No. 21-2270

In the United States Court of Appeals
for the Eighth Circuit

The School of the Ozarks, Inc.,
Plaintiff-Appellant,
v.
Joseph R. Biden, Jr., in his official capacity as President of the United States, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Missouri
Honorable Roseann A. Ketchmark (6:21-cv-03089-RK)

BRIEF OF *AMICI CURIAE* HANNIBAL-LAGRANGE UNIVERSITY, MISSOURI BAPTIST UNIVERSITY, SOUTHWEST BAPTIST UNIVERSITY, AND THE CHRISTIAN LIFE COMMISSION OF THE MISSOURI BAPTIST CONVENTION SUPPORTING PLAINTIFF-APPELLANT AND REVERSAL

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August 9, 2021

Corporate Disclosure Statement

Pursuant to Fed. R. App. P. 26.1, the *amici* state that they are Missouri nonprofit corporations, which have no shareholders, subsidiaries, owners or affiliates. The Missouri Baptist Convention is a corporate member of each of the corporate *amici*; the Convention is a Missouri benevolent religious corporation that has no shareholders, subsidiaries, owners, affiliates, or parents.

Statement Pursuant to Fed. R. App. P. 29(4)(E) and 29(a)(2)

No party's counsel authored this brief in whole or in part; no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person other than the *amici* and their counsel contributed money that was intended to fund preparing or submitting the brief.

All parties have consented to the filing of this brief.

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Interest of the *Amici Curiae*

Your *amici* are religious universities and organizations associated with the Missouri Baptist Convention. As such, they are deeply concerned about principles of Freedom and Truth: Freedom to seek and to speak the truth, including the most fundamental truth about God and mankind; Freedom to practice and to preach the truth, in the academy and in the public square.

Your *amici* include:

- **The Missouri Baptist Convention, by the Christian Life Commission of the Missouri Baptist Convention,** Jefferson City, Missouri**;**
- **Hannibal-LaGrange University,** in Hannibal, Missouri;
- **Missouri Baptist University**, in St. Louis, Missouri; and
- **Southwest Baptist University,** in Bolivar, Missouri.

The Missouri Baptist Convention (MBC) is the state denomination for Southern Baptist churches in Missouri. The Southern Baptist Convention (SBC) is the nation's largest Protestant denomination, with about 50,000 churches and 16 million members. The MBC is comprised of about 1800 independent local churches, with about a half million members. The MBC's Christian Life Commission addresses public policy affecting such issues as

freedom of speech, religious liberty, marriage and family, the sanctity of human life, and ethics. Religious freedom is an indispensable, bedrock value for Southern Baptists. The Constitution's guarantee of freedom from governmental interference in matters of privacy and faith is a crucial protection on which SBC members and adherents of other faith traditions depend as they follow the dictates of their conscience under God in the practice of their faith, even in the academy and in the public square.

The university *amici* are entities affiliated with the Missouri Baptist Convention, and thereby related to Southern Baptist churches in Missouri. All are organized as private, nonprofit charities, dedicated in their charters to pursue excellence in distinctively Christian liberal arts education. Each has adopted a statement of faith that includes the Southern Baptist Convention's statement of faith, the *Baptist Faith and Message*, 2000.

Further, each of the University *amici*:

- share the Southern Baptists' care for religious liberty and freedom of conscience; [1]

[1] "God alone is Lord of the conscience... Church and state should be separate… A free church in a free state is the Christian ideal…." Baptist Faith and Message, 2000, Article 17. See http://www.sbc.org/bfm/bfm2000.asp

- believe that God grants religious freedom as a fundamental human right, and Government should recognize it, as in our First Amendment;
- believe that God created mankind, male and female, in His image: "In the day that God created man, in the likeness of God made he him; Male and female created he them; and blessed them…" Genesis 5:1-2;
- believe, therefore, that all persons are created in God's image and thus are equal in value, and that this Divine interest extends to maleness and femaleness;
- offer, consistent with these beliefs, student housing in dorms that differentiate between men and women; and
- may offer married-student housing consistent with a belief that the divine institution of marriage is limited to a man and a woman (Genesis 2:24, NASB).

Further, each University *amicus* has notified the U.S. Department of Education of its religious convictions regarding marriage, sex outside marriage, sexual orientation and gender identity, and has requested and obtained exemption from Title IX's requirements as much as they would require the University to violate its religious tenets.

Your *amici* understand that College of The Ozarks' concerns are not unique to that College and are not unique to independent religious colleges. The outcome of this case will affect Christian liberal arts colleges well beyond COO; it will also affect the ability of religious charities and organizations to coordinate and support a program of education according to the dictates of conscience. Therefore, your *amici* draw the Court's attention to the ways in which this ruling conflicts with Baptist doctrine and principles in particular, and the ideal of a religiously-motivated liberal arts university in general.

