

CAUSE NO. 2025DCV3641

POWERED BY PEOPLE,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
V.	§	41st JUDICIAL DISTRICT
	§	
KEN PAXTON,	§	
IN HIS OFFICIAL CAPACITY AS	§	
TEXAS ATTORNEY GENERAL	§	
<i>Defendants.</i>	§	EL PASO COUNTY, TEXAS

**VERIFIED AMENDED PETITION FOR DECLARATORY JUDGMENT,  
MOTION FOR PROTECTIVE ORDER, APPLICATION FOR EMERGENCY  
TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION,  
AND OTHER INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Powered by People, a volunteer-driven Texas nonprofit composed of thousands of everyday Texans, files this verified amended petition seeking a temporary restraining order and a protective order against Defendant, Texas Attorney General Ken Paxton, in his official capacity. As explained below, in under a week’s time, the State has initiated two unlawful, retaliatory new legal actions against Plaintiff — and is imminently planning to initiate a third. The State has admitted that its actions are in direct response to Plaintiffs’ exercise of First Amendment rights in the form of political speech and organizing. “[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *accord Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012). And so, “political speech must prevail” against those who act to suppress it. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340 (2010). This Court must act immediately and provide the protection requested herein to avoid such grave constitutional injuries.

Specifically, on August 6, 2025, Defendant launched a retaliatory and unlawful investigation into Powered by People, serving Mr. David Wyson and Ms. Gwen Pulido, Board members of Powered by People, with a Request to Examine (“RTE”) seeking reams of sensitive and burdensome information from Plaintiff in less than 48 hours time. The State provided no valid reason to support this urgent, invasive, expensive inquiry — instead simply claiming to counsel that it was an “emergency.” At the same time, Defendant Paxton admitted publicly that while he does not have “details” to support his allegations, but planned to use this “investigation” to “find out if they’ve done anything inappropriate,” pointing explicitly to Plaintiff’s recent political speech, organizing and advocacy.<sup>1</sup> In other words, with the August 6, 2025 action, the State was bluntly using the vast power of the Attorney General’s office to effectuate a fishing expedition, constitutional rights be damned.<sup>2</sup> Defendant gave Petitioner a hard deadline of 4:00pm MT August 8, 2025 to respond.

Earlier on August 8, 2025, and unbeknownst to the Defendants, the Attorney General abruptly changed directions, and started heading to north Texas. As Plaintiff was finalizing its El Paso lawsuit, the Attorney General announced the filing of a new court action in Tarrant County against Plaintiff and Robert “Beto” O’Rourke (the founder of Powered by People). Despite that, as of 9:56 am MT on Friday, counsel for the Attorney General knew that Powered by People was represented by the undersigned counsel, and while the one member of the Attorney General’s

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<sup>1</sup> James Morley III, Texas AG Paxton to Newsmax: O’Rourke’s PAC to Be Investigated, NEWSMAX (Aug. 6, 2025, 5:40 PM EDT), <https://www.newsmax.com/newsmax-tv/ken-paxton-texas-redistricting/2025/08/06/id/1221553/>.

<sup>2</sup> Even worse, Defendant Paxton — who is running for and actively fundraising for his 2026 run for U.S. Senate — has publicly identified former Congressman Beto O’Rourke, the prominent founder of Powered by People, as a potential 2026 political opponent. Another motivation behind Defendant’s action thus appears to be an unlawful desire to retaliate against Mr. O’Rourke, and to use the power of the State of Texas to try to intimidate Mr. O’Rourke from challenging Defendant in a free and fair election.

lawyer group apparently drove the approximately three hour drive from Austin to Fort Worth, the Attorney General did not inform the undersigned counsel of an imminent “emergency” *ex parte* TRO filing and hearing until almost four hours later. Despite the failure to identify any substantial connection to the Tarrant County venue, the State sought a temporary restraining order seemingly aimed to achieve similar goals as the RTE: namely, to chill the exercise of constitutionally protected rights.

Later, a hearing was held before Judge Fahey in Tarrant County. The Tarrant County court entered a Temporary Restraining Order at 5:32pm.<sup>3</sup> The next day, on August 9, 2025, counsel for the State indicated that “effectively immediately” it was withdrawing its RTE issued to Petitioner, Powered by People, and asked counsel for Petitioner to dismiss this instant action.<sup>4</sup>

This evening, in the latest egregious misuse of power, staff at Defendant’s office has indicated that that Defendant will be immediately seeking to institute *quo warranto* proceedings in Tarrant County, a County where there is not even a colorable argument for proper venue for such a proceeding. Defendant is abusing the legal system, and his authority within that system, solely for the purpose of harassing and intimidating Plaintiff in order to curtail Plaintiff’s protected constitutional activity. He cannot be allowed to run roughshod over the Texas and United States Constitution.

And so, Defendant’s withdrawal of the RTE served on Petitioner on August 6, 2025, does not justify dismissal of the instant action. Indeed, far from mooted the controversy between the

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<sup>3</sup> Earlier today, Plaintiff and Mr. O’Rourke filed a motion to change venue to El Paso County in the Tarrant County case since a substantial part of the events giving rise to the State’s alleged claims occurred in El Paso County and venue is not proper in Tarrant County. That motion is attached as Exhibit B. Shortly, Plaintiff and Mr. O’Rourke will also seek to dissolve the TRO issued by Judge Fahey since it lacks support in law and fact.

