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

CATHOLIC LEADERSHIP COALITION OF TEXAS, dba TEXAS LEADERSHIP COALITION, et al., Plaintiffs,	§	
v.	§	Civil Cause No. 1:12-CV-00566-SS
DAVID A. REISMAN, in his official capacity as Executive Director of the Texas Ethics Commission, et al.	§	

TEC DEFENDANTS' RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE DISTRICT COURT JUDGE:

Defendant David A. Reisman, in his official capacity as Executive Director of the Texas Ethics Commission (TEC), and Defendants Hugh C. Akin, Jim Clancy, Thom Harrison, Paul W. Hobby, Bob Long, Paula M. Mendoza, Tom Ramsay and Chase Untermeyer, all in their official capacity as Commissioners of the TEC (collectively, "TEC Defendants"), file this Response to Plaintiffs Texas Leadership Coalition (TLC) and Texas Leadership Coalition-Institute for Public Advocacy's (TLC-IPA) Motion for Preliminary Injunction, and would respectfully show as follows:

SUMMARY OF ARGUMENT

Plaintiffs are not entitled to a preliminary injunction because they cannot demonstrate that the statutes challenged in this suit—which include legitimate organizational and reporting requirements imposed on political committees in Texas—

will cause Plaintiffs any real imminent harm, as Texas law provides Plaintiffs multiple avenues through which they can fully engage in the state political process *right now.* Moreover, the harm to the public interest that will occur if the requested relief is granted outweighs any harm Plaintiffs claim they may suffer, because the statutes Plaintiffs ask this Court to enjoin serve an important public interest by helping to ensure that the public has access to information about those who seek to influence the political process through campaign contributions and expenditures.

In conformance with the Supreme Court's mandate in *Citizens United v. FEC*, Texas law permits TLC to expend its own corporate funds on direct "campaign expenditures," which are the closest Texas analogue to "independent expenditures" under federal election law. Because Texas law does not require that TLC make these expenditures through a political committee (PAC), Plaintiffs cannot demonstrate that they will suffer imminent, irreparable harm if an injunction does not issue in this matter because there is a readily available avenue through which TLC may engage in its desired political speech right now. While TLC complains that it does not wish to make its own political expenditures because it may risk losing its preferred 501(c)(4) federal tax status and may risk having to disclose the names of its donors, neither *Citizens United* nor the First Amendment itself requires that a state structure its campaign finance laws to ensure corporations can maintain a certain federal tax status and avoid disclosure of donors.

Furthermore, to the extent TLC-IPA appears to claim injury in this matter because it is required to abide by certain registration and reporting requirements

imposed on political committees under Texas law, *Citizens United* only served to reaffirm that states may permissibly impose such requirements on both political committees and corporations without running afoul of the First Amendment.

Finally, the sweeping relief Plaintiffs seek through their request for preliminary injunction could have severe collateral consequences, and disserve the public interest, because it could serve to eviscerate many legitimate campaign finance disclosure and reporting requirements in Texas law. Because harm to the public will result if such relief is granted, Plaintiffs' motion should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

I. Plaintiffs' Allegations

Plaintiffs bring this suit to challenge on First Amendment grounds sections 253.037(a) and 253.031(b) of the Texas Election Code. *Complaint* ¶ 1. Plaintiff TLC alleges that it is a 501(c)(4) non-profit organization founded "to develop resources and opportunities to inform Catholics about the moral precepts of the Church pertaining to their responsibilities as Catholic voters." *Id.* ¶ 10. TLC-IPA is a political committee (PAC) formed by TLC so that TLC could "freely conduct political advocacy without jeopardizing its tax-exempt status under the Internal Revenue Code." *Id.* Plaintiffs allege TLC-IPA wishes to expend funds on political advertising to support certain candidates in the upcoming July 31 primary runoff election in Texas, as well as in future elections. *Id.* ¶ 11.

Plaintiffs allege that TLC-IPA is prevented from expending funds on political advertising in the July 31 primary runoff due to the following provisions of the Texas Election Code:

- Texas Election Code § 253.037(a), which provides that a "general-purpose committee may not knowingly make or authorize a political contribution or political expenditure unless the committee has: (1) filed its campaign treasurer appointment not later than the 60th day before the date the contribution or expenditure is made; and (2) accepted political contributions from at least 10 persons."

- Texas Election Code § 253.031(b), which provides that a "political committee may not knowingly accept political contributions totaling more than $ 500 or make or authorize political expenditures totaling more than $ 500 at a time when a campaign treasurer appointment for the committee is not in effect."

