



legitimacy of some aspects of the challenged provisions, the Court finds emergency equitable relief is nevertheless improper in light of the complexity of the legal issues presented, the short time Plaintiffs have given the Court to resolve those issues, and the extraordinary potential for harm if a wrongful injunction should issue. If the challenged provisions are to be struck down, it will not be done hurriedly, but after careful consideration of the parties' arguments on a fully developed evidentiary record. Plaintiffs' motion is therefore denied.

Plaintiff Catholic Leadership Coalition of Texas (evidently more commonly known as the Texas Leadership Coalition, or "TLC") and its political committee,<sup>1</sup> Plaintiff Texas Leadership Coalition–Institute for Public Advocacy (TLC-IPA), challenge three sections of the Texas Election Code, claiming they violate the First Amendment. Defendants are all sued in their official capacities as members of the Texas Ethics Commission, the entity charged with enforcement of the challenged sections, *see* TEX. GOV'T CODE § 571.061(a)(3); except for Defendant Susan Reed, who is sued in her official capacity as the District Attorney for Bexar County, Texas, where Plaintiffs are located, and who would therefore be empowered to prosecute Plaintiffs for criminal violations of the challenged sections.

More specifically, Plaintiffs challenge Texas Election Code § 253.037(a),<sup>2</sup> which requires committees like TLC-IPA to wait sixty days from the filing of its campaign treasurer appointment,

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<sup>1</sup> TLC claims its political committee is a "general-purpose committee" under Texas law. *See* TEX. ELEC. CODE § 251.001(14).

<sup>2</sup> Plaintiffs indicate in passing that their challenge to § 253.037(a) should also be understood as a challenge to § 253.031(b), which reads: "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."

and to accept political contributions from at least ten people, before it can make or authorize political contributions or expenditures in excess of \$500;<sup>3</sup> and § 253.094(a), which states: “A corporation or labor organization may not make a political contribution that is not authorized by this subchapter.” Plaintiffs bring both facial and as-applied challenges to § 253.037(a), and an as-applied challenge to § 253.094(a).

Apparently, these provisions are particularly problematic for Plaintiffs because although TLC—a 501(c)(4) nonprofit entity—was formed in 2011, it did not register TLC-IPA until June 7, 2012. Under current Texas law, therefore, assuming it meets all other applicable requirements, TLC-IPA will be unable to make or authorize political contributions or expenditures until August 6, at the earliest. Plaintiffs complain this will curtail TLC-IPA’s ability to spend money in support of its favored political candidates in the Texas primary runoff election, scheduled for July 31, 2012.

Plaintiffs filed this lawsuit on June 28, 2012, and filed their motion for preliminary injunction the following day. In their motion, Plaintiffs ask the Court to enjoin “Defendants from enforcing Texas Election Code § 253.037(a) against TLC-IPA and Texas Election Code § 253.094(a) against TLC and TLC-IPA as applied to contributions from TLC to support independent expenditures.” Pls.’ Mot. [#6] at 44. Plaintiffs further ask the Court to waive the security requirement of Federal Rule

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<sup>3</sup> In full, that section reads:

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.

The terms “political contribution” and “political expenditure” are defined elsewhere in the Election Code. *See* TEX. ELEC. CODE § 251.001(5), (10).

of Civil Procedure 65(c) because, they argue, Defendants would not be harmed by a wrongful injunction.

For the following reasons, the Court denies Plaintiffs' motion.

### **Analysis**

A preliminary injunction is appropriate only if Plaintiffs demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued; (3) the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) the grant of an injunction will not disserve the public interest. *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009). Although Plaintiffs' claims are by no means frivolous, the Court finds they have not sufficiently demonstrated these elements.

With respect to the first element, the Court suspects the challenged sections, which are broadly worded and draw no distinction between contributions and expenditures, are likely to receive strict scrutiny, at least in part. Absent a persuasive showing by Defendants that these sections advance a compelling state interest and are the least restrictive means of advancing that interest, portions of these sections are very likely unconstitutional. However, because Plaintiffs waited until the eleventh hour to file this lawsuit, Defendants have not so far had a fair opportunity to marshal their evidence and arguments in support of the challenged sections. Accordingly, although the Court has grave doubts about the constitutionality of portions of the challenged sections, it cannot accurately gauge Plaintiffs' likelihood of success at this time.

The second element follows the first. If the challenged sections are unconstitutional, in whole or part, Plaintiffs face a substantial threat of irreparable harm by having their right to free speech impermissibly abridged. On the other hand, if the challenged sections are constitutional,

Plaintiffs cannot fairly be said to have suffered harm. For the same reasons the Court cannot gauge the likelihood of Plaintiffs' success on the merits at this time, neither can it assess whether Plaintiffs face a substantial threat of irreparable harm.

The third element weighs heavily in favor of denying Plaintiffs' motion. The threatened injury if the injunction is denied is that the status quo will be preserved and newly created political committees, or those with fewer than ten contributors, will be unable to make political contributions or expenditures in excess of \$500 until the Court can address the merits of Plaintiffs' claims. The record in this case does not reflect how many such committees exist and are prevented by Texas law from making desired contributions or expenditures, but the Court suspects the number is low. On the other hand, if the injunction is granted, Texas's established system for regulating political contributions and expenditures will be significantly disrupted on the eve of the primary runoff elections. Worse, given the short time frame, the biennial nature of the Texas Legislature, and the delays inherent in lawmaking, it is almost certain no amended regulatory scheme could be implemented before the general election in November. Under the circumstances, the injury caused by granting the requested injunction would far exceed the harm caused by denying it.

In this case, just as the second element follows the first, the fourth element follows the third. The chaos created by an upheaval in Texas election law immediately before major elections would directly and substantially disserve the public's interest in fair, efficient, and orderly elections. Further, it bears noting that this crisis was manufactured in large part by TLC and its choice to wait approximately eight months before creating a political committee. Neither Texas's government nor its voters should have to bear the costs associated with TLC's indolence.

For the foregoing reasons, equitable relief is inappropriate at this time, and the Court therefore denies Plaintiffs' motion.

**Conclusion**

Although the Court declines to issue an injunction at this time, it stresses its serious doubts about the constitutional legitimacy of portions of the challenged sections, and the importance of a strong evidentiary showing by Defendants if they wish to preserve the statutes as written. Once the parties have had a fair opportunity to develop the record and fully brief the issues in this case, the Court will evaluate whether the statutes at issue offend the First Amendment.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion for Preliminary Injunction [#6] is DENIED.

SIGNED this the 19<sup>th</sup> day of July 2012.

  
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SAM SPARKS  
UNITED STATES DISTRICT JUDGE