

No. 23A607

In the Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, *ET. AL.*,
Applicants,

v.

STATE OF TEXAS,
Respondent.

***On Application to Vacate the Injunction Pending Appeal Entered by the
United States Court of Appeals for the Fifth Circuit***

To the Honorable Samuel A. Alito, Jr.,
Associate Justice of the United States and
Circuit Justice for the Fifth Circuit

**MOTION FOR LEAVE TO FILE *AMICUS* BRIEF AND *AMICUS*
CURIAE BRIEF OF IMMIGRATION REFORM LAW INSTITUTE
IN SUPPORT OF RESPONDENT**

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MOTION FOR LEAVE TO FILE *AMICUS BRIEF*

Movant Immigration Reform Law Institute respectfully requests leave to file the accompanying brief as *amicus curiae* in support of the respondent’s opposition to the stay application.* The state respondents consented to this motion, and the federal applicants took no position.

IDENTITY AND INTERESTS OF MOVANT

Movant Immigration Reform Law Institute (“IRLI”) is a non-profit 501(c)(3) public interest law firm dedicated to litigating immigration-related cases in the interests of United States citizens, and also to assisting courts in understanding and accurately applying federal immigration law. IRLI has litigated or filed *amicus curiae*

* Pursuant to this Court’s Rule 37.6, counsel for movant and *amicus curiae* authored the motion and brief in whole, and no counsel for a party authored the motion and brief in whole or in part, nor did any person or entity, other than the movant/*amicus* and its counsel, make a monetary contribution to preparation or submission of the motion and brief.

briefs in a wide variety of cases, including: *Wash. All. Tech Workers v. U.S. Dep't Homeland Security*, 50 F.4th 164 (D.C. Cir. 2022); *Trump v. Hawaii*, 138 S. Ct. 2392 (2018); and *Matter of Silva-Trevino*, 26 I&N Dec. 826 (BIA 2016).

REASONS TO GRANT LEAVE TO FILE

Pursuant to this Court's Rule 37.4, movant respectfully seeks leave to file the accompanying *amicus curiae* brief in support of the respondent. Movant respectfully submits that its proffered *amicus* brief brings to the Court's attention several responses to Applicants' claim that Texas's concertina wire barriers interfere with their executive discretion:

- First, that Applicants' immigration non-enforcement policies, not being federal law, do not have the potential to preempt Texas's concertina wire barriers. *See Amicus Br.* at 6-9.
- Second, that Applicants' non-enforcement policies are counter to the congressional purpose of reducing illegal entries. *See Amicus Br.* at 9-12.
- Third, that Texas's wire barriers further the congressional purpose of reducing illegal entries. *See Amicus Br.* at 15-18.
- Fourth, as a sovereign, Texas has inherent authority to protect its territory in congruence with federal law. *See Amicus Br.* at 12-13.

Consequently, Texas's wire barriers are not preempted. These issues are all relevant to deciding the stay application, and movant IRLI believes that filing the brief may aid the Court.

Dated: January 10, 2024

Respectfully submitted,

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AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT

Amicus Curiae Immigration Reform Law Institute (“IRLI” or “*Amicus*”) respectfully submits that the Circuit Justice—or the full Court, if this matter is referred to the full Court—should deny the stay application because the federal applicants are unlikely to prevail on the merits. IRLI’s interests are set out in the accompanying motion for leave to file.

INTRODUCTION

The State of Texas “launched Operation Lone Star in 2021 to aid Border Patrol in its core functions.” App. to Vacate at 27. As part of this operation, Texas installed concertina wire fencing on private property that abuts the U.S.-Mexico border. *Id.*

The present suit was initiated by Texas after Applicants began destroying and removing the concertina wire fencing. Texas alleged common law claims of conversion and trespass to chattels, as well as violations of the Administrative Procedure Act (“APA”), and sought injunctive relief to protect its property, a stay of agency action

under the APA, and declaratory relief stating that Applicants' actions are unlawful. *Id.* at 21a.

