

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

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WESTERN DISTRICT OF TEXAS
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))
 CATHOLIC LEADERSHIP))
 COALITION OF TEXAS, dba TEXAS))
 LEADERSHIP COALITION; TEXAS))
 LEADERSHIP COALITION -))
 INSTITUTE FOR PUBLIC ADVOCACY;))
 FRIENDS OF SAFA TEXAS; and))
 TEXAS FREEDOM PAC))
))
 Plaintiffs,))
))
 v.))
))
 DAVID A. REISMAN, in his official))
 Capacity as Executive Director of the Texas))
 Ethics Commission; HUGH C. AKIN; JIM))
 CLANCY; TOM HARRISON; PAUL W.))
 HOBBY; BOB LONG; PAULA M.))
 MENDOZA; TOM RAMSAY; and CHASE))
 UNTERMEYER, in their official capacity))
 as members of the Texas Ethics))
 Commission; SUSAN REED, in her))
 official capacity as District Attorney for))
 Bexar County, Texas,))
))
))
 Defendants.))
 _____))

Civil Case No. 1:12-cv-566-SS

DECLARATORY AND INJUNCTIVE
RELIEF SOUGHT

SECOND AMENDED VERIFIED COMPLAINT¹

Plaintiffs Catholic Leadership Coalition of Texas, Texas Leadership Coalition – Institute for Public Advocacy, Friends of SAFA Texas, and Texas Freedom PAC bring this action for injunctive and declaratory relief, as well as nominal damages, and complain as follows:

¹ Verifications for Plaintiffs are attached to this Complaint.

INTRODUCTION

1. This is a First Amendment constitutional challenge to provisions of the Texas Election Code that prevent Plaintiffs from speaking meaningfully about candidates for state and local office in Texas. Plaintiffs challenge Texas Election Code § 253.037(a) (in conjunction with § 253.031(b)) because it is a prior restraint on speech that prevents individuals organized around common principles from jointly funding independent political advertisements or political contributions for at least 60 days. Section 253.037(a) also violates Plaintiffs' First Amendment rights by forcing them to collect contributions from an arbitrary number of additional persons before Plaintiffs may speak meaningfully about candidates or exercise their right of free association. Plaintiffs also challenge § 253.094(a) because it prevents an incorporated nonprofit organization from transferring its contact list to a political committee to further the committee's independent political advertisements.

PRELIMINARY STATEMENT

2. The Texas Leadership Coalition – Institute for Public Advocacy (TLC-IPA) is composed predominantly of lay Catholics who wish to pool their resources in support of political candidates who share the group's values. Friends of SAFA Texas (FOSAFA) is another group of lay Catholics focused on protecting and promoting marriage and the family who wish to pool their resources in support of political candidates who share its values. TLC-IPA and FOSAFA desire to fund independent advertisements for and against political candidates based on their positions on issues important to the groups, respectively, and to make monetary and in-kind contributions to supported candidates. Texas Freedom PAC ("Texas Freedom") is committed to engaging with the Latino and youth communities to recruit and promote Hispanic candidates who adhere to core conservative values. All three groups are based in the San Antonio area.

3. Texas held primary runoff elections on July 31, 2012 that determined nominees for various political offices. TLC-IPA, FOSAFSA, and Texas Freedom were registered with the State before the runoff elections, and had filed campaign finance reports with the Texas Ethics Commission ("the Commission") disclosing contributions and expenditures. These reports were filed electronically and were available online almost immediately for public viewing.

4. Both TLC-IPA and FOSAFSA had developed advertisements—uncoordinated with any candidates or political parties—that they intended to distribute before the primary runoffs. However, for these Plaintiffs, it was too late. Texas Election Code § 253.037(a) requires "general purpose committees" such as these Plaintiffs to wait 60 days from the date of registration, and obtain contributions from ten or more persons, before making or authorizing more than \$500 in aggregate political contributions or expenditures. Tex. Elec. Code § 253.037(a); Op. Tex. Ethics Comm. No. 161 (1993). The runoff elections came and went before the statutory waiting period had elapsed and before they had collected funds from ten unique contributors. While TLC-IPA and FOSAFSA were thus banned from disseminating *their own speech* in time to influence runoff voters, individuals and pre-existing political committees were and remain free to make unlimited contributions *directly to* candidates, and to fund independent advertisements in unlimited amounts.

5. Texas Freedom developed a detailed budget for activity to assist candidates before the General Election, including funding blockwalking and phone banks in coordination with the campaigns, but these plans too were stymied by Texas law. Section 253.037(a) prevented Texas Freedom from leasing office space in August, hiring consultants, and making other expenditures to lay the groundwork for its planned activities.

6. This case challenges these flagrant violations of Plaintiffs' First Amendment rights to free speech and association. This case presents a constitutional challenge to Texas Election Code § 253.037(a), facially as a prior restraint on political contributions and expenditures, and facially to the extent it restricts independent expenditures. Subsection (a)'s requirements that a general purpose committee register, wait 60 days, and collect contributions from ten persons before it may expend (or even agree to expend) more than \$500 each impose a free speech "waiting period." This constitutes an outright ban on protected political speech—whether such speech be in the form of independent expenditure advertisements or contributions to a candidate—that is unjustifiable under any theory of the First Amendment to the United States Constitution. The ten-contributor requirement of subsection (a)(2) additionally constitutes forced political association which is also inconsistent with the First Amendment.

7. This case further presents a challenge to Texas Election Code § 253.094(a), which prohibits corporations from making "a political contribution that is not authorized by this subchapter," to the extent such provision prohibits corporations, including nonprofit corporations, from making contributions to political committees for use with respect to independent expenditures. *See EMILY's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009).

JURISDICTION AND VENUE

8. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343. This civil action arises under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983. Plaintiffs seek a declaration of their rights in this case of actual controversy within this court's jurisdiction pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

9. Venue is proper in this Court under 28 U.S.C. 1391(b) because defendant David A. Reisman resides in the Western District of Texas and all defendants reside in Texas. The Texas Ethics Commission is located in this judicial district, and the Executive Director and members of the Commission perform their official duties in this district. Additionally, a substantial part of the events giving rise to this claim occurred in this district.

PARTIES

10. Plaintiff Catholic Leadership Coalition of Texas, commonly known as the Texas Leadership Coalition (TLC), is an incorporated non-profit 501(c)(4) founded in 2011 by lay Catholics in San Antonio, Texas. The TLC was founded for the purpose of public education and advocacy; specifically, to develop resources and opportunities to inform Catholics about the moral precepts of the Church pertaining to their responsibilities as Catholic voters. Its headquarters are located at 3503 Millgrove Street, San Antonio, Texas, 78230. Because 501(c)(4)s are limited in the proportional amount of candidate advocacy they may undertake, the TLC board voted to establish a political committee in order to freely conduct political advocacy without jeopardizing TLC's tax-exempt status under the Internal Revenue Code. The TLC may also need and establish new political committees to participate in future elections.

11. Plaintiff TLC-IPA is the political committee established by the TLC. TLC-IPA is dedicated to supporting or opposing candidates based on their positions on issues of importance to TLC-IPA. It is therefore a "general-purpose committee" under Texas campaign law, headquartered at 3503 Millgrove Street, San Antonio, Texas 78230. Through the TLC-IPA, the supporters of TLC and like-minded individuals can pool their resources for effective speech and association. Philip C. Sevilla is treasurer of TLC-IPA and a board member of the TLC, and he

makes decisions regarding TLC-IPA's activities in consultation with TLC's other board members.

