No. 14-12696-CC

In the United States Court of Appeals for the Eleventh Circuit

ETERNAL WORD TELEVISION NETWORK, INC.,
Plaintiff-Appellant,

STATE OF ALABAMA,
Plaintiff,

v.

SECRETARY OF THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, SECRETARY OF THE U.S. DEPARTMENT OF LABOR, U.S. DEPARTMENT OF LABOR, SECRETARY OF THE U.S. DEPARTMENT OF THE TREASURY, U.S. DEPARTMENT OF THE TREASURY,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Alabama

MOTION FOR LEAVE TO FILE AMICI BRIEF

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CERTIFICATE OF INTERESTED PERSONS and CORPORATE DISCLOSURE STATEMENT

Amicus curiae **Dominican Sisters of Mary, Mother of the Eucharist** has no parent corporation and issues no stock.

Amicus curiae **Sisters of Life** has no parent corporation and issues no stock.

Amicus curiae **Judicial Education Project** has no parent corporation and issues no stock.

Pursuant to Federal Rule of Appellate Procedure 26.1 and 11th Cir. Rules 26.1-1 and 26.1-2, counsel certifies that to his knowledge, the only interested parties omitted from prior-submitted certificates of interested persons are the following:

Dominican Sisters of Mary, Mother of the Eucharist (amicus curiae)

Judicial Education Project (amicus curiae)

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Eternal Word Television Network v. U.S. Department of Health, et al., 14-12696-CC

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MOTION FOR LEAVE TO FILE AMICUS BRIEF

Pursuant to Federal Rule of Appellate Procedure 29(b) and Eleventh Circuit Rule 29-1, amici the Dominican Sisters of Mary, Mother of the Eucharist, Sisters of Life, and the Judicial Education Project move the Court for leave to file the attached amicus brief in support of the petition for rehearing en banc. All parties have consented to the filing of this brief.[1]

Amici have an interest in protecting the broad range of religious exercise in this country from arbitrary and unreasonable judgments by the government, particularly where such judgments entangle the federal government in controversial questions of moral philosophy and religious liberty. Both religious amici (and the non-religious amicus) recognize that religious organizations – even organizations that are not churches – are entitled under the Constitution and federal statute to act in accordance with their religious beliefs except where government restrictions have met the most demanding standards. Although the religious amici have their own particular vocations, structures, and purpose, neither is a conventional church. Amici believe that their own rights of religious liberty are

[1] Amici are seeking leave to file this brief in two related cases, *Eternal Word Television Network, Inc. v. Sec'y, U.S Dept. of Health & Human Serv.*, No. 14-12696 and the consolidated cases of *Roman Catholic Archidiocese of Atlanta et al. v. Sec'y, U.S Dept. of Health & Human Serv.*, Nos. 14-12890 & 14-13239. This Court decided these cases together in *Eternal Word Television Network, Inc. v. Burwell*, Nos. 14-12890, 14-12696, & 14-13239, 2016 U.S. App. LEXIS 2778 (11th Cir. Feb. 18, 2016).

inextricably linked to the courts' proper recognition of the religious liberties of the plaintiffs in these cases, along with the other religious objectors to the contraceptive mandate. The movants thus have an interest in helping this Court perform its essential role in protecting religious liberty from arbitrary exercises of government power. Fed. R. App. Proc. 29(b)(1).

The panel erroneously approved the government's attempt to distinguish between religious institutions by dividing them into more and less protected categories based a classification set forth in I.R.C. § 6033. Although the government used that classification to create one legal regime for groups that would be fully exempt from the contraceptive mandate and those that would only be "accommodated," it was and is irrelevant. Section 6033 only prescribes *tax filing requirements* for certain non-profit entities. As the proposed brief explains, the classification created by section 6033 is designed to serve a purely administrative purpose and has no relation to religious exercise or the relative religiosity of religious organizations, much less to the profound moral questions about contraception, life, and death at the heart of this lawsuit. The panel failed to recognize that section 6033 was irrelevant and indeed, imputed far too much significance to the distinction it creates. The attached brief provides the Court with legal history and argument on this point in addition to what the parties have offered, and so is both desirable and relevant to the Court's consideration of the

petition for rehearing en banc. *See* Fed. R. App. Proc. 29(b)(2).