Texas timely filed a Motion for a Temporary Restraining Order, followed by a Notice of Escalating Property Damage in Support of its Emergency Motion for a TRO. *Id.* at 21a-22a. The district court granted the TRO and held an initial hearing on the preliminary injunction motion, followed by supplemental briefing, document production, virtual conferences, and eventually a second hearing. *Id.* at 22a. Despite making several findings of fact indicating the unlawfulness of Applicants' actions, the district court found that the APA's waiver of sovereign immunity precluded the lawsuit and denied Texas's motion for preliminary injunction.

Texas filed a timely interlocutory appeal and a motion for an injunction pending appeal with the Fifth Circuit. *Id.* at 7a. The Fifth Circuit granted the injunction, finding that the district court had erred in its interpretation of the APA's sovereign immunity waiver. *Id.* Applicants then filed the present application to vacate the injunction with Justice Alito.

SUMMARY OF ARGUMENT

Texas's use of concertina wire fencing on private property to protect its southern border does not violate the Supremacy Clause of the U.S. Constitution. No preemptive force attaches to mere enforcement priorities of the executive branch, especially where, as here, the enforcement priorities themselves violate federal law. Nor is the use of the concertina wire fencing preempted because it makes compliance with both state and federal law impossible or creates an obstacle to the full purposes of Congress. On the contrary, Texas's installation of wire fencing does not prevent

anyone from complying with both state law and the Immigration and Nationality Act (“INA”), and it achieves the same federal statutory purpose as other federally authorized border walls and barriers—preventing the entry of illegal aliens into the United States. As a sovereign, Texas has inherent authority to protect its borders by pursuing the very congressional objective Applicants have abandoned.

ARGUMENT

The Supremacy Clause of the U.S. Constitution provides that “the Laws of the United States . . . shall be the supreme Law of the Land . . . Laws of any State to the contrary notwithstanding.” U.S. Const. art. VI, cl. 2. Thus, the Supremacy Clause ensures that where state law conflicts with federal law, the state law must yield. *See Arizona v. United States*, 567 U.S. 387, 399 (2012) (“The Supremacy Clause provides a clear rule . . . Congress has the power to preempt state law.”). Accordingly, where “the clear and manifest purpose of Congress,” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947), is that federal law be supreme, state laws that conflict with such federal enactments are preempted.

Preemption under the Supremacy Clause “is compelled whether Congress’s command is explicitly stated in the statute’s language or implicitly contained in its structure and purpose.” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992) (quotation marks and citations omitted). Regardless of whether “[p]re-emption . . . is explicitly stated in the statute’s language or implicitly contained in its structure and purpose,” *Fid. Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 152-53 (1982), Congress’s preemptive purpose is found in the federal statute itself. *CSX Transp. v. Easterwood*, 507 U.S. 658, 664 (1993).

There are two types of implied conflict preemption relevant here. The first is “conflict-impossibility preemption,” *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963), which arises where “compliance with both federal and state regulations is a physical impossibility” *Arizona*, 567 U.S. at 399. The second is “conflict-obstacle preemption” (or simply “obstacle preemption”), *Florida Lime*, 373 U.S. at 142-43, “where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Arizona*, 567 U.S. at 399.

As both the district and appellate courts in this case recognized, there is no conflict between the INA and Texas’s use of concertina wire fencing to protect private property from invading illegal aliens. There is no conflict-impossibility preemption because, as the district court found, border patrol personnel have access to the land on both sides of Texas’s fence, thus enabling them to “inspect, apprehend, and process” aliens illegally entering the United States without violating Texas’s property rights. App. to Vacate at 43a-47a. As for Applicants’ claim that the concertina wire “interferes” with their exercise of executive discretion under the INA, *id.* at 23-26, that implicit obstacle-preemption claim must fail, since mere executive policies—especially ones that run counter to statutory purposes—lack preemptive force. The purpose of federal immigration law is operational control of the border, defined as the achievement of zero unlawful entries.¹ It is Texas’s concertina wire that furthers this

¹ “Operational Control” has been defined by Congress as “the prevention of all unlawful entries into the United States, including by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.” Secure Fence Act

congressional objective, whereas Applicants’ policies subvert it.