Summary of Argument

Upon taking office, President Biden ordered the federal government to change the rules governing the Fair Housing Act (FHA) based on the theory that its ban on sex discrimination encompasses gender identity and sexual orientation. (Executive Order 13988 or "EO") [2] Just three weeks later, the U.S. Department of Housing and Urban Development (HUD) issued a directive imposing this rule change nationwide. ("HUD Directive") [3] Because this includes private religious colleges, the rule change [4] arguably would force them to let males occupy female dorms and even qualify for roommate selection if those males claim a female gender identity. Because the FHA bans statements and notices that are considered discriminatory, the new directive also censors colleges from even telling students or their parents about the college's religious policies, including that students can only apply for dorms that fit their biological sex.

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[2] Executive Order No. 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, 86 Fed. Reg. 7023 (Jan. 20, 2021)

[3] U.S. Department of Housing & Urban Development, Directive, Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act (Feb. 11, 2021) ("the Directive"). (https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf. Last accessed: 08/09/2021)

[4] President Biden later commented that the Directive was a "rule change" that "finally" "improved upon" the FHA. JA38-39, 198, citing Fed. Register.

College of the Ozarks presents this court with a chance to provide "further elaboration" on how government must respect the dignity interests of all citizens, including the dignity of sincere religious believers, individuals, and organizations, like College of the Ozarks. And this case offers a chance to say that Presidential Executive Orders and HUD directives on these issues must yield to fundamental free exercise and conscience rights of faith-based colleges and universities like COO and your *amici*.

The EO and directive threaten imminent concrete injury to religious colleges. More than just a "credible threat," these actions pose an existential threat to the very survival of Christian liberal arts college, as historically conceived. Even the Obama-Biden administration promised this clash was coming. [5] Religious colleges and other ministry organizations would be naïve not to take them at their word.

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[5] In the oral argument in *Obergefell,* Solicitor General Verelli had this exchange with Justice Alito:

> **Justice Alito**: Well, in the *Bob Jones* case, the Court held that a college was not entitled to tax exempt status if it opposed interracial marriage or interracial dating. So would the same apply to a 10 university or a college if it opposed same-sex marriage?
> **General Verrilli**: You know, I don't think I can answer that question without knowing more specifics, but it's certainly going to be an issue. I don't deny that. I don't deny that, Justice Alito. It is –it is going to be an issue.

Argument

I. Private universities face an existential threat under the enforcement requirements of Presidential Executive Order 13988 and the HUD Directive

Your *amici* believe that the government order and directive here create an inevitable collision between sexual liberty and religious liberty. A Presidential edict redefining the Fair Housing Act (FHA) to prohibit sexual orientation and gender identity discrimination and mandating "full enforcement" nationwide does not create a merely "speculative" risk. This a deliberate declaration by the President of the United States to implement a government ideology of sexual liberty that will inevitably collide with the religious liberty of colleges, like Appellant and *amici* who teach a biblical sexual ethic. Far from being speculative or hypothetical, some would say this inevitable collision poses an existential threat to the continued survival of Christian liberal arts universities, as historically conceived, unless the fundamental rights of Free Exercise and Free Speech are protected by the Courts pre-emptively, before the Executive arrow strikes its target.

Obergefell Transcript, page 38, lines 6-15. https://www.supremecourt.gov/oral_arguments/argument_transcripts/2014/14-556q1_l5gm.pdf/Last accessed: 08/09/2021)

In *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 749 (8th Cir. 2019), regarding the "injury in fact" requirement for standing in a pre-enforcement action, this Court said:

> Although a harm must be "actual or imminent, not conjectural or hypothetical," to constitute an injury in fact, *id.* at 1548 (citation omitted), a plaintiff need not wait for an actual prosecution or enforcement action before challenging a law's constitutionality, see *Susan B. Anthony List v. Driehaus* , 573 U.S. 149 (2014). In fact, all a plaintiff must do at the motion-to-dismiss stage is allege "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and [that] there exists a credible threat of prosecution thereunder." *Id.* at 159, 134 S.Ct. 2334 (citation omitted); see also *281 Care Comm. v. Arneson* , 638 F.3d 621, 627 (8th Cir. 2011) (explaining that even "[s]elf-censorship can ... constitute injury in fact" for a free-speech claim when a plaintiff reasonably decides "to chill his speech in light of the challenged statute").

