No. 21-55757

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LYDIA OLSON, ET AL,

Plaintiffs-Appellants,

v.

STATE OF CALIFORNIA, ET AL.,

Defendants-Appellees.

ON APPEAL FROM UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
NO. 2:19-CV-10956-DMG-RAO
The Honorable Dolly M. Gee, Judge

BRIEF OF *AMICUS CURIAE* BY THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC. IN SUPPORT OF PLAINTIFFS AND AFFIRMING THE PANEL DECISION

PAUL D. CULLEN, JR.
CHARLES R. STINSON
THE CULLEN LAW FIRM, PLLC
1101 30th Street NW, Suite 500
Washington, DC 20007
(202) 944-8600
paul@cullenlaw.com
charles@cullenlaw.com

TIMOTHY A. HORTON
THE LAW OFFICE OF TIMOTHY A. HORTON
600 W. Broadway, Suite 700
San Diego, CA 92101
(619) 272-7017
timhorton@timhortonlaw.com

Attorneys for Amicus Curiae
Owner-Operator Independent Drivers Association, Inc.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, proposed *amicus curiae* Owner-Operator Independent Drivers Association, Inc. states that it has no parent corporation, subsidiaries (including wholly-owned subsidiaries), or affiliates that have issued shares to the public and that no publicly held corporation owns 10% or more of its stock.

Respectfully Submitted,

Dated: January 22, 2024

THE CULLEN LAW FIRM, PLLC

By: */s/ Paul D. Cullen, Jr.*
Paul D. Cullen, Jr.
Charles R. Stinson

Attorneys for Amicus Curiae
Owner-Operator Independent Drivers Association, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes, Regulations, and Rules

TABLE OF AUTHORITIES
(continued)

Other Authorities **Page**

STATEMENT OF INTEREST

The Owner-Operator Independent Drivers Association, Inc. ("OOIDA")[1] is the largest international trade association representing the interests of independent owner-operators, small-business motor carriers, and professional truck drivers. OOIDA, to protect the rights of its members who wish to hire and work as independent contractor drivers in California, has challenged AB 5 in the Southern District of California (*California Trucking Associations, et al. v. Bonta, et al.*, No. 3:18-CV-02458-BEN-DEB). As part of that challenge, OOIDA has advanced an equal protection claim, offering evidence that (1) specific provisions of AB 5 contradict the law's claimed purposes, and (2) the effect of AB 5 to abolish the independent contractor driver model was motivated by lawmaker animus. Thus, OOIDA holds a particular interest whether this Court upholds the rational basis standard applicable to economic classifications.

OOIDA has more than approximately 150,000 members based in all 50 states and Canada, who collectively own and operate more than 240,000 individual heavy-duty trucks. Single-truck motor carriers represent nearly half of the total active motor carriers operated in the United States. OOIDA actively promotes the interests and rights of professional drivers and small-business truckers through its interaction with

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party contributed money intended to fund its preparation or submission. All parties have consented to the filing of this brief.

state and federal government agencies, legislatures, courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA's mission includes the promotion and protection of the interests of independent truckers, whether they are owner-operators, small-business motor carriers, or professional truck drivers, on any issue that might touch on their economic well-being, their working conditions, or the safe operation of their motor vehicles on the nation's highways.

In addition to its affirmative, strategic litigation, OOIDA routinely participates as *amicus curiae* before federal Circuit Courts of Appeals and the United States Supreme Court to advocate for the lawful classification of drivers, the right to pursue independent owner-operator and small-business motor carrier opportunities, and the right to freely participate in interstate commerce.

SUMMARY OF THE ARGUMENT

The State hopes to focus this rehearing of the Panel's decision reversing dismissal of Plaintiffs' equal protection claim (the "Decision") on (1) whether Plaintiffs-Appellants' (collectively, "Olson") have sufficiently alleged "animus" as described in this Court's equal protection precedent and (2) whether the Panel's decision conflicts with another panel's decision, *American Society of Journalists & Authors, Inc. v. Bonta*, 15 F.4th 954 (9th Cir. 2021). But both premises are flawed from the outset and neither requires this Court to reverse the Panel's decision.

