

No. 24-1061

**In the Supreme Court of the United
States**

PROJECT VERITAS, ET AL.,
Petitioners,
v.

NATHAN VASQUEZ, IN HIS OFFICIAL CAPACITY
AS MULTNOMAH COUNTY DISTRICT
ATTORNEY, ET AL.,
Respondents.

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

**BRIEF OF CITIZENS NEWS GUILD D/B/A
TEXAS SCORECARD AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. A RECORDING SCANDAL IN TEXAS EXPOSES FLAWS IN OREGON'S AUDIO RECORDING LAW.	3
II. IF OREGON'S AUDIO RECORDING LAW APPLIED IN TEXAS, A CORRUPT POLITICIAN WOULD STILL BE IN OFFICE AND THE CITIZEN WHO EXPOSED HIS WRONGDOING WOULD BE VICTIMIZED.....	7
A. Oregon Prohibits Defensive Recording.....	7
B. Oregon Forces Citizens to Make Impossible Content-Based Decisions.....	8
C. A Defensive Recording Preserves Truth, and Ensures Consequences for Corruption.	10
CONCLUSION	11

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>N.Y. Times Co. v. Sullivan</i> , 376 U.S. 254 (1964)	3
<i>Reed v. Town of Gilbert</i> , 576 U.S. 155 (2015)	2, 8
<i>Sorrell v. IMS Health</i> , 564 U.S. 552 (2011)	2, 9
Statutes	
O.R.S. § 165.540(1)(c)	7, 8
O.R.S. § 165.540(5)(a)	2, 8, 9
O.R.S. § 165.540(5)(b)	2, 8
Other Authorities	
Janelle Lamb, He Said. She Said. The iPhone Said: The Use of Secret Recordings in Domestic-Violence Litigation, 110 Calif. L. Rev. 1095 (2022)	9

INTEREST OF *AMICUS CURIAE*¹

Citizens News Guild d/b/a Texas Scorecard (hereinafter “Texas Scorecard”) is a 501(c)(3) nonprofit media organization that exists for the purpose of reporting on the advancement of self-governance in Texas and beyond. To that end, Texas Scorecard has reported on state and local government and has successfully litigated against local government attempts to ban one party recording of government officials in Texas.² Texas Scorecard has also witnessed unsuccessful attempts by those in the Texas government to make recordings of state officials in the state capitol illegal.³ As described in this brief, Texas Scorecard’s Publisher Michael Quinn Sullivan has witnessed firsthand the importance of citizens being able to record meetings with government officials.

¹ Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party’s counsel, and no person or entity other than *amicus* funded its preparation or submission.

² Tessa Weinberg & Elizabeth Campbell, *Empower Texans sues Watauga, city officials over ordinance prohibiting secret recordings*, Fort Worth Star-Telegram (May 1, 2020), <https://www.star-telegram.com/news/politics-government/article242433376.html>; Pls.’ Notice of Voluntary Dismissal at 1, *Empower Texans Found., Inc. v. City of Watauga*, No. 4:20-cv-00416-O (N.D. Tex. July 19, 2020).

³ Tony McDonald, *Harless Claims Hijacked Ethics Bill “Was Never Going to Pass”*, Texas Scorecard (June 4, 2015), <https://perma.cc/UB37-QRF2>; C.S.S.B. 19, 84th R.S., 2015, <https://perma.cc/5FLN-9WUH>.

SUMMARY OF ARGUMENT

Oregon’s all-party-consent statute is facially content- and speaker-based, meaning the First Amendment demands strict scrutiny in evaluating it. Under Oregon’s law, unannounced audio recording is a crime unless the recorded conversation (i) occurs during “a felony that endangers human life,” or (ii) involves a law-enforcement officer acting in an official capacity and the recorder satisfies extra conditions. O.R.S. § 165.540(5)(a)–(b). Whether the recording is a criminal act thus turns on *what* is being recorded and *who* is speaking, precisely the line-drawing condemned by this Court in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), and *Sorrell v. IMS Health*, 564 U.S. 552 (2011). Content-based laws are presumptively unconstitutional and Oregon cannot satisfy the exacting burden of strict scrutiny.

By criminalizing unannounced recordings, the statute chills whistle-blowing, investigative journalism, and victims’ efforts at self-protection. Domestic-violence survivors, for example, rely on secret recordings to corroborate abuse that otherwise would devolve into “he-said-she-said” disputes. The law forces Oregonians to *announce* a recording, thereby risking escalation. Or, perversely, Oregonians can hope an encounter escalates into a life-threatening felony to retroactively make a recording lawful. The First Amendment does not permit the state to condition the lawfulness of speech on the degree of danger a victim must endure.

