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March 27, 2026

Via Electronic Filing
Mr. Christopher A. Prine
Clerk of the Court
Fifteenth Court of Appeals
P.O. Box 12852
Austin, TX 78711

Re: Post-Submission Letter—Response to Issues Raised at Oral Argument
In re Powered by People and Robert Francis O'Rourke
Court of Appeals Number: 15-25-00140-CV
Trial Court Case Number: 348-367652-2025

Dear Mr. Prine:

Please provide a copy of this letter to Chief Justice Brister, Justice Field, and Justice Farris, before whom this case was orally argued on March 12, 2026.

Pursuant to the Court's invitation at oral argument on March 12, 2026, the State of Texas respectfully submits this post-submission letter addressing the questions raised by the Court. Oral argument primarily focused on two of the trial court's orders: the denial of the motion to transfer venue and the issuance of a temporary restraining order. The State addresses each in turn.

I. The DTPA Authorizes Enforcement Against False Representations in the Solicitation and Distribution of Contributions Without Requiring a Consumer, Transaction, or Goods and Services.

The Court's questions regarding "consumer," "transaction," and "trade or commerce" resolve the same way: the Attorney General's enforcement authority under § 17.47(a) of the Texas Business & Commerce Code requires none of them.

Section 17.46(a) provides that false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are unlawful. That is the complete requirement.

No consumers. No goods. No services. No transactions.

Section 17.47(a) confirms the point. It authorizes suit whenever there is reason to believe unlawful conduct is occurring and enforcement is in the public interest. The word "consumer" does not appear in the provision. By contrast, § 17.50 expressly limits private actions to consumers. The Legislature knew how to impose that limitation. It did so only there.

The case law reflects this distinction, too. State enforcement actions do not require a consumer, while private actions do. *Riverside Nat. Bank v. Lewis*, 603 S.W.2d 169, 173-74 (Tex. 1980) (recognizing that a person who "engaged in a deceptive act by presenting any misleading information concerning any item of value" may be sued by the State under the DTPA, whereas a party bringing a private DTPA suit must be a consumer); *Household Retail Servs., Inc. v. State*, No. 04-00-00734-CV, 2001 WL 984779, at *3 n.4 (Tex. App.—San Antonio Aug. 29, 2001) ("An aggrieved individual must meet the statutory definition of "consumer" to bring a private cause of action against a business defendant … This issue is not applicable where the cause of action is brought by the AG."). The lone contrary decision—since reversed and vacated—is not binding and conflicts with the weight of authority. *Word of Faith Outreach Ctr. Church, Inc. v. Morales*, 787 F. Supp. 689, 697 (W.D. Tex. 1992), *reversed*, 986 F.2d 962 (5th Cir. 1993); *Cf. Holzman v. State*, 2013 WL 398935, at *3 (Tex. App.—Corpus Christi–Edinburg Jan. 31, 2013) (mem. op.) ("[I]t is not necessary for the State to allege any injury to a [consumer] to recover the civil penalties it seeks in its live petition."); *Tex. v. Colony Ridge, Inc.*, 2024 WL 4553111, at *7-8 (S.D. Tex. Oct. 11, 2024) (holding the presence of a consumer, or injury to a consumer, is not required when the State initiates a DTPA lawsuit).

Neither do §§ 17.46(a) and 17.47(a) require a "transaction," "good," or "service." These statutes prohibit "acts" and "practices," terms whose ordinary meanings are **far broader** than "transactions" or "goods" and "services." *Compare* ACT and PRACTICE, Black's Law Dictionary (12th ed. 2024) *with* TRANSACTION *and with* Tex. Bus. & Com. Code § 17.45(1) (defining "goods"), (2) (defining "services"). The Legislature knew how to impose those limits. Tex. Gov't Code Ch. 312. It did not. Instead, it directed that the statute be liberally construed to protect against deceptive practices. Tex. Bus. & Com. Code § 17.44(a) (directing that the DTPA "shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.").

