

No. 22-11707

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PAUL A. EKNES-TUCKER, et al.,

Plaintiffs-Appellees,

&

UNITED STATES OF AMERICA

Intervenor-Plaintiff-Appellee,

vs.

GOVERNOR OF THE STATE OF ALABAMA, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Middle District of Alabama
Case No. 2:22-cv-184-LCB

MOTION OF UNITARIAN UNIVERSALIST ASSOCIATION,
SOUTHEAST CONFERENCE OF THE UNITED CHURCH OF
CHRIST, UNIVERSAL FELLOWSHIP OF METROPOLITAN
COMMUNITY CHURCHES, AND THE GLOBAL JUSTICE
INSTITUTE FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN
SUPPORT OF PLAINTIFFS-APPELLEES' PETITION FOR
REHEARING EN BANC

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Eknes-Tucker v. Gov. of Alabama, No. 22-11707

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1(a), 26.1-2(b) and 26.1-3, the undersigned counsel certifies that the following persons and entities may have an interest in the outcome of this case:

1. Abdul-Latif, Hussein – *Amicus Curiae*
2. Academic Pediatric Association – *Amicus Curiae*
3. Alabama Center for Law and Liberty (The), LLC – *Amicus Curiae*
4. Alabama Chapter of the American Academy of Pediatrics – *Amicus Curiae*
5. Alabama Policy Institute, Inc. – Parent company of *Amicus Curiae* The Alabama Center for Law and Liberty, LLC
6. Alaska, State of – *Amicus Curiae*
7. Alstott, Anne – *Amicus Curiae*
8. America First Legal Foundation – *Amicus Curiae*
9. American Academy of Child and Adolescent Psychiatry – *Amicus Curiae*
10. American Academy of Family Physicians – *Amicus Curiae*
11. American Academy of Nursing – *Amicus Curiae*
12. American Academy of Pediatrics – *Amicus Curiae*

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13. American Association of Physicians for Human Rights, Inc. –
Amicus Curiae
14. American College of Obstetricians and Gynecologists –
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15. American College of Osteopathic Pediatricians – *Amicus
Curiae*
16. American College of Physicians – *Amicus Curiae*
17. American Medical Association – *Amicus Curiae*
18. American Pediatric Society – *Amicus Curiae*
19. American Psychiatric Association – *Amicus Curiae*
20. Andersen, Alison – Counsel for *Amici Curiae*
21. Anderson, Tom – Defendant
22. Arizona, State of – *Amicus Curiae*
23. Arkansas, State of – *Amicus Curiae*
24. Arnold, Rev. Stephanie York – *Amicus Curiae*
25. Association of American Medical Colleges – *Amicus Curiae*
26. Association of Medical School Pediatric Department Chairs –
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27. Austin, Heather, Ph.D., previously proceeding under
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28. Australian Professional Association for Trans Health (The) –
Amicus Curiae
29. Baia, Elizabeth – Counsel for *Amici Curiae*
30. Bailey, Daryl D. – Defendant
31. Balderas, Hector – Counsel for *Amicus Curiae*
32. Barday, Shireen – Counsel for *Amicus Curiae*
33. Barham, Rev. Richard – *Amicus Curiae*
34. Barnhart, Jr., Rev. Dr. David. L. – *Amicus Curiae*
35. Baylock, Wilson C. – Defendant
36. Becker, Laura – *Amicus Curiae*
37. Beninati, Nancy – Counsel for *Amicus Curiae*
38. Blakemore, Rev. Robin – *Amicus Curiae*
39. Boccuzzi, Jr., Carmine D. – Counsel for *Amici Curiae*
40. Boe, Brianna – Plaintiff (pseudonym)
41. Boergers – Counsel for *Amici Curiae*
42. Bonta, Rob – Counsel for *Amicus Curiae*
43. Boulware, Susan D. – *Amicus Curiae*
44. Bowdre, Alexander Barrett – Counsel for Defendants
45. Bridges, Rev. Dr. Rebecca L. – *Amicus Curiae*
46. Broyles, Vernadette R. – Counsel for *Amici Curiae*
47. Bundesverband Trans* e.V. – *Amicus Curiae*

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48. Burke, Liles C. – U.S. District Court Judge
49. Burleigh, Billy – *Amicus Curiae*
50. California, State of – *Amicus Curiae*
51. Cantrell, Michael A. – Counsel for *Amici Curiae*
52. Carr, Danny – Defendant
53. Central Conference of American Rabbis – *Amicus Curiae*
54. Cheek, Jason R. – Counsel for Intervenor-Plaintiff
55. Clark, Kristen, U.S. Department of Justice, Civil Rights
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56. Clark, Matthew James – Counsel for *Amicus Curiae*
57. Coe, Brian – *Amicus Curiae* (pseudonym)
58. Coe, Laura – *Amicus Curiae* (pseudonym)
59. Colavecchio, JD – Counsel for *Amici Curiae*
60. Colorado, State of – *Amicus Curiae*
61. Connecticut, State of – *Amicus Curiae*
62. Conrady, Rev. Julie – *Amicus Curiae*
63. Cooper, Rev. Erica – *Amicus Curiae*
64. Davies, Andrew Rhys – Counsel for *Amici Curiae*
65. Davis, James William – Counsel for Defendants
66. Delaware, State of – *Amicus Curiae*
67. Dingus, Rev. Jaimie – *Amicus Curiae*

