NO. 25-1028

United States Court of Appeals

for the

Fourth Circuit

ELEANOR MCGINN,

Plaintiff-Appellant,

– v. –

BROADMEAD, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND AT BALTIMORE

BRIEF FOR *AMICI CURIAE* NATIONAL CELIAC ASSOCIATION AND DISABILITY LAW CENTER OF VIRGINIA IN SUPPORT OF PLAINTIFF-APPELLANT

ELLEN M. SAIDEMAN
LAW OFFICE OF ELLEN SAIDEMAN
7 Henry Drive
Barrington, Rhode Island 02806
esaideman@yahoo.com

THEODORE R. DEBONIS
Counsel of Record
STEVEN C. SCHWARTZ
ALICIA YEO
CHAFFETZ LINDSEY LLP
1700 Broadway, 33rd Floor
New York, New York 10019
ted.debonis@chaffetzlindsey.com

Attorneys for Amici Curiae

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
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No. 25-1028 Caption: Eleanor McGinn v. Broadmead, Inc.

Pursuant to FRAP 26.1 and Local Rule 26.1,

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(name of party/amicus)

who is Amicus, makes the following disclosure:
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If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

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If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

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If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Theodore R. Debonis Date: 3/10/2025

Counsel for: National Celiac Association

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No. 25-1028 Caption: Eleanor McGinn v. Broadmead, Inc.

Pursuant to FRAP 26.1 and Local Rule 26.1,

disAbility Law Center of Virginia
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

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Signature: /s/ Rebecca S. Herbig Date: 3/10/25

Counsel for: disAbility Law Center of Virginia

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STATEMENT OF INTEREST OF AMICI[1]

Amicus the National Celiac Association ("**NCA**") is a 501(c)(3) non-profit organization dedicated to educating, empowering, and advocating for individuals with celiac disease and non-celiac gluten sensitivity, their families, and communities throughout the nation. NCA collaborates with healthcare professionals throughout the United States to disseminate science-based information on celiac disease, and it provides an expanding national support network and programs to address the needs of children through Raising Our Celiac Kids, older adults through Supporting Celiac Seniors, and those facing food insecurity through its Feeding Gluten Free program.

Amicus disAbility Law Center of Virginia ("**dLCV**") is the designated protection and advocacy ("**P&A**") system for the Commonwealth of Virginia.[2] In that role, dLCV is authorized to "pursue legal, administrative, and other remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals."[3] dLCV has a strong interest in enforcement of the Americans with

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[1] Pursuant to Federal Rule of Appellate Procedure 29(c)(4), *Amici* state that all parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *Amici* further state that (a) there is no party or counsel for a party in the pending appeal who authored this brief in whole or in part; (b) there is no party or counsel for a party in the pending appeal who contributed money that was intended to fund preparing or submitting the brief; and (c) no person or entity contributed money that was intended to fund preparing or submitting the brief, other than *Amici* and their members.

[2] *See* Va. Code § 51.5-39.13.

[3] 29 U.S.C. § 794e(f)(3); *see also Virginia Office for Protection and Advocacy v. Stewart*, 563 U.S. 247 (2011).

Disabilities Act ("**ADA**") to assure full inclusion of people with disabilities in all aspects of society.

Amici seek to protect and support individuals with gluten-related disorders, such as Plaintiff-Appellant Eleanor McGinn. Ms. McGinn, one of many older adults with celiac disease, now lives at a senior care facility that shows little interest in providing the safely prepared gluten-free food promised when Ms. McGinn contracted and paid to relocate there. The district court's decision dooms her and others suffering gluten-related disorders to choose between years of meals prepared and eaten alone, or the severe health consequences that result from partaking in the facility's regular meals shared with others. *Amici* submit this brief to highlight the impact of the district court's decision on these individuals and to advocate for necessary—and mandatory—accommodations under the ADA.

INTRODUCTION

Amici emphasize the urgent need for reasonable accommodations under the ADA[4] for individuals with celiac disease, non-celiac gluten sensitivity, and wheat allergies (collectively, "**gluten-related disorders**"). Gluten exposure can cause severe short- and long-term health consequences, including gastrointestinal distress,

[4] Plaintiff-Appellant also raised claims under the Rehabilitation Act and the Fair Housing Act. *See* Brief of Plaintiff-Appellant at 29-30, ECF No. 13. Those statutes also require reasonable accommodations or modifications, and the legal analysis is similar.

neurological complications, and increased cancer risks. Yet, despite the necessity of a strict gluten-free diet ("**GFD**"), individuals with gluten-related disorders frequently encounter cross-contacted and mislabeled food, making eating a constant risk and source of anxiety. As a result, they often experience heightened psychological burdens, social isolation, and even food-related phobias.

Maintaining a GFD is particularly difficult in care facilities, where frequent cross-contact, untrained and unprepared staff, and limited menu options, make adherence exceptionally challenging. Older adults, such as Ms. McGinn, face a heightened risk of malnutrition, exclusion from communal meals, and diminished quality of life when facilities fail to provide safe gluten-free options. Without reasonable modifications, those with gluten-related disorders are denied full and equal enjoyment of daily mealtimes, depriving them of adequate nutrition and social engagement.

Here, Ms. McGinn is requesting that Broadmead, Inc. ("**Broadmead**"), which has absorbed over $700,000 of her life savings, provide her with nutritious and safely prepared gluten-free food that she can enjoy alongside her fellow residents. This request was not made in a vacuum—in contravention of her medically-required gluten-free diet, Ms. McGinn was fed gluten-containing food by Broadmead on

multiple occasions.[5] These incidents debilitated her health and worsened her quality of life, rendering her unable to trust Broadmead to meet her dietary needs.

