

Nos. 07-6233

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

YES ON TERM LIMITS, INC., ROBERT MURPHY, SHERRI
FERRELL, and ERIC DONDERO RITTBERG,
Plaintiffs-Appellants,

v.

M. SUSAN SAVAGE, individually and in her official capacity as
Oklahoma Secretary of State, and W.A. DREW EDMONDSON,
individually and in his official capacity as the Oklahoma Attorney
General,
Defendants-Appellants.

Appeal from the United States District Court for the Western District of
Oklahoma – Honorable Tim Leonard, District Court Judge

BRIEF OF AMICUS CURIAE INSTITUTE FOR JUSTICE
URGING REVERSAL AND SUPPORTING
PLAINTIFFS/APPELLANTS

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I. STATEMENT OF AMICUS IDENTITY, INTEREST, AND AUTHORITY

The Institute for Justice is a nonprofit, public interest legal center committed to defending and strengthening the essential foundations of a free society: private property rights, economic and educational liberty, and the free exchange of ideas. As part of its economic liberty mission, the Institute represents hardworking men and women throughout the country in challenging laws that interfere with their right to provide for themselves and their families through honest enterprise. For example, the Institute successfully represented Virginia and California vintners in challenging protectionist laws that prohibited the direct interstate shipment of wine to consumers, *Granholm v. Heald*, 544 U.S. 460 (2005). As part of the Institute's efforts to promote the ability of citizens to freely communicate with one another regarding political matters without governmental interference, the Institute has challenged efforts to regulate political speech at the national level and in the states. *See Ass'n of Am. Physicians. & Surgeons v. Brewer*, 494 F.3d 1145, *amended by* 497 F.3d 1056 (9th Cir. 2007) (challenging Arizona's system of taxpayer funded campaigns); *San Juan County v. No New Gas Tax*, 157 P.3d 831 (Wash. 2007)

(challenging attempt to regulate radio commentary as campaign contributions).

This case brings both of these areas to the fore. Oklahoma's prohibition on signature gathering by out-of-state residents restricts both the ability of Americans to move between the states to engage in political activity and the ability of professional signature gatherers who do not reside in Oklahoma to travel to that state and practice their trade. In other words, the prohibition (i) closes a market for professional services to Americans other than Oklahomans simply because they reside in other states, and (ii) closes Oklahoma to the free exchange of ideas that is part of an out-of-stater's efforts to convince an Oklahoma voter to sign a petition. As such, the law is of serious concern to the Institute, which works to vindicate the right of all Americans to earn a living and to communicate regarding political issues, regardless of who they are or where they live.

All parties have consented to the filing of this amicus curiae brief. *See* Fed. R. App. P. 29(a).

II. FACTUAL SUMMARY

It is Civics 101 that ours is a Union of several States and that the residents of one State must be accorded certain privileges and immunities in all others. Contrary to this fundamental precept, Oklahoma denies to all Americans save Oklahoma residents two of the most fundamental privileges we as Americans (indeed, as persons) possess: the right to pursue one's chosen profession and the right to engage in speech and advocacy regarding political issues.

By decree, Oklahoma prohibits every fellow American residing in any sister State from collecting initiative or referendum signatures in the Sooner state. Okla. Const. art. 3, § 1 (defining "qualified electors" as "citizens of the United States ... who are bona fide residents of this state"); Okla. Stat. tit. 34, § 3.1 (restricting the ability to circulate any initiative or referendum petition to only "qualified elector[s] of the State of Oklahoma"). The Oklahoma Supreme Court defines "bona fide resident" so restrictively that one must actually make Oklahoma the place where they presently and permanently plan to live in order to gather signatures:

A bona fide resident for purposes of art. 1, § 3 is equated with a person's honest intent to make a place one's residence or domicile, a conscious decision to make a location an individual's home.

Physical presence, as in merely crossing the Oklahoma state line, will not constitute residency. Residency requires a person have a true, fixed, permanent home to which the individual, when absent, expects to return. It is where the person lives. Although an individual may have multiple dwellings, a natural person has but one residence. The dominant element in determining legal residence is the intention to abandon a former domicile and to acquire another without any intention of returning—present abode, in and of itself, is not conclusive.

In re: Initiative Petition No. 379, 155 P.3d 32, 41 (Okla. 2006) (footnotes omitted) (“*Petition 379*”).

