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NO. 2024-43394

KEN PAXTON, in his official capacity as Texas Attorney General and THE STATE OF TEXAS PLAINTIFFS	§	IN THE DISTRICT COURT
VS.	§	127TH JUDICIAL DISTRICT
FIEL HOUSTON, INC., DEFENDANT	§	HARRIS COUNTY, TEXAS

AMENDED DEFENDANT'S RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO FILE PROPOSED *QUO WARRANTO* PETITION AND APPLICATION FOR TEMPORARY INJUNCTION

TO THE HONORABLE DISTRICT JUDGE:

Defendant FIEL Houston, Inc. ("FIEL"), a non-profit corporation, responds to the request by Plaintiffs Texas Attorney General and State of Texas ("Paxton") for leave to file a proposed *quo warranto* petition and for temporary injunctive relief, and would respectfully show the Court that the requested relief should be denied because:

1. No probable grounds exist to support a *quo warranto* petition;

2. Paxton lacks a probable right to the relief sought;

3. Paxton cannot show probable, imminent and irreparable injury if the injunction is not awarded;

4. Injunctive relief that alters rather than maintains the status quo is disfavored and Paxton cannot meet the evidentiary standard for a mandatory temporary injunction;

5. Paxton is not entitled to a determination whether the status quo is a violation of the law without a full trial on the merits;

6. Paxton is not entitled to a temporary injunction that provides substantially all the relief which is properly obtainable in a final hearing; and

7. Equitable considerations including laches and harm to FIEL support denial of the injunctive relief sought.

PRELIMINARY STATEMENT

FIEL

FIEL is an immigrant-led, non-profit organization that provides education, social services and legal services to immigrants and their families.[1] "FIEL" is an acronym, in Spanish, for "Familias Inmigrantes Estudiantes Luchar," which in English means "Immigrant Families and Students in the Fight." FIEL is located in southwest Houston, Texas and has members throughout the Houston area.

FIEL's mission is to empower and educate people regardless of their immigration status. FIEL's slogan is: Por sus familias y su educación (for families and their education). FIEL works to better the quality of life for people through increased access to education and other resources. FIEL's programs include: hosting community forums with information for all students on how to access higher education, including information on how to apply for financial aid and scholarships; hosting Know-Your-Rights presentations throughout the year on various topics, including immigration and housing; providing immigration legal services; conducting surveys on community needs; and sponsoring holiday toy drives and dress-for-success events for low-income youth and students applying for jobs. Exs. A, B, C, D, E, F, G, H, I, J, K, and L.

FIEL also provides one-on-one assistance to community members in need. This includes serving walk-ins at the FIEL office who are domestic violence victims in need of emergency help and families who need help navigating the judicial or immigration systems. FIEL helps families who are victims of crime navigate the judicial system by having FIEL staff or volunteers attend court hearings with them, and attend meetings between families and law enforcement to translate and help explain case developments.

FIEL's services include promoting voter engagement among its members and the community. FIEL educates members about how qualified citizens can register to vote and the

[1] https://fielhouston.org/

importance of voting by visiting members' homes, talking with members in FIEL's office, and engaging with FIEL's members by phone, social media, or other electronic channels. Until Texas imposed new limitations on voter assistance and poll workers, FIEL provided assistance to limited English proficient citizens to vote at the polls in compliance with legal restrictions surrounding polling locations. FIEL also recruited and trained FIEL members as volunteer poll workers.

On September 3, 2021, FIEL joined other Texas non-profits and voters to challenge, under the U.S. Constitution and federal Voting Rights Act, the Texas Legislature's enactment of SB1. SB1, among other things, restricts voter assistance; imposes new ID requirements for mail ballots; and criminalizes certain voter engagement and poll worker activities. *See La Union del Pueblo Entero, et al. v. Gregory Abbott, et al.,* No. 5:21-cv-844 (W.D. Tex.). Attorney General Paxton is among the named defendants in the SB1 lawsuit.

On October 18, 2021, FIEL joined other Texas non-profits and voters to challenge, under the U.S. Constitution and federal Voting Rights Act, the Texas Legislature's enactment of redistricting plans for State House, State Senate, Congress and State Board of Education. *See League of United Latin American Citizens, et al., v. Gregory Abbott, et al.*, No. 3:21-cv-259 (W.D. Tex.).

Paxton's Lawsuits Against Humanitarian Non-Profits in Texas

Paxton has filed a series of unsuccessful lawsuits targeting non-profit organizations with whose content or mission he disagrees. These are not "content neutral" state actions across the political spectrum or based on conduct.

On July 2, 2024, the 205th District Court in El Paso County granted summary judgment in favor of a non-profit organization, Annunciation House, and against Paxton, after finding that Paxton had taken legal action to harass Annunciation House. *Annunciation House, Inc. v. Paxton,* No. 2024DCV0616 (205th Dist. Ct. El Paso Cnty., Tex. Feb. 8, 2024). The Court concluded: "The record before this Court makes clear that the Texas Attorney General's use of the request to

examine documents from Annunciation House was a pretext to justify its harassment of Annunciation House employees and persons seeking refuge. . . . This is outrageous and intolerable." Order Granting Plaintiff Annunciation House, Inc.'s Traditional and No-Evidence Motion for Final Summary Judgment ("Order Granting AHI Summary Judgment") at 2, *Annunciation House, Inc. v. Paxton*, No. 2024DCV0616 (205th Dist. Ct. El Paso Cnty., Tex. July 9, 2024) (No. 46). Ex. FF.

In the *Annunciation House* case, Paxton used the powers of his office to demand that Annunciation House provide immediate access to the organization's documents related to the individuals to whom it provides shelter, including attorney referrals provided to shelter guests, all documents provided to Annunciation House by its guests, and all personal documents that guests provided to Annunciation House as part of seeking shelter. Verified Original Petition for Declaratory Judgment, Application for Temporary Restraining Order, and Application for Temporary Injunction at 3, *Annunciation House, Inc. v. Paxton*, No. 2024DCV0616 (205th Dist. Ct. El Paso Cnty., Tex. Feb. 8, 2024) (No. 1). Paxton threatened criminal sanctions and forfeiture of Annunciation House's right to do business in Texas if Paxton, in his sole discretion, decided Annunciation House had not complied. *Id*.

When Annunciation House filed suit in an effort to protect itself from Paxton's document demands, Paxton filed a proposed *quo warranto* petition and motion for temporary injunction. In his proposed *quo warranto* petition, Paxton asked the court to order "That Annunciation House forfeit its rights and privileges as a registered corporation; []That Annunciation House's registration is immediately dissolved and void; [and] Temporary and permanent injunctive relief prohibiting Annunciation House from conducting any operations in Texas[.]" The Office of the Attorney General and the State of Texas' Application for Temporary Injunction and Motion for Leave to File Second Amended Petition and Counterclaim in the Nature of *Quo Warranto* at 28-29, *Annunciation House, Inc. v. Paxton*, No. 2024DCV0616 (205th Dist. Ct. El Paso Cnty., Tex.

June 3, 2024) (No. 33). Paxton further claimed that Annunciation House, a faith-based humanitarian shelter that has openly assisted immigrants and others for over 45 years, "is engaged in systemic violations of the criminal prohibition on alien harboring[] and operation of a stash house" in violation of state law. *Id.* at 23.

The District Court, in its summary judgment order, concluded that Paxton had enforced provisions of the Texas Business Organizations Code in an unconstitutional manner against Annunciation House and that Paxton's "efforts to close down Annunciation House are substantially motivated by his retaliation against Annunciation House's exercise of its First Amendment right to expressive association." *See* Order Granting AHI Summary Judgment at 2-3, *Annunciation House, Inc. v. Paxton*, No. 2024DCV0616 (205th Dist. Ct. El Paso Cnty., Tex. July 9, 2024) (No. 46). Ex. FF.

