April 10, 2026

Via Electronic Filing
Mr. Michael A. Cruz
Clerk of the Court
FIFTEENTH COURT OF APPEALS
300 W. 15th Street, Suite 607
Austin, Texas 78701

Re: Response to the State of Texas's Post-Argument Submission
Case No. 15-25-00140-CV; In re Powered By People and
Robert Francis O'Rourke, Relators

Trial Court Cause No. 348-367652-2025

To The Honorable Fifteenth Court of Appeals:

Relators write briefly to respond to the points raised in the State's post-submission brief filed March 27, 2026.

I. The State's brief emphasizes how this mandamus proceeding is not moot.

Mootness "is difficult to establish," and "[t]he party asserting it must prove that intervening events make it '*impossible* for a court to grant *any* effectual relief whatever to the prevailing party.'" *Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 689 (Tex. 2022) (quoting *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016)). In particular, where "an order granting injunctive or protective relief" carries "a significant collateral consequence," a case is not moot. *In re Salgado*, 53 S.W.3d 752, 757 (Tex. App.—El Paso 2001, no pet.); *see also State v. Lodge*, 608 S.W.2d 910, 912 (Tex. 1980) (voiding a since-dismissed mental health confinement order to "remove[] the collateral consequences" of "stigma"). Further, "'[v]oluntary abandonment' of a challenged action 'provides no assurance' that the action will not recur and typically cannot render a case moot." *Paxton v. Annunciation House, Inc.*, 719 S.W.3d 555, 590 (Tex. 2025) (quoting *Matthews ex rel. M.M. v. Kountze ISD*, 484 S.W.3d 416, 419–20 (Tex. 2016))

When there are significant ongoing legal rights tied to an order's validity, mandamus review is not moot. In *In re Salgado*, a trial court issued a protective order granting exclusive custody of a child to her aunt. 53 S.W.3d at 756. Although the protective order had expired, the Court of Appeals held the mandamus petition was not moot because, "by virtue of the order, [the aunt] utilized the period of custody to argue that she ha[d] standing to file a suit affecting the parent-child relationship." *Id.* at 757. The court reasoned that determining the order was "void and vacat[ing] it" would call into question the basis of the aunt's standing in that separate suit, and "[g]iven this serious collateral consequence," the issue was not moot.

Similarly, here, the State is pursuing contempt and quo warranto proceedings based on Relator's alleged violation of an unlawful prior restraint. The State even re-emphasizes that contempt is available unless this Court voids the trial court order. Post-Submission Br. at 7. Like the mandamus proceeding in *In re Cornyn*, where the court voided a TRO, here this Court previously "stayed the TRO" to preserve jurisdiction and there was a "contempt hearing and a temporary-injunction hearing that were actively pursued until [that] stay issued." 27 S.W.3d 327, 332, n.11 (Tex. App.—Houston [1st Dist.] 2000, no pet.). Because contempt and quo warranto are significant collateral consequences, this Court should void the TRO.

Nor can the State meet its "heavy burden" to show voluntary cessation has caused mootness. The State previously argued that it is "almost categorically" impossible for a DTPA injunctive relief claim to be moot. SR.0064. It also argued that "[t]he only action Section 17.47 (titled, 'Restraining Orders') authorizes the State to bring is one for injunctive relief." MR.0373. If a court were to agree that the State cannot proceed with a stand-alone DTPA civil enforcement action, the State provides "no credible assurance that [it] will not subsequently amend [its] petition to reassert" injunctive claims in order to keep the suit alive; "[i]n fact, [its] conduct to date indicates the opposite." *In re Premcor Ref. Group, Inc.*, 262 S.W.3d 475, 479 (Tex. App.—Beaumont 2008, no pet.). Thus, "subsequent events" here do not "make absolutely clear" that challenged conduct "could not reasonably be expected to recur." *Matthews ex rel. M.M.*, 484 S.W.3d at 418.

II. The trial court's venue ruling was an abuse of discretion.

The State cites no counter-authority to *In re Hardwick*, and the logic of that case applies. A trial court's "venue determination can be made only once" and the "scope of [this

Court's] review extends only to the trial court's [original] venue determination, which is the ruling challenged in this original proceeding." *In re Hardwick*, 426 S.W.3d 151, 158 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (citing Tex. R. Civ. P. 87(5) and *In re Team Rocket, L.P.*, 256 S.W.3d 257, 259–60 (Tex. 2008)). Relators stand on prior briefing responding to the State's argument on mandatory venue. Post-Submission Br. at 3.

