No. 22-2268

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CRISTA EGGERS and NMM,
Plaintiffs-Appellees,

v.

ROBERT EVNEN, Nebraska Secretary of State,
Defendant-Appellant.

On Appeal from the United States District Court
for the District of Nebraska
No. 4:22-cv-3089 (Hon. John M. Gerrard)

Brief of the States of Arkansas, Alabama, Alaska, Florida, Idaho, Indiana, Louisiana, Missouri, Montana, North Dakota, Ohio, Oklahoma, South Carolina, Utah, and West Virginia as Amici Curiae Supporting Defendant-Appellant

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The Amici States are governmental entities that are not required to file a corporate disclosure statement. Fed. R. App. P. 26.1(a). The Amici States are not aware of additional interested persons.

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IDENTITY AND INTEREST OF AMICI AND SUMMARY OF ARGUMENT

Amici are the States of Arkansas, Alabama, Alaska, Florida, Idaho, Indiana, Louisiana, Missouri, Montana, North Dakota, Ohio, Oklahoma, South Carolina, Utah, and West Virginia.

The Amici States are responsible for conducting elections, and as part of that responsibility, they are charged with enforcing regulations that safeguard voter confidence and promote electoral integrity. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191, 197 (2008) (plurality op.); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). Amici States have an interest in protecting their ability to enact regulations without undue micromanagement by the federal judiciary.

Several of Amici States' constitutions and laws provide that citizens may place legislation and constitutional amendments on the ballot via signature petition. Amici States have an interest in defending these state-created systems from federal oversight.

This case involves much more than a challenge to Nebraska's requirement that ballot measure sponsors attain the support of a wide geographic cross-section of the state's voters to gain ballot access. By all accounts, Nebraska's requirement, like those in other states, is not terribly difficult to meet. And the district court didn't enjoin it because of any practical difficulties it creates for the initiative process that amount to an unconstitutional burden.

Instead, it invented a new approach to *Anderson/Burdick*'s balancing test that allows judges to place a finger on the scale to ensure that it always comes out a particular way. The district court held that what it labeled "vote dilution"—in the context of this case, the requirement that ballot sponsors collect signatures from more than just the largest handful of a state's counties—is *per se* severely burdensome under *Anderson/Burdick* and subject to strict scrutiny. That approach conflicts with the Supreme Court precedent.

Indeed, the district court's approach would place in jeopardy many similar requirements (some over century-old) in other states based on a misapplication of the Supreme Court's one person, one vote doctrine to the process by which petitions make it to the ballot. But the Constitution protects the right to vote for one's representatives in the republican form of government it guarantees. It does not regulate an entirely state-created right to direct democracy via ballot measures. States are free to structure this process as they see fit without intrusion by the federal judiciary. This Court should therefore reverse and make clear that geographic diversity requirements such as Nebraska's are subject only to rational basis review.

ARGUMENT

I. This Court should repudiate the district court's erroneous and dangerous *Anderson/Burdick* approach.

Though the district court's merits analysis rested primarily on its erroneous endorsement of Ninth Circuit case law holding that geographic diversity requirements in both the nominating petition and initiative petition contexts must satisfy strict scrutiny, it separately reached the same result applying a novel *Anderson/Burdick* analysis. That framework has proven to be problematic, often subjecting state election laws to subjective policy whims. But the district court went further than merely improperly applying *Anderson/Burdick* scrutiny instead of simply upholding Nebraska's requirement under rational basis review. It determined that geographic diversity requirements *per se* severely burden the right to vote and are thus subject to strict scrutiny irrespective of whether they are actually burdensome. This Court should make clear that, where *Anderson/Burdick* applies, courts must follow the Supreme Court's instructions to weigh actual evidence of burdens against state interests.

A. Courts should be wary of expanding the areas in which they employ the *Anderson/Burdick* balancing test.

It has been over a decade since the Supreme Court last considered the proper constitutional test in challenges of state election laws. *See Crawford*, 553 U.S. at

181. *Crawford* involved two plurality opinions both purporting to apply the decisional framework from *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). Under that test, courts assess "the extent to which [the] challenged regulation burden[s]" a voter's First or Fourteenth Amendment rights. *Id.* at 434. An election law that "imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters" is "'generally'" justified by "'the State's important regulatory interests.'" *Id.* (quoting *Anderson*, 460 U.S. at 788).

