IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

UNITED ATLANTIC VENTURES, LLC, Plaintiff, v. TMTG SUB INC. f/k/a TRUMP MEDIA & TECHNOLOGY GROUP CORP., TRUMP MEDIA & TECHNOLOGY GROUP CORP f/k/a DIGITAL WORLD ACQUISITION CORP., DONALD J. TRUMP, DEVIN G. NUNES, DONALD J. TRUMP, JR., KASHYAP "KASH" PATEL, DANIEL SCAVINO, JR., ERIC SWIDER, FRANK J. ANDREWS, EDWARD J. PREBLE, and JEFFREY A. SMITH, Defendants, and TRUMP MEDIA & TECHNOLOGY GROUP CORP., Nominal Defendant.	)	C.A. No. 2024-0184-LWW

STATEMENT OF INTEREST OF THE UNITED STATES

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The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517, which empowers the Attorney General to direct the appearance of "any officer of the Department of Justice . . . [in] any State or district in the United States to attend to the interests of the United States in a suit pending in . . . a court of a State[.]" By filing a statement of interest, the United States seeks to aid the Court's deliberations by sharing the Unites States' views on the proper application of the Supremacy Clause and Article II of the Constitution, as well as the varied precedent interpreting those constitutional provisions. The United States frequently attends to those interests and files statements in cases that have presented issues concerning the President's amenability to judicial process. *See infra* at 1 n.1.

Through Section 517, Congress provided express statutory authority for the United States to attend to its interests in any federal or State court to which it is not a party. *See, e.g.*, *Hunton & Williams v. Dep't of Justice*, 590 F.3d 272, 291 (4th Cir. 2010) ("A statement of interest, which is authorized by 28 U.S.C. § 517, is designed to explain to a court the interests of the United States in litigation between private parties."). The United States has a long history of using this authority in private suits, filing over 600 statements of interest since 1925. Victor Zapana, Note, The Statement of Interest as a Tool in Federal Civil Rights Enforcement, 52 Harv. C.R.–C.L. L. Rev. 227, 228–29 (2017). Section 517's text authorizes the United States to file statements without leave, contains no time limitation, and commits the discretion to file to the United States. *See, e.g., Gil v. Winn Dixie Stores, Inc.*, 242 F. Supp. 3d 1315, 1317 (S.D. Fla. 2017) (denying motion to strike a statement of interest as untimely and filed without leave because the statute "contains no time limitation and does not require the Court's leave"); *Karnoski v. Trump*, No. 18-51013, 2018 WL 4501484, at *2 (E.D. Mich. Sept. 20, 2018) (recognizing no time limitation and no

leave requirement); *Creedle v. Gimenez*, No. 17-22477, 2017 WL 5159602 at * 3 (S.D. Fla. Nov. 7, 2017) (denying a motion to strike when the United States filed its statement after the underlying motion became ripe).

Section 517 entrusts the Attorney General with the obligation to determine the contours of the United States' "interests." *See, e.g.*, *United States ex rel. Prather v. Brookdale Senior Living Cmtys., Inc.*, 892 F.3d 822, 833 n.6 (6th Cir. 2018) ("The legislative branch has created the scheme that gives the executive branch the ability to 'attend to the interests of the United States,' 28 U.S.C. § 517, as it—not we—may choose."); *Roeder v. Islamic Republic of Iran*, 195 F. Supp. 2d 140, 158 (D.D.C. 2002) (The United States "clearly has the authority pursuant to 28 U.S.C. § 517" to intercede in a case should it believe that its interests are sufficiently implicated). The great weight of precedent supports filing here. Section 517 permits the United States to file statements of interest without limitation so long as the Attorney General concludes that the interests of the United States are implicated. That this is a State court proceeding is immaterial as Congress wanted to ensure the United States possessed authority "to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State." 28 U.S.C. § 517; *see also Rudenberg v. Chief Deputy Atty. Gen. of Delaware Dep't of Justice*, 2016 WL 7494900, at *4–*11 (Del. Sup. Ct.) (discussing permissible consideration of a Statement of Interest filed by the United States after the conclusion of the parties' briefing and ordering supplemental briefing by the parties based on issues raised by the United States in its Statement of Interest).

INTRODUCTION

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517. This is a private civil suit for damages against the President of the United States, brought in State court, for alleged non-official conduct that occurred before his present term in office. The President has moved to dismiss without prejudice, or for a temporary stay of proceedings, on the grounds that he is temporarily immune during his term as Chief Executive. The United States has a fundamental interest in protecting the office of the Presidency and the powers and duties invested in that office under Article II of the Constitution. As a result, the Department has consistently appeared to articulate the interests of the United States in suits implicating the President's amenability to State and federal judicial process.[1]

At present, this case raises the substantial constitutional question of whether, and how, a State court may exercise civil jurisdiction over the President of the United States during his elected term in office. It is a question that was previously reserved by the Supreme Court in *Clinton v. Jones*, and an issue with deep implications for the relationship between the Executive Branch and the States of the Union. The President is, after all, "the only person who alone composes a branch of government." *Mazars*, 591 U.S. at 868. In that way, "[t]he President occupies a

[1] The United States has previously filed statements of interest and amicus briefing at the trial, appellate, and Supreme Court level in cases that have presented issues concerning the President's amenability to judicial process. *See, e.g.*, *Trump v. Vance*, 591 U.S. 786, 810 (2020) (whether a State criminal subpoena seeking the President's personal financial records from a third-party custodian is permissible); *Trump v. Mazars USA*, 591 U.S. 848, 868 (2020) (whether a congressional subpoena seeking the President's personal financial records from a third-party custodian is enforceable); *Clinton v. Jones*, 520 U.S. 681 (1997) (whether civil litigation in federal court against the President for pre-tenure conduct may proceed during his tenure); *Nixon v. Fitzgerald*, 457 U.S. 731 (1982) (whether the President is immune from civil actions for damages based on the President's conduct in office; *United States v. Poindexter*, 732 F. Supp. 142 (D.D.C. 1990) (whether a former President may be subpoenaed to testify as a witness in support of the defense in a criminal trial).

