

# No. 21-1365

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## IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Selina Soule, a minor, by Bianca Stanescu, her mother; Chelsea Mitchell,  
a minor, by Christina Mitchell, her mother; Alanna Smith, a minor,  
by Cheryl Radachowsky, her mother; Ashley Nicoletti, a minor,  
by Jennifer Nicoletti, her mother,  
*Plaintiffs-Appellants,*

v.

Connecticut Association of Schools, Inc. d/b/a Connecticut Interscholastic  
Athletic Conference; Bloomfield Public Schools Board of Education;  
Cromwell Public Schools Board of Education; Glastonbury Public Schools  
Board of Education; Canton Public Schools Board of Education; Danbury  
Public Schools Board of Education,  
*Defendants-Appellees.*

and

Andraya Yearwood; Thania Edwards, on behalf of her daughter, T.M.,  
Commission on Human Rights and Opportunities,  
*Intervenor-Defendants-Appellees.*

On Appeal from the United States District Court  
for the District of Connecticut, No. 3:20-cv-00201

### **BRIEF OF 73 FEMALE ATHLETES, COACHES, SPORTS OFFICIALS, AND PARENTS OF FEMALE ATHLETES AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS**

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## Interest of Amici Curiae<sup>1</sup>

Since the founding of this nation, equality has been a constant struggle for various people groups. When the struggle has reached this Court, this Court has consistently been willing to consider how to uphold equal protection, equality of opportunity, and equal rights for all persons in these United States.

Here, the need to protect the equality of women is at issue. Sports is the new playing field, but the ultimate victory sought is for equality. *Amici* are 73 female athletes, coaches, teammates, parents, and relatives of these athletes<sup>2</sup>. These athletes come from many levels of playing – from elementary school to collegiate; from professional to Olympic. No matter their level of accomplishment, their years in their chosen sport, or their age – some minors and some adults – all have been forced to compete against males or to suffer the psychological impact of helplessly watching the forced competition of men against women. Each of the *amici* who have signed on to this brief have a unique story to tell that all weave a common thread essential to this Court’s consideration of Soule’s appeal.

Among the 73 athletes, coaches, and family members are: (i) Martina Navratilova, 59x Grand Slam Champion; (ii) Nancy Hogshead-Makar, Olympic Gold Medalist, celebrated civil rights lawyer, former president of the Women’s Sports Foundation; (iii) Donna de Varona, Olympic Gold Medalist, World Record Holder,

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<sup>1</sup> In accordance with Local Rule 29.1(b) and Federal Rule of Appellate Procedure 29(a)(4)(E), counsel affirms that no counsel for any party authored this brief in whole or in part and that no person or entity other than amici or their counsel made a monetary contribution intended to fund the preparation and submission of this brief.

<sup>2</sup> Athletes, coaches, and family members are identified in the Appendix to this Brief.

Emmy award winner, former president of the Women's Sports Foundation; (iv) Donna Lopiano, Ph.D., six-time National Champion softball player, nine-time All-American, National Sports Hall of Famer, one of the "Ten Most Powerful Women in Sports" and one of the "100 Most Influential People in Sports," former Women's Athletic Director at the University of Texas, former president of the Association for Intercollegiate Athletics for Women, and former president of the Women's Sports Foundation; (v) Jennifer Sees, former NCAA track and field athlete, high school track coach, and parent of an NCAA soccer player; (vi) Summer Sanders, Olympic Gold Medalist; (vii) Courtney DeSoto, mother of a high school female athlete; (viii) Jill Sterkel, an Olympic swimmer, former world record holder, and former University of Texas head swim coach; (ix) Madisan Debos, current NCAA track athlete; (x) Laura Wilkinson, an Olympian and World Champion in diving and parent to a daughter; and (xi) Evie Edwards, a cyclist and the mother of an elementary-age female cyclist.

*Amici* demonstrate, through painfully lived experiences, that Soule's situation is tragically not unique. Female athletes across the country, at all levels of sports, stand on the precipice of permanently losing their access to equal opportunity and safety in sports. Based on their biological sex, they are at risk of being pushed aside in law and in life in a permanently damaging and irreversible way.

