No. 20-1029

In the Supreme Court of the United States

CITY OF AUSTIN, TEXAS,
Petitioner,
v.
REAGAN NATIONAL ADVERTISING
OF AUSTIN, INC., ET AL.
Respondents.

ON WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICI CURIAE* FLORIDA, ARKANSAS, CALIFORNIA, CONNECTICUT, DISTRICT OF COLUMBIA, ILLINOIS, IOWA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, NEVADA, NEW JERSEY, NEW YORK, OHIO, OREGON, PENNSYLVANIA, SOUTH DAKOTA, VERMONT, AND WASHINGTON IN SUPPORT OF PETITIONER

DAVID M. COSTELLO
Assistant Solicitor General
Office of the Florida
Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 414-3300
henry.whitaker@
myfloridalegal.com

ASHLEY MOODY
Attorney General
HENRY C. WHITAKER
Solicitor General
Counsel of Record
DANIEL W. BELL
Chief Deputy
Solicitor General
KEVIN A. GOLEMBIEWSKI
Deputy Solicitor General

Counsel for Amicus Curiae the State of Florida
(*Counsel for other amici listed on inside cover*)

ADDITIONAL COUNSEL

LESLIE RUTLEDGE
Attorney General
of Arkansas

ROB BONTA
Attorney General
of California

WILLIAM TONG
Attorney General
of Connecticut

KARL A. RACINE
Attorney General
of District of Columbia

KWAME RAOUL
Attorney General
of Illinois

THOMAS J. MILLER
Attorney General
of Iowa

AARON M. FREY
Attorney General
of Maine

BRIAN E. FROSH
Attorney General
of Maryland

MAURA HEALEY
Attorney General
of Massachusetts

DANA NESSEL
Attorney General
of Michigan

KEITH ELLISON
Attorney General
of Minnesota

LYNN FITCH
Attorney General
of Mississippi

AARON D. FORD
Attorney General
of Nevada

ANDREW J. BRUCK
Acting Attorney General
of New Jersey

LETITIA JAMES
Attorney General
of New York

DAVE YOST
Attorney General
of Ohio

ELLEN F. ROSENBLUM
Attorney General
of Oregon

JOSH SHAPIRO
Attorney General
of Pennsylvania

JASON R. RAVNSBORG
Attorney General
of South Dakota

THOMAS J. DONOVAN, JR.
Attorney General
of Vermont

ROBERT W. FERGUSON
Attorney General
of Washington

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT.....1

ARGUMENT 3

I. THE FIFTH CIRCUIT ERRED BY CONCLUDING THAT PETITIONER'S ORDINANCE IS CONTENT-BASED UNDER *REED*. 3

A. Laws like petitioner's are content-neutral. 3

B. The Fifth Circuit's decision threatens thousands of state and local sign laws. 6

C. The "officials must read it" test would inject uncertainty into many areas of regulation beyond signage. 12

II. EVEN IF PETITIONER'S ORDINANCE IS CONTENT-BASED, THE FIFTH CIRCUIT ERRED IN INVALIDATING THE ORDINANCE ON ITS FACE.....19

CONCLUSION 22

TABLE OF AUTHORITIES

CASES

Ams. for Prosperity Found. v. Bonta,
141 S. Ct. 2373 (2021).....21
Barr v. Am. Assoc. of Pol. Consultants,
140 S. Ct. 2335 (2020).....3, 21
Bd. of Trustees v. Fox,
492 U.S. 469 (1989).....20
Boos v. Barry,
485 U.S. 312 (1988).....4
Brockett v. Spokane Arcades, Inc.,
472 U.S. 491 (1985).....20
City of Ladue v. Gilleo,
512 U.S. 43 (1994).....6
Clark v. Cmty. for Creative Non-Violence,
468 U.S. 288 (1984).....4
Hav-A-Tampa Cigar Co. v. Johnson,
5 So. 2d 433 (Fla. 1941) 6
Metromedia, Inc. v. City of San Diego,
453 U.S. 490 (1981).....6
Murphy v. Westport,
40 A.2d 177 (Conn. 1944) 7
Nat'l Inst. of Family & Life Advocates v. Becerra,
138 S. Ct. 2361 (2018).....13
Nev. Comm'n on Ethics v. Carrigan,
564 U.S. 117 (2011).....5
Packingham v. North Carolina,
137 S. Ct. 1730 (2017).....17
Preferred Tires, Inc. v. Vill. of Hempstead,
19 N.Y.S.2d 374 (N.Y. Sup. Ct. 1940) 7
PruneYard Shopping Ctr. v. Robins,
447 U.S. 74 (1980).....15

Reagan Nat'l Advert. v. City of Austin,
972 F.3d 696 (5th Cir. 2020)..... passim
Reed v. Town of Gilbert,
576 U.S. 155 (2015).....1, 3, 10
United States v. Alvarez,
567 U.S. 709 (2012).....17
United States v. Stevens,
559 U.S. 460 (2010).....19
Veneklase v. City of Fargo,
248 F.3d 738 (8th Cir. 2001).....13
Ward v. Rock Against Racism,
491 U.S. 781 (1989).....4
Wisconsin v. Mitchell,
508 U.S. 476 (1993).....14

STATUTES

11 R.I. Gen. Laws § 11-52.3-4 16
18 U.S.C. § 709 18
225 Ill. Comp. Stat. 440/3.17 7
225 Ill. Comp. Stat. 440/3.18 7
225 Ill. Comp. Stat. 440/4.03 7
225 Ill. Comp. Stat. 440/4.04 7
3 Pa. Stat. Ann. § 459-503-A.....11
50 U.S.C § 3513 18
51 U.S.C. § 20141 18
66 Pa. Stat. Ann. § 2902.....15
720 Ill. Comp. Stat. 5/16-40 16
730 Ill. Comp. Stat. 150/3 12
775 Ill. Comp. Stat. 5/3-102 14
Ala. Code § 23-1-273.....7
Ala. Code § 37-8-200.....11
Ala. Code § 8-6-171.....16
Alaska Stat. § 11.46.570 15
Alaska Stat. § 18.80.240 14

