No. 26-2626

IN THE

United States Court of Appeals for the Ninth Circuit

IN RE JUUL LABS, INC. ANTITRUST LITIGATION

JUUL LABS, INC., ET AL.,

Defendants-Appellants,

v.

DEVIN BLACK, ET AL.,

Plaintiffs-Appellees.

On Rule 23(f) Interlocutory Appeal from the
United States District Court for the Northern District of California
No. 3:20-cv-02345-WHO, District Judge William H. Orrick

BRIEF OF IOWA AND 13 ADDITIONAL STATES AS AMICI CURIAE IN SUPPORT OF DEFENDANTS-APPELLANTS

BRENNA BIRD
Attorney General of Iowa

ERIC H. WESSAN
Solicitor General

PATRICK C. VALENICA
Deputy Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 281-5164
(515) 281-4209 (fax)
eric.wessan@ag.iowa.gov

JULY 28, 2026

Counsel for Amicus Curiae State of Iowa

(Additional counsel listed after signature block)

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STATEMENT OF AMICI CURIAE

The Attorneys General of Iowa and thirteen additional States are their States' chief law enforcement officers. Their interest in this case arises from two related responsibilities. *First*, Attorneys General are responsible for protecting their States' consumers and enforcing their States' antitrust laws. Amici States have enacted statutes governing competition and consumer protection within their jurisdictions. *See, e.g.*, Iowa Code §§ 553.4, 553.12. Those statutes reflect differing legislative judgments about the proper scope of antitrust liability, remedies, and enforcement. *Second*, Attorneys General have a sovereign interest in ensuring that transactions within their States are governed by their States' laws, not laws of another State.

The certification order below permits Plaintiffs to invoke California's Cartwright Act to regulate purchases made outside California, including purchases made by residents of other States within those States.

If left undisturbed, that approach would allow California law to trump other States' differing policy choices—raising serious federalism concerns. It displaces the policy choices of the State where the transaction occurred and substitutes those of the forum State. The Constitution and settled principles of state sovereignty do not permit such extraterritorial application of state law. *See*, *e.g.*, *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336–37 (1989).

Amici submit this brief in support of reversing the district court's class-certification order to protect those sovereign interests and to ensure that the territorial limits of state law are respected in multistate class actions. Properly read, the Cartwright Act does not reach wholly out-of-state transactions. Because the order below permits California law to govern transactions occurring wholly outside California—and because that issue affects whether the class may be certified at all—this Court should reverse the class-certification order.

SUMMARY OF ARGUMENT

This Court should reverse the district court's class-certification order. The district court certified a multistate class under California's Cartwright Act that includes non-California consumers who made purchases in their home States. In other words, the certification order allows California antitrust law to govern purchases made by Iowans in Iowa.

That approach raises serious extraterritoriality problems. Yet the district court certified the class while breezing by any extraterritoriality analysis. Had it done the analysis, it would have recognized the federalism concerns. Instead, it devoted one paragraph to the issue before moving on.

California follows a strong presumption against extraterritorial application of its statutes. Unless the Legislature clearly enacts extraterritorial legislation, California statutes apply only to activities

occurring within California. *Sullivan v. Oracle Corp.*, 254 P.3d 237, 248 (Cal. 2011). Nothing in the Cartwright Act shows an intent to regulate purchases made entirely outside California by residents of other States. Applying California law to those transactions also raises constitutional concerns. The Constitution reflects a broader principle that States may not regulate commerce occurring wholly outside their borders. *See Healy*, 491 U.S. at 336–37; *Edgar v. MITE Corp.*, 457 U.S. 624, 642–43 (1982) (plurality op.).

The certification order largely bypassed that analysis. Although the order acknowledged that the class includes out-of-state purchases, it did not meaningfully address whether the Cartwright Act governs those transactions. Instead, the district court brushed the issue aside and skipped ahead to the choice-of-law analysis. But the Cartwright Act does not apply extraterritorially to transactions that occur out-of-state. Other courts in the Northern District of California have recognized the concerns raised by applying California antitrust law to "actual sales out of state." *In re HIV Antitrust Litig.*, 2022 WL 22609107, at *9 (N.D. Cal. Sept. 27, 2022); *see also In re Capacitors Antitrust Litig.*, 2020 WL 6462393, at *7 (N.D. Cal. Nov. 3, 2020).

Indeed, the extraterritoriality question is logically antecedent to class certification. If California law cannot govern purchases made outside California, then the certified class necessarily includes claims governed by the laws of many other States. And the differences among

those laws defeat predominance under Rule 23. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623–24 (1997); *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589–94 (9th Cir. 2012), *overruled in part on other grounds*, *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 682 n.32 (9th Cir. 2022). If the Cartwright Act cannot apply extraterritorially, then there is no potential class outside California. This Court should reverse.

ARGUMENT

I. The District Court Got It Wrong: The Cartwright Act Does Not Authorize Regulation of Out-of-State Purchases.

California law begins with a strong presumption against extraterritorial application of its statutes. As the California Supreme Court has long explained, "[o]rdinarily the statutes of a state have no force beyond its boundaries," and courts should not assume that the Legislature "undertook to pass a law which would trench upon the sovereign powers of any other jurisdiction." *N. Alaska Salmon Co. v. Pillsbury*, 162 P. 93, 94 (Cal. 1916). "[T]he Legislature ordinarily does not intend for its enactments to create conflicts with other sovereigns." *Ward v. United Airlines, Inc.*, 466 P.3d 309, 321 (Cal. 2020). Thus "[t]he legislature need not qualify each law by saying 'within the territorial jurisdiction of this State'" because "[t]hat is how statutes have always been interpreted"—a principle that applies both to federal law and "to

the laws of our states." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 268–69 (2012).

So "the presumption is that [the Legislature] did not intend to give its statutes any extraterritorial effect." *N. Alaska Salmon*, 162 P. at 94; Scalia & Garner, *Reading Law* 268 ("A statute presumptively has no extraterritorial application."). Without "express words or clear implication" that a law applies extraterritorially, California statutes operate only within California. *N. Alaska Salmon,* 162 P. at 95; *see also Sullivan*, 254 P.3d at 248. This rule "reflects [the] assumption that a legislature generally legislates with domestic concerns in mind" and "serves the incidental purpose of avoiding unintended conflicts with other sovereigns." *Ward*, 466 P.3d at 317; *see also*, *e.g.*, *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010); *Campbell v. Arco Marine, Inc.*, 42 Cal. App. 4th 1850, 1858–60 (Cal. Ct. App. 1996).

Nothing in the Cartwright Act overcomes that presumption. The statute contains no language suggesting that the California Legislature intended to regulate purchases made outside California by residents of other States. *See* Cal. Bus. & Prof. Code §§ 16720–16727. So, for example, in another Cartwright Act class-action suit, the district court observed that the presumption against extraterritoriality applied because the plaintiffs had not "identified anything from the text . . . or the legislative history" of the Cartwright Act "that would support extraterritorial application." *In re HIV Antitrust Litig.*, 2022 WL 22609107, at *9.

Plaintiffs sue under the Cartwright Act's section allowing damages suits by "[a]ny person who is injured in his or her business or property"—"regardless of whether such injured person dealt directly or indirectly with the defendant"—"by reason of anything forbidden or declared unlawful by this chapter." Cal. Bus. & Prof. Code § 16750(a). That law, like the rest of the Act, is directed at protecting consumers: it was designed to "protect the public." *Clayworth v. Pfizer, Inc.*, 233 P.3d 1066, 1083 (Cal. 2010) (quotation omitted). As the California Supreme Court has explained, the Act is "about the protection of *competition*, not *competitors*." *Id.* (quotation omitted).

Nothing there expands the Cartwright Act's reach to transactions that occur entirely out-of-state or suggests that it was designed to protect the public in other States. *In re HIV Antitrust Litig.*, 2022 WL 22609107, at *9. Simply because the statute permits suit by "any person" does not overcome the presumption: "[G]eneric terms like 'any' or 'every' do not rebut the presumption against extraterritoriality." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 118 (2013); *see also* Scalia & Garner, *Reading Law* 270 ("*any* does not mean 'anywhere in the world'"). The statute's "reference to injury to 'business or property' also does not indicate extraterritorial application." *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 350 (2016). And the Act's own title stated that it was designed to "promote free competition in commerce and all classes of business in this state." Ch. 530, 1907 Cal. Stat. 984. The Act contains no suggestion

that § 16750 extends nationwide to out-of-state purchasers, which are subject to their own States' determinations about antitrust liability, individual causes of action, and the appropriate amount of damages for antitrust violations.

In their petition-stage briefing, Plaintiffs asserted that the Cartwright Act applies to out-of-state purchases under § 16750 because JLI was based in California and JLI and Altria met to discuss the agreement in California. Resps.-Pls.' Joint Opp'n to Pets.-Defs.' Pet. for Review of Class Certification Order per Fed. R. Civ. P. 23(f) at 22, No. 26-1519 (9th Cir. Mar. 23, 2026). But when determining whether a California statute applies to events involving multiple states, courts must assess "what kinds of California connections will suffice to trigger the relevant provisions of California law." *Ward*, 466 P.3d at 319. That is a statute-by-statute analysis. "[T]he connections that suffice for purposes of one statute may not necessarily suffice for another," and "each law must be considered on its own terms." *Id.; see*, *e.g.*, *id.* at 324 (declining to apply a conduct-based test where such a test would be indeterminate and unworkable). The U.S. Supreme Court, for its part, looks to a statute's "focus" to determine when events are sufficiently domestic for a non-extraterritorial statute to apply. *Morrison*, 561 U.S. at 266. This analysis is distinct from the choice-of-law inquiry, which is only needed when more than one State's law applies to a particular claim.

The relevant California connection for purposes of determining the scope of § 16750 is the transaction that allegedly harmed the plaintiff. Unlike other parts of the Act enforceable by the State of California, a claim under § 16750 requires injury to establish liability. That, in turn, requires transactions that can only occur in each plaintiff's respective State. Section 16750 is thus focused on the transaction that injured the plaintiff, which for many plaintiffs in this case took place wholly outside California. That interpretation accords with the Act's purpose of protecting consumers. And the location of the transaction that caused the plaintiff's injury serves as an objective, easily administrable benchmark for determining when § 16750 applies.

Plaintiffs' petition-stage briefing further contended that California courts "have long construed the Cartwright Act to reach extraterritorial conduct so long as it causes injury in California." 23(f) Pet. Opp'n at 21 n.13 (cleaned up). But that proves the point: To sue under the Act, private plaintiffs must be injured in California. And in any event, the cases Plaintiffs cited for the proposition that California-injured plaintiffs can sue under the Cartwright Act for interstate conduct addressed the Commerce Clause or personal jurisdiction, not the geographic scope of the Act itself. *See RLH Indus., Inc. v. SBC Commc'ns, Inc.*, 133 Cal. App. 4th 1277, 1288, 1293 (Cal. Ct. App. 2005); *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 984, 993–94 (9th Cir. 2000); *St. Joe Paper Co. v. Superior Court*, 120 Cal. App. 3d 991, 999 (Cal. Ct. App. 1981).

The district court ignored the presumption of extraterritoriality, rendering its extraterritoriality analysis flawed from the outset. But courts confronting the Cartwright Act's territorial limits have recognized the risks inherent in applying it to transactions occurring entirely outside the State. Applying California law to "actual sales out of state" risks conflicts with other States' regulatory regimes. *In re HIV Antitrust Litig.*, 2022 WL 22609107, at *9; *see also In re Capacitors Antitrust Litig.*, 2020 WL 6462393, at *7. Such extraterritorial application risks subjecting a single transaction to multiple and potentially inconsistent state antitrust regimes, allowing each State to impose its own regulatory standards on commerce occurring elsewhere.

That concern implicates a core constitutional principle. The dormant Commerce Clause prohibits a State from regulating commerce "wholly outside" its borders or projecting its regulatory policy into other jurisdictions. *Healy*, 491 U.S. at 336. If multiple States regulated out-of-state transactions this way, interstate firms could be forced to structure nationwide conduct to comply with the most restrictive state regime—effectively allowing one State to dictate the rules across the national market.

The district court did not perform the extraterritoriality analysis. Defendants argued the Cartwright Act cannot be applied extraterritorially and that the proposed multistate class therefore rested on an impermissible extension of California law to out-of-state purchases.

Defendants explained that California statutes are subject to a strong presumption against extraterritorial application and that nothing in the Cartwright Act overcomes that presumption. *See* 7-ER-1232.

The certification order did not engage with that argument. The court instead focused on two district court decisions Defendants cited—*In re HIV Antitrust Litigation* and *In re Capacitors Antitrust Litigation*. In those cases, the judges had questioned whether the Cartwright Act could apply to out-of-state transactions but denied or modified the proposed classes on other grounds. Without further analysis, the certification order dismissed the relevance of those cases because "neither judge reached the question." 1-ER-29.

But explaining why two prior cases do not control is not a substitute for the underlying legal analysis. The district court never independently examined the Cartwright Act's territorial scope, its text, or California's presumption against extraterritorial application. Nor did the court determine whether California law could govern the out-of-state transactions in the certified class. Instead, the court proceeded directly to a choice-of-law inquiry. 1-ER-29. That approach assumes the answer to a threshold question. Choice-of-law analysis applies only after determining that the forum statute may apply extraterritorially in the first place.

Here, as explained above, the certified class includes transactions occurring wholly outside California. The court certified multistate

Cartwright Act classes encompassing purchasers in numerous States, including transactions occurring in Iowa. 1-ER-37–38. Purchases made by Iowa consumers in Iowa are quintessentially Iowa transactions. Applying California's antitrust statute to those purchases would allow California to regulate commerce occurring outside its territory, infringing on other States' "interest in how their markets are managed and how best to enforce antitrust violations and regulate commerce in their states." *Stromberg v. Qualcomm Inc.*, 14 F.4th 1059, 1069 (9th Cir. 2021).

The certification order never answered the operative question: Whether the Cartwright Act may govern transactions occurring entirely outside California. For the reasons explained above, the Cartwright Act does not govern out-of-state transactions under § 16750. That threshold issue should be resolved first. Because the Cartwright Act cannot govern purchases made outside California, the certified class necessarily encompasses claims governed by numerous States' antitrust laws. That difference bears directly on Rule 23 predominance.

II. Applying California Law to Out-of-State Purchases Would Displace Other States' Sovereign Policy Choices.

A. States have a sovereign interest in regulating transactions within their borders.

Applying California law to purchases made in Iowa would override Iowa's sovereign policy choices. "[R]egulation of actual sales out of state implicates potential conflicts with other states' laws." *In re HIV Antitrust Litig.*, 2022 WL 22609107, at *9. State Legislatures balance competing

antitrust-enforcement considerations—such as deterrence of anticompetitive conduct, compensation of injured consumers, and the potential economic effects of litigation and damages remedies. As this Court has explained, "the relevant interests are not simply about the benefit or harm to resident consumers or liability to resident antitrust defendants; rather the relevant interests are about harm to the competitive process and in-state business activity." *Stromberg*, 14 F.4th at 1072. "Maximizing consumer and business welfare, and achieving the correct balance for society, does not inexorably favor greater consumer protection; instead, setting a baseline of corporate liability for consumer harm requires balancing the competing interests." *Mazza*, 666 F.3d at 592.

Even remedial differences are important. Sovereigns that "agree about primary conduct" can "disagree dramatically about appropriate remedies." *F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 167 (2004). Allowing out-of-state purchasers to invoke the Cartwright Act would allow those plaintiffs to "bypass their own [states'] less generous remedial schemes, thereby upsetting a balance of competing considerations that their own domestic antitrust laws embody." *Id.*

Other States adopt different approaches to these questions. *See California v. ARC Am. Corp.*, 490 U.S. 93, 101–02 (1989) (recognizing that States may adopt differing antitrust enforcement schemes following *Illinois Brick*). Those deliberate differences should matter.

States should be allowed to define the scope of antitrust liability within their own borders. The district court's class-certification order subverts that ability.

Indeed, Iowa has enacted its own antitrust framework governing competition within the State. *See* Iowa Code §§ 553.4, 553.12. Those laws reflect Iowa's judgment about the appropriate balance between deterrence, compensation, and enforcement. And Iowa's laws are not identical to California's, even with respect to remedies. For example, Iowa permits exemplary damages on top of actual damages only if the defendant's conduct is willful or flagrant, but California automatically assigns treble damages under § 16750(a). *Compare id.* § 553.12(3), *with* Cal. Bus. & Prof. Code § 16750(a).

Other States' laws should not "be tossed overboard and their residents remitted to California law for transactions that, for individual consumers, are local in nature." *In re Graphics Processing Units Antitrust Litig.*, 527 F. Supp. 2d 1011, 1028 (N.D. Cal. 2007). It is Iowa's Legislature—not California's—that is "entitled to set the proper balance and boundaries" in Iowa "between maintaining consumer protection, on the one hand, and encouraging an attractive business climate, on the other hand" and thus "calibrate liability to foster commerce." *Mazza*, 666 F.3d at 592–93.

This Court's claim-preclusion precedent relating to state consumer protection and antitrust laws raises further concerns about the

implications of this class action if Plaintiffs lose their Cartwright Act claims. *See California v. IntelliGender, LLC*, 771 F.3d 1169, 1180–81 (9th Cir. 2014). In *IntelliGender*, this Court held that government entities are claim-precluded from seeking the same redress that class members have pursued in a class-action suit. *Id.* at 1182 ("the State is precluded from seeking the same relief sought in the CAFA class action").

Permitting Iowa purchasers to sue under the Cartwright Act thus raises questions about Iowa's ability to subsequently represent and litigate on behalf of its own citizens in antitrust suits, such as through a *parens patriae* suit under federal antitrust law. *See* 15 U.S.C. § 15c(a); *IntelliGender*, 771 F.3d at 1180 ("the appropriate inquiry is not what relief was ultimately granted, but whether the government is suing for the same relief already *pursued* by the plaintiff"). Though the preclusive scope of *IntelliGender* as applied to other States is unresolved, *IntelliGender* underscores the serious sovereignty concerns triggered by the district court's deficient extraterritoriality analysis.

B. The Constitution limits extraterritorial application of state law.

The Constitution, and our federalist structure, limits a State's ability to project its law beyond its borders.

A State may not project its regulatory regime into other States by controlling transactions taking place elsewhere. *See Healy*, 491 U.S. at 336–37; *Edgar*, 457 U.S. at 642–43 (plurality op.). That rule reflects a

core structural principle of federalism: Each State may regulate its own markets, but not those of its neighbors. The Supreme Court has "long recognized that the Constitution restricts a State's power to reach out and regulate conduct that has little if any connection with the State's legitimate interests"—a principle that is "an obvious and necessary result of our constitutional order" and "is not confined to any one clause or section, but is expressed in the very nature of the federal system that the Constitution created and in numerous provisions that bear on States' interactions with one another." *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 154 (2023) (Alito, J., concurring in part and concurring in judgment) (cleaned up).

That includes, for example, the Commerce Clause. States may not "directly regulate[]" interstate commerce, so state laws that "attempt directly to assert extraterritorial jurisdiction over persons or property would offend sister States and exceed the inherent limits of the State's power." *Edgar*, 457 U.S. at 640, 643 (plurality op.) (quotation omitted). State laws "directly regulating . . . out-of-state transactions" thus violate the Commerce Clause. *E.g.*, *R.I. Truck Ctr., LLC v. Daimler Trucks N. Am., LLC*, __ F.4th __, 2026 WL 1948541, at *11 (1st Cir. July 6, 2026); *id.* at *10 (Rhode Island law designed to protect consumers that "does not regulate exclusively in-state harms" and "would directly prevent vehicle sales across the border, in Massachusetts" violated the dormant Commerce Clause).

The Iowa transactions swept up in the certified class lack the connection necessary to justify applying California law. Purchases made by Iowans in Iowa occurred entirely outside California, involved no California consumers, and thus implicate the policy choices of another sovereign State. Applying the Cartwright Act to those transactions raises serious constitutional concerns: California would be directly regulating commerce occurring wholly beyond its borders.

The district court's class-certification order transforms the Cartwright Act into a nationwide antitrust regime governing transactions across the country—displacing the regulatory choices of other States in the process. Nothing in the statute authorizes that result, and our constitutional structure, and its federalist principles, counsel strongly against it.

III. The Territorial Reach of the Cartwright Act Bears Directly on Class Certification.

The territorial reach of the Cartwright Act is not merely a merits issue. It directly affects the Rule 23 analysis and thus should be decided now.

Rule 23 requires courts to determine whether common issues predominate before certifying a class. *Amchem*, 521 U.S. at 623–24. When a proposed class includes claims governed by the laws of multiple States, courts must consider whether differences among those laws defeat predominance. *Id.* Those differences matter because each State

retains authority to define the scope of liability for transactions within its borders.

This Court has repeatedly emphasized that principle. In *Mazza*, the Court vacated certification of a nationwide class where the laws of multiple States governed class members' claims. 666 F.3d at 589–94. Because the state consumer-protection laws in *Mazza* differed in material respects, including in their remedial frameworks, applying a single State's law to the entire class would improperly displace other States' policy choices. *Id.* at 590–91. Those differences defeated Rule 23's predominance requirement. *Id.* at 594.

Other courts too have declined to certify multistate classes where differences between States' laws would require the application of multiple bodies of law to resolve class members' claims. *See Castano v. Am. Tobacco Co.*, 84 F.3d 734, 741–43 (5th Cir. 1996); *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1015–18 (7th Cir. 2002). "No class action is proper unless all litigants are governed by the same legal rules." *In re Bridgestone/Firestone*, 288 F.3d at 1015.

The same concern arises in antitrust cases. State antitrust laws vary in important ways, including who may recover damages and under what circumstances. Under federal antitrust law, indirect purchasers generally may not recover damages. *Ill. Brick Co. v. Illinois*, 431 U.S. 720, 735–36 (1977). Responding to that decision, many States enacted "*Illinois Brick* repealer" statutes permitting indirect purchasers to seek damages

under state law, while other States declined to do so or adopted different limitations on recovery. *See ARC Am. Corp.*, 490 U.S. at 98, 101–02. That is just one example of how the scope of antitrust liability varies across jurisdictions. *See Stromberg*, 14 F.4th at 1068–69.

Those differences reflect deliberate legislative choices about the proper scope of antitrust enforcement. Some States permit indirect-purchaser damages actions; others restrict such claims or apply different rules governing proper plaintiffs and damages. "[M]aterial differences exist between California's Cartwright Act and the antitrust laws of other states," including "significant variations" even between States that, like California, allow private causes of action for indirect injury. *Stromberg*, 14 F.4th at 1068; *id.* at 1074 ("Even among the repealer states, the various state laws are hardly uniform."); *cf. Mazza*, 666 F.3d at 591, 596 (no predominance for nationwide class where there were "material differences in the remedies given by state laws").

If California law cannot govern out-of-state purchases, the class certified here necessarily includes claims properly governed by other States' antitrust laws. For that reason, courts should resolve the governing-law question before confirming that a multistate class satisfies Rule 23 predominance.

CONCLUSION

This Court should reverse the district court's class-certification order.

July 28, 2026

Respectfully submitted,

BRENNA BIRD
Iowa Attorney General

/s/ Eric H. Wessan
ERIC H. WESSAN
Solicitor General

PATRICK C. VALENCIA
Deputy Solicitor General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 281-5164
(515) 281-4209 (fax)
eric.wessan@ag.iowa.gov

Counsel for Amicus Curiae State of Iowa

ADDITIONAL COUNSEL

Steve Marshall
Attorney General of Alabama

Cori Mills
Acting Attorney General of Alaska

James Uthmeier
Attorney General of Florida

Chris Carr
Attorney General of Georgia

Theodore E. Rokita
Attorney General of Indiana

Kris W. Kobach
Attorney General of Kansas

Liz Murrill
Attorney General of Louisiana

Catherine L. Hanaway
Attorney General of Missouri

Austin Knudsen
Attorney General of Montana

Michael T. Hilgers
Attorney General of Nebraska

Gentner Drummond
Attorney General of Oklahoma

Alan Wilson
Attorney General of South Carolina

Ken Paxton
Attorney General of Texas

CERTIFICATE OF SERVICE

I certify that the foregoing was filed with the Clerk using the appellate CM/ECF system on July 28, 2026. All counsel of record are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

July 28, 2026

/s/ *Eric H. Wessan*
Solicitor General

Counsel for Amicus Curiae State of Iowa

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- ○ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ◉ is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ○ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ○ complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
  - ☐ it is a joint brief submitted by separately represented parties.
  - ☐ a party or parties are filing a single brief in response to multiple briefs.
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- ○ complies with the length limit designated by court order dated _____.
- ○ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/Eric H. Wessan **Date** July 28, 2026

*(use "*s/[typed name]*" to sign electronically-filed documents)*