APPEAL NO. 18-13592-EE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DREW ADAMS,
Plaintiff-Appellee,

v.

THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA
Defendant-Appellant.

On Appeal from the United States District Court
for the Middle District of Florida, Jacksonville Division
District Court No. 3:17-cv-00739-TJC-JBT

SUPPLEMENTAL REPLY BRIEF OF APPELLANT THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA

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Jeffrey D. Slanker FBN 0100391
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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Local Rules 26.1-1 through 26.1-3 and 28-1(b), Appellant certifies that the name of each person, attorney, association of persons, firm, law firm, partnership, and corporation that has or may have an interest in the outcome of this action — including subsidiaries, conglomerates, affiliates, parent corporations, publicly-traded companies that own 10% or more of a party's stock, and all other identifiable legal entities related to *any* party in the case is limited to the following:

1. AAPL – *Amicus Curiae*
2. AAUW – *Amicus Curiae*
3. A Better Balance - *Amicus Curiae*
4. Aberli, Thomas A. – *Amicus Curiae*
5. Achievement First Public Charter Schools – *Amicus Curiae*
6. Adams, Drew – Appellee
7. Adams, Scott – Appellee's Father
8. Adecco Group AG - Parent company for Amicus Curiae General Assembly Space, Inc.
9. Adecco, Inc. - Parent company for Amicus Curiae General Assembly Space, Inc.
10. ADL – *Amicus Curiae*