<sup>4</sup> Attorney Farquharson also indicated that it was withdrawing its RTE issued to Mr. O’Rourke; however to date, Mr. O’Rourke has not been served with an RTE.

parties, the State instead plans to continue to escalate it. Thus, this Court continues to have jurisdiction to hear Petitioner’s claims for declaratory and injunctive relief under the First and Fourth Amendment of the U.S. Constitution, since without such relief, Defendant will be free to reserve the RTE at any time, free to file a retaliatory action in *quo warranto*, and free to continue to infringe on Plaintiff’s constitutional rights. *See, Paxton v. Annunciation House, Inc.*, No. 24-0573, 2025 WL 1536224, \*56 (Tex. 2025) (finding that even though the attorney general ceased pressing for records, “the records dispute is not moot as the attorney general remains free to simply file more requests if there is no ruling that deems the relevant requests unconstitutional.”). Further, Plaintiff now seeks injunctive relief, including an emergency temporary restraining order, enjoining Defendant from harassing Plaintiff and violating its rights by instituting *quo warranto* proceedings against Plaintiff in an improper county.

Plaintiffs respectfully show the Court as follows, in support of the requested relief:

## **I. PARTIES**

1. Plaintiff, Powered by People, is a Texas nonprofit corporation. It operates as a political organization pursuant to 26 U.S.C. § 527(e)(1) for the purpose of “directly or indirectly accepting contributions or making expenditures, or both” to influence elections. As a political organization, Powered by People files regular campaign finance reports with the Texas Ethics Commission, and is registered within Texas as a general-purpose committee.

2. Defendant is Ken Paxton, in his official capacity as Texas Attorney General. He may be served at the Office of the Attorney General, 300 W. 15<sup>th</sup> Street, Austin, Texas 78701.

## **II. DISCOVERY-CONTROL PLAN**

3. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks injunctive relief.

## **III. RULE 47 STATEMENT**

4. Pursuant to Texas Rule of Civil Procedure No. 47, Plaintiff is not seeking monetary relief, only non-monetary relief in the form of injunctive and declaratory relief.

## **IV. JURISDICTION & VENUE**

5. This Court has statutory jurisdiction in that a substantial part of the events giving rise to this claim occurred in El Paso County. Venue is proper because the challenged Request to Examine was served in El Paso County. *See* Tex. R. Civ. Pro. 176.6(e) (“[a] person commanded to...produce...designated documents and things...may move for a protective order...either in the court in which the action is pending or in a district court in the county where the subpoena was served.”); *see also Paxton v. Annunciation House, Inc.*, No. 24-0573, 2025 WL 1536224, \*24 (Tex. 2025) (determining that Rule 176.6(e) applies to the Attorney General’s Requests to Examine). Moreover, jurisdiction remains with this court and the dispute is not moot simply because Defendant has withdrawn the RTE. *Id.* at \*56 (Tex. 2025) (Finding that even though the attorney general ceased pressing for records, “the records dispute is not moot as the attorney general remains free to simply file more requests if there is no ruling that deems the relevant requests unconstitutional.”)

## **V. FACTS**

6. In 2019, Mr. O'Rourke founded Powered by People, a voter registration and mobilization group that works to expand access to democracy through voter registration and direct

voter engagement. Composed of thousands of volunteers in every region of Texas, and with seven full-time employees, Powered by People has spearheaded large voter mobilization efforts, registering thousands of Texans to vote. In addition, at different times, Powered by People has taken on community-centered projects such as raising money for persons who suffered home damage as a result of Texas's electric grid failure, coordinating volunteers at community food banks during the height of the COVID pandemic, going door-to-door to educate elderly members of the public about vaccines during the pandemic, and raising money for and delivering supplies during other national disasters.

7. Powered by People currently has seven employees and maintains its principal place of business in El Paso, Texas.

8. In addition to serving as its founder, Mr. O'Rourke sits on Powered by People's Board of Directors, alongside David Wysong and Gwen Pulido.

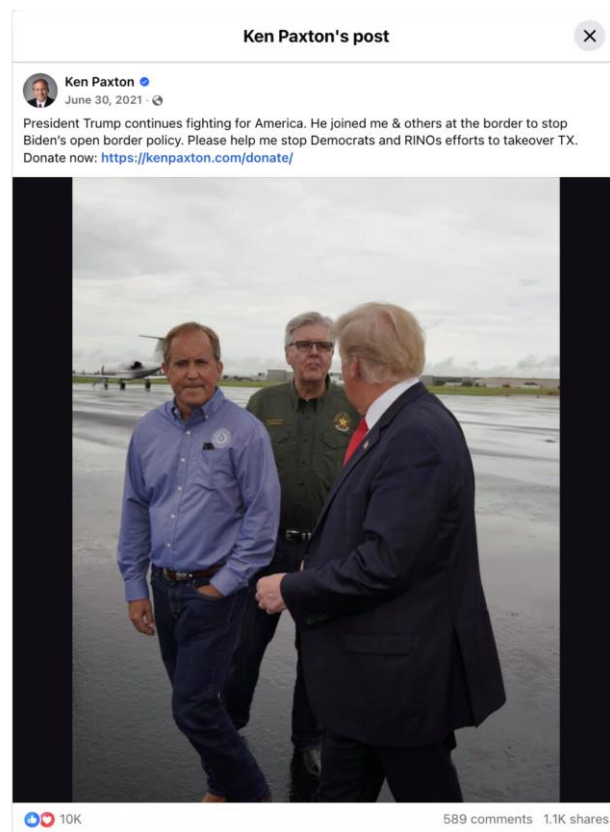
9. In recent months, Mr. O'Rourke has been a prominent, outspoken critic of Texas Republicans' attempts to re-draw Texas' congressional map at the behest of President Donald J. Trump. For instance, on July 21, 2025, Mr. O'Rourke appeared on PBS Newshour and argued that President Trump "knows he will lose the slim majority they have in the House of Representatives unless they rig the game mid-decade, which is what they're trying to do in Texas."<sup>5</sup> On July 24, 2024, Mr. O'Rourke appeared at a large rally at the Capital and accused Republicans of "play[ing] games . . . in order to maximize [] political power" at the expense of flood victims.<sup>6</sup>

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<sup>5</sup> Amna Nawaz, *Stephanie Kotuby & Alexa Gold, O'Rourke says 'we have to fight back' as Trump pushes Texas to redraw congressional maps*, PBS NEWSHOUR (July 21, 2025, 6:40 PM EDT), <https://www.pbs.org/newshour/show/orourke-says-we-have-to-fight-back-as-trump-pushes-texas-to-redraw-congressional-maps>.

