

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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STATE OF TEXAS; STATE OF MONTANA,  
*Plaintiffs-Appellees,*

v.

XAVIER BECERRA, *Secretary, U.S. Department of Health and Human Services;*  
MELANIE FONTES RAINER, *Director;* CENTERS FOR MEDICARE AND MEDICAID  
SERVICES; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the Eastern District of Texas

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**AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS FOR  
AMERICAN CANCER SOCIETY, AMERICAN CANCER SOCIETY  
CANCER ACTION NETWORK, THE AIDS INSTITUTE, AMERICAN  
ACADEMY OF FAMILY PHYSICIANS, AMERICAN ACADEMY OF  
PEDIATRICS, AMERICAN COLLEGE OF CHEST PHYSICIANS,  
AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS,  
AMERICAN COLLEGE OF PHYSICIANS, AMERICAN GERIATRICS  
SOCIETY, AMERICAN MEDICAL WOMEN’S ASSOCIATION,  
AMERICAN NURSES ASSOCIATION, AMERICAN PSYCHIATRIC  
ASSOCIATION, AMERICAN SOCIETY OF CLINICAL ONCOLOGY,  
CANCERCARE, CROHN’S & COLITIS FOUNDATION, EPILEPSY  
FOUNDATION, GLMA: HEALTH PROFESSIONALS ADVANCING  
LGBTQ+ EQUALITY, HEMOPHILIA FEDERATION OF AMERICA,  
INFECTIOUS DISEASES SOCIETY OF AMERICA, THE LEUKEMIA &  
LYMPHOMA SOCIETY, MUSCULAR DYSTROPHY ASSOCIATION,  
NATIONAL LGBTQI+ CANCER NETWORK, NATIONAL MULTIPLE  
SCLEROSIS SOCIETY, NATIONAL ORGANIZATION FOR RARE  
DISORDERS, NATIONAL PATIENT ADVOCATE FOUNDATION**

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DECEMBER 4, 2024

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## **SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES**

The undersigned counsel of record certifies under Fifth Circuit Rule 29.1 that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1, in addition to those already listed in the parties' briefs, have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

### **Amici Curiae:**

The AIDS Institute  
American Academy of Family Physicians  
American Academy of Pediatrics  
American Cancer Society  
American Cancer Society Cancer Action Network  
American College of Chest Physicians  
American College of Obstetricians and Gynecologists  
American College of Physicians  
American Geriatrics Society  
American Medical Women's Association  
American Nurses Association  
American Psychiatric Association  
American Society of Clinical Oncology  
*CancerCare*  
Crohn's and Colitis Foundation  
Epilepsy Foundation  
GLMA: Health Professionals Advancing LGBTQ+ Equality  
Hemophilia Federation of America  
Infectious Diseases Society of America  
The Leukemia & Lymphoma Society  
Muscular Dystrophy Association  
National LGTBQI+ Cancer Network  
National Multiple Sclerosis Society  
National Organization for Rare Disorders  
National Patient Advocate Foundation

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Respectfully submitted,

Dated: December 4, 2024

/s/ Deanne E. Maynard

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Deanne E. Maynard



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## **IDENTITY AND INTEREST OF AMICI CURIAE<sup>1</sup>**

Amici represent millions of health-care practitioners, patients, and consumers across the country treating and/or facing serious, acute, and chronic health conditions and disabilities. Amici have a unique perspective on what individuals and families need to prevent disease, manage health, and cure illness—and a deep understanding of the harm that will result if the district court’s decision stands.

Amici are all deeply concerned about the effect the district court’s decision will have on the individuals and families they represent. As a direct result of the decision not to protect all lesbian, gay, bisexual, transgender, and queer (LGBTQ) people in the manner Section 1557 requires, many individuals will face discrimination or the threat of discrimination, which will delay access to timely treatment, lower the quality of medical care, and result in poorer health outcomes. Amici submit this brief to assist the Court in understanding the nature and extent of this harm.

