No. 24-803

In the Supreme Court of the United States

MICHAEL QUINN SULLIVAN,

Petitioner,

v.

TEXAS ETHICS COMMISSION,

Respondent.

On Petition for Writ of Certiorari to the Texas Court of Appeals, Third District

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Texas requires certain citizens to obtain a speech license before they may petition elected representatives on contested matters of public concern. Texas's own Attorney General refuses to defend this unconstitutional regime and (alongside eight other amici) asks this Court to revisit lobbyist registration laws. The Court should do so.

Respondent Texas Ethics Commission ("TEC") barely disputes that this case is certworthy. The TEC does not deny that the seventy-year-old case at the heart of the decision below—*United States v. Harriss*, 347 U.S. 612 (1954)—is out of step with modern First Amendment precedents. Nor does the TEC deny that lower courts are confused over how to apply *Harriss*, deploying varying tiers of scrutiny to reach inconsistent results. And the TEC agrees that the lawfulness of so-called lobbyist registration rules—which all too often reach everyday people nobody would label a "lobbyist"—is an important question that implicates federal and state laws nationwide. There is ample reason to grant certiorari and realign outdated lobbyist registration jurisprudence with bedrock First Amendment principles.

The TEC's only serious objection to certiorari involves Petitioner Michael Quinn Sullivan himself. According to the TEC, the "content and frequency" of Mr. Sullivan's speech takes him outside the First Amendment's protections and renders him different from "ordinary" citizens who suffer under Chapter 305's draconian and capricious regime. Opp. 14, 20. But the politically charged "content" of Mr. Sullivan's speech is the very reason it merits far more protection

than the lower courts accorded. *See TikTok Inc. v. Garland*, 145 S. Ct. 57, 67 (2025) ("Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional[.]"). The TEC's insistence that *Harriss* authorizes a speech licensure regime based on the "content and frequency" of speech, Opp. 14, only proves how much confusion *Harriss* has wrought. This Court should not tolerate bureaucrats wielding *Harriss* to silence their critics with content-based speech restrictions.

The TEC's remaining arguments attempting to dismiss the burden of Chapter 305 do not counsel against review; they merely illustrate considerations courts must account for under a proper analytical framework. The decision below applied an incorrect legal standard to authorize a draconian penalty justified by the "content and frequency," Opp. 14, of core political speech. This Court should grant review.

I. The TEC Concedes the Crevasse Between *Harriss* and Modern Jurisprudence.

The TEC makes no effort to reconcile *Harriss* with this Court's modern First Amendment precedents. Nor could it.

Harriss's permissive review of lobbyist registration laws, 347 U.S. at 625-26, is out of step with recent precedent recognizing that "[l]aws that burden political speech are 'subject to strict scrutiny,'" *Citizens United v. FEC*, 558 U.S. 310, 340 (2010) (citation omitted). The TEC does not acknowledge that holding.

Likewise, *Harriss*'s recognition of a "vital" interest in legislative "self-protection," 347 U.S. at 625-26, is out of step with recent precedent recognizing that there is "only one permissible ground for restricting political speech: the prevention of '*quid pro quo*' corruption or its appearance," *FEC v. Cruz*, 596 U.S. 289, 305 (2022). Again, the TEC does not acknowledge that holding or explain how Chapter 305 is narrowly tailored to combat *quid pro quo* corruption. Nor could it. Mr. Sullivan made no expenditures and received no compensation beyond his ordinary salary; there "clearly is no 'quid.'" *Calzone v. Summers*, 942 F.3d 415, 424 (8th Cir. 2019).

On top of that, *Harriss*'s animating fear that "the voice of the people may all too easily be drowned out by the voice of special interest groups," 347 U.S. at 625, is out of step with recent precedent recognizing that "the government may not 'restrict the speech of some elements of our society in order to enhance the relative voice of others,'" *Moody v. NetChoice, LLC*, 603 U.S. 707, 742 (2024) (quoting *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976)). Once again, the TEC does not acknowledge that holding.

The TEC may ignore this crevasse, but lower courts and ordinary citizens enjoy no such luxury. Clarification is warranted.

II. *Harriss* Spawns Widespread Confusion.

The TEC effectively concedes that lower courts are confused about how to apply *Harriss* in light of modern First Amendment precedents.