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68. District of Columbia – *Amicus Curiae*
69. Doss, Jeffrey P. – Counsel for Plaintiffs
70. Eagan, Melody Hurdle – Counsel for Plaintiffs
71. Eknes-Tucker, Paul A. – Plaintiff
72. Elgart, Allison – Counsel for *Amicus Curiae*
73. Elias, Nimrod Pitsker – Counsel for *Amicus Curiae*
74. Ellison, Keith – Counsel for *Amicus Curiae*
75. Endocrine Society (The) – *Amicus Curiae*
76. Escalona, Elizabeth Prim Formby – Counsel for Intervenor-
Plaintiff
77. Ethics and Public Policy Center – *Amicus Curiae*
78. Federación Estatal de Lesbianas, Gais, Trans, Bisexuales,
Intersexuales y más (The) – *Amicus Curiae*
79. Ferguson, Robert W. – Counsel for *Amicus Curiae*
80. Finney II, Rev. Johnny R. - *Amicus Curiae*
81. Ford, Aaron D. – Counsel for *Amicus Curiae*
82. Foster, Rev. Carolyn – *Amicus Curiae*
83. Frey, Aaron M. – Counsel for *Amicus Curiae*
84. Frosh, Brian E. – Counsel for *Amicus Curiae*
85. Fuller, David – *Amicus Curiae*
86. Fundación Colectivo Hombres XX, AC – *Amicus Curiae*

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87. G., C. (pseudonym) – *Amicus Curiae*
88. Genau, Rev. Joseph – *Amicus Curiae*
89. George, Renu R. – Counsel for *Amicus Curiae*
90. George, Rev. Cathy – *Amicus Curiae*
91. Georgia, State of – *Amicus Curiae*
92. Gibson, Rev. Henry N. – *Amicus Curiae*
93. Global Justice Institute, Inc. – *Amicus Curiae*
94. Hamilton, Gene P. – Counsel for *Amicus Curiae*
95. Hamilton-Poore, Rev. Dr. Samuel F.– *Amicus Curiae*
96. Hamilton-Poore, Rev. Terry - *Amicus Curiae*
97. Hasson, Mary Rice – Counsel for *Amicus Curiae*
98. Hawaii, State of – *Amicus Curiae*
99. Healey, Maura – Counsel for *Amicus Curiae*
100. Health Professionals Advancing LGBTQ Equality – *Amicus Curiae*
101. Hecker, Elizabeth P. – Counsel for Intervenor-Plaintiff
102. Henkin, Rabbi Steven – *Amicus Curiae*
103. Hopkins, Rev. C. Lynn. – *Amicus Curiae*
104. Hutchinson, Rev. Laura – *Amicus Curiae*
105. Illinois, State of – *Amicus Curiae*
106. Indiana, State of – *Amicus Curiae*

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107. Isaacson, Eric Alan – Counsel for *Amici Curiae*
108. Isasi, William – Counsel for *Amici Curiae*
109. Isner, Rev. Shane – *Amicus Curiae*
110. Ivey, Kay – Defendant
111. James, Letitia – Counsel for *Amicus Curiae*
112. Jennings, Kathleen – Counsel for *Amicus Curiae*
113. Jimmerson, Rev. Dr. Ellin – *Amicus Curiae*
114. Kamody, Rebecca – *Amicus Curiae*
115. Kerschner, Helena – *Amicus Curiae*
116. Koe, Rachel – Plaintiff (pseudonym)
117. Krishna, Praveen S. – Counsel for Plaintiff-Intervenor
118. Kuper, Laura – *Amicus Curiae*
119. LaCour, Edmund G. (Jr.) – Counsel for Defendants
120. Lamar-Hart, Cynthia – *Amicus Curiae*
121. Lannin, Cortlin H. – Counsel for *Amici Curiae*
122. Lanosa, Michael – Counsel for *Amici Curiae*
123. Lareau, Alyssa C. – Counsel for Intervenor-Plaintiff
124. Levi, Jennifer – Counsel for Plaintiffs
125. LGBT+ Denmark – *Amicus Curiae*
126. Loe, Sarah – *Amicus Curiae* (pseudonym)
127. Loe, Tom – *Amicus Curiae* (pseudonym)

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128. Loper, Rev. Dr. Helene – *Amicus Curiae*
129. Louisiana, State of – *Amicus Curiae*
130. Maine, State of – *Amicus Curiae*
131. Marshall, Steve – Defendant
132. Martinez, Gabriel – Counsel for *Amicus Curiae*
133. Maryland, State of – *Amicus Curiae*
134. Massachusetts, Commonwealth of – *Amicus Curiae*
135. Mattern, David – Counsel for Plaintiffs
136. McAlister, Mary E. – Counsel for *Amici Curiae*
137. McCoy, Scott D. – Counsel for Plaintiffs
138. McNamara, Meredith – *Amicus Curiae*
139. Men of Reform Judaism – *Amicus Curiae*
140. Mills, Christopher Ernest – Counsel for Defendants
141. Minnesota, State of – *Amicus Curiae*
142. Mississippi, State of – *Amicus Curiae*
143. Missouri, State of – *Amicus Curiae*
144. Mitchell, Jonathon F. – Counsel for *Amicus Curiae*
145. Moe, Jane – Plaintiff (pseudonym)
146. Montag, Coty Rae – Counsel for Intervenor-Plaintiff
147. Montana, State of – *Amicus Curiae*
148. Morrison, Rachel N. – Counsel for *Amicus Curiae*

