

In the
United States Court of Appeals
for the **Eighth Circuit**

DYLAN BRANDT, et al.,

Plaintiffs-Appellees,

v.

LESLIE RUTLEDGE, in her official capacity as the
Arkansas Attorney General, et al.,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Arkansas – Central, No. 4:20-cv-00450-JM.
The Honorable **James M. Moody, Junior**, Judge Presiding.

**BRIEF OF LIVERAMP HOLDINGS, INC. and
ELEVEN ADDITIONAL BUSINESS AND PHILANTHROPIC
ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFFS-APPELLEES AND AFFIRMANCE OF THE
DISTRICT COURT’S RULING**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, the undersigned counsel for LiveRamp Holdings, Inc., Acxiom LLC, Kinesso, LLC, the Northwest Arkansas Council, the Arkansas State Chamber of Commerce, the Walton Family Foundation, Inc., The Winthrop Rockefeller Foundation, The Interpublic Group of Companies, Inc., Asana, Inc., Xperi Holding Corp., Acoustic, L.P., and CYCLQ LLC (d/b/a Blue Star Business Services) certify that:

1. LiveRamp Holdings, Inc., the Northwest Arkansas Council, the Arkansas State Chamber of Commerce, the Walton Family Foundation, Inc., the Winthrop Rockefeller Foundation, The Interpublic Group of Companies, Inc., Asana, Inc., Xperi Holding Corp., and CYCLQ LLC (d/b/a Blue Star Business Services) respectively, have no parent corporation.

2. Acxiom LLC and Kinesso, LLC are wholly owned subsidiaries of The Interpublic Group of Companies, Inc.

3. Acoustic, L.P. is owned by Centerbridge Partners, L.P.

4. The Interpublic Group of Companies, Inc. is a publicly traded company. No publicly held corporation owns more than 10% of its stock.

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6. Asana, Inc. is a publicly traded company. No publicly held corporation owns 10% or more of Asana's stock.

7. No corporations hold any stock in the Northwest Arkansas Council, the Arkansas State Chamber of Commerce, the Walton Family Foundation, Inc., The Winthrop Rockefeller Foundation, or CYCLQ LLC (d/b/a Blue Star Business Services).

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iv
STATEMENT OF INTEREST.....	1
INTRODUCTION & SUMMARY OF ARGUMENT	7
ARGUMENT	8
I. A Reversal of the District Court’s Ruling Would Harm <i>Amici’s</i> Employees with Transgender Children by Depriving Them of Gender-Affirming Care	8
II. A Reversal of the District Court’s Ruling Would Impair <i>Amici’s</i> Ability to Attract and Retain a Diverse, Inclusive, and Talented Workforce, Compromising Their Ability to Compete	10
III. A Reversal of the District Court’s Ruling Will Adversely Affect Commerce Within Arkansas, Harming <i>Amici</i> —as Well as Other Arkansas Businesses.....	15
CONCLUSION.....	20
CERTIFICATE OF COMPLIANCE	22
CIRCUIT RULE 28A(h) CERTIFICATION.....	23
CERTIFICATE OF SERVICE	24

TABLE OF AUTHORITIES

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STATEMENT OF INTEREST¹

Amici are leading members of the business and philanthropic community in Arkansas, as well as companies that are concerned that laws like the ban on gender-affirming care for transgender youth might be enacted in their states. This community includes nationally recognized companies, trade associations, and non-profit organizations.

LiveRamp Holdings, Inc. (“LiveRamp”) is an S&P 400 company that offers a leading data connectivity platform. Founded in Conway, Arkansas, in 1969, LiveRamp provides services and infrastructure allowing companies to connect, control, and activate data to create more valuable business outcomes. LiveRamp seeks to foster an inclusive and welcoming workplace for all of its employees. Its Diversity, Inclusion, and Belonging (“DIB”) efforts include EQUAL, a grassroots group for queer and allied employees of LiveRamp that champions cultural transformation and workplace inclusivity.

