IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF OKLAHOMA ex rel. JOE M. ALLBAUGH, INTERIM DIRECTOR OF THE OKLAHOMA DEPARTMENT OF CORRECTIONS; THE STATES OF ARIZONA, ARKANSAS, KANSAS, INDIANA, LOUISIANA, MISSOURI, NEVADA and WISCONSIN; NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, on behalf of its members; JOHN WHETSEL, SHERIFF OF OKLAHOMA COUNTY, OKLAHOMA; OKLAHOMA SHERIFFS' ASSOCIATION, on behalf of its members; INDIANA SHERIFFS' ASSOCIATION, on behalf of its members; MARION COUNTY SHERIFF'S OFFICE; and LAKE COUNTY SHERIFF'S DEPARTMENT,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION and the UNITED STATES OF AMERICA,

Respondents.

Case No. 16-1339
consolidated with
Case Nos. 16-1321 *et al.*

STATE AND LOCAL GOVERNMENT PETITIONERS' REPLY IN SUPPORT OF MOTION FOR STAY PENDING REVIEW

(Counsel listed on the following pages)

James Bradford Ramsay
General Counsel
Jennifer Murphy
Assistant General Counsel
National Association of Regulatory Utility Commissioners
1101 Vermont Avenue, N.W., Suite 200
Washington, D.C. 20005
P: (202) 898-2207
E: jramsay@naruc.org

COUNSEL FOR NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Danny Honeycutt
Oklahoma County Sheriff's Office
201 N. Shartel Ave.
Oklahoma City, OK 73102
P: (405) 713-2050
E: sodanhon@okcounty.org

COUNSEL FOR JOHN WHETSEL, SHERIFF OF OKLAHOMA COUNTY, OKLAHOMA

Mark Brnovich
Attorney General of Arizona
Dominic E. Draye
Deputy Solicitor General
Arizona Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007
P: (602) 542-5025
E: dominic.draye@azag.gov

COUNSEL FOR STATE OF ARIZONA

E. Scott Pruitt
Attorney General of Oklahoma
Patrick R. Wyrick
Solicitor General
Mithun Mansinghani
Deputy Solicitor General
Nathan B. Hall
Assistant Solicitor General
Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
P: (405) 521-3921
E: Mithun.Mansinghani@oag.ok.gov

COUNSEL FOR STATE OF OKLAHOMA

Christopher J. Collins
Collins, Zorn & Wagner
429 NE 50th Street, 2nd Floor
Oklahoma City, OK 73105
P: (405) 524-2070
E: cjc@czwglaw.com

COUNSEL FOR OKLAHOMA SHERIFFS' ASSOCIATION

Leslie Rutledge
Attorney General of Arkansas
Nicholas Bronni
Deputy Solicitor General
Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
P: (501) 682-8090
E: lee.rudofsky@arkansasag.gov

COUNSEL FOR STATE OF ARKANSAS

Karla L. Palmer
Hyman, Phelps & McNamara, P.C.
700 13th Street, N.W., Suite 1200
Washington, D.C. 20005
P: (202) 737-5600
E: kpalmer@hpm.com

Tonya J. Bond
Joanne T. Rouse
Plews Shadley Racher & Braun LLP
1346 N. Delaware Street
Indianapolis, IN 46202
P: (317) 637-0781
E: tbond@psrb.com
E: jrouse@psrb.com

COUNSEL FOR THE INDIANA SHERIFFS' ASSOCIATION, MARION COUNTY SHERIFF'S OFFICE, AND LAKE COUNTY SHERIFF'S DEPARTMENT

Derek Schmidt
Attorney General of Kansas
Jeffrey A. Chanay
Chief Deputy Attorney General
Kansas Office of the Attorney General
Memorial Hall, 3rd Floor
120 SW 10th Avenue
Topeka, KS 66612-1597
P: (785) 368-8435
E: jeff.chanay@ag.ks.gov

COUNSEL FOR STATE OF KANSAS

Gregory F. Zoeller
Attorney General of Indiana
Thomas M. Fisher
Solicitor General
Office of the Indiana Attorney General
302 W. Washington Street, IGC-South, Fifth Floor
Indianapolis, IN 46204
P: (317) 232-6255
E: Tom.Fisher@atg.in.gov

