
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TRACIE T. BOREL, ON BEHALF OF HER MINOR CHILDREN, AL AND RB;
GENEVIEVE DARTEZ, ON BEHALF OF HER GREAT-GRANDCHILD, DD,

Plaintiffs-Appellees

v.

SCHOOL BOARD SAINT MARTIN PARISH,

Defendant-Appellant

v.

UNITED STATES OF AMERICA,

Intervenor-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

OPPOSITION OF THE UNITED STATES TO APPELLANT'S PETITION
FOR REHEARING EN BANC

KRISTEN CLARKE
Assistant Attorney General

ERIN H. FLYNN
ANNA M. BALDWIN
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 305-4278

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	
INTRODUCTION	1
STATEMENT	3
ARGUMENT	9
<i>A. Consistent With Supreme Court And Circuit Precedent, The Panel Correctly Held That The District Court Continues To Have Remedial Jurisdiction</i>	<i>10</i>
<i>B. The Panel's Fact-Bound Affirmance Of The District Court's Denial Of Unitary Status Is Amply Supported By The Record And Does Not Conflict With Any Decisions Of The Supreme Court Or This Court</i>	<i>12</i>
CONCLUSION	18
CERTIFICATE OF SERVICE	
CERTIFICATE OF COMPLIANCE	

TABLE OF AUTHORITIES

CASES:	PAGE
<i>Allen v. Louisiana</i> , 14 F.4th 366 (5th Cir. 2021).....	11
<i>Anderson v. School Bd. of Madison Cnty.</i> , 517 F.3d 292 (5th Cir. 2008)	3, 10, 12
<i>Board of Educ. of Okla. City Pub. Schs. v. Dowell</i> , 498 U.S. 237 (1991)	3
<i>Brumfield v. Louisiana State Bd. of Educ.</i> , 806 F.3d 289 (5th Cir. 2015)	9
<i>Davis v. East Baton Rouge Par. Sch. Bd.</i> , 721 F.2d 1425 (5th Cir. 1983).....	10
<i>Freeman v. Pitts</i> , 503 U.S. 467 (1992).....	3-4, 15
<i>Green v. County Sch. Bd.</i> , 391 U.S. 430 (1968).....	15
<i>Keyes v. School Dist. No. 1, Denver</i> , 413 U.S. 189 (1973).....	14
<i>Local No. 93, Int’l Ass’n of Firefighters v. City of Cleveland</i> , 478 U.S. 501 (1986).....	11
<i>Missouri v. Jenkins</i> , 515 U.S. 70 (1995)	3
<i>Pasadena City Bd. of Educ. v. Spangler</i> , 427 U.S. 424 (1976).....	15
<i>Ross v. Houston Indep. Sch. Dist.</i> , 699 F.2d 218 (5th Cir. 1983)	4, 7
<i>Smith v. School Bd. of Concordia Par.</i> , 906 F.3d 327 (5th Cir. 2018)	9, 11-12
<i>Swann v. Charlotte-Mecklenburg Bd. of Educ.</i> , 402 U.S. 1 (1971)	15
<i>Thomas v. School Bd. St. Martin Par.</i> , 756 F.3d 380 (5th Cir. 2014).....	1, 3
<i>United States v. Fletcher ex rel. Fletcher</i> , 882 F.3d 151 (5th Cir. 2018).....	12
<i>Valley v. Rapides Par. Sch. Bd.</i> , 646 F.2d 925 (5th Cir. 1981).....	9

RULES:	PAGE
Fed. R. App. P. 35(a)	9
Fed. R. App. P. 35(b)	9
5th Cir. R. 35.1	9
5th Cir. I.O.P. 35	9

Pursuant to this Court’s orders dated September 28, 2022, and September 30, 2022, the United States respectfully submits this opposition to appellant’s petition for rehearing en banc.

INTRODUCTION

In 2014, this Court held that the district court retained jurisdiction in this long-running school desegregation case, notwithstanding the fact that the case had been on the district court’s inactive docket for several decades. *Thomas v. School Bd. St. Martin Par.*, 756 F.3d 380, 386 (5th Cir.). This Court remanded the case to the district court to determine “whether the vestiges of *de jure* segregation had been eliminated as far as practicable.” *Id.* at 388 (citation omitted).