<sup>6</sup> Blaise Gainey, *'We will not let Trump take over': Texans rally as state lawmakers begin redistricting hearings*, KUT (July 24, 2025, 4:36 PM CDT), <https://www.kut.org/politics/2025-07-24/we-will-not-let-trump-takeover-texans-rally-as-state-lawmakers-begin-redistricting-hearings>.

10. In support of his political views and the views of Powered by People, Mr. O’Rourke has made numerous successful grassroots fundraising appeals for donations to Powered by People, stating his desire to “have the backs of these heroic state lawmakers” and otherwise support Texas-based organizations who share his opposition to the newly introduced redistricting maps.<sup>7</sup> It is, of course, commonplace for political figures and candidates to tie appeals for resources to achieving policy actions. Indeed, Defendant Paxton himself has implored donors to donate to help him “stop Biden’s open border policy” and “stop Democrats and RINOs efforts to takeover [sic] TX.”<sup>8</sup>



<sup>7</sup> Owen Dahlkamp, *Beto O’Rourke’s political group is a top funder for Texas Democrats’ exodus to block GOP congressional map*, Tex. Trib. (Aug. 5, 2025, 1:00 PM CT), <https://www.texastribune.org/2025/08/05/texas-democrats-quorum-break-beto-orourke-illinois-funding/>.

<sup>8</sup> Ken Paxton, Facebook (Jun. 30, 2021, 2:04 PM EDT), <https://www.facebook.com/kenpaxtonTX/posts/4198758750185935>, (last visited Aug. 8, 2025).

11. At 2:15pm MT on Wednesday August 6, 2025, Defendant Paxton issued a press release entitled “Attorney General Ken Paxton Launches Investigation into Beto O’Rourke’s Radical Group for Unlawfully Funding Runaway Democrats.” The release stated that, “[a]s part of the investigation, Attorney General Paxton has issued a Request to Examine, which demands documents and communications from the group regarding potentially unlawful activity, including its involvement in the Democrats’ scheme to break quorum.”<sup>9</sup>

12. At 7:15pm MT on August 6, 2025, Mr. Wysong received the “Request to Examine” (RTE) via personal service at his home in El Paso, Texas. A true and accurate copy of the RTE, as served upon Mr. Wysong, is attached as Exhibit A.

13. Indeed, as of this amended filing, Mr. O’Rourke has not been served with the RTE.

14. The RTE demands eleven categories of potentially extensive documents that may be in the possession of Plaintiff. Several may be subject to privilege.

- a. For instance, Requests 1 and 2 seek communications between Powered by People and dozens of lawmakers. To the extent any such documents exist, they may be protected by legislative privilege.
- b. Requests 3 and 4 seek documents and communications “relating to, or discussing, quorum during Texas’s current special legislative session.” Requests 7 and 8 seek communications regarding the “solicitation of funds” to support certain lawmakers. To the extent any such documents exist, they may be protected by attorney-client privilege.

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<sup>9</sup> Press Release, Office of the Texas Attorney General, Attorney General Ken Paxton Launches Investigation into Soros-Funded PAC for Unlawfully Funding Runaway Democrat Legislators (Aug. 7, 2025), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-launches-investigation-soros-funded-pac-unlawfully-funding-runaway>.



15. Despite the extensive and burdensome requests, the likely privileged nature of the information sought, and constitutionally suspect motives involved, the RTE set a compliance deadline of 4:00 pm MT (5:00pm CT) Friday, August 8, 2025. While the State purports to have withdrawn the RTE, thus suspending this deadline, it apparently intends to use a proceeding in *quo warranto* and/or discovery in the ongoing Tarrant County case to access the same or similar information.

16. While the RTE claimed to encourage Plaintiff to “meet and confer with the Office of the Attorney General” over the scope of the production, when Powered by People’s national counsel asked first for a two-week extension the morning of Thursday, August 7, 2025, his request was promptly rejected. Similarly, a subsequent request sent by Texas counsel seeking an extension until August 16, 2025 (the same 10 days a nonparty subpoenaed for documents in a civil lawsuit under Tex. R. Civ. P. 205.2 would be entitled to), went unresponded to by the Office of Attorney General.

17. Defendant purported to issue the RTE pursuant to Texas Business Organizations Code § 12.151 *et seq.*, which allows the Attorney General to inspect corporate records “as the attorney general considers necessary in the performance of a power or duty of the attorney general, of any record of the entity.”

18. The RTE threatened that if Powered by People does not comply, penalties “include the Office of the Attorney General initiating a legal action for the entity’s ‘registration or certificate of formation’ to be ‘revoked or terminated,’ Tex. Bus. Org. Code § 12.155. If the Office of the Attorney General deems such penalty warranted, proceedings to revoke or terminate an entity’s registration or certificate of formation are initiated through a petition for leave to file an information in the nature of *quo warranto*. Tex. Civ. Prac. & Rem. Code § 66.002.” It is also Class

B misdemeanor to fail to or refuse to provide records requested by the Attorney General. *See* Tex. Bus. Orgs. Code § 12.156.

19. On August 11, 2025, during a conversation with the undersigned counsel, Defendant's counsel indicated that Defendant plans to file a motion for leave to file a petition for *quo warranto* against Powered by People in Tarrant County. The purpose of a *quo warranto* proceeding is to revoke a corporation's charter and ability to conduct business in this state.