11. Advocates for Youth – *Amicus Curiae*

12. Airbnb, Inc. – *Amicus Curiae*

13. Akin Gump Strauss Hauer & Feld LLP - Counsel for Amici Curiae

14. Alger, Maureen P. – Counsel for Amicus Curiae

15. Allen, Tommy – Board Member of Appellant

16. Alliance Defending Freedom – Counsel for Amicus Curiae

17. Alphabet, Inc. (GOOG) - Parent company for Amicus Curiae Google LLC

18. Altman, Jennifer G. – Counsel for Appellee

19. Amend, Andrew – (New York State Office of the Attorney General) - Counsel for Amicus Curiae

20. American Academy of Child and Adolescent Psychiatry (AACAP) – *Amicus Curiae*

21. American Academy of Nursing – *Amicus Curiae*

22. American Academy of Pediatrics – *Amicus Curiae*

23. American Association of University Women (AAUW) - *Amicus Curiae*

24. American College of Physicians – *Amicus Curiae*

25. American Medical Association – *Amicus Curiae*

26. American Medical Women's Association – *Amicus Curiae*

27. American Nurses Association – *Amicus Curiae*

28. American School Counselor Association – *Amicus Curiae*

29. Apple Inc. – *Amicus Curiae*

30. Asana, Inc. – *Amicus Curiae*

31. Association of Medical School Pediatric Department Chairs – *Amicus Curiae*

32. Atlanta Women for Equality – *Amicus Curiae*

33. Baker & Hostetler LLP - Counsel for Amicus Curiae

34. Banks, Emily – *Amicus Curiae*

35. Barden, Robert Chris – Counsel for Appellant, Terminated

36. Barrera, Kelly – Board Member of Appellant

37. Barth, Morgan – *Amicus Curiae*

38. Baxter, Rosanne C. – Counsel for Amicus Curiae

39. Bazer, Morgan – *Amicus Curiae*

40. BCC – *Amicus Curiae*

41. Bertschi, Craig E. – Counsel for Amicus Curiae

42. Beth Chayim Chadashim (BCC) - *Amicus Curiae*

43. Binning, Sarah R. – Counsel for Amicus Curiae

44. BlackRock, Inc. (BLK) - Beneficial owner of Amicus Curiae Yelp Inc.

45. Boies, Schiller & Flexner, LLP – Counsel for Amicus Curiae

46. Borelli, Tara L. – Counsel for Appellee

47. Boston Area Rape Crisis Center – *Amicus Curiae*

48. Bourgeois, Roger – *Amicus Curiae*

49. Bruce, Diana K. – *Amicus Curiae*

50. Buckeye Region Anti-Violence Organization, a Program of Equitas Health – *Amicus Curiae*

51. Berlow, Clifford W. – Counsel for Amicus Curiae

52. California – *Amicus Curiae*

53. California Women Lawyers – *Amicus Curiae*

54. California Women's Law Center – *Amicus Curiae*

55. Campbell, James A. – Counsel for Amicus Curiae

56. Canan, Patrick – Board Member of Appellant

57. Carney, Karen – *Amicus Curiae*

58. Carpenter, Christopher S., Ph.D. - *Amicus Curiae*

59. Carter, Heidi – *Amicus Curiae*

60. Casa de Esperanza: National Latina Network for Healthy Families and Communities – *Amicus Curiae*

61. Castillo, Paul David – Counsel for Appellee

62. Center for Constitutional Rights – *Amicus Curiae*

63. Center for Religious Expression – Counsel for Amicus Curiae

64. Center for Reproductive Rights – *Amicus Curiae*

65. Central Conference of American Rabbis – *Amicus Curiae*

66. Champion Women – *Amicus Curiae*

67. Chandy, Sunu P. (National Women's Law Center) - Counsel for Amici Curiae

68. Chang, Tommy – *Amicus Curiae*

69. Chapman, Peyton – *Amicus Curiae*

70. Chaudhry, Neena (National Women's Law Center) - Counsel for Amici Curiae

71. Coalition of Black Trade Unionists – *Amicus Curiae*

72. Coleman, Arthur - Counsel for Amicus Curiae

73. Colter, Howard – *Amicus Curiae*

74. Connecticut – *Amicus Curiae*

75. Conron, Kerith J., M.P.H., Sc.D. - *Amicus Curiae*

76. Copsey, Alan D. (Washington State Office of the Attorney General) - Counsel for Amicus Curiae

77. Corrigan, Hon, Timothy J. – United States District Judge

78. Credo Mobile, Inc. – *Amicus Curiae*

79. Cyra, Sherri – *Amicus Curiae*

80. Dasgupta, Anisha S. (New York State Office of the Attorney General) - Counsel for Amicus Curiae

81. Davis, Bryan – *Amicus Curiae*

82. Davis, Steven D. – Counsel for Amici School Administrators

83. Day One – *Amicus Curiae*

84. DC Coalition Against Domestic Violence – *Amicus Curiae*

85. Delaware – *Amicus Curiae*

86. DeSelm, Lizbeth – *Amicus Curiae*

87. Deutsche Bank AG. – *Amicus Curiae*

88. DiBenedetto, Arthur – *Amicus Curiae*

89. Disability Rights Education and Defense Fund (DREDF) – *Amicus Curiae*

90. District of Columbia – *Amicus Curiae*

91. Doolittle, Kirsten L. – Counsel for Appellee

92. Doran, Mary – *Amicus Curiae*

93. Doss, Eric – *Amicus Curiae*

94. DREDF – *Amicus Curiae*

95. Dyer, Karen Caudill – Counsel for *Amicus Curiae*

96. Dwyer, John C. – Counsel for *Amicus Curiae*

97. Eaton, Mary - Counsel for Amicus Curiae

98. eBay Inc. – *Amicus Curiae*

99. Education Counsel, LLC - Counsel for Amicus Curiae

100. Empire Justice Center – *Amicus Curiae*

101. Endocrine Society – *Amicus Curiae*

102. Eppink Samuel T., Ph.D. (expected 2019) - *Amicus Curiae*

103. Equal Rights Advocates – *Amicus Curiae*

104. Equality California – *Amicus Curiae*

105. Ewing, Gregory – *Amicus Curiae*

106. Family Values @ Work – *Amicus Curiae*

107. Ferguson, Robert W. (Attorney General for the State of Washington) - Counsel for Amici Curiae

108. Florida School Boards Insurance Trust – Insurance Carrier for Appellant

109. Flores, Andrew R., Ph.D. - *Amicus Curiae*

110. Flynn, Diana K. – Counsel for Appellee

111. FORGE, Inc. – *Amicus Curiae*

112. Forson, James (Tim) – Superintendent of the St. Johns County School District

113. Fountain, Lisa Barclay – Counsel for Appellant

114. Gartrell, Nanette, M.D. - *Amicus Curiae*

115. Gates, Gary J., Ph.D. - *Amicus Curiae*

116. Gender Based Violence Organizations – *Amicus Curiae*

117. Gender Diversity – *Amicus Curiae*

118. Gender Justice – *Amicus Curiae*

119. Gender Spectrum – *Amicus Curiae*

120. General Assembly Space, Inc. – *Amicus Curiae*

121. Generales, Markos C. – (Akin Gump Strauss Hauer & Feld LLP) Counsel for Amicus Curiae

122. Girls for Gender Equity – *Amicus Curiae*

123. Girls, Inc. – *Amicus Curiae*

124. GitHub, Inc. – *Amicus Curiae*

125. Glassdoor, Inc. – *Amicus Curiae*

126. GlaxoSmithKline LLC – *Amicus Curiae*

127. GlaxoSmithKline PLC: Parent company for Amicus Curiae GlaxoSmithKline LLC

128. GLMA – Health Professionals Advancing LGBT Equality - *Amicus Curiae*

129. GLSEN – *Amicus Curiae*

130. Goldberg, Suzanne – Counsel for Amicus Curiae

131. Gonzales, Gilbert, Ph.D., M.H.A. - *Amicus Curiae*

