No. 02-35171

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EARL OLD PERSON, CAROL JUNEAU, JOE MACDONALD and JEANNINE PADILLA,

Plaintiffs-Appellants

v.

BOB BROWN, SECRETARY OF STATE FOR THE STATE OF MONTANA; and JUDY MARTZ, GOVERNOR OF THE STATE OF MONTANA,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANTS

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INTEREST OF THE UNITED STATES

The United States enforces Section 2 of the Voting Rights Act, 42 U.S.C. 1973. The Department of Justice is often involved in litigation concerning redistricting or other types of Section 2 violations where, by the time a decision is reached by the court, there is an election scheduled in the near future. The decision of the district court here that immediate relief can be withheld pending a statewide redistricting that will take at least a year is inconsistent with well- established remedial principles mandating that relief for a Section 2 violation be not only full and complete, S. Rep. No. 417, 97th Cong., 2d Sess. 31 (1982), but also be provided

"with all possible speed." *Briscoe* v. *Bell*, 432 U.S. 404, 410 (1977). In addition, the court's legal error in concluding that the feasibility of an interim remedy is a factor in deciding whether Section 2 has been violated could seriously hamper plaintiffs' ability to redress a Section 2 violation. This Court's decision may therefore affect the ability of the United States to carry out its responsibilities under the Voting Rights Act. The United States has authority to file this brief without the consent of the parties pursuant to Federal Rule of Appellate Procedure 29(a). Because the brief is being filed out of time, however, the United States has filed a motion seeking leave of court, pursuant to Federal Rule of Appellate Procedure 29(e).

STATEMENT OF THE ISSUE

Whether a district court may decline to award immediate relief for a violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and permit an illegal plan to be used in an upcoming election because a new plan to be adopted by state officials in 2004 might cure the dilution of Indian voting strength for subsequent elections.[1]

STATEMENT OF JURISDICTION

Amicus agrees with the statement of jurisdiction contained in the Brief of

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[1] Appellants are raising additional issues in their brief. Because this appeal is being briefed on a expedited basis and the United States learned of the existence of this appeal somewhat late, we did not have sufficient time to review the extensive record on liability issues. Accordingly, the United States takes no position on issues that depend upon an assessment and application of the facts. We address only the legal issue whether the district court erred in holding that a remedy was unavailable for the upcoming election.

Appellants.

STATEMENT OF THE CASE

1. This action was filed on January 12, 1996, to challenge the 1992 redistricting plan for the Montana house and senate as violating Section 2 of the Voting Rights Act (Section 2). *Old Person* v. *Brown*, 182 F. Supp. 2d 1002, 1003 (D. Mont. 2002). Plaintiffs are tribal members, registered voters, and residents of the Flathead and Blackfeet Indian Reservations, which include portions of four counties in northwest Montana. *Ibid.* Twenty house and senate districts, or portions thereof, are contained within this four-county area. The complaint alleged that the 1992 redistricting plans dilute Indian voting strength and that an additional majority Indian house district and a majority Indian senate district could be drawn in the area encompassed by the Blackfeet and Flathead Reservations. *Id.* at 1004.[2]

As of the 1990 census, Indians comprised 6% of the total population and 4.8% of the voting age population in Montana. *Old Person* v. *Cooney*, 230 F.3d 1113, 1117 (9th Cir. 2000). The 1992 redistricting plan contained four majority Indian house districts, only one of which (HD 85) is located in the area involved in this litigation. No majority Indian senate districts were located within the Blackfeet and Flathead Reservations; the only majority Indian senate district (SD 3) was

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[2] Members of the Montana house are elected from 100 single-member districts for two-year terms. Senators are elected from single-member districts formed by joining two adjacent house districts. Senate terms are for four years, and one half of the seats are filled every two years. 182 F. Supp. 2d at 1005-1006.

created by joining two majority-Indian house districts that lie outside the area involved in this case. *Id.* at 1118-1119.

