NO. 15-0917

IN THE SUPREME COURT OF TEXAS

MICHAEL QUINN SULLIVAN,

Petitioner,

v.

TEXAS ETHICS COMMISSION,

Respondent.

From the Court of Appeals
for the Second Judicial District of Texas at Fort Worth
Court of Appeals No. 02-15-00103-CV

BRIEF OF THE PILLAR OF LAW INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Pillar of Law Institute is a non-profit, non-partisan institution organized under § 501(c)(3) of the Internal Revenue Code and dedicated to defending political free speech and association. It is a program of the Wyoming Liberty Group. The Institute represents plaintiffs and defendants nationwide who are threatened by laws that abridge political First Amendment rights. This case is of concern to *amicus* because it addresses the further collapse of constitutional protections for political speech and freedom of association, which lie at the very heart of the First Amendment.

The Pillar of Law Institute will pay attorneys' fees incurred in the preparation of this *amicus* brief.

SUMMARY OF THE ARGUMENT

Texas's lobbying regime may not be imposed on bands of citizens who simply espouse their political ideals and disrupt the legislative status quo. First Amendment precedent, both in the areas of campaign finance and lobbying law, instruct this Court that the Texas Ethics Commission's unsupported investigation into Michael Quinn Sullivan's political affairs must be summarily dismissed under the Texas Citizens Participation Act.

Although Texas's lobbying provisions seem facially valid, the Commission's approach cannot be upheld under the doctrines of First Amendment vagueness and

overbreadth. Doing so would empower the Commission to be a rudderless anti-corruption agent, able to impose onerous regulations and penalties against disfavored or minority groups without sensible boundaries. This would leave those who have cannot afford more sophisticated modes of political participation without a voice, that is, without the protection of the First Amendment.

ARGUMENT

I. Introduction

This case asks whether Texas may demand that grassroots groups submit to an 84-category lobbying reporting regime when they speak about political issues. The Texas Ethics Commission ("TEC")'s argument reaches far and wide and knows few limiting principles. It ensures that even bands of concerned senior citizens must hire lobbyists, lawyers, and accountants to comply with the law. In doing so, it imposes far too blunt and broad an instrument to protect against corruption. Indeed, limiting the scope of the law will not "destroy the ability of the State of Texas to require public registration of paid lobbyists[.]" *In re Michael Quinn Sullivan*, TEC, Final Order, Jul. 21, 2014, at 1 (hereinafter "TEC Final Order"). Rather, granting the Michael Quinn Sullivan's petition will allow this Court to enforce constitutional limits that will ensure "paid lobbying" registration and reporting is not triggered arbitrarily nor paired with political inquisitions guaranteed to chill political free speech and associational rights under the First Amendment.

Because there is scant legal basis to apply the Texas lobbying laws against Sullivan, this Court should grant Sullivan's petition and employ the Texas Citizens Participation Act ("TCPA") to restore First Amendment rights jeopardized by this case. *See* Petitioner's Br. at xii (noting dismissal of Sullivan's TCPA claim).

II. The Supreme Court Requires Swift Legal Procedures to Adjudicate Political Free Speech Rights

Legal regimes that regulate political speech and association must incorporate standards lending to quick, non-burdensome dispute resolution. *Fed. Elec. Comm'n* ("*FEC*") *v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 469 (2007). These standards must be found both in the wording of regulations themselves and in the processes used to adjudicate disputes. Objective standards lead to easy comprehension—insulating the law from vagueness challenges. *See Buckley v. Valeo*, 424 U.S. 1, 43–44 (1976). Efficient, streamlined adjudication lessens the chance that the law may be used abusively—e.g., by scorched earth, "lawfare" tactics—and protect delicate First Amendment interests by doing so. *See Virginia v. Hicks*, 539 U.S. 113 (2003). Given that the litigation in this matter arose out of events in 2010 and 2011 and centers largely on the bureaucratic combing of one man's e-mails, the TCPA should be used to vindicate First Amendment rights here.

