IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION, INC.,	§	
Plaintiff,	§	
v.	§	
TEXAS ETHICS COMMISSION; CHRIS FLOOD, in his official capacity as Chair of the Texas Ethics Commission; **PATRICK W. MIZELL**, in his official capacity as Vice Chair of the Texas Ethics Commission; **ROBERT L. DUNCAN**, **SEAN GORMAN**, **GEANIE MORRISON**, **RICHARD S. SCHMIDT**, **JOSEPH O. SLOVACEK**, and **MARK STRAMA**, each in his or her official capacity as a Commissioner of the Texas Ethics Commission; and **JAMES TINLEY**, in his official capacity as Executive Director of the Texas Ethics Commission,	§	Civil Action No. 6:26-cv-00699
Defendants.	§	

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Foundation for Individual Rights and Expression, Inc., by and through its undersigned counsel, alleges as follows:

INTRODUCTION

1. Plaintiff Foundation for Individual Rights and Expression, Inc. ("FIRE") is a nonpartisan, nonprofit civil liberties organization that defends the right to free expression embodied in the First Amendment to the U.S. Constitution. FIRE wishes to represent Adriane Hodges, the Republican nominee for Bell County Treasurer, in a challenge to a Texas law that

punishes her for statements made during her campaign. Consistent with its tax-exempt purpose and mission, FIRE wishes to provide its services pro bono. But FIRE cannot do so without risking civil, and potentially criminal, penalties.

2. Ms. Hodges is running for office on her promise to work toward abolishing the office she is seeking. She won the Republican nomination for Bell County Treasurer in the March 3, 2026 primary, is unopposed in the November 3, 2026 general election, and will take office on January 1, 2027. She intends to perform every duty of the office.

3. Texas Local Government Code § 152.052(a) singles out officials who "publicly advocated the abolition of the office" during their campaigns. Within five days of taking office, such an official must swear an affidavit "stating that the officer elects not to be paid for the officer's services." The affidavit must also describe "the method by which the officer intends to seek to obtain the abolition of the office" and "the date by which it is proposed to be accomplished." Citing that statute, the Bell County Commissioners Court has set the Bell County Treasurer's salary at $0 beginning January 1, 2027. A candidate for Bell County Treasurer who promises to keep the office, or to expand its remit, faces no such penalty.

4. FIRE believes that Texas Local Government Code § 152.052(a) discriminates on the basis of viewpoint and compels speech, and it is prepared to file suit on Ms. Hodges's behalf and seek a preliminary injunction before she takes office. It has not done so to date because, under Defendants' construction of Texas law, FIRE's pro bono litigation on behalf of Ms. Hodges will be treated as an unlawful corporate campaign contribution.

5. Texas Election Code § 253.094 makes it a third-degree felony for a corporation, including a nonprofit corporation, to make a "political contribution." In Ethics Advisory Opinion No. 580 ("EAO 580"), the Texas Ethics Commission (the "Commission") stated that "[l]egal

services provided without charge to candidates or political committees are in-kind contributions," reasoning that litigation is "in connection with a campaign" whenever the client's standing depends on her status as a candidate. Ms. Hodges is subject to § 152.052 because of positions she took as a candidate. Under § 253.094, as construed in EAO 580, FIRE would be risking civil and criminal penalties by representing her free of charge, and Ms. Hodges would also risk civil and criminal penalties by accepting FIRE's pro bono assistance. Tex. Elec. Code § 253.003(b), (e).

6. This result is not permitted by the First Amendment. For more than sixty years, the Supreme Court has held that nonprofit public interest litigation "is a form of political expression" and association that the government may regulate only narrowly. *NAACP v. Button*, 371 U.S. 415, 429 (1963); *In re Primus*, 436 U.S. 412, 428–32 (1978). Moreover, contribution limits survive scrutiny only insofar as they prevent quid pro quo corruption or its appearance. *FEC v. Cruz*, 596 U.S. 289, 305 (2022). But a federal lawsuit, litigated publicly before a federal judge, seeking a judicial determination of the government's constitutional obligations, is not a corrupt request. A ban on this type of activity serves no interest recognized by the Constitution.

7. The Fifth Circuit has already held that a nonprofit legal organization faces a credible threat of enforcement under § 253.094 and EAO 580, and that it may sue Defendants to stop it. *Inst. for Free Speech v. Johnson*, No. 24-50712, slip op. at 9–19 (5th Cir. July 28, 2025). FIRE's injury is more concrete still. It has a named client and is immediately prepared to represent her, but Defendants' construction of § 253.094 creates a substantial risk of civil or criminal penalties should it do so.

8. FIRE asks this Court to declare that § 253.094 violates the First and Fourteenth Amendments as applied to FIRE's pro bono representation of Ms. Hodges, and to enjoin Defendants from enforcing these unlawful provisions. Because the affidavit required by § 152.052

is due within five days of January 1, 2027, FIRE will move for a preliminary injunction with this Complaint.

9. The facts of this case make prompt relief essential. Ms. Hodges takes office on January 1, 2027, and Texas Local Government Code § 152.052(a) requires her to file the affidavit within five days, by January 6, 2027. Ms. Hodges must therefore obtain relief before that deadline. This requires FIRE preparing Ms. Hodges's case for filing, submitting a preliminary injunction motion, permitting time for any opposition, and providing the reviewing court with time to rule. FIRE cannot even begin this litigation process while facing the threat that its legal work will be found unlawful, and its already short timeline grows shorter with each passing day.

