

No. 20-50448

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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TONY K. MCDONALD; JOSHUA B. HAMMER; MARK S. PULLIAM,  
*Plaintiffs-Appellants,*

v.

JOE K. LONGLEY, IMMEDIATE PAST PRESIDENT OF THE STATE BAR OF TEXAS; RANDALL O. SORRELS, PRESIDENT OF THE STATE BAR OF TEXAS; LAURA GIBSON, MEMBER OF THE STATE BAR BOARD OF DIRECTORS AND CHAIR OF THE BOARD; JERRY C. ALEXANDER, MEMBER OF THE STATE BAR BOARD OF DIRECTORS; ALISON W. COLVIN, MEMBER OF THE STATE BAR BOARD OF DIRECTORS; ET AL.,  
*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Western District of Texas, Austin Division, No. 1:19-cv-00219 (Yeakel, J.)

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**BRIEF OF AMICI CURIAE  
TEXAS ACCESS TO JUSTICE COMMISSION AND  
TEXAS ACCESS TO JUSTICE FOUNDATION  
SUPPORTING APPELLEES AND AFFIRMANCE**

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TEXAS ACCESS TO JUSTICE COMMISSION AND  
TEXAS ACCESS TO JUSTICE FOUNDATION

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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<sup>1</sup> Defendants-Appellees are members of the Board of Directors of the State Bar of Texas, sued in their official capacity. As explained in Appellees' brief, several former members of the State Bar Board of Directors were named as Defendants in their official capacity in Plaintiffs-Appellants' complaint, but they are no longer parties to this case. Their successors, who are included among the Defendants-Appellees listed above, have been automatically substituted as parties. The following former members of the State Bar Board are no longer parties to the case: Joe K. Longley, G. Thomas Vick, Jr., Laura Gibson, Christy Amuny, Jeff Chandler, Alison W. Colvin, Leslie W. Dippel, Estrella Escobar, Jarrod T. Foerster, Angelica Hernandez, Sarah Clover Keathley, Neil D. Kelly, David C. Kent, Aldo D. Lopez, Robert E. McKnight, Jr., Rudolph K. Metayer, Christopher Oddo, Amie S. Peace, Sally Pretorius, Curtis Pritchard, Baili B. Rhodes, Lisa S. Richardson, Fidel Rodriguez, Jr., Gregory W. Sampson, Dinesh H. Singhal, K. Nicole Voyles, Brandley C. Weber, and James C. Woo.

The following Defendants were named in Plaintiffs' First Amended Complaint, *see* ROA.2135-54, but were dismissed without prejudice pursuant to a stipulation between the parties, *see* ROA.3145-48: Seana Willing, in her official capacity as Chief Disciplinary Counsel of the State Bar of Texas; and Teresa Acosta, Pablo Javier Almaguer, Bruce Ashworth, Gena Bunn, Sheri Roach Brosier, Magali Suarez Candler, Vance Goss, John Neal, Dave Obergfell, Noelle M. Reed, William Skrobarczyk, and Javier S. Vera, in their official capacities as Members of the Commission for Lawyer Discipline of the State Bar of Texas.

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Created by order of the Texas Supreme Court in 2001, the Texas Access to Justice Commission is not a corporation. The Commission consists of 21 commissioners, each serving a three-year term, and three ex-officio members.

The Texas Access to Justice Foundation is a 501(c)(3) non-profit corporation organized under the laws of Texas and has no capital stock or other ownership.

