No. 18-20251

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

NICOLE WITTMER,

Plaintiff-Appellant,

v.

PHILLIPS 66 COMPANY,

Defendant-Appellee.

On Appeal from the United States District Court for the Southern District of Texas,
Houston Division, Case No. 4:17−cv−02188

BRIEF OF AMICI CURIAE NATIONAL CENTER FOR LESBIAN RIGHTS, AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC., ACLU OF TEXAS FOUNDATION, GLBTQ LEGAL ADVOCATES & DEFENDERS, LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., AND FREEDOM FOR ALL AMERICANS IN SUPPORT OF NEITHER PARTY

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons and entities as described by 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:

1. Nicole Wittmer, Plaintiff-Appellant.

2. Alfonso Kennard, Jr., Kennard Richard, P.C., Attorney for Nicole Wittmer, Plaintiff-Appellant.

3. Phillips 66 Company, Defendant-Appellee.

4. Shauna Johnson Clark, Joy M. Soloway, Fazila Issa, Norton Rose Fulbright US, LLP, Attorneys for Phillips 66 Company, Defendant-Appellee.

5. National Center for Lesbian Rights, Amicus Curiae (represented by Shannon P. Minter and Christopher F. Stoll) is a 501(c)(3) non-profit organization that is not a publicly held corporation and has no parent corporation.

6. American Civil Liberties Union Foundation, Inc., Amicus Curiae (represented by Shannon P. Minter and Christopher F. Stoll) is a 501(c)(3) non-profit organization that is not a publicly held corporation and has no parent corporation.

7. ACLU of Texas Foundation, Amicus Curiae (represented by Shannon P. Minter and Christopher F. Stoll) is a 501(c)(3) non-profit organization that is not a publicly held corporation and has no parent corporation.

8. GLBTQ Legal Advocates & Defenders, Amicus Curiae (represented by Mary L. Bonauto) is a 501(c)(3) non-profit organization that is not a publicly held corporation and has no parent corporation.

9. Lambda Legal Defense and Education Fund, Inc., Amicus Curiae (represented by Shannon P. Minter and Christopher F. Stoll) is a 501(c)(3) non-profit organization that is not a publicly held corporation and has no parent corporation

10. Freedom for All Americans, Amicus Curiae (represented by Shannon P. Minter and Christopher F. Stoll) is a 501(c)(4) non-profit organization that is not a publicly held corporation and has no parent corporation.

Dated: August 6, 2018

/s Christopher F. Stoll
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INTEREST OF AMICI CURIAE[1]

The **National Center for Lesbian Rights** ("NCLR") is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in promoting equal opportunity for LGBT people in the workplace through legislation, policy, and litigation, and represents LGBT people in employment and other cases in courts throughout the country.

The **American Civil Liberties Union Foundation, Inc.** ("ACLU") is a nationwide, nonprofit, nonpartisan organization with approximately 1.75 million members dedicated to defending the principles embodied in the Constitution and our nation's civil rights laws. The **ACLU of Texas Foundation** is one of the ACLU's statewide affiliates. The ACLU and the ACLU of Texas have long fought to ensure that lesbian, gay, bisexual, and transgender people are treated equally and fairly

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[1] The parties have consented to the filing of this brief. Counsel for the parties have not authored this brief in whole or in part. The parties and counsel for the parties have not contributed money that was intended to fund preparing or submitting the brief. No person other than the amici curiae contributed money that was intended to fund preparing or submitting the brief.

under law, having served as counsel in cases including *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (holding that Constitution guarantees the fundamental right to marry to same-sex couples), *United States v. Windsor*, 570 U.S. 744 (2013) (holding that federal government cannot discriminate against married same-sex couples for purpose of determining federal benefits and protections); *Alford v. Moulder*, No. 3:16-cv-350-CWR-LRA, 2016 WL 3449911 (S.D. Miss. June 20, 2016) (challenging Mississippi's anti-LGBT law, HB 1523); *McMillen v. Itawamba Cty. Sch. Dist.*, 702 F. Supp. 2d 699 (N.D. Miss. 2010) (granting plaintiff's motion for preliminary injunction allowing her to attend prom with same-sex date and wearing a tuxedo).

