IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

BRIANNA BOE, et al., **Plaintiffs,** **and** **UNITED STATES OF AMERICA,** **Plaintiff-Intervenor,** **v.** **STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama, et al.,** **Defendants.**	)	**Case No.: 2:22-cv-00184-LCB**

KATHLEEN HARTNETT'S RESPONSE TO THE COURT'S SUPPLEMENTAL ORDER TO SHOW CAUSE

TABLE OF CONTENTS

TABLE OF AUTHORITES

Cases

Statutes

Other Authorities

Rules

Treatises

Respondent Kathleen Hartnett responds to the Court's May 1, 2024 Supplemental Order to Show Cause and states as follows:

INTRODUCTION

Kathleen is one of the *Walker* counsel. Throughout her involvement in that case, Kathleen acted in good faith, followed governing rules and ethical standards, and pursued her clients' best interests. She has testified honestly and completely in her declarations and live testimony before the Panel and this Court. Because she did not engage in sanctionable conduct, she respectfully requests that the Court dismiss her from this proceeding without sanction.

This brief discusses each of the applicable findings in the Panel's Report of Inquiry (the "Report") issued in *In Re: Amie Adelia Vague, et al.*, No. 2:22-mc-3977-WKW (M.D. Al.) ("*Vague*") and the charges set forth in this Court's Supplemental Order to Show Cause ("Show Cause"). At the outset, Kathleen respectfully highlights a few key overarching considerations:

First, no evidence from the numerous hours of testimony and pages of declarations indicates that anyone—much less Kathleen—was involved in a coordinated scheme to file two cases in an attempt to increase the chances of drawing a particular judge. Rather, the two teams—*Walker* and *Ladinsky*—were competing to be the first-filed case. And, once the cases were filed, there was minimal

coordination between the teams until such coordination became unavoidable. For her part, Kathleen never interacted with anyone on the *Ladinsky* team about these cases until Friday, April 15—the date *Walker* was dismissed.

Second, Kathleen was counsel in *Walker* only. She did not participate in the refiling of the *Eknes-Tucker* case. Her involvement in this matter ended with the Rule 41 dismissal in *Walker* on Friday, April 15, 2022, and the *Walker* team's decision that weekend not to refile.

Third, the "misconduct" listed in the Report is principally "collective," and nearly all of it does not involve conduct personal to Kathleen. For instance, the Report and, by extension, the Show Cause address a number of discussions and phone calls—a call to Judge Thompson's chambers; calls between the *Walker* and *Ladinsky* teams involving wide-ranging discussions of judges and their philosophies; and a discussion that purportedly included a comment about the parties having a "zero percent chance" of success in front of Judge Burke. Kathleen was not involved in any of those calls and discussions. The only actions described as "misconduct" involving Kathleen were marking *Walker* as a related case to *Corbitt* and voluntarily dismissing *Walker* without prejudice. As described below, these actions do not support a sanction against Kathleen.

Finally, Kathleen requests that the Court consider the Panel's real-time comments about Kathleen during her testimony, as opposed to the Final Report's conclusions of collective misconduct. During her testimony, the Panel repeatedly praised Kathleen and her candor:

> JUDGE PROCTOR: One of the things I was impressed with with your declaration is its clarity, its organization, and its candor. So I want to give you that compliment as we stand here. Aug. 3, 2022 Hrg. Trans. at 22:12–14.
>
> JUDGE PROCTOR: I think you've given me a good picture of what you're thinking and what your motivations were and what your decisions were. *Id.* at 42:12–14.
>
> JUDGE PROCTOR: I really appreciate the way you're tackling this, and I just want to affirm that as we're going along. *Id*. at 79:25–26.
>
> JUDGE PROCTOR: I thank you for the way you've approached this. *Id*. at 89:17.

Throughout this process, Kathleen has been truthful and forthcoming. The Panel's statements indicate that, in real time, they agreed.

Kathleen's testimony also is corroborated by the testimony of each of the other Respondents on all the material issues. Notably, much of that testimony was taken when all Respondents were sequestered and therefore could not—and did not—communicate about their testimony. Such consistency is the hallmark of truthfulness in any judicial inquiry and should be given extraordinary weight as this Court considers whether Kathleen acted in good faith.

Kathleen regrets that her actions created an appearance of impropriety and judge shopping and appreciates this opportunity to address the Court. Because she did not engage in any sanctionable conduct and at all times acted in good faith, she respectfully requests dismissal of the charges.

STANDARDS OF CONDUCT

I. The Court May Sanction Under Its Inherent Authority Only Upon a Finding of Subjective Bad Faith.

The Court's "inherent power should be exercised with caution and its invocation requires a finding of bad faith." *Kornhauser v. Comm'r of Soc. Sec.*, 685 F.3d 1254, 1257 (11th Cir. 2012); *see Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1223 (11th Cir. 2017) (requiring a finding of subjective bad faith for sanctions under the Court's inherent authority). "[I]n the absence of direct evidence of subjective bad faith, this standard can be met if an attorney's conduct is so egregious that it could only be committed in bad faith." *Id.* at 1224–25. Recklessness alone will not suffice. Rather, to be sanctionable, an attorney's reckless conduct must be paired with a frivolous argument or an intention to harass. *Id.* at 1225.

In "exercising its inherent power to impose sanctions, a court must 'comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees.'" *Kornhauser*, 685 F.3d at 1257 (quoting *Chambers v.*

NASCO, Inc., 501 U.S. 32, 50 (1991)). For there to be due process, "the attorney must, first, be afforded 'fair notice that [his or her] conduct may warrant sanctions and the reasons why,' and, second, 'be given an opportunity to respond, orally or in writing, to the invocation of such sanctions and to justify [his or her] actions.'" *Id.* (quoting *In re Mroz*, 65 F.3d 1567, 1575–76 (11th Cir. 1995)).[1]

While the Eleventh Circuit has not clearly adopted an evidentiary standard for sanctions pursuant to the Court's "inherent authority," at least three Circuits require clear and convincing evidence of bad faith before imposing such sanctions. *See Mazzei v. Money Store*, 2023 WL 6784415, at *4 (2d Cir. Oct. 13, 2023); *In re Moore*, 739 F.3d 724, 730 (5th Cir. 2014); *Ali v. Tolbert*, 636 F.3d 622, 627 (D.C. Cir. 2011); *cf. In re: Little Rest Twelve, Inc.*, 662 F. App'x 887, 889 (11th Cir. 2016) (requiring "specific findings"); *but see Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 777 (7th Cir. 2016). And in an unpublished decision, the Eleventh Circuit has reviewed sanctions imposed under a district court's "inherent powers" for "clear and convincing evidence." *JTR Enterprises, LLC v. Columbian Emeralds*, 697 F. App'x 976, 978, 986–87 (11th Cir. June 23, 2017). Many district courts in the Eleventh Circuit have also applied a clear and convincing evidence standard. *See e.g.*, *JTR*

[1] Kathleen incorporates Doc. 508, which preserves objections to the process utilized in this proceeding.

Enterprises, LLC v. An Unknown Quantity, 2014 WL 12503330, at *9 (S.D. Fla. June 19, 2014); *Barash v. Kates*, 585 F. Supp. 2d 1347, 1365 (S.D. Fla. 2006); *Cuyler v. Kroger Co.*, 2015 WL 12602441, at *11 (N.D. Ga. Dec. 31, 2015), *report and recommendation adopted*, 2016 WL 6095223 (N.D. Ga. Feb. 4, 2016). This Court applied a clear and convincing evidence standard when imposing sanctions last year. *Fletcher v. Ben Crump L., PLLC*, 2023 WL 3095571, at *5 (N.D. Ala. Apr. 26, 2023).

Additionally, in considering whether to impose a sanction, the Court must assess each attorney individually, including with respect to a determination of bad faith. "[C]ourts levying sanctions [must] assess an attorney's individual conduct and [must] make an explicit finding that he or she acted in bad faith." *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 650 (9th Cir. 1997); *see also JTR Enters.*, 697 F. App'x at 987 ("Bad faith is personal to the offender. One person's bad faith may not be attributed to another by operation of legal fictions or doctrines such as respondeat superior or vicarious liability.") (quoting Gregory P. Joseph, *Sanctions: The Federal Law of Litigation Abuse* § 27 (4th ed. 2012)). In other words, Kathleen's conduct must be addressed *individually*, not *collectively*. *Cf. Vague*, Doc. 70 at 51 (making findings of misconduct against "counsel" on an admittedly "collective" basis). Kathleen cannot be sanctioned for another person's conduct.

II. *Sua Sponte* Sanctions Under Rule 11 Also Require a Heightened Showing "Akin To Contempt."

Rule 11 applies to "pleading[s], written motion[s], or other paper[s]." Fed. R. Civ. P. 11. In this proceeding, the only two papers at issue are the *Walker* Civil Cover Sheet and the Rule 41 dismissal. Case law is mixed on whether Rule 11 applies to civil covers sheets. *See Morse v. Am. Sec. Ins. Co.*, 2011 WL 332544, at *2 (S.D. Tex. Jan. 28, 2011) ("The civil cover sheet is not a pleading and does not contain the certifications required by Rule 11."); *Blackburn v. Lubbock FBI*, 2023 WL 6139457, at *3 (N.D. Tex. Aug. 23, 2023); *Afzaal v. Upper Iowa Univ.*, 2018 WL 7138388, at *3 (E.D. Tex. Dec. 21, 2018); *Llort v. BMW of N. Am., LLC*, 2020 WL 2928472, at *4 (W.D. Tex. June 2, 2020); *but see Cellar Door Prods., Inc. of Michigan v. Kay*, 897 F.2d 1375, 1379 (6th Cir. 1990) (affirming sanctions for failure to identify a related case on the civil docket sheet). The undersigned counsel has not found any case applying Rule 11 to a Rule 41 voluntary dismissal. Regardless, Kathleen will address Rule 11 below as if it applies, without conceding that it in fact applies, to the Civil Cover Sheet and the Rule 41 dismissal.

The State of Alabama did not file a Rule 11 sanctions motion. Thus, the Show Cause is *sua sponte*. *Sua sponte* Rule 11 sanctions are subject to a heightened standard, which the Eleventh Circuit has described as "akin to contempt." *Kaplan v. DaimlerChrysler, A.G.*, 331 F.3d 1251, 1255 (11th Cir. 2003). Although the Eleventh

Circuit has not elaborated on the meaning of "akin to contempt," district courts have held that negligence or ignorance of the law is not sufficient. *See Iparametrics, LLC v. Meier*, 2012 WL 12896231, at *4 (N.D. Ga. Oct. 30, 2012, *affd sub nom. iParametrics, LLC v. Howe*, 522 F. App'x 737 (11th Cir. 2013); *Hodge v. Orlando Utilities Comm'n*, 2010 WL 376019, at *5 (M.D. Fla. Jan. 25, 2010). To the contrary, only egregious conduct such as "making a knowingly false statement or exhibiting a deliberate indifference to obvious facts is akin to contempt." *See Hodge*, 2010 WL 376019, at *5; *accord Iparametrics*, 2012 WL 12896231, at *4.

Additionally, although the Eleventh Circuit has not reached the question, the Second Circuit has required subjective bad faith to satisfy the "akin to contempt" standard. *See Kaplan*, 331 F.3d at 1255.; *In re Off. of Alabama Att'y Gen.*, 2023 WL 129438, at *3 (11th Cir. Jan. 9, 2023) (declining to adopt a *mens rea* standard); *In re Pennie & Edmonds LLP*, 323 F.3d 86, 87 (2d Cir. 2003) (requiring subjective bad faith); *but see Wharton v. Superintendent Graterford SCI*, 2024 WL 998036, at *4 (3d Cir. Mar. 8, 2024); *Jenkins v. Methodist Hosps. of Dallas, Inc.*, 478 F.3d 255, 264 (5th Cir. 2007); *In re Engle Cases*, 283 F. Supp. 3d 1174, 1214 (M.D. Fla. 2017) (finding that subjective bad faith is not required).

Regardless, contempt is subject to a clear and convincing standard of proof. *Howard Johnson Co. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990); *Rankin v.*

City of Niagara Falls, 293 F.R.D. 375, 387 (W.D.N.Y. 2013), *aff'd sub nom. Rankin v. City of Niagara Falls, Dep't of Pub. Works*, 569 F. App'x 25 (2d Cir. 2014). This "more exacting" clear and convincing evidence standard for contempt, *Jove Eng'g, Inc. v. I.R.S.*, 92 F.3d 1539, 1545 (11th Cir. 1996), is consistent with the requirement that *sua sponte* Rule 11 sanctions "must be reviewed with 'particular stringency.'" *Kaplan*, 331 F.3d at 1255.

III. "Judge Shopping" is not a Specifically-Defined Term That, by Itself, Provides a Standard of Conduct For Attorneys to Follow.

As other Respondents have explained, "[T]here is no 'federal law prohibiting judge shopping.' Instead, there is a patchwork of local and federal rules and court decisions that restrict or prohibit **particular conduct** that can be rightfully characterized as 'judge shopping.' In reality, the term 'judge shopping' has no established or universally recognized definition." Doc. 493 at 12.

In its "judge-shopping" section, the Show Cause cites to *In re BellSouth Corp*, which said, "a contrivance to interfere with the judicial assignment process constitutes a threat to the orderly administration of justice." 334 F.3d 941, 959 (11th Cir. 2003). *BellSouth* involved a party hiring Judge U.W. Clemon's nephew in an attempt to get Judge Clemon to recuse. The court found that hiring an attorney for the purpose of recusing a judge was "a contrivance" and an "attempt to manipulate the random assignment process." *Id.* 959–60. *BellSouth* does not define contrivance,

and both *BellSouth* and the Fifth Circuit case it cites related to "contrivance[s]" involving attorneys agreeing to representation for the purpose of recusing a judge. *See BellSouth*, 334 F.3d at 949 (quoting *McCuin v. Texas Power & Light Co.*, 714 F.2d 1255, 1264 (5th Cir. 1983)). Additionally and also unlike here, the Northern District of Alabama had a Standing Order addressing the appearance of counsel that could lead to recusal, and the Court had a history of cases involving the same lawyer appearing in Judge Clemon's cases.

IV. Rule 83(b) Requires Actual Notice of Provisions Allegedly Violated for Sanctions to be Imposed.

Federal Rule of Civil Procedure 83 provides that "[n]o sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement." Fed. R. Civ. P. 83(b). "Rule 83(b) ensures that litigants are not unfairly sanctioned for failure to comply with a local rule of the court or internal operating procedures or the like of which they are unaware." *Carroll v. Jaques Admiralty L. Firm, P.C.*, 110 F.3d 290, 293 (5th Cir. 1997).

V. Other Standards

While the Show Cause identifies other standards (Local Rule 83.1, Rule of Professional Conduct 1.2, Rule of Professional Conduct 1.3, Rule of Professional

Conduct 3.3, the Oath of Admission, and Kathleen's sworn oath), these do not apply to each charge in the Show Cause. Kathleen will address those standards below where appropriate. Of note, Kathleen had not reached the point of submitting a *pro hac vice* application, and neither the Northern District nor Middle District's Local Rules require attorneys admitted *pro hac vice* to take this oath. Nevertheless, none of Kathleen's conduct violated these oaths.

BACKGROUND INFORMATION

Kathleen graduated from Harvard Law School in 2000 and then clerked for Judge Merrick Garland on the D.C. Circuit and Justice John Paul Stevens on the U.S. Supreme Court. Ex. A, Hartnett Decl. at p. 2. Her professional experience includes service as special assistant and associate counsel to the President of the United States and as Deputy Assistant Attorney General in the Department of Justice. Ex. A, Hartnett Decl. at p. 3. In 2020, Kathleen joined the Cooley firm where she is a member of the Business Litigation group and leads the firm's Issues and Appeals practice group. Ex. A, Hartnett Decl. at p. 2. Kathleen has a robust commercial litigation practice and she also handles *pro bono* cases. *Id.* The *Walker* case was one of her *pro bono* matters. Ex. A, Hartnett Decl. at pp. 3–4.

Kathleen was the partner supervising the Cooley team working on the *Walker* case. Ex. A, Hartnett Decl. at p. 4. The Cooley team joined Lambda Legal, ACLU

National, and ACLU Alabama to provide litigation support for the constitutional challenge to the Alabama Vulnerable Child Compassion and Protection Act. Ex. A, Hartnett Decl. at pp. 3–4; Aug. 3, 2022 Hrg. Trans. at 42:20–43:18. Because she lives in and bases her legal practice out of California and had not yet applied for *pro hac vice* admission in the *Walker* case, Kathleen and the Cooley team relied on local counsel in Alabama for guidance and information relating to local rules and customs.

SUMMARY OF KATHLEEN'S CONDUCT AND TESTIMONY[2]

Kathleen's Declaration, Supplemental Declaration, and testimony at the August 3, 2022 evidentiary hearing, along with other testimony and evidence, establish the following facts pertaining to her knowledge, intentions, and actions:

In 2020, the ACLU, ACLU Alabama, and Lambda Legal formed a team to challenge the legality of a contemplated law in Alabama restricting medical care for transgender youth in the Middle District of Alabama. *Vague*, Doc. 80-7, Esseks Decl. at p. 11. Kathleen and Cooley were not a part of the team in 2020. At that time, the team had discussions about and intended to mark the to-be-filed case as related to *Corbitt*, which the ACLU and ACLU Alabama were litigating as counsel of record. Ex. A, Hartnett Decl. at p. 6; *Vague*, Doc. 80-13, Borelli Decl. at p. 5; *Vague*, Doc.

[2] Kathleen is attaching her Declaration (Exhibit A; *Vague*, Doc. 80-12), her Supplemental Declaration (Exhibit B; Doc. 506-1), and copy of the *Corbitt* docket sheet (Exhibit C) for reference. In a separate filing, Kathleen made an offer of proof of an expert declaration. Doc. 504. The expert declaration supports a number of conclusions in this brief, should the Court choose to consider it.

80-7, Essex Decl. at p. 16; *Vague*, Doc. 80-16, Charles Decl. at pp. 14–17, 23. No lawsuit was filed in 2020 because the bill did not become law.

In March 2021, the Alabama Legislature was considering a similar bill, and the ACLU asked Kathleen and Cooley to join the team (the "*Walker* team"). Ex. A, Hartnett Decl. at pp 3–4. Kathleen understood from *Walker* co-counsel that they intended to file *Walker* in the Middle District and mark it as related to *Corbitt* because the two cases involved overlapping factual and legal issues. Ex. A, Hartnett Decl. at p. 7. She also understood that *Corbitt* was on appeal and was expected to be remanded back to Judge Thompson for further proceedings that entailed, at minimum, resolution of an attorneys' fee motion. Ex. A, Hartnett Decl. at p. 7. Kathleen did not believe *Corbitt*'s status on appeal meant that it could not be "related" to *Walker*. *See* Aug. 3, 2022 Hrg. Trans. at 20:20–21:2

Soon after joining the case in 2021, Kathleen directed Cooley lawyers to research the related case designation—in particular, to research any local substantive or procedural requirements for marking a case as related to another on the civil cover sheet. Ex. A, Hartnett Decl. at p. 16; *Vague*, Doc. 80-9, Veroff Decl. at p. 4. After reviewing the research, she agreed that the team had a reasonable basis to mark *Walker* related to *Corbitt.* Ex. A, Hartnett Decl. at pp. 7–8; 16–17. Because of the overlapping legal and scientific issues with *Corbitt* and the lack of any Middle

District local rule providing standards for marking "related" on the civil cover sheet, Kathleen believed there was a good faith basis for marking *Walker* related to *Corbitt* that did not violate any rules or standards. Ex. A, Hartnett Decl. at pp. 7–8; 16–17. Ultimately, no lawsuit was filed in 2021 because the bill did not become law. Ex. A, Hartnett Decl. at 4.

In early 2022, the *Walker* team—including Kathleen and the Cooley team—again prepared for litigation in light of the potential passage of the law in Alabama. Ex. A, Hartnett Decl. at 4. They resumed work where they had left off in 2021, and, as in 2021, they intended to file their case in the Middle District and mark it as "related" to *Corbitt* on the civil cover sheet. *Corbitt* was still on appeal at this time. Ex. A, Hartnett Decl. at 6–9.

On April 12, 2022, the day after *Walker* was filed, Carl Charles, a *Walker* attorney from Lambda, called Judge Thompson's chambers at the suggestion of others on the *Walker* team to alert chambers that a motion for preliminary injunction was being filed. *See Vague*, Doc. 80-7, Esseks Decl. at p. 20 (explaining that Mr. Charles called Judge Thompson's chambers at Mr. Esseks' suggestion); *Vague*, Doc. 80-16, Charles Decl. at p. 72 (same). Kathleen learned that Carl Charles called Judge Thompson's chambers on April 12 because she was following email traffic among *Walker* counsel while she was in a deposition preparation session that day with a

witness in a different case. Ex. B, Supp. Decl. at ¶ 4. Kathleen did not (1) participate in this call, (2) direct or advise Mr. Charles to make this call, or (3) provide any input on whether to make the call or what to say. *See id.*; *Vague*, Doc. 70 at 18; Aug. 3, 2022 Hrg. Trans. at 25:13–15 (Kathleen, explaining that she was "in deposition prep or something that day" and was merely "following the email traffic" related to the call). Regardless, Kathleen does not believe that Charles's call was inappropriate. *See* Aug. 3, 2022 Hrg. Trans. 26:12–20; Ex. B, Hartnett Supp. Decl. at ¶ 4.

Later, on April 12, 2022, the *Walker* team filed a Motion to Reassign *Walker* to Judge Thompson based on instructions from the Middle District clerk's office that such a motion was required to effectuate the related case designation, which was, according to the clerk's office, not self-executing. Ex. A, Hartnett Decl. at p. 10; Doc. 70 at 20 (Report finding that junior associate "spoke to a Middle District clerk's office employee and was told that counsel would need to file a motion to relate *Walker* to *Corbitt*…"). However, after Judge Marks entered a Show Cause Order as to why *Walker* should not be transferred to the Northern District—where the *Ladinsky* had filed a separate action—the *Walker* team, believing a transfer was inevitable, withdrew their motion to reassign and consented to the transfer. *Walker*, Doc. 18.

The Report discusses "an April 13th call that took place between the *Ladinsky* and *Walker* teams" that purportedly included (1) *Walker* team members trying to "drum up support for *Ladinsky* counsel transferring their case to the Middle District and proceeding before Judge Thompson" and (2) discussions about various judges and how they might view these cases. *Vague*, Doc. 70 at 24–25.[3] Kathleen was ***not*** on this call; she was in a deposition in a different case that day. Ex. B, Hartnett Suppl. Decl. ¶¶ 5–6. No one who was on the April 13 call testified that Kathleen participated. Aug. 3, 2022 Hrg. Trans. at 213–214 (Esseks); Nov. 3, 2022 Hrg. Trans. at 30–31 (Orr); Aug. 4, 2022 Hrg. Trans. at 33:1–15 (Eagan).

Good Friday, April 15, 2022 was a hectic day during which the posture of the *Walker* litigation changed rapidly:

- Members of the *Walker* and *Ladinsky* teams (including Kathleen) had a call earlier in the day to discuss procedural next steps and consolidation, now that both of their cases were in the Northern District. This conversation was the first time that Kathleen interacted with any members of the *Ladinsky* team. Hartnett Supp. Decl. at ¶ 10; Hartnett Decl. at 27.

[3] Kathleen is relying on the Report's characterization of this call for purposes of reference, as she was not on this call.

- Despite Kathleen's belief that *Walker* would be assigned to Judge Axon, who was then presiding over the first-filed *Ladinsky*, *Walker* was assigned to Judge Burke.[4] Aug. 3, 2022 Hrg. Trans. at 46:10–19.
- At 4:07 p.m. that Friday, Judge Burke entered an order setting *Walker* for a status conference on the following Monday morning at 10:00 a.m. *Vague*, Doc. 70 at 28. At this point, Kathleen mistakenly believed that *Walker* would be transferred to Judge Axon, who was then assigned to the first-filed case (*Ladinsky*), and that the Monday status conference would likely be canceled. *See* Aug. 3, 2022 Hrg. Trans. at 64:18–65:24; Hartnett Decl. at pp. 28–29.
- Around 4:45 p.m., Kathleen was on a call with an Alabama Deputy Attorney General discussing consolidation and how to inform Judge Burke of the plan to seek consolidation. During that call, Judge Axon entered an order reassigning *Ladinsky* to Judge Burke. At that point, Kathleen first realized that the status conference set by Judge Burke would go forward on Monday. As explained above, prior to Judge

[4] Kathleen now understands, based on the Panel's explanation, why *Walker* was assigned to Judge Burke. At the time, she did not know the Northern District's assignment procedures for transferred cases, and Judge Marks's transfer order said that *Walker* was being transferred so that "it may be decided with *Ladinsky*." *Walker*, Doc. 20.

