No. 13-25-00386-CV

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

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

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

BRIEF OF AMICUS CURIAE *PROJECT VERITAS* IN SUPPORT OF APPELLANT

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INTEREST OF AMICUS CURIAE

Project Veritas is an investigative journalism organization. It conducts undercover investigations, files public records requests with state and federal agencies, cultivates insider sources, and publishes reports on matters of public concern. Its work has resulted in disclosures concerning the conduct of nonprofits, government entities, educational institutions, and private corporations.

Project Veritas's day-to-day newsgathering depends on three constitutional pillars directly implicated by this appeal. The first is the right to obtain information through public records requests. The second is the right to receive information from sources who may themselves be subject to nondisclosure obligations. The third is the right to publish lawfully obtained truthful information of public concern free from judicial prior restraint.

Appellee Phi Theta Kappa Honor Society's theory of liability would, if accepted by Texas courts, foreclose a substantial portion of investigative journalism in this State. PTK contends that a journalist or author may be enjoined from publishing information she lawfully obtained because the entity that created the information now claims it as privileged or confidential. Project Veritas has a direct and concrete interest in showing why PTK is wrong and ensuring that the Texas Citizens Participation Act ("TCPA") functions as the Legislature intended: as a fast-moving dismissal mechanism with mandatory fee-shifting that deters censorious litigation against the press.

Project Veritas also has an interest in the Court's resolution of the statutory questions presented. The construction PTK urges — that a declaratory judgment action

seeking to forbid an author from publishing her book targets her possession of documents rather than any "communication made" by her — would create a roadmap for SLAPP plaintiffs to plead around the TCPA. Press organizations like Project Veritas would be the primary targets of that roadmap. Equally important, PTK's threshold timeliness defense, if accepted, would give every Texas trial court the power to defeat the TCPA simply by setting a late hearing date over the movant's objection. That outcome would gut the statute's deterrent function across the State.

No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money intended to fund the preparation or submission of this brief.

STATEMENT OF THE CASE

The parties have adequately stated the nature of the case in their briefs. Project Veritas writes only to emphasize three procedural facts that frame its argument. *First*, PTK's underlying lawsuit sought a declaratory judgment that Marek may not retain, publish, or disseminate information PTK claimed was confidential or privileged, coupled with an *ex parte* temporary restraining order requiring Marek to submit her completed manuscript to PTK for pre-publication review. *Second*, after the trial court dissolved the TRO and denied a temporary injunction, PTK nonsuited its case the same day — but Marek's TCPA motion to dismiss had already been filed five days earlier, and her motion for fees, costs, and sanctions followed shortly after. *Third*, the trial court denied both motions on July 28, 2025, in two one-sentence orders without analysis or findings.

The appeal therefore presents this Court with the question whether a plaintiff who files a frivolous, constitutionally *forbidden* prior-restraint action, loses at the TRO stage,

nonsuits before the TCPA motion can be heard, and then opposes timely scheduling of the TCPA hearing, may walk away from this litigation with *zero* consequence under the very statute the Texas Legislature enacted to deter such suits. Project Veritas submits that, if Texas law is to be taken seriously, the answer must be no.

SUMMARY OF THE ARGUMENT

The First Amendment to the United States Constitution and Article I, § 8 of the Texas Constitution categorically forbid prior restraints on the publication of truthful information of public concern lawfully obtained by a journalist or author. As the Supreme Court of the United States has held, prior restraints on speech are "the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart,* 427 U.S. 539, 559 (1976). Or, as Appellant's counsel put it more memorably at the temporary injunction hearing: "The Supreme Court has roundly rejected prior restraints." That principle, drawn from *The Big Lebowski* and confirmed by every relevant case from *Near v. Minnesota* through *New York Times Co. v. United States* and *Bartnicki v. Vopper,* governs this appeal.

I. PTK's underlying declaratory judgment action sought a constitutionally impermissible prior restraint on the publication of a book based on lawfully obtained public records. The trial court's denial of TCPA relief permits a SLAPP suit of exactly the kind the TCPA was enacted to deter.

II. Decades of First Amendment jurisprudence forbid courts from enjoining the publication of truthful information of public concern that the publisher lawfully obtained, even where the original source breached a duty of confidentiality, even where the source

acted unlawfully, and even where the underlying information was once protected by privilege or classification. The publisher does not bear the risk of upstream conduct.

