No. 25-0995

In the Supreme Court of Texas

PAUL CHABOT,
Petitioner,

v.

FREDERICK FRAZIER,
Respondent.

On Petition for Review from the Fifth District Court of Appeals, Dallas, Texas

BRIEF OF CITIZENS DEFENDING FREEDOM-USA
AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR REVIEW

REMNANT LAW

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INTRODUCTION

The Texas Constitution, celebrating its 150th anniversary on February 15, 2026, was deeply rooted in natural-rights philosophy and provides even stronger safeguards for free speech than the federal constitution. At its foundation is Article I, Section 2, which declares that "[a]ll political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit" and pledges the people of Texas to "the preservation of a republican form of government," while affirming their "inalienable right to alter, reform or abolish their government." TEX. CONST. art. I, § 2. Because sovereignty resides ultimately with the people—not with transient officeholders—vigorous criticism of public officials is indispensable to informed self-government and the electoral process.

Rooted in this natural rights philosophy that animated the 1876 Texas framers, Article I, Section 8 recognizes liberty of speech as a fundamental, pre-political right essential to human dignity and republican self-government. That provision declares that "[e]very person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege," and expressly commands that "in all indictments for libel, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases." TEX. CONST. art. I, § 8.

Echoing the 1876 Bill of Rights preamble's command that "the general, great and essential principles of liberty and free government may be recognized and established," and paralleling the "natural and indefeasible right" to worship declared in Section 6, the Texas framers understood freedom of speech as inherent to the human condition and indispensable to republican self-government. This provision reflects the framers' intent to protect vigorous public debate—especially criticism of government officials—from being chilled by civil liability.

To underscore the importance of the 1876 Texas Constitution, in the February 2026 edition of the Texas Bar Journal, Justice Evan A. Young raised this foundational commitment in his lead article, "A Chance for the Public, the Bar, and the Bench to Reclaim Our 150-Year-Old Constitution." *See* Vol. 89, No. 2, Tex. B.J. 94 (Feb. 2026). Justice Young emphasized the Texas Constitution's unique breadth and detail, noting that the Texas Bill of Rights—Article I of our constitution—is even "broader and grander" than its federal counterparts. *Id*. at 95. He urged courts, counsel, and scholars to prioritize Texas-specific guarantees over reflexive reliance on federal precedent. *Id*. at 94–95.

The "bolder and grander" Bill of Rights provisions serve as a direct link to the Texas Citizens Participation Act (TCPA), enacted in 2011 (HB 2973) and amended in 2019 (HB 2730) to fulfill the Texas constitutional promises of Article I, Section 8 and provide practical effect to these natural-rights guarantees. The House Research

Organization bill analyses and legislative hearings stressed the need for early dismissal of frivolous lawsuits that chill protected speech, including criticism of public officials. *See* House Research Org., Bill Analysis, Tex. H.B. 2973, 82d Leg., R.S. (2011); House Research Org., Bill Analysis, Tex. C.S.H.B. 2730, 86th Leg., R.S. (2019) (reforms intended "to curtail abuses and ensure the law is used as intended" to protect constitutional rights).

The Court of Appeals' decision allowing Frederick Frazier's suit to proceed against Paul Chabot turns defamation law into a weapon that public officials can wield to silence political critics. This contravenes both the legislative intent behind the TCPA and the robust state constitutional protections in the State of Texas. When courts permit litigation to proceed on unproven allegations while treating post-publication demands for retraction as evidence of malice, they transform the judicial system into an instrument of censorship. This Court should grant review to reaffirm the TCPA's role in protecting core political speech and to prevent the chilling effect that results when public officials can use litigation as a cudgel against citizens engaged in debate or criticize their character or fitness for office.

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IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus Curiae[1] Citizens Defending Freedom ("CDF") is a nonpartisan non-profit grassroots organization dedicated to defending constitutional freedoms, particularly the First Amendment rights of speech, religion, and association. CDF's core mission includes citizen engagement in support of an informed electorate and ensuring robust public debate on matters of public concern, including the fitness of elected officials and candidates regardless of party affiliation.

CDF defends free speech and the integrity of civil discourse to give confidence to the general public that criticism of public figures is shielded from retaliatory litigation to chill free speech, regardless of popularity or political correctness of the viewpoint expressed. CDF thus has a significant interest in this matter for all citizens in order to foster an informed electorate in the State of Texas. No fee was paid or will be paid for preparing this brief.

