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SUPREME COURT OF TEXAS
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No. 23-0080

IN THE SUPREME COURT OF TEXAS

Michael Quinn Sullivan,
Petitioner,

v.

Texas Ethics Commission,
Respondent.

On Review from the Third Court of Appeals at Austin, Texas
Cause No. 03-21-00033-CV; *Michael Quinn Sullivan v. Texas Ethics Commission*

BRIEF OF *AMICUS CURIAE* CAMPAIGN LEGAL CENTER IN SUPPORT OF RESPONDENT

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INTERESTS OF AMICUS CURIAE

Amicus curiae Campaign Legal Center ("CLC") is a nonpartisan nonprofit organization working for a more transparent, inclusive, and accountable democracy. CLC has a longstanding, demonstrated interest in the constitutionality and efficacy of campaign finance, ethics, and political disclosure laws, including those related to lobbying activities.[1] CLC has participated in numerous cases concerning disclosure laws, including *National Association of Manufacturers v. Taylor*, 582 F.3d 1, 5 (D.C. Cir. 2009), a challenge to the federal Lobbying Disclosure Act, and more recently, *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021).

CLC's brief will focus on Petitioner's First Amendment claims relating to Texas's lobbying disclosure law, although CLC joins the defenses made by Respondent Texas Ethics Commission with respect to Petitioner's other claims in these proceedings.

SUMMARY OF ARGUMENT

In 2010 and 2011, Petitioner Michael Quinn Sullivan failed to register and report as a lobbyist under Tex. Gov't Code § 305.001, *et seq*. ("lobbying disclosure law"), although he was engaged in the practice of lobbying as the President and CEO of a non-profit advocacy group, Empower Texans, Inc. Over the course of the next

[1] No person or entity other than CLC and its counsel made a monetary contribution to this brief's preparation or submission.

decade, Sullivan attempted to escape liability for his failure to register and report—not so much by disputing the factual record but instead by attacking the constitutionality of the very lobbying disclosure law to which he was subject.

But disclosure laws like Texas's have long been deemed the "best of disinfectants" for the "diseases" of political corruption and official self-dealing. *Buckley v. Valeo*, 424 U.S. 1, 67 (1976). As the D.C. Circuit noted in rejecting a challenge to a provision of the federal Lobbying Disclosure Act ("LDA"), the public interest in effective lobbying registration and disclosure laws is long-standing and well-established:

> More than fifty years ago, the Supreme Court held that the public disclosure of who is being hired, who is putting up the money, and how much they are spending to influence legislation is a vital national interest. . . . [N]othing has transpired in the last half century to suggest that the national interest in public disclosure of lobbying information is any less vital than it was when the Supreme Court first considered the issue. . . .

Nat'l Ass'n of Manufacturers, 582 F.3d at 5 (internal citations and quotation marks omitted). As does federal law, so too does Texas's lobbying disclosure law provide the public with vital information about "who is being hired, who is putting up the money, and how much," *United States v. Harriss*, 347 U.S. 612, 625-26 (1954), thereby promoting transparent government and averting potential political corruption and the appearance of corruption. *See also Fla. League of Pro. Lobbyists,*

Inc. v. Meggs, 87 F.3d 457, 460 (11th Cir.1996); *Minn. State Ethical Practices Bd. v. NRA*., 761 F.2d 509, 512–13 (8th Cir. 1985).

Despite the longstanding, consistent judicial authority supporting lobbying disclosure laws at both the federal and state level, Petitioner devotes much of his merits brief to a futile attempt to paint Texas's law as an outlier. But, as CLC's brief will document, lobbying registration and disclosure laws are not only common, but ubiquitous nationwide, present in all 50 states. *See* Section I *infra*. These laws have been passed to combat pervasive problems and scandals relating to lobbyists' transactional relationship with lawmakers, and the prophylactic impact of transparency on potential corruption is well-recognized.

