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No. 25-0502

In the Supreme Court of Texas

LARRY EDGAR ESTRADA, ET AL.,
Petitioners,

v.

CITY OF HOUSTON,
Respondent.

On Appeal from the Court of Appeals
For the Fourteenth District of Texas at Houston, No. 14-23-00035-CV

BRIEF OF AMICI CURIAE FREEDOM OF INFORMATION FOUNDATION OF TEXAS, TEXAS PRESS ASSOCIATION, TEXAS ASSOCIATION OF BROADCASTERS, FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION, AND THOMAS LEATHERBURY IN SUPPORT OF PETITIONERS' BRIEF ON THE MERITS

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INTEREST OF AMICI CURIAE

The **Freedom of Information Foundation of Texas** ("FOIFT") is a Texas non-profit corporation that works to encourage greater appreciation, knowledge, and understanding of the First Amendment and helps to ensure that the public's business is conducted in public. Since its founding in 1978, FOIFT has helped citizens and journalists access government meetings and documents. The non-partisan FOIFT acts as a statewide information clearinghouse and offers guidance and assistance on FOI-related issues through a network of attorneys and through public seminars and conferences.

The **Texas Press Association** ("TPA") is a non-profit industry association representing nearly 400 daily and weekly newspapers across the state of Texas, each of which upholds a strong tradition of journalistic integrity and community service. TPA, founded in 1880, performs numerous services on behalf of its members, including sponsoring and promoting legislation and taking legal action to protect First Amendment freedoms and open government.

The **Texas Association of Broadcasters** ("TAB") is a non-profit association that represents and advocates on behalf of more than 1,300 television and radio stations licensed by the Federal Communications

Commission to serve communities across the state of Texas with community-oriented free, over-the-air broadcast programming. TAB was founded in 1951 and incorporated one year later and performs numerous services on behalf of its members, including advocating for legislation relating to and affecting radio and television broadcasters, advancing Open Government, and protecting the First Amendment, as well as publishing guidebooks on various legal issues, including access to public information.

The **Foundation for Individual Rights and Expression** ("FIRE") is a nonpartisan nonprofit that defends the rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended First Amendment rights nationwide without regard to the speakers' views through public advocacy, strategic litigation, and *amicus curiae* filings in cases implicating expressive rights. *See, e.g.*, Brief for FIRE as *Amicus Curiae* supporting Petitioner, *Yelp v. State of Texas*, No. 25-1071 (Tex. Mar. 4, 2026); *Fellowship of Christian Univ. Students at the Univ. of Tex. at Dall. v. Eltife*, 806 F. Supp. 3d 662 (W.D. Tex. 2025), *appeal docketed*, No. 25-50914 (5th Cir. Nov. 5, 2025); *Rosado v. Bondi*, 1:26-cv-01532, 2026 WL

1291731 (N.D. Ill. May 5, 2026); *Reges v. Cauce*, 175 F.4th 1014 (9th Cir. 2026).

The ability to recover fees through fee-shifting statutes is important to FIRE's litigation strategy and overall mission. In addition to federal fee shifting provisions that FIRE generally relies on, such as 42 U.S.C. § 1988 and 5 U.S.C. § 552(a)(4)(E), state fee-shifting statutes, like those in Texas, play an important role in FIRE litigation, including, as relevant here, when FIRE or its clients seek access to government records. *See Tarleton State Univ. v. Found. for Individual Rts. & Expression*, No. 15-24-00057-CV, 2025 WL 1322593 (Tex. App. May 6, 2025); *see also*, *e.g.*, *Mastriano v. Gregory*, No. 5:24-cv-00567-F (W.D. Okla. May 31, 2024); *Adams v. Gulley,* No. CCH-24-587004 (Super. Ct. San Francisco Cnty. June 6, 2024); *Found. for Individual Rts. & Expression v. U.S. Dept. of Homeland Sec.*, No. 1:26-cv-01704 (D.D.C. May 19, 2026).

Thomas Leatherbury is a solo practitioner and the Director of the First Amendment Clinic and a Clinical Professor of Law at Southern Methodist University Dedman School of Law.[1] He has handled Texas Public Information requests throughout his career.