The district court wrongly denied Ms. McGinn's request for injunctive relief on the basis that there is no real and immediate threat of repeated injury to Ms. McGinn. This is plainly untrue. In fact, Broadmead changed its labeling system to only provide for "Gluten Friendly" food instead of gluten-free, meaning there are no assurances at all that Broadmead's food can safely be consumed by Ms. McGinn or anyone with a severe gluten-related disorder. Because Broadmead cannot—or will not—provide Ms. McGinn safe, gluten-free food, she is in fact *constantly* under a real and immediate threat of injury. That she is thus deterred from patronizing Broadmead's dining spaces also constitutes *actual* injury as well.

Programs such as the Gluten-Free Food Program and the Gluten-Free Food Service provide blueprints for safe gluten-free dining. These programs educate institutions and businesses on proper food preparation practices and the provision of a truly gluten-free menu. Numerous colleges, hospitals, and care facilities have already successfully implemented such programs. Without a meaningful gluten-free dining program at Broadmead, Ms. McGinn is unable to fully access and enjoy the assisted living facility which is now her home; she is deprived of the amenities for which she contracted and paid. *Amici* urge the Court to reverse the district court's

[5] *See* Brief of Plaintiff-Appellant at 8-12, ECF No. 13.

decision and affirm that individuals with gluten-related disorders are entitled to the accommodations necessary to protect their health, dignity, and full participation in public life under the ADA.

SUMMARY OF AMICI'S ARGUMENT

Ms. McGinn has endured a significant degree of physical and mental suffering due to Broadmead's failure to reasonably accommodate her celiac disease. That failure was, and continues to be, in violation of the ADA. Ms. McGinn continues to face a real and immediate threat of repeated injury because of Broadmead's change in labeling and refusal to guard against gluten cross-contact. Further, the fact that she is currently deterred from consuming any food from Broadmead due to Broadmead's failure to comply with the ADA also constitutes actual injury. Ms. McGinn's requests for a reliably gluten-free diet are reasonable and necessary accommodations under the ADA that would finally enable her to fully access and enjoy Broadmead's communal dining services.

The district court's decision ignores clear precedent and the legal protections mandated by the ADA. Further, *amici* urge this Court to consider the broader implications of the decision for individuals suffering from gluten-related disorders, as supported by a wealth of quantitative and qualitative data and studies. As explained in **Point I**, the ADA was enacted to remedy discrimination against disabled persons and integrate them into the mainstream of American life.

Accordingly, the ADA *requires* that places of public accommodation provide reasonable accommodations to disabled persons. **Point II** explains gluten-related disorders, including celiac disease, the impact of these disorders on the lives of their sufferers, and why these disorders constitute a disability under the ADA. **Point III** discusses the medical necessity of a gluten-free diet, and why the provision of gluten-free dining is required for disabled individuals to have a "like experience" under the ADA. Finally, **Point IV** notes that certain care facilities (and other institutions across the United States) have already successfully implemented gluten-free dining programs, and it explains that these measures constitute reasonable accommodations under the ADA without otherwise fundamentally altering the services provided by the facilities.

ARGUMENT

POINT I

THE ADA REQUIRES THAT PLACES OF PUBLIC ACCOMMODATION PROVIDE REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES

The ADA, enacted in 1990, is a landmark civil rights law designed "to remedy widespread discrimination against disabled individuals" through "clear, strong,

consistent, enforceable standards."[6] Congress recognized that "society has tended to isolate and segregate individuals with disabilities,"[7] and enacted the ADA "to eliminate discrimination against disabled individuals, and to integrate them 'into the economic and social mainstream of American life.'"[8] Under the ADA, "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."[9]

One of the ADA's fundamental protections is the requirement that businesses and service providers take proactive steps to remove barriers that exclude individuals with disabilities by making reasonable modifications to their policies, practices, and procedures, when necessary, unless doing so would fundamentally alter the nature of the service.[10] Partial or inadequate measures do not pass muster. Modified policies, practices, and procedures must provide disabled individuals with a "like experience" comparable to their non-disabled peers.[11]

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[6] *J.D. by Doherty v. Colonial Williamsburg Found.*, 925 F.3d 663, 669 (4th Cir. 2019) (quoting *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674 (2001) and 42 U.S.C. § 12101(b)(2)).
[7] *Martin*, 532 U.S. 674-75 (quoting 42 U.S.C. § 12101(a)(2).
[8] 42 U.S.C. § 12181(7)(B) (quoting S.Rep. No. 101–116, p. 20 (1989); H.R.Rep. No. 101–485, pt. 2 (1990), U.S. Code Cong. & Admin. News 1990, pt. 2, pp. 303, 332)
[9] 42 U.S.C. § 12182(a).
[10] 42 U.S.C. § 12182(b)(2)(A)(ii).
[11] 42 U.S.C. § 12182(a).

As such, injunctive relief is available under the ADA where the plaintiffs can show that they will "suffer an injury in fact which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical."[12] There must be a showing of a real and immediate threat that the plaintiff will be wronged again.[13]

This Court has already recognized that celiac disease and other conditions requiring dietary restriction constitute disabilities under the ADA.[14] Accordingly, the mandated protections of the ADA extend to those with gluten-related disorders, and these individuals are entitled to reasonable accommodations or modifications to enable their full and equal enjoyment of places of public accommodation.