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149. National Association of Pediatric Nurse Practitioners –
Amicus Curiae
150. Nebraska, State of – *Amicus Curiae*
151. Neronha, Peter – Counsel for *Amicus Curiae*
152. Nevada, State of – *Amicus Curiae*
153. New Jersey, State of – *Amicus Curiae*
154. New Mexico, State of – *Amicus Curiae*
155. New York, State of – *Amicus Curiae*
156. Newton, Rev. Nicole – *Amicus Curiae*
157. Noe, Kathy – Plaintiff (pseudonym)
158. North Carolina, State of – *Amicus Curiae*
159. Norwegian Organization for Sexual and Gender Diversity
(The) – *Amicus Curiae*
160. Oklahoma, State of – *Amicus Curiae*
161. Oladeinbo, Gilbert Olusengun – Counsel for Plaintiffs
162. Olezeski, Christy – *Amicus Curiae*
163. Oregon, State of – *Amicus Curiae*
164. Ormand, Justin L. – Counsel for *Amici Curiae*
165. Orr, Asaf – Counsel for Plaintiffs
166. Pediatric Endocrine Society – *Amicus Curiae*
167. Pennsylvania, Commonwealth of – *Amicus Curiae*

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168. Perigoe, Kelly – Counsel for Plaintiffs
169. Peterson, Misty L. – Counsel for Plaintiffs
170. Platkin, Matthew J. – Counsel for *Amicus Curiae*
171. Poe, Megan – Plaintiff (pseudonym)
172. Powers, John Michael – Counsel for Intervenor-Plaintiff
173. Pratt, James Andrew – Counsel for Plaintiffs
174. Professional Association for Transgender Health Aotearoa
New Zealand (The) – *Amicus Curiae*
175. Racine, Karl A. – Counsel for *Amicus Curiae*
176. Ragsdale, Barry Alan – Counsel for *Amici Curiae*
177. Raoul, Kwame – Counsel for *Amicus Curiae*
178. Ray, Brent P. – Counsel for Plaintiffs
179. Reinke, Adam – Counsel for Plaintiffs
180. Reynolds, Laura – *Amicus Curiae*
181. Renner, Rev. Steven S.– *Amicus Curiae*
182. Rhode Island, State of – *Amicus Curiae*
183. Riehl, Christina – Counsel for *Amicus Curiae*
184. Robin-Vergeer, Bonnie –Counsel for Intervenor-Plaintiff
185. Rodriguez Martinez, Michael – Counsel for *Amici Curiae*
186. Roe, Melissa
187. Roe, Rebecca

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188. Rosenblum, Ellen F. – Counsel for *Amicus Curiae*
189. Rothbauer, Rev. Chris – *Amicus Curiae*
190. Saei, Joseph – Counsel for Plaintiffs
191. Sanders, Rev. Jennifer – *Amicus Curiae*
192. Schwabauer, Barbara – Counsel for Intervenor-Plaintiff
193. Seiss, Benjamin Matthew – Counsel for Defendants
194. Setary / Setarf / Setar LGBTIQ Rights in Finland – *Amicus Curiae*
195. Shapiro, Josh – Counsel for *Amicus Curiae*
196. Shikada, Holly T. – Counsel for *Amicus Curiae*
197. Shortnacy, Michael B. – Counsel for Plaintiffs
198. Smalts, Laura Perry – *Amicus Curiae*
199. Smith, John (pseudonym) – *Amicus Curiae*
200. Societies for Pediatric Urology – *Amicus Curiae*
201. Society for Adolescent Health and Medicine – *Amicus Curiae*
202. Society for Pediatric Research – *Amicus Curiae*
203. Society of Pediatric Nurses – *Amicus Curiae*
204. Soe, Melissa – *Amicus Curiae* (pseudonym)
205. Soto, Diego Armando – Counsel for Plaintiffs
206. South Carolina, State of – *Amicus Curiae*

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207. Southeast Conference of the United Church of Christ, Inc. –
Amicus Curiae
208. Stein, Joshua H. – Counsel for *Amicus Curiae*
209. Stewart, Sandra Jean – Counsel for Intervenor-Plaintiffs
210. Stoll, Christopher F. – Counsel for Plaintiffs
211. Stone, Jessica Lynn – Counsel for Plaintiffs
212. Stonewall UK – *Amicus Curiae*
213. Strickland, Bishop Kevin L. – *Amicus Curiae*
214. Swedish Federation for Lesbian, Gay, Bisexual, Transgender,
Queer and Intersex Rights (The) – *Amicus Curiae*
215. Szilagyi, Nathalie – *Amicus Curiae*
216. Terry, Abigail Hoverman – Counsel for Plaintiffs
217. Texas, State of – *Amicus Curiae*
218. Thomas, Rev. Dr. Kevin L. – *Amicus Curiae*
219. Thomason, Rev. Beth – *Amicus Curiae*
220. Thornton, Joel H. – Counsel for *Amici Curiae*
221. Tong, William – Counsel for *Amicus Curiae*
222. Toyama, Kaitlin – Counsel for Intervenor-Plaintiff
223. Trevor Project (The), Inc. – *Amicus Curiae*
224. Unikowsky, Adam G. – Counsel for *Amici Curiae*
225. Union for Reform Judaism – *Amicus Curiae*

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226. Unitarian Universalist Association – *Amicus Curiae*
227. United States of America – Intervenor-Plaintiff
228. Universal Fellowship of Metropolitan Community Churches –
Amicus Curiae
229. Utah, State of – *Amicus Curiae*
230. Vague, Amie A. – Counsel for Plaintiffs
231. Vance, Robert S. (III) – Counsel for *Amici Curiae*
232. Ventiere, Jessica – Defendant
233. Vermont, State of – *Amicus Curiae*
234. Veta, D. Jean – Counsel for *Amici Curiae*
235. Voe, April
236. Voe, Robert
237. Voigts, Anne M. – Counsel for Plaintiffs
238. Wadsworth, Stephen D. – Counsel for Intervenor-Plaintiff
239. Walker, Susan Russ – Magistrate Judge
240. Warbelow, Sarah – Counsel for Plaintiffs
241. Washington, State of – *Amicus Curiae*
242. Weaver, Cynthia Cheng-Wun – Counsel for Plaintiffs
243. Weaver, Lily – Counsel for *Amicus Curiae*
244. Weaver, Susan Kay – Counsel for *Amici Curiae*
245. Weiser, Philip J. – Counsel for *Amicus Curiae*

