

No. 14-1033

IN THE SUPREME COURT OF TEXAS

COMMUNITY HEALTH SYSTEMS
PROFESSIONAL SERVICES CORPORATION, ET AL.,

Petitioners,

v.

HENRY ANDREW HANSEN, II, M.D.,

Respondent.

On Petition for Review from the
Thirteenth Court of Appeals at Corpus Christi/Edinburg

**BRIEF AMICUS CURIAE OF
PACIFIC LEGAL FOUNDATION
IN SUPPORT OF PETITIONERS**

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS:

Pacific Legal Foundation respectfully submits this brief amicus curiae in support of Petitioners Community Health Systems Professional Services Corporation, et al., pursuant to Texas Rule of Appellate Procedure 11.

IDENTITY AND INTEREST OF AMICUS CURIAE

Pacific Legal Foundation (PLF) engages in research and litigation over a broad spectrum of public interest issues in state and federal courts, representing the views of thousands of supporters nationwide who believe in limited government, individual rights, and free enterprise. PLF's Free Enterprise Project engages in litigation, including the submission of amicus briefs, in cases affecting America's economic vitality and the legal burdens imposed on small businesses. PLF has filed amicus briefs nationwide in numerous cases involving the expansion of civil liability, including many in this Court. *See, e.g., Genie Indus., Inc. v. Matak*, 462 S.W.3d 1 (Tex. 2015); *Centocor, Inc. v. Hamilton*, 372 S.W.3d 140 (Tex. 2012); *Nabors Drilling, U.S.A., Inc. v. Escoto*, 288 S.W.3d 401 (Tex. 2009); *New Texas Auto Auction Services, L.P. v. Gomez de Hernandez*, 249 S.W.3d 400 (Tex. 2008); *Western Investments, Inc. v. Urena*, 162 S.W.3d 547 (Tex. 2005).

In addition, PLF attorneys have published articles on the effects of tort liability on the business community. *See, e.g., Deborah J. La Fetra, A Moving Target: Property Owners' Duty to Prevent Criminal Acts on the Premises*, 28 Whittier L. Rev. 409

(2006); Deborah J. La Fetra, *Freedom, Responsibility, and Risk: Fundamental Principles Supporting Tort Reform*, 36 Ind. L. Rev. 645 (2003). Pacific Legal Foundation attorneys are familiar with the legal issues raised by this case and believe that its public policy perspective and litigation experience in support of free enterprise principles will provide a useful additional viewpoint on the issues presented.

INTRODUCTION AND SUMMARY OF ARGUMENT

It is an evil that a person should be injured even by truthful statements as to his character. It is a still greater evil that freedom of speech and freedom of discussion, on which ultimately depends the ascertainment of truth, should be checked.¹

Petitioner Community Health Systems Professional Services Corporation (PSC) provides professional and administrative support services to various entities, including the College Station Medical Center (hospital) and the Regional Employee Assistance Program (REAP). Among its services is the evaluation of physician performance and employment, including whether a physician caused “practice losses” to REAP and the hospital. *Hansen v. Jackson*, 2014 WL 5794872, at *1-2 (Tex. App. - Corpus Christi–Edinburg Nov. 6, 2014). Dr. Henry Hansen’s contract with REAP specified that he could be terminated “without cause” if he caused practice losses above a certain dollar amount. *Id.* at *1. In his first two years, Hansen’s practice losses well exceeded the dollar amount in the contract, caused by the combination of his very high

¹ Marc A. Franklin, *The Origins and Constitutionality of Limitations on Truth as a Defense in Tort Law*, 16 Stan. L. Rev. 789, 789 (1964) (citation omitted).

salary and failure to see a sufficient number of patients, a matter exacerbated by his flat refusal to accept any referrals from two of the three primary referring doctors for several months. *Id.* at *1-2.

REAP terminated Hansen's contract after he was paid \$2.4 million for three years of service. Hansen responded by suing REAP, PCS, the hospital, the hospital's chief executive officer, and the two doctors from whom he refused to accept referrals. Pertinent here, Hansen alleged that the defendants, including PCS, engaged in tortious interference of contract. *Id.* at *3. PCS responded that the claim must fail because PCS had merely communicated truthful information (e.g., that he refused to accept referrals) and honest advice pursuant to its business relationship with REAP. The trial court ruled in favor of PCS, but the appellate court reversed, declining to recognize communication of truthful information as a defense to a tortious interference claim. *Id.* at *18. It was wrong.

