No. 164, Orig.

In the Supreme Court of the United States

IOWA AND MONTANA, PLAINTIFFS

v.

ARIZONA, ET AL.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

BRIEF OF AMICUS CURIAE NEXSTAR MEDIA GROUP, INC. IN SUPPORT OF PLAINTIFFS

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SEPTEMBER 2026

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INTEREST OF AMICUS CURIAE[1]

Local broadcaster Nexstar Media Group Inc. has a strong interest in—and unique perspective on—the issues presented in this case. Nexstar is subject to a preliminary injunction that similarly "present[s] fundamental questions over a state's power to interfere with a federally approved merger of national reach." Pls.Br.1. It can thus provide the Court with a concrete, first-hand account of why the issues here are important and recurring. It can further illustrate the harms to federal authority, state sovereignty, and competition caused by such suits. In short, Nexstar's experience highlights the urgent need for this Court's intervention and restoration of a workable legal regime for federally approved mergers.

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[1] Pursuant to Rule 37.6, amicus states that no counsel or party authored this brief in whole or in part and that no person other than amicus or its counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties received notice of this brief at least 10 days before its due date.

INTRODUCTION AND SUMMARY OF ARGUMENT

The federal antitrust laws were not designed to give a handful of states veto power over a nationwide merger cleared by the federal government and welcomed by the majority of states. Yet that has now happened twice in a matter of months. Both the Paramount-Warner Brothers merger underlying this case and amicus Nexstar's merger with fellow broadcaster TEGNA were driven by competitive necessity. As traditional media companies, these entities now vie against digital and streaming behemoths like Netflix, Amazon, YouTube, and Meta. To compete, traditional media companies must achieve economies of scale. In both cases, the mergers necessary to preserve competition were cleared by one or more of the federal agencies charged by Congress with enforcing the antitrust laws and protecting the national public interest. Indeed, in Nexstar's case, the federal government affirmatively found that Nexstar's merger was procompetitive and necessary for broadcast television's continued vitality.

That should have been the end of the matter in both cases. Yet an overlapping minority of states motivated by parochial interests secured nationwide injunctive relief against both mergers. As plaintiffs Iowa and Montana have shown and as Nexstar's case confirms, that result is intolerable several times over. To start, it nullifies the carefully designed regulatory scheme for federal merger review. That displaces uniform, nationwide interests with conflicting and idiosyncratic state interests and enforcement—and in areas where states have limited regulatory experience or understanding of the relevant markets. Far from promoting federalism, such injunctions undermine state sovereignty by allowing the state with the most restrictive antitrust priorities to dictate economic policy for all others. For that same reason, nationwide equitable relief obtained by a handful of disgruntled states violates this Court's recent instructions on the limits of injunctive remedies.

None of these harms can be justified by any public-interest considerations. To the contrary, such injunctions harm the public by depriving it of increased access to news and media. And they threaten the national economy by chilling mergers, no matter how beneficial—an outcome that will reduce rather than aid competition.

The Court should grant the motion and confirm that a single state must not be allowed to abuse the antitrust laws to impose its own policy preferences on the rest of the nation.

STATEMENT

A. Like Paramount And Warner Brothers, Nexstar And TEGNA Merged To Compete In The Modern Media Environment—And Received Federal Approval To Do So

Nexstar is a local television broadcaster that distributes its content for free over the air. 9-ER-1927-28; 8-ER-1489-90; 7-ER-1267-68.[2] Local broadcasters serve a vital public-interest function, providing news, emergency information, and community-focused

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[2] Citations to "ER" are to the record in *DirecTV, LLC v. Nexstar Media Group, Inc.*, No. 26-2490 (9th Cir.), Dkt. 52.

programming to millions of Americans. 7-ER-1239, 7-ER-1271-72; 4-ER-639-41. Indeed, Congress has expressly found that "[t]here is a substantial governmental interest in promoting the continued availability of such free television programming, especially for viewers who are unable to afford other means of receiving programming." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 646 (1994) (alteration in original) (quoting Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(a)(12), 106 Stat. 1460, 1461).

