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Cause No. 199-07889-2025

EAST PLANO ISLAMIC CENTER, *Plaintiff,*	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	
	§	OF COLLIN COUNTY, TEXAS
LANDON THURMAN, TESTIMONIES OF GOD, INC., HERITAGE GRACE COMMUNITY CHURCH, INC., JASON OSBORNE, and JOHN DOES 1-20, *Defendants.*	§	199th JUDICIAL DISTRICT

MOTION TO DISMISS UNDER TEX CIV. PRAC. & REM. CODE § 27.003, AND FOR RECOVERY OF COSTS, ATTORNEY'S FEES, AND SANCTIONS BY DEFENDANTS TESTIMONIES OF GOD, INC.; HERITAGE GRACE COMMUNITY CHURCH, INC.; AND LANDON THURMAN.

To the Honorable Judge of Said Court:

Defendants Testimonies of God, Inc., Landon Thurman (collectively, the "Missionary Defendants"), and Heritage Grace Community Church ("Heritage Grace") by and through undersigned counsel, respectfully move the Court to dismiss Plaintiff's Original Petition and Request for Declaratory and Injunctive Relief (the "Petition") pursuant to Tex. Civ. Prac. & Rem. Code § 27.003 because this legal action is based on or is in response to Defendants' exercise of the right of free speech.

INTRODUCTION

1. Plaintiff, East Plano Islamic Center ("EPIC" or "EPIC mosque"), filed suit against Christian missionaries and a Church because the missionaries shared the Gospel and distributed gospel tracts beside a public sidewalk over 500 feet away from the entrance of a mosque. Plaintiff seeks injunctive relief that would prohibit Defendants from engaging in speech or distributing "evangelical pamphlets, letters, fliers or other documents offensive to the Islamic faith." Petition ¶36. EPIC's Petition strives to establish a heckler's veto buffer zone that would prohibit speech it finds offensive within the general vicinity of the mosque, even when that speech occurs in a traditional public forum. Such relief flagrantly violates the Texas and U.S. Constitutions and warrants dismissal under the Texas Citizens Participation Act.

BACKGROUND

2. Defendant Testimonies of God, Inc., is a Texas nonprofit corporation exempt from taxation under 26 U.S.C. § 501(c)(3). Founded in 2021, Testimonies Of God is a Christian apologetics and evangelism ministry whose mission is to empower and encourage the members of Christ's Body in the principles of biblical evangelism and to provide them with practical tools to proclaim the gospel. Reflecting its core belief that Christ commands His followers to "Go into all the world and preach the gospel to all creation" (Mark 16:15), its activities include missions trips (both domestic and international), open-air preaching and public evangelism at sporting events, college campuses, and other public areas, distributing gospel tracts and Bibles, and providing evangelism training for local churches. Thurman Aff. ¶2.

3. Defendant Landon Thurman is the President, Founder, and a missionary of Testimonies of God. Thurman Aff. ¶3.

4. Heritage Grace Community Church is a Reformed Baptist Church founded in 2012. Defendant Thurman is a member of Heritage Grace but fulfills no leadership role. Kahler Aff. ¶3-5.

5. Missionary Defendants have conducted outreach activity approximately 500 feet away from the EPIC mosque entrance beside a public sidewalk. They have shared the Gospel and distributed gospel tracts and apologetics pamphlets and engaged in respectful discussion with any interested passersby. Missionary Defendants' goal "is to lovingly proclaim the Gospel to our Muslim neighbors who do not know the True Jesus Christ as their Lord and Savior" and "to offer the message of eternal life through Christ." Thurman Aff. ¶7, 8, 14 & Exh. C.

6. On October 2, 2025, Plaintiff filed the Petition, which contained causes of action against Defendants for common law nuisance and for declaratory relief under the Texas Declaratory Judgment Act, Tex. Civil Prac. & Rem. Code Ch. 37 (collectively, the "Causes of Action"). Plaintiff seeks equitable relief enjoining Defendants from engaging in speech Plaintiff considers "offensive to the Islamic faith" in the vicinity of EPIC mosque and a declaration that Defendants are violating Plano Ordinance 2023-9-18, Sections 14-86 and 14-87(d). Petition ¶¶ 30, 36.

ARGUMENT

The Petition is subject to the Texas Citizens Participation Act.

7. The Texas Legislature enacted the Texas Citizens Participation Act (TCPA) to encourage and safeguard the rights of a defendant to speak freely, petition, associate freely, and otherwise participate in government to the maximum extent provided by law. Tex. Civ. Prac. & Rem. Code § 27.002.

8. To safeguard these rights expeditiously and cost-effectively, the TCPA gives defendants the power to resolve at an early stage whether a legal action impinging on such rights has merit by filing a motion to dismiss (commonly referred to as an "anti-SLAPP motion"). *See* Tex. Civ.

Prac. & Rem. Code § 27.003(a), (b). Once the motion is filed, all discovery is stayed in the legal action until the court rules on the motion, which must occur within 30 days after the hearing on the motion concludes. See Tex. Civ. Prac. & Rem. Code §§ 27.003(c), 27.005(a). If the defendant is successful in dismissing the legal action, the defendant is entitled to court costs and reasonable attorney fees incurred in defending against the action. Tex. Civ. Prac. & Rem. Code § 27.009(a)(1). The court can also impose sanctions sufficient to deter the plaintiff from bringing a similar action in the future. Tex. Civ. Prac. & Rem. Code § 27.009(a)(2).