Alaska Stat. § 19.25.105 7
Ariz. Rev. Stat. Ann. § 13-2907.02.....17
Ariz. Rev. Stat. Ann. § 28-7902.....7
Ariz. Rev. Stat. Ann. § 44-6561.....17
Ark. Code Ann. § 23-42-309 16
Ark. Code Ann. § 27-50-310 18
Ark. Code Ann. § 27-74-302 7
Ark. Code Ann. § 4-99-302 18
Cal. Bus. & Prof. Code § 5272.....7
Cal. Penal Code § 148.1.....17
Cal. Penal Code § 502.....16
Cal. Penal Code § 530.....15
Cal. Penal Code § 538d 18
Colo. Rev. Stat. § 18-8-110 17
Conn. Gen. Stat. Ann. § 53-278d 15
Conn. Gen. Stat. Ann. § 53a-130 15
D.C. Code § 22-933.01 16
Del. Code Ann. tit. 11, § 854 15
Del. Code Ann. tit. 17, § 1121 7
Fla. Stat. § 316.72 18
Fla. Stat. § 479.015 6
Fla. Stat. § 479.11 10
Fla. Stat. § 479.16 .....3, 7, 9, 21
Fla. Stat. § 496.415 .....2, 17
Fla. Stat. § 760.01 14
Fla. Stat. § 767.04 11
Fla. Stat. § 784.048 16
Fla. Stat. § 790.163 17
Fla. Stat. § 812.0195 16
Fla. Stat. § 843.085 18
Fla. Stat. § 943.0435 12
Ga. Code Ann. § 32-6-72.....7
Ga. Code Ann. § 40-8-116.....18
Ga. Code Ann. § 43-17-12.....17

Haw. Rev. Stat. § 264-72 7
Haw. Rev. Stat. § 467B-9 17
Idaho Code Ann. § 40-1910A 7
Idaho Code Ann. § 40-1911 ..... 7, 11
Ind. Code § 35-43-5-3.5 15
Ind. Code § 8-23-20-7 7
Iowa Code § 306B.1 9
Iowa Code § 708.11 16
Kan. Stat. Ann. § 68-2233 7
Kan. Stat. Ann. § 8-1512 10
Ky. Rev. Stat. Ann. § 177.830 9
La. Rev. Stat. Ann. § 14:40.2 16
La. Rev. Stat. Ann. § 45:1166 15
La. Rev. Stat. Ann. § 48:461.2 ..... 7, 11
Mass. Gen. Laws ch. 68, § 28 17
Mass. Gen. Laws ch. 93D, § 2 7
Md. Code Ann., Crim. Law § 8-801 16
Md. Code Ann., Pub. Safety § 3-502 18
Md. Code Ann., State Gov't § 20-304 14
Md. Code Ann., Transp. § 8-701 7
Md. Code Ann., Transp. § 8-744 7
Me. Rev. Stat. tit. 17-A, § 354 15
Me. Rev. Stat. tit. 23, § 1903 7
Me. Rev. Stat. tit. 23, § 1908 7
Me. Rev. Stat. tit. 23, § 1914 7
Mich. Comp. Laws § 252.302 7
Mich. Comp. Laws § 252.313 7
Mich. Comp. Laws § 257.615 10
Mich. Comp. Laws § 400.293 17
Minn. Stat. § 173.08 7
Minn. Stat. § 219.29 11
Minn. Stat. § 363A.08 14
Miss. Code Ann. § 49-23-5 7
Mo. Rev. Stat. § 213.040 14

Mo. Rev. Stat. § 226.520 11
Mo. Rev. Stat. § 575.090 17
Mont. Code Ann. § 46-23-504.....12
Mont. Code Ann. § 61-8-210.....10
N.C. Gen. Stat. § 131F-20 17
N.C. Gen. Stat. § 136-129 7
N.C. Gen. Stat. § 14-208.7 12
N.C. Gen. Stat. § 14-277.4A.....13
N.D. Cent. Code § 12.1-11-0.....17
N.D. Cent. Code § 12.1-31-07.1.....16
N.H. Rev. Stat. Ann. § 238:24.....7
N.H. Rev. Stat. Ann. § 651-B:4-a.....12
N.J. Stat. Ann. § 27:5-11.....7
N.J. Stat. Ann. § 39:4-183.22a.....11
N.J. Stat. Ann. § 56:8-2.1.....18
N.Y. Exec. Law § 296 14
N.Y. Gen. Bus. Law § 399-yy 15
Neb. Rev. Stat. § 28-358.....16
Neb. Rev. Stat. § 39-218.....7
Neb. Rev. Stat. § 54-619.....11
Neb. Rev. Stat. § 60-6,127.....10
Nev. Rev. Stat. § 200.575 16
Nev. Rev. Stat. § 410.320 7
Ohio Rev. Code Ann. § 2913.49.....2, 15
Ohio Rev. Code Ann. § 4112.02.....14
Ohio Rev. Code Ann. § 4511.16.....10
Ohio Rev. Code Ann. § 5516.01.....9
Ohio Rev. Code Ann. § 935.18.....11
Okla. Stat. tit. 4, § 45 11
Okla. Stat. tit. 69, § 1273 7
Okla. Stat. tit. 69, § 1274 7
Or. Rev. Stat. Ann. § 165.800 15
Or. Rev. Stat. Ann. § 419B.016.....17
S.C. Code Ann. § 57-25-140.....7, 10, 11

S.D. Codified Laws § 20-13-10 14
S.D. Codified Laws § 31-29-63 7
S.D. Codified Laws § 37-30-17 17
Tenn. Code Ann. § 39-17-315 16
Tenn. Code Ann. § 40-39-203 12
Tenn. Code Ann. § 54-21-102 9
Tex. Bus. & Com. Code Ann. § 304.151 18
Tex. Code Crim. Proc. art. 62.051 12
Tex. Transp. Code Ann. § 391.001 9
Utah Code Ann. § 72-7-504 7
Utah Code Ann. § 76-5-111 16
Utah Code Ann. § 76-9-109 13
Va. Code Ann. § 18.2-419 13
Vt. Stat. Ann. tit. 10, § 488 7
Vt. Stat. Ann. tit. 10, § 493 7
W. Va. Code § 17-22-4 10
W. Va. Code § 29-19-13 ..... 17, 18
W. Va. Code § 61-6-25 17
Wash. Rev. Code § 47.42.040 8
Wash. Rev. Code § 9A.46.110 16
Wash. Rev. Code § 9A.90.070 16
Wis. Stat. § 202.16 ..... 17, 18
Wis. Stat. § 217.12 18
Wis. Stat. § 945.06 15
Wyo. Stat. Ann. § 24-10-104 8

