IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BAY AREA UNITARIAN UNIVERSALIST CHURCH; DRINK HOUSTON BETTER, LLC d/b/a ANTIDOTE COFFEE; and PERK YOU LATER, LLC, *Plaintiffs*, v. KEN PAXTON, Attorney General for the State of Texas, in his official capacity; KIM OGG, District Attorney for Harris County, in her official capacity; CHRISTIAN MENEFEE, County Attorney for Harris County, in his official capacity; ED GONZALEZ, County Sheriff for Harris County, in his official capacity; PETE BACON, Acting Chief of Police for the Webster Police Department, in his official capacity; TROY FINNER, Chief of the Houston Police Department, in his official capacity; KIM LEMAUX, Presiding Officer for the Texas Commission on Law Enforcement, in her official capacity, *Defendants.*	)	CIVIL ACTION NO. 4:20-cv-3081

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Protection of the "fundamental right of a private property owner to exercise exclusive dominion and control over [her property]" is a core governmental function. *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1265 (11th Cir. 2012). The Texas Penal Code protects private property rights by criminalizing trespass. As long as property owners provide reasonable notice, their fundamental right to exclude others is guaranteed by the deterrent effect of the criminal law, which depends on the real possibility of arrest, prosecution, and punishment. But the Texas Legislature has decided that not all reasons to exclude are created equal: the Penal Code singles out property owners who hold a specific viewpoint for disfavored treatment. Under sections 30.05, 30.06 and 30.07, a property owner who wishes to exclude persons carrying firearms may only do so if she speaks that message in the burdensome format and language chosen by the state. In other words, she must choose between exercising her core property right to exclude and her right to speak in the manner of her own choosing.

This is incompatible with the First Amendment's robust protection for the individual right to say what one wants, how one wants; as well as the right of an organization to associate, or not, with whomever it pleases. The First Amendment prohibits the government from choosing the specific words and format a speaker must use to convey a disfavored message. Under the unconstitutional-conditions doctrine, the government cannot achieve the same result by threatening to withhold a governmental benefit. Yet sections 30.06 and 30.07 of the Penal Code do just this. Plaintiffs, a coffee shop in Houston and a church in Webster, both wish to exclude individuals with firearms from their properties and to communicate that message in the manner of their own choosing. Instead, in order to avail themselves of the deterrent effect of the criminal law and police protection for their right to exclude, they must post large, text-heavy signs that are a magnet for controversy. And the church's rights are doubly infringed, because the statutes require the church to choose between its right not to associate with people carrying firearms and its right not to speak the state's preferred message.

Make no mistake: the choice is real. Defendants in this case, Plaintiffs' local law-enforcement and prosecutorial authorities, are required to, and do, enforce the challenged statutes. The record establishes that unless property owners comply with the statutes' burdensome and unconstitutional requirements, Defendants cannot and will not arrest or prosecute trespassers with licensed handguns. What is more, would-be trespassers know this and willfully carry their weapons where they are not wanted with impunity. This situation is repugnant to Plaintiffs' First Amendment rights and their fundamental property rights, and this Court should bring it to an end.

NATURE AND STAGE OF THE PROCEEDING

A. Statutory Framework

Among the rights enjoyed by property owners in Texas is the right to exclude others. Property owners' right to exclude is enforced and protected through the criminal trespass laws of the State of Texas. In particular, Texas Penal Code § 30.05(a) provides that a "person commits an offense if the person enters or remains on or in [the] property of another … without effective consent and the person … had notice that the entry was forbidden." Section 30.05(b), in turn, defines "notice" broadly to include, among other things, "oral or written communication by the owner or someone with apparent authority," "fencing or other enclosure obviously designed to exclude intruders," "identifying purple paint marks on trees or posts," and, relevant here, "a sign or signs posted on the property or at the entrance to the building, *reasonably likely to come to the attention of intruders*, indicating that entry is forbidden." *Id.* § 30.05(b)(2) (emphasis added).[1]

Property owners in Texas have the right to exclude entrants for almost any reason. A property owner might, for example, exclude entrants with dogs, people carrying backpacks, or those who fail to meet a prescribed dress code. In each instance, a property owner may provide notice that such

[1] Sections 30.05(a) and (b) are collectively referred to as the "General Criminal Trespass Statute."

persons are excluded by posting a sign "reasonably likely to come to the attention of intruders" pursuant to § 30.05(b). But where a private property owner seeks to exclude on the basis that the entrant is carrying a firearm, the simple, straightforward notice requirements of the General Criminal Trespass Statute do not apply. Instead, she faces a complex set of laws imposing a series of burdensome strictures on the manner in which she may provide notice.

Pursuant to § 30.05(f), it is a defense to prosecution that "the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun was forbidden" and the person possessed a license to carry a handgun in a concealed manner or openly in a holster. Thus, to exclude handguns carried by a licensed individual, a property owner must separately provide "notice" compliant with two statutory provisions: § 30.06, Trespass by License Holder with a Concealed Handgun, and § 30.07, Trespass by License Holder with an Openly Carried Handgun. Under both statutes, "a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication." Tex. Penal Code Ann. §§ 30.06(b), 30.07(b). "Written communication," in turn, is defined by § 30.06(c)(3) as follows:

> (A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun"; or
>
> (B) a sign posted on the property that:
> (i) includes the language described by Paragraph (A) in both English and Spanish;
> (ii) appears in contrasting colors with block letters at least one inch in height; and
> (iii) is displayed in a conspicuous manner clearly visible to the public.

Section 30.07(c)(3) provides a nearly identical definition of "written notice" applicable to license holders openly carrying handguns, except that such notice must be posted at each entrance.

And all that excludes only licensed handguns. In order to exclude other firearms from the property, including long guns and unlicensed handguns, § 30.05(c) requires that signs: (1) be posted at each entrance to the property; (2) include language that is identical or substantially similar the

following: "Pursuant to Section 30.05, Penal Code (criminal trespass), a person may not enter this property with a firearm"; (3) include this language in both English and Spanish; (4) appear in contrasting colors; (5) be written in block letters at least one inch in height; and (6) be displayed in a conspicuous manner clearly visible to the public.