The district court wrongly decided that Ms. McGinn had no right to injunctive relief under the ADA.[15] The court's decision was premised on the misunderstanding that there is no real and immediate threat of repeated injury to Ms. McGinn, given that the incidents of gluten exposure occurred in the past and that Ms. McGinn no longer eats food provided by Broadmead.[16]

As *amici* show below, there is a real and immediate threat of repeated gluten exposure to Ms. McGinn, as Broadmead has changed its food labeling system and

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[12] *Proctor v. Prince George's Hosp. Center*, 32 F. Supp. 2d 830, 832 (D. Md. 1998).
[13] *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).
[14] *Colonial*, 925 F.3d at 670-71.
[15] *McGinn v. Broadmead, Inc.*, 2024 WL 5118414 (D. Md., 2024) at 7-8.
[16] *Id.*

no longer even attempts to assure that its food is gluten-free.[17] Additionally, without instituting a separate food preparation space, training its food service staff, and monitoring compliance, Broadmead simply cannot ensure that the food it prepares is actually gluten-free. Such measures are recognized by *amici* and experts as necessary for minimizing the possibility of gluten cross-contact and providing gluten-free food that can be reliably consumed by those who medically require it.[18]

The fact that Ms. McGinn no longer consumes the food at Broadmead does not eliminate the threat of injury—it is because of the threat of repeated injury that she *cannot* continue to consume Broadmead's food.[19] This is directly contrary to the ADA's intention to reasonably *accommodate* disabled persons. Without adequate assurances of the safety of the food, she is unable to ignore the real and immediate possibility that she will once again suffer the ill effects of gluten exposure. Furthermore, the fact that she has been deterred from consuming the food at Broadmead and consequently robbed of the enjoyment of the dining services constitutes an actual injury—not just a threat of repeated injury.[20]

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[17] *See infra* Point III.A.
[18] *See infra* Points III.A & IV.
[19] In fact, where a disabled individual is deterred from patronizing due to a defendant's failure to comply with the ADA, then that individual has suffered *actual* injury. *See, e.g.*, *Nat'l Fed'n of the Blind, Inc. v. Wal-Mart Assocs.*, 566 F. Supp. 3d 383, 393-94 (D. Md. 2021).
[20] *Id.*

POINT II

GLUTEN-RELATED DISORDERS ARE DISABILITIES UNDER THE ADA

A. This Court Has Recognized Gluten-related Disorders as Disabilities Under the ADA

As noted above, this Court has already acknowledged that celiac disease and other gluten-related disorders can constitute disabilities under the ADA. In *Colonial*, this Court recognized celiac disease as a "'severe dietary restriction[n] [which] enjoy[s] the protections of the ADA.'"[21] This Court held that a severe dietary restriction constitutes a disability—as opposed to a "simple dietary restriction"—where the individual "must remain vigilant" and "monitor everything he eats" without "much (if any) margin for error," lest he face serious health consequences.[22]

This Court also expressly held that "less severe non-celiac gluten insensitivity" can also meet this definition.[23] The following sub-sections describe gluten-related disorders and the severity of these disorders.

B. There Are a Variety of Gluten-related Disorders

Gluten-related disorders encompass various conditions triggered by gluten ingestion. Gluten-related disorders can be grouped into three broad categories:

[21] *Colonial*, 925 F.3d at 670.
[22] *Id.* at 671.
[23] *Id.* at 670-71.

(1) celiac disease, an autoimmune disorder; (2) non-allergic, non-celiac gluten sensitivity; and (3) wheat allergies.[24]

1. *Celiac disease*

Celiac disease is a chronic autoimmune disorder triggered by gluten consumption that primarily affects the small intestine.[25] It is the most severe gluten-related disorder, and one of the most common inherited autoimmune disorders in the world, affecting approximately 1% of the population. Symptoms range from gastrointestinal distress and weight loss to osteoporosis and neurological problems.[26] As an autoimmune disorder, celiac disease causes a person's body to react to gluten as a foreign agent, causing the immune system to attack the lining of the intestinal tract.[27] These attacks damage the intestinal walls, causing nutritional deficiencies, digestive distress, and an increased risk of other, consequential diseases.[28]

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[24] Anna Sapone et al., *Spectrum of Gluten-Related Disorders: Consensus on New Nomenclature and Classification*, 10 BMC MEDICINE 13, 13 (2012). In this brief, *amici* refer to "gluten-related disorders" where appropriate to generalize across the spectrum of gluten-related disease and to individual disease where specificity is required.

[25] Benjamin Lebwohl et al., *Celiac Disease and Non-Celiac Gluten Sensitivity*, 351 BMJ 4347 (2015), at 1.

[26] Naiyana Gujral et al., *Celiac disease: Prevalence, Diagnosis, Pathogenesis, and Treatment*, 18 WORLD J. GASTROENTEROLOGY 6036 (2012).

[27] *Id.* at 6036.

[28] *Id.* at 6036-37.

2. *Non-celiac gluten sensitivity*

Many people who suffer negative effects from ingesting gluten do not test positive for celiac disease but nonetheless have similar symptomatic reactions.[29] This condition, called non-celiac gluten sensitivity ("**NCGS**"), is the default medical diagnosis when celiac disease and wheat allergy are excluded. Unlike celiac disease, there is no identifiable biomarker available for diagnosing NCGS. Thus, people who suffer from NCGS often endure long histories of health complaints, inconclusive medical diagnoses, and untreated gastrointestinal and extra-intestinal complications.

Patients who suffer from NCGS experience many of the same symptoms as celiac disease patients: gastrointestinal pain, bloating, nausea, gastroesophageal reflux disease, and diarrhea. They can also experience extra-intestinal symptoms with no associated gastrointestinal factors: headache, fatigue, muscle pain, extremity numbness, and dermatitis. Finally, they can suffer anxiety, depression and neuropsychiatric disorder like autism and attention deficit hyperactivity disorder.[30] There is no known treatment for NCGS other than a GFD.

3. *Wheat allergy*

Some individuals experience adverse reactions to gluten due to a wheat allergy. About 1% of the population suffers from this gluten-related disorder, which

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[29] Lebwohl et al., *supra* note 23, at 9; Pasquale Mansueto et al., *Non-Celiac Gluten Sensitivity: Literature Review*, 33 J. AM. C. NUTRITION 39 (2014).

