

No. 13-25-00386-CV

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IN THE COURT OF APPEALS  
THIRTEENTH JUDICIAL DISTRICT OF TEXAS  
AT CORPUS CHRISTI AND EDINBURG

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TONI MAREK, APPELLANT,  
v.  
PHI THETA KAPPA HONOR SOCIETY,

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*On Appeal from Cause No. 25-03-92211-D,  
In the 377<sup>th</sup> Judicial District Court, Victoria County, Texas*

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BRIEF OF AMICUS CURIAE  
IN SUPPORT OF APPELLANT

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Brian Casper  
KLEMCHUK PLLC  
8150 North Central Expressway 10th Fl.  
Dallas, TX 75206  
214.367.6000  
brian.casper@klemchuk.com  
Texas Bar No. 24075563

*Counsel for Amicus Curiae*  
HonorSociety.org Inc.

## IDENTITY OF PARTIES AND COUNSEL

Pursuant to Tex. R. App. P. 38.1(a), the following is a list of all parties to the trial court's orders being appealed from and all counsel appearing in the trial or appellate courts:

### PARTIES

- Plaintiff/Appellee: Phi Theta Kappa Honor Society
- Defendant/Appellant: Toni Marek

### COUNSEL

- For Plaintiff/Appellee:
  - Tracy Betz  
TAFT STETTINIUS & HOLLISTER LLP  
One Indiana Square, Suite 3500  
Indianapolis, IN 46204  
317-713-3500  
tbetz@taftlaw.com
  - Kevin D. Cullen  
CULLEN, CARSNER, SERRDEN & CULLEN, LLP  
119 S. Main Street  
Victoria, TX 77901  
361-573-6318  
kcullen@cullenlawfirm.com
- For Defendant/Appellant:
  - Marc J. Randazza (trial and appellate counsel)  
RANDAZZA LEGAL GROUP, PLLC  
8991 W. Flamingo Rd., Ste. B  
Las Vegas, NV 89147  
702-420-2001  
ecf@randazza.com

- Alex J. Shepard (appellate counsel)  
RANDAZZA LEGAL GROUP, PLLC  
8991 W. Flamingo Rd., Ste. B  
Las Vegas, NV 89147  
702-420-2001  
ecf@randazza.com
  
- Mark W. Bennett (appellate counsel)  
BENNETT & BENNETT  
917 Franklin Street, Fourth Floor  
Houston, TX 77002  
713-224-1747  
mb@ivi3.com
  
- David C. Griffin (trial counsel)  
MAREK, GRIFFIN & KNAUPP  
101 S. Main Street, Ste. 508  
Victoria, TX 77901  
361-573-5500  
dcg@lawmgk.com

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## CASES

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## INTEREST OF AMICUS CURIAE

HonorSociety.org, Inc. (“HonorSociety”) was the prevailing party in *Phi Theta Kappa Honor Soc’y v. HonorSociety.org, Inc.*, No. 24-60452, 2025 WL 1030240 (5th Cir. Apr. 7, 2025)(copy attached). In that case, the United States Court of Appeals for the Fifth Circuit vacated a preliminary injunction obtained by the Appellee in this case, Phi Theta Kappa Honor Society (“PTK”).

Both the Appellee and the Appellant discussed the Fifth Circuit’s decision in their briefs. HonorSociety submits this brief to ensure that the Court has an accurate understanding of the Fifth Circuit’s full analysis in that case. As the party whose speech was enjoined in that matter, HonorSociety is uniquely positioned to clarify the nature and scope of the Fifth Circuit’s holding and has an interest in ensuring that case is accurately described in these proceedings.

No party’s counsel authored this brief in whole or in part. HonorSociety paid for the preparation of this brief.

## STATEMENT OF THE CASE

The parties have adequately stated the nature of the case in their briefs.

## SUMMARY OF THE ARGUMENT

Amicus curiae submits this brief to address the Fifth Circuit’s decision in *Phi Theta Kappa Honor Society v. HonorSociety.org, Inc.*, No. 24-60452 (5th Cir. Apr. 7, 2025) which is referenced in both parties’ briefing. Appellee PTK’s discussion of that decision does not accurately reflect the nature of the Fifth Circuit’s holding. In that case, the Fifth Circuit vacated a preliminary injunction obtained by PTK. The court held that the injunction imposed broad prior restraints on HonorSociety’s speech, and also unconstitutionally compelled speech. Amicus curiae hopes to illuminate the relevant aspects of the Fifth Circuit’s decision so that the Court may better evaluate the parties’ arguments regarding it.