For these reasons, the Court should grant leave to file the attached amicus brief.

Respectfully submitted,

/s/Jonathan Keim

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2016, I electronically filed the foregoing *amici curiae* brief with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Alabama

BRIEF FOR AMICI CURIAE DOMINICAN SISTERS OF MARY, MOTHER OF THE EUCHARIST, SISTERS OF LIFE, AND THE JUDICIAL EDUCATION PROJECT IN SUPPORT OF PLAINTIFF-APPELLANT'S PETITION FOR REHEARING EN BANC

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

Amici have an interest in ensuring that religious organizations believe that the religious liberty of every American is at stake in the cases challenging the government's contraceptive mandate, and therefore seek to help the Court perform its essential role policing government intrusions into controversial questions of moral philosophy and religious belief.

Dominican Sisters of Mary, Mother of the Eucharist is a Roman Catholic community of women religious based in Ann Arbor, Michigan. The Dominican Sisters profess the vows of poverty, chastity and obedience, along with a contemplative emphasis on Eucharistic adoration and Marian devotion. The Dominican Sisters seek to continue the tradition of educating generations of young people in their Faith and to bring youth into deeper relationship with Christ.

Sisters of Life is a Roman Catholic community of contemplative and active women religious. The Sisters of Life were founded in 1991 for the protection and enhancement of the sacredness of every human life. In addition to the traditional

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[1] This amicus brief is filed pursuant to Fed. R. App. P. 29(a). Counsel for all parties have consented to the filing of amicus briefs in this case. No counsel for a party authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person, other than amici curiae, their members, or their counsel, contributed money that was intended to fund preparing or submitting the brief.

vows of poverty, chastity, and obedience, The Sisters of Life are consecrated under a special fourth vow to protect and enhance the sacredness of human life. Sisters of Life community minister to pregnant women through hospitality, practical assistance, spiritual retreats, and healing.

The **Judicial Education Project (JEP)** is dedicated to strengthening liberty and justice through defending the Constitution as envisioned by the Framers—a federal government of defined and limited power, dedicated to the rule of law, and supported by a fair and impartial judiciary. JEP educates citizens about issues such as the judiciary's role in our democracy, how judges interpret the Constitution, and the impact of court rulings on the nation. In pursuit of these constitutional principles, JEP has filed amicus curiae briefs in numerous cases.

ARGUMENT

When the Department of Health and Human Services (HHS) created the scheme to address religious objections to its contraceptive mandate (or "mandate"), it conditioned eligibility for a complete exemption on a single, entirely irrelevant factor: federal tax filing obligations under section 6033 of the Internal Revenue Code.[2] Religious organizations that are not obligated to file returns would be

[2] Unless otherwise specified, any reference to "Code" in this brief refers to the Internal Revenue Code, which is found at Title 26 of the United States Code.

eligible for the religious exemption; equally religious organizations required to file returns would only receive a troublesome "accommodation." Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 39,870, 39,871 (July 2, 2013). The principal parties have briefed these issues.

But although the panel approved the scheme, it made an exceptionally important error of law. The panel erroneously concluded that the Code distinguishes between organizations with different "tax status," whereas section 6033 only establishes different *tax filing obligations*. *Eternal Word Television Network, Inc. v. Sec'y, U.S. Dept. of Health & Human Serv.*, Nos. 14-12696, 14-12890 & 14-13239, 2016 U.S. App. LEXIS 2778, at *82-*85, *109-*110 (11th Cir. Feb. 18, 2016) (hereinafter "*EWTN*"). Based on this misunderstanding of the law, the panel went on to approve the separation of religious groups into "exempted" and "accommodated" categories.

