

CAUSE NO. 017-330567-21

TEXANS FOR VACCINE CHOICE,
Plaintiff/Counter-Defendant,

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IN THE DISTRICT COURT OF

v.

TARRANT COUNTY, TEXAS

**JACKIE SCHLEGEL, TEXANS FOR
VACCINE FREEDOM, and TEXANS FOR
VACCINE CHOICE PAC.**

Defendants/Counter-Plaintiffs.

17TH JUDICIAL DISTRICT

**DEFENDANTS JACKIE SCHLEGEL’S, TEXANS FOR VACCINE FREEDOM’S, AND
TEXANS FOR VACCINE CHOICE PAC’S
ORIGINAL ANSWER AND ORIGINAL COUNTERCLAIMS**

Jackie Schlegel, Texans for Vaccine Freedom, and Texans for Vaccine Choice PAC submit this their Original Answer and Original Counterclaims and respectfully show the Court as follows:

GENERAL DENIAL

1. Pursuant to Texas Rule of Civil Procedure 92, Ms. Schlegel, Texans for Vaccine Freedom, and Texans for Vaccine Choice PAC deny generally and materially, singular and plural, the allegations contained in Texans for Vaccine Choice’s First Amended Original Petition and demand strict proof thereof, and state that this is a matter for jury decision.

**ORIGINAL COUNTERCLAIMS OF JACKIE SCHLEGEL, TEXANS FOR VACCINE
FREEDOM, AND TEXANS FOR VACCINE CHOICE PAC**

2. Jackie Schlegel, Texans for Vaccine Freedom, and Texans for Vaccine Choice PAC (collectively “Counter-Plaintiffs”) bring the following counterclaims¹ against Texans for Vaccine Choice (“Counter-Defendant”):

I. DISCOVERY CONTROL PLAN

¹ To the extent that any of the counterclaims and defenses that Counter-Plaintiffs have pled are or appear contradictory, such counterclaims and defenses are pled in the alternative.

3. Discovery shall be Level 2 subject to orders of this Court.

II. PARTIES

4. Texans for Vaccine Choice is a Plaintiff/Counter-Defendant in this lawsuit, has appeared and may be served via its counsel of record.

5. Jackie Schlegel is a Defendant/Counter-Plaintiff in this lawsuit, has appeared and may be served via her counsel of record.

6. Texans for Vaccine Freedom is a Defendant/Counter-Plaintiff in this lawsuit, has appeared and may be served via its counsel of record.

7. Texans for Vaccine Choice PAC is a Defendant/Counter-Plaintiff in this lawsuit, has appeared and may be served via its counsel of record.

III. JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter because the dispute involves an amount in controversy that exceeds any minimum jurisdictional limit of this Court, to the extent such a minimum limit exists. This Court has personal jurisdiction over Counter-Defendant because it is a citizen of Texas, does business in Texas, has committed torts in Texas, and has availed itself of this Court's jurisdiction by filing its First Amended Original Petition. Jurisdiction is proper in the district court pursuant to TEX. CONST. ART. V, § 8 and TEX. GOV'T CODE ANN. § 24.007.

9. Venue is proper in Tarrant County because the subject matter of the dispute occurred wholly or in part in Tarrant County, Texas and because it is the venue in which Counter-Defendant initially brought this action. TEX. CIV. PRAC. & REM. CODE § 15.062(a).

IV. RULE 47 STATEMENT

10. Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, Counter-Plaintiffs seek monetary relief of \$250,000 or less and non-monetary relief.

V. FACTS

A. Homemaker Ms. Schlegel started Texans for Vaccine Choice in 2015 as a private Facebook group.

11. Ms. Schlegel is a mother to three. Years ago, her family had a negative experience with childhood vaccines. This experience led Ms. Schlegel to begin researching the vaccine safety and science movement.

12. In early 2015, proposed legislation introduced in the Texas legislature sought to remove religious and philosophical objections to vaccines. Ms. Schlegel was concerned that the proposed legislation would eliminate parental choice.

13. In or around February 2015, Ms. Schlegel created a private Facebook group as a forum for concerned parents and other adults to meet, discuss, and share information regarding vaccine choice and the proposed legislation. Ms. Schlegel named the Facebook Group “Texans for Vaccine Choice” and served as the sole administrator of the group. Ms. Schlegel chose the name “Texans for Vaccine Choice” because it plainly described the group’s objective, and she wanted the group’s emphasis to be medical freedom and individual autonomy—hence the word “choice.” Ms. Schlegel deliberately avoided names, images, and likenesses that could distract from the emphasis on choice.

