UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

INTERFAITH CENTER ON CORPORATE RESPONSIBILITY, et al.,

Plaintiffs,

v.

KEN PAXTON, in his official capacity as Attorney General of Texas,

Defendant.

No. 25-cv-01803-ADA-SH

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Senate Bill 2337 (the Act), which the Texas Legislature enacted earlier this year, improperly seeks to impose Texas's views about investment principles upon others. The Act violates the First Amendment by requiring people to speak Texas's chosen message—even when that message is inconsistent with their own views. Worse yet, the Act is unconstitutionally vague because the scope of the Act depends on undefined statutory terms whose meanings are politically charged and widely disputed.

This Court already recognized the Act's constitutional defects when it preliminarily enjoined enforcement against two proxy advisory firms. Order, *Institutional Shareholder Services Inc. v. Paxton* (*ISS*), No. 25-cv-01160-ADA (W.D. Tex. Aug. 29, 2025); Order, *Glass, Lewis & Co. v. Paxton* (*Glass Lewis*), No. 25-cv-01153-ADA (W.D. Tex. Aug. 29, 2025). But the Act chills speech from more than just those two firms, since its compelled speech requirements extend to entities that merely do "research" or "analysis" regarding proxy proposals, regardless of whether they make recommendations. Further, adjudicating the constitutionality of the Act requires few material facts, none of which are subject to genuine dispute. The Court should thus extend those preliminary rulings and conclude that the Act is facially unconstitutional, grant summary judgment for Plaintiffs, and order injunctive and declaratory relief.

STATEMENT OF FACTS

I. Proxy proposals

Public companies periodically hold shareholder meetings where shareholders can exercise their right to vote on various matters, including proposals submitted by management or by other shareholders. *Nat'l Ass'n of Manufacturers v. SEC*, 105 F.4th 802, 806 (5th Cir. 2024); **Exhibit 1**, Decl. of Joshua Zinner (Zinner Decl.) ¶ 7. Such proposals appear on a company's

proxy statement along with management's recommendations on those proposals. *Id.* ¶ 7. Proxy proposals can address a range of matters, from executive compensation to proposed mergers and acquisitions. **Exhibit 2**, Decl. of Cynthia McHale (McHale Decl.) ¶ 12.

Proxy voting is a key aspect of corporate governance and of shareholder rights. Zinner Decl. ¶ 8. It gives shareholders a say in how companies are run and ensures that corporate directors remain accountable to their shareholders. McHale Decl. ¶ 13.

II. Texas's interest in repressing disfavored views on proxy voting

Texas enacted the Act in 2025.[1] Ostensibly, the Act arose out of Texas legislators' concern about fraud and deceit by proxy advisory firms retained by institutional investors to provide proxy voting recommendations. According to the bill sponsors, proxy advisory firms often make recommendations that prioritize "nonfinancial factors," which supposedly raises a concern that proxy advisory firms are defrauding or deceiving their investor clients.[2]

The Act's stated legislative findings echo that purported rationale. The Act states that proxy advisors "have recommended votes based on environmental, social or governance (ESG) investing, diversity, equity, or inclusion (DEI), and social credit of sustainability scores" without conducting financial analyses, despite having proxy voting policies claiming that the purpose of the recommendation is maximizing and protecting shareholder value." Sec. 1(3). The legislature found that requiring State-mandated disclosures is necessary "to prevent fraudulent or deceptive

[1] S.B. 2337, 89th Leg., Reg. Sess. (Tex. 2025) (codified at Tex. Bus. Orgs. Code tit. 1, ch. 6A). The Act contains four sections. Section 2 adds new sections 6A.001, 6A.101–02, and 6A.201–02 to the Business Organizations Code. For ease of reference, the Act's sections and the new sections of the Code are cited as "Sec. __."

[2] S. Rsch. Ctr., Bill Analysis, S.B. 2337 (Apr. 22, 2025), https://perma.cc/UAJ9-4YJF. (Senate bill sponsor's statement of intent); *see also* Trade, Workforce & Econ. Dev. Comm. Rep. (Unamended), Bill Analysis, S.B. 2337, https://perma.cc/34Q9-PN4S (House committee analysis).

acts and practices" when proxy advisers make recommendations on a shareholder vote for nonfinancial reasons. Sec. 1(3)–(4).

But Texas legislators were not silent about the true purpose of the Act. Their statements show that the Act was intended to repress disfavored viewpoints, not to combat fraud or deception. First, the Act represses the consideration of ESG and DEI in proxy voting because Texas views the consideration of those factors to be unwelcome political activism. As one bill sponsor stated, "proxy advisory firms have become increasingly political with a *hard left* bent. . . . Some are basing their advice on ESG standards, other times on DEI priorities."[3] Second, the Act also targets firms that—in another sponsor's view—"are basing their advice to clients on factors other than shareholder return, such as in many cases environmental, social, and governance—*political hot button issues*—[and] DEI factors."[4] The Act restricts speech on any shareholder proposal—even if it is "solely in the financial interest of the shareholders"—if that speech opposes the management's position on that proposal.

III. The key provisions of the Act

In general terms, the Act requires "proxy advisors" to speak negatively about their recommendations that consider ESG, DEI, and other so-called "nonfinancial factors," including any advice that opposes management's recommendation on a proposal.

A. Statutory definitions

A few broad definitions determine the scope of the Act's requirements. The first key statutory term is "proxy advisor," which the Act defines as "a person who, for compensation,

[3] Tex. Sen. Comm. on State Affairs, 89th Leg., R.S., Debate on S.B. 2337, at 0:58:46-59:27 (Apr. 24, 2025) (statement of Sen. Hughes), https://senate.texas.gov/videoplayer.php?vid=21888 (emphasis added).