JURISDICTION AND VENUE

10. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).

11. The Court may grant declaratory relief under 28 U.S.C. §§ 2201 and 2202, injunctive relief under Federal Rule of Civil Procedure 65 and 42 U.S.C. § 1983, and attorney's fees and costs under 42 U.S.C. § 1988.

12. The Eleventh Amendment does not bar this action. Defendants are sued in their official capacities for prospective relief only. Each Defendant has a particular duty to enforce § 253.094 and has shown a willingness to exercise that authority. *Ex parte Young*, 209 U.S. 123 (1908); *Inst. for Free Speech*, slip op. at 18–19 (holding *Ex parte Young* applies to Commissioners because they "shall administer and enforce" Title 15 of the Election Code (quoting Tex. Gov't Code § 571.061(a)(3))).

13. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because Defendants perform their official duties in Austin, Texas, and all Defendants reside in Texas. Venue is also proper under § 1391(b)(2) because a substantial part of the events giving rise to FIRE's claims occurred in this District, including the Commission's adoption of EAO 580 in Austin and the Bell County proceedings that give rise to the representation FIRE seeks to provide.

14. Assignment to the Waco Division is proper because Bell County is therein located, and therefore FIRE's anticipated litigation will occur in the Division.

PARTIES

15. Plaintiff FIRE is a nonprofit corporation organized under the laws of Massachusetts, with its principal place of business in Philadelphia, Pennsylvania. FIRE is exempt from federal income tax under 26 U.S.C. § 501(c)(3). It is a "corporation" covered by Subchapter D of Chapter 253 of the Texas Election Code, which reaches nonprofit corporations organized under the "law of another state." Tex. Elec. Code § 253.091.

16. Defendant Texas Ethics Commission is the state agency that administers and enforces Title 15 of the Texas Election Code, including § 253.094. Tex. Const. art. III, § 24a; Tex. Gov't Code § 571.061(a)(3). It acts through its eight Commissioners.

17. Defendant Chris Flood is the Chair of the Texas Ethics Commission. Defendant Patrick W. Mizell is its Vice Chair. Defendants Robert L. Duncan, Sean Gorman, Geanie Morrison, Richard S. Schmidt, Joseph O. Slovacek, and Mark Strama are Commissioners. Each is sued in his or her official capacity.

18. The Commissioners "shall administer and enforce" Title 15 of the Texas Election Code, which includes §§ 253.003 and 253.094. Tex. Gov't Code § 571.061(a)(3). They issue advisory opinions interpreting Title 15, including EAO 580. *Id.* § 571.091. They also adjudicate

sworn complaints, impose civil penalties, bring civil enforcement actions, and refer violations to prosecutors for criminal prosecution. *Id.* §§ 571.121–.140, 571.171–.173.

19. Defendant James Tinley is the Executive Director of the Texas Ethics Commission and is sued in his official capacity. The Executive Director administers the Commission's operations and directs the staff who receive sworn complaints, conduct preliminary review, and present matters to the Commission for enforcement. *Id.* §§ 571.025, 571.124.

20. At all relevant times, Defendants have acted and will act under color of state law.

FACTUAL ALLEGATIONS

A. It is unlawful for any corporation to give a Texas candidate or officeholder anything of value.

21. "A corporation or labor organization may not make a political contribution that is not authorized by this subchapter." Tex. Elec. Code § 253.094(a). A violation is a felony of the third degree. *Id.* § 253.094(c). No provision of Subchapter D authorizes a corporation to provide legal services to a candidate or officeholder.

22. This prohibition applies both ways: a person who knowingly accepts a political contribution she knows was made in violation of Subchapter D also commits a third-degree felony. *Id.* § 253.003(b), (e).

23. A "political contribution" is "a campaign contribution or an officeholder contribution." *Id.* § 251.001(5). A "contribution" is "a direct or indirect transfer of money, goods, services, or any other thing of value." *Id.* § 251.001(2). An "in-kind contribution" is "a contribution of goods, services, or any other thing of value that is not money." *Id.* § 251.001(21).

24. A "campaign contribution" is a contribution to a candidate "that is offered or given with the intent that it be used in connection with a campaign for elective office." *Id.* § 251.001(3).

"Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution." *Id.*

25. An "officeholder contribution" is a contribution to an officeholder "offered or given with the intent that it be used to defray expenses that (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and (B) are not reimbursable with public money." *Id.* § 251.001(4).

26. Beyond criminal prosecution, a violator is exposed to civil liability to the State for triple the value of the unlawful contribution, *id.* § 253.133, and to civil penalties imposed by the Commission of up to $5,000 or triple the amount at issue, whichever is greater, Tex. Gov't Code § 571.173.

27. Any individual who is a resident of, or real property owner in Texas, may file a sworn complaint with the Commission alleging a violation of Title 15. Tex. Gov't Code § 571.122. The Commission may then investigate, hold hearings, impose penalties, and refer the matter for criminal prosecution. *Id.* §§ 571.124–.140, 571.171.

B. The Commission has declared that free legal services to a candidate are an illegal corporate contribution.

28. In 2022, the Institute for Free Speech ("IFS"), a nonprofit public interest law firm, asked the Commission whether it could represent Texas candidates and political committees, without charge, in lawsuits challenging the constitutionality of Texas campaign finance laws subject to Defendants' jurisdiction.