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246. Wenck, Julia H. – Counsel for *Amici Curiae*
247. West Virginia, State of – *Amicus Curiae*
248. Wilkerson, Mark Douglas – Counsel for *Amici Curiae*
249. Williams, Renee – Counsel for Intervenor-Plaintiff
250. Wilson, Thomas Alexander – Counsel for Defendants
251. Women of Reform Judaism – *Amicus Curiae*
252. Wood, Rev. Kimberly – *Amicus Curiae*
253. Woodke, Lane Hines – Counsel for Intervenor-Plaintiff
254. World Professional Association for Transgender Health –
Amicus Curiae
255. Young, Susanne R. – Counsel for *Amicus Curiae*
256. Zelbo, Howard S. – Counsel for *Amici Curiae*
257. Zoe, James – Plaintiff (pseudonym)

The organizations Unitarian Universalist Association, Southeast Conference of the United Church of Christ, Universal Fellowship of Metropolitan Community Churches, and the Global Justice Institute all are not-for-profit organizations that issue no stock and that are not controlled by any publicly traded corporation.

Eknes-Tucker v. Gov. of Alabama, No. 22-11707

Respectfully submitted this eighteenth day of September 2023.

/s/ Susan Kay Weaver

Susan Kay Weaver

Counsel for *Amici Curiae*

**MOTION FOR LEAVE
TO FILE *AMICUS CURIAE* BRIEF**

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure and 11th Cir. R. 29-3, *amici curiae* respectfully move for leave to file an *amicus curiae* brief in support of Plaintiffs-Appellees' Petition for Rehearing En Banc. A copy of the proposed brief is attached to this motion.

STATEMENT OF MOVANTS' IDENTITY AND INTEREST

Amicus curiae the **Unitarian Universalist Association** (“UUA”) is a religious denomination formed in 1961 by the union of the American Unitarian Association and the Universalist Church of America, two denominations with deep roots in American history. Its membership today comprises more than 1,000 congregations nationwide, ranging from those recently organized to many of America's founding churches, first gathered by the Pilgrims and Puritans in the 1600s. The UUA has an abiding interest in the worth and dignity of each person. In ceremonies of dedication, many Unitarian Universalist congregations acknowledge a child's sacred life and commit to support the family in its key role of guarding the child's life, freedom, and

opportunities.¹ The UUA opposes interference with the right of parents to support their children who need gender-affirming care. “A parent or guardian who is taking their child to a health care provider to offer gender-affirming care is providing love and support.”²

Amicus curiae **Southeast Conference of the United Church of Christ** is the regional body of the United Church of Christ (“UCC”) within the states of Alabama, northwestern Florida, Georgia, Mississippi, South Carolina, and Tennessee (except the city of Memphis). The UCC comprises some 4700 congregations in the United States and 16 in Alabama. UCC President John C. Dorhauer and other UCC leaders have condemned state laws, including Alabama’s, that are “depriving parents of the right to make medical decisions for their children.”³ “The harm done when governments seize control from

¹ Rev. Linda Olson Peebles, *We Dedicate This Child*, UUA pamphlet (1999), <https://www.uuabookstore.org/Assets/PDFs/3559.pdf> .

² UUA, *Diversity of Sexuality and Gender is a Gift*, UUA Press Releases (February 25, 2022), <https://bit.ly/3C5zizH> (responding to Texas officials’ mischaracterization of gender-affirming care as “child abuse”).

³ John C. Dorhauer, et al, *Trans-Nonbinary Pastoral Letter*, United Church of Christ (June 8, 2022), <https://bit.ly/3z7vWuf> .

parents of their own freedom to provide care for their own children is obvious.”⁴

Amicus curiae **Universal Fellowship of Metropolitan Community Churches (“MCC”)**, founded in 1968, is the world’s largest Christian denomination ministering primarily to LGBT persons, with affiliated and emerging congregations across the United States, including in Alabama. MCC believes everyone is included in the family of God and is committed to working for their civil and human rights.

Amicus curiae **Global Justice Institute**, the social-justice arm of MCC, works with faith-based activists around the globe to support projects that further human rights and equality.

REASONS WHY MOVANTS’ BRIEF IS DESIRABLE AND RELEVANT TO THE DISPOSITION OF THIS CASE

Clergy in the congregations and faith communities of *amici curiae* minister to transgender youth and their families. Concerned that the Act and similar acts in other states may cause physical, mental and spiritual harm to vulnerable youth and their families, *amici* organizations stand with them and advocate for them in accordance

⁴ *Id.*

with *amici's* faith and values. Faith leaders in the UUA and UCC have spoken out against laws restricting gender-affirming care because they have an awareness of the laws' potential harmful effects to transgender youth and their families. *Amici* organizations believe it is of exceptional importance that parents of transgender minors have the right to seek expert medical advice, subject to medically accepted standards, in support of their transgender children and youth so they may flourish.

The proposed amicus curiae brief's discussion of the Panel Opinion's errors is likely to be helpful to this Court's active judges in evaluating the clear need for en banc rehearing.

Amici curiae respectfully request that their motion be granted and the attached amicus curiae brief be submitted for filing.