[30] Lebwhohl et al., *id.* at 10.

is unrelated to celiac disease or NCGS but may involve similar gastrointestinal symptoms. However, wheat allergy has a much faster onset of symptoms—often as little as a few minutes—compared to celiac disease and NCGS. Wheat allergy can also result in anaphylaxis, which occurs when a release of chemicals in response to the exposure to an allergen causes a life-threatening reaction. The only treatment for wheat allergy is strict avoidance of wheat (of which gluten is a component).

C. Unmitigated Gluten Consumption Has Serious Health Consequences

When assessing a disability under the ADA, "we are to consider impairments in their '*unmitigated state.*'"[31] For millions of Americans with gluten-related disorders,[32] avoiding gluten is not a dietary choice but a medical necessity. This is because, for these individuals, even trace consumption of gluten may cause serious medical consequences.

Individuals with celiac disease who ingest gluten experience severe immediate gastrointestinal symptoms including diarrhea, bloating, loss of appetite, impaired growth, and steatorrhea.[33] About 50% of patients with gluten-related

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[31] *Colonial*, 925 F.3d at 670.

[32] Nat'l Inst. of Diabetes & Dig. & Kidney Diseases, *Celiac Disease*, https://www.niddk.nih.gov/health-information/digestive-diseases/celiac-disease/definition-facts (last visited Mar. 5, 2025).

[33] Excessive fat in stools caused by malabsorption by the small intestine. *Steatorrhea*, MERRIAM-WEBSTER DICTIONARY (2025), https://www.merriam-webster.com/dictionary/steatorrhea; *see also*, Maialen Vázquez-Polo et al., *Uncovering the Concerns and Needs of Individuals with Celiac Disease: A Cross-Sectional Study*, 15(17) NUTRIENTS 3681, 3681-82 (2023).

disorders present extra-intestinal symptoms:[34] anemia, osteoporosis, dermatitis herpetiformis,[35] neurological problems, and dental enamel hypoplasia. If individuals with celiac disease are regularly exposed to gluten, they face significantly higher risks of developing certain types of cancers—including small bowel cancer,[36] non-Hodgkin lymphoma,[37] and Enteropathy-associated T-cell lymphoma (EATL), a rare type of non-Hodgkin lymphoma with a high mortality rate.[38]

For older adults such as Ms. McGinn, the physical consequences of gluten exposure can be particularly severe, exacerbating age-related health risks and accelerating physical decline. In addition to the malabsorption-related morbidities commonly associated with celiac disease—such as osteoporosis, anemia, and nutritional deficiencies—older adults with celiac disease face higher risks of autoimmune diseases and malignancies, significantly increasing morbidity and

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[34] Gujral et al., *supra* note 24, at 6037.

[35] Dermatitis herpetiformisis is a chronic skin condition caused by a reaction to gluten ingestion whereby extremely itchy bumps or blisters appear on the body. *Dermatitis Herpetiformis*, CELIAC DISEASE FOUND., https://celiac.org/celiac-disease/understanding-celiac-disease-2/dermatitis-herpetiformis/ (last visited Mar. 5, 2025).

[36] Anne-Sophie Jannot et al., *High Risk of Digestive Cancers in Patients With Celiac Disease: A Nationwide Case-Control Cohort Study*, CLINICAL GASTROENTEROLOGY AND HEPATOLOGY (2025) at 1.

[37] Ying Gao et al., *Increased Risk for Non-Hodgkin Lymphoma in Individuals with Celiac Disease and a Potential Familial Association*, 136 GASTROENTEROLOGY 91, 94 (2009).

[38] A. Al-toma et al., *Survival in Refractory Coeliac Disease and Enteropathy-Associated T-cell Lymphoma: Retrospective Evaluation of Single-Centre Experience*, 56 GUT 1373 (2007).

mortality rates.[39] The risk of developing autoimmune disorders and cancers rises with both age and prolonged gluten exposure, making strict dietary adherence even more critical for older adults.[40] Furthermore, emerging studies suggest a potential link between celiac disease and increased fall risk among older adults, likely due to neurological complications, muscle weakness, and balance issues associated with chronic malabsorption.[41]

POINT III

SAFE AND NUTRITIOUS GLUTEN-FREE DINING IS A NECESSARY ACCOMMODATION IN CARE FACILITIES

A. Gluten-Free Food Is Medically Necessary

A *strict* gluten-free diet ("**GFD**") is the only treatment available for individuals suffering from severe gluten-related disorders.[42] A GFD must exclude wheat, barley, rye, and all derivatives of these grains, and any of the foods that contain them. A GFD is challenging because it requires great diligence in identifying

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[39] Shadi Rashtak & Joseph A. Murray, *Celiac Disease in the Elderly*, 38 GASTROENTEROLOGY CLINICS OF N. AM. 433 (2009).
[40] *Id.*; *see also* A. Ventura, G. Magazzu & L. Greco, *Duration of Exposure to Gluten and Risk for Autoimmune Disorders in Patients with Celiac Disease*, 117 GASTROENTEROLOGY 297 (1999); B T Cooper et al., *Lymphoma risk in coeliac disease of later life*, 23(2) DIGESTION 89 (1982).
[41] Nat'l Celiac Ass'n, *Falls in Adults and Seniors: Could Celiac Disease Be the Culprit* (Jul. 2024), https://nationalceliac.org/wp-content/uploads/2024/07/FallsinAdultsSeniors.pdf.
[42] Carlo Catassi et al., *A Prospective, Double Blind, Placebo Controlled Trial to Establish a Safe Gluten Threshold for Patients with Celiac Disease.* 85 AM. J. CLINICAL NUTRITION 160 (2007).

and avoiding hidden sources of gluten. Gluten often lurks in many products, such as sausages, soups, soy sauces, and ice cream. Cross-contact may occur during storage and food processing.[43] Either way, a trace amount of gluten (*i.e.*, anything more than one crumb) is harmful to individuals with severe gluten-related disorders.[44] These individuals must remain vigilant, and those individuals require that food preparers be equally vigilant.