9. To succeed on a motion to dismiss under the TCPA, the defendant must demonstrate that it is seeking to dismiss a legal action, as defined by the TCPA, and that the plaintiff's legal action is based on or is in response to (1) an act of the defendant protected by the right of free speech, the right to petition, or the right of association or (2) an act of the defendant described by Texas Civil Practice & Remedies Code section 27.010(b). See Tex. Civ. Prac. & Rem. Code §§ 27.003(a), 27.005(b). If the defendant meets its burden, the court must dismiss the plaintiff's action unless the plaintiff can either (1) establish that the challenged action is exempt from the TCPA or (2) establish by clear and specific evidence a prima facie case for each essential element of the challenged claim. See Tex. Civ. Prac. & Rem. Code §§ 27.005(c), 27.010; *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 434 (Tex. 2017); *Bedford v. Spassoff*, 520 S.W.3d 901, 904 (Tex. 2017); *In re Lipsky*, 460 S.W.3d 579, 587 (Tex. 2015). Even if the plaintiff meets its prima facie burden, the court must dismiss the legal action if the defendant can establish an affirmative defense or other grounds on which the defendant is entitled to judgment as a matter of law. See Tex. Civ. Prac. & Rem. Code § 27.005(d). In evaluating a motion to dismiss, the court must construe the TCPA liberally to fully effectuate its purpose and intent to encourage and safeguard a defendant's rights. See Tex. Civ. Prac. & Rem. Code §§ 27.002, 27.011(b).

10. Plaintiff's Petition is a "legal action" subject to the TCPA. *See* Tex. Civ. Prac. & Rem. Code § 27.001(6) (a "legal action" subject to the TCPA includes "(1) a lawsuit, (2) a cause of action, (3) a petition, (4) a complaint, (5) a cross-claim, (6) a counterclaim, or (7) any other judicial pleading or filing that requests legal, declaratory, or equitable relief.").

11. Plaintiff's Petition should be dismissed because it is based on or is in response to Defendants' exercise of their right of free speech. Under the TCPA, a defendant exercises her right of free speech when she makes a communication in connection with a matter of public concern. Tex. Civ. Prac. & Rem. Code § 27.001(3); *Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 894 (Tex. 2018); *ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 898 (Tex. 2017); *Lippincott v. Whisenhunt*, 462 S.W.3d 507, 509 (Tex. 2015). The TCPA does not require more than a tangential relationship between the communication and the matter of public concern. Coleman, 512 S.W.3d at 900; *see also McLane Champions, LLC v. Hous. Baseball Partners* LLC, 671 S.W.3d 907, 916–17 (Tex. 2023) (temporal connection between communication and matter of public concern, however, is required; subsequent ramifications of communication are not relevant). A communication includes the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic, regardless of whether

the communication is made or submitted publicly or privately. *Coleman*, 512 S.W.3d at 898–99; *Lippincott*, 462 S.W.3d at 509; *see* Tex. Civ. Prac. & Rem. Code § 27.001(1). A matter of public concern is a statement or an activity about one of the following: (1) 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, (2) a matter of political, social, or other interest to the community, or (3) a subject of concern to the public. Tex. Civ. Prac. & Rem. Code § 27.001(7).

12. The Causes of Action are facially based on and in response to Defendants' protected speech.

13. Missionary Defendants have shared the Gospel and distributed gospel tracts and apologetics pamphlets beside a public sidewalk approximately 500 feet away from the mosque entrance. Missionary Defendants' purpose in conducting outreach activity outside of EPIC "is to lovingly proclaim the Gospel to our Muslim neighbors who do not know the True Jesus Christ as their Lord and Savior. EPIC is a place where many people gather each Friday for prayer, and we preach there because it provides an opportunity to reach hundreds of souls who may have never heard the true biblical Gospel. Our goal is not to provoke or protest them but to offer the message of eternal life through Christ." Thurman Aff. ¶8, 11–13, 17 & Exh. C (example religious pamphlet).

14. Missionary Defendants have engaged in respectful dialogue and discussion with passersby, including EPIC staff, mosque attendees, and passersby of other faiths. Thurman Aff. ¶14.

15. On one occasion, an EPIC staff member "expressed concern about [Missionary Defendants'] message and requested that we refrain from directly calling the Qur'an or Islam false. We respectfully explained that we could not compromise the truth of the Gospel." Thurman Aff. ¶19.

16. Heritage Grace, as explained *infra*, is not a proper party to this action because it has not participated in the activity of which Plaintiff complains and the Petition does not provide a basis to establish that any Missionary Defendant is an agent of Heritage Grace and participates in outreach activity near EPIC on Heritage Grace's behalf. *See* Kahler Aff. ¶¶8–10. However, the Petition seeks to hold Heritage Grace liable for Missionary Defendants' speech, imputes Missionary Defendants' speech to Heritage Grace, and seeks injunctive relief restraining Heritage Grace's speech. The Petition is, therefore, based on and in response to Heritage Grace's speech within the meaning of the TCPA.

