No. 15-1442

In the
Supreme Court of the United States

THE GILLETTE COMPANY, et al.

Petitioners,

v.

CALIFORNIA FRANCHISE TAX BOARD,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of California

BRIEF AMICUS CURIAE OF THE COUNCIL OF STATE CHAMBERS OF COMMERCE IN SUPPORT OF PETITIONERS

*LYNN A. GANDHI
**Counsel of Record*
Honigman Miller Schwartz & Cohn LLP
660 Woodward Ave.
Detroit, MI 48226-3506
Telephone: (313) 465-7646
Email: lgandhi@honigman.com
Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, the Council of State Chambers of Commerce (the COSC) respectfully submits this brief amicus curiae in support of Petitioners The Gillette Company, et al.[1]

The COSC, a non-profit and non-partisan organization, is the national organization for the executive leadership of the forty-six state chambers of commerce. The individual state chambers of commerce are member organizations, composed of and representing the interests of private businesses, enterprises, large and small, and local chambers of commerce. The state chambers are engaged in the continual economic development of their individual states to make each of their states attractive as a place to live and work. Collectively, their membership encompasses more than 150,000 businesses with millions of employees. These businesses compose the backbone of the U.S. economy. As a representative of businesses across

---

[1] Pursuant to this Court's Rule 37.2(a), all parties have consented to the filing of this brief. Letters evidencing such consent have been filed with the Clerk of the Court. Counsel of record for all listed parties received notice at least 10 days prior to the due date of this Amicus Curiae's intention to file this brief. Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

the United States, amicus is uniquely well suited to assist the Court in the instant case.

State chambers of commerce operate in states that are members of binding state compacts. The business enterprises that are members of the state chambers have planned their business affairs to comply with the requirements imposed by these compacts. Chamber members rely upon adherence to these compacts to maintain a stable economic environment. The actions of state courts to ignore the binding nature of these compacts (absent a proper withdrawal under the terms of each compact) and the enactment of legislation to retroactively deprive citizens and businesses of property and due process is a significant concern to the state chambers and their members.

SUMMARY OF ARGUMENT

The most important issue presented in this appeal has nothing to do with taxation or statutory interpretation. It is the fundamental question of whether there are constitutional limits to a state Legislature's authority to ignore existing law and adopt statutes that impose new burdens and obligations or take away existing rights of citizens and businesses.[2] Amicus Curiae believes that the

---

[2] This appeal involves the retroactive application of a statute that imposes civil taxes and burdens. The law is settled that the retroactive application of statutes that impose new or different criminal sanctions violates the due process and *ex*

California Supreme Court improperly abrogated the basic protections provided by the Due Process Clause of the federal Constitution by ignoring the properly enacted statutory provisions of a binding compact. If there are no limits to states' authority to select those laws that they will enforce, how can any citizen or business ever be compliant with the law? This issue is a basic question of the relationship of every state's jurisprudence and its citizenry.[3]

The issue before the Court is of critical concern for the state chambers and the business enterprises that comprise their membership, regardless of size. Businesses create the majority of U.S. jobs and fund the operations of every state. Businesses commit financial resources, employ persons and develop plans based on the current state of the law. Businesses need certainty to grow and expand. The potential for a state to fail to uphold the provisions of a binding compact, or to impose retroactive changes in the law to pretend that membership in a compact never existed, injects an element of uncertainty in every business transaction that occurs in our nation.

---

post facto clauses of the federal Constitution. U.S. Const. amend V; U.S. Const. amend. XIV, § 1; U.S. Const. art I, § 9, cl. 3 ("No bill of attainder or ex post facto law shall be passed."); *Bouie v. Columbia*, 378 U.S. 347, 353–54 (1964).

[3] The same result also exists in the worrisome legislative trend to blithely impose new burdens or take away vested rights through enactment of retroactive civil legislation, particularly to overrule "unfavorable" judicial interpretations of the law, under the guise of "curative" or "remedial" legislation. *See* Order of the Michigan Supreme Court in *Gillette Commercial Operations North America & Subsidiaries,* Docket No. 152588, June 24, 2016.