On remand, the School Board did not argue that no vestiges of discrimination remained. Instead, “for *five years*, it engaged in extensive discovery, conceded that it was no longer ‘seeking a finding of unitary status’ in student assignment, and entered into several consent orders” committing the Board to take further steps to eliminate the remaining vestiges of discrimination. Panel Op. 6.

In the years following the 2014 remand, the School Board satisfied its constitutional obligations in some areas and the district court accordingly declared the school district unitary in the areas of transportation, staff assignment, facilities, and extracurricular activities. See ROA.2243, 7107, 7109, 15587. But not all

vestiges of discrimination have been eliminated to the extent practicable. Thus, in June 2021, the district court correctly denied the School Board's motion for unitary status as to student assignment and quality of education regarding discipline. On appeal, the merits panel correctly rejected the School Board's effort to reverse course and argue—notwithstanding this Court's 2014 decision and the Board's subsequent agreement to multiple consent orders—that the district court never had jurisdiction on remand to do anything other than dismiss this case.

While the United States shares the Board's desire for federal court involvement in the school district to end, such action is not warranted until the Board complies in good faith with the consent orders to which it has agreed and eliminates the remaining vestiges of *de jure* discrimination in its school system. The panel correctly applied Supreme Court and circuit precedent in affirming the fact-bound denial of unitary status. Further review is unwarranted. If anything, it would be an abuse of the en banc process to allow the Board to again seek to void the obligations that it agreed to, but has not fulfilled, in binding consent orders. Rather, each party's attention should be on the work necessary to bring the School Board into compliance and this case to an end.

STATEMENT

1. The Supreme Court has long made clear that, in a suit to enforce the constitution's ban on racially segregated schools, a school district may be released from a federal district court's jurisdiction only after the court has determined that the school district has: (1) fully and satisfactorily complied with the court's decrees for a reasonable period of time; (2) eliminated the vestiges of prior *de jure* segregation to the extent practicable; and (3) demonstrated a good-faith commitment to the whole of the court's decrees and to those provisions of the law and the constitution that were the predicate for judicial intervention. *Board of Educ. of Okla. City Pub. Schs. v. Dowell*, 498 U.S. 237, 249-250 (1991); *Freeman v. Pitts*, 503 U.S. 467, 491, 498 (1992); *Missouri v. Jenkins*, 515 U.S. 70, 87-89 (1995); *Anderson v. School Bd. of Madison Cnty.*, 517 F.3d 292, 297 (5th Cir. 2008).

2. In 2014, this Court held that the district court retained remedial jurisdiction in this case because the court had not made an unambiguous determination that the School Board had eliminated the vestiges of discrimination to the extent practicable. *Thomas v. School Bd. St. Martin Par.*, 756 F.3d 380, 387 (5th Cir. 2014). On remand, the Board did not insist, as it has in this appeal, that the school district achieved unitary status in 1974 and that the district court lacked authority to do anything other than dismiss this case. Appellant's Br. 13. Nor did

the Board seek a judgment that it had already eliminated all vestiges of discrimination or carry its burden of proof, as required under Supreme Court and this Court's precedent, in making any such showing. *Freeman*, 503 U.S. at 494; see also *Ross v. Houston Indep. Sch. Dist.*, 699 F.2d 218, 225 (5th Cir. 1983) ("Public school officials * * * must demonstrate to the district court overseeing their desegregation efforts that current segregation is in no way the result of [their] past segregative actions." (citation and internal quotation marks omitted; brackets in original)).

Instead, the Board entered into a series of consent decrees addressing student assignment, faculty and staff assignment, transportation, and quality of education to "facilitate both the Board's fulfillment of its affirmative desegregation obligations and the termination of judicial supervision." ROA.3872. The Board admitted that "full compliance" with these orders "will support a finding that the District has complied with both the letter and spirit of the orders and desegregation law, and that the vestiges of past discrimination have been eliminated to the extent practicable." ROA.3873-3874.¹

a. In the Student Assignment Consent Order the Board "agree[d]" to undertake steps "designed to eliminate the vestiges of the prior discrimination."

