

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

YOUNG CONSERVATIVES OF TEXAS §
FOUNDATION §
Plaintiff, §
§ CIVIL ACTION NO. 4:20-CV-973
v. § JUDGE SEAN D. JORDAN
§
THE UNIVERSITY OF NORTH TEXAS, THE §
UNIVERSITY OF NORTH TEXAS SYSTEM, §
NEAL SMATRESK, PRESIDENT OF THE §
UNIVERSITY OF NORTH TEXAS and §
SHANNON GOODMAN, VICE PRESIDENT §
FOR ENROLLMENT OF THE UNIVERSITY §
OF NORTH TEXAS;
Defendants. §

**PLAINTIFF'S COMBINED RESPONSE TO DEFENDANTS' CROSS-MOTION
FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ISSUES**

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TO THE HONORABLE SEAN D. JORDAN:

Plaintiff Young Conservatives of Texas Foundation (“YCT”) files this combined Response to Defendants’ (hereafter “UNT”) Cross-Motion for Summary Judgment and Reply in Support of Plaintiff’s Motion for Summary Judgment.

RESPONSE TO UNT’S STATEMENT OF ISSUES

The combined motions and cross motions for summary judgment in this case present, at most, three broad issues:

- (1) Is Tex. Educ. Code, Sec 54.051(d) preempted by 8 U.S.C. § 1623 and therefore unconstitutional?
- (2) Does YCT, a student organization with members at UNT injured by Section 54.051(d), have standing to challenge the constitutionality of Section 54.051(d) in this Court?
- (3) Are Defendants, the individuals at UNT that faithfully and willingly apply Section 54.051(d) to YCT’s members, proper parties for injunctive relief under *Ex parte Young*?

Because UNT knows the weakness of its positions on these issues, it attempts to make this case appear more complicated than it is. UNT’s “issues presented” section expands these core issues into a complicated morass of seven questions and seven additional sub-questions. These “issues presented” include evidentiary arguments, procedural arguments, and a host of arguments already rejected by this Court.

YCT believes this scattershot approach is inconsistent with the purpose of the “issues presented” requirement of LR CV-7. Nonetheless, in accord with LR CV-7, YCT responds to UNT’s issues (and sub-issues) as follows:

1. YCT’s summary judgment evidence is proper.
2. As this Court has already ruled, YCT does not need a *statutory* cause of action for its claims. YCT’s claims arise in equity under *Ex parte Young*.

- a. As this Court has already ruled, YCT does not claim an individual statutory cause of action under 8 U.S.C. § 1623. YCT's claims arise in equity under *Ex parte Young*.
 - b. As this Court has already ruled, YCT does not claim the Supremacy Clause creates a cause of action. YCT's claims arise in equity under *Ex parte Young*.
 - c. As this Court has already ruled, YCT does not claim a constitutional right to pay in-state tuition under the Due Process or Equal Protection Clauses. YCT's claims are based on preemption and arise in equity under *Ex parte Young*.
3. YCT's claims are not barred by sovereign immunity.
 - a. The Texas legislature explicitly waived sovereign immunity for the Entity Defendants under the Uniform Declaratory Judgements Act and UNT may not reestablish immunity by removal to federal court.
 - b. The Named Defendants are not protected by sovereign immunity because, as this Court has recognized, YCT's claims arise in equity under *Ex parte Young*.
4. YCT has established the elements of associational standing.
 - a. YCT has established injury-in-fact to its members by providing the declarations of its state chairman and two members at UNT that have paid nonresident tuition. YCT is not required to show that "each of its members" are injured by the challenged law.
 - b. As this Court has already ruled, paying unlawful tuition is an injury and an injunction preventing the payment of that unlawful rate of tuition will remedy that injury. Furthermore, enjoining an unconstitutional law is consistent with the principles of federalism, comity, and the public interest.
5. 8 U.S.C. § 1623 preempts Tex. Educ. Code, Sec 54.051(d) as applied to United States citizens.
6. YCT has met the elements of injunctive relief and an injunction will be in the public interest because there is no legitimate governmental interest in the application of an unconstitutional law.

7. YCT's request for injunctive relief is well within the boundaries of clarity required by FRCP 65.

INTRODUCTION

The merits arguments in this case are “straightforward.” *See Young Conservatives of Tex. Found. v. Univ. of N. Tex.*, 2021 U.S. Dist. LEXIS 207787, at *21 (E.D. Tex. Oct. 28, 2021). Federal law sets forth “a simple rule: If a university provides an educational benefit based on residence to an alien who lacks lawful immigration status, then that university must provide the same benefit to a United States citizen regardless of the citizen’s residency.” *Id.* at 20-21.

In direct contradiction to this Federal law, Texas law makes unlawfully present aliens eligible for the benefit of low-cost “resident tuition” if they can establish residency in Texas, but denies certain United States citizens that same benefit, based on their residency. Instead, these United States citizens are required by Tex. Educ. Code, Sec. 54.051(d) (“Section 54.051(d)”) to pay a significantly higher rate of tuition.

YCT, whose members at UNT include United States citizens that have been denied the benefit of resident tuition under these laws, seeks to enjoin UNT’s officials from charging United States citizens at the higher, unlawful, rate set by Section 54.051(d). Because this presents a pure question of law, YCT has moved for summary judgment.

Aware that it has little hope on the merits, UNT’s Response and Cross-motion for Summary Judgment raises more than a dozen separate ancillary or procedural arguments apart from the merits (which itself involves a dozen more arguments) in the hope that if it throws enough at the wall, something will stick. But many of these arguments have already been rejected by this Court, and the others are precluded by law. Summary judgment for YCT is proper.

RESPONSE TO UNT'S STATEMENT OF FACTS

Federal Law

This case turns on the interpretation and application of federal law. In particular, 8 U.S.C.

§ 1623 (“Section 1623”) provides that:

Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.

Put another way, if a university provides an educational benefit based on residence to an alien who lacks lawful immigration status, then that university must provide the same benefit to a United States citizen regardless of the citizen’s residency. *Id.*

As UNT acknowledges, Section 1623 was passed at the same time as a host of other laws designed to disincentivize illegal immigration to the United States for benefits. Dkt #52, p. 18. The Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”) 8 U.S.C. §§ 1601-1614 dealt with federal benefits, while the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) 8 U.S.C. §§ 1601-1614, §§ 1621-1632 dealt with state benefits. *Id.*

As UNT acknowledges, however, Congress took a different approach with federal and state programs. Dkt #52, p. 18. In many cases, Congress limited federal benefits to unlawfully present aliens outright. *Id.* at 18-19. By contrast, Congress allowed states some leeway to provide benefits to unlawfully present aliens, but placed conditions on states’ authority to do so. *Id.* at 19.

Section 1623 fits this mold. It does not interfere with a state’s authority to allow unlawfully present aliens to qualify for resident tuition. But that choice comes with a cost: if a state chooses

to grant unlawfully present aliens eligibility for resident tuition, it loses its ability to charge higher tuition to United States citizens who are not residents of that state. *See* 8 U.S.C. § 1623. ¹

The sole merits question presented by this case, is whether Texas's tuition laws run afoul of this mandate. They do.

Texas's Tuition Laws

In direct conflict with Section 1623, Texas law allows unlawfully present aliens to qualify for resident tuition, while continuing to charge United States citizens from states other than Texas nonresident tuition. *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *2.

Eligibility for resident tuition in Texas is determined by Section 54.052 of the Texas Education Code. *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *2. That provision provides three paths to resident tuition. A student can gain eligibility by showing that: (1) they established “domicile” in Texas “not later than one year before the census date of the academic term in which the person is enrolled”; (2) if the student is a dependent, that their parent established “domicile” in Texas “not later than one year before the census date of the academic term in which the person is enrolled”; or (3) if the student graduated from a Texas high school, that they “maintained a residence” in Texas for the “three years preceding the date of graduation [from high school] or receipt of the diploma equivalent, as applicable; and … the year preceding the census date of the academic term in which the person is enrolled in an institution of higher education.”

¹ UNT puts forward a counter-history of Section 1623 in its statement of facts. UNT claims that Section 1623 merely requires that “no preferential treatment of the alien be given on the basis of residence.” Dkt #52, p. 18. But this position is found nowhere in the text or history of the statute. To the contrary, in circumstances where an unlawfully present alien is eligible for benefits on the basis of residence, the text of Section 1623 *requires* preferential treatment for the United States Citizen. In particular, Section 1623 requires that the United States Citizen be granted the same benefit the unlawfully present alien earned by establishing residency on the basis of residency, “*without regard to whether the citizen or national is such a resident.*” 8 U.S.C. § 1623 (emphasis added).

Tex. Educ. Code, Sec. 54.052(a). Because “domicile” is defined by statute as a “permanent residence,” all three methods for establishing resident tuition turn on residency within the state. Tex. Educ. Code, Sec. 54.0501. Anyone “who fails to meet those residency requirements is not entitled to receive in-state tuition—regardless of whether that person is a United States citizen—and must pay higher tuition rates.” *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *2 (citing §§ 54.051(d), 54.052.)

As this Court has recognized, and UNT admits, this statutory scheme allows some “unlawfully present aliens to pay resident tuition rates while United States citizens from states other than Texas may not.” *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *2.; Dkt #52 at p. 18.

For United States citizens from states other than Texas—including YCT’s members—this is no small matter. Under Section 54.051(c), the base rate for resident tuition is \$50 per semester credit hour. By contrast, the statutory base rate for nonresident tuition is set by a statutory formula contained in Section 54.051(d).² In practice, and by design, this formula makes nonresident tuition more expensive than resident tuition. Dkt #2 at p. 6. For example, in 2022 the difference in cost for a resident student at UNT and a nonresident is around \$12,240. *Tuition, Costs & Aid*, UNIV. OF NORTH TEX., <https://admissions.unt.edu/tuition-costs-aid> (last visited Feb. 3, 2022).

² UNT places significant emphasis on the fact that the base rate under Section 54.051(d) is calculated by Texas Higher Education Coordinating Board (the “Coordinating Board”), not UNT. *See, e.g.*, Dkt #52, p. 16, 17, 20, 24, etc. But while the Coordinating Board *calculates* the base rate, the formula is set by statute and the Coordinating Board has no enforcement authority. *Id.* Instead, State law specifically places the application and enforcement Section 54.051(d) under the authority of *public universities*, including UNT, who “shall cause to be collected from students registering at the institution tuition or registration fees at the rates prescribed in this section.” Tex. Educ. Code, Sec. 54.051(b).

Factual Background

YCT is a conservative student organization with members at UNT. Ex. 2 (Dominguez Dec.). YCT's members have been required to pay nonresident tuition under Section 54.051(d). *Id.*; see also, Ex. 3 (Student Dec. 1); Ex. 4 (Student Dec. 2). To resolve these injuries and further its mission, YCT sued UNT in state court seeking: (1) a declaration that Section 54.051(d) was pre-empted and thus unconstitutional, and (2) an injunction preventing UNT from applying Section 54.051(d) to require United States citizens to pay higher tuition based on residency. Dkt #2 at p. 7–11.

In order to comply with state law³, and to ensure that its injunctive relief would be effective, YCT sued the UNT officials and entities with authority to oversee and implement Section 54.051(d) in the tuition process. In particular, YCT sued Shannon Goodman, Neal Smatresk, the University of North Texas, and the University of North Texas System. *Id.*

UNT claims that these defendants are not involved in the application of Section 54.051(d), (Dkt #52, p. 37) but this is belied by their testimony. Defendant Goodman is the Vice President of Enrollment at UNT. Mr. Goodman oversees various departments, including University Admissions, Financial Aid and Scholarships, the Registrar's Office, Enrollment Systems, the Welcome Center, and University Tours. Ex. 5, p. 8–10. In short, Mr. Goodman is in charge of all departments which cover matters pertaining to the charging and payment of student tuition at UNT. *Id.* at p. 9-10, 15-17.

³ Under the Uniform Declaratory Judgment Act, YCT was required to sue the University when it brought a facial challenge to Section 54.051(d). *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 76 (Tex. 2015) (“for claims challenging the validity of statutes, the Declaratory Judgment Act requires that the relevant governmental entities be made parties...”).

Mr. Goodman admits that the officials he oversees at UNT comply with state law, including Section 54.051(d), when assessing tuition. *Id.* at p. 16-17, 19-20. He further admits that Section 54.051(d) requires a different rate of tuition for resident and nonresident students (*Id.* at p. 13) and that if the officials he oversees did not comply with state law, including Section 54.051(d), he would have the authority to take action to correct them. *Id.* at p. 16-17.

Defendant Smatresk is the President of UNT. In that role he is “ultimately accountable for what happens at the University, in most cases.” Ex. 1, p. 12. Mr. Smatresk also directly oversees the work of Mr. Goodman and his department. Ex 1, p. 11. He also directly oversees Clay Simmons, the University’s Chief Compliance Officer, who ensures that the University complies with state law, including Section 54.051(d). *Id.* at p. 12. Mr. Smatresk admits that if Mr. Goodman failed to comply with state law, including Section 54.051(d), he could take action to correct him. *Id.* at p. 11-12.

Defendants the University of North Texas and the University of North Texas System are the entities specifically tasked by statute with the application of the challenged tuition rates. Contrary to UNT’s assertions, State law specifically states that the University’s governing authority “shall cause to be collected from students registering at the institution tuition or registration fees at the rates prescribed in this section.” Tex. Educ. Code, Sec. 54.051(b). Defendants admit that UNT complies with state law, including Section 54.051(d), when assessing tuition. Ex. 5, p. 16-17, 19-20.

Shortly after YCT sued, it moved for summary judgment in state court. UNT responded by removing the case to this Court citing federal question jurisdiction. Dkt #1. UNT then immediately moved to dismiss the case based on a lack of federal subject matter jurisdiction. Dkt #7. That motion to dismiss was denied. Dkt #34.

Having lost its motion to dismiss, UNT then tried to intimidate YCT's members by demanding that YCT produce and make public the names and contact information of all YCT members at UNT, triggering motion practice before this Court. Dkt #44. This Court agreed that UNT's demands violated the First Amendment and entered a protective order allowing YCT to produce any student information it deemed appropriate for standing purposes as Confidential Attorneys Eyes Only. Dkt #50. Almost immediately after that order was entered, (and well before UNT's response brief) YCT produced as confidential the names of two student members who had paid nonresident tuition at UNT and their sworn declarations. Ex. 3; Ex. 4.

Finally, more than a year after YCT filed its motion for summary judgment, UNT has responded. As explained below, its arguments fail.

ARGUMENT

I. SECTION 54.051(d) IS PREEMPTED BY FEDERAL LAW AND THEREFORE UNCONSTITUTIONAL

This case begins and ends with the text of the relevant statutes. If the text and implementation of state law conflicts with the text of federal law, then the federal law must prevail and state law “must give way”. *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 617–18 (2011); *see also*, U.S. Const., Art. VI, cl. 2 (“The Laws of the United States which shall be made in Pursuance” of the United States Constitution are “the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”)

Here, the texts of the relevant statutes are straightforward. Section 1623 provides that: “an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State . . . for any postsecondary education benefit *unless* a citizen or national of the United States is eligible for such a benefit . . . without regard to whether the citizen or national is such a resident.” (emphasis added).

Giving this language its plain meaning, this Court held that Section 1623 “sets forth a simple rule: If a university provides an educational benefit based on residence to an alien who lacks lawful immigration status, then that university must provide the same benefit to a United States citizen regardless of the citizen’s residency.” Dkt #34 at p.18. The Eastern District of Virginia agrees, noting that the most logical reading of “§ 1623 is that public post-secondary institutions need not admit illegal aliens at all, but if they do, these aliens cannot receive in-state tuition *unless* out-of-state United States citizens receive this benefit.” *Equal Access Educ. v. Merten*, 305 F. Supp. 2d 585, 607 (E.D. Va. Feb. 24, 2004) (emphasis added).

Texas law plainly violates that command. There is no dispute that aliens who are not lawfully present in the United States are eligible to receive in-state tuition on the basis of residency in Texas. Tex. Educ. Code § 54.052(a)(3); Exhibit 1 at p.23. *See also*, Tex. Educ. Code § 54.052. In fact, UNT encourages undocumented immigrants to apply for this benefit. Neal Smatresk, *Support for DACA and undocumented students — A Message from the President*, UNIV. OF NORTH TEX., <https://www.unt.edu/notices/support-daca-and-undocumented-students-message-president> (last visited Feb. 3, 2022); *University of North Texas Dreamers Resource Guide*, <https://idea.unt.edu/sites/default/files/Final%20Dreamers%20Resource%20Guide%201%209%2019.pdf> (last visited Feb. 3, 2022).

At the same time, it is clear from the text of Tex. Educ. Code § 54.052 that U.S. citizens are denied in-state tuition based on their residency in a state that is not Texas. *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *2 (citing §§ 54.051(d), 54.052.) Instead, U.S. citizens who fail to meet the residency requirements are required to pay nonresident tuition. Tex. Educ. Code § 54.051(d) (calculating the tuition rate for a nonresident student); Tex. Educ. Code §

54.0501(4) (defining nonresident tuition as “tuition paid by a person who is not a resident of this state and who is not entitled or permitted to pay resident tuition under this subchapter.”).

Faced with this clear preemption, UNT takes a shotgun approach, raising nearly a dozen arguments on the merits. Many of these arguments are already adequately addressed by YCT’s motion for summary judgment or implicitly ruled out by other arguments in this brief and therefore not repeated here.⁴ The remainder of UNT’s merits arguments have been consolidated into the sub-headings below.

A. Express preemption does not require an explicit preemption clause

First, UNT argues that Section 1623 does not preempt the law at issue “or any other state statute” because it allegedly does not contain preemption language. Dkt #52, p. 51. But the Court has “never required any particular magic words” in express preemption cases. *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 112 (1992) (Kennedy, J., concurring in part and concurring in the judgment).

Here, Congress’ desire to preempt certain state laws is clear from the text. Section 1623 provides that “[n]otwithstanding any other provision of law, an alien who is not lawfully present in the United States *shall not be eligible* on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit *unless...*” certain criteria are met. The “unavoidable implication of this provision” is that it was intended to prohibit state laws which provided those benefits without meeting certain conditions. *See Gade*, 505 U.S. at 99 (majority opinion). The fact that Section 1623 does not use the word “preemption” is irrelevant.

⁴ See, Dkt #52, p 53–54 (arguing no implied preemption) compare Dkt #6, p.10–11 (addressing this argument); Dkt #52, p. 54–55 (arguing no impossibility preemption) compare Dkt #6, p. 18–20 (addressing this argument).

UNT argues that reading Section 1623 as preemptive is contrary to the text, because Section 1623 also “expressly allows the states to adopt laws relating to benefits for non-qualified aliens.” Dkt #52, p. 52. But YCT has never argued that UNT, or Texas, or anyone else is preempted from granting benefits to unlawfully present aliens. Rather, YCT has always stood by the text of Section 1623—UNT may provide such benefits if it chooses, but *only if* it meets the other requirements of the statute. Because Texas law and UNT’s current tuition practices fail to meet those other requirements, they are preempted.

B. Section 54.051(d) need not contain the words “alien” or “postsecondary education benefit” in order to be preempted

In a similar vein, UNT argues that Section 54.051(d) is not preempted because it “does not reference” any of the key terms from Section 1623—*e.g.*, “alien who is not lawfully present,” “postsecondary education benefit,” “citizen or national of the United States,” or “establish any eligibility requirements.” Dkt #52, p. 51. UNT makes a lot of this argument, printing out a table of both statutory provisions. *Id.* at p. 50. According to UNT, this is dispositive, because it means that YCT must allegedly cite other provisions within the Texas Education Code in order to make its preemption argument work. *Id.*

But preemption is not a simple word-match game that allows state policy makers to avoid federal mandates through clever labeling. YCT challenged Section 54.051(d) because that is the portion of the statute that injures its nonresident members by unlawfully mandating a higher tuition rate on the basis of residency. To be sure, that provision would be fine as a matter of preemption if Texas law did not simultaneously make unlawfully present aliens eligible for cheaper, in-state tuition under Sections 54.052, and 54.051(c). But, as explained above, those provisions *do* make unlawfully present aliens eligible for in-state tuition on the basis of residence. As such, federal

law forbids UNT from charging higher out of state tuition to United States citizens—which is precisely what Section 54.051(d) mandates.

UNT seems to argue that if YCT wants to challenge the portion of the law that requires its members to pay unlawfully high tuition, it must also challenge the portions of the law that allow unlawfully present aliens to pay in-state tuition. But as YCT has repeatedly made clear, UNT may charge unlawfully present aliens in-state tuition if it wants. What it cannot do (without violating federal law) is make unlawfully present aliens eligible for in-state tuition *and* charge out of state tuition to United States citizens. That is what it has done. The fact that Section 54.051(d) does not include the words “alien” or “postsecondary education benefit” is beside the point.

C. In-State tuition is a postsecondary educational benefit

UNT next argues that in-state tuition is not a “postsecondary education benefit.” Dkt #52 at p. 58. But multiple courts have looked at the issue and come to a contrary conclusion. *See, e.g.*, *Equal Access Educ.*, 305 F. Supp. 2d at 606 (“[A]liens cannot receive in-state tuition unless out-of-state United States citizens receive this benefit.”); *State ex rel. Brnovich v. Maricopa Cty. Cnty. Coll. Dist. Bd.*, 243 Ariz. 539, 541 (Ariz. 2018) (“Federal law generally bars granting in-state tuition to students based on state residency when they are not lawfully present in the United States. See 8 U.S.C. § 1623(a).”); *Martinez v. Regents of University of California*, 241 P.3d 855, 862–63 (CA 2010) (referring to in-state tuition as a postsecondary education benefit under Section 1623); *Foss v. Arizona Bd. of Regents*, 1 CA-CV 18-0781, 2019 WL 5801690, at *6 (Ariz. Ct. App. Nov. 7, 2019) (“Section 1623 is directed at institutional practices, curtailing the authority of educational institutions to grant in-state tuition benefits to undocumented aliens.”)

