

October 22, 2015

ABEL ACOSTA, CLERK

NO. PD-1067-15

IN THE
COURT OF CRIMINAL APPEALS OF TEXAS
EX PARTE JAMES RICHARD "RICK" PERRY,
Appellant

On Appeal from the 390th Judicial District Court,
Travis County, Texas, Cause No. D-1-DC-14-100139

**APPELLANT'S BRIEF ON THE MERITS ADDRESSING
THE STATE'S PETITION FOR DISCRETIONARY REVIEW**

THE BUZBEE LAW FIRM
Anthony G. Buzbee
State Bar No. 24001820
JPMorgan Chase Tower
600 Travis Street, Suite 7300
Houston, Texas 77002
Tbuzbee@txattorneys.com
Telephone: 713-223-5393
Facsimile: 713-223-5909

BAKER BOTTS L.L.P.
Thomas R. Phillips
State Bar No. 00000102
98 San Jacinto Blvd., Suite 1500
Austin, Texas 78701-4078
tom.phillips@bakerbotts.com
Telephone: 512-322-2565
Facsimile: 512-322-8363

BOTSFORD & ROARK
David L. Botsford
State Bar No. 02687950
1307 West Ave.
Austin, Texas 78701
dbotsford@aol.com
Telephone: 512-479-8030
Facsimile: 512-479-8040

ORAL ARGUMENT PREVIOUSLY SCHEDULED BY THE COURT

Identity of Judge, Parties, and Counsel

The following is a complete list of the names and addresses of all parties and counsel in this case.

Trial Judge: Honorable Bert Richardson, sitting by appointment; Court of Criminal Appeals, Supreme Court Building, 201 West 14th Street, Austin, Texas, 78701.

Appellant: Former Governor James Richard “Rick” Perry, c/o Anthony G. Buzbee, JPMorgan Chase Tower, 600 Travis Street, Suite 7300, Houston, Texas 77002.

Appellant’s Counsel: Anthony G. Buzbee, JPMorgan Chase Tower, 600 Travis Street, Suite 7300, Houston, Texas 77002; Thomas R. Phillips, 98 San Jacinto Blvd., Suite 1500, Austin, Texas 78701-4078; and David L. Botsford, 1307 West Avenue, Austin, Texas, 78701 (Lead Counsel on Appeal).

State of Texas: Attorney Pro Tem Michael McCrum, 700 N. Saint Mary’s Street, Suite 1900, San Antonio, Texas 78205; Assistant Attorney Pro Tem David Gonzalez, 206 East 9th Street, Suite 1511, Austin, Texas, 78701.

Table of Contents

Identity of Judge, Parties, and Counsel.....	i
Index of Authorities	iv
Statement of the Case.....	1
Grounds for Review.....	3
Statement of the Facts.....	4
A. Proceedings in the district court.....	4
B. B. Proceedings in the court of appeals.....	6
Summary of the Argument.....	10
Argument.....	12
A. Introduction	12
B. The court of appeals opinion correctly analyzed and decided Governor Perry’s First Amendment challenges.....	13
1. First Amendment Principles	13
2. The Statutory Framework	15
3. The court of appeals was faithful to this Court’s binding precedents.....	18
4. Section 36.03(a)(1), as it incorporates the definition of “coercion” from Section 1.07(a)(9)(F), implicates the First Amendment.....	20
5. The State’s arguments that the statutes do not implicate the First Amendment are without merit.....	20
a. The State’s cases are distinguishable	21
b. The court of appeals was correct that Governor Perry did not lose his First Amendment rights by holding public office.....	25

6.	Section 36.03(a)(1), as it incorporates the definition of “coercion” from Section 1.07(a)(9)(F), is a content-based restriction on speech.....	31
7.	Section 36.03(a)(1), as it incorporates the definition of “coercion” from Section 1.07(a)(9)(F), fails to satisfy “strict scrutiny”	33
C.	Even if the court of appeals erred in its reasoning, its judgment was correct for other reasons.....	35
1.	Section 36.03(a)(1), as it incorporates the definition of “coercion” from Section 1.07(a)(9)(F), is overbroad	35
2.	The statutory scheme is facially void for vagueness	46
	Prayer for Relief.....	52
	Certificate of Compliance	54
	Certificate of Service	54

Index of Authorities

	Page(s)
CASES	
<i>All. to End Repression v. City of Chicago</i> , 742 F.2d 1007 (7th Cir. 1984)	37
<i>Ashcroft v. A.C.L.U.</i> , 535 U.S. 564 (2002)	32
<i>Ashcroft v. Am. Civil Liberties Union</i> , 542 U.S. 656 (2004)	14, 15
<i>Bd. v. State</i> , No. 03-96-00024-CR, 1998 WL 271043 (Tex. App.—Austin May 29, 1998, pet. ref'd) (not designated for publication)	22
<i>Bond v. Floyd</i> , 385 U.S. 116 (1966)	27
<i>Broadrick v. Oklahoma</i> , 413 U.S. 601 (1973)	43, 44
<i>Brown v. Entm't Merchants Ass'n</i> , 131 S. Ct. 2729 (2011)	13, 33
<i>Carey v. Brown</i> , 447 U.S. 455 (1980)	24
<i>City of Seattle v. Ivan</i> , 856 P.2d 1116 (Wash. App. 1993)	38
<i>Colautti v. Franklin</i> , 439 U.S. 379 (1979)	49
<i>Collection Consultants, Inc. v. State</i> , 556 S.W.2d 787 (Tex. Crim. App. 1977)	42
<i>Connick v. Myers</i> , 461 U.S. 138 (1983)	26
<i>Crouch v. Civil Serv. Comm'n of Tex. City</i> , 459 S.W.2d 491 (Tex. Civ. App.—Houston [14th Dist.] 1970, writ ref'd n.r.e.)	50

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.