The DTPA defines "trade or commerce" to include the distribution of any "thing of value." Tex. Bus. & Com. Code § 17.45(6). Political contributions are things of value under Texas law. *See* Tex. Elec. Code § 251.001(2) (defining "contribution" as "a direct or indirect transfer of *money*, goods, services, or a*ny other thing of value* and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer." (emphases added)); *see also* Tex. Elec. Code § 251.001 (defining an "expenditure" as "a payment of *money or any other thing of value* and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment." (emphasis added)); *Borgelt v. Austin Firefighters Ass'n, IAFF Local 975*, 692 S.W.3d 288, 299 (Tex. 2024) (interpreting the Constitution's Gift Clause's prohibition on the government granting "public money or thing of value" for private gain). Relators' solicitation and distribution of contributions therefore fall squarely within the DTPA's scope.

The deceptive conduct here is straightforward—donations were solicited for one purpose and used for another. Those representations were made in the course of soliciting and distributing contributions. That is "trade or commerce." *See also Commonwealth v. Pennsylvania Chiefs of Police*

Assn., Inc., 132 Pa. Cmwlth. 186, 189-90, 572 A.2d 256 (1990) (solicitation of money and sale of advertising space constitutes "trade" and "commerce").

This case is about misrepresentation, not political advocacy. The DTPA does not regulate lawful political fundraising. It does, however, prohibit deceptive practices in how funds are solicited. In *Seagull v. WinRed, Inc.*, a Connecticut court held that WinRed's use of default pre-checked recurring donations boxes for political donations could constitute "unfair or deceptive acts or practices in the conduct of any trade or commerce." 2023 WL 4322714 *4 (Conn. Super. Ct. June 28, 2023). The Eighth Circuit reached similar conclusions about WinRed's alleged misconduct. *WinRed, Inc. v. Ellison*, 59 F.4th 934 (8th Cir. 2023). The same is true here.

And to the extent goods or services were required for the violations under §§ 17.46(b)(2), (5), (7), and (24), the allegations satisfy that standard. For example, the *WinRed* court held that WinRed's "conduiting of donations qualifies as 'services' and 'the distribution of any ... thing of value....'" 2023 WL 4322714 at *4. The same logic applies to Relators. Relators were advertising and offering to perform a service by conduiting the donations solicited from Texas consumers to the absconding legislators. As in *Mother & Unborn Baby Care of N. Tex., Inc. v. State*, 749 S.W.2d 533, 538 (Tex. App.—Fort Worth 1988, writ denied), it is "immaterial whether [the violators] provided a service in exchange for money; the statute as a whole supports the conclusion that transfer of valuable consideration is not necessary." The same is true here. Relators offered and performed a service—collecting and transmitting funds. Tex. Bus. & Com. Code § 17.45(2). That is enough.

II. Venue is Proper in Tarrant County.

In re Hardwick, 426 S.W.3d 151 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding), is not binding on this Court. At most, it is persuasive. Even under its reasoning, the State prevails.

Hardwick held that the trial court "must base its venue determination on the last pleading that was timely filed" before the hearing. *Id.* at 157. At the time of the August 14 ruling, the operative pleading included DTPA injunctive relief. That pleading did not trigger any mandatory venue provision.

A DTPA injunction under § 17.47 is a statutory injunction—**not an equitable one**—because § 17.47 removes the common law prerequisite of pleading no adequate remedy at law. *Brown v. Gulf Television Co.*, 306 S.W.2d 706, 709 (Tex. 1957); *David Jason W. & Pydia, Inc. v. State*, 212 S.W.3d 513, 519 (Tex. App.—Austin 2006, no pet.) (hereafter "*West*"). The mandatory venue provision in Tex. Civ. Prac. & Rem. Code § 65.023, relied on by Relators, reaches only equitable injunctions—which the State never sought. And, contra the State's claims for civil penalties and *quo warranto* relief, the mandatory venue provision in § 65.023 "applies only to suits in which the relief sought is purely or primarily injunctive." *In re Cont'l Airlines, Inc.*, 988 S.W.2d 733, 736 (Tex. 1998). As to § 17.47(b), the word "may" makes that provision permissive. *Whitson v. Harris*, 682 S.W.2d 423 (Tex. App.—Dallas 1984, writ dism'd); *In re Sanofi-Aventis U.S., LLC*, 711 S.W.3d 732, 735 (Tex. App.—15th Dist. 2025). Mandamus does not generally lie to enforce permissive venue. *Bridgestone/Firestone, Inc. v. Thirteenth Court of Appeals*, 929 S.W.2d 440, 441 (Tex. 1996) (orig. proceeding).