This is in accord with the common understanding of what a “benefit” is. Any college student or parent of a college student understands the financial benefits of receiving lower tuition

by being classified as an in-state resident. Indeed, Defendant Neal Smatresk agreed that generally it would benefit students to receive in-state tuition. Exhibit 1 at p. 23–23. This common understanding of the term “benefit” should control. *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1480 (2021) (“When called on to resolve a dispute over a statute’s meaning, this Court normally seeks to afford the law’s terms their ordinary meaning at the time Congress adopted them.”)

UNT nonetheless argues that benefits under Section 1623 are limited to “payments or direct services of which resident tuition is neither.” Dkt #52, p. 58-59. But the only case UNT cites for this proposition that dealt with education benefits is *Equal Access Educ.*, 305 F. Supp. 2d 585. Dkt #52, p. 59. In that case, the court held that admission to a university was not a postsecondary education benefit under a separate statute, 8 U.S.C. § 1611. *Equal Access Educ.*, 305 F. Supp. 2d at 605. But had UNT read the rest of that case, it would have seen that the court also noted that resident tuition—the thing at issue in this case—is a postsecondary education benefit under Section 1623. See *Id.* at 606 (“The more persuasive inference to draw from § 1623 is that public postsecondary institutions need not admit illegal aliens at all, but if they do, these aliens cannot receive in-state tuition unless out-of-state United States citizens receive this *benefit*.”) (emphasis added). UNT’s argument therefore fails.

D. Preemption under Section 1623 turns on whether aliens are eligible for a benefit on the basis of residency, not whether they receive “preferential treatment.”

UNT next argues that all Section 1623 requires is that United States citizens be able to establish eligibility for resident tuition on the same terms as unlawfully present aliens—*i.e.*, by showing residency in Texas. Dkt #52, p. 57. UNT reaches for this meaning by selectively quoting a portion of Section 1623’s title—*i.e.*, “limitation on eligibility for preferential treatment of aliens.” Dkt #52, p. 56. This argument fails for two reasons.

First, even if UNT’s selective quotation of the section title could be reasonably read as an equal treatment provision—which it cannot—it would be irrelevant, because such a reading conflicts with the text of the operative provisions of Section 1623. *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R.*, 331 U.S. 519, 528–29 (1947) (“The title of a statute . . . cannot limit the plain meaning of the text.”). As explained above, Section 1623 does not merely require equal treatment. To the contrary, in circumstances where an unlawfully present alien is eligible for benefits on the basis of residency, Section 1623 plainly requires *preferential treatment* for United States citizens—namely, that United States citizens be granted the same benefit given to the unlawfully present alien on the basis of residency, “*without regard* to whether the citizen or national is such a resident.” 8 U.S.C. § 1623 (emphasis added).

Second, when read in full, Section 1623’s title does not imply that it is an equal treatment provision. The title for Section 1623 is not “limitation on preferential treatment of aliens,” as UNT suggests. Rather, the full title is “[l]imitation on *eligibility for preferential treatment* of aliens not lawfully present *on basis of residence* for higher education benefits.” (Emphasis added). This additional language matters.

Putting aside immigration for the moment, there is no dispute that in-state tuition is, by definition, “preferential treatment” for some students “on the basis of residence.” In particular, Texas residents attending Texas universities receive “preferential treatment” in comparison to nonresidents in the form of lower in-state tuition, which is often thousands of dollars cheaper per-semester than the tuition paid by their out-of-state counterparts for the same education. Dkt #2 at p. 6.

Given this context, the most obvious inference to draw from Section 1623’s title is that the statute was designed to limit unlawfully present aliens’ eligibility for *that* preferential treatment—

i.e., in-state tuition—not to require that U.S. Citizens and unlawfully present aliens be treated the same with regard to establishing residency. Indeed, numerous courts, including this Court, have read the statute that way.⁵ UNT’s reliance on a selective quotation from the section title fails.

E. The Federalism Canon does not apply because Congress has spoken clearly

UNT argues that this Court should not give Section 1623 its common meaning, because “the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress.” Dkt #53 p. 48. And UNT contends that there is no evidence that Congress “intend[ed] to displace state law regarding state postsecondary benefits.” Dkt #52 p. 49.

But Section 1623 clearly anticipates that it will affect state law regarding state “postsecondary education benefits.” Indeed, Section 1623 directly regulates eligibility for “postsecondary education benefit[s]” *by name*. 8 U.S.C. § 1623(a). It is difficult to imagine a clearer indication of Congressional intent to regulate in this area.

To be sure, courts should tread carefully when presuming that Congress intended to reach activity traditionally regulated by the states. But that caution cannot be transformed into license to rewrite a federal law merely because it has incidental impacts on state powers. Under “the

⁵ See, e.g., *Equal Access Educ.*, 305 F. Supp. 2d at 606 (“[A]liens cannot receive in-state tuition unless out-of-state United States citizens receive this benefit.”); *State ex rel. Brnovich v. Maricopa Cty. Cnty. Coll. Dist. Bd.*, 243 Ariz. 539, 541 (Ariz. 2018) (“Federal law generally bars granting in-state tuition to students based on state residency when they are not lawfully present in the United States. See 8 U.S.C. § 1623(a).”); *Martinez v. Regents of University of California*, 241 P.3d 855, 862–63 (CA 2010) (stating that granting in-state tuition undocumented aliens on the basis of residency would be barred by Section 1623); *Foss v. Arizona Bd. of Regents*, 1 CA-CV 18-0781, 2019 WL 5801690, at *8 (Ariz. Ct. App. Nov. 7, 2019) (“Section 1623 is directed at institutional practices, curtailing the authority of educational institutions to grant in-state tuition benefits to undocumented aliens.”)

Supremacy Clause... any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.” *Gade*, 505 U.S. at 108 (cleaned up).

F. Eligibility for resident tuition turns on residence

UNT next argues that Section 54.051 (d) is not preempted because “Resident Tuition” allegedly does not turn on residence. However, every residency determination under Texas Education Code Section 54.052(a) turns on whether the student is a resident within the State of Texas. *See Tex. Educ. Code § 54.052* (requiring a showing of “domicile” or “residence” for each category); *Tex. Educ. Code § 54.0501(3)* (defining “domicile” as “a person's principal, permanent *residence...*”) (emphasis added).

UNT points to *Martinez v. Regents of Univ. of California*, 241 P. 3d 855 (Cal. 2010), which held that California’s in-state tuition program was not preempted by Section 1623, because it did not turn on residence. But under California law, a student could qualify for in-state tuition if they attended high school in California for at least three years and met other statutory requirements, none of which involved residency within California. *Cal. Educ. Code § 68130.5. Martinez*, 241 P.3d at 864 (emphasis added). For example, “some students who live in an adjoining state or country are permitted to attend high school in California in some circumstances, even though they are not California residents.” *Id.* The “children of parents who live outside of California but who attend boarding schools in California might attend California high schools for three years, yet not be California residents.” *Id.* And “those who attended high school in California for three years but then moved out of the state and lost their residency status would apparently be eligible for the exemption if they decided to attend a public college or university in California.” *Id.*

None of that is true in Texas. In fact, while UNT claims that former Texas high school students are eligible for in-state tuition without regard to residency, the statute tells a different

story. Section 54.052 is clear that a student may establish residency if she attended a Texas public high school “and...maintained a residence continuously in this state for the three years preceding the date of graduation...and the year preceding the census date of the academic term in which the person is enrolled in an institution.” (Emphasis added). UNT’s reliance on *Martinez* is therefore misplaced.

G. UNT’s half-hearted challenge to the Constitutionality of Section 1623 fails

Finally, after failing to provide compelling interpretations of the text, history, or purpose of Section 1623, UNT makes a desperate half-attempt at arguing against the statute’s constitutionality. Without any case citations, UNT proposes that the plain-text reading of Section 1623 would “exceed congressional authority to regulate the States.” Dkt #52 at p. 63.

But the federal government’s power to regulate the uniquely federal interest of immigration and naturalization is well established. *Arizona v. United States*, 567 U.S. 387, 395 (2012). This authority is derived from several sources, including Congress’s power to “establish an uniform Rule of Naturalization” (U.S. Const., art. I, § 8, cl. 4) and the Necessary and Proper Clause. *Chadha v. Immigration & Naturalization Serv.*, 634 F.2d 408, 418 (9th Cir. 1980). Indeed, “[t]he regulation of aliens is so intimately blended and intertwined with responsibilities of the national government that where it acts, and the state also acts on the same subject, ‘the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.’” *Hines v. Davidowitz*, 312 U.S. 52, 66 (1941) (quoting *Gibbons v. Ogden*, 9 Wheat. 1, 22 U. S. 211 (1824)).

Here, Congress took action to discourage (but not prohibit) states from offering benefits to unlawfully present aliens. It did so because it realized that eligibility for such benefits can encourage activity—illegal immigration—that federal law prohibits. In discouraging states from

enacting policies that directly contradict federal immigration policy, Congress was well within its Constitutional authority. UNT provides no case citation or argument to the contrary.

II. YCT HAS STANDING TO CHALLENGE SECTION 54.051(d)

For a litigant to have standing, it usually must show “(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157-58 (2014) (cleaned up). When these requirements are met, a plaintiff may sue on its own behalf. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1992).

An association, like YCT, may also “have standing to assert the claims of its members even where it has suffered no injury from the challenged activity.” *Texas Ent. Ass'n, Inc. v. Hegar*, 10 F.4th 495, 504 (5th Cir. 2021) (alteration and quotation omitted). To establish associational standing, the association must show that (1) “its members would otherwise have standing to sue in their own right”; (2) “the interests it seeks to protect are germane to the organization’s purpose”; and (3) “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Ass'n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd.*, 627 F.3d 547, 550 (5th Cir. 2010) (quoting *Hunt v. Wash. St. Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977)).

UNT does not argue that prong two is not met here—*i.e.*, UNT does not dispute that the interests YCT seeks to protect are germane to the organization’s purpose. And with good reason: this Court has already recognized that YCT likely meets this burden. *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *7 n.1; see also, *Ass'n of Am. Physicians & Surgs. v. Tex. Med. Bd. (TMB)*, 627 F.3d 547, 550 n.2 (5th Cir. 2010) (“the germaneness requirement is ‘undemanding’ and requires ‘mere pertinence’ between the litigation at issue and the organization’s purpose.”).

Instead, UNT objects that: (1) YCT has failed to provide sufficient evidence that its members have been injured by Section 54.051(d); and (2) even if YCT’s members have been injured, such claims require that the members themselves be made parties. Both of these arguments fail.

A. YCT’s members have been injured by Section 54.051(d)

To establish associational standing YCT need only provide evidence that “at least one” of its members is injured by Tex. Educ. Code § 54.051(d). *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009). The law is unclear on what evidence is required to meet this burden. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015) (discussing the lack of clarity). Some courts have held that the name of an injured member is, eventually, necessary. *Id.* Others have held that uncontested sworn declarations of association leadership regarding its membership, even without naming specific members, are sufficient. *Id.*; *Marszalek v. Kelly*, No. 20-cv-04270, 2021 U.S. Dist. LEXIS 107613 (N.D. Ill. June 9, 2021) (uncontested declarations of leadership were sufficient); *see also Familias Unidas v. Briscoe*, 544 F.2d 182, 192 (5th Cir. 1976) (doubting the relevance of membership information when members were not seeking damages and “Appellees had ample discovery means and opportunity, as provided by the Federal Rules, to depose the chief officer...”)

Either way, YCT has met its burden. At the outset of this case, YCT provided the uncontested declaration of YCT’s state chairman, swearing that YCT had members at UNT that had been required to pay nonresident tuition. Ex 2. UNT chose not to depose YCT’s chairman and has never produced *any* evidence conflicting with his sworn statements.

Additionally, after this Court entered a protective order protecting the identity of YCT’s members (and well before UNT filed its response), YCT also provided UNT with the names *and* sworn declarations of two YCT members who are U.S. Citizens that paid nonresident tuition at

UNT. Ex. 3, 4. YCT has since learned that one of those members was dropped from her classes at UNT on January 18th, 2022, because she was unable to afford tuition, only further aggravating her injuries. Ex. 6 (student declaration 3).⁶ These injuries to YCT members are sufficient to establish standing. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 342-43 (1977) (an association has standing if “its members, or any one of them, are suffering immediate or threatened injury...”).

Desperate to avoid the merits of this case, UNT argues that YCT must show that “all” or “many” of its members are injured by the challenged law. Dkt #52, p. 13, 44. But the law only requires evidence that at least *one* member is injured. YCT has already exceeded that burden.

B. YCT’s individual members need not be parties to this case

UNT next argues that YCT does not have associational standing because the nature of its claims allegedly requires that YCT’s individual members be made parties. But this Court has already rejected that argument. *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *7 n.1.

This Court’s ruling is well supported. YCT has brought a facial challenge to a state law. A “facial challenge generally is not fact intensive and does not require individual members to participate.” *NetChoice, LLC v. Paxton*, No. 1:21-CV-840-RP, 2021 U.S. Dist. LEXIS 233460, at *16 (W.D. Tex. Dec. 1, 2021). Moreover, YCT is seeking only declaratory and injunctive relief. When, as in this case, a party is seeking injunctive relief and has “adduced evidence that its members were affected by the implementation of the [challenged law,] [f]urther participation by [its] members [is] not necessary, and [it] ha[s] associational standing to challenge the [law].” *Tex.*

⁶ Despite best efforts, YCT has not yet received the signed declaration from this student, but was informed today that it will be signed and provided by tomorrow 2/9/2022. YCT intends to supplement this brief with that exhibit as soon as it is received. YCT notified UNT’s counsel of the circumstance. However, even without this additional exhibit, YCT has done more than enough to establish standing.

Entm't Ass'n v. Hegar, No. 20-50262, 2021 U.S. App. LEXIS 24871, at *11 (5th Cir. Aug. 19, 2021); see also, *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977) (when an “association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured.”).

UNT objects that YCT’s individual members must be made public parties, so that it can engage in a “fact-intensive” inquiry into *the degree* in which they are injured by Section 54.051(d). Dkt #52, p. 46. But the circumstances of YCT’s individual members are relevant in this case solely to determine whether at least one has suffered an injury sufficient for Article III standing.⁷ In that inquiry, the *degree* of YCT’s members is irrelevant. The “injury in fact requirement under Article III is qualitative, not quantitative, in nature.” *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 612 (5th Cir. 2017). An Article III “injury-in-fact need not be substantial.” *Id.* Indeed, ‘it need not measure more than an ‘identifiable trifle.’” *Id.* When, as here, a plaintiff is an object of a regulation, ““there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.”” *Contender Farms, L.L.P. v. United States Dep't of Agric.*, 779 F.3d 258, 264 (5th Cir. 2015).

YCT has provided sufficient evidence to show that it has members subject to the higher tuition mandated by Section 54.051(d). As this Court has already recognized, being subject to this

⁷ UNT points to *Prison Justice League v. Bailey*, 697 F. App'x 362, 363 (5th Cir. 2017). But in that case, the cause of action itself turned on the member’s individual circumstances. In that case, the Prison Justice League (a prisoners advocacy group) sought to represent various members who had allegedly suffered excessive force or retaliation at the hands of various prison officers. Because both excessive force and retaliation are “necessarily fact-intensive” claims that depend on “the facts and circumstances of each particular case” –e.g., the level of force used, and the motive of the individual officer are essential elements of the claim—the court held that associational standing was not appropriate. *Id.* at 364. Here, the elements of YCT’s challenge to state tuition laws do not turn on individual circumstances.

higher tuition requirement is a real injury sufficient to establish associational standing. *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *8. No further member involvement is necessary.

III. UNT'S PROCEDURAL AND EVIDENTIARY ARGUMENTS FAIL

Because UNT knows that its merits and standing arguments are weak, UNT spends the majority of its brief on various tangential objections. As explained below, many of these objections have already been rejected by this Court. The remainder fail.

A. This Court has already ruled that YCT's claims arise in equity under *Ex parte Young* and no statutory cause of action is necessary

UNT first argues that YCT's claims should be rejected because YCT has failed to cite a cause of action. Dkt #52, p. 27 -30. But this is just a rehash of UNT's Motion to Dismiss, which this Court already rejected. *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *10. As this Court recognized, YCT's claims arise in equity and therefore no statutory cause of action is required. *Id.* at *11. This is in accord with binding precedent from the Supreme Court. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015).

For the same reason, two more of UNT's objections fail. First, UNT objects that the Supremacy Clause does not create a cause of action. Dkt #52, p. 28. This is true, but irrelevant. As this Court has already recognized, YCT never claimed that the Supremacy Clause creates a cause of action. Rather, YCT brings its claims pursuant to *Ex parte Young*, which the Supreme Court has noted "gives life to the Supremacy Clause." *Green v. Mansour*, 474 U.S. 64, 68 (1985).

Second, UNT spends multiple pages explaining why it does not believe YCT has a valid equal protection claim under 42 U.S.C. 1983. Dkt #52, p. 28-30. But as this Court has already recognized, YCT did not bring an equal protection claim under 42 U.S.C 1983. *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *10 n.3. Nor was YCT required to establish an

equal protection violation or other independent constitutional right for its preemption claims to go forward. *Id.* at *14 (citing *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 472, 475 (5th Cir. 2020) (en banc) (noting that the case could proceed against state officials because the plaintiff had “a cause of action against them *at equity*, regardless of whether it [could] invoke § 1983”). It is well established that preemption claims *are* constitutional claims and *Ex parte Young* is the proper vehicle for bringing them. *Wis. Dep’t of Indus., Labor & Human Rels. v. Gould, Inc.*, 475 U.S. 282, 286 n.4 (1986).

UNT provides no new arguments that would justify this Court departing from its previous holdings. Accordingly, UNT’s attempt to relitigate its failed Motion to Dismiss should be rejected.

B. The Named Defendants are not protected by sovereign immunity because YCT has properly established a claim under *Ex parte Young*

UNT next argues that YCT’s claims are barred by sovereign immunity. But, again, this Court has already largely rejected this claim. “[T]his lawsuit is a classic application of *Ex parte Young*: Young Conservatives seeks prospective injunctive relief that would prevent UNT officials from enforcing a state law against its members that allegedly runs counter to federal law.” *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *21. Accordingly, sovereign immunity does not bar relief. *Green*, 474 U.S. at 68.

UNT argues in its Response that *Ex parte Young* does not apply. But, these arguments have either already been rejected by this Court, are waived, or fail on their own merits.

1. This Court has already rejected UNT’s argument that the application of *Ex parte Young* is precluded by *Armstrong*

UNT argues that two factors from *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 325 (2015), preclude the application of *Ex parte Young* here. In particular, UNT argues that: (1) 8 U.S.C. § 1103 grants the Secretary of Homeland Security exclusive authority for enforcing

Section 1623, thus precluding private equitable relief; and (2) the statutes at issue are too complex for this court to craft a judicially administrable remedy. Dkt #52, p. 41, 42. But this Court has already fully evaluated these arguments and rejected them.

With regard to UNT's first argument, this Court rightly held that an exclusive remedy was "nowhere to be found in the text of 8 U.S.C. § 1103. And UNT does not cite any other provision of IIRIRA indicating that Congress provided a 'sole remedy' for violations of Section 1623(a)." *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *18. UNT's response presents no new evidence or argument that would justify the Court departing from this holding. Indeed, it does not present any new evidence or argument on this point at all.

With regard to UNT's arguments on complexity and judicial administrability, this Court held that:

Unlike the claim at issue in *Armstrong*, Young Conservatives' preemption challenge to Section 54.051(d) would not require application of a 'judicially unadministrable' standard. Section 1623(a) of IIRIRA is not 'judgment-laden,' 'broad,' or 'unspecific.' To the contrary, it sets forth a simple rule: If a university provides an educational benefit based on residence to an alien who lacks lawful immigration status, then that university must provide the same benefit to a United States citizen regardless of the citizen's residency...*it is 'difficult to imagine' a more straightforward requirement...*

Id., at *20-21 (emphasis added, citations and brackets omitted).

UNT has provided no new argument or evidence that would justify a departure from this Court's prior ruling. Its attempt to relitigate its Motion to Dismiss should be rejected.

2. Defendants Smatresk and Goodman are proper defendants

UNT next claims that Defendants Smatresk and Goodman do not have a sufficient connection to the application of Section 54.051(d) to be proper parties for relief under *Ex parte*

Young. Dkt #52, p. 34-39. To the extent this argument has not been waived⁸, it fails. To be a proper defendant under *Ex parte Young* a public official need only have “*some connection* with the enforcement of the [challenged law].” *Air Evac EMS, Inc. v. Tex., Dep’t of Ins., Div. of Workers’ Comp.*, 851 F.3d 507, 519 (5th Cir. 2017) (emphasis added). That burden is met if the defendant has taken or can take “specific action predicated on the [challenged] statute” or has “authority to oversee” a system predicated on the challenged statute. *Id.* at 518, 520.

This Court has already noted that both Named Defendants appear to meet that burden. *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *12-13. Further discovery has confirmed that presumption to be true.

