

CASE NO. 03-06-00273-CV

IN THE COURT OF APPEALS
FOR THE THIRD DISTRICT OF TEXAS
AUSTIN, TEXAS

TEXAS BANKERS ASSOCIATION, FINANCE COMMISSION OF TEXAS, AND
CREDIT UNION COMMISSION OF TEXAS,
Appellants,

v.

ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW
(ACORN), VALERIE NORWOOD, ELSIE SHOWS, MARYANN ROBLES-
VALDEZ, BOBBY MARTIN, PAMELA COOPER, AND CARLOS RIVAS,
Appellees.

*On Appeal from the 126th District Court
Travis County, Texas*

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INTRODUCTION

"We must never forget that it is a constitution we are expounding."¹ Unique to all that ensues in this case is that it is the Texas Constitution ("Constitution") that directly confers on the Legislature "the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), and (t)" of Section 50 of the Constitution.² And, as constitutionally empowered, the Legislature conferred the power of interpretation on the Finance Commission and Credit Union Commission ("Commissions"). Keeping this remarkable empowerment in mind, Texas Bankers Association ("TBA") makes this reply.

STATEMENT OF FACTS

A. Texas voters weighed the merits of home equity lending—amending the Constitution to permit home equity loans.

Appellees (collectively "ACORN") assert the historical context of homestead rights is significant. But they omit the following statement found in the Interpretive Commentary in the Constitution:

The direct cause of the law was the United States Panic of 1837 and the ensuing depression during which numerous families lost homes and farms through foreclosures, and in the Republic of Texas business became stagnate, money scarce, and credit unobtainable. Most Texans were in debt and the young nation was in economic peril.³

Today, the amateur historian would be hard-pressed to describe the Panic of 1837, Texas is no longer a republic (though if it were, its economy would rank as eighth largest

¹ *McCulloch v. Maryland*, 17 U.S. 316, 407 (1819).

² TEX. CONST. art. XVI, § 50(u).

³ TEX. CONST. art. XVI, § 50, Interpretive Commentary (Vernon 1993).

in the world),⁴ and nineteenth-century concerns about the scarcity of money and credit no longer exist.

More to the point, while the concerns that were the "direct cause" of the homestead exemption dissipated, other concerns *caused by* the homestead exemption arose. One concern leading voters to amend the Constitution to permit home equity lending was that Texas was the only state that did not permit its citizens to access the equity in their homes. As a result, homeowners without significant cash reserves facing expenses such as college tuition and emergency medical care were forced to sell their homes, typically paying a commission of six percent to a real estate agent. An equally poor alternative was for homeowners to take out high-interest unsecured loans, and with no tax benefits (in most cases, home equity loan interest is tax-deductible).⁵

Were this Court, in making its decision in this case, to reconsider the wisdom of Texas citizens' choice to permit home equity lending, then it should also consider the benefits associated with home equity lending that ACORN ignores. Figures published by the Office of the Consumer Credit Commissioner indicate that, from 2002 to 2005, lenders extended over \$30 billion in first lien home equity credit to Texas borrowers.⁶ In 2003, Comptroller Strayhorn concluded that replacing \$12.7 billion in higher-cost non-tax-deductible loans with home equity lines of credit would result in savings of \$741

⁴ Fall 2004 Economic Update – Published by Texas Comptroller Carol Keeton Strayhorn, report available at www.window.state.tx.us/ecodata/teufall04/.

⁵ Bill Analysis, HOUSE RESEARCH ORGANIZATION, 5 (May 9, 1997) HJR 31.

⁶ 2004 Home Equity Lending Report issued by the Office of Consumer Credit Commissioner; 2006 Home Equity Lending Report issued by the Office of Consumer Credit Commissioner.

million for Texas homeowners.⁷ These findings demonstrate the substantial economic benefit that Texas consumers have realized as a result of home equity lending.

Regardless, the pros and cons of home equity loans have already been weighed by Texas voters who voted to amend the Constitution to permit home equity lending. Thus, the question for this Court is not whether public policy favors home equity lending, but whether the Commissions' interpretations exceed not merely a typical grant of legislative authority, but the authority conferred by the Constitution itself.

