

Motion Granted in Part and Order filed September 12, 2025.



**In The
Fifteenth Court of Appeals**

NO. 15-25-00140-CV

**IN RE POWERED BY PEOPLE AND ROBERT FRANCIS O'ROURKE,
Relators**

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
348th District Court
Tarrant County, Texas
Trial Court Cause No. 348-367652-2025**

ORDER

On August 25, 2025, relators Powered by People and Robert Francis O'Rourke filed a petition for writ of mandamus in this Court. *See* Tex. Gov't Code Ann. § 22.221; *see also* Tex. R. App. P. 52. In the petition, Relators ask this Court to compel the honorable Megan Fahey, presiding judge of the 348th District Court of Tarrant County, to dismiss the case for lack of subject matter jurisdiction, or, alternatively, to vacate her rulings denying relators' Emergency Motion to Transfer

Venue and Emergency Motion to Dissolve Temporary Restraining Order and enter an order transferring the case to the 41st Judicial District Court in El Paso County.

Together with the mandamus petition Relators filed a Motion for Emergency Relief pursuant to Texas Rule of Appellate Procedure 52.10 seeking a stay of the Temporary Restraining Orders issued August 15, 2025 and August 25, 2025. We administratively stayed the temporary injunction hearing and extended the TROs, without regard to the merits, pending our consideration of Relators' motion for temporary relief.

The unusual facts here raise unusual questions. The First Amendment guarantees a right to make and receive political contributions supporting an officeholder, candidate, or political party, subject to statutory limits of various types. One of those limits prohibits officeholders from using political contributions to pay personal expenses. It is a novel question whether expenses for food, transportation, and lodging *outside* Texas by officeholders who should be on duty *in* Texas when the Legislature is in session are legitimate political expenses or illegitimate personal ones. But the question today is not whether such activities can be punished after the fact by the remedies in the Texas Election or Penal Codes, but whether they can be prohibited before they occur based on a suspicion that they might.

At this stage, where little evidence has been offered, the latter would constitute an unconstitutional prior restraint of political activity that may or may not prove to be lawful. Tools, whether legal or political, for eliminating quorum breaks may exist. But our Texan founding fathers—like our American founding fathers—took prior restraints on political speech out of the tool kit when they enshrined the right to free speech in our Constitution.

For the following reasons, we GRANT Relators' motion in part. We stay the August 15, 2025 Temporary Restraining Order. We deny emergency relief as to the August 25, 2025 Temporary Restraining Order.

BACKGROUND

On July 9, 2025, Governor Abbott required the Legislature to convene in a special session beginning July 21, 2025. Governor Abbott's proclamation asked the Legislature to consider "a revised congressional redistricting plan in light of constitutional concerns raised by the U.S. Department of Justice." Several state legislators left Texas in response to these redistricting efforts. In response, the Texas House of Representatives instructed its sergeant-at-arms to secure and maintain the attendance of the absent legislators and to issue civil arrest warrants for those legislators.

I. Trial Court Proceedings

On August 8, 2025, the State filed suit in Tarrant County alleging that Relators, former Congressman Robert O'Rourke and an organization founded by him, Powered by People (PxP), engaged in fundraising efforts intended to defray travel costs and to aid the absent legislators. The State alleged that Relators deceived consumers by claiming to solicit donations for political purposes and directing consumers to political fundraising platforms, such as ActBlue, but were actually using the donations to fund personal expenses for absent legislators, which the State alleged is impermissible under the Penal Code and Election Code. *See* Tex. Pen. Code § 36.08(f) ("A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits,

accepts, or agrees to accept any benefit from any person.”); Tex. Elec. Code § 253.035(a) (“A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use.”). The State relied on Section 17.47(a) of the Deceptive Trade Practices Act (DTPA), which permits the Attorney General’s Consumer Protection Division to bring an action against any person who has violated the DTPA:

(a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.

Tex. Bus. & Com. Code § 17.47(a).

The State asserted that injunctive relief was necessary to prevent Relators from engaging in further deceptive conduct. The State also argued that a temporary restraining order was necessary to avoid “irreparable injury, loss, or damage” that would occur due to O’Rourke’s “last-minute scheduling of the Fort Worth rally.” The only attachment to the State’s pleading was the Governor’s proclamation calling the legislative special session.

