No. 14-1543

In The
Supreme Court of the United States

RONALD S. HINES, DOCTOR
OF VETERINARY MEDICINE,

Petitioner,

v.

BUD E. ALDRIDGE, Jr., DOCTOR OF
VETERINARY MEDICINE, et al.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

BRIEF *AMICI CURIAE* OF INTERNATIONAL SOCIETY FOR ANIMAL RIGHTS AND ADVANCING THE INTERESTS OF ANIMALS IN SUPPORT OF PETITION

HENRY MARK HOLZER
Counsel of Record
14115 Moorpark Street
Sherman Oaks, CA 91423
hank@henrymarkholzer.com
(818) 650-8181

FREDRICK A. HAGEN
BERDING & WEIL, LLP
2175 N. California Blvd., Suite 500
Walnut Creek, CA 94596
fhagen@berdingweil.com
(925) 838-2090

Counsel for Amici Curiae
International Society for Animal Rights
Advancing the Interests of Animals

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICI CURIAE*	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
CONCLUSION	9

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991) 6

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) 5, 6

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, Florida, 508 U.S. 520 (1993) 2

City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432 (1985) 6

Hines v. Alldredge, et al., 783 F.3d 197 (2015) 8

Jones v. Beame, 380 N.E.2d 277 (New York Court of Appeals, 1978) 2

Jones v. Butz, 374 F.Supp. 1284 (S.D.N.Y. 1974) 2

Lorillard Tobacco Co. v. Reilly, 533 U.S. 525 (2001) 6

Pacific Gas & Elec. Co. v. Public Utilities Comm'n of Cal., 475 U.S. 1 (1986) 5

R.A.V. v. City of St. Paul, 505 U.S. 377 (1992) 6

Turner Broad. Sys., Inc. v. F.C.C., 512 U.S. 622 (1994) 6

United States v. Stevens, 559 U.S. 460 (2010) 2, 6

STATE CASE

O'Sullivan v. City of San Diego, No. D047382, 2007 WL 2570783 (Cal. Ct. App. Sept. 7, 2007) 2

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

First Amendment to the Constitution of the United States of America 5, 6, 8, 9

Tenth Amendment to the Constitution of the United States of America 7

STATUTE

Texas Occupations Code § 801.351 ....2, 6

RULES OF THE SUPREME COURT OF THE UNITED STATES

Rule 37 1

OTHER AUTHORITIES

GuideStar 2, 3

http://isaronline.org/programs/animal-rights-education/some-thoughts-on-the-rights-of-animals (Last visited July 23, 2015) 4

https://www.guidestar.org/nonprofit-directory/environment-animals/animal-protection-welfare-services/1.aspx (Last visited July 23, 2015) 3

http://www.animalstodayradio.com/listen-to-animals-today-radio (Last visited July 23, 2015) 4

INTEREST OF THE *AMICI CURIAE*[1]

International Society for Animal Rights ("ISAR") founded in 1959, is a corporation created under the Not-for-Profit law of the District of Columbia and is a 501(c)(3) federal tax exempt corporation.

ISAR's chartered purposes include, but are not limited to, promoting "protection of animals from all forms of cruelty and suffering inflicted upon them for the demands of science, profit, sport or from neglect or indifference to their welfare or from any other cause."

In furtherance of that goal, through the support of thousands of individuals and organizations in the United States and around the world, ISAR engages in extensive public education, including the creation and dissemination of monographs and other material dealing with animal rights.

---

[1] Pursuant to Rule 37 of the Rules of the Supreme Court of the United States, no counsel for any party authored this brief in whole or in part. No person or entity other than the *amici curiae* International Society for Animal Rights made a monetary contribution to the preparation or submission of the brief, and all expenses thereof will be paid by International Society for Animal Rights. The law firm of Berding & Weil's *pro bono* representation of the *amici curiae* consisted of contributing the time of associate lawyer Fredrick A. Hagen. Counsel of record for all parties were timely notified at least ten days prior to filing this brief, and have consented to its filing. Letters of consent have been filed with the Clerk of the Court.

The first federal and state court opinions to use the term "animal rights" were in cases initiated by ISAR, *see Jones v. Butz*, 374 F.Supp. 1284 (S.D.N.Y. 1974, three-judge court) and, *Jones v. Beame*, 380 N.E.2d 277 (N.Y. 1978). ISAR has submitted *amici curiae* briefs in this Court. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, Florida*, 508 U.S. 520 (1993); *United States v. Stevens*, 559 U.S. 460 (2010); and other courts (*see O'Sullivan v. City of San Diego*, No. D047382, 2007 WL 2570783 (Cal. Ct. App. Sept. 7, 2007).)