Due to the medically-necessary strictness of the GFD, the labeling of food products as "gluten-free" is also regulated by the Food & Drug Administration ("**FDA**"). The term "gluten-free" can only be used by food manufacturers on product labels if the manufacturers have met certain requirements.[45] The FDA has also indicated that restaurants should only use the term "gluten-free" if their menu items meet the same standards as those that apply to manufacturers.[46]

In contrast, the term "Gluten Friendly" is meaningless. This term is gimmicky marketing-speak and provides no official or standardized assurances. The definition

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[43] *Id.*; *Foods Where Gluten May be "Hidden"*, GLUTEN INTOLERANCE GROUP, (Aug. 2021), https://gluten.org/2021/03/23/43-foods-where-gluten-may-be-hidden/.
[44] Catassi et al., *supra* note 40 at 165.
[45] *'Gluten-Free' Means What It Says*, U.S. FOOD & DRUG ADMIN., https://www.fda.gov/consumers/consumer-updates/gluten-free-means-what-it-says (last updated May 4, 2023); *Gluten and Food Labeling*, U.S. FOOD & DRUG ADMIN., https://www.fda.gov/food/nutrition-education-resources-materials/gluten-and-food-labeling (last updated Jul. 16, 2018).
[46] *Id.*

of "Gluten Friendly" is left to the discretion of the individual manufacturer or food service provider. At best, "Gluten Friendly" foods do not contain gluten ingredients, but gluten cross-contact likely occurred.[47] For instance, IHOP admittedly prepares "Gluten-Friendly" food using gluten-contaminated cooking oil.[48] For individuals suffering from gluten-related disorders, these "Gluten Friendly" foods are essentially inedible and provide no measure of accommodation. Notably, after discovery closed, Broadmead stopped even attempting to provide gluten-free food and switched to labeling these items as "Gluten Friendly," noting that these items "may not be gluten-free."[49] As such, there is a real and immediate threat of injury to Ms. McGinn, who must continue to avoid eating food at Broadmead.

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[47] Luna Christina Lupus, *What's The Actual Difference Between Gluten-Free And Gluten-Friendly?*, TASTING TABLE, (Dec. 12, 2024), https://www.tastingtable.com/1733378/difference-between-gluten-free-and-gluten-friendly/; *see, e.g.*, *Gluten Friendly Menu Items*, OUTBACK STEAKHOUSE, https://www.outback.com/nutrition/gluten-friendly (last visited Mar. 5, 2025) ("The menu items do not have a gluten-free certification. However, our registered dietitian works closely with our chefs and supply chain to validate our gluten-friendly ingredients and menus"); *Gluten Friendly Products*, BOLD BATCH CREAMERY, https://boldbatchcreamery.com/collections/gluten-friendly-products/gluten-friendly (last visited Mar. 5, 2025) ("We use this term to indicate that a product is made without gluten, but that we cannot use the term 'gluten free' or 'Celiac safe' for any of our products. We work in a very small space in a big shared kitchen where cross contamination is a possibility. We cannot guarantee that any products are entirely free of allergens.").

[48] *Gluten-Friendly menu items are here!*, IHOP, https://www.ihop.com/en/nutrition/info/gluten-friendly (last visited Mar. 5, 2025).

[49] Brief of Plaintiff-Appellant at 15-16, ECF No. 13.

B. Gluten-Free Dining Is Necessary for a "Like Experience" in Care Facilities

Disabled individuals in care facilities are entitled to "like experiences" as their non-disabled peers.[50] One primary benefit of care facilities is regular and facilitated socialization between residents, which helps to combat the loneliness and isolation often experienced by older adults.[51]

Communal dining is one of the main forms of socialization at care facilities and contributes to residents' quality of life.[52] One study noted, "[m]ealtimes are a required communal activity and, thus, a natural point for social interaction amongst compatible peers and may be the starting point for building and sustaining of social relationships."[53] Further, social companionship during mealtimes has been shown to improve nutritional health among older adults,[54] as eating together is associated

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[50] 42 U.S.C. § 12182(a); *Colonial*, 925 F.3d 663 at 672.
[51] Barbara Hanratty et al., *Loneliness as a risk factor for care home admission in the English Longitudinal Study of Ageing*, 47(6) AGE AGEING 896, 896-97 (2018); *Why Dining Is So Important at Senior Living Communities*, SENIORS BLUE BOOK (Nov. 7, 2024) https://seniorsbluebook.com/articles/why-dining-is-so-important-at-senior-living-communities.
[52] Debra Street et al., *The Salience of Social Relationships for Resident Well-Being in Assisted Living*, 62(2) J. OF GERONTOLOGY S129, S132 (2007); Leah Curle & Heather Keller, *Resident interactions at mealtime: an exploratory study*, 7(3) EUR. J. AGEING 189, 189 (2010); Iracema Leroi, *Time for dinner: the communal dining room in care homes and its impact on nutritional outcomes*, 32(7) INT'L PSYCHOGERIATRICS 803, 803 (2020).
[53] Curle & Keller, *id.* at 190.
[54] Kristel A. N. D. Nijs et al., *Effect of Family-Style Meals on Energy Intake and Risk of Malnutrition in Dutch Nursing Home Residents: A Randomized Controlled Trial*, 61 J. OF GERONTOLOGY 935, 935 (2006).

with higher food intake.[55] Conversely, residents with lower social engagement during mealtimes have been found to have a lower average body weight.[56]

Additionally, gluten-free food offered at care facilities should also be varied and nutritious to provide individuals requiring the GFD with a "like experience." One survey found that gluten-free food products on average show nutritional inadequacies, *i.e.*, low protein content and a high fat and salt content, compared to their equivalent gluten-containing products.[57] These inadequacies are particularly troublesome for older adults who may require a low-sodium diet due to cardiac, kidney, or lung problems. If residents with gluten-related disorders can only eat from a significantly more limited, higher-fat, and higher-sodium menu than other residents, they are unable to experience the same nutritional benefits and will likely experience adverse health effects.[58] A rotation of different foods is also needed to

