

No. 25-5309

**IN THE UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT**

**GUN OWNERS OF AMERICA, INC., and GUN OWNERS
FOUNDATION,**
Plaintiffs–Appellants,

v.

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES,
Defendant–Appellee.

On Appeal from the United States District Court
For the District of Columbia
No. 1:21-cv-02919-ABJ
Hon. Amy Berman Jackson

**AMICUS CURIAE BRIEF OF
THE BUCKEYE INSTITUTE
IN SUPPORT OF
PLAINTIFFS–APPELLANTS & REVERSAL**

David C. Tryon
Counsel of Record
Alex M. Certo
Bret Baker
THE BUCKEYE INSTITUTE
88 East Broad Street, Suite 1300
Columbus, Ohio 43215
(614) 224-4422
D.Tryon@BuckeyeInstitute.org

Attorneys for Amicus Curiae

CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

Counsel for *amicus curiae* certifies the following:

A. Parties and Amici

All parties, intervenors, and amici currently appearing before the district court and in this Court are listed in the Brief for Plaintiffs—Appellants Gun Owners of America at (ii) and on the docket.

B. Rulings Under Review

The United States District Court for the District of Columbia granted summary judgment for the Bureau of Alcohol, Tobacco, Firearms and Explosives on July 23, 2025.

C. Related Cases

To the knowledge of counsel for *amicus curiae*, there are no cases related to this one for purposes of this disclosure.

CERTIFICATE PURSUANT TO CIRCUIT RULE 29(D)

Pursuant to D.C. Circuit Rule 29(d), the undersigned counsel for *amicus curiae* certifies that a separate brief is necessary to provide the unique perspective of The Buckeye Institute.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 29(a)(4)(A) and 26.1 of the Federal Rules of Appellate Procedure, amicus states that it has no parent corporation and issues no stock, thus no publicly held corporation owns more than ten percent of its stock. All parties have consented to the filing of this brief.

TABLE OF CONTENTS

CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES.....	i
CERTIFICATE PURSUANT TO CIRCUIT RULE 29(D)	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	iv
GLOSSARY	vii
INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF THE ARGUMENTS.....	1
ARGUMENTS.....	2
I. Equity opposes the ATF’s concealment of documents it produced because such a remedy exceeds the statutory and historical equitable powers.....	2
A. The federal courts’ equitable authority is limited to historical analogs from the English Court of Chancery.....	4
B. There is no analog from the English Court of Chancery to equitably order the concealment of inadvertently disclosed records.	6
C. Neither the text of FOIA nor any permissible extension of the statutory authority to grant equitable relief supports the ATF’s request	8
D. Equity does not favor the ATF	12
CONCLUSION.....	17
CERTIFICATE OF COMPLIANCE	18
CERTIFICATE OF SERVICE	19

TABLE OF AUTHORITIES

Cases

<i>Atlas Life Ins. Co. v. W.I. Southern, Inc.</i> , 306 U.S. 563 (1939)	4
<i>Bodly's Case</i> , 22 Eng. Rep. 824 (Ch. 1679).....	12
<i>Citizens for Resp. & Ethics in Washington v. United States Dep't of Just.</i> , 846 F.3d 1235 (D.C. Cir. 2017).....	10
<i>Cox Broad. Corp. v. Cohn</i> , 420 U.S. 469 (1975)	13, 14
<i>Douglas v. Indep. Living Ctr. of S. California, Inc.</i> , 565 U.S. 606 (2012)	3
<i>Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.</i> , 527 U.S. 308 (1999)	4, 6, 7, 8, 9
<i>Harris v. Bessent</i> , No. 25-5037, 2025 WL 1021435 (D.C. Cir. Apr. 7, 2025)	8
<i>Hum. Rts. Def. Ctr. v. United States Park Police</i> , 126 F.4th 708 (D.C. Cir. 2025)	7, 11
<i>I.N.S. v. Pangilinan</i> , 486 U.S. 875 (1988)	3
<i>Keystone Driller Co. v. Gen. Excavator Co.</i> , 290 U.S. 240 (1933)	16
<i>New York Times Co. v. United States</i> , 403 U.S. 713 (1971)	11
<i>Olmstead v. United States</i> , 277 U.S. 438 (1928)	10, 16
<i>Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.</i> , 324 U.S. 806 (1945)	14

