IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

INSTITUTE FOR FREE SPEECH, a nonprofit corporation and public interest law firm, Plaintiff, v. J.R. JOHNSON, in his official and individual capacities as Executive Director of the Texas Ethics Commission; MARY KENNEDY, CHRIS FLOOD, and RICHARD SCHMIDT in their official capacities as commissioners of the Texas Ethics Commission; and RANDALL ERBEN, CHAD CRAYCRAFT, PATRICK MIZELL, JOSEPH SLOVACEK, and STEVEN WOLENS, in their individual and official capacities as commissioners of the Texas Ethics Commission; Defendants.	Cause No. 4:23-cv-00808-P

PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Table of Contents

Table of Contents ii

Table of Authorities iv

Introduction 1

Facts and Background 2

Argument 9

I. The TEC's ban on corporate in-kind contributions violates IFS's First Amendment rights to associate, petition, and speak as-applied to pro bono civil-rights litigation 9

A. *Button* and progeny clearly established a right to associate and speak for the purposes of pro bono litigation against the government 9

B. The right to petition for redress includes the right of access to the courts for pro bono lawsuits 11

C. The TEC's regime prevents IFS or any other corporation from providing pro-bono legal services to Texas candidates or political committees 13

D. The TEC's regime does not meet strict scrutiny as applied to IFS or entities like IFS 14

1. The TEC's regime violates *Button* and its progeny 14

2. The TEC's regime is an improper content-based restriction 18

3. The TEC's regime discriminates against viewpoints that oppose the TEC or its campaign-finance restrictions 22

II. The TEC's ban on corporate contributions is overbroad because it is disproportionate and censors too much protected speech 23

III. 42 U.S.C. § 1983 preempts the TEC's regulatory regime because that regime provides state officials with partial immunity from federal civil rights suits 25

IV. IFS is entitled to permanent injunctive relief against the enforcement of the TEC's regime 26

V. IFS is entitled to a declaration that the TEC's regime is unconstitutional 27

VI. IFS is entitled to nominal damages for past violations of its right to associate, petition, and speak 28

Conclusion 29

Table of Authorities

Cases

Ark. Writers' Project, Inc. v. Ragland,
481 U.S. 221 (1987).. 18

Bernard v. Gulf Oil Co.,
619 F.2d 459 (5th Cir. 1980) 10

Broadrick v. Oklahoma,
413 U.S. 601 (1973).. 23

Brown v. Entm't Merchs. Ass'n,
564 U.S. 786 (2011).. 17

Bryant v. Military Dep't,
597 F.3d 678 (5th Cir. 2010) 12

Cal. Motor Transp. Co. v. Trucking Unlimited,
404 U.S. 508 (1972).. 12

Christian Legal Soc'y v. Walker,
453 F.3d 853 (7th Cir. 2006) 27

Citizens United v. FEC,
558 U.S. 310 (2010).. 15, 19

FEC v. Ted Cruz for Senate,
142 S. Ct. 1638 (2022).. 15

Franco v. Kelly,
854 F.2d 584 (2d Cir. 1988) 12

Greater New Orleans Broad. Ass'n v. United States,
527 U.S. 173 (1999).. 17

Gronowski v. Spencer,
424 F.3d 285 (2d Cir. 2005) 25

Harrison v. Springdale Water & Sewer Com.,
780 F.2d 1422 (8th Cir. 1986) 12

Haywood v. Drown,
556 U.S. 729 (2009).. 25

Henry v. N. Tex. State Hosp.,
Civil Action No. 7:12-cv-00198-O, 2013 U.S. Dist. LEXIS 107260 (N.D. Tex. July 9, 2013) 12

Hines v. Pardue,
No. 1:18-cv-155, 2022 U.S. Dist. LEXIS 240148 (S.D. Tex. Dec. 16, 2022) 26

Hines v. Quillivan,
No. 1:18-CV-155, 2021 U.S. Dist. LEXIS 235684, (S.D. Tex. Dec. 9, 2021)...................... 20

Hines v. Quillivan,
No. 1:18-cv-155, 2021 U.S. Dist. LEXIS 236801 (S.D. Tex. July 29, 2021) 20

Holder v. Humanitarian L. Project,
561 U.S. 1 (2010)... 20

In re Primus,
436 U.S. 412 (1978).. 10, 14

Jones v. White,
No. H-03-2286, 2006 U.S. Dist. LEXIS 84052 (S.D. Tex. Nov. 17, 2006)......................... 28

Legal Servs. Corp. v. Velazquez,
531 U.S. 533 (2001).. 11, 22, 23

Lewis v. Woods,
848 F.2d 649 (5th Cir. 1988) 28

McCutcheon v. FEC,
572 U.S. 185 (2014).. 15

McDonald v. Longley,
4 F.4th 229 (5th Cir. 2021) 27

Middle S. Energy, Inc. v. New Orleans,
800 F.2d 488 (5th Cir. 1986) 27

Miller v. Bonta,
No. 22cv1446-BEN (JLB), 2022 U.S. Dist. LEXIS 228197 (S.D. Cal. Dec. 19, 2022) 25

MWK Recruiting Inc. v. Jowers,
833 F. App'x 560 (5th Cir. 2020) 26

NAACP v. Button,
371 U.S. 415 (1963).. 9, 10, 11, 14

Netchoice, L.L.C. v. Paxton,
49 F.4th 439 (5th Cir. 2022) 23

Pac. Coast Horseshoeing Sch., Inc. v. Kirchmeyer,
961 F.3d 1062 (9th Cir. 2020) 19

Perry Ed. Ass'n v. Perry Local Educators' Ass'n,
460 U.S. 37 (1983).. 22

Police Dep't of Chicago v. Mosley,
408 U.S. 92 (1972).. 18

Porter v. Califano,
592 F.2d 770 (5th Cir. 1979) 10

Recht v. Morrisey,
32 F.4th 398 (4th Cir. 2022) 17

Reed v. Town of Gilbert,
576 U.S. 155 (2015).. 18, 19

Rosenberger v. Rector & Visitors of the Univ. of Va.,
515 U.S. 819 (1995).. 22

Serafine v. Branaman,
810 F.3d 354 (5th Cir. 2016) 19, 21, 23, 24

Soranno's Gasco v. Morgan,
874 F.2d 1310 (9th Cir. 1989) 12

Steffel v. Thompson,
415 U.S. 452 (1974)........ 27

Texans for Free Enter. v. Texas Ethics Comm'n,
732 F.3d 535 (5th Cir. 2013) 26

United Mine Workers of Am., Dist. 12 v. Ill. State Bar Ass'n,
389 U.S. 217 (1967)........ 11

