No. 11-889

In The Supreme Court of the United States

TARRANT REGIONAL WATER DISTRICT,
A TEXAS STATE AGENCY,

Petitioner,

v.

RUDOLF JOHN HERRMANN, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF OF *AMICI CURIAE* CITY OF IRVING, TEXAS, CITY OF HUGO, OKLAHOMA, AND HUGO MUNICIPAL AUTHORITY IN SUPPORT OF PETITIONER

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MOTION OF HUGO MUNICIPAL AUTHORITY FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Pursuant to Rule 37.2(b), the Hugo Municipal Authority ("HMA") respectfully moves for leave to file the attached brief as *amicus curiae*, jointly with the City of Irving, Texas and the City of Hugo, Oklahoma (collectively with HMA, "Hugo"). Petitioner has consented to Irving and Hugo's filing of this brief, and their written consent has been filed with the Clerk of the Court. Notwithstanding the timely notice provided to all counsel of record pursuant to Rule 37.2(a), counsel for respondents made no response giving their written consent to this filing. HMA therefore moves for leave to file this brief in support of Petitioner.

The nature of HMA's interest in the Court's consideration of this Petition is intertwined with the interests of the City of Irving and the City of Hugo, set forth more fully in the attached Brief of *Amici Curiae*.

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BRIEF OF *AMICI CURIAE* CITY OF IRVING, TEXAS, CITY OF HUGO, OKLAHOMA, AND HUGO MUNICIPAL AUTHORITY IN SUPPORT OF PETITIONER

INTEREST OF *AMICI CURIAE*[1]

The Tenth Circuit's decision, construing the Red River Compact to authorize facially discriminatory state legislation obstructing interstate commerce in water (an increasingly scarce, valuable and essential natural resource), should be reviewed by this Court. It is contrary to the standard announced in this Court's landmark opinion in *Sporhase v. Nebraska*, establishing that water is an article of interstate commerce subject to the dormant Commerce Clause.[2] If not reviewed, the precedent of the Tenth Circuit's decision could provide a basis for comparable

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[1] Pursuant to Rules 37.4 and 37.6, the disclosure requirement does not apply to the City of Irving, the City of Hugo, or the Hugo Municipal Authority, as an Oklahoma public water trust formed for the benefit of the City of Hugo. Nonetheless, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. Pursuant to Rule 37.2(a), counsel of record for all parties received notice at least 10 days prior to the due date of the intention of *amici* to file this brief. Petitioner has consented to Irving and Hugo's filing, and their written consent has been filed with the Clerk of the Court. Counsel for respondents have made no response to that notice.

[2] 458 U.S. 941, 954 (1982) ("Our conclusion that water is an article of commerce raises, but does not answer, the question whether the Nebraska statute is unconstitutional.").

restraints on interstate commerce in water throughout the western United States because most interstate water apportionment compacts among the Western States contain language comparable to the Red River Compact provisions that served as the basis for the Tenth Circuit's authorization of discriminatory legislation.

The interests of the City of Hugo, Oklahoma and the Hugo Municipal Authority (collectively "Hugo") and the City of Irving, Texas ("Irving") underscore the seriousness of Oklahoma's discriminatory legislation and the Tenth Circuit decision regarding the dormant Commerce Clause. Irving, a growing Texas municipality with projected water needs that far exceed current supplies, entered into a contract, the Irving-Hugo Agreement, to purchase water from Hugo to meet those needs. Hugo currently holds water rights from the State of Oklahoma for 30,500 acre-feet per year and has a pending application to appropriate significant additional supplies.

Irving and Hugo's exercise of their respective rights and obligations under the Irving-Hugo Agreement is restricted, if not outright prohibited, by the same Oklahoma statutes that are being challenged by Petitioner. Irving and Hugo brought their own suit for declaratory judgment and injunctive relief,

challenging these Oklahoma statutes under the dormant Commerce Clause.[3]

The water that is the subject of the Irving-Hugo Agreement is part of Reach II, Subbasin 1 of the Red River Basin, the waters of this Subbasin 1 being apportioned to the State of Oklahoma under the Red River Compact. See Red River Compact, Pub. L. No. 96-564, 94 Stat. 3305 (1980), § 5.01. Thus, the Tenth Circuit's holding, in Petitioner's case, that "the Red River Compact insulates Oklahoma water statutes from dormant Commerce Clause challenge insofar as they apply to surface water subject to the Compact" also forecloses Irving and Hugo's ability to obtain judicial relief under the Commerce Clause and thus to proceed with their interstate water project involving Compact water. See App. at 51a.[4]