<i>Ramirez v. Collier</i> , 595 U.S. 411 (2022)	13
<i>Renegotiation Bd. v. Bannerkraft Clothing Co.</i> , 415 U.S. 1 (1974)	9, 10
<i>Rocky Mountain Wild, Inc. v. United States Forest Serv.</i> , 56 F.4th 913 (10th Cir. 2022)	8
<i>Umfraville v. Lonstede</i> , Y.B. Edw. 2, reprinted in 2 Selden Society xiii, 59	5
Statutes	
Judiciary Act of 1789, 1 Stat. 78	4
See 5 U.S.C. § 552(a)(4)(B)	11
Other Authorities	
1 Joseph Story, <i>Commentaries on Equity Jurisprudence as Administered in England and America</i> (13th ed. 1886)	5, 6, 7
30A C.J.S. <i>Equity</i> § 102	12
A. Dobie, <i>Handbook of Federal Jurisdiction and Procedure</i> (1928)	6
Anthony DiSarro, <i>Freeze Frame: The Supreme Court’s Reaffirmation of the Substantive Principles of Preliminary Injunctions</i> , 47 Gonz. L. Rev. 51 (2012)	5
<i>Diligence</i> , <i>Black’s Law Dictionary</i> (12th ed. 2024)	15
H. D. Hazeltine, <i>The Early History of English Equity</i> , in <i>Essays in Legal History</i> (Vinogradoff ed. 1913)	5
Theodore F. T. Plucknett, <i>Concise History of the Common Law</i> (2nd ed. 1936)	5
<i>Vigilant</i> , <i>Black’s Law Dictionary</i> (12th ed. 2024)	15

William Baude & Samuel L. Bray, *When the Executive Has Unclean Hands*, 135 Yale L.J. Forum (forthcoming 2025),
<https://dx.doi.org/10.2139/ssrn.5680222>12

GLOSSARY

ATFBureau of Alcohol, Tobacco, Firearms and Explosives
FOIA.....Freedom of Information Act
CREW.....*Citizens for Resp. & Ethics in Washington v. United
States Dep't of Just.*, 846 F.3d 1235 (D.C. Cir. 2017)

INTEREST OF AMICUS CURIAE¹

The Buckeye Institute was founded in 1989 as an independent research and educational institution—a think tank—to formulate and promote free-market policy in the states. The Buckeye Institute accomplishes its mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating free-market policies, and marketing those policy solutions for implementation in Ohio and replication across the country. The Buckeye Institute also files lawsuits and submits amicus briefs to fulfill its mission. The Buckeye Institute is a nonpartisan, nonprofit, tax-exempt organization, as defined by I.R.C. section 501(c)(3).

SUMMARY OF THE ARGUMENTS

The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) seeks equity contrary to the foundational principles of equity. The maxims of equity reflect the historical development of the law. Equity follows the law—but it does not create law. Equity demands parties

¹ As required by Rule 29(a), The Buckeye Institute states that all parties have given consent to file this amicus brief. Further, no counsel for any party has authored this brief in whole or in part and no person other than the amicus has made any monetary contribution to this brief’s preparation or submission.

seeking equity come to the court with clean hands, they do equity in favor of the other party, and they be diligent and vigilant in discharging their duties.

Courts' equitable powers stem from the common law, dating back hundreds of years. Those powers do not write upon a clean slate. The district court ignored the maxims of equity and effectively created a new claw-back section in the Freedom of Information Act ("FOIA") statute to satisfy the ATF. The lower court's decision runs against the history of equity, expanding the courts' powers beyond the historical boundaries. This Court should reverse the lower court and, consistent with the First Amendment, see Pls.–Appellants' Opening Br. at 44, allow Gun Owners of America to disclose the public records that the ATF produced.

ARGUMENTS

I. Equity opposes the ATF's concealment of documents it produced because such a remedy exceeds the statutory and historical equitable powers.