A. The First Amendment Does Not Tolerate Administrative Prior Restraints

In *Citizens United*, the Supreme Court explained that sizeable and complex election laws burdening political speech operate as the functional equivalent of a prior restraint. *See Citizens United v. FEC*, 558 U.S. 310, 335 (2010). This is so because many "persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech—harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." *Id.* at 335–36 (quoting *Hicks*, 539 U.S. at 119). At issue was a complicated two-part, 11-factor balancing test to decide if certain political speech was regulated as an "electioneering communication." *Id.* at 335. Because the laws in question reached so broadly and were unduly complicated, they were stricken under this reasoning. *Id.* at 336.

Complex and far-reaching speech regulations trigger enhanced scrutiny. This rigorous scrutiny is not unique to campaign finance precedent. It is required to ensure adequate legal standards protect First Amendment freedoms across a wide swath of legal systems. This includes political speech targeted by lobbying provisions. *See, e.g.*, *ACLU v. New Jersey Election Law Enforcement Comm'n* ("*NJELEC*"), 509 F.Supp. 1123, 1128–34 (D.N.J. 1983) (laws infringing on lobbying invoke strict scrutiny and states must take caution where extensive reporting obligations are

imposed that would deter lobbying); *Fair Political Practices Comm'n* ("*FPPC*") *v. Superior Court*, 599 P.2d 46, 55 (Cal. 1979) ("Because the transaction reporting requirements will often constitute a significant interference with the fundamental right to petition, the strict scrutiny doctrine is applicable").

Where legal regimes targeting speech become especially ill-defined and far-reaching, their effect is to act as the functional equivalent of a prior restraint. When New Jersey expanded its disclosure provisions to capture groups like the ACLU and League of Women Voters, the District Court held that the state could not impose burdensome paperwork and registration requirements for groups whose focus is to educate the public generally. *NJELEC*, 509 F.Supp. at 1133. Rather, the state was required to narrow its regulatory scheme to capture only speech that would constitute express advocacy, thus eliminating questions of vagueness and overbreadth. *Id.* at 1135. Likewise, when California imposed far-reaching lobbying disclosure provisions, these too were held unconstitutional because reporting was "determined mainly by lobbyist and employer transactions with others, which may be entirely unrelated to lobbyist activities." *FPPC*, 25 Cal.3d at 48. Because the reporting obligations constituted a significant interference with the right to petition, the California Supreme Court deemed them invalid.

Where clear regulations have been established that target narrow categories of conduct, courts have usually allowed the regulation of a tapered definition of

lobbying: "direct communication with [legislators] on pending or proposed [] legislation." *U.S. v. Harriss*, 347 U.S. 612, 622 (1954). But, as in the cases of California, New Jersey, and likely Texas, where states exceed those definitions with vague or far-reaching provisions, First Amendment concerns have often invalidated those regimes.

B. Texas's Lobbying Law is Unconstitutionally Overbroad and Stifles Grassroots Engagement

The primary trigger at issue—Texas Government Code § 305.003—requires an individual to register and be subject to the state's 84-category lobbyist reporting regime if, "as part of his regular employment, [he] has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action on behalf of the person by whom he is compensated or reimbursed." The Texas Administrative Code refines this by requiring at least $1,000 of compensation to be paid for such lobbying in any quarter of an annum. 1 TAC § 34.43. In practice, this means that a whole host of non-profits who ordinarily talk to the public and legislators about public policy must monitor their politically related speech every quarter to ensure that they do not cross the $1,000 lobbying threshold lest they be subject to the state's 84-category reporting regime.

In the present case, Sullivan has battled the TEC because Empower Texans—like many other groups organized under Section 501(c)(4) of the Internal Revenue Code—informs the public, scores legislation, and examines government

accountability. This is the ordinary stuff of American politics. People care fervently about causes, assemble together in groups, and communicate with the public about their vision for their community, state, or country. Tying this American tradition up in bureaucratic red tape only inhibits a free exchange of ideas.

While vigorously sharing its views, Empower Texans appears to have communicated with legislators—who are also members of the public. This is not to fret. Through a significant fishing expedition, the TEC examined a multitude of Sullivan's e-mails that: (a) notified the public and perhaps legislators in particular how the Empower Texans legislative score system worked, (b) explained how Sullivan correlates votes on legislation to individual legislators, and (c) offered legislators and the public information about how voting records would be computed. *See* 3CR1327–1333; 3CR1138; 3CR1144. In other words, Empower Texans did exactly what countless 501(c)(4) groups do nationwide—advocate and educate the public about policies they care about.