Instead, the Court should affirm the Panel's decision and confirm the standard applicable to equal protection claims in the Ninth Circuit.

First, equal protection precedent concerning economic classifications requires plaintiffs to show that a legal distinction between similarly-situated parties lacks a rational basis—or that the claimed basis is irrational. That showing does not require demonstrating that political animus motivated the challenged legal distinction—animus is merely one means satisfying the standard. As Olson here alleged and OOIDA in its challenge proved, litigants can establish irrationality by demonstrating that the law contradicts its claimed purposes. Thus, whether Olson adequately alleged that lawmaker animus motivated AB 5's treatment of app-based workers does not control whether Olson plausibly alleged that their treatment violates equal protection by showing that the distinctions were *otherwise* irrational.

Second, merely because the Panel came to a different conclusion than another panel as to whether different AB 5 distinctions violate equal protection does not mean the two panels' decisions conflict. Essentially, the State argues that because one court determined that *one provision* of AB 5 passes equal protection muster, *all* of AB 5 is now beyond reproach. But the panels' divergent conclusions merely illuminate that some sets of workers could reasonably warrant different treatment under AB 5 and others may not. Similarly, OOIDA showed in its challenge that applying other AB 5 provisions to the unique regulatory setting of truck drivers

warrants a rational basis analysis distinct from that conducted in either *Olson* or *American Society of Journalists*.

Far from a catastrophic deviation from precedent sure to result in a flood of frivolous litigation (*see Petition for Panel Rehearing or Rehearing En Banc*, Dkt. 49 ("Rehearing Petition") at 17-19), the Panel's decision affirms the idea that no single case should be a blanket analysis covering every provision of AB 5—each of the law's many exemptions and carve-outs warrant a separate analysis. The Decision represents a straightforward application of this Court's equal protection precedent to a uniquely flawed law. The Panel merely reinforces the idea that the government cannot make legal distinctions between similarly-situated persons based solely on either claimed "purposes" that contradict the law itself or animus towards a politically unpopular group (or both). Olson plausibly alleged facts that, if proven, would clearly satisfy this standard. Likewise, OOIDA and the plaintiffs in their challenge to other AB 5 provisions demonstrated these elements.

OOIDA participates as an *amicus* in this rehearing in support of the Panel's decision to confirm the standard for equal protection claims subject to rational basis review, as correctly applied by the Panel, and to demonstrate the importance of this Court's ruling beyond the parties and facts of this lawsuit.

ARGUMENT

Laws that make legal economic distinctions between similarly situated persons pass equal protection scrutiny if they bear a rational relationship to a legitimate government interest or purpose. *See, e.g.*, *Merrifield v. Lockyer*, 547 F.3d 978, 986 (9th Cir. 2008). But a rational basis must be a logical one. *See id.* ("The State is not compelled to verify *logical* assumptions with statistical evidence."); *cf. id.* at 991 (political animus is evidence of irrationality). Thus, although rational basis review is forgiving, it is not, as the State implies, a rubber stamp for any and all economic distinctions that a state legislature deems politically expedient. Laws that treat people differently must, at a minimum, make logical sense. Legal distinctions fail rational basis review if they, *inter alia*: (1) contradict their claimed justifications in effect or (2) can only be explained by bare political animus.

The Panel's decision demonstrates an equal protection test that requires an independent evaluation of the context of each challenged AB 5 provision, just as in OOIDA's pending challenge and *American Society of Journalists*. The Panel's analysis here did not establish a new equal protection standard creating a blanket rule that will invite a flood of litigation.

I. Rational basis review does not require courts to approve of a state's unequal treatment in the face of clear legal logical contradictions.

The State's petition focused on the question of whether Olson's allegations, if true, constituted "animus" within the equal protection framework. *See* Rehearing

Petition at 10-12. But animus is only one way to demonstrate irrationality; animus is not a necessary element of an equal protection claim subject to rational basis review. Thus, whether Olson here—or OOIDA in its challenge—demonstrate political animus does not control the outcome of their equal protection claim. Instead, Olson here and OOIDA have shown that the relevant AB 5 carve-outs are otherwise irrational, because when a government treats like-persons differently, it cannot ignore reality and logic.