Axon's order, Kathleen believed—albeit mistakenly—that Judge Burke may not have known about the posture of both cases and that he would likely cancel the status conference when the parties informed the Court about the plan to consolidate before Judge Axon. *See* Aug. 3, 2022 Hrg. Trans. at 64:18–65:24; Hartnett Decl. at pp. 28–29.

- Because it was Easter weekend and the beginning of Passover, the lead lawyers in *Walker*, who all lived outside Alabama, faced difficulties being present for the status conference on Monday, April 18. Ex. A, Hartnett Decl. at pp. 29–30.
- Kathleen had serious concerns about the ability of the *Walker* team's sole attorney present in Alabama to handle the status conference. Those reasons included her performance that week, the uncertainties arising from the likely consolidation of *Walker* with *Ladinsky*, the on-the-spot case management decisions that would likely need to be made during the course of the conference, and the tension between the advocacy groups. Ex. A, Hartnett Decl. at pp. 29–30; Aug. 3, 2022 Hrg. Trans. at 24:9–21, 73:6–19, 81:12–14.
- Although the status conference was not planned to discuss the merits, the procedural aspects of the cases were critical and complex. For

example, *Ladinsky* was first filed, but *Walker* had a pending motion for a preliminary injunction. Aug. 4, 2022 Hrg. Trans. at 62:16–64:6. The two teams had different experts, different claims, and different philosophies. Aug. 3, 2022 Hrg. Trans. at 52:1–5; 55:15–16. These differences would require effective advocacy and coordination with *Ladinsky* counsel with almost no time to prepare. Among other issues, Kathleen believed the Court was likely to take up how a preliminary injunction hearing would proceed. Kathleen did not have confidence in local counsel to handle these issues at the status conference. Ex. A, Hartnett Decl. at p. 29–30.

- Kathleen's concerns about coordinating with *Ladinsky* counsel, particularly in light of the tension between the advocacy groups, were heightened when she realized that the two teams would have to appear together on Monday. Specifically, Kathleen testified that the status conference was "the forcing mechanism" that made her realize "we're not going to get our acts together in time for Monday." Before that point, the teams had a general plan to work together, but they had not had "even . . . one strategic conversation." In other words, the status

conference forced Kathleen to confront the "the inevitable train wreck that was coming." Aug. 3, 2022 Hrg. Trans. at 53:14–54:20.

- Kathleen did not have any personal knowledge about Judge Burke, but she was aware of concerns that had been voiced by other attorneys. She was also concerned with the sudden and unexpected reassignment from Judge Axon to Judge Burke. Ex. A, Hartnett Decl. at p. 30.
- Kathleen also believed the defendants might file an answer over the weekend, which would have eliminated the option of a Rule 41(a)(1)(A)(i) voluntary dismissal.[5] Ex. A, Hartnett Decl. at 30.
- All of these concerns—the lack of confidence in the one attorney who could appear for the *Walker* team at the joint status conference on the Monday after Easter, the potential strategic importance of decisions concerning consolidation and scheduling that might arise at the status conference, the questions about why *Ladinsky* was consolidated with *Walker* before Judge Burke, and the potential loss of the right to dismiss under Rule 41 if the State were to quickly file an answer—led Kathleen to believe that a Rule 41 dismissal without prejudice was in the best

[5] Underscoring the validity of this concern, some defendants filed an answer is *Eknes-Tucker* two days after the Complaint was filed.

interests of her clients. Concern with Judge Burke was not Kathleen's sole, or even her predominant, consideration. Ex. A, Hartnett Decl. at pp. 29–30.

- Kathleen viewed Rule 41 as providing an absolute right to voluntarily dismiss as long as the Defendants had not filed an answer or motion for summary judgment. Aug. 3, 2022 Hrg. Trans. at 82:20–83:8.
- Late in the afternoon of April 15, Kathleen briefly spoke with Shannon Minter of *Ladinsky* counsel about dismissal after the transfer of *Ladinsky* to Judge Burke and prior to dismissal.[6] Aug. 3, 2022 Hrg. Trans. at 80:4–83:6. During their interaction, Kathleen and Minter also discussed their teams' shared intent to regroup and discuss possibly joining forces to refile a new case. Hartnett Decl. at p. 21; Aug. 3, 2022 Hrg. Trans. at 82:6–84:10.
- The Report discusses a "5:00 p.m. conference call" on April 15th involving multiple members of both the *Ladinsky* and *Walker* teams and

[6] Jennifer Levi testified that she talked to Kathleen on April 15th about dismissing and a possible refiling. Aug. 4, 2022 Hrg. Trans. at 30:14–31:11. Kathleen does not remember talking to Levi about this; she only recalls talking to Minter, but she cannot definitively say that she did not talk to Levi. Hartnett Supp. Decl. at ¶ 14. Regardless, Levi's description of this conversation is consistent with Kathleen's thought process at this time. *See id.* Levi says that they discussed dismissal and that Kathleen said any refiling discussion would have to involve more members of her team but that they would move quickly to discuss the options available to the groups. *Id.*; *compare* Aug. 3, 2022 Hrg. Trans. at 78: 18–79:7, 88:1–12 and Ex. A, Hartnett Decl. at p. 21.

says that Kathleen was on the call. *Vague*, Doc. 70 at 31. Kathleen was ***not*** on the call described by the Panel, *see* Hartnett Supp. Decl. at ¶¶ 7–14, and, indeed, this section of the Report appears to confuse several phone calls among different groups of lawyers. Regardless, the call that the Report focuses on apparently involved discussions about judicial preferences—namely, a purported comment about a "zero percent chance" that Judge Burke would grant the requested relief. Again, Kathleen was ***not*** on such a call, and to the extent the Report states that she was, the cited testimony says otherwise. *See* Aug. 4, 2022 Hrg. Trans. at 168–179; *Vague* Doc. 70 (citing same); *see also* Hartnett Supp. Decl. at ¶¶ 7–14.

- Kathleen and the *Walker* team independently decided to dismiss *Walker*, but the *Ladinsky* team's intent to dismiss was a factor in her decision: "The *Walker* team made this decision independently from the *Ladinsky* team, but as part of this decision considered that the *Ladinsky* team also was contemplating dismissal and was likely to dismiss." Ex. A, Hartnett Decl. at pp. 30–31; *see* Aug. 3, 2022 Hrg. Trans. at 85:14–17 ("[W]e kind of independently -- I also agreed to that. But it was

informed by the notion that they likely were, and I think we kind of both confirmed that we were around the same time.").

- Kathleen did not view the *Ladinsky* dismissal as a required condition to dismissing *Walker*. Aug. 3, 2022 Hrg. Trans. at 84:25–85:11. However, she did agree to coordinate the timing of the two dismissals with the *Ladinsky* team as a "professional courtesy" Aug. 3. Hrg. Trans. at 84: 13–24.
- The *Walker* team dismissed their case on that Friday, April 15, 2022.

Representatives of the various advocacy groups involved in the *Walker* and *Ladinsky* cases had a call on Saturday, April 16 to discuss next steps. Kathleen was not invited to and did not participate in this call, but she learned afterwards that the call was acrimonious and that it revealed an inability of the *Walker* and *Ladinsky* teams to work together to file a new case. After receiving a report of the call that Saturday afternoon, Kathleen decided that Cooley would not participate in the filing of a new lawsuit. Aug. 3, 2022 Hrg. Trans. at 87:3–12. Kathleen did not participate in filing *Eknes-Tucker* or in any decision-making related to filing *Eknes-Tucker*—including where to file and which plaintiffs to include. *See* Ex. A, Hartnett Decl. at pp. 21–22.

ARGUMENT

The Show Cause incorporates eight findings from Section V of the Report into the Charges against Kathleen, and it adds new charges related to obtaining client consent for the dismissal of *Walker* and potential discrepancies and nondisclosures in her testimony. It then requires Kathleen to show cause why she should not be sanctioned under these Charges. Doc. 479 at 12–13. This Argument section is divided into five sections that address the Charges in the Show Cause.

Section I below addresses the Show Cause's first Charge, involving the related case designation; **Section II** below addresses the next two Charges, which do not relate to Kathleen's conduct; and **Section III** below addresses the four Charges that are related to dismissal (only some of which relate to Kathleen's conduct); **Section IV** below addresses Paragraph III(b) of the Show Cause, which relates to Kathleen's credibility and testimony before the Panel; and **Section V** below addresses the dismissal of *Walker* without obtaining client consent. Kathleen's response addresses only her own personal conduct, because other attorneys' conduct and "collective misconduct" cannot be the basis for sanctions.

I. Charge 1: "*Walker* counsel, including Ms. Hartnett, to mark *Walker* related to a case closed one year earlier decided by a 'favorable' judge."

As explained herein, the *Walker* team's relatedness designation cannot be the basis for sanctions against Kathleen. That designation was not intended to and did

not manipulate the random case assignment procedures, was objectively reasonable, was made in good faith, was not a contrivance, and was not made for an improper purpose. Moreover, Kathleen did not have notice of any controlling rule governing the marking of a case as "related" to another in the Middle District of Alabama and therefore cannot be sanctioned for marking *Walker* as related to *Corbitt*. The Middle District of Alabama does not have a rule that defines "related" or describes the Court's procedure for determining relatedness. When, as here, "there is no controlling law" on a procedural matter, "[n]o sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement." Fed. R. Civ. P. 83(b).

A. Designating a Case as Related is a Permissible Deviation from the Default Random Case Assignment System in Federal District Courts.

This Court and the Panel have both characterized the relatedness designation as a species of "judge-shopping" and as an attempt to manipulate the random case assignment procedures. For example, the Show Cause cites to a case holding "that a contrivance to interfere with the judicial assignment process constitutes a threat to the orderly administration of justice." Doc. 479 at 5 (quoting *In re BellSouth Corp.*, 334 F.3d 941, 959 (11th Cir. 2003). However, the consolidation or assignment of

related cases is a permissible exception to the default approach of random assignment, not a contrivance intended to improperly manipulate the random assignment of cases.

In general, courts have broad discretion to establish procedures for the assignment of cases. *See* 28 U.S.C. § 137 ("The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court."). The Middle District of Alabama, like most, if not all, federal district courts, has a random assignment process: "Civil cases shall be divided among the judges of this Court through a computerized random selection process." M.D. Ala. LR 40.1.

However, both by rule and practice, the random assignment process for district courts has certain exceptions, including for related cases. Relevantly, the standard Civil Cover Sheet—which was approved by the Judicial Conference of the United States in 1974—requires a plaintiff to identify any "related cases." Depending on the district, a case that is related to a previously-filed case can be assigned or reassigned to the judge handling the previously-filed related case. *See, e.g.*, *James v. Hunt*, 761 F. App'x 975, 980 (11th Cir. 2018) ("[T]he initiating judge had inherent authority to manage the district court docket and reassign the case to a judge who had presided over a prior related case."); *Ogier as Trustee for Pampillon v. American National*

Red Cross, 2018 WL 10699592, at *1 (N.D. Ga. Feb. 21, 2018) ("Under this Court's internal operating procedures, it is appropriate to assign related cases to the same judge.").

The District Court for the District of Columbia has described the related case doctrine as "an exception to the general rule of random assignment of cases," *Tripp v. Exec. Off. Of the President*, 194 F.R.D. 340, 342 (D.D.C. 2000), a means "to circumvent the normal random assignment system to make a direct assignment to a particular judge," *Comm. on Judiciary v. McGahn*, 391 F. Supp. 3d 116, 119 (D.D.C. 2019), and "the reason that circumvention of random assignment is sometimes permissible." *Millard v. Gov't of D.C.*, 2023 WL 2301927, at *2 (D.D.C. Mar. 1, 2023); *see also Plants v. US Pizza Company, Inc.*, 2019 WL 13212704, at *2 (E.D. Ark. Mar. 27, 2019) ("There is an exception to this general rule [of random assignment] for 'related cases.'").

Similarly, district courts can have non-random assignment rules and practices for cases involving successive actions with the same parties, vexatious litigants, or judicial efficiency. *See, e.g.*, M.D. Fla. LR 1.05; 1.07. Judge Axon invoked this practice here when she, as Judge Proctor explained, had a two-week criminal trial that prevented her from promptly giving attention to *Ladinsky* or *Walker*, and as a result, she reassigned *Ladinsky* to Judge Burke, who had already been assigned to

Walker.[7] Judge Proctor similarly stated in a recent opinion: "When two cases are filed in a single district however, 'District Judges have the inherent power to transfer cases from one to another for the expeditious administration of justice.' . . . Given 'the district court's broad authority over its own docket,' a district judge may 'reassign cases at its discretion, consistent with its local rules.'" *Coleman v. Town of Brookside, Alabama*, 2022 WL 4391678, at *1 (N.D. Ala. Sept. 22, 2022) (internal citations omitted).

In short, random assignment is the default procedure for judicial assignments, but in the Middle District, like in all districts, courts and parties can invoke certain exceptions that result in non-random assignments of cases. This context is important here because the *Walker* team attempted to invoke one of these permissible exceptions by designating *Walker* as related to *Corbitt*. Invoking a permissible exception from the default random assignment process is not a sanctionable contrivance to manipulate the random assignment process.

[7] Kathleen is not suggesting that the Court acted improperly in any way. Her point is that despite the default of random assignment procedures, *Ladinsky* was not randomly assigned to Judge Burke. The Report and this Court's April 5, 2024 Order both state that Judge Axon—rather than a random system—made the decision to transfer *Ladinsky* to Judge Burke.

B. Kathleen's Agreement with Other *Walker* Counsel's Decision to Mark *Walker* as Related to *Corbitt* was not for an Improper Purpose.

Rule 11 prohibits filings that are "being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." Fed. R. Civ. P. 11(b)(1). The Eleventh Circuit has described this prong of Rule 11 as a pleading that "is filed **in bad faith** for an improper purpose." *Baker v. Alderman*, 158 F.3d 516, 524 (11th Cir. 1998) (emphasis added). "Improper purpose may be shown by excessive persistence in pursuing a claim or defense in the face of repeated adverse rulings or by obdurate resistance out of proportion to the amounts or issues at stake." *Pierce v. Com. Warehouse*, 142 F.R.D. 687, 690–91 (M.D. Fla. 1992). The Fourth Circuit has said:

> [I]f a complaint is filed to vindicate rights in court, and also for some other purpose, a court should not sanction counsel for an intention that the court does not approve, so long as the added purpose is not undertaken in bad faith and is not so excessive as to eliminate a proper purpose. Thus, the purpose to vindicate rights in court must be central and sincere.

In re Kunstler, 914 F.2d 505, 518 (4th Cir. 1990). Here, the Court has identified the possible "improper purpose" as "judge shopping," i.e., manipulating or circumventing the random assignment of judges. Doc. 479 at 5.

The *Walker* team's relatedness designation was not for an improper purpose. The related case doctrine is a recognized exception to the random assignment

process—a "reason that circumvention of random assignment is sometimes permissible." *Millard*, 2023 WL 2301927, at *2. The exception is recognized in both the standard Civil Cover Sheet and the Middle District of Alabama's Civil Cover Sheet. As noted below, district courts around the country—although *not* the Middle District of Alabama—have rules governing this permissible "exception" to or "circumvention" of the random assignment process. In other words, courts permit parties to designate a case as related and to advocate for why a court should deem two cases as related. Thus, seeking a relatedness determination is not an improper purpose. Rather, it is an accepted practice around the country.

The *Walker* team engaged in that accepted practice. They marked *Walker* as related to *Corbitt*. Then, at the direction of the Middle District clerk's office, they filed a motion arguing why the two cases had overlapping factual and legal issues and why reassignment to Judge Thompson would further judicial economy. *Walker*, Doc. 8. There was nothing underhanded or contriving about this: the arguments were made in the open, on the record, and in a motion that put the relatedness decision firmly within the control of the court. This course of conduct exactly mirrors what this Court said is the procedure for reassignment based on relatedness: "[M]arking the cover sheet as related is not enough to direct the assignment in a particular way. If reassignment is sought after the judge is randomly assigned, an appropriate motion

is required." Doc. 466 at 24. Advocating for a well-recognized exception to the random assignment process and following the Court's unwritten procedure—as relayed by the Middle District clerk's office itself—is not a course of conduct taken for an improper purpose. Kathleen and the *Walker* team analyzed the facts and the law and followed an accepted procedure in an effort to advance their clients' objectives as warranted by existing law.

Kathleen readily acknowledged that the *Walker* team viewed Judge Thompson as a favorable draw. She also explained that the relatedness designation and motion to reassign were well-founded as a matter of fact and law. *See* Aug. 3, 2022 Hrg. Trans. at 22:23–23:22. Both can be and are true. As the Motion to Reassign stated, the *Walker* case involved "[t]iming exigencies" because it sought preliminary injunctive relief. *Walker*, Doc. 8 at 2. The emergency nature of this case and the injunctive relief sought, in addition to the overlapping factual and legal issues in *Walker* and *Corbitt*, provided not only a plausible but a reasonable basis for seeking reassignment. Judge Thompson was already familiar with several of the factual, scientific, and legal issues and, thus, was in a position to efficiently rule on a time-sensitive request for injunctive relief. Kathleen testified about Judge Thompson's familiarity with the issues:

> [T]o understand and be able to adjudicate that case, you had to be familiar with transgender versus cisgender people; the general kind of

> what is entailed when you change your -- when you do a gender transition. So that -- which is, again, something people are becoming more familiar with, but it's not always a topic that even -- when I started doing these cases, you know, you have to learn it. So he clearly, by having ruled in [*Corbitt*], understood the general notion of what gender transition means when you change your gender marker, that type of thing.

Aug. 3, 2022 Hrg. Trans. at 61:25–62:10. She also testified about Judge Thompson's familiarity with the specific due process claims that *Walker* was advancing. *Id.* at 61:11–20.

Thus, taken together, the facts surrounding the relatedness marking on the civil cover sheet show a proper purpose. Relatedness is a well-recognized exception to the random assignment process. The *Walker* team's marking of the case as related to *Corbitt* was warranted by existing law. The *Walker* team filed a motion arguing the basis for a reassignment, including potential judicial economy, and left the decision to have the cases deemed related to the court. All of these factors demonstrate that Kathleen and the *Walker* team had proper purposes for marking related. Even if the Court concludes that the *Walker* team marked *Walker* as related to *Corbitt* primarily for the purpose of drawing Judge Thompson, then the Court should still "not sanction counsel for an intention that the court does not approve" because the *Walker* team and Kathleen had (1) a good faith basis for marking related

and (2) a legitimate and proper purpose in maximizing judicial economy in a case seeking emergency relief. *Kunstler*, 914 F.2d at 518.

C. Kathleen's Agreement with Other *Walker* Counsel's Decision to Mark *Walker* as Related to *Corbitt* was Objectively Reasonable and Therefore Did Not Violate Rule 11.

In the absence of clear guidance from the Middle District regarding what cases are "related" or "pending," the *Walker* team's decision to mark *Walker* and *Corbitt*—which overlapped both factually and legally—as related was objectively reasonable and therefore not sanctionable under Rule 11.

The "Relatedness" Determination was Reasonable. Notably, the Middle District does not have a Local Rule, General Order, or other public guidance on the definition of "related," the assignment of related cases, or the determination of relatedness. The only public guidance is the Civil Cover Sheet, which says, "This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases." Local Rule 3.1 even says, "This requirement [to complete a civil cover sheet] is solely for administrative purposes, and matters appearing in the civil cover sheet have no legal effect in the action." M.D. Ala. LR 3.1.

Although the Middle District does not have a rule that defines "related" or describes how related cases are assigned, many district courts do, and the various

local rules and orders across the country vary greatly, with at least some districts not merely allowing, but *requiring* cases to be marked as "related" where they involve similar questions of law or fact (as *Corbitt* and *Walker* did):[8]

District	**Rule**
Northern District of Florida	LR 5.6: "the new case involves issues of fact or law in common with the issues in another case pending in the District."
District of Hawaii	LR 40.2: "involve the same or substantially identical transactions, happenings, or events, or the same or substantially identical questions of law."
Eastern District of Kentucky Western District of Kentucky (Joint Rules)	LR 40.1: "Cases may be considered related if they meet the requirements of F.R.Civ.P.42(a)" FRCP 42(a): "involve a common question of law or fact"
Southern District of Ohio	LR 3.1: "Call for a determination of the same or substantially identical questions of law or fact."
Middle District of Tennessee	AO 176: "The cases involve common questions of law or fact (see, e.g., Fed. R. Civ. P. 42(a))"

In light of these rules, *Walker* counsel's determination that *Walker* was "related" to *Corbitt* was objectively reasonable. Both *Walker* and *Corbitt* dealt with civil rights claims for transgender persons under an emerging, if not novel, theory of

[8] Many other districts require similar questions of law *and* fact, but even if this Court finds the facts of *Corbitt* and *Walker* were not plausibly similar, then at least some districts' rules would allow a finding of relatedness based only on similar questions of law.

Constitutional rights. Similarly, they both involved factual issues related to differences between gender identity and biological sex and the different medical treatments and procedures available to transgender persons. As this Court is likely aware, the issues raised in *Walker* and *Corbitt* are not run-of-the-mill issues. Under many district courts' relatedness rules—but particularly those based on similar questions of law—these overlapping legal and factual issues present, at the very least, a colorable claim of relatedness.

In addition, many districts either initially assign later-filed related cases to the judge assigned to the earlier-filed related case or allow the judge with the earlier-filed case to make a relatedness determination: (1) Eastern District of Arkansas, GO 39(b)(5); (2) Northern District of California, LR 3-12; (3) District of Columbia, LR 40.5(c)(1); (4) Northern District of Illinois, LR 40.4; (5) District of Nebraska, GR 1.4(a)(4)(B)(i); (6) District of Nevada, LR 42-1(b); (7) Southern District of New York, Rules for the Division of Business Among District Judges 13(b)(2); (8) Eastern District of Pennsylvania, Civil Rule 40.1(V)(a); (9) Western District of Pennsylvania, LCR Rule 40(E); (10) District of Rhode Island, LR 105(a)(2); (11) District of Utah, DUCivR 83-2(g); (12) District of Vermont, GO 73(g); (13) Eastern District of Wisconsin, Civil LR 3(b)(4); (14) Western District of Wisconsin, AO 347; (15) District of Wyoming, LR 40.2(a)(1)(A)(ii). Thus, in absence of a local rule or

order on the matter, the *Walker* team's initial belief that Judge Thompson would either receive the initial assignment of *Walker* or determine relatedness was consistent with several other districts' practices and not precluded by any express rule or procedure in the Middle District.

The "Pending" Determination Was Reasonable. Similarly, *Walker* counsel acted reasonably in determining that *Corbitt* was still "pending." The Middle District's Civil Cover Sheet allows, if not requires, the identification of any "related pending cases." The Report noted that *Corbitt* had been marked "closed," which is presumably a reference to the notation on the docket sheet on CM/ECF and Judge Thompson's Order stating "This case is closed." *Corbitt*, Doc. 102. Seemingly, the Panel equated "closed" with "not pending."

However, the Middle District does not provide any guidance on what "pending" means. Neither the Civil Cover Sheet nor any local rule does so. At most, CM/ECF allows searches for "Open cases" and "Closed cases."[9] But, a closed case can still have significant activity and have pending issues for either the district court or the court of appeals to resolve. As of the date of this filing, *Corbitt* itself has eighteen docket entries, including two motions that have been ruled on, since it was

[9] This option is available on the Reports>Civil Reports>Civil Cases page. The Middle District also publishes a list of "Flag Definitions" for cases on Pacer and CM/ECF. *See* https://pacer.uscourts.gov/file-case/court-cmecf-lookup/court/ALMDC. This list of definitions does not include a definition of "pending."

marked "closed." *See* Ex. C, *Corbitt* Docket Sheet. The undersigned counsel's firm had a case in the Northern District of Alabama—*Killough v. All Points Logistics*, 5:17-cv-00247-AKK—that was closed on March 8, 2022 when the court entered a judgment after a jury verdict. After being marked "closed," the defendant filed numerous post-trial motions, which required extensive briefing and rulings from the court. The plaintiff also filed a bill of costs, on which the court ruled. In fact, the docket shows over eighty docket entries after the case was "closed." It would not be unreasonable to have understood that case to have been "pending," despite the "closed" marking on the docket.

