IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES HALL and NANCI HALL, h/w Plaintiffs	:	CIVIL NO: 3:23-CV-00978
v.	:	JUDGE SAPORITO
SIG SAUER, INC. et al., Defendants	:	

BRIEF OF AMICI CURIAE SECOND AMENDMENT FOUNDATION AND NATIONAL RIFLE ASSOCIATION OF AMERICA IN SUPPORT OF DEFENDANT SIG SAUER INC.'S MOTION FOR RECONSIDERATION OF THE OCTOBER 28, 2025 ORDER, OR IN THE ALTERNATIVE, TO CERTIFY OCTOBER 28, 2025 ORDER FOR INTERLOCUTORY APPEAL PURSUANT TO 28 U.S.C. § 1292(b)

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CORPORATE DISCLOSURE STATEMENT

Counsel for amici curiae certify that Second Amendment Foundation and National Rifle Association of America are nonprofit organizations and thus have no parent corporations and no stock.

Date: February 17, 2026

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INTEREST OF AMICI CURIAE[1]

Second Amendment Foundation ("SAF") is a non-profit membership organization founded in 1974 with over 720,000 members and supporters in every state of the union. Its purposes include education, research, publishing, and legal action focusing on the constitutional right to keep and bear arms. Currently, SAF is involved in dozens of Second Amendment-related lawsuits and thus has great interest in the outcome of this case and this particular issue within the case.

The National Rifle Association of America (NRA) is America's oldest civil rights organization and foremost defender of Second Amendment rights. It was founded in 1871 by Union veterans—a general and a colonel—who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise amongst the citizenry. Today, the NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has approximately four million members, and its programs reach millions more.

[1] No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amici and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION

For many people who choose to exercise their Second Amendment rights, their status as a gun owner remains an intensely private matter. Americans have a variety of reasons for wanting to keep their gun ownership to themselves. For some who live in high crime neighborhoods, they may fear that the very firearms they own for self-defense could be an enticing target for burglars when they are not home. Others may not want their friends, family, or local community to know they own firearms because they fear the potential social ostracism that may occur in the places where gun ownership remains controversial.

Whatever their reasons for secrecy, our historical tradition supports the idea that Americans have a reasonable expectation of privacy in their status as gun owners. The Second Amendment was crafted both to recognize what the Founders saw as a natural right, but also as a check on potential government tyranny. Given that latter motivation, privacy in gun ownership has always come hand in hand with the right. Today, an assortment of federal and state laws protect gun owner privacy to various degrees and in different ways.

So, when gun owners reach out to a firearms manufacturer for help with a allegedly defective gun they purchased,[2] the last thing they would reasonably expect

[2] Second Amendment Foundation and the National Rifle Association of America ("Amici") take no position on the merits of Plaintiffs' case against Sig

is that said manufacturer would divulge their identity to private plaintiffs without their informed consent, putting their name into a public court record and possibly even requiring them to answer plaintiffs' subpoenas or sit for depositions.

This brief will look at the history of the Second Amendment as an anti-tyranny provision that has long looked at government intrusion on the privacy of gun owners with deep suspicion. It will also show how gun owners' expectations of privacy fit within the relevant privacy precedents. Amici respectfully urge this Court to see to it that the privacy interests of gun owners are protected, and that it does not force their identities to be divulged to the plaintiffs.

ARGUMENT

I. PRIVACY IN FIREARMS OWNERSHIP HAS ALWAYS BEEN A FUNDAMENTAL COMPONENT OF THE SECOND AMENDMENT RIGHT

While this civil discovery dispute does not involve the government as a party, it still very much involves the privacy of gun owners, and it would be the government (through this Court) potentially ordering a violation of that privacy. As such, the Second Amendment is implicated because "[t]he Second Amendment's text is not limited to direct prohibitions on possessing or using firearms. It states that the 'right

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Sauer in terms of whether the P320 family of firearms is (or was) technically defective. They argue only that Plaintiffs may not prove their case by intruding on the privacy rights of gun owners without consent.

of the people to keep and bear Arms, shall not be infringed.' " *Ortega v. Grisham,* 148 F.4th 1134, 1143 n.3 (10th Cir. 2025). An American having their identity as a gun owner forcibly divulged through a court order is an infringement on the right to keep and bear arms.