Applying that balancing test is not easy. *Anderson/Burdick* has been often criticized by scholars and jurists. It has been rightly described as "troublesome," "malleabl[e]," "indeterminate," and "amorphous." Edward B. Foley, *Voting Rules & Constitutional Law*, 81 Geo. Wash. L. Rev. 1836, 1859 (2013). Especially in high-stakes cases, as election matters often are, it "it is a dangerous tool" that "affords far too much discretion to judges in resolving the dispute before them." *Daunt v. Benson*, 956 F.3d 396, 424 (6th Cir. 2020) (Readler, J., concurring in judgment). And it leaves states with no clear guidance in enacting election regulations. *See Crawford*, 553 U.S. at 208 (Scalia, Thomas, & Alito, JJ., concurring) ("Judicial review of [state legislatures'] handiwork must apply an objective, uniform standard that will enable them to determine, *ex ante*, whether the burden they impose is too severe."); *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182,

208 (1999) (Thomas, J., concurring) ("When an election law burdens voting and associational interests, our cases are much harder to predict, and I am not at all sure that a coherent distinction between severe and lesser burdens can be culled from them."); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997) (noting that "[n]o bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms").

How the *Anderson/Burdick* framework ought to be employed is a matter in desperate need of clarity from the Supreme Court. And that strongly counsels against employing that amorphous balancing test in new domains. *See United States v. Virginia*, 518 U.S. 515, 567 (1996) (Scalia, J., dissenting) (noting that varying levels of scrutiny add "a further element of randomness" in "that it is largely up to us which test will be applied in each case").

The mechanics of initiative petition regimes are one such area. "[T]he right to a state initiative process is not a right guaranteed by the United States Constitution." *Dobrovolny v. Moore*, 126 F.3d 1111, 1113 (8th Cir. 1997). Because this "mechanism[] of direct democracy [is] not compelled by the Federal Constitution," the Supreme Court has left it "up to the people of each State, acting in their sovereign capacity, to decide whether and how to permit legislation by popular action." *Doe v. Reed*, 561 U.S. 186, 212 (2010) (Sotomayor, J., concurring).

Yet courts routinely subject state initiative regulations to scrutiny under the *Anderson/Burdick* framework on the basis of a regulation's impact on "the communication of ideas associated with the circulation of petitions." *Dobrovolny*, 126 F.3d at 1113. But it is not always easy to discern whether a law merely regulates the mechasm of petition gathering process or affects ideas and viewpoints. *See, e.g.*, *Doe*, 561 U.S. at 194-195 (holding that a law that "compelled disclosure of signatory information on referendum petitions" was subject to scrutiny not because it regulated the mechanics of the initiative process but because it regulated "the expression of a political view"); *Marijuana Policy Project v. United States*, 304 F.3d 82, 84-85 (D.C. Cir. 2002) (upholding law that prohibited initiatives reducing marijuana penalties). And the outcome of *Anderson/Burdick*'s balancing inquiry varies among courts even where similar laws are at issue. *See, e.g.*, *Wilmoth v. Secretary of State of New Jersey*, 731 Fed. Appx 97, 102 (3d Cir. 2018) ("Since the turn of the century, 'a consensus has emerged' that laws imposing residency restrictions upon circulators of nomination petitions "are subject to strict scrutiny analysis.") (collecting cases); *but see Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614, 618 (8th Cir. 2001) (upholding such a regulation under *Anderson/Burdick*).

Courts should therefore be cautious of exploring new ways to employ *Anderson/Burdick*'s balancing framework where the Supreme Court has not explicitly endorsed its use. Regulations like Nebraska's geographic diversity requirement are

outside of that gamut. The Court should confirm that where petitioning regulations do not implicate speech (as the district court correctly held below) and do not implicate the right to vote (as explained in Section II), rational basis rather than *Anderson/Burdick* scrutiny applies.

