

06-0354-cv

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

FAITH TEMPLE CHURCH

Plaintiff-Appellant,

-v-

TOWN OF BRIGHTON, SANDRA L. FRANKEL, in her official capacity as Brighton Town Supervisor, THOMAS LOW, in his official capacity as Brighton Commissioner of Public Works, RAMSEY BOEHNER, in his official capacity as Brighton Town Planner, and JAMES R. VOGEL, RAYMOND TIERNEY III, JILL VIGDOR FELDMAN and SHERRY KRAUS, in their official capacity as Brighton Town Board Members,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

**BRIEF *AMICUS CURIAE* OF THE BECKET FUND FOR RELIGIOUS
LIBERTY IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, *amicus* states that it does not have a parent corporation, nor does *amicus* issue any stock.

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INTEREST OF THE *AMICUS*

Pursuant to Fed. R. App. P. 29, The Becket Fund for Religious Liberty respectfully submits this brief *amicus curiae* in support of Plaintiff-Appellant and reversal of the lower court's decision. All parties have consented to the filing of this brief.

The Becket Fund for Religious Liberty is a nonpartisan, interfaith, public interest law firm dedicated to protecting the free expression of all religious traditions and the equal participation of religious people and institutions in public life and public benefits. It shares a common interest with religious and civil rights organizations nationwide in assuring that religious exercise and expression are not infringed or burdened by federal and state land-use laws, policies, or regulations, such as the implementation of the City of Brighton's Comprehensive Plan through eminent domain proceedings.

The Becket Fund represents parties in a host of land-use cases across the country under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc, *et seq.*¹ In addition, *amicus* has filed a series of

¹ See, e.g., *Congregation Kol Ami v. Abington Township*, 2004 WL 1837037 (E.D. Pa. Aug. 17, 2004); *Castle Hills First Baptist Church v. City of Castle Hills*, 2004 WL 546792 (W.D. Tex. Mar. 17, 2004); *United States v. Maui County*, 298 F. Supp. 2d 1010, (D. Haw. 2003); *Hale O Kaula v. Maui Planning Comm'n*, 229 F. Supp. 2d 1056 (D. Haw. 2002); *Cottonwood Christian Ctr. v. Cypress Redev. Agency*, 218 F. Supp. 2d 1203 (C.D. Cal. 2002); *Freedom Baptist Church v.*

briefs *amicus curiae* in cases involving the rights of religious land owners.²

This brief *amicus curiae* presents a unique perspective on the actual, and

Township of Middletown, 204 F. Supp. 2d 857 (E.D. Pa. 2002). See also *Living Water Church of God v. Meridian*, No. 05-2309 (6th Cir. filed Sept. 29, 2005) (pending); *Elsinore Christian Center v. City of Lake Elsinore*, No. 04-55320 (9th Cir. filed Feb. 26, 2004) (pending); *Redwood Christian Schs. v. County of Alameda*, Civ. No. 01-4282 (N.D. Ca. filed Nov. 16, 2001) (pending); *Missionaries of Charity, Brothers v. City of Los Angeles*, Civ. No. 01-08511 (C.D. Ca. filed Sept. 19, 2001) (pending); *Great Lakes Society v. Georgetown Charter Township*, No. 03-4599-AA (Mich. Cir. Ct., Ottawa Cy.) (pending); *Temple B'nai Sholom v. City of Huntsville*, Civ. No. 01-1412 (N.D. Ala. removed June 1, 2001) (settlement agreement signed June 2003); *Greenwood Comm'y Church v. City of Greenwood Village*, Civ. No. 02-1426 (Colo. Dist. Ct.) (permit granted Dec. 2, 2002); *Living Waters Bible Church v. Town of Enfield*, Civ. No. 01-450 (D.N.H.) (agreement for entry of judgment signed Nov. 18, 2002); *Calvary Chapel O'Hare v. Village of Franklin Park*, Civ. No. 02-3338 (N.D. Ill.) (settlement agreement signed Sept. 3, 2002); *Refuge Temple Ministries v. City of Forest Park*, Civ. No. 01-0958 (N.D. Ga. filed Apr. 12, 2001) (consent order signed Mar. 2002); *Unitarian Universalist Church of Akron v. City of Fairlawn*, Civ. No. 00-3021 (N.D. Ohio) (settlement approved Oct. 1, 2001); *Haven Shores Community Church v. City of Grand Haven*, No. 1:00-CV-175 (W.D. Mich.) (consent decree signed Dec. 20, 2000).

