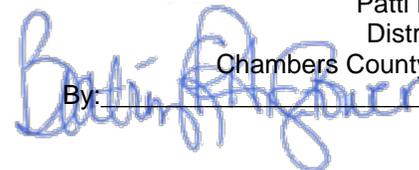


By: 

CAUSE NO. 26DCV0142

BARBERS HILL INDEPENDENT
SCHOOL DISTRICT EDUCATION
FOUNDATION

Plaintiff,

v.

TERRI LEO WILSON

Defendant

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IN THE DISTRICT COURT

OF CHAMBERS COUNTY, TEXAS

334TH JUDICIAL DISTRICT

**DEFENDANT’S MOTION TO DISMISS
PURSUANT TO THE TEXAS CITIZENS PARTICIPATION ACT
TEX. CIV. PRAC. & REM. CODE § 27.001**

Plaintiff Barbers Hill Independent School District Education Foundation (the “Foundation”) brought this lawsuit against Texas State Representative Terri Leo Wilson, claiming that Leo Wilson’s campaign statements concerning her opponent constitute defamation and business disparagement. Because the Foundation’s claims are based on Leo Wilson’s speech, they implicate her right to free speech as defined by the Texas Citizens Participation Act (“TCPA”). Leo Wilson seeks dismissal of the Foundation’s specious claims—as well as mandatory attorneys’ fees and expenses—under the TCPA because the Foundation cannot offer clear and specific evidence to support their claims.

The Foundation lacks clear and specific evidence to support the necessary elements for its claims for defamation and business disparagement. Indeed, the only wrongful conduct here is the Foundation’s. This lawsuit is nothing more than an attempt to muzzle the speech of a Texas State Representative for the benefit of her political opponent, Nathan Watkins, who is a Director of the

Foundation. Consequently, the Foundation’s claims should be dismissed under the TCPA, and the Court should award Leo Wilson her attorneys’ fees in obtaining dismissal.

I. FACTUAL BACKGROUND

As noted in the Foundation’s Petition, Leo Wilson is currently a member of the Texas House of Representatives for District 23 running for re-election . . . in the upcoming March 3, 2026 Republican primary.” *See* Pet. ¶ 4.4. The Foundation further acknowledges that “[h]er opponent [Nathan Watkins] serves as a Director on the Foundation’s Board.” *Id.*

The Foundation’s claims are premised entirely upon a single statement made by Leo Wilson in an article published by *The Texan*. The article—titled *Heated GOP Primary for Southeast Texas House District Draws Scrutiny Over Public School Education Foundation Spending*—discusses the campaign between Leo Wilson and Mr. Watkins, as well as Mr. Watkins’ involvement with the Foundation. *See* Pet., Ex. A. It notes that Mr. Watkins “faces criticism over his employer’s relationship with [the Foundation], which includes a ‘partnership’ to develop a luxury apartment complex.” *Id.* at Ex. A, p. 3. The article references that “[f]ormer Chambers County Auditor Tony Sims has publicly questioned the legality of ISD’s transfers to [the Foundation], and told *The Texan* that the arrangement may allow [the Foundation] to invest in ways the ISD may not under the state’s Public Funds Investment Act.” *Id.* at Ex. A, p. 4. But the article notes that “Watkins dismissed concerns about the arrangement with Chambers County and [the Foundation] publicized by Sims as merely ‘campaign rhetoric.’” *Id.*

Later in the same article, Leo Wilson states her opinion concerning Mr. Watkins’ motivation in running for public office:

Leo Wilson said she thinks that part of the reason Watkins is running is to address concerns about BHEF.

“I think based on what I have discovered between the ISD and the education foundation and his directorship that he is running to make legal what may be illegal,” said Leo Wilson.

Id. at Ex. A, p. 5.

Despite Mr. Watkins dismissing similar comments as merely “campaign rhetoric,” the organization for which he is a Director has now sued Leo Wilson for her stated opinions concerning Mr. Watkins’ desire for public office. The Foundation asserts causes of action for defamation and business disparagement, each of which expressly relies upon the singular statement from Leo Wilson quoted above. *See* Pet. ¶¶ 5.1-5.15. The Foundation seeks alleged damages from Leo Wilson and, more concerningly, a gag order preventing her from making statements regarding the Foundation.

The hearing on the Foundation’s application for a temporary restraining order is set for February 20, 2026 at 9:00 AM.