B. The district court's novel *Anderson/Burdick* approach was erroneous.

After determining that geographic diversity requirements are subject to scrutiny under the Equal Protection Clause, the district court applied strict scrutiny and concluded Nebraska's requirement was likely invalid. As explained in Section II, that was wrong. But the district court separately held that if it had applied *Anderson/Burdick*'s balance framework instead, it would have reached the same result.

The district court began with the first step of *Anderson/Burdick*, "whether a challenged law severely burdens the right to vote." Add. 20 (quoting *Crawford*, 552 U.S. at 205) (Scalia, J., concurring). To determine this, courts "weigh the 'character and magnitude' of the burden . . . against the interest the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary." *Timmons*, 520 U.S. at 358 (quoting *Burdick*, 504 U.S. at 434). Plaintiffs must generally "provide concrete evidence of the burden imposed on voters," and the court must make some effort to quantify the practical consequences of those burdens. *Crawford*, 533 U.S. at 201 (plurality op.).

That is not how the district court decided whether the geographic diversity requirement here severely burdens the right to vote. Rather, it labelled all minimum county thresholds for modicum-of-support showings as "vote dilution." Add. 18. Noting that the Supreme Court has held that burdens are severe "if they go beyond the merely inconvenient," Add. 21 (citing *Crawford*, 552 U.S. at 205) (Scalia, J., concurring), it held that "[v]ote dilution is more than an inconvenience—it's an insurmountable impediment to effective use of the franchise." *Id.* Thus, there was no weighing of burdens and state interests to determine whether Nebraska's constitutional requirement is severely burdensome under *Anderson/Burdick*. Instead, the district court held that "vote dilution" is *per se* severely burdensome, such that every election regulation so categorized is subject to strict scrutiny.

That is not the law. It cannot be squared with any of the Supreme Court's case law outside of the one person, one vote doctrine where vote dilution is at issue. For example, the Supreme Court has held that equal protection does not "require proportional representation as an imperative of political organization." *Mobile v. Bolden*, 446 U.S. 55, 75-76 (1980). And Congress made certain to clarify that "nothing in [Section 2 of the Voting Rights Act] establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 52 U.S.C. 10301. But any reapportionment that lacked proportional

minority representation could simply be labeled "vote dilution" under the district court's approach and subject to strict scrutiny, despite the Supreme Court's holding that the Constitution does not require proportional representation and Congress's choice not to attempt to do so in the Voting Rights Act.

Consider also cases involving partisan gerrymandering. The Supreme Court struggled for decades to determine whether a justiciable standard exists for partisan gerrymandering claims and eventually concluded one does not. *See Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). But on the district court's view, one could simply argue that diluting the votes of one's political opponents imposes a severe burden on the right to vote, subjecting any offending apportionment scheme to strict scrutiny. It is telling that of all the approaches the Supreme Court considered and rejected in *Rucho*, *Anderson/Burdick* did not warrant a mention. *See id.*

Nor can the district court's approach be squared with areas in which the Supreme Court has held that the Constitution does not prohibit population differences that the district court would label "vote dilution." In the case of judicial elections, for example, population equality is not constitutionally required. *See Wells v. Edwards*, 347 F. Supp. 453, 455-56 (M.D. La. 1972), *aff'd mem.*, 409 U.S. 1095 (1973). Yet under the district court's *Anderson/Burdick* approach, the lack of population equality among judicial districts might be "an insurmountable impediment

to the effective use" of voting power and thus subject to strict scrutiny. Add. 21. Of course, no court has ever held this.

For all the framework's faults, *Anderson/Burdick* is at least clear that judges cannot simply deem a state's policy choices with which they strongly disagree as a *per se* severe burden on the right to vote subject to strict scrutiny. Countenancing such an approach could put numerous state election regulations in jeopardy as well as open a whole host of apportionment challenges that the Supreme Court has never entertained. Burdens must be practical, not merely conceptual. As the history of states like Arkansas shows, sponsors of ballot measures have successfully complied with geographic diversity requirements for over a century. They facilitate rather than burden the exercise of the state-created right to initiate legislation. This Court should reverse the district court's contrary determination.