Further, a "closed" case, like *Corbitt*, can be on appeal. So, while the district court proceeding may be inactive or "closed," the case itself is still very much "pending" in the federal court system. Not only can a case be pending and active in a court of appeals, but it could also eventually be remanded for further proceedings in the district court, including for the award of fees or costs. Indeed, the Fifth Circuit has held, although in a different context, "[a]bsent any legislative history to the contrary, an action is 'pending' so long as a party's right to appeal has not yet been exhausted or expired. . . . The fact that a motion for attorneys' fees is the only matter pending before a court does not mean that court lacks jurisdiction or that the case is

not 'pending.'" *Knights of the Ku Klux Klan Realm of Louisiana v. E. Baton Rouge Par. Sch. Bd.*, 679 F.2d 64, 67 (5th Cir. 1982).

In other words, a "closed" case can still have "pending" issues that require resolution and significant activity. That was exactly the case with *Corbitt*. On March 2, 2021, *after* the case was "closed," the court extended the deadline for the plaintiffs to file a motion for attorneys' fees and expenses until after resolution of an appeal. When *Walker* was filed, the attorneys' fee issue was still pending. Further, on April 27, 2022—only sixteen days after the *Walker* filing—an attorney for the State of Alabama filed a motion to withdraw, which the court granted.

Ultimately, in the absence of express guidance, the term "pending" is not synonymous with "closed," and it could be—and was—reasonably interpreted to mean that the case has not reached a point of final adjudication. Because of the lack of an express rule to the contrary, Rule 83 prohibits the imposition of a sanction for the *Walker* team's implicit statement that *Corbitt* was "pending."

Relatedness Determination Did Not Violate Rule 11. In the absence of explicit rules in the Middle District regarding relatedness, advocating for a relatedness finding that would be permissible in many district courts is not sanctionable under Rule 11. If the relatedness designation would be proper under several other districts' rules, then it could not be frivolous or unwarranted by existing

law. The absence of a specific rule or guidance in the Middle District of Alabama left Kathleen and the *Walker* team with a professional judgment call as to whether to mark *Walker* as related to *Corbitt*, and they did so in a way that was consistent with existing law in other districts. In fact, the *Walker* team filed a Motion to Reassign that included a reasonable legal basis for their relatedness determination. *Walker*, Doc. 8.

Further, marking *Walker* related to *Corbitt* is not "akin to contempt." Other than the Civil Cover Sheet, the Middle District does not have any rule or order defining "related" or "pending." Thus, Kathleen and the *Walker* team could not have knowingly violated or acted with deliberate indifference to any rule. In fact, they did the opposite; they researched and investigated the issues, and they determined that no rule existed. In the absence of that rule, the *Walker* team marked *Walker* as related to *Corbitt* in a manner consistent with commonplace understandings of relatedness and with other districts' rules. This course of conduct is simply not "akin to contempt" and therefore is not sanctionable under Rule 11.

Finally, the *Walker* team ultimately withdrew its relatedness designation without a Rule 11 motion from the State of Alabama or the Court issuing a *sua sponte* Rule 11 show cause order. As the comments to Rule 11 indicate, "Such corrective

action … should be taken into account in deciding what—if any—sanction to impose." Fed. R. Civ. P. 11 cmt.

Moreover, and critically, had the Court addressed the merits of the relatedness issue (which it did not do because the *Walker* team consented to a transfer to the Northern District), it could have ruled that the two cases were not related, and the *Walker* team would have accepted that ruling. The mere marking of the Civil Cover Sheet, where the Court had full discretion to relate or not relate the cases, could not be considered a bad faith attempt to abuse the judicial process—it was an attempt to use an acceptable judicial process appropriately.

In light of the objective reasonableness of Kathleen and the *Walker* team's position and the lack of any conduct akin to contempt, Kathleen cannot be subject to any Rule 11 sanction.

D. Kathleen's Actions Regarding the Relatedness Designation Were Taken in Good Faith and Therefore Are Not Sanctionable Under the Court's Inherent Authority.

Kathleen's extensive testimony regarding relatedness demonstrates that her actions were taken in good faith and therefore cannot be the basis for a sanction issued under the Court's inherent authority. Kathleen testified that she believed that *Corbitt* and *Walker* had overlapping legal and factual issues and that, although *Corbitt* was marked "closed" on the Middle District docket, it was on appeal and

would be returning to Judge Thomspon for, at least, further proceedings related to a petition for fees and costs. Specifically, she said:

> My understanding was that my co-counsel wanted to be before Judge Thompson because he was expected to be receptive to our factual and legal claims, as he had been regarding similar legal claims in *Corbitt*, which involves Equal Protection and Due Process challenges to an Alabama law limiting transgender individuals' rights. I also understood from co-counsel that the cases were related because they involved overlapping legal and factual issues. I understood *Corbitt* was on appeal before the Eleventh Circuit Court of Appeals and was expected to be remanded back to Judge Thompson for, at a minimum, resolution of an attorneys' fee motion.

Ex. A, Hartnett Decl. at p. 7. In addition, Kathleen correctly noted that the Middle District does not have a local rule on relatedness:

> We determined there was not a local rule on point. The civil cover sheet is essentially the rule. And we looked at the case law and did not find -- I hope we didn't miss something -- any Middle District case law.

Aug. 3, 2022 Hrg. Trans. at 20:9–12. Kathleen had a good faith, reasonable belief that marking related to Corbitt was appropriate:

> Ultimately, I concurred in the plan to file the case in the Middle District of Alabama and relate the case to Judge Thompson by checking a box on the civil cover sheet. Our belief at the time was that as a result of checking the box on the civil cover sheet for related cases, the case would then be sent to Judge Thompson to decide whether the case was sufficiently related to accept the case. We were not aware of any requirement in the Middle District of Alabama to file a motion to relate or reassign in order to perfect our relatedness designation on the civil cover sheet, and our review of the Middle District rules did not indicate any such process. I believed that because there was no clear guidance on the standard for relating a case in the Middle District of Alabama,

> we had a reasonable basis for marking our case as related to *Corbitt* and, if the State opposed our marking the case as related, we might not be successful.

Ex. A, Hartnett Decl. at p. 8.

Kathleen acknowledged in her testimony that her team viewed Judge Thompson as a "good draw" given his prior experience with and favorable ruling in a case raising factual and legal issues similar to those raised by *Walker*: "[T]o be clear, Judge Thompson would be seen as a likely favorable judge for our cause. That's not a surprise." Aug. 3, 2022 Hrg. Trans. at 19:20–21. However, Kathleen at the same time had a good faith, reasonable basis for marking *Walker* as related to *Corbitt*. She was candid on this point when questioned by the Panel:

> JUDGE PROCTOR: One of the things I was impressed with with your declaration is its clarity, its organization, and its candor. So I want to give you that compliment as we stand here. And the reason I'm asking this question is I'm asking you to really give us your candid response to this question. Was marking Corbitt related driven by the overlapping legal and factual issues, or because Judge Thompson, who I think your cocounsel and you have all said you viewed as a favorable draw if you could get Judge Thompson on your Walker case -- was it driven by who the judge was in Corbitt? That's a question we have.
>
> MS. HARTNETT: Your Honor, we also didn't give it a great deal of thought, to be totally honest with Your Honor. This was not some sort of plot to try to undermine the relatedness thing. We thought we had a reasonable basis for noting it as related, but we didn't really even do that kind of counterfactual analysis.
>
> What I can say is as I was doing the declaration, I can distinguish between two things. Why did we want, hope that we got Judge Thompson? We thought he would be a good draw. He had just resolved

> the transgender discrimination case in a way that was favorable to the plaintiff. Why did we mark the cases related? Because we believed that we had a good-faith basis for marking it as related under the rule.
>
> So in my mind, that – I'm not denying that we were hoping that that would be a good draw, there might be other good draws, but that -- the relatedness was not something we thought we could sneak that in or something. It was that we actually looked at the rule, looked at the law and facts, and thought this would actually be efficient for this --
>
> It's a not [an] []obscure topic. Of course, Judge Burke was able to learn it and deal with it, so I appreciate that. But it involves issues of complex scientific issues about, like, what gender is and all these things, so it certainly seemed efficient for someone who had handled the case before to have it again.

Aug. 3, 2022 Hrg. Trans. at 22:12–23:22.

> JUDGE PROCTOR: And in fairness, that's one thing you did understand, is Judge Thompson had experience with what you thought was a case that you ultimately said was related?
>
> MS. HARTNETT: Yes.
>
> JUDGE PROCTOR: And you thought his judicial philosophy would be favorable to your clients' claims?
>
> MS. HARTNETT: Well, it's not just in the philosophy, but generally, also, he had just ruled that transgender individuals were subject to protection under the equal protection and due process clauses, and so that's a kind of specific -- some people might generally be open to a civil rights claim, but that would be a newer version of that. So it was -- we had recent understanding that he was kind of -- he had ruled -- he had accepted the same arguments we would be making in a general level in our case, with some complications presented by the medical context.

Aug. 3, 2022 Hrg. Trans. at 61:5–20. Kathleen's testimony is consistent with the testimony of other *Walker* attorneys on this issue. *See* Aug. 3, 2022 Hrg. Trans. at

91:16–95:1 (Borelli), 184:7–185:22 (Esseks); *Vague*, Doc. 80-9, Veroff Decl. at pp. 3–4; *Vague*, Doc. 80-11, Pelet del Toro Decl. at pp. 4–5; *see also*, *e.g.*, *Vague* Doc. 98 at 9:13–17 (junior attorney testifying that Thompson "had decided fairly recently issues related to transgender rights … and so there was some hope for a judge with expertise").

Because inherent authority sanctions require "subjective bad-faith," the Court must inquire into Kathleen's "subjective intent." *Purchasing Power, LLC v. Bluestem Brands, Inc.*, 851 F.3d 1218, 1224 (11th Cir. 2017). As noted above, Judge Proctor repeatedly praised Kathleen's candor, and he also noted that Kathleen gave the Panel "a good picture of what you're thinking what your motivations were and what your decisions were." *See* Aug. 3, 2022 Hrg. Trans. at 42:12–15. Judge Proctor twice told Kathleen that he appreciated the way that she approached her testimony. *Id.* at 79:25–80:2, 89:22–23. The Report does not specifically identify any instance where Kathleen was not truthful or forthcoming. On the contrary, she truthfully testified that the *Walker* team had a preference for Judge Thompson, but a preference and desire for a certain judge can—and did—coexist with a subjective belief that the *Walker* team could make a reasonable claim of relatedness.

Kathleen and the *Walker* team's good faith is reflected in their decision-making process. They researched relatedness, and they ultimately determined that

the Middle District did not have a controlling standard. They believed that they had a reasonable basis for the relatedness marking based on the overlapping legal and factual issues, and they advocated for a reassignment based on that reasonable belief. Researching an issue, filing a brief, and requesting a favorable ruling from a court is the opposite of a "contrivance." Even if the Court has a differing opinion of the law, that difference of opinion alone is not enough to find bad faith.

In sum, Kathleen believed that by marking *Walker* as related to *Corbitt* and, at the court clerk's direction filing the Motion to Reassign, the *Walker* team was invoking a permissible exception to the default rule of random assignment. The evidence simply does not support a clear and convincing finding of subjective bad faith, and therefore the Court has no basis to sanction Kathleen under the Court's inherent authority.

E. The Other Standards in the Order to Show Cause Do Not Apply to the Relatedness Designation.

None of the other standards of conduct identified by the Court apply to the relatedness designation. Neither the Panel nor the Court have identified any willful false statement by Kathleen, so 18 U.S.C. § 1621 and Rule of Professional Conduct 3.3 do not apply. Nor did Kathleen violate her sworn oath. Rules of Professional Conduct 1.2, 1.3, and 1.4 do not apply because the relatedness marking does not implicate any client communication issues or any neglect of a matter within

Kathleen's attorney-client relationship. Finally, Kathleen never took an oath of admission, which is not even required of attorneys admitted *pro hac vice*, but nevertheless, Kathleen did not violate any standard in the oath.

II. Charges 2 and 3 (Conduct Unrelated to Kathleen)

As described below, Kathleen was not involved in the conduct described in Charges 2 and 3. Because Kathleen's conduct must be viewed individually, and because she cannot be sanctioned for someone else's conduct, she should not be sanctioned for any of the conduct in Charges 2 and 3.

A. Charge 2: "*Walker* counsel, including Ms. Hartnett to contact the chambers of Judge Thompson (who was never assigned to *Walker*) to directly and indirectly influence or manipulate assignments away from Chief Judge Marks to Judge Thompson."[10]

This charge refers to Carl Charles calling Judge Thompson's chambers the day after *Walker* was filed. Kathleen did ***not*** (1) participate in this call, (2) direct or advise Carl Charles to make this call, or (3) provide any input on whether to make the call or what to say. Hartnett Supp. Decl. at ¶ 4. Because subjective bad faith "is personal to the offender," Kathleen cannot be punished under the Court's inherent authority for another person's conduct. *JTR Enters.*, 697 F. App'x at 987 ("Bad faith is personal to the offender. One person's bad faith may not be attributed to another

[10] Kathleen will address the inherent authority standard in this Section. This charge does not involve pleadings or other filings, so Rule 11 does not apply. Similarly, the other standards of conduct do not apply.

by operation of legal fictions or doctrines such as respondeat superior or vicarious liability.").[11]

As Kathleen has explained, at most she was aware that Mr. Charles contacted Judge Thompson's chambers to alert his office that a motion for preliminary injunction was being filed. Aug. 3, 2022 Hrg. Trans. at 26:4–27:5. As she testified, "I was actually in deposition prep or something that day, but I was following the email traffic." *Id.* at 25:13–15; *see* Hartnett Supp. Decl. at ¶ 4. No testimony or other evidence before the Court and Panel indicates that Kathleen had any involvement beyond simple awareness that Charles planned to call Judge Thompson's chambers, and Kathleen confirms that in her supplemental declaration. *See* Ex. B, Hartnett Supp. Decl. at ¶ 4.

The Panel also asked about Kathleen's involvement with the call:

> JUDGE PROCTOR: Were you on any conference calls when the idea of calling Judge Thompson's chambers was discussed?
>
> MS. HARTNETT: I was not on any call where that was discussed. It was an email exchange that was being had where I saw the whole thing unfold of, like, maybe we should call over there to let them know it's coming so they're ready for it, and then Tish [Gotell Faulks] saying, I've talked to Kaitlin [Welborn], and that makes sense, and then Carl [Charles] saying -- but Tish saying, I'm busy, and then Carl saying, I'll do it.

[11] Kathleen is not suggesting that Charles's phone call was sanctionable.

> JUDGE PROCTOR: And I understand, so they're not conference calls per se, but email traffic that you saw about this subject?
>
> MS. HARTNETT: Yes.

Aug. 3, 2022 Hrg. Trans. at 29:4–16. Kathleen's testimony is consistent with other *Walker* attorneys' testimony. *See* Aug. 3, 2022 Hrg. Trans. at 192:10–194:10; *Vague*, Doc. 80-9, Veroff Decl. at pp. 5–6; *Vague*, Doc. 80-11, Pelet del Toro Decl. at pp. 4–5.

To the extent this Charge also relates to a member of the *Walker* team talking to someone at the Equal Justice Initiative who relayed some information from one of Judge Thompson's law clerks, Kathleen does not recall having any knowledge of that communication at the time. *See Vague*, Doc. 70 at 20–21.[12] The Panel asked her, "Did you learn this as part of your role as counsel in the case, or did you learn this subject matter that you're about to be asked about only after our inquiry began as part of our inquiry?" Aug. 3, 2022 Hrg. Trans. at 37:4–7. Kathleen responded, "I believe only after the inquiry began. . . . I was walking from a deposition to the hotel to be able to get my flight out of Texas when the call happened, so I was on a call where I believe this topic was discussed." *Id.* at 37:8–24. In other words, to the best of her recollection, Kathleen had no knowledge of this contact before it occurred. To

[12] Kathleen does not read the Show Cause to cover this conduct, but out of an abundance of caution, she addresses it here.

the extent it was discussed by the *Walker* team after the contact was made, it was during a call that Kathleen joined while in transit from a deposition, but she has no specific recollection of hearing about the outreach.

In sum, Kathleen neither made the call to Judge Thompson's chambers nor directed or advised Charles to make that call. She also did not, at the time, know about the indirect outreach to a Judge Thompson clerk. Regardless, these contacts were intended to alert the court to a time-sensitive filing and to understand Court procedure, not to influence or manipulate the Court. *See* Doc. 517 at 7; *Vague*, Doc. 80-9, Veroff Decl. at 2–3. Viewed individually—as she must be—Kathleen cannot be sanctioned for this Charge, as she did not engage in the charged conduct, let alone in subjective bad faith.

B. Charge 3: "*Walker* counsel, including Ms. Hartnett, to attempt to persuade *Ladinsky* counsel to transfer the latter case to the Middle District to be before Judge Thompson."[13]

This charge is based on a call about the possibility of seeking a transfer of *Ladinsky* to the Middle District and Judge Thompson that the Panel described as follows: "Members of both teams—at least Esseks, Orr, Eagan, Nowlin-Sohl, Charles, and Soto—participated in a conference call that started at 5:00 p.m. on April 13, 2022." *Vague*, Doc. 70 at 23. Kathleen was ***not*** on the April 13 call that was the

[13] Kathleen will address the inherent authority standard. This Charge does not involve pleadings or other filings, so Rule 11 does not apply. Similarly, the other standards of conduct do not apply.

basis of this finding. In addition to so stating in her supplemental declaration, *see* Ex. B, Hartnett Supp. Decl. at ¶¶ 5–6, none of the participants in the call testified that she was on it. *See* Aug. 3, 2022 Hrg. Trans. at 213–214 (Esseks); Nov. 3, 2022 Hrg. Trans. at 30–31 (Orr); Aug. 4, 2022 Hrg. Trans. at 33:1–15 (Eagan).

Just as with the call to Judge Thompson's chambers, Kathleen cannot be sanctioned under the Court's inherent authority for the conduct of other attorneys. Kathleen could not have acted in subjective bad faith when she did not engage in the specified conduct at all.

III. Dismissal-Related Conduct

Charge 4: "All counsel, including Ms. Hartnett to coordinate the dismissal of the *Walker* and *Ladinsky* cases after their assignment to the Court, and then for lead counsel to make clear that the case would be refiled when commenting to the media about refiling."

Charge 5: "All counsel, including Ms. Hartnett, to engage in numerous and wide-ranging discussions about how judges were favorable or unfavorable in the context of deciding whether to dismiss and refile their cases."

Charge 6: "All counsel, including Ms. Hartnett to suddenly dismiss *Walker* and *Ladinsky* after a series of phone conferences in which counsel discussed a number of matters, including their prospects in front of the Court and that the Court was a bad draw"

Charge 7: "All counsel, including Ms. Hartnett, to abruptly stop the pursuit of emergency relief and decide to dismiss, and for *Ladinsky* counsel to refile a case in the Middle District with brand new plaintiffs, even though time was of the essence and their stated goal was to move quickly to enjoin what they viewed as an unconstitutional law"

A. Other Than Dismissing *Walker*, Kathleen Did Not Engage In Any Of The Other Conduct Described In Charges 4, 5, 6, and 7.

Charges 4, 5, 6, and 7 all relate to the dismissals of *Walker* and *Ladinsky*. However, none of these charges relate solely to dismissing under Rule 41 alone. Rather, each of them is based on dismissal *plus* some other conduct (4: comments to the media; 5: engaging in discussions about judges; 6: discussing prospects for success with certain judges, including saying that Judge Burke was a bad draw; 7: deciding to refile in the Middle District with new plaintiffs). Kathleen, however, did not engage in any of the other conduct alleged in these Charges; she was involved in dismissing *Walker* as permitted by Rule 41 and nothing more. In the following subsection (Section III.B), Kathleen explains why dismissal of *Walker*, standing alone, is not sanctionable. First, however, she explains why she cannot be sanctioned for Charges 4, 5, 6, and 7, given that those charges are all based on dismissal plus additional conduct of which she was not a part.[14]

First, as to Charge 4, Kathleen did not make any comments to the media. *Ladinsky* team members made the comments noted in the Report. *See Vague*, Doc. 70 at 44 (describing comments by the *Ladinsky* team). Kathleen cannot be sanctioned for comments made by someone else in a different case, especially when

[14] Kathleen does not concede that any of this alleged conduct warrants sanctions for any Respondent.

Kathleen had no involvement or input in those media comments. Further, even though the *Walker* and *Ladinsky* teams coordinated the timing of their dismissals, both teams had an "an *unconditional right* to dismiss [their] complaint by notice and without an order of the court at any time prior to the defendant's service of an answer or a motion for summary judgment." *Matthews v. Gaither*, 902 F.2d 877, 880 (11th Cir. 1990). Here, Kathleen testified that she coordinated the timing as a professional courtesy to the *Ladinksy* team, but to be clear, she also testified that she independently decided to dismiss.

Second, as to Charges 5 and 6, Kathleen was not involved in any of the "wide-ranging discussions" on April 15th described in the Final Report or discussions with the *Ladinsky* team about the prospects in front of Judge Burke. As noted above, the Report focused on a "5:00 p.m. conference call" on April 15th involving multiple members of the *Ladinsky* and *Walker* teams and says that Kathleen was on the call. *Vague*, Doc. 70 at 31. Kathleen was not on any such call, and, indeed, this section of the Report appears to confuse several phone calls among different groups of lawyers. Regardless, the call on which the Report focuses apparently involved discussions about judicial preferences—namely, the purported comment about a "zero percent chance" that Judge Burke would grant the requested relief. Kathleen was ***not*** on this call, and to the extent the Report states that she was, the cited testimony says

otherwise. *See* Aug. 4, 2022 Hrg. Trans. at 168–179; *Vague* Doc. 70 (citing same). Kathleen's supplemental declaration also further explains that she was not on any such call. *See* Ex. B, Hartnett Supp. Decl. at ¶¶ 7–14.

Consistent with Kathleen's testimony, the testimony cited by the Report regarding the "wide-ranging discussions" about judges does not place Kathleen on those calls. *See* May 20, 2022 Hrg. Trans. at 125–26 (Nowlin-Sohl testifying but not describing who was on the call); Aug. 3, 2022 Hrg. Trans. at 77 (Kathleen testifying about a *Walker*-only call and a one-on-one call with Minter); Aug. 4, 2022 Hrg. Trans. at at 77–79 (Eagan not describing who was on the call), 167–68 (Terry testifying that she, Eagan, Vague, Shortnacy, Minter, and Levi were on the call), 239–40 (Doss saying "I don't know" when asked if a Cooley lawyer was in conversations about dismissal and then describing a *Ladinsky* team call); *Vague* Doc. 80-6, Minter Dec. at 42, ¶ 12 (Minter describing a "team call" and then reaching out to an attorney from *Walker* after); *Vague* Doc. 80-6, Soto Dec. at 70, ¶ 36 ("On April 15, after Judge Axon transferred *Ladinsky* to Judge Burke, some members of the *Ladinsky* team got on a call.").

In fact, Kathleen and Minter's testimony show that Minter called Kathleen to discuss next steps in light of the 5:00 p.m. *Ladinsky* call. *See Vague* Doc. 80-6, Minter Dec. at 42, ¶ 12; Aug. 3, 2022 Hrg. Trans. at 76:23–80:23; Nov. 3, 2022 Hrg.

Trans. at 154:3–7. Of course, Minter would have had no need to call Kathleen to discuss dismissal if Kathleen was on the 5:00 PM *Ladinsky* call (which she was not). To the best of Kathleen's recollection, this call, or perhaps couple of calls, with Minter were the only calls she had with any member of the *Ladinsky* team after *Ladinsky* was reassigned to Judge Burke.