On August 8, 2025, at 5:32 p.m. after considering the “pleadings, affidavits, and arguments of counsel” the trial court granted a temporary restraining order and restrained Relators from (1) using or raising funds for non-political purposes; (2) offering travel, hotel, or dining accommodations or services to Texas legislators who left the state; and (3) removing any property or funds from Texas during the

pendency of the State's suit. Without hearing evidence on the merits, the trial court found:

Defendants' fundraising conduct constitutes false, misleading, or deceptive acts under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.46(a), (b)(2), (b)(5), (b)(7), and (b)(24) because Defendants are raising and utilizing political contributions from Texas consumers to pay for the personal expenses of Texas legislators, in violation of Texas law. Because this conduct is unlawful and harms Texas consumers, restraining this conduct is in the public interest. DTPA § 17.47(a); *see also* Tex. Const. art. III, § 5.

Furthermore, Defendants have and will continue to engage in unlawful fundraising practices and utilization of political funds in a manner that either directly violates or causes Texas Democratic Legislators to violate: (1) Texas Penal Code, § 36.01(3); (2) Texas Elections Code, § 253.035; (3) Rule 5, § 3 of the House Rules of Procedure; and (4) Tex. Pen. Code §§ 36.08, 36.10. Consumers have and continue to suffer irreparable harm through these unlawful acts because they are making political contributions that are being used to fund personal expenses and violate State law.

The trial court set a hearing on a temporary injunction for August 19, 2025.

On August 12, 2025, the State filed an emergency motion to modify the TRO in which it alleged that Relators were violating the August 8 TRO. Specifically, the State complained of statements made by O'Rourke on social media, additional social media pleas for political donations, and a political rally held by PxP, shown on O'Rourke's YouTube channel, in which a graphic on screen solicited donations "to help Texas Democrats stop Trump's power grab." The State sought modification to the TRO to restrain others working with Relators, specifically requesting service of the order on ActBlue and "any bank or other financial institution at which PxP maintains accounts containing donated funds."

On August 12, 2025, the State sought leave, then amended its petition, to file information in the nature of quo warranto, seeking judicial forfeiture of PxP's corporate charter on the grounds that it is operating in violation of State criminal laws "and has done so in such a manner that has brought the Texas House of Representatives to a legislative standstill." *See* Tex. Gov't Code § 402.023(a) (permitting the Attorney General to seek judicial forfeiture of private corporation's charter "if sufficient cause exists"). In its amended petition, the State also sought a temporary injunction pursuant to Section 17.47 of the DTPA and, independent of the DTPA, citing *State v. Naylor*, 466 S.W.3d 783, 790 (Tex. 2015), under its "intrinsic right to enact, interpret, and enforce its own laws."

The next day, August 13, 2025, Relators filed opposition to the State's motion to modify the TRO and an emergency motion to dissolve the TRO. On August 14, 2025, the trial court held a hearing on Relators' Motion to Transfer Venue, the State's Motion for Expedited Discovery, and Relators' Motion to Dissolve the TRO. At the hearing the trial court heard argument of counsel and reviewed a portion of a video interview between O'Rourke and California Governor Gavin Newsom. The trial court also admitted into evidence a "thumb drive" containing video of O'Rourke's rally held in Tarrant County. In the hearing, the State argued, "we're not restraining speech. What we are saying is that what they cannot do is use this certain speech to fundraise. They can say whatever they want, but they cannot use it to fundraise."

On August 15, 2025, the trial court granted the modified TRO, which replaced the August 8 TRO, restrained the same actions as the original TRO, and further restrained "Defendants, their officers, agents, servants, employees, and attorneys,

and those persons or entities in active concert or participation with Defendants.” The modified TRO also contained recitations that Relators’ “fundraising conduct constitutes false, misleading, or deceptive acts under the [DTPA].” The trial court subsequently denied Relators’ motion to dissolve the TRO, motion to transfer venue, and emergency motion for reciprocal discovery.

On August 25, 2025, in response to actions taken by an El Paso District Court in a parallel proceeding, the trial court signed a TRO restraining PxP from “initiating, filing, or prosecuting any suit, claim, or proceeding that seeks to restrain or enjoin the State from initiating, filing, or prosecuting the quo warranto claims alleged by the State in this proceeding.”