United States v. Hansen,
143 S. Ct. 1932 (2023)........ 24

United States v. Stevens,
559 U.S. 460 (2010)........ 23

United Transp. Union v. State Bar of Mich.,
401 U.S. 576 (1971)........ 12

Uzuegbunam v. Preczewski, 141 S. Ct. 792 (2021) 28

Valley v. Rapides Par. Sch. Bd.,
118 F.3d 1047 (5th Cir. 1997) 26

Washington State Grange v. *Washington State Republican Party*,
552 U.S. 442 (2008)........ 23

Willey v. Harris Cty. DA,
27 F.4th 1125 (5th Cir. 2022) 14, 21

Williams-Yulee v. Fla. Bar,
575 U.S. 433 (2015)........ 17

Statutes

42 U.S.C. § 1983 .... 1, 25, 26, 28

42 U.S.C. § 1988 25

TEX. ELEC. CODE, § 251.001(1) 6

TEX. ELEC. CODE § 251.001(2) 2

TEX. ELEC. CODE § 251.001(5) 7

TEX. ELEC. CODE § 251.001(7) 7

TEX. ELEC. CODE § 251.001(8) 7

TEX. ELEC. CODE § 251.001(10) 7

TEX. ELEC. CODE § 251.001(12) 7

TEX. ELEC. CODE § 251.001(21) 2

TEX. ELEC. CODE § 253.094 .... passim

TEX. ELEC. CODE § 253.094(c) 2

TEX. ELEC. CODE § 253.131 2

TEX. ELEC. CODE § 259.001 .... 6, 7, 8, 13

TEX. ELEC. CODE § 259.001(a) 6, 7, 8, 13

TEX. GOV. CODE § 571.061 .... 2, 6

TEX. GOV. CODE § 571.171 2

Other Authorities

Richard H. Fallon, Jr., *Strict Judicial Scrutiny,* 54 UCLA L. Rev. 1267 (2007) 14

Treatises

12 Moore's Federal Practice - Civil § 57.07 (2023) 27

Introduction

The American legal profession has a storied history of providing free legal services to those in need. But the need for free services outstrips their availability. And sometimes the government itself fuels this shortage.

The Institute for Free Speech ("IFS") is a non-profit corporation that provides pro bono legal services to persons who litigate against the government in order to vindicate and expand First Amendment rights, in particular the right to political expression.

Chris Woolsey, a candidate and elected official in Corsicana, Texas, would like to challenge a Texas law that compels him to place the government's message on political signs. The Texas Anti-Communist League PAC, a Fort Worth political action committee, would like to do the same. Both would like to accept free legal services from IFS to mount their legal challenges, but the Texas Ethics Commission ("Commission" or "TEC") and Texas state law prevent IFS from associating with Woolsey and the League and speaking and petitioning on their behalf for the purposes of pro bono litigation against the government. The Commission's regime similarly prevents other corporations from offering pro bono legal services to Texas non-federal candidates and political committees.

The Commission's regulatory regime violates IFS's First Amendment rights, as well as those of similarly situated corporations. It also subverts federal law by undermining 42 U.S.C. § 1983 and insulating the TEC's other speech restrictions from legal challenges.

Facts and Background

Texas prohibits corporations from providing in-kind contributions

The TEC, acting through its Executive Director and Commissioners, is the state agency that is responsible for enforcing the Texas Election Code, including the provisions concerning political contributions and expenditures, and political advertising. TEX. GOV. CODE § 571.061, § 571.171.

TEX. ELEC. CODE § 253.094 prohibits corporations from making political contributions to candidates and political committees. A "contribution" is defined as any "transfer of money, goods, services, or any other thing of value." TEX. ELEC. CODE § 251.001(2). "In-kind contribution[s]," meaning goods or services or any other thing of value that is not money, are also prohibited. *Id.* § 251.001(21). Such a violation is a felony offense of the third degree. *Id.* § 253.094(c). The state may also collect civil damages "in the amount of triple the value of the unlawful contribution or expenditure." *Id.* § 253.133. Other candidates may also sue the corporations and donation recipients for damages and fees. *Id.* § 253.131.

IFS's foregone opportunities to provide pro bono legal services in Texas

On multiple occasions, IFS has foregone legally representing a candidate or political committee in Texas due to concern that it could be prosecuted under the Texas Election Code for providing an in-kind contribution in the form of pro bono legal services. Appendix In Support of Plaintiff's Motion for Summary Judgment ("App.") 9-13. Because IFS is a nonprofit corporation,

IFS was concerned that it might run afoul of Texas's corporate contribution ban if IFS represented a candidate or political committee. App. 9. IFS decided to seek clarification from the Commission by requesting an advisory opinion. *Id.* In the meantime, IFS refrained from representing candidates or political committees in Texas. *Id.*

IFS requests an advisory opinion

On January 18, 2022, IFS submitted a letter to the Commission requesting an advisory opinion to resolve whether pro bono legal services provided to a candidate or political committee for the purpose of challenging the interpretation or constitutionality of a Texas law or regulation in court constitutes a "contribution" barred by section 253.094 of the TEXAS ELECTION CODE. App. 16-23. IFS argued that: (1) the described pro bono legal services are not an in-kind contribution and therefore not a "contribution" or a "political contribution" because the "'usual and normal practice' of nonprofits that offer pro bono legal services for public interest litigation . . . is to provide these services 'without charge';" (2) the described pro bono legal services are not a "campaign contribution;" and (3) an interpretation of the statute that would bar provision of pro bono legal services in such matters would render the prohibition unconstitutional. *Id.*

On May 12, 2022, the Commission issued Draft Advisory Opinion No. AOR-660 ("AOR-660"). App. 24-27. The draft opinion interpreted pro bono legal services as an "in-kind contribution" subject to the TEXAS ELECTION CODE because such services would be used in

connection with a campaign. Under that interpretation, pro bono legal services would be prohibited under TEX. ELEC. CODE § 253.094. *Id.*

The Commission discussed AOR-660's reasoning at its meeting the same day. IFS President David Keating encouraged the Commission to set the draft aside for public comment, noting that the draft would prove to be controversial nationwide. App. 10. Keating further argued that the Commission's draft also limits charitable organizations, such as IFS, from offering their services to those with limited resources and effectively bars IFS's attorneys from the courthouse doors. *Id.* The Commission postponed AOR-660's adoption pending public comment. *Id*.

