No. 22-1149

IN THE SUPREME COURT OF TEXAS

ROGER BORGELT; MARK PULLIAM; JAY WILEY,
Petitioners,

TEXAS,
Intervenor-Petitioner,

v.

CITY OF AUSTIN; SPENCER CRONK,
IN HIS OFFICIAL CAPACITY AS CITY MANAGER OF AUSTIN; AND
AUSTIN FIREFIGHTERS ASSOCIATION LOCAL 975,
Respondents.

On Petition for Review from the Third
Court of Appeals at Austin, Texas
No. 03-21-00227-CV

AMICUS CURIAE BRIEF OF THE CATO INSTITUTE IN SUPPORT OF PETITION FOR REVIEW

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. This case concerns Cato because it involves the application of basic First Amendment principles to the workplace and to the ability to pursue public interest litigation, in addition to the Texas Constitution's guarantees of limited government.

[1] No fee was paid or will be paid for preparing this brief. *See* Tex. R. App. P. 11(c).

INTRODUCTION AND SUMMARY

In October 2017, the City of Austin (the City) and the Austin Firefighters Association, Local 975 (the Union) began operating under a new collective bargaining agreement (CBA) for the years 2017–2022. Article 10 of the CBA establishes what is known as Association Business Leave (ABL) which is a form of paid time off given to members of the Union for the sole purpose of conducting Union business. Under Article 10, Union business includes time spent in collective bargaining negotiations, adjusting grievances, attending dispute resolution proceedings, and attending Union conferences and meetings. The City annually contributes 5,600 hours of paid time off to a pool of leave time to be used as ABL. The Union President is entitled to use up to 2,080 of these hours, and is assigned to a full-time, forty-hour work week doing only Union business. Under the terms of the CBA, the Union President is not required to maintain any regular firefighting duties. The remaining ABL hours may be used by other "Authorized Association Representatives."

Petitioners challenged Article 10 under several provisions in the Texas Constitution collectively known as the "Gift Clauses." *See* TEX. CONST. art. III, §§ 50, 51, 52(a); *id.* art. XVI, § 6(a). They argued that the ABL provision is an unlawful grant of public money to a private entity

for non-public purposes in violation of the Gift Clauses, and they sought both injunctive relief and a declaratory judgment.

In response, the Union moved to dismiss Petitioners' complaint under the Texas Citizens Participation Act (TCPA), which is an anti-SLAPP statute designed to identify and dismiss frivolous, non-meritorious lawsuits intended to chill First Amendment rights. *See generally* Tex. Civ. Prac. & Rem. Code §§ 27.001-.011. The trial court held that ABL did not violate the Gift Clauses and also granted the Union's TCPA motion. The court not only awarded statutorily mandated attorneys' fees in the amount of $115,250, it also imposed punitive sanctions on the Petitioners in the amount of $75,000.

Petitioners appealed to the Third Court of Appeals (Third Court). The Third Court affirmed the holding that ABL complied with the Texas Constitution and affirmed the TCPA order. The court held that the ABL provision is one part of the bargained-for compensation provided in the CBA, and thus not a gratuitous grant of public funds in violation of the Gift Clauses. *Borgelt v. Austin Firefighters Ass'n, IAFF Local 975*, No. 03-21-00227-CV, slip op. at 11 (Tex. App. Nov. 22, 2022).

In light of the Third Court's conclusion, this case presents several important issues arising under not only the Gift Clauses but also the First Amendment to the U.S. Constitution. First, the Third Court's conclusion that ABL is one part of the compensation for *all* firefighters

under the CBA would mean that ABL conflicts with the U.S. Supreme Court's decision in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018). If the Third Court is right that ABL came at the expense of other benefits or compensation, then ABL effectively takes a portion of non-consenting firefighters' compensation to support the Union's private speech. And in any event, ABL also takes *taxpayer* money to support union speech, another First Amendment violation. If allowed to continue, the use of ABL and similar provisions will enable public sector unions to circumvent *Janus* and undermine the First Amendment's protection against compelled speech for non-union workers.

Second, the Third Court's decision to uphold the TCPA award of attorneys' fees and sanctions violates Petitioners' First Amendment right to participate in public interest litigation under *NAACP v. Button*, 371 U.S. 415 (1963) and *In re Primus*, 436 U.S. 412 (1973). The court justified its award, in large part, by referencing Petitioners' desire to advance a particular cause in this litigation. The court thus essentially punished Petitioners for exercising their First Amendment freedoms. This judicial action against plaintiffs who have engaged in public interest litigation not only injures Petitioners in this case, it also threatens to chill future *bona fide* public interest litigation.

