No. 20-3082

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

ANIMAL LEGAL DEFENSE FUND, CENTER FOR FOOD SAFETY, SHY 38 INC., HOPE SANCTUARY
Plaintiffs-Appellees,

v.

LAURA KELLY, in her official Capacity as Governor of Kansas, and DEREK SCHMIDT, in his official Capacity as Attorney General of Kansas,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS
No. 18-cv-02657, The Hon. Kathryn H. Vratil presiding

Brief of *Amici Curiae*

The American Civil Liberties Union Foundation of Kansas and the American Civil Liberties Union Foundation of Utah

Lauren Bonds
Sharon Brett
ACLU Foundation of Kansas
6701 W 64th Street, Suite 210
Overland Park, KS 66202
Telephone: (913) 490-4100
Email:lbonds@aclukansas.org
sbrett@aclukansas.org

John M. Mejia
Leah Farrell
Jason M. Groth
ACLU Foundation of Utah
335 N. 300 West
Salt Lake City, UT 8403
Telephone: (801) 521-9862
Email: jmejia@acluutah.org
farrell@acluutah.org
jgroth@acluutah.org

Counsel of Record for Amici Curiae

TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 3

ARGUMENT 3

I. The Act is a Content-Based and Viewpoint-Based Restriction in Violation of the First Amendment 6

II. The Act Impermissibly Chills Employees from Communicating about Their Work Conditions and Exercising Their Right to Associate. 8

A. The Act Interferes in Workers' Speech and Expression Rights. 8

B. Kansas's Ag-Gag Statute Interferes with Workers' Rights to Petition the Government. 10

C. Kansas's Ag-Gag Statute Interferes with Workers' Right to Associate. 11

III. The Act Chills Reporter-Source Communications and Impermissibly Interferes with the Dissemination of Information that is Vital to Public Health and Safety. 13

CONCLUSION 17

TABLE OF AUTHORITIES

Cases

American Communications Ass'n v. Douds, 339 U.S. 382, 417 (1950)..................12

Animal Legal Def. Fund et. al v. Herbert, No. 13-cv-00679 (D. Utah, June 23, 2016) 15

Animal Legal Def. Fund et. al v. Reynolds, No. 19-1364 (8th Cir., June 27, 2019) 15

Animal Legal Def. Fund et. al v. Vaught, No. 20-1538 (8th Cir., June 3, 2020) 15

Animal Legal Def. Fund v. Herbert, 263 F. Supp. 3d 1193 (D. Utah 2017)...........14

Animal Legal Def. Fund v. Reynolds, 287 F. Supp. 3d 901 (S.D. Iowa 2018)........14

Animal Legal Def. Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018).......................14

California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972) 10

Carey v. Brown, 447 U.S. 455, 467 (1980) 8

Carlson v. California, 310 U.S. 106, 113 (1940) 9

First Nat'l Bank v. Bellotti, 435 U.S. 765, 783 (1978)..........13

Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964)..........17

Martin v. City of Del City, 179 F.3d 882, 887 (10th Cir. 1999)..........10

NAACP v. Alabama, 357 U.S. 449, 460 (1958)..........12

NLRB v. Town & Country Electric, 516 U.S. 85, 95-96 (1995)..........13

People for the Ethical Treatment of Animals, Inc. v. Stein, No. 16-CV-25, 2020 U.S. Dist. LEXIS 103541 (M.D.N.C. June 12, 2020)..........14

Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 586-87 (1980)..........17

Stanley v. Georgia, 394 U.S. 557, 564 (1969)..........13

Thornhill v. Alabama, 310 U.S. 88, 102 (1940) 8

United Mine Workers of America v. Pennington, 381 U.S. 657 (1965)....................9

Statutes

K.S.A. § 47-1827

STATEMENT OF INTEREST OF AMICI CURIAE

The ACLU of Kansas and ACLU of Utah are non-profit organizations dedicated to protecting the civil rights and civil liberties of all people living in Kansas and Utah. We have a long history of involvement, both as amicus curiae and as direct counsel, in defending freedom of speech, association, press, and other important constitutional rights. The ACLU of Kansas and the ACLU of Utah consistently stand up for the rights of workers, including workers from marginalized groups, and the rights of news organizations to report on issues of great public importance.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The American Civil Liberties Union (ACLU) Foundation of Kansas, and the American Civil Liberties Union Foundation of Utah are nonprofit entities operating under § 501(c)(3) of the Internal Revenue Code. *Amici* are not subsidiaries or affiliates of any publicly owned corporations and do not issue shares of stock. No publicly held corporation has a direct financial interest in the outcome of this litigation due to *amici*'s participation.