¹ Since entry of those orders, the district court has declared the school district unitary in the areas of transportation, staff assignment, facilities, and extracurricular activities. See ROA.2243, 7107, 7109, 15587.

ROA.3891. In moving for entry of this Order, the Board informed the court that it was withdrawing an earlier motion for unitary status and was “no longer” arguing “for a finding of unitary status in the area of student assignment.” ROA.2532-2533.

At the time that the Student Assignment Consent Order was entered in 2016, the majority of schools in the District—10 of the 16 schools—remained racially identifiable, meaning that they departed by more than 15 percentage points from district-wide student enrollment demographics by race for comparable grade levels. ROA.3888. When the parties jointly moved for entry of the Student Assignment Consent Order, the district court held a hearing on whether the Order was appropriate and likely to eliminate existing vestiges of discrimination. ROA.17311-17316. Over three days, the court “reviewed the draft of th[e] consent decree with the parties several times,” “heard evidence on the decree,” and “visited several of the schools affected by the decree” before entering the Order. ROA.17428; see also ROA.2663. The Order states that the district court concluded that its entry “is consistent with the Fourteenth Amendment * * * and that such entry will further the orderly desegregation of the [District].” ROA.3872.

b. The Discipline Consent Order that the Board agreed to in 2016 states that its provisions are intended to ensure “that the District administers student discipline in a fair and non-discriminatory manner, addresses disproportionate

assignment of exclusionary sanctions to Black students, and provides all students with an equal opportunity to learn in a safe, orderly, and supportive environment.”

ROA.3986. The Order mandates that “[e]xcept as required by law, the District shall not administer exclusionary discipline consequences prior to attempting and documenting non-exclusionary” strategies and measures. ROA.3986.

c. Both the Student Assignment and Discipline Consent Orders were combined in November 2016 into the Superseding Consent Order, which states that it “reflects the District’s obligations under the United States Constitution * * * and sets forth the remedial measures to be taken by the Board to eliminate, to the extent practicable, the vestige of the former segregated system in the District.” ROA.3873, 3878.

3. Between September 2020 and January 2021, the District moved for a declaration of unitary status and dismissal of the case in the remaining areas of court supervision, *i.e.*, student assignment, faculty assignment, and quality of education, including both academic achievement and discipline. ROA.8478, 9098. The United States opposed the motions for unitary status as to student assignment and discipline and took no position as to faculty assignment or academic achievement. ROA.14492, 15816-15817.

In a 160-page memorandum ruling issued after a six-day hearing on the motions (ROA.15793-15802, 16395), the district court found that the school

district was not unitary in student assignment, faculty assignment, and quality of education with respect to discipline and graduation pathways. ROA.16906-16907.

a. In evaluating whether the District had achieved unitary status in the area of student assignment, the district court acknowledged that “a school system is not required to have ‘a racial balance in all of the schools.’” ROA.16629 (quoting *Ross*, 699 F.2d at 227-228). The court determined that the Board in this case, however, had failed to achieve unitary status as to student assignment. The court found that the Board did not satisfy the agreed-upon +/-15 percentage point desegregation goal in the elementary schools in the St. Martinville Zone—Catahoula Elementary, the Early Learning Center, and St. Martinville Primary.

The court found that the persistent racial imbalance that remains in the St. Martinville Zone is a product of the underlying constitutional violation, and that “the white racial identifiability of Catahoula results directly from the fact that the District intentionally built the school in a white town for white students.”

ROA.16791. The court further found that the reason St. Martinville Primary and the Early Learning Center continue to be majority Black, racially identifiable schools is because “the District continues to operate Catahoula” as a majority white, racially identifiable school. ROA.16791. The court concluded that the continued racial segregation in these elementary schools is not the product of changes in the racial demography of relevant neighborhoods (ROA.16791), and

that the ongoing racial identifiability of these schools means that approximately one-third of Black elementary students in the District remain in racially identifiable schools. ROA.16770-16771.

b. The district court also found that the District was not entitled to a declaration of unitary status in the area of discipline because it had failed to comply with relevant provisions of the Discipline Consent Order. In particular, the court found that the District has not reduced its reliance on exclusionary discipline measures and was not using and documenting its use of non-exclusionary interventions, as required by the consent order. ROA.16871.

c. Finally, the district court held that plaintiffs were entitled to additional equitable relief, including the court-ordered closure of Catahoula Elementary, to bring the School Board into compliance with its constitutional obligations. ROA.16813.

