

No. _____

In the Supreme Court of the United States

MICHAEL QUINN SULLIVAN
Applicant,

v.

TEXAS ETHICS COMMISSION,
Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Samuel A. Alito, Jr.
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Fifth Circuit

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Michael Quinn Sullivan respectfully requests a 45-day extension of time to and including Monday, January 13, 2025, to file a petition for a writ of certiorari. That extension would be less than the maximum 60-day extension authorized by Supreme Court Rule 13.5 and 28 U.S.C. § 2101(c).

2. The Texas Third Court of Appeals issued its opinion and judgment on August 31, 2022. The opinion is reported at 660 S.W.3d 225 (Tex. App.—Austin 2022), and it is appended as Exhibit A. Applicant timely sought rehearing in the Third Court of Appeals, which the appellate court denied on December 19, 2022.

3. Applicant timely filed a petition for review in the Texas Supreme Court on February 2, 2023. On March 8, 2024, the Texas Supreme Court issued an order denying discretionary review. Applicant timely sought rehearing of that order on April 22, 2024. On August 30, 2024, the Texas Supreme Court denied Applicant's motion for rehearing. A copy of that order is appended as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1257.

4. Currently, Applicant's petition for writ of certiorari seeking review of the Third Court of Appeals's decision would be due on November 29, 2024. This application is being filed more than 10 days in advance of that date. No prior application has been made in this case.

5. This case presents questions eminently worthy of this Court's review. This case implicates whether—and if so, under what circumstances—the government may

permissibly compel a private citizen to register with a governmental agency in order to publish and disseminate materials expressing his viewpoint on contested matters of public policy. In 2010 and 2011, Applicant served as President and CEO of Empower Texans, Inc. Empower Texans published and disseminated news and editorial content that directly or indirectly opposed and promoted legislation. As part of that mission, Empower Texans published its proprietary Fiscal Responsibility Index—its subjective assessment of how each state legislator voted on various issues important to Empower Texans. In 2012, two state legislators took exception to their poor ratings on the Fiscal Responsibility Index, and they filed complaints with Respondent Texas Ethics Commission against Applicant and Empower Texans. As to Applicant, the legislators claimed he had failed a duty to register with the government and pay a fee of \$150 in order to speak on matters of public policy. Following administrative proceedings, Respondent assessed a \$10,000 penalty against Applicant.

6. Applicant challenged that penalty in trial court, arguing that Texas’s law restricting political speech is unconstitutional facially and as applied to him. The trial court sided with Respondent. On appeal, the Third Court of Appeals largely affirmed the trial court’s judgment, though it vacated the \$10,000 penalty and ordered further proceedings. The Texas Supreme Court denied discretionary review.

7. Seventy years ago, this Court considered laws aimed at restricting congressional lobbying activity. *United States v. Harriss*, 347 U.S. 612, 613 (1954). Since that time, the Court has on numerous occasions reviewed campaign finance regulations that restrict political speech. *See, e.g., Fed. Election Comm’n v. Ted Cruz for Senate*, 596 U.S. 289 (2022); *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185 (2014);

Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010). This Court has explained that “[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people.” *Citizens United*, 558 U.S. at 339. And the “First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.” *Id.* (internal quotation marks and citation omitted). As a result, “political speech must prevail against laws that would suppress it, whether by design or inadvertence.” *Id.* at 340. Nevertheless, States have continued to promulgate and maintain byzantine restrictions on political speech, leaving ordinary citizens unclear as to the circumstances under which they may be compelled to register with the government before there are permitted to speak on matters of public concern.

8. This Court’s 1950s-era precedents regarding congressional lobbying laws have fallen far out of step with its modern First Amendment jurisprudence. Unsurprisingly, deep-seated and acknowledged disagreements have emerged among this Nation’s courts over several related issues, including the type of governmental interests that may justify speech restrictions like those enacted in Texas and the scope of judicial review of these decisions. Texas has justified its political speech restrictions by citing this Court’s decades-old jurisprudence that is impossible to square with the Court’s current approach to the First Amendment. *See Sullivan*, 660 S.W.3d at 233-34.

9. Applicant recently engaged undersigned counsel, who was not previously involved in the case. This case presents complex questions and a significant record developed over many years of litigation. A 45-day extension would give counsel

sufficient opportunity to review the record, analyze the issues presented, and prepare the petition for filing. The extension is also necessary given the heavy press of matters the undersigned counsel is responsible for over the next two months, as well as preexisting holiday-related observances and travel plans.

10. Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari up to and including Monday, January 13, 2025.

Dated: November 15, 2024

Respectfully submitted.

/s/ Kyle D. Hawkins

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