Defendant Goodman is the Vice President of Enrollment at UNT. Mr. Goodman admits that he oversees all departments which cover matters pertaining to the charging and payment of student tuition at UNT. Ex. 5 at p. 9-10, 15-17. Mr. Goodman admits that the officials he oversees at UNT comply with state law, including Section 54.051(d), when assessing tuition. *Id.* at p. 16-

⁸ Any argument that Defendants Smatresk and Goodman do not have a sufficient connection to Section 54.051(d) has likely been waived. In response to UNT’s motion to dismiss, YCT explicitly argued that both Smatresk and Goodman apply Section 54.051(d) and therefore have a sufficient connection to the challenged law, and “**UNT [did] not argue otherwise.**” *Young Conservatives*, 2021 U.S. Dist. LEXIS 207787, at *13 (emphasis added). Later, in response to this Court’s order to show cause (Dkt #36) YCT once again provided evidence that both Smatresk and Goodman apply Section 54.051(d) and are proper parties under *Ex parte Young*. Dkt #37, p 3-4. In its reply to that brief, UNT again did not provide any evidence to the contrary. *See* Dkt #42, p 4. Furthermore, throughout the duration of this litigation, YCT’s counsel has repeatedly requested that UNT comply with FRCP 26(f) by explaining any argument or theory that it had as to why Smatresk and Goodman may not be proper parties, and UNT repeatedly refused. *See, e.g.*, Dkt #37, p. 4; Dkt #37-3. Because UNT has repeatedly refused to address this argument when raised in prior briefing, any argument it seeks to raise here is waived. *See CardSoft, LLC v. VeriFone, Inc.*, 807 F.3d 1346, 1353 (Fed. Cir. 2015); *Pratt v. Mut. of Omaha Ins. Co.*, No. 4:15-CV-00009-DMB-JMV, 2016 U.S. Dist. LEXIS 40228, at *27 n.19 (N.D. Miss. Mar. 28, 2016) (cursory argument in response brief resulted in waiver); *Yassine v. United States*, No. A-16-CV-105-LY, 2016 U.S. Dist. LEXIS 178988, at *14 (W.D. Tex. Dec. 27, 2016) (failure to brief issue in response resulted in waiver).

17, 19-20. He further admits that Section 54.051(d) requires a different rate of tuition for resident and nonresident students (*Id.* at p. 13) and that if the officials he oversees did not comply with state law, including Section 54.051(d), he would have the authority to take action to correct them. *Id.* at p. 16-17. If a student wishes to contest their tuition or residency determination, that appeal would be handled by a committee, which is also in the department Mr. Goodman oversees. *Id.* at 28-29. Accordingly, Mr. Goodman is a proper defendant for injunctive relief because he can take “specific action predicated on” Section 54.051(d) and has “authority to oversee” a system predicated on Section 54.051(d). *Air Evac EMS*, 851 F.3d at 518, 520.

Defendant Smatresk is likewise a proper defendant. Mr. Smatresk is the President of UNT. In that role he is “ultimately accountable for what happens at the University, in most cases.” Ex. 1, p. 12. Mr. Smatresk also directly oversees the work of Mr. Goodman and his department, which covers all issues pertaining to tuition. Ex 1, p. 11. Mr. Smatresk admits that if Mr. Goodman failed to comply with state law, including Section 54.051(d), while performing his duties, Mr. Smatresk could take action to correct him. *Id.* at p. 11-12. Mr. Smatresk also directly oversees Clay Simmons, the University’s Chief Compliance Officer, who ensures that the University complies with state law, including Section 54.051(d). *Id.* at p. 12. Accordingly, Mr. Smatresk can take “specific action predicated on” Section 54.051(d) and has “authority to oversee” a system predicated on Section 54.051(d). He is therefore a proper party for injunctive relief. *Air Evac EMS*, 851 F.3d at 518, 520.

UNT objects that neither Defendant *calculates* the annual nonresident rate which UNT faithfully applies on its campus. This is true. Under state law, the Texas Higher Education Coordinating Board (the “Coordinating Board”) calculates the base tuition rate that must be applied for nonresident tuition at UNT and other universities across the state. But the formula for

calculating the rate is set by statute, and state law specifically tasks *the University's "governing board"*—not the State Coordinating Board—with the application and enforcement of those rates. In particular, Tex. Educ. Code Sec. 54.051 (b) requires that the University's governing board “shall cause to be collected from students registering at the institution tuition or registration fees at the rates prescribed in this section.” Tex. Educ. Code, Sec. 54.051(b). And UNT's governing board has delegated its authority to collect tuition to Defendants Smatresk and Goodman.⁹ In this regard, this case is virtually identical to *Ex parte Young*.

In *Ex parte Young*, the plaintiffs challenged the application of certain statutorily mandated rates for merchandise moved by railroad. *Ex parte Young*, 209 U.S. 123 (1908). Like the statute at issue here, the statute in *Ex parte Young* mandated that the challenged rates be set and calculated by a state-created body—the “Railroad and Warehouse Commission”—or were otherwise specified by statute. *Id.* at 142 (syllabus). Like the statute at issue here, the Commission that calculated the rates did not apply or enforce the rates but instead, left the enforcement to others. *Id.* The plaintiffs, who were subject to the challenged rates, sued the Attorney General. Like the Defendants in this case, the Attorney General did not calculate the rates, but merely had authority to ensure that others complied with the rules. Nonetheless, the Supreme Court held that the Attorney General was a proper party for injunctive relief because he had authority to take action

⁹ Tex. Educ. Code 61.003 (9) defines the “governing board” of a university as “the body charged with policy direction of any public technical institute, public junior college, public senior college or university...” At UNT, authority for policy making “vests in the Board of Regents, chancellor, *and the president*” (emphasis added). *Shared Governance and the Role of Advisory Committees and the Academic Administration*, UNIV. NORTH TEX., <https://policy.unt.edu/policy/06-047> (last visited Feb. 3, 2022). The “president [Defendant Smatresk] may delegate authority to other members of the university administration as allowed by state law and Regents Rules; however, authority rests only with individuals - who are directly accountable for the decisions they make - *and may not rest with a committee.*” *Id.* Mr. Smatresk admits that he is “ultimately accountable for what happens at the University, in most cases.” Ex. 1, p. 12. And UNT has delegated authority over tuition issues to Mr. Goodman. Ex. 5 p. 9–10.

to ensure compliance with the law. *Id.* at 160, 161. Similarly here, the Defendants may not calculate the base tuition rate, but they directly apply it and ensure that their subordinates do as well. That is sufficient to make them proper defendants under *Ex parte Young*.

UNT points to two cases, neither of which apply. First, UNT points to *Morris v. Livingston*, 739 F.3d 740, 742 (5th Cir. 2014), where an inmate attempted to sue the Governor for failures of prison officials to comply with the law. Because the Governor neither applied the laws at issue nor directly supervised those that did, he was not a proper party. But, unlike the Governor in *Morris*, Tex. Educ. Code Sec. 54.051 (b) specifically tasks UNT with applying the challenged rates, and Defendants admit that they do so.

Second, UNT points to the Supreme Court’s recent decision in *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522 (2021). In that case, the Court held that state court clerks docketing petitions were not proper parties for injunctive relief under *Ex parte Young*, because court officials are generally not adverse to those filing petitions. But that case is inapposite for at least two reasons. First, *Whole Women’s Health* came out the way it did because *Ex parte Young* has always had an explicit exception for court officials. *Id.* at 532. To apply that exception outside of the court officer context goes beyond the four corners of the case and would radically limit the viability of *Ex parte Young*.

Second, unlike the court clerks in *Whole Women’s Health*, Defendants are not disinterested parties with no concern about the application of Section 54.051(d). UNT claims that enjoining the application of Section 54.051(d) at UNT would cost the university “approximately \$25,000,000 per semester.” Dkt #52, p. 64. Defendants have all fought hard in this case to preserve that unlawful income stream. Moreover, UNT generally, and Smatresk in particular, actively encourages unlawfully present aliens to apply for resident tuition—the very activity that triggers

the pre-emption in this case. Neal Smatresk, *Support for DACA and undocumented students — A Message from the President*, UNIV. OF NORTH TEX., <https://www.unt.edu/notices/support-daca-and-undocumented-students-message-president> (last visited Feb. 3, 2022). In other words, the evidence shows that Defendants have an active desire to continue to provide the benefit of resident tuition to unlawfully present aliens while simultaneously denying that benefit to United States citizens on the basis of residency. Defendants are therefore sufficiently adverse to be parties in this case.

3. An injunction in this case would prevent the application of the challenged law

UNT next argues that an injunction would not be effective, because Defendants do not set the rate for nonresident tuition and could not make a new rate even if they wanted to. Dkt #52, p. 40. But executive officials enjoined under *Ex parte Young* seldom write the laws they are enjoined from enforcing. That does not mean those officials cannot be enjoined.

Moreover, contrary to its assertions, UNT has ample authority to set a new rate for nonresident students that complies with federal law. In particular, Tex. Educ. Code Sec. 54.0513 makes clear that in addition to amounts set by Section 54.051, the university may charge “any student an amount designated as tuition” that its governing board “considers necessary for the effective operation of the institution.” Accordingly, in the absence of a clear mandate from Section 54.051(d), Section 54.0513 would provide ample authority to set new rates that comply with federal law.

But UNT’s objection fails for a better reason. At its core, UNT’s argument presupposes that this Court cannot enjoin the application of an unconstitutional law unless it explains how to replace it. This is a blatant call for judicial activism. The Texas Supreme Court, for example, has

struck down Texas's funding model for public schools on multiple occasions. And as that court explained:

[a]lthough we have ruled the school financing system to be unconstitutional, we do not now instruct the legislature as to the specifics of the legislation it should enact; nor do we order it to raise taxes. The legislature has primary responsibility to decide how best to achieve an efficient system. We decide only the nature of the constitutional mandate and whether that mandate has been met.

Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 399 (Tex. 1989). Similarly, this Court need not explain the best way for UNT to manage its budget or construct a tuition model that complies with federal law in order to enjoin the current application of an unconstitutional law.

C. The Entity Defendants cannot reestablish sovereign immunity that was specifically waived by statute by removing a case to this Court

UNT next argues that even if *Ex parte Young* provides a waiver of immunity for the named Defendants, no such waiver exists for the Entity Defendants—the University of North Texas and the University of North Texas System. But YCT fully responded to this argument in its response to this Court's Order to Show Cause (Dkt #37) and UNT did not offer any substantive response. *See* Dkt #42 (failing to respond *at all* to YCT's immunity waiver argument regarding *Lapides* or *Wei-Ping Zing*).

YCT originally filed this lawsuit in state court under the Uniform Declaratory Judgment Act (UDJA). As the Texas Supreme Court has repeatedly explained, “for claims challenging the validity of statutes, the Declaratory Judgment Act requires that the relevant governmental entities be made parties, and thereby waives immunity.” *Patel v. Tex. Dep’t of Licensing & Regulation*, 469 S.W.3d 69, 76 (Tex. 2015) (cleaned up) (citing, *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994); *Tex. Dep’t of Transp. v. Sefzik*, 355 S.W.3d 618, 621-22 & n.3 (Tex. 2011).

Because the UDJA waived immunity for YCT’s claims in state court, UNT may not circumvent that waiver by voluntarily removing the case to this Court. When “the State has explicitly waived sovereign immunity from state-court proceedings...” the government may not re-establish immunity by “remov[ing] a case from state court to federal court.” *Wei-Ping Zeng v. Tex. Tech Univ. Health Sci. Ctr.*, 836 F. App’x 203, 207 (5th Cir. 2020) (citing *Lapides v. Bd. of Regents*, 535 U.S. 613, 620 (2002)).

Despite multiple opportunities, UNT has never even attempted to explain how its claim of immunity is not precluded by these cases. UNT’s assertion of immunity fails.

D. YCT’s summary judgment evidence is properly before this Court

Next, UNT raises three objections to YCT’s summary judgment evidence. First, UNT argues that paragraphs 5 and 6 of UNT Chairman Will Dominguez’s declaration are inadmissible under Federal Rule of Evidence 602, because he allegedly provides “no testimony to support the basis for his personal knowledge” that YCT has members at UNT that have paid nonresident tuition. Dkt #52, p 27.

But this is refuted by simply reading the Declaration. Mr. Dominguez is the state chairman of YCT. Dkt #6-1, p. 1. He swears that he “oversees” the UNT chapter and knows its roster. *Id.* at p. 1-2. Mr. Dominguez’s declaration also includes a sworn statement that his claims regarding YCT’s student roster are based on “personal knowledge.” *Id.*, at p 1 (emphasis added). That is sufficient to comply with Rule 602.

UNT’s objection, at bottom, is that *it thinks* that it is unlikely that the state chairman of YCT would have any “personal knowledge” of whether the UNT chapter he oversees has members that paid nonresident tuition. Dkt #52, p. 27. But UNT provides no basis for these doubts. Moreover, Mr. Dominguez’s declaration was submitted over a year ago. If UNT doubted the

veracity of Mr. Dominguez's sworn statements, it had over a year to depose Mr. Dominguez or seek other discovery to establish the basis of his statements. It did not do so. Its failure to avail itself of the discovery process is not a basis to exclude Mr. Dominguez's testimony.

Nor does UNT's eleventh-hour, conclusory statement that it does not trust Mr. Dominguez create a factual dispute sufficient to preclude summary judgment. A litigant opposing summary judgment "may not rest upon conclusory allegations or denials" but instead "must present affirmative evidence" contradicting the movant's theory of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986). As the Supreme Court has explained, at a minimum, "the purpose of Rule 56 is to enable a party who believes there is no genuine dispute as to a specific fact essential to the other side's case to demand at least one sworn averment of that fact before the lengthy process of litigation continues." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

Second, UNT objects to paragraphs 8-12 of Mr. Dominguez's declaration (Dkt #6-1, p. 2) where he explains YCT's mission and gives examples of various issues YCT has advocated for. Dkt #52, p. 26. But, again, there is no basis to doubt that the state chairman of YCT has personal knowledge of YCT's mission and advocacy, and UNT has had more than sufficient time to conduct discovery if those claims were in question.

Finally, UNT objects to Exhibits A-L of the Dominguez declaration which were provided as examples of YCT's advocacy on various issues. UNT objects that these Exhibits are hearsay and unauthenticated. Dkt #52 at p. 26-27. But these objections fail.

First, even if the exhibits were excluded, it would have no effect on the outcome of this case. Mr. Dominguez is fully competent as the state chairman of YCT to testify as to YCT's policy positions, and his testimony as presented is sufficient without the added exhibits.

Second, the exhibits are not hearsay as they are not presented for the truth of the matter asserted, but rather to simply note that YCT has spoken on these topics. Fed. R. Evid. 801; *United States v. Sanders*, 639 F.2d 268, 270 (5th Cir. 1981) (“if the statement was offered on a non-assertive basis, *i.e.*, for proof only of the fact that it was said, the statement would not be subject to the hearsay objection.”).

Finally, as for authentication, each of these documents is publicly available and subject to judicial notice. Fed. R. Evid. 201. UNT’s objections should therefore be denied.

E. YCT has established the factors for injunctive relief

To establish entitlement to injunctive relief, a plaintiff must show: “(1) success on the merits; (2) the failure to grant the injunction will result in irreparable injury; (3) the injury outweighs any damage that the injunction will cause the opposing party; and (4) the injunction will not disserve the public interest.” *United Motorcoach Ass’n, Inc. v. City of Austin*, 851 F.3d 489, 492–93 (5th Cir. 2017).

If this Court has reached this portion of the analysis, it is because it has already concluded that elements (1) and (2) are met—*i.e.*, that Section 54.051(d) is unconstitutional and injures YCT’s members. Faced with these conclusions, UNT leans heavily on the equitable public interest considerations from elements (3) and (4). In particular, UNT argues that even if Section 54.051(d) is unconstitutional, this Court should not grant an injunction because it would allegedly cost UNT \$25,000,000 per semester and create a “patchwork of tuition rates across the state.” Dkt #52, p. 64.

But “[i]t is not [this Court’s] role to weigh such tradeoffs.” *Nat'l Fed'n of Indep. Bus. v. DOL*, Nos. 21A244, 21A247, 2022 U.S. LEXIS 496, at *11 (Jan. 13, 2022) (risk to “over 6,500 lives and ...hundreds of thousands of hospitalizations” was not sufficient to preclude stay of

unlawful mandate). Indeed, even at the preliminary injunction phase, once a constitutional violation has *likely* been established, the other preliminary injunction factors largely collapse. Why? Because: (1) “A violation of the Constitution ‘for even minimal periods of time . . . unquestionably constitutes irreparable injury.’” *BST Holdings*, 2021 U.S. App. LEXIS 33698, at *24; and (2) There is no public interest in enforcing an unconstitutional law. *Jackson Women’s Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014) (citation omitted) (quoting *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012); *N.Y. Progress & Protection PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (“[T]he Government does not have an interest in the enforcement of an unconstitutional law.”) (cleaned up).

Here, UNT is opposing injunctive relief *after* a constitutional violation has been established as a matter of law. The fact that UNT’s budget may be affected is not sufficient to justify leaving an unconstitutional law in place.¹⁰ Indeed, the public interest is “served by maintaining our constitutional structure . . . even, or perhaps *particularly*, when those decisions frustrate government officials.” *BST Holdings*, 2021 U.S. App. LEXIS 33698, at *26.

Five semesters have passed since this lawsuit was filed. That is five semesters that YCT’s members and countless other students have been unlawfully forced to pay nonresident tuition. None of that money is recoverable. For some, no doubt, that unlawfully high tuition has forced them to forgo semesters of education. Those opportunities cannot be replaced. Enough is enough.

¹⁰ To be sure, if UNT believes the equities are truly on its side, it could ask that this Court stay its injunction pending appeal. But to argue that this Court should leave in operation indefinitely a law held unconstitutional because the government disagrees with the policy implications of following the Constitution is a call for lawlessness.

F. YCT's request for injunctive relief complies with Rule 65

Finally, UNT objects that YCT's request for injunctive relief is not sufficiently clear to allow this Court to comply with Rule 65. But the burden Rule 65 places on this Court is low. An injunction must only "describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1)(C).

Here, YCT requests that UNT officials be enjoined from applying Section 54.051(d) to United States citizens at UNT, because as written and as historically applied by UNT, Section 54.051(d) requires United States citizens pay more in tuition than the lower rate made available to unlawfully present aliens on the basis of residency. Unlike UNT, YCT is confident that this Court can craft an injunction based on that request that meets the modest requirements of Rule 65.

UNT's real complaint is that it will have hard policy decisions to make about its tuition rates and budget if it is enjoined from unlawfully charging out of state tuition to United States citizens. This is not unusual. Complying with the law often involves hard policy tradeoffs that policymakers would rather not make. But this Court need not tell UNT how to make those tradeoffs in order to tell UNT to stop violating the law.

CONCLUSION

For the forgoing reasons, UNT's cross motion for summary judgment should be denied in full, and YCT's motion for summary judgment should be granted.

Respectfully submitted,

/s/Chance Weldon
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed on February 8, 2022, with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Exhibits were filed with redactions as previously approved by this Court's protective order Dkt #51, and will be filed later under seal. The unredacted versions of these exhibits have been provided to Defendant's Counsel per the rules of this Court's protective order.

/s/Chance Weldon
CHANCE WELDON

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
SHERMAN DIVISION

YOUNG CONSERVATIVES OF)
TEXAS FOUNDATION)
)
)
)
VS.)
) CIVIL ACTION NO.
THE UNIVERSITY OF NORTH) 4:20-CV-973
TEXAS, THE UNIVERSITY OF)
NORTH TEXAS SYSTEM, NEAL) HONORABLE SEAN D. JORDAN
SMATRESK, PRESIDENT OF THE)
UNIVERSITY OF NORTH TEXAS,)
AND SHANNON GOODMAN, VICE)
PRESIDENT FOR ENROLLMENT OF)
THE UNIVERSITY OF NORTH)
TEXAS)

ORAL DEPOSITION

OF

DR. NEAL SMATRESK

TAKEN VIA ZOOM

NOVEMBER 22, 2021

ORAL DEPOSITION OF DR. NEAL SMATRESK, taken
remotely via the Zoom platform, produced as a Witness at
the instance of the Plaintiff, and duly sworn, was taken
in the above-styled and numbered cause on the 22nd day of
November, 2021, from 1:31 p.m. to 2:29 p.m., before JUDY
A. COUGHENOUR JOHNSON, Certified Shorthand Reporter No.

1 1198, in and for the State of Texas, reported by machine
2 shorthand at THE UNIVERSITY OF NORTH TEXAS, DENTON, TEXAS,
3 the location of the Witness, pursuant to the Federal Rules
4 of Civil Procedure and the provisions stated on the record
5 or attached herein.

6 * * * * *

7 APPEARANCES

8 For Plaintiff:

9 TEXAS PUBLIC POLICY FOUNDATION
10 BY: CHRISTIAN TOWNSEND
- AND -
11 CHANCE WELDON
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13 For Defendants:

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18 - AND -

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22 Also Present:

23 DOLLY GARCIA
24 RENALDO STOWERS

1 APPEARANCES (CONTINUED)

2 Reported By:

3 JUDY A. COUGHENOUR & ASSOCIATES
4 BY: JUDY A. COUGHENOUR JOHNSON
5 8109 Asmara Drive
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6 * * * * *

7 STIPULATIONS

8 The attorneys for all parties present stipulate and
9 agree to the following items:

10 THAT the deposition of DR. NEAL SMATRESK is taken
11 pursuant to Notice;

12 THAT by agreement of Counsel and all parties
13 present, the Reporter was allowed to swear in the Witness
14 remotely;

15 THAT all objections will be made pursuant to the
16 Federal Rules of Civil Procedure;

17 AND THAT the original transcript will be submitted
18 for signature to the Witness' attorney, SANDY
19 HELLUMS-GOMEZ, and that the Witness or the Witness'
20 attorney will return the signed transcript to JUDY A.
21 COUGHENOUR & ASSOCIATES within thirty days of the date the
22 transcript is provided to the Witness' attorney. If not
23 returned, the Witness may be deemed to have waived the
24 right to make the changes, and an unsigned copy may be

1 used as though signed.

