

Kendyl T. Hanks  
National Appeals and Legal Issues  
T: (512) 320-7225  
F: (512) 320-7210  
hanksk@gtlaw.com

October 19, 2023

Blake A. Hawthorne  
Clerk of the Court  
Supreme Court of Texas  
Supreme Court Building  
201 W. 14th Street, Room 104  
Austin, Texas 78701

***Via Electronic Filing***

Re: No. 23-0662, *Raoger Corporation v. Barrie Myers*, in the Supreme Court of Texas

Dear Mr. Hawthorne:

I am writing on behalf of *Amici* Texas Restaurant Association and the Restaurant Law Center as *Amici Curiae* in support of the Petition for Review filed by Raoger Corporation d/b/a Cadot Restaurant (“Cadot”) in this appeal. *Amici* urge that this is an important case that presents the Court with an opportunity to clarify the law concerning the Texas Dram Shop Act, TEX. ALCO. BEV. CODE § 2.02, and the circumstances under which summary judgment disposition is appropriate under the plain statutory language of the Act.

The restaurant and foodservice industry is the country’s second largest private-sector employer—approximately 10% of the workforce here in Texas and across the nation works in the industry. The industry employs 1.4 million Texans in more than 50,000 locations statewide and nearly 16 million Americans who work in over one million restaurants and other foodservice outlets across the country. Established in 1937, *Amici* Texas Restaurant Association is a 501(c)(6) nonprofit that represents and advocates on behalf of Texas’s approximately \$70 billion food-service industry. As of 2020, the restaurant and foodservice industry was the country’s second largest private-sector employer—approximately 10% of the workforce here in Texas and across the nation works in the industry. *Amici* Restaurant Law Center is the only independent public policy organization created specifically to represent the interests of the food-service industry in the courts. Through participation in amicus briefs on behalf of the industry, the Restaurant Law Center provides courts with the industry’s perspective on legal issues significantly impacting its members and highlights the potential impact of pending cases like this one.

The issues raised in Cadot’s Petition for Review present the Court with a rare opportunity to address and clarify the application of plain statutory text in Texas’s Dram

Blake A. Hawthorne  
Clerk of the Court  
Supreme Court of Texas  
October 19, 2023  
Page 2

Shop Act, which states that a commercial vendor is not liable unless the plaintiff proves that “*at the time the provision occurred it was apparent to the provider that the individual being . . . provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others.*” TEX. ALCO. BEV. CODE § 2.02 (emphasis added).

The trial court properly applied this plain statutory text and granted Cadot’s motion for summary judgment because the undisputed evidence in the record confirms there was no indication to Cadot (or to any witness that saw the patron at the establishment) that—at the time alcohol was served—the patron “was obviously intoxicated.” In fact, the only evidence in the record was—even according to the investigating officer—the patron *was not* “obviously intoxicated” either when he was served or after he left the restaurant. Under these circumstances, summary judgment reflected a proper application of the Dram Shop Act’s plain language.

Despite the Dram Shop Act’s plain statutory text, the court of appeals reversed as if the “obviously intoxicated” standard—evaluated at the time alcohol is served—did not exist. The court of appeals attempted to justify this holding by relying on “circumstantial evidence” from *after* “the time the provision occurred” to find a fact question on whether “it was apparent to the provider” that the patron was obviously intoxicated—emphasizing that “Section 2.20 does not require evidence that the provider witnessed the intoxicated behavior.” *Myers v. Raoger Corp.*, No. 05-21-00988-CV, 2023 WL 4346826, at \*4 (Tex. App.—Dallas July 5, 2023, pet. filed).

Petitioner Cadot has ably explained why these issues are important to the broader jurisprudence concerning the scope and interpretation of the Dram Shop Act. *Amici* separately submit this letter in support of granting review—and intend to present a more fulsome Brief of Amici Curiae if afforded the opportunity—to emphasize how and why the rule applied by the court appeals decision has dramatic and unintended consequences for the restaurant industry and its employees. Any rule that permits a claim against a restaurant to overcome summary judgment where there is no evidence a patron was “obviously intoxicated” when he was served ignores the purpose, legislative intent, and plain language of the Dram Shop Act. By citing “circumstantial evidence” of intoxication—such as an accident occurring *after* the patron was served and departed a restaurant—nullifies the Dram Shop Act’s objective temporal requirements that the provider’s liability be established at the time alcohol is served, based on the standard of “obvious intoxication.”

By misapplying the Dram Shop Act’s “obviously intoxicated” standard, the court of appeals’ holding has significant deleterious consequences for the thousands of Texas restaurants and millions of restaurant employees who—with notoriously slim profit margins—face the risk of ruinously expensive and prolonged litigation in dram shop cases that should be resolved at the summary judgment stage. *Amici Curiae* therefore

Blake A. Hawthorne  
Clerk of the Court  
Supreme Court of Texas  
October 19, 2023  
Page 3

respectfully submit that the Court should request further briefing in this appeal and, after fully considering the consequences of the court of appeals' application of the Dram Shop Act, grant Cadot's petition for review.

Respectfully submitted,



Kendyl T. Hanks  
*Counsel for Amicus Curiae Texas  
Restaurant Association and the  
Restaurant Law Center*

KTH:gp

cc: All counsel of record.

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Gina Pegues on behalf of Kendyl Hanks  
Bar No. 24032273  
Peguesg@gtlaw.com  
Envelope ID: 80784941  
Filing Code Description: Amicus Brief  
Filing Description: Letter Brief for Amici Curiae  
Status as of 10/19/2023 4:27 PM CST

Associated Case Party: Raoger Corporation

Name	BarNumber	Email	TimestampSubmitted	Status
Steven Knight		steven.knight@chamberlainlaw.com	10/19/2023 4:21:22 PM	SENT
Amy JoForeman		aj.foreman@chamberlainlaw.com	10/19/2023 4:21:22 PM	SENT

Associated Case Party: Texas Restaurant Association and the Restaurant Law Center

Name	BarNumber	Email	TimestampSubmitted	Status
Kendyl T.Hanks		hanksk@gtlaw.com	10/19/2023 4:21:22 PM	SENT

Associated Case Party: Barrie Myers

Name	BarNumber	Email	TimestampSubmitted	Status
Matthew Kita	24050883	matt@mattkita.com	10/19/2023 4:21:22 PM	SENT