On September 26, 2022, the Institute for Justice and American Civil Liberties Union of Texas ("ACLU"), two other nonprofit corporations that engage in pro bono litigation, submitted letters arguing that the draft opinion violates the First Amendment. Both organizations maintained that the Commission's draft opinion, if adopted, would limit access to legal advocacy against civil rights violations. App. 10-11, 28-41.

At its September 29, 2022 meeting, the Commission issued a revised draft of AOR-660. Executive Director Johnson noted that the revised draft removed all discussion of federal law. App. App. 11, 42-45. He also discussed, at length, the reasons for reaching the draft opinion's conclusions. Johnson argued that the concerns over First Amendment violations were inapplicable, because the cited cases focus on the restrictions of the practice of law, not on campaign finance. *Id.* at 11.

IFS President Keating again commented on AOR-660, advising against adopting the draft. *Id.* At Commissioner Mizell's request, the Commission moved to postpone the adoption of AOR-660 until the next meeting. *Id.* At its December 14, 2022 meeting, the Commission again introduced the revised draft of AOR-660. App. 11-12. Keating and an ACLU of Texas representative advocated against adoption of the Commission's revised draft. *Id.* at 12.

By a 5-3 vote, the Commission adopted and published AOR-660 in its final form, titled Ethics Advisory Opinion No. 580 ("EAO No. 580" or "Opinion"). App. 12, 46-49, 52. Chair Kennedy and Commissioners Flood and Schmidt voted "no." App. 12, 52. All other commissioners voted for the Opinion. *Id.*

The Opinion's summary reads (App. 46):

> Section 253.094 of the Texas Election Code prohibits corporations from making political contributions to candidates and political committees. Legal services provided without charge to candidates or political committees are in-kind contributions. When those services are given with the intent that they be used in connection with a campaign, they are in-kind campaign contributions. The described legal services would be used in connection with a campaign because the requestor's standing to pursue such a challenge would depend on its client's status as a candidate or political committee subject to the laws administered and enforced by the Commission.

Candidate Chris Woolsey

Chris Woolsey is an elected member of the Corsicana, Texas city council. App. 1. Woolsey intends to run for re-election for his current seat and intends to begin soliciting money for that

purpose in the near future. Woolsey is a "candidate" under the TEXAS ELECTION CODE, § 251.001(1). App. 2.

TEX. ELEC. CODE § 259.001(a) requires that any political advertising sign designed to be seen from a road, other than a bumper sticker, must bear the government's warning message: "NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY." The Commission enforces Title 15 of the Texas Election Code (Regulating Political Funds and Campaigns), which includes this warning requirement. TEX. GOV. CODE § 571.061(a)(3) ("The commission shall administer and enforce . . . Title 15, Election Code….")

When he runs for re-election, as he currently intends, or if he chooses to run for a different elected office in Texas, Woolsey intends to print and post political advertising signs in support of his current and future candidacies. App. 2. In so doing, he would be required to print the government's message on any political advertising sign in support of his election campaign. *Id.* Failing to speak the government's required message on his signs, or even entering into a contract to print or make such signs, would subject Woolsey to criminal prosecution for a Class C misdemeanor offense. *Id.*; TEX. ELEC. CODE § 259.001.

Woolsey would mount a legal challenge to TEX. ELEC. CODE § 259.001(a) as compelled speech, in violation of the First Amendment, but he lacks the financial means to hire a private attorney to mount such a legal challenge. App. 2. If IFS offered Woolsey pro bono legal

representation to challenge TEX. ELEC. CODE § 259.001(a) as compelled speech in violation of the First Amendment, he would gladly accept such representation. App. 3.

The Texas Anti-Communist League PAC

The Texas Anti-Communist League PAC is a Fort Worth-based political action committee, registered as a General Purpose Committee (GPAC) in Texas since May 6, 2022. App. 5. The League is a "political committee" pursuant to TEX. ELEC. CODE § 251.001(12), and a "general-purpose committee" as defined by TEX. ELEC. CODE § 251.001(14). App. 5. It has not yet made any "political contribution," "campaign expenditure," "direct campaign expenditure" or "political expenditure" as defined by TEX. ELEC. CODE § 251.001(5), (7), (8), or (10), but it intends to support candidates and measures in Texas elections that promote its mission of opposing the spread of communism, Marxism, or affiliated ideologies in Texas institutions. App. 5. In promoting its mission, the League would like to enter into a contract to print or make political advertising signs that do not bear the government's message, as currently required by TEX. ELEC. CODE § 259.001(a). App. 5-6.

As a result, the League would like to mount a legal challenge to TEX. ELEC. CODE § 259.001(a), as compelling speech, in violation of the First Amendment, but it lacks sufficient funds to pay for legal representation for such a lawsuit. App. 6. If IFS offered the League pro bono legal representation to challenge TEX. ELEC. CODE § 259.001(a), as compelled speech in violation of the First Amendment, the League would gladly accept such representation. App. 6.

IFS wants to represent Chris Woolsey or the Texas Anti-Communist League in a pro bono lawsuit

Challenging compelled speech, especially restrictions related to political speech, fits with IFS's mission and history of challenging other political speech restrictions. IFS would represent Chris Woolsey and the Texas Anti-Communist League in a pro bono legal challenge to TEX. ELEC. CODE § 259.001(a), as compelled speech in violation of the First Amendment. App. 13-14.