COUNSEL FOR STATE OF INDIANA

Jeff Landry
Attorney General of Louisiana
Patricia H. Wilton
Assistant Attorney General
Louisiana Department of Justice
1885 North Third Street
Baton Rouge, LA 70802
P: (225) 326-6006
E: wiltonp@ag.louisiana.gov

COUNSEL FOR STATE OF LOUISIANA

Chris Koster
Attorney General of Missouri
J. Andrew Hirth
Deputy General Counsel
Missouri Office of the Attorney General
P.O. Box 899
207 W. High Street
Jefferson City, MO 65102
P: (573) 751-0818
E: andy.hirth@ago.mo.gov

COUNSEL FOR STATE OF MISSOURI

Adam Paul Laxalt
Attorney General of Nevada
Lawrence VanDyke
Solicitor General
Office of the Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701-4717
P: (775) 684-1100
E: LVanDyke@ag.nv.gov

COUNSEL FOR STATE OF NEVADA

Brad D. Schimel
Attorney General of Wisconsin
Misha Tseytlin
Solicitor General
Daniel P. Lennington
Deputy Solicitor General
Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707-7857
P: (608) 267-9323
E: tseytlinm@doj.state.wi.us

COUNSEL FOR STATE OF WISCONSIN

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit rule 26.1, the following parties submit these disclosure statements. National Association of Regulatory Utility Commissioners (NARUC) is a quasi-governmental nonprofit organization founded in 1889 and incorporated in the District of Columbia. NARUC is a "trade association" as that term is defined in Circuit Rule 26.1(b). NARUC has no parent company. No publicly held company has any ownership interest in NARUC. NARUC represents those government officials in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, charged with the duty of regulating, among other things, the telecommunications within their respective borders.

The Indiana Sheriffs' Association (ISA) submits that it was established in 1930 and incorporated as a nonprofit organization in the State of Indiana in 1977. The ISA is a "trade association" as that term is defined in Circuit Rule 26.1(b). The ISA acts as the representative for the ninety-two Indiana county sheriff's offices to promote and improve the delivery of county sheriffs' services, foster professionalism through the criminal justice system, and to encourage the appreciation and practice of law enforcement in the State in Indiana. The ISA has no parent company. No publicly held company has any ownership interest in the ISA.

The Oklahoma Sheriffs' Association (OSA) is a nonprofit 501(c)(3) registered with the Oklahoma Secretary of State since 1991. The OSA is a "trade association" as that

term is defined in Circuit Rule 26.1(b). The OSA's mission is to represent the elected Sheriffs in all 77 counties of Oklahoma. The OSA has no parent company. No publicly held company has any ownership interest in the OSA.

All other Petitioners are State or local government entities and are not required to file a disclosure statement.

Respectfully submitted,

/s/ *Tonya J. Bond*
Tonya J. Bond
COUNSEL FOR THE INDIANA SHERIFFS' ASSOCIATION

/s/ *James B. Ramsay*
James Bradford Ramsay
COUNSEL FOR NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

/s/ *Christopher J. Collins*
Christopher J. Collins
COUNSEL FOR OKLAHOMA SHERIFFS' ASSOCIATION

TABLE OF CONTENTS

Corporate Disclosure Statement i

Table of Contents iii

Table of Authorities iv

INTRODUCTION 1

ARGUMENT 2

I. Petitioners are likely to succeed on the merits of their challenge to the Commission's statutory authority to promulgate their Order setting intrastate rate caps 2

II. The State and Local Government Petitioners will be irreparably harmed absent a stay and the public interest weighs in favor of granting a stay 7

CONCLUSION 10

TABLE OF AUTHORITIES

Cases

AT & T Corp. v. Iowa Utilities Bd.,
525 U.S. 366 (1999). 4

Beard v. Banks,
548 U.S. 521 (2006). 9

Bell v. Wolfish,
441 U.S. 520 (1979). 9

Bond v. United States,
134 S. Ct. 2077 (2014). 3

Ewing v. California,
538 U.S. 11 (2003). 9

Fair Assessment in Real Estate Ass'n, Inc. v. McNary,
454 U.S. 100 (1981). 10

Horne v. Flores,
557 U.S. 433 (2009). 10

Illinois Pub. Telecommunications Ass'n v. F.C.C.,
117 F.3d 555 (D.C. Cir. 1997), decision clarified on reh'g,
123 F.3d 693 (D.C. Cir. 1997).. 3

