

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Nos. 19-1075 & 19-1292

E.F. TRANSIT, INC.,	}	
	}	
Plaintiff-Appellant,	}	Appeal from the
	}	United States District Court
v.	}	for the Southern District
	}	of Indiana
	}	
INDIANA ALCOHOL AND TOBACCO COMMISSION, et al.,	}	No. 1:13-cv-1927-RLY-MJD
	}	
	}	The Honorable
Defendants/Appellees.	}	Richard L. Young

**BRIEF OF AMICI CURIAE WINE AND SPIRITS DISTRIBUTORS  
OF INDIANA, WINE AND SPIRITS DISTRIBUTORS OF ILLINOIS,  
WINE AND SPIRITS WHOLESALERS OF AMERICA, INDIANA  
BEVERAGE ALLIANCE, AND ASSOCIATED BEER  
DISTRIBUTORS OF ILLINOIS IN SUPPORT OF APPELLEE'S  
BRIEF SEEKING AFFIRMANCE**

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## CORPORATE DISCLOSURE STATEMENT

1. Wine and Spirits Distributors of Indiana is an unincorporated association that is an affiliate of Wine and Spirits Distributors of America. No publicly held corporation owns 10 percent or more of its stock.

2. Wine and Spirits Distributors of Illinois is an Illinois non-profit organization. It has no parent company and no publicly held corporation owns 10 percent or more of its stock.

3. Wine and Spirits Wholesalers of America is a Missouri non-profit corporation. It has no parent company and no publicly held corporation owns 10 percent or more of its stock.

4. The Indiana Beverage Alliance is an Indiana non-profit corporation. It has no parent company and no publicly held corporation owns 10 percent or more of its stock.

5. Associated Beer Distributors of Illinois is an Illinois non-for-profit corporation. It has no parent company and no publicly held corporation owns 10 percent or more of its stock.

**RULE 29(a)(4) STATEMENT OF COMPLIANCE**

This brief is being submitted pursuant to Rule 29(a) of the Federal Rules of Civil Procedure. No party or party's counsel authored this brief in whole or in part or contributed money intended to fund its preparation or submittal. No person other than the amici curiae or their members contributed money to fund its preparation and submittal.

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## INTEREST OF AMICUS CURIAE

The amici curiae are trade organizations supporting the government's interest in maintaining the long-established three-tier system for alcohol distribution. The outcome of this case could have a transformative impact on the alcoholic beverages market in Indiana and elsewhere by virtue of the Appellant's argument that federal law preempts Indiana's prohibited interest requirements governing the distribution of alcohol. Because the amici's members would be directly harmed by this threatened upheaval to the three-tiered system, the amici wish to offer the Court their perspective relating to the policies and core Twenty-first Amendment powers that support the challenged Indiana laws.

The amici brief is "desirable and . . . the matters asserted are relevant to the disposition of the case" because the Amici address the operation of the three-tiered system and explain how that system serves the government's legitimate interest in ensuring a properly functioning distribution system for alcoholic beverages. *See* Fed. R. App. Pro. 29(2)(B). The Amici's proposed brief also explores the practical and wide-ranging effects of the Appellant's preemption theory. These issues go to the heart of the challenge raised by the Appellant to that three-tiered system.

WSDIN is composed of members who are alcoholic beverage permittees in the state of Indiana. Its mission is to advance the interests and independence of Indiana's wine and spirits distributors and to uphold and protect the integrity of Indiana's three-tier distribution system and all laws governing the sale of alcoholic beverages to individuals of drinking age.

WSDIL represents Illinois' wine and spirits distributors. It exists to promote the general welfare of the alcoholic beverage industry in Illinois and to maintain and encourage a high standard of ethics and moral responsibility among all persons engaged in the industry. Its predecessor entity was formed shortly after the repeal of Prohibition and it has existed in its current form since 1997.

