19-1524

United States Court of Appeals for the Fourth Circuit

Ruth Akers, on behalf of herself and others similarly situated, Sharon Moesel

Plaintiffs-Appellants,

v.

Maryland State Education Association, et al.,

Defendants-Appellees,

On Appeal from the United States District Court
for the District of Maryland
Case No. 1:18-cv-01797-RDB

AMICUS CURIAE BRIEF OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION IN SUPPORT OF PLAINTIFFS-APPELLANTS

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STATEMENT OF INTEREST AND AUTHORITY TO FILE

The National Right to Work Legal Defense Foundation submits this amicus curiae brief with the consent of all parties pursuant to Federal Rule of Appellate Procedure 29(a)(2).[1]

The National Right to Work Legal Defense and Education Foundation, Inc. ("Foundation") is a charitable, legal aid organization formed to protect the rights of ordinary working men and women from infringement by compulsory unionism. Though its staff attorneys, the Foundation aids individual employees who have been denied or coerced in the exercise of their right to refrain from collective union activity.

The Foundation has a direct interest in this case because it concerns whether a good faith defense exempts unions from damages liability under Section 1983, 42 U.S.C. § 1983, for depriving employees of their First Amendment rights. Foundation staff attorneys are litigating this issue in several other courts. The Foundation submits the brief to aid the Court in deciding this case.

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[1] No party or party's counsel authored this brief in whole or in part. No party, party's counsel, or person other than the amicus curiae contributed money that was intended to fund preparing or submitting the brief.

SUMMARY OF ARGUMENT

There is no good faith defense to Section 1983 liability. The ostensible defense is: (1) incompatible with Section 1983's text, which mandates that "[e]very person" who acts under color of state law to deprive others of their constitutional rights "*shall be liable* to the party injured in an action at law," 42 U.S.C. § 1983; (2) incompatible with the statutory basis for immunities; (3) incompatible with "[e]lemental notions of fairness [that] dictate that one who causes a loss should bear the loss," *Owen v. City of Indep.*, 445 U.S. 622, 654 (1980); and (4) incompatible with Section 1983's remedial purposes.

This Court has not yet recognized a good faith defense. Nor have other circuits recognized an across-the-board defense to every Section 1983 claim. Several circuits have found good faith to be a defense to constitutional claims analogous to malicious prosecution and abuse of court processes, because malice and lack of probable cause are elements of those claims. *See e.g. Duncan v. Peck*, 844 F.2d 1261, 1266-67 (6th Cir. 1988); *Wyatt v. Cole*, 994 F.2d 1113, 1119–21 (5th Cir. 1993); *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1277 (3d Cir. 1994); *Pinsky v. Duncan*, 79 F.3d 306, 312–13 (2d Cir. 1996). But these courts did

not hold that good faith is a defense to *all* claims brought under Section 1983 for damages. Unlike claims analogous to abuse of process, a good faith motive is not a defense to the deprivation of First Amendment rights recognized in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448, 2468 (2018).

ARGUMENT

I. There Is No Good Faith Defense to Section 1983 Liability.

A. A good faith defense conflicts with Section 1983's text.

"Statutory interpretation . . . begins with the text." *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016). Section 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983. Section 1983 means what it says: "[u]nder the terms of the statute, '[e]very person who acts under color of state law to deprive another of a constitutional right [is] answerable to that person *in*

a suit for damages.'" *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976)) (emphasis added).

A good faith defense to Section 1983 conflicts with the statute's mandate that "every person"—not some persons, but "every person"—who deprives a party of constitutional rights "shall be liable to the party injured in an action at law." 42 U.S.C. § 1983. The term "shall" is not a permissive term, but a mandatory one. The proposition that defendants that deprive others of their constitutional rights *shall not* be "liable to the party injured in an action at law," if they act in good faith, contradicts Section 1983's statutory command.