The effect of this scheme is to render Oklahoma off-limits to would-be professional signature gatherers from the other forty-nine states in the Union. To even compete for a position collecting signatures for pay, or even to simply cross the state line to attempt to persuade one’s fellow citizens of the wisdom of signing a petition, Americans not residing in Oklahoma must be willing (and financially able) to quit their current jobs, leave their homes, and relocate their families to Oklahoma. For the professional signature gatherer, who must travel from jurisdiction to jurisdiction to collect signatures, this means, effectively, that Oklahoma must be their base of operations—if they live anywhere else, they face the risk of imprisonment for plying

their trade in Oklahoma.¹ For the non-professional gatherer—motivated by ideology or other interests—it is a “Do Not Enter” sign at the state border.

III. ARGUMENT

One of the foremost principles that has sustained us as a Union, rather than a mere league of States, is that there are certain fundamental rights to which we, as Americans, are all entitled—rights enjoyed “by the citizens of each state, in every other state.” *Corfield v. Coryell*, 6 F. Cas. 546, 552 (C.C.E.D. Pa. 1823) (No. 3,230). Through a law that codifies everything our Framers intended to prevent when they adopted the Privileges and Immunities Clause of Article IV, Section 2, Oklahoma has trampled that principle, along with the fundamental right of every American, Oklahoma resident or not, to pursue her chosen livelihood or to engage in political advocacy regarding the signing of petitions.

¹ Forcing professional signature gatherers to reside in Oklahoma in order to ply their trade there also has the effect of excluding these gatherers from plying their trade in the other states that similarly restrict signature gathering to in-state residents.

A. The Purpose Of The Privileges And Immunities Clause Is To Prohibit Discrimination By One State Against Residents Of The Several States

The purpose of the Privileges and Immunities Clause is to prevent the kind of discrimination against, and barriers to, nonresidents similar to those that Oklahoma has erected here. Discrimination against out-of-staters was well known to the Framers and is what motivated them to adopt the Privileges and Immunities Clause.

“During the preconstitutional period, the practice of some States denying to outlanders the treatment that its citizens demanded for themselves was widespread,” and such “discriminations . . . were by no means eradicated during the short life of the Confederation.” *Austin v. New Hampshire*, 420 U.S. 656, 660 (1975). It was out of this concern that the Privileges and Immunities Clause was born. Its “primary purpose,” the Supreme Court has emphasized, “was to help fuse into one Nation a collection of independent, sovereign States.” *Toomer v. Witsell*, 334 U.S. 385, 395 (1948). It did so by “plac[ing] the citizens of each State upon the same footing with citizens of other States”—“reliev[ing] them from the disabilities of alienage in other States” and “inhibit[ing] discriminating legislation against them by other States.”

Paul v. Virginia, 75 U.S. 168, 180 (1868), *overruled on other grounds by United States v. Se. Underwriters Ass'n*, 322 U.S. 533 (1944).

So critical to the success of the Republic was the Privileges and Immunities Clause that Alexander Hamilton, in urging ratification, called it “the basis of the Union”—a guarantee that “equality of privileges and immunities” would remain “inviolable” for citizens of all States, in all States. *The Federalist No. 80* (Alexander Hamilton).

Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists.

Paul, 75 U.S. at 180.

Thus, the Privileges and Immunities Clause “was always understood as having but one design and meaning, viz., to secure to the citizens of every State, within every other, the privileges and immunities . . . accorded in each to its own citizens. It was intended to guard against a State discriminating in favor of its own citizens.”

Lemmon v. People, 20 N.Y. 562, 626-27 (1860). “[N]o provision in the Constitution has tended so strongly to constitute the citizens of the

United States one people,” *Paul*, 75 U.S. at 180, and the Clause has therefore rightly been called the “the palladium of equal fundamental civil rights for all citizens.” Cong. Globe, 39th Cong., 1st Sess. 1836 (1866) (statement of Rep. Lawrence).

B. The Right To Pursue A Livelihood Is One Of The Most Fundamental Rights Protected By The Privileges And Immunities Clause

The “norm of comity” that the Privileges and Immunities Clause secures among the States, *Austin*, 420 U.S. at 660, applies to all interstate transactions—including the pursuit of a livelihood. This fact has been recognized since the earliest days of our Republic.

