Case No. 25-3175

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

GWLADYS K. NARE and MANFRED L.S. NARE, Individually; GWLADYS K. NARE and MANFRED L.S. NARE, as PARENTS, NATURAL GUARDIANS and NEXT FRIENDS OF M.N., a minor child,

Appellants,

v.

OMAHA DISCOVERY TRUST d/b/a KIEWIT LUMINARIUM, a Nebraska corporation,

Appellee.

BRIEF OF APPELLANTS

On appeal from the United States District Court for the District of Nebraska

Case No. 8:25-cv-00048

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SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

Omaha Discovery Trust ("ODT") operates a place of entertainment in Omaha called the Kiewit Luminarium. It is a science museum for children. ODT has a policy that members of federally recognized Native American tribes can be admitted for free if they present a tribal membership card at the ticket counter.

Gwladys K. Nare and Manfred L.S. Nare are Black. They purchased full-price admission tickets to ODT for the two of them and their minor child. When informed of ODT's free-admission-based-upon-race-and-show-us-your-papers policy, they requested a refund and were refused.

Appellants filed a Complaint alleging racial discrimination in contravention to federal law and a state law cause of action for an unfair trade practice. App. 4.

The district court granted ODT's motion to dismiss. App. 13; R. Doc. 19. It found, at its core, that ODT's policy did not discriminate based on race because membership in a Native American tribe is a political classification and not a racial one.

Appellants request 15 minutes per party for oral argument.

CORPORATE DISCLOSURE STATEMENT

The Appellants are not corporations.

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JURISDICTIONAL STATEMENT

The district court had jurisdiction over this case pursuant to 42 U.S.C. §§1981, 1982, 2000a, and 2000a-2, because the enforcement of federal statutes prohibiting racial discrimination were at issue. This appeal is taken from a final decision of the district court entered on October 8, 2025. A notice of appeal was timely filed on October 30, 2025. This Court has jurisdiction under 28 U.S.C. §1291.

STATEMENT OF THE ISSUES

1. Whether the district court erred in holding that Appellee, Omaha Discovery Trust ("ODT"), did not violate 42 U.S.C. §§1981, 1982, 2000a, and 2000a-2 by granting free admission to its place of exhibition or entertainment to members of federally recognize Native American tribes. Apposite case: *United States v. Eagleboy*, 200 F.3d 1137 (8th Cir. 1999).
2. Whether the district court erred in holding that ODT did not violate the Nebraska Consumer Protection Act, Neb Rev. Stat. §59-1602, with its free admission policy for member of federally recognized Native American tribes. Apposite case: None.

STATEMENT OF THE CASE

Because the trial court granted ODT's motion to dismiss, the below facts are taken from the Complaint.

The Nare family is Black. ODT operates a place of exhibition or entertainment in Omaha, Nebraska. ODT's business is engaged in interstate commerce as it attracts customers from other states. App. 4; R. Doc. 1 at 1.

On Columbus Day, October 14, 2023, ODT issued a press release announcing its policy that any member of a federally recognized Native American tribe was entitled to free admission upon presentation of a piece of paper proving their membership in an Indian tribe. App. 5; R. Doc. 1 at 3.

On February 10, 2024, the Appellants paid ODT's full admission price. On February 11, 2024, Appellants presented their admission tickets to ODT and then requested a full refund. Their demand was rejected because the Appellants are not Native Americans.

The free-admission-based-upon-race-and-show-us-your-papers policy of ODT caused the Appellants to suffer damages, including punitive

damages. Per 42 U.S.C. §1988 and §2000a-3(b), Appellants also requested reasonable attorney's fees.

The Nare family's Complaint set out four causes of action. The first cause of action was for racial discrimination in violation of 42 U.S.C. §2000a and §2000a-2. The second and third causes of action alleged violations of 42 U.S.C. §1981 and §1982. The final cause of action alleged violation of Neb. Rev. Stat. §59-1602 for ODT's unfair trade practice. The state law cause of action incorporated by reference all facts of the Complaint, that is, the allegations of racial discrimination. App. 8; R. Doc. 1 at 5.