The Austin Third Court of Appeals was thus correct to reject Petitioner's First Amendment challenge and uphold the constitutionality of Texas's lobbying disclosure law. *See Sullivan v. Tex. Ethics Comm'n*, 660 S.W.3d 225 (Tex. App.—Austin 2022, pet. filed). First, the lower court was correct in rejecting Petitioner's unfounded demand for strict scrutiny and instead applying exacting scrutiny—the standard which the U.S. Supreme Court has repeatedly affirmed is the appropriate level of review for political disclosure laws. *See Bonta*, 141 S. Ct. at 2383. Second, the court was right to find that Texas's disclosure law is "the type of regulation—directed towards the exchange of money for lobbying communications—the U.S. Supreme Court has determined passes constitutional muster because it advances

substantial governmental interests." *Sullivan*, 660 S.W.3d at 234. Finally, the Court of Appeals carefully analyzed and properly rejected Petitioners' complaints about the law's overbreadth, *id*. at 235-36, finding that its fee schedule, media exemption, and monetary thresholds were appropriately tailored.

For these reasons, CLC respectfully submits that the petition should be denied, or if it is granted, that the Court of Appeals' judgment should be affirmed.

ARGUMENT

I. Lobbying Disclosure Laws Are a Cornerstone of Good Governance Standards Nationwide.

Lobbying registration and disclosure laws like Texas's are ubiquitous nationwide, illustrating the widespread recognition that transparency in lobbying is crucial to preserving the integrity of government, as well as public confidence in its operation. All 50 states have some form of a lobbying disclosure law on the books, as well as several U.S. territories. *See Lobbyist Registration Requirements*, Nat'l Conf. of State Legislatures ("NCSL") (last updated Sept. 13, 2021), https://www.ncsl.org/ethics/lobbyist-registration-requirements.[2]

[2] *See* Ala. Code § 36-25-18; Alaska Stat. § 24.45.041; Ariz. Rev. Stat § 41-1232.05; Ark. Code § 21-8-601; Cal. Gov't Code § 86100; Colo. Rev. Stat. § 24-6-303; Conn. Gen. Stat. § 1-94; Del. Code tit. 29, § 5832; D.C. Code § 1-1162.27; Fla. Stat. § 11.045; Ga. Code Ann. § 21-5-71; 2 G.C.A. § 8101; Haw. Rev. Stat. § 97-2; Idaho Code Ann. § 67-6617; 25 Ill. Comp. Stat. § 170/3; Ind. Code § 2-7-2-1; Iowa Code § 68B.36; Kan. Stat. Ann. § 46-265; Ky. Rev. Stat. Ann. § 6.807; La. Stat. Ann. § 24:53; Me. Stat. tit. 3, § 313 ; Md. Code, Gen. Provis. § 5-704; Mass. Gen. Laws ch. 3, § 41; Mich. Comp. Laws § 4.417; Minn. Stat. § 10A.03; Miss. Code Ann. § 5-8-5; Mo. Rev. Stat. § 105.473; Mont. Code Ann. § 5-7-103; Neb. Rev. Stat. § 49-1480; Nev. Rev. Stat. § 218H.200; N.H. Rev. Stat. § 15:1; N.J. Rev. Stat. § 52:13C-21; N.M. Stat. § 2-11-3; N.Y. Legis. Law § 1-e; N.C. Gen. Stat. § 120C-200; N.D. Cent. Code § 54-05.1-03; Ohio Rev. Code § 101.72;

The right to free speech was designed to enable self-government, ensure responsive officeholders, and prevent the corruption of democratic processes. Properly understood, disclosure laws like Texas's thus enhance, rather than constrain, the free speech necessary to sustain our democracy. As the Supreme Court has explained, "[i]n a republic where the people are sovereign, the ability of the citizenry to make informed choices is essential." *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976). Disclosure laws thus directly serve the democratic values animating the First Amendment—"secur[ing] the widest possible dissemination of information from diverse and antagonistic sources" and facilitating "uninhibited, robust, and wide-open" public debate on political issues. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 266, 270 (1964).

