No. 114,573

IN THE SUPREME COURT OF THE STATE OF KANSAS

LARRY T. SOLOMON, CHIEF JUDGE,
30TH JUDICIAL DISTRICT of the STATE OF KANSAS

Plaintiff-Appellee,

v.

THE STATE OF KANSAS,

Defendant-Appellant.

BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF KANSAS IN SUPPORT OF PLAINTIFF-APPELLEE

Appeal from the Kansas District Court of Shawnee County
Honorable Larry D. Hendricks, Judge
District Court Case No. 2015-CV-156

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INTEREST OF AMICI CURIAE

Founded in Wichita more than fifty years ago, the American Civil Liberties Union Foundation of Kansas ("ACLU-KS") is an affiliate of the national organization and has approximately 3,000 members in Kansas. Since its founding, the ACLU has participated in numerous cases in Kansas' state and federal courts both as direct counsel and as amicus curiae and has consistently argued for an expansive interpretation of constitutional rights. This case involves a challenge to the foundation of our republican form of government – the separation of powers and judicial independence. These principles are fundamental to the protection of other constitutional rights that are central to the mission of the ACLU-KS. Thus, the proper resolution of this case is a matter of substantial interest to the ACLU and its members.

SUMMARY OF ARGUMENT

The separation of powers is essential to our republican form of government and the preservation of liberty. It requires that each branch of government "should have a will of its own" and, consequently, should be structured such "that *the members of each should have as little agency as possible in the appointment of the members of the others*." Federalist No. 51, 293 (emphasis added). The Kansas Legislature recently undermined this central tenet of the doctrine of separation of powers when it passed a law stripping the Judiciary of its authority to determine who should appoint certain members of the Judiciary. *Solomon v. Kansas,* Case No. 2015-CF-156 (Mem. Decision & Order 31). In 2014, the Legislature passed, without the Supreme Court's authority, 2014 Senate Substitute for House Bill 2338, § 11 ("HB 2338"), which gave the Legislature overruling influence over "who chooses chief district court judges" and stripped the Supreme Court

of its constitutionally-mandated administrative authority to determine same. Mem. Decision & Order 31. In *Solomon v. Kansas*, the District Court of Shawnee County found § 11 "unconstitutional as a violation of the separation of powers doctrine . . . ." *Id.* at 37.

However, there is more. Following the filing of *Solomon v. Kansas* on February 18, 2015, the Kansas Legislature doubled down on its effort to usurp authority over the administration of the courts and passed 2015 House Bill 2005 ("HB 2005"). The law conditions the 2016 and 2017 appropriations for the Kansas Judiciary on this Court's ruling in *Solomon v. Kansas.* The Legislature accomplished this unconstitutional feat by attaching a non-severability provision to § 11 of HB 2338 in § 29 of HB 2005, thereby conditioning appropriations for the Judiciary on the survival of § 11 in this case. Thus, if this Court affirms the lower court's ruling that § 11 is unconstitutional, the non-severability clause operates to invalidate HB 2005 in its entirety, and the Legislature will have defunded the Judiciary through 2017. Accordingly, amici respectfully requests that if this Court should consider § 11 of HB 2338 and § 29 of HB 2005 together, that it invalidate the non-severability clause of HB 2005 along with § 11. Section 11 is invalid; therefore, the Legislature's non-severability clause must fall with it. The Legislature cannot evade the Constitution so easily. *Boumediene v. Bush*, 553 U.S. 723, 765 (2008).

Section 11 violates the separation of powers doctrine and Article III, § 1 of the Kansas Constitution. It directly harms (1) Chief Judge Solomon, whose administrative authority and duties are irreconcilably hamstrung by the new election scheme, (2) the Supreme Court, which has been stripped of its constitutionally-vested administrative authority, and (3) the people of Kansas by threatening judicial independence and the fair and impartial administration of justice.

ARGUMENT

I. Section 11 violates Article III, § 1 of the Kansas Constitution and the separation of powers doctrine.

On the separation of powers, James Madison explained "[T]he great security against a gradual concentration of the several powers in the same department consists in *giving to those who administer each department* the *necessary constitutional means* and personal motives *to resist encroachments of the others*." Federalist No. 51, 294 (emphasis added). Madison made clear that no one branch should be administered directly or completely by another, and that none should ever have an overruling influence over the administration of the others. *Id.*; Federalist No. 48, 279. The powers of each branch are enumerated in the Constitution to resist encroachment by other branches. *Id.*; Kan. Const. Arts. I-III.

