

NO. 25-2039

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Emily Shilling; et al,

Plaintiffs-Appellees,

v.

Donald J. Trump, in his official capacity
as President of the United States; et al,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No. 2:25-cv-00241-BHS
The Honorable Benjamin H. Settle
United States District Court Judge

**BRIEF FOR THE STATES OF VERMONT AND WASHINGTON AS
AMICI CURIAE IN SUPPORT OF APPELLEES**

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I. INTRODUCTION

The President's Executive Order banning transgender people from serving in the military not only violates the Constitution—as the district court correctly concluded—but it will also weaken our nation's military, including the National Guards operated by all Amici States. The Executive Order harms the Amici States' interests in emergency and disaster preparedness by depriving our National Guard units of experienced and qualified soldiers at a time when recruiting is especially challenging. Without providing any evidence-based rationale for doing so, it again pulls the rug out from under service members who have served with honor and distinction. And it entangles the Amici States in a discriminatory policy fundamentally at odds with their own experiences in enacting and enforcing laws protecting transgender individuals from discrimination. Their experience shows that allowing transgender individuals to participate fully in society, including the military, benefits Amici States and the nation. The Executive Order and the policies and directives implementing it are unconstitutional and harm national security. This Court should affirm the district court's grant of a preliminary injunction.

II. IDENTITY AND INTERESTS OF AMICI

The States of Washington, Vermont, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Rhode Island, and Wisconsin (“Amici States” or “States”) respectfully submit this *amicus curiae* brief in support of Plaintiffs-Appellees as of right pursuant to Federal Rule of Appellate Procedure 29(a)(2). The Amici States have an interest in the strength and preparedness of our national defense, including through the National Guard, over which the States have partial control and on which the States rely in times of peace and emergency. The Amici States also have interests in protecting other state institutions implicated by the Executive Order and in enforcing their own civil rights protections for transgender individuals. These interests are best served by allowing transgender individuals to serve in the military and National Guard without discrimination.

III. ARGUMENT

A. The National Guard Serves a Vital Role in Ensuring the Security and Disaster Preparedness of the States.

As the modern-day successor to the Founding-era concept of the militia, the National Guard is explicitly governed by the United States Constitution. *Ass’n of Civilian Technicians, Inc. v. United States*, 603 F.3d 989, 992 (D.C. Cir.

2010). Article I, Section 8 gives Congress the power “[t]o provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions.” U.S. Const. art. I, § 8, cl. 15. It also gives Congress the power “[t]o provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.” U.S. Const. art. I, § 8, cl. 16. These two clauses, known as the Militia Clauses, “reflect a delicate compromise that gives the States power over their respective militias—subject to the President’s power to call those militias into national service when necessary.” *Abbott v. Biden*, 70 F.4th 817, 821 (5th Cir. 2023).

The statutory scheme governing the National Guard reflects this compromise. As the Fifth Circuit has explained, “the National Guard includes two ‘overlapping but distinct organizations’—the National Guards of the various States and the National Guard of the United States.” *Id.* at 822 (quoting *Perpich v. Dep’t of Def.*, 496 U.S. 334, 345 (1990)). “All who enlist in a State’s National Guard must simultaneously enlist in the National Guard of the United States, which is a reserve component[] of the armed forces.” *Id.* (internal quotations and

citations omitted); 10 U.S.C. § 10101. However, “[m]embers of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law.” 10 U.S.C. § 12401. The States retain control over the National Guard when it is not called into federal service. 32 U.S.C. §§ 328, 502(f). In sum, the National Guard is ““a “hybrid” entity that carefully combines both federal and state characteristics.”” *Ass’n of Civilian Technicians*, 603 F.3d at 992 (quoting *Lipscomb v. Fed. Labor Relations Auth.*, 333 F.3d 611, 614 (5th Cir. 2003)).

Although the National Guard is primarily funded through federal appropriations, *see* 32 U.S.C. §§106-107, it also receives funding from the States. For example, California’s enacted budget for fiscal year 2024 allocated more than \$293 million for its National Guard; of this amount, more than \$148 million—approximately 51% of the budget—came from California’s General Fund.¹ Vermont’s fiscal year 2025 budget allocated almost \$7 million to its military department, most of which flows to various National Guard functions.² In Washington, the adopted budget for 2023-2025 allocated over \$151 million

¹ California State Budget Office, 2023-24 STATE BUDGET – GG1, 8940 Military Dep’t, <https://ebudget.ca.gov/2023-24/pdf/Enacted/GovernorsBudget/8000/8940.pdf>.

² State of Vermont, FY2025 Governor’s Recommended Budget: Rollup Report, <https://perma.cc/LNY6-E2EJ>.

in state appropriations to the Military Department, including more than \$59 million for the disaster response account³; in federal fiscal year 2024, Washington spent about \$6.3 million on National Guard facilities, construction, and projects, and the state also appropriates almost \$1 million per year combined to the Guard for wildland fire training, administrative costs, and death benefits for families of Guard members who died in service. In Massachusetts, the enacted budget for the fiscal year 2025 included state spending for (among other things) the office of the adjutant general, certain National Guard aviation facilities, and National Guard missions and division operations.⁴

The National Guard has thousands of members assigned for duty in each state. Data from March 2025 on members assigned for duty show, for example, that Washington had 5,410 members of the Army National Guard and 2,003 members of the Air National Guard assigned for duty in the State.⁵ California had 12,311 members of the Army National Guard and 4,712 members of the Air

³ Engr. Sub. S.B. 5187, 68th Leg., Reg. Sess., Chapter 475 Wash. Sess. Laws 2023, 132-33.

⁴ Military Division, Budget Summary FY2025 Enacted, Commonwealth of Massachusetts, <https://budget.digital.mass.gov/summary/fy25/enacted/public-safety/military-division/?tab=budget-summary>.

⁵ Defense Manpower Data Center, *Number of Military and DoD Appropriated Fund (APF) Civilian Personnel* (Mar. 31, 2025), <https://dwp.dmdc.osd.mil/dwp/app/dod-data-reports/workforce-reports>.