WSWA is a national trade organization and the voice of the wholesale branch of the wine and spirits industry. Founded in 1943, WSWA represents nearly 400 companies in all 50 States and the District of Columbia that hold state licenses to act as wine and/or spirits distributors and/or brokers. WSWA's members distribute more than 80 percent of all wine and spirits sold at wholesale in the United States. WSWA supports the state regulation of alcohol through the three-tier regulatory system of alcohol suppliers, distributors and retailers

Formed in 1984, the IBA is an Indiana non-profit public benefit corporation, that operates under the laws of the State of Indiana. As stated in its Articles of Incorporation, the IBA's purposes include: "(a) To provide a forum for the exchange of information and ideas relating to the beverage industry in Indiana[;] (b) To represent the beverage industry in legislative, administrative, and judicial matters at the state, county, and municipal levels of government in Indiana[; and] (c) To engage in such other activities in furtherance of the common business interests of its members as are incidental or related to the foregoing purposes." The IBA's current membership includes the Indiana distributors of Anheuser-Busch InBev



brands, including Budweiser beer. The IBA filed an amicus curiae brief in the district court.

ABDI represents beer wholesalers in Illinois, advocating for an independent three-tier system before courts and the Illinois legislature. It also provides resources and education for distributors to allow them to best serve their customers, communities and employees.

The Amici are aligned with the Appellees and support the Appellees in the brief they filed on June 7, 2019.

### **ARGUMENT**

This brief addresses the grave implications of E.F. Transit's arguments for the sustainability of the three-tier system under which alcoholic beverages have been regulated in the United States since the repeal of Prohibition in 1933. Throughout its brief, E.F. Transit represents to the Court that its arguments only address Indiana's Prohibited Interest Laws "as applied" to E.F. Transit's proposed "logistics" and transportation services for both liquor and beer in Indiana. *See, e.g.*, App. Br. at 28-29, 31. E.F. Transit also asserts that features of Indiana's three-tier system that prohibit vertical integration, for example between wholesalers and retailers, are "not at issue." *Id.* at 9. However, E.F. Transit's preemption argument is not so narrowly-tailored and would, as a legal and practical matter, impair the three-tier system in Indiana and other states throughout the country. Laws segregating the alcoholic beverages market *vertically* (down the supply chain) and *horizontally* (across product categories) employ the same means, share the same

purposes and rest on the same interests and justifications. They directly limit the economic might and influence of large businesses, like Monarch Beverage Co. (“Monarch”), and allow a greater diversity of companies, including small retailers, to operate without undue influence from larger, more economically powerful, suppliers and wholesalers on whom they depend for economic survival.

A false premise of E.F. Transit’s preemption theory is its claimed “independence” as a federally-licensed and state-licensed motor carrier. *See* App. Br. at 12-13 (referencing E.F. Transit’s separate incorporation), 40 (arguing E.F. Transit is not engaged in wholesaling but rather must be treated only as a “federally licensed motor carrier). E.F. Transit’s claimed “independence” from its commonly-owned and managed beer wholesaler affiliate, Monarch, represents an implicit collateral attack on the Indiana Supreme Court’s decision in *Indiana Alcohol & Tobacco Commission v. Spirited Sales, LLC*, 79 N.E.3d 371 (Ind. 2017). *Spirited Sales* held that E.F. Transit and Monarch are appropriately treated as one and the same for purposes of applying Indiana’s prohibited interest restrictions. *Id.* at 379. That decision of state law by Indiana’s highest court is not legitimately in question in this appeal. In effect, E.F. Transit comes before this Court, not as an “independent” motor carrier, but rather as part of Monarch, the largest beer wholesaler in the State of Indiana, with the objective of expanding its market dominance into the wholesale distribution of liquor, as well as the provision of “logistics” and transportation services to all segments of the alcoholic beverage

market in Indiana, in direct violation of the purposes of the three-tier structure devised by the Indiana General Assembly.<sup>1</sup>

If E.F. Transit somehow succeeds in separating itself from its common ownership and management with Monarch based on federal preemption law thereby circumventing Indiana's horizontal segregation of beer and liquor wholesaling, then any permittee operating on any of the three tiers or with respect to any product type could engage in "motor carrier activities" through commonly-managed and controlled "motor carriers" for purposes of engaging in the transportation, storage and delivery of alcoholic beverages regardless of the express prohibition of this activity under a state's alcoholic beverage laws. Suppliers, other wholesalers and retailers could, just like Monarch, form surrogate motor carriers, invoke E.F. Transit's preemption theory, and effectively circumvent Indiana's three-tier structure just as E.F. Transit seeks to do here. What E.F. Transit nonchalantly calls federally-protected "motor carrier activities" are inherent in the privileges granted to wholesalers in Indiana and constitute integral, critical and far-reaching aspects of the importation and distribution of alcohol at each of the levels of