[55] Lucy Wright et al., *Eating together is important: using a dining room in an acute elderly medical ward increases energy intake*, 19(1) J. OF HUM. NUTRITION & DIETETICS 23, 23 (2006).
[56] Anne Marie Beck & Lars Ovesen, *Influence of Social Engagement and Dining Location on Nutritional Intake and Body Mass Index of Old Nursing Home Residents*, 22(4) J. OF NUTRITION FOR THE ELDERLY 1, 1 (2003).
[57] Valentina Melini & Francesca Melini, *Gluten-Free Diet: Gaps and Needs for a Healthier Diet*, 11(1) NUTRIENTS 170, 183-84 (2019).
[58] *Id.* at 184-86; *see also* Yash Patel & Jacob Joseph, *Sodium Intake and Heart Failure*, 21(24) INT. J. MOLECULAR SCI. 9474, 9474-75 (2020).

obtain sufficient complex carbohydrates, protein, fiber, fatty acids, vitamins and minerals.[59]

If care facilities fail to provide safely-prepared, nutritious, and varied gluten-free food to residents living with gluten-related disorders, these facilities are denying these individuals the nutritional and social benefits of meal services.[60] When care facilities cannot reliably provide the GFD, be it through limited gluten-free menu items, mislabeling of menus and food products, repeated incidents of gluten exposure, or their staff's lack of training and preparedness,[61] these residents are forced into a difficult choice. They must either spend their mealtimes advocating for themselves instead of eating with their peers,[62] or they must forgo the dining room

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[59] Thimmaiah G. Theethira & Melinda Dennis, *Celiac disease and the gluten-free diet: consequences and recommendations for improvement*, 33(2) DIGESTIVE DISEASES 175, 182 (2015).

[60] Ross Watkins et al., *Exploring Resident's Experiences of Mealtimes in Care Homes: A Qualitative Interview Study*, 17 BMC GERIATRICS 141, 141 (2017).

[61] While catering industry staff generally are aware of celiac disease, there are still issues with accurately reporting the availability of gluten-free options and inadequate workplace training. *See, e.g.*, Ian Young & Abhinand Thaivalappil, A systematic review and meta-regression of the knowledge, practices, and training of restaurant and food service personnel toward food allergies and Celiac disease. 13(9) PLOS ONE 1, 13 (2018).

[62] *Living With Dietary Restrictions: The Social and Emotional Impacts of Eating Out*, LAUREN RENLUND MPH, RD (Sep. 17, 2022) https://laurenrenlund.com/living-dietary-restrictions-social-emotional-impacts-eating/; Ximena Figueroa-Gómez et al., *Experiences and perceptions of people with celiac disease, food allergies and food intolerance when dining out*, 11 FRONTIERS IN NUTRITION (2024); Vázquez-Polo et al., *supra* note 31, at 3682; Jon Bari, *Emotional Toll From The Loss Of Food Freedom & Exclusion From Spontaneous Activities Involving Food*, CELIAC JOURNEY (May 6, 2023)

entirely and prepare their own meals.[63] These individuals thus lose the opportunity to forge social connections during mealtimes, exacerbating feelings of isolation and loneliness and worsening their health outcomes.[64]

This cycle of social isolation reinforces the lifelong psychological impacts of gluten-related disorders and maintaining a strict GFD.[65] Research consistently links celiac disease to increased rates of anxiety and depression.[66] Managing celiac disease makes social interactions—especially those centered around food—stressful, exhausting, and anxiety-inducing. Individuals with celiac disease frequently report social isolation due to the challenges of dining out, attending gatherings, and participating in communal activities where food is involved.[67] Research on social

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https://www.celiacjourney.com/post/emotional-toll-from-the-loss-of-food-freedom-exclusion-from-spontaneous-activities-involving-food; Randi L. Wolf et al., *Hypervigilance to a Gluten-Free Diet and Decreased Quality of Life in Teenagers and Adults with Celiac Disease*, 63 DIGESTIVE DISEASES & SCI. 1438, 1446 (2018).

[63] Wolf et al., *id.* at 1444.

[64] Jorunn Drageset, *The Importance of Activities of Daily Living and Social Contact for Loneliness: a Survey Among Residents in Extended Care Facilities*, 18 SCANDINAVIAN J. OF CARING SCI. 65, 68 (2004).

[65] Fabiana Zingone et al., *Psychological Morbidity of Celiac Disease: A Review of the Literature*, 3 UNITED EUR. GASTROENTEROLOGY J. 136, 141 (2015).

[66] *Id.* at 138; Mostafa Hossam-Eldin Moawad et al., *Anxiety and Depression Among Adults and Children With Celiac Disease: A Meta-Analysis of Different Psychiatry Scales*, 6(4) AM. PSYCHIATRIC ASSOC. (2024).

[67] Vázquez-Polo et al., *supra* note 31, at 3692.

participation among celiac patients found that 59.8% avoided social activities on at least a monthly basis, due to their dietary restrictions.[68]

The psychological burden of celiac disease extends beyond general social discomfort—it has also been linked to higher rates of social phobia. One study found that 70% of individuals with celiac disease exhibited symptoms consistent with social phobia, in stark contrast to only 16% of individuals in the control group.[69] This data underscores the significant impact that celiac disease can have on mental health, particularly regarding fear of social interactions involving food, concerns over cross-contact, and the stress of communicating dietary needs.