The end result of this statutory scheme is that if a property owner wants to provide notice that *all* firearms are prohibited, the owner must post at least *three* separate signs, of which two must appear at each entrance to the property: one sign compliant with § 30.05(c), one § 30.06 sign, and one § 30.07 sign. All three signs must parrot specific statutory language written in contrasting colors and block letters at least one inch in height; all three signs must be written in both English and Spanish; and all three signs must be displayed in a conspicuous manner clearly visible to the public.

This statutory signage scheme, particularly when compared to the straightforward General Criminal Trespass Statute, is complex, redundant, and confusing. Neither the text nor legislative history proffers any explanation of why such a complex scheme is necessary to effectively provide notice that firearms are disallowed on private property. On the contrary, the avowed purpose of the legislative drafter was to make the required language "cumbersome," so as to discourage property owners from attempting to exclude firearms.[2] By every measure, the drafter succeeded.

Moreover, signs compliant with §§ 30.05(c), 30.06, and 30.07 are not provided to property owners by any public entity. *See* Lee Dep. Tr., Ex. C, App. 48; Wilhelm Dep. Tr., Ex. D, App. 92-174; Bacon Dep. Tr., Ex. E, App. 187-89. Consequently, property owners must shoulder the financial cost of producing, installing, and displaying the signs themselves.

Not only are the signs burdensome and unsightly, they are also unnecessarily large, taking up prime real-estate on the facade of businesses who want to exclude guns. They are also ineffective; the

[2] *See* Laylan Copelin, *Limiting guns as Texas businesses? It's a legal – and legalese – fight*, STATESMAN, https://bit.ly/3FGZqT8 (last updated Dec. 11, 2018, 10:28 AM), Ex. B, App. 9.

text-heavy and legalistic signs are hard to decipher. A more effective sign could include less text and employ universally recognized iconography. *See* Jourdan Expert Report, Ex. F, App. 192-96 ¶¶ 10, 19.

B. Plaintiffs are Injured by Sections 30.06 and 30.07.

Plaintiff Bay Area Universal Unitarian Church (the "Church") is located in Harris County, Texas, near the border of Houston and Webster. Brandon Decl., Ex. G, App. 201 ¶ 1. The Church receives governmental services, including police and prosecutorial services, from the City of Webster and Harris County. *Id.* at 207-08 ¶ 17. Plaintiff Antidote Coffee is a coffee shop located in Harris County, in Houston. Callaway Decl., Ex. I, App. 219 ¶ 1. Antidote Coffee receives governmental services, including police and prosecutorial services, from Harris County.[3] *Id.* at 223 ¶ 18. Both Plaintiffs wish to exclude all firearms from their property. Ex. G, App. 204 ¶ 3; Ex. I, App. 220 ¶ 2.

The Church Plaintiff. The Church professes a message of nonviolence, and, consistent with that message, it has an official policy of disallowing all firearms on Church grounds. Ex. G, App. 204 ¶¶ 2-3. The Church displays on its front and side entrances signs that it believes to be compliant with § 30.07, to prohibit the open carry of handguns by license holders. *Id.* at 204 ¶ 4. Each of the signs measure 18 x 24 inches and the Church paid $111.80 to post them. *Id.* The Church believes that posting any further no-gun signs would detract too much from the religious message the Church wants to express, and would turn entrants' thoughts immediately to guns and violence. *See* Zimmerman Decl., Ex. H, App. 217 ¶ 4. The Church also believes that posting any additional no-guns signs would impair the safety and accessibility of the Church building. Ex. G, App. 205 ¶ 6. Church greeters need to be able to see through the clear glass doorways to determine whether an entrant needs assistance

[3] Although calls for service within the incorporated areas of Harris County, including the Cities of Houston and Webster, are not routed to the Harris County Sheriff's Office ("HCSO"), HCSO has "situational" law enforcement responsibilities in such incorporated areas. Ex. C, App. 21. Officers employed by the HCSO have authority to arrest individuals for violations of the Texas Penal Code anywhere in Harris County, including within the cities of Houston and Webster. *Id.* at 23.

entering, or whether an approaching entrant may pose a safety risk. *See id.*; Ex. F, App. 196 ¶ 22 (noting that the "relatively large, text heavy signs" required by §§ 30.06 and 30.07 will "[i]n many cases … block sightlines on glass doors and store windows"). The Church would prefer to communicate that guns are disallowed by posting a sign in its own words, in a way that situates the prohibition on firearms within the Church's larger religious philosophy. *See* Ex. G, App. 206 ¶ 11. But the requirements of § 30.07(c)(3) provide no leeway to convey the Church's "no guns" message in a more positive way. *See* Ex. F, App. 195-96 ¶ 19. The Church would also prefer to post a smaller sign that does not drown out other messaging, as the current § 30.07 signs do. *See* Ex. G, App. 206 ¶¶ 7, 11.

Plaintiff Antidote Coffee. Antidote Coffee is a small, family-oriented coffee shop that sells coffee, wine, ice cream, and related goods. Ex. I, App. 219-20 ¶ 1. In prior years, Antidote displayed a small three-inch-by-three-inch pictographic "no-guns" sign in its front window. *Id* at 220 ¶ 4. Today, Antidote posts signs that it believes are compliant with §§ 30.05(c), 30.06, and 30.07, taking up a total of 10.33 square feet—over five feet at each entrance. *Id.* at 220 ¶ 5. These signs cover a large portion of Antidote's storefront and are detrimental to its desired aesthetic. *Id.* at 220-22 ¶¶ 5-6, 10. The signs also force Antidote to make what it considers a "bold political statement" about guns. *Id.* at 221 ¶ 6.

Indeed, members of the public have stated that they view the "big ugly sign[s]" required by §§ 30.06 and 30.07 to be "social[]" and "political[]" statements on behalf of the institutions who post them.[4] The political valence of the signs has transformed them into a "Scarlet Letter," causing passers-by to deem Antidote Coffee anti-gun. For example, Antidote received a one-star rating from one Google user who explained: "The coffee shop posts 30.06 and 30.07 signage."[5] Another member of the public posted about Antidote on an online forum known as Texas3006.com, which provides "a

[4] Post by The Annoyed Man, TEXASCHLFORUM.COM, https://bit.ly/3WlIlEs (Mar. 11, 2019 12:39 PM), Ex. J, App. 229.

