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Via Electronic Filing

Lyle W. Cayce, Clerk of Court
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

RE: No. 19-10011, *Texas v. United States*

Dear Mr. Cayce:

Plaintiff-Appellee States submit this supplemental letter brief in response to the Court's order of June 26, 2019.

Under *Virginia House of Delegates v. Bethune-Hill*, the U.S. House lacks standing to press this appeal. 139 S. Ct. 1945 (2019). It cannot override the Department of Justice's decision not to contest the district court's judgment. Moreover, its intervention was plainly untimely. Nevertheless, the State Intervenors have standing because the judgment below presents an Article III injury.

In any event, this Court may exercise subject-matter jurisdiction under *United States v. Windsor*, 570 U.S. 744 (2013). The *Windsor* Court held that the federal government had standing to challenge the constitutionality of the Defense of Marriage Act ("DOMA") even though it agreed with the plaintiff that DOMA was unconstitutional. The dissenting Justices argued that holding represented a major departure

from core Article III principles. *See* 570 U.S. at 784 (Scalia, J., dissenting) ("Article III requires not just a plaintiff (or appellant) who has standing to complain but an opposing party who denies the validity of the complaint."). Nevertheless, *Windsor* binds this Court and confirms appellate jurisdiction here. As in *Windsor*, the federal government has standing to challenge the constitutionality of the ACA even though it agrees that the ACA is unconstitutional. The Court should reach the merits of this appeal and affirm the judgment below declaring the ACA unlawful in its entirety.

If the Court were to hold that it lacks appellate jurisdiction, the proper remedy would be to dismiss the appeal without disturbing any part of the judgment below.

I. The Intervenor States Have Standing; the U.S. House Does Not.

A. The U.S. House Lacks Standing and, in Any Event, Its Intervention Was Untimely.

Bethune-Hill makes clear that the U.S. House lacks standing. That case concerned an equal protection challenge to several state-house districts in Virginia. 139 S. Ct. at 1949-50. Voters sued Virginia, alleging that the districts were racially gerrymandered. *Id.* at 1949. Throughout the early stages of the litigation, the State defended the districts against the voters' challenge. *Id.* at 1950. The Virginia House of Delegates which intervened as a defendant "and carried the laboring oar in urging the constitutionality of the challenged districts." *Id.* But after a three-judge district-court panel ruled against the defendants, Virginia—through its Attorney General—elected not to pursue an appeal. *Id.* The House alone pressed ahead. *Id.* Virginia moved to dismiss the House's appeal for lack of standing. *Id.*

The Supreme Court agreed, for two reasons. First, the Court held that the

House "lacks authority to displace Virginia's Attorney General as representative of the State." *Id.* Second, it held that "the House, as a single chamber of a bicameral legislature, has no standing to appeal the invalidation of the redistricting plan separately from the State of which it is a part." *Id.*

Those two holdings foreclose the U.S. House's standing in this case. Like the Virginia House, the U.S. House here cannot step into the shoes of the Attorney General to continue an appeal that the Attorney General has elected not to pursue, and it lacks standing to maintain this appeal in its own right.

1. In *Bethune-Hill*, the Court observed that Virginia "has adopted an approach resembling that of the Federal Government." 139 S. Ct. at 1952. Under that approach, "[a]uthority and responsibility for representing the State's interests in civil litigation . . . rest exclusively with the State's Attorney General." *Id.* at 1951 (citing Va. Code Ann. § 2.2–507(A)). The Court's comparison to federal law was apt. The U.S. Attorney General is the sole legal representative of the federal government in litigation involving the United States. Like the Virginia code provision in *Bethune-Hill*, the U.S. Code provides that, "except as authorized by law," the "conduct of litigation in which the United States, an agency, or officer thereof is a party . . . is reserved to officers of the Department of Justice, under the direction of the Attorney General." 28 U.S.C. § 516; *see also id.* § 519 ("[T]he Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct . . . in the discharge of their respective duties.").[1]

[1] *See also, e.g.*, *United States v. Alky Enters., Inc.*, 969 F.2d 1309, 1314 (1st Cir. 1992) ("Generally, unless the law expressly states otherwise, the Attorney General