National Guard assigned for duty in the State.⁶ Illinois had 9,480 members of the Army National Guard and 2,693 members of the Air National Guard assigned for duty in the State.⁷ And Vermont had 1,690 members of the Army National Guard and 1,012 members of the Air National Guard assigned for duty in the State.⁸

The National Guard is unique for its dual state-federal service and because it provides for part-time service. As the Army National Guard explains, joining the Guard requires attending one weekend of drill per month and a two-week training course each year.⁹ The National Guard allows service members to keep their civilian jobs while serving.¹⁰ This type of service allows more individuals to participate. For example, women make up a larger percentage of the National Guard and reserves than active-duty forces.¹¹ The Amici States benefit from a National Guard comprised of individuals from different professional

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Army National Guard, *Guard FAQs*, <https://nationalguard.com/guard-faqs>.

¹⁰ Military One Source, *National Guard Employment Support*, <https://www.militaryonesource.mil/resources/millife-guides/national-guard-employment>.

¹¹ U.S. Dep't of Defense, *Department of Defense Releases Annual Demographics Report – Upward Trend in Number of Women Serving Continues* (Dec. 14, 2022), <https://www.defense.gov/News/Releases/Release/article/3246268/departement-of-defense-releases-annual-demographics-report-upward-trend-in-numbe/>.

backgrounds who are engaged in different civilian careers and bring different skills to their service.

In addition to serving as a reserve force of the U.S. Military, the National Guard saves lives by responding to natural disasters. The National Guard responded to major wildfires in Washington in 2024 and California in 2025.¹² Members of the Vermont Army National Guard collaborated with search and rescue teams to evacuate nineteen people from Hurricane Beryl in one night in 2024.¹³ In 2023, the Hawai'i National Guard responded to devastating wildfires in Lahaina by maintaining order, fighting the fires, and searching for victims.¹⁴ In 2019, 200 members of the Illinois National Guard responded to major river

¹² Joseph Siemandel, *Year in Review: 2024 was a busy year for Washington Military Department*, Defense Visual Information Distribution Service (DVIDS) (Jan. 7, 2025), <https://www.dvidshub.net/news/488741/year-review-2024-busy-year-washington-military-department>; Kimberly Hill, *California National Guard supports wildfire response following devastating fires in SoCal*, DVIDS (Jan. 20, 2025), <https://www.dvidshub.net/news/489368/california-national-guard-supports-wildfire-response-following-devastating-fires-socal>.

¹³ J. Scott Detweiler, *Vermont National Guards Supports Cyclone Beryl Response*, DVIDS (July 11, 2024), <https://www.dvidshub.net/news/475930/vermont-national-guards-supports-cyclone-beryl-response>.

¹⁴ Erich B. Smith, *Hawaii Army National Guard Supports Maui Wildfire Response*, National Guard (Aug. 28, 2023), <https://www.nationalguard.mil/News/Article-View/Article/3507502/hawaii-army-national-guard-supports-maui-wildfire-response/>.

floods by placing sandbags and monitoring levees.¹⁵ In January of this year, Maryland activated its National Guard to respond to a winter storm.¹⁶

States also send members of their National Guard to assist other states facing major natural disasters. All fifty states, plus the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, and the Northern Mariana Islands, have enacted legislation to become members of the Emergency Management Assistance Compact (“EMAC”).¹⁷ EMAC is a formal compact that facilitates states’ sharing of personnel and resources when a governor in one state declares an emergency.¹⁸ National Guard members are deployed to respond to disasters in other states through EMAC.¹⁹ For example, in 2024, many states sent personnel and resources to Florida to help respond to Hurricane Milton. New York sent sixty-five members of its National Guard.²⁰ Colorado sent a helicopter

¹⁵ Bradford Leighton, *Ill. National Guard helps civilian agencies fight flooding*, National Guard (June 3, 2019), <https://www.nationalguard.mil/News/Article-View/Article/1863818/ill-national-guard-helps-civilian-agencies-fight-flooding/>.

¹⁶ Maryland National Guard, *Maryland National Guard activated to support winter storm response across the state* (Jan. 8, 2025), <https://news.maryland.gov/ng/2025/01/08/maryland-national-guard-activated-to-support-winter-storm-response-across-the-state/>.

¹⁷ EMAC, *What is EMAC?*, <https://www.emacweb.org/index.php/learn-about-emac/what-is-emac>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ State of New York, *New York National Guard Will Move Personnel From Syracuse and Long Island to Camp Blanding Joint Training Center Florida on Wednesday, October 9* (Oct.

and crew.²¹ Delaware sent 100 members of its National Guard.²² Connecticut deployed members of its National Guard in the wake of Hurricane Helene in 2024.²³ In 2022 alone, over 100,000 members of the National Guard were deployed to fight wildfires in nineteen states.²⁴ And in 2012, in the aftermath of Hurricane Sandy, 12,000 National Guard members—including 2,000 deployed by New Jersey—assisted eleven states, working with search and rescue teams, staffing evacuation shelters, clearing routes, and delivering essential equipment and supplies.²⁵ As the Amici States—and the nation as a whole—face

9, 2024), <https://www.governor.ny.gov/news/governor-hochul-announces-65-new-york-national-guard-soldiers-and-airmen-are-deploying-assist>.

²¹ Colorado National Guard, *Colorado National Guard supports Hurricane Milton relief efforts* (Oct. 9, 2024), <https://co.ng.mil/News/Archives/Article/3930948/colorado-national-guard-supports-hurricane-milton-relief-efforts/>.

²² State of Delaware, *Governor Carney to Activate Delaware National Guard to Assist with Florida's Hurricane Response* (Oct. 8, 2024), <https://news.delaware.gov/2024/10/08/governor-carney-to-activate-delaware-national-guard-to-assist-with-floridas-hurricane-response/>.

²³ State of Connecticut, *Governor Lamont Announces Connecticut National Guard Sending Additional Soldiers and Aircraft to North Carolina for Further Hurricane Helene Disaster Assistance* (Oct. 3, 2024), https://portal.ct.gov/governor/news/press-releases/2024/10-2024/governor-lamont-announces-connecticut-national-guard-sending-additional-soldiers-to-north-carolina?language=en_US.

²⁴ Anshu Siripurapu & Noah Berman, *What does the U.S. National Guard Do?*, Council on Foreign Relations (last updated Apr. 3, 2024), <https://www.cfr.org/backgrounder/what-does-us-national-guard-do#:~:text=The%20National%20Guard%20can%20also,normally%20funded%20by%20the%20state>.

