# No. 24-10707

## IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NATIONAL ASSOCIATION FOR GUN RIGHTS, et al.,

*Plaintiffs-Appellees,*

v.

MERRICK GARLAND, et al.,

*Defendants-Appellants.*

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On Appeal from the United States District Court for the
Northern District of Texas
Case No. 4:23-cv-00830
District Judge Reed O' Connor

## BRIEF OF AMICUS CURIAE STATE OF MONTANA, WEST VIRGINIA, 25 OTHER STATES, AND THE ARIZONA LEGISLATURE SUPPORTING PLAINTIFFS-APPELLEES AND AFFIRMANCE

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## SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

As required by Fifth Circuit Rule 29.2, the undersigned counsel of record certifies that, in addition to the persons and entities listed in Appellants', Appellees', and other *amici*'s Certificates of Interested Persons, the following listed persons and entities described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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## INTERESTS OF AMICI CURIAE

Renegade agencies threaten our constitutional structure and can impose substantial harms on regulated parties and others—like states whose economies suffer. So it is "vital to the integrity and maintenance of the system of government ordained by the constitution" that courts ensure agencies, like the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"), act only within their statutory authority. *See Marshall Field & Co. v. Clark*, 143 U.S. 649, 692 (1892). To urge courts to police the boundaries of agencies' statutory authority and safeguard our constitutional separation-of-powers principles, the States of Montana, West Virginia, Alabama, Arkansas, Alaska, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wyoming, and the Arizona Legislature ("Amici States") submit this amicus brief in support of Plaintiff-Appellees. Amici States urge this Court to affirm the decision below.

## SUMMARY OF THE ARGUMENT

ATF is responsible for administering important, yet controversial, statutes like the National Firearms Act of 1934 ("NFA") and the Gun Control Act of 1968 ("GCA") that go to the heart of Americans' Second Amendment rights. Given the sensitivity of this work, one would hope that ATF would tread carefully before regulating in aggressive and unexpected ways. But in recent years, ATF has done just the opposite, stretching the NFA's and GCA's text to reach conduct that the lawmakers never anticipated. Stretching the GCA's definition of "machinegun" to reach Forced Reset Triggers ("FRTs") is just the latest example.

The district court rightly rebuffed ATF's argument—just recently rejected in *Garland v. Cargill*, 602 U.S. 406, 422 (2024)—that "single function of the trigger" under the GCA means "single pull of the trigger." *See* ROA.3663-3726. *Cargill* held that the GCA doesn't "define a machinegun based on what type of human input engages the trigger." 602 U.S. at 422. Like the bump stocks in *Cargill*, FRTs don't fire "more than one shot … by a single function of the trigger," *see* 26 U.S.C. §5845(b), so the district court correctly held that FRTs are not "machineguns" under the GCA. *See* ROA.3704. This Court should affirm.

Beyond ATF's myriad attempts to stretch its organic statutes to cover conduct outside its statutory authority, it has also resorted to a host of impermissible tactics to achieve its desired policy results. As detailed below, those tactics include erasing ordinary meaning, stripping words from context, ignoring comments, short-circuiting APA requirements, and blinding itself to the real-world consequences of its own actions. Armed with that background, this Court can review ATF's final rule with eyes wide open. Even if some administrative corner-cutting seems appropriate given the interests at stake, that policy-over-law approach is untenable with our constitutional structure. *See Cargill v. Garland*, 57 F.4th 447, 472 (5th Cir. 2023) (en banc) (courts don't determine public policy, "[t]hat solemn responsibility lies with Congress"). Careful adherence to statutory text safeguards our right of self-governance and ensures we remain a "[g]overnment of laws, not of men." *Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.*, 550 U.S. 81, 119 (2007) (Scalia, J., dissenting).