Such uncertainty creates instability and the potential for chaos in our economic system, which must be strong to ensure the safety and welfare of our nation. ("Not only the wealth, but the independence and security of a country, appear to be materially connected with the prosperity of manufactures.")[4] Allowing a state to retroactively change the law under the guise of "interpretation" or "curative" or "remedial" legislation, which disadvantages businesses and their employees, poses severe problems for those who attempt to structure their activities to comply with the law.

If this decision is left to stand, this instability will increase as additional states seek to pretend that their obligations under a myriad of multistate compacts never existed. Such actions would negatively affect the state chambers and their members. Indeed, the mere uncertainty of the status of existing compacts while the Court considers granting Gillette's petition is harmful, and the uncertainty continues to grow.

---

[4] Alexander Hamilton, *Report of the Secretary of the Treasury of the United States on the Subject of Manufactures* 30 (1791).

ARGUMENT

Failing to Adhere to the Binding Provisions of an Interstate Compact and Retroactive Legislation Imposes Burdens And Obligations On Businesses That Impedes Commerce, Create Instability in the Domestic Marketplace, and Impedes Economic Growth.

1. Increasing Use of Retroactively Applying New Laws.

In recent years, a disturbing legislative trend is developing. State Legislatures are increasingly resorting to retroactively changing statutes enacted by prior Legislatures even though such changes retroactively create new burdens or take away rights from their citizens and businesses.

Businesses cannot function efficiently and effectively when the laws that apply to them are constantly changing. Businesses cannot alter or adapt business practices for retroactive changes that apply to closed transactions, finalized business years, and decisions made.

Of the several categories of statutes that can be retroactive, some are worse than others. Retroactive civil statutes that merely give greater rights or some benefit vis-à-vis the government are not constitutionally problematic. Many retroactive statutes impose burdens over a lengthy period of retroactivity, while others impose them for only a short, modest period. The former class of statutes is

clearly more constitutionally problematic than the latter. Indeed, under *United States v. Carlton,*[5] statutes in the former class are unconstitutional. Some retroactive civil statutes impose a burden vis-à-vis the government while others adjust burdens among private parties. Some retroactive statutes, such as the estate tax statute at issue in *Carlton*, are the result of the legislature realizing it made a mistake and promptly rectifying that mistake. Other retroactive statutes are an attempt by the legislature to retroactively overrule court decisions, take away vested rights and confer upon the legislature the power to say what the law was, which is traditionally considered a judicial function.[6]

Unless this Court grants Gillette's Petition, the California Legislature will not have to accept the consequences of the adopted legislation, because it can always rewrite the past. Businesses and their employees will be forced to bear any resulting burden that may ensue. Under this Court's opinion in *Carlton* there are indisputable due process constitutional limits on the Legislature's power to enact retroactive, burdensome legislation. This Court should apply these limits to protect all businesses and citizens. Without limits, businesses will confront increasing instability as states may choose to ignore a myriad of other binding multistate compacts currently in place.

---

[5] 512 U.S. 26 (1994).

[6] *See E. Enters. v. Apfel*, 524 U.S. 498, 528–29 (1998).

2. Violation of the Rule of Law Creates Instability.

The Roman Emperor Caligula was criticized for writing laws in small type and hanging them on high pillars where they were difficult to read.[7] Someone with sufficiently good eyesight, however, could at least read Caligula's laws. The California Supreme Court has gone a step further and has created a situation that makes its laws impossible to divine unless one can see into the future. Such action, if followed by other states for other compacts, imposes a significant burden on businesses.

The deliberate action by a state to ignore the provisions of a binding compact that it voluntarily adopted conflicts with the fundamental principle of the rule of law. Few propositions are more basic to the rule of law than the concept that legislation imposing new burdens or obligations should operate only prospectively. Failure to follow the rule of law will create instability in our domestic marketplace and impede our large and small businesses' economic growth.

The U.S. Supreme Court summarized the historical distaste for retroactive law in *Eastern Enterprises v. Apfel* as "generally disfavored in the

---

[7] *See* Charles Sampford, *Retrospectivity and the Rule of Law* 11 (2006) (citing 1 Blackstone, *Commentaries on the Laws of England* 46 (1979)).

law,"[8] in *Bowen v. Georgetown Univ. Hospital*,[9] and in accordance with "fundamental notions of justice" that have been recognized throughout history and in *Kaiser Aluminum & Chemical Corp. v. Bonjorno*.[10] This Court has also noted that retroactive legislation "presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions."[11]

Similarly, in *Landgraf v. U.S.I. Film Products*, 511 U.S. 244 (1994), this Court held that "[e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted."