²⁵ Jim Greenhill, *12,000 National Guard Members Helping 11 States Recover from Hurricane Sandy* (Oct. 30, 2012), <https://www.nationalguard.mil/News/Article/574966/12000-national-guard-members-helping-11-states-recover-from-hurricane-sandy/>; National

increasingly catastrophic wildfires, hurricanes, and other natural disasters, a robust National Guard staffed with every qualified service member is essential to protect people and property.

In addition to natural disasters, states sometimes activate members of the National Guard to provide security support at major events. For example, in 2024, members of Nevada's National Guard assisted local law enforcement in providing security at the Formula 1 Las Vegas Grand Prix, which drew several hundred thousand attendees to the city.²⁶ Members of the National Guard from the District of Columbia and about forty other states provided security for President Trump's 2025 Inauguration, in a tradition dating back to the first inauguration of President George Washington.²⁷

The National Guard also uses the technical expertise of its members to provide cybersecurity support during elections. As of 2022, the National Guard

Centers for Environmental Information, *Storm Events Database*, <https://www.ncdc.noaa.gov/stormevents/eventdetails.jsp?id=416939>.

²⁶ Emerson Marcus, *Nevada Guard set to support Clark County first responders during Formula 1 Las Vegas Grand Prix*, Nevada National Guard (Nov. 20, 2024), <https://nv.ng.mil/News/Article-Display/Article/3973518/nevada-guard-set-to-support-clark-county-first-responders-during-formula-1-las/>.

²⁷ District of Columbia National Guard, *National Guard support to the District of Columbia and the 60th Presidential Inauguration* (Jan. 13, 2025), <https://dc.ng.mil/Public-Affairs/News-Release/Article/4028262/national-guard-support-to-the-district-of-columbia-and-the-60th-presidential-in/>.

cyber force included over 2,200 members from thirty-eight units.²⁸ These members provided cybersecurity support during the 2022 primary elections in eight states.²⁹ In 2024, fifteen states activated the National Guard to provide cybersecurity for the November general election.³⁰ Many states rely on the National Guard for their cybersecurity needs because many state and local governments experience gaps in their cybersecurity workforce.³¹

B. Banning Transgender Individuals from Military Service Will Harm National Guard Recruitment Efforts and Jeopardize States' Security and Readiness.

While the pressing need for its services continues to grow, the National Guard has struggled with recruitment in recent years. More than a decade ago, in 2014, the Army expressed concerns about future recruitment based on physical fitness issues and young Americans showing less interest in military

²⁸ Whitney Hughes, *National Guard Provides Critical Election Cybersecurity*, National Guard (Nov. 7, 2022), <https://www.nationalguard.mil/News/Article/3211891/national-guard-provides-critical-election-cybersecurity/>.

²⁹ *Id.*

³⁰ Jeff Schogol, *Many of the National Guardsmen activated for election focus on cybersecurity*, Task & Purpose (Nov. 5, 2024), <https://taskandpurpose.com/news/national-guard-election-cybersecurity/>.

³¹ Skylar Rispens, *National Guard ready to assist states with cyber response, say officials*, State Scoop (Mar. 20, 2024), <https://statescoop.com/national-guard-ready-assist-with-state-cyber-response/>.

careers.³² In fiscal year 2023, the National Guard had “another rough year for recruiting[.]”³³ Many states have fallen short of their recruiting targets in the past several years. For example, Washington has failed to reach targets for the last five years.³⁴ Oregon failed to reach targets in 2021 and 2022.³⁵ Minnesota lowered its recruiting goal in 2023 after failing to meet its target for three years.³⁶ Some states have instituted programs for referral bonuses.³⁷ Washington law authorizes a bonus of up to \$500 when a current member of the National Guard

³² C. Todd Lopez, *Recruiting force remains unchanged, despite shrinking goals*, U.S. Army (Jan. 22, 2014), https://www.army.mil/article/118369/recruiting_force_remains_unchanged_despite_shrinking_goals.

³³ National Guard Association of the United States, *Recruiting Continues to Be Challenging* (Oct. 17, 2023), <https://www.ngaus.org/newsroom/recruiting-continues-be-challenging>.

³⁴ Joseph Siemandel, *Adjutant General testifies for the Keeping our Washington National Guard Strong Act legislation*, DVIDS (Jan. 10, 2024), <https://www.dvidshub.net/news/461590/adjutant-general-testifies-keeping-our-washington-national-guard-strong-act-legislation>.

³⁵ Annual Performance Progress Report at 3, Oregon Military Dep’t (Oct. 3, 2022), <https://www.oregon.gov/omd/Documents/2022%20Proposed%20APPR.pdf>.

³⁶ Jonah Kaplan, *Minnesota National Guard meets its annual recruitment goal after three-year slump*, WCCO News (May 24, 2023), <https://www.cbsnews.com/minnesota/news/minnesota-national-guard-meeting-its-recruitment-goals-after-three-year-slump/>.

³⁷ Desiree D’Iorio, *Know someone who wants to join the National Guard? In some states, you now can get a finder’s fee*, the American Homefront Project (Jan. 19, 2023), <https://americanhomefront.wunc.org/news/2023-01-19/know-someone-who-wants-to-join-the-national-guard-in-some-states-you-now-can-get-a-finders-fee>.

refers someone who joins the Guard.³⁸ Vermont offers \$1,000 for a successful enlistment.³⁹ Other states have similar referral programs.⁴⁰

The National Guard's recruitment struggles are not unique. The Army has fallen short of its targets in recent years by thousands of recruits,⁴¹ leading it to lower its recruiting targets.⁴² As a recent paper by a lieutenant colonel and a national security analyst explains, the Army's insufficient recruiting poses a national security risk.⁴³ The American Enterprise Institute recently released a report by a retired major general noting that the number of eighteen-year-olds in the U.S. population is expected to drop, and arguing that current pay for new soldiers is too low to attract enough recruits.⁴⁴ A 2020 study found that 77% of

³⁸ Wash. Rev. Code Ann. § 38.24.070.

³⁹ Vermont National Guard, *Joint Enlistment Enhancement Program (JEEP)*, <https://vt.public.ng.mil/Join-The-VT-Guard/Joint-Enlistment-Enhancement-Program/>.