There is no sympathy for the child who pleads for mercy after killing his parents when he claims, "I am an orphan with no parents to care for me." Why is that so? Because the child has brought this misfortune upon himself. Or as the maxims of equity declare, those who seek equity must come to the court with clean hands and must first do equity. Further,

equity aids the vigilant and diligent. While perhaps the ATF may not have the same degree of apocryphal orphan's unclean hands, the ATF satisfies none of these maxims.

The ATF seeks to leverage federal courts' equitable authority to order the concealment of unredacted, unflattering public records that were produced and shared by the ATF. But that is not the way equity works.

Equitable powers are not unlimited. Equity does not create a blank slate upon which a court can write the law: "It is a longstanding maxim that equity follows the law." *Douglas v. Indep. Living Ctr. of S. California, Inc.*, 565 U.S. 606, 619–20 (2012)(internal citations omitted). Equity does not evade existing law. "A court of equity may not create a remedy in violation of law, or even without the authority of law." *Id.*; *see also I.N.S. v. Pangilinan*, 486 U.S. 875, 883 (1988) ("Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law."). And equity does not give courts carte blanche in the name of fairness.

The Freedom of Information Act ("FOIA") does not convey upon courts the authority to restrict the usage of documents disclosed under FOIA. And courts do not have the power to simply expand their own power when

the relevant statute does not convey the legal power to grant such relief. The district court exceeded its authority, so this court should reverse.

A. The federal courts' equitable authority is limited to historical analogs from the English Court of Chancery.

Equitable remedies emerged over time from English courts seeking to avoid the unfortunate injustices that the common law sometimes dictated. The doctrine's intricate structure was then incorporated into the American judicial system, as the Judiciary Act of 1789 gave federal courts jurisdiction over "all suits . . . in equity." § 11, 1 Stat. 78. The Supreme Court has "long held that "[t]he 'jurisdiction' thus conferred . . . is an authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries." *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 318 (1999) (quoting *Atlas Life Ins. Co. v. W.I. Southern, Inc.*, 306 U.S. 563, 568 (1939)).

While most view equity jurisdiction in England as a product of the Chancellor's court and the split between the legal and equitable courts, the notion of equity began in the early common law courts and was not foreign to the Chancellor's court as it began to develop and exercise more

equitable jurisdiction. Theodore F. T. Plucknett, *Concise History of the Common Law* 606 (2nd ed. 1936) (citing *Umfraville v. Lonstede*, Y.B. Edw. 2, reprinted in 2 Selden Society xiii, 59).

As the common law courts' rules became too strict, specific equity jurisdiction was vested in the lord chancellor, and the Chancery Court was born. From there, the "Chancellor's court, exercising very wide discretionary powers, gradually developed the elaborate and effective system of rules and principles which we . . . know as English Equity." *Id.* at 608 (quoting H. D. Hazeltine, *The Early History of English Equity*, in *Essays in Legal History*, 261, 282 (Vinogradoff ed. 1913)).

Justice Joseph Story noted that "the federal law of equity 'is founded upon, co-extensive with, and in most respects conformable to, that of England.'" Anthony DiSarro, *Freeze Frame: The Supreme Court's Reaffirmation of the Substantive Principles of Preliminary Injunctions*, 47 Gonz. L. Rev. 51, 62 (2012) (quoting 1 Joseph Story, *Commentaries on Equity Jurisprudence as Administered in England and America* 54 (13th ed. 1886)). As such, "[s]ubstantially, then, the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and

the enactment of the original Judiciary Act, 1789 (1 Stat. 73).” *Grupo Mexicano de Desarrollo S.A.*, 527 U.S. at 318–19 (quoting A. Dobie, *Handbook of Federal Jurisdiction and Procedure* 660 (1928)). Federal courts should ask, therefore, whether the relief requested “was traditionally accorded by courts of equity.” *Id.* at 319.

B. There is no analog from the English Court of Chancery to equitably order the concealment of inadvertently disclosed records.

