

No. 14-26-00443-CV

**IN THE FOURTEENTH COURT OF APPEALS
AT HOUSTON, TEXAS**

**TERRI LEO WILSON,
*Appellant,***

v.

**BARBERS HILL INDEPENDENT SCHOOL DISTRICT
EDUCATION FOUNDATION,
*Appellee.***

On Appeal from the 344th Judicial District Court
Chambers County, Texas, Cause No. 26DCV0142
Honorable Randy McDonald, presiding

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ORAL ARGUMENT REQUESTED

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STATEMENT OF THE CASE

Nature of the Case: This is an appeal from a trial court's denial of a Texas Citizens Participation Act ("TCPA") motion to dismiss.

Trial Court 344th District Court for Chambers County, Texas; Cause No. 26DCV0142; Hon. Randy McDonald, presiding.

Trial Court Proceedings: During a primary for a Texas House of Representatives seat, the incumbent representative shared a news article addressing her primary opponent. CR7. In the article, she was quoted about her opponent's motivations for running for office and noted his lobbying interests and desire "to promote his business." See CR48.

A non-profit the opponent volunteered for brought defamation and business disparagement claims for the incumbent's quote. CR4-5. The non-profit nonsuited its claims against the incumbent just days after she filed her motion to dismiss. CR77-79.

The trial court placed the TCPA step two burden on the movant, despite the statute's unambiguous language placing the burden on the non-movant. RR38.

Trial Court Disposition: The trial court denied the TCPA motion, despite concluding that "it may not be a good lawsuit." RR80; RR86.

STATEMENT REGARDING ORAL ARGUMENT

Representative Wilson requests oral argument because this appeal involves critical issues of defamation law in the context of social media and elections, and undersigned counsel is an appellate lawyer seeking an oral argument opportunity to qualify for the civil appellate Board Certification exam.

ISSUES PRESENTED

1. The second step of the TCPA motion to dismiss analysis requires the non-movant to present clear and specific evidence of each essential element of its claim. Here, the trial court flipped the burden by requiring the movant to prove that the claim is frivolous. Did the trial court err in applying the wrong standard?

2. A defamation plaintiff must show that the defendant's speech was not non-actionable opinion or rhetorical hyperbole and produce clear and specific evidence that the defendant acted with the requisite fault and made statements that damaged the plaintiff. Did the trial court err in declining to analyze the context of the statement at issue was non-actionable opinion used in a heated election and that the non-movant produced no evidence of actual malice or damages?

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INTRODUCTION

This case involves the First Amendment rights of political candidates speaking on public issues, including the spending of funds earmarked for public schooling and motivations of opposing candidates seeking public office. Texas courts have routinely held that elections yield greater First Amendment protections for candidates' advocacy because voters do not adopt everything said in an election as statements of fact.

The trial court ignored settled precedent and the TCPA's own burden-shifting framework and required Representative Wilson to prove the frivolity of the plaintiff's claims. RR38; RR74. This Court should reverse the trial court's denial of Representative Wilson's TCPA motion to dismiss and remand for consideration of attorneys' fees for three reasons.

First, the trial court applied the wrong standard and only examined one of the four necessary elements of the non-movant's defamation and business disparagement claims. It required the movant to prove the claims were frivolous instead of examining whether the non-movant had adduced sufficient evidence on each material element of its claims. *See* RR38.

Second, the trial court failed to examine the alleged defamatory statements in their full context in a published article addressing the backgrounds and motives of two primary election opponents. RR44. Looking

at the context as required by Texas Supreme Court jurisprudence, the statements are non-actionable opinion or rhetorical hyperbole that cannot support a defamation action.

Third, the record lacks any evidence that Representative Wilson acted with actual malice, or knowledge of or a reckless disregard of the possibility that any objective, reasonable reader would interpret her speech about her political opponent's motivations to run for office as an accusation of illegal conduct.

STATEMENT OF FACTS

I. Representative Wilson and her primary challenger begin a heated primary for Representative Wilson’s seat in the Texas Legislature.

Representative Terri Leo Wilson (“Representative Wilson”) is a two-term member of the Texas House of Representatives for District 23, a district that includes Galveston, Anahuac, and Mont Belvieu. *See* CR103; CR115. The Barbers Hill Education Foundation (the “Foundation”) is a “non-profit” organization chartered to support the teachers of the Barbers Hill Independent School District (the “School District”). CR101-02. The Foundation is the largest education fund in the United States—it manages over \$175 million in assets under its management. CR117.

Despite the impressive stature of its portfolio, it only contributed \$106,240 in grants for the 2023-2024 fiscal year. CR20. Notably, the School District contributed millions of dollars to the privately managed fund each fiscal year. *See* CR147. Multiple elected officials in District 23 have commented on the disparity between the Foundation’s assets and the small grants it issued to fulfill its mission. *Id.*

One of the Foundation’s Directors, Nathan Watkins (“Watkins”), announced that he would run against Representative Wilson in the March 2026 primary for District 23. CR103; CR114-15. In addition to serving as a

Director, Watkins is also vice president of a real estate development group, Americus Holdings (“Americus”). CR115.

During his campaign, Watkins and his supporters attacked Representative Wilson’s voting record—accusing her of opposing property tax relief. CR115-17. Local and state news media uncovered and reported that the Foundation—an “organization designed to help educators” and students in Barbers Hill—partnered with Americus to develop a luxury apartment complex and purchased other real property valued at over \$6 million from Americus. *See* CR116.

Starting in January 2026, media outlets, former elected officials, candidates for office, and policy groups across the state inquired about the legality of the transactions and publicly questioned the Foundation’s fundraising and investing strategies and the comparatively low distributions to public schools. *See* CR147-48. Nearly half a dozen news agencies published articles about the Foundation’s financial conditions. *Id.*

In an interview for an article in *The Texan* (published January 29, 2026), Representative Wilson opined on “the reason[s] Watkins is running” against her, stating that: “I think based on what I have discovered between the ISD and the [E]ducation [F]oundation and [Watkins’s] directorship that he is running to make legal what may be illegal.” CR118. On February 2,

2026, Representative Wilson shared the article on her personal Facebook account, with the quote excerpted above the link to the article and its cover photo. CR105.

