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

INSTITUTE FOR FREE SPEECH, a nonprofit corporation and public interest law firm, Plaintiff, v. JAMES TINLEY, in his official capacity as Executive Director of the Texas Ethics Commission, *et al.*; Defendants.	No. 1:23-cv-01370-DAE-ML

PLAINTIFF'S MOTION TO EXCLUDE THE REPORT AND TESTIMONY OF DEFENDANTS' LEGAL EXPERT ANDREW STEWART CATES

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RULE CV-7(G) STATEMENT

On July 27, 2026, Plaintiff's counsel emailed defense counsel to inform counsel that IFS was planning to move to exclude most the TEC expert's opinions because they were inadmissible opinions on legal issues and legislative facts, that the motion would likely be filed on July 29, and that we expected that motion to be opposed. Plaintiff's counsel offered to confer by phone or email if defense counsel thought there was anything to confer about. Plaintiff's counsel did not receive a response prior to filing this motion. IFS considers this motion opposed. Dispositive motions are due by Aug. 28, 2026.

INTRODUCTION

Expert witnesses cannot make conclusions of law. Legal questions are for this Court to decide. The Institute for Free Speech (IFS) challenges the Texas Ethics Commission's (TEC) bar on pro bono legal services by non-profit corporations, because this ban chills First Amendment rights, is not narrowly tailored, and lacks any compelling state interest.

The TEC responds by calling a legal expert to testify that, in his opinion, the TEC has correctly interpreted Texas state law; IFS has satisfactory alternative channels for its speech because it could form a separate legal entity; IFS's proposed conduct would threaten its tax-exempt status with the IRS; and IFS lacks standing. These are all legal conclusions impermissibly intruding on this Court's role.

Although the TEC's expert has provided scattered facts about his own past experiences as a campaign-finance lawyer, his expert opinions are inadmissible. This Court should find that the TEC's expert report and testimony are unhelpful to this Court and exclude all of his opinions as inadmissible legal conclusions.

STATEMENT OF FACTS

The events of this case are known to the Court, *see, e.g.*, Dkt. 57-1 at 7-11; Dkt. 44-1 at 2-6, so Plaintiff will only review facts relevant to this motion.

On August 8, 2023, IFS brought this lawsuit challenging the TEC's regulatory regime, which bars non-profit corporations like IFS from providing pro bono legal services to Texas candidates or political committees. *See* Dkt. 1. IFS's suit seeks, among other things, a permanent injunction preventing Defendants from enforcing their regime facially and as applied against pro bono legal-service providers in corporate form; a declaratory judgment stating the TEC's regulatory regime violates the First Amendment; and nominal damages. *See id.* at 19-20.

On April 27, 2026, this Court issued a scheduling order, which had been jointly proposed by parties. *See* Dkt. 77; Dkt. 76. Discovery closed under this plan on July 24. Dkt. 77 at 2. Defendants had until June 5 to designate any expert witnesses, with Plaintiff's designation of any rebuttal expert due fourteen days after that. *Id.* at 1; *see also* Dkt. 74 at 3. The order set the deadline for Rule 702 motions objecting to admissibility of an expert's opinion for thirty days after receipt of the expert's report or thirty days after the expert's deposition, whichever is later. Dkt. 77 at 1.

Defendants designated a testifying expert, attorney Andrew Stewart Cates, on June 5. *See* Dkt. 78; Ex. 1 (Cates's curriculum vitae); Ex. 2 (transcript of Cates's deposition); Ex. 3 (Cates's report); Kolde Dec., ¶¶ 3-5. Defendants retained Mr. Cates "to provide [his] analysis of the relevant laws and regulations regarding corporate contributions to candidates and officeholders in Texas." Ex. 3, ¶ 2; *see also* Ex. 2 at 7:14-20, 11:10-18 (describing scope of expert's work). Mr. Cates's curriculum vitae contains all the qualifications he claims as the basis for his opinion. Ex. 2 at 4:21-5:9, 9:14-22; *cf.* Ex. 1. IFS sent the report of its own designated rebuttal expert on June 18 and deposed Mr. Cates in Austin, TX on July 14, 2026. Kolde Dec., ¶¶ 4, 6; Ex. 2 at 4:1-3. Under this Court's scheduling order, any motion objecting to Mr. Cates's report or testimony is due August 13, 2026. *See* Dkt. 77 at 1. This motion is timely and a ruling prior the dispositive motions cut-off on August 28 would be helpful to narrowing the issues and evidence before the Court in any motions for summary judgment, if possible.