DATED: September 18 ,2023 Respectfully submitted,

 /s/ Susan Kay Weaver
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Attorneys for Amici Curiae:

Unitarian Universalist Association,

Southeast Conference of the United

Church of Christ, Universal

Fellowship of Metropolitan

Community Churches, and Global

Justice Institute

CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion, which has been prepared in proportionally spaced Century Schoolbook 14-point font, complies with the type-volume limitation of Fed.R.App.P. 27(d)(2)(A), the typeface requirements of Fed.R.App.P. 32(a)(5), and the type requirements of Fed.R.App.P. 27(d)(1)(E). It contains 644 words as counted by the Microsoft Word for Mac (version 16.77 (23091003)) word-processing system used to prepare the Motion, exclusive of the parts of the Motion exempted from the type-volume limitation by Fed.R.App.P. 32(f).

/s/ Susan Kay Weaver

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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2023, I am electronically filing the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system, which will send notice of this filing to all parties through their counsel of record as indicated on the electronic filing receipt.

/s/ Susan Kay Weaver

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BRIEF FOR *AMICI CURIAE* UNITARIAN UNIVERSALIST
ASSOCIATION, SOUTHEAST CONFERENCE OF THE UNITED
CHURCH OF CHRIST, UNIVERSAL FELLOWSHIP OF
METROPOLITAN COMMUNITY CHURCHES, AND GLOBAL
JUSTICE INSTITUTE IN SUPPORT OF PLAINTIFFS-APPELLEES
PETITION FOR REHEARING EN BANC

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1(a)(1), 26.1-2(b), and 26.1-3, the undersigned counsel certifies that the following listed persons and entities may have an interest in the outcome of this case:

1. Abdul-Latif, Hussein – *Amicus Curiae*
2. Academic Pediatric Association – *Amicus Curiae*
3. Alabama Center for Law and Liberty (The), LLC – *Amicus Curiae*
4. Alabama Chapter of the American Academy of Pediatrics – *Amicus Curiae*
5. Alabama Policy Institute, Inc. – Parent company of *Amicus Curiae* The Alabama Center for Law and Liberty, LLC
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17. American Medical Association – *Amicus Curiae*
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20. Andersen, Alison – Counsel for *Amici Curiae*
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25. Association of American Medical Colleges – *Amicus Curiae*
26. Association of Medical School Pediatric Department Chairs –
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27. Austin, Heather, Ph.D., previously proceeding under
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32. Barday, Shireen – Counsel for *Amicus Curiae*
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34. Barnhart, Jr., Rev. Dr. David. L. – *Amicus Curiae*
35. Baylock, Wilson C. – Defendant
36. Becker, Laura – *Amicus Curiae*
37. Beninati, Nancy – Counsel for *Amicus Curiae*
38. Blakemore, Rev. Robin – *Amicus Curiae*
39. Boccuzzi, Jr., Carmine D. – Counsel for *Amici Curiae*
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48. Burke, Liles C. – U.S. District Court Judge
49. Burleigh, Billy – *Amicus Curiae*
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63. Cooper, Rev. Erica – *Amicus Curiae*
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68. District of Columbia – *Amicus Curiae*
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191. Sanders, Rev. Jennifer – *Amicus Curiae*
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199. Smith, John (pseudonym) – *Amicus Curiae*
200. Societies for Pediatric Urology – *Amicus Curiae*
201. Society for Adolescent Health and Medicine – *Amicus Curiae*
202. Society for Pediatric Research – *Amicus Curiae*
203. Society of Pediatric Nurses – *Amicus Curiae*
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210. Stoll, Christopher F. – Counsel for Plaintiffs
211. Stone, Jessica Lynn – Counsel for Plaintiffs
212. Stonewall UK – *Amicus Curiae*
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214. Swedish Federation for Lesbian, Gay, Bisexual, Transgender,
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218. Thomas, Rev. Dr. Kevin L. – *Amicus Curiae*
219. Thomason, Rev. Beth – *Amicus Curiae*
220. Thornton, Joel H. – Counsel for *Amici Curiae*
221. Tong, William – Counsel for *Amicus Curiae*
222. Toyama, Kaitlin – Counsel for Intervenor-Plaintiff
223. Trevor Project (The), Inc. – *Amicus Curiae*
224. Unikowsky, Adam G. – Counsel for *Amici Curiae*
225. Union for Reform Judaism – *Amicus Curiae*

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226. Unitarian Universalist Association – *Amicus Curiae*
227. United States of America – Intervenor-Plaintiff
228. Universal Fellowship of Metropolitan Community Churches –
Amicus Curiae
229. Utah, State of – *Amicus Curiae*
230. Vague, Amie A. – Counsel for Plaintiffs
231. Vance, Robert S. (III) – Counsel for *Amici Curiae*
232. Ventiere, Jessica – Defendant
233. Vermont, State of – *Amicus Curiae*
234. Veta, D. Jean – Counsel for *Amici Curiae*
235. Voe, April
236. Voe, Robert
237. Voigts, Anne M. – Counsel for Plaintiffs
238. Wadsworth, Stephen D. – Counsel for Intervenor-Plaintiff
239. Walker, Susan Russ – Magistrate Judge
240. Warbelow, Sarah – Counsel for Plaintiffs
241. Washington, State of – *Amicus Curiae*
242. Weaver, Cynthia Cheng-Wun – Counsel for Plaintiffs
243. Weaver, Lily – Counsel for *Amicus Curiae*
244. Weaver, Susan Kay – Counsel for *Amici Curiae*
245. Weiser, Philip J. – Counsel for *Amicus Curiae*

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249. Williams, Renee – Counsel for Intervenor-Plaintiff
250. Wilson, Thomas Alexander – Counsel for Defendants
251. Women of Reform Judaism – *Amicus Curiae*
252. Wood, Rev. Kimberly – *Amicus Curiae*
253. Woodke, Lane Hines – Counsel for Intervenor-Plaintiff
254. World Professional Association for Transgender Health –
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255. Young, Susanne R. – Counsel for *Amicus Curiae*
256. Zelbo, Howard S. – Counsel for *Amici Curiae*
257. Zoe, James – Plaintiff (pseudonym)

The organizations Unitarian Universalist Association, Southeast Conference of the United Church of Christ, Universal Fellowship of Metropolitan Community Churches, and the Global Justice Institute all are not-for-profit organizations that issue no stock and that are not controlled by any publicly traded corporation.