Kinesso, LLC (“Kinesso”), a wholly owned subsidiary of The Interpublic Group of Companies, Inc., provides marketing intelligence services, leveraging data,

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), counsel for amicus curiae states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae, its members, or its counsel made a monetary contribution to the brief’s preparation or submission. All parties have consented to the filing of this brief.

planning, and marketing expertise to help clients execute successful campaigns. Kinesso seeks to cultivate an inclusive and welcoming workplace for its employees, as reflected in its Diversity, Equity, and Inclusion (“DEI”) programming. These programs aim to create meaningful ways for employees to engage in creating the diverse and inclusive culture that is central to the company’s values.

Acxiom LLC (“Acxiom”), a wholly owned subsidiary of The Interpublic Group of Companies, Inc., is a customer intelligence company that provides data-driven solutions to enable the world’s best marketers to better understand their customers, and to create better experiences and business growth. Acxiom endeavors to create an inclusive and welcoming workplace for all of its employees. To this end, Acxiom has established an IDEA Council to advance cross-company diversity and inclusion strategies. These initiatives include the creation of the LGBTQ+Acxiom affinity group, as well as community engagement programs with organizations like the Women’s Foundation of Arkansas.

Northwest Arkansas Council (“NWA Council”) is a 501(c)(6) non-profit organization working to improve and advance job opportunities, talent recruitment, physical infrastructure, health care, and quality of life. The NWA Council was founded by prominent Arkansas business leaders. NWA Council seeks to build and foster a diverse, inclusive business community in the Northwest Arkansas region. NWA Council’s initiative, EngageNWA, aims to facilitate diversity across all levels,

sectors, and communities in Northwest Arkansas—because regions with diverse communities perform better economically.

The Arkansas Chamber of Commerce (“the Chamber”) is the leading voice for Arkansas businesses and serves as the primary business advocate on all issues affecting Arkansas employers. With nearly 1,200 members, the Chamber represents a network of companies whose common goal is to improve the business climate in Arkansas. This includes promoting greater diversity, equity, and inclusion.

The Walton Family Foundation, Inc. (“WFF”) is a 501(c)(3) family-led foundation where three generations of the descendants of founders Sam and Helen Walton, and their spouses, work together to create access to opportunities for people and communities. WFF primarily focuses its charitable efforts on improving K-12 education, protecting rivers and oceans, and creating opportunity and enhancing quality of life for all in the Northwest Arkansas and the Arkansas-Mississippi Delta regions. In February 2021, WFF announced a new five-year strategic plan, which reaffirmed WFF’s commitment to elevating organizations from diverse backgrounds and encouraging WFF’s partners to prioritize diversity, equity, and inclusion. WFF is supporting efforts to advance Arkansas as one of the most vibrant and inclusive communities in the nation.

The Winthrop Rockefeller Foundation (“WRF”) is a private foundation dedicated to relentlessly pursue economic, educational, social, ethnic, and racial

equity for all Arkansans. WRF envisions an Arkansas in which all residents have jobs that pay a livable wage, a quality education, and the chance to thrive and prosper. WRF works to eliminate the legacies of unfairness and inequity, and seeks to elevate those whose opinions are rarely sought and considered.

The Interpublic Group of Companies, Inc. (“IPG”) is a global provider of marketing and communications solutions, with 54,600 employees in all major world markets. As a preeminent global provider of communications, IPG plays a pivotal role in empowering communities around the world to be open and empathetic to all. IPG works to ensure policies and practices are inclusive of LGBTQ+ employees, and it remains committed to attracting and retaining LGBTQ+ talent, while also championing the needs and interests of this important community beyond IPG and in the broader cultural conversation.

Xperi Holding Corporation (“Xperi”) invents, develops, and delivers technologies and intellectual property for consumer devices, media platforms, and semiconductors worldwide. Xperi has been steadfast in its support and commitment to stand against discrimination and embracing diversity and inclusion throughout its workforce, including the creation of a resource group for LGBTQ+ employees and the establishment of a diversity and inclusion counsel comprised of employees at all levels and senior executives.

Acoustic, L.P. (“Acoustic”) is an independent marketing, customer experience, and lifecycle pricing and promotion technology solutions provider. With more than 800 employees globally, Acoustic opened a physical office in Conway, Arkansas in 2021 and its product, customer success, and customer support teams have a presence in the region. Equity is a core tenet of Acoustic’s culture, and the company is committed to championing Inclusion & Diversity both internally and in the communities in which it operates. Acoustic believes that individual companies must take a stand against injustice and will not tolerate discrimination in any form.