Lobbying disclosure measures also reflect the widespread consensus among citizens and their representatives that lobbyists' relationships with legislators and other officeholders—if concealed from public scrutiny—pose acute risks of corruption and the appearance of corruption. Indeed, many jurisdictions have progressed far beyond mere lobbying disclosure laws, and have also limited or

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Okla. Stat. tit. 74, § 4250; Or. Rev. Stat. § 171.740; 65 Pa. Cons. Stat. § 13A04; 42 R.I. Gen. Laws § 139.1-4; S.C. Code Ann. § 2-17-20; S.D. Codified Laws § 2-12-1; Tenn. Code Ann. § 3-6-302; Tex. Gov't Code § 305.005; Utah Code § 36-11-103; Vt. Stat. Ann. tit. 2, § 263; Va. Code. Ann. § 2.2-422; Wash. Rev. Code § 42.17A.600; W. Va. Code § 6B-3-2; Wis. Stat. § 13.64; Wyo. Stat. Ann. § 28-7-101.

barred gifts to officeholders from lobbyists,[3] restricted lobbyists' campaign contributions, *see infra* at 6 n.5, and limited lobbyist involvement in political campaigns.[4]

The constitutionality of lobbying disclosure measures, established in the Supreme Court's 1954 decision in *Harriss*, is beyond serious dispute. *See*, *e.g.*, *Florida League*, 87 F.3d at 460 (collecting cases and noting that "[s]everal other courts have similarly interpreted *Harriss* and have rejected broad constitutional attacks on lobbying disclosure requirements"). Lower courts have almost without exception upheld lobbying registration and reporting laws. Indeed, many courts have gone significantly further, approving, for example, complete bans on campaign contributions by lobbyists.[5]

Lobbying disclosure laws have been seen as the "best of disinfectants" to political corruption not only in theory, but in reality. *Buckley,* 424 U.S. at 67. Given

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[3] *See*, *e.g.*, House Rule 25(5)(e)(1); Senate Rule 35(a)(2)(b). *Schickel v. Dilger*, 925 F.3d 858, 872-73 (6th Cir. 2019) (upholding ban on lobbyists' gifts to covered officeholders, with no de minimis exception).

[4] *Md. Right to Life State Political Action Comm. v. Weathersbee*, 975 F. Supp. 791, 797 (D. Md. 1997) (applying strict scrutiny, and upholding law barring lobbyists from serving on political fundraising committees).

[5] *See*, *e.g.*, *Schickel*, 925 F.3d at 873 (applying closely drawn scrutiny to upheld a complete ban on campaign contributions by lobbyists); *Preston v. Leake*, 660 F.3d 726, 729 (4th Cir. 2011) (lobbyist contribution restriction was "a valid exercise of North Carolina's legislative prerogative to address potential corruption and the appearance of corruption in the state"); *Inst. of Gov't Advocates v. Fair Political Practices Comm'n*, 164 F. Supp. 2d 1183 (E.D. Cal. 2001) (applying closely drawn scrutiny to uphold ban on lobbyist contributions to candidates for offices the lobbyist is registered to lobby); *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska1999) (upholding ban on lobbyist contributions to members of assembly except to candidates in lobbyist's home district).

the volume and intensity of lobbying activities, Texas's current lobbying disclosure regime is relatively modest. Texas law does not require disclosing the recipient of gifts unless the value exceeds $132.60 per person in a given day (exceeding 60% of the legislative per diem). Tex. Gov't Code § 305.0061(a); Tex. Ethics Comm'n Rules Ch. 50, § 1. In this landscape, Texas's lobbying disclosure law is thus critical to ensuring transparency in government and enabling the public to assess the interests seeking to influence and persuade their elected representatives.

II. The Lobbying Disclosure Law Is Constitutional.

A. Exacting scrutiny applies to the review of a lobbying disclosure law.

Petitioner offers no reason for this Court to deviate from the U.S. Supreme Court's consistent practice of applying exacting scrutiny to the review of political disclosure laws.