Kansas courts have long recognized this doctrine of separation of powers in the Kansas Constitution. *Auditor v. Atchison,* T. & S. F. R. Co., 6 Kan. 500, 507 (1870). It is by and through this separation of powers that "a dangerous concentration of power is avoided, and also the respective powers are assigned to the department best fitted to exercise them." *Van Sickle v. Shanahan*, 212 Kan. 426, 439-40, 511 P.2d 223 (1973). Consequently, the doctrine is "an inherent and integral element of the republican form of government." *Hays v. Ruther*, 298 Kan. 402, 409, 313 P.3d 782 (2013) (internal quotation marks omitted).

"The state legislature have all the legislative power that the people of the state have power to give them," and no more. *State ex rel. Anderson v. State Office Bldg. Com.*, 185 Kan. 563, 569, 345 P.2d 674 (1959). *See also Leek v. Theis*, 217 Kan. 784, 801, 539 P.2d 304 (1975) ("The legislature cannot exercise any power retained by the

people, or not delegated by the people to the legislature"). In Kansas, any "action by the legislature which attempts to control or dictate the internal, administrative functions of the other branches" constitutes "a clear encroachment upon and violation of the separation of powers doctrine." *State v. Greenlee,* 228 Kan. 712, 719, 620 P. 2d 1132 (1980).

"Whether a statute is unconstitutional because it violates the separation of powers doctrine is for this court to determine . . . as we reaffirmed just last year, 'the final decision as to the constitutionality of legislation rests exclusively with the courts . . . .'" *State v. Buser,* 302 Kan. 1, 2, 2015 Kan. LEXIS 715 (2015) (citing *Gannon v. State*, 298 Kan. 1107, 1159, 319 P.3d 1107 (2014)); *Atchison,* 6 Kan. at 506 (quoting *Marbury v. Madison*, 5 U.S. 137, 177, 2 L. Ed. 60 (1803)).

A. Section 11 violates Article III, § 1 of the Kansas Constitution.

In 2014, the Legislature passed § 11 of HB 2338 to amend K.S.A. 2014 Supp. 20-329, and the governor signed it into law. The amendment sought to overrule Supreme Court Rule 107, which for decades has provided that the Supreme Court shall appoint chief district court judges and sets forth the process for such appointment. Under § 11, chief judges are now to be elected by their peers – fellow district court judges – instead of appointed by the Supreme Court. Section 11 further imposed a term limit for then sitting chief judges under the new election scheme.

Section 11 effectively stripped the Supreme Court of authority to appoint chief judges directly and/or to determine who should. At the same time, § 11 allowed the Supreme Court to retain its supervisory authority over these peer-appointed chief judges. Thus, the Legislature stripped the Court of appointment authority but allowed it to retain

its supervisory authority. Such an ill-contrived dichotomy not only violates Supreme Court Rule and the Kansas Constitution, it ignores far-reaching practical considerations critical to judicial independence and the fair administration of justice in Kansas, including, but not limited to, the filling of chief district judgeship vacancies, removal of unsatisfactory chief judges, and the supervision of the recusal process by chief judges.

Since 1972, Article III, § 1 of the Kansas Constitution has expressly delegated general administrative authority over the courts to the Judiciary. Kan. Const. Art. III, § 1. "*The **supreme court shall** have **general administrative authority** over all courts in this state.*" *Id.* (emphasis added). The people of Kansas, through its Constitution, have vested the mandatory duty to administer the courts in the Kansas Supreme Court.

The unambiguous language of Article III, § 1 leaves no question of interpretation. The word "shall" in § 1 reflects a mandatory constitutional duty. *Gannon*, 298 Kan. at 1141 (citing *Abbeville County Sch. Dist. v. State*, 335 S.C. 58, 67, 515 S.E.2d 535 (1999) ("'The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or promissory by its own terms.' Since the . . . clause uses the term 'shall,' it is mandatory."). "The people knew full well how to make the [Judiciary's] constitutionally assigned tasks simply discretionary, i.e., 'the legislature may.'" *Id.* at 1142. Because the last sentence of Article III, § 1 uses the word "shall" and not "may," the administrative authority vested in the Kansas Supreme Court is not permissive, it is mandatory.