Early English Chancery courts rejected the idea of free-wheeling equitable relief, *i.e.*, every court using its own measurement of fairness. Those courts ultimately repudiated such an ad hoc, open-ended concept. Measuring justice based on each chancellor’s conscience would create uncertainty. *See id.* at 332–33 (citing Story, *supra*, at 21). What measure would it be if one chancellor has a conservative conscience, another a liberal conscience, and a third an indifferent one? *See* Story, *supra*, at 21. The Supreme Court in *Grupo Mexicano* directed lower courts to measure equity by concrete standards, rooted in history, not conscience.

The Supreme Court further rejected a general equitable power that would be limited only when “there is a statute to the contrary.” *Grupo Mexicano de Desarrollo S.A.*, 527 U.S. at 321. Instead, the rule is the

inverse: “[E]quitable powers conferred by the Judiciary Act of 1789 did not include the power to create remedies previously unknown to equity jurisprudence.” *Id.* at 332.

Without a tie to history, equity is unlimited or unmoored. Without tethering equity to a historical equitable analog, courts’ unbounded equitable jurisdiction

of correcting, controlling, moderating, and even superceding the law, and of enforcing all the rights, as well as charities, arising from natural law and justice, and of freeing [them] from all regard to former rules and precedents, [] would be the most gigantic in [the court’s] sway, and the most formidable instrument of arbitrary power, that could well be devised.

Story, *supra*, at 21. While some might argue for unbridled equitable authority to promote fairness, such open-ended judicial authority would improperly “place the whole rights and property of the community under the arbitrary will of the Judge . . . with a despotic and sovereign authority.” *Id.*

In the FOIA context, neither the ATF nor the district court has provided a historical analog of courts exercising equity to prevent the disclosure of produced public records. *See Hum. Rts. Def. Ctr. v. United States Park Police*, 126 F.4th 708, 718 (D.C. Cir. 2025) (noting no

“documented historical practice of permitting the government to claw back information it accidentally disclosed in a FOIA production”).

If there is no historical analog to “remedies administered by the English Court of Chancery and courts sitting in equity at the time of the Founding,” the Court should not extend equity to reward the government here. *See Harris v. Bessent*, No. 25-5037, 2025 WL 1021435, at *5 (D.C. Cir. Apr. 7, 2025) (Rao, J., dissenting) (citing *Grupo Mexicano de Desarrollo, S.A.*, 527 U.S. at 318–19).

C. Neither the text of FOIA nor any permissible extension of the statutory authority to grant equitable relief supports the ATF’s request.

In the only other case addressing courts’ powers related to FOIA clawbacks, the Tenth Circuit Court of Appeals justified its departure from jurisprudential norms of equitable authority because the plaintiff “cite[d] no authority *barring* courts from ordering the return or destruction of inadvertently disclosed records subject to FOIA exemption.” *Rocky Mountain Wild, Inc. v. United States Forest Serv.*, 56 F.4th 913, 931 (10th Cir. 2022) (emphasis added). Yet, as detailed above, the lack of authority affirmatively barring equitable relief does not liberate courts to invent a

government pseudo-clawback/non-disclosure remedy for the government's inadvertent disclosure.

Nevertheless, the lower court misreads a number of cases to give itself equitable authority to expand FOIA. First, the court overreads the clause in *Renegotiation Bd. v. Bannercraft Clothing Co.*, stating that there is “‘little to suggest’ that FOIA ‘limit[s] the inherent powers of an equity court.’” App. 064–065 (quoting *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 20 (1974)). But while FOIA may not limit those powers, the Court’s equitable jurisprudence does limit them. Indeed, the quoted language from *Bannercraft* does not allow lower courts to add new statutory language to FOIA. Further, a lack of statutory limitation does not dismiss the Court’s subsequent directions that courts are limited to relief that “was traditionally accorded by courts of equity.” *Grupo Mexicano de Desarrollo S.A.*, 527 U.S. at 319. The lower court never addressed that requirement in its decision.