It also contradicts the Supreme Court's holding that Section 1983 "contains no independent state-of-mind requirement." *Daniels v. Williams*, 474 U.S. 327, 328 (1986). A good faith defense would require the court to pencil into Section 1983 a state-of-mind requirement absent from its text, in defiance of *Daniels*.

The district court's conception of a good faith defense is especially incompatible with Section 1983's text. The lower court found the ostensible defense shields "private citizens who have relied in good faith on then existing laws that were presumptively valid." DE 110 at 10 n.7. An

element of Section 1983 is that a defendant must act "under color of any statute, ordinance, regulation, custom, or usage, of any State." 42 U.S.C. § 1983. There is no difference between a defendant acting "under color of any statute" and one relying on existing state statute. The district court has made a statutory *element* of Section 1983 an affirmative *defense* to Section 1983.

A defendant's acting under a state statute cannot be both an element of and a defense to Section 1983. That makes no sense as a matter of statutory interpretation, and would render the statute self-defeating. Private defendants that act "under color of any statute," as Section 1983 requires, would be shielded from liability *because* they acted under color of a state statute. The district court's reasoning cannot be reconciled with Section 1983's color-of-state-law element.

B. A good faith defense is incompatible with the statutory basis for qualified immunity.

1. Section 1983 "on its face does not provide for *any* immunities." *Malley v. Briggs,* 475 U.S. 335, 342 (1986). Thus, courts can "not simply make [their] own judgment about the need for immunity" and "do not have a license to create immunities based solely on [their] view of sound policy." *Rehberg*, 566 U.S. at 363.

Courts only can "accord[] immunity where a 'tradition of immunity was so firmly rooted in the common law and was supported by such strong policy reasons that Congress would have specifically so provided'" when it enacted Section 1983. *Richardson v. McKnight*, 521 U.S. 399, 403 (1997) (quoting *Wyatt v. Cole*, 504 U.S. 158, 164–65 (1992)). The relevant policy reasons are "avoid[ing] 'unwarranted timidity' in performance of public duties, ensuring that talented candidates are not deterred from public service, and preventing the harmful distractions from carrying out the work of government that can often accompany damages suits." *Filarsky v. Delia*, 566 U.S. 377, 389–90 (2012) (citing *Richardson*, 521 U.S. at 409–11).

Private defendants seldom satisfy the prerequisites for qualified immunity. *See Richardson*, 521 U.S. at 409–11; *Wyatt*, 504 U.S. at 164–65. A narrow exception is private individuals who perform duties for the government that are equivalent to those performed by public officials who have qualified immunity. *See Filarsky*, 566 U.S. at 393–94 (a private attorney a city retained to conduct an official investigation is entitled to qualified immunity).

Unions do not enjoy qualified immunity to Section 1983 liability. There is no history of unions enjoying immunity before Section 1983's enactment in 1871. Indeed, public-sector unions did not even exist at that time. Janus, 138 S. Ct. at 2471. And, the government's interest in ensuring that public servants are not cowed by threats of personal liability has no application to a large public-sector union like the Maryland State Education Association.

2. The relevance of the foregoing is three-fold. *First*, the Supreme Court's decisions concerning qualified immunity law show that exemptions to Section 1983 liability cannot be created out of whole cloth. Immunities are based on the statutory interpretation that Section 1983 did not abrogate entrenched, pre-existing immunities. *See Filarsky*, 566 U.S. at 389–90. The good faith defense to Section 1983 the Union Appellees argue for, in contrast, is based on nothing more than (misguided) notions of equity and fairness. See DE 75 at 12-14. Given that courts "do not have a license to create immunities based on [their] view[s] of sound policy," *Rehberg*, 566 U.S. at 363, it follows that courts have no license to create equivalent defenses to Section 1983 liability based on policy reasons.