The history and application of section 6033 show that the classification was a paperwork requirement designed to help the Internal Revenue Service administer the tax laws, with no relevance to religious practice or convictions, the employer-employee relationship, health care, contraception, or the like. If HHS had been serious about creating an exemption that treated religious objectors respectfully, it could have modeled its exemption after the one created by Title VII of the Civil Rights Act of 1964, which provides a tried-and-true mechanism for protecting

employee and employer civil rights. A Title VII-based exemption, unlike the gerrymandered one concocted by HHS, would better reflect the reality that religious organizations may legally hire employees who share their beliefs.

I. The Government Conditioned the Religious Exemption on Irrelevant Return Filing Requirements Under I.R.C. § 6033

The tax-writing committees of Congress have taken care to avoid entangling the Internal Revenue Service in religious affairs, typically imposing on religious organizations only the minimum reporting requirements necessary to the administration of the tax laws. But the decision by HHS, an administrative agency, to demand that all religious non-profit organizations other than churches directly or indirectly provide contraceptives and abortifacients to their female employees and all employees' female dependents (including minor dependents), is a stark departure from that course. The mandate grants an exemption only to non-profit organizations that are "churches, their integrated auxiliaries, and conventions or associations of churches," as well as "the exclusively religious activities of any religious order," as those terms are used in clauses (i) and (iii) of I.R.C. § 6033(a)(3)(A). 45 C.F.R. § 147.131(a) (citing I.R.C. § 6033(a)(3)(A)(i) & (iii)). Non-profit organizations that do not fit into that category do not qualify for the exemption, and therefore are forced into an "accommodation" which does not actually accommodate their religious objections. 45 C.F.R. § 147.131(c), (d), (e).

Section 6033 requires some non-profit groups to file with the Internal Revenue

Service an annual return of income and expenses and other information relevant to its tax exemption but does not require churches and certain affiliates to do so. As the following history makes clear, section 6033 provides no basis for distinguishing among religious institutions for the purposes for which HHS uses it. Indeed, the history of return filing requirements shows that the provision is directed solely at *collecting information* to enable the Internal Revenue Service to confirm whether a tax-exempt organization is operating in accordance with the terms of its tax-exempt status, a statutory purpose having no relevance to the mandate's purpose.

A. The History of I.R.C. § 6033 Shows that Return Filing Requirements for Tax-Exempt Organizations Are Purely Informational

When Congress first imposed an income tax on corporate entities, it specifically exempted from all taxation – and filing requirements – all "corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes[.]" Revenue Act of 1894, ch. 349, § 32, 28 Stat. 509, 556 (declared unconstitutional in *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895), *aff'd on rehearing*, 158 U.S. 601 (1895)). After the Sixteenth Amendment was ratified, the Revenue Act of 1913 preserved the exemption. Revenue Act of 1913, ch. 16, 38 Stat. 114, 172 (1913). Not until the 1943 Revenue Act were tax-exempt organizations required to file any sort of information returns,

and even then the requirement did not apply to "religious organization[s]" and "organization[s] . . . operated, supervised, or controlled by or in connection with a religious organization." Revenue Act of 1943, ch. 63, § 117, 58 Stat. 21, 37 (1944). At that moment in tax history, then, there was no difference in the return filing requirements between churches and other religious organizations.

Over time, it became clear that some tax-exempt organizations were engaging in income-producing activity unrelated to their exempt purposes, and thus competing at an unfair advantage against taxable entities. So in 1950, Congress added the unrelated business income tax (UBIT) provisions to the Code, requiring otherwise tax-exempt organizations, including religious institutions, to file income tax returns and pay taxes on their unrelated business taxable income. Revenue Act of 1950, ch. 994, 64 Stat. 906, 948 (1950). These UBIT returns were entirely separate from the information returns filed to report on nontaxable exempt operations. "Churches" were excluded from the UBIT return requirement, but the statute did not define "church." Thus, although non-church religious organizations now had to file UBIT returns, the broad category of religious organizations as a whole remained exempt from filing information returns.