Through strategic litigation, public policy advocacy, and education, **GLBTQ Legal Advocates & Defenders** ("GLAD") works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. GLAD has litigated widely in both state and federal courts in all areas of the law in order to protect and advance the rights of lesbians, gay men, bisexuals, transgender individuals and people living with HIV and AIDS. GLAD has an enduring interest in ensuring that employees receive full and complete redress for the violation of their civil rights in the workplace.

Founded in 1973, **Lambda Legal Defense and Education Fund, Inc.** is the nation's oldest and largest nonprofit legal organization working to secure the civil

rights of lesbian, gay, bisexual, and transgender ("LGBT") people and everyone living with HIV through impact litigation, policy advocacy and public education Lambda Legal has extensive experience in the scope of Title VII coverage of discrimination against LGBT employees, including as counsel of record in the first federal appellate court ruling recognizing coverage of sexual orientation discrimination as a form of sex discrimination, *Hively v. Ivy Tech Community College of Indiana*, 853 F.3d 339 (7th Cir. 2017) (en banc), and also presented written and oral argument as amicus in *Zarda v. Altitude Express*, 883 F.3d 100 (2d Cir. 2018). Lambda Legal was counsel of record in an appeal finding the employer liable for sex discrimination for firing an employee about to begin her gender transition at work, *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011) (decided under Equal Protection Clause but applying Title VII analysis), and recently has prevailed repeatedly in arguing that discrimination against transgender individuals is sex discrimination under federal law. *See also Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla.*, No. 3:17-CV-739-J-32JBT, 2018 WL 3583843 (M.D. Fla. July 26, 2018); *Karnoski v. Trump*, No. C17-1297-MJP, 2018 WL 1784464 (W.D. Wash. Apr. 13, 2018); *Evancho v. Pine-Richland School Dist.*, 237 F.Supp.3d 267 (W. D. Pa. 2017).

Freedom for All Americans is the bipartisan campaign to secure full nondiscrimination protections for LGBTQ people nationwide. Its work brings

together Republicans and Democrats, businesses large and small, people of faith, and allies from all walks of life to make the case for comprehensive nondiscrimination protections that ensure everyone is treated fairly and equally at work and in our communities.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff-Appellant Nicole Wittmer filed suit against Defendant-Appellee Phillips 66 Company, alleging that the company discriminated against her on the basis of sex in violation of Title VII of the Civil Rights Act of 1964 by declining to hire her because she is transgender.[2] The District Court agreed with Ms. Wittmer that discrimination against a job applicant based on their transgender status constitutes sex discrimination under Title VII. ROA.565-566. It concluded,

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[2] A transgender person is someone whose sex assigned at birth does not match their core, hard-wired internal sense of their own sex, which is also referred to as a person's gender identity. The incongruence between their birth sex and their gender identity can cause transgender people significant psychological distress, which may be diagnosed as a medical condition known as gender dysphoria. Transgender people alleviate that distress by taking steps to bring their outer appearance into closer alignment with their gender identity, a process known as gender transition. Gender transition can include steps such as correcting identity documents to reflect the name and sex designation that matches a transgender person's gender identity, as well as changing hairstyles, clothing, and mannerisms to align with those typically associated with their gender identity. Gender transition may also include medications or surgical procedures to make a transgender person's physical appearance consistent with others who share the same gender identity. Each of these steps enables a transgender person to live consistently with their gender identity and to be seen by others in a way that reflects their true gender.

however, that Ms. Wittmer "fail[ed] to point to or submit record evidence making a *prima facie* case that Phillips discriminated against her because of her transgender status or a failure to conform to sex stereotypes." ROA.566.

