EXHIBIT A
No. 23-12752-G

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NICHOLAS BOLTON,
Plaintiff-Appellant,

v.

SHERIFF OF COWETA COUNTY, *et al*.,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia, No. 1:21-CV-02278-MHC
Honorable Mark H. Cohen

BRIEF OF AMICUS CURIAE NATIONAL POLICE ASSOCIATION IN SUPPORT OF DEFENDANTS-APPELLEES AND IN SUPPORT OF AFFIRMANCE

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February 27, 2024

CERTIFICATE OF INTERESTED PERSONS

In accordance with 11th Cir. Rule 26.1-3(a)-(d), Amicus Curiae National Police Association hereby files this Certificate of Interested Persons, borrowing in part from information provided by the Appellant and Appellees to the above-styled appeal. The undersigned counsel of record for Amicus Curiae, upon information and belief, certifies that the following is a full and complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this particular case or appeal, including any subsidiaries, conglomerates, affiliates, parent corporation and any publicly held corporation that owns 10% or more of the stock of a party, and any other identifiable legal entities related to a party:

- Bolton, Nicholas S.
- Brit Global Specialty
- Cohen, Mark H., District Judge, USDC, NDGA
- Collins, John Taylor
- Coweta County, GA
- Coweta County Board of Commissioners
- Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, L.L.P.

- Hanover Insurance Group (THG)
- Hendrickson, Jeffrey C.
- House, Jon
- Howard, James W.
- Howard Law Firm, P.C.
- Howard, Leif A.
- Howard, Sharon Effatt
- National Police Association
- NOVA Casualty Insurance Company
- Pierce Couch Hendrickson Baysinger & Green, L.L.P.
- RiverStone Managing Agency Limited (AP4)
- Spinks, Christian
- Wood, Lenn, Sheriff of Coweta County, GA
- Woodward, Karen E.

Upon information and belief, no publicly held corporation owns 10% or more of the stock of a party.

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CORPORATE DISCLOSURE STATEMENT

Per Fed. Rs. App. P. 26.1 and 29(a)(4)(A), as well as Eleventh Circuit Local Rules 28-1(b) and 29-1, amicus curiae National Police Association advises that it is an Indiana § 501(c)(3) non-profit corporation that has no corporate parent and no stockholders.

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IDENTITY, INTEREST, AND AUTHORITY TO FILE OF *AMICUS CURIAE*[1]

Identity. The National Police Association is an Indiana § 501(c)(3) non-profit corporation founded to provide educational assistance to supporters of law enforcement, as well as support to individual law enforcement officers and the agencies they serve.

Interest. The National Police Association seeks to bring important issues in the law enforcement field to the forefront of public discussion in order to facilitate remedies and broaden public awareness.

Authority to File. The National Police Association attaches this brief to its Motion for Leave to File Brief of Amicus Curiae National Police Association in Support of Defendants-Appellees, and restates the reasons set forth in the referenced Motion as its basis for seeking leave to file the brief. Amicus Curiae seeks an exercise of this Court's inherent authority under Fed. R. App. 29(a)(6) to grant it leave to file the enclosed brief. The Motion contains the parties' responses to Amicus Curiae's consent requests.

[1] Under Fed. R. App. P. 29, *amicus curiae* states that no party or party's counsel for either side authored this brief in whole or in part. No person or entity other than *amicus curiae* and its members made a monetary contribution to the brief's preparation or submission.

STATEMENT OF ISSUES

The issues presented in Amicus Curiae's brief are as follows:

1. Whether internal department policy standards regarding aspects of police officers' interactions with citizens are relevant to the qualified immunity inquiry; and,

2. How the physiological stressors of day-to-day law enforcement tasks affect officers' abilities to perform their jobs.

SUMMARY OF ARGUMENT

In recent years, qualified immunity has been hit with several broadsides both as a matter of law and from the legal academy. While the merits of those attacks vary in strength—and though the doctrine is not perfect—qualified immunity nonetheless finds sound footing in the same ideas that animated the Supreme Court's objective reasonableness jurisprudence, as long as it is applied correctly. Here, Mr. Bolton contends in part that qualified immunity should not apply when an officer violates their department's internal policy. That is an incorrect statement of the doctrine. Internal department policies have no relevance to whether an officer violated the Constitution or whether that violation was clearly established as unlawful when it occurred. While the Officers briefly address this particular argument, it merits additional exposition because of the implications for law enforcement writ large should the Court be misled by it.

