

**IN THE
SUPREME COURT OF VIRGINIA**

Record No. _____

PETER VLAMING,

Plaintiff-Petitioner,

v.

WEST POINT SCHOOL BOARD; LAURA ABEL, in her official capacity as Division Superintendent; JONATHAN HOCHMAN, in his official capacity as Principal of West Point High School; and SUZANNE AUNSPACH, or her successor in office, in her official capacity as Assistant Principal of West Point High School,

Defendants-Respondents.

**MOTION OF THE NATIONAL ASSOCIATION OF SCHOLARS
FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF THE
NATIONAL ASSOCIATION OF SCHOLARS, IN SUPPORT OF
PETITIONER**

JAMES A. DAVIDS
Virginia State Bar No. 69997
JOSHUA HETZLER
Virginia State Bar No. 89247
FOUNDING FREEDOMS LAW
CENTER
707 East Franklin Street
Richmond, VA 23219
Telephone: (804) 971-5509
Facsimile: (804) 343-0050
jim@foundingfreedomslaw.org
josh@foundingfreedomslaw.org

RANDALL L. WENGER*
JEREMY L. SAMEK*
INDEPENDENCE LAW CENTER
23 North Front Street
Harrisburg, PA 17101
Telephone: (717) 657-4990
Facsimile: (717) 545-8107
rwenger@indlawcenter.org
jsamek@indlawcenter.org

**pro hac vice* application pending

**MOTION OF THE NATIONAL ASSOCIATION OF
SCHOLARS FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*
OF THE NATIONAL ASSOCIATION OF SCHOLARS, IN
SUPPORT OF PETITIONER**

Pursuant to Rule 5:30(c), the National Association of Scholars respectfully moves this Court for leave to file the attached brief *amicus curiae* in support of petitioner. Petitioner and Respondent have granted consent.

The National Association of Scholars is a non-profit organization that seeks to reform higher education. Founded in 1982 as Campus Coalition for Democracy and known since 1987 as the National Association of Scholars, it is a leading advocate for academic freedom, disinterested scholarship, and excellence in American higher education. It has served as amicus within several federal circuits, including cases such as *Meriwether v. Hartop*, 992 F. 3d 492 (6th Cir. 2021), *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012); *Grutter v. Bollinger*, 288 F.3d 732 (6th Cir. 2002), *aff'd*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 122 F. Supp. 2d 811 (E.D. Mich. 2000), *rev'd in part*, 539 U.S. 244 (2003); *Buchanan v. Alexander*, 919 F.3d 847 (5th Cir.); *Fisher v. Univ. of Texas at*

Austin, 644 F.3d 301 (5th Cir. 2011); and *Keeton v. Anderson-Wiley*, 664 F.3d 865 (11th Cir. 2011).

This case is particularly appropriate for the associated scholars to speak to the Court, as the school administrators are insisting that a teacher speaking sex-based pronouns is speech that is “not protected by the Virginia Constitution.” Def’s Memorandum in Support of Demurrer and Plea in Bar at 8. School officials deem Mr. Vlaming’s use of pronouns as simply “part of his official duties as a high school teacher.” *Id.*

Pronouns have long been used to inculcate worldviews—even at the cost of conscience, as in Mr. Vlaming’s case. Manipulating pronouns to inculcate values has become common in contemporary academia. Typically, this has been employed as part of “social transitioning,” in which a person claiming a gender discordant with their sex insists on being affirmed in their perceived gender. World Prof. Ass’n for Transgender Health, *Standards of Care* 16 (2011) (noting use of gender-based pronouns in social transition).

But there is substantive, important meaning embedded in pronouns, and there are solid linguistic, philosophical, and

biological reasons why a speaker might choose to use pronouns in alignment with the biological sex of the referent. For a teacher to speak according to his conscience and best academic judgment is not wrongful, invidious discrimination; it is an exercise in academic freedom, and as such it must be protected.

At issue in this case is whether school administrators are justified in forcing a teacher to speak gender-based pronouns when that usage conflicts with that teacher's convictions regarding the biological realities of sex.

Answering that question largely turns on whether pronouns have more than a ministerial role in English, and particularly in the gender identity context. And this is where the associated scholars may be of substantial benefit to the Court.