[4] *See* Tex. H. Comm. on Trade, Workforce & Econ. Dev., Hr'g, at 1:13:57–14:09 (Apr. 23, 2025), https://house.texas.gov/videos/21855 (statement of Rep. Leach) (emphasis added).

provides a proxy advisory service to shareholders of a company or to other persons with authority to vote on behalf of shareholders of a company." Sec. 6A.001(3). The Act does not define "compensation."

The second key term is "proxy advisory service," which is embedded in the definition of "proxy advisor." The statute defines "proxy advisory service" as any of four "services that are provided in connection with or in relation to a company." Sec. 6A.001(4). Those four services are: (1) "advice or a recommendation on how to vote on a proxy proposal or company proposal"; (2) "proxy statement *research and analysis* regarding a proxy proposal or company proposal"; (3) "a rating or *research* regarding corporate governance"; and (4) "development of proxy voting recommendations or policies, including establishing default recommendations or policies." *Id.* (emphasis added).

Finally, the statutory definition of "company" applies to speech about companies that (1) are incorporated in Texas, (2) have their principal place of business in Texas, or (3) have proposed to become a Texas company. Sec. 6A.001(1).

B. The Act's requirements

The Act imposes two sets of requirements. The first requirement applies to a proxy advisory service that "is not provided solely in the financial interest of the shareholders." Sec. 6A.101. The second requirement applies to "materially different" advice. Sec. 6A.102.

1) Services not "solely in the financial interest" of shareholders

The Act deems a proxy advisory service to be "not provided solely in the financial interest of the shareholders" in several circumstances. The first is when the service is even "partly based on, or otherwise takes into account, one or more nonfinancial factors." Sec. 6A.101(a)(1). The Act describes nonfinancial factors as including, but not limited to, "an environmental, social, or governance (ESG) goal, factor, or investment principle"; "diversity,

equity, or inclusion (DEI)"; "a social credit or sustainability factor or score"; or "membership in or commitment to an organization or group that wholly or partly bases its evaluation or assessment of a company's value over any period on nonfinancial factors." Sec. 6A.101(a)(1)(A)–(D).

The other circumstances in which the Act deems a proxy advisory service to be "not provided solely in the financial interest of the shareholders" are when the service: involves a voting recommendation on a shareholder proposal that is inconsistent with company management's recommendation without including a written economic analysis; is not based solely on financial factors and subordinates shareholders' financial interests to other objectives; or advises against a company proposal to elect a director unless the advice solely considered the financial interest of the shareholders. Sec. 6A.101(a)(4)(b).

When the Act deems a proxy advisor to provide a service not solely in the shareholders' financial interest, the advisor must make certain disclosures. It must "conspicuously" state to shareholders receiving the service that the service is not being provided solely in shareholders' financial interest and explain, "with particularity," the basis for its advice and "that the advice subordinates the financial interests of shareholders to other objectives." Sec. 6A.101(b)(1). It must also provide a copy of the disclosure to the subject company and "publicly and conspicuously disclose" on its website that its services "are not based solely on the financial interest of shareholders." Sec. 6A.101(b)(1)(B).

2) "Materially different" advice

The Act deems a proxy voting recommendation to be "materially different" when a proxy advisor either (1) gives different voting advice to different clients or (2) recommends a vote in opposition to the company management's recommendation. Sec. 6A.102(a).

Being deemed to provide "materially different" advice triggers several requirements. The proxy advisor must comply with the above disclosure requirements for nonfinancial services—that is, a disclosure to the advice recipients, to the subject company, and on the proxy advisor's internet home page. Sec. 6A.102(b)(1). The proxy advisor must also notify each advice recipient, the subject company, and the Attorney General. Sec. 6A.102(b)(2). The proxy advisor must also disclose which of the conflicting advice is provided solely in the financial interest of the shareholders and supported by specific financial analysis. Sec. 6A.102(b)(3).

C. Enforcement

The Act deems a failure to comply with any aspect of the Act to be a "deceptive trade practice." Sec. 6A.201. Defendant Ken Paxton, the Texas Attorney General, has the power to enforce the Act. The Consumer Protection Division of the Attorney General's Office can enforce the Act through an action for injunctive relief and civil penalties of up to "$10,000 per violation." Tex. Bus. & Com. Code § 17.47(a), (c)(1). The Act does not say what counts as a single "violation" of the statute. The Act also allows the recipient of a proxy advisory service, the subject company, or any shareholder of such a company to bring suit for declaratory or injunctive relief. Sec. 6A.202.

IV. Proxy research, analysis, and advice by Plaintiffs

Plaintiffs are three nonprofit organizations that help shareholders or their members engage with companies to seek strong long-term financial performance. As part of seeking that performance, Plaintiffs consider the environmental and social impacts of company practices, as well as strong corporate governance and other factors, because they believe that those factors can be central to the long-term financial success of companies. For two of the Plaintiffs, their investment approach is shaped in part by their religious and moral beliefs, but in all Plaintiffs' views, those considerations are financial considerations.

Plaintiffs are not proxy advisors in the ordinary sense of the term. Unlike Glass Lewis and ISS, the proxy advisory firms that brought earlier challenges against the Act, Plaintiffs are not hired by investors to provide proxy voting recommendations. The legislative findings in the Act are not about organizations like Plaintiffs. Nonetheless, because of the broad sweep and vague language of the Act, Plaintiffs' activities may fall within the scope of the Act.[5]

A. Interfaith Center on Corporate Responsibility

ICCR is a nonprofit coalition of faith and values-based investors committed to engaging with companies to enhance long-term corporate value. Zinner Decl. ¶ 2. It has more than 300 institutional investor members that include religious investors, foundations, asset managers, pension funds and endowments, and other long-term institutional investors. *Id.* ¶ 4. ICCR believes that companies must "look beyond the next earnings report" and focus on long-term value creation. *Id.* ¶ 9. ICCR believes that it is integral to companies' long-term value that companies account for the well-being of all their stakeholders, including their workers and the communities where they operate. *Id.* As such, ICCR and its members fundamentally disagree with the core proposition of the Act that environmental, social, and governance concerns that are consistent with their ethical and religious values are nonfinancial factors. *Id.* ¶ 10.

