

# No. CV-17-873

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## In the Supreme Court of Arkansas

THE STATE OF ARKANSAS,  
*Petitioner,*

v.

THE CITY OF FAYETTEVILLE ET AL.,  
*Respondents.*

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On Appeal from the Circuit Court of Washington County, First Division  
The Honorable Doug Martin, Circuit Judge

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**MOTION FOR LEAVE TO FILE BRIEF OF AMICI  
CURIAE STATES OF TEXAS, ALABAMA, IDAHO,  
INDIANA, KANSAS, LOUISIANA, MICHIGAN,  
MISSOURI, OKLAHOMA, AND THE COMMONWEALTH  
OF KENTUCKY, BY AND THROUGH GOVERNOR  
MATTHEW G. BEVIN, AS AMICI CURIAE  
IN SUPPORT OF PETITIONER**

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**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE**  
**To the Honorable Supreme Court of Arkansas:**

1. Amici curiae are the States of Texas, Alabama, Idaho, Indiana, Kansas, Louisiana, Michigan, Missouri, Oklahoma, and the Commonwealth of Kentucky, by and through Governor Matthew G. Bevin. Amici curiae respectfully request leave to file the attached brief in support of the position of Petitioner, the State of Arkansas.

2. Amici have an interest in this Court’s decision because their own State constitutions contain clauses identical or substantially similar to the Arkansas Speech or Debate Clause. *See* Ark. Const. art. V, § 15 (“[F]or any speech or debate in either house, [the members of the General Assembly] shall not be questioned in any other place.”). Amici’s speech or debate clauses read as follows:

- **Alabama:** “[F]or any speech or debate in either house [members of the legislature] shall not be questioned in any other place.” Ala. Const. art. IV, § 56.
- **Idaho:** “[N]or shall a member, for words uttered in debate in either house, be questioned in any other place.” Idaho Const. art. III, § 7.
- **Indiana:** “For any speech or debate in either house, a member shall not be questioned in any other place.” Ind. Const. art. IV, § 8.
- **Kansas:** “For any speech, written document or debate in either house, the members shall not be questioned elsewhere.” Kan. Const. art. II, § 22.

- **Kentucky:** “[F]or any speech or debate in either house, they shall not be questioned in any other place.” Ky. Const. § 43.
- **Louisiana:** “No member shall be questioned elsewhere for any speech in either house.” La. Const. art. III, § 8.
- **Michigan:** “They shall not be questioned in any other place for any speech in either house.” Mich. Const. art. IV, § 11.
- **Missouri:** “[A]nd they shall not be questioned for any speech or debate in either house in any other place.” Mo. Const. art. III, § 19.
- **Oklahoma:** “[F]or any speech or debate in either House, [Senators and Representatives] shall not be questioned in any other place.” Okla. Const. art. V, § 22.
- **Texas:** “No member shall be questioned in any other place for words spoken in debate in either House.” Tex. Const. art. III, § 21.

Twelve State constitutions contain speech or debate clauses that are virtually identical to Arkansas’s. *See* Brief Appendix A. Twenty-six State constitutions contain speech or debate clauses that are substantially similar to Arkansas’s. *See* Brief Appendix B. Several other State constitutions and statutory codes contain analogous provisions. *See* Brief Appendix C.

3. Amici have an interest in this case because their courts look to how courts of other states interpret constitutional and statutory provisions similar to their own. *See, e.g., Hankston v. State*, 517 S.W.3d 112, 122 (Tx. Ct. Crim. App. 2017); *Ex Parte Rogers*, 68 So. 3d 773, 779–80 (Ala. 2010); *State v. Cohagan*, 404 P.3d 659,

667 (Idaho 2017); *Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007); *State v. Bethel*, 66 P.3d 840, 846–51 (Kan. 2003); *Lake Cumberland Reg'l Hosp., LLC v. Adams*, 536 S.W.3d 683, 689-90 (Ky. 2017); *State v. Amos*, 343 So. 2d 166, 168 (La. 1977); *State ex rel. Gurganus v. CVS Caremark Corp.*, 852 N.W.2d 103, 115 n.2 (Mich. 2014); *Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633, 640–41 (Mo. 2012); *Wall v. Marouk*, 302 P.3d 775, 787 n.46 (Okla. 2013). Amici thus have an interest in promoting the correct application of constitutional language identical or similar to that which appears in their own constitutions.

4. In this case, Respondents seek to compel disclosure of materials and testimony that go to the subjective motivations underlying an important Arkansas legislative initiative, the Intrastate Commerce Improvement Act (or “Act 137”). But Respondents’ efforts are squarely prohibited by the Arkansas Speech or Debate Clause, as numerous courts around the country have held as to analogous provisions in other constitutions. If the Washington County Circuit Court’s interpretation of the Arkansas Speech or Debate Clause is permitted to stand, it would establish a harmful precedent inconsistent with the text and purpose of Amici’s constitutions’ speech or debate clauses.

5. Amici bring to this Court a perspective that the parties’ briefs do not bring. Like amici’s courts, this Court looks to decisions of courts in other States as persuasive authority when interpreting legal texts that read similarly. *See, e.g., 3 Rivers Logistics, Inc. v. Brown-Wright Post No. 158*, 2018 Ark. 91, at 5-7 (2018) (looking to

opinions of the Georgia Supreme Court and the Indiana Court of Appeals in interpreting their respective State's statutes that read similarly but not identically to an Arkansas statute). By bringing to the Court's attention similar speech or debate clauses from other States' constitutions and discussing the issues from the perspective of those clauses, amici's brief addresses the issues in this appeal in a way that is helpful to the Court and not duplicative of the parties' briefs.

6. The movants have read the briefs of the Appellant (Petitioner) and Appellees (Respondents), and this amicus brief is necessary, as explained above, to address the issues of: (1) the correct application of the Arkansas Speech and Debate Clause and (2) the potentially far-reaching consequences of this Court's decisions in this case. The parties raised these issues in their briefs.

7. The proposed brief of amici curiae accompanies this motion.

## **CONCLUSION AND PRAYER**

The Court should grant the motion for leave to file the brief of amici curiae States of Texas, Alabama, Idaho, Indiana, Kansas, Louisiana, Michigan, Missouri, Oklahoma, and the Commonwealth of Kentucky, by and through Governor Matthew G. Bevin.

Respectfully submitted.

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## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been sent to the following by the electronic-filing system on May 29, 2018, to all counsel of record.

/s/ Brett D. Watson  
BRETT D. WATSON

## CERTIFICATE OF COMPLIANCE

I hereby certify that I have submitted and served on opposing counsel an unredacted document and, if required, a redacted PDF document that comply with the Rules of the Supreme and the Court of Appeals. The PDF documents are identical to the corresponding parts of the paper documents from which they were created as filed with the Court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the Court and has been served on all opposing parties.

Identification of paper documents not in PDF format:

The following original paper documents are not in PDF format and are not included in the PDF document(s): None.

/s/ Brett D. Watson  
BRETT D. WATSON