The U.S. House has pointed to nothing to counteract the "broad grant of authority to litigate given to the Attorney General . . . under 28 U.S.C. § 516." *United States v. Santee Sioux Tribe of Neb.*, 135 F.3d 558, 562 (8th Cir. 1998). The Attorney General's statutory authority "to control litigation is not diminished" absent a "clear and unambiguous directive from Congress." *Id.* (quotations omitted); *accord Marshall v. Gibson's Prods., Inc. of Plano*, 584 F.2d 668, 676 n.11 (5th Cir. 1978). The ACA itself contains no provision authorizing anyone, much less the U.S. House, to act as an agent of the United States in litigation concerning that Act, let alone to do so over the Attorney General's contrary position.[2]

The U.S. House relied on two statutory provisions to justify its intervention in this case. Neither gives it authority to supersede the Attorney General's power to decide the position the United States takes in this litigation. The first, 28 U.S.C section 2403(a), is inapplicable on its face. It says nothing at all about the U.S. House, or even Congress. It merely instructs courts entertaining challenges to U.S. statutes in cases "to which the United States . . . is not a party" to inform the Attorney General, so that the United States can decide whether to intervene. 28 U.S.C. § 2403(a).

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alone has plenary power to conduct litigation in which the United States has an interest.") (citing 28 U.S.C. §§ 516, 519); *Fed. Deposit Ins. Corp. v. Irwin*, 727 F. Supp. 1073, 1074 (N.D. Tex. 1989), *aff'd*, 916 F.2d 1051 (5th Cir. 1990) ("[T]he Attorney General . . . is vested with plenary power over all litigation to which the United States or one of its agencies is a party.").

[2] There are, of course, some exceptions to the Attorney General's exclusive authority to conduct litigation—including, for example, *qui tam* actions. *See Vt. Agency of Nat. Res. v. United States ex rel Stevens*, 529 U.S. 765, 772 (2000). But no such exception is implicated here.

The United States was a party to this lawsuit from the very beginning: The State Plaintiffs sued the United States. To the extent section 2403(a) is at all relevant, it is that its reference to the necessary point of contact—the Attorney General—confirms that it is he, not the U.S. House or any of its members, who is charged with deciding the litigation position of the United States.

The second statute the U.S. House pointed to—28 U.S.C. section 530D—is similarly unavailing. That statute is a notice provision. It requires, in relevant part, the Attorney General to submit a report to Congress when the Department of Justice determines that it will "refrain (on the grounds that the provision is unconstitutional) from defending or asserting" the constitutionality of a federal law "or not to appeal or request review" of a decision "affecting the constitutionality of any such" law. 28 U.S.C. 530D(a)(1)(B)(ii). It sets a deadline for this report to "reasonably enable the House of Representatives and the Senate to take action . . . to intervene in a timely fashion in the proceeding." *Id.* § 530D(b)(2). The statute does not itself grant authority to the U.S. House to intervene in any given case, much less over the objection of the Attorney General. Nor does any other statute. When Congress wants to authorize intervention as of right, it knows well how to do so. *See, e.g.*, 28 U.S.C. § 2403(a) (directing courts to inform the Attorney General when the constitutionality of a statute is at issue in a third-party case, and providing that in any such proceeding "the court shall . . . permit the United States to intervene").

2. The U.S. House also lacks a sufficient cognizable injury of its own to "independently demonstrate standing." *Bethune-Hill*, 139 S. Ct. at 1951. Again, the statutory provisions on which the U.S. House relied to justify its intervention do not give

it any such authority. *See supra* pp. 4-5.

The role played by the U.S. House in passing the ACA is insufficient to establish standing. As the Court held in *Bethune-Hill*, "a judicial decision invalidating" a law does not "inflict[] a discrete, cognizable injury on each organ of government that participated in the law's passage." 139 S. Ct. at 1953. Like the Virginia House in *Bethune-Hill*, the U.S. House "constitutes only a part" of one branch that is itself only a part of the law-creating process. *Id.* The holding in *Bethune-Hill* unequivocally forecloses the U.S. House's independent standing: "[A] single House of a bicameral legislature lacks capacity to assert interests belonging to the legislature as a whole." *Id.* at 1953-54. Indeed, the Court found "no support for the notion that one House of a bicameral legislature, resting solely on its role in the legislative process, may appeal on its own behalf a judgment invalidating" a law it helped pass. *Id.* at 1953.

