to voluntary dismissal.

### B. *The Vested Right Exception*

In the Court's reasoning of whether the TPPA involves a vested right, it correctly concluded the TPPA does not confer a vested right.<sup>71</sup> As previously stated, the Court of Appeals previously rejected a vested right argument involving a TPPA petition that was pending at the time of the voluntarily dismissal.<sup>72</sup> The Court in *Flade* explained how

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64. *Solomon*, 2023 WL 3730597, at \*5–6; *Adamson*, 2022 WL 17334223, at \*57.

65. TENN. R. CIV. P. 23.05 ("A certified class action shall not be voluntarily dismissed..."); TENN. R. CIV. P. 66 ("An action wherein a receiver has been appointed shall not be dismissed except...").

66. TENN. CODE ANN. § 20-17-105 (West 2019).

67. *Id.* §§ 20-17-105(b)–(c).

68. *Flade v. City of Shelbyville*, 699 S.W.3d 272, 289, 293 (Tenn. 2024).

69. *Id.* at 289.

70. TENN. CODE ANN. § 20-17-104(d) (West 2019).

71. *Flade*, 699 S.W.3d at 295.

72. *See supra* Part III.

vested rights are rooted in due process, but due process does not require the adjudication of every TPPA petition.<sup>73</sup> In fact, the court in *Solomon v. Solomon* comparatively pronounced the TPPA as more of a motion to dismiss.<sup>74</sup> Under Tennessee law, a motion to dismiss does not give a defendant a vested right simply by its filing.<sup>75</sup>

The court in *Solomon* was correct in categorizing the TPPA as a motion to dismiss and concluding no vested right existed.<sup>76</sup> Functionally, the TPPA operates in a similar manner to Tennessee Rule 12.02.<sup>77</sup> Under Tennessee Rules of Civil Procedure, a motion to dismiss for failure to state a claim triggers a summary judgment-esque proceeding.<sup>78</sup> The TPPA operates in a similar manner as once a petition is filed, the court evaluates whether the plaintiff's claim is viable.<sup>79</sup> In both procedures, if the court finds the plaintiff's claim to be tenable, the claim proceeds.<sup>80</sup> On the other hand, both the TPPA and Rule 12.02 allow the court to dismiss the suit if the plaintiff's claim is not feasible.<sup>81</sup> Because of the procedural similarities to a motion to dismiss, the TPPA does not proffer a vested right as an exception to Rule 41.01.

### C. The Counterclaim Exception

Rule 41.01 also provides an exception for voluntary dismissal if the defendant has pleaded a counterclaim.<sup>82</sup> The Court of Appeals in *Flade* held the TPPA petition was not a counterclaim because it combined the procedural mechanisms of a Rule 12.02 motion to dismiss and a summary judgment-type procedure.<sup>83</sup> However, a previous case found the TPPA did constitute a counterclaim.<sup>84</sup> In *Adamson v. Grove* the court maintained the TPPA could be characterized as a counterclaim because the petition was more than

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73. *Solomon v. Solomon*, No. M2021-00958-COA-R3-CV, 2023 WL 3730597, at \*6–8 (Tenn. Ct. App. May 31, 2023).

74. *Id.* at \*8.

75. *See Ricketts v. Sexton*, 533 S.W.2d 293, 294 (Tenn. 1976).

76. *Solomon*, 2023 WL 3730597, at \*8.

77. TENN. R. CIV. P. 12.02.

78. *Id.*

79. TENN. CODE ANN. § 20-17-105 (West 2019).

80. *See id.* § 20-17-105(b).

81. TENN. R. CIV. P. 12.02.

82. TENN. R. CIV. P. 41.01(1).

83. *Flade v. City of Shelbyville*, No. M2022-00553-COA-R3-CV, 2023 WL 2200729, at \*68–69 (Tenn. Ct. App. Feb. 24, 2023).

84. *Adamson v. Grove*, No. M2020-01651-COA-R3-CV, 2022 WL 17334223, at \*43 (Tenn. Ct. App. Nov. 30, 2022).