Respectfully submitted,

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## IDENTITIES AND INTERESTS OF AMICI CURIAE<sup>2</sup>

### Texas Access to Justice Commission

The Texas Supreme Court created the Texas Access to Justice Commission by unanimous order in 2001. ROA.1606-10 (Order Establishing the Commission). In that Order, the Texas Supreme Court recognized the following deficiencies in the then-existing framework for the provision of legal services for low-income Texans:

- many gaps exist in developing a comprehensive, integrated statewide civil legal-services delivery system in Texas;
- many poor people in Texas are underrepresented, in that they receive limited advice from a legal-services provider when they would in fact be better served by full representation on a civil legal matter;
- inadequate funding and well-intentioned but uncoordinated efforts stand in the way of a fully integrated civil legal-services delivery system;
- achieving a committed and active justice community in Texas is essential to the effective delivery of civil legal services;
- while many organizations throughout the state share a commitment to improving access to justice, no single group is widely accepted as having ultimate responsibility for progress on the issues; and
- leadership that is accepted by the various stakeholder organizations committed to achieving full access, and

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<sup>2</sup> This brief is submitted under Federal Rule of Appellate Procedure 29(a) with the consent of all parties. Undersigned counsel certify that no counsel to any party authored the brief in any part, no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief, and no person—other than the amici curiae, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

empowered to take action, is essential to realizing equal justice for all in Texas.

ROA.1606. Its solution to these serious problems was the Commission. ROA.1607.

The Texas Supreme Court charged the Commission with the general duty to “develop and implement policy initiatives designed to expand access to and enhance the quality of justice in civil legal matters for low-income Texas residents.”

ROA.1607. It also tasked the Commission with various more specific duties, providing that the Commission must:

- identify and assess current and future needs for access to justice in civil matters by low-income Texans;
- develop and publish a strategic plan for statewide delivery of civil legal services to low-income Texans;
- foster the development of a statewide integrated civil legal-services delivery system;
- work to increase resources and funding for access to justice in civil matters and to ensure that the resources and funding are applied to the areas of greatest need;
- work to maximize the wise and efficient use of available resources, including the development of local, regional, and statewide coordination systems and systems that encourage the coordination or sharing of resources or funding;
- develop and implement initiatives designed to expand civil access to justice;
- work to reduce barriers to the justice system by addressing existing and proposed court rules, procedures, and policies that negatively affect access to justice for low-income Texans; and

- monitor the effectiveness of the statewide system and services provided and periodically evaluate the progress made by the Commission in fulfilling the civil legal needs of low-income Texans.

ROA.1607.

The funding the Commission needs to operate in order to accomplish these objectives comes exclusively from the State Bar of Texas. *See* ROA.1609; ROA.1729-30 (Declaration of Trish McAllister ¶ 52). The Commission thus has a strong interest in ensuring both that (1) the Bar remains able to collect the dues it needs to fulfill its budgetary requirements and (2) no legal barriers prevent the Bar from continuing to fund the Commission’s vital access to justice work. Because Appellants’ claims threaten those interests, the Commission submits this brief to inform the Court about the critical role the Commission plays in providing access to justice in Texas and to assure the Court that the Commission’s work is fully consistent with the standard announced in *Keller v. State Bar of California*, 496 U.S. 1 (1990).

#### Texas Access to Justice Foundation

The Texas Access to Justice Foundation is the leading funder of legal aid in Texas. Since its inception in 1984, the Foundation has awarded nearly \$770 million to legal aid organizations across Texas. In 2019, the Foundation made grants to dozens of organizations that provide free legal assistance in civil matters such as protection from domestic violence, assistance with housing issues, and assistance

with accessing veterans' benefits to more than 150,000 low-income Texans each year.

A Section 501(c)(3) nonprofit organization, the Foundation was created by the Texas Supreme Court in 1984 to fund nonprofit organizations that provide free civil legal aid to low-income Texans. ROA.1654; ROA.1733 (McAllister Decl. ¶ 63). The Texas Supreme Court initially appointed the Foundation to administer the Interest on Lawyers' Trust Accounts (IOLTA) Program and has since placed several additional programs under its purview, including the Basic Civil Legal Services (BCLS) grants program, Crime Victim Civil Legal Services (CVCLS), the Legal Aid for Survivors of Sexual Assault (LASSA) grants program, and the Legal Aid for Veterans (LAV) grants program.