In *Corfield v. Coryell*, which the Supreme Court has called “the first, and long the leading, explication of the Clause,” *Austin*, 420 U.S. at 661, Justice Bushrod Washington made clear that the pursuit of a livelihood is a “privilege” with respect to which a State may not discriminate against nonresidents. Sitting as Circuit Justice, Justice Washington “deemed the fundamental privileges and immunities protected by the Clause to be essentially coextensive with those calculated to achieve the purpose of forming a more perfect Union.” *Id.* Although he did not enumerate every such privilege and immunity

(doing so would have been “more tedious than difficult,” *Corfield*, 6 F. Cas. at 551) , he did specify some, including:

The right of a citizen of one state to pass through,
or to reside in any other state, for purposes of . . .
professional pursuits

Id. at 552. As Justice Washington explained, the Constitution’s guarantee of “the enjoyment of” this right “by the citizens of each state, in every other state, was manifestly calculated . . . ‘to secure and perpetuate mutual friendship and intercourse among the people of the different states of the Union.’” *Id.* (quoting Articles of Confederation, art. IV (1777)).²

The Court has time and again affirmed *Corfield’s* teaching that the Privileges and Immunities Clause protects every American’s right to pursue her chosen profession free from the kind of provincial

² Appellees will likely argue that Oklahoma has not violated the right recognized by Justice Washington because, technically, nonresidents are still free to “pass through . . . or . . . reside in” Oklahoma. Even by that hyper-technical reading, however, Oklahoma most certainly has violated the right, because nonresidents are not free to pass through “for purposes of . . . professional pursuits.” Rather, they must become residents to pursue employment as signature gatherers. Regardless, the Privileges and Immunities Clause is specifically designed to give the out of state visitor “the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in [a] second State.” *Saenz v. Roe*, 526 U.S. 489, 500 (1999).

discrimination found in Oklahoma’s residents-only policy. While the Court has used various terms in describing the privilege—for example, to “practice [an] occupation,” *Hicklin v. Orbeck*, 437 U.S. 518, 524 (1978), “pursue a common calling,” *id.*, or “pursu[e] . . . ordinary livelihoods,” *Toomer*, 334 U.S. at 408 (Frankfurter, J., concurring)—the underlying principle has remained unchanged:

[A] nonresident’s right to pursue a livelihood in a State other than his own . . . is protected by the Privileges and Immunities Clause.

Baldwin v. Fish & Game Comm’n of Mont., 436 U.S. 371, 386 (1978); *see also Oklahoma Educ. Ass’n v. Alcoholic Beverage Laws Enforcement Comm’n*, 880 F.2d 929, 933 (10th Cir. 1989) (“The purpose of the privileges and immunities clause is to promote interstate harmony and the national economic union. The ability of residents of one state to pursue their occupation in other states is fundamental to this purpose.” (citations omitted)).

To truly appreciate the inviolability of this right in the Framers’ eyes, it is important to recall the principles for which many of them had, a few years earlier, “pledge[d] . . . [their] Lives, . . . Fortunes and . . . sacred Honor.” The Declaration of Independence para. 5 (U.S. 1776).

The Supreme Court has expressly linked the Privileges and Immunities Clause with the principles enshrined in the Declaration of Independence, explaining that “[i]t was undoubtedly the object of the clause . . . to place the citizens of each State upon the same footing with citizens of other States,” to “insure[] to them . . . the same freedom possessed by the citizens of those States . . . in the pursuit of happiness.” *Paul*, 75 U.S. at 180; *see also Hicklin*, 437 U.S. at 524 (same). Because “[t]he right to follow any of the common occupations of life is an inalienable right, . . . formulated as such under the phrase ‘pursuit of happiness,’” *Butchers’ Union Slaughter-house & Live-Stock Landing Co. v. Crescent City Live-Stock & Slaughter-house Co.*, 111 U.S. 746, 762 (1884) (Bradley, J., concurring), it is safe to say that its “denial . . . by any of the States would have been unthinkable to the revolutionary theoreticians,” *Salla v. County of Monroe*, 423 N.Y.S.2d 878, 881, 399 N.E.2d 909, 912 (1979).