IFS would also like to represent other Texans, including other candidates or political committees, on a pro bono basis, in order to challenge other state-law restrictions on the right to speak or associate for political purposes, if such a lawsuit fits with IFS's mission. *Id.*

Due to the Commission's regulatory regime, including, in particular, TEX. ELEC. CODE § 253.094 and the Commission's Opinion, IFS has refrained from offering or providing any pro bono legal services to Woolsey and the League, because the provision of such services would expose IFS, and its attorneys, to criminal and civil liability under the Texas Election Code. App. 13-14.

The Commission's regulatory regime prevents IFS from representing Woolsey and the League in a pro bono legal challenge to TEX. ELEC. CODE § 259.001(a). App. 13-14. Other corporations that offer legal services are similarly prevented from offering their services on a pro bono basis to Texas state and local candidates and political committees. App. 14-15, 28-41, 55-57.

Argument

I. The TEC's ban on corporate in-kind contributions violates IFS's First Amendment rights to associate, petition, and speak as-applied to pro bono civil-rights litigation

A. *Button* and progeny clearly established a right to associate and speak for the purposes of pro bono litigation against the government

Suing state officials to prevent the enforcement of unconstitutional laws implicates the right of lawyers to *associate* with potential and actual clients and also the right to *speak* on behalf of those clients and advocates against unjust laws. For six decades, courts have understood the First Amendment to cover those activities and take precedence over state regulatory regimes that interfere with those rights.

The First Amendment accords heightened free speech guarantees to the Institute for Free Speech, and similarly situated persons who "advocat[e] [for] lawful means of vindicating legal rights." *NAACP v. Button,* 371 U.S. 415, 437 (1963). In *Button,* the Supreme Court upheld the NAACP's right to provide nonprofit legal services—as IFS does here—as "a form of political expression" by vindicating civil rights in the form of desegregation lawsuits. *Id.* at 429, 431 (invalidating anti-solicitation law prohibiting attorneys from advising others about their legal rights).

Recognizing that this form of legal representation constitutes protected expression, the court noted that the First Amendment "protects vigorous advocacy, certainly of lawful ends, against governmental intrusion." *Id.* at 429, 437. Thus, it found that Virginia officials could not, "under

the guise of prohibiting professional misconduct, ignore constitutional rights." *Id.* at 439. The court expressed particular concern that Virginia's vague and broad statute lent itself to "selective enforcement against unpopular causes," such as, then, the civil-rights movement. *Id.* at 435-36.

Since *Button,* the Supreme Court has repeatedly accorded broad First Amendment protections to non-profit lawyers who vindicate legal rights. Indeed, it has noted the important First Amendment role of non-profits who litigate in defense of the unpopular, including political dissenters. *In re Primus*, 436 U.S. 412, 427-28 (1978). "The ACLU engages in litigation as a vehicle for effective political *expression and association,* as well as a means of communicating useful information to the public." *Id.* at 431 (emphasis added); *see also Bernard v. Gulf Oil Co.,* 619 F.2d 459, 472-73, 478 (5th Cir. 1980) (following *Button* and vacating district court order restricting communications with actual and potential class members); *Porter v. Califano*, 592 F.2d 770, 780 (5th Cir. 1979) ("Especially where the government is one of the parties in the related litigation, courts must most carefully scrutinize government action which attempts to chill private speech designed to raise funds for the legal fees of the private party litigating, and especially defending himself, against the government").

In *Primus*, the court affirmed that South Carolina could "not abridge unnecessarily the associational freedom of nonprofit organizations, or their members," through broad lawyer disciplinary rules. *Primus,* 436 U.S. at 439 (striking down discipline of ACLU lawyer who had offered pro bono representation to a woman who had been sterilized as a condition of continued receipt of Medicaid benefits); *see also United Mine Workers of Am., Dist. 12 v. Ill. State Bar Ass'n,*

389 U.S. 217, 221-23 (1967) (*Button* covers non-political cases too, including a union staff attorney handling workers' compensation claims for union members).

Similarly, in 2001, the court affirmed that the government cannot "prohibit the analysis of certain legal issues" without violating the First Amendment. *Legal Servs. Corp. v. Velazquez,* 531 U.S. 533, 545, 547-8 (2001) *("LSC")* (where Congress funds legal representation for benefits recipients, it may not hamstring the representation). "The attempted restriction is designed to insulate the Government's interpretation of the Constitution from judicial challenge. The Constitution does not permit the Government to confine litigants and their attorneys in this manner." *Id.* at 548.

These Supreme Court holdings all support the proposition IFS advances: that TEC officials may not use Texas's corporate contribution ban as a vehicle to vitiate IFS's (and others') right to associate and speak for the purposes of pro bono litigation against the government, and in particular for the purpose of legally challenging the TEC's own regulatory regime, which targets political speech.

B. The right to petition for redress includes the right of access to the courts for pro bono lawsuits

The "rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights" — and these are connected with "the *other* First Amendment rights of free speech and free press." *United Mine Workers,* 389 U.S. at 222 (emphasis added). The government may no more burden the exercise of these rights through

"indirect restraints" than through direct prohibitions. *Id.; see also United Transp. Union v. State Bar of Mich.,* 401 U.S. 576, 585 (1971) ("The common thread running through our decisions . . . is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment.").

Thus, in addition to the right to associate and speak, the First Amendment also protects that right of access to the courts as part of the right to petition for a redress of grievances. *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) ("Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition."); *Bryant v. Military Dep't*, 597 F.3d 678, 690 (5th Cir. 2010) ("The First Amendment of the federal Constitution guarantees the right of access to the courts to petition for redress of grievances"); *see also Soranno's Gasco v. Morgan,* 874 F.2d 1310, 1314 (9th Cir. 1989) ("The right of access to the courts is subsumed under the first amendment right to petition the government for redress of grievances."); *Franco v. Kelly*, 854 F.2d 584, 588-89 (2d Cir. 1988) (". . . the right of access to the courts is substantive rather than procedural . . . ."); *Harrison v. Springdale Water & Sewer Com.*, 780 F.2d 1422, 1427 (8th Cir. 1986) ("As an aspect of the First Amendment right to petition, the right of access to the courts shares this 'preferred place' in our hierarchy of constitutional freedoms and values."); *Henry v. N. Tex. State Hosp.,* Civil Action No. 7:12-cv-00198-O, 2013 U.S. Dist. LEXIS 107260, at *17-18 (N.D. Tex. July 9, 2013) (App. 58-62) (citing *Bryant*).