A. The Second Amendment was created as an anti-tyranny provision.

Explaining the intrinsic private nature of the Second Amendment right requires a detour into history, and in particular, an understanding that the Second Amendment was created by people who had just revolted against a tyrannical government. The Founders sought to guarantee the People had a final recourse should the new government they were forming also turn tyrannical. Tench Coxe, a delegate to the Annapolis Convention in 1786 and the Continental Congress in 1788, wrote of Madison's draft of the Second Amendment that "[w]hereas civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, … the people are confirmed by the article in their right to keep and bear their private arms." *Remarks on the First Part of the Amendments to the Federal Constitution*, under the pseudonym "A Pennsylvanian" in the *Philadelphia Federal Gazette*, June 18, 1789, p. 2 col. 1 (as quoted in the Federal Gazette, June 18, 1789).

Coxe's view dominated the Founding era and Nineteenth Century. And the Second Amendment's original meaning has not changed. In a speech in the House of Representatives, Abolitionist Representative Edward Wade said the "right to

'keep and bear arms,' is thus guarantied, in order that if the liberties of the people should be assailed, the means for their defence shall be in their own hands." *Slavery Question: Speech of Hon. Edward Wade of Ohio in the House of Representatives*, August 2, 1856 (Buell & Blanchard Publishers, 1856). Senator Charles Sumner's "The Crime Against Kansas" speech likewise bristled at the notion that slavery opponents in Kansas should be disarmed of their Sharps rifles by the proslavery government: "Never was this efficient weapon more needed in just self defence, than now in Kansas, and at least one article in our National Constitution must be blotted out, before the complete right to it can in any way be impeached." Charles Sumner, *The Kansas Question, Senator Sumner's Speech, Reviewing the Action of the Federal Administration Upon the Subject of Slavery in Kansas* 22-23 (Cincinnati, G.S. Blanchard, 1856). Thomas Cooley, a longtime Michigan Supreme Court Justice, similarly wrote that "[t]he right declared was meant to be a strong moral check against the usurpation and arbitrary powers of rulers, and as necessary and efficient means of regaining rights when temporarily overturned by usurpation." Thomas M. Cooley, LL.C., *The General Principles of Constitutional Law in the United States of America* 298 (1898).

Additional examples abound, and one of Amici's counsel collected dozens of them in a prior law review article. *See* C.D. Michel & Konstadinos Moros, *Restrictions "Our Ancestors Would Never Have Accepted": The Historical Case*

Against Assault Weapon Bans, 24 Wyo. L. Rev. 89, 90 (2024). But there is no need to belabor the point: in addition to enabling personal self-defense, the Second Amendment exists as a last-resort check on government power, a failsafe to enable collective defense in the event a tyrant or foreign invader ever usurps our constitutional order. There can be no historical tradition of the government violating the privacy of gun owners, or enabling such a violation, when one of the Second Amendment's main purposes was to be a "doomsday provision" for the People to protect themselves from a tyrannical government. *Silveira v. Lockyer*, 328 F.3d 567, 570 (9th Cir. 2003) (Kozinski, J., dissenting); *see also Barnett v. Raoul*, 671 F. Supp. 3d 928, 940 (S.D. Ill. 2023) ("although 'most undoubtedly thought [the Second Amendment] even more important for self-defense and hunting' the additional purpose of securing the ability of the citizenry to oppose an oppressive military, should the need arise, cannot be overlooked.").

B. Addressing the ways gun owner privacy has traditionally been allowed to be limited.

To be sure, like all rights the Second Amendment is not absolute, and in some instances the government does have the ability to intrude on the privacy of gun owners. For example, early colonial "muster" laws required men of militia age to present their arms for inspection. *See, e.g.*, 1631 Va. Acts 174, Acts of Feb. 24, 1631, Act LVI (required annual accounting of "arms and ammunition"). But these laws,

besides applying only to members of the militia, did not constitute an accounting of every arm those militia members owned; rather, they ensured each militia member was sufficiently armed so if called upon, they could serve the collective defense.