III. PTK's statutory argument — that its declaratory judgment action targeted Marek's possession of documents rather than any communication made by her — would, if accepted, create a template for circumventing the TCPA. The TCPA's newsgathering provision, Tex. Civ. Prac. & Rem. Code § 27.010(b)(1), expressly protects the gathering, receiving, posting, or processing of information for communication to the public, whether or not the information is actually communicated to the public. That provision was enacted for cases exactly like this one.

IV. PTK's threshold timeliness defense fails on its own terms and would, if accepted, gut the TCPA. The forfeiture rule of *In re Giles* applies only when the movant has failed to use reasonable diligence to obtain a timely hearing. *Hill v. Keliher,* No. 01-20-00419-CV, 2022 WL 3031620, at *11 (Tex. App.—Houston [1st Dist.] Aug. 2, 2022, no pet.). The record shows Marek's counsel was diligent to a fault. PTK is moreover estopped from invoking forfeiture where PTK **itself requested** the late hearing date over Marek's objection. *Aquamarine Pools of Tex., LLC v. Amelse,* No. 07-23-00367-CV, 2024 WL 3405634, at *3 (Tex. App.—Amarillo July 12, 2024, no pet.). The systemic stakes are clear: if a trial court can defeat the TCPA by setting a late hearing date over the movant's objection, every press defendant in Texas is at the mercy of every trial court's calendar.

ARGUMENT

I. PTK'S UNDERLYING DECLARATORY JUDGMENT ACTION SOUGHT A CONSTITUTIONALLY IMPERMISSIBLE PRIOR RESTRAINT,

WHICH IS THE VERY KIND OF SUIT THE TCPA WAS ENACTED TO DETER.

Project Veritas does not write to relitigate the dissolved temporary restraining order. The TRO is gone. The constitutional analysis matters here, however, because PTK's underlying claim was constitutionally meritless from the moment of filing, and the TCPA exists to deter claims like that one through expedited dismissal and mandatory fee-shifting. Without a constitutional understanding of what PTK actually sought, the TCPA analysis that follows cannot do its work.

PTK's lawsuit sought a declaratory judgment that Marek "is not permitted to retain, publish, or disseminate" information about PTK, coupled with an injunction preventing publication of her book until PTK could review the manuscript. 1.CR.13-14. That relief is a prior restraint by any honest reading. Texas courts have long defined a prior restraint as "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) (internal quotations omitted). PTK sought to prevent the publication of Marek's book. PTK sought to substitute its own editorial judgment for Marek's. PTK sought, in plain words, a *prior restraint*.

Prior restraints carry "a heavy presumption against [their] constitutional validity." *Bantam Books, Inc. v. Sullivan,* 372 U.S. 58, 70 (1963). They are "the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n,* 427 U.S. at 559; *see also Davenport v. Garcia,* 834 S.W.2d 4, 9 (Tex. 1992). The Supreme Court of Texas has repeatedly held that prior restraints on speech are presumptively

unconstitutional under Article I, § 8 of the Texas Constitution, which provides protections "greater" than those of the First Amendment. *Davenport,* 834 S.W.2d at 9-10. Indeed, the Texas Supreme Court has applied this rule even to allegedly defamatory speech. *Hajek v. Bill Mowbray Motors, Inc.,* 647 S.W.2d 253, 255 (Tex. 1983); *Kinney,* 443 S.W.3d at 92.

This Court has applied the same rule. In *Corpus Christi Caller-Times v. Mancias,* 794 S.W.2d 852, 854 (Tex. App.—Corpus Christi 1990, no writ), this Court held that "[a]n injunction which imposes [] prior restraints upon speech and publication constitutes an impermissible restraint on First Amendment rights." PTK's declaratory judgment claim, with its companion request for injunctive relief against publication, falls squarely within the prohibition of *Mancias*. This case is not at the doctrinal frontier. It is at the doctrinal core.

As Appellant's counsel reminded the trial court at the temporary injunction hearing: "The Supreme Court has roundly rejected prior restraints." That observation, quoted from Walter Sobchak in *The Big Lebowski* and adopted with approval by the Supreme Court of Texas in *Kinney*, is more than rhetorical flourish. It captures the doctrinal consensus that this appeal must vindicate.