132. Gonzalez-Pagan, Omar – Counsel for Appellee

133. Google LLC – *Amicus Curiae*

134. Goss Graves, Fatima (National Women's Law Center) - Counsel for Amicus Curiae

135. Greer, Eldridge – *Amicus Curiae*

136. Grossman, Miriam – *Amicus Curiae*

137. Grijalva, Adelita – *Amicus Curiae*

138. Gurtner, Jill – *Amicus Curiae*

139. Haney, Matthew – *Amicus Curiae*

140. Hargis, Kellie M. – *Amicus Curiae*

141. Harmon, Terry J. – Counsel for Appellant

142. Harrington, Emily – Counsel for Amicus Curiae

143. Hawaii – *Amicus Curiae*

144. Haynes, Patricia - Counsel for Amicus Curiae

145. Herman, Jody L., Ph.D. - *Amicus Curiae*

146. Heyer, Walt – *Amicus Curiae*

147. Hohs, Sherie – *Amicus Curiae*

148. Holland & Knight, LLP – Counsel for Amicus Curiae

149. Holloway, Ian W., Ph.D., M.S.W., M.P.H. - *Amicus Curiae*

150. Hughes, Paul W. (Mayer Brown) - Counsel for Amicus Curiae

151. IBM Corporation – *Amicus Curiae*

152. Ifill, Sherrilyn A. - Counsel for Amicus Curiae

153. Illinois – *Amicus Curiae*

154. Illinois Accountability Initiative – *Amicus Curiae*

155. In Our Own Voice: National Black Women's Reproductive Justice Agenda – *Amicus Curiae*

156. Indiegogo, Inc. – *Amicus Curiae*

157. Iowa – *Amicus Curiae*

158. Iowa Coalition Against Sexual Assault – *Amicus Curiae*

159. Jacksonville Area Sexual Minority Youth Network, Inc. – *Amicus Curiae*

160. Jacobs, Edward J. – Counsel for Amicus Curiae

161. James, Letitia (Attorney General for the State of New York) - Counsel for Amicus Curiae

162. Kaiser Foundation Health Plan, Inc. ("Kaiser Permanente") - *Amicus Curiae*

163. Kaiser Permanente – *Amicus Curiae*

164. Kaplan, Aryeh L. – Counsel for Appellee

165. Kasper, Erica Adams – Appellee's Next Friend and Mother

166. Kellum, Nathan W. – Counsel for Amicus Curiae

167. Kenney, Tim – *Amicus Curiae*

168. Kimberly, Michael B. (Mayer Brown LLP) - Counsel for Amicus Curiae

169. Kirkland, Earl – Counsel for Amicus Curiae

170. Knotel, Inc. - *Amicus Curiae*

171. Kogan, Terry S. – *Amicus Curiae*

172. Kostelnik, Kevin C. – Counsel for Appellant, Terminated

173. Kunin, Ken – *Amicus Curiae*

174. Kunze, Lisa – Principal of Allen D. Nease High School

175. Laidlaw, Michael – *Amicus Curiae*

176. Lambda Legal Defense and Education Fund, Inc. – Counsel for Appellee

177. Lapointe, Markenzy – Counsel for Appellee

178. Las Cruces Public Schools – *Amicus Curiae*

179. LatinoJustice PRLDEF – *Amicus Curiae*

180. Lawyers Club of San Diego – *Amicus Curiae*

181. Lee, Jen Hee – Counsel for Amicus Curiae

182. Legal Aid At Work – *Amicus Curiae*

183. Legal Momentum – *Amicus Curiae*

184. Legal Voice – *Amicus Curiae*

185. Levi Strauss & Co. - *Amicus Curiae*

186. Linden Research, Inc. d/b/a Linden Lab – *Amicus Curiae*

187. Los Angeles Unified School District – *Amicus Curiae*

188. Louisiana Foundation Against Sexual Assault – *Amicus Curiae*

189. Love, Laura H. – *Amicus Curiae*

190. Lyft, Inc. - *Amicus Curiae*

191. MacKenzie, Dominic C. – Counsel for Amicus Curiae

192. Maine – *Amicus Curiae*

193. Majeski, Jeremy – *Amicus Curiae*

194. Mallory, Christy, J.D. - *Amicus Curiae*

195. Mapbox, Inc. - *Amicus Curiae*

196. Marin Software Incorporated (MRIN) - *Amicus Curiae*

197. Martin, Emily (National Women's Law Center) - Counsel for Amicus Curiae

198. Massachusetts – *Amicus Curiae*

199. Mayer Brown LLP - Counsel for Amici Curiae

200. McCaleb, Gary S. – Counsel for Amicus Curiae

201. McCalla, Craig – *Amicus Curiae*

202. McRae Bertschi & Cole, LLC – Counsel for Amicus Curiae

203. Meece, Gregory R. – *Amicus Curiae*

204. Meerkamper, Shawn – *Amicus Curiae*

205. Melody, Colleen M., (Washington State Office of the Attorney General) - Counsel for Amicus Curiae

206. Mesa, David D. – Counsel for Amicus Curiae

207. Meyer, Ilan, H., Ph.D. - *Amicus Curiae*

208. Michigan – *Amicus Curiae*

209. Michigan Coalition to End Domestic & Sexual Violence – *Amicus Curiae*

210. Microsoft Corporation (MSFT): *Amicus Curiae* and parent company for *Amicus Curiae* GitHub, Inc.

211. Mignon, Bill – Board Member of Appellant

212. Miller, William C. – Counsel for Appellee

213. Minnesota – *Amicus Curiae*

214. Minter, Shannon – Counsel for Amicus Curiae

215. Morse, James C., Sr. – *Amicus Curiae*

216. Munson, Ziad W. – *Amicus Curiae*

217. Murray, Kerrel – Counsel for Amicus Curiae

218. NAACP Legal Defense & Educational Fund, Inc. – *Amicus Curiae*

219. Nardecchia, Natalie – Counsel for Appellee, Terminated

220. National Alliance to End Sexual Violence – *Amicus Curiae*

221. National Asian Pacific American Women's Forum – *Amicus Curiae*

222. National Association of School Psychologists – *Amicus Curiae*

223. National Association of Social Workers – *Amicus Curiae*

224. National Association of Women Lawyers – *Amicus Curiae*

225. National Center for Law and Economic Justice – *Amicus Curiae*

226. National Center for Transgender Equality – *Amicus Curiae*

227. National Coalition Against Domestic Violence – *Amicus Curiae*

228. National Council of Jewish Women – *Amicus Curiae*

229. National Crittenton – *Amicus Curiae*

230. National LGBTQ Task Force – *Amicus Curiae*

231. National Organization for Women Foundation – *Amicus Curiae*

232. National PTA and The American School Counselor Association – *Amicus Curiae*

233. National Resource Center on Domestic Violence – *Amicus Curiae*

234. National Women's Law Center, et al. – *Amicus Curiae*

235. Nebraska Coalition to End Domestic and Sexual Violence – *Amicus Curiae*

236. Nelson, Janai S. – Counsel for Amicus Curiae

237. Nevada Coalition to End Domestic and Sexual Violence – *Amicus Curiae*

238. New Hampshire Coalition Against Domestic and Sexual Violence – *Amicus Curiae*

239. New Jersey – *Amicus Curiae*

240. New Mexico – *Amicus Curiae*

241. New Mexico Coalition of Sexual Assault Programs, Inc. – *Amicus Curiae*

242. New York – *Amicus Curiae*

243. New York State Coalition Against Sexual Assault – *Amicus Curiae*

244. NIO Inc. (NIO): Parent company for *Amicus Curiae* NIO USA, Inc.

245. NIO NextEV Ltd.: Parent company for *Amicus Curiae* NIO USA, Inc.

246. NIO USA, Inc. - *Amicus Curiae*

247. Northern Marianas Coalition Against Domestic & Sexual Violence – *Amicus Curiae*

248. Oasis Legal Services – *Amicus Curiae*

249. Oath Inc. - Parent company for *Amicus Curiae* Tumblr, Inc