⁴⁰ Indiana National Guard, *Referral Enlistment Program*, <https://www.in.gov/indiana-national-guard/about/referral-enlistment-program/>; Oregon Army National Guard, *Enlistment Enhancement Program*, <https://www.oregonarmyguard.com/referral>.

⁴¹ Lt. Col. Frank Dolberry & Charles McEnany, "*Be All You Can Be*": *The U.S. Army's Recruiting Transformation*, Association of the United States Army (Jan. 2024), <https://www.ausa.org/publications/be-all-you-can-be-us-armys-recruiting-transformation>.

⁴² Svetlana Shkolnikova, *Army on pace to meet lowered recruitment goal for 2024, but long-term challenges remain* (Apr. 18, 2024), <https://www.stripes.com/branches/army/2024-04-18/army-soldiers-recruiting-enlistment-senate-wormuth-13590935.html>.

⁴³ Dolberry & McEnany, *supra* note 41.

⁴⁴ John G. Ferrari, *McDonald's or the Army? A California Case Study*, American Enterprise Institute (Mar. 19, 2024), <https://www.aei.org/research-products/report/mcdonalds-or-the-army-a-california-case-study/>.

youth cannot qualify for military service.⁴⁵ In this difficult recruiting environment, the military cannot afford to turn away otherwise-qualified recruits simply because they are transgender.

The President’s Executive Order makes matters worse by excluding transgender individuals from military service and requiring the Amici States to be discriminatory employers, contrary to their own laws. This forced discrimination will further hamper already-challenging recruitment efforts for the National Guard. Johns Hopkins University found that members of Generation Z—those born in the late 1990s through the early 2010s—“embrace[] the right to freely express one’s gender identity.”⁴⁶ An overwhelming 88% of respondents to Johns Hopkins’ poll “felt companies must inquire about preferred gender pronouns.”⁴⁷ Thus, in addition to violating the Constitution, the President’s discriminatory Executive Order will harm recruiting efforts with young Americans in the peak age demographic for recruitment. Former high-

⁴⁵ Council for a Strong America, *77 Percent of American Youth Can’t Qualify for Military Service* (Jan. 24, 2023), <https://www.strongnation.org/articles/2006-77-percent-of-american-youth-can-t-qualify-for-military-service>.

⁴⁶ Johns Hopkins University, *Gen Z In The Workplace: How Should Companies Adapt?* (Apr. 18, 2023), <https://imagine.jhu.edu/blog/2023/04/18/gen-z-in-the-workplace-how-should-companies-adapt/>.

⁴⁷ *Id.*

ranking military officials share this concern about the effect of the ban. *See* 2-SER-507 (“An organization that is perceived by America’s youth as discriminatory will be at a competitive disadvantage in this race for talent.”); 3-SER-611 (“This sudden reversal of policy will damage the reputation of the military and diminish its attractiveness among the young people we most need to persuade to join our ranks.”).

Nor is the Executive Order necessary to address any new phenomenon, given that transgender individuals have served in the military for years. A 2014 study found that approximately 150,000 veterans, active-duty service members, and members of the National Guard or Reserves identified as transgender.⁴⁸ As of 2020, one study estimated that at least 8,000 transgender people were serving on active duty in the U.S. Military.⁴⁹ Notably, transgender individuals are about twice as likely as other adults to have served their country in the Armed Forces.⁵⁰ The President’s Executive Order would require the National Guard to discharge

⁴⁸ Gary J. Gates & Jody L. Herman, *Transgender Military Service in the United States*, The Williams Inst. (May 2014), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Military-Service-US-May-2014.pdf> (estimating 134,300 transgender veterans and 15,500 members in active service).

⁴⁹ Natasha A Schvey et al., *A Descriptive Study of Transgender Active Duty Service Members in the U.S. Military*, 5 *Transgender Health* 149, 149 (2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7906232/pdf/trgh.2019.0044.pdf>.

⁵⁰ Gates & Herman, *Transgender Military Service*, *supra* note 48.

transgender members and turn away potential recruits solely because they identify as transgender. The lost potential for new personnel, not to mention the loss of personnel in whom training and money have been invested, will impede the National Guard's ability to respond to natural disasters and perform its other functions at a time when a robust National Guard is more necessary than ever.

C. The Executive Order Broadly Undermines the Amici States' Institutions and Efforts to Protect Members of Their Communities.

In addition to harming military recruitment and national security, the Executive Order constitutes a blatantly discriminatory policy targeting transgender residents of the Amici States. As Amici States' experience shows, discrimination of this sort threatens to harm all state residents, whether part of the transgender community or not.

1. Transgender people are a vital part of the Amici States' communities but face ongoing discrimination.

Nationwide, about 2.3 million adults—or about 0.95% of the nation's population—identify as transgender.⁵¹ They live in the Amici States (as well as every other State and U.S. territory)⁵² and contribute to our communities in

⁵¹ USA Facts, *What percentage of the US population is transgender?*, <https://usafacts.org/articles/what-percentage-of-the-us-population-is-transgender/> (last visited May 28, 2025).

⁵² Sandy E. James et al., *Early Insights: A Report of the 2022 U.S. Transgender Survey*, Nat'l Ctr. For Transgender Equality, 15 (Feb. 2024), https://transequality.org/sites/default/files/2024-02/2022%20USTS%20Early%20Insights%20Report_FINAL.pdf.

countless ways—as parents, educators, students, firefighters, police officers, musicians, writers, nurses, doctors, and more. Nothing about being transgender inhibits a person’s ability to contribute to society or to serve in the military.⁵³ On the contrary, the experience of the Amici States shows that transgender people are just as capable as their cisgender counterparts and make a meaningful, positive impact not only in the military, but in our schools, workplaces, and communities.