By bringing their names, their voices, and their personal stories to this Court's attention, *amici* hope to highlight the plea of women and girls across the nation: that this Court affirm their continued right to equal opportunity and to set in

granite that females may not be put at a clear and targeted disadvantage based on their biological sex.

### **Summary of the Argument**

*Amici* offer an argument that uniquely supplements Soule’s bold defense of females’ equal rights. By finding for Soule, this Court can reaffirm that women should not lose their equal opportunity to compete in sports on a level playing field. and ensure that females’ basic right to be treated equally is still the legal norm in the United States. In order for women and girls to be able to talk frankly about their biology and the impact of their sex in sport and in life, the words “female,” “girl,” and “woman” are an essential recognition of scientific reality throughout this brief. Accurate language that clearly describes the biological existence of female humans must have priority over language of preferred personal identification. This is the only way to protect the rights, equality, and safety of female athletes.

A growing number of women and girls have been facing the humiliating and damaging experience of being forced to compete against males who identify as transgender in the women’s sports category. This is an abusive and discriminatory practice. *Amici* ask this Court to affirm the protection of women and girls. One male competing against women and girls negatively affects every girl he competes with as well as every girl who loses a playing opportunity and every girl who must witness a female athlete being asked to step aside for the feelings of a male despite the knowledge that it is unfair to ask her to do so.

*Amici’s* experiences as athletes, coaches, parents, and relatives of female athletes prove that females are uniquely and adversely affected when they are

forced to compete against males in sports. Their personal stories demonstrate that females and males cannot experience or compete in physical sports in the same way; that the psychological, tangible, and long-term harm suffered by females forced to compete against males is irreversible; and that females across the nation at all levels of sports are suffering real harm that threatens their right to basic equality, safety, and equal opportunity under the law.

## **Argument**

### **I. Females are uniquely and adversely affected when they are forced to compete against males in sports.**

It is hard to express the pain, humiliation, frustration, and shame women experience when they are forced to compete against males in sport. It is public shaming and suffering, an exclusion from women's own category. The message to women and girls, 50% of our population, is shared by the parents, teammates, and spectators who watch it unfold. The shame does not disappear after competition is over. It stays forever as a memory of sanctioned public ridicule and a reminder of how women should expect to be treated and set aside for the needs and desires of males.

At every age and every level, a female athlete deserves to know she is worthy of respect and fair competition against other females. She should not have to reach elite status to finally be deemed good enough to play without facing sex discrimination. College women's teams do not play against college men's teams; the high school girls' basketball team does not play against the boys' basketball

team. The individual men's and women's state champion in tennis do not play against each other to determine who is the actual champion. The women's Olympic sprint champion does not race the men's champion.

This kind of competition is not allowed because we understand the result would almost always serve to humiliate women. It is not real or fair competition. We know the outcome because the numbers, science, and physical realities predict it with concrete assurance. A far less talented and skilled male will soundly beat a female. With this knowledge, we know the contests would merely be a predetermined public display of the physical differences between males and females. Such competition robs women and girls of a place to be held up in equal value to boys and men. In fact, it solidifies and reinforces that they are not worthy of equal opportunity and recognition.

Each stage of a girl's sports development path provides the opportunity to play – from granting her the last spot on the team to the first-place podium. These experiences – which start at a young age – create inspiration, self-belief, resilience, and confidence – things every girl should be able to seek fairly and with equal opportunity to her male counterparts. We know the names of women like Martina Navratilova because these pathways and opportunities have been protected for females from a young age to the most competitive levels.

**A. Females and males cannot experience or compete in physical sports in the same way.**

There is enormous emotional trauma that accompanies women and girls when they are subject to competing against males in their sports opportunities. This trauma is grounded in real science and an understanding of our physical world as women; it is not a figment of our imagination. As athletes, coaches, and spectators of sport, we know there is a clear and obvious physical difference between boys and girls. We know the physical development of boys – beginning in utero – results in a performance difference between boys and girls. See Carole Hooven, *T: The Story of Testosterone, the Hormone that Dominates and Divides Us* (2021). We see this play out in sports and physical activity at every age and every level.