CYCLQ LLC (d/b/a Blue Star Business Services) (“Blue Star”) is a digital strategies agency based in Fayetteville, Arkansas and focused on digital marketing, consulting, media engagement, and web design and development. Blue Star proudly serves small and medium-sized businesses across the U.S. Blue Star supports educational initiatives designed to eliminate unconscious bias and works to ensure that Arkansas’ workplace environments are free of discrimination. Blue Star also supports initiatives designed to reduce the effects of prejudices in communities at the local, regional, and national level.

Amici oppose discrimination in all of its forms and share a commitment to equality, respect, and dignity for all people, regardless of their gender identity. This commitment has manifested itself in their support and defense of public policies that protect the civil rights of transgender people. Through these policies, *amici* hope to

promote acceptance and equal treatment for all of their employees, customers, and respective families. Many *amici* employ and serve transgender people, and all *amici* oppose the potential implementation of HB 1570 (“the Healthcare Ban”), which discriminates against transgender people by, among other things, barring health care professionals from providing gender-affirming care to transgender youth. As detailed below, the Healthcare Ban, if allowed to go into effect, will adversely impact *amici*’s (or their members’) businesses, employees, and customers.

Amici submit this brief to advise the Court of the harm that reversing the district court’s decision would have on their businesses specifically, on businesses in the state of Arkansas more generally, and potentially on businesses throughout the country should courts declare that such statutes as the Healthcare Ban are lawful.

INTRODUCTION & SUMMARY OF ARGUMENT

Amici businesses, associations, and philanthropic organizations agree with plaintiffs-appellees that the district court’s well-reasoned decision, which granted plaintiffs’ motion for a preliminary injunction, should be affirmed in all respects. Were this Court to reverse the district court and allow the Healthcare Ban to go into effect, the businesses of *amici* or *amici*’s members will suffer. The Healthcare Ban will directly harm *amici*’s employees who have transgender children by depriving those children of necessary gender-affirming care. The Healthcare Ban will also impair *amici*’s ability to attract and retain a diverse, inclusive, and talented workforce, which in turn will compromise *amici*’s ability to compete. The Healthcare Ban will harm *amici*—as well as other Arkansas businesses—by adversely affecting commerce within the state. Finally, if the Court were to declare the Healthcare Ban constitutional, *amici* are concerned that similar laws could be enacted in other states, inflicting all of these harms on families—and businesses—across the country. Accordingly, *amici* urge this Court to protect the civil rights of transgender youth by affirming the district court’s opinion in its entirety. *See, e.g., Wright ex rel. A.W. v. Pulaski Cnty. Special Sch. Dist.*, 803 F. Supp. 2d 980, 984 (E.D. Ark. 2011) (“[T]he Eighth Circuit Court of Appeals has held that, ‘. . . it is always in the public interest to protect constitutional rights.’” (citing *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008))).

ARGUMENT

I. A Reversal of the District Court’s Ruling Would Harm *Amici’s* Employees with Transgender Children by Depriving Them of Gender-Affirming Care

Reversing the district court’s ruling will harm *amici’s* employees with transgender children by denying them the gender-affirming care they need and deserve. A major goal of gender-affirming healthcare is to treat gender dysphoria, defined as “discomfort or distress that is caused by a discrepancy between a person’s gender identity and that person’s sex assigned at birth.”² As detailed more fully in plaintiffs’ brief, the treatments that would be denied by the Healthcare Ban, which are recognized as medically necessary for many adolescents with gender dysphoria, are vital to the health and well-being of many transgender youth. The importance of this issue cannot be overstated, as there are an estimated 1.3 million transgender youth living in this country today.³

Amici employ thousands of individuals in the state of Arkansas and, undoubtedly, *amici’s* workforce includes the parents of transgender children. For many transgender youth, gender-affirming healthcare is life-saving. According to

² *Chapter One Outlawing Trans Youth: State Legislatures and the Battle Over Gender-Affirming Healthcare for Minors*, 134 Harv. L. Rev. 2163, 2166 (2021).