C. The Privileges And Immunities Clause Protects “Fundamental Rights”—Including The Right To Urge Your Fellow Americans To Sign A Petition

1. Freedom Of Speech Is A Fundamental Right Bearing On The Vitality Of The Nation As A Single Entity

Of course, the Privileges and Immunities Clause does not protect only economic interests. *Bach v. Pataki*, 408 F.3d 75, 90 (2d Cir. 2005); *see also Doe v. Bolton*, 410 U.S. 179, 200 (1973) (striking down residency requirement in abortion statute). “The right to travel freely within this nation to speak, work and enjoy other incidents of life, liberty and property is an aspect of the constitutional right not to be discriminated against because of residence.” *Troyer v. Town of Babylon*, 483 F. Supp. 1135, 1140 (E.D.N.Y. 1980) (holding that ordinance restricting the door-to-door distribution of religious material to only town residents violated the Equal Protection Clause of the Fourteenth Amendment); *see also A. L. Blades & Sons, Inc. v. Yerusalim*, 121 F.3d 865, 870 n.7 (3d Cir. 1997) (noting that both the Privileges and Immunities Clause and the Commerce Clause “are ‘rooted in the common purpose of protecting United States citizens from parochial, self-interested state actions that curtail economic and political freedoms of nonresidents and inhibit the growth of a competitive national market and a unified people.’” (quoting Thomas H. Day, *Hiring Preference Acts: Has the Supreme Court Rendered them*

Violations of the Privileges and Immunities Clause?, 54 Fordham L. Rev. 271, 274 (1985)).

The Privileges and Immunities Clause prohibits restrictions on those “privileges and immunities” that bear “upon the vitality of the Nation as a single entity” and therefore can be classified as “fundamental.” *United Bldg. & Constr. Trades Council v. Mayor and Council of the City of Camden*, 465 U.S. 208, 218 (1984) (quoting *Baldwin*, 436 U.S. at 383). Of course, “freedom of speech ... [is] a fundamental right[] which [is] safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution.” *DeJonge v. Oregon*, 299 U.S. 353, 363 (1937). And it cannot be doubted that the ability of individuals to travel from state to state to urge political change bears upon the vitality of the Nation as a single entity: “The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change.” *Meyer v. Grant*, 486 U.S. 414, 421 (1988). For this reason, the ability to travel state to state to urge political action can easily be classified as “fundamental” for purposes of the Privileges and Immunities Clause as well as the Due Process Clause.

2. The Success Or Failure Of Initiatives And Referenda Influence The Political Direction Of The Country

Nonetheless, Appellees may argue that the ability to travel to a particular state to urge political change in that state does not bear on the vitality of the Nation as a single entity; rather, they may argue, what gets on the ballot in Oklahoma is wholly of importance to Oklahomans and Oklahomans alone. Certainly, the Oklahoma Supreme Court adopted this position in disqualifying Initiative 379. *See Initiative 379*, 155 P.3d at 37 (noting with disapproval the fact that the initiative was supported by out-of-state contributions); *id.* at 47 (“NVO and its out-of-state circulators were paid, imported entities in search of signatories for their own economic benefit—not for the benefit of Oklahoma citizens or their laws The importation of out-of-state residents to obtain signatures for a ballot measure in an Oklahoma state election paid for by out-of-state contributors in which these people have no interest is illegal, fraudulent and unsettling.”).

With all due respect to the Oklahoma Supreme Court, the issue of whether Oklahoma may quarantine itself from the political influence of people from other states was settled in 1789 and affirmed, with considerable emphasis, once more in 1868. The Oklahoma court’s

conclusion that the citizens of the other forty-nine states “have no interest” in the passage of Oklahoma initiatives is simply wrong. The passage or failure of an initiative is a political signal of extensive significance in this country.

One need only look to the national ramifications of Howard Jarvis’s taxpayer revolt in California that resulted in Proposition 13 to understand that the impact of the success or failure of an initiative does not stop at the border of a state.

Proposition 13 was a political earthquake whose jolt was felt not just in Sacramento but all across the nation, including Washington, D.C. Jarvis’s initiative to cut California’s notoriously high property taxes by 30 percent and then cap the rate of increase in the future was the prelude to the Reagan income tax cuts in 1981. It also incited a nationwide tax revolt at the state and local levels. Within five years of Proposition 13’s passage, nearly half the states strapped a similar straitjacket on politicians’ tax-raising capabilities. Almost all of those tax limitation measures remain the law of the land today.