Levin v. Commerce Energy, Inc.,
560 U.S. 413 (2010). 10

Louisiana Pub. Serv. Comm'n v. F.C.C.,
476 U.S. 355 (1986). 3

Medtronic, Inc. v. Lohr,
518 U.S. 470 (1996). 4

New England Pub. Commc'ns Council v. F.C.C.,
334 F.3d 69 (D.C. Cir. 2003). 3

O'Lone v. Estate of Shabazz,
482 U.S. 342 (1987). 9

Sturgeon v. Frost,
136 S. Ct. 1061 (2016). 2

Younger v. Harris,
401 U.S. 37 (1971). 10

Statutes

47 U.S.C. § 152. . . . . 3, 4

47 U.S.C. § 201. 5

47 U.S.C. § 276. . . . . 1, 2, 3, 4, 5, 6

Pub. L. No. 104-104, Section 601(c)(1) (1996). 4

Rules

Federal Rule of Appellate Procedure 26.1. i

Circuit Rule 26.1(b). . . . . i, ii

Regulations

47 C.F.R. § 64.6010 10

Order on Reconsideration,
Rates for Interstate Inmate Calling Services,
FCC 16-102, 81 Fed. Reg. 62818, (2016). 6, 10

Second Report and Order and Third Further Notice of Proposed Rulemaking,
Rates for Interstate Inmate Calling Services,
FCC 15-136, 80 Fed. Reg. 79135, (2015). 6

INTRODUCTION

Ultimately, this suit is about whether States have the authority to fund their corrections programs through the use of site commissions on inmate calling services (ICS), or whether instead the Federal Communications Commission has the authority to declare such payments illegitimate and impose ICS rate caps that attempt to squeeze out site commissions. The Commission grounds its claim of authority on Section 276's mandate that payphone providers be "fairly compensated" for calls made on their payphones. The challenged Order, however, does not purport to address any systematic undercompensation of ICS providers for their services. In its Opposition, the Commission does not even allege that providers are raking in excessive profits. Rather, this suit challenges the Commission's attempt to prevent *States* from being overcompensated through site commissions that are passed through the provider on to the consumer. But Section 276 does not give the Commission any authority to ensure that consumer rates are fair, must less authority to regulate State and local correctional facility revenue from ICS calls. Accordingly, Petitioners are likely to succeed on the merits of their argument that the Commission's Order is unlawful.

Moreover, because the Commission does not seriously contest the State and Local Government Petitioners' impending irreparable harm, and because the equities favor a stay, Petitioners are entitled to a stay of the Commission's second attempt to cap intrastate ICS rates—a stay that would be identical to those ones issued by this Court twice before.

ARGUMENT

I. Petitioners are likely to succeed on the merits of their challenge to the Commission's statutory authority to promulgate their Order setting intrastate rate caps.[1]

The Commission's unreasonable interpretation of Section 276[2] takes a portion of one word in the statute—"fair"—and argues that this snippet allows any regulation of intrastate payphone rates the Commission, in its judgment, deems is "fair." Even if placing such weight on that word "may be plausible in the abstract, . . . it is ultimately inconsistent with both the text and context of the statute as a whole."[3] Because "[s]tatutory language cannot be construed in a vacuum," but instead "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"[4]—and because the Commission fails rebut Petitioners' arguments that the statutory text and context contravene its interpretation—Petitioners are likely to succeed on the merits of their jurisdictional challenge to the Commission's Order.

Notably, the Commission never claims that it advances the *correct* interpretation of Section 276, or even the *best* among competing interpretations. The Commission instead

[1] The State and Local Government Petitioners join in the arguments made by the ICS Provider Petitioners in their separately-filed Reply in support of a stay, but do not repeat those arguments pursuant to this Court's briefing order, including the argument that this Court's previous stays of the Commission's intrastate rate caps indicate that Petitioners are entitled to a stay of the latest Order setting intrastate caps.

