

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**ESI/EMPLOYEE SOLUTIONS, LP, and  
HAGAN LAW GROUP LLC;**

*Plaintiffs,*

**V.**

**CIVIL ACTION NO. 4:19-cv-00570-ALM**

**CITY OF DALLAS; ERIC JOHNSON, in  
his official capacity as Mayor of the City of  
Dallas; T.C. BROADNAX, in his official  
capacity as City Manager of the City of  
Dallas; and BEVERLY DAVIS, in her  
official capacity as Director of the City of  
Dallas Office of Equity and Human Rights,**

*Defendants.*

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**MERITS BRIEF OF *AMICI CURIAE* OF  
AMERICAN STAFFING ASSOCIATION, ASSOCIATED BUILDERS AND  
CONTRACTORS OF TEXAS, INC., ASSOCIATED GENERAL CONTRACTORS-  
TEXAS BUILDING BRANCH, NORTH DALLAS CHAMBER OF COMMERCE,  
NATIONAL FEDERATION OF INDEPENDENT BUSINESS, NORTH TEXAS LESBIAN  
GAY BISEXUAL TRANSGENDER CHAMBER OF COMMERCE, INC., REAL  
ESTATE COUNCILS OF TEXAS, RESTAURANT LAW CENTER, TEXAS  
APARTMENT ASSOCIATION, TEXAS ASSOCIATION OF BUILDERS, TEXAS  
ASSOCIATION OF BUSINESS, TEXAS ASSOCIATION OF MANUFACTURERS, THE  
TEXAS CONSTRUCTION ASSOCIATION, TEXAS FOOD & FUEL ASSOCIATION,  
THE TEXAS HOTEL AND LODGING ASSOCIATION, TEXAS NURSERY &  
LANDSCAPE ASSOCIATION, TEXAS SOCIETY FOR HUMAN RESOURCE  
MANAGEMENT, TEXAS RETAILERS ASSOCIATION, THE TEXAS TRAVEL  
INDUSTRY ASSOCIATION, AND THEATRE OWNERS OF MID-AMERICA  
IN SUPPORT OF PLAINTIFFS**

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Respectfully submitted,

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ASSOCIATION OF BUSINESS, TEXAS ASSOCIATION OF  
MANUFACTURERS, THE TEXAS CONSTRUCTION  
ASSOCIATION, TEXAS FOOD & FUEL ASSOCIATION,  
THE TEXAS HOTEL AND LODGING ASSOCIATION,  
TEXAS NURSERY & LANDSCAPE ASSOCIATION,  
TEXAS SOCIETY FOR HUMAN RESOURCE  
MANAGEMENT, TEXAS RETAILERS ASSOCIATION,  
THE TEXAS TRAVEL INDUSTRY ASSOCIATION, AND  
THEATRE OWNERS OF MID-AMERICA

**IDENTITY OF PARTIES AND COUNSEL**

***Amici Curiae: American Staffing Association, Associated Builders and Contractors of Texas, Inc., Associated General Contractors-Texas Building Branch, North Dallas Chamber of Commerce, National Federation of Independent Business, North Texas Lesbian Gay Bisexual Transgender Chamber of Commerce, Inc., Real Estate Councils of Texas, Restaurant Law Center, Texas Apartment Association, Texas Association of Builders, Texas Association of Business, Texas Association of Manufacturers, The Texas Construction Association, Texas Food & Fuel Association, The Texas Hotel and Lodging Association, Texas Nursery & Landscape Association, Texas Society for Human Resource Management, Texas Retailers Association, The Texas Travel Industry Association, and Theatre Owners of Mid-America***

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TO THE HONORABLE DISTRICT COURT:

American Staffing Association, Associated Builders and Contractors of Texas, Inc., Associated General Contractors-Texas Building Branch, North Dallas Chamber of Commerce, National Federation of Independent Business, North Texas Lesbian Gay Bisexual Transgender Chamber of Commerce, Inc., Real Estate Councils of Texas, Restaurant Law Center, Texas Apartment Association, Texas Association of Builders, Texas Association of Business, Texas Association of Manufacturers, The Texas Construction Association, Texas Food & Fuel Association, The Texas Hotel and Lodging Association, Texas Nursery & Landscape Association, Texas Society for Human Resource Management, Texas Retailers Association, The Texas Travel Industry Association, and Theatre Owners of Mid-America (“Amici Curiae”) file this *amici curiae* merits brief in support of Plaintiffs ESI/Employee Solutions, LP, and Hagan Law Group LLC, and their request for a preliminary injunction in this matter and respectfully shows the Court as follows:

**I. STATEMENT OF INTEREST OF THE AMICI CURIAE**

The American Staffing Association (“ASA”) is the voice of the U.S. staffing, recruiting, and workforce solutions industry. ASA represents nearly 3,200 offices in the state of Texas who employ over 1.4 million people each year, almost 300,000 on any given day.