II. Appellate Court Proceedings

On August 25, 2025, Relators filed this petition for writ of mandamus in which they challenged the trial court’s subject matter jurisdiction and four of the trial court’s orders: (1) the modified TRO; (2) denial of Relators’ motion to transfer venue; (3) denial of Relators’ request for reciprocal discovery; and (4) an anti-suit injunction in the form of a TRO. Relators also filed an emergency motion for temporary relief in which they asked this Court to issue an order staying the TRO, modified TRO, and the underlying proceedings until this Court ruled on the petition for writ of mandamus. We requested a response from the State due by August 27, 2025—an abbreviated period that would have allowed the State to proceed with both the scheduled deposition and the temporary injunction hearing as scheduled if the mandamus petition was determined to lack merit. The State immediately filed a motion for a 14-day extension of time to file its response and requested that this

Court rule on its request by 4:30 p.m. that day, on threat of mandamus to the Texas Supreme Court.

At 5:01 p.m. on August 26, 2025, this Court granted the State’s request for a 14-day extension of time to file its response. In that same order, we granted an administrative stay of the hearing set September 2, 2025 on the temporary injunction and the discovery order requiring Relators to appear for deposition August 29, 2025, to accommodate the State’s requested extension and prevent the issues from becoming moot while the emergency motion was considered. “Administrative stays do not typically reflect the court’s consideration of the merits of the stay application. Rather, they freeze legal proceedings until the court can rule on a party’s request for expedited relief.” *In re State*, 711 S.W.3d 641, 643 n.2 (Tex. 2024) (quoting *United States v. Tex.*, 144 S. Ct. 797, 798 (2024) (Barrett, J., concurring in denial of applications to vacate stay)); *cf. In re State*, 711 S.W.3d at 644 (many such cases); *In re State of Texas*, No. 24-0325 (Apr. 23, 2024) (administrative stay entered pending consideration of emergency motion); *In re Richardson*, No. 24-0086 (Feb. 2, 2024) (administrative stay); *In re Elhindi*, No. 23-1040 (Dec. 27, 2023); *In re State of Texas*, No. 23-0994 (Dec. 8, 2023) (administrative stay); *Ahlgren v. Ahlgren*, No. 23-0603 (Aug. 14, 2023) (administrative stay).¹

At 5:02 p.m. on August 26, the State filed a petition for writ of mandamus and accompanying motion for emergency relief in the Supreme Court, in which the State alleged this Court abused its discretion by not ruling on the State’s motion to extend

¹ This Court has followed this practice in issuing administrative stays without regard to the merits to permit the Court time to consider a party’s request for emergency relief. *See, e.g., Paxton v. Garza*, No. 15-25-00116-CV (June 30, 2025) (administrative stay); *In re Storable, Inc.*, No. 15-25-00109-CV (June 24, 2025) (administrative stay).

time before 4:30 p.m. The Texas Supreme Court denied the State’s mandamus petition the next day. To preserve this Court’s ability to fully review Relators’ petition for writ of mandamus, on September 3, 2025, this Court issued an order requiring the August 15, 2025 and August 25, 2025 TROs to remain in effect until decision by this Court on Relators’ emergency motion or until further order of this Court.

ANALYSIS

We are presented with a motion for temporary relief while the Court considers Relators’ petition for writ of mandamus. The Texas Supreme Court determined that when the Court exercises its authority under Texas Rule of Appellate Procedure 52.10, the goal should be to preserve the parties’ rights while the appellate proceeding proceeds. *In re State*, 711 S.W.3d at 645. Recognizing that a stay such as that requested by Relators here, is “a kind of injunction,” the Court applied traditional considerations governing injunctive relief. *Id.* at 645. While not foreclosing consideration of other matters, the Court determined whether injunctive relief was warranted by considering (1) the likely merits of the parties’ positions; (2) whether the party seeking relief demonstrated that it will suffer irreparable harm if relief is not granted; and (3) the harm other parties or the public will experience if temporary relief is granted as well as any potential injury to non-parties caused by granting or denying relief. *Id.* We apply those same considerations here.