Among the BCLS funds the Foundation administers on behalf of the court is one-half of the mandatory annual legal services fee that the Bar collects from Texas lawyers in addition to their annual membership dues. *See* TEX. GOV'T CODE ANN. §§ 81.054(c)-(d), (j)-(k) (West 2019); Tex. Sup. Ct. Order, Misc. Docket No. 98-9001 (Jan. 7, 1998) (the "BCLS Order").<sup>3</sup> The Foundation also administers a substantial portion of the voluntary Access to Justice contributions made by lawyers in conjunction with their annual Bar dues. *See, e.g.*, Tex. Sup. Ct. Order, Misc.

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<sup>3</sup> [https://www.txcourts.gov/All\\_Archived\\_Documents/SupremeCourt/AdministrativeOrders/miscdocket/98/98-9001.pdf](https://www.txcourts.gov/All_Archived_Documents/SupremeCourt/AdministrativeOrders/miscdocket/98/98-9001.pdf).

Docket No. 19-9093 (Oct. 1, 2019).<sup>4</sup> Other funding sources of the Foundation include state funds, *cy pres* awards, private donations, and grants from other foundations.

The Bar and the Commission are key partners in the Foundation's efforts to improve the availability and quality of legal services for low-income Texans. By way of example, the Commission's policy initiatives to integrate the statewide delivery of civil legal services and its fundraising efforts on behalf of legal aid organizations complement the Foundation's grant-making activities. The Foundation both administers programs created by the Commission (*e.g.*, the Texas Student Loan Repayment Assistance Program) and disburses funds raised by the Commission for legal aid organizations (*e.g.*, the Commission's Justice for All Campaign). Similarly, the Bar's Legal Access Division complements the Foundation's work by "support[ing] . . . the day-to-day needs" of legal-aid providers and connecting *pro bono* attorneys with legal services organizations in need of assistance. ROA.1723-27 (McAllister Decl. ¶¶ 16-41); *see also* ROA.1616-17 (2015 Self-Evaluation Report to the Sunset Advisory Commission). A disruption of these existing synergies among the Foundation, the Commission, and the Bar would have a crippling impact on the Foundation and, in turn, the delivery of free legal aid in Texas.

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<sup>4</sup> <https://www.txcourts.gov/media/1444874/199093.pdf>.

The Foundation thus has a strong interest in the continued viability of its key access-to-justice partners. Moreover, Appellants’ challenge to the mandatory legal services fee as an impermissible compelled charitable contribution threatens the Foundation’s interest in sustaining—and growing—funding for legal aid in Texas. The Foundation thus joins the Commission in submitting this *amici curiae* brief.

### ARGUMENT

**I. The Bar’s funding of the Commission easily meets the *Keller* standard because the Commission’s work is focused on “improving the quality of the legal service available to the people of the State.”**

The Bar’s funding of the Commission easily passes muster under the Constitution. In *Keller*, the Supreme Court held that state bars “may . . . constitutionally fund activities germane to th[e] goals [of regulating the legal profession and improving the quality of legal service] out of the mandatory dues of all members.” 496 U.S. at 13-14. It explained that “the guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or ‘improving the quality of the legal service available to the people of the State.’” *Id.* at 14 (quoting *Lathrop v. Donohue*, 367 U.S. 820, 843 (1961) (plurality opinion)).

The *Keller* standard—which has been controlling precedent for First Amendment issues concerning integrated bars’ expenditures of member dues for more than three decades—applies to the Bar’s funding of the Commission. Whether

viewed from the perspective of the Commission’s established purpose in the Texas Supreme Court’s Order or its on-the-ground efforts to improve access to justice across the state, the Commission’s work plainly is directed at “improving the quality of the legal service available to the people of the State.” *Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843 (plurality opinion)). That renders the Bar’s funding of the Commission fully consistent with the Constitution.

**A. The duties the Texas Supreme Court placed upon the Commission all revolve around improving the quality of legal service available to low-income Texans.**

The Texas Supreme Court was well aware of the *Keller* standard when it created the Commission in 2001. Indeed, the Texas Legislature codified the *Keller* standard in 1991, adding a restriction to the State Bar Act that “[f]ees collected under this chapter and other funds received by the state bar may not be used for influencing the passage or defeat of any legislative measure unless the measure relates to the regulation of the legal profession, *improving the quality of legal services*, or the administration of justice.” TEX. GOV’T CODE ANN. § 81.034 (West 2019) (emphasis added). That is why the Texas Supreme Court’s Order creating the Commission charges it with duties that are fully consistent with both *Keller* and the State Bar Act. *See* ROA.1606-10 (Order Establishing the Commission).