## ARGUMENT

### I. ATF is Pushing the Limits of its Statutory Authority Again.

ATF's statutory authority is limited. For one, the GCA permits ATF to "prescribe *only* such rules and regulations as are *necessary* to carry out

[its] provisions." 18 U.S.C. §926 (emphases added). And another, the NFA grants ATF power only over a narrow set of firearms. *See* 26 U.S.C. §5845(a). Congress has made only a few minor changes to this statutory scheme over the years. *See* Firearms Owners Protection Act ("FOPA"), Pub. L. No. 99-308, 100 Stat. 449 (1986) (*codified as amended at* 18 U.S.C. §§921-26, 929; 26 U.S.C. §5845); Bipartisan Safer Communities Act ("BSCA"), Pub. L. No. 117-159, 136 Stat. 1313 (2022) (*codified as amended at* 18 U.S.C. §§921-24; 34 U.S.C. §40901).

Even though Congress envisioned a modest role for ATF in executing these statutes, ATF's role has grown larger by the day. Among other things, it claims that it must adopt "new definitions" that are "general enough to account for [societal] changes." *See, e.g.*, Definition of "Frame or Receiver" and Identification of Firearms ("Frame Final Rule"), 87 Fed. Reg. 24652, 24662 (Apr. 26, 2022). But that's not its job. Having veered off course into the regulatory wilderness and severed any ties to the statutes that give it life, ATF has again ignored its obligations under the APA and acted beyond the limits of its statutory authority. In three recent cases, this Court has stymied ATF's misadventures. It should do so again here.

***Stabilizing Braces.*** Start with stabilizing braces. For a long time, ATF had no qualms with these devices—between 2012 and 2018, it "issued [seventeen] classifications of stabilizing braces." Factoring Criteria for Firearms With Attached "Stabilizing Braces" ("Brace Final Rule"), 88 Fed. Reg. 6478, 6502 n.84 (Jan. 31, 2023). In each of these classifications, ATF concluded that the assistive devices were not "firearms" covered by the NFA. *Id.* This Court later explained that ATF's longstanding interpretation—that pistols with stabilizing braces are neither "shotguns" nor "rifles" and thus are not covered "firearms"—was consistent with the NFA. *See Mock v. Garland*, 75 F.4th 563, 567 (5th Cir. 2023).

But in 2021, ATF suddenly changed course, initiating a proposed rulemaking with the ostensible purpose of evaluating whether pistols with stabilizing braces were "shotguns" or "rifles" under the NFA.[1] *See* Factoring Criteria for Firearms With Attached "Stabilizing Braces" ("Brace Proposed Rule"), 86 Fed. Reg. 30826 (June 10, 2021). To do that, ATF created a worksheet to help determine whether a stabilizing brace was "designed and intended to be fired from the shoulder." *Id.* at 30829.

[1] The NFA's definitions for shotguns and rifles have this common thread: they are weapons "designed," "made," and "intended to be fired from the shoulder." 26 U.S.C. §5845(c), (d).

And it established "a point system assigning a weighted value to various characteristics." *Id.*

But when ATF released the Brace Final Rule eighteen months later, it agreed that the worksheet and point system failed to achieve its intended purposes. Brace Final Rule, 88 Fed. Reg. at 6510. Yet rather than reopen notice-and-comment, it scrapped the worksheet and point system for a six-factor balancing test "based on almost entirely subjective criteria" and found nowhere in the Brace Proposed Rule. *Mock*, 75 F.4th at 583-84. And the anticipated impact of ATF's redefinition wasn't minor. The final regulatory impact analysis concluded that under ATF's re-definition, nearly 99% of pistols with stabilizing braces would be covered firearms under the NFA. *See* ATF, Factoring Criteria for Firearms with Attached "Stabilizing Braces": Final Regulatory Impact Analysis and Final Regulatory Flexibility Analysis 21 (2023).

But ATF's redefinition contradicts the NFA's clear statutory text. To start, the NFA doesn't cover pistols, *see* 26 U.S.C. §5845, nor does it cover pistols with accessories, *see id.* §5845(a)(1), (3) (only covers shotguns and rifles *as produced*); *id.* §5845(a)(2), (4) (only covers "weapon[s] made" from shotguns or rifles). The statute excludes standard pistols

from the broader "firearm" definition. *Id.* §5845(e). So a pistol with a stabilizing brace is not a rifle or shotgun under the NFA. Despite all that, the ATF charged ahead and issued the Brace Final Rule, describing its previous seventeen interpretations that stabilizing braces were *not* covered by the NFA as "past inconsistencies and misapplications of the statute" that the final rule "rectif[ied]." Brace Final Rule, 88 Fed. Reg. at 6503 (cleaned up).