[5] GOOGLE.COM, https://bit.ly/3FEBFuW (last visited Nov. 1, 2022).

centralized location for reporting and retrieving businesses and other facilities that deny our right to defend both ourselves and our families from criminals."[6] On the website, users post the addresses of various properties that display no-guns signs along with detailed descriptions of whether the signs meet the statutory requirements, such as whether the letters are less than an inch tall. One Texas3006 user noted that Antidote Coffee posts valid 30.06 and 30.07 signs at both entrances and commented, "I guess I have to go somewhere else for coffee."[7]

As the existence of the Texas3006 website demonstrates, the complicated statutory signage framework in Texas encourages some members of the public to bring firearms into environments where they are not welcome in order to test the reaction of the public and of law enforcement. Such persons are known to law enforcement in Texas and are sometimes referred to as "Second Amendment Auditors." *See* Duplechain Dep. Tr., Ex. L, App. 267-75-75.

Dawn Callaway, an owner of Antidote, has had firsthand experience with this. On one occasion, while replacing the §§ 30.06 and 3.07 signs outside Antidote, a man approached Ms. Callaway to tell her that "those signs don't matter, that he can come in anyway, and that … [she would have] to verbally tell him that he wasn't allowed because those signs didn't actually mean anything, and that he teaches a concealed handgun course so he knows." Ex. K, App. 264-65.

This interaction was not an isolated incident. Public message boards across the internet reflect the view of gun-bearing members of the public that the complex statutory requirements of §§ 30.06 and 30.07 allow them to circumvent property owners' attempts to exclude firearms, while remaining technically compliant with the law. *See, e.g.*, Ex. J, App. 228 ("I walked right past a sign yesterday that said 'No firearms allowed'. I thought it was cute."). Despite Antidote's posting of all signs required by §§ 30.05(c), 30.06, and 30.07, individuals with firearms have entered Antidote's property. When

[6] Russell Jones, TEXAS3006.COM, https://bit.ly/3t33aHr (last visited Nov. 1, 2022).

[7] Post by Texas12Gauge, TEXAS3006.COM (June 3, 2017), https://bit.ly/3sIyuuy.

confronted, these individuals have become verbally combative and resisted leaving. One gun-bearing patron falsely asserted that he was an off-duty police officer and so was permitted to have his gun in the coffee shop. Ex. K, App. 247-49. In another case, an individual with a firearm initially departed the premises but later returned with a sword, in an apparent reaction to being prohibited from carrying a firearm into the coffee shop. *Id.* at 254. Antidote's staff felt threatened by the incident. *See id.* at 255.

Alternate Forms of Notice. Sections 30.06 and 30.07 provide that, in lieu of posting compliant signs, a property owner may provide individualized notice that licensed firearms are prohibited, either orally or via card. Providing individual notice by either method is impracticable for Plaintiffs and places an even greater burden on speech than using signs. *See* Ex. G, App. 207 ¶¶ 14-16; Ex. I, App. 223 ¶¶ 14-17. First, because there is no way to know whether any given entrant has a concealed firearm, Plaintiffs would have to give individual notice to every single person who enters the premises. *See id.*; Ex. E, App. 167-68. Second, the Church feels that a practice of providing individual notice to every churchgoer, either by card or orally, would substantially alter the religious experience it wishes to provide. Ex. G, App. 207 ¶¶ 15-16. Antidote similarly feels that a practice of providing individual notice to every customer, either by card or orally, would substantially alter the customer experience. Ex. I, App. 223 ¶¶ 16-17. It is also intimidating, uncomfortable and scary to confront an individual carrying a firearm to ask them to leave. *See generally* Ex. G, App. 207 ¶ 13; Ex. I, App. 223 ¶ 15.

C. Defendants Enforce Sections 30.06 and 30.07.

The Webster Police Department, through Chief of Police Pete Bacon, and the Harris County Sheriff's Office, through Sheriff Ed Gonzalez (collectively, the "Law Enforcement Defendants"), enforce the laws of the State of Texas, including §§ 30.06 and 30.07, in their respective jurisdictions. Ex. C, App. 17-18, 23-26; Ex. E, App. 134-37. The Harris County District Attorney's Office, through District Attorney Kim Ogg, prosecutes violations of Texas Law, including § 30.06 and § 30.07, in Harris County. Ex. D, App. 61, 66-67; Ogg Resp. to Pls.' Req. for Admis., Ex. M, App. 280.

Before making an arrest for a violation of §§ 30.05, 30.06, or 30.07, officers employed by the Law Enforcement Defendants must have probable cause to believe all elements, including the notice requirements, are satisfied. Ex. C, App. 26; Gonzalez Resp. to Pls. Req. for Admis., Ex. N, App. 291; Ex E., App. 138, 147 (stating that if any one requirement of §§ 30.06 or 30.07—such as block lettering at least one inch in height—is not satisfied, an individual would not be in violation of the statute and an officer could not make an arrest for violation of the statute). And prosecutors employed by the Harris County District Attorney's Office must ascertain probable cause as to all elements, including notice requirements, before accepting charges or pursuing prosecution for violations of §§ 30.06 or 30.07. *See* Ex. D, App. 70-72, 75-80. For this reason, officers and prosecutors employed by Defendants are specifically trained on the nuances of the signage requirements under §§ 30.05, 30.06, and 30.07. *See* TCOLE Course 3184, Ex. O., App. 29; TCOLE Course 3187, Ex. P, App. 350; Tex. D. & Cnty. Att'ys Assoc. 2015-2017 Leg. Update, Ex. Q, App. 396; Tex. D. & Cnty. Att'ys Assoc. 2019-2021 Leg. Update, Ex. R, App. 402; HCDA Slide Deck, Ex. S, App. 407; Ex. D, App. 96-99. Officers and prosecutors are further trained that signs compliant with each of the three statutes—§§ 30.05(c), 30.06, and 30.07—are required if a property owner wants to provide notice that long guns as well as unlicensed, licensed concealed, and licensed openly carried handguns are all prohibited. *Id.*

When officers of the Law Enforcement Defendants are on patrol or respond to calls for service, they put this training into practice. For example, on June 4, 2017, the Webster Police Department responded to a call for service at a Cheddars restaurant involving a person carrying a concealed weapon. *See* Event Report, Ex. T, App. 420; Ex. E, App. 161. Chief Bacon testified that "[a]t some point, the weapon was observed, apparently by management, resulting in a call [to] the police department." Ex. E, App. 161. The event report states that Cheddars "DOES HAVE 30.07 POSTED," indicating that responding officers reviewed the posted signage and discovered a sign comporting with the requirements of that section. Ex. T, App. 420. Chief Bacon testified that "based

on [the Event Report], I do not believe, to my knowledge, that Cheddars has a 30.06 sign posted." Ex. E, App. 162. And "[i]n the absence of a 30.06 sign, I do not believe that the officer would have the right to remove the gentleman from the premises, unless Cheddars, again, insisted." *Id.* at 162-63.