As another example, some laws existed in the Nineteenth Century allowing for the taxation of certain types of weapons, which by implication would require disclosing the ownership of those weapons to the government. But these laws most often taxed weapons only if they were publicly carried, not merely if they were possessed in the home. *See, e.g., An Act Entitled Revenue*, ch. 34, § 23, pt. 4, 1856-1857 N.C. Pub. Laws ($1.25 tax on pistols and bowie knives if they were carried in public that year, though pistols used for mustering were exempted).

Moreover, many of these laws were also racist and existed to target newly freed Black Americans. After the Civil War, many southern territories under reconstruction adopted "Black Codes," which aimed to keep newly freed former slaves repressed, often with the assistance of the Ku Klux Klan. Strategic disarmament of Black Americans was part of this nefarious project, as even President Grant complained to Congress that the Klan's objectives were, "by force and terror, to prevent all political action not in accord with the views of the members, to deprive colored citizens of the right to bear arms . . . and to reduce the colored people to a condition closely akin to that of slavery." *See* H. Journal, 42nd Cong., 2d Sess. 716 (1872).

It's thus no surprise that the Jim Crow era also saw a much more rapid adoption of taxes on certain weapons in the South. For instance, an 1867 Mississippi law assessed a tax of between five dollars and fifteen dollars on "every gun and pistol," and if the tax was not paid, the Sheriff was obligated to seize that gun. The tax was considerable, ranging from $108 to $325 per gun in today's dollars. 1867 Miss. Laws 327-28, *An Act To Tax Guns And Pistols in The County Of Washington*, ch. 249, § 1. But the law *only* applied in Washington County, Mississippi, and not the whole state. According to the 1860 census, Washington County was made up of 92% enslaved people, and even to this day is still over 70% African American. *See* U.S. Dep't of the Interior, Census Office, *Population of the United States in 1860,* 270 (Washington, Gov't Printing Office 1864).

A final category of laws in the Nineteenth Century was akin to registration and thus implicated privacy concerns: provisions that applied to concealed carry permitting. Specifically, while many local governments restricted concealed carry, they allowed individuals to apply with the local government for permits that exempted them from that restriction. *See, e.g., Ordinance to Regulate the Carrying of Pistols*, Oct. 25, 1880, reprinted in BROOKLYN DAILY EAGLE (N.Y.), Oct. 26, 1880, at 1 (1880 Brooklyn ordinance providing that a permit to carry a concealed weapon can be issued if "applicant is a proper and law abiding person.").

But these laws likewise do not justify any broad power of government to

generally intrude on gun owner privacy. They only applied to those who wished to carry a firearm *concealed*; open carry was generally permissible throughout America in the Nineteenth Century, without any permit being necessary. *See Cal. Rifle & Pistol Ass'n v. L.A. Cty. Sheriff's Dep't*, 745 F. Supp. 3d 1037, 1057 (C.D. Cal. 2024) (acknowledging that historical restrictions on concealed carry did not limit open carry). And further, there was implied consent in surrendering some privacy even for those who did choose to carry concealed, because they took the affirmative step of deciding to apply for a permit with their local government. Historical concealed carry permitting laws are thus not analogous to the government ordering the identity of gun owners to be divulged simply because they contacted a gun manufacturer, and not the government, for assistance.

C. Modern legal protections confirm privacy in gun-ownership is reasonably expected by gun owners.

In the modern era, the federal government itself has recognized gun owner privacy interests. In the 1980s, the Firearms Owners' Protection Act forbade the federal government from keeping a registry directly linking firearms to their owners,[3] a law still in effect today. *See* 18 U.S.C.A. § 926. Similarly, to prevent the establishment of a de facto registry of gun owners, the FBI is required by federal law

[3] The only exception being arms required to be registered under the National Firearms Act for taxation like machine guns, short-barrel rifles, short-barrel shotguns, and suppressors.

to destroy National Instant Criminal Background Check System records of approved firearm purchasers within 24 hours of a "proceed" response. 28 C.F.R. § 25.9(b)(1)(iii) (2026). For delayed transactions, records must be purged within 90 days. *Id.*