² See, e.g., *Kelo v. City of New London*, 125 S.Ct. 2655 (2005) (*amicus* brief filed December 3, 2004); *Guru Nanak v. County of Sutter*, No. 03-17343 (9th Cir.) (*amicus* brief filed June 9, 2004); *Westchester Day School v. Village of Mamaroneck*, No. 03-9042 (2nd Cir.) (*amicus* brief filed Jan. 20, 2004); *Murphy v. Town of New Milford*, No. 03-9329 (2nd Cir.) (*amicus* brief filed July 8, 2004); *Church of Jesus Christ of Latter-Day Saints v. City of West Linn*, No. 51504 (S. Ct. Or.) (*amicus* brief filed Sept. 21, 2004); *Town of Foxfield v. Archdiocese of Denver*, No. 2005CA000202 (App. Ct. Co.) (*amicus* brief filed July 5, 2005); *Midrash Sephardi v. Town of Surfside*, 366 F.3d 1214 (11th Cir. April 21, 2004) (*amicus* brief filed Nov. 21, 2003); *Fifth Avenue Presbyterian Church v. City of New York*, 293 F.3d 570 (2^d Cir. 2002) (*amicus* brief filed on behalf of broad coalition, Mar. 15, 2002); *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. March 8, 2004) (*amicus* brief filed on behalf of a broad coalition Aug. 28, 2002); *C.L.U.B. v. City of Chicago*, 342 F.3d 752 (7th Cir. 2003) (*amicus* brief filed June 26, 2002).

substantial, burdens suffered by religious institutions when local governments use eminent domain to implement land use redevelopment plans. *Amicus* believes that its experience in this area of the law will assist the Court in resolving this case.

SUMMARY OF ARGUMENT

RLUIPA's plain terms specify that neither a "land use regulation" itself, nor the means the government uses to "implement" a land use regulation may substantially burden religious exercise. 42 U.S.C. § 2000cc(a). The lower court, however, re-wrote the Act so that religious institutions are no longer protected from the means used to "implement" land use regulations. By defying the Act's plain language, the lower court held that RLUIPA does not impose any restraint on local governments' use of eminent domain to implement land use plans that target the properties of churches and other religious institutions.

This holding severely undermines RLUIPA's protections in an area where religious institutions are particularly vulnerable. Religious institutions are, by their very nature, non-profit and categorically tax-exempt. Because of these fundamental characteristics, local governments have been particularly eager in recent years to use eminent domain to implement land use redevelopment schemes by replacing tax-exempt religious uses with for-profit, tax-generating entities.³ If this Court sustains the lower court's holding that RLUIPA provides no protection against this practice, it will further encourage local governments to declare open season on the taking of religious property of all kinds.

³ Such a result is particularly ironic, because religious institutions are generally exempted from taxes precisely because they are deemed to be "beneficial and stabilizing influences in community life." *Walz v. Comm'r*, 397 U.S. 664, 673 (1970).

ARGUMENT

- I. **THE LOWER COURT’S CONTRIVED INTERPRETATION OF RLUIPA STRIPS THE ACT OF MUCH OF THE PROTECTION IT WAS INTENDED TO AFFORD RELIGIOUS INSTITUTIONS.**
 - A. **RLUIPA’s Plain Language Protects Religious Institutions From Any Means the Government Uses to Implement Land Use Regulations.**

RLUIPA’s “Substantial Burdens” provision provides as follows:

No government shall impose or *implement* a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, . . .

42 U.S.C. § 2000cc(a) (emphasis added). By its plain terms, the Act specifies that that neither a “land use regulation” itself, nor the *means* the government uses to “*implement*” a land use regulation may substantially burden religious exercise.

The fact that RLUIPA’s covers the means used to “implement” a land use regulation is significant and no accident. Very often a land use regulation by itself may not substantially burden religious exercise, but the means used to implement that regulation do burden religious exercise. One common example of this phenomenon is a zoning law that requires a house of worship to go through the process of obtaining a variance (or some other type of conditional permitting process) before it may engage in religious exercise on certain property. By itself, the land use regulation requiring the house of worship to go through the process of

obtaining a variance or permit may not impose a substantial burden.⁴ However, the means used to implement that land use regulation—*e.g.*, a decision by the government to deny a variance or conditional use permit—will very often actually inhibit religious exercise, thereby imposing a substantial burden.⁵

Or consider another example. A city enacts a zoning law designating certain property in its jurisdiction as off-limits to religious exercise. The city then implements that law by imposing monetary penalties on a church using that property for religious exercise. RLUIPA's substantial burden provision expressly allows the church to challenge both the zoning law prohibiting use of the property for religious exercise and the means—*i.e.*, the monetary penalties—used to implement that law, even though the imposition of monetary penalties is not itself

⁴ See, *e.g.*, *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (7th Cir. 2003) (rejecting facial challenge under RLUIPA's substantial burden provision to land use regulation requiring religious institutions to seek a zoning permit); *San Jose Christian College v. Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004) (same); *Petra Presbyterian Church v. Village of Northbrook*, Civ. No. 03-1936, 2003 WL 22048089 (N.D. Ill. Aug. 29, 2003) (same).

⁵ See, *e.g.*, *Sts. Constantine and Helen Greek Orthodox Church v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005) (finding substantial where religious institution sought, but was denied a zoning permit); *DiLaura v. Ann Arbor Charter Tp.*, 30 Fed. Appx. 501(6th Cir. 2002) (same); *Westchester Day School v. Village of Mamaroneck*, 417 F.Supp.2d 477 (S.D.N.Y. March 2, 2006) (same); *Living Water Church of God v. Charter Tp. of Meridian*, 384 F.Supp.2d 1123 (W.D.Mich. 2005) (same); *Greater Bible Way Temple v. Jackson*, 2005 WL 3036527 (Mich.App. Nov.10, 2005) (same); *Congregation Kol Ami v. Abington Township*, 2004 WL 1837037 (E.D. Pa. Aug. 17, 2004) (same); *Guru Nanak v. Sutter County*, 326 F.Supp.2d 1140 (E.D.Cal. 2002) (same).

a “land use regulation.”

B. The Lower Court Adopted an Interpretation of RLUIPA that Ignores Its Plain Language Protecting Religious Institutions From the Means Used to Implement Land Use Regulations.

This case presents what should have been a straight forward application’s of RLUIPA’s text protecting religious institutions from the means used to “implement” land use regulations. Brighton’s Comprehensive Plan—which is undeniably a land use regulation⁶—specifies that the Church’s property should be utilized for the Town’s preferred use of open space. The Church asserts that its religious exercise is substantially burdened by the means the Town used to implement its Comprehensive Plan—seizing the Church’s property through eminent domain. This implementation of a land use regulation through eminent domain falls as squarely within the terms of RLUIPA as a decision by Brighton to implement its Comprehensive Plan by denying the Church a variance or imposing a monetary penalty on the Church for using its land for religious purposes.

The lower court, however, ignored RLUIPA’s plain language. Instead of asking whether Brighton’s use of eminent domain “implement[s] a land use regulation” as RLUIPA’s text commands, the court asked whether eminent domain proceedings were themselves a land use regulation within the meaning of RLUIPA. Concluding that they were not, the court summarily dismissed the

⁶ See Appellants’ Brief at 16-24.

Church's RLUIPA claims.

In other words, the lower court adopted a rule that RLUIPA does not protect religious institutions from the means used to implement land use regulations unless those means are themselves land use regulations. Because this stingy interpretation of RLUIPA reads the words "or implements" out of RLUIPA's text, it violates basic principles of statutory construction. *See, e.g., Photopaint Technologies, LLC v. Smartlens Corp.*, 335 F.3d 152, 157 (2d Cir. 2003) ("We read statutes to avoid rendering any words wholly superfluous."); *see also Connecticut ex rel. Blumenthal v. U.S. Dept. of Interior*, 228 F.3d 82, 88 (2d Cir. 2000) ("we are required to 'disfavor interpretations of statutes that render language superfluous.'") (internal citation omitted).

Moreover, narrowing the Act so that the government may substantially burden religious exercise through the means (including eminent domain) it uses to implement land use regulations flies in the face of the expansive reading of the Act required by RLUIPA Section 5(g). That Section instructs that RLUIPA must be construed "in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution."⁷

In sum, the lower court's contrived construction of RLUIPA to narrow the

⁷ *See also Dennis v. Higgins*, 498 U.S. 439, 443 (1991) (civil rights laws should be construed broadly to effectuate their remedial purposes); *Griffin v. Breckenridge*, 403 U.S. 88, 97 (1971) (same).

scope of its application should be reversed as inconsistent with hornbook principles of statutory interpretation.⁸

II. REMOVING THE PROTECTIONS RLUIPA AFFORDS AGAINST THE USE OF EMINENT DOMAIN TO IMPLEMENT LAND USE REGULATIONS WILL FURTHER THE TREND OF LOCAL GOVERNMENTS TARGETING THE PROPERTY OF RELIGIOUS INSTITUTIONS FOR SEIZURE.

The violence the lower court's holding does to RLUIPA's text is sufficient grounds to reverse its decision. However, this Court should also be aware of the devastating consequences for churches and other religious institutions that would follow from a holding endorsing the lower court's stingy reading of RLUIPA's protections.

Declaring that RLUIPA does not apply to the use of eminent domain to "implement" land use regulations will place religious institutions in the cross-hairs of redevelopment plans. It clears the way for revenue hungry local governments to use eminent domain to implement land use plans that call for achieving economic development by replacing tax-exempt religious uses with tax revenue generating commercial uses. This is not idle speculation. As detailed below, examples abound in recent years of local governments relying on eminent domain to remove

⁸ Because Brighton is indisputably using the eminent domain proceedings in this case to "implement" a land use plan, this Court need not address the question whether an eminent domain action is itself a "land use regulation" within the meaning of RLUIPA.

religious uses that stand in the way of land use development schemes designed to generate tax revenues.⁹ This Court should not narrow RLUIPA to take away one of the last protections religious institutions have against this type of eminent domain abuse.

The exercise of eminent domain power is often particularly destructive when applied to religious institutions. As one court has noted, because “[c]hurches are central to the religious exercise of most religions,” preventing a church from maintaining its chosen “worship site fundamentally inhibits its ability to practice its religion.” *Cottonwood Christian Ctr. v. Cypress Redev. Agency*, 218 F. Supp. 2d 1203, 1226 (C.D. Cal. 2002). When religious land uses, such as houses of worship, schools, cemeteries, and soup kitchens, are condemned, religious expression is also unavoidably burdened.

For example, in *Cottonwood Christian*, a church spent over five years acquiring property that was both centrally located to its congregants and sufficient in size to build a sanctuary that allowed the entire church body to assemble for worship together in accordance with the church’s beliefs.¹⁰ However, once the

⁹ The Supreme Court’s announcement in *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), that the Fifth Amendment allows property to be seized and converted to a different use in the name of economic development has only further encouraged cities to target religious uses.

¹⁰ 218 F. Supp. 2d at 1225.

City discovered the church's intent to build a place of worship, the City's land use officials designated the church's property as an area of redevelopment and initiated eminent domain proceedings to transfer the property to a Costco. The City sought to justify this scheme by asserting that Costco would bring more economic development and tax dollars than the proposed tax-exempt church.¹¹ Ultimately, the court held that RLUIPA did not allow the City to use eminent domain to implement its land use policy of preferring a tax-generating use of the property instead of the church's proposed use.

Another good example of the phenomenon of municipalities using eminent domain to implement their preferred land use vision involved a mosque in East Saint Louis, Illinois. Though the mosque had purchased property to develop a worship center that would minister to the poor in a depressed area of the city, the city government preferred the immediate tax revenue that would be generated by a for-profit developer. Accordingly, it condemned the mosque's property and transferred it to a private rental housing developer as part of a land use redevelopment plan calling for redevelopment of the area around the mosque.¹²

Numerous other examples illustrate the extent to which municipalities

¹¹ *Id.*

¹² *See Southwestern Ill. Dev. Auth. v. Al-Muhajinum*, 744 N.E. 2d 308, 312 (Ill. App. 2001) (rejecting challenge by mosque to the condemnation of its property in order to transfer the property to a private rental housing developer).

throughout the country routinely target religious institutions for condemnation in order to implement land use plans that they claim will generate tax revenue and economic development.

- In January 2006, the City of Sand Springs announced its intent to implement a land use plan known as the Keystone Corridor Redevelopment Project by using eminent domain to seize Centennial Baptist Church, a 50-member, predominantly African-American congregation. Notably, the city excluded existing commercial entities from the scope of this commercial redevelopment project. In March 2006, the Church responded by rejecting the offer and asserting, *inter alia*, First Amendment and RLUIPA protections. See Ralph Blumenthal, *Humble Church Is at Center of Debate on Eminent Domain*, New York Times, January 25, 2006.
- In February 2005, Living Faith Ministries, a 6,000-member, 20-year-old African-American church in New Jersey, filed a RLUIPA lawsuit against the Camden County Improvement Authority. The suit was necessary to protect the church from the County's attempt to seize its property and transfer ownership to a private developer so the County could implement a redevelopment scheme calling for the construction of private residential units. See Eileen Stilwell, *Church Lawsuit Targets Camco*, Courier-Post, February 17, 2005.
- In Normandy, Missouri, the Sisters of the Good Shepherd owned a large parcel that serves as a convent, retirement home for aged sisters, and a shelter for drug-addicted women. The city, however, was not content with the good deeds of the sisters and instead sought to take the religious complex and replace it with a \$53 million retail and commercial development. See D. Paul Harris, *Nuns in Normandy Get Ready for Fight Over Redevelopment; Sisters Say Their Area Is Lovely and City's Plan Seems "Ill-Conceived,"* ST. LOUIS POST-DISPATCH, July 29, 2002 at 1.
- Two Atlantic City, New Jersey churches were forced to sell their properties under threat of condemnation in order to give the property to the MGM Grand Casino. The churches were both destroyed, yet the MGM eventually chose to locate elsewhere. See Bill Kent, *Real-Life Monopoly: MGM Bids on the Boardwalk*, N.Y. TIMES, July 14, 1996, at 13NJ-6.

- The city of New Rochelle, New York targeted two local churches for eminent domain actions in order to make way for a 309,000 square foot IKEA store. See Debra West, *IKEA Wants to Move In, but Neighbors Fight Moving Out*, N.Y. TIMES, Mar. 7, 2000, at B1; Lynn Cascio, *Protestors March to Embarrass IKEA*, JOURNAL NEWS, (Westchester Cty., NY), May 25, 2000, at 5B.
- In May 2001, the San Jose Redevelopment Agency targeted several churches for condemnation in order to secure land for a proposed 40 parcel high-density housing redevelopment plan. See Edwin Garcia, *Remaking Downtown San Jose; City Targets 40 Properties for Development as Housing, Landowners Who Refuse Plan Could Be Forced to Sell Sites*, San Jose Mercury News, May 12, 2001, at 1A.
- After City Chapel church converted a downtown four-story retail building into a church for its 100 members, the city of South Bend, Indiana condemned the building for private redevelopment. See *City Chapel Evangelical Free Inc. v. City of South Bend*, 744 N.E. 2d 443, 454 (Ind. 2001); Terrence Bland, *Church Site is "One More Piece of the Puzzle,"* SOUTH BEND TRIBUNE, Aug. 4, 2001, at A4.
- In February 2002, the City of North Hempstead, New York moved for a surprise condemnation of St. Luke's Pentecostal Church after St. Luke's had completed an arduous permitting process to acquire the land, including litigation to acquire a parking variance. Unbeknownst to St. Luke's, its land had been slated for condemnation back in 1994, well before they applied for a single permit. Yet the city failed to inform St. Luke's of its demolition plans at any time before the actual condemnation and St. Luke's lost their church. See Stewart Ain, *Of Spiritual vs. Urban Renewal*, N.Y. TIMES, Apr. 16, 2000, at 14LI3; *In the Matter of the Application of North Hempstead Community Redev. Agency*, 2002 N.Y. Misc. LEXIS 1488, at *1-*2 (Aug. 29, 2002); Marni Soupcoff, *North Hempstead Bulldozes Constitutional Rights*, THE WESTBURY TIMES (Mineola, NY), Feb. 22, 2002; Victor Manuel Ramos, *In North Hempstead: A Spiritual Homecoming Deferred; Redevelopment Claims Dream of Church's Building*, NEWSDAY, Feb. 4, 2001, at G17.
- In 2002 the city of Memphis designated a 15.5-acre parcel of land as the site for a new basketball stadium for use by private NBA teams. The area