The District Court concluded:

> [T]he Attorney General chose to harass a human rights organization with impunity and with disregard to his duty to faithfully uphold the laws of Texas and the United States. As the top law enforcement officer of the State of Texas, the Attorney General has a duty to uphold all laws, not just selectively interpret or misuse those that can be manipulated to advance his own personal beliefs or political agenda.

Id. at 3-4.

Paxton has sought direct review in the Texas Supreme Court and the appeal remains pending. Defendant and Intervenor's Notice of Accelerated Direct Appeal, *Annunciation House, Inc. v. Paxton*, No. 2024DCV0616 (205th Dist. Ct. El Paso Cnty., Tex. July 18, 2024) (No. 51).

Similarly, on June 5, 2024 Paxton filed suit against Catholic Charities of the Rio Grande Valley ("Catholic Charities RGV"), a nonprofit organization that provides social services within the Diocese of Brownsville. Verified Rule 202 Petition to Take Deposition ("Rule 202 Pet."), *Off. Att'y. Gen. of Tex. v. Cath. Charities of the Rio Grande Valley*, No. C-2639-24-C (139th Dist. Ct. Hidalgo Cnty., Tex. June 5, 2024). Catholic Charities RGV "expresses its Catholic faith by providing food, shelter, and other basic necessities to homeless people, asylum seekers, and others

in need in the Rio Grande Valley." *See* Catholic Charities of the Rio Grande Valley's Response and Objections to Rule 202 Petition ("CCRGV's Response and Objections") at 3, *Off. Att'y. Gen. of Tex. v. Cath. Charities of the Rio Grande Valley*, No. C-2639-24-C (139th Dist. Ct. Hidalgo Cnty., Tex. July 3, 2024).

Paxton's petition claimed that he had launched an investigation into Catholic Charities RGV because a separate organization, Catholic Charities USA, "[i]s an entity that *may be* 'encouraging, transporting, and harboring aliens to come to, enter, or reside in the United States.'" Rule 202 Pet. at 2 (emphasis added). Paxton said that his investigation was to determine "whether [Catholic Charities RGV] ha[s] taken any action related to services provided to aliens that would cause forfeiture of your corporate charter[.]" CCRGV's Response and Objections at 3.

Nevertheless, Catholic Charities RGV cooperated in Paxton's investigation by producing over 100 pages of documents responsive to Paxton's requests. When Paxton deemed the documents inadequate and demanded to take a deposition of a representative of Catholic Charities RGV, the organization provided instead a sworn written statement. Paxton sued, claiming a right to take the deposition under Texas Rule of Civil Procedure 202. Rule 202 Pet. at 2-5.

Paxton demanded to take the deposition under his authority to determine whether Catholic Charities RGV "has been or is engaged in acts or conduct in violation of: (1) its governing documents; or (2) any law of this state." *Id.* at 3 (citing Texas Bus. Org. Code § 12.153). Catholic Charities RGV responded that "The Attorney General's investigation of CCRGV is based solely on CCRGV'S religiously motivated provision of charitable services to asylum seekers, which do not violate any law." CCRGV's Response and Objections at 1.

On July 24, 2024, the District Court denied Paxton's petition to take a deposition. Order Denying Petitioner's Verified Rule 202 Petition to Take Deposition, *Off. Att'y. Gen. of Tex. v. Cath. Charities of the Rio Grande Valley*, No. C-2639-24-C (139th Dist. Ct. Hidalgo Cnty., Tex. July 24, 2024). Ex. GG.

The Present Lawsuit

As he did with his failed lawsuit against Annunciation House, Paxton here attempts to shut down FIEL through a misuse of Texas's *quo warranto* statute, Tex. Civ. Prac. & Rem. Code Ann. § 66. In his proposed *quo warranto* petition, Paxton asks the Court to strip FIEL of its corporate status and end its operations because FIEL has advocated on social media on behalf of immigrants and criticized certain public policies that FIEL believes negatively affect the quality of life of immigrants, consistent with its organizational mission. The Office of the Attorney General and State of Texas' Application for Temporary Injunction and Motion for Leave to File [Proposed] Petition in the Nature of *Quo Warranto* ("QW Pet."). Paxton argues that FIEL's content-based speech violates federal rules that govern tax-exempt organizations and thus "the Court should revoke and terminate FIEL's corporate registration and certificate of formation, dissolve its existence, enter a permanent injunction prohibiting FIEL from transacting business in this State, and appoint a receiver to wind-up its affairs." QW Pet. at 3-4.

The timing of Paxton's proposed *quo warranto* petition is not accidental. Paxton filed his proposed petition while FIEL participates as a plaintiff in two civil rights lawsuits that challenge Texas' election statutes, including one case that names Paxton as a defendant. This Court can take judicial notice of other litigation alleging retaliatory conduct by Paxton, including firing top assistants for good faith reporting of suspected illegal conduct. *See Office of the Attorney General of Texas v. Brinkman*, 636 S.W.3d 659, 663-70 (Tex. App.—Austin 2021, pet. denied).

Paxton filed the instant action against FIEL while briefing was ongoing in the *LUPE v. Abbott* case regarding FIEL's standing to sue Paxton (and other defendants), and the day before FIEL and its co-plaintiffs filed their supplemental brief in support of standing. *See LUPE v. Abbott*, No. 5:21-cv-00844 (W.D. Tex.) Dkt. 1145. In his own brief, Paxton argued that "The Court therefore should hold that the organizational Plaintiffs lack standing and dismiss them from

this case." *See LUPE v. Abbott*, No. 5:21-cv-00844 (W.D. Tex.) Dkt. 1140 at 1; *see also id.* at Dkt. 862 at 72-74 (arguing FIEL lacks standing to sue).

Just months earlier, on October 4, 2023, the Executive Director of FIEL testified at trial in *LUPE v. Abbott* regarding the negative effects of Texas SB1 on FIEL and its members (which afford the organization standing to sue and go to the merits of its claims).

Paxton's request for a temporary and permanent injunction here, including his request to temporarily "halt[] FIEL's operations in toto" and permanently dissolve FIEL's existence (QW Pet. at 1, 4), seeks either an end-run around the federal court's jurisdiction to determine the validity of the motion Paxton filed or to try to bootstrap a favorable ruling in this case to try to divest a federal court of jurisdiction to consider his (and other) constitutional misconduct. Through this tactic, Paxton seeks to terminate FIEL's lawsuits against Paxton and relieve Paxton of the need to defend against FIEL's effort to enjoin two Texas election statutes as discriminatory against minority voters.

ARGUMENT

As demonstrated below, Paxton's proposed *quo warranto* petition is not supported by probable grounds or a cause of action against FIEL and thus there is no reason to grant leave to file. Paxton is also not entitled to a temporary injunction for the same reasons and because he cannot show probable, imminent and irreparable injury if the injunction is not awarded. Furthermore, mandatory injunctive relief here is inappropriate and equitable considerations including laches and harm to Defendant warrant denial of injunctive relief.

A. Legal Standard

The Texas Constitution provides that the Attorney General shall, "from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law." Tex. Const. art. IV, § 22.

The Texas Civil Practice and Remedies Code provides that a *quo warranto* action is only available if:

> (1) a person usurps, intrudes into, or unlawfully holds or executes a franchise or an office, including an office in a corporation created by the authority of this state;
>
> (2) a public officer does an act or allows an act that by law causes a forfeiture of his office;
>
> (3) an association of persons acts as a corporation without being legally incorporated;
>
> (4) a corporation does or omits an act that requires a surrender or causes a forfeiture of its rights and privileges as a corporation;
>
> (5) a corporation exercises power not granted by law;
>
> (6) a railroad company charges an extortionate rate for transportation of freight or passengers; or
>
> (7) a railroad company unlawfully refuses to move over its lines the cars of another railroad company.

Tex. Civ. Prac. & Rem. Code § 66.001.