Pursuant to its constitutional mandate, the Supreme Court adopted Rule 107(a), which establishes that the *Supreme Court shall appoint chief judges of the district courts* and *governs the appointment process*. Kan. Sup. Ct. R. 107(a) (2014 Kan. Ct. R. Annot.

217-20) (emphasis added). Supreme Court Rule 107(b) clarifies the administrative role and functions of the position of chief judge of the district courts. *Id.* at (b). It is indisputable that Supreme Court Rule 107 establishes the chief judge's position, duties, and administrative powers, including the "supervisory authority over" each district "court's clerical and administrative functions." Such clerical and administrative functions include but are not limited to personnel matters, case assignment, judge assignment, information compilation and management, fiscal matters, including management of each district court's budget, committees, district judicial meetings, liaisons and public relations, as well as overall improvement in the court's functioning. *Id.* at (a)-(b).

These rules are comprehensive and leave no void for the Legislature to fill. *State v. Mitchell*, 234 Kan. 185, 193-95, 672 P.2d 1 (1983). Unlike *State v. Mitchell*, in which the Court held that the Judiciary had acquiesced to the Legislature its administrative authority with respect to regulating jury selection because the Court had neglected to pass any rule or guidance on that subject, *id.*, Supreme Court Rule 107 affirmatively negates acquiescence in this case. Plaintiff's challenge itself demonstrates a lack of cooperation by the Judiciary with regard to § 11, and the Supreme Court's robust rules with respect to the appointment of chief judges belie acquiescence by the Judiciary in the rulemaking space. The appointment of members of the Judiciary is a function at "the very heart of the administration of justice and the court system in Kansas." *State ex rel. Stephan v. Adam*, 243 Kan. 619, 621, 760 P.2d 683 (1988).

Over the years, the Legislature has admittedly passed numerous statutes that provide standards or guidelines to be followed by the Judiciary – before the 1972 constitutional amendment granting administrative authority to the Court and after where

the Court has acquiesced in the rulemaking space on a particular subject; however, none of those statutes has ever conflicted with Supreme Court rule until the Legislature passed § 11. *See Greenlee*, 228 Kan. at 719. In *State v. Mitchell*, this Court noted, if a statute were to conflict with a court rule, the constitutional mandate would prevail. *Mitchell*, 234 Kan. at 195. This is not merely dictum; this has been the controlling rule of law in Kansas for more than a century and is embodied in the concept of judicial review. *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 888-89, 179 P.3d 366 (2008) (citing 5 U.S. at 176).

Chief Justice Marshall explained in *Marbury v. Madison* that "in choosing between the requirements of the fundamental law established by the people and embodied in the Constitution and an act of the agents of the people, acting under authority of the Constitution," the Judiciary "*should enforce the Constitution as the supreme law of the land*." *Sebelius*, 285 Kan. at 888 (quoting *Muskrat v. United States*, 219 U.S. 346, 357-58, 31 S. Ct. 250 (1911)); *Mitchell*, 234 Kan. at 195; *State ex rel. Tomasic v. Kansas City*, 237 Kan. 572, 597, 701 P.2d 1314 (1985) (citing *Marbury*, 5 U.S. at 177) ("[A]n act of the legislature, repugnant to the constitution, is void."); *Marbury*, 5 U.S. at 178 ("*the constitution, and not such ordinary act, must govern the case to which they both apply*.").

Here, § 11 of HB 2338 conflicts with Supreme Court Rule 107(a). The Court promulgated Rule 107 pursuant to its constitutional mandate. Thus, the constitutional mandate, and the court rules issued pursuant to same, must prevail over the conflicting statute. Because the conflicting statute contravenes the Court's constitutional mandate as exercised through the rulemaking process, it violates Article III, § 1 of the Kansas Constitution and the separation of powers doctrine. *Id.*; *compare Hays v. Ruther*, 298 Kan. 402, 410, 313 P.3d 782 (2013) ("Legislation that has an incidental impact on the

practice of law *and that does not conflict* with the essential mission of regulating the practice of law in this state does not violate the separation of powers doctrine.").

