

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

CISSY THUNDERHAWK, WAŠTÉ WIN YOUNG, REVEREND JOHN
FLOBERG, and JOSÉ ZHAGÑAY, on behalf of themselves and all similarly
situated persons,

PLAINTIFFS-APPELLANTS,

v.

MORTON COUNTY; SHERIFF KYLE KIRCHMEIER; GOVERNOR DOUG
BURGUM; FORMER GOVERNOR JACK DALRYMPLE; DIRECTOR GRANT
LEVI; and SUPERINTENDENT MICHAEL GERHART, JR.,

DEFENDANTS-APPELLEES.

On Appeal from the United States District Court
for the District of North Dakota - Western
Honorable Judge Daniel M. Traynor, District Judge
(1:18-cv-00212-DMT)

**MOTION FOR LEAVE TO FILE BRIEF OF AMERICAN CIVIL
LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF
NORTH DAKOTA AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-
APPELLANTS AND REVERSAL**

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**Admitted only in South Dakota*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae American Civil Liberties Union and American Civil Liberties Union of North Dakota state that they do not have a parent corporation and that no publicly held corporation owns 10% or more of their stock.

Dated: July 20, 2026

By: /s/ Vera Eidelman
Vera Eidelman

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), amici curiae American Civil Liberties Union (“ACLU”) and American Civil Liberties Union of North Dakota (“ACLU of North Dakota”) (together, “Amici”) respectfully submit this motion for leave to file an amicus brief in this case. In support of this motion, Amici submit their proposed brief (attached as Exhibit A) and state as follows:

1. Federal Rules of Appellate Procedure 29(a)(2)–(3) provide that amici curiae may file a brief with the Court’s permission, and that attendant motions requesting the Court’s leave to file such briefs must state the “movant’s interest,” “the reason why an amicus brief is desirable,” and “why the matters asserted are relevant to the disposition of the case.”

2. Whether to grant a motion for leave to file an amicus brief is a matter of the Court’s discretion. *See, e.g., N.M. Oncology & Hematology Consultants, Ltd. v. Presbyterian Healthcare Servs.*, 994 F.3d 1166, 1175 (10th Cir. 2021) (“Federal courts have discretion in allowing participation as amicus curiae.”); *Lefebure v. D’Aquila*, 15 F.4th 670, 673 (5th Cir. 2021) (“Courts enjoy broad discretion to grant or deny leave to amici under Rule 29.” (citation omitted))

3. As then-Judge Alito once noted, “it is preferable to err on the side of granting leave.” *Neonatology Assocs., P.A. v. Comm’r of Internal Review*, 293 F.3d 128, 133 (3d Cir. 2002). “[A] court is usually delighted to hear additional arguments from able amici that will help the court toward right answers . . .” *Mass. Food Ass’n*

v. Mass. Alcoholic Beverages Control Comm’n, 197 F.3d 560, 567 (1st Cir. 1999). “[I]f a good brief is rejected, the merits panel will be deprived of a resource that might have been of assistance,” including from “entities with particular expertise” or that “argue points deemed too far-reaching for emphasis by a party intent on winning a particular case.” *Neonatology Assocs.*, 293 F.3d at 132, 133 (citations omitted). In addition, rejecting amicus briefs may “convey an unfortunate message about the openness of the court” and “[u]nless a court follows a policy of either granting or denying motions for leave to file in virtually all cases,” denying a motion for leave carries the risk of “at least the perception of viewpoint discrimination.” *Id.* at 133.

4. This case considers whether the traditional-public-forum status of a particular stretch of rural road was “clearly established at the time of the events alleged in the Complaint”—a question that the district court referred to as “the lynchpin of the . . . analysis” in its order, App. 247; R. Doc. 168, at 2—and, relatedly, whether courts must engage in a particularized, fact-intensive inquiry before deeming any road to be a traditional public forum.

5. The ACLU is a nationwide, nonprofit organization that since 1920 has sought to protect the civil liberties of all Americans, including the rights to freedom of speech and assembly. The ACLU of North Dakota is a state chapter of the ACLU.

As organizations committed to protecting First Amendment rights, the ACLU and ACLU of North Dakota have an interest in the proper resolution of this case.

6. Amici’s proposed brief is relevant to the proper resolution of this case. The brief details governing caselaw from the Supreme Court and this Court that makes clear that, absent limited circumstances not present in this case, roads are traditional public forums and courts should not engage in any particularized inquiry to make that determination. Relying on Supreme Court caselaw, the brief explains why that is the governing rule, and also offers examples of protests throughout history and around the country that have taken place on rural roads, emphasizing their compatibility with expressive activity and the unique role they play as sites of discourse in rural communities.

7. Amici respectfully submit that their brief is also desirable. Amici have extensive experience litigating First Amendment cases, including those concerning speech rights in traditional public forums, and are well-positioned to address the question raised by this case. *See, e.g., Hague v. Comm. for Indus. Org.*, 307 U.S. 496 (1939) (counsel); *Stahl v. City of St. Louis*, 687 F.3d 1038 (8th Cir. 2012) (counsel); *Mo. Broads. Ass’n v. Schmitt*, 946 F.3d 453 (8th Cir. 2020) (amicus). In addition, the ACLU, the ACLU of North Dakota, and other ACLU state affiliates have frequently appeared before this Court as amici curiae—including in a prior appeal in this case. *See Thunderhawk v. Morton Cnty.*, No. 20-3052, 2022 WL 2441323