Based on the TEC's approach in this case, most non-profit groups operating in Texas would find themselves required to employ a professional lobbying (or, at least, accounting and legal) arm just to exercise their First Amendment rights. Groups like Young Conservatives of Texas, Equality Texas, and the Texas Eagle Forum all publicly rate and review legislation along with legislators. Presumably they communicate with the public, with legislators, and send e-mail blasts. It is hard

to find groups who do not do exactly this these days. Unsurprisingly, none of these groups show registered lobbyists in 2015. *See* Texas Ethics Commission, Lobby Lists and Reports, *available at* https://www.ethics.state.tx.us/dfs/loblists.htm. The reason is simple. In America, we do not precondition the right of our citizenry to speak and petition based on bureaucratic approval.

Taking the TEC's position seriously would mean the end of public engagement by a wide array of grassroots groups hoping to engage the public over public policy ideals. Texas imposes an odd array of registration and reporting requirements for groups whose communications might distantly, someday be read by a legislator. It asks that even the most modest speakers—the AARP and Boy Scout packs—track each and every e-mail sent because they might constitute lobbying expenses. It does not focus on the kind of one-on-one, direct lobbying described in *Harriss*. It is not designed to prevent shady, backroom deals. Rather, it imposes an overbroad, prophylactic registration and reporting regime guaranteed to disengage many Texans like Sullivan and Empower Texans from political participation.

Understanding whether one is regulated or unregulated under the state's 84-category reporting regime is a daunting task. The law commands that anyone employed with but "part" of his duties as influencing legislation is required to register and report if the value of that compensation exceeds $1,000 in a quarter. In

the instant controversy, the TEC determined Mr. Sullivan's activities certainly crossed this threshold because he made "dozens of communications to legislators and legislative staff" and created a "sophisticated scorecard system to direct legislative action." TEC Final Order at 2.[1] Nowhere in the Final Order does one find a valuation of the e-mails in question, nor a calculation of Mr. Sullivan's time needed to create "dozens of communications" or his "sophisticated scorecard system," nor any tabulation at all. We are left but with the word of the enlightened Commission that Sullivan should be deemed a lobbyist and that his speech, unregulated, was impermissible.

Consider the Commission's imagined estimation that Sullivan's "dozens of e-mails" pushed him past the $1,000 threshold necessitating compliance with the lobbying law. Suppose Sullivan sent three dozen e-mails in the timeframe imagined by the TEC. Suppose further that each e-mail required a generous 20 minutes of Sullivan's time. Under these presumptions, Sullivan used 720 minutes, or twelve hours, to create these worrisome e-mails. The mean annual salary that Sullivan earned between 2010 and 2011 was $130,485.00. *See* TEC Final Order at 1. This translates to an hourly wage of $62.73. Under this calculation, if every e-mail of the 36 e-mails constituted lobbying communications, the amount in controversy would

[1] Hoping to emulate Erwin Schrödinger, the TEC concludes that publishing scorecards both trigger lobbyist registration and do not trigger lobbyist registration. *Compare* TEC Final Order at 2 *with* TEC Final Order at 4.

be $752.76. Thus, Sullivan would fall short of the $1,000 threshold established by law. However, the Commission's Final Order includes no calculations; no estimation can be found. "Trust the Commission" is the only guiding point supporting a finding that Sullivan should have complied with the state's lobbying law.

The system in question does not just impair Mr. Sullivan and Empower Texans. Imagine the following scenario. The Texas Legislature is poised to pass a bill drastically cutting funding to community senior centers. Understandably, elderly citizens are upset and take action. Many senior citizens distrust established groups like the AARP and decide to form new groups like the Texas Silver League and the Senior Citizen Forum. Their goals are simple—generate public discussion about the importance of community senior centers, show the negative effects of the proposed legislation with human stories, and build coalitions supporting their cause. The groups in question are not legally or politically sophisticated and their funding could be described as truly grassroots.