20. As defense counsel well knows, a *quo warranto* proceeding in Tarrant County would be completely improper and filing such a pleading there would likely violate attorney ethical rules. Nonetheless, defense counsel indicated they will do so imminently while refusing to identify any basis for doing so.<sup>10</sup>

21. In that same conversation, in response to Plaintiffs indicating that their position was that no discovery should occur in the case until the Motion To Transfer Venue had been decided, Defendant's counsel stated that, in that case, Defendant would instead "ambush" them with discovery.

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<sup>10</sup> Tex.Civ. Prac. & Rem. Code 66.002(a), the controlling *quo warranto* statute, says a *quo warranto* petition should be filed with "the district court of the proper county or a district judge." The general venue statute, Tex.Civ. Prac. & Rem. Code 15.002(a), provides, in relevant part, that venue is only proper in the county "in which all or a substantial part of the events or omissions giving rise to the claim occurred,"...or "in the county of the defendant's principal office in this state, if the defendant is not a natural person." Here, that county can only be El Paso County as Powered by People's principal place of business, Board members, senior team are all in El Paso and its and main activities primarily occur in El Paso County. As attested to in the attached declaration, and as Defendants is aware, no activities that Defendant has (unjustifiably) targeted actually occurred in Tarrant County. *See* Ex. A (Declaration of David Wysong).

22. Defendant Paxton has identified Mr. O’Rourke as a prospective opponent in the 2026 U.S. Senate race, and has already used the prospect of running against Mr. O’Rourke in a fundraising appeal.<sup>11</sup>



23. Recently, through repeated comments, Defendant Paxton has made clear his intention to retaliate against Mr. O’Rourke personally through this RTE for Mr. O’Rourke’s First Amendment-protected activities, including his speech, association with others, and advocacy against the proposed congressional maps. As noted above, the press release announcing the RTE

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<sup>11</sup> Ken Paxton (@KenPaxtonTX), X (Apr. 29, 2025, 2:23 PM CDT), <https://x.com/KenPaxtonTX/status/1917298692438254050> (last visited Aug. 8, 2025).

characterizes lawful donations made by Powered by People as “Beto Bribes.”<sup>12</sup> Defendant Paxton has gone on in recent days to call Mr. O’Rourke “delusional”<sup>13</sup> and to claim he is “scared of accountability.”<sup>14</sup> And, again, even though Defendant Paxton has publicly admitted that he does not have any “details” or actual proof to support allegations of unlawful behavior,<sup>15</sup> Defendant Paxton has stated that serving the RTE sparks “an investigation into Beto O’Rourke’s radical group for unlawfully funding runaway Democrats.”<sup>16</sup>

## VI. CLAIMS FOR RELIEF

### COUNT 1: U.S. Constitution, Freedom of Association (42 U.S.C. § 1983)

24. Plaintiff realleges and incorporates by reference the foregoing paragraphs as though fully set forth herein.

25. Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment. *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 375 (Tex. 1998) (quoting *NAACP v. Alabama*, 357 U.S. 449, 460 (1958)). The First Amendment’s protection of the freedom of association provides “protection to collective effort on behalf of shared goals.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). As the Supreme Court has noted, “[p]rotected association furthers a wide variety of political, social,

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<sup>12</sup> Press Release, Office of the Texas Attorney General, Attorney General Ken Paxton Launches Investigation into Beto O’Rourke’s Radical Group for Unlawfully Funding Runaway Democrats (Aug. 6, 2025),

<https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-launches-investigation-beto-orourkes-radical-group-unlawfully-funding>.

<sup>13</sup> Ken Paxton (@KenPaxtonTX), X (Aug. 7, 2025 3:16 PM), <https://x.com/KenPaxtonTX/status/1953550789571424322> (last visited Aug. 8, 2025).

<sup>14</sup> Ken Paxton (@KenPaxtonTX), X (Aug. 6, 2025, 6:19 PM CDT), <https://x.com/KenPaxtonTX/status/1953234509685768647> (last visited Aug. 8, 2025).

<sup>15</sup> James Morley III, *Texas AG Paxton to Newsmax: O’Rourke’s PAC to Be Investigated*, Newsmax (Aug. 6, 2025, 5:40 PM EDT).

<sup>16</sup> Ken Paxton (@KenPaxtonTX), X (Aug. 6, 2025, 3:18 PM CDT), <https://x.com/KenPaxtonTX/status/1953188955807273440> (last visited Aug. 8, 2025).

economic, educational, religious, and cultural ends, and is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority.” *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021) (internal quotation marks omitted).

26. The RTE and threatened *quo warranto* proceeding wrongly burdens association in several ways. First, political contributions and expenditures are a form of speech and association. *See In re Siroosian*, 449 S.W.3d 920, 925 (Tex. App.—Dallas 2014, no pet.) (quoting *McCutcheon v. Fed. Election Comm’n*, 134 S.Ct. 1434, 1441 (2014)) (“The right to participate in democracy through political contributions is protected by the First Amendment.”). Government actions that tend to limit political spending “operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution.” *Osterberg v. Peca*, 12 S.W.3d 31, 41 (Tex. 2000) (quoting *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam)). Here, Defendant Paxton is overtly penalizing Plaintiff’s exercise of free speech, seeking to chill Plaintiff and Mr. O’Rourke from further political spending and donating. “The First Amendment does not permit the government to make any individual choose between the First Amendment right to engage in unfettered political speech and subjection to discriminatory” application of laws. *See Davis v. Fed. Election Comm’n*, 554 U.S. 724, 739 (2008).