“[a] mere denial[] of the plaintiff’s cause of action” and requested relief in the form of attorney’s fees, sanctions, and court costs.<sup>85</sup> However, this part of the *Adamson* case was overruled by the Tennessee Supreme Court in *Flade*.<sup>86</sup> The Tennessee Supreme Court distinguished *Adamson* from the case before it by arguing how the situation in *Adamson* was different since the plaintiff voluntarily dismissed his claims before the defendant had a chance to file a TPPA petition.<sup>87</sup> In fact, it was the plaintiff in *Flade* who argued that the TPPA constituted a counterclaim because “Rule 41.01 requires that a counterclaim be pleaded prior to service of a notice of voluntary dismissal . . . and the defendants’ TPPA petition was not.”<sup>88</sup>

The Tennessee Supreme Court was correct in concluding the TPPA is not a counterclaim. Black’s Law Dictionary defines a counterclaim as a claim for relief that is asserted in opposition to the original claim.<sup>89</sup> While the TPPA petition is asserted against the plaintiff and allows some relief through attorney’s fees and sanctions, these components are not enough to label the TPPA as a counterclaim.<sup>90</sup> As previously stated, the TPPA acts more along the lines of a motion to dismiss.<sup>91</sup> When the defendant submits a TPPA claim, he is trying to dismiss the plaintiff’s case and recover minimal fees to cover the expenses of defending the case.<sup>92</sup> In effect, a counterclaim seeks to add an additional claim to a case while a TPPA claim seeks to stop the case and provide monetary recompense for defending against frivolous claims. Because of the operational differences between the TPPA and traditional counterclaims, the Tennessee Supreme Court was right in determining the TPPA is not a counterclaim.

#### D. Other “Anti-SLAPP” Decisions

Finally, the Tennessee Supreme Court’s decision is sound because other jurisdictions have ruled in a similar manner on cases involving Anti-SLAPP petitions and voluntary dismissal. In *Law Offices of Andrew L. Ellis v. Yang*, the California Court of Appeals ruled that the court could not hear the defendant’s Anti-SLAPP petition after the

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85. *Id.* at \*43–44 (internal citation omitted).

86. *Flade*, 699 S.W.3d at 301 (Tenn. 2024).

87. *Id.* at 297.

88. *Id.*

89. *Counterclaim*, BLACK’S LAW DICTIONARY (9th ed. 2009).

90. TENN. CODE ANN. § 20-17-107(a) (West 2019).

91. *See supra* Part IV.B.

92. TENN. CODE ANN. § 20-17-105 (West 2019); TENN. CODE ANN. § 20-17-107(a)(1) (West 2019).

plaintiff voluntarily dismissed his claims.<sup>93</sup> Similarly, the California Supreme Court denied a defendant's right to recovery under an Anti-SLAPP statute because the defendant did not file a petition before the plaintiff voluntarily dismissed his suit.<sup>94</sup> The Oregon Court of Appeals also held the defendant could not obtain attorney's fees from their Anti-SLAPP petition after the plaintiff's voluntary dismissal.<sup>95</sup> However, some courts have allowed payment of attorney's fees to the defendant despite the plaintiff's voluntary dismissal if the defendant could have prevailed under their petition.<sup>96</sup> Therefore, the Tennessee Supreme Court's decision aligns with other jurisdictions' decisions to not adjudicate an Anti-SLAPP petition after the plaintiff has voluntarily dismissed the suit.

#### IV. IMPLICATIONS OF THE CASE

While *Flade v. City of Shelbyville* was correctly decided under Tennessee precedent, the decision creates several unintended consequences, the first being the impact on defendants with TPPA claims. Defendants may argue the decision in *Flade* obstructs their rights under due process. By allowing plaintiffs to voluntarily dismiss their complaints at any time before adjudication of a TPPA claim, the court gives preference to plaintiffs and their potentially frivolous suits. For example, if a plaintiff indeed has a frivolous claim, they could drag a faultless defendant through litigation and voluntarily dismiss their frivolous suit immediately before adjudication of the defendant's TPPA claim. This would leave the defendant with no recourse, attorney's fees, sanctions, or court costs, despite their extensive efforts in combatting a frivolous claim, because the court cannot adjudicate the TPPA claim further. Therefore, the main effect on defendants is increased litigation costs because of their inability to collect attorney's fees and other costs associated with TPPA remedies.