To be clear, while a savings clause under § 16 of Article III operates to save any statutes regarding the administration of the courts then in existence in 1972, i.e., prior to the grant of administrative authority to the Supreme Court, this clause does **not** save any amendment or new statute that conflicts with the express language of the Constitution or any rule promulgated by the Supreme Court pursuant to its constitutionally-mandated administrative authority. Kan. Const. Art. III, § 16; *see also Mitchell*, 234 Kan. at 195.

When in conflict with a statute, the constitutional mandate of Article III, § 1 prevails. Section 11 must be stricken as unconstitutional in violation of Article III, § 1.

B. Section 11 usurps the power of the Judiciary in violation of the separation of powers doctrine and, therefore, is null and void.

An unconstitutional "usurpation of powers exists [only] when one branch of government significantly interferes with the operations of another branch." *Miller v. Johnson*, 295 Kan. 636, 671, 289 P.3d 1098 (2012). To determine whether a significant interference has occurred, the Court considers: "(1) the essential nature of the power being exercised; (2) the degree of control by one branch over another; (3) the objective sought to be attained; and (4) the practical result of blending powers as shown by actual experience over a period of time." *Id.* (citing *Sebelius*, 285 Kan. at 884). In applying these four factors to § 11, the District Court reached the correct result, but it failed to consider all practical consequences of the Legislature's far-reaching encroachment.

1. The essential nature of the power being exercised.

First, the nature of the power being exercised is unquestionably administrative and judicial. At its most basic level, § 11 determines who chooses the chief district court

judges in Kansas and how the appointment process works. The Legislature has admitted that this is purely an administrative question regarding the judicial branch. K.S.A. 1999 Supp. 20-329. The statute, therefore, is self-identifying as administrative and judicial.

Article III, §1 of the Kansas Constitution vests in the Kansas Supreme Court general administrative authority over all the courts of the unified judicial branch. "The position of the chief district court judge is one of the principal instruments through which the Kansas Supreme Court's constitutionally-granted 'general administrative authority' over the courts in Kansas is wielded." Mem. Decision & Order 26. The Supreme Court has not acquiesced, cooperated, or agreed to extend any agency authority whatsoever to the Legislature to govern the administration of the courts with respect to § 11 or the appointment of members of the Judiciary generally. *Mitchell*, 234 Kan. at 195.

Accordingly, the first factor weighs against the Legislature.

2. The degree of control by one branch over another.

The District Court rightly held that to hold a judge accountable to his or her peers instead of the Supreme Court, as § 11 has done, would "improperly hamstring the supreme court's 'general administrative authority'—notwithstanding the fact that Article III. Sec. 15 of the Kansas Constitution and the remaining language of K.S.A. 20-329 still subject chief judges to discipline, suspension, and removal for cause by the supreme court." Mem. Decision & Order 30. For example, in Kansas, the chief judge is responsible for deciding whether district court judges properly recused themselves (or failed to) under K.S.A. 1999 Supp. 20-311d(b). The Legislature's chief judge election scheme thus raises a practical problem in fair judicial administration regarding requests for recusal. Chief judges are left to rule on their peers' handling of requests for recusal,

and those same peers now determine whether to re-elect that chief judge. This opens the door to political pressure and reduces public confidence in the judicial system.

It is of no moment that § 11 left intact the language of K.S.A. 20-329 that subjects chief judges to "the supervision of the supreme court" because this authority is not "legislatively-granted, but, rather, constitutionally provided for by Article III," § 1 of the Kansas Constitution. Mem. Decision & Order 31. The constitutional grant of "general" administrative power to the Supreme Court in Article III, § 1 was not accidental, nor is it shared with the legislative or the executive branches. No provision of the Kansas Constitution or court rule promulgated thereunder authorizes the Legislature or the executive to overrule Supreme Court Rule 107, and no statute can amend a constitutional mandate. *See* Kan. Const. Art. XIV (the Constitution can only be amended by a vote of two-thirds of both legislative chambers and a majority popular vote).