In 1969, in response to the increasing complexity and sophistication of tax-exempt entities and actual or perceived abuses of their tax status, the Tax Reform Act of 1969 (the "1969 Act") made major changes to the taxation of otherwise tax-

exempt organizations. Tax Reform Act of 1969, tit. I, § 101, 83 Stat. 487, 494-96 (1969). Among them was a narrowing of the information return filing exemption for religious organizations. Now it applied only to "churches, their integrated auxiliaries, and conventions or associations of churches" and "the exclusively religious activities of any religious order."[3] *Id.* at 520. Despite the changes, the purpose of the expanded return filing requirement remained purely informational. The statutory language, which is still in effect, makes this explicit:

> . . . [E]very organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other *information for the purpose* of *carrying out the internal revenue laws* as the Secretary may by forms or regulations prescribe[.]

I.R.C. § 6033(a)(1) (emphasis added). At the time, the General Explanation of the Tax Reform Act of 1969 (known as the 1969 Blue Book) also summarized the statute's purpose as providing the government "with the information needed to enforce the tax laws." Staff of the Joint Committee on Internal Revenue Taxation, 91st Cong., General Explanation of the Tax Reform Act of 1969 52-53 (Comm. print 1970) ("1969 Blue Book"). The 1969 Blue Book also identified two specific problems that the 1969 amendments sought to correct: "more information is

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[3] These statutory criteria remain today in clauses (i) and (iii) of I.R.C. § 6033(a)(3)(A).

needed on a more current basis from more organizations and [] this information should be made more readily available to the public, including State officials." *Id.* Noting the new legislation's narrow information return exemption for certain types of church-related organizations, the 1969 Blue Book observed that "[i]n addition to these [exempt] categories, the Treasury Department may exempt other types of organizations from the filing requirements if it concludes that the information is not of significant value." *Id.* at 53. This discretionary authority of the Treasury Department was codified at I.R.C. § 6033(a)(3)(B), which provides that the Treasury Secretary may relieve any organization from filing an information return "where he determines that such filing is not necessary to the efficient administration of the internal revenue laws."[4]

Even the extensive 1969 Act statutory changes, however, did not treat church-related organizations uniformly. They varied based upon congressional views about sound tax policy and the Treasury Department's need for information.

[4] Pursuant to this discretionary authority, the Treasury Department has exempted certain other religious organizations from information return filing because it determined that the information was not necessary for administration of the tax laws. In an anomaly, such religious organizations are just as legally exempt from information return filing as statutorily exempt church-related organizations, but are not eligible for an exemption from the mandate. This difference exists solely because their filing exemption is *discretionary* under I.R.C. § 6033(a)(3)(B) rather than *mandatory* under I.R.C. § 6033(a)(3)(A)(i) and (iii). *See also* Treas. Reg. § 1.6033-6(b)(2)(iii), (iv); Rev. Proc. 96-10, 1996-1 C.B. 577.

Accordingly, although church-related organizations remained exempt from filing information returns under the narrower exemptions in I.R.C. § 6033(a), Congress revoked the general religious organization exemption from filing UBIT returns for *all* religious organizations, even church-related organizations. Congress believed that it was inappropriate even for church-related organizations to be exempt from UBIT when

> exempt organizations not subject to the unrelated business income tax—such as churches, social clubs, fraternal beneficiary societies, etc.—began to engage in substantial commercial activity. . . . Some churches are engaged in operating publishing houses, hotels, factories, radio and TV stations, parking lots, newspapers, bakeries, restaurants, etc.

1969 Blue Book at 66-67. The development of I.R.C. § 6033(a)(3)'s exemptions from otherwise applicable information filing requirements makes clear that the sole purpose of return filing is to provide the Internal Revenue Service with information it needs to administer and enforce the tax laws, nothing more. Generally speaking, today every exempt organization is required by I.R.C. § 6033(a)(1) to file an annual return of income and expenses and other information the Internal Revenue Service needs to determine whether the organization continues to qualify for the tax exemption and meets other tax-related requirements. The provisions of I.R.C. § 6033(a)(3)(A) specify only which organizations remain statutorily exempt from that general rule. Moreover, the imposition of UBIT filing requirements on every type of religious organization – indeed, even on churches and houses of worship –

demonstrates plainly that the information collected through return filing has no purpose other than increasing the efficiency of tax administration and enforcement. The panel opinion was simply wrong to infer additional significance.