Stephen Moore, *Proposition 13 Then, Now and Forever*,

http://www.cato.org/pub_display.php?pub_id=5682 (July 30, 1998).

According to the Initiative and Referendum Institute at the University of Southern California, citizens using the initiative process “have

brought about some of the most fundamental and controversial public policy decisions affecting our daily lives,” including:

- Granting women the right to vote;
- Creating the eight-hour workday;
- Abolishing poll taxes;
- Legalizing medical marijuana;
- Legalizing physician-assisted suicide;
- Ending the use of racial preferences in government hiring and contracting;
- Adopting various methods of campaign finance restrictions, including taxpayer funding of campaigns;
- Adopting and abolishing the death penalty.

Initiative and Referendum Institute, *A Brief History of the Initiative and Referendum Process in the United States*,

<http://www.iandrinstitute.org/New%20IRI%20Website%20Info/Drop%20Down%20Boxes/Quick%20Facts/History%20of%20I&R.pdf>. Thus, the

Institute has concluded, “There is little doubt that in recent years the initiative process has become one of the most important mechanisms for altering and influencing public policy at the local, state and even

national level.” *Id.* This trend has only continued as new issues, such as same-sex marriage and compensation for regulatory takings, have seized national attention because of statewide initiatives on these topics.

The state of Oklahoma is trying to have its political influence go one way. At least politically, however, what happens in Oklahoma does not stay in Oklahoma. Whether it likes it or not, Oklahoma contributes to the national dialogue on issues by passing or rejecting ballot measures on controversial and important topics, yet it bans Americans from, for instance, Oregon, Maine, and Florida from helping to place such measures on the ballot. Americans in other states, however, may believe that the passage or failure of a ballot measure in Oklahoma would influence the political outcome in their own state and they are entitled as Americans to attempt to persuade their fellow Americans residing in Oklahoma of the wisdom or folly of this political path. The ability to travel to another state to engage in political activities that

may have nationwide impact is therefore fully protected by the Privileges and Immunities Clause.³

D. Oklahoma’s Residents-Only Law Violates The Privileges And Immunities Clause

The protections of the Privileges and Immunities Clause are not absolute—the Clause precludes discrimination against nonresidents only when (1) the government burdens one of the privileges and immunities protected by the Clause, and (2) (a) the government does not have a “substantial reason” for the difference in treatment, or (b) the discrimination does not bear a “substantial relationship” to the government’s objectives. *A.L. Blades, Inc.*, 121 F.3d at 870; *see also*

³ As noted above, the circulation of an initiative petition, by its very nature, involves both the expression of a desire for political change and a discussion of the merits of the proposed change. *Meyer*, 486 U.S. at 421. For this reason, the circulation of a petition is an exercise in political persuasion, not one of formulation of governmental policy. Thus, the role played by a circulator is different from those functions that are “so close to the core of the political process as to make him a formulator of governmental policy” that the Privileges and Immunities Clause does not apply. *See Nelson v. Geringer*, 295 F.3d 1082, 1093 (10th Cir. 2002) (internal quotation marks omitted) (holding that the role of Assistant Adjutant General in Wyoming National Guard does not involve state policy formulation and therefore restriction of the position to only residents of Wyoming violated Clause). In this case, the signatories formulate state policy and Oklahoma is justified in restricting only state residents to signing the petitions; the circulators, on the other hand, merely invite Oklahomans to undertake the forming of state policy.

Toomer, 334 U.S. at 396. As noted above, Oklahoma’s residents-only requirement for collecting signatures burdens not one, but two, privileges protected by the Clause and does so in explicit terms. Indeed, the entire point of this case is that Oklahoma wishes to continue to bar nonresidents from collecting signatures in the state. Thus, the first prong of the test is satisfied.

Moreover, Oklahoma does not have a “substantial reason” for restricting the circulation of petitions to in-state residents. In order to prove a “substantial reason,” Oklahoma must prove that there is a valid independent justification for the disparate treatment and that nonresidents are a “peculiar source of the evil at which the statute is aimed.” *Toomer*, 334 U.S. at 398. Oklahoma successfully justified its restriction to the district court and the Oklahoma Supreme Court by cataloging instances where out-of-state circulators had declared that they reside in Oklahoma and thus out-of-state circulators were inherently suspect. *See Initiative 379*, 155 P.3d at 39 (“**Pivotal to the integrity of the circulation process is the Oklahoma residency of circulators.**”).