“‘[J]ust relief’ that ‘preserve[s] the parties’ rights’ cannot be afforded without some consideration of the merits.” *In re State*, 711 S.W.3d at 644–45. Accordingly, we consider the merits first, mindful of the Texas Supreme Court’s instruction that the merits “need not—and often should not—be definitively determined at this

preliminary stage.” *Id.* at 645. Mandamus relief is available when a trial court’s temporary restraining order adjudicates conduct to be “illegal based merely on pleadings and a brief, non-evidentiary TRO hearing when substantial rights are involved and the issues are far from clear.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (granting mandamus relief where temporary restraining order enjoined political action committee from engaging in political speech on the ground that such speech was illegal).

I. The Trial Court Had Jurisdiction to Issue Injunctive Relief If Such Injunctive Relief Were Otherwise Warranted.

Relators contend that the trial court had no subject matter jurisdiction to hear the underlying suit or restrain them. An order is void if the court rendering it had no jurisdiction of the subject matter. *See Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990). Whether a pleader has alleged facts that demonstrate a trial court’s subject matter jurisdiction is a question of law reviewed de novo. *Sampson v. Univ. of Texas at Austin*, 500 S.W.3d 380, 384 (Tex. 2016).

Relators assert the trial court lacks subject matter jurisdiction over the State’s DTPA action because the State does not have standing. Relators argue the DTPA does not govern the underlying transactions involving political fundraising, and the State lacks standing to sue for the conduct it challenges.

“[T]he question whether a plaintiff has established his right ‘to go forward with [his] suit’ or ‘satisfied the requisites of a particular statute’ pertains ‘in reality to the right of the plaintiff to relief rather than to the [subject-matter] jurisdiction of the court to afford it.’” *Pike v. Tex. EMC Mgmt., LLC*, 610 S.W.3d 763, 774 (Tex. 2020) (quoting *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 76–77 (Tex. 2000)). A

trial court, therefore, does not lack subject matter jurisdiction simply because the plaintiff may not have established a statutory right to go forward with the suit.

Relators make several arguments on the merits, asserting that allowing this suit by the State has due process implications, and that the State's position would lead to absurd and unjust consequences. Each of these arguments, however, goes to the merits of the State's case and whether it can prove its claims under the DTPA. In asserting that "the threshold inquiry for a cause of action under the DTPA is whether the plaintiffs are 'consumers' for purposes of the Act," Relators cite several cases in which courts addressed the merits of DTPA actions, not the trial court's subject matter jurisdiction. *See e.g., Flenniken v. Longview Bank & Tr. Co.*, 661 S.W.2d 705, 706 (Tex. 1983) (reviewing trial court judgment after jury trial and concluding that only consumers may maintain a private cause of action under the DTPA); *Doe v. Boys Clubs of Greater Dallas, Inc.*, 868 S.W.2d 942, 953 (Tex. App.—Amarillo 1994), *aff'd*, 907 S.W.2d 472 (Tex. 1995) (reviewing summary judgment and determining that the record did not support conclusion that plaintiff sought or acquired goods or services).

We need not determine at this juncture whether political donors can be consumers under the DTPA, whether they engaged in the purchase of goods or services, or whether false representations were made. That is because the failure to establish the elements of a DTPA claim does not strip the trial court of subject matter jurisdiction to issue injunctive relief, although such relief could be erroneous. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 127–28 & n.4 (2014) (question whether plaintiff has statutory cause of action is not one of constitutional "standing" but of statutory interpretation); *Pike*, 610 S.W.3d at 774

(question whether plaintiff has satisfied the requisites of a particular statute relates to the plaintiff's right to relief rather than the court's subject matter jurisdiction). We preliminarily conclude, without making a dispositive determination at this juncture, that the trial court had subject matter jurisdiction to entertain the request for a temporary restraining order on the State's DTPA claim.

II. This Case Is Appropriate for Mandamus Review.

The State argues that this Court has no authority to grant relief to Relators because temporary restraining orders are unreviewable. According to the State, this Court must wait until a temporary injunction issues and then consider the appeal pursuant to the schedule set for interlocutory accelerated appeals.

The Texas Supreme Court's opinion in *In re Newton* forecloses that argument. *In re Newton*, 146 S.W.3d 648, 650 (Tex. 2004). In that factually analogous case, two Democratic Party candidates for general election to the Texas House of Representatives procured a temporary restraining order barring a political action committee (Associated Republicans of Texas Political Action Committee, "ART PAC") supporting Republican Party candidates from soliciting, accepting, and spending certain corporate contributions for a period of fourteen days. *Id.* The Democratic Party candidates argued—and the trial court found—that the political action committee had violated governing law by soliciting, accepting, and expending such funds. *Id.* at 649–50. The Texas Supreme Court granted mandamus relief and vacated the TRO, reasoning that conduct should not be "adjudicated illegal based merely on pleadings and a brief, non-evidentiary TRO hearing when substantial rights are involved and the issues are far from clear." *Id.* at 651.