ORDINANCES

City of Nashua, N.H., Code § 190-94 10
Hillsborough Cty., Fla., Code § 7.03.00 15
Jacksonville, Fla., Code § 656.1302 15
Jacksonville, Fla., Code § 656.1307 15
Leon Cty., Fla., Code § 10-9.101 10
Leon Cty., Fla., Code § 10-9.201 13
Leon Cty., Fla., Code § 10-9.301 10

Los Angeles, Cal., Code § 14.4.2 10
Los Angeles, Cal., Code § 14.4.4 10
Miami, Fla., Code § 33.94 15
Miami, Fla., Code § 33.95 14
New Orleans, La., Code art. 24.8.....10
New Orleans, La., Code art. 26.6.....10
Newport, Ky., Code § 15.9.....13
Ocala, Fla., Code § 110-6.....16
Orange Cty., Fla., Code § 31.5-13.....16
Orange Cty., Fla., Code § 31.5-5.....15, 16
Orange Cty., Fla., Code § 31.5-76.....15
Phila., Pa., Code § 9-1106 19
Phoenix, Ariz., Code § 705 13
Providence, R.I., Code § 16-13.1 18
Provo, Utah, Code § 14.38.020.....10
San Diego, Cal., Code § 142.1210 10
San Jose, Cal., Code § 10.09.010 18
St. Petersburg, Fla., Code § 16.40.120.4 10
St. Petersburg, Fla., Code § 16.40.120.6.7 10
Tampa, Fla., Code § 12-61 19
Tampa, Fla., Code § 27-43 10
Town of Barrington, R.I., Code § 138-2 18

OTHER AUTHORITIES

250 R.I. Code R. 100-00-1.30.....10
33 Miss. Admin. Code Pt. 209, R. 1.1 11
43 Tex. Adm. Code § 22.15.....10
Ala. R. Prof'l Cond. 1.6 13
Alaska Admin. Code tit. 17, § 20.005 10
D.C. Mun. Regs. tit. 24, § 108.6 10
Del. Lawyers' R. Prof'l Cond. 1.6 14

Distracted Driving, Centers for Disease Control and Prevention, https://www.cdc.gov/transportation safety/distracted_driving/index.html 6
Fla. Bar. R. 4-1.6 13
Ga. R. Prof'l Cond. 1.6 14
Mass. R. Prof'l Cond. 1.6 14
Mont. Admin. R. 18.6.240 11
N.C. R. Prof'l Cond. 1.6 14
N.J. Admin. Code § 19:66-5.7 10
Nev. R. Prof'l Cond. 1.6 14
Okla. Admin. Code 120:10-15-9 10

INTEREST OF AMICI CURIAE

This case involves the question whether it violates the First Amendment for states to regulate signs that advertise off-premises activities differently from those that advertise on-premises activities. The decision below concluded that it does. Amici States believe that this decision, if upheld, could raise questions about the constitutionality of a range of state and local regulations designed to protect the health and safety of the citizenry that have never been thought to be, and are not in fact, unconstitutional. Amici States have a significant interest in defending the validity of laws that protect their residents, as well as in ensuring the proper interpretation and application of the First Amendment.[1]

SUMMARY OF ARGUMENT

Billboards and similar signs are, by design, distracting to motorists. For decades, nearly all 50 states (and numerous political subdivisions) have addressed the risks that they pose to traffic safety by distinguishing between "on-premises" and "off-premises" signs. The former are located on the premises of the business that they advertise (e.g., "Eat Here"), and the latter are located elsewhere (e.g., "Waffle House One Mile Ahead").

Restrictions on off-premises signs promote traffic safety while leaving business owners substantial leeway to advertise. According to the Fifth Circuit, however, they violate the First Amendment. Pointing to *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), the

[1] This brief is filed under Supreme Court Rule 37.4 and does not require Rule 37.6 disclosures or consent of the parties.

Fifth Circuit held that a sign regulation is content-based and therefore subject to strict scrutiny if "officials [must] examine" speech to determine whether the sign is on- or off-premises. *Reagan Nat'l Advert. v. City of Austin*, 972 F.3d 696, 706 (5th Cir. 2020). But *Reed* adopted no such rule; it provided only that laws are content-based if they "target speech based on its communicative content." 576 U.S. at 163. Off-premises sign regulations do not do that—even if they use words as evidence of where a sign (and associated business) is located. It is not content-based to use words as a proxy for the relative locations of a sign and a business associated with it. The location of the sign and business is a matter that is wholly non-expressive.

The Fifth Circuit's decision not only calls into question countless routine traffic laws, but also conflicts with the constitutional treatment of timeworn laws in a range of areas that have never been thought constitutionally suspect simply because they use words as a proxy for non-expressive activity. Identity-theft laws, for example, require officials to examine speech to assess whether a suspect is "holding [himself] out to be [an]other person." *See, e.g.*, Ohio Rev. Code Ann. § 2913.49(B). Officials must likewise examine speech to enforce laws prohibiting solicitors from misrepresenting that "[an]other person or organization sponsors or endorses" their efforts. *See, e.g.*, Fla. Stat. § 496.415(3). Even antidiscrimination claims often turn on the defendant's speech as evidence of discriminatory intent.

If using words as evidence of the non-expressive elements of such laws is not content-based regulation, neither is using words as a proxy for whether a sign is on- or off-premises. The Fifth Circuit erred in holding otherwise.

ARGUMENT

I. THE FIFTH CIRCUIT ERRED BY CONCLUDING THAT PETITIONER'S ORDINANCE IS CONTENT-BASED UNDER *REED*.

A. Laws like petitioner's are content-neutral.

Since *Reed*, this Court has reaffirmed precedents reflecting that a law is not content-based simply because it has an incidental effect on some speakers or messages. *See Barr v. Am. Assoc. of Pol. Consultants*, 140 S. Ct. 2335, 2347 (2020) (plurality op.) (explaining that "the First Amendment does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech" (quotations omitted)). Consistent with those precedents, *Reed* held that a law is content-based only if it "target[s] speech based on its communicative content." 576 U.S. at 163. And off-premises laws do not target communicative content, even if they incidentally burden it.

