

No. 21-51178

In the United States Court of Appeals for the Fifth Circuit

NetChoice, LLC d/b/a NetChoice, and Computer & Communications
Industry Association d/b/a/ CCIA
Plaintiffs-Appellees,

v.

Ken Paxton, in his official capacity as Attorney General of Texas,
Defendant-Appellant.

On Appeal from the United States District Court
for the Western District of Texas, Austin Division
Civil Action No. 1:21-cv-00840-RP

**BRIEF OF *AMICUS CURIAE* DAVID MAMET IN SUPPORT OF
DEFENDANT-APPELLANT**

Sarah B. Rogers
BREWER, ATTORNEYS & COUNSELORS
750 Lexington Ave., 14th Floor
New York, N.Y. 10022
Tel.: (212) 489-1400

*Counsel for Amicus Curiae David
Mamet*

SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record for *amicus curiae* David Mamet certifies that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Plaintiffs-Appellees:

NetChoice, L.L.C., a 501(c)(6) District of Columbia organization doing business as NetChoice; and Computer & Communications Industry Association, a 501(c)(6) non-stock Virginia Corporation doing business as CCIA

Counsel for Plaintiffs-Appellees:

Scott A. Keller (lead counsel)

Steven P. Lehotsky

Matthew H. Frederick

Todd Disher

Jonathan Urick

Gabriela Gonzalez-Araiza

Jeremy Evan Maltz

LEHOTSKY KELLER LLP

Defendant-Appellant:

Ken Paxton, in his official capacity as Attorney General of Texas

Counsel for Defendant-Appellant:

Judd Edward Stone II

Ryan Baasch

Benjamin S. Lyles

Benjamin S. Walton

Christopher D. Hilton

Courtney Brooke Corbello

Office of the Attorney General

Amici in Support of Plaintiffs-Appellees:

Chamber of Progress; Connected Commerce Council; CTA; Engine Advocacy; Information Technology & Innovation Foundation; National Black Justice

Coalition; Progressive Policy Institute; TechNet; Washington Center for Technology Policy; Hispanic Technology and Telecommunications Partnership

Counsel for Chamber of Progress, et al.:
William Reid Wittliff
Wittliff Cutter P.L.L.C.

Amici in Support of Plaintiffs-Appellees:

The Reporters Committee for Freedom of the Press; The American Civil Liberties Union; The Center for Democracy and Technology; and American Civil Liberties Union of Texas

Counsel for The Reporters Committee for Freedom of the Press, et al.:
Catherine Lewis Robb
Laura Lee Prather
Haynes And Boone, Llp

Amicus in Support of Plaintiffs-Appellees:

TechFreedom

Counsel for TechFreedom:
Corbin K. Barthold
Techfreedom

Amicus in Support of Plaintiffs-Appellees:

Electronic Frontier Foundation

Counsel for Electronic Frontier Foundation:
David Greene
Mukund Rathi
Electronic Frontier Foundation
Thomas S. Leatherbury
Vinson & Elkins LLP

Amici in Support of Defendant-Appellant:

Texas Public Policy Foundation, The Babylon Bee; Not the Bee; Giganews, Inc.; and Golden Frog, Inc.

Counsel for Texas Public Policy Foundation, et al.:
W. Scott McCollough

Mccollough Law Firm, P.C.
Evan Miles Goldberg
Evan Miles Goldberg, PLLC
Robert Henneke
Texas Public Policy Foundation

/s/Sarah B. Rogers

TABLE OF CONTENTS¹

	Page
STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY	1
ARGUMENT	3
I. Lessons from Aerial Navigation.....	3
II. Conclusion	5
CERTIFICATE OF COMPLIANCE.....	6
CERTIFICATE OF SERVICE	7

¹ Because this brief does not cite cases, statutes, or other authorities, no table of authorities is included.

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY

Proposed *amicus* David Mamet aspires to enjoy freedom of speech without government-enabled censorship. Mr. Mamet worries about how Americans can navigate their world when firms that control information conduits, and are privileged and subsidized by the government, serve curated “information” to users and the public which no longer maps onto the world that Americans personally observe.