This Court has already acknowledged that forcing someone with a gluten-related disorder to eat alone is completely unacceptable: "At the outset, we find unpersuasive Colonial Williamsburg's argument that J.D. could have simply eaten his meal later. *We hardly see how sitting at a restaurant and not eating would have provided J.D. a like experience to that of his nondisabled peers*."[70] Likewise, forcing an older adult with a disability to repeatedly risk their health simply to be able to integrate socially is precisely what the ADA was designed to avoid.[71]

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[68] Erin B. P. Miller et al., *Life After Celiac Disease Diagnosis: Results from the Go Beyond Celiac Patient Registry*, 119(10S) AM. J. GASTROENTEROLOGY S1598 (2024).
[69] Giovanni Addolorato et al., *Social Phobia in Celiac Disease*, 43 SCANDINAVIAN J. OF GASTROENTEROLOGY 410, 415 (2008).
[70] *Colonial*, 925 F.3d at n. 7 (emphasis added).
[71] *See supra* Point I.

POINT IV

CARE FACILITIES CAN AND DO REASONABLY ACCOMMODATE INDIVIDUALS WITH GLUTEN-RELATED DISORDERS

Across the United States, several care facilities have already implemented and maintained successful gluten-free dining programs. These programs are examples of reasonable accommodations under the ADA, enabling residents suffering from gluten-related disorders to experience full and equal enjoyment of both the social and nutritional benefits of dining at their care facilities.

There are numerous certification and training programs available for organizations seeking to provide gluten-free dining. One example is the Gluten-Free Food Program ("**GFFP**") certification, which verifies when food service establishments meet adequate gluten-free standards.[72] The program involves an inspection of the establishment's systems and gluten testing to ensure products are free of gluten components or other trigger ingredients at levels considered safe for individuals with celiac disease and other gluten-related conditions.[73] The GFFP also

[72] GLUTEN-FREE FOOD PROGRAM, https://glutenfreefoodprogram.com/ (last visited Mar. 5, 2025).
[73] GLUTEN-FREE FOOD PROGRAM, *Gluten-Free Certification*, https://glutenfreefoodprogram.com/gluten-free-certification/ (last visited Mar. 5, 2025)

trains and educates its users on gluten-free best practices to help them meet the certification standards.[74]

Another example is Gluten Intolerance Group's Gluten-Free Food Service ("**GFFS**") program,[75] which works with its users to develop policies and procedures to ensure gluten-free best practices are followed, and provides certification after in-person auditing by GFFS personnel.[76] Similarly, GREAT Gluten-Free Foodservice Training provides both onsite and online training to its users to help them provide safe gluten-free options.[77] These programs have been used by universities,[78] restaurants,[79] hospitals,[80] rehabilitation centers,[81] and assisted living facilities,[82]

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[74] *Gluten-Free Training*, GLUTEN-FREE FOOD PROGRAM, https://glutenfreefoodprogram.com/gluten-free-training/ (last visited Mar. 5, 2025)
[75] GLUTEN-FREE FOOD SERVICE, https://gffs.org/ (last visited Mar. 5, 2025).
[76] *Validation*, GLUTEN-FREE FOOD SERVICE, https://gffs.org/validation (last visited Mar. 5, 2025).
[77] GREAT KITCHENS, https://greatgfkitchens.org/ (last visited Mar. 5, 2025).
[78] *Great Testimonials*, GREAT KITCHENS, https://greatgfkitchens.org/about/testimonials (last visited Mar. 5, 2025).
[79] *Gluten-Free Restaurants & Bakeries*, GF-FINDER, https://gf-finder.com/gluten-free-restaurants/ (last visited Mar. 5, 2025).
[80] *Seven Universal Health Services (UHS) Hospitals Become Validated Gluten Free Safe Spots for Patients, Staff and Visitors*, GLUTEN-FREE FOOD SERVICE (Dec. 2, 2021) https://gffs.org/seven-universal-health-services-uhs-hospitals-become-validated-gluten-free-safe-spots-for-patients-staff-and-visitors/; Mayo Clinic Named a Validated Gluten Free Safe Spot for Patients, Staff and Visitors, GLUTEN-FREE FOOD SERVICE (Sep. 10, 2022) https://gffs.org/mayo-clinic-named-a-validated-gluten-free-safe-spot-for-patients-staff-and-visitors/.
[81] *Gluten-Free Food Service*, CENTER FOR CHANGE, https://centerforchange.com/about-cfc/gluten-free-food-service/ (last visited Mar. 5, 2025).
[82] *Start thriving with whole life living*, GENCARE LIFESTYLE,

among other establishments.

Similar measures have already been implemented to accommodate individuals with celiac disease or other food allergies.[83] The Department of Justice recently reached settlement agreements with two universities, Lesley University and Rider University, after ADA complaints from students with celiac disease and other allergies.[84] As part of these settlement agreements, the universities agreed to implement measures enabling students to fully and equally participate in the school's meal plan and dining systems, such as: providing nutritionally comparable gluten-free and allergen-free meals, developing individualized meal plans for students with dietary restrictions, taking reasonable steps to prevent cross-contact, establishing a separate food preparation area with separate utensils and food preparation items, allowing students to store and prepare their own foods in designated areas, providing pre-order options to students wishing to order meals in advance, and enforcing mandatory and regular training for food service staff.[85]

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https://www.gencarelifestyle.com/whole-life-living (last visited Mar. 5, 2025).

[83] Megan Benka, *Caught Bread-Handed: Exposing Long-Term Care Facilities' Legal Non-Compliance in Caring for Elderly Residents with Celiac Disease*, 31 ELDER L.J. 309, 327-328 (2024).

[84] Settlement Agreement, U.S. and Lesley U. (2012) (DJ 202-36-231); Settlement Agreement, U.S. and Rider U. (2019) (DJ 202-48-32).