Independent provisions confirm that Tarrant County is the appropriate venue. Tex. Civ. Prac. & Rem. Code § 15.006. Venue is proper under § 15.002(a)(1) because a substantial part of the events occurred there, including Relators' rally at the Fort Worth Convention Center on August 9, 2025, along with the solicitations that were directed at consumers located in Tarrant County.

Consequently, venue is plainly proper in Tarrant County.[1]

III. The TRO Was Properly Issued on Sufficient Evidence, and the Issues It Raised Are Now Moot.

A. The Personal-Use Analysis Turns on Purpose.

The Court questioned whether hotel and travel payments to legislators are "personal" expenses and suggested that such payments might be ordinary political expenses. The State submits that the question is not whether travel or lodging can ever be political expenses. It is whether these payments were for the performance of official duties.

They were not.

They were made to induce legislators *not* to perform their duties. Payment for non-performance of official duties is not a political expense—it is personal use. Tex. Elec. Code § 253.035(d) (defining "personal use" as "a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office.").

The deceptive act is the misrepresentation to donors. Funds were solicited for a lawful purpose and used for another. *See Cancer Fund of Am., Inc.*, No. CV-15-00884-PHX-NVW, 2019 WL 13214435, at *7 (D. Ariz. 2019). That is the violation. The political coloring of the purpose does not change the legal classification.

The Texas Supreme Court is currently considering pending *quo warranto* petitions—*In re State*, No. 25-0687 (Tex.), and *In re Greg Abbott*, No. 25-0674 (Tex.)—that may provide guidance on the question whether payments inducing legislators to remain absent from session constitute political expenses or personal use. The Fifteenth Court may wish to defer ruling on that issue until the Texas Supreme Court has resolved those proceedings.

B. The Evidentiary Record Was Sufficient, and Any Challenge Is Moot.

A verified petition is competent evidence at the TRO stage. That is black-letter law. Tex. R. Civ. P. 682.

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[1] At oral argument, Relators' counsel conceded that the *quo warranto* venue argument was not properly before this Court. Nor was the argument properly raised to the trial court. Even setting that aside, section 66.002 of the Texas Civil Practice & Remedies Code does not designate a mandatory county for *quo warranto* actions. Section 66.002(a) permits suit in Travis County or the county of the defendant's residence—it does not mandate El Paso. Where a specific statute does not designate a mandatory venue, the general venue statute fills the gap. Under § 15.002(a)(1), a substantial part of the events giving rise to the *quo warranto* claim—including Relators' public fundraising in Tarrant County and the impact on legislators serving that region—occurred in Tarrant County.

The record included verified allegations, admissions, and supporting materials showing: the pre-litigation *quid pro quo* admission by Relators' spokesperson to the Houston Chronicle; the RTE served on Relators; Relators' non-response to the RTE; and public reporting of legislators' travel and accommodations funded through Relators. Additional evidence was presented at the subsequent hearing, including: a thumb drive containing video of Relators' Tarrant County rally of August 9—at which O'Rourke, speaking on the subject of his efforts to deprive the legislature of a quorum stated "there are no refs in this game—f*ck the rules—we are going to win, whatever it takes" (Second Amended Petition (hereinafter "SAP") ¶ 32; First Amended Petition ("FAP") ¶ 52; MR.0115); and an excerpt of Relators' interview with California Governor Gavin Newsom, SMR.100, in which Relators acknowledged the TRO was "so incredibly narrow in scope" and that there were "some very technical, specific things" he could not say, but confirmed he had "continued to rally, to fight, to raise and to speak." SMR.100 80:21–25.

The issue identified by the Court is not the absence of evidence. It is the wording of the order. The evidence was there. The order did not fully recite it. That is a drafting issue, not an evidentiary failure.