3. Impact to Businesses and State Economies.

The impact of the decision below to businesses and state economies looms large. For example, the

---

[8] *E. Enters.*, *supra* n. 6, at 532. Retroactive legislation can also constitute an uncompensated "taking" of property. *Id.* at 528–29.

[9] 488 U.S. 204, 223 (1988)

[10] 494 U.S. 827, 855 (1990) (SCALIA, J., concurring).

[11] *General Motors Corp. v. Romein,* 503 U.S. 181, 191 (1992).

Great Lakes Water Compact [12] provides binding parameters for how the eight participatory states collaborate to manage and protect the Great Lakes-St. Lawrence River Basin. The compact contains detailed rules for which water diversions the states may approve on their own, [13] which diversions require unanimous approval,[14] and which diversions are prohibited under the compact.[15] Each state is responsible for adherence and enforcement of these compact rules. If at any point one or more states chose to exit the compact or simply not enforce its requirements, the compact would be broken, and the Great Lakes Basin would be under threat of abuse. The compact is critical to the citizens and businesses of the region because large scale water diversions would have a dramatic effect on shipping, fish populations, rivers and streams, not to mention unnecessary loss of critical fresh water resources. Just recently, the members of the compact unanimously approved a diversion of major importance. [16] The City of Waukesha Wisconsin

---

[12] *See, e.g.*, Mich. Comp. Laws Ann. § 324.34201 (West 2008); Ohio Rev. Code Ann. § 1522.01 (West 2008); 122 Stat. 3739 (2008).

[13] Ind. Code Ann. § 14-25-15-1(4.10)–(4.12) (West 2008); 45 Ill. Comp. Stat. Ann. 147/5(4.10)–(4.12) (West 2007).

[14] 32 Pa. Stat. and Cons. Stat. Ann. § 817.22(2.4) (West 2008).

[15] N.Y. Envtl. Conserv. Law § 21-1001(4.8)–(4.9) (McKinney 2008).

[16] June 21, 2016. Final vote by the eight Great Lakes governors.

found its drinking water source contaminated by naturally occurring radon, and sought a diversion of fresh water from Lake Michigan to be used as its water source. This was the first U.S. community outside the Great Lakes drainage basin to use lake water since the compact was adopted in 2008. Absent adherence to the compact provisions to approve such diversion, Waukesha would have found itself without a feasible and reliable long-term, sustainable water supply. The impact would have been disastrous to the residents and businesses of Waukesha and the State of Wisconsin.[17]

Another example is the Atlantic States Marine Fisheries Compact[18] which binds fourteen states[19] along the Atlantic coast to "promote the preservation of [fisheries] and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states."[20] The Atlantic States Marine Fisheries Commission,

---

[17] Associated Press, Crain's Detroit Business, June 20, 2016.

[18] *See, e.g.*, Conn. Gen. Stat. § 26-295 (1942); Fla. Stat. Ann. § 379.2253 (West 1942).

[19] Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, Georgia, and Florida.

[20] Va. Code Ann. § 28.2-1000(IV) (West 1942); N.C. Gen. Stat. Ann. § 113-252(IV) (West 1942).

created by the compact in 1942,[21] credits the member states' cooperation under the compact for the passage of the Atlantic Striped Bass Conservation Act[22] and the Atlantic Coastal Fisheries Cooperative Management Act,[23] which have helped to maintain fish populations along the coast.[24] The Commission also credits adherence to the compact with the recovery of a number of Atlantic coastal fish populations, including the striped bass, black sea bass, bluefish scup, summer flounder, Spanish mackerel and spiny dogfish.[25] If these states were permitted to abandon the compact without notice,[26] the Atlantic coast could be faced with overfishing, threatening both the fishery markets on which the region relies heavily, and the very existence of certain species of fish.

---

[21] Me. Rev. Stat. Ann. tit. 12, § 4603 (1942); N.Y. Envtl. Conserv. Law § 13-0371(III) (McKinney 1942).