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<sup>1</sup> In fact, Monarch does not need a separate motor carrier, such as E.F. Transit, to transport its product under the Indiana alcoholic beverage laws. The shareholders of Monarch created E.F. Transit for tax and liability purposes. R.167-2 at 2-3 (Terry Dep. 17). Monarch, itself, has the authority under its scope of permit to provide all of the services E.F. Transit currently provides to Monarch. For instance, Monarch has the ability to import, transport, deliver possess, and store beer. Ind. Code § 7.1-3-3-5(a)(b)(d)(e) and (f). But Monarch cannot transport liquor under the prohibited interest provisions. Therefore, in order to achieve greater market dominance and circumvent Indiana law, Monarch contracted with E.F. Transit (essentially, with itself) for these vital, core functions under the Twenty-first Amendment.

Indiana's three-tier system. As such, a single permittee's ability to circumvent the restrictions of the three-tier system would allow that permittee to potentially control and monopolize these critical aspects, both on the key intermediate functions of wholesalers (the transportation, storage and delivery of alcoholic beverages to retailers), but also on the other two levels of the three-tier system. Such result would cripple the three-tier system—a system that has indisputably served its original purposes including the promotion of temperance and state and local control over the sale, transportation and storage of alcoholic beverages. This brief will provide real examples of how permit holders of one type or another could and likely would take advantage of such a “motor carrier loophole” to circumvent state and federal laws.

**I. Indiana's Core 21st Amendment Interests are Directly Furthered by Carefully Structuring the Alcoholic Beverages Market to Limit the Size and Scale of Alcoholic Beverages Concerns Both Vertically, Down the Distribution Chain, and Horizontally, Across the Major Product Categories of Beer, Wine and Liquor.**

E.F. Transit asserts that Indiana's restrictions on horizontal integration of beer wholesaling and liquor wholesaling are somehow different in their purpose and effects from vertical segmentation of the three-tier system. *See* App. Br. at 9. To the contrary, both vertical and horizontal restrictions directly limit the size and scale of the operations of alcoholic beverages businesses. The only difference is that they accomplish these limitations with respect to different aspects of the market – vertically up and down the supply chain versus horizontally across the major product categories of beer, wine and liquor. Both types of limitations prevent

integrated business models from dominating the alcoholic beverages market. Like vertical integration, “[h]orizontal integration may also be motivated by the desire to exercise monopoly power.” JEAN TIROLE, *THE THEORY OF INDUSTRIAL ORGANIZATION* 17 (MIT Press 1989).

Larger, integrated businesses generally have greater economic power and influence than smaller businesses and are incentivized to use that power to maximize their profits. *Id.* at 17-18, 34-35. These economic truths are self-evident and fundamental to the purpose and justification of the three-tier system. RAYMOND FOSDICK & ALBERT SCOTT, *TOWARD LIQUOR CONTROL* 38–39 (reprinted 2011, Center for Alcohol Policy); *see also* CAROLE L. JURKIEWICZ & MURPHY L. PAINTER, *SOCIAL AND ECONOMIC CONTROL OF ALCOHOL* 9 (2008) (referencing the design of the three-tier system as one of “intentional fractionalization” of the market). They also inform other areas of law and public policy, including antitrust enforcement. *See* <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010> (horizontal mergers) and <https://www.justice.gov/atr/non-horizontal-merger-guidelines> (non-horizontal mergers)

E.F. Transit’s argument that Indiana must prove by specific evidence that the prohibited interest statutes comprising its three-tier system are efficacious in advancing Indiana’s core Twenty-first Amendment interests is a non-sequitur. The laws at issue directly achieve Indiana’s legitimate interests by prohibiting businesses in the alcoholic beverage industry from employing vertically and horizontally integrated business models on a large or expansive scale. The law has

long recognized that tied-house laws and the three-tier structure, however it is organized in any particular state, promote Twenty-first Amendment core interests and facilitate local control and regulation of the alcoholic beverage industry. The quantity and diversity of licensed wholesalers in Indiana, many of which are based in small Indiana communities, is a testament to the success of Indiana's alcoholic beverages policy. *See* FOSDICK & SCOTT, *supra* at 6-8. There are presently 55 licensed wholesalers of beer and liquor in Indiana, a number that reflects the success of Indiana's horizontal constraints on large wholesalers, like Monarch. <https://mylicense.in.gov/everification/Search.aspx?facility=Y> (search of active alcoholic beverages permittees by wholesale license for beer and liquor).