(8th Cir. July 5, 2022) (per curiam) (listing ACLU and ACLU of North Dakota as amici). *See also, e.g., Turtle Mountain Band of Chippewa Indians v. Howe*, No. 23-3655, 2026 WL 1967126 (8th Cir. July 7, 2026) (listing ACLU and ACLU of Arkansas as amici); *Equal Emp. Opportunity Comm’n v. N. Mem’l Health Care*, 908 F.3d 1098, 1099 (8th Cir. 2018) (noting that appellant was “supported by numerous religious organizations and the ACLU as *amici curiae*”); *S.J.W. ex rel. Wilson v. Lee’s Summit R-7 Sch. Dist.*, 696 F.3d 771, 772 (8th Cir. 2012) (listing ACLU of Missouri and Kansas as amici); *Knights of Ku Klux Klan v. Curators of Univ. of Mo.*, 203 F.3d 1085, 1092 n.6 (8th Cir. 2000) (discussing “refine[d]” version of argument offered by ACLU of Missouri as amicus).

8. Plaintiffs-Appellants consent to the filing of the amicus brief. Defendants-Appellees do not consent.

For the foregoing reasons, Amici respectfully request that this Court grant the motion for leave to file a brief of amici curiae.

Dated: July 20, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify as follows:

1. This Motion for Leave to File Brief of Amici Curiae in Support of Plaintiffs–Appellees and Affirmance complies with the type-volume limitation of Fed. R. App. P. 38(d)(2)(A) because this motion contains 910 words; and
2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface, 14-point Times New Roman, using the word-processing system Microsoft Word 2010.

Dated: July 20, 2026

By: /s/ Vera Eidelman
Vera Eidelman

Counsel for Amici Curiae

**CERTIFICATION OF COMPLIANCE WITH EIGHTH CIRCUIT RULE
28A(H)**

Pursuant to Local Rule 28A(H), I hereby certify that the electronic version of this Motion for Leave to File Brief of Amici Curiae in Support of Plaintiffs—Appellees and Affirmance has been scanned for viruses using Windows Security anti-virus (version 1.435.67.0) and no virus was detected.

Dated: July 20, 2026

By: /s/ Vera Eidelman
Vera Eidelman

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on July 20, 2026.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 20, 2026

By: /s/ Vera Eidelman

Vera Eidelman

Counsel for Amici Curiae

Exhibit A

**IN THE UNITED STATES COURT OF APPEALS
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STATEMENT OF INTEREST¹

The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit organization that since 1920 has sought to protect the civil liberties of all Americans, including the rights to freedom of speech and assembly. The ACLU of North Dakota is a state chapter of the ACLU. The ACLU and its chapters and affiliates have frequently appeared as both counsel and amici in cases to defend the First Amendment rights of people to protest in the streets. *See, e.g., Hague v. Comm. for Indus. Org.*, 307 U.S. 496 (1939) (counsel); *Stahl v. City of St. Louis*, 687 F.3d 1038 (8th Cir. 2012) (counsel); *Missouri Broads. Ass’n v. Schmitt*, 946 F.3d 453 (8th Cir. 2020) (amicus).

The ACLU and the ACLU of North Dakota submit this brief to address what the court below referred to as “the lynchpin of the . . . analysis”: whether the stretch of rural road at issue in this case “was clearly established at the time of the events alleged in the Complaint as a traditional public forum.” App. 247; R. Doc. 168, at 2.

¹ Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(E), amici certify that no person or entity, other than amici curiae, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part.

INTRODUCTION AND SUMMARY OF ARGUMENT

Public streets are quintessential traditional public forums. Streets of every kind—including rural roads, multi-lane roads, and high-speed roads—have served as sites of protest throughout our nation’s history and continue to do so today. In the 1960s and 70s, civil rights demonstrators and anti-war protesters marched along rural roads to make their voices heard. More recently, Catholic youth have marched on rural roads to protest abortion, people have lined up along highways to oppose COVID-19 mandates, and Buddhist monks have marched from Texas to D.C. to spread a message of world peace.

As one of the few communal spaces in rural areas, roads are uniquely positioned to offer rural communities, and those wishing to address them, a public space in which to associate, communicate thoughts, and discuss public issues. This includes issues that specifically affect rural communities, from new construction and development in small towns to the state of rural healthcare.

As alleged, the road protest at issue here is no different. Plaintiffs, individuals who opposed the construction of the Dakota Access pipeline, used a public rural road near the construction site to express their opposition. Defendants shut down their access to that road for five months. Though the court below correctly concluded that the road is a traditional public forum, App. 249; R. Doc. 168, at 4, it held that the road’s forum status was not clearly established at the time of the alleged violation

because no court had previously held that a road with identical features constituted a traditional public forum, and so defendants were entitled to qualified immunity at the motion to dismiss stage.

That was error as a matter of law—and it was an error that, if affirmed, will have significant practical effects. If this Court holds that, in order for protesters who experience a First Amendment violation on a public street (or, by the same logic, sidewalk or park) to vindicate their rights, a court must have previously held that that *particular* site, or a place very much like it, is a traditional public forum, people will think twice before joining a protest in many spaces around the country. And requiring such a particularized inquiry for every public street, sidewalk, or park will also burden judicial resources unnecessarily. Meanwhile, recognizing the forum status of rural roads will not undercut the government’s ability to ensure that such roads are safe and passable, for the government can regulate even speech on streets and highways as long as its regulation is reasonable, content-neutral, and leaves open ample alternative means of communication.