[22] 16 U.S.C. § 5151 *et seq.* (1984).

[23] 16 U.S.C. § 5101 *et seq.* (1993).

[24] *Management Success through State/Federal Partnership*, Atlantic States Marine Fisheries Commission, http://www.asmfc.org/about-us/program-overview.

[25] *Id.*

[26] Ga. Code Ann. § 27-4-210(XII) (1942); 20 R.I. Gen. Laws Ann. § 20-8-1(XII) (West 1942).

4. Effect on Local Communities and Their Residents.

Compacts also affect local communities who rely upon them for economic support. The effects on local communities for failing to adhere to compact requirements could be disastrous. Consider the Cumbres and Toltec Scenic Railroad Compact [27] between the states of Colorado and New Mexico. This compact provides for the joint ownership and operation of the Cumbres and Toltec Scenic Railroad.[28] The Cumbres & Toltec Scenic Railroad Commission,[29] composed of two members from each state, manages the railroad.[30] The railroad, built in 1880 [31] and designated as a National Historic Landmark, spans 64 miles across Colorado and New Mexico and is the longest and highest narrow gauge railroad in North America.[32] It was near extinction

---

[27] N.M. Stat. Ann. § 16-5-1 (1974); Colo. Rev. Stat. § 24-60-1901 (1974); 88 Stat. 1421 (1974).

[28] N.M. Stat. Ann. § 16-5-1(I) (1974); Colo. Rev. Stat. § 24-60-1901(I) (1974).

[29] N.M. Stat. Ann. § 16-5-3 (1974); Colo. Rev. Stat. § 24-60-1902 (1974).

[30] N.M. Stat. Ann. § 16-5-3 (1974); Colo. Rev. Stat. § 24-60-1903 (1974).

[31] *About the Cumbres & Toltec Scenic Railroad*, Friends of the Cumbres & Toltec Scenic Railroad, Inc., http://www.cumbrestoltec.org/volunteer/3-about/index.php?option=com_content&view=article&id=9&Itemid=13.

[32] *Id.*

in the late 1960s when a group of citizens and the Colorado and New Mexico governments created the compact.[33] Due to this joint effort, the railway has become an international attraction, recognized as "one of the best 20 railway experiences in the world" by the Society of International Railway Travelers.[34] The compact enables the railroad to function across the states' borders, supporting tourism and, perhaps more meaningfully, also protects and preserves this historic, internationally famous landmark. Were either Colorado or New Mexico permitted to abandon the compact, this remnant of American history may be forced to shut down and deteriorate back to its pre-compact state.

The Nurse Licensure Compact [35] is another compact that illustrates the impact that multistate compacts have on communities and their residents. This compact allows nurses who live in one of the 25 member states [36] to have their nursing licenses recognized in the other 24 member states.[37] In 2015,

---

[33] *Id.*

[34] *Id.*

[35] *See, e.g.*, Ariz. Rev. Stat. Ann. § 32-1668 (1998); Iowa Code Ann. § 152E.1 (West 2008).

[36] Idaho, Utah, Arizona, Colorado, New Mexico, Texas, North Dakota, South Dakota, Nebraska, Iowa, Missouri, Arkansas, Wisconsin, Mississippi, Kentucky, Tennessee, South Carolina, North Carolina, Virginia, Maryland, Delaware, Rhode Island, New Hampshire, Maine, and Montana.

[37] Wis. Stat. Ann. § 441.50(3)(a) (2014); Mont. Code Ann. § 37-8-451(III)(1) (West 2015).

the Montana Board of Nursing stated that one of its primary motivations for becoming a member of the compact was "[i]ncreasing access for quality nursing care for the citizens of Montana," since "[a]s a rural-frontier state, in some areas, Montana lacks access to specialized nursing services and relies on telehealth services for important types of case management for patients facing chronic diseases."[38] Thus, the compact allows states without an adequate population of specialized nurses to rely on other states' nurses to travel across state borders and increase the quality of health care in each participating state. Issues of nurse availability and understaffing are not just present in rural Montana, but are known to be widespread according to the American Nurses Association. [39] This compact addresses that issue by "[facilitating] the states' responsibility to protect the public's health and safety" and "[ensuring] and [encouraging] the cooperation of party states in the areas of nurse licensure and regulation." [40] Ensuring proper staffing levels reduces medical and medication errors, decreases patient complications, and

---

38 *Montana Becomes 25th State to Join the Nurse Licensure Compact*, National Council of State Boards of Nursing (March 5, 2015), https://www.ncsbn.org/7097.htm.