Sullivan suggests that strict scrutiny might be appropriate here on the theory that the disclosure law is a "content-based restriction," Pet. Br. at 29, citing *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015). This claim is both wrong and misdirected. First, the lobbying disclosure law is not "content based" in the sense that it favors or disfavors certain viewpoints or subjects, which is the primary concern animating the U.S. Supreme Court's First Amendment doctrine on "content-based" regulation. *See*, *e.g.*, *Carey v. Brown*, 447 U.S. 455, 461 (1980) (objecting that law prohibiting all picketing except labor-related picketing "accords preferential

treatment to the expression of views on one particular subject"); *Tex. Dept. of Transp. v. Barber*, 111 S.W.3d 86, 93, 99-100 (Tex. 2003). And the Supreme Court has clarified that *Reed* should not be interpreted to require strict scrutiny simply because a law requires "[a] reader [to] ask . . . who is the speaker and what is the speaker saying." *City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1471 (2022) (internal quotation marks omitted).

Texas's lobbying disclosure law does not even require this rudimentary level of inquiry. Its requirements instead are triggered when a person engages in a financial transaction, i.e., makes an expenditure or receives compensation exceeding $200 for lobbying activities. *See* Tex. Gov't Code § 305.003(a) (requiring registration upon expenditure or receipt of compensation to "communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action"). But the subjects raised or viewpoints expressed by the person to these members in the course of lobbying are immaterial. Contrary to Petitioner's claim, there is no need for an "examination of the content of that speech." *see* Pet. Br. 31. And determining "whether the speech is made 'directly with one or more members of the legislative or executive branch,'"—to which Petitioner also objects, *id*. (quoting Tex. Gov't Code § 305.003(a))—is not an inquiry into content at all.

But more fundamentally, Texas's law is not appreciably more "content-based" than any other lobbying or campaign finance disclosure law at the federal or state level, which have been upheld under exacting scrutiny. The federal LDA, for example, defines a covered "lobbying contact" to include communications regarding "the formulation, modification, or adoption of Federal legislation" or "the administration or execution of a Federal program or policy." 2 U.S.C. § 1602. Indeed, it is difficult to identify a political disclosure law that defines the communications it regulates without some reference to their content, and this Court has not interpreted this feature to create a constitutional infirmity. *Osterberg v. Peca*, 12 S.W.3d 31, 36 n.2 (Tex. 2000) (upholding disclosure requirements applicable to "direct campaign expenditures," defined as expenditures made "in connection with a campaign for elective office or on a measure") (citing Tex. Elec. Code § 251.001(7), (8)).

Although such laws have a nominal connection to the communication's content, they do not draw strict scrutiny. *See, e.g.*, *Citizens United v. FEC*, 558 U.S. 310, 323, 366 (2010) (applying exacting scrutiny and upholding disclosure requirements applicable to electioneering communications, i.e. ads that "refer[] to a clearly identified candidate for Federal office"); *Libertarian Nat'l Comm., Inc. v. FEC*, 924 F.3d 533, 548 (D.C. Cir. 2019) (rejecting challenge to federal campaign contribution limits as "content based" and noting that by "[plaintiff]'s logic,

[campaign finance law] would be rife with content-based restrictions on recipients' speech").

Finally, if there were any lingering doubts as to the scrutiny appropriate for a disclosure law, these were recently resolved by *Bonta*. There the Supreme Court reaffirmed that exacting scrutiny is the applicable standard in all compelled disclosure cases, rejecting the notion advanced by the plaintiffs there that the standard should vary for different types of speakers or in different contexts. 141 S. Ct. at 2383 (declining to cabin exacting scrutiny to electoral context: "[r]egardless of the type of association, compelled disclosure requirements are reviewed under exacting scrutiny.").

B. Lobbying disclosure not only advances political transparency, but also prevents corruption and the appearance of corruption.