4. On appeal, the merits panel affirmed in part and reversed in part. Panel Op. 1-2. The panel first held that the district court properly exercised remedial jurisdiction over the case. Panel Op. 5. The panel explained that two reasons supported this conclusion. First, because jurisdiction extends to the “the correction of the constitutional infirmity,” jurisdiction persists in this case because the Board, in agreeing to remedial measures in multiple consent orders, conceded that the underlying constitutional violation has not been remedied to the extent practicable.

Panel Op. 4-5 (quoting *Brumfield v. Louisiana State Bd. of Educ.*, 806 F.3d 289, 298 (5th Cir. 2015)). Second, the panel explained that “a district court may also obtain remedial authority over litigation from a party’s voluntary entrance into a consent decree.” Panel Op. 5 (citing *Smith v. School Bd. of Concordia Par.*, 906 F.3d 327, 334 (5th Cir. 2018)).

The panel also affirmed the denial of unitary status, holding, under clear error review, that the district court’s factual determinations were substantially and plausibly supported by the record. Panel Op. 7-11. The panel reversed as to the closure of Catahoula Elementary, concluding that the district court abused its discretion in ordering this remedy because the record did not show that doing so was “absolutely necessary” to achieve desegregation. Panel Op. 13 (citing *Valley v. Rapides Par. Sch. Bd.*, 646 F.2d 925, 940 (5th Cir. 1981)).

ARGUMENT

En banc review is warranted only when the panel decision conflicts with a decision of the Supreme Court or this Court or where “the proceeding involves a question of exceptional importance,” such as “an issue on which the panel decision conflicts with the authoritative decisions of other” circuit courts. Fed. R. App. P. 35(a) and (b); see 5th Cir. R. 35.1 & I.O.P. 35. Neither circumstance exists here.

A. Consistent With Supreme Court And Circuit Precedent, The Panel Correctly Held That The District Court Continues To Have Remedial Jurisdiction

The Board argues that the panel erred by “[s]imply [a]ssum[ing] an [o]ngoing [c]onstitutional [v]iolation.” Pet. 4. But the panel made no such error.

Jurisdiction in this case was established by the original constitutional violation and only terminates once the Board carries its burden of proof in showing that all vestiges of discrimination have been eliminated to the extent practicable. *Anderson v. School Bd. of Madison Cnty.*, 517 F.3d 292, 294 (5th Cir. 2008); accord *Davis v. East Baton Rouge Par. Sch. Bd.*, 721 F.2d 1425, 1434 (5th Cir. 1983) (explaining that until “the system-wide effects” of past discrimination are eliminated “root and branch,” a district court “must retain jurisdiction to insure that the present effects of past segregation are completely removed” (citation omitted)).

While it is of course true that the parties cannot stipulate to a “legal conclusion” that jurisdiction exists (Pet. 6), the Board conceded the factual existence of continuing vestiges of discrimination. On remand, the Board affirmatively conceded that it was not seeking a finding of unitary status as to student assignment. The Board then entered into the Student Assignment Consent Order, which states its provisions are “designed to eliminate the vestiges of the prior discrimination.” ROA.3891. The face of the Order further states that “[t]he parties agree that entry of this Consent Order * * * will facilitate * * * the District’s fulfillment of its affirmative desegregation obligations in the area of

student assignment.” ROA.3884. The Order also explains that the district court has determined that the Order is “consistent with the Fourteenth Amendment * * * and that [its] entry will further the orderly desegregation of the District.” ROA.3884.

The Board’s argument that the Student Assignment Consent Order, on its face, does not admit the existence of ongoing vestiges of discrimination is baseless. As such, this Court’s decision in *Allen v. Louisiana*, 14 F.4th 366 (5th Cir. 2021), is inapposite because this case involves factual admissions that the original constitutional violation has not been remedied because vestiges of discrimination remain. The panel correctly concluded that the School Board’s jurisdictional arguments are “fatally undermined by its own post-remand actions.” Panel Op. 6.