Viewing qualified immunity properly, it maintains a function vital to the day-to-day job of law enforcement. The fact is, most attorneys and judges assess a set of facts—was the suspect intoxicated? was the gun raised? was the door unlocked?—from the relative comfort of their offices, chambers, and the like. Our nation's law enforcement officers do not get that luxury. They instead take these situations head-on, dealing in real time with citizens who, for a host of reasons, seek to cause harm

to themselves, to the public, and/or to the officers who enforce the nation's laws. And rarely do lawbreakers welcome a police officer's intervention. Much more often, officers must resolve situations involving belligerent individuals who may be under the influence of intoxicants, in the throes of a mental-health crisis, armed with a weapon, or some combination of all three. The difficulty—and danger—these interactions pose can scarcely be put into words. As a result, constitutional doctrines that defer to officers in such situations, like qualified immunity, are preferable to the near-strict constitutional-liability scheme that many qualified immunity detractors idealize.

ARGUMENTS AND CITATIONS TO AUTHORITIES

Amicus Curiae offers this brief for two purposes. First, to clamp down on the idea that internal department policies can stand in place of clearly established law for the purpose of determining whether qualified immunity should be granted or denied. Second, to illustrate the important policy considerations qualified immunity supports. Research into police officers' response times and ability to handle stressful situations, regardless of their training, demonstrates that officers faced with complex, dangerous situations experience a marked decrease in their ability to process verbal conversations and to identify the location of items and people in a given space. Given this, it makes sense from a public policy perspective to have a deferential doctrine like qualified immunity counter the possibility of liability in every high-stakes interaction between officers and citizens that calls for a use of force.

I. INTERNAL POLICY STANDARDS ARE NOT RELEVANT TO WHETHER QUALIFIED IMMUNITY SHOULD BE GRANTED OR DENIED.

To start, qualified immunity is an affirmative defense to constitutional liability under 42 U.S.C. § 1983 which state actors, sued in their personal capacity, can invoke. *Mullenix v. Luna*, 577 U.S. 7, 11 (2015). When asserted, usually at summary judgment but also before discovery and after trial, the doctrine's formulation in this

Circuit requires those seeking it to show that they acted within their "discretionary authority" in dealing with the citizen/inmate. *See Dukes v. Deaton*, 852 F.3d 1035, 1041 (11th Cir. 2017). For any official so acting, they are then entitled to qualified immunity unless (1) they violated a federal statutory or constitutional right (2) and that violation was "clearly established" as unlawful at the time of the incident. *Laskar v. Hurd*, 972 F.3d 1278, 1284 (11th Cir. 2020) (citation omitted). Mr. Bolton tells this Court there are numerous reasons the District Court incorrectly granted qualified immunity, but premises several of those reasons on the contention that violating department policies can establish the law for purposes of qualified immunity *See* Aplnt.'s Br., at 22. This is flatly incorrect.

In its most pithy form, a right (i.e., the law) is clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (per curiam). That phrasing, however, belies the nature of how the law becomes so established. While the far, extreme end of the inquiry portends the possibility that some situations are so obvious that they, in and of themselves, define what an officer should or should not do, the far more typical case falls somewhere in the middle.[2]

[2] One *per curiam* Supreme Court opinion phrases this as a situation where the obviousness or precedent has "placed the statutory or constitutional question beyond debate." *See Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (per curiam) (citation omitted).