[1] The views expressed do not speak for Southern Methodist University or the SMU Dedman School of Law.

In accordance with Texas Rule of Appellate Procedure 11(c), no fees or costs were paid for preparing this brief.

INTRODUCTION

Amici file this brief to urge the Court to reverse the Fourteenth Court of Appeals' decision. For more than half a century, *amici* have worked hand-in-hand with legislators, journalists, civic organizations, and ordinary Texans to ensure the Texas Public Information Act ("TPIA" or the "Act") remains a vibrant, effective tool for government transparency. The mission of *amici* is directly threatened by the Court of Appeals' decision, which holds that a prevailing plaintiff does not "incur" attorneys' fees under the Texas Government Code § 552.323 unless it is separately liable to pay its own salaried lawyers. That construction, if left standing, will chill the very enforcement actions that the Legislature deemed essential to make the TPIA more than an empty promise.

The Court of Appeals' decision is not an isolated anomaly. By converting the statutory word "incurred" into a novel "third-party-invoice" requirement, the opinion below undermines fee-shifting in the TPIA and almost 500 statutes in Texas that use similar language. Its logic would bar fee awards to the Texas Attorney General, law school clinics, public-interest nonprofits, in-house counsel for businesses, and pro bono firms that litigate transparency cases—

precisely the institutional actors on which effective public-records enforcement most often depends. *Texas v. Interstate Com. Comm'n*, 935 F.2d 728, 731–32 (5th Cir. 1991) (emphasis in original) (finding that Texas could recover attorneys' fees under FOIA provision because "*[a]ny* complainant who [actually and reasonably incurs legal fees and substantially prevails] is included within the language of the statute. No class of complainants—not even state governments—is excluded"). Indeed, the opinion will penalize nonprofit public-interest entities which often litigate through salaried staff or volunteers, by stripping them of the statutory fee recovery necessary to sustain their watchdog efforts.

Amici therefore have a strong interest in ensuring that "incurred" is given its ordinary, widely accepted meaning: fees are incurred when legal services are rendered on a client's behalf, regardless of whether the lawyer is paid by a separate hourly rate, salary, or flat fee covering this or multiple cases. That meaning accords with decisions from other Texas courts, with federal and sister state precedent interpreting similar language, and with the Legislature's unmistakable intent to encourage meritorious suits compelling disclosure of public information. *See Powell v. Grimes*, No. 01-23-00129-CV, -- S.W.3d --, 2025 WL 626428, at *8 (Tex.

App.—Houston [1st Dist.] Feb. 27, 2025, no pet.) (explaining that "[t]he law firm appellees are fictional legal persons and thus cannot represent themselves" and so "were entitled to recover attorney's fees for services performed on their behalf"); *see also City of Carrollton v. Paxton*, No. 03-13-00838, 2016 WL 1566400, at *4 (Tex. App.—Austin Apr. 4, 2016, no pet.) (mem. op.) (affirming fee award to Attorney General under TPIA); *Adkisson v. Paxton*, 459 S.W.3d 761, 780 (Tex. App.—Austin 2015, no pet.) (affirming an award of attorneys' fees to the Attorney General after he prevailed on a TPIA information request); *Qaddura v. Texas*, No. 2-06-027-CV, 2006 WL 3028420, at *7 (Tex. App.—Fort Worth Oct. 26, 2006, no pet.) (affirming award of attorneys' fees for the Attorney General's staff attorneys under an "incurred" statute); *Thomas v. Cornyn*, 71 S.W.3d 473, 491 (Tex. App.—Austin 2002, no pet.) (holding Attorney General entitled to fee award under TPIA if he prevails on appeal); *Chin v. U.S. Dep't of Air Force*, 220 F.3d 587, 587 (5th Cir. 2000) (per curiam) (finding that it was clear error for the district court to deny attorney's fees to attorney acting on behalf of "the real party in interest" even assuming arguendo that the attorney was appearing pro se); *Nat'l Sec. Couns. v. Cent. Intel. Agency*, 811 F.3d 22, 28 (D.C. Cir. 2016) ("While individuals who represent themselves may not recover fees, organizations that represent themselves may so recover."); *Baker & Hostetler LLP v. U.S. Dep't of Com.*, 473 F.3d 312, 324 (D.C. Cir. 2006) (Kavanaugh, J.) ("By its terms, FOIA's fees provision applies to all 'complainants' who have 'substantially prevailed.' The statutory text contains no exception for a law firm that represents itself.").