This Court has long hewed to the principle that true statements cannot form the basis of a finding of defamation. The policy reasons underlying that bedrock rule apply with equal force to efforts to punish truthful speech under the rubric of tortious interference with contract. Just as state agencies demand and depend upon truthful communication when regulating businesses, so too do private commercial enterprises seek and require truthful information when making business decisions and weighing employment relationships.

If the Court were to decide that truthful speech can give rise to liability for tortious interference, it would then be obliged to tackle the question of whether such a rule runs afoul of the free speech guarantees in the Texas Constitution and the First Amendment to the United States Constitution. *See Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001) (“As a general matter, ‘state action to punish the publication of truthful information seldom can satisfy constitutional standards.’”) (quotation omitted). But the Court need not go there. Following a canon of constitutional avoidance similar to that which applies to interpretation of statutes, *Stockton v. Offenbach*, 336 S.W.3d 610, 618 (Tex. 2011), this Court should avoid a conflict between the tort of interference with contract and constitutional guarantees of free speech by holding that truthful communication and honest advice cannot give rise to a claim for tortious interference.

For the reasons set forth below, this Court should establish the truthful communication and honest advice defenses against tortious interference claims as the law of Texas, consistent with Restatement (Second) of Torts § 772 (1979) (“One who intentionally causes a third person not to perform a contract or not to enter into a prospective contractual relation with another does not interfere improperly with the other’s contractual relation, by giving the third person (a) truthful information, or (b) honest advice within the scope of a request for the advice.”).

ARGUMENT

I

PUBLIC POLICY FAVORS THE COMMUNICATION OF TRUTHFUL INFORMATION AND HONEST ADVICE

Texas law places a premium on truthful communication in multiple contexts. Most analogously to the intentional interference torts, truth is a defense to defamation. Additionally, Texas statutes and regulations demand truthful communication in business conducted with, or regulated by, the state. The policies underlying this demand are of equal force in the private sector. Failure to protect truthful communication results in defensive silence, as in the case of employment referrals.

A. The Policies That Support Truth as an Absolute Defense in Defamation Actions Also Apply in Intentional Interference Cases

Defamation law aims to protect the reputational interests of a plaintiff by allowing her to restore her good name and to obtain compensation and redress for harm caused by defamatory statements. *See Tatum v. The Dallas Morning News, Inc.*, 493 S.W.3d 646, 656 (Tex. App. - Dallas 2015). “Generally, in an action for defamation, a defendant is limited to only two complete defenses: truth and absolute privilege.” *Zarate v. Cortinas*, 553 S.W.2d 652, 654 (Tex. App. - Corpus Christi 1977); *Tatum*, 493 S.W.3d at 657, citing Civ. Prac. § 73.005(a) (truth is a defense to a libel action) and *Randall’s Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 646 (Tex.1995) (“In suits brought by private individuals, truth is an affirmative defense

to slander.”). A court’s determination that a truthful statement accurately refers to particular conduct that objectively did or did not happen will override the more inchoate and subjective “reputational” harms that are difficult to ascertain and quantify. *See* Robert C. Post, *The Social Foundations of Defamation Law: Reputation and the Constitution*, 74 Cal. L. Rev. 691, 705 (1986).

While defamation and intentional interference with contract are distinct causes of action, *Bennett v. Computer Associates Int’l., Inc.*, 932 S.W.2d 197, 204 (Tex. App. - Amarillo 1996), the defenses applicable to a defamation claim can be used to defeat claims arising under other theories, such as tortious interference. For instance, in *Martinez v. Hardy*, 864 S.W.2d 767, 775-76 (Tex. App. - Houston [14th Dist.] 1993, no writ), the court held that the defamation defense of absolute privilege barred the plaintiff from recovering damages under the theory of tortious interference. This was so because “[t]he gravamen of Martinez’ tortious interference claim [was] the allegedly defamatory statements” made by one defendant to another. *Id.* at 776. Other courts have held the same. *Medical Lab. Mgmt. Consultants v. American Broadcasting Cos., Inc.*, 306 F.3d 806, 821 (9th Cir. 2002) (truthful news broadcast on matter of public concern required same constitutional analysis for tortious interference claim as for defamation claim); *Beverly Hills Foodland, Inc. v. United Food and Commercial Workers Union, Local 655*, 39 F.3d 191, 196 (8th Cir. 1994) (same constitutional standards that apply to defamation claims apply where store owner claimed that flyer

distributed by union members tortiously interfered with its business); *see also TMJ Implants, Inc. v. Aetna, Inc.*, 498 F.3d 1175, 1201 (10th Cir. 2007) (no reason to treat a tortious interference claim differently from a defamation claim when it comes to requirement that statements be false).