As the scholars explain in their brief, pronoun use has been deployed to shape values by advocates ranging from feminists to Quakers. Pronouns embed metaphysical and ontological meaning—such that authors may intentionally misuse a pronoun to communicate a deeper meaning. And in this case, the use (or non-use) of gender-based pronouns implicates the same value-

shaping, metaphysical, and ontological concerns and thus falls within the exercise of academic freedom.

CONCLUSION

The National Association of Scholars offers its scholarly viewpoint on the importance and meaning of pronouns in the context of this case. Pronouns are rife with meaning and merit legal protection. School administrators conditioned Mr. Vlaming's employment on his use of speech contrary to his beliefs and academic judgment. For this reason, in deciding the case, it is relevant to consider the implications of meaning in language, as well as the rationale of those who choose to use pronouns in accordance with Standard English usage.

Scholarly views from a well-established and credible scholars' association are most apropos to providing "information on matters of law about which there [is] doubt, especially in matters of public interest." *United States v. Michigan*, 940 F.2d 143, 164 (6th Cir. 1991). And to that end, the National Association of Scholars respectfully seeks this Court's leave to file the

attached *amicus curiae* brief supporting the Petitioner, Mr. Vlaming.

Dated: November 12, 2021

Respectfully submitted,

/s/ Joshua Hetzler
JOSHUA HETZLER (VSB #89247)
JAMES A. DAVIDS (VSB #69997)
FOUNDING FREEDOMS
LAW CENTER
707 East Franklin Street
Richmond, VA 23219
Tel: (804) 971-5509
Fax: (804) 343-0050
jim@foundingfreedomslaw.org
josh@foundingfreedomslaw.org

RANDALL L. WENGER*
JEREMY L. SAMEK*
INDEPENDENCE LAW CENTER
23 North Front Street
Harrisburg, PA 17101
Tel: (717) 657-4990
Fax: (717) 545-8107
rwenger@indlawcenter.org
jsamek@indlawcenter.org

**pro hac vice* application pending

CERTIFICATE OF SERVICE

I certify that this 12th day of November, 2021, electronic and paper copies of the foregoing were served by electronic mail and first-class mail, respectively, on:

CHRISTOPHER P. SCHANDEVEL
Virginia State Bar No. 84412
TYSON C. LANGHOFER
Virginia State Bar No. 95204
ALLIANCE DEFENDING FREEDOM
20116 Ashbrook Place, Suite 250
Ashburn, VA 20147
Telephone: (571) 707-4655
Facsimile: (571) 707-4656
cschandevel@ADFlegal.org
tlanghofer@ADFlegal.org

J. CALEB DALTON
Virginia State Bar No. 83790
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, D.C. 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
cdalton@ADFlegal.org

SHAWN A. VOYLES
Virginia State Bar No. 43277
MCKENRY DANCIGERS DAWSON, P.C.
192 Ballard Court, Suite 400
Virginia Beach, VA 23462
Telephone: (757) 461-2500
Facsimile: (757) 461-2341
savoyles@va-law.com

STACY L. HANEY
Virginia State Bar No. 71054
ANDREW P. SELMAN
Virginia State Bar No. 91060
HANEY PHINYOWATTANACHIP PLLC
11 South 12th Street, Suite 300C
Richmond, VA 23219
Telephone: (804) 500-0301
Facsimile: (804) 500-0309
shaney@haneyphinyo.com
aselman@haneyphinyo.com

ALAN E. SCHOENFELD*
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY
Telephone: (212) 230-8800
Facsimile: (212) 230-8888
alan.schoenfeld@wilmerhale.com

TANIA FARANSSO*
EDWARD WILLIAMS
Virginia State Bar No. 88102
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
tania.faransso@wilmerhale.com
ed.williams@wilmerhale.com

**Admitted pro hac vice*

I further certify that I have filed an electronic PDF version of the foregoing with the Clerk via the Virginia Appellate Courts eBriefs System.

/s/ Joshua Hetzler
Joshua Hetzler (VSB #89247)

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capacity as Assistant Principal of West Point High School,

Defendants-Respondents.

ORDER

This Cause coming before this Court on National Association of
Scholars' Motion for Leave to File its Amicus Curiae brief in support
of Petitioner, this Court having reviewed this Motion and being
otherwise duly advised on the premises, it is hereby ORDERED that
the Motion is

GRANTED

DENIED.