27. Moreover, the Supreme Court has recognized for decades that “compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). That is because disclosure can subject organizations and individuals to threats of harassment, reprisals, and “other manifestations of public hostility.” *Id.*

28. Harassment need not be certain to occur for a plaintiff to state an association claim. The Supreme Court has emphasized instead that the First Amendment is implicated “by ‘state action which may have the effect of curtailing the freedom to associate,’ and by the ‘possible deterrent effect’ of disclosure.” *Americans for Prosperity Found.*, 594 U.S. at 616 (quoting *NAACP*, 357 U.S. at 460–61); *see also id.* at 606 (“freedom of association may be violated . . . where individuals are punished for their political affiliation.”).

29. Further, the First Amendment protects the right to publish and distribute political writings while remaining anonymous. *Ex parte Odom*, 570 S.W.3d 900, 908 (Tex. App.—Houston [1st Dist.] 2018, pet. denied) (citing *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 342 (1995)).

30. As detailed above, the RTE and the threatened *quo warranto* proceeding are intended to, and would serve to, chill Powered by People’s speech and association by deterring their contributions and expenditures, by subjecting supporters and contributors to identification and potential harassment (including from Defendant himself, given his targeting of Mr. O’Rourke) and by forcing disclosure of anonymous political writings, which would in turn make at least some supporters think twice before associating with Powered by People. For particular example, Requests 3 and 4 appear to request any and all communications between Powered by People and any person regarding quorum break. This would implicate third parties, including Powered by People’s volunteers, supporters and contributors, and subject them to identification by a vindictive and politically-motivated bad-faith government actor.

## **COUNT 2: U.S. Constitution, Retaliation For Protected Speech (42 U.S.C. § 1983)**

31. Plaintiff realleges and incorporates by reference the foregoing paragraphs as though fully set forth herein.

32. The Constitution prohibits the government from taking adverse action against a person for the exercise of their First Amendment rights. *E.g., Nieves v. Bartlett*, 587 U.S. 391, 398 (2019). Accordingly, the State cannot retaliate against a citizen who exercises the right of free speech on a matter of public concern. *Levine v. Maverick Cnty. Water Control & Imp. Dist. No. 1*, 884 S.W.2d 790, 795 (Tex. App.—San Antonio 1994, writ denied). There’s no question that “speech concerning illegal conduct, especially in the public sector is of ‘public concern,’” and includes Mr. O’Rourke’s condemnation of Texas Republicans’ attempt to re-draw the congressional maps, which he has characterized as unlawful. *Upton Cnty., Tex. v. Brown*, 960 S.W.2d 808, 826 (Tex. App.—El Paso 1997, reh’g overruled).

33. To demonstrate retaliation, “[a] claimant must show at least that a substantial and motivating factor for the complained-of action resulted from his exercise of free speech.” *Levine*, 884 S.W.2d 790 at 795. Here, as demonstrated by Defendant Paxton’s personal animus and vitriol against Plaintiff and Mr. O’Rourke based on their protected political speech, including speech criticizing Defendant Paxton himself and speech in the form of political donations, retaliation was wrongfully a “substantial and motivating factor” in the issuance of the RTE. *Id.*

**COUNT 3: U.S. Constitution, Fourth Amendment (42 U.S.C. § 1983) & Art. I, § 9 of the Texas Constitution**

34. Plaintiff incorporates by reference every allegation in the preceding paragraphs as if set forth fully herein.

35. The Fourth Amendment, which applies to the States through the Fourteenth Amendment, provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,” and that “no Warrants shall issue, but upon probable cause.” U.S. Const. amend. IV.

36. “Based on this constitutional text,” the Supreme Court “has repeatedly held that searches conducted outside the judicial process, without prior approval by a judge or a magistrate judge, are *per se* unreasonable subject only to a few specifically established and well-delineated exceptions.” *City of Los Angeles v. Patel*, 576 U.S. 409, 419 (2015) (internal quotation marks and alterations omitted).

37. The Attorney General’s demand for documents was not made pursuant to a judicial warrant backed by probable cause. In fact, Defendant’s demand for documents has not been ratified by any court. Nor does Defendant’s demand for documents constitute a permissible administrative search, which must be conducted pursuant to some “‘special need’ other than conducting criminal investigations.” *Id.* at 420. The Attorney General has identified no such special need for these documents, and none is apparent.

38. Instead, the RTE is an “administrative search” which must provide for pre-disclosure judicial review that permits the target to challenge the reasonableness of the inquiry, including its scope, relevance, and burden. While the Texas Supreme Court in *Annunciation House v. Paxton* declined to strike down a *facial* challenge to Texas Business Organizations Code § 12.152, it did so assuming that precompliance review would in fact be made available to those served with requests to examine and that such requests would otherwise adhere to Texas law. *Paxton v. Annunciation House, Inc.*, No. 24-0573, 2025 WL 1536224, at \*24 (Tex. May 30, 2025); *see also Spirit Aerosystems, Inc. v. Paxton*, 142 F.4th 278, 291 (5th Cir. 2025) (“Although the RTE statute does not by its text incorporate Rule 176.6, the Texas Supreme Court recently held in *Annunciation House* that Rule 176.6 nevertheless provides a mechanism for precompliance review of RTEs. . . . The Texas Supreme Court also confirmed that ‘the term [immediately] cannot



reasonably be read literally,’ and that the Attorney General was ‘not permit[ted] ... to withhold precompliance review’ . . .”).