D. Procedural Background

Plaintiffs filed this suit on November 2, 2020, against a number of state and local officials. ECF No. 1. All Defendants moved to dismiss, and on August 27, 2021, this Court entered an order granting those motions in part while allowing Plaintiffs' as-applied First Amendment claims to go forward. ECF No. 68. On September 27, 2021, State Defendants Kim Lemaux and Ken Paxton were voluntarily dismissed. ECF No. 82.

On December 23, 2021, Defendant Troy Finner moved for judgment on the pleadings. ECF No. 115. The parties engaged in discovery during the pendency of that motion, and, on September 1, 2022, discovery closed. *See* ECF No. 108. On September 29, 2022, this Court granted Chief Finner's motion and dismissed Plaintiffs' claims against Chief Finner without prejudice. ECF No. 147. On October 31, 2022, Plaintiffs moved to amend the Complaint to address the issues identified in the Court's September 29, 2022, Order. ECF No. 150. That motion remains pending. Plaintiffs now move for summary judgment against all remaining Defendants.

ISSUE PRESENTED AND STANDARD OF REVIEW

The issue presented is whether Plaintiffs are entitled to summary judgment in their favor. Summary judgment is proper if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant "bears the initial burden of informing the district court of the basis for the motion, and … demonstrat[ing] the absence of a genuine issue of material fact." *Becerra v. Asher*, 921 F. Supp. 1538, 1542 (S.D. Tex. 1996). "Once the movant carries this burden, the burden shifts to the nonmovant to … set forth specific facts showing the existence of a genuine issue for trial." *Id.*

SUMMARY OF ARGUMENT

I. Plaintiffs have standing. They are injured as a matter of law because the challenged statutes burden their speech and treat them differently from those with differing viewpoints. Moreover, Plaintiffs have been injured materially, in that they have been compelled to commission, purchase, and post the signs described by the statutes, at their own expense. These injuries are traceable to Defendants and would be redressed by a favorable decision in this case. Defendants are responsible for enforcing the challenged statutes where Plaintiffs are located. Because Defendants enforce the challenged statutes *as written*—as they must—Plaintiffs must adhere to the statutory notice requirements. If the Court enjoins the burdensome notice requirements, Plaintiffs will be free to communicate, in their own words, the message that firearms are unwelcome on their properties.

II. The challenged statutes violate the First Amendment. By singling out for special burdens the message that firearms are unwelcome, the statutes discriminate on the basis of content and viewpoint. And by providing immunity to licensed handgun carriers entering their property unless Plaintiffs post the signs prescribed in the statutes, the state impermissibly conditions Plaintiffs' exercise of their core property right to exclude on their willingness to give up their First Amendment right to fashion their own speech. Finally, the statutes also unconstitutionally force the church to choose between its free-speech rights and its right not to associate with individuals carrying firearms.

These laws could not satisfy even the most lenient degree of First Amendment scrutiny. None are justified by—let alone tailored to further—any legitimate governmental interest; instead, they are designed specifically to burden the exercise of Plaintiffs' property and association rights.

ARGUMENT

I. PLAINTIFFS HAVE STANDING.

Article III standing has three elements: *First*, the plaintiff must have suffered "an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual

or imminent, not "conjectural" or "hypothetical."'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted). *Second*, the injury must be "fairly … trace[able] to the challenged action of the defendant, and not … th[e] result [of] the independent action of some third party." *Id.* (alterations in original) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)). *Third*, the plaintiff must show that her injury "will [likely] be 'redressed by a favorable decision.'" *Id.* at 561 (quoting *Simon*, 426 U.S. at 41-42). Plaintiffs meet all three requirements. Because Texas's trespass scheme conditions its protections on Plaintiffs' acceding to state-mandated speech in a form they find objectionable, it is invalid under the unconstitutional-conditions doctrine. Plaintiffs therefore have standing to sue Defendants, who are charged with enforcing the scheme. *See, e.g.*, *Dep't of Tex., Veterans of Foreign Wars of the U.S. v. Tex. Lottery Comm'n*, 760 F.3d 427, 434 (5th Cir. 2014) (en banc).

A. The Statutory Scheme Concretely Injures Plaintiffs.

The enforcement of Texas's trespass regime concretely injures Plaintiffs in three ways: first, it selectively burdens the viewpoints of property owners like Plaintiffs, who wish to exclude firearms, over property owners who wish to exclude entrants for any other reason; second, it compels Plaintiffs to speak in a manner with which they disagree; third, it impairs the Church's freedom of association. Each of these independently satisfies the injury-in-fact element of standing, and none amounts to a self-inflicted injury, contrary to this Court's previous ruling.

1. The Scheme Injures Plaintiffs by Imposing Uneven Burdens on the Expressive Viewpoint of Property Owners Seeking to Exclude Firearms.

Before Plaintiffs even posted their §§ 30.06 and 30.07 signs, they had suffered a sufficient injury to have Article III standing. The First Amendment mandates evenhanded treatment of differing viewpoints. The government may not "license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 392 (1992). Persons subjected to a regime that burdens their speech in an "asymmetrical" manner are sufficiently injured for standing purposes. *See, e.g.*, *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734-35 (2008).