Nexstar faces the same competitive reality as other traditional video-content providers—including Paramount and Warner Brothers. Most families no longer gather around the television set in the evening any more than they retrieve a daily newspaper from the driveway. Instead, they access news and entertainment from digital platforms available on ubiquitous internet-connected devices. That means local broadcasters must compete against a rapidly expanding universe of streaming options from the world's largest and wealthiest companies, such as Netflix, YouTube, and Amazon Prime Video. 7-ER-1250-52, 7-ER-1266; 8-ER-1585-93; 8-ER-1647-56; 8-ER-1571-73; *cf.* Bill.of.Compl.4 (describing similar "[c]ompetition from streaming services like Netflix, Disney, and Amazon").

To compete in this modern media environment, Nexstar needs economies of scale. 9-ER-1877; 13-ER-2871; 13-ER-2857. The solution—as in Paramount and Warner Brothers' case—was a merger. Nexstar acquired TEGNA, another local broadcaster (and did so before any injunctive-relief motion was filed, let alone granted). Assuming integration is permitted to proceed, that acquisition will allow Nexstar to offer viewers across the nation more local-news programming, including important political news. 7-ER-1272-73; 8-ER-1489, 8-ER-1497-98.

And—also as with Paramount and Warner Brothers—the federal government cleared the Nexstar-TEGNA merger. Indeed, the government went further in Nexstar's case: it affirmatively found the merger would serve the public interest. Nexstar submitted the proposed merger to the Federal Communications Commission (FCC), the agency Congress entrusted to review broadcast transactions and determine whether they serve the "public interest, convenience, and necessity." 47 U.S.C. § 310(d). The FCC conducted a four-month review, during which it considered extensive comments from merger supporters and opponents. It then issued a 95-paragraph, thoroughly reasoned decision finding the merger would "serve the public interest" by "enabling" Nexstar and TEGNA "to expand the production of local news and information" and maintain broadcast's competitive position in the face of deep-pocketed streaming services. 7-ER-1239; *see* 7-ER-1239-74.[3] The merger meant Nexstar would acquire just 3.6% (64) of the nation's 1,777 full-power stations; as the FCC noted, this would bring Nexstar's total station ownership to just 15%. 7-ER-1240 n.1.

The FCC acknowledged the merger would result in Nexstar's ownership of multiple Big-Four television stations in less than 15% of the country's Nielsen

[3] The order was issued by the FCC's Media Bureau and "ha[s] the same force and effect" as an order of the full Commission. 47 U.S.C. § 155(c)(3).

Designated Market Areas (DMAs)—specifically, in 31 out of 210 DMAs.[4] But the FCC deemed that result necessary: "core revenue" for local stations in those 31 DMAs was "stagnant or falling," and "[i]nsisting on continued separate ownership eventually will be the death of at least one news organization in these markets." 7-ER-1259-62 (alteration in original). Thus, "combining Nexstar with TEGNA provides the only hope to achieve the scale needed to sustain operations." 7-ER-1257 (quotation marks omitted). Even so, the FCC conditioned its approval on enforceable commitments from Nexstar to divest certain stations and increase the amount of local news and programming on its stations. 7-ER-1241, 7-ER-1258, 7-ER-1268, 7-ER-1262.

As the FCC recognized, those commitments are consistent with Nexstar's track record of increasing local news, including following mergers. 7-ER-1266-67. For instance, after a 2019 acquisition, Nexstar's stations increased local-news coverage by 28,000 hours per year (over 12.5%) and local-lifestyle and political programming by 9,000 (over 75%) and 800 hours per year (over 40%) respectively. 7-ER-1267. Nexstar has been recognized for that commitment: Nexstar stations won over 500 awards for excellence in local reporting and programming in 2025, and industry watchdogs rate "all" of Nexstar's local-news programming as "politically neutral" and "virtually

[4] A "Big-Four" station is a station affiliated with one of the four major national networks (ABC, CBS, FOX, and NBC). 7-ER-1251; 8-ER-1490-91. DMAs are geographic regions that group counties based on television viewing areas.

all" of its programming as having reliable, fact-based reporting. 3-ER-289; 9-ER-1878; 7-ER-1267.