- Texas Election Code § 253.094(a), which bars corporations and labor organizations from making political *contributions,* unless specifically authorized.[1]

TLC-IPA states that it wishes to spend funds supporting at least one, specifically identified candidate for the Texas Senate, but that it is prevented from doing so because it registered itself as a general-purpose committee less than 60 days before the runoff and wishes to spend more than $500 on its intended advertisements. *Complaint* ¶¶ 18-23. TLC-IPA states that it wishes to raise funds through a website, but has not yet begun this fundraising effort because § 253.097(a) bars it from expending any funds during the 60-period immediately after it has filed its treasurer appointment. *Id.*¶25.

1 The Texas Election Code defines "political contribution" as either a "campaign contribution" or an "officeholder contribution." TEX. ELEC. CODE § 251.001(5). A "campaign contribution" is defined as "a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure." *Id.* at § 251.001(3). An "officeholder contribution" is defined as "a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money." *Id.* § 251.001(4).

TLC also alleges that it wishes to gift its "contact list" to TLC-IPA, but that it is prevented from doing so by § 253.094(a)'s bar on corporate contributions to candidates or political committees. Plaintiffs complain that they face a threat of prosecution if they engage in these prohibited activities. *Id.* ¶¶ 52-53. TLC also alleges that it is "unwilling" to expose itself to the possibility of losing its preferred 501(c)(4) tax status if it engages in political activity directly, rather than through TLC-IPA, and that TLC is "unwilling" to "expose its contributors to potential disclosure" that may be required if it expends funds on political activity directly. *Id.*¶ 55.

II. Operation of the Texas Election Code

Generally speaking, corporations in Texas can make political expenditures directly from their corporate funds.[2] Prohibitions on political expenditures were removed from Section 253.094 of the Election Code in 2011. *See* Tex. H.B. 2359, 82d Leg., R.S. (2011).[3] This statutory amendment followed two significant events. First, the United States Supreme Court ruled in *Citizens United v. Federal Election Commission* that federal laws restricting "independent expenditures" by corporations in connection with an election violated the First Amendment. 130 S.Ct. 876, 913

2 Among other things, corporations and labor organizations may make certain expenditures "to finance the establishment or administration" and "maintenance and operation" of a general purpose political committee. TEX. ELEC. CODE § 253.100(a). The corporation or labor organization may also make expenditures to solicit contributions to the political committee from its employees or members. Id. § 253.100(b)-(c).

3 The Texas Election Code defines the term "political expenditure" as a "campaign expenditure" or an "officeholder expenditure." TEX. ELEC. CODE § 251.001(10). A "campaign expenditure" is defined as "an expenditure made by any person in connection with a campaign for elected office or on a measure." *Id.* at § 251.001(7). An "officeholder expenditure" is defined as "an expenditure made by any person to defray expenses that: are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money." *Id.* § 251.001(9).

(2010). Second, in 2010 this very Court held that *Citizens United* rendered invalid Texas's similar prohibition on corporate "political expenditures" then found in Section 253.094. *Texas Municipal Police Association v. Texas Ethics Commission*, No. A-08-CA-741-SS (W.D. Tex. 2010). To remedy this infirmity, this Court ordered that all references to "political expenditures" be struck and severed from the statute. Thereafter, the Legislature formally amended Section 253.094 to remove all references to "political expenditures."[4] *See* HOUSE COMMITTEE ON ELECTIONS, BILL ANALYSIS, Tex. H.B. 2359, 82d Leg., R.S. (2011).

Texas law also permits the formation of political committees. A "political committee" is defined as "a group of persons that has as a principal purpose accepting political contributions or making political expenditures." TEX. ELEC. CODE § 251.001(12). There are two types of political committees in Texas. A "general purpose committee" is a "political committee that has among its principal purposes: (A) supporting or opposing: (i) two or more candidates who are unidentified or are seeking offices that are unknown; or (ii) one or more measures that are unidentified; or (B) assisting two or more officeholders who are unidentified." TEX. ELEC. CODE § 251.001(14). This is contrasted with a "specific purpose committee," which is a "political committee that does not have among its principal purposes those of a general-purpose committee but does have among its principal purposes: (A) supporting or opposing one or more: (i) candidates, all of whom are identified and are seeking offices

4 Although Plaintiffs ask this Court to declare that section 253.094(a) of the Election Code cannot be applied to bar corporate contributions to political committees that make only "independent expenditures," the term "independent expenditure" does not exist in Texas election law.

that are known; or (ii) measures, all of which are identified; (B) assisting one or more officeholders, all of whom are identified; or (C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown." TEX. ELEC. CODE § 251.001(13).