The First Amendment requires reversal. Courts, including the Supreme Court and this Court, have consistently recognized that public streets are the archetypical traditional public forum, and have applied that rule to hold that specific public roads—including rural, multi-lane, and high-speed roads like the one at issue here—are traditional public forums, without further analysis. Under existing law, there are

limited, discrete circumstances in which courts properly ask whether details of a particular space can negate its presumed forum status—for example, when sidewalks or streets are expressly reserved for non-expressive purposes, or physically blocked off—but none of those are relevant here.

This Court should reverse the court below and hold that, absent limited circumstances not present here, it is clearly established that a road is a traditional public forum.

ARGUMENT

I. STREETS, INCLUDING ROADS, ARE QUINTESSENTIAL TRADITIONAL PUBLIC FORUMS.

A. Streets hold a special significance as this nation’s archetypical space for public speech and association.

More than 80 years ago, the Supreme Court held that “[w]herever the title of streets . . . may rest, they have immemorially been held in trust for the use of the public.” *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939). In striking down a law that restricted the distribution of leaflets in the streets of Jersey City, the Court rejected the government’s argument that its “ownership of streets . . . is as absolute as one’s ownership of his home,” and refused to grant it the power “to exclude citizens from the use thereof.” *Id.* at 514. Instead, in seminal language, the Supreme Court recognized that, “time out of mind, [streets] have been used for . . . assembly, communicating thoughts between citizens, and discussing public questions”—uses that “from ancient times, [have] been a part of the privileges, immunities, rights, and

liberties of citizens.” *Id.* at 515. This pronouncement was not about sidewalks limited to pedestrian foot traffic; it was specifically about *streets*—public thoroughfares for vehicles and, at the time, horses. *See Comm. for Indus. Org. v. Hague*, 25 F. Supp. 127, 143 (D.N.J. 1938) (noting that the leafletting law at issue was purportedly meant to “protect . . . against . . . the traditional frightening of horses,” among other things).

The Court has since repeatedly recognized that it is “a basic rule . . . that a street . . . is a quintessential forum for the exercise of First Amendment rights.” *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017); *see also Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983) (recognizing that “streets” are “quintessential public forums”); *United States v. Grace*, 461 U.S. 171, 177 (1983) (“[S]treets . . . are considered, without more, to be ‘public forums.’”). Indeed, “public streets a[re] the archetype of a traditional public forum.” *Frisby v. Schultz*, 487 U.S. 474, 480 (1988) (citation omitted).

It is therefore “no accident that public streets . . . have developed as venues for the exchange of ideas.” *McCullen v. Coakley*, 573 U.S. 464, 476 (2014). “Even today, they remain one of the few places where . . . speaker[s] can be confident that [they are] not simply preaching to the choir.” *Id.* While “individual[s] confronted with an uncomfortable message can always turn the page [in a book or magazine], change the channel [on TV], or leave [a] Web site, . . . on public streets and sidewalks

... listener[s] often encounter[] speech [they] might otherwise tune out.” *Id.* “In light of the First Amendment’s purpose to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, this aspect of traditional public fora is a virtue, not a vice.” *Id.* (quotation marks and citation omitted).

Equally, traditional public forums hold a “special significance” because the fact that speech is uttered on a public street suggests that “what is at issue is an effort to communicate to the public . . . on matters of public concern.” *Snyder v. Phelps*, 562 U.S. 443, 456 n.4 (2011). “[R]esort to [such] public places” has been “immemorially associated” with “opportunities for the communication of thought and the discussion of public questions.” *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941). And this venerable tradition has a very practical side as well: streets provide a free forum for those who cannot afford to take out an advertisement or spend the time to write an op-ed. *See City of Ladue v. Gilleo*, 512 U.S. 43, 57 (1994) (“Even for the affluent, the added costs in money or time [for certain types of expression] . . . may make the difference between participating and not participating in some public debate.”).

B. Courts have applied the rule that streets are traditional public forums without engaging in any particularized inquiry.

The presumption that streets are traditional public forums is so strong that, “[o]rdinarily, a determination of the nature of the forum . . . follow[s] automatically” from the fact that it is a street. *Frisby*, 487 U.S. at 480. In *Frisby*, the Supreme Court

applied this rule to hold that a road in a town’s residential area constituted a traditional public forum. The road at issue was “within a subdivision of the Town zoned exclusively for single-family residences,” where “[t]here are no sidewalks, curbs, gutters, or street lights” and the “road surfaces . . . are approximately 30 feet wide and blacktopped.” *Schultz v. Frisby*, 619 F. Supp. 792, 793–94 (E.D. Wis. 1985), *vacated*, 818 F.2d 1284 (1987).

But the Supreme Court didn’t engage with those details. It held that “[n]o particularized inquiry into the precise nature of a specific street is necessary” for the forum determination; instead, “all public streets are held in the public trust and are properly considered traditional public fora.” *Frisby*, 487 U.S. at 480–81. “Accordingly,” it concluded, “the streets [at issue] are traditional public fora.” *Id.* at 481. The Court emphasized that its prior “decisions identifying public streets . . . as traditional public fora are not accidental invocations of a ‘cliché.’” *Id.* at 480. And it expressly rejected the government’s attempt to rely on the particulars of the roads at issue—including “the[ir] physical narrowness . . . as well as [] their residential character”—to undercut their traditional public forum status. *Id.* “The residential character of those streets may well inform *the application* of the relevant test [for regulations of speech in a traditional public forum], but it does not lead to a different test.” *Id.* (emphasis added).