Significantly, the Texas Supreme Court recognized that an “injunction plaintiff need not establish the correctness of his claim to obtain temporary relief, but must show only a likelihood of success on the merits.” *Id.* at 652, n.21 (citation omitted). The problem was that the trial court did not stop at merely finding the possibility of such a violation, but found—without even the benefit of an evidentiary hearing—that ART PAC had “in fact violated the Election Code.” *Id.* at 652. The Texas Supreme Court questioned why the trial court “thought it necessary to schedule any further hearing at all, having decided the case on the pleadings as it did.” *Id.* In these unique circumstances, the Court departed from the ordinary rule that temporary restraining orders are unreviewable and granted mandamus review where the First Amendment injury to ART PAC would be irreparable if ART PAC were required to await a temporary injunction to appeal through the ordinary accelerated appellate process.

Here, the political party interests are reversed, but the facts are the same in the key respects. Here, the State—represented by the current Attorney General who is also a Republican candidate for U.S. Senate—has procured a temporary restraining order barring a political action committee supporting Democratic Party candidates from soliciting, accepting, and spending certain contributions. Relators’ rights to “freedom of speech under the United States Constitution and the Texas Constitution” have been subjected to a prior restraint, as were the free speech rights of ART PAC. *Id.* at 652. And just as in *In re Newton*, the temporary restraining order shot far past finding a likelihood of success on the merits and finally adjudicated the Relators’ political speech to be illegal based merely on pleadings and a “brief, non-evidentiary

TRO hearing when substantial rights are involved and the issues are far from clear.”

Id. The temporary restraining order states as follows:

Defendants’ fundraising conduct ***constitutes false, misleading, or deceptive acts*** under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.46(a), (b)(2), (b)(5), (b)(7), and (b)(24) because Defendants are raising and utilizing political contributions from Texas consumers to pay for the personal expenses of Texas legislators, ***in violation of Texas law. Because this conduct is unlawful and harms Texas consumers, restraining this conduct is in the public interest.*** DTPA § 17.47(a); see also Tex. Const. art. III, § 5.

Furthermore, Defendants have and will continue to engage in ***unlawful fundraising practices*** and utilization of political funds in a manner that either directly violates or causes Texas Democratic Legislators to violate: (1) Texas Penal Code, § 36.01(3); (2) Texas Elections Code, § 253.035; (3) Rule 5, § 3 of the House Rules of Procedure; and (4) Tex. Pen. Code §§ 36.08, 36.10.

(emphasis added).

These are not findings of likely success on the merits. They are resolutions of the merits. Consequently, as in *In re Newton*, it is unclear why the district court here thought it necessary to schedule a temporary injunction hearing at all, having already decided the case on the pleadings. *Id.*

Moreover, just as in *In re Newton*, it is “far from clear” that the actual instances of Relators’ conduct recounted in the pleadings are unlawful under the laws that the State invokes here. *Id.* For example, the Texas Deceptive Trade Practices Consumer Protection Act is an older statute—enacted in 1973 by the 63rd Texas Legislature. Yet the State fails to cite a single case in which the DTPA has been interpreted to apply to political solicitations or political speech in the DTPA’s

half century of existence, despite the raucous nature of Texas’s political climate over the spanning decades. The text of the statute provides clues as to why that may be—although we need not and do not definitively resolve the issue here.

Relators urge us to limit the DTPA’s applicability to the confines set out in the statute’s plain text: “false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division. . . .” Tex. Bus. & Com. Code § 17.46. Section 17.46(b) lists 34 examples of such deceptive acts or practices, but the Legislature did not expressly include political solicitations or political speech in section 17.46(b)’s list of regulated conduct or in the definitions capturing what qualifies as a protected consumer transaction. *See PPG Indus., Inc. v. JMB/Houston Centers Partners, Ltd.*, 146 S.W.3d 79, 84 (Tex. 2004) (Brister, J.). (“A statute’s silence can be significant.”).