39. Accordingly, for the RTE to be constitutional, it must adhere to the Texas Rules of Civil Procedure governing administrative subpoenas, which incorporate the prohibitions on unreasonable search and seizures found in the U.S. Constitution and in the Texas Constitution. That means: “(1) the agency must conduct its investigation pursuant to an authorized purpose, and the subpoena must be relevant to that purpose; (2) the agency must follow the necessary statutory procedures; (3) the subpoena must describe the documents sought with adequate particularity, meaning that the scope of its demand for documents must be adequate, but not excessive, for the purposes of the inquiry; (4) the subpoena must not unnecessarily or excessively seek information that the agency already possesses; and (5) the respondent may show that the subpoena is unnecessarily burdensome.” *Schade v. Texas Workers’ Comp. Comm’n*, 150 S.W.3d 542, 551 (Tex. App.—Austin 2004).

40. The RTE here fails several of these factors: it was issued for the unauthorized purpose of retaliating against a political rival and to restrict protected rights; even if the purpose of the inquiry were proper, the RTE is vague, seeking a wide range of information with no stated justification; and—between the less-than-48-hour response deadline, requests for sensitive information, including likely attorney client privileged and legislatively privileged information, and far-reaching demands—is patently burdensome. The RTE does not even provide reasonable time to conduct a sufficient privilege search. By contrast, the Texas Rules of Civil Procedure require that, when serving a request for production, a “notice . . . must be served at least 10 days before the subpoena compelling production is served.” Tex. R. Civ. P. 205.2. Here, there was no notice, much less a 10 day notice *in advance* of actually serving the subpoena-equivalent RTE.

#### **COUNT 4: Equal Protection Clauses of the U.S. and Texas Constitution--Selective and Vindictive Enforcement**

41. “[T]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

42. “[T]o establish a claim of discriminatory enforcement, a party must first show he or she has been singled out for prosecution or enforcement of the regulation or ordinance while others similarly situated and committing the same acts have not.” *Maguire Oil Co. v. City of Houston*, 69 S.W.3d 350, 370 (Tex. App.—Texarkana 2002, pet. denied) (internal citations and quotation marks omitted). “Further, the party must also show the government has purposefully discriminated on the basis of an impermissible consideration such as race, religion, or the desire to prevent the exercise of constitutional rights.” *Id.* (citations/quotations omitted).

43. Similarly, “a constitutional claim of prosecutorial vindictiveness may be established in either of two distinct ways: 1) proof of circumstances that pose a ‘realistic likelihood’ of such misconduct sufficient to raise a ‘presumption of prosecutorial vindictiveness,’ which the State must rebut or face dismissal of the charges; or 2) proof of ‘actual vindictiveness’—that is, direct evidence that the prosecutor’s charging decision is an unjustifiable penalty resulting solely from the defendant’s exercise of a protected legal right.” *Neal v. State*, 150 S.W.3d 169, 173 (Tex. Crim. App. 2004); *cf. Hillside Prods., Inc. v. Duchane*, 249 F. Supp. 2d 880, 897–98 (E.D. Mich. 2003) (“[in] vindictive enforcement claims, Plaintiffs must show: (1) exercise of a protected right; (2) the enforcer’s ‘stake’ in the exercise of that right; (3) the unreasonableness of the enforcer’s conduct; and (4) that the enforcement was initiated with the intent to punish Plaintiffs for the exercise of the protected right.”).

44. Here, Defendant Paxton has made it a clear political priority to single-out and target Powered by People based on personal and political animus. Whereas he has never conducted this type of investigation on an organization that is identified as conservative leaning or supportive of him personally or politically. Notably, he himself has been impeached for charges relating to bribery and corrupt campaign and officeholders, and indicted for other criminal matters. Rather than utilizing his office to conduct a neutral third-party audit of those who contributed to him in order to gain political influence, he wasted millions of taxpayer dollars defending his corrupt practices. Defendant Paxton appears to have based his investigative priorities on advice that is commonly attributed to Joseph Goebbels: “Accuse the other side of that which you are guilty.” The fact that he uses the State as an instrumentality to accomplish his illegitimate goals violates the Equal Protection Clause.

**VII. EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
MOTION FOR PROTECTIVE ORDER, APPLICATION FOR TEMPORARY  
INJUNCTION, AND OTHER INJUNCTIVE RELIEF**

***Application for Emergency Temporary Restraining Order***

45. Defendant has indicated that his office intends to imminently initiate baseless *quo warranto* proceedings in Tarrant County, where there are no grounds for venue. This will be the third baseless action that Defendant initiates against Plaintiff in less than a week.

46. As demonstrated by the foregoing facts, Defendant is abusing the legal system solely for the purpose of harassing Plaintiff and chilling Plaintiffs’ First Amendment rights.

47. Defendant has no good faith basis for his threatened legal action, and the action is intended to and would have the effect of imminently and irreparably harming Plaintiff by violating Plaintiffs’ constitutional rights, as laid out in the preceding legal counts. This matter must be

heard immediately, including ex parte if necessary, as Plaintiff will suffer irreparable harm in the absence of temporary relief until a hearing on a temporary injunction can be had.

48. Plaintiff is willing to post bond.

***Motion for Protective Order***

49. Plaintiff re-alleges and incorporates by reference the preceding paragraphs for all purposes the same as if set forth herein verbatim.

50. Plaintiff seeks a protective order pursuant to Tex. R. Civ. Pro. 176.6(e) and Tex. R. Civ. Pro. 192.6(b). Rule 176.6(e) provides, in relevant part, “[a] person commanded to...produce...designated documents and things...may move for a protective order under Rule 192.6(b) — before the time specified for compliance — either in the court in which the action is pending or in a district court in the county where the subpoena was served.”

51. In order to “protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights,” Tex. R. Civ. P. 192.6(b) allows a court to “make any order in the interest of justice and may — among other things — order that: (1) the requested discovery not be sought in whole or in part; (2) the extent or subject matter of discovery be limited; (3) the discovery not be undertaken at the time or place specified; (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the court; (5) the results of discovery be sealed or otherwise protected, subject to the provisions of Rule 76a.”