[2] 47 U.S.C. § 276.

[3] *Sturgeon v. Frost*, 136 S. Ct. 1061, 1070 (2016).

[4] *Id.*

relies on *Chevron* to conceal the defects in its statutory construction by claiming that its interpretation is "reasonable," and thus is entitled to deference even if flawed.[5] But because the Commission is attempting to wield preemptive authority over *intra*state rates, the Court owes the Commission no deference; rather, Section 152(b) of the Communications Act[6] requires a clear, unambiguous statement granting the Commission the particular intrastate authority claimed.[7] Contrary to the Commission's claims,[8] the fact that Section 276 provides *some* authority to the Commission to regulate compensation to payphone providers for intrastate calls does not give the Commission *plenary* or *unrestricted* authority to regulate intrastate rates. Section 152(b) is not completely nullified once the word "intrastate" is used elsewhere in the Act. Rather, Section 152(b)'s specific codification of broadly applicable principles of federalism also operates as "a rule of statutory construction,"[9] requiring that any intrastate authority that is granted by statute be narrowly construed.[10]

---

[5] FCC Opp. to Stay 24.

[6] 47 U.S.C. § 152(b).

[7] *See Illinois Pub. Telecommunications Ass'n v. F.C.C.*, 117 F.3d 555, 561 (D.C. Cir. 1997), *decision clarified on reh'g*, 123 F.3d 693 (D.C. Cir. 1997); *see also Bond v. United States*, 134 S. Ct. 2077, 2088-90 (2014).

[8] FCC Opp. to Stay 23.

[9] *Louisiana Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 373 (1986); *see Illinois Pub. Telecommunications Ass'n*, 117 F.3d at 561 (Section 152(b) is both a "substantive and interpretative limitation[]").

[10] *New England Pub. Commc'ns Council v. F.C.C.*, 334 F.3d 69, 73, 78 (D.C. Cir. 2003) ("Such general provisions [in Section 276] cannot, however, trump section 152(b)'s specific

(continued...)

Thus, in order to prevail on the merits, the Commission must demonstrate that the authority it attempts to wield is specifically and unambiguously granted by statute; any deference to reasonable interpretations must be given to those that best preserve State authority to set intrastate rates. Because Petitioners advance the best interpretation of Section 276, as well as the interpretation that least infringes on State prerogatives, this Court should rule that Petitioners remain likely to succeed on the merits.

But even assuming the Commission is correct that it has the authority to prevent payphone providers from being *over*compensated as well as *under*compensated, the challenged Order is still outside the plain terms of Section 276. Section 276 gives the Commission only the authority "to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their

---

[10](...continued)
command that no Commission regulations shall preempt state regulations unless Congress expressly so indicates.") (citing *AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 381 n.8 (1999) ("Insofar as Congress has remained silent … § 152(b) continues to function.")); *see also* Pub. L. No. 104-104, Section 601(c)(1) (1996) (requiring provisions of the 1996 Telecommunications Act, including Section 276, to "not be construed to modify, impair, or supersede . . . State, or local law unless expressly so provided in such Act or amendments"); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (rejecting argument that "this assumption should apply only to the question whether Congress intended any pre-emption at all, as opposed to questions concerning the *scope* of its intended invalidation of state law," and instead using "the presumption against the pre-emption of state police power regulations to support a narrow interpretation of [] an express [preemption] command").

payphone."[11] Unlike Section 201, which addresses "charges" generally,[12] Section 276 limits the Commission's authority to ensuring fair compensation to *providers*, not consumers or correctional facilities. But in its Opposition, the Commission never claims the Order is addressed to providers obtaining excessive profits from consumers. Rather, the Commission claims that the Order is aimed at reducing or eliminating site commissions, which is compensation paid *by* providers *to* correctional institutions, the costs of which are later passed to the consumer.[13] In other words, it is ultimately compensation demanded by State prisons and local jails that the Commission is attempting to ensure is "fair." Similarly, the Order's rate caps effectively also cap intrastate toll rates—rates charged by carriers and passed through providers for long-

---

[11] 47 U.S.C. § 276.