Florida law, for example, generally requires a permit for signs located along state highways, but there is an exemption for signs "on the premises" of an "establishment" that they advertise. Fla. Stat. § 479.16(1). In other words, Florida exempts on-premises advertising from its general permitting scheme for signs. So a "Waffle House" sign along Interstate 75 may be erected on Waffle House

premises without a permit, but a permit would be required to erect the same sign off-premises.

Such an off-premises law may limit signs that "direct persons to any location not on th[e] site," *see Reagan Nat'l Advert.*, 972 F.3d at 704, but it does not target signs because of that message. The law regulates based on location, not speech; any effect on "off-premises" speech is at most incidental, as no topic or message is singled out for differential treatment. *See Boos v. Barry*, 485 U.S. 312, 320 (1988) (a "regulation[] that appl[ies] to a particular category of speech because the regulatory targets happen to be associated with that type of speech" is not content-based).

Off-premises laws do not target a sign based on its communicative content simply because officials must examine the sign to determine whether it is off-premises. This Court has consistently held that "[e]xpression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions." *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984). This Court's cases do not establish a categorical rule that such restrictions cannot use words as a means to effectuate regulation without triggering strict scrutiny. To the contrary, the Court has recognized that a regulation can be a content-neutral time, place, or manner restriction on speech even if effectuating it requires review of expression. *See Ward v. Rock Against Racism*, 491 U.S. 781, 790–92 (1989) (holding content-neutral a sound-amplification ordinance that required monitoring of music—"one of the oldest forms of human expression").

Even when core political speech is at issue, words can be used to effectuate a reasonable time, place, or manner restriction on speech. A legislator, for example, may be prohibited from "advocating" the passage or failure of legislation during a legislative debate if conflict-of-interest laws would prevent him from voting on the legislation. *See Nev. Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 121–23 (2011). That is true even if the only way to figure out whether the "advocacy" in question is prohibited is by reading or hearing it (and even if such review is more than "cursory," *Reagan Nat'l Advert.*, 972 F.3d at 705–06). The legislator's words are reviewed solely because they are evidence of whether he is engaging in advocacy of the prohibited kind (during a legislative debate regarding a matter on which he may not vote).

Here, a sign's text is likewise used solely as evidence of the location of the sign and associated business. Text directing motorists to a highway exit five miles away is evidence that the sign is off-premises, while "Eat Here" is evidence that the sign is on-premises.

The "officials must read it" test thus inappropriately subjects innocuous, unimpeachably reasonable time, place, and manner restrictions to exacting scrutiny. *Reed* did not adopt such a test, and this Court should reject respondents' invitation to subject unobjectionable forms of government regulation to close constitutional scrutiny.

B. The Fifth Circuit's decision threatens thousands of state and local sign laws.

Billboards and similar signs "are real and substantial hazards to traffic safety"; they "are intended to, and undoubtedly do, divert a driver's attention from the roadway." *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 508–09 (1981) (quotations omitted).[2] Accordingly, "[w]hile signs are a form of expression protected by the Free Speech Clause, they pose distinctive problems that are subject to" states' "police powers." *See City of Ladue v. Gilleo*, 512 U.S. 43, 48 (1994).

In regulating billboards, state and local governments must balance safety concerns against the interests of both those who wish to advertise on signs and those who own land along roadways. They must also consider a variety of community interests, including promoting economic development and protecting visual aesthetics. *See, e.g.*, Fla. Stat. § 479.015 ("declar[ing]" that "[t]he control of signs" is "necessary . . . to attract visitors to [Florida] by conserving the natural beauty of the state").

For the past century—since the rise of the automobile in America—states and local governments have balanced those interests by regulating the time, place, and manner in which signs may be displayed. *See, e.g.*, *Hav-A-Tampa Cigar Co. v. Johnson*, 5 So. 2d 433, 437 (Fla. 1941) (upholding Florida's ban on

---

[2] In 2018 alone, around 400,000 people "were injured in crashes involving a distracted driver." Distracted Driving, Centers for Disease Control and Prevention (Aug. 9, 2021), https://www.cdc.gov/transportationsafety/distracted_driving/index.html.

billboards "[w]ithin fifteen feet of the outside boundary of a public highway"); *Murphy v. Westport*, 40 A.2d 177, 178 (Conn. 1944) (considering a town's ban on all outdoor advertising signs other than on-premises signs); *Preferred Tires, Inc. v. Vill. of Hempstead*, 19 N.Y.S.2d 374, 377 (N.Y. Sup. Ct. 1940) (upholding a town's total billboard ban). Some common examples of regulations include laws requiring permits for off-premises signs; laws barring signs that could be confused with traffic-control devices, such as stop signs; and laws imposing time restrictions on event signs.

The Fifth Circuit's decision would imperil such regulations, jeopardizing innumerable longstanding and carefully crafted regulatory regimes.

1. For starters, many states have laws like petitioner's that distinguish between on- and off-premises signs based on the words used on the signs.[3]

---

[3] *See* Ala. Code § 23-1-273(4); Alaska Stat. § 19.25.105(a)(2); Ariz. Rev. Stat. Ann. § 28-7902; Ark. Code Ann. § 27-74-302; Cal. Bus. & Prof. Code § 5272(a); Del. Code Ann. tit. 17, § 1121; Fla. Stat. § 479.16(1); Ga. Code Ann. § 32-6-72(3); Haw. Rev. Stat. § 264-72(3); Idaho Code Ann. §§ 40-1910A, 40-1911; 225 Ill. Comp. Stat. 440/3.17, 3.18, 4.03, 4.04; Ind. Code § 8-23-20-7(3); Kan. Stat. Ann. § 68-2233; La. Rev. Stat. Ann. § 48:461.2; Me. Rev. Stat. tit. 23, §§ 1903(8), 1908, 1914; Md. Code Ann., Transp. §§ 8-701, 8-744; Mass. Gen. Laws ch. 93D, § 2; Mich. Comp. Laws §§ 252.302(y), 252.313; Minn. Stat. § 173.08, subd. 1(3); Miss. Code Ann. § 49-23-5(1)(c); Neb. Rev. Stat. § 39-218; Nev. Rev. Stat. § 410.320(3); N.H. Rev. Stat. Ann. § 238:24; N.J. Stat. Ann. § 27:5-11(a)(1)(c); N.C. Gen. Stat. § 136-129; Okla. Stat. tit. 69, §§ 1273(h), 1274(b); S.C. Code Ann. § 57-25-140(A)(6); S.D. Codified Laws § 31-29-63; Utah Code Ann. § 72-7-504(2)(c); Vt. Stat. Ann. tit. 10, §§ 488, 493; Va. Code Ann. § 33.2-1217(B);

So do numerous cities.[4] And the laws are integral to sign regulation; off-premises restrictions are a straightforward and effective way for states and cities to limit the number of signs dotting a highway without singling out specific industries, groups, activities, topics, or viewpoints. Under such laws, a sign's location, not its message, is what matters, and the laws are easy to enforce: officials need only read a proposed or existing sign to determine whether it is located on-premises.