To be safe from regulatory persecution, Texas non-profits would need to keep tallies of each e-mail blast, who might have read it, and how much money was spent per keystroke to create a short note. Indeed, any sort of activity one might deem capable of somehow influencing legislation would require significant attention, accounting to track expenses, and perhaps legal guidance about how to steer an organization's activities. Under the TEC's reasoning in the present case, a whole

variety of grassroots voices would simply be without the resources or sophistication to comply with Texas's lobbying laws. Such a result cannot pass First Amendment scrutiny. Voices like Equality Texas or the hypothetical Texas Silver League should flourish, not flounder, in a public exchange of ideals. But complicated 84-category reporting regimes, like the one at play in Texas, ensure that only the most powerful and well-connected voices in Texas politics are heard.

C. The TCPA Cures Texas's Administrative Prior Restraint and Should Be Given Effect Here

The principles embodied in *Wisconsin Right to Life* and *Citizens United*—that individuals should not be buried in bureaucratic red tape to exercise political free speech rights—are made real in the Texas Citizen's Participation Act. The TCPA is a statutory tool that individuals may use to summarily terminate unlawful government actions targeting them due to the exercise of free speech or associational rights. Under the principles laid out in *Wisconsin Right to Life* and *Citizens United*, individual speakers caught up in such regulatory enforcement actions must be able to avail themselves of a process that entails "minimal if any discovery, to allow parties to resolve disputes quickly without chilling speech through the threat of burdensome litigation." *Wisconsin Right to Life*, 551 U.S. at 469. This process must be swift and avoid complicated, protracted trials. *Id*. The TCPA ensures these very principles by safeguarding instances where a legal action has been taken against a respondent based on, related to, or in response to respondent's exercise of the rights

of free speech, petition, or association. TEX. CIV. PRAC. & REM. CODE § 27.001(3). Indeed, the law itself protects the right of the citizenry to discuss matters of public concern, including issues about the government or public officials. *Id.*

It is important to note that the guiding principles of *Wisconsin Right to Life* and *Citizens United* were not centered in some showing of actual, conspiratorial censorship of speech. It is sufficient, as recognized in decades of campaign finance litigation, that complicated and prolix laws will have the effect of chilling average speakers. And when those laws touch particularly on political speech—at the core of the First Amendment—the constitution requires particularly stringent procedures. *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

The TCPA sets forth a clear two-step process for dismissing actions that may infringe on First Amendment rights. First, a respondent must show, by a preponderance of the evidence, that a legal action against him is based on, relates to, or is in response to their exercise of free speech or petition rights. Second, the complaining party may survive dismissal by producing "clear and specific" evidence establishing the case for each element of the claims in question. TEX. CIV. PRAC. & REM. CODE § 27.005(b). This offers a sensible balance between protected free speech rights and government programs abutting them. Where government is acting on a constitutionally sound basis, it may escape TCPA dismissals by producing evidence supporting the basis of its investigation. This would permit, for example,

investigations into substantiated allegations of conspiracy—unprotected speech under the First Amendment—where a modicum of evidence has been provided. But where government lacks a constitutionally sound foundation to investigate, the TCPA ensures a swift remedy for speakers.

The process laid out in the TCPA makes the constitutional underpinnings of *Wisconsin Right to Life* and *Citizens United* a reality in Texas. No far-flung regulatory fishing expeditions may be had into the politically provocative. No burdensome, lengthy discovery examinations may be sustained without a properly established and limited legal footing. It is understandable the TEC might protest.

What the record makes amply clear here is that one man, employed as the president of a non-profit 501(c)(4), did what many employees of similar organizations do every day in America—communicate publicly about their group's policy preferences. Yes, the Commission protests that "dozens" of e-mails were sent by Sullivan to legislators which, when combined with a "sophisticated scorecard system," amounted to unregistered lobbying. TEC Final Order at 2. But nowhere in that Order does one find a scintilla of evidence illustrating more than $1,000 or five percent of Mr. Sullivan's time was spent on lobbying. Since the bare requirement of the law is to pass either threshold to trigger lobbying registration and reporting requirements, one would conclude the Commission would have evidence, not speculation about "dozens of e-mails" to support such a conclusion. That it does not

is proof enough to summarily terminate this case and preserve the political free speech rights of Mr. Sullivan and Empower Texans under the TCPA.