14. At Ms. Schlegel’s direction, Facebook group members—“moms in minivans” as some called themselves—began attending town halls and other events to raise the issue of vaccine choice. These efforts, in turn, led to an increase in the Texans for Vaccine Choice Facebook group’s membership. Ms. Schlegel’s Texans for Vaccine Choice Facebook group started drawing attention from certain political and social communities.

15. Several months after creating the name Texans for Vaccine Choice and the so-named Facebook group, it was suggested to Ms. Schlegel that she transition Texans for Vaccine

Choice from a Facebook group into a more formal advocacy organization.

16. In approximately July 2015, Texans for Vaccine Choice became a formal political action committee (*i.e.*, Texans for Vaccine Choice PAC) to support pro-vaccine choice candidates. Texans for Vaccine Choice PAC was the first public-facing entity using the “Texans for Vaccine Choice” name that Ms. Schlegel had created for the private Facebook group.

17. In or around August 2015, Texans for Vaccine Choice filed papers to become a 501(c)(4) nonprofit corporation. A 501(c)(4) nonprofit corporation may engage in lobbying efforts. Ms. Schlegel was one of three founding Board Directors. There had to be two other Board Directors because three is the minimum number of Directors required for non-profit corporations under the Texas Business Organizations Code. Board Director Rebecca Hardy completed many of the secretarial filings, while Ms. Schlegel remained the leader of the group.

18. In or about October 2016, papers were filed to establish Texans for Vaccine Freedom as a 501(c)(3) charitable organization. Texans for Vaccine Freedom focuses on educational and community outreach.

19. In addition to leading and coordinating efforts by Texans for Vaccine Choice PAC, Ms. Schlegel has served as a Board Director of both Texans for Vaccine Choice and Texans for Vaccine Freedom since their respective formations.

20. Texans for Vaccine Choice PAC, Texans for Vaccine Choice, and Texans for Vaccine Freedom engaged in complementary albeit distinctive efforts to promote vaccine choice. Each operated independently based on their specific organizational objectives. All accounting and records were kept separate from one another consistent with their organizational structures.

B. As the vaccine choice movement garnered more attention due to the COVID-19 pandemic, the Texans for Vaccine Choice Board attempts a coup against Ms. Schlegel.

21. Texans for Vaccine Choice PAC, Texans for Vaccine Freedom, and Texans for

Vaccine Choice have worked in complementary ways to maximize the educational and advocacy efforts about vaccine choice. Texans for Vaccine Choice PAC, the first formal advocacy organization created following the Facebook group, supports vaccine choice oriented political candidates. Texans for Vaccine Choice, the second formal advocacy organization created, participates in lobbying efforts. Texans for Vaccine Freedom, an educational and community outreach organization, does not participate in electoral or legislative politics and instead shares information and educational opportunities about vaccine choice with the public.

22. Based on the operational realities of managing Texans for Vaccine Choice PAC, Texans for Vaccine Choice, and Texans for Vaccine Freedom, and to maximize their impact in support of vaccine choice, Texans for Vaccine Choice PAC would usually move money to Texans for Vaccine Choice and/or Texans for Vaccine Freedom several times per year. Most fundraising was done through the PAC. Over the years, several individuals—including Ms. Schlegel—initiated these money transfers without prior or later Board approval for each transfer.

23. The COVID-19 pandemic brought increased attention to the subject of vaccines, vaccine choice, and—unsurprisingly—the organizations involved in the vaccine choice movement. Texans for Vaccine Choice PAC, Texans for Vaccine Choice, and Texans for Vaccine Freedom experienced a sharp increase in attention. Their distribution lists grew ten-fold during the COVID-19 pandemic.

24. The Texas Legislature meets every odd-numbered year for a legislative session. The COVID-19 pandemic, and specifically the advent of COVID-19 vaccines near the end of 2020, put vaccine choice front and center for the upcoming 2021 Texas legislative session—the 87th Legislature. In anticipation of vaccine “mandate” legislation, Ms. Schlegel decided to

fundraise specifically for Texans for Vaccine Choice, the 501(c)(4) advocacy and social welfare nonprofit corporation, rather than through the PAC. The fundraising efforts were successful.