A. Courts disagree on which level of constitutional scrutiny to apply to lobbyist registration laws. *See* Pet. 20-22. The TEC does not deny that courts currently take one of two approaches: intermediate scrutiny, *see* App.12a-13a, or strict scrutiny, *see Minn. State Ethical Pracs. Bd. v. Nat'l Rifle Ass'n of Am.*, 761 F.2d 509, 511 (8th Cir. 1985) (per curiam); *cf. Nat'l Ass'n of Mfrs. v. Taylor*, 582 F.3d 1, 11 (D.C. Cir. 2009) (declining to address which tier of scrutiny applied because the law satisfied strict scrutiny); *Fla. League of Pro. Lobbyists, Inc. v. Meggs*, 87 F.3d 457, 460 (11th Cir. 1996) (same).

Rather than endorse either approach, the TEC argues for a third: unspecified "methods of analysis that do not involve tiers of scrutiny." Opp. 27. But that is not what the decision below did. *See* App.13a (applying "intermediate … scrutiny" (citation omitted)). Nor is it the analysis this Court has applied in more recent political speech cases. Contrary to the TEC, applying strict scrutiny to the political speech restriction here would not be an "expansion of the tiers of scrutiny into [a] new area[] of First Amendment jurisprudence," Opp. 27, because this Court's political-speech cases already do just that, *see, e.g.*, *Citizens United*, 558 U.S. at 340 ("Laws that burden political speech are 'subject to strict scrutiny.'" (citation omitted)).

Besides, "a test based on 'history'" would not help the TEC. Opp. 28 (citation omitted). As Mr. Sullivan has explained, the First Amendment originated from a particular disfavor of speech licensing requirements like Chapter 305's. *See* Pet. 32-33. And "[g]oing back

to colonial times, providing … feedback to elected officials was viewed as one of the essential purposes of petitioning." IJ Amicus Br. 14. The TEC offers no answer to this history.

B. Courts also disagree on which governmental interests are sufficient to support lobbyist registration laws. *See* Pet. 22-25. Some credit pure informational interests, *see* App.16a; *Taylor*, 582 F.3d at 15-16; *Meggs*, 87 F.3d at 460-61, and others do not, *see Calzone*, 942 F.3d at 424-25.

The TEC suggests that the "Eighth Circuit took pains to make clear that" it recognized a pure informational interest. Opp. 24-25. In fact, the Eighth Circuit took pains to say the opposite. In the Eighth Circuit's words, "legislators['] need to know who is speaking to determine how much weight to give the speech" and the public's "right to know who is speaking so that it can hold legislators accountable for their votes and other actions … are not 'sufficiently important' to justify the burdens placed on [an individual's] speech." *Calzone*, 942 F.3d at 424-25. The only governmental interest the Eighth Circuit credited was "prevent[ing] actual or apparent public corruption." *Id.* at 423.

It is unclear how Chapter 305's burdens on ordinary citizens prevent *quid pro quo* corruption. To the contrary, the TEC recognizes that Chapter 305 permits *larger* gifts by those who register as lobbyists. *See* Pet. 11.

III. The Decision Below Is Wrong.

Leaning on *Harriss* alone, Opp. 29-31, the TEC does not defend Chapter 305 under this Court's modern First Amendment jurisprudence. Its *Harriss*-based defense invites at least four problems.

First, the TEC argues that Mr. Sullivan's speech may be burdened because of its "content." Opp. 14. But the TEC "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Moreover, the TEC admits Chapter 305 is content-based. *See* Pet. 33-34. That is yet another reason to apply strict scrutiny, *see TikTok*, 145 S. Ct. at 67—which the TEC makes no effort to argue it could satisfy.

Second, the TEC objects to the "frequency" of Mr. Sullivan's speech. Opp. 14; *id.* at 20 (distinguishing Mr. Sullivan from an "average citizen who … spent a day or two at the Texas Capitol"). But this Court's precedents favor "more speech," not less. *Texas v. Johnson*, 491 U.S. 397, 419 (1989) (citation omitted). Any notion that "the State may control the volume of expression … contradicts basic tenets of First Amendment jurisprudence." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 792 n.30 (1978); *see McConnell v. FEC*, 540 U.S. 93, 259 (2003) (Scalia, J., concurring in part and dissenting in part) ("Given the premises of democracy, there is no such thing as *too much* speech.").

Third, the TEC argues that Mr. Sullivan "was hardly burdened" by Chapter 305. Opp. 21. As an

initial matter, the legal disagreement over the weight of Chapter 305's burdens counsels *for*, not against, certiorari. In any event, Chapter 305 is among the most burdensome lobbyist registration laws nationwide. *See* Pet. 28-29. The TEC identifies no marginal informational benefit these burdens provide. The TEC admits Mr. Sullivan already "voluntarily disclosed" the required information in other contexts. Opp. 20. And, unlike the law in *Harriss*, Chapter 305 also requires a hefty fee. *See* Pet. 5, 9. The TEC cannot explain why bureaucratic hoop-jumping paired with a substantial fee advances any governmental interest, much less a compelling one.