ICCR does not recommend to its members how they should vote on specific shareholder proposals, but ICCR does engage in a variety of activities designed to educate its members about shareholder proposals and the shareholder proposal process. *Id.* ¶¶ 13–14. ICCR publishes an annual list of shareholder resolutions filed by its members; shares information with its members

[5] ISS's preliminary injunction motion incorrectly stated that the Act exempts nonprofits. ISS cited a House amendment that would have provided such an exemption. *ISS* ECF No. 14 at 16 n.11. But the Senate did not concur in that amendment, and the exemption did not become part of the final law. *See* Tex. S. J., 89th Leg., Reg. Sess. 3193–94 (Tex. May 27, 2025) (House Floor Amendment No. 2), https://perma.cc/282U-4D8T.

on pending shareholder resolutions; issues press releases about resolutions that it deems important for its members; and publishes weekly bulletins containing members' statements in support of their shareholder proposals. *Id.* ¶ 15. ICCR also provides advice to its membership on the process of filing shareholder proposals and prepares research and reports, such as internal briefs assessing companies. *Id.* ¶¶ 16–17. Those services may fall within the scope of proxy advisory services as defined by the Act. *Id.* ¶¶ 21–23. ICCR's work is funded in part by membership dues, which may be construed as compensation that makes ICCR a proxy advisor under the Act. *Id.* ¶ 19.

B. United Church Funds

United Church Funds (UCF) is a faith-based nonprofit organization that provides investment services to over 1,100 churches and other faith-based nonprofits, including those affiliated with the United Church of Christ. **Exhibit 3**, Decl. of Rev. Dr. Charles C. Buck (Buck Decl.) ¶¶ 2–4. UCF is a member of ICCR. *Id.* ¶ 9. UCF believes that investing responsibly is not only ethical and moral, but also a prudent approach to managing investment risks and creating investment opportunities by promoting long-term value. *Id.* ¶¶ 5–6.

UCF has relied on the services of Glass Lewis and ISS to ensure that its votes are aligned with UCF's values and priorities. *Id.* ¶ 11. In addition, UCF itself provides various client services to explain its own votes and how it engages with companies to advance financial prudence and the common good. *Id.* ¶¶ 12–13. UCF files exempt solicitations, signs onto investor letters, issues public statements about how it votes or intends to vote, and files shareholder proposals. *Id.* Those services may fall within the scope of proxy advisory services as defined by the Act. *Id.* ¶¶ 19–22. UCF does all that using expense ratios assessed on a quarterly basis to each fund it maintains, which may be construed as compensation that makes UCF a proxy advisor under the Act. *Id.* ¶ 16.

C. Ceres

Ceres is a nonprofit advocacy organization that works with investors, companies, and other nonprofits to make the business case for sustainability. McHale Decl. ¶ 3. Ceres believes that managing sustainability-related risks is crucial for corporate profitability, especially in the long term, and that companies that manage those risks present investment opportunities. *Id.* ¶¶ 5–6. Ceres runs an Investor Network of over 170 members, including pension funds, foundations, and endowments, that share that view. *Id.* ¶ 7.

Ceres does not make proxy voting recommendations to its members, but Ceres does provide various member services related to proxy voting. *Id.* ¶ 14. Ceres disseminates research and analysis about proxy proposals to shareholders. *Id.* ¶¶ 14–19. It also helps to run an initiative called Climate Action 100+, which produces a Net Zero Company Benchmark that assesses companies on various criteria including governance. *Id.* ¶ 10. Those services may fall within the scope of proxy advisory services as defined by the Act. *Id.* ¶ 25. Ceres does this work using annual dues paid by its members, as well as funding through foundation and corporate grants, individual and family foundation giving, and events and sponsorships. *Id.* ¶ 8. Such funding may be construed as compensation that makes Ceres a proxy advisor under the Act.

LEGAL STANDARD

A court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Book People, Inc. v. Wong (Book People III)*, No. 1:23-CV-00858, 2025 WL 3035109, at *3 (W.D. Tex. Oct. 21, 2025).

ARGUMENT

This Court has already concluded, on a preliminary basis, that the Act is unconstitutional as applied to two proxy advisors: ISS and Glass. *ISS* Aug. 29, 2025 Order; *Glass Lewis* Aug. 29,

2025 Order. But the Act sweeps much broader than those two firms. It also violates the constitutional rights of small organizations and non-profits that engage in shareholder advocacy, public education, and investment research.

As a threshold matter, Plaintiffs have standing, this Court has jurisdiction under the *Ex parte Young* exception to sovereign immunity, and this controversy is ripe. On the merits, the Act facially violates the First Amendment because it is a content- and viewpoint-based speech restriction that does not withstand strict scrutiny. In addition, the Act is unconstitutionally vague because it relies on undefined terms whose meanings are politically charged and hotly debated.

