

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

LIA Network

*Plaintiff,*

v.

J.R. Johnson, in his official capacity as  
Executive Director of the Texas Ethics  
Commission; Randall H. Erben, Chris Flood,  
Chad M. Craycraft, Mary K. Kennedy, Patrick  
W. Mizell, Richard S. Schmidt, Joseph O.  
Slovacek, and Steven D. Wolens, in their  
official capacities as members of the Texas  
Ethics Commission,

*Defendants.*

**ORIGINAL COMPLAINT**

Civil Action No. 1:24-cv-500

Plaintiff LIA Network brings this civil action against Defendants J.R. Johnson, in his official capacity as Executive Director of the Texas Ethics Commission, and Randall H. Erben, Chris Flood, Chad M. Craycraft, Mary K. Kennedy, Patrick W. Mizell, Richard S. Schmidt, Joseph O. Slovacek, and Steven D. Wolens, in their official capacities as members of the Texas Ethics Commission, and alleges as follows:

## INTRODUCTION

1. As the Texas Ethics Commissions' Chairman once confessed about his agency, "Those who try to comply will be punished for doing so."<sup>1</sup> It is time to end the TEC's unconstitutional abuse of Texans who try to comply with the state's cryptic and arbitrary speech regulations, and yet are punished by the TEC at the behest of political opportunists through a process reminiscent of Star Chamber.

2. Ordinarily the Texas Constitution assigns the task of representing the State and enforcing its laws to its elected Attorney General and the elected district and county attorneys. Tex. Const. Art. IV, Sec. 22; Art. V, Sec. 21. Texas law recognizes that these elected officials exercise prosecutorial discretion to decide to prosecute not only when there has been a violation of state law, but when the state's resources would be reasonably deployed in prosecuting a violation.

3. However, when it comes to the enforcement of the state's speech regulations, the Texas Ethics Commission turns reason on its head. The TEC gives the keys to the state's power to political opportunists bent on harassing their opponents in the heat of a political campaign. By disclaiming any discretion to decline to initiate an enforcement action, the TEC is no more than a political attack dog, unleashed by anyone able to cobble together some nitpicking complaint regarding compliance with state campaign finance disclosure and disclaimer statutes.

4. In the midst of a political campaign, opportunists lie in wait, watching what their opponents say. They identify some (often times perceived) technical error, and file a complaint with the TEC. If the complaint alleges facts which, if true, would constitute a violation of the state's speech

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<sup>1</sup> Emily Ramshaw, *Jim Clancy and Paul Hobby: The TT Interview*, The Texas Tribune, February 5, 2013, <https://www.texastribune.org/2013/02/05/jim-clancy-and-paul-hobby-tt-interview/>.

regulations, the TEC is unleashed. The accused is dragged into a secretive, labyrinthian process that will drag on for years and require legal assistance far outweighing the cost of settlement. The TEC's administrative process deprives respondents of due process, using their silence and opposition against them, even while the accused proceeds in the shadow of a parallel criminal prosecution for the same offense.

5. The TEC rewards political opportunist exponentially. For the minimal effort required to file a complaint alleging a perceived technical error, their opponent can not only be tarnished as an "ethics violator" in the midst of a political campaign, they are subjected to a years-long, state-sanctioned and procedurally deficient enforcement process. "The process is the punishment," as they say.

6. This case involves just such a hijacking of state power by bad actors for the purpose of harassment. And it is over an absolutely trivial and blatantly unconstitutional law that exists merely as a trap for the unwary.

7. Plaintiff LIA Network is exactly the type of organization one would expect to fall into the state's punji pit. It is a small independent grassroots group that, amongst its regular activities, publishes voter guides regarding local issues and candidates in Kerr County, Texas. LIA Network does its best to comply with Texas' expansive and incomprehensible speech regulations. But in this case, the organization didn't know about the requirements of TEX. ELEC. CODE § 255.006.

8. Under the guise of protecting voters from "misleading use of office title," TEX. ELEC. CODE § 255.006 declares it a class A misdemeanor punishable by up to a \$4,000 fine and a year in jail for a Texan to contract with a printer to print political advertising that mentions a non-incumbent candidate's name and the office that candidate seeks without also including the word

“for” on the advertisement. In other words, one must *never* print a non-incumbent candidate’s name in the proximity of the office they seek without also saying the word “for.” Doing so merits a year in jail.