### **I. PTK’s characterization of the Fifth Circuit’s decision is incomplete and misleading.**

PTK describes the proceedings in *Phi Theta Kappa Honor Society v. HonorSociety.org, Inc.* as involving an initial “very narrow preliminary injunction,” followed by a later, broader injunction that the Fifth Circuit ultimately reversed. (Appellee’s Br. at 6).

Indeed, PTK goes further, describing it as “a court issuing a broad injunction in response to Honor Society’s contemptuous flouting of an earlier narrow

injunction.” (Appellee’s Br. at 6). That description assigns the expansion of the injunction to the court’s independent response to HonorSociety’s conduct. PTK frames its summary as indicating the district court needed to impose punishment for contempt. In truth, the district court did not find that HonorSociety failed to comply with that first injunction.

Instead, PTK moved for additional relief, seeking further restrictions on HonorSociety’s publications and a gag order limiting future speech. *Phi Theta Kappa Honor Soc’y*, No. 24-60452 at 1-2. HonorSociety opposed that request on First Amendment grounds, but PTK insisted that HonorSociety’s speech was not protected by the First Amendment. PTK asked the court to enjoin HonorSociety’s protected speech. The court ultimately ordered HonorSociety to speak PTK’s preferred speech rather than HonorSociety’s own desired speech.

**II. The Fifth Circuit held that the injunction imposed clear-cut unconstitutional restraints on speech in violation of HonorSociety’s First Amendment rights.**

On appeal, the Fifth Circuit characterized the injunction that PTK sought and obtained as “sweeping.” *Phi Theta Kappa Honor Soc’y*, 2025 WL 1030240 at 3. The court found that it was “both overbroad and impermissibly compels speech” and compared it to “classic examples of prior restraint ... [which] face a well-established presumption against their constitutionality.” *Id.* at 4 (internal citations and quotations omitted).

These were not marginal defects. They were violations of core First Amendment concerns. For example, PTK asked the district court to enjoin HonorSociety from reporting on the sexual harassment allegations against its former executive director. It further sought to prohibit Honor Society’s founder, Mike Moradian, from making truthful edits to PTK’s Wikipedia entry, to force HonorSociety to add PTK’s contact information to HonorSociety’s own website, and to take down a cartoon that PTK claimed was a racist caricature of its chief executive officer. *Id.* at 3-4. PTK acknowledged that these were prior restraints but contended they were permissible because they were commercial speech. *Id.* at 5.

The Fifth Circuit rejected PTK’s characterization out of hand, holding that:

Edits to PTK’s Wikipedia page cannot, **in any sense**, be viewed as “propos[ing] a commercial transaction.”

*Id.* (emphasis added).

Moreover, the court explained that even if some elements of the enjoined speech were commercial, “the injunction’s sweeping prohibitions are overbroad because the injunction also prohibits non-commercial speech and instances of speech not found to be prejudicial to PTK” including any future edits the Wikipedia page even those that were “true” or “innocuous.” *Id.* at 6. The decision also rejected the attempt to censor the cartoon-image which was protected under the First Amendment’s well-known protections for “jokes, parodies, satire, and the like,

whether clever or in poor taste.” *Id.* (internal citations omitted).

So, while PTK is correct that “the Fifth Circuit ultimately reversed that broader ruling”—(Appellee’s Br. at 6)—that characterization omits PTK’s central role in arguing for, obtaining, and defending an injunction that the Fifth Circuit quickly rejected as an infringement of core First Amendment rights.

### **III. The Fifth Circuit’s decision underscores the speech-based nature of PTK’s claim.**

The Fifth Circuit’s analysis is relevant here because it reflects the constitutional concerns that arise when litigation seeks to restrict or control speech—particularly when such efforts are framed narrowly but operate broadly in effect. The nature of PTK’s claims in this case raises those same concerns. Here, as in its prior litigation against HonorSociety, PTK sought injunctive relief that would limit someone else’s ability to publish and use information in public discourse—conduct that falls squarely within the realm of expressive activity the TCPA is designed to protect.