David Mamet is the author of various plays. His films include *The Postman Always Rings Twice*, *Wag the Dog*, *The Verdict*, *Hoffa*, *Ronin*, *The Untouchables*, *House of Games* (writer/director), *Oleanna* (writer/director), *Homicide* (writer/director), *The Spanish Prisoner* (writer/director), *State and Main* (writer/director), *Heist* (writer/director), *Spartan* (writer/director), and *Redbelt* (writer/director). His most recent books are *True and False*, *Three Uses of the Knife*, *The Wicked Son*, *Bambi vs. Godzilla*, *The Secret Knowledge*, *Chicago*, *The Diary of a Porn Star*, and the just-released *Recessional: On the Death of Free Speech and the Cost of a Free Lunch*. He directed the world premiers of his most recent plays, *Bitter Wheat*, starring John Malkovich, on the West End in 2019, and *The Christopher Boy’s Communion* at the Odyssey Theatre in Los Angeles in February, 2020.

He has a direct interest in the outcome of this case as a citizen of the United States who hopes for a free society governed by well-informed, thinking fellow

citizens and as an author whose work explores the full range of human emotion and intellect.

This brief is timely because it is being submitted “within 7 days after the filing of the principal brief of the party whose position the amicus brief will support.” 5TH CIR. R. 29.1. All parties hereto have consented to the filing of this brief. Counsel for *amicus curiae* represents that *amicus* authored this brief in its entirety. No party’s counsel authored this brief in whole or in part, and no party, nor any party’s counsel, contributed money that was intended to fund preparing or submitting this brief. No person other than *amicus* or his counsel contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

I. Lessons from Aerial Navigation

The pilot wants to orient himself. He knows approximately where he is, for he knows the direction in which he's been flying, the speed of the plane, and the time of flight. And he has a chart. Given a 100 mph airspeed, flying west for one hour, he should be at this point on the chart. He should, thus, see, to his right a camel-backed double hill, and, off to his left, a small lima bean shaped lake.

He now looks out, but he can't find the objects the chart informed him he'd see. He concludes that he is lost.

How can he determine his location? He has a map, but he's just misused it. How?

The Map is not the territory. The territory is the territory. The pilot's answer to the question "where am I?" lies not on the map, but out the windscreen. That's where he is. It doesn't matter where he calculated he should be, the territory below him is where he is.

What are its features? He looks below and sees: a river, a railroad line, a small town. Now he finds these on the chart. And he knows his location. From this he can recalculate, if he likes, his airspeed and direction of flight. This will help him plan his next leg more accurately.

Modern “connected” humankind is trying to determine its position backwards. We are deluged with constant information (the map), and if, looking out, if we don’t see a corresponding situation we may disregard our senses, prefer the information to the reality, and, shun, deride or oppose any who don’t share our beliefs – which we, being human, call Reality.

I report as an outdoorsman, that Panic is real. It is the loss of the mind and will to Pan, God of the Woods. The affected loses his reason, and runs about unable to recognize those actual signs (a road, his own footprints), which might bring him back to safety.

Navigating requires using tools correctly. The confused citizen has a map. But, if he worked from his observations back to it, he might discover that he can’t find his position pictured there.

Looking out he might, for example, see a free, prosperous, and good country, in which there was little actual poverty, scant racism, and no “systemic” racism, where minorities and women, rather than being discriminated against were treated preferentially. (This belief might be correct or incorrect, but unless we prefer a Ministry of Truth, the belief is his own and surely he’s entitled to it.)

Referring back, then, to his “information,” the citizen might not be able to correlate it with his observations. He knew where he was, as he’d just looked around. But he found no corresponding position on his map.

A pilot in this situation might conclude he'd simply picked up the wrong map.

But what if the government and its privileged conduits prohibited him from choosing another?

copyright © 2022 by D. Mamet

II. Conclusion

The Court should decide in favor of Defendant-Appellant and vacate the district court's order.

Dated: March 9, 2022

Respectfully submitted,

/s/Sarah B. Rogers

Sarah B. Rogers, Esq.
BREWER, ATTORNEYS & COUNSELORS
750 Lexington Ave., 14th Floor
New York, N.Y. 10022
Tel.: (212) 489-1400

*Counsel for Amicus Curiae David
Mamet*

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface requirements of Rule 32(a)(5) and the typestyle requirements of Rule 32(a)(6) because this motion was prepared in proportionally spaced typeface using Microsoft Word in 14-point font. This motion complies with the type-volume limitation of Rule 32(g) because it contains 862 words, excluding the parts exempted under Rule 32(f).

Dated: March 9, 2022

/s/Sarah B. Rogers

Sarah B. Rogers

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2022, an electronic copy of the foregoing brief of *amicus curiae* was filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF filing system and that service will be accomplished using the appellate CM/ECF system.

Dated: March 9, 2022

/s/Sarah B. Rogers
Sarah B. Rogers

Counsel for Amicus Curiae