Irving and Hugo are local governments who have the authority and bear the responsibility to manage water resources and provide long-term water supply in their respective jurisdictions. As Petitioner has detailed, Oklahoma enjoys an abundance of water

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[3] In that case, Irving and Hugo have recently petitioned this Court for a writ of certiorari for review of the Tenth Circuit's order remanding the case for dismissal for lack of federal jurisdiction, based on its conclusion that Hugo lacks standing as an Oklahoma political subdivision to challenge the Oklahoma statutes under the Commerce Clause of the U.S. Constitution. See *City of Hugo v. Buchanan*, Docket No. 11-852.

[4] All citations in this brief to the Appendix ("App.") are to materials contained in the Appendix made part of Tarrant's Petition for a Writ of Certiorari in Docket No. 11-889.

supply far in excess of the needs in that state, and the north Texas region that includes Irving's service area is a rapidly growing metropolitan area, in which cities and other water providers must seek additional sources to meet future water demands. Pet. at 3-4. Hugo is an Oklahoma appropriator of Oklahoma water, who wishes to sell and deliver some of its appropriated water, in excess of regional needs in Oklahoma, to Irving, a Texas purchaser. This is the simple and classic exercise of interstate commerce, through which the compensation paid to Hugo will substantially benefit the regional economy. Under the Tenth Circuit's analysis of the Red River Compact, however, Oklahoma's anti-export statutes will render unfeasible the Irving-Hugo Agreement particularly, and more generally will effectively preclude this needed interstate water market between willing Oklahoma water sellers and willing Texas water buyers.

As an Oklahoma water right holder of Compact water, and as parties to an interstate water sale and purchase agreement hampered by the Tenth Circuit's broad reading of congressional consent to Oklahoma's protectionist legislation, Irving and Hugo's unique perspective on this lawsuit will assist the Court in its disposition of the petition. Irving and Hugo have a direct interest in the Court's resolution of the merits of the Compact consent question presented in this case, and present relevant arguments not advanced by Petitioner that would support reversal of the Tenth Circuit decision on this issue. This brief is filed

in order to provide additional context for the far-reaching implications of the Tenth Circuit's decision.

SUMMARY OF ARGUMENT

Irving and Hugo address the first of the two questions presented by Petitioner Tarrant Regional Water District ("Tarrant"), namely whether Congress's approval of the Red River Compact ("Compact"), utilizing language common to most such interstate water compacts, "manifests unmistakably clear congressional consent to state laws that expressly burden interstate commerce in water." See Pet. at i, 14-27. This Compact consent issue is the merits issue common to both this case and Irving and Hugo's case. Because the Tenth Circuit's holding contravenes this Court's established precedent (i) requiring "expressly stated" or "unmistakably clear" congressional consent to state statutes that otherwise would violate the dormant Commerce Clause, and (ii) finding that consent lacking in equitable apportionment language of interstate water compacts, this issue requires this Court's review. Moreover, the Compact consent issue presents a substantially important legal question with implications not only for the Red River Compact and its four signatory states, but well beyond that to the dozens of interstate compacts that apportion stream water throughout the western United States using similar terms.

Although not addressed herein, *amici* Irving and Hugo also support Petitioner's legal position on its second, preemption question presented.

ARGUMENT

I. The Tenth Circuit's Analysis Of The Red River Compact Ignores This Court's Prior Analysis Regarding Water Apportionment Compacts And The Dormant Commerce Clause.

A. The *Sporhase* Court Expressly Considered And Rejected Compact Apportionment Of Interstate Water Resources As "Persuasive Evidence That Congress Consented To The Unilateral Imposition Of Unreasonable Burdens On Commerce."

The Tenth Circuit correctly recognized this Court's "*Sporhase/Wunnicke* standard for congressional consent," under which Congress's intent to immunize state statutes from dormant Commerce Clause requirements must be "expressly stated" or otherwise "unmistakably clear." App. at 19a-20a; *Sporhase v. Nebraska*, 458 U.S. 941, 960 (1982); *South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 91-92 (1984). Having recited that standard, however, the Tenth Circuit dispenses with this Court's dormant Commerce Clause precedent from *Sporhase* simply by distinguishing it from this case, because *Sporhase* involved Nebraska's attempt to

regulate interstate transfer of groundwater that was not subject to an interstate compact. App. at 23a; see also *id*. at 27a.