SUMMARY OF ARGUMENT

Kansas's "Ag-Gag" law, K.S.A. § 47-1827, is a content-based and viewpoint-based restriction on individuals' freedom of speech under the First Amendment. The Act criminalizes undercover investigations and whistleblowing at agricultural facilities by prohibiting individuals from gaining access to such facilities, or taking pictures or videos of such facilities, without effective consent and with the "intent to damage the enterprise," K.S.A. § 47-1827(c). In this way, the Act specifically targets those who are critical of agricultural facilities. By exposing people to potential criminal liability, the Act impermissibly sweeps up more than just undercover animal rights activists attempting to gain access to agricultural facilities to aid in their investigations. It also discourages workers from seeking redress for unsafe employment conditions, unionizing to fight the same, or serving as sources for news outlets to raise awareness of matters of public concern and put pressure on government officials to intervene. Because the Act has a chilling effect on these bedrock components of the First Amendment—and broadly applies to anyone critical of the facility's operations—the Act cannot stand.

ARGUMENT

Over ten thousand workers are employed in meatpacking plants in Kansas. *See* Kansas Dep't of Comm., Top Employers,

https://www.kansascommerce.gov/the-kansas-edge/learn-about-kansas/top-employers (last accessed Aug. 24, 2020). Meatpacking consistently reports the highest occupational injury and illness rates of any industry in the United States. Monthly Labor Review, U.S. Bureau of Labor Statistics, *How safe are the workers who process our food?*, July 2017), https://www.bls.gov/opub/mlr/2017/article/pdf/how-safe-are-the-workers-who-process-our-food.pdf (last accessed Aug. 24, 2020). According to the Occupational Health and Safety Administration (OSHA), there are "many serious safety and health hazards in the meatpacking industry." U.S. Dep't of Labor, OSHA, Meatpacking – Overview, https://www.osha.gov/SLTC/meatpacking/ (last accessed Aug. 24, 2020). Close proximity to hooks and knives, coupled with high-speed carcass processing lines, yield severe cut and stab injuries on a regular basis. *See* Human Rights Watch, *When We're Dead and Buried, Our Bones Will Keep Hurting: Workers' Rights Under Threat in US Meat and Poultry Plants* (Sept. 2019), https://www.hrw.org/report/2019/09/04/when-were-dead-and-buried-our-bones-will-keep-hurting/workers-rights-under-threat.

These hazardous conditions necessitate a robust system of safety precautions and employee protections. However, plants consistently fail to implement worker protections. *Id.*; U.S. Dep't of Labor, OSHA, Meatpacking – Overview,

https://www.osha.gov/SLTC/meatpacking/ (last accessed Aug. 24, 2020). This forces workers to undertake an active role in enforcing minimum safety standards.

Agricultural workers can enforce minimum safety standards in two important ways. First, workers can assert their rights to safe working conditions through organizing, unionization, and reporting to government agencies tasked with investigating occupational health and safety standards. Second, agricultural workers can blow the whistle on unsafe working conditions and broader public health concerns by reporting to the press, which in turn, can generate public outrage and important changes to policies and practices.

Both of these methods of raising concerns with employment conditions are protected First Amendment activities. They each require speaking up regarding conditions of employment, either to union representatives, government agencies, or to the press, and at times, may require taking photo or videographic evidence to support a complaint. Yet, Kansas' Ag-Gag law restricts and chills such speech by imposing liability on workers for attempting to protect their rights. The Act's restrictions on free speech may also constrain employees' right to associate with one another regarding workplace conditions or petition for redress. For these reasons, the Act is a content-based and viewpoint-based restriction that impermissibly interferes with protected First Amendment activities. The district court's findings were therefore correct and should be upheld.