Both this Court and the Eighth Circuit recognized that the Brace Final Rule should be set aside as unlawful, relying on many of the same issues identified above. *See Mock*, 75 F.4th at 585 ("six-part test provides no meaningful clarity about what constitutes an impermissible stabilizing brace"); *see also Firearms Regul. Accountability Coal., Inc. (FRAC) v. Garland*, 112 F.4th 507 (8th Cir. 2024) (reversing the denial of a preliminary injunction). In finding that the Brace Final Rule violated the APA, *FRAC* sharply condemned ATF's "act-now-and-justify-later decisionmaking." 112 F.4th at 525 n.15. And *FRAC* agreed with *Mock* that ATF's final rule made it "nigh impossible for a regular citizen to determine what constitutes a braced pistol." *Id.* at 523-24 (quoting *Mock*, 75 F.4th at 584-85).

This is just the first example of ATF impermissibly testing the limits of the statute it claimed to execute. More to come.

***Weapons Parts Kits.*** Turn next to weapons parts kits. In its attempt to squeeze "weapons parts kits" into the GCA's definition of "firearm," 18 U.S.C. §921(a)(3),[2] ATF again stretched the meaning of its enabling statutes too far. *See* Definition of "Frame or Receiver" and Identification of Firearms ("Frame Proposed Rule"), 86 Fed. Reg. 27720 (May 21, 2021). The proposed rule turned on the GCA's definition of "frame or receiver," *see id.* at 27741, which hasn't changed since the GCA was enacted in 1968, *see VanDerStok v. Garland*, 86 F.4th 179, 189, 195 (5th Cir. 2023); *see also Guedes v. ATF*, 140 S. Ct. 789, 790 (2020) (statement of Gorsuch, J.) ("law hasn't changed, only [ATF]'s interpretation of it.").

Under the proposed rule, a "frame or receiver" covered any part that could "hold" or "integrate" "one or more fire control components," which was defined as "a component necessary for the firearm to initiate, complete, or continue the firing sequence." Frame Proposed Rule, 86 Fed.

[2] A "firearm" is "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm." *Id.*

Reg. at 27741. But that definition covers many firearms parts, leaving modern firearms with many "frames" or "receivers"—a reality that ATF later agreed was unworkable. Frame Final Rule, 87 Fed. Reg. at 24692-93. Yet rather than proposing a new definition and reopening the comment period, ATF again adopted a new definition on the fly (which it pulled from a comment). *See id.* at 24692-93. ATF's new definition shifted the focus from every component of a firing sequence (and the housing or structure for it) to the so-called "primary energized component." *See id.* at 24693, 24735.

Beyond the statutory disconnect, ATF's approach presented a "logical outgrowth" problem too, which occurs when an agency "significantly amend[s] the rule between the proposed rule and final versions, making it impossible for people to comment on the rule during the comment period." *Ohio v. EPA*, 144 S. Ct. 2040, 2056 (2024) (cleaned up). The APA prohibits a rulemaking process in which "interested parties would have had to divine the agency's unspoken thoughts, because the final rule was surprisingly distant from the proposed rule." *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1080 (D.C. Cir. 2009) (cleaned up). Nor does an agency "have carte blanche to establish a rule contrary to its original

proposal simply because it receives suggestions to alter it during the comment period." *Mock*, 75 F.4th at 584.

But this Court wasn't distracted by ATF's tactics. Instead, it refused to adopt the final rule's expansive reading of "frame or receiver" and instead relied on the plain meaning of that term when the GCA was enacted in 1968. *VanDerStok*, 86 F.4th at 189, 195. It faulted ATF's interpretation for "stretch[ing] the words too far" and reading out other words, which it found was "not only imprecise, ambiguous, and violative of the statutory text, [but] it also legislates." *Id.* at 192, 195. And it ultimately enjoined the final rule, concluding that ATF again exceeded its statutory authority. *See id.* at 190-91, 195.