Still, the transgender community has suffered “a history of persecution and discrimination” that persists to the present day. *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015); *Flack v. Wis. Dep’t of Health Servs.*, 328 F. Supp. 3d 931, 953 (W.D. Wis. 2018) (“In short, other than certain races, one would be hard-pressed to identify a class of people more discriminated against historically or otherwise more deserving of the application of heightened scrutiny when singled out for adverse treatment, than transgender people.”). As this Court has held, gender identity is at least a quasi-suspect class, and classifications based on gender identity are subject to heightened scrutiny—

⁵³ American Medical Association, *Military Medical Policies Affecting Transgender Individuals H-40.966* (2015), <https://policysearch.ama-assn.org/policyfinder/detail/40.966?uri=%2FAMADoc%2FHOD.xml-0-3487.xml>. (“[T]here is no medically valid reason to exclude transgender individuals from service in the US military.”).

including in the context of military decisions. *Karnoski v. Trump*, 926 F.3d 1180, 1200-01 (9th Cir. 2019); *Hecox v. Little*, 104 F.4th 1061, 1079-80 (9th Cir. 2024), *as amended* (June 14, 2024). The district court correctly applied heightened scrutiny after concluding that “[t]he Hegseth Policy uses gender dysphoria as a proxy to ban all transgender service members.” 1-ER-30-32.

And the protections of heightened scrutiny are necessary here, because transgender people continue to experience discrimination that impairs their physical and mental health, curtails their economic prospects, and ultimately limits their ability to realize their potential and participate fully in society. According to the 2022 United States Transgender Survey (“2022 USTS”),⁵⁴ transgender individuals continue to face verbal harassment and physical violence at home, in school, and in their communities; grapple with mistreatment in the workplace and a higher rate of unemployment than the general United States population; confront homelessness and difficulty obtaining and maintaining housing; and endure myriad other forms of discrimination in education, employment, housing, and access to health care due to their gender identity.⁵⁵

⁵⁴ The 2022 USTS “is the largest survey ever conducted to examine the experiences of binary and nonbinary transgender people in the United States.” James et al., *supra* note 52, at 4.

⁵⁵ *See generally id.*

To combat those problems, states began providing civil rights protections for transgender people over a quarter century ago. Currently, 24 states—including many of the Amici States—and the District of Columbia have enacted civil rights protections for transgender people in education, employment, health care, housing, and/or public accommodations.⁵⁶ And at least 395 municipalities

⁵⁶ **California:** Cal. Civ. Code § 51(b), (e)(5), (6) (public accommodations); Cal. Educ. Code §§ 220 (education), 221.5(f) (education and school athletic participation); Cal. Gov’t Code §§ 12926(o), (r)(2), 12940(a), 12949 (employment); 12955 (housing); Cal. Penal Code §§ 422.55, 422.56(c) (hate crimes). **Colorado:** Colo. Rev. Stat. §§ 24-34-301(9)-(10) (definition); 24-34-402 (employment); 24-34-502 (housing); 24-34-601 (public accommodations). **Connecticut:** Conn. Gen. Stat. §§ 10-15c (schools); 46a-51(21) (definition); 46a-60 (employment); 46a-64 (public accommodations); 46a-64c (housing). **Delaware:** Del. Code Ann. tit. 6, §§ 4501 (public accommodations); 4502(11) (definition); 4603(b) (housing); tit. 19, § 711 (employment). **Hawai‘i:** Haw. Rev. Stat. § 489-2 (definition); 489-3 (public accommodations); 515-2 (definition); 515-3 (housing). **Illinois:** 775 Ill. Comp. Stat. 5/1-102(A) (housing, employment, access to financial credit, public accommodations); 5/1-103(O-1) (definition). **Iowa:** Iowa Code §§ 216.2(10) (definition); 216.6 (employment); 216.7 (public accommodations); 216.8 (housing); 216.9 (education). **Kansas:** Kansas Hum. Rts. Comm’n, *Kansas Human Rights Commission Concurs with the U.S. Supreme Court’s Bostock Decision* (Aug. 21, 2020). **Maine:** Me. Rev. Stat. Ann. tit. 5, § 4553(5-C) (definition); 4571 (employment); 4581 (housing); 4591 (public accommodations); 4601 (education). **Maryland:** Md. Code Ann., State Gov’t §§ 20-101(e) (definition); 20-304 (public accommodations); 20-606 (employment); 20-705 (housing); Md. Code Ann., Educ. § 26-704 (schools). **Massachusetts:** Mass. Gen. Laws ch. 4, § 7 (definition); ch. 76, § 5 (education); ch. 151B, § 4 (employment, housing, credit) (as amended by Ch. 205, 2024 Mass. Acts); ch. 272, §§ 92A, 98 (public accommodations) (as amended by Ch. 134, 2016 Mass. Acts). **Michigan:** Mich. Comp. Laws § 37.2102(1) (employment, housing, public accommodations, education); 37.2103(f) (definition). **Minnesota:** Minn. Stat. § 363A.03(44), (50) (definitions); 363A.08 (employment); 363A.09 (housing); 363A.11 (public accommodations); 363A.13 (education). **Nevada:** Nev. Rev. Stat. §§ 118.075, 118.100 (definition, housing); 613.310(4), 613.330 (definition, employment); 651.050(2), 651.070 (public accommodations). **New Hampshire:** N.H. Rev. Stat. Ann. § 354-A:2(XIV-e) (definition); 354-A:6 (employment); 354-A:8 (housing); 354-A:16 (public accommodations); 354-A:27 (education). **New Jersey:** N.J. Stat. Ann. § 10:5-5(rr) (definition); 10:5-12 (public accommodations, housing, employment); 18A:36-41 (school activities). **New Mexico:** N.M. Stat. Ann. § 28-1-2(T) (definition); 28-1-7(A) (employment);

offer express protections against discrimination based on gender identity.⁵⁷ As the experiences of the Amici States and these other jurisdictions show, transgender-inclusive policies help to ease the stigma on transgender people, and mitigate the negative impact on their educational, work, and health outcomes. Those policies also foster a more just and productive society for all our residents.

2. The Executive Order will needlessly harm the Amici States by limiting National Guard readiness and creating unequal opportunities at public institutions.