A political committee cannot accept political contributions or make political expenditures totaling more than $500 unless it has filed a notice of appointment of a campaign treasurer. TEX. ELEC. CODE § 253.031(b). The notice a general-purpose committee files appointing a campaign treasurer includes important disclosures, such as the name of any corporation or organization that may have established the committee and the name of any person that determines the committee's contributions or expenditures. *Id.* § 252.0031. Although a general-purpose committee may immediately accept unlimited amounts of lawful political contributions once it has properly appointed a treasurer, a general-purpose committee may not make or authorize contributions or expenditures totaling more than $500 until 60 days after it has filed its treasurer appointment and has accepted contributions from at least 10 persons.[5] *Id.* § 253.037(a). However, these latter limitations do not apply if the general-purpose committee has accepted one or more contributions from "a multicandidate political committee (as defined by the Federal Election Campaign Act) that is registered with the Federal Election Commission." *Id.* § 253.037(c).

5 It is not necessary that the 10 contributors make monetary contributions to the political committee. In-kind contributions in the forms of personal services, goods, or facilities can also satisfy this requirement. *See* TEX. ELEC. CODE § 251.001(2) (defining "contribution" as "a direct or indirect transfer of money, goods, services, or any other thing of value").

Chapter 254 of the Election Code imposes reporting requirements on political committees and corporations, among others. The law generally requires that the general-purpose committee report, among other things: who contributes to it, the amounts of those contributions, the amounts spent on political expenditures and to whom those expenditure are made, the name of any candidate supported or opposed by the committee, and the name of any officeholder assisted by the committee. TEX. ELEC. CODE § 254.031; 254.151. The campaign treasurer of a general-purpose committee must file reports at least twice a year. TEX. ELEC. CODE § 254.153. A general-purpose committee that is involved in an election must generally file additional reports 30 days and 8 days before the election. *Id.* § 254.154. In addition, a general-purpose committee that makes campaign expenditures over a set amount in the nine-day period before an election must report that spending within one business day of making the expenditure. *Id.* § 254.039.

ARGUMENTS AND AUTHORITIES

I. Plaintiffs have not demonstrated that they are entitled to the extraordinary remedy of preliminary injunctive relief.

To obtain preliminary injunctive relief, the applicant must show (1) a substantial likelihood that he will prevail on the merits, (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, (3) that his threatened injury outweighs the threatened harm to the party whom he seeks to enjoin, and (4) that granting the relief will serve the public interest. *See Planned Parenthood of Houston & Southeast Tex. v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005). Relief in the

form of "federal injunctive decrees directing state officials" is an extraordinary remedy. *Morrow v. Harwell*, 768 F.2d 619, 627 (5th Cir. 1985). A court should not grant such relief "unless the party seeking it has clearly carried the burden of persuasion on all four requirements." *PCI Transp. Inc. v. Fort Worth & Wstrn R.R. Co.,* 418 F.3d 535, 545 (5th Cir. 2005). In the instant matter, Plaintiffs have failed to "clearly carry" their burden of persuasion on the four requirements articulated above. Accordingly, issuance of the extraordinary relief of the preliminary injunction is not warranted, and Plaintiffs' motion should be denied in its entirety.

II. Plaintiffs cannot show a likelihood of success on the merits

a. *Citizens United* and its progeny do not compel striking down the legitimate contribution prohibition and registration/reporting requirements challenged here.

It cannot be disputed that *Citizens United* concerned only the regulation of independent *expenditures* by corporations whose primary activity was *not* political in nature. But *Citizens United* cannot be engrafted in whole onto the Court's review here of Texas's prohibition on corporate *contributions* or the state's registration/reporting requirements for political committees. *See, e.g., In re Anh Cao*, 619 F.3d 410, 416 (5th Cir. 2010) ("the Supreme Court's decision in *Citizens United*…provides no reason to change our analysis of the validity of the contribution limits FECA places on political parties and PACs"); *Ex parte Ellis*, 309 S.W.3d 71, 85 (Tex. Crim. App. 2010) ("Although we agree that *Citizens United* has significantly affected the constitutional landscape with respect to corporate free speech by removing restrictions on independent corporate expenditures, we disagree with [the] contention that the

decision has had any effect on the Court's jurisprudence relating to corporate contributions.").

Moreover, the post-*Citizens United* cases Plaintiffs rely on in support of their First Amendment challenges do not concern prohibitions on corporate contributions or organizational requirements imposed on PACs. Rather, a review of these cases reveal that they address: (1) challenges to statutes that sought to achieve through regulation of campaign contributions the "equalization" of the candidate campaign coffers, s*ee, e.g., Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (U.S. 2011) and *Davis v. FEC*, 554 U.S. 724 (2008); (2) pre-*Citizens United* challenges to prohibitions on independent expenditures, *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 460 (2007); or (3) challenges to federal laws that placed firm caps on the amount in contributions political committees could receive or accept from any one donor, when that money would be used strictly for independent expenditures. *See SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010); *EMILY's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009); *Carey v. FEC*, 791 F. Supp. 2d 121, 132 (D.D.C. 2011) (all striking down, in light of *Citizens United,* monetary caps on contributions to nonprofits that made only independent expenditures).