unique position in the Constitutional scheme." *Fitzgerald*, 457 U.S. at 749. Meanwhile, it is long settled that "the States have no power" to "retard, impede, burden, or in any manner control" the operations of the federal government. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 426, 436 (1819). This shield stems from the Supremacy Clause, U.S. Const. art. VI, cl. 2, which makes the Constitution and other federal law supreme, "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Over the nearly two and a half centuries since the ratification of the Constitution, the Supreme Court has articulated different ways of understanding the Supremacy Clause's promise. Through discrete doctrines, including a bar on State restraint of federal officers (the "anti-restraint principle"), obstacle preemption, and intergovernmental immunity, courts have different lenses through which to view and evaluate whether a State has impermissibly encroached on the federal sphere. When such encroachment occurs, State courts are bound by the Clause to recognize the preemptive or immunizing federal force and nullify the competing State action. U.S. Const. art. VI, cl. 2. And setting individual doctrines aside, the heart of the matter is simple—"the Constitution guarantees 'the entire independence of the General Government from *any* control by the respective States.'" *Trump v. Anderson*, 601 U.S. 100, 111 (2024) (emphasis added) (citation omitted).

In the view of the United States, these principles compel that this case may not be actively litigated against the President during his term in office. Article II of the Constitution vests the entire Executive Power in the President of the United States. U.S. Const. art. II, § 1. The demands on its occupant are accordingly severe and unceasing. As a result of being a one-man-branch-of-government: "there is not always a clear line between [the President's] personal and official affairs" for "'[t]he interest of the man' is often 'connected with the constitutional rights of the

place.'" *Mazars*, 591 U.S. at 868 (quoting The Federalist No. 51, at 349 (James Madison) (J. Cooke ed., 1961)). In other words, "incidental to the functions confided in Article II is 'the power to perform them, without obstruction or impediment'" even from challenges to a President's personal concerns. *Vance*, 591 U.S. at 810 (quoting 3 J. Story, Commentaries on the Constitution of the United States § 1563, at 418–19 (1833)). As a consequence, the President must be protected during his term from State court judicial process that could "'significantly interfere with his efforts to carry out' th[e] duties" of the Presidency. *See id.* (quoting *Clinton*, 520 U.S. at 710, 714 (Breyer, J., concurring in the judgment)).

State court jurisdiction over this private damages lawsuit, which puts the President at the center of the allegations, is irreconcilable with the unitary structure that Article II of the Constitution provides, and threatens to impermissibly impede the orderly functioning of the Executive Branch. As a result, the Supremacy Clause's structural protections against State encroachment on federal functions forbid active litigation of this lawsuit.

In addition, the intergovernmental immunity doctrine forbids this Court from exercising jurisdiction in a manner that would directly regulate the President. It moreover forbids any State-court-imposed penalties for failure to comply with an order of this Court. These constraints present dispositive practical obstacles if this suit were to continue during the President's term. Those issues alone favor a stay of proceedings until the end of the President's term.

All told, in the view of the United States, this Court should at a minimum temporarily stay this matter during the President's term.

ARGUMENT

I. State Court Jurisdiction Over the President Raises Substantial Concerns Under the Supremacy Clause and Article II

A. The Constitution Guarantees a Singularly Energetic and Independent President

The Supreme Court has long recognized that "[t]he high respect that is owed to the office of the Chief Executive . . . should inform the conduct of [an] entire proceeding" implicating the autonomy of his office. *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367, 385 (2004) (quoting *Clinton*, 520 U.S. at 707). Our constitutional design demands that respect. Indeed, the President occupies a "unique position in the constitutional scheme." *Fitzgerald*, 457 U.S. at 749. While the Constitution vests the legislative and judicial powers in collective bodies, it vests "[t]he executive Power" in the President alone. U.S. Cont. art. II, § 1. His office, unlike those of other executive officers, does not depend on Congress for its existence or its powers. The Constitution "entrust[s] [the President] with supervisory and policy responsibilities of utmost discretion and sensitivity." *Fitzgerald*, 457 U.S. at 750. And it is he alone "who is charged constitutionally to 'take Care that the Laws be faithfully executed.'" *Id.* (citation omitted). Among other critical responsibilities, the President serves as "the sole organ of the federal government in the field of international relations[,]" *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936), and is the Commander-in-Chief of the military, U.S. Const. art. II, § 2.

In constitutional and practical terms, the President's power and responsibilities under Article II are "so vast and important that the public interest demands that he devote his undivided time and attention to his public duties." *Clinton*, 520 U.S. at 697. Indeed, our system of government "makes a single President responsible for the actions of the [entire] Executive Branch." *Free Enter. Fund v. Pub.*

Co. Acct. Oversight Bd., 561 U.S. 477, 496–97 (2010) (quoting *Clinton*, 520 U.S. at 712–13 (Breyer, J., concurring in judgment)). In both the demands it places on its occupant and the accountability it expects, the Presidency is a singular office.

The unceasing nature of the President's duties is reflected in the constitutional structure. In contrast to the Congress, which is required to assemble only "once in every Year," U.S. Const. art. I, § 4, and which may adjourn on a regular basis, *id.* § 5, the President must attend to his duties as Chief Executive and Commander-in-Chief continuously during his tenure. Even a temporary interruption may require an "Acting President" to discharge these perpetual duties. *See* U.S. Const. amend. XXV, §§ 3, 4.

Finally, due to the "special nature of the President's constitutional office and functions" and "the singular importance of [his] duties," the Constitution requires particular "deference and restraint" in the conduct of litigation involving the President. *Fitzgerald*, 457 U.S. at 751–56. The Supreme Court has held, for example, that a court may not enjoin the President in the conduct of his official duties and that Congress may subject the President to a statute's dictates only if it states its intention to do so clearly. *Franklin v. Massachusetts*, 505 U.S. 788, 800–01 (1992); *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 498–99 (1867). Concerns about the impact of litigation on the President's ability to perform his constitutional functions have likewise led the Supreme Court to hold that the President is absolutely immune from civil damages liability for his official actions, *Fitzgerald*, 457 U.S. at 756, absolutely or presumptively immune from criminal liability for official actions, *Trump v. United States*, 603 U.S. 593, 614 (2024), entitled to special solicitude in discovery, *Cheney*, 542 U.S. at 385, and entitled to procedural deference in federal suits solely related to his private conduct, *Clinton*, 520 U.S. at 707. Constitutional concerns also restrict a

court's assessment of the President's entitlement to judicial review and relief. *Cheney*, 542 U.S. at 385 (concerning mandamus relief from discovery order).