12. Plaintiff Friends of SAFA Texas ("FOSAFA") is a political committee focused on protecting marriage and the family. The individuals constituting FOSAFA decided to pool their resources in order to speak effectively. FOSAFA's stated mission is "Promoting Political Candidates to be elected to office who are committed to Protecting, Defending and Promoting the Family, the original and basic unit of society." FOSAFA is therefore a "general purpose committee" under Texas campaign law, headquartered at 31239 Sunlight Drive, Bulverde, Texas 78163. Patrick Von Dohlen is a founding member and decision-maker for FOSAFA. The San Antonio Family Association is a related, unincorporated nonprofit organization focused on protecting, promoting, and defending the family, the basic unit of society. The San Antonio Family Association's mission is educational and legislative. It was established in late 2011 by many, but not all, of the individuals who constitute FOSAFA.

13. Texas Freedom PAC ("Texas Freedom") is a political committee focused on engaging with the Latino and youth communities to recruit and promote Hispanic candidates who adhere to core conservative values. It is therefore a "general purpose committee" under Texas campaign law, headquartered at 14427 Brookhollow, Suite 312, San Antonio, Texas 78232. Weston Martinez is the President and Treasurer of Texas Freedom.

14. Defendant David A. Reisman is the Executive Director of the Texas Ethics Commission, which is located at 201 East 14th St., 10th Floor, Austin, Texas 78701. Defendants Hugh C. Akin, Jim Clancy, Tom Harrison, Paul W. Hobby, Bob Long, Paula M. Mendoza, Tom Ramsay, and Chase Untermeyer are members of the TEC. The TEC has ultimate authority to administer and enforce the statutory provisions at issue in this case, including initiating civil

enforcement actions or referring matters to the appropriate prosecuting attorney for criminal prosecution. These individuals are sued in their official capacity.

15. Defendant Susan Reed is the District Attorney for Bexar County, Texas, who may criminally prosecute violations of the statutes at issue in this case in the county in which plaintiffs reside and plan on conducting their First Amendment activities. Her office is located at 300 Dolorosa Street, 5th Floor, San Antonio, Texas 78205. She is sued in her official capacity.²

STATEMENT OF FACTS

Activities and Operations of TLC

16. The TLC is a nonprofit 501(c)(4), incorporated under Texas law, whose mission is primarily educational. It is a membership-based organization and collects dues from its members to finance its activities. The organizers and supporters of the TLC are predominantly lay Catholics who believe strongly in abiding by the principles espoused by their Church. They further believe that many Catholic and Christian candidates and officeholders depart from the principles of their faith in the discharge of their public duties, particularly with respect to issues of protection for the unborn and traditional marriage. They also believe too many Catholic voters cast ballots for such politicians. These lay Catholics founded the TLC as a vehicle through which to educate their fellow Catholics regarding the true precepts of the Church and the importance of incorporating such principles in one's approach to civic responsibility. Since its

² On August 3, 2012, the district court granted Defendant Reed's motion to dismiss Plaintiff TLC and TLC-IPA's claims against her, finding that "criminal prosecution at this time is simply moot" because TLC-IPA "has ample time to comply with the Texas statute before the next election." Doc. 37 (Aug. 3, 2012) (entered on the docket Aug. 6, 2012). Plaintiffs included Reed as a defendant again upon filing of their First Amended Complaint on August 9, 2012, when another general purpose committee, FOSAFA, which had not been registered for 60 days, was added as a plaintiff. Plaintiffs have repeatedly offered to dismiss Reed from the suit on written assurance that in the absence of a referral from the Commission, Reed would not seek prosecution of any Plaintiff for violation of any law or regulation challenged in this suit. Reed has not provided such assurance.

founding in October 2011, the TLC has been active in its educational and religious mission. Among many other activities, the TLC has produced a regular email newsletter for supporters; sponsored a Catholic men's retreat focused on Thomas More: A Man for All Seasons, which was attended by 34 Catholic men; organized and led major rallies in downtown San Antonio; and proceeded with planning and organization for other such activities.

17. Recently, the Department of Health and Human Services announced that it would mandate that nearly all insurance plans provide coverage for contraceptives and sterilization services. To faithful Catholics such as those constituting the TLC, this policy represents an unconscionable government intrusion into a matter of faith and morals, mandating action that would violate deeply held religious principles of Catholics. Although only one of many issues, the HHS mandate illustrates the impact elected officials and public policy have on people of faith, and provided an even greater sense of purpose to the TLC's campaign efforts.

18. The TLC has a First Amendment right to use its general treasury funds to speak independently about candidates, as recognized under federal and Texas law. *See Citizens United v. FEC*, 130 S. Ct. 876 (2010); Op. Tex. Ethics Comm'n No. 489 (2010), *superseded in part by* H.B. 2359, 82nd Leg., R.S. (2011). The TLC exercised its free speech rights in endorsing a slate of candidates in Texas' May 29 primary elections. Although the actual expenditures involved in distributing these endorsements were de minimus, the TLC sought the advice of counsel experienced in election law, acquired an electronic filing password from the TEC, and filed a report of its independent expenditures.³ However, the amount of express election-related activity the TLC may undertake is limited by federal law as a condition of its tax-exempt status. *See* Rev. Rul. 81-95, 1981-1 C.B. 332 (political activity may not be the "primary" activity of a

³ Plaintiffs use the term "independent expenditures" to mean the same as "direct campaign expenditures" as defined in the Texas Election Code, *see infra* ¶ 63 n. 8.

501(c)(4)). Desiring to engage in further speech regarding specific candidates and elections in 2012, the TLC realized it needed to establish a separate campaign fund as permitted under the federal tax rules. *See* 26 U.S.C. § 527(f)(3) (permitting establishment by tax-exempt organizations of a "separate segregated fund"). The TLC established the TLC-IPA as a "general-purpose committee" with the Commission on June 7, 2012. By maintaining a separate account and acting through the TLC-IPA, the TLC and its supporters may speak freely about candidates, issues and elections without such political activity being attributed to the TLC itself and jeopardizing the TLC's tax-exempt status. *See id.* ("separate segregated fund" is treated as a separate organization).

19. Even aside from federal tax rules, the TLC was required to register a general-purpose committee under Texas law to carry out its desired activity, because funds given with the intent that they be used in connection with a campaign for elective office are "political contributions" under the Election Code. *See infra* ¶ 52 (definition of "political committee").

20. The TLC has worked to gradually build a contact list of individuals interested in the TLC's educational and public issue activities. Often when the TLC has events, attendees are added to the list, and additional contacts are added by TLC members and directors. This list is not used for any business purpose, but it has value to a political committee like the TLC-IPA. As of the date of filing of this amended complaint, the list consisted of the email addresses of 890 individuals; many, if not most, of those individuals are *not* members or family of members of TLC.

Activities and Operations of TLC-IPA

21. TLC-IPA desires to fund independent expenditure advertising supporting and opposing candidates for nonfederal office. Plans for such expenditures will not be conveyed to

any candidates, their campaigns or agents, or political parties prior to obligation of funds or dissemination of the advertisement. It also desires to make monetary and in-kind contributions to nonfederal candidates.

22. TLC-IPA postmarked its campaign treasurer appointment form to the Commission on June 7, 2012. TLC-IPA is therefore prohibited from engaging in meaningful speech activity until the expiration of the 60-day waiting period on August 6, 2012, and until it collects contributions from ten persons.