I. TEXAS’S CONCERTINA WIRE FENCE PRESENTS NO OBSTACLE TO CONGRESS’S PURPOSES AND OBJECTIVES.

In reviewing whether Texas’s actions are implicitly preempted by the INA, a court’s “primary function is to determine whether, under the circumstances of this particular case, [state] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Here, the concertina wire installed by Texas is no such obstacle.

First, preemption is predicated on properly enacted federal laws, not executive enforcement policies that are subject to change with every new presidential administration. Accordingly, because preemption is based on the properly enacted laws of the legislature, executive agencies cannot claim preemption when their conduct is not authorized by federal law. As this Court has explained, “the *purpose of Congress* is the ultimate touchstone in every preemption case.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (emphasis added) (quotation marks and citations omitted). It is thus not surprising that this Court has consistently stated that preemption analysis is “informed by *examining the federal statute* as a whole and identifying its purpose and intended effects.” *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 374 n.8 (2000) (emphasis added). *See also Kansas v. Garcia*, 140 S. Ct. 791, 801 (2020) (“[T]he federal restrictions or rights that are said to conflict with state law *must stem from either the Constitution itself or a valid statute enacted by*

of 2006, 109 P.L. 367, 120 Stat. 2638, 2639; 8 U.S.C. § 1101, *note*; 8 U.S.C. § 1701, *note*.

Congress. “There is no federal preemption *in vacuo*,’ without a constitutional text, federal statute, or treaty made under the authority of the United States.”) (emphasis added) (quoting *Puerto Rico Dep’t. of Consumer Affairs v. ISLA Petroleum Corp.*, 485 U. S. 495, 503 (1988)); *Murphy v. NCAA*, 138 S. Ct. 1461, 1481 (2018) (explaining that “every form of preemption is *based on a federal law* that regulates the conduct of private actors, not the States.”) (emphasis added); *CSX Transp.*, 507 U.S. at 664 (“Evidence of preemptive purpose is sought *in the text and structure of the statute itself*.”) (emphasis added).

Because “all preemption arguments[] must be grounded ‘in the text and structure of the statute at issue[,]’” *Kansas*, 140 S. Ct. at 804 (quoting *CSX Transp.*, 507 U. S. at 664), “the possibility that federal enforcement priorities might be upset is not enough to provide a basis for preemption. The Supremacy Clause gives priority to ‘the Laws of the United States,’ not the . . . enforcement priorities or preferences of federal officers.” *Id.* at 807 (quoting U.S. Const. Art. VI, cl. 2.). Thus, it is not enough for Applicants to argue that Texas’s attempts to secure the border conflict with this administration’s non-enforcement immigration policy. They must show that Texas is acting in contravention of the purposes and objectives of Congress, as is not possible here, since it is Texas that has taken up the congressional objective of border protection that Applicants have cast aside.

In the INA, Congress provided the Secretary of Homeland Security with “the power and duty to *control and guard the boundaries and borders of the United States against the illegal entry of aliens*[.]” 8 U.S.C. § 1103(a)(5) (emphasis added). As

relevant here, one such power provided to carry out this duty is the ability to “access to private lands . . . for the purpose of patrolling the border to *prevent the illegal entry of aliens* into the United States.” 8 U.S.C. § 1357(a)(3) (emphasis added). Applicants simultaneously ignore these clear statutory commands and argue that Texas is interfering with their ability to follow them. They cannot have it both ways. Their actions in allowing illegal aliens into the U.S. interior are at clear odds with Congress’s objective of preventing such entry. The INA, moreover, gives them their authority to access private lands for the purpose of preventing, not facilitating, illegal entry. *Id.* Removing Texas’s border barriers to allow migrants to flow freely into the interior of the United States is in direct conflict with this statutory command.

Nor are Applicants’ actions necessary to carry out their statutory duty to inspect, apprehend, and detain illegal aliens. *See generally* 8 U.S.C § 1225. The district correctly rejected Applicants’ justifications that cutting Texas’s fence was necessary “(1) to inspect, apprehend, and detain illegal aliens; and (2) to prevent or address medical emergencies.” App. to Vacate at 5a. In fact, the district court found no evidence that the fence was cut for any such valid purpose and instead found that it was cut “for no apparent purpose other than to allow migrants easier entrance further inland.” *Id.* As the district court explained:

No reasonable interpretation of [inspect, apprehend, or process] can square with Border Patrol’s conduct. Visual observation is not physical control. Opening fences does not restrain freedom of movement. Blind trust that migrants who have just been seen criminally violating one boundary will respect barriers along the road toward a processing center constitutes neither “apprehension” nor “detention.”