Thus, as in *Merrifield*, demonstrating that a legal distinction contradicts or undermines the law's claimed purpose shows "irrationality" for the equal protection analysis. Olson's allegations here, and OOIDA in its challenge, meet that standard—independent of any showing of political animus.

A. Legal distinctions that undermine or contradict a law's claimed purpose are "irrational" for equal protection purposes.

When deciding whether a legal distinction passes rational basis review, a court must answer two questions: "(1) Does the challenged legislation have a legitimate purpose? and (2) Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose?" *W. & S. Life Ins. Co. v. State Bd. of Equalization of California*, 451 U.S. 648, 668 (1981). If "'there is any reasonably conceivable state of facts that could provide a rational basis' for the challenged law," the claim must be rejected. *Merrifield*, 547 F.3d at 989 (quoting

FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 313 (1993)). But a legal distinction that has the effect of contradicting a law's claimed, even legitimate, purposes fails rational basis review. *See, e.g.*, *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011) (affirming district court's rejection of "claimed legislative justification because the record established that the statute was not rationally related to furthering such interests"). "Needless to say, while a government need not provide a perfectly logically solution to regulatory problems, it cannot hope to survive *rational* basis review by resorting to irrationality." *Merrifield*, 547 F.3d at 991.

In *Merrifield*, a panel of this Court examined a pesticide licensing law's rationale compared to its language and effects. The law intended to target pesticide-based pest control but applied to all pest controllers, regardless of pesticide use, with the rationale that all pest controllers may come into contact with pesticides. *Merrifield*, 547 F.3d at 991. But the law exempted pest controllers who did non-pesticide control of certain pests. The plaintiff engaged in non-pesticide control of non-exempted pests and challenged the exemption on equal protection grounds.

Critical to the analysis was practical logic: "those exempted under the current scheme are more likely to be exposed to pesticides than individuals like" the plaintiff. *Id.* Thus, although the State justified applying the licensing regime to all pest controllers because even non-pesticide users were likely to encounter pesticides, it exempted those non-pesticide users who were *most likely* to interact with

pesticides. This practical effect undermined the law's rationale and failed rational basis review. *Id.* Independent of any animus determination, contradictory and illogical legal distinctions fail rational basis review.

B. The Panel properly held that AB 5's treatment of app workers undermined the classification law's claimed purpose.

The Panel applied this standard to Olson's claims that exempting workers for certain apps—like Task Rabbit and Wag!—but not other app-based workers, like those at Uber and Postmates, lacked a rational basis. Excluding these workers from AB 5 was "starkly inconsistent" with one of AB 5's chief purposes, affording gig-based workers employee rights. *See* Decision at 24 (*Olson*, 62 F.4th at 1219). Moreover, the Panel could not conceive of—and the State could not provide—any reason that the exempted app-based workers should be excluded from AB 5 but Uber and Postmates workers should not. *See id.* at 24 & n.11 (62 F.4th at 1219 & n.11). In short, the exemptions undermined AB 5's claimed purposes, independent of any animus that might have motivated the decision to exempt some app workers and not others. *See id.* at 1219-20.

C. OOIDA's challenge highlights additional exemptions that contradict AB 5's claimed purposes of remedying worker misclassification in California.

OOIDA's challenge to other AB 5 provisions provide a further example of differential treatment that undermines the law's claimed purpose. AB 5 as applied to trucking treats interstate truckers differently than their intrastate counterparts: the

law features an exemption that can only ever be invoked by local, intrastate truckers, contradicting AB 5's claimed purpose of remedying misclassification of California workers. This disparate treatment exists due to the unique regulatory setting of the trucking industry.

AB 5 generally applies the demanding ABC classification test to workers in California. Cal. Lab. Code § 2775(b)(1). As applied in the interstate trucking industry, the ABC test prevents motor carriers from hiring owner-operators (many of OOIDA's members) as independent contractor drivers, because they generally work in "the usual course of the hiring entity's business." *Id.* § 2775(b)(1)(B). Relevant to OOIDA's challenge, AB 5 contains a business-to-business ("B2B") exemption that, when satisfied, classifies workers under the previous, more flexible classification standard. *Id.* § 2776(a).