Left uncorrected, the decision below will embolden state and local governmental bodies to stonewall even more records requests from newsrooms, civic watchdogs, and private citizens alike, secure in the knowledge that many institutional requestors will be unable to recover the fees needed to prosecute even the clearest violations. The ruling thus endangers the transparency the TPIA was enacted to guarantee and erodes public confidence in open government. For these reasons, and for those set forth in Petitioners' briefing, *amici* respectfully urge the Court to reverse the Fourteenth Court of Appeals' decision and reinstate the trial court's award of attorneys' fees.

ARGUMENT

I. The Importance of the TPIA and Fee Shifting Provisions.

1. The TPIA Necessarily Furthers Government Accountability and Transparency.

The TPIA, originally known as the Open Records Act, was passed in 1973. *See Kessling v. Friendswood Indep. Sch. Dist.*, 302 S.W.3d 373, 381 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). "The [T]PIA guarantees access to public information, subject to certain exceptions." *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P.*, 343 S.W.3d 112, 114 (Tex. 2011) (citing TEX. GOV'T CODE ch. 552). The Act defines public information as information that is "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; (2) for a governmental body and the governmental body (A) owns the information [or] (B) has a right of access to the information." TEX. GOV'T CODE § 552.002(a)(1)–(2).

"[T]he TPIA's stated policy objectives are to provide accountability and transparency in government by establishing mechanisms to foster public access to government records." *Greater Hou. P'ship v. Paxton*, 468 S.W.3d 51, 57 (Tex. 2015). Reflecting the fundamental philosophy of

American representative government—that government is the servant, not the master, of the people—"it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees." TEX. GOV'T CODE § 552.001(a). Thus, in promoting transparency and accountability, the TPIA empowers citizens and fosters public participation in government processes.

Although modeled after the federal Freedom of Information Act ("FOIA"), the TPIA differs from its federal counterpart in that it "contains a strong statement of public policy favoring public access to governmental information and a statutory mandate to construe the Act to implement that policy and to construe it in favor of granting a request for information." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (citation omitted). In other words, the TPIA should be liberally construed in favor of granting requests and narrowly interpreted as to exceptions. *See* TEX. GOV'T CODE § 552.001(b).

This Court has ordered merits briefing to resolve whether an organization represented by its own salaried attorneys "incurs" attorneys' fees within the meaning of the TPIA's fee-shifting provision. *See id.* at § 552.323(a). The resolution of that question will determine not only whether Mayer Brown may recover the fees a jury found reasonable after a decade of hard-fought litigation, but whether fee-shifting remains a viable enforcement mechanism for the institutional litigants—law firms, nonprofits, advocacy organizations, and the Texas Attorney General himself—that most commonly vindicate the public's right to government information.

2. The Vital Necessity of the TPIA's Fee-Shifting Provision.

One of the most significant features of the TPIA is its fee–shifting provision, which requires that the prevailing party be awarded the attorneys' fees it has incurred. *See id.* at § 552.323(a). This provision is not simply a procedural formality—it drives the TPIA's enforcement and ensures that the public can hold government entities accountable. *See Pickens v. City of Greenville*, No. 05-25-00694-CV, 2026 WL 777181, at *2 (Tex. App.—Dallas Mar. 18, 2026, no pet.) (holding that "[t]he [T]PIA mandates a liberal construction").

Fee-shifting statutes were designed, in part, "to enable private parties to obtain legal help in seeking redress for injuries resulting from the actual or threatened violation of specific [] laws." *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986), *supplemented*, 483 U.S. 711 (1987). Without such provisions, the consequences could be severe: meritorious lawsuits might never be brought, and individuals or organizations lacking financial resources could be left without meaningful recourse.