App. to Vacate at 46a. The district court found further evidence of Applicants’

unlawful behavior, stating that

[d]efendants apparently seek to establish an unofficial and unlawful port of entry stretching from wherever they open a hold through the Plaintiff's fence to the makeshift processing center they established on private land a mile or more away. The Defendants even appear to seek gates in the Plaintiff's fence that the Defendants can control to facilitate this initiative. Establishing such a system at a particularly dangerous stretch of the river creates a perverse incentive for aliens to attempt to cross at that location, begetting life-threatening crises for aliens and agents both.

Id. at 46a-47a. *Id.* (finding that, in addition to cutting holes in the fencing to allow illegal aliens entry, the evidence showed Border Patrol “passively observing a stream of migrants as they make the hazardous journey from Mexico, across the river, and then up the bank on the American side. *At no point* are the migrants interviewed, questioned as to citizenship, or in any way hindered in their progress into the United States.”). Indeed, all evidence points to Applicants’ “utter failure” to fulfill their statutory duties. *Id.* at 47a. Accordingly, they “cannot claim the statutory duties they are so obviously derelict in enforcing as excuses to puncture the Plaintiff’s attempts to shore up the Defendants’ failing system. Nor may they seek judicial blessing of practices that both directly contravene those same statutory obligations and require the destruction of [Texas’s fencing.]” *Id.*

Second, Applicants’ preemption arguments fail because Texas’s concertina wire fencing, far from “stand[ing] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” *Hines*, 312 U.S. at 67, assists in accomplishing statutory objectives. In fact, as the courts below found, not only do immigration officers have access to both sides of Texas’s fence, but the concertina

wire fencing *further*s the objectives of Congress by deterring and preventing illegal aliens from entering the United States. App. to Vacate at 27a (explaining that “[t]he wire serves as a deterrent—an effective one at that. The Court heard testimony that in other border sectors, the wire was so successful that illegal border crossings dropped to less than a third of their previous levels. By all accounts, Border Patrol is grateful for the assistance of Texas law enforcement, and the evidence shows the parties work cooperatively across the state[.]”).

Certainly, if Texas’s concertina wire fencing achieved a purpose contrary to Congress’s objective—for example, if Texas were facilitating illegal immigration—then its state policy would likely be preempted by the INA. That is because, as this Court has repeatedly explained, preemption is triggered when a “state policy may produce a result *inconsistent with the objective of the federal statute.*” *Rice*, 331 U.S. at 230 (emphasis added) (citing *Hill v. Florida*, 325 U.S. 538, 541-42 (1945) (holding that Florida’s licensing of union representatives circumscribed the full freedom that Congress intended workers to have to choose bargaining representatives, and therefore was obstacle preempted by the National Labor Relations Act)). As explained, Texas’s concertina wire fencing does not produce a result inconsistent with the objectives of the INA. Indeed, it comports with the objectives of the INA by preventing illegal aliens from entering the country without being inspected, apprehended, and processed. The INA can hardly obstacle-preempt Texas from producing the same result that the INA is designed to achieve.

Indeed, states’ power to act congruently with Congress in protecting their

borders flows from their sovereignty. “As a sovereign, [a state] has the inherent power to exclude persons from its territory, subject only to those limitations expressed in the Constitution or constitutionally imposed by Congress.” *Arizona*, 567 U.S. at 417 (Scalia, J., dissenting). As Justice Scalia noted, “two of the Constitution’s provisions were designed to enable the States to prevent ‘the intrusion of obnoxious aliens through other States.’” *Id.* at 418 (quoting Letter from James Madison to Edmund Randolph (Aug. 27, 1782), in 1 Writings of James Madison 226 (G. Hunt ed. 1900); accord *The Federalist* No. 42, pp. 269-71 (C. Rossiter ed. 1961) (J. Madison)). First, “the Constitution’s Privileges and Immunities Clause” was made applicable to “[t]he *Citizens* of each State.” *Id.* (quoting U.S. Const. Art. IV, § 2, cl. 1) (emphasis original). Second, the constitution “authoriz[ed] the general government to establish a uniform rule of naturalization throughout the United States[.]” to ensure that the low citizenship standards of one state did not “serve as a gateway for the entry of ‘obnoxious aliens’ into other States.” *Id.* (quoting *The Federalist* No. 42, *supra*, at 271; Art. I, § 8, cl. 4). Thus, as Justice Scalia explained, “the naturalization power was given to Congress not to abrogate the States’ power to exclude those they did not want, but to vindicate it.” *Id.*