[1] Pursuant to Rule 11(c) of the Texas Rules of Appellate Procedure, Amicus and its counsel state that none of the parties to this case, nor their counsel authored this brief in whole or in part, nor made any monetary contribution for the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

The Court should grant the petition for review. The Court of Appeals committed multiple errors that undermine Article I, Section 8 of the Texas Constitution and the TCPA's anti-SLAPP purpose, transforming Texas defamation law into a tool for chilling political speech. *See Chabot v. Frazier*, No. 05-24-01272-CV, 2025 WL 2164002 (Tex. App.—Dallas July 30, 2025).

First, the Court misapplied the substantial-truth doctrine by treating historical reporting as actionable when subsequent events changed the legal status of past conduct. This holding conflicts with this Court's recent decision in *Polk County Publishing Co. v. Coleman*, 685 S.W.3d 71 (Tex. 2024), and threatens to impose an impossible editorial burden: speakers must continuously update historical statements to account for plea negotiations, settlements, and other post-publication developments. Such a rule chills speech by creating perpetual liability for accurate historical reporting.

Second, the Court created a roadmap for manufacturing actual malice: send a vague cease-and-desist letter (CR 202), withhold material information, and then cite the speaker's continued speech as evidence of reckless disregard. This approach contravenes *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and Texas precedent establishing that actual malice is measured by the speaker's state of mind at the time of publication—not by post-publication persistence in the face of official

demands. If allowed to stand, this rule empowers public officials to weaponize pre-suit threats, forcing speakers to choose between silence and litigation exposure.

Third, the Court rejected the libel-proof plaintiff doctrine despite Frazier's extensively publicized criminal proceedings and law enforcement discharge. This doctrine exists precisely to prevent public officials from using defamation suits to suppress commentary about their own documented misconduct. The Court's refusal to apply it here weakens the TCPA's screening function and invites officials to silence critics through process-as-punishment litigation.

Fourth, and most fundamentally, the decision enables litigation to function as a tool for chilling political speech. By allowing suits to proceed on attenuated theories of falsity, by treating routine pre-suit demands as proof of malice, and by rejecting defenses designed to protect commentary on public officials' documented conduct, the Court of Appeals has made defamation litigation more attractive as a strategic weapon against citizens engaged in core political advocacy.

Review is essential to restore the constitutional balance and reaffirm that sovereignty resides with the people—not with officials who wield litigation to silence criticism.

ARGUMENT

I. THE COURT OF APPEALS MISAPPLIED SUBSTANTIAL TRUTH AND IGNORED TEXAS'S CONSTITUTIONAL COMMITMENT TO ROBUST POLITICAL SPEECH

A. The TCPA Was Enacted to Give Practical Effect to Article I, Section 8's Protection of Political Speech

The 2011 TCPA (HB 2973) was enacted to combat SLAPP suits aimed at silencing political criticism, especially of public officials. The statute's purpose is to "safeguard citizens' rights to participate and speak freely by preventing the legal system from being used offensively to chill those rights." *Serafine v. Blunt*, 466 S.W.3d 352, 356 (Tex. App.—Austin 2015, pet. denied); TEX. CIV. PRAC. & REM. CODE § 27.002. The House Research Organization's bill analysis for HB 2973 emphasized that the Act was necessary because "the threat of expensive litigation can stifle the open discussion of issues that are important to a functioning democracy." House Research Org., Bill Analysis, Tex. H.B. 2973, 82d Leg., R.S., at 3 (2011).

The 2019 amendments (HB 2730) preserved these strong protections for speech on matters of public concern. The bill analysis stated that reforms were intended to "curtail abuses while ensuring the law continued to function as intended" to protect constitutional speech. House Research Org., Bill Analysis, Tex. C.S.H.B. 2730, 86th Leg., R.S., at 2 (2019). Representative Jeff Leach and other proponents

confirmed that the amendments were not intended to weaken safeguards for political speech about public officials.

This legislative history confirms that both the 2011 enactment and the 2019 amendments were designed to give practical effect to Article I, Section 8's command that Texans shall be "at liberty to speak, write or publish" their opinions, especially regarding the fitness of public officials for office. TEX. CONST. art. I, § 8. The TCPA provides the procedural mechanism for early dismissal of suits that threaten to chill this constitutionally protected activity.