9. LIA Network included the following section on its voter guide for the 2024 City of Kerrville local elections:



10. Garcia and Ferguson were opposed by Kerrville Forward PAC. Leaders of Kerrville Forward PAC filed complaints against LIA Network, accusing the organization of violating TEX. ELEC. CODE § 255.006 on account of the LIA Network’s omission of the term “for” on its voter guide. The TEC accepted jurisdiction over the complaint, initiating the Defendants’ constitutionally deficient, secretive, and abusive “sworn complaint” process against LIA Network.

11. Due to the TEC’s investigation, LIA Network has been forced to add the term “for” in between the names of candidates it supports and the offices those candidates are seeking on its publications going forward, something it does not wish to do. LIA Network is actively suffering a violation of its right to free speech on account of the pending investigation and the potential for further enforcement and is suffering a violation of its right to due process on account of the TEC’s constitutionally deficient enforcement process. Moreover, LIA Network expects the harassment

to continue, and does not want to be endlessly dragged through the TEC's unconstitutional enforcement process over nitpicking charge their opponents can conjure up.

12. LIA Network seeks protection from this Court. It asks this court to declare TEX. ELEC. CODE § 255.006 unconstitutional facially or as-applied to LIA Network's voter guide publications, and asks the Court to enjoin Defendants from using their constitutionally deficient administrative enforcement procedures to enforce Title 15 of the Election Code against LIA Network over the current complaint and in the future.

### **JURISDICTION AND VENUE**

13. This Court has jurisdiction over the subject matter of this suit 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. Plaintiff seeks a declaration of its rights in this case of actual controversy within the Court's jurisdiction pursuant to 28 U.S.C. §§ 2201-02.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). 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. In addition, the events giving rise to Plaintiff's claims occurred in this district.

### **PARTIES**

15. Plaintiff LIA Network is a Texas Domestic Nonprofit Corporation that is domiciled in Kerr County, Texas.

16. Defendants J.R. Johnson, Mary K. Kennedy, Randall H. Erben, Chad M. Craycraft, Chris Flood, Patrick W. Mizell, Richard S. Schmidt, Joseph O. Slovacek, and Steven D. Wolens are, respectively, the Executive Director and members of the Texas Ethics Commission, which is

located at 201 East 14th St., 10th Floor, Austin, Texas 78701. The Texas Ethics Commission has the statutory authority to administer and enforce TEX. ELEC. CODE § 255.006 including initiating civil enforcement actions, accepting jurisdiction of sworn complaints, or referring matters to an appropriate prosecuting attorney for criminal prosecution. These individuals are sued in their official capacities.

### STATEMENT OF FACTS

#### **Nitpicking Opportunists Use the TEC's Constitutionally Deficient "Sworn Complaint" Process to Harass LIA Network Over Its Grassroots Voter Guides.**

17. LIA Network is a grassroots nonprofit organization composed of citizens in and around Kerr County, Texas that also operates under the name We the People – Liberty in Action. Amongst many other regular activities, as part of its mission, LIA Network seeks to provide voters with information about upcoming local elections including both issue and candidate elections. LIA Network has distributed voter guides by mail and in-person and intends to continue to distribute voter guides in the future.

18. For the 2024 City of Kerrville Election, LIA Network distributed the voter guide identified as Exhibit A and incorporated herein to this Complaint. In addition to making recommendations on Propositions A-J of the Kerrville City Charter Amendment Election, the voter guide also recommended candidates Roman Garcia and Barbara Dewell Ferguson, who were running for the positions of Mayor of Kerrville and Place 4 on the Kerrville City Council, respectively.

19. Garcia and Ferguson were opposed by "Kerrville Forward PAC." On April 9, 2024, Kerrville Forward PAC publicized to the Hill County Community Journal that it had sent a "cease and desist letter" to LIA Network, with the paper running an article stating "'We the People' group facing legal issues." In reality, the Cease and Desist Letter was not received by LIA Network

until April 15, 2024. But the sending of the letter had its effect, allowing Kerrville Forward to accuse LIA Network of violation of election laws in the midst of the local campaign.