Fourth, the TEC argues that Chapter 305's compensation and time thresholds "exempt" citizens "who occasionally talk to lawmakers in the course of their jobs." Opp. 2. In fact, these low thresholds risk ensnaring many ordinary speakers. *See* THSC Amicus Br. 13-20.

Chapter 305's compensation threshold at the relevant time was satisfied if a person made more than $1,000 per calendar quarter. *See* Pet. 10. This threshold did not require any compensation beyond a person's "salary for th[eir] regular employment." Tex. Gov't Code § 305.003(b). As long as a person spoke to legislators or government officials in the course of a job for which they were paid more than $334 per month, the compensation threshold was met.

Chapter 305's time threshold is likewise easily surpassed. At the relevant time, spending just 5% of one's compensated time on "lobbying activities" was enough. Pet. 10. Such lobbying activities include,

among other things, "review and analysis of legislation," "research," and "communication with the employer/client." 1 Tex. Admin. Code § 34.3. Any person who spent two out of forty hours each week researching or analyzing legislative issues would exceed this threshold. And people like Mr. Sullivan whose job involved analyzing legislation for the purpose of educating voters were virtually guaranteed to do so.

In his petition, Mr. Sullivan posited (at 19) a hypothetical to illustrate that under Chapter 305, a citizen's First Amendment right to publish and disseminate a politically charged book would evaporate if he did so too close to the Texas Capitol and encountered too many legislators. The TEC offers no response. That is because Chapter 305's enforcement against Mr. Sullivan is unconstitutional.

IV. This Important Case Is an Ideal Vehicle.

A. The TEC does not dispute that this case is important. *See* Pet. 25-29. Indeed, the TEC acknowledges that the constitutional limits on lobbyist registration rules have nationwide significance because "all fifty States have some form of lobbying disclosure requirements, and most States charge a registration fee." Opp. 25. The TEC is wrong, however, that this case necessarily "call[s] into question the constitutionality of the laws of all fifty States." *Id.* at 26. As Mr. Sullivan has explained—and the TEC does not dispute—Texas's lobbyist registration law is among the most onerous in the nation. *See* Pet. 28-29. It may well be that under the

proper standard, some states' laws pass muster, and some do not.[1]

B. The TEC effectively concedes that *Harriss* is an outlier that has spawned confusion, but it disputes whether its enforcement action against Mr. Sullivan is an appropriate vehicle. Each of the TEC's purported vehicle problems is illusory.

First, the TEC argues that Mr. Sullivan forfeited his challenge to Chapter 305's registration requirement in the Court of Appeals. Opp. 28-31. But the Court of Appeals below considered and rejected that exact argument, and it considered Mr. Sullivan's challenge to Chapter 305's registration *and* fee requirements. *See* App.11a-20a. Throughout this litigation, Mr. Sullivan has consistently challenged the bases for his $10,000 fine—that is, Chapter 305's registration *and* fee requirements. *See* Appellant's Br. 28, *Sullivan v. TEC*, No. 03-21-00033-CV (Tex. Ct. App. May 14, 2021) (explaining that the "unconstitutional burden" is "register[ing] as a lobbyist and pay[ing] the speech registration fee"); Reply Br. 13-14, *Sullivan*, No. 03-21-00033-CV (Sept.

[1] Likewise, the federal lobbyist registration law—which has been substantially amended since *Harriss*, *see* Lobbying Disclosure Act of 1995, Pub. L. No. 104-65, 109 Stat. 691—differs from Chapter 305 in several material respects. The federal regime involves no fee. And it reaches only those individuals whose time spent serving a client involves at least 20% lobbying activities, 2 U.S.C. § 1602(10)—far higher than Texas's 5% threshold, *see* Pet. 10-11.