The stakes extend well beyond the TPIA. In Texas, nearly 500 fee-shifting statutes share the identical "incurred" requirement at issue in this case. *See* Pet'rs' Br. App., Tab 6–7. Included in this number are 119 statutes enacted expressly for the benefit of the Texas Attorney General. *See id.* The Texas Attorney General, who employs a staff of 750 taxpayer-funded lawyers and generally does not hire outside counsel, relies on those statutes to recover fees when he enforces Texas law. *See City of Houston v. Estrada*, No. 14-23-00035-CV, -- S.W.3d --, 2025 WL 1225845, at *10 (Tex. App.—Houston [14th Dist.] Apr. 29, 2025, pet. filed) (Boatman, J., concurring). As Justice Boatman observed, a ruling that fees are "incurred" only when a litigant is legally obligated to pay its lawyers a separate fee renders the Attorney General's statutory fee rights "a nullity, to the detriment of the public fisc." *Id.* And similarly, it would gut fee-shifting for in-house counsel, nonprofit staff attorneys, and law firms litigating on their own behalf across hundreds of statutory schemes. *Id.* at *9. Even further, Houston concedes that the Attorney General can recover fees when using staff attorneys but offers no statutory basis for treating other organizations differently. Opp. 39.

Courts have consistently recognized the importance of construing statutes to further their enforcement purpose. In *Murkeldove v. Astrue*, the Fifth Circuit reversed the district court's narrow reading of "incurred" under the Equal Access to Justice Act. 635 F.3d 784, 790–94 (5th Cir. 2011).[2] The district court had found that because the contingency-fee contracts contemplated payment only upon success, the plaintiffs had yet to "incur" attorneys' fees. *Id.* at 786. The Fifth Circuit reversed, holding that even if the plaintiffs "did not have a legal obligation to pay fees pursuant to these agreements, well-established rules of statutory construction and policy considerations dictate that they should be awarded attorney's fees." *Id.* at 792. A contrary interpretation, the court explained, gives fewer parties the opportunity to offset the costs of their

[2] As this Court has recognized, "because the [TPIA] is modeled on the FOIA, federal precedent is persuasive, particularly where the statutory provisions mirror one another." *Tex. Comptroller of Pub. Accts. v. Att'y Gen. of Tex.*, 354 S.W.3d 336, 342 (Tex. 2010).

litigation with a fee award and "significantly frustrates the purpose and efficacy of the [statute]." *Id.* at 793.

In sum, the TPIA plays a crucial role in promoting transparency and justice for those seeking access to government information. And central to the TPIA's effectiveness is its fee-shifting mechanism. Without it, the financial burdens associated with pursuing TPIA requests would deter many organizations and individuals from seeking the information to which they are entitled, undermining the very purpose of the Act and making the promise of open government largely illusory for many Texans.

II. The Chilling Effect on *Pro Bono* and Nonprofit Attorneys Enforcing the TPIA.

1. The Crucial Role of *Pro Bono* and Nonprofit Representation in TPIA Enforcement.

The TPIA's promise of an open state government is only as strong as its enforcement. Nonprofit organizations and advocacy groups like *amici* work at the forefront of TPIA litigation. Historically, *amici* have not directly pursued TPIA mandamus cases as a relator party. Accordingly, FOIFT, for example, has not sought the recovery of TPIA attorney fees on its own account. But its membership and associations include nonprofits and individuals that seek to enforce the TPIA through the mandamus remedy provided by the statute. Such nonprofit entities use salaried or volunteer staff rather than outside counsel because they have the specialized knowledge and institutional experience necessary to navigate the complexities of public information law. The pro bono work performed by these staff members is encouraged by the Texas Rules of Professional Conduct[3] and the State Bar of Texas,[4] and is essential for building public support and advancing the causes of transparency and accountability. If the incorrect analysis in the court below regarding when attorney fees are "incurred" is not set aside, such relators will be inhibited and discouraged to pursue otherwise meritorious claims. *See Nat'l Sec. Couns.*, 811 F.3d at 29 (recognizing that no federal court of appeals has denied "attorney's fees to any kind of self-representing organization, much less a *bona fide* corporation represented by in-house counsel" under the FOIA fee provision); *see also Benally v. U.S. Off. of Navajo & Hopi Indian Relocation*, 154 F.4th 630, 634 (9th Cir. 2025) (recognizing that a narrow reading of "incurred" in fee-shifting statutes

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[3] Section 6 of the Preamble of the Texas Rules of Professional Conduct states that lawyers have an ethical obligation to render *pro bono* legal services and that every lawyer, regardless of professional prominence or workload, should do so. *See* Tex. R. Prof. Cond. Preamble: A Lawyer's Responsibilities § 6.