B. I.R.C. § 6033 Does Not Establish Relevant Classifications of Religious Exercise

HHS uses the lines drawn by I.R.C. § 6033(a)(3)(A) to distinguish between religious groups that are entirely exempt from the contraceptive mandate and those which it will only "accommodate." Several other courts of appeal have made similar errors in other mandate cases, each one erroneously concluding that section 6033's filing requirement is relevant to some purpose other than mere tax information collection. *See, e.g.*, *Little Sisters of the Poor Home for the Aged v. Burwell*, 794 F.3d 1151, 1199-1200 (10th Cir. 2015) (section 6033 and regulations "award benefits to some religious organizations . . . based on articulable criteria that other religious organizations do not meet"), *vacated and remanded* 578 U.S. ___ (2016). But the differences that place organizations in one category or another have no relation to the mandate's asserted purpose. For one thing, the church/non-church distinction in tax law is hardly as deep or significant as these decisions assume. It is also irrelevant. Whether an organization is a "church" for purposes of section 6033 (and elsewhere in the tax code) or another type of religious non-profit is determined by its structure and the manner in which it accomplishes its religious activities, not by whether its employees share its religious commitments. As the

Tax Court has stated, "[t]o classify a religious organization as a church under the Internal Revenue Code, we should look to its religious purposes, *and, particularly, the means by which its religious purposes are accomplished*." *Found. of Human Understanding v. Comm'r*, 88 T.C. 1341, 1357 (1987) (emphasis added) (*citing Chapman v. Comm'r*, 48 T.C. 358, 367 (1961) (Tannenwald, J., concurring)), *acq. in part*, 1987-2 C.B. 1 (1987). "At a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship. When bringing people together for worship is only an incidental part of the activities of a religious organization, those limited activities are insufficient to label the entire organization a church." *Id.* (internal citations and quotations omitted) (citing *Amer. Guidance Found., Inc. v. United States*, 490 F. Supp. 304, 306 (D.D.C. 1980)). These principles are informally termed the "associational test." *See also Chapman*, 48 T.C. at 361, 363 (tax commissioner "[did] not dispute the fact, nor could he, that this is a religious organization" but "though every church may be a religious organization, every religious organization is not per se a church.").

The Internal Revenue Service has also published a longer set of factors that it believes relate strongly to whether a given religious organization is a "church."[5]

[5] These factors are: (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal

Under either set of criteria, organizations that accomplish religious goals through something other than associational worship cannot qualify as churches regardless of the strength or degree of religious commonality between the organizations and their employees. Yet HHS's initial stated reason for limiting the exemption to "churches" and related organizations was that employees of such organizations are more likely than other religious organizations to share religious objections to contraception. *Compare* 78 Fed. Reg. at 39,874 *with* T.D. 9726, 2015-31 I.R.B. 107. It is notable that among the factors listed by both the Internal Revenue Service and the courts to identify a church for purposes of section 6033, nowhere does shared religiosity with employees appear as a factor that distinguishes a church from other religious organizations. In any event, the final version of the exemption *eliminated* the requirement that religious organizations eligible for the exemption primarily employ people who share their religious beliefs. *Id.* Moreover, after fighting a losing battle in the courts for 10 years, the Treasury Department 30 years ago abandoned the position that the activities of an

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code of doctrine and discipline; (5) a distinct religious history; (6) a membership not associated with any other church or denomination; (7) an organization of ordained ministers; (8) ordained ministers selected after completing prescribed studies; (9) a literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) Sunday schools for religious instruction of the young; and (14) schools for the preparation of its ministers. *See Found. of Human Understanding*, 88 T.C. at 1357-58.