2, 2021) (confirming "Sullivan's defense that the statute as a whole is unconstitutional").[2]

The Court of Appeals thus had no difficulty rejecting the TEC's waiver argument. *See* App.11a ("In his first issue, Sullivan contends that the registration and fee statutes violate the First Amendment both facially and as applied to him."); *id.* at 20a ("We overrule Sullivan's first issue."). Because Mr. Sullivan's challenge to Chapter 305's registration *and* fee requirements was both "pressed" and "passed upon in the state court," it is properly reviewable in this Court. *Heath v. Alabama*, 474 U.S. 82, 87 (1985).[3]

Second, the TEC argues that Mr. Sullivan was a "paid lobbyist" for a "special interest group" rather than an "average citizen." Opp. 8 n.5, 20-21. But it bases that argument entirely on the "content and frequency" of Mr. Sullivan's speech, *id.* at 14, which confirms that the TEC misunderstands the First Amendment, *see TikTok*, 145 S. Ct. at 67. Regardless, the TEC's ill-defined labels about who is and is not an "average citizen" are irrelevant. The TEC does not dispute that Mr. Sullivan was involved in core political speech. *See* Pet. 25-26, 31. That he expressed his views

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[2] Mr. Sullivan also challenged the registration *and* fee requirements in the district court, *see* App.135a-142a, and Texas Supreme Court, *see* App.101a-106a, 108a-123a, 125a-132a.

[3] The decision below properly recognized that Mr. Sullivan challenges Chapter 305 as applied to him; the TEC's suggestion (at 19) that Mr. Sullivan asserts only a "facial or overbreadth challenge" misstates the record. *See* App.11a.

while serving as the head of a nonprofit organization does not diminish his First Amendment protections.

Furthermore, the decision below held broadly that Chapter 305 "require[s] registration of persons who, like Sullivan, are employees and officers of the organization on whose behalf they lobby … but who do not make any expenditures in connection with their speech." App.13a. That holding brings within Chapter 305's oppressive ambit all manner of individuals no one would think of as lobbyists. *See* THSC Amicus Br. 13-20; *see also Harriss*, 347 U.S. at 628 (Douglas, J., dissenting) (raising concern regarding "people who have done no more than exercise their constitutional rights of speech, assembly, and press").

Third, the TEC notes that some of Mr. Sullivan's communications did not relate to the Fiscal Responsibility Index he published to inform Texans of legislators' votes. Opp. 9-14, 20-21. As a legal matter, that is irrelevant. Chapter 305 applies broadly to "communicat[ions] directly with a member of the legislative or executive branch to influence legislation or administrative action." Tex. Gov't Code § 305.003(a)(2). The TEC does not dispute that all communications at issue fall within this category. Nor does the TEC dispute that all communications at issue thus involve quintessential political speech discussing "the merits of [a] proposed [political] change." *Meyer v. Grant*, 486 U.S. 414, 421 (1988). Indeed, the TEC concedes that Mr. Sullivan's communications "urged legislators to support or oppose various bills and amendments." Opp. 9.

As a factual matter, the vast majority of communications at issue *do* relate to the Index—including many highlighted by the TEC.[4] The few that do not still tee up the same First Amendment concerns. They are either direct political speech to legislators, *see* CR254, 1116, 1168-69, 1171, 2309, or invitations to meetings where such political speech occurs, *see* CR2278-80.

Fourth, the TEC emphasizes that the Texas Supreme Court denied discretionary review. Opp. 2, 17, 18, 30. That is unsurprising; the problem is *Harriss*, which the Texas Supreme Court cannot revisit. Indeed, the TEC's petition-stage briefing below relied on *Harriss* and opposed review precisely because "Texas courts are *obligated* to follow binding precedent of the United States Supreme Court." Resp. to Pet. 29, *Sullivan v. TEC*, No. 23-0080 (Tex. July 14,

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[4] *See* CR225 ("We will negatively score HB 3640." (formatting altered)); CR248 ("This amendment vote will not be used on the Fiscal Responsibility Index." (formatting altered)); CR252 ("votes on amendments to Senate Bill 1581 are subject to scoring"); CR256 ("votes on amendments to Senate Bills 1 and 2 today are subject to scoring"); CR2272 ("this is following up on our December 20th letter about the *Fiscal Responsibility Index* and how we will score the speakership vote"); CR2301 ("We will therefore negatively score a vote on HB 3640 on the Fiscal Responsibility Index." (formatting altered)); CR2314 ("We did want to keep you informed of potential votes we will be using on the Fiscal Responsibility Index.").

Mr. Sullivan cites to the clerk's record below ("CR") rather than the TEC's appendix, which omits important context like the "unsubscribe" links that allowed legislators to stop the emails, *see* Pet. 13.

2023). There is no similar impediment to this Court revisiting *Harriss*.

* * *

Mr. Sullivan spoke to elected officials about political matters important to him and the nonprofit organization he created. Because he failed to obtain a speech license and pay a fee before doing so, the TEC fined him $10,000. This regime impedes the people's ability to "hold officials accountable." *Citizens United*, 558 U.S. at 339. The First Amendment protects against that undemocratic result.

CONCLUSION

The petition should be granted.

Respectfully submitted.

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