II. ARGUMENT AND AUTHORITIES

A. Standard of Review: Texas Citizens Participation Act

This motion arises under the TCPA, which permits early dismissal with no discovery in cases involving certain types of communications. TEX. CIV. PRAC. & REM. CODE (“CRPC”) §§ 27.003, 27.006. Motions to dismiss under the TCPA involve three steps:

1. The defendant must show “by a preponderance of the evidence that the lawsuit is based on, relates to, or is in response to [its] exercise of [its] right to free speech, the right to petition or the right of association.” CPRC § 27.005(b).

2. After the defendant prevails on Step One, the burden shifts to the plaintiff to thwart dismissal by producing “clear and specific evidence [of] a prima facie case for each essential element” of each claim. *Id.* § 27.005(c).
3. Even if the plaintiff could substantiate its claims, dismissal is still required if the defendant “establishes by a preponderance of the evidence each essential element of a valid defense” to the plaintiff’s claim. *Id.* § 27.005(d).

ExxonMobil Pipeline Co. v. Coleman, 512 S.W.3d 895, 898 (Tex. 2017).

Here, Step One is achieved because the Foundation’s claims clearly relate to Leo Wilson’s right to free speech. But the Foundation fails to meet its burden in Step Two to provide clear and specific evidence of each element of its claims. And even if the Foundation could, which it can’t, Leo Wilson nonetheless defeats such claims in Step Three with her defense of justification. If and when this motion is successful, the legislature has mandated that Leo Wilson recover her attorneys’ fees and litigation expenses from the Foundation. *Id.* § 27.009.

B. Step One: The TCPA applies because the Foundation’s claims are based on, related to, or in response to Leo Wilson’s right of free speech.

The TCPA applies to any communications that fall within the statute’s broad text. *Coleman*, 512 S.W.3d at 901–02. Even a “remote” or “tenuous” connection between a claim and a protected statement will trigger the statute’s dismissal procedure, moving the inquiry to “Step Two.” *Id.*

Right of Free Speech

The Foundation’s claims relate to—and were filed in direct response to—Leo Wilson’s exercise of her right to free speech. The TCPA protects communications “made in connection with a matter of public concern.” CPRC § 27.001(3). So long as Leo Wilson’s allegations and statements have even a “remote,” “tangential,” or “tenuous” connection with any conceivable public concern, the statements involve free speech under the TCPA, and the TCPA applies. *Coleman*, 512 S.W.3d at 900 (“The TCPA does not require that the statements specifically ‘mention’ health, safety,

environmental, or economic concerns, nor does it require more than a ‘tangential relationship’ to the same.”).

Under the TCPA, a matter of public concern is defined to include the following:

- (A) a public official, public figure, or other person who has drawn substantial public attention due to the person’s official acts, fame, notoriety, or celebrity;
- (B) a matter of political, social, or other interest to the community; or
- (C) a subject of concern to the public.

CPRC § 27.001(7). Each category applies here.

First, the Foundation is either a public figure¹ or limited-purpose public figure², which is evidenced by the fact that public news articles are written about the Foundation and its activities.³ *See O’Rourke v. Warren*, 673 S.W.3d 671, 682 (Tex. App.—Austin 2023, pet. denied) (noting that the matter at issue “was already a matter of public concern, having been discussed in news coverage” prior to the allegedly defamatory statements). Leo Wilson’s comment also concerned

¹ As the Foundation states in its Petition, it is an organization established to support public education activities. Pet. ¶ 1.1. It “relies on donor and community support in order to carry out its charitable mission.” *Id.* The Foundation further admits in its Petition that the Barbers Hill ISD Board of Trustees—publicly elected officials—“exercise[] significant control by virtue of the membership of the [] Foundation’s governing board.” *Id.* at ¶ 4.1. The Foundation’s Board “is comprised of elected officials and community leaders, including leaders in the local oil and gas industry.” *Id.* at ¶ 4.3. The Foundation further claims that it “enjoys a positive reputation, and the strength of that reputation is critical to building community ties.” *Id.*

² To determine whether a defamation claimant is a limited-purpose public figure, Texas courts apply the following three-part test: (1) the controversy at issue must be public both in the sense that people are discussing it and people other than the immediate participants in the controversy are likely to feel the impact of its resolution; (2) the plaintiff must have more than a trivial or tangential role in the controversy; and (3) the alleged defamation must be germane to the plaintiff’s participation in the controversy. *Neely v. Wilson*, 418 S.W.3d 52, 70 (Tex. 2013). Here, all of these requirements are met. The statements at issue are clearly being discussed by the general public as evidenced by the subject news article. As the education fund for which Mr. Watkins serves as a director, the Foundation’s role is nontrivial. And the statements that are the subject of this litigation are germane to the Foundation’s relationship with Mr. Watkins.