B. The Court of Appeals Imposed an Impossible Standard: Perpetual Updating of Historical Reporting

The Court of Appeals held that Chabot's republication of 2023 news articles became actionable when certain legal developments occurred in 2024.[2] This holding conflicts with the substantial-truth doctrine and creates an untenable burden on speakers.

[2] Frazier was charged with third-degree felony counts of attempting to impersonate a public servant (specifically, impersonating a McKinney city code enforcement officer to have Chabot's campaign signs removed during their 2022 Republican primary contest). *See* Plaintiff's Original Petition at CR 8–16 (detailing the felony impersonation charges, misdemeanor criminal mischief for removing campaign signs, nolo contendere plea to the felony, and guilty plea to the misdemeanor). He entered a plea of nolo contendere and received deferred adjudication. *Id*. He also pleaded guilty to Class C misdemeanor criminal mischief for removing Chabot's campaign sign. Id. In April 2024, after completing the terms of deferred adjudication, the impersonation charges were dismissed. *Id*. The Court of Appeals held that Chabot's statements about these charges and pleas became actionable after this dismissal. *Id*. at *2–*4

1. Substantial Truth Focuses on the "Gist" at the Time of Publication

This Court recently reaffirmed that substantial truth asks whether the "gist" of a statement, as understood by a reasonable reader, is more damaging to the plaintiff's reputation than a truthful account would be. *Polk County Publishing Co. v. Coleman*, 685 S.W.3d 71, 76–80 (Tex. 2024). The inquiry focuses on what was true when published, not whether subsequent legal developments altered the status of past events. *Id*. at 78 ("A statement need not be perfectly true; as long as it is substantially true, it is not false.").

The "gist" of Chabot's statements—that Frazier engaged in criminal conduct involving impersonation and property damage during a political campaign—was and remains true. A reasonable reader would understand these statements to mean that Frazier committed acts that resulted in criminal charges, pleas, and deferred adjudication. That the charges were later dismissed as part of a negotiated plea agreement does not render the historical fact of the charges and pleas false. *See Turner v. KTRK Television*, Inc., 38 S.W.3d 103, 115 (Tex. 2000) (substantial truth doctrine "precludes liability for a publication that correctly conveys a story's 'gist' or 'sting' although erring in the details").

2. Subsequent Legal Developments Do Not Create Retroactive Falsity

The Court of Appeals' approach would require speakers to continuously monitor and update historical statements whenever a subject's legal status changes

through plea negotiations, settlements, or appeals. This is unworkable and unprecedented.

This standard is incompatible with Article I, Section 8's promise that Texans shall be "at liberty" to speak and publish opinions. A right to speak is no right at all if it comes with perpetual liability for failing to account for future legal developments. *See Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 629 (Tex. 2018) ("A broadcast with specific statements that err in the details but that correctly convey the gist of a story is substantially true.").

3. Historical Reporting Remains True Even With Status Changes

Chabot republished news articles reporting what was true in 2023, Frazier was charged with crimes, entered pleas, and received a dishonorable discharge.[3] These historical facts remain true regardless of subsequent legal developments. The charges were filed. The pleas were entered. The dishonorable discharge was issued. That Frazier later negotiated changes to some of these outcomes does not erase the historical record.

This Court recognized this principle in *Coleman*, where it held that reporting on a prosecutor's involvement in post-conviction proceedings was substantially true

[3] In December 2023, the Dallas Police Department listed Frazier's separation as "dishonorably discharged" on the F-5 Separation of Licensee Form because he elected to retire while under internal investigation. *Chabot*, 2025 WL 2164002, at *1. Frazier subsequently appealed this designation to the Texas Commission on Law Enforcement, which changed his discharge status to "general discharge." *Id*. This change occurred before Frazier sent his cease-and-desist letter to Chabot, but Frazier did not disclose this fact in his demand for retraction. *Id*.

even though the prosecutor was not involved in the original trial. 685 S.W.3d at 78–80. The Court emphasized that "errors of law by those reporting on the law are not automatically actionable as defamation." *Id*. at 78. If even legal errors are protected when they convey the substantial truth, then accurate historical reporting cannot become actionable simply because subsequent events change legal classifications.