The speaker need not even have yet engaged in the speech in question. *See id.* at 734. In *Davis*, a political candidate had suffered a cognizable Article III injury where he intended to self-fund his campaign and that choice would confer on his opponent more favorable contribution limits. *Id.* Although Davis's opponent ultimately opted out of the contribution limits that Davis challenged, the Court found that Davis nonetheless possessed "the requisite stake in the outcome" of the case for standing. *Id.* His injury stemmed from being subjected to the asymmetric scheme itself. *Id.*

Texas has created a similarly asymmetrical scheme. It burdens the speech of property owners who wish to exclude firearms from their premises by giving them a narrow set of burdensome options to provide notice, while leaving all other property owners free to provide notice in any way they choose. To exclude trespassers for some reason *other than* firearm possession, a property owner may provide "oral or written communication" or post any sign that is "reasonably likely" to notify entrants "that entry is forbidden." Tex. Penal Code Ann. § 30.05(b)(2)(A). Meanwhile, property owners wishing to exclude firearms have fewer (and more onerous) options. Such owners can provide notice via oral communication; written communication *only* if it follows a specific government script; or a sign that, again, must reproduce, word for word, a state-prescribed message (in both English and Spanish). *See* Tex. Penal Code Ann. §§ 30.06(c)(3), 30.07(c)(3). The signage requirements extend all the way down to font size and color. *See id.*

Just as in *Davis*, simply being subjected to this asymmetrical scheme—which singles out property owners wishing to exclude licensed firearms and gives them narrower and more burdensome options for how to convey that message—is a First Amendment injury.

2. The Scheme Impermissibly Compels a Manner of Expression Offensive to Plaintiffs, Which Is an Injury-in-Fact.

In any event, Plaintiffs *have* posted signs to conform with §§ 30.06 and 30.07; they are actually engaging in government-scripted speech. That is also sufficient injury for Article III.

Having to convey a message against one's will is a cognizable First Amendment injury for standing purposes. *See Wooley v. Maynard*, 430 U.S. 705, 714-15 (1977) (compelling the display of a state's motto on a license plate violated the First Amendment). So is being told *how* to speak. "[T]he government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners; free and robust debate cannot thrive if directed by the government." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 791 (1988); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995) (similar); *see also infra* at 19, 21, 25. The difference between one's desired manner of expression and the government-mandated manner need not be vast for an injury to exist. The First Amendment recognizes, and protects, even limited expressive interests. *See, e.g.*, *City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000) (desire to dance nude, rather than in a g-string, is expressive conduct triggering First Amendment scrutiny). For example, merely being forced to label films as "political propaganda"—even if the films may still be displayed—is enough of a First Amendment injury to confer standing. *Meese v. Keene*, 481 U.S. 465, 473 (1987).

Posting §§ 30.06 and 30.07 signs constitutes a First Amendment injury under these precedents. Plaintiffs need not object to the *substance* of the message—as, here, they wish to exclude guns—because it is enough that the *manner* of the compelled speech is offensive to them. *See* Ex. G, App. 204-07 ¶¶ 3-4, 6-10, 15-16; Ex. I, App. 221-23 ¶¶ 6-7, 10, 15-17; *Riley*, 487 U.S. at 791 ("[W]e presume that speakers, not the government, know best *both* what they want to say and *how* to say it." (emphases added)); *Int'l Soc. for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809, 820 (5th Cir. 1979) (finding religious adherents had standing to challenge an ordinance requiring that solicitations from the public be made from designated booths, which restricted the manner in which the plaintiffs would ordinarily make solicitations—*i.e.*, "aggressively and without inhibition").

Nor does it matter, for standing purposes, if Plaintiffs' objection to the signs is aesthetic. As the Supreme Court observed in *Lujan*, the desire to observe wild animals "for purely esthetic

purposes" would be "undeniably a cognizable interest for purpose of standing." 504 U.S. at 562-63. Having *engaged in speech* contrary to one's own aesthetic preferences is an even more concrete and particularized injury. *See, e.g.*, *Jacobs v. Clark Cnty. Sch. Dist.*, 526 F.3d 419, 425-27 (9th Cir. 2008) (finding students had standing to challenge a mandatory dress code as injuring their "First Amendment rights to engage in expressive conduct via [their] choice of clothing"); *cf. City of Erie*, 529 U.S. at 289. If Texas required gun-excluding property owners to paint their entire premises bright scarlet, that would be a cognizable aesthetic injury. The actual statutory requirements are not different in kind.

3. Separately, Texas's Scheme Impairs the Church's Right to Associate with Only Unarmed Patrons.

In addition to the viewpoint- and speech-based injuries discussed above, the Church has suffered a separate injury because of Texas's regime: The Church cannot effectively exclude armed entrants, which impairs its freedom of association. *See Boy Scouts of Am. v. Dale*, 530 U.S. 640, 650 (2000). The Church wishes to exclude weapons for both expressive and associational reasons. *See* Ex. G, App. 204-07 ¶¶ 2-4, 6-10, 14-16. Yet Texas's convoluted scheme emboldens members of the public to flout what they perceive to be inadequate signage on no-gun premises, *see* Ex. J, App. 228; D. Callaway Dep. Tr., Ex. K, App. 245-58, 264-66, making it exceedingly difficult for the Church to exclude firearms. And this injury is particularized to the Church—the carrying of weapons runs counter to the Church's most fundamental religious tenets, including conversation-based conflict resolution, nonviolence, love, and compassion. Ex. G, App. 206 ¶ 8; *id.* at 210.

4. These Injuries Are Not Self-Inflicted.

Although it is true that "standing cannot be conferred by a self-inflicted injury," Mem., ECF No. 147 at 11 (quoting *Zimmerman v. City of Austin*, 881 F.3d 378, 389 (5th Cir. 2018)), Plaintiffs' injuries are not self-inflicted. In an unconstitutional-conditions case, a plaintiff that engages in unwanted speech in order to obtain a governmental benefit has not inflicted her own injury. *See, e.g.*, *Agency for Int'l Dev. v. All. for Open Soc. Int'l, Inc.*, 570 U.S. 205, 219 (2013) (rejecting as "[in]sufficient" the

government's suggestion that funding recipients who object to a program's conditions may decline the funds and thereby avoid being subjected to the condition).

Plaintiffs cannot opt out of the asymmetrical Texas scheme, because—to state the obvious—it is the only criminal trespass law there is. And *all* the options available to them to express their no-guns viewpoint are burdensome and objectionable to them. *See* Ex. G, App. 204-07 ¶¶ 4-10, 14-16; Ex. I, App. 221-23 ¶¶ 6-8, 10, 14-17. The only way they can choose not to engage in a burdensome form of expression is if they forgo their right to exclude firearms—which is precisely the constitutional problem. Under the circumstances, they have chosen to post (some of) the government-scripted signs, but that choice among evils does not make their constitutional injury voluntary.