Similarly, the district court’s opinion overreads this Court’s recognition in *Citizens for Responsibility and Ethics in Washington v. United States Department of Justice* (“CREW”) that “FOIA . . . vests courts with broad equitable authority” to justify concealing the already-

disclosed records here. *Citizens for Resp. & Ethics in Washington v. United States Dep't of Just.*, 846 F.3d 1235, 1241 (D.C. Cir. 2017). The district court uses *CREW* as a means to expand FOIA's remedies.

The decisions relied on below, and discussed by this Court in *CREW*, all involve disputes regarding the *withholding* of public records, not the *concealment* of already-disclosed records at issue here. The results of the cases discussed by the *CREW* court are consistent with FOIA's purpose and its explicit remedy, which aims at liberal disclosure. Under the district court's interpretation, however, federal courts can do the opposite and use FOIA to order the concealment of records. Such an extension is illogical and unsupported.

Writing on equity, Justice Brandeis noted, “[i]n a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously.” *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (J. Brandeis, dissenting). Equity does not allow courts to enforce government-requested concealment of already disclosed records, especially since the “broad language of the FOIA” emphasizes “disclosure [] with its exemptions carefully delineated as exceptions.” *Bannerkraft Clothing Co.*, 415 U.S. at 19. Equity in FOIA should assist the purposes

of FOIA—to provide freedom of information to the public, not the concealment thereof. And courts must adhere to Congress’s statutory instructions under FOIA—equity cannot impair the law itself.

In *Hum. Rts. Def. Ctr. v. United States Park Police*, this Court recognized that “Congress presumably acted deliberately in omitting general clawback authority from FOIA.” 126 F.4th at 719. Congress likewise acted deliberately when it limited the equitable powers of the courts. See 5 U.S.C. § 552(a)(4)(B) (vesting the district courts only with “jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant”).

Nonetheless, the government “makes the bold and dangerously farreaching contention that the courts should take it upon themselves to ‘make’ a law . . . in the name of equity . . . even when the representatives of the people in Congress have adhered to the command of the First Amendment and refused to make such a law.” *New York Times Co. v. United States*, 403 U.S. 713, 718 (1971). The Court should continue to follow traditional notions of equity and reject the lower court’s expansion of equity to benefit the government.

D. Equity does not favor the ATF.

Equitable doctrines not only have built-in limitations in relation to courts, but parties as well. See William Baude & Samuel L. Bray, *When the Executive Has Unclean Hands*, 135 Yale L.J. Forum at 4–5 (forthcoming 2025), <https://dx.doi.org/10.2139/ssrn.5680222>. Acting as limiting principles, the maxims of equity include the requirement that one who requests equity from a court must have done and seek to do equity. In other words, requiring a party to “do equity” “assumes that different equitable rights have arisen from the same subject matter . . . some in favor of the plaintiff and some in favor of the defendant,” so that the party requesting equity is required to recognize and provide for the other party’s rights, and relief is granted only upon a showing that the other party’s rights are protected. 30A C.J.S. *Equity* § 102.

This understanding of equity dates back as far as the seventeenth century, where English courts recognized that “[i]niquity takes away equity.” Baude & Bray, *supra*, at 5 (quoting *Bodly’s Case*, 22 Eng. Rep. 824, 824 (Ch. 1679)). And as recently as 2022, the Supreme Court

reaffirmed that the “well-worn principles of equity” still apply in “all” cases. *Ramirez v. Collier*, 595 U.S. 411, 434 (2022).

While similar to the equitable doctrine of unclean hands (where courts look at inequitable prior conduct by one party), the requirement to do equity requires courts to look at and evaluate equities between the parties. Here, the ATF asks the Court to harm Gun Owners of America’s well-established First Amendment rights to erase the ATF’s own error in producing unredacted documents under FOIA. *See, e.g., Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1975) (discussing the First Amendment rights of the press related to receiving and publishing public records).

In considering this balancing of the equities, it must also be noted that Gun Owners of America has disclaimed any interest in publicizing personally identifying information, such as individuals’ names or Social Security numbers. Pls.–Appellants’ Opening Br. at 46–47. The only interest in dispute would be the unredacted information that the ATF intended to redact under FOIA Exemption 7(E), “specific law enforcement procedures and techniques.” App. 045. Therefore, as Gun Owners of America states in its brief, “the only risk of harm . . . publication would pose is to the reputations of the government officials” who Gun Owners

of America caught violating the law. Pls.–Appellants’ Opening Br. at 9.