The district court granted ODT's 12(b)(6) motion to dismiss. It held that membership in a Native American tribe was a political and not a racial classification and there was no plausible allegation of racial discrimination. The trial court found that the facts of this case were indistinguishable from *United States v. Eagleboy*, 200 F.3d 1137 (8th Cir. 1999). The trial court also rejected the notion that tribal membership was equivalent to race. App. 17-8; R. Doc. 1 at 5-6.

The state law cause of action for violation of Nebraska's Consumer Protection Act (Neb. Rev. Stat. §59-1602) was premised upon racial discrimination. That is to say, it was an unfair trade practice to discriminate

against customers based upon race. The trial court essentially held that consumer protection statutes had not been extended to racial discrimination claims.

SUMMARY OF THE ARGUMENT

ODT's policy for admission to its place of amusement treats customers differently based upon their race. Native Americans can get in free if they present a card showing that they are members of a federally recognized Indian tribe. Appellants submit that this is unlawful and that membership in an Indian tribe is a proxy for race.

ARGUMENT

I. STANDARD OF REVIEW

"To survive a motion to dismiss a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. at 678.

An appellate court reviews "de novo a district court's decision granting a motion to dismiss for failure to state a claim, accepting as true all factual

allegations and viewing them in the light most favorable to the non-moving party." *Yang v. Robert Half Int'l, Inc*., 79 F. 4th 949, 961-62 (8th Cir. 2023).

II. RACE IS A PRECONDITION AND REQUIREMENT FOR MEMBERSHIP IN A FEDERALLY RECOGNIZED INDIAN TRIBE.

Perhaps the best way to analyze this case is by a simple syllogism.

1. In order to be a member of a federally recognized Indian tribe, one must have the racial characteristics, blood and DNA of the Native American race.

2. Members of other races (e.g. Whites, Blacks and Asians) cannot become members of federally recognized Indian tribes.

3. Ergo, membership in a federally recognized Indian tribe is based on race. In other words, race is a proxy for membership in a federally recognized Indian tribe.

Membership in a federally recognized tribe is not a voluntary association like a political party, alumni club, business tips group or service group. The key ingredient and necessary precondition to being a member in a federally recognized Indian tribe is DNA and blood. The blood aspect will be discussed in more detail below.

Here's an example and it is meant to be provocative to highlight and emphasize the importance of this concept. Suppose a baseball team offered free admission to members of the Knights of the Ku Klux Klan ("KKK"). The actual offer of free admission doesn't mention race. That is, the advertising doesn't say, "Whites-get-in-free day." But membership in the KKK is only open to people of the Caucasian race. Ergo, the free admission offer is based on race.

Appellants submit that the ODT's limiting free admission policy to tribal members is actually and fundamentally premised on race although ODT tries to disguise it. As the British would say, ODT is being too clever by half by using the federally recognized Indian tribe membership ruse. Some cynics might say the Appellee's use of the term "federally recognized tribal membership" is a workaround or dodge developed by a lawyer in an attempt to avoid liability for racial discrimination.

Two cases out of Hawaii support the proposition that membership in a tribe is, in fact, based upon race. *Rice v. Cayetano*, 528 U.S. 495, 120 S. Ct. 1044, 145 L. Ed. 2d 1007 (1999) held that the State of Hawaii could not restrict citizens from voting in a statewide election based on race or ancestry.

Hawaii has a state agency known as the Office of Hawaiian Affairs ("OHA"). The Hawaii Constitution only allowed "Hawaiians" to vote for nine trustees for the OHA. The term "Hawaiians" was defined as the descendants of "people inhabiting the Hawaiian Islands prior to 1778." 528 U.S. 499. Harold F. Rice wasn't a "Hawaiian" or "Native Hawaiian" as defined by state law.

The State of Hawaii argued that its voting scheme, "is not a racial category at all but instead a classification limited to those whose ancestors were in Hawaii at a particular time, regardless of their race." *Id*. at 514.

The Supreme Court responded, "Ancestry can be a proxy for race. It is that proxy here." *Id*. The same can be said for tribal membership. Membership in a federally recognized Indian tribe **is a proxy for race**.