25. The 2021 legislative session consisted of one regular session and three additional special sessions. Regular session ran from January 12 to May 31, 2021. The first special session ran from July 8 to August 6, 2021. The second special session ran from August 7 to September 2, 2021. And the third special session ran from September 20 to October 19, 2021. The 87th Legislature had the most days in session since the 79th Legislature in 2005. It was Texans for Vaccine Choice's busiest lobbying year in the organization's history.

26. Texans for Vaccine Choice, under Ms. Schlegel's leadership, lobbied on behalf of vaccine choice during all four legislative sessions in 2021. Ms. Schlegel led these lobbying efforts despite also caring for a parent who had been diagnosed with terminal cancer and who passed at the beginning of the third special session. Based on these demands on her time, and her personal loss, Ms. Schlegel stepped back from some of the day-to-day operations—apart from the lobbying in the capital—of Texans for Vaccine Choice in the late summer and early fall.

27. After the third special session concluded in October 2021, Ms. Schlegel began to do some year-end work inherent in nonprofit organization leadership while also preparing for 2022. Whereas during odd-numbered years, Ms. Schlegel and her co-workers focused on legislative reform and advocacy during legislative session, during even-numbered years there is generally more focus on educational outreach (from Texans for Vaccine Freedom) and political campaign involvement (from Texans for Vaccine Choice PAC) because there is no legislative session. Moreover, because Ms. Schlegel and others were predominantly occupied with lobbying efforts during the abnormally lengthy legislative session, money had not been moved to Texans for Vaccine Freedom at the usual intervals.

28. Based on Ms. Schlegel’s focused fundraising efforts in late 2020 and early 2021 for Texans for Vaccine Choice in anticipation of an intense lobbying effort during the 87th Legislature, Texans for Vaccine Choice maintained a sizable balance that would not go to immediate use in 2022. In November 2021, Ms. Schlegel initiated a money transfer from Texans for Vaccine Choice to Texans for Vaccine Freedom within the usual course of operations, as part of the usual year-end housekeeping, and because there would be no more legislative sessions—*i.e.*, the traditional forum for where Texans for Vaccine Choice utilizes its resources—in 2021. Ms. Schlegel did not need authorization to initiate the transfer. Further, the money transfer would have left months of operational costs in the Texans for Vaccine Choice account.

29. Shortly after Ms. Schlegel initiated the money transfer on or about November 18, 2021, the other two Texans for Vaccine Choice Board Directors (Rebecca Hardy and Christine Welborn) learned of the attempted transfer and stopped it. No money was transferred.

30. On November 19, 2021, Board Directors Ms. Hardy and Ms. Welborn presented Ms. Schlegel a proposed severance package for her to resign as Executive Director. When Ms. Schlegel declined the proposed package, Board Directors Ms. Hardy and Ms. Welborn informed her that her employment as Executive Director had been terminated and that she had been “removed” from the Texans for Vaccine Choice Board the previous evening.

31. Texans for Vaccine Choice is governed by a set of by-laws. The by-laws provide that “any Director may be removed upon an affirmative vote of a majority of the entire Board of Directors then in office at any meeting of the Board of Directors.” The by-laws also provide that “notice of any special meeting of the Board of Directors shall be given at least fifteen (15) days[’] notice of the meeting. Written notice[’] consists of a notice either personally delivered, sent by mail, email, facsimile or other means of electronic transmission to each Director at his/her

address as shown in the records of Texans for Vaccine Choice.”

32. Ms. Schlegel, a Director of Texans for Vaccine Choice, did not receive or waive the required notice for any Board meeting in which Ms. Hardy and Ms. Welborn purported to have removed Ms. Schlegel as a Board Director. Ms. Schlegel likewise did not receive or waive the required notice for any Board meeting in which Ms. Hardy and Ms. Welborn purported to have terminated Ms. Schlegel as Executive Director of Texans for Vaccine Choice.

33. Ms. Hardy and Ms. Welborn did not adhere to the Texans for Vaccine Choice by-laws in their purported removal of Ms. Schlegel in their attempted coup of Texans for Vaccine Choice. Accordingly, Ms. Schlegel remains a Board member of Texans for Vaccine Choice.