The panel was also correct in holding that, under Supreme Court and this Court’s case law, the School Board’s assumption of obligations under the Superseding Consent Order and its underlying orders “confers remedial jurisdiction on the district court to enforce those obligations.” Panel Op. 6 (citing *Smith v. School Bd. of Concordia Par.*, 906 F.3d 327, 334 (5th Cir. 2018)). Upon entering the parties’ agreed-upon consent orders, the district court had full authority to enforce the terms of the parties’ contractual bargain. *Local No. 93, Int’l Ass’n of Firefighters v. City of Cleveland*, 478 U.S. 501, 522 (1986) (“[I]t is the agreement of the parties, rather than the force of the law upon which the

complaint was originally based, that creates the obligations embodied in a consent decree.”). In *Smith*, this Court rejected the argument of a charter school that it was not subject to the district court’s remedial authority, given that the school had agreed to the terms of a consent decree. 906 F.3d at 334. *Smith*’s holding that a district “court can enforce desegregation obligations incorporated into a consent decree against a party that entered that decree” is fully applicable in this case. *Ibid*.

B. The Panel’s Fact-Bound Affirmance Of The District Court’s Denial Of Unitary Status Is Amply Supported By The Record And Does Not Conflict With Any Decisions Of The Supreme Court Or This Court

The Board’s further arguments (Pet. 12-17) that the panel erred in affirming the denial of unitary status as to student assignment and discipline also fail. The panel properly evaluated these fact-bound, record-specific questions.

1. To achieve unitary status as to student assignment, the Board was required to demonstrate that it has both “complied in good faith with desegregation orders” for a period of at least three years and has also “eliminated the vestiges of prior *de jure* segregation to the extent practicable.” *Anderson*, 517 F.3d at 297; see *United States v. Fletcher ex rel. Fletcher*, 882 F.3d 151, 157-160 (5th Cir. 2018). The panel correctly held that the Board could not meet the showing required under either the vestiges prong or the compliance prong of the analysis. Panel Op. 7-9.

The Board does not contest that four schools that are subject to the Student Assignment Consent Order—Catahoula Elementary, St. Martinville Primary, the

Early Learning Center, and Celia High—have racially skewed student enrollments that fall outside of the Order’s +/-15 percentage point desegregation standard.

While the district court was not troubled by Celia High’s “modest deviation” from the desegregation goal, the same was not true for the elementary schools in the St. Martinville Zone. ROA.16769.

Instead, the court found both that “the white racial identifiability of Catahoula results directly from the fact that the District intentionally built the school in a white town for white students” and that “the extent of the Black racial identifiability of [St. Martinville Primary] and [the Early Learning Center] is a result of the fact that the District continues to operate Catahoula.” ROA.16791. The court further found that the ongoing racial identifiability of these schools was not caused by demographic changes: to the contrary, “the cause of schools in the St. Martinville Zone remaining racially identifiable is that the demographics *have not* meaningfully changed during the period of Court supervision.” ROA.16792.

The panel appropriately found that it was “plausible in light of the record” in this case to find that such racial imbalances are vestiges of *de jure* segregation. Panel Op. 8. As the panel noted, an expert witness testified before the district court that “Catahoula Elementary School was historically an all-white school, has remained virtually all-white in the interim period, and therefore has been persistently racially identifiable.” Panel Op. 8. The panel further noted that the

Board had “failed to present any countervailing evidence contradicting the District’s intent in selecting Catahoula Elementary School’s location.” Panel Op. 8.

Contrary to the Board’s argument, the panel in no way predicated its affirmance on an assumption that “residential racial separation is generally a product of past segregated school[s].” Pet. 8 (citation omitted). Instead, the panel concluded that the district court’s finding that intentional discrimination spurred the creation of Catahoula Elementary in an all-white community (and the creation of separate, dual schools for Black children in St. Martinville) was reasonable based on the record before the district court. Panel Op. 8-9. That record-specific conclusion is consistent with governing precedent. See *Keyes v. School Dist. No. 1, Denver*, 413 U.S. 189, 208 (1973) (“[I]ntentionally segregative school board actions in a meaningful portion of a school system, as in this case, create[] a presumption that other segregated schooling within the system is not adventitious.”).