II. The district court erred in concluding that requiring a geographically diverse modicum of support to place a measure on the ballot violates the Equal Protection Clause.

States that allow initiated legislation by ballot measure have a key interest in ensuring that all their citizens have an opportunity to influence the process, including rural voters. The district court ignored that important interest. Further, it misapplied the Supreme Court's one person, one vote doctrine, extending that doctrine outside of its well-defined application to the fundamental constitutional right to vote for one's representatives. That doctrine has no place in the context of state-

created rights to direct democracy. This Court has previously indicated that it would reach that conclusion if presented with the opportunity, and it should do so now and reverse the district court's preliminary injunction.

A. Geographic diversity requirements serve important state interests.

Over half the states in the Nation have some form of initiative or referendum process.[1] In addition to requiring a certain number of signatures for a ballot measure to qualify, thirteen states have imposed further requirements to ensure ballot measures attain a geographically diverse modicum of support.[2] Over half of those Arkansas, Idaho, Massachusetts, Nebraska, Nevada, Ohio, Utah, and Wyoming—have historically tied their geographic requirement to county populations, rather than political subdivisions that must be equally apportioned.[3] That is unsurprising,

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[1] *See State-by-State List of Initiative and Referendum Provisions*, Initiative & Referendum Institute, *available at* http://www.iandrinstitute.org/states.cfm (listing the 26 states).

[2] Those states are Alaska, Arkansas, Florida, Idaho, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, Ohio, Utah, and Wyoming. *See Signature, Geographic Distribution and Single Subject (SS) Requirements for Initiative Petitions*, Initiative & Referendum Institute, *available at* http://www.iandrinstitute.org/docs/Almanac-Signature-and-SS-and-GD-Requirements.pdf.

[3] *See* Ark. Const. art. V, sec. 1; Mass. Const. 48, Gen. Prov., Pt. 2; Neb. Const. art. III, sec. 2; Nev. Const. art. XIX, sec. 2; Ohio Const. art. II, sec. 1g; Wyo. Const. art. III, sec. 52.

Idaho previously tied its geographic requirement to counties, but the Ninth Circuit held that provision unconstitutional. *See Idaho Coal. United for Bears v. Cenarrusa*, 342 F.3d 1073 (9th Cir. 2003). Idaho thereafter revised its statute to tie its requirement to legislative districts. *See* S.B. 1108 (Idaho 2013) (amending Idaho

given that most of these states enacted their ballot measure provisions over a century ago, long predating the Supreme Court's one person, one vote doctrine which arose in the Warren Court era.[4] *See Reynolds v. Sims*, 377 U.S. 533 (1964).

These geographic diversity requirements serve important state interests. They are designed to ensure that important changes in a state's legal landscape, especially constitutional amendments, are vetted by more than just voters in the state's largest handful of counties before being placed on the ballot. Without a requirement of attaining a modicum of support from a wide cross-section of voters, rural counties in particular would be entirely shut out of the process.

For example, placing a constitutional amendment on the ballot in Arkansas for the 2022 general election requires 89, 151 signatures of registered voters.[5] Arkansas's largest county, Pulaski, has over 238,000 registered votes, all of whom

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Code Ann. 34-1805); *see also Reclaim Idaho v. Denney*, 497 P.3d 160, 191-93 (Idaho 2021) (striking down subsequent amendment to the statute and restoring the 2013 version).

Utah previously tied its geographic requirement to counties, but amended its statutes in 2003 to tie its requirement to legislative districts. *See* S.B. 28 (Utah 2003) (amending Utah Code Ann. 20A-7-201); H.B. 211 (Utah 2021) (amending Utah Code Ann. 20A-7-301).

[4] *See State-By-State List*, supra note 1.