³ See *Get The Facts About Trans Youth*, Movement Advancement Project, <https://www.lgbtmap.org/file/Advancing%20Acceptance%20Infographic%20FINAL.pdf>.

the Trevor Project’s 2019 National Survey on LGBTQ Youth Mental Health, approximately 54 percent of transgender youth reported seriously considering suicide and 29 percent attempted suicide.⁴ Trans youth who receive gender-affirming healthcare, however, show decreased levels of depression, psychological distress, and suicidal behavior.⁵

Parents of transgender children understand and appreciate better than anyone just how important gender-affirming healthcare can be for youth who need it. That is why, if allowed to take effect, the Healthcare Ban will compel *amici*’s employees with transgender children to choose between (1) moving to another state to obtain the gender-affirming healthcare that Arkansas is attempting to deny; (2) stopping their children’s current care, which could be detrimental to the child’s mental and physical health—as well as the family’s well-being; or (3) traveling out-of-state to obtain gender-affirming treatment, which families may not have the resources to do. All of these options would adversely affect *amici*’s workforce. Employees would likely be forced to find new jobs if they chose to move to a different state. If, instead, employees decided to travel out-of-state for their children’s medical care, their absence from work would likely increase, leading to declines in productivity and

⁴ *Gender-Affirming Care for Youth*, The Trevor Project (Jan. 29, 2020), <https://www.thetrevorproject.org/research-briefs/gender-affirming-care-for-youth/>.

⁵ See *Chapter One Outlawing Trans Youth*, *supra* note 2, at 2168.

effectiveness. And for the reasons described above, simply stopping (or declining to pursue) gender-affirming care could have potentially devastating consequences on the children of these employees.

Importantly, the aforementioned losses are not hypothetical. *Amici* know of employees with transgender children who have indicated that they will leave Arkansas if the Healthcare Ban takes effect. Families are already making sacrifices in order to help their transgender children receive gender-affirming healthcare. Ultimately, some of these families will leave their homes and communities in Arkansas in order to better protect their children.⁶ *Amici* will lose the collective experience, expertise, and value added by the employees who leave the state in pursuit of this necessary—and potentially life-saving—medical care for their children. Because of this, the Healthcare Ban will have profoundly negative and lasting effects on *amici*'s workforce.

II. A Reversal of the District Court's Ruling Would Impair Amici's Ability to Attract and Retain a Diverse, Inclusive, and Talented Workforce, Compromising Their Ability to Compete

Reversing the district court's ruling will also compromise the ability of *amici* to retain and recruit a talented workforce. As to retention, the Healthcare Ban will

⁶ See Jo Yurcaba, *'It's not safe': Parents of transgender kids plan to flee their states as GOP bills loom*, NBC News (Apr. 19, 2021), <https://www.nbcnews.com/feature/nbc-out/it-s-not-safe-parents-transgender-kids-plan-flee-their-n1264506>.

encourage certain employees—including LGBTQ individuals or parents of LGBTQ children—to leave Arkansas. LGBTQ employees may move for the simple reason that they feel unwelcome and unsafe in Arkansas, while employees with transgender children (as noted) may relocate in pursuit of the gender-affirming healthcare that has been outlawed in Arkansas.

The signs of such an exodus have already started to appear. Before the Healthcare Ban was preliminarily enjoined, for instance, several transgender adolescents and their families fled Arkansas, or considered doing so, citing concerns about access to essential medical care and fear of hostility towards transgender and gender non-conforming people.⁷ If *amici*'s LGBTQ employees or employees with