The connection to the TCPA is direct. The Texas Legislature enacted the TCPA "to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law." Tex. Civ. Prac. & Rem. Code § 27.002. When a plaintiff files a constitutionally **meritless** prior-restraint action, the TCPA is the statutory mechanism the Legislature created to dispatch that suit at the earliest possible stage and to make the plaintiff pay for

filing it. The TCPA's mandatory fee-shifting and discretionary sanctions provisions, *id.* § 27.009(a), are not procedural niceties. They are the deterrent mechanism that gives the statutory scheme real-world bite. Without them, every institutional plaintiff in Texas would have a free option to file censorious litigation, lose, and walk away. *That is precisely what PTK seeks here, and it is precisely what the TCPA forbids*.

II. THE FIRST AMENDMENT AND ARTICLE I, § 8 FORBID PRIOR RESTRAINTS ON THE PUBLICATION OF LAWFULLY OBTAINED TRUTHFUL INFORMATION OF PUBLIC CONCERN, REGARDLESS OF WHETHER A SOURCE BREACHED AN UPSTREAM DUTY OF CONFIDENTIALITY.

A. The governing rule: lawful receipt insulates the publisher.

The Supreme Court has stated the controlling rule with unusual clarity: "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." *Smith v. Daily Mail Publ'g Co.,* 443 U.S. 97, 103 (1979). The *Daily Mail* rule has been applied in case after case in which the original source acted unlawfully, the source breached a confidentiality obligation, or the information was once protected by privilege or classification. Lawful receipt by the publisher is the controlling fact.

The proper remedy for upstream wrongdoing lies against the upstream actor, not the publisher. If a source steals classified documents, the source faces criminal charges; the press does not. If a source breaches a nondisclosure agreement, the source faces a contract action; the publisher does not. If a government agency releases protected materials in error,

the agency may face administrative consequences; the recipient who lawfully received the materials does not face an injunction. The First Amendment places the risk of upstream secrecy on the party claiming it. The press bears the constitutional shield.

B. The Pentagon Papers establish that even classified, stolen documents may be published.

New York Times Co. v. United States, 403 U.S. 713 (1971), is the strongest possible illustration of the protections afforded the press. After Daniel Ellsberg stole top-secret Defense Department documents ("Pentagon Papers") and provided them to the press during the Vietnam War, the Government sought a prior restraint on the ground of grave national-security harm. The Supreme Court refused to enjoin publication of the documents, even though the source had not produced the documents lawfully. As Justice Black observed in concurrence, "[s]uch a holding would make a shambles of the First Amendment." *Id.* at 715 (Black, J., concurring).

If publication of *classified war plans* cannot be enjoined when the source committed espionage to obtain them, then the publication of internal honor-society emails certainly cannot be enjoined when the colleges to whom PTK distributed them produced them in response to public records requests. The principle does not change because the speaker is an independent author rather than a national newspaper, or because the subject is an honor society rather than a war. The First Amendment protects publication regardless of the publisher's institutional form, and the public interest in PTK's governance — an organization that touches millions of community-college students and faculty — is plainly a matter of public concern.

C. *Florida Star* establishes that even violation of a statute by the source does not strip the publisher of First Amendment protection.

Florida Star v. B.J.F., 491 U.S. 524 (1989), maps directly onto this case. There, a Florida statute imposed civil liability on anyone publishing the name of a sexual-assault victim. A police department released a victim's name in violation of the department's own internal policy and the statute. A newspaper published the name. The Supreme Court held that the press could not be punished for publishing truthful information lawfully obtained from a public record, even where the source had violated its own confidentiality policy. *Id.* at 535-39.

The structural parallel to this case is exact. PTK shared its internal emails with college board members at community colleges across the country. The colleges, as governmental entities, were subject to public records requests. Marek issued public records requests. The colleges produced the emails. Whatever PTK's grievance with the colleges — and PTK has never sued any of them — it does not run against Marek. Marek lawfully obtained the documents. Under *Daily Mail* and *Florida Star*, that lawful receipt insulates her from a prior restraint.

D. *Bartnicki* establishes that even illegality at the source does not strip the publisher of First Amendment protection where the publisher itself acted lawfully.