Third, as to Charge 7, Kathleen was not involved in the decision to file *Eknes-Tucker* in the Middle District with new plaintiffs. Charge 7 is premised on the refiling, and Kathleen cannot be sanctioned for the *Eknes-Tucker* filing with which she had no involvement. Further, Kathleen acknowledged the "tension" Between pursuing emergency relief and dismissal. Aug. 3, 2022 Hrg. Trans. at 78:19, explaining that in deciding to dismiss, Kathleen said: "we need to have the conversation tomorrow morning. I think I'm the one that said, we need to have the calls to the groups. If you-all want to talk, do it tomorrow morning. This needs to move forward. I was worried about the idea of delay." *Id.* at 78:19–23. Lawyers frequently weigh countervailing factors and face difficult decisions. Kathleen reasonably and in good faith believed and that voluntary dismissal was in her clients' best interests, but she was also concerned about delay. That is why she insisted on a prompt meeting to evaluate options for refiling.

B. The *Walker* Team Had A Right To Dismiss Under Rule 41(a)(1)(A)(i) For Any Reason.

Even were Kathleen charged with voluntary dismissal of *Walker* standing alone, Kathleen's decision to dismiss under Rule 41 is not sanctionable. Rule 41(a)(1)(A)(i) "plainly grants a plaintiff the right to dismiss—without a court order—'an action' prior to a defendant serving 'either an answer or a motion for summary judgment.'" *Absolute Activist Value Master Fund Limited v. Devine*, 998 F.3d 1258, 1264 (11th Cir. 2021); *accord Matthews v. Gaither*, 902 F.2d 877, 880 (11th Cir. 1990) ("It is well established that Rule 41(a)(1)(i) [sic] grants a plaintiff an *unconditional right* to dismiss his complaint by notice and without an order of the court at any time prior to the defendant's service of an answer or a motion for summary judgment.") (emphasis added); *Watkins v. Angels Trucking Services, LLC*, 2020 WL 7055496, at *3 (S.D. Ala. Dec. 2, 2020) (describing plaintiff's dismissal under Rule 41(a)(1)(A)(i) as "his absolute right"); *Carrasquillo-Rodriguez v. United States*, No. 2:19-CV-526-WKW, 2019 WL 4281925, at *1 (M.D. Ala. Sept. 10, 2019) ("his right").

Courts have found that plaintiffs may voluntarily dismiss under Rule 41 for any reason. *See Wolters Kluwer Financial Services, Inc. v. Scivantage*, 564 F.3d 110, 115 (2d Cir. 2009) (finding that the plaintiff "was entitled to file a valid Rule 41 notice of voluntary dismissal for any reason, and the fact that it did so to flee the

jurisdiction or the judge does not make the filing sanctionable."); *accord Ambrosia Coal and Construction Co. v. Pages Morales*, 2007 WL 9710667, at *2 (S.D. Fla. Aug. 2, 2007) ("[T]he plaintiff's motive for filing the notice is irrelevant."). The Fifth Circuit has held, "Court-ordered sanctions should be neither 'a consequence' of a voluntary dismissal without prejudice nor a 'condition' placed upon such dismissal." *Bechuck v. Home Depot U.S.A., Inc.*, 814 F.3d 287, 292–93 (5th Cir. 2016) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396–97 (1990)). "Although forum-shopping is not a trivial concern, 'Rule 41(a)(1) essentially permits forum shopping.'" *Id.* at 293 (quoting *Harvey Specialty & Supply, Inc. v. Anson Flowline Equipment Inc.*, 434 F.3d 320, 324 n.15 (5th Cir. 2005)).

Thus, even if the assignment to Judge Burke was the sole reason for Kathleen's decision to dismiss *Walker*—which it was not—Rule 41 permits such a dismissal. It provides an unconditional right to dismiss for any reason. Kathleen and the *Walker* team exercised this right, and while their "motive for filing the notice is irrelevant," Kathleen testified extensively on her motives. *Ambrosia Coal and Construction*, 2007 WL 9710667, at *2. Kathleen acknowledges that the assignment of Judge Burke was *a* factor in the dismissal, but it was certainly not *the* factor or even the principal factor. She had many other motivations—including the late Friday notice of status conference on the Monday following Easter, the unexpected transfer

of the *Ladinsky* case to Judge Burke (meaning that the Monday status conference would in fact proceed and would involve both cases), the difficulty in having the right attorneys at the status conference, the lack of confidence in the local counsel, and the complexities of coordinating with *Ladinsky* counsel in the face of differing strategies.

In short, sanctions under the Court's inherent authority require subjective bad faith. Kathleen and the *Walker* team did not act in subjective bad faith because they exercised an unconditional right that their clients could exercise for any reason. To find that a voluntary dismissal was in bad faith would impose conditions and require a justifiable reason. Further, even if voluntary dismissals are subject to Rule 11, Kathleen cannot be sanctioned. Because a dismissal can be for any reason, it necessarily cannot have an "improper purpose." Fed. R. Civ. P. 11(b). The other standards of conduct in the Show Cause do not apply.

C. Sanctioning a Rule 41 Dismissal Would Interpose an Untenable Conflict Between Attorneys and Their Clients.

Although, as explained, the right to dismiss under Rule 41 is absolute, the Court also should consider the duties that Kathleen and the *Walker* team owed to their clients. Both Alabama Rule of Professional Conduct 2.1 and ABA Model Rule 2.1 require a lawyer to "exercise independent professional judgment and render candid advice." In the *Walker* team's professional judgment, the best strategy for

success as of late Friday afternoon on April 15 was to dismiss, regroup, and evaluate their options. While the decision may certainly be second-guessed, it was made with the clients' best interests in mind and was expressly permitted under Rule 41. To sanction Kathleen for making a time-sensitive decision to invoke a right afforded under the rules of procedure would create a tension, if not a conflict, between the personal interests of attorneys who do not want to be sanctioned and the interests of their clients in a voluntary dismissal.

Here, in Kathleen's judgment, dismissal was the best option for her clients. She stated in her declaration:

> When *Ladinsky* was transferred to Judge Burke, I realized the Monday status conference would take place and was concerned about *Walker* Counsel's inability to have senior lawyers on the team admitted *pro hac vice* and otherwise able to travel from around the country to participate in what I thought could become a substantive discussion of the case. Additionally, over the past several days of active litigation, I grew to have serious questions about the capacity of our sole local counsel to handle this matter on her own. I also was concerned about *Walker* Counsel's ability to adequately coordinate with *Ladinsky* Counsel regarding strategy in advance of the April 18 status conference (including because the teams had *not* been coordinating to date and had differences in strategy, as well as past challenges working together on litigation). Additionally, I had concerns about the sudden, unexpected, and unexplained assignment of both *Walker* and *Ladinsky* to Judge Burke, whom I did not know and had not personally researched, but about whom others had expressed significant concern. Additionally, I believed it was necessary to dismiss immediately because were the State to answer before we dismissed, we would lose our unilateral right to dismiss voluntarily under Federal Rule of Civil Procedure 41.

Ex. A, Hartnett Decl. at pp. 29–30.

Kathleen certainly understood the urgency of the relief sought in *Walker*, but she ultimately decided, "[A]t the end of the day, it's better to bring a properly baked case, even if it's a couple of days later, than a case that's not going to go well earlier." Aug. 3, 2022 Hrg. Trans. at 78:24–79:1. She described the prospects of adequately coordinating with the *Ladinsky* team as "the inevitable train wreck that was coming." Aug. 3, 2022 Hrg. Trans. at 53:21—22. She then said, "I think what really happened in the end is that by having that ten a.m. status conference as the forcing mechanism and seeing what was happening that day, this is not going to get – we're not going to get our acts together in time for Monday." Aug. 3, 2022 Hrg. Trans. at 54: 2–6.

In short, on the evening of Friday, April 15, Kathleen saw the prospects for coordinating with *Ladinsky* as an "inevitable train wreck." She did not have faith in *Walker*'s only counsel located in Alabama. She did not know whether the senior members of her team could even appear in Alabama, much less be admitted *pro hac vice*. She felt that she did not have "a properly baked case." She did not think that her team and the *Ladinsky* team were "going to get our acts together in time for Monday." In a very short period of time on a holiday weekend, Kathleen considered these factors and felt that dismissal was in the best interests of her clients.

Rule 41 indisputably permits voluntary dismissals, and on that Friday afternoon, Kathleen exercised her independent judgment, weighed her clients' interests, and felt that a Rule 41 dismissal was the best option. As the Eleventh Circuit has said, Rule 41 "grants a plaintiff an *unconditional right* to dismiss." *Matthews*, 902 F.2d at 880. The undersigned counsel are aware of no case in which an attorney has been disciplined for a single dismissal pursuant to Rule 41. In fact, in *Wolters Kluwer*, which the Report cited, the Second Circuit reversed a sanction imposed for voluntary dismissing, and it said that the plaintiff had an "unfettered right" to dismiss and that it could do so "for any reason, and the fact that it did so to flee the jurisdiction or the judge does not make the filing sanctionable." 564 F.3d at 115. If this Court finds that a dismissal is sanctionable, then it would interpose a conflict between what Kathleen believed was in the best interests of her clients and her own interest in not being sanctioned.

IV. Paragraph III(b) of the Supplemental Order to Show Cause

A. Kathleen did not Misrepresent Her Concern About the Reassignment of *Ladinsky* to This Court, and She Truthfully Testified About Her Reasons for Dismissal.

Paragraph III(b) of the Show Cause discusses the *Walker* and *Ladinsky* attorneys' testimony about their reasons for dismissing. The Report and the Show Cause suggest that Kathleen claimed "that the dismissal was because Judge Axon

did not explain the reassignment of *Ladinsky* and [the Court] set *Walker* for a status conference in Huntsville on April 18." Doc. 479. Kathleen testified truthfully and extensively about the reasons she decided to dismiss *Walker*. As she acknowledged in her declaration, "I had concerns about the sudden, unexpected, and unexplained assignment of both *Walker* and *Ladinsky* to Judge Burke, whom I did not know and had not personally researched, but about whom others had expressed significant concern." Ex. A, Hartnett Decl. at p. 30.

However, as reflected by her testimony and as set forth above, Kathleen's reasons for dismissing were multi-faceted. Among other things, Kathleen had serious concerns about the *Walker* team's ability to properly handle the Monday morning status conference, given that its most experienced lawyers were unlikely to be able to be present on short notice after the religious holiday weekend. The consolidation with *Ladinsky* coupled with the tension between the groups and their strategies exacerbated her concerns. Kathleen and the *Walker* team had to make a quick decision because they would lose that right if the State answered the complaint. Thus, in Kathleen's mind, the dismissal was an opportunity to reset the case and get it in the right posture with the right preparation: "But when I think about my ethical obligation, I knew that we still had the right to bring the case back. And

I felt like we weren't in a position to do it right on Monday, but we could maybe be in a position to do it right later." Aug. 3, 2022 Hrg. Trans. at 74:19–22.

Ultimately, this Charge is about credibility. Kathleen stands behind her testimony, which was truthful then and is truthful now. In real time, Judge Proctor thanked Kathleen for her approach to her testimony. He praised her candor. He even said that Kathleen provided "a good picture of what you're thinking what your motivations were and what your decisions were." *See* Aug. 3, 2022 Hrg. Trans. at 42:12–15.

The Final Report does not find that Kathleen testified untruthfully or that she was not fully transparent. Instead, the Final Report casts doubts about the Respondents' collective motivations, which directly conflicts with the repeated praise Judge Proctor expressed towards Kathleen during her live testimony. Judge Proctor's comments to Kathleen ("[o]ne of the things I was impressed with with your declaration is its clarity, its organization, and its candor;" "I think you've given me a good picture of what you're thinking and what your motivations were and what your decisions were;" "I really appreciate the way you're tackling this, and I just want to affirm that as we're going along;" and "I thank you for the way you've approached this.") seem to clearly indicate that Kathleen's testimony was not the basis for the credibility concerns expressed in finding 10 of the Report.

In addition to Kathleen's specific circumstances, the credibility assessments made in the Report are not based on clear and convincing evidence. The *Walker* Respondents were consistent in their testimony about the different considerations for dismissing, even if some Respondents personally placed different emphasis on the various factors. No Respondent testified that Kathleen's stated reasons for dismissing were pretextual or false. Nor does any other evidence suggest that.

The inferences drawn by the Panel from the testimony of the Respondents—besides being improperly "collective," *Vague* Doc. 70 at 51—simply do not suffice to meet the high evidentiary standard required to justify a sanction against Kathleen. Inherent authority sanctions require clear and convincing evidence or, at the very least, specific findings. There is no evidence—no conflicting testimony or documentation—to support a finding that Kathleen failed to testify truthfully. Both the perjury statute and Rule of Professional Conduct 3.3 require heightened *mens rea* (willfulness and knowledge). None of the evidence indicates that Kathleen willfully misrepresented any of her testimony. Simply put, Kathleen told the truth, and to find otherwise would require the Court to discredit the testimony of every other attorney who testified on this topic and to make unsupported inferences.

B. Kathleen Did Not Make Any Misrepresentations to the Panel, and She Did Not Fail to Disclose any Material Facts.

Paragraph III(b) of the Show Cause also requires Kathleen to "show cause why she should not be sanctioned for misrepresenting or otherwise failing to disclose key facts during the panel's inquiry." Doc. 479 at 13. Due process requires that the Court provide fair notice to Kathleen of what conduct may give rise to sanctions. Neither Paragraph III(b) nor the Report provide reasonable notice of a purported misrepresentation or nondisclosure by Kathleen. Instead, Paragraph III(b) required Kathleen to "address any findings in Section IV of the Panel's Report implicating her credibility or any discrepancies between her own oral and written testimony and the oral and written testimony of all other attorneys who testified." *Id*. at 14. Respectfully, Kathleen is left to guess at what the Court may consider to be "matters impacting her credibility" or "discrepancies" between her testimony and that of other Respondents. This directive does not satisfy due process. Regardless, Kathleen is not aware of any statement she made that could be viewed as false or a material nondisclosure. Likewise, she knows of no material discrepancies between her testimony and the testimony of other Respondents.

At the Court's March 19, 2024 hearing, the Court indicated that "a junior associate telling me material facts that everybody else left out of their testimony" was a primary concern underlying this aspect of the Show Cause. March 19, 2024

Hrg. Trans. at 56:23–24. The Court's statement is presumably a reference to the "zero percent chance" comment described by Abigail Terry as having occurred on an April 15th phone call.[15] But as noted above, Kathleen was not on the call where this comment was purportedly made. Thus, Kathleen has no knowledge of whether this comment was made and could not have omitted or misrepresented anything in her testimony about this call and comment.

Absent further guidance, undersigned counsel has scoured the Report and the record, and have determined that there are only three findings or statements that could possibly relate to a misrepresentation or nondisclosure by Kathleen, and none of those actually implicate Kathleen in any wrongdoing.

First, finding 10 in the Report broadly states that every Respondent engaged in misconduct by stating that they had reasons for dismissing other than the assignment of Judge Burke to *Walker* and *Ladinsky*. As discussed above, Kathleen truthfully described her reasons for dismissal, and Judge Proctor praised her candor.

Second, the Panel made the following broad statement in the Report:

> To be clear, however, *Walker* counsel's candor on the whole is concerning. For example, Esseks's testimony that, "based on [his] understanding of what related means," he would have marked *Corbitt* as related to *Walker*, even if that case had been assigned to a judge that had previously ruled against them, strains credulity, particularly

[15] Ms. Terry did not testify that Kathleen was on this call. Aug. 4, 2022 Hrg. Trans. at 167:22–168:20.

> considering the extent of counsel's efforts to steer *Walker* to Judge Thompson.

Vague, Doc. 70 at 18 n.3. Though this footnote references "*Walker* counsel" as a group, it does not identify any statement made by Kathleen, much less any misrepresentation or nondisclosure by Kathleen. Kathleen should not—indeed, *cannot*—be sanctioned for her co-counsel's response to a hypothetical question.

Third, in reviewing the declarations and testimony, Kathleen noted that Jennnifer Levi said that she had a call with Kathleen on late Friday about dismissing the two cases. Aug. 4, 2022 Hrg. Trans. at 30:14–31:11. Kathleen does not recall talking to Levi. Rather, she only recalls talking to Minter. Minter's testimony appears to support Kathleen's recollection. He said, "I called one of the attorneys on the Walker team to see if they were -- what they were thinking." Nov. 3, 2022 Hrg. Trans. at 154:3–5. In his declaration, he said, "I had some individual communications with one of the *Walker* attorneys to flag the need for a call between the two teams over the weekend if possible, given the short time before the law would take effect." *Vague*, Doc. 80-6, Minter Decl. at ¶ 12.

Regardless, Levi's testimony about the substance of the conversations she remembers is consistent with Kathleen's intentions at the time and her discussions with Minter. Levi says that they discussed dismissal and that Kathleen said any refiling discussion would have to involve more members of her team but that they

would move quickly to discuss joining forces. Kathleen's testimony on her thought process and conversation with Minter are similar. *Compare* Aug. 4, 2022 Hrg. Trans. at 30:14–31:11 *and* Aug. 3, 2022 Hrg. Trans. at 78: 18–79:7; 88:1–12 and Hartnett Decl. at p. 21. Thus, this difference in testimony is nothing more than differing memories. There is no material factual difference between what Levi said and Kathleen's thought process. As the Court has noted, it is only concerned with *material* discrepancies. March 19, 2024 Hrg. Trans. at 53:15–21. This difference in memory is therefore not sanctionable.

In sum, Kathleen did not violate her sworn oath, Rule of Professional Conduct 3.3., or any other applicable standard of conduct because she did not make any material misrepresentation or fail to disclose material facts—much less do so intentionally or knowingly. The other standards of conduct are inapplicable.

V. Kathleen Acted With Implied Authorization to Dismiss *Walker* Without Prejudice.[16]

Section III(c) of the Show Cause appears to be based on the premise that a voluntary dismissal without prejudice requires client consent. It does not. As the Eighth Circuit has held: "The general rule is that an attorney has no implied authority

[16] Kathleen maintains an objection that her clients in the *Walker* case did not waive their privilege with members of the *Walker* team, and the Panel invaded that privilege when it forced members of the *Walker* team to discuss their privileged conversations about the dismissal. She likewise objects, as she noted in Doc. 508, to this charge being added so late in the process.

to settle or compromise or dismiss his client's cause of action with prejudice. . . . [She] does have, where employed to prosecute litigation, implied power to take all action with reference to procedural matters, including the power to dismiss without prejudice." *Engelhardt v. Bell & Howell Co.*, 299 F.2d 480, 483 (8th Cir. 1962). After the *Walker* team acted with its implied authorization and voluntarily dismissed, it consulted with the *Walker* plaintiffs the same day.

A. Kathleen and the *Walker* Team Were not Required Under Rule 1.2 to Obtain Prior Consent From Their Clients to Dismiss Without Prejudice.

Alabama and ABA Rule of Professional Conduct 1.2(a) state that "A lawyer shall abide by a client's decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are to be pursued." ABA Rule 1.2(a) adds, "A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation." The Comment to Rule 1.2 states, "In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected."

In short, Rule 1.2 distinguishes between the objectives of representation and the means of representation. In general, the client determines the objectives, and the

attorney is responsible for the means. In this case, the objective was quite clear: challenge the constitutionality of the recently-passed S.B. 184. As of late Friday, April 15, 2022, Kathleen and the *Walker* team had to determine the means of best accomplishing this objective.

A dismissal without prejudice is a matter of means, rather than objective, because it does not compromise the rights of the client. "Where an action is dismissed without prejudice, the plaintiff may refile before the expiration of the applicable statute of limitations." *Alexander v. Bradshaw*, 599 F. App'x 945, 946 (11th Cir. 2015). Courts around the country have distinguished between dismissals with prejudice and those without prejudice because of the right to refile, and as a result, these courts have found that attorneys have the implied authority to dismiss without prejudice as a means to achieve the objective of representation.

As noted, the Eight Circuit has said: "The general rule is that an attorney has no implied authority to settle or compromise or dismiss his client's cause of action with prejudice. . . . [She] does have, where employed to prosecute litigation, implied power to take all action with reference to procedural matters, including the power to dismiss without prejudice." *Engelhardt*, 299 F.2d 480 (8th Cir. 1962). Other courts agree:

- *Federated Towing & Recovery, LLC v. Praetorian Ins. Co.*, 283 F.R.D. 644, 662–63 (D.N.M. 2012): "An attorney would have implied authority to agree

to a dismissal of a case without prejudice, because doing so does not compromise or settle the client's rights, and the client is not precluded from litigating the merits of the case."

- *Slovitz v. City of New York*, 157 N.Y.S.2d 532, 533 (Sup. Ct. 1956): "It is familiar law that an attorney's authority to discontinue an action is presumed and binding upon his client, especially where there is no settlement or release involved."

- *Virginia Concrete Co. v. Bd. of Sup'rs of Fairfax Cnty.*, 197 Va. 821, 827, 91 S.E.2d 415, 420 (1956): "Under his general authority an attorney has control of the remedy and may discontinue the action by a dismissal without prejudice, thus binding his client."

- *Duhe v. Jones*, 186 So. 2d 419, 424 (La. Ct. App. 1966): "[A]n attorney of record has implied authority to dismiss a suit 'without prejudice'."

- *Snyder-Falkinham v. Stockburger*, 249 Va. 376, 382, 457 S.E.2d 36, 39 (1995): "An attorney's general authority permits the attorney to discontinue a pending action by a dismissal without prejudice; but this general authority gives the attorney no right to discharge or terminate a cause of action by a dismissal on the merits, such as by a dismissal with prejudice, without special authority or acquiescence on the part of the client."

- *Cory v. Howard*, 164 N.E. 639, 639 (1929): "As the dismissal of a suit does not bar the bringing of another for the same cause of action, the attorney of record has the implied authority to discontinue the action if he sees fit."

- *Sewraz v. Nguyen*, No. 3:08CV90, 2011 WL 201487, at *6 (E.D. Va. Jan. 20, 2011): "An attorney has the general implied authority to nonsuit a case so long as it does not prevent bringing another suit on the same merits."

- *City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 758 (Tex. 2003): "Texas courts have held that an attorney has implied authority to nonsuit a client's claim when the nonsuit does not affect a substantial right or bar the bringing of another suit based on the same cause of action."

- *Bice v. Stevens*, 325 P.2d 244, 251 (1958): "It is clearly within the attorney's authority to dismiss the client's action without prejudice."

Treatises also agree on this point:

- **Corpus Juris Secundum:** "[I]t is generally held that an attorney has implied authority to enter or take a dismissal, discontinuance, or nonsuit which does not bar the bringing of another suit on the same cause of action." 7A C.J.S. Attorney & Client § 295.

- **Federal Procedure, Lawyers Edit**ion: "An attorney who is employed to prosecute litigation has the implied power to take all action with reference to procedural matters, including stipulating to a dismissal without prejudice." 27A Fed. Proc., L. Ed. § 62:502.

- **American Law Reports:** "The rule prevailing in most jurisdictions is that an attorney employed to prosecute an action has implied authority, by virtue of such employment, to have the action discontinued or dismissed where such discontinuance or dismissal will not operate as a bar to the institution of a new action on the same cause, or, as expressed in some cases, where the dismissal or other termination is 'without prejudice.'" 56 A.L.R.2d 1290 (Originally published in 1957).

- **Restatement (Third) of the Law Governing Lawyers:** "A lawyer, for example, may decide whether to move to dismiss a complaint." Restatement (Third) of the Law Governing Lawyers § 21 (2000).

Consistent with this substantial case law, Kathleen testified that the *Walker* team had the authority to voluntarily dismiss without prejudice:

> We did have the ability to do that. I mean, our client -- we had -- our client gave us the -- we have authority to generally make litigation decisions in their best interest, and particularly because here we weren't, like, settling their claim or something. We were just voluntary dismissing it. I think we felt like we had the authority as the counsel group to do that.

Aug. 3, 2022 Hrg. Trans. at 76:9–15.

In short, Kathleen and the *Walker* team had the implied authority—as contemplated by ABA Rule 1.2—to dismiss the case without prejudice. The dismissal was consistent with the *Walker* plaintiffs' objectives in the representation: to challenge the constitutionality of S.B. 184. In Kathleen's mind, the *Walker* case was not optimally positioned to succeed. For the reasons discussed elsewhere in this brief, Kathleen believed, "[A]t the end of the day, it's better to bring a properly baked case, even if it's a couple of days later, than a case that's not going to go well earlier." Aug. 3, 2022 Hrg. Trans. at 78:24–79:1. She believed, in good faith, that a dismissal gave both the *Walker* and *Ladinsky* teams time to regroup and determine the best way to achieve the shared objective of challenging S.B. 184, and she acted with her implied authority to pursue that objective.