Associated Builders and Contractors of Texas, Inc. (“ABC of Texas”) is affiliated with a national construction industry trade association representing over 21,000 members. ABC of Texas helps its members deliver services for the betterment of the communities in which they work. ABC of Texas has eight local chapters across the State of Texas and counts more than 1,800 Texas employers as members. It also has among its eight chapters TEXO which is a joint ABC and AGC chapter with 324 members in the DFW and East Texas area.

The Associated General Contractors-Texas Building Branch (“AGC-TBB”) is a branch of AGC of America, a national construction industry trade association. AGC-TBB is comprised of ten AGC chapters located across Texas whose members perform commercial building construction. These ten Texas AGC building chapters have a membership of approximately 370 general contractors and 3,890 specialty contractors, subcontractors, and suppliers. It also has among its eight chapters TEXO which is a joint ABC and AGC chapter with 324 members in the DFW and East Texas area.

The North Dallas Chamber of Commerce (“NDCC”) is an association of businesses and individuals who come together to promote the most favorable environment for business. Since 1954, the NDCC has taken an active role in promoting pro-business public policy through advocacy and programming. The NDCC strives to make Dallas a better place to live, work, raise a family and build a business.

For more than 75 years, National Federation of Independent Business (“NFIB”) has been the voice of small business, advocating on behalf of America’s small and independent business owners, both in Washington, D.C., and in all 50 state capitals. NFIB is nonprofit, nonpartisan, and member-driven. Since its founding in 1943, NFIB has been exclusively dedicated to small and independent businesses and remains so today. NFIB has over 20,000 members in Texas, 1308 which are in the Dallas area.

The North Texas Lesbian Gay Bisexual Transgender Chamber of Commerce, Inc. (“LGBT Chamber”) represents more than 350 member businesses throughout the Dallas area. The LGBT Chamber works to improve the economic vitality of the Dallas region and support the positive attributes of a diverse workplace, supply chain, and community. LGBT Chamber works to achieve equality through business.

The Real Estate Councils of Texas (“RECsTX”) is a statewide coalition formed to monitor and advocate on legislative issues that impact the commercial and industrial real estate development industry. RECsTX is comprised of five Real Estate Councils: Austin, Dallas, Fort Worth, Houston, and San Antonio. Of a total of 5,500 individual members and over 1,500 member companies, RECsTX has approximately 2,150 members and 650 member companies within the city of Dallas.

The Restaurant Law Center (“RLC”) is a public policy organization affiliated with the National Restaurant Association, the largest foodservice trade association in the world. The RLC serves as the legal arm of the National Restaurant Association. The RLC was created in 2015 to provide courts with the industry’s perspective on legal issues significantly impacting the food service industry. Specifically, the RLC highlights the potential industry-wide consequences of pending federal, state, and/or local government actions, such as the one at issue before this Court. One of RLC’s core functions is to provide collective advocacy for the industry, as it is doing in this litigation. National Restaurant Association members have locations that operate within Texas, including many in the City of Dallas and its surrounding cities that would be impacted by the Dallas Sick Leave Ordinance. A local chapter of the Texas Restaurant Association, the Greater Dallas Restaurant Association strives to promote growth of the restaurant industry by providing educational programs, public awareness campaigns, and grassroots government affairs initiatives. Greater Dallas Restaurant Association is just over 1,000 members strong, making it one of the largest trade associations in Dallas.

The Texas Apartment Association (“TAA”) is a non-profit statewide trade association providing exceptional advocacy, education and communication for the Texas rental housing industry. TAA serves all types of rental professionals, including property owners, builders,



developers, property management firms and service providers. TAA's nearly 12,000 member companies represent almost 2.2 million rental homes and units across the state. TAA is affiliated with the National Apartment Association and local associations in 24 Texas cities, including the Apartment Association of Greater Dallas, which represents over 1,600 members across 11 counties in the Greater Dallas area.