³ *See, e.g.*, Pet. ¶ 4.7 (noting the article written by *The Texan*, which the Petition describes as “a statewide political news organization”); *see also* Christopher James, *Barbers Hill: We’re No. 1 in national assets per pupil*, *The Baytown Sun* (Feb. 24, 2016), https://resources.finalsite.net/images/v1658256070/bhisd/mfctoitrgrvub1vmp9/Poole_BSun_Article_2_20165.pdf (article in *The Baytown Sun* with statements by the Foundation’s Executive Director regarding the Foundation’s finances and activities).

public officials (including BHISD and its officials) and Mr. Watkins, someone who has drawn substantial public attention due to his campaign for public office and position as a Director of the Foundation. CPRC § 27.001(7)(A).

Second, the subject statement is a matter of political, social, and other interest to the community. *See Brady v. Klentzman*, 515 S.W.3d 878, 884 (Tex. 2017) (“Public matters include ‘a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public.’”). Again, numerous articles have been written about the Foundation and its activities, as well as Mr. Watkins’ connection to the Foundation.

Third, the comment at issue is a subject of concern to the public. Leo Wilson is a State Representative who is also running for reelection, and her comment concerned her political opponent. *See, e.g., O’Rourke*, 673 S.W.3d at 681-82 (holding statements made by gubernatorial candidate about private citizen’s political conduct was subject of concern to the public). Moreover, the subject article relates to the use of public funds, and “[w]here the public’s purse goes, so goes the public’s concern.” *See Tex. Tribune, Inc. v. MRG Med. LLC*, No. 03-23-00293-CV, 2024 WL 2305265, at *3 (Tex. App.—Austin May 22, 2024, pet. denied) (quoting *PNC Inv. Co., LLC v. Fiamma Statler, LP*, No. 02-19-00037-CV, 2020 WL 5241190, at *5 (Tex. App.—Fort Worth Sept. 3, 2020, no pet.) (mem. op.)).

Both of the Foundation’s claims are based on Leo Wilson’s statement allegedly about a public figure on a matter of interest to the community that is a subject of public concern. Indeed, a news article on the subject is what brings these parties before the Court. Claims are “in response to” protected speech so long as they “reacted to or were asserted subsequently to [the] ongoing communications.” *Cavin*, 545 S.W.3d at 69. This test is plainly met here because the Foundation’s claims were reactive and asserted subsequent to Leo Wilson’s statement in the news article.

B. Step Two: Plaintiff has no clear and specific evidence to substantiate its claims.

Because the TCPA applies, the Court then moves to Step Two: deciding if dismissal is warranted. At this point, the burden shifts to the Foundation to show by *clear and specific evidence* that *each and every element* of its claims for defamation and business disparagement has been met. CPRC § 27.005(c). Because the Foundation cannot do so, each of its claims must be dismissed.

1. Defamation

The Foundation must establish the following elements to recover on its defamation claim: (1) publication of a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) if necessary, damages. *Exxon Mobil Corporation v. Rincones*, 520 S.W.3d 572 (2017). The Foundation cannot meet any of the first three elements, either as a matter of law or because it cannot provide clear and specific evidence. Accordingly, its defamation claim must be dismissed.

a. Element 1: the Foundation cannot offer clear and specific evidence of a false statement of fact.

First, the Foundation cannot proffer clear and specific evidence that Leo Wilson made any false statement of fact. “To be actionable as defamation, a statement must be an assertion of verifiable fact, that is, a statement that purports to be verifiable.” *Benson v. Guerrero*, 702 S.W.3d 775, 788 (Tex. App.—Houston [1st Dist.] 2024, no pet.). But even “[s]tatements that are verifiably false are not legally defamatory if the context of those statements discloses that they reflect an opinion.” *Id.* The Court must “interpret the statement in light of the surrounding circumstances based on how a reasonable person would perceive the publication in its entirety, and not merely how portions of the statement might be viewed in isolation.” *Id.*

The statement that is the subject of the Foundation’s claim states Leo Wilson’s opinion regarding why her opponent, Mr. Watkins, is running for public office. Specifically, Leo Wilson states that she believes Mr. Wilson “is running to make legal what may be illegal.” Pet., Ex. A, p. 5. Nowhere in this statement does Leo Wilson claim that anyone—let alone the Foundation—has actually committed any illegal acts. A reasonable person understands that someone can desire or advocate for certain conduct to be legalized without having previously committed that particular conduct.

Moreover, Leo Wilson clearly articulated her opinion that Mr. Wilson’s purported desired conduct *may* be illegal. The subject quote does not state as a matter of fact that the conduct *is* illegal. *Benson*, 702 S.W.3d at 788.