17. Missionary Defendants' speech and pamphlet distribution is communication on a matter of public concern within the meaning of the TCPA. Tex. Civ. Prac. & Rem. Code § 27.001(7). Missionary Defendants engage in speech and debate on public sidewalks—the "quintessential public forum" which "'have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983) (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939)). Such speech and debate in

traditional public fora is core First-Amendment-protected speech, and Missionary Defendants' discussion and advocacy about the meaning of life and salvation are certainly matters of "political, social, or other interest to the community" or "concern to the public." Tex. Civ. Prac. & Rem. Code § 27.001(7)(B), (C); *see Elite Auto Body LLC v. Autocraft Bodywerks, Inc.*, 520 S.W.3d 191, 204 (Tex. App. 2017) (explaining that the TCPA applies even beyond First-Amendment-protected speech).

18. The Petition is, by its own terms, based on and in response to Defendants' exercise of their free speech right. The Petition *targets* Defendants' speech and seeks to prohibit it outright because Plaintiff disagrees with Defendants' viewpoint. *See* Petition ¶ 36. Plaintiff's requests for injunctive and declaratory relief strive to establish a heckler's veto buffer zone that would prohibit any speech it finds offensive within the general vicinity of the mosque, even when that speech occurs in a traditional public forum. Such relief would flagrantly violate the Texas and U.S. Constitutions. This is the quintessential case for which the TCPA is designed.

Plaintiff cannot prove a prima facie case for either Cause of Action.

19. When Defendants demonstrate that plaintiff's Petition is based on or is in response to Defendants' protected speech under the TCPA, the burden shifts to the plaintiff to establish by clear and specific evidence a prima facie case for each essential element of its claim. *See* Tex. Civ. Prac. & Rem. Code § 27.005(b), (c). Plaintiff cannot meet its burden as to either of its Causes of Action.

Common Law Nuisance

20. Plaintiff alleges a claim of intentional, private common law nuisance. To establish a prima facie claim for a common law nuisance, Plaintiff must establish (1) that a condition substantially interferes with Plaintiff's use and enjoyment of its property; (2) that the substantial interference causes unreasonable discomfort or annoyance; (3) that Defendants caused the condition; and (4) Defendants acted intentionally. *Crosstex N. Texas Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 595, 601, 604 (Tex. 2016).

21. "[T]o rise to the level of nuisance, the interference must be 'substantial' in light of all the circumstances." *Id.* at 596. "Even a substantial interference, however, does not constitute a nuisance unless the effect of the interference on those who would otherwise use and enjoy their land is 'unreasonable.'" *Crosstex*, 505 S.W.3d at 596. The unreasonableness requirement (1) "focuses on the unreasonableness of the interference's effect on the plaintiff's comfort or contentment," not the unreasonableness of the Defendants' conduct, (2) must be determined based on an objective standard of persons of ordinary sensibilities, not on the subjective response of any particular plaintiff," and (3) is determined by "balancing a wide variety of factors, depending on the specific facts." *Id.* at 596-97. "[T]he effects of the defendant's conduct or land use must be "such as would disturb and annoy persons of ordinary sensibilities, and of ordinary tastes and habits.'" *Id.* at 599.

22. On Missionary Defendants' first outreach activity near EPIC, on May 13, 2025, they located themselves beside what they believed to be a public sidewalk and preached and spoke with various passersby for about an hour and a half. Plano police officers and mosque security personnel eventually approached them, and mosque security asserted that the location was within EPIC's property line. Because the street signs in the area were green, the Plano police also believed Missionary Defendants were on public property. The officers allowed Missionary Defendants to continue to preach while the property line was verified. The Plano Police Chief arrived later and confirmed that the location was on private property. At the request of EPIC security, Plano police later issued Defendant Thurman a criminal trespass warning. Thurman Aff. ¶9.

23. Plano police officers directed the Missionary Defendants to relocate to the grass beside the public sidewalk at the corner of 14th Street (a busy, six-lane road) and Star Court. This location is approximately 500 feet away from mosque's entrance and on the other side of a strip-mall building from the mosque. Thurman Aff. ¶¶11–13, 15 & Exhs. A, B.

24. The police officers tested Missionary Defendants' amplification equipment and modulated its settings to ensure that it was set at a reasonable volume. Missionary Defendants have remained in this location and maintained their amplification at this level ever since. Missionary Defendants never block the sidewalk or impede congregants from accessing the mosque. Missionary Defendants have never attempted to enter the mosque themselves. Thurman Aff. ¶¶ 10–11, 13, 23.

25. Although police officers have been present directing traffic across 14th Street, neither Defendant Thurman nor anyone else participating in a Testimonies of God outreach activity have received any criminal citations related to activity near EPIC and have not received any further warnings. Thurman Aff. ¶¶ 24–25.

26. On multiple occasions, EPIC mosque's Head of Security and Property Manager approached Missionary Defendants and engaged in friendly, respectful conversations in which he thanked them for remaining orderly and on public property, made no request to modify their amplification, and gave no indication that Plaintiff's prayer service was in any way affected. Thurman Aff. ¶¶19, 21, 22.