Nor does this action implicate Congress's unique institutional prerogatives. In rare instances, such prerogatives afford the *bicameral* Congress standing to defend a law. *See, e.g.*, *I.N.S. v. Chadha*, 462 U.S. 919 (1983) (determining that Congress had standing to defend the constitutionality of a one-house legislative veto). But *Bethune-Hill* confirms that *Chadha* does not apply to a single chamber of a bicameral Congress acting unilaterally. That was so even though the Virginia House argued that the subject of the litigation—redistricting seats for the General Assembly—directly impacted it, affecting as it would the very composition of its membership. *See Bethune-Hill*, 139 S. Ct. at 1957 (Alito, J., dissenting). That did not suffice because "[o]ne House of its bicameral legislature cannot alone continue the litigation against the will of its partners in the legislative process." *Id.* at 1956.

Moreover, affording the U.S. House standing to defend a law against a lower court decision that the Department of Justice has, in effect, elected not to appeal would raise serious separation-of-powers issues. The Executive Branch is entrusted with the power to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3; *see also supra* pp. 3-4 & n.1 (discussing the Attorney General's plenary power to make litigation decisions in suits involving the United States). "Once Congress makes its choice in enacting legislation, its participation ends." *Bowsher v. Synar*, 478 U.S. 714, 733 (1986). Thereafter, Congress can "control the execution of its enactment only indirectly—by passing new legislation." *Id.* at 733-34.

3. In any event, the U.S. House's intervention was untimely. The U.S. Attorney General notified the U.S. House of its intention not to defend the constitutionality of every aspect of the ACA on June 7, 2018—just 45 days after the State Plaintiffs filed their amended complaint. ROA.2803. Yet the U.S. House made no attempt to intervene in the proceedings. Months went by and the litigation continued apace, culminating eventually in an order granting partial summary judgment for the State Plaintiffs on their claim for declaratory relief. ROA.2611-65. Only then, after the district court entered its order, did the U.S. House attempt to intervene—and even then not on the declaratory-relief claim. ROA.2795-821. Its attempt was obviously futile: The State Intervenors had already filed a notice of appeal, ROA.2787-88, "depriv[ing] the district court of jurisdiction to hear a motion to intervene," *Avoyelles Sportsmen's League, Inc. v. Marsh*, 715 F.2d 897, 929 (5th Cir. 1983). Thus, the U.S. House's motion to intervene necessarily sat—and still sits—on the district court docket, unaddressed. The U.S. House intervened only on appeal.

An "untimely[] intervention must be denied." *NAACP v. New York*, 413 U.S. 345, 365 (1973). This Court has long held a motion to intervene presumptively untimely when the proposed intervenor sits on the sidelines in district court and intervenes only on appeal. *E.g.*, *McKenna v. Pan Am. Petroleum Corp.*, 303 F.2d 778, 778 (5th Cir. 1962) (per curiam). Successful "[p]ost-judgment intervention is rare." *United States ex rel. Marshall v. Allegheny-Ludlum Indus., Inc.*, 553 F.2d 451, 453 (5th Cir. 1977) (per curiam). In this Circuit, a party seeking to intervene for the first time on appeal may do so only if (1) "other parties do not oppose its intervention on appeal"; and (2) the nonparty seeking to intervene "had no [earlier] notice of the action." *In re Deepwater Horizon*, 857 F.3d 246, 253 n.32 (5th Cir. 2017) (quotations omitted). The U.S. House fails on both counts.

