COLORADO SUPREME COURT 2 East 14th Avenue, 4th Floor Denver, CO 80203	
U.S. Court of Appeals for the Tenth Circuit, Case No. 18-1455 U.S. District Court for the District of Colorado, Case No. 1:15-CV- 01161-WJM-SKC	
Plaintiff/Appellee: Amica Life Insurance Company, **v.** **Defendant/Appellant:** Michael P. Wertz.	Supreme Court Case No: 2019SA143
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BRIEF OF AMICI CURIAE (1) NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND (2) INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION, IN SUPPORT OF AMICA LIFE INSURANCE COMPANY	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with C.A.R. 29 and 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The amicus brief complies with the applicable word limit set forth in C.A.R. 29(d), as more fully explained below.

☒ It contains 4,745 words (does not exceed 4,750 words).

The amicus brief complies with content and form requirements set forth in C.A.R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

/s/ Marcy G. Glenn

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GLOSSARY

Commission	Interstate Insurance Product Regulation Commission
Colorado Compact	Colorado Insurance Product Regulation Compact, C.R.S. § 24-60-3001
Compact	Interstate Insurance Product Regulation Compact
ITLIP Standards	Individual Term Life Insurance Product Standards
NAAG	National Association of Attorneys General
NAIC	National Association of Insurance Commissioners
NCSL	National Conference of State Legislatures
NCOIL	National Conference of Insurance Legislators

The National Association of Insurance Commissioners (NAIC) and the Interstate Insurance Product Regulation Commission (Commission) (jointly, Amici) respectfully submit this amicus brief in support of plaintiff-appellee Amica Life Insurance Company (Amica).

IDENTITY, INTEREST, AND INDEPENDENCE OF AMICI CURIAE

Identity. Founded in 1871, the NAIC is the United States standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five United States territories. *See* https://www.naic.org/. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, coordinate regulatory oversight, and represent their collective views.

The NAIC, working closely with the National Conference of State Legislatures (NCSL), the National Conference of Insurance Legislators (NCOIL), the National Association of Attorneys General (NAAG), and other state officials, developed the Interstate Insurance Product Regulation Compact (Interstate Compact), *available at* https://www.insurancecompact.org/ (*see* link to "Compact Statute"). App.161, ¶4. The Interstate Compact was drafted as an interstate agreement for the states to adopt. Its purposes include to develop uniform standards for covered insurance product lines, promptly review filed products, and approve those product filings that satisfy the applicable uniform standards.

App.161, ¶5. In 2004, Colorado, one of the Interstate Compact's founding members, enacted the Compact as C.R.S. § 24-60-3001 (Colorado Compact). App.162, ¶7.

The Interstate Compact created the Commission as a joint public agency. App.162, ¶7. *See* https://www.insurancecompact.org/. The Commission acts pursuant to the Interstate Compact as it has now been adopted in 44 states, Puerto Rico, and the District of Columbia (collectively, Compacting States). *See* https://www.insurancecompact.org/about.htm. As of December 31, 2018, the Compacting States, acting through their respective state insurance regulators serving as Commission members, had adopted more than 100 uniform standards for insurance products subject to the Interstate Compact, and had approved more than 7,600 insurance products submitted by more than 250 insurance companies. App.162, 9; https://www.insurancecompact.org/compact_rlmkng_record.htm; https://www.insurancecompact.org/documents/member_resources_prod_stats.pdf. Colorado's Insurance Commissioner has served as a member of the Commission since its inception. App.162, ¶8.

Interest. Amici have a strong interest in appearing as amici curiae because defendant Michael P. Wertz challenges the enforceability of the two-year suicide exclusion in the Amica policy (Policy), a provision the Commission approved in 2011 pursuant to the Individual Term Life Insurance Product Standards (ITLIP

Standards) initially adopted in 2007. App.165-166, ¶18; 209. The two-year suicide exclusion appears in thousands of Commission-approved life insurance products, including many that insure or provide benefits to Colorado residents.