29. On December 14, 2022, the Commission adopted Ethics Advisory Opinion No. 580 by a 5–3 vote. EAO 580 holds that "[l]egal services provided without charge to candidates or political committees are in-kind contributions." It continues: "When those services are given with

the intent that they be used in connection with a campaign, they are in-kind campaign contributions." A true and correct copy of EAO 580 is attached as **Exhibit A**.

30. EAO 580 reads "in connection with a campaign" broadly. Under its test, litigation is connected to a campaign whenever the client's "standing to pursue such a challenge would depend on its client's status as a candidate or political committee subject to the laws administered and enforced by the Commission." The Commission applied that test to offensive declaratory judgment actions as well as defensive litigation.

31. EAO 580 rejected IFS's argument that public-interest litigation organizations, which do not charge clients for legal services, provide nothing of commercial value. It held that the relevant market is "the legal services industry," so free representation is a contribution measured at market rates.

32. EAO 580 identifies only these alternatives: a candidate may litigate on her own; she may pay counsel with political contributions; or she may hire a corporation that charges "a fair market rate." But under EAO 580, a nonprofit corporation may not provide its services free of charge in bringing any other legal action under the First Amendment.

33. The Commission has not withdrawn, modified, or limited EAO 580.

C. The Fifth Circuit has held that nonprofit counsel face a credible threat of enforcement and have standing to challenge the law.

34. The Commission continues to defend EAO 580 and § 253.094 in federal court. In *Institute for Free Speech v. Tinley*, No. 1:23-cv-01370 (W.D. Tex.), the Commission moved for summary judgment on September 10, 2026, asking the court to uphold the ban as applied to pro bono legal services. Defs.' Mot. for Summ. J., *Inst. for Free Speech v. Tinley*.

35. In that case, the Fifth Circuit held that IFS had standing to challenge § 253.094 and EAO 580 before enforcement occurred. *Inst. for Free Speech*, slip op. at 7–15.

36. The court held that providing nonprofit legal services is conduct "arguably affected with a constitutional interest." *Id.* at 9–10. It noted that the Commissioners did not dispute that IFS's proposed representation would violate Texas law. And it held that IFS faced a credible threat of enforcement because "the Commissioners have never disclaimed their intent to enforce Section 253.094 against IFS if it does so." *Id.* at 11. The Commission's statement that enforcement would "depend[] on the facts of the case" was "cold comfort." *Id.*

37. The court also rejected the Commissioners' argument that federal tax law independently bars a § 501(c)(3) organization from representing a candidate pro bono, noting that such an organization "does not propose to participate 'in' the campaign *qua* campaign or directly endorse a candidate." *Id.* at 14. And it held that the claims were ripe even though civil enforcement requires the votes of six Commissioners, because "new Commissioners may adopt the view of the five who voted in favor of the Advisory Opinion." *Id.* at 17–18.

D. FIRE defends free expression through pro bono litigation.

38. FIRE was founded in 1999 to defend free speech on America's college campuses. In 2022, it expanded its mission to defend free expression throughout American society. FIRE employs many attorneys that assist in furthering its mission, approximately 20 of whom litigate before state and federal courts.

39. Litigation is central to FIRE's mission. FIRE represents clients pro bono in lawsuits challenging government restrictions on speech. It selects cases to establish and enforce First Amendment principles, and it uses litigation to communicate its views about free expression to courts, officials, and the public.

40. FIRE is nonpartisan and has represented clients of every political persuasion. FIRE takes no position on the merits of its clients' views, including Ms. Hodges's view on whether Bell County should keep its Treasurer.

41. As a § 501(c)(3) organization, FIRE does not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office. FIRE does not endorse candidates, contribute to campaigns, or make campaign expenditures. It has no shareholders and no political committee.

42. FIRE is funded by charitable contributions from individuals, foundations, and other nonprofit and business corporations. Its donors give to support its civil liberties work. FIRE's funds and resources do not derive from selling its services in the legal services marketplace.

43. FIRE's attorneys are salaried employees. When they represent a client, the services provided are FIRE's.

E. Texas has penalized Adriane Hodges for her campaign platform.

44. Adriane Hodges ran for Bell County Treasurer in the 2026 Republican primary. Her central campaign promise is to abolish the office she sought; as she has told voters: "I'm asking voters to hire me so I can fire myself." Mary-Elise O'Bar, *Bell County Treasurer Candidate Promises to Eliminate Office, Following Galveston County,* The Texan, Nov. 3, 2025. Ms. Hodges argues that the Treasurer's office duplicates work performed by the County Auditor, and she proposed to eliminate the office "by a voter-backed constitutional amendment." Bella Casey, *Challenger Adriane Hodges defeats incumbent Gaylon Evans in Bell County treasurer Republican primary election*, Temple Daily Telegram, Mar. 4, 2026.

45. Ten Texas counties have abolished the office of county treasurer, and each did so through a constitutional amendment approved by the voters. Galveston County did so most

recently, after its treasurer campaigned to eliminate his own position and the Legislature and voters approved the change.