The main fix to this problem is quite simple: give the court limited jurisdiction to rule on a TPPA claim after voluntary dismissal to ensure no frivolous suit goes unchecked. California's Anti-SLAPP statute provides similar language.<sup>97</sup> As *Law Offices of Andrew L. Ellis v. Yang* explains, the statute anticipates the scenario when parties attempt to dismiss their case during a pending Anti-SLAPP petition

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93. L. Offs. of Andrew L. Ellis v. Yang, 100 Cal. Rptr. 3d 771, 773 (Cal. Ct. App. 2009).

94. S.B. Beach Props. v. Berti, 138 P.3d 713, 714 (Cal. 2006).

95. Chinese Consol. Benevolent Ass'n v. Chin, 504 P.3d 1196, 1202 (Or. Ct. App. 2021).

96. Jacobson v. Clack, 309 A.3d 571, 581, 584–85 (D.C. 2024).

97. See CAL. CODE CIV. P. § 425.16 (2025).

and gives the court the opportunity to award attorney's fees and court costs to the defendant.<sup>98</sup> California's approach to voluntary dismissal is fairer to the defendant and the administration of justice. The TPPA and existing Tennessee precedent do not fully protect defendants from frivolous attacks on speech because of their predisposition in favoring plaintiffs' rights.

The second category of issues with the *Flade* decision is how it undermines the legislative intent of the TPPA. As previously stated, the TPPA was created to encourage the freedom of expression and sanction frivolous suits seeking to stifle this right.<sup>99</sup> In fact, previous courts have stated that to bar the awarding of attorney's fees under an Anti-SLAPP petition would threaten the purposes of Anti-SLAPP acts because plaintiffs could avoid paying fees by dismissing their frivolous suits.<sup>100</sup> Therefore, when legislatures fail to provide safeguards in their Anti-SLAPP laws and courts interpret the laws to protect plaintiffs, the court system encourages the tactical use of voluntary dismissal to evade the repercussions of frivolous claims. When this injustice occurs, the court system makes a mockery of the primary purpose of the TPPA and other "Anti-SLAPP" laws.

#### V. PROPOSED SOLUTIONS & CONCLUSION

While *Flade* was correctly decided under Tennessee law and precedent, the case highlights a significant problem with the TPPA. There is no singular answer on how to best fix this issue, but the most straightforward answer would be to encourage the Tennessee legislature to amend the TPPA. If amended, the TPPA should provide a limited exception for voluntary dismissal, allowing courts to adjudicate TPPA claims and award fees to defendants. Other states such as Oregon, Maine, and Nebraska have language in their Anti-SLAPP statutes permitting such exceptions.<sup>101</sup> Therefore, the Tennessee legislature could easily update the TPPA language by using other states' Anti-SLAPP laws as examples. This amendment is essential because without this added language, Tennessee courts will continue to interpret these types of situations under the guidance of *Flade*. While it is possible for courts to interpret the TPPA to allow for adjudication after voluntary dismissal, the best route for change is through the legislature. Without an update to the TPPA, plaintiffs

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98. *Yang*, 100 Cal. Rptr. 3d at 777–78.

99. *Hambidge*, *supra* note 11.

100. *Jacobson*, 309 A.3d at 581.

101. *See, e.g.*, ME. REV. STAT. ANN. tit. 14, § 738 (2025); NEB. REV. STAT. ANN. § 25-824 (West 1987); OR. REV. STAT. ANN. § 31.152 (West 2024).

will continue to take advantage of this loophole at the expense of defendants.