***Bump Stocks.*** Rewind a few years to ATF's bump stock rule, which it issued in 2018. *See* Bump-Stock-Type-Devices ("Bump-Stock Final Rule"), 83 Fed. Reg. 66514 (Dec. 26, 2018). For years, ATF "took the position that semiautomatic rifles equipped with bump stocks were not machineguns." *Cargill*, 602 U.S. at 412. But ATF "abruptly reversed course" in 2017, *see id.*, reinterpreting the GCA's definition of machinegun—weapons that shoot "automatically … by a single function of the trigger"—to cover weapons that shoot automatically by a "single *pull* of the

trigger." Bump-Stock Final Rule, 83 Fed. Reg. at 66515. Congress' attempts to ban bump stocks stalled, but ATF charged ahead on its own, banning bump stocks and ordering owners of bump stocks to "destroy" or "surrender them"—all under threat of criminal prosecution. *Cargill*, 602 U.S. at 414.

Many of the States here argued years ago that ATF's final rule did "not flow from the governing statute's clear and unambiguous language." *See* Br. of Amici States of West Virginia, Montana, et al., at 6, *Aposhian v. Garland*, No. 21-159 (U.S., Sept. 3, 2021). And this Court agreed that ATF had shown too little concern for the statutory text, finding that "single function of the trigger" cannot reasonably be read to mean "single pull of the trigger." *Cargill*, 57 F.4th at 461, 464. The Supreme Court affirmed, rejecting ATF's expansive, policy-driven reconstruction of the GCA. *Cargill*, 602 U.S. at 422; *see also id.* at 427 (ATF impermissibly "abandon[ed] the text" of the statute it claimed to execute).

***Forced Reset Triggers.*** That brings us to the portion of ATF's final rule challenged here. In its attempt to squeeze FRTs into the GCA's definition of "machinegun"—despite the similarity between FRTs and bump stocks—ATF again tries to stretch its statutory authority too far. And

after *Cargill*, ATF's attempt to redefine "machinegun" under the GCA to cover FRTs even more obviously fails. *See* 602 U.S. at 421.

*Cargill* rejected ATF's attempt to treat bump stocks as machineguns "by interpreting the phrase 'single function of trigger' to mean 'a single pull of the trigger.'" *Id.* at 421. Instead, it explained that a "single function of the trigger" means that the "shooter must engage the trigger and then release the trigger to allow it to reset" after each shot. *Id.* If the shooter must "release pressure from the trigger and allow it to reset," the device is not a "machinegun," even if it "reduces the amount of time that elapses between separate 'functions' of the trigger." *Id. Cargill* found that was the case with bump stocks. *Id.* And here, the district court found a FRT still requires that the shooter pull the trigger for each shot fired—it just "reduces the amount of time that elapses between" separate trigger pulls, so a FRT isn't a "machinegun" under the GCA. ROA.3709-10. ATF is thus overextending the GCA's reach once more.

This case is just another entry in ATF's series of misadventures. Time and again, ATF has ventured off into the regulatory wilderness, abandoning the only statutes that give it life in the first instance. Even though many of these statutes have remained essentially static for

decades, ATF's role in executing them grows larger by the day because it must create "new definitions" that are "general enough to account for changes" in society. Frame Final Rule, 87 Fed. Reg. at 24662. But ATF misunderstands its job, and this misconception is statutorily unjustified and constitutionally impermissible. *Cf.* David S. Tatel, *The Administrative Process and the Rule of Environmental Law*, 24 HARV. ENVTL. L. REV. 1, 2 (2010) ("Often … it looks for all the world like agencies chose their policy first and then later seek to defend its legality."). This Court should keep this history in mind as it considers ATF's arguments here. Just as consistency can "reinforce[]" an agency's "reasonableness," *Acosta v. Hensel Phelps Constr. Co.*, 909 F.3d 723, 736 (5th Cir. 2018), inconsistency and a pattern of unlawfulness can signal an agency's *un*reasonableness.