The 1969 *Report of the Citizens' Committee on Constitutional Revision* identifies "the purposes behind amending article 3, section 1" of the Kansas Constitution in 1972:

> The . . . main areas of reform to accomplish this ultimate goal, not necessarily in the order named, are those designed to attain: (1*) proper supervision, administration and discipline of judicial personnel*; (2) ***qualified judges free of political pressures and considerations***; (3) *such flexibility as will insure efficient use of available judges*; (4) ***steadfast recognition of and insistence upon vigilant maintenance of the doctrine of separation of powers -- with the three branches of government free from encroachments of each other;*** (5) *adequate tenure and compensation to attract and hold qualified judges on the bench*; and (6) ***public confidence in the judicial system***.
>
> "With the foregoing objectives in mind, section 1 . . . would *vest the supreme court with rule making power regarding process, practice, and procedure at all levels of the unified court, as well as regarding appeals*. ***Such rule making power is, in reality, an inherent power of the judiciary.*"**

Behrmann v. Pub. Employees Relations Bd., 225 Kan. 435, 441, 591 P.2d 173 (1979) (quoting *Report of the Citizens' Comm. on Constitutional Revision,* 43 (Feb. 1969) (emphasis added).

The separation of powers was clearly at the forefront of the drafters' concerns in 1969. Freedom from political pressures and public confidence in the judicial system were also identified as necessary reforms. All of these reforms are foiled by § 11.

For example, what happens when the Supreme Court determines to terminate an unsatisfactory chief judge? "[W]ithout the power to choose another chief district court judge to replace a dissatisfactory one—even if that dissatisfaction does not rise to the level where discipline might be appropriate—the supreme court's authority to administer a 'unified court' is severely hamstrung." Mem. Decision & Order 31; *see Behrmann,* 225 Kan. at 441. Does a vacancy remain until the next election by the district court judges as provided for by district court rule, which does not yet exist but its creation was "provided" for by the Legislature?

Moreover, what happens if the district court judges elect an unsatisfactory chief judge that has previously been removed by the Supreme Court? This would pit the district court's appointment authority against the Supreme Court's supervisory authority. Is the Judiciary then to turn to the Legislature for instructions? It is obvious that this election scheme usurps the general administrative authority of the Supreme Court, dilutes its remaining supervisory authority, and creates a slippery slope for the sliding authority of the Judiciary at the hands of the Legislature.

Finally, it is also "immaterial that the Legislature has not granted itself the power to directly choose a chief district court judge. The Legislature *has* taken that power away

from the Kansas Supreme Court and, thus, exerted itself over a fundamental component of the Judiciary." Mem. Decision & Order 32. Because the degree of control by the Legislature over the Judiciary constitutes an egregious affront to the separation of powers, this second factor also weighs heavily against the Legislature.

3. The objective sought to be attained.

At a minimum, the objective of the Legislature is to impose on the Judiciary a new election scheme for chief district court judges, which contravenes the existing appointment scheme established by Court rule pursuant to its constitutionally-mandated administrative authority under Article III, § 1. The result is to disturb the Supreme Court's administration of the unified court system in Kansas. However, that is not all. Shortly after Chief Judge Solomon filed his challenge herein, the Legislature passed HB 2005, which contains a non-severability clause attaching that appropriations bill to the success or failure of § 11. Because HB 2005 is conditioned on the survival of § 11, the two statutes are so inextricably intertwined that this Court must consider them together.

The non-severability provision states that in the event "any provision of this act or of 2014 Senate Substitute for House Bill No. 2338," including § 11, is "held to be invalid or unconstitutional, it shall be *presumed conclusively* that the Legislature would not have enacted the remainder of this act without such . . . invalid or unconstitutional provision and the provisions of this act are hereby declared to be null and void and shall have no force and effect." *See* HB 2005, § 29. In other words, "if this Court were to declare Section 11 . . . unconstitutional as Chief Judge Solomon requests, such a ruling would also invalidate 2015 House Bill 2005" and effectively

defund the Judiciary through 2017. Mem. Decision & Order 33.

By enacting a non-severability clause tying the Legislature's appropriations for the Judiciary for the next two years to this Court's ruling on a constitutional question of separation of powers, the Legislature has wielded "the power of the purse as a club against an equal branch of government." Mem. Decision & Order 33. At a minimum, this calls into question the legislative objective at work in § 11.