Beyond the specific provision at issue in this case, the resolution of the appeal will impact the legitimacy of both the Colorado and Interstate Compacts. The Compacts' validity, in turn, could affect the enforceability of other uniform Commission-adopted standards, which appear in thousands of approved insurance products. Ultimately, the Interstate Compact's success relies on its uniform standards having the force and effect of law, so that Commission-approved insurance products are enforceable as written.

Amici submitted a joint brief in the Tenth Circuit.

Independence. No party's counsel authored any part of this brief, and only Amici contributed money toward its preparation and filing.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court asked: "May the Colorado General Assembly delegate power to an interstate administrative commission to approve insurance policies sold in Colorado under a standard that differs from Colorado statute?" Amici submit this brief to support Amica's emphatic "yes" answer. Under Colorado standards for the legislative delegation of authority to *administrative agencies*, the Colorado Compact permissibly delegates authority to the Commission to adopt uniform

standards (applicable to Commission-approved policies) that can differ from state statutes (applicable to state-approved policies), including the one-year limit on suicide exclusions stated in C.R.S. § 10-7-109. That holding was correct for the reasons stated in Amica's brief and *infra* at 12-13.

Amici expand on why, additionally, the law governing the delegation of authority to *interstate compacts* authorized the General Assembly's enactment of the Colorado Compact[1]:

1. In the exercise of its sovereignty and as part of the conventional grant of legislative power, Colorado may enter an interstate compact with its sister states to address an interstate issue. As with all state legislative delegations of authority, a delegation to an interstate compact must be reasonable and limited. Assuming those requirements are met, the compact is a valid and enforceable contract among the compacting states.

2. Applying these principles, the General Assembly enacted the Colorado Compact for valid reasons in the exercise of its legislative power and the

[1] This issue is relevant to the Colorado Compact and approximately fifteen interstate compacts into which Colorado has entered that involve the exercise of collective administrative policy or regulatory authority. *E.g.*, Interstate Compact on Juveniles, C.R.S. §§ 24-60-701 to -708; Nonresident Violator Compact of 1977, C.R.S. §§ 24-60-2101 to -2104; Interstate Medical Licensure Compact, C.R.S. § 24-60-3602; Interstate Physical Therapy Licensure Compact, C.R.S. § 24-60-3702.

state's sovereignty. The Colorado Compact reasonably defines and limits its delegated authority; it includes ample standards and safeguards to protect against the Commission's abuse of its authority; and the delegated authority is limited in scope. Therefore, the Colorado Compact is lawful and its provisions apply to Commission-approved policies, and Section 10-7-109 applies to policies not submitted for Commission approval.

ARGUMENT

I. Colorado May Enter Interstate Compacts to Cooperatively Solve Interstate Problems.

"The authority of states to enter into compacts is, in the words of James Madison, so clearly evident that no further discussion is needed." Michael L. Buenger, *et al.,* THE EVOLVING LAW AND USE OF INTERSTATE COMPACTS 17 (ABA 2d ed. 2016) (citing THE FEDERALIST No. 44) (Buenger). "The compact…adapts to our Union of sovereign States the age-old treaty making power of independent sovereign nations." *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938).

"A compact is, after all, a contract." *Texas v. New Mexico*, 482 U.S. 124, 128 (1987). Therefore, "[i]nterstate compacts are construed as contracts under the principles of contract law." *Tarrant Reg'l Water Dist. v. Hermann*, 569 U.S. 614, 628 (2013). Member states contractually agree on certain principles and rules concerning the exercise of joint governing authority for the subject matter of the

compact, which "may limit the agreeing States in the exercise of their respective powers." *United States v. Bekins*, 304 U.S. 27, 52 (1938). Compacts effectively marshal state cooperation in resolving interstate issues, including to establish "uniformity of legislation among the several States." Felix Frankfurter, "The Compact Clause of the Constitution—A Study in Interstate Adjustments," 34 YALE L.J. 685, 698 (1925).