⁷ See Emily Wax-Thibodeaux, *After Arkansas passes its trans ban, parents and teens wonder: Should we stay?*, Wash. Post (Apr. 24, 2021), https://www.washingtonpost.com/national/after-arkansas-passes-its-trans-ban-parents-and-teens-wonder-should-we-stay/2021/04/23/74c822f0-9d34-11eb-8005-bffc3a39f6d3_story.html (Kris Vaughn considers moving to more welcoming states after the Healthcare Ban passed. “It’s heartbreaking, because it’s the state where my loved ones are buried, where I got married, where my husband returned home from serving in Afghanistan,” she noted, but “it’s just not home if my child isn’t welcome.”); Jamie Weiss, *Mother, trans daughter leaving Arkansas ahead of new legislation taking effect*, 40/29 News (May 25, 2021), <https://www.4029tv.com/article/arkansas-mother-trans-daughter-fleeing-arkansas-ahead-of-new-legislation-taking-effect/36524446#> (Shirley Taylor, the mother of a transgender 11-year-old, plans to leave the state at the end of the school year “to start fresh in a place they hope will be more welcoming”); Yurcaba, *supra* note 6 (Amanda Dennis, mother of an 8-year-old transgender daughter, told NBC News she is prepared to move to protect her children, stating, “[t]he benefits are not going to outweigh the dangers of raising our children here in this state”); Katelyn Burns, *Arkansas faces a Trans Exodus after passing 3 anti-trans bills in 3 weeks*,

transgender family members leave the state and therefore leave their jobs,⁸ *amici* will lose their knowledge, experience, and diverse perspectives. And this departure of talent will, as a consequence, inflict concrete financial harm. To take just one example, the estimated cost of replacing an employee is “between 93 percent and 200 percent of the departing employee’s salary”—costs that likely have grown during the COVID-19 pandemic.⁹ *Amici* have invested resources in attracting, hiring, and training their employees—investments that will be lost if employees are

Bus. Insider (Apr. 7, 2021), <https://www.businessinsider.com/arkansas-3-anti-trans-bills-in-3-weeks-triggers-exodus-2021-4> (Jacqueline Middleton, a 23-year-old transgender woman, is planning on leaving the state over the Healthcare Ban); Nico Lang, *Transphobic Legislation Is Forcing Arkansas Families to Abandon the State*, *them.* (Apr. 27, 2021), <https://www.them.us/story/transphobic-legislation-forcing-arkansas-families-abandon-state> (the mother of a transgender student says although she “‘can’t imagine how we would be able to stay somewhere that has so clearly told us that we’re not welcome,’ she knows that moving will take a major toll on their family”).

⁸ In a recent survey, 51% of LGBTQ respondents stated that they had considered moving to “a new geographic location in order to live in a community and legal climate that is more accepting of all sexual orientations/gender identities.” Out & Equal Workplace Advocates and The Harris Poll, “*Open to All*” *Movement in the Post-Masterpiece Era* 8 (Oct. 4, 2018), https://theharrispoll.com/wp-content/uploads/2018/10/Out_and_Equal-PPT-Slides_Complete-Data.pdf.

⁹ Center for American Progress, *The Costly Business of Discrimination* 14 (Mar. 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/03/pdf/lgbt_biz_discrimination.pdf?_ga=2.251671808.807897117.1636054779-1438182767.1636054779.

forced to leave Arkansas to escape discrimination or secure medical care for their children.

At the same time, a reversal of the district court’s decision would gravely compromise *amici*’s ability to hire the talent needed for their businesses to thrive. As discussed previously, the Healthcare Ban not only prohibits gender-affirming medical care, but sends a message to members of the LGBTQ community that Arkansas does not value inclusivity and diversity. As Amy Waggoner, then Director of Midwest State & Local Government Affairs at Salesforce noted, “[i]f [a potential employee] says, ‘I think that I or my friends or family might be discriminated against if I move to that state . . . ,’ [t]hen we just lost that opportunity to recruit that top talent.”¹⁰

This dynamic will negatively affect *amici*, as “[a locality’s] commitment to diversity, equity, and inclusion is a key driver of economic success, serving to attract residents, visitors, and businesses who place a high value on inclusivity.”¹¹ This is

¹⁰ U.S. Chamber of Commerce Found., *Business Success and Growth Through LGBT-Inclusive Culture* 30 (Apr. 9, 2019), <https://www.uschamberfoundation.org/sites/default/files/Business-Success-Growth-LGBT-Inclusive-Culture-FINAL-WEB.pdf>.