Besides these federal protections, several states have also passed laws concerning gun owner privacy. Indiana's "Disclosure of Firearm or Ammunition Information as a Condition of Employment" law prohibits both public and private employers from inquiring about or requiring disclosure of employees' firearm ownership as a condition of employment, unless directly related to job duties. Ind. Code § 34-28-8-6 (2025). Florida prohibits physicians from asking about firearm ownership unless it is relevant to medical care or safety, and from entering such information into medical records if irrelevant, among other protections. *See* Fla. Stat. § 790.338 (2025). Other states have similar laws. *See, e.g.,* Mo. Rev. Stat. § 571.012; Mont. Code Ann. § 50-16-108. Finally, many states restrict access to carry permit data or other gun owner records, often exempting them from public records laws to protect privacy. *See, e.g.,* Ariz. Rev. Stat. § 13-3112(J) (carry permit data confidential except by court order); Haw. Rev. Stat. § 134-3 (same).

We are of course only gently scratching the surface here, and a full examination of the intersection of the right to bear arms, the right to privacy, and to what degree the government's intrusion on that right is permissible could be the

subject of a lengthy law review article. Such a project is certainly beyond the scope of an amicus brief hoping to assist the resolution of a discovery dispute.[4] But even this very condensed summation of the relevant historical context shows that Americans have always had the implicit right to keep their status as a gun owner confidential, often from the federal government itself. That right has been subject only to narrow exceptions. States have increasingly protected this right in the modern era, further entrenching a reasonable expectation of privacy among gun owners. Thus, the government ordering a firearms manufacturer to divulge the identities of gun owners would go against that long-running historical tradition.

II. FITTING GUN OWNERS' REASONABLE EXPECTATION OF PRIVACY INTO THE RELEVANT PRIVACY CASELAW

The prior historical context around the Second Amendment and the privacy interests it implicates is also important in the privacy analysis itself. "Although the [Supreme] Court has not set forth a single metric or exhaustive list of considerations to resolve the circumstances in which a person can be said to have a reasonable expectation of privacy, it has explained that '[l]egitimation of expectations of privacy by law must have a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are

[4] Though Amici would be happy to provide more, if the Court would find it helpful.

recognized and permitted by society.' " *Byrd v. United States*, 584 U.S. 395, 405 (2018) (quoting *Rakas v. Illinois*, 439 U.S. 128, 143 n.12 (1978)). And of course, "individuals often have greater expectations of privacy **in things** and places **that belong to them**, not to others." *Carpenter v. United States*, 585 U.S. 296, 328 (2018) (bold added). Gun owners who reach out to a manufacturer for assistance with their firearm do not expect the government will order that manufacturer to divulge their identities, and thus their status as gun owners, to others without their consent. That expectation is a reasonable one, as demonstrated by the modern state and federal laws discussed in the preceding section.[5]

A. Gun ownership as a personal matter implicating constitutional privacy interests.

The Supreme Court has referred broadly to a constitutional privacy interest in "avoiding disclosure of personal matters," *Whalen v. Roe*, 429 U.S. 589, 599 (1977), and Amici contend gun ownership is such a personal matter. In *Whalen*, New York

[5] This widespread expectation of privacy in gun ownership was also demonstrated a few years ago by the widespread outrage that resulted from the California Department of Justice leaking the identities of over 200,000 people in the state who had a concealed handgun license, including among them judges and other government officials. *See* Kurt Chirbas & Chantal Da Silva, *California DOJ Data Breach Exposes Personal Information of All Concealed Carry Permit Holders Across State*, NBC News (June 29, 2022), https://www.nbcnews.com/news/us-news/california-doj-data-breach-exposes-personal-information-concealed-carr-rcna35849; *see also* Greg Moran, *California DOJ Gun Data Leak Exposes Judge, Prosecutor Info*, Gov't Tech. (July 5, 2022), https://www.govtech.com/public-safety/california-doj-gun-data-leak-exposes-judges-prosecutors.

required a centralized filing system of all prescriptions written for controlled substances that had potential for abuse. A lower court had held that the state could not record in a centralized computer file, the names and addresses of all persons who obtained, pursuant to a doctor's prescription, the drugs for which there was both a lawful and an unlawful market. While the Supreme Court reversed that judgment, it agreed that the information did implicate privacy, but ruled that the law adequately protected privacy when it limited access to the lists and built in protection from disclosures. *Whalen*, 429 U.S. at 605.