A further description of each individual amicus curiae joining this brief is included in the addendum at the end of this brief.

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<sup>1</sup> This brief is submitted under Federal Rule of Appellate Procedure 29(a) with the consent of all parties. Counsel for Amici Curiae certify that this brief was not authored in whole or part by counsel for any of the parties; no party or party’s counsel contributed money for the brief; and no one other than Amici and their counsel have contributed money for this brief.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Discrimination on the basis of sex, ge

the district court's decision should not stand and that the protections section 1557 guarantees should be restored.

## ARGUMENT

### **A. LGBTQ People With Chronic Diseases And Disabilities Face Distinct Challenges Accessing Health Care**

Nearly everyone will require health care at some point in their lives. *See Nat'l Fed. of Indep. Bus. v. Sebelius*, 567 U.S. 519, 547 (2012). That fact is apparent from looking at even just a subset of the diseases on which Amici focus:

More than 2 million new cancer cases are expected to be diagnosed in the United States in 2024, while more than 18 million Americans are living with a history of cancer. Am. Cancer Soc'y, *Cancer Facts & Figures 2024*, at 1.<sup>2</sup>

Roughly four out of ten Americans will develop cancer in their lifetimes. *Id.* at 2.

An additional 127.9 million American adults are living with cardiovascular diseases. Seth S. Martin et al., *2024 Heart Disease and Stroke Statistics: A Report of US and Global Data from the American Heart Association*, Am. Heart Ass'n, e352-53 (2024).<sup>3</sup>

The lifetime risk for developing cardiovascular disease in those free of known disease at age 45 is almost two in three for men and greater than one in two for women. John T. Wilkins et al.,



*Transgender, Queer (LGBTQ) People and Cancer Fact Sheet (2024).*<sup>10</sup> Indeed, the LGBTQ community has a disproportionate burden of some chronic illnesses, like cancer, HIV, and heart disease. Gwendolyn P. Quinn et al., *Cancer and Lesbian, Gay, Bisexual, Transgender/Transsexual, and Queer/Questioning (LGBTQ) Populations*, 65:5 CA: A CANCER J. FOR CLINICIANS 384, 384-86 (2015); Ctrs. for Disease Control & Prevention, *Diagnoses of HIV Infection in the United States and Dependent Areas, 2018 (Updated)* 14 (2020) (roughly 70% of new HIV diagnoses in 2018 were among gay and bisexual men); Yi Guo et al., *Statin use for Atherosclerotic Cardiovascular Disease Prevention Among Sexual Minority Adults*, J. OF AM. HEART A



individuals are also more than twice as likely as heterosexual ones to have a mental health disorder in their lifetime. Am. Psychiatric Assoc.,

Multiple studies have also found that lesbian and gay individuals face discrimination in health care, including finding that nearly half (46%) of heterosexual first-year medical students in one report expressed at least some explicit bias against these individuals. Sara E. Burke et al., *Do Contact and Empathy Mitigate Bias Against Gay and Lesbian People Among Heterosexual First-Year Medical Students?*, Acad Med. (May 2015).<sup>20</sup>



*Tables Table 18 (2016).*<sup>23</sup> For example, even long after diagnosis and initial treatment, individuals with a previous cancer diagnosis are more likely to require hospitalizations, ER visits, ambulatory surgeries, and provider visits than those without. They thus spend on average more than twice as long receiving health care in a year compared to individuals without a previous cancer diagnosis. K. Robin Yabroff et al., *Annual Patient Time Costs Associated with Medical Care Among Cancer Survivors in the United States*, 52:7 MED CAR. 594, 597-99 (2014).<sup>24</sup> Similarly, individuals living with HIV must receive lifelong treatment from medical providers to suppress the virus, treatment that helps maintain a healthy immune system and prevent spread. Dep't of Health & Human Servs., *Evidence of HIV treatment and viral suppression in preventing the sexual transmission of HIV* (2022).<sup>25</sup> For an LGBTQ person with one of these chronic conditions, frequent health care visits come with a risk of suffering discrimination from health care providers. Mirza & Rooney, *supra*.