B. Kathleen and the *Walker* Team Did Not Neglect any Matter Entrusted to Them by Their Clients in Violation of Rule 1.3.

Alabama Rule 1.3 provides, "A lawyer shall not willfully neglect a legal matter entrusted to him." ABA Rule 1.3 similarly states, "A lawyer shall act with reasonable diligence and promptness in representing a client." Kathleen and the *Walker* team did not neglect any matter entrusted to them by their clients.

First, Kathleen and the *Walker* team filed a lengthy and well-drafted complaint within just *three days* of Governor Ivey signing S.B. 184, and they filed a motion for a temporary restraining order and/or preliminary injunction one day later. The record

here is thus chock full of evidence that Kathleen and the other *Walker* counsel were vigorously pressing their clients' claims both before and during the pendency of the case.

Second, on Friday, April 15, 2022, the *Walker* team dismissed their case, believing it to be the best available option given their procedural circumstances. In doing so, Kathleen and the *Walker* team were cognizant not to "delay" given the urgency and therefore moved quickly to make a decision as to next steps. Aug. 3, 2022 Hrg. Trans. at 78:18–23.

Third, other *Walker* counsel who had relationships with the clients informed the clients of the dismissal and the expectation that another case would be filed within a reasonable timeframe after the dismissal.

Fourth, when Kathleen and the *Walker* team dismissed, they were committed to ensuring that someone challenged S.B. 184. Kathleen agreed with Judge Proctor's statement that, "This wasn't a decamp, walk away" situation. Aug. 3, 2022 Hrg. Trans. at 77:25–78:2; *see id.* at 78:7–7 ("[W]e were committed to having someone do this challenge in the state.").

Fifth, the *Ladinsky* group ultimately refiled—as discussed between the two groups—and got S.B. 184 enjoined, even if temporarily. Thus, the objective of the representation was achieved in the district court.

C. The *Walker* Team Kept Their Clients Reasonably Informed About the Status of the Case in Compliance With Rule 1.4.

Alabama Rule 1.4 provides:

> (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

ABA Rule 1.4 provides:

> (a) A lawyer shall:
> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
> (3) keep the client reasonably informed about the status of the matter;
> (4) promptly comply with reasonable requests for information; and
> (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The obligation in Rule 1.4 is driven by the context of the situation. The comments to Alabama Rule 1.4 state, "Adequacy of communication depends in part on the kind of advice or assistance involved." The comments to ABA Rule 1.4 expressly contemplate that an attorney may need to act immediately without prior

consultation with a client: "In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation." The Comments to Alabama Rule 1.4 similarly state, "Practical exigency may also require a lawyer to act for a client without prior consultation."

That is exactly what happened here. Kathleen and the *Walker* team faced what they believed were exigent circumstances, and they had to make a decision quickly. At any point, the State could have answered the complaint and removed the right of voluntary dismissal. Given these circumstances, prior consultation was not feasible—particularly when, as the cases cited above note, an attorney has the implied authority to dismiss without prejudice.

Further, Kathleen and Cooley's primary role on the *Walker* team was to lead the litigation effort: conducting legal research, assessing potential claims, and preparing pleadings. She was not responsible for the day-to-day communication with the clients. That was the role of other members of the *Walker* team, but those other members talked with the clients throughout the week that *Walker* was pending and

shortly after the dismissal.[17] The *Walker* team as a whole communicated with their clients on an ongoing basis and kept them informed.

D. Rule 11 Does not Apply to This Charge.

Kathleen did not violate Rule 11 by filing a voluntary dismissal without the prior consent of her client. First, Rule 11 imposes duties to the court system and other litigants. *See Mars Steel Corp. v. Continental Bank N.A.*, 880 F.2d 928, 932 (7th Cir. 1989). Rule 11 is not meant to discipline attorneys for breaching duties to their clients. *Mark Indus., Ltd. v. Sea Captain's Choice, Inc.*, 50 F.3d 730, 732 (9th Cir. 1995) (agreeing with the proposition "that the purpose of Rule 11 is to deter abuses of the litigation process which have the potential of harming the interests of the opponent, not to discipline attorneys for breaches of duty to their own clients."). Second, ample case law provides that Kathleen had the implied authority to voluntarily dismiss the *Walker* case without prejudice, so she had—at absolute minimum—a reasonable basis for the dismissal. Third, Kathleen's purpose in dismissing was to regroup and determine the best approach for challenging S.B. 184, her clients' ultimate objective—which is not improper.

[17] Kathleen defers to the facts in James Esseks, Carl Charles, and LaTisha Faulks's supplemental declarations and brief on this point.

CONCLUSION

Kathleen accepts responsibility for her actions and stands ready to express to the Court that she deeply regrets that her actions created an appearance of impropriety and judge shopping. However, she at all times acted in good faith and within the bounds of existing rules and standards, and she did not intend to, nor did she, engage in any sanctionable conduct.

Dated: May 13, 2024

/s/ Brannon J, Buck

Brannon J. Buck (ASB-5848-K56B)
bbuck@badhambuck.com
Christopher B. Driver (ASB-9178-G39B)
cdriver@badhambuck.com
BADHAM & BUCK, LLC
2001 Park Place North, Ste. 500
Birmingham, Alabama 35203
(205) 521-0036 (Phone)
(205) 521-0037 (Facsimile)

Counsel for Kathleen Hartnett

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served on all parties of record via the CM/ECF electronic filing system, electronic mail, and/or U.S. Mail on this the 13th day of May, 2024.

/s/ Brannon J. Buck

OF COUNSEL

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In re* Amie Adelia Vague, *et al.	}	**Case No. 2:22-mc-03977-WKW**

DECLARATION OF KATHLEEN HARTNETT PURSUANT TO JULY 8, 2022 ORDER

I, Kathleen Hartnett, declare:

1. I submit this Declaration pursuant to the Panel's July 8, 2022 Order in this matter.

2. The matters stated herein are based upon my personal knowledge and are true to the best of my knowledge. To the extent information provided in response to one of the Panel's questions is responsive to other questions, I have attempted to repeat that information, but the information provided below should be considered as being provided in response to all questions as necessary, notwithstanding that it is provided in response to a specific question. In addition, in some instances I provide

information as context for my response rather than in direct response to the Panel's question.[1]

3. I am a partner at the Cooley LLP law firm in San Francisco, California. I have been at Cooley since 2020. My primary practice is focused on complex civil and appellate litigation for corporate clients in federal and state courts throughout the country. I also spend considerable time litigating and supervising cases *pro bono* for indigent clients and for non-profit organizations with interests in various civil rights matters around the country.

4. I earned my Juris Doctorate from Harvard Law School in 2000, after which I clerked for Judge Merrick Garland of the United States Court of Appeals for the D.C. Circuit and for United States Supreme Court Justice John Paul Stevens.

5. After clerking, I joined a national law firm in Washington, D.C. as an associate with a focus on appellate and constitutional law. In 2006, I co-founded a Washington, D.C. litigation boutique, where I litigated commercial disputes and represented nationwide classes of antitrust and consumer protection plaintiffs.

[1] Pursuant to and in compliance with the Panel's July 25, 2022 Order, I have not disclosed any attorney-client communications in this declaration. Moreover, by submitting this declaration, I do not intend to waive the attorney work product protection as to any materials or communications disclosed herein.

6. In 2010, I left my firm to serve as special assistant and associate counsel to President Barack Obama, and continued in that role until 2013.

7. In 2013, I joined the United States Department of Justice Civil Division, where I served as Deputy Assistant Attorney General. In that role, I oversaw the Federal Programs Branch, which litigates challenges to federal actions across the country.

8. After my government service, I returned to private practice in 2016 at the law firm Boies Schiller Flexner LLP in San Francisco, where I was a partner until 2020, when I joined Cooley.

9. I was selected in 2020 by the judges of the Northern District of California to be a lawyer representative and was selected by the judges to be co-chair of the lawyer representatives for 2022-2023.

10. I am admitted to practice law in California, the District of Columbia, and New York. I am in good standing in each of those jurisdictions.

11. As background for all of the responses below, I first became involved in plans to file a legal challenge to proposed legislation in Alabama that would criminalize the provision of gender-affirming care to transgender youth in March 2021. At that time, Cooley began working on a *pro bono* basis with several non-profit organizations—Lambda Legal ("Lambda"), the American Civil Liberties Union ("ACLU National"), and the American Civil Liberties Union of Alabama (the

"ACLU of Alabama")—who had been preparing to challenge the companion bills, House Bill 1 and Senate Bill 10, which were then pending in the Alabama legislature. I and others at Cooley had partnered with Lambda and ACLU National before, including to challenge various laws aimed at transgender people in other states, and we had an ongoing relationship with those organizations. At that time, I had an understanding from conversations with lawyers at Lambda and ACLU National that there were other groups also considering challenges to the two laws, but I was not in contact with those other groups regarding these potential challenges.

12. In March, April, and May of 2021, I supervised Cooley associates in helping to draft the *Walker* complaint and a motion for a preliminary injunction and temporary restraining order. However, the bills that we were anticipating challenging did not pass the Alabama legislature at that time, and so Cooley paused its work on the complaint and the motion.

13. When the threat of similar bills in Alabama resumed in early 2022, the Cooley team and I resumed our work in *Walker* starting in early February 2022, again alongside Lambda, ACLU National, ACLU of Alabama, and, eventually, the Transgender Law Center. As explained further below in response to **Topic 5**, and as context for my responses to all of these questions, at no time before my communications with *Ladinsky* Counsel on April 15, 2022 regarding potentially consolidating our cases in the Northern District of Alabama and then potentially

dismissing our cases did I view *Walker* Counsel as "coordinating" with *Ladinsky* Counsel. Rather, before that day, I understood that another counsel group (which I came to know as *Ladinsky* Counsel) were likely to, and then in fact did, file a challenge to a transgender youth healthcare ban. I had minimal interactions with that other counsel group in 2022 and I had no expectation when filing *Walker* that our case would be consolidated with or litigated in coordination with *Ladinsky*. To the contrary, my understanding was that the two groups would seek to maintain separate cases, including because the groups were unlikely to work well together given various history and experiences between certain individuals in the different counsel groups (none involving Cooley).

14. **Topic 1. With regard to the first topic identified in the Panel's July 8, 2022 Order, my participation in and knowledge of "[t]he actual or potential judicial assignments in *Ladinsky*, *Walker*, and/or *Eknes-Tucker*," are as follows:**

Ladinsky

- I did not have any participation in the actual or potential judicial assignments in *Ladinsky* but I did learn of them as the *Ladinsky* case received such assignments.
- Before the *Ladinsky* case was filed, I knew that a group I would later know as *Ladinsky* Counsel intended to file in the Northern District of Alabama.

- On or around April 11, 2022, I learned from co-counsel on the *Walker* case that various organizations, including the National Center for Lesbian Rights ("NCLR"), GLBTQ Legal Advocates & Defenders ("GLAD"), Southern Poverty Law Center ("SPLC"), and Human Rights Campaign ("HRC"), as well as two law firms (collectively, *Ladinsky* Counsel), had in fact filed a case in the Northern District of Alabama called *Ladinsky* and that the *Ladinsky* case had been assigned to Judge Manasco. Later that same day, I learned from *Walker* co-counsel that Judge Manasco recused herself from the *Ladinsky* case.
- On April 14, 2022, I learned from co-counsel in *Walker* that the *Ladinsky* case had been reassigned to Judge Axon in the Northern District of Alabama.
- On April 15, 2022, as discussed more fully below, I learned that the *Ladinsky* case had been reassigned to Judge Burke in the Northern District of Alabama.

Walker

- When Cooley joined the team that was preparing to file the *Walker* case in March 2021, I understood from attorneys from Lambda, the ACLU of Alabama, and ACLU National that they were inclined to file their lawsuit in the Middle District of Alabama (where at least one likely plaintiff family

resided, where the district attorney for that plaintiff family's county resided, and where the Attorney General of Alabama resided) and to mark the case as related to *Corbitt v. Taylor*, an action that was before Judge Thompson of the Middle District of Alabama and with which ACLU National and ACLU of Alabama were familiar because they serve as counsel in *Corbitt*.

- My understanding was that my co-counsel wanted to be before Judge Thompson because he was expected to be receptive to our factual and legal claims, as he had been regarding similar legal claims in *Corbitt*, which involves Equal Protection and Due Process challenges to an Alabama law limiting transgender individuals' rights. I also understood from co-counsel that the cases were related because they involved overlapping legal and factual issues. I also understood *Corbitt* was on appeal before the Eleventh Circuit Court of Appeals and was expected to be remanded back to Judge Thompson for, at a minimum, resolution of an attorneys' fee motion.
- Soon after Cooley joined the case in March 2021, Cooley associates under my supervision conducted a review of the judges in the Middle District of Alabama and the Northern District of Alabama that could possibly be assigned to the case. The same team of associates reviewed the process for marking the case as related, the standard for considering a case related in

the Middle District and how an opposing counsel would object to the marking of a case as related. The purpose of the review was to confirm the strategy of filing the case in the Middle District and marking the case as related.

- Ultimately, I concurred in the plan to file the case in the Middle District of Alabama and relate the case to Judge Thompson by checking a box on the civil cover sheet. Our belief at the time was that as a result of checking the box on the civil cover sheet for related cases, the case would then be sent to Judge Thompson to decide whether the case was sufficiently related to accept the case. We were not aware of any requirement in the Middle District of Alabama to file a motion to relate or reassign in order to perfect our relatedness designation on the civil cover sheet, and our review of the Middle District rules did not indicate any such process. I believed that because there was no clear guidance on the standard for relating a case in the Middle District of Alabama, we had a reasonable basis for marking our case as related to *Corbitt* and, if the State opposed our marking the case as related, we might not be successful.
- I intended to litigate our challenge in the Middle District of Alabama regardless of whether Judge Thompson ultimately was assigned to the case.

- The strategy described in the preceding bullets regarding filing in the Middle District and marking our case as related to *Corbitt* is the strategy we continued to pursue when the possibility of filing this case arose again in March 2022.
- On April 11, 2022, I supervised the Cooley team in finalizing the *Walker* complaint with our co-counsel, and Cooley and our co-counsel filed the *Walker* action in the Middle District of Alabama. As explained above, I understood that the proper way to have a case deemed related was to mark the civil cover sheet to indicate that the *Walker* case was related to the *Corbitt* case, which is what we did. We reviewed the Middle District of Alabama local rules and there was no indication that we had to file a motion to relate or reassign in order to perfect a relatedness designation. I also expected, based on my discussions with *Walker* co-counsel, that the case initially would be assigned to Judge Thompson for a relatedness determination because we had marked the case as related to *Corbitt*.
- On April 12, 2022, it was initially unclear to me whether our case had yet been formally assigned to a judge. My understanding from our team's reporting of communications with the Middle District of Alabama's Clerk's Office is that we needed to file a Local Rule 5.2 motion (redacting personal identifiers) before receiving a case number. Because *Walker*

Counsel expected that our case initially would be with Judge Thompson due to the relatedness designation, one of our *Walker* team members contacted Judge Thompson's chambers on April 12, 2022 and advised that we were preparing to file a motion for a temporary restraining order and/or preliminary injunction. In my experience, it is typical to alert a judge's chambers when a motion for a temporary restraining order is forthcoming.

- Only after that call to Judge Thompson's chambers on April 12, 2022, did *Walker* Counsel learn that our case had been assigned to Chief Judge Marks of the Middle District of Alabama. I checked PACER, which indicated that we were assigned to Chief Judge Marks and an associate on the Cooley team also called the office of the Clerk of the Court and received confirmation that Chief Judge Marks had been assigned the case. The associate also reported that the Clerk's Office said that in order for a judge to have the opportunity to consider the case as related, we would have to file a motion with the currently assigned judge (Chief Judge Marks) to relate our case to *Corbitt*. Therefore, I supervised Cooley associates in drafting a motion to reassign the *Walker* case to Judge Thompson as related to the *Corbitt* case, in order to perfect our relatedness designation on the civil cover sheet. *Walker* Counsel (including me) agreed

to file that motion, and it was filed during the early evening of April 12, 2022.

- On April 13, 2022, I learned that Chief Judge Marks had issued an order to show cause why the *Walker* case should not be transferred to the Northern District of Alabama so that it could be decided with the first-filed *Ladinsky* case. Between April 13, 2022 and April 14, 2022, I and other *Walker* Counsel were considering a response to the order to show cause, including whether to respond by arguing that the case should remain in the Middle District and reassigned to Judge Thompson or to agree to have the case transferred to the Northern District of Alabama.
- I understand that later on April 13, 2022, in light of the show cause order and potential transfer, some *Walker* Counsel, including a Cooley associate, and some *Ladinsky* Counsel had a phone call to discuss the response to the order to show cause and potential transfer and consolidation. At the time of this call, *Walker* Counsel intended to oppose consolidation and seek reassignment to Judge Thompson. I was not present on that call because I was in a deposition on another matter that day.
- On April 14, 2022, the State of Alabama filed a response to the order to show cause and to the *Walker* motion to reassign the case to Judge Thompson. In its response to the motion to reassign, as one reason that the

case should not be reassigned to Judge Thompson, the State noted that the *Corbitt* case was denoted "closed" on the District Court docket. That was when I realized that *Corbitt* was marked "closed" on the docket, though I believed it was still pending on appeal; the State's brief did not mention the appeal status, and thus, upon reading the State's brief I thought I could be wrong and that the case may have been finally resolved. Upon further discussion and continued research after receiving the State's filings, I realized that the *Corbitt* appeal was in fact still pending. However, given the State's response briefs and, in light of Judge Marks' order to show cause, the likelihood we would be transferred to the Northern District regardless of our response to the order to show cause, I and the other *Walker* decision-makers determined that the appropriate course of action was to agree to have the case transferred to the Northern District of Alabama, where the *Ladinsky* case had been filed. At that time, I knew that the *Ladinsky* case had been assigned to Judge Axon.

- On April 14, 2022, *Walker* Counsel filed a response to Chief Judge Marks' order to show cause by explaining that although *Walker* was properly filed in the Middle District, the *Walker* Plaintiffs did not oppose transfer to the Northern District to be adjudicated alongside *Ladinsky*. At that point, I

expected the case to be transferred to Judge Axon of the Northern District of Alabama, because Judge Axon was presiding over *Ladinsky*.

- On the morning of the April 15, 2022, Chief Judge Marks transferred the *Walker* case to the Northern District of Alabama, where it was assigned to Judge Burke.
- Please see my response to **Topic 5** below for a detailed description of the events of April 15, 2022, including the potential and actual assignment and reassignment of *Walker* within the Northern District. As that response explains, after *Walker* was assigned to Judge Burke on April 15, 2022, efforts were made on April 15, 2022 by the Office of the Alabama Attorney General, *Ladinsky* Counsel, and *Walker* Counsel to consolidate the two cases before Judge Axon through a motion for consolidation to be filed with Judge Axon in *Ladinsky*. Ultimately, the plan was for the Attorney General to file the motion to consolidate in *Ladinsky* and represent that *Ladinsky* Counsel and *Walker* Counsel consented to it.
- While I was on the phone with the Attorney General's office discussing that motion, however, Judge Axon transferred *Ladinsky* to Judge Burke. As a result of that transfer of *Ladinsky* to Judge Burke, the Attorney General ceased its plan to file a motion for consolidation before Judge Axon.

Eknes-Tucker

- At some point in time after April 19, 2022, I became aware from press coverage that *Ladinsky* Counsel had filed the *Eknes-Tucker* case in the Middle District of Alabama, where it was assigned to Judge Huffaker of the Middle District of Alabama.
- At some point, I also became aware that the *Eknes-Tucker* case was transferred to Judge Burke in the Northern District of Alabama.

15. **Topic 2. With regard to the second topic identified in the Panel's July 8, 2022 Order, my participation in and knowledge of "[a]ny actions or decisions taken in the course of preparing to file *Ladinsky*, *Walker*, and/or *Eknes-Tucker* that relate to any actions or plans that were intended to cause, actually caused, or may have caused the assignment or reassignment to, or the actual or potential recusal of, any judge in the Northern or Middle Districts of Alabama," are as follows:**

Ladinsky

- I have no knowledge of or participation in any actions or decisions taken in the course of preparing to file *Ladinsky* that relate to any actions or plans that were intended to cause, actually caused, or may have caused the assignment or reassignment to, or the actual or potential recusal of, any judge in the Northern or Middle Districts of Alabama. I did know that the

Ladinsky Counsel intended to file their case in the Northern District of Alabama.

Walker

- I have no knowledge of or participation in any actions or decisions taken in the course of preparing to file *Walker* that were intended to cause, actually caused, or may have caused the actual or potential recusal of any judge in the Northern or Middle Districts of Alabama.
- With respect to actions or decisions taken in the course of preparing to file *Walker* that were intended to cause, actually caused, or may have caused the assignment or reassignment to any judge in the Northern or Middle Districts of Alabama, as described above in response to **Topic 1**, when I joined the team that was preparing to file the *Walker* case in March 2021, I understood that *Walker* Counsel from Lambda, the ACLU of Alabama, and ACLU National were inclined to file their lawsuit in the Middle District of Alabama (where at least one likely plaintiff family resided, where the district attorney for that plaintiff family's county resided, and where the Attorney General of Alabama resided) and to mark the case as related to *Corbitt*, a case presided over by Judge Thompson.
- As explained above in response to **Topic 1**, which I incorporate by reference here, my understanding was that my co-counsel wanted to be

before Judge Thompson because he was expected to be receptive to our factual and legal claims, as he had been regarding similar legal claims in *Corbitt*, which involves Equal Protection and Due Process challenges to an Alabama law limiting transgender individuals' rights. I also understood from co-counsel that the cases were related because they involved overlapping legal and factual issues. I also understood that *Corbitt* was on appeal before the Eleventh Circuit Court of Appeals and was expected to be remanded back to Judge Thompson for, at a minimum, resolution of an attorneys' fee motion.

- As discussed above, in or around March 2021, I supervised Cooley associates who researched the process for marking a case as related in the Middle District of Alabama. That research confirmed that there was no specific authority in the Middle District of Alabama as to what constitutes a related case. Nor was there any procedure set forth for filing a motion to relate or motion to reassign to perfect a relatedness designation. Ultimately, upon discussion and in the absence of clear guidance, as described more fully in response to **Topic 1** above, I and the other decision-makers concurred that it was reasonable to mark the *Walker* case as related to the *Corbitt* case given the overlap in the legal and factual issues between the cases.

- Our strategic thinking and research from 2021 informed how we proceeded in 2022. On April 11, 2022, when we filed the *Walker* case, *Walker* Counsel marked the case as related to *Corbitt* on the civil cover sheet.

Eknes-Tucker

- Before *Eknes-Tucker* was filed, or even conceived (to my knowledge), I had preliminary conversations with *Ladinsky* Counsel on April 15, 2022 prior to the voluntary dismissal of *Walker* and *Ladinsky* about the possibility of refiling a single, coordinated lawsuit including both *Ladinsky* Counsel and *Walker* Counsel. On the morning of April 16, 2022, as more fully described in response to **Topic 5** below, there was a call between certain representatives of *Walker* Counsel and *Ladinsky* Counsel about potential collaboration on a refiled lawsuit, but I was not invited to and did not participate in that call. By the end of the day on April 16, 2022, Cooley had withdrawn from participating in any new or refiled lawsuit. Thus, I have no knowledge of or participation in any actions or decisions taken by *Ladinsky* Counsel in the course of preparing to file *Eknes-Tucker* that relate to any actions or plans that were intended to cause, actually caused, or may have caused the assignment or reassignment to, or the actual or potential recusal of, any judge in the Northern or Middle Districts of Alabama.

16. Topic 3. With regard to the third topic identified in the Panel's July 8, 2022 Order, my participation in and knowledge of "[a]ny action or decision that relates to which parties to name in *Ladinsky*, *Walker*, and/or *Eknes-Tucker*, where to file each action, and all the reasons related to any such decision about who to name and where to file," are as follows:

Ladinsky

- I have no knowledge of or participation in any action or decision that relates to which parties to name in *Ladinsky*, where to file the *Ladinsky* action, or the reasons related to any such decision about who to name and where to file.