At no point does the Foundation overcome these hurdles or otherwise prove that Leo Wilson made a statement of fact that was false. Absent such evidence, the Foundation’s claim is deficient as a matter of law. *See, e.g., Van Der Linden v. Khan*, 535 S.W.3d 179, 200 (Tex. App.—Fort Worth 2017, pet. denied) (noting plaintiff bears the burden to prove the statement’s falsity).

b. Element 2: the Foundation cannot offer clear and specific evidence of a defamatory statement that concerned the Foundation.

Second, the Foundation’s defamation claim fails because it cannot cite clear and specific evidence that Leo Wilson’s statement concerned the Foundation. Instead, a cursory review of the statement at issue clarifies that it was directed at the desires of non-party Nathan Watkins, not the Foundation. Indeed, the subject of the article containing the quote from Leo Wilson is the campaign between herself and Mr. Watkins. The Foundation cannot prove that a reasonable person would perceive Leo Wilson’s statement to have been referring to actions taken by the Foundation (as opposed to any other person) that are illegal. Absent such evidence, the Foundation’s claim is deficient as a matter of law.

c. Element 3: the Foundation cannot offer clear and specific evidence of actual malice as required.

As demonstrated above, the Foundation is either a public figure or limited-purpose public figure. *See supra* p. 6. In either case, the Foundation is required to prove the statement was made by Leo Wilson with “actual malice” to establish a defamation claim. *Greer v. Abraham*, 489 S.W.3d 440, 443 (Tex. 2016).

“Actual malice” in the context of a defamation claim refers not to bad motive or ill will but to the actual knowledge of, or reckless disregard for, the falsity of the statement. *Id.* “Reckless disregard” is a higher bar than negligence. *See Bentley v. Bunton*, 94 S.W.3d 561, 594 (Tex. 2002). “Proof of reckless disregard requires evidence that the defendant had serious doubts about the truth of the publication, or stated differently, that the defendant had a high degree of awareness of the probable falsity of the statement.” *Rodriguez v. Gonzales*, 566 S.W.3d 844, 851 (Tex. App.—Houston [14th Dist.] 2018, pet. denied).

The Foundation has not and cannot present any evidence of the required actual malice. As the Texas Supreme Court has stated, a “lack of care or an injurious motive in making a statement is not alone proof of actual malice . . .” *Bentley*, 94 S.W.3d at 596. And an “understandable misinterpretation of ambiguous facts does not show actual malice.” *Id.* “A failure to investigate fully is not evidence of actual malice; a purposeful avoidance of the truth is.” *Id.*

The Foundation cites only a cease and desist letter as its sole evidence of actual malice. *See Pet.* ¶ 4.8. *First*, the letter does not provide any information sufficient to establish actual knowledge for its recipient that all of the Foundation’s activities are legal. Instead, the letter refers only to a housing development that was not even referenced by Leo Wilson in her statement—it provides no information about the Foundation’s other past and/or ongoing actions. *See Pet.* at

Exhibit B. And in regard to this housing development, the letter merely states that it “provides housing discounts for city and school district employees.” *Id.* No other information is provided regarding the development’s compliance with all applicable laws and regulations.

Second, even if the letter did assert that the Foundation had at all times acted legally—which it conspicuously does not—such protestations are insufficient to establish actual malice. *See, e.g., Rodriguez*, 566 S.W.3d at 851 (noting “[t]he mere fact that a defamation defendant knows that a public official has denied harmful allegations or offered an alternative explanation of events is not evidence that the defendant doubted the allegations.”) (citation omitted).

The Foundation summarily claims that Leo Wilson made “uninformed and speculative accusations.” *See* Pet. at Exhibit B. Even *if* that were true, it is wholly insufficient to establish the required degree of actual malice. *Greer*, 489 S.W.3d 443. The Foundation’s defamation claim must be dismissed.

2. Business Disparagement

As for its business disparagement claim, the Foundation must establish the following elements: (1) publication of false and disparaging information about the plaintiff, (2) with malice, (3) without privilege, (4) that resulted in special damages. *Hurlbut v. Gulf Atl. Life Ins. Co.*, 749 S.W.2d 762, 766 (Tex. 1987). The Foundation cannot meet any of the first three elements for the same reasons identified above regarding the defamation claim; namely, there is no evidence that Leo Wilson made any false statements about the Foundation with actual malice. *See supra* pp. 7-10. But the business disparagement claim fails for the additional reason that the Foundation cannot provide clear and specific evidence of the required special damages. Accordingly, its business disparagement claim must likewise be dismissed.