[4] *See Pro Bono Texas Campaign: Supporting Attorneys in Pro Bono Service*, STATE BAR OF TEXAS, https://www.texasbar.com (last visited August 24, 2026).

risks denying individuals the ability "to vindicate their rights" and discouraging counsel from "litigating meritorious claims").

The relationship between these organizations and the communities they serve is symbiotic. By representing those with the fewest resources, these organizations advance the public's right to know about government activity and ensure that government is held accountable. The Court of Appeals' decision, however, threatens this relationship by making it impossible for attorneys and organizations to recoup the costs of their time and expertise unless they engage in the impractical exercise of invoicing and paying themselves.

For *amici*, the potential consequences of the decision below are not abstract. As Justice Boatman emphasized in her concurring opinion, the holding of the court below will bar fee awards to pro bono and nonprofit lawyers when a statute imposes an "incurred" requirement. *See Estrada*, 2025 WL 1225845, at *9 (Boatman, J., concurring). Justice Boatman wrote separately to ask this Court "to consider this important issue." *Id.* at *10. *Amici* share Justice Boatman's concern. Pro bono and nonprofit organizations are among the TPIA's most frequent enforcers, and their ability to continue that work depends entirely on whether fee-shifting remains available to organizations represented by salaried and volunteer attorneys.

2. The Practical Impossibility of "Incurring" Fees in *Pro Bono* and Nonprofit Contexts.

The Court of Appeals' focus on invoices and payment obligations overlooks the economic reality that an organization incurs a genuine, measurable cost when its lawyers spend time on a case because that time cannot be spent on other matters. Courts have recognized that "incurred" encompasses the lost opportunity cost of employing salaried lawyers, finding that for every hour that in-house counsel, salaried government lawyers, and nonprofit staff attorneys devote to one case is an hour that could have been spent on other matters. *See Textor v. Bd. of Regents of N. Ill. Univ.*, 711 F.2d 1387, 1396–97 (7th Cir. 1983); *see also Wisconsin v. Hotline Indus., Inc.*, 236 F.3d 363, 365 (7th Cir. 2000) ("But salaried government lawyers, like in-house and non-profit counsel, do incur expenses if the time and resources they devote to one case are not available for other work."); *Matter of Arb. Between United Pub. Workers, AFSCME, Loc. 646, AFL-CIO & Dep't of Trans.*, 487 P.3d 302, 306 (Haw. 2021), *as corrected* (July 7, 2021) (holding that its Attorney General incurred fees "based on the time its attorney spent on [the] case, which was time he could not spend on other cases"). For the nonprofit and pro bono organizations that enforce the TPIA, every hour spent compelling disclosure is an hour unavailable for other matters. That cost is incurred when the work is performed, regardless of whether it is ever reduced to an invoice.

The holding in *Powell v. Grimes* confirms that organizations represented by their own attorneys incur fees. *See Powell*, 2025 WL 626428, at *8. There, the First Court of Appeals reasoned that law firms are "fictional legal persons and thus cannot represent themselves" and are "entitled to recover attorney's fees for services performed on their behalf." *Id.* The court in *Powell* drew an important distinction between an organization and an individual—one that the opinion in *Jackson* did not address.

Indeed, *Powell* did not ignore *Jackson*; it distinguished individual pro se representation from organizational representation, explaining that a lawyer representing himself in an individual capacity is different from a law firm. *Jackson* concerned an individual who represented himself *pro se*, and held that a *pro se* litigant does not incur attorney's fees and therefore cannot recover them. *Jackson v. State Off. of Admin.*

Hearings, 351 S.W.3d 290, 300 (Tex. 2011). It did not consider whether an organization represented by its own salaried lawyers incurs fees—a separate question that turns on the litigant's organizational status. That distinction matters because "an organization is not comparable to a *pro se* litigant because the organization is always represented by counsel, whether in-house or *pro bono*, and thus, there is always an attorney-client relationship." *Kay v. Ehrler*, 499 U.S. 432, 436 n.7 (1991).