In sum, "a sitting President is unusually busy, [] his activities have an unusually important impact upon the lives of others, and [] his conduct embodies an authority bestowed by the entire American electorate." *Clinton*, 520 U.S. at 711 (Breyer, J., concurring in the judgment). Investing one person with the authority of an entire branch "creates a constitutional equivalence between a single President, on the one hand, and many legislators, or judges, on the other." *Id.* at 712. He represents the "sole branch which the constitution requires to be always in function," *Vance*, 591 U.S. at 796 (citation omitted), indeed, he is the "sole indispensable man in government," *Clinton*, 520 U.S. at 713 (Breyer, J., concurring in the judgment) (quoting P. Kurland, Watergate and the Constitution 135 (1978)). Maintaining an energetic and independent Presidency is accordingly a matter of constitutional significance.

B. The Supremacy Clause Prevents States from Interfering with the Executive Branch and its Chief Executive

The Supremacy Clause mandates that "the activities of the Federal Government [be] free from regulation by any state." *Hancock v. Train*, 426 U.S. 167, 178 (1976) (citation omitted). As Chief Justice Marshall long ago explained, "[i]t is of the very essence of supremacy, to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence." *McCulloch*, 17 U.S. at 427. The Supremacy Clause thus deprives the States of power "to retard, impede, burden, or in any manner control, the operations" of the federal government in executing its functions. *Id.* at 436. Under our constitutional system, it is "inconceivable" that a State law or policy could "be interposed as an obstacle to the effective operation of a federal constitutional power." *United States v. Belmont*, 301 U.S. 324, 332 (1937); *see*

Davis v. Elmira Sav. Bank, 161 U.S. 275, 283 (1896) (any attempt by a State to "control the conduct of the" national government or to "impair[] the efficiency of th[e] agencies of the federal government to discharge the[ir] duties" is "absolutely void"); *Tennessee v. Davis*, 100 U.S. 257, 263 (1880).

Those principles apply equally to a State's invocation of its judicial process. For example, as a result of the "distinct and independent character of the government of the United States," "State judges and State courts" lack authority to issue a writ of habeas corpus directing federal officers to release persons held under federal authority. *Tarble's Case*, 80 U.S. (13 Wall.) 397, 406–12 (1871). So too, States lack authority to issue writs of mandamus directed at federal officers. *McClung v. Silliman*, 19 U.S. (6 Wheat.) 598, 604-05 (1821). Congress and the Supreme Court have accordingly long recognized the deep-rooted federal interest in "safeguarding officers and others acting under federal authority against peril of punishment for violation of state law or obstruction or embarrassment by reason of opposing policy on the part of those exerting or controlling state power." *Colorado v. Symes*, 286 U.S. 510, 517 (1932) (discussing federal-officer removal statute).

C. *Clinton* Recognized the Constitutional Hurdles to State Court Jurisdiction over a Private Civil Suit Against the President

The *Clinton* decision provides helpful insight into the balance of the Presidency's Article II protections and the demands of judicial process. There, the Supreme Court held that a federal district court could maintain jurisdiction over a private civil suit against the President for pre-term non-official conduct. *Clinton*, 520 U.S. at 710. To come to that conclusion, the Court relied on the repeated, "quite burdensome interactions" between the *coequal* Judicial and Executive Branches. *Id.* at 702. Under the Constitution, the federal judiciary may "determine whether [the President] has acted within the law" or otherwise intercede in specific cases or controversies. *Id.* at 703. These decisions can "serious[ly] impact" the President and

force him to devote "substantial time" to interactions with the Article III institutions. *Id.*

Those burdens, however, have a constitutional dimension. The Court has thus cautioned that even coequal federal courts must take great pains to "accommodate the President's needs . . . especially in matters involving national security" to give "the utmost deference to Presidential responsibilities," and otherwise apply pleading standards and sanctions to avoid "politically motivated harassing and frivolous litigation[.]" *See id.* at 708–09 (quoting *United States v. Nixon*, 418 U.S. 683, 710–711 (1974)). Justice Breyer, concurring in the judgment, emphasized that only three private civil suits had been previously filed against a sitting President in the history of the Republic. *Id.* at 722. He explained that, if the trend were to change, "courts will have to develop administrative rules applicable to such cases (including postponement rules [staying a case during the President's term]) in order to implement the basic constitutional directive [of Article II]." *Id.* at 723. That makes sense. An independent and energetic Presidency, as planned by the Founders, demands no less. Substantial private State court civil litigation, involving the President's personal attention, would necessarily disrupt the constitutional design.[2]

Indeed, the *Clinton* Court was attentive to the distinct burdens that comparable State litigation would bring. *Id.* at 691. As the Court observed, such a case would also raise "federalism and comity concerns" as well as questions of "possible local prejudice." *Id.* Instead of a separation-of-powers inquiry, private civil suits in State court require an analysis under "the Supremacy Clause." *Id.* at 691 n. 13. In sum: "any direct control by a state court over the President, who has principal

[2] The United States agrees with Defendants that the trend has, in fact, changed. Substantial private civil litigation against the President has become normalized.

responsibility to ensure that [federal] laws are 'faithfully executed' may implicate concerns that are quite different from the interbranch separation-of-powers conflict addressed [in *Clinton*]." *Id.* (quoting U.S. Const. Art. II, § 3). To make this point clear, the Court cited three authorities: *Hancock*, 426 U.S. at 178–79; *Mayo v. United States*, 319 U.S. 441, 445 (1943); and Lawrence Tribe, American Constitutional Law 513 (2d ed. 1988).