In *Prazma v. Kaehne*, 768 P.2d 586 (Wyo. 1989), for example, the Wyoming Supreme Court affirmed a directed verdict for the defendants in a case alleging tortious interference with contractual expectancy based on a statement that a neighboring rancher did not have a prescriptive easement over adjoining property. Because the statement was truthful, it was of no legal consequence that it allegedly prevented the sale of the rancher's property to a prospective buyer. The court observed that, "whether solicited or volunteered, truthful statements are not actionable for tortious interference with a contract or prospective contractual relationship." *Id.* at 590.

For these reasons, as a practical matter, Prosser and Keeton on the Law of Torts § 129 at 989 (5th ed. 1984), assert that "it is probably safe to assume that occasions privileged under the law of defamation are also occasions in which interference with contract by legal means would be considered justified."

B. Texas Laws and Cases Place Great Value on Truthful Communication

The communication of truthful information is essential to a government resting on the consent of an informed citizenry. Consequently, it has always been Texas policy to protect the communication of such information. Public policy is, of course, found primarily “in [a state’s] constitution, statutes, and the decisions of its courts.” *Ranger Ins. Co. v. Ward*, 107 S.W.3d 820, 827 (Tex. App. - Texarkana 2003, pet. denied).

All three sources of Texas policy demonstrate a zealous respect for truthful speech. Texas Constitution article I, section 8, affirmatively provides that the court shall consider “the truth thereof” in prosecutions related to “the publication of papers, investigating the conduct of officers, or men in public capacity.” *See Greer v. Abraham*, 489 S.W.3d 440, 444 (Tex. 2016) (“[T]he constitutional focus [of defamation] is on the defendant’s attitude toward the truth, not his attitude toward the plaintiff.”).

Texas statutes require truthful communication in the context of business regulation. For example, Texas Finance Code § 396.103, provides that a business desiring to register as a private child support enforcement agency must file an application with the state, with a notarized affirmation that the application is “accurate and truthful in all respects.” *See also* 7 Tex. A.D.C. § 31.92, § 31.11 (same

requirements for foreign agencies seeking to engage in business in the state). Similarly, Texas Insurance Code Art. 5.13-1 provides that all legal services contracts and related promotional materials “shall be truthful and accurate” and describe the coverage offered.

Regulations related to state and state-licensed employment similarly require truthful communication. Just as the state demands the truth from those offering to do business in Texas, so too do state agencies rely on truthful and accurate information in their own employment decisions. For example, in *Texas Dept. of Public Safety-Private Security Program v. Geter*, 2016 WL 7408046 (Tx. St. Off. Admin. Hrgs. Dec. 15, 2016), the Texas Department of Public Safety denied Derrick Geter’s application for registration as a noncommissioned security officer because he failed to disclose two criminal convictions on his application. *Id.* at *1. The administrative law judge reviewing the department’s application denial explained that because “the application serves as the foundation of the process by which the Department vets those seeking licensure, the Department must be able to confidently rely on the accuracy and veracity” of the applicant’s information. When Geter “failed to truthfully provide the requested information,” *id.* at *4, his application was neither truthful nor accurate, and the department properly denied it. *Id.* at *5-*6. *See also Texas Dept. of Insurance v. Gonzales*, 2000 WL 35361588 (Tx. St. Off. Admin. Hrgs. Mar. 17, 2000) (revoking insurance licenses of agent who failed to provide “truthful and accurate” information

to the Department); *In the Matter of the Revocation of the Securities Agent Registration and the Denial of the Investment Adviser Agent Renewal Application of James Newton Darwin, II*, 2000 WL 13518, *7 (Tex. St. Sec. Bd. Jan. 3, 2000) (“The Securities Commissioner must have accurate, truthful, and complete information on the Form U-4s, through which persons become registered with the Board as agents of securities dealers and investment advisers, in order to determine whether prospective registrants are worthy of the public trust.”)

