

No. WR-13,374-05

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**IN THE COURT OF CRIMINAL  
APPEALS OF TEXAS**

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**Ex Parte Bobby James Moore,**  
*Applicant.*

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ON APPLICATION FOR WRIT OF HABEAS CORPUS IN CAUSE  
NO. 314483-C IN THE 185TH JUDICIAL DISTRICT  
HARRIS COUNTY

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**BRIEF OF FAITH LEADERS AND RELIGIOUS ORGANIZATIONS AS  
AMICI CURIAE IN SUPPORT OF APPLICANT BOBBY JAMES MOORE**

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## STATEMENT OF INTEREST OF *AMICI*

*Amici* are a collection of faith leaders and religious organizations from across Texas and the nation who represent a wide array of faith traditions. They submit this brief because they are concerned about the protection of morality and appropriate justice. While they may have different views about the death penalty, they are united in their view that no intellectually disabled person—including Bobby James Moore—should be executed.

The Evangelicals for Social Action is an organization that serves as a catalyzing agent for Christ's shalom through projects focused on cultural renewal, holistic ministry, political reflection and action, and social justice.

The Dominican Sisters of Houston is a congregation of women religiously committed to teaching and preaching the Gospel through education and advocacy on crucial justice issues.

The Red Letter Christians is a national public policy ministry that advocates a lifestyle prescribed by Scripture. The ministry seeks to amplify voices combining Biblical values and justice.

The Texas Catholic Conference of Bishops is a federation of all Roman Catholic dioceses and ordinates in Texas. The public policy issues addressed by the federation include institutional concerns of the Catholic Church and issues related to Catholic moral and social teaching.

Archbishop Joseph A. Fiorenza is Archbishop Emeritus, Archdiocese of Galveston-Houston.

Rabbi Samuel E. Karff is Rabbi Emeritus, Congregation Beth Israel in Houston, Texas.

Reverend William A. Lawson is Pastor Emeritus, Wheeler Avenue Baptist Church in Houston, Texas.

Reverend Lee Ann Bryce is Senior Pastor, First Congregational United Church of Christ - Fort Worth.

Reverend Susan Buchanan is Reverend, United Methodist Church in Houston, Texas.

Dr. Steve Bezner is Senior Pastor, Houston Northwest Church.

Dr. Dan Darby is Senior Pastor, Coldspring United Methodist Church in Houston, Texas.

Larry James is the Chief Executive Officer of CitySquare, a Dallas-based organization, formally known as Central Dallas Ministries, that serves the community in areas related to the persistence of poverty.

Marv Knox is a Field Coordinator for Fellowship Southwest, a regional network affiliated with the Cooperative Baptist Fellowship. Mr. Knox does not speak on the organization's behalf.

Reverend Allison Sandlin Liles is an Episcopal Minister in Dallas, Texas.

Ricky McClatchy is the Field Coordinator for Cooperative Baptist Fellowship in Texas, a network comprised of individuals and churches that work together to spread the hope of Christ. Mr. McClatchy does not speak on the network's behalf.

Bishop Michael McKee is Resident Bishop, North Texas Conference of The United Methodist Church in Plano, Texas.

Dr. Carolyn Clay Pickens is Institutional Advancement Director, Brentwood Baptist Church in Houston, Texas.

Dr. Joe Samuel Ratliff is Pastor, Brentwood Baptist Church in Houston, Texas.

Paul Randall is an Associate Pastor of Ecclesia, a Christian community that serves the City of Houston.

Rabbi Samuel M. Stahl is Rabbi Emeritus, Temple Beth-El in San Antonio, Texas.

Martin Troyer is Pastor, Houston Mennonite Church.

Stephen C. Wells is Pastor, South Main Baptist Church in Houston, Texas.

Notwithstanding their differences in theology, *amici* share the conviction that intellectually disabled people should not be put to death.<sup>1</sup>

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<sup>1</sup> *Amici's* institutional affiliations are provided only for purposes of identification. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. See TEX. R. APP. P. 11.

## INTRODUCTION

Every day, people are guided by their faith. They look to their faith in navigating the obstacles they face and cherishing the glories life brings them. Their faith is paramount, regardless of their age, educational background, or profession. As faith leaders, *amici* are blessed with a unique perspective into the beliefs of the people of both Texas and the United States, and share a duty to vocalize those beliefs.