As will be discussed below, one need not have 100% Indian blood to qualify for tribal membership.

"Simply because a class defined by ancestry does not include all members of the race does not suffice to make the classification race neutral. Here, the State's argument is undermined by its express racial purpose and by its actual effects." *Rice*, 528 U.S. at 516-17. That's exactly what the ODT's admission policy does. ***It is not race neutral and its purpose is racist***. The

actual effect is that Native Americans get into Kiewit Luminarium for free while all other races pay full price.

At its core, discrimination based on race is unlawful (and bad) because, "it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualifies." *Id*. at 517.

To further emphasize the point, the Supreme Court in *Rice* cited and quoted *Hirabayashi v. United States*, 320 U.S. 81, 100, 87 L. Ed. 1774, 63 S. Ct. 1375 (1943), "'Distinctions between citizens solely based because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" 528 U.S. at 517. A racial preference for admission to a public accommodation is also, by its nature, odious to a free people. In that regard it is worth observing that both Creighton University and the University of Nebraska-Lincoln field athletic teams with players of several races. To think that these two universities might give free admission to fans based upon race is, frankly, bizarre in the twenty-first century. It is also unlawful. 42 U.S.C. §2000a. Race neutrality is what federal law requires as the Supreme Court has noted in cases for admission to colleges and in voting in elections. Add public accommodations to that list.

Finally, *Rice* distinguished *Mancari*. The *Mancari* precedent is restricted to the hiring practices of the Bureau of Indian Affairs which is a *sui generis* federal agency. And this is because the federal government has "unique obligation towards the Indians." 528 U.S. at 520.

The other federal case out of Hawaii is *Doe v. Kamehameha Schools/Bishop Estate*, 416 F. 3d 1025, *vac'd and rev'd en banc*, 470 F.3d 827 (9th Cir. 2006), *cert. denied*, 550 U.S. 931, 127 S. Ct. 2160, 167 L. Ed 2d 887 (2007). Appellants will focus on the panel decision as it is more persuasive than the en banc decision. And, of course, this Court is not bound by any Ninth Circuit decision; en banc or panel.

Doe was a §1981 action brought against the private and non-sectarian Kamehameha Schools when a qualified student was denied admission because he did not have the requisite pure or part aboriginal blood.[1] Section 1981 "forbids racial discrimination in the making and enforcement of contracts." 416 F. 3d at 1027. In the instant case, one of the Appellants' causes of action alleges violation of 42 U.S.C. §1981. When the Nare family appeared at the admission counter of ODT's place of business, a contract was formed; money

[1] The trial court entered summary judgment in favor of the schools concluding that the admissions policy was a valid race-conscious remedial affirmative action program. 295 F. Supp. 2d 1141, 1172 (D. Haw. 2003) Note well that the case was not dismissed pursuant to 12(b)(6) and the trial court had evidence before it.

in exchange for admission to the museum. But because the Nares weren't the "right" race they had to pay the full admission price.

The schools in *Doe* admitted that their admission policy was based on race. The issue, as stated by the panel, was "whether a private school, receiving no federal funds, may legitimately restrict admission to those of the native Hawaiian race." *Id*. at 1030. The Appellants haven't alleged any receipt of federal funds by ODT so the same issue is presented. The panel held that the "Hawaiians first" admission policy constituted unlawful invidious race discrimination in violation of Section 1981. 416 F. 3d at 1027.

The *Doe* panel traced the history of Sections 1981 and 1982, the Thirteenth Amendment, Fourteenth Amendment and prior Supreme Court cases. *Id*. at 1029 – 1039. *Jones*[2] held that that 42 U.S.C. §1982 encompassed and prohibited racial discrimination in purely private transactions.[3] *Runyon*[4] held that "an individual's §1981 right 'to make and enforce contracts' is violated if a private offeror refuses to extend him 'the same opportunity to

[2] *Jones v. Alfred H. Mayer Co*., 392 U.S. 409, 20 L. Ed. 2d 1189, 88 S. Ct. 2186 (1968).
[3] A ticket is piece of property and a revocable license to enter a place of amusement. In Nebraska, Cornhusker football tickets are routinely divided in divorces. *Bergmeier v. Bergmeier*, 296 Neb. 440, 894 N.W.2d 266 (2017).
[4] *Runyon v. McCary*, 427 U.S. 160, 49 L. Ed. 2d 415, 96 S. Ct. 2586 (1976)

enter into contracts' that he extends to white offerees, solely on the basis of race." 416 F.3d at 1032, 1033.