And, of course, the legal profession itself demands not only that attorneys convey truthful information and honest advice in the course of their practice, but the state itself, via the State Bar of Texas, places such a high value on the integrity of future attorneys that it investigates the character and fitness of all applicants. Rules Governing Admission to the Bar of Texas, Rules II and VIII.² Many Texas law schools also request applicant information related to character, particularly as regards dishonesty or discipline in the academic context. John S. Dzienkowski, *Character and Fitness Inquiries in Law School Admissions*, 45 S. Tex. L. Rev. 921, 925 (2004). An applicant’s failure to provide full and accurate information may result in denial of his or her application. *See also Tex. Gov. Code* § 82.023 (setting forth character and fitness requirement in the Declaration of Intention to Study Law).

² <https://ble.texas.gov/rule02>; <https://ble.texas.gov/rule08>.

The importance of truthful communication and honest advice in the private sector is illustrated by the business judgment rule, which generally protects corporate officers and directors who owe fiduciary duties to the corporation, from liability for acts that are within the honest exercise of their business judgment and discretion. *Sneed v. Webre*, 465 S.W.3d 169, 173 (Tex. 2015) (citation omitted). The purpose of truthful communication, in business as in other aspects of life, frequently is to influence the course of another’s conduct. Thus, the public policy underlying the law of misrepresentation and fraud is to encourage and support the exchange of truthful information between parties who are doing business with one another. *Cf. Morris v. House*, 32 Tex. 492, 495 (1870); *see also, Keith v. Murfreesboro Livestock Mkt., Inc.*, 780 S.W.2d 751, 754 (Tenn. Ct. App. 1989) (“[T]he concept of fraud protects every person’s legitimate expectations that he or she can reasonably rely on the representations of others when making decisions—especially business decisions.”).

The objective of encouraging truthful communications is a policy found in other areas of the law as well. It is a crucial component of fact-finding in a trial. *JLG Trucking, LLC v. Garza*, 466 S.W.3d 157, 162 (Tex. 2015), citing *Evansich v. Gulf, C. & Santa Fe R.R.Co.*, 61 Tex. 24, 28 (1884) (“any fact which bears upon the credit of a witness would be a relevant fact, . . . whether it goes to his indisposition to tell the truth, his want of opportunity to know the truth, his bias, interest, want of memory, or other like fact.”); *Davidson v. Great Nat. Life Ins. Co.*, 737 S.W.2d 312, 314

(Tex.1987) (“Cross-examination is a safeguard essential to a fair trial and a cornerstone in the quest for truth.”). And both courts and parties are encouraged to amend records and pleadings as necessary to most fully and accurately convey truthful information. *Pacific Fire Ins. Co. v. Smith*, 145 Tex. 482, 484, 199 S.W.2d 486, 487-88 (1947) (noting “the liberal policy of amending records to speak the truth so that justice may be administered between the parties in the appellate courts”).³

As the foregoing shows, all relevant sources of Texas policy are uniform in their protection of truthful speech. This Court should also uphold that policy.

C. The Dwindling Availability of Employment References Demonstrates the Adverse Effects of Chilling Truthful Communication

American law highly values the communication of truthful information, in recognition that an open society encourages trade and business relationships and fair administration of justice. *See generally* Rodney A. Smolla, *Free Speech in an Open*

³ The public policy favoring communication of truthful information is not absolute, of course, particularly in the context of criminal law. In *Leday v. State*, 983 S.W.2d 713, 724-25 (Tex. Cr. App. 1998), the Texas Court of Criminal Appeals noted that, in that context, “the ascertainment of truth is not the only objective,” and that due process protections may, at times, “override” the truth-finding function. (citation omitted). This is the exception to the general rule, however, and subsequent courts interpret *Leday* narrowly, even in criminal cases. *See, e.g., Resendez v. State*, 160 S.W.3d 181, 184-86 (Tex. App. - Corpus Christi-Edinburg 2005) (*Leday*’s limited holding is that “a defendant’s admission of guilt does not waive a court’s erroneous admission of evidence,” and does not extend to waiver of errors related to the legal sufficiency of the evidence); *Birdsong v. State*, 82 S.W.3d 538, 544 (Tex. App. - Austin 2002) (refusing to apply *Leday* to a defendant’s voluntary waiver to appear as a witness at his punishment hearing).