As representatives of a cross-section of faiths, *amici* stand firmly in their opposition to the implementation of the death penalty against people with intellectual disabilities. The costs of executing such people—moral, human, and societal—are unacceptable. Executing people with intellectual disabilities violates the ethical standards of the people of Texas and this country, the moral obligations owed to those with intellectual disabilities, and the Eighth Amendment’s proscription of cruel and unusual punishments.

But this case is not just about the immorality of executing people with intellectual disabilities. It is about the person before this Court: Bobby James Moore. As clear as it is that people with intellectual disabilities should not be executed, it is equally clear that Mr. Moore is intellectually disabled.

After a two-day hearing in which several mental-health experts testified, the habeas court determined that Mr. Moore was intellectually disabled under the

current, generally accepted, and uncontroversial diagnostic definition of intellectual disability. *See Moore v. Texas*, 137 S. Ct. 1039, 1045 (2017). The habeas court recommended that this Court reduce Mr. Moore’s sentence to life in prison or grant him a new trial. *Id.* at 1046.

Unfortunately, this Court rejected the habeas court’s recommendations and denied Mr. Moore habeas relief. *Id.* In its opinion, this Court relied on the definition of intellectual disability in an obsolete manual and evidentiary factors that are not based on any medical authority. *Id.* at 1046–47.

Vacating this Court’s judgment, the Supreme Court of the United States held that adjudications of intellectual disability must be informed by medical guidance and the “medical community’s diagnostic framework.” *Id.* at 1053 (quotations omitted). Under current medical diagnostic standards, Mr. Moore is intellectually disabled and therefore ineligible for the death penalty, as the habeas court found.

Mr. Moore’s crime is one all *amici* condemn, and justice must be served for that offense. But justice is not served by executing a person who is intellectually disabled. As a society, we have a legal and moral duty to ensure that justice is carried out humanely and every intellectually disabled person—including Mr. Moore—is treated fairly and compassionately. This Court can and should ensure that no intellectually disabled person is executed in Texas.

*Amici* respectfully request that this Court faithfully apply the Supreme Court’s holding and rule that Mr. Moore is intellectually disabled and therefore not eligible for the death penalty.

## ARGUMENT

### **I. This Court must apply a standard for intellectual disability consistent with the standards of modern medicine.**

The Supreme Court of the United States has recognized the unconstitutionality of sentencing those with intellectual disabilities to death—a constitutional principle this Court cannot merely acknowledge, but must properly apply. Doing so requires faithfully adhering to the Supreme Court’s decision to ensure that Mr. Moore, an intellectually disabled person, is not executed.

In 2002, the Supreme Court declared a national prohibition on executing people with intellectual disabilities. *Atkins v. Virginia*, 536 U.S. 304, 321 (2002). The Supreme Court held that there is no penological purpose for executing people with intellectual disabilities, and that the execution of such people is “nothing more than the purposeless and needless imposition of pain and suffering, and hence unconstitutional.” *Id.* at 319 (quotations omitted).

In holding that application of the death penalty to those with intellectual disabilities is unconstitutional, the Supreme Court emphasized that the determination of whether a punishment is excessive “is judged not by the standards that prevailed in 1685 when Lord Jeffreys presided over the ‘Bloody Assizes’ or

when the Bill of Rights was adopted, but rather those that currently prevail.” *Id.* at 311. The Court continued: “The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. . . . The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” *Id.* at 311–12 (quotations omitted).

A decade later, the Supreme Court instructed that the legal determination of intellectual disability must be “informed by the medical community’s diagnostic framework.” *Hall v. Florida*, 134 S. Ct. 1986, 2000 (2014). In ruling that Florida’s standard for determining intellectual disability violated the Eighth Amendment, the Supreme Court held that adjudications of intellectual disability must be “informed by the views of medical experts,” and that Florida’s standard “disregard[ed] established medical practice.” *Id.* at 1995.

In this case, the Supreme Court held that *Atkins* and *Hall* require courts to consult (and not disregard) *current* medical standards in determining intellectual disability. *Moore*, 137 S. Ct. at 1048–49. The Supreme Court approved of the habeas court’s reliance on “current medical standards,” and ruled that this Court’s adherence to “superseded medical standards” and reliance on the factors laid out in *Ex parte Briseno*, 135 S.W.3d 1 (Tex. 2004), violated the Eighth Amendment. *Moore*, 137 S. Ct. at 1048, 1053.