The approach of the lower court also presents serious practical difficulties for the organizations that enforce the TPIA. As explained in the Petition for Review, the Court's reading of "incurred" would require pro bono attorneys and public interest organizations to generate invoices and artificial liabilities to themselves to recover fees. *See* Pet. for Rev., at 10–12. This is impractical and fundamentally at odds with the realities of pro bono and nonprofit legal work. Here, Mayer Brown's salaried attorneys pursued meritorious TPIA claims on behalf of Mr. Estrada. The Court of Appeals' implied requirement that the firm bill itself serves no purpose other than to deter TPIA enforcement. *See Estrada*, 2025 WL 1225845, at *5.

But even if public interest organizations or pro bono counsel representing individual TPIA litigants like Mr. Estrada considered "billing themselves" like the Court of Appeals' opinion suggests, the majority opinion fails to provide any guidance on how to self-bill in practice. Would such organizations or individuals be required to collect invoices from its volunteer attorneys working at multiple law firms, only to process them if and when a case is successful? These organizations would essentially have to divert resources to create and manage new internal billing systems, detracting from any public mission. These fundamental problems highlight the unworkability of the Court of Appeals' approach and unnecessary complexity that it introduces.

3. The Chilling Effect on *Pro Bono* for Vulnerable Populations and Threat to Government Transparency.

The impact of the Court of Appeals' decision will be felt most acutely by vulnerable populations. Incarcerated individuals like Mr. Estrada, for example, are frequently represented in TPIA actions by organizations interested in government transparency and accountability because the government can ignore incarcerated individuals' TPIA request but not an attorney's request. *See* TEX. GOV'T CODE § 552.028(a). These attorneys' inability to recover anything after years of litigation would run counter to the legislative intent of the TPIA, which was designed to encourage enforcement by making fee recovery mandatory for prevailing parties.[5]

The result is a perverse incentive: attorneys that volunteer for nonprofit organizations or individuals without the resources to retain fee counsel will be discouraged from taking on TPIA cases, especially those that are complex and time-consuming. Mr. Estrada's case demonstrates this plainly. Should the Court of Appeals' decision stand, pro bono attorneys will have every reason to direct their limited resources to other areas of the law where fee recovery remains available. The net effect will be a reduction in access to justice and weakening of government accountability.

Finally, the value of the TPIA's mandatory fee-shifting provision lies in its deterrent effect. The provision gives governmental bodies an incentive to meet their disclosure obligations in the first instance rather than to withhold records and force requestors into years of litigation. A rule that makes fees recoverable when a litigant retains outside counsel, but not when nonprofits, clinics, or pro bono attorneys press the same

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[5] THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS, 2024 PUBLIC INFORMATION ACT HANDBOOK 2 (explaining that "[t]he purpose of the Public Information Act is to maintain the people's control 'over the instruments they have created.' The Public Information Act requires the attorney general to construe the Act liberally in favor of open government").

meritorious claims, gives governmental bodies an incentive to exploit the structure of their adversaries' representation. The Legislature made fee recovery mandatory to foreclose that result.

CONCLUSION

For these reasons, *amici* respectfully urge the Court to reverse the Court of Appeals' judgment.

Respectfully submitted,

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I certify that this Brief in Support complies with the type-volume limitations of Tex. R. App. P. 9.4(i)(2)(D) because it contains 3,570 words, excluding the parts of the brief exempted by Tex. R. App. P. 9.4(i)(1).

This Brief in Support also complies with the typeface and type-style requirements of Tex. R. App. P. 9.4(e) because it has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and 12-point Century Schoolbook font for footnotes.

/s/ Paul C. Watler
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CERTIFICATE OF SERVICE

I certify that on August 25, 2026, a true and correct copy of the foregoing document was served on all counsel of record via FileTime e-filing system.

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