For those cases—like the present dispute—in this Circuit, the law is established only by "decision of the United States Supreme Court, Eleventh Circuit Court of Appeals, or the highest court of the state where the case arose." *See Jenkins v. Talladega City Bd. of Educ.*, 115 F.3d 821, 826 n.4 (11th Cir. 1997); *accord. Hines v. Jefferson*, 338 F. Supp. 3d 1288, 1300 (N.D. Ga. Sept. 2018). And more specifically, those authorities (cases from the referenced courts) can only clearly establish the law by passing on (1) "indistinguishable facts clearly establishing the constitutional right" or (2) providing "a broad statement of principle within the Constitution, statute, or case law that clearly establishes a constitutional right." *See Shuford v. Conway*, 666 F. App'x. 811, 817 (11th Cir. Nov. 18, 2016) (citing *Lewis v. City of West Palm Beach*, 561 F.3d 1288, 1291-92 (11th Cir. 2009)).[3]

None of these authorities, however, stand for the proposition that clearly established law or rights stem from another source. In particular, interdepartmental policies or standards—and the violation of the same—have no bearing on whether a state action violated clearly established constitutional rights. Such sources of information "cannot establish, clearly or otherwise, the law." *See Hall v. Staff*, 2023 WL 6323085, at *5 (M.D. Ga. Sept. 28, 2023) (citing *Buzzi v. Gomez*, 24 F. Supp.

[3] *Shuford* and *Lewis* also mention a third way, through "conduct so egregious that a constitutional right was clearly violated, even in the total absence of case law," *id.* at 817, but Amicus Curiae addresses this third proposition above in referencing the "far, extreme" bounds of the qualified immunity inquiry. *See* Br., *supra*, at 5.

2d 1352, 1362 (S.D. Fla. 1998) ("The Court can find no cases holding that a government official's violation of department policy, without more, constitutes a constitutional violation")); *see also Edwards v. Gilbert*, 867 F.2d 1271, 1276 (11th Cir. 1989) (rejecting the plaintiffs' "attempts to broaden defendants' constitutional duties by contending that defendants violated state laws and regulations"); *Davis v. Scherer*, 468 U.S. 183, 194 (1984) (holding that public officials "do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision").

As one district court put it, a county police department's decision to terminate an officer because the officer's use-of-force violated policy did not preclude a determination that the officer was entitled to qualified immunity "because the inquiry into whether an officer violated department policy and is subject to punishment is not coextensive with the question of whether he violated clearly established constitutional rights and thus is stripped of qualified immunity." *See Merritt v. Gay*, 2016 WL 4223687, at *11, n. 8 (S.D. Ga. Aug. 9, 2016). The only exception to this situation would be where the policy itself contained limitations/prohibitions that were coterminous with constitutional principles. *See Charles v. Johnson*, 18 F.4th 686, 701-02 (11th Cir. 2021). Though, per *Charles*, the policy in question would not itself bear on whether the actor committed a constitutional violation, if it contained a coterminous constitutional standard, then it

could have relevance to whether the officer had "fair warning" that their act was unconstitutional. *Id*.[4]

Here, no such situation exists. Mr. Bolton complains that the Officers violated Coweta County policy by (1) initiating a motor vehicle pursuit in circumstances where the need to apprehend Mr. Bolton did not outweigh the inherent dangers to the community posed by such a pursuit, and (2) failing to report Mr. Bolton's offenses to the dispatch center *See* Aplnt.'s Br., at 30-31. But the initiation of a motor vehicle pursuit or the reporting thereof to central command does not involve any *constitutional* component, at least insofar as the Fourth Amendment is concerned. The only question is whether the Officers' decision to so initiate was "reasonable" as governed by applicable Fourth Amendment case law—not an intradepartmental balancing analysis. Even more remote, the reporting to central command has no discernible constitutional component to it. Thus, under *Charles* and previous cases,

[4] In *Charles*, this Court dealt with whether a previous case, *Mercado v. City of Orlando*, 407 F.3d 1152 (11th Cir. 2005), allowed a violation of department policy to be evidence of a constitutional violation. In answering no, the *Charles* Court noted that *Mercado* only allowed such a policy to have relevance on the clearly established question when it contained statements that were "tantamount to a codification" of general constitutional principles. *See* 18 F. 4th at 702. The *Mercado* case included a department restriction on shooting a less-lethal munition at the head of a non-threatening suspect. The *Charles* Court found that to be "tantamount to a codification of the general constitutional principle that deadly force cannot be used in non-deadly-force situations." *Id*. The policies at issue here, as discussed in the brief's body, are far different.

the CCSO policies at issue have no bearing on the constitutional questions, and no bearing on qualified immunity generally.