27. While loud noise could potentially rise to the level of a nuisance if it actually prevents the mosque from conducting its prayer service, Plaintiff must prove more than that the sound of Missionary Defendant's speech was in some way audible within the mosque. "Trifles" and "petty annoyances" are not legally actionable nuisances. *Crosstex*, 505 S.W.3d at 595. Given that those Defendants who preach near the mosque do so over 500 feet away from the mosque, with an intervening strip mall, next to a six-lane road, and with sound amplification equipment kept at the volume the Plano police instructed, and given that Plaintiff's staff member thanked Missionary Defendants for "remaining orderly" and said that their location was fine, Plaintiff cannot prove that the preaching substantially and unreasonably interfered in its use and enjoyment of the land.

28. Plaintiff's congregants encountering speech with which Plaintiff disagrees while in transit to attend the mosque, Petition ¶22, is not a substantial and unreasonable interference with Plaintiff's property. Discomfort with hearing the expression of religious beliefs different from their own is not substantial interference with Plaintiff's property, nor is it objectively unreasonable. Even if the Gospel offends Plaintiffs, "[t]o endure the speech of . . . offensive content and then to counter it is part of learning how to live in a pluralistic society." *Lee v. Weisman*, 505 U.S. 577, 590 (1992). Plaintiff can demonstrate nothing more than annoyance and discomfort at hearing the expression of religious beliefs contrary to their own.

29. Even if Plaintiff established a nuisance injury, "[w]hether a defendant may be held liable for causing a nuisance depends on the culpability of the defendant's conduct, in addition to proof that the interference is a nuisance. . . . [N]uisance cannot be premised on a mere accidental interference." *Crosstex*, 505 S.W.3d at 604. In the absence of an unusually dangerous activity subject to strict liability, this means the Plaintiff must establish Defendants either intentionally or negligently caused the nuisance. *See id.* They can establish neither.

30. Plaintiffs cannot establish that Defendants intentionally inflicted a nuisance. Intent is measured subjectively. "[A] defendant intentionally causes a nuisance if the defendant "acts for the purpose of causing" the interference or "knows that [the interference] is resulting or is substantially certain to result" from the defendant's conduct." *Crosstex*, 505 S.W.3d at 605 (quoting Restatement (Second) of Torts § 825). "[To] prove an intentional nuisance, the evidence must establish that the defendant intentionally caused the interference that constitutes the nuisance, not just that the defendant intentionally engaged in the conduct that caused the interference." *Id.*

31. The purpose of Missionary Defendants' outreach activity near EPIC "has never been to disrupt or prevent religious services at the mosque" or to "provoke or protest" those who attend. Thurman Aff. ¶8, 17. Rather, Missionary Defendants' goal is to "reach hundreds of souls who may have never heard the true biblical Gospel . . . [and] to offer the message of eternal life through Christ." Thurman Aff. ¶7, 8, 17. Their intention in using amplification was to prevent voice strain and so that they could maintain a conversational tone of voice, especially given that they were located beside a busy, six-lane road. Thurman Aff. ¶16. This does not demonstrate intent to cause a nuisance.

32. Plaintiff's live pleading sounds solely in intentional nuisance. Under Tex. Civ. Prac. & Rem. Code §27.005(c), Plaintiff must provide clear and specific evidence of each essential element of that claim, including intent (i.e., that Defendants acted for the purpose of causing, or were substantially certain their conduct would cause, a nuisance, *Crosstex*, 505 S.W.3d at 604–05). Evidence of mere negligence cannot satisfy that burden.

33. Alternatively, even if the Court construed the petition to include negligent nuisance, Plaintiff still fails.

In this category, the claim is governed by ordinary negligence prin-

> ciples. The elements the plaintiff must prove are "the existence of a legal duty, a breach of that duty, and damages proximately caused by the breach." *IHS Cedars Treatment Ctr., Inc. v. Mason*, 143 S.W.3d 794, 798 (Tex. 2004). To establish the breach, the plaintiff must prove that the defendant's conduct constituted negligence, which is "simply doing or failing to do what a person of ordinary prudence in the same or similar circumstances would have not done or done." *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 753 (Tex. 1998). That is, a nuisance may result from "a failure to take precautions against a risk apparent to a reasonable man." . . . The only unique element, which derives from the nature of the legal injury on which the plaintiff bases the claim, is the burden to prove that the defendant's negligent conduct caused a nuisance, which in turn resulted in the plaintiff's damages.

Crosstex, 505 S.W.3d at 607.

34. Plaintiff cannot demonstrate that Missionary Defendants failed to take precautions to prevent the volume of their amplification equipment from exceeding a reasonable level. They maintained a distance of over 500 feet from the mosque entrance. They tested their equipment settings with police officers present and sought the officer's independent judgment as to what constituted a reasonable volume level. Missionary Defendants maintained the same volume level at all subsequent outreach events. Missionary Defendants also made sure to remain on the grass beside the public sidewalk, leaving the public sidewalk free for pedestrian traffic to flow unimpeded. Passersby were free to ignore Defendants and continue on their way. These precautions demonstrate that Defendants exercised ordinary care to avoid causing a nuisance to Plaintiff's property; they are, therefore, not liable for negligence. Moreover, Plaintiff did not inform Missionary Defendants that their speech was audible (let alone disruptive of services) within the mosque and did not request that Defendants reduce the volume. Rather, mosque staff requested that Missionary Defendants censor their speech. Thurman Aff. ¶¶19–22.