B. The Constitution specifically carves out the broad interpretive powers that the Commissions have exercised.

It is no small matter that the Constitution expressly authorizes the Legislature to delegate "the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), and (t)" of Section 50 of the Constitution to one or more state agencies.⁸ In contrast, all of the cases cited by ACORN to support its argument that the Commissions should be given little deference are cases where the Legislature has authorized an agency to interpret legislative action.⁹ ACORN cites no case where the Constitution itself authorizes a branch of government to delegate the power of constitutional interpretation—a power the judiciary normally possesses.

The interpretive authority in Section 50(u) is even distinguishable from the Texas Supreme Court's taking to itself the power to interpret provisions of the Constitution

⁷ *Home Equity Lines of Credit Good Choice for Texas*, Opinion-Editorial by Carole Keeton Strayhorn, Texas Comptroller, September 10, 2003.

⁸ TEX. CONST. art. XVI, § 50(u).

⁹ Appellees' Response ("Response"), pp. 4-8.

because mainstream jurisprudential principles call for narrow interpretive authority if power is being exercised external to the authority of the Constitution.¹⁰ In the instant case, however, it is the Constitution itself that empowers the external authority to interpret its provisions. And, consequently, there is no jurisprudential foundation requiring a narrow application of this power. In fact, the law may be that once the Commissions have exercised their interpretive power, their interpretations are not subject to further review. The separation of powers clause of the Constitution "prohibits a person of one branch from exercising a power historically or inherently belonging to another department."¹¹ But in full, the clause provides:

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, *except in the instances herein expressly permitted*.¹²

This clause confirms that express grants of authority trump the general separation of powers rule. In accord, the Supreme Court has acknowledged that the constitutional balance of powers can be altered by amending the Constitution.¹³

¹⁰ See *Lombardo v. City of Dallas*, 73 S.W.2d 475, 486 (Tex. 1934).

¹¹ *State v. Hardy*, 769 S.W.2d 353, 354 (Tex. App.—Houston [1st Dist.] 1989, no writ) (citing *Coates v. Windham*, 613 S.W.2d 572, 576 (Tex. Civ. App.—Austin 1981, no writ)).

¹² TEX. CONST. art. II, § 1 (emphasis added).

¹³ *State v. Thomas*, 766 S.W.2d 217, 219 (Tex. 1989); *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993) (holding that "governmental authority vested in one department of government cannot be exercised by another department unless expressly permitted by the constitution.").

The constitutional grant of interpretive authority in this case vests the power to interpret specific subsections of Section 50 in the agencies designated by the Legislature, which has properly delegated that power to the Commissions.¹⁴ And constitutional provisions that direct the Legislature to act for a particular purpose are to be liberally construed.¹⁵ Accordingly, this Court should move cautiously if it intends to give weight to ACORN's arguments. There is no similar grant of interpretive authority to any other department of government under the Constitution and, arguably, the Commissions' constitutional interpretive authority is exclusive.

A similar issue was examined by the Attorney General in 1998 after Senator Jerry Patterson requested an opinion regarding whether the Legislature may authorize a state agency to construe the home equity amendments to the Constitution.¹⁶ In response, the Attorney General issued Opinion DM-495, ultimately concluding that authorizing a state agency to construe the home equity amendments "absent express constitutional authorization, would be to usurp the powers of the judiciary in violation of the separation of powers principles set out in . . . the Texas Constitution."¹⁷ Without constitutional authorization, the Legislature, at most, could authorize a state agency to adopt rules implementing the requirements of Section 50. Such rules would be "given weight" by a court in construing the Constitution, but would not bind courts.¹⁸ The Attorney General

¹⁴ TEX. CONST. art. XVI, § 50(u); *see also* TEX. FIN. CODE §§ 11.308, 15.413.

¹⁵ *Nootsie, Ltd. v. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex. 1996).

¹⁶ *See* Op. Tex. Att'y Gen. No. DM-495, p.1 (1998).

¹⁷ *Id.* at p. 2.

¹⁸ *Id.* at p. 3.

further opined that "[i]n theory, the state constitution could be amended to give a state agency definitive interpretive powers over constitutional provisions, subject to the requirements of the federal Constitution."¹⁹ After the Attorney General's opinion was published, the voters added Section 50(u) to the Constitution.

ACORN attempts to trivialize the Commissions' authority by arguing that the Commissions' "were given one job" under the Constitution. The addition of Section 50(u), however, represents a profound departure from typical agency delegations and ACORN can point to no other department or agency expressly authorized to perform that "one job." This constitutional grant of authority is unprecedented, and there is no jurisprudential basis to declare the power narrow.²⁰ Having said this, the Court need not plumb such depths of the limits of the Commissions' constitutional power as the more familiar ground of constitutional interpretation can answer all questions in Appellants' favor.