Every one of the Commission’s duties is aimed at improving the quality of legal services available to low-income Texans. Both its overarching charge to

“develop and implement policy initiatives designed to expand access to and enhance the quality of justice in civil legal matters for low-income Texas residents” and each of the specific instantiations of that duty listed in the Texas Supreme Court’s Order, *see supra*, Identities and Interests of Amici Curiae, at 2-3 (quoting duties imposed by Order), concern “improving the quality of the legal service available to the people of the State.” *Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843 (plurality opinion)).

To be sure, the Commission’s focus is on the part of the population to which legal service is scarcely available and most in need of improvement. Nothing about that restricted focus violates *Keller* (or, for that matter, the State Bar Act). *Keller* plainly does not require that every expenditure of bar funds “improv[e] the quality of the legal service available” to every single resident of a state. *Id.* (quoting *Lathrop*, 367 U.S. at 843 (plurality opinion)). Rather, *Keller* counsels only that each bar program must focus on “improving the quality of the legal service available” to some set of “people of the State.” *Id.* (quoting *Lathrop*, 367 U.S. at 843 (plurality opinion)). That commonsense reading of *Keller* allows for targeted solutions to specific—and urgent—problems. The Commission is a prime example of such a solution, as the Texas Supreme Court created it to address serious deficiencies in the quality of legal service available to low-income Texans. *See* ROA.1606-10 (Order Establishing the Commission). Its efforts to combat those deficiencies “improv[e]



the quality of the legal service available to the people of the State.” *Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843 (plurality opinion)).

**B. Consistent with its charge, the Commission’s work is exclusively focused on improving the quality of legal service available to low-income Texans.**

The Commission’s on-the-ground efforts live up to the lofty goals set for it by the Texas Supreme Court. The Commission’s annual reports to the Texas Supreme Court detail its work in expanding access to justice for low-income Texans and confirm that its focus in deed, as well as in word, is on “improving the quality of the legal service available to the people of the State.” *Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843 (plurality opinion)); see ROA.1658-76 (The Commission’s 2018 Report); ROA.1678-97 (The Commission’s 2017 Report).

The Commission operates through a number of committees and task forces. For example, its Law School Advisory Committee “creates and promotes programs to ensure the next generation of attorneys are familiar with civil access to justice issues.” ROA.1659 (The Commission’s 2018 Report). That committee pursues those goals through three primary initiatives. First, it coordinates an annual Pro Bono Spring Break that gives Texas law students the opportunity to spend their spring break working with legal aid organizations across the state. *Id.* Second, the committee sponsors the Access to Justice Internship Program, which provides stipends to law students who commit to serving at a legal aid organization for a

specified number of hours during their time in law school. ROA.1660. Third, the committee partners with Texas law schools to host poverty simulations designed to “sensitize law students to the struggles that low-income Texans face in their day-to-day lives.” *Id.* Together, these efforts instill in the next generation of attorneys an appreciation of the access to justice issues facing low-income Texans and a commitment to meeting those needs through pro bono work or other service.

Another Commission committee, the Legal Training Programs Committee, provides high-quality training to legal aid attorneys. ROA.1661. As one example, it partners with Fellows from the American College of Trial Lawyers, the preeminent organization of trial lawyers in North America, to host an annual Texas Trial Academy for Texas legal aid attorneys. *Id.* Such training directly improves the quality of legal service available to low-income Texans through the state’s legal aid organizations.