Here, the state plaintiffs and the federal government opposed the U.S. House's intervention on appeal. *See* Mot. of U.S. House of Representatives to Intervene, at 1 (Jan. 7, 2019). And the U.S. House can hardly claim it lacked notice during the pendency of the district-court proceedings. The U.S. Attorney General timely informed Congress that the Department of Justice would not be defending the ACA—as he was required to under 28 U.S.C. § 530D(a)(1)(B)(ii), (b)(2)—a full seven months before the U.S. House sought to intervene in the action now on appeal. At that point, if not far sooner,[3] the U.S. House was on notice of the state plaintiffs' constitutional challenge and the Department of Justice's decision not to mount a full defense of the ACA. *See, e.g.*, *Engra, Inc. v. Gabel*, 958 F.2d 643, 645 (5th Cir. 1992) (per curiam)

[3] The State Intervenors moved to intervene a month after the State Plaintiffs filed their first complaint, and without the benefit of statutory notice. ROA.220-56.

(concluding that a delay of eight months in seeking intervention was untimely).[4]

B. The State Intervenors Have Standing to Appeal the Judgment.

1. For the reasons set out above, the State Intervenors cannot stand in the shoes of the federal government to defend the ACA. *See supra* pp. 3-5; *Bethune-Hill*, 139 S. Ct. at 1952. Nothing authorizes those States to represent the United States "as its agent to assert [its] interests" in this appeal. *Bethune-Hill*, 139 S. Ct. at 1952.

2. Nevertheless, the States can prosecute this appeal in their own names because of their alleged threatened loss of federal funds. Combined with the federal government's representation that it would comply with a declaratory judgment without geographic limitation if this Court were to affirm the district court's decision, the threat is sufficient to satisfy Article III.

a. The partial final judgment below declares the ACA's individual mandate "UNCONSTITUTIONAL and INSEVERABLE from the remainder" of the law. ROA.2785. It includes no geographic or substantive exceptions. Nothing in the district court's judgment evinces any indication that the ACA is unconstitutional in the Plaintiff States but lawful elsewhere. Nor does the operative complaint request relief limited to the Plaintiff States; it sought a declaration that the ACA is unlawful and

[4] A different analysis may apply when a State Attorney General intervenes as the chief legal officer of her state, particularly if the constitutionality of a state statute is at issue. Because States have "a manifest legal interest in defending the constitutionality of [their] laws," *Ne. Ohio Coal. for Homeless & Serv. Employees Int'l Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1007 (6th Cir. 2006), and because State Attorneys General typically enjoy primary, if not exclusive, authority to speak on behalf of their respective States in appellate matters, *see, e.g.*, *Bethune-Hill*, 139 S. Ct. at 1951, they are in a qualitatively different position than the U.S. House is in this case.

an injunction forbidding its enforcement anywhere in the country. ROA.530-35.

The Supreme Court has repeatedly held that the type of declaratory relief issued below suffices to confer standing. In *Franklin v. Massachusetts*, for example, it held that the Commonwealth of Massachusetts had standing to challenge the federal government's formula for allocating overseas employees to various States in conducting the 1990 census. 505 U.S. 788, 796 (1992). The Court's plurality opinion noted that "Massachusetts would have had an additional Representative if overseas employees had not been allocated at all" and that this injury was "likely to be redressed by declaratory relief against the Secretary alone." *Id.* at 802-03 (op. of O'Connor, J.). It concluded that "we may assume it is substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision by the District Court, even though they would not be directly bound by such a determination." *Id.* at 803 (op. of O'Connor, J.). The Court reiterated this conclusion a decade later in *Utah v. Evans*, which also involved a State's challenge to the federal government's census methodology. 536 U.S. 452, 464 (2002) (quoting *Franklin*, 505 U.S. at 803 (op. of O'Connor, J.)); *see also Allco Fin. Ltd. v. Klee*, 861 F.3d 82, 96 (2d Cir. 2017); *Los Angeles County Bar Ass'n v. Eu*, 979 F.2d 697, 701 (9th Cir. 1992).

The only reason that the district court did not enter a nationwide injunction here is that the federal government assured the district court that injunctive relief was unnecessary. The district court entered the judgment at issue in response to State Plaintiffs' motion for a preliminary injunction prohibiting the federal government "from enforcing the Patient Protection and Affordable Care Act and its associated

regulations." ROA.570. The State Plaintiffs explained that, because the individual mandate is unconstitutional and inseverable from the rest of the ACA, the preliminary injunction should apply to the entirety of the law and should apply nationwide: While "an injunction limited to the individual mandate and its most closely related provisions—the guaranteed-issue and community-rating requirements—can logically and equitably be limited to the Plaintiff-States and those living and operating within their boundaries, an injunction against the entire ACA must operate on a nationwide basis." ROA.2466. Invalidating the entire ACA only as to the Plaintiff States "would force citizens from the Plaintiff-States to heavily subsidize non-Plaintiff-States with their general tax dollars," a patently inequitable result. ROA.2466.