2 * * * * *

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12 * * * * *

13 EXHIBITS

14	EXHIBIT NUMBER	DESCRIPTION	PAGE MARKED	PAGE REF'D
16	1	Being an Office of the President 2021-2022 Organizational Chart	50	11
17	2	Being a document entitled 8 U.S. Code 1623 - Limitation on eligibility for preferential treatment of aliens not lawfully present on basis of residence for higher education benefits	50	13
18	3	Being a document entitled 8 U.S. Code 1101 - Definitions	50	14
19	4	Being a University of North Texas Dreamers' Resource Guide	50	16
20	5	Being Tweets	50	25

1	EXHIBITS (CONTINUED)			
2	EXHIBIT NUMBER	DESCRIPTION	PAGE MARKED	PAGE REF'D
3	<hr/>			
4	6	Being an article entitled Democrats Declare War on Conservatives at University of North Texas, dated July 9, 2020	50	31
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4 Today's date is November 22, 2021. The
5 time is 1:31 p.m.

6 This is the oral deposition of Dr. Neal
7 Smatresk, and it is being conducted remotely, by agreement
8 of Counsel, with the Witness located at the University of
9 North Texas, Denton, Texas.

10 Will the Witness please raise your right
11 hand and be sworn?

* * * *

14 DR. NEAL SMATRESK
15 the Witness herein, having been first duly administered an
16 oath or affirmation, via Zoom, pursuant to the agreement
17 of Counsel, testified as follows:

EXAMINATION

20 QUESTIONS BY MR. TOWNSEND:

21 THE REPORTER: Thank you so much.

22 I have administered the oath, the Witness
23 having been identified to me by attestation of Counsel.

1 locations, for the record?

2 RENALDO STOWERS: My name is Renaldo
3 Stowers. I'm Senior Associate, General Counsel, for the
4 University of North Texas System.

5 DOLLY GARCIA: I am --

6 MR. TOWNSEND: My name is --

7 DOLLY GARCIA: Dolly Garcia --

8 MR. TOWNSEND: Oops.

9 (The Reporter indicated Ms. Garcia
10 could continue.)

11 DOLLY GARCIA: I am Dolly Garcia, Associate
12 General Counsel with the University of North Texas System.

13 MR. TOWNSEND: My name is Christian
14 Townsend. I represent Young Conservatives of Texas
15 Foundation. I'm in Austin, Texas.

16 In the room with me is Chance Weldon. He
17 also represents YCT, and he's also in Austin, Texas.

18 MS. HELLUMS-GOMEZ: I am Sandy
19 Hellums-Gomez. I'm a partner at Husch Blackwell, an
20 outside Counsel for the Defendants, and I am in Houston,
21 Texas.

22 MS. DUGGINS-CLAY: Good afternoon,
23 everyone.

24 Paige Duggins-Clay, Associate at Husch
25 Blackwell, outside Counsel for the UNT, Defendants, and I

1 am in McKinney, Texas today.

2 THE REPORTER: And are there any
3 stipulations regarding this deposition or the transcript?

4 MS. HELLUMS-GOMEZ: Yes. As we stated
5 before, we would like a copy of the transcript for review
6 and signature.

7 (The Reporter indicated Mr. Townsend
8 could begin at any time.)

9 MR. TOWNSEND: Thank you.

10 Q (Mr. Townsend) All right. Good afternoon.

11 My name is Christian Townsend. I'm with
12 the Texas Public Policy Foundation, and I represent the
13 Young Conservatives of Texas Foundation in this case.

14 Could you please state your name for the
15 record?

16 A (The Witness) Neal Smatresk.

17 Q Have you ever given a deposition before?

18 A Yes.

19 Q All right. Well, as I'm sure you're well aware,
20 the way things will go today, I'll ask you some questions,
21 and you must answer them truthfully, unless your attorney
22 tells you clearly and directly not to answer. Does that
23 sound clear?

24 A Yep.

25 Q If you don't understand any of my questions,

1 please feel free to ask so, and I'll rephrase it. But if
2 you do answer a question, I'll assume that you understood
3 it. Do you understand this?

4 A Yes.

5 Q Awesome.

6 So just two basic requirements before we
7 begin.

8 First, so we can keep - keep a clear record
9 for the case, or for the Reporter, will you agree to wait
10 until I finish asking a question before you give an
11 answer?

12 A Yes.

13 Q And in return, I'll offer you the same courtesy.
14 I'll wait until you finish an answer before I ask another
15 question. Does that sound good?

16 A Yes.

17 Q Awesome.

18 If at any point you need a break, just let
19 me know, and we'll take a break. I just ask that you
20 answer any question that's on the table at the time. Is
21 that fair?

22 A Yes.

23 Q Are you currently on any medication that would
24 inhibit your ability to answer truthfully today?

25 A No.

1 Q And do you have any medical conditions that
2 would prevent you from answering truthfully here today?

3 A No.

4 Q Awesome.

5 So you're currently employed by The
6 University of Texas. Is that true? Or University of
7 North Texas. Is that true?

8 A Yes.

9 Q What's the title of your position there?

10 A President.

11 Q And you're testifying here today in your
12 official capacity as President of the University of North
13 Texas.

14 A Yes.

15 Q And how long have you been in that role?

16 A Not quite eight years.

17 Q Awesome.

18 And can you tell me a little bit about what
19 the role of President at UNT is?

20 A It's the CEO position for the University.

21 Q And so CEO position, so does that mean you
22 oversee aspects of the campus?

23 A I supervise an array of employees.

24 Q Awesome.

25 All right. I'm going to start sharing my

1 screen in order to introduce the first exhibit. Is that
2 all right?

3 A Yes.

4 Q All right. Can you see my screen?

5 A I can.

6 Q Awesome.

7 Do you recognize this chart?

8 A Yes.

9 Q All right. Can you describe what is this chart?

10 A It's my org chart.

11 Q And does this accurately reflect the way your
12 office is organized?

13 A Yes.

14 Q So the way it looks, is like it - you oversee
15 the people beneath you on the chart. Is that correct?

16 A Correct.

17 Q All right. Do you see Shannon Goodman on this
18 chart?

19 A I do.

20 Q And Mr. Goodman reports to you. Correct?

21 A Yes.

22 Q What's Mr. Goodman's role at UNT?

23 A He's the VP for Enrollment.

24 Q And you'd be responsible if Mr. Goodman were to
25 mess up or violate University policy. Correct?

1 A I guess it depends, but I am the ultimate - I'm
2 ultimately accountable for what happens at the University,
3 in most cases.

4 Q Awesome.

5 So if Mr. Goodman were violating State law,
6 you could do something about it?

7 A I suppose.

8 Q Do you see Clay Simmons on this chart?

9 A I do.

10 Q And Clay Simmons is beneath you on this chart.
11 Correct?

12 A Correct.

13 Q What is Mr. Simmo

14 A He's our Chief Compliance Officer

15 O And he makes sure that UNT complies

16 law?

17 A He makes sure that we comply with all applicable
18 laws and Board of Regents' policies.

19 Q Awesome.

20 And does UNT comply with state law?

21 A I believe so.

Q Do you see Elizabeth with on this chart?

23 A I do.

24 Q And Elizabeth With is beneath you on this chart?

25 A Yes.

1 Q And she reports to you? Correct?

2 A Correct.

3 Q What's Miss With's role at UNT?

4 A She is our Senior - she's Senior Vice-President
5 for Student Affairs.

6 Q And does Student Affairs include freshmen
7 recruitment?

8 A No.

9 Q Now where is freshman recruitment?

10 A Under Shannon Goodman.

11 Q Awesome.

12 And she --

13 A She - she does participate in freshman
14 orientation.

15 Q Okay. Perfect. Thank you.

16 All right. I'm going to stop sharing for a
17 second and introduce the second exhibit.

18 (The Reporter asked whether Exhibit 1
19 had been introduced.)

20 MR. TOWNSEND: Yes. That was Exhibit 1.

21 Q (Mr. Townsend) All right. I'm going to
22 introduce what will be Exhibit 2. Can you all see my
23 screen?

24 A (The Witness) Yes.

25 Q Okay. Great.

1 Do you recognize this Statute?

2 A No.

3 Q Would you take a minute to familiarize yourself
4 with this Statute, particularly Section (a)?

5 | A Yep.

6 | Q Awesome.

7 So there's a term in that Statute. It's
8 not very polite, nowadays, in - in common parlance. But
9 it says, "An alien who is not lawfully present in the
10 United States". Do you know what that means?

11 MS. HELLUMS-GOMEZ: Objection. Calls for a
12 legal conclusion.

13 A (The Witness) Probably not in a political or a
14 legal sense.

15 Q (Mr. Townsend) What about in a normal sense?

16 A Someone who is present in the United States
17 without any form of documentation.

18 Q Would we typically call that somebody - that
19 person unauthorized or undocumented immigrant?

20 MS. HELLUMS-GOMEZ: Objection. Calls for a
21 legal conclusion.

22 A (The Witness) I don't know.

23 Q (Mr. Townsend) Okay. I'm going to introduce
24 what will be Exhibit 3. Can you see this?

25 A Yes.

1 Q All right. This - if - if I told you that this
2 is the definition section for that previous Statute, would
3 you have any reason to doubt that?

4 A I wouldn't doubt it or know it.

5 Q All right. So here, it's - defines some of the
6 terms. Do you see Section (a), Subsection (3) here?

7 A Yes.

8 Q Would you take a second to familiarize yourself
9 with this?

10 A Okay.

11 Q All right. So it says that "The term alien
12 refers - means any person who's not a citizen or national
13 of the United States."

14 A Okay.

15 Q Do you understand what that means?

16 A I read the sentence.

17 MS. HELLUMS-GOMEZ: Objection. Calls for a
18 legal conclusion.

19 A (The Witness) I read the sentence. I can
20 understand the sentence.

21 Q (Mr. Townsend) And can you describe what that
22 means, in common parlance?

23 MS. HELLUMS-GOMEZ: Objection. Calls for a
24 legal conclusion.

25 A (The Witness) I'm not sure I know what it

1 means, in common parlance or in legal parlance.

2 Q (Mr. Townsend) All right.

3 All right. I'm going to stop sharing my
4 screen for a second.

5 All right. So do you - do you know what an
6 undocumented immigrant is?

7 MS. HELLUMS-GOMEZ: Objection. Calls for a
8 legal conclusion.

9 A (The Witness) I've heard of such, but I
10 wouldn't - couldn't tell you the legal particulars.

11 Q (Mr. Townsend) Okay. So you've heard of that
12 term?

13 A Yes.

14 Q Have you ever used it, yourself?

15 A No.

16 Q No?

17 Have you ever used the term unauthorized
18 immigrant?

19 A No.

20 Q Have you ever seen that term on UNT documents?

21 A Not that I recall.

22 Q All right. I'd like to introduce - this will be
23 Exhibit 4.

24 Have you seen this before?

25 A I may have.

1 Q Do you know where this would come from?

2 A No.

3 Q I'm going to scroll down here. This is Page 2.

4 All right. Do you see down here where it's
5 signed from Rebecca Perfecto?

6 A Yes.

7 Q Do you know Rebecca Perfecto?

8 A No.

9 Q Do you know the Office of Freshman Recruitment?

10 A Actually I don't know that office. I know
11 there's an Admissions Office and a Recruitment Office.

12 Q All right. So there's a Recruitment Office at
13 UNT?

14 A Yes.

15 Q So if I told you that this came from your Web
16 site, you wouldn't have any reason to believe that it
17 didn't?

18 A No.

19 Q I'm going to scroll to Page 4 of this document.
20 Can you familiarize yourself with that first paragraph
21 there?

22 A Okay.

23 Q Do you know what - when that paragraph uses the
24 term unauthorized immigrants, what they're referring to?

25 MS. HELLUMS-GOMEZ: Objection. Calls for

1 speculation.

2 MR. TOWNSEND: I'm sorry. One second, if I
3 can interrupt real quick.

4 Sandy, just so you know, under the local
5 rules, Section CV-30, in the Eastern District of Texas,
6 you can only make two different objections. One is
7 objective (sic.), leading, and the other is objection,
8 form.

9 So if you could just kind of stick to those
10 objections --

11 MS. HELLUMS-GOMEZ: Well --

12 MR. TOWNSEND: -- you can make your
13 substantive arguments later.

14 MS. HELLUMS-GOMEZ: Actually, we didn't
15 make that stipulation for this deposition.

16 But if you're fine with stipulating that I
17 can say, "Objection. Form," and preserve my objections to
18 the evidence and the questions later, we can make that
19 stipulation, if that's what you want.

20 MR. TOWNSEND: That - that's the way - that
21 would be great, because that's the local rules that we're
22 operating under.

23 MS. HELLUMS-GOMEZ: Okay. Federal Rules --

24 MR. TOWNSEND: Awesome.

25 MS. HELLUMS-GOMEZ: -- are - tend to like

1 specificity, but if you agree, I'm - I'm fine with,
2 "Objection. Form."

3 MR. TOWNSEND: Perfect.

4 MS. HELLUMS-GOMEZ: Objection. Form.

5 And on that same basis, I'll object to this
6 exhibit, as it has - we have no basis for what this is, or
7 where it's from, or who produced it, or when they produced
8 it.

9 So I'll put an, "Objection. Form," to this
10 exhibit on the record, as well.

11 MR. TOWNSEND: Yeah. Of course.

12 Q (Mr. Townsend) Would you like for me to restate
13 my question, Mr. Smatresk?

14 A (The Witness) Yes.

15 Q Awesome.

16 When - you said you'd familiarized yourself
17 with this paragraph. Correct?

18 A Correct.

19 Q Do you know, when the paragraph used the term
20 unauthorized immigrants, what that term means?

21 A I couldn't define it for you.

22 Q But in common parlance, would you understand
23 what they were getting at?

24 A I would have to say a best guess, which is
25 someone who is in the country without documentation.

1 Q Absolutely.

2 So this paragraph says that some
3 unauthorized immigrants are eligible to enroll at UNT?

4 MS. HELLUMS-GOMEZ: Objection. Form.

5 A (The Witness) Yeah. I - I - I couldn't - I
6 couldn't hazard a guess on that, based off what you've
7 just showed me.

8 Q (Mr. Townsend) No. I'm just saying what this
9 paragraph says.

10 A The words --

11 Q That's what --

12 A -- in the --

13 0 -- this paragraph --

14 | A -- paragraph --

15 Q -- says?

16 A -- the words in the paragraph say these students
17 may be eligible for State grants.

18 Q But - yes. Sorry. I'm - let me just read this,
19 just so we're on the same terms.

24 A The words are eligible - you - you just repeated
25 the words of the sentence.

1 Q Yes.

2 A I --.

3 Q Did - did I do that correctly?

4 A I believe you read them well.

5 Q Thank you.

6 Would you agree that UNT allows
7 unauthorized immigrants to enroll, or are they eligible to
8 enroll at UNT?

9 MS. HELLUMS-GOMEZ: Objection. Form.

10 A (The Witness) Again, I - you're asking me to
11 judge something that I didn't write and haven't seen
12 before, so am I supposed to draw conclusion from something
13 I don't know where it came from?

14 Q (Mr. Townsend) No, sir.

15 You - you're the President of UNT, so I'm
16 asking you, in your official capacity as President of UNT,
17 whether or not unauthorized immigrants are eligible to
18 enroll at UNT.

19 A I guess it depends on the definition of
20 unauthorized immigrants.

21 So from my perspective, I believe we could,
22 based off this, but I don't - this doesn't look like a
23 legal document, to me, and so I can't really guess at what
24 point what immigrants would be allowed.

25 Q How would you --

1 A Or unauthorized --

2 Q -- define --

3 A -- immigrants.

4 Q Oh. Sorry.

5 (The Reporter asked the Witness to
6 repeat the end of his answer which she
7 could not hear clearly.)

8 A (The Witness) I said I couldn't guess what
9 unauthorized immigrants would or wouldn't be allowed,
10 based off this paragraph.

11 Q (Mr. Townsend) How would - hmmm.

12 But some unauthorized immigrants may be
13 eligible, or are - are eligible?

14 MS. HELLUMS-GOMEZ: Objection. Form.

15 A (The Witness) You're asking me to interpret
16 words in a paragraph that I'm not familiar with, and I'm
17 not familiar with the legal veracity of it.

18 This certainly doesn't look like a Senate
19 Bill, to me, so --

20 Q (Mr. Townsend) So --

21 A -- I - I feel unable to answer, based off what
22 you've presented.

23 Q No, sir.

24 And - and this might be where some of the
25 confusion is coming in.

1 This was just to introduce this exhibit and
2 to let you know that there is material from your
3 University that does say this.

4 This now question, what I'm asking, is as
5 President of the University, in your official capacity,
6 whether or not you know whether or not unauthorized
7 immigrants are eligible to enroll at UNT.

8 A I believe that some categories are.

9 Q All right. And are some categories eligible to
10 pay in-state tuition?

11 A I believe some categories are.

12 Q And those are categories unauthorized - of
13 unauthorized immigrants?

14 A Correct.

15 Q Great.

16 The last things on this point.

17 In-state tuition. That's different than
18 out-of-state tuition. Correct?

19 A Correct.

20 Q And currently in-state tuition is cheaper than
21 out-of-state tuition?

22 A That's actually a technically difficult
23 statement, but generally yes.

24 Q Generally yes.

25 So generally it would benefit students to

1 receive in-state tuition?

2 MS. HELLUMS-GOMEZ: Objection. Form.

3 A (The Witness) Yes.

4 Q (Mr. Townsend) I'm going to stop sharing my
5 screen real quick.

6 Do you have a Twitter account?

7 A Yes.

8 Q What's the name of your Twitter account?

9 A Well, it's actually the University runs it for
10 me, but I can Tweet on it. It's @UNTPrez.

11 Q UNTPrez?

12 So you do Tweet from that account?

13 A On occasion.

14 Q Do other people Tweet from that account, as
15 well?

16 A Yes. They do.

17 Q All right. Do you review Tweets, either before
18 or after they Tweeted?

19 A Not generally.

20 Q Do you have the authority to review Tweets --

21 A I do.

22 Q -- that go out on that account?

23 A I do.

24 Q Do you have the authority to remove Tweets from
25 that account?

1 A I don't think I've ever asked to do that, except
2 for when I misspell something and delete a Tweet.

3 Q Absolutely.

4 But - and you can. Correct?

5 A Yes.

6 Q All right. This will be - I'd like to introduce
7 Exhibit 5. I'm going to start sharing my screen. Can you
8 see this?

9 A Yep.

10 Q And this is your Twitter account. Correct?

11 A It is.

12 Q And it's the official Twitter of the University
13 of North Texas President?

14 A Correct.

15 Q And that's your name at the top?

16 A Yes.

17 Q So a student who sees these Tweets would assume
18 that they come from you?

19 A Yes.

20 Q I'm going to scroll down to Page 2 of the
21 exhibit.

22 All right. Is this from - this reply from
23 your Twitter account?

24 A Yep.

25 Q Can you tell me what you meant by this reply?

1 A That a student, who said they didn't feel good,
2 Tweeted, and I said, "We're looking in to it."

3 I probably forwarded the Tweet to Student
4 Affairs.

5 Q All right. And did UNT investigate this?

6 A I can't recall.

7 Q Do you know if there's ever been an
8 investigation against YCT?

9 A An investigation?

10 Q Um hum.

11 A I don't - I'm not sure if you mean it in the
12 sense of EEOAA. I don't know.

13 Q Have there ever been official steps to look in
14 to the conduct of either the organization or members of
15 that organization?

16 A Not by me.

17 Q Okay.

18 A And I don't - I - I - I'm actually not sure if
19 anyone else has, but I don't think so.

20 Q So you - you're testifying that you're not aware
21 of any investigations in to YCT?

22 A Not official investigations.

23 Q What's the difference between official and
24 unofficial investigations?

25 A When you say, "We're looking in to it," and it

1 goes to Student Affairs, many different things can happen.

2 Q What are those? Can you describe some of those
3 things?

4 A It can go to the Dean of Students, who then
5 looks in to it.

6 We get complaints all the time, on social
7 media, and so I generally refer them to Student Affairs.
8 Sometimes I refer them to University Branding and
9 Marketing.

10 Q Do you often --

11 (The Reporter asked for a repeat of the
12 last part of the Witness' answer.)

13 A (The Witness) University Branding and
14 Marketing.

15 Q (Mr. Townsend) Do you often reply to Tweets,
16 telling informed people that they are - well, you - you
17 are looking in to this?

18 A Not a lot.

19 Q Have you ever?

20 A Oh.

21 Q Besides this instance?

22 A Probably.

23 Q Can you recall a time --

24 A I can't --

25 Q -- that you --

1 A -- recall.

2 Q -- did?

3 A I can't recall the last time I did it.

4 Q All right. Do you think it's reasonable for a
5 YCT student to see this Tweet, and to think that YCT
6 members are being investigated?

7 MS. HELLUMS-GOMEZ: Objection. Form.

8 A (The Witness) No.

9 Q (Mr. Townsend) Why not?

10 A When you say you're looking in to something, it
11 doesn't imply a full investigation.

12 Q But you described that there were official and
13 unofficial investigations. Correct?

14 A I - I said I referred it to Student Affairs, in
15 most likelihood. And I actually couldn't recall.

16 If someone says something that I believe is
17 illegal, or hate speech, or something like that, I might
18 refer it to EEOAA, or even to the police.