In addition, when a matter in equity “concerns the public interest as well as the private interests of the litigants [it] assumes even wider and more significant proportions,” as a court properly applying the maxim “not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public.” *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 815 (1945). As the Supreme Court has recognized, there is a “public benefit . . . performed by the reporting of the true contents of the [public] records by the media.” *Cox Broad. Corp.*, 420 U.S. at 495. This benefit is of particular importance because “[t]he freedom of the press to publish . . . information” is of “critical importance” in the United States, where “the citizenry is the final judge of the proper conduct of public business.” *Id.* Thus, the public interest further tilts the balance of the equities toward Gun Owners of America.

Finally, “equity aids the vigilant and diligent.” The ATF was neither diligent nor vigilant in discharging its duties. The ATF was required to respond to Gun Owners of America’s FOIA request, exercising the “diligence reasonably expected from, and ordinarily exercised by, a person

who seeks to satisfy a legal requirement or to discharge an obligation.” *Diligence, Black’s Law Dictionary* (12th ed. 2024). Gun Owners of America submitted its FOIA request on April 28, 2021. Pls.–Appellants’ Opening Br. at 3. The ATF ignored that request. Gun Owners of America had to then file a complaint to force the ATF to fulfill its duty. That is not diligence. Then, the ATF took nearly two years until September 6, 2023, to produce the documents at issue here. *Id.* That is not diligence.

It was also incumbent on the ATF to be vigilant, or “watchful and cautious” or “on the alert” to guard its own information as it produced its documents. *Vigilant, Black’s Law Dictionary* (12th ed. 2024). But, despite delays of nearly two and a half years to produce these documents, the ATF carelessly produced documents that showed an intention to redact certain information but left it unredacted. Even then, the ATF did not notice its own negligence until notified by Gun Owners of America’s counsel. Pls.–Appellants’ Opening Br. at 3. That is not vigilance. ATF cannot plead for equity—mercy—when it brought this situation on itself.

As Justice Butler articulated for the Supreme Court nearly 100 years ago, courts apply the maxims of equity “not by way of punishment for extraneous transgressions, but upon considerations that make for the

advancement of right and justice”—to faithfully perform the longstanding duties of a court. *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933). Without fear or favor, courts exist to ensure that “government officials shall be subjected to the same rules of conduct that are commands to the citizen.” *Olmstead*, 277 U.S. at 485 (1928) (J. Brandeis, dissenting).

Executive branch agencies, such as the ATF, are responsible for knowing the limits of their constitutional authority, as well as their responsibilities in producing records under FOIA. This Court should not grant the ATF reprieve. Because the ATF has not done equity to Gun Owners of America or the public at large, it cannot receive equitable relief.

CONCLUSION

Equity is an important principle in American jurisprudence. But it is not unlimited. The lower court's expansion of equity to create new governmental rights under FOIA is wrong. The maxims of equity, as incorporated from the English Court of Chancery, stand as an obstacle to the government's requested remedies. This Court should reverse the district court's decision.

Respectfully submitted,

/s/ David C. Tryon

David C. Tryon

Counsel of Record

Alex M. Certo

Bret Baker

THE BUCKEYE INSTITUTE

88 East Broad Street, Suite 1300

Columbus, Ohio 43215

(614) 224-4422

D.Tryon@BuckeyeInstitute.org

November 13, 2025

CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Fed. R. App. P. 29(a)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 3,268 words.

This document 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 document has been prepared in a proportionally spaced typeface using Microsoft Word for the most current version of Office 365 in 14-point type, Century Schoolbook.

/s/ David C. Tryon
David C. Tryon
Attorney of record for
The Buckeye Institute

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above amicus brief was served on all counsel of record via the Court's electronic filing system this 13th day of November 2025.

/s/ David C. Tryon

David C. Tryon

Attorney of record for

The Buckeye Institute