The First Amendment does not require states and localities to resort to less effective means of regulating on-premises and off-premises signs. Respondents have argued that the Fifth Circuit's decision leaves states free to regulate signs that display only commercial speech. Br. in Opp. at 11–12. That is cold comfort, however, for it would hamper state and local governments from regulating unsightly noncommercial signage that might otherwise dominate their landscapes and highways.

Perversely, a holding that the First Amendment forbids governments from using words to regulate off-premises signs is likely to lead to more, rather than

---

Wash. Rev. Code § 47.42.040(3); Wyo. Stat. Ann. § 24-10-104(a)(iii).

[4] *See, e.g.*, Leon Cty., Fla., Code §§ 10-9.101, 10-9.301; Los Angeles, Cal., Code §§ 14.4.2, 14.4.4(B)(11); City of Nashua, N.H., Code § 190-94(B)(6), (19); New Orleans, La., Code arts. 24.8(L), 26.6; Provo, Utah, Code § 14.38.020; San Diego, Cal., Code § 142.1210(a)(1); Tampa, Fla., Code § 27-43; St. Petersburg, Fla., Code §§ 16.40.120.4, 16.40.120.6.7; Chamber of Com. Amicus Br. 9, *City of Austin v. Reagan Nat'l Advert.*, No. 20-1029 (U.S. Mar. 1, 2021) (in Texas alone, around 350 cities and towns "distinguish between on- and off-premise signage").

less, intrusive regulation. Tennessee and some other states, for instance, have reacted to court decisions striking down the traditional on-premises/off-premises distinction by using revenue-generation, along with the location of a sign, as a proxy for whether the sign advertises an off-premises location, rather than using the straightforward means of whether the words on the sign direct the reader to an on- or off-premises location. *See* Tenn. Code Ann. § 54-21-102(17); Iowa Code § 306B.1; Ky. Rev. Stat. Ann. § 177.830(5); Ohio Rev. Code Ann. § 5516.01; Tex. Transp. Code Ann. § 391.001(1-a). Under these workarounds to the Fifth Circuit's holding, a sign that is on the premises of an establishment is defined as an "on-premises" sign unless it separately generates revenue for the establishment. Tenn. Code Ann. § 54-21-102(17)(B). But revenue-generation is both more intrusive and more difficult to detect and enforce than simply consulting what the sign says.

In Florida, for example, nine inspectors of the Florida Department of Transportation monitor compliance with the state's off-premises law. They do so by, among other things, patrolling when signs change; if a landowner without a permit for his sign changes the sign, the inspectors read the sign to determine whether it is still an on-premises sign. But under a revenue-generation law, Florida's inspectors could enforce the law only by investigating landowners' financial arrangements.[5] The result would be more intrusive regulation, not less.

---

[5] Under Florida law, an otherwise on-premises sign requires a permit if "the owner of the establishment receives rental income." Fla. Stat. § 479.16(1). The point, however, is that it

2. The Fifth Circuit's decision also threatens other traditional forms of sign regulation that rely on words as evidence of regulated activities.

First, laws "imposing time restrictions on signs advertising a one-time event" would be at risk. *Reed*, 576 U.S. at 175 (Alito, J., concurring). States and cities across the country have had such laws for decades. *See, e.g.*, Alaska Admin. Code tit. 17, § 20.005(a); N.J. Admin. Code § 19:66-5.7(g)(14); Okla. Admin. Code 120:10-15-9(a); Or. Admin. R. 350-081-0074(1)(a)(L)(v); 250 R.I. Code R. 100-00-1.30(A)(7)(g); S.C. Code Ann. § 57-25-140(A)(9); 43 Tex. Adm. Code § 22.15(d)(7); D.C. Mun. Regs. tit. 24, § 108.6; Leon Cty., Fla., Code § 10-9.201(b)(3); Newport, Ky., Code § 15.9; Phoenix, Ariz., Code § 705(B)(2)(i). Yet under the Fifth Circuit's decision, the laws might well be constitutionally suspect because they regulate both commercial and noncommercial signs and require officials to review the text of a sign to determine whether it advertises a one-time event.

Second, laws barring signs that "use[] the word 'stop' or 'danger'" or that "present[] or impl[y] the need" for "stopping or the existence of danger" would be imperiled, as officials cannot determine whether such laws apply without examining a sign's text. Fla. Stat. § 479.11(6); *see also, e.g.*, Kan. Stat. Ann. § 8-1512; Mich. Comp. Laws § 257.615(a); Mont. Code Ann. § 61-8-210; Neb. Rev. Stat. § 60-6,127(1); Ohio Rev. Code Ann. § 4511.16; Va. Code Ann. § 33.2-1216(3); W. Va. Code § 17-22-4(2); Miami, Fla., Code

---

would be difficult to administer the scheme if revenue-generation were the principal means of distinguishing between on- and off-premises signage.

§ 33.95(h); *cf.* Ala. Code § 37-8-200(a) (prohibiting signs that resemble "railroad crossing sign[s]"); Minn. Stat. § 219.29, subd. 2 (same).

Third, reviewing a sign's text is necessary to determine whether various laws regulating neighborhood signs apply. For example, numerous states have laws requiring owners of a "vicious[]" dog to post a sign on their property that says "Bad Dog" or that otherwise warns the community about the dog. *See* Fla. Stat. § 767.04; Neb. Rev. Stat. § 54-619(2); Ohio Rev. Code Ann. § 935.18(C)(1); Okla. Stat. tit. 4, § 45(B)(1); 3 Pa. Stat. Ann. § 459-503-A(a.1).