23. The July 31 runoff elections were held 54 days from the date TLC-IPA was registered as a general purpose committee with the Commission. The first ballots were cast during the early voting period beginning July 23, only 46 days from the date of TLC-IPA's registration.

24. One candidate the TLC-IPA supports is Dr. Donna Campbell, a non-incumbent candidate for Texas Senate District 25. Dr. Campbell emerged from a three-person Republican primary to earn a spot in the runoff election against the incumbent, Senator Jeff Wentworth. Dr. Campbell shares the TLC-IPA's values regarding several issues of great importance to the TLC-IPA, and the TLC-IPA intended to vigorously advocate her election in the runoff.

25. The TLC-IPA intended to produce and distribute a print advertisement expressly advocating her election, which was to contain a list of persons who endorsed her, in time to influence voters before the runoff. TLC-IPA was not able to hire a third party to produce copy, or distribute the advertisement, because § 253.037(a) prohibited it from expending or obligating the funds required.

26. TLC-IPA produced a single-page slate of endorsements including all the candidates it supported in the primary runoffs. The TLC-IPA was ready to include this

endorsement list in a Catholic-focused direct mail piece to be mailed to 15,000 households before the primary runoff. Because § 253.037(a) prohibited expending or obligating the funds required, TLC-IPA was forced to change its plans. Instead of distributing the piece before the runoff with the endorsements included, the piece will be mailed after the runoff election and will include only educational articles.

27. TLC-IPA intended to spend the bulk of its funding to broadcast a radio advertisement supporting Dr. Campbell in the week preceding the runoff election. Because § 253.037(a) prevented expending or obligating the funds required, TLC-IPA was unable to broadcast this advertisement to the extent desired. Instead, it paid a nominal sum toward a radio advertisement jointly funded by TLC-IPA and a married couple, Dr. Robert and Darlene Jimenez. The total cost of the radio advertisement was \$2,800; TLC-IPA paid \$100 and the Jimenezes paid \$2,700. The Supreme Court of Texas has held that a married couple may not be required to form a political committee before jointly funding independent expenditures, *Osterberg*, 12 S.W.3d at 46, and "a group composed exclusively of two or more individual filers or political committees" already required to file reports with the Commission may jointly fund advertisements without constituting a separate "political committee," 1 Tex. Admin. Code § 20.1(14). While this specific arrangement was permissible, no additional individuals or married couples could have helped fund this advertisement, because such individuals would then be acting in concert with the Jimenezes, and thus all non-TLC-IPA funders in such a situation would constitute a political committee with the Jimenezes. If such a committee were considered a "specific purpose committee," it would have been prohibited from spending more than \$500 on the advertisement because it had not been registered 30 days before the election. *See* Tex. Elec.

Code § 253.031(c). If such a committee were considered a general purpose committee, of course, it would be subject to the waiting period under § 253.037(a).

28. If TLC-IPA had secured an injunction against § 253.037(a), it would have been able to fund the radio advertisement under its name alone, with funds from the Jimenezes as well as other contributors. By pooling funds from the Jimenezes and many other contributors, TLC-IPA would have been able to spend much more than \$2,800, resulting in more broadcasts of the advertisement and more contacts with potential runoff voters. Instead of spending thousands of dollars, TLC-IPA was limited to spending \$100.

29. The TLC-IPA's advertisements were planned, produced, and disseminated independently of any political candidates and political parties. TLC-IPA did not convey its plans for any expenditure to any candidates, their campaigns or agents, or political parties prior to the obligation of funds for an expenditure or dissemination of an advertisement. TLC-IPA's expenditures for these advertisements are therefore "direct campaign expenditures" under the Texas Election Code because they will be expenditures made "in connection with a campaign for an elective office" and "without the prior consent or approval" of any candidate. *See* Tex. Elec. Code §§ 251.001(2), (3), (7), (8); 1 Tex. Admin. Code § 20.1(5)(A).

30. By July 11, 2012, TLC-IPA had accepted pledged monetary contributions of \$1,600 toward its intended runoff election advertisements.

31. If TLC-IPA had been free to spend a meaningful amount to fund its independent expenditures before the runoff, it would have been able to secure significantly more in contributions toward those expenditures.

32. TLC-IPA has registered an internet domain name (tlcipa.com) and secured hosting services for a website. TLC-IPA would have immediately hired a third party to develop

a permanent website, essential for furthering TLC-IPA's communications with voters and solicitation of online contributions from the general public. The third party would also implement a social media strategy to increase contacts with potentially interested persons. TLC-IPA could not hire such third party when it desired, because § 253.037(a) prohibited it from expending or obligating the funds required. Design of a custom website would cost a minimum of \$1,500, with monthly maintenance charges of approximately \$100. Instead, TLC-IPA was forced to change plans. Prior to the primary runoffs, TLC-IPA's website consisted of a single page displaying only its endorsement list. Its current website remains a simple page with the General Election endorsement list, and an online donation button. Even if TLC-IPA had been permitted to fund the *design* of its desired website earlier, it would not have been free to engage in robust online fundraising, because § 253.037(a) prevented TLC-IPA from expending or obligating the funds required for the *transaction fees* incurred due to such contributions. *See, e.g., infra* ¶ 41.

33. As of the date of filing of this amended complaint, the TLC-IPA has utilized the TLC's contact list three times to distribute its independent expenditure advertisements. The TLC-IPA will pay TLC \$30 for the use of the list for each such communication. This figure is based on the rental cost of an equivalent list of targeted email addresses available from a list vendor in an arm's length transaction.

34. The TLC intends to transfer its contact list to TLC-IPA for continued use, now and as continually updated by TLC, without remuneration. TLC-IPA intends to use this list solely for distribution of its independent expenditure advertisements. This contribution is prohibited by the general ban on corporate contributions to political committees. *See* Tex. Elec. Code § 253.094(a). Further, TLC could not itself utilize the list in the manner desired for TLC-

IPA's benefit because the list includes individuals who are not members or the family of members of TLC. *See* Tex. Elec. Code §§ 253.100(b), (e); Op. Tex. Ethics Comm'n No. 225 (1994).

Activities and Operations of FOSAFSA

35. FOSAFSA desires to fund independent expenditure advertising supporting and opposing candidates for nonfederal office. Plans for such expenditures will not be conveyed to any candidates, their campaigns or agents, or political parties prior to obligation of funds or dissemination of the advertisement. It also desires to make monetary and in-kind contributions to nonfederal candidates.

36. FOSAFSA postmarked its campaign treasurer appointment form to the Commission on July 19, 2012. FOSAFSA is therefore prohibited from engaging in meaningful speech activity until the expiration of the 60-day waiting period on September 17, 2012, and until it collects contributions from ten persons.

37. One candidate FOSAFSA strongly supports is Dr. Donna Campbell, a non-incumbent candidate for Texas Senate District 25. FOSAFSA independently researched and compiled a detailed table comparing the positions of Dr. Campbell and Senator Jeff Wentworth, her opponent in the Republican primary, on issues of great importance to FOSAFSA. FOSAFSA members spent considerable time and effort producing the table. The table was completed on July 25, 2012 and posted on the Facebook page for "Friends of SAFA Texas."

38. Without consultation with Donna Campbell or her campaign, FOSAFSA would have funded the placement of this comparison table as an advertisement in the *San Antonio Express-News* in time to influence voters in the July 31 runoff, but § 253.037(a) prevented it from expending or obligating the funds required.