¹¹ Human Rights Campaign Found., *Municipal Equality Index: A Nationwide Evaluation of Municipal Law* 52 (2020), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/MEI-2020-Final-2020.pdf?mtime=20201203083159&focal=none>; see also Matt Motyl et al., *How ideological migration geographically segregates groups*, 51 J. Experimental Soc. Psychol. 1, 2 (2014),

especially true of younger workers: Generation Z and Millennial employees—not just LGBTQ people—tend to be more culturally aware and to care more deeply about inclusion than older generations.¹² The Healthcare Ban, by signaling open hostility towards the transgender community, will therefore discourage individuals (especially younger workers) who value inclusion from pursuing career opportunities in Arkansas. This puts the state at a competitive disadvantage “to those [localities] that are open to new ideas, welcoming to people of different backgrounds, and provide an environment that encourages the free flow of innovation.”¹³ In light of today’s fierce competition for talent,¹⁴ this ban will seriously harm the business interests of *amici* and *amici*’s member businesses.

https://motyl.people.uic.edu/MIOTN_Migration_JESP_2014.pdf (study indicating that individuals tend to move from ideologically unfriendly communities to congruent communities).

¹² See Pierre Dupreelle et al., *A New LGBTQ Workforce Has Arrived—Inclusive Cultures Must Follow*, Boston Consulting Group (June 23, 2020), <https://www.bcg.com/publications/2020/inclusive-cultures-must-follow-new-lgbtq-workforce>.

¹³ Jon Miller & Lucy Parker, *Open For Business: Strengthening the economic case*, 26 (Jan. 24, 2018), https://static1.squarespace.com/static/5bba53a8ab1a62771504d1dd/t/5d40964b36f8640001cd3a86/1564513872720/Open+For+Business_Full+Report.pdf.

¹⁴ See generally Jon Bostock, *In The War For Talent, Competition Has Never Been So Fierce*, *Forbes* (July 20, 2021), <https://www.forbes.com/sites/forbesbusinesscouncil/2021/07/20/in-the-war-for-talent-competition-has-never-been-so-fierce/?sh=75edf746118b> (discussing the competitive hiring market and factors influencing workers’ employment decisions).

Finally, if the Healthcare Ban were to take effect, it may interfere with the ability of those *amici* with locations outside the state to efficiently allocate their workforce. Numerous Arkansas businesses maintain operations—or parts of their operations—in other regions of the country or the world. Because no other state bars transgender youth from accessing medically necessary care prescribed by their doctors, while Arkansas alone bars such access, employees with transgender children, LGBTQ employees, and other employees who prefer to work in a community that does not discriminate will be less willing to transfer to the state of Arkansas. This will naturally interfere with the ability of affected businesses to deploy their workforce in an efficient and effective manner.

In short, if the district court’s decision were reversed and the Healthcare Ban went into effect, *amici* and other Arkansas businesses would struggle to recruit and retain the talented employees that are the lifeblood of thriving businesses and vibrant economies.

III. A Reversal of the District Court’s Ruling Will Adversely Affect Commerce Within Arkansas, Harming Amici—as Well as Other Arkansas Businesses

If the Healthcare Ban were allowed to take effect, some people would not feel comfortable traveling to Arkansas in light of the unwelcoming environment, and some groups would avoid holding national conferences there. This will inflict

substantial harm on *amici*, Arkansas businesses, and all Arkansans, because all benefit from a strong economy.

Arkansas is not a special case; other states have faced adverse economic consequences for discriminating against the LGBTQ community. When the North Carolina legislature passed a so-called “bathroom bill” targeting transgender individuals, consumer boycotts led to hundreds of millions, if not billions, of dollars in lost revenue.¹⁵ Businesses also responded by deserting the state. PayPal announced that it was abandoning plans to build a new global operations center in Charlotte because the “bathroom bill,” like the Healthcare Ban, “perpetuate[d] discrimination” based on gender identity and “violate[d] the values and principles that are at the core of PayPal’s mission and culture.”¹⁶ Deutsche Bank froze a

¹⁵ See Colleen Jenkins & Daniel Trotta, *Seeking end to boycott, North Carolina rescinds transgender bathroom law*, Reuters (Mar. 30, 2017), <https://www.reuters.com/article/us-north-carolina-lgbt/seeking-end-to-boycott-north-carolina-rescinds-transgender-bathroom-law-idUSKBN1711V4>; see also *‘Bathroom bill’ to cost North Carolina \$3.76 billion*, CNBC (Mar. 27, 2017), <https://www.cnbc.com/2017/03/27/bathroom-bill-to-cost-north-carolina-376-billion.html> (“[T]he law limiting LGBT protections will cost the state more than \$3.76 billion in lost business over a dozen years.”).

