

**CAUSE NO. 017-330567-21**

**TEXANS FOR VACCINE CHOICE**

**Plaintiff,**

**v.**

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

**Defendant.**

**IN THE DISTRICT COURT OF**

**TARRANT COUNTY, TEXAS**

**17<sup>th</sup> JUDICIAL DISTRICT**

**PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION,  
APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
TEMPORARY INJUNCTION,  
PERMANENT INJUNCTION,  
AND DECLARATORY JUDGMENT**

Plaintiff, Texans for Vaccine Choice (hereafter “TFVC”), files against these Defendants in their various capacities, individually and in combination, seeking, *inter alia*, to enforce trademarks and a non-disclosure agreement.

**DISCOVERY CONTROL PLAN**

1. Under Texas Rule of Civil Procedure 190.3, Plaintiff plans to conduct discovery under Level 2 and affirmatively pleads this suit is not governed by the expedited actions process Rule 169 of the Texas Rules of Civil Procedure because Plaintiff seeks injunctive relief.

**JURISDICTION AND VENUE**

2. The damages sought in this suit are within the jurisdictional limits of the Court. As required by Rule 47, Texas Rules of Civil Procedure, Plaintiff states that Plaintiff seeks monetary

relief of \$250,000 or less and non-monetary relief. This Court has personal jurisdiction over each Defendant as each is a resident of Texas or has its principal place of business in Texas.

3. Venue is proper in Tarrant County pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a) as it is the county of one of the Defendant's residences.

#### **PARTIES**

4. This Petition is filed by Texans for Vaccine Choice, Plaintiff, a non-profit corporation organized in Texas as a 501(c)(4) social welfare organization.

5. Defendant, Texans for Vaccine Freedom, is a nonprofit corporation organized under the laws of the State of Texas and is recognized as a 501(c)(3) tax-exempt organization under the Internal Revenue Code. It can be served with process by serving its registered agent, Jackie Schlegel, at 1321 W Randol Mill Rd., Suite 2006, Arlington, TX 76012.

6. Defendant, Texans for Vaccine Choice PAC, is a Texas political committee. It can be served with process by serving its treasurer, Jackie Schlegel, at 1321 W Randol Mill Rd., Suite 2006, Arlington, TX 76012.

7. Defendant, Jackie Schlegel, is an individual who may be served with process at her residential address of 1321 W Randol Mill Road, Suite 2006, Arlington, TX 76012, or wherever she may be found.

#### **FACTS**

8. Texans for Vaccine Choice grew out of an effort by three women: Michelle Evans, Jackie Schlegel, and Rebecca Hardy. During the early part of 2015, the three women worked informally during the 84th Texas Legislature to defend parental rights with regard to vaccine policy. In the aftermath of the session, the three women decided to formally organize their

activities using a political committee and a non-profit corporation. Rebecca Hardy took the lead in creating the legal entities.

9. Defendant Texans for Vaccine Choice PAC was formed by Rebecca Hardy on July 16, 2015 when she caused to be filed an appointment of campaign treasurer by a general purpose committee with the Texas Ethics Commission. The treasurer appointment identified Rebecca Hardy as the Treasurer. In addition to Hardy, Jackie Schlegel (then “Schlegel-Polvado”) and Michelle Evans (then “Michelle Schneider”) were identified as additional contribution decision makers for Texans for Vaccine Choice PAC.

10. Although initially formed and operated as an unincorporated non-profit association, Texans for Vaccine Choice was incorporated by Rebecca Hardy as a non-profit corporation with the Texas Secretary of State in August 2015. TFVC was organized under the Internal Revenue Code as a 501(c)(4) social welfare organization.

11. On October 25, 2016, with the consent and authorization of the board of directors of TFVC, Hardy caused to be filed a certificate of formation with the Texas Secretary of State creating Texans for Vaccine Freedom. That organization would operate under TFVC’s consent to seek recognition from the IRS under Section 501(c)(3).

12. Immediately prior to the events giving rise to this lawsuit, the board of directors of Plaintiff TFVC was composed of three individuals: Rebecca Hardy, Defendant Jackie Schlegel and Christine Welborn. Schlegel and Hardy also served on the board of directors of Defendant Texans for Vaccine Freedom, a separate but related 501(c)(3) non-profit organization. In addition to Schlegel and Hardy, Joel Starnes served as the third director of Defendant Texans for Vaccine Freedom.