Each authority cited by the Court delineates the limits of State control over the Executive Branch and its officers. First, in *Hancock*, the Court held that a State could not require permitting at federal facilities. 426 U.S. at 168. If federal law does not "affirmatively declare [federal] instrumentalities or property subject to regulation," then "the federal function must be left free of regulation." *See id.* at 179 (citation omitted). Similarly, in *Mayo*, the Court held that a State regulatory scheme could not defeat a federal program operated in conflict with the State's policy. 319 U.S. at 442, 448. It explained, "the activities of the Federal Government are free from regulation by any state" and so a State could not impose its own view of what "would be required before executing a function of government." *See id.* at 445–47. "[T]he federal function must be left free" as "[t]his freedom is inherent in sovereignty." *Id.* at 447. Finally, the Court quoted the portion of Professor Tribe's casebook stating: "absent explicit congressional consent no state may command federal officials . . . to take action in derogation of their . . . federal responsibilities." Lawrence Tribe, *supra*, at 513.

In sum, the Court understood that State court jurisdiction involves wholly different considerations and obstacles compared to federal court jurisdiction. Such litigation, unlike that in coequal federal courts, presents distinct and weighty burdens, and runs up against the constitutional restrictions that limit how States may interact with the Federal Government. By that light, as the above holds, State

courts are thus foreclosed from subjecting the President to such "burdensome interactions," even if those burdens would be permissible in federal court. *See Clinton*, 520 U.S. at 702. Put otherwise, under our constitutional structure, State courts have a far different—and far more limited—ability to subject the President to judicial process.

D. *Vance* Reaffirmed Constitutional Roadblocks to State Court Jurisdiction Over the President

Clinton provides the most fulsome statement regarding the principles applicable to State court jurisdiction over a private civil suit against the President. Nonetheless, nearly a decade and a half later, the Court provided additional insight into the Supremacy Clause implications of State judicial process involving the President. In *Vance*, the Court considered whether a State criminal subpoena seeking the President's personal records from a third-party custodian was categorically barred by the Supremacy Clause, or otherwise subject to a heightened need standard.

First and foremost, the Court emphasized that that Article II protects the sphere of the President's authority by guaranteeing the President's "power to perform [his duties], without obstruction or impediment." *Vance*, 591 U.S. at 810 (citation omitted). So the President is protected during his term from State court judicial process that could "'significantly interfere with his efforts to carry out' th[e] duties" of the Presidency. *See id.* (quoting *Clinton*, 520 U.S. at 710, 714 (Breyer, J., concurring in the judgment)). This includes State judicial process involving his non-official concerns. *See id.* So "[t]he Supremacy Clause prohibits state judges and prosecutors from interfering with a President's official duties." *Id.* at 806.

Nonetheless, the Court rejected categorical immunity, or a heightened showing of need, for the particular State judicial process before it. Looking to history, and

particularly a criminal subpoena of President Jefferson's communications approved by Chief Justice Marshall in 1807, the Court held that the President's papers are not always immune to a State grand jury's subpoena. *Id.* at 795. It found that two hundred years of practice "establish[] that no citizen, not even the President, is categorically above the common duty to produce evidence when called upon in a criminal proceeding." *Id.* at 810. And the Court rejected requiring a special necessity showing. *Id.* at 807. So there is no categorical prohibition on such subpoenas. And the Court held a State prosecutor need not provide special justifications as to why he needs such documents. In substantial part, this derives from the centuries-long right to "every man's evidence" and "that the public interest in fair and accurate judicial proceedings is at its height in the criminal setting[.]" *Id.* at 799 (citation omitted); *see also id.* at 808–09 ("[T]he public interest in fair and effective law enforcement cuts in favor of comprehensive access to evidence. . . . [The alternative] could prejudice the innocent by depriving the grand jury of *exculpatory* evidence.").

But while rejecting a total immunity from any and all process, the Court was clear that Article II remained a meaningful general bar against State judicial process. The Court explained that "although the Constitution does not entitle the Executive to absolute immunity or a heightened standard, he is not relegated only to the challenges available to private citizens." *Id.* at 809 (cleaned up). Far from it. While the President in *Vance* did not contend that the subpoena to his third-party custodian was, "in particular . . . impermissibly burdensome[,]" the Court explained that the Supremacy Clause and Article II provide applied defenses to State judicial process. *Id.* at 801, 809–10.

The case-specific defenses noted by the Court are substantial—even though they do not apply to every proceeding categorically. They include arguing that the judicial process is "an attempt to influence the performance of [the President's] official

duties," or alternatively would simply "impede his constitutional duties." *Id.* at 809–10. He can thus defeat State judicial process "interposed as an obstacle to the effective operation of a federal constitutional power" or proceedings which serve as an "obstruction or impediment" to "the power to perform" "the functions confided in Article II." *Id.* at 810 (citations omitted). Procedurally, "'once the President sets forth and explains a conflict between judicial proceeding and public duties,' or shows that an order or subpoena would 'significantly interfere with his efforts to carry out' those duties 'the matter changes.'" *Id.* (quoting *Clinton*, 520 U.S. at 710, 714 (Breyer, J., concurring in the judgment)). Once the President invokes the conflict, "a court should use its inherent authority to . . . ensure that such 'interference with the President's duties would not occur'" including "quash[ing] or modify[ing] the" offending judicial process. *See id.* (quoting *Clinton*, 520 U.S. at 708 (opinion of the Court)).

II. The Supremacy Clause Compels at Least a Temporary Stay

Clinton and *Vance* recognized that Supremacy Clause principles govern when a State court seeks to exercise jurisdiction over the President. Two lines of doctrines—the anti-restraint principle and obstacle preemption—are particularly on point for this inquiry. And those doctrinal lines sketch clear constitutional borders that State courts may not cross. Under the anti-restraint principle, State courts may not exercise control over the President when doing so would restrain his constitutional work. Likewise, obstacle preemption bars State courts from subjecting the President to civil suits, like this one—forcing him to the center of a sprawling civil action—which place a substantial obstacle in the way of his duties. Both lines of cases deal with the same broad theory: State judicial process may not damage the President's functioning by controlling the President or placing obstacles in his path.