The list goes on: countless other sign laws likewise require officials to review text, including those that distinguish between seasonal and non-seasonal signs, directional and non-directional signs, construction and non-construction signs, trespassing and non-trespassing signs, and so on. *See, e.g.*, La. Rev. Stat. Ann. § 48:461.2(A)(7) (distinguishing seasonal signs); 33 Miss. Admin. Code Pt. 209, R. 1.1(ii) (same); S.C. Code Ann. § 57-25-140(A)(9) (same); Miami, Fla., Code § 33.94(j) (same); Idaho Code Ann. § 40-1911(1) (directional signs); Mo. Rev. Stat. § 226.520(1) (same); Jacksonville, Fla., Code § 656.1302(e) (same); Orange Cty., Fla., Code §§ 31.5-5, 31.5-76 (same); N.J. Stat. Ann. § 39:4-183.22a (construction signs); Mont. Admin. R. 18.6.240(4)(a) (same); Hillsborough Cty., Fla., Code § 7.03.00(E)(4)(c) (same); Jacksonville, Fla., Code § 656.1307 (same); Orange Cty., Fla., Code § 31.5-5 (same); Miami, Fla., Code § 33-94(p) ("no trespassing" signs); Ocala, Fla., Code § 110-6(2) (same); Orange Cty., Fla., Code § 31.5-13(8) (same).

It is unclear how these manifold forms of sign regulation could proceed without attaching significance to the words employed on the face of such signs.

C. The "officials must read it" test would inject uncertainty into many areas of regulation beyond signage.

The "officials must read it" test would both raise questions about a variety of state regulations beyond sign laws and inject discord into this Court's First Amendment jurisprudence. Many forms of state regulation use text or speech as a proxy for, or as evidence of, non-expressive activity. Speech, for example, is often used as evidence of fraud, discrimination, and identity theft. Such laws are not, and have never been considered, constitutionally suspect. Yet off-premises sign regulation amounts to no more than using speech as evidence of location—a matter that is likewise non-expressive. Amici States submit that in both instances, states may use speech or text as a proxy for non-expressive activity without triggering close constitutional scrutiny.

Sex-Offender Laws. For example, in Florida and several other states, sex offenders must report all of their internet identifiers (e.g., email addresses, social-media accounts, and online-chat names) to law enforcement officials; if they fail to do so, they are subject to prosecution for failing to properly report as a sex offender. *See, e.g.*, Fla. Stat. § 943.0435(2)(a), (b); 730 Ill. Comp. Stat. 150/3; Mont. Code Ann. § 46-23-504(3); N.H. Rev. Stat. Ann. § 651-B:4-a; N.C. Gen. Stat. § 14-208.7(b)(7); Tenn. Code Ann. § 40-39-203(a)(7); Tex. Code Crim. Proc. art. 62.051(c)(7).

Consequently, law enforcement officials must read text—an offender's list of identifiers—in carrying out their enforcement duties.

Zoning Laws. Many zoning laws that prohibit activities in particular locations pose the same problem because officials must review speech to determine whether a person is engaged in the activity. A number of cities and states, for example, ban picketing at a person's home "for the purpose of persuading" the person, thus requiring officials to review the speech of those gathered outside a home to determine whether they are violating the law. *Veneklase v. City of Fargo*, 248 F.3d 738, 746, 749 (8th Cir. 2001) (en banc) (per curiam) (upholding Fargo's ban); *see id.* at 749 (Arnold, J., dissenting) (disagreeing that the law is constitutional but not disputing that it is "content neutral"); *see also* N.C. Gen. Stat. § 14-277.4A; Utah Code Ann. § 76-9-109; Va. Code Ann. § 18.2-419; Providence, R.I., Code § 16-13.1; San Jose, Cal., Code § 10.09.010; Town of Barrington, R.I., Code § 138-2.

Confidentiality Laws. This Court has recognized that "[s]tates may regulate professional conduct, even though that conduct incidentally involves speech." *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2372 (2018). Such regulation, however, often requires review of speech as a proxy for that conduct. In dozens of states, for instance, an attorney may not disclose confidential attorney-client communications unless he "reasonably believes" that disclosure is necessary "to prevent a death or substantial bodily harm." *E.g.*, Fla. Bar. R. 4-1.6(b); Ala. R. Prof'l Cond. 1.6(b); Del. Lawyers' R.

Prof'l Cond. 1.6(b)(1); Ga. R. Prof'l Cond. 1.6(b)(1); Mass. R. Prof'l Cond. 1.6(b); Nev. R. Prof'l Cond. 1.6(b); N.C. R. Prof'l Cond. 1.6(b). Enforcement thus hinges on review of particular communications to determine whether they are confidential and, if so, whether the exception applies.

Antidiscrimination Laws. Antidiscrimination claims often turn on the defendant's speech as evidence of discriminatory intent.[6] Relevant questions may include "who is the speaker and what is the speaker saying," which in the Fifth Circuit's view are "hallmarks of a content-based inquiry." *Reagan Nat'l Advert.*, 972 F.3d at 706. But the use of words as evidence of discriminatory intent does not give rise to a First Amendment defense. *See, e.g.*, *Wisconsin v. Mitchell*, 508 U.S. 476, 487 (1993). If examination of words as evidence of discriminatory conduct does not give rise to close First Amendment scrutiny, neither should the use of words to determine the location of a sign and an associated business.

Common-Carrier Laws. Officials also must often examine text or speech in applying laws regulating common carriers (e.g., telephone companies, public utilities, and railroads). Several states require telephone companies to discontinue a person's services when he is using them "for the purpose of transmitting or receiving gambling

---

[6] Nearly every state and many cities have antidiscrimination laws. *See, e.g.*, Alaska Stat. § 18.80.240; Fla. Stat. § 760.01; 775 Ill. Comp. Stat. 5/3-102; Md. Code Ann., State Gov't § 20-304; Minn. Stat. § 363A.08; Mo. Rev. Stat. § 213.040; S.D. Codified Laws § 20-13-10; N.Y. Exec. Law § 296; Ohio Rev. Code Ann. § 4112.02; Phila., Pa., Code § 9-1106; Tampa, Fla., Code § 12-61.

information." *E.g.*, La. Rev. Stat. Ann. § 45:1166(C); Conn. Gen. Stat. Ann. § 53-278d(b); Wis. Stat. § 945.06; *see also* 66 Pa. Stat. Ann. § 2902. Enforcing those laws thus requires officials to review a person's speech over the telephone to determine whether he is using it for gambling.