In *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951), the seminal case on legislative delegation to interstate compacts, the Supreme Court confirmed that a state may "solve a problem…by compact and by the delegation, if such it be, necessary to effectuate such solution by compact." *Id.* at 31. "The Constitution did not purport to exhaust imagination and resourcefulness in devising fruitful interstate relationships[,]" and it "is not to be construed to limit the variety of arrangements which are possible through the voluntary and cooperative actions of individual States with a view to increasing harmony within the federalism created by the Constitution." *New York v. O'Neill*, 359 U.S. 1, 6 (1959). *See also, e.g.*, *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 40 (1994) (compacts address "interests that may be badly served or not served at all by the ordinary channels of National or State political action") (internal quotation marks and citation omitted).

The Interstate Compact exists to address a real and important interstate problem: the need, recognized since the early-1990s by Congress and state

insurance regulators, to identify and improve certain areas of state insurance regulation. Unlike other financial services industries that are federally regulated, insurance is regulated primarily by the states. In the McCarran-Ferguson Act, Congress declared that "the continued regulation and taxation by the several States of the business of insurance is in the public interest[.]" 15 U.S.C. § 1011. To implement that policy statement, Congress provided that "[t]he business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business." *Id.* § 1012(a). *See, e.g.*, *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408, 429 (1946) ("Congress' purpose [in enacting McCarran-Ferguson] was broadly to give support to the existing and future state systems for regulating and taxing the business of insurance.").[2]

II. The Interstate Compact Addresses an Important Interstate Problem.

Because the business of insurance is subject to state regulation, insurance companies doing business in multiple states must comply with non-uniform state standards for the content of insurance products. The burden of monitoring and

[2] The United States Constitution's Compact Clause requires congressional approval only for interstate compacts that interfere with federal supremacy. *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Wertz has not challenged the district court's correct holding that the Interstate Compact did not require such consent because its purposes and powers fall squarely within the authority delegated by the McCarran-Ferguson Act. App.422, 669-70. *See, e.g.*, *McComb v. Wambaugh*, 934 F.2d 474, 479 (3d Cir. 1991).

complying with those disparate requirements affects the efficiencies, time, and cost at which insurance companies can bring new products to market, referred to as "speed-to-market."

In the early-2000s, states identified the process for filing, review, and approval of insurance products—especially those competing with federally regulated securities and banking products—as an area needing modernization, to increase speed-to-market for the benefit of consumers, insurers, and regulators alike. *See generally* 2002 NAIC Proceedings, 2d Qtr. (June 8, 2002), *available at* 2002 WL 32700633, at *44-45; 2002 NAIC Proceedings, 4th Qtr. (Dec. 7, 2002), *available at* 2002 WL 32842723, at *9-12; 2003 NAIC Proceedings, 3d Qtr. (Sept. 13, 2003), *available at* 2003 WL 24100891, at *34-35.

These challenges led the NAIC to seek a speed-to-market solution that would (1) address the uniformity of content requirements applicable to new products, and (2) streamline the review and approval process for products offered on a multi-state platform. A single point of filing would protect consumers regardless of where the product was issued or where an insured resided at the time of a claim. An interstate compact emerged as the best way to facilitate interstate cooperation and foster efficiency. 2002 NAIC Proceedings, 4th Qtr., at 10. The Interstate Compact was drafted to create a mechanism for (1) the adoption of uniform standards to apply in multiple states, and (2) a single point of filing

products for review and approval. 2002 NAIC Proceedings, 2d Qtr., at 44; Compact, art. IV, §§ 2-3. At the same time, the Interstate Compact as enacted in the Compacting States, including the Colorado Compact, was carefully crafted to clearly define and limit the Commission's authority and to preserve other specific authority in the states. *See infra* at 14-18.

The NAIC adopted the Interstate Compact in 2003. Recognizing that state delegation of limited regulatory authority to the Commission must work seamlessly with other facets of regulation and consumer protection delegated by state legislatures to insurance regulators and attorneys general, NAIC members collaborated with NCSL, NCOIL, NAAG, and other state officials.