52. Further, Tex. R. Civ. P. 192.4 provides protections against, *interalia*, inappropriate document requests, requiring that the “discovery methods permitted by these rules should be limited by the court if it determines, on motion or on its own initiative and on reasonable notice, that: (a) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from

some other source that is more convenient, less burdensome, or less expensive; or (b) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.” *See In re Weekley Homes, L.P.*, 295 S.W.3d 309, 322-23 (Tex. 2009) (noting harm that the party resisting discovery might suffer as result of revealing private conversations, trade secrets, and privileged and other confidential information); *see also In re Houstonian Campus, L.L.C.*, 312 S.W.3d 178, 184 (Tex. App.—Houston [14th Dist.] 2010, orig. proceeding) (considering the harm that party resisting discovery might suffer as a result of revealing members’ names).

53. Here, the RTE runs afoul of many of the prohibitions found in Rule 192.6(b) and 192.4, as it:

- *Harasses Plaintiff* — “Discovery is unnecessarily harassing where it is sought for an improper purpose.” *Centennial Psychiatric Assocs., LLC v. Cantrell*, No. 14-17-00380-CV, 2017 WL 6544283, at \*9 (Tex. App. Dec. 21, 2017). The entire RTE was sent for the purpose of retaliation against and harassing a political opponent, a clearly improper purpose and abuse of the RTE process. *See supra*, para. 20-21, 29-31.
- *Invades constitutional rights* — As thoroughly addressed in the preceding sections, Defendants’ RTE improperly invades on Plaintiffs’ Texas and federal constitutional rights. *See supra*, para. 22-42.
- *Is unduly burdensome because:*
  - *There is insufficient time to respond* — Defendants provided a wholly insufficient amount of time to respond and object to the individual

document requests within the RTE. They further refused two requests for an extension of the RTE deadline. Requests for document production to a party in civil litigation allow for a 30 day response deadline. Tex. R. Civ. Pro. 196.2(a). A subpoena seeking documents from a nonparty requires at least 10 days notice. Tex. R. Civ. Pro. 205.2. Here, Defendants provided less than 48 hours notice to Plaintiff, an unreasonable amount of time to (1) gather responsive documents, (2) review those documents for privilege and, (3) compile and provide objections and responses. In the context of a nonparty subpoena, the Eighth Court of Appeals has said “[p]lainly...a day’s notice is not reasonable...” *In re State*, 599 S.W.3d 577, 597 (Tex.App.--El Paso, 2020, orig. proceeding). So too in this situation where Defendants provided less than 48 hours from notice of the RTE to deadline for response.

- *The requests are overly broad* — Additionally, the requests in the RTE are overly broad. An overly broad request for documents that is merely a “fishing expedition” into the other party’s files is prohibited. *In re American Optical Corp.*, 988 S.W.2d 711, 713 (Tex.1998); *Dillard Dept. Stores v. Hall*, 909 S.W.2d 491, 492 (Tex.1995). Here, the RTE is expressly a fishing expedition, and one initiated against a perceived political opponent. Neither the rules of civil procedure nor the U.S. or Texas Constitutions allow for such an assault.
- *There is an alternate source for some of the information* — A request is unduly burdensome when the discovery can be obtained from some other

source that is more convenient, less burdensome, or less expensive. Tex. R. Civ. P. 192.4(a); *Brewer & Pritchard, P.C. v. Johnson*, 167 S.W.3d 460, 466 (Tex.App.—Houston [14th Dist.] 2005, pet. denied); e.g., *In re Arras*, 24 S.W.3d 862, 864 (Tex.App.—El Paso 2000, orig. proceeding) (deposition of nonparty for addresses of other parties was inconvenient and burdensome). The RTE requests information about political contributions and expenditures, which, as a candidate for office on multiple occasions himself, the Defendant knows are subject to public filings and therefore obtainable through other means. Powered by People is a nonprofit organization exempt from tax under 26 U.S.C. § 527 as a political organization, and is registered with the Federal Election Commission under federal campaign finance law and with the Texas Ethics Commission under state campaign finance law. As an organization registered under these campaign finance laws, Powered by People files regular, public reports of its contributions and expenditures. *See* 52 USC § 30104(a)(4); 11 CFR § 104.5(c); Tex. Elec. Code §§ 254.153, 254.154; 1 Tex. Admin. Code §§ 20.423, 20.425. On a regular basis according to schedules determined by these laws, Powered by People files *public* reports of the funds it has received and expenditures made, subject to thresholds for itemization on reports.

- *Requires unnecessary expenses* — Since some of the requests, including Nos. 9 and 11 encompass materials filed in TEC filings, the requests for additional production pursuant to the RTE would require unnecessary expense.

54. A trial court has “broad discretion” in determining whether to grant a protective order and “balances the parties’ competing interests” when making its determination. *Eurecat U.S., Inc. v. Marklund*, 527 S.W.3d 367, 376 (Tex. App.—Houston [14th Dist.], 2017, no. pet.).

55. Plaintiff’s injuries if required to respond to Defendants’ RTE are numerous and articulated above.

### ***Request for Temporary and Permanent Injunctions***

56. Plaintiff re-alleges and incorporates by reference the preceding paragraphs for all purposes the same as if set forth herein verbatim.

57. In addition to the protections afforded by a Rule 176.6(e) protective order, Plaintiff requests and is entitled to temporary and permanent injunctions against Defendant. While the grounds for Plaintiffs’ motion for protective order and requests for injunction overlap, there are additional constitutional bases for enjoining the RTE. *Cf. Annunciation House, Inc.*, 2025 WL 1536224, at \*24 (determining that a recipient of an RTE may seek precompliance review “whether by Rule 176.6(e)’s protective orders or *other provisions of Texas law*”).