Walker

- As described above in my responses to **Topic 1** and **Topic 2**, which I incorporate by reference here, when I joined the team that was preparing to file the *Walker* case in March 2021, I understood that *Walker* Counsel from Lambda, the ACLU of Alabama, and ACLU National were inclined to file their lawsuit in the Middle District of Alabama (where at least one likely plaintiff family resided, where the district attorney for that plaintiff family's county resided, and where the Attorney General of Alabama resided) and to mark the case as related to *Corbitt v. Taylor*, an action that was before Judge Thompson of the Middle District of Alabama.

- As also explained in my above responses, my understanding was that my co-counsel wanted to be before Judge Thompson because he was expected to be receptive to our factual and legal claims, as he had been regarding similar legal claims in *Corbitt*, which involves Equal Protection and Due Process challenges to an Alabama law limiting transgender individuals' rights. I also understood from co-counsel that the cases were related because they involved overlapping legal and factual issues. I also understood that *Corbitt* was on appeal before the Eleventh Circuit Court of Appeals and was expected to be remanded back to Judge Thompson for, at a minimum, resolution of an attorneys' fee motion.
- As also discussed in my above responses, in or around March 2021, I supervised Cooley associates who researched the process for marking a case as related in the Middle District of Alabama. That research confirmed that there was no specific authority in the Middle District of Alabama as to what constitutes a related case. Nor was there any procedure set forth for filing a motion to relate or motion to reassign to perfect a relatedness designation. Ultimately, upon discussion and in the absence of clear guidance, as described more fully above, I and the other decision-makers concurred that it was reasonable to mark the *Walker* case as related to the

Corbitt case given the overlap in the legal and factual issues between the cases.

- Our strategic thinking and research from 2021 informed how we proceeded in 2022. On April 11, 2022, we filed the *Walker* case in the Middle District of Alabama and marked the case as related to *Corbitt* on the civil cover sheet.
- I was not directly involved with but have general knowledge of the decision to name Jeffrey Walker, Lisa Walker, H.W., Jeffrey White, Christa White, and C.W. as plaintiffs in the *Walker* action. Those individuals were prepared to bring suit in 2021 had the Alabama transgender youth healthcare ban passed in 2021, and they remained interested in bringing suit in 2022 when the ban passed in 2022, which is why they were named as plaintiffs. The plaintiffs resided in the Middle and Northern Districts of Alabama, respectively. To my knowledge, their district of residence was not the reason they were plaintiffs. *Walker* Counsel named as defendants the district attorneys for the counties in which the plaintiff families resided and the Attorney General of Alabama, as those officials would be responsible for enforcing the challenged law against plaintiffs.

- *Walker* Counsel also considered adding an additional family as plaintiffs in the *Walker* case, but did not ultimately do so. That decision was based on facts particular to the family (including the age of the child, the child's health history, and family dynamics) that *Walker* Counsel believed created concerns about whether the plaintiff was representative of the type of plaintiff who we thought should be bringing the challenge, and was unrelated to any considerations regarding the venue in which the case was filed.

Eknes-Tucker

- As noted above, before *Eknes-Tucker* was filed, or even conceived to my knowledge, I had preliminary conversations with *Ladinsky* Counsel on April 15, 2022 prior to the voluntary dismissal of *Walker* and *Ladinsky* about the possibility of refiling a single, coordinated lawsuit including both *Ladinsky* Counsel and *Walker* Counsel. On the morning of April 16, 2022, as more fully described in response to **Topic 5** below, there was a call between certain representatives of *Walker* Counsel and *Ladinsky* Counsel about potential collaboration on a refiled lawsuit, but I was not invited to and did not participate in that call. By the end of the day on April 16, 2022, Cooley had withdrawn from participating in any new or refiled lawsuit. Thus, other than those preliminary conversations, I have no knowledge of

or participation in any action or decision by *Ladinsky* Counsel that relates to which parties to name in *Eknes-Tucker*, where to file the *Eknes-Tucker* action, or the reasons related to any such decision about who to name and where to file.

17. Topic 4. With regard to the fourth topic identified in the Panel's July 8, 2022 Order, I have no participation in or knowledge of "[a]ny action or decision that relates to attempts to associate other law firms or the actual association of other law firms to work with counsel in *Ladinsky*, *Walker*, and/or *Eknes-Tucker*."

18. Topic 5. With regard to the fifth topic identified in the Panel's July 8, 2022 Order, my participation in or knowledge of "[a]ny and all actions or decisions that relate to coordination and/or dismissal of the *Ladinsky* and *Walker* cases and the reasons for dismissal, including but not limited to (1) the conference call that occurred on April 15, 2022 and (2) any other communications between *Ladinsky* counsel and *Walker* counsel on that topic" is as follows:

- At no time before my communications with *Ladinsky* Counsel on April 15, 2022 regarding potentially consolidating our cases in the Northern District of Alabama, and then potentially dismissing our cases, did I view *Walker* Counsel as "coordinating" with *Ladinsky* Counsel. Rather, before that day, I had minimal interactions with the other counsel group and I had no plan

whatsoever for *Walker* to be consolidated with *Ladinsky*. To the contrary, my understanding was that the two groups would seek to maintain separate cases, including because the groups were unlikely to work well together given various history and experiences between certain individuals in the different counsel groups (none involving Cooley).

- Among other things, I was not even aware that *Ladinsky* Counsel had filed its case in the Northern District of Alabama on April 8, 2022 until Monday, April 11, 2022 (the date we were planning to and did file our complaint in *Walker*).
- I generally understood from my *Walker* co-counsel, both in 2021 (while litigation was being prepared if the transgender youth healthcare ban passed) and in 2022 (in advance of our filing *Walker*) that there were two groups of counsel who represented different plaintiffs in Alabama, and who were interested in challenging the law if it passed, and that our group was likely to file in the Middle District of Alabama and the "other group" (which I came to know as *Ladinsky* Counsel) was likely to file in the Northern District of Alabama. I did not directly interact with anyone from *Ladinsky* Counsel about the Alabama litigation in 2021 or in advance of our filing *Walker* in 2022, other than being copied on the emails described below.

- On March 3, 2022, I learned from an attorney at Lambda Legal that *Ladinsky* Counsel were planning to file suit in the Northern District of Alabama if the transgender youth healthcare ban passed.
- On April 7, 2022 (the day the Alabama Legislature passed the transgender youth healthcare ban), an attorney from the Southern Poverty Law Center who was a member of the *Ladinsky* team emailed an attorney from Lambda Legal regarding a press release that *Ladinsky* Counsel had issued announcing their plans to challenge the Alabama law regarding the provision of healthcare to transgender youth and the Lambda Legal and Southern Poverty Law Center lawyers also briefly referenced the experts they intended to use in challenging the law. The *Ladinsky* attorney asked if *Walker* Counsel would agree to a common interest agreement in principle, and I confirmed to co-counsel on the *Walker* team that Cooley would agree to a common interest agreement.
- On April 8, 2022 (the day Governor Ivey signed the transgender youth healthcare ban into law), an attorney from Lambda Legal emailed certain members of the *Ladinsky* and *Walker* teams, subject to the common interest agreement reached the day before, to report on a call that the Lambda Legal attorney had received from an attorney at the U.S. Department of Justice ("DOJ"). The DOJ attorney was seeking an update

on the civil rights groups' plans to challenge the law and to indicate DOJ's interest in potentially becoming involved in the litigation. I was not part of any communications between *Walker* Counsel and DOJ before *Walker* and *Ladinsky* were voluntarily dismissed on April 15, 2022 and have not personally spoken to any DOJ representative about this matter. I understand that on April 14, 2022, representatives from *Walker* Counsel were contacted by DOJ regarding DOJ's potential involvement in *Walker* and/or *Ladinsky*, and that DOJ had not yet decided how to proceed.

- On April 11, 2022, I understand that an attorney from the *Ladinsky* team reached out to *Walker* Counsel to inquire about our judge assignment and to inform *Walker* Counsel that the judge to whom *Ladinsky* was initially assigned had recused herself. I considered this communication to be informational in nature and not to constitute coordination between *Walker* and *Ladinsky* Counsel—who, again, preferred *not* to be joined together in a single lawsuit. That same day, someone who apparently wanted to join the *Ladinsky* case reached out to me, and I connected them via email with one of the *Ladinsky* attorneys.
- My co-counsel communicated with the attorney from the *Ladinsky* team on April 12, 2022 concerning judge assignments, again, in an

informational manner, and informed *Walker* Counsel of these communications.

- On April 13, 2022, Chief Judge Marks issued an order to show cause as to why *Walker* should not be transferred to the Northern District for decision with the first-filed case, *Ladinsky*, indicating the potential for the *Walker* and *Ladinsky* cases to be consolidated. On April 13, 2022, a member of the *Walker* team alerted a member of the *Ladinsky* team to this order and our planned response, and I understand that later on April 13, 2022, in light of the show cause order and potential transfer, some *Walker* Counsel, including a Cooley associate, and some *Ladinsky* Counsel had a phone call to discuss the response to the order to show cause and potential transfer and consolidation. However, at the time of this call, Walker Counsel intended to oppose consolidation and seek reassignment to Judge Thompson. I was not present on that call because I was in a deposition on another matter that day.
- As discussed above, on April 14, 2022, *Walker* Counsel responded to Chief Judge Marks' order to show cause by explaining that although *Walker* was properly filed in the Middle District, the *Walker* Plaintiffs did not oppose transfer to the Northern District to be adjudicated alongside *Ladinsky*.

- On April 15, 2022, at around 9:45 AM CT, I learned that the *Walker* case had been transferred to the Northern District of Alabama.
- On April 15, 2022, at around 10:30 AM CT, I learned that the *Walker* case had been assigned to Judge Burke in the Northern District of Alabama.
- On April 15, 2022, at around 11:30 AM CT, I learned from a Cooley associate, who had contacted the Northern District of Alabama Clerk's Office, that to formally consolidate the *Walker* case with the *Ladinsky* case, *Ladinsky* Counsel would need to file a motion for consolidation before Judge Axon.
- On April 15, 2022, at around 2:00 PM CT, I and other representatives of *Walker* Counsel participated in a call with representatives of *Ladinsky* Counsel where we discussed filing a motion to consolidate our cases in *Ladinsky* and potential coordination of our strategies going forward. We did not discuss dismissal of the *Walker* or *Ladinsky* cases on this call, and, to my knowledge, neither *Walker* nor *Ladinsky* Counsel was considering dismissal at that time.
- After that call, *Walker* Counsel and *Ladinsky* Counsel exchanged emails regarding a motion for consolidation, which *Walker* Counsel drafted and which *Ladinsky* Counsel planned to file before Judge Axon.

- As *Ladinsky* Counsel was preparing to file the motion for consolidation, I learned from *Ladinsky* Counsel that, rather than *Ladinsky* Counsel filing the motion to consolidate, the State was planning to file a motion in *Ladinsky* to consolidate *Walker* with *Ladinsky* before Judge Axon. At that time, I understood that *Ladinsky* Counsel was planning to consent to the State's motion to consolidate.
- On April 15, 2022, around 4:00 PM CT, Judge Burke set a status conference in *Walker* for the morning of Monday, April 18, 2022. April 15, 2022 was the beginning of Passover and Easter was April 17, 2022.
- On April 15, 2022, around 4:45 PM CT, I called and spoke with counsel in the Alabama Attorney General's Office, both to confirm their plan for filing the motion to consolidate before Judge Axon in *Ladinsky* (which I understood they were going to file imminently) and to discuss how to inform Judge Burke about the consolidation motion, given that he had set a status conference in *Walker* for Monday morning.
- While I was still on that phone call with counsel in the Alabama Attorney General's Office, they informed me that Judge Axon had just issued an order transferring *Ladinsky* to Judge Burke. Counsel in the Alabama Attorney General's Office then indicated to me on that same phone call that they would no longer be filing a motion to consolidate before Judge

Axon. I reported this information back to counsel in both *Ladinsky* and *Walker*, in light of our discussions that day about consolidating our cases before Judge Axon.

- After completing my call with the Alabama Attorney General's Office, the *Walker* team began discussing possible voluntary dismissal.
- On April 15, 2022, around 5:00 PM CT, I had a brief call with an attorney on the *Ladinsky* team where *Ladinsky* Counsel indicated that they were considering dismissing their case. I indicated that *Walker* Counsel was also separately considering dismissal.
- At the time—a Friday evening before a holiday weekend, with a status conference now certain to take place on Monday morning—I believed that dismissing immediately was the best course of action for several reasons. Prior to the transfer of *Ladinsky* to Judge Burke, I had assumed the cases would be consolidated before Judge Axon and that the Monday status conference that Judge Burke had ordered would not take place. When *Ladinsky* was transferred to Judge Burke, I realized the Monday status conference would take place and was concerned about *Walker* Counsel's inability to have senior lawyers on the team admitted *pro hac vice* and otherwise able to travel from around the country to participate in what I thought could become a substantive discussion of the case. Additionally,

over the past several days of active litigation, I grew to have serious questions about the capacity of our sole local counsel to handle this matter on her own. I also was concerned about *Walker* Counsel's ability to adequately coordinate with *Ladinsky* Counsel regarding strategy in advance of the April 18 status conference (including because the teams had *not* been coordinating to date and had differences in strategy, as well as past challenges working together on litigation). Additionally, I had concerns about the sudden, unexpected, and unexplained assignment of both *Walker* and *Ladinsky* to Judge Burke, whom I did not know and had not personally researched, but about whom others had expressed significant concern. Additionally, I believed it was necessary to dismiss immediately because were the State to answer before we dismissed, we would lose our unilateral right to dismiss voluntarily under Federal Rule of Civil Procedure 41.

- On April 15, 2022, between 5:00 PM CT and 6:00 PM CT, the *Walker* team decided to dismiss its case. The *Walker* team made this decision independently from the *Ladinsky* team, but as part of this decision considered that the *Ladinsky* team also was contemplating dismissal and was likely to dismiss. During that time, I had communications with members of the *Ladinsky* team to inform them of the *Walker* team's intent

to voluntarily dismiss *Walker* and to confirm the *Ladinsky* team's intended course, which I learned was also to voluntarily dismiss their case.

- Before we dismissed, I had brief, preliminary conversations on April 15, 2022 with *Ladinsky* Counsel about *Walker* Counsel and *Ladinsky* Counsel refiling a single coordinated lawsuit. We agreed to defer any further discussion until the weekend.
- Prior to filing their notices of voluntary dismissal, the *Walker* and *Ladinsky* teams coordinated with one another regarding the logistics of dismissing both cases. At that time, *Walker* Counsel planned to dismiss the *Walker* case simultaneously with the dismissal of the *Ladinsky* case and to coordinate with *Ladinsky* Counsel over the weekend about possibly filing a consolidated suit.
- At around 6:24 PM CT on April 15, 2022, *Walker* Counsel filed a notice of voluntary dismissal of the *Walker* case. Shortly thereafter, at around 6:33 PM CT, *Ladinsky* Counsel informed *Walker* Counsel that they had filed a notice of voluntary dismissal of the *Ladinsky* case.
- On April 16, 2022, I understand that senior members of the *Walker* and *Ladinsky* teams met and discussed potential refiling of a single lawsuit and coordination going forward. I was not invited to that call, and neither I nor anyone from Cooley was on that call. I understand from others who

attended that call that the different counsel groups struggled to work together, had conflicting strategies, and had a disagreement about decisional structure. I also knew that, in the hours following that call, the ACLU and Lambda had decided not to continue to litigate in Alabama, and that ACLU of Alabama was considering joining the *Ladinsky* team.

- On the evening of April 16, 2022, I informed other *Walker* Counsel that Cooley would not be part of any further litigation regarding Alabama's transgender youth healthcare ban, including any effort to file a coordinated suit with *Ladinsky* Counsel, given the difficulties of coordinating the many groups involved and the disparate strategies. Other *Walker* Counsel then informed *Ladinsky* Counsel of this decision by Cooley.

19. Topic 6. With regard to the sixth topic identified in the Panel's July 8, 2022 Order, I have no participation in or knowledge of "[a]ny and all actions that relate to the decision to file *Eknes-Tucker* in the United States District Court for the Middle District of Alabama."

20. Topic 7. With regard to the seventh topic identified in the Panel's July 8, 2022 Order, my participation in or knowledge of "(1) preparation for the hearing in this matter (including circulation of any Q&A document), and (2) the questions expected to be asked or that were actually asked by the court at the May 20, 2022 hearing" is as follows:

- On May 10, 2022, I learned of the Panel's Order in this matter instructing me and other counsel to appear before the Panel on May 20, 2022. I immediately informed Cooley leadership, including Cooley's General Counsel, about the order and began consulting with them regarding how to proceed.
- On May 11, 2022, I and other *Walker* Counsel retained Barry Ragsdale to represent us in this matter. That same day, we had an introductory call with Mr. Ragsdale.
- On May 13, 2022, I participated in a team call with Mr. Ragsdale regarding preparation for the May 20, 2022 hearing, including Mr. Ragsdale's plan to draft a written pre-hearing submission. On this call, Mr. Ragsdale directed *Walker* Counsel to prepare work product to assist him in representing us at the May 20, 2022 hearing, including a document with potential questions that may be asked at the hearing, answers to those questions, and a chronology of relevant events. I began preparing the chronology of relevant events in coordination with other *Walker* Counsel and attorneys representing *Walker* Counsel shortly after the May 13 meeting. I also began assisting with preparation of *Walker* Counsel's pre-hearing submission.

- On May 14, 2022, I sent the chronology of relevant events to *Walker* Counsel for their review.
- On May 15, 2022, I participated in another team call with Mr. Ragsdale regarding preparation for the May 20 hearing. I also sent the chronology of relevant events, which we discussed on the May 15 call, to Mr. Ragsdale and senior *Walker* Counsel.
- Also on May 15, 2022, the Q&A document was circulated to counsel for *Walker* Counsel and senior *Walker* Counsel by a member of the *Walker* team. I began assisting with the preparation of that document shortly after receiving it. I also forwarded the document to more junior *Walker* Counsel for their input.
- Between May 15, 2022 and May 19, 2022, I and other senior *Walker* Counsel provided input to the Q&A document and to the pre-hearing submission.
- On May 17, 2022, I participated in a team call with Mr. Ragsdale regarding preparation for the May 20 hearing. We discussed the Q&A document at that meeting.
- On May 18, 2022, I participated in multiple team calls with Mr. Ragsdale regarding preparation for the May 20 hearing.

- On May 19, 2022, I traveled to Alabama for the May 20 hearing, and I participated in in-person meetings with Mr. Ragsdale. During those meetings, we discussed the Q&A document with Mr. Ragsdale. On the evening of May 19, 2022, the Q&A document was circulated to more junior *Walker* Counsel to verify the accuracy of the information in the document.
- My knowledge of "the questions . . . that were actually asked by the court at the May 20, 2022 hearing" is limited to the Panel's statements in open court during the May 20 hearing, including the Panel's description of the questions the Special Master planned to ask junior attorneys in their individual interviews. I also believe I may have inferred general information about certain questions asked of certain witnesses based on a report of the June 17, 2022 status conference and my review of the Panel's July 8, 2022 Order. None of the information or knowledge I have about the questions asked by the Court at the May 20, 2022 hearing came from counsel who testified at that hearing or who are the subject of this proceeding.

21. **Topic 8. With regard to the eighth topic identified in the Panel's July 8, 2022 Order, my knowledge of the "identify of [any] attorney, not included in the style of the original order, whom" I am "aware of being involved**

in any input, recommendation, decision, or strategy regarding any of the subjects referenced above," is as follows:

- I am aware that Shannon Minter from NCLR was involved as part of the *Ladinsky* team.
- I am aware that Josh Block at ACLU had some involvement in 2021 *Walker* strategy and at the beginning of our 2022 *Walker* effort.
- I am aware that Sharon McGowan at Lambda Legal had some involvement in the 2021 and 2022 *Walker* efforts. Sharon McGowan and Camilla Taylor at Lambda Legal also were part of our efforts to prepare for the May 20, 2022 hearing.
- I informed Cooley's pro bono and communications teams of our dismissal of *Walker* and our decision not to refile any case.
- There are several attorneys at Cooley who are working as my counsel in this matter since May 10, 2022, including some who helped with our preparations in advance of the May 20, 2022 hearing.

22. With respect to the Panel's directive that I attest to my compliance with the July 8, 2022 Order and to affirmatively indicate any non-compliance: I have complied with the Panel's July 8, 2022 Order as modified by the Panel's July 25, 2022 Order.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: July 27, 2022
Oakland, California

/s/ *Kathleen Hartnett*
Kathleen Hartnett

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will give notice of such filing to all counsel of record.

/s/ Barry A. Ragsdale
OF COUNSEL

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

BRIANNA BOE, et al., **Plaintiffs,** **and** **UNITED STATES OF AMERICA,** **Plaintiff-Intervenor,** **v.** **STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama, et al.,** **Defendants.**	**Case No.: 2:22-cv-00184-LCB** **FILED UNDER SEAL**

KATHLEEN HARTNETT'S SUPPLEMENTAL DECLARATION

I, Kathleen Hartnett, declare:

1. I submit this Declaration in connection with my Response to the Supplemental Order to Show Cause in this matter.

2. I repeat and reaffirm the testimony in my prior Declaration and oral testimony before the Panel and do not repeat it here. Rather, this Supplemental Declaration is intended to further elaborate upon and/or clarify certain factual issues

raised by the Panel's Report and this Court's Supplemental Order to Show Cause ("Show Cause").

3. The matters stated herein are based upon my personal knowledge and are true to the best of my knowledge.

Call to Judge Thompson's Chambers (Show Cause at 12-13)

4. I learned that Carl Charles called Judge Thompson's chambers on April 12 because I was following email traffic among *Walker* counsel about the status of *Walker* while I was in a deposition preparation session that day with a witness in a different case. However, I did not (1) participate in this call, (2) direct or advise Mr. Charles to make this call, or (3) provide any input on whether to make the call or what to say. (In stating these facts, I do not mean to suggest that Mr. Charles's call was improper in any way.)

April 13 Conference Call (Show Cause at 13)

5. The Final Report of Inquiry describes "a conference call that started at 5:00 p.m. on April 13, 2022" that, according to the Panel, potentially involved a discussion of "an argument that *Ladinsky* should be transferred to the Middle District and consolidated with *Walker* before Judge Thompson." *Vague*, Doc. 70 at 23.

6. I was not on this April 13, 2022 call, and I have reviewed contemporaneous records to confirm that I was not on this call. I was in a deposition that day in a different case. Because I was not on the call, I do not have any direct

knowledge about what was discussed on the call, including the purported discussion of *Ladinsky* being transferred to the Middle District of Alabama to be consolidated with *Walker* in front of Judge Thompson.

April 15 Call(s) (Show Cause at 13)

7. The Final Report of Inquiry describes another "conference call" that occurred "[l]ess than one-half hour after Judge Axon's transfer order was entered" among members of both the *Walker* and *Ladinsky* teams. *Vague*, Doc. 70 at 31; *see* Show Cause at 13 (alleging "numerous and wide-ranging discussions about how judges were favorable or unfavorable in the context of deciding whether to dismiss and refile their cases" and "series of phone conferences in which counsel discussed a number of matters, including their prospects in front of the Court and that the Court was a bad draw."). The Final Report of Inquiry states that I was on this call. I was not on a call that included multiple members of both the *Walker* and *Ladinsky* teams after Judge Axon transferred *Ladinsky* to Judge Burke. Nor am I aware of any such call occurring. I was unable to locate any statement in the testimony cited in the Final Report of Inquiry that says that I was on a call that included multiple members of both the *Walker* and *Ladinsky* teams after Judge Axon transferred *Ladinsky* to Judge Burke on April 15.

8. I was not involved in any calls with lawyers from the *Ladinsky* and *Walker* teams on April 15 that involved discussions "about how judges were

favorable or unfavorable in the context of deciding whether to dismiss and refile" or about the "prospects in front of Judge Burke and that he was a bad draw." *Vague*, Doc. 70 at 51 (emphasis in original).

9. Specifically, I was not on a call where someone reportedly said that there was a "zero percent chance" of success in front of Judge Burke. Nor did I ever hear anyone make such a comment.

10. As I stated in my prior declaration, I spoke to *Ladinsky* counsel twice on April 15. These two calls were the first time that I spoke to *Ladinsky* counsel at any time during this litigation. First, "[o]n April 15, 2022, at around 2:00 PM CT, I and other representatives of *Walker* Counsel participated in a call with representatives of *Ladinsky* Counsel where we discussed filing a motion to consolidate our cases in *Ladinsky* and potential coordination of our strategies going forward." Hartnett Decl. at 27. This was prior to Judge Burke's Order setting a Monday morning hearing and prior to Judge Axon's transfer Order. *See id.* Potential dismissal was not discussed on this call. *See id.*

11. Later on April 15, I participated in a Zoom call with members of the *Walker* team. The call was originally about a different case (a case also involving several *Walker* team members), but morphed into a call about the emerging circumstances in *Walker*. During that call, *Walker* counsel, among themselves, eventually discussed potential dismissal.