250. O'Melveny & Myers LLP – Counsel for Amicus Curiae

251. O'Reilly, John – *Amicus Curiae*

252. OGC Law, LLC. – Counsel for Amicus Curiae

253. Ohio Alliance to End Sexual Violence – *Amicus Curiae*

254. Oregon – *Amicus Curiae*

255. Oregon Coalition Against Domestic & Sexual Violence – *Amicus Curiae*

256. Orr, Asaf – Counsel for Amicus Curiae

257. Palacios, Patricia – Counsel for Amicus Curiae

258. Palazzo, Denise – *Amicus Curiae*

259. Parent-Child Center – *Amicus Curiae*

260. Patreon, Inc. - *Amicus Curiae*

261. Pediatric Endocrine Society – *Amicus Curiae*

262. Pennsylvania – *Amicus Curiae*

263. PFLAG, Inc. – *Amicus Curiae*

264. Pierce, Jerome – Counsel for Amicus Curiae

265. Pillsbury Winthrop Shaw Pittman LLP – Counsel for Appellee

266. Pincus, Andrew J. (Mayer Brown LLP) - Counsel for Amicus Curiae

267. Planned Parenthood of South, East and North Florida – *Amicus Curiae*

268. Planned Parenthood of Southwest and Central Florida – *Amicus Curiae*

269. Pollock, Lindsey – *Amicus Curiae*

270. Portnoi, Dimitri – Counsel for Amicus Curiae

271. Postmates Inc. - *Amicus Curiae*

272. Powell, Wesley R. – Counsel for Record of Amicus Curiae

273. Purcell, Noah G. (Solicitor General for the State of Washington) - Counsel for Amicus Curiae

274. Rakuten, Inc.: Beneficial owner of *Amicus Curiae* Lyft, Inc.

275. Ranck-Buhr, Wendy – *Amicus Curiae*

276. Rao, Devi M. – Counsel for Amicus Curiae, Terminated

277. Rape/Domestic Abuse Program – *Amicus Curiae*

278. RC Barden and Associates – Counsel for Appellant, Terminated

279. Recruit Holdings Co., Ltd. (TYO 6098): Parent company for *Amicus Curiae* Glassdoor Inc.

280. Replacements, Ltd. - *Amicus Curiae*

281. Retzlaff, Pamela – *Amicus Curiae*

282. Reynolds, Andrew, Ph.D. - *Amicus Curiae*

283. RGF OHR USA, Inc.: Parent company for Amicus Curiae Glassdoor Inc.

284. Rhode Island – *Amicus Curiae*

285. Rivaux, Shani – Counsel for Appellee

286. Robertson, Cynthia C. – Counsel for Appellee

287. Rose, Nicholas M. (Baker & Hostetler LLP) - Counsel for Amicus Curiae

288. Rothfield, Charles - Counsel for Amicus Curiae

289. Samuels, Jocelyn, J.D. - *Amicus Curiae*

290. San Diego Cooperative Charter Schools – *Amicus Curiae*

291. Santa, Rachel – *Amicus Curiae*

292. SASA Crisis Center – *Amicus Curiae*

293. Sears, R. Bradley, J.D. - *Amicus Curiae*

294. Schaffer, Brian – *Amicus Curiae*

295. Scholars Who Study The Transgender Population – *Amicus Curiae*

296. Schommer, Monica – *Amicus Curiae*

297. School Administrators from 29 States and the District of Columbia – *Amicus Curiae*

298. School District of South Orange and Maplewood – *Amicus Curiae*

299. Segal, Richard M. – Counsel for Appellee

300. Shah, Paru – *Amicus Curiae*

301. Shirk, Sarah – *Amicus Curiae*

302. Shutterstock, Inc. (SSTK) - *Amicus Curiae*

303. SisterReach – *Amicus Curiae*

304. Slanker, Jeffrey D. – Counsel for Appellant

305. Slavin, Alexander – Counsel for Amicus Curiae

306. Slough, Beverly – Board Member of Appellant

307. Smith, Nathaniel R. – Counsel for Appellee

308. Sniffen, Robert J. – Counsel for Appellant

309. Sniffen & Spellman, P.A. – Counsel for Appellant

310. Spellman, Michael P. – Counsel for Appellant

311. Spital, Samuel (counsel for LDF) – Counsel for Amicus Curiae

312. Spotify AB - Parent company for *Amicus Curiae* Spotify USA Inc.

313. Spotify Technology S.A. - Parent company for *Amicus Curiae* Spotify USA Inc

314. Spotify USA Inc. - *Amicus Curiae*

315. Spryszak, Delois Cooke – *Amicus Curiae*

316. SSAIS.org – *Amicus Curiae*

317. Steptoe & Johnson LLP – Counsel for Amicus Curiae

318. Stop Sexual Assault in Schools (SSAIS.org) – *Amicus Curiae*

319. Stork, Victoria Lynn – (Baker & Hostetler LLP) - Counsel for Amicus Curiae

320. SurvJustice – *Amicus Curiae*

321. Sutherland, Emily – *Amicus Curiae*

322. Taymore, Cyndy – *Amicus Curiae*

323. Teufel, Gregory H. – Counsel for Amicus Curiae

324. The American Academy of Pediatrics – *Amicus Curiae*

325. The Impact Fund – *Amicus Curiae*

326. The Law Office of Kirsten Doolittle, P.A. – Counsel for Appellee

327. The School Board of St. Johns County, Florida – Appellant

328. The Southwest Women's Law Center – *Amicus Curiae*

329. The Women's Law Center of Maryland – *Amicus Curiae*

330. Toomey, Joel – Magistrate Judge

331. Trans Youth Equality Foundation – Amicus Curiae

332. Tumblr, Inc. - *Amicus Curiae*

333. Twitter Inc. (TWTR) - *Amicus Curiae*

334. Tyler & Bursch, LLP. – Counsel for Amicus Curiae

335. Tyler, Robert H. – Counsel for Amicus Curiae

336. Tysse, James E. – (Akin Gump Strauss Hauer & Feld LLP) – Counsel for Amicus Curiae

337. Underwood, Barbara D. (Solicitor General for the State of New York) - Counsel for Amici Curiae

338. Union for Reform Judaism – *Amicus Curiae*

339. UniteWomen.org – *Amicus Curiae*

340. Upchurch, Bailey & Upchurch, P.A. – General Counsel to Appellant

341. Upchurch, Frank D. – General Counsel to Appellant

342. Valbrun-Pope, Michaelle – *Amicus Curiae*

343. Van Meter, Quentin – *Amicus Curiae*

344. Van Mol, Andre – *Amicus Curiae*

345. Vannasdall, David – *Amicus Curiae*

346. Vaughn, Craig – *Amicus Curiae*

347. Verizon Communications Inc. (VZ) - Parent company for *Amicus Curiae* Tumblr, Inc.

348. Vermont – *Amicus Curiae*

349. Vermont Network Against Domestic & Sexual Violence – *Amicus Curiae*

350. Virginia – *Amicus Curiae*

351. Virginia Sexual & Domestic Violence Action Alliance – *Amicus Curiae*

352. Vitale, Julie – *Amicus Curiae*

353. Voices of Hope – *Amicus Curiae*

354. Wallace, Matthew M. – Counsel for Amicus Curiae, Terminated

355. Washington – *Amicus Curiae*

356. Washoe County School District – *Amicus Curiae*

357. Wasick, Joanna (Baker & Hostetler LLP) - Counsel for Amicus Curiae

358. Weber, Thomas – *Amicus Curiae*

359. Weisel, Jessica M. – (Akin Gump Strauss Hauer & Feld LLP) Counsel for Amicus Curiae

360. Williams Institute at UCLA School of Law - *Amicus Curiae*

361. Willkie Farr & Gallagher LLP - Counsel for Amicus Curiae

362. Wilson, Bianca, D.M., Ph.D. - *Amicus Curiae*

363. Wisconsin Coalition Against Sexual Assault – *Amicus Curiae*

364. Women of Reform Judaism, and Men of Reform Judaism – *Amicus Curiae*

365. Women's Bar Association of the District of Columbia – *Amicus Curiae*