A. The Anti-Restraint Principle Prevents Control Over the President

It is fundamental in our constitutional system that States and their courts may not control "*sitting* federal officeholders." *See Anderson*, 601 U.S. at 111. "Such a power would flout the principle that 'the Constitution guarantees the entire independence of the General Government from any control by the respective States.'" *Id.* (quoting *Vance*, 591 U.S. at 800). "[C]onsistent with that principle, States lack even the lesser powers to issue writs of mandamus against federal officials or to grant habeas corpus relief to persons in federal custody." *Id.* (citing *McClung*, 19 U.S. at 603–05; *Tarble's Case*, 80 U.S. at 405–10).

The Supreme Court has repeatedly and long recognized this anti-restraint principle. In short, State courts are forbidden "in the form of judicial process or otherwise, [to] attempt to control . . . [an] authorized officer or agent of the United States[.]" *See Ableman v. Booth*, 62 U.S. 506, 524 (1858). This includes directing federal officers to take or withhold particular actions by mandamus, *McClung*, 19 U.S. at 603–05, as well as to release or present those in their custody by habeas, *Tarble's Case*, 80 U.S. at 405–10. It also forbids coercive judicial process that interferes with the federal official's duties taken pursuant to federal law—statutory or constitutional. For example, States are forbidden from seizing and trying a federal official "for an act which he was authorized to do by the law of the United States, which it was his duty to do as [official] of the United States, and if, in doing that act, he did no more than what was necessary and proper for him to do[.]" *Cunningham v. Neagle*, 135 U.S. 1, 75 (1890). The federal government must "through its official agents, execute . . . the powers and functions that belong to it." *Id.* at 60. So federal officers cannot "be interfered with and controlled for any period by officers or tribunals of another sovereignty." *Tarble's Case*, 80 U.S. at 409.

To be sure, it is true that *ordinary* federal officers may be subject to State court jurisdiction for damages actions, *Teal v. Felton*, 53 U.S. (12 How.) 284 (1851), and may face criminal prosecution when it is unclear if it could "reasonably be claimed that the [contested actions were taken] in the performance of a [federal] duty," *U.S. ex rel. Drury v. Lewis*, 200 U.S. 1, 8 (1906). Nonetheless, there is a stark difference between ordinary federal officials and the President. "[T]he constitution requires [the President] to be always in function[,]" that is, to attend to his duties and supervise the Executive Branch. *See Vance*, 591 U.S. at 796 (citation omitted). He is owed special deference and a presumption that courts may not dictate his actions or behavior. *Cf. Franklin*, 505 U.S. at 800–01 (refusing to subject him to the Administrative Procedure Act given "the unique constitutional position of the President"); *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) ("With regard to the President, courts do not have jurisdiction to enjoin him, and have never submitted the President to declaratory relief[.]" (citations omitted)). While ordinary federal officials may be replaced, supplemented, or otherwise substituted while they face State civil or criminal diversions; the President has no such luxury. Accordingly, subjecting the President to legal process *by definition* involves—or at minimum, risks—the capture of a branch of the federal government, because it seizes the time, attention, and resources of the Executive, whose power runs entirely through its single head.

For these reasons, the special needs of the President and his unique role in our constitutional system has led to many exemplary rules not ordinarily available to federal officers. He is absolutely immune from damages actions for official conduct. *Fitzgerald*, 457 U.S. at 756. He is absolutely or presumptively immune from criminal liability for actions taken in the inner and even *outer* bounds of his official acts. *Trump*, 603 U.S. at 614. He is entitled to special solicitude in discovery. *Cheney*, 542

U.S. at 385. And he receives procedural deference in federal suits solely related to his private conduct. *Clinton*, 520 U.S. at 707. These unique protections derive invariably from the President's status of one in our constitutional system. Private State court litigation against the President raises "unique risks to the effective functioning of government." *See Fitzgerald*, 457 U.S. at 751.

This suit threatens sufficient restraint of the President such that a pause is required for the duration of his time in office. "Personal jurisdiction refers to the court's power over the parties in the dispute." *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 129 (Del. 2016). Specifically, it refers to "authority. . . [such] that the court's decision will bind" the parties. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999). Accordingly, "[a] state court's assertion of jurisdiction" definitionally "exposes defendants to the State's coercive power[.]" *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011).

The coercive assertion of State authority over the President cannot continue during his Presidency. Plaintiff has brought a complex case, with the President at the center, which includes demands of substantial discovery; litigation events; need for consultation with counsel; and related diversions from the President's activities. By its very nature, this litigation would invariably, and consistently, "retard, impede, [or] burden" the President's official work, *McCulloch*, 17 U.S. at 436, or "impair[] the efficiency of th[e] [President] of the federal government to discharge [his] duties," *Davis*, 161 U.S. at 283. These restraints on the President's official duties are of an entirely different character compared to an ordinary federal officer. By seeking to seize the "sole indispensable man in government" and hold his attention through this difficult State judicial proceeding, the State court civil process here should yield to the anti-restraint principle. *See Clinton*, 520 U.S. at 713 (Breyer, J., concurring in the judgment) (citation omitted). He would be required to abandon at times his

Presidential duties to answer the demands of this Court. *See Pub. Utils. Comm'n of Cal. v. United States*, 355 U.S. 534, 543 (1958) (explaining that the "discretion of the federal officers" cannot be restrained so that they may act "only if the [State] approves"). These demands will be imposed explicitly through orders, or implicitly through the threat of an adverse final judgment against him if he fails to sufficiently engage with the defense of this matter. Those coercive restraints would "interfere[] with and control[] for any period" the President and the attention he must otherwise aim at his constitutional duties. *See Tarble's Case*, 80 U.S. at 409. As a result, the Court should pause this litigation during the President's term.

B. Obstacle Preemption Bars Jurisdiction Which Interferes with the President's Duties

The Supreme Court's obstacle preemption doctrine offers another perspective for why the assertion of State court civil jurisdiction here must yield. Under the broader principle of conflict preemption, federal law may displace State action when the opposing forces clash in one of two ways. First, when federal law has made it so "compliance with both federal and state regulations is a physical impossibility[.]" *Arizona v. United States*, 567 U.S. 387, 399 (2012) (citation omitted). Second, "when the [action] of a junior sovereign 'stands as an obstacle to the accomplishment and execution of the full purposes and objective of' the senior sovereign." *State ex rel. Jennings v. City of Seaford*, 278 A.3d 1149, 1160 n.5 (Del. Ch. 2022) (quoting *Gonzalez v. State*, 207 A.3d 147, 154 (Del. 2019)), *judgment entered sub nom. State v. City of Seaford*, No. 2022-0030-JTL, 2022 WL 2401256 (Del. Ch. July 1, 2022). This second option is called obstacle preemption. *See Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 330 (2011).