[12] 47 U.S.C. § 201(b).

[13] *See* FCC Opp. to Stay 4-5 (noting that the Order attempted to address the "market failure" of site commissions, which the Commission deems "unrelated to the costs of providing inmate calling," and "which leads to correspondingly higher charges for end users"); *id.* at 9 (stating that the Commission determined that "site commissions, as a category, are not costs 'reasonably related to the provision of'" ICS, and that under the rate caps, the Commission expected that "correctional authorities would [not] continue to collect more in site commissions than inmate calling providers could profitably pay within the new rate caps"); *id.* at 13 (stating that rate caps were meant to ensure sufficient compensation only for "reasonable payments to correctional facilities," and that the rate caps would "permit[] reasonable, but not unlimited, payments to correctional facilities [to] 'address the harmful effects of outsized site commissions'"); *id.* at 21-22 (stating that site commissions were excluded from rate caps because the Commission objected to accounting for "whatever payments a correctional authority might seek," including using those payments to "fund the construction of a new highway or hospital").

distance intrastate calls—even though such action is traditionally regulated by the States and not anywhere authorized by Section 276.

The situation described in the affidavit from the Oklahoma Department of Corrections (ODOC) is illustrative. Under the current contract with Value-Added Communications, prisoners are charged $0.20/minute for ICS, with $0.15 allocated to ODOC and $0.05 allocated to payphone provider.[14] Under the Commission's own estimates, the provider is not being overcompensated because its compensation is well-under the $0.11/minute maximum the Commission has deemed "just, reasonable, and fair" to cover the cost of providing ICS service (exclusive of facility costs).[15] Section 276 provides no authority to the Commission to further regulate compensation to providers that is already "fair." In contrast, the Commission in the challenged Order has deemed $0.02/minute the "fair" compensation to *facilities*, creating a $0.13 cap that is aimed at reducing Oklahoma's $0.20/minute intrastate rate regardless of whether providers are overcompensated or undercompensated.[16] The Order is thus not within the Commission's jurisdiction under Section 276, and Petitioners are likely to succeed on the merits.

---

[14] State Pets.' Motion for Stay, Exhibit C, Affidavit of Tina Hicks, ¶ 10.

[15] *See* Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, FCC 15-136, 80 Fed. Reg. 79135, ¶¶ 21-22 (2015).

[16] *See* Order on Reconsideration, *Rates for Interstate Inmate Calling Services*, FCC 16-102, 81 Fed. Reg. 62818, ¶¶ 3, 22, 30 (2016).

II. The State and Local Government Petitioners will be irreparably harmed absent a stay and the public interest weighs in favor of granting a stay.

The Commission makes no serious attempt to rebut the evidence offered showing that the State and Local Government Petitioners, like Oklahoma, will be irreparably harmed by the challenged Order.

First, the Commission speculates that the federally-mandated lowered intrastate rates will increase call volume sufficiently to compensate for lost revenue, noting that call volume increased in certain locations after interstate rates were capped,[17] but fails to address the evidence and analysis submitted by Oklahoma showing that the interstate caps did not cause increased call volume at ODOC sufficient to remedy the harm experienced. As the ODOC affidavit explains, the data demonstrates that any increase in call volume in Oklahoma prisons was short-lived, since call volume regressed to its historical mean a year after the interstate caps went into effect.[18] Moreover, the temporary increase in call volume was mainly a result of fluctuation in intrastate call volume (rates for which have heretofore remained uncapped by the Commission), not interstate call volume, so it can hardly be said that the Commission's rate caps caused (and will cause) an increase in call volume in Oklahoma.[19] And even if call volume does increase modestly, ODOC and other prisons and jails will still lose substantial funds because the

[17] FCC Opp. to Stay 20 & n.8, 28.

[18] State Pets.' Motion for Stay, Exhibit C, Affidavit of Tina Hicks, ¶¶ 12-15.