The Amici States' experience belies the President's stated rationale for reinstating a ban on transgender service members in the military. For years,

28-1-7(F) (public accommodations); 28-1-7(G) (housing). **New York:** N.Y. Exec. Law §§ 291, 292, 296 (definition, education, employment, public accommodations, housing). **Oregon:** Or. Rev. Stat. § 174.100(4) (definition); 659.850 (education); 659A.006 (employment, housing, public accommodations). **Pennsylvania:** 43 Pa. Stat. § 953; 16 Pa. Code § 41.206 (definition, employment, housing, public accommodations). **Rhode Island:** 11 R.I. Gen. Laws § 11-24-2 (public accommodations); 28 R.I. Gen. Laws §§ 28-5-6(12) (definition), 28-5-7 (employment); 34 R.I. Gen. Laws §§ 34-37-3(9), 34-37-4 (housing). **Utah:** Utah Code Ann. § 34A-5-106 (employment); 34A-5-102(o) (definition); 57-21-5 (housing). **Vermont:** Vt. Stat. Ann. tit. 1, § 144 (definition); tit. 9, §§ 4502 (public accommodations), 4503 (housing); tit. 21, § 495 (employment). **Washington:** Wash. Rev. Code Ann. §§ 28A.642.010 (education); 49.60.030(1)(a)-(e) (employment, public accommodations, real estate transactions, credit transactions, and insurance transactions); 49.60.040(29) (definition); 49.60.180 (employment); 49.60.215 (public accommodations); 49.60.222 (housing). **District of Columbia:** D.C. Code § 2-1401.02(12A-i) (definition); 2-1402.11 (employment); 2-1402.21 (housing); 2-1402.31 (public accommodations); 2-1402.41 (education).

⁵⁷ Movement Advancement Project, *Local Nondiscrimination Ordinances* (current as of May 28, 2025), https://www.lgbtmap.org/equality-maps/non_discrimination_ordinances.

transgender individuals have served in Amici States' National Guard components and have done so with honor and distinction. After the first, longstanding ban was lifted in 2016, and again when the Trump Administration's first attempt to ban transgender service members from the military was reversed in 2021, some of these Guard members came out to their superiors and peers with no negative impact on the Guard's functions.⁵⁸ The National Guard trained its members on compliance with the nondiscrimination policy, expressing no particular concerns about compliance.⁵⁹ Likewise, transgender cadets in ROTC programs supported by many of Amici States' colleges and universities also disclosed their gender identities. The Amici States are unaware of any adverse consequences to their Guard units or ROTC programs because of those disclosures.

⁵⁸ E.g., Minnesota National Guard, *Here to Serve* (June 25, 2020), retrieved from <https://web.archive.org/web/20250214221108/https://ngmnpublish.azurewebsites.us/here-to-serve/> (website capture by Wayback Machine dated Feb. 14, 2025, retrieved May 14, 2025); Megan Kon, *Transgender guardsman born for military service*, U.S. Dep't of Veterans Affairs (Mar. 27, 2023), retrieved from <https://web.archive.org/web/20250221185745/https://www.va.gov/augusta-health-care/stories/transgender-guardsman-born-for-military-service/> (website capture by Wayback Machine dated Feb. 21, 2025, retrieved May 14, 2025).

⁵⁹ Erich B. Smith & Jon Soucy, *Guard members ready for new DoD transgender policy*, National Guard (June 15, 2017), https://www.army.mil/article/189440/guard_members_ready_for_new_dod_transgender_policy.

The Trump Administration’s latest about-face threatens to require the Amici States to undo our efforts to provide an inclusive environment for current transgender service members and foist upon us the discriminatory policies of the past. It will entangle the Amici States—once again—in a federal scheme that requires us to differentiate National Guard recruits and service members based on a characteristic that has been demonstrated to have nothing to do with their ability to serve. Such discrimination is in direct conflict with the policies of the Amici States, including our prohibitions on discrimination based on gender identity in public or private employment and our laws extending civil rights protections to transgender residents in other aspects of civic life.⁶⁰

Beyond harming state military components, the Trump Administration’s ban on transgender service members will also harm the Amici States’ public colleges and universities that support ROTC programs. ROTC programs are designed to train commissioned officers for the Armed Forces; they are located on and supported by college campuses but are subject to federal entry requirements.⁶¹ Many public colleges and universities in the Amici States host

⁶⁰ *See supra* note 56.

⁶¹ *See* 10 U.S.C. § 2103. *See also* 10 U.S.C. § 2031(a)(2) (providing for the establishment and organization of Junior ROTC programs in middle and high schools).

ROTC programs and provide them with physical space, and, in some instances, financial support in the form of a budget or scholarship funds. Reinstating the ban on transgender service members will render these ROTC programs—together with the scholarship and career opportunities they provide—actually or effectively unavailable to transgender students, who will be ineligible to serve in the Armed Forces upon graduation. The ban will thus harm the Amici States’ public colleges and universities by limiting their ability to extend the same opportunities to all students, in direct contravention of many schools’ own transgender-inclusive policies and the Amici States’ broader anti-discrimination laws.⁶²

Finally, the ban also imposes a distinct set of harms on one subset of state-run educational institutions: the public specialized maritime academies in Massachusetts, California, and New York that serve as pathways for students interested in pursuing maritime professions or becoming commissioned officers

⁶² See *supra* note 56, see also, e.g., University of Vermont, *Equal Opportunity in Educational Programs and Activities* (last visited May 28, 2025), <https://catalogue.uvm.edu/undergraduate/aboutuniv/equalopportunity/>; University of Washington, *EO31-Nondiscrimination and Affirmative Action* (last visited May 28, 2025), <https://policy.uw.edu/directory/po/executive-orders/eo-31-nondiscrimination-and-affirmative-action/>. Congress has barred institutions of higher education that receive federal funding from preventing the Armed Forces from establishing or operating ROTC programs on campus. 10 U.S.C. § 983.

in the Coast Guard or other branches of the Armed Forces.⁶³ These academies welcome transgender students.⁶⁴ In addition to the state-of-the-art training and curriculum they offer all students, maritime academies extend special benefits to those who intend to join the military, including funding conditioned on subsequent military service⁶⁵ and programs that enable students to obtain military commissions after graduation. For example, the maritime academies all offer a “Strategic Sealift Midshipman [or Officer] Program,” which allows students earning Coast Guard Licenses to be commissioned as officers in the Navy Reserve upon graduation and provides stipends to help pay for school.⁶⁶

⁶³ Massachusetts operates the Massachusetts Maritime Academy; California, the California State University Maritime Academy; and New York, the State University of New York Maritime College. New York is also home to the federally administered U.S. Merchant Marine Academy.

⁶⁴ Massachusetts Maritime Academy, *Equal Opportunity and Diversity*, <https://www.maritime.edu/human-resources/equal-opportunity>; State University of New York, *Supporting our LGBTQIA+ community*, <https://www.suny.edu/diversity/lgbtq/>; California State University Maritime Academy, *Non-Discrimination Statement*, <https://www.csum.edu/admissions/non-discrimination-statement.html>.