I. The Act is a Content-Based and Viewpoint-Based Restriction in Violation of the First Amendment.

First Amendment jurisprudence plainly establishes that content-based restrictions on speech, which "target speech based on its communicative content," are presumptively invalid. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015). This is because content-based restrictions threaten to "manipulate the public debate through coercion rather than persuasion," *Turner Broad. Sys. Inc. v. FCC*, 512 U.S. 622, 641 (1994), and "drive certain ideas or viewpoints from the marketplace." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 387 (1982). Content-based speech regulations "require[] enforcement authorities to examine the content of the message to determine whether plaintiffs have violated the law." Mem. and Order. at 34, citing *McCullen v. Coakley*, 573 U.S. 464, 479 (2014).

The district court correctly ruled that K.S.A. § 47-1827 (b), (c), and (d) are content-based restrictions on free speech that do not meet strict scrutiny, in violation of the First Amendment. In so ruling, the district court found that the provisions in question "restrict the communication an investigator may have with an animal facility owner," which "is a regulation of speech in its most basic form. Mem. and Order at 32. Determining whether a person violated K.S.A. § 47-1827 (b), (c), and (d) would necessarily require examining whether the speech made to gain entry to the animal facility, remain there, or take photographs there, was

deceptive. If it was deceptive speech, it would violate the Act. The Act therefore proscribes a particular type of speech—deceptive speech—and is content-based.

The district court also correctly found that the statute is viewpoint discriminatory. Viewpoint discrimination is a particularly egregious subset of content-based discrimination. *Pahls v. Thomas*, 718 F.3d 1210, 1229 (10th Cir. 2013) (citing *Rosenberger v. Rectors & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)). The law here plainly targets only those who might have negative viewpoints about the animal facility, in that the law prohibits speech only if it was intended to "damage the enterprise conducted at the animal facility." K.S.A. § 47-1827. A facility employee could, for example, lie to the facility owner about needing to access the facility after hours for a work-related purpose, when the employee truly intends to bring her young children by to see the animals. Workers could remain on the property after hours to hold a surprise party for a co-worker, or play practical jokes on one another, or even just to socialize, even if they were not given permission to do so. None of this would violate the Act, because it would not be done with intent to "damage the enterprise conducted at the animal facility." Accordingly, the Act constitutes a viewpoint-based restriction on speech in violation of the First Amendment.

II. The Act Impermissibly Chills Employees from Communicating about Their Work Conditions and Exercising Their Right to Associate.

Kansas's Ag-Gag statute stymies First Amendment protected activities essential to vindicating workplace rights. Worker-led safety initiatives often rely on complaints to government agencies as well as engagement with external worker advocacy organizations. Kansas's Ag-Gag statute would reasonably chill, if not prohibit, both efforts.

First, the Act's restrictions on making photographic and video recordings interfere with a worker's ability to communicate about illegal working conditions. Second, the Act restricts the ability of agricultural workers to petition government by undermining their ability to document unsafe conditions in support of their complaints to investigative agencies. Finally, the Act's content and viewpoint-based distinctions on who will face penalties for entry has a restrictive effect on workers' association rights.

A. The Act Interferes in Workers' Speech and Expression Rights.

Labor conditions are a matter of public concern that fall within the ambit of First Amendment protection. *Thornhill v. Alabama*, 310 U.S. 88, 102 (1940) ("the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution"); *Carey v. Brown*, 447 U.S. 455, 467 (1980) (noting labor issues are equally deserving of First Amendment protection as other economic, political, and

social issues). Workers generally have the right to communicate about their workplace conditions as well as their opposition to employer mistreatment without government interference. *See Carlson v. California*, 310 U.S. 106, 113 (1940) ("publicizing the facts of a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person secured to them by the Fourteenth Amendment against abridgement by a State"); *see also United Mine Workers of America v. Pennington*, 381 U.S. 657 (1965).