¹⁶ Press Release, Dan Schulman, President & CEO of PayPal, *PayPal Withdraws Plan for Charlotte Expansion* (Apr. 5, 2016), <https://newsroom.paypal-corp.com/PayPal-Withdraws-Plan-for-Charlotte-Expansion>; see also Jon Kamp & Valerie Bauerlein, *PayPal Cancels Plan for Facility in North Carolina, Citing Transgender Law*, Wall St. J. (Apr. 5, 2016), [https://www.wsj.com/articles/paypal-cancels-plans-for-operations-center-400-jobs-over-north-carolinas-transgender-law-1459872277#:~:text=Valerie%20Bauerlein,-Biography&text=PayPal%20Holdings%20Inc.,Charlotte%2C%20the%20state's%](https://www.wsj.com/articles/paypal-cancels-plans-for-operations-center-400-jobs-over-north-carolinas-transgender-law-1459872277#:~:text=Valerie%20Bauerlein,-Biography&text=PayPal%20Holdings%20Inc.,Charlotte%2C%20the%20state's%20)

planned North Carolina expansion that would have brought 250 jobs to the Raleigh-Durham area.¹⁷ Entertainers like Bruce Springsteen and Itzhak Perlman cancelled concerts in the state to express their opposition.¹⁸

When a state propagates discrimination against the LGBTQ community, travel and tourism suffer as well. Some groups may avoid holding events in states where some participants will feel unwelcome or be unwilling to attend, and some groups may make the same choice to avoid the appearance of supporting the discriminatory policy.¹⁹ In Texas, for instance, an anti-transgender “bathroom bill” was estimated to cost approximately \$3.3 billion per year in diminished travel and tourism, 35,600 full-time-equivalent jobs, \$176.4 million in state revenue, and \$84.3

20biggest%20city.

¹⁷ See Jon Kamp & Valerie Bauerlein, *Deutsche Bank Freezes North Carolina Expansion, Citing Transgender Law*, Wall St. J. (Apr. 12, 2016), <https://www.wsj.com/articles/deutsche-bank-freezes-north-carolina-expansion-citing-transgender-law-1460469042>.

¹⁸ See Michael Cooper, *Itzhak Perlman Cancels Concert in North Carolina, Citing Bias Law*, N.Y. Times (May 17, 2016), <https://www.nytimes.com/2016/05/18/arts/music/itzhak-perlman-cancels-concert-in-north-carolina-citing-bias-law.html>; see also Laura Wagner, *Bruce Springsteen Cancels Show in North Carolina To Protest ‘Bathroom Bill’*, NPR (Apr. 8, 2016), <https://www.npr.org/sections/thetwo-way/2016/04/08/473566753/bruce-springsteen-cancels-show-in-north-carolina-to-protest-bathroom-bill>.

¹⁹ See M. Ray Perryman, *The Potential Impact of Social Legislation on Business Activity*, Perryman Group, (Apr. 18, 2017), <https://www.perrymangroup.com/media/uploads/report/perryman-the-potential-impact-of-social-legislation-on-business-activity-04-18-17.pdf>.

million in local fiscal resources.²⁰ Indiana bore a similar economic burden in 2015, when it enacted a law that discriminates against LGBTQ individuals. Shortly after its passage, “the city’s convention bookings with organizations based outside of Indiana dropped 43%” and, for the rest of the year, “the drop was 28%.”²¹ Notably, at least twelve companies cited the discriminatory legislation as a reason for avoiding the state.²²

Relatedly, the Healthcare Ban would lead to a decline in tourism and travel by the LGBTQ community itself. The corresponding loss of economic support from the LGBTQ community would be catastrophic to Arkansas businesses. In 2016, the American LGBTQ community alone possessed an estimated \$917 billion in total buying power.²³ Globally, this figure is thought to reach approximately \$3.7

²⁰ See M. Ray Perryman, *The Economic and Fiscal Price of Restricting Bathroom Access*, Perryman Group, (Apr. 19, 2017), <https://www.perrymangroup.com/publications/column/2017/4/24/the-economic-and-fiscal-price-of-restricting-bathroom-access/>.