4. The "Conviction" versus "Plea" Distinction Is Immaterial

The Court of Appeals found actionable falsity in Chabot's characterization of Frazier's plea as a "conviction." Chabot, 2025 WL 2164002, at *2. This holding ignores both defamation law and criminal law. In criminal law, a guilty plea "is itself a conviction." *Moore v. Estelle*, 526 F.2d 690, 696 (5th Cir. 1976). "Once convicted, whether as a result of a plea of guilty, nolo contendere, or of not guilty (followed by trial), convictions stand on the same footing, unless there is a specific statute creating a difference." *United States v. Williams*, 642 F.2d 136, 139 (5th Cir. 1981). Texas law agrees: "The entry of a valid plea of guilty has the effect of admitting all material facts alleged in the formal criminal charge." *Ex parte Williams*, 703 S.W.2d 674, 682 (Tex. Crim. App. 1986) (en banc).

The distinction between "conviction" and "guilty plea" is therefore immaterial to a reasonable reader. Both signify that the defendant admitted criminal conduct. Courts consistently hold that this distinction does not create actionable falsity. *See Carpenter v. Drechsler*, No. CIV. A. 89-0066-H, 1991 WL 332766, at *6 n.6 (W.D.

Va. May 7, 1991) (statement that plaintiff was a "convicted felon" was substantially true even though he only pled guilty), *aff'd*, 19 F.3d 1428 (4th Cir. 1994).

Imposing defamation liability for this semantic difference—especially when the statement comes from a non-lawyer engaged in political advocacy—contradicts *Coleman's* holding that speakers should not face liability for minor legal errors. 685 S.W.3d at 78. Chabot, a citizen advocate without legal training, should not be punished for using common parlance that accurately conveys the gist: Frazier admitted criminal conduct.

5. The Court of Appeals' Rule Defeats Article I, Section 8's Purpose

Article I, Section 8 protects "the liberty to speak, write or publish" opinions on public officials. TEX. CONST. art. I, § 8. This provision reflects the framers' understanding that robust criticism of officeholders—even when imprecise in details—is essential to republican self-government.

Article I, Section 8 is textually and historically broader than the First Amendment, lacking the federal "abridging" language and emphasizing a pre-political natural right with an explicit jury role in libel cases. The framers' natural-rights philosophy demands that courts interpret this provision independently to provide greater protection for political speech. By requiring continuous updating of historical statements and imposing liability for technical legal distinctions, the Court of Appeals has made criticism of public officials prohibitively risky. Citizens who

lack legal training or resources to monitor ongoing developments in officials' legal affairs will self-censor rather than risk litigation. This is precisely the "chilling effect" that Article I, Section 8 and the TCPA were designed to prevent. *See McIlvain v. Jacobs*, 794 S.W.2d 14, 16 (Tex. 1990) (substantial truth doctrine exists to ensure that "minor inaccuracies" do not "result in the punishment of free expression").

C. The Amarillo Court of Appeals Recently Confirmed That Historical Reporting Need Not Be Updated

This Court should grant review in part because the Court of Appeals' decision conflicts with recent Texas case law. In *Wheeler v. J.M. Martin Custom Homes*, Inc., No. 07-24-00316-CV, 2025 WL 3557955 (Tex. App.—Amarillo Dec. 11, 2025), the Amarillo Court of Appeals held that the TCPA protects republication of historical information even when circumstances later change. The court explained that "requiring real-time updates to historical reporting would impose the very editorial burden the TCPA was designed to prevent." *Id*. at 4.

Wheeler involved homeowners who made statements about a builder's payment practices. The builder sued for business disparagement. The court held that the homeowners' statements—based on their experiences at the time—remained protected even if subsequent events might have changed the builder's practices. *Id*.

If the TCPA protects historical statements about business practices in a private commercial dispute, it necessarily protects historical reporting about a public

official's criminal proceedings in a matter of intense public concern. The Court of Appeals' contrary holding creates a conflict in Texas law that this Court should resolve.

II. THE COURT OF APPEALS CREATED A ROADMAP FOR PUBLIC OFFICIALS TO MANUFACTURE ACTUAL MALICE THROUGH PRE-SUIT THREATS, UNDERMINING ARTICLE I, SECTION 8

The Court of Appeals' treatment of the cease-and-desist letter and Chabot's continued speech presents an even more dangerous threat to Article I, Section 8: it provides a playbook for public officials to manufacture constitutional fault through strategic pre-suit demands.

A. Actual Malice Is Measured at the Time of Publication, Not by Post-Publication Persistence

The legislative history of the TCPA confirms that the statute was designed to give practical effect to Article I, Section 8's protection of political speech. Both the 2011 enactment and the 2019 amendments emphasized that speakers must have "breathing space" to criticize public officials without fear that routine pre-suit threats will be weaponized as evidence of fault.