Advancing the Interests of Animals ("AIA") is a Not-for-Profit 501(c)(3) organization chartered under the laws of California. Among its activities is production and broadcast of "Animals Today Radio."

SUMMARY OF ARGUMENT

The Texas statute[2] at the core of this case greatly impacts on the First Amendment right of the *amici curiae* and others who share their mission because of the incalculable amount of pure informational speech disseminated throughout the United States and around the world by International Society for Animal Rights and AIA specifically and the animal rights/ welfare movement in particular.

[2] Texas Occupations Code, § 801.351 (Reproduced in Petitioner's Appendix at page 35).

ARGUMENT

According to GuideStar, the gold standard of comprehensive information about charities and nonprofits in the United States, there are estimated to be approximately 23,000 domestic organizations directly or indirectly concerned with the rights/welfare of animals.[3] Like ISAR and AIA, countless numbers of these organizations[4] utilize pure speech to communicate educational public policy information promoting animal rights/welfare. Indeed, substantial amounts of such organizations' budgets, like ISAR's, are spent on making and supporting various forms of speech.[5] Examples of that speech abound: Newsletters, interviews, billboards, observances, seminars, blogs, websites, speeches, courses, articles, reports, memoranda, radio shows, and public service announcements.

Over the last several decades the legal specialty of animal rights law has burgeoned. As Counsel of

---

[3] https://www.guidestar.org/nonprofit-directory/environment-animals/animal-protection-welfare-services/1.aspx (Last visited July 23, 2015).

[4] As the GuideStar database shows, American animal rights/welfare organizations range from the largest such as Humane Society of the United States and American Society for the Prevention of Cruelty to Animals, to small "Mom-and-Pop" groups that spend their own money to foster adoptable companion animals who lack homes.

[5] ISAR's 2013 and 2014 program expenses were approximately $300,000 for each year.

Record, Professor Emeritus Henry Mark Holzer, has written,

> [a]lthough the modern animal rights movement is no more than twenty years old, the efforts of its leaders have already produced important gains: philosophical symposia on animal rights are being held around the world; courses on animal rights are being offered in colleges and law schools; more and more books and articles on animal rights are being published every month; advocates of animal rights are in great demand as lecturers; the rights of animals are increasingly being asserted in courts.[6]

The information disseminated through pure speech to diverse domestic and international recipients has included every imaginable subject, from abattoirs to zoos. No less than 111 animal rights/welfare topics have been explored in the last six years by just one weekly on-air and Internet streaming show, Animals Today Radio, a project of Advancing the Interests of Animals.[7]

It is beyond question that ISAR, AIA, and similar organizations are broadly and consistently exercising

---

[6] "Some Thoughts on the Rights of Animals": http://isaronline.org/programs/animal-rights-education/some-thoughts-on-the-rights-of-animals (Last visited July 23, 2015).

[7] http://www.animalstodayradio.com/listen-to-animals-today-radio (Last visited July 23, 2015).

their First Amendment inalienable right of free speech to advance the rights/welfare of animals.[8]

Unfortunately, however, since this Court's decision in *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), the "fighting words" case, there has been a category of "second class" speech. According to Associate Justice Frank Murphy,

> [t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting words," those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.[9]

---

[8] *See Pacific Gas & Elec. Co. v. Public Utilities Comm'n of Cal.*, 475 U.S. 1, 8 (1986) (affirming that the constitutional guarantee of free speech protects the public's interest in receiving information).

[9] *Chaplinsky*, at 571-72. *Amici curiae's* failure to address some of the constitutional, definitional, and other issues raised by Justice Murphy's observations – "well-defined" and "narrowly limited," "never been thought to raise any constitutional problem," "inflict injury," "no essential part of any exposition of ideas," "slight social value," "a step to truth" and "outweighed by

(Continued on following page)

Although to the Court's blacklist of unprotected speech there have been added few other types,[10] the fact remains that beginning with *Chaplinsky* it has been held constitutionally acceptable for government to suppress certain categories of expression.

As the result, two core questions have arisen in First Amendment jurisprudence. The first question is what standard should be applied by courts to assess the societal/political/cultural value of the sought-to-be-suppressed speech. Is it to be "strict scrutiny,"[11] "intermediate scrutiny,"[12] or mere "rational-basis,"[13]the latter being what the Fifth Circuit applied in this case.