Same goes for Mr. Bolton's claim that the Officers in question should be denied qualified immunity because they purportedly violated Coweta County policies in executing the precision-immobilization technique (PIT) maneuver by driving "on the wrong side of the roadway," by doing so "without…departmental training," and by doing so "without…supervisory permission." *See* Aplnt.'s Br., at 32-33. For one, the PIT maneuver had no bearing on the actual use of force at issue. For two, the above-referenced guidelines (driving on the right side of the road, obtaining interdepartmental training, and obtaining permission before so acting) do not bear on the reasonableness of the action. Indeed, such an act facially could easily be seen as reasonable *without* following any of the foregoing guidelines. It is precisely for that reason that department policy violations and accompanying punishments are not "coextensive with the question" of whether those acts "violated clearly established constitutional right[s]." *See Merritt*, *supra*, at 7.

Given the above authorities, the Court should forcefully reject the idea that any of Mr. Bolton's claims to defeat qualified immunity based on the Officers' alleged department policy violations hold water.

II. QUALIFIED IMMUNITY FURTHERS LEGITIMATE INTERESTS OF THE GOVERNMENT AND ITS CITIZENS.

Amicus Curiae next turns to the broader policy questions. Make no mistake—qualified immunity is a doctrine that defers to law enforcement defendants. That deference is warranted. As will be borne out below, research on the human body's response to high-stress situations shows officers routinely suffer temporary mental and physical impairments brought on by the scenarios they face daily. A deferential defense to constitutional liability is, therefore, necessary, even if it occasionally relieves government officials from liability for constitutional violations in the name of avoiding a chill on legitimate government action when officers are punished for violating rights previously unknown. Indeed, that consideration motivated in part the Supreme Court's first modern concept of the doctrine. *See Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982) ("But where an official's duties legitimately require action in which clearly established rights are not implicated, the public interest may be better served by action taken 'with independence and without fear of consequences'") (quoting *Pierson v. Ray*, 386 U.S. 547 (1967)).

The fact is, there is almost no profession like policing. As one officer put it, "[t]here are few professions where an employee can perceive a dangerous situation in the workplace and still be required to enter that environment and act." *See* Sgt. Rob Pride, "Police Recruitment was Already Tough. Attacks on Qualified Immunity Make Matters Worse." USA Today Opinion (Nov. 26, 2021),

https://www.usatoday.com/story/opinion/voices/2021/11/26/attacking-qualified-immunity-hurts-policing/8654304002/. Though there is no generalized duty for police to intervene in a situation unless one or more involved individuals is in custody[5] (and a few other, more narrow exceptions), police departments tend to identify a failure to do so as dereliction of duty. *See* Pride, *supra*, at 11. This means, in turn, that officers are either thrust into, or thrust themselves into, dangerous situations involving life-or-death decisions with regularity. As it were, research into the circumstances officers routinely encounter, and the effect of those circumstances on an officer's ability to function, tracks with the Supreme Court's "without fear of consequences" intuition.

To begin, one study suggests that the average police officer will experience roughly 188 critical incidents throughout her career. *See* Brian A. Chopko, et al. *Critical Incident History Questionnaire Replication: Frequency and Severity of Trauma Exposure Among Officers from Small and Midsize Police Agencies*, JOURNAL OF TRAUMATIC STRESS, March 21, 2015, https://pubmed.ncbi.nlm.nih.gov/25808672/ (last accessed February 27, 2024). Many such critical incidents arise spontaneously during otherwise regular response calls, which denies officers the ability to plan or mentally rehearse for a situation that rapidly spirals out of control. *See* Colin Burrows, *Critical Decision Making by Police Firearms Officers: A Review*

[5] *See, e.g., Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

of Officer Perception, Response, and Reaction, A JOURNAL OF POLICY AND PRACTICE, Sept. 24, 2007, https://academic.oup.com/policing/articleabstract/1/3/273/1544689?redirectedFrom=fulltext (last accessed February 27, 2024).