Physical fitness tests and records for youth sports showcase a measurable performance disparity between males and females at every age. The genetic gene expressions that differ between males and females number over 6,000 and are not limited to: height, body mass, skeletal structure, strength, muscle quality, center of gravity, limb length ratios, cardiovascular performance, and, of course, reproductive influence. See EN Hilton & TR Lundberg, *Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage*, *Sports Med.* (March 2021); ML Blair, *Sex-based differences in physiology: what should we teach in the medical curriculum?*, *Adv Physical Educ.* (March 2007); and KM Haizlip, BC Harrison, & LA Leinwand, *Sex-based differences in skeletal muscle kinetics and fiber-type composition*, *Physiology* (Bethesda) (Jan. 2015). The effects of any amount of male puberty and androgenization make those early performance differences explode even further.

As athletes, coaches, and parents of female athletes, we know this because we live it. We see and understand that the average age at which male athletes will beat the world records of women is 14-15 years of age. See the details of records listed on the Boys v. Women website: <https://boysvswomen.com/#/world-record>. The use, weight, and design of sports equipment such as bikes, balls, bats, javelins, discs, and suits, as well as playing fields and net heights reflect the biological differences between boys and men and girls and women and are designed to optimize the competition. At every level, we are aware that less skilled, less determined males beat higher level female athletes because of innate physical difference in the sexes. Physical and developmental differences should not mean that girls and women are less worthy of participating, competing, and winning in sport. Females are half of the world's population and deserve equal opportunities as much as males.

**B. The psychological, tangible, and long-term harm suffered by females forced to compete against males is irreversible.**

When women and girls are asked to compete against male athletes, they are asked to ignore biological reality, the reality that defines female physical bodies. They are asked to pretend there is no hardship or difference in competing against male development that began in utero and resulted in differences in muscle structure, bone structure, response and reaction times, bone density, and finally, reproductive influences, such as monthly cycles and possible pregnancy. They are asked to ignore almost all their lived experiences. This expected disconnection from

reality has a very real psychological impact. It tells female athletes, their coaches, and their family members that female bodies don't matter enough to be recognized. This message is received when girls and women are told that rules in their sports don't need to be fair and that female bodies don't have equal representation on a playing field. Women's and girls' positions can be taken by a male if he requests to play with females, despite his physical advantages. Women and girls must stand by as boys and men now have a claim to female spaces, in addition to their own full male teams.

The girl who loses her place or her chance to compete must watch a male take a place that was set aside for her. She not only has to deal with a loss; but she must also deal with the psychological trauma that comes from knowing that the loss was not just, fair, or equal; it was an 'extra' spot given to a male – one she had no equal opportunity to compete for. The girls around her must watch a male supplant a place that was once set aside for women. This is mental torture for them. See Courtney E. Ackerman, *Learned Helplessness: Seligman's Theory of Depression*, (March 2018). Women and girls know this means their fair treatment and their equal opportunity are no longer recognized as important. They are not protected or safe in their own sports. The girls competing receive the message that their competition is not important enough to demand integrity and fairness, while they witness firsthand that the males' competition and demands are always enough. The damage this causes is irreversible.

As athletes, coaches, and parents of female athletes, we are left with questions. How are we not seen working and training and striving – only to be

beaten by a male who has less objective talent and skill but is able to rely on innate male advantage? How have we come to a place where we no longer have fair and equal opportunities in sports and where females are excluded from our own podiums, our own teams, and our own championships because we are expected to affirm males who wish to have our place? How are we expected to compare ourselves to males who everyone knows are physically stronger and biologically different? Why are women not allowed to have a female champion when there is already a male champion – whose place we could never take? Why does a male get to take a female's place on a team or in a race because it will help him feel better? If the measurement is feelings, why do our feelings not count? Will this Court agree that females no longer have the right to equal opportunities in real competitions? Females are suffering irreversible psychological damage that compounds every day this unequal treatment continues.

**C. Females are suffering real harm that threatens their right to basic equality and equal opportunity.**

Women and girls had begun to believe that the measured and known performance gap between males and females did not have to be viewed as a stamp of male superiority, but rather as the understood physiological and biological divergence between equally respected members of society. The sex of female bodies, organized around and along divergent developmental paths, affects every cell and system, from reproduction and muscular development to skeletal and cardiovascular systems. Females had come to appreciate that these innate

differences did not strip them of an expected place of equality and fair treatment. Sport and physical competition is the one public place where males and females have been guaranteed the right to celebrate their entirely independent and incomparable physical limits under laws like Title IX. Now, these same rules are being interpreted to remove women's access to equal protection and equal opportunities.