New York Times Co. v. Sullivan and its Texas progeny establish that actual malice is a subjective standard measured at the time of publication. 376 U.S. at 279–80. The inquiry asks whether the defendant entertained serious doubts about the truth of the statement when it was published—not whether the defendant persisted

in speaking after receiving legal threats. *See New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 162 (Tex. 2004) (actual malice requires "subjective awareness of probable falsity" at time of publication).

This Court has held that "the actual malice standard requires that a defendant have, subjectively, significant doubt about the truth of his statements at the time they are made." *Bentley v. Bunton*, 94 S.W.3d 561, 596 (Tex. 2002) (emphasis added). In *Bentley*, the Court scrutinized the defendant's pre-publication knowledge and investigative process, not post-publication reactions to denials. *Id*. at 595–96. Similarly, in *Huckabee v. Time Warner Entertainment Co*., 19 S.W.3d 413, 427 (Tex. 2000), this Court rejected the notion that awareness of vehement denials, standing alone, establishes actual malice, emphasizing that the focus must remain on the speaker's contemporaneous state of mind.

B. The Court of Appeals' Approach Invites Officials to Weaponize Pre-Suit Threats

The Court of Appeals relied heavily on Frazier's May 9, 2024 cease-and-desist letter and Chabot's continued speech as evidence of actual malice. *See* Plaintiff's Response to TCPA Motion at CR 202 et seq. (containing the demand letter and exhibits). This reasoning inverts the constitutional standard. Cease-and-desist letters are sent after publication. The letter made general assertions of falsity without providing supporting documentation or disclosing material facts, such as the recent

change in discharge status or the negotiated nature of the felony dismissal. *See* CR 202 et seq.; Chabot Declaration at CR 85 et seq.

Post-publication conduct may provide circumstantial evidence of earlier intent, but only if it reveals something about what the defendant believed when publishing—not merely that the defendant refused to yield to pressure. *See Huckabee*, 19 S.W.3d at 427 (knowledge of denials, "however vehement," does not establish actual malice). The Court of Appeals treated routine pre-suit tactics as proof of culpable intent, transforming vague demand letters into constitutional fault and giving public officials veto power over critics.

Article I, Section 8 is textually and historically broader than the First Amendment, with its explicit affirmation of liberty to publish opinions and jury determination in libel cases. This broader scope demands that Texas courts interpret actual malice to provide greater protection against post-publication pressure tactics, ensuring that natural-rights guarantees are not undermined by strategic litigation.

C. The "May 16, 2024" Post Does Not Establish Actual Malice

The Court of Appeals specifically relied on Chabot's May 16, 2024 post, which linked to a December 2023 court document and included the title "NEW: Frazier admits GUILTY in just released court doc received May 16 2024.[4] The court

[4] After receiving the cease-and-desist letter, Chabot posted a document he had newly obtained, with the title "NEW: Frazier admits GUILTY in just released court doc received May 16 2024." *Id*. The document itself was from December 2023 and reflected Frazier's guilty plea to criminal

characterized this title as "misleading" because the document was not "newly released"—it had been created in December 2023. *Chabot*, 2025 WL 2164002, at *8. This reasoning reflects a fundamental misunderstanding of actual malice and imposes an unworkable standard on political speakers.

The title was accurate because the document was "just released" to Chabot on May 16, 2024—that is when he received it. The fact that the document was created months earlier does not make the title false. Documents are frequently "released" or "obtained" long after their creation. A speaker who receives a document and shares it with the public accurately describes it as "newly released" from the speaker's perspective. Characterizing a document as “newly released” to the speaker is common journalistic and advocacy practice.

The Court of Appeals treated the title's emphasis on Frazier's guilty plea as evidence of malice. But the document did reflect Frazier's guilty plea. Characterizing that plea as an admission of guilt is substantially true, as discussed above. At most, the title reflects editorial judgment about what aspect of the document to emphasize—not "serious doubts as to truth." *Bentley*, 94 S.W.3d at 596. Even if the title could be characterized as imprecise (it cannot), the timing of the post—after the cease-and-desist letter—does not establish actual malice. The fact that Chabot

mischief. The Court of Appeals held that "the timing of the post and Chabot's misleading title" constituted evidence that "Chabot acted with knowledge of its falsity or with reckless disregard for its truth." *Id*.

continued to publish information after receiving Frazier's demand shows confidence in his sources, not reckless disregard for truth.