The Supreme Court has frequently applied this rule categorically to hold that roads are traditional public forums purely because they are roads. For example, in *Forsyth County v. Nationalist Movement*, the Supreme Court considered an ordinance that regulated public assemblies on “public . . . roads” in a “primarily rural . . . county.” 505 U.S. 123, 124, 126 (1992). As described by the court below, the protest that gave rise to the suit had planned to march along a “two-lane street” from a school to a courthouse and would have required the county to “close all traffic.” *Nationalist Movement v. City of Cumming*, 913 F.2d 885, 887 (11th Cir. 1990). But, as in *Frisby*, the Supreme Court did not delve into any particulars of the regulated road before deeming it a traditional public forum. Instead, it simply held that “[t]he ordinance” regulated “parades[] . . . in ‘the archetype of a traditional public forum[.]’” *Forsyth*, 505 U.S. at 130 (quoting *Frisby*, 487 U.S. at 480).

Similarly, in *McCullen*, the Court held that a state law regulating access to “public way[s]” and “sidewalk[s]” regulated speech in a traditional public forum, without considering the specific roads and sidewalks where the law could be applied. 573 U.S. at 476 (alterations in original). And, in *Boos v. Barry*, the Court held that a law regulating the display of signs within 500 feet of a foreign embassy regulated

speech in “traditional public fora” simply because it “bar[red] . . . speech on public streets and sidewalks.” 485 U.S. 312, 318 (1988).²

This Circuit has also clearly accepted and reiterated the presumed traditional public forum status of roads. “[P]ublic places’ historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, without more, to be ‘public forums.’” *Pursley v. City of Fayetteville*, 820 F.2d 951, 954 (8th Cir. 1987) (alteration in original) (citing *Grace*, 461 U.S. at 177). Eighth Circuit law defines “[a] traditional public forum [a]s a type of property that ‘has the physical characteristics of a public thoroughfare, . . . [has] the objective use and purpose of open public access or some other objective use and purpose inherently compatible with expressive conduct, [and has] historical[ly] and traditional[ly] . . . been used for expressive conduct.’” *Bowman v. White*, 444 F.3d 967, 975 (8th Cir. 2006) (fourth and fifth alterations in original) (quoting *Warren v. Fairfax Cnty.*, 196 F.3d 186, 191 (4th Cir. 1999)). The vast majority of rural roads satisfies each of these factors by definition. Indeed, as this Court has recognized,

² The court below concluded that neither *Forsyth* nor *McCullen* could help decide this case because they “did not discuss highways or bridges in sparsely populated rural areas . . . but focused on the constitutionality of the city ordinance” at issue. App. 253; R. Doc. 168, at 8. That ignores the logic of the cases: the constitutionality of the laws turned on whether or not they regulated speech in a traditional public forum—and, as discussed above, the Supreme Court held that they did simply because they regulated parades on roads and protests on streets.

streets are a “quintessential” example of traditional public forums. *Ball v. City of Lincoln*, 870 F.3d 722, 730 (8th Cir. 2017).

Like the Supreme Court, the Eighth Circuit has applied this rule to hold that roads are traditional public forums without any further analysis. *See Ass’n of Cmty. Orgs. for Reform Now v. St. Louis Cnty.*, 930 F.2d 591, 594 (8th Cir. 1991) (holding that regulation of speech in “roadways” regulated speech in a traditional public forum); *Traditionalist Am. Knights of the Ku Klux Klan v. City of Desloge*, 775 F.3d 969, 974 (8th Cir. 2014) (accepting parties’ agreement that ordinance regulating “speech in the public streets of Desloge” regulated “a traditional public forum” (citing *Frisby*, 487 U.S. at 480)).³

³ The same is true of other courts of appeal. In considering a law regulating speech on highways, the Fourth Circuit has held that “[t]here is . . . no question that public streets,” including the highways at issue, “qualify as traditional public forums.” *Reynolds v. Middleton*, 779 F.3d 222, 225 (4th Cir. 2015) (quotation marks and citation omitted); *see also Warren*, 196 F.3d at 191–92 (“Since it is so likely that any given street, sidewalk, or park meets all three characteristics of a traditional public forum a court can generally treat a street, sidewalk, or park as a traditional public forum without making a ‘particularized inquiry.’” (quoting *Frisby*, 487 U.S. at 481)). The Sixth Circuit has similarly held that “[t]here can be no doubt that [a county’s] streets . . . are traditional public fora.” *Ater v. Armstrong*, 961 F.2d 1224, 1227 (6th Cir. 1992); *see also Dean v. Byerley*, 354 F.3d 540, 549–50 (6th Cir. 2004) (recognizing that “the Supreme Court considers streets . . . to be public fora for purposes of First Amendment scrutiny” and assuming that the street at issue was a traditional public forum without further analysis (citing *Grace*, 461 U.S. at 177)).

Reflecting the same approach, the Fifth Circuit has applied time, place, and manner scrutiny—that is, the scrutiny that applies in a traditional public forum—to a law regulating solicitations in roadways because “the applicable law [states that] streets are traditional public forums.” *Houston Chronicle Publ’g. Co. v. City of League*

C. The traditional public forum status of streets is so clear that courts compare other spaces to streets to determine their forum status.

The status of streets as traditional public forums is so well established that courts often use public roads as a benchmark against which to determine the forum status of other public spaces. Several courts have held that other spaces are traditional public forums because they closely resemble streets. *See, e.g., Brindley v. City of Memphis*, 934 F.3d 461, 469 (6th Cir. 2019) (holding that a paved, privately owned two-lane roadway “looks and functions like a public street, and that is enough to classify it as a traditional public forum”); *Warren*, 196 F.3d at 190 (holding that a pedestrian plaza “is a traditional public forum because it is merely a combination of the three prototypical examples of traditional public fora—streets, sidewalks, and parks”); *McCraw v. City of Oklahoma City*, 973 F.3d 1057, 1067–68 (10th Cir. 2020) (holding that medians on public roads are traditional public forums because they “share fundamental characteristics with public streets, sidewalks, and parks, which are quintessential public fora”).