In contrast, the statutes challenged in this matter do *not* attempt to equalize campaign funding amongst candidates, place limits on a corporation's direct campaign expenditures or serve to cap the contribution amount a political committee may accept from any one donor. Rather, the statues at issue serve to either: (1) bar *contributions* made by a corporation to a candidate or political committee, *see* TEX. ELEC. CODE

§ 253.094(a); or (2) impose reporting and organizational requirements on a political committee in Texas (but *only if* they intend to raise and spend more than $500), *id.* § 253.031(b) and § 253.037(a).[6] Accordingly, none of the post-*Citizens United* cases cited by Plaintiffs support the proposition that the laws at issue in this case have been rendered constitutionally infirm.[7]

Significantly, the post-*Citizens United* cases cited by Plaintiffs only serve to support the constitutional validity of Texas's reporting and disclosure requirements. For example, in *SpeechNow.org,* the D.C. Circuit, relying on *Citizens United*, expressly rejected the plaintiff's challenge made there to the reporting and organizational requirements imposed on political committees under federal law. *See* 599 F.3d at 696 (holding that to defend such requirements, the government need only "point to any 'sufficiently important' governmental interest that bears a 'substantial relation' to the disclosure requirement"). Further, and contrary to what Plaintiffs suggest here, the *SpeechNow.org* court made clear that, for purposes of constitutional scrutiny, it did not matter at what stage of a nascent political committee's fundraising efforts the government chose to trigger mandatory compliance with PAC organizational and

6 The fact that the challenged statutes are organizational requirements imposed on Texas general purpose committees, so as to further the states legitimate interests in proper reporting and disclosure, distinguish this matter from the "prior restraint" cases relied upon by Plaintiff, because those matters involved restrictions that barred a speaker's speech entirely. Here, as noted above, TLC is not prevented from speaking because it can make expenditures now from its corporate funds. The challenged statutes merely place reasonable organizational limitations upon TLC's affiliated political committee, which TLC wishes to employ as one vehicle through which TLC engages in political activity.

7 Plaintiff's citation to *Galassini v. Town of Fountain Hills*, 2011 U.S. Dist. LEXIS 128294, 2011 WL 5244960 (D. Ariz. Nov. 3, 2011) is not instructive, as that case contains no legal analysis and involved statutes that permitted no pre-registration speech of a political committee. Further, unlike in that matter, TLC need not speak through its political committee to engage in political speech because it can make its own campaign expenditures.

contribution reporting requirements, because such "groups would need to collect and keep the necessary data on contributions even before an expenditure is made; it makes little difference to the burden of compliance *when* the group must comply as long as it anticipates complying at some point." *Id.* at 698 (emphasis added). Accordingly, any complaint Plaintiffs make here related to Texas's requirement that a PAC must appoint a campaign treasurer (and thereby comply with related organizational and reporting requirements) before raising or expending more than $500 simply falls flat.

Further, Plaintiffs improperly attempt to equate § 253.094(a)'s bar on *corporations making* contributions to candidates or political committees with the laws that were at issue in *SpeechNow.org and EMILY's List,* yet those laws concerned limits placed on the contribution *amount* per donor a non-profit making independent expenditures could *receive*. Those courts simply had no need to consider the legitimacy of laws prohibiting *contributions* made directly by corporations to candidates and committees; accordingly, those cases can offer no support to Plaintiffs' challenge to § 253.094. Indeed, unlike the federal laws at issue in *SpeechNow.org and EMILY's List*, nothing in Texas law limits the *amount* in contributions a political committee may receive from any lawful particular donor.

While it is true that § 253.031(b) imposes a $500 limit before certain organizational and reporting requirements are triggered, once a political committee properly appoint a campaign treasurer there is no limit in Texas law on the amount a

committee may accept from lawful donors.[8] Further, even if this matter were factually on all fours with *SpeechNow.org and EMILY's List*, which it is not, it is highly questionable whether the Fifth Circuit would have struck down the contribution caps in the manner the D.C. Circuit did in those cases. This is because, unlike the D.C. Circuit, the Fifth Circuit has held that "*Citizens United*…provides no reason to change our analysis of the validity of the *contribution* limits FECA places on political parties and PACs." *In re Anh Cao*, 619 F.3d at 416 (emphasis added).