The Commission is also responsible for various task forces established by the Texas Supreme Court to design and publish legal forms that self-represented litigants can use to meet their basic civil legal needs. *See* ROA.1661-63. The Landlord-Tenant Forms Task Force has, for example, put together “the forms needed by low-income tenants and landlords to deal with eviction.” ROA.1661-62. The Probate Forms Task Force has drafted “will forms that give self-represented litigants options appropriate for their stage in life,” along with “global instructions relevant

to all the will forms” that provide the basic information about creating and executing a will. ROA.1662. The Protective Order Task Force works to create and refine a form protective order kit that can be used by victims of domestic violence. ROA.1662-63. There are also forms task forces for other common legal issues, such as eviction and divorce. ROA.1733 (McAllister Decl. ¶ 61). By promulgating these forms, the Commission’s forms task forces greatly improve the quality of legal services available to low-income Texans who cannot afford legal representation.

Another Commission committee, the Technology Committee, focuses on addressing the technology needs of legal aid attorneys. ROA.1663 (The Commission’s 2018 Report). It provides training for legal aid attorneys on the use of various computer programs that can be utilized in their practices. *Id.* The committee also more broadly assesses the technology needs of legal aid attorneys and formulates strategies to ensure that they are met. *Id.*

The Commission’s Legislative Committee “assists the Commission in developing and advocating a legislative agenda to ensure successful funding for legal aid organizations and legislative reforms that increase access to justice.” *Id.* The committee educates state and national lawmakers about access to justice issues and seeks funding for legal aid organizations. ROA.1663-65. The committee also advocates for various access to justice measures unrelated to funding. For example, the committee successfully supported: the removal of barriers to an attorney being

appointed an *ad litem* on a pro bono basis, ROA.1665; allowing inactive bar members to practice on a solely pro bono basis, ROA.1687-88 (The Commission’s 2017 Report); and the creation of new mechanisms for titles to real property and vehicles to be transferred upon death without the need to go through probate, thereby solving a serious access to justice problem that had affected many low-income Texans, ROA.1686-87. The committee’s efforts to secure funding for legal aid organizations and its non-funding initiatives thus all share a common focus on improving the access to and quality of legal service for low-income Texans.

The Commission’s Rules and Legislation Committee “addresses systemic access to justice issues for the poor through the creation of . . . policies, procedures, and practices.” ROA.1667 (The Commission’s 2018 Report). Its Self-Represented Litigants Subcommittee has drafted amendments to the Texas Code of Judicial Conduct concerning “reasonable accommodations a judge may take to afford all litigants the right to be heard” and has offered “policies on interactions with court patrons by court clerks and other court personnel.” *Id.* The committee has also worked to increase awareness of limited scope representation, a useful tool that makes it easier for attorneys to represent low-income Texans for one discrete purpose. ROA.1667-68. The Language Access, Pro Bono, and Legal Notices Subcommittees have also pursued amendments to rules or legislation to address

access to justice issues in their areas of focus. ROA.1668; ROA.1688-89 (The Commission’s 2017 Report).

The Commission also engages in significant private fundraising efforts for the benefit of the state’s legal aid organizations. Through its Justice for All Campaign, Champion of Justice Society, Champions of Justice Law Firm Competition, and Champions of Justice Gala Benefitting Veterans, the Commission raised nearly \$2 million distributed to legal aid services in 2018.

In sum, the Commission focuses on “improving the quality of the legal service available to the people of the State” by removing barriers that block access to justice for low-income Texans and improving the quantity and quality of legal services available to them. These extensive efforts fulfill the Texas Supreme Court’s charge to the Commission and fully adhere to both the State Bar Act and the *Keller* standard.

**II. The Bar’s financial support of certain programs administered by the Foundation also meets the *Keller* standard of improving the quality of legal service available to low-income Texans.**

To the extent that the Bar provides financial support for certain programs administered by the Foundation, that support similarly meets the *Keller* standard. Since its inception over three and a half decades ago, the Foundation has worked in partnership with other entities to a single end—improving access to the civil justice system for low-income Texans. In other words, like the Commission, the Foundation has worked to “improv[e] the quality of the legal service available to the

people of the State,” a goal that the Supreme Court specifically endorsed in *Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843 (plurality opinion)).