I. This Court has jurisdiction.

A. Plaintiffs have standing.

Courts have "repeatedly" recognized standing for plaintiffs to bring pre-enforcement challenges to laws that burden free speech rights. *Ostrewich v. Tatum*, 72 F.4th 94, 102 (5th Cir. 2023). "[S]tanding rules are relaxed for First Amendment cases so that citizens whose speech might otherwise be chilled by fear of sanction can prospectively seek relief." *Nat'l Press Photographers Ass'n v. McCraw*, 90 F.4th 770, 782 (5th Cir. 2024) (footnote omitted). The same is true for vagueness claims that implicate speech protected by the First Amendment. *Id.* at 782 n.32. A plaintiff need not subject itself to actual enforcement to have standing to bring such challenges. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158–59 (2014).

Plaintiffs meet all the standing requirements necessary for this pre-enforcement challenge. To establish Article III standing, a plaintiff must show (1) injury in fact, (2) causation, and (3) redressability. *Diamond Alternative Energy, LLC v. EPA*, 145 S. Ct. 2121, 2133 (2025). As to the first prong, a plaintiff in a pre-enforcement challenge can establish injury-in-fact by showing that "(1) they have an intention to engage in a course of conduct arguably affected with a constitutional interest, (2) their intended future conduct is arguably proscribed by the policy in

question, and (3) the threat of future enforcement of the challenged policies is substantial." *Book People, Inc. v. Wong (Book People II)*, 91 F.4th 318, 329 (5th Cir. 2024) (citation modified).

Injury-in-fact is not difficult to establish when a statute chills speech, as it does here. *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 660 (5th Cir. 2006); *Speech First Inc. v. Fenves*, 979 F.3d 319, 330–31 (5th Cir. 2020) (quoting *Houston Chron. Publ'g Co. v. City of League City*, 488 F.3d 613, 618 (5th Cir. 2007)). That is so even though the Act does not directly prohibit any speech, since "constitutional violations may arise from the deterrent, or 'chilling,' effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights." *Laird v. Tatum*, 408 U.S. 1, 11 (1972).

Plaintiffs meet all three prongs for showing injury-in-fact. As to the first two prongs, Plaintiffs regularly speak—and would continue to speak—in ways that "arguably," *Book People II*, 91 F.4th at 329, fall within the scope of the Act. *Supra* Background Section III. The scope of the Act depends on the terms "proxy advisor" and "proxy advisory service," which include research and analysis about proxy voting (even without advice or recommendations on how to vote) and generic proxy voting recommendations that are not about specific companies or specific proxy votes. Plaintiffs regularly disseminate such research, analysis, and recommendations to shareholders and would continue to do so. *See id.* Plaintiffs arguably do so "for compensation," which is a broad and undefined term that is not limited to fee-for-service arrangements and could plausibly be read to sweep in the other ways that Plaintiffs are funded for their work. *See id.* Meeting the injury-in-fact test requires only that a "plausible reading" of a challenged law applies. *Barilla v. City of Houston, Texas*, 13 F.4th 427, 433 (5th Cir. 2021). Plaintiffs are plausibly "an object of [the] regulation," leaving "little question" that Plaintiffs are injured by the Act. *Book People III*, 2025 WL 3035109, at *4.

As to the third prong, there is also a substantial threat of future enforcement. This prong is easily met in this type of case, since "a plaintiff who mounts a pre-enforcement statutory challenge on First Amendment grounds need not show that the authorities have threatened to prosecute him; the threat is latent in the existence of the statute." *Speech First*, 979 F.3d at 336 (citation modified); *see also Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988) ("We are not troubled by the pre-enforcement nature of this suit. The State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise.").[6] In any case, the Attorney General has shown that he is willing to use his enforcement authority for political ends, including this Act in particular.[7]

Plaintiffs are also injured because compliance with the Act would compel them to speak against their own views. Being compelled to speak out against themselves would cause Plaintiffs reputational harm leading to economic injury. Zinner Decl. ¶¶ 34–40; McHale Decl. ¶¶ 34–36; *see Book People, Inc. v. Wong* (*Book People I*), 692 F. Supp. 3d 660, 691 (W.D. Tex. 2023) (recognizing reputational harm from compelled speech). Finally, UCF—a member of ICCR, recipient of ICCR's speech, and a past customer of Glass Lewis and current customer of ISS and recipient of their speech—is injured by the Act's chilling of ICCR's, Glass Lewis's, and ISS's speech. "The First Amendment protects the right to hear as well as to speak," so that which

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[6] This requirement is particularly relaxed for facial challenges. "[W]hen dealing with pre-enforcement challenges to recently enacted (or, at least, non-moribund) statutes that facially restrict expressive activity by the class to which the plaintiff belongs, courts will assume a credible threat of prosecution in the absence of compelling contrary evidence." *Speech First*, 979 F.3d at 335 (citation omitted); *Barilla*, 13 F.4th at 432 & n.2 (recognizing that this standard applies to all types of speech).

[7] *ISS* ECF No. 76-21 (civil investigative demand); *Glass* ECF No. 61-4 (civil investigative demand); *see also* Vianna Davila, *How Ken Paxton Is Stretching the Boundaries of Consumer Protection Laws to Pursue Political Targets*, Tex. Tribune (May 30, 2024), https://perma.cc/3GZT-YZDW (describing Paxton's "aggressive" use of consumer protection laws "to investigate a wide range of organizations with which he disagrees politically").

"silences a willing speaker . . . also works a constitutional injury against the hearer." *Ass'n of Am. Physicians & Surgeons Educ. Found. v. Am. Bd. of Internal Med.*, 103 F.4th 383, 390 (5th Cir. 2024) (quoting *Basiardanes v. City of Galveston*, 682 F.2d 1203, 1211 (5th Cir. 1982)).