Moreover, there is no live TRO. The State filed its Second Amended Petition on October 22, 2025, withdrawing all requests for injunctive relief. The special session ended; the absent legislators returned; and the conduct the TRO targeted became factually and legally impossible.

The State no longer seeks injunctive relief. There is nothing left for the Court to enjoin. The TRO is moot.

If the Court reaches the merits, the governing standard is statutory. Section 17.47 supplies it.

When the State seeks relief under § 17.47(a), the common law elements—imminent harm, irreparable injury, no adequate remedy at law—do not apply. *West*, 212 S.W.3d at 519. Section 17.47(a) sets its own standard that only requires that Attorney General to show reason to believe that a past violation occurred, a violation is ongoing, or a future violation is likely to occur and that injunctive relief is in the public interest. The statute expressly provides that injunctive relief "shall lie even if such person has ceased such unlawful conduct"—eliminating even the imminence requirement. Tex. Bus. & Com. Code § 17.47(a). Rule 683 governs the form of the order, not the evidentiary threshold for obtaining one.

The Court in *Newton* granted mandamus because (1) ART PAC had four years of publicly disclosed, legally unchallenged political activity before the TRO; (2) the TRO adjudicated that lawful political activity as illegal based only on pleadings at a non-evidentiary hearing; and (3) waiting for the TI would have been irremediable because the election would be over. *In re Newton*, 146 S.W.3d 648, 651–52 (Tex. 2004). None of those factors are present here.

First, at the August 14 modified TRO hearing, the trial court admitted the Tarrant County rally video (SMR.267) and the Newsom interview (SMR.100)—actual video evidence of Relators' conduct and statements during and after the TRO period. This was not a bare-pleadings hearing. *Second*, Relators' fundraising for this specific purpose spanned weeks, not four years, and was not publicly disclosed as a *quid pro quo* until Relators' own spokesperson admitted it to the Houston

Chronicle before the lawsuit was filed. SAP ¶ 13; MR.202 ¶ 13. *Third*, and dispositive on the adequate-remedy prong, the TI hearing was set for August 19—eleven days away. Under *Walker v. Packer*, mandamus requires not only a clear abuse of discretion but also no adequate remedy by appeal. 827 S.W.2d 833, 840 (Tex. 1992). An imminent TI hearing with an available accelerated interlocutory appeal was an adequate remedy. *Newton's* irremediability rationale does not apply when the TI hearing is eleven days away. At the time the TRO issued, no one could know whether the restrained conduct would be completed before that date—and mandamus cannot be evaluated with hindsight.

The September 12 ruling further found the TRO defective because its findings were conclusory—lacking the specific factual recitation Rule 683 requires and the specific findings *Davenport v. Garcia*, 834 S.W.2d 4 (Tex. 1992). But *Davenport's* heightened two-prong test—imminent and irreparable harm plus least-restrictive means—applies only to prior restraints on protected speech. Since Relators' solicitations were fraudulent commercial representations rather than protected political expression, *Davenport's* framework was inapplicable.

C. This Court Lacks Jurisdiction, and Any Challenge Is Moot.

First, Relators had an adequate remedy at law. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992). Relators filed their petition for writ of mandamus on August 25, 2025, and the temporary restraining order expired on September 2—one week later—at the time of the preliminary injunction hearing. The trial court might have denied a preliminary injunction, preventing any further harm. Or, if the trial court entered a preliminary injunction, Relators could have appealed in the ordinary course and, if necessary, sought relief under Rule 29.3. Because the order was set to expire imminently—and no particular urgency required action before the September 2 hearing—waiting was a more than adequate remedy.

Nearly a century ago, the Texas Supreme Court held that "a writ of mandamus will not issue" if a party seeks relief too late. *Holcombe v. Fowler*, 9 S.W.2d 1028 (Tex. 1928). The Texas Supreme Court recently reiterated that mandamus is controlled by equitable principles. *In re Smith*, 727 S.W.3d 497, 498–99 (Tex. 2025). Serious challenges should not be "brought at the last possible minute . . . without an unusual justification," and "[e]quitable principles require reasonable swiftness by the party seeking relief." *Id.* Relators have never justified their weeks of delay in seeking relief from this Court.