This Court has held that "the mere failure to investigate the facts, by itself, is no evidence of actual malice." *Bentley*, 94 S.W.3d at 595. If failure to investigate is insufficient, then persistence in publishing accurate documents certainly cannot suffice. To hold otherwise would convert Article I, Section 8's protection into a trap. Whereas, the more confident a speaker is in the truth, the more likely post-publication persistence will be used as evidence of malice.

D. Allowing Pre-Suit Threats to Establish Malice Defeats the TCPA's Anti-Chilling Purpose

The TCPA was enacted because the Legislature recognized that "the threat of expensive litigation can stifle the open discussion of issues that are important to a functioning democracy." House Research Org., Bill Analysis, Tex. H.B. 2973, 82d Leg., R.S., at 3 (2011). The statute provides for early dismissal precisely to prevent this chilling effect from taking hold.

The Court of Appeals' decision defeats this purpose. Under its rule, a cease-and-desist letter transforms continued speech into evidence sufficient to survive TCPA dismissal. This means that speakers face a Hobson's choice to retract and fall silent, even if confident in the truth to avoid litigation risk; or continue speaking and

face years of litigation with the demand letter serving as prima facie evidence of malice.

Either outcome undermines Article I, Section 8's command of liberty. A right that can be extinguished by a lawyer's letter is no right at all. This Court should grant review to reaffirm that actual malice cannot be manufactured through pre-suit threats designed to deter protected speech.

III. THE COURT OF APPEALS WRONGLY REJECTED THE LIBEL-PROOF PLAINTIFF DOCTRINE AND WEAKENED TCPA SAFEGUARDS FOR CORE POLITICAL SPEECH PROTECTED BY THE TEXAS CONSTITUTION

The Court of Appeals' rejection of the libel-proof plaintiff doctrine represents a third independent ground for reversal. This doctrine exists to prevent public officials from weaponizing defamation law to suppress commentary about their own well-publicized misconduct. While some jurisdictions have questioned the doctrine's breadth, Texas courts have recognized it in appropriate cases, see *McBride v. New Braunfels Herald-Zeitung*, 894 S.W.2d 6 (Tex. App.—Austin 1994, writ denied), and Article I, Section 8 supplies the constitutional imperative for its application here. By refusing to apply it as a factor supporting TCPA dismissal despite Frazier's extensively publicized criminal proceedings and initial dishonorable discharge, the Court has invited officials to use litigation strategically.

Frazier's widely publicized criminal proceedings and law enforcement discharge were central to the 2024 campaign. His reputation on integrity and fitness was already so diminished that further similar statements could not cause additional harm. *McBride*, 894 S.W.2d at 10. The panel's rejection of the libel-proof plaintiff doctrine, combined with its single-claim approach to defamation, weakens the TCPA's screening function and violates Article I, Section 8 by permitting public officials to use courts to suppress protected criticism of their own documented misconduct.

A. The Libel-Proof Plaintiff Doctrine Protects Commentary on Officials' Documented Misconduct

The libel-proof plaintiff doctrine recognizes that when a plaintiff's reputation on a specific subject has been so damaged by prior truthful publications that additional similar statements cannot cause incremental harm, those statements are not actionable. *McBride*, 894 S.W.2d at 10.

This doctrine serves two vital purposes, both rooted in Article I, Section 8's protection of political speech:

1. It Prevents Officials from Using Courts to Suppress Discussion of Their Own Misconduct

A public official who has engaged in widely publicized misconduct cannot use defamation law to silence critics who comment on that same misconduct. To allow such suits would give officials a perverse incentive: engage in misconduct,

allow it to be widely reported, and then sue anyone who continues to discuss it. This would enable officials to control public discourse about their fitness for office by threatening litigation against citizens who reference established facts.

Article I, Section 8, cannot tolerate this result. The provision's promise that Texans shall be "at liberty to speak, write or publish" opinions on public officials would be meaningless if officials could invoke prior publicity as a sword (to establish reputational harm) while simultaneously using courts to suppress further commentary on the same conduct. TEX. CONST. art. I, § 8.