Second, unlike with recognized immunities, there is no common law history before 1871 of private parties enjoying a good faith defense to constitutional claims. As one scholar recently noted: "[t]here was no well-established, good-faith defense in suits about constitutional violations when Section 1983 was enacted, nor in Section 1983 suits early after its enactment." William Baude, *Is Qualified Immunity Unlawful?,* 106 Cal. L. Rev. 45, 49 (2018); *see Anderson v. Myers*, 238 U.S. 368, 378 (1915) (rejecting good faith defense); *Little v. Barreme*, 6 U.S. (2 Cranch) 170, 179 (1804) (Justice Marshall rejecting a good faith defense; "the instructions cannot . . . legalize an act which without those instructions would have been a plain trespass.").

Finally, it would be anomalous to grant defendants that lack qualified immunity the functional equivalent of immunity under the guise of a "defense." Yet that is what the district court did here. Qualified immunity bars a damages claim against an individual if his or her "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). That accurately describes the ostensible "defense" the district court accepted. It makes little sense to find

that defendants not entitled to qualified immunity are nonetheless entitled to substantively the same thing, but under a different name.

C. A good faith defense to Section 1983 is inconsistent with equitable principles that injured parties should be compensated for their losses.

1. Equity cannot justify writing into Section 1983 a state-of-mind exception found nowhere in its text. "As a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text." *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990).

That especially is true here. There is nothing equitable about depriving victims of constitutional deprivations relief for their injuries. Nor is there anything equitable about letting wrongdoers, like the Union Appellees, keep ill-gotten gains.

If anything, equity favors enforcing Section 1983 as written, for "elemental notions of fairness dictate that one who causes a loss should bear the loss." *Owen*, 445 U.S. at 654. The Supreme Court in *Owen* wrote those words when holding municipalities not entitled to good-faith immunity to Section 1983 claims. The Court's two equitable justifications for so holding are equally applicable here.

The *Owen* Court reasoned that "many victims of municipal malfeasance would be left remediless if the city were . . . allowed to assert a good faith defense," and that "[u]nless countervailing considerations counsel otherwise, the injustice of such a result should not be tolerated." *Id.* at 651. That injustice also should not be tolerated here. Countless victims of constitutional deprivations will be left remediless if defendants in Section 1983 suits can escape liability by showing they had a good faith, but mistaken, belief their conduct was lawful. If a good faith defense to Section 1983 liability were recognized, every defendant to every Section 1983 damages claim could assert it because every such defendant would have acted under color of an existing law. For example, the municipalities the Supreme Court in *Owen* held not entitled to good-faith immunity could have raised an equivalent good faith defense, leading to the very injustice the Court sought to avoid.

The *Owen* Court further reasoned that Section "1983 was intended not only to provide compensation to the victims of past abuses, but to serve as a deterrent against future constitutional deprivations, as well." *Id.* at 651. "The knowledge that a municipality will be liable for all of its injurious conduct, *whether committed in good faith or not*, should create

an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights." *Id.* at 651–52 (emphasis added). The same rationale weighs against recognizing a good faith defense to Section 1983 claims.

2. The Union Appellees argued below it would be unfair to hold private actors liable for damages that state actors avoid because of their immunity. See DE 75 at 14. That is not unfair, because public servants enjoy qualified immunity for reasons not applicable to unions and most other private entities: to ensure that the threat of personal liability does not dissuade individuals from being public servants. *See Wyatt*, 504 U.S. at 168.

If that interest applies to private persons in particular circumstances, they are entitled to immunity. *See Filarsky*, 566 U.S. at 389–90. But "[f]airness alone is not . . . a sufficient reason for the immunity defense, and thus does not justify its extension to private parties." *Crawford-El v. Britton*, 523 U.S. 574, 590 n.13 (1998).

Moreover, a large organization like the MSEA is nothing like individual persons who enjoy qualified immunity. MSEA is most akin to a governmental organization that *lacks* qualified immunity, namely a

municipality. "It hardly seems unjust to require a municipal defendant which has violated a citizen's constitutional rights to compensate him for the injury suffered thereby." *Owen*, 445 U.S. at 654. Nor is it unjust to require unions or other private organizations that violate citizens' constitutional rights to compensate them for their injuries.