The same is true for a variety of other common-carrier laws. In California, for instance, public shopping centers must permit "speech and petitioning," *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 78 (1980) (quotations omitted), which might require courts to review speech to determine if a shopping center has properly excluded a person from its premises. And New York requires telephone companies to accommodate victims of domestic violence by "us[ing] a modified or alternative name for" their phonebook listing. N.Y. Gen. Bus. Law § 399-yy(1). Officials must therefore review the text of a phonebook listing to determine whether a company has accommodated a particular victim.

Speech-Related Criminal Laws. Numerous state criminal laws require officials to review speech. Identity-theft laws, which prohibit "holding [oneself] out to be [an]other person," can often be applied only after reviewing a person's representations about his identity. Ohio Rev. Code Ann. § 2913.49(B); *see also, e.g.*, Alaska Stat. § 11.46.570(a); Cal. Penal Code § 530; Conn. Gen. Stat. Ann. § 53a-130(a)(1); Del. Code Ann. tit. 11, § 854(a); Ind. Code § 35-43-5-3.5(a); Me. Rev. Stat. tit. 17-A, § 354(2)(a); Or. Rev. Stat. Ann. § 165.800(1).

Cybercrime laws, such as laws prohibiting selling stolen property on the internet and laws prohibiting

"spoofing," often require review of a person's online activity, including social-media posts, data transmissions, and messages. *See* Fla. Stat. § 812.0195 (prohibiting selling stolen property on the internet); 11 R.I. Gen. Laws § 11-52.3-4 (same); 720 Ill. Comp. Stat. 5/16-40 (same); Wash. Rev. Code § 9A.90.070 (prohibiting "spoofing," which is "initiat[ing] the transmission, display, or receipt of the identifying information of another organization . . . for the purpose of gaining unauthorized access to . . . a data network"); Cal. Penal Code § 502(c)(9) (similar).

Laws against financial exploitation of "a vulnerable adult," which prohibit using "deception" to secure funds from a victim, require examination of a person's statements to the victim. D.C. Code § 22-933.01(2); *see also, e.g.*, Ala. Code § 8-6-171(5); Ark. Code Ann. § 23-42-309(a)(2); Md. Code Ann., Crim. Law § 8-801(b)(2); Neb. Rev. Stat. § 28-358; N.D. Cent. Code § 12.1-31-07.1(1); Utah Code Ann. § 76-5-111(9)(a).

Stalking laws, which prohibit "repeated or continuing harassment . . . that would cause a reasonable person to feel terrorized," require analysis of, for example, potentially harassing text messages, emails, and voicemails to determine whether they would cause a reasonable person to feel terrorized. Tenn. Code Ann. § 39-17-315(a)(4); *see also, e.g.*, Fla. Stat. § 784.048(2); Iowa Code § 708.11(2); La. Rev. Stat. Ann. § 14:40.2(A); Nev. Rev. Stat. § 200.575(1); Wash. Rev. Code § 9A.46.110(1).

And false-reporting laws, which prohibit lying about, among other things, child abuse or the

presence of a bomb, require officials to review a person's statements to authorities. *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-2907.02; Cal. Penal Code § 148.1; Colo. Rev. Stat. § 18-8-110; Fla. Stat. § 790.163; Mo. Rev. Stat. § 575.090; N.D. Cent. Code § 12.1-11-03; Or. Rev. Stat. Ann. § 419B.016; W. Va. Code § 61-6-25(a).

Some or all of these laws could be viewed as targeting conduct or speech that is unprotected. "Specific criminal acts are not protected speech even if speech is the means for their commission." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017); *but cf. United States v. Alvarez*, 567 U.S. 709, 718 (2012) (plurality op.) (observing that the First Amendment sometimes protects false statements that have been made a crime). But just as speech may be used as a proxy for conduct that is criminal, so too may speech be used as evidence of, or as a proxy for, the location of a sign and the business that it advertises—matters that are likewise non-expressive.

Solicitation Laws. Many solicitation laws also require officials to review text or speech. Dozens of states prohibit solicitors from misrepresenting that they are collecting funds for charitable purposes. *See, e.g.*, Ariz. Rev. Stat. Ann. § 44-6561(A)(3); Fla. Stat. § 496.415(7); Ga. Code Ann. § 43-17-12(d)(3); Haw. Rev. Stat. § 467B-9(c); Mass. Gen. Laws ch. 68, § 28(b); Mich. Comp. Laws § 400.293(1)(a); N.C. Gen. Stat. § 131F-20(9); W. Va. Code § 29-19-13(b); Wis. Stat. § 202.16(d). Similarly, many states prohibit solicitors from misrepresenting that "[an]other person sponsors or endorses" their efforts. Fla. Stat. § 496.415(3); *see also, e.g.*, Ariz. Rev. Stat. Ann. § 44-6561(4); S.D. Codified Laws § 37-30-17(4); W. Va.

Code § 29-19-13(d); Wis. Stat. § 202.16(e). And other states prohibit "transmitting a telephone solicitation by any method" that "cause[s] to be displayed a fictitious . . . name or telephone number on" a person's "caller identification service." *See* Ark. Code Ann. § 4-99-302(b); Tex. Bus. & Com. Code Ann. § 304.151. All three types of laws require officials to review words—either the text of a solicitor's materials or the text appearing on a caller identification service—to decide if a solicitor has broken the law.

Impersonation Laws. Finally, an array of laws banning wrongful impersonation require review of offending speech. Many states prohibit placing titles like "sheriff" or "police" on items to "mislead" another that the wearer is in fact a public official. *E.g.*, Fla. Stat. § 843.085; Cal. Penal Code § 538d; Md. Code Ann., Pub. Safety § 3-502(c). Other laws forbid a vehicle bearing the words "school bus" from doing anything other than transporting children to school or related activities. Ark. Code Ann. § 27-50-310; Fla. Stat. § 316.72; Ga. Code Ann. § 40-8-116. And still others outlaw wrongfully implying that one is associated with a state agency or branch of government. N.J. Stat. Ann. § 56:8-2.1; Wis. Stat. § 217.12.[7] For each restriction, officials must review

[7] Federal law prohibits the wrongful impersonation of federal entities as well. *See* 18 U.S.C. § 709 (prohibiting unauthorized use of words like "FBI," "Secret Service," and "United States Mint"); 51 U.S.C. § 20141 (similar for NASA); 50 U.S.C § 3513 (similar for CIA).

text to determine whether a person is engaged in impersonation.