46. Ms. Hodges defeated the incumbent Treasurer in the March 3, 2026 primary election with 52.46% of the vote. No candidate has filed to oppose her in the general election, and a write-in vote "may not be counted unless the name written in appears on the list of write-in candidates." Tex. Elec. Code §§ 146.022, 146.025(a)(1), 146.031. No write-in candidate declared for the office by the August 17, 2026 deadline. Ms. Hodges will therefore be elected if she receives a single vote. She expects to take office on January 1, 2027, for a four-year term.

47. Ms. Hodges intends to perform every duty of the office of Bell County Treasurer for as long as the office exists. She has not elected to forgo her salary and does not wish to do so.

48. Texas Local Government Code § 152.052(a) provides: "Within five days after the date an elected county or precinct officer takes office, the officer shall file an affidavit with the county payroll officer stating that the officer elects not to be paid for the officer's services if, during the person's campaign for election to the county or precinct office, the person publicly advocated the abolition of the office. The affidavit must include a statement by the officer describing the method by which the officer intends to seek to obtain the abolition of the office for which the officer was elected and the date by which it is proposed to be accomplished." Once the affidavit is filed, "the county payroll officer may not issue a paycheck to the officer." *Id.* § 152.052(c). A copy of § 152.052 is attached as **Exhibit B**.

49. Section 152.052 applies only to candidates who "publicly advocated the abolition of the office." A candidate who advocated keeping the office, expanding it, or reforming it may draw the full salary.

50. Bell County officials have used § 152.052 against Ms. Hodges. On August 24, 2026, citing § 152.052, the Bell County Commissioners Court approved a budget setting the Treasurer's salary at $0 beginning January 1, 2027. Bell County Judge David Blackburn has confirmed that the County expects Ms. Hodges to file the § 152.052 affidavit after she takes office.

51. Bell County Auditor Tina Entrop serves as the county payroll officer who administers § 152.052.

F. FIRE is ready to represent Ms. Hodges in court.

52. FIRE has reviewed Ms. Hodges's situation and is prepared to file suit on her behalf in the United States District Court for the Western District of Texas against Bell County and Auditor Entrop in her official capacity. Ms. Hodges wishes to file this suit and to receive the benefit of FIRE's pro bono services in doing so.

53. FIRE would assert that § 152.052 violates the First Amendment on at least two grounds.

54. *First*, FIRE believes that § 152.052 discriminates by viewpoint. It strips the salary from officials who campaign on one position—that is, support for abolishing the office they sought—and leaves officials who took any other position unaffected. Viewpoint discrimination is "an egregious form of content discrimination." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). And the State may not penalize a candidate for promises about the terms of the office she seeks. *Brown v. Hartlage*, 456 U.S. 45, 53–62 (1982) (a candidate's pledge to serve at a reduced salary is protected by the First Amendment).

55. *Second*, FIRE believes that § 152.052 compels speech. It requires Ms. Hodges to swear that she "elects" not to be paid, which is false, and to declare the method and date by which she will seek to abolish her office. The State may not compel a citizen to affirm a viewpoint she

does not hold. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977); *303 Creative LLC v. Elenis*, 600 U.S. 570, 586–87 (2023).

56. FIRE intends to move for a preliminary injunction when it files. Because the affidavit is due within five days after January 1, 2027, the motion must be filed and decided before Ms. Hodges takes office.

57. Ms. Hodges shares FIRE's view of § 152.052 and wishes for FIRE to represent her in challenging it. Neither she nor her campaign can afford to pay market rates for federal civil rights litigation.

58. FIRE would provide its services without charge to the client, consistent with its tax status, mission, and practice.

59. Ms. Hodges will take office on January 1, 2027. Under Texas Local Government Code § 152.052(a), she must file the affidavit no later than five days after taking office. To meet that deadline, FIRE must begin litigating her case immediately.

G. Texas law requires FIRE to refrain from representing Ms. Hodges.

60. FIRE's representation of Ms. Hodges is proscribed by § 253.094 as construed in EAO 580.

61. If FIRE files before January 1, 2027, Ms. Hodges will be a candidate or officer-elect. There is a substantial risk this litigation will be deemed "in connection with a campaign" under EAO 580: § 152.052 applies to her only because of what she "publicly advocated" "during [her] campaign for election," so her claim and her standing depend on her candidacy and her campaign speech. And under § 251.001(3), that FIRE's services would be provided after the election "does not affect [their] status as a campaign contribution."

62. In the alternative, once Ms. Hodges takes office, the Commission could treat FIRE's continued services as an "officeholder contribution": a thing of value used to defray expenses of an activity "in connection with the office" that are "not reimbursable with public money." Tex. Elec. Code § 251.001(4).

63. Either way, the services risk being deemed a "political contribution" that FIRE, a nonprofit corporation, may not make. *Id.* §§ 251.001(5), 253.094(a).

64. Defendants have never disclaimed an intent to enforce § 253.094 against nonprofit legal organizations that represent candidates or officeholders without charge. Given the perilously short timeframe within which FIRE must obtain relief for Ms. Hodges, seeking a contrary advisory opinion or similar binding guidance from Defendants is impractical. Moreover, FIRE is already suffering from a likelihood of prosecution or other enforcement in light of Defendants' issuance of EAO 580.