D. Recognizing a good faith defense to Section 1983 will undermine the statute's remedial purposes.

The district court not only failed to evaluate whether a good faith defense has any basis in Section 1983's text, but also failed to consider the implications of recognizing this sweeping defense.

This ostensible defense would be available not just to unions, but to all defendants sued for damages under Section 1983. Individuals with qualified immunity would have little reason to raise the defense, because their immunity is similar to it. But defendants who lack immunity, such as private parties and municipal governments, would gain the functional equivalent of a qualified immunity.

Those defendants could raise a good faith defense not just to First Amendment compelled-speech claims, but against any constitutional or statutory claim brought under Section 1983 for damages. This includes claims alleging discrimination based on race, sex, or political affiliation.

The defense recognized below is broad in scope: defendants that rely on existing state laws do not have to pay damages to any parties they injure. Such a defense to Section 1983 liability would largely eviscerate the statute because an element of Section 1983 is that defendants must act under color of state law. *See infra 4-5*. Nearly all defendants who act under color of state law will be relying on existing state law, and thus be exempted from paying damages. State Br. 14. The district court's good faith defense would render Section 1983 self-defeating and deny countless victims of constitutional deprivations relief for their injuries.

Even if Section 1983's text did not preclude courts from refusing to hold defendants that act in good faith liable to injured parties in actions at law—which it does—practical concerns warrant not creating this exemption to Section 1983 liability.

II. Other Courts Recognized a Good Faith Defense Not to All Section 1983 Claims, But Only to Certain Constitutional Deprivations.

A. Other appellate courts found a good faith defense only where malice and lack of probable cause are elements of constitutional claims arising from malicious prosecution and abuse of process.

Union Appellees argued below that other appellate courts found that private defendants generally have a good faith defense to Section 1983 damages liability. Union Defs.' Mem. in Supp. of Mot. to Dismiss, 13-14, [ECF 75]. A close reading of the published decisions,[2] however, reveals that the courts did not recognize a defense to Section 1983 writ large, but found that good faith was a defense to a particular due process deprivation actionable under Section 1983.

Section 1983 provides a cause of action for the "deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. The elements and defenses material to different constitutional "deprivation[s]" vary considerably. For example, the elements of a Fourteenth Amendment due process violation differ from

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[2] *Jarvis v. Cuomo*, 660 F. App'x 72 (2d Cir. 2016), is a non-precedential, unpublished order that does constitute the law of that circuit.

those of a Fourth Amendment search and seizure violation.

Most importantly here, state of mind is material to some constitutional deprivations, but not others. A specific intent is required in "due process claims for injuries caused by a high-speed chase," "Eighth Amendment claims for injuries suffered during the response to a prison disturbance," and invidious discrimination claims under the Equal Protection clauses. *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1074 (9th Cir. 2012). In contrast, most "free speech violations do not require specific intent." *Id.*

A review of the published appellate decisions finding defendants can raise a good faith defense to Section 1983 claims shows that those courts did so because malice and lack of probable cause were material to the deprivation at issue: a due process deprivation arising from malicious prosecution or an abuse of court processes.

The Sixth Circuit was the first to find that private parties can raise a "common law good faith defense to malicious prosecution and wrongful attachment cases" brought under Section 1983. *Duncan v. Peck*, 844 F.2d 1261, 1267 (6th Cir. 1988). It did so because malice and lack of probable cause are elements of those types of claims. *Id. Duncan*, how-

ever, also held that other "courts who endorsed the concept of good faith immunity for private individuals improperly confused good faith immunity with a good faith defense." 844 F.2d at 1266. That holding conflicted with other circuits' rulings that private parties enjoy good faith immunity to Section 1983 liability. *See id.* at 1265.

In 1992, the Supreme Court in *Wyatt* resolved the circuit split and held that private parties seldom enjoy good faith immunity to Section 1983 liability. 504 U.S. at 161, 168. *Wyatt* involved constitutional claims analogous to "malicious prosecution and abuse of process." *Id.* at 159. The Court recognized that, at common law, "private defendants could defeat a malicious prosecution or abuse of process action if they acted without malice and with probable cause." *Id.* at 164–65.