Amici support the Plaintiff-Appellant in this pre-enforcement challenge, in the words of James Madison:

> "Because it is proper to take alarm **at the first experiment on our liberties**. We hold this prudent jealousy to be the first duty of Citizens, and one of the noblest characteristics of the late Revolution. The free men of America **did not wait till usurped power had strengthened itself by exercise**, and entangled the question in precedents. They saw all the consequences in the principle, and **they avoided the consequences by denying the principle**." [6] (**bold** emphasis added)

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[6] James Madison, *Memorial and Remonstrance*, 1785 *See* https://founders.archives.gov/documents/Madison/01-08-02-0163 ; Last accessed 08/09/2021.

II. The Directive censors and compels protected speech.

As religious universities, your *amici* have a conscientious duty to communicate clearly with constituents, including Missouri Baptist churches and prospective and current students and their families. College catalogs and other policy statements must clearly explain the application of fundamental religious beliefs to campus policies pertaining to dormitories, showers, bathrooms, and other private or intimate areas. The school's duty to communicate truthfully about doctrine and policy squarely collides with legal duties under the HUD Directive. As *amici* understand it, HUD would compel the college to say things that would violate religious conscience, or HUD would prohibit the college from saying things that religious conscience would compel, such as the fact that private or intimate areas will be segregated according to biological sex, consistent with the school's religious doctrine, and that gender is a gift of God, who has created us, male or female, for our good and for His glory.

A college's "private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression." *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). Moreover, "the First Amendment interests are especially strong here" because these housing policies, including compelled pronouns, relate to the

College's core religious and moral beliefs. *Meriwether v. Hartop*, No. 20-3289, 2021 WL 1149377, at *11 (6th Cir. Mar. 26, 2021).

The directive restricts the College's protected speech based on its content. Compl. ¶¶ 228-46, 374-83. The FHA and its regulations do not govern the College's speech on all topics, but only its speech concerning particular content: speech "with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination." 42 U.S.C. § 3604(c).

HUD's regulations restrict the College's ability to "[m]ake, print, or publish," or "[r]epresent to any person" speech deemed discriminatory. 24 C.F.R. § 100.50(b)(4)–(5). By definition, this is a limitation on speech based on its content.

The directive also restricts speech based on its viewpoint. Compl. ¶¶ 228-46, 374- 83. The directive's use of the FHA and HUD regulations means that the College can tell students they will be placed in dorms using their gender identity, but the College cannot tell students they will be placed in dorms based on their biological sex. And, given that the school's religiously-based policies should be constitutionally protected, its speech implementing and supporting its policies must also be treated as protected activities.

Here, the College's "religious and philosophical" positions are "are protected views" entitled to "neutral and respectful consideration." *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1727, 1729 (2018). The College's "First Amendment interests are especially strong" because its housing policies and speech, including the use of pronouns, derive from the College's core religious beliefs. *Meriwether v. Hartop*, 992 F.3d 492, 509 (6th Cir. 2021).

As in *Telescope Media Grp.*, *id.*, 749, this Court should find that the compelling of speech or the constraining of speech, contrary to religious conscience, is sufficient to constitute "injury in fact" for purposes of finding standing.

III. Biblical Convictions about Sexuality and Marriage are Fundamental and Non-Negotiable for Christian Colleges like *Amici*.

The Southern Baptist Convention's doctrinal statement, *Baptist Faith and Message*, 2000, ("BFM")[7] teaches laymen and clergy to "make the will of Christ supreme in our own lives and in human society" to "oppose racism, …

[7] The full text of the Baptist Faith and Message, 2000, is available at https://bfm.sbc.net/; last accessed 08/09/2021.

all forms of sexual immorality, including adultery, homosexuality, and pornography…." and to "bring industry, government, and society" under the way of biblical truth. (Article 15)

BFM, Article 5, on Man, says, in part:

> Man is the special creation of God, made in His own image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God's creation. . . . The sacredness of human personality is evident in that God created man in His own image, and in that Christ died for man; therefore, every person of every race possesses full dignity and is worthy of respect and Christian love.

BFM, Article 12, on Education, says:

> Christianity is the faith of enlightenment and intelligence. In Jesus Christ abide all the treasures of wisdom and knowledge. All sound learning is, therefore, a part of our Christian heritage. The new birth opens all human faculties and creates a thirst for knowledge. Moreover, the cause of education in the Kingdom of Christ is co-ordinate with the causes of missions and general benevolence, and should receive along with these the liberal support of the churches. An adequate system of Christian education is necessary to a complete spiritual program for Christ's people.
>
> In Christian education there should be a proper balance between academic freedom and academic responsibility. Freedom in any orderly relationship of human life is always limited and never absolute. The freedom of a teacher in a Christian school, college, or seminary is limited by the pre-eminence of Jesus Christ, by the authoritative nature of the Scriptures, and by the distinct purpose for which the school exists.