The parallels between the two cases are not incidental. They reflect a common pattern of using litigation to restrain others’ speech. Whether it is prohibiting criticism and forcing an opponent to give voice to PTK’s perspective—as was the case before the Fifth Circuit—or seeking to enjoin publication of documents obtained via a public records request, as is the case here, courts should approach such claims with particular care in light of the constitutional concerns highlighted by the Fifth Circuit.

## PRAYER

Appellee PTK contends that there is no example of it suing anyone other than Appellant Marek to prevent them from speaking out. (Appellee's Br. at 4). The decision in *Phi Theta Kappa Honor Society v. HonorSociety.org, Inc.* shows otherwise. And both that case and this one involve efforts to restrain speech before it occurs. Amicus curiae respectfully submits that, in assessing PTK's claims, the Court should consider the Fifth Circuit's conclusion that the injunction PTK previously sought, obtained, and defended was a sweeping, overbroad, and unconstitutional prior restraint on speech.

Date: May 1, 2026

/s/Brian Casper  
Brian Casper  
KLEMCHUK PLLC  
8150 North Central Expressway 10th Fl.  
Dallas, TX 75206  
214.367.6000

*Counsel for Amicus Curiae*  
HonorSociety.org Inc.

## CERTIFICATE OF COMPLIANCE

I hereby certify that, in compliance with Tex. R. App. P. 9.3(i)(3), this brief contains 1,098 words, excluding the portions of the brief not included in the word count under Tex. R. App. P. 9.3(i)(1).

/s/Brian Casper \_\_\_\_\_

Brian Casper

KLEMCHUK PLLC

8150 North Central Expressway 10th Fl.

Dallas, TX 75206

214.367.6000

*Counsel for Amicus Curiae*

HonorSociety.org Inc.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically filed with the Clerk of the Court using the court filing system, and served electronically to the following:

- For Plaintiff/Appellee:
  - Tracy Betz  
TAFT STETTINIUS & HOLLISTER LLP  
ONE INDIANA SQUARE, SUITE 3500  
INDIANAPOLIS, IN 46204  
317-713-3500  
tbetz@taftlaw.com
  - Kevin D. Cullen  
CULLEN, CARSDNER, SERRDEN & CULLEN, LLP  
119 S. MAIN STREET  
VICTORIA, TX 77901  
361-573-6318  
kcullen@cullenlawfirm.com
- For Defendant/Appellant:
  - Marc J. Randazza (trial and appellate counsel)  
RANDAZZA LEGAL GROUP, PLLC  
8991 W. Flamingo Rd., Ste. B  
Las Vegas, NV 89147  
702-420-2001  
ecf@randazza.com
  - Alex J. Shepard (appellate counsel)  
RANDAZZA LEGAL GROUP, PLLC  
8991 W. Flamingo Rd., Ste. B  
Las Vegas, NV 89147  
702-420-2001  
ecf@randazza.com

- Mark W. Bennett (appellate counsel)  
BENNETT & BENNETT  
917 Franklin Street, Fourth Floor  
Houston, TX 77002  
713-224-1747  
mb@ivi3.com
  
- David C. Griffin (trial counsel)  
MAREK, GRIFFIN & KNAUPP  
101 S. Main Street, Ste. 508  
Victoria, TX 77901  
361-573-5500  
dcg@lawmgk.com

Date: May 1, 2026

/s/Brian Casper  
Brian Casper  
KLEMCHUK PLLC  
8150 North Central Expressway 10th Fl.  
Dallas, TX 75206  
214.367.6000

*Counsel for Amicus Curiae*  
HonorSociety.org Inc.

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

April 7, 2025

Lyle W. Cayce  
Clerk

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No. 24-60452

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PHI THETA KAPPA HONOR SOCIETY,

*Plaintiff—Appellee,*

LYNN TINCHER-LADNER,

*Defendant/Third Party Defendant—Appellee,*

*versus*

HONORSOCIETY.ORG., INCORPORATED; HONOR SOCIETY  
FOUNDATION, INCORPORATED,

*Defendants—Appellants.*

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:22-CV-208

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Before ELROD, *Chief Judge*, and DAVIS and RAMIREZ, *Circuit Judges*.

