No. 25-2145

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ALLY FINANCIAL, INC.,

Appellant-Defendant,

v.

MICHAEL SHERIDAN, individually and on behalf of all others similarly situated,

Appellee-Plaintiff.

On Appeal from the United States District Court
for the Southern District of West Virginia

BRIEF OF THE NATIONAL ASSOCIATION OF CONSUMER ADVOCATES AND NATIONAL CONSUMER LAW CENTER AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE

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February 13, 2026

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- 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.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 25-2145 Caption: Ally Financial, Appellant-Defendant v. Sheridan, Appellee-Plaintiff

Pursuant to FRAP 26.1 and Local Rule 26.1,

National Association of Consumer Advocates
(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

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☑ YES ☐ NO
If yes, identify entity and nature of interest:

Ally Financial, Inc. is a party to this matter and is a publicly traded company listed on the New York Stock Exchange (NYSE) under the ticker symbol "ALLY."

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
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:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
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.

7. Is this a criminal case in which there was an organizational victim? ☐ YES ☑ NO
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/ Katherine Aizpuru Date: 02/13/2026

Counsel for: Amicus Curiae NACA

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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No. 25-2145 Caption: Ally Financial, Appellant-Defendant v. Sheridan, Appellee-Plaintiff

Pursuant to FRAP 26.1 and Local Rule 26.1,

National Consumer Law Center (NCLC)
(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/ Katherine Aizpuru Date: 02/13/2026

Counsel for: Amicus Curiae NCLC

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STATEMENTS REQUIRED BY FED. R. APP. P. 29

All parties have consented to the filing of this brief. *Amici* certify that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than *amici curiae*, their members, or their counsel contributed money that was intended to fund the preparation or submission of this brief.

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INTERESTS OF AMICI CURIAE

Amici are nonprofit organizations that, among other things, advocate for the rights of consumers, including those with lower incomes. The National Association of Consumer Advocates (NACA) is a nonprofit association of over 1,500 attorneys and consumer advocates whose primary focus is the protection and representation of consumers. The nonprofit National Consumer Law Center (NCLC) works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training. NCLC has a particular expertise regarding consumer debt collection, including publishing the treatise Fair Debt Collection (11th ed. 2026).

Amici's work focuses on protecting consumers from unfair, deceptive, and discriminatory practices. Many consumers who are victims of unfair or deceptive trade practices by lenders and servicers are low-income people of color. Amici submit this brief to assist the Court in understanding how lenders prey on consumers through junk fees, including the pay-to-pay fees at issue in this matter. Amici urge the Court to affirm the District Court's decision granting class certification.

INTRODUCTION

This straightforward consumer protection action concerns Ally Financial, Inc.'s ("Ally") practice of assessing exorbitant fees on West Virgina borrowers simply for making loan payments by phone or online ("pay-to-pay fees"). Borrowers' loans are governed by form contracts that do not authorize pay-to-pay fees. No law authorizes pay-to-pay fees either. Contrary to Ally's arguments below and before this Court, West Virginia law prohibits a debt collector like Ally from allowing its service providers to charge pay-to-pay fees—even if Ally did not itself charge the fees. But if the Ally and Third Party Payment Processors Association ("TPPPA") had it their way, lenders and servicers could always assess otherwise illegal fees so long as they hired a third-party payment processor to do it for them. The legislature did not intend to create this perverse race to the bottom.

TPPPA's brief raises up a parade of horribles, warning that the District Court's order will generate "higher costs and fewer consumer-friendly payment options." The opposite is true. In the mortgage servicing context, for example, the majority of mortgage servicers have ceased charging pay-to-pay fees. They still offer consumers the ability to make one-time mortgage payments online or by phone, because it is less expensive for them to offer electronic payments than to accept checks. But they offer that service without a fee. And TPPPA warns of duplicative litigation. But despite that dozens of cases involving pay-to-pay fees have been

litigated across the country since the late 2010s, amici are unaware of any pay-to-pay case against a money transmitter.

Instead, the District Court's ruling on class certification was consistent with the majority of courts to consider class certification in pay-to-pay fee cases, as well as the majority of courts to consider identical fee practices under state debt collection law. There was no abuse of discretion. Accordingly, Amici request that the Court affirm the District Court's ruling, which is faithful to this Court's precedent in *Alexander v. Carrington Mortg. Co.*, 23 F.4th 370 (4th Cir. 2022) and consistent with the vast majority of courts to consider identical issues.