[5] *See* 2022 Initiatives and Referenda Handbook, Arkansas Secretary of State, *available at* https://www.sos.arkansas.gov/uploads/elections/2021-2022_I__R_Handbook_-_November_2021.pdf.

are eligible to sign signature petitions for ballot measures.[6] A sponsor of a ballot measure could thus attain all the required signatures in just one of Arkansas's seventy-five counties. More realistically, over a quarter of Arkansas's registered voters live in its five most populous counties.[7] Given the investment of time and resources involved in sponsoring a ballot measure, it would make little sense for sponsors to canvass for signatures in the state's more rural counties. Thus, when the people of Arkansas first adopted the state's initiative and referendum process, they included a requirement that a certain signature threshold be met in at least fifteen of Arkansas's seventy-five counties. *See* Ark. Const. art. 5, sec. 1; Ark. Code Ann. 7-9-108. Each of the ballot measures approved by Arkansas voters in the past century have met this requirement, and that provision has gone unchallenged until last year. *See Liberty Initiative Fund v. Thurston*, Case No. 4:21-cv-00460-JM (E.D. Ark.).

B. Geographic diversity requirements do not violate the "one person one vote" doctrine.

The Supreme Court has identified the constitutional "right to vote freely for the candidate of one's choice." *Reynolds*, 377 U.S. at 555. The right to vote for

[6] *See* VR Statistics County Report, Arkansas Secretary of State, at 4, *available at* https://www.sos.arkansas.gov/uploads/elections/VR_Statistics_Report_June_1_2022.pdf.

[7] *See id.*

candidates, rather than through direct democracy, is grounded in the "representative government" guaranteed by the Constitution. *Id.*; *see also* U.S. Const. art. IV, sec. 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government"). The Court has explained that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds*, 377 U.S. at 555; *see id.* at 568 (holding that "the Equal Protection Clause requires" equal apportionment of state legislative districts).

Applying that principle, a state generally cannot impose geographic distribution requirements on nominating petitions untethered from population equality as a condition of a political party gaining ballot access. *Moore v. Ogilvie*, 394 U.S. 814, 819 (1969). That is because the "use of nominating petitions . . . to obtain a place on the . . . ballot" is "an integral part of the election process." *Id.* at 818; *see also McLain v. Meier*, 637 F.2d 1159, 1163 (8th Cir. 1980) ("[T]he fundamental right to vote is inseparable from the right to place the candidate of one's choice on the ballot."). *Moore* and its progeny have thus rendered constitutionally infirm various geographic requirements for political parties and candidates appearing on the ballot.

Initiated legislative and constitutional enactments are a different animal. For one, voter-initiated legislation is a feature purposefully absent from the federal

constitution; instead, that power belongs to Congress alone. *See* U.S. Const. art. 1, sec. 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."). For another, it is entirely the prerogative of the states whether to allow for the exercise of legislative authority through ballot measures; around half of states have chosen not to. Courts, including this one, have thus recognized the important differences between the "fundamental right to vote in an election of political representatives" and a "state-created right to participate in initiatives . . . not provided by the United States Constitution." *Bernbeck v. Gale*, 829 F.3d 643, 648 n.4 (8th Cir. 2016); *see also Kendall v. Balcerzak*, 650 F.3d 515, 523 (4th Cir. 2011) ("The basis for distinguishing the right to vote in a representative election, on the one hand, from the right to petition for referendum and initiative, on the other, is a sound one. The referendum is a form of direct democracy and is not compelled by the Federal Constitution."); *Palisade FruitLands v. Todd*, 279 F.3d 1204, 1211 (10th Cir. 2002) ("[E]very decision of which we are aware has held that initiatives are state-created rights and are therefore not guaranteed by the U.S. Constitution.").

Of course, states that choose to adopt an initiative process must do so in a way that does not violate rights that are provided by the Constitution. The Supreme Court has held, for example, that states may not abridge speech relating to

the process of circulating initiative petitions. *See Meyer v. Grant*, 486 U.S. 414 (1988). That does not mean, of course, that "the First Amendment confers a right to use governmental mechanics to convey a message." *Nevada Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 127 (2011). Rather, the constitutional guarantees that generally protect citizens operate with no less force in the ballot initiative context than elsewhere. But that does not mean that the fundamental right to vote for one's representatives is implicated by a state's requirements for placing legislation on the ballot. Neither is the "one person one vote" doctrine, which flows from that right.