Construing the plain language of the Act, the Texas Supreme Court has held that the “DTPA’s primary goal was to protect consumers by encouraging them to bring consumer complaints.” *Id.*; *Woods v. Littleton*, 554 S.W.2d 662, 669 (Tex.1977) (“[T]he legislative intent [was] to encourage aggrieved consumers to seek redress and to deter unscrupulous sellers who engage in deceptive trade practices.”) “The Legislature did not intend the DTPA for everybody. It limited DTPA complaints to ‘consumers,’ and excluded a number of parties and transactions from the DTPA....” *PPG Indus.*, 146 S.W.3d at 85 (citing *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 815 (Tex.1997) (holding “consumer” includes intended beneficiary of goods or services)). The DTPA defines “consumer” as “an individual, partnership, corporation, this state, or a subdivision or agency of

this state who seeks or acquires by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of \$25 million or more, or that is owned or controlled by a corporation or entity with assets of \$25 million or more.” Tex. Bus. & Com. Code § 17.45(4). “Goods” are defined to mean “tangible chattels or real property purchased or leased for use.” *Id.* § 17.45(1). “Services” refers to “work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.” *Id.* § 17.45(2).

Construing these provisions as a whole, it is not immediately clear from the State’s pleadings what “goods” or “services” are at issue, as political contributions may not necessarily fit either category. Nor is it clear who the consumer is or whether any goods or services have been acquired for “use.” *Flenniken v. Longview Bank and Trust Co.*, 661 S.W.2d 705, 707 (Tex. 1983) (requiring that the transaction being challenged under the DTPA involve a consumer and goods or services); *Riverside Nat’l Bank v. Lewis*, 603 S.W.2d 169, 170–71 (Tex. 1980) (holding that “one who seeks a loan from a bank in order to refinance a car” does not qualify as a “consumer,” and so cannot recover under the DTPA).² Moreover, the State’s other arguments pertaining to violations of the Election Code, the House Rules, and the Penal Code are not sufficiently developed at this juncture to obtain a declaration of illegal action without so much as an evidentiary hearing. Just as in *In re Newton*, we need not await a temporary injunction to grant relief.

² Relators concede that the Attorney General need not be a “consumer” to sue in the sense that he need not have donated to Relators to be a viable claimant. Rather, they acknowledge that the Attorney General may act to vindicate the claims of “consumers” who would have their own claims under the DTPA, but Relators argue that a political donor does not fit the statute’s definition of a “consumer.”

III. The Temporary Restraining Order Is an Unconstitutional Prior Restraint on Political Speech.

In their motion for emergency relief, Relators assert that the trial court's modified TRO violates their rights to free speech under the Texas Constitution and the United States Constitution and must be vacated for that reason. We agree.

“[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). “It has been generally, if not universally, considered that it is the chief purpose of the guaranty [of the First Amendment] to prevent previous restraints upon publication.” *Near v. Minnesota*, 283 U.S. 697, 713 (1931). The United States Supreme Court has long held that speech is protected even if it is in the form of a solicitation to pay or contribute money. *Bates v. State Bar of Arizona*, 433 U.S. 350, 363 (1977) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)). In the words of Chief Justice Roberts, if the First Amendment protects “Nazi parades—despite the profound offense such spectacles cause—it surely protects political campaign speech despite popular opposition.” *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 191 (2014).

Similarly, the Texas Constitution declares that “[e]very person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press.” Tex. Const. art. I, § 8. Prior restraints on speech include judicial orders “forbidding certain communications” that are “issued in advance of the time that such communications are to occur.” *Kinney v. Barnes*, 443 S.W.3d 87, 90 (Tex. 2014) (quoting *Alexander v. United States*, 509 U.S. 544, 550 (1993)). “[A]

prior restraint on expression is presumptively unconstitutional.” *Davenport v. Garcia*, 834 S.W.2d 4, 10 (Tex. 1992). While abuse of the right to speak subjects a speaker to certain penalties, the Texas Supreme Court has long held that “pre-speech sanctions” are presumptively unconstitutional. *Barnes*, 443 S.W.3d at 90. Recognizing that prior restraints are the least tolerable infringement on free speech rights, the Texas Supreme Court developed a test to determine whether a judicial order could withstand constitutional scrutiny. *Davenport*, 834 S.W.2d at 10. The Court determined an order could be upheld only where there are specific findings supported by evidence that (1) an imminent and irreparable harm will deprive litigants of a just resolution of their dispute, and (2) the judicial action represents the least restrictive means to prevent that harm. *Id.*