Women's sports were created and set aside to be a place where 50% of the population could finally be included and seen as worthy of the title, "champion"; where they could be held up as valuable members of schools, teams, and society.

Now, the nation is being told that fair sports for women and girls was a lie. As athletes, coaches, and parents of female athletes, we know that asking women to compare their bodies to male bodies is not a just request. The athletes know the competition is unfair. The coaches, officials, and sports scientists know the competition is unfair. The parents and spectators know the competition is unfair. And we all know exactly why. We even know that many of the male athletes taking our positions and titles were not exceptional male athletes in comparison to other males; they now serve as a reminder that a physically unexceptional male is entitled to showcase physical prowess against women and demand women relinquish their opportunity to compete, their place in the event, their hard-earned title, and even their records. The girls and women must comply; the officials must congratulate; the parents must cheer; and the records must be etched for all to appreciate the reinforced reality that males are entitled to replace and show dominance over females in what was once an equal society.

These policies and actions are violating the spirit of the formation of women's sports and laws like Title IX. People in positions of power are looking for the right words to justify this deprivation of equal opportunity. As women, we can only think that it is because we are "just women;" and that even our biological reality is a debatable concept.

The realization that the laws and rights written to protect women are being used against females and the knowledge that people in power cannot or will not see – even in a publicly visible contest – that females are not being treated with the same respect and honor as men is a message that cuts deep into the psyche of women. The women that have experienced this feel the weight of unequal treatment, the stripping of rights, the loss of rewards, and the erasure of fair and equal representation. Women feel the weight of the message that female physical bodies are only good enough if they are able to compete with a physical development of biology that does not match their own. Women see and hear the rule makers and lawmakers argue the purpose of women's sports and, indeed, that the purpose of female athletes is to make a male athlete feel welcome and honored above the female athletes. Girls and women hear the message that it is a female's job to consider our kindness above our demands for fair and equal treatment. Female athletes are told that "there are only a few" male athletes who want to compete against women, and so females must step aside and make room for them. The awards and record boards, originally meant to help girls and women share new possibilities for those of us born female, are rewritten with male names. Female existence and accomplishment in sports is being erased, name by name. When

women compete in races against males and compete on teams with males, females know they are supporting the premise of male dominance; they are supporting the idea that females can only respond with meek compliance when treated as less than men; women and girls are forced to support the erasure of something females were proud of and once esteemed for.

As athletes, coaches, and parents of female athletes, what is our choice? To cede to participate? To give up entirely? Do we not then also give away our rights and our dignity? There is no solution for women and girls without the protection of laws that recognize equal opportunity for females.

The forced competition against males is humiliating. It cannot be fair or equal and yet, girls and women must either walk away from sports opportunities or accept the humiliation. Frustratingly, the rules and laws written for the expressed purpose of equality have not been enough; states now need to write new laws on top of the old ones to prevent the redefinition of the physical reality of being female.

A question being asked is if there is a way to make competition fair for women while still including some of the males who wish to participate with women. This is also an insulting proposition. Competition is how human beings find their physical limits. It is an invitation to bring one's absolute personal best and match it with the personal best of others in a fair and clean contest. Bringing a body forward to compete that is intentionally and artificially hindered is not in the spirit of that ethos. The question the lawmakers and governing bodies of sport are asking as they try to make guidelines to include males is just how much rules must impair male

performance and development to be equated to that of women. This argument – this experiment – is not empowering for women; it is damaging to an entire generation of females. It is deeply misogynistic and demeaning. Girls and women are not encumbered male bodies. Girls and women are uniquely and innately female, and females should not have to fight for representation and see only biology that does not compare to their own rewarded.