ARGUMENT

I. Ally's Auto Financing Arrangement

Low-income consumers are more likely than others to utilize installment contracts or other financing options to buy a car. The most common auto financing arrangement is a retail installment sales contract (RISC), where the retailer or dealership enters into a contract with the consumer for the sale of the automobile providing for the sale price plus finance charges to be paid in installments over time. NCLC, Consumer Credit Regulation: Retail Installment Sales, 12.2.1. Financing institutions like Ally get involved when they purchase the RISCs from the dealer, which often happens immediately upon the execution of the RISC. *Id.* Sometimes financing institutions further assign the RISCs and their interests to other companies

for loan servicing, giving consumers no say in choosing their loan servicer. Once the debt is assigned, the consumer makes debt payments to the financing institution or its servicer, which can enforce the RISC if the consumer defaults. *Id.* In short, the consumer and the financing entity have a relationship only because the latter has stepped into the creditor's shoes.

Ally develops relationships with dealers, which assign consumers' purchases and financing to Ally. Ally then acts as a debt collector under West Virginia law by collecting monthly debt payments from the consumer. In some instances, as here, debt collectors hire vendors to facilitate the collection of these debt payments. Consumers do not have a say in what (if any) payment processor their lender or servicer uses, and accordingly cannot choose a payment processor that does not charge pay-to-pay fees. Ally's service providers, ACI Pay ("ACI") and CheckFreePay (CFP), move the debt payment from the consumer to Ally. Ally affirmatively encourages consumers to use ACI and CFP, and has a contractual relationship with ACI and CFP to allow them to collect and remit debt payments on Ally's behalf.

II. Debt Collectors Are Still Debt Collectors When Using Third Party Payment Processors

Lenders and servicers across industries use third party payment processors to facilitate collection, while others manage collection in-house. The lenders and servicers are debt collectors in either scenario. Under West Virginia law, a "debt

collector" includes persons or organizations "engaging directly or indirectly in debt collection." W. Va. Code § 46A-2-122(d). By defining "debt collector" to include those who collect debt "indirectly," the legislature deliberately included those, like Ally, using third parties to collect debts on their behalf.

Cases interpreting the federal FDCPA, which uses identical "directly or indirectly" language, confirm this. *See West v. Costen*, 558 F. Supp. 564, 573-74 (W.D. Va. 1983) (explaining vicarious liability applies under the FDCPA and granting summary judgment to plaintiff where agents collected service charges); *Glover v. Ocwen Loan Servicing, LLC*, 127 F.4th 1278, 1286-87 (11th Cir. 2025) (finding mortgage servicer using a third party processor was a debt collector).[1] And so do cases interpreting nearly identical state debt collection laws. *See Alexander*, 23 F.4th at 375-76 (finding mortgage servicer using a third party payment processor was a debt collector under the Maryland Consumer Debt Collection Act)[2]; *Williams v. Lakeview Loan Servicing LLC*, 694 F. Supp. 3d 874, 885 (S.D. Tex. 2023) (denying summary judgment to servicer on Texas Debt Collection Act claim where servicer engaged in indirect debt collection when its subservicer collected mortgage

[1] Brief for defendant-appellant at 6, *Glover*, 127 F.4th 1278 (11th Cir. 2025) (No. 18), 2023 WL 8891397, at *6 (Ocwen used a third-party processor to collect and process pay-to-pay transactions).

[2] Brief for plaintiffs-appellants at 6, *Alexander*, 23 F.4th 370 (4th Cir. 2022) (No. 25), 2021 WL 1346036, at *6 (Carrington used third-party processors, including ACI, to collect and process pay-to-pay transactions).

payments and incidental fees).

III. The Court Should Reject TPPPA's Proposed Loophole

TPPPA's argument would create a loophole for debt collectors like Ally who use third parties to literally take the money from consumers and deposit it with the debt collector—an outcome inconsistent with state law governing both direct *and* "indirect" debt collection. Defining indirect debt collection to somehow exclude persons collecting debts through a vendor would create a loophole for otherwise illegal fees. In that case, lenders and servicers could always assess otherwise-illegal fees so long as they hired someone to do it for them, and they could enjoy immunity from violations by their service providers that they indirectly caused. It would create a race to the bottom and relegate the law to irrelevance, which is certainly not what the West Virginia legislature intended.

Nothing prevents Ally from using third party payment processors to extend payment options to consumers. But if Ally wants to do that, it "must do so without the imposition of a statutorily prohibited convenience fee." *Alexander*, 23 F.4th at 379. That would bring Ally in compliance with the law and alignment with the vast majority of loan servicers already offering flexible payment options to borrowers for free.

TPPPA's argument that the lawsuit could expose its membership to liability is a red herring. Although these issues have been heavily litigated across the country,

including in this circuit, amici are not aware of any pay-to-pay case against a third party payment processor or money transmitter. And no one in this case has alleged that ACI or CFP are themselves debt collectors. Rather, the focus is on Ally's conduct, as the assignee of Plaintiff's RISC and the debt collector in question.

Finally, TPPPA argues without a single on-point citation that Ally's payment processing vendors are effectively common carriers and thus cannot be agents. Br. of Amicus Curae TPPPA, at 6-7.[3] But payment processors are not common carriers, defined as "one, who undertakes for hire to carry from place to place the goods of all persons indifferently," nor analogous to them. *Adkins v. Slater*, 298 S.E.2d 236, 240 (W. Va. 1982) (citing *Maslin v. B. & O. R.R. Co.,* 14 W. Va. 180, 188 (1878)), *modified on other grounds by Foster v. City of Keyser*, 501 S.E.2d 165 (W. Va. 1997). Payment processors collect and remit payments only to the creditors that contract for their services, unlike TPPPA's example of FedEx, which can ship packages from anyone to anyone. TPPPA seeks to turn the issue on its head by placing the focus on the borrower's *payment* rather than the creditor's *collection*. But, of course, the borrower only uses a third party payment processor because they owe a debt to the creditor, and the creditor directs borrowers to the payment

[3] The only case TPPPA cites is a bankruptcy case involving a shipping dispute from a different Circuit, which says nothing about payment processors or debt collection. *See In re World Imports, Ltd.*, 862 F.3d 338, 345 (3d Cir. 2017).

processor. Borrowers do not seek out the third party processor on their own.[4]

IV. Pay-to-Pay Fees Are Predatory and Burdensome

Most loan originators and servicers do not charge fees when borrowers make payments by phone or online. This makes sense given that it is generally cheaper and easier for collectors to process phone and online payments than check payments. ACH payments typically cost less than 50 cents per transaction, while paper checks typically cost between $1 and $2. *See* Association for Financial Professionals (AFP), 2022 AFP Payments Cost Benchmarking Survey, available at https://perma.cc/SKV2-ZY8C; *accord Montesi v. Seterus Inc.*, No. 50-2015-CA-010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cnty. Mar. 1, 2019), Dkt. 165, at 6:22-8:6 (explaining loan servicer paid its third-party processor, Western Union, 20 cents per transaction).[5] Yet pay-to-pay fees often exceed these costs by hundreds of percentage points. In this case, the pay-to-pay fees were approximately $4; some servicers have charged as much as $20 for a single one-time payment made online or by phone.

In the past, servicers themselves have shouldered the cost of payment

[4] TPPPA's nonsensical argument that payment processors do not collect debt (despite contracting with the creditor to do precisely that) but instead merely complete consumer-initiated delivery of funds fails for the same reason. Br. of Amicus Curae TPPPA, at 8-10.

[5] ACI acquired Western Union's bill pay business in 2019. *See* ACI Worldwide, ACI Worldwide to Acquire Western Union's Speedpay U.S. Domestic Bill Pay Business, Press Release (Feb. 28, 2019), available at https://perma.cc/6DKL-HWHZ.

processing. *See Montesi v. Seterus Inc.*, No. 50-2015-CA-010910-XXXX-MB (Fla. Cir. Ct. Palm Beach Cnty. Mar. 1, 2019), Dkt. 165, at 6:22-8:6. More recently, instead of shouldering the costs of their own debt collection business, servicers like Ally have begun allowing their providers to pass those costs directly to borrowers—usually in inflated amounts. The payment processors that loan servicers often use have themselves been accused of unfair, deceptive, and abusive acts or practices. *See, e.g.*, CFPB, CFPB Takes Action Against ACI Worldwide for Illegally Processing $2.3 Billion in Mortgage Payments that Homeowners Did Not Authorize (Jun. 27, 2023), https://perma.cc/Q23Z-W37P; FTC, FTC Takes Action to Stop Payment Processor First American from Trapping Small Businesses with Surprise Exit Fees and Zombie Charges (July 29, 2022), https://perma.cc/HCH4-5TR4. Borrowers have no say in what payment processor their lender or servicer uses, and cannot pick one that does not charge pay-to-pay fees. And while lenders and servicers can negotiate directly with third party processors to keep these costs accurate and low, borrowers cannot and are then saddled with inflated fees that vastly exceed the payment processor's costs.

Regulators have long criticized pay-to-pay fees as violative of state and federal public policy. For example, in 2017 the CFPB put out a bulletin on "Telephone Pay Fees," in which it warned financial services providers and debt collectors about the many ways in which their fees for making payments over the

telephone could violate laws. *See, e.g.*, CFPB Compliance Bulletin 2017-01: Phone Pay Fee (July 31, 2017), available at https://perma.cc/5CKV-SM57 (warning mortgage servicers that pay-to-pay fees might violate the FDCPA). And in 2021, the CFPB filed an amicus brief in a matter before the Ninth Circuit agreeing that the FDCPA prohibits pay-to-pay fees, explaining "the FDCPA was designed to rein in unethical debt collectors[] and . . . limit the amounts that debt collectors could try to collect from consumers," and that pay-to-pay fees are "most often just a way for debt collectors to take advantage of consumers by trying to extract more money than they originally bargained for or reasonably expected to pay." *Thomas-Lawson v. Carrington Mortg. Servs.*, 9th Cir. No. 21-55459, Dkt. 22, at 11 (Brief of Amicus Curiae Consumer Financial Protection Bureau in Support of Plaintiffs-Appellants). In 2022, when the FTC sought comments on junk fees including those imposed on "captive consumers" dealing with companies that have "exclusive rights," then-Chair Lina M. Khan explained: "No one has ever felt that a 'convenience fee' was convenient. Companies should compete to provide the best quality at the best price, not to see who can squeeze the most added expenses out of consumers. That's especially true at a time when families are struggling with the effects of inflation." *See* FTC, Federal Trade Commission Explores Rule Cracking Down on Junk Fees (Oct. 20, 2022), https://perma.cc/CZ2J-E7AB.

State regulators have also taken action. In 2021, a coalition of 33 state

attorneys general (including West Virginia's) intervened to object to a settlement with a large mortgage servicer, when the terms of that agreement purported to permit the servicer to force borrowers to modify their uniform mortgages to allow it to assess pay-to-pay fees. The New York Attorney General, speaking for the coalition, condemned pay-to-pay fees:

> When Americans utilize online or phone payments to pay off their monthly mortgages, [mortgage servicer] PHH benefits, but instead of passing those savings on to homeowners PHH charged illegal fees and increased costs for nearly one million Americans," said Attorney General James. "PHH's sole purpose is to collect and process homeowners' payments, which it already makes millions of dollars from each year. In the 21st century, when most Americans pay their bills online or by phone, to charge fees on top of what they are already being paid is not only unethical, but unlawful. . . . For years, PHH charged nearly one million homeowners an illegal fee — ranging from $7.50 to $17.50 — each time a homeowner made a monthly mortgage payment online or by phone, despite most Americans paying their mortgages one of these two ways. Nowhere in these homeowners' mortgage contracts is there authorization for such fees and PHH does not charge "processing" fees for any other customers, including those who pay by check or those who set up automatic debit payments. Charging fees not mentioned in the mortgage contract is illegal and, under New York's mortgage servicing regulations, explicitly forbidden.

N.Y. State Att'y Gen., Attorney General James Leads Bipartisan Coalition Fighting to Protect Nearly One Million Homeowners from Unlawful Fees (Jan. 29, 2021), https://perma.cc/F4RQ-7LT8.

V. There Are Strong Policy Reasons Against Allowing Debt Collectors to Permit Service Providers to Charge New Fees

The West Virginia Consumer Credit and Protection Act's ("CCPA") focus on

whether the original agreement authorizes the fee is crucial to facilitating its broad consumer protection purpose. Requiring a fee to be authorized in the agreement creating the debt "protects consumers from later add-ons in the way of various fees, preventing [borrowers] from being blindsided down the road." *Alexander*, 23 F.4th at 378 (discussing the FDCPA, upon which the CCPA is modeled). A lender is "better positioned" to rectify the lack of express authorization for collecting pay-to-pay fees in the agreement creating the debt than the consumers the CCPA seeks to protect. *See Glover*, 127 F.4th at 1293-94. While "bargaining power is certainly not equal" between consumers and auto lenders at the outset (including dealerships and financial institutions that at times originate their own loans, like Ally in some instances), there could be "at least some element of notice as to the terms of the original agreement." *Id.*

But the standard form RISCs do not expressly authorize pay-to-pay fees let alone mention them, and accordingly borrowers do not agree to pay them or even know about them when the obligation is created. And where, as here, a borrower only has a relationship with a debt collector because it was assigned a RISC, they may well have no say in whether that debt collector intends to charge pay-to-pay fees or intends to use service providers like ACI and CFP that charge fees they never agreed to pay. Borrowers cannot choose which third party processor (if any) their lender or subservicer uses, and thus cannot switch third party processors to one that

does not charge pay-to-pay fees. The predation is doubled where borrowers also did not choose their loan servicer.

Debt collectors and their service providers should not be allowed to impose new fees on borrowers when those fees were never included in the underlying loan agreement. By the time a debt collector or its service provider adds a new fee, the borrower "may well be over a barrel at that later point in time." *Alexander*, 23 F.4th at 378.

TPPPA's logic is particularly concerning in this regard. If it is true, as TPPPA argues, that a money transmitter may add whatever new fees it wants to a debtor's payment, then by that logic a payment processor could charge any fee at all with no limit beyond what a borrower will "agree." Money transmitters involved in collecting debt service payments could charge for allowing a borrower to pay on a weekend instead of a weekday; allowing a borrower to communicate with a live customer service representative instead of an AI agent; or even processing a payment by check. Positioning its members as providing a voluntary third-party service, TPPPA offers no limiting principle beyond so-called "agreement." "If any valid, new contract were enough, debt collectors would be free to offer unfair terms to consumers who cannot seek a better deal elsewhere." *Glover*, 127 F.4th at 1293. Courts across the country (including this one) have rejected the argument that a "separate agreement" is sufficient to overcome a state debt collection law, and this

Court should do so again. *See, e.g.*, *id.*; *Alexander*, 23 F.4th at 378; *Knapp v. PHH Mortg. Corp.*, 2025 WL 1174947, at *7-8 (D. Or. Apr. 18, 2025).

VI. In the Related Mortgage Industry, Pay-to-Pay Fees Are No Longer Standard

Pay-to-pay fees used to be very common in a related consumer lending space—the mortgage home lending space. But the practice has largely ceased, in many instances as part of settlements, and as of now, the majority of mortgage loan servicers do not charge pay-to-pay fees, including Arvest Central Mortgage Co., Bank of America, BB&T Bank, BNB Bank, Caliber Home Loans, Carrington Mortgage, Chase Home Lending, Citibank, Citizens Bank, EastWest Bank, First Mortgage, Freedom Mortgage, KeyBank Mortgage, LoanCare (in most states), M&T Bank, PHH Mortgage Corp. (in many instances), Prime Lending Mortgage, Quicken Loans, Roundpoint Mortgage Servicing, Rushmore Loan Management Services, SunTrust Bank, and TD Bank.

Although these servicers no longer charge pay-to-pay fees, that does not mean they no longer offer consumers the ability to make payments online or by phone. Because those payment methods are less expensive for servicers, servicers still make those payment methods available. The only difference, from the consumer's perspective, is that consumers are no longer burdened with an illegal fee.

CONCLUSION

For these reasons, NACA and NCLC respectfully request that this Court affirm the District Court's decision granting class certification.

Dated: February 13, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that, on this 13th day of February, 2026, a true and correct copy of the foregoing was served via the Court's electric filing system upon all counsel of record.

/s/ *Katherine M. Aizpuru*
Katherine M. Aizpuru

Attorney for Amici

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 3,375 words and is no more than 15 pages long, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ *Katherine M. Aizpuru*
Katherine M. Aizpuru

Attorney for Amici