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Respectfully submitted this 18th day of September 2023.

/s/ Susan Kay Weaver

Susan Kay Weaver

Counsel for *Amici Curiae*

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STATEMENT OF COUNSEL

I, Susan K. Weaver, express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the Supreme Court of the United States and of this circuit, such that consideration by the full court is necessary to secure and maintain uniformity of decisions in this Court:

1. *Parham v. J.R.*, 442 U.S. 584 (1979).
2. *Bendiburg v. Dempsey*, 909 F.2d 463 (11th Cir.1990).

I also express a belief, based on a reasoned and studied professional judgment, that this appeal involves questions of exceptional importance:

Whether included in the long-recognized fundamental right of parents under the Due Process Clause to direct their children's upbringing is the right "to follow and seek medical advice" to care for

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their children, *Parham*, 442 U.S. at 602, subject to medically accepted standards?

Respectfully submitted this 18th day of September 2023.

/s/ Susan Kay Weaver

Susan Kay Weaver

Counsel for *Amici Curiae*

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I. STATEMENT OF THE ISSUE MERITING EN BANC CONSIDERATION

Portions of Alabama S.B. 184 (the “Act”) criminalize providing puberty-blocking medications and cross-sex hormones to transgender minors to treat their gender dysphoria. Parent Plaintiffs in this case challenged those portions of the Act. The district court issued a preliminary injunction, holding Parent Plaintiffs likely to prevail on the merits because they can show they have, under the Fourteenth Amendment’s Due Process Clause, a “fundamental right to treat their children with transitioning medications subject to medically accepted standards.” DE112-1:16. The district court also found record evidence that enforcing the ban will cause transgender youth severe medical harm. DE112-1:30.

The Panel Opinion has vacated the preliminary injunction on grounds that conflict with *Parham v. J.R.*, 442 U.S. 584 (1979), which holds that parents have a fundamental right to direct their children’s upbringing that includes the right “to seek and follow medical advice.” *Parham*, 442 U.S. at 602; accord *Bendiburg v. Dempsey*, 909 F.2d 463, 470 (11th Cir.1990). The Panel Opinion dramatically curtails that

fundamental right, reasoning treatments for gender dysphoria were not known to the Fourteenth Amendment’s framers and ratifiers in 1868.

That reasoning places the Eleventh Circuit precedent in conflict with *Parham*, which recognizes parents’ right to seek medical treatments their children need without asking whether the particular medical treatments involved were known to the Fourteenth Amendment’s framers and ratifiers..

II. IDENTITY AND INTEREST OF AMICI CURIAE

Amicus curiae the **Unitarian Universalist Association**

(“UUA”) is a religious denomination formed in 1961 by the union of the American Unitarian Association and the Universalist Church of America, two denominations with deep roots in American history. Its membership today comprises more than 1,000 congregations nationwide, ranging from those recently organized to many of America’s founding churches, first gathered by the Pilgrims and Puritans in the 1600s. The UUA opposes interference with the right of parents to support their children who need gender-affirming care to flourish.

Amicus curiae **Southeast Conference of the United Church of Christ** is the regional body of the United Church of Christ (“UCC”)

within the states of Alabama, northwestern Florida, Georgia, Mississippi, South Carolina, and Tennessee (except the city of Memphis). The UCC comprises some 4700 congregations in the United States and 16 in Alabama. UCC President John C. Dorhauer and other UCC leaders have condemned state laws, including Alabama's, that deprive parents of the right to make medical decisions for their child.

Amicus curiae **Universal Fellowship of Metropolitan Community Churches (“MCC”)**, founded in 1968, is the world's largest Christian denomination ministering primarily to LGBT persons, with affiliated and emerging congregations across the United States, including in Alabama. MCC believes everyone is included in the family of God and is committed to working for their civil and human rights.

Amicus curiae **Global Justice Institute**, the MCC's social-justice arm, works with faith-based activists around the globe to support projects that further human rights and equality.

III. RULE 29(a)(4)(E) STATEMENT

This brief was written in whole by the *amici curiae*'s counsel, working with *amici* and their representatives. No counsel for the parties in this matter authored any portion of this brief, nor did any

party or its counsel contribute money that was intended to fund preparing or submitting the brief. No person other than *amici curiae*, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief.

IV. SUMMARY OF ARGUMENT

Under our Constitution, parents have a fundamental liberty interest to “follow and seek medical advice” in order to protect and care for their children. *Parham*, 442 U.S. at 602. The Panel failed to honor this fundamental liberty interest that the Supreme Court recognized in *Parham*, which is grounded in longstanding substantive-due-process antecedents. Instead, the Panel Opinion primarily focuses on whether particular treatments were already known when the Fourteenth Amendment was ratified in 1868.