The *Wyatt* Court determined that "[e]ven if there were sufficient common law support to conclude that respondents . . . should be entitled to a good faith *defense*, that would still not entitle them to what they sought and obtained in the courts below: the qualified *immunity* from suit accorded government officials." *Id.* at 165 (first emphasis added). The reason was, the "rationales mandating qualified immunity for public officials are not applicable to private parties." *Id.* at 167.

The *Wyatt* Court left open the question of whether the defendants could raise "an affirmative defense based on good faith and/or probable cause." *Id*. at 168–69. As the Court later explained in *Richardson*, "*Wyatt* explicitly stated that it did not decide whether or not the private defendants before it might assert, not immunity, but a special 'good-faith' defense." 521 U.S. at 413. The Court in *Richardson*, "[l]ike the Court in *Wyatt*," also "[did] not express a view on this last-mentioned question." *Id.* at 414. The Supreme Court has yet to resolve the question.

On remand in *Wyatt v. Cole*, the Fifth Circuit held the defendants could raise this defense because malice and lack of probable cause are elements to an abuse of process claim. 994 F.2d 1113, 1119–21 (5th Cir. 1993). The Fifth Circuit recognized that the Supreme Court "focused its inquiry on the elements of these torts," and found "that plaintiffs seeking to recover on these theories were required to prove that defendants acted with malice and without probable cause." *Id*. at 1119.

The Fifth Circuit's observation is correct. Justice O'Connor's majority opinion in *Wyatt* focused on the fact "that at common law, private defendants could defeat a malicious prosecution or abuse of process action

if they acted without malice and with probable cause." *Wyatt*, 504 U.S. at 165. Justice Kennedy's concurrence similarly focused on the analogous elements of a common law malicious prosecution claim. Id. at 172–73 (Kennedy. J., concurring). Justice Kennedy explained that "it is something of a misnomer to describe the common law as creating a good faith *defense*; we are in fact concerned with the essence of the wrong itself, *with the essential elements of the tort*." *Id.* at 172 (latter emphasis added). Chief Justice Rehnquist agreed, and stated that "[r]eferring to the defendant as having a good-faith defense is a useful shorthand for capturing plaintiff's burden and the related notion that a defendant could avoid liability by establishing either a lack of malice or the presence of probable cause." *Id.* at 176 n.1 (Rehnquist, C.J., dissenting).

The Second and Third Circuits followed the lead of the Sixth and Fifth Circuits and held that malice and lack of probable cause are elements to claims arising from abuses of court processes. *See Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1276–77 (3d Cir. 1994); *Pinsky v. Duncan*, 79 F.3d 306, 312–13 (2d Cir. 1996). The Second Circuit in *Pinsky* required proof of "malice" and "want of probable cause" because "malicious prosecution is the most closely analogous tort

and [we] look to it for the elements that must be established in order for [the plaintiff] to prevail on his § 1983 damages claim." 79 F.3d at 312–13. The Third Circuit in *Jordan* required proof of "malice" for the same reason, recognizing that while "section 1983 does not include any *mens rea* requirement in its text, . . . the Supreme Court has plainly read into it a state of mind requirement specific to the particular federal right underlying a § 1983 claim." 20 F.3d at 1277.

This line of cases recognized only that malice and lack of probable cause are elements of constitutional claims arising from abuses of court processes. That was the claim at issue in each case.[3] None of the cases held that *all* deprivations of *all* constitutional rights actionable under Section 1983 require proof of malice and lack of probable cause. These cases cannot support the proposition that an across-the-board good faith defense exists to Section 1983 claims.