Given the foregoing, the post-*Citizens United* authority relied on by Plaintiffs provides no basis for striking down the particular statutes at issue in this case.

b. Plaintiffs have failed to demonstrate the challenged statutes are otherwise constitutionally infirm.

Disclosure and related organizational requirements such as those challenged here are subject to "exacting" scrutiny, which requires a "substantial relation" between the disclosure requirement and a "sufficiently important" governmental interest. *Citizens United*, 130 S. Ct. at 914; *see also SpeechNow.org*, 599 F.3d at 696. The political committee organizational requirements challenged by Plaintiffs survive this scrutiny. Indeed, *SpeechNow.org* and other similar, recent cases serve to compel this Court to uphold the organizational and reporting requirements imposed by challenged statutes 253.031(b) and 253.037(a).

Plaintiffs here attack the requirement that general purpose committees must appoint a campaign treasurer—an act that triggers certain reporting and disclosure

8 There are limits imposed on candidates for judicial office and those who support them, but that is not at issue here. *See* TEX. ELEC. CODE § 253.151 et seq. (Judicial Campaign Fairness Act).

requirements—if they raise or expend greater than $500. TEX. ELEC. CODE § 231.031(b). While Plaintiffs appear to couch this requirement as a limitation on contributions to a political committee, it is nothing of the sort. Rather, Texas law merely requires that if a general purpose committee raises or expends more than $500, then it must appoint a campaign treasurer (who in turn must comply with certain reporting and disclosure requirements found in Chapter 254 of the Election Code). Plaintiffs cannot succeed in attacking this treasurer-appointment requirement because the *Citizens United* and *SpeechNow.org* courts, and many others, have consistently upheld challenges to such "sunshine" provisions. *See, e.g., Citizens United,* 130 S. Ct. at 916 ("transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages"); *SpeechNow.org,* 599 F.3d at 696; *see also Justice v. Hosemann*, 829 F. Supp. 2d 504, 519 (N.D. Miss. 2011) (denying plaintiff's motion for preliminary injunction in suit challenging certain disclosure requirements imposed on Mississippi PACs); *see also Vt. Right to Life Comm., Inc. v. Sorrell*, No. 2:09-cv-188, 2012 U.S. Dist. LEXIS 86175 (D. Vt. June 21, 2012) (engaging in exhaustive analysis, and employing the "sufficiently important government interest" test to uphold various Vermont laws imposing organizational and reporting requirements on political committees, including contribution limitations).

The other two organizational requirements imposed on PACs of which Plaintiffs complain—i.e., that expenditures can't be made until 60 days after appointment of a committee treasurer and until the committee has 10 contributors—are also simply organizational requirements that a state may legitimately impose on political

committees. *See* TEX. ELEC. CODE § 253.037(a). First, these requirements impose only a minimal burden on TLC-IPA because they would not apply to TLC-IPA if it were to accept just one contribution from an out-of-state multi-candidate committee. *See* TEX. ELEC. CODE § 253.037(c). Moreover, these requirements serve a requisite, "sufficiently important" state interest. *See SpeechNow.org,* 599 F.3d at 696. The 60-day provision, for example, helps ensure that political committees are registered far enough in advance of an election cycle to have adequate time to make the required pre-election reports. Further, the 10-donor requirement helps ensure that a committee has a sufficient diversity of *disclosed* donors. This latter government interest finds ample support in this case, as Plaintiffs wish for TLC-IPA to have just one disclosed donor—TLC itself—because TLC donors (who could always donate directly to TLC-IPA, but would then have to be disclosed in committee reports filed with TEC) wish to remain undisclosed. The state, however, has a clearly recognized, legitimate interest in structuring its political committee organizational and reporting requirements in a way that minimizes the ability of corporations and others to withhold from the public information about political donors. *See Citizens United,* 130 S. Ct. at 916 ("transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages"). Accordingly, the state has a legitimate basis in enforcing the 10-donor requirement to help serve that interest.

Furthermore, Plaintiffs' challenge to § 253.094(a)'s bar on corporate contributions must be rejected because, as noted above, *Citizens United* simply did not alter the constitutional legitimacy of bars on *contributions* to candidates *and*

committees. *See, e.g., In re Anh Cao*, 619 F.3d at 416. This is particularly true in the instant case, where TLC and TLC-IPA have telegraphed through their Complaint that they wish to route funds through the TLC corporate form to TLC-IPA for the purpose of supporting one or more specifically identified candidates. *See Complaint* ¶¶ 18-23. This type of seemingly coordinated spending raises precisely the type of "quid pro quo" concerns that have been repeatedly held to be a sufficiently compelling government interest to support bars on certain types of political contributions and expenditures. *See, e.g., FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 460 (2001) (upholding government restrictions on coordinated spending between committees and candidates after finding that striking such restrictions could permit circumvention of campaign contribution limitations and encourage potentially corruptive relationships between candidates, parties and large-money donors); *see also Citizens United*, 130 S. Ct. at 908 (discussing prohibition on contributions upheld in *Buckley v. Valeo,* 424 U.S. 1, 27 (1976)).

