

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

DEBORAH VAILES,

Plaintiff,

-v.-

RAPIDES PARISH SCHOOL DISTRICT, and
DR. DANA NOLAN,

Defendants.

COMPLAINT

Plaintiff Deborah Vailes (hereinafter “Plaintiff”), by and through undersigned counsel, brings this Complaint against the Rapides Parish School District, Dr. Dana Nolan, and their employees, agents, and successors in office (collectively “Defendants”), and in support thereof allege the following upon information and belief:

INTRODUCTION

1. This action