Founded in 1946, the Texas Association of Builders is an affiliate of the National Association of Home Builders and has 27 local associations and almost 11,000 builder, remodeler, developer and associate members across the state. Representing over 723,058 jobs and more than \$67.5 billion annually in the Texas economy, the state and local associations play a crucial role in providing housing for Texans. The Texas Association of Builders is dedicated to creating a positive business environment for the housing industry by addressing the housing issues of the people of Texas.

The Texas Association of Business ("TAB") is the leading employer organization in Texas. It is the state's chamber of commerce. Representing companies from large multi-national corporations to small businesses in nearly every community of Texas, TAB works to improve the Texas business climate and to help make the state's economy the strongest in the world. TAB represents several hundred employers in the Dallas region that is impacted by the Dallas ordinance. For 97 years, TAB has fought for issues that impact business to ensure that employers' opinions are heard. Its 27 affiliated local home builders associations across Texas includes the Dallas Builders Association, whose membership includes more than 1,100 members of the residential construction industry who collectively build more than 34,000 homes annually in one of the nation's strongest housing markets.

Representing more than 600 large and small companies from every manufacturing sector, the Texas Association of Manufacturers (“TAM”) actively promotes manufacturers’ interests and priorities from the State Capitol to Washington, D.C. TAM is the front-line defense against state and federal legislative, regulatory, tax and energy policy overreach that could threaten job growth and continued prosperity of Texas’s manufacturing sector. Likewise, TAM proactively pursues policy that enhances its members’ ability to grow jobs and to remain domestically and globally competitive.

Today’s manufacturing industries bring new technologies and consumer goods to market and drive the Texas economy forward. Manufacturers in Texas account for more than 13.3 percent of the total output in the state – more than \$226 billion in 2017 – and manufacturers employ more than 869,000 Texans in jobs that pay an average compensation of more than \$82,540 annually. On average, each manufacturing job created also provides 3.8 additional jobs in a community. Texas remains the number one (1) exporting state in the U.S.A., now for more than a dozen years running.

The Texas Construction Association (“TCA”) has approximately 3,000 company members, counting its direct members and the members of its state and local construction trade member associations; approximately 180 of those members are located in Dallas. Every construction trade is represented in the TCA membership, whose company members are located in all regions of Texas. Notably, several of TCA’s member associations have chapters in the Dallas metro area, specifically, the American Subcontractors Association, North Texas Chapter; DFW Drywall and Acoustical Contractors Association; Mechanical Contractors Association of Texas, Dallas Chapter; National Electric Contractors Association, North Texas Chapter; and the Plumbing-Heating-Cooling Contractors of Texas, North Texas Chapter. TCA is dedicated to

maintaining a vibrant and prosperous business climate, especially for subcontractors and suppliers in the construction industry.

The Texas Food & Fuel Association is a non-profit 501(c)(6) trade association representing the retail sector of the oil and gas industry in Texas. Based in Austin, the association works to build consensus among industry professionals, local municipalities, state and federal governing agencies, elected officials, and others who have a vested interest in the petroleum marketing and convenience retail industries.

Members of the Texas Food & Fuel Association (“TFFA”) own, operate and supply in excess of 12,000 convenience stores, grocery stores, and truck stops to which they distribute approximately 9 billion gallons of gasoline and diesel fuel each year. TFFA member companies supply fuels to motorists as well as commercial and industrial uses including aviation, marine, manufacturing, government, agriculture, and construction.

The Texas Hotel and Lodging Association (“THLA”) is the single state trade association representing the Texas hotel industry. THLA has over 4,000 member hotels representing every aspect of the hotel and lodging industry including 161 member hotels within the City of Dallas.

The Texas Nursery & Landscape Association (“TNLA”) is the trade association representing the wholesale, production, retail, landscape, and allied segments of the green industry in Texas. TNLA is comprised of more than 1,400 member businesses across the State of Texas with the mission of enhancing members’ business success. In the Dallas region alone, TNLA represents 245 members and, according to the most recent Texas A&M report, TNLA’s industry across the retail, landscape, and grower sectors conducts over \$4.9 billion in sales within the Dallas metropolitan statistical area.