City, 488 F.3d 613, 621–22 (5th Cir. 2007) (citing *Grace*, 461 U.S. at 177). The Ninth Circuit has applied time, place, and manner scrutiny to speech restrictions in roads for the same reason. *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 945 (9th Cir. 2011) (applying time, place, and manner scrutiny to law regulating solicitation in roadways).

D. Material differences from open public roads can undercut a specific space’s traditional public forum status, but no such differences are present here.

Similarly, this Court has started with the premise that open, public streets are traditional public forums in order to hold that other spaces are not because they are materially distinguishable from roads. This Court’s opinion in *Sessler v. City of Davenport* is particularly instructive on this point. Like this case, *Sessler* raised the question of whether government officials were entitled to qualified immunity for restricting speech on a public street—except the street at issue had been “fenced-off” for a vendor festival. 102 F.4th 876, 879 (8th Cir. 2024). The Court held that qualified immunity was appropriate in that case, but only because specific “compelling countervailing details” made the streets’ forum status during the festival insufficiently clear. *Id.* at 884. *See also id.* at 880 (noting that “[o]rganizers installed six-foot high chain link fences,” required vendors to “pay for spaces within the fenced-off area,” and imposed “limitations on [vendors’] noise levels”).

Critically, in reaching that conclusion, the Court recognized that the “City streets and sidewalks” at issue “undisputedly served as a ‘traditional public forum’ under normal circumstances when fences were not erected,” and that “a generally open street” is, by definition, “a traditional public forum.” *Id.* at 879, 881. It asked only if those streets “*remained* a ‘traditional public forum’” once “fenced-off”—and it held that the answer to *that* question was not clear. *Id.* at 879 (emphasis added).

The Court need only look to the first step of the Court’s analysis in *Sessler* to hold that the rural road in this case—which involved no fencing off or fees for access—is clearly a traditional public forum.

This Court’s analysis in *Ball* and *Bowman* follow a similar analytical framework to *Sessler*. Both cases recognize that public streets are normally traditional public forums, and then compare the particular spaces at issue—a commercial plaza and a university campus—to public roads to assess whether they, too, qualify as traditional public forums. *See Ball*, 870 F.3d at 734–35 (holding that a commercial plaza did not constitute a traditional public forum because, unlike public streets, it was “not primarily used as [a] thoroughfare for the public to travel” but instead “function[ed] as a venue for commercial use by Arena Tenants, as a means to facilitate safe and orderly access to the Arena for its patrons, as a security screening area, and as a gathering place and entryway for Arena patrons”); *Bowman*, 444 F.3d at 978 (holding that “streets . . . that might otherwise be traditional public fora may be treated differently when they fall within the boundaries of the University’s vast campus” because a campus is not designed “to provide a forum for all persons to talk about all topics at all times” and so “differs in significant respects from public forums such as streets”). In contrast, the rural road at issue here was not designed for, or limited to use by, particular patrons or speakers.

The Supreme Court has taken a similar approach to restricted-access or -use areas that include streets and sidewalks—first recognizing that streets are quintessential public forums and then asking if the limited access areas at issue are sufficiently distinct from typical roads (or sidewalks). *See United States v. Kokinda*, 497 U.S. 720, 726–27 (1990) (plurality opinion) (holding that, though “streets and parks” have “been traditionally open to the public for expressive activity,” a postal service sidewalk was not a traditional public forum, because it was not a public thoroughfare and was “constructed solely to provide for the passage of individuals engaged in postal business”); *Greer v. Spock*, 424 U.S. 828, 838 (1976) (holding that a military base, which included streets and sidewalks, was not a traditional public forum because, unlike open streets, it had not “traditionally served as a place for free public assembly and communication of thoughts by private citizens”).

Here, the Court need only apply the general rule that open streets are traditional public forums because, as alleged in the complaint, there are no “compelling countervailing details” to pull the road at issue here from that status. *See Sessler*, 102 F.4th at 884. To the extent that the government has concerns regarding the “proximity, speed, and volume of passing cars,” those “may support [an] argument that a time, place, and manner restriction is constitutional . . . [b]ut ample precedent holds that these characteristics do not deprive public streets of their status as public fora.” *McCraw*, 973 F.3d at 1068–69. *See also Frisby*, 487 U.S. at

481 (such characteristics “may well inform the application of the relevant test, but it does not lead to a different test”).⁴

II. THE GENERAL RULE THAT STREETS ARE TRADITIONAL PUBLIC FORUMS HOLDS FOR RURAL ROADS, HIGH-SPEED ROADS, AND MULTI-LANE ROADS.

A. Rural roads, high-speed roads, and multi-lane roads have served as sites of protest throughout our nation’s history.

The Eighth Circuit test for forum status also considers whether there “any special characteristics regarding the environment” that inform the inquiry. *Ball*, 870 F.3d at 731. *See also Sessler*, 102 F.4th at 884 (considering “compelling countervailing details”). If anything, the special characteristics of rural roads—as exemplified by their historic uses—confirm their traditional public forum status.