Amici take no position concerning the District Court's decision that Ms. Wittmer offered insufficient evidence of discrimination. Should this Court agree with the District Court on that issue, the Court need not address the District Court's conclusion that Title VII's prohibition on sex discrimination includes discrimination against an employee or applicant based on their transgender status. *See Brandon v. Sage Corp.*, 808 F.3d 266, 270 (5th Cir. 2015) (assuming without deciding that Title VII prohibits discrimination against employee labelled "cross-gender" by manager because record showed that plaintiff did not suffer an adverse employment action); *accord Tovar v. Essentia Health*, 857 F.3d 771, 775 (8th Cir. 2017) ("[W]e assume for purposes of this appeal that the prohibition on sex based discrimination under Title VII . . . encompasses protection for transgender individuals.").

If the Court concludes that it must address this issue, however, amici submit this brief to bring to the Court's attention the large body of federal court decisions holding that Title VII prohibits discrimination against transgender workers based on their nonconformity with sex stereotypes. Since the Supreme Court's watershed decision in in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), a broad consensus has emerged among federal courts that discrimination against transgender

individuals because they do not conform to an employer's expectations of how a man or a woman should look or act constitutes discrimination "because of . . . sex" under Title VII. 42 U.S.C. § 2000e-2(a)(1).

Indeed, there was essentially no dispute on this issue between the parties in the District Court. Defendant-Appellee Phillips 66 conceded that discrimination against a transgender person due to their nonconformity with gender stereotypes may violate Title VII, and it argued that the key issue in such cases is whether a transgender employee or applicant can demonstrate that he or she "was treated less favorably than other similarly situated non-transgender applicants." ROA.124. This was the legal standard that the District Court applied, and the broad weight of authority confirms it was correct: workplace discrimination against transgender persons is a form of sex discrimination prohibited by Title VII.[3]

[3] This case does not concern whether discrimination against a gay, lesbian, or bisexual employee based on his or her sexual orientation constitutes actionable sex discrimination under Title VII. It also does not concern access to sex-separated facilities in the workplace. This action involves only the claim that an employer violated Title VII's prohibition on sex discrimination by declining to hire an applicant because she is transgender.

ARGUMENT

I. A BROAD CONSENSUS OF FEDERAL COURTS RECOGNIZES THAT DISCRIMINATION AGAINST TRANSGENDER PERSONS CONSTITUTES UNLAWFUL DISCRIMINATION BASED ON SEX STEREOTYPES

"More than two decades ago, the Supreme Court held that a plaintiff may rely on gender-stereotyping evidence to show that discrimination occurred 'because of ... sex' in accordance with Title VII." *Equal Emp't Opportunity Comm'n v. Boh Bros. Const. Co.*, 731 F.3d 444, 453 (5th Cir. 2013) (en banc) (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)). The Supreme Court determined that a female employee who was denied a promotion because she was described as "macho" and did not "walk . . . femininely, talk . . . femininely, dress . . . femininely, wear make-up, have her hair styled, [or] wear jewelry," could state a claim for sex discrimination under Title VII, even though she was not discriminated against simply for being a woman rather than a man. *Price Waterhouse,* 490 U.S. at 235. The Court explained:

> [W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for in forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.

Id. at 251 (internal quotation marks, alteration, and citations omitted).

Since *Price Waterhouse,* numerous federal courts, including this Court, "have

recognized that a plaintiff can satisfy Title VII's because-of-sex requirement with evidence of a plaintiff's perceived failure to conform to traditional gender stereotypes." *Boh Bros.*, 731 F.3d at 454. In *Boh Brothers,* this Court held that an employee who faced workplace harassment because of his perceived lack of masculinity could bring a claim for sex discrimination under Title VII. The Court upheld the jury's finding that the employee had suffered sex-based harassment, holding that workplace conduct such as being subjected to "sex-based epithets like 'fa—ot,' 'pu—y,' and 'princess,'" supported the conclusion that the employee was harassed because he "fell outside of [his coworker's] manly-man stereotype." *Id.* at 457, 459. The fact that both the harasser and the target were male did not alter this conclusion. Regardless of the gender of the plaintiff or the harasser, "a plaintiff may establish a sexual harassment claim with evidence of sex-stereotyping." *Id.* at 456.

The analysis is no different when the individual facing discrimination or harassment is transgender. As the Sixth Circuit concluded nearly fifteen years ago, there is no "reason to exclude Title VII coverage for non sex-stereotypical behavior simply because the person is a transsexual." *Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004).[4] *Smith* held that "discrimination against a plaintiff who is

[4] Historically, the term "transsexual" was commonly used to refer to transgender people, and some decisions use that language. Today, the more commonly used term is "transgender." For purposes of the Title VII analysis, the terms are interchangeable.

transsexual—and therefore fails to act and/or identify with his or her gender [assigned at birth]—is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*, who, in sex-stereotypical terms, did not act like a woman[.]" *Id.* at 577. For this reason, the court held that a transgender woman who was in the process of gender transition and faced workplace discrimination for "express[ing] a more feminine appearance and manner" could assert a claim under Title VII, because such "discrimination would not [have] occur[red] but for the victim's sex." *id.* at 572, 574.

As the Eleventh Circuit explained in reaching the same result in a case involving adverse action against a transgender employee,

> A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes. The very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior. . . . There is thus a congruence between discriminating against transgender . . . individuals and discrimination on the basis of gender-based behavioral norms.

Glenn v. Brumby, 663 F.3d 1312, 1316 (11th Cir. 2011) (citations and internal quotation marks omitted).

Applying similar reasoning, the First, Sixth, Seventh, Ninth, and Eleventh Circuits have all concluded that disparate treatment of transgender persons based on their gender nonconformity constitutes impermissible sex discrimination under federal anti-discrimination statutes. *See Rosa v. Park W. Bank & Trust Co.*, 214 F.3d

213, 215-16 (1st Cir. 2000); *Equal Emp't Opportunity Comm'n v. R.G. &. G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 572 (6th Cir. 2018), *pet. for cert. filed,* No. 18-107 (U.S. Jun. 24, 2018); *Barnes v. City of Cincinnati*, 401 F.3d 729, 741 (6th Cir. 2005); *Smith*, 378 F.3d at 578; *Whitaker v. Kenosha Unified Sch. Dist. No. 1*, 858 F.3d 1034, 1047-50 (7th Cir. 2017); *Hively v. Ivy Tech Cmty. Coll. of Indiana*, 853 F.3d 339, 346-47 (7th Cir. 2017) (en banc); *Schwenk v. Hartford*, 204 F.3d 1187, 1200-02 (9th Cir. 2000); *Glenn*, 663 F.3d at 1316; *Chavez v. Credit Nation Auto Sales, LLC*, 641 Fed. Appx. 883, 884 (11th Cir. 2016). Citing several of the above-referenced cases from other circuits, the Tenth Circuit also has assumed, without deciding, that a transgender employee may bring a claim for discrimination under Title VII if he or she faces adverse employment action based on his or her nonconformity with sex stereotypes. *See Etsitty v. Utah Transit Authority*, 502 F.3d 1215, 1224 (10th Cir. 2007).[5]

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[5] Numerous district courts across the country, including in this Circuit, have also held that a transgender plaintiff may bring claims under Title VII and other federal anti-discrimination statutes when they face discrimination due to their nonconformity with sex stereotypes. *See, e.g.*, *Lopez v. River Oaks Imaging & Diagnostic Grp., Inc.*, 542 F. Supp. 2d 653, 660 (S.D. Tex. 2008); *Grimm v. Gloucester Cty. Sch. Bd.,* 302 F. Supp. 3d 730, 745 (E.D. Va. 2018); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 293 (W.D. Pa. 2017); *Valentine Ge v. Dun & Bradstreet, Inc.*, No. 6:15-CV-1029-ORL-41GJK, 2017 WL 347582, at *4 (M.D. Fla. Jan. 24, 2017); *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850, 877 (S.D. Ohio 2016); *Roberts v. Clark Cty. Sch. Dist.*, 215 F. Supp. 3d 1001, 1014 (D. Nev. 2016): *Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509, 527 (D. Conn. 2016); *Rumble v. Fairview Health Servs*., No.

"By definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth." *Whitaker*, 858 F.3d at 1048. For this reason, "[t]here is no way to disaggregate discrimination on the basis of transgender status from discrimination on the basis of gender non-conformity." *R.G. &. G.R. Harris Funeral Homes, Inc.*, 884 F.3d at 576-77. Accordingly, an employer violates Title VII when it subjects a transgender employee or applicant to adverse action for "appear[ing] or behav[ing] in a manner that contradicts the [employer's] perception of how she should appear or behave based on her sex." *Id.* at 574; *see also Lopez v. River Oaks Imaging & Diagnostic Grp., Inc.,* 542 F. Supp. 2d 653, 660 (S.D. Tex. 2008) (concluding that "transsexuality is not a bar to [plaintiff's] sex stereotyping claim. Title VII is violated when an employer discriminates against any employee, transsexual or not, because he or she has failed to act or appear sufficiently masculine or feminine enough for an employer.") (quoting *Schroer,* 525 F. Supp. 2d at 63).

14-cv-2037 (SRN/FLN), 2015 WL 1197415, *2 (D. Minn. Mar. 16, 2015); *Schroer v. Billington*, 577 F. Supp. 2d 293, 305 (D.D.C. 2008); *Mitchell v. Axcan Scandipharm*, 2006 WL 4561731 (W.D. Pa. Feb. 21, 2006); *Kastl v. Maricopa Cnty. Comm. College Dist.,* 2004 WL 2008954, at *2-3 (D. Ariz. June 3, 2004); *Tronetti v. Healthnet Lakeshore Hosp*., 2003 WL 22757935 (W.D.N.Y. Sept. 26, 2003). *See also Doe v. Trump*, 275 F. Supp. 3d 167, 209-10 (D.D.C. 2017) (holding, under Equal Protection Clause, that classifications based on transgender status "inherently discriminate[]" based on a person's "failure to conform to gender stereotypes").

Under Title VII, "[a]n individual cannot be punished because of his or her perceived gender-nonconformity. Because these protections are afforded to everyone, they cannot be denied to a transgender individual. The nature of the discrimination is the same; it may differ in degree but not in kind, and discrimination on this basis is a form of sex-based discrimination . . . ." *Glenn*, 663 F.3d at 1319. The District Court therefore was correct to conclude that Title VII protects transgender individuals like Ms. Wittmer from discrimination based on their nonconformity to sex stereotypes.

II. TITLE VII ALSO PROTECTS TRANSGENDER EMPLOYEES BECAUSE TRANSGENDER STATUS AND GENDER TRANSITION ARE INHERENTLY SEX-BASED.

Although federal courts have long recognized that a transgender plaintiff may state a valid claim for violation of Title VII under a sex-stereotyping theory, the district court also correctly concluded that Title VII protects transgender employees for an even more basic reason. This is because "it is analytically impossible to fire an employee based on that employee's status as a transgender person without being motivated, at least in part, by the employee's sex." *R.G. &. G.R. Harris Funeral Homes, Inc.*, 884 F.3d at 575.

Discrimination based on transgender status is inherently sex-based because being transgender can only be understood with regard to a person's sex. *See, e.g.*, *Love v. Johnson*, 146 F. Supp. 3d 848, 850-51 (E.D. Mich. 2015). The definition of

being transgender rests on the difference between a person's gender identity and the sex assigned to them at birth. *Id.* Since both these characteristics are sex-related, differential treatment of transgender people requires consideration of a sex-related characteristic of the individual.

For example, in one recent case, a transgender employee was terminated when she transitioned from male to female and wished to comply with the employer's dress code for female employees. The Sixth Circuit framed the relevant inquiry as "whether Stephens would have been fired if Stephens had been a woman who sought to comply with the women's dress code." *R.G. &. G.R. Harris Funeral Homes, Inc.,* 884 F.3d at 575. Because the answer was clearly no, the court concluded that "[t]his, in and of itself, confirms that Stephens's sex impermissibly affected Rost's decision to fire Stephens." *Id.*; *see also Macy v. Holder,* No. 0120120821, 2012 WL 1435995, at *10 (E.E.O.C. Apr. 20, 2012) ("[I]f Complainant can prove that the reason that she did not get the job . . . is that the Director was willing to hire her when he thought she was a man, but was not willing to hire her once he found out that she was now a woman—she will have proven that the Director discriminated on the basis of sex.").

Alternatively, as some courts have also observed, discrimination based on transgender status may be analyzed as discrimination based on an employee's undergoing or having undergone gender transition. *See, e.g., Schroer*, 577 F. Supp. at 306. By way of analogy, "an employer who fires an employee because the

employee converted from Christianity to Judaism has discriminated against the employee 'because of religion,' regardless of whether the employer feels any animus against either Christianity or Judaism, because '[d]iscrimination "because of religion" easily encompasses discrimination because of a change of religion.'" *R.G. &. G.R. Harris Funeral Homes, Inc.,* 884 F.3d at 575 (quoting *Schroer*, 577 F. Supp. 2d at 306). For similar reasons, "discrimination 'because of sex' inherently includes discrimination against employees because of a change in their sex." *Id.*; *see also Fabian,* 172 F. Supp. 3d at 527.

Viewed in this light, "[g]ender (or sex) is not being treated as 'irrelevant to employment decisions' if an employee's attempt or desire to change his or her sex leads to an adverse employment decision." *R.G. &. G.R. Harris Funeral Homes, Inc.,* 884 F.3d at 576 (quoting *Price Waterhouse*, 490 U.S. at 240); *see also Glenn*, 663 F.3d at 1314 (firing employee because of her "intended gender transition" is sex discrimination); *Dawson v. H&H Elec., Inc.*, No. 4:14-CV-00583-SWW, 2015 WL 5437101, at *3 (E.D. Ark. Sept. 15, 2015) (discrimination based on "sex" includes discrimination "because of [a person's] gender transition").

In sum, the District Court correctly concluded that Ms. Wittmer stated a viable claim for sex discrimination both because of "the long-recognized protections

against gender- or sex-based stereotyping" and because her "status as a transgender woman places her under the protections of Title VII." ROA.565-566.

CONCLUSION

For the foregoing reasons, amici submit that the District Court correctly concluded that a plaintiff who alleges adverse employment action based on her transgender status states a claim for discrimination "because of sex" under Title VII.

DATED: August 6, 2018

Respectfully submitted,

NATIONAL CENTER FOR LESBIAN RIGHTS

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation, as provided in Fed. R. App. P. 29(b) because, exclusive of the exempted portions of the brief, the brief contains 3,560 words.

2. This brief complies with the type-face requirements, as provided in Fed. R. App. P. 32(a)(5), and the type-style requirements, as provided in Fed. R. App. P. 32(a)(6), because the brief has been prepared in proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman font.

3. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated: August 6, 2018

/s Christopher F. Stoll
Christopher F. Stoll
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

The undersigned counsel certifies that a true and correct copy of the foregoing has been forwarded to all counsel of record electronically and served via the Court's electronic filing system on August 6, 2018.

Dated: August 6, 2018

/s Christopher F. Stoll
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