In support of the lobbying disclosure law, Texas asserts both an interest in "preserv[ing] and maintain[ing] the integrity of the legislative and administrative processes" and an informational interest in the disclosure of "the identity, expenditures, and activities of certain persons who, by direct communication with government officers, engage in efforts to persuade members of the legislative or executive branch to take specific actions." Tex. Gov't Code § 305.001. To achieve these anti-corruption and transparency goals, the legislature directs the Commission to work to "eliminate opportunities for undue influence" and "disclose fully

information related to expenditures … for petitioning the government," among other objectives. *Id*. § 571.001.

Petitioner now asserts that "the only compelling governmental interest" that justifies measures like the lobbying disclosure law is "anticorruption," Pet. Br. 33, but this is demonstrably wrong. He cites no support for this contention beyond *Calzone v. Summers*, 942 F.3d 415 (8th Cir. 2019), which he plainly misreads. The U.S. Supreme Court instead has consistently held that political disclosure laws, and lobbying disclosure laws specifically, advance *both* anti-corruption and informational interests, and have upheld disclosure measures on both bases.

Calzone held that the application of Missouri's lobbyist registration law to a citizen "who neither spends nor receives money in connection with his advocacy," 942 F.3d at 424-25, did not substantially relate to either the state's asserted anti-corruption goals or its transparency interest. The Court of Appeals also noted, however, that its analysis might shift if Calzone's advocacy had involved compensation or expenditures: "We do not doubt that when money changes hands, the nature of Missouri's transparency interest changes too, because the risk of quid pro quo corruption increases." *Id*. at 425. The Eighth Circuit thus in no way discounted the importance of the state's asserted interests, but rather narrowly held that they were not served by a particular application of Missouri's lobbying law to unpaid legislative advocacy. Even if *Calzone* had ruled otherwise, however, the

Eighth Circuit could not countermand the Supreme Court—which has made clear that lobbying disclosure serves to prevent corruption. As *Harriss* explained, such statutes aim to "maintain the integrity of a basic governmental process." 347 U.S. at 625.[6] And courts across the nation have recognized more broadly that lobbying—especially when undergirded by the exchange of money—is a particularly vulnerable locus for influence-peddling and potential corruption. As the Fourth Circuit noted, "[t]he role of a lobbyist is both legitimate and important to legislation and government decision-making, but by its very nature, it is prone to corruption and therefore especially susceptible to public suspicion of corruption." *Preston*, 660 F.3d at 737. *See also Schickel*, 925 F.3d at 873 ("Lobbyists' role undoubtedly sharpens the risk of corruption and its appearance."); *Ognibene v. Parkes*, 671 F.3d 174, 188 (2d Cir. 2011).

But, contrary to Petitioner's claim, *Harriss* and its progeny also make clear that lobbying disclosure laws can be sustained on the strength of the government's

[6] Indeed, the U.S. Supreme Court has stressed that lobbying poses a greater risk of corruption than do several types of electoral advocacy. In *McIntyre v. Ohio Elections Comm'n*, a case concerning a state disclaimer requirement for ballot measure literature, the Court explained that the anti-corruption interest which justified the disclosure of lobbying activities in *Harriss* is less relevant to ballot initiatives because the latter has no nexus to candidates or officeholders. 514 U.S. 334, 356 n.20 (1995). By contrast, "the activities of lobbyists who have direct access to elected representatives, if undisclosed, may well present the appearance of corruption." *Id.*; *see also Citizens United*, 130 S. Ct. at 915 (striking down restrictions on corporate electoral spending but noting, by contrast, that "the Court has upheld registration and disclosure requirements on lobbyists").

informational interest alone. *See also Citizens United*, 558 U.S. at 369 (noting that informational interest "alone" is "sufficient to justify" disclosure laws); *Osterberg*, 12 S.W.3d at 44 (campaign expenditure reporting requirements—are "'a reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of [the] election system to public view"') (quoting *Buckley*, 424 U.S. at 82).