On its face, the temporary restraining order is a prior restraint on Relators’ political expression. *See Buckley v. Valeo*, 424 U.S. 1, 16–17 (1976) (recognizing political fundraising as political speech under the First Amendment, with limitations permissible to address specific concerns such as corruption). It expressly restrains Relators, “their officers, agents, servants, employees, and attorneys, and those persons or entities in active concert or participation with” relators from the following:

- i. Using political funds for the improper, unlawful, and non-political purposes of (1) funding out-of-state travel, hotel, or dining accommodations or services to unexcused Texas legislators during any special legislative session called by the Texas Governor, or (2) funding payments of fines provided by Texas House rules for unexcused legislative absences;
- ii. Raising funds for non-political purposes, including to (1) fund out-of-state travel, hotel, or dining accommodations or services to

unexcused Texas legislators during any special legislative session called by the Texas Governor, or (2) fund payments of fines provided by Texas House rules for unexcused legislative absences, through the ActBlue platform or any other platform that purports to exist for political fundraising purposes;

iii. Offering, conferring, or agreeing to confer, travel, hotel, or dining accommodations or services (or funds to support such accommodations or services) to unexcused Texas legislators during any special legislative session called by the Texas Governor as consideration for a violation of such legislators' Constitutional duties; and

[iv.] [R]emoving any property or funds that belong to, or are being held for, Defendant Powered by People and/or Defendant O'Rourke, from the State of Texas during the pendency of this lawsuit.

Under *Davenport*, these prior restraints are fatally defective because the order contains no findings supported by evidence that imminent and irreparable harm will deprive the litigants of a just resolution of their dispute, or that the sweeping prior restraints are the least restrictive means to prevent the harm. *Davenport*, 834 S.W.2d at 10. The modified temporary restraining order contains no specific findings pertaining to imminent and irreparable harm at all, much less findings supported by evidence.³ It simply adjudicates the merits prematurely:

The Court finds that harm is imminent to the State, and if the Court does not issue this order, the State will be irreparably injured.

³ The original temporary restraining order, which contained most of the prior restraints at issue here, was supported only by the State's pleadings and an attachment consisting of the Governor's proclamation calling an "extraordinary session of the 89th Legislature." The State sought modifications to the temporary restraining order to alter the original order's language to further restrain Relators' "officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise." The only additional evidence introduced at the hearing on the modified TRO was an excerpt of a video interview between O'Rourke and California Governor Gavin Newsom, and a video of a Democratic Party rally in Tarrant County.

Specifically, Defendants' fundraising conduct constitutes false, misleading, or deceptive acts under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.46(a), (b)(2), (b)(5), (b)(7), and (b)(24), because Defendants are raising and utilizing political contributions from Texas consumers to pay for the personal expenses of Texas legislators, in violation of Texas law. Because this conduct is unlawful and harms Texas consumers, restraining this conduct is in the public interest. Tex. Bus. & Com. Code § 17.47(a); *see also* Tex. Const. art. III, § 5.

Furthermore, the order contains no statement that the prior restraints on speech are the least restrictive means to prevent whatever harm is threatened, nor could the order truthfully do so. "Freedom of expression may not be restricted solely on grounds that its exercise will have the effect of producing imminent and irreparable harm. Restraints may be imposed only if the injunctive relief granted encompasses the least restrictive means of protecting against the alleged harmful effect." *Ex parte Tucci*, 859 S.W.2d 1, 6 (Tex. 1993). This failing, too, is fatal to the order.

The State defends the order on two grounds. First, the State argues that the temporary restraining order comports with Texas law and so must be upheld on that basis. Texas Rules of Civil Procedure 680, 683, and 684 require a trial court issuing a temporary restraining order to: (1) state why the order was granted without notice if it is granted *ex parte*, Tex. R. Civ. P. 680; (2) state the reasons for the issuance of the order by defining the injury and describing why it is irreparable, *id.*; (3) state the date the order expires and set a hearing on a temporary injunction, *id.*; and (4) set a bond, Tex. R. Civ. P. 684. "Orders that fail to fulfill these requirements are void." *In re Office of Attorney Gen.*, 257 S.W.3d 695, 697 (Tex. 2008) (citing *InterFirst*

Bank San Felipe, N.A. v. Paz Constr. Co., 715 S.W.2d 640, 641 (Tex.1986); *Lancaster v. Lancaster*, 291 S.W.2d 303, 308 (Tex. 1956)).