The Montana legislature has no power over legislative redistricting, although it may make recommendations. 230 F.3d at 1118. Redistricting is performed by a Districting and Apportionment Commission, which consists of five members, none of whom may be public officials. Four members are appointed by the majority and minority leaders of each house. The four commissioners select the fifth member, who serves as chair of the commission. *Ibid.* Upon the filing of a redistricting plan by the commission with the secretary of state, the plan becomes law, and the commission is dissolved. Mont. Const., Art. V, § 14.

In 1998, following trial, the district court dismissed the complaint on the grounds that the 1992 redistricting plans neither diluted Indian voting strength nor were adopted with a discriminatory purpose. 230 F.3d at 1117. The court held that white bloc voting was not legally significant and that the number of legislative districts in which Indians were the majority was "roughly proportional" to the Indian share of the voting age population in Montana. *Id.* at 1117, 1129.

2. On appeal, this Court affirmed the district court's ruling that plaintiffs failed to prove that the 1992 redistricting plan was adopted with a discriminatory purpose. 230 F.3d at 1130-1131. The court reversed, however, as to dilution. The court held, 230 F.3d at 1120-1122, 1127 (citing *Thornburg* v. *Gingles*, 478 U.S. 30, 50-51 (1986), that plaintiffs had established the three primary factors indicative of a Section 2 violation: (1) that the population of Indians was sufficiently large and

geographically compact to constitute a majority in a single-member district (compactness), (2) that Indians are "politically cohesive" (cohesiveness), and (3) that the "white majority votes sufficiently as a bloc to enable it - - in the absence of special circumstances, * * * usually to defeat" the preferred candidate of Indian voters (white bloc voting). The court also found plaintiffs had proven a number of the illustrative factors identified by the Senate Judiciary Committee in 1982 as important to any Section 2 inquiry: there is a history of discrimination against Indians by the federal government and the State of Montana, and the lower socio-economic status of Indians relative to whites hinders their ability to participate fully in the political process. *Old Person*, 230 F.3d at 1129. Finally, the court found that "in at least two recent elections in Lake County * * * there had been overt or subtle racial appeals." *Ibid.*

This Court found that the district court had committed two errors in its analysis of dilution. First, it concluded that the district court had erred in relying on the electoral success of Indians in majority-Indian house districts in finding that white bloc voting in majority-white house districts was not legally significant. 230 F.3d at 1122, 1127. Second, this Court concluded that the district court erred in finding proportionality between the legislative districts in which Indians constituted an effective majority and the Indian share of the voting age population in Montana. *Id.* at 1129-1130. This Court left open the question whether the entire State, as opposed to some geographic subset, is the proper "frame of reference" for a proportionality finding, because the parties did not object to the district court's use

of statewide proportionality.[3] *Id.* at 1129, n.15. See *Johnson* v. *De Grandy*, 512 U.S. 997, 1021 n.18 (1994). Since the Court reasoned that these errors may have affected the district court's ultimate finding that, in the totality of circumstances, there was no dilution of Indian voting strength, it remanded for appropriate proceedings. 230 F.3d at 1130-1131.

3. Following this Court's remand, the 2000 census figures became available. They show an increase in both the number and percentage of Indians in Montana. Indians are now 7.32% of the total population and 5.93% of the voting age population.[4] E.R., CR 300, p. 11.

On remand, the court held a hearing at which expert testimony was presented concerning the intervening 1998 and 2000 elections, the impact of the 2000 census, the deliberations of the Districting and Apportionment Commission appointed after the 2000 census, and possible remedies for a Section 2 violation. The court issued a decision on January 24, 2002, entering judgment for the defendants. 182 F. Supp. 2d 1002. The court concluded that the four remaining plaintiffs have standing to

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[3] As explained by this Court,

> [p]roportionality is distinct from proportional representation. Proportionality relates to "the political or electoral power of minority voters," while proportional representation refers to the electoral success of minority candidates.