[3] *See Wyatt*, 504 U.S. at 160 (state court complaint in replevin); *Duncan*, 844 F.2d at 1267 (state court prejudgment attachment order); *Jordan*, 20 F.3d at 1276–77 (state court judgment and garnishment process); *Vector Research, Inc. v. Howard & Howard Attorneys P.C.*, 76 F.3d 692, 699 (6th Cir. 1996) (federal court ex parte seizure order); *Pinsky*, 79 F.3d at 312–13 (state court prejudgment attachment procedure).

B. Malice and lack of probable cause are not elements of a First Amendment violation, and thus their absence does not provide a defense to such a claim.

Malice and lack of probable cause are not elements of the First Amendment deprivation at issue here. In general, "free speech violations do not require specific intent." *OSU Student Alliance*, 699 F.3d at 1074. In particular, a compelled speech violation does not require any specific intent. Under *Janus*, a union deprives public employees of their First Amendment rights by taking their money without affirmative consent. 138 S. Ct. at 2486. A union's intent when so doing is immaterial.

Thus, whether the Union Appellees acted with malice or without probable cause—i.e., in good faith reliance on existing law—when they seized agency fees from Ruth Akers and other employees without their consent is irrelevant. Either way, the Union Appellees deprived the employees of their First Amendment rights. Good faith simply is not a defense to a union fee seizure under *Janus*.

C. Common law analogies hold little relevance because a First Amendment compelled speech claims lacks a close common law analog.

Some district courts have misunderstood the foregoing point, and assumed that the availability of a good faith defense turns on what common law tort is most analogous to a First Amendment compelled-speech deprivation. *See Carey v. Inslee*, 364 F. Supp. 3d 1220, 1229-30 (W.D. Wash. 2019); *Crockett v. NEA-Alaska,* 367 F. Supp. 3d 996, 1004 (D. Alaska 2019). Those courts lost sight of the limited relevance of common law analogies.

Common law analogies are relevant to the extent they shed light on the elements or defenses to an alleged deprivation of constitutional rights actionable under Section 1983.[4] For example, courts have found malice and lack of probable cause to be elements of constitutional claims arising from abuses of court processes based on the common law elements of that tort. *See supra* at 14-18.

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[4] Common law history also is relevant to whether a defendant is entitled to qualified immunity under Section 1983. *See Filarsky*, 566 U.S. at 384-88. But the Union Appellees do not claim qualified immunity. So that is not an issue here.

Here, state of mind is *not* an element or defense to the First Amendment compelled-speech deprivation recognized in *Janus,* which requires only that a union seize dues or fees from employees without their affirmative consent. 138 S. Ct. at 2486. It is therefore irrelevant what common law tort may be most like this deprivation.

A First Amendment compelled-speech claim has no close common law analog. Section 1983 is not "simply a federalized amalgamation of pre-existing common-law claims." *Rehberg*, 566 U.S. at 366. It "is broader in that it reaches constitutional and statutory violations that do not correspond to any previously known tort." *Id.*

First Amendment compelled-speech violations do not directly correspond to previously known torts. It violates the First Amendment to "[c]ompell[ ] a person to subsidize the speech of other private speakers," because it undermines "our democratic form of government" and leads to individuals being "coerced into betraying their convictions." *Janus*, 138 S. Ct. at 2464. That injury is unlike that caused by common law torts. It is peculiar to the First Amendment.

The bottom line is that good faith is not a defense to a deprivation of First Amendment rights under *Janus*. As discussed in Section I, good

faith also is not a defense to Section 1983 damages liability where a First Amendment violation has occurred. The Union Appellees lack a cognizable basis for asserting a good faith defense.

CONCLUSION

The district court's judgment should be reversed and the case remanded for further proceedings.

Dated: July 22, 2019

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with type-volume limitation, typeface requirements, and type-style requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4,313 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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 it uses Century Schoolbook 14-point type face throughout, which is a proportionally spaced typeface that includes serifs.

Dated: July 22, 2019

/s/ William L. Messenger
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I certify that on July 22, 2019, this document was electronically filed with the clerk of the court for the U.S. Court of Appeals for the Fourth Circuit and served through CM/ECF upon:

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