The *Harriss* Court expounded at length on the informational value of lobbying registration and disclosure:

> Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. . . . Congress has not sought to prohibit these pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose.

347 U.S. at 625. Courts have recognized that the transparency interests recognized in *Harriss* are tantamount to the informational interests that have been deemed a compelling justification for campaign finance disclosure laws. "[J]ust as disclosure serves the important "informational interest' of 'help[ing] voters to define more of the candidates' constituencies,' . . . it likewise helps the public to understand the constituencies behind legislative or regulatory proposals." *Nat'l Ass'n of Manufacturers*, 582 F.3d at 14 (internal citations omitted). "Transparency in government, no less than transparency in choosing our government, remains a vital

national interest in a democracy." *Id*. *See also N.Y. Temp. State Lobbying Comm'n*, 534 F. Supp. at 494-95 ("The lobby law serves to apprise the public of the sources of pressure on government officials, thus better enabling the public to assess their performance."). Texas's lobbying disclosure law thus can be justified by its transparency interest alone, independent of its anti-corruption objectives.

Indeed, in focusing only on the putative First Amendment burdens posed by Texas's disclosure law, plaintiff "ignores the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace." *McConnell v. FEC*, 540 U.S. 93, 197 (2003) (citation omitted). Because the lobbying disclosure law adds to robust debate by providing the public with critical information—i.e., more speech—about the persons engaged in paid attempts to persuade and influence Texas lawmakers, it promotes the values and principles that underlie the First Amendment.

C. The law is narrowly tailored to advance Texas's compelling informational and anti-corruption interests.

Applying exacting scrutiny, the lower court found that Texas's lobbying disclosure law bears "a substantial relation" to "a sufficiently important governmental interest," and is "narrowly tailored to the interest it promotes." *See Sullivan*, 660 S.W.3d at 233 (quoting *Bonta*, 141 S. Ct. at 2385).

Petitioner resists this outcome, arguing that even if strict scrutiny is not warranted, the appellate court misapplied the exacting scrutiny test because it failed

to heed *Bonta*'s warning that "unnecessary burdens weigh against satisfying exacting scrutiny's requirement of narrow tailoring." Pet. Br. at 41. But in demanding that exacting scrutiny have "real teeth," *id*., Petitioner misapprehends the standard's dictates. Lawmakers are not obliged to adopt "the least restrictive means" or the narrowest possible reporting requirement. To survive heightened scrutiny, a law need not be "perfect, but reasonable"; the legislature need not adopt "the single best disposition[,] but one whose scope is 'in proportion to the interest served.'" *McCutcheon v. FEC*, 572 U.S. 185, 218 (2014) (plurality opinion) (citation omitted).

In addition to misstating the standard, Petitioner also fails to identify any "unnecessary burdens" here, and indeed, by most measures, Texas's law sweeps far less broadly than many of its counterparts at the federal and state level. While Petitioner lists a number of complaints about the tailoring of the law, they largely rest on misinterpretations of the Texas statute and other disclosure laws.

1. First, Petitioner attempts to paint Texas's fee schedule as an unconstitutional burden, Pet. Br. at 29, or at least atypical of lobbying registration laws, *id*. at 41-42. But it is neither. Texas's statute is consistent with those in most states and localities, which levy fees for lobbyist registration, often to defray the costs of operating the registration system or making the disclosure available to the public. At least 40 states have established some manner of fees for lobbyist registration. *See supra* NCSL Lobbyist Registration Requirements. These range

from a $1000 annual fee in Massachusetts for lobbyist entities, *see* Mass. Gen. Laws ch. 3, § 41, to a $20 change in Nevada for non-paid lobbyists, *see* Nev. Rev. Stat. § 218H.500(b)(2) and *Registration Fees (2023)*, at https://www.leg.state.nv.us/Lobbyist/82nd2023/DoYouNeedToRegister.