20. On April 15, 2024, with early voting in the election just a week away and LIA Network just finally receiving the cease and desist letter, Kerrville Forward PAC though Mr. John Robert Harrison filed Sworn Complaint SC-32404297 with the Texas Ethics Commission. A copy of Sworn Complaint SC-32404297 is attached hereto and incorporated herein as Exhibit B. In it, Harrison alleged that LIA Network's voter guide violated TEX. ELEC. CODE § 255.006 by listing Garcia and Ferguson's names adjacent to the titles of the offices they were seeking (Mayor of Kerrville and Place 4, Kerrville City Council, respectively) without including the word "for" to "clarify that the candidates does not hold that office." This was alleged to be a "misleading statement" in violation of state law.<sup>2</sup>

21. TEX. ELEC. CODE § 255.006 states:

Sec. 255.006. MISLEADING USE OF OFFICE TITLE. (a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made.

(b) A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made.

(c) For purposes of this section, a person represents that a candidate holds a public office that the candidate does not hold if:

(1) the candidate does not hold the office that the candidate seeks; and

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<sup>2</sup> Harrison also alleged that LIA Network had morphed into a political committee that had not appointed a treasurer in violation of TEX. ELEC. CODE § 251.001(12). The TEC rejected jurisdiction on this portion of the complaint because Harrison failed to allege that making political expenditures was LIA Network's "principal purpose." It is yet to be seen if Harrison will correct his allegations and renew his attack under the "morph into a PAC" theory. If the TEC accepts jurisdiction over that complaint, it would represent an existential threat to LIA Network's privacy and freedom to operate in support of its social welfare mission.

(2) the political advertising or campaign communication states the public office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office.

(d) A person other than an officeholder commits an offense if the person knowingly uses a representation of the state seal in political advertising.

(e) An offense under this section is a Class A misdemeanor.

22. In addition to being enforced through the TEC's sworn complaint process, § 255.006 is a Class A Misdemeanor punishable by a fine of up to \$4,000 and confinement in jail for up to one year. TEX. PEN. CODE § 12.21.

**The TEC Accepts Jurisdiction and Begins Enforcement Proceedings Over the Omission of "For" on the Voter Guides.**

23. On April 22, 2024, LIA Network received a notice from the Texas Ethics Commission signed by TEC Deputy Director of Enforcement Jordan T. Hunn and TEC General Counsel James Tinley on behalf of TEC Executive Director J.R. Johnson. The Notice stated that the TEC, acting through Johnson, accepted jurisdiction over the allegations in Sworn Complaint SC-32211435. The notice is attached hereto and incorporated herein as Exhibit C. It stated:

We received sworn complaint SC-32404297 on April 15, 2024. The sworn complaint alleges that, as the principal officer of the LIA Network, also known as Liberty in Action, you entered into a contract or other agreement to print or publish political advertising with the intent to represent that Roman Garcia and Barbara Dewell Ferguson, who are respectively candidates for mayor and city council member in Kerrville, Texas, held offices that they did not hold at the time that the representations were made, in violation of Section 255.006 of the Election Code.

The Texas Ethics Commission (TEC) accepts jurisdiction over this allegation. This does not mean that the TEC has found that a violation occurred. It means that the sworn complaint meets the TEC's legal and technical form requirements for accepting jurisdiction.

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**The sworn complaint allegation will be processed as a Category One violation. Under the law you are required to respond to the allegation not later than 10 business days from the date you receive this notice. Failure to respond will**



**constitute a separate violation for which a separate civil penalty may be assessed.**

The response must be in writing, admit or deny the allegations, and be signed by you. If you deny the allegations, then you should provide evidence supporting the denial. The response must include any challenge you seek to raise to the Commission's exercise of jurisdiction. The response should be under oath. We have enclosed an affidavit form that you may wish to use for the response. A respondent who is a candidate or officeholder may by writing submitted to the Commission designate an agent with whom the Commission staff may communicate regarding the complaint. If you have any information relevant to the complaint, please provide it at this time. Also, please be advised that you should preserve all documents and evidence related to the allegations in this complaint.

To comply with legal requirements regarding the initial notice of a sworn complaint, I have also included a copy of the sworn complaint, the Commission's sworn complaint rules, a Statement of Respondent's Rights, and a copy of the relevant statutes of the Election Code. More information about the complaint process is available on the Commission's website at [www.ethics.state.tx.us](http://www.ethics.state.tx.us).

Please note that at this stage in the process, Commission members and staff are required by law to keep the complaint and all documents relating to it strictly confidential.

(emphasis in original).

24. Attached to the TEC Notice was a "Statement of Respondent's Rights." A copy of that document is attached hereto and incorporated herein as Exhibit D. That documents states, *inter*

*alia:*

The Texas Ethics Commission (Commission) is required to conduct a preliminary review when it receives a written complaint that conforms with legal and technical form requirements and that alleges a violation of a law under the Commission's jurisdiction.

At or after the time the Commission provides notice of a preliminary review hearing, the Commission may submit to the complainant and the respondent written questions and require those questions to be answered under oath within a reasonable time. The Commission may also subpoena documents and examine witnesses.

If a respondent fails to appear at a hearing, the Commission may proceed in the respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty.

25. In reaction to the TEC initiating an enforcement action against it under TEX. ELEC. CODE § 255.006, LIA Network has been forced to add the term “for” in between the names of candidates it supports and the offices those candidates are seeking when distributing further voter guides, an action it would not do but for the threat of further legal harassment.

**The TEC's Sworn Complaint Process is a Never-Ending Procedural Nightmare for Respondents.**

26. The Texas Ethics Commission is tasked with enforcing Title 15 of the Election Code, including Chapter 255. TEX. GOV'T CODE § 571.061(a)(3). These statutes are also enforceable criminally. Despite Chapter 255 pertaining to regulations on the independent speech of citizens regarding elections and political campaigns, the TEC enforces it through an administrative law process common to regulatory bodies, and a shoddy and abusive version of such a process at that. The rules of civil procedure, as modified by statute and TEC rule, are employed to govern the administrative proceedings. The TEC's sworn complaint enforcement process is outlined in TEX. GOV'T CODE Chapter 571, Subchapter E and is further detailed in the TEC's Rules, attached to and incorporated herein as Exhibit E.

27. The TEC's enforcement process is typically initiated when the TEC receives a sworn complaint. These complaints are overwhelmingly filed, as in this case, by one political candidate or their supporters against an opposing political candidate, or their supporters.

28. In accordance with TEX. GOV'T CODE § 571.123(a) and § 571.124(a), the TEC must accept jurisdiction over a complaint if it meets the “form requirements” of TEX. GOV'T CODE § 571.122. Accordingly, the TEC disclaims any “prosecutorial discretion” in initiating an investigation and

prosecution of the accused if the complaint merely alleges facts that, if true, would constitute a violation of laws enforced by the Commission.<sup>3</sup>

29. In the TEC's sworn complaint process, the charges are prosecuted by TEC staff attorneys and argued in front of the Commission's eight members. These commissioners, who employ the Commission staff, serve as both fact-finder and the ultimate judge on all legal questions. While Commission rules provide that the TEC may order a formal hearing before the State Office of Administrative Hearings, on information and belief, this has never taken place and all hearings in the history of the TEC have been conducted before the commissioners.

30. The standard of proof in the TEC's sworn complaint process is by a preponderance of the evidence. Commission Rule § 12.171.

31. To begin its enforcement process, the TEC staff are statutorily authorized and required to send written questions to the respondent regarding the subjects charged. The respondent is required to answer the written questions and the TEC will penalize the respondent if they refuse to answer. Under Commission Rule §12.33, the TEC has granted itself the authority to sanction a respondent for failure to comply with a Commission order.<sup>4</sup> There is no exception for charges which are simultaneously subject to criminal prosecution, such as TEX. ELEC. CODE § 255.006.

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<sup>3</sup> Oddly, TEX. GOV'T CODE § 571.124(b) requires a super-majority vote of the Commission (six of eight commissioners) to initiate an investigation on its own initiative. So, a single complainant with an axe to grind against their political opponent has more power to initiate the power of government to prosecute violations of speech regulations than the commissioners.

<sup>4</sup> See, e.g. Exhibit F, Final Order In the Matter of Darnella Wilkerson Before the Texas Ethics Commission SC-32107157 (February 23, 2023). In this matter, the TEC assessed \$17,500 civil penalty against the treasurer of the African American Caucus, a PAC which was an "break-off" of the "Texas Coalition of Black Democrats-Harris County" that reported \$3,458.60 in political expenditures without disclosing the source of the funds. The TEC imposed a \$15,000 civil penalty upon Wilkerson as a "default judgment" for failing to appear at her preliminary review hearing

32. The TEC unilaterally controls the flow of the sworn complaint process and there are few safeguards ensuring the process ever ends. While TEX. GOV'T CODE § 571.1242(g) appears to set a 120-day deadline for the TEC to at least propose an agreement to settle the complaint, the TEC has adopted rules effectively allowing it to avoid compliance even with that requirement. The Commission has granted itself authority under Commission Rule 12.83(b) to toll the deadline of the case until the Commission receives a response to its written questions. In practice, the Commission treats objections to the written questions as a refusal to answer the questions, extending the deadline. Under Commission Rule § 12.83(c), the TEC has also granted itself authority to indefinitely delay the 120-day settlement proposal deadline if the Commission issues a subpoena and the respondent resists.

33. After receiving the respondent's answers to the written questions (or when it feels like it), the TEC will schedule a preliminary review hearing. That hearing is always conducted in Austin, behind closed doors, in the basement of the Capitol. On information and belief, the TEC always calls the respondent as a witness at the preliminary review hearing. This is done even with regard to enforcement of statutes that authorize simultaneous criminal prosecution, such as TEX. ELEC. CODE § 255.006.

34. If the respondent invokes their right against self-incrimination and/or otherwise refuses to answer questions or testify, the TEC, holding that the sworn complaint process is governed by civil procedure, asserts that it may make a finding against the respondent on account of the

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after she informed the Commission she “had no means of transportation to appear.” The TEC added a \$2,500 penalty because Wilkerson failed to respond to the Commission's written questions.

respondent's failure or refusal to testify. For example, In the Matter of Michael Quinn Sullivan, the TEC noted that Sullivan's refusal to answer its questions "permitted the Commission to draw inferences adverse to Mr. Sullivan that supported the allegations of the sworn complaints." Exhibit G, Final Order In the Matter of Michael Quinn Sullivan, Before the Texas Ethics Commission SC-3120487 and SC-3120488 at 8 (July 21, 2014).<sup>5</sup> The Commission went on to explain its requirements that the accused cooperate in its proceedings, saying:

"If every participant in an administrative proceeding could simply refuse to participate in any meaningful way, the entire sworn complaint process would fail its statutory purpose. The Commission does not and will not tolerate such dilatory tactics. . . . Mr. Sullivan's refusal to cooperate only bolsters the case against him."

*Id.*

35. Accordingly, because the standard of proof is a preponderance of evidence, a respondent who refuses to put on evidence in their defense during the sworn complaint process will always be found to be in violation of the laws charged by the TEC.<sup>6</sup>

36. During the TEC's administrative enforcement process, the respondent, if the enforcement involves a criminal statute, as it often does, remains at risk of separate criminal prosecution by state and local prosecutors.

37. On information and belief, at the preliminary review hearing stage, respondents are expected to attempt to settle the case with the Commission, often for a penalty in the \$500 to

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<sup>5</sup> The Sullivan matter involved an alleged violation of the state's lobbyist registration and licensure statute, violation of which was simultaneously subject to civil/administrative enforcement by the TEC and subject to criminal penalties. *See* Tex. Gov't Code § 305.031(a).

<sup>6</sup> Thus a TEC respondent must choose between resisting the administrative action and following Justice Jackson's admonition that, "Any lawyer worth his salt will tell the suspect, in no uncertain terms, to make no statement to the police under any circumstances." This advice seemingly should apply to the speech police too.

\$1,000 range. Those who resist the prosecution, and assert defenses or challenge the Commission's authority, are treated with scorn and are punished for refusing to cooperate, facing much larger final penalties in the \$5,000 to \$10,000 range. *See, e.g.* Final Order In the Matter of Michael Quinn Sullivan. Accordingly, very few TEC complaints ever see the light of day, as the practical advice would be to simply pay off the TEC rather than spend an exponentially larger sum on legal fees to resist.<sup>7</sup>

38. Even if the commissioners at the preliminary review hearing are unsure whether the evidence supports the finding of a violation of law, and especially if the commissioners find a violation, the TEC may vote to proceed to a formal hearing. At a formal hearing, the preliminary review hearing process is essentially repeated, except this time in a hearing in Austin that is open to the public. The TEC may hold one or more prehearing conferences or other hearings between the preliminary review hearing and formal hearing at which the TEC may vote to issue subpoenas to the respondent and others. Through this pre-hearing/discovery process, the TEC may indefinitely delay scheduling the formal hearing.

39. Once the TEC holds a formal hearing, it is required to issue a final order within 60 days. The TEC may find the respondent has violated state law and impose a civil penalty, which in certain cases is only limited by the "amount in controversy" which is not clearly defined but in one

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<sup>7</sup> In fact, during the Sullivan proceedings, former TEC Commissioner Tom Ramsay openly quipped, "I don't understand why he won't just pay us \$500 to make it all go away."

recent TEC Final Order was held to total \$453,499.29 and in any case may be at least \$5,000 per violation.<sup>8</sup>

40. A “Final Order” becomes truly final unless the respondent files a civil lawsuit within 30 business days in state district court. Although TEX. GOV’T CODE 571.133 provides that such review is by trial de novo, the respondent is forced to proceed in the appeal as a plaintiff. The TEC takes the position that it is not required to file a petition or otherwise plead or prosecute its charges against the respondent. As the plaintiff in the appeal, the respondent is denied many of the procedural protections that would typically be afforded to a defendant. The TEC has never obtained a non-settlement final judgment against a respondent in the appeal process, though several of the appeals have dragged on for years, in the case of Michael Quinn Sullivan, more than a decade.

41. Throughout its administrative process, and both at the preliminary review hearing and formal hearing stage, the TEC refuses to hear constitutional arguments from the respondent.<sup>9</sup> Commission staff have stated that such arguments may only be brought up later, once the case reaches appeal, if ever. One commissioner has even stated that the Commission is “not required to call constitutional balls and strikes” and that the Commission is not required to read binding state court of appeals opinions relevant to the Commission’s administrative enforcement action.

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<sup>8</sup> See, e.g., Exhibit H, Final Order In the Matter of Eric Dick Before the Texas Ethics Commission, SC-32203126 at 8 (September 29, 2023) (recounting the Commission’s prior \$30,000 penalty against Dick, imposing a \$10,000 penalty against Dick, and claiming the “maximum civil penalty the Commission may impose in this case is \$453,499.29.”).

<sup>9</sup> See, e.g. Exhibit G, Final Order In the Matter of Michael Quinn Sullivan, Before the Texas Ethics Commission SC-3120487 and SC-3120488 (July 21, 2014). at 5-6 (responding to Sullivan’s arguments the state lobby law was unconstitutional that “[t]he Commission **cannot** and will not unilaterally refuse to enforce the lobbyist registration statute.”) (emphasis added).

**The TEC Admits That Its Sworn Complaint Process is Abusive.**

42. According to the TEC's recently filed self-evaluation report, submitted to the Texas Sunset Advisory Commission:

- Since 2018, the TEC has accepted jurisdiction over 649 complaints against Texans. Of these, only six have made it to the formal hearing stage.
- The TEC has never ruled against itself in any of those six formal hearings.
- Only two of the complaints were appealed to a district court. One settled and the other is still pending.
- During that time, the largest time the TEC's administrative process (not including appeals to district or appellate courts) lasted was up to 856 days from the TEC's acceptance of jurisdiction to dismissal or a final order.<sup>10</sup>

43. The TEC's leadership has admitted the agency regularly punishes those who attempt to comply with their regulations. Speaking to the Texas Tribune, former TEC Chairman Jim Clancy admitted:

[T]hose people who come to us, who try to disclose, are typically the ones who are fined. People who don't report, who ignore the disclosure system, those folks are rarely involved. . . . [T]here's a feeling that **those people who try to comply are punished for doing so.**<sup>11</sup>

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<sup>10</sup> Texas Ethics Commission, Self-Evaluation Report to the Sunset Advisory Commission at 38-41 (2023), available at <https://www.sunset.texas.gov/public/uploads/2023-09/Sunset%20Self-Evaluation%20Report-FINAL.pdf>.

<sup>11</sup> Emily Ramshaw, *Jim Clancy and Paul Hobby: The TT Interview*, The Texas Tribune, February 5, 2013, <https://www.texastribune.org/2013/02/05/jim-clancy-and-paul-hobby-tt-interview/> (emphasis added).



44. Echoing these observations, Paul Hobby, another former TEC Chairman, admitted the TEC’s administrative hearings have a profound chilling effect on citizen participation:

You ought to see these people who leave our meetings in tears, **these sweet, simple** people who missed a box, missed a deadline. They get a letter [from the Ethics Commission] and they can’t sleep at night, they hire a lawyer they can’t afford. There’s no moral sanction here, they’re not convicted felons. But **these people swear, they promise, “I’ll never participate in the process again.”**<sup>12</sup>

45. The TEC has acknowledged the abuse of this rigged process through misleading campaign communications stating that individuals are “under investigation by the Ethics Commission.”<sup>13</sup>

46. Plaintiff LIA Network doesn’t want to spend 10 years trying to vindicate its First Amendment right not to have to say “for” on a voter guide talking about small town political races. It is asking this Court for protection and relief.

### Count I

#### 42 U.S.C. §§ 1983

#### TEX. ELEC. CODE § 255.006 is Unconstitutional Facially and/or as Applied to LIA Network

47. LIA Network repeats and realleges each of the foregoing allegations in this Original Complaint as if fully set forth herein.

48. Plaintiff brings this action pursuant to 42 U.S.C. § 1983. In order to prevail on a claim under § 1983, Plaintiff must show that Defendants acted under color of state law, and Defendants’ acts deprived Plaintiff of its rights under the laws of the United States.

49. LIA Network’s desired statements—the distribution of voter guides regarding candidates and the offices they are seeking—is unquestionably speech protected by the First Amendment.

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<sup>12</sup>*Id* (emphasis added).

<sup>13</sup> Resolution, Texas Ethics Commission, December 3, 2013, [https://www.ethics.state.tx.us/data/enforcement/sworn\\_complaints/RESOLUTION.pdf](https://www.ethics.state.tx.us/data/enforcement/sworn_complaints/RESOLUTION.pdf)

However, in fear of further prosecution, LIA Network has been compelled to add the term “for” to its statements about candidates and the offices they seek out of fear of legal harassment.

50. In enforcing Tex. Elec. Code § 255.006, the Texas Ethics Commission is acting under color of state law.

51. Application of TEX. ELEC. CODE § 255.006 to LIA Network’s speech, as complained-of in Sworn Complaint SC-32211435, violates its First Amendment right to free speech. The statute is a content-based restriction on speech which compels speakers to add the word “for” to their discussion of non-incumbent candidates and the offices they are seeking, regardless of context. There is no compelling governmental interest in applying these laws to LIA Network’s voter guides, nor is TEX. ELEC. CODE § 255.006 narrowly tailored to achieve a compelling governmental interest.

52. Accordingly, LIA Network seeks nominal damages and preliminary and permanent injunctive relief pursuant to 42 U.S.C. § 1983 against the Defendants to prevent them from enforcing TEX. ELEC. CODE § 255.006 generally, because it is facially unconstitutional, and as applied to LIA Network on account of its past and future publication of voter guides. The enforcement of TEX. ELEC. CODE § 255.006 is causing and will continue to cause LIA Network to suffer substantial and irreparable harm in violation of its First Amendment rights because LIA Network is forced to refrain from speaking in the manner it otherwise would, and is required to add speech to its publications for no reason.

53. Additionally, LIA Network is entitled to attorneys’ fees and costs pursuant to 42 U.S.C. § 1988.

**Count II**  
**42 U.S.C. §§ 1983; 22 U.S.C. § 2201**  
**TEC Enforcement Procedures Are Unconstitutional under the 1st and 14th Amendments**  
**Both Facially and as Applied to LIA Network**

54. LIA Network repeats and realleges each of the foregoing allegations in this Original Complaint as if fully set forth herein.

55. Plaintiff brings this action pursuant to 42 U.S.C. § 1983. In order to prevail on a claim under § 1983, Plaintiff must show that Defendants acted under color of state law, and Defendants' acts deprived Plaintiff of its rights under the laws of the United States.

56. The Texas Ethics Commission's sworn complaint enforcement procedures, described in TEX. GOV'T CODE Chapter 571 Subchapter E, and further as alleged in this Complaint, are totally deficient with regard to the enforcement of TEX. ELEC. CODE § 255.006 and with regard to the enforcement of Title 15 of the Election Code generally against independent political speakers such as LIA Network. Title 15 of the Election Code proscribes and compels certain speech by independent citizens and citizen groups, in the context of political campaigns. Together with provisions of the Government Code, Title 15 is enforceable simultaneously in civil, administrative, and criminal proceedings. This deficient enforcement procedure, when applied to independent political speakers like LIA Network, violates the First and Fourteenth Amendments.

57. Because of the nature of the TEC's constitutionally deficient procedures, LIA Network's political opponents are free to subject the organization to an endless barrage of harassing complaints nitpicking their compliance with Title 15's speech disclaimer and disclosure requirements. Because the TEC takes the stance that it has no prosecutorial discretion, this puts LIA Network's political opponents in the driver's seat to initiate TEC enforcement actions at will, using TEC resources, merely by accusing LIA Network of actions which "if true" would constitute

a violation of Title 15. LIA Network reasonably fears it will be subjected to future enforcement, not only on account of the requirements of TEX. ELEC. CODE § 255.006, but also other disclaimer and reporting requirements in Title 15 that apply to independent political speakers like LIA Network.

58. Subjecting LIA Network to the TEC's administrative procedures under Chapter 571, Subchapter E, on account of their First-Amendment-protected speech violates the organization's First Amendment rights and right to due process as protected by the Fourteenth Amendment. The TEC's administrative procedures are biased, unfair, and potentially never-ending. The process abuses respondents' due process rights by using their silence and opposition against them, in the shadow of potential criminal prosecution.

59. Accordingly, LIA Network seeks declaratory relief pursuant to Section 22 U.S.C. § 2201 declaring the use of the TEX. GOV'T CODE Chapter 571, Subchapter E sworn complaint process to enforce Title 15 of the Election Code, including TEX. ELEC. CODE § 255.006, against independent political speakers such as LIA Network is facially unconstitutional, or unconstitutional as applied to LIA Network and its voter guide activities.

60. LIA Network also seeks nominal damages and preliminary and permanent injunctive relief pursuant to 42 U.S.C. § 1983 against the Defendants to prohibit the TEC from using the TEX. GOV'T CODE Chapter 571, Subchapter E sworn complaint process to enforce Title 15 of the Election Code, including TEX. ELEC. CODE § 255.006, against independent political speakers such as LIA Network on the grounds that such procedures are unconstitutional both facially and as-applied to LIA Network's voter guide activities.

61. Likewise, Subjecting LIA Network to the TEX. GOV'T CODE Chapter 571, Subchapter E sworn complaint process with regard to Sworn Complaint SC-32404297 is causing and will

continue to cause LIA Network to suffer substantial and irreparable harm in violation of its First Amendment Rights and Fourteenth Amendment due process rights. Accordingly, LIA Network seeks nominal damages and preliminary and permanent injunctive relief pursuant to 42 U.S.C. § 1983 against the Defendants to prohibit them from conducting further enforcement proceedings on Sworn Complaint SC-32211435.

62. The TEC's constitutionally deficient procedures were adopted and are enforced under color of state law and have caused the deprivation of LIA Network's due process rights.

63. Additionally, LIA Network is entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

#### **Bench Trial Requested**

64. Plaintiffs request a bench trial on all matters submitted to a trier of fact.

#### **Prayer for Relief**

65. Plaintiff LIA Network respectfully requests this Court enter judgment in its favor and against Defendants and provide the following relief:

- A. Preliminary and permanent injunctive relief pursuant to 42 U.S.C. § 1983 against Defendants' further enforcement of TEX. ELEC. CODE §255.006, generally on account of the statute being facially unconstitutional, or in the alternative, as applied to LIA Network's future publication of voter guides;
- B. Declaratory relief pursuant to 22 U.S.C. § 2201 declaring that the TEC's sworn complaint enforcement procedures under TEX. GOV'T CODE Chapter 571, Subchapter E, are facially unconstitutional or, in the alternative, unconstitutional as-applied to complaints regarding LIA Network's publication of voter guides;

- C. Preliminary and permanent injunctive relief pursuant to 42 U.S.C. § 1983 against the initiation of additional enforcement actions using the TEX. GOV'T CODE Chapter 571, Subchapter E sworn complaint process to enforce Title 15 of the Election Code, generally because the sworn complaint process is facially unconstitutional, or as applied to LIA Network's future publication of voter guides;
- D. Preliminary and permanent injunctive relief pursuant to 42 U.S.C. § 1983 against further enforcement proceedings on Sworn Complaint SC-32211435;
- E. Award LIA Network nominal damages of \$1;
- F. LIA Network's reasonable costs and expenses of this action, including attorneys' fees, in accordance with 42 U.S.C. § 1988 and all other applicable laws; and
- G. Any and all other further relief to which LIA Network may be justly entitled.

Respectfully submitted,

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