"integrated auxiliary" of a church, one of the entities identified in I.R.C. § 6033(a)(3)(A) and exempted under the contraceptive mandate, must be "exclusively religious." *See, e.g.*, *Lutheran Soc. Serv. of Minn. v. United States*, 758 F.2d 1283 (8th Cir. 1985) (striking down "exclusively religious" requirement). Indeed, church auxiliaries qualify for an exemption but often have no religious teaching or ceremonial purpose, may be engaged in similar community service activities, or may have religiously-motivated members.

Although the panel concluded that the government was establishing a "bright-line test," *EWTN*, 2016 U.S. App. LEXIS 2778 at *84, a "bright line" is only as valid as the criteria that separate one side from the other. HHS cannot simply conjure up a tax law distinction having no relation to its own purposes; HHS must justify the distinction. It cannot. Filing an annual information return has everything to do with administration of the tax laws and nothing to do with religious exercise.

II. The Government Should Have Modeled the Contraceptive Mandate Exemption After the Title VII Religious Exemption

HHS could have approached potential religious objections more respectfully by modeling its religious exemption after the one in Title VII of the Civil Rights Act of 1964. After all, these plaintiffs must deal with the mandate not because they are *taxpayers*, but because they are *employers*. And federal law already provides guidance about how to respect the convictions of religious employers. Title VII specifically exempts religious employers from certain laws that apply to secular

employers. These provisions allow a broad range of religious employers to hire only people who share their religious beliefs without being subject to the penalties that apply to non-religious employers. 42 U.S.C. § 2000e-1.

It is perhaps unsurprising that employment law would include broad religious exemptions. Employment law has the potential to interfere directly with institutions' religious exercise by inserting the government in a powerful position between religious institutions and the employees who carry out their mission. *See Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Comm'n*, 132 S. Ct. 694, 705-07 (2012) (applying employment discrimination law to churches "interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs."); *Conlon v. Intervarsity Christian Fellowship/USA*, 777 F.3d 829, 833-34 (6th Cir. 2015) (ministerial exception applied to evangelical campus mission); *Shaliehsabou v. Hebrew Home of Greater Washington, Inc.*, 363 F.3d 299, 309-10 (4th Cir. 2004) (ministerial exception applied to home for the elderly). Other employment laws track Title VII's definitions of religious organizations. *See, e.g.*, 42 U.S.C. § 12113(d)(1); 13 C.F.R. § 113.3-1(h); 41 C.F.R. § 60-1.5(a)(5); 48 C.F.R. § 22.807(b)(7). By comparison, the arbitrary choice of section 6033 to create differential treatment for religious groups is patently absurd. Religious employers like the plaintiffs are expressly permitted by Title VII to hire

only people who share their beliefs, but contraceptive mandate penalties still can drive such employers out of existence.

CONCLUSION

The contraceptive mandate is premised on the view that pregnancy is an adverse health condition to be prevented, and if not prevented, "cured." The religious amici operate from a different premise: Pregnancy is the first stage of a new human life, created in the image of God. The government's failure to acknowledge and respect religious institutions' adherence to a fundamental teaching of the faith to which they have dedicated their lives would deprive American communities of much more than just the services they provide. Instead of denying these religious groups the respect their convictions deserve based on a tax reporting requirement that has *nothing* to do with the relationship between employers and their employees, HHS should have taken the approach already codified in Title VII. The Court should grant the petition.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the page limitations of 11th Cir. R. 35-6 because this brief contains 15 pages, excluding the parts of the brief exempted by 11th Cir. R. 35-6.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Office Word in 14-point Times New Roman.

3. As required by this Court's guidelines for the use of the CM/ECF system, I hereby certify that:

a. all required privacy redactions have been made;

b. the hard copies submitted to the Clerk's Office are exact copies of the ECF submission;

c. The ECF submission has been scanned for viruses with the most recent version of a commercial virus scanning program, and according to the program, it is free of viruses.

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2016, I electronically filed the foregoing *amici curiae* brief with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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