230 F.3d at 1120 n.5 (quoting *Johnson* v. *DeGrandy*, 512 U.S. at 1014, n.11).

[4] The census figures also show that the 1993 districts are severely malapportioned. E.R., Pl. Exh. 4.

assert their vote dilution claims only in the districts in which they reside and that any claim for relief must be restricted to those districts. *Id*. at 1006. It found, however, that the evidence introduced at the hearing as to demographics and election results in two additional districts (which are within the Blackfeet and Flathead Reservations) is "relevant and admissible to the extent it informs the Court's totality of the circumstances analysis regarding" the vote dilution claims for the districts in which the remaining plaintiffs reside. *Ibid.*

The court found that the 1998 and 2000 elections showed continued racial polarization, and that the 2000 census demonstrates that "statewide, the gap between the number of majority-minority districts to minority members' share of the relevant population has increased." *Id.* at 1009. It found that the record supports this Court's finding that, on a statewide basis, proportionality is lacking. *Id.* at 1011. Nevertheless, the court ruled that, if proportionality is evaluated within the "relevant geographic subset which this Court is called upon to assess on remand, the proportionality factor is satisfied" because "Indian-preferred candidates have been elected to the Montana legislature from both of the House Districts at issue and from one of the two Senate Districts at issue." *Id.* at 1011-1012.

Ultimately, the court found that the totality of the circumstances supported the prior finding of no vote dilution in the remaining districts at issue. It found that the fact that Indian-preferred candidates were elected in both house districts and one senate district of the four districts at issue, "strongly suggests that American Indians have an equal opportunity to elect candidates of their choice" in those districts and

that "[t]his fact alone illustrates the success of American Indian candidates (proportional representation) and the electoral power of American Indian voters (proportionality) within the Districts at issue in this case." *Id.* at 1015.

4. In addition, the court found that, in the circumstances of this case, the availability of a "constitutionally acceptable remedy" is "an appropriate factor to be weighed in the [Section] 2 totality of circumstances inquiry." *Id.* at 1020. The court found that this is the "'unusual case' in which a viable short-term remedy is not available," *id.* at 1020, relying on language in *Reynolds* v. *Sims*, 377 U.S. 533, 585 (1964). In *Reynolds*, the Supreme Court stated that "it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." 377 U.S. at 585. The Court then indicated that

> under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid. In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.

Ibid.

In this case, the district court based its decision that it would not be appropriate to grant immediate relief on factual findings concerning the state's

electoral process. The court found that the 2002 election cycle was in "full swing." 182 F. Supp. 2d at 1017-1018. Specifically, it found that the deadline for announcing candidacy is March 2002 (although candidates begin announcing as early as January), and that the Secretary of State is "in the midst of responding to questions about voter district boundaries and providing voter mailing lists to potential candidates." *Id.* at 1018. Thus, candidates would be disadvantaged by short-term changes in the district lines, and voters would be confused by changes in precincts and polling places. In addition, a change in district boundaries could invalidate ballot referendum petitions signed and certified as representing 5% of the registered voters in particular districts for a statewide referendum that has already been qualified for the 2002 election. *Ibid.*

The court also found that an order compelling partial redistricting would "impair th[e] legitimate state purposes" of the Districting and Apportionment Commission, which has the task of ensuring that districts drawn based upon the 2000 census comply with "one person, one vote" principles. *Id.* at 1018-1019. The court held that plaintiffs had "failed to demonstrate that a court-ordered remedy to address alleged vote dilution would not violate the principals [sic] of 'one person, one vote' throughout other legislative districts in Montana." *Id.* at 1019. Finally, the court found that its legal conclusion was "reinforced by the very real prospect that comprehensive and long-term relief designed to address vote dilution throughout the State of Montana is in the offing within a year." *Id.* at 1020.

Defendants had argued, citing *Nipper* v. *Smith*, 39 F.3d 1494, 1534 (11th Cir.

1994) (en banc), cert. denied, 514 U.S. 1083 (1995), that, even if vote dilution exists, there cannot be a violation of Section 2 unless a constitutionally acceptable remedy also exists. 182 F. Supp. 2d at 1016. Without deciding the correctness of that legal principle generally, the court concluded that "given the particular circumstances of this case, it is an appropriate factor to be weighed in the § 2 totality of circumstances inquiry." *Id.* at 1020. Thus, the court made the appropriateness of an immediate remedy a factor in determining whether there was a violation of Section 2.