Amicus’s first-hand experience demonstrates this. In 2019, an unannounced recording exposed Texas House Speaker Dennis Bonnen’s corrupt quid-pro-quo offer made to its Publisher, Michael Quinn Sullivan. Once Sullivan made the meeting and quid-pro-quo

offer public, Bonnen lied about the meeting, why it occurred, and what was said during it. Sullivan ultimately made the recording public, establishing the truthfulness of his account and the speaker’s deceit. The incident directly led to Speaker Bonnen’s retirement from the legislature.

Had Oregon’s statute been in place in Texas, the recording would have been unlawful, the truth would have remained hidden, and a corrupt official would still be in power. Oregon’s law shields wrongdoers from accountability and obstructs the “uninhibited, robust, and wide-open” debate on issues of public importance the First Amendment protects. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

ARGUMENT

I. A RECORDING SCANDAL IN TEXAS EXPOSES FLAWS IN OREGON’S AUDIO RECORDING LAW.

On June 12, 2019, then Speaker of the Texas House of Representatives Dennis Bonnen engaged in quid pro quo corruption by offering then CEO of Empower Texans⁴, Michael Quinn Sullivan, House media credentials for Texas Scorecard reporters⁵ in exchange for

⁴ At the time, Amicus operated under the name Empower Texans Foundation in conjunction with a related 501(c)(4) organization, Empower Texans. The Foundation published Texas Scorecard while Empower Texans issued political endorsements and made independent political expenditures. Since the 2019 incident, Amicus has changed its corporate name to Citizens News Guild d/b/a Texas Scorecard and now engages only in 501(c)(3) nonpartisan journalism. Empower Texans continues to exist as a separate and independent organization.

⁵ For context, the Texas House had denied media credentials to Texas Scorecard capitol bureau reporters for two sessions, despite

Sullivan politically targeting ten members of the Texas House Republican Caucus that Bonnen disfavored.⁶

Sullivan met with Bonnen at his invitation after the 2019 legislative session had ended and was surprised to find Representative Dustin Burrows present as well.⁷ Burrows was then the House Republican Caucus Chairman and has since been elected as the current Speaker of the Texas House.⁸ Suspicious of Bonnen's intentions and aware of several recent instances where Bonnen had lied about others, Sullivan secretly recorded the meeting so that Bonnen could not lie about the meeting or distort its purpose.⁹

In the meeting, Bonnen was adamant he wanted to “do something for [Sullivan].”¹⁰ Sullivan retorted that he didn't need anything from the speaker but Bonnen insisted that if they could “make this work” he would “put your guys on the floor next session.”¹¹ In

the organization meeting the stated criteria and despite credentials being issued by the Texas Senate. In 2019, Texas Scorecard sued House officials over the denial and a lawsuit over the issue was pending at the time of the Sullivan-Bonnen meeting. Michael Quinn Sullivan, *Bonnen's Backroom Offer*, Texas Scorecard (July, 25, 2019), <https://perma.cc/6E4X-6HRM>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*; Texas House of Representatives, *Speaker of the House*, (May 15, 2025), <https://perma.cc/HWL7-ZWC2>.

⁹ Michael Quinn Sullivan, *Hearing Bonnen's Deceit*, Texas Scorecard (October 15, 2019), <https://perma.cc/G9WL-62NY>.

¹⁰ *Bonnen's Backroom Offer*, *supra* note 5.

¹¹ *Transcript of Audio Recording (June 12, 2019)*, Texas Scorecard (Oct. 15, 2019), <https://perma.cc/94LN-SGR9> at 12:25-13:2.

exchange, Bonnen asked Sullivan to spend political money targeting lawmakers Bonnen saw “as not being helpful.”¹² He directed Burrows to give Sullivan a list of 10 Republicans to go “pop” in the upcoming 2020 primary election.¹³ Notably, the 10 Republicans were all “good targets” in Sullivan’s opinion.¹⁴ This presented the conundrum that Sullivan could be seen as accepting Bonnen’s offer if he engaged in political activity he already intended to do.

Surprised by Bonnen’s “dirty” offer and concerned that it was a threat to himself and the integrity of his organization, Sullivan immediately called his attorney after leaving the meeting.¹⁵ On the advice of counsel, Sullivan sent a specifically worded letter to Bonnen and Burrows unequivocally rejecting Bonnen’s offer.¹⁶ Bonnen responded with a letter stating that “[n]o offer was made to [Sullivan] of any kind” and therefore there was nothing for Sullivan to “reject.”¹⁷

Sullivan proceeded to expose the meeting, the offer, and the speaker’s denial in a commentary entitled “Bonnen’s Backroom Offer” published by Texas Scorecard.¹⁸

¹² *Bonnen’s Backroom Offer*, *supra* note 5.