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<sup>23</sup> [https://www.cdc.gov/nchs/data/ah305\\_079](https://www.cdc.gov/nchs/data/ah305_079)





FDA-approved disease-modifying therapy is the best way to manage the MS disease course, prevent accumulation of disability, and protect the brain from damage due to MS. *See* Daniel M. Hartung et al., *Trends In Coverage for Disease Modifying Therapies in Multiple Sclerosis in Medicare Part D*, 38 HEALTH AFFAIRS 303 (2019).<sup>27</sup> MS patients face a reduction in survival of between 8 to 12 years if they do not receive proper treatment. *Id.*

Timely treatment for epilepsy is also critical to reduce the risk of accident, injury, or sudden unexpected death. C.E Belgley & T.L. Durgin, *The direct costs of epilepsy in the United States: A systemic review of estimates*, 56 EPILEPSIA 1376-87 (2015).<sup>28</sup>

Early detection and treatment of HIV is not only essential for people living with HIV, but it is also necessary to help stop HIV's spread—80% of new HIV infections are the result of someone unaware of their status or not receiving treatment. Zihao Li et al., *Vital Signs: HIV Transmission Along the Continuum of Care — United States, 2016*, 68 Morbidity & Mortality Weekly Report 267 (2019).<sup>29</sup>

Untreated psychosis in individuals with mental illness “increases a person’s risk for suicide, involuntary emergency care, and poor clinical outcomes.” Vikki Wachino et al., *Coverage of Early Intervention Services for First Episode Psychosis*, 2 (Oct. 16, 2015).<sup>30</sup> In contrast, early intervention strategies have changed the trajectory of individuals’ lives, enabling people with serious mental illnesses to live safely in community settings and participate fully in family and community life. *Id.*

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<sup>27</sup> <https://doi.org/10.1377/hlthaff.2018.05357>.

<sup>28</sup> <https://doi.org/10.1111/epi.13084>.

<sup>29</sup> <http://dx.doi.org/10.15585/mmwr.mm6811e1>.

<sup>30</sup> <https://www.medicaid.gov/federal-policy-guidance/downloads/cib-10-16-2015.pdf>.





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LGBTQ individuals also have several risk factors for chronic illness, making preventive care and frequent screenings essential. For example, lesbian women have multiple higher risk factors for breast cancer than heterosexual women, such as higher smoking and obesity rates, greater alcohol use, and never having completed a pregnancy; compared to heterosexual men, gay men have a higher prevalence of human papillomavirus, which is associated with seven types of cancer; and a transgender person requires screening for different conditions than an individual who is not transgender. *Id.*<sup>38</sup> Frequent HIV screening for gay men or transgender persons similarly helps catch and treat HIV early and helps prevent further spread of the disease. *HIV Surveillance, supra* at 7-8. Yet instead of increased screening by health care providers for these various risks, one survey found that LGBTQ respondents were less likely to receive proper screening—only 32% of female respondents had received recommended mammograms and nearly half of respondents said their providers did not talk to them about their risks of cancer or how to reduce them. UC Davis, *supra*. And more than half of gay and bisexual men reported that a doctor has never recommended they get tested for HIV, even though

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<sup>38</sup> See Cancer.org, HPV and Cancer, <https://www.cancer.org/healthy/cancer-causes/infectious-agents/hpv/hpv-and-cancer-info.html>; Homma, *supra*, at 1-8; Howard H. Bailey et al., *ASCO Statement: Human Papillomavirus Vaccination for Cancer Prevention*, 34 J. OF CLINICAL ONCOLOGY 15 (2016), <https://ascopubs.org/doi/10.1200/JCO.2016.67.2014>.

