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Curtis Files SCOTUS Amicus Brief for Distinguished Law Professors in First Amendment Retaliatory Arrest Case

New York, May 25, 2023 – Acting as a pro bono counsel for law professors Brandon L. Garrett (Duke Law School), Thomas Healy (Seton Hall Law School), Brenner M. Fissell (Villanova University), Colin Miller (University of South Carolina School of Law), Sheldon Nahmod (Chicago-Kent College of Law), Seth W. Stoughton (University of South Carolina School of Law), and Rebecca Tushnet (Harvard Law School), Curtis filed an *amicus* brief in the U.S. Supreme Court in support of granting the petition for *certiorari* in *Sylvia Gonzalez v. Edward Trevino, II, et al.*, No. 21-50276, a case involving a person’s right to assert a First Amendment retaliatory arrest claim when objective evidence demonstrates that that person was arrested in retaliation for their protected, political speech. The Supreme Court is expected to decide whether to take the case this fall.

Petitioner Sylvia Gonzalez is a retiree and former city councilwoman who organized a petition – which garnered hundreds of signatures – in favor of replacing an unpopular city manager. She presented her petition at a city council meeting after which she unwittingly placed the petition in her bag. Although Ms. Gonzalez returned the petition to the mayor before leaving the building, the mayor and the city manager she tried to replace had her arrested weeks later for a Class A misdemeanor under a Texas statute that prohibited “intention-ally destroy[ing], conceal[ing], remov[ing], or otherwise impair[ing] the verity, legibility, or availability of a government record.” Tex. Penal Code § 37.10(a)(3). Ms. Gonzalez, a 72-year old woman, was then held in jail for a day and handcuffed to a metal bench wearing an orange jail shirt. She was also denied accommodations like using a restroom that had a door or standing up to stretch her legs.

Ms. Gonzalez filed a First Amendment retaliatory arrest claim alleging that she was arrested for the content of her protected, political speech. Defendants moved to dismiss Ms. Gonzalez’s claim and the U.S. District Court for the Western District of Texas denied that motion. On appeal, the Fifth Circuit reversed the district court’s denial of defendants’ motion to dismiss. Ms. Gonzalez petitioned the Fifth Circuit for a rehearing *en banc*, but the Fifth Circuit denied that petition. The Fifth Circuit’s denial of Ms. Gonzalez’s petition for a rehearing was based on an interpretation of Supreme Court precedent regarding First Amendment retaliatory arrest claims that is incorrect, overly restrictive, and unduly burdensome of citizen’s First Amendment rights, and is also inconsistent with decisions of the Seventh and Ninth Circuits in First Amendment retaliatory arrest cases.

Curtis appellate partner Michel Paradis stated, “It’s such an important case. This country was built upon the idea that citizens must be able to criticize public officials without fear of being targeted by the government for harassment and retaliation. We not only should have that right, but the Constitution guarantees that right. The Fifth Circuit broke with the rest of the country in a way that threatens the rights of us all. It therefore falls to the Supreme Court to make clear from the highest levels of the Justice Department to the smallest local community board, government officials cannot send the police after their critics with impunity simply by finding some pretextual loophole for doing so.” Litigation associate Rebecca Meyer was also part of the team representing *amici*.

Institute of Justice lawyer and petitioner’s counsel Anya Bidwell, added, “Petition-stage amicus briefs are much more impactful than merits-stage amicus briefs. Through the strength of their arguments and the reputation of their authors and signatories, they help convince the Court that the case is worth looking at. Michel and his team submitted just such a brief. If cert gets granted, it will be in large part due to their amazing work.”

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Notes to Editors:

Photos available of Curtis lawyers.

Curtis, Mallet-Prevost, Colt & Mosle LLP is a leading international law firm. Headquartered in New York, Curtis has 19 offices and affiliates in the United States, Latin America, Europe, the Middle East and Asia. Curtis represents a wide range of clients, including governments and state-owned companies, multinational corporations and financial institutions, sovereign wealth funds, money managers, privately held businesses, individuals and entrepreneurs. For more information about Curtis, please visit www.curtis.com.

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