A rhetorical and interpretative note is necessary here. Both §1981 and §1982 refer to the rights of white citizens. Appellants submit that since Native American citizens get in free at the Kiewit Luminarium, they are privileged and placed above all other races; reverse discrimination as it were. And if 42 U.S.C. §2000a is read *in pari materia* with §1981 and §1982, it is obvious that Congress intended that all racial discrimination is barred; direct and reverse. *McDonald v. Santa Fe Trail Transp. Co*., 427 U.S. 273, 49 L. ed. 2d 493, 96 S. Ct. 2574 (1976) is in agreement with the Plaintiffs as it held that §1981 encompassed discrimination against white persons. 427 U.S. at 295-96.

The *Doe* panel then concluded, "This means once the §1981 plaintiff establishes a prima facie case of intentional race discrimination, the defendant must come forward with a legitimate nondiscriminatory reason justifying the challenged practice; if such a reason is offered the plaintiff may still attempt to show that the reason is a pretext for unlawful race discrimination." 416 F.3d at 1039.

The instant case has not even moved into the discovery phase. The Appellants' Complaint alleges that ODT's free admission policy "was

intentionally established by the Defendant as malicious, oppressive or in reckless disregard to Plaintiffs' federal civil rights." App. 7; R. Doc. 1 at 4. At a minimum, this case should remanded to see if ODT can allege and prove a non-pretextual and legitimate non-discriminatory reason as to why it is discriminating on the basis of race.

The *Doe* panel discussed *Mancari* in the context of the Hawaiian people and Native Americans. It stated that *Mancari* is a narrow ruling about the hiring practices of the BIA with the tribes as political entities. It concluded,

> Nonetheless, it does not follow from *Mancari*, or from any other authority of which we are aware, that Congress may authorize a private school to exclusively restrict admission on the basis of an express *racial* classification. Rather, the Court's decisions in this arena have emphasized the nonracial classifications held to withstand scrutiny under modern civil rights law. 416 F. 3d at 1048 (emphasis in original)

The full Ninth Circuit reversed the *Doe* panel but seven judges dissented and four opinions were written. As Judge Kozinski wrote, "Given the scores of pages we have written on both sides of this issue, it should be clear that the question is a close one and ours might not be the last word." 470 F.3d at 889.

The main dissent did cite the Supreme Court's view on racial discrimination. "'[c]lassifications of [persons] solely on the basis of race … threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial

hostility. *Shaw v. Reno*, 509 U.S. 630, 643, 113 S. Ct. 2816, 125 L. Ed. 2d 511 (1993)." *Id*. at 872.

ODT's free admission policy is explicitly based on membership in a racial group. It really couldn't be more clear. People who appear at the ticket counter of the Kiewit Luminarium get the in-your-face race message and the sense that ODT is hostile to all races except Native Americans.

Finally, a Nebraska Law Review article is particularly helpful. The authors are a retired UNL Law professor and two Indian Nation historians. Snowden, *American Indian Sovereignty and Naturalization: It's a Race Thing*, 80 Neb. L. Rev. 171 (2001).

The authors state their conclusions at two places in the law review article,

> [f]ederal Indian law usually requires some quantum of Indian blood or descent before recognition of the person as a citizen or member of the nation for purposes of Indian sovereignty. That is, there is a racial criteria at the center of federal recognition of membership in an Indian nation whenever that membership is raised in the context of which nation's law shall apply to a controversy. 80 Neb. L. Rev. at 173.

"Consequently, citizenship or membership provisions in Native nation constitutions regularly require a blood-quantum or descent." *Id*. at 221.

