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September 4, 2020

Hon. Scott S. Harris, Clerk
United States Supreme Court
One First Street, N.E.
Washington, DC 20543

Re: No. 19-1091, *Evans v. Sandy City*

Dear Mr. Harris:

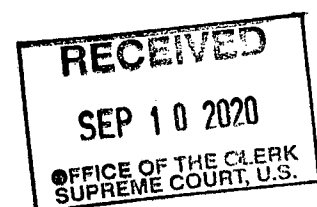
I write to advise the Court of the Tenth Circuit's recent decision in *McCraw v. City of Oklahoma City*, ___ F.3d ___, 2020 WL 5103634 (Aug. 31, 2020) (No. 19-6008). There, the Tenth Circuit considered an Oklahoma City ordinance that "prohibits pedestrians from being on approximately four hundred medians across Oklahoma City." *Id.* at *3; *see id.* at *1-2. Recognizing that roadway medians are traditional public fora, and applying the standards set forth in *McCullen*, the Tenth Circuit held that the Oklahoma City ordinance was unconstitutional. As particularly relevant here, the court affirmed that intermediate scrutiny requires the government to "*demonstrate* that less burdensome alternatives would not achieve its interest in median safety": a "summary dismissal of alternatives is insufficient." *Id.* at *12-13 (emphasis added).

McCraw does not change the need for this Court's intervention—it only confirms that the decision below is inconsistent with First Amendment jurisprudence. The decision below approved the very type of "summary dismissal of alternatives" by the government that *McCullen* forecloses. The Court should grant certiorari—or, in the alternative, summarily reverse—to bring the law of the Tenth Circuit fully in line with *McCullen* and with that of other jurisdictions. In the alternative, the Court should hold the petition for resolution of the petition in *Bruni*. *See* Pet. Reply 5 n. 1.

I would appreciate your distributing this letter to the Court as soon as possible, as the petition has already been distributed for the September 29 Conference.

Sincerely,
Kevin P. Martin

cc: All counsel of record (via email)



September 4, 2020

/s/ Kevin P. Martin
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Counsel for Petitioner

No. 19-1091

IN THE
Supreme Court of the United States

STEVE RAY EVANS,

Petitioner,

v.

SANDY CITY, *et al.*

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

CERTIFICATE OF SERVICE

I, Kevin P. Martin, counsel of record and a member of the Bar of this Court, certify pursuant to Supreme Court Rules 29.3 and 29.5 (as modified by the Court's Order of April 15, 2020) that I have, this 4th day of September, 2020, served petitioner's letter to the Hon. Scott S. Harris upon each party separately represented in this proceeding by causing an electronic copy of the same to be delivered to counsel of record at the email address listed below:

Troy L. Booher
tbooher@zbappeals.com

Pursuant to the Court's April 15 Order, I certify that all parties have agreed to accept such electronic service in lieu of service of paper copies. I further certify that all persons required to be served have been served.