By preventing lawyers working for non-profit corporations from associating with Texas candidates and political committees, the TEC defendants' regulatory regime unconstitutionally burdens the right to petition by effectively closing the courthouse door to certain lawyers, and their clients, simply because those lawyers work for corporations, rather than partnerships, limited liability companies, or sole proprietorships.

C. The TEC's regime prevents IFS or any other corporation from providing pro-bono legal services to Texas candidates or political committees

By issuing Ethics Advisory Opinion No. 580, the TEC defendants have put IFS (and other corporations that are similarly situated) on notice that the officials who enforce TEX. ELEC. CODE § 253.094 [the corporate-contribution ban] consider that provision to prohibit the corporate provision of pro bono legal services to a Texas non-federal candidate or political committee, because that would be an in-kind contribution and standing to pursue a legal challenge would be contingent on the legal services being "used in connection with a campaign," as that term is construed by the TEC. App. 12-13, 46-49, 52.

As a result of the previous ambiguity about the scope of TEX. ELEC. CODE § 253.094, IFS has already foregone the opportunity of representing a Texas non-federal candidate in the recent past. App. 9. Now that the TEC defendants have confirmed that they would apply TEX. ELEC. CODE § 253.094 to such a representation, IFS is presently prevented from representing either Chris Woolsey or the Texas Anti-Communist league in a pro bono legal challenge to the warning message that is required on political signs pursuant to TEX. ELEC. CODE § 259.001(a). App. 13-14.

Like IFS, other corporations, including the Institute for Justice, ACLU of Texas, Liberty and Justice Center are similarly prevented from offering pro bono legal services to Texas non-federal candidates or political committees. App. 14, 28-41, 55-57.

D. The TEC's regime does not meet strict scrutiny as applied to IFS or entities like IFS

1. The TEC's regime violates *Button* and its progeny

Restrictions on core First Amendment rights—such as the rights to associate, speak, and petition for redress in the form of pro bono litigation against the government—are subject to strict scrutiny; that is, the TEC defendants must prove that their regulatory regime furthers a compelling state interest that is narrowly tailored to achieve that interest. *Willey v. Harris Cty. DA*, 27 F.4th 1125, 1129 (5th Cir. 2022) (applying strict scrutiny to anti-barratry law where plaintiff wanted to solicit indigent clients who were already represented by appointed counsel and noting that the "Supreme Court has twice applied strict scrutiny to state attempts to restrict non-commercial attorney solicitation"); *see also* Richard H. Fallon, Jr., *Strict Judicial Scrutiny,* 54 UCLA L. Rev. 1267, 1279 (2007) (tracing the development of the strict-scrutiny test in the 1960s and noting that *Button* applied a compelling interest test and "also prefigured the modern narrow tailoring requirement[.]"). Specifically*,* the Fifth Circuit reasoned that *Button* and *Primus* established three principles: (1) the work that the plaintiff wished to do was constitutionally protected speech and association; (2) restrictions on that conduct are strictly scrutinized; and (3) those restrictions are only permissible where narrowly tailored to the substantive evils that state proves is present in a particular case. *Willey,* 27 F.4th at 1130.

Here the TEC defendants' regulatory regime similarly burdens core First Amendment rights and is not supported by a compelling state interest. Advisory Opinion 580 asserts that the TEC does not begrudge anyone pro bono legal representation, just pro bono legal representation provided by a corporation. But what could be even a rational interest, let alone a compelling one as required by *Wiley*, in barring attorneys who organize their practices in a corporate form from providing their services on a pro bono basis? Attorneys and law firms who practice in the corporate form are subject to the same rules of professional conduct, and are equally liable for malpractice claims, as are attorneys who practice as individuals, in partnerships, or as limited liability companies. Indeed, it is not for the TEC to regulate the practice of law, an area of responsibility wisely left to the courts, directly or through their bars.

Nor could the TEC assert that its regulation barring corporations (and only corporations) from providing pro bono legal services somehow advances a compelling state interest in fighting corruption. The Supreme Court has "spelled out how to draw the constitutional line between the permissible goal of avoiding corruption in the political process and the impermissible desire simply to limit political speech." *McCutcheon v. FEC*, 572 U.S. 185, 192 (2014). "Any regulation must instead target what we have called '*quid pro quo*' corruption or its appearance." *Id.* (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *see also FEC v. Ted Cruz for Senate*, 142 S. Ct. 1638, 1652 (2022).

"The hallmark of corruption is the financial *quid pro quo*: dollars for political favors." *McCutcheon*, 572 U.S. at 192. But whatever the justification may be for barring corporations,

generally, from donating money to political campaigns as a means of averting quid pro quo corruption or its appearance, it is not readily apparent that the provision of pro bono legal services by law firms that happen to operate as corporations is a perfect substitute for money as a corruption agent.

That Defendants might be pursuing a valid anti-quid pro quo corruption interest makes even less sense in the as-applied context raised here. An obvious difference exists between a for-profit corporation (an oil company, a tech giant, a foreign state-owned enterprise, etc.) that may have use for political favors, and a nonprofit legal-services provider which exists to provide those services in alignment with its pre-formed ideological mission. How, exactly, does a nonprofit's provision of pro bono legal services raise the specter of corruption? IFS will not represent political committees because it might secretly wish to obtain some legislative favor. But there is no mystery why IFS seeks to file these lawsuits. IFS will file pro bono First Amendment lawsuits because that has been its raison d'être since its inception almost twenty years ago. IFS seeks merely to pursue its constitutionally protected mission.