PER CURIAM:\*

HonorSociety.org and its corporate affiliate, Honor Society Foundation, (collectively, “HonorSociety”) appeal the entry of a

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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preliminary injunction that prohibits them from engaging in several forms of online speech and compels them to include a “disclaimer” in its future online posts that reference this litigation. Because we agree with HonorSociety that the injunction is overbroad and compels speech in violation of the First Amendment, we VACATE the injunction and REMAND to the district court.

## I

This case involves two honor societies that compete in the community-college honor-society market. Phi Theta Kappa Honor Society (“PTK”), founded in 1918, provides academic- and professional-focused membership services to community college students across the county. HonorSociety, founded in 2014 by Michael Moradian, has a similar mission, and has become PTK’s largest competitor.

In 2022, PTK sued HonorSociety asserting claims under the Lanham Act for trademark and trade-dress infringement and Mississippi state-law claims for unfair competition and trade-dress infringement. It later added several claims, including Mississippi state-law claims for tortious interference with contract and with prospective business advantage. HonorSociety asserted several counterclaims against PTK and third-party claims against Dr. Lynn Tincher-Ladner, PTK’s chief executive officer.<sup>1</sup>

In March 2024, PTK obtained a preliminary injunction that enjoined HonorSociety from circulating six survey questions that contained “misleading” information to PTK members and from soliciting information on PTK from college campuses.

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<sup>1</sup> Because Dr. Tincher-Ladner joined PTK’s request for the preliminary injunction that is at issue here, any reference to PTK in this opinion refers to both PTK and Dr. Tincher-Ladner.

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A few months later, PTK again requested a preliminary injunction, this time on the basis that HonorSociety had continued to disseminate misleading claims against PTK, albeit in new ways. PTK claimed that HonorSociety had used generative artificial intelligence to create approximately 5,000 websites and articles to “mislead readers about the lawsuit”; spread misinformation about a former PTK chapter advisor and the organization’s former executive director, Rod Risley; created a “Directory” of PTK chapters that actually redirected users to HonorSociety’s websites; edited PTK’s Wikipedia page; and circulated a cartoon image of an “East Asian woman,” which, according to the district court’s findings, depicted Dr. Tincher-Ladner. The district court later held an evidentiary hearing on the motion in June 2024 and granted the motion two months later, finding that PTK was likely to succeed on its Mississippi state law claim for tortious interference.

The district court’s injunction was sweeping. It prohibited HonorSociety from engaging in several forms of online speech targeted at PTK and ordered it to include a disclaimer on any website or social media post that referenced the pending litigation. The injunction states:

- 1) Immediately cease edits to PTK’s Wikipedia page, and subject itself to discovery on Wikipedia edits it may have made or caused during this litigation.
- 2) Remove all images of the cartoon East Asian woman vendor from its webpages and social media posts.
- 3) Remove all false subject matter from its webpages and social media posts regarding the Itawamba Community College chapter advisor’s arrest.
- 4) Limit its reporting on the sexual harassment allegations against Risley to existing media articles only, rather than articles of its own creation.
- 5) Add the actual contact information for every PTK chapter into the “Directory,” or delete the “Directory.”

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- 6) Add the following disclaimer, in 12 point or larger size font, to the top of all remaining webpages and social media posts that concern or reference this litigation:

Disclaimer: The author of this article is not a neutral party in the referenced litigation. HonorSociety.org Inc., Honor Society Foundation Inc., and its president Michael Moradian were sued in federal court by PTK on April 20, 2022 for False Designation of Origin, Trade Dress Infringement, and Unfair Competition. Honor Society and Michael Moradian countersued and are presently defendants/counter-plaintiffs in this litigation. Litigation is still ongoing and all claims made regarding this case are just allegations against the parties.

HonorSociety then timely appealed the second injunction. On appeal, it argues that: (1) the district court erred in concluding that PTK was substantially likely to succeed on the merits of its claims for tortious interference, (2) the injunction is an overbroad and vague prior restraint, and (3) the injunction compels speech in violation of the First Amendment. Because we conclude that this injunction is both overbroad and impermissibly compels speech, we pretermitt discussion of HonorSociety's likelihood of success on the merits.