Dated: _____

Justice

JAMES A. DAVIDS
Virginia State Bar No. 69997
JOSHUA HETZLER
Virginia State Bar No. 89247
FOUNDING FREEDOMS LAW CENTER
707 East Franklin Street
Richmond, VA 23219
Telephone: (804) 971-5509
Facsimile: (804) 343-0050
jim@foundingfreedomslaw.org
josh@foundingfreedomslaw.org

RANDALL L. WENGER*
JEREMY L. SAMEK*
INDEPENDENCE LAW CENTER
23 North Front Street
Harrisburg, PA 17101
Telephone: (717) 657-4990
Facsimile: (717) 545-0600
rwenger@indlawcenter.org
jsamek@indlawcenter.org

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JAMES A. DAVIDS
Virginia State Bar No. 69997
JOSHUA HETZLER
Virginia State Bar No. 89247
FOUNDING FREEDOMS LAW
CENTER
707 East Franklin Street
Richmond, VA 23219
Telephone: (804) 971-5509
Facsimile: (804) 343-0050
jim@foundingfreedomslaw.org
josh@foundingfreedomslaw.org

RANDALL L. WENGER*
JEREMY L. SAMEK*
INDEPENDENCE LAW CENTER
23 North Front Street
Harrisburg, PA 17101
Telephone: (717) 657-4990
Facsimile: (717) 545-8107
rwenger@indlawcenter.org
jsamek@indlawcenter.org

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INTEREST OF *AMICUS CURIAE*¹

The National Association of Scholars is a non-profit organization that seeks to reform higher education. Founded in 1982 as Campus Coalition for Democracy and known since 1987 as the National Association of Scholars, it is a leading advocate for academic freedom, disinterested scholarship, and excellence in American higher education. *Amicus* files this brief to lend its expertise as to the importance of academic freedom and freedom of speech in educational settings.

STATEMENT OF FACTS

Amicus defers to the Nature of the Case and Material Proceedings Below and Statement of Facts as articulated in Petitioner's Brief to the Supreme Court of Virginia.

ASSIGNMENTS OF ERROR

Amicus defers to the Assignments of Error as articulated in Petitioner's Brief to the Supreme Court of Virginia.

¹ No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or any person other than *amicus curiae* or their counsel contributed money intended to fund preparation or submission of this brief.

AUTHORITIES AND ARGUMENT

Teachers do not lose their freedom of speech simply by engaging in public employment, since the government may not condition employment upon giving up rights of expression. See *Garcetti v. Ceballos*, 547 U.S. 410 (2006). However, if Petitioner Peter Vlaming's dismissal of employment is allowed to stand, important speech protections such as academic freedom and freedom from compelled speech will be lost.

Petitioner, in employing a feminine pronoun to refer to a biological female, spoke in accordance with his beliefs about reality and his best academic judgment. By compelling Petitioner's speech, Respondents force him to lend support to one side of the gender identity debate. When they conditioned his employment on his use of a pronoun, they demanded that Petitioner assert a proposition which was contrary to his better judgment.

The issues surrounding gender identity and language are matters of ongoing debate in this country. Individuals hold differing views on this controversy, and there are legitimate, compelling

intellectual grounds for honest and respectful disagreement. Causing Petitioner to espouse a view that he disagrees with in an academic setting curtails his ability to participate honestly in an important cultural debate.

What separates a free society from a dystopian one is the ability to express dissent. Submission in matters of intellectual disagreement should not be imposed by bureaucratic fiat.

When it comes to language usage, there are solid grounds—historical, ideological, and practical—for Petitioner to use pronouns in conformity with biological sex. In doing so, Petitioner is not engaging in harmful conduct or invidious discrimination; he seeks to partake of an essential feature of a free society—to let his best judgment be the guide of his speech.

I. Spoken language—including pronouns—is the basic medium of instruction.

Pronouns are part of our spoken language, the essential medium of academic instruction. Other modes of communication may play supporting roles, but the classroom is, above all else, a place where the teacher conveys information through the use of the spoken word.

As with any freedom, this carries responsibilities which distinguish the exercise of freedom from mere license. A teacher's freedom to speak implies the responsibility and the authority to control that speech. This control extends to the manner of speaking, the content of sentences, and the deliberate choice of words.

II. Pronouns have been drafted into politics to convey meaning disproportionate to their size.

Pronouns—the set of words used as substitutes for nouns—are ubiquitous in English, and rarely attract attention until drafted for political ends. In recent decades, however, these tiny words have become a flash point in sexual politics, as shown by the ideological reaction against the unmarked (generic) use of the masculine pronoun *he*.