Bartnicki v. Vopper, 532 U.S. 514 (2001), provides the strongest authority for the proposition that upstream illegality does not run against a downstream publisher who acted lawfully. In *Bartnicki,* an unknown person illegally intercepted a private cellphone conversation between two union officials. The interceptor mailed a tape of the

conversation to a private citizen, who provided it to a radio broadcaster. The broadcaster aired the tape as part of news coverage of an ongoing labor dispute. *Id.* at 518-19. The Supreme Court held that the broadcaster could not be liable for airing the conversation, even though the underlying interception was a federal crime.

The Court's reasoning was direct: "a stranger's illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern." *Id.* at 535. If a radio broadcaster cannot be liable for broadcasting an illegally intercepted phone call, then an author cannot be enjoined for publishing materials that her sources may have produced in arguable breach of nondisclosure obligations. PTK's theory — that Marek can be enjoined because some of her sources may have been bound by NDAs — collapses against this authority.

E. Investigative journalism cannot function under the rule PTK seeks.

The institutional perspective Project Veritas brings to this Court is that public records requests are the bedrock newsgathering tool, insider sources are the second, and both routinely produce materials whose creators would prefer they remain confidential. An investigative journalist who must investigate every source's NDA before relying on the source's information will not investigate. An author who must police every public records release for inadvertent disclosure of arguably privileged materials will not write. A publisher who must obtain every institution's permission before quoting its internal documents will publish only press releases.

If Texas adopts the rule PTK seeks — that a publisher must investigate and police every upstream privilege claim or NDA before publishing, or face injunctive and

declaratory relief — the practical effect will be to shut down investigative reporting on every institution sophisticated enough to designate its internal communications as confidential. Universities, hospitals, public agencies, large nonprofits, and major employers will all have a new tool to suppress critical reporting: a declaratory judgment action seeking to forbid the retention or publication of internal documents. That is not what the First Amendment, the Texas Constitution, or the TCPA permit. It is what they were designed to prevent.

III. PTK'S "POSSESSION, NOT COMMUNICATION" THEORY WOULD GUT TCPA PROTECTION FOR NEWSGATHERING AND MUST BE REJECTED.

A. The TCPA's text covers exactly this case.

Section 27.001(3) defines the "exercise of the right of free speech" as "a communication made in connection with a matter of public concern." Section 27.001(1) defines "communication" broadly to include "the making or submitting of a statement or document in any form or medium..." Section 27.010(b)(1) extends TCPA coverage to "any act of [a] person, whether public or private, related to the gathering, receiving, posting, or processing of information for communication to the public, whether or not the information is actually communicated to the public, for the creation, dissemination, exhibition, or advertisement or other similar promotion of a dramatic, literary, musical, political, journalistic, or otherwise artistic work..." Tex. Civ. Prac. & Rem. Code § 27.010(b)(1).

That language was enacted for newsgathering activity exactly like Marek's. Public records requests issued to community colleges constitute "gathering" and "receiving" information. Source interviews with former PTK employees and members are the same.

Manuscript preparation for a journalistic and literary work is precisely what the statute protects. The announced publication of Marek's book is itself a communication; the trial court could not have suppressed it if PTK had not filed an action seeking exactly that result.

B. PTK's construction is artificial and would swallow the statute.

PTK contends that its declaratory judgment action targeted Marek's "possession" of documents rather than any "communication" by her. That construction would require the Court to ignore the relief PTK actually sought. PTK requested a declaration that Marek "is not permitted to retain, publish, or disseminate the information in any manner," coupled with an injunction against publication of her book. 1.CR.13-14. A claim seeking to forbid publication of a book is — by any honest reading — a claim targeting communication. No journalist following this case is fooled by PTK's disingenuous labels, and the Court should not reward PTK's conduct and gamesmanship.

The artificiality of PTK's construction is exposed by its consequences. If labeling such a claim as one about "possession" sufficed to evade the TCPA, every SLAPP plaintiff in Texas could plead around the statute by careful word choice. Sue a journalist not for publishing a story but for "retaining" her notes. Sue an author not for writing a book but for "possessing" the manuscript. Sue a critic not for posting a review but for "accumulating" the source materials. Such a construction would empty the TCPA of meaning. The Legislature did not enact the TCPA to be evaded by relabeling. PTK seeks to gut the statute and it should not be permitted to do so.