19 But in this case, I doubt that I did either
20 of those things.

21 Q Do you know what you did do in this case?

22 A No. I told you I'm not sure. I probably
23 referred it to Student Affairs.

24 Q And just to clarify, when you referred something
25 to Student Affairs, what happens? Or what steps can

1 happen?

2 A They look in to the situation, as best they can.

3 Q Can you describe how?

4 A No.

5 Q No?

6 A No. I --

7 Q You don't --

8 A -- don't know how.

9 Q -- know how?

10 A I don't know how.

11 If it's something egregious, it would go to
12 EEOAA, or a Title IX investigation.

13 Q And when you say you refer something to Student
14 Affairs, that's Elizabeth With oversees that?

15 A Yes.

16 Q And you testified earlier that you oversee
17 Elizabeth With. Correct?

18 A That's correct.

19 Q But you don't know what happens when you refer
20 someone to Student Affairs?

21 MS. HELLUMS-GOMEZ: Objection. Form.

22 A (The Witness) Different things happen.

23 Sometimes I get an answer, sometimes I don't.

24 Q (Mr. Townsend) Can you describe some of those
25 different things for us?

1 A If a student - and - and I'm speculating now, so
2 I don't really see the value of this.

3 Q Well, I'm just asking what are different
4 measures that Student Affairs can take, once they get a
5 referral from yourself?

6 A They can refer it to the Dean of Students for
7 followup, or they can refer it to EEOAA, or they can refer
8 it to the police.

9 Q So just to clarify, there are three --

10 A They --

11 Q -- actual --

12 A -- or they could decide to do nothing.

13 Q All right. So just to clarify, there are four
14 actions that Student Affairs can do - take, when they
15 receive a - a referral from you?

16 A Well, I would - I would say there's two. They
17 can act on it or not.

18 Q All right. And if they do choose to act on it,
19 the things that they can do are --?

20 A Refer to the police, refer to EEOAA, or refer to
21 the Dean of Students' office.

22 Q And if they are referred to the Dean of
23 Students' office, could students get in trouble for that?

24 MS. HELLUMS-GOMEZ: Objection. Form.

25 A (The Witness) I don't know.

1 Q (Mr. Townsend) Could a student be expelled?

2 A Again, I don't know.

3 Q Could a student be interviewed?

4 A Probably.

5 Q All right. So what is the point of you stating
6 that you're looking in to this and were referring it to
7 Student Affairs?

8 MS. HELLUMS-GOMEZ: Objection. Form.

9 A (The Witness) To let a student, who says they
10 feel unsafe and harassed, know that someone will review
11 this.

12 Q (Mr. Townsend) But not you, yourself?

13 A Nope.

14 Q But you did testify earlier that you oversee the
15 person who does review it?

16 A One of them.

17 Q All right. I'm going to introduce - this will
18 be --

19 MR. TOWNSEND: Is this Exhibit 6 we're on?

20 (The Reporter indicated that it would be.)

21 Q (Mr. Townsend) Yes. I'd like to introduce
22 Exhibit 6.

23 Have you seen this article before?

24 A (The Witness) No.

25 Q Okay.

1 A Not that I recall.

2 Q All right. I'm just going to walk through a
3 couple of things in this article.

4 First it says it's from July 9th, 2020.
5 Correct?

6 A Yep.

7 Q All right. I'm going to scroll down to Page 2.

8 Can you familiarize yourself with this
9 paragraph, starting with, "The UNT chapter"?

10 A I read it.

11 Q Great.

12 And that paragraph says that Kelly Neidert
13 was last - the previous year's chapter's chairman.

14 A That's what the sentence says.

15 Q Great.

16 So that would have been 2019. Correct?

17 A Well, I don't know the date. I think --

18 Q But it would have been the year before this
19 article was published?

20 A I don't know.

21 MS. HELLUMS-GOMEZ: Objection. Form.

22 A (The Witness) I don't know.

23 Q (Mr. Townsend) Do you know if Kelly Neidert was
24 the chapter's chairman at UNT? Or YCT at UNT?

25 A I assume from this she was, but I don't know.

1 Q All right. Great.

2 All right. I'm going to scroll down. Do
3 you see this Tweet that's up there?

4 A Yes.

5 Q Have you seen this Tweet before?

6 A Maybe, but I - there's so many around this young
7 woman that I couldn't recall any specific.

8 Q What do you mean by that?

9 A I know she was very active on Twitter.

10 Q All right. Which person are you referring to?

11 A Kelly Neidert.

12 Q So what activity are you aware of? On her
13 Twitter?

14 A That she posted a lot of stuff.

15 Q Can you define what "stuff" you're referring to?

16 A No.

17 Q No, that you don't know?

18 A That's correct. I mean, I've seen some of her
19 posts, but - I've seen that she is active on Twitter. I
20 have lots of people I follow, so I don't try to pick out
21 anybody, and this is just noise, as far as I'm concerned.

22 (The Reporter asked for a repeat of the
23 last part of the Witness' answer.)

24 A (The Witness) I have - I said I got a lot - I -
25 I have a lot of Tweets from people I'm following, with

1 others, and that I don't go out of my way to follow any of
2 them, specifically, unless I see something that looks
3 particularly egregious, and I note that I am not
4 referenced in this Tweet, so I couldn't say whether I saw
5 it or not.

6 Q (Mr. Townsend) And do you follow Kelly Neidert?

7 A I - I don't think so, but you never know.

8 I don't follow - you know, sometimes people
9 follow for me, so I doubt I would - would want to.

10 Q Can you describe the context that you would have
11 seen some of her Tweets?

12 A People often put my hash tag in, or my - my
13 address, my Twitter handle in.

14 So when they put my Twitter handle in to a
15 Tweet, then I generally see it.

16 Q And can you describe the context of some of
17 those Tweets that you would have seen?

18 A Which ones?

19 Q Referring to Kelly Neidert. Any of them.

20 A Yes. There was a dispute between her and some
21 of the other students on campus that seemed heated.

22 Q Can --

23 A Oh.

24 Q -- you describe it?

25 A Both contributing in - in - in ways to the

1 conversation, which, at some point, just looked like two
2 people shouting at each other.

3 Q Can you describe the context of that Twitter
4 spat?

5 MS. HELLUMS-GOMEZ: Objection. Form.

6 A (The Witness) No. I can't.

7 Q (Mr. Townsend) You don't remember anything from
8 that?

9 A Not really.

10 Q Just that it occurred?

11 A Yeah. There was a lot of activity around it for
12 awhile. Then it stopped.

13 Q When you say activity, what do you mean?

14 A Tweets back and forth.

15 Q And when was this?

16 A I feel - I - I couldn't tell you, for sure. I
17 feel like it was right around - it was preCOVID, but I - I
18 can't say, for sure.

19 Q So just - just so I'm clear, you remember that
20 there were Tweets, you remember Kelly Neidert as an
21 account, but you don't recall any of the subject matter of
22 those Tweets?

23 A Not really. I mean, people shouting at each
24 other doesn't constitute something I would look at deeply.

25 Q Do you know what they were shouting at each

1 other?

2 A No.

3 Q You just remember that they were shouting at
4 each other?

5 A Yeah.

6 Q Was it political?

7 A I don't know.

8 Q All right. I'd like to refer back to this
9 Tweet. You said you were familiar with - you familiarized
10 yourself with it?

11 A This one?

12 Q Yes. The --

13 A Yes.

14 Q -- on the screen?

15 A I read it.

16 Q All right. What - can you tell me what this
17 Tweet says?

18 A "Don't come back to campus if you value your
19 safety."

20 Q And who is this Tweet directed at?

21 A The - at YCT, UNT, and at Kelly Neidert.

22 Q Do you know if UNT has investigated threats
23 against YCT or Kelly Neidert?

24 A I don't know.

25 Q If you had seen this Tweet, would you have

1 forwarded it to Student Affairs for investigation?

2 A It's --

3 MS. HELLUMS-GOMEZ: Objection.

4 A (The Witness) -- possible.

5 MS. HELLUMS-GOMEZ: Form.

6 Q (Mr. Townsend) Okay.

7 A (The Witness) Okay. It's possible.

8 Q But you didn't.

9 A No. It doesn't - it didn't reference me, but I
10 would - and, again, at some point, when groups are just
11 Tweeting unmercifully, I ignore them.

12 Q And I'm going to scroll up here.

13 Do you see this paragraph that starts, "In
14 addition to this Petition"?

15 A Yes.

16 Q Can you familiarize yourself with that
17 paragraph?

18 A I have.

19 Q Great.

20 This paragraph says that, "YCT and UNT - at
21 UNT and Neidert have had threats of violence leveled
22 against them, and they claim their account was recently
23 hacked."

24 Is it - did I read that correctly?

25 A Yeah. Good job reading.

1 Q Yo.

2 Are you aware of these allegations?

3 A No. And I've never heard of this hacking thing.

4 I - I knew there was an argument that was
5 escalating around both of them. Both students on one side
6 and students on the other.

7 Q So you've - hadn't heard of the hacking. Have
8 you - you heard of the threats of violence?

9 A I haven't heard threats of violence,
10 specifically.

11 Q What have you heard?

12 A I thought I explained that.

13 There was a heated discussion, on Twitter,
14 between some of our students and some of the - and Kelly
15 Neidert.

16 Q So that's the only time that you've heard about
17 those - that situation?

18 A Yeah. There was a spate of them, and then it
19 kind of went away.

20 Q There's a what? I'm sorry?

21 A A spate of them.

22 Q I - I'd like to direct to the next paragraph.
23 Can you familiarize yourself with this paragraph that
24 starts with "Neidert has been"?

25 A Okay. I read it.

1 Q Great.

2 So it says that, "Neidert has been the
3 target of doxxing."

4 A I have - I have no idea what that is.

5 Q It defines it later. "Attempts to publish her
6 private and" --

7 A Oh.

8 Q -- "identifying" --

9 A Someone else wrote that. I don't know. It's -
10 I mean, you know --

11 Q You --

12 A -- this person has obviously got an opinion, and
13 so they've been writing stuff. I don't know.

14 If you want me to verify it, I have no clue
15 whether it's right or wrong.

16 Q On - sorry. We're getting - backing up just a
17 second.

18 We're going to start with the definition of
19 doxxing. Do you know what the - that phrase means?

20 A No. I do not.

21 And I don't know if I accept whatever
22 definition is put in parentheses by someone I don't know.

23 Q All right. Do you know what attempts to publish
24 her private and identifying information on the Internet
25 means?

1 A I've never heard of that.

2 Q You've never heard of someone publishing private
3 information on the Internet?

4 A Oh. That I've heard of.

5 Q Yeah.

6 So if - so if we replace, "Neidert has been
7 the target of doxxing," with "Neidert has been the target
8 of attempts to publish her private and identifying
9 information on the Internet," are you aware of that --

10 MS. HELLUMS-GOMEZ: Objection.

11 Q (Mr. Townsend) -- allegation?

12 MS. HELLUMS-GOMEZ: Form.

13 A (The Witness) No.

14 Q (Mr. Townsend) No?

15 Are you aware of any attempts to publish
16 private information from YCT students?

17 A No.

18 Q Of YCT students?

19 A No.

20 Q No?

21 Real quick, I just want to scroll down to
22 5, 6, 7.

23 I know you said that this was just one
24 article, so I want to direct you to this Tweet from UNT
25 Democrats. Can - do you see this?

1 A Yes.

2 Q And you see that it says, "You all heard them.
3 Sign that Petition," referring to the Tweet below. It
4 says that, "College Democrats declare open war on
5 conservatives"?

6 A I've just read it.

7 Q Would that appear to be an endorsement of
8 declaring war on conservatives?

9 MS. HELLUMS-GOMEZ: Objection. Form.

10 A (The Witness) I don't know.

11 Q (Mr. Townsend) If the alleged threats above,
12 that we discussed, are true, would you find that
13 troubling?

14 MS. HELLUMS-GOMEZ: Objection. Form.

15 A (The Witness) I'm not sure what you're asking.

16 Q (Mr. Townsend) If what we've discussed -
17 threats of violence, threats of hacking, threats of
18 public - private information being put on public
19 information - if that was true, would you find that
20 troubling on your University?

21 MS. HELLUMS-GOMEZ: Objection. Form.

22 A (The Witness) Yes, but I think context is
23 relevant.

24 Q (Mr. Townsend) Can you discuss what context
25 would be relevant for that?

1 A If the threats were serious. I can't judge
2 that, however.

3 Q How is a threat - can you describe how a threat
4 of violence would not be serious?

5 MS. HELLUMS-GOMEZ: Objection. Form.

6 A (The Witness) I might answer by saying I've
7 watched fights between my two year old and five year old
8 grandson who threaten each other with violence on a
9 regular basis, and I don't take them very seriously.

10 Q (Mr. Townsend) Do you think of your students as
11 two and five year olds?

12 MS. HELLUMS-GOMEZ: Objection. Form.

13 A (The Witness) I think there's times when our
14 students don't behave as the adults they are.

15 Q (Mr. Townsend) All right.

16 MR. TOWNSEND: I'm going to take a five
17 minute break here, if that's all right, and then we'll
18 come back.

19 Let's mute ourselves.

20 THE REPORTER: We're off the record at
21 2:12.

22 (Recess from 2:12 p.m. to 2:21 p.m.)

23 THE REPORTER: We're back on the record at
24 2:21.

25 Q (Mr. Townsend) Awesome.

1 Just a couple more questions before we
2 get - and sorry about the light kind of shining on my face
3 like that.

6 A (The Witness) I couldn't define it legally.

7 Q Have you ever heard that term?

8 A I've heard the term. (Witness nodded head up
9 and down.)

10 Q Where have you heard that term?

11 A I don't know. Newspaper. Around.

12 Q Do you know what it means if a newspaper were to
13 use it?

14 A Someone who is in the country without
15 documentation. (Witness shook head from side to side.)

16 Q Have you ever used the term undocumented
17 immigrant?

18 A I - I - I - I don't think so, but I wouldn't
19 swear to it.

Q. Have you ever heard the term illegal alien?

21 A Yes, I have.

22 | 0 Do you know what it means?

23 MS. HELIUMS-GOMEZ: Objection. Form.

24 | A (The Witness) Actually, no. I don't.

25 O (Mr. Townsend) Where have you heard it?

1 A People use it all the time. (Witness shook head
2 from side to side.)

3 I do not - I am not aware of the technical
4 definition of the term.

5 Q But when people use it and you hear it, do you
6 know what they're referring to?

7 A I would assume someone who came in to the
8 country with no documentation.

9 Q And you heard the term unauthorized immigrant
10 before?

11 A Again, the same thing. I - I'm - I'm not sure
12 unauthorized. I've read it in something you just had up
13 there, but I would assume it means the same thing.

14 But actually - but I really don't know.

15 Q I'm sorry. One quick - real quick.

16 MR. TOWNSEND: Is that Renaldo who is in
17 the room?

18 If you could just slide in a little bit?

19 I can see his elbow.

20 I'm sorry. Okay. A little bit more.

21 RENALDO STOWERS: Why do you need me to
22 slide in? I am doing nothing but sitting in this
23 deposition. I'm not doing anything. You can - you can
24 see if I'm going to start saying - doing anything --

25 MR. TOWNSEND: But --

1 RENALDO STOWERS: -- with President
2 Smatresk.

3 MR. TOWNSEND: It - it's common practice
4 for any Counsel to be --

5 RENALDO STOWERS: I've been --

6 MR. TOWNSEND: -- on the --

7 RENALDO STOWERS: -- I've been --

8 MR. TOWNSEND: -- camera.

9 RENALDO STOWERS: -- I've been an attorney
10 for an extremely long time, so you don't need to advise me
11 on what's common practice.

12 If you do, I can advise --

13 MR. TOWNSEND: Well, just --

14 RENALDO STOWERS: -- you on what's common
15 practice with regard to taking a deposition.

16 Is this good enough?

17 MR. TOWNSEND: Yes. I can see the edge of
18 your face. That's --

19 RENALDO STOWERS: Thank you.

20 MR. TOWNSEND: -- useful. Thank you.

21 RENALDO STOWERS: Please continue.

22 MR. TOWNSEND: I will.

23 RENALDO STOWERS: Good.

24 Q (Mr. Townsend) You testified earlier,
25 Mr. Smatresk, that you oversee Mr. Goodman?

1 A (The Witness) Yes.

2 Q And you testified that he oversees recruitment?

3 A Yes.

4 Q Great.

5 And he would be responsible for things
6 published from freshman recruitment - or from recruitment.
7 Correct?

8 A Most likely.

9 Q And you, being responsible for Mr. Goodman,
10 would be responsible for things published through - by the
11 University. Correct?

12 A Yes.

13 Q And you wouldn't publish something that's not
14 true.

15 A If I --

16 MS. HELLUMS-GOMEZ: Objection. Form.

17 A (The Witness) To the extent that I knew it
18 wasn't true, I wouldn't.

19 Q (Mr. Townsend) And it would be improper for you
20 to tell students something that wasn't true. Correct?

21 MS. HELLUMS-GOMEZ: Objection. Form.

22 A (The Witness) The same answer.

23 Q (Mr. Townsend) And can you repeat the answer,
24 then?

25 A I wouldn't knowingly tell a student something

1 untrue.

2 Q And you wouldn't tell a student that they were
3 eligible for something if they weren't?

4 A I guess it depends what eligible - what
5 eligibility you're discussing.

6 I don't know all the rules for eligibility,
7 so I wouldn't normally be in that position.

8 Q No. But if you did know that - if you did say
9 that somebody was eligible, it would be improper for you
10 to do that if it wasn't --

11 A I have --

12 Q -- true?

13 A You mean if I had a perfect understanding of all
14 the rules that we have?

15 Q Yes.

16 A Then I would probably not knowingly tell them
17 something that - tell them they were eligible for
18 something, if I understood all the rules.

19 MS. HELLUMS-GOMEZ: And I would object to
20 form on that question, Miss Johnson.

21 Q (Mr. Townsend) I'm going to pull back up
22 Exhibit 4. Can you see this?

23 A (The Witness) Yes.

24 Q And I'm scrolling to Page 4 on this.

25 And you would agree that this says that

1 unauthorized immigrants are eligible to enroll at UNT and
2 pay in-state tuition?

3 MS. HELLUMS-GOMEZ: I'm going to object to
4 form, again, to this exhibit.

5 A (The Witness) I have already answered this
6 question.

7 Q (Mr. Townsend) And if you could just give an
8 answer, that would be awesome.

9 A It reads, "Certain unauthorized immigrants are
10 eligible to enroll in Texas public colleges and pay
11 in-state tuition."

12 Q And that appears to tell students that they -
13 that even if they're unauthorized immigrants, that they
14 might be in - eligible to enroll and pay in-state tuition.
15 Correct?

16 MS. HELLUMS-GOMEZ: Objection. Form.

17 A (The Witness) To the extent that I understand
18 the sentence I just read you.

19 Q (Mr. Townsend) And this appears to be on UNT
20 letterhead. Or UNT document.

21 MS. HELLUMS-GOMEZ: Objection. Form.

22 A (The Witness) Did you ask a question?

23 Q (Mr. Townsend) Yes.

24 Does it appear that this comes from UNT?

25 A It looks like it.

1 Q But you are testifying today that you don't know
2 whether or not unauthorized immigrants are eligible to
3 enroll at UNT?

4 A I told you before, I believe some are.

5 Q Great.

6 And this will be my final question.

7 And I'll stop sharing my screen real quick.

8 Do you think that college students might be
9 intimidated if they saw their President Tweeting that they
10 are looking in to Tweets, and political conduct, and
11 political statements by the University President?

12 MS. HELLUMS-GOMEZ: Objection. Form.

13 A (The Witness) No.

14 Q (Mr. Townsend) Okay.

15 MR. TOWNSEND: I have no further questions.

16 (Witness passed at 2:29 p.m.)

17 MR. TOWNSEND: Would you like to Redirect?

18 MS. HELLUMS-GOMEZ: Not at this time.

19 THE REPORTER: Okay. That concludes the
20 deposition at 2:29 p.m.

21 Stipulations have been made that the
22 original transcript is going to be sent to Sandy
23 Hellums-Gomez for signature of the Witness, and thereafter
24 the signed transcript is to be returned to JUDY A.
25 COUGHENOUR & ASSOCIATES, 8109 Asmara Drive, Austin, Texas,

1 within thirty days for filing with the attorney who asked
2 the first question in the deposition.

3 And that does conclude the deposition.

4 * * * * *

5 (The Certified Shorthand Reporter JUDY A.
6 COUGHENOUR JOHNSON hereby states that
7 Exhibit Nos. 1 through 6 were marked at
8 the conclusion of the deposition, and the
9 originals are to be attached to the
10 original transcript of the deposition.)

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1	CHANGES AND SIGNATURE		
2	WITNESS NAME:	DR. NEAL SMATRESK	
3	DATE TAKEN:	NOVEMBER 22, 2021	
4	PAGE	LINE	CHANGE
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5 I, DR. NEAL SMATRESK, have read the foregoing
6 deposition and hereby affix my signature that the same is
7 true and correct, except as noted above.

8

9

10

DR. NEAL SMATRESK

11

STATE OF _____

12

COUNTY OF _____

13

BEFORE ME, _____, on this
14 day personally appeared DR. NEAL SMATRESK, known to me or
15 proved to me, under oath, identity card, or other
16 document, to be the person whose name is subscribed to the
17 foregoing document and acknowledged to me that the same
18 was executed for the purposes and consideration therein
19 expressed.