Here, by contrast, there is no meaningful protection. Gun owners would have their identities disclosed without their consent, and even with a protective order in place, they could then be forced into depositions or other legal proceedings. All because they simply contacted a manufacturer for help with their firearm.

Amici concede the caselaw on the specific question of privacy in gun ownership is not yet developed, and so far, unaddressed by the Supreme Court. That isn't surprising because most Second Amendment-related questions remain unaddressed given how few times the Court has dealt with the topic. *See District of Columbia v. Heller*, 554 U.S. 570, 635 (2008) ("since this case represents this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field"). That the Supreme Court has not gotten to this specific

question yet does not mean there is no reasonable expectation of informational privacy in gun ownership.

Some courts, however, *have* dealt with similar questions and can provide some initial guidance on the contours of gun owner privacy. Perhaps the most direct instance came in 1999, when the Michigan Supreme Court decided that gun ownership was information of a personal nature such that disclosure of identities under a state Freedom of Information Act request would have constituted a clearly unwarranted invasion of individual privacy. *Mager v. Dep't of State Police*, 460 Mich. 134 (1999). As that court explained:

> We held in *Bradley* that "information is of a personal nature if it reveals intimate or embarrassing details of an individual's private life." [citation omitted]. A citizen's decision to purchase and maintain firearms is a personal decision of considerable importance. We have no doubt that gun ownership is an intimate or, for some persons, potentially embarrassing detail of one's personal life.

Id. at 144 (quoting *Bradley v. Saranac Bd. of Educ.*, 455 Mich. 285, 294 (1997)).

B. Distinguishing cases with safeguards or less sensitive information.

Recently, the Ninth Circuit reached a different conclusion, though the facts in its case were quite different. Rather than a FOIA request that would divulge the identities of gun owners, the court dealt with the question of whether California could disclose the identifying information of gun owners to "bona fide research institutions for the ostensible purposes of preventing gun violence, shooting accidents, and suicide." *Doe v. Bonta*, 650 F. Supp. 3d 1062, 1064 (S.D. Cal. 2023).

The Ninth Circuit ruled that the plaintiffs failed to state a claim that their Second Amendment rights had been violated through the chilling effect[6] that disclosure would bring. Under the law at issue, "biographical information [was given] only to accredited research institutions, and as the district court explained, research institutions are prohibited from publicly disseminating personal information." *Doe v. Bonta*, 101 F.4th 633, 640 (9th Cir. 2024). "The record reflects that DOJ also requires researchers to abide by strict data security precautions to prevent disclosure. There is no allegation that approved research institutions have violated the restrictions imposed on them, that the institutions have been responsible for any public leak of information, or that the institutions have been the victims of hacking." *Id.*

Here, the situation is dissimilar because Plaintiffs' counsel is not nearly so limited. Presumably, they will want to subpoena or depose some of the gun owners'

[6] Such a chilling effect could very well be present in this case as well, should Defendant be forced to divulge identities. As a public policy matter, we should encourage people to seek help with potentially defective guns to promote safety. If Americans are instead taught that seeking help from a gun maker could end with their identity being disclosed to third parties without consent, it could discourage them from seeking that help and continue to use firearms that are possibly unsafe. Concerns over chilling effects have been grounds to prohibit disclosure of confidential information in other contexts. *See, e.g., NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958) (A state supreme court's enforcement of a civil contempt order issued against an association for failing to produce membership lists violated its members' rights to associate freely, which was protected by the Fourteenth Amendment.).

whose identities are revealed, and thereby insert their names into the court records of relatively high-profile litigation. What's more, unlike in California where a de facto state gun registry is in place, many of the gun owners at issue here never handed their information over to the government, and thus had no expectation their status as gun owners could possibly be divulged. Defendant "outing" them as gun owners without their consent (or even notification) runs afoul of expectations of not just privacy in gun ownership, but also even basic consumer privacy.