---

the social interest in order and morality" – stems from our acknowledgement that *Chaplinsky* has not been overruled and thus remains good law.

[10] *See United States v. Stevens*, 559 U.S. 460 (2010), discussing categories of speech unprotected by the First Amendment.

[11] *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992) (regulations that burden the expression of certain viewpoints or content subject to strict scrutiny).

[12] *See Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994) (regulations unrelated to content subject to intermediate scrutiny because they pose a decreased risk of excising certain ideas or viewpoints from the market of ideas). *See* also, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 561-62 (2001) (tobacco advertising restriction violated First Amendment under intermediate scrutiny, and *Reed v. Reed*, 404 U.S. 71 (1971)).

[13] *See Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 571 (1991) (appearing to apply rational-basis review of nude dancing regulations); *see* also, *City of Cleburne v. Cleburne Living Ctr.,*

(Continued on following page)

The answer to the first question virtually always dictates the answer to the second: Few statutes survive "strict scrutiny" review because if a "suspect category" (*e.g.*, race) or "fundamental right" (*e.g.*, voting) is found to exist, government can rarely prove the law is "narrowly tailored" to advance a "compelling interest."

On the other hand, if the analytic tool of "rational-basis" is applied to the challenged statute, government can easily establish the law's connection to one of its legitimate governmental functions, especially one exercised under a state's health-safety-welfare-morals Tenth Amendment police power.

It is Texas' police power that Petitioner ran afoul of, namely the State's Veterinary Licensing Act.[14]

Through three interlocking provisions, the statute provides that before a licensed veterinarian can render professional advice (*i.e.*, speak to anyone about a specific animal) there must be an official veterinarian-client relationship, which cannot be established without the vet possessing "sufficient knowledge" of the animal, which, in turn, cannot be acquired without a physical examination or a personal visit to the animal's residence. In sum, then, Texas prohibits pure speech without prior satisfaction of a state-imposed, explicit conduct requirement. The Texas law

Inc., 473 U.S. 432, 440-41 (1985) (applying rational-basis review in an equal protection challenge).

[14] Texas Occupations Code, § 801.351.

is akin to that state, any other, or the federal government, requiring that a legal advice talk-show host meet personally with a caller before answering her question about how many witnesses are required for a Last Will and Testament.[15]

Petitioner's arguments in the District Court and the United States Court of Appeals for the Fifth Circuit were cogent, but doomed in the latter forum once that court asserted the Texas statute "does not regulate the content of any speech, require veterinarians to deliver any particular message or restrict what can be said once a veterinary-client-patient relationship is established."[16] Similarly, once the Court of Appeals applied "rational-basis" review to Petitioner's equal protection and due process claims because he "is not a member of a protected class, and the classification does not infringe on fundamental constitutional rights."

In light of the Fifth Circuit's ruling, the sole "Question Presented" by the Petition is, "Are restrictions on occupational speech subject to First Amendment scrutiny or only rational-basis review?"

The *amici curiae* International Society for Animals Rights contends that implicit in that Certiorari-seeking question is the equally if not more important one of

---

[15] Moreover, the Texas statute prevents Dr. Hines from speaking not only to fellow Texans, but also people in other states and, for that matter, individuals throughout the world.

[16] *Hines v. Alldredge, et al.*, 783 F.3d 197, 201 (2015).

whether Texas, any other state, or the federal government, can suppress pure speech by creating a threshold occupational "conduct" requirement and making its satisfaction a prerequisite to exercising an occupational licensee's First Amendment right of Free Speech.

CONCLUSION

Amici Curiae International Society for Animal Rights and Advancing the Interests of Animals support Dr. Ronald S. Hines's Petition that a Writ of Certiorari issue to the United States Court of Appeals for the Fifth Circuit so that these important questions can be answered definitively.

Respectfully submitted,

HENRY MARK HOLZER
Counsel of Record
14115 Moorpark Street
Sherman Oaks, CA 91423
hank@henrymarkholzer.com
(818) 650-8181

FREDRICK A. HAGEN
BERDING & WEIL, LLP
2175 N. California Blvd., Suite 500
Walnut Creek, CA 94596
fhagen@berdingweil.com
(925) 838-2090

Counsel for Amici Curiae
International Society for Animal Rights
Advancing the Interests of Animals

July 2015