20

21

GIVEN under my hand this _____ day of _____,
2021.

22

23

24

25

NOTARY PUBLIC IN AND FOR THE
STATE OF _____
MY COMMISSION EXPIRES ON:

REPORTER'S CERTIFICATION

13 DEPOSITION OF DR. NEAL SMATRESK

NOVEMBER 22, 2021

16 I, JUDY A. COUGHENOUR JOHNSON, a Certified
17 Shorthand Reporter in and for the State of Texas, do
18 hereby certify to the following:

19 THAT the Witness, DR. NEAL SMATRESK, was duly sworn
20 by the officer, and that the transcript of the oral
21 deposition is a true record of the testimony given by the
22 Witness;

23 THAT the deposition transcript was submitted on
24 December 1, 2021 to the attorney for Defendants for
25 examination, signature, and return to JUDY A. COUGHENOUR &

1 ASSOCIATES, 8109 Asmara Drive, Austin, Texas, 78750, by
2 December 31, 2021.

3 THAT the amount of time used by each party at the
4 deposition is as follows:

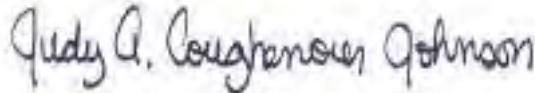
5 CHRISTIAN TOWNSEND - (49 minutes)

6 SANDY HELLUM-GOMEZ - (00:00 minutes)

7 THAT \$404.55 is the deposition officer's charges
8 for preparing the original deposition transcript and any
9 copies of exhibits, charged to Plaintiff.

10 I further certify that I am neither Counsel for,
11 related to, nor employed by any of the parties in the
12 action in which this proceeding was taken, and further,
13 that I am not financially or otherwise interested in the
14 outcome of the action.

15 SWORN TO by me this 1st day of December, 2021.

16 
17

18 JUDY A. COUGHENOUR JOHNSON
19 TEXAS CSR NO. 1198
20 EXPIRATION DATE: 06/30/23
21 8109 Asmara Drive
22 Austin, Texas 78750
23 PH: (512) 346-4707
24
25

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

YOUNG CONSERVATIVES OF TEXAS §
FOUNDATION §
§
§
Plaintiff § CIVIL ACTION NO. 4:20-CV-973
v. § JUDGE SEAN D. JORDAN
§
THE UNIVERSITY OF NORTH TEXAS, THE §
UNIVERSITY OF NORTH TEXAS §
SYSTEM, NEAL SMATRESK, PRESIDENT §
OF THE UNIVERSITY OF NORTH §
TEXAS and SHANNON GOODMAN, §
VICE PRESIDENT FOR ENROLLMENT OF §
THE UNIVERSITY OF NORTH TEXAS; §
§
Defendants. §

DECLARATION OF WILLIAM C. DOMINGUEZ

I, William C. Dominguez, hereby declare as follows:

1. I am over the age of 18, of sound mind, and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.
2. I am the State Chairman of Young Conservatives of Texas (“YCT”), a non-partisan youth organization committed to advancing conservative values.
3. In my role as State Chairman, I oversee all YCT chapters at colleges and universities across the state of Texas.
4. YCT has established and currently maintains a chapter at the University of North Texas (“UNT”) in Denton County, Texas.
5. YCT’s members include United States citizens that do not qualify as Texas residents and are not otherwise exempt from the requirement to pay nonresident tuition.

6. YCT's members include individuals that are currently enrolled as undergraduate students at UNT.

7. YCT's core organizational purpose is to advance conservative values by educating students and the public, advocating for conservative policies, engaging in campus activism, and publishing ratings of the Texas Legislature.

8. Pursuant to this core purpose, YCT has repeatedly taken stands on issues of higher education. Advocacy for higher education reform is central to YCT's role as Texas's preeminent conservative youth organization. YCT not only advocates for such reforms statewide, but also focuses in on campus specific policies, including those at UNT. *See Exhibit A.*

9. For example, YCT advocates for increased competition, transparency, and accountability in higher education. *See Exhibits B, C, and D.*

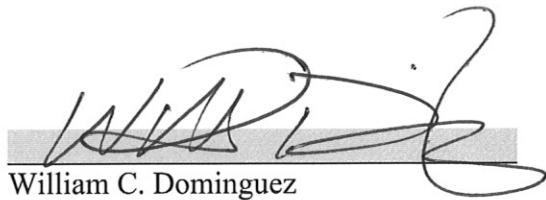
10. YCT has also fought hard to eliminate wasteful spending as a means of lowering tuition. *See Exhibits E and F.*

11. YCT has consistently mounted a conservative opposition to tuition deregulation. *See Exhibits G and H.*

12. And, most relevantly, YCT has repeatedly opposed the disparate treatment of aliens who are not lawfully present in the United States and United States citizens from other states with regard to tuition. *See Exhibits I, J, K, and L.*

13. The denial of resident tuition rates to United States citizens has impaired YCT's ability to advance conservative values by causing the organization to expend scarce resources that would otherwise be dedicated to advocacy in other policy areas.

Pursuant to 28 U.S.C. § 1746, I, William C. Dominguez, declare under penalty of perjury that the foregoing is true and correct. Executed on this 5 day of January, 2021, in DALLAS, Texas.



William C. Dominguez

Filed Under Seal

EXHIBIT 3
(Confidential Outside
Counsel Eyes Only)

CAUSE NO. _____

YOUNG CONSERVATIVES OF TEXAS
FOUNDATION

Plaintiff,

v.

THE UNIVERSITY OF NORTH TEXAS,
NEAL SMATRESK, PRESIDENT OF
THE UNIVERSITY OF NORTH TEXAS,
and SHANNON GOODMAN, VICE
PRESIDENT FOR ENROLLMENT OF
THE UNIVERSITY OF NORTH TEXAS

Defendants.

IN THE DISTRICT COURT OF

DENTON COUNTY, TEXAS

JUDICIAL DISTRICT

AFFIDAVIT OF [REDACTED]

STATE OF CA §
Orange COUNTY §

BEFORE ME, the undersigned notary, on this day personally appeared [REDACTED], the affiant, whose identity is known to me. After I administered the oath, affiant testified as follows:

1. "My name is [REDACTED]. I am over the age of 18, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am currently enrolled as an undergraduate at the University of North Texas ("UNT") in Denton County, Texas.
3. I am a member of the UNT Chapter of Young Conservatives of Texas ("YCT"), a non-partisan youth organization committed to advancing conservative values.
4. I am a United States citizen and resident of the State of California. However, I am neither a Texas resident nor legally exempt for the requirement to pay nonresident tuition.

5. I paid nonresident tuition for my most recent semester at UNT and anticipate paying nonresident tuition during future semesters.
6. The requirement that I pay tuition in excess of the rate set for resident students harms me financially,

Name [REDACTED]

SEE ATTACHED
NOTARIZED DOCUMENT

SWORN to and SUBSCRIBED before me, the undersigned authority, on the _____ day
of _____, 2020.

Notary Public in and for
the State of _____
My commission expires: _____

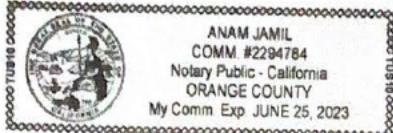
SEE ATTACHED
NOTARIZED DOCUMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ORANGE

Subscribed and sworn to (or affirmed) before me on this 6
day of NOVEMBER, 2020 by [REDACTED]

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Signature

A handwritten signature in black ink, appearing to read "Anam Jamil". The signature is written in a cursive style and is crossed out with a large, diagonal black line.

Filed Under Seal

EXHIBIT 4
(Confidential Outside
Counsel Eyes Only)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

YOUNG CONSERVATIVES OF TEXAS §
FOUNDATION §
Plaintiff, §

v. §

THE UNIVERSITY OF NORTH TEXAS, THE §
UNIVERSITY OF NORTH TEXAS SYSTEM, §
NEAL SMATRESK, PRESIDENT OF THE §
UNIVERSITY OF NORTH TEXAS and §
SHANNON GOODMAN, VICE PRESIDENT §
FOR ENROLLMENT OF THE UNIVERSITY §
OF NORTH TEXAS; §
Defendants. §

CIVIL ACTION NO. 4:20-CV-973
JUDGE SEAN D. JORDAN

DECLARATION OF [REDACTED]

I, [REDACTED], hereby declare as follows:

1. I am over the age of 18, of sound mind, and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.
2. I am currently enrolled at the University of North Texas (UNT).
3. I am a member of the UNT chapter of Young Conservatives of Texas.
4. I am a United States Citizen and resident of the state of Missouri.
5. I am neither a Texas resident nor legally exempt from the requirement to pay nonresident tuition at UNT.
6. I paid nonresident tuition for my most recent semester at UNT and anticipate that I will be required to pay nonresident tuition in the future.
7. The requirement that I pay tuition in excess of the rate set for resident students financially harms me.

Pursuant to 28 U.S.C. § I declare under penalty of perjury that the forgoing is true and correct.

Executed on this 5th day of January, 2022, in Dexter,
Missouri

[REDACTED]
[REDACTED]

EXHIBIT 5

SCRUNCH...SCRUNCH...SCRUNCH

CIVIL ACTION NO. 4:20-CV-973

**YOUNG CONSERVATIVES OF TEXAS FOUNDATION
VS.
THE UNIVERSITY OF NORTH TEXAS, ET AL.**

**ORAL DEPOSITION
OF
SHANNON MICHAEL GOODMAN
TAKEN ON
NOVEMBER 12, 2021
VIA ZOOM**

REPORTED BY:

**JUDY A. COUGHENOUR & ASSOCIATES
8109 Asmara Drive
Austin, Texas 78750
PH: (512) 346-4707**

Page 1		Page 3	
1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT 3 SHERMAN DIVISION		1 APPEARANCES (CONTINUED)	
4 5 VS. 6 THE UNIVERSITY OF NORTH 7 TEXAS, THE UNIVERSITY OF 8 NORTH TEXAS SYSTEM, NEAL 9 SMATREK, PRESIDENT OF THE 10 UNIVERSITY OF NORTH TEXAS, 11 AND SHANNON GOODMAN, VICE 12 PRESIDENT FOR ENROLLMENT OF 13 THE UNIVERSITY OF NORTH 14 TEXAS 15 *****		2 Reported By: 3 JUDY A. COUGHENOUR & ASSOCIATES 4 BY: JUDY A. COUGHENOUR JOHNSON 5 8109 Asmara Drive 6 Austin, TX 78750 7 PH: (512) 346-4707 8 e-mail: Jude@prodigy.net 9 ***** 10 STIPULATIONS 11 The attorneys for all parties present stipulate and 12 agree to the following items: 13 THAT the deposition of SHANNON MICHAEL GOODMAN is 14 taken pursuant to Notice; 15 THAT by agreement of Counsel and all parties 16 present, the Reporter was allowed to swear in the Witness 17 remotely; 18 THAT all objections will be made pursuant to the 19 Federal Rules of Civil Procedure; 20 AND THAT the original transcript will be submitted 21 for signature to the Witness' attorney, SANDY 22 HELLUMS-GOMEZ, and that the Witness or the Witness' 23 attorney will return the signed transcript to JUDY A. 24 COUGHENOUR & ASSOCIATES within thirty days of the date the 25 transcript is provided to the Witness' attorney. If not 25 returned, the Witness may be deemed to have waived the right to make the changes, and an unsigned copy may be	
12 13 ORAL DEPOSITION 14 OF 15 SHANNON MICHAEL GOODMAN 16 TAKEN VIA ZOOM 17 NOVEMBER 12, 2021 18 19 *****		25 A. COUGHENOUR JOHNSON, Certified Shorthand Reporter No.	
20 ORAL DEPOSITION OF SHANNON MICHAEL GOODMAN, taken 21 remotely via the Zoom platform, produced as a Witness at 22 the instance of the Plaintiff, and duly sworn, was taken 23 in the above-styled and numbered cause on the 12th day of 24 November, 2021, from 1:28 p.m. to 2:06 p.m., before JUDY 25 A. COUGHENOUR JOHNSON, Certified Shorthand Reporter No.		Page 2	
1 1198, in and for the State of Texas, reported by machine 2 shorthand at THE UNIVERSITY OF NORTH TEXAS, DENTON, TEXAS, 3 the location of the Witness, pursuant to the Federal Rules 4 of Civil Procedure and the provisions stated on the record 5 or attached herein. 6 ***** 7 APPEARANCES 8 For Plaintiff: 9 TEXAS PUBLIC POLICY FOUNDATION 10 BY: CHANCE WELDON 11 - AND - 12 CHRISTIAN TOWNSEND 13 901 Congress Avenue 14 Austin, TX 78701 15 PH: (512) 472-2700 16 e-mail: Cweldon@texaspolicy.com 17 18 For Defendants: 19 HUSCH BLACKWELL 20 BY: SANDY HELLUMS-GOMEZ 21 600 Travis Street 22 Suite 2350 23 Houston, TX 77002 24 PH: (713) 647-6800 25 e-mail: Sandy.gomez@huschblackwell.com 26 27 - AND - 28 HUSCH BLACKWELL 29 BY: PAIGE DUGGINS-CLAY 30 111 Congress Avenue 31 Suite 1400 32 Austin, TX 78701 33 PH: (512) 472-5456 34 e-mail: Paige.duggins-clay@huschblackwell.com 35 36 Also Present: 37 NANCY MARTIN, HOST 38 DOLLY GARCIA		1 uscd as though signed. 2 ***** 3 INDEX 4 Appearances..... 2 5 Stipulations..... 3 6 Exhibits..... 4 7 SHANNON MICHAEL GOODMAN 8 Examination by Mr. Weldon..... 5 9 Witness Changes and Corrections..... 32 10 Witness Signature..... 33 11 Court Reporter Certificate..... 34 12 ***** 13 EXHIBITS 14 EXHIBIT PAGE PAGE 15 NUMBER DESCRIPTION MARKED REF'D 16 1 Being biographical information on 17 Shannon Goodman from the Office of 18 the President (/) 31 10 19 2 Being a University of North Texas 20 Division of Enrollment 2021-2022 21 3 Being a copy of Texas Education 22 Code, Section 54.051, Tuition Rates 31 17 23 4 Being a copy of Texas Education 24 Code, Section 54.052, Determination 25 of Resident Status 31 20 26 27 28 29 30	

Judy A. Coughenour & Associates

Page 2 (Pages 5-8)

<p style="text-align: center;">Page 5</p> <p>1 THE REPORTER: Today's date is November 12, 2 2021, and the time is 1:27 p.m. 3 My name is Judy Coughenour Johnson, Judy A. 4 Coughenour & Associates, 8109 Asmara Drive, Austin, Texas. 5 This is the oral deposition of Shannon 6 Michael Goodman, and it is being conducted remotely, by 7 agreement of Counsel, with the Witness located at the 8 University of North Texas, Denton, Texas. 9 Will the Witness please raise your right 10 hand and be sworn? 11 * * * * 12 13 SHANNON MICHAEL GOODMAN 14 the Witness herein, having been first duly administered an 15 oath or affirmation, via Zoom, pursuant to the agreement 16 of Counsel, testified as follows: 17 18 EXAMINATION 19 QUESTIONS BY MR. WELDON: 20 THE REPORTER: Thank you. 21 I have administered the oath, the Witness 22 having been identified to me by attestation of Counsel. 23 Would Counsel, and all other persons 24 present in the rooms, please identify yourselves, and your 25 locations, for the record?</p>	<p style="text-align: center;">Page 7</p> <p>1 (Ms. Garcia came in to the camera view.) 2 MR. WELDON: Thank you. 3 MS. HELLUMS-GOMEZ: Does that work? 4 (The Reporter indicated that now Mr. Weldon 5 could begin at any time.) 6 MR. WELDON: Okay. 7 Q (Mr. Weldon) Would you please state your name 8 for the record? 9 MR. WELDON: I think - I think they're on - 10 I think they're on mute. 11 MS. HELLUMS-GOMEZ: Yeah. 12 A (The Witness) Shannon Goodman. 13 (The Reporter asked for a repeat of the 14 name.) 15 A (The Witness) Goodman. 16 Q (Mr. Weldon) And Mr. Goodman, have you ever 17 given a deposition before? 18 A I have not. 19 Q Okay. So then before we begin, I'd just like 20 to ask that for the purposes of getting a clear 21 transcript, you let me finish asking any questions before 22 you start your answer, and I'll extend the same courtesy, 23 by waiting for you to answer before I ask any additional 24 questions. Is that fair? 25 A That's fair.</p>
<p style="text-align: center;">Page 6</p> <p>1 MR. WELDON: Chance Weldon, taking the 2 deposition. 3 I'm here in Austin, Texas. 4 MS. HELLUMS-GOMEZ: Sandy - excuse me - 5 Sandy Hellums-Gomez, Counsel for the Defendants. 6 I am present in Houston, Texas. 7 MS. DUGGINS-CLAY: Paige Duggins-Clay, 8 Counsel for the UNT, Defendants, and in Austin, Texas. 9 (The Reporter asked if there was anyone 10 else present with Mr. Weldon.) 11 MR. WELDON: Yeah. Yes. 12 MR. TOWNSEND: Yes. Christian Townsend in 13 Austin, Texas. 14 (The Reporter indicated Mr. Weldon 15 could begin at any time.) 16 MS. HELLUMS-GOMEZ: And - well, and - and 17 present in Denton, as well, is Miss Dolly Garcia, in-house 18 Counsel with UNT. 19 MR. WELDON: Can - can she be on camera? I 20 just - I can't see her, and I don't know who's in the 21 room. 22 So if she could just get back on camera, 23 that would be appreciated. 24 MS. HELLUMS-GOMEZ: Okay. Can you - does 25 that work for you, Dolly?</p>	<p style="text-align: center;">Page 8</p> <p>1 Q Okay. And it probably won't be necessary, but 2 if for any reason you need a break, just let me know. I 3 only ask that you answer any question that's pending at 4 the time before we break. Is that fair? 5 A That's fair. 6 Q Okay. Are you on any medication that would 7 prevent you from answering truthfully here today? 8 A No. 9 Q Okay. And do you have any medical condition 10 that would prevent you from answering truthfully here 11 today? 12 A No. 13 Q Okay. And you're currently employed by the 14 University of North Texas. Is that true? 15 A That's true. 16 Q Okay. And what is the title of your position 17 there? 18 A Vice-President for Enrollment. 19 Q Okay. And you're testifying here today in your 20 capacity as Vice-President of Enrollment. Is that true? 21 A That's true. 22 Q Okay. So how long have you been in that role? 23 A Approximately six and a half years, 24 approximately. 25 Q And as Vice-President of Enrollment, what</p>

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<p style="text-align: right;">Page 9</p> <p>1 exactly do you oversee? What are you in charge of?</p> <p>2 A As far as units?</p> <p>3 Q Yeah.</p> <p>4 A Or the division?</p> <p>5 So I have University Admissions. I have</p> <p>6 Financial Aid and Scholarships. I have the Registrar</p> <p>7 Office. I have - the last six months, I have - I now have</p> <p>8 Student Financial Services. I have a unit that's called</p> <p>9 Enrollment Systems. And also oversee Welcome Center and</p> <p>10 University Tours.</p> <p>11 And then just administrative units, within.</p> <p>12 Like budget, you know, for - for the division.</p> <p>13 Q So if I --</p> <p>14 (The Reporter asked for a repeat of the</p> <p>15 last part of the Witness' answer.)</p> <p>16 A (The Witness) For the division. Just for - you</p> <p>17 know, for the administrative roles for the - for the</p> <p>18 division, itself.</p> <p>19 Q (Mr. Weldon) So do any of those departments or</p> <p>20 programs, that you oversee, involve the assessment of</p> <p>21 tuition at the University of North Texas?</p> <p>22 A I have a - a unit that's called Student</p> <p>23 Financial Services. They actually will assign or ensure</p> <p>24 that tuition has been assigned so that students are - are</p> <p>25 charged, and then they'll - they're also in charge of</p>	<p style="text-align: right;">Page 11</p> <p>1 before?</p> <p>2 A (The Witness) I think what you're pointing to</p> <p>3 is a Web page? Web site? Is that correct?</p> <p>4 A That - that - that is correct.</p> <p>5 And is this the - your biography that's on</p> <p>6 the University of North Texas Web site?</p> <p>7 A Yeah. It should be.</p> <p>8 I haven't looked at that site recently, but</p> <p>9 I'm assuming that's - that's what's there right now.</p> <p>10 Q Okay. And did you - did you sign off on this,</p> <p>11 or help create it?</p> <p>12 A Probably at the - I - I probably did sign off on</p> <p>13 it at the - at the time it was created. Yeah.</p> <p>14 Q Okay. Thank you.</p> <p>15 And can you look in this section here that</p> <p>16 says Bio Information? A couple of sentences down, where</p> <p>17 it says, "Mr. Goodman oversees UNT programs"?</p> <p>18 A Yes.</p> <p>19 Q Do you see that sentence?</p> <p>20 A Yes, I do.</p> <p>21 Q All right. And it says that you oversee the</p> <p>22 Eagle Express Tuition Plan. Correct?</p> <p>23 A That's correct. That's part of the Student</p> <p>24 Financial Services.</p> <p>25 Q Okay. And that tuition plan, that's going to</p>
<p style="text-align: right;">Page 10</p> <p>1 collecting those - and billing students for that.</p> <p>2 Q I'm sorry. Can you repeat the last - the last</p> <p>3 part of that statement? I don't - I couldn't understand</p> <p>4 you.</p> <p>5 A Sure.</p> <p>6 They - they ensure that the - the students</p> <p>7 are billed, and then they ensure that the - you know, they</p> <p>8 work on the fee payment, the collection side of that, as</p> <p>9 well.</p> <p>10 Q I'm going to introduce an exhibit, and let me</p> <p>11 see if I can pull it up here.</p> <p>12 This will be Exhibit 1.</p> <p>13 MR. WELDON: Can everybody see this? Are</p> <p>14 you all able to see that?</p> <p>15 (The Reporter indicated she could.)</p> <p>16 MS. HELLUMS-GOMEZ: Yes.</p> <p>17 A (The Witness) I - if - if that is in reference</p> <p>18 to a picture of me, yes.</p> <p>19 Q (Mr. Weldon) Okay.</p> <p>20 MR. WELDON: And I'm not sure.</p> <p>21 Do we have any way for them to be able to</p> <p>22 scroll through this, or do I need to just operate that?</p> <p>23 HOST: You'll need to operate that.</p> <p>24 MR. WELDON: Okay. Thank you.</p> <p>25 Q (Mr. Weldon) Have you ever seen this document</p>	<p style="text-align: right;">Page 12</p> <p>1 involve the cost of - of tuition for students at UNT,</p> <p>2 isn't it?</p> <p>3 A If - and that's an older plan that new students,</p> <p>4 I don't believe, can lock in to anymore.</p> <p>5 But yeah. That was - by students that</p> <p>6 chose that, were able to lock in those rates.</p> <p>7 Q Okay. And that's - and - and you said that's no</p> <p>8 longer available at the University or --</p> <p>9 A I don't believe we're doing Eagle Express</p> <p>10 anymore. We moved on to - the University moved on to Save</p> <p>11 and Soar Plan. That is a more recent one.</p> <p>12 So I think where students who had</p> <p>13 originally got on the Eagle Express will still continue on</p> <p>14 that, but I don't believe it's available to new students.</p> <p>15 I could be wrong on that, but I - I - I</p> <p>16 don't believe it is.</p> <p>17 Q Okay. Do you know if the cost of tuition is</p> <p>18 different for resident and nonresident students, at the</p> <p>19 University of North Texas?</p> <p>20 A There is a statutory tuition rate that is state</p> <p>21 defined through the legislature. They define a - what</p> <p>22 universities, such as us, can charge for a credit hour for</p> <p>23 resident, and they also define what is charged for</p> <p>24 nonresident.</p> <p>25 So that's the - that is the difference.</p>