Amici agree with Plaintiff that this "unprecedented" and "naked act of intimidation" threatens "the public's confidence in a fair and impartial judiciary" and the very foundation of our republican form of government. Mem. Decision & Order 33 (quoting Pl.'s Reply Mem. 1). By entwining these statues, the Legislature has wielded the power of the purse as a threat against an equal branch of government in order to unconstitutionally usurp the Judiciary's administrative control over who appoints members of that branch. This can hardly be considered a traditional "check and balance" by the Legislature against the Judiciary. This factor weighs against the Legislature.

4. The practical result of the blending of powers as shown by actual experience over a period of time.

Since 1972, there has been no previous blending of judicial and legislative powers on this subject. Any and all previous amendments to K.S.A. 20-329 preserved the status quo and conformed to Article III, § 1 and Supreme Court Rule 107. For decades, the determination of who should appoint chief district court judges has been vested in the Supreme Court and exercised through the rulemaking process. Accordingly, this factor is at best neutral, but it certainly does not weigh in favor of the Legislature.

Based on the foregoing, the nature of the administrative power of the Judiciary at issue in this case is clear, the usurpation of that power by the Legislature via § 11

demonstrable, and the Legislature's objective suspect. Section 11 significantly interferes with and exerts overruling influence over an equal branch of government. Therefore, § 11 violates the separation of powers doctrine.

II. The non-severability clause of HB 2005 must fall with § 11 of HB 2338.

The non-severability provision of HB 2005 attaches to any provision of HB 2338 that is held to be invalid or unconstitutional, including § 11. Therefore, the non-severability clause is related to and impacted by § 11. Chief Judge Solomon challenged § 11 of HB 2338 on Feb. 18, 2015. HB 2005 was signed by the governor on June 5, 2015. Chief Judge Solomon immediately raised this issue and challenged the non-severability clause of HB 2005 as unconstitutional in his Reply Memo of July 2015. Thus, he joined his challenge to the non-severability provision of HB 2005 to his challenge to HB 2338 in *Solomon v. Kansas*. Plaintiff's Reply Mem. in Support of Cross-Motion for Summary Judgment. pp. 2-3 (July 8, 2015).

The District Court also considered these two provisions and found that these clauses taken together raise serious questions as to the Legislature's objective behind § 11. *See* Mem. Decision & Order pp. 32-33. While the District Court declined to "resolve" the two together, that does not mean this Court cannot or that the issue was waived. The standard of review for these questions of law is de novo. *Gannon*, 298 Kan. at 1118.

In *Stilp v. Commonwealth*, 588 Pa. 539, 639, 905 A.2d 918 (2006), the Pennsylvania Supreme Court analyzed a similar non-severability clause. In that case, the plaintiffs had "filed three separate actions in the Commonwealth Court of Pennsylvania" challenging the constitutionality of two different laws. *Id.* at *Syl.* The Supreme Court assumed plenary jurisdiction over the matters. One of the acts, which provide

compensation to judges, contained a non-severability clause. Because the clause attached to a bill addressing funding for the Judiciary, the court found the clause had a coercive effect on the Judiciary and implicated separation of powers concerns. *Id.* at 640-44 (holding clause was used as a sword to do indirectly that which it could not do directly). Accordingly, the court severed the non-severability clause, rendering it ineffective. *Id.* at 642. Kansas Courts have struck down similar clauses for similar reasons.

In *Kansas City v. Robb*, 164 Kan. 577, 190 P.2d 398 (1948), this Court struck down a "repealing clause" where a statute, as amended, was found to be invalid and unconstitutional. The Legislature had amended an existing statute and then passed a clause repealing portions of the original statute. Upon challenge, the Court held the attempted amendment to that statute was invalid and unconstitutional; thus, it found the repealing clause must fall with the unconstitutional amendment to preserve the existing statute, leaving it "in force as it existed prior to the attempted amendment." *Id.* at 580.

Accordingly, if this Court were to resolve both § 11 and the non-severability clause of HB 2005 together, this Court should sever the coercive non-severability clause from the invalidated § 11 to preserve HB 2005.

III. Conclusion

Section 11 of HB 2338 and the non-severability clause of HB 2005 violate Article III, § 1 and the separation of powers doctrine of the Kansas Constitution.

Respectfully submitted,

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I certify that on the 4th day of December 2015, the above amicus brief was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants, and copies were electronically mailed to:

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