For roughly 1,000 years, this word performed a double role in English, serving as the third person masculine singular pronoun as well as the unmarked third person singular. The unmarked form is the generic pronoun, used for males or females when the sex of the referent is undetermined.

Starting in the 1970s, feminist activists launched the revolutionary claim that *he*, in this generic sense, encoded a sexist

preference. This criticism persuaded some to find ways to avoid the pronoun *he*. Attempts to steer clear of offense resulted in constructions as clunky as they were circuitous: the cumbersome phrase *he or she*; using *she* or *it* as replacements; random combinations of *he* and *she*; the plural pronoun *they*; and the orthographic chimera *s/he*. But language is too powerful a river to be diverted by rearranging pebbles along the banks, and none of these efforts have succeeded in totally abolishing the unmarked use of *he*.

More recently—and more radically—a new tactic spurred the concoction of novel third person pronouns (e.g., *te*, *xe*, and *zir*). This was led by the transgender and gender queer movements. Both movements reject the Standard English practice of referring to biological males with masculine pronouns and biological females with feminine pronouns. They fail to recognize that these standard usages are not merely instances of linguistic prescriptivism: masculine and feminine pronouns are grounded in the recognition—not the imposition—of an objective biological reality.

Philology confirms what the common speaker implicitly understands: a pronoun matches the biological sex of the referent. Fads of usage and political correctness do not vitiate this general principle.

Whatever the merits of these conflicting views, we must recognize that it was intellectual freedom itself that made possible these political assaults on the language. This is as it should be when intellectual freedom holds true—but this same freedom must also protect those with differing views.

For example, when the editors of the journal of the National Association of Scholars receive a manuscript containing a nonstandard pronoun, they correct it. Their editorial policy is a political statement: it rejects the misguided notion that generic *he* is offensive or obsolete. Rejecting such innovations is one way of refuting an implied argument. It is an exercise of intellectual freedom.

There is one point on which we do agree with feminist, transgender, and gender queer activists: pronouns are significant

and have cultural significance. The attempt to impose new patterns of usage is an attempt to change culture through language.

Such an attempt is coercive by nature. While speakers of Standard English can tolerate nonstandard usage, proponents of the new ideology demand not just assent, but conformity. This is because they aim not just to feel better about themselves as individuals, but to impose their views on the culture by reforming the language.

The generic *he* has been indicted by these activists, but those who reject this indictment choose to maintain the standard usage because they understand those novel forms for what they are: subtle signs of loyalty, the linguistic version of virtue-signaling, and submission to an ideology which intellectual honesty compels them to reject.

III. Pronouns convey public meanings and are not a private language.

Words are vehicles for conveying ideology, and intellectual freedom wilts when language is coerced. For this reason, the language we use to address one another is a matter of public importance.

In keeping with the American Revolution's emphasis on social equality, our founders forbade Congress from granting titles of nobility. Other nations and movements have also used terms of address to inculcate their worldview and establish political ascendancy. The Quakers, noted for their belief in universal equality, deliberately used pronouns as a form of social protest.

In the 17th century, along with many other European languages, English possessed a stratified system of second person pronouns. The singular (*thou/thee/thy/thine*) carried associations of familiarity. It was used to address equals or inferiors. The original plural pronoun (*you/your/yours*) connotated elevation and distance (cf. the plural royal *we*). It was also used in the singular as a sign of respect, when addressing superiors or strangers (cf. German *du/Sie*, French *tu/vous*, Spanish *tú/usted*, Italian *tu/Lei*, Modern Greek *σύ/εσείς*). Misuse of *thou* could be offensive or contemptuous. It was a comment on another human's worth.

This distinction was not just a matter of courtesy; it represented the prevailing social worldview. The Quakers, with their commitment to equality, conscientiously objected to this

custom, and asserted their claim by using *thou* for everyone, regardless of position or rank.

The Quakers understood that even the smallest word involves a statement about reality. They believed in the principle that all men were equal, and they chose words that affirmed this conviction.

Pronouns, like other forms of public address, continue to have public meaning. They are not, in logician and philosopher Ludwig Wittgenstein's term, a "private language." Their meanings must be public—widely recognized and understood. Otherwise, they cease to be useful.