Indeed, the Supreme Court adopted its narrow view of what counts—and does not count—as a valid anti-corruption interest in the campaign-finance context when applying only less-than-strict scrutiny. That is, if the state is not addressing quid pro quo corruption, it does not have a merely "important" governmental interest that might satisfy intermediate scrutiny, never mind the compelling interest needed to regulate the First Amendment right to litigate as a form of political association and expression. Laws that fail lesser scrutiny cannot pass strict scrutiny. *See Sorrell v.*

IMS Health, Inc., 564 U.S. 552, 571 (2011); *Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173, 184 (1999). "After all, if you can't ski a blue run successfully, you obviously can't tackle a double black diamond." *Recht v. Morrisey*, 32 F.4th 398, 410 (4th Cir. 2022).

And even if the TEC could assert a compelling (or even merely important) interest here, it could not show that its regulation is narrowly tailored to advancing its interests. The TEC's regime is an indiscriminate, blanket prohibition on corporate-legal-service providers, untethered to any specific showing of harm. For example, how would the integrity of Texas's system of representative democracy be furthered by preventing IFS from representing Chris Woolsey or the Anti-Communist League in a civil rights lawsuit against the message requirements on political signs? By definition, a blanket ban is indiscriminate and not narrowly tailored.

Yet the corporate pro bono ban is also fatally underinclusive. That a "regulation is wildly underinclusive when judged against its asserted justification," that "is alone enough to defeat it." *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 802 (2011). "Underinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Id.* (citations omitted). "Underinclusivity creates a First Amendment concern when the State regulates one aspect of a problem while declining to regulate a different aspect of the problem that affects its stated interest in a comparable way." *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 451 (2015) (citation and emphasis omitted).

Notably, the TEC does not ban *all* pro bono legal services. Advisory Opinion 580 explicitly states that its rule "is not as dramatic as some critics have suggested," because candidates "may

accept pro bono representation to challenge the law." App. 49. They just cannot get pro bono legal services from corporations. Attorneys and law firms who operate as sole proprietors, partnerships, and professional limited liability companies—some of which have many political wants, on their own behalf or on behalf of their corporate or share-holder clients—are free to donate their services to candidates and political committees. These may include the most powerful and well-connected big-law partnerships. If the TEC were concerned about the corrupting influence of pro bono legal services, it would start by aiming its prohibitions at other members of our profession, not at nonprofit organizations.

2. The TEC's regime is an improper content-based restriction

In addition to burdening the right to associate, speak, and petition for redress in the form of pro bono litigation against the government, the TEC's regime is also content based. "[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dep't of Chicago v. Mosley,* 408 U.S. 92, 95 (1972). "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert,* 576 U.S. 155, 163 (2015) (citations omitted).

"Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Id.* at 163; *Ark. Writers' Project, Inc. v. Ragland,* 481 U.S. 221, 230 (1987) ("official scrutiny of the content of publications as the basis

for imposing a tax is entirely incompatible with the First Amendment's guarantee[s]"); *Serafine v. Branaman*, 810 F.3d 354, 361 (5th Cir. 2016) (application of regulation restricting the use of the title "psychologist" in campaign context was content based).

The "commonsense meaning of the phrase 'content based' requires a court to consider whether a regulation of speech on its face draws distinctions based on the message a speaker conveys." *Reed,* 576 U.S. at 163 (internal quotation marks omitted). It does not matter whether a law does so by "defining regulated speech by particular subject matter," or by "defining regulated speech by its function or purpose." *Id.* "Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny." *Id.* at 163-64. Moreover, laws that are facially neutral are nonetheless considered content-based if they "cannot be justified without reference to the content of the regulated speech, or . . . were adopted by the government because of disagreement with [the speech's] message." *Id.* at 164 (internal quotation marks omitted).

And speaker-based discrimination is content-based discrimination. "[T]he Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice." *Citizens United*, 558 U.S. at 340-41. It is axiomatic that "the creation and dissemination of information are speech within the meaning of the First Amendment." *Pac. Coast Horseshoeing Sch., Inc. v. Kirchmeyer,* 961 F.3d 1062, 1072 (9th Cir. 2020) (quoting *Sorrell v.* 564 U.S. at 570); *see also Hines v. Quillivan,* No. 1:18-cv-155, 2021 U.S. Dist. LEXIS 236801, at

*24-26 (S.D. Tex. July 29, 2021) (App. 81-90) (relying on *Pac. Coast Horseshoeing* to find that plaintiff's phone calls and emails advising animal owners regarding veterinary issues constituted speech not conduct). And the creation of legal briefing and its submission to a court are no less protected speech than the type of educational services (learning to be a farrier) at issue in *Pac. Coast Horsehoeing* or the prescription history at issue in *Sorrell.* Indeed, the Supreme Court has already recognized that restraints on legal advocacy and training are content-based regulations. *Holder v. Humanitarian L. Project*, 561 U.S. 1, 27 (2010) *("HLP")* ("Plaintiffs want to speak to the PKK and the LTTE, and whether they may do so under § 2339B depends on what they say. If plaintiffs' speech to those groups imparts a 'specific skill' or communicates advice derived from 'specialized knowledge'—for example, training on the use of international law or advice on petitioning the United Nations—then it is barred"); *see also Hines v. Quillivan,* No. 1:18-CV-155, 2021 U.S. Dist. LEXIS 235684, at *9-10 (S.D. Tex. Dec. 9, 2021) (App. 77-80) (following *HLP* and finding that physical-examination requirement was content based and regulated speech about veterinary advice).

The TEC's regulatory regime is likewise content based as applied to IFS and similarly situated corporations that offer pro bono legal services. Legal advocacy, such as what IFS proposes to do, is quintessential protected speech and also implicates the related First Amendment rights of association and petition for redress through litigation. In order to determine whether TEX. ELEC. CODE § 253.094 [the corporate-contribution ban] applies to IFS's proposed activities, the TEC's officials will need to examine the content of IFS's legal speech, to discern whether a given brief

was signed by IFS attorneys in their capacity as corporate employees, and to determine whether the speech is on behalf of a Texas non-federal candidate or political committee, rather than on behalf of a politically active group or individual who does not meet the definition of a political committee or candidate. Indeed, the TEC would be unable to enforce TEX. ELEC. CODE § 253.094 [the corporate-contribution ban] against IFS without reference to the content of IFS's protected speech. As such, the TEC's application of TEX. ELEC. CODE § 253.094 to pro bono legal services must be supported by a compelling government interest and narrow tailoring.