366. Women's Bar Association of the State of New York – *Amicus Curiae*

367. Women's Center for Advancement – *Amicus Curiae*

368. Women's Law Project - *Amicus Curiae*

369. Women's Law Project and Young Women United – *Amicus Curiae*

370. Women Lawyers On Guard Inc. ("WLG") - *Amicus Curiae*

371. Women's Legal Defense and Education Fund – *Amicus Curiae*

372. Women's Liberation Front – *Amicus Curiae*

373. Wong, Kyle – Counsel for Amicus Curiae

374. Working Assets, Inc. - Parent company for *Amicus Curiae* CREDO Mobile, Inc.

375. Wyoming Coalition Against Domestic Violence and Sexual Assault – *Amicus Curiae*

376. Xerox Corporation (XRX) - *Amicus Curiae*

377. Yelp Inc. (YELP) - *Amicus Curiae*

378. Young Women United - *Amicus Curiae*

The undersigned certifies that included in this CIP is a list of the publicly traded companies and corporations that have indicated an interest in the outcome of the case or appeal through their appearance as an *Amicus Curiae*. Upon information and belief, the undersigned is not required to enter this information into the web-based CIP.

Aside from those appearing as *Amicus Curiae*, the undersigned is unaware of any publicly traded companies or corporations that have an interest in the outcome of the case or appeal. The undersigned will enter this information into the web-based CIP contemporaneous with the filing of this Certificate of Interested Persons and Corporate Disclosure Statement.

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The Supreme Court could not have been clearer in Bostock v. Clayton Cty., Georgia, 140 S. Ct. 1731 (2020) that sex and transgender status are distinct concepts. This recognition, when applied to the Title IX regulation permitting schools to separate student bathrooms on the basis of sex, fully supports the School Board's position in this case. Indeed, by its express and unambiguous language, the regulation only applies to sex as opposed to transgender status.

I. Title IX Permits Sex-Separated Bathrooms Meriting Reversal

Much of Adams' supplemental brief argues that in light of Bostock, this Court must find that impermissible sex discrimination occurred here. See Adams' Supp. Brief at pp. 4-9. What Adams misses though is that Title IX is fundamentally different from Title VII by virtue of its implementing regulations that permit sex-based separation of bathrooms. Title VII contains no statutory authorization or regulatory exception to its prohibition on sex discrimination in the terms and conditions of employment as it relates to bathrooms.

This is why Adams is wrong to suggest that Title VII case law and findings should be applied wholesale to Title IX claims. See Adams' Supp. Brief at p. 3. The cases cited by Adams do not even stand for this proposition, and the differences between the statutes have resulted in significant variations in the way they are interpreted. See Gebser v. Lago Vista Independent Sch. Dist., 524 U.S. 274, 277,

281-290 (1998)(holding that educational institutions could not be held liable under Title IX for harassment on a theory of respondeat superior, like employers can in Title VII cases, given different statutory language in Title IX). In fact, Bostock disclaims any intent to interpret the meaning of "sex" as it is used in Title IX. Bostock, 140 S. Ct. at 1753.

Perhaps this point is academic though, because the School Board has never contended that its policy does not make classifications based on sex by mandating that biological boys use the boys' bathroom and biological girls use the girls' bathroom. This activity is expressly permitted by Title IX's implementing regulations. Adams has not contended that bathrooms in schools may not be separated on the basis of sex. Surely, Title IX and its implementing regulations do not *require* a school to separate bathrooms based on sex. But it is an improper reading of Title IX and the implementing regulations to argue that the ability to make the classification is lawful but that a misclassification within that model is unlawful, which is what Adams argues.

Adams argues that Title VII is similar to Title IX, because Title VII also permits separate restrooms, but he does not cite to any statutory or regulatory language to support this point. See Adams' Supp. Brief at p. 15. There is none. Adams' reliance on Lusardi v. McHugh, Appeal No. 0120133395, 2015 WL 1607756 (E.E.O.C. Apr. 1, 2015), a decision issued by the EEOC holding that it was

impermissible discrimination in violation of Title VII to require a transgender person to use the facilities matching their biological sex, is inapposite for this reason. Of course, this decision is not binding on this Court even if it were considering a Title VII claim. See Wade v. Brennan, 647 F. App'x 412, 415-16, n.8 (5th Cir. 2016) ("We may rely on EEOC decisions as persuasive authority, though they are not binding.") (citing Price v. Fed. Exp. Corp., 283 F.3d 715, 725 (5th Cir. 2002)).

Adams' suggestion that it is somehow meaningful that the EEOC has not abolished sex-separated restrooms or that sex-separated bathrooms persist in other states under appellate court holdings agreeing with the district court misses the point. See Adams' Supp. Brief at p. 16. The point is that Title IX's implementing regulations would have to be read out of existence to find that the School Board's bathroom policy separating bathrooms based on biological sex is actionable under Title IX. Under the interpretation offered by Adams, a biological female can make the exact same claim and prevail under Title IX because, "but for" her sex, she would have been able to use the boys' bathroom. But she would not have a claim, because the regulation permits that classification to be made.

Even more, whether it is unlawful for an employer to separate bathrooms on the basis of sex under Title VII, let alone whether a school may do so under Title IX, is a door left open by the Supreme Court in Bostock. Not only did the Supreme Court confine its holding to claims of discrimination on the basis of transgender status or

sexual orientation in termination decisions challenged under Title VII, it did not purport to address whether other "other policies and practices might or might not qualify as unlawful discrimination or find justifications under other provisions of Title VII." Bostock, 140 S. Ct. at 1753.