But the B2B exemption as applied to trucking can only ever exempt local workers and subject them to the more flexible standard. The federal Truth-in-Leasing rules—which apply to all drivers and carriers operating in *interstate* commerce, 49 U.S.C. § 13501; 49 U.S.C. § 14102—dictate a carrier-driver relationship that precludes satisfaction of the B2B exemption, but those federal rules do not apply to *intrastate* operations. Thus, AB 5 divides independent trucker drivers into two separate classes, interstate drivers and intrastate drivers, who are treated differently under the law with no rational basis.

That is, the federal rules explicitly require that the lease agreement provide that the motor carrier—the lessee of the independent contractor driver's equipment—"have exclusive possession, control, and use of the equipment [and] assume complete responsibility for the operation of the equipment for the duration of the lease." 49 C.F.R. § 376.12(c)(1). The B2B exception requires the opposite: that the "service provider [the driver] is free from the control and direction of the contracting business entity [the hiring entity] in connection with the performance of the work, both under the contract for the performance of the work and in fact." Cal. Lab. Code §§ 2775(b)(1)(A); 2776(a)(1).

This conflict means that the B2B exemption cannot apply to any driver or motor carrier engaged in interstate commerce. The upshot? Only California-based, intrastate operations can ever invoke the B2B exemption to avail themselves of the previous, more flexible standard. But AB 5's claimed rationale is to combat misclassification of California workers through application of the ABC test. The State has never articulated a rational basis to grant California-based intrastate truckers an exemption to AB 5 but not grant interstate truckers the same exemption.

Similarly, AB 5's construction trucking exemption contradicts its claimed justifications. That is, AB 5 grants an exemption from its ABC test for certain trucking operations in the construction industry. *See* Cal. Lab. Code § 2781(h). But the State's claimed justification for treating these workers differently undermines

the exception. That is, one of the State's primary arguments for exempting construction truckers from the ABC test—and therefore classifying drivers under the old standard that would permit the use of independent contractor drivers—is that construction projects involve much more oversight and direction of drivers than do other trucking operations. If construction drivers need *more* oversight, why does AB 5 allow trucking companies to invoke a more flexible standard that permits independent contractor drivers? This contradiction, plus political favoritism and economic protectionism for the local construction industry proves an equal protection violation under this Court's precedent. *See Merrifield*, 547 F.3d 991 n.15.

Thus, like Olson's allegations here, OOIDA highlights AB 5 carve-outs that undermine and contradict AB 5's claimed rationales. Olson's and OOIDA's challenges illustrate how the equal protection standard applies on a case-by-case basis, not as a broad rule that invites more litigation.

II. The Panel's analysis does not conflict with *American Society of Journalists*.

Contrary to the State's urging, the Panel's application of the rational basis standard does not contradict this Court's analysis in *American Society of Journalists*. *See* Rehearing Petition at 12-17. First and foremost, by insisting that *American Society of Journalists* controls here, the State seemingly takes the position that when a court decides that *one* provision of a law passes constitutional muster, *other* distinct provisions of that law are not subject to their own analysis. The Court must reject

this approach. The entirety of a law requires thoughtful analysis. The Panel here apparently recognized as much, discussing *American Society of Journalists* and highlighting critical differences between the AB 5 provisions at issue there and in the instant case. Decision at 26 (*Olson*, 62 F.4th at 1220).

For example, the *American Society of Journalists* panel concluded that conceivable logical bases supported the challenged differential treatment: "It is certainly conceivable that differences between occupations warrant differently contoured rules for determining which employment test better accounts for a worker's status." *See, e.g.*, *Am. Soc. of Journalists*, 15 F.4th at 965. But this Panel concluded the opposite with respect to the app-based worker exemptions: "There is no indication that many of the workers in exempted categories, including those working for the app-based gig companies that are exempted, are less susceptible to being 'exploited by being misclassified as independent contractors.'" Decision at 25 & n.11 (*Olson*, 62 F.4th at 1219 & n.11). Moreover, the State could not articulate any possible basis for treating these workers differently: "It is notable that during oral argument, counsel for Defendants was unable to articulate a conceivable rationale for A.B. 5 that explains the exemptions made by A.B. 5, as amended." *Id.* *American Society of Journalists* does not justify courts in this circuit abdicating their obligation to analyze AB 5's numerous exemptions and carveouts.