In the body of the article, Representative Wilson’s comments on her opponent continued, stating that Watkins misled voters about her voting record in the Texas House of Representatives, abandoning his attack ads and fliers “after learning [her votes tracked] Republican Party platform issues.” CR118. Representative Wilson closed that his “mischaracterizations of my votes are disingenuous,” but that attacks on things she’s actually done was “fair game” in an election. *Id.*

In the article, Watkins responded to criticism about the Americus transactions as merely “campaign rhetoric.” CR20; CR117. Watkins and Representative Wilson attended several debates and campaign forums in the primary election, each of them heated. *See* RR43-44 (noting it was “a battle of an election”).

The article also noted that Watkins was backed aggressively by his private employer Americus and other members of the Foundation, including Dr. Greg Poole. CR115. Americus ran a political action committee that donated over \$125,000 to Watkins’s campaign. *Id.*

The Foundation sent Representative Wilson a cease-and-desist letter a few days later. CR23-24. The Foundation asserted that “[t]he housing development that is the subject of [Representative Wilson’s] post” helps provide housing for school district employees. CR23. Strangely, neither her Facebook post nor the statement in *The Texan* article reference the housing development. *See* CR17-21.

Representative Wilson defeated Watkins in the primary. *See* RR44.

II. The Foundation sues Representative Wilson to support its own director’s bid for the same State House seat, but non-suits after a TCPA motion to dismiss is filed.

On February 11, 2026, in the midst of the election, the Foundation sued Representative Wilson for defamation and business disparagement. CR4-13. The Foundation also sought a temporary restraining order preventing her from speaking about any issues related to the Foundation’s management of finances. *See* CR28-30 (Foundation’s Proposed Temporary Restraining Order). Watkins did not sue Representative Wilson. *See* CR4 (Plaintiff’s Verified Original Petition).

Representative Wilson responded to the petition and filed a motion to dismiss under the TCPA on February 19, 2026. *See* CR53-56 (Response to Request for Temporary Restraining Order); CR57-71 (TCPA Motion to Dismiss).

The Foundation nonsuited its claims a few days after Representative Wilson filed her motion to dismiss. CR77-78. In a response it filed over a month later, the Foundation conceded that the TCPA applied. CR86; CR143.

Trying to meet its burden under step two of the TCPA analysis, the Foundation cited the following evidence to support its defamation and business disparagement claims: *The Texan* article and three affidavits from sitting Foundation Directors. *See* CR87. The article was titled “Heated GOP Primary for Southeast Texas House District Draws Scrutiny Over Public School Education Foundation Spending.” *See* CR7.

The Foundation argued that only one statement Representative Wilson made was a possible false and defamatory statement of fact: “I think based on what I have discovered between the ISD and the education foundation and [Watkins’s] directorship (of the education foundation) that he is running to make legal what may be illegal.” CR88.

III. After misapplying the TCPA standard, the trial court denies Representative Wilson’s motion to dismiss.

On April 7, 2026, the trial court held an oral hearing on Representative Wilson’s motion to dismiss. RR1. During the hearing, the trial court addressed only one element of the Foundation’s claim—whether there is a statement of fact capable of defamatory meaning. RR84-85. The trial court believed that “[t]he right thing to do is put this case to bed and not let it have

anything to do with precedent” involving the TCPA in the context of elections. *See* RR87. It concluded that—under a Rule 166a standard—a possible juror could find the alleged statement at issue defamatory. RR79-80.

The trial court clarified that its analysis examined only the specific alleged defamatory statement. RR44 (asking if a reader “when presented with that statement, [would find] it was defamatory?”). The Court declined to analyze the alleged statements in the context of the election or *The Texan* article. RR79-80. Specifically, it held “up front in ruling on this,” that “none of [the election context] matters.” RR44.

The trial court also expressed the opinion that “everything [Representative Wilson had] said with regard to this [TCPA] action has been correct” and that it “would like to see [Representative Wilson] compensated for the attorney’s fees.” RR83; *see also* RR81 (expressing desire for counsel to settle the issue out of court). Nonetheless, the trial court denied the motion and signed its order denying the motion to dismiss on April 13, 2026. RR86 (ruling from the bench); CR157 (signed order).

SUMMARY OF THE ARGUMENT

This Court should reverse and remand because the trial court committed multiple errors in denying Representative Wilson's TCPA motion to dismiss. First, the court abandoned the TCPA's burden shifting framework by placing the burden on the movant to prove the claim was frivolous, rather than requiring the non-movant to present clear and specific evidence of each essential element.

It then applied a Rule 166a summary-judgment standard and ignored binding precedent requiring it to decide the purely legal question whether the challenged statement was non-actionable opinion.

Although the standards use similar language, they impose distinct burdens on the non-movant. Under the TCPA's burden-shifting framework, the Foundation failed to present clear and specific, non-conclusory evidence that Representative Wilson acted with actual malice or that it suffered damages from the challenged statement. Because the statement was not actionable as a matter of law, and because the Foundation failed to produce non-conclusory evidence of damages or of serious doubts about the truth of the alleged implication, this Court should reverse and remand for consideration of fees.

ARGUMENT

The Texas Constitution affords each person the “liberty to speak, write or publish [her] opinions on any subject.” TEX. CONST. art. I, § 8. The TCPA protects citizens from “retaliatory lawsuits that seek to intimidate or silence them on matters of public concern.” *In re Lipsky*, 460 S.W.3d 579, 586 (Tex. 2015) (orig. proceeding).

Courts analyze motions to dismiss under the TCPA using a three-step burden-shifting framework. At issue here is the second step, where the non-movant must show clear and specific evidence on each essential element of his claim. TEX. CIV. PRAC. & REM. CODE § 27.005(c).

But the trial court abandoned this framework by (a) placing the burden on the movant to show that the claim was frivolous and (b) applying a Rule 166a standard without regard to the legal sufficiency of the Foundation’s proffer. *See infra* Part II; RR38; RR79-80.

The Foundation got exactly what it wanted—Representative Wilson’s silence on vital issues of spending money earmarked for funding for public schools on private enterprise—without establishing: (a) the quote from Representative Wilson was not opinion nor the caustic, hyperbolic rhetoric in elections non-actionable under defamation law; (b) she acted with actual

malice; or (c) it sustained any damages from an alleged statement. *See infra* Part III.

I. The TCPA applies because the claims involve Representative Wilson’s protected speech on matters of public concern.

The TCPA applies to lawsuits “based on or [made] in response to” a party’s exercise of free speech rights. TEX. CIV. PRAC. & REM. CODE § 27.003(a). It defines the exercise of free speech as “a communication made in connection with a matter of public concern.” TEX. CIV. PRAC. & REM. CODE § 27.001(3). A communication relates to a matter of public concern if it discusses:

- (1) a *public figure or limited-purpose public figure*,
- (2) a matter of political, *social, or other interest* to the community, or
- (3) a subject of concern to the public.

See id. § 27.001(7)(A)-(C) (emphasis added).

Representative Wilson’s speech incorporated all three categories—she shared her opinion relating to a public figure and official, discussed news media publications and think-tank reports on private and public funds for education, and critiqued the political lobbying interests supporting “her [primary] opponent’s motivation for running for office.” RR41; *see also Szymonek v. Guzman*, 641 S.W.3d 553, 565 (Tex. App.—Austin 2022, pet.

denied) (holding that TCPA applies to statements addressing any topic with “public relevance beyond the interest of the parties”).

The Foundation did “not contest that [Representative Wilson’s] statements were made in the exercise of [her] right to engage in free speech.” CR143; *see also* RR7-8. The TCPA applies because the statements at issue were made during a heated primary election about the use of funds earmarked to benefit public school children and teachers in District 23. *See* § 27.001(7).

II. The trial court misapplied the TCPA standard.

The second step of the TCPA standard requires the non-movant to establish a prima facie case by clear and specific evidence. *Walgreens v. McKenzie*, 713 S.W.3d 394, 402 (Tex. 2025) (citing TEX. CIV. PRAC. & REM. CODE § 27.005(c)). Failure to meet this standard with respect to just one element of a claim requires dismissal. *See Hersh v. Tatum*, 526 S.W.3d 462, 468 (Tex. 2017). The TCPA motion to dismiss standard is different from the summary judgment standard. *See Lipsky*, 460 S.W.3d at 589-91.

The trial court declined to address the Foundation’s lack of evidence on damages and actual malice because it tasked Representative Wilson with proving that the lawsuit was frivolous. *See* RR38. It limited its analysis to whether the statement was capable of defamatory meaning. *See* RR44.

The trial court then applied the summary judgment standard instead. *See* RR39-40 (asking Representative Wilson to apply a summary judgment standard to its motion). Even worse, it also refused to evaluate the statement and its context of a political primary because it believed that it was a different standard. RR44; RR79-80. The trial court explicitly stated that it would not “go to that standard of the lawsuit” discussed in the “*O’Rourke* decision,” but instead “go to whether the lawsuit filed has any reasonable ability under 166a under the summary judgment standard.” RR79-80.

But *O’Rourke v. Warren* was an appeal of a TCPA motion to dismiss dealing with the second step of the analysis. 673 S.W.3d 671, 690-91 (Tex. App.—Austin 2023, pet. denied) (reversing and holding that the trial court should have granted the TCPA motion to dismiss the defamation claim because the statements were non-actionable opinions) (citing TEX. CIV. PRAC. & REM. CODE § 27.005(c)). This is the standard the trial court should have applied.

Had the trial court applied the appropriate standard, it would have dismissed this action because the challenged statement is not an actionable statement of fact and the Foundation failed to produce clear and specific evidence of the requisite fault or damages.

III. The Foundation failed to establish a prima facie case for its defamation claims with clear and specific evidence.

A viable defamation claim requires that: (1) the defendant published a false statement of fact to a third party, (2) the false statement was defamatory and made of and concerning the plaintiff, (3) the defendant had the requisite degree of fault, and (4) the plaintiff was damaged by the publication. *See Lipsky*, 460 S.W.3d at 593 (citing *WFAA-TV, Inc. v. McLemore*, 978 S.W.2d 568, 571 (Tex. 1998)).

First, the record demonstrates Representative Wilson provided an opinion based on her primary opponent’s motivations to run for office—not a false statement of fact. *Infra* Part III.a. Second, the Foundation has not adduced clear and specific evidence that Representative Wilson acted with actual malice because it is a limited-purpose public figure. *Infra* Part III.b. Third, the Foundation’s affidavits are incompetent evidence of damages caused by any alleged defamatory statement. *Infra* Part III.c.

a. The trial court erred by declining to analyze whether Representative Wilson’s statement is a non-actionable statement of opinion as a matter of law.

Texas law distinguishes between actionable verifiable statements of fact and nonactionable opinions, inferences, or statements of rhetorical hyperbole. *See Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 639-40 (Tex. 2018). A statement is an opinion if it is “an indefinite or ambiguous individual judgment that rests solely in the eye of the beholder or is otherwise

a loose and figurative term.” *Palestine Herald-Press Co. v. Zimmer*, 257 S.W.3d 504, 511 (Tex. App.—Tyler 2008, pet. denied).

“Whether a statement is an opinion is a question of law.” *Tatum*, 554 S.W.3d at 639. Courts must “interpret the statement in light of the surrounding circumstances based on how a reasonable person would perceive the publication in its entirety.” *Benson v. Guerrero*, 702 S.W.3d 775, 788 (Tex. App.—Houston [1st Dist.] 2024, no pet.) (citations omitted). A reasonable person would base their understanding off of the “entirety of the communication, not from isolated statements.” *Lilith Fund for Reproductive Equity v. Dickson*, 662 S.W.3d 355, 363 (Tex. 2023) (citation omitted).

Applying the appropriate standard to the statement at issue here leads to one result: non-actionable opinion criticizing a political opponent in a heated primary election. *See* CR8; RR43-44. The trial court’s decision to ignore the statement’s context and its failure to analyze whether the statement was an opinion rather than a statement of fact require reversal under the TCPA’s clear and specific evidence standard. *See* RR54.

i. The statement’s context demonstrates it is an opinion because it was a loose or figurative critique of a political opponent.

An opinion does not become an actionable statement of fact based on a person’s subjective reading of “a sentence or two out of context” because

“that person is not an objectively reasonable reader.” *See New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 159 (Tex. 2004) (citing *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 583 (1994)). A reasonable reader reads the entirety of a communication and is aware of “relevant contemporary events” and the “speaker’s method and style of dissemination.” *Lilith Fund*, 662 S.W.3d at 363-64.

In *O’Rourke v. Warren*, the Austin Court of Appeals held that a gubernatorial candidate’s statements “equat[ing] [an energy executive]’s political donations to Governor Greg Abbott with crimes” of bribery and corruption were not defamatory statements of fact. 673 S.W.3d at 673. There, candidate O’Rourke made multiple statements implying that an energy executive’s donations to Governor Abbott’s campaigns were bribes or payoff schemes to avoid liability or investigation for profiting off of a natural disaster. *See id.* at 673-75.

The Austin Court began by noting that a reasonable reader would understand that the Texas electrical grid and Winter Storm Uri were major issues discussed in the 2022 Texas gubernatorial campaign between O’Rourke and incumbent Governor Abbott. *Id.* The court concluded that because others opined on the ongoing debate about Texas’s electrical grid failures and that the statements were made during a political campaign “clue

the reader that O'Rourke's purpose 'is advocacy, not the dissemination of facts.'" *Id.* at 686 (citing *Lilith Fund*, 662 S.W.3d at 367). The court then concluded that reasonable readers know that "claims about a political opponent being corrupt or being beholden to campaign contributors or special interests are just the type of 'rhetorical hyperbole' that is commonplace and expected during contentious political campaigns." *Id.* at 686-87 (footnotes omitted) (citing *Backes v. Misko*, 486 S.W.3d 7, 26 (Tex. App.—Dallas 2015, pet. denied)).

O'Rourke demonstrates that Representative Wilson's statement at issue is opinion or rhetorical hyperbole and not a dissemination of fact. The immediate context of Representative Wilson's statement is Watkins's desire to run against her. CR48. The sentence before the alleged statement of fact is: "[Representative] Wilson said she thinks that *part* of the reason Watkins is running is to address concerns about [the Foundation]." *Id.*

The Texan article first publishing the alleged statement reveals that both Watkins and Representative Wilson were attacking each other's "resumes" during a political primary. *See* CR45-47. Watkins's supporters ran ad campaigns attacking Representative Wilson's records and the interests she served in the state legislature. *See* CR45-46 (describing mailer campaign incorrectly asserting that Representative Wilson opposed measures or

stances of the Texas Republican party platform months before the alleged statement was made). Representative Wilson responded by articulating her subjective perception that Watkins ran to promote his business and lobby for gains in that arena—based in part on Watkins’s own messaging to voters. CR21. Watkins himself told voters that he ran “against [Representative Wilson] to promote his business.” *See id.*

A reasonable reader would be informed by the discourse surrounding the Foundation’s endowment size, suspect real estate deals, and limited disbursements. CR21; CR7-8. They would also be aware of the other figures and reports questioning the legality of the Foundation’s investments from the other sources saying so in *The Texan* article. *See* CR20. Representative Wilson’s own Facebook post sharing *The Texan* article includes the quotes from the article’s author criticizing the Foundation’s operations:



See CR8.

The author of the article noted that there were multiple “allegations concerning” both Representative Wilson and Watkins. *Id.* For instance, the article quotes a former county auditor and his prior statements that he believed the Foundation’s arrangement of its asset transfers “may allow the [Foundation] to invest funds in ways the [school district] may not under the state’s Public Funds Investment Act.” CR20. Thus, no reasonable reader would perceive her statement as a statement of fact rather than a position of advocacy.

ii. The First Amendment’s heightened protections for political campaign rhetoric also requires dismissal of the claims under the TCPA.

Watkins himself responded to those criticisms as “campaign rhetoric.” CR59. Campaign rhetoric receives the “fullest and most urgent application” of First Amendment protections. *See FEC v. Cruz*, 596 U.S. 289, 302 (2022) (citing *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)). “Accusations of the use of political influence to gain some benefit from government are not defamatory and do not constitute libel per se.” *Farias v. Garza*, 426 S.W.3d 808, 818 (Tex. App.—San Antonio 2014, pet. denied), *disapproved of on other grounds by Lipsky*, 460 S.W.3d at 591.

Subjective political beliefs of the positions and interests that political opponents serve are “[s]ubjective assertions [] not actionable in defamation.” *See Paulsen v. Yarrell*, 537 S.W.3d 224, 235 (Tex. App.—Houston [1st Dist.] 2017, pet. denied); *see also, e.g., O’Rourke*, 673 S.W.3d at 690-91.

In *Lilith Fund*, the Texas Supreme Court dismissed defamation claims brought by abortion advocates against an organizer for statements that he believed abortion was a criminal act and that the advocates would face criminal penalty under a pending ordinance targeting their activity. 662 S.W.3d at 368-69.

Just like in *Lilith Fund*, the comments at issue advance advocacy points—not assertions intended to deliver facts. Here, all of Representative Wilson’s comments to *The Texan* express her subjective opinion that Watkins would be a worse representative for her district than her because he was running to cater to certain interests. *See* CR20-21 (context of statements). Her statements reveal that she had a sincerely held subjective belief—backed up by numerous news media articles and public policy think-tank studies—that Watkins was interested in lobbying for personal gain rather than serving the local constituency. *See* CR18-21.

She began her statements that Watkins’s motivations to run for public office include these private aims based on what she had “discovered.” CR21.

Representative Wilson ponders some of the “the reason[s] Watkins is running” in the sentence immediately preceding the quote. *Id.* She continued by stating that:

“He told voters he was running against me to promote his business and over my votes for school choice and to ban taxpayer-funded lobbying but probably stopped after learning those are Republican Party platform issues.”

“I don’t mind if he attacks me on votes I’ve actually taken. That is fair game,” added Leo Wilson. “But these mischaracterizations of my votes are disingenuous.”

CR118.

The context reveals that the challenged statement is a recitation of Representative Wilson’s subjective beliefs regarding her opponent’s political motivations. CR21 (“*I think* based on what I have discovered . . .”) (emphasis added).

It does not convey any statement of fact. The Foundation’s business disparagement and defamation claims fail because Representative Wilson did not publish a false statement of fact. This Court should reverse and remand for consideration of Representative Wilson’s attorneys’ fees under the TCPA.

iii. The plain language of Representative Wilson’s statement reveals it is non-actionable opinion.

A statement criticizing an opponent based on “an individual judgment that rests solely in the eye of the beholder” is non-actionable opinion

protected by the United States and Texas Constitutions. *Falk & Mayfield LLP v. Molzan*, 974 S.W.2d 821, 824 (Tex. App.—Houston [14th Dist.] 1998, pet. denied) (citations omitted).

In *Falk & Mayfield, LLP v. Molzan*, this Court held that a restaurant owner’s statement accusing an opposing lawyer of “lawsuit abuse” was non-actionable because the terms were “somewhat indefinite and ambiguous” and arose from the speaker’s individual judgment that the lawyer tried to gain an unfair advantage in a commercial dispute. *See id.* The Court noted that the term was not a statement of fact because it was somewhat ambiguous as “lawsuit abuse does not, in its common usage, convey a verifiable fact.” *Id.* The Court then concluded that the “expression of subjective opinion,” even though some could construe it as disparaging, was “absolutely protected by the First Amendment of the United States Constitution and Section 8, article I, of the Texas Constitution.” *Id.* (citing *Carr v. Brasher*, 776 S.W.2d 567, 570 (Tex. 1989)).

Molzan requires the same result here. The implication that the Foundation advances here—that someone accused it of lobbying to expand the scope of permissible activities it could take—does not convey any particular fact. It is not different than an accusation that a lawyer intends to use the judicial system for advantages.

Accusing a political opponent of being beholden to special interests is an “expression of subjective opinion” that cannot serve as a basis for a defamation action. The trial court’s failure to evaluate whether the alleged defamatory statement was non-actionable opinion requires reversal and remand for consideration of Representative Wilson’s attorneys’ fees.

b. The Foundation is a limited-purpose public figure required to establish actual malice.

Separate from whether anyone published a statement of fact, the Foundation had to produce clear and specific evidence showing that Representative Wilson made a false statement of fact with actual malice. It has failed to do so.

The plaintiff’s status as the allegedly defamed person determines the required degree of fault. *Lipsky*, 460 S.W.3d at 593. A public figure must show that the defendant published the statement with actual malice. *Id.* Actual malice requires evidence that the speaker actually knew of or recklessly disregarded the falsity of her statement. *Greer v. Abraham*, 489 S.W.3d 440, 443 (Tex. 2016). First Amendment protections require a higher standard of fault with regard to alleged false statements of fact concerning these figures. *See Casso v. Brand*, 776 S.W.2d 551, 553-54 (Tex. 1989) (collecting cases establishing heightened fault standard).

Because the rampant public discourse about the Foundation's dealings permeated news and social media before Representative Wilson's statements, it is a limited-purpose public figure. *See* CR21; CR147-48. Thus, the Foundation must present clear and specific evidence that Representative Wilson acted with actual malice with respect to the implication it contends.

i. Watkins and the Foundation are limited-purpose public figures.

Limited-purpose public figures are those that have been placed in or sought out the spotlight in a particular public controversy or can influence the resolution of the issues involved. *See Vice v. Kasprzak*, 318 S.W.3d 1, 15 (Tex. App.—Houston [1st Dist.] 2009, no pet.). In *WFAA-TV, Inc. v. McLemore*, the Texas Supreme Court established a three-step test for limited-purpose public figure status:

- (1) **Public Controversy:** the controversy at issue must be public both in the sense that people are discussing it and people other than the immediate participants in the controversy are likely to feel the impact of its resolution;
- (2) **More than a trivial role:** the plaintiff must have more than a trivial or tangential role in the controversy; and
- (3) **Germane:** the alleged defamation must be germane to the plaintiff's participation in the controversy.

978 S.W.2d at 570-71. A controversy is public where “people other than the immediate participants in the controversy” discuss the matter and are “likely to feel the impact of its resolution.” *Id.* at 571.

In *Vice v. Kasprzak*, the First Court of Appeals held that an HOA president was a limited-purpose public figure for allegations of corruption involving his business as HOA president and his private employer. 318 S.W.3d at 16. The Court held that the controversy about conflicts of interest between the HOA board and a local developer that employed the HOA president was a public controversy based on its effect on an entire community and the near half a dozen articles published regarding disputes about the HOA’s dealings. *Id.* at 15-16. The Court noted that the HOA president’s own actions created substantial interest and discourse in even the smallest of communities could satisfy the limited-purpose public figure test under *McLemore*. *Id.*

The *McLemore* test is satisfied here. First, Watkins and the Foundation are limited-purpose public figures for the statements related to conflicts of interest, use of private and public funds, and the Foundation’s management of hundreds of millions of dollars. CR146-49; CR142; *see also Kasprzak*, 318 S.W.3d at 15-16 (finding a public controversy is implicated where HOA board at issue controlled over 2,000 homes). Numerous media outlets and political

figures have expressed concerns about how the Foundation’s private fundraising intersects with public education in the School District. *See* CR147-48. Further, the teachers, students, and donors are all impacted by the resolution of the controversy. *See* CR139.

Second, the Foundation—as active manager of over \$174 million in public education funds—has a far more than trivial role in the controversy. The extensive media coverage and criticisms from other elected officials make clear that the Foundation’s management of funds is the center of the controversy. *See* CR18-21; CR147-48. Notably, the Foundation’s board of directors consists of elected officials including the sitting superintendent of the School District. CR61 & nn.1-3; CR134-36 (Declaration of Greg Poole).

Lastly, Representative Wilson’s speech is germane to the Foundation’s participation in the controversy because it discussed the Foundation’s role in distributing private funds for public benefits. *See* CR115-19.

ii. The Foundation cannot produce clear and specific evidence of actual malice.

As noted above, actual malice means that a speaker made a statement of fact knowing that it was false or with a “reckless disregard” for the falsity of the statement. *See Greer*, 489 S.W.3d at 443. Recklessness requires a defamation plaintiff to show that the speaker “entertained serious doubts as to the truth of [her] publication.” *McLemore*, 978 S.W.2d at 574 (quoting *St.*

Amant v. Thompson, 390 U.S. 727, 731 (1968)). The actual malice standard focuses on the speaker's state of mind at the time of the publication, not after she was sued. *Cruz v. Van Sickle*, 452 S.W.3d 503, 517 (Tex. App.—Dallas 2014, pet. struck).

A failure to investigate alone is not evidence of actual malice; a purposeful avoidance of the truth is. *Hearst Corp. v. Skeen*, 159 S.W.3d 633, 637 (Tex. 2005) (quoting *Bentley v. Bunton*, 94 S.W.3d 561, 596 (Tex. 2002)). Likewise, a failure to consult every possible source does not constitute purposeful avoidance of the truth. *Huckabee v. Time Warner Entm't Co.*, 19 S.W.3d 413, 428 (Tex. 2000). Nor does disbelieving the subject's version of events constitute evidence of a reckless disregard for the purported falsity of the statement. *Hearst Corp.*, 159 S.W.3d at 639 (holding that receiving a letter questioning the truth of the publication before publication is not evidence establishing a reckless disregard for the truth).

For instance, in *Lane v. Phares*, the Fort Worth Court held that a statement is not made with actual malice if the speaker genuinely believes her statement's truth based on personal experience, perspective, or multiple objective sources stating the same. 544 S.W.3d 881, 899 (Tex. App.—Fort Worth 2018, pet. denied).

There, a vocal coach sued a former student over a series of online posts that criticized the coach's methodology and reputation. *Id.* at 885. The student had heard from multiple other coaches, students, and industry professionals, that the vocal coach had been disrespectful, vindictive, and sued her prior employers. *Id.* The Fort Worth Court affirmed the dismissal of the claims because the coach failed to produce evidence of actual malice. *Id.* at 899. Specifically, the record revealed only that the student's personal experience with the coach and reports from multiple sources with knowledge of such facts in the same industry supported her subjective belief of the truth of her statements, despite some countering facts existing. *Id.*

Here, Representative Wilson did not act with a reckless disregard for the truth because she genuinely believed Watkins ran for office to lobby for a broader scope of legal transactions the Foundation could take. CR116; CR118. She obtained this belief from objective reporting from multiple sources, including other public figures. *See* CR147 (noting that a Republican candidate for Texas Board of Education shared a report on the Foundation's financial condition). The Texas Public Policy Foundation report was released in January 2026, weeks before Representative Wilson's statements and social media post referring to Watkins. *See id.* Representative Wilson refers to this research in stating that she based her opinion on what she

“discovered” from the extensive coverage and community commentary about Watkins, Americus, and the Foundation. *See* CR114-18.

The dissemination of other sources making the same statement supports her genuine belief that Watkins ran for the purpose of supporting his business and lobbying to make certain public-private partnerships legal. *See Phares*, 544 S.W.3d at 892-95.

The Foundation solely argued that she acted with reckless disregard for the truth of the alleged statement because she did not reach out to the Foundation to get their position on the issue of Watkins’s candidacy first. *See* CR131; CR135. Essentially, it argued that Representative Wilson’s criticism was unfair because it did not agree with her opinion. *See* CR131. That falls far short of actual malice. *Freedom Newspapers of Tex. v. Cantu*, 168 S.W.3d 847, 858 (Tex. 2005) (noting that a plaintiff’s denial of harmful allegations is not evidence that the defendant should doubt the truth of those allegations); *see also id.* (noting that “[i]n the world of politics” a denial is “so commonplace” that it rarely would inform the most conscientious of speakers to the likelihood of error) (quoting *Harte-Hanks Comms., Inc. v. Connaughton*, 491 U.S. 657, 692 n.37 (1989)). This Court should reverse because the Foundation falls well short of establishing a minimum quantum of evidence on actual malice.

iii. The Foundation also failed to establish negligent disregard for the truth.

Even if the Foundation is held to be a private figure, its declarations failed to establish that Representative Wilson acted with a negligent disregard for the falsity of her alleged statements.

This Court has stated that strict liability does not apply where—as here—the alleged defamatory speech involves a matter of public concern. *See Amell v. Van Pelt*, 729 S.W.3d 70, 87 (Tex. App.—Houston [14th Dist.] 2025, pet. pending). For the purpose of defamation liability, a speaker is negligent if she knew or should have known a statement was a false statement of fact. *Jones v. Pozner*, Case No. 03-18-00603-CV, 2019 WL 5700903, at *8 (Tex. App.—Austin 2019, pet. denied). Negligence occurs where the speaker speaks contrary to facts it has unfettered access to from objective third-party sources in the public domain. *See id.* at *7-8 (holding that statements of Sandy Hook school shooting was a hoax at a fake school demonstrated to be made at least negligently because hundreds of articles detailed the school and shooting event before and after its occurrence).

In *French v. French*, the Waco Court held that a plaintiff's denial of the allegedly false statement is insufficient to create a fact issue on the defendant-speaker's negligence. 385 S.W.3d 61, 74 (Tex. App.—Waco 2012, pet. denied).

There, a woman acquitted of a felony theft charge sued a neighboring couple and friend that reported the woman to the police for defamation. *Id.* at 65. The woman submitted an affidavit that asserted the family friend acted in bad faith because he did not inquire about the truth of whether the woman stole the money before reporting his suspicions to the police. *Id.* at 74. The affidavit also presented that the couple knew the following when they made the statement: that they had misplaced large sums of money before and often assumed cash was stolen after they would fail to lock their home while traveling. *Id.* The Court held that the affidavits produced a fact issue as to the couple, but not to the friend, because it raised only “mere surmise or suspicion” of facts about the friend’s motivations to speak to the police. *Id.*

Here, there is no evidence beyond “surmise or suspicion” about what Representative Wilson should have known. The Foundation’s declarations do not contain any evidence that Representative Wilson had grounds to doubt the truth of the alleged statement because numerous articles, public figures, and candidates had already accused the Foundation of the same shortcomings prior to her remarks to *The Texan*. *See* CR18; CR147-48.

Further, reaching out to the Foundation for comment before speaking to a reporter dealing with the ongoing election would not be practicable or feasible. CR18-21; CR4 (post in social media context). Nor would it put her

on notice that the alleged implication is discernible or untrue because the Foundation's denial of the accusation made by many others would not show that she should have doubted the allegation. *See Huckabee*, 19 S.W.3d at 427 (noting that a plaintiff's "denial of harmful allegations or offer[of] an alternative explanation of events is not evidence" establishing fault).