Presumably, the Supreme Court was referring to Title VII's Bona Fide Occupational Qualification ("BFOQ") exception which permits sex discrimination that would otherwise be in violation of Title VII, when sex is "reasonably necessary to the normal operation of that particular business or enterprise." 42 U.S.C. § 2000e-2(e). Bostock does not foreclose that what might be otherwise considered discrimination under its holding, might be lawful upon application of an exception to the sex discrimination prohibition in Title VII.

This type of exception is exactly what the Court is confronted with in this case. Adams even acknowledges that Title IX's prohibition on sex discrimination is subject to exceptions with respect to the separation of bathrooms. See Adams' Supp. Brief at p. 16. The district court did not meaningfully grapple with the inherent contradiction in Adams' request to find the School Board's policy separating bathrooms based on sex unlawful, notwithstanding the regulation. On this point, the district court found:

> Because neither Title IX nor the regulation define "sex" or "on the basis of sex," the statute and regulation cannot be presumed to mean "biological sex." Adams is not contending that the school cannot provide separate restrooms for the sexes-he just wants the school to

> recognize that, interpreting sex to include gender identity, he is a boy and should be permitted to use the boys' restrooms.

Adams by & through Kasper v. Sch. Bd. of St. Johns Cty., Fla., 318 F. Supp. 3d 1293, 1322 (M.D. Fla. 2018). But again, the district court mistook its task in resolving this case with deciding whether Adams was a boy and not whether the School Board's policy was in violation of Title IX. The district court ultimately concluded that Adams proved a Title IX violation, because the School Board prohibited "a transgender boy, from using the boys' restroom 'on the basis of sex,' which discrimination caused [Adams] harm." Id. at 1325. But even if the term "sex" under Title IX included the concept of gender identity, it does not explain how the regulation does not permit discrimination based on "sex" even when "sex" is interpreted to include gender identity.

This presents the inherent dichotomy in Adams' challenge to the manner in which the School Board classifies him for purposes of its bathroom policy while, at the same time, conceding that the School Board is permitted to separate the two sexes in bathrooms.[1] Indeed, Adams argues, "the Title IX regulation allowing separate restrooms neither mandates nor endorses discrimination against transgender

[1] Adams, like the district court, continues to ignore how the School Board could possibly implement any bathroom policy or how Title IX's regulation could even have meaning with respect to gender fluid students if students were to be classified only on their gender identity.

students" and that it does not "require schools to maintain separate restrooms – they are simply permitted to do so." See Adams' Supp. Brief at p. 16. Adams further states, "[n]othing about the regulation requires schools to discriminate against transgender students, and nothing in Bostock approves discrimination of that kind." See Adams' Supp. Brief at p. 16.

Fundamentally, the factual record before this Court does not support Adams' argument. The School Board's bathroom policy merely requires students to use the bathroom matching their biological sex. Of course, schools are not required under the regulation to separate bathrooms based on sex, but they *are permitted* to do so. Adams argues that nothing in the regulation requires schools to discriminate against transgender students, but the question before this Court is not whether a school is "required" to discriminate against a transgender student, it is whether a school *may* discriminate against a student on the basis of sex for purposes of bathroom use. Whether that discrimination in bathroom use is due to one's biological sex or their transgender status "inextricably" bound with their biological sex, the result is the same. The result is that the School Board's policy is permissible.

Along these lines, there is nothing "stunning" about the School Board's observation that Bostock defines transgender status in reference to biological sex by holding that discrimination against an individual due to their transgender status is sex discrimination. The Supreme Court held explicitly:

> If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the individual employee's sex plays an unmistakable and impermissible role in the discharge decision.

Bostock, 140 S. Ct. at 1741–42. It is "but for" a transgender female's biological sex that the discrimination is actionable in this scenario according to the Supreme Court, because the employer in this scenario tolerates those actions in biological females that it does not in a biological male. In fact, a biological male, regardless of his gender identity, would also be protected from termination if an employer terminated him because of actions or traits it would tolerate in women.

Of course, but for Adams' biological sex, he would be able to use the boys' bathroom. But that is true of all biological girls, and the logic advanced by Adams would require this Court to read Title IX to make claims of those biological girls that do not identify as male also a violation of Title IX, something the regulations do not contemplate.

During oral argument in this matter, the Court asked Adams' counsel to distinguish the hypothetical Title IX claim brought by a biological girl. The scenario involved such a girl that identifies as a girl challenging the School Board's policy prohibiting her from using the boys' bathroom, alleging harm because the girls' bathrooms were overcrowded. Adams' attempt in his supplemental brief to distinguish this hypothetical plaintiff from his case falls flat. On this point, Adams

argues that the hypothetical biological girl would not suffer discrimination based on her transgender status. See Adams' Supp. Brief at p. 14. Adams' argument in this regard recasts the School Board's policy as one that targets transgender students; it does not. But again, although the biological girl has suffered a form of sex discrimination — that is, she is treated different than biological boys — her claim would not be actionable, because Title IX permits the separation of bathrooms based on the two sexes.

Next, Adams argues that there must be an injury and that the injury determines the remedy. See Adams' Supp. Brief at pp. 14-15. Adams argues that to the extent a biological girl in this scenario experiences injury, it is not because "she cannot access the boys' restroom, or because of a categorical school policy rejecting her gender identity. It is because the girls' restroom is an unequal facility, and that is what must be remedied in that hypothetical." See id. at p. 15. This does not distinguish the hypothetical though and does not follow from the record. Again, the School Board's policy does not take into account gender identity.

Further, Adams has argued during this litigation that he suffered injury actionable under Title IX, at least in part, because the gender-neutral bathrooms he was given access to were further from his classes than the boys' bathrooms. Once again, utilizing our hypothetical girl, would she not suffer the same harm as Adams if the girls' bathrooms were further away than the boys bathrooms? And wouldn't

the harm be on account of the School Board having classified her as a female rather than a male thus restricting her access to the boys' bathrooms? If the remedy she sought was to use the boys' bathrooms, and requiring biological females to use the girls' bathrooms is impermissible sex discrimination under Title IX, there really is no distinguishing that hypothetical from the instant matter.