The problem with the Tenth Circuit's shelving of *Sporhase* in its consent analysis of the language of the Red River Compact is that it thereby ignores this Court's consideration in *Sporhase* of whether equitable apportionment by an interstate water compact satisfies the congressional consent standard. The *Sporhase* Court considered and expressly rejected arguments made by Nebraska and Amici Curiae States[5] that various federal water legislation and interstate water allocation compacts reflect congressional authorization of state-adopted restrictions on interstate commerce involving water. *Sporhase*, 458 U.S. at 958. Nebraska had argued:

> Congress clearly exempted water resources from application of the Commerce Clause of the Constitution . . . by the specific approval of water appropriation compacts between states on the nation's rivers and waterways.[6]

The Amici Curiae States in their brief even more clearly, and expansively, urged:

> The amici states have enacted laws limiting or prohibiting the export of water for use

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[5] Colorado, Wyoming, Utah, Nevada, Kansas, North Dakota, South Dakota, and Missouri.

[6] Brief of Appellee at *27, *Sporhase v. Nebraska*, 458 U.S. 941 (1982), *available at* 1982 WL 608566.

> outside the boundaries of the state. These statutes are consistent with equitable apportionment decrees of this court and are necessary to implement the interstate compacts consented to by Congress. Implicit in all compacts apportioning interstate waters, and explicit in some, is the assumption that each state may prohibit the diversion of apportioned waters for use outside its boundaries.[7]

The Court could have ruled that such federal law authorities were not applicable to the (non-compact) groundwater at issue (as did the lower courts in this case), but instead it directly addressed the merits of Nebraska's argument – ruling that the proposition was incorrect and that state laws addressing water apportioned by compact are still generally subject to the constitutional restrictions of the Commerce Clause. The *Sporhase* Court explicitly considered whether interstate water compacts (or other federal water legislation) implicitly waive Commerce Clause restrictions, and ruled as follows:

> Although the 37 statutes and the interstate compacts demonstrate Congress' deference to state water law, they do not indicate that Congress wished to remove federal constitutional constraints on such state laws. The negative implications of the Commerce Clause, like the mandates of the Fourteenth

[7] Brief of Amici Curiae States at *7, *Sporhase v. Nebraska*, 458 U.S. 941 (1982), *available at* 1982 WL 608568.

> Amendment, are ingredients of the *valid* state law to which Congress has deferred. Neither the fact that Congress has chosen not to create a federal water law to govern water rights involved in federal projects, nor the fact that Congress has been willing to let the States settle their differences over water rights through mutual agreement, constitutes persuasive evidence that Congress consented to the unilateral imposition of unreasonable burdens on commerce.

Sporhase, 458 U.S. at 959-960 (footnotes omitted, emphasis in original).

By this conclusion, the Court intentionally announced a rule that the equitable apportionment of water accomplished by interstate compacts does not waive otherwise applicable Commerce Clause restrictions. See Douglas L. Grant, *State Regulation of Interstate Water Export*, 3 WATERS AND WATER RIGHTS at 48-38 (Robert E. Beck and Amy L. Kelley, eds., 3d ed. LexisNexis/Matthew Bender 2009) ("In other words, Congress' mere consent to the water compacts was not an unmistakably clear expression of intent to authorize unreasonable state burdens on commerce.").[8] The logic of the *Sporhase* Court's treatment

[8] See also Olen Paul Matthews & Michael Pease, *The Commerce Clause, Interstate Compacts, And Marketing Water Across State Boundaries*, 46 Nat. Resources J. 601, 635 (2006); Chris Seldin, *Interstate Marketing of Indian Water Rights: The Impact of the Commerce Clause*, 87 Cal. L. Rev. 1545, 1555 (1999).

of compact apportionment is undeniable: Equating congressional consent to the apportionment of water with consent to violate dormant Commerce Clause requirements would mean that interstate surface water apportioned by a compact is not subject to the dormant Commerce Clause, while intrastate surface water and underground water remain subject to dormant Commerce Clause restrictions.