they account for the overwhelming majority (70%) of new cases. Liz Hamel et al., *supra* at 16; Ctrs. for Disease Control & Prevention, *Diagnoses of HIV Infection, supra*. LGBTQ people also experience higher rates of mental health disorders, rates that are at least partly attributable to the excess stress they experience because of discrimination. Wendy B. Bostwick et al., *Discrimination and Mental Health Among Lesbian, Gay and Bisexual Adults in the United States*, 84 AM. J. ORTHOPSYCHIATRY 35-45 (2014).<sup>39</sup>

Such discrimination contributes to LGBTQ people's documented lower patient satisfaction. Patient satisfaction is an important metric for health care providers that depends on many factors, including effective and clear communication between health care providers and patients, a safe environment of mutual respect that lets patients disclose information, and support by providers that empowers patients to participate in their own treatment, such as by choosing among different treatment options. Jennifer Jabson & Charlie S. Kamen, *Sexual Minority Cancer Survivors' Satisfaction with Care* 34:1-2 J. PSYCHOSOC. ONCOL. 28, 28-30 (2016).<sup>40</sup> Patient satisfaction positively correlates with better health outcomes—patients who report better satisfaction with their overall experience are more likely

to complete prescribed treatment and follow care provider recommendations. *Id.*; Ashish K. Jha et al., *Patients' Perception of Hospital Care in the United States*, 359 *NEW ENG. J. MED.* 1921, 1925-26 (2008).<sup>41</sup>

Unsurprisingly, discrimination against LGBTQ patients lowers their satisfaction level with the care they receive or can access. Jabson, *supra*, at 28-30; Joseph B. Clift & J. Kirby, *Health Care Access and Perceptions of Provider Care Among Individuals in Same-Sex Couples: Findings From the Medical Expenditure Panel Survey (MEPS)*, 59 *J. HOMOSEXUALITY* 839, 839-40 (2012).<sup>42</sup> For example, one study found that gay and bisexual men were almost twice as likely as heterosexual men (12% versus 7%) to report lower satisfaction with medical care, including reporting that doctors did not show them respect and did not spend enough time with them. Clift & Kirby, *supra*, at 840-42. Another study showed similar results, finding across all measured satisfaction items that LGBTQ cancer survivors reported lower satisfaction with care than heterosexual cancer survivors. Jabson, *supra*, at 35-38.

Prohibiting discrimination in health care on the basis of sexual orientation or gender identity must be part of the solution to these many harms suffered by LGBTQ

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<sup>41</sup> <https://www.nejm.org/doi/pdf/10.1056/NEJMsa0804116>.

<sup>42</sup> <https://doi.org/10.1080/00918369.2012.694766>.

people with chronic conditions and disabilities. Provider groups welcome and recommend strong non-discrimination standards, promote culturally responsive training for clinicians as critical to closing gaps in outcomes and patient satisfaction for LGBTQ patients. Kamen, *supra*. The alternative of telling LGBTQ patients to avoid the harm by finding another provider is not an adequate answer. Many chronic conditions and disabilities require specialized care, and in some regions of the country there may be only one or two providers with the necessary expertise. Beth O'Connor et al., *LGBTQIA+ health in rural America, National Rural Health Policy Brief* (Feb. 2022).<sup>43</sup> Thus, one survey found that “18 percent of LGBTQ people said it would be ‘very difficult’ or ‘not possible’ to find the same type of service at a different hospital,” and 17% said the same about finding service at a different community health center or clinic. Mirza & Rooney, *supra*. Even if an alternative provider exists, finding one can delay critical treatment for chronic conditions and disabilities or deter LGBTQ people from receiving or completing the treatment they need. *Supra* at pp. 13-19.

Given the discrimination that many LGBTQ people face in health-care settings, it is critical that the protections Congress adopted in Section 1557 stay in place.