ARGUMENT

THE DISTRICT COURT COMMITTED LEGAL ERROR IN CONCLUDING THAT, EVEN IF A VIOLATION OF SECTION 2 WAS SHOWN IN THIS CASE, NO REMEDY SHOULD BE IMPLEMENTED PRIOR TO THE CONCLUSION OF THE STATE'S REDISTRICTING PROCESS

A. *Complete And Prompt Relief Is Required When A Violation Of The Right To Vote Is Proven*

When Congress amended the Voting Rights Act in 1982, it stated that, where there has been a violation of Section 2

> the remedy fashioned must be commensurate with the right that has been violated. * * * The court should exercise its traditional equitable powers to fashion the relief so that it completely remedies the prior dilution of minority voting strength and fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice.

S. Rep. No. 417, 97th Cong., 2d Sess. 31 (1982).

In *Reynolds* v. *Sims*, 377 U.S. 533, 562 (1964), the Supreme Court recognized the pivotal nature of voting rights in stating that the "right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political

rights." The Court has also recognized that the drafters of the Voting Rights Act intended to provide prompt and effective remedies for voting discrimination, *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328 (1966), and to "eradicate the blight of voting discrimination with all possible speed." *Briscoe* v. *Bell*, 432 U.S. 404, 410 (1977).

The district court's determination that, even if there were a violation of Section 2 in this case, relief must be delayed until the redistricting commission completes its work, runs counter to the "usual principle that any deprivation of constitutional rights calls for *prompt* rectification." *Watson* v. *City of Memphis*, 373 U.S. 526, 532-533 (1963) (emphasis added). In *Watson*, the Court stated:

> The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled.

Id. at 533 (footnote omitted). See also *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969) (holding, more than three decades ago, that the standard of "all deliberate speed" was no longer permissible and requiring school districts operating unconstitutionally segregated schools to terminate dual school systems immediately).

B. *The District Court Erred In Treating The Appropriateness Of An Immediate Remedy As A Factor In Determining Whether There Was A Violation Of Section 2*

As this Court recognized in the prior appeal in this case, 230 F.3d at 1120, in order to prevail on a claim of vote dilution under Section 2, plaintiffs must first meet the three threshold requirements established by the Supreme Court in *Thornburg* v.

Gingles , 478 U.S. 30 (1986). As applicable to this case, plaintiffs were required to show that:

> (1) the population of American Indians "is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) American Indians are "politically cohesive"; and (3) the "white majority votes sufficiently as a bloc to enable it - - in the absence of special circumstances, * * * usually to defeat the minority's preferred candidate."

230 F.3d at 1120 (quoting *Gingles*, 478 U.S. at 50-51).

If plaintiffs have established all three *Gingles* factors, the court must decide whether "'on the totality of circumstances,' American Indians have been denied an equal opportunity to 'participate in the political process and to elect representatives of their choice.'" 230 F.3d at 1120 (quoting 42 U.S.C. 1973(b)).

In this legislative redistricting case, the district court erred by incorporating into its analysis of the first *Gingles* factor principles developed by the en banc Eleventh Circuit in *Nipper* v. *Smith*, 39 F.3d 1494 (1994), cert. denied, 514 U.S. 1083 (1995), in the very different context of judicial elections. Defendants relied below upon *Nipper* in arguing that there cannot be a violation of Section 2 unless a constitutionally acceptable remedy also exists. *Nipper* is, however, inapposite to the claim in this case. *Nipper* involved a Section 2 challenge to the at-large election of judges in Florida. A panel of the court of appeals had reversed the district court's finding of no Section 2 liability, but en banc review was granted to consider, *inter alia*, "how the courts' totality of the circumstances analysis must be modified in order to adapt to the judicial model." 39 F.3d at 1530.