Aside from the cases Defendant cites in its own briefing, take the California Supreme Court case of *Pioneer Electronics (USA), Inc. v. Superior Court* as an additional example. There, the named class action plaintiff claimed that he needed the identifying information (names, addresses, etc.) to facilitate communication with potential class members. 40 Cal. 4th 360 (2007). The litigation did not touch on anything nearly as sensitive as firearms ownership, as it concerned allegedly defective DVD players. The California Supreme Court ruled the information could be disclosed because of two key reasons: First, it was not particularly sensitive information, and second, individuals were given the chance to prevent their information from being released. As the court explained:

> Such disclosure involves no revelation of personal or business secrets, intimate activities, or similar private information, and threatens no undue intrusion into one's personal life, such as mass-marketing efforts or unsolicited sales pitches. Moreover, the order in this case imposed important limitations, requiring written notice of the proposed

> disclosure to all complaining Pioneer customers, giving them the opportunity to object to the release of their own personal identifying information. Under these circumstances, the court's order involved no serious invasion of privacy.

Pioneer Elecs. (USA), Inc., 40 Cal. 4th at 373. Thus, even in litigation concerning something as trivial as DVD players, the California Supreme Court felt the privacy in consumer identities merited giving them at least some chance to protect their own privacy. The protection must be much higher when something as sensitive as gun ownership will be forcibly divulged, as opposed to ownership of broken DVD players. Consumers' reasonable expectations of privacy are significantly higher in gun ownership than they are in purchases of electronics.

C. The third-party doctrine and modern precedent in privacy cases.

Amici concede that certain federal cases have been less friendly to third party privacy claims. For example, the Supreme Court has ruled that a petitioner who was the suspect in a robbery did not have a legitimate expectation of privacy regarding the numbers he dialed on his phone because those numbers were automatically turned over to a third party, the phone company. *Smith v. Maryland*, 442 U.S. 735, 736 (1979). "When he used his phone, petitioner voluntarily conveyed numerical information to the telephone company and 'exposed' that information to its equipment in the ordinary course of business. In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed." *Id.* at 744.

"Until 2018, it was accepted that one could not have a reasonable expectation of privacy in information voluntarily turned over to third parties." *United States v. Jarmon*, 14 F.4th 268, 272 (3d Cir. 2021).

But *Smith* was not the last word on third-party privacy expectations. As the Supreme Court has explained much more recently, "[t]he third-party doctrine partly stems from the notion that an individual has a reduced expectation of privacy in information knowingly shared with another. **But the fact of 'diminished privacy interests does not mean that the Fourth Amendment falls out of the picture entirely.**' " *Carpenter*, 585 U.S. at 314 (quoting *Riley v. California*, 573 U.S. 373, 392 (2014)) (bold added). Critically, the Court went on to explain: "*Smith* and *Miller*, after all, did not rely solely on the act of sharing. Instead, they considered 'the nature of the particular documents sought' to determine whether 'there is a legitimate 'expectation of privacy' concerning their contents.' " *Id.* at 314 (quoting *United States v. Miller*, 425 U.S. 435, 442 (1976)).

The nature of what is sought here by the Plaintiffs (through the coercion of a court order) is the disclosure of the identities of gun owners. Those gun owners have an interest in keeping that information secret, or at minimum, not having it disclosed without their consent. In light of our historical tradition around privacy in gun ownership that continues through today with the protections of various state and federal laws, as well as the relevant caselaw on privacy rights, this Court should

decline to order Defendant to divulge the identities of their customers.

CONCLUSION

Our historical tradition demonstrates that Americans have always considered gun ownership a personal and private matter. Amici urge this Court to not force the Defendant to divulge the identities of its customers to the Plaintiffs, which would violate their reasonable expectation of privacy.

Dated: February 17, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of the Federal Rules of Civil Procedure and of this Court's local rules because it contains a total of 4,504 words (including footnotes), which is below this Court's limit of 5,000 words. Counsel determined the word count using Microsoft Word's wordcount tool.

Date: February 17, 2026

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