chosen for condemnation included churches that agreed to vacate after the city raised the threat of condemnation. *See* Deborah M. Clubb, *City Pays COGIC \$1.8 Million for Lots Near Arena*, COMMERCIAL APPEAL (Memphis, TN), Mar. 7, 2002, at B1.

- In September 2002, the city of Hillsboro, Oregon voted to condemn a Christian Science Reading Room in order to use the property for a private commercial and residential development to support a planned civic center. *See* William E. Dunn, *My Turn; Condemnation for City Building Bad Policy*, OREGONIAN (Portland, OR), Oct. 11, 2001, at West Zones 13; David R. Anderson, *Hillsboro Negotiates Deal to Build Civic Center*, OREGONIAN (Portland, OR), Sept. 4, 2002, at C2.
- As part of a downtown revitalization plan, the city of Boynton Beach, Florida openly sought to transfer the Jesus House of Worship Church's property to private retail developers. The city declared it would rely on its eminent domain powers if the church remained unwilling to sell. *See* Gariot Louima, *Boynton Officials Ready to Buy, Raze Businesses*, PALM BEACH POST, Dec. 11, 2002 at 1B.
- The Ventura City Council has targeted the property of a religious fraternal organization for condemnation in order to build a new cultural arts center. *See* John Scheibe, *City Council to Study Proposal for Arts Center; New 600-Seat Building Could Cost \$21.8 Million to \$26.7 Million*, VENTURA COUNTY STAR, August 4, 2003, at B01.

Such high frequency of attacks gives testimony to the special disadvantage religious institutions face in the eminent domain context. Because religious institutions are categorically non-profit and tax-exempt, they naturally generate less tax revenue than commercial uses. Accordingly, when determining which properties to seize in furtherance of land use redevelopment schemes, such as Brighton's Comprehensive Plan, local governments and municipalities will target tax-exempt religious properties while preserving commercial properties and

entities. *Cf. Kelo*, 125 S.Ct at 2676 (O’Connor, J. dissenting) (recognizing the “specter of condemnation” that threatens the property of religious institutions when property may be taken for economic development) (citing brief *amicus curiae* of The Becket Fund for Religious Liberty).

* * *

In sum, without RLUIPA’s protections, local governments will be further emboldened to use eminent domain to seize tax exempt religious property, while universally sparing commercial properties and entities. If this Court were to affirm the lower court’s decision that RLUIPA does not apply to the use of eminent domain to implement Brighton’s Comprehensive Plan and other redevelopment schemes, it would ignore Congress’ express intent to protect religious institutions from *all* means—including eminent domain—used to implement land use regulations. This Court should not sheath RLUIPA’s sword in a context where religious institutions are most vulnerable.

CONCLUSION

For the foregoing reasons, the decision of the lower court should be REVERSED.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I hereby certify that this brief *amicus curiae* complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 32(a)(7)(B)(i). The brief consists of 3,848 words. The font used is Times New Roman at 14-point type. The word count was performed by the word count function on the word processing program used to prepare the brief (Microsoft Office Word 2003).

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