The Attorney General must secure leave from a district court in order to file a *quo warranto* action, and the district court may only grant leave "if there is 'probable ground' for the proceeding." *State v. City of Double Horn*, No. 03-19-00304-CV, 2019 WL 5582237, at *3 (Tex. App.—Austin Oct. 30, 2019, pet. denied) (quoting Tex. Civ. Prac. & Rem. Code § 66.002(d)). The district court looks at the State's allegations to determine if probable ground exists. *See id.* at *4. The Court is required to accept "specific factual allegations" in the petition as true, but the Court is not bound to accept the Attorney General's characterizations of the facts or his legal conclusions. *State v. City of Double Horn*, 2019 WL 5582237, at *4; *Ramirez v. State*, 973 S.W.2d 388, 393 (Tex. App.—El Paso 1998, no pet.) (*quo warranto* petition must "state[] a cause of action"). Nothing about Paxton's suit here fits under the limited grounds for a proper quo warranto proceeding and respectfully FIEL requests that the Court deny the request for leave and a temporary t ground is whether the facts alleged in the State's petition, taken as true, "state a cause

of action for which the *quo warranto* statute provides a remedy." *State v. City of Double Horn*, No. 03-19-00304-CV, 2019 WL 5582237, at *4 (Tex. App.—Austin Oct. 30, 2019, pet. denied). In this case, even accepting Paxton's allegations as true (and they are hotly contested), Paxton does not state a cause of action for which the *quo warranto* statute provides a remedy.

B. No Probable Grounds Exist to Grant Leave to File Paxton's Proposed *Quo Warranto* Petition.

Paxton does not dispute that FIEL is a charitable organization. QW Pet. at 76 ("FIEL's website represents that the nonprofit corporation advocates on behalf of immigrants and their families for access to social justice, education, and laws benefitting these communities."). Instead, Paxton alleges that FIEL violates certain federal requirements for tax exempt organizations. *See id.* ("FIEL has openly flouted the 50l(c)(3) requirements *and, thus*, its governing corporate documents.") (emphasis added).

For the reasons below, Paxton lacks probable grounds for his *quo warranto* petition and thus the Court should deny the Motion for Leave to File**.**

a. The United States Internal Revenue Code Preempts Paxton's Rules for Tax Organizations

The Supremacy Clause of the United States Constitution provides that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. *See also Arizona v. United States*, 132 S. Ct. 2492, 2500 (2012) ("The Supremacy Clause provides a clear rule that federal law 'shall be the supreme Law of the Land['.] Under this principle, Congress has the power to preempt state law.").

Under the Supremacy Clause, state law must give way to federal law in at least three circumstances: (1) where Congress has withdrawn specified powers from the States by enacting a statute containing an express preemption provision ("express preemption"), (2) where Congress, acting within its proper authority, has occupied a field through pervasive regulation or where there

is a dominant federal interest ("field preemption"), and (3) where state law conflicts with federal law ("conflict preemption"). *See id.* at 2500-01.

Through the U.S. Internal Revenue Code, Congress thoroughly regulates tax exemption of charitable organizations, and "Congress has left no room for state regulation of these matters." *United States v. Locke*, 120 S. Ct. 1135, 1149 (2000) (holding the federal Ports and Waterways Safety Act preempts state pollution law) (*citing Fidelity Fed. Sav. & Loan Assn. v. de la Cuesta*, 458 U.S. 1141 (1982)). For this reason, there is no room for Paxton to impose his own rules regarding the conduct of 26 U.S.C. § 501(c)(3) organizations. Similarly, Paxton's rules are conflict preempted because "compliance with both federal and state regulations is a physical impossibility" and Paxton's rules "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *See Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 203-04 (1983).

Courts frequently find that specific provisions of the U.S. Internal Revenue Code preempt state law. *See, e.g. Sigmon v. Sw. Airlines Co.*, 110 F.3d 1200, 1204 (5th Cir. 1997) (opining in a lawsuit to recover a refund of amounts erroneously collected by an airline as federal excise taxes, "[t]he exclusive remedy provided by the Internal Revenue Code [] preempts the appellants' state-law claims against a private entity"); *see also Umland v. PLANCO Fin. Services, Inc.*, 542 F.3d 59, 65 (3d Cir. 2008) (IRS administrative scheme for handling employee classification disputes preempted state-law claims); *United States v. First Bank*, 737 F.2d 269, 274 (2d Cir. 1984) (Internal Revenue Code preempts state law requiring that notice of administrative summons be given to the co-owner of a joint account); *Presley v. United States*, 895 F.3d 1284, 1292 (11th Cir. 2018) (Florida constitutional provision granting a privacy interest in bank records was preempted by the Internal Revenue Code).

Field Preemption

The Internal Revenue Code occupies the field of federal tax-exempt organizations by thoroughly regulating which organizations qualify for tax exemption, reporting requirements, and permissible activities of tax exempt organizations. 26 U.S.C. §§ 501–530. Paxton does not attempt to explain how he can impose his own rules on top of the very thorough, preexisting legal structure for federal tax exemption. According to Paxton, "[t]he present action concerns how FIEL is operated" and specifically "whether an organization complies with the 50l(c)(3) rules[.]" QW Pet. at 6.

The cases cited by Paxton make clear that it is the Internal Revenue Service, not state attorneys general, that enforces the rules governing 26 U.S.C. § 501(c)(3) organizations, and Congress, not state attorneys general, makes the rules. *See, e.g.* QW Pet. at 6 (citing *Taxation With Representation v. United States*, 585 F.2d 1219 (4th Cir. 1978) and *Better Bus. Bureau v. United States*, 326 U.S. 279 (1945). Similarly, the regulations cited by Paxton are regulations enforced by the I.R.S., not state attorneys general. *See, e.g.*, QW Pet. at 7 (citing 26 C.F.R. § l.50l(c)(3)-1).

Paxton asserts no state law violations; rather, the lawsuit turns entirely on Paxton's assertion that "FIEL has openly flouted the 50l(c)(3) requirements *and, thus*, its governing corporate documents." QW Pet. at 7 (emphasis added).

With respect to what 26 U.S.C. § 501(c)(3) organizations can say in the political arena, Congress enacted a carefully considered and complex system of rules. Paxton cannot layer on his own rules for tax exempt organizations' speech without unconstitutionally intruding on a field occupied by Congress.

Conflict Preemption

In addition to being field preempted, Paxton's rules for FIEL are conflict preempted in at least six ways.

i. The IRS, not Paxton, Decides When an Organization has 50l(c)(3) Status

Paxton argues that FIEL "cannot enjoy 50l(c)(3) status while" advocating for policies and posting on social media. QW Pet. at 2. But Paxton does not decide which entities "enjoy 50l(c)(3) status." That determination lies exclusively in the hands of the IRS which receives and renders determinations on applications for tax exempt status and also reviews the tax returns of 26 U.S.C. § 50l(c)(3) organizations. *See, e.g.* 26 C.F.R. § 1.501(a)-1 ("an organization that has been determined by the Commissioner . . . to be exempt under section 501(a) or the corresponding provision of prior law may rely upon such determination so long as there are no substantial changes in the organization's character, purposes, or methods of operation."). It is not possible for both the IRS and Paxton to decide which organizations "enjoy 50l(c)(3) status," and thus Paxton's rules regarding permissible speech, as well as his effort to dissolve FIEL's charter because of its speech, are conflict preempted.

ii. Permissible Lobbying Activity

Paxton argues that 26 U.S.C. § 50l(c)(3) organizations are prohibited from lobbying. *See* QW Pet. at 2 (arguing that 26 U.S.C. § 50l(c)(3) organizations "*must not* engage in 'carrying on propaganda, or otherwise attempt [] to influence legislation.'") (emphasis added). Paxton's interpretation of 26 U.S.C. § 50l(c)(3) as prohibiting all lobbying, or prohibiting the handful of social media posts he identifies from FIEL over an eight year period, cannot be reconciled with the federal standards for lobbying and thus Paxton's rules "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Pac. Gas & Elec. Co.*, 461 U.S. at 203–04.