35. For all these reasons, Plaintiff cannot establish a prima facie claim for common law nuisance.

Declaratory Judgment Act Claim

36. Plaintiff's Declaratory Judgment Act claim requests a declaration that Defendants are in violation of Plano Ordinance 2023-9-18, Sections 14-86 and 14-87(d) (the "Ordinance"), which makes it an "offence for any person to intentionally, knowingly, or recklessly make or cause to be made an unreasonable noise: (1) in a public place other than a sport shooting range," and declares a noise presumptively unreasonable and a noise nuisance if it is "created in a public place . . . adjacent to a religious facility . . . and [is] reasonably likely to interfere with the workings of

such institution . . . and a sign indicating that . . . a religious facility is in the vicinity is posted so as to be visible to motorists, passengers and pedestrians."

37. "More specifically, Plaintiff seeks a declaration that using sound amplification devices to blare loud messaging inside the walls of Plaintiff's mosques during sacred prayer services is *per se* unreasonable." Petition ¶ 30.

38. Given the precautions that Missionary Defendants took to ensure that the volume remained at a reasonable level, including by testing their amplification equipment and modulating it to police officers' satisfaction and remaining over 500 feet away from the mosque entrance, and the fact that Plano police officers have been present nearby directing traffic but have not issued criminal citations to Missionary Defendants, Thurman Aff. ¶10–11, 13, 26–27, Plaintiff cannot establish that Missionary Defendants violated the Ordinance.

39. However, even if Plaintiff did establish that Missionary Defendants violated the Ordinance, this would not be enough to sustain a claim for declaratory relief under the Declaratory Judgment Act.

40. First, the Court has no subject-matter jurisdiction to render a declaratory judgment construing or enforcing a penal ordinance. "[T]he Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code §§ 37.001–.011, is not a grant of jurisdiction, but 'merely a procedural device for deciding cases already within a court's jurisdiction.'" *Chenault v. Phillips*, 914 S.W.2d 140, 141 (Tex. 1996) (quoting *State v. Morales*, 869 S.W.2d 941, 947 (Tex.1994)). Plaintiff "seeks a declaratory judgment … declaring Defendants in violation of the City of Plano's Ordinance No. 2023-9-18." Pet. ¶ 26. But City of Plano Ordinance No. 2023-9-18 (the "Noise Ordinance") is a criminal ordinance. *See* Noise Ordinance § 14-86 ("It shall be an offense…"); Plano Code Section 1-4 (prescribing criminal penalties). The Noise Ordinance does not provide for any civil cause of action or non-criminal enforcement mechanism. *Id.* Because of Texas' jurisdictional bar on civil courts' interpreting criminal ordinances, which flows from the separation of the Texas Supreme Court's and the Texas Court of Criminal Appeals' separate jurisdictions, a Texas court does not have jurisdiction to and cannot issue a declaratory judgment on a criminal ordinance in a civil lawsuit. *State v. Morales*, 869 S.W.2d 941, 947 (Tex. 1994) ("A civil court simply has no jurisdiction to render naked declarations of 'rights, status or other legal relationships arising under a penal statute.' … [T]he prospect of both civil and criminal courts construing criminal statutes would tend to 'hamstring' the efforts of law enforcement officers, creates confusion, and might result finally in precise contradiction of opinions between the civil courts and the Court of Criminal Appeals to which the Constitution has entrusted supreme and exclusive jurisdiction in criminal matters." (cleaned up)); *see City of Justin v. Wesolak*, 2016 WL 2989568 at *3 n.5 (Tex.App.—Ft. Worth 2016) (noting that a court cannot issue a declaratory judgment on a city ordinance in a civil trial because "[t]he meaning of a penal ordinance and a determination of whether it is enforceable against a particular citizen should ordinarily be determined by courts exercising criminal ju-

risdiction over the alleged violation."). While the City of Plano can criminally regulate certain behavior, it cannot alter the standard for the civil liability of private parties.

41. Second, a Declaratory Judgment Act claim may not be used to resolve issues already pending in the same suit. *See Kyle v. Strasburger,* 522 S.W.3d 461, 467 n.10 (Tex.2017); *BHP Pet. Co. v. Millard*, 800 S.W.2d 838, 841 (Tex.1990); *see, e.g., Boatman v. Lites*, 970 S.W.2d 41, 43 (Tex. App.—Tyler 1998, no pet.) ("It is well settled in Texas that a declaratory judgment may not be used solely as a vehicle to obtain attorney's fees, and it is inappropriate if it will serve no useful purpose."). Plaintiff's claim for declaratory judgment adds nothing to its common law nuisance claim. A declaration that Missionary Defendants' activity is *per se* unreasonable could go to the "unreasonableness" element of a common law nuisance claim, but it does not establish any of the other elements. Ultimately, Plaintiff's declaratory judgment claim to declare Missionary Defendants' activity a nuisance *per se* based on the Ordinance improperly attempts to subject them to nuisance liability without pleading and proving the elements required to establish a nuisance liability claim. Nuisance *per se* is a type of injury, not a claim, and Plaintiff's seeking a declaratory judgment with respect to nuisance *per se*, in addition to violating the penal-jurisdictional limitation on declarations with respect to penal ordinances, would constitute an advisory opinion.