IFS is unaware of a compelling governmental interest in preventing pro bono challenges against unconstitutional laws, but even presuming, arguendo, that such an interest exists, the TEC's blanket ban on corporations providing legal services is not narrowly tailored. For example, in *Serafine,* the Texas State Board of Examiners of Psychologists tried to prevent candidate Mary Serafine from describing herself as a "psychologist" on her Texas senate campaign website. 810 F.3d at 357-58. Applying strict scrutiny, the Fifth Circuit held that Serafine "was seeking votes, not clients" and the state had not narrowly tailored its law to further its interest in regulating mental health treatment, by applying it "outside the context of the actual practice of psychology." *Id.* at 360-61; *see also Willey,* 27 F.4th at 1130 (explaining that the state must prove restrictions are "carefully tailored to prevent substantive evils that a state proves are present in a *particular* case") (emphasis added). So too here, where IFS does not seek to campaign on behalf Texas candidates or political committees in the court of public opinion but merely to vindicate their civil rights in a court of law. The TEC simply has no business regulating the provision of pro bono legal services

in such circumstances and doing so is the quintessential overreach that narrow-tailoring analysis is supposed to address. Moreover, IFS is unaware of any particularized basis for the TEC to submit that the Texas system of representative democracy would be corrupted by allowing IFS to represent Chris Woolsey or the Anti-Communist League in a challenge to the warning requirement for political signs.

3. The TEC's regime discriminates against viewpoints that oppose the TEC or its campaign-finance restrictions

"Viewpoint discrimination is . . . an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or *perspective* of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (citing *Perry Ed. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37, 46 (1983)) (emphasis added); *see also LSC,* 531 U.S. at 547 (effect of improper funding restriction on subsidized legal services "operates to insulate current welfare laws from constitutional scrutiny and certain other legal challenges, a condition implicating First Amendment concerns"). Litigation necessarily involves the "expression of theories and postulates on both, or multiple, sides of an issue." *Id.* at 548.

Here the TEC's enforcement of its regulatory regime not only discriminates based on content, but effectively prevents IFS from articulating its (and its putative clients') viewpoints that are hostile to government regulation of core political speech. By burdening a set of viewpoints that are opposed to the TEC's regulatory goals, its officials engage in classic viewpoint discrimination.

The TEC's regime also operates to insulate the TEC's laws and regulations from legal challenge. As in *LSC,* the TEC's regime impermissibly interferes with the ability of parties to obtain free legal services in order to challenge the government's own laws. "The restriction on speech is even more problematic because in cases where the attorney withdraws from a representation, the client is unlikely to find other counsel . . . There often will be no alternative source for the client to receive vital information respecting constitutional and statutory rights bearing upon claimed benefits." *Id.* at 546. So too here. The availability of pro bono legal services does not match the demand for such services and the TEC's regulatory regime takes one category of service providers out of the mix entirely, further constraining the supply in a way that benefits only the government.

II. The TEC's ban on corporate contributions is overbroad because it is disproportionate and censors too much protected speech

In the First Amendment context, federal courts recognize a species of facial challenge whereby a law may be invalidated as overbroad if "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 473 (2010) (citing *Washington State Grange* v. *Washington State Republican Party*, 552 U.S. 442, 449, n. 6 (2008)); *see also Broadrick v. Oklahoma*, 413 U.S. 601, 611-16 (1973); *McClelland v. Katy Indep. Sch. Dist.*, 63 F.4th 996, 1012-13 (5th Cir. 2023); *Netchoice, L.L.C. v. Paxton*, 49 F.4th 439, 450 (5th Cir. 2022); *Serafine,* 810 F.3d at 364. To evaluate this question, a court must determine whether the unlawful applications of a statute are

disproportionate to its lawful applications. *United States v. Hansen*, 143 S. Ct. 1932, 1939-40 (2023).

Importantly, a facial overbreadth challenge allows a plaintiff—and by extension, the court—to consider the effects of a speech restriction on third parties, who are not otherwise part of the litigation. *Broadrick,* 413 U.S. at 612-13; *Serafine,* 810 F.3d at 364. Thus, for example, in *Serafine,* the Fifth Circuit held that a provision of Texas's Psychologists' Licensing Act was overbroad because it arguably prohibited unlicensed persons from providing advice about everyday mental-health challenges. 810 F.3d at 367-370. "The ability to provide guidance about the common problems of life—marriage, children, alcohol, health—is a foundation of human interaction and society, whether this advice be found in an almanac, at the feet of grandparents, or in a circle of friends." *Id.* at 369.

IFS has already shown that the TEC's regulatory regime prevents non-parties from engaging in protected First Amendment activity in the form of pro bono litigation against government civil-rights restrictions. App. 9, 13-15, 28-41, 56-57. Thus, the statute in question burdens core protected activity and it does so in a significant way.

IFS leaves it to the TEC defendants to articulate the legitimate sweep of their corporate contribution ban, but IFS is unaware of legitimate basis to muzzle virtually all corporations from donating even small amounts to Texas non-federal candidates or political committees. If Texas's corporate contribution ban has no, or few, lawful applications, its legitimate sweep is

presumptively disproportionate. As a result, TEX. ELEC. CODE § 253.094 is facially overbroad and this Court should invalidate it in its entirety.

III. 42 U.S.C. § 1983 preempts the TEC's regulatory regime because that regime provides state officials with partial immunity from federal civil rights suits

"This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land[.]" U.S. CONST. art.VI, cl. 2. "The Supremacy Clause of the Constitution guarantees that state law will not preempt or otherwise erode § 1983 causes of action and state law may not be used to immunize conduct violative of § 1983." *Gronowski v. Spencer*, 424 F.3d 285, 297 (2d Cir. 2005) (citing *Martinez v. California*, 444 U.S. 277, 284 n.8 (1980)). Accordingly, in *Haywood v. Drown*, 556 U.S. 729, 736-37 (2009), the Supreme Court invalidated a New York law that limited the enforcement of 42 U.S.C. § 1983 causes of action in state courts under the Supremacy Clause, reasoning that state law was being improperly used to "shield [a] narrow class of defendants from liability." *See also Miller v. Bonta,* No. 22cv1446-BEN (JLB), 2022 U.S. Dist. LEXIS 228197, at *16-17 (S.D. Cal. Dec. 19, 2022) (App. 63-76) (invalidating a California law that would have the effect of thwarting federal court orders enforcing Second Amendment rights through 42 U.S.C. § 1988 fee awards).