The tribal constitutions of the Omaha, Ponca, Santee Sioux and Winnebago tribes were reprinted in the law review article and three of the four tribes required at least one-fourth degree of aboriginal blood. In other words, membership in an Indian

tribe is blood based. *Id*. at 220. Interestingly the Ponca tribe allows people to be voted in as honorary members if they don't satisfy the blood requirement, but they can't vote, hold office or "otherwise exercise the rights or receive benefits of the members of the Ponca Tribe of Nebraska." *Id*. at 223. What that means is a Black person could be voted as an honorary member of the Ponca Tribe, but wouldn't receive a tribal membership card allowing that person free admission to the Kiewit Luminarium.

The district court found, as a fact, that honorary tribal membership to non-whites to be significant. "Tribes may extend membership to people based upon factors other than race." App. 17; R. Doc. 19 at 5. But as noted above from the Nebraska Law Review article, honorary membership in the Ponca Tribe doesn't allow the honorary member to vote, hold office or otherwise exercise the rights and benefits of tribal membership. Maybe the honorary member just gets a membership card.

Appellants submit that honorary membership in an Indian tribe is similar to being named an Admiral in the State of Nebraska's mythical navy.[5] Upon being named an Admiral in the Nebraska Navy, the new Admiral gets a certificate signed

[5] Nebraska Admiral - Wikipedia ("It is not a miliary rank, requires no specific duties, and carries with it no pay or other compensation.")

by the Governor. As the saying goes, being a Nebraska Admiral and three dollars will get you a cup of coffee at Starbucks.

In a letter from a BIA official, Professor Snowden was told that on a partial list of the BIA's 155 tribes, "97 tribes had a one-fourth degree requirement…." *Id*. at footnote 241.

The bottom line here from the academic scholarship and the actual Indian constitutions is that tribal membership requires Indian blood. Race is a proxy for membership in a tribe.

III. *EAGLEBOY* IS DISTINGUISHABLE.

United States v. Eagleboy, 200 F.3d 1137 (8th Cir. 1999) was a criminal case in which the plaintiff was the United States of America. The key to understanding *Eagleboy* is that the Eighth Circuit noted that the United States has "special obligations toward Indians" and that "the government [has] trust obligations to Indians." 200 F.3d at 1138 and 1139. Omaha Discovery Trust is not the government of the United States and it has no historical, special or trust relationship with Indians. In fact, it is a brand-new enterprise.

The foundational United States Supreme Court case relied upon by the *Eagleboy* court and ODT in its trial court brief was *Morton v. Mancari*, 417 U.S. 535, 41 L. Ed. 2d 290, 94 S. Ct. 2474 (1974). *Mancari* involved the special relationship between the federal government and Native Americans. In *Mancari*, the

issue was whether Native Americans could be preferred for employment by the BIA. Again, the centuries-long and special relationship between the tribes and the federal government drove the government's decision to favor Indians for federal employment. It is also worth noting that the Indian tribes and United States waged war against each other, signed treaties and – in some cases – the United States treated the Indian tribes poorly. A remedial policy for employment was certainly in order and the political decision was made to put that policy into a statute.

IV. THE SUPREME COURT HAS REACHED ITS LIMITS FOR TOLERANCE OF RACIAL DISCRIMINATION.

Appellants submit that after decades of litigation the Supreme Court has moved into a new era regarding racial discrimination law. And to not to put too fine a point on it, the Justices are fed up with revisionist and rearguard efforts on the margin to continue race discrimination in our country.

Chief Justice Roberts wrote back in 2007, "That the way to stop discrimination on the basis of race is to stop discriminating on the basis of race." *Parents Involved in Cmty Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 749, 127 S. Ct. 2738, 168 L.Ed.2d 508 (2007).

The message, however, was apparently not understood in some quarters as the Supreme Court had to again pronounce what the Constitution (and American

society) requires. It is fair to say that the Supreme Court has reached the limits of its tolerance for racial discrimination schemes with its decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 143 S. Ct. 2141, 216 L. Ed. 2d 857 (2023).