When under significant mental stressors, a person's complex cognitive functions, like conducting verbal communication or processing the arrangement of persons in a set space, tend to falter. *See* Eamonn Arble, et al., *Differential Effects of Psychological Arousal Following Acute Stress on Police Officer Performance in a Simulated Critical Incident*, FRONTIERS IN PSYCHOLOGY, April 9, 2019, https://doaj.org/article/507cd0f7c3384e21945b8358ed423bd1#:~:text=Prior%20research%20suggests%20that%20physiological%20arousal%20following%20a,included%20multiple%20calls%2C%20dynamic%20environments%2C%20and%20surprise%20threats. (last accessed February 27, 2024). Thus, in other words, officers will encounter repeated, critical, and often surprise scenarios where *their own* mental capacity for decision-making is reduced.

Over time, the impact of these events and their outcomes has a deleterious effect on officers' mental health. *See* John Violanti, et al., *Police Stressors and Health: A State-of-the-Art Review*, POLICING, November 2017, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6400077/pdf/nihms/1008968.pdf (last accessed February 27, 2024). That, in turn, is associated with declines in job performance. *See* Tina B. Craddock, et al., *Police Stress and Deleterious Outcomes: Efforts Towards*

Improving Police Mental Health, JOURNAL OF POLICE AND CRIMINAL PSYCHOLOGY, November 9, 2021, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8575544/pdf/11896_2021_Article_9488.pdf (last accessed February 27, 2024).

Making matters worse, however, is the reality that many citizens with whom law enforcement interact are themselves suffering from a mental health disorder, under the influence of a mind-altering substance, or both. This increases the chances that these citizens will act aggressively towards officers. A 2018 study found that even low doses of alcohol revealed a significant relationship between prefrontal cortex activity and aggression. *See* Thomas F. Denson et al., *The Neural Correlates of Alcohol-Related Aggression*, 18 COGNITIVE, AFFECTIVE & BEHAVIORAL NEUROSCIENCE, 203, 214 (January 8, 2018), https://link.springer.com/content/pdf/10.3758/s13415-017-0558-0.pdf. (last accessed February 27, 2024). This conclusion, the authors noted, "corroborate[d] the predictions of many of the major theories of intoxicated aggression." *Id*. Such as, for example, that when combined with hostile situations or dispositional aggressiveness, alcohol can promote aggressive behavior. *Id*. at 203.

The suggestion that individuals who interact with law enforcement have, generally, an increased propensity for aggression is not limited to those with substance abuse issues, however. In a 2006 article discussing neuroscientific components of the legal insanity defense, one legal commentator described a meta-

analysis of studies that concluded, "[e]ven minimal frontal lobe dysfunction may cause impulsive aggression, as studies have found relationships between sub-clinical frontal lobe deficits and aggression in normal populations." *See* Richard E. Redding, *The Brain-Disordered Defendant: Neuroscience and Legal Insanity in the Twenty-First Century*, 56 AM. U. L. REV. 51, 61–62 (2006). In other words, whether substance-related or not, there is support for the conclusion that citizens interacting with officers are more likely to possess altered mental states and/or react aggressively to simple conduct. The upshot of this literature, therefore, is that *many* of the most complex officer-citizen interactions suffer from temporarily diminished mental capacity on both sides for different reasons.

Here is the primary problem. In any given event, as one group of researches described it, officers have to make "immediate decisions of great consequence across a variety of unpredictable situations." *Arble*, et al., *supra*. For example:

> "[A]n officer approaching a reportedly armed suspect must attempt to communicate with the suspect while simultaneously visually scanning for the presence of weapons, considering other threats within the environment (e.g., other potential suspects, nearby civilians who could be in danger), evaluating the suspect's potential escape routes, potentially coordinating movements with a partner, maintaining radio communication, and considering the nature of the suspect in question (e.g., the suspect's mental state, or if the individual is in fact the actual suspect). These extreme cognitive demands must also be done while the officer is likely to be highly emotionally aroused. In this context of demanding cognitive engagement and emotional arousal, the police officer will be required to

> make a split-second decision not only to potentially discharge their firearm but also to do so accurately."