In fact, history shows that “the States enacted numerous laws restricting the immigration of certain classes of aliens[.] . . . State laws not only provided for the removal of unwanted immigrants but also imposed penalties on unlawfully present aliens who aided their immigration.” *Id.* at 419. Because states are sovereigns, they are “*entitled* to have [their] own immigration policy”—including a more rigorous

enforcement policy—so long as that does not conflict with federal law.” *Id.* at 427 (emphasis original). Texas’s use of wire fencing to protect its border does not conflict with federal law, but rather executes Texas’s own inherent power to defend its territory.

The mere fact that a state may adopt the same express policies as those enacted by Congress over an issue of mutual import does not in itself cause federal preemption of state law. Indeed, this Court has recognized that “[t]he pervasiveness of federal regulation does not diminish the importance of immigration policy to the States.” *Arizona*, 567 U.S. at 397. Like *Arizona*, Texas “bears many of the consequences of unlawful immigration.” *Id.* at 398. Illegal immigration is a growing problem, and Texas is on the front lines of it. Statistics from U.S. Customs and Border Protection (“CBP”) reveal that in FY 2023 there were more than 3.2 million aliens encountered nationwide, with over 1.3 million in Texas alone. U.S. Customs and Border Protection, Nationwide Encounters, available at <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (last visited January 9, 2024). Applicants cannot use the courts to force Texas to follow their lead by ignoring the law and further exacerbating the illegal immigration crisis.

It is true, of course, that erecting the concertina wire fencing achieves a result that the federal government could also achieve. But that is a core feature of the system of dual sovereignty, not an indication of preemption. *See United States v. Wheeler*, 435 U.S. 313, 317 (1978) (“[A] federal prosecution does not bar a subsequent state prosecution of the same person for the same acts, and a state prosecution does

not bar a federal one.”) Indeed, this Court has not found implied preemption in many contexts where states have prohibited the exact same conduct prohibited by the federal government. *See, e.g., Arizona*, 567 U.S. at 430-31 (Scalia, J., concurring in part and dissenting in part) (“The sale of illegal drugs, for example, ordinarily violates state law as well as federal law, and no one thinks that the state penalties cannot exceed the federal.”) Overlapping jurisdiction—and the possibility of successive state and federal enforcement—is an unexceptional, well-established part of our federal system. Applicants cannot at once abdicate their responsibilities to pursue congressional purposes and appeal to them as a means of preventing Texas from pursuing them itself.

II. THERE IS NO CONFLICT IN THE METHOD OF ENFORCEMENT.

To avoid preemption, it is not enough that state objectives be consistent with congressional objectives. A state law may be preempted despite consistent objectives where there is a conflict between state and federal methods of enforcement. “Conflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy.” *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 287 (1971). Here, however, there is no such conflict in technique. Rather, the conflict is between the state’s carrying out of congressional objectives that the executive has scorned.

The presence of an actual conflict between methods of enforcement is required to establish that a state action is obstacle preempted. For example, in *Arizona*, this Court held that Congress’s abstention from criminal penalties for illegal alien employment implicitly preempted Arizona from imposing such penalties. *Arizona*, 567 U.S. at 406 (“Although § 5(C) attempts to achieve one of the same goals as federal

law—the deterrence of unlawful employment—it involves a conflict in the method of enforcement. . . . Congress decided it would be inappropriate to impose criminal penalties on aliens who seek or engage in unauthorized employment. It follows that a state law to the contrary is an obstacle to the regulatory system Congress chose.”).