Nexstar and TEGNA also submitted the merger to the U.S. Department of Justice (DOJ), which is charged with reviewing the competitive effect of proposed mergers under federal antitrust laws. 15 U.S.C. § 18a. DOJ likewise conducted a searching review, involving multiple requests, millions of documents, large volumes of data, and economic and marketplace analyses. 7-ER-1449-50. DOJ completed its review without conditions.

Nexstar and TEGNA closed their merger shortly after FCC approval and DOJ clearance. 8-ER-1726-27; 9-ER-1788.

B. A Minority Of States And A Nexstar Competitor Obtained A Nationwide Injunction Against The Merger Based On Purely Local Purported Harms

Despite this dual federal clearance, eight states and California-based DIRECTV (a customer and competitor of Nexstar) sued Nexstar and TEGNA in the Eastern District of California, alleging federal antitrust violations. The *Nexstar* plaintiffs alleged anticompetitive harm arising from a small aspect of the merger: Nexstar's acquisition of stations in the 31 DMAs where it already owned a Big-Four station ("overlap DMAs") and a purported corresponding ability to charge cable and satellite companies (like DIRECTV) higher retransmission fees. 13-ER-3021. The eight plaintiff states—collectively containing only 11 of those 31 DMAs—also alleged individual subscribers would be harmed if cable and satellite companies made the business decision to raise their own fees in response to increased Nexstar fees. 13-ER-2987-90. And (disregarding the FCC's contrary determination) the *Nexstar* plaintiffs alleged the local-news product in those specific DMAs would be degraded. 13-ER-3024; 13-ER-2987-90.

Notwithstanding the *Nexstar* plaintiffs' localized allegations, they sought a sweeping injunction effectively undoing the closed merger nationwide, including in the many DMAs where no anticompetitive conduct was alleged and across corporate functions (such as advertising) unrelated to any purported fee increases. 10-ER-2131-34; 13-ER-2979-84. They succeeded. The district court imposed a nationwide hold-separate order enjoining "all actions relating to integration and consolidation of Nexstar and TEGNA." 1-ER-49-52. In doing so, the court expressly disregarded the FCC's detailed factfinding and conclusions on the merger's public-interest benefits.

By artificially separating two already combined companies, the injunction severely and irreparably harms Nexstar and TEGNA (now a Nexstar subsidiary): costing tens of millions of dollars in lost operational efficiencies, preventing technological advancements necessary to stay competitive with digital and streaming platforms, and causing loss of key employees and business relationships. 8-ER-1485-88, 8-ER-1494-95, 8-ER-1500-01; 8-ER-1511; 8-ER-1536-38. It also prohibits TEGNA from using Nexstar's resources—or even making its own independent changes—to thrive in the competitive media landscape. 1-ER-50. And the injunction deprives the public of the increased local-news access that the FCC found the merger would provide.

Nexstar appealed the preliminary injunction to the Ninth Circuit, arguing that (1) it is overbroad because its nationwide and corporationwide relief sweeps more broadly than the *Nexstar* plaintiffs' alleged harms; and (2) the *Nexstar* state plaintiffs lack standing, in part because they assert harms based on a small and identifiable number of subscribers that mirror alleged private-party harms. Oral argument is scheduled for November 17, 2026.

After Nexstar noticed its appeal, the *Nexstar* state plaintiffs filed an amended complaint adding five additional states as parties. Plaintiff States' First Amended Complaint, *In Re: Nexstar-TEGNA Merger Litig.*, No. 26-cv-00976 (E.D. Cal. Apr. 30, 2026), Dkt. 201. Two of those states collectively contain three additional "overlap" DMAs—bringing the total number of overlap DMAs that fall within plaintiff states' borders to 14. *Id.* at 22. Yet three of those new states—Kansas, Massachusetts, and Vermont—contain *no* overlap DMAs. *Ibid.* Although proceedings continue in the district court, trial will not take place until July 2027. Order at 4, *Nexstar*, No. 26-cv-00976, Dkt. 258.

ARGUMENT

I. THE PRELIMINARY INJUNCTION AGAINST NEXSTAR DEMONSTRATES THE RECURRING PROBLEM OF STATES' VETOING FEDERALLY CLEARED MERGERS

The preliminary injunction against Nexstar implicates the same core concern animating this case: a minority of states asserting local interests to nullify federal regulatory authority.