*Amici* agree that this Court should (and, under the Supreme Court’s rulings, must) apply “[t]he medical community’s current standards” in determining intellectual disability. *Id.* at 1053. As the Supreme Court acknowledged, using superseded medical standards and the *Briseno* factors “creat[es] an unacceptable risk that people with intellectual disabilities will be executed.” *Id.* at 1044. The legal and moral prohibition against executing people with intellectual disabilities is only meaningful if this Court adheres to current medical standards for determining who is intellectually disabled. Doing so best protects the interests of justice and the hallmarks of compassion and human dignity that are fundamental pillars of our faiths and our society.

**II. Under the standards of modern medicine, Mr. Moore is intellectually disabled and therefore ineligible for the death penalty.**

In this case, consulting contemporary medical standards can lead to only one conclusion: Mr. Moore is intellectually disabled. His IQ scores “fall[] within the clinically established range for intellectual-functioning deficits.” *Id.* at 1050. Under “prevailing clinical standards,” he “suffer[ed] significant adaptive deficits,” including an inability to read, write, properly tell time, and understand basic concepts of arithmetic. *Id.* at 1045, 1050. And the onset of these deficits occurred when Mr. Moore was a minor (when he faced severe abuse at the hands of his father and others). *See id.* at 1051.

Consistent with the Supreme Court’s opinion, this Court should rule that Mr. Moore is intellectually disabled under current medical standards and therefore ineligible for the death penalty.

**III. The faith and morality of both Texans and Americans as a whole dictate that Mr. Moore not be executed.**

The Eighth Amendment “reaffirms the duty of the government to respect the dignity of all persons.” *Id.* at 1048 (quotations omitted). Notwithstanding *amici*’s differing faiths and varying views regarding capital punishment, *amici* embrace this constitutional requirement and its prohibition on executing intellectually disabled people. *Amici* are compelled under their respective faiths and ethical obligations to regard the least among us with mercy. Mr. Moore is someone of significant intellectual disability and particular vulnerability. This Court has the opportunity to both prohibit a sentence that our society deems repugnant and uphold the dignity of all persons by ruling that Mr. Moore is intellectually disabled and therefore ineligible for a sentence of death.

The Supreme Court has identified a national consensus against executing people with intellectual disabilities. *Atkins*, 536 U.S. at 316. *Amici* can attest that this consensus exists not just on a national scale, but in Texas as well. As faith leaders, *amici* have a unique perspective: They spend every day confronting issues of morality alongside their faith communities. It is their job to know the hearts, minds, and values of their congregations and communities. Their unique

experience allows them to speak confidently that the execution of those with intellectual disabilities conflicts with governing mores and principles.

*Amici* are also united in their belief that executing Mr. Moore would be repugnant and immoral. There is no legitimate purpose for putting to death a person who is intellectually disabled under the standards of modern medicine. Instead, as a society, we must protect the dignity and sanctity of life of such persons. Because Mr. Moore is intellectually disabled under the medical community's current standards, he should be spared from a sentence of death.

The Supreme Court has long considered the role of morality when determining the appropriateness of the death penalty, particularly in the context of intellectual disability. *See, e.g., Atkins*, 356 U.S. at 306 (stating that “[b]ecause of their disabilities in areas of reasoning, judgment, and control of their impulses,” intellectually disabled people “do not act with the level of moral culpability that characterizes the most serious adult criminal conduct”). This is because the concepts of morality and justice operate hand-in-hand, for punishment cannot be just if it is immoral. *Amici* share the conviction that executing Mr. Moore cannot be morally justified.

#### CONCLUSION

For the foregoing reasons, this Court should rule that Mr. Moore is intellectually disabled and therefore ineligible for a sentence of death.

Date: November 1, 2017

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief satisfies the word-limit requirements for amicus briefs contained in the Texas Rule of Appellate Procedure, because it contains a total of 2,073 words, excluding the portions that can be excluded pursuant to those same rules.

/s/ Thomas E. O'Brien  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on November 1, 2017, a true and correct copy of the foregoing was served via electronic mail on the following counsel of record for all parties in this case:

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