42. Third, Plaintiff's request for declaratory judgment seeks to determine potential future tort liability, which is not an appropriate use of the Declaratory Judgment Act. *E.g., In re Houston Specialty Ins.*, 569 S.W.3d 138, 140–41 (Tex.2019) (legal malpractice); *Abor v. Black*, 695 S.W.2d 564, 566 (Tex.1985) (personal injury), *overruled on other grounds, In re J.B. Hunt Transp.*, 492 S.W.3d 287 (Tex.2016).

43. For all of these reasons, Plaintiff cannot establish a prima facie claim for declaratory relief under the Declaratory Judgment Act.

Heritage Grace Community Church

44. Plaintiff's claims for nuisance liability and a declaratory judgment include only undifferentiated, collective accusations against "Defendants." But Heritage Grace was not involved in any of the events Plaintiff attempts to use as grounds for that liability or declaratory judgment, and an entity is not vicariously liable for others' acts absent well-pleaded facts establishing an agency or employment relationship and conduct within that scope, which Plaintiff does not make. *Painter v. Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 130–31 (Tex. 2018) (absent respondeat superior or vicarious liability, the general rule is "that a person has no duty to control another's conduct"); *Baptist Memorial Hosp. System v. Sampson*, 969 S.W.2d 945, 947 (Tex. 1998) (under respondeat superior, an employer can be liable for the actions of an employee or agent, but not for the actions of someone over which the employer has no control over means or methods of conduct). Nor does mere awareness of or agreement with members' speech constitute ratification, which requires intent to adopt the act with full knowledge and which is also not pleaded. *Gulf, C. & S.F. Ry. Co. v. Reed*, 15 S.W.

1105, 1107 (Tex. 1891) ("Mere silence, unless required to speak and act, or even satisfaction at the commission of the wrong, unaccompanied by some act of adoption, will not amount to ratification.")

Defendants can establish affirmative defenses and are entitled to judgment as a matter of law.

45. Even if plaintiff has met its burden by establishing a prima facie case for each essential element of its claims, the court must dismiss the legal action under the TCPA if defendant can establish an affirmative defense or other grounds on which defendant is entitled to judgment as a matter of law. See Tex. Civ. Prac. & Rem. Code § 27.005(d).

Article I, Section 8 of the Texas Constitution and the First Amendment to the U.S. Constitution

46. Defendant is entitled to judgment as a matter of law because Plaintiff's claims and requested equitable relief would violate Article I, Section 8 of the Texas Constitution, the Free Speech Clause of the U.S. Constitution's First Amendment.

47. Public streets, sidewalks and parks, "which 'have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions'" are "quintessential public forums" in which communicative activity cannot be prohibited and the government's authority to restrict speech at all is extremely limited. *Perry,* 460 U.S. at 45 (quoting *Hague*, 307 U.S. at 515). "In a traditional public forum—parks, streets, sidewalks, and the like—the government may impose reasonable time, place, and manner restrictions on private speech, but restrictions based on content must satisfy strict scrutiny, and those based on viewpoint are prohibited." *Minnesota Voters All. v. Mansky*, 585 U.S. 1, 11 (2018). Even content-neutral time, place, and manner restrictions must "leave open ample alternative channels of communication." *Perry*, 460 U.S. at 45.

48. "Discrimination against speech because of its message is presumed to be unconstitutional." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995). Viewpoint discrimination, which is an "an egregious form of content discrimination," occurs "when the specific motivating ideology or the opinion or perspective of the speaker is the rationale" for restricting it. *Id.* at 829. Viewpoint discrimination is *never* permissible. *Mansky*, 585 U.S. at 11.

49. "Regulations which take the form of prior restraints are subject to particularly exacting judicial scrutiny with a heavy presumption against their constitutional validity." *Iranian Muslim Org. v. City of San Antonio*, 615 S.W.2d 202, 205 (Tex. 1981). A "heckler's veto" never justifies a prior restraint on speech; indeed, the Texas Supreme Court deems such a notion "unthinkable." *Id.* at 206-07 (quoting Blasi, Prior Restraints on Demonstrations, 68 Mich.L.Rev. 1481, at 1510 (1970)).

50. Nor can Defendants' speech be prohibited because it may make Plaintiffs uncomfortable when they walk by on their way to the mosque. Petition ¶ 22. As the Supreme Court explained in *McCullen v. Coakley*, 573 U.S. 464, 476 (2014):

> It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out. In light of the First Amendment's purpose "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail," *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 377, 104 S.Ct. 3106, 82 L.Ed.2d 278 (1984) (internal quotation marks omitted), this aspect of traditional public fora is a virtue, not a vice.