Based on nothing more than an internet search, Paxton contends that "FIEL's social media and other public facing statements in support of or opposition to legislation" violate 26 U.S.C. § 50l(c)(3) requirements. QW Pet. at 23. But Paxton's rule excludes the IRS regulations that set out two tests for whether a substantial part of an organization's activities attempt to influence

legislation.[2] Paxton's proposed *quo warranto* petition makes no effort to apply either of the tests mandated by federal law, instead simply claiming that FIEL "openly attempts to defeat Texas legislation, and carries on propaganda[, and thus] violates the 50l(c)(3) rules."]. QW Pet. at 2. Because what is legal under federal law is illegal under Paxton's rules, Paxton's rules conflict with, and are preempted by, the Internal Revenue Code.

iii. Content-based Regulation

Under Paxton's rule, only organizations with whom he disagrees violate 26 U.S.C. § 50l(c)(3); organizations that endorse him, or lobby for causes he supports, do not violate the statute. Paxton's rule is preempted by 28 U.S.C. § 50l(c)(3) which does not distinguish among organizations based on their political views.

For example, Paxton has not sought to file a *quo warranto* petition against Texas Values, a Texas non-profit that enjoys 26 U.S.C. § 50l(c)(3) status. Exs. M and N. Although it is related to a 50l(c)(4) organization, Texas Values (the 50l(c)(3)) endorses candidates and lobbies for and against legislation without interference from Paxton. The Texas Values website "blog" also frequently reposts press releases from Paxton's office, and posts updates on Paxton's activities and encourages its readers to "like" the posts.[3]

In February 2016, Texas Values endorsed Rick Green, a Republican candidate for Texas Supreme Court Place 5. Mr. Green posted Texas Values's endorsement of his candidacy on Facebook. Mr. Green's endorsement post featured the logo of Texas Values and tagged Texas Values. Mr. Green's message appeared on the Texas Values Facebook page and the endorsement remains displayed on the Texas Values Facebook page. Ex. O. On February 22, 2016, Rick Green

[2] *Compare* IRS, "Measuring Lobbying Activity: Expenditure Test" available at https://www.irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test#:~:text=Under%20the%20expenditure%20test%2C%20an,that%20period%20subject%20to%20tax. (last visited Aug. 12, 2024) *with* IRS, "Measuring Lobbying: Substantial Part Test" available at https://www.irs.gov/charities-non-profits/measuring-lobbying-activity-expenditure-test#:~:text=Under%20the%20expenditure%20test%2C%20an,that%20period%20subject%20to%20tax. (last visited Aug. 12, 2024).

[3] Texas Values, Blog Archives, available at https://txvalues.org/tag/ken-paxton/.

again tagged Texas Values on a Facebook post promoting the organization's endorsement of him. Mr. Green's message states that Texas Values was among "the most conservative groups and organizations supporting Rick Green's campaign. Mr. Green's message appeared on the Texas Values Facebook page and the endorsement remains displayed on the Texas Values's Facebook page. Ex. P.

On January 5, 2017, Texas Values posted a message on its Facebook page urging voters to support the Texas Privacy Act, SB 6, filed by Senator Lois Kolkhorst. Texas Values posted: "Take Action: Contact your State senator to support this important bill." Ex. Q.

On February, 18 2020, Texas Values endorsed Aaron Reitz, a Republican candidate for the Texas House of Representatives District 47. Mr. Reitz posted Texas Values's endorsement of his candidacy on his Facebook page. Mr. Reitz's endorsement post featured the Texas Values logo and tagged Texas Values. Mr. Reitz's message appeared on the Texas Values Facebook page and remains displayed on the Texas Values Facebook page. Ex. R. On February 24, 2020, Mr. Reitz posted on Facebook another announcement regarding Texas Values' endorsement of him. Again Mr. Reitz tagged Texas Values, Mr. Reitz's message appeared on the Texas Values's Facebook page, and the endorsement remains on the Texas Values Facebook page. Ex. S.

In another example, the Texas Home School Coalition (THSC) is a Texas non-profit that holds 26 U.S.C. § 501(c)(3) tax-exempt status, endorses candidates and lobbies for and against legislation without interference from Paxton. Exs. T and U. THSC states on its website that it "exists to encourage, equip, and advocate for families in their home education journey." Ex. V. On its website page for "Political Action," THSC states "THSC is active on several political fronts defending home schooling and parental rights. THSC is well known and respected at the Texas capitol, lobbying every session to defend parental rights. The THSC Watchmen program recruits the best and brightest from the home school community to intern in Austin and lobby on behalf of home schoolers during each legislative session." Ex. W.

THSC continues, "During the election cycles, THSC uses local committees and a questionnaire to vet and select candidates to endorse who will defend parental rights at every level. THSC also sheds a light on particularly bad judges through our Texas Judicial Wall of Shame. Year round THSC also hosts the THSC Rangers program, which supports clubs in local areas to train home school students on political activism and the political process, engaging them in local politics." *Id.*

In 2018, THSC endorsed Paxton as he ran for re-election to the office of Attorney General. Ex. X. THSC stated on Facebook: "We are proud to fully support Attorney General Ken Paxton for re-election. As a homeschool dad, he consistently fights for the protection of homeschools in Texas. Be sure to vote for him by March 6, 2018." *Id.* On August 19, 2021, THSC posted a picture on Facebook announcing their 26th annual Gala and Fundraiser. Ex. Y. The announcement featured Ken Paxton, who was seeking reelection, as the Honored Guest. Ex. Y.

In 2016, THSC published a list of candidates endorsed by their organization. Ex. Z. THSC's Facebook page shows that in 2016, the organization also endorsed, and was tagged on Facebook by, Rick Green, Texas Republican candidate for Texas Supreme Court Place 5. Exs. AA and Ex. P. THSC's Facebook page shows that in 2017 the organization also endorsed, and was tagged on Facebook by, Damon Rambo, a Republican candidate for Texas House District 25. Ex. BB. THSC's Facebook page shows that in 2020, the organization also endorsed, and was tagged on Facebook by, Jeff Cason, a Republican candidate for Texas House District 92, and Aaron Reitz, a candidate for the Supreme Court of Texas Place 5. Ex. CC, Ex. R. Ex. S.

On May 4, 2021, THSC posted a series of infographics on Facebook in a video urging support for the UIL Equal Access Bill (HB 547). In the second image, THSC says that it "wholeheartedly supports the UIL Equal Access bill. In the last image THSC states, "35 other states have this access for homeschool students. We are praying that Texas will become the 36th." Ex. DD THSC's website currently includes a page titled "THSC 2024 Election

Endorsements," that announces the organization's candidate endorsements for the 2024 election cycle. Ex. EE. and https://policy.thsc.org/endorsements/.

Paxton's rule for non-profits, under which he seeks to halt the operations and dissolve the charters of organizations with which he disagrees, is conflict preempted by the Internal Revenue Code and its regulations.

iv. Enforcement

Under Paxton's scheme, he can bring a *quo warranto* action to immediately terminate the activities and corporate charter of any 26 U.S.C. § 501(c)(3) organization that has engaged in what he considers to be prohibited political activity. Again, federal law authorizes only the IRS to take action against 26 U.S.C. § 501(c)(3) organizations that may have violated the statute. *See, e.g.*, 26 C.F.R. § 301.7409-1 ("When the Assistant Commissioner (Employee Plans and Exempt Organizations) concludes that a section 501(c)(3) organization has engaged in flagrant political intervention and is likely to continue to engage in political intervention that involves political expenditures, the Assistant Commissioner . . . shall send a letter to the organization providing it with the facts based on which the Service believes that the organization has been engaging in flagrant political intervention[.]"). Furthermore, unlike under Paxton's rule, federal law provides that a 26 U.S.C. § 501(c)(3) organization has the opportunity to respond to a letter from the IRS "by establishing that it will immediately cease engaging in political intervention, or by providing the Service with sufficient information to refute the Service's evidence that it has been engaged in flagrant political intervention." *Id.*

v. Jurisdiction

The Internal Revenue Code also preempts the method by which Paxton seeks a ruling on his contention that "FIEL has violated the 50l(c)(3) rules." QW Pet. at 19.