**II. Policy Concerns Are For Congress, Not ATF or the Courts.**

Lacking textual support, ATF's *amici* lean on policy concerns, arguing that this Court should depart from the NFA's because FRTs will otherwise "spread quickly among criminal organizations, aspiring mass shooters, and other illicit channels." *See* Br. of Amicus Curiae Brady Ctr. to Prevent Gun Violence, et al., Dkt. 42, at 25. But *amici*'s policy-over-law arguments—no matter how wise ATF's final rule may seem—"cannot

trump the best interpretation of the [NFA's] statutory text." *Patel v. Garland*, 596 U.S. 328, 346 (2022). ATF's final rule exceeds its statutory authority, and that should be the end of the matter.

It is no longer enough for ATF to insist that its final rule relied on a so-called "permissible" construction of the NFA by pairing policy with a strained reading of the statute. Although that kind of construction might have received *Chevron* deference in the past, *Loper Bright* shut that door. *See Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024). It no longer "makes … sense to speak of a 'permissible' interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best." *Id.* at 2266. If the final rule's definition doesn't rest on the "best" interpretation of the NFA's text, "it is not permissible." *See id.*

Even apart from *Chevron*'s demise, our core constitutional commitments—like fidelity to statutory text—foreclose ATF's attempt to bend the NFA to achieve policy goals that Congress has yet to embrace. *See Cargill*, 57 F.4th at 472 (courts don't determine public policy, "[t]hat solemn responsibility lies with Congress"). Even faced with "unsuccessful legislative efforts," "judges may not rewrite the law simply because of their policy views[,] … update the law merely because they think

Congress does not have the votes or fortitude[,] … [or] predictively amend the law[.]" *Bostock v. Clayton Cnty.*, 590 U.S. 644, 782 (2020) (Kavanaugh, J., dissenting). Just as firearms violence doesn't give courts a pass to ignore the Constitution, *see District of Columbia v. Heller*, 554 U.S. 570, 636 (2008), it doesn't give them a pass to ignore congressional statutes either.

To be sure, "executive officials are not, nor are they supposed to be 'wholly impartial'" on policy choices like those related to FRTs in ATF's final rule. *See Kisor v. Wilke*, 588 U.S. 558, 615 (Gorsuch, J., concurring). Indeed, ATF's "interests," "constituencies," and "policy goals" are reflected in the final rule. *See Id.* But that inherent bias makes it all the more important that courts don't cede their obligation to adopt the best reading of the statute, even if it departs from ATF's preferred reading. Separation-of-powers principles require courts to "interpret and follow the law as written, regardless of whether [they] like the law as written." *Bostock*, 590 U.S. 780-81 (Kavanaugh, J., dissenting); *see also* THE FEDERALIST NO. 78, at 523 (Alexander Hamilton) (J. Cooke ed. 1961) (federal judges exercise "neither Force nor Will, but merely judgment").

Beyond the impropriety of ATF's attempts to bend the NFA to accomplish its policy goals, ATF's reinterpretation efforts likely stymie congressional action. At the time ATF redefined "machineguns" under the NFA to cover bump stocks, Congress was debating two bills that would prohibit bump stocks.[3] *Cargill*, 602 U.S. at 429 (Alito, J., concurring) (observing that Congress may have banned bump stocks "if ATF had stuck with its earlier interpretation"). Rather than let the legislative process run its course, ATF charged ahead and issued its revised definition, much to the chagrin of one prominent legislator. *See* Press Release, Sen. Dianne Feinstein, *Feinstein Statement on Regulation to Ban Bump Stocks* (Mar. 23, 2018) ("Both the Justice Department and ATF lawyers know that legislation is the only way to ban bump stocks. The Law has not changed since 1986, and it must be amended to cover bump stocks.").

When agencies short-circuit the legislative process, they encourage congressional officials to "stay out of the business of governing" and "punt[] the tough decisions … to presidential and agencies politics."

[3] *See* Automatic Gunfire Prevention Act, H.R. 3947, 115th Cong. (2017); To Amend Title 18, United States Code, To Prohibit the Manufacture, Possession, or Transfer of Any Part or Combination of Parts That is Designed and Functions to Increase the Rate of Fire of a Semi-automatic Rifle, H.R. 3999, 115th Cong. (2017).