The Panel Opinion’s focus on specific treatments is wholly inappropriate. When the Fourteenth Amendment’s framers and ratifiers acted in 1868 to protect our most fundamental liberties, they well knew that medical science advances with time—and that it would continue to advance. The Panel Opinion errs by employing their ignorance of specific scientific advances to drastically curtail parents’

fundamental-liberty interest in caring for their children. *Parham's* broad right, honoring parents' duty to seek expert medical care their children need to flourish, cannot be limited to seeking only medical treatments that were known in 1868.

The Panel Opinion acknowledges: "Laws that burden the exercise of a fundamental right require strict scrutiny and are sustained only if narrowly tailored to further a compelling governmental interest." Panel Opinion at 25 (quoting *Lofton v. Sec'y of Dep't of Child & Fam. Servs.*, 358 F.3d 804, 815 (11th Cir.2004)). But having found the Act doesn't infringe on a fundamental right, the Panel adds that it's not subject to strict scrutiny. That is at odds with the Supreme Court's recognition of parents' fundamental liberty interest in fulfilling their children's medical needs.

These serious errors must be corrected. *Parham's* explicit protection of parents' fundamental right to "follow and seek medical advice" to care for their child, *Parham*, 442 U.S. at 602, cannot be reconciled with rational-basis review, allowing the State to prohibit—and even criminalize—parents' exercise of that fundamental right merely because medicine is always evolving. The Panel Opinion effects

a gross violation of parents’ most basic right to secure the medical care that their children need to flourish and conflicts with Supreme Court precedent.

V. ARGUMENT

A. Parents Have a Fundamental Right to Seek and Follow Expert Medical Advice So their Children May Flourish

“The liberty interest at issue in this case—the interest of parents in the care, custody and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by th[e Supreme] Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000)(plurality opinion); see *id.* at 68-69. A century of high-court precedents recognize that right, stretching back to *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925). Thus, it is both “deeply rooted in this Nation’s history and tradition’ and ‘implicit in the concept of ordered liberty.” *Dobbs v. Jackson Women’s Health Org.*, 142 S.Ct. 2228, 2242 (2022)(quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)(cleaned up); see *Glucksberg*, 521 U.S. at 727 n.19.

At its very core is parents' right and duty to seek and follow expert medical advice to protect and care for their children. The Supreme Court in *Parham v. J.R.*, 442 U.S. 584, 602 (1979), held:

[O]ur constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). See also *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). Surely, this includes a "high duty" to recognize symptoms of illness and to seek and follow medical advice.

Parham, 442 U.S. at 602.

Yet the Panel holds that parents have no fundamental right, subject of course to current medically accepted standards, to obtain gender-affirming transitioning medications in support of their transgender children. The Panel's analysis erroneously focuses on whether specific medical treatments were available in 1868, instead of honoring the well-recognized right of parents "to seek and follow medical advice," consistent with medically accepted standards, as in *Parham*, 442 U.S. at 602, 604. That is a very serious mistake.

The district court soundly held that *encompassed within* a parent’s fundamental right to make decisions concerning the “care, custody and control of their children,” *Troxel*, 530 U.S. at 65-66, is the “more *specific* right to direct a child’s medical care,” DE112-1:16 (citing *Bendiburg v. Dempsey*, 909 F.2d 463, 470 (11th Cir.1990)). Accordingly, parents have “plenary authority to seek such care for their children, subject to a physicians’ independent examination and medical judgment.” DE112-1:16 (quoting *Parham*, 442 U.S. at 604). In line with those precedents, the district court concluded that parents here were “substantially likely to show that they have a fundamental right to treat their children with transitioning medications subject to medically accepted standards.” DE112-1:16.

The Panel, however, under its “careful description” of the liberty interest at issue (*see Glucksberg*, 521 U.S. at 721), faults the district court for failing to show that the recently available treatments for gender-affirming care “inform[ed] the meaning of the Fourteenth Amendment at the time it was ratified—July 9, 1868.” Panel Opinion at 27-28. The Panel reasons that if medical treatments for gender dysphoria were unknown until “well into the twentieth century,” *the*

treatments cannot be “deeply rooted” in our nation’s history and tradition. Panel Opinion at 26-27 & nn.11-12.

The Panel’s explicit assumption, that the Fourteenth Amendment’s framers sought to limit parents to seeking only those medical treatments that were available in 1868, is misplaced. The Fourteenth Amendment’s framers doubtless understood that parents have important rights and duties when it comes to protecting their children. Those framers could not have thought that medical treatments parents might seek to support and nurture their children are fixed in the limited medical knowledge of any particular time. The Fourteenth Amendment’s framers and ratifiers fully understood that new treatments emerge with ongoing scientific research and discoveries.

The principle of scientific progress, including medical, was well known when the Fourteenth Amendment was ratified. Framed in 1787, the Constitution had long empowered Congress “[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” U.S. Const., Art. I, ¶8, cl.8. By 1868, moreover, the Fourteenth Amendment’s framers doubtless knew—from their own

recent experience—for “during the Civil War, there were many medical advances and discoveries.”¹ Treating that war’s mass casualties had contributed significantly to advancements in medical science and practice.²

To suggest, as the Panel Opinion does, that the Fourteenth Amendment’s framers were ignorant of scientific advancements, and that they somehow assumed that medical science and practice was fixed as of 1868 seriously underestimates their knowledge and understanding.

The Panel Opinion’s holding that the parental right to support and protect their children is limited to specific medical treatments rooted in our Nation’s history and tradition makes little sense. On what basis shall courts distinguish which, *if any*, pediatric treatments are sufficiently rooted in this Nation’s history and tradition to merit

¹ Robert F. Reilly, *Medical and Surgical Care During the American Civil War, 1861–1865*, 29:2 *Baylor U. Med. Ctr. Proc.* 138, 138 (2017); *see also* F. William Blaisdell, *Medical Advances During the Civil War*, 123 *Archives of Surgery* 1045-50 (1988).