Accordingly, Plaintiffs have failed to demonstrate that *Citizens United* and its progeny compel striking down the Election Code provisions challenged in this matter. The motion should be denied on this basis alone.

c. Plaintiffs have not shown an entitlement to the broad-scope preliminary injunctive relief it seeks.

Even if this Court were to find that preliminary injunctive relief should issue enjoining Defendants from enforcing the challenged laws *as applied to Plaintiffs*, that does not justify issuance of any broader injunctive relief that would serve to strike

down the statutes on their face, as Plaintiffs request with respect to § 253.031(b) and 253.037(a). Indeed, the Court is required to reject facial challenges such as those made here, if it is possible to apply a limiting construction to a challenged law to cure the constitutional infirmity. *See, e.g., Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 664 (5th Cir. 2006).

Here, Plaintiffs have not pled any basis for this Court to enjoin Defendants' enforcement of the challenged statutes as to any entity other than the Plaintiffs. For example, § 253.031(b) applies to special purpose committees (i.e., committees that form to support specifically identified candidates) as well as general purpose committees, yet Plaintiffs have made no argument that the statute cannot be constitutionally applied to special-purpose committees.[9] Accordingly, any preliminary injunctive relief that issues from this Court should be strictly limited in scope to the Plaintiffs' claims.

III. Plaintiffs cannot show they will suffer irreparable harm if the requested injunctive relief does not issue.

Injunctive relief should also be denied because Plaintiffs cannot show that they will suffer irreparable harm if an injunction does not issue.

First and foremost, it must be noted that *Texas* law permits TLC to engage directly in the political advocacy at issue here, without need to expend funds through a political committee. More specifically, corporations such as TLC are permitted to expend funds from their corporate coffers to make direct campaign expenditures in

9 Moreover, because Texas law does not recognize the existence of what Plaintiffs term an "independent expenditure" only committee, any order this Court may wish to issue related to Plaintiffs' challenge to § 253.094(a) would have to be narrowly tailored to ensure that Texas may still lawfully prohibit

Texas, which are the closest analogue to "independent expenditures" in federal election law. TLC may expend such funds *today*, and it is not strictly limited to an amount it may spend on such advertising. *See generally* TEX. ELEC. CODE § 253.091 et seq.; *but see also* TEX. ELEC. CODE § 254.261 and 1 TEX. ADMIN. CODE § 22.6 (campaign expenditures must be publically disclosed).

Thus, Plaintiffs have not shown that it is *Texas* law that serves as an impediment to TLC's wish to immediately engage in political advocacy. Rather, Plaintiffs' claimed injury in this matter is caused by their stated wish to: (1) ensure TLC retains its preferred 501(c)(4) status under *federal* tax law, and (2) allow TLC to keep its donor list private. *See Complaint* ¶¶ 16, 55. The fact that TLC may allegedly risk losing its preferred federal tax status if it engages in certain political activity, however, does not serve to render Texas law constitutionally infirm. Indeed, Plaintiffs have cited nothing that would support such an assertion. Nor have Plaintiffs cited any law that would support an assertion that the state must act in a way that ensures a donor list remains undisclosed; if anything, the opposite is true. *See Citizens United,* 130 S. Ct. at 916 (reaffirming legitimacy of campaign finance disclosure requirements). Because, by Plaintiffs' own admission, their alleged injury is caused by the restrictions imposed upon TLC by federal tax law, and not by the Texas Election Code, they cannot demonstrate that Defendants are the cause of an imminent First Amendment violation

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contributions from a corporation to a political committee that are then used by the committee to contribute to a candidate or to coordinate spending with a candidate.

that must only be redressed by extraordinary relief such as a preliminary injunction. *See id.*

Moreover, Plaintiffs cannot demonstrate that they risk suffering imminent harm if an injunction is not issued because the Texas Election Code permits TLC to engage in other, significant political advocacy *right now.* For example, to the extent Plaintiffs complain here that the law prohibits TLC from sharing its contact list with TLC-IPA, the law already permits a corporation or organization to solicit funds from its employees or members for an affiliated general-purpose committee, as well as to expend corporate funds on establishing and administering the affiliated general-purpose committee. *See* TEX. ELEC. CODE § 253.100. Thus, Plaintiffs' apparent interest in engaging in political fundraising from TLC members could likely be accomplished now under existing law. Because Plaintiffs have failed to plead facts that would demonstrate that they cannot accomplish their stated political goals under existing law, they cannot demonstrate an imminent injury.