Yet, Adams does not challenge the School Board's right to separate the sexes, and he maintains that the School Board is permitted to make girls use the girls bathrooms and boys use the boys bathrooms. Instead, he challenges the School Board's classification of him within the contours of the policy by asking this Court to adopt an interpretation of "sex" that changes depending on where in the statute or regulatory scheme it appears. In the general prohibition on sex discrimination in the statute, Adams argues it means that whenever someone is discriminated against in violation of Title IX because of their sex, whether that be their biological sex or transgender status, there is liability notwithstanding any exception. But in that same breath, Adams argues that the regulatory language permitting sex separation of bathrooms only authorizes discrimination against persons that are not transgender. Accepting this invitation would improperly turn the word "sex" into a chameleon, changing its meaning depending on where it appears in the statute and regulatory scheme. See Clark v. Martinez, 543 U.S. 371, 382, 386 (2005). Or, even more disconcerting, it would mean biology has no place at all within Title IX.

Adams argues that the School Board asks this Court to "limit Title IX's sex discrimination prohibition based on [its] own characterization of the term 'biological sex' – a term found nowhere in either Title VII or Title IX." See Adams' Supp. Brief at p. 2. This argument is simply wrong. The School Board asks this Court to give effect to the language of Title IX's implementing regulations that expressly permit the separation of bathrooms on the basis of biological sex. Adams argues that if the School Board's interpretation were correct then Bostock would have come out differently. See Adams' Supp. Brief at p. 3. But this is incorrect, because Title VII does not have a similar regulation, and Bostock says nothing about school bathrooms.

II. Adams' Interpretation of Title IX Violates the Clear Statement Rule

The School Board agrees with Adams that Title VII, unlike Title IX, is not spending clause legislation. Compare Gebser, supra, at 287 (recognizing that Title IX was passed pursuant to the spending clause) with Fitzpatrick v. Bitzer, 427 U.S. 445, 458 (1976) (Brennan, concurring)(recognizing that Title VII was passed pursuant to the Commerce clause and § 5 of the Fourteenth Amendment). This distinction mandates reversal, because the Supreme Court's reasoning in Bostock makes clear that Congress did not put states on notice that classifying bathroom usage based on biological sex is in violation of Title IX.

First, Adams' contention that the School Board waived this argument is unavailing for the reasons set forth in the School Board's Reply Brief. See School Board's Reply Brief at p. 21. Adams is also incorrect in arguing that the Clear Statement rule does not require reversal in light of Bostock.

When Congress acts pursuant to the Spending Clause, it creates legislation "much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." Pennhurst State Sch. and Hosp. v. Halderman, 451 U.S. 1, 17, (1981). Thus, in interpreting Spending Clause legislation, courts must insist "that Congress speak with a clear voice." Id. "There can, of course, be no knowing acceptance [of the terms of the contract] if a State is unaware of the conditions [of the legislation] or is unable to ascertain what is expected of it." Id. at 24–25. To find such a knowing acceptance, the Court must determine "whether Congress spoke so clearly that it can fairly say that the State could make an informed choice." Id. at 25. This is referred to as a Clear Statement Rule.

Adams' argument that Bostock invalidates the application of the Clear Statement Rule in this case misconstrues this precedent. In fact, the Supreme Court opined in Bostock that those that passed the Civil Rights Act might not have anticipated their work would lead to the result the Court was reaching. Bostock, 140

S. Ct. at 1737. The Supreme Court further explained why it did not matter if its holding was contemplated by Congress when it enacted Title VII, stating:

> But "'the fact that [a statute] has been applied in situations not expressly anticipated by Congress'" does not demonstrate ambiguity; instead, it simply " 'demonstrates [the] breadth'" of a legislative command. And "it is ultimately the provisions of" those legislative commands "rather than the principal concerns of our legislators by which we are governed."

Id. at 1749 (internal citations omitted). The Supreme Court emphasized the "broad" language of Title VII and that many of its applications might have been unexpected by Congress in 1964. Id. at 1753.

Conversely, Congress cannot use Spending Clause legislation to impose conditions on federal funds recipients through broad or vague terms interpreted on a case-by-case basis. Spending Clause legislation is fundamentally different from language passed pursuant to some other grant of authority given that it conditions a waiver of immunity on the acceptance of federal funds. A clear statement is necessary not only for the statute to apply at all, but to also apply in the way one is claiming. Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 548 U.S. 291, 296 (2006); Gregory v. Ashcroft, 501 U.S. 452, 460–70 (1991).

Congress cannot through the use of broad terms impose "upon the States a burden of unspecified proportions and weight, to be revealed only through case-by-case adjudication in the courts." Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cty. v. Rowley, 458 U.S. 176, 190 n.11 (1982). A statute using broad

terms under which a condition is implied, but plausible, is not enough. Dellmuth v. Muth, 491 U.S. 223, 232 (1989). "The requirement of a clear statement in the text of the statute ensures that Congress has specifically considered state sovereign immunity and has intentionally legislated on the matter." Sossamon v. Texas, 563 U.S. 277, 290 (2011). "[C]lear statement rules ensure Congress does not, by broad or general language, legislate on a sensitive topic inadvertently or without due deliberation." Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119, 139 (2005) (plurality opinion) "Implied limitation rules avoid applications of otherwise unambiguous statutes that would intrude on sensitive domains in a way that Congress is unlikely to have intended had it considered the matter." Id.

This line of precedent undercuts any application of Bostock's textual interpretation of Title VII to Title IX's provisions enacted pursuant to the Spending Clause. The Supreme Court held in Bostock that there is no such thing as a "canon of donut holes," in which Congress' failure to speak to a certain issue creates a tacit exception. Bostock, 140 S. Ct. at 1746–47. Nevertheless, this pronouncement must give way in this case to Clear Statement Rule precedent, because Congress' failure to speak to a certain issue does create an exception when the application of a statute is contingent on the acceptance of federal funds.

The language of Title IX and its regulatory scheme, if anything, evince that the Clear Statement Rule mandates reversal. There is no plausible argument that the

regulatory exemption in Title IX permitting sex-separated bathrooms requires schools to discriminate based on gender identity in establishing a bathroom policy; rather, schools are permitted to separate bathrooms based on sex under the regulations.