C. The cases PTK relies on do not support its theory.

Pinghua Lei v. National Polymer International Corp., 578 S.W.3d 706 (Tex. App.—Dallas 2019, no pet.), addressed "theft and electronic transfer of trade secrets" — physical conduct, not journalistic communication. *Id.* at 713. The same opinion held that disclosure of trade secrets to a third party *does* constitute a "communication" under the TCPA. *Id.* at 713-14. PTK's reliance on *Pinghua Lei* thus refutes its own argument. Marek's alleged conduct is not theft and electronic transfer. It is communication — receiving information from third parties through public records requests, communicating with sources, and announcing the planned publication of a book.

Krasnicki v. Tactical Entertainment, LLC, 583 S.W.3d 279 (Tex. App.—Dallas 2019, pet. denied), addressed claims based on the *withholding* of a document — the precise opposite of publication. *Id.* at 283-84. PTK does not allege that Marek withheld anything. It alleges she will publish. *Stone v. Melillo,* No. 14-18-00971-CV, 2020 WL 6143126 (Tex. App.—Houston [14th Dist.] Oct. 20, 2020, no pet.), held that the TCPA does not allow injunctive relief to be challenged separately when it is linked to a cause of action. *Id.* at *4-5. That is not Marek's situation — her TCPA motion challenges PTK's declaratory judgment claim, which is itself a "legal action" under the TCPA, and the injunction is part and parcel of that claim. None of PTK's cases supports the proposition that an action seeking to enjoin publication of a book is somehow not based on a "communication."

D. Newsgathering itself is protected by Section 27.010(b)(1).

Even if the Court were to credit PTK's construction — that its claim somehow targets only Marek's possession of documents and not her anticipated publication — the gathering of those documents through public records requests and source interviews falls

squarely within the express protection of Section 27.010(b)(1). That provision was enacted to ensure that the statutory shield reaches not only publication but the journalistic activity that precedes it.

The provision's drafting reflects exactly this purpose. It protects "the gathering, receiving, posting, or processing of information for communication to the public, whether or not the information is actually communicated to the public..." Tex. Civ. Prac. & Rem. Code § 27.010(b)(1) (emphasis added). The italicized phrase puts to rest any argument that the TCPA's protection runs only to publication after the fact. The Legislature anticipated cases exactly like this one — cases in which a plaintiff sues to prevent publication before it occurs — and extended TCPA protection to the journalistic activity that precedes the prevented publication.

PTK's claim, viewed through any honest construction of the statute, attacks Marek's exercise of the right of free speech under Section 27.001(3) and, separately, her newsgathering activity under Section 27.010(b)(1). Either basis is sufficient to invoke the TCPA's protections. Both apply here.

IV. PTK'S THRESHOLD TIMELINESS DEFENSE FAILS ON ITS OWN TERMS AND WOULD, IF ACCEPTED, GUT THE TCPA.

PTK's principal threshold defense is its argument that Marek forfeited TCPA protections by failing to obtain a hearing within ninety days of service. PTK relies on this Court's decision in *In re Giles,* 675 S.W.3d 376 (Tex. App.—Corpus Christi-Edinburg 2023, orig. proceeding). But, this argument fails for four independent reasons, each of which would be sufficient on its own to require reversal.

A. The forfeiture rule applies only when the movant has failed to use reasonable diligence to obtain a timely hearing.

PTK's *Giles* argument rests on a reading of the forfeiture rule that strips it of its limiting principle. As the Houston First Court of Appeals held in *Hill,* the cases addressing forfeiture "hold that a TCPA movant waives his motion to dismiss by failing to use reasonable diligence to set the motion for a hearing within the statutory 90-day deadline." 2022 WL 3031620, at *11. The diligence framework reframes the inquiry around the movant's conduct rather than the bare fact of a late hearing.