As in the Paramount-Warner Brothers merger, the DOJ exhaustively reviewed the Nexstar-TEGNA merger for compliance with the antitrust laws—consistent with its congressionally delegated authority—and allowed it to go forward. Indeed, the government went a major step further with respect to Nexstar: the FCC affirmatively concluded the merger would serve the public interest. *Supra* pp.5-7. The FCC's review was far from toothless; it imposed conditions on the merger, including Nexstar's divestiture of several stations and memorialization of Nexstar's commitment to increase local news and programming. *Supra* p.6.

Yet a federal district court allowed a minority of states to veto that federally approved merger. The court blocked it nationwide based on a handful of states' parochial antitrust-policy preferences and apparent desire to protect local companies—as well as the self-interested business priorities of DIRECTV, Nexstar's competitor. That result undermines the federal regulatory structure and defies this Court's, Congress's, and the DOJ's unified view on the primacy of that federal structure in antitrust enforcement.

The Court has explained that "[a]ntitrust analysis must always be attuned to the particular structure and circumstances of the industry at issue," namely, "the significance of regulation." *Verizon Commc'ns Inc. v. Law Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 411 (2004). And where, as here, there exists "a regulatory structure designed to deter and remedy anticompetitive harm," "the additional benefit to competition provided by antitrust enforcement will tend to be small, and it will be less plausible that the antitrust laws contemplate such additional scrutiny." *Id.* at 412. Indeed, "[m]istaken inferences" in antitrust enforcement "are especially costly, because they chill the very conduct the antitrust laws are designed to protect" and because "[j]udicial oversight" under the antitrust laws "would seem destined to distort investment and lead to a new layer of interminable litigation." *Id.* at 414 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 594 (1986)).

Deference to a federal scheme is critical not just because of federal-agency expertise and controlling precedent, but also because of the uniform, nationwide perspective and interests that federal enforcement advances. While a private antitrust plaintiff (including a state) "may be expected to exercise" its rights "only when [its] personal interest will be served," the federal "[g]overnment seeks its injunctive remedies on behalf of the general public." *United States v. Borden Co.*, 347 U.S. 514, 518 (1954). Because only the federal government considers the national interest, it is the more appropriate party to oversee mergers with national effect. *See, e.g.*, *Lieberman v. FTC*, 771 F.2d 32, 40 (2d Cir. 1985) (explaining that federal merger review is part of "a comprehensive regulatory scheme that offers no place for state law enforcement," and expressing "doubt[]" that "Congress would have intended to have the staffs of fifty state attorneys general sitting as oversight committees reacting to [Federal Trade] Commission or Justice Department decisions whether to block large-scale mergers of national or international significance"); *Mattox v. FTC*, 752 F.2d 116, 122 (5th Cir. 1985) (because federal merger review "only covers transactions likely to affect the entire national economy, Congress may have wanted to centralize regulation of such mergers in the FTC and the Justice Department," and "[d]isclosure to state attorneys general would tend to balkanize that needed centrality").

In crafting the antitrust laws, Congress recognized the dangers inherent in allowing piecemeal state enforcement over federal antitrust matters. Over a century ago, it rejected a Clayton Act amendment that would have permitted the attorney general of any state to "bring suit in the name of the United States to enforce any of the antitrust laws." 51 Cong. Rec. 14476-77, 14518 (1914). Lawmakers recognized that because "the States have different policies," "disaster" would "result[] if the attorney general of each State [were] allowed to institute proceedings under this law, without any regard to what the Attorney General, carrying out the policy of the national legislation, may have to say on the subject." *Id.* at 14477. That situation would "prevent the carrying out of any uniform policy in the enforcement of the antitrust law." *Id.* at 14518. Thus, while states may challenge mergers under the Clayton Act, they may do so only as private parties. 15 U.S.C. §§ 25, 26; *California v. Am. Stores Co.*, 495 U.S. 271, 276 (1990).