12. At some point during our *Walker* Zoom call that Friday afternoon, I stepped out of the Zoom call and had a one-on-one phone call with Shannon Minter from *Ladinsky* Counsel. As I previously testified, this call occurred after the transfer of *Ladinsky* and prior to both teams' dismissals. Hartnett Decl. at 29.

13. I stated in my prior Declaration that "I reported this information [about the transfer of *Ladinsky*] back to counsel in both *Ladinsky* and *Walker*, in light of our discussions that day about consolidating our cases before Judge Axon." Hartnett Decl. at 29. I reported this information to *Ladinsky* and *Walker* counsel via email, not on a conference call. I was not on any conference call after the transfer of *Ladinsky* with both the *Walker* and *Ladinsky* counsel.

14. Jennifer Levi testified that she and I also had a discussion on that Friday afternoon about dismissing the two cases. I do not recall having a discussion with Ms. Levi, but her description of the purported discussion is materially similar to the discussions I had with Shannon Minter. While I have no direct recollection of talking to Ms. Levi, it is possible that she may have been on my call with Mr. Minter.

Voluntary Dismissal (Show Cause 13, 14)

15. In both my first Declaration and my testimony before the Panel, I discussed my thought process and reasoning for voluntarily dismissing *Walker*. I have reviewed my Declaration and testimony, and I reaffirm that they accurately describe my honestly-held beliefs and opinions on April 15, 2022.

Client Communication (Show Cause 14)

16. Within the *Walker* team, I did not have the role of communicating directly with our clients. Other members of the team, primarily from the advocacy groups, took on that role.

17. My understanding is that members of the *Walker* team consulted with our clients the evening of Friday, April 15, 2022 about the voluntary dismissal.

18. To date, none of the clients have filed bar complaints against me, sued me for malpractice, or otherwise made any type of complaint about the propriety of the voluntary dismissal of *Walker*.

19. When the *Walker* team decided to voluntarily dismiss, I believed that we needed to act quickly because of the exigency of the circumstances. The defendants could have filed an answer at any time and removed our ability to file a voluntary dismissal.

Concluding Statement

20. In closing, I accept responsibility for my actions and deeply regret that my actions created an appearance to the Court of impropriety and judge shopping. At no time did I engage in anything I believed to be misconduct, let alone intentional or bad faith misconduct. Rather, at all times I acted in good faith, sought to advance the best interests of my clients in an extremely chaotic and condensed period of litigation, and believed that I was acting well within existing rules and standards. I

also have told the truth at all times in these proceedings, which have taken a significant toll on me, my family, and my practice of law. I apologize to the Court for what has resulted from my conduct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: May 8, 2024.
Oakland, California

/s/ Kathleen Hartnett
Kathleen Hartnett

Exhibit C

APPEAL,CLOSED,MHT-ClerkC

U.S. District Court
Alabama Middle District (Montgomery)
CIVIL DOCKET FOR CASE #: 2:18-cv-00091-MHT-SMD

Corbitt et al v. Taylor et al(MHT)
Assigned to: Honorable Judge Myron H. Thompson
Referred to: Magistrate Judge Stephen Michael Doyle
Case in other court: 21-10486-F
Cause: 42:1983 Civil Rights Act

Date Filed: 02/06/2018
Date Terminated: 01/15/2021
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Darcy Corbitt represented by **Brock Boone**
Southern Poverty Law Center
400 Washington Ave.
Montgomery, AL 36104
334-425-9541
Email: brock.boone@splcenter.org
TERMINATED: 03/23/2020
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gabriel Arkles
Transgender Legal Defense and Education Fund
520 8th Avenue, Suite 2204
New York, NY 10018
646-862-9396
Email: garkles@transgenderlegal.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James Dixon Esseks
America Civil Liberties Union Foundation
125 Broad Street; 18th Floor
New York, NY 10004
917-495-5745
Email: jesseks@aclu.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kaitlin Elizabeth Welborn
ACLU of Alabama
PO Box 6179
Montgomery, AL 36106
334-265-2754

Email: kewelborn@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LaTisha Gotell Faulks
6701 Winton Blount Blvd
Suite 241292
Montgomery, AL 36124
571-278-5672
Email: tish_gotell@hotmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Leslie J. Cooper
ACLU LGBT & HIV Project/ACLU Foundation
125 Broad Street; 18th Floor
New York, NY 10004
212-549-2584
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Randall Charles Marshall
Randall C Marshall
6611 Bristle Cone Court
Lolo, MT 59847
406-830-3749
Email: rmarshall@aclualabama.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rose Saxe
ACLU
125 Broad St - 18 Floor
New York, NY 10004
212-549-2627
Email: rsaxe@aclu.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Destiny Clark represented by **Brock Boone**
(See above for address)
TERMINATED: 03/23/2020
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gabriel Arkles
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James Dixon Esseks
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kaitlin Elizabeth Welborn
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LaTisha Gotell Faulks
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Leslie J. Cooper
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Randall Charles Marshall
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rose Saxe
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

John Doe
TERMINATED: 07/25/2018

represented by **Brock Boone**
(See above for address)
TERMINATED: 07/25/2018
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gabriel Arkles
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Randall Charles Marshall
(See above for address)
TERMINATED: 07/25/2018
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rose Saxe
(See above for address)
TERMINATED: 07/25/2018

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Jane Doe represented by **Brock Boone**
(See above for address)
TERMINATED: 03/23/2020
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gabriel Arkles
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James Dixon Esseks
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kaitlin Elizabeth Welborn
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LaTisha Gotell Faulks
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Leslie J. Cooper
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Randall Charles Marshall
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rose Saxe
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Hal Taylor represented by **Brad A. Chynoweth**
in his official capacity as Secretary of the Alabama Law Enforcement Agency
State of Alabama Office of the Attorney General

501 Washington Avenue
Montgomery, AL 36130
334-242-7997
Fax: 334-353-8440
Email: brad.chynoweth@alabamaag.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James William Davis
State of Alabama
Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36130
334-242-7300
Fax: 334-353-8400
Email: Jim.Davis@AlabamaAG.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael Wayne Robinson
Alabama Law Enforcement Agency
Legal Division
301 S. Ripley Street
Montgomery, AL 36102
334-353-8216
Fax: 334-242-0894
Email: michael.robinson@alea.gov
TERMINATED: 03/23/2020
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Misty Shawn Fairbanks Messick
Office of the Attorney General
501 Washington Avenue
Post Office Box 300152
Montgomery, AL 36130-0152
334-353-8674
Fax: 334-353-8400
Email: Misty.Messick@AlabamaAG.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Winfield James Sinclair
Alabama Attorney General
5132 Eagle Pass Road
Montgomery, AL 36109
205-782-9110
Email: winfield.sinclair@gmail.com
TERMINATED: 05/04/2022
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Noel Steven Barnes
Alabama Law Enforcement Agency
201 South Union Street; Suite 300
Montgomery, AL 36102
334-517-2889
Email: noel.barnes@alea.gov
ATTORNEY TO BE NOTICED

Defendant

Charles Ward
Colonel, in his official capacity as Director of the Department of Public Safety

represented by **Brad A. Chynoweth**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James William Davis
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael Wayne Robinson
(See above for address)
TERMINATED: 03/23/2020
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Misty Shawn Fairbanks Messick
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Winfield James Sinclair
(See above for address)
TERMINATED: 05/04/2022
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Noel Steven Barnes
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Deena Pregno
in her official capacity as Chief of the Driver License Division

represented by **Brad A. Chynoweth**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James William Davis
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael Wayne Robinson
(See above for address)
TERMINATED: 03/23/2020
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Misty Shawn Fairbanks Messick
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Winfield James Sinclair
(See above for address)
TERMINATED: 05/04/2022
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Noel Steven Barnes
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Jeannie Eastman
in her official capacity as Driver License Supervisor in the Driver License Division

represented by **Brad A. Chynoweth**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James William Davis
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael Wayne Robinson
(See above for address)
TERMINATED: 03/23/2020
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Misty Shawn Fairbanks Messick
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Winfield James Sinclair
(See above for address)
TERMINATED: 05/04/2022
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Noel Steven Barnes

(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/06/2018	1	COMPLAINT against Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward (Filing fee $ 400.00 receipt number 4602048251.), filed by Darcy Corbitt, John Doe, Destiny Clark. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Filing Fee Receipt)(kh,) (Entered: 02/08/2018)
02/06/2018	2	Plaintiff John Doe's Motion for Leave to Proceed under a Pseudonym and for Protective Order by John Doe. (Attachments: # 1 Text of Proposed Order)(kh,). (Entered: 02/08/2018)
02/06/2018	3	Corporate/Conflict Disclosure Statement by Darcy Corbitt. (kh,) (Entered: 02/08/2018)
02/08/2018	4	Corporate/Conflict Disclosure Statement by Destiny Clark. (kh,) (Entered: 02/08/2018)
02/08/2018	5	Corporate/Conflict Disclosure Statement by John Doe. (kh,) (Entered: 02/08/2018)
02/09/2018	6	Motion for Rose Ann Saxe to Appear Pro Hac Vice by Destiny Clark, Darcy Corbitt, John Doe. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Good Standing)(Boone, Brock) Modified on 2/9/2018 to add the attorney's name (kh,). (Additional attachment(s) added on 2/9/2018: # 4 Motion Pro Hac Vice Filing Fee) (kh,). (Entered: 02/09/2018)
02/09/2018	7	**ORDER granting 6 Motion for Rose Ann Saxe to Appear Pro Hac Vice. Signed by Honorable Judge Myron H. Thompson on 2/9/2018. (kh,)** (Entered: 02/09/2018)
02/09/2018	8	Summons Issued as to Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward and mailed CMRRR with copy of 1 complaint, 2 Motion, 3 - 5 Corporate/Conflict Disclosure Statements(kh,) (Entered: 02/09/2018)
02/14/2018	9	Return Receipt Card showing service of 1 complaint, 2 Motion, 3 - 5 Corporate/Conflict Disclosure Statements signed by M.D. for Jeannie Eastman served on 2/13/2018, answer due 3/6/2018; Deena Pregno served on 2/13/2018, answer due 3/6/2018; Hal Taylor served on 2/13/2018, answer due 3/6/2018; Charles Ward served on 2/13/2018, answer due 3/6/2018. (kh,) (Entered: 02/16/2018)
02/26/2018	10	**ORDERED that plaintiff John Doe's motion for leave to proceed under a pseudonym and for a protective order (doc. no. 2) is granted, with leave for each defendant to object within 10 business days after he or she first appears. Signed by Honorable Judge Myron H. Thompson on 2/26/2018. (kh,)** (Entered: 02/26/2018)
02/28/2018	11	NOTICE of Appearance by Winfield James Sinclair on behalf of All Defendants (Sinclair, Winfield) (Entered: 02/28/2018)
02/28/2018	12	NOTICE of Appearance by Brad A. Chynoweth on behalf of All Defendants (Chynoweth, Brad) (Entered: 02/28/2018)
02/28/2018	13	Corporate/Conflict Disclosure Statement by Charles Ward. (Chynoweth, Brad) (Entered: 02/28/2018)
02/28/2018	14	Corporate/Conflict Disclosure Statement by Deena Pregno. (Chynoweth, Brad) (Entered: 02/28/2018)

02/28/2018	15	Corporate/Conflict Disclosure Statement by Hal Taylor. (Chynoweth, Brad) (Entered: 02/28/2018)
02/28/2018	16	Corporate/Conflict Disclosure Statement by Jeannie Eastman. (Chynoweth, Brad) (Entered: 02/28/2018)
02/28/2018	17	MOTION for Extension of Time to File Answer re 1 Complaint, *(UNOPPOSED)* by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 02/28/2018)
02/28/2018	18	Response to Order re 10 Order on Motion for Miscellaneous Relief, Order on Motion for Protective Order,, *(granting plaintiff John Does Motion for Leave to Proceed under a Pseudonym and giving defendants leave to file any objection within 10 business days of their appearance)* by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 02/28/2018)
02/28/2018	19	**TEXT ORDER granting 17 Motion for Extension of Time to Answer Answer due from Jeannie Eastman on 3/20/2018; Deena Pregno on 3/20/2018; Hal Taylor on 3/20/2018; Charles Ward on 3/20/2018. Signed by Honorable Judge Myron H. Thompson on 2/28/2018. (no pdf document attached to this entry)(kh,)** (Entered: 02/28/2018)
03/02/2018	20	NOTICE of Appearance by Michael Wayne Robinson on behalf of All Defendants (Robinson, Michael) (Entered: 03/02/2018)
03/15/2018	21	Second MOTION for Extension of Time to File Answer *(Unopposed)* by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 03/15/2018)
03/26/2018		Set Hearings: Telephone Conference set for 3/29/2018 02:45 PM before Honorable Judge Myron H. Thompson. (ag,) (Entered: 03/26/2018)
03/29/2018	22	Minute Entry for proceedings held before Honorable Judge Myron H. Thompson: Telephone Conference held on 3/29/2018 (PDF available for court use only). (Recording Time 2:50 - 2:55.) (ag,) (Main Document 22 replaced on 3/29/2018) (ag,). (Entered: 03/29/2018)
03/29/2018	23	**ORDER granting 21 second Motion for Extension of Time, such that defs now have until 4/3/2018 to respond to the complaint. Signed by Honorable Judge Myron H. Thompson on 3/29/18. (djy,)** (Entered: 03/29/2018)
04/03/2018	24	ANSWER to 1 Complaint, by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 04/03/2018)
04/06/2018	25	**RULE 26(f) ORDER: Accordingly, it is ORDERED that the Rule 26(f) report containing the discovery plan shall be filed as soon as practicable but not later than April 27, 2018, as further set out in order. Signed by Honorable Judge Myron H. Thompson on 4/6/2018. (kh,)** (Entered: 04/06/2018)
04/27/2018	26	REPORT of Rule 26(f) Planning Meeting. (Boone, Brock) (Entered: 04/27/2018)
04/30/2018	27	Motion to Appear Pro Hac Vice by Destiny Clark, Darcy Corbitt, John Doe. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Good Standing)(Boone, Brock) (Entered: 04/30/2018)
04/30/2018	28	**ORDERED that the plaintiffs' motion for pro hace vice admission of Gabriel Arkles (doc. no. 27) is granted. Signed by Honorable Judge Myron H. Thompson on 4/30/2018. (kh,)** (Entered: 04/30/2018)

05/03/2018	29	**UNIFORM SCHEDULING ORDER: Final Pretrial Conference set for 8/9/2019, 10:00 AM, in Montgomery, Alabama, before Honorable Judge Myron H. Thompson; Non-Jury Trial set for 9/9/2019, 10:00 AM, in Montgomery, Alabama, before Honorable Judge Myron H. Thompson; Dispositive Motions due by 2/8/2019; Mediation Notice due by 1/18/2019; Amended Pleadings due by 7/16/2018; Discovery due by 1/11/2019, as further set out in order. Signed by Honorable Judge Myron H. Thompson on 5/3/2018. (furn: ag, calendar)(kh,)** (Entered: 05/03/2018)
05/17/2018	30	Joint MOTION for Protective Order by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward, John Doe, Darcy Corbitt, Destiny Clark. (Attachments: # 1 Text of Proposed Order Protective Order, # 2 Exhibit Confidentiality Undertaking)(Chynoweth, Brad) Modified on 5/17/2018 to add as filed on behalf of the plaintiffs (kh,). (Entered: 05/17/2018)
05/18/2018	31	**TEXT ORDER denying 30 Joint Motion for Protective Order with leave to refile for failure to comply with Section 15(c) of the court's Uniform Scheduling Order (see Doc. 29). Signed by Honorable Judge Gray M. Borden on 5/18/2018. (no pdf document attached to this entry)(kh,)** (kh,). (Entered: 05/18/2018)
05/18/2018	32	Joint MOTION for Protective Order *(Renewed)* by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Attachments: # 1 Text of Proposed Order Protective Order, # 2 Exhibit Confidentiality Undertaking)(Chynoweth, Brad) (Entered: 05/18/2018)
05/18/2018	33	**PROTECTIVE ORDER: It is ORDERED that the joint motion for protective order (Doc. 32) is GRANTED as further set out in order. Signed by Honorable Judge Gray M. Borden on 5/18/2018. (kh,)** (Entered: 05/18/2018)
07/16/2018	34	First MOTION for Leave to File *Amended Complaint* by Destiny Clark, Darcy Corbitt, John Doe. (Attachments: # 1 Exhibit First Amended Complaint)(Boone, Brock) Modified on 8/6/2018 to clarify text to reflect as also filed on behalf of Jane Doe (qc/djy,). (Entered: 07/16/2018)
07/16/2018	35	Proposed MOTION for Leave to File *Under Pseudonym* by Jane Doe. (Boone, Brock) Modified on 8/6/2018 to clarify text to reflect as filed by Jane Doe not all plfs (qc/djy,). (Entered: 07/16/2018)
07/16/2018		***Attorney Brock Boone,Randall C Marshall,Gabriel Arkles,Rose Saxe for Jane Doe added pursuant to 34 motion (NO PDF document attached to this notice). (djy,) (Entered: 08/06/2018)
07/24/2018	36	**ORDERED that plaintiffs' unopposed motion for leave to file an amended complaint (doc. no. 34) is granted. Signed by Honorable Judge Myron H. Thompson on 7/24/2018. (kh,)** (Entered: 07/24/2018)
07/24/2018	37	**ORDER: Upon consideration of plaintiff Jane Doe's motion for leave to proceed under a pseudonym and for a protective order (doc. no. 35), it is ORDERED that the defendants show cause, if any there be, by August 6, 2018, as to why the motion should not be granted. Signed by Honorable Judge Myron H. Thompson on 7/24/2018. (kh,)** (Entered: 07/24/2018)
07/25/2018	38	AMENDED COMPLAINT *for Declaratory and Injunctive Relief* against All Defendants, filed by Darcy Corbitt, Destiny Clark, Jane Doe.(Boone, Brock) Modified on 8/6/2018 to clarify text to reflect as also filed on behalf of Jane Doe, not John Doe (qc/djy,). (Entered: 07/25/2018)

07/25/2018		***Attorney Gabriel Arkles for Destiny Clark, Darcy Corbitt added pursuant to the 38 amended complaint. (no pdf document attached to this entry) (kh,) Modified on 8/6/2018 to clarify text to remove reference to John Doe (qc/djy,). (Entered: 07/26/2018)
08/03/2018	39	REPLY BRIEF re 37 Order to Show Cause, filed by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 08/03/2018)
08/08/2018	40	ANSWER to 38 Amended Complaint, by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward.(Chynoweth, Brad) (Entered: 08/08/2018)
08/20/2018	41	**ORDERED that plaintiff Jane Doe's motion for leave to proceed under a pseudonym and for a protective order (doc. no. 35), to which defendants do not object, see Defs.' Reply to Show Cause Order (doc. no. 39), is granted. Signed by Honorable Judge Myron H. Thompson on 8/20/2018. (kh,)** (Entered: 08/20/2018)
01/11/2019	42	MOTION for Protective Order *(HIPAA)* by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Attachments: # 1 Exhibit Proposed Order)(Chynoweth, Brad) (Entered: 01/11/2019)
01/14/2019	43	**PROPOSED QUALIFIED HIPAA PROTECTIVE ORDER: This order authorizes Defendants to submit the redacted information to the Court under seal. This order is intended to authorize such disclosures under the privacy regulations issued pursuant to HIPAA. 45 C.F.R. 164.512(e)(1)(i). The parties are EXPRESSLY PROHIBITED from using or disclosing the protected health information submitted pursuant to this order for any purpose other than this action. Further, the parties are ORDERED to destroy the protected health information (including all copies made), immediately upon conclusion of this action. See 45 C.F.R. 163.502(b); 164.512(e)(1)(v). Signed by Honorable Judge Gray M. Borden on 1/14/2019. (kh,)** (Entered: 01/14/2019)
01/14/2019	44	**TEXT ORDER granting 42 MOTION for Protective Order (HIPAA). Signed by Honorable Judge Gray M. Borden on 1/14/2019. (no pdf document attached to this entry)(kh,)** (Entered: 01/14/2019)
01/16/2019	45	Notice of Mediation and Settlement Conference by All Plaintiffs (Marshall, Randall) (Entered: 01/16/2019)
02/08/2019	46	MOTION for Summary Judgment by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 02/08/2019)
02/08/2019	47	MOTION for Leave to File *Records Under Seal (Unopposed)* by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 02/08/2019)
02/08/2019	48	Evidentiary Submission re 46 MOTION for Summary Judgment filed by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3 - under seal, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 10a - under seal, # 12 Exhibit 11, # 13 Exhibit 11a - under seal, # 14 Exhibit 12, # 15 Exhibit 13, # 16 Exhibit 14, # 17 Exhibit 15, # 18 Exhibit 16 - under seal)(Chynoweth, Brad) (Attachment 15 replaced on 3/20/2019) (kh,). (Entered: 02/08/2019)
02/08/2019	49	NOTICE OF FILING RECORDS UNDER SEAL by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward re 48 Evidentiary Submission,, (Attachments: # 1 Exhibit 3, # 2 Exhibit 10a, # 3 Exhibit 11a, # 4 Exhibit 16)(kh,) (Entered: 02/08/2019)

02/08/2019	50	MOTION for Summary Judgment *Declaratory Relief, and Permanent Injunction* by Destiny Clark, Darcy Corbitt, Jane Doe. (Boone, Brock) (Entered: 02/08/2019)
02/08/2019	51	BRIEF/MEMORANDUM in Support re 50 MOTION for Summary Judgment *Declaratory Relief, and Permanent Injunction* filed by Destiny Clark, Darcy Corbitt, Jane Doe. (Boone, Brock) (Entered: 02/08/2019)
02/08/2019	52	Evidentiary Submission re 50 MOTION for Summary Judgment *Declaratory Relief, and Permanent Injunction*, 51 BRIEF/MEMORANDUM in Support filed by Destiny Clark, Darcy Corbitt, Jane Doe. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit Placeholder, # 7 Exhibit Placeholder, # 8 Exhibit Placeholder, # 9 Exhibit Placeholder, # 10 Exhibit Placeholder, # 11 Exhibit Placeholder, # 12 Exhibit Placeholder, # 13 Exhibit Placeholder, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit Placeholder, # 32 Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34, # 35 Exhibit 35, # 36 Exhibit 36, # 37 Exhibit 37, # 38 Exhibit 38, # 39 Exhibit Placeholder, # 40 Exhibit 40, # 41 Exhibit Placeholder, # 42 Exhibit Placeholder, # 43 Exhibit Placeholder, # 44 Exhibit Placeholder, # 45 Exhibit 45, # 46 Exhibit 46, # 47 Exhibit 47, # 48 Exhibit 48, # 49 Exhibit 49, # 50 Exhibit 50, # 51 Exhibit 51, # 52 Exhibit 52, # 53 Exhibit 53, # 54 Exhibit 54, # 55 Exhibit 55, # 56 Exhibit 56, # 57 Exhibit 57, # 58 Exhibit 58, # 59 Exhibit 59)(Boone, Brock) (Entered: 02/08/2019)
02/08/2019	53	NOTICE by Destiny Clark, Darcy Corbitt, Jane Doe re 50 MOTION for Summary Judgment *Declaratory Relief, and Permanent Injunction*, 51 BRIEF/MEMORANDUM in Support (Boone, Brock) (Entered: 02/08/2019)
02/08/2019	54	BRIEF/MEMORANDUM in Support re 46 MOTION for Summary Judgment filed by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 02/08/2019)
02/11/2019	55	**TEXT ORDER granting 47 Motion for Leave to File Records Under Seal. Signed by Honorable Judge Myron H. Thompson on 2/11/2019. (No pdf attached to this entry) (alm,)** (Entered: 02/11/2019)
02/11/2019	56	PLAINTIFFS' NOTICE OF FILING EXHIBITS UNDER SEAL by Destiny Clark, Darcy Corbitt, Jane Doe re 52 Evidentiary Submission (Attachments: # 1 Exhibit 6, # 2 Exhibit 7, # 3 Exhibit 8, # 4 Exhibit 9, # 5 Exhibit 10, # 6 Exhibit 11, # 7 Exhibit 12, # 8 Exhibit 13, # 9 Exhibit 31, # 10 Exhibit 39, # 11 Exhibit 41, # 12 Exhibit 42, # 13 Exhibit 43, # 14 Exhibit 44)(kh,) (Entered: 02/12/2019)
02/15/2019	57	**ORDERED that the motions for summary judgment (doc. nos. 46 & 50) are set for submission without oral argument on March 22, 2019, with the opposition briefs and evidentiary materials due by March 8, 2019, and any replies to the opposition due by March 22, 2019. Signed by Honorable Judge Myron H. Thompson on 2/15/2019. (kh,)** (Entered: 02/15/2019)
03/08/2019	58	BRIEF/MEMORANDUM in Opposition *to Defendant's Motion for Summary Judgment* filed by Destiny Clark, Darcy Corbitt, Jane Doe. (Boone, Brock) (Entered: 03/08/2019)
03/08/2019	59	Evidentiary Submission *in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment* filed by Destiny Clark, Darcy Corbitt, Jane Doe. (Attachments: # 1 Exhibit 60, # 2 Exhibit 61, # 3 Exhibit 62, # 4 Exhibit 63, # 5 Exhibit 64, # 6 Exhibit 65, # 7 Exhibit 66, # 8 Exhibit 67, # 9 Exhibit 68, # 10 Exhibit 69, # 11 Exhibit 70, # 12 Exhibit 71,