39. FOSAFAs strongly opposes the legislative priorities of San Antonio Mayor Julian Castro and strongly opposes Mayor Castro's reelection. One of the main initiatives of Mayor Castro to which FOSAFAs is opposed, the Brainpower Initiative, is up for a vote in the San Antonio City Council the week of August 6. FOSAFAs desires to raise money to immediately fund independent expenditure advertisements against Mayor Castro's reelection. FOSAFAs is intent on doing so as soon as possible in order to define Mayor Castro from FOSAFAs's perspective and educate voters while Castro is in the public eye and before the next mayoral race in May 2013. FOSAFAs additionally desires to advocate against Mayor Castro before he gives his scheduled keynote address to the Democratic National Convention on September 4, 2012.

40. FOSAFAs has registered an internet domain name (friendsofsafatexas.com) and secured hosting services for a website. FOSAFAs would have hired a third party to design a permanent FOSAFAs website to further its communications with voters before the July 31 runoffs, permit online contributions, and implement a social media outreach strategy, but § 253.037(a) prevented it from expending or obligating the funds required. FOSAFAs planned to have a site with at least eight separate pages of detailed information and express political advocacy. Design of a custom website would cost a minimum of \$1,500, with monthly maintenance charges of approximately \$100. Because FOSAFAs was prohibited from paying for the site it desires, it was forced to change plans. Instead, it spent \$50 for a one-page site that consists exclusively of the comparison table discussed at ¶ 37.⁴ FOSAFAs subsequently paid for a change to the site for a charge of \$50. Even if FOSAFAs were permitted to fund the *design* of its desired website, it would not have been free to engage in robust online fundraising, because § 253.037(a) prevented FOSAFAs from expending or obligating the funds required for the

⁴ <http://www.friendsofsafatexas.com/>

transaction fees incurred due to such contributions. *See, e.g., infra* ¶ 50. FOSAFAs would have immediately contracted for the development of its desired website, online contributions, and social media outreach in preparation for the November 2012 General Elections, and the May 2013 mayoral elections, but for the prohibition in § 253.037(a).

41. Establishing the online fundraising page is a priority for FOSAFAs because it would permit fundraising by email and through its website that would be convenient for contributors and easy for FOSAFAs to execute and manage.

42. If FOSAFAs had been free to spend a meaningful amount to fund its independent expenditures before the runoff, it would have been able to secure significantly more in contributions toward those expenditures. Because FOSAFAs could not fund its own speech, several FOSAFAs members and supporters instead contributed directly to the Donna Campbell campaign.

Activities and Operations of Texas Freedom

43. Texas Freedom's mission is to support desired candidates in a unique way: by securing consulting, voter-contact, and other campaign resources through the committee which can then be provided as in-kind contributions to several novice candidates at a more affordable price than each of the candidates could have secured individually. Texas Freedom President Weston Martinez believes his committee, by providing a permanent cost-saving mechanism, ready to deploy each cycle, will provide valuable benefit to new candidates inexperienced in campaigning and help reduce the monetary advantages of incumbents who have a much easier time raising funds from donors.

44. Texas Freedom postmarked its campaign treasurer appointment form to the Commission on June 29, 2012, the day after the U.S. Supreme Court announced its decision in

National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012), upholding the Patient Protection and Affordable Care Act. Despite Martinez's desire for immediate action, he was prohibited from engaging in meaningful political association until the expiration of the 60-day waiting period on August 28, 2012, and until it collected contributions from ten persons.

45. Texas Freedom desired to lease office space in August, hire consultants and prepare a block-walking and phone bank program for the General Election, but was prohibited from expending or obligating the funds required by § 253.037(a).

46. Not only did the statute prohibit Texas Freedom from expending funds, but it also prevented effective fundraising. Mr. Martinez personally spoke with numerous individuals who desired to contribute funds, but when the donors were informed that the committee could not expend more than \$500 before the expiration of the waiting period, they directed the funds elsewhere.

47. As one example, a statewide political organization was prepared to contribute at least \$1,000 to Texas Freedom for use in connection with the General Election. However, the organization's legal counsel later informed Martinez that the contribution could not be made because Texas Freedom's campaign finance reports did not yet disclose contributions from ten persons, and therefore Texas Freedom was effectively prevented by the Election Code from using the funds. As a result, Texas Freedom did not receive the contribution.

Costs of Certain Political Advertising and Fundraising

48. A single letter sent by first-class United States mail costs approximately \$0.60 (assuming \$0.15 for printing and paper and \$0.45 for postage). Consequently, even the simplest letter or print advertisement can be mailed to only 833 individuals without exceeding \$500 in cost ($\$0.60 \times 833 = \499.80). As an example, there were 518,625 voting age adults in Senate

District 25 in the 2000 Census. See District Analysis: District 25, Population and Household, <http://www.fyi.legis.state.tx.us/fyiwebdocs/HTML/senate/dist25/r1.htm>.

49. A quarter-page color advertisement in the *San Antonio Express-News* Sunday Star edition, which includes online for 7 days, costs \$2,114 for a single Sunday. Hearst Media Services, Retail Advertising Ratebook, Rate Card No. 67, eff. January 2012.⁵

50. Piryx is one of the most popular third-party firms providing online fundraising platforms and processing. Political committees contract with Piryx to secure a customized fundraising page where contributors can authorize online contributions and provide the committee with the information required for reporting. Committees can then provide links to this contribution page on the committees' website and in online and email advertisements. Piryx charges a flat fee of 4.5% for each transaction, up to an aggregate of \$100,000 in contributions. At this rate, a committee would incur \$500 in transaction fees after collecting \$11,111 in online contributions.

REVIEW OF RELEVANT LAW

51. A review of relevant defined terms is essential to understanding the regulation of political committees in Texas. First, the individuals acting together through TLC-IPA, FOSAFSA, and Texas Freedom, respectively, constitute a *political committee* because "political committee means a group of persons that has as a principal purpose accepting political contributions or making political expenditures." Tex. Elec. Code § 251.001(12). By contrast, "[a] person *not acting in concert with another person* who makes one or more direct campaign expenditures in an election *from the person's own property*" is required to report such expenditures but is not required to file a campaign treasurer appointment as a political

⁵ Available at http://www.express-news.com/advertising/home/2012_retailRates.pdf (last visited June 27, 2012).

committee. *See* Tex. Elec. Code §§ 254.261(a), (d). Because the committee plaintiffs are each composed of a "group of persons" acting in concert to engage in political contributions and expenditures, they are "political committees" under the Election Code.

52. By rule, the Commission has elaborated on the definition of "political committee":

Political committee—Two or more persons that have as a principal purpose accepting political contributions or making political expenditures to support or oppose candidates, officeholders, or measures. *The term does not include a group composed exclusively of two or more individual filers or political committees required to file reports under Election Code, Title 15 ... who make reportable expenditures for a joint activity such as a fundraiser or an advertisement.*"

1 Tex. Admin. Code § 20.1(14) (emphasis added). When read in conjunction with section 254.261, it is clear that the Commission definition just cited does not apply to the individuals supporting TLC-IPA, FOSAFSA, or Texas Freedom, respectively, such that they could avoid status as a political committee. That is because an individual can only qualify as an "individual filer" with respect to direct campaign expenditures if he or she is "not acting in concert with another person" and makes such expenditure "from the person's own property." Tex. Elec. Code § 254.261. TLC-IPA, FOSAFSA, and Texas Freedom were each formed with the express purpose of pooling their resources and soliciting funds from the general public, and spending those funds on political advocacy (that is, for the purpose of "accepting political contributions" and "making political expenditures"). Those involved in TLC-IPA, FOSAFSA, and Texas Freedom are acting in concert with one another to further their common political ends, and pooling their resources to do so. As the Texas Supreme Court has observed, "if an individual acts in concert with another, the individuals must form a political committee, appoint a campaign treasurer, and file that appointment with the appropriate authority before making direct campaign expenditures that exceed \$500." *Osterberg v. Peca*, 12 S.W.3d 31, 46 (Tex. 2000).