Kansas's Ag-Gag statute runs afoul to these First Amendment protections by prohibiting agricultural workers from documenting unsafe working conditions. In particular, K.S.A. 47-1827(c)(4) would prohibit workers from photographing or recording safety hazards to raise public awareness, support a union grievance, or share with worker rights groups. A worker would be in violation of the subsection (c) if they remained at work after their shift to videotape malfunctioning machinery or photograph a thermometer displaying an unsafe temperature. Conversely, a worker who remained at a worksite after their shift to take selfies would not face liability under the statute. Kansas's Ag-Gag statute therefore imposes a content-based restriction on expression that chills workers from engaging in their right to document and discuss labor conditions.

B. Kansas's Ag-Gag Statute Interferes with Workers' Rights to Petition the Government.

The First Amendment right to petition includes the right to seek redress from government agencies. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972); *Martin v. City of Del City*, 179 F.3d 882, 887 (10th Cir. 1999). Filing a complaint with OSHA or another worker protection agency constitutes protected petitioning activity. The Act's subsection (d) restrictions compromise workers' ability to meaningfully petition worker protection agencies for assistance by forcing them to file complaints lacking documentation.

Documentary evidence is often critical to convincing government regulators about the severity and credibility of agricultural worker complaints. For instance, OSHA requires worker complaints be of sufficient detail to determine that a dangerous condition exists, and prioritizes complaints that demonstrate reasonable grounds to believe that there is a violation of an OSHA standard. *See* U.S. Dep't of Labor, OSHA, Federal OSHA Complaint Handling Process, https://www.osha.gov/as/opa/worker/handling.html (last accessed Aug. 24, 2020). Video documentation is often essential to reporting unsafe working condition. In addition to lending credibility to a complaint, a video may be able to communicate facts that would be lost in a verbal or written account. A verbal description of a malfunctioning machine might fail to convey threatening aspects associated with its operation, where a video could provide much clearer proof. Moreover, the

majority of dangerous, frontline meatpacking jobs are held by immigrant workers. *See* Shawn Fremstad, Hye Jin Rho, and Hayley Brown, Cntr. for Economic and Pol'y Research, *Meatpacking Workers are a Diverse Group Who Need Better Protections* (Apr. 29, 2020), https://cepr.net/meatpacking-workers-are-a-diverse-group-who-need-better-protections/; Chico Harlan, *For Somalis, hope falls to the cutting floor: Refugees entrapped by popular meat industry*, WASH. POST (May 24, 2016), https://www.washingtonpost.com/sf/national/2016/05/24/for-many-somali-refugees-this-industry-offers-hope-then-takes-it-away. Video documentation can alleviate potential issues that may arise as a result of a language barrier between workers and government investigators: documentary evidence can provide a government investigator with details that a non-native English speaker may be unable to verbally describe.

Kansas's Ag-Gag law undermines the ability of agricultural workers to obtain and document evidence of violations of workers' rights before filing a formal petition or otherwise seeking resolution of grievances. For already-vulnerable workers, this chilling effect has serious consequences, implicating both the livelihood and physical safety of agricultural workers and their families.

C. Kansas's Ag-Gag Statute Interferes with Workers' Right to Associate.

The First Amendment guarantees the right to associate for the purpose of economic betterment and to air grievances. *See NAACP v. Alabama*, 357 U.S. 449,

460 (1958); *see also American Communications Ass'n v. Douds*, 339 U.S. 382, 417 (1950) (J. Frankfurter, concurring). Accordingly, government regulation that has "the effect of curtailing the freedom to associate is subject to the closest scrutiny." *NAACP* at 462. The right to associate encompasses the right to join a union.