26 U.S.C. § 7428 provides:

> In a case of actual controversy involving--(1) a determination by the Secretary--(A) with respect to the initial qualification or continuing qualification of an organization as an organization described in section 501(c)(3) which is exempt from tax . . . upon the filing of an appropriate pleading, the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia may make a declaration with respect to such initial qualification or continuing qualification[.] Any such declaration shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Federal Claims, as the case may be, and shall be reviewable as such.

Thus, federal law provides the exclusive process by which *anyone* resolves a dispute regarding whether an organization continues to qualify for 26 U.S.C. § 501(c)(3) status. Paxton cannot establish his own process by which he files a *quo warranto* action in state District Court to obtain a ruling that "FIEL has violated the 50l(c)(3) rules." QW Pet. at 19. *See, e.g. Russell v. United States*, 551 F.3d 1174, 1179–80 (10th Cir. 2008) (Internal Revenue Code "dictates the method" for discharging a tax lien) (*citing Sec. Pac. Mortg. Corp. v. Choate*, 897 F.2d 1057, 1058 (10th Cir. 1990)).

Paxton's attempt to use this court to secure a ruling that "FIEL has violated the 50l(c)(3) rules" is conflict preempted and thus his proposed *quo warranto* action is foreclosed.

vi. Statute of Limitations

26 U.S.C. § 6501 provides the general rule that the amount of any tax shall be assessed within three years after the tax return is filed. Paxton's attempt to rely on social media posts by FIEL as early as 2016 is thus conflict preempted.

b. Paxton has no federal cause of action

Paxton's lawsuit turns entirely on his claim that FIEL "is engaging in systematic violations of its governing documents and, relatedly, 26 U.S.C. § 501(c)(3)." QW Pet. at 3. Although Paxton references a violation of FIEL's "governing documents," Paxton describes the governing documents violation purely in terms of violating 26 U.S.C. § 501

(c)(3). *See* QW Pet. at 76 ("FIEL has openly flouted the 50l(c)(3) requirements *and, thus,* its governing corporate documents.") (emphasis added).[4]

It cannot be disputed that the U.S. Internal Revenue Service exclusively interprets and enforces 26 U.S.C. § 501(c)(3). *See* discussion *supra* Section B(a)(iv). Paxton's theory that FIEL's political speech causes it to forfeit its tax-exempt status is built entirely on his interpretation of federal regulations—regulations he has no power to interpret. Paxton's second substantive claim is under Tex. Tax Code Ann. § 11.18. But this statute makes no reference to nonprofit political activity and thus cannot support Paxton's proposed petition. Thus, because Paxton identifies no state law parallel to 26 U.S.C. § 501(c)(3) and he lacks the authority to interpret or enforce 26 U.S.C. § 501(c)(3) Paxton has no cause of action for his *quo warranto* petition. *See, e.g.* Order Granting Plaintiff Annunciation House, Inc.'s Traditional and No-Evidence Motion for Final Summary Judgment at 2 n.1, *Annunciation House, Inc. v. Paxton*, No. 2024DCV0616 (205th Dist. Ct. El Paso Cnty., Tex. July 9, 2024) (No. 46) (concluding that "none of these charges can be sustained or survive legal scrutiny.").

i. Paxton has authority under the Texas Constitution to enforce state, not federal, law.

Although Paxton claims that he can exercise authority under Section 22 of Article 4 of the Texas Constitution ("Section 22 of Article 4") in a "host of situations involving legal violations," his examples also only deal with state law:

- Challenging unreasonably high or extortionate utility rates charged by state industry monopoly (*State v. Sw. Bell Tel. Co.*, 526 S.W.2d 526, 531 (Tex. 1975));
- Acting as an insurer in Texas without the required state licenses (*Washington Am. Life Ins. Co. v. State*, 545 S.W.2d 291, 295 (Tex. App.—Austin 1977, no writ));

[4] Of note, Paxton does not contend that FIEL is organized for an unlawful purpose in violation of Tex. Business Organizations Code 22.051. Instead, Paxton's claim rests entirely on violation of 26 U.S.C. § 501(c)(3).

- Violating state usury laws (*Chesterfield Fin. Co. v. Wilson*, 328 S.W.2d 479, 482 (Tex. App.—Eastland 1959, no writ)); and
- Enforcement of state law requirement that corporations submit to inspection of their records (*Humble Oil & Ref. Co. v. Daniel*, 259 S.W.2d 580, 588 (Tex. App.—Beaumont 1953, writ ref'd n.r.e.).

See Prop. QW Pet. at 5.

Paxton cites no authority for his contention that Section 22 of Article 4 authorizes him to enforce federal law against a Texas corporation.

ii. Texas does not regulate political speech by non-profits

It is the policy of the State of Texas that "robust, active, bona fide, and well-supported charitable organizations are needed within Texas to perform essential and needed services[.]" Tex. Civ. Prac. & Rem. Code Ann. § 84.002. Rather than restrict their speech, Texas protects the activities of nonprofits, enacting, for example, legislation that immunizes nonprofits from suits seeking money damages "in order to encourage volunteer services and maximize the resources devoted to delivering these services." Tex. Atty. Gen. Op. No. JM-1257, 1990 WL 508433 (1990) (quoting Tex. Civ. Prac. & Rem. Code § 84.002(7)) (internal quotation marks omitted).

Similarly, Texas requires merely that a nonprofit declare, on its certificate of formation that it is organized for "a lawful purpose." Tex. Bus. Orgs. Code Ann. § 22.051 ("A nonprofit corporation may be formed for any lawful purpose or purposes not expressly prohibited under this chapter or Chapter 2, including any purpose described by Section 2.002.")[5]

[5] *See also* Texas Secretary of State Form 202—General Information (Certificate of Formation – Nonprofit Corporation) and Instructions, available at www.sos.state.tx.us/corp/forms/202_boc.pdf ("A nonprofit corporation may be formed for any lawful purpose or purposes not expressly prohibited under title 1, chapter 2, or title 2, chapter 22, of the BOC, which may be stated as "any or all lawful purposes" in the space provided.").

Conceding the hands-off approach that the Texas Legislature takes with respect to the purpose and activities of nonprofits in the state, Paxton does not allege that Texas enacted an equivalent to 26 U.S.C. § 501(c)(3) for Texas nonprofits, or that Texas otherwise limits the political speech of nonprofits.

c. Paxton Also Lacks Probable Cause Because the Remedy He Seeks, FIEL's dissolution, is not available under federal or state law for the violations alleged by Paxton.

Paxton seeks to halt FIEL's operations and dissolve its corporate registration, but closing an organization and ceasing its operations is never the remedy for losing tax exemption. In other words, under the statutes even if FIEL were out of compliance with tax exemption rules, Paxton would not have any legal right to close the organization.

Paxton claims authority to bring suit to close down FIEL under two statutes: Tex. Gov't Code Ann. § 402.023 and Tex. Civ. Prac. & Rem. Code Ann. §§ 66.001 et seq. Both statutes require that Paxton, when he seeks judicial forfeiture of a corporation's charter, allege that a corporation has "exercise[d] power not granted by law." Tex. Civ. Prac. & Rem. Code Ann. § 66.001(5); Tex. Gov't Code Ann. § 402.023.

In his petition, Paxton claims that FIEL exercises "power not granted by law" by engaging in activities inconsistent with two statutes related to tax exempt status: 26 U.S.C. § 501(c)(3) and Texas Tax Code section 11.18. QW Pet. at 3 (citing 26 U.S.C. § 501(c)(3) and Tex. Tax Code Ann. § 11.18).