With respect to the 60-day and 10 contributor requirements in 253.037(a), Plaintiffs have not carried their burden to show that they will be irreparably harmed if an injunction does not issue to enjoin enforcement of 253.037(a), because Plaintiffs will not be bound by these requirements if they simply obtain a contribution of any amount from any multistate political committee. *See* TEX. ELEC. CODE § 253.037(c). Further, Plaintiffs have not even alleged that they are unable to obtain 10 contributors, and

have therefore not shown that particular organizational requirement serves as any barrier to their planned political activity.[10]

Finally, and to the extent Plaintiffs challenge to § 253.094(a) is founded on the assertion that that statute serves to bar TLC from gifting its contact list to TLC-IPA, Plaintiffs have pled nothing from which this Court could find that this particular prohibition is the cause of any imminent injury related to the primary runoff that must be redressed by a preliminary injunction. Therefore, the challenge to this statute can provide no basis for awarding preliminary injunctive relief.

Given all of the foregoing, Plaintiffs have not demonstrated that it is necessary for this Court to strike down these challenged restrictions in order for TLC-IPA to fund political ads for the primary run-off, and therefore cannot demonstrate the requisite harm to obtain preliminary injunctive relief.

IV. Plaintiffs cannot show that less harm will result to Defendants if the injunction issues than to Plaintiffs if the injunction does not issue, and the public interest weighs in favor of denying the sweeping injunctive relief requested by Plaintiffs.

Plaintiffs also cannot demonstrate that the equities tip in favor of this Court granting a preliminary injunction, and the public interest would be disserved if the injunction were to issue.

For example, while Plaintiffs complain that § 253.031(b) currently prevents them from freely raising and expending funds for political advertising, they fail to acknowledge the far-reaching effect that an injunction declaring this provision

10 Indeed, it is more likely than not that the paid membership of TLC exceeds 10 people, and Texas law permits TLC-IPA to solicit contributions from TLC's membership.

unconstitutional would have on the campaign finance system in Texas.

If this Court issued an injunction declaring § 253.031(b) unconstitutional on its face, the collateral consequences to campaign finance reporting requirements could be significant because a declaration striking down § 253.031(b) could be construed as alleviating political committees of the requirement that they file a campaign treasurer appointment. This could eviscerate the reporting requirements for groups accepting political contributions or making political expenditures in connection with elections, because those reporting requirements are imposed on campaign treasurers. *See, e.g.,* TEX. ELEC. CODE § 254.001(b).[11] Further, the information a political committee is

11 Thus, numerous provisions of the Texas Election Code imposing reporting requirements on the campaign treasurer of a political committee may have no force if § 253.031(b) is struck down. *See, e.g.,* TEX. ELEC. CODE §§ 254.038 (requiring that the campaign treasurer for a specific-purpose committee file a pre-election report detailing the amount of contributions received from a person that in the aggregate exceeds $1,000 during the reporting period); 254.039 (requiring that the campaign treasurer for a general-purpose committee file a pre-election report detailing direct campaign expenditures for supporting or opposing either a single candidate that in the aggregate exceed $1,000 or a group of candidates that in the aggregate exceed $15,000 during the reporting period); 254.123 (requiring that a campaign treasurer file semi-annual reports for a specific-purpose committee); 254.124 (requiring that the campaign treasurer of a specific-purpose committee to file semi-annual reports for each election in which it supports or opposes a candidate or measure); 254.125 (requiring that the campaign treasurer of a specific-purpose committee for supporting or opposing a candidate or measure file a final report) ; 254.126 (requiring that the campaign treasurer of a specific-purpose committee file a dissolution report if it expects no reportable activity to occur after the period covered by a report); 254.127 (requiring the campaign treasurer of a specific-purpose committee to file a termination report if his appointment is terminated); 254.128 (requiring a campaign treasurer for a specific-purpose committee who accepts political contributions or makes political expenditures for a candidate or officeholder to deliver written notice of that fact to the affected candidate or officeholder no later than the end of the reporting period in which the reportable activity occurs) ; 254.153 (requiring that a campaign treasurer file semi-annual reports for a general-purpose committee); 254.154 (requiring that the campaign treasurer for a general-purpose committee file pre-election reports); 254.1541 (requiring that the campaign treasurer for a general-purpose committee with less than $20,000 in one or more accounts maintained by the committee in which political contributions are deposited file a report detailing the amount of political contributions from each person in the aggregate that exceed $100 and that are accepted during the reporting period and the total amount of the political contributions or expenditures of $100 or less accepted); 254.155 (allowing the campaign treasurer to file monthly reports as an alternative to filing the reports required under sections 254.153 and 254.154); 254.159 (requiring that the campaign treasurer of a general-purpose committee file a dissolution report if it expects no reportable activity to occur after the period covered by a report); 254.160 (requiring the campaign treasurer of a general-purpose committee to file a

currently required to disclose in a campaign treasurer appointment would no longer be available to assist the public in making inform choices. *See* TEX. ELEC. CODE §§ 252.002; 252.003; 252.0031.