²¹ Andrew Bender, *Indiana’s Religious Freedom Act Cost Indianapolis \$60 Million in Lost Revenue*, Forbes (Jan. 31, 2016), <https://www.forbes.com/sites/andrewbender/2016/01/31/indianas-religious-freedom-act-cost-indianapolis-60-million-in-lost-revenue/?sh=2744eb302e2a>.

²² *Id.*

²³ See John Schneider & David Auten, *The \$1 Trillion Marketing Executives Are Ignoring*, Forbes (Aug. 14, 2018), <https://www.forbes.com/sites/debtfreeguys/2018/08/14/the-1-trillion-marketing-executives-are-ignoring/?sh=1f1bfa68a97f>.

trillion.²⁴ In travel and tourism alone, the annual economic impact of LGBTQ travelers in the U.S. is about \$70 billion.²⁵ Arkansas currently benefits from LGBTQ tourism; towns in Northwest Arkansas, for instance, consistently attract LGBTQ visitors.²⁶ In short, the LGBTQ community is a significant force in the economy, and the state of Arkansas cannot afford to lose this economic support.

The Healthcare Ban's extreme impact on the well-being of transgender youth stands out among anti-transgender laws as especially pernicious; if it takes effect, the law may well have a greater effect on commerce than has been experienced in other states. A recent poll revealed that 66% of all adults nationwide oppose legislation that prohibits gender-affirming care for minors.²⁷ It is also estimated that 28% of LGBTQ adults will not buy products or services from companies that are

²⁴ See Nick Wolny, *The LGBTQ+ Community Has \$3.7 Trillion In Purchasing Power; Here's How We Want You to Sell to Us*, Entrepreneur (June 10, 2019), <https://www.entrepreneur.com/article/334983>.

²⁵ See Stephanie Rosenbloom, *The Evolving World of Gay Travel*, N.Y. Times (May 30, 2014), <https://www.nytimes.com/2014/06/01/travel/the-evolving-world-of-gay-travel.html>.

²⁶ Ben Kessler, *Gay-friendly towns in red states draw LGBTQ tourists: 'We're here to be normal for a weekend'*, NBC News (Apr. 26, 2019), <https://www.nbcnews.com/feature/nbc-out/gay-friendly-towns-red-states-draw-lgbtq-tourists-we-re-n998541>.

²⁷ See Matt Loffman, *New poll shows Americans overwhelmingly oppose anti-transgender laws*, PBS NewsHour (Apr. 16, 2021), <https://www.pbs.org/newshour/politics/new-poll-shows-americans-overwhelmingly-oppose-anti-transgender-laws>.

headquartered in states that pass anti-transgender legislation.²⁸ This data suggests that Arkansas businesses will pay a steep price for the discriminatory actions of their legislature.

CONCLUSION

The Healthcare Ban, if allowed to take effect, would undermine *amici*'s concerted efforts to build a talented, diverse, and thriving Arkansas business community—and would inflict economic harm on *amici* and the Arkansas economy. This irresponsible statute is manifestly not in the public interest. Accordingly, *amici* urge this Court to affirm the district court's decision.

²⁸ See Pathfinder Opinion Research, *Nationwide Survey of LGBTQ Adults* (Apr. 23, 2021), <https://www.glaad.org/sites/default/files/Pathfinder%20Opinion%20Research%20Memo%20GLAAD%20100%20days%20poll.pdf>.

Respectfully submitted on this 19th day of January, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this Brief of *Amici Curiae* in Support of plaintiffs–appellees and Affirmance complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,163 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I also certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, 14-point Times New Roman, using the word-processing system Microsoft Word 2019.

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CIRCUIT RULE 28A(h) CERTIFICATION

The undersigned hereby certifies that I have filed electronically, pursuant to Circuit Rule 28A(h), a version of the brief in non-scanned PDF format. I hereby certify that the file has been scanned for viruses and that it is virus-free.

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit via the Court's electronic filing system on January 19, 2022, which will serve electronic notice to all parties of record.

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