As the lower court found, Petitioner cannot seriously contend that the registration fee he was required to pay was particularly onerous. *Sullivan*, 660 S.W.3d at 235 (finding that "the registration fee under the Texas statute is both nominal (especially for those who lobby on behalf of non-profits) and significantly less than the compensation or reimbursement threshold that triggers the registration requirement)"). Indeed, Petitioner does not dispute that his registration fee as a lobbyist employed by a non-profit during the relevant years was only $100, comparable or lower than the lobbying registration fees of many other states. *See* Tex. Gov't Code § 305.005(c)(1). If Sullivan had instead sought to lobby in nearby Oklahoma, for instance, he would have also been subject to a $100 annual registration fee, Okla. Stat. tit. 74 § 4250; if he ventured east to Louisiana, he would have incurred a $110 annual fee, La. Stat. Ann. § 24-53(I). And even Texas's fee for "for profit" lobbyists of $750—which Petitioner criticizes although it has no application to his case—is in line with other populous states. *See*, *e.g.*, Mass. Gen. Laws ch. 3, § 41 (annual fee of $1,000 for lobbyist entities, in addition to $100 fee

per individual lobbyist); N.J.A.C. § 19:25-20.20 ($575 fee for all individual lobbyists (i.e. "governmental affairs agents")).

2. Petitioner also complains that the appellate court declined to consider whether he qualified for Texas's "media exemption," Pet. Br. at 47-49, but he does not identify any constitutional deficiency in this holding. He proposes that Texas's media exemption should operate on an "intent test," *id*. at 48, but such a standard would be utterly unworkable, leaving the application of disclosure requirements entirely up to the subjective whims of the speaker. Certainly, it is not a test ever adopted by the U.S. Supreme Court—which instead has approved a media exemption based on objective criteria. *See McConnell*, 540 U.S. 208-09; 52 U.S.C. § 30104(f)(3)(B)(i) (excluding from regulable "electioneering communications" any "communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate").

Petitioner's principal grievance appears to be that the appellate court, by holding that journalists should register as lobbyists if they "got paid . . . to engage in lobbying," *Sullivan*, 660 S.W.3d at 236, in effect has "gutted" the media exception in Texas law, Pet. Br. at 47. But this is exactly how a media exemption is meant to operate—i.e. by exempting "bona fide" media activity and *only* "bona fide" media activity, *see*, *e.g.*, 11 C.F.R. §§ 100.73, 100.132. As the Supreme Court noted when

upholding the media exemption in federal campaign finance law, this protection extends to certain *types* of communications; it does not create blanket immunity for entire industries, media-related or otherwise. *McConnell*, 540 U.S. 208-09 ("[52 U.S.C. § 30104(f)(3)(B)(i)] excepts news items and commentary only; it does not afford carte blanche to media companies generally to ignore [campaign finance law] provisions.") (citations and quotation marks omitted). Otherwise, a media exemption would become a gaping loophole in the law: any person engaged in paid lobbying—or express campaign advertising—could evade disclosure simply by declaring that their "intent" was to engage in "journalism."

3. Petitioner also complains that certain design features of the lobbying disclosure law—e.g., its monetary thresholds for registration and its definitions of regulable activity—are not narrowly tailored. He argues, for example, that the law is overbroad because its counterparts, such as the federal LDA, require registration only when lobbyists make "expenditures." Pet. Br. at 43. But here Sullivan is simply incorrect: registration is required under federal law when "lobbyists" meet certain monetary thresholds, measured either by their "total income" in a quarter (for a "lobbying firm"), 2 U.S.C. § 1603(a)(3)(A)(i), or "total expenses" (for a "lobbying organization"), *id*. § 1603(a)(3)(A)(ii). Lobbyists need not make "expenditures" to trigger coverage. And more broadly, tying registration to compensation is not unusual. For instance, neighboring Louisiana defines a lobbyist as a person who

either "acts in a representative capacity and makes an expenditure" or a person "employed or engaged for compensation to act in a representative capacity." La. Stat. Ann. § 24:51(5).