But Oklahoma’s justification is simply a tautology—out-of-state circulators are untrustworthy because only out-of-state circulators have violated the restriction against out-of-state circulators. This *ex post facto* evidence is useless—instead, Oklahoma needed to have produced evidence that nonresidents were inherently untrustworthy before it passed the law and continue to be so now for some other reason than that Oklahoma has seen fit to make what they do a crime. In that regard, to survive a Privileges and Immunities Clause challenge, the government must show that the justification actually exists and, moreover, that the nonresidents targeted for discrimination are a “peculiar source” of the problem:

[T]he privileges and immunities clause . . . does not preclude discrimination against citizens of other States where there is a “substantial reason” for the difference in treatment. [T]he inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. As part of any justification offered for the discriminatory law, nonresidents must somehow be shown to constitute a peculiar source of the evil at which the statute is aimed.

Camden, 465 U.S. at 222 (alteration in original; internal quotation marks and citations omitted); *see also W.C.M. Window Co. v. Bernardi*,

730 F.2d 486, 497-98 (7th Cir. 1984) (holding that state could only justify its in-state preference law by demonstrating using data that nonresidents were causing unemployment problems in Illinois; that is, the state had to demonstrate the “costs and benefits” of the law).

Oklahoma is, in essence, simply creating a self-fulfilling prophecy to justify its restriction because no in-state resident will violate the ban on out-of-state circulators. Until Oklahoma can actually demonstrate that people from, say, Kansas, Alaska or Kentucky are more likely to manufacture signatures than Oklahomans, the law banning nonresidents from collecting signatures does not rest on a “substantial” justification. *See Supreme Court v. Piper*, 470 U.S. 272, 285-86 (1985) (rejecting New Hampshire’s argument that it was justified in requiring all attorneys to reside in the state because “there is no reason to believe that a nonresident lawyer will conduct his practice in a dishonest manner.”).

IV. CONCLUSION

Oklahoma’s residents-only policy is inimical to the Privileges and Immunities Clause and the principles it enshrines. By “discriminating against citizens of other States in the pursuit of ordinary livelihoods in

competition with local citizens,” *Toomer*, 334 U.S. at 408 (Frankfurter, J., concurring), as well as their ability to travel to Oklahoma to engage in constitutionally protected advocacy, Oklahoma’s law “conflicts with the constitutional purpose of maintaining a Union rather than a mere league of States,” *Zobel v. Williams*, 457 U.S. 55, 73 (1982) (O’Connor, J., concurring) (quoting *Paul*, 75 U.S. at 180). In order to ensure that equality of privileges and immunities remains inviolable for citizens of all States, in all States, this Court should reverse the district court’s judgment.

RESPECTFULLY submitted this 14th day of January 2008.

INSTITUTE FOR JUSTICE

s/William R. Maurer
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**Admission pending.*

**CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. P.
32(a)(7)(C)**

I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,317 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionality spaced typeface in Microsoft Word for Windows XP in Century 14 pt. type.

All required privacy redactions have been made and, with the exceptions of those redactions, every document submitted in Digital Form or scanned PDF format is an exact copy of the written document filed with the Clerk, and;

The digital submissions have been scanned for viruses with Norton Antivirus Corporate Edition v. 7.60.926 and, according to the program, are free of viruses.

01/14/08
Date

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CERTIFICATE OF SERVICE AND FILING

I certify under Penalty of perjury under the laws of the United States and the State of Washington, I caused within 2 business days of January 14, 2008 (i) one original and seven copies of the BRIEF OF AMICUS CURIAE INSTITUTE FOR JUSTICE (“Amicus Brief”) to be filed by third-party, overnight commercial carrier with the Clerk at the United States Court of Appeals for the Tenth Circuit, The Byron White U.S. Courthouse, 1823 Stout Street, Denver, CO 80257; and (ii) one copy of the Amicus Brief to be served by third-party, overnight commercial carrier on each of the below-listed parties; and that on that on January 14, 2008, I caused (i) an original of the Amicus Brief to be sent electronically to the Clerk by email to esubmissions@ca10.uscourts.gov; and (ii) a copy of the Amicus Brief to be sent electronically to the email addresses listed below:

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DATED this 14th day of January 2008.

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