[85] *Id.*

While accommodating individuals with gluten-related disorders likely requires some degree of investment, this can be accomplished reasonably.[86] Indeed, similar accommodations may already be made to accommodate other food allergies and dietary restrictions more generally, including religious and cultural accommodations, which speaks to the reasonableness of the requested accommodations in this instance.[87]

In fact, businesses often discover that gluten-free dining programs become assets, giving them a competitive edge over their counterparts.[88] One continuing care retirement community in Arizona invested around $12,000 on obtaining its gluten-free certification and soon began seeing "returns on the investment" in the form of current residents and prospective residents taking interest in the gluten-free

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[86] *Colonial*, 925 F.3d at 675. Reasonableness depends on the individual circumstances and the capabilities of each respective care facility. It seems likely that Broadmead has the financial resources to implement the requested measures in this instance. *See, e.g.*, Complaint at ¶ 57, *McGinn*, 2024 WL 5118414, ECF No. 1 (noting that Broadmead "also denied McGinn's request that Broadmead submit to a recognized, mutually acceptable food certification program in which McGinn could participate. Relatedly, McGinn learned that Broadmead recently approved an expenditure of $6,500 from the corporate budget to further enhance the walls of the Bistro.").

[87] *Id.* at 674-75; Benka, *supra* note 81, at 350-51.

[88] Lindsey Yeakle, The benefits of adding gluten-free dining options at your community, MCKNIGHTS SENIOR LIVING (Mar. 22, 2021), https://www.mcknightsseniorliving.com/home/columns/guest-columns/the-benefits-of-adding-gluten-free-dining-options-at-your-community/

offerings.[89] Beyond baseline compliance with the ADA, care facilities themselves also stand to benefit from adequately catering to the GFD.

Moreover, the accommodations requested by Ms. McGinn will not fundamentally alter the nature of the goods and services provided by Broadmead.[90] In *Colonial*, this Court observed that food service is *the* essential aspect of a restaurant.[91] Similarly, food service is an important aspect of care facilities which provide residents with meals. In *Colonial,* this Court held that the question of whether granting occasional requests from individuals with severe dietary restrictions to eat homemade food at the restaurant would fundamentally alter a restaurant's business model was for a jury to determine.[92] This Court thus made clear that, even where food service is the main business and source of income, individuals with celiac disease may be entitled to reasonable accommodations.

Applying this analysis here, offering varied, nutritious and safe gluten-free options prepared by trained staff in a separate food-preparation space should not necessarily be considered a *fundamental alteration* of an entire care facility.[93]

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[89] Elizabeth Ecker, *CCRC Sees Opportunity in Gluten-Free Dining*, SENIORS HOUSING NEWS (May 23, 2013), https://seniorhousingnews.com/2013/05/23/gluten-free-dining-presents-new-value-in-senior-living/.
[90] *Colonial*, 925 F.3d at 676.
[91] *Id*.
[92] *Id.*
[93] Benka, *supra* note 81, at 351-52.

Similar to college dormitories, care facilities offer a host of services, and, as discussed in Point III, dining services are a critical part of the social experience for residents. As noted above, various care facilities have been able to make dining services inclusive by providing safe dining experiences for residents with celiac disease, gluten-related disorders, other common food allergies such as nuts, dairy, and seafood, and religious or cultural dietary restrictions.[94]

In conclusion, the implementation of gluten-free dining programs in care facilities is not only reasonable accommodations as mandated by the ADA but also a practical and beneficial measure for both the residents and the facilities themselves. By adopting certification and training programs, such as GFFP and GFFS, care facilities can ensure the safe preparation and provision of quality gluten-free meals. This not only allows all residents to fully participate in communal dining and receive adequate nutrition, but also positions these care facilities as inclusive and

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[94] *Id.;* Stacey Burke, *Special Diets and Feeding Assistance in Senior Living*, A PLACE FOR MOM (Jul. 13, 2021), https://www.aplaceformom.com/caregiver-resources/articles/special-diets; Katie Fanuko, *How One Senior-Living FSD Addresses Allergies*, FOODSERVICE DIRECTOR (May 26, 2015), https://www.foodservicedirector.com/menu/how-one-senior-living-fsd-addresses-allergies; *How Can Senior Assisted Living In Three Rivers, MI Prevent Food Allergies Among The Residents?*, LAKEHOUSE THREE RIVERS, https://lakehousethreerivers.seniorlivingnearme.com/blogs/how-can-senior-assisted-living-in-three-rivers-mi-prevent-food-allergies-among-the-residents (last visited Mar. 5, 2025); *Understanding Dietary Restrictions in Senior Living Homes*, TERRABELLA SENIOR LIVING (May 28, 2024) https://www.terrabellaseniorliving.com/senior-living-blog/understanding-dietary-restrictions-in-senior-living-homes/.

competitive in a growing market. The legal precedents and successful examples from various institutions underscore that these accommodations are reasonable and do not fundamentally alter the nature of the services provided, but rather enrich the residential experience for all.

CONCLUSION

For the reasons stated above, this Court should reverse the district court decision and remand the case for further proceedings.

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Ellen M. Saideman
LAW OFFICE OF ELLEN SAIDEMAN
7 Henry Drive
Barrington, RI 02806
401-258-7276
esaideman@yahoo.com

Respectfully submitted,

CHAFFETZ LINDSEY LLP

By: /s/ Theodore R. Debonis
Theodore R. Debonis
Counsel of Record
Steven C. Schwartz
Alicia Yeo
1700 Broadway, 33rd Floor
New York, NY 10019
Tel. (212) 257-6960
Fax. (212) 257-6950
T.Debonis@chaffetzlindsey.com

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 32(a)(7)(B) because it contains 6,339 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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By: /s/ Theodore R. Debonis
Theodore R. Debonis

CERTIFICATE OF SERVICE

I hereby certify that this brief has been served through the Court's ECF system on counsel for all parties required to be served on March 10, 2025.

/s/ Theodore R. Debonis
Theodore R. Debonis