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<sup>43</sup> [https://www.ruralhealth.us/getmedia/6589dfad-a5f9-494e-b0e8-749f8b60ff68/2022-NRHA-LGBTQ-Policy-Paper-Final-\(1\).pdf](https://www.ruralhealth.us/getmedia/6589dfad-a5f9-494e-b0e8-749f8b60ff68/2022-NRHA-LGBTQ-Policy-Paper-Final-(1).pdf).

## CONCLUSION

For these reasons, the Court should vacate the district court's preliminary injunction and stay order.

Dated: December 4, 2024

Respectfully submitted,

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## **ADDENDUM**

American Cancer Society's (ACS's) mission is to save lives, celebrate lives, and lead the fight for a world without cancer. American Cancer Society Cancer Action Network is the nonpartisan advocacy affiliate of ACS, making cancer a top priority for policymakers, and believing that everyone should have a fair and just opportunity to prevent, detect, treat, and survive cancer.

The AIDS Institute is a national nonpartisan, nonprofit organization that promotes action for social change through public policy, research, advocacy, and education and works to protect and improve health care access for people living with HIV/AIDS, Hepatitis, and patients living with chronic diseases.

Founded in 1947, the American Academy of Family Physicians (AAFP) is one of the largest national medical organizations, representing 130,000 family physicians and medical students nationwide. AAFP seeks to improve the health of patients, families, and communities by advocating for the health of the public and by supporting its members in providing continuous comprehensive health care to all.

The American Academy of Pediatrics (AAP) is a national, not-for-profit organization representing 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. In its dedication to the health of all children, the AAP

strives to improve health care access and eliminate disparities for all children, including those who identify as lesbian, gay, bisexual, transgender, or questioning of their sexual or gender identity. Pediatricians know that discrimination in health care settings can impede a child's ability to access the services they need for healthy development, and AAP strongly opposes any attempt to limit access to comprehensive, developmentally appropriate care for our nation's children and adolescents.

The American College of Chest Physicians (CHEST) is a global leader in pulmonary, critical care, and sleep medicine. Established in 1935, CHEST supports more than 21,000 clinicians through education, research, and advocacy. CHEST believes best patient outcomes cannot be achieved without eradication of health disparities that currently impact specific populations, including disproportionate health risks and barriers to health care access faced by LGBTQ+ patients.

Representing more than 90% of board-certified OB/GYNs in the United States, American College of Obstetricians and Gynecologists (ACOG) is the nation's premier professional membership organization for obstetrician-gynecologists dedicated to access to evidence-based, high-quality, safe, and equitable obstetric and gynecologic care. ACOG maintains the highest standards of clinical practice and continuing education of its members, promotes patient education, and increases awareness among its members and the public of the



changing issues facing women's health care. ACOG is committed to ensuring access for all people to the full spectrum of evidence-based quality reproductive health care, including abortion care, and is a leader in the effort to confront the maternal mortality crisis in the United States.

The American College of Physicians (ACP) is the largest medical specialty organization and the second largest physician membership society in the United States. ACP members include 161,000 internal medicine physicians, related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge, clinical expertise, and compassion to the preventive, diagnostic, and therapeutic care of adults across the spectrum from health to complex illness. ACP has a longstanding commitment to improving the health of all Americans and opposes any form of discrimination in the delivery of health care services. ACP is dedicated to eliminating disparities in the quality of or access to health care and is committed to working toward fully understanding the unique needs of the LGBTQ community and eliminating health disparities for LGBTQ persons.

The American Geriatrics Society (AGS) is a national non-profit organization of geriatrics healthcare professionals dedicated to improving the health, independence, and quality of life of all older Americans. Its more than 6,000 members include geriatricians, geriatrics nurse practitioners and advanced practice

nurses, social workers, family practitioners, physician assistants, pharmacists, and internists, all of whom are pioneers in advanced illness care for older individuals. AGS has worked tirelessly to ensure that all older adults have access to interprofessional care teams dedicated to eliciting personal care goals and treating older people as whole persons. AGS believes in a just society, one where we all are

services, and it is ANA's calling to champion nurses and the causes they care about. ANA advocates to improve the quality of healthcare for all and to amplify nurses' voices across healthcare and in society.