Conflict preemption, of which obstacle preemption is a species, occurs where there is a clash between federal law and the laws of a State. *See, e.g.*, *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (plurality op.) ("Our ultimate task

in any pre-emption case is to determine whether state regulation is consistent with the structure and purpose of the statute as a whole."). But the Supremacy Clause does not just displace State actions that conflict with Congressional enactments. "*This Constitution*, and the Laws of the United States which shall be made in Pursuance thereof" are both, along with treaties, "the supreme Law of the Land[.]" U.S. Const. art. VI, cl. 2 (emphasis added). Therefore, a court's task is determining whether "state law st[ands] as an obstacle to the accomplishment of a significant federal [] objective" in whatever form that takes—including the Constitution. *Williamson*, 562 U.S. at 330 (citations omitted); *see also Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153–54 (1982) (explaining that a federal regulation can preempt a state statute); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 376 (2000) (considering the preemptive combination of an Act of Congress and the foreign affairs powers of the Executive Branch—with a "plenitude of Executive authority"); *Vance*, 591 U.S. at 805, 809–10 (discussing the Constitution preempting State jurisdiction over the President). So the structural portions of the Constitution may, of their own force and effect, displace obstructive State actions. *Vance*, 591 U.S. at 805, 809; *cf. W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 192–93 & n.9 (1994) (explaining how the Commerce Clause, without any affirmative Act of Congress, displaces State laws that disrupt interstate commercial exchange).

State laws are invalid if they "either frustrate[] the purpose of the national legislation or impair[] the efficiency of th[o]se agencies of the federal government to discharge the duties for the performance of which they were created." *Davis*, 161 U.S. at 283. Here, the position created is the Presidency of the United States and the preempting force is Article II. State law thus may not "frustrate[] the purpose" or "impair[] the efficiency" of the "performance of" the Presidency. *See id.*

Article II creates an energetic President with purposeful independence. The vesting clause provides the President all of "[t]he executive Power." U.S. Const. art. II, § 1. It "makes a single President responsible for the actions of the [entire] Executive Branch" and all the executive duties invested in that department. *Free Enter. Fund*, 561 U.S. at 496–97 (quoting *Clinton*, 520 U.S. at 712–13 (Breyer, J., concurring in judgment)). He must be always available to conduct foreign affairs, command the military, consider legislation that might be vetoed, manage the entirety of the federal workforce, exercise those powers invested in him by statute, and otherwise perform his difficult duties.

Turning from that design to this State proceeding, continued civil jurisdiction would ultimately be "interposed as an obstacle to the effective operation of a federal constitutional power"—that of the Chief Executive's independent and energetic functioning. *See Belmont*, 301 U.S. at 332. He would be required to abandon at times his Presidential duties to answer the demands of this Court. All told, this proceeding as a whole, and specific events during the case, would require the President to "desist from performance [of his duties] until [he] satisf[ies]" the demands of this State proceeding. *See Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187, 190 (1956) (citation omitted); *see also Crosby*, 530 U.S. at 373–76 (holding that a State sanctions bill on a foreign sovereign was preempted because it undermined the President's "flexible and effective authority"); *Arizona*, 567 U.S. at 409 (forbidding "state officers" from impeding an area "entrusted to the discretion of the Federal Government"). This substantial obstacle to the purposes and objectives of Article II is forbidden by the Supremacy Clause. Obstacle preemption principles thus compel at least a stay during the President's term.

III. Applying the Test from *Vance* Favors a Temporary Stay

The principles above are sufficient to justify a stay, given the nature of this litigation. But a temporary stay is also required under the general principles articulated in *Vance* for dealing with discrete instances of judicial process. The *Vance* Court recognized a specific "Supremacy Clause prohibit[ion on] state judges . . . interfering with a President's official duties." 591 U.S. at 806. The President may challenge a State court's "attempt to influence the performance of his official duties," or the impeding of his ability to perform "the functions confided in Article II." *Id.* at 809–10 (cleaned up). When State judicial process raises these concerns, the offending State action should be "sufficiently important to justify [the] intrusion on the Article II interests of the Presidency." *Id.* at 813 (Kavanaugh J., concurring in the judgment).

Under this framework, the same sort of stay is required. As explained, the burdens here are severe—far greater than in *Vance*—and the State interests are minimal—far lesser than in *Vance*. That case, again, involved a *discrete* criminal subpoena to a third party that was backed by centuries of history and the substantial interest in *criminal* enforcement. This case involves the far greater intrusion wrought by a complex civil action aimed at the President. Meanwhile, there is a substantially weaker private interest of just the individual plaintiff. *See Cheney*, 542 U.S. at 384–85 (explaining the "much weightier" public interest in criminal proceedings compared to civil proceedings when considering the propriety of judicial process against the Executive Branch). Weak interests combined with a substantial burden are sufficient to forbid continued proceedings during this President's term. The Court should accordingly at least order a temporary stay of proceedings.

The *Vance* framework involves two steps. First, the President should "set[] forth and explains a conflict between judicial proceeding and public duties,' or" describe "significant[] interfere[nce] with his efforts to carry out" his Article II work.

See Vance, 591 U.S. at 810 (quoting *Clinton*, 520 U.S. at 710, 714 (Breyer, J., concurring in the judgment)). Second, the relevant State court must "use its inherent authority to . . . ensure that such 'interference with the President's duties would not occur'" which includes ending the offending proceeding or otherwise modifying it to eliminate the conflict. *See id.* (quoting *Clinton*, 520 U.S. at 708 (opinion of the Court)). In applying the test, a court must consider "[t]he high respect that is owed to the office of the Chief Executive" indeed it "should inform the conduct of the entire proceeding[.]" *Id.* at 809 (quoting *Clinton*, 520 U.S. at 707).