C. Since the attempted coup, Counter-Defendant have prevented Ms. Schlegel from accessing electronic accounts and documents and misused Ms. Schlegel’s “Texans for Vaccine Choice” mark and logo.

34. Since approximately November 19, 2021, Counter-Defendant has repeatedly blocked Ms. Schlegel, on behalf of herself and other Counter-Plaintiffs, from accessing a Google Drive containing personal documents of Ms. Schlegel as well as documents belonging to Counter-Plaintiffs. Blocked Google Drive documents include files related to the care of Ms. Schlegel’s special needs child.

35. On information and belief, individuals at Texans for Vaccine Choice changed the passwords of Ms. Schlegel’s personal Texans for Vaccine Choice email account and prohibited her from accessing her email and digital calendar.

36. On information and belief, individuals at Texans for Vaccine Choice also attempted to break into Ms. Schlegel’s Apple ID. Similarly, Ms. Schlegel’s personal social media accounts have also been subject to login attempts.

37. On information and belief, Texans for Vaccine Choice have used

Ms. Schlegel's email address without her permission and without informing recipients that the message was not coming from Ms. Schlegel.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT

38. Counter-Plaintiff Schlegel incorporate all preceding paragraphs as if set forth herein.

39. There is a live, subsisting, justiciable controversy as to whether Ms. Schlegel remains a Director of the Board of Directors for Texans for Vaccine Choice under the Texans for Vaccine Choice by-laws. Counter-Defendant, acting under two Board Directors, asserts that Ms. Schlegel is no longer a Director as of November 18, 2021. Ms. Schlegel insists otherwise.

40. Ms. Schlegel requests a declaration that the attempted removal of Ms. Schlegel as a Director of the Texans for Vaccine Choice Board was ineffective.

41. This controversy is ripe for a ruling by this Court.

42. Ms. Schlegel is entitled to attorney fees pursuant to this cause of action.

SECOND CAUSE OF ACTION: HARMFUL ACCESS BY COMPUTER (TEXAS PENAL CODE CHAPTER 33 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE CH. 143)

43. Counter-Plaintiffs incorporate all preceding paragraphs.

44. Counter-Defendant violated Chapter 33 of the Texas Penal Code by intentionally, and without consent or authority, accessing online email, electronic cloud storage devices, website, and social media accounts, among other things, belonging to Counter-Plaintiffs. Texans for Vaccine Choice's access and manipulation of that electronic information and documents was made with the intent to harm Counter-Plaintiffs. As a result of Counter-Defendant's violation, which was committed knowingly and intentionally, Counter-Plaintiffs have been injured and suffered damages.

45. Counter-Plaintiffs are entitled to attorney fees pursuant to this cause of action.

VII. JURY DEMAND

46. Counter-Plaintiffs demand a trial by jury.

VIII. PRAYER

47. For these reasons, Defendants/Counter-Plaintiffs respectfully pray that the Court:

- a. Order that Plaintiff/Counter-Defendant take nothing against Defendants/Counter-Plaintiffs in this suit.
- b. Dismiss all claims against Defendants/Counter-Plaintiffs with prejudice.
- c. Rule in favor of Defendants/Counter-Plaintiffs on each of their counterclaims.
- d. Award Defendant/Counter-Plaintiff Jackie Schlegel the following declaratory relief: Counter-Defendant's purported removal of Jackie Schlegel as Director of Texans for Vaccine Choice on or about November 18, 2021 was ineffective under the governing by-laws.
- e. Order that Defendants/Counter-Plaintiffs recover against Plaintiff/Counter-Defendant the following:
 1. Actual, direct, indirect, incidental, and consequential damages, together with pre- and post-judgment interest; and
 2. Reasonable attorneys' fees, expenses, court fees, and associated costs.
- f. Grant Defendants/Counter-Plaintiffs all such other relief to which they are entitled in equity or law.

Respectfully Submitted,

**AHMAD, ZAVITSANOS, ANAIPAKOS,
ALAVI & MENSING, P.C.**

/s/ John Zavitsanos _____

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ATTORNEYS FOR JACKIE SCHLEGEL,
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TEXANS FOR VACCINE CHOICE PAC

CERTIFICATE OF SERVICE

I hereby certify that on the February 11, 2022, a true and correct copy of the above and foregoing has been e-filed and e-served via Texas e-File to all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ John Zavitsanos _____

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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