NCSL and NCOIL endorsed the Interstate Compact, continue to actively promote it, and appoint members to the Commission's standing Legislative Committee. Interstate Compact Bylaws, art. VIII, §1(A), *available at* https://www.insurancecompact.org/ (*see* link to "Bylaws"). As explained in NCOIL's resolution of endorsement, "critics of state regulation single out the product approval process as the most glaring shortcoming of state insurance regulation"; "a delay in bringing products to market is disadvantageous for consumers"; and "the Compact would offer insurers flexibility by allowing them to seek product approval either through the Compact or on an individual state basis." NCOIL, "Resolution in Support of the NAIC Interstate Insurance Product

Regulation Compact Model Legislation" (July 11, 2003), *available at* http://www.ncoil.org/wp-content/uploads/2016/04/CompactResolution.doc.

NCSL unanimously endorsed the Interstate Compact for similar reasons:

> The Compact promises to preserve the state system of insurance regulation against federal encroachment while raising insurance standards, improving the quality of product review, and giving companies the regulatory efficiency that they need to compete in the modern marketplace….At the same time, it would benefit consumers by promoting higher product standards and facilitating the development of new products that meet consumer needs. The Compact also would allow states to pool their collective expertise to better review products and to make more valuable use of resources.

NCSL, "FAQs on the Interstate Insurance Product Regulation Compact", *available at* http://www.ncsl.org/documents/insur/compactfaq.pdf. *See also* http://www.ncsl.org/research/financial-services-and-commerce/iiprc-statutes.aspx.[3]

In 2004, Colorado and Utah became the first states to adopt the Interstate Compact. In 2006, the Commission passed its operational threshold of adoption by 26 states, or 40% of the national premium volume in the subject product lines. *See*

[3] This history rebuts Wertz's misguided claim that the NAIC is beholden to the insurance industry over states and consumers. Opening Brief (OB) at 7-8 & n.1; *see also* CTLA Amicus Brief at 22-23. Indeed, the treatise he quotes concludes: "The NAIC has been remarkably successful in obtaining the adoption of its proposals by the states. This is the result of both the long and thorough vetting process that precedes final NAIC action and the reputation the organization has built over its hundred-forty-year history as the voice of responsible insurance regulation." Raymond A. Guenter & Elisabeth Ditomassi, FUNDAMENTALS OF INSURANCE REGULATION 27 (2017).

https://www.insurancecompact.org/history.htm. With this, the Interstate Compact became authorized to exercise a limited regulatory function as "an instrumentality of the Compacting States." Colorado Compact, art. III § 2.

Just as the compact in *Dyer* was appropriate to "solve a problem" of pollution in the Ohio River system in *Dyer*, 341 U.S. at 24, 31, the Interstate Compact facilitates the joint and collaborative regulation of covered insurance products in the Compacting States.

III. The Colorado Compact Lawfully Delegates Authority to the Commission.

A. Compact Law Permits Reasonable and Carefully Limited Delegations of Legislative Authority.

In *Dyer*, the Supreme Court held that the West Virginia legislature engaged in "the conventional grant of legislative power" when it entered the Ohio River Valley Water Sanitation Compact, because the West Virginia statute was "a reasonable and carefully limited delegation of power to an interstate agency." 341 U.S. at 31. Subsequent decisions have confirmed that under *Dyer*, a state legislature's delegation of authority to an interstate compact is lawful if it is "reasonable and carefully limited." *See, e.g.*, *Nebraska v. Cent. Interstate Low-Level Radioactive Waste Compact Comm'n*, 187 F.3d 982, 985 (8th Cir. 1999) (upholding compact under the *Dyer* standard).

Therefore, the Interstate Compact terms to which the member states have agreed are valid provided that they meet *Dyer*'s "reasonable and carefully limited" standard. That test accords with Colorado law on the delegation of legislative authority to administrative agencies. Both bodies of law take a functional approach, focusing on the substance of the delegation.

Under Colorado law, as explained in *Cottrell v. City & County of Denver*, 636 P.2d 703 (Colo. 1981), the General Assembly may delegate power to an administrative agency if "there are sufficient statutory standards and safeguards and administrative standards and safeguards, in combination, to protect against unnecessary and uncontrolled exercise of discretionary power." *Id.* at 709-10 (holding adequate a statute that required the agency to set water rates "as low as good service will permit" and to make them "uniform as far as practicable"); *see also, e.g.*, *People v. Lowrie*, 761 P.2d 778, 779 (Colo. 1988) (upholding delegation where the statute mandated "reasonable and just" agency rules that were "necessary for the fair, impartial, stringent, and comprehensive administration" of the liquor laws). Under Colorado law, a challenge under the nondelegation doctrine will be "seldom sustained." *Cottrell*, 636 P.2d at 708.