Students for Fair Admissions, Inc. can best be understood in the context of *Grutter v. Bollinger,* 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304 (2003) where Justice O'Connor wrote that by 2028, "the use of racial preferences will no longer be necessary…." 539 US. at 343. Universities, however, were recalcitrant and a *Students for Fair Admissions, Inc.* was filed so that *Grutter* might be overruled.

Grutter wasn't explicitly overruled by *SFFA* but the Supreme Court held that university students "must be treated on his or her experiences as an individual – not on the basis of race." 600 U.S. at 231. In the "fed up" category, the Chief Justice wrote, "That is so, *we have repeatedly explained*, because '[a]t the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals not as simply components of a racial, religious, sexual or national class.'" 600 U.S. at 223. (emphasis added) Chief Justice Roberts used the word "repeatedly" five times in his majority opinion. Both quotes are strong language in support of the Supreme Court's goal of achieving a color blind society and what the law requires.

Chief Justice Roberts wrote, '[c]ollege admissions are zero-sum. A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter." 600 U.S. at 187. The same can be said of admission charges to the Kiewit Luminarium. The free admission for one racial group advantages one racial group at the expense of all others.

Non-discrimination at places of amusement has been federal law since 1964. It is a fundamental right that the people of this country are treated equally at the admission window to sporting events, movie theaters and museums. It really is beyond the pale and outside the comprehension of an American in the year 2026 to think that race would have the bearing on a ticket price. But that's exactly what the Omaha Discovery Trust is doing.

V. FAIRNESS IS A QUESTION FOR THE FINDER OF FACT.

There are four cases annotated under Neb. Rev. Stat. §59-1601 et seq., the Nebraska Consumer Protection Act. Neb. Rev. Stat. §59-1602 reads, "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce shall be unlawful."

To put the fairness issue in the vernacular, consider a Black person appearing at the counter to purchase an admission ticket at any place of entertainment or amusement in Omaha and is told that he has to pay the full price but people of

another race get in free. At a very human level the likely response is, "That's not fair."

In *State ex rel. Stenberg v. Consumer's Choice Foods, Inc*., 276 Neb. 481, 755 N.W.2d 583 (2008) the trial court found that it was an unfair trade practice to cause consumers to believe that a freezer was free when, in fact, they had to pay nearly $100 per month for 48 months. 276 Neb. at 485. Consumer transactions that affect the public interest are actionable under Neb. Rev. Stat. §59-1602. *Nelson v. Lusterstone Surfacing Co*., 258 Neb. 678, 605 N.W.2d 136 (2000). Racial discrimination, on its face, affects the public interest. This state law cause of action, of course, is dependent upon this Court's decision. That is to say, if this Court finds that tribal membership is not a proxy for race then the state law cause of action is not viable.

CONCLUSION

Appellants submit that this Court reverse this matter and remand it to the district court, thus, giving the Appellants the opportunity to develop the facts regarding racial discrimination for a trial.

DATED this 12th day of January, 2026.

GWLADYS K. NARE, MANFRED L. S. NARE, Individually and as Parents, Next Friends and Guardians of M.N., a minor child

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CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 28(a)(10) and Fed. R. App. P. 28.1(e)(2)(B)(i) and 32 (g)(1), the undersigned counsel certifies that this Appellants' Brief complies with the word/line limits set forth in Fed. R. App. P. 28.1(e)(2)(B)(i). The brief contains 4,033 words, exclusive of the cover page, statement with respect to oral argument, corporate disclosure statement, table of contents, table of authorities, certificates of counsel, signature block, certificate of compliance and certificate of service. This brief complies with the typeface requirements of Fed. R. App. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman style font.

Pursuant to Fed. R. App. P. 28(a)(h), the undersigned further certifies that the brief and appendix have been scanned for viruses and are virus-free.

/s/ *David D. Begley*_____

CERTFICATE OF SERVICE

I hereby certify that on a copy of the foregoing was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit, using the CM/ECF system, on the 12th day of January, 2026, which sent notification to all counsel of record.

/s/ *David D. Begley*_____