Society 6 (1992) (describing the marketplace of ideas as “perhaps the most powerful metaphor in the free speech tradition,” and noting that its premise is that “humankind’s search for truth is best advanced by a free trade in ideas”); *cf. Time, Inc. v. Hill*, 385 U.S. 374, 388 (1967). If the communication of truthful statements *were* actionable, people would consequently remain silent, withholding useful, true information on which free market transactions depend. *See* Robert L. Tucker, “*And the Truth Shall Make You Free*”: *Truth as a First Amendment Defense in Tortious Interference with Contract Cases*, 24 *Hastings Const. L.Q.* 709, 718-20 (1997) (citing cases).

For example, the fear of defamation suits and related claims leads many employers to refuse to provide meaningful information about a past employee’s job performance in response to a reference request. Indeed, most employers are now unwilling to provide any information beyond an employee’s job title and dates of employment. Alex B. Long, *The Forgotten Role of Consent in Defamation and Employment Reference Cases*, 66 *Fla. L. Rev.* 719, 721 (2014).

Prospective employers are unable to make fully informed hiring decisions when they cannot obtain meaningful, truthful information about potential hires from speech-chilled employers. *See Saucedo v. Rheem Mfg. Co.*, 974 S.W.2d 117, 120-21 (Tex. App. - San Antonio 1998). The unwillingness of responding employers to provide detailed information about an applicant’s work history results in something of a mixed

bag for applicants. Long, *Forgotten Role*, 66 Fla. L. Rev. at 724. Good employees suffer when responding employers fail to provide favorable opinions and detailed information about an employee's exemplary work performance that might result in a future hire. Meanwhile, incompetent employees are shielded from previous employers' disclosures that might dissuade a prospective employer from hiring the employee, thus potentially causing problems in the employee's new workplace. *Id.* (citation omitted). Ultimately, society as a whole suffers when employers make inefficient decisions because they receive incomplete information. Terry Ann Halbert & Lewis Maltby, *Reference Check Gridlock: A Proposal for Escape*, 2 Emp. Rts. & Emp. Pol'y J. 395, 403 (1998) (discussing the societal and economic harm flowing from the reference gridlock, in which employees cannot show how qualified they are for positions and employers cannot efficiently identify suitable applicants for positions).⁴

The adverse affects of chilling truthful communications in the employment context were clearly described by a concurring justice in *Tiernan v. Charleston Area Med Ctr., Inc.*, 506 S.E.2d 578, 592-93 (W. Va. 1998). In that case, the West Virginia

⁴ See also Alissa J. Strong, "*But He Told Me It Was Safe!*": *The Expanding Tort of Negligent Representation*, 40 U. Mem. L. Rev. 105, 124 (2009) (Honest, detailed references from former employers enable employers (1) to hire employees who are best suited for the positions for which they have applied; and (2) to learn about applicants' particular strengths and weaknesses, information that permits the employer to make early, helpful adjustments in supervisory strategies.).

Supreme Court of Appeals held that communication of truthful information bars claims for tortious interference with a business relationship. Although the majority opinion did not enunciate the policy reasons for its decision, a concurring justice explained that, had the court failed to acknowledge truth as a categorical defense,

every facet of our lives would be endangered: workers whose lives depend on the level of safety in workplaces would be placed at risk by newly hired co-workers whose background and safety record could no longer be checked; children in day care, the sick, the aged and infirm would not be protected from caretakers who have a history of molesting or preying upon these defenseless groups; small business owners, whose entire livelihood is invested, sometimes for generations, could be financially ruined, and their employees left jobless, by the actions of one employee whose background could not be effectively questioned or verified. Indeed, every citizen who depends upon police officers, firefighters, or emergency personnel has a stake in the pursuit of truth in the hiring and employment process.

Id. at 603-04 (McCuskey J., concurring). Keeping these compelling policies in mind, and to prevent the chilling of truthful speech, this Court should likewise adopt the rule that truthful communication is a categorical defense to a tortious interference claim.

II

THE TRUTHFUL COMMUNICATION AND HONEST ADVICE DEFENSE AVOIDS POTENTIAL FIRST AMENDMENT PROBLEMS

The court should refuse to recognize tort liability arising from truthful communication not only because it violates sound policy and leads to adverse

practical consequences, but also because such a system would likely violate constitutional free speech protections.