The en banc court in *Nipper* characterized the first *Gingles* precondition as "the existence of a permissible remedy," and noted that, in legislative redistricting cases, the inquiry is whether the minority group is "sufficiently large and compact * * * to constitute [a majority in] a single-member district." 39 F.3d at 1524 (citing *Gingles*). The en banc court in *Nipper* held that "[a] district court must determine as part of the *Gingles* threshold inquiry whether it can fashion a permissible remedy in the particular context of the challenged system," 39 F.3d at 1531; in the case of the judicial elections at issue in that case, the court interpreted the first *Gingles* threshold factor to require that there be "a remedy within the confines of the state's judicial model [of at-large elections] that does not undermine the administration of justice." *Ibid.* The court recognized that this analysis was necessary because of the unique nature of the judicial system:

> In cases challenging the election of judges, the totality of the circumstances analysis, which was developed in the legislative election context, must be altered to take into account the characteristics unique to judicial elections. Among the factors a court must consider in conducting that analysis is the state policy advanced by the judicial election scheme at issue.

39 F.3d at 1547.

Florida maintained that at-large election of judges was essential in order to "minimize the potential for a trial judge to pursue an agenda on behalf of a particular group of constituents." 39 F.3d at 1535 n.77. The en banc court found that none of the remedies proposed by the plaintiffs could be implemented without undermining the administration of justice and thus that plaintiffs were not entitled to relief under

Section 2. *Id.* at 1546-1547.

This case, however, involves elections for legislators, and the only issue is whether the particular single-member districts, as drawn, result in a dilution of Indian voting strength. There is no need in this case to change the way legislators are elected. Plaintiffs can show that they will be able to elect candidates of their choice within the framework of the state's existing method of electing legislators -- elections from single-member districts. The remedy that plaintiffs seek here, *i.e.*, a redrawing of existing district lines, is routinely available in legislative redistricting cases.

What the district court actually found here was that there were exigent circumstances, *i.e.*, an upcoming election and a state process of redistricting already underway, that warranted a delay in implementing relief. Under *Reynolds*, those difficulties may affect whether it is permissible as a matter of equitable remedial discretion to permit elections to be held under an illegal plan. But they have no bearing on whether the plan is illegal in the first place. Nor is this the sort of circumstance intended by the court in *Nipper* to be considered in determining whether a violation of Section 2 has been shown. It was, therefore, legal error for the district court to employ that analysis here.

The court's error has serious consequences. When the State draws its new districting plan in 2003, that plan may very well continue to raise Section 2 concerns. Under the law applied by the district court, plaintiffs would have to amend their claim and attack the new plan. Because the new plan undoubtedly will raise

different issues than the plan now under attack, there would need to be an analysis whether the new plan violates Section 2, which may involve the need to examine elections under the new plan. Under this scenario, there would be no possibility of relief for the foreseeable future.

Assuming that all other factors in the "totality of circumstances" inquiry would lead to a finding of unlawful dilution, but that there truly are "exigent circumstances" justifying a delay in ordering a remedy, under the correct analysis, the court would look at the state's new plan in a remedial posture -- the plaintiffs would not need to meet again the burden of proving a Section 2 violation. If a new redistricting plan is considered in a remedial posture, the court would determine whether the new plan cured the underlying violation, and plaintiffs would be entitled to relief.

C. *The District Court Erred In Finding That An Immediate Remedy Was Not Feasible In This Case*

The passage from *Reynolds* v. *Sims* quoted by the district court does not justify its conclusion that relief for any violation in this case should await redistricting in the normal course. *Reynolds* establishes a strong presumption against permitting elections to be held under an illegal plan. Although in exercising its equitable discretion, the court should take into account the types of administrative considerations presented here, such as the fact that candidates may be inconvenienced by uncertainty concerning the district boundaries, the district court did not cite any facts that make this case extraordinary or the obstacles

insurmountable. Were a violation found, such administrative inconvenience must be weighed against a continuation of the deprivation of the rights of Indian voters whose votes are diluted by the current system. See *Taylor* v. *Louisiana*, 419 U.S. 522, 535 (1975).