ARGUMENT

A. The Constitution broadly exempts "any interest" from being included in the cap on fees, and the Commissions applied the definition that has applied to virtually every consumer lending transaction in the State of Texas for more than one hundred years (Issue 1 – Fee cap).

1. ACORN provides examples of interest rather than a workable definition.

The Commissions interpreted "interest" to mean compensation for the use, forbearance, or detention of money. ACORN challenges this interpretation, arguing that

¹⁹ *Id.* at pp. 5-6.

²⁰ *Id.* at p. 2.

"interest" can only mean the interest specified in the promissory note.²¹ But ACORN undercuts its argument by adding an exception to this rule for *per diem* interest, which is not specified in the note, but which ACORN concedes is "interest" nonetheless.²² In truth then, ACORN's definition of interest is not a definition at all, but simply two specific examples of interest. What ACORN's two examples have in common, however, is that interest specified in the note and *per diem* interest are both examples of compensation for the use, forbearance, or detention of money. Notably, under ACORN's definition, pre-paid points—points calculated as a percentage of the loan amount and charged up-front to obtain a lower interest rate—would not be interest because pre-paid points are neither interest specified in the note nor *per diem* interest. Nonetheless, points are indisputably compensation for the use, forbearance, or detention of money and Texas courts have declared points to be interest.²³ If adopted, ACORN's definition of "interest" would create a new category of "interest" for home equity loan transactions, distinguishing home equity loans from virtually every other type of consumer credit transaction.

2. The Constitution carves out "any interest" from the fee cap and ACORN's "definition" ignores the presumption that the Legislature acts with knowledge of existing law.

ACORN's definition ignores the presumption that the Legislature acts with knowledge of existing law. Section 50(a)(6)(E) uses the term "*any interest*" without

²¹ Response, p.14.

²² *Id.*

²³ See *Southwestern Invest. Co. v. Hockley County Seed and Delinting, Inc.*, 516 S.W.2d 136, 137 (Tex. 1974); *Tarver v. Sebring Capital Corp.*, 69 S.W.3d 708, 713 (Tex. App.—Waco 2002, no pet.).

limiting interest to interest described in the note or *per diem* interest.²⁴ For over one hundred years, the Texas Supreme Court has defined interest as compensation for the use, forbearance, or detention of money.²⁵ In interpreting the term "interest," the Commissions simply used the well-established definition of interest that has governed lending transactions in Texas since the nineteenth century. Given the fact that the Legislature and the courts defined interest as the compensation for the use, forbearance, or detention of money long before the home equity loan amendments to the Constitution were drafted, it cannot be unreasonable for the Commissions to give the term "interest" in the Constitution the same meaning as the definition of interest used by the Legislature in the Finance Code and as used by the courts.²⁶

Moreover, the term "interest" in Section 50(a)(6)(E) is not limited to any particular type of interest, but applies to "any" interest. Therefore, "interest" necessarily refers to *any and all* interest. Any other construction requires the addition of limiting words that are not found in Section 50(a)(6)(E) and contradicts the plain language of the Constitution. Unlike the limited examples ACORN provides, the Commissions' interpretation provides useful interpretive guidance that is consistent with the Constitution and the interpretation should be upheld.

²⁴ TEX. CONST. art. XVI, § 50(a)(6)(E) (emphasis added).

²⁵ *Galveston & Houston Invest. Co. v. Grymes*, 63 S.W. 860, 861 (Tex. 1901); *Carl J. Battaglia, M.D., P.A. v. Alexander*, 177 S.W.3d 893, 907 (Tex. 2005).

²⁶ *McBride v. Clayton*, 140 Tex. 71, 166 S.W.2d 125, 128 (1942) (holding that the Legislature is presumed to act with full knowledge of the existing condition of the law and with reference to it).

ACORN also simplistically declares that under the Commissions' interpretation, any compensation paid to the lender for making the loan is considered interest and excluded from the fee cap, insinuating that the exception swallows the rule.²⁷ This is not the case, however. Texas courts have held that certain lender-retained charges in various lending transactions are not interest.²⁸

Without providing a useful definition of interest, ACORN points to the itemized disclosure provision found at Section 50(a)(6)(M)(ii), arguing that the disclosure provision lists points and interest separately, so points must be something other than interest.²⁹ But ACORN fails to acknowledge that the provision also lists fees separately, requiring "disclosure of the actual *fees, points*, interest, costs, and charges that will be charged at closing."³⁰ Thus, the provision also supports an argument that points—which have been found to be interest under Texas law³¹—are also not fees. The fact remains that Section 50(a)(6)(M)(ii) simply lists every item that must be disclosed on the HUD-1 Settlement Statement form and offers no interpretive guidance.