Although these rules set a floor on what a temporary restraining order must contain to prevent voidness, the rules are not a ceiling on what the Texas Constitution separately demands when a party seeks to enact a prior restraint on political speech in the form of a temporary restraining order. Regardless, the trial court’s modified temporary restraining order does not even comport with the minimal requirements of Rule 683. Every temporary restraining order must “set forth the reasons why the court deems it proper to issue the writ to prevent injury to the applicant in the interim; that is, the reasons why the court believes the applicant’s probable right will be endangered if the writ does not issue.” *Transp. Co. of Tex. v. Robertson Transps., Inc.*, 261 S.W.2d 549, 553 (Tex. 1953); *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.”). This explanation may not be conclusory, as the trial court’s order was here. *See Good Shepherd Hosp., Inc. v. Select Specialty Hosp.-Longview, Inc.*, 563 S.W.3d 923, 929 (Tex. App.—Texarkana 2018, no pet.); *In re Chaumette*, 456 S.W.3d 299, 305 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding). The temporary restraining order must recite the facts on which the trial court relied in reaching its conclusion. *See In re Cnty. of Hidalgo*, 655 S.W.3d 44, 53 (Tex. App.—Corpus Christi–Edinburg 2022, no pet.); *Caniglio v. Woods*, 593 S.W.3d 856, 858 (Tex. App.—Texarkana 2019, no pet.). The modified temporary restraining order does not do so.

Second, the State argues that the modified temporary restraining order only regulates fraudulent and deceptive conduct, which does not constitute a prior

restraint. This presumes that Relators’ conduct and speech was fraudulent. As addressed above, the trial court concluded that Relators “fundraising conduct constitutes false, misleading, or deceptive acts” without any evidence to support those findings. The modified temporary restraining order did not state the facts on which it based these conclusions; therefore, it did not overcome the presumption of unconstitutionality.

IV. The Balance of Harms Supports Granting Temporary Relief.

Turning to the balance of harms, the Texas Supreme Court recognized that “any significant denigration of First Amendment rights inflicts irreparable injury . . . and constitutes irreparable harm.” *Iranian Muslim Org. v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981) (omission in original). The United States Supreme Court recently re-affirmed, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Mahmoud v. Taylor*, — U.S. —, 145 S. Ct. 2332, 2364 (2025) (Alito, J.); (quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam)) (internal quotations omitted).

Quoting *In re State*, 711 S.W.3d at 647, the State asserts it will be irreparably harmed “if Relators are able to disburse funds (for out-of-state expenses) because ‘if it is later determined they were paid in violation of’ Texas law, ‘they cannot feasibly be recouped.’” The circumstances in this case are measurably different than those in *In re State*. *In re State* involved a guaranteed-income program in which Harris County proposed to distribute funds to individuals. *Id.* at 643. The State alleged that disbursement of those funds violated the Texas Constitution’s bar on gratuitous payments to individuals. *Id.* If the funds were disbursed before the trial court

determined if the program violated the Texas Constitution, they could not feasibly be recouped from individuals. *Id.* at 647.

In this case, the State filed a DTPA action against Relators seeking injunctive relief and civil penalties. DTPA claims generally are punitive rather than remedial. *PPG Indus., Inc. v. JMB/Houston Centers Partners Ltd. P'ship*, 146 S.W.3d 79, 89 (Tex. 2004). In other words, the State does not seek to recoup the actual funds donors gave to Relators. The State seeks civil penalties under the DTPA that are tied to conduct, not monetary damages. If Relators disburse funds, unlike the anticipated disbursements in *In re State*, the State's claims under the DTPA do not seek to claw back actual disbursed funds, but to assess statutory penalties.

We grant Relators' motion in part and ORDER that the August 15, 2025 modified temporary restraining order be STAYED pending resolution of the petition for writ of mandamus or until further order of this Court. The extension of the August 25, 2025 temporary restraining order remains in place until resolution of the petition or further order of this Court.

PER CURIAM

Panel consists of Chief Justice Brister and Justices Field and Farris.