Jonathan Wood, *Overruling* Chevron *Could Make Congress Great Again*, THE REG. REV. (Sept. 12, 2018), https://perma.cc/U8M8-KF3A. In the process, they undermine congressional efforts to reach enduring solutions on critical policy issues. And that's exactly what happened here. Rather than turning to the legislative process, 24 members of Congress wrote a letter to ATF urging it to issue a rule banning "binary triggers, forced-reset triggers, and Hellfire triggers." Press Release, Rep. Joaquin Castro, *Congressman Castro Leads Call for ATF to Prohibit Sales of Hellfire Trigger Devices* (July 15, 2022), https://perma.cc/5F53-A9UF.

Careful adherence to the text is not a matter of blind obedience. Rather, it is what it means to be a "[g]overnment of laws, not of men." *Zuni*, 550 U.S. at 119 (Scalia, J., dissenting). Legislated or promulgated text allows citizens to predictably order their affairs and avoid the "eternal fog of uncertainty" that deference to agency reinterpretations allows. *Loper Bright*, 144 S. Ct. at 2272. It also safeguards our right of self-government—the separation of legislative, executive, and judicial powers, enforced not by mere "parchment barriers" but by a judicial branch faithful to say what the law *is*, not what it *should be* (or would be if the legislators knew better). *Zuni*, 550 U.S. at 118 (Scalia, J., dissenting) ("Why

should we suppose that in matters more likely to arouse the judicial libido … a judge in the School of Textual Subversion would not find it convenient (yea, *righteous!*) to assume that Congress *must* have meant, not what it said, but what he knows to be best?"). But "[i]f judges could … rewrite or update … gun laws based on their own policy views, the Judiciary would become a democratically illegitimate super-legislature—unelected and hijacking the important policy decisions reserved by the Constitution to the people's elected representatives." *Bostock*, 590 U.S. at 782-83 (Kavanaugh, J., dissenting).

The answer to the concerns raised by ATF's *amici*—weighty as they may be—is not to abandon our core constitutional commitments but to reaffirm them. Regulating FRTs, like sports gambling and many other controversial subjects, requires important policy choices reserved for Congress, not courts or agencies. *Cf. Murphy v. NCAA*, 584 U.S. 453, 486 (2018). The solution to those concerns lies in the halls of Congress, not in the chambers of our federal courts. *Cargill*, 57 F.4th at 472 ("[I]t is not [the courts'] job to determine our nation's public policy That solemn responsibility lies with Congress."); *see also Cargill*, 602 U.S. at 429 (Alito, J., concurring) ("[A]n event that highlights the need to amend a law does

not change its meaning," but there is a "simple remedy": "Congress can amend the law[.]"). The district court rightly recognized that the burden to "amend the statutory definition," if necessary, lies with Congress, not ATF. *See* ROA.3709; *see also* ROA.3711 (vacatur required because ATF "create[d] law that Congress did not pass").

## CONCLUSION

Given ATF's pattern of conduct during the various rulemakings outlined above, its action here warrants close scrutiny. Congress hasn't banned stabilizing braces, weapons parts kits, bump stocks, or forced reset triggers. Nor can ATF do so in Congress' stead. ATF's error here—nearly identical to its error in *Cargill*—provides another look behind the curtain of a poorly disguised "legislative" agency masquerading as an executive one. And here, ATF continues its long history of ignoring statutory text and APA mandates, so this Court should provide ATF with yet another course correction and affirm the district court's order.

DATED this 4th day of November, 2024.

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B)(i) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 3,900 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and is double-spaced except for footnotes and for quoted and indented material.

/s/ *Peter M. Torstensen, Jr.*
PETER M. TORSTENSEN, JR.

## CERTIFICATE OF SERVICE

I certify that on this date, an accurate copy of the foregoing document was served electronically through the Court's CM/ECF system on registered counsel.

Dated: November 4, 2024

/s/ *Peter M. Torstensen, Jr.*
PETER M. TORSTENSEN, JR.