⁴ Equally, the government cannot rob the road here of traditional public forum status by arguing that it was built for transportation, not expression. As the Fourth Circuit has explained, “[o]ne cannot seriously argue with Justice Kennedy’s observation that the traditional public fora of streets, sidewalks, and parks are not primarily designed for expressive purposes.” *Warren*, 196 F.3d at 195 (citing *Int’l Soc’y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 696–97 (1992) (Kennedy, J., concurring in the judgment) (“*ISKCON*”)). And yet they are, undeniably, traditional public forums. That is because the question in forum law “is not whether the property was *designed* for expressive activity, but whether the objective uses and purposes of the property *are compatible with* the wide measure of expressive conduct characterizing public fora.” *Id.* (emphasis added); *see also First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114, 1125–26 (10th Cir. 2002) (citing *ISKCON*, 505 U.S. at 686 (O’Connor, J., concurring)). To hold otherwise would enable the government to destroy the public forum status of any public land by deeming its purpose to be anything other than expressive. *But see Grace*, 461 U.S. at 180 (the government “may not by its own *ipse dixit* destroy the ‘public forum’ status of streets and parks which have historically been public forums”) (citation omitted)).

From the civil rights marches across rural fields and state lines in the 1960s to today's protests against immigration enforcement actions, rural roads and highways have served as sites of protest. During the civil rights era, political leaders often relied on multi-day protest marches—on routes that necessarily included rural roads, high-speed roads, multi-lane roads, and bridges—to capture a national audience and transport their message across the United States. Today, protesters continue to rely on marches to D.C. to convey their message.

The 1965 Voting Rights March is one of the most iconic examples. On March 21, 1965, thousands of voting rights activists began a 54-mile-long journey along U.S. Route 80 from Selma, Alabama to the state capitol in Montgomery. The planned route covered bridges, sidewalks, and the highway between the two cities. *Williams v. Wallace*, 240 F. Supp. 100, 104–05, 107 (M.D. Ala. 1965). For five days, protesters marched through rural and urban areas, walking along everything from a narrow dirt road to a high-speed highway.⁵ The highway was two lanes with a three-foot shoulder in some places and four lanes with a six-foot shoulder in others. *Williams*, 240 F. Supp. at 107.⁶

⁵ Townsend Davis, *Weary Feet, Rested Souls: A Guided History of the Civil Rights Movement* 117 (W. W. Norton & Company 1998).

⁶ Notably, a district court considering the marchers' challenge to the government's interference with their intended march held that they had a "constitutional right to march along [the h]ighway" and that Governor Wallace's efforts to "absolutely

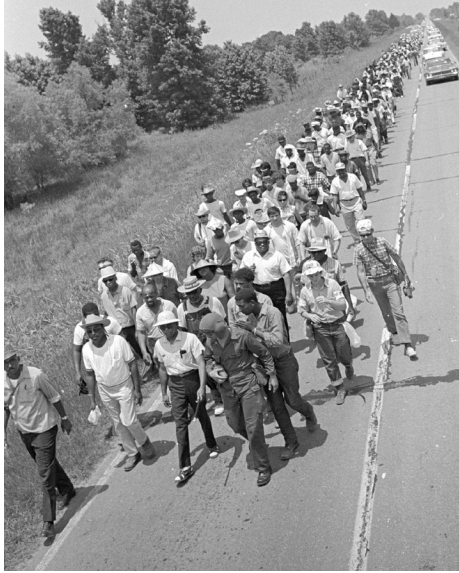
A year later, approximately 15,000 protesters, joined by major civil rights organizations, marched across state lines from Memphis, Tennessee to Jackson, Mississippi in the Meredith March Against Fear, crossing dirt roads, densely packed Black neighborhoods, and interstate highways and, in the process, registering over 4,000 Black Americans to vote.⁷ Participants included elected officials, clergymen, and civil rights leaders like Martin Luther King, Jr. and Stokely Carmichael.

Thirty years after the Voting Rights March, Congress designated Route 80 a National Historic Trail. Half a century later, it awarded the “foot soldiers” and civil rights leaders of the Selma Marches, including the late Congressman John Lewis, Congressional Gold Medals.⁸

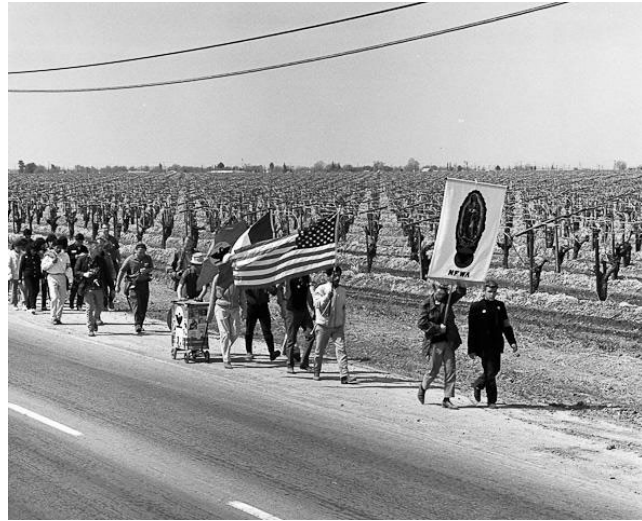
ban[] any march by any manner—regardless of how conducted” violated the First Amendment. *Williams*, 240 F. Supp. at 107.

⁷ Aram Goudsouzian, *Down to the Crossroads: Civil Rights, Black Power, and the Meredith March Against Fear* 246–47 (Farrar, Straus and Giroux 2015).