13. Accordingly, although the two separate, related organizations had two of their three board members in common, Plaintiff TFVC and Defendant Texans for Vaccine Freedom had a different person serving as the third director. In the case of TFVC, that person was Christine Welborn. In the case of Defendant Texans for Vaccine Freedom, that person was Joel Starnes.

14. Accordingly, Defendant Schlegel had independent fiduciary duty to both TFVC and to Defendant Texans for Vaccine Freedom. She also was employed as Executive Director of TFVC. In addition, on April 21, 2021, Hardy assigned Schlegel as Treasurer of Defendant Texans for Vaccine Choice PAC.

15. TFVC, Defendant Texans for Vaccine Freedom, and Defendant Texans for Vaccine Choice PAC had related, but distinct missions relating to promoting medical freedom, bodily autonomy, individual rights, and parental choice. TFVC, due to its 501(c)(4) status, took the lead on lobbying and political endorsement activities. Defendant Texans for Vaccine Freedom, because of the limitations on 501(c)(3) organizations, limited its activities to authorized educational efforts. Although the two organizations shared common directors, aside from the initial seed funding of \$50.00 for the 501(c)(3) bank account, funds never flowed from TFVC to Defendant Texans for Vaccine Freedom. Instead, funds for that organization's educational efforts were independently raised. Additionally, TFVC administered Texans for Vaccine Choice PAC to separately raise and spend funds on direct political activity, such as the making of campaign contributions, since such activities were prohibited for both TFVC and Texans for Vaccine Freedom.

16. The three organizations took steps to ensure sufficient separation to comply with IRS regulations. This required Defendant Texans for Vaccine Freedom, as a 501(c)(3) organization, to abstain from subsidizing the lobbying and political activities of TFVC. In accordance with

these best practices, all shared websites, social media pages, email lists, and other communications channels were necessarily owned by TFVC since Texans for Vaccine Freedom's assets could not be used to distribute certain TFVC communications, whereas TFVC's assets could be used to promote and distribute communications produced by Texans for Vaccine Freedom. Likewise, TFVC was responsible for administering the Texans for Vaccine Choice PAC, because 501(c)(3) organizations like Texans for Vaccine Freedom are prohibited by IRS regulations from maintaining a separate political committee.

17. In her capacity as an employee of TFVC, Defendant Jackie Schlegel executed a "Non-Disclosure Agreement" restricting the activities she is allowed to engage in separate from TFVC. Specifically, the Agreement provides: "Without the written consent of [TFVC], [Schlegel] further agrees not to directly or indirectly, engage or participate in any other business activities which [TFVC], in its reasonable discretion, determines to be in conflict with the best interests of [TFVC]."

18. In the months leading up to and including November 2021, TFVC and Texans for Vaccine Freedom ("TFVF") staff reported to the TFVC and TFVF board concerns regarding Defendant Schlegel's behavior, authority, and the direction she was taking the organization as executive director as it seemed to be against TFVC's mission. This "new direction" included unauthorized expansions outside of Texas, a partisan withdrawal from criticism of Republican elected officials, a refusal to call for a fourth special session of the Texas Legislature to address vaccine policy, and the outsourcing of management to a third-party contractor.

19. After hearing these concerns regarding Schlegel's unauthorized behavior, TFVC and TFVF directors Joel Starnes and Christine Welborn confronted Schlegel informally about the

staff's concerns about her activities as executive director. Schlegel told the pair that if they did not agree with her new direction for the organization, they would need to fire her.

20. Welborn then shared her concerns with Rebecca Hardy. Unbeknown to Hardy and Welborn, who constituted the majority of the TFVC board, Schlegel enjoyed support for her "new direction" for TFVC from Joel Starnes, the third director of Defendant Texans for Vaccine Freedom.

21. In light of the concerns raised by TFVC staff, Hardy and Welborn, with the consent of Schlegel and Starnes to waive the 15-day rule in the bylaws, scheduled a TFVC board meeting for the afternoon of November 19, 2021 to discuss formally with Schlegel her activities and to, pending resolution of that conversation, consider offering Schlegel a bereavement leave for up to a year. The pair hoped for an amicable resolution to the difference in opinion about the direction of the organization between them, as the board majority, and Schlegel.