Courts routinely order remedies that require adjustments of existing election schedules and timetables, such as a brief extension of candidate qualifying periods, even when elections are not far off in order to avoid perpetuation of discrimination. See, *e.g.*, *Busbee* v. *Smith*, 549 F. Supp. 494, 519 (D.D.C. 1982) (special timetable for candidate filing and elections ordered in two congressional districts without changing schedules for rest of State), aff'd, 489 U.S. 1166 (1983). In January, when the district court rendered its decision, there were still six months before the primary elections, allowing ample time to implement an interim plan.

The court expressed concern that any court-ordered interim plan would violate one-person, one-vote principles in other legislative districts in the State, 182 F. Supp. 2d at 1019. But the 1993 plan that the court kept in place for the upcoming election itself now violates one-person, one-vote principles. Moreover, the court's reasoning fails to take into account the testimony of the State's demographer (referenced in the Brief of Appellants at 36) that a remedy affecting only the four-county area involved in this case could be implemented and that it would be possible to limit the total deviation in the remedial plan to the levels existing in the current plan - - the constitutional violation would be no worse than it already is.

Even if the election process in this case was too far advanced to permit a

remedy to be put in place for the 2002 elections, the court would have had the authority to order special elections in 2003 under a remedial plan. Many courts have implemented remedies requiring shortening of terms of office and ordering special elections. In *Ketchum* v. *City Council of City of Chicago*, 630 F. Supp. 551, 568 (N.D. Ill. 1985), the court stated that, given the choice between "acquiescing in delay or moving expeditiously" to remedy a violation of Section 2 in elections for alderman, it would order special elections. In doing so, the court stated:

> Aware of the singular importance of the right to vote in a republic and the deleterious consequences to a democracy that arise whenever racial discrimination is permitted to dilute and distort the voting strength of any group, we choose to act today.

Ibid. See also *Neal* v. *Harris*, 837 F.2d 632, 634 (4th Cir. 1987) (district court did not abuse its discretion in ordering special election, with a "modest delay" in deference to concerns of election officials); *Smith* v. *Beasley*, 946 F. Supp. 1174, 1212 (D.S.C. 1996) (permitting imminent election for state legislators to go forward but shortening terms of office to one year and ordering special election, because individuals whose rights have been violated "are entitled to have their rights vindicated as soon as possible"); *Dillard* v. *City of Greensboro*, 870 F. Supp. 1031 (M.D. Ala. 1994) (denying stay pending appeal of order granting special election); *Burton* v. *Hobbie*, 561 F. Supp. 1029, 1034-1035 (M.D. Ala. 1983) (three-judge court) (shortening terms of Alabama state legislators and ordering special election). And, in the context of school desegregation, the Supreme Court ordered school districts to terminate operation of dual school systems at once, even though the

school year had already commenced. *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969).

If the 2002 elections are permitted to proceed using the 1992 districts, house members elected under that plan will serve for two years, and state senators will serve for four years. Four years is a long time for Indian voters to be represented by legislators elected under a plan that unlawfully dilutes their voting strength. If it is determined that insufficient time remains before the 2002 elections to implement a new plan, shortening the terms of any legislators elected under the 1992 plan and ordering special elections would ameliorate that harm.

Finally, any relief that the court orders would not interfere with the State's ongoing redistricting process for the whole State. Whatever plan is devised by the State will become effective for the election that follows unless its legality is also challenged.

CONCLUSION

The judgment of the district court on remedy should be reversed.

Respectfully submitted,

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STATEMENT OF RELATED CASES

Amicus is not aware of any related case pending in this Court.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 29(d) and Ninth Circuit Rule 32-1, I hereby certify that this brief is proportionally spaced, has a typeface of 14 points or more and contains 7000 words or less.

Marie K. McElderry
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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Brief for the United States As Amicus Curiae Supporting Appellants on the parties to this appeal by sending two copies to counsel of record by Federal Express courier service at the following addresses:

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