53. "Political expenditure" means either a "campaign expenditure" or an "officeholder expenditure." Tex. Elec. Code 251.001(10). A "campaign expenditure" is an expenditure—whether made before, during, or after an election—"made by any person in connection with a campaign for an elective office or on a measure." *Id.* § 251.001(7).

54. "Expenditure" is defined in extremely broad terms to mean "a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment." *Id.* § 251.001(6).

55. "Political contribution" means either a "campaign contribution" or an "officeholder contribution." *Id.* § 251.001(5). A "campaign contribution" is 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.* § 251.001(3). As with the expenditure definition, "whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution." *Id.* A "contribution" is a "direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer...." *Id.* § 251.001(2).

56. Texas law recognizes two general categories of political committees: *general purpose committees* and *specific purpose committees*. While the statutory definitions are difficult to comprehend, given the usage of the term "unidentified," the Commission provides an explanation of the difference between general and specific purpose committees. An excerpt of that explanation is as follows:

Supporting or opposing unidentified candidates. A political committee that supports or opposes two or more candidates who are unidentified or who are seeking offices that are unknown is a general-purpose political committee.

A general-purpose committee devoted to a particular point of view does not become a specific-purpose committee because it lends support to a particular candidate in an election

EXAMPLE: A political committee that supports candidates who oppose gambling is a general-purpose political committee. The candidates supported by this political committee are "unidentified" because the political committee is devoted to a particular issue or point of view, not to particular candidates. If a candidate's views on gambling change, the candidate may gain or lose the committee's support

EXAMPLE: A political committee that supports candidates who are members of a particular political party is a general-purpose political committee. (Some political committees affiliated with political parties are subject to different reporting requirements from other general-purpose committees.

"General Purpose and Specific Purpose Political Committees," Campaign Finance Guide for Political Committees at 2-3 (revised Nov. 1, 2012).⁶ The plaintiff committees are categorized as "general purpose" committees because their purpose is not to support specific, identified candidates, but rather to support candidates who share their values, *see supra* ¶¶ 11-13, including multiple candidates who are presently "unidentified." *Id.* § 251.001(14). *See, e.g.*, Op. Tex. Ethics Comm'n No. 320 (1996) ("Because the committee's purpose would be to support candidates of its party in general, whether currently identified or not, the group would be a general-purpose committee"); *cf.* Tex. Elec. Code § 251.001(13) (defining "specific-purpose committee").

57. As Texas general-purpose committees, the speech of TLC-IPA, FOSAFSA, and Texas Freedom is severely constrained—in fact, entirely banned in any meaningful amount—in the first 60 days after registration. The relevant provision was enacted in 1987 and reads as follows:

⁶ Available at http://www.ethics.state.tx.us/guides/pac_guide.pdf (last visited Nov. 9, 2012).

§ 253.037. Restrictions on Contribution or Expenditure by General-Purpose Committee

(a) 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.

...

(c) Subsection (a) does not apply to a political party's county executive committee that is complying with Section 253.031 or to a general-purpose committee that accepts contributions from a multicandidate political committee (as defined by the Federal Election Campaign Act) [FN1] that is registered with the Federal Election Commission, provided that the general-purpose committee is in compliance with Section 253.032.

[FN1] 2 U.S.C.A. § 431 et seq.

Tex. Elec. Code § 253.037, as amended by Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 531, § 1, eff. Sept. 1, 1993. While on its face § 253.037 applies to an expenditure of any amount, the Commission has mercifully interpreted the section to permit up to \$500 in aggregate political disbursements before the 60-day and ten-contributor requirements are met, in order to harmonize it with a 1993 amendment to a related provision of the Election Code:

Reading section 253.031(b)⁷ and section 253.037(a) together, we conclude that the following rules apply to general-purpose committees: A general-purpose committee may not make or authorize political expenditures totaling more than \$500 unless the committee has (1) filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500, and (2) accepted political contributions from at least 10 persons.

⁷ In challenging the pre-registration requirement incorporated within § 253.037(a), Plaintiffs also challenge § 253.031(b), which provides: "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." Tex. Elec. Code § 253.031(b).

Op. Tex. Ethics Comm'n No. 161 (1993) ("TEC AO 161"); *see also* 1 Tex. Admin. Code § 22.1(c). In light of this regulatory interpretation, and in light of the statutory definitions of the relevant terms, § 253.037(a) decrees that three discrete conditions be met before any group of persons defined by the law as a "general purpose committee" may spend more than \$500 on political expression or association.

58. *First*, the "committee" must "file its campaign treasurer appointment." Tex. Elec. Code § 253.037(a)(1); *see also* § 253.031(b). The appointment must be filed with the Commission, on a form provided by the Commission, which requires the "committee" to not only appoint a campaign treasurer who assumes legal responsibility and must file campaign finance reports under penalty of perjury, but also, *inter alia*, to designate a committee address, designate the treasurer's physical and mailing address(es), and identify the individual(s) responsible for the committee's decisions as to contributions and expenditures. *Id.* §§ 252.002; 252.003.⁸

59. *Second*, the committee must accept political contributions from ten or more persons. *Id.* § 253.037(a)(2).

60. *Third*, even if the committee succeeds in collecting contributions from ten persons immediately, the committee is subject to the 60 day waiting period. *Id.* § 253.037(a)(1).

61. These three requirements must be met not merely before the "committee" actually transfers more than \$500 in funds (or any other thing of value) in the aggregate "in connection with any campaign for elective office or on a measure," but before it even agrees to do so, or incurs an obligation to do so, "whether [such agreement or obligation is] legally enforceable or

⁸ When Plaintiffs refer to a "registration" requirement in this litigation, the reference is to the requirement to file this appointment of campaign treasurer form, which formally establishes the committee.

not." *See* Tex. Elec. Code §§ 251.001(7) (defining "political expenditure") and 251.001(6) (defining "expenditure").

62. When it comes to political speech, there is an important distinction between independent spending and spending that is coordinated with the candidate who is supported or benefitted by the speech. Federal law uses the term "independent expenditure" to refer to an expenditure for uncoordinated speech. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16. Texas describes the same activity as a "direct campaign expenditure": "Direct campaign expenditure means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure." Tex. Elec. Code § 251.001(8). The Texas Administrative Code explains that "[a] campaign expenditure is not a contribution ... if: (A) it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made; or (B) it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure." 1 Tex. Admin. Code § 20.1(5); Op. Tex. Ethics Comm'n No. 331 (1996). Putting these definitions together, an "expenditure" that is made "in connection with a campaign for elective office or on a measure" but "without the prior consent or approval" of the benefitting candidate is a "direct campaign expenditure" under Texas law, Tex. Elec. Code § 251.001(7), (8); Tex. Admin. Code § 20.1(5)(A). "What Chapter 253 defines as a 'direct campaign expenditure' corresponds with what the Federal Election Campaign Act and United States Supreme Court call an 'independent expenditure.'" *Osterberg v. Peca*, 12 S.W.3d 31, 36 n. 2 (Tex. 2000) (citing, *inter alia*, Op. Tex. Ethics Comm'n No. 336 (1996)).⁹ Nevertheless, because "political expenditures" include "direct campaign expenditures," *see* Tex. Elec. Code §

⁹ Accordingly, Plaintiffs will use the term "independent expenditures" or "IEs" interchangeably with the term "direct campaign expenditures," and any reference to "independent expenditures" or "IEs" is intended to refer to "direct campaign expenditures" under Texas law.