Finally, this case presents an opportunity to clarify the definition of a "public benefit" under this Court's Gift Clauses precedents. The

Third Court's opinion rests on the assumption that nearly any grant of public funds to a private entity constitutes a public benefit if it eventually produces some good for the public. But this Court has made clear that the *predominant purpose* of the grant must be for a public purpose. Here, the Union is a private entity whose main objective is to increase its members' salary and thus increase the cost of government at the taxpayers' expense. The costs of public-sector unions should be seriously considered in determining whether the City may pay people to pursue objectives that are averse to the taxpayers' interests.

This Court should grant the petition for review and reverse the decision of the Third Court.

ARGUMENT

I. ABL COMPELS AUSTIN TAXPAYERS AND FIREFIGHTERS TO SUBSIDIZE UNION SPEECH IN VIOLATION OF THE FIRST AMENDMENT

When Union members conduct Union business on ABL time, they often engage in speech on matters of public concern. ABL can be used for "association business activities" that include "Collective Bargaining negotiations; adjusting grievances, attending dispute resolution proceedings, addressing cadet classes . . . and attending union conferences and meetings." COLLECTIVE BARGAINING AGREEMENT BETWEEN CITY OF AUSTIN AND AUSTIN FIREFIGHTERS ASSOCIATION LOCAL 975 16 (2017) [hereinafter 2017 CBA].[2] And the Austin Firefighters Union, like any public-sector union, "takes many positions during collective bargaining that have powerful political and civic consequences." *Janus*, 138 S. Ct. at 2464 (internal quotations omitted). Because of ABL, Austin taxpayers are forced to pay the salary of Union members as those members perform Union work and engage in Union speech.

Freedom of speech "'includes both the right to speak freely and the right to refrain from speaking at all.'" *Id.* at 2463 (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)). "When speech is compelled, . . . individuals are coerced into betraying their convictions." *Id.* at 2464. And

[2] Available at https://tinyurl.com/ykex8r6j.

"[c]ompelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns." *Id.* (emphasis in original). For that reason, "[c]itizens may challenge compelled support of private speech," even when that compulsion takes the form of "general taxes." *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 562 (2005). Applying this principle, the U.S. Supreme Court struck down a tax on mushroom producers that was used to fund private mushroom advertisements, the content of which some of the taxpaying producers opposed. *United States v. United Foods, Inc.*, 533 U.S. 405, 416 (2001).

Here, the Union's speech is private speech. *See Janus*, 138 S. Ct. at 2460 (holding that "the positions [a public-sector] union takes in collective bargaining and related activities" constitutes "private speech on matters of substantial public concern"). And as demonstrated by this lawsuit, many Austin taxpayers like Roger Borgelt object to funding that speech. Taxpayers like Borgelt are thus forced to subsidize private speech they oppose, a core First Amendment injury. If the Court declines to grant this petition, such First Amendment injuries will continue until a First Amendment challenge inevitably brings the ABL issue to this Court once again. Declining to take this case will unnecessarily prolong both these First Amendment harms and ABL's legal uncertainty.

Further, the Third Court's reasoning reveals another First Amendment injury. Not only are Austin taxpayers forced to pay for

private speech they oppose via ABL, but so also are Austin *firefighters* who have declined to join the Union. The Third Court held below that ABL is "part of the agreed upon *compensation* provided for [all firefighters] in the [CBA]." *Borgelt*, slip op. at 11 (emphasis added). Effectively, the Third Court concluded that ABL came at the expense of other benefits that Austin firefighters *would* have received had their negotiators not prioritized ABL instead. This conclusion was necessary (though not sufficient) for the Third Court to conclude that ABL complies with the Gift Clauses, because on this view ABL was bargained for at the cost of some consideration.

But if indeed ABL came at the expense of other benefits that all Austin firefighters (including non-Union members) would have otherwise received, then ABL runs headlong into *Janus*'s unqualified command that "[n]either an agency fee nor any other payment to [a public-sector] union may be deducted from a nonmember's wages, *nor may any other attempt be made to collect such a payment*, unless the employee affirmatively consents to pay." 138 S. Ct. at 2486 (emphasis added). Effectively, the Union's use of ABL achieved the same ends as an agency fee by extracting a portion of every firefighters' compensation up front, at the time the CBA was agreed to, instead of collecting the fee from each paycheck.