Neither 26 U.S.C. § 501(c)(3) nor Texas Tax Code section 11.18 relate to the right of a corporation to form or exist, and neither statute provides for the revocation of a nonprofit's charter as a remedy for noncompliance with tax exemption guidelines. 26 U.S.C. § 501(c)(3) provides, in relevant part: "An organization . . . *shall be exempt from taxation* . . . [if it meets certain requirements]." (emphasis added). Similarly, Texas Tax Code Sec. 11.18 provides, in relevant part, that "[a]n organization that qualifies as a charitable organization . . . *is entitled to an*

exemption from taxation [if it meets certain requirements]." Tex. Tax Code Ann. § 11.18 (emphasis added).

Because the two substantive statutes on which Paxton relies relate to whether an organization is exempt from paying taxes, and noncompliance with these statutes results in no more than the loss of tax-exempt status, the remedy of halting FIEL's operations and dissolving FIEL's charter is not available to Paxton.

d. Paxton's enforcement violates FIEL's First Amendment rights to free speech and to seek redress in the courts

Speech on public policy issues lies at the heart of the First Amendment's protections. *See Connick v. Myers,* 461 U.S. 138, 145 (1983) ("[T]he Court has frequently reaffirmed that speech on public issues occupies the highest rung of the hierarchy [sic] of First Amendment values and is entitled to special protection.") (internal quotation marks omitted); *First Nat'l Bank v. Bellotti,* 435 U.S. 765, 776 (1978) (stating that speech on matters of public concern is "at the heart of the First Amendment's protection"); *Rash–Aldridge v. Ramirez,* 96 F.3d 117, 119 (5th Cir.1996) (citing *Miller v. Town of Hull,* 878 F.2d 523, 532 (1st Cir.1989)).

Furthermore, "criticism of public officials lies at the very core of speech protected by the First Amendment." *Colson v. Grohman,* 174 F.3d 498, 507 (5th Cir. 1999) (citing *New York Times Co. v. Sullivan,* 376 U.S. 254, 269–70 (1964).

Public officials may not wield the power of their offices to take adverse action against those who engage in protected speech. *See Scott v. Flowers,* 910 F.2d 201, 213 (5th Cir.1990) (holding that the Texas Commission on Judicial Conduct could not constitutionally reprimand an elected state justice of the peace for making public statements criticizing other county officials); *Smith v. Winter,* 782 F.2d 508, 512 (5th Cir.1986) (finding that elected members of a county board of education stated an actionable First Amendment retaliation claim).

Particularly here, where Paxton's requested relief seeks the "death penalty," effectively ceasing all of FIEL's operations entirely and dissolve its corporate existence, "[t]he threat of

invoking legal sanctions" is sufficient to deter protected speech. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).

In his proposed petition, Paxton relies broadly on social media posts and news articles in which FIEL appears to comment on issues of public concern. Paxton fails to explain how these statements by FIEL, on issues of public concern, precisely violate 26 U.S.C. § 501(c)(3). Instead, Paxton's laundry list of public statements demonstrates that he has taken legal action against FIEL because of the content of FIEL's statements, not because he thinks the statements are prohibited by federal law.

For example, Paxton cites as evidence in his case that FIEL "openly attends political rallies [and] engage[s] in 'shouting matches' with Trump supporters." QW Pet. at 12. Here, as in other paragraphs of the Proposed Petition, Paxton doesn't even pretend to argue that FIEL campaigns for or against a candidate or legislation. Instead, Paxton seeks to stop FIEL's operations and dissolve its charter because, at the gathering he cites, FIEL "announced 'Trump lost' over a bullhorn." QW Pet. at 62. Announcing the results of an election is not lobbying, it is communicating factually true information.

Paxton's motivation to shut down FIEL because of its speech is further demonstrated by his reliance, as evidence in his case, on FIEL's statements urging President Biden, when Biden was *not* a candidate for office, to do more to achieve comprehensive immigration reform. QW Pet. at 12-13.

Even more tellingly, in his Supplemental Submission in Support of his Application for a Temporary Injunction, Paxton relies on FIEL's litigation against Texas officials—litigation that challenges various state policies—as evidence supporting his request to shut down FIEL. The Office of the Attorney General and the State of Texas' Supplemental Submission in Support of Application for Temporary Injunction at 1-3, *Paxton v. FIEL*, No. 202443394 (127th Dist. Ct. Harris Cnty., Tex. Aug. 9, 2024). Paxton cites to FIEL's participation in four civil rights lawsuits

and "advoca[cy] for just laws" as the grounds on which this Court should immediately halt FIEL's operations. *Id*.

As even Paxton must concede, participation in civil rights litigation, and calling on elected officials to bring about "just laws" are not activities prohibited by 26 U.S.C. § 501(c)(3) or its regulations. To the contrary, 26 U.S.C. § 501(c)(3) organizations are routinely allowed to file and proceed in lawsuits. Nevertheless, Paxton supplemented his court filings specifically to rely on these activities as the basis of his effort to terminate FIEL's operations and charter. In other words, it is *because* FIEL participates in litigation that Paxton personally disagrees with, and calls on elected officials to bring about "just laws", that Paxton seeks to shut FIEL down. *Id*.

Paxton's reliance on FIEL's participation in protected First Amendment activities shows beyond a doubt that Paxton's true intent is not the legitimate goal of law enforcement, but the illegitimate goal of trying to silence FIEL because of its speech and its participation in litigation that challenges policies of Texas and its state officials. Paxton's actions violate FIEL's First Amendment rights.

Paxton was recently enjoined by a federal court for engaging in this same type of unconstitutional behavior. *See Media Matters for Am. v. Paxton*, No. 24-CV-147 (APM), 2024 WL 1773197 (D.D.C. Apr. 12, 2024) (granting preliminary injunction to halt Paxton investigation into non-profit news organization after concluding that Paxton's investigation was in retaliation for First Amendment protected activities).

FIEL urges the Court not to countenance Paxton's most recent attempt to silence a non-profit because he personally disapproves of the content of its speech.

C. Paxton Cannot Show That he is Entitled to a Temporary Injunction

a. Legal Standard

In order to secure a temporary injunction, an applicant must demonstrate (1) a cause of action, (2) a probable right to the relief sought, and (3) a probable imminent and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

With respect to the first prong, for the reasons set out above, Paxton has no legitimate cause of action and the Court should deny Paxton's motion for leave to file his proposed petition because without a cause of action, Paxton cannot prove any probable right to relief.

Furthermore, a temporary injunction is not appropriate because: Paxton cannot show probable, imminent and irreparable injury if the injunction is not awarded; injunctive relief that alters rather than maintains the status quo is disfavored and Paxton cannot meet the evidentiary standard for a mandatory temporary injunction; Paxton is not entitled to a determination whether the status quo is a violation of the law without a full trial on the merits; Paxton is not entitled to a temporary injunction that provides substantially all the relief which is properly obtainable in a final hearing; and equitable considerations including laches and harm to FIEL support denial of the injunctive relief sought.

b. **Paxton cannot show a probable right to relief**

Even if Paxton has the authority to enforce the federal Internal Revenue Code (and he does not), Paxton's interpretation of the Internal Revenue Code, in the form of his own special rules, is preempted by the Internal Revenue Code. FIEL incorporates and relies on its arguments in Section B(a) above regarding preemption.