¹³ *Transcript of Audio Recording (June 12, 2019)*, *supra* note 11 at 10:5, 44:16-25.

¹⁴ *Bonnen’s Backroom Offer*, *supra* note 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Letter from Dennis Bonnen to Michael Quinn Sullivan (June 27, 2019)*, Texas Scorecard (July 25, 2019), <https://perma.cc/X854-UMPV>.

¹⁸ *Bonnen’s Backroom Offer*, *supra* note 5.

In reaction to the commentary and related news coverage, Bonnen doubled down on lying about what had taken place. In a voicemail left with a member of the legislature, Bonnen claimed he met with Sullivan for the purpose of telling him *not* to campaign against Republican incumbents in the primary.¹⁹ The day after Sullivan published his commentary, Bonnen sent an email to House Republicans falsely claiming Sullivan requested the meeting in order to obtain media credentials and that Bonnen rebuffed him.²⁰

As contemporaneous reporting noted, “Currently, Sullivan’s story is a tale of two competing and contradictory accounts. And it remains to be seen if any political fallout will occur as a result.”²¹

But then Sullivan shocked the Texas political world and revealed he had recorded the “entire meeting, from before [he] walked in until after [he] left.”²² The public response from the Texas House was sharp: a bipartisan group of lawmakers called for Bonnen’s

¹⁹ The Texas Tribune, *Dennis Bonnen Leaves Voicemail About Michael Quinn Sullivan*, YouTube (Sept. 13, 2019), <https://www.youtube.com/watch?v=DpM4sPU4j8>.

²⁰ *Email from Dennis Bonnen to Texas House Republican Members (July 26, 2019)*, The Texas Tribune (Sept. 11, 2019), <https://perma.cc/4E9S-R2ZV>.

²¹ McKenzie Dilullo, *Texas Speaker Dennis Bonnen Accused of Quid Pro Quo by Grassroots Group Empower Texans*, The Texan (July 26, 2019), <https://thetexan.news/state/legislature/86th-session/texas-speaker-dennis-bonnen-accused-of-quid-pro-quo-by-grassroots-group-empower-texans/>

²² *Hearing Bonnen’s Deceit*, *supra* note 9.

resignation.²³ He was forced to step down as speaker and did not run for reelection.²⁴ And Sullivan was vindicated even by some of his harshest critics for telling the truth.²⁵ Had Oregon's audio recording law been in effect in Texas, the outcome would have been far worse.

II. IF OREGON'S AUDIO RECORDING LAW APPLIED IN TEXAS, A CORRUPT POLITICIAN WOULD STILL BE IN OFFICE AND THE CITIZEN WHO EXPOSED HIM WOULD BE VICTIMIZED.

Had Oregon's recording law been in effect in Texas in 2019, the Bonnen quid pro quo scandal would not have come to a proper resolution. The Oregon recording law forces citizens to make impossible choices.

A. Oregon Prohibits Defensive Recording.

Under the Oregon recording law, what Sullivan did would have been illegal, because Sullivan did not notify Bonnen or Burrows that he was recording them. O.R.S. § 165.540(1)(c). Unless a bad actor commits a felony that endangers human life or is a police officer, unannounced recordings are illegal under Oregon law.

²³ Cassandra Pollock, *Calls For Texas House Speaker Dennis Bonnen's Resignation Are Limited — But Growing*, KERA (Oct. 17, 2019), <https://perma.cc/J9VT-BUNW>.

²⁴ Clarice Silber, *Texas GOP House Speaker Dennis Bonnen drops re-election bid after secret tape*, Fox 26 Houston (Oct. 22, 2019), <https://perma.cc/U49A-NHVZ>.

²⁵ Ross Ramsey, *Analysis: Give Michael Quinn Sullivan his due — he was telling the truth about Speaker Dennis Bonnen*, The Texas Tribune (Oct. 15, 2019), <https://perma.cc/CBA4-E4AY>.

B. Oregon Forces Citizens to Make Impossible Content-Based Decisions.

When an Oregonian reasonably fears wrongdoing, the state’s recording law presents only two unconstitutional paths: (1) announce the recording and risk escalation or; (2) record the conversation secretly and hope that a “felony that endangers human life” occurs. *See* O.R.S. §§ 165.540(1)(c), (5)(a).