Start with step one. The President, through counsel, has described the substantial interference to his duties arising from this suit, *see* Opening Br. in Supp. of Defs.' Mot. to Dismiss, or Alternatively, to Stay on the Basis of Temporary Presidential Immunity at 51–61, Transaction ID 75507840, and State civil litigation of this kind generally, *id.* 12–50. This suffices to raise the necessary conflict or significant interference. The President does not "bear the onus of critiquing the unacceptable" process, but need only bring the conflict to the attention of the court. *See Cheney*, 542 U.S. at 388 (explaining that a civil plaintiff must "satisf[y] his burden of showing the propriety of [civil judicial process]" against "the Executive Branch"). Indeed, the *Vance* Court did not suggest any role for judicial scrutiny into this showing.

As described by the Court, once the conflict or interference is laid out, the Court's role is to respond by quashing or modifying the offending State judicial process. *See Vance*, 591 U.S. at 810. This makes sense. "[T]he relevant precedents . . . support a principle of the President's independent authority to control his own time and energy[.]" *Clinton*, 520 U.S. at 711 (Breyer, J., concurring in the judgment); *see also Vance*, 591 U.S. at 800 (explaining that the President's "duties come with protections that safeguard the President's ability to perform his vital functions").

Courts, federal or State, are not equipped with "judicially discoverable and manageable standards for resolving" the contours of the President's needs. *Cf. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012) (citation omitted) (discussing the political question doctrine); *Trump*, 603 U.S. at 632 & n.3 (explaining that "the interests that underlie Presidential immunity seek to protect not the President himself, but the institution of the Presidency" so "such second-guessing would 'threaten the independence or effectiveness of the Executive'" (quoting *Vance*, 591 U.S. at 805)). Thus, the Court should move to step two and decide what must be done to facilitate what Article II demands.

At this second step, this Court should at least temporarily stay this matter. At the outset, the competing interests here are far weaker than those in *Vance*. There, the Court was looking at the public's interest in prompt, fair, and fulsome criminal inquires—the "height" of common good. *See Vance*, 591 U.S. at 799. By contrast, all agree that this case is now a "nonexpedited damages case." Order Granting Mot. for Temporary Stay at 4, Transaction ID 75113824. Deferring civil damage actions until the completion of the President's term in office preserves a plaintiff's right to seek relief for a meritorious claim. It affects only when, not whether, the President must answer for his actions; it merely delays, rather than defeats, the vindication of the plaintiff's private legal interests. When a plaintiff seeks only damages for past misconduct, delay is very unlikely to vitiate the relief. And, from the United States's review, there do not appear to be any specific circumstances requiring immediate acquisition of discoverable material, or other time-sensitive issues. Moreover, unlike the public interest in the criminal sphere, the civil action here is predominantly, if not entirely, a matter of private interest to the particular plaintiff. This is a far weaker counterweight to the substantial Article II interests in full Presidential functioning.

The weak private interest in rapid resolution is outmatched by the substantial public interests in an energetic, independent, Presidency, as previously described. The President has been set at the center of these allegations. And complex factual issues involving the President are raised throughout the 215-paragraph operative complaint. All appear to agree that the President's personal knowledge and testimony would be critical to resolution of these issues. *See* Pl.'s Opp'n to Defs.' Mot. to Dismiss, or Alternatively, to Stay on the Basis of Temporary Presidential Immunity at 28, Transaction ID 75754648. The United States understands these kinds of circumstances to present precisely the disruption counseling in favor of a stay of proceedings at a minimum.

If the Court desires an illustration of the diversionary threat here, consider the result of the remand in *Clinton v. Jones*. The proceedings following the Court's denial of immunity were so onerous that an entire book teaching civil procedure uses the case as a model. Nan D. Hunter, The Power of Procedure: The Litigation of Jones v. Clinton xv (1d ed. 2002) ("This book shows how the procedural steps in the litigation . . . including . . . the 'dragnet of discovery,' created what became one of the great political crises in U.S. history."). Litigation there, as here, requires "extensive fact investigation." *Id.* at 3. That case too involved the President's personal knowledge which inevitably required his direct attention, as this matter would require President Trump's. *See e.g.*, *id.* at 59, 75–82, 96–99. Moreover, even cases that were originally intended to have no political bent may ultimately be transformed into harassing exercises. *See id.* at 63 (describing how Jones's original lawyers withdrew after outside attorneys who had the "purpose of bringing down the President" convinced Jones "to prov[e] Clinton is a bad person" through her suit rather than pursue her original relief (cleaned up)). And whether or not used for that purpose, the civil judicial process is extraordinarily burdensome on a defendant in fact-bound matters.

See, e.g., *id.* at 75–112. That is true even if the defense ultimately prevails. *Id.* at 164. Public reporting attests to the Presidential distraction brought by litigation in *Clinton*. Michael (Mickey) Kantor Interview, William J. Clinton Presidential History Project 72 (June 28, 2002); Peter Baker, Clinton Settles Paula Jones Lawsuit for $850,000, Washington Post, (Nov. 14, 1998), at A1. A reasonable assessment of the allegations here suggests that similar, time-consuming consequences would result.

In sum, it is the view of the United States that this matter would squarely disrupt Presidential functioning and thus invokes the "protections that safeguard the President's ability to perform his vital functions." *Vance*, 591 U.S. at 800. As a categorical matter, the principles set out in *Vance* require at least a temporary stay. However, if the Court chooses to consult the constitutional defense against criminal subpoenas set out by the Court, that too militates in favor of barring further proceedings. Weighing the weak private interests of rapid resolution against the substantial Article II interests in favor of a temporary halt, this Court should find the test satisfied and hold this case until the end of the President's term.