⁸ C-SPAN, *Congressional Gold Medal Ceremony for 1965 Voting Rights Marches Foot Soldiers* (C-SPAN, streamed Feb. 24, 2016), <https://www.c-span.org/video/?405070-1/congressional-gold-medal-ceremony-1965-voting-rights-marches-foot-soldiers>.



(Bob Fitch, *Meredith March Against Fear, June 1966* (photograph 1966), available at Bob Fitch Photography Archive, Stanford Libraries, <https://perma.cc/WC4K-42BJ>)



(Paul Richards, *Farm Workers on Strike 1959–1966* (Photograph, 1966), available at Harvey Richards Media Archive, <https://perma.cc/Z5WT-7CYZ> .)

Concurrently, labor activists and anti-war dissidents used rural roads and highways to elevate their own political demands. From 1963 through 1975, protesters in hundreds of antiwar demonstrations walked across the roads of rural towns and major cities.⁹ In Minneapolis, Minnesota, 30,000 to 40,000 people marched ten miles to the state's capitol in protest of the war, setting the record for

⁹ Amanda Miller, *Vietnam-Era Antiwar Protests - Timeline and Maps 1963–1975*, Univ. of Wash., <https://perma.cc/24MD-6VND>.

the largest of any such demonstration in the state’s history.¹⁰ And on the West Coast, thousands of California farmworkers and their supporters spent twenty-five days walking roughly 300 miles from Delano to Sacramento, California, marching along “dusty highways” and through “farming communities of the Central Valley” to bring attention to dangerous working conditions at grape farms across the state.¹¹

Today, activists continue the long tradition of utilizing rural roads as sites of protest. In 2015, supporters with the National Rural Health Association took to backroads to protest the closure of rural hospitals and walked 283 miles from North Carolina to Washington, D.C.¹² Rural roads and highways also feature prominently in demonstrations against abortion. In Mobile, Alabama, hundreds of people have participated in the March for Mobile, created so people there could join in nationwide commemorative protest against *Roe v. Wade* even if they could not make it to Washington, D.C.¹³ And Catholic youth engage in an annual continental pro-

¹⁰ William Greider, *Fires Hit Campuses; Rallies Calm*, ProQuest Hist. Newspapers: Wash. Post, May 10, 1970, at A1.

¹¹ *The Road to Sacramento: Marching for Justice in the Fields*, National Park Service, <https://perma.cc/PMF5-KZU7>.

¹² Will Huntsberry, *As More Rural Hospitals Close, Advocates Walk to Washington*, NPR (June 14, 2015), <https://perma.cc/3SDU-JZKD>.

¹³ Christian Jennings, *March for Life Draws Hundreds in Mobile*, NBC 15 News (Jan. 27, 2017), <https://perma.cc/MM4K-HTF8>. Similar marches are held annually across hundreds of rural towns, from Palatine, Illinois to Cody, Wyoming. See Bob Susnjara, *March for Life Draws Hundreds Along Northwest Highway in Palatine*, Daily Herald (Oct. 19, 2019), <https://perma.cc/6FS5-U8KS>; Zac Taylor, *About 90*

life pilgrimage, inspired by Pope John Paul II's 1995 challenge to "create a 'culture of life,'" walking in shifts for dozens of miles starting in Stanley County, South Dakota, with the aim of reaching Fort Pierre by nightfall.¹⁴

In the summer of 2020, when protests against police brutality gripped the country, rural roads again served as a site of protest. On June 4, more than 1,000 protesters in Catskill, NY marched down Main Street, across the Catskill Creek bridge, finally taking a knee at the police station. Days later, in Morehead, Kentucky, a small town, 400 protesters marched down Main Street, using the street to transport their message from a library to a local Veteran memorial.¹⁵ The national outcry also inspired extensive counterprotest in the streets, including in Wantagh, New York, home to a population of both active and retired law enforcement agents. More than 1,000 local protesters marched down Wantagh Avenue in the pro-police rally, with participants chanting "back the blue" and "Blue Lives Matter."¹⁶

Come Out for Annual Right to Life March Saturday, Cody Enterprise (Jan. 22, 2018), <https://perma.cc/YW3A-QZNT>.

¹⁴ Stephen Lee, *Pro-Life Youth on Cross-Country Crossroads Pilgrimage*, Crossroads Pro-Life (June 23, 2015), <https://perma.cc/PPJ6-PD68>.

¹⁵ John Flavell, *Black Lives Matter March in Morehead*, Daily Independent (June 6, 2020), <https://perma.cc/V5FS-33M5>; Nick Oliver, *Hundreds Come Together for Morehead Peaceful Protest*, WKYT (June 6, 2020), <https://perma.cc/8P7L-BS3K>.

¹⁶ Kayla Guo, *Over 1,000 Attend 'Back the Blue' March in Wantagh: PHOTOS*, Patch (July 6, 2020), <https://perma.cc/Y8M9-FPS8>; Jesse Coburn, *Supporters March to Shine Light on Work of Police Officers*, Newsday (July 6, 2020), <https://perma.cc/D35L-2PQM>.

Rural roads have also continued to offer a space to communicate on local issues, including those tied to the particular site of protest. In March 2021, University of South Florida students and faculty gathered on an avenue outside a forest preserve to protest the university's plans to develop it into a golf course.¹⁷ In 2023, people protested along the road that leads to the White Sands Missile Range, where the first detonation of a nuclear weapon occurred, in an effort to gain recognition and compensation for the test's long-term health effects.¹⁸ Last May, residents of Lebanon County, Pennsylvania rallied along Route 422, a multi-lane road, to protest construction of a data center nearby.¹⁹

And rural roads also remain a key component of marches from around the country to Washington, D.C., including marches against fascism from Philadelphia,²⁰ a 15-week-long "Walk for Peace" by Buddhist monks that began in

¹⁷ Jessica Meszaros, *USF Students, Faculty Protest Development of Forest Preserve*, WUSF (May 10, 2021), <https://perma.cc/UC6B-5ZXZ>.