There is no such conflict here. Congress has authorized the exact enforcement method Texas uses to maintain operational control—border barriers. Indeed, review of the U.S. Customs and Border Protection website shows the extensive use of border barriers along almost all of the southern border, save for large portions of the Texas border. U.S. Customs and Border Protection: Border Security, Border Wall System, available at <https://www.cbp.gov/border-security/along-us-borders/border-wall-system> (last visited January 9, 2024).

Furthermore, the use of border barriers has been authorized by Congress. A 2017 Executive Order issued “[i]n accordance with existing law, including the Secure Fence Act and IIRIRA,” called for the “plan[ing], design, and construct[ion of] a physical wall along the southern border using appropriate materials and technology to *most effectively achieve complete operational control of the southern border.*” (emphasis added) Executive Order: Border Security and Immigration Enforcement Improvements, Jan. 5, 2017, available at: <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-border-security-immigration-enforcement-improvements/>. As the order itself notes, Congress’s objective is operational control of the border, that is, the prevention of all illegal immigration, which can be achieved through the use of border barriers. *E.g.*, 8

U.S.C. §§ 1101 *note*, 1701 *note*. In fact, as a 2017 report from the office of the inspector general at the Department of Homeland Security reflected, border barriers are an effective method of preventing illegal immigration. Immigration Reform Law Institute, Investigative Report, December 14, 2023, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://irli.org/wp-content/uploads/2023/12/Border-Wall-Study.Completed.Final_Final.pdf.

As explained, a conflict between a state law and federal discretionary enforcement priorities is not a conflict between laws. The nonenforcement policies of the current executive branch are not the same as statutory enforcement methods or techniques—let alone the equivalent of Congress’s “clear and manifest purpose.” *Rice*, 331 U.S. at 230. Indeed, this Court considered and unanimously rejected this theory of implied preemption in *Arizona*. In that case, the United States had challenged a “show your papers” law enacted in Arizona which required state officials to inquire about the immigration status of certain arrestees. This Court was unanimous in holding that there was no implied preemption under the Supremacy Clause without a showing that the “show your papers” law actually “creates a conflict with federal law.” *Arizona*, 567 U.S. at 415. Justice Alito’s concurrence explained:

The United States suggests that a state law may be pre-empted, not because it conflicts with a federal statute or regulation, but because it is inconsistent with a federal agency’s current enforcement priorities. Those priorities, however, are not law. They are nothing more than an agency policy. I am aware of no decision of this Court recognizing that mere policy can have pre-emptive force If § 2(B) were pre-empted at the present time because it is out of sync with the Federal Government’s current

priorities, would it be unpreempted at some time in the future if the agency's priorities changed?

Arizona, 567 U.S. at 445 (internal citation omitted). Accord *Kansas*, 140 S. Ct. at 807.

The same is true in this case. Even if Applicants wish to reduce compliance with federal law through non-enforcement policies, that alone does not preempt the states, under their inherent authority, from pursuing the scorned congressional objective by taking action to reduce illegal immigration themselves.

CONCLUSION

For the foregoing reasons, Applicants' motion to vacate the injunction issued by the Fifth Circuit should be DENIED.

Dated: January 10, 2024

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CERTIFICATE AS TO FORM

Pursuant to Sup. Ct. Rules 22 and 33, I certify that the foregoing motion for leave to file and the accompanying *amicus* brief are proportionately spaced, have a typeface of Century Schoolbook, 12 points, and contain 3 and 18 pages (and 432 and 3892 words) respectively, excluding this Certificate as to Form, the Table of Authorities, the Table of Contents, and the Certificate of Service.

Dated: January 10, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that, on this 10th day of January 2024, in addition to filing the foregoing document via the Court's electronic filing system, one true and correct copy of the foregoing document was served by U.S Priority Mail, postage pre-paid, with a PDF courtesy copy served via electronic mail on the following counsel:

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The undersigned further certifies that, on this 10th day of January 2024, the delivery of an original and ten true and correct copies of the foregoing document were sent by Federal Express, next-day delivery, to:

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Executed January 10, 2024,

/s/ Christopher J. Hajec
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