65. That threat of enforcement is heightened here. Any resident of, or property owner in Texas, may file a sworn complaint with the Commission. Ms. Hodges's view that the County Treasurer position should be eliminated, and the County's response to it, have drawn public controversy and opposition from local officials and the statewide association of county treasurers. A lawsuit challenging § 152.052 would be public and would identify FIRE as counsel. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014) (the threat of enforcement is "bolstered" where "any person" may file a complaint).

66. Because of § 253.094 and EAO 580, FIRE has not filed suit on Ms. Hodges's behalf and will not do so unless this Court grants relief. FIRE's attorneys and officers will not risk felony prosecution and civil penalties, nor will FIRE expose Ms. Hodges to prosecution for accepting its help.

67. As an organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, it cannot charge Ms. Hodges fair market rates. Accepting market rate compensation for its tax-exempt activities, in addition to being impermissible, would require FIRE to abandon its mission and its practice of representing clients pro bono. Moreover, neither Ms. Hodges nor her campaign can afford to pay market rates for legal services in connection with her anticipated lawsuit.

68. Each day the ban remains in force, FIRE loses its opportunity to speak and associate through litigation, and Ms. Hodges loses access to the counsel of her choice. If FIRE cannot obtain relief for Ms. Hodges before January 6, 2027, she must sign the compelled affidavit without a court ever reviewing § 152.052.

CLAIMS FOR RELIEF

COUNT I

Freedom of Speech and Association, As Applied (U.S. Const. amends. I, XIV; 42 U.S.C. § 1983)

69. FIRE incorporates paragraphs 1 through 68.

70. Nonprofit public-interest litigation is protected speech and association. When an organization litigates to vindicate constitutional rights, "litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives" of the organization and "a form of political expression." *Button*, 371 U.S. at 429. A nonprofit that "engages in litigation as a vehicle for effective political expression and association" may not be punished for offering its services to prospective clients without charge. *Primus*, 436 U.S. at 431.

71. The State may regulate that activity only with "narrow specificity." *Button*, 371 U.S. at 433; *Primus*, 436 U.S. at 432–33. A regulation that burdens this activity must serve a

compelling interest that is closely drawn to avoid unnecessary abridgment of associational freedoms.

72. Section 253.094, as construed by EAO 580, makes FIRE's pro bono litigation on behalf of Ms. Hodges a crime. It forbids FIRE from offering its services and Ms. Hodges from accepting them and prevents FIRE and Ms. Hodges from associating in a challenge to a law both believe is unconstitutional.

73. The ban fails any level of First Amendment scrutiny. Even if FIRE's services were treated as an ordinary campaign contribution, the State would have to show that the ban is "closely drawn" to a "sufficiently important interest." *McCutcheon v. FEC*, 572 U.S. 185, 197 (2014) (plurality). The only interest the Supreme Court recognizes for limiting political contributions is preventing quid pro quo corruption or its appearance. *Cruz*, 596 U.S. at 305.

74. FIRE's representation of Ms. Hodges presents no risk of quid pro quo corruption or its appearance. FIRE's litigation would be filed publicly and would be governed by the rules of civil procedure and professional conduct. The relief FIRE seeks would bind Bell County in its treatment of every official who campaigns to abolish an office. Ms. Hodges would not use FIRE's services for advertising, voter contact, or any other campaign activity. And FIRE has no business before the Bell County Treasurer and seeks nothing from her office.

75. The rationales that have sustained corporate contribution bans in other cases do not apply here. *See FEC v. Beaumont*, 539 U.S. 146, 154–56 (2003). FIRE amasses no wealth from the relevant economic marketplace and has no shareholders to protect. It cannot serve as a conduit to circumvent individual contribution limits, because Texas imposes no limits on individual contributions to candidates for county office, and because a court judgment cannot be converted into campaign resources.

76. Texas's ban is also not closely drawn. It prohibits all pro bono representation of candidates and officeholders by every nonprofit legal organization within or without Texas, in any case where the client's standing depends on her status. Rather than ban pro bono representation and chill constitutional litigation, Texas could address any legitimate concern through disclosure or through a targeted exception for litigation against the government seeking to vindicate constitutional rights.

77. *Catholic Leadership Coalition of Texas v. Reisman*, 764 F.3d 409 (5th Cir. 2014), does not control here. That case upheld § 253.094 as applied to a nonprofit corporation's gift of its email contact list to an affiliated committee that contributed directly to candidates. An email list is a campaign resource, usable for fundraising and voter contact. That case did not address pro bono legal representation, which *Button* and *Primus* protect as a distinct form of expression and association.

78. Defendants' enforcement of § 253.094 and EAO 580 against FIRE's representation of Ms. Hodges (and of other candidates and officeholders in litigation against the government) would violate the First and Fourteenth Amendments.

79. FIRE has no adequate remedy at law. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality).

80. FIRE is likely to succeed in this claim. Without a preliminary injunction, FIRE faces a substantial threat of irreparable injury because it must either risk civil penalties and potential criminal prosecution or abandon its representation of Ms. Hodges. That injury outweighs any harm to Defendants from being barred from enforcing § 253.094 against FIRE, and an

injunction will serve the public interest. *See Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013).

COUNT II

Right to Petition, As Applied
(U.S. Const. amends. I, XIV; 42 U.S.C. § 1983)

81. FIRE incorporates paragraphs 1 through 80.

82. The First Amendment protects the right to petition the government for redress of grievances, including through the courts. *See BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524–25 (2002). "[C]ollective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment." *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 585 (1971).