		# 13 Exhibit 72, # 14 Exhibit 73, # 15 Exhibit 74, # 16 Exhibit 75, # 17 Exhibit 76, # 18 Exhibit 77)(Boone, Brock) (Entered: 03/08/2019)
03/08/2019	60	BRIEF/MEMORANDUM in Opposition re 50 MOTION for Summary Judgment *Declaratory Relief, and Permanent Injunction* filed by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 03/08/2019)
03/22/2019	61	REPLY BRIEF *to Defendants' Opposition to Plaintiffs' Motion for Summary Judgment* filed by Destiny Clark, Darcy Corbitt, Jane Doe. (Arkles, Gabriel) (Entered: 03/22/2019)
03/22/2019	62	REPLY BRIEF re 58 BRIEF/MEMORANDUM in Opposition *to Defendants' Motion for Summary Judgment* filed by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 03/22/2019)
06/26/2019		Case Reassigned to Honorable Judge Stephen Michael Doyle as referral judge; Honorable Judge Gray M. Borden no longer assigned to the case. (no pdf document attached to this entry) (kh,) (Entered: 06/26/2019)
07/08/2019	63	**ORDERED that all pending motions are set for an in-person oral argument on July 30, 2019, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr United States Courthouse Complex, One Church Street, Montgomery, Alabama. Signed by Honorable Judge Myron H. Thompson on 7/8/2019. (furn: ag, calendar)(kh,)** (Entered: 07/08/2019)
07/15/2019	64	Joint MOTION for Extension of Deadline Trial Deadlines *Pending Oral Argument* by Destiny Clark, Darcy Corbitt, Jane Doe, Hal Taylor, Charles Ward, Deena Pregno, and Jeannie Eastman. (Attachments: # 1 Text of Proposed Order)(Boone, Brock) Modified on 7/18/2019 to add as filed on behalf of the defendants(kh,). (Entered: 07/15/2019)
07/16/2019	65	**ORDERED that: (1) The motion to suspend trial deadlines pending oral argument on cross motions for summary judgment (doc. no. 64) is set for an in-person hearing on July 30, 2019, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama, as further set out. Signed by Honorable Judge Myron H. Thompson on 7/16/2019. (furn: calendar, ag) (kh,)** (Entered: 07/16/2019)
07/16/2019	66	**ORDER SETTING PRETRIAL HEARING: Final Pretrial Conference set for 8/9/2019, at 10:00 AM, in CR 2FMJ, before Honorable Judge Myron H. Thompson; Proposed Pretrial Order due by 8/6/2019. Non-Jury Trial set for 9/9/2019, at 10:00 AM, in Montgomery, Alabama before Honorable Judge Myron H. Thompson; as further set out. Signed by Honorable Judge Myron H. Thompson on 7/16/2019. (furn: calendar, ag)(kh,)** (Entered: 07/16/2019)
07/23/2019	67	NOTICE by Destiny Clark, Darcy Corbitt, Jane Doe re 58 BRIEF/MEMORANDUM in Opposition, 55 Order on Motion for Leave to File, 62 Reply Brief, 59 Evidentiary Submission,, 50 MOTION for Summary Judgment *Declaratory Relief, and Permanent Injunction*, 56 Notice (Other), 54 BRIEF/MEMORANDUM in Support, 51 BRIEF/MEMORANDUM in Support, 52 Evidentiary Submission,,,,, 57 Order, 60 BRIEF/MEMORANDUM in Opposition, 61 Reply Brief, 53 Notice (Other) *of Supplemental Authority* (Attachments: # 1 Supplement)(Boone, Brock) (Entered: 07/23/2019)
07/30/2019	68	Minute Entry for proceedings held before Honorable Judge Myron H. Thompson: Motion Hearing held on 7/30/2019 re 50 MOTION for Summary Judgment *Declaratory Relief, and Permanent Injunction* filed by Destiny Clark, Darcy Corbitt, Jane Doe, 64 Joint MOTION for Extension of Deadline Trial Deadlines *Pending Oral Argument* filed by

		Destiny Clark, Deena Pregno, Charles Ward, Darcy Corbitt, Hal Taylor, Jane Doe, Jeannie Eastman, 46 MOTION for Summary Judgment filed by Deena Pregno, Charles Ward, Hal Taylor, Jeannie Eastman (PDF available for court use only). (Court Reporter Patricia Starkie.) (ag,) (Entered: 07/30/2019)
07/30/2019	69	**ORDERED that the parties' motions for summary judgment (doc. nos. 46 & 50 are denied. Signed by Honorable Judge Myron H. Thompson on 7/30/2019. (kh,)** (Entered: 07/30/2019)
07/30/2019	70	STIPULATION *(Joint)* by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward, Darcy Corbitt, John Doe, and Destiny Clark (Attachments: # 1 Exhibit A)(Chynoweth, Brad) Modified on 7/30/2019 to add as filed on behalf of the plaintiffs (kh,). (Entered: 07/30/2019)
07/31/2019	71	**ORDERED that the joint motion for extension of deadlines (doc. no. 64) is ranted as follows: (1) The pretrial and trial are continued generally. However, the court has not yet decided whether to have a trial or not. (2) All unexpired deadlines connected to the pretrial and trial are suspended. However, the parties are still to submit a proposed pretrial order by August 6. (3) If the court decides to hold a trial, a new trial date, as well as new pretrial deadlines, will be set. Signed by Honorable Judge Myron H. Thompson on 7/31/2019. (furn: calendar, ag) (term: Final Pretrial Conference set for 8/9/2019; Non-Jury Trial set for 9/9/2019) (kh,)** (Entered: 07/31/2019)
08/05/2019	72	Motion for Leslie J. Cooper to Appear Pro Hac Vice (Filing fee $ 75.00 receipt number 4602054465.) by Destiny Clark, Darcy Corbitt, John Doe. (Attachments: # 1 Original Certificate of Good Standing - USDC-SDNY, # 2 Filing Fee Receipt)(kh,) (Entered: 08/06/2019)
08/06/2019	73	**TEXT ORDER granting 72 Motion for Leslie J. Cooper to Appear Pro Hac Vice. Signed by Honorable Judge Myron H. Thompson on 8/6/2019. (no pdf document tatted to this entry)(kh,)** (Entered: 08/06/2019)
08/06/2019		***Attorney Leslie J. Cooper for Destiny Clark,Leslie J. Cooper for Darcy Corbitt,Leslie J. Cooper for Jane Doe added pursuant to the court's 73 text order. (no pdf document attached to this entry) (kh,) (Entered: 08/06/2019)
08/14/2019	74	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of MOTION HEARING Proceedings (PDF ACCESS RESTRICTED FOR 90 DAYS) held on 7/30/2019, before Honorable Judge Myron H. Thompson. Court Reporter/Transcriber Patricia G. Starkie, Telephone number 334-262-1221. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. NOTICE OF INTENT TO REQUEST REDACTION DUE WITHIN 7 BUSINESS DAYS. Redaction Request due 9/4/2019. Redacted Transcript Deadline set for 9/16/2019. Release of Transcript Restriction set for 11/12/2019. (kh,) (Entered: 08/14/2019)
09/13/2019	75	NOTICE by Destiny Clark, Darcy Corbitt, Jane Doe re 58 BRIEF/MEMORANDUM in Opposition, 55 Order on Motion for Leave to File, 59 Evidentiary Submission,, 56 Notice (Other), 54 BRIEF/MEMORANDUM in Support, 51 BRIEF/MEMORANDUM in Support, 52 Evidentiary Submission,,,,, 57 Order, 60 BRIEF/MEMORANDUM in Opposition, 61 Reply Brief, 53 Notice (Other) *of Supplemental Authority* (Attachments: # 1 Exhibit A)(Boone, Brock) (Entered: 09/13/2019)
02/04/2020	76	MOTION to Withdraw as Attorney by Destiny Clark, Darcy Corbitt, Jane Doe. (Boone, Brock) (Entered: 02/04/2020)

02/20/2020	77	MOTION to Substitute Attorney by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Barnes, Noel) (Entered: 02/20/2020)
03/23/2020	78	**TEXT ORDER granting 77 Motion to Substitute Attorney. Signed by Honorable Judge Myron H. Thompson on 3/23/2020. (no pdf document attached to this entry)(kh,)** (Entered: 03/23/2020)
03/23/2020		*** Attorney Michael Wayne Robinson terminated pursuant to the 78 text order. (no pdf document attached to this entry)(kh,) (Entered: 03/23/2020)
03/23/2020	79	**TEXT ORDER granting 76 Motion to Withdraw as Attorney. Signed by Honorable Judge Myron H. Thompson on 3/23/2020. (no pdf document attached to this entry)(kh,)** (Entered: 03/23/2020)
03/23/2020		*** Attorney Brock Boone terminated pursuant to the 79] text order. (no pdf document attached to this entry)(kh,) (Entered: 03/23/2020)
07/01/2020	80	NOTICE by Destiny Clark, Darcy Corbitt, Jane Doe *Notice of Supplemental Authority* (Arkles, Gabriel) (Entered: 07/01/2020)
09/03/2020	81	**ORDER: This court, having denied the parties' crossmotions for summary judgment, must resolve "whether to decide the case on the paper record or to hold a trialas to some or all issues." Order (doc. no. 69). In order to inform that decision, the court seeks additional briefing from the parties. Accordingly, itis ORDERED that the parties are to separately file, by noon on September 18, 2020, a brief responding to the following questions, with any reply, if desired, due by noon on September 25, 2020, as further set out in order. Signed by Honorable Judge Myron H. Thompson on 9/3/2020. (kh,)** (Entered: 09/03/2020)
09/18/2020	82	REPLY BRIEF re 81 Order,, filed by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 09/18/2020)
09/18/2020	83	BRIEF/MEMORANDUM in Support re 81 Order,, filed by Destiny Clark, Darcy Corbitt, Jane Doe, John Doe. (Marshall, Randall) (Entered: 09/18/2020)
09/25/2020	84	REPLY BRIEF re 83 BRIEF/MEMORANDUM in Support filed by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward. (Chynoweth, Brad) (Entered: 09/25/2020)
09/25/2020	85	REPLY BRIEF re 82 Reply Brief, 81 Order,, filed by Destiny Clark, Darcy Corbitt, Jane Doe, John Doe. (Marshall, Randall) (Entered: 09/25/2020)
09/28/2020	86	MOTION to Expedite *Final Decision* by Destiny Clark, Darcy Corbitt, Jane Doe, John Doe. (Marshall, Randall) (Entered: 09/28/2020)
09/28/2020	87	**TEXT ORDER: Conference Call re 86 motion set for 9/29/2020, at 07:30 AM, by telephone, before Honorable Judge Myron H. Thompson. Signed by Honorable Judge Myron H. Thompson on 9/28/2020. (furn: calendar, ag)(no pdf document attached to this entry)(kh,)** (Entered: 09/28/2020)
09/29/2020	88	Minute Entry for proceedings held before Honorable Judge Myron H. Thompson: Motion Hearing held on 9/29/2020 re 86 MOTION to Expedite *Final Decision* filed by Destiny Clark, John Doe, Darcy Corbitt, Jane Doe (PDF available for court use only). (Court Reporter Patricia Starkie.) (ag,) (Entered: 09/29/2020)
10/19/2020	89	NOTICE of Appearance by Misty Shawn Fairbanks Messick on behalf of All Defendants (Messick, Misty) (Entered: 10/19/2020)

10/20/2020	90	Motion for James D. Esseks to Appear Pro Hac Vice by Destiny Clark, Darcy Corbitt, Jane Doe. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Good Standing) (Marshall, Randall) Modified on 10/20/2020 to add the attorney's name.(kh,). (Entered: 10/20/2020)
10/20/2020	91	Motion for Kaitlin Welborn to Appear Pro Hac Vice by Destiny Clark, Darcy Corbitt, Jane Doe. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Good Standing) (Marshall, Randall) Modified on 10/20/2020 to add the attorney's name. (kh,). (Entered: 10/20/2020)
10/22/2020	92	NOTICE of Appearance by James William Davis on behalf of Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward (Davis, James) (Entered: 10/22/2020)
10/23/2020	93	**ORDER: Based on the representations made on the record during the conference call on September 29, 2020, it is ORDERED that the motion to expedite (doc. no. 86) is granted to the extent that the court is expediting its consideration of this case, including whether to hold a hearing and when that should take place. Signed by Honorable Judge Myron H. Thompson on 10/23/2020. (kh,)** (Entered: 10/23/2020)
10/23/2020	94	Pro Hac Vice Filing fee received re 90 Motion for James D. Esseks : $ 75.00, receipt number 4602059946 (kh,) (Entered: 10/26/2020)
10/23/2020	95	Pro Hac Vice Filing fee received re 91 Motion for Motion for Kaitlin Welborn : $ 75.00, receipt number 4602059947 (kh,) Modified on 10/26/2020 to correct the receipt number. (kh,). (Entered: 10/26/2020)
10/23/2020		***Attorneys Kaitlin Welborn and James Dixon Esseks Destiny Clark, Darcy Corbitt, Jane Doe pursuant to the 90 and 91 motions. (no pdf document attached to this entry) (kh,) (Entered: 10/26/2020)
10/26/2020	96	**TEXT ORDER granting 90 Motion for James D. Esseks to Appear Pro Hac Vice; granting 91 Motion for Kaitlin Welborn to Appear Pro Hac Vice. Signed by Honorable Judge Myron H. Thompson on 10/26/2020. (no pdf document attached to this entry)(kh,)** (Entered: 10/26/2020)
12/16/2020	97	NOTICE by Destiny Clark, Darcy Corbitt, Jane Doe re 51 BRIEF/MEMORANDUM in Support *Notice of Supplemental Authority* (Attachments: # 1 Exhibit A: Ray v McCloud)(Marshall, Randall) (Entered: 12/16/2020)
01/11/2021	98	NOTICE of Appearance by LaTisha Gotell Faulks on behalf of All Plaintiffs (Faulks, LaTisha) (Entered: 01/11/2021)
01/11/2021	99	Unopposed MOTION for Status Conference by Destiny Clark, Darcy Corbitt, Jane Doe. (Attachments: # 1 Exhibit A, # 2 Text of Proposed Order)(Faulks, LaTisha) Modified on 1/12/2021 to clarify the docket text (wcl,). (Entered: 01/11/2021)
01/15/2021	100	**ORDER: It is ORDERED that plaintiffs' 99 motion for a status conference is denied as moot. Signed by Honorable Judge Myron H. Thompson on 1/5/2021. (amf,)** (Entered: 01/15/2021)
01/15/2021	101	**OPINION. Signed by Honorable Judge Myron H. Thompson on 1/15/2021. (amf,)** (Entered: 01/15/2021)
01/15/2021	102	**JUDGMENT: In accordance with the opinion entered this date, it is the ORDER, JUDGMENT, and DECREE of the court as follows: 1) Judgment is entered in favor of plaintiffs Darcy Corbitt, Destiny Clark, and Jane Doe, and against defendants Hal Taylor,**

		Charles Ward, Deena Pregno, and Jeannie Eastman.; 2) It is DECLARED that the policy of the Alabama Law Enforcement Agency entitled "Subject: Changing Sex on a Driver License Due to Gender Reassignment," also known as Policy Order 63, as it has been applied to plaintiffs Corbitt, Clark, and Doe, is unconstitutional; 3) Defendants Taylor, Ward, Pregno, and Eastman are ENJOINED and RESTRAINED from failing to issue to plaintiffs Corbitt, Clark, and Doe new driver licenses with female sex designations, upon application for such licenses by them;further ORDERED that costs are taxed against defendants Taylor, Ward, Pregno, and Eastman, for which execution may issue; DIRECTING the Clerk to enter this document on the civil docket as a final judgment pursuant to Rule 58 FRCP; This case is closed. Signed by Honorable Judge Myron H. Thompson on 1/15/2021. (Attachments: # 1 Civil Appeals Checklist)(amf,) (Entered: 01/15/2021)
01/27/2021	103	Unopposed MOTION for Extension of Time to File *Motion for Attorney's Fees* by Destiny Clark, Darcy Corbitt, Jane Doe. (Attachments: # 1 Text of Proposed Order)(Welborn, Kaitlin) Modified on 1/28/2021 to clarify the docket text (wcl,). (Entered: 01/27/2021)
01/28/2021	104	**ORDER granting 103 Unopposed Motion for Extension of Time to File a Motion for Attorney's Fees and that the deadline for plfs to file a motion for attorney's fees and expenses is extended to 3/1/2021. Signed by Honorable Judge Myron H. Thompson on 1/28/2021. (wcl,)** (Entered: 01/28/2021)
02/12/2021	105	NOTICE OF APPEAL by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward as to 101 Opinion, and 102 Judgment entered 1/15/2021. (Chynoweth, Brad) Modified on 2/12/2021 to clean up text. (dmn,) (Entered: 02/12/2021)
02/12/2021	106	Appeal Instructions sent to Brad A. Chynoweth, James William Davis, Misty Shawn Fairbanks Messick, Winfield James Sinclair, and Noel Steven Barnes, counsel for Appellants Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward re 105 Notice of Appeal. A copy of the Transcript Information Form must be mailed to each court reporter from whom you are requesting a transcript. (Attachments: # 1 Transcript Information Form)(dmn,) (Entered: 02/12/2021)
02/12/2021	107	Transmission of 105 Notice of Appeal, 102 Judgment, 101 Opinion, and Docket Sheet to US Court of Appeals. (Attachments: # 1 Docket Sheet and Appeal Record)(dmn,) (Entered: 02/12/2021)
02/17/2021	108	USCA Case Number 21-10486-F for 105 Notice of Appeal filed by Deena Pregno, Charles Ward, Hal Taylor, Jeannie Eastman. Fee Status: Fee Not Paid. Awaiting Appellant's Certificate of Interested Persons due on or before 2/26/2021 as to Appellant Hal Taylor. Awaiting Appellee's Certificate of Interested Persons due on or before 3/12/2021 as to Appellee Destiny Clark. (dmn,) (Entered: 02/17/2021)
02/17/2021	110	USCA Appeal Fees received $ 505 receipt number 4602061520 re 105 Notice of Appeal filed by Deena Pregno, Charles Ward, Hal Taylor, Jeannie Eastman, 11th Circuit Appeal No. 21-10486-F. (dmn,) (Entered: 02/22/2021)
02/19/2021	109	TRANSCRIPT INFORMATION FORM re 105 Notice of Appeal, Appeal No. 21-10486-F by Jeannie Eastman, Deena Pregno, Hal Taylor, Charles Ward with following notation, "I AM ORDERING A TRANSCRIPT OF THE FOLLOWING PROCEEDINGS: Other 3/29/2018 Thompson FTR; 7/30/2019 Thompson Starkie; 9/29/2020 Thompson Starkie." (Note by Appeal Docket Clerk: 3/29/2018 Teleconference FTR; 7/30/2019 Motion Hearing, Court Reporter: Patricia Starkie; 9/29/2020 Motion Hearing, Court Reporter: Patricia Starkie; all hearings held before Judge Myron H. Thompson.) (Messick, Misty) Modified on

		2/22/2021 to clean up and include additional text; date changed from 3/28/2018 to 3/29/2018. (dmn,) (Entered: 02/19/2021)
02/19/2021	111	Transcript Acknowledgment Part II received from Court Reporter Patricia Starkie on 105 Notice of Appeal, Appeal No. 21-10486-F. Satisfactory arrangements for paying the cost of the transcript were complete on 2/19/2021. Estimated filing date: 3/19/2021. (dmn,) (Entered: 02/22/2021)
03/01/2021	112	MOTION for Extension of Time to File *Motion for Attorney's Fees* by Destiny Clark, Darcy Corbitt, Jane Doe. (Attachments: # 1 Text of Proposed Order)(Welborn, Kaitlin) (Entered: 03/01/2021)
03/02/2021	113	**ORDER granting 112 Unopposed Motion for Extension of Time to File to a Motion for Attorney's Fees and that the deadline for plfs to file a motion for attorney's fees and non-taxable expenses is extended until after the resolution of dfts' appeal (Doc. 105). Signed by Honorable Judge Myron H. Thompson on 3/2/2021. (wcl,)** (Entered: 03/02/2021)
03/19/2021	114	Transcript Acknowledgment Part III received from Court Reporter Patricia Starkie on 105 Notice of Appeal, Appeal No. 21-10486-F. This is to certify that the transcript has been completed and filed with the district court on 3/19/21. Actual No. of Volumes and Hearing Dates: 2 Volumes, 9/29/20, 3/29/2018. 7/30/2019 on file Doc. 74 . (dmn,) (Entered: 03/19/2021)
03/19/2021	115	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of TELEPHONE CONFERENCE (PDF ACCESS RESTRICTED FOR 90 DAYS) for dates of 3/29/2018 before Judge Thompson, re 105 Notice of Appeal Court Reporter/Transcriber Starkie, Telephone number 334-322-8053. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. NOTICE OF INTENT TO REQUEST REDACTION DUE WITHIN 7 BUSINESS DAYS. Redaction Request due 4/9/2021. Redacted Transcript Deadline set for 4/19/2021. Release of Transcript Restriction set for 6/17/2021. (djy,) (Entered: 03/23/2021)
03/19/2021	116	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of TELEPHONE CONFERENCE (PDF ACCESS RESTRICTED FOR 90 DAYS) for dates of 9/29/2020 before Judge Thompson, re 105 Notice of Appeal Court Reporter/Transcriber Starkie, Telephone number 334-322-8053. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. NOTICE OF INTENT TO REQUEST REDACTION DUE WITHIN 7 BUSINESS DAYS. Redaction Request due 4/9/2021. Redacted Transcript Deadline set for 4/19/2021. Release of Transcript Restriction set for 6/17/2021. (djy,) (Entered: 03/23/2021)
05/25/2021		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Middle District of Alabama certifies that the record is complete for purposes of this appeal re: 105 Notice of Appeal, Appeal No. 21-10486-GG. The entire record on appeal is available electronically. (dmn,) (Entered: 05/25/2021)
04/27/2022	117	MOTION to Withdraw as Attorney by Hal Taylor. (Sinclair, Winfield) (Entered: 04/27/2022)
05/04/2022	118	**TEXT ORDER: GRANTING the 117 Motion to Withdraw Winfield J. Sinclair as Attorney. Signed by Honorable Judge Myron H. Thompson on 5/4/2022. (NO PDF attached to this entry) (am,)** (Entered: 05/04/2022)

05/04/2022		*** PURSUANT TO THE 118 ORDER - Attorney Winfield James Sinclair terminated. (NO PDF attached to this entry) (am,) (Entered: 05/04/2022)

PACER Service Center			
Transaction Receipt			
05/13/2024 21:59:44			
PACER Login:	Badham_Buck	**Client Code:**	Cooley
Description:	Docket Report	**Search Criteria:**	2:18-cv-00091-MHT-SMD
Billable Pages:	17	**Cost:**	1.70