The panel’s affirmance that the Board also failed to make the required showing at the compliance prong—which, by itself, would also have required denial of the motion for unitary status—is likewise well-supported. By failing to meet the +/-15 percentage point desegregation goal set out in the Student Assignment Consent Order, the “Board failed at its own agreed-upon metric.”

Panel Op. 9. Given that failure, the district court did not clearly err in finding that the Board failed to make the required showing of compliance.

There is no basis for the Board's argument that either the panel or the district court somehow erred in treating the consent order's +/-15 percentage point desegregation goal as a rigid "racial quota." Pet. 15. Compliance with the constitution requires the School Board to "make every effort to achieve the greatest possible degree of actual desegregation." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 26 (1971). Such efforts "necessarily [are] concerned with the elimination of one-race schools," *ibid.*, and other racially-identifiable student bodies that are "traceable, in a proximate way, to the prior violation." *Freeman v. Pitts*, 503 U.S. 467, 494 (1992). The agreed-upon desegregation goal provides a starting point for the district court to assess whether the Board has successfully completed the core task in a school desegregation case: converting a *de jure* segregated school system with dual schools to a system without racially identifiable "white" schools or "black" schools. *Green v. County Sch. Bd.*, 391 U.S. 430, 442 (1968).

In this case, the desegregation goal allows for a wide band of compliant enrollment figures and was not inflexibly applied. See *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424, 434 (1976). Where Black students make up 46% of the relevant elementary school population, elementary schools with Black student

enrollment between 31% and 61% meet the desegregation standard and are not considered racially identifiable. ROA.3890. Moreover, under the consent order's own terms, kindergarten and first grade at Catahoula Elementary and the entirety of Stephenville Elementary, which is overwhelmingly white but geographically isolated, are exempted from compliance with the standard. ROA.3894, 3896. Nor did the district court treat slight non-compliance with the goal at Celia High as weighing against the Board. ROA.16769.

There was no legal or factual error in the panel's affirmance of the denial of unitary status as to student assignment, nor is the issue of such exceptional significance to warrant en banc review.

2. The Board likewise fails to identify any error in the panel's affirmance of the denial of unitary status as to quality of education regarding discipline. In the Discipline Consent Order, the Board agreed "not [to] administer exclusionary discipline consequences prior to attempting and documenting non-exclusionary corrective strategies and interventions." ROA.3986. But the district court found that the Board failed even to document its use of such alternative strategies, much less to succeed in reducing the sustained racial disparities in exclusionary discipline over a three-year period, as required under the Discipline Consent Order. ROA.16852-16853, 16871-16872, 16875. The panel correctly explained that "the

record evidence flatly demonstrates that the School Board failed to take” the actions required under the Discipline Consent Order. Panel Op. 11.

Finally, the Board fails entirely to acknowledge that the district court also credited an unrebutted expert statistical analysis showing that “the observed racial disparities in discipline are not attributable to factors such as socioeconomic status, gender, school, or grade-levels of students.” ROA.16875. The court found that the analysis showed that “the disparities are a product of racial discrimination, not other social ills or variables.” ROA.16876.

The Board has identified no basis to disturb the well-supported, record-specific conclusions of the district court and the merits panel.

CONCLUSION

The School Board's petition for rehearing en banc should be denied.

Respectfully submitted,

KRISTEN CLARKE
Assistant Attorney General

s/ Anna M. Baldwin
ERIN H. FLYNN
ANNA M. BALDWIN
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 305-4278

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2022, I electronically filed the foregoing response with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Anna M. Baldwin
ANNA M. BALDWIN
Attorney

CERTIFICATE OF COMPLIANCE

This response complies with the length limitation of Federal Rule of Appellate Procedure 35(e) because, excluding the parts of the response exempted by Federal Rule of Appellate Procedure 32(f), this response contains 3787 words according to the word processing program used to prepare the response.

This filing also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2019 in Times New Roman 14-point font, a proportionally spaced typeface.

s/ Anna M. Baldwin
ANNA M. BALDWIN
Attorney

Date: October 18, 2022