The other prongs of standing—causation and redressability—are easily met. *Speech First*, 979 F.3d at 338; *Inst. for Free Speech v. Johnson*, 148 F.4th 318, 330 (5th Cir. 2025). Potential enforcement of the Act causes Plaintiffs to have to self-censor. Zinner Decl. ¶ 39; Buck Decl. ¶ 35; McHale Decl. ¶¶ 37–38. A favorable decision enjoining the Attorney General from enforcement would redress the harm.

B. The Attorney General is not entitled to sovereign immunity.

Although the Eleventh Amendment generally bars suits in federal court against nonconsenting states and against state officials in their official capacities, the *Ex parte Young* exception to sovereign immunity allows suit in federal court for injunctive or declaratory relief against state officials for ongoing federal violations. *City of Austin v. Paxton*, 943 F.3d 993, 997 (5th Cir. 2019) (citing *Ex parte Young*, 209 U.S. 123 (1908)). The exception applies when the state official has "some connection with the enforcement" of the challenged law. *Id.*; *Book People III*, 2025 WL 3035109, at *5 (citation omitted). In determining whether there is a requisite connection, a key guidepost is whether the state official has "the particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty." *Texas All. for Retired Ams. v. Scott*, 28 F.4th 669, 672 (5th Cir. 2022).

The Texas Attorney General has the required connection to enforcement to allow suit under the *Ex parte Young* exception. "All that is required is a mere 'scintilla of "enforcement" by the relevant state official with respect to the challenged law.'" *Jackson v. Wright*, 82 F.4th 362, 367 (5th Cir. 2023) (quoting *City of Austin*, 943 F.3d at 1002). Here, the Attorney General is "statutorily tasked with enforcing the challenged law," *Texas All.*, 28 F.4th at 672 (quoting *In re*

Abbott, 956 F.3d 696, 709 (5th Cir. 2020)), because the Act expressly assigns enforcement authority to the Consumer Protection Division of the Texas Attorney General's Office. Sec. 6A.201; Tex. Bus. & Com. Code § 17.47(a), (c)(1). That is more than "the general duty to see that the laws of the state are implemented." *Jackson*, 82 F.4th at 367 (quoting *City of Austin*, 943 F.3d at 999–1000). In fact, the Attorney General has already shown his willingness to enforce the Act by initiating investigations of Glass Lewis and ISS. *Supra* n.7.

C. Plaintiffs' claims are ripe because they raise pure questions of law.

Courts consider two factors to assess ripeness: (1) "the fitness of the issues for judicial decision" and (2) "the hardship to the parties of withholding court consideration." *Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 930 (5th Cir. 2023) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). Plaintiffs' claims are fit for judicial decision because they raise constitutional questions under the First and Fourteenth Amendments that are "pure questions of law that need[] no further factual development." *Id.* Whether the Act is a viewpoint- or content-based speech regulation and whether it is unconstitutionally vague are pure legal questions that are not contingent on future events. Without judicial review, Plaintiffs would be harmed because their speech is chilled, and Plaintiffs risk significant civil penalties if they do not comply. *See Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 743–44 (1997); *Groome Res. Ltd., L.L.C. v. Par. of Jefferson*, 234 F.3d 192, 200 (5th Cir. 2000).

II. The Act abridges Plaintiffs' freedom of speech in violation of the First Amendment.

The First Amendment, which applies to States through the Fourteenth Amendment, prohibits any law "abridg[ing] the freedom of speech." U.S. Const. amend. I; *Nat'l Inst. of Fam. & Life Advocs. v. Becerra* (NIFLA), 585 U.S. 755, 766 (2018).

Ordinarily, a plaintiff bringing a facial constitutional challenge must "establish that no set of circumstances exists under which [the law] would be valid, or that the statute lacks any plainly

legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 472 (2010) (citation modified). In the First Amendment context, there is "a second type of facial challenge, whereby a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Id.* at 473 (citation modified). The lower bar for First Amendment facial challenges is because of unique concerns about chilling and self-censorship, which would silence speakers absent an avenue for facial determinations of constitutionality. *United States v. Hansen*, 599 U.S. 762, 770 (2023); *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 660 (5th Cir. 2006).

The Act facially violates the First Amendment under either test. On its face, the Act is both a content- and viewpoint-based speech regulation. It fails strict scrutiny in all its applications because the Act's "lack of tailoring to the State's… goals is categorical—present in every case—as is the weakness of the State's interest." *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021). The Act is also written so broadly and so vaguely that "every application [of the Act] creates an impermissible risk of [the] suppression of ideas." *Forsyth Cnty., Ga. v. Nationalist Movement*, 505 U.S. 123, 129 (1992).

A. The Act is, on its face, content-based speech regulation.

"A regulation of speech is facially content based under the First Amendment if it 'target[s] speech based on its communicative content'—that is, if it 'applies to particular speech because of the topic discussed or the idea or message expressed.'" *City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (quoting *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015)). Such laws are "presumptively unconstitutional," *Reed*, 576 U.S. at 163, and are subject to strict scrutiny, *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 471 (2025). Strict scrutiny "requires a restriction to be the least restrictive means of achieving a compelling governmental interest" and is "the most demanding test known to constitutional law."

Id. at 484 (quoting *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997)). The demanding nature of the test is because "[i]t is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995) (citation omitted). The Act is content-based speech regulation for two reasons: because it imposes burdens based on the speech's content and because it compels speech.

First, the Act—on its face—burdens speech based on its content. The Act's requirements apply only to "proxy advisory services," Sec. 6A.001(4), that Texas deems are "not provided solely in the financial interest of the shareholders," Sec. 6A.101, and voting advice that Texas defines as "materially different," Sec. 6A.102. The Act does not regulate other types of speech by proxy advisors or other types of speech to shareholders. The Act "'on its face' draws distinctions based on the message a speaker conveys" because it "defin[es] regulated speech by particular subject matter." *Reed*, 576 U.S. at 163. Determining whether there is a violation of the Act would require enforcement authorities to "examine the content of the message that is conveyed," so the Act draws a facial content-based distinction. *McCullen v. Coakley*, 573 U.S. 464, 479 (2014) (citation omitted).