Likewise, the provisions at issue in OOIDA's challenge demand a distinct equal protection analysis. Indeed, OOIDA demonstrated that those exemptions contradict and undermine AB 5's claimed purposes, distinguishing them from the provisions approved in *American Society of Journalists*. *See supra* Part I.C. Far from inciting a flood of frivolous equal protection suits, the Panel's decision is a straightforward example of applying the principles set forth in *American Society of Journalists*, *Merrifield*, and other relevant equal protection cases. The State's approach—short-circuiting constitutional scrutiny of any AB 5 provision and instead applying the holding to other AB 5 provisions—prevents the courts from meaningfully overseeing the constitutionality of California's governance of workers.

A determination that one provision of a legal scheme furthers a legitimate government interest does not mean that every provision of that scheme must then be presumed to pass constitutional muster. This Court should reject the State's invitation to bypass judicial oversight of California's complex and multifaceted worker classification scheme for all types of workers and unique circumstances.

III. Lawmaker animus toward a politically unpopular group, particularly when combined with a lack of logical connection between the distinction and the law, demonstrates an "irrational" basis.

Neither Olson's challenge here nor OOIDA's challenge in the Southern District of California requires a showing of animus, since both sets of AB 5 challengers have demonstrated irrationality independent of animus. But if this Court

does examine Olson's allegations of animus, it will find that Olson plausibly alleged that lawmaker animus did indeed motivate the app-based worker exemption according to this Court's standard for political animus in rational basis cases.

The Panel's analysis of the animus of AB 5's "architect" followed the appropriate standard regarding equal protection irrationality. *See, e.g.*, *Merrifield*, 547 F.3d at 991. "[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973). Political "singling out," particularly combined with a contradictory rationale, is evidence of an irrational basis. *See, e.g.*, *Merrifield*, 547 F.3d at 991.

The Panel's decision with respect to animus closely aligned with the analysis in *Merrifield*: Olson plausibly alleged that lawmakers singled them out as a politically unpopular group, and the exemption's contradictory nature and lack of conceivable legitimate basis bolstered the plausibility of the animus allegations. Decision at 25-26 (*Olson*, 62 F.4th at 1219-20) (quoting *Merrifield*, 547 F.3d at 991).

Moreover, the Panel expressly noted that Olson's plausible allegations of animus differentiated their claims from those rejected in *American Society of Journalists*. *Id.* at 26 (*Olson*, 62 F.4th at 1220). Far from blowing open the courthouse doors for anyone unhappy with the legislature's political choices, the

Panel's decision affirms this Court's equal protection precedent, which recognizes that the government cannot punish unpopular groups with arbitrary differential treatment.

For example, OOIDA's challenge to AB 5 brings to the fore the animus against independent contractor truck drivers (many of whom are OOIDA members who wish to maintain their status as independent contractors) held by AB 5's architect, former Assemblywoman Lorena Gonzalez, and others. In a committee hearing report on AB 5 from April 3, 2019, a sponsor of the bill, the California Labor Federation, described AB 5 in part: "It distinguishes carefully between a trucking company that has no employee drivers (misclassification) and a trucking company that contracts with a mechanic (legitimate contractor)." The only way that a trucking company can have no employee drivers is if it hires independent contractor drivers.

The legislature also targeted brokers who contract with these truckers. In a floor session, former Assemblywoman Gonzalez said, "We are [] getting rid of an outdated broker model that allows companies to basically make money and set rates for people that they called independent contractors." *See* video record of Assembly Floor Session, at 1:08:20-1:08:30 (Sept. 11, 2019) (https://www.assembly.ca.gov/media/assembly-floor-session-20190911).