83. EAO 580 targets petitioning because it applies to litigation challenging the government's own laws. Under § 253.094, as construed in EAO 580, a crime is committed when a client receives pro bono representation and her standing to sue depends on her status as a candidate. The ban thus falls hardest on candidates and officeholders who seek judicial review of laws that regulate their political speech.

84. By forbidding nonprofit organizations from representing those clients without charge, the ban burdens FIRE's right to petition on its clients' behalf and its clients' right to obtain counsel to petition the courts. This law serves no interest sufficient to justify that burden.

85. Defendants' enforcement of § 253.094 and EAO 580 against FIRE's pro bono representation of candidates and officeholders in First Amendment litigation against the government violates the First and Fourteenth Amendments.

86. FIRE is likely to succeed in this claim. Without a preliminary injunction, FIRE faces a substantial threat of irreparable injury because it must either risk felony prosecution or

abandon its representation of Ms. Hodges. That injury outweighs any harm to Defendants from being barred from enforcing § 253.094 against FIRE, and an injunction will serve the public interest. *See Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013).

COUNT III

Unconstitutional Vagueness
(U.S. Const. amend. XIV; 42 U.S.C. § 1983)

87. FIRE incorporates paragraphs 1 through 86.

88. A criminal law that regulates speech must give fair notice of what it forbids. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253–54 (2012); *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

89. EAO 580 addressed litigation challenging laws "administered and enforced by the Commission." Its test, whether the client's standing "depend[s] on its client's status as a candidate," provides no clear guideline for litigation challenging other laws that operate on candidates because of their campaign speech, such as § 152.052. Nor does Texas law tell FIRE whether services provided after a candidate takes office are campaign contributions, officeholder contributions, or neither.

90. FIRE cannot determine with reasonable certainty whether representing Ms. Hodges is a felony. That uncertainty, which is backed by the threat of criminal penalties and open to complaint by any resident or property owner in Texas, chills protected expression and invites arbitrary enforcement. Accordingly, § 253.094 is unconstitutionally vague.

91. FIRE is likely to succeed in this claim. Without a preliminary injunction, FIRE faces a substantial threat of irreparable injury because it cannot determine whether representing Ms. Hodges is a felony, and that uncertainty chills its protected expression and association. This injury outweighs any harm to Defendants from being barred from enforcing § 253.094 against FIRE, and

an injunction will serve the public interest. *See Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013).

PRAYER FOR RELIEF

FIRE respectfully asks the Court to enter judgment in its favor and to:

A. Expedite consideration of FIRE's application for a preliminary injunction;

B. Declare that Texas Election Code § 253.094 and Ethics Advisory Opinion No. 580 violate the First and Fourteenth Amendments as applied to pro bono legal representation by FIRE of Adriane Hodges in litigation challenging Texas Local Government Code § 152.052;

D. Declare that § 253.094 is unconstitutionally vague;

E. Preliminarily and permanently enjoin Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them, from enforcing §§ 253.003 and 253.094 and EAO 580 through investigation, civil penalties, civil enforcement actions, or referral for criminal prosecution, against FIRE, its attorneys, its clients, and its officers and employees, on account of FIRE's pro bono representation of Ms. Hodges in litigation challenging Texas Local Government Code § 152.052;

F. Award FIRE its costs and reasonable attorney's fees under 42 U.S.C. § 1988; and

G. Grant such other relief as the Court deems just and proper.

Dated: November 2, 2026

Respectfully submitted,

/s/ Rachel P. Hooper

BAKER & HOSTETLER LLP
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Exhibits

Exhibit A — Ethics Advisory Opinion No. 580 (Dec. 14, 2022)
Exhibit B — Tex. Loc. Gov't Code § 152.052

Verification

I, Conor Fitzpatrick, declare as follows:

1. I am Chief Supervising Attorney of the Foundation for Individual Rights and Expression, Inc.

2. I have reviewed this Verified Complaint. The factual allegations concerning the Foundation for Individuals Rights and Expression, Inc. are true and correct based upon my personal knowledge, and the remaining factual allegations are true and correct to the best of my knowledge, information, and belief.

3. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Washington, DC on November 2, 2026.

Conor Fitzpatrick

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION, INC.

(b) County of Residence of First Listed Plaintiff Philadelphia Cnty, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Rachel P. Hooper
Baker & Hostetler, LLP
811 Main St., Suite 1100

DEFENDANTS

TEXAS ETHICS COMMISSION, et al.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. § 1983 and 28 U.S.C. §§ 1331 and 1343(a)(3)

Brief description of cause:
First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
11/2/2026

SIGNATURE OF ATTORNEY OF RECORD
Rachel Palmer Hooper

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Exhibit A

TEXAS ETHICS COMMISSION

ETHICS ADVISORY OPINION NO. 580

December 14, 2022

ISSUE

Whether a corporation subject to section 253.094 of the Texas Election Code may provide pro bono legal services to candidates or political committees in Texas for the purpose of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission. ***(AOR-660)***

SUMMARY

No. Section 253.094 of the Texas Election Code prohibits corporations from making political contributions to candidates and political committees. Legal services provided without charge to candidates or political committees are in-kind contributions. When those services are given with the intent that they be used in connection with a campaign, they are in-kind campaign contributions. The described legal services would be used in connection with a campaign because the requestor's standing to pursue such a challenge would depend on its client's status as a candidate or political committee subject to the laws administered and enforced by the Commission.

FACTS

The requestor, a nonprofit, tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code, requests an opinion regarding the application of Texas law to the provision of pro bono legal services to candidates or political committees in Texas for the purpose of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission (the "Commission"). Specifically, the requestor asks whether its proposed provision of pro bono legal services to candidates or political committees constitutes a "political contribution," "contribution," "campaign contribution," or "officeholder contribution" as those terms are defined by Texas law.

The requestor says that it represents "citizens, nonprofit organizations, and candidates in litigation around the country." It does not accept fees from its clients. However, it employs staff attorneys, pays other fees and costs in connection with the litigation, and often retains outside counsel on behalf of its clients.

ANALYSIS

Pro-bono legal services provided to a candidate or political committee are in-kind contributions.

The Election Code defines a "contribution" as any "transfer of money, goods, services, or any other thing of value." Tex. Elec. Code § 251.001(2). Contributions need not be monetary; they can take the form of in-kind goods or services paid for by contributors. *Id*. at §§ 251.001(2); 251.001(21) (defining "in-kind contribution").

The requestor contends that its pro bono legal services are not in-kind contributions because of Commission rule 20.66, which says that a "discount to a candidate, officeholder or political committee" is not an in-kind contribution if "the terms of the transaction reflect the usual and normal practice of the industry and are typical of the terms that are offered to political and non-political persons alike." See 1 Tex. Admin. Code § 20.66. But the requestor arrives at that conclusion by too-narrowly defining the "industry" in which it operates to include only those legal service providers who do not charge their clients. In our opinion, the relevant industry here is the legal services industry, not the nonprofits-that-offer-pro-bono-legal-services-for-public-interest-litigation industry. The legal services provided by the requestor have a value, even if the requestor does not charge for them. The requestor's staff attorneys are paid for their time, and the requestor says it often retains outside counsel and pays fees or other costs in connection with the litigation. These are in-kind contributions. *See Id*. at § 20.1(19).

Pro-bono legal services provided to a candidate or political committee are in-kind *campaign* contributions if they are given with the intent that they be used "in connection with" a campaign.

Texas does not prohibit corporations from making any contributions, only "political contributions," which includes "campaign contributions." Tex. Elec. Code § 253.094 (prohibiting corporations from making political contributions); *Id*. at § 251.001(5) (defining political contribution). A "campaign contribution" is any "contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure." *Id*. § 251.001(3).

The Supreme Court of Texas has determined that the phrase "in connection with" is an expansive term that is satisfied even by "indirect, 'tenuous,' or 'remote' relationships." *Cavin v. Abbott*, 545 S.W.3d 47, 70 (Tex. App.—Austin 2017, no pet.) (citing *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 901 (Tex. 2017)), *but see* Osterberg v. Peca, 12 S.W.3d 31, 51 (Tex. 2000) (construing "in connection with a campaign" to mean only expenditures to fund express electoral advocacy in the context of direct campaign expenditures made by a non-candidate). The Commission has previously interpreted this phrase to encompass litigation costs not only for lawsuits that are directly related to campaign activity, but also lawsuits that have a more indirect relationship to a person's status as a candidate. *See* Tex. Ethics Comm'n Op. No. 329 (1996) (pro bono legal services for lawsuit brought under section 253.131 of the Election Code); Tex. Ethics Comm'n Op. No. 533 (2015) (pro bono legal services for defending against a defamation lawsuit).

The requestor asserts that Commission rule 20.1(18) limits what "in connection with a campaign" means for purposes of the Election Code's definition of campaign contribution. It

does not. Rule 20.1(18) relates to campaign *expenditures*, not campaign contributions. *See* Tex. Ethics Comm'n Op. No. 574 (2022).

The Commission's prior opinions on the personal use of political contributions are relevant to this request.

This request does not ask us to interpret the Election Code's prohibition on the personal use of political contributions, but the Commission's prior opinions on that law are relevant here because, like the definition of campaign contribution, the definition of "personal use" depends on what is and is not "connected" to a campaign. Tex. Elec. Code § 253.0035(d) (defining "personal use" as a use that primarily furthers individual or family purposes "not connected with the performance of duties or activities as a candidate for or holder of a public office."). If legal services are "connected with the performance of duties or activities as a candidate for or holder of a public office," then a candidate or officeholder may properly use their political contributions to defray the costs of those services. In our opinion, if legal expenses are "connected with" a campaign for purposes of the personal-use restriction, then they must also be incurred "in connection with" a campaign for purposes of the prohibition on corporate contributions. *Compare* Tex. Elec. Code § 253.035 *with id*. at § 251.001(3). Put another way, if a candidate is permitted to use his campaign funds to pay for litigation, a third-party's payment of the same litigation costs must constitute campaign contributions.

In interpreting the personal-use restriction, the Commission has taken a broad view of the legal expenses that are connected with a campaign. See Tex. Ethics Comm'n Op. No. 105 (1992) (defending a lawsuit to collect on a campaign loan); Tex. Ethics Comm'n Op. No. 222 (1994) (responding to a grievance filed with the State Bar alleging violations in connection with campaign material); Tex. Ethics Comm'n Op. No. 433 (2001) (defense of charges brought by the Texas State Commission on Judicial Conduct); Tex. Ethics Comm'n Op. No. 498 (2011) (defamation lawsuit brought by former judge in his status as a candidate).

Most relevant to this request, the Commission found that an individual may use political contributions to pay the expenses of responding to a sworn complaint filed with the Texas Ethics Commission. Tex. Ethics Comm'n Op. No. 219 (1994). That would continue to be true even if a candidate or committee challenges the interpretation or constitutionality of the law in response to such a complaint. Such a challenge, when presented as a defense to an alleged violation of law, would be as connected to the campaign as the alleged violation itself.

Lawsuits that depend on a plaintiff's status as a candidate or political committee are connected to a campaign.

The requestor says it intends to provide pro bono legal services to candidates or political committees in Texas for the "sole purpose" of challenging in court the interpretation or constitutionality of a Texas law or regulation subject to the jurisdiction of the Texas Ethics Commission. However, courts have no jurisdiction to decide an "abstract question of law without binding the parties" and "remedying an actual or imminent harm." *Tex. Assn. of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993) (considering standing before evaluating the constitutionality of generally applicable laws); *see also, Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822 (Tex. 2000). A litigant must have standing to pursue a claim. *DaimlerChrysler*

Corp. v. Inman, 252 S.W.3d 299, 304 (Tex. 2008) ("A court has no jurisdiction over a claim made by a plaintiff without standing to assert it."). Standing "focuses on the question of who may bring an action." *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998). The general test for standing in Texas is whether there is a real controversy between the parties that will actually be determined by the judgment sought. *Tex. Ass'n of Bus.*, 852 S.W.2d at 446.

In our opinion, if a person's standing to bring a lawsuit depends on his status as a candidate or political committee subject to the laws administered and enforced by the Commission, then the lawsuit is connected with a campaign. This is most obviously true when a candidate or committee presents such a legal challenge in response to the Commission's enforcement of a law under its jurisdiction. *See* Tex. Ethics Comm'n Op. No. 219 (1994) (legal costs of responding to a sworn complaint filed with the Texas Ethics Commission are connected with a campaign). However, it would be equally true if a candidate or committee challenged a law under the Ethics Commission's jurisdiction as a plaintiff under the Uniform Declaratory Judgments Act. *See* Tex. Civ. Prac. & Rem. Code § 37.001 *et. seq.*; *City of Dallas v. Albert*, 354 S.W.3d 368, 378 (Tex. 2011) ("The Declaratory Judgments Act does not enlarge a court's jurisdiction; it is a procedural device for deciding cases already within a court's jurisdiction."); *Stop 'N Go Markets, Inc. v. Exec. Sec. Sys., Inc.*, 556 S.W.2d 836, 837 (Tex. Civ. App.—Houston [14th Dist.] 1977, no writ) (recognizing "[a] justiciable controversy does not exist and an advisory opinion is being sought if a party requests a court to render a declaratory judgment premised upon the happening of a future, hypothetical event").

In conclusion, a legal action that depends on a person's status as a candidate is connected with a campaign, and pro bono legal services provided to a candidate in connection with such litigation constitute contributions for purposes of the Texas Election Code. Tex. Elec. Code § 251.001(3). Consequently, such pro bono legal services may not be provided to a candidate by a corporation. *Id*. at § 253.094.

<u>This opinion does not prohibit candidates from filing any claim, including to challenge the laws under the TEC's jurisdiction.</u>

Nothing in this opinion should be construed to prevent candidates from challenging the Commission's interpretation or constitutionality of any law. Instead, it merely applies Texas's ban on corporate contributions and finds that when a person's standing to sue is premised on his status as a candidate, the litigation is connected with that person's campaign. *See* Tex. Elec. Code § 251.001(3).

The consequences of this finding are not as dramatic as some critics have suggested. Candidates may file lawsuits to challenge the law. They may accept pro bono representation to challenge the law. Alternatively, they may use their political contributions to pay for such litigation. *See* Tex. Ethics Comm'n Op. No. 219 (1994). They may even be represented by corporations, as long as they pay a fair market rate for the representation.

Exhibit B

Sec. 152.052. DECISION TO REDUCE COMPENSATION OR NOT TO BE PAID.

(a) Within five days after the date an elected county or precinct officer takes office, the officer shall file an affidavit with the county payroll officer stating that the officer elects not to be paid for the officer's services if, during the person's campaign for election to the county or precinct office, the person publicly advocated the abolition of the office. The affidavit must include a statement by the officer describing the method by which the officer intends to seek to obtain the abolition of the office for which the officer was elected and the date by which it is proposed to be accomplished.

(b) An elected county or precinct officer may, at any time, reduce the amount of compensation set for that office by filing with the county payroll officer an affidavit stating that the officer elects to reduce the amount of compensation paid for the officer's service to a specified amount. The reduction is effective on the date the affidavit is filed, and the county payroll officer shall issue any subsequent paychecks for the officer accordingly.

(c) If an officer covered by Subsection (a) or any other elected county or precinct officer files an affidavit with the county payroll officer stating that the officer elects not to be paid for the officer's services, the county payroll officer may not issue a paycheck to the officer.

(d) After an affidavit under Subsection (a) of this section is filed, the county payroll officer shall take measures to stop payment of a paycheck that was issued to the officer before the affidavit was filed and that has not been presented for payment.

[Tex. Loc. Gov’t Code § 152.052]