<p style="text-align: right;">Page 13</p> <p>1 That's the rate that's different for residents and 2 nonresidents. That's that statutory, legislative rate 3 that's --</p> <p>4 Q Okay.</p> <p>5 A -- defined.</p> <p>6 Q So - so you would agree, though, that the rate 7 that is - that is charged is different? Correct?</p> <p>8 A I would agree that the - yeah. That the 9 statutory rate is - there's a rate set for resident and a 10 rate set for nonresident.</p> <p>11 Q And UNT complies with that state law, and 12 charges the different rates. Correct?</p> <p>13 A That is correct.</p> <p>14 Q Okay. I'm going to introduce a new exhibit, 15 Exhibit 2.</p> <p>16 MR. WELDON: Can everybody see that?</p> <p>17 MS. HELLUMS-GOMEZ: Yes.</p> <p>18 MR. WELDON: Okay.</p> <p>19 Q (Mr. Weldon) And - and Mr. - Mr. Goodman, do 20 you recognize the document on your screen?</p> <p>21 A (The Witness) I can't see it all. I think 22 there are - might - the pictures, and stuff, are in front 23 of it.</p> <p>24 But the part that I can see, yeah. Is - is 25 recognizable. Yes.</p>	<p style="text-align: right;">Page 15</p> <p>1 the University of North Texas Web site, would that sound 2 like - would - would you agree that that's reasonable?</p> <p>3 That we probably got it there?</p> <p>4 A Yes.</p> <p>5 Q Okay. Now can you look directly beneath - 6 beneath your name there? There's a box relating to Chris 7 Foster. Can you see that?</p> <p>8 A I can.</p> <p>9 Q Actually, let me back up one question.</p> <p>10 Would - does this appear to be an accurate 11 representation of the way that division is structured?</p> <p>12 A Yes.</p> <p>13 Q Okay. And is this one of the - earlier you 14 testified that you oversee several divisions. Is - this 15 is one of the divisions that you oversee?</p> <p>16 A I oversee one - one singular division, the 17 Division of Enrollment. These are different departments 18 or units within that division.</p> <p>19 Q Okay.</p> <p>20 A Just --</p> <p>21 Q So is it - oh. I apologize.</p> <p>22 So the things - but basically this is a - a 23 chart that shows all of the things that - all of the 24 divisions that you oversee with all - all of the 25 departments of the division that you oversee. Is that</p>
<p style="text-align: right;">Page 14</p> <p>1 Q Okay. And --</p> <p>2 (The Reporter asked for a repeat of the 3 last part of the Witness' answer.)</p> <p>4 A (The Witness) All the way - well, it's - the 5 top - the - the teal boxes to Michael Sanders. I can see 6 part of what I believe is probably Brenda McCoy, who's - 7 who is now retired, and then the level that has - down 8 where it says Call Center, you know, starting from the 9 left, I can see those boxes.</p> <p>10 Q (Mr. Weldon) I can - I can move that around a 11 little bit so you can see the rest of it.</p> <p>12 Does that change anything?</p> <p>13 A That allows me to see all the - I think the 14 lower boxes, and - and that's fine. I'm assuming there's 15 nothing off to the right that, you know, is different.</p> <p>16 But what I can - what I can see looks 17 familiar. Yeah.</p> <p>18 Q Okay. Do - can you - can you say what that - 19 what this document represents?</p> <p>20 A This would be a - a - a high-level org chart of 21 the division.</p> <p>22 Q Okay.</p> <p>23 A Probably focusing in on who would be my direct 24 reports.</p> <p>25 Q Okay. And if I told you that we got this from</p>	<p style="text-align: right;">Page 16</p> <p>1 correct?</p> <p>2 A Correct.</p> <p>3 Q Okay. So going back to the box in the middle 4 that - that refers to Chris Foster - you said you can see 5 that there. Right?</p> <p>6 A Correct.</p> <p>7 Q And from this chart, it looks like Mr. Foster 8 direct - reports directly to you. Is that correct?</p> <p>9 A Correct.</p> <p>10 Q Okay. So it would be fair to say that you 11 oversee his work. Is that correct?</p> <p>12 A Yeah. I mean, I think that's fair. I oversee 13 Chris. Yeah.</p> <p>14 Q Okay. Can you look at the box directly below 15 Mr. Foster's name?</p> <p>16 A I can.</p> <p>17 Q Okay. And that indicates that Mr. Foster is in 18 charge of tuition and fees assessment. Correct?</p> <p>19 A It does.</p> <p>20 Q Okay. And to your knowledge, when Mr. Foster 21 assesses tuitions and - tuition and fees, he complies with 22 state law. Correct?</p> <p>23 A Correct.</p> <p>24 Q And, you know, if, for some reason, Mr. Foster 25 collected fees in a way that didn't comply with state law,</p>

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<p>1 you would have authority to correct him. Right?</p> <p>2 A Correct.</p> <p>3 Q I'd like to introduce Exhibit 3. And this is</p> <p>4 going to be a copy of - this should be a copy of the Texas</p> <p>5 Education Code.</p> <p>6 MR. WELDON: Can everybody see that?</p> <p>7 A (The Witness) I - yeah. I mean, I can see the</p> <p>8 page that I think you're bringing up.</p> <p>9 Q (Mr. Weldon) Yeah. We can scroll - we'll</p> <p>10 scroll through - we'll scroll through it, as necessary.</p> <p>11 A Yes.</p> <p>12 Q Yeah.</p> <p>13 Have you ever seen Texas Education Code,</p> <p>14 Section 54.051 before?</p> <p>15 A I have seen it before. Yes.</p> <p>16 Q Okay. And can you take a look at Section (b) on</p> <p>17 this page?</p> <p>18 A Okay.</p> <p>19 Q Okay. Would it be a fair summary to say that</p> <p>20 that section says the University shall collect tuition at</p> <p>21 the rates prescribed by this section?</p> <p>22 MS. HELLUMS-GOMEZ: Objection. Calls for a</p> <p>23 legal conclusion.</p> <p>24 A (The Witness) Yeah. I'm not - let me reread</p> <p>25 it, because I'm not sure exactly what you're asking, so</p>	<p>1 setting the formula for nonresident student tuition?</p> <p>2 MS. HELLUMS-GOMEZ: Objection. Calls for a</p> <p>3 legal conclusion.</p> <p>4 A (The Witness) Yeah. I would - that's kind of</p> <p>5 how I read it. Yes.</p> <p>6 Q (Mr. Weldon) Thank you.</p> <p>7 And you would agree that the formula, in</p> <p>8 Section (c), and the formula in Section (d), are</p> <p>9 different. Correct?</p> <p>10 MS. HELLUMS-GOMEZ: Objection. Calls for a</p> <p>11 legal conclusion.</p> <p>12 A (The Witness) Yeah. I mean, as I - as I read</p> <p>13 it, I - well, I - there are different way to come to it.</p> <p>14 I guess technically it could end up being</p> <p>15 the same if - the way it's calculated, the way it's</p> <p>16 stated, would come out with it. But yeah.</p> <p>17 Q (Mr. Weldon) Yeah.</p> <p>18 But there - but they are different</p> <p>19 formulas. Correct?</p> <p>20 A Yeah. The - the - the way they're stated, they</p> <p>21 seem to - the path to it is different, it sounds like.</p> <p>22 Yeah.</p> <p>23 Q Okay. And to your knowledge, the programs that</p> <p>24 you oversee at the University of North Texas, they comply</p> <p>25 with this law. Correct?</p>
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<p>1 that --.</p> <p>2 Yeah. I mean, I think - is that - can you</p> <p>3 state your question again?</p> <p>4 Q (Mr. Weldon) Yeah. I was just saying is it</p> <p>5 fair to say that this section says that the college shall</p> <p>6 cause to be collected, from students, fees and rates</p> <p>7 prescribed in this section?</p> <p>8 A Under that Statute? So according to Statute?</p> <p>9 Is that what you're asking?</p> <p>10 Q Yes.</p> <p>11 A I think - I think that's fair.</p> <p>12 Q Yeah.</p> <p>13 Okay. Can you take a look at Section (c)?</p> <p>14 A Yes.</p> <p>15 Q And in Section (c), you would agree that section</p> <p>16 sets the formula for the tuition rate for resident</p> <p>17 students. Correct?</p> <p>18 MR. WELDON: Objection. Calls for a legal</p> <p>19 conclusion.</p> <p>20 A (The Witness) Yeah. I think - I mean, with -</p> <p>21 out of my understanding, I - I - I think so.</p> <p>22 Q (Mr. Weldon) Okay. If you take just a minute</p> <p>23 to look at Section (d), just beneath that?</p> <p>24 A Okay.</p> <p>25 Q Okay. And is it fair to say that that is</p>	<p>1 A To my understanding. Yes.</p> <p>2 Q Okay. I'd like to introduce another exhibit.</p> <p>3 That would be Exhibit 4.</p> <p>4 MR. WELDON: Can everybody see that?</p> <p>5 A (The Witness) I can - I can see your screen.</p> <p>6 Yeah.</p> <p>7 Q (Mr. Weldon) Okay. Great.</p> <p>8 And that - that looked - that appears, to</p> <p>9 you, to be Texas Education Code, Section 54.052?</p> <p>10 A That's what it's stated. Yeah.</p> <p>11 Q Yeah. And have you seen this section of the</p> <p>12 Texas Education Code before?</p> <p>13 A I have. Yes.</p> <p>14 Q Will you take a look at Section (a)?</p> <p>15 A Okay.</p> <p>16 Q And is it fair to say that that section says</p> <p>17 that this law establishes the standard for establishing</p> <p>18 residency? Is that correct?</p> <p>19 MS. HELLUMS-GOMEZ: Objection. Calls for a</p> <p>20 legal conclusion.</p> <p>21 A (The Witness) That - so state your - state your</p> <p>22 question again? I'm sorry.</p> <p>23 Q (Mr. Weldon) I'm sorry. The - this - the - the</p> <p>24 Section (a) basically makes clear that this section of the</p> <p>25 Texas Education Code sets the - the standard for</p>

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<p>1 determining resident status. Is that correct?</p> <p>2 A I guess, on that, I don't - I don't know if - if</p> <p>3 (a) does that, in and of itself. I guess I've never tried</p> <p>4 to read it that way, but I think - are you talking about</p> <p>5 the - the entire - the 54.052, or are you talking about</p> <p>6 just that --</p> <p>7 Q Oh, yeah. And let me clarify.</p> <p>8 Section (a) indicates that, you know,</p> <p>9 Section 54.052 is the statute that sets - that governs the</p> <p>10 determination of resident status. Correct?</p> <p>11 MS. HELLUMS-GOMEZ: Yeah. Objection.</p> <p>12 Calls for a legal conclusion.</p> <p>13 A (The Witness) So yeah. I mean, as I - yeah.</p> <p>14 So for my understanding and knowledge,</p> <p>15 it's - it's that entire thing that begins to set</p> <p>16 the - the - the rules and - of what determines resident</p> <p>17 status.</p> <p>18 And I - I'm --</p> <p>19 Q (Mr. Weldon) Okay.</p> <p>20 A -- going to answer it - I hope I'm answering</p> <p>21 your question the way - what - what you're asking.</p> <p>22 Q Oh. You're - you're doing - you're doing fine.</p> <p>23 I'm just - let me - let me put it - put it to you this</p> <p>24 way.</p> <p>25 So then you would agree that Section 54.052</p>	<p>1 A (The Witness) So it's my understanding that the</p> <p>2 ApplyTexas is - is owned, if you will, by THECB, the Texas</p> <p>3 Higher Education Coordinating Board. They contract out to</p> <p>4 I think it's The University of Texas to actually help kind</p> <p>5 of maintain that application.</p> <p>6 But the reason I bring it up and it's</p> <p>7 relevant, is on that application, when students apply in</p> <p>8 Texas, and they use ApplyTexas, they will - they will use</p> <p>9 that application, and they'll fill out that front.</p> <p>10 There's a - a - for lack of a better term, there's like a</p> <p>11 profile that students have to create that they - they -</p> <p>12 they answer a series of questions there, and then they'll</p> <p>13 pick, you know, what institutions they want to apply to.</p> <p>14 But it's in that profile where the series</p> <p>15 of these questions regarding resident status, if you</p> <p>16 will - you know, this - this - that are asked, and that</p> <p>17 determination is made, and that determination then is</p> <p>18 passed to the universities.</p> <p>19 So then we take - we take what the results</p> <p>20 of that profile, of what happened on that application, and</p> <p>21 then the - they will pass us, you know, the resident or</p> <p>22 nonresident field, and then we - we take that and - and</p> <p>23 process it.</p> <p>24 Q So is it - is it your understanding, then, that</p> <p>25 ApplyTexas determines the resident status of students</p>
<p>1 is what sets the - you know, the standard for resident</p> <p>2 status. Correct?</p> <p>3 MS. HELLUMS-GOMEZ: Objection. Calls for a</p> <p>4 legal conclusion.</p> <p>5 A (The Witness) I - I - I believe so.</p> <p>6 Q (Mr. Weldon) And the divisions at the</p> <p>7 University of North Texas that you oversee, they</p> <p>8 faithfully apply Section 54.052 when determining resident</p> <p>9 status. Correct?</p> <p>10 A Well, can I - let me - can I explain kind of how</p> <p>11 that comes to us? That might help to this, because I want</p> <p>12 to try to make sure I'm answering your question.</p> <p>13 So the students - there's - I mean, I don't</p> <p>14 know if you're familiar with ApplyTexas? It's the state</p> <p>15 application. Are you - for admission. Are you familiar</p> <p>16 with that?</p> <p>17 Q Yeah.</p> <p>18 A So - so the ApplyTexas application that I - I</p> <p>19 believe - I think technically is probably - is owned, if</p> <p>20 you will, by the - the higher ed, so the THECB, the</p> <p>21 Texas --</p> <p>22 (The Reporter asked for a repeat of the</p> <p>23 last part of the Witness' answer which</p> <p>24 broke up.)</p> <p>25 Q (Mr. Weldon) I'm - I'm sorry. Can you --</p>	<p>1 based on 54 - 54.052?</p> <p>2 MS. HELLUMS-GOMEZ: Objection. Calls for a</p> <p>3 legal conclusion.</p> <p>4 A (The Witness) Yeah. I mean, functionally,</p> <p>5 those questions are asked there, and a - the answer to</p> <p>6 that will derive a value that they pass us, which is then</p> <p>7 either resident or nonresident.</p> <p>8 So yeah. In that sense, I would say - say</p> <p>9 that's probably a pretty accurate statement.</p> <p>10 Q (Mr. Weldon) I'm sorry. I'm just going to try</p> <p>11 and clean that up a little bit for the transcript. Was --</p> <p>12 A Sure.</p> <p>13 Q -- your - you - was - it was your conclusion,</p> <p>14 then, that ApplyTexas, that program, the questions they</p> <p>15 asked, are designed to get at the definition in 54.052?</p> <p>16 A (Witness nodded head up and down.)</p> <p>17 MS. HELLUMS-GOMEZ: Objection. And calls</p> <p>18 for speculation.</p> <p>19 A (The Witness) Yeah. I think that's - that's</p> <p>20 what I was trying to say.</p> <p>21 Q (Mr. Weldon) Okay.</p> <p>22 A Yeah.</p> <p>23 Q And once that determination is made, could you,</p> <p>24 at the - any of the departments you oversee, could they</p> <p>25 overturn that and say, "No. We think this student is a</p>

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<p style="text-align: right;">Page 25</p> <p>1 resident, or is not a resident"?</p> <p>2 A No. I don't - I mean, no. Just - just to sit</p> <p>3 there and say, you know, "Shannon, no. I think he should</p> <p>4 be a - a - a resident," no. They don't have the</p> <p>5 authority or latitude.</p> <p>6 There are cases that - you know, a minority</p> <p>7 of - of applications that will come through that they will</p> <p>8 pass as - I think the code is Undetermined, and that's</p> <p>9 based on perhaps how somebody answered the - the - the</p> <p>10 question. They are coded as a nonresident, and then they</p> <p>11 are - they have to answer the questions again, and</p> <p>12 then provide documentation.</p> <p>13 That documentation is again prescribed by</p> <p>14 the Coordinating Board about what's acceptable. So we</p> <p>15 don't have any flexibility, you know, on - on that.</p> <p>16 Q So I'm trying to unpack what you just - what you</p> <p>17 just told me there.</p> <p>18 So like let's say that they're - well,</p> <p>19 let - let's do it this way.</p> <p>20 Are there any students - if - if you're</p> <p>21 going to apply to be a student at the University of North</p> <p>22 Texas, is there any way to do so outside of the ApplyTexas</p> <p>23 program?</p> <p>24 A Some of our students will come through an</p> <p>25 application called the Common App. And that - the Common</p>	<p style="text-align: right;">Page 27</p> <p>1 Q So is there like some sort of Statute that</p> <p>2 requires you to - to make applications available through</p> <p>3 ApplyTexas?</p> <p>4 MS. HELLUMS-GOMEZ: Objection. Calls for</p> <p>5 legal conclusion.</p> <p>6 A (The Witness) I honestly couldn't cite you</p> <p>7 that.</p> <p>8 It's just - it's my understanding that we -</p> <p>9 to be one - is that it - it's not - I do not believe we</p> <p>10 have a - or do not believe we have a choice to not be</p> <p>11 present in ApplyTexas. Let me answer it that way.</p> <p>12 Q (Mr. Weldon) Okay. But you also use the Common</p> <p>13 App. And - and let me make sure I'm saying this right.</p> <p>14 Common, like the word C-O-M-M-O-N, App?</p> <p>15 A Correct.</p> <p>16 Q Okay. And that was a choice made by the</p> <p>17 University of North Texas.</p> <p>18 A Correct.</p> <p>19 Q Okay. That would be similar to if I choose to</p> <p>20 use Microsoft Word, as opposed to WordPerfect. Correct?</p> <p>21 A Yeah. I mean, I guess, on a - on - on one</p> <p>22 level.</p> <p>23 Q Do you have any other - any other way that the</p> <p>24 University of North Texas establishes resident status,</p> <p>25 other than ApplyTexas or the Common App?</p>
<p style="text-align: right;">Page 26</p> <p>1 App. So it's another application process.</p> <p>2 And - but it has - it will have the same</p> <p>3 series of - of questions on there.</p> <p>4 Q And is - is that - is the Common App - I - I</p> <p>5 believe is what you called it - is that run by the</p> <p>6 University of North Texas?</p> <p>7 A The Common App is a - I don't - I don't know how</p> <p>8 to accurately phrase it - but we don't own the Common App.</p> <p>9 The Common App is a - is more of a - I'll say a national</p> <p>10 application, but it's - it's an application that schools</p> <p>11 in many states use, as well.</p> <p>12 Q Okay. And is that an app that you - that you</p> <p>13 have - that the University of North Texas has chosen to</p> <p>14 use?</p> <p>15 A Correct.</p> <p>16 Q Okay. And the same is - with ApplyTexas. Is</p> <p>17 that an app that the University of North Texas has chosen</p> <p>18 to use?</p> <p>19 A It's my understanding that was chose for us, and</p> <p>20 why - the reason I say that, I mean, is it is my</p> <p>21 understanding that we are - there is an expectation that</p> <p>22 we use that, from the Coordinating Board, so we have to be</p> <p>23 present in - in ApplyTexas.</p> <p>24 And so the vast majority of our</p> <p>25 applications come through ApplyTexas.</p>	<p style="text-align: right;">Page 28</p> <p>1 A A student - so every - both of those use this.</p> <p>2 A student who comes in and then perhaps later has now met</p> <p>3 this definition, because they have met one of the myriad</p> <p>4 of - of choices in there, could - could get a - a change -</p> <p>5 have their resident status changed after coming in, but</p> <p>6 everybody who initiates and comes in is done that way --</p> <p>7 Q So --</p> <p>8 A -- you know.</p> <p>9 Q -- over - the student you just described, who</p> <p>10 wants to have their resident status changed, what would be</p> <p>11 the process for that?</p> <p>12 A It would answer the same questions. They would</p> <p>13 then have to provide the documentation that's prescribed</p> <p>14 by the Coordinating Board that's acceptable.</p> <p>15 That would go through a - a committee,</p> <p>16 then, for review, to make sure that they've answered, and</p> <p>17 provided the answer correctly, and provided that</p> <p>18 documentation to support that. The documentation is what</p> <p>19 is acceptable to the - based on the Coordinating Board.</p> <p>20 Q And is that - is that committee in one of the,</p> <p>21 you know, departments that you oversee?</p> <p>22 A Yeah. Its a - I - I think there may be, and I</p> <p>23 don't know the - I - I don't know - so yes. The - the -</p> <p>24 the gist of it sits within my division, but there may be</p> <p>25 representation outside the division on the committee. I -</p>