This Court recognized as much in the previous challenge to the geographic diversity requirement at issue in this case. In *Bernbeck*, the Court recognized "the tenuous nature of . . . [the] equal protection claim" against that requirement and explained that isn't "tethered to any constitutional mandates found in Section 2 of the Fourteenth Amendment." 829 F.3d at 649. It went on to note that it was "virtually certain that" challenges to geographically diverse modicum of support requirements, like that here, "fail[] to state an actionable equal protection claim," and even if not, "the required rational basis analysis would . . . doom[] any such claim." *Id.* Yet the district court dismissed that conclusion, saying there was "little . . . to indicate that it was based on a fully considered assessment of the arguments and authority" it considered. Add. 28.

On the contrary, the Supreme Court has made clear that the "one-person, one-vote guarantee" speaks "in terms of equality of representation, not voter equality" in some other sense. *Evenwel v. Abbott*, 578 U.S. 54, 71 (2016); *see also id.* at 72 (collecting cases). Far from applying to votes cast in favor of initiative petitions, the doctrine does not even apply to all *candidates*. Indeed, any contrary theory cannot be squared with the Supreme Court's holding that the one person, one vote doctrine does not apply at all in the context of judicial elections. In *Wells v. Edwards*, the Court summarily affirmed a three-judge district court decision that held that because state judges are not elected to provide citizens with a "representative government" in the way legislative and executive officials are, the one person, one vote doctrine was simply "not relevant to the makeup of the judiciary." *Wells v. Edwards*, 347 F. Supp. 453, 455-56 (M.D. La. 1972), *aff'd mem.*, 409 U.S. 1095 (1973).

Thus, it is constitutional for states to assign populations to elected judicial districts such that each district's constituency is not the same size. That unequal treatment would be subject to strict scrutiny in the context of a legislative or executive office. If the one person, one vote doctrine was only concerned with "voting strength" generally, that distinction would make no sense. *Moore*, 394 U.S. at 819. But the Court's cases speak about "voting strength" in terms of its relation to "representative government." *Id.* Where that connection is missing, such as in the case

of judges, whose offices are not "representative" in nature, state regulations need only satisfy rational basis review.

The district court recognized that, "[s]emantically," the Supreme Court's description of the one person, one vote doctrine being concerned with equality of representation "doesn't apply well to an initiative petition." Add. 17 n.4. But it handwaved away the distinction between direct and representative governance, arguing that voters are acting as "their own representative" in the initiative process. *Id.* (emphasis omitted). That ad hoc pronouncement ignores the fact that, in the ballot measure context, voters are not *voting for a representative*, no matter how the measure comes to be placed on the ballot. It also ignores the plain meaning of "representative." *See, e.g.*, Black's Law Dictionary 1557 (11th Ed. 2019) (defining "representative" as "one who stands for or acts on behalf of another"). Serving a constituency of one does not make someone a "representative" in the context of the fundamental right to vote.

The district court thus stretched the one person, one vote doctrine well beyond the bounds set by the Supreme Court. It applies to representative democracy, not direct democracy. This Court should reprise its earlier conclusion that challenges such as this one "fail[] to state an actionable equal protection claim" and reverse the district court's contrary holding. *Bernbeck*, 829 F.3d 649.

CONCLUSION

For these reasons, the Amici States respectfully ask the Court to reverse the preliminary injunction entered by the district court.

Dated: July 27, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4,200 words, excluding the parts exempted by Fed. R. App. P. 32(f).

I also certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in 14-point Times New Roman font, using Microsoft Word.

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The Amici States are authorized to file this brief without the consent of the parties or leave of the Court. Fed. R. App. P. 29(a)(2).

/s/ *Dylan L. Jacobs*
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CERTIFICATE OF SERVICE

I certify that on July 27, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to any CM/ECF participants.

/s/ *Dylan L. Jacobs*
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