Argument

I. Expert witnesses cannot offer opinions on conclusions of law or the legislative facts bearing on them

"[A]n expert may never render conclusions of law." *Goodman v. Harris County*, 571 F.3d 388, 399 (5th Cir. 2009). Allowing expert testimony on legal questions amounts to impermissible "outsourcing" of this Court's Article III duty to decide questions of law. *Nathan v. Alamo Heights Indep. Sch. Dist.*, 173 F.4th 576, 607 (5th Cir. 2026) (en banc).

Expert witnesses can only testify if the party calling that expert proves "that it is more likely than not" that the expert's opinion "will help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 703. Defendants are unable to meet this burden for Cates's opinions because they are merely legal opinions. Moreover, his legal opinions do not help this Court understand the evidence or determine a disputed fact.

The federal rules "do[] not allow an expert to render conclusions of law" or to offer "witness reports . . . consisting of nothing more than legal arguments." *Snap-Drape, Inc. v. Commissioner*, 98 F.3d 194, 198 (5th Cir. 1996). "Experts cannot offer testimony regarding what law governs a dispute or what the applicable law means," nor regarding "the legal conclusions to be drawn from the evidence," nor advocacy that "reiterate[s] what the lawyers offer in argument." *Dickson v. Bosworth Co.*, No. MO:21-CV-009-DC, 2022 U.S. Dist. LEXIS 86711, at *9 (W.D. Tex. May 13, 2022) (collecting cases); *see also Aubrey v. Barlin*, No. 1:10-CV-076-DAE, 2015 U.S. Dist. LEXIS 139961, at *34 (W.D. Tex. Oct. 14, 2015) (prohibiting expert testimony "as to mixed questions of law and fact" when the testimony "amount[s] to his application of the facts to the relevant [] laws").

Experts are also forbidden from opining on "legislative facts which . . . bear on the justification of legislation" and "are relevant to the constitutionality of a challenged law." *Nathan*, 173 F.4th at 607-08 & n.57 (cleaned up). Legislative facts "are decided by courts" on their own, but "experts can help determine []so-called 'adjudicative facts"—that is, "facts concerning the conduct of parties in a particular case." *Id.* at 608 n.57; *see also Ellis v. Weasler Eng'g, Inc.*, 258 F.3d 326, 334 n.12

(5th Cir. 2001) (distinguishing legislative from adjudicative facts).[1] Therefore, this Court should exclude Mr. Cates's legal conclusions or opinions on legislative facts as reflected in Mr. Cates's report and testimony.

II. Cates's report and testimony almost exclusively offer inadmissible advocacy and legal conclusions

Mr. Cates presents himself as a non-profit lawyer and an expert on "legislative and campaign law in Texas," whom Defendants tasked with "provid[ing] my analysis of the relevant laws and regulations regarding corporate contributions to candidates and officeholders in Texas" and on "the process of . . . advisory opinions and sworn complaints by the Texas Ethics Commission." Ex. 3, ¶ 1-2, 4-6. His testimony and report constitute his "expert opinions as a Texas campaign finance lawyer." Ex. 2 at 9:14-22. Although Cates is a lawyer with knowledge of Texas state law, he admits that he has no qualifications beyond his experience as a lawyer and has never served as an expert before. Ex. 2 at 4:21-6:6, 9:14-22; *see also* Ex. 1. He is not an appropriate expert witness, as his own lack of experience as an expert prior to this case reveals.

While "being a lawyer does not disqualify one as an expert witness," courts scrutinize testimony closely in order to ensure that the lawyer does not "testify to legal questions" or "tell the trier of fact what to decide"—thus intruding on the court's role. *Askanase v. Fatjo*, 130 F.3d 657, 672 (5th Cir. 1997). "Because most of [the expert's] report opines about questions of law, it is inadmissible." *Stallion*

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[1] Examples of adjudicative facts that are properly subject to expert testimony in a traffic-accident case would be the location of a collision between two objects, their speed and direction of travel, or the mechanism of injury to a vehicle occupant. An expert opining that a government agency correctly applied state law in an Advisory Opinion, or that a 501(c)(3) could form a PAC, is not offering adjudicative facts. He is offering legal opinions.

Heavy Haulers, LP v. Lincoln Gen. Ins. Co., No. SA-09-CA-0317-FB, 2011 U.S. Dist. LEXIS 3322, at *7 (W.D. Tex. Jan. 13, 2011).

Much of Cates's report and deposition testimony simply describes the text of various laws and regulations and opines on Cates's interpretation of their language. *See* Ex. 3, ¶¶ 9-11, 13-16, 21-29, 31-34; Ex. 2 at 16:21-17:20, 24:11-25:9, 30:2-31:1, 32:16-35:16, 39:6-41:16. Indeed, the TEC retained Mr. Cates so he could supply this Court with his "analysis of the relevant laws and regulations regarding corporate contributions." Ex. 3, ¶ 3. This assignment calls for rendering legal opinions.