2. It Conserves Judicial Resources and Prevents Process-as-Punishment

When a plaintiff's reputation on the specific matter at issue has already been destroyed by extensive truthful publicity, litigation over additional similar statements serves no compensatory purpose. The lawsuit becomes purely punitive—a vehicle for imposing discovery costs, litigation expenses, and emotional burdens on speakers who have done nothing more than repeat widely known facts.

This "process as punishment" dynamic is precisely what the TCPA was designed to prevent. The Legislature enacted the statute to ensure early dismissal of suits that "threaten the free exercise of First Amendment rights." *Serafine*, 466 S.W.3d at 356. The libel-proof plaintiff doctrine advances this purpose by filtering out cases where the only function of litigation is to punish speakers for discussing matters already in the public domain.

B. Frazier's Reputation Was Already Destroyed on Matters of Integrity and Fitness for Office

Frazier's criminal proceedings and law enforcement discharge were extensively publicized before Chabot created his website or displayed campaign signs.[5] This publicity focused on the precise issues Chabot addressed; Frazier's integrity, truthfulness, and fitness for public office.

Chabot's website republished 2023 news articles without alteration. These articles had already been read by thousands of voters. His campaign signs summarized information that was already circulating widely in the district. A reasonable jury could not find that Chabot's repetition of extensively publicized facts caused additional reputational harm beyond what Frazier had already suffered.

The libel-proof plaintiff doctrine prevents an outcome where officials can sue some speakers while leaving others alone, even though all speakers are saying the same thing. If mainstream media outlets could report on Frazier's criminal

[5] Frazier's 2022 Republican primary campaign against Chabot, his criminal charges for impersonating a public servant and criminal mischief, his guilty pleas, and his separation from the Dallas Police Department were covered by local newspapers, television news, and online media outlets throughout Collin County and the Dallas-Fort Worth metroplex. These matters were also the subject of extensive discussion on social media and in campaign communications. Additionally, all of the underlying facts were matters of public record: court filings in Collin County showing the charges, pleas, and eventual dismissal; Texas Commission on Law Enforcement records regarding Frazier's discharge status; and news archives available through internet searches. By the 2024 Republican primary, these facts were widely known among voters in House District 61. In May 2024, Frazier lost his primary runoff election by a margin of 68-32, reflecting voters' awareness of his background. *See* Texas Secretary of State, Election Results (May 28, 2024 Republican Primary Runoff, House District 61).

proceedings without being sued, and if those reports destroyed Frazier's reputation on integrity, then Chabot cannot be held liable for repeating the same information.

To allow selective enforcement would give officials the power to target critics based on viewpoint or political affiliation while ignoring institutional media. A result incompatible with Article I, Section 8's guarantee of equal liberty to "speak, write or publish." TEX. CONST. art. I, § 8.

C. The Court of Appeals' Rejection of the Doctrine Invites SLAPP Suits

By holding that the libel-proof plaintiff doctrine does not apply despite extensive publicity about Frazier's misconduct, the Court of Appeals has weakened the TCPA's screening function and invited officials to use litigation strategically.

Under the Court of Appeals' rule, an official whose misconduct has been extensively reported can still sue citizens who discuss that same conduct. This creates a perverse incentive structure where mainstream media outlets report on official misconduct (protected by institutional resources and liability insurance). Citizens and activists later reference these same facts in political advocacy. The official sues the under-resourced citizens, not the media outlets, knowing that citizens are more likely to settle or fall silent due to litigation costs.

This pattern enables officials to use selective enforcement of defamation law to chill grassroots political speech while leaving institutional media alone. Article I, Section 8 does not permit this form of viewpoint-based suppression.

The TCPA provides for early dismissal to prevent "the undue burden of frivolous litigation." *Serafine*, 466 S.W.3d at 356. The libel-proof plaintiff doctrine advances this purpose by identifying cases where litigation serves no compensatory function—where the only effect is to punish speakers for discussing matters already in the public domain.

The Court of Appeals' refusal to apply this doctrine means that even when an official's reputation has been destroyed by extensive truthful publicity, a citizen who repeats those same facts can be forced through years of litigation. Discovery, depositions, expert witnesses, trial preparation—all of these burdens will be imposed even though the official cannot prove incremental harm.