The district court ultimately agreed with the State Plaintiffs that the ACA is unconstitutional and inseverable, but it declined to issue a preliminary injunction and instead "[c]onstru[ed] the Plaintiffs' Application for Preliminary Injunction . . . as a motion for partial summary judgment." ROA.2612. It did so in response to a request from the federal government, ROA.2501; ROA.2757, that claimed that "entering a declaratory judgment . . . would be adequate relief against the government," ROA.1581. In making this request, the federal government cited *Florida ex rel. Bondi v. U.S. Dep't of Health & Human Servs.*, 780 F. Supp. 2d 1256, 1305 (N.D. Fla. 2011). This decision, which addressed an earlier challenge to the ACA, concluded that the ACA was unconstitutional but granted declaratory relief rather than injunctive relief. It reasoned that, in light of the "long-standing presumption 'that officials of the Executive Branch will adhere to the law as declared by the court . . . the declaratory judgment is the functional equivalent of an injunction.'" *Id.* (citation omitted).

In sum, the district court issued the declaratory judgment at issue here because, while it agreed with the State Plaintiffs on the merits of the case, it credited the federal government's representations that it would comply with a declaratory judgment. And if this Court were to affirm the district court's decision, the federal government has given this Court no reason to doubt that it will so comply—without geographic limitation. *See, e.g.*, *Poe v. Gerstein*, 417 U.S. 281, 281 (1974) (per curiam) (holding that the district court properly refused to issue an injunction "[b]ecause it was anticipated that the State would respect the declaratory judgment").

b. As a result, the State Intervenors can point to record evidence to support a "threat of injury," *Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983), that is "concrete," "actual," and "imminent," *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up). As the State Intervenors alleged in their intervention motion, a "ruling declaring the ACA unconstitutional would immediately stop the flow of federal funding" to the State Intervenors. ROA.240. Given the federal government's representations that it would comply with the district court's order without limitation, the threat provides adequate grounds to establish the State Intervenors' standing. State Plaintiffs do not dispute that stopping the transfer of taxpayer money to the Intervenor States constitutes an "injury" sufficient to maintain Article III standing. *See, e.g.*, *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017) ("For standing purposes, a loss of even a small amount of money is ordinarily an 'injury.'").

II. This Appeal Presents a Live Case or Controversy Under *United States v. Windsor*.

At any rate, this case presents a live case or controversy under *Windsor*. There,

Windsor sought a refund of estate taxes she paid after the death of her same-sex spouse. 570 U.S. at 753. DOMA did not permit a refund. *Id.* Windsor sued, arguing that DOMA was unconstitutional. *Id.* The Department of Justice agreed that DOMA was unconstitutional, but rather than simply refund her taxes, continued to enforce DOMA and asked the courts to declare DOMA unconstitutional. *Id.* at 753-54.

The Supreme Court held, by a vote of 5-4, that this scenario presented a live case or controversy. Even though the plaintiff (Windsor) and the defendant (the federal government) both agreed that DOMA was unconstitutional and that the plaintiff was entitled to a tax refund, the fact that the federal government had not yet paid the refund was sufficient to create a case or controversy. *Id.* at 757-60.

The dissenting Justices pointed out that *Windsor's* holding is a doctrinal aberration untethered to Article III of the Constitution. They explained that, from the very beginning, effectively no controversy ever existed between Windsor and the United States. As Justice Scalia noted, "Article III requires not just a plaintiff (or appellant) who has standing to complain but an opposing party who denies the validity of the complaint." *Id.* at 784 (Scalia, J., dissenting). By holding otherwise, he argued, the majority rested on the "the counterintuitive notion that an Article III 'controversy' can exist without disagreement between the parties." *Id.* at 785. And scholars have faulted *Windsor* for creating a special carveout to normal standing rules for the federal government. *See, e.g.*, Richard H. Fallon, Jr., *The Fragmentation of Standing*, 93 Tex. L. Rev. 1061, 1086 (2015) ("*Windsor* will enter the United States Reports as a decision about the standing of the United States, in contrast with most if not all other litigants, to appeal from judgments with which it agrees on the merits.").