The American Psychiatric Association (APA), with more than 38,000 members, is the nation's leading organization of physicians who specialize in psychiatry. Its member physicians work to ensure high quality care and effective treatment for all persons with mental health disorders. It is the position of the APA that discrimination, including against those with gender dysphoria, has negative mental health consequences. The APA opposes all public and private discrimination against transgender and gender-diverse individuals, including in health care.

The American Society of Clinical Oncology (ASCO) is a national organization representing more than 50,000 oncology professionals who care for patients with cancer. Through research, education, and promotion of the highest-

CancerCare is the leading national organization providing free, professional support services and information to help people manage the emotional, practical, and financial challenges of cancer.

Crohn's & Colitis Foundation's is a non-profit, volunteer-fueled organization dedicated to finding cures for Crohn's disease and ulcerative colitis, and improving the quality of life of children and adults affected by these diseases.

The mission of the Epilepsy Foundation is to improve the lives of people affected by epilepsy through education, advocacy, research, and connection.

GLMA: Health Professionals Advancing LGBTQ+ Equality is a national organization committed to ensuring health equity for lesbian, gay, bisexual, transgender, and queer (LGBTQ+) communities and equality for LGBTQ+ health professionals in their work and learning environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research.

Hemophilia Federation of America (HFA) is a community-based, grassroots advocacy organization that assists, educates, and advocates for people with hemophilia, von Willebrand disease, and other rare bleeding disorders. HFA works for patient access to quality and affordable care and coverage—priorities that reflect the nature of bleeding disorders as serious, life-long, and expensive health conditions.

Infectious Diseases Society of America's mission is to bring together the curiosity, compassion and knowledge of our members to strengthen the field of infectious diseases, advance science and advocate for health equity.

The Leukemia & Lymphoma Society (LLS) is the world's largest voluntary health agency dedicated to fighting blood cancer and ensuring that the more than 1.3 million blood cancer patients and survivors in the United States have access to the care they need. LLS's mission is to cure leukemia, lymphoma, Hodgkin's disease, and myeloma, and to improve the quality of life of patients and their families. LLS advances that mission by advocating that blood cancer patients have sustainable access to quality, affordable, coordinated health care, regardless of the source of their coverage.

The Muscular Dystrophy Association (MDA) is the number one voluntary health organization in the United States for people living with muscular dystrophy, ALS, and related neuromuscular diseases. For over 70 years, MDA has led the way in accelerating research, advancing care, and advocating for the support of our families. MDA's mission is to empower the people we serve to live longer, more independent lives.

The mission of the National LGBTQI+ Cancer Network is to improve the lives of LGBTQI+ individuals on the cancer journey and those at risk through educational, training, and advocacy initiatives.

The National Multiple Sclerosis Society exists because there are people living with multiple sclerosis (MS). Our vision is a world free of MS. Our mission is: We will cure MS while empowering people affected by MS to live their best lives.

National Organization for Rare Disorders (NORD), a 501(c)(3) organization, is a patient advocacy organization dedicated to individuals with rare diseases and the organizations that serve them. NORD, along with its more than 350 patient organization members, is committed to improving the health and well-being of people with rare diseases by driving advances in care, research, and policy.

National Patient Advocate Foundation's mission is to make the healthcare system work for all of us.

### **CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system on December 4, 2024.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: December 4, 2024

/s/ Deanne E. Maynard  
Deanne E. Maynard

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 3,700 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface, including serifs, using Microsoft Word in Times New Roman 14-point font.

Dated: December 4, 2024

/s/ Deanne E. Maynard  
Deanne E. Maynard