¹⁸ Russell Contreras, *Documentary Highlights Plight of U.S. Atomic Bomb Test Victims*, Axios (Nov. 9, 2023), <https://perma.cc/H5Y3-J7A7>; Nora Wendl, *Trinity Fallout*, Places J. (June 2024), <https://perma.cc/TP9S-GCEB>.

¹⁹ Matthew Toth, *Protesters Rally on Route 422 Against Proposed S.Annville Data Center*, Lebanon Daily News (May 2, 2026), <https://perma.cc/E6CS-E6T9>.

²⁰ We Are America March, <https://perma.cc/A3MC-9TS9>.

Texas,²¹ and rallies along highways to support truckers who drove from Southern California to demand the lifting of COVID-19 restrictions.²²

Thus, our nation’s rural roads, high-speed roads, and multi-lane roads have a storied history of protest in accordance with the definition of traditional public forums under the law. They are public thoroughfares that are “inherently compatible with expressive conduct, [and that have] historical[ly] and traditional[ly] . . . been used for expressive conduct.” *Bowman*, 444 F.3d at 975 (second and third alterations in original) (quoting *Warren*, 196 F.3d 186).

B. Courts have specifically applied this rule to rural roads.

Courts around the country have specifically held that rural roads, including multi-lane and high-speed roads, constitute traditional public forums simply because they are roads. *See e.g., Forsyth Cnty.*, 505 U.S. at 130 (holding that “public . . . roads” in a “primarily rural . . . county” are “the archetype of a traditional public forum.” (quotation marks omitted) (quoting *Frisby*, 487 U.S. at 480)); *Jacobson v. United States Dep’t of Homeland Sec.*, 882 F.3d 878, 882–83 (9th Cir. 2018) (holding that public rural roads are traditional public forums and the government bears the burden of proving otherwise, by showing that they no longer function as

²¹ Tiffany Stanley & Deepa Bharath, *Buddhist Monks’ 15-Week Walk for Peace Ends in Washington, D.C.*, AP (Feb. 10, 2026), <https://perma.cc/3SVA-H5PG>.

²² *See* WQOW, *SLIDEWSHOE: Freedom Convoy passes through Chippewa Valley Friday*, WQOW (Mar. 4, 2022), <https://perma.cc/D36D-QWKH>.

public rural roads); *Reynolds v. Middleton*, 779 F.3d 222, 225 (4th Cir. 2015) (holding that “[t]here is . . . no question that public streets,” including the highways at issue, “qualify as traditional public forums” (citation omitted)); *Brindley*, 934 F.3d at 469 (holding that two-lane roadway that directly intersects with a busy public thoroughfare is a traditional public forum).

Indeed, rural roads are often a necessary site for communicating certain messages or reaching certain audiences. As one district court explained in holding that “rural roads” constitute a traditional public forum, protesting on such roads may offer a *more* effective way to communicate a message than “picketing in a park or along a roadway in a more urban area” would because, on rural roads, “the intended communication [may be more likely to] reach its intended audience.” *Pineros Y Campesinos Unidos del Noroeste v. Goldschmidt*, 790 F. Supp. 216, 220 (D. Or. 1990).

The traditional public forum status of streets, including rural roads that do not fall within certain limited exceptions, is therefore clearly established, and the district court’s order should be reversed.

C. Holding that no particularized inquiry is necessary would not hinder the government’s ability to keep roads safe and passable and it would protect speech.

While regulations of speech in a traditional public forum are subject to a higher level of scrutiny than the reasonableness standard Defendants seek to apply here, a road’s traditional public forum status does not deprive the government of all power to regulate speech, much less conduct, there. “The designation of an area as a traditional public forum does not prevent localities from addressing such significant concerns as public safety and the movement of traffic.” *Warren*, 196 F.3d at 190. Rather, the government may impose “reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions ‘are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.’” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

Meanwhile, making particularized inquiries the norm for rural roads, as Defendants propose, rather than the rare and limited exception, as the caselaw requires, would chill speech on any specific piece of land that a court had not previously deemed a traditional public forum. And it would require courts to

consider the facts of every public street, thereby unnecessarily burdening judicial resources.

CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to apply the rule set forth above—that, absent limited exceptions not present here, it is clearly established that rural roads are traditional public forums by definition—and to reverse the district court’s opinion.

Dated: July 20, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify as follows:

1. This Brief of Amici Curiae in Support of Plaintiffs–Appellees and Affirmance complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 5,952 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(f); and
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, 14-point Times New Roman, using the word-processing system Microsoft Word 2010.

Dated: July 20, 2026

By: /s/ Vera Eidelman
Vera Eidelman

Counsel for Amici Curiae

**CERTIFICATION OF COMPLIANCE WITH EIGHTH CIRCUIT RULE
28A(H)**

Pursuant to Local Rule 28A(H), I hereby certify that the electronic version of this Brief of Amici Curiae in Support of Plaintiffs-Appellees has been scanned for viruses using Windows Security anti-virus (version 1.435.67.0) and no virus was detected.

Dated: July 20, 2026

By: /s/ Vera Eidelman
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on July 20, 2026.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 20, 2026

By: /s/ Vera Eidelman
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