For instance, he states that many of Texas' election laws "are simply not well fleshed out by the legislature," which forces the TEC "to [] heavily interpret how the law should apply." *Id.*, ¶¶ 10-11 (giving examples of various "inconsistencies and confusion in the law as written"). He points to "[t]he ban on corporation contributions in Texas" as an example of a "surprisingly complicated" rule, which required the TEC to "create[] an expansive definition of" a key term. *Id.*, ¶¶ 24-26; *see also* Ex. 2 at 27:12-28:17. He described the legal standard for an administrative expense" under Texas law and opined on whether pro bono legal services could perhaps qualify. *Id.* at 32:16-35:16. And, after conducting a "review of the . . . relevant law and regulations," Mr. Cates states that Defendants "accurately represented" and "correctly interpreted the law." Ex. 3, ¶¶ 37-38. These are all legal conclusions that are not properly subject to expert testimony.

"Issues of statutory interpretation are questions of law for the court to decide." *Moody v. Oscar Ins. Co.*, No. H-25-2577, 2026 LX 80054, at *10 (S.D. Tex. Feb. 9, 2026) (citing *Dresser v. Meba Medical & Benefits Plan*, 628 F.3d 705, 708 (5th Cir. 2010) and other cases). All of Mr. Cates' analysis of Texas laws and regulations intrude on this Court's role and should be excluded.

Mr. Cates's report, moreover, contains other conclusions of law, sometimes using the very words of applicable standards. For instance, even though he is not a tax lawyer, Cates claims that IFS's legal advocacy on behalf of candidates may violate IRS regulations and endanger IFS's tax exempt status as a 501(c)(3). Ex. 3, ¶ 34; Ex. 2 at 19:5-7.[2] And although he is not a litigator with experience in federal court, Cates also opines about whether a particular issue would be "ripe for a complaint"; says there is no "reasonable danger" or "imminent threat of [the TEC's] enforcement"; claims there are "other avenues" for IFS's speech; and concludes that the challenged regulatory regime "rightfully bar[s]" IFS from providing pro bono services. Ex. 3, ¶¶ 3, 19-20, 31, 36, 38; *cf.* Ex. 2 at 23:18-24:5, 25:14-23 (claiming witness did not intend to use "ripe" and "imminent threat" in a jurisdictional sense).

Mr. Cates even suggests that the Fifth Circuit misapplied standing doctrines in this case. Ex. 3, ¶¶ 19, 37 (insisting that "[w]hile the Fifth Circuit was *likely* correct" in theory, "the likelihood" of enforcement "is incredibly small" and "[t]here is no realistic specter of enforcement . . . by the Commission itself") (emphasis added); *see also* Dkt. 44-1 at 11 (holding that IFS faces "a substantial (or credible) threat of enforcement"). It is entirely inappropriate for the TEC to offer expert testimony on standing, particularly testimony that contradicts binding law of the case.

These are legal conclusions and advocacy "merely rehashing the legal theories [Defendants] advance" in their briefing, and thus do not help the Court understand the evidence or determine any fact at issue. *Calderon v. Bank of Am. N.A.*, 941 F.

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[2] Since Mr. Cates is not a tax lawyer, his opinion on IFS's federal tax status is beyond the scope of his expertise as a specialist in Texas campaign-finance law. *Goodman*, 571 F.3d at 399 (stressing expert cannot go beyond scope of expertise). Mr. Cates similarly has no business offering opinions on federal court litigation topics, such as standing or ripeness.

Supp. 2d 753, 760 (W.D. Tex. 2013). Because Mr. Cates's report and testimony almost entirely concern the law—not facts—they are not admissible under the federal rules.

III. Cates's report and testimony opine on inadmissible legislative facts

Mr. Cates also seeks to testify about an alternative channel allegedly available in Texas for providing pro bono legal services to candidates and committees by forming a separate Texas Political Action Committee. *See* Ex. 3, ¶¶ 30-36; Ex. 2 at 17:24-18:25, 21:18-22:5, 30:2-31:1. Most, if not all, of this testimony constitutes conclusions of law. But, if any factual information exists in the portions of Cates' report and testimony about legal alternatives, it concerns legislative facts, not adjudicative facts.

"There are fundamental differences between adjudicative facts and legislative facts." *Wood v. Stephens*, 619 F. App'x 304, 309 n.3 (5th Cir. 2015) (cleaned up). Adjudicative facts are "the facts of the particular case." *Id.* (quoting Adv. Comm. Note to Fed. R. Evid. 201). "Legislative facts, on the other hand, are those which have relevance to legal reasoning and the lawmaking process." *Id.* A legislative facts "explain a particular law's rationality," "helps a court or agency determine the law's content and application," and is "not ordinarily specific to the parties in a proceeding." *Ellis*, 258 F.3d at 334 n.12 (quoting Black's Law Dictionary (7th ed. 1999)). The Fifth Circuit does not permit experts to testify about legislative facts. *See Nathan*, 173 F.4th 576, 607-08 & n.57 (5th C. 2026) (cleaned up).