As in this case, IFS typically challenges political-speech restrictions under 42 U.S.C. § 1983. App. 8. The TEC's regulatory regime thwarts the intent of 42 U.S.C. § 1983 by reducing the availability of counsel to take such cases and also acts as a form of partial, state-law based, immunity for a narrow class of defendants: TEC officials who enforce its campaign-finance laws.

Thus, as in *Haywood v. Drown* and *Miller v. Bonta,* this Court should invalidate the TEC regime under the Supremacy Clause.

IV. IFS is entitled to permanent injunctive relief against the enforcement of the TEC's regime

To obtain a preliminary injunction, a movant must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any potential harm to the non-movant; and (4) that the injunction will not undermine the public interest. *Valley v. Rapides Par. Sch. Bd*., 118 F.3d 1047, 1051 (5th Cir. 1997). For a permanent injunction, a plaintiff must show actual success on the merits, in addition to demonstrating the other three factors. *MWK Recruiting Inc. v. Jowers*, 833 F. App'x 560, 562 (5th Cir. 2020) (citing *Amoco Prod. Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 546 n.12 (1987)); *see also Hines v. Pardue*, No. 1:18-cv-155, 2022 U.S. Dist. LEXIS 240148, at *81-82 (S.D. Tex. Dec. 16, 2022) (App. 95-120).

IFS has shown that the TEC defendants' regulatory regime unconstitutionally burdens First Amendment rights to associate, speak, and petition in the form of pro bono litigation against the government and also violates the Supremacy Clause by limited the rights to sue under 42 U.S.C. § 1983. The loss of First Amendment freedoms for even minimal time periods constitutes irreparable injury. *Texans for Free Enter. v. Texas Ethics Comm'n,* 732 F.3d 535, 539 (5th Cir. 2013).

"[I]njunctions protecting First Amendment freedoms are always in the public interest." *Id.* (citing *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006)). Likewise, prohibiting a governmental body from violating citizens' rights is "no harm at all." *McDonald v. Longley*, 4 F.4th 229, 255 (5th Cir. 2021) (citing *Christian Legal Soc'y*, 453 F.3d at 867).

V. IFS is entitled to a declaration that the TEC's regime is unconstitutional

Declaratory and injunctive relief have many attributes in common but are distinct remedies. *12 Moore's Federal Practice - Civil § 57.07* (2023). Declaratory relief generally requires a lesser showing than an injunction, because it is less coercive. *Id.*; *see also Middle S. Energy, Inc. v. New Orleans,* 800 F.2d 488, 490 (5th Cir. 1986) (declaratory judgment requires the existence of an actual legal controversy between the parties).

Here the TEC has, by issuing Ethics Advisory Opinion No. 580, confirmed that it views Texas's corporate contribution ban as applying to IFS's proposed provision of pro bono legal services to Chris Woolsey and the Texas Anti-Communist League. Issuing a declaration that enforcing the TEC's regulatory regime against IFS would be unconstitutional would resolve a present legal controversy between the parties and allow IFS to exercise its First Amendment rights in Texas. *See Steffel v. Thompson*, 415 U.S. 452, 469-70 (1974) ("Of course, a favorable declaratory judgment may nevertheless be valuable to the plaintiff though it cannot make even an unconstitutional statute disappear.").

VI. IFS is entitled to nominal damages for past violations of its right to associate, petition, and speak

IFS has asserted nominal damages claims for $17.91 against each of the individual-capacity defendants: Randall Erben, Chad Craycraft, Patrick Mizell, Joseph Slovacek, and Steven Wolens. Dkt. #1 at 20. Nominal damages serve to redress constitutional injuries even if a plaintiff "cannot or chooses not to quantify that harm in economic terms." *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802 (2021) (applying nominal damages in the context of a college student deprived of his First Amendment right to speak on campus); *Lewis v. Woods*, 848 F.2d 649, 652 (5th Cir. 1988) ("It is axiomatic that a plaintiff who files suit under 42 U.S.C. § 1983 may recover only if he proves a constitutional violation[.]"); *Jones v. White*, No. H-03-2286, 2006 U.S. Dist. LEXIS 84052, at *13-14 (S.D. Tex. Nov. 17, 2006) (App. 91-94) ("Courts award nominal damages in civil rights suits brought under 42 U.S.C. § 1981 or § 1983 . . . when the plaintiff has proven a civil rights deprivation but cannot show actual damages.").

Here the individual defendants all voted in favor of Ethics Advisory Opinion No. 580, which articulated the TEC's interpretation that Texas's corporate-contribution ban applied to a corporation's provision of pro bono legal services to challenge the TEC's own laws, causing IFS to self-censor, and refrain from associating with Chris Woolsey and the Anti-Communist League and speaking and petitioning on their behalf by challenging the notice requirement on political signs. App. 12-15.

Conclusion

This Court should grant IFS's motion for summary judgment and enjoin the enforcement of the TEC's ban on corporate contributions, declare it unconstitutional, and order the individual defendants to pay nominal damages for past injuries.

Respectfully submitted,

Dated: September 27, 2023

s/Endel Kolde
Endel Kolde
Washington Bar No. 25155
Courtney Corbello
Texas Bar No. 24097533
INSTITUTE FOR FREE SPEECH
1150 Connecticut Ave., NW
Suite 801
Washington, D.C. 20036
Tel: (202) 301-1664
Fax: (202) 301-3399
dkolde@ifs.org
ccorbello@ifs.org

s/Tony McDonald
Tony McDonald
Texas Bar No. 24083477
Connor Ellington
Texas Bar No. 24128529
LAW OFFICES OF TONY MCDONALD
1308 Ranchers Legacy Trl
Fort Worth, TX 76126
Tel: (512) 200-3608
Fax: (815) 550-1292
tony@tonymcdonald.com
connor@tonymcdonald.com

Attorneys for IFS