Put simply, *Janus* makes clear that it is impossible for ABL to comply with *both* the Gift Clauses *and* the First Amendment. To uphold ABL under the Gift Clauses, the Third Court had to treat ABL as bargained-for compensation. But if that is so, then ABL came at a cost to those Austin firefighters who never agreed to sacrifice other wages and benefits to fund private Union speech. The Third Court's opinion invites public sector unions in Texas and elsewhere to circumvent *Janus* and violate the First Amendment rights of non-union employees by reengineering unconstitutional agency-fee schemes. For this reason as well, this Court should grant review and put an end to Austin's ABL scheme.

II. THE AWARD OF FEES AND SANCTIONS AGAINST PETITIONERS UNDER THE TCPA VIOLATED THEIR FIRST AMENDMENT ASSOCIATIONAL FREEDOMS

The Third Court upheld a TCPA order that awarded fees and sanctions against Petitioners totaling $190,250. If allowed to stand, that order would punish private citizens for exercising their right to participate in public interest litigation. This Court should grant the petition for review to ensure that the TCPA is not used to undermine the rights it was intended to safeguard.

The "freedom to engage in association for the advancement of beliefs and ideas" is an implicit guarantee of the First Amendment. *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958). This guarantee

"require[s] a measure of protection for 'advocating lawful means of vindicating legal rights,' . . . including '[advising] another that his rights have been infringed and [referring] him to a particular attorney or group of attorneys . . . for assistance.'" *Primus*, 436 U.S. at 432 (1973) (quoting *Button*, 371 U.S. at 434). As a result, the work of public interest organizations—which seek to advance particular causes through litigation—receives special solicitude under the First Amendment. For such organizations, "'litigation is not a technique of resolving private differences'; it is 'a form of political expression' and 'political association.'" *Id.* at 428 (quoting *Button*, 371 U.S. at 429, 431).

The U.S. Supreme Court established key protections for public interest lawyers and clients in a series of decisions in the 1960s and 70s—the most notable of which were *NAACP v. Button* and *In re Primus*. In *Button*, the Court determined that a Virginia law that would have prohibited the NAACP from soliciting prospective litigants violated the First Amendment's protections for free expression and association. 371 U.S. at 437–38. The Court explained that the State's interest in regulating the "traditionally illegal practices of barratry, maintenance and champerty" did not justify the solicitation ban, in part because "[m]alicious intent was of the essence of the common-law offenses of fomenting or stirring up litigation," and "the exercise . . . of First Amendment rights to enforce constitutional rights through litigation, as

a matter of law, cannot be deemed malicious." *Id.* at 439–40. The Court noted that the NAACP was dedicated to the mission of desegregation, which it pursued through litigation. "[A]ssociation for litigation," the Court explained, "may be the most effective form of political association" for the NAACP, and thus, "a statute broadly curtailing group activity leading to litigation may easily become a weapon of oppression." *Id.* at 431, 435–36.

In *Primus*, the U.S. Supreme Court built upon the foundation it laid in *Button* when it held that South Carolina's decision to sanction an ACLU attorney who solicited a potential litigant was unconstitutional. 436 U.S. at 431–32. The Court rejected any meaningful distinction between the NAACP and the ACLU for First Amendment purposes, finding that litigation played a similar role in both organizations' missions. *Id.* at 427–32. The Court explained that an ACLU attorney's solicitation "comes within the generous zone of First Amendment protection reserved for associational freedoms. The ACLU engages in litigation as a vehicle for effective political expression and association, as well as a means of communicating useful information to the public." *Id.* at 431. Additionally, as it did in *Button*, the Court also rejected the argument that "[t]he State's interests in preventing the 'stirring up' of frivolous or vexatious litigation and minimizing commercialization of the legal profession" outweighed the First Amendment interests of the ACLU

and its attorney. *Id.* at 436–37. The Court noted that "considerations of undue commercialization of the legal profession [for private gain] are of marginal force where, as here, a nonprofit organization offers its services free of charge to individuals who may be in need of legal assistance and may lack the financial means and sophistication necessary to tap alternative sources of aid." *Id.* at 437.