²⁷ Response, p. 13.

²⁸ The following are a few examples of charges in various lending transactions that courts have held are not interest: attorneys' fees, *Texas Commerce Bank v. Goldring*, 665 S.W.2d 103, 104 (Tex. 1984); recording fees, *Harrell v. Colonial Fin. Corp.*, 341 S.W.2d 545, 547-48 (Tex. App.—San Antonio 1960, writ ref. n.r.e.); inspection fees, *Harrell*, 341 S.W.2d at 547-48; commitment fees, *Gonzales County Savings & Loan Assoc. v. Freeman* 534 S.W.2d 903, 908 (Tex. 1976); and casualty insurance on loan collateral, *Sunwest Bank of El Paso v. Gutierrez*, 819 S.W.2d 673, 675 (Tex. App.—El Paso 1991, writ denied).

²⁹ Response, pp. 17-18.

³⁰ TEX. CONST. art. XVI, § 50(a)(6)(M)(ii) (emphasis added).

³¹ See *Southwestern Invest.* 516 S.W.2d at 137; *Tarver*, 69 S.W.3d at 713.

B. The Constitution does not limit applications to only written applications (Issue 2 – Oral applications).

Under Section 50(a)(6)(M)(i) of the Constitution, a home equity loan may not close before the twelfth day after the later of: (1) the date "an application" is submitted to the lender; or (2) the date the lender provides the notice in Section 50(g).³² The Constitution refers to "an application" but does not require that the application be in any particular format. The Commissions interpreted "application" to mean an oral or electronic application.

ACORN argues that because the notice provision in Section 50(g) refers to a "written application," Section 50(a)(6)(M)(i)'s reference to "an application" should be construed to require a written application. But this argument ignores the fact that the Texas Supreme Court, in *Stringer v. Cendant Mortgage Corp.*,³³ held that the notice provisions in Section 50(g) confer no rights or obligations on borrowers or lenders and are not controlling. In so holding, the Court noted that the substantive rights and obligations are provided by the provisions found in Section 50(a)(6) and the loan documents themselves.³⁴

Although *Stringer* is hardly susceptible to misinterpretation, ACORN nonetheless attempts to distinguish *Stringer* by arguing that *Stringer* should only apply to cases where there are two conflicting provisions.³⁵ What ACORN ignores, however, is the fact that,

³² TEX. CONST. art. XVI, § 50(a)(6)(M)(i).

³³ 23 S.W.3d 353, 357 (Tex. 2000).

³⁴ *Id.* at 357.

³⁵ Response, p. 32.

post-*Stringer*, Section 50(g) was amended to provide: "YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE." This clear incorporation of the holding in *Stringer* was not preceded by an "in the event of a conflict" clause or any other qualifying language as now argued by ACORN. Accordingly, the Section 50(g) notice confers no rights or obligations on borrowers or lenders.³⁶ Certainly then, the Constitution establishes no requirement that an application be submitted in writing.

Section 50(a)(6)(M)(i) refers only to the submission of "an application," therefore an interpretation that identifies types of applications—including oral applications—that may be submitted for purposes of the twelve-day rule is consistent with Section 50(a)(6)(M)(i). Because the trial court invalidated the Commissions' interpretation, the trial court erred.

C. The home equity line of credit advance methods identified by the Commissions are permissible under the Constitution (Issue 3 – HELOC advances).

Under Section 50(t)(3), a borrower may take out a home equity line of credit ("HELOC"), which is an open-end account that may be debited in amounts in excess of \$4,000. Section 50(t)(3) does not state the permissible methods for advances to be made, but expressly prohibits the use of "a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance." Although HELOCs are permitted under the

³⁶ ACORN also cites Section 50(g) in response to TBA's Issue 1 (fee cap) and Issue 3 (HELOC advances). *Stringer* and the subsequent constitutional amendment confirm that 50(g) provides no substantive rights. This rule applies with equal force to ACORN's arguments pertaining to the fee cap and HELOC interpretations.

Constitution, ACORN presents a number of arguments that, if accepted, would effectively end the use of HELOCs by eliminating advances. For instance, ACORN points out that the statutory definition of "credit card" includes "a card, confirmation, or identification or check or other written request by which a customer obtains access to a revolving credit account."³⁷ Thus, using ACORN's proposed definition, the Constitution purportedly bans HELOC advances through a card, confirmation, identification, check, *or other written request or through any similar device*. If this is the case, there are no permissible HELOC advance methods—a conclusion that completely thwarts the will of the voters who approved the constitutional amendment allowing HELOCs because a borrower must have some method to obtain an advance for a HELOC to operate as intended.

ACORN's true concern appears to be that, in its opinion, HELOCs threaten to "frivolously" put homes at risk.³⁸ But the voters did not approve an amendment requiring homeowners to justify purchases made with home equity loan proceeds. And the Constitution protects HELOC consumers: HELOCs are subject to the same requirements as traditional home equity loans—including waiting periods, the opportunity to rescind, and required notices lenders must provide—and any advance must be in an amount greater than \$4,000.³⁹

³⁷ Response, p. 42.

³⁸ Response, p. 43.

³⁹ TEX. CONST. art. XVI, § 50(t)(2).

While Section 50(t)(3) prohibits the use of a credit card, a debit card, preprinted solicitation check or any similar device to obtain an advance, it does not expressly prohibit, among others, prearranged drafts, convenience checks, or written transfer instructions.⁴⁰ ACORN complains that the Commissions do not "actually interpret" Section 50(t)(3) because they do not define prohibited devices and explain why they are similar to credit cards, debit cards and preprinted solicitation checks or distinguishable from non-prohibited devices.⁴¹ But defining every word and term used in the Constitution or an interpretation is not the constitutional mandate of the Commissions and ACORN can cite no case where courts have found a statute to be void simply because the Legislature failed to define every term.

To the contrary, a statute is unconstitutionally vague if it does not give fair notice of what conduct may be punished and invites arbitrary and discriminatory enforcement by its lack of guidance for those charged with its enforcement.⁴² A statute is not unconstitutionally vague simply because the statute does not define all words or terms used.⁴³ If words or terms are not defined, they are to be given their plain meaning and read in the context in which they are used.⁴⁴ Take, for instance, ACORN's complaint that the Commissions did not define the term "credit card." Presumably, a bank could refer to a credit card as the "XYZ Super Card" and reduce the size of the card to fit on a keychain

⁴⁰ *See id.*

⁴¹ Response, p. 38.

⁴² *Rooms With a View, Inc. v. National Mortgage Ass'n*, 7 S.W.3d 840, 845 (Tex. App.—Austin 1999, no pet).

⁴³ *See id.*

and the card would still be a credit card or, at a minimum, a device similar to a credit card under the Constitution. The Commissions may rely on the plain meaning and context of the language of the Constitution and are not required to issue an interpretation which provides that a device is similar to a credit card if it is a two by three-inch rectangle, identifies the borrower on its face, and contains a magnetic strip with account information on the back. Rather, the Commissions' interpretations need only "give a person of ordinary intelligence fair notice that his or her contemplated conduct is forbidden."⁴⁵ And, where a statute challenged for vagueness "can be construed in two different ways, one of which sustains its validity, [courts] must apply the interpretation that sustains its validity"—the burden being on the challenger to prove the statute is unconstitutional.⁴⁶

The Commissions interpreted "preprinted solicitation check" to mean a check provided to an owner for the purpose of originating a HELOC or to a borrower for the purpose of soliciting additional advances on an existing HELOC, containing at least one preprinted key payment term, that is not requested by the borrower or owner. The Commissions then identified "convenience checks" as a permissible method of obtaining a HELOC advance. While the Commissions did not define the term "convenience check," one must necessarily conclude that a convenience check is a check that is not a preprinted solicitation check, which is otherwise expressly prohibited.⁴⁷ Thus, the

⁴⁴ *Griffin Indus. v. State*, 171 S.W.3d 414, 418 (Tex. App.—Corpus Christi 2005, no pet.).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Smith v. Baldwin*, 611 S.W.2d 611, 616 (Tex. 1980) (holding that where a term is employed in one section of a statute and excluded in another, the term should not be implied where excluded).

Commissions' interpretation provides fair notice of what conduct is prohibited by the Constitution by interpreting the Constitution and by providing a specific example of an acceptable HELOC advance method. Accordingly, the Commissions have provided the type of guidance called for under their constitutional grant of interpretive authority and the interpretation found at 7 TEX. ADMIN. CODE § 153.84(1) is not unconstitutionally vague.

D. The Commissions properly interpreted "related to" to mean "signed at closing in connection with the home equity loan" (Issue 4 – Document copies).

Under Section 50(a)(6)(Q)(v), a lender must, "at the time the extension of credit is made, provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit." Unlike the broad language found in constitutional provisions pertaining to the fee cap ("any interest") and the 12-day waiting period ("an application"), the requirement that a lender provide "all documents signed by the owner" is expressly limited to documents "related to the extension of credit." The Commissions interpreted Section 50(a)(6)(Q)(v) to mean documents "signed at closing in connection with the equity loan."⁴⁸

This interpretation is consistent with the Constitution because it requires lenders to provide copies of all documents signed at closing in connection with the equity loan—which are the documents that contain the rights and obligations of the parties to the loan transaction and, therefore, are documents related to the extension of credit.⁴⁹ Without the

⁴⁸ 7 TEX. ADMIN. CODE § 153.22.

⁴⁹ In support of its challenge to the oral application interpretation, ACORN argued that the term "application," used in Section 50(a)(6)(M)(i), meant a written application because the prescribed notice

guidance this interpretation provides, a lender would have to guess, for example, as to whether a driver's license displaying the driver's signature that a lender photocopies to confirm the identity of the borrower is somehow "related to the extension of credit." This interpretation construes the Constitution in a manner that both provides guidance for lenders and ensures that borrowers receive meaningful information about their loans. Accordingly, the trial court erred in invalidating the Commissions' interpretation

CONCLUSION

ACORN concludes its response by claiming that Appellants imply that a quote⁵⁰ from a House Research Organization ("HRO") report is HRO analysis.⁵¹ The quote is simply one of many statements—including the selected comments by legislators that ACORN cites in its Response—used to demonstrate the discussion before the Legislature when the Legislature voted to put the proposed home equity amendment before the voters. While the legislative history does not make clear the extent to which the Legislature heeded the statements of any particular legislator or report, one thing is clear—we need look no further than the Constitution to see the language that the

in Section 50(g) refers to a "written application." Although *Stringer* and the subsequent constitutional amendment to Section 50(g) confirm that Section 50(g) confers no substantive rights, if 50(g) does confer substantive rights, 50(g) would support the Commissions' interpretation that the documents signed at closing in connection with the equity loan are the "documents signed by the owner related to the extension of credit" because the notice in Section 50(g) states "LOANS DESCRIBED BY SECTION 50(a)(6) . . . MUST . . . PROVIDE THAT YOU RECEIVE A COPY *OF ALL DOCUMENTS YOU SIGN AT CLOSING.*" (emphasis added).

⁵⁰ "Home equity lenders in Texas often are uncertain about whether a particular action would violate the Constitution and require them to forfeit the principal on a loan SJR 42 would solve the problem by giving the Finance and Credit Union Commissions the responsibility of clarifying home equity law Another reason for giving interpretive authority to a state agency, as proposed by SJR 42, is to allow the more minor details to be established outside of the Constitution without making that document more unwieldy than necessary." Bill Analysis, HOUSE RESEARCH ORGANIZATION, 4 (May 23, 2003) SJR 42.

Legislature ultimately approved. This language was evaluated by the voters, who approved home equity lending in 1997 and have since *expanded* home equity lending.

Texas Bankers Association's intervention in this case confirms the fact that home equity lenders remain concerned about whether a particular action would violate the Constitution and that lenders rely heavily on the Commissions' interpretations for guidance. The interpretations at issue are consistent with the Constitution and clarify Texas home equity law for both lenders and borrowers. Accordingly, the trial court erred in invalidating the interpretations and this Court should reverse the judgment of the trial court.

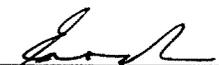
PRAYER

Appellant Texas Bankers Association requests that the Court reverse the judgment of the trial court and render judgment for the Finance Commission of Texas, the Credit Union Commission of Texas, and Texas Bankers Association. Texas Bankers Association further prays for all other relief to which it may be entitled.

⁵¹ Response, p. 62.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been sent by First Class US

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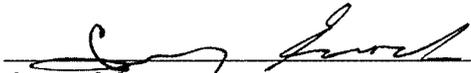
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