The TEC's final order strings together an interesting array of facts in an attempt to support its finding that Sullivan should have registered and reported as a lobbyist. One e-mail of concern, sent to a legislative chief of staff, simply read, "Senate Bills 1 and 2 are subject to scoring." TEC Final Order at 2. The TEC also deeply frets about Sullivan communicating with legislators about proposed draft scores and legislation. For example, Representative Laubenberg maintained a draft score of 87 percent. The TEC then references an e-mail sent by Sullivan to Laubenberg that noted "we will be including HB 272 on the 2011 Fiscal Responsibility Index. We hope you will support this important legislation." *Id*. at 3. The TEC reasons that publishing a draft score "combined with the direction on how to vote, resulting in an 'improved' final score" constitutes lobbying. *Id.* While this exploration into the many e-mails of Mr. Sullivan may make for fascinating reading, they do nothing to satisfy the TEC's burden here that he earned more than $1,000 or spent five percent of his employed time lobbying. Because the TEC did not attempt to marshal relevant evidence and because sensitive First Amendment rights at stake, the TCPA should be applied here.

While the TEC, or angry legislators, might favor a decade-long inquisition into Mr. Sullivan's political affairs, the First Amendment, as realized through the

TCPA, will not sustain this. Empower Texans, like Equality Texas, has ideas about what policies are best for the state. It communicates with neighbors, adversaries, and even members of the legislature. But there is no record before this court that Mr. Sullivan's many general e-mail blasts, subscriber updates, blogs, and "dozens of e-mails" constituted the narrow sort of direct lobbying properly subject to regulation under *Harriss* or that they met Texas's legal triggers for lobbying. 347 U.S. at 622. Somewhere a disgruntled legislator is upset that Mr. Sullivan is an effective political communicator. And now, Texas lobbying law—used as a shield to prevent real corruption and shady backroom deals—is malformed into a sword to damage the voices of political opposition. For this reason alone, the TCPA's fullest application should be upheld.

The TCPA should be affirmed by this Court as an effective rebuke to the overreach of the TEC. The Supreme Court has made abundantly clear that political free speech rights are fragile and need adequate processes and procedures to protect them. *Citizens United*, 558 U.S. at 335–36. By affirming the application of the TCPA, this Court will ensure that Texas grassroots voices are protected. From Empower Texans to Equality Texas, all Texans deserve to hear a wide array of policy options, debate their merits, and do so without the roving eye of the TEC examining every communication. Only the fullest application of the TCPA achieves these goals.

III. The Commission's "We Know It When We See It" Approach to Lobbying Regulation Suffers from Overbreadth and Vagueness

Lobbyist registration and reporting regimes usually survive review when they target direct communications with lobbyists intended to influence legislation and do so with clear and articulable triggers. *See supra* Part II(A). This is important because the First Amendment protects not just the right of the citizenry to discuss issues publicly. It also protects the right of individuals to communicate with public officials. *See Adderley v. Florida*, 385 U.S. 39, 50–51 (1966) (Douglas, J., dissenting) ("Conventional methods of petitioning may be, and often have been, shut off to large groups of our citizens. Legislators may turn deaf ears; formal complaints may be routed endlessly through a bureaucratic maze; courts may let the wheels of justice grind very slowly" [2]).

"Due process requires that a criminal statute provide adequate notice to a person of ordinary intelligence that his contemplated conduct is illegal. . . ." *Buckley*, 424 U.S. at 77. And where First Amendment rights are implicated, an "even 'greater degree of specificity' is required.'" *Id.* (quoting *Smith v. Goguen*, 415 U.S. 566, 573, (1974)). Even government policies are subject to vagueness challenges. *See Fed.*

[2] Justice Douglas continued:

> Those who do not control television and radio, those who cannot afford to advertise in newspapers or circulate elaborate pamphlets may have only a more limited type of access to public officials. Their methods should not be condemned as tactics of obstruction and harassment as long as the assembly and petition are peaceable . . . .

Adderly, 385 U.S. at 50–51.

Communications Comm'n v. Fox Television Stations, Inc., 132 S.Ct. 2307 (2012). The doctrine of overbreadth is "closely related to the vagueness doctrine, because indefinite laws tend to be overly broad as well, in that they not only provide insufficient notice of illegality but sometimes include within their prohibitions expression that is protected speech." *Hiett v. U.S.*, 415 F.2d 664 (5th Cir. 1969).