This Court has held that in delegating authority to state agencies, the General Assembly discharges "its [lawmaking] function when it describes what job must be done, who must do it, and the scope of his authority." *Swisher v. Brown*, 402 P.2d

621, 626 (Colo. 1965). The same can be said for the lawful delegation of authority to interstate compacts under *Dyer*: if the compact statute states the tasks to be accomplished, identifies those charged with a duty to act, and defines the extent of the designees' authority, the delegation is "reasonable and carefully limited" and, thus, permissible.

B. The Colorado Compact's Delegation of Authority Is Reasonable and Carefully Limited.

The federal district court undertook a careful analysis under *Cottrell*, separately considering the substantive "standards" and procedural "safeguards" applicable to the promulgation of uniform standards, including the ITLIP Standards, under the Colorado Compact. App.691-694. The court correctly concluded that the statute provides adequate standards and safeguards to survive scrutiny under Colorado administrative law. App.691. Whether the test is for "sufficient statutory standards and safeguards" (under *Cottrell*) or a "reasonable and carefully limited delegation" (under *Dyer*), the Colorado Compact complies equally with Colorado administrative law and general compact law.

At the outset, the Colorado Compact's stated purposes provide substantive standards for the Commission's activities. Those purposes include to "promote and protect the interests of consumers of [covered] insurance products"; "develop uniform standards for insurance products covered under the Compact"; "establish a central clearinghouse to receive and provide prompt review of [covered] insurance

products…submitted by insurers"; and "give appropriate regulatory approval to those product filings…satisfying the applicable uniform standard[.]" Colorado Compact, art. I, §§ 1-4. The Commission's standards must be designed "to effectively and efficiently achieve the purposes of [the] Compact." *Id.*, art. VII, § 1.

The Colorado Compact includes additional substantive standards that apply specifically to the development of uniform standards, including the ITLIP Standards. The uniform standards must be "reasonable," *id.*, art. IV, § 2, art. VII, § 1; "each uniform standard shall be construed…to prohibit the use of any inconsistent, misleading or ambiguous provisions in a Product," *id.*, art. II, § 15; and "the form of the Product…shall not be unfair, inequitable or against public policy[,]" *id.*

The Colorado Compact also incorporates a variety of important procedural safeguards against Commission overreach. *First*, a Compacting State's legislature may withdraw from the Interstate Compact by repealing the statute by which the state joined, with withdrawal effective on the repeal date. *Id.*, art. XIV, § 1(b).[4]

[4] Other compacts postpone the effectiveness of withdrawal until the state has taken further steps such as notifying other member states, *e.g.*, C.R.S. § 24-60-1201, art. VIII, § d (Interstate Compact for Education); or a specified time period has elapsed, *e.g.*, C.R.S. § 24-60-2202, art. 8, § D (Rocky Mountain Low-Level Radioactive Waste Act).

Second, a Compacting State retains unfettered sovereign authority to opt out of any uniform standard, *id.*, art. VII, §§ 3–6—a "unique" feature that "[n]o other compact has[.]" Buenger at 451, 452. A Compacting State has the corollary right to request a stay of the applicable uniform standard while the state perfects its opt-out. Colorado Compact, art. VII, § 6. In this case, for example, the General Assembly or the Insurance Commissioner could have opted out of the ITLIP Standards that included the two-year maximum suicide exclusion; in that event, the ITLIP Standards would have had "no further force and effect" in Colorado. *Id.*, art. VII, § 5.

In addition:

- The Commission representatives from all Compacting States, including Colorado, have an equal vote on all matters, including the adoption of uniform standards. *Id.*, art. V, § 1(b). Each "compacting state determines the election or appointment and qualification of its own commissioner." *Id.*, art. V, § 1(a). At this time, each Compacting State, including Colorado, has chosen to make its chief insurance regulatory official its Commission representative. *See id.*, Preamble.
- The Commission must follow the Model State Administrative Procedure Act in adopting rules and procedures. *Id.*, art. VII, § 2.