For language to be meaningful, it must be subject to public standards and criteria of correctness. Words that exist only in reference to private thoughts are not in fact language at all. A speaker of such "words" may demand that others learn the rules to his own private code, but this is tyranny, not language, and a free society resists these assaults.

In the United States, we are free to name ourselves and even to select our own pronouns, but there is a vast difference between expressing a personal choice and compelling others to affirm it.

IV. Pronouns communicate metaphysics and serve as tools to change—or preserve—social values.

When feminist activists attacked the generic use of *he*, they were not breaking down the pronoun's link to the biological sex of the referent. The transgender and gender queer movements repudiate this connection. They claim that an individual's subjective sense of gender identity justifies the use of a pronoun different from the biological sex. A metaphysical claim is embedded in this assertion: the idea that "real" identity arises from an inward conviction rather than from empirical reality.

But the transgender and gender queer movements are not satisfied with making metaphysical claims or asserting personal, inward convictions. These movements have a second key feature: they demand that everyone affirm their metaphysics. It is not enough that John Doe, born male and chromosomally male in every cell in his body, believes that he is actually female. He also demands that others accommodate and affirm his personal belief. Some may choose to do so. But others may decline.

Gender identity theory, which demands allegiance and brooks no dissent, is—when it comes to pronouns—simply another attempt

to rationalize a fictive “private language.” And there is no academic or societal warrant to force others to affirm every individual’s self-perceived gender by using their preferred private language.

V. Pronouns are among the most stable units of language and are firmly grounded in human physiology.

Of course, pronouns do change over time. Very few Americans continue to use the older pronouns mentioned above, though we recognize them and know what they mean. Yet pronouns remain among the most change-resistant elements in the language. Throughout history these terms have been squarely grounded in the human biological facts of being male or female.

Consider these lines from Geoffrey Chaucer’s *The Knight’s Tale*, composed around 1369-1372:

Whilom, as olde stories tellen us
Ther was a duc that highte Theseus;
Of Atthenes he was lord and governour,
And in his tyme swich a conquerour
That gretter was ther noon under the sonne.
Ful many a riche contree hadde he wonne;
What with his wysdom and his chivalrie,
He conquered al the regne of Femenye,
That whilom was ycleped Scithia,
And weddede the queene Ypolita,
And broghte hire hoom with hym in his contree.²

² <https://chaucer.fas.harvard.edu/pages/knights-tale-0>

Though the modern reader can still understand and enjoy Chaucer, the language has changed since the 14th century. Its syntax may be different and semantic ranges have shifted, but what strikes the contemporary reader is the durability of small words: they mean the same things now as they did then. These pronouns stand like boulders in the ever-flowing stream of English, testifying to the stability of the language and the permanence of the underlying truths they convey: the sexes differ, and that difference is essential. The English pronouns reflect timeless reality.

The language of Chaucer becomes less intelligible still in a world where fluid and infinite genders supplant the traditional definition of sex; but far more pernicious is the effect of estranging students from one another and from their essential human nature. The social price of erasing these distinctions is severe and worth speaking against.

Education is—or it should be—open to debate, and those who wish to dispute the fundamental biological fact that humanity consists of two biological sexes are welcome to present their case. A school can hold the door open to those who declare such beliefs, but

it must also uphold the rights of others who stick with biological facts and the standard usage of language. Nor does a willingness to entertain new gender theories dispose of the institutional obligation to respect and protect the teacher's intellectual and academic freedom to speak in his own voice and according to his own understanding of anthropological realities.

The same freedom that gives individual students the right to advocate for linguistic inventions also gives teachers who dispute the validity, utility, or rationality of these innovations the right to speak consistently with their understanding and ethics.

VI. Pronouns embed and communicate ontological meaning.

Personal pronouns like *he* and *she* communicate distinct ontological meaning. They whisper the truth that there is a difference between female and male, a distinction recognized by generations of language users and witnessed by the facts of biology.

No word is utterly devoid of referential meaning, and pronouns are no exception. They build a bridge of shared assumptions between speaker and listener. When individuals opt

out of this linguistic contract by choosing their own pronouns, they thwart the purpose of language and invite confusion.

Indeed, some advocates for social change welcome confusion: they seek “to queer” the language—by force if necessary. Others simply want to replace one set of underlying premises with a different set of their own. The essence of freedom is that some will disagree with these agendas and seek to hold the line against them.