Applying those principles to this case, the Third Court erred in upholding the award of fees and sanctions under the TCPA. Petitioners raised a First Amendment defense to those sanctions under *Button*, but the court conducted only a cursory analysis of that defense before discounting the possibility that the monetary penalties could violate Petitioners' rights. *Borgelt*, slip op. at 44. In fact, *Button* is directly on point. Petitioners are seeking to enforce the Texas Constitution through representation by the Goldwater Institute, a nonprofit public interest organization akin to the NAACP and the ACLU. Therefore, Petitioners and their counsel are entitled to the same First Amendment protections established in *Button* and *Primus*. They cannot be punished under the TCPA for advancing *bona fide* public interest litigation in Texas courts.

The Goldwater Institute is "a free-market public policy research and litigation organization dedicated to advancing the principles of limited government, economic freedom, and individual liberty, with a focus on education, free speech, healthcare, equal protection, property

rights, occupational licensing, and constitutional limits." *Our Story*, GOLDWATER INST. (last visited Mar. 10, 2023 1:25 PM).[3] Goldwater traces its lineage to the conservative and libertarian public interest law firms that first appeared in the 1970s, and which themselves were modeled on the NAACP Legal Defense Fund. *See, e.g.*, Martha F. Davis, *Our Better Half: A Public Interest Lawyer Reflects on Pro Bono Lawyering and Social Change Litigation*, 9 AM. U.J. GENDER SOC. POL'Y & L. 119, 125 (2001); Ann Southworth, *Conservative Lawyers and the Contest Over the Meaning of "Public Interest Law*," 52 UCLA L. REV. 1223, 1258–59 (2005). Goldwater's Scharf-Norton Center for Constitutional Litigation was established in 2007 by Institute for Justice[4] co-founder, and current Arizona Supreme Court Justice, Clint Bolick. Starlee Coleman, *Arizona Gov. Doug Ducey Appoints Goldwater Institute's Clint Bolick to Serve as Arizona Supreme Court Justice*, GOLDWATER INST. (Jan. 6, 2016).[5] Part of Goldwater's institutional strategy is to pursue litigation in state courts, because it recognizes that "[t]he U.S. Constitution provides a basic minimum of protection for individual rights, while leaving states free to enact laws that protect those rights more broadly." Goldwater Inst., *Our*

[3] Available at https://tinyurl.com/56x6jj27.

[4] The Institute for Justice was established in 1991 as part of the "second generation" of conservative and libertarian public interest firms. Southworth, *supra*, at 1255–61.

[5] Available at https://tinyurl.com/2p8cpvh7.

Story, *supra*. For Goldwater, litigation is a form of political expression and association. *See Primus*, 436 U.S. at 428.

And if the freedom to associate to advance public interest litigation protects the activities of public interest *lawyers*, then this First Amendment protection must logically extend to their *clients* as well. The First Amendment would offer little protection if the government could disrupt the right "to engage in association for the advancement of beliefs and ideas" by simply punishing litigants for attempting to enforce constitutional provisions in court. *Patterson*, 357 U.S. at 460.

In this case, Petitioners and their counsel seek to eliminate what they believe to be "taxpayer abuse" by "challenging [ABL] because it is an unlawful subsidy to a private entity under the Texas Constitution." Jon Riches, *Eliminating an Egregious Taxpayer Abuse*, GOLDWATER INST. (Sept. 7, 2015).[6] Their stated objective is to "build favorable anti-subsidy case law in Texas that can be used to address abuse of taxpayer funds and other forms of government and cronyism." *Id.* At its root, this case seeks to apply provisions of the Texas Constitution in a novel way, no different than any of the famous test cases filed by the NAACP or ACLU in its aim to advance a cause with good-faith legal argument.

To justify upholding the TCPA order, the Third Court relied in part on Petitioners' opposition to public-employee bargaining. Specifically, the

[6] Available at https://tinyurl.com/5n7h5z2c.

court cited Petitioners' expression of support for pursuing political objectives in the courts, and the fact that Petitioners had not been billed for legal services. *Borgelt*, slip op. at 41–42. None of these facts justify imposing TCPA sanctions. They are instead the very basis of the political expression and association being forwarded by this case. To impose fees and sanctions in light of these facts is to punish Petitioners for engaging in constitutionally protected activity.