Furthermore, courts must deny leave to file *quo warranto* petitions when the Attorney General seeks to regulate the conduct of a corporation, as opposed to its right to exist. In such cases, the State "is under the duty to try its case in the same manner and under the same rules by which any other litigant is compelled to sue and be sued." *Humble Oil & Ref. Co. v. Daniel*, 259 S.W.2d 580, 591 (Tex. App.—Beaumont 1953, writ ref'd n.r.e.). Here, Paxton concedes that FIEL can engage in political speech (QW Pet. at 2), but contends that FIEL's speech is in violation of

federal law. "*Quo warranto* tests only whether the public corporation has the power assumed, not whether it was properly exercised." *State ex rel. Grimes Cnty. Taxpayers Ass'n v. Tex. Mun. Power Agency*, 565 S.W.2d 258, 276 (Tex. App.—Houston [1st Dist.] 1978, *writ dism'd*); *see also Newsom v. State*, 922 S.W.2d 274, 278-279 (Tex. App.—Austin 1996, writ denied) (statute authorizing *quo warranto* action against a person unlawfully holding or executing office in a corporation does not permit such action to challenge the validity of the corporate officers' actions, rather than the corporate officers' right to hold office).

c. Paxton fails to establish a probable imminent and irreparable injury.

A temporary injunction is an extraordinary remedy which does not issue as a matter of right. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). An injunction is only justified where a plaintiff cannot be compensated by money damages and can show both "a probable right to the relief sought" and "a probable, imminent, and irreparable injury in the interim." *Id*. at 204.

Irreparable injury means that the injuries in question are such that the plaintiff could not be compensated by an adequate remedy at law, such as with money or damages measured in monetary terms or other legal compensation. *T-N-T Motorsports v. Henessy Motorsports*, 965 S.W.2d 18, 23-24 (Tex. App.—Houston [1st Dist.] 1998, pet. dism'd); *see also Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993) ("Damages are usually an adequate remedy at law, and the requirement of demonstrating an interim injury is not to be taken lightly"). Here, Paxton fails to articulate any harm, much less "irreparable" harm.

Texas Rule of Civil Procedure 683 requires that every order granting an injunction must "set forth the reasons for its issuance" and "be specific in its terms." Tex. R. Civ. P. 683. When setting forth the reasons injury will occur, the trial court must set forth specific reasons, not merely conclusory statements. *Kotz v. Imperial Capital Bank*, 319 S.W.3d 54, 56 (Tex. App.—San Antonio 2010, no pet.); *see also State v. Cook United, Inc.*, 464 S.W.2d 105, 106 (Tex. 1971) ("[I]t is necessary to give the reasons why injury will be suffered if the interlocutory relief is not

ordered"). Simply stating a party "will suffer irreparable harm" does not satisfy Rule 683's specificity requirement. *AutoNation, Inc. v. HatFIELd*, 186 S.W.3d 576, 582 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *see also Indep. Capital Mgmt., LLC v. Collins*, 261 S.W.3d 792, 795-96 (Tex. App.—Dallas 2008, no pet.).

Accordingly, an order granting a temporary injunction that fails to strictly comply with the specificity requirement may be declared void and dissolved. *Qwest Commc'ns. Corp. v. AT&T Corp.*, 24 S.W.3d at 337; *Kotz*, 319 S.W.3d at 56; *Indep. Capital Mgmt.*, 261 S.W.3d at 795. A trial court is considered to have abused its discretion if it issues a temporary injunction order that fails to satisfy the specificity requirement of Rule 683. *Indep. Capital Mgmt.*, 261 S.W.3d at 795.

Rule 683's requirements are mandatory, and "an order granting a temporary injunction that does not meet them is subject to being declared void and dissolved." *Qwest Commc'ns Corp.,* 24 S.W.3d 334, 337 (Tex. 2000) (per curiam); *see also In re Luther*, 620 S.W.3d 715, 722-23 (Tex. 2021) (orig. proceeding) (per curiam). Rule 683 requires, as a condition for the validity of any temporary injunction, that the case be set for "trial on the merits with respect to the ultimate relief sought." Tex. R. Civ. P. 683. The purpose of this requirement is to "protect the parties from being subject to a temporary injunction made permanent by a court's failure to set the matter for a final determination on the merits." *EOG Res., Inc. v. Gutierrez*, 75 S.W.3d 50, 53 (Tex. App. — San Antonio 2002, no pet.).

Just this year the Texas Supreme Court reiterated that "[A]n injunction will not lie to prevent an alleged threatened act, the commission of which is speculative and the injury from which is purely conjectural." *Huynh v. Blanchard*, No. 21-0676, 2024 WL 2869423, at *16 (Tex. June 7, 2024).

The absence of any information about how and why the alleged harm will occur in the interim—until the dispute can be finally determined on the merits—how the harm would be irreparable and why Paxton has no adequate remedy at law fails to satisfy Rule 683. *Kotz*, 319

S.W.3d at 56-58 (reversing injunction failing to identify harm and comply with Rule); *Estate of Benson*, No. 04-15-00087-CV, 2015 WL 5258702, at *4 (Tex. App.—San Antonio Sept. 9, 2015, pet. dism'd) (reversing entry of a temporary injunction where the order failed to identify "how **or why** [plaintiff] will be irreparably harmed") (emphasis added); *AutoNation, Inc.*, 186 S.W.3d at 582 (order satisfied the specificity requirement from Rule 683 because it "identifies the probable injury that will be suffered by appellees, why the injury is irreparable, and why appellees will have no adequate legal remedy if the injunction does not issue"); *see also Hill v. McLane Co.*, No. 03-10-00293-CV, 2011 WL 56061, at *7 (Tex. App.—Austin Jan. 5, 2011, no pet.) (holding that application for temporary injunction that identified how a harm was irreparable and why applicant could not be adequately compensated in damages satisfied Rule 683).

Finally, because the requirements of Rule 683 are mandatory, "an order granting a temporary injunction that does not meet them is subject to being declared void and dissolved." *Qwest*, 24 S.W.3d at 337; *see also Luther*, 620 S.W.3d at 722-23. Failure to comply with Rule 683 renders an injunction "fatally defective and void." *See, e.g.*, *In re Garza*, 126 S.W.3d 268, 271 (Tex. App.—San Antonio 2003, no pet.). Here, Paxton has failed to pass even the first threshold he must establish to obtain a temporary restraining order or a temporary injunction.

Here, nothing in Paxton's proposed *quo warranto* petition articulates—nor can he demonstrate with any properly admissible evidence at a temporary injunction hearing—that any activity of FIEL is causing harm or damage to anyone of any kind, much less ***irreparable*** harm. Prohibiting all of FIEL's activities by dissolving the entity via a temporary injunction rather than after a full legal proceeding on the merits functionally gives Paxton not only more relief than he could be entitled to, by enjoining FIEL from engaging in plainly lawful activities, but effectively gives Paxton "ultimate relief." This—together with the *Annunciation House* case—is now the second time that Paxton has misused the temporary injunction process and wasted judicial and State resources targeting constitutionally-protected speech and activities. As was the case in

Annunciation House, Paxton has again failed to show any injury, much less irreparable injury warranting the extraordinary relief of a temporary injunction.

d. Injunctive relief that alters rather than maintains the status quo is disfavored and Paxton cannot meet the evidentiary standard for a mandatory temporary injunction.

Texas law is clear that except for certain extraordinary circumstances not present here, injunctive relief is rarely appropriate when a party, as in this case, seeks to alter—not maintain—the status quo. When considering temporary injunctive relief, the question before the Court is whether the applicant is entitled to ***preserve*** the status quo of the litigation's subject matter pending a trial on the merits. *Butnaru*, 84 S.W.3d at 204; *see State v. Southwestern Bell Tel. Co*., 526 S.W.2d 526, 528 (Tex. 1975) (defining status quo as "last, actual, peaceable, non-contested status that preceded the pending controversy").

Paxton's requested relief alters rather than preserves the status quo. *See, e.g.*, QW Pet. at 24 (asking the Court to award "Temporary injunctive relief immediately halting FIEL's operations pending resolution of the petition on the merits [and] prohibiting FIEL from conducting any operations in Texas.").