Those exceptional demands, which nearly any police officer will encounter, require a degree of deference that qualified immunity provides. In few other professions does the specter of uncapped damages dovetail with the opportunity for someone to assert their rights were violated. The nature of the job requires officers, in some instances, to use force—the prospect that one against whom forced was used would claim "too much!" is a near guarantee, at this point.

The final point made by the authors in the above-referenced study also drives home that officer in critical incident situations suffer from not only mental impairments but also physical ones. Notably, high-stress situations often impair performance in areas like tactical decision-making, rendering officers less able to make considered decisions about when to shoot at, as opposed to pursuing, a citizen-suspect. *See* Lorraine Hope, *Evaluating the Effects of Stress and Fatigue on Police Officer Response and Recall: A Challenge for Research, Training, Practice and Policy*, JOURNAL OF APPLIED RESEARCH IN MEMORY AND COGNITION, Sept. 2016, https://www.sciencedirect.com/science/article/abs/pii/S2211368116300572 (last accessed February 27, 2024).

And when officers *do* elect to fire their weapons in high-stress circumstances, their physical ability to do so likewise appears impaired. One group of researchers described how, in training situations, shooting hit rates reached 90%, but in real life

shootings, the shooting hit rates did not exceed 50%. *See* Laura Giessing, *et al*., *Effects of Coping-Related Traits and Psychophysiological Stress Responses on Police Recruits*' *Shooting Behavior in Reality-Based Scenarios*, FRONTIERS IN PSYCHOLOGY, July 3, 2019, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6617500/ (last accessed October 19, 2023). As these researchers observed, "in case[s] of performance failures, police shootings can have tremendous consequences for the officers themselves, colleagues, suspects, or innocent bystanders." *Id*.

Given the above, it is clear that a deferential liability defense is necessary. The nature of the profession regularly places officers in scenarios that compromise their mental and physical ability to respond and respond well. *See* Marian Pitel, et al. *Giving Voice to Officers Who Experienced Life-Threatening Situations in the Line of Duty: Lessons Learned About Police Survival*, SAGE JOURNALS (Sept. 14, 2018, https://journals.sagepub.com/doi/pdf/10.1177/2158244018800904 (last accessed October 19, 2023). A robust qualified immunity jurisprudence ensures that officers are given leeway to do their near-impossible jobs without the specter of strict liability hanging over their heads.

Thus, qualified immunity can bolster both an officer's confidence in doing her job without as much concern that a judge or jury will later say her snap decision-making in a dangerous, unique, high-stress situation violated the U.S. Constitution. In turn, the citizenry benefits from the protection of law enforcement that is more

inclined to vigorously guard its citizens rights, to the point of increasing the likelihood officers will involve themselves in ongoing situations despite having no constitution obligation to do so.

CONCLUSION

The Court should affirm the District Court's decision and remand the case with instructions to enter judgment in Defendants-Appellees' favor.

Date: February 27, 2024.

Respectfully submitted,

s/ Jeffrey C. Hendrickson

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the appellate CM/ECF system on **February 27, 2024**. Listed counsel in this appeal are registered CM/EF users who will be served by the appellate CM/ECF system. *See* Fed. R. App. P. 25(b).

Date: February 27, 2024

s/ Jeffrey C. Hendrickson
Jeffrey C. Hendrickson

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPE-FACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

I certify:

1. This *amicus curiae* brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains **3,633** words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and

2. This brief complies with the type-face requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced type-face using **Microsoft Office 2016 in fourteen-point Times New Roman font**.

Date: February 27, 2024

s/ Jeffrey C. Hendrickson
Jeffrey C. Hendrickson

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTIONS

I certify that a copy of the foregoing *amicus curiae* brief, as submitted in Digital Form via the court's ECF system, is an exact copy of the written document filed with the Clerk and has been scanned for viruses with the TrendMicro Worry-Free Business Security Version 19.03144, Server Version 9.0.3147, Virus Scan Engine Version 9.950.1006, dated February 27, 2024, and, according to the program, is free of viruses. In addition, all required privacy redactions have been made.

Date: February 27, 2024

s/ Jeffrey C. Hendrickson
Jeffrey C. Hendrickson