BFM, Article 17, on Religious Liberty, says, in part:

> God alone is Lord of the conscience… . The state has no right to impose penalties for religious opinions of any kind.

BFM, Article 18, on the Family, says, in part:

> God has ordained the family as the foundational institution of human society. It is composed of persons related to one another by marriage, blood, or adoption. … Marriage is the uniting of one man and one woman in covenant commitment for a lifetime. It is God's unique gift to reveal the union between Christ and His church and to provide for the man and the woman in marriage the framework for intimate companionship, the channel of sexual expression according to biblical standards, and the means for procreation of the human race.
>
> The husband and wife are of equal worth before God, since both are created in God's image. The marriage relationship models the way God relates to His people.

See also "*The Nashville Statement*," a contemporary "Christian Manifesto on human sexuality," released on August 29, 2017, and endorsed by the Southern Baptists and some of your *amici*.[8] The statement is framed in terms of what signers affirm and what they deny, showing that religious exercise is sometimes expressed by a refusal. The Preamble declares that the liberty to proclaim the truth about human sexuality is not mainly in service of the speaker's conscience, but focuses on the desire for human flourishing for the hearer. Article 1 affirms that God designed marriage to be the union of man and woman, to signify covenant love between Christ and the Church. Article 10 denies that same-sex marriage can be approved morally, according to the Bible.

[8] https://cbmw.org/nashville-statement (last accessed: 08/09/2021)

IV. The Supreme Court has promised protection of fundamental religious freedom, even in the face of non-discrimination laws advancing a public policy of non-discrimination.

The U.S. Supreme Court has ruled twice—clearly and repeatedly —that the government must respect and tolerate Americans who hold the belief that God has ordained marriage as between one man and one woman. While generally extending equal treatment to same-sex marriages, the Court has also promised to protect the dignity and worth of religious citizens who continue to advocate man-woman marriage.

A. Obergefell promised religious believers and organizations that the First Amendment would protect sincere religious beliefs affirming man-woman marriage and disapproving of same-sex relationships.

Obergefell v. Hodges, 576 U.S. 644 (2015), promised religious believers and organizations that they would remain secure in their constitutional right to believe, teach and live out their sincere religious convictions that marriage is between a man and woman, and that same-sex marriage should not be condoned. The promise was unmistakable and unambiguous:

> Marriage, in their view, is by its nature a gender-differentiated union of man and woman. This view long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world. *Id.*, 2594.

> Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here. *Id.*, 2602.

> It must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. *Id*., 2607

B. Masterpiece demanded that government tolerate and respect religious persons and organizations who believe same-sex relations are morally wrong.

In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), Justice Kennedy, writing again for the majority, applied *Obergefell's* promise to protect Jack Phillips's Christian conscience from naked anti-religious *animus*:

> At the same time, the religious and philosophical objections to gay marriage are protected views and in some instances protected forms of expression. *Id*. 1727.

> In view of these factors the record here demonstrates that the Commission's consideration of Phillips' case was neither tolerant nor respectful of Phillips' religious beliefs. *Id*. 1731

The Court repudiated the bigotry and *animus* exposed by the commissioners' caustic comparisons between Mr. Phillips' faith and some of the most evil acts in history. Religious convictions about traditional marriage deserve dignity, respect, and tolerance. The Constitution forbids that malice and denigration against religious persons by those who police discrimination. Treating

religious objectors as evil because they object based on conscience is antithetical to Free Exercise.

C. *Masterpiece* promised "further elaboration" in future cases.

In *Masterpiece*, the Court found hostility in comments and arguments by the government "that religious beliefs cannot legitimately be carried into the public sphere or commercial domain, implying that religious beliefs and persons are less than fully welcome in Colorado's business community. *Id* at 1729. One commissioner suggested that Phillips can believe "what he wants to believe," but cannot act on his religious beliefs "if he decides to do business in the state."

Further, this Court recognized the temptation for some government officials to demonize religious dissenters who refuse to bow the knee to a particular public policy. *Id*. at 1729-32.

The Court anticipated future cases involving the inevitable collision between religious liberty and sexual liberty, but the courts must resolve them with mutual tolerance and respect. *Id*. at 1732.