Rendering Texas's reporting and disclosure provisions meaningless would clearly harm the public interest given that the Supreme Court has repeatedly upheld federal reporting and disclosure requirements—similar to the ones identified above—as constitutional. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 82 (1976) (upholding federal disclosure requirements based on a governmental interest in "provid[ing] the electorate with information" about the sources of political campaign funds, not just the interest in deterring corruption and enforcing anti-corruption measures"); *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (upholding disclosure requirements for organizations engaging in electioneering communications); *Citizens United*, 130 S.Ct. at 914 (upholding disclaimer and disclosure requirements for electioneering communications as applied, and citing the government's recognized interest in providing the electorate with information); *see also Osterberg v. Peca*, 12 S.W.3d 31, 44 (Tex. 2000) (holding that the Texas Election Code requirement that an individual report campaign expenditures exceeding $100 as if that individual were the campaign treasurer of a specific-purpose committee did not violate the First Amendment).

Just as striking down § 253.031(b) would have significant consequences, an

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termination report if his appointment is terminated); 254.161 (requiring a campaign treasurer for a general-purpose committee who accepts political contributions or makes political expenditures for a candidate or officeholder to deliver written notice of that fact to the affected candidate or officeholder no later than the end of the reporting period in which the reportable activity occurs).

injunction declaring § 253.094(a) unconstitutional would have profound, negative effect on the public interest. If this Court grants Plaintiffs' request for injunctive relief, corporations and labor organizations could potentially give *unlimited* political contributions (both in-kind and monetary) directly to candidates, officeholders, and political committees in Texas. It is well-established that the State has a strong governmental interest in preventing the actuality or appearance of *quid pro quo* corruption, and this interest justifies the limits on political contributions directly to candidates. *See, e.g., FEC v. Beaumont*, 539 U.S. 146, 154 (2003) (holding that a state may generally ban direct corporate contributions because such bans "prevent corruption or the appearance of corruption"); *Buckley*, 424 U.S. at 26-27 (holding that the governmental interest in preventing the actuality and appearance of corruption was sufficient justification for a federal law limiting candidate contributions to $1,000).

Even if this Court were only to declare § 253.094(a)'s prohibition on contribution to political committees unconstitutional "as applied" to what Plaintiffs term "independent expenditure"-only committees (a committee structure that simply does not exist under Texas law), the public would still suffer significant harm that would outweigh the claimed harm to the Plaintiffs if the preliminary injunction does not issue. For example, a review of reporting requirements set forth in Chapter 254 of the Election Code reveals that the Texas Legislature wished to impart sunshine on the political process by requiring that contributors to candidates and political committees be disclosed publically. *See* TEX. ELEC. CODE § 254.031(a)(1). If this Court declares § 253.094(a) unconstitutional, even if only "as applied," these disclosure requirements

could be circumvented. Indeed, Plaintiffs confirm that this is their intent by this suit by stating that TLC is "unwilling to expose" its contributors to potential disclosure by engaging in political spending that may expose its donors to public disclosure. *See Complaint* ¶ 55. *Citizens United*, however, supports a finding that an attempt to subvert Texas's disclosure provisions would harm the public interest, because in that case the Supreme Court recognized that "the public interest is best served by access to more, not less, information." *Van Hollen v. FEC*, 2012 U.S. App. LEXIS 10333 (D.C. Cir. May 14, 2012) (citing *Citizens United*, 130 S. Ct. at 914). Further, to the extent Plaintiffs' complaint as to 253.094(a)'s bar on contributions is grounded in the assertion that this bar impedes TLC's ability to refrain from disclosing its donors, that claimed "injury" simply can be given no weight in the balancing of the harms. *See id.*

Because Plaintiffs cannot demonstrate that equities weigh in favor of granting their requested injunctive relief, their motion should be denied.

CONCLUSION

For the foregoing reasons, Defendants request the Court DENY Plaintiffs' request for preliminary injunctive relief.

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CERTIFICATE OF SERVICE

The undersigned certifies that the forgoing document has been served on the following counsel of record in this matter via the Court's CM/ECF electronic filing system:

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