39 *Nurse Staffing*, American Nurses Association, http://www.nursingworld.org/MainMenuCategories/ThePracticeofProfessionalNursing/NurseStaffing.

40 Ark. Code Ann. § 17-87-601(I)(b)(1)-(2) (2000); Tenn. Code Ann. § 63-7-302(I)(b)(1)-(2) (2010).

improves nurse retention.[41] If a state were permitted to withdraw on a moment's notice, nurses practicing outside their home license state would suddenly lose the ability to practice in that state. With regulatory hurdles inhibiting interstate movement, the quality of medical care would decline.

5. Effect on Interstate and Local Community Relations.

Compacts also affect interstate relationships as well as relationships between local communities that span state lines. The failure to recognize compact provisions on a retroactive basis would detrimentally affect these relationships. For example, the Arkansas River Compact of 1949[42] between Colorado and Kansas affects the states' economic, political, and environmental benefits. For the majority of the time since their establishment, Kansas and Colorado have feuded over possession and use of water from the Arkansas River.[43] In 1948, through the compact, the states apportioned the river's water.[44] While the

---

41 *Nurse Staffing*, American Nurses Association, http://www.nursingworld.org/MainMenuCategories/ThePracticeofProfessionalNursing/NurseStaffing.

42 Kan. Stat. Ann. § 82a-520 (1948); Colo. Rev. Stat. § 37-69-101 (1948).

43 *See, e.g.*, *Kansas v. Colorado*, 185 U.S. 125 (1902); *Kansas v. Colorado*, 206 U.S. 46 (1907); *Colorado v. Kansas*, 320 U.S. 383 (1943).

44 Kan. Stat. Ann. § 82a-520(V)-(VI) (1948); Colo. Rev. Stat. § 37-69-101(V)-(VI) (1948).

compact intended to "settle existing disputes,"[45] it also served as a framework for resolving future disputes over the river water. The two states, as well as this Court, have relied on the compact to settle different instances of this century-old feud on numerous occasions.[46] Lately, the dispute has become particularly heated as drought in Southwestern Kansas has depleted much of the river's water.[47] At a local level, if the compact does not bind the states, Kansas may attempt to impede Colorado's access to the John Martin Reservoir, around which Colorado has created a state park.[48] Not only would this cut off a source of tourism for Colorado, directly damaging its economy, but Kansas could also attempt to drain the irrigation ditches that are protected under the compact,[49] which flow from the dam to local Colorado farms. The river's water's significance cannot be underestimated. In

---

[45] Kan. Stat. Ann. § 82a-520(I)(A) (1948); Colo. Rev. Stat. § 37-69-101(I)(A) (1948).

[46] *See, e.g., Kansas v. Colorado*, 514 U.S. 673 (1995); *Kansas v. Colorado*, 533 U.S. 1 (2001); *Kansas v. Colorado*, 543 U.S. 86 (2004); *Kansas v. Colorado*, 556 U.S. 98 (2009).

[47] Lindsay Cobb, *Southwest Kansas Water Wars*, KSN (November 18, 2004, 9:59 PM), http://ksn.com/2014/11/18/southwest-kansas-water-wars/.

[48] *See John Martin Reservoir*, Colorado Parks & Wildlife, http://cpw.state.co.us/placestogo/Parks/JohnMartinReservoir.

[49] Kan. Stat. Ann. § 82a-520(V)(F)-(H) (1948); Colo. Rev. Stat. § 37-69-101(V)(F)-(H) (1948).