E.F. Transit also wrongly claims that Indiana's limitation on horizontal integration is unique. App. Br. 9. In fact, other states also regulate the alcoholic beverages distribution chain by imposing restraints on horizontal integration based on product type. There are 17 "control" states in which the distribution and retail sale of liquor is segmented from the distribution and retail sale of beer and/or wine.<sup>2</sup> Package retailers in these markets are also limited, like Indiana's wholesalers, in the types of products they may sell (beer, and in some instances wine, but not liquor). States also commonly treat the transportation and delivery of liquor

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<sup>2</sup> In the following 17 states, package liquor is only available for purchase from a state-owned store: Alabama, Idaho, Iowa, Maine, Michigan, Mississippi, Montana, New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Vermont, Virginia, West Virginia, and Wyoming. Five of these states (Mississippi, New Hampshire, Pennsylvania, Utah and Wyoming) further restrict the package sale of wine to state-owned stores. *See* [www.nabca.org](http://www.nabca.org) (additional information on control states).

differently in direct-to-consumer sales. Among states that permit such direct shipments, there are different laws and requirements in nearly every one governing the interstate shipment (by suppliers) of wine and spirits to consumers. Roughly 43 states allow direct-to-consumer delivery of wine in some form. *See* <https://wineinstitute.com/pliancerules.org/state-map>. Only five states permit direct-to-consumer delivery of liquor.<sup>3</sup> These laws relate to the price, route and service of motor carriers at least as much (if not more) than the Indiana prohibited interest laws at issue here and would be vulnerable to a federal preemption challenge if E.F. Transit were to prevail, directly contrary to this Court’s ruling in *Lebamoff Enterprises, Inc. v. Huskey*, 666 F.3d 455 (7th Cir. 2012).

E.F. Transit’s argument that a state must present evidence showing the effectiveness of a specific, individual feature of a state’s three-tier structure “as applied” to a specific permittee, like E.F. Transit and Monarch (App. Br. at 33-34), would create a virtually insurmountable obstacle for the exercise of a state’s Twenty-first Amendment powers to structure the alcoholic beverages supply chain in their jurisdiction.<sup>4</sup> App. Br. at 33-34 (arguing the state must provide “that

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<sup>3</sup> The five are Alaska (<https://www.commerce.alaska.gov/web/amco/TradePractices.aspx>), the District of Columbia (D.C. Code § 25-772), Nebraska (Neb. Rev. Stat. § 53-123.15), New Hampshire (N.H. Rev. Stat. § 178:27) and North Dakota (N.D. Cent. Code § 5-01-16).

<sup>4</sup> This appeal is easily disposed under the majority opinion’s analysis in *Lebamoff* for the reasons addressed above and in the ATC’s brief. Amici here agree with the ATC’s position, however, that Judge Hamilton’s concurring opinion in *Lebamoff* better reflects the historical and legal significance of the Twenty-first Amendment, the United States Supreme Court’s decision in *North Dakota v. United States*, and the Court’s repeated statements emphasizing the legitimacy of the three-tier system and state power over the structure of the distribution system for

enforcing the prohibited-interest statutes against E.F. Transit advances [a legitimate state interest in regulating alcoholic beverages”). E.F. Transit’s position is a trick bag that would be outcome determinative with respect to circumventing the restrictions and limitations the three-tier system and it should be rejected for at least four good reasons.