The purpose of the TCPA is to "identify and summarily dispose of lawsuits designed only to chill First Amendment rights, not to dismiss meritorious lawsuits." *In re Lipsky*, 460 S.W.3d 579, 589 (Tex. 2015). The purpose of TCPA sanctions is to "reimburse[] the costs of defending [an] improper legal action" and "to deter the party who brought the legal action from bringing similar future, retaliatory lawsuits." Laura Lee Prather & Jane Bland, *The Developing Jurisprudence of the Texas Citizens Participation Act*, 50 TEX. TECH L. REV. 633, 670 (2018). More specifically, "[s]anctions may be appropriate when the plaintiff has shown an intention to harass via the court system. For instance, a plaintiff might file multiple lawsuits in multiple jurisdictions against the same defendant to drain its resources or exhaust its manpower." *Id.* at 678–79.

Nothing about Petitioners' suit suggests that it was retaliatory or intended to harass. Instead, Petitioners and their counsel brought this

suit seeking both to vindicate their own rights as taxpayers and to establish new precedent under the Gift Clauses. Petitioners would only be successful in this aim if they obtained a published decision in their favor from the court of appeals or this Court, which means they were prepared to lose both at the trial court and on appeal. This commitment to following a single case through multiple levels of appeal is inconsistent with a desire to merely interfere with the lawful exercise of First Amendment rights through nuisance litigation. *See id.* at 636–39.

The U.S. Supreme Court has counseled that "the exercise . . . of First Amendment rights to enforce constitutional rights through litigation, as a matter of law, cannot be deemed malicious." *Button*, 371 U.S. at 439–40. Following the example set by their public interest forebearers, Petitioners and their counsel brought this suit as a means of achieving the lawful objectives of enforcing the Gift Clauses. They did so in good faith, and without a desire for personal gain. If the TCPA order is permitted to stand, Petitioners would be punished for exercising the same freedoms that the TCPA is intended to defend, and future public-interest litigation in Texas would be significantly chilled.

III. PUBLIC-SECTOR COLLECTIVE BARGAINING DOES NOT PROVIDE A PREDOMINANTLY "PUBLIC BENEFIT" AND COMES AT SUBSTANTIAL COSTS TO TAXPAYERS

A government payment to a private party only complies with the Gift Clauses if it is made for a "public benefit." In holding that ABL does confer a public benefit and does comply with the Gift Clauses, the Third Court took an exceptionally broad view of what can constitute a public benefit. The Third Court's approach overlooked the costs incurred by taxpayers under a public-sector collective bargaining system. ABL effectively funnels taxpayer dollars to Union negotiators working to *increase* the cost of firefighting services, thereby diminishing any conceivable benefit received by taxpayers. This implausibly broad conception of a "public benefit" calls for this Court's review and correction.

This Court has held that an expenditure is made for a public purpose only if its "*predominant* purpose is to accomplish a public purpose, not to benefit private parties." *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 384 (Tex. 2002) (emphasis added). Below, the Third Court concluded that ABL satisfies this test "because it facilitates the Association's ability to carry out its business of supporting the Fire Department's mission and maintaining good labor relations between the City and its public-servant firefighters." *Borgelt*, slip op. at 20. Essentially, the court held that

because the use of ABL will redound to the public benefit in *some* way, it therefore satisfies the requirements of the Gift Clauses. But this rationale fails to heed then-Justices Owen and Hecht's admonition that this Court's Gift Clauses precedent "does not stand for the proposition that public funds can be funneled to an individual or a private corporation so long as the public interest is somehow furthered." *Tex. Mun. League*, 74 S.W. 3d at 392 (Owen, J., dissenting).

Union bargainers do not further a *predominantly* public purpose because the goals of the City and the Union are at odds during the collective bargaining process. The City naturally seeks to obtain effective firefighting services at the lowest cost, which maximizes the benefit received by taxpayers. The Union, by contrast, uses its monopoly status to "lobby for higher pay and higher government spending on activities that benefit" the Union and its members. Chris Edwards, *Public Sector Unions and the Rising Costs of Employee Compensation*, 30 CATO J. 87, 100 (2010). "When that lobbying leads to higher costs for the government, that burden is born by someone else—the taxpayers." *Id.* Under ABL, the City pays Union members to work against the City's own interest and that of its taxpayers. By definition, ABL cannot serve a predominantly public purpose if it exists to facilitate *increased* governmental costs for the benefit of the Union.