2014, Kansas acknowledged that 37% of its economy was tied to the Arkansas River.[50]

Another example of interstate community reliance is the New Hampshire-Vermont Interstate Sewage and Waste Disposal Facilities Compact,[51] which established "joint sewage and waste disposal facilities" between New Hampshire and Vermont.[52] This compact allows municipalities, so long as one is located in New Hampshire and one in Vermont, to collaborate on the construction, maintenance, and operation of sewage and waste disposal facilities for mutual benefit.[53] The agreements that this compact facilitates predate disputes regarding interstate waste disposal, such as *Philadelphia v. New Jersey*,[54] wherein this Court found that state laws banning importation of other states' waste, even if to "protect its residents' pocketbooks as well as their environment," [55] violated the U.S. Constitution's dormant commerce clause.[56] Three years prior to that case, however, New Hampshire and Vermont

---

[50] Cobb, *supra* n. 47.

[51] Vt. Stat. Ann. tit. 10, § 1201 *et seq.* (West 1975); N.H. Rev. Stat. Ann. § 149-J:1 (1975); 90 Stat. 1221 (1976).

[52] Vt. Stat. Ann. tit. 10, § 1202(A) (West 1975); N.H. Rev. Stat. Ann. § 149-J:1(I)(A) (1975).

[53] Vt. Stat. Ann. tit. 10, § 1203(A) (West 1975); N.H. Rev. Stat. Ann. § 149-J:1(II)(A) (1975).

[54] 437 U.S. 617 (1978).

[55] *Id.* at 626.

[56] *Id.* at 627.

were doing precisely the opposite, abiding by the Constitution to jointly dispose of their waste in agreed-on facilities. Allowing either state to unilaterally withdraw from this compact, which by its terms does not provide for withdrawal,[57] would allow either state to instantly exclude the other from using the jointly constructed and managed facilities. Such action would negatively affect the excluded state's municipalities, which have relied on the now-exclusive facilities, and would inhibit the cooperation that the dormant commerce clause calls for. It may even, as a passive ban on the excluded state's waste, vaguely mirror *Philadelphia v. New Jersey*'s unconstitutional active ban on interstate waste importation.

6. An Atmosphere of Chaos and Inability to Plan Exists.

Sanctioning retroactive legislation extends the legal fiction that every business not only knows what the law is, but also what it will someday be. Not only would ignorance of the law be no defense, but so would a lack of prescience.

This creates an atmosphere of chaos and the inability to plan. For example, the Multistate Highway Transportation Agreement[58] standardizes weight and size requirements for vehicles traveling

---

[57] *See* Vt. Stat. Ann. tit. 10, § 1201 *et seq.* (West 1975); N.H. Rev. Stat. Ann. § 149-J:1 (1975).

[58] Ariz. Rev. Stat. Ann. § 28-1821 (2014); Idaho Code Ann. § 49-1901 (2005).

on member states' highways.[59] This compact, binding ten states in the Western United States,[60] significantly enables interstate commerce by removing variable restrictions on trucks in a contiguous block of states. If Utah were to withdraw from the compact and set more restrictive weight or size requirements on its highways, every other state's freight carriers that needed to pass through Utah either would have to spend additional funds and time bypassing the state, or would have to conform to Utah's restrictions, carrying fewer goods or utilizing smaller trucks to do so. Such concessions would necessitate a greater number of either trucks or trips to convey the same amount of goods between states, ultimately suppressing interstate trade. Even the threat of such a scenario, instead of facilitating access among these states, would increase barriers among these states.

A central function of law is to provide a stable framework in which persons and businesses may act with a confident understanding of the effect of their actions on their legal rights and liabilities. This assurance is indispensable to plan and enter into commercial transactions. Businesses need to know in advance if their transactions will be lawful or criminal, valid or invalid, taxable or non-taxable. The decision of the court below is fatal to these determinations. If not reviewed, all compacts

---

[59] N.M. Stat. Ann. § 11-14-2(I)(b) (West 1997); Utah Code Ann. § 41-23-2(I)(2) (West 1981).

[60] Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

entered into by states that impact economic considerations are at risk. The lack of stability will create significant and unintended consequences for amicus and the business it serves.

CONCLUSION

For the reasons stated above, the judgment of the Supreme Court of the State of California should be reversed.

Respectfully submitted,

*LYNN A. GANDHI
**Counsel of Record*
Honigman Miller
Schwartz & Cohn LLP
660 Woodward Ave.
Detroit, MI 48226-3506
Telephone: (313) 465-7646
Email:
lgandhi@honigman.com
Counsel for Amicus Curiae

June 30, 2016