251.001(8), even such fully independent speech is subject to the three requirements of § 253.037(a).

Corporate contributions to Texas political committees

63. As a general rule, Texas law prohibits corporations, including nonprofit corporations, from making political contributions unless specifically authorized by subchapter D of the Election Code. Tex. Elec. Code §§ 253.091; 253.094(a). The only contributions authorized are "campaign contributions" made "in connection with an election on a measure only to a political committee for supporting or opposing measures exclusively," *id.* § 253.096, and contributions made to political parties for certain limited purposes, *id.* § 253.104. Subchapter D also authorizes expenditures by a corporation to "finance the establishment or administration of a general-purpose committee," and provides a non-exhaustive list of permissible expenditures for committee "maintenance and operation." *Id.* §§ 253.100(a)(1)-(12).

64. Due to the expansive definition of "contribution," which includes "a direct or indirect transfer of money, goods, services, or any other thing of value," the corporate contribution prohibition includes a prohibition on in-kind contributions of anything of value "given with the intent that it be used in connection with a campaign for elective office or on a measure," unless such is made only to a "political committee for supporting or opposing measures exclusively." *Id.* §§ 251.001(2), (3); 253.096. Thus, while corporate contributions are permitted to a very narrow class of "specific purpose committee" organized for ballot measures, and to political parties for certain limited purposes, no corporation is permitted to make any contribution—whether monetary or in-kind—to a general-purpose committee. No exception is provided for contributions from a purely ideological or issues-based nonprofit corporation with no past, present, or future business activities.

Penalties

65. A corporation that violates the corporate contribution prohibition commits a third degree felony. *Id.* § 253.094(c). Third-degree felonies are punishable by 2-10 years in prison and a \$10,000 fine. Tex. Pen. Code § 12.34. Further, "[a]n officer, director, or other agent of a corporation" responsible for a prohibited corporate contribution "is punishable for the grade of offense applicable to the corporation []." *Id.* § 253.095.

66. "A person" who "knowingly accept[s] a political contribution the person knows to have been made in violation" of the corporate contribution prohibition also commits a third degree felony. *Id.* § 253.003(b), (e).

67. A violation of § 253.037 is a Class A misdemeanor. Tex. Elec. Code § 253.037(d). Class A misdemeanors are punishable by up to one year in jail and a \$4,000 fine. Tex. Pen. Code § 12.21.

68. The district attorney of Bexar County, Texas may criminally prosecute violations of the statutes at issue in this case because defendants are residents of Bexar County. Tex. Gov't Code § 571.171(a); Tex. Elec. Code § 251.004.

69. The Commission may impose a civil penalty of \$5,000 or triple the amount at issue, whichever amount is more, for a violation of a law administered and enforced by the Commission. Tex. Gov't Code § 571.173.

70. In addition to civil administrative enforcement and criminal penalties referenced above, violations of the statutes at issue may result in liability for damages in a suit by plaintiffs' political opponents. For knowingly making or accepting a campaign contribution or making a campaign expenditure in violation of § 253.037, where the contribution or expenditure is in support of a candidate, a person is liable for damages in the amount of twice the value of the

unlawful contribution or expenditure and reasonable attorneys fees to each opposing candidate. Tex. Elec. Code § 253.131. A corporation that knowingly makes a prohibited campaign contribution to a political committee is liable for damages in the amount of twice the value of the unlawful contribution and reasonable attorneys fees to each political committee of opposing interest in the election in connection with which the contribution or expenditure is made. *Id.* § 253.132. Violations of the statutes also may result in liability for damages to the state "in the amount of triple the value of the unlawful contribution or expenditure." *Id.* § 253.133. These damages penalties may be in addition to the civil penalties imposed by the Commission and any criminal liability. *Id.* § 253.134.

Reporting requirements for general purpose committees

71. General-purpose committees are subject to robust reporting requirements. A general purpose committee may opt for monthly filing by providing written notice to the Commission of its intent to file monthly. *Id.* § 254.155. Such notice must be provided between January 1 – January 15 of the filing year; however, if the committee was formed after January 15, notice must be provided with the filing of the committee's campaign treasurer appointment. *Id.* § 254.155(b). Monthly reports cover the period from the 26th day of month A through the 25th day of month B, and are due on the 5th day of month C. *Id.* § 254.157.

72. General purpose committees not opting to file monthly shall file according to the "regular" reporting schedule. In all years, such committees must file two reports, due on January 15 and July 15. *Id.* § 254.153.

73. General purpose committees on the "regular" schedule must file additional reports in election years. "In addition to other required reports, for each election in which a general-

purpose committee is involved," the committee's campaign treasurer must file at least two pre-election reports:

(b) The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day.

(c) The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

Tex. Elec. Code §§ 254.154(b), (c). In addition to the 30-day and 8-day pre-election reports, the treasurer of a general purpose committee "involved in a runoff election" shall file one report for the runoff election, which must be received by the Commission "not earlier than the 10th day or later than the eighth day before runoff election day," covering the period "beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day." *Id.* § 254.154(e).

74. In addition to the 30-day, 8-day, and runoff reports, "special pre-election reports" are required for significant activity occurring during the last nine days before an election. Specifically, if a general purpose committee, during the period beginning the ninth day before the election and ending at noon on the day before the election:

- a. accepts contributions from one donor that aggregate more than \$5,000; or
- b. makes "direct campaign expenditures" supporting or opposing a single candidate in excess of \$1,000 or a group of candidates in excess of \$15,000;

the treasurer must file a report *by the end of the first business day after the date the contribution is accepted or the expenditure is made* that exceeds the threshold. *Id.* § 254.039 (emphasis added). Contributions reportable under this section must include the dates and amounts of the

contributions, and the full name and address of the contributor. *Id.* § 254.039(a-2). Expenditures reportable under this section must include the amount, the full name and address of the payees, and the dates and purposes of the expenditures, including the names of candidates supported. *Id.* § 254.039(b). For electronic filers, the report must be transmitted to the Commission by midnight; for paper filers, the report must be received by the Commission by 5 p.m. *Id.* §§ 254.039(a-1); 254.037(b). If a general purpose committee becomes involved in an election within this last nine days but the activity is minimal such that the special pre-election report is not required, the contributions and expenditures shall be reported "not later than the regular deadline" for the report covering that period. *Id.* § 254.154(d).

Public availability of campaign finance reports

75. The Commission is required by statute to post every electronically-filed campaign finance report, including "special pre-election reports" filed in the last nine days before an election, online for public viewing "not later than the second business day after the report is filed." Tex. Elec. Code § 254.0401.

76. All candidates, officeholders, and political committees are required to file electronically unless the filer submits an affidavit affirming that (i) neither the filer, nor any agent of the filer, nor any person under contract with the filer, uses a computer to keep current records of contributions and expenditures; **and** (ii) the filer does not, in a calendar year, accept more than \$20,000 in aggregate political contributions or make more than \$20,000 in aggregate political expenditures. *Id.* §§ 254.036(b), (c). Thus, even a political committee with de minimus activity must file electronically unless it affirms under penalty of perjury that its records are not kept electronically.