² *See generally* Shauna Devine, *Learning from the Wounded: The Civil War and the Rise of American Medical Science* (Chapel Hill: Univ. North Carolina Press, 2014).

constitutional protection? Amoxicillin, widely used today to treat strep throat and ear infections, came into widespread use in the U.S. only after 1974.³ It was unknown to the Fourteenth Amendment's framers. Might penicillin be sufficiently rooted in our Nation's history? The first report of its antibacterial properties was published in a British journal in 1929.⁴ Chemotherapy to treat childhood leukemia was not developed until the 1940s.⁵ Promising immunotherapy treatments for childhood cancer are yet under research and development today.⁶

The Supreme Court's historical analysis in *Dobbs* by no means undermines parents' duty to care for, and their fundamental right to protect their children—both concepts that the Fourteenth Amendment's framers surely understood, and that the Supreme Court's and this

³ U.S. Food & Drug Administration, *Drugs@FDA: FDA-Approved Drugs*, <https://bit.ly/3LpwDEV> .

⁴ The Nobel Foundation, The Nobel Prize: Sir Alexander Fleming, <https://bit.ly/45ZAroz>; Alexander Fleming, On the Antibacterial Action of Cultures of a Penicillium, with Special Reference to their Use in the Isolation of B. influenzae, 10(3) British J. Experimental Pathology 226-36 (1929), <https://bit.ly/45VrSep> .

⁵ Dana-Farber Cancer Institute, *About Us: Sidney Farber, MD*, <https://bit.ly/3PgkGCy> .

⁶ Dana Farber/Boston Children's Cancer and Blood Disorders Center, *CAR T-Cell Therapy*, <https://bit.ly/3PphN2x> .

Court's precedents have honored, right down to *Parham* and *Bendiburg*. *Dobbs* did not overrule those decisions. Time and again the *Dobbs* Court warns: "Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion." *Dobbs*, 142 S.Ct. at 2277-78, *see also id.* at 2280. *Dobbs* cannot be employed to curtail the fundamental right recognized in *Parham*.

Employing an insupportably narrow "history-and-tradition" analysis, the Panel Opinion nonetheless holds the Act interferes with no fundamental liberty and is subject to mere rational-basis review. Moreover, the Panel emphasizes at length that rational-basis review is a "lenient standard." Panel Opinion at 35.

"Under this deferential standard," the question that we ask "is simply whether the challenged legislation is rationally related to a legitimate state interest." *Lofton*, 358 F.3d at 818. Such a relationship may merely "be based on rational speculation" and need not be supported "by evidence or empirical data." *FCC v. Beach Commc'ns, Inc.* 508 U.S. 307, 315 (1993); *accord Jones*, 950 F.3d at 809 ("When we review a statute for rationality, generally we ask if there is *any* rational basis for the law, even if the government's proffered explanation is irrational, and even if it fails to offer any explanation at all.").

Panel Opinion at 35.

The rational-basis standard is inappropriate for restrictions of a long-recognized fundamental right. In this case, that undemanding standard enables the State to usurp parents’ role in evaluating the risks and benefits of medical treatments their children may need to flourish. If the Panel Opinion becomes the law, parents’ access to *any* pediatric medical treatments not recognized in 1868, no matter how effective today, might be restricted by the state under rational-basis review.

The Panel Opinion holds *Parham* does “not at all suggest parents have a fundamental right to direct a particular treatment for their child that is prohibited by state law,” Panel Opinion at 32, and that *Bendiburg*’s reasoning is inapplicable “to situations involving parents’ ability to *affirmatively obtain* certain medical treatment for their child that the State prohibits.” Panel Opinion at 33 n.17. But neither *Parham* or *Bendiburg* suggest a state may—on the basis of speculation—criminalize medically accepted treatments that parents seek in order to protect their child from severe harm.

Of course parents’ right to obtain medical treatment in support of their child is not unrestricted. As the district court recognized, “the State may limit the right and intercede on a child’s behalf when the

child’s health and safety is in jeopardy.” DE112-1:17 (citing *Bendiburg*, 909 F.2d at 470 (11th Cir.1990). Yet such limitations by the state should be subject to strict scrutiny “sustained only if narrowly tailored to further a compelling governmental interest.” Panel Opinion at 25 (quoting *Lofton*, 358 F.3d at 815). The lenient rational-basis standard makes the child “the mere creature of the State,” *Parham*, 442 U.S. at 602 (citing *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925)), a notion “our constitutional system long ago rejected.” *Id.* at 602.

VI. CONCLUSION

Amici support the right, and indeed the duty, of parents to make medical decisions consistent with medically accepted standards in support of their child’s well-being—so that children may flourish. The Panel Opinion unconstitutionally intrudes on parents’ ability to make such decisions in order to provide children the support they need. This case should be reheard en banc.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief, which has been prepared in proportionally space Century Schoolbook 14-point font, complies with the type-volume limitation of Fed.R.App.P. 29(b)(4), the typeface requirements of Fed.R.App.P. 32(a)(5), and the type requirements of Fed.R.App.P. 32(a)(6). It contains 2,570 words as counted by Microsoft Word for Mac (version 16.77 (23091003)) word-processing system used to prepare the Brief, exclusive of the parts of the Brief exempted from the type-volume limitation by Fed.R.App.P. 32(f) and 11 Rule 29-3.

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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2023, I am electronically filing the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system, which will send notice of this filing to all parties through their counsel of record as indicated on the electronic filing receipt.

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