But there is no basis to disregard that special carve-out here. As in *Windsor*, the federal government agrees with the State Plaintiffs that the ACA is unlawful. It filed a notice of appeal on January 4, 2019, ROA.2844-45, and then filed a brief agreeing with the State Plaintiffs. Yet the federal government continues to enforce the ACA in the Plaintiff States, just as the federal government in *Windsor* continued to enforce DOMA as to Windsor. *See* 570 U.S. at 757-58. That posture fits *Windsor* and presents a live case or controversy. Because subject-matter jurisdiction under Article III is satisfied, the Court should proceed to the merits. And, on the merits, the Court should hold that the ACA is unlawful in its entirety and affirm the judgment below.

III. Under No Circumstances Should the Judgment Below Be Vacated.

The Court has appellate jurisdiction and should decide the merits of this appeal. But even if it concluded it lacks appellate jurisdiction, vacatur is inappropriate. The doctrine in *United States v. Munsingwear, Inc.*, counsels vacatur when a party that *prevails* in a lower court moots the case while on appeal to preserve his victory. 340 U.S. 36, 39-41 (1950); *accord U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25-26 (1994). That doctrine has no application when—as would be the case here—the *losing* party abandons his appeal. In *Bancorp*, the Court held that when a "losing party has voluntarily forfeited his legal remedy by the ordinary process[] of appeal"—there, by choosing to settle the case—he "surrender[s] his claim to the equitable remedy of vacatur." 513 U.S. at 25.

Here, the State Plaintiffs prevailed in the district court over the federal government. The federal government, as the losing party below, filed a notice of appeal on January 4, 2019. ROA.2844-45. But on March 25, 2019, the federal government filed

a letter effectively dismissing its own appeal.

As numerous courts have recognized, it would be quite improper to vacate a lower-court judgment simply because the losing party abandons an appeal. In *EPA v. New Jersey*, for instance, the Department of Justice filed a petition for certiorari. No. 08-512, 2008 WL 4619509 (U.S. 2008). But while that petition was pending, it changed its view and moved to withdraw the petition. The Court duly dismissed it—without altering the decision below. *EPA v. New Jersey*, 555 U.S. 1162 (2009). In *ODonnell v. Salgado*, several county judges appealed a ruling against them in their official capacities. 913 F.3d 479, 481 (5th Cir. 2019) (per curiam). New judges were elected who took a different position and dismissed the appeal. *Id.* They then sought to vacate an earlier published stay opinion, citing *Munsingwear*. *Id.* at 481-82. The court rejected that argument as "seriously flawed," *id.* at 481, noting that the appeal only became moot when the losing party "declined to pursue its appeal," *id.* at 482 (quoting *Karcher v. May*, 484 U.S. 72, 83 (1987)).

Nothing justifies vacatur of the district court's judgment under these circumstances. Indeed, if a losing party could vacate the unfavorable judgment simply by changing his position on appeal, no judgment would ever stand.[5]

* * *

The Court should resolve the merits of this appeal and affirm.

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[5] In any event, if the Court questions its appellate jurisdiction because it cannot ascertain the scope of the judgment below and its effect on the State Intervenors, the proper course would be to remand for clarification. That is especially important here because the State Plaintiffs have consistently requested nationwide relief and understood the district court's partial final judgment to apply nationwide.

Respectfully submitted.

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Certificate of Service

On July 5, 2019, this supplemental letter brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) as set out in this Court's order of June 26, 2019, the document is filed only as an electronic submission, with no forthcoming exact paper copy to be filed in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Kyle D. Hawkins
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Certificate of Compliance

This brief is no more than 15 pages in length and otherwise complies with the requirements set out in this Court's order of June 26, 2019. In particular, this supplemental letter brief complies the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the same program used to calculate the word count).

/s/ Kyle D. Hawkins
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