This understanding of the *Sporhase* rule is also supported by western states' legislative responses following the Court's decision. Prior to *Sporhase*, fourteen western states limited or prohibited the export of water.[9] Following *Sporhase*, two of those embargo statutes were repealed,[10] one was struck down by a federal district court,[11] and nine states amended or adopted legislation designed at least in part to qualify under the *Sporhase* standards for permissible constraints on interstate commerce in water.[12] Like those states whose pre-*Sporhase* export statutes were repealed or stricken, so also these nine

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[9] See generally Richard S. Harnsberger, Josephine R. Potuto & Norman W. Thorson, *Interstate Transfers of Water: State Options after* Sporhase, 70 Neb. L. Rev. 754, 817 and Appendix (1991).

[10] COLO. REV. STAT. § 37-81-101 (1973) (repealed 1983); WYO. STAT. § 41-3-105 (1977) (repealed 1983).

[11] N.M. STAT. ANN. § 72-12-19 (1978) (repealed 1983); see *City of El Paso v. Reynolds*, 563 F. Supp. 379 (D.N.M. 1983).

[12] See Harnsberger et al., *supra note* 9*,* Appendix. Whether such legislation actually satisfies *Sporhase* standards is undetermined.

states (Arizona, Idaho, Kansas, Montana, Nebraska, Nevada, Oregon, South Dakota and Utah) are all "compact states." This state-level response to this Court's *Sporhase* analysis reflects a clear and shared understanding that the dormant Commerce Clause still limits a state's ability to embargo export of its water resources, even where the state is party to one or more interstate water compacts.

Because the Tenth Circuit's decision contravenes the precedent established by *Sporhase*, this Court's review is warranted. As discussed further below, the various provisions of the Red River Compact on which the Tenth Circuit relied to find "broad regulatory authority," see App. at 25a, 27a, for the "Compact states to protect their apportionments of water," App. at 3a, see also App. at 27a, are typical of the terms of many other interstate water compacts involving vast amounts of water resources throughout the western United States. This case therefore presents an appropriate vehicle by which this Court may determine whether to affirm, or to modify, its conclusion in *Sporhase* that equitable apportionment alone does not manifest congressional intent to insulate a state's discriminatory water statutes from Commerce Clause scrutiny.

B. Under The *Sporhase* Analysis Of Compact Consent, The Red River Compact Provisions On Which The Tenth Circuit Relied Do Not Supply "Unmistakably Clear" Evidence Of Congressional Consent.

This Court's review of the Tenth Circuit's Compact consent analysis is substantially important because that analysis of the language of the Red River Compact does not follow the rule set out in *Sporhase*. The various terms, provisions, and phrases in the Red River Compact on which the Tenth Circuit relied are common provisions found in nearly all of the many interstate water compacts among the western states, and are not properly read to immunize the signatory states from dormant Commerce Clause protections. As this Court noted in *Sporhase*, such interstate compacts are "agreements among States regarding rights to surface water." *Sporhase*, 458 U.S. at 959. In this context, general provisions regarding a compact purpose of apportionment of the water resources of a particular basin are certainly not remarkable. Indeed, a comparative review of certain key provisions of the 21 western interstate water compacts demonstrates that all of these compacts have the nature or purpose of apportionment.[13]

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[13] Irving and Hugo had compiled such a comparative review of the terms and provisions of these western interstate compacts, which was made part of the record in their appeal before the Tenth Circuit. Cf. *City of Hugo v. Nichols*, 656 F.3d 1251 (2011)

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As Petitioner has set out, the "non-interference" provision of the Red River Compact is also common language found in other interstate water apportionment compacts. See Red River Compact, § 2.10, App. at 87a; Pet. at 18, 25 & n. 12. Such general provisions reflect Congress's general deference to state water law, stated in numerous federal statutes including compact ratifications, which this Court acknowledged but found insufficient to immunize water compact states from dormant Commerce Clause prohibitions. See *Sporhase*, 458 U.S. at 959-960. Nearly all of the other western states' water compacts also contain this type of provision.[14]

(consolidated Case Nos. 10-7043 and 10-7044). Accompanying the filing of this brief, pursuant to Rule 32.3 *amici* are submitting a letter to the Clerk of the Court describing the material comprising this comparative review and proposing that it be lodged for the Court's consideration of this Petition.