## II

Court orders that forbid speech activities are “classic examples of prior restraints.” *Alexander v. United States*, 509 U.S. 544, 550 (1993). Prior restraints “face a well-established presumption against their constitutionality.” *United States v. Brown*, 218 F.3d 415, 424–25 (5th Cir. 2000)). “The first step in assessing the constitutionality of a prior restraint requires considering whether the harm the court seeks to prevent justifies the restraint on speech.” *Marceaux v. Lafayette City-Par. Consol. Gov't*, 731 F.3d 488, 493 (5th Cir. 2013). Further, the restriction “must be narrowly tailored

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and employ the least restrictive means of preventing the prejudice.” *Id.* at 492.

Neither party disputes that this injunction constitutes a prior restraint. PTK asserts, however, that the prior restraint is justified because the district court concluded that HonorSociety’s speech constitutes false commercial speech, which does not enjoy the First Amendment’s full protections.

True, the First Amendment “accords a lesser protection to commercial speech than to other constitutionally guaranteed expression.” *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 563 (1980). But at its core, commercial speech is speech that “does no more than propose a commercial transaction.” *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66 (1983) (citation and internal quotation marks omitted).<sup>2</sup>

Edits to PTK’s Wikipedia page cannot, in any sense, be viewed as “propos[ing] a commercial transaction.” *Id.* Nor can the cartoon image in question, which is protected under the First Amendment. *See Bailey v. Iles*, 87 F.4th 275, 283 (5th Cir. 2023) (“The First Amendment’s protections

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<sup>2</sup> Our commercial-speech analysis is guided by the *Bolger* factors: “(i) whether the communication is an advertisement, (ii) whether the communication refers to a specific product or service, and (iii) whether the speaker has an economic motivation for the speech.” *Procter & Gamble Co. v. Amway Corp.*, 242 F.3d 539, 552 (5th Cir. 2001) (citing *Bolger*, 463 U.S. at 67 (internal quotation marks omitted)). We note that the distinction between commercial and noncommercial speech is a “matter of degree,” *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423 (1993), which is ill-suited to a generalized, one-size-fits-all approach. The record is replete with discrete instances of speech, including social media posts on LinkedIn and X (formerly Twitter), AI-generated websites and articles on myriad topics, Wikipedia edits, cartoons, the PTK chapter “Directory,” and more. Here, the district court concluded that HonorSociety’s “online postings” collectively constituted commercial speech. On remand, we urge the district court to analyze commercial speech with an increased level of granularity.

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apply to jokes, parodies, satire, and the like, whether clever or in poor taste.”).

Assuming *arguendo* that some of the enjoined speech constitutes commercial speech, the injunction’s sweeping prohibitions are overbroad because the injunction also prohibits non-commercial speech and instances of speech not found to be prejudicial to PTK. For example, the district court enjoined HonorSociety from making any future edits to PTK’s Wikipedia page—whether true or untrue, prejudicial or innocuous. It also did not identify any harmful or untrue reporting in HonorSociety’s reporting on Risley. An injunction must be “‘narrowly tailored’ to excis[e]” only those examples of speech with a sufficient potential for prejudice. *Marceaux*, 731 F.3d at 494 (vacating injunction that ordered the “takedown” of a website where only some of the website’s contents caused prejudice). Because this injunction prohibits speech irrespective of its potential for prejudice, it is overbroad.

Finally, we conclude that the disclaimer constitutes impermissible compelled speech. Generally, the government may not compel a person to speak the government’s preferred message. *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023). In the context of commercial speech, the government may compel speech if the disclosure is: (1) purely factual, (2) uncontroversial, (3) justified by a legitimate state interest, and (4) not unduly burdensome. *R J Reynolds Tobacco Co. v. FDA*, 96 F.4th 863, 877 (5th Cir. 2024) (citing *Zauderer v. Off. of Disciplinary Counsel of Sup. Ct. of Ohio*, 471 U.S. 626, 651 (1985)). The district court did not analyze whether this disclaimer was uncontroversial, justified by a state interest, or posed undue burdens on HonorSociety. Further, while PTK asserts that there is a state interest in ensuring an unbiased jury pool, the district court specifically disclaimed any concerns over tainting the jury pool.

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In conclusion, the district court's injunction is an overbroad prior restraint and impermissibly compels speech. Accordingly, we VACATE the injunction and REMAND to the district court.