[19] *Id.* at ¶¶ 16-17.

costs of permitting ICS—such as call monitoring and inmate escorting—will also increase with increased volume, but the rates paid to facilities will decrease.[20]

Second, the Commission speculates that the millions of dollars prisons will lose in funding, which is used to fund inmate welfare programs, will not cause irreparable harm because "site commissions are not Oklahoma's only source of funding for inmate welfare programs."[21] Such cryptic allusions to how Petitioners might attempt to accommodate the harm caused by the Commission—raising taxes? charging or increasing fees for other inmate services?—is insufficient to excuse the demonstrated irreparable harm and dismissive of the realities of funding correctional facilities in a time of highly-constrained State budgets. As the ODOC affidavit demonstrates, the revenue received from ICS must be used for specified inmate services—such as substance abuse treatment, counseling, health services, and legal services—and the anticipated loss in yearly funds that will be caused by the challenged Order represents, for example, ODOC's entire operational budget for substance abuse treatment.[22] Merely because the Order may not cause the only irreparable harm the Commission appears to care about—"threaten[ing] the availability of inmate calling services at its facilities"[23]—does not mean that Petitioners will not suffer any irreparable harm.

[20] *Id.* at ¶¶ 18-19.

[21] FCC Opp. to Stay 28.

[22] State Pets.' Mot. for Stay, Exhibit C, Affidavit of Tina Hicks at ¶¶ 20-22.

[23] FCC Opp. to Stay 28.

Finally, the public interest weighs in favor of a stay. There can be no doubt that the setting of intrastate ICS rates involves weighing competing public interests—for example, between the benefits of increased inmate contact with families and friends and the funding of other inmate welfare programs. But the policy decision about how to balance those interests rests firmly in State and local governments,[24] *not* with the Commission or inmates and their families. In Oklahoma, for example, ODOC has determined that $0.20/minute for all calls strikes the right balance between providing affordable contact with families (allowing, for example, 125 minutes of conversation for as little as $25/month) and funding other critical inmate welfare programs, such as substance abuse treatment. To the extent inmates and their families disagree with those policy choices, they should seek relief from their State legislature, not a federal agency that is wholly ill-suited to be making decisions about prison policies—an area of policymaking far removed from the Commission's authority and expertise.

Petitioners, like other State and local government entities, have decided that public policy weighs in favor maintaining ICS rates at their current levels—even if other States have chosen a different course. Out of comity and in support of the principles of

[24] *See, e.g.*, *Ewing v. California*, 538 U.S. 11, 24 (2003) (courts' "tradition of deferring to state legislatures in making and implementing such important [criminal justice] policy decisions is longstanding"); *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987) ("[P]enological objectives [are] committed to the considered judgment of prison administrators, 'who are actually charged with and trained in the running of the particular institution under examination.'" (quoting *Bell v. Wolfish*, 441 U.S. 520, 562 (1979))); *see also Beard v. Banks*, 548 U.S. 521, 535 (2006).

federalism, this Court should respect that determination of the public interest by individual States and grant the requested stay,[25] leaving States the discretion to implement the public interest with respect to ICS rates as they see fit.

CONCLUSION

For the foregoing reasons, the State and Local Government Petitioners respectfully request that this Court stay the Commission's implementation of 47 C.F.R. § 64.6010 as promulgated by the *Order on Reconsideration* (FCC 16-102) pending judicial review.

[25] *See Horne v. Flores*, 557 U.S. 433, 448 (2009) ("Federalism concerns are heightened when, as in these cases, a federal court decree has the effect of dictating state or local budget priorities. States and local governments have limited funds."); *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 108 (1981) ("The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it."); *Cf. also Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 421 (2010) (comity requires "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways"); *Younger v. Harris*, 401 U.S. 37, 44 (1971) ("Our Federalism" requires "sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.").