Texas Society for Human Resource Management (“SHRM”) is the state council for SHRM national, representing over 19,000 Texas Human Resource Professionals and supporting 36 Texas chapters of SHRM. SHRM creates better workplaces where employers and employees thrive together. As the voice of all things work, workers and the workplace, SHRM is the foremost expert, convener and thought leader on issues impacting today’s evolving workplaces. With 300,000+ HR and business executive members in 165 countries, SHRM impacts the lives of more than 115 million workers and families globally. In the city of Dallas, SHRM has 6,300 members.

Today, the Texas Retailers Association (“TRA”) represents the companies and retail professionals who make up one of the world’s largest economies and provides them a voice in Austin and Washington, DC, as well valuable membership benefits. Through TRA’s various initiatives TRA aims to improve the lives of not just retailers, but customers as well. By providing government advocacy, industry information and education resources and events, as well as supporting educational programs and scholarship funds, TRA ensures its members concerns are met and protected. Currently, TRA represents over 50 retail and grocery members in the city of Dallas who employ over 50,000 Texans.

The Texas Travel Industry Association (“TTIA”) is the primary advocate and voice for the Texas Travel Industry, representing a diverse membership of Texas Travel destinations, accommodations, attractions, transportation and support businesses, and individuals with an interest in developing Travel and Tourism in Texas. TTIA is a nonprofit organization, focused on a variety of member-driven public policy initiatives, business networking opportunities, marketing programs, and educational offerings, all designed to strengthen its members and

position the travel industry for success today and in the future. TTIA represents over 550 businesses, organizations, and individual members in Travel & Tourism.

Theatre Owners of Mid-America is a regional trade association that represents movie theaters in Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas. Theatre Owners of Mid-America's membership in Texas includes 28 cinema companies operating more than 4,000 screens across the state.

Amici and their members stand to experience significant economic harm if the Dallas ordinance is not enjoined. Many employers in the Dallas region also operate in multiple other cities in the state of Texas and across the country. The Dallas Paid Sick Leave Ordinance creates inconsistent regulations, confusion, and unnecessary complications for employers (including the Amici Curiae) and employees across the Dallas region and state of Texas, which deters continued growth. The one-size-fits all approach mandated in the Ordinance regarding the record-keeping and method of calculating paid sick leave is not practical for businesses currently operating in the region. The Amici Curiae are also concerned that the Ordinance violates the Constitutional rights of various employers, employees and businesses. The far-reaching consequences of the Ordinance threaten economic sustainability, business attraction and growth in the Dallas region. This Honorable Court previously recognized that local, state, or national trade associations representing millions of employers in Texas and throughout the country have standing to challenge a legislative rule that directly affects such entities and the employers they represent. *Nevada v. U.S. Dep't of Labor*, 275 F. Supp. 3d 795, 800-801 (E.D. Tex. 2017)(Hon. Judge Mazzant).

Accordingly, the Amici Curiae submits this merits brief supporting Plaintiffs and their opposition to the Ordinance.

## II. SUMMARY OF ARGUMENTS IN OPPOSITION OF THE ORDINANCE

The Amici Curiae hereby join in, adopt as their own, and also incorporate herein by reference the summary of arguments in opposition of the ordinance as set forth in the filed *Amicus Curiae Brief of The Dallas Regional Chamber in Support of Plaintiffs*, Doc. 25.

## III. ARGUMENTS

Collectively, the Amici Curiae represent more than 15,418 stakeholders who have a vested interest in a determination of the validity of the Ordinance. Accordingly, the Amici Curiae hereby join in, adopt as their own, and also incorporate herein by reference the arguments as set forth in the filed *Amicus Curiae Brief of The Dallas Regional Chamber in Support of Plaintiffs*, Doc. 25.

## IV. CONCLUSION

The Amici Curiae hereby join in, adopt as their own, and also incorporate herein the conclusion as set forth in the filed *Amicus Curiae Brief of The Dallas Regional Chamber in Support of Plaintiffs*, Doc. 25.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on August 29, 2019, I electronically filed the foregoing document with the clerk of court for the United States District Court for the Eastern District of Texas using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all counsel of record who have consented in writing to accept this Notice as service of this document by electronic means. In addition, the foregoing was served by email upon Anna Mackin ([anna.mackin@oag.texas.gov](mailto:anna.mackin@oag.texas.gov)) as counsel for the State of Texas.

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