For example, the Foundation administers the Texas Student Loan Repayment Assistance Program (SLRAP), which was created by the Commission in 2003 “to recruit and retain lawyers who want to work at legal aid organizations but cannot afford to do so because the low salaries paid by the organizations do not cover their student loan debt.” ROA.1825. With financial support from the Bar, the Foundation provided financial assistance to 199 such attorneys in 2017 and 2018. ROA.1811 (State Bar of Texas Annual Report 2017-2018). Alleviating the burdens of student loan debt so that recent law school graduates can work for Texas legal aid organizations undoubtedly enhances “the quality of the legal service available to the people of the State.” *Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843 (plurality opinion)).

The Foundation also administers part of the funds collected from the \$65 legal services fee that Texas attorneys must pay in addition to their annual membership dues. *See* TEX. GOV’T CODE ANN. § 81.054(j)-(k) (West 2019). Although the legal services fee is collected in connection with the annual dues, the Bar does not receive that fee. *Id.* § 81.054(c)-(d). Instead, the Texas Supreme Court distributes the fee to the Comptroller, who allocates half to the Supreme Court Judicial Fund for civil legal services to the indigent and the remaining half to the Fair Defense Account of

the state's general revenue fund for indigent criminal defense programs. *Id.* Appellants challenge that fee as a “compelled charitable contribution” that “has nothing to do with regulating the profession or ensuring ethical conduct by attorneys.” Appellants’ Br. at 10. But, as the district court correctly concluded, the legal services fee is not subject to *Keller* because it is not used to fund any Bar expenditures. ROA.3450.

In any event, the fee would satisfy *Keller* because it is used solely to promote legal services for the indigent, thereby maintaining access to the justice system and improving the quality of available legal services. The portion of the mandatory legal services fee allocated to civil legal services is administered as part of the state’s Basic Civil Legal Services (BCLS) program, which was enacted by the Texas Legislature in 1997, when federal funding for legal services to the indigent had declined significantly. *See* BCLS Order at 1. The following year, the Texas Supreme Court appointed the Foundation to administer the BCLS program on behalf of the Court. *Id.* at 1. The court’s appointment order sets forth specific eligibility criteria for grantees. *Id.* at 2. To qualify for a grant, an organization must:

- be a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
- provide basic civil legal services to indigent persons who earn not more than 125% of the federal poverty guidelines;
- be current in all required filings with governmental authorities;

- maintain open records and conduct open meetings;
- be an equal employment opportunity employer; and
- demonstrate that it can utilize the funds granted to it in a manner consistent with the rules promulgated by the Supreme Court and policies adopted by the Foundation.

*Id.* Following these criteria, the Foundation thereby administers these funds to “improv[e] the quality of the legal service available to the people of the State” by promoting access to justice for low-income Texans. *Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843 (plurality opinion)).

**III. Eliminating mandatory Bar dues or the legal services fee would impair the Commission’s and the Foundation’s efforts to improve the provision of quality legal services to low-income Texans.**

The Commission and the Foundation are critical partners in the state’s access to justice delivery system. The Commission’s funding comes exclusively from the Bar, and the Foundation receives funding from both the Bar and the mandatory legal services fee. Any interruption in this funding will hamper amici’s laudable efforts to improve the quantity and quality of free and low-cost legal services throughout the State.

**A. Cutting off the Commission’s sole source of funding would spell a return of the troubling access to justice problems that prompted the Texas Supreme Court to create the Commission nearly two decades ago.**

The Commission has rightfully received plaudits for its important work. *See, e.g.*, Tex. S. Res. 616, 86th Leg., R.S., 2019 S.J. of Tex. 1244 (Texas Senate



resolution “commend[ing] the Texas Access to Justice Commission on its efforts to ensure that low-income veterans receive quality legal representation”). Even with the Commission’s work, however, there remains a great need for free and reduced-fee legal services in Texas. *See* ROA.1721-22 (McAllister Decl. ¶¶ 3-7). The Texas Judicial Council recently recognized that more than 5.6 million Texans qualify for legal aid. *See* ROA.1654 (Resolution of the Texas Judicial Council: Supporting Funding for Civil Legal Aid in Texas (Approved Sept. 14, 2018)). Much work remains to be done for Texas to meet that need. Texas ranks 47th among the states in access to legal aid lawyers, with approximately one legal aid lawyer for every 8,000 Texans who qualify. *See id.* The reality is that most poor Texans with a legitimate need for legal assistance are still forced to navigate the legal system unrepresented.