The Dallas Court of Appeals has adopted the same framework in three separate decisions. In *In re Herbert,* the court held that a trial court has no discretion but to give the TCPA movant a timely hearing so long as the movant has acted with reasonable diligence in requesting it. No. 05-19-00993-CV, 2019 WL 4509222, at *2 (Tex. App.—Dallas Sept. 19, 2019, orig. proceeding). The same court reached the same conclusion in *In re Dror,* No. 14-22-00541-CV, 2022 WL 5156721, at *3 (Tex. App.—Houston [14th Dist.] Oct. 5, 2022, orig. proceeding) ("The trial court must set a TCPA motion to dismiss for hearing within the applicable statutory deadline . . . if the movant makes reasonable efforts to obtain a timely hearing."), and again in *In re Lozovyy,* No. 05-24-00121-CV, 2024 WL 1046362 (Tex. App.—Dallas Mar. 11, 2024, orig. proceeding). In *Lozovyy,* the court conditionally granted mandamus where the trial court told the movant its docket was "jammed packed" and there was "no way to SQUEEZE [the] motion into the requested docket." *Id.* at *1. The court held that under those facts the trial court "clearly abused its

discretion by not setting and conducting a hearing on relators' TCPA motion to dismiss within the statutory deadlines." *Id.*

The record here shows that Marek's counsel was diligent. Marek filed her TCPA motion on April 4, 2025 — well within the statutory window. Her counsel offered the trial court hearing dates of May 15-22 and June 9-17, both within the ninety-day window. 3SCR at 16. When PTK proposed an August setting, Marek's counsel explicitly informed the trial court of the statutory deadlines: "The hearing must be held by June 3 unless there is good cause. Even with good cause, it must be held by July 3." 3SCR at 15. When the trial court proposed an August 7 hearing date, Marek's counsel reiterated the deadlines and offered to make himself or his firm available "anytime in May or June." 3SCR at 12. **The trial court ignored this request and set the hearing for July 18, 2025 — fifteen days outside the ninety-day deadline.** 4CR at 1557.

That fact pattern is materially indistinguishable from *In re Lozovyy.* Marek's counsel did everything the diligence framework requires. He filed the motion within the deadline. He proposed timely hearing dates. He cited the statutory deadlines explicitly. He offered availability across the entire ninety-day window. When the trial court ignored those efforts and set a late date, Marek's counsel again objected. Forfeiture under *Giles* is not appropriate on these facts. *Hill, Herbert, Dror,* and *Lozovyy* all confirm that the forfeiture rule does not apply when the movant has been diligent and the trial court has set the late date over the movant's objection. It's unclear what more Marek could have done.

B. PTK is estopped from invoking forfeiture where PTK itself caused the late hearing date.

Even setting aside the diligence framework, PTK is barred from invoking forfeiture by its own conduct. PTK's counsel told the trial court there was "no urgency" to hear Marek's motion, urged that "fairness leads to a July/August setting," cited a three-week trial in another matter and a "large family vacation," and ultimately asked the court for a hearing on August 7 or the week of August 11. 3SCR at 12-15. *PTK now invokes the very lateness it requested as a basis for forfeiture*. This is the very definition of conduct barred by Anglo-American common law equitable estoppel for centuries. This is rank gamesmanship and Texas equity does not permit this sort of nonsense.

The Amarillo Court of Appeals confronted precisely this kind of two-faced conduct in *Aquamarine*. There, the non-movant initially objected to a late TCPA hearing as untimely and then changed position when the movant invoked the parties' agreement. The court applied the invited-error doctrine to bar the non-movant from benefiting from delay it had caused. *Aquamarine*, 2024 WL 3405634, at *3. The court invoked the Texas Supreme Court's longstanding rule: "It is an elementary principle supported by many authorities that a litigant cannot ask something of a court and then complain that the court committed error in giving it to him. The rule, grounded in even justice and dictated by common sense, is that he is estopped." *Id.* at *8, n.5 (quoting *Ne. Tex. Motor Lines, Inc. v. Hodges,* 158 S.W.2d 487, 488 (Tex. 1942)).

The principle applies with full force here. PTK requested the August date. PTK now invokes the August date as forfeiture. The invited-error doctrine bars that maneuver. PTK cannot tell the trial court that fairness requires a July or August hearing date and then tell this Court that the very date PTK demanded gives PTK a free pass on the merits of

Marek's TCPA motion. It's an obviously unjust position, and Texas justice does not work this way.

C. Strict enforcement of the forfeiture rule against a diligent movant would defeat the TCPA's statutory purpose.

The Texas Supreme Court has explained that the TCPA's hearing deadlines exist to provide "expedited consideration of any suit that appears to stifle the defendant's communication on a matter of public concern." *In re Panchakarla,* 602 S.W.3d 536, 538 (Tex. 2020). The deadlines are movant-protective. They exist to give the press a fast escape hatch from censorious litigation, not to give plaintiffs a procedural sword to defeat dismissal motions. Section 27.011(b) reinforces this purpose by requiring that the TCPA "shall be construed liberally to effectuate its purpose and intent fully." Tex. Civ. Prac. & Rem. Code § 27.011(b).