Second, the Act is a facially content-based speech regulation because it compels Plaintiffs to speak Texas's opinion. Government-compelled speech violates the "principle that freedom of speech prohibits the government from telling people what they must say." *Rumsfeld v. Forum for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 61 (2006). "Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command." *Janus v. AFSCME*, 585 U.S. 878, 892 (2018). Because a law that compels people "to speak a particular message alters the content of their speech," such a law is a content-based speech regulation

subject to strict scrutiny. *NIFLA*, 585 U.S. at 766 (citation modified); *R J Reynolds Tobacco Co. v. FDA*, 96 F.4th 863, 876 (5th Cir. 2024) ("[G]overnment-compelled speech inherently regulates speech on the basis of its content.").

The Act compels persons both "to speak [the State's] message when [they] would prefer to remain silent" and forces them "to include other ideas with [their] own speech that [they] would prefer not to include." *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023). When any proxy advisor makes certain statements to shareholders, they must "conspicuously" include a State-mandated disclosure "that the service is not being provided solely in the financial interest of the company's shareholders," Sec. 6A.101(b)(1), 6A.102(b)(1). They must also provide disclosures to the subject company and to the Attorney General, which is speech that they otherwise would not make at all. Sec. 6A.101(b)(2), 6A.102(b)(2)(C)–(D). They must also "publicly and conspicuously" post the State-mandated disclosure on their websites. Sec. 6A.101(b)(3). By mandating the content of speech in these ways, the Act triggers strict scrutiny.

B. The Act is, on its face, viewpoint-based speech regulation.

Worse yet, the Act regulates based on viewpoint. "Viewpoint discrimination is . . . an egregious form of content discrimination." *Rosenberger*, 515 U.S. at 829. The government engages in viewpoint discrimination "when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction" on speech. *Id.*

The Act targets speakers with a viewpoint that Texas disfavors. On its face, it applies to speech that recognizes that such topics as sound corporate governance, organizational diversity, and environmental sustainability are relevant to a company's financial performance. It imposes no requirements on those who speak the opposite view, which is the view that those factors are financially irrelevant. The Act also applies to speech that opposes corporate management but does not apply to speech that follows management's recommendations. So the Act, "on its face,

distinguishes between two opposed sets of ideas: those aligned with [Texas's views] and those hostile to them." *Iancu v. Brunetti*, 588 U.S. 388, 394 (2019). Texas legislators expressly stated that the Act does so because of viewpoint differences. Senate Comm. on State Affs., *supra* n.3, at 58:29 (complaining that "sadly, in recent years, proxy advisory firms have become increasingly political with a hard left bent"). The Act thus discriminates on viewpoint by targeting "particular views taken by speakers on a subject." *Rosenberger*, 515 U.S. at 829.

The Act goes further yet when it compels disfavored speakers to speak in support of Texas's viewpoint, in contradiction to their own viewpoint. Speakers with the view that governance, diversity, and sustainability affect a company's bottom line are required to repeat a State-scripted message that such considerations are nonfinancial factors that are not in shareholders' financial interest. "Plaintiffs have no choice but to accept the government's speech as their own." *Book People III*, 2025 WL 3035109, at *7. The Act thus unlawfully uses Texas's power to "compel the endorsement of ideas that it approves," *Knox v. Serv. Emp. Int'l Union, Loc. 1000*, 567 U.S. 298, 309 (2012), and "coopt an individual's voice for its own purposes," *303 Creative*, 600 U.S. at 592. But the government "may not burden the speech of others in order to tilt public debate in a preferred direction" because in the marketplace of ideas, "the speaker and the audience, not the government, assess the value of the information presented." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578–79 (2011) (citation omitted).

C. The Act fails under strict scrutiny and is facially unconstitutional.

A finding of viewpoint bias is the "end[of] the matter," without even a need to apply strict scrutiny. *Iancu*, 588 U.S. at 399. The Act violates the First Amendment. But to the extent the Court applies strict scrutiny, the Attorney General must prove that the Act is "the least restrictive means of achieving a compelling state interest," *Free Speech Coalition*, 606 U.S. at 471; *NIFLA*, 585 U.S. at 766 (citing *Reed*, 576 U.S. at 163). Where "every application of [a law]

. . . raises the same First Amendment issues," the strict scrutiny analysis lends itself to a facial inquiry. *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1122 (9th Cir. 2024); *X Corp. v. Bonta*, 116 F.4th 888, 899 (9th Cir. 2024). Here, the State cannot satisfy either part of this mandatory, two-step showing: a compelling interest *or* narrow tailoring.

The Act's purported justification is "to prevent fraudulent or deceptive acts and practices in this state." Sec. 1(4). But Texas has no compelling interest in regulating where there is no "'actual problem' in need of solving." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 799 (2011) (quoting *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 822 (2000)); *Playboy*, 529 U.S. at 822 ("Government must present more than anecdote and supposition" to justify speech restriction). Sophisticated institutional investors that "hire professionals to provide advice" on proxy voting need no protection from Texas to understand the nature of the advice that they have sought. There is no evidence that those investors have been subject to fraud or deception. Nor is there any opportunity for fraud or deception where the investors also have access to information in the proxy materials, through which company management have an opportunity to provide their own perspective on any matters presented for a shareholder vote. When asked to identify any examples of fraudulent or deceptive statements by Glass Lewis or ISS, the Attorney General provided only a vague conclusory response that he "believes generally" that Glass Lewis and ISS have made such statements and that nobody "other than counsel" had knowledge of such statements. *ISS*, ECF No. 76-12 at 5, 8; *Glass*, ECF No. 61-9 at 5. The Act, moreover, also broadly sweeps in Plaintiffs and others that are not ordinarily considered proxy advisors (other than under the Act's bespoke and unusually expansive definition of the term). Texas's legislative findings do not even purport to identify a fraud problem relating to Plaintiffs or others that may fall within the scope of the Act despite not being proxy advisors in the ordinary sense.