The position of the United States mirrors both this authority and the congressional history. As DOJ has explained to both the public and courts, "Congress gave federal enforcers the primary role in merger review." Stanley Woodward, Assoc. Atty. Gen., *Antitrust Federalism* (Sep. 17, 2026).[5] "[W]hen a transaction affects the national economy" and "the benefits and harms of a particular transaction may not be equally distributed," "federalism principles require the national government to step in and weigh all the risks and benefits"—not states, which advance local and competing interests. *Ibid.*; *see* Statement of Interest of the United States at 1-3, *California v. Paramount Skydance Corp.*, No. 26-cv-07116 (N.D. Cal. Sep. 15, 2026), Dkt. 22; Statement of Interest of the United States, *New York v. Deutsche Telekom AG*, No. 19-cv-05434 (S.D.N.Y. Dec. 20, 2019), Dkt. 348.

Nexstar's case illustrates the very dangers that Congress, the courts, and the DOJ have recognized would result from nullifying federal expertise and interests in favor of a piecemeal state-enforcement regime. *First*, the *Nexstar* plaintiffs' antitrust theory relies on a badly outdated understanding of the media landscape that mistakenly assumes broadcast television remains a dominant player in the video-content market. *See* 8-ER-1564-610, 8-ER-1643-73. But the FCC—which is charged by Congress with monitoring the communications landscape—recognized that this view no longer reflects today's reality. To the contrary, broadcasters face competition from global digital and streaming services (not to mention other sources of local news), which can be met only by mergers like Nexstar and TEGNA's. 7-ER-1239-40. By ignoring this reasoned decision in favor of a flawed and obsolete antitrust analysis, the district court's injunction inflicts the very harms to competition and

[5] https://www.justice.gov/opa/speech/associate-attorney-general-stanley-e-woodward-jr-delivers-remarks-53rd-annual-conference.

public interest that the antitrust laws are designed to prevent.

Second, the injunction against Nexstar exemplifies local preferences overriding national interests. The plaintiff states contain just 11 of the 31 DMAs in which Nexstar's merger purportedly causes anticompetitive harm—and those 31 DMAs represent just a fraction of the areas in which Nexstar and TEGNA merged. Allowing plaintiffs with such localized interests to dictate nationwide antitrust law and business decisions is a recipe for "disaster." 51 Cong. Rec. 14477. This Court should confirm that individual states may not displace the federal government's role as the nation's primary federal-antitrust-law enforcer.

II. THE PRELIMINARY INJUNCTION AGAINST NEXSTAR DEMONSTRATES THE RECURRING PROBLEM OF STATES' USING ANTITRUST LAW TO DICTATE OTHER STATES' ECONOMIC POLICIES

Suits like these intrude on the authority not just of the federal government but also of the states. Under the theory underlying both suits, a single state may dictate the competitive landscape of all other states. Worse still, it may do so over other states' preferences. In this case, multiple states investigated the Paramount-Warner Brothers merger, declined to challenge it, but were then deprived of its benefits. Bill.of.Compl.9.

Similarly in Nexstar's case, the majority of states have expressed no objection to Nexstar and TEGNA's merger despite its months-long, highly publicized federal review. That makes sense. Again, even on the

Nexstar plaintiffs' logic, the purported risk of anticompetitive harm arises from Nexstar's acquisitions in just 31 DMAs across the nation. *Supra* pp.7-8. The states that do not contain those 31 DMAs have no coherent antitrust theory, even accepting the *Nexstar* plaintiffs' flawed claims. (The fact that three of the states newly added as plaintiffs—Vermont, Massachusetts, and Kansas—contain none of those 31 DMAs cements that the challenge to Nexstar's merger is motivated by policy preferences rather than any actually perceived antitrust injury.) And even for the 20 states that *do* contain the 31 overlap DMAs, half of them have not challenged the merger. 13-ER-3039-40. Yet those states are now deprived of the merger's numerous benefits—benefits that extend to areas unrelated to broadcast television and unchallenged by the Nexstar plaintiffs, such as increased advertising opportunities (*supra* pp.5-7)—for months, if not years, based on the actions of other states and private parties. That undermines every understanding of federalism and state sovereignty.