The United States Supreme Court, and numerous lower courts, have consistently held that providing truthful information to third parties about the business practices of others is constitutionally protected, and the First Amendment bars the imposition of civil liability for providing such information. *See* Tucker, “*And the Truth Shall Make You Free,*” *supra*, at 727-28 (1997). In fact, constitutional constraints on speech-based civil liability extend even as far back as the Founding. Eugene Volokh, *Tort Liability and the Original Meaning of the Freedom of Speech, Press, and Petition*, 96 Iowa L. Rev. 249, 250 (2010). Examples of such constitutional restraints on tort claims are *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964) (libel),⁵ *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918-19 (1982) (interference with business relations), and *Herceg v. Hustler Magazine, Inc.*, 814 F.2d 1017, 1023-24 (5th Cir. 1987) (negligence). The constitutional restraints apply because the imposition of tort liability is itself state action. Volokh, *Original Meaning*, 96 Iowa L. Rev. at 258-59, citing Thomas M. Cooley, *A Treatise on the Constitutional*

⁵ “Substantial truth” is an absolute defense to a libel action. *McIlvain v. Jacobs*, 794 S.W.2d 14, 15 (Tex. 1990); *Dolcefino v. Randolph*, 19 S.W.3d 906, 918 (Tex. App. - Houston [14th Dist.] 2000). The “substantial truth” test stems from the freedom of speech and freedom of press protections of the First Amendment. *Basic Capital Mgmt. v. Dow Jones & Co.*, 96 S.W.3d 475, 481 (Tex. App. - Austin 2002, no pet.) (citing *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 516-17 (1991)).

Limitations Which Rest upon the Legislative Power of the States of the American Union 422 (Boston, Little, Brown & Co. 1868).

In *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971), a case involving the peaceful distribution of leaflets, the Court explained:

Petitioners plainly intended to influence respondent's conduct by their activities; this is not fundamentally different from the function of a newspaper. Petitioners were engaged openly and vigorously in making the public aware of respondent's real estate practices. Those practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability.

Id. at 419. *See also Delloma v. Consolidation Coal Co.*, 996 F.2d 168, 172 (7th Cir. 1993) (“[P]ermitting recovery for tortious interference based on truthful statements would seem to raise significant First Amendment problems.”). In *Hofmann Co. v. E.I. Du Pont de Nemours & Co.*, 248 Cal. Rptr. 384, 391 (1988), the California Court of Appeal held that the First Amendment barred any cause of action for intentional interference with prospective economic advantage on the basis of statements consisting of truthful information. *See also Near East Side Community Organization v. Hair*, 555 N.E.2d 1324, 1334 (Ind. App. 1990) (First Amendment protects defendants' circulation of pamphlets complaining about the plaintiff's offensive business practices).

Attempts to penalize truthful speech with tort damages raises substantial questions under the United States and Texas Constitutions. *See* U.S. Const. amend.

I; Texas Const. art. 1, § 8. Adopting truth as a defense to intentional torts as the law of Texas, as in Restatement section 772(a), would be consistent with this Court's history of judicial restraint, and would eliminate any need for Texas courts to reach those constitutional questions. *See VanDevender v. Woods*, 222 S.W.3d 430, 432-33 (Tex. 2007). Ultimately, this Court should follow the principle aptly stated by the Arizona Supreme Court: "It is difficult to see anything defensible, in a free society, in a rule that would impose liability on one who honestly persuades another to alter a contractual relationship." *Wagenseller v. Scottsdale Memorial Hospital*, 147 Ariz. 370, 388, 710 P.2d 1025, 1043 (1985).

CONCLUSION

"If withholding truth, leaving one of the parties in ignorance, is a necessary element in upholding contracts, the price of stability may be too high." Franklin, *Truth as a Defense*, 16 Stan. L. Rev. at 828. If truth is not a defense to interference torts, then potential defendants must choose to keep themselves quiet, and the recipients of their communication in ignorance, to avoid being sued. The decision below should be

CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that the foregoing BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS is proportionately spaced, has a typeface of 14 points or more, and contains 4387 words.

DATED: January 25, 2017.

/s/ J. David Breemer
J. DAVID BREEMER

CERTIFICATE OF SERVICE

I certify that a true and correct copy of BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS was electronically served on all parties through counsel of record as shown below on January 25, 2017.

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