IV. At the Very Least the Bars Imposed by Intergovernmental Immunity Compel a Stay

The intergovernmental immunity doctrine forbids States from "regulat[ing] the United States directly" even through generally applicable rules or actions. *United States v. Washington*, 596 U.S. 832, 838 (2022) (citation omitted). When applied to those who perform government functions, it provides an immunity that protects the federal "interest in getting the Government's work done." *See Boyle v. United Techs. Corp.*, 487 U.S. 500, 505 (1988); *see also Tennessee*, 100 U.S. at 263 (noting the applicability of Supremacy Clause principles to federal actors as the federal government "can act only through its officers and agents"). As Chief Justice Marshall explained long ago—the State cannot "retard, impede, burden, or in any manner control" any part of the federal sphere. *See McCulloch*, 17 U.S. at 436. "The Court

thus interpreted the Constitution as prohibiting States from interfering with or controlling the operations of the Federal Government." *Washington*, 596 U.S. at 838 (discussing *McCulloch* and its progeny). The *Clinton* Court seemed to allude to this doctrine in particular when it referenced the bar on "direct control" of the President by a State court. *Clinton*, 520 U.S. at 691 n.13; *see also* Lawrence Tribe, *supra*, at 513 ("[A]bsent explicit congressional consent no state may command federal officials . . . to take action in derogation of their . . . federal responsibilities.").

Even if this Court were to conclude that the various other Supremacy Clause doctrines and the *Vance* test do not counsel a temporary pause, the bar on direct regulation should. Any court order or applied State procedural rule, aimed at the President, implicates this bar on direct control. Indeed, requiring any personal actions by the President, including attendance of proceedings, testimony, personal responses to discovery devices, or other direct diversions of his person, all run into this immunity doctrine. The President cannot "be required [to obtain State permission] before executing a function of government." *Mayo*, 319 U.S. at 445–47. Courts take "a functional approach" to this inquiry. *United States v. City of Arcata*, 629 F.3d 986, 991 (9th Cir. 2010) (quoting *North Dakota v. United States*, 495 U.S. 423, 435 (1990)); *accord City of Detroit v. Murray Corp. of Am.*, 355 U.S. 489, 492 (1958) ("[W]e must look through form and behind labels to substance."). Simply put, to personally remove the President's attention is to functionally regulate the Presidency itself. It would impermissibly "deny [the President] . . . the right to perform the functions within the scope of the federal authority." *See Sperry v. Florida ex rel. Fla. Bar*, 373 U.S. 379, 385 (1963). And a variety of court orders and procedural rules, doing exactly that, must necessarily be precluded under the doctrine. These State legal demands would ultimately exert "state control in the performance of

[Presidential] duties . . . [requiring] that [he] desist from performance until [he] satisf[ies] a state officer." *See Johnson v. Maryland*, 254 U.S. 51, 57 (1920).

Consider the analysis by the State court in *Zervos v. Trump*, 171 A.D.3d 110 (N.Y. App. Div. 2019). There, the New York intermediate appellate court considered a similar question to the one raised here, whether a State civil lawsuit could continue against the President. The court there held 3-2 that a State civil matter could continue during the President's term. Yet all five judges recognized the acute difficulty with requiring actions by the President during the course of litigation—particularly the lack of coercive penalties that may be imposed. To the majority:

> [S]tate courts are fully aware that they should not compel the President to take acts or refrain from taking acts in his official capacity or otherwise prevent him from executing the responsibilities of the Presidency. It is likely that holding the President in contempt would be the kind of impermissible 'direct control' contemplated by *Clinton v. Jones* and violative of the Supremacy Clause. . . . [We assume] that reasonable accommodations would be made with respect to the President's schedule.

Id. at 127. Meanwhile, this recognition that a State court may not compel the President's actions, nor levy penalties against him, led the two judges in dissent to conclude no State civil jurisdiction could continue during the President's term.

> Besides the court's ability to issue a decree by which a defendant must abide (here, if plaintiff prevails, to award a money judgment and order defendant to retract his statements and offer an apology), the court holds the power to direct him to respond to discovery demands, to sit for a deposition, and to appear before it. This power includes formidable enforcement mechanisms, including the ability to hold parties in criminal contempt, and, as a last resort, to imprison them. I recognize that this is a highly unlikely event in this case, as the motion court made clear that it would accommodate the singular nature of defendant's job. However, while the court's need to order the President of the United States before it so he can answer to contempt charges is hypothetical, the even remote possibility of such an event elevates an arm of the state over the federal government to a degree that the Supremacy Clause cannot abide.

Id. at 135 (Mazzarelli, J., dissenting).

Nor is this substantial constitutional hurdle impugned by *Vance and Clinton*. When approving State judicial process in *Vance*, the Supreme Court was not confronted with any question of direct control of the President's person. There, the documents were in the hands of a third party and so no threat of contempt, or order requiring personal attention, was at issue. *Vance*, 591 U.S. at 791 ("The subpoena directed Mazars to produce financial records relating to the President and business organizations."). And *Clinton* noted the "direct control" hurdle as potentially dispositive. 520 U.S. at 691 n.13.

The practical difficulties flowing from intergovernmental immunity strongly counsel in favor of temporarily pausing this matter. This Court cannot order the President's personal participation, nor coerce his compliance. Unique and difficult questions for how the Court could structure continued litigation flow from these roadblocks. In the view of the United States, this Court should accordingly pause the matter until the President's immunity dissipates at the end of his term. At the very least, the Court should bear in mind these limitations if it determines that resuming proceedings during the President's term is not foreclosed.

CONCLUSION

For the foregoing reasons, it is the view of the United States that this Court should at least temporarily stay this matter during the President's term.

Dated: May 15, 2025

Respectfully submitted,

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

UNITED ATLANTIC VENTURES, LLC, Plaintiff, v. TMTG SUB INC. f/k/a TRUMP MEDIA & TECHNOLOGY GROUP CORP., TRUMP MEDIA & TECHNOLOGY GROUP CORP f/k/a DIGITAL WORLD ACQUISITION CORP., DONALD J. TRUMP, DEVIN G. NUNES, DONALD J. TRUMP, JR., KASHYAP "KASH" PATEL, DANIEL SCAVINO, JR., ERIC SWIDER, FRANK J. ANDREWS, EDWARD J. PREBLE, and JEFFREY A. SMITH, Defendants, and TRUMP MEDIA & TECHNOLOGY GROUP CORP., Nominal Defendant.	)	C.A. No. 2024-0184-LWW

CERTIFICATE OF SERVICE

I, Jason Altabet, hereby certify that on May 15, 2025, true and accurate copies of the Statement of interest were served upon the following counsel for Plaintiff and counsel for Defendants by email and by FedEx at the following addresses:

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