If Appellants prevail in their effort to abolish mandatory Bar dues, Texas would fall further behind in this area of critical importance. That would cut off the Bar’s funding of the Commission, and both those Texans least able to access justice and the justice system as a whole would feel the fallout. Because funding for the Commission’s operations comes exclusively from the Bar, the Commission would cease to exist in that scenario. The Commission’s important work in facilitating self-represented litigants’ navigation through the legal system would go undone.

That would not only block access to justice for those litigants, but also impede the functioning of the broader judicial system. Without the Commission's work to reduce the friction in this area, the interaction between self-represented litigants and courts would be considerably less efficient. The resulting waste of time and resources for both the litigants and the courts would benefit no one.

The Commission's public and private fundraising efforts for legal aid organizations would come to an end as well. That lifeline of funding to those organizations, a substantial portion of which is administered through the Foundation, would thus dry up. The knock-on effect would be a reduction in the number of legal aid attorneys whom those organizations could afford to employ, and that would in turn directly decrease the number of low-income Texans whom those organizations could assist with legal service. The result would be fewer Texans in need being able to access justice through the provision of affordable legal service.

The elimination of the Commission's extensive training support for legal aid organizations would further increase the financial strain on those groups. Legal aid organizations would face a choice of either cutting other areas of their tight budgets to make room for those training expenses or accepting a reduced level of attorney training as a financial necessity. Neither would bode well for the quantity and quality of legal services available to low-income Texans.

In short, the Texas Supreme Court created the Commission for a reason. It fulfills a unique and indispensable role in the State’s access to justice framework. If the Commission ceases to exist and thus can no longer fulfill its charge “to develop and implement policy initiatives designed to expand access to and enhance the quality of justice in civil legal matters for low-income Texas residents,” both low-income Texans and the entire justice system will suffer. ROA.1607 (Order Establishing the Commission).

**B. Eliminating important funding sources for the Foundation would further compound the access to justice gap in Texas.**

Although the Foundation’s funding sources are more diverse than those of the Commission, it, too, would suffer if Appellants prevail. Any loss of funding—whether direct (*e.g.*, through the elimination of the mandatory legal services fee) or indirect (*e.g.*, through the loss of the Commission and the funds for legal aid it raises)—would reduce the Foundation’s grant-making capacity and, in turn, reduce the capacity of its grantees to serve the millions of Texans who cannot otherwise afford legal representation.

The statewide need for free and reduced-fee legal services cannot be overstated. That need was well recognized before the COVID-19 pandemic, *see, e.g.*, ROA.1721-22 (McAllister Decl. ¶¶ 3-7); ROA.1654 (Resolution of the Texas Judicial Council), which has only increased that need—exponentially—while at the same time causing sources of funding for legal aid to dry up. *See* Statement from

Betty Balli Torres, *On COVID-19 and the Impact on Legal Aid in Texas* (Mar. 24, 2020).<sup>5</sup> Thus, the preservation of already scarce funding for free and accessible legal services intended to help bridge the State’s justice gap is more important now than ever.

### CONCLUSION

For these reasons, the Commission and the Foundation respectfully submit that the Court should affirm the judgment of the district court.

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<sup>5</sup> <http://www.teajf.org/news/docs/Stmt-on-COVID-19-Legal-Aid.aspx>.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 6, 2020, a true and correct copy of the foregoing amicus brief was filed with the electronic case filing (ECF) system of the U.S. Court of Appeals for the Fifth Circuit, which provided electronic service on the following counsel of record:

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### CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) because it contains 4,532 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

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