⁶⁵ The Student Incentive Payment (SIP) Program is offered for students of all the academies. Following graduation, SIP students must either enter the U.S. Armed Forces on active duty or must be in a reserve unit for at least six years, along with other requirements. See 46 C.F.R. § 310.7; U.S. Dep’t of Transp., Maritime Administration, *The Student Incentive Payment (SIP) Program* (last visited May 28, 2025), <https://www.maritime.dot.gov/education/maritime-academies/student-incentive-payment-sip-program>.

⁶⁶ See, e.g., Naval Service Training Command, *Strategic Sealift Midshipman Program* (last visited May 28, 2025), <https://www.netc.navy.mil/Commands/Naval-Service-Training-Command/NROTC/Prospective-Midshipmen/NROTC-Program-Options/SSMP/>.

As with the ROTC programs (and against these academies' own anti-discrimination policies), reinstating a ban on transgender service members will effectively require these public institutions to offer different opportunities to their students based solely on their transgender status. That is, while cisgender students will be eligible for the full range of services, scholarships, and programs at the academies, transgender students will be unable to take advantage of benefits that depend on a future military career. Considering the more limited opportunities that will be available to transgender students after graduation, the overall education these academies provide will be of significantly lesser value.

The Amici States' experience with the National Guard, ROTC programs, and maritime academies is consistent with the broader lessons we have learned from implementing transgender-inclusive laws and policies: welcoming transgender individuals to live and participate fully in society consistent with their gender identity not only improves their lives but also makes our communities stronger. Reversing the military's policy on transgender service members will harm Amici States by undermining our institutions and requiring us to discriminate against our own residents based on their gender identity.

3. The Executive Order will harm the Amici States’ veterans, active service members, and those who wish to serve.

The Trump Administration’s irrational decision to reinstate the ban on transgender service members will also directly harm the residents of the Amici States: our veterans, active service members, and those who wish to serve. As the district court noted, the President has repeatedly expressed animus towards transgender individuals. 1-ER-8, 13-15. Indeed, the Executive Order itself repeats a number of incendiary and disparaging claims about transgender people, including that being transgender is somehow inconsistent with “an honorable, truthful, and disciplined lifestyle” or the “humility and selflessness required of a service member.” Executive Order 14,183, 90 Fed. Reg. 8757 (Feb. 3, 2025). But the experiences of the named Plaintiffs who have longstanding, distinguished service—even during their transitions—plainly belie those claims, as do the positions of the major medical organizations that have weighed in on the issue.⁶⁷ Another Plaintiff will be deprived of the opportunity to serve absent court intervention.

⁶⁷ See American Psychological Association, *Statement Regarding Transgender Individuals Serving in Military* (2018), <https://www.apa.org/news/press/releases/2018/03/transgender-military> (“No scientific evidence has shown that allowing transgender people to serve in the armed forces has an adverse impact on readiness or unit cohesion.”); American Medical Association, *Statement on Pentagon’s Ban on Transgender in Military* (Apr. 11, 2019), <https://www.ama-assn.org/press-center/press-releases/ama-statement-pentagons-ban-transgender-military>.

The Amici States have an interest in upholding their residents’ right to live free from discrimination and its associated harms. *See, e.g., Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 609 (1982) (“[A] State has a substantial interest in assuring its residents that it will act to protect them from these evils [of discrimination].”). The harm to the dignity of transgender veterans and soldiers is obvious. The ban degrades the service of 150,000 transgender veterans, active-duty service members, and members of the National Guard and Reserves, as well as those who wish to serve. Reinstating the ban serves no purpose but to deny a group disfavored by the Trump Administration equal opportunity and equal treatment under the law and erode our military readiness. The Executive Order relegates transgender individuals to second-class status, sending the unmistakable message that their Commander-in-Chief believes they are unfit to serve or that their service is not valued.

The ban also harms the many transgender residents of the Amici States who relied on the assurance of the federal government over the years that they were welcome to serve without discrimination. Many service members in the National Guard and other branches of the military identified themselves as transgender to their command based on that assurance, believing that they would not thereby be deprived of their opportunity to serve (or their livelihoods). The

Executive Order breaks that promise to the grave detriment of those who relied on it. Transgender service members may now be targeted for discharge, other adverse actions, or harassment and discrimination. Likewise, transgender residents of the Amici States who took steps to prepare for careers in the military, by joining ROTC or enrolling in the maritime academies, for example, did so in reliance on the promise that they would be able to serve. They too face losing the opportunity to serve, and along with it the investment they have made in their careers thus far and other opportunities forgone.

Finally, transgender service members who have not yet revealed their transgender status, together with those who wish to pursue careers in the military, will soon face the unfathomable choice of being honest about who they are and being discharged or denied accession outright, or hiding their identities and serving in fear of being discovered.⁶⁸ Denying otherwise qualified transgender individuals the opportunity to serve denies them equal participation in a core civic activity. And forcing transgender people to hide their identities in order to enlist or continue serving is extremely harmful to their health and wellbeing⁶⁹—

⁶⁸ Cf. *Log Cabin Republicans v. United States*, 716 F. Supp. 2d 884, 897-909 (C.D. Cal. 2010) (recounting harrowing testimony of service members describing the experience of serving under a “cloud of fear” during the military’s Don’t Ask Don’t Tell policy).

⁶⁹ Joycelyn Elders & Alan M. Steinman, *Report of the Transgender Military Service Commission*, The Palm Ctr., 4 (March 2014), <https://palmcenterlegacy.org/wp->

a reality evidenced by the experiences of the thousands of gay, lesbian, and transgender service members who have served under previous discriminatory policies.⁷⁰ Concealing core aspects of one's identity has a negative impact on mental health.⁷¹ The need to hide their gender identity makes transgender service members less likely to seek necessary mental health and medical care, as the limited confidentiality of communications with medical providers in the military makes it more difficult for them to be candid in seeking help.⁷²

Further, prohibiting transgender individuals from serving consistent with their gender identity estranges them from their fellow service members and

[content/uploads/2014/03/Transgender-Military-Service-Report 1.pdf](https://palmcenterlegacy.org/wp-content/uploads/DoDs-Transgender-Ban-Has-Harmed-Military-Readiness-copy-3.pdf) (“We determined not only that there is no compelling medical reason for the ban, but also that the ban itself is an expensive, damaging and unfair barrier to health care access for the approximately 15,450 transgender personnel who serve currently in the active, Guard and reserve components.”); Vice Admiral Donald C. Arthur & Major General Gale Pollock et al., *DoD's Transgender Ban Has Harmed Military Readiness*, The Palm Ctr., 24-26 (Nov. 2020) <https://palmcenterlegacy.org/wp-content/uploads/DoDs-Transgender-Ban-Has-Harmed-Military-Readiness-copy-3.pdf>.

