IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

INSTITUTE FOR FREE SPEECH, a nonprofit corporation and public interest law firm, Plaintiff, v. JAMES TINLEY, in his official capacity as Executive Director of the Texas Ethics Commission; GEANIE MORRISON, CHRIS FLOOD, RICHARD SCHMIDT, RANDALL ERBEN, SEAN GORMAN, PATRICK MIZELL, JOSEPH SLOVACEK, and MARK STRAMA, in their official capacities as commissioners of the Texas Ethics Commission; Defendants.	No. 1:23-cv-01370-DAE

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

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INTRODUCTION

The Institute for Free Speech ("IFS") is a non-profit corporation that provides pro bono legal services to vindicate First Amendment rights. IFS wishes to offer its services to Texas candidates or political committees, just like it does in other states, but is prevented from doing so by Texas's corporate contribution ban. At least one candidate and committee would like to accept free legal services from IFS to mount legal challenges to restrictions on the political speech, but the Texas Ethics Commission ("Commission" or "TEC") and Texas state law prevent IFS from associating with them and speaking and petitioning on their behalf for the purposes of pro bono litigation against the government. The TEC's regime fails to meet strict scrutiny and violates the First Amendment.[1]

FACTS AND BACKGROUND

The necessary facts and evidence supporting this motion are set forth in the Appendix filed in support of this motion and recounted in the Fifth Circuit's opinion on this case. Dkt. 44-1 at 2-6. In summary, IFS asserts that the TEC's regulatory regime prevents it from exercising its First Amendment rights in Texas. The TEC, acting through its Executive Director and Commissioners, is the agency responsible for enforcing the Texas Election Code. TEX. GOV. CODE § 571.061, § 571.171.

TEX. ELEC. CODE § 253.094 prohibits corporations from making political contributions to candidates and political committees, including in-kind

[1] This motion was previously filed over two years ago in the Northern Dist. of Texas and has been refiled presently in accordance with the case status conference held on Oct. 29, 2025, and in compliance with this district's Local Rules.

contributions of services. TEX. ELEC. CODE § 251.001(2); § 251.001(21). 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.

The TEC construes the corporate contribution ban to apply to pro bono legal services by corporations such as IFS, if they are provided to Texas candidates or committees. 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. App. 9-13; Dkt. 44-1 at 2-4, 9.

After IFS requested an advisory opinion to allow it to provide its services, the TEC, by a 5-3 vote, adopted and published Ethics Advisory Opinion No. 580. App. 12, 46-49, 52, 52; Dkt. 44-1 at 5. 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.

Chris Woolsey is an elected member of the Corsicana, Texas city council. App. 1. Woolsey intends to run for city council again and intends to begin soliciting money

for that purpose in the future. App. 2. He was most recently re-elected in 2025. BALLOTPEDIA, *Chris Woolsey*, https://perma.cc/PA79-5B6C. He may also challenge another elected official for a different office in 2026 or after, and has filed a campaign treasurer report. TEXAS SCORECARD, *Corsicana Councilman Proposes DOGE-Style City Committee* (Jan. 29, 2025), https://perma.cc/MY3J-KR77 ("In December, Woolsey filed a campaign treasurer appointment with the Texas Ethics Commission and confirmed that he is considering a run against incumbent State Rep. Cody Harris (R-Palestine) in the upcoming 2026 primary elections"). Woolsey is a "candidate" under the TEXAS ELECTION CODE, § 251.001(1). App. 2; Dkt. 44-1 at 2, 8, 17.

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. Woolsey would like to mount a legal challenge to this requirement by accepting pro bono legal services from IFS, if he could do so legally and without liability under the TEC's regime. App. 2-3.

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; Dkt. 44-1 at 3, 8, 16-17. The League would also like to mount a legal challenge to TEX. ELEC. CODE § 259.001(a), as compelling speech, in violation of the First Amendment and do so by accepting pro bono legal help from IFS, but is prevented from doing so by the TEC's regime. App. 6.

IFS would similarly like to offer pro bono legal services to Woolsey and the League for this purpose. App. 13-14. IFS would also like to represent other Texans, including other candidates or political committees, on a pro bono basis. *Id.* IFS is prevented from offering these services because doing so would expose IFS, and its attorneys, to criminal and civil liability under the Texas Election Code. App. 13-14; Dkt. 44-1 at 3, 8-10.