The Court can stop there because the lack of compelling state interest is fatal, but the Act also fails the tailoring inquiry. Compelled speech is far from the least restrictive means to achieve the stated government interest, especially where there is no evidence that Texas tried, or even considered, "a government-funded public information campaign" to address the purported fraud and deception. *Free Speech Coal.*, 95 F.4th at 284; *NIFLA*, 585 U.S. at 775; *Glass Lewis* ECF No. 61-10 at 10 (Texas's admission that it has tried no such alternative). Texas can also "vigorously enforce its antifraud laws." *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 800 (1988). Existing Texas statutes already prohibit "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce" and confer enforcement authority on the Attorney General. Tex. Bus. & Com. Code §§ 17.46(a), 17.47. The Act allows the Attorney General to stifle disfavored views without actual proof of fraud under those existing statutes, despite no reason to believe that the existing anti-fraud statutes were inadequate.

The Act is also both "seriously underinclusive [and] seriously overinclusive." *Brown*, 564 U.S. at 805. The Act is seriously overinclusive because it applies to persons and entities other than traditional proxy advisors. The legislative sponsors expressed concern about fraud and deceit by proxy advisors that are hired to provide voting recommendations—although without any evidence of such fraud. *See* Statement of Facts Section II, *supra*. The legislative record does not even mention any concern about fraud and deceit by persons who perform research or analysis of proxy proposals without making voting recommendations. Yet the Act sweeps in such persons, including Plaintiffs, for whom the Texas legislature did not express any fraud concern.

The Act is also over- and under-inclusive as to the nature of the speech that it covers. It applies to speech about Texas companies, even if a non-Texas speaker is speaking to a non-Texas shareholder. Meanwhile, it does not address speech by a Texas speaker to a Texan shareholder if

the proxy vote at issue relates to a non-Texas company. This mismatch between the chosen regulatory approach and the asserted justification "raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown,* 564 U.S. at 802. The Act is not about protecting Texan shareholders from fraud or deception, but instead about repressing disfavored speech about Texas companies.

Facial invalidation is appropriate. "Where, as here, a statute imposes a direct restriction on protected First Amendment activity, and where the defect in the statute is that the means chosen to accomplish the State's objectives are too imprecise, so that in all its applications the statute creates an unnecessary risk of chilling free speech, the statute is properly subject to facial attack." *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 967–68 (1984) (footnote omitted); *see also id.* at 965 n.13 (facial challenge appropriate "when the statute on its face and therefore in all its applications falls short of constitutional demands."). Facial invalidation is critical to securing First Amendment protections because it serves to "provide[] breathing room for free expression" by vindicating the rights of "would-be speakers" that remain silent and those that are interested in hearing that speech. *Hansen*, 599 U.S. at 769–70.

III. The Act is unconstitutionally vague.

"Vagueness doctrine is an outgrowth not of the First Amendment, but of the Due Process Clause." *United States v. Williams*, 553 U.S. 285, 304 (2008).[8] But "many times void-for-vagueness challenges are successfully made when laws have the capacity to chill constitutionally protected conduct, especially conduct protected by the First Amendment." *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 546 (5th Cir. 2008) (citation modified); *see also Reno v. Am. C.L. Union*, 521 U.S. 844, 871–2 (1997) (vague speech regulation "raises special First Amendment

[8] In the context of a state law, as here, the source of the right is the Fourteenth Amendment. *Women's Med. Ctr. of Nw. Houston v. Bell*, 248 F.3d 411, 421 (5th Cir. 2001).

concerns because of its obvious chilling effect on free speech"); *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982). "A law is unconstitutionally vague if it (1) fails to provide those targeted by the statute a reasonable opportunity to know what conduct is prohibited, or (2) is so indefinite that it allows arbitrary and discriminatory enforcement." *McClelland v. Katy Indep. Sch. Dist.*, 63 F.4th 996, 1013 (5th Cir. 2024) (footnote omitted).

The Act is unconstitutionally vague on its face in several ways. First, the Act is vague as to the entities to which it applies. The legislative findings in the statute pertain to "professionals that are hired by shareholders" "to provide advice in the exercise of their rights as shareholders." Sec. 1(1). Those findings refer to entities ordinarily described as proxy advisors, like Glass Lewis and ISS. But the Act's definition of "proxy advisor" is far broader. The Act's definition includes a person who provides "proxy statement research and analysis" (even without advice or recommendations on how to vote), ratings of corporations, or generic proxy voting policies that are not about specific companies or specific proxy votes. Sec. 6A.001(4). Such a person is covered by the Act if they do so "for compensation," which is a term that the Act does not define. *Id.* § 6A.001(3). The Act does not say whether "compensation" is limited to fee-for-service arrangements or whether it could also encompass entities that perform activities based on membership fees or grant funding. The Act thus defines "proxy advisor" in a way that may sweep broadly to include entities like Plaintiffs, which are not "proxy advisors" within the ordinary meaning of the term and which do not receive fees from shareholders to provide them with voting advice.[9] Zinner Decl. ¶¶ 18–19; Buck Decl. ¶¶ 10, 16–17; McHale Decl. ¶ 26. The Act is so vague that Plaintiffs do not know if the Act even applies to them.