Page 8 (Pages 29-32)

Page 29	Page 31
1 I can't tell you who the committee members are, off the	1 (The Certified Shorthand Reporter JUDY A.
2 top of --	2 COUGHENOUR JOHNSON hereby states that
3 Q Okay.	3 Exhibit Nos. 1 through 4 were marked at
4 A -- my head.	4 the conclusion of the deposition, and the
5 Q Okay. But the - the committee is within your	5 originals are to be attached to the
6 division. Correct?	6 original transcript of the deposition.)
7 A Correct.	7
8 Q Okay. And do you understand that that	8
9 committee, in - in - that's within the division you	9
10 oversee, do you understand that it complies with state	10
11 law?	11
12 A Yes. They're using the same - same Statute	12
13 and - and questions, and then the documentation that's	13
14 prescribed by the Coordinating Board.	14
15 Q Okay. I don't - let me just take a brief break.	15
16 I don't think I have anything else, but I'm going to break	16
17 for about five minutes, and then I'll come back. Okay?	17
18 MS. HELLUMS-GOMEZ: Sure.	18
19 A (The Witness) Fair enough.	19
20 Q (Mr. Weldon) All right.	20
21 THE REPORTER: We'll be off the record at	21
22 2:01.	22
23 (Recess from 2:01 p.m. to 2:04 p.m.)	23
24 MR. WELDON: Okay. We don't have any other	24
25 questions, at this time.	25
Page 30	Page 32
1 (Witness passed at 2:04 p.m.)	1 CHANGES AND SIGNATURE
2 MR. WELDON: And - and so unless you want	2 WITNESS NAME: SHANNON MICHAEL GOODMAN
3 to do any Redirect, Miss Gomez, I think we're - we're	3 DATE TAKEN: NOVEMBER 12, 2021
4 finished.	4 PAGE LINE CHANGE REASON
5 MS. HELLUMS-GOMEZ: No, sir. We appreciate	5 _____
6 your time.	6 _____
7 MR. WELDON: Thank you.	7 _____
8 And Judy, what - what do you --	8 _____
9 THE REPORTER: This --	9 _____
10 MR. WELDON: -- think --	10 _____
11 THE REPORTER: -- concludes - this	11 _____
12 concludes the deposition at 2:04 p.m.	12 _____
13 And as far as the stipulations, there is no	13 _____
14 stipulation about the original transcript, and it will be	14 _____
15 filed directly with the attorney who asked the first	15 _____
16 question, Chance Weldon.	16 _____
17 Is that correct?	17 _____
18 MR. WELDON: That is correct.	18 _____
19 (A discussion was held regarding the	19 _____
20 stipulations and the Reporter was	20 _____
21 asked to go back on the record.)	21 _____
22 MS. HELLUMS-GOMEZ: Yes. We would like to	22 _____
23 stipulate that we would like the opportunity to review and	23 _____
24 sign the transcript.	24 _____
25 * * * * *	25 _____

Judy A. Coughenour & Associates

<p>1 _____ 2 _____ 3 _____ 4 _____ 5 I, SHANNON MICHAEL GOODMAN, have read the foregoing 6 deposition and hereby affix my signature that the same is 7 true and correct, except as noted above. 8 9 _____ 10 SHANNON MICHAEL GOODMAN 11 STATE OF _____ 12 COUNTY OF _____ 13 BEFORE ME, _____, on this 14 day personally appeared SHANNON MICHAEL GOODMAN, known to 15 me or proved to me, under oath, identity card, or other 16 document, to be the person whose name is subscribed to the 17 foregoing document and acknowledged to me that the same 18 was executed for the purposes and consideration therein 19 expressed. 20 GIVEN under my hand this _____ day of _____, 21 2021. 22 _____ 23 NOTARY PUBLIC IN AND FOR THE STATE OF _____ 24 MY COMMISSION EXPIRES ON: 25 _____</p>	<p>Page 33</p> <p>1 ASSOCIATES, 8109 Asmara Drive, Austin, Texas, 78750, by 2 December 16, 2021. 3 THAT the amount of time used by each party at the 4 deposition is as follows: 5 CHANCE WELDON - (36 minutes) 6 SANDY HELLUM-GOMEZ - (00:00 minutes) 7 THAT \$270.84 is the deposition officer's charges 8 for preparing the original deposition transcript and any 9 copies of exhibits, charged to Plaintiff. 10 I further certify that I am neither Counsel for, 11 related to, nor employed by any of the parties in the 12 action in which this proceeding was taken, and further, 13 that I am not financially or otherwise interested in the 14 outcome of the action. 15 SWORN TO by me this 15th day of November, 2021. 16 _____ 17 JUDY A. COUGHENOUR JOHNSON 18 TEXAS CSR NO. 1198 EXPIRATION DATE: 06/30/23 19 8109 Asmara Drive Austin, Texas 78750 20 PH: (512) 346-4707 21 22 23 24 25</p>
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<p>1 IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT SHERMAN DIVISION 3 YOUNG CONSERVATIVES OF) TEXAS FOUNDATION) 4) 5 VS.)) CIVIL ACTION NO. 6 THE UNIVERSITY OF NORTH) 4:20-CV-973 TEXAS, THE UNIVERSITY OF) 7 NORTH TEXAS SYSTEM, NEAL) HONORABLE SEAN D. JORDAN SMATRESK, PRESIDENT OF THE) 8 UNIVERSITY OF NORTH TEXAS,) AND SHANNON GOODMAN, VICE) 9 PRESIDENT FOR ENROLLMENT OF) THE UNIVERSITY OF NORTH) 10 TEXAS) 11 ***** 12 REPORTER'S CERTIFICATION 13 DEPOSITION OF SHANNON MICHAEL GOODMAN 14 NOVEMBER 12, 2021 15 ***** 16 I, JUDY A. COUGHENOUR JOHNSON, a Certified 17 Shorthand Reporter in and for the State of Texas, do 18 hereby certify to the following: 19 THAT the Witness, SHANNON MICHAEL GOODMAN, was duly 20 sworn by the officer, and that the transcript of the oral 21 deposition is a true record of the testimony given by the 22 Witness; 23 THAT the deposition transcript was submitted on 24 November 16, 2021 to the attorney for Defendants for 25 examination, signature, and return to JUDY A. COUGHENOUR &</p>	<p>Page 34</p>
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EXHIBIT

1

MENU

Office of the President (/)

[HOME \(/\)](#) / [SHANNON GOODMAN](#)

Shannon Goodman



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TOP

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Shannon Goodman

Vice President for Enrollment

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 [2021-22 Enrollment Org Chart](https://president.unt.edu/sites/default/files/21-22%20Enrollment_OrgChart%20%281%29.pdf) (https://president.unt.edu/sites/default/files/21-22%20Enrollment_OrgChart%20%281%29.pdf)

Division Information

The Division of Enrollment is charged with the goals of improving the quality, quantity and diversity of UNT's student population through effective enrollment management and strategic enrollment strategies. The division includes the following departments:

- Undergraduate Admissions
 - Student Financial Aid and Scholarships
- Student Financial Services
- Registrar's Office
- Transfer Articulation

Bio Information

Shannon Goodman began as the founding vice president of the Division of Enrollment in February 2015. Mr. Goodman is responsible for building an effective enrollment management operation and ensuring UNT achieves sustainable enrollment growth while balancing both quality and accessibility. In collaboration with others at the university, Mr. Goodman oversees UNT programs such as the [Eagle Express Tuition Plan](https://eagleexpress.unt.edu/) (<https://eagleexpress.unt.edu/>), a plan that locks in students' total academic costs for four years and saves them up to \$4,000 if they graduate in four years. Mr. Goodman has more than 25 years of experience in higher education and most recently served as associate vice president of enrollment and student services at the University of Nevada-Las Vegas. Mr. Goodman joined UNLV in 2008 as executive director for student systems, overseeing the day-to-day management, planning, organizing and directing of the staff and operations and UNLV's adoption of new information systems for admissions, recruitment, records, advising, financial aid and student accounts. Prior to joining UNLV, Goodman was managing partner for STK Consulting, working with higher education clients adopting new technical solutions including enterprise resource planning software.

Education:

- M.S. in Educational Leadership, Northern Arizona University
- B.S. in Advertising, Arizona State University

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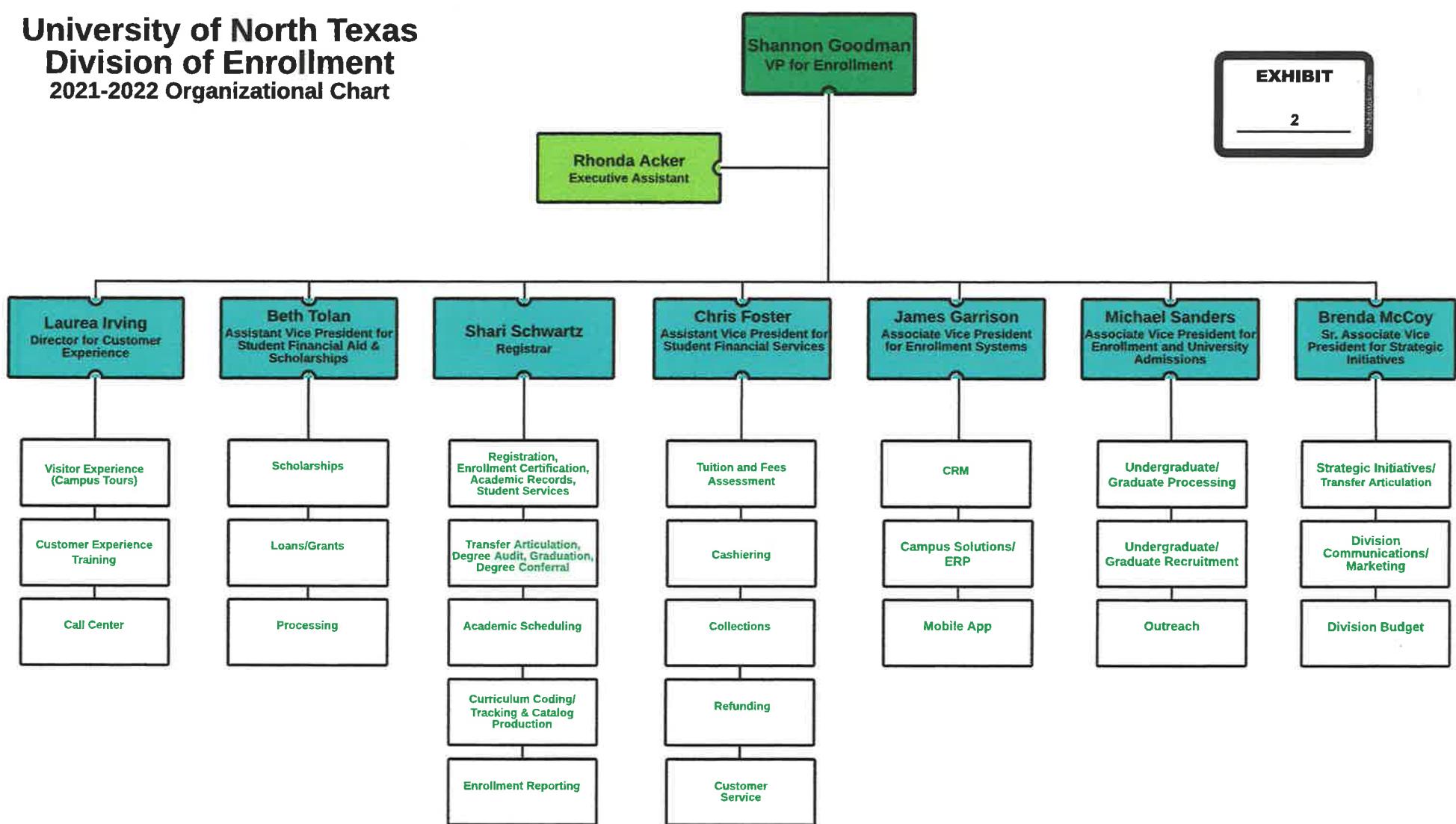
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University of North Texas
Division of Enrollment
2021-2022 Organizational Chart

EXHIBIT

2



EXHIBIT

3

exhibitsticker.com

Texas Education Code

§ 54.051 Tuition Rates

(a) In this section:

- (1) "Coordinating board" means the Texas Higher Education Coordinating Board.
- (2) "General academic teaching institution" has the meaning assigned by Section 61.003 (Definitions)(3) of this code.
- (3) "Medical and dental unit" has the meaning assigned by Section 61.003 (Definitions) of this code.
- (4) "Public junior college" has the meaning assigned by Section 61.003 (Definitions)(2) of this code.

(b) The governing board of each institution of higher education and of the Texas State Technical College System shall cause to be collected from students registering at the institution tuition or registration fees at the rates prescribed in this section.

(c) Unless a different rate is specified by this section, tuition for a resident student at a general academic teaching institution is \$50 per semester credit hour.

(d) Unless a different rate is specified by this section, tuition for a nonresident student at a general academic teaching institution or medical and dental unit is an amount per semester credit hour equal to the average of the nonresident undergraduate tuition charged to a resident of this state at a public state university in each of the five most populous states other than this state, as computed by the coordinating board under this subsection. The coordinating board shall set the tuition rate provided by this subsection for each academic year and report that rate to each appropriate institution not later than January 1 of the calendar year in which the academic year begins, or as soon after that January 1 as practicable. In computing the tuition rate, the coordinating board shall use the nonresident tuition rates for the other states in effect for the academic year in progress when the board makes the computation.

(e) Tuition for a resident student registered only for thesis or dissertation credit that is the final credit hour requirement for the degree in progress is determined by the governing board of the institution in which the student is enrolled.

(f) Tuition for a resident student enrolled in a program leading to an M.D. or D.O. degree is \$6,550 per academic year. Tuition for a nonresident student enrolled in a program leading to an M.D. or D.O. degree is an amount per year equal to three times the rate that a resident student enrolled in a program leading to an M.D. or D.O. degree would pay during the corresponding academic year.

(g) Tuition for a resident student enrolled in a program leading to a D.D.S. degree is \$5,400 per academic year. Tuition for a nonresident student enrolled in program leading to a D.D.S.

degree is an amount per year equal to three times the rate that a resident student enrolled in a program leading to a D.D.S. degree would pay during the corresponding academic year.

- (h) Tuition for a resident student enrolled in a program leading to a D.V.M. degree is \$5,400 per academic year. Tuition for a nonresident student enrolled in a program leading to a D.V.M. degree is an amount per year equal to three times the rate that a resident student enrolled in a program leading to a D.V.M. degree would pay during the corresponding academic year.
- (i) Tuition for a resident student registered at a law school is \$80 per semester credit hour. Tuition for a nonresident student registered at a law school is the amount that can be charged a nonresident graduate student under Subsection (d) and Section 54.008 (Tuition Rate Set by Governing Board).
- (j) Tuition for a student registered in a program leading to a degree in nursing or in an allied health profession is the same as for students with the same residency registered at a general academic teaching institution.
- (k) Tuition for a resident student registered at the Texas State Technical College System is the greater of \$50 or an amount set by the governing board of the system at not less than \$16 per semester credit hour. Tuition for a nonresident student registered at the Texas State Technical College System is an amount set by the governing board of the system at not less than \$80 per semester credit hour.
- (l) Resident students or nonresident students registered for a course or courses in art, architecture, drama, speech, or music, where individual coaching or instruction is the usual method of instruction, shall pay a fee, in addition to the regular tuition, set by the governing board of the institution.
- (m) Unless the student establishes residency or is entitled or permitted to pay resident tuition as provided by this subchapter, tuition for a student who is a citizen of any country other than the United States of America is the same as the tuition required of other nonresident students.
- (n) Tuition for a resident student registered in a public junior college is determined by the governing board of each institution, but the tuition may not be less than \$8 for each semester credit hour and may not total less than \$25 for a semester. Tuition for a nonresident student is determined by the governing board of each institution but the tuition may not be less than \$200 for each semester.
- (o) Renumbered as V.T.C.A., Education Code Sec. 54.063 and amended by Acts 1985, 69th Leg., ch. 708, Sec. 8, eff. Aug. 26, 1985.
- (p) Renumbered as V.T.C.A., Education Code Sec. 54.064 and amended by Acts 1985, 69th Leg., ch. 708, Sec. 9, eff. Aug. 26, 1985.

Acts 1971, 62nd Leg., p. 3072, ch. 1024, art. 1, Sec. 1, eff. Sept. 1, 1971. Amended by Acts 1971, 62nd Leg., p. 3352, ch. 1024, art. 2, Sec. 29, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 88, ch. 51, Sec. 8, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 1358, ch. 515, Sec. 1, 2, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2326, ch. 720, Sec. 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1382, ch. 617, Sec. 1, eff. Aug. 27, 1979; Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 10, Sec. 1; Acts 1985, 69th Leg., ch. 708, Sec. 1, 8, 9, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 287, Sec. 26, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 6.01, eff. Sept. 1, 1992; Acts 1995, 74th Leg., ch. 451, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1073, Sec. 1.02, eff. Aug. 1, 1997; Acts 2001, 77th Leg., ch. 655, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1392, Sec. 1, eff. June 16, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 888 (S.B. 1528), Sec. 6, eff. September 1, 2005.

Location:<https://california.public.law>.



Texas Education Code

§ 54.052 Determination of Resident Status

(a) Subject to the other applicable provisions of this subchapter governing the determination of resident status, the following persons are considered residents of this state for purposes of this title:

(1) a person who:

(A) established a domicile in this state not later than one year before the census date of the academic term in which the person is enrolled in an institution of higher education; and

(B) maintained that domicile continuously for the year preceding that census date;

(2) a dependent whose parent:

(A) established a domicile in this state not later than one year before the census date of the academic term in which the dependent is enrolled in an institution of higher education; and

(B) maintained that domicile continuously for the year preceding that census date; and

(3) a person who:

(A) graduated from a public or private high school in this state or received the equivalent of a high school diploma in this state; and

(B) maintained a residence continuously in this state for:

(i) the three years preceding the date of graduation or receipt of the diploma equivalent, as applicable; and

(ii) the year preceding the census date of the academic term in which the person is enrolled in an institution of higher education.

(b) For purposes of this section, the domicile of a dependent's parent is presumed to be the domicile of the dependent unless the person establishes eligibility for resident status under Subsection (a)(3).

Acts 1971, 62nd Leg., p. 3072, ch. 1024, art. 1, Sec. 1, eff. Sept. 1, 1971. Amended by Acts 1979, 66th Leg., p. 1065, ch. 496, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 1813, ch. 402, Sec. 1, eff. June 11, 1981; Acts 1989, 71st Leg., ch. 620, Sec. 2, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 425, Sec. 1, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 1392, Sec. 2, eff. June 16, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 888 (S.B. 1528), Sec. 3, eff. September 1, 2005.

Location:https://texas.public.law/statutes/tex._bus._and_com._code_section_2.402.

Original Source: § 2.402 — *Rights of Seller's Creditors Against Sold Goods*, <http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.2.htm#2.402> (last accessed Jun. 7, 2021).

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

YOUNG CONSERVATIVES OF TEXAS §
FOUNDATION §
Plaintiff, §
§
v. § CIVIL ACTION NO. 4:20-CV-973
THE UNIVERSITY OF NORTH TEXAS, THE §
UNIVERSITY OF NORTH TEXAS SYSTEM, §
NEAL SMATRESK, PRESIDENT OF THE §
UNIVERSITY OF NORTH TEXAS and §
SHANNON GOODMAN, VICE PRESIDENT §
FOR ENROLLMENT OF THE UNIVERSITY §
OF NORTH TEXAS; §
Defendants. §

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

The Court, having considered Plaintiff's Motion for Summary Judgment, and Defendants' Cross-Motion for Summary Judgment, and all memoranda submitted in support of and in opposition to the motions, as well as the applicable law, concludes that Plaintiff's motion has merit and should be, and hereby is GRANTED. Defendants' Cross-Motion is hereby DENIED. The Court DECLARES that Tex. Educ. Code § 54.051(d), as applied to United States citizens, is preempted by 8 U.S.C. § 1623(a), and therefore is invalid and of no force or effect. The Court further DECLARES that Defendants are hereby PERMANENTLY ENJOINED from applying Section 54.051(d) of the Texas Education Code to United States citizens.