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; Dkt. 40 at 17. Other corporations that offer legal services are similarly prevented from exercising their right to represent Texas candidates or comittees. App. 14-15, 28-41, 55-57.

On August 8, 2023, IFS sued the TEC's executive director and commissioners in their official and individual capacities, seeking, among other things, declaratory relief and an injunction preventing the TEC from enforcing its regime against IFS. Dkt. 1. IFS bought a purely legal pre-enforcement challenge, arguing that Respondents' regulatory regime unconstitutionally burdens IFS's right to associate, speak, and petition through pro bono litigation and that 42 U.S.C. § 1983 pre-empts the regime. *Id.*; see also Dkt. 44-1 at 7-8.

After both sides filed dispositive motions, this Court dismissed the case on standing and ripeness grounds. Dkt. 40 at 18, 22. This Court also found that qualified immunity barred IFS's individual-capacity claims. *Id.* at 29. And the Court later entered a text order on its docket mooting IFS's first motion for summary judgment in light of the dismissal. Dkt. 44-1 at 6, 22 n.6.

After Plaintiff appealed, the Fifth Circuit affirmed this Court's decision on qualified immunity but reversed the dismissal of the remainder of the case. *Id.* at 21-22. This Circuit determined that "IFS's claims against the Commissioners in their official capacities may proceed." *Id.* at 19. "IFS has Article III standing" because it had "carried its burden to show that it has sustained a pre-enforcement injury, which both is traceable to the Commissioners' potential enforcement of Section 253.094 and redressable here." *Id.* at 15. Moreover, the Circuit held that "[n]o further factual questions require resolution for the adjudication of [IFS's] claims" . *Id.* at 21. As a result, the Circuit remanded the case, with instructions for the district court to "explore in the first instance" "the merits of [IFS's] First Amendment claims." *Id.* at 22 & n.6.

At an in-person status conference on October 29, 2025, this Court told Plaintiff to refile its motion for summary judgment, because the Court dismissed the original motion as moot. *See id.* at 22 n.6. This motion followed.

ARGUMENT

I. The TEC's ban on corporate in-kind contributions violates IFS's First Amendment rights under *Button* and progeny

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)*; Porter v. Califano*, 592 F.2d 770, 780 (5th Cir. 1979).

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.

A. 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); *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").

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, as opposed to other legal entities.

B. The TEC's regime burdens other similarly situated corporations

By issuing Ethics Advisory Opinion No. 580, the TEC defendants have put IFS (and other similarly situated corporations) on notice that the officials who enforce TEX. ELEC. CODE § 253.094 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. Like IFS, 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; Dkt. 44-1 at 4.

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

Restrictions on core First Amendment rights 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 twenty years ago. IFS seeks 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.

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 a 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. Covered persons 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.

II. The TEC's regime is also 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;

Serafine v. Branaman, 810 F.3d 354, 361 (5th Cir. 2016) (application of regulation restricting the use of the title "psychologist" in campaign context 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.

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.

III. The TEC's regime discriminates against viewpoints that oppose the TEC

"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 always 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 insulates 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 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." *Id.* at 546. So too here.

IV. The TEC's ban on corporate contributions is overbroad

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. 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.

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; *cf.* Dkt 40 at 17. IFS leaves it to the TEC defendants to articulate the legitimate sweep of their corporate contribution ban, but IFS is unaware of a legitimate basis to muzzle virtually all corporations from providing any donations. If Texas's corporate contribution ban has no, or few, lawful applications, its legitimate sweep is presumptively disproportionate.

V. 42 U.S.C. § 1983 preempts the TEC's regulatory regime

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

VI. IFS is entitled to a permanent injunction

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 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 meets these standards. 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*, 453 F.3d at 867).

VII. IFS is entitled to declaratory relief

Declaratory and injunctive relief have 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). *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.").

CONCLUSION

This Court should grant IFS's motion for summary judgment, declare the TEC's ban on corporate contributions unconstitutional, and enjoin its enforcement.

Respectfully submitted,

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