As athletes, coaches, and parents of female athletes, we are hurt and shamed that people in power do not find female athletes important enough to speak up for. We are left to cry and sink into depression on our own as we embrace our new understanding of girls' and women's place in the world. We are left with the shame of not being able to compete physically with a male who wants our place, the shame that laws have not been enough, the shame of losing while others cheered in a competition with no integrity, the shame of seeing males so easily take over that which was established for us, the shame of having to speak out for something so plainly obvious, and the shame of having been silent, even if just for a moment, while we suffered or watched other women suffer. Not one more girl should go through this. Not one more parent should have to watch their daughter sidelined for a male who is deemed more important than her fair and equal chance.

The rules and record boards have not been fixed. We are not just haunted by our memories and experiences. We are forced to reckon with a public record that condones and historically celebrates our abuse and marginalization. This cannot be the legacy we leave for women and girls; for millions of human beings who are born female.

**1. Reka Gyorgy, 2016 Hungarian Olympian, 2x ACC Champion from Virginia Tech**

I was a senior competing in my last swim meet at the NCAA Women's Swimming & Diving Championships on March 17th, 2022. I swam the 500 freestyle in preliminaries where I got 17<sup>th</sup>, which means I did not make it back to the finals and was first alternate. I watched Lia Thomas [a biological male] from the pool deck win a women's national title in a finals that I deserved to be in because the rules in place did not support biological women. I couldn't help but cry and feel frustrated, angry, and sad. It hurt me, my team, and other women in the pool. A year later, there is still no response to my letter to the NCAA. This is an ongoing, painful reminder of how little all the women at that swim meet matter to the people running our schools and sports competitions.



*Photo 1: The podium at the 2022 NCAA Women's Swimming and Diving Championships where a male took the place of Reka Gyorgy.*

## **2. Macy Petty, current NCAA volleyball player**

While in high school, I competed in club volleyball tournaments across the country with hopes of being recruited to a college volleyball team. At one of these tournaments, with several college recruiters watching, I had to play against a boy in a girls' volleyball tournament. While trying to evaluate our skills, the recruiters instead watched this athlete repeatedly slam the ball in our faces. Because the girls' volleyball net heights are different from boys', this athlete was competing on a net 7.5 inches shorter than he should have as a male. As an athlete, this was humiliating; as a woman, I was horrified to see a boy so easily steal the right to play in brackets that were designed specifically to make volleyball safe and competitive

for female bodies. I thought this was a mistake everyone could see, and it would never happen again.

### **3. Riley Gaines, 12x All-American, SEC Record Holder**

I have been a devout swimmer from the age of seven. It's hard to explain the amount of time, hard work, and sacrifice I have made in an effort to be successful at my sport. Every opportunity and every small victory along the way made the next step possible.

Last year, a 6'4" male (Lia Thomas) and I raced at the National Championships, which ultimately resulted in a tie. Upon tying, I was told Thomas (the male athlete) would get the trophy instead of myself as it was necessary for photo purposes. Everything I worked my entire life for was reduced to a photo-op to validate a male's feelings and identity of himself. All the women in the race faced unfair competition and the silencing of our voices through intimidation, emotional blackmail and gas-lighting by these large organizations and institutions.

I still struggle with knowing the people who were supposed to shield us from harm and make sure our sport is ethical were the same people who were silent and allowed us to be discriminated against. This goes against everything federal civil rights laws and Title IX were intended to protect. Women's sports were created to recognize and celebrate the unique physical accomplishments of female athletes. I feel neither recognized nor celebrated. I feel betrayed, belittled, and traumatized. Please don't make any other women go through this.



*Photo 2: Riley Gaines is forced to share the podium with a male.*

#### 4. Catrina Allen, World Champion in Disc Golf

I have been playing sports since I was five, and although I've lost many times over the course of my career, I've never felt as defeated as the day I had to compete against a male opponent in the disc golf female professional division. As tears ran down my face, during an elite series tournament, I realized that even though I have a strict practice regiment, workout plan and am known as a fighter, there is no outworking the physical advantages that a male has. I have since faced four different males in the female category in 26 different tournaments. The worst part is if the women speak out and share their feelings of defeat and frustration, they fear loss of sponsorships and the very public wrath of those defending the male athletes. The women feel helpless, scared, voiceless and isolated.