51. Missionary Defendants wish "to converse with their fellow citizens about an important subject on the public streets and sidewalks—sites that have hosted discussions about the issues of the day throughout history." *Id.* at 496-97. Plaintiff's demand to prohibit Defendants from "handing out evangelical pamphlets, letters, fliers, or other documents offensive to the Islamic faith" would effectively establish for Defendants a heckler's veto buffer zone in which the mosque may veto any speech with which it disagrees. The Supreme Court has not hesitated to invalidate similar buffer zones. *See McCullen*, 573 U.S. at 469, 496-97 (holding that a 35-foot-buffer zone around abortion clinics violated the Free Speech Clause because it "clos[ed] a substantial portion of a traditional public forum to all speakers"); *see also Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 117 (1982) (invalidating "a Massachusetts statute, which vests in the governing bodies of churches and schools the power effectively to veto applications for liquor licenses within a five hundred foot radius of the church or school").

52. Ultimately, Plaintiff cannot force Defendants, or anyone else, to "speak only well of" it. *Ex parte Tucker*, 220 S.W. 75, 76 (Tex. 1920). It cannot ask this Court to close a traditional public forum or to regulate speech because it dislikes Missionary Defendants' viewpoint. The Texas and U.S. Constitutions bar Plaintiff's claims.

Texas Religious Freedom Restoration Act, Tex. Civ. Prac. & Rem. Code Ann. § 110.001 *et seq.*

53. The Texas Religious Freedom Restoration Act, Tex. Civ. Prac. & Rem. Code Ann. § 110.001 *et seq.* ("TRFRA"), provides that the application of a law, regulation, decision, order, practice, or any other exercise of governmental authority cannot substantially burden a person's free exercise of religion unless the government can demonstrate that such exercise of authority is in furtherance of a compelling governmental interest and is the least-restrictive means of furthering that interest. TRFRA § 110.002–.003.

54. A "substantial burden" on religious free exercise exists if there is any burden that is "real

vs. merely perceived, and significant vs. trivial." *Merced v. Kasson*, 577 F.3d 578, 588 (5th Cir. 2009). In *Wisconsin v. Yoder*, 406 U.S. 205, 208 (1972), the substantial burden was a $5 fine.

55. A "compelling governmental interest" is one "of the highest order" and "paramount." *Id.* at 591–92 (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993), and *Yoder*, 406 U.S. at 213). Furthermore, the applicability of that compelling interest must relate "to the person—the particular claimant whose sincere exercise of religion is being substantially burdened." *Id.* at 592 (quoting *Gonzalez v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430–31 (2006)). That is, broadly-formulated, generalized interests such as "health" or "safety" cannot satisfy the compelling interest test. *Barr v. City of Sinton*, 295 S.W.3d 287, 306 (Tex. 2009) (rejecting "public safety, morals, and general welfare" as broadly-formulated, general interests that do "not satisfy the scrutiny mandated by TRFRA."); *Merced*, 577 F.3d at 592 (same).

56. TRFRA § 110.004 explicitly provides that this limitation on government authority may be raised "as a defense in a judicial or administrative proceeding without regard to whether the proceeding is brought in the name of the state or by any other person."

57. Sharing the Gospel is the core religious mission of Testimonies of God and an exercise of Defendant Thurman's faith:

> "Evangelism is an important part of my religious exercise and the core religious mission of Testimonies of God. Evangelism is a direct command from Jesus Christ (Matthew 28:18–20). It is how Christians express love for God and neighbor by declaring the only message that saves. Sharing the Gospel is not optional. It is an act of obedience to Christ and an essential part of Christian worship. Through evangelism, we proclaim forgiveness of sins through the life, death, and resurrection of Jesus Christ, calling all people to turn from sin (such as trusting in their own self-proclaimed righteousness or goodness for salvation) and to place their trust in Him alone for eternal life. We also preach publicly because it follows the biblical model: Jesus preached openly (Luke 8:1), Paul reasoned in marketplaces (Acts 17:17), and Peter proclaimed Christ in public squares (Acts 2). The message of the cross belongs in the hearing of the world.")

Thurman Aff. ¶6.

58. Sharing the Gospel is also an exercise of Heritage Grace's religious beliefs:

> Heritage Grace Community Church is a Reformed Baptist church who loves the Lord Jesus Christ, seeks to honor Him through the preaching and teaching His Word, and we love all people, as they have

> been created in the image of God (Genesis 1:27). We also heed our Lord's commission (Matthew 28:19-20) to proclaim to all people the Gospel of Jesus Christ and the free offer of His grace and salvation by faith in His name and repentance from their sin.

Kahler Aff. ¶3.

59. Enjoining Defendants from sharing the Gospel near EPIC would substantially burden their religious exercise. Thurman Aff. ¶¶5–8; Kahler Aff. ¶10 ("While the officers of Heritage Grace have not been directly involved in Testimonies of God's outreach to the EPIC mosque, Heritage Grace is bound by the biblical command for Christians to share the Gospel of Jesus Christ, and any restriction on Heritage Grace's ability to proclaim its religious conviction that there is no other name under heaven by which man can be saved except Jesus Christ (Acts 4:12), even if the message of Jesus is offensive to the lost (1 Pet. 2:6–8, John 15:18–21), would stop the core religious work of Heritage Grace."). Requiring Missionary Defendants to alter their message to make it palatable to Plaintiff would also substantially burden Missionary Defendants' religious exercise. Thurman Aff. ¶19 (EPIC security "expressed concern about our message and requested that we refrain from directly calling the Qur'an or Islam false. We respectfully explained that we could not compromise the truth of the Gospel").