In addition to stifling discussion and reporting of workplace conditions, Kansas's Ag-Gag statute has a profound restrictive effect on a workers' right to associate with worker advocacy organizations. A broad range of lawful protected union activities are prohibited by K.S.A. § 47-1827. First, subsection (d) would subject union organizers to penalties solely because they are entering an agricultural site to recruit workers. An organizer who waits in the parking lot of a company plant to solicit strike petitions could be subject to liability under the statute, whereas a Girl Scout troop that sets up a table to sell cookies without permission would not be. Additionally, the Act's prohibition on deception would make the common union tactic of "salting" illegal. Salting is the practice of paying union organizers to seek employment at non-union facilities for the purpose of organizing the operation, sometimes doing so secretly. The Supreme Court has held that salting is protected lawful activity, "even if a company perceives those protected activities as disloyal. After all, the employer has no legal right to require

that, as part of his or her service to the company, a worker refrain from engaging in protected activity." *NLRB v. Town & Country Electric*, 516 U.S. 85, 95-96 (1995).

By limiting these core organizing activities, Kansas's Ag-Gag statute's speech restrictions have the consequence of also impairing Kansas agricultural workers' First Amendment association rights.

III. The Act Chills Reporter-Source Communications and Impermissibly Interferes with the Dissemination of Information that is Vital to Public Health and Safety.

As a content and viewpoint-based restriction on free speech, the Act impermissibly chills workers' ability to provide vital information to the press, and subsequently inform the public about issues that impact the broader health and safety of the public.

It is "well established that the Constitution protects the right to receive information and ideas." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). First Amendment law exists in part to prohibit the government from "limiting the stock of information from which members of the public may draw." *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 783 (1978). Journalists and their sources have a joint First Amendment interest in accessing and disseminating information about the health and safety of food production at agricultural facilities. As such, numerous courts across the country have struck down laws similar to K.S.A. § 47-1827 which attempt to limit such conduct through impermissible restrictions on free speech.

See, e.g. Animal Legal Def. Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018); *People for the Ethical Treatment of Animals, Inc. v. Stein*, No. 16-CV-25, 2020 U.S. Dist. LEXIS 103541 (M.D.N.C. June 12, 2020); *Animal Legal Def. Fund v. Reynolds*, 287 F. Supp. 3d 901 (S.D. Iowa 2018); *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017).

Journalists rely on employee whistleblowers and undercover investigators to provide newsworthy information, which is then used to keep the public informed. When potential news sources are threatened with liability for disclosing information about facility operations, including providing firsthand accounts or documentary proof such as photos or videos, the press is unable to do this important job. The chilling effect that the Act will have on the speech of employees will undoubtedly result in suppressed reporting capabilities. Undercover reporting and employee whistleblowing serves an important role in ensuring that the public can access non-public information that is vital to public health and safety. *See* Paul A. LeBel, *The Constitutional Interest in Getting the News: Toward a First Amendment Protection from Tort Liability for Surreptitious Newsgathering,* 4 WILLIAM & MARY BILL OF RS. J. 1145, 1153 (1996); *see also* Lewis Bollard, *Ag-gag: The Unconstitutionality of Laws Restricting Undercover Investigations on Farms*, 42 ENVTL. L. REP. NEWS & ANALYSIS 10960, 10975 (2012) (describing litigation that highlights the importance of undercover investigations). Indeed, in

cases challenging similar statutes in other states, various press organizations have filed as *amici*, invoking the importance of free speech for employees and investigators who may serve as sources. *See, e.g.* Brief of Amici Curiae the Reports Committee for Freedom of the Press and 23 Media Organizations in Support of Plaintiffs-Appellants, *Animal Legal Def. Fund et. al v. Vaught*, No. 20-1538 (8th Cir., June 3, 2020); Brief for Amici Curiae 23 Media Organizations and Associations Representing Journalists, Writers, and Researchers in Support of Plaintiffs-Appellees, *Animal Legal Def. Fund et. al v. Reynolds*, No. 19-1364 (8th Cir., June 27, 2019); *see also* Brief of Amicus Curiae Center for Constitutional Rights, *Animal Legal Def. Fund et. al v. Herbert*, No. 13-cv-00679 (D. Utah, June 23, 2016) (discussing importance of undercover investigations to public news reporting on issues of public importance in the agricultural industry).