In fact, all the information in the public domain before her comment showed that the Foundation had made transactions in conflict of interest and appeared to spend money promised for public school teachers and student grants on real estate deals. *Jones*, 2019 WL 5700903, at *7-8; CR117. Thus, the Foundation has failed to produce the minimum quantum of clear and specific evidence necessary to establish a prima facie case that Representative Wilson was negligent in publishing her alleged statement.

c. The Foundation failed to produce any competent evidence of damages.

A defamation plaintiff must plead and prove damages from the alleged injurious statements. To survive a TCPA motion to dismiss, a non-movant must show evidence "sufficient to allow a rational inference that [its] damages naturally flowed from the defendant's conduct. A general averment of loss, like any conclusory opinion, is not sufficient." *USA Lending Grp., Inc. v. Winstead PC*, 669 S.W.3d 195, 202 (Tex. 2023) (quoting *In re Lipsky*, 460 S.W.3d at 592-93).

A declarant's speculation about an amount of damages or causes of damages resulting from a purported defamatory statement is legally insufficient evidence of damages. *See Dolcefino v. Randolph*, 19 S.W.3d 906, 930 & n.21 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). In *In re Lipsky*, the Texas Supreme Court held that conclusory affidavits are not “a sufficient substitute for the clear and specific evidence required to establish a prima facie case under the TCPA.” 460 S.W.3d at 592 (citation omitted).

The *Lipsky* court held that the following declaration did not satisfy the clear and specific evidence of damages necessary to maintain a defamation or business disparagement claim: the plaintiff suffered “direct pecuniary and economic losses and costs, lost profits, loss of its reputation, and loss of goodwill in the communities in which it operates . . . in excess of three million dollars.” *Id.* The court then stated that the declaration was insufficient evidence because it did not illustrate how the defendant's remarks actually caused the losses among any other factor or occurrence. *Id.* at 593 (citing *Burbage v. Burbage*, 447 S.W.3d 249, 262 (Tex. 2014)).

The Foundation's declarations here are also too speculative and conclusory to constitute evidence of damages. The Foundation never identified any specific loss of donations and did not even attempt to explain how Representative Wilson's remarks alone caused its damages. *See* CR150;

CR132. Specifically, Dr. Greg Poole’s declaration stated that the School District incurred damages in responding to information requests “*that appear[]* to have been solely on [Representative Wilson’s]” speech. CR135. However, they ignore entirely that the Texas Public Policy Foundation and numerous other public figures made the same statement far more directly before *The Texan* article and even in the very same article:

Former Chambers County Auditor Tony Sims has publicly questioned the legality of the ISD’s transfers to the education foundation, and told *The Texan* that the arrangement may allow the BHEF to invest funds in ways the ISD may not under the state’s **Public Funds Investment Act**.

CR117.

Instead, two declarants state that they fear the Foundation *may* or *could* lose donor interest or that the controversy *could* damage their reputation. *See* CR131 (stating unparticularized fear that community members “could . . . form a false or negative impression”); CR135. The other declarant was a donor who was not deterred from donating before or after Representative Wilson’s post. *See* CR139.

The Foundation pointed to no competent evidence that it sustained actual damages from Representative Wilson’s quote. Thus, it has failed to prove an essential element of its business disparagement and defamation

claims. This Court should reverse and remand for reconsideration of Representative Wilson's attorneys' fees.

PRAYER

This Court should reverse the trial court's denial of Wilson's TCPA motion because: (1) the statement at issue is a non-actionable statement of opinion, advocacy, or rhetorical hyperbole, and (2) the Foundation failed to produce clear and specific evidence that it sustained any damages or that Representative Wilson published any statement of fact with reckless disregard for its falsity. Further, this Court should remand for consideration of Representative Wilson's attorneys' fees under the TCPA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to Tex. R. App. P. 9.2(c)(1), 9.5(b)(1), a true and correct copy of the foregoing document has been electronically filed and served on all counsel of record on June 2, 2026.

/s/ Antonio X. Milton
Antonio X. Milton

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the typeface and word-count requirements set forth in the TEXAS RULES OF APPELLATE PROCEDURE. This brief has been prepared, using Microsoft Word, in 14-point Georgia font for the text and 12-point Georgia font for any footnotes. This brief complies with the length limitations of TEXAS RULE OF APPELLATE PROCEDURE 9.4(i) because this brief consists of 6,836 words as determined by Microsoft Word 365, excluding the parts of the brief exempted by TEXAS RULE OF APPELLATE PROCEDURE 9.4(i)(1).

/s/ Antonio X. Milton
Antonio X. Milton

APPENDIX

Tab	Description	Record Range
1	<i>The Texan</i> Article	CR17-21
2	Order Denying Defendant's Motion to Dismiss Pursuant to the TCPA	CR157-158

https://thetexan.news/elections/2026/heated-gop-primary-for-southeast-texas-house-district-draws-scrutiny-over-public-school-education-foundation/article_dee435e8-80ea-4a2a-8d7c-c0dfcd43feb3.html

Heated GOP Primary for Southeast Texas House District Draws Scrutiny Over Public School Education Foundation Spending



State Rep. Terri Leo Wilson faces a primary challenge from developer Nathan Watkins.

HOLLY HANSEN

JAN 29, 2026



Left to right: state Rep. Terri Leo Wilson (campaign photo) and Nathan Watkins (campaign photo). Background: Texas Capitol (The Texan/Daniel Friend).

							
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A heated Republican battle is emerging in southeast Texas, where state Rep. Terri Leo Wilson (R-Galveston) faces a primary challenge from a Chambers County developer in a race shaped by conflicting characterizations of Leo Wilson's voting record — and renewed scrutiny of a tiny school district's relationship with a lucrative non-profit public-school foundation.

Former Mont Belvieu City Manager Nathan Watkins, vice president at Americus Holdings Real Estate Development and a director of the Barbers Hill Independent School District's (BHISD) education foundation, announced last year that he would run against Leo Wilson for Texas House District 23, which includes Chambers County and part of Galveston County.

"I got into this race not to run against a person but for the district," Watkins told The Texan. "After the last legislative session, I heard from locally elected officials and people in the district that said they were looking for someone who's got a strong track record of delivering results."