22. On the evening of November 18, 2021, the eve of the scheduled board meeting with Hardy, Welborn and Joel Starnes, Defendant Schlegel initiated a transfer of \$116,000 from the TFVC bank account to Defendant Texans for Vaccine Freedom's bank account. This completely unprecedented transfer of funds, constituting 80% of TFVC's cash reserves, was unauthorized by the TFVC board of directors and did not fulfill any purpose to advance TFVC's mission. In fact, this fundamental transaction was tantamount to winding down the organization. The transfer appeared to be intended to move funds from an account clearly controlled by TFVC, with its board majority (composed of Hardy and Welborn) that disagreed with Schlegel's "new direction," to Defendant Texans for Vaccine Freedom, which had a board majority (composed of Schlegel and Starnes) that supported Schlegel's "new direction."

23. TFVC directors Hardy and Welborn were alerted by staff about the pending, unauthorized transfer of funds the evening of November 18. Hardy and Welborn instructed the staff to call the bank and halt the transfer, which was already listed as “pending” on the online account portal. The TFVC board then held an emergency meeting, whereby they immediately terminated Defendant Jackie Schlegel’s employment as executive director and removed her from the board of directors. Following the emergency meeting, TFVC’s board of directors has ratified the actions taken in the emergency meeting and have voted to replace Schlegel as a director with another individual.

24. The following day Schlegel was informed that her employment had been terminated, that she had been removed from the board of directors, and that she was ordered to return all TFVC property and to abstain from taking any actions to use TFVC’s property or to hold herself out as acting or speaking on behalf of TFVC. Despite these clear instructions and her contractual agreement to the contrary, Schlegel has persisted in attempting to speak on behalf of TFVC, to use TFVC marks, and to restrict and control TFVC’s assets, including TFVC’s social media webpages and mailing lists. Defendant Schlegel has persisted in efforts to operate Defendants Texans for Vaccine Freedom and Texans for Vaccine Choice PAC despite a lack of consent by TFVC to the operation of those entities under those names.

25. Plaintiff TFVC has been publicly using and actively promoting the word mark "TEXANS FOR VACCINE CHOICE" in connection with its efforts since at least February of 2015.

26. The "TEXANS FOR VACCINE CHOICE" logo was created for Plaintiff TFVC and is owned by Plaintiff TFVC. Individuals affiliated with Plaintiff TFVC have been publicly using and actively promoting the "TEXANS FOR VACCINE CHOICE" logo in connection with their

efforts since as early as March 2015. Plaintiff has been using and actively promoting the "TEXANS FOR VACCINE CHOICE" logo in connection with its efforts since at least March of 2015.

27. Plaintiff has promoted the "TEXANS FOR VACCINE CHOICE" word mark and "TEXANS FOR VACCINE CHOICE" logo, including, but not limited to, substantial expenditures at the 2016 and 2018 conventions of the Republican and Democrat party conventions, sponsorship of the Texas Home School Coalition Conventions over several years, Facebook advertising campaigns and other promotional endeavors. No sizable sums were ever spent promoting the PAC or TFVF since conception. The mission of the related organizations was always carried out by and through the (c)(4) organization.

28. Defendants, using the names Texans for Vaccine Freedom and Texans for Vaccine Choice PAC are causing confusion, violating TFVC's trademarks, utilizing protected business opportunities, and confidential information, all while trying to "rebrand" themselves under a new name.

29. Defendant Schlegel signed a non-disclosure agreement during her employment with Plaintiff. She has violated provisions of that agreement including a failure to avoid conflicts of interest, ownership and title to confidential information, including but not limited to trademarks, logos, the TFVC political action committee, and TFVC membership lists.

30. The Defendant's activities since Schlegel's employment was terminated have caused confusion amongst consumers about the use of TFVC's marks and that source of its services.

## **CAUSES OF ACTION**

### **INFRINGEMENT OF PLAINTIFF'S TRADEMARK: "TEXANS FOR VACCINE CHOICE"**

31. The word mark "TEXANS FOR VACCINE CHOICE" is a valid, protectable trademark.

32. Plaintiff owns the word mark "TEXANS FOR VACCINE CHOICE" and uses it as a trademark to identify its services.

33. Defendants have been using, and if not enjoined by this Court, will continue to use, Plaintiff's word mark "TEXANS FOR VACCINE CHOICE" without the consent of the Plaintiff in a manner that is likely to cause confusion among ordinary consumers as to the source, sponsorship, affiliation, or approval of the services.

34. Defendants' use of Plaintiff's word mark "TEXANS FOR VACCINE CHOICE" without consent of the Plaintiff in a manner likely to cause confusion constitutes common law trademark infringement by Defendant.

35. Plaintiff has suffered damages owing to the unauthorized use by Defendant of its word mark "TEXANS FOR VACCINE CHOICE".