Additionally, the State cannot maintain permissive venue in Tarrant County, and it is proper for this Court to grant mandamus under these circumstances. Although "incidental trial ruling[s]" are "ordinarily not reviewable by mandamus," when the Court already "must remedy" a trial court order "by interlocutory mandamus review," "the interests of judicial economy dictate that [it] should also remedy the trial court's" erroneous incidental ruling. *Gen. Motors Corp. v. Gayle*, 951 S.W.2d 469, 477 (Tex. 1997); *see also, e.g.*, *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 943 (Tex. 1998) (conditionally granting mandamus of scheduling order when "there [we]re other errors present in this case that we must remedy by mandamus."). Under these circumstances, the benefits to mandamus outweigh the detriments and, particularly given "the complete lack of authority for the trial court's order," this Court should not put "the civil justice system itself to the trouble of grinding through proceedings that [a]re certain to be 'little more than a fiction.'" *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 137 (Tex. 2004).

Because the State only targets First Amendment-protected political speech and fails to allege a cognizable DTPA claim in trade and commerce, it cannot maintain venue under either the DTPA or the general venue statute. TEX. BUS. & COM. CODE ANN. § 17.47(b) (providing venue only to an action "*which alleges a claim to relief* under this section") (emphasis added); *cf. Nabors Loffland Drilling Co. v. Martinez*, 894 S.W.2d 70, 74 (Tex. App.—San Antonio 1995, writ denied) (holding "as a matter of law that [the Plaintiff] was not a consumer under the DTPA and therefore could not take advantage of the DTPA venue statute"); *In re Sanofi-Aventis U.S. LLC*, 711 S.W.3d 732, 738, n.5 (Tex. App. [15th Dist.] 2025) (citing *In re Tex. Dep't of Transp.*, 218 S.W.3d 74, 78 (Tex. 2007) ("An improperly pleaded claim, i.e. one that is not viable on its face, will not support venue in a particular county.").

III. The State's new Connecticut authority involved a commercial service provider, not an organization fundraising to promote its own speech.

Relators stand on their prior briefing as to why gratuitous political, charitable, or religious donations do not constitute "trade and commerce," and why the State's reading

of the DTPA would create unnecessary First Amendment conflicts. Orig. Pet. at 33-42; Reply in Support of Pet. at 7-20; *see also Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 796 (1988) ("[Charitable] solicitation is characteristically intertwined with informative and perhaps persuasive speech . . . ."). The State's only new focus is a factually and substantively irrelevant unpublished out-of-state case involving a direct provider of commercial services.

That case involved a payment processing website, not an organization receiving gratuitous donations for its own benefit. *Seagull v. WinRed, Inc.*, No. X07HHDCV226154527S, 2023 WL 4322714, at *2 (Conn. Super. Ct. June 28, 2023) ("WinRed, is a for-profit corporation . . . [f]ees are charged to the campaigns and committees who utilize WRTS' technology."). Individuals who donated to campaigns *through* WinRed were not donating *to* WinRed itself. *Id.* WinRed was not engaging in its own First Amendment protected political speech, nor were donors giving money to promote WinRed's speech. Further, the State mischaracterizes the related Eighth Circuit opinion, which only determined that state law was not preempted by the Federal Election Campaign Act, but did not address the merits of any state law claims. *WinRed, Inc. v. Ellison*, 59 F.4th 934, 938 (8th Cir. 2023) ("WinRed ask this court to declare General Ellison's investigation preempted and enjoin it.").

That the State never cites an opinion from any jurisdiction directly discussing political, charitable, or religious fundraising as trade and commerce only highlights their position's weakness. Should the Court consider out of state authority, *Del Tufo* more squarely addressed the type of protected political speech at issue here:

> By way of clear distinction, the raising of funds for political purposes, whether at the national or local level, involves neither commercial goods nor commercial services. In essence, said activity involves the promotion and marketing of concepts . . . .

Del Tufo v. Nat'l Republican Senatorial Comm., 248 N.J. Super. 684, 689 (N.J. Super. Ct. Ch. Div. 1991); *see also Lutheran Ass'n of Missionaries & Pilots, Inc. v. Lutheran Ass'n of Missionaries & Pilots, Inc.*, No. CIV.03-6173, 2004 WL 1212083, at *4 (D. Minn. May 20, 2004) ("charitable donations are not the sale of services or intangibles, and thus are not 'merchandise' under the Consumer Fraud Act").

Respectfully,

/s/ Mimi Marziani

Mimi Marziani

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 April 10, 2026.

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