Second, this Court cannot provide Relators with any relief regarding the TRO. By its own terms, the order has expired. Any collateral effects of an opinion from this Court would not satisfy the redressability requirement. "[R]edressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power." *Haaland v. Brackeen*, 599 U.S. 255, 294 (2023).

Third, issues related to Relators' contempt of the TRO are not before this Court. The petition for writ of mandamus does not identify any trial court orders regarding contempt as part of "the respondent's action from which the relator seeks relief." Tex. R. App. P. 52.3(e)(3). There has been no request-and-refusal in the trial court. *See, e.g.*, *In re Eagleridge Operating, LLC*, 642 S.W.3d 518, 525 (Tex. 2022) ("Due to the extraordinary nature of the remedy, the right to mandamus

relief generally requires a predicate request for action by the respondent, and the respondent's erroneous refusal to act."). Any commentary by this Court regarding Relators' potential liability for contempt would be an advisory opinion.

IV. Mootness Does Not Eliminate Liability for Contempt.

A case may become moot. A violation of a court order does not.

A party remains accountable for conduct that occurred while the order was in force. Mootness does not erase past violations. *Ex parte Browne*, 543 S.W.2d 82, 86 (Tex. 1976). It does not grant retroactive immunity.

The State acknowledges the principle that a void court order cannot be enforced through contempt, and a party cannot be held in contempt for failing to comply with a void order. *See In re Luther*, 620 S.W.3d 715, 721 (Tex. 2021). But for that principle to apply, the order must be void. The TRO here was not void. The September 12 ruling reached the prior-restraint issue on the merits and stayed the order; it did not find the order lacked legal existence from its inception. The TRO was not void and, therefore, Relators could be held in contempt for violating it. *Cf Molano v. State*, 262 S.W.3d 554 (Tex. App.—Corpus Christi 2008) (acknowledging the distinction between the civil penalties under 17.47(e) for violating an injunction and the civil penalties awarded under 17.47(c) for violations of the DTPA).

V. The Amicus Argument Fails Because the Statute Requires Deception.

Tilton v. Marshall, 925 S.W.2d 672 (Tex. 1996), confirms that fraud may be adjudicated by neutral proof without inquiry into protected expression. Relators' counsel cited *Word of Faith Outreach Ctr. Church, Inc. v. Morales*, 787 F. Supp. 689 (W.D. Tex. 1992), *reversed*, 986 F.2d 962 (5th Cir. 1993)—a district court opinion expressing doubt about DTPA claims against religious fundraising generally. But *Tilton*—decided by the Texas Supreme Court three years later, involving the very same church—is controlling authority that supersedes the reversed federal district court opinion. Under *Tilton*, the fraud claim proceeds because it can be adjudicated by neutral legal standards.

The amicus brief argues that § 17.45(6)'s definition of "trade and commerce" is limited to goods and services, and that each subsection of § 17.46(b) the State cited incorporates those definitions. That argument depends on omitting the second half of § 17.45(6)'s text. The full definition reads: "'trade' and 'commerce' mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value." Tex. Bus. & Com. Code § 17.45(6). The catchall "any other article, commodity, or thing of value" is not a gloss on goods and services but a separate, independent clause that extends the definition beyond them. The amicus brief does not quote or address this language. Goods and services are one component of trade and commerce; they are not its entirety. Political contributions are things of value under Texas law. *See* Tex. Elec. Code § 251.001(2). The distribution of things of value in exchange for a false representation about their use falls within § 17.45(6)'s plain text.

Next, the amicus argues in three steps: (1) if political donors are consumers, religious donors are too; (2) if aggregating political donations is a service, aggregating religious donations is too; and (3) aspirational fundraising language is the same in both contexts. Wrong.

The limiting principle is deception. Not politics. Not religion. Deception. The DTPA does not reach lawful fundraising. It reaches false representations about how funds will be used. Tex. Bus. & Com. Code § 17.46-47.That is this case. The amicus concern is hypothetical. This case is concrete.

CONCLUSION

For these reasons, and for those detailed in the State's response and at oral argument, the petition should be denied.

Sincerely,

/s/ Johnathan Stone

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