D. *Bostock* reserved issues of Religious Freedom defenses.

In *Bostock v. Clayton County, GA*, 140 S. Ct. 1731 (2020) the U.S. Supreme Court held that Title VII's prohibition against employment discrimination "because of sex" was violated when an employee was fired just because of

being homosexual or being transgender. But Associate Justice Gorsuch, in the majority opinion in *Bostock*, disclaimed that its holding applied outside the Title VII employment context, or to intimate spaces like showers or locker rooms in college housing.

> What are these consequences anyway? The employers worry that our decision will sweep beyond Title VII to other federal or state laws that prohibit sex discrimination. And, under Title VII itself, they say sex-segregated bathrooms, locker rooms, and dress codes will prove unsustainable after our decision today. But none of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and we do not prejudge any such question today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind. The only question before us is whether an employer who fires someone simply for being homosexual or transgender has discharged or otherwise discriminated against that individual "because of such individual's sex." As used in Title VII, the term " 'discriminate against' " refers to "distinctions or differences in treatment that injure protected individuals." *Burlington N. & S.F.R.* , 548 U.S. at 59, 126 S.Ct. 2405. Firing employees because of a statutorily protected trait surely counts. Whether other policies and practices might or might not qualify as unlawful discrimination or find justifications under other provisions of Title VII are questions for future cases, not these."
>
> *Id*. at 1753-54.

Justice Gorsuch also disclaimed that Bostock had retreated from protecting deeply held religious convictions under either the Free Exercise clause, or under statutes like the Religious Freedom Restoration Act, or statutory exceptions in Title VII and other non-discrimination laws:

> "Separately, the employers fear that complying with Title VII's requirement in cases like ours may require some employers to violate their religious convictions. **We are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society.** (emphasis added) But worries about how Title VII may intersect with religious liberties are nothing new; they even predate the statute's passage. As a result of its deliberations in adopting the law, Congress included an express statutory exception for religious organizations. § 2000e–1(a). This Court has also recognized that the First Amendment can bar the application of employment discrimination laws "to claims concerning the employment relationship between a religious institution and its ministers." *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 188 (2012). And Congress has gone a step further yet in the Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat. 1488, codified at 42 U.S.C. § 2000bb *et seq*. That statute prohibits the federal government from substantially burdening a person's exercise of religion unless it demonstrates that doing so both furthers a compelling governmental interest and represents the least restrictive means of furthering that interest. § 2000bb–1. Because RFRA operates as a kind of super statute, displacing the normal operation of other federal laws, it might supersede Title VII's commands in appropriate cases. *See* § 2000bb–3.
>
> But how these doctrines protecting religious liberty interact with Title VII are questions for future cases too."

Id.at 1753-54.

The Supreme Court has left it for lower courts to wrestle with text of the statutes, the executive orders, and the department directive here. The high court says the lower courts have the "benefit of adversarial testing of statutory terms and their meaning…." *Id*. at 1753. But Justice Gorsuch also says, "We are also deeply concerned with preserving the promise of the free exercise of

religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society." And he reminds us "This Court has also recognized that the First Amendment can bar the application of employment discrimination laws "to claims concerning the employment relationship between a religious institution and its ministers." *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* , 565 U.S. 171, 188, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012)."

V. *Fulton's* unanimous decision shows government must not discriminate against sincerely held religious beliefs of faith based organizations in the public square. .

In *Fulton v. City of Philadelphia*, 141 S.Ct. 1868 (2021), decided June 17, 2021, a unanimous court held that the refusal of Philadelphia to contract with Catholic Social Services for the provision of foster care services unless CSS agrees to certify same-sex couples as foster parents violates the Free Exercise Clause of the First Amendment.

The decision used narrow grounds to reach the result, but lower courts should see in this decision that the Court is determined to give robust protection to First Amendment rights of religious organizations,

The interest of Government to advance a social ideology with non-discrimination laws must yield to sincerely held religious convictions of ministry organizations like Appellant and like *amici*.

Conclusion

For these reasons, your *amici* join the Plaintiff-Appellant in urging this Court to reverse the judgment of the District Court, and remand to the Court for further proceedings.

Respectfully submitted,

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Appendix A - Certificates

Certificate of Compliance with Rule 32(G)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) because this brief contains 4470 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced, roman typeface with serifs (Times New Roman) using Microsoft Word, set in 14 points.

Date: August 9, 2021
s/Jonathan R. Whitehead
Attorney for *Amici*

Certificate of Compliance with Eighth Cir. R. 28A(h)

This brief has been scanned for viruses and is virus free.

Date: August 9, 2021
s/Jonathan R. Whitehead
An Attorney for *Amici*

Certificate of Service

I hereby certify that on August 9, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

Date: August 9, 2021
s/Jonathan R. Whitehead
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