58. The Texas Supreme Court has explained that:

A temporary injunction’s purpose is to preserve the *status quo* of the litigation’s subject matter pending a trial on the merits. . . . To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard.

*Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). “[T]he only question before the trial court in a temporary injunction hearing is whether the applicant is entitled to preservation of the status quo of the subject matter of the suit pending trial on the merits.” *Id.* (quoting *Pub. Util. Comm’n v. Water Servs., Inc.*, 709 S.W.2d 765, 767 (Tex. App.—Austin 1986, no writ). Moreover,



“[w]hether to grant or deny a temporary injunction is within the trial court’s sound discretion,” and a reviewing court should not overturn absent a showing that such discretion was abused. *Id.*

59. Here, Plaintiff is entitled to preservation of the *status quo* because it will suffer imminent, irreparable harm for which no adequate remedy at law exists if Defendants are not restrained enforcing the RTE. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002) (“An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard.”) (citing *Canteen Corp. v. Republic of Tex. Props., Inc.*, 773 S.W.2d 398, 401 (Tex. App. —Dallas 1989, no writ)).

60. Plaintiff will suffer a violation of its constitutional rights, and “[u]nder Texas law, a violation of a constitutionally guaranteed right inflicts irreparable injury warranting injunctive relief.” *Operation Rescue-Nat’l v. Planned Parenthood of Houston & Se. Texas, Inc.*, 937 S.W.2d 60, 77 (Tex. App.—San Antonio 1996, writ granted and *aff’d as modified*, 975 S.W.2d 546 (Tex. 1998)) (citing *Southwestern Newspapers Corp. v. Curtis*, 584 S.W.2d 362, 368 (Tex. Civ. App.—Amarillo 1979, no writ); *Iranian Muslim Organization v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981)).

61. Once sensitive information has been handed over and disclosure has been compelled, there can be no remuneration. Not only will Plaintiff suffer that irreparable harm, but compliance with the RTE would deprive this Court of its jurisdiction by effectuating the irreversible contested action that is the subject of this Petition. *Cf. Marketshare Telecom, L.L.C. v. Ericsson, Inc.*, 198 S.W.3d 908, 921 (Tex. App. —Dallas 2006, no pet.) (holding that a court “may protect its jurisdiction” by issuing appropriate injunctions).

62. Further, Plaintiff has stated numerous valid causes of action, *see supra para.* 22-42, and the verified factual allegations demonstrate a probable right to relief. Defendant Paxton has clearly violated the Texas and United States Constitution, as well as the Texas Rules of Civil Procedure.

63. Plaintiff is willing to post bond. Pursuant to Tex. R. Civ. P. 168, “[w]here the...temporary injunction is against...a subdivision of the State in its governmental capacity, and is such that the State...[and]...the subdivision of the State in its governmental capacity, has no pecuniary interest in the suit and no monetary damages can be shown, the bond shall be allowed in the sum fixed by the judge, and the liability of the applicant shall be for its face amount if the restraining order or temporary injunction shall be dissolved in whole or in part.”

64. Accordingly, Plaintiff asks the Court to set a briefing period for its request for temporary injunction, set the same for a hearing and, after the hearing, issue a temporary injunction against Defendants.

65. For these same reasons, Plaintiff seeks a permanent injunction prohibiting Defendants from enforcing the RTE.

### **PRAYER AND REQUEST FOR RELIEF**

For the foregoing reasons, Plaintiff Powered by People requests an immediate protective order pursuant to Tex. R. Civ. Pro. 192.6(b) and Tex. R. Civ. Pro. 176.6(e), and a temporary restraining order issued to Defendants preventing enforcement of the RTE in its entirety. Further, Plaintiff requests that Defendants be cited to appear and answer, and that on hearing, issue Plaintiff judgment as follows:

- (a) A protective order against Defendants’ enforcement of the RTE in its entirety;

- (b) A declaration that Defendants violated the U.S. Constitution and the Texas Constitution, and that the RTE is invalid and unenforceable;
- (c) A temporary and permanent injunction restraining Defendants from enforcing the RTE in its entirety;
- (d) A temporary restraining order restraining Defendants from instituting *quo warranto* proceedings without leave of this court or another district court in El Paso County.
- (e) A temporary and permanent injunction enjoining Defendants from instituting *quo warranto* proceedings without leave of this court or another district court in El Paso County until such date as this Court deems fit.
- (f) Costs of court;
- (g) Reasonable and necessary attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and
- (h) Such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

/s/ Mimi Marziani

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**ATTORNEYS FOR PLAINTIFF**

## VERIFICATION

My name is David Mills Wysong, my date of birth is May 9, 1972, and my address is 824 Twin Hills Dr., El Paso, Texas 79912, United States. I declare under penalty of perjury that the statements in the foregoing Facts section are true and correct.

Executed in El Paso County, State of Texas, on the 11th day of August, 2025.

Signed by:  
  
6CAD8FCC6CE546F...

David Mills Wysong

### **VERIFICATION**

My name is Joaquin Gonzalez, my date of birth is November 27, 1984, and my address is 1533 Austin Hwy. #102-402, United States. I declare under penalty of perjury that the statements in paragraphs 19-21 in the fact section are true and correct.

Executed in Bexar County, State of Texas, on the 11th day of August, 2025.

/s/ Joaquin Gonzalez  
Joaquin Gonzalez

## CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of the foregoing pleading was served on the following as set forth below, on August 11, 2025.

**Via e-service:** [Rob.Farquharson@oag.texas.gov](mailto:Rob.Farquharson@oag.texas.gov)

Rob Farquharson

Deputy Chief

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**Via e-service:** [Johnathan.Stone@oag.texas.gov](mailto:Johnathan.Stone@oag.texas.gov)

Johnathan Stone

Chief

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/s/ Mimi Marziani

Mimi Marziani