- Promulgation of a uniform standard requires the support of a two-thirds supermajority of both the Commission and its Management Committee. *Id.*, art. V, §§ 1(b), 2(b)(ii).
- The Commission must provide written notice of its intent to adopt a uniform standard to each Compacting State's relevant legislative committees. *Id.*, art. VII, § 2.
- A uniform standard adopted in excess of the Commission's specific rulemaking authority, "shall be invalid and have no force and effect." *Id.*, § 1.
- If any Colorado Compact provision exceeds the General Assembly's constitutional authority to delegate, it "shall be ineffective" and those duties "shall remain" in the General Assembly and the Insurance Commission. *Id.*, art. XVI, § 2(d).[5]
- Any person, including a Compacting State, may obtain judicial review of an adopted uniform standard. *Id.*, § 7.

Beyond these substantive standards and procedural safeguards, the Colorado Compact's delegation of authority is circumscribed in scope. The Commission is

[5] Wertz makes much of the Colorado Compact's severability provision. OB at 26. However, the rule of severability applies to *all* Colorado statutes, C.R.S. § 2-4-204; the inclusion of a routine severability provision does not presume that the Colorado Compact will be held unlawful.

limited to developing uniform standards for covered insurance product lines and, on behalf of the Compacting States, reviewing and approving specific insurance products that insurance companies submit and that satisfy adopted uniform standards. All other aspects of insurance regulation are untouched. "The Commissioner of any State in which an Insurer is authorized to do business or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the Insurer in accordance with the provisions of the State's law[,]" *id*., art. VIII, § 4, including to regulate for consumer protection and market conduct related to Commission-approved products. "Nothing [in the Colorado Compact] prevents the enforcement of any other [Colorado] law." *Id*., art. XVI, § 1(a). And neither the Colorado Compact nor any action of the Commission can "abrogate or restrict"

> (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the Product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

Id., § 1(b). Accordingly, while embracing uniform product standards and centralized product review, the Colorado Compact preserves the General Assembly's broad and direct oversight of insurers' qualifications to do business in

Colorado, licensing of insurance agents, consumer education and assistance, remedies available to consumers, and enforcement of consumer protection laws.

These substantive standards and procedural safeguards substantially exceed those present in *Cottrell*, *Lowrie*, and other Colorado decisions upholding the General Assembly's delegation of authority to administrative agencies. They also reasonably and appropriately limit the Commission in its exercise of delegated authority under compact law.

C. The ITLIP Standards May Differ From Colorado Law.

Wertz argues against the General Assembly's delegation of authority to the Interstate Compact based on his mischaracterization that the Commission has amended the one-year maximum suicide exclusion in Section 10-7-109. This contention is wrong for at least three reasons.

First, the *General Assembly* enacted the Colorado Compact, and so the Commission did not amend Colorado law.

Second, the ITLIP Standards and Section 10-7-109 apply to distinct policies. The statute unambiguously states that any Commission-adopted uniform standards (as to which a Compacting State has not opted-out) "shall have the force and effect of law and shall be binding in the Compacting States…only for those Products filed with the Commission," *id.*, art. IV, § 2; "it is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings[,]" *id.*,

art. III, § 1; and "[n]othing herein shall prohibit any Insurer" from instead obtaining direct state approval of its policies, *id.* If an insurer makes that permissible choice, its policies "shall be subject to the laws of those States." *Id.*, art. XVI, § 1(c); *see also id.*, art. X, § 1.

As a result, the suicide exclusion authorized under the Colorado Compact did not amend or repeal Section 10-7-109, which continues to apply to life insurance policies submitted for direct state approval; instead, the Colorado Compact merely authorizes the Commission to approve the two-year exclusion in policies submitted for Commission review. The legislature did not subordinate Colorado law—it established a different path for product approval: insurers may file their policies with the Commission and abide by its uniform standards, or they may comply with the Colorado laws and regulations, including Section 10-7-109, that otherwise apply to policies offered to Colorado consumers. The fact that different rules apply depending on that choice does not render the legislative delegation unconstitutional or establish an implied amendment.