Whether alternative legal channels for speech exist and are constitutionally satisfactory is a legislative fact addressing the legal question of compelling state interest and narrow tailoring. It is for this Court to decide and is not a suitable topic for expert testimony. "Only adjudicative facts are determined in trials, and only legislative facts are relevant to the constitutionality of a challenged law." *Nathan*, 173 F.4th at 608 n.57 (cleaned up).

The information Mr. Cates wishes to supply is not specific to the parties litigating this case. Instead, he seeks to explain the reasoning behind Texas' ban on pro bono legal services by non-profit corporations and to justify this ban as a rational and "rightful[]." Ex. 3, ¶¶ 31-32, 5-36. Yet Cates himself states that he was not opining on constitutionality but only on "the Internal Revenue Code and Texas law." Ex. 2 at 30:2-31:1. Thus, either this is testimony about impermissible legislative facts, or it is an impermissible legal conclusion about the meaning of the code and Texas law.

This Court, therefore, should refuse to permit expert testimony on alternative legal channels such as the formation of a Texas PAC.

IV. Cates's opinions about Texas state law are irrelevant to IFS's claims that the TEC's ban is unconstitutional

IFS brings no state law claims in this case. Rather, IFS's core claims are constitutional and arise under the First Amendment. "The views of self-proclaimed experts do not shed light on the meaning of the Constitution." *Nathan*, 173 F.4th at 608 (citation and internal quotation marks omitted). As a result, many of Mr. Cates's legal conclusions are not even relevant: another reason why they are inadmissible. "When evaluating expert testimony, the overarching concern is whether or not it is relevant and reliable." *Smith v. Goodyear Tire & Rubber Co.*, 495 F.3d 224, 227 (5th Cir. 2007). Mr. Cates's opinion that the TEC correctly interpreted state law in the advisory opinion at issue, tells us nothing about whether that state law is constitutional as applied to IFS's proposed conduct. So too with regard to his legal opinion that IFS could form a Texas PAC or would endanger its federal tax status if it followed through on its intended course of conduct.

V. Plaintiff does not object to Cates's lay testimony concerning his past personal experiences with the TEC, as a lawyer representing some of the regulated community

In a few sections in his report and deposition testimony, Mr. Cates briefly discusses his own experiences dealing with the TEC and representing part of the regulated community. In these sections, it appears that Cates perhaps testified regarding past facts (rather than law), and Plaintiff does not seek to exclude these narrow portions of his report and testimony.[3] These portions, however, are not expert opinions, because they are not specialized knowledge reflecting a reliable application of reliable principles and methods. *See* Fed. R. Evid. 702(d). Rather, they are ordinary testimony about personal knowledge, that any witness can provide. *See* Fed. R. Evid. 602.

Specifically, Cates noted that the regulated community relies on TEC's advisory opinions; described his own experience seeking an advisory opinion; said that he has witnessed the TEC self-initiating a complaint and referring a case to the state prosecutor; indicated that he tells his clients that any public statement of an intent to run for office makes it likely that a client could be viewed as a candidate; and stated that the regulated community habitually files complaints with the TEC whenever it believes an issue deserves attention and investigation. *See* Ex. 3, ¶¶ 2, 12, 17-18; Ex. 2 at 10:6-19, 11:19-12:19, 13:15-14:22, 15:14-16:19, 42:2-12. Insofar as Mr. Cates's past personal experiences as a campaign-finance lawyer are relevant, Plaintiff does not object to these limited portions of the report and testimony.

[3] IFS has designated its own expert witness, to rebut portions of Mr. Cates's report. *See* Kolde Dec., ¶ 6. Because this witness is called in rebuttal, if this Court strikes a portion of Mr. Cates's report, then IFS's testimony rebutting that section will also be excluded. However, IFS's witness should be allowed to rebut whatever portions of Mr. Cates's report or testimony this Court admits into evidence, if any.

It is important to stress, however, that those experiences pertain only to past events and are not expert opinions. Plaintiff objects to any testimony speculating about the future conduct of the regulated community, predicting TEC action, implying that Mr. Cates can accurately predict who will file a complaint or about what issue, or re-casting his legal conclusions as a personal experience.

CONCLUSION

This Court should exclude Mr. Cates's expert opinions as impermissible legal opinions and opinions on legislative facts.

Respectfully submitted,

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Dated: July 29, 2026

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