*Photo 3: A male becomes the women's champion in disc golf in competition against Catrina Allen and other females.*

**5. Hannah Arensman, professional women's cycling,  
Cyclocross National Champion**

I was born into a family of athletes. Encouraged by my parents and siblings, I competed in sports from a young age, and I followed in my sister's footsteps, climbing the ranks to become an elite cyclocross racer. Over the past few years, I have had to race directly with male cyclists in women's events. As this has become more of a reality, it has become increasingly discouraging to train as hard as I do only to have to lose to a man with the unfair advantage of an androgenized body that intrinsically gives him an obvious advantage over me, no matter how hard I train.

I have decided to end my cycling career. At my last race at the recent UCI Cyclocross National Championships in the elite women's category in December 2022, I came in 4th place, flanked on either side by male riders awarded 3rd and 5th places. My sister and family sobbed as they watched a man finish in front of me, having witnessed several physical interactions with him throughout the race.

Additionally, it is difficult for me to think about the very real possibility I was overlooked for an international selection on the US team at Cyclocross Worlds in February 2023 because of a male competitor.

Moving forward, I feel for young girls learning to compete and who are growing up in a day when they no longer have a fair chance at being the new record holders and champions in cycling because men want to compete in our division. I have felt deeply angered, disappointed, overlooked, and humiliated that the rule makers of women's sports do not feel it is necessary to protect women's sports to ensure fair competition for women anymore.



*Photo 4: Hannah Arensmen misses the podium while a male takes her place.*

**6. Courtney DeSoto, parent of current high school track athlete**

I am the parent of a minor daughter who runs varsity track in a public school in California. A male freshman joined the women's team this year and is running varsity track and winning every race while the girls watch in bewilderment. This same.

individual is using the girl's locker room to change and shower. The girls are so uncomfortable that some are not using the locker room themselves anymore. The head coach is about to quit over the injustice of it all. Complaints and concerns for the girls are made to school and district administration, but no one is willing to say anything because our state laws and legislators will not protect our daughters. I have a younger daughter who is also interested in sports, but I am concerned for the future of all our girls.

**7. Jarrod Jacobi, father of high school ski athlete**

My daughter lives in a school district where alpine ski racing is a varsity sport. On March 5-7, 2023, the CA/NV Interscholastic Ski & Snowboard Federation (CNISF) state finals for ski athletes occurred at Northstar (Tahoe). Forty to 50 schools were represented, with approximately 200 athletes in total. My daughter worked hard all season and qualified to represent her high school this year.

I was riding the chairlift with her when she told me that the overall winner of the slalom race the day before, who placed third in grand slalom later that day, was "trans." My daughter has a kind, supportive heart, but we must consider the young ladies down the line (her included) who were displaced in standings by a biological male. How might they feel? What if a few more biological males compete in the

women's division next year, and the following year, more? Or she does not qualify for state because she lost out to a biological male; or didn't get a college scholarship for the same reason. These are not hypothetical questions; this is where we are headed unless sane people, not afraid to point out the obvious, speak up and take a stand.

These kids – they are kids – live in the world adults have created. I don't blame the winning athlete; this is a failure at the administrative level and higher. I'll point out the obvious: you ruin women's sports by allowing males to compete in women's sports.

Speaking for parents of female athletes, are we just expected to "come to terms" with this? No amount of hormone therapy or re/de-constructive surgery will change the biological, muscular, and skeletal differences between those born with XX and those born with XY chromosomes. The assumption is that when my daughter competes in the women's division, she competes against other biological females. She is not in a co-ed or open division.

It is one thing to read about these things happening in other places; it is quite another to witness it firsthand. This injustice to young women cannot continue anywhere, especially not on my doorstep.

### **Conclusion**

Every day that girls' and women's equal opportunity in sports is denied, is a day that females suffer irreversible harm and psychological trauma. By reversing the judgment of the district court, this Court can reaffirm that females have not lost their equal opportunity to compete in sports on a level playing field and ensure that

the basic right to be treated equally as a person born female is still the legal norm in the United States.

The judgment of the district court should be reversed.

Respectfully submitted,

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pro hac vice pending*

### **Certificate of Compliance**

This brief complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and Local Rule 29.1(c) because it less than the maximum length limitation there allowed, excluding the parts of the brief exempted by Rule 32(f); and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the same program used to calculate the word count).

/s/Amos N. Jones  
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