Therefore, the requested relief is improper. As explained by the Fourth Court of Appeals:

> As such, it goes well beyond the prescribed function of a temporary injunction to maintain the status quo and instead reaches the merits of the contractual dispute between the parties by granting Horizon part of the relief it seeks in its lawsuit, i.e., forcing Morgan Stern to transfer its remaining ownership interest in the Company to Horizon. Thus, the temporary injunction order fails to merely preserve the status quo of the suit's subject matter pending trial on the merits, and instead permanently alters the status quo by ordering the transfer of Morgan Stern's interest to Horizon. We therefore conclude the trial court's order granting the temporary injunction amounts to a clear abuse of discretion.

Morgan Stern Realty Holdings, LLC v. Horizon El Portal, LLC, No. 04-14-00208-Cv, 2014 WL 2531980, at *3 (Tex. App.—San Antonio June 4, 2014, no pet.).

Ordering specific performance in this case would also violate Defendants' constitutional rights.

Furthermore, Paxton cannot meet the evidentiary standard for a mandatory temporary injunction. "A trial court may grant a mandatory injunction compelling affirmative action only if the injunction-seeking party provides a 'clear and compelling presentation'" as to the third prong—that the injunction is necessary to prevent irreparable injury or extreme hardship. *Texas Health Huguley, Inc. v. Jones*, 637 S.W.3d 202, 215 (Tex. App.—Fort Worth 2021, no pet.). Paxton's lame and threadbare reliance on FIEL's social media posts pertaining to events from years ago is hardly the type of evidence establishing any hardship to Plaintiff or the need for the extraordinary relief of a temporary injunction based on actual, admissible evidence. This lack of evidence undermines any claim that FIEL's conduct is causing clear irreparable harm that must be addressed immediately.

e. Paxton is not entitled to a determination whether the status quo is a violation of the law without a full trial on the merits.

The purpose of a temporary injunction is to preserve the status quo pending a final trial on the merits. *Butnaru*, 84 S.W.3d at 204. Where the essential question of a lawsuit is "whether the status quo is a violation of the law" this determination should be made "with a full trial on the merits." *Fuentes v. Fuentes*, 656 S.W.3d 703, 712 (Tex. App.—El Paso 2022, no pet.). Paxton alleges that "FIEL is engaged in systemic violations of the 501(c)(3) rules" and Paxton seeks a temporary mandatory injunction to "immediately halt[] FIEL's operations[.]" QW Pet. at 24. Assuming, arguendo, that the Court can even consider the merits of this question, it should be decided only at a final trial on the merits.

f. Paxton is not entitled to a temporary injunction that provides substantially all the relief which is properly obtainable in a final hearing.

A court should not grant a temporary injunction that provides "substantially all the relief which is properly obtainable in a final hearing." *Garza v. City of Mission*, 684 S.W.2d 148, 154 (Tex. App.—Corpus Christi-Edinburg 1984, writ dism'd). Granting Paxton's request for so-called temporary relief halting FIEL's operations would effectively "determine [Defendant's] rights

without a trial." *Id.* (*citing Dallas Indep. Sch. Dist. v. Daniel*, 323 S.W.2d 639, 641 (Tex. App.—Dallas 1959, writ ref'd n.r.e.). As noted, because Paxton seeks substantially all the relief to which he would be entitled after prevailing in a trial on the merits, his request for a temporary injunction should be denied for this reason as well.

g. Equitable considerations including laches and harm to Defendants warrant denial of the injunctive relief sought.

Injunctions are governed by principles of equity: "The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with these rules or the provisions of the statutes." Tex. R. Civ. P. 693. (emphasis added).

When considering injunctive relief and similar equitable remedies, equitable principles apply. "For example, the complaining party must come to the court with clean hands and must have acted promptly to enforce its rights." *Landry's Seafood Inn & Oyster Bar v. Wiggins*, 919 S.W.2d 924, 927 (Tex. App.—Houston [14th Dist.] 1996, no writ) (affirming trial court's denial of temporary injunction because Landry's undue delay and allowed damages to accrue before raising a claim) (citing *Foxwood Homeowners Ass'n v. Ricles*, 673 S.W.2d 376, 379 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); *Embarcadero Technologies, Inc. v. Redgate Software, Inc.*, No. 1:17–CV-444-RP, 2017 WL 5588190, at *3-8 (W.D. Tex. Nov. 20, 2017) (denying preliminary injunction in case involving alleged misappropriation of trade secrets and confidential information, including downloading data from Google Drive because of plaintiffs' delay in seeking equitable injunctive relief).

"Two essential elements of laches are (1) unreasonable delay by one having legal or equitable rights in asserting them; and (2) a good faith change of position by another to his detriment because of the delay." *Rogers v. Ricane Enterprises, Inc.*, 772 S.W.2d 76, 80 (Tex.1989).

Absent a good explanation, a substantial period of delay militates against the issuance of a preliminary injunction by demonstrating that there is no apparent urgency to the request for injunctive relief." *Gonannies, Inc. v. Goupair.Com, Inc.*, 464 F. Supp. 2d 603, 608-609 (N.D. Tex.

2006) (no irreparable harm where *plaintiff waited one month* to file suit and six months before requesting injunctive relief) (emphasis added); *see also Embarcadero Technologies, Inc.,* 2017 WL 5588190, at *3 ("The delay exhibited by Plaintiffs in seeking a preliminary injunction also casts doubt upon the supposed irreparability of the harm alleged.")

Paxton's proposed *quo warranto* petition focuses largely on activities of FIEL **in 2016**. QW Pet. 7-17. The significant delay on Paxton's part in seeking relief through the proposed *quo warranto* petition—complaining about conduct going back years earlier— make dubious any claim of true harm. This unreasonable delay is fatal to Paxton's request for an injunction. *See Embarcadero Technologies, Inc.,* 2017 WL 5588190, at *3 ("**Plaintiffs' delay in seeking injunctive relief is fatal to their request for a preliminary injunction**.") (emphasis added).

FIEL has also been prejudiced by this delay and their position has plainly changed. The federal statute of limitations pertaining to actions under the Internal Revenue Code preclude state or federal action based on conduct this stale. *See* 26 U.S.C. § 6501. Even without having to rely on the legal arguments of limitations, the equitable doctrine of laches weighs heavily against relief of this type involving stale acts. Although there are several things that have changed since 2016, one of the more apparent is that FIEL has been deprived the opportunity to address with even more concrete evidence the fallacy in Paxton's contentions as memories fade and witnesses are harder to locate as time goes by.

Much of the hearsay attached to the Paxton's request for injunctive relief recounts events that have occurred years prior to the filing of this suit. Accordingly, laches provides an additional ground warranting the denial of the injunctive relief sought here.

CONCLUSION

Defendant will show at the injunction hearing that this is a hotly disputed matter, that Paxton is not entitled to the relief he seeks, and that Paxton filed this suit in retaliation for

Defendant having sued Paxton alleging statutory and constitutional violations in connection with Texas election legislation. Further, Paxton is unlikely to ultimately prevail at trial on the merits.

The fact that Paxton, who has targeted others with whom he disagrees, is using the power of his public office specifically to target a non-profit organization because of FIEL's exercise of its First Amendment rights to free speech and to seek redress in the courts is reprehensible and unconstitutional.

Whether by a Rule 91 motion, summary judgment, or by trial, FIEL will likely prevail as other targeted organizations have prevailed. For this additional reason, temporary injunctive relief is improper.

REQUEST FOR RELIEF

Paxton bears a heavy burden before he can persuade this Court to exercise the extraordinary remedy of a temporary injunction or grant leave to file the proposed *quo warranto* petition. As in his two recent failed lawsuits against other Texas non-profit that serve immigrants, Paxton has, in this case, also failed to shoulder his burden under the law and to show himself entitled to the requested relief. For all of the reasons stated above, Defendant respectfully requests that the Court deny Paxton's motions for leave to file the proposed *quo warranto* petition and motion for temporary injunction.

Dated: August 13, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of this document was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on August 13, 2024.

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