Kansas news outlets have a robust record of providing important information to the public about working conditions in state agricultural facilities, especially in recent months. For example, when the COVID-19 epidemic struck meatpacking facilities in Western Kansas, facility owners and local public health officials did not initially disclose the number of affected workers. Union workers and the local press raised concerns in public forums, putting pressure on facility owners and state officials to act. *See generally* Corinne Boyer, *Update: Coronavirus Clusters Grow Rapidly in Three Western Kansas Meatpacking Counties*, KMUW.ORG (Apr.

23, 2020), https://www.kmuw.org/post/coronavirus-clusters-grow-rapidly-three-western-kansas-meatpacking-counties; Corrine Boyer, *Despite Meatpacking Plants' Efforts, Kansas Workers Say 'We're Right Next to Each Other,"* HIGH PLAINS PUBLIC RADIO (May 3, 2020) https://www.hppr.org/post/despite-meatpacking-plants-efforts-kansas-workers-say-were-right-next-each-other. Likewise, journalists at the Kansas City Star and the Wichita Eagle exposed the dangerousness of conditions at Kansas meatpacking facilities during the pandemic, and how facility owners were putting pressure on Kansas state officials to make changes to coronavirus-related policies to lighten the burden on the facility's business operations. *See* Jonathan Shorman and Kevin Hardy, *Kansas altered meatpacking guidance to let possibly exposed workers stay on the job*, WICHITA EAGLE (May 20, 2020), https://www.kansas.com/news/politics-government/article242852011.html.

The role that Kansas news outlets played in exposing the current public health crisis in agricultural facilities highlights the importance of the relationship between agricultural employees and the press—a relationship that this Act deliberately restricts. Kansas's Ag-Gag statute subjects people to liability for exposing real, dangerous issues in their workplace, which will undoubtedly affect their willingness to come forward and report such issues to the press—even when doing so would be a valuable public service. Notably, "First Amendment

guarantees are [customarily] interposed to protect communication between speaker and listener. . . . But the First Amendment embodies more than a commitment to free expression and communicative interchange for their own sakes; it has a structural role to play in securing and fostering our republican system of self-government." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 586-87 (1980) (Brennan, J., concurring in the judgment); *see also Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964) ("[S]peech concerning public affairs is more than self-expression; it is the essence of self-government."). Because the Act interferes with the structural role that such speech can play, the district court was correct in finding the Act to be unconstitutional.

CONCLUSION

For the foregoing reasons, the Court should affirm the District Court's judgment.

Dated: August 31, 2020

Respectfully submitted,

/s/ Lauren Bonds
Lauren Bonds, KS Sup. Ct. No. 27807
Sharon Brett
ACLU Foundation of Kansas
6701 W 64th Street, Suite 210
Overland Park, KS 66202
Telephone: (913) 490-4100
Email: lbonds@aclukansas.org

sbrett@aclukansas.org

John M. Mejia
Leah Farrell
Jason M. Groth
ACLU Foundation of Utah
335 N. 300 West
Salt Lake City, UT 8403
Telephone: (801) 521-9862
Email: jmejia@acluutah.org
farrell@acluutah.org
jgroth@acluutah.org

CERTIFICATE OF SERVICE

I, Lauren Bonds, do hereby certify that a true and correct copy of the above and foregoing Brief was electronically filed with the Court's electronic filing system on this 31st day of August, 2020, and on this same day a copy of this document was emailed to Attorney General Derek Schmidt (ksagappealsoffice@ag.ks.gov) and Governor Laura Kelly ( ).

/s/ Lauren Bonds____
Lauren Bonds

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-face requirements of Federal Rule of Appellate Procedure 32(a)(5). The brief contains 3,933 words.

CERTIFICATE OF DIGITAL SUBMISSION

In the electronic version of the foregoing BRIEF OF AMICUS CURIAE, I hereby certify that: 1) all required privacy redactions have been made; 2) the ECF submission is an exact copy of the hard copy that will be filed; and 3) the digital submission has been scanned for viruses with the most recent version of Symantec Endpoint Protection Small Business Edition using components Symantec.cloud-Cloud Agent 3.00.31.2817 and Symantec.cloud-Endpoint Protection NIS-22.15.2.26, last updated on August 30, 2020, and according to the program, is virus-free.