II. EVEN IF PETITIONER'S ORDINANCE IS CONTENT-BASED, THE FIFTH CIRCUIT ERRED IN INVALIDATING THE ORDINANCE ON ITS FACE.

After concluding that petitioner's ordinance is content-based, the Fifth Circuit applied strict scrutiny and declared the ordinance facially invalid. *See Reagan Nat'l Advert.*, 972 F.3d at 710. But even if the ordinance is content-based, that was a mistake. Respondents are advertising companies who sought permits for off-premises signs that display not only noncommercial speech but also commercial speech. *See* Pet. Br. 47; Pet. App'x 23a, 52a n.11; Ex. J, Dkt. 36-4; Dkt. 36-6, 36-7. Before invalidating the ordinance in all applications, the Fifth Circuit should have considered whether the law is valid to the extent it regulates the content of respondents' commercial speech.

Instead, the Fifth Circuit applied strict scrutiny to the entire ordinance, in all of its applications, because it governs "both commercial and noncommercial messages." *Reagan Nat'l Advert.*, 972 F.3d at 709. That misstates the rule for declaring a law facially invalid under the First Amendment, which turns on whether (1) "no set of circumstances exists under which [the law] would be valid," or (2) the law is overly broad, meaning "a substantial number of its applications are unconstitutional, judged in relation to [its] plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 473 (2010) (quotations omitted).

Here, neither test is satisfied. There is little question that the on-premises/off-premises distinction drawn by the ordinance, even if content-based, is constitutional to the extent it applies to commercial speech. Indeed, respondents urged denial of certiorari in this case on the ground that state and local governments could "adjust[]" to the Fifth Circuit's decision by revising their sign laws to "apply only to commercial speech." Br. in Opp. at 11–12. There can equally be little dispute that the ordinance regulates commercial speech in a great number of its applications and so is not substantially overbroad, let alone unconstitutional in all or substantially all of its applications. *See* Pet. Br. 47 ("Respondents have never disputed that, even though their billboards display some noncommercial speech, they mostly display commercial speech.").

Moreover, this Court has held that it is generally inappropriate to invoke the overbreadth doctrine "before it is determined that the statute would be valid as applied." *Bd. of Trustees v. Fox*, 492 U.S. 469, 485 (1989). Where, as here, parties challenge a purportedly "overbroad statute" and have engaged in both "protected and unprotected" conduct, there is "no want of a proper party to challenge the statute" and so the "statute may forthwith be declared invalid to the extent that it reaches too far, but otherwise left intact." *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985). Thus, even if the ordinance is content-based, the Fifth Circuit should have held that it is constitutional as it applies to respondents' commercial speech, and unconstitutional as it applies to their noncommercial speech, rather than invalidating it across the board.

The Fifth Circuit's remedial error compounds the practical problems that its mistaken content-based holding creates. Its decision would restrict the authority of states and localities to apply off-premises laws even to signage containing solely commercial speech—even though such applications of the laws would be constitutional, and even if such laws are constitutional in the great bulk of their applications. This concern is not hypothetical. Florida's off-premises law, for example, applies on its face to both commercial and noncommercial speech, Fla. Stat. § 479.16(1), but we understand that the Florida Department of Transportation generally does not enforce the permitting requirement against noncommercial signage. Under this Court's settled overbreadth doctrine, then, there would be no basis for invalidating Florida's law on its face even if it were content-based, *contra* the Fifth Circuit.

Several Justices of this Court have expressed concerns about the soundness of the overbreadth doctrine even in its current form.[8] The doctrine tends to "short circuit the democratic process by interfering with the work of [state and local governments] more than necessary." *See Barr*, 140 S. Ct. at 2365 (Gorsuch, J., concurring in the judgment in part and

---

[8] *See Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2390 (2021) (Thomas, J., concurring) (expressing "doubts about the . . . application of [the] overbreadth doctrine" because it allows courts to strike a law even if the law is constitutional as applied to the plaintiff (quotations omitted)); Tr. of Oral Arg. at 39, *United States v. Williams*, No. 06-694, 128 S. Ct. 1830 (2008) (Kennedy, J.) (same); *id.* at 40 (Roberts, C.J.) (same); *accord id.* at 43–44 (Scalia, J.) ("[T]he whole doctrine of overbreadth rests upon dictum, doesn't it?").

dissenting in part) (quotations omitted). The Court, of course, need not broadly revisit that doctrine in this case. But it certainly should not sanction the Fifth Circuit's decision and create a new incarnation of the doctrine amounting to overbreadth on steroids.

CONCLUSION

The Fifth Circuit's judgment should be reversed.

Respectfully submitted,

ASHLEY MOODY
Attorney General of Florida

HENRY C. WHITAKER
Solicitor General
Counsel of Record

DANIEL W. BELL
Chief Deputy Solicitor General

KEVIN A. GOLEMBIEWSKI
Deputy Solicitor General

DAVID M. COSTELLO
Assistant Solicitor General

Office of the
Attorney General
The Capitol – PL-01
Tallahassee, FL 32399
Phone: (850) 414-3300
henry.whitaker@
myfloridalegal.com

August 20, 2021

Counsel for Amicus Curiae the State of Florida
(Counsel for other amici listed below)

Additional Counsel

LESLIE RUTLEDGE
Attorney General
of Arkansas

ROB BONTA
Attorney General
of California

WILLIAM TONG
Attorney General
of Connecticut

KARL A. RACINE
Attorney General
of District of Columbia

KWAME RAOUL
Attorney General
of Illinois

THOMAS J. MILLER
Attorney General
of Iowa

AARON M. FREY
Attorney General
of Maine

BRIAN E. FROSH
Attorney General
of Maryland

MAURA HEALEY
Attorney General
of Massachusetts

DANA NESSEL
Attorney General
of Michigan

KEITH ELLISON
Attorney General
of Minnesota

LYNN FITCH
Attorney General
of Mississippi

AARON D. FORD
Attorney General
of Nevada

ANDREW J. BRUCK
Acting Attorney General
of New Jersey

LETITIA JAMES
Attorney General
of New York

DAVE YOST
Attorney General
of Ohio

ELLEN F. ROSENBLUM
Attorney General
of Oregon

JOSH SHAPIRO
Attorney General
of Pennsylvania

JASON R. RAVNSBORG
Attorney General
of South Dakota

THOMAS J. DONOVAN, JR.
Attorney General
of Vermont

ROBERT W. FERGUSON
Attorney General
of Washington