No. 19-15382 & 20-15186

In the

United States Court of Appeals

for the Ninth Circuit

JULIA BERNSTEIN; ESTHER GARCIA; LISA MARIE SMITH, on behalf of themselves and other similarly situated,
Appellees,

v.

VIRGIN AMERICA, INC.; ALASKA AIRLINES, INC.,
Appellants.

On Appeal from the United States District Court for the Northern District of California
3:15-cv-02277-JST

BRIEF OF GEORGIA, ALABAMA, ARKANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, NEBRASKA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, AND UTAH AS AMICI CURIAE SUPPORTING APPELLANTS

Office of the Georgia Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3409
apinson@law.ga.gov

Christopher M. Carr
Attorney General of Georgia
Andrew A. Pinson
Solicitor General
Drew F. Waldbeser
Assistant Solicitor General
Zack W. Lindsey
Assistant Attorney General

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Regulations

Other Authorities

STATEMENT OF INTEREST

Over the past half-century, few advancements have done as much good for the States and their citizens as the arrival of affordable and reliable air travel. In 2016 alone, civil aviation produced $1.8 trillion in economic activity and supported 10.9 million jobs. FAA, *The Economic Impact of Civil Aviation on the U.S. Economy* 3 (Nov. 2020), https://perma.cc/ZPL5-UB4P. These economic benefits ripple across the country to communities large and small. Regional Airline Association (RAA), *Annual Report 2019* 12 (2019), https://perma.cc/2UB5-EUUR (airports in small communities create millions of jobs and produce $134 billion annually in economic activity for their regions, including tens of millions in wage and tax revenue); Bruce A. Blonigen & Anica D. Cristea, *Air Service and Urban Growth*, J. of Urban Econ. 86, 145 (2015) (increased air traffic leads to population growth, higher incomes, and more jobs).

The airline industry's status as an engine of economic growth stems from a single, major shift in federal policy: deregulation. Before Congress passed the Airline Deregulation Act in 1978, the federal government micromanaged every aspect of the industry. As a result, fares were "absurdly expensive," and most of the country had never been on a plane. Derek Thompson, *How Airline*

Ticket Prices Fell 50 Percent in 30 Years (And Why Nobody Noticed), The Atlantic (Feb. 28, 2013), https://perma.cc/Y4YN-N5ES. The ADA freed the airline industry from that oppressive regulatory scheme in favor of "maximum reliance on competitive market forces and on actual and potential competition." *Northwest v. Ginsberg,* 572 U.S. 273, 280 (2014) (quoting 49 U.S.C. §§ 40101(a)(6), (12)(A)). And it worked. Since 1978, the price of flying has dropped by half, democratizing air travel and creating trillions of dollars in economic growth for state and local economies.

This unqualified success story is put in peril by the panel decision and the circuit precedent it extends. The ADA's success came first from retiring the federal regulatory scheme that hampered innovation and competition. But deregulation has had staying power because the ADA, through express preemption, also kept the States from "undo[ing] federal deregulation with regulation of their own." *Morales v. Trans World Airlines*, 504 U.S. 374, 378 (1992). And Congress used words that "express[ed] a broad pre-emptive purpose" to make sure that heavy-handed state regulation, however well-meaning, would not keep this critical industry from taking off. *Id.* The panel's too-narrow construction of the ADA's preemptive scope risks resurrection of the very forces

that kept air travel out of reach for the average person. Because the *amici* States have strong and obvious interests in maintaining the benefits of airline deregulation for their citizens, we write here in support of rehearing en banc.

ARGUMENT

I. The panel decision conflicts with the Supreme Court's construction of the Airline Deregulation Act.

The ADA expressly preempts any state "law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b). The panel held that the ADA does not expressly preempt California's rest and meal break rules as applied to flight attendants because those rules do not "bind[] the carrier to a particular price, route, or service." *Bernstein v. Virgin Am.,* 990 F.3d 1157, 1169 (9th Cir. 2021) (quoting *Dilts v. Penske Logistics*, 769 F.3d 637 (9th Cir. 2014)). That decision does not square with the Supreme Court's construction of the ADA.

A. Under controlling Supreme Court precedent, the ADA preempts California's rest and meal break rules.

The Supreme Court has explained several times that the ADA's preemptive sweep in 41713(b) is "broad," because it covers laws that are even just "related to" a price, route, or service of an

air carrier. *Morales*, 504 U.S. at 383; *see also Ginsberg*, 572 U.S. at 284; *Am. Airlines, v. Wolens*, 513 U.S. 219, 223 (1995). The Court has interpreted that language to mean "[s]tate enforcement actions having a *connection with or reference to* airline 'rates, routes, or services' are pre-empted." *Id*. at 384 (emphasis added).

Under this test, "what is important is the effect of a state law, regulation, or provision, not its form." *Ginsberg*, 572 U.S. at 283 (cleaned up). Some state actions, like gambling or prostitution bans, "may affect airline fares in too tenuous, remote, or peripheral a manner to have pre-emptive effect." *Morales,* 504 U.S. at 390 (cleaned up). But laws that have a "significant impact" on the fares airlines charge, the routes they travel, or the services they provide are preempted, *id.*, even when that impact could be described as "indirect," *id*. at 386. As a result, even generally applicable state laws that ban deceptive advertising, *id.* at 388, or allow private lawsuits for consumer fraud, *Wolens*, 513 U.S. at 228, or breach of implied covenants, *Ginsberg*, 572 U.S. at 284, are preempted as applied to airlines because they have "the forbidden significant effect" on prices, routes or services. *Morales*, 504 U.S. at 388.

So here. California's break requirements would easily have a "significant impact" on airline prices, routes, and services if they

applied to flight attendants. Airlines could theoretically schedule these mandated breaks either while in flight or on the ground between flights. Either option would significantly affect prices, routes, or services.

Take in-flight breaks first. California law generally prohibits employees from being on duty at all—not even "on call"—during their breaks. *See* Cal. Code Regs. tit. 8, § 11090(11)-(12); *Augustus v. ABM Sec. Servs.,* 2 Cal.5th 257, 269 (2016). But FAA regulations generally contemplate that flight attendants will remain on duty for the whole flight to handle both routine and emergency safety duties—including medical emergencies, in-flight fires, and evacuations. *Flight Attendant Duty Period Limitations and Rest Requirements*, 59 Fed. Reg. 42,974-01, 42,974 (Aug. 19, 1994). And federal law requires a minimum contingent of flight attendants to be on duty the entire time the aircraft is operating. 14 C.F.R. § 121.385(a). These requirements alone seem to preclude in-flight breaks altogether. *See* U.S. Amicus Br. at 19-20.

At minimum, meeting both federal law and California's break rules would require staffing many flights with extra flight attendants so they could take turns going "off duty."[1] The result

[1] Even under such an arrangement, it is hard to see how airlines could ensure that off-duty flight attendants would be left alone for the full break, *see* Cal. Code Regs. tit. 8, § 11090(11)(C), (E)

would be higher prices and fewer seats for paying customers. *See* Doc. 120 at 4-5 (estimating the break rules will cost Virgin $1,950,925 annually in just additional salary); Iowa DOT, *Iowa Air Service Study* 2-34 (Apr. 2008), https://perma.cc/4UXR-EHYU (calculating that airlines must already have a paying customer in about 80 percent of their seats on every flight to break even). Combined with already-slim margins, those higher costs and lower revenues would significantly impact prices. *Id.* at 2-40 (explaining that escalating operating costs have forced airlines to "increase[] fares, and … increase their average load factors for each departing flight"). And those cost pressures likely would make some routes unprofitable, thus impacting routes and services as well. *Id.* at 2-31, 32 (warning that rising operating costs have "reduced service frequencies" at some airports and put "commercial air service" at risk for some communities entirely); RAA, *Valuable: Air Service to Small Communities Generates Significant Economic Activity,* (2019), https://perma.cc/3LRB-

---

(requiring a "suitable place" for breaks), since flight attendants on break in jump seats would be fully visible, in uniform, and steps away from passengers. And allowing off-duty attendants to refuse to help passengers in need—even those with health or safety issues—would significantly impact airline "services." Scott McCartney, *Imagine Not Hating Flying Coach*, WSJ (Oct. 16, 2019), https://perma.cc/36SU-E3WM.

ZX98 (explaining that "mainline airlines intensely focused on profitability" may drop service to smaller markets, especially if there are staffing concerns).

Between-flight breaks would significantly impact prices, routes, and services, too. Commercial aircraft operate under tight, carefully coordinated schedules that must account for many factors, including weather, congestion in airspace and at airports, mechanical failures, and connection times. Vinayak Deshpande & Mazhar Arıkan, *The Impact of Airline Flight Schedules on Flight Delays*, Mfg. & Serv. Operations Mgmt. 14(3), pp. 423-24 (2012). But delays happen anyway, usually from bad weather or congested airports. And because airlines share gates, runways, and airspace, delays at even one airport will have "significant ramifications for the rest of the national airspace system." GAO, *Initiatives to Reduce Flight Delays and Enhance Capacity are Ongoing but Challenges Remain* 1 (May 26, 2005), https://perma.cc/G5RN-YY3T.

On-the-ground breaks for California-based flight attendants would make this logistical challenge much harder. An airline might need to shift crew schedules around to accommodate breaks. But flight schedules are driven by inflexible factors including gate availability, aircraft availability, takeoff and

landing slots, passenger demand, weather, mechanical failures, connection times, and air traffic congestion. Deshpande & Arıkan, *supra*. So incorporating rest breaks would introduce severe disruptions into the schedule for not just California flights, but the rest of the country, too.

If airlines instead hire and staff additional sets of flight attendants for California flights, that will also impact prices and services. Flight attendants typically fly a string of connected flights that begin and end (often days later) in the same city. Xugang Ye, *Airlines' Crew Pairing Optimization: A Brief Review*, Dep't of Applied Sciences and Mathematics, Johns Hopkins Univ. 1 (2007). So if an airline swaps out flight attendants for a break, the airline will have to ferry both flight attendants to their next destination. Airlines would thus be paying two flight attendants, and incurring unnecessary transportation costs, to do the work of just one.

Finally, these impacts only account for California-based flight attendants. But as explained below, the decision's ramifications extend to any flight attendants while their flight is "in" California, to other airline employees (e.g., pilots), *and* to other states that have similar or even conflicting break requirements. There can thus be no doubt that applying California's break rules to the

airline industry would significantly impact prices, routes, and services, rendering those rules preempted under the ADA's express terms.

B. The panel's contrary decision conflicts with Supreme Court precedent interpreting the ADA.

The panel did not merely disagree that applying California's break rules to flight attendants would have a "significant impact" on airline prices, routes, or services. The panel declined even to apply that test, despite its Supreme Court pedigree, *see Morales*, 504 U.S. at 388. In its place, with little analysis, the panel relied on *Dilts v. Penske Logistics,* 769 F.3d 637 (9th Cir. 2014), which held that the Federal Aviation Administration Authorization Act—a law that borrowed the ADA's preemption language—did not preempt break rules as applied to *trucking companies*. *Bernstein*, 990 F.3d at 1169. Under *Dilts*, the ADA preempts state law only if the law "*binds* the carrier to a particular price, route, or service." *Id.*

That narrow test cannot be squared with the Supreme Court's construction of the ADA. The Supreme Court has directly rejected the argument that the ADA preempts only state enforcement actions that "actually prescribe rates, routes, or services" because that would "read[] the words 'relating to' out of the statute."

Morales, 504 U.S. at 385. And asking whether a state law "binds" a carrier to a particular rate, route, or service is no different than asking whether a law *prescribes* it. Nor does it matter that the break rules here are "normal background rules for almost *all* employers doing business in the state of California," *Dilts*, 769 F.3d at 647. The Supreme Court has made clear that the ADA preempts laws of general applicability, too. *Morales*, 504 U.S. at 386 (calling a proposed exception for generally applicable laws "utterly irrational"); *see also California Trucking Ass'n v. Bonta,* No. 20-55106, 2021 WL 1656283, at *14-19 (9th Cir. Apr. 28, 2021) (Bennett, J., dissenting) (explaining why the *Dilts* line of cases contradict Supreme Court precedent); *Massachusetts Delivery Ass'n v. Coakley*, 769 F.3d 11, 20 (1st Cir. 2014) (refusing "to adopt [*Dilt*'s] categorical rule"). In short, *Dilts* conflicts with Supreme Court precedent construing the ADA, and the panel decision applying *Dilts* does too. En banc review is necessary to clear this direct obstacle to proper application of the Supreme Court precedent.

One more thing. If this Court decides to rehear this case en banc, it may wish to consider a second, related departure from Supreme Court precedent. In *Charas v. Trans World Airlines,* 160 F.3d 1259, 1261 (9th Cir. 1998), the panel held that the impacts

on "services" preempted by the ADA meant impacts on "prices, schedules, origins and destinations of the point-to-point transportation," but *not* impacts on "provision of in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities." As other circuits have explained, this cramped reading of "services" is "inconsistent" with, if not "foreclose[d]" by, the Supreme Court's decision in *Rowe v. New Hampshire Motor Transport Ass'n*, 552 U.S. 364, 368, 376 (2008). *Air Transp. Ass'n of Am., v. Cuomo,* 520 F.3d 218, 223 (2d Cir. 2008) (inconsistent); *Bower v. Egyptair Airlines Co*., 731 F.3d 85, 94 (1st Cir. 2013) (foreclosed). Rehearing en banc would allow this Court to reconsider whether significant impacts on the broader range of airline "services" are also grounds for ADA preemption.

II. The panel decision threatens severe economic harm to state and local economies across the country.

The amici States and their citizens depend on faithful application of the ADA's preemption provision to prevent the serious harms caused by over-regulation. The ADA spurs innovation in the airline industry and drives down prices by precluding an oppressive regulatory scheme. *See Ginsberg*, 572 U.S. at 280. The ADA's preemption provision is central to that plan: it "ensure[s] that the States would not undo federal

deregulation with regulation of their own." *Morales*, 504 U.S. at 378. And the plan has worked. Freed from restrictive federal and state regulation, airfares dropped by half, capacity and passenger traffic tripled, and air travel became an engine for nationwide economic growth, in communities large and small. Thompson, *supra*; Shantay Piazza, *30 Years After Airline Deregulation*, OSU L. Magazine (2009), https://perma.cc/63MS-B5T5 (tripled capacity and traffic); RAA, *Annual Report 2019* at 12, *supra*.

In contrast, the panel decision threatens widespread economic harm. The combination of disruption, delays, and price increases caused by applying California's break laws to the airline industry would cascade across the country, and the consequences would be especially painful for regional airlines—the exclusive providers of air travel for much of the country. These damaging consequences are added reasons to rehear this case.

A. The harms caused by the panel decision will be substantial and widespread.

The panel decision applies California's break requirements to all flight attendants who live or are based in California. *Bernstein*, 990 F.3d at 1162. But the panel's reasoning would apply equally to all flight attendants working even temporarily in California. *Id.* The implications are far-reaching.

Start with the most direct impacts. About three-quarters of Virgin America flights pass through both California and another state. ER52; ER672; ER815; ER817-21. And since every major airline has multiple flights through California each day, the break rules will introduce serious logistical challenges for every airline, and not just for their California flights. *See supra* at 5-8. At minimum, airlines would have to track not only which employees live or are based in California, but also how long they spend in California.

And the impact will extend well beyond this case. To begin with, the panel's reasoning would encompass flight attendants who are merely passing through California, not just those who live or are based in California. The panel "[e]xtrapolate[d]" California labor law as applying to "nonresidents, as well as residents." 990 F.3d at 1170 (citing *Sullivan v. Oracle Corp.*, 51 Cal.4th 1191, 1197-98 (2011)). So there is reason to believe that the break rules would apply to *all* flight attendants while in California, no matter where they live or are based. Unless these rules are preempted, airlines will have to provide breaks for all of those employees, too.

Nor is there any apparent reason why the panel decision would apply only to flight attendants. The next cases will inevitably be about the rest of the flight and ground crew. We

know this because they have already been brought. *See Goldthorpe v. Cathay Pac. Airways Ltd.,* 279 F. Supp. 3d 1001, 1003 (N.D. Cal. 2018) (pilots); *Angeles v. U.S. Airways,* No. C 12-058600, 2013 WL 622032 (N.D.Cal. Feb. 19, 2013) (ground crews). So the panel decision imposes regulatory uncertainty and related costs on airlines for those employees as well.

And there is yet more. If the ADA does not preempt the enforcement of *California* break rules against the airline industry, then other states' similar laws would presumably be enforceable, too. *See, e.g.*, *Rodriguez v. Peak Pressure Control*, No. 217CV00576JCHJFR, 2020 WL 3000414, at *2 (D.N.M. June 4, 2020) (applying New Mexico's overtime laws "to employment done in New Mexico, without reference to an employer's or employee's place of residence"); *O'Neill v. Mermaid Touring*, 968 F. Supp. 2d 572, 579 (S.D.N.Y. 2013) (similar); *Dow v. Casale,* 83 Mass. App. Ct. 751, 758 (2013) (applying the Massachusetts Wage Act to work done by a non-resident traveling salesman). Consider the implications. The panel decision seems to apply California's break rules to any work performed by *anyone* while in California. But if the same rule holds for Oregon, or Washington, or Nevada, a flight attendant who lived in California might be covered by three or four states' laws during a day's work. Even assuming that an

airline could simultaneously satisfy each state's break laws, *but see* Airlines for Am. Br. at 23, compliance would be expensive and time-consuming. First, airlines would have to parse each state's labor laws. Then, they would have to determine which state laws cover each flight attendant during each flight, and try to factor that information into its schedules (while still building in flexibility for unexpected delays or diversions).

The panel opinion thus introduces the specter of a new web of state regulation that would inflict significant compliance costs. California's break rules would disrupt air traffic across the country even if they apply only to flight attendants that live in or are based out of California. *See supra* at 5-8. But if airlines must also give pilots and ground crew the same breaks, plus comply with the employment law of every other state (or at least those in the Ninth Circuit), the compliance burdens will magnify exponentially. All these mandatory breaks will cause delays between routes. Airlines will have to hire and staff more pilots, ground crew, and flight attendants, which will increase prices. And these burdens will make some routes unprofitable, leading to their cancellation. The panel opinion will thus significantly impact rates, routes, and services not only in California, but across the

entire country—ultimately to the detriment of consumers, who will bear the burden of higher prices and less reliable air travel.

B. The panel decision will disproportionately harm the consumers and rural communities served by regional airlines and airports.

Most parts of the country depend on regional airports and airlines for air travel. But regional airlines already struggle to stay afloat, and the panel decision threatens to bury them with costly compliance burdens. The inevitable result would be fewer routes to smaller airports, higher rates for the remaining flights, and increased delays. The panel decision thus risks depriving entire communities of the economic and quality-of-life benefits that come with inexpensive and accessible air travel.

1. Most states receive a majority of their air service through regional airports and airlines. Regional carriers are the sole provider of air service to 63 percent of airports in the United States. RAA, *Regional Airlines Provide The Critical Link*, https://perma.cc/UB95-XX7Q. Twenty-nine states receive at least fifty percent of their air service from regional airlines, and fifteen states receive more than seventy-five percent. RAA, *Annual Report 2020* 64-65 (2020), https://perma.cc/H3Q6-SGD6.

These regional airports and airlines provide irreplaceable economic benefits. In the fifteen states that depend almost

exclusively on regional airlines for air service, the aviation industry generated $62 billion in economic activity in 2016. *See The Economic Impact of Civil Aviation on the U.S. Economy*, *supra*, at 10; *see also* William Swelbar, *Will Regional Airlines Survive the COVID-19 Market?*, Brink News (Aug. 12, 2020), https://perma.cc/AKL5-6NS2 (explaining that "small community air service contributes more than $130 billion in economic activity every year"). Put simply, regional air service provides huge economic benefits for small communities. Douglas Jacobson, *The Economic Impact of the Airline Industry in the South*, The Council of State Gov'ts (May 2004), https://perma.cc/XZM9-KBVG. And when communities lose this link to the national and global economy—from dropped routes or shuttered airports—economic growth stagnates. *See* Greg Pecorara & Ed Bolen, *General Aviation and Smaller Airports Critical Now More Than Ever*, Clarion Ledger (Oct. 2, 2020), https://perma.cc/B9UY-YJ48; Hugo Martin, *As airlines post big profits, small communities lose service*, LA Times (Jan. 22, 2018), https://perma.cc/6YRH-GF45.

2. These regional carriers and airports are likely to be hit hardest by the costs that the panel decision would impose, and that could decimate the many communities that rely on them for air travel.

Regional airlines already operate on a knife's edge. Regional airlines have fewer resources, administrative staff, and pilots. RAA Amicus Br., Black Decl. ¶¶5, 8. "Their profits are shrinking, costs are rising, and they're having trouble finding enough pilots to work for the salaries they pay." David Koenig, *Regional airlines not sharing in majors' success*, AP News (Sept. 10, 2014), https://perma.cc/M7V8-QSD2. Since 2007, 91 airports nationwide have closed. RAA Amicus Br., Black Decl. ¶9. And aviation experts predict more failures and route cancellations. Koenig, *supra*.

Applying a layer of state regulations like California's would only increase the pressure on regional airlines. Regional flights are (by definition) short. So, even assuming in-flight breaks are permitted by federal law and would comply with California law (*but see supra* at 5 & n.1), there will typically not be enough time for flight attendants to take an in-flight break while still performing their assigned duties. Regional airlines might instead have to staff an extra flight crew to comply with a break rule like California's. Those extra employees take up seats on the plane, which would also threaten the profitability of regional airlines that operate small capacity planes on razor-thin margins. *See* Iowa DOT, *Iowa Air Service Study*, supra 2-34. Since regional

airlines already struggle to break even, Koenig, *supra*, these substantial and duplicative costs, *see* Doc. 120 at 4-5 (estimating break rules would cost Virgin America $1,950,925 annually in extra salary alone), would inevitably require higher rates or less in-flight service.

And this all assumes that the airlines can actually hire more staff. But that is a problem too: regional airlines already struggle to find enough pilots. In fact, some smaller routes have already been canceled for lack of staff. *See Valuable: Air Service to Small Communities Generates Significant Economic Activity*, *supra*; *see also* Ethan S. Klapper, *Effects of the Pilot Shortage on the Regional Airline Industry: A 2023 Forecast*, Embry-Riddle Aeronautical Univ. 1 (2019), https://perma.cc/N59M-PHBK (predicting a "substantial … regional pilot shortage" that would "have devastating effects for the overall U.S. airline industry, and the broader U.S. economy"). If airlines must hire additional pilots to accommodate California's break rules, more cancellations will follow.

Breaks on the ground would present extra difficulties for regional airlines, too. Regional aircraft visit up to eight cities on an average day, more than national airlines, RAA Amicus Br., Black Decl. ¶7, because regional flights typically connect travelers

from smaller communities to large "hub" airports, where they continue their journey. Iowa DOT, *Iowa Air Service Study*, supra, 2-27; Lauren Zumbach, *Frequent travelers assume regional flights are more likely to get canceled, Are they really?* Chicago Tribune (Mar. 26, 2019), https://perma.cc/E3K6-CWJ8. Regional airlines have tight windows in which to deliver these passengers so they can make their connections, and even short delays will add up over the course of the day. *Id*. To make the logistics work, regional airlines would either have to fly fewer connections or hire more staff. Either answer will significantly impact rates and routes and harm consumers in smaller communities.

In short, if the panel decision stands, the story does not end well for regional airlines and the hundreds of millions of people they serve. Even if major airlines can adapt—still at the expense of consumers, who will have to pay more and get less in return—regional airlines may well struggle to stay aloft. At the very least, the panel decision will mean fewer regional flights, higher prices, and more delays, erasing substantial gains from deregulation with a single opinion.

CONCLUSION

For the reasons set out above, this Court should grant the petition for en banc review.

Respectfully submitted.

/s/ *Andrew A. Pinson*
Christopher M. Carr
Attorney General of Georgia
Andrew A. Pinson
Solicitor General
Drew F. Waldbeser
Assistant Solicitor General
Zack W. Lindsey
Assistant Attorney General

Office of the Georgia Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3409
apinson@law.ga.gov
Counsel for the State of Georgia

Steve Marshall
Attorney General of Alabama

Leslie Rutledge
Attorney General of Arkansas

Daniel Cameron
Attorney General of Kentucky

Jeff Landry
Attorney General of Louisiana

Lynn Fitch
Attorney General of Mississippi

Austin Knudsen
Attorney General of Montana

Douglas J. Peterson
Attorney General of Nebraska

Dave Yost
Attorney General of Ohio

Alan Wilson
Attorney General of South Carolina

Jason R. Ravnsborg
Attorney General of South Dakota

Ken Paxton
Attorney General of Texas

Sean D. Reyes
Attorney General of Utah

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 29(a)(4)(G) and Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 4,117 words as counted by the word-processing system used to prepare the document. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Century Schoolbook14-point font, a proportionally spaced typeface.

/s/ Andrew Pinson
Andrew Pinson

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2021, I served this brief by electronically filing it with this Court's ECF system, which constitutes service on all attorneys who have appeared in this case and are registered to use the ECF system.

/s/ Andrew A. Pinson
Andrew A. Pinson