First elected in 2022, Leo Wilson wields endorsements from President Donald Trump, Gov. Greg Abbott, U.S. Sen. Ted Cruz (R-TX), state Sen. Mayes Middleton (R-Galveston), and all four Galveston County commissioners. Both Abbott and Texas House Speaker Dustin Burrows (R-Lubbock) have traveled to Galveston to support her re-election campaign.

Watkins touts endorsements from three Chambers County commissioners, the Chambers County sheriff, and BHISD Superintendent Greg Poole, who has donated \$25,000 to his campaign.

Watkins has raised more than \$400,000 compared to Leo Wilson's \$180,000, with his most sizable donations totaling \$125,000 coming from the Texans for Good Government PAC run by Americus Holdings Managing Partner Andrew Schatte.

Some of the heaviest tactics exercised on his behalf, however, have been through the Texas Defense PAC, which is primarily funded by casino magnate Miriam Adelson, owner of Las Vegas Sands.

Texas Defense PAC has been flooding HD 23 households with mail and text messages accusing Leo Wilson of voting against property tax relief — a claim Leo Wilson denounced as patently false.

“I voted for property tax relief,” Leo Wilson told The Texan. “I voted for [House Bill] 3 but had voted against a previous version that did not include a sunset provision.”

Leo Wilson also pointed out that the pro-Watkins campaign materials cite her vote against an amendment to property tax reforms, but that the amendment in question was introduced by a Democrat and opposed by all but one House Republican.

Watkins said he has had nothing to do with the mailers mischaracterizing Leo Wilson’s voting record, since they were sent by a “third party.”

He also faces criticism over his employer’s relationship with the Barbers Hill Education Foundation (BHEF), which includes a “partnership” to develop a luxury apartment complex. BHEF has also purchased property valued at more than \$6 million from Americus Holdings.

Watkins said his role with the education foundation while receiving an investment for his company did not present a conflict of interest.

BHISD is responsible for educating fewer than 8,000 students and manages an annual budget of \$151 million, but between 2019 and 2022, the district transferred \$41 million to BHEF, and last year the board approved an additional grant of \$8 million.

At the end of 2024, the non-profit BHEF reported holding \$175 million, making it the largest education foundation fund in the United States. A recent report from the **Texas Public Policy Foundation** noted that they hold more than \$26.7 million in “**alternative investments.**”

Although BHEF’s website states that through “tax-deductible donations the Education Foundation can provide grants directly to educators,” the organization only **reported** providing \$106,240 in contributions and grants for the fiscal year ending June 2024.

Regarding the transferred funds, Watkins said they were related to tax abatement agreements allowed under a now-expired Texas program known as **Chapter 313.**

“Those are not taxpayer dollars that are flowing from the ISD into the foundation. They are associated with 313 agreements and every one of those has been approved by the Texas Comptroller.”

Former Chambers County Auditor Tony Sims has publicly questioned the legality of the ISD’s transfers to the education foundation, and told The Texan that the arrangement may allow the BHEF to invest funds in ways the ISD may not under the state’s **Public Funds Investment Act.**

Americus Holdings has also entered a **public-private partnership** with the Chambers County Local Government Corporation for a new county jail at a cost of \$168 million, for which Watkins is the project developer. Under the arrangement, the corporation issued bond debt for construction and Americus Holdings will lease the jail to the county for \$10 million per year.

Watkins dismissed concerns about the arrangement with **Chambers County** and the BHEF publicized by **Sims** as merely “campaign rhetoric.”

“All of the contracts with Chambers County were competitively bid,” said Watkins, who added that the transactions had been approved by the Texas Office of the Attorney General.

“We were responding to an unfunded mandate from the state of Texas to build a new jail and the county was proposing initially to go to the voters with a four-cent tax rate increase that likely was not going to be supported,” added Watkins.

Leo Wilson said she thinks that part of the reason Watkins is running is to address concerns about BHEF.

“I think based on what I have discovered between the ISD and the education foundation and his directorship that he is running to make legal what may be illegal,” said Leo Wilson.

“He told voters he was running against me to promote his business and over my votes for school choice and to ban taxpayer-funded lobbying but probably stopped after learning those are Republican Party platform issues.”

“I don’t mind if he attacks me on votes I’ve actually taken. That is fair game,” added Leo Wilson. “But these mischaracterizations of my votes are disingenuous.”

The two will meet in a candidate forum in Chambers County on Thursday and have several more scheduled over the next month.

Two Democrats, Cheryl Clark and Sean Foley, have also filed to run for HD 23, which is rated R-65% according to The Texan’s [Texas Partisan Index](#).

Holly Hansen

Holly Hansen is a Senior Reporter for *The Texan* where she has written extensively on criminal justice, public corruption, politics, and property rights, and is one of the state’s most recognized journalists covering Houston and Harris County. She is a frequent guest on radio and television shows, discussing local, state, and federal public affairs. She graduated from the University of Central Florida with a degree in History, has called Texas home for three decades, and now lives in the Austin area where she enjoys the outdoors and reading historic literature.

Tab 2

CAUSE NO. 26DCV0142

BARBERS HILL INDEPENDENT
SCHOOL DISTRICT EDUCATION
FOUNDATION

Plaintiff,

v.

TERRI LEO WILSON
in her Individual Capacity,

Defendant.

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IN THE DISTRICT COURT

CHAMBERS COUNTY, TEXAS

344TH JUDICIAL DISTRICT OF TEXAS


**ORDER DENYING DEFENDANT’S MOTION TO DISMISS
PURSUANT TO THE TEXAS CITIZENS PARTICIPATION ACT
TEX. CIV. PRAC. & REM. CODE § 27.001**

On April 7, 2026, came on for hearing Defendant Terri Leo Wilson’s Motion to Dismiss Pursuant to the Texas Citizens Participation Act, Tex. Civ. Prac. & Rem. Code § 27.001 (“Motion to Dismiss”). The Court, having considered the evidence of record and the pleadings and arguments of counsel, is of the opinion that the Motion to Dismiss should be DENIED.

Dated: April 13, 2026



The Honorable Judge Randy McDonald

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Mick Williams on behalf of Sara Leon

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Filing Description: Proposed Order Denying Defendant's Motion to Dismiss Pursuant to the Texas Citizens Participation Act

Status as of 4/13/2026 12:13 PM CST

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