[9] The Texas House adopted an amendment that would have made the Act inapplicable to certain charitable organizations. But the Senate did not concur in the amendment, so the Act as enacted says nothing about whether non-profits fall within the scope of the Act. *Supra* note 5.

Second, the Act relies on undefined terms with heavily disputed and politically charged definitions, which results in the chilling of speech. The scope of the Act hinges on conduct that is deemed to be "not provided solely in the financial interest of the shareholders." That term applies to a service that is even "partly based on" or "takes into account" certain "nonfinancial factors," which are defined to include "ESG" and "DEI." But those terms have no agreed definition. Zinner Decl. ¶ 27; Buck Decl. ¶ 25; McHale Decl. ¶ 30. In a 2024 survey of public company directors, 66% said that ESG means different things to different people.[10] *See NAACP v. U.S. Dep't of Educ.*, 779 F. Supp. 3d 53, 66 (D.D.C. 2025) (finding likely vagueness where challenged documents "fail[ed] to provide an actionable definition of what constitutes 'DEI' or a 'DEI' practice"); *Perkins Coie LLP v. U.S. Dep't of Just.*, 783 F. Supp. 3d 105, 175–76 (D.D.C. 2025); *Sec. Indus. & Fin. Mkts. Ass'n v. Ashcroft*, 745 F. Supp. 3d 783, 800 (W.D. Mo. 2024) (finding unconstitutional vagueness for rule that fails to adequately define "nonfinancial objective."). In fact, certain factors that can be characterized as ESG and DEI are considered by many institutional investors to be relevant to the financial interest of the shareholders of a company and the company itself. Zinner Decl. ¶¶ 11–12; Buck Decl. ¶¶ 26–27; McHale Decl. ¶¶ 5–6. What Texas really means by ESG and DEI are political positions that Texas and others ideologically oppose. *See, e.g.,* Exec. Order No. 14,366, 90 Fed. Reg. 58503, 58503 (Dec. 11, 2025) (describing DEI and ESG as "radical politically-motivated agendas"). The use of undefined statutory language to repress disfavored views is inconsistent with due process.

Third, the "financial interest of the shareholders" is inherently not susceptible to a single definition and, for that reason, is not used by institutional investors or the firms or organizations

[10] PwC, *Uncertainty and transformation in the modern boardroom* (2024) https://perma.cc/MPC5-7347.

that advise them on shareholder votes. Zinner Decl. ¶ 24; Buck Decl. ¶ 23. Some investors may be interested in short-term financial gain, while others may have a long-term financial focus. Those interests may not necessarily be aligned. Because the Act is fundamentally premised on Texas's misconception that there is a single financial interest that is common to all shareholders, its definitions are fundamentally flawed and result in constitutionally impermissible vagueness.

IV. The Court should order declaratory and permanent injunctive relief.

A plaintiff seeking a permanent injunction must show that: "(1) [they have] suffered an irreparable injury; (2) [] remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) [] considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) [] the public interest would not be disserved by a permanent injunction." *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156–57 (2010); *Book People III*, 2025 WL 3035109, at *3.

Plaintiffs are irreparably injured by the Act. First, the Act causes constitutional harm. Zinner Decl. ¶¶ 30–31, 34–36; Buck Decl. ¶¶ 29–30; McHale Decl. ¶ 34. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). Second, the Act will undermine Plaintiffs' credibility with their clients and members, require them to disclose detailed financial analyses, and force them to report nonpublic communications with their clients and members to the companies being evaluated. Zinner Decl. ¶¶ 36–39; Buck Decl. ¶¶ 32–34, 37; McHale Decl. ¶¶ 35–37. In UCF's case, the Act would cause it and its clients to be deprived of services provided by ICCR. Buck Decl. ¶¶ 38–39. Third, the Act imposes harm in the form of significant compliance costs. Zinner Decl. ¶¶ 40–41; Buck Decl. ¶¶ 36–37.

In the context of First Amendment harms, the "constitutional and reputational harms alone warrant injunctive relief." *Book People III*, 2025 WL 3035109, at *10. "Monetary damages are inadequate to compensate for the loss of First Amendment [f]reedoms." *Id.* Even if the Act were intended to pursue laudable goals, "tr[ying] to serve that goal in an unconstitutional way" is against the public interest. *Id.* "Indeed, '[i]njunctions protecting First Amendment freedoms are always in the public interest.'" *Book People II*, 91 F.4th at 341 (quoting *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 298 (5th Cir. 2012)).

Declaratory relief is also warranted. Under the Declaratory Judgment Act, "any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). Whether to grant declaratory relief is within the Court's discretion, based on considerations such as "(1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." *Env't Tex. Citizen Lobby, Inc. v. ExxonMobil Corp.*, 824 F.3d 507, 523 (5th Cir. 2016) (quoting *Concise Oil & Gas P'ship v. La. Intrastate Gas Corp*., 986 F.2d 1463, 1471 (5th Cir. 1993)). The Act is vague and arguably sweeps in Plaintiffs, leaving them with a difficult choice between taking onerous compliance measures and risking significant legal exposure. Zinner Decl. ¶¶ 42–46; Buck Decl. ¶¶ 40–43; McHale Decl. ¶¶ 33–38. Declaratory relief is appropriate here to give Plaintiffs certainty about the enforceability of the Act.

CONCLUSION

The Court should grant Plaintiffs' motion for summary judgment.

Respectfully submitted,

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+ Admitted *pro hac vice*

January 7, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2026, I electronically filed the foregoing Plaintiffs' Motion for Summary Judgment with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who are registered CM/ECF users.

/s/ Ketan U. Kharod
Ketan U. Kharod