Moreover, if Plaintiffs post nonconforming signs, an entrant carrying a licensed handgun who walks past the signs cannot be arrested or prosecuted for trespass. Ex. C, App. 72; Ex. D, App. 56-58, 77, 79; Ex. E, App. 138, 147. This evidence establishes that Plaintiffs will in fact forgo the protection of Texas criminal law unless they adopt verbatim Texas's specified signage. The record also establishes that some Texas residents monitor signage and deliberately enter properties with nonconforming signs to test their right to carry and have otherwise confronted Plaintiffs over their signs. *See* Ex. K, App. 245-47 (explaining that a gun-bearing patron stated falsely that he was an off-duty officer and insisted on having his gun); *id.* at 249-58 (explaining that another gun-bearing patron initially left the premises, then later returned with a sword); Ex. J, App. 228 (describing posts on public message boards contemplating carrying firearms where noncompliant or insufficient "no guns" signs are posted); Ex. L, App. 267-75 (describing Second Amendment Auditors); *supra* at 7 (describing Texas3006 website and public posts regarding Antidote Coffee's statutory signage).

B. Plaintiffs' Injuries Are Fairly Traceable to Defendants.

Standing's second element requires Plaintiffs to show that their injuries are fairly traceable to Defendants' challenged conduct. *Lujan*, 504 U.S. at 560. Lest this element collapse with the merits,

however, "[t]racing an injury is not the same as seeking its proximate cause." *K.P. v. LeBlanc*, 627 F.3d 115, 123 (5th Cir. 2010). Instead, the relevant question is whether defendants are "among those who cause [Plaintiffs'] injury." *Air Evac EMS, Inc. v. Texas, Dep't of Ins., Div. of Workers' Comp.*, 851 F.3d 507, 514 (5th Cir. 2017). The Fifth Circuit has held the traceability requirement satisfied where a defendant applies an allegedly invalid legal standard to decide a fee dispute involving the plaintiff. *See id.* That is precisely analogous to the situation here, where Defendants apply the allegedly unconstitutional notice requirements of §§ 30.06 and 30.07 to determine whether Plaintiffs are entitled to the protection of Texas' criminal trespass laws. Specifically, officers and prosecutors employed by Defendants are trained on the notice requirements of §§ 30.06 and 30.07 with particularity, and they cannot make an arrest, or pursue prosecution, for violation of those statutes if notice is statutorily deficient. *See supra* at 9. And the record shows that officers employed by Defendants put that training into practice in evaluating posted no-guns signs when responding to calls for service. *Supra* at 9-10. All Defendants, moreover, have admitted in their depositions that they must enforce Texas's regime as written. Ex. C, App. 17-18, 23-26; Ex. D, App. 61, 66-67; Ex. E, App. 134-36.

All this leads to one inexorable conclusion: the injuries that Plaintiffs have suffered, and will continue to suffer absent an injunction, are fairly traceable to Defendants' enforcing of Texas's regime. Because Defendants must enforce the regime as written, Plaintiffs are required to speak in a way that (1) is more burdensome than the speech required of property owners wishing to exclude entrants for any other reason, and (2) is offensive to Plaintiffs. Otherwise, Plaintiffs will not benefit from the deterrence that comes from the criminal law of trespass. In short, Defendants are "among those who cause [Plaintiffs'] injury," thus satisfying traceability. *Air Evac EMS*, 851 F.3d at 514.

C. Plaintiffs' Injuries Are Redressable by a Favorable Decision.

To establish redressability, a plaintiff need not show that the requested relief will completely "relieve his every injury." *K.P.*, 627 F.3d at 123 (quoting *Larson v. Valente*, 456 U.S. 228, 243 n.15

(1982)). Rather, it suffices for a plaintiff to show "that a favorable decision will relieve a discrete injury to himself." *Id.* (quoting *Larson*, 456 U.S. at 243 n.15). Where, as here, Defendants have "definite responsibilities relating to the application of [the statute]," and "wield influence" relevant to Plaintiffs' injury, redressability is satisfied. *Air Evac EMS*, 851 F.3d at 507. Plaintiffs easily clear this bar, for the same reasons stated above. The relief Plaintiffs seek—a declaration that Texas impermissibly conditions the benefits of trespass law on Plaintiffs' adopting a state-mandated expression, and an injunction preventing Defendants from enforcing that impermissible condition—would provide complete relief to Plaintiffs. Plaintiffs could then exercise their right to exclude firearms without adopting burdensome, government-scripted speech.

D. The Harris County Defendants Are Not Entitled to Sovereign Immunity.

In their answer, the Harris County Defendants asserted the affirmative defense of sovereign immunity. *See* ECF 105, at 8 ¶ 70. There is no evidence supporting this defense. Plaintiffs' claims fall within the heartland of the *Ex parte Young* exception to sovereign immunity. *See Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002); *see generally Ex parte Young*, 209 U.S. 123, 166-67 (1908). This exception applies if the "complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md.*, 535 U.S. at 645 (citation omitted). That is what Plaintiffs' complaint alleges—Defendants' (including the Harris County Defendants') enforcement of Texas's trespass regime violates Plaintiffs' federal (First Amendment) rights. And the complaint seeks only prospective relief—a declaration of this ongoing injury and an injunction that prevents Defendants from further injuring Plaintiffs. Therefore, the Harris County Defendants are not entitled to sovereign immunity.

II. THE STATUTES VIOLATE PLAINTIFFS' FIRST AMENDMENT RIGHTS.

Under many of the same principles, Texas's trespass scheme violates Plaintiffs' First Amendment rights. *First*, it violates their right to free speech. Under the unconstitutional-conditions

doctrine, if it would violate Plaintiffs' First Amendment rights to compel them directly to parrot the §§ 30.06 and 30.07 notice requirements, it is equally a First Amendment violation to coerce them by "condition[ing] the conferral of a government benefit on" their agreeing to do so. *Dep't of Tex.*, 760 F.3d at 438; *see also Perry v. Sindermann*, 408 U.S. 593, 597 (1972) ("[I]f the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited."). Here, Texas could not directly impose the §§ 30.06 and 30.07 signage requirements on Plaintiffs, because the challenged statutes are content- and viewpoint-based and compel government-scripted speech. And the challenge statutes do condition Plaintiffs' enjoyment of a right—their fundamental property right to exclude—on their agreeing to forfeit their First Amendment objections and follow the government's burdensome script. "Content-based laws," such as these, "may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). But this coercive scheme does not further any substantial government interest, let alone in a narrowly tailored fashion. The challenged statutes therefore violate the First Amendment as to both Plaintiffs.