⁷⁰ Declaration of Former Chairman of Joint Chiefs of Staff, Admiral Michael Mullen, *Stockman v. Trump*, Case No. 5:17-cv-01799-JGB-KK (C.D. Cal.) [ECF No. 21].

⁷¹ See, e.g., J. E. Pachankis et al., *Sexual orientation concealment and mental health: A conceptual and meta-analytic review*, *Psychological Bulletin*, 146(10), 831–871 (2020) (a meta-analysis of 193 studies finding that sexual orientation concealment was associated with increased rates of mental health problems such as depression, anxiety, and psychological distress).

⁷² See Matthew F. Kerrigan, *Transgender Discrimination in the Military: The New Don't Ask Don't Tell*, 18 *Psychol. Pub. Pol'y & L.* 500, 513-14 (2012); Elders & Steinman, *supra* note 69, at 4.

encourages latent discriminatory attitudes, undermining the group's ability to trust and bond. One study on the impact of concealment versus disclosure of sexual orientation in the military found that concealment relates negatively to unit and social task cohesions and conversely, that disclosure positively impacts cohesion.⁷³ "Concealment leads to . . . stress and isolation, which can lead to decreased performance ability."⁷⁴ The negative repercussions of concealment are especially pertinent in the military, where "interpersonal connection, support, and trust among unit members are thought to be paramount to unit cohesion and effectiveness."⁷⁵ Thus, depriving transgender service members of the trust and bonding with fellow service members that is so fundamental to the military experience not only harms them individually, it also undermines military readiness and effectiveness generally. By changing military policy based on animus and without regard for the realities of military service, the Executive Order will have the opposite effect of its stated goal.

⁷³ Bonnie Moradi, *Sexual Orientation Disclosure, Concealment, Harassment, and Military Cohesion: Perceptions of LGBT Military Veterans*, 21 Mil. Psychol. 513 (2009).

⁷⁴ Allison Ross, Note, *The Invisible Army: Why the Military Needs to Rescind Its Ban on Transgender Service Members*, 23 S. Cal. Interdisc. L. J. 185, 209 (2014).

⁷⁵ *Id.*

D. The Executive Order Undermines the Military’s Role as an Inclusive Institution That Reflects Our Nation’s Population.

The consequences of the Executive Order are not limited to the Armed Forces. They will be felt across society at large. The military is among our country’s most integrated and diverse institutions, as it has eliminated several discriminatory restrictions on service over the last seventy years. By 1954, the military was fully racially integrated, and to this day the percentage of African Americans in the military is higher than the percentage of African Americans in the general population.⁷⁶ Women have been allowed to serve in combat since 2015, and the rate of military service by women has been rising.⁷⁷ Since 2011, individuals who are not heterosexual have been allowed to serve without concealing their sexual orientation, and a Pentagon report issued ten years later found that concerns about repealing the “Don’t Ask, Don’t Tell” policy were

⁷⁶ Paul-Thomas Ferguson, *African American Service and Racial Integration in the U.S. Military*, U.S. Army (Feb. 23, 2021), retrieved from <https://web.archive.org/web/20250301050059/https://www.army.mil/article/243604/african-american-service-and-racial-integration-in-the-u-s-military> (website capture dated Mar. 1, 2025, retrieved May 14, 2025).

⁷⁷ Emma Moore, *Women in Combat: Five-Year Status Update*, Center for a New American Security (Mar. 31, 2020), <https://www.cnas.org/publications/commentary/women-in-combat-five-year-status-update>.

“vastly overblown.”⁷⁸ Reinstating a ban on transgender service members is equally unfounded. Beginning in 2016, and again in 2021, the military took similar steps forward for transgender individuals by allowing them to serve consistent with their gender identity. The Executive Order singles out transgender individuals for renewed exclusion, sending a message that threatens to slow progress and that will be heard and felt throughout our communities. Indeed, it seems that is precisely the point.

The military has already concluded—twice—that allowing transgender individuals to serve consistent with their gender identity is in the nation’s best interest. Reinstating the ban simply cannot be justified by reference to costs, unit cohesion, or overall readiness.⁷⁹ Rather, the Administration seeks to ban otherwise qualified people from service simply because of who they are. In doing so, the Administration would harm both the Amici States and our residents in profound ways. The National Guard’s experience allowing transgender individuals to serve consistent with their gender identity aligns with the military’s role as a highly trained, professional fighting force that prioritizes its

⁷⁸ Meghann Myers, *Fears of openly gay troops were vastly overblown: Pentagon report*, The Military Times (Sept. 28, 2022), <https://www.militarytimes.com/news/your-military/2022/09/28/fears-of-openly-gay-troops-were-vastly-overblown-pentagon-report/>.

⁷⁹ 2-SER-461-63, 481-83, 488-90, 494-96, 507-09; 3-SER-608-09.

national security mission over political debates. The Executive Order is a step backwards for transgender people, for civil rights, for the military, and for the country.

IV. CONCLUSION

This Court should affirm the district court's grant of Plaintiffs-Appellees' Motion for Preliminary Injunction.

DATED this 30th day of May 2025.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 29(a)(5), because it contains 6,989 words, less than half of the length allowed by Circuit Rule 32-1(a) for principal briefs. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared in Times New Roman 14-point font, a proportionally spaced typeface.

DATED this 30th day of May 2025.

s/ Cassandra Baker

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CERTIFICATE OF SERVICE

On May 30, 2025, I filed an electronic copy of this brief with the Clerk of the Ninth Circuit using the Court's electronic-filing system. That system sends a Notice of Docket Activity to all registered attorneys in this case.

DATED this 30th day of May 2025.

s/ Cassandra Baker

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