This transforms the TCPA from a meaningful early screen into a procedural formality. Instead of dismissing meritless suits at the outset, courts will allow them to proceed whenever an official can point to any technical imprecision in how a citizen summarized well-known facts. When a public official's criminal proceedings have been extensively covered by media, reported in court records, and discussed throughout an electoral district, citizens must remain free to reference these facts in political advocacy without facing litigation. To hold otherwise would mean that Article I, Section 8's "liberty" exists only for those with resources to defend defamation suits—a limitation the framers would have rejected. This perverse

incentive structure cannot be reconciled with the Texas Constitution's commitment to popular sovereignty and robust political debate.

D. Article I, Section 8 Demands Application of the Doctrine

The framers' natural-rights philosophy in Article I, Section 8 demands that courts apply doctrines like libel-proof plaintiff to shield core political speech from retaliatory suits. By rejecting it here, the Court of Appeals has subordinated Texas constitutional guarantees of free speech.

IV. THE DECISION ENABLES LITIGATION AS A TOOL TO CHILL POLITICAL SPEECH

The cumulative effect of the Court of Appeals' errors is to transform defamation litigation from a remedy for genuine reputational harm into a strategic weapon that public officials can wield to silence political critics. This outcome threatens the foundational principles of Article I, Section 8 and defeats the TCPA's legislative purpose.

A. The Decision Creates a Roadmap for Chilling Political Speech

The Court's holdings provide public officials with a three-part playbook: (1) allow mainstream media to report misconduct without filing suit (because institutional outlets have resources to defend themselves); (2) sue less-resourced citizens who reference the same facts; and (3) send vague cease-and-desist letters without supporting documentation, then cite continued speech as evidence of malice.

Even when statements are substantially true, officials can identify technical imprecisions to establish prima facie falsity and survive TCPA dismissal. This playbook imposes years of litigation costs and discovery burdens on citizens engaged in core political speech—regardless of whether the official can ultimately prevail. The process becomes the punishment.

B. The TCPA Was Enacted to Prevent This Outcome

The Legislature's intent was precisely to prevent officials from using litigation strategically. By allowing suits to proceed on attenuated theories of falsity, treating pre-suit demands as evidence of malice, and refusing to apply the libel-proof plaintiff doctrine, the Court has made the TCPA ineffective as a shield against retaliatory litigation.

C. Article I, Section 8 Embodies Popular Sovereignty

The Texas Constitution's commitment to popular sovereignty—reflected in Article I, Section 2's declaration that "[a]ll political power is inherent in the people"—requires that citizens remain free to criticize officials without fear of silencing litigation. TEX. CONST. art. I, § 2.

The 1876 framers understood this liberty would be meaningless if officials could use civil litigation to punish critics. The Court of Appeals' decision treats political advocacy as an abuse, allowing officials to sue over substantially true

statements based on public records. This inverts the constitutional relationship, giving officials power to silence critics through strategic use of the judicial system rather than respecting the people's sovereignty.

CONCLUSION AND PRAYER

The Court of Appeals' decision transforms defamation law into a weapon that public officials can wield to silence political critics. This ruling cannot be reconciled with Article I, Section 8's guarantee that Texans shall be "at liberty to speak, write or publish" opinions on public officials, nor with the TCPA's purpose of providing early dismissal of suits designed to chill protected speech.

On the eve of the Texas Constitution's 150th anniversary, this Court should grant review to reaffirm the framers' vision of robust political speech and restore the principle that sovereignty resides with the people—not with officials who use courts to suppress criticism they have earned.

Amicus Curiae Citizens Defending Freedom respectfully prays that this Court:

1. Grant the petition for review;
2. Reverse the judgment of the Court of Appeals;
3. Render judgment dismissing Frazier's defamation claim with prejudice under the Texas Citizens Participation Act;
4. Grant such other relief to which Petitioner and the citizens of Texas are entitled.

RESPECTFULLY SUBMITTED this 11th day of February 2026.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2)(B) because, according to the Microsoft Word count function, it contains 6,010 words, excluding the parts of the brief exempted by Texas Rule of Appellate Procedure 9.4(i)(1). This brief complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it has been prepared in a proportionally spaced typeface using Microsoft Word software in Times New Roman 14-point font in text and Times New Roman 12-point font in footnotes.

/s/ Jonathan K. Hullihan
Jonathan K. Hullihan

CERTIFICATE OF SERVICE

I certify that on February 11, 2026, I caused a true and correct copy of the foregoing Amicus Curiae Brief of Citizens Defending Freedom-USA was served electronically on all counsel of record for petitioner/appellant and respondent/appellee via the Court's e-filing system.

/s/ Jonathan K. Hullihan
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