Second, Texas's trespass scheme violates the Church's right of association. The First Amendment "right to associate with others" is infringed by "a regulation that forces [a] group to accept members it does not desire." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622-23 (1984). The state therefore could not require the church to associate with individuals carrying firearms during worship services. It therefore also cannot condition government protection for the Church's ability to exclude such individuals on its acceptance of the challenged statutes' burdensome signage requirements. *See, e.g.*, *Lefkowitz v. Cunningham*, 431 U.S. 801, 807-08 (1977) (holding statute unconstitutional where it conditioned right to political association on forfeiture of Fifth Amendment right).

A. The Challenged Statutes Violate Plaintiffs' Freedom of Speech.

1. The Signage Requirements Are Content- and Viewpoint-Based.

Texas could not compel Plaintiffs to post the signs directly because such a requirement would be impermissibly content- and viewpoint-based. It would be content-based because "[m]andating speech that a speaker would not otherwise make necessarily alters the content of the speech." *Riley*, 487 U.S. at 795; *see also Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371-72 (2018) (noting that, outside of narrow precedents involving commercial speech, which are not applicable here, "compelling individuals to speak a particular message" is a "presumptively unconstitutional," "content-based" regulation (citation omitted)).

Even worse, the Texas scheme is also viewpoint-based. *See, e.g.*, *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) ("When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant."). The burdensome requirements of §§ 30.06 and 30.07 do not apply to all signage relating to trespass or handguns—only to signage indicating that handguns are unwelcome. *See Reed*, 576 U.S. at 168 (a regulation is viewpoint based when it discriminates "on the specific motivating ideology or the opinion or perspective of the speaker") (citations omitted). Viewpoint discrimination is particularly offensive because it "suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 785 (1978). Indeed, the drafter of the challenged statutes stated that "he intentionally made the sign's language cumbersome so as to discourage businesses from curbing the right to bear arms." Ex. B, App. 9.

It is no defense that Plaintiffs agree with the overall message that they wish to exclude firearms. *See supra* at 14-15. Freedom of speech "necessarily compris[es] the decision of both what to say and what *not* to say." *Riley*, 487 U.S. at 797; *see also Kinney v. Barnes*, 443 S.W.3d 87, 95 (Tex. 2014) ("[Freedom of speech] cannot co-exist with a power to … fashion the form of [a person's] speech."

(citation omitted)). As the Supreme Court has recognized, "[a] requirement that adherents of particular religious faiths or political parties wear identifying arm-bands" would "obviously" invade the freedoms guaranteed by the First Amendment. *Am. Commc'ns Ass'n v. Douds*, 339 U.S. 382, 402 (1950). The injury here is of the same type. The large size and distinctive nature of the signs makes them a Scarlet Letter—a badge that sets Plaintiffs apart and marks them for opprobrium. *See supra* at 6-7.

Relatedly, it is a First Amendment violation for the state to impose additional burdens on a speaker when they voluntarily convey a particular message. In *Miami Herald Publishing Co. v. Tornillo*, the Supreme Court considered a state law requiring a newspaper that had criticized a political candidate to print the candidate's reply for free. 418 U.S. 241, 244 (1974). The Court held this statute unconstitutional because it "exacts a penalty on the basis of the content of a newspaper." *Id.* at 256. Part of "the penalty" was "the cost in printing and composing time and materials and in taking up space that could be devoted to other material…." *Id.* Here, too, the challenged statutes penalize Plaintiffs by requiring them to expend additional costs (as well as additional space) on multiple large signs just because they wish to convey the message that firearms are unwelcome. *See* Ex. G, App. 204 ¶ 4 (noting that the Church paid $111.80 for its § 30.07 signs); Ex. I, App. 222 ¶ 12 (noting that Antidote Coffee has paid more than $500 for its §§ 30.05(c), 30.06, and 30.07 signs and installation); *Rosenberger*, 515 U.S. at 828 ("[T]he government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression.").

2. Sections 30.06 and 30.07 Impose an Unconstitutional Condition.

If the state may not "directly require" Plaintiffs to post §§ 30.06 and 30.07 signs, the state may not condition a governmental benefit on their doing so—even a benefit to which Plaintiffs are not entitled. *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006); *Dep't of Tex.*, 760 F.3d at 437 ("[E]ven though a person has no 'right' to a valuable governmental benefit[,] … the government may not … deny a benefit to a person on a basis that infringes … his interest in freedom

of speech." (quoting *Perry*, 408 U.S. at 597)). But here, Texas has denied Plaintiffs the protection of the criminal law against handgun-toting trespassers *unless* Plaintiffs speak the particular message, in the particular manner, that the state has dictated.

The protection of the right to exclude is a core governmental function. *See GeorgiaCarry.Org, Inc.*, 687 F.3d at 1265. And government protects that right through the deterrent effect of the criminal trespass law, backed up by the real threat of arrest and prosecution. As the Supreme Court has repeatedly recognized, "[t]he severity of criminal sanctions," especially when combined with "the opprobrium and stigma of a criminal conviction," results in criminal law's having an "increased deterrent effect" over and above that of civil regulations. *Reno v. ACLU*, 521 U.S. 844, 872 (1997); *see, e.g.*, *Virginia v. Hicks*, 539 U.S. 113, 119 (2003) (observing that threat of "criminal sanctions" creates greater deterrence); *see also Prantil v. Arkema Inc.*, 986 F.3d 570, 577 n.29 (5th Cir. 2021) (damages for civil trespass claim unavailable unless plaintiff can prove injury). As set forth above, if Plaintiffs provide notice of their intent to exclude licensed firearms in a manner that does not conform with §§ 30.06 and 30.07, and an entrant with a licensed handgun ignores that notice, that entrant has not committed the crime of trespass and can be neither arrested nor prosecuted. This removes "one of the most essential sticks in [Plaintiffs'] bundle of rights that are commonly characterized as property," *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021) (citation omitted).