PERMANENT INJUNCTIVE RELIEF

77. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

78. Sections 253.037(a) and 253.094(a) have deprived, and will continue to deprive, Plaintiffs of their fundamental rights protected by the First and Fourteenth Amendments. Money damages cannot adequately compensate these constitutional injuries and, absent injunctive relief, the injuries will be irreparable. Accordingly, appropriate injunctive relief and a declaration of the unconstitutionality of the statutes are necessary.

79. TLC-IPA, FOSAFA, and Texas Freedom face a credible threat of prosecution if they exceed the paltry \$500 in political expenditures permitted under § 253.037 within the first 60 days after registration or before they accept contributions from ten persons.

80. TLC-IPA, FOSAFA, and Texas Freedom are not willing to expose themselves and their treasurers to criminal and civil penalties and thus have been forced to refrain from speaking pending vindication of their constitutional rights.

81. TLC will face a credible threat of prosecution if it contributes its contact list to TLC-IPA in violation of § 253.094(a) for use with respect to independent expenditures. TLC-IPA will face a credible threat of prosecution under § 253.003(b) and (e) if it accepts the list as a contribution.

82. TLC is not willing to expose itself and its board members to criminal and civil penalties and thus has been forced to refrain from contributing its contact list to the TLC-IPA pending vindication of its constitutional rights.

83. TLC is further unwilling to expose itself to a potential adverse determination with respect to its application for recognition as a 501(c)(4) if the TLC were to engage in an amount

of candidate advocacy deemed excessive by the Internal Revenue Service. This is precisely the reason the TLC established TLC-IPA as a separate segregated fund. TLC is also unwilling to expose its contributors to potential disclosure which may be required as a result of ongoing litigation that may determine whether contributors to 501(c)(4)s that run express advocacy election ads must be disclosed. *See Van Hollen v. FEC*, -- F. Supp. 2d --, 2012 WL 1066717 (D.D.C. March 30, 2012).

84. The free speech and associational rights of others not before the Court will be similarly infringed as § 253.037(a) and § 253.094(a) are applied in future elections and enforced by these Defendants. *See Storer v. Brown*, 415 U.S. 724, 737 n. 8 (1974).

85. Plaintiff TLC may need to establish an additional political committee for use in a future election. Unless the unconstitutionality of § 253.037(a) is recognized, TLC may not be permitted to do so in time to influence the relevant election.

86. TLC or the individual responsible for its future general purpose committee (who, as now, would in all likelihood be a member or director of TLC itself) will face a credible threat of prosecution if the future committee engages in political expenditures or contributions in violation of § 253.037(a).

COUNT 1

Section 253.037(a) is facially unconstitutional because it imposes a prior restraint on political speech and association¹⁰

87. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

¹⁰ In challenging the pre-registration requirement incorporated in § 253.037(a) in Counts 1 and 2, Plaintiffs state a challenge to § 253.031(b) as well. References to the pre-registration requirement should be taken to include § 253.031(b).

88. When two or more persons meeting the definition of a "general purpose committee" desire to contribute to or speak about nonfederal candidates in Texas, before contributing, spending, or obligating more than \$500, or even distributing any materials valued at over \$500, they must do three things: (i) register with the state; (ii) after registration, wait 60 days; and (iii) accept contributions from ten persons. The pre-registration, 60-day waiting period, and ten-contributor requirements are prior restraints on political speech and association that are facially unconstitutional because they burden and chill these rights protected by the First and Fourteenth Amendments to the United States Constitution.

89. Section 253.037(a) has deprived, and will continue to deprive, plaintiffs and others similarly situated of their fundamental rights protected by the First and Fourteenth Amendments. Money damages cannot adequately compensate these constitutional injuries and, absent injunctive relief, the injuries will be irreparable. There is no adequate remedy at law.

COUNT 2

Section 253.037(a) imposes a waiting period for "political expenditures" that is facially unconstitutional to the extent it restricts "direct campaign expenditures" because it is unsupported by any cognizable government interest and because it is not narrowly tailored

90. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

91. Restrictions on independent expenditures that burden political speech are subject to strict scrutiny; that is, they must be narrowly tailored to achieve a compelling government interest. *Citizens United v. FEC*, 130 S. Ct. 876, 898 (2010) (quoting *FEC v. Wis. Right to Life*, 551 U.S. at 464 (2007) (opinion of Roberts, C.J.)). The prevention of actual or apparent *quid pro quo* corruption is the only government interest sufficient to justify campaign finance restrictions. *See Wis. Right to Life State PAC v. Barland*, 664 F.3d 139, 153 (7th Cir. 2011) (citing *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496-97 (1985)). Because the Supreme

Court has held as a matter of law that independent expenditures "do not give rise to corruption or the appearance of corruption," *Citizens United*, 130 S. Ct. at 909, there is no compelling government interest served by restrictions on such expenditures. "What [Election Code] chapter 253 defines as a 'direct campaign expenditure' corresponds with what the Federal Election Campaign Act and United States Supreme Court call an 'independent expenditure.'" *Osterberg v. Peca*, 12 S.W.3d 31, 36 n. 2 (Tex. 2000). Yet, the effect of the pre-registration requirement is to ban political speech—including "direct campaign expenditures"—until registration is executed. In like manner, the 60-day waiting period imposed by § 253.037(a)(1) on "political expenditures" bans "direct campaign expenditures" until the 60 days expire, and the requirement imposed by § 253.037(a)(2) that a general purpose committee accept contributions from ten persons before it may make political expenditures aggregating in excess of \$500 applies to ban "direct campaign expenditures" before the ten contributions are accepted. Therefore, Texas's law imposing a waiting period on any meaningful amount of "direct campaign expenditures" violates plaintiffs' First Amendment rights of speech and association.

92. In addition to lacking any cognizable government interest, § 253.037(a) is not narrowly tailored. Persons (including corporations) acting alone may make unlimited "direct campaign expenditures" *immediately*, subject only to an after-the-fact reporting requirement. *See* Tex. Elec. Code § 254.261. But any two or more persons meeting the definition of a "general purpose committee" who wish to pool resources for the same activity are subject to the onerous requirements of § 253.037(a). This is an unconstitutional burden on collective political activity protected by the First Amendment's guarantees of free speech and the right to petition. Further, persons (except corporations) may *immediately* make direct contributions to candidates, and except for contributions to judicial candidates, such contributions may be made in unlimited

amounts. *See* Tex. Elec. Code ch. 253. Any statute prohibiting groups of persons from funding speech *independent of candidates* while individuals are permitted to make *unlimited contributions directly to candidates* is the opposite of narrowly tailored to anticorruption purposes.

93. Section 253.037(a) has deprived, and will continue to deprive, plaintiffs and others similarly situated of their fundamental rights protected by the First and Fourteenth Amendments. Money damages cannot adequately compensate these constitutional injuries and, absent injunctive relief, the injuries will be irreparable. There is no adequate remedy at law.

COUNT 3

Section 253.037(a)(2)'s ten-contributor requirement is facially unconstitutional because it imposes "forced association" upon a group before it may speak meaningfully about candidates

94. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

95. The ten-contributor requirement contained in § 253.037(a)(2) is not only an unjustified prior restraint but also unconstitutional forced association because it requires Plaintiff committees to convince others to contribute to their cause before they may speak meaningfully about candidates. The ten-contributor requirement violates plaintiffs' First Amendment rights of speech and association.