DATED: October 20, 2016

Respectfully submitted,

/s/ *Mithun Mansinghani*

E. Scott Pruitt
Attorney General of Oklahoma
Patrick R. Wyrick
Solicitor General
Mithun Mansinghani
Deputy Solicitor General
Nathan B. Hall
Assistant Solicitor General
Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
P: (405) 521-3921
E: Mithun.Mansinghani@oag.ok.gov

COUNSEL FOR STATE OF OKLAHOMA

James Bradford Ramsay
General Counsel
Jennifer Murphy
Assistant General Counsel
National Association of Regulatory
Utility Commissioners
1101 Vermont Avenue, N.W., Suite 200
Washington, D.C. 20005
P: (202) 898-2207
E: jramsay@naruc.org

COUNSEL FOR NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Christopher J. Collins
Collins, Zorn & Wagner
429 NE 50th Street, 2nd Floor
Oklahoma City, OK 73105
P: (405) 524-2070
E: cjc@czwglaw.com
COUNSEL FOR OKLAHOMA SHERIFFS' ASSOCIATION

Danny Honeycutt
Oklahoma County Sheriff's Office
201 N. Shartel Ave.
Oklahoma City, OK 73102
P: (405) 713-2050
E: sodanhon@okcounty.org

COUNSEL FOR JOHN WHETSEL, SHERIFF OF OKLAHOMA COUNTY, OKLAHOMA

Mark Brnovich
Attorney General of Arizona
Dominic E. Draye
Deputy Solicitor General
Arizona Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007
P: (602) 542-5025
E: dominic.draye@azag.gov
COUNSEL FOR STATE OF ARIZONA

Leslie Rutledge
Attorney General of Arkansas
Nicholas Bronni
Deputy Solicitor General
Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
P: (501) 682-8090
E: lee.rudofsky@arkansasag.gov
COUNSEL FOR STATE OF ARKANSAS

Karla L. Palmer
Hyman, Phelps & McNamara, P.C.
700 13th Street, N.W., Suite 1200
Washington, D.C. 20005
P: (202) 737-5600
E: kpalmer@hpm.com

Tonya J. Bond
Joanne T. Rouse
Plews Shadley Racher & Braun LLP
1346 N. Delaware Street
Indianapolis, IN 46202
P: (317) 637-0781
E: tbond@psrb.com
E: jrouse@psrb.com

COUNSEL FOR THE INDIANA SHERIFFS' ASSOCIATION, MARION COUNTY SHERIFF'S OFFICE, AND LAKE COUNTY SHERIFF'S DEPARTMENT

Derek Schmidt
Attorney General of Kansas
Jeffrey A. Chanay
Chief Deputy Attorney General
Kansas Office of the Attorney General
Memorial Hall, 3rd Floor
120 SW 10th Avenue
Topeka, KS 66612-1597
P: (785) 368-8435
E: jeff.chanay@ag.ks.gov

COUNSEL FOR STATE OF KANSAS

Gregory F. Zoeller
Attorney General of Indiana
Thomas M. Fisher
Solicitor General
Office of the Indiana Attorney General
302 W. Washington Street, IGC-South, Fifth Floor
Indianapolis, IN 46204
P: (317) 232-6255
E: Tom.Fisher@atg.in.gov

COUNSEL FOR STATE OF INDIANA

Jeff Landry
Attorney General of Louisiana
Patricia H. Wilton
Assistant Attorney General
Louisiana Department of Justice
1885 North Third Street
Baton Rouge, LA 70802
P: (225) 326-6006
E: wiltonp@ag.louisiana.gov

COUNSEL FOR STATE OF LOUISIANA

Chris Koster
Attorney General of Missouri
J. Andrew Hirth
Deputy General Counsel
Missouri Office of the Attorney General
P.O. Box 899
207 W. High Street
Jefferson City, MO 65102
P: (573) 751-0818
E: andy.hirth@ago.mo.gov
COUNSEL FOR STATE OF MISSOURI

Adam Paul Laxalt
Attorney General of Nevada
Lawrence VanDyke
Solicitor General
Office of the Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701-4717
P: (775) 684-1100
E: LVanDyke@ag.nv.gov

COUNSEL FOR STATE OF NEVADA

Brad D. Schimel
Attorney General of Wisconsin
Misha Tseytlin
Solicitor General
Daniel P. Lennington
Deputy Solicitor General
Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707-7857
P: (608) 267-9323
E: tseytlinm@doj.state.wi.us

COUNSEL FOR STATE OF WISCONSIN

CERTIFICATE OF SERVICE

I hereby certify that, on October 20, 2016, a true and correct copy of the foregoing Motion for Stay was served via the Court's CM/ECF system on counsel of record for all parties.

/s/ *Mithun Mansinghani*
Mithun Mansinghani