The factual record demonstrates that this concern is not hypothetical. Second Amendment auditors patrol Texas, seeking opportunities to test the limits of their ability to carry firearms onto others' property. *See* Ex. L, App. 267-75. These individuals are emboldened by the impossibility of criminal sanctions where signage is nonconforming. *See* Ex. K, App. 264-65; Ex. J, App. 226-33; Sealed Ex. A, ECF No. 151-1 ¶ 43. Indeed, there is a website devoted to calling out establishments' noncompliance with § 30.06—on which Antidote has been mentioned. *Supra* at 7. Plaintiffs are put to

a choice: either forfeit the right to exclude licensed handgun carriers, or forfeit their right to free speech by accepting the burdens §§ 30.06 and 30.07 place on the manner in which they communicate.[8]

3. The Lack of Governmental Interest

This coercive, content-based and viewpoint-based scheme is invalid unless "the government proves [it is] are narrowly tailored to serve compelling state interests." *Reed*, 576 U.S. at 163-64. "A law is narrowly tailored if it 'actually advances the state's interest … and could be replaced by no other regulation that could advance the interest as well with less infringement of speech (is the least-restrictive alternative).'" *Dep't of Tex.*, 760 F.3d at 440 (citation omitted). Moreover, the state's interest must be "ideologically neutral." *Wooley v. Maynard*, 430 U.S. 705, 717 (1977). "[W]here the state's interest is to disseminate an ideology, no matter how acceptable to some, such interest cannot outweigh an individual's First Amendment right to avoid becoming the courier for such message." *Id.*

Here, Defendants have never advanced any compelling government interest that could support the Acts. Some have, at times, suggested that the governmental interest served by the challenged statutes is the provision of adequate notice to potential trespassers. *See, e.g.*, ECF No. 115, at 13. But Defendants have never explained why licensed carriers of handguns would require different, more elaborate notice than other would-be trespassers.

In any event, the expert report of Dawn Jourdan dispels the notion that the challenged statutes advance any theoretical state interest in providing notice to trespassers. As she explains, the language mandated by the statutes is "legalistic and complex," and for that reason, people who encounter signs conforming to the statutory requirements "will likely have to pause to parse the meaning of the

[8] It does not matter that citizens do not have an entitlement to police protection or the prosecution of another. *Cf.* ECF No. 147 at 12 (discussing *Linda R.S. v. Richard D*). Just as it would violate the First Amendment for the state to make citizens calling 911 recite the Pledge of Allegiance before dispatching assistance, *cf. W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943), here it violates the First Amendment to make Plaintiffs post the signs in order to obtain the benefit of the General Criminal Trespass Laws.

message." Ex. F, App. 196. Accordingly, the challenged statutes *thwart* the goal of providing adequate notice and thus are certainly not the least-restrictive means of achieving it. As Dr. Jourdan explains, the message that firearms are unwelcome "could be more simply and effectively conveyed through the use of iconography and less legalistic text, resulting in a smaller *and* easier to read sign." *Id.* at 192 (emphasis added). This should come as no surprise, because fair notice is not what the legislature had in mind; rather, the intention was to burden those who, like Plaintiffs, wish to exclude firearms from their property. *See* Ex. B, App. 9 ("the Legislature intentionally crafted an ugly, eye-glazing, space-zapping warning sign"). That is not a valid government interest. *See Wooley*, 430 U.S. at 717.

Indeed, because the challenged statutes do not advance any legitimate governmental interest, they could not survive even intermediate scrutiny. *See, e.g.*, *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1475 (2022) ("[T]o survive intermediate scrutiny, a restriction on speech or expression must be 'narrowly tailored to serve a significant governmental interest.'" (citation omitted)); *cf. Am. Beverage Ass'n v. City & Cnty. of San Francisco*, 916 F.3d 749, 756-57 (9th Cir. 2019) (invalidating warning-label requirement where "the record … show[ed] that a smaller warning … would accomplish Defendant's stated goals"). The Acts therefore violate Plaintiffs' right to free speech and are invalid.

B. The Challenged Statutes Violate the Church's Freedom of Association.

The Supreme Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts*, 468 U.S. at 622. This freedom of association "plainly presupposes a freedom not to associate," and consequently, "a regulation that forces [a] group to accept members it does not desire … may be justified [only] by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* at 623.

The Church has an official policy that forbids the carrying of firearms onto church property. Ex. G, App. 204 ¶ 3; *id.* at 210. The Church believes that the carrying of weapons at church runs counter to its most fundamental religious tenets, which include addressing conflict through conversation, nonviolence, love, and compassion. *Id.*, App. 206 ¶ 8. Moreover, the Church believes that allowing weapons would prevent the Church from fulfilling its intended role as a refuge for peace and tranquility. *Id.*, App. 206 ¶ 9. The Church's attendant desire not to associate with anyone carrying a firearm is protected by the First Amendment. *See, e.g.*, *Boy Scouts of Am.*, 530 U.S. at 648 ("Forcing a group to accept certain members may impair the ability of the group to express those views, and only those views, that it intends to express."). Accordingly, any requirement by the state that the church allow weapons on its property would be "subject to the closest scrutiny." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-61 (1958). Here, there is no compelling state interest that would demand the presence of firearms in the Church.

As such, the state could not compel the Church to admit individuals carrying firearms. Neither can it require the Church to give up its right to free speech in order to exercise its right to free association. *See supra* Section II.A.1 (explaining how the statutes infringe plaintiffs' freedom of speech); *Simmons v. United States*, 390 U.S. 377, 394 (1968) ("[W]e find it intolerable that one constitutional right should have to be surrendered in order to assert another."). The Church has a right to communicate the message that firearms are unwelcome at its services, in the manner it chooses, *and* a right not to associate with individuals carrying firearms. *See United States v. Herrera-Ochoa*, 245 F.3d 495, 500 (5th Cir. 2001). The Acts violate the First Amendment by forcing them to choose between the two.

CONCLUSION

For the foregoing reasons, the Court should enter judgment for Plaintiffs, declaring the heightened notice requirements imposed by sections 30.06 and 30.07 of the Texas Penal Code unconstitutional and enjoining their further enforcement against Plaintiffs.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2022, I electronically filed a true and correct copy of the foregoing document with the Clerk of the District Court of the Southern District of Texas by using the CM/ECF system, which will send notification to all participants in the case who are registered CM/ECF users.

/s/ William R. Taylor
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