Languages are malleable, and English is no exception. But it should be shaped by the free exchange of ideas, not by edicts handed down by authorities. From the Puristic *Katherevousa* Greek of the 18th century to the modern *Académie Française*, institutional attempts to control language through diktat have achieved spectacular results in failure.

Calling males *females* and vice versa, and twisting pronouns to fit trends of sexual identity, may signal institutional allegiance to a woke sensibility of gender fluidity, but in the end we will have the same sexual binaries we have had all along. Where today’s gender activists would charge Petitioner with “misgendering” a

student, he should have the freedom to respond that, on the contrary, he cannot in good conscience agree to “mis-sex.”

Pragmatically, Respondents’ actions against Petitioner prove futile when it comes to changing the underlying realities, and along the way they cause a great deal of collateral harm. Compelled speech undermines the marketplace of ideas that defines the educational system and the forum of a healthy society. Petitioner’s actions do not evidence wrongful, invidious discrimination—they typify the best of modern education: student and teacher confronting challenging ideas and testing the truth. Neither should be ordered to affirm what they cannot in good conscience hold to be true.

CONCLUSION

For the reasons stated above, *Amicus* requests the Court to review this matter and to vindicate the speech rights of Petitioner.

Dated: November 12, 2021

Respectfully submitted,

/s/ Joshua Hetzler
JOSHUA HETZLER (VSB #89247)
JAMES A. DAVIDS (VSB #69997)
FOUNDING FREEDOMS
LAW CENTER
707 East Franklin Street

Richmond, VA 23219
Tel: (804) 971-5509
Fax: (804) 343-0050
jim@foundingfreedomslaw.org
josh@foundingfreedomslaw.org

RANDALL L. WENGER*
JEREMY L. SAMEK*
INDEPENDENCE LAW CENTER
23 North Front Street
Harrisburg, PA 17101
Tel: (717) 657-4990
Fax: (717) 545-8107
rwenger@indlawcenter.org
jsamek@indlawcenter.org

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CHRISTOPHER P. SCHANDEVEL
Virginia State Bar No. 84412
TYSON C. LANGHOFER
Virginia State Bar No. 95204
ALLIANCE DEFENDING FREEDOM
20116 Ashbrook Place, Suite 250
Ashburn, VA 20147
Telephone: (571) 707-4655
Facsimile: (571) 707-4656
cschandevel@ADFlegal.org
tlanghofer@ADFlegal.org

J. CALEB DALTON
Virginia State Bar No. 83790
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, D.C. 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
cdalton@ADFlegal.org

SHAWN A. VOYLES
Virginia State Bar No. 43277
MCKENRY DANCIGERS DAWSON, P.C.
192 Ballard Court, Suite 400
Virginia Beach, VA 23462
Telephone: (757) 461-2500
Facsimile: (757) 461-2341
savoyles@va-law.com

STACY L. HANEY
Virginia State Bar No. 71054
ANDREW P. SELMAN
Virginia State Bar No. 91060
HANEY PHINYOWATTANACHIP PLLC
11 South 12th Street, Suite 300C
Richmond, VA 23219
Telephone: (804) 500-0301
Facsimile: (804) 500-0309
shaney@haneyphinyo.com
aselman@haneyphinyo.com

ALAN E. SCHOENFELD*
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY
Telephone: (212) 230-8800
Facsimile: (212) 230-8888
alan.schoenfeld@wilmerhale.com

TANIA FARANSSO*
EDWARD WILLIAMS
Virginia State Bar No. 88102
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
tania.faransso@wilmerhale.com
ed.williams@wilmerhale.com

**Admitted pro hac vice*

I further certify that I have caused to be filed ~~one printed copy of~~
~~the foregoing with the Clerk of this Court and I have filed an electronic~~

PDF version of the foregoing with the Clerk via the Virginia Appellate
Courts eBriefs System.

/s/ Joshua Hetzler
Joshua Hetzler (VSB #89247)

RULE 5:17A CERTIFICATE

Pursuant to Virginia Supreme Court Rule 5:17A(c)(iii)(3), I hereby certify that the foregoing brief complies with the type-volume limitation set forth in Virginia Supreme Court Rule 5:17A(c)(i). Exclusive of the exempted portions of the brief, the brief contains 2,576 words.

/s/ Joshua Hetzler _____
Joshua Hetzler (VSB #89247)

Dated: November 12, 2021