**First**, the effectiveness of the market structuring or segmentation can fairly be evaluated only in the aggregate considering what it achieves with respect to the market as a whole. The incremental effects from a single wholesaler’s or supplier’s violation of or exemption from the horizontal or vertical restrictions upon the alcoholic beverages market as a whole would be extremely difficult to measure. The restrictions and policy underlying them are carefully designed to stop business practices and ownership/management structures that would, directly or indirectly, evade the horizontal and vertical segregation of the supply chain. *See* Ind. Code §§ 7.1-3-3-19, 7.1-3-13-1, 7.1-5-9-3, 7.1-5-9-6. The system is highly vulnerable to being eroded incrementally and eventually destroyed by efforts like E.F. Transit’s in this case, seeking an “as-applied” exemption based on a single enterprise’s unique design for evading the prohibited interest restrictions and expanding influence and

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alcoholic beverages. 495 U.S. 423, 432 (1990). If state power and authority under the Twenty-first Amendment is to be preeminent in regard to the structure of the alcoholic beverages supply chain, then *ad hoc* balancing of state and federal interests too weakly recognizes the unique deferral of power the Twenty-first Amendment confers to the states. As Judge Hamilton wrote in *Lebamoff*: “[B]alancing of benefits and burdens can be an imposition in and of itself on the broad regulatory power granted to states within the relatively narrow core of the Twenty-first Amendment.” *Lebamoff*, 666 F.3d at 466 (Hamilton, J., concurring in the judgment).



economic power beyond the horizontal and vertical limitations imposed by Indiana law.

**Second**, any baseline for empirically measuring the effectiveness of the three-tier system is over 80 years old. The prohibited interest provisions of Indiana law and the three-tier system date back to the 1930s. Measuring the impact of those laws empirically would be difficult, if not impossible, due to the passage of time and other factors including technological, legal and other changes since Prohibition.

**Third**, the legitimacy of the three-tier system has been upheld repeatedly and largely unquestioned in terms of its purposes and effects. *See* App. Br. at 17-21. At the time the three-tier system was implemented, it was supported by a robust study of alcoholic beverages policy by Raymond Fosdick and Albert Scott. *See* FOSDICK & SCOTT, *supra*. Under such circumstances, states should not have to re-validate their policies in court and prove long-settled constitutional propositions as a matter of empirical fact. Rather, any such re-examination and updating of legitimate laws and policies should be for the legislative process. Furthermore, simply limiting the number of products that one can distribute would *ipso facto* limit the size of the company's scope of operations.

**Fourth**, and most importantly, the prohibited interest laws directly achieve their intended and legitimate purposes by preventing large companies from expanding their economic power and influence beyond the strict horizontal and vertical limitations imposed by Indiana law. Robust enforcement of such laws and prohibition, as here, against attempts to evade the prohibited interest laws directly

and necessarily achieves the legitimate Twenty-first Amendment purposes for which the laws were designed.

**II. Accepting Monarch/E.F. Transit's Arguments in this Matter Would Have a Significant Detrimental Impact on Indiana's Three-Tier System of Alcoholic Beverage Regulation and Create Precedent that Would Allow Industry Participants to Circumvent Alcoholic Beverage Laws in Indiana and Nationwide.**

If E.F. Transit's challenge to Indiana's three-tier system is successful, there would be nothing to stop large alcoholic beverage suppliers, wholesalers and retailers (or other types of permittees) from establishing affiliated "motor carriers" to provide critical and far-reaching aspects of the importation and distribution of alcohol in circumvention of the restrictions of Indiana's three-tier system. The three-tier system that has existed in Indiana for over 80 years as the primary means for regulating alcoholic beverages by Indiana would be forever weakened if not irreparably broken. Such a result predicated on federal preemption would effectively render Indiana's exercise of state authority under the Twenty-first Amendment toothless.

There are many examples in Indiana and elsewhere of how permit holders of various types could (and likely would) take advantage of such a "motor carrier loophole." In Indiana, for instance, suppliers are generally not allowed to sell alcoholic beverages directly to retailers. *See, e.g.*, Ind. Code §§ 7.1-3-2-7, 7.1-3-12-2 and 7.1-3-7-3. Likewise, wholesalers are not generally allowed to sell alcoholic beverages directly to consumers. *See, e.g.*, §§ 7.1-3-3-5, 7.1-3-13-3 and 7.1-3-8-3(c). However, based on the logic of E.F. Transit's argument, a supplier of alcoholic