Nor does Petitioner's complaint that the lobbying disclosure law lacks reporting thresholds withstand scrutiny. As applicable in 2010-11, the law covered only persons compensated to advocate as part of their regular employment and who spent at least 26 hours and more than five percent of their compensated time in a quarter engaged in lobbying activity. Tex. Gov't Code § 305.003(b), (b-3); 1 Tex. Admin. Code § 34.43(b) (Appx.4). Plaintiff retorts that nevertheless Texas's law remains unusually broad because it incorporates preparatory work into "lobbying" for the purposes of applying these thresholds. Pet. Br. at 39-40. But again he is simply incorrect. Lobbying disclosure laws, including the federal LDA, frequently cover preparatory work; Texas is not an outlier. *See*, *e.g.*, 2 U.S.C. § 1602(7) (providing that "lobbying activities" includes "preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others"). To do otherwise would be irrational—a lobbyist typically bills their clients for any time relating to "lobbying activities," not simply for their brief period of "contact" with a covered officeholder, and similarly, a lobbying organization's "expenses" will necessarily cover their lobbyists' preparatory work as well as the costs of direct

contacts. Excluding these activities from the monetary thresholds as Petitioner demands would ignore this reality and grossly underestimate the money expended to influence Texas officeholders.

4. Finally, Petitioner complains that the appellate court refused to narrow the scope of the lobbying disclosure law by restricting it to groups meeting a "major purpose" test. Pet. Br. at 45. This argument is entirely misplaced. This test was created by the U.S. Supreme Court to determine which politically active groups were required to register and report as "political committees" (or "PACs") under federal law. *See*, *e.g.*, *Buckley*, 424 U.S. at 79. Because "political committee" status entails a host of "[d]etailed recordkeeping and disclosure obligations, . . . [and] the duty to appoint a treasurer and custodian of records," *see FEC v. Mass. Citizens for Life*, 479 U.S. 238, 254 (1986), as well as the "need to assume a more sophisticated organizational form, [and] to adopt specific accounting procedures," *id*. at 255, the Supreme Court limited this federal status to groups whose "major purpose" relates to "the nomination or election of a candidate." *Buckley*, 424 U.S. at 79.

This test has no relevance to lobbying registration and has never been applied in this context. *Cf*. *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1010 (9th Cir. 2010) (finding that outside of the federal election context, groups need not meet the "major purpose" test to be subject to disclosure). There has been no allegation in this case that Petitioner is required to establish and register a PAC, nor required to

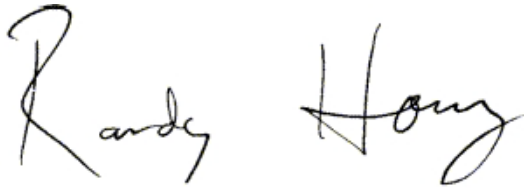
appoint a treasurer and custodian of records. Thus, Petitioner's argument about the "major purpose" test provides no support to his First Amendment challenge here.

CONCLUSION

For these reasons, the petition for review should be denied, or alternatively, if the Court grants the petition, then the judgment of the Court of Appeals should be affirmed.

Dated: December 4, 2023

Respectfully submitted,



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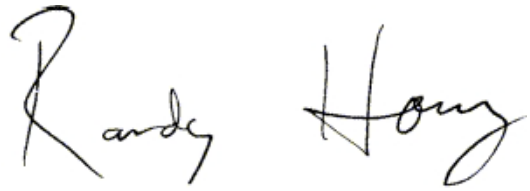

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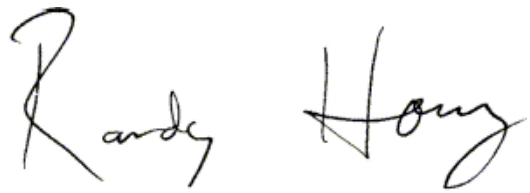

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