It should be undisputed that the interpretation adopted by the district court and advanced by Adams was not in the minds of those that passed Title IX. Indeed, those that passed Title IX were concerned that the statute's broad prohibition on sex discrimination would forbid schools from maintaining sex-separated intimate facilities. See, e.g., 117 Cong. Rec. 30,407 (1971); 118 Cong. Rec. 5807 (1972). In fact, as the Fourth Circuit noted in G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd., the interpretation of Title IX and its implementing regulations to require schools to permit students to use the bathroom aligning with their gender identity was "novel," and "perhaps not the intuitive one". 822 F.3d 709, 722-23 (4th Cir. 2016), vacated and remanded, 137 S. Ct. 1239 (2017). The Fourth Circuit also acknowledged in Grimm that "there was no interpretation of how § 106.33 applied to transgender individuals before January 2015." Id. at 709. Of course, that January 2015 interpretation, which was already subject to a questionable amount of deference, has since been withdrawn. Gloucester Cty. Sch. Bd. v. G. G. ex rel. Grimm, 137 S. Ct. 1239 (2017).

Adams cites Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 182 (2005) for the proposition that the School Board should have been on notice that the regulation permitting sex-separated bathrooms should operate differently than it has for the past 40 years. While Jackson held that schools are on notice that diverse forms of intentional discrimination are in violation of Title IX, the case concerned intentional retaliatory conduct, which is not subject to any regulatory exception and which was prohibited by Title IX regulations for nearly 30 years at the time of the decision. 544 U.S. at 183. The lack of comparable regulatory guidance in the instant matter supports reversal and makes Jackson inapposite. See Pennhurst, 451 U.S. at 25 (noting that it "strains credulity to argue that participating States should have known of their 'obligations' . . . when . . . the governmental agency responsible for the administration of the Act . . . has never understood [the statutory provision] to impose conditions on participating States").

Adams asks this Court to countenance liability for a federal funding recipient, operating pursuant to a regulation permitting the alleged discriminatory act at issue here, where there can be no question that it was "not immediately obvious what the grantee's obligations under the federal program were and it is surely not obvious that the grantee was aware that it was administering the program in violation of the statute or regulations." See Guardians Ass'n v. Civil Serv. Comm'n of City of New York, 463 U.S. 582, 598 (1983). This argument should be rejected, and the district

court should be reversed for interpreting Title IX in violation of the Clear Statement Rule.

III. The Differences Between the Sexes are Enduring and those Differences Undergird the School Board's Policy

It cannot be disputed that certain sex-based classifications are constitutional, because there are "differences between men and women" that are "enduring." United States v. Virginia, 518 U.S. 515, 533 (1996). "The sexes are not similarly situated in certain circumstances." Michael M. v. Superior Court, 450 U.S. 464, 469 (1981) (plurality opinion). The "two sexes are not fungible." Virginia, 518 U.S. at 533.

Bostock's recognition of the distinction between sex and transgender status supports a finding that the School Board's policy is substantially related to an important governmental interest. In fact, Bostock recognized that arguments advanced by employers that the discrimination against a transgender person, without regard to their biological sex, might be pertinent if Title VII only ensured equal treatment between men and women. 140 S. Ct. at 1748. That is exactly the guarantee of the Equal Protection Clause; no more and no less. Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256, 273 (1979)("[T]he Fourteenth Amendment guarantees equal laws, not equal results.").

Adams asks this Court to afford him special treatment and not just the equal treatment the law commands by creating an exception to equal-protection precedent for biological females that are transgender. In so doing, not only does Adams

misconstrue what the law requires, but he again recasts the School Board's policy into something it is not; that is, a policy that targets students based on their gender identity.

Instead, the School Board's policy requires biological girls to use the girls' bathrooms and biological boys to use the boys' bathrooms to protect the bodily privacy and safety interests of all students. On the record before this Court, it cannot be said that the policy was not a close enough fit to the important governmental interests at stake to survive intermediate scrutiny. In fact, of the approximately 2,000 students who attended Nease High School at the same time as Adams, there were only 5 known transgender students, including Adams (or 0.25% of the student population at the school). See [Docs. 162 at Tr. 136, 141]. Adams is the only student who refused to abide by the School Board's bathroom policy. [Doc. 162 at Tr. 141-142].

Finally, Adams cites Concrete Works of Colorado, Inc. v. City & Cty. of Denver, Colo., 540 U.S. 1027, 124 S. Ct. 556, 557 (2003)(Scalia J. dissenting from the denial of petition for writ of certiorari) which in turn cites Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 229-230 (1995), for the proposition that harm is relevant in Equal Protection Clause jurisprudence. Adams misconstrues the School Board's position and the cases cited, which concern what level of scrutiny to apply to a benign racial classification.

The cases cited by Adams hold that benign intent of the classification, like those for affirmative action purposes, does not lessen the scrutiny standard. Adarand, 515 U.S. at 229-230. Rather, the nature, not purpose, of the classification drives the appropriate scrutiny standard. Id. Critically, Concrete Works notes that "a proper plaintiff challenging governmental use of racial preferences can state a prima facie case simply by pointing to this practice and showing that he or she was treated 'unequally because of his or her race.'" See 540 U.S. 1027, 124 S. Ct. 556, 557.

Thus, any biological female that could establish Article III injury by virtue of the School Board's classification could challenge that classification as discriminatory. Importantly, if the district court and Adams are right that the manner in which Adams uses the bathroom ameliorates the privacy interest of others, this position cannot be maintained alongside an acknowledgement that schools can separate bathrooms based on sex, because that same rationale applies when any biological female uses the restroom.

The School Board's classifications were not based on stereotypes about the sexes. The classifications were based on the enduring biological differences between boys and girls that the Supreme Court has repeatedly recognized support a classification challenged under the intermediate scrutiny standard. For these reasons, the district court should be reversed.

Respectfully submitted this 24th day of July, 2020.

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this brief complies with this Court's June 17, 2020, Order limiting supplemental briefs to no more than twenty (20) pages. I FURTHER CERTIFY that 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). This brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 2007 in 14-point Times New Roman.

/s/ Terry J. Harmon
TERRY J. HARMON

CERTIFICATE OF SERVICE

I hereby certify one true and accurate copy of the foregoing document has been furnished by electronic means to all counsel of record as well as by U.S. Certified Mail, Postage Prepaid and Return Receipt Requested.

One originally signed version and six copies of this brief with tan covers have been delivered via Federal Express to:

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