Just how much does public sector collective bargaining increase overall taxpayer cost? From 1957 to 2011, it is estimated that mandatory public-sector collective bargaining increased the cost of state and local government operations by approximately $600–$750 per person per year. GEOFFREY LAWRENCE ET AL., THE HERITAGE FOUND., HOW GOVERNMENT UNIONS AFFECT STATE AND LOCAL FINANCES: AN EMPIRICAL 50-STATE REVIEW (2016).[7] This equates to a $2,300–$3,000 greater annual tax burden on the average family of four. *Id.* In 2014, public sector unions increased state and local spending by an estimated $127–$164 billion, with the increased costs "concentrated in the states that grant the most aggressive powers to union leaders." *Id.* And according to the Bureau of Economic Analysis, approximately half of the $3 trillion spent annually by state and local governments is for public worker compensation. Chris Edwards, *Kill Two Birds with One Stone: Repeal Collective Bargaining*, WASH. EXAM'R (July 7, 2020) [hereinafter *Kill Two Birds*].[8]

Available data on collective bargaining with firefighter unions suggests that unions have significant impacts on local government. One study found that "unionization increases wages for fire department employees by 9% and benefits by 25%." *Id.* Another study suggests that as the legal environment becomes more favorable to collective

[7] Available at https://tinyurl.com/y3vfx7n8.

[8] Available at https://tinyurl.com/3r7uwz2k.

bargaining, firefighter pay tends to increase with minimal reduction in the number of firefighters employed. LAWRENCE, *supra*. In other words, the more friendly a state is to collective bargaining, the more it will pay its firefighters without any offsetting reduction in employment, thereby only increasing overall government expenditure over time. "States with compulsory bargaining laws for firefighters . . . are also associated with a rise in total spending by local governments of $207 to $295 per capita." *Id.*

Public-sector collective bargaining can also cause unforeseen costs and consequences. For example, collective bargaining agreements can make it notoriously difficult to fire underperforming workers. "Nationwide, the layoff and firing rate of state and local workers is only one-third the rate of the private sector." *Kill Two Birds*, *supra*. This problem is especially acute in the context of police unions, where labor contracts "often include provisions that obstruct discipline, erase discipline records, and insert elevated standards of review that shield rogue police officers from justice." Rachel Grezler, *Confronting Police Abuse Requires Shifting Power from Police Unions*, DAILY SIGNAL (June 8, 2020).[9] Additionally, one report estimates that when departments can successfully terminate police officers, as many as 25% of those officers

[9] Available at https://tinyurl.com/53yjur9y.

are able to successfully appeal the termination and are reinstated with back pay. *Id.* Labor contracts like these police-friendly examples turn problematic employees into financial liabilities for cities and municipalities in the short and long term. If public employees can't be fired for their conduct, these employees have no incentive to change their behavior and may continue to be the subjects of complaints, disciplinary proceedings, and lawsuits.

Finally, states and municipalities must always be on the lookout for plain old rent-seeking. A recent study of the impact of teachers' union collective bargaining on student achievement found that "additional revenue did not lead to student achievement gains among [school] districts that allocated these new funds while in the midst of collective bargaining, but it did [lead to achievement gains] among districts that committed new revenue one year prior to collective bargaining." Jason Cook et al., *Rent-Seeking through Collective Bargaining: Teachers Unions and Education Production*, CATO INST. (Oct. 5, 2022).[10] In essence, "districts that allocated funds relatively free of collective bargaining pressures were more efficient." *Id.*

While public sector employees have the right to collectively bargain in Texas, their actions increase both seen and unforeseen costs on the taxpayers. Consequently, a collective bargaining provision like ABL,

[10] Available at https://tinyurl.com/4atcuvex.

which *pays* members of a union to engage in the very conduct that leads to these increased costs, cannot be considered a "public benefit" under this Court's Gift Clauses precedent. The Third Court's contrary interpretation calls for this Court's review.

CONCLUSION

For the foregoing reasons, and those described by Petitioners, this Court should grant the petition for review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitations of Tex. R. App. P. 9.4(i)(2)(B) because it contains 4,496 words, excluding the parts of the brief exempted by Tex. R. App. R. Rule 9.4(i)(1).

This brief complies with the typeface requirements of Tex. R. App. P. 9.4(e) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in fourteen (14) point Century Schoolbook style font.

/s/Isaiah McKinney
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CERTIFICATE OF SERVICE

I certify that on March 21, 2023, the foregoing document was electronically filed and served on counsel of record through the electronic filing manager in accordance with Rule 9.5(b)(1) of the Texas Rules of Appellate Procedure.

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