Third, as a contract between the Compacting States, the Colorado Compact must be enforced as written and the two-year maximum suicide exclusion in the ITLIP Standards must apply to policies submitted for Commission approval. As this Court recognized in *Frontier Ditch Co. v. Southeastern Colorado Water Conservancy District*, 761 P.2d 1117 (Colo. 1988), differences between the terms

of interstate compacts and otherwise applicable Colorado law are both inevitable and permitted—and the compact provisions control. *Frontier* involved the Arkansas River Compact between Colorado and Kansas, which concerned Arkansas River water that traveled from Colorado to Kansas through a canal and headworks located in Colorado. The compact's plain language gave *Kansas* "'exclusive administrative control over the operation of the Frontier canal and its headworks…, to the same extent as though said works were located entirely within the state of Kansas'"—control that, but for the compact, *Colorado* would have exercised under Colorado water law and in Colorado water courts. *Id.* at 1119 (quoting compact). The Court held that "[e]ven though existing [Colorado] statutory schemes might well result in a different apportionment of waters, the provisions of such a compact bind the states and their citizens." *Id*. at 1123 (citing *Hinderlider*, 304 U.S. at 106). The General Assembly could agree to subject the Colorado water, canal, and headworks to Kansas jurisdiction and water law because, "through the use of an interstate compact, a state may…agree that the sister state to which the water is equitably apportioned will have exclusive authority over the determination of an applicant's right to divert the water and the administration of any such decreed water right." *Id.*

"[A]s with any contract, [the Court must] begin by examining the express terms of the Compact as the best indication of the intent of the parties[.]" *Tarrant*,

569 U.S. at 628. In this case, the Colorado Compact's plain language makes clear that the General Assembly intended a uniform standard to determine the requirements applicable to products filed with the Commission: "For any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products." Colorado Compact, art. XVI, § 1(b). If there were any question about the General Assembly's intent, the Colorado Compact's legislative history conclusively shows that the legislature understood and intended that the Colorado Compact "'replace[ ] conflicting state law for products approved by the Commission[.]'" App.690 (Order Granting Summary Judgment, quoting legislative history); *see also* App. 468, 528 n.7.

Equally important, the Colorado Compact's opt-out procedures and the General Assembly's ability to repeal the Colorado Compact in its entirety, *see supra* at 14-15, ensure that the legislature controls Colorado law on the content of all life insurance policies issued within Colorado. Thus, far from improperly delegating authority to amend Colorado law, the General Assembly has explicitly retained that authority.

If this Court were to hold that Section 10-7-109 overrides the ITLIP Standards' maximum suicide exclusion, it would not merely second-guess the

General Assembly's decision to enter the Colorado Compact and to not opt out of the ITLIP Standards or any of the 22 uniform standards with the same suicide exclusion provision, App.171, ¶45. It also would violate the general principle that "[a] state can impose state law on a compact organization only if the compact specifically reserves its right to do so." *Seattle Master Builders Ass'n v. Pac. Nw. Elec. Power & Conservation Planning Council*, 786 F.2d 1359, 1371 (9th Cir. 1986). As a contract between states, a compact is subject to the constitutional prohibition on the impairment of contracts. U.S. CONST. art. I, § 10, cl. 1; COLO. CONST. art. 2, § 11; *see, e.g.*, *Green v. Biddle*, 21 U.S. 1, 92 (1823). Application of Section 10-7-109 to products submitted to the Commission, including the Amica Policy, beyond trampling on the General Assembly's indisputable authority and intent, would unlawfully impair the Colorado Compact.

CONCLUSION

For the reasons stated above, Amici respectfully request the Court to answer the certified question, as reframed by the Court, in the affirmative.

Dated: October 23, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2019, a copy of this **AMICUS BRIEF OF (1) NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND (2) INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION** was served electronically on all counsel of record through the Colorado Courts E-Filing System.

s/ Marcy G. Glenn

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