A temporary remedy that sweeps so far beyond the suing states' borders also violates the bedrock limitations on injunctive relief this Court has recently reaffirmed. Courts lack authority to issue injunctions "broader than necessary to provide complete relief to each plaintiff with standing to sue." *Trump v. CASA*, 606 U.S. 831, 861 (2025). As Nexstar explained in its pending appeal, that principle precludes the *Nexstar* plaintiffs' nationwide injunction. Those plaintiffs allege harms in only discrete subsets of their states arising from only limited aspects of the Nexstar-TEGNA merger, yet obtained a nationwide hold-separate over every aspect of the merger. That relief far exceeds their narrow alleged harms. *CASA* carved out no exception for antitrust law—and there is none.

III. THE PRELIMINARY INJUNCTION AGAINST NEXSTAR DEMONSTRATES THE RECURRING HARMS THESE SUITS INFLICT ON THE PUBLIC INTEREST AND NATIONAL ECONOMY

Finally, these suits raise issues of recurring importance because of the harms they inflict on the public interest and national economy—harms that may themselves reduce competition and media diversity.

As Iowa and Montana observe, mergers "do not freeze well." Expedition.Mot.2; Pls.Br.21-22 (explaining harm to companies). So too for Nexstar. The artificial separation of already combined companies imposes profound and irreversible harm. Nexstar has lost tens of millions of dollars it can never recover. It cannot implement strategies necessary to compete, honor its enforceable commitments to the FCC, or deploy the benefits the merger was designed to deliver. Those include benefits unrelated to the challenged aspects of the merger, like advertising. And it faces the irreversible loss of key employees and degradation of critical business relationships. *Supra* p.8.

The injunction also degrades the very TEGNA assets it purports to preserve. Before the injunction, TEGNA had announced \$90-\$100 million in cost reductions that would eliminate newsroom and support positions, consolidate station operations and management, and develop technologies like AI automation. 7-ER-1472. Only "in light of the pending Nexstar acquisition" were some plans "deferred or delayed"—an acquisition now blocked. 2-ER-92. Yet the injunction does not simply prevent TEGNA from undertaking those cost reductions; it forces TEGNA to maintain pre-existing levels of operations, sales, and staffing even while blocking TEGNA from accessing Nexstar's assets and resources. 1-ER-50. So even if TEGNA reached an independent judgment that it needed to make changes to one of those core business areas to survive while acting as a separate company, it cannot do so. In short, the "only hope" "to sustain operations" that the FCC recognized—increased "scale"—is unavailable to Nexstar and TEGNA so long as the injunction is in place. 7-ER-1257-58.

The public is also harmed. As the FCC found, the merger would allow Nexstar to offer more of its free local news and programming on stations that had either no or minimal local-news presence. 13-ER-2957; 7-ER-1270-71. Those include concrete gains like access to Nexstar's Washington, D.C. news bureau and 24 state-capital bureaus; deployment of state-of-the-art broadcast infrastructure with improved audio and video quality and advanced emergency alerts; and Nexstar's enforceable commitment to expand local news and programming. 7-ER-1270-73; 9-ER-1939. Those benefits are now on ice indefinitely.

These harms will occur in every suit of this type (and there may well be a proliferation of such suits if the results in these cases stand). And that is only considering the mergers that are actually attempted. The power of a subset of states or even a single state to block nationwide mergers approved by federal regulators will have a chilling effect on future mergers, no matter how beneficial. Even if companies are confident that a merger would be pro-competitive and likely to gain federal approval, they may choose not to proceed against the threat of a single activist state nullifying federal clearance. In the DOJ's words, when multiple "enforcers can each apply the same statutory language to the same transaction, a business weighing a multistate deal faces real uncertainty" about "how many separate institutional judgments it will need to satisfy before closing, and at what cost in delay and legal fees"—risking "abandoned transactions that would have otherwise benefited consumers." Woodward, *Antitrust Federalism*, *supra*. At a time when many companies must achieve economies of scale to compete with deep-pocketed global competitors, that result would *decrease* competition. These current and future harms demand this Court's swift intervention—intervention that would likely offer guidance in Nexstar's case as well as others in the future.

CONCLUSION

Plaintiffs' motion for leave to file a bill of complaint should be granted.

Respectfully submitted,

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SEPTEMBER 2026

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