Furthermore, Ms. Gonzalez's AB 5 fact sheet referred to the independent contractor driver model as "exploitative" and "illegal." Californians for the Arts,

AB-5 Fact Sheet from Assemblywoman Lorena Gonzalez (Sept. 9, 2019), https://www.californiansforthearts.org/AB-5-about-blog/2020/2/7/AB-5-fact-sheet-from-assemblywoman-lorena-gonzalez.

This evidence of animus explains, pointedly, why truckers are treated differently under AB 5 than workers in other industries. The State, in this litigation and in OOIDA's challenge, repeatedly pointed to remedying worker *mis*classification and exploitation as AB 5's chief purpose. But AB 5 automatically classifies *all* truck drivers as employees—even those who were properly (and voluntarily) classified as independent contractors and not exploited under the previous standard. Viewed in the context of the lawmakers' numerous statements singling out truckers operating as independent contractors, the evidence in OOIDA's lawsuit demonstrates how AB 5's disparate treatment of truckers from other workers was indeed motivated by political animus.

As in the instant matter, OOIDA showed that the laws at issue in their challenge feature a purported rationale that was contradicted by the law's practical effects and clear evidence of lawmaker intent to single them out for unfavorable treatment. Both this case and OOIDA's challenge (if successful) represent, therefore, faithful applications of this Court's long-standing equal protection jurisprudence.

CONCLUSION

AB 5 is riddled with exemptions and carve-outs that, like those at issue here and in OOIDA's challenge, directly contradict and undermine AB 5's claimed purposes. Applying this Court's equal protection framework to either of these fact patterns results in a straightforward conclusion: The differential treatment fails rational basis review. Here, the app-based worker provision exempts many workers who are indistinguishable from the primary targets of AB 5, which simultaneously shows that the exemption undermines AB 5's purpose and was motivated by political animus for apps like Uber and Postmates. Likewise, in OOIDA's challenge, OOIDA demonstrated that AB 5's B2B exemption can only ever only apply to local workers despite the law's claimed purpose of reclassifying California workers and that lawmakers wished to eliminate independent contractor drivers even if they were properly and voluntarily independent.

These conclusions do not diverge from previous Ninth Circuit equal protection caselaw, particularly *American Society of Journalists*. In this case and that case, a panel of this Court applied the proper equal protection standard to the facts of *different* AB 5 provisions. That two courts come to different conclusions about different provisions of the law does not mean that the decisions conflict.

For the foregoing reasons, in addition to those advanced by the Plaintiffs here, OOIDA urges this Court to affirm the Panel's Decision reversing the District Court's dismissal of Plaintiffs' equal protection claims.

Respectfully Submitted,

Dated: January 22, 2024

By: */s/ Paul D. Cullen, Jr.*

Paul D. Cullen, Jr.
Charles R. Stinson
THE CULLEN LAW FIRM, PLLC
1101 30th Street NW, Suite 500
Washington, DC 20007
(202) 944-8600
paul@cullenlaw.com
charles@cullenlaw.com

Timothy A. Horton
THE LAW OFFICE OF TIMOTHY A. HORTON
600 W. Broadway, Suite 700
San Diego, CA 92101
(619) 272-7017
timhorton@timhortonlaw.com

Attorneys for Amicus Curiae *Owner-Operator Independent Drivers Association, Inc.*

CERTIFICATE OF SERVICE

I, Paul D. Cullen Jr., hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit and served upon all counsel of record via the Court's CM/ECF system.

Dated: January 22, 2024

/s/ Paul D. Cullen, Jr.
Paul D. Cullen, Jr.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form08instructions.pdf

9th Cir. Case Number(s) 21-55757

I am the attorney or self-represented party.

This brief contains 3,841 **words,** including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

- ○ complies with the word limit of Cir. R. 32-1.
- ○ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ◉ is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ○ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ○ complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
  - ☐ it is a joint brief submitted by separately represented parties.
  - ☐ a party or parties are filing a single brief in response to multiple briefs.
  - ☐ a party or parties are filing a single brief in response to a longer joint brief.
- ○ complies with the length limit designated by court order dated ____.
- ○ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/Paul D. Cullen, Jr. **Date** January 22, 2024
*(use "*s/[typed name]*" to sign electronically-filed documents)*

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov