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IN THE
INDIANA SUPREME COURT
NO. _____

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, Appellant (Plaintiff below), v. ACE AMERICAN INSURANCE COMPANY, FEDERAL INSURANCE COMPANY, ILLINOIS NATIONAL INSURANCE COMPANY, NORTH AMERICAN SPECIALTY INSURANCE COMPANY, STARR INDEMNITY AND LIABILITY COMPANY, U.S. SPECIALTY INSURANCE COMPANY, and WESTCHESTER FIRE INSURANCE COMPANY, Appellees (Defendants below).	)	Indiana Court of Appeals Cause No. 19A-PL-01313 Marion Superior Court Hon. David J. Dreyer, Judge Trial Court Cause No. 49D10-1601-PL-001570

BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS

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STATEMENT OF INTEREST

United Policyholders is a non-profit organization that advocates on behalf of a diverse range of policyholders regarding insurance law and public policy. The decision below ("Opinion") interprets an insurance policy exclusion commonly found in "claims-made" insurance policies, such as directors and officers ("D&O") liability and errors and omissions ("E&O") policies, issued to businesses in Indiana and throughout the country. As such, this case involves an issue of general importance to policyholders other than the plaintiff here, the National Collegiate Athletic Association ("NCAA").

SUMMARY OF ARGUMENT

The Opinion incorrectly adopts a broad interpretation of exclusionary insurance policy language that threatens to substantially limit or eliminate years of coverage for Indiana policyholders under claims-made insurance policies. Such policies cover claims made during year(s) the policy is in effect, except that here the Court of Appeals held that the NCAA's 2014 policies did not cover a claim made and reported in that year. That is because the Court of Appeals adopted a broad reading of the "related acts" exclusion found in claims-made policies that purports to limit or exclude coverage for a new claim based on its relationship to a prior claim.

The Opinion deprives the NCAA of its 2014 coverage for a 2014 lawsuit (*Jenkins*) on the ground that *Jenkins* is "related" to a 2006 lawsuit (*White*). The Opinion adopts a broad interpretation of "related" to conclude that *Jenkins* and *White* were "related" despite the fact that they involved different time periods, different rules and bylaws, different conduct, and different plaintiffs. The Opinion's broad reading of the exclusion violates settled Indiana rules of insurance policy interpretation, and threatens to curtail or eliminate coverage for Indiana policyholders under claims-made insurance policies.

The Opinion relies on a decades-old Seventh Circuit decision to conclude that "related" has a uniformly broad, unambiguous meaning, even when used in an insurance policy exclusion. It then distinguishes a 2004 Court of Appeals holding that the term "interrelated" is ambiguous, effectively creating a rule that "related" acts provisions are ambiguous if they use the term "interrelated," but unambiguous if they use the term "related." Neither the English language nor Indiana law justify

this distinction. It conflicts with a long line of Court of Appeals cases and turns this Court's jurisprudence regarding the interpretation of insurance policy exclusions on its head.

That jurisprudence holds that insurance policy exclusions must be clear and unmistakable, and that courts must construe any ambiguities in favor of coverage. A long line of Indiana Court of Appeals' decisions holds that words capable of being read broadly or narrowly—like "related"—must be given their narrow meaning in an insurance policy exclusion. The Opinion conflicts with this line of authority and departs from this Court's precedent, requiring this Court's intervention and guidance. *See* Ind. Appellate Rule 57(H)(1), (2).

ARGUMENT

I. The Opinion presents a question of public importance that the Court has not previously addressed regarding the enforceable scope of "related" wrongful act provisions.

Claims made insurance policies are different from "occurrence" policies in that they are triggered by a claim made during the policy period for a "wrongful act" (as defined in the policy), rather than by an occurrence that may have taken place years before a claim is made. Insurers often try to limit their liability for claims made during their policy period, however, by including some form of "related wrongful act" exclusion purporting to limit or exclude claims for wrongful acts that are "related" or "interrelated" to prior claims or wrongful acts. *See* 4 Law and Prac. of Ins. Coverage Litig. § 47:13 (June 2020 update).

The exclusion at issue here (the "Related Wrongful Acts Exclusion" or "Exclusion") provides:

> IV. Exclusions
>
> The Insurer shall not be liable to make any payment for Loss in connection with a Claim made against the Insured:
>
> ***
>
> C. alleging, arising out of, based upon or attributable to the facts alleged, or to the same or Related Wrongful Act alleged or contained, in any Claim which has been reported, or in any circumstances of which notice has been given before the inception date of this policy, under any other management liability insurance policy, directors and officers liability insurance policy or any similar insurance policy of which this policy is a renewal or replacement or which it may succeed in time; . . .

(Appellant's App. Vol. II p. 197). The policies define "Related Wrongful Act" as:

> Wrongful Acts which are the same, related or continuous, or Wrongful Acts which arise from a common nucleus of facts. Claims can allege Related Wrongful Acts regardless of whether such Claims involve the same or different claimants, Insureds or legal causes of action.

(Appellant's App. Vol. II p. 194).

The Opinion threatens to turn exclusions like this one into sweeping coverage denials under claims-made insurance policies governed by Indiana law. Almost any claim against any business will "relate" to other claims made against that same entity in the broadest sense, because both will arise in some way from the nature of the policyholder's business. Here, for instance, the NCAA has faced numerous lawsuits challenging its regulation of permissible benefits for student-athletes. If the language of the Exclusion is interpreted as broadly as the Court of Appeals read it, every one of these lawsuits could be considered a single claim made at the time of the earliest one. This is an absurd result that would deprive Indiana plaintiffs and policyholders of untold millions of dollars of insurance coverage.

Liability insurance provides a public benefit by ensuring not only a defense against claims against the insured, but also compensation for plaintiffs who claim to have been harmed as a result of the insured's conduct. *See*, *e.g.*, *Home Ins. Co. v. Neilsen*, 165 Ind. App. 445, 451, 332 N.E.2d 240, 244 (1975). This Court has developed special rules for interpreting liability insurance policies "in order to further the policy's basic purpose of indemnity." *Auto-Owners Ins. Co. v. Harvey*, 842 N.E.2d 1279, 1286 (Ind. 2006) (quotation and citation omitted). The hallmark rule is that, "[a]ny doubts as to the coverage under the policy will be construed against the insurer." *Id*. In *Harvey*, for instance, this Court interpreted both the

term "accident" used in the definition of "occurrence" and the exclusion for "intended or expected" harm in favor of coverage for the wrongful death of a 16-year-old girl.

The Opinion in this case, by contrast, reads the Exclusion broadly in favor of the insurers and concludes that *White* and *Jenkins* were "related" because both involved the NCAA's "scholarship scheme." Slip Op. 23, ¶ 33. That conclusion creates the absurd result that the Exclusion (or similar exclusions in future policies) could be applied to bar coverage for any lawsuit with allegations involving permissible student-athlete benefits. Under this reasoning, the NCAA's insurers can feel emboldened to assert that the NCAA has no coverage under post-*White* policies for claims involving student-athlete benefits, denying years of millions of dollars of coverage to the NCAA and student-athlete-plaintiffs.

A federal district court applying Indiana law recently rejected such a broad reading of a "related acts" exclusion. *See Emmis Communications Corp. v. Illinois Nat'l Ins. Co.*, 323 F.Supp.3d 1012, 1023 (S.D. Ind. 2018), *aff'd* 937 F.3d 836 (7th Cir. 2019). The policy in *Emmis* excluded coverage for "any Claim alleging, arising out of, based upon, attributable to or in any way related directly or indirectly, in part or in whole, to an Interrelated Wrongful Act." *Id*. at 1026. The policy defined an "Interrelated Wrongful Act" as "(i) the same or related facts, circumstances, situations, transactions or events alleged in any of the Event(s), and/or (ii) any Wrongful Act(s) that are the same or that are related to those that were alleged in any of the Event(s)." *Id*. at 1022.

Emmis involved coverage for a 2012 lawsuit that included allegations about facts at issue in several lawsuits filed two years prior. *Id.* at 1017. Those lawsuits were reported as claims under D&O policies then in effect. *Id.* The 2012 lawsuit was reported under a later-issued D&O policy in effect at that time. *Id.* at 1012. The insurer denied coverage, citing the Interrelated Wrongful Act exclusion. *Id.* at 1022.

The court noted that there was "no question that if the plain language [of the exclusion] is applied literally, the [2012 lawsuit] is excluded from coverage." *Id.* at 1026. That was because if the exclusion applied as written "it would mean that *any* shared factual allegation would be sufficient to trigger the exclusion." *Id.* (Court's emphasis). The court refused to read the exclusion that broadly because it would produce an absurd result. *Id.* Instead, the court ruled: "Rather than being read literally, the language of [the exclusion] must be read to exclude only those claims that share operative facts with the [prior lawsuits]; that is, facts that form the basis of the causes of action asserted in the lawsuits." *Id.* at 1027.

This same reading is compelled here because the definition of "Related Wrongful Act" in the NCAA's 2012-2014 policies says that those acts must be "the same, related or continuous, or Wrongful Acts which arise from a common nucleus of facts." The Court of Appeals conceded that "[t]he *Jenkins* time period does not overlap with the *White* time period." Slip Op. 6, ¶ 9. The Court of Appeals also noted that, "[w]hile White challenged the NCAA Bylaws 15.02.5, 15.02.2, and 15.1,[1] which

[1] This is incorrect. *White* challenged only Bylaw 15.02.5. (Appellant's Reply at 24; Appellants App. Vol. III, p. 79). The Court of Appeals erred.

capped a grant-in-aid below the cost of attendance, Jenkins contested, as illegal under the Sherman Act, all NCAA rules that prohibit, cap, or otherwise limit the remuneration that players may receive for their athletic services, including but not limited to NCAA Bylaws 12 (amateurism; prohibiting boosters, etc.), 13 (recruiting), 15 and 16." *Id*. Yet, the Court of Appeals held that the exclusion nevertheless applied under the its broad reading of "related" in violation of this Court's rules for interpreting insurance policy exclusions.

The Court of Appeals' interpretation of the Exclusion is important not only to the NCAA and the *Jenkins* plaintiffs, it is important to every business in Indiana. Most Indiana businesses have some form of claims-made insurance coverage, such as D&O or E&O policies. The vast majority, if not all, of those policies contain some form of "related wrongful act" provision. This Court's guidance is needed to confirm the proper interpretation of that language, particularly given the current tension between the Opinion and *Emmis*.

II. The Court of Appeals erroneously relied on *Gregory* to exclude coverage.

The Opinion relied principally upon *Gregory v. Home Ins. Co.*, 876 F.2d 602 (7th Cir. 1989), for its conclusion that the Exclusion was unambiguous and barred coverage for *Jenkins*. Slip Op. 20-22. *Gregory* does not support a sweeping finding that related wrongful act exclusions are always unambiguous. *Gregory* held only that the provision at issue could apply to the facts at issue, not that the language used was unambiguous in all circumstances. Indeed, the court noted that "'related' covers a very broad range of connections, both causal and logical," and

acknowledged that there are circumstances where "the rule of restrictive reading of broad language would come into play." *Id.* at 606.

The *Gregory* court did not need to determine whether the rule applied because the claims at issue all arose from a single event – an attorney's tax and securities advice and the drafting of an opinion letter that the Internal Revenue Service determined was incorrect. Although multiple parties made claims arising from that erroneous legal work, all of the claims were related to the same errors. Here, *White* and *Jenkins* involve challenges by different groups of plaintiffs to different remuneration caps imposed by the NCAA at different periods in time. Factually, *Gregory* bears no resemblance to this case.

The Opinion acknowledges the Court of Appeals' holding that the term "interrelated" was ambiguous in *Am. Home Assur. Co. v. Allen*, 814 N.E.2d 662, 664 (Ind. Ct. App. 2004). Slip Op. 21, ¶31. But, the Opinion then effectively twists *Allen's* distinguishing of *Gregory* into a rule that the term "interrelated" in a related wrongful acts provision is ambiguous while the term "related" is unambiguous in all circumstances. Although *Allen* distinguished *Gregory* on that basis, there is no rationale for using that distinction to create a rule that the term "related" is uniformly unambiguous.

The definition of "Interrelated Wrongful Acts" at issue in *Emmis* shows the absurdity of the Court of Appeals' logic. The policy defined "Interrelated Wrongful Act" as including "(i) the same or **related** facts , circumstances, situations, transactions or events alleged in any of the Event(s), and/or (ii) any Wrongful Act(s)

that are the same or that are **related** to those that were alleged in any of the Event(s)." *Id*. at 1022 (emphasis added). The policy, in other words, used the term "related" to define what was "interrelated." It is therefore unclear whether under the Court of Appeals' logic the language would have been considered unambiguous (because it used the term "related") or ambiguous (because it used the term "interrelated").

The Opinion also uses the terms interchangeably. The Opinion states that the *White* policies "include[] language that is designed to cap the insurer's liability for multiple claims based on the same or **interrelated** Wrongful Acts." Slip Op. 18, ¶ 28 (emphasis added). The language the Opinion is presumably referring to is quoted at pages 7-8 of the opinion. It doesn't use the word "interrelated;" it uses the word "related." *Id*.

The policy language in *Emmis* and the Opinion used both "related" and "interrelated" because there is no meaningful difference between the two terms. Synonyms for both include "linked", "connected", "associated." *See* Merriam-Webster.com Thesaurus, https://www.merriam-webster.com/thesaurus (accessed 26 Aug. 2020). And, even if "related" can have a broad scope, it also can have a narrow scope, or different meaning, depending on context and circumstances.

This Court is the ultimate authority on whether *Gregory* and *Allen* together establish a rule that related wrongful acts provisions are uniformly considered unambiguous as long as they use the word "related" rather than "interrelated." *Gregory* was decided in 1989 by a federal circuit court predicting Indiana law. *Allen*

is a Court of Appeals decision that held the term "interrelated" was ambiguous. *Allen* did not adopt *Gregory's* conclusion that "related" was unambiguous; it merely distinguished *Gregory* as involving the term "related," rather than "interrelated."

There are several reasons why the Court should conclude that *Gregory* and *Allen* cannot be combined into such a broad rule:

First, numerous decisions issued since *Gregory* have emphasized that policy exclusions must be clear and unmistakable to bar coverage, and that courts must construe any ambiguities strictly in favor of coverage. *State Auto Mut. Ins. Co. v. Flexdar, Inc.*, 964 N.E.2d 845, 848 (Ind. 2012); *USA Life One Ins. Co. of Ind. v. Nuckolls*, 682 N.E.2d 534, 538 (Ind. 1997); *National Mut. Ins. Co. v. Curtis*, 867 N.E.2d 631, 634 (Ind. Ct. App. 2007); *PSI Energy, Inc. v. Home Ins. Co.*, 801 N.E.2d 705, 723 (Ind. Ct. App. 2004); *American Family Life Assur. Co. v. Russell*, 700 N.E.2d 1174, 1177 (Ind. Ct. App. 1998).

Second, numerous Indiana decisions since *Gregory* was decided have held that Indiana courts cannot interpret policy language in a manner that creates absurd results, or render the policy's coverage illusory. *Meridian Mut. Ins. Co. v. Richie*, 540 N.E.2d 27, 30 (Ind. 1989), *vacated on other grounds*, 544 N.E.2d 488 (1989); *Davidson v. Cincinnati Ins. Co.*, 572 N.E.2d 502, 508 (Ind. Ct. App. 1991); *Landis v. American Interinsurance Exchange*, 542 N.E.2d 1351, 1354 (Ind. Ct. App. 1989); *Monticello Ins. Co. v. Mike's Speedway Lounge, Inc.*, 949 F.Supp. 694, 699 (S.D. Ind. 1996); *Fidelity & Guar. Ins. Underwriters, Inc. v. Everett I. Brown Co.*, L.P., 25 F.3d 484, 490 (7th Cir. 1994); *Emmis*, 323 F.Supp.3d at 1023.

Third, courts in other jurisdictions have distinguished or criticized *Gregory's* holding that the term "related" is unambiguous. In *National Union Ins. Co. of Pittsburgh, Pennsylvania v. Holmes & Graven*, 23 F.Supp.2d 1057 (D. Minn. 1998), for example, a Minnesota federal district court considered and rejected *Gregory's* definition of the term "related." It instead applied a definition that considered, in the context of the coverage at issue "whether the acts are connected by time, place, opportunity, pattern, and most importantly, method or modus operandi." *Id.* at 1070 (quoting *American Commerce Insurance Brokers, Inc. v. Minnesota Mut. Fire and Cas. Co.*, 551 N.W.2d 224, 231 (Minn. 1996)). *See also Financial Management Advisors, LLC v. American Intern. Specialty Lines Ins. Co.*, 506 F.3d 922, 926 (9th Cir. 2007) (distinguishing *Gregory* because in that case "the insured attorney committed a single wrong—he gave the same advice to several parties to promote a single investment"); *Beale v. American Nat. Lawyers Ins. Reciprocal*, 843 A.2d 78, 92 (Md. 2004).

This Court should grant transfer to examine *Gregory* and *Allen* and decide whether, together, they embody the rule effectively created by the Opinion in this case—i.e., that coverage turns on whether the "related acts" exclusion uses the term "interrelated" or "related" (and perhaps the related question of how Indiana courts should interpret provisions like those in *Emmis* that use both terms).

III. The decision below creates a conflict with a long line of Court of Appeals' decisions.

A long line of Indiana Court of Appeals' precedent holds that, "the rule of construction which favors coverage of the insured" requires that "the [disputed]

term is to be given its broad meaning in the so-called 'extension' cases, and is construed narrowly in 'exclusion' cases." *Allstate Ins. Co. v. Neumann*, 435 N.E.2d 591 (Ind. Ct. App. 1982). This line of authority has been followed by the Court of Appeals and federal courts applying Indiana law since *Neumann* was decided in the context of the term at issue in *Neumann*—the term "resident." *See Indiana Farmers Mut. Ins. Co. v. Imel*, 817 N.E.2d 299, 305 (Ind. Ct. App. 2004); *Omni Ins. Grp. v. Poage*, 966 N.E.2d 750, 756 (Ind. Ct. App. 2012); *Indiana Farmers Mut. Ins. Grp. v. Blaskie*, 727 N.E.2d 13, 15 (Ind. Ct. App. 2000); *Aetna Cas. & Sur. Co. v. Crafton*, 551 N.E.2d 893, 895 (Ind. Ct. App. 1990); *Allstate Ins. Co. v. Shockley*, 793 F. Supp. 852, 856 (S.D. Ind. 1991), *aff'd sub nom. Allstate Ins. Co. v. Desjarlais*, 980 F.2d 733 (7th Cir. 1992). *See also Econ. Fire & Cas. Co. v. Love*, 996 F.2d 1219 (7th Cir. 1993), as amended on denial of reh'g (June 21, 1993) (citing *Neumann* for the proposition, "A term is to be construed narrowly in exclusion cases"). *But see Armstrong v. Federated Mut. Ins. Co.*, 785 N.E.2d 284, 288-89 (Ind. Ct. App. 2003) (declining to follow *Neumann*).[2]

While this line of authority addressed the meaning of the term "resident," the rationale and rule do not; they hold that terms like "resident"—which can be construed broadly or narrowly—must be given a narrow construction in policy exclusions and a broad construction in extension clauses. The term "related" is no

[2] *Armstrong* noted incorrectly that no other case had followed the rule announced in *Neumann* and took that as "signal[ing] a reluctance on the part of our courts to adopt a rule that paints with too broad a brush." *Id.* at 289. As noted above, several cases decided before *Armstrong* followed the rule, and more have done so since *Armstrong*.

different—it can be read broadly or narrowly. Cases involving the same facts or transaction may be related in narrow sense of the word, whereas more tenuous connections may be "related" in a broad sense of the term.

The Opinion conflicts with this line of authority by giving a broad meaning to "related" in the Related Wrongful Act Exclusion. The Court of Appeals should have narrowly construed the term, rather than reaching for any broad overlap between *Jenkins* and *White* to conclude that they were "related" because "both lawsuits essentially focus on the scheme instituted by Bylaw 15." Slip Op. 23, ¶ 32. This Court's intervention and guidance is needed to resolve this conflict and confirm what the Court of Appeals has long held: words that can be read broadly or narrowly should be given a narrow meaning when used in insurance policy exclusions.

IV. The Opinion conflicts with established Indiana law regarding the existence and construction of ambiguities in insurance policy language.

Even if the line of Court of Appeals' authority interpreting the term "resident" had no application to any other word in the English language, the fact that "related" may be read narrowly or broadly invokes another long-established rule of insurance policy interpretation: "It is well settled that where there is an ambiguity, insurance policies are to be construed strictly against the insurer and the policy language is viewed from the standpoint of the insured. This is especially true where the language in question purports to exclude coverage." *Flexdar*, 964 N.E.2d at 848 (internal quotes and citations omitted).

Indiana's ambiguity rule with respect to insurance policy exceptions is particularly stringent:

> [E]xceptions, limitations and exclusions must be plainly expressed in the policy. The exclusionary clause must **clearly and unmistakably** bring within its scope the particular act or omission that will bring the exclusion into play, and **any doubts to the coverage under the policy shall be construed against the insurer** to further the policy's basic purpose of indemnity.

Russell, 700 N.E.2d at 1177 (emphasis added); *accord, e.g., Flexdar*, 964 N.E.2d at 848; *Nuckolls*, 682 N.E.2d at 538; *Curtis*, 867 N.E.2d at 636; *PSI Energy*, 801 N.E.2d at 723; *Rozek v. Am. Family Mut. Ins. Co.*, 512 N.E.2d 232, 234 (Ind. Ct. App. 1987).

As the *Emmis* court noted in interpreting a similar exclusion, the Related Wrongful Act Exclusion, if read literally, is fatally overbroad. *Emmis*, 323 F.Supp.3d at 1026. The term "Related Wrongful Acts" is so vague and general that it could apply whenever there is any factual overlap between two different claims, no matter how insignificant. Here, for instance, one of the NCAA's primary organizational purposes is to establish rules regarding benefits student-athletes can receive from any source as a result of their athletic participation. Under the Opinion's reasoning, any future claim that asserts wrongdoing arising from that activity could be barred from coverage under any policy that contains a related wrongful act exclusion. This interpretation is unreasonable because it deprives the NCAA of coverage for a core function of its business.

As if the term "Related Wrongful Acts" were not broad and general enough, moreover, the Exclusion also applies to any claim "alleging, arising out of, based

upon or attributable to the facts . . . alleged or contained, in any Claim which has been reported." As written, this means the Exclusion applies to any claim alleging **any** of the same facts alleged in a prior claim. There almost certainly will be some factual overlap between any two claims asserted against the same organization. If the Exclusion is to be applied as broadly as the Opinion suggests, then it can be applied to bar coverage for any claim involving allegations that overlap in any way with allegations made in a prior lawsuit. This is unreasonable as a matter of law. *See Emmis*, 323 F.Supp.3d at 1026 (refusing to enforce a related wrongful acts exclusion because if the exclusion were applied literally "it would mean that *any* shared factual allegation would be sufficient to trigger the exclusion.") (Court's emphasis).

Such a conclusion cannot be reconciled with established Indiana law requiring exclusions to be clear and unmistakable. The policies here easily could have met this standard. If they had intended to bar coverage for all claims alleging improper conduct in connection with the NCAA's regulation of the financial aid that student-athletes may receive, they could have said exactly that. And, if they had done so, the NCAA would have had the opportunity to decide whether it wanted to purchase that coverage and face uninsured exposure for such claims. Instead, the NCAA has been put in the position of having its Exclusion construed so broadly as to exclude coverage for a type of claim for which the NCAA reasonably expected coverage.

Because the Related Wrongful Acts Exclusion did not clearly and unmistakably bar coverage for *Jenkins*, the Opinion departed from established Indiana law. The Court should grant transfer, confirm that its jurisprudence on the interpretation of insurance policy exclusions applies to "related wrongful acts" exclusions in claims-made policies, and reverse for further proceedings consistent with the Court's opinion. At a minimum, the Court should confirm that the issue whether *White* and *Jenkins* are "related" within the meaning of the policy language is a question of fact that must be left for the jury.

CONCLUSION

For the foregoing reasons, Amicus Curiae United Policyholders respectfully requests that this Court grant transfer and reverse the decision below, and that the Court grant all other just and proper relief.

Respectfully submitted,

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WORD COUNT CERTIFICATE

Pursuant to Indiana Appellate Rule 44, I verify that this Brief of Amicus Curiae contains less than 4,200 words, excluding the items specified in Appellate Rule 44(C), as calculated by the word processing program used to create this brief, which is Microsoft Word 2016.

/s/ Christian P. Jones

CERTIFICATE OF SERVICE

Pursuant to Indiana Appellate Rule 24(D), I certify that on August 31, 2020, the foregoing Brief of Amicus Curiae was electronically filed through the Indiana E-filing System ("IEFS") and was served electronically to counsel of record as follows:

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/s/ Christian P. Jones