Two recent decisions confirm that strict procedural enforcement is inappropriate where it would defeat the statute's purpose. In *First Sabrepoint Capital Management, L.P. v. Farmland Partners Inc.,* the Texas Supreme Court applied harmless-error review to the TCPA's thirty-day ruling deadline rather than treating that deadline as jurisdictional. 712 S.W.3d 75, 80-84 (Tex. 2025). The Court reasoned that strict enforcement would frustrate rather than advance the statute's purpose. In *Forget About It, Inc. v. BioTE Medical, LLC,* the Dallas Court of Appeals declined to impose strict timing requirements on the discovery extension under Section 27.004(c), citing Section 27.011(b)'s liberal-construction mandate for the proposition that the TCPA "shall be construed liberally to effectuate its purpose." 585 S.W.3d 59, 64 (Tex. App.—Dallas 2019, pet. denied).

Applying the forfeiture rule against a diligent movant whose adversary requested the late date would invert the statute's purpose. The TCPA was enacted to protect the press from censorious litigation, not to give trial courts a backdoor mechanism for defeating the statute by delay. The procedural deadlines were enacted to give the movant a fast disposition, not to give the non-movant a way to engineer forfeiture by stalling. Reading the statute the way PTK proposes — as a trap that closes around any movant whose hearing is held outside the statutory window regardless of fault — would convert a press-protective statute into a press-hostile one.

D. Affirmance on the timeliness ground would create a roadmap for institutional plaintiffs to weaponize the courts against journalists.

This is where Project Veritas's institutional voice carries its greatest weight, because what is at stake is not the disposition of one case but the operation of the TCPA across Texas. If this Court affirms on PTK's threshold defense, future SLAPP plaintiffs will have a clear template. File a constitutionally meritless prior-restraint suit. Obtain an *ex parte* TRO. Lose at the TRO stage. Nonsuit before the TCPA motion can be heard. Oppose the timely scheduling of the TCPA hearing while citing professional commitments and personal travel. Walk away with zero liability for fees or sanctions when the trial court — *at the non-movant's request* — sets a late date. Every step of that template was executed in this case. If it works here, we can be sure it will be replicated across Texas.

Investigative journalism in Texas would face a substantially elevated litigation risk. Any institution sophisticated enough to designate its internal communications as privileged or confidential could file declaratory judgment actions seeking to forbid the retention,

publication, or dissemination of materials a journalist obtained through lawful channels. The threat of suit would in many cases be enough to chill publication. The cost of defense would itself function as a sanction. A journalist of ordinary means cannot afford to defend such suits, and the TCPA's fee-shifting provisions are the statutory mechanism the Legislature created precisely to make those defenses possible without imposing crippling cost on the press.

Mandatory fees and discretionary sanctions under Section 27.009(a) are what give the TCPA real-world bite. Without them, a SLAPP plaintiff faces no meaningful downside to filing. The trial court's unexplained denial of fees in this case — following an unexplained denial of dismissal — undermines that mechanism. Marek pursued the route the Legislature provided. She objected to the late date. She filed her motion. She preserved her rights. She took an interlocutory appeal under Section 51.014(a)(12) when the trial court denied the motion. That route should produce reversal.

PRAYER

For the foregoing reasons, Amicus Curiae Project Veritas respectfully urges this Court to reverse the trial court's denial of Appellant's motion to dismiss under the Texas Citizens Participation Act and Appellant's motion for costs, attorneys' fees, and sanctions, and to remand with instructions to grant both motions and to award fees and sanctions in accordance with Tex. Civ. Prac. & Rem. Code § 27.009(a).

Dated: May 6, 2026.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that, in compliance with Tex. R. App. P. 9.4(i)(3), this Brief of Amicus Curiae contains 5,347 words, excluding the portions of the brief not included in the word count under Tex. R. App. P. 9.4(i)(1).

/s/ Benjamin R. Wetmore
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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Brief of Amicus Curiae has been electronically filed with the Clerk of the Court using the court filing system, and served electronically to the following:

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