### **BREACH OF CONTRACT**

36. Defendant Schlegel executed a Non-Disclosure Agreement requiring her to protect and, on demand, return all confidential information of Plaintiff TFVC as well as to avoid "other business activities" which in TFVC's "reasonable discretion" it determines to be in TFVC's best interests. She was bound by these terms and has failed to comply with that agreement despite instructions to do so.

37. Defendant Schlegel has shared, disclosed, or otherwise failed to return confidential information as defined in that agreement. She has failed to avoid conflicts of interest as to business opportunities that belong to the Plaintiff.

#### **INFRINGEMENT OF PLAINTIFF'S "TEXANS FOR VACCINE CHOICE" LOGO**

38. The "TEXANS FOR VACCINE CHOICE" logo is a valid, protectable trademark.

39. Plaintiff owns the "TEXANS FOR VACCINE CHOICE" logo and uses it as a trademark to identify its services.

40. Defendants have been using, and if not enjoined by this Court, will continue to use, Plaintiff's "TEXANS FOR VACCINE CHOICE" logo without the consent of the Plaintiff in a manner that is likely to cause confusion among ordinary consumers as to the source, sponsorship, affiliation, or approval of the services.

41. Defendants' use of Plaintiff's "TEXANS FOR VACCINE CHOICE" logo without consent of the Plaintiff in a manner likely to cause confusion constitutes common law trademark infringement by Defendants.

42. Plaintiff has suffered damages owing to the unauthorized use by Defendants of its "TEXANS FOR VACCINE CHOICE" logo.

#### **UNLAWFUL INTERFERENCE WITH BUSINESS RELATIONS AND CONTRACTS**

43. Defendants have interfered with existing and prospective business relations and contracts and continuing actions will cause irreparable damage to the Plaintiff. It is impossible to move forward with the purpose of the Plaintiff's organization when third parties no longer employed with the organization or otherwise under the control of the organization continue to send communications to the public using the organization's platform, logo, name, and mission. The confusion caused by these activities will injure the integrity of the organization and most

likely cause it to lose credibility and donors. In short, such actions on the part of the Defendants, if continued, will likely lead to a collapse of the organization and its mission.

#### **BREACH OF FIDUCIARY DUTY**

44. Defendant Schlegel, as executive director (an employee), owed a fiduciary duty to the Plaintiff. Specifically, Defendant Schlegel owed a duty of loyalty and the utmost good faith, a duty to refrain from self-dealing, duty to act with integrity of the strictest kind, duty of fair, honest dealing, duty of full disclosure.

45. Her acts and omissions, as set out above, violated the fiduciary duties set out above. Her acts and omissions, as set out above, benefited her to the detriment of and damage to the Plaintiff.

#### **DAMAGES**

46. Plaintiff is entitled to damages including all pecuniary, consequential, general, and special damages.

#### **DECLARATORY JUDGMENT**

47. Pursuant to Chapter 37 of the Texas Civil Practice & Remedies Code, the court has “the power to declare rights, status, and other legal relations . . .” §37.003(a).

48. In accordance with that, Plaintiff seeks declarations from this court that it is entitled to (1) the exclusive continued use of the name “Texans for Vaccine Choice;” 2) exclusive use of the “Texans for Vaccine Choice” Logo; 3) that Plaintiff is entitled to withdraw its consent to the use by Defendants of the similar name “Texans for Vaccine Freedom;” 4) that Plaintiff has a right and obligation to control the activities of Texans for Vaccine Control PAC; 5) that Plaintiff is entitled to the return of all tangible property; and 6) a return of all improperly collected and retained donations.

### ATTORNEY'S FEES

49. Plaintiff is entitled to reasonable and necessary attorney's fees pursuant to Tex.Civ.Prac.&Rem.Code §§37.009 and 38.001 *et seq.* as well as the provisions of the Non-Disclosure Agreement.

### APPLICATION FOR TEMPORARY RESTRAINING ORDER

50. Plaintiff asks the Court for specific injunctive relief of preventing Defendants from issuing communications in the name of Texans for Vaccine Choice, or in the name of Jackie Schlegel *as executive director of Texans for Vaccine Choice*, to cease emailing members of Texans for Vaccine Choice using email lists belonging to Texans for Vaccine Choice, to halt the use of and control of the TFVC Facebook page, not attempt to access any bank account or other funding, and to halt any other use, duplication, or modifications of any data used or compiled by TFVC.