beverages such as a brewery (*i.e.* its affiliate motor carrier) could argue that federal preemption allows it to provide all “logistics” and other transportation services in connection with a wholesaler’s sale of product to retailers regardless of applicable prohibited interest provisions.<sup>5</sup> Based on this same logic, a wholesaler of alcoholic beverages (*i.e.* its affiliate motor carrier) could argue that federal preemption allows it to provide all the “logistics” and other transportation services in connection with the direct sale of alcoholic beverages to consumers by retailers regardless of applicable prohibited interest provisions. In other words, based on the logic of Monarch/E.F. Transit’s position, the lion’s share of activities related to selling alcoholic beverages to wholesalers or consumers, all services E.F. Transit provides—the intake, inventory control, sorting, storage, transportation and delivery of product as well as invoice collection—could be provided by a permittee in another tier contrary to the restrictions and limitations designed to keep the three tiers separate. R.167-2 at 6, 7.

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<sup>5</sup> In addition to the prohibited interest provisions relating to wholesaling beer and liquor, there are various others prohibited interest provisions in Indiana relating to businesses in other tiers. *See, e.g.*, Ind. Code § 7.1-5-9-2 (prohibiting a brewer or vintner from having an interest in a wholesale permit); Ind. Code § 7.1-5-9-7 (prohibiting a distiller from having an interest in a retail permit); Ind. Code § 7.1-5-9-8 (prohibiting a distiller from having an interest in a wholesale permit); Ind. Code § 7.1-5-9-9 (prohibiting beer and liquor wholesalers from having interests in a retail permit); Ind. Code § 7.1-5-9-10 (prohibiting a retailer from having an interest in a supplier or wholesale permit); Ind. Code § 7.1-5-9-13 (prohibiting nearly all permit holders from having an interest in a retail package liquor store permit). Under Monarch / E.F. Transit’s reasoning, all of these prohibited interest provisions could be circumvented by a permittee with an affiliated motor carrier providing logistics and transportation services described above.

Entanglements of this type among suppliers, wholesalers and retailers would invite abuses and undermine Indiana's ability to police and enforce laws against preferential treatment or product discrimination related to retailers or wholesalers. For example, it would become very difficult to stop unlawful preferential treatment of favored retailers by a wholesaler or supplier providing "motor carrier" services to a particular retailer by means of its affiliated motor carrier. Likewise, it would become very difficult to police the temptation of the retailer to give unlawful preferential treatment by means of product placement to its preferred wholesaler that is preferred because it provides all the retailer's logistics and transportation services related to the sale of alcoholic beverages to consumers.<sup>6</sup> All of these entanglements and enforcement difficulties follow from E.F. Transit's position regarding preemption.

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<sup>6</sup> These unlawful activities, among others, are often referred to as "product discrimination" and "slotting fees" in the alcoholic beverage industry and can be violations of the commercial bribery and tied-house regulations found in Title 27 of the Code of Federal Regulations. *See* 27 C.F.R. Part 6; 27 C.F.R. Subpart C; 27 C.F.R. Part 10. Regardless, they are extremely difficult to police and prosecute. Indeed, many state law enforcement officers and alcoholic control commissions are not properly trained in forensic accounting in order to unravel entanglements usually associated with white collar crime. This is likely the primary reason why permit holders, at least in Indiana, are not allowed to have other business relationships with persons from whom they buy alcoholic beverages, except for the customary buying of alcoholic beverages. Ind. Code § 7.1-5-5-11. It is simply too difficult to tell whether parties are hiding or embedding certain costs of product or financial inducements to purchase a seller's product by way of separate contractual arrangements.

## CONCLUSION

For the foregoing reasons, the district court's judgment should be affirmed.

Respectfully submitted,

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**FED. R. APP. P. 32(g) WORD COUNT CERTIFICATE**

1. Pursuant to Fed. R. App. P. 32(g) and Cir. R. 29, the undersigned counsel for the amici curiae certifies that this brief complies with the type-volume limitations of Circuit Rule 32(c) because the brief contains 3,750 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook typeface, font size 12 for the text and font size 12 for the footnotes. *See* Cir. R. 32(b).

*s/Mark J. Crandley* \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

*s/Mark J. Crandley* \_\_\_\_\_