A would-be victim may declare, “I am recording this interaction.” But such notice could provoke the very harm the victim would seek to deter: an abuser could seize the recording device, delete evidence, or escalate to using force. Even if violence is avoided, disclosure changes the *content and character* of the conversation: the wrongdoer, now on notice that they are being recorded, self-censors, depriving courts, police, and the public of an authentic record of the exchange that would have otherwise taken place.

Oregon’s ban is riddled with carve-outs that hinge on *what* is being recorded and *who* is speaking. It decriminalizes an unannounced recording only when either (i) the conversation occurs “during a felony that endangers human life,” O.R.S. § 165.540(5)(a), or (ii) the target is “a law-enforcement officer acting in the officer’s official capacity” and the recorder satisfies four additional conditions, § 165.540(5)(b). A court therefore must read or listen to the *content* of the recording—or identify the *speaker*—to know whether the statute applies. That is the very definition of a content-based law. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (regulation is content-based if it “draws distinctions based on the message a speaker conveys”); *Sorrell v. IMS Health Inc.*, 552 U.S. 552, 569-70 (2011) (content- and speaker-

based burdens on speech trigger “heightened judicial scrutiny.”)

Because § 165.540 singles out recordings of *police* and of *life-threatening felonies*²⁶ for preferential treatment, it “targets speech based on its communicative content” and is “presumptively unconstitutional” unless Oregon can satisfy strict scrutiny. *Reed*, 576 U.S. at 163.

Absent notice, a recording is criminal—*unless* the abuse becomes a life-threatening felony, at which point § 165.540(5)(a) retroactively blesses it. The statute thus perversely encourages victims to *gamble* on greater danger so the evidence will later be lawful to publish.

Domestic-violence survivors illustrate the stakes. Secret recordings “can provide evidence that is absolutely critical to proving domestic violence and gender-based crimes to both a judge and to one’s community.” Janelle Lamb, *He Said. She Said. The iPhone Said: The Use of Secret Recordings in Domestic-Violence Litigation*, 110 Calif. L. Rev. 1095, 1125 (2022). Yet Oregon criminalizes the very act that secures such evidence—unless the abuse occurs *during the recording* and rises to lethal levels. The First Amendment

²⁶ Why unannounced recordings of non-life-threatening felonies remain unlawful while those that occur during life-threatening felonies are lawful is entirely unclear. Likewise, why law enforcement is exempted from the consent requirement while other state actors are not is rooted in a content-based distinction about whose speech is worthy of being recorded without consent and whose is not. If sunlight is indeed the best disinfectant, then that is true whether the state actor being recorded is a sheriff or the speaker of the house.

does not tolerate a regime that conditions lawful recording on the degree of violence a victim must endure.

C. A Defensive Recording Preserves Truth, and Ensures Consequences for Corruption.

Defensive recordings are valuable and merit First Amendment protection.

Sullivan recounted that the reason he recorded the meeting was “to ensure Bonnen could not lie about the meeting or distort its purpose in the future.”²⁷ Sullivan noted that Bonnen had a reputation for lying publicly about others and had faced no consequences for doing so.²⁸ In other words, Sullivan wanted to take the meeting with Bonnen, but he felt it necessary to record the meeting to protect himself from danger. Because Texas law permits “one-party consent,” Sullivan was free to defend himself by recording what transpired.

Sullivan’s recording preserved the truth of what took place, ultimately to his and the public’s benefit. Had Sullivan not recorded the meeting, it would have been his word against the word of two powerful officials. Indeed, by all accounts it appears that Bonnen included Burrows in the meeting to create this two-on-one dynamic.²⁹

Had Sullivan’s recording not existed, both the Texas House of Representatives and the public more generally would not have known who was telling the truth. As a matter of policy, a recording protects both the person being recorded and the person doing the

²⁷ *Hearing Bonnen’s Deceit*, *supra* note 9.

²⁸ *Id.*

²⁹ *Id.*

recording precisely because it creates an objective record of what occurred. The public was not left to guess whether the speaker of the Texas house corruptly offered a quid pro quo deal—they heard him do so in his own voice.

Because there was a true audio record of the meeting between Bonnen, Burrows, and Sullivan, Bonnen faced the consequences for his deceitfulness and duplicity. Had Oregon’s recording statute been in place in Texas however, the truth never would have come to light. Oregon’s recording statute obstructs the preservation of truth, protects wrongdoers from the consequences of their actions, and violates the First Amendment by directly impeding the gathering of information.

CONCLUSION

For the foregoing reasons this Court should grant the petition.

Respectfully submitted,

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