[14] See Arkansas River Basin Compact, 87 Stat. 569 (1973), art. XI(B); Arkansas River Basin Compact, 80 Stat. 1409 (1966), art. XIII(B); Arkansas River Compact, 63 Stat. 145 (1949), art. VI(A); Big Blue River Compact, 86 Stat. 193 (1972), § 7.2(3); Canadian River Compact, 66 Stat. 74 (1952), art. X(d); Colorado River Compact, 45 Stat. 1057, 1064 (1928), art. IV(c); Pecos River Compact, 63 Stat. 159 (1949), art. VIII; Republican River Compact, 57 Stat. 86 (1943), art. IV; Sabine River Compact, 68 Stat. 690 (1954), *as amended by* 76 Stat. 34 (1962), art. II; Snake River Compact, 64 Stat. 29 (1950), art. IX; Yellowstone River Compact, 65 Stat. 663 (1951), art. XVIII. In the cases of water apportionment compacts that (i) include provisions for basin-wide treatment of certain issues, across state lines, or (ii) do not establish a compact commission, and thus do not require a clarification of state vs. compact commission authority, such a "non-interference" provision would not be expected, and is not

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Even the Tenth Circuit's emphasis on the "free and unrestricted use" phrasing, in the Red River Compact provisions that allocate water resources for specific "reaches" and "subbasins" among the signatory states, does not satisfy this Court's standard for unmistakably clear congressional consent. App. at 26a; see App. at 87a § 4.02 (Reach I, Subbasin 2, water the subject of two of Petitioner's permit applications to OWRB); see also Red River Compact, § 5.01 (Reach II, Subbasin 1, water the subject of Hugo's permit applications pending with OWRB). Again, this is common water apportionment compact language – 11 of 18 western states' compacts recognize the right of "free and unrestricted" use (or comparable authorization) of water allocated to a state by the compact.[15]

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found. See Costilla Creek Compact, 77 Stat. 350 (1963), *amending* 60 Stat. 246 (1946); Klamath River Basin Compact, 71 Stat. 497 (1957); Upper Colorado River Basin Compact, 63 Stat. 31 (1949) (basin-wide treatment); and South Platte River Compact, 44 Stat. 195 (1926); La Plata River Compact, 43 Stat. 796 (1925) (no compact commission).

[15] See Arkansas River Basin Compact, 87 Stat. 569 (1973), art. IV; Arkansas River Basin Compact, 80 Stat. 1409 (1966), art. V; Bear River Compact, 94 Stat. 4 (1980), *amending* 72 Stat. 38 (1958), art. V(A); Big Blue River Compact, 86 Stat. 193 (1972), § 5.2; Canadian River Compact, 66 Stat. 74 (1952), art. IV(a); Colorado River Compact, 45 Stat. 1057, 1064 (1928), art. III(a); La Plata River Compact, 43 Stat. 796 (1925), art. II(1), (2)(a); Sabine River Compact, 68 Stat. 690 (1954), *as amended by* 76 Stat. 34 (1962), art. IV; South Platte River Compact, 44 Stat. 195 (1926), art. III; Upper Niobrara River Compact, 83 Stat. 86 (1969), art. V(A)(1). The three compacts that utilize a basin-wide administration approach, discussed above, are excluded from this aspect of the comparative analysis because of their

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The Tenth Circuit incorrectly and overbroadly interprets the phrase "free and unrestricted use" to give a signatory state, in this case Oklahoma, a complete and prospective blank check to discriminate against out-of-state water marketing and use.

Examination of two other compact examples further establishes that this interpretation of "free and unrestricted use" is not legally sound. First, one of the interstate stream compacts (to which Nebraska is a party) offered for this Court's consideration in *Sporhase* also includes such provisions. See South Platte River Compact, 44 Stat. 195 (1926), art. III (apportioning tributary waters of Lodgepole Creek, with Nebraska having "the full and unmolested use and benefit of all waters" above the designated point of diversion, and Colorado having "the exclusive use and benefit" of all waters flowing at or below that point). The *Sporhase* Court, however, concluded that "the interstate compacts . . . do not indicate that Congress wished to remove federal constitutional constraints on such state laws." *Sporhase*, 458 U.S. at 959-960.