96. Section 253.037(a)(2) has deprived, and will continue to deprive, plaintiffs and others similarly situated of their fundamental rights protected by the First and Fourteenth Amendments. Money damages cannot adequately compensate these constitutional injuries and, absent injunctive relief, the injuries will be irreparable. There is no adequate remedy at law.

COUNT 4

Section 253.094(a)'s prohibition on corporate contributions is unconstitutional as applied to contributions from TLC to support TLC-IPA's "direct campaign expenditures," because it is unsupported by any cognizable government interest and because it is not appropriately tailored

97. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

98. As stated above, the TLC is a nonprofit, social welfare organization with no past, present, or future business activities. It is incorporated for liability purposes. The TLC intends to contribute its contact list to TLC-IPA so that the TLC-IPA may distribute its "direct campaign expenditure" advertisements to the individuals on the list.

99. Prohibitions on corporate contributions are not constitutionally valid as applied to contributions to political committees for use exclusively with respect to independent expenditures. The United States Supreme Court held in *Citizens United* that corporations may make unlimited independent expenditures from their general treasury funds. 130 S. Ct. at 913. In *SpeechNow.org v. Federal Election Commission*, the Court of Appeals for the District of Columbia Circuit relied on *Citizens United* to hold that federal limits on *contributions* from individuals to political committees engaged only in independent expenditures were unconstitutional. 599 F.3d 686, 689 (D.C. Cir. 2010) (en banc).

100. Federal courts of appeal and district courts have applied the principles reiterated by the Supreme Court in *Citizens United* with regard to independent expenditure activity undertaken by political committees. "Because *Citizens United* held 'as a matter of law that independent expenditures do not corrupt or create the appearance of quid pro quo corruption,' it followed inexorably that 'contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption.'" *Barland*, 664 F.3d at 154 (*quoting*

SpeechNow.org, 599 F.3d at 694). Indeed, limits on contributions for independent expenditures were invalid even before *Citizens United*, and in particular with respect to nonprofit organizations. *See, e.g., Emily's List*, 581 F.3d at 16-19. Where a contribution limit serves no anticorruption purpose, then as a matter of law it violates the First Amendment if it suppresses political speech, including speech by a corporation. *American Tradition P'ship v. Bullock*, 132 S. Ct. 2490, 2012 WL 2368660 (2012) (per curiam).

101. It follows, therefore, that the general ban on corporate contributions contained in § 253.094(a) violates plaintiff TLC's First Amendment rights of speech and association as applied to TLC's proposed in-kind contribution of a contact list to TLC-IPA for use exclusively with respect to distribution of "direct campaign expenditures." Because TLC-IPA is prohibited from accepting this in-kind contribution, its First Amendment rights of speech and association are likewise violated.

102. In addition to lacking any cognizable government interest, § 253.094(a) is not narrowly tailored, or even "closely drawn," because it prohibits corporate contributions while leaving unregulated contributions from other business entities that are indistinguishable in any meaningful respect from corporations.

103. Section 253.094(a) has deprived, and will continue to deprive, plaintiffs and others similarly situated of their fundamental rights protected by the First and Fourteenth Amendments. Money damages cannot adequately compensate these constitutional injuries and, absent injunctive relief, the injuries will be irreparable. There is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. A declaratory judgment that Texas Election Code § 253.037(a) is facially unconstitutional as it constitutes a prior restraint on the political contributions or expenditures of any general purpose committee;
2. A declaratory judgment that Texas Election Code § 253.037(a) is facially unconstitutional to the extent it restricts the "direct campaign expenditures" of any general purpose committee;
3. A declaratory judgment that Texas Election Code § 253.037(a) is unconstitutional as applied to a general purpose committee that makes only "direct campaign expenditures";
4. A declaratory judgment that Texas Election Code § 253.031(b) is facially unconstitutional as it constitutes a prior restraint on the political contributions or expenditures of any political committee;
5. A declaratory judgment that Texas Election Code § 253.031(b) is unconstitutional as applied to a political committee that makes only "direct campaign expenditures";
6. A declaratory judgment that Texas Election Code § 253.094(a) is unconstitutional as applied to contributions from a corporation to support "direct campaign expenditures";
7. A permanent injunction enjoining Defendants from enforcing § 253.037(a) against TLC-IPA, FOSAFA, or Texas Freedom PAC;
8. A permanent injunction enjoining Defendants from enforcing § 253.094(a) against TLC and TLC-IPA as applied to contributions from TLC to support "direct campaign expenditures";
9. An award of nominal damages for the violation of Plaintiffs' constitutional rights;

10. Reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988 or any other applicable statute or authority; and

11. Any other relief that the Court deems just and appropriate.

Dated November 9, 2012.

Respectfully submitted,



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*Admitted *pro hac vice*

Certificate of Service

I certify that a true and correct copy of the foregoing Plaintiffs' Second Amended Verified Complaint, and any accompanying verifications and exhibits, have been served upon the following on this 9th day of November, 2012 as follows:

Erika Kane
Angela Colmenero
General Litigation Division
Office of the Attorney General
PO Box 12548
Austin, TX 78711

By certified mail

Courtesy copy emailed to

Erika.kane@texasattorneygeneral.gov

Angela.colmenero@texasattorneygeneral.gov

Susan Bowen
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Courtesy copy emailed to

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Jerad Najvar

VERIFICATION OF PHILIP C. SEVILLA ON BEHALF OF TLC AND TLC-IPA

I, Philip C. Sevilla, declare as follows:

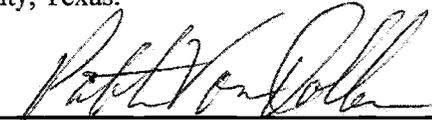
1. I am a member of the board of directors of the Catholic Leadership Coalition of Texas ("Texas Leadership Coalition" or "TLC") and the treasurer of the Texas Leadership Coalition – Institute for Public Advocacy ("TLC-IPA").
2. I have personal knowledge of the operations of TLC and TLC-IPA, including those set out in this Amended Complaint.
3. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the factual statements in this Amended Complaint relating to TLC and TLC-IPA are true and correct.
4. If called upon to testify I would testify competently as to matters stated herein. Executed on November 7, 2012, in Bexar County, Texas.


Philip C. Sevilla

VERIFICATION OF PATRICK VON DOHLEN ON BEHALF OF FOSAFSA

I, Patrick Von Dohlen, declare as follows:

1. I am a founding member of, and one of the decision-makers for, Friends of SAFA Texas (FOSAFSA).
2. I have personal knowledge of the operations of FOSAFSA, including those set out in this Amended Complaint.
3. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the factual statements in this Amended Complaint relating to FOSAFSA are true and correct.
4. If called upon to testify I would testify competently as to matters stated herein. Executed on November 7, 2012, in BEAR County, Texas.

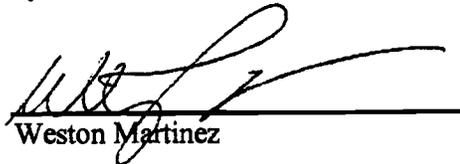


Patrick Von Dohlen

VERIFICATION OF WESTON MARTINEZ ON BEHALF OF TEXAS FREEDOM PAC

I, Weston Martinez, declare as follows:

1. I am a founding member of, and the principal decision-maker for, Texas Freedom PAC.
2. I have personal knowledge of the operations of Texas Freedom PAC, including those set out in this Amended Complaint.
3. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the factual statements in this Amended Complaint relating to Texas Freedom PAC are true and correct.
4. If called upon to testify I would testify competently as to matters stated herein. Executed on November 7, 2012, in Bexar County, Texas.


Weston Martinez