The existing lodestar of constitutional regulation of lobbying is found in *Harriss*. There, the Supreme Court analyzed the Federal Regulation of Lobbying Act of 1946. 347 U.S. at 617. The National Farm Committee was charged with failure to report the solicitation and receipt of contributions intended to influence the passage of legislation and with expenditures made in a similar manner. *Id.* at 614–15. After analyzing the constitutional considerations, the Court rejected the government's broad construction of the Act and reasoned that lobbying could be regulated where: (1) a person solicits or receives contributions, that (2) were designed to influence the passage of legislation, where (3) there was direct communication with legislators, and if (4) the term lobbying were narrowed to mean only "direct communication with members of Congress on pending or proposed federal legislation." *Id.* at 620–21.[3]

[3] More recent challenges to lobbying provisions have generally followed the *Harriss* framework. *See, e.g., Nat'l Ass'n of Mfrs. v. Taylor*, 582 F.3d 1 (D.C. Cir. 2009).

Though Texas's attempt to root out corruption in government affairs is admirable, the Commission's execution is not. The TEC imposes burdensome lobbyist compliance requirements on anyone spending more than just $1,000 in a quarter or five percent of their time as part of employment. Texas law seems to track the *Harriss* definition of lobbying, because the lobbyist designation attaches if someone, "as part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action on behalf of the person by whom he is compensated or reimbursed." TEX. GOV. CODE § 305.003(b). However, as is made clear in the record here, it is unclear that many of Sullivan's e-mails were directed toward influencing the passage of any legislation and their value or cost assessment remains completely unknown. TEC Final Order at 2. Groups hoping to engage the Texas public must then guess how the Commission will determine if its communications are intended to "influence" legislation and what the value of *de minimis* expenditures, like e-mail, walking door to door, visiting a legislator at home, and the like will be. This leaves groups wanting to speak out subject solely to the whims of the TEC.

It is true that many lobbying regimes have been upheld as constitutionally sound. Yet, those that reach too far or impose too uncertain of registration requirements have been invalidated. So, New Jersey's disclosure law that would have regulated the League of Women Voters was stricken because it would impose

burdensome paperwork for groups who generally educate the public, like Empower Texans. *NJELEC*, 509 F.Supp. at 1133. Just the same, California's attempt to use broad lobbying definitions were held unconstitutional because the reporting obligations constituted a significant interference with the right to petition. *FPPC*, 25 Ca.3d at 48.

Sensible lobbying rules must have sensible boundaries. The Commission entrusted with lobbying compliance fails to abide by this maxim, leaving the rights of neighborhood activists and grassroots groups to its day-to-day caprice. To pass constitutional muster, the record before this Court must illustrate that more than $1,000 in a quarter or five percent of Mr. Sullivan's time was used to engage in *Harriss*-style lobbying. Instead of following these legal dictates, the Commission engaged in what could best be described as the "We know lobbying when we see it" approach to lobbyist registration. *See Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). Instead of illustrating how e-mails were designed to influence the passage of legislation, the TEC simply decides they do so. Instead of providing price and cost calculations about how each communication or activity adds up to amount to more than $1,000 or five percent of Mr. Sullivan's time, the Commission just shrugs and offers a "trust us" approach to the law. By doing so, the TEC evades the legal constraints of Texas law and maintains its own enigmatic code

for lobbyist registration and reporting requirements. Such a practice is insufficient to survive vagueness and overbreadth considerations.

CONCLUSION

For the reasons discussed herein, this Court should grant Michael Quinn Sullivan's petition for review.

Respectfully submitted,

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**Motion for* pro hac vice *admission pending.*

May 13, 2016.

CERTIFICATE OF COMPLIANCE

In accord with Texas Rule of Appellate Procedure 9.4(i)(3) and 11(a), I hereby certify that the foregoing brief contains 4,498 words, excluding those portions permitted by TEX. R. APP. P. 9.4(i)(1). I further certify that this brief has been prepared using a typeface of no smaller than 14-point except for footnotes, which are no smaller than 12-point.

/s/ Roger Borgelt

CERTIFICATE OF SERVICE

I hereby certify that I have complied with the Electronic-Filing Rules for the Supreme Court of Texas and that on May 13, 2016 the foregoing *Amicus Curiae* Brief in Support of Petitioner was e-filed with the Clerk of the Court and that a true and correct copy of same was e-served on all counsel listed below in accordance with the Texas Rules of Appellate Procedure.

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