60. Applying either common law nuisance or the Ordinance to subject the Missionary Defendants to civil liability for their religious exercise would substantially burden Defendants' religious free exercise in violation of TRFRA.

Statute Void

61. Plano Ordinance 2023-9-18, Section 14-87(d), declaring noise adjacent to a religious facility and "reasonably likely to interfere" with the facility's operations a noise nuisance, is void to the extent it declares such activity a nuisance *per se*.

62. Municipal ordinances cannot support nuisance *per se* on their own, and Plaintiff fails to plead what state legislative authority grants the Ordinance authorization to establish nuisance *per se*. *Crossman v. City of Galveston*, 247 S.W. 810, 812 (Tex. 1923) ("The rule is that, in the absense of express legislative sanction, a city is without authority to declare that a nuisance which is not so per se or at common law."); *Stockwell v. State*, 221 S.W. 932, 933 (Tex. 1920) ("It would, indeed, be a dangerous power to repose in municipal corporations to permit them to declare, by ordinance or otherwise, anything a nuisance . . . ."); *see Huynh v. Blanchard*, 694 S.W.3d 648, 683 n.49 (Tex. 2024) ("[The City's] own definition of a nuisance, set forth in its ordinance, is not conclusive and binding on the courts." (brackets in original) (*quoting City of Texarkana v. Reagan*, 247 S.W. 816, 817 (Tex. 1923))).

63. Municipal ordinances may not declare a nuisance per se that is not so at common law, which is simply to say that while a city can declare a nuisance and enforce it criminally, it can-

not change the standard of liability for common law claims. *See Crossman*, 247 S.W. at 812. The conduct the Ordinance proscribes would not be considered a nuisance at common law, because the Ordinance focuses on interference with activity, not interference with the use and enjoyment of property, and it does not require that the interference be substantial. *Crosstex*, 505 S.W.3d at 597 (defining the elements of common law nuisance). The Ordinance also lowers the standard for knowing, intentional, or reckless conduct. Common law nuisance claims based on intentional or reckless conduct require at least that the Defendant know that his conduct was "substantially certain" to cause the nuisance injury, *Id.* at 605, while the Ordinance defines conduct as knowing, intentional, or reckless if the interference is "reasonably likely" to occur. Ordinance § 14-86, 14-87(d).

64. The Ordinance is also time- and place-variant, which is incompatible with nuisance per se. *Maranatha Temple, Inc. v. Enterprise Products Co.*, 893 S.W.2d 92, 100 (Tex.App.—Houston [1st Dist.] 1994, writ den'd) ("A nuisance per se is an act, occupation, or structure that is a nuisance at all times, under any circumstances, and in any location."); *Rankin v. FPL Energy, LLC*, 266 S.W.3d 506, 511 n.7 (Tex.App.—Eastland 2008) (same). Nuisance per se is also categorically excluded when dealing with legal conduct, such as the Missionary Defendants' statutorily and constitutionally-protected speech. *Maranatha Temple*, 893 S.W.2d at 100 ("Neither the lawful use of property nor the lawful conduct of a business is a nuisance per se.").

ATTORNEY'S FEES AND COSTS

65. Under the TCPA, when a legal action is dismissed, the defendant is entitled to an award of court costs and reasonable attorney fees that are incurred in defending against the legal action. Tex. Civ. Prac. & Rem. Code § 27.009(a)(1). Therefore, if the Court grants Defendants' motion to dismiss, Defendants ask the Court to award their court costs and reasonable attorney fees incurred in defending against the action. *See id.*

SANCTIONS

66. Under the TCPA, when a legal action is dismissed, the court may sanction the plaintiff to deter the plaintiff from bringing similar future actions; those sanctions are awarded to the defendants in addition to costs and reasonable attorney fees. Tex. Civ. Prac. & Rem. Code § 27.009(a). Plaintiff's Petition targeted core protected speech occurring in a traditional public forum because of the speaker's viewpoint and sought injunctive relief that flagrantly violates Article I, Section 8 of the Texas Constitution and the First Amendment to the U.S. Constitution. Therefore, if the Court grants Defendants' motion to dismiss, Defendants ask the Court to sanction Plaintiff and award those sanctions to Defendants. See Tex. Civ. Prac. & Rem. Code § 27.009(a)(2).

PRAYER

Wherefore, premises considered, Defendants respectfully pray that the Court set this Motion

to Dismiss for hearing in accordance with Tex. Civ. Prac. & Rem. Code § 27.004 and, after the hearing, grant this Motion to Dismiss, make the adverse party fee findings under Tex. Civ. Prac. & Rem. Code § 27.009, and set a supplemental fee submission deadline.

Respectfully submitted,

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Counsel for Defendants Testimonies of God, Inc., Heritage Grace Community Church, Inc., Landon Thurman

CERTIFICATE OF SERVICE

I certify that on November 5, 2025, I served a copy of Defendants Testimonies of God, Inc.; Heritage Grace Community Church, Inc.; and Landon Thurman's Tex. Civ. Prac. & Rem. Code 27.003 Motion to Dismiss and for Recovery of Costs, Attorney's Fees, and Sanctions on Plaintiff by electronic service. My email address is lea@butterfieldpatterson.com.

/s/ Lea E. Patterson
Lea E. Patterson

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