51. Plaintiff is likely to recover from Defendants after a trial on the merits because Defendant Schlegel's services were indisputably terminated, yet they continue to wrongfully and illegally interfere in the business relations of Texans for Vaccine Choice, using the organization's logo, email list and other assets. It is indisputable that Defendants' relationship with the Plaintiff was rightfully terminated and any further action, which is public and easily proven, is clearly damaging. Recovery is all but guaranteed and the only issue is the amount of damages.

52. If this Court does not grant this request to restrain the Defendants, the Plaintiff will suffer imminent and irreparable harm in that Defendants are utilizing member lists belonging to TFVC to engage in fundraising efforts for other entities, and will likely continue speaking on TFVC's behalf, which they lack authorization to do. Or the Defendants will simply attempt to use the email lists and donor data for the use and benefit of Texans for Vaccine Freedom, an

entity that has no right to such data. Plaintiff currently has no physical control over Defendants' communications or the content thereof, as they refuse to disable the digital platforms associated with TFVC's previous account and continue to use and speak under TFVC's banner through a name of a terminated employee. All of this will ultimately lead to the certain demise of the organization and its mission.

53. Plaintiff has no adequate remedy at law because allowing such conduct unchecked to continue while Plaintiff conducts discovery and proceeds to trial on the underlying causes of action will cause irreparable harm. The conduct must be halted immediately before more damage is done and cannot be undone.

54. Based on the above, the Plaintiff requests this Honorable Court to order the following:

- a. Defendants, JACKIE SCHLEGEL, TEXANS FOR VACCINE FREEDOM, and TEXANS FOR VACCINE CHOICE PAC, individually and in any combination, cease all communications in the name of Texans for Vaccine Choice or any reference to Jackie Schlegel as Executive Director of Texans for Vaccine Choice;
- b. Defendants, JACKIE SCHLEGEL, TEXANS FOR VACCINE FREEDOM, and TEXANS FOR VACCINE CHOICE PAC, individually and in any combination, not use, access, modify, change, alter, share, disseminate, or copy the email list or any data owned by Texans for Vaccine Choice for any reason;
- c. Defendants, JACKIE SCHLEGEL, TEXANS FOR VACCINE FREEDOM, and TEXANS FOR VACCINE CHOICE PAC, individually and in any

combination, return all digital and tangible property of the Plaintiffs including all data;

- d. Defendants, JACKIE SCHLEGEL, TEXANS FOR VACCINE FREEDOM, and TEXANS FOR VACCINE CHOICE PAC, individually and in any combination, not disclose any data or digital information to any other person or entity;
- e. Defendants, JACKIE SCHLEGEL, TEXANS FOR VACCINE FREEDOM, and TEXANS FOR VACCINE CHOICE PAC, individually and in any combination, restore the passwords in effect for all social media accounts of Texans for Vaccine Choice in which the Defendants access or otherwise changed login credentials. If restoration of the prior passwords is not possible, then change the passwords and inform Plaintiff of those passwords and any other login credentials necessary to regain the status quo ante on those social media accounts; and
- f. Defendants, JACKIE SCHLEGEL, TEXANS FOR VACCINE FREEDOM, and TEXANS FOR VACCINE CHOICE PAC, individually and in any combination, not access or attempt to access any bank account or funds in any account controlled by Texans for Vaccine Choice and/or its board.

**BOND**

55. Plaintiff is willing to post a reasonable bond for the temporary restraining order and requests the Court to set the reasonable bond.

### **REQUEST FOR TEMPORARY INJUNCTION**

56. Plaintiff asks the Court to set this application for temporary injunction for hearing and to issue a temporary injunction against Defendants after hearing.

### **REQUEST FOR PERMANENT INJUNCTION**

57. Plaintiff asks the Court to set this request for permanent injunction for a full trial on the merits and to issue a permanent injunction against Defendants after the trial.

### **CONDITIONS PRECEDENT**

58. Plaintiff confirms that all conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

### **PRAYER**

Plaintiff prays that the Court will cite Defendants to appear and answer and that Plaintiff be awarded a judgment against Defendants, on final trial, including actual damages, consequential damages, injunctive relief as set out above, attorney's fees, pre-judgment interest, and costs. Plaintiff further prays that the Court will grant all other relief to which Plaintiff is entitled both in equity and law.

Respectfully submitted,

*/s/ J. Christopher Diamond*

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 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/ J. Christopher Diamond* \_\_\_\_\_

J. Christopher Diamond

### 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.

Frankie Larsen on behalf of James Christopher Diamond  
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