- a. Element 4: the Foundation cannot show clear and specific evidence that it actually suffered “special damages.”

The business disparagement claim requires the Foundation to prove that the allegedly disparaging statement caused it to suffer actual economic damages. *Forbes Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 170 (Tex. 2003) (business-disparagement claim requires proof of “special damages to the plaintiff”). The allegedly disparaging words must be the legal cause of the economic loss. *Hurlbut*, 749 S.W.2d at 766. For example, if the allegedly disparaging words came from the defendant *and* other sources, evidence must demonstrate a causal link between the defendant’s particular statement and the plaintiff’s actual damages. *Landry’s, Inc. v. Animal Legal Def. Fund*, 631 S.W.3d 40, 54-55 (Tex. 2021).

Here, the Foundation can prove neither actual pecuniary loss nor that Leo Wilson’s statement was the legal cause of such loss. There is no evidence that anyone has chosen to not do business with the Foundation that otherwise would have done so. Moreover, *even if* a party had chosen not to deal with the Foundation, such decision was likely the result of comments by many others who have more directly accused the Foundation of wrongdoing than anything said by Leo Wilson. As just one example, *the very same article that is the basis of the Foundation’s claims* attributes statements to the former Chambers County Auditor questioning the legality of the Foundation’s conduct:

Former Chambers County Auditor Tony Sims has publicly questioned the legality of the ISD’s transfers to the education foundation, and told The Texan that the arrangement may allow the BHEF to invest funds in ways the ISD may not under the state’s **Public Funds Investment Act**.

See Pet., Ex. A p. 4. To the extent the Foundation suffered any economic loss—which it did not—such loss could be attributed to any of the myriad statements by any number of individuals

concerning the Foundation.⁴ This reality negates any potential business disparagement claim. *Landry's, Inc.*, 631 S.W.3d at 54

Under the TCPA, the Foundation bears the burden to “establish[] by clear and specific evidence a prima facie case for each essential element of the claim[s] in question.” *Landry's, Inc.*, 631 S.W.3d at 54 (quoting CPRC § 27.005(c)). Put simply, the Foundation has not and cannot meet this burden.

C. Step Three: Leo Wilson has a valid defense that also requires dismissal.

In the unlikely event that the Foundation’s claim survives the second step of the TCPA, it nonetheless still fails at the third step because Leo Wilson can establish by a preponderance of the evidence each essential element of valid defenses to the Foundation’s claim, including justification. CPRC § 27.005(d).

Justification is a defense to claims for defamation and business disparagement and can be based on “the exercise of either (1) one’s own legal rights or (2) a good-faith claim to a colorable legal right, even though that claim ultimately proves to be mistaken.” *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 80 (Tex. 2000). A “good-faith claim to a colorable legal right” has been defined as one “that is objectively well grounded and justifiable.” *Lamont v. Vaquillas Energy Lopeno Ltd., LLP*, 421 S.W.3d 198, 218 (Tex. App.—San Antonio 2013, no pet.).

Here, Leo Wilson was justified in making her statement because it was “done in good faith with the belief that there is a colorable claim.” *Hill v. Heritage Resources, Inc.*, 964 S.W.2d 89, 115 (Tex. App.—El Paso 1997, no writ). Indeed, others have made similar statements. *See supra* p. 11. Even if the Court somehow determined the Foundation had clear and specific evidence to

⁴ Despite these and similar statements by many others, the Foundation has conspicuously sued and sought to silence precisely one individual: the politician who is in an active campaign against a Director of the Foundation.

support its claims, Leo Wilson's conduct was justified, and the Court should accordingly dismiss such claims.

D. Request for Mandatory Attorneys' Fees and Expenses

The TCPA mandates that, when the trial court dismisses a legal action under the TCPA, the Court must award "court costs, reasonable attorneys' fees, and other expenses incurred in defending against the legal action as just and equity require." CPRC § 27.009(a)(1). Those funds compensate the defendant who should not have been subjected to the claim nor incurred the costs of responding. At the hearing or upon granting the motion, Leo Wilson will submit a fee application and include the expenses it has incurred in responding to the Foundation's improper claims.

PRAYER

For the reasons above, State Representative Terri Leo Wilson asks the Court to grant this TCPA motion, dismiss the Foundation's claims with prejudice, award attorneys' fees and expenses to Leo Wilson, and to award any further relief, either in law and equity, to which Leo Wilson may show herself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on February 19, 2026 in compliance with Texas Rule of Civil Procedure 21a on all attorneys of record via e-filing.

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