Second, among the western states' water apportionment compacts there are several that, in sharp contrast to the Red River Compact's provisions, "specifically require consent from the signatory states or from a compact commission before water can be

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fundamentally different approach, disregarding state boundaries.

exported outside the river basin." Grant, 3 WATERS AND WATER RIGHTS at 48-38 & n. 220.[16] Typical of such express export consent requirements, Section 5.4 of the Kansas-Nebraska Big Blue River Compact provides: "Neither state shall authorize the exportation from the Big Blue river of water originating within that basin without the approval of the [compact agency's] administration." But Section 5.3 of that same compact also provides: "The State of Kansas shall have *free and unrestricted use* of all waters of the Big Blue River Basin flowing into Kansas from Nebraska in accordance with this Compact. . . ." (emphasis added). If "free and unrestricted use" signifies the outright and absolute power of a compact state to regulate its allocated water even to the point of discriminating against water export, as the Tenth Circuit believes, it is difficult to see how such authorization could be harmonized within a compact that requires approval by another entity before the signatory state can authorize water export.

On the contrary, like the many other compact examples including provisions for "free and unrestricted use" by a state of its compact-allocated water, these provisions in the Red River Compact do not carry the legal weight that the Tenth Circuit has afforded them. None of the provisions on which the

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[16] See Kansas-Nebraska Big Blue River Compact, art. V, § 5.4, 86 Stat. 193, 197 (1972); Snake River Compact, art. IV, 64 Stat. 29, 31 (1950); Yellowstone River Compact, art. X, 65 Stat. 663, 669 (1951).

court relied to foreclose dormant Commerce Clause challenges to Oklahoma's anti-export statutes is anything more than the typical compact apportionment language considered and rejected by the *Sporhase* Court. The Tenth Circuit's reading of what it considers to be "broad language of key Compact provisions," App. at 24a, that "give the Oklahoma Legislature wide latitude to regulate interstate commerce in its state's apportioned water," App. 27a, is manifestly based on the court's failure to follow this Court's *Sporhase* analysis of compact provisions. Evaluated with that guidance, nothing in the Red River Compact approaches satisfying this Court's "unmistakably clear" standard for congressional consent.

II. The Common Provisions Of Equitable Apportionment Compacts Also Demonstrate The Far-Reaching Implications Of The Tenth Circuit's Flawed Compact Consent Analysis, And The Need For This Court's Review.

Comparison of specific language in the Red River Compact to the terms and conditions of other interstate water apportionment compacts is not only necessary to determine whether congressional approval of the Compact amounts to "unmistakably clear" authorization of otherwise prohibited restrictions on interstate commerce, it also highlights for this Court the vast legal and economic implications of leaving the Tenth Circuit's Compact consent

holding in place. Most of the major stream water sources in the western United States are subject to interstate equitable apportionment compacts. Comparative consideration of these compacts' terms makes abundantly clear that the Tenth Circuit's interpretation of language in the Red River Compact would equally apply to the terms of numerous other compacts, and thus the laws of numerous other compact states.

Unconstrained by the Commerce Clause, and emboldened by the "wide berth" described by the Tenth Circuit, App. at 28a, it is easy to foresee many more states taking now-sanctioned actions in the interest of gaining various forms of economic advantage by hoarding their water resources for in-state use. Indeed, there would be nothing to prevent Oklahoma and other compact states from reverting to outright embargos against export of their water resources. This is precisely the type of "economic Balkanization" the Commerce Clause intended to prevent. Cf. *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979). This outcome is obviously of paramount concern to cities and other water providers in areas of growing population, water shortage and recurring drought such as north Texas, but it truly begs for this Court's attention on the far larger national scale.

The Tenth Circuit concluded its opinion by stating that its role is "not to pass judgment on the economic policy implications of the Red River Compact . . . [but] to ascertain what the Compact says about state regulation of apportioned water." App. at

51a. Irving and Hugo respectfully submit that, given the flawed Compact consent analysis employed by the Tenth Circuit and the sweeping national importance of its holding, *this* Court's critically important role is either to affirm its existing compact consent analysis set out thirty years ago in *Sporhase*, or somehow to modify or reject that precedent. These challenges to the Oklahoma anti-export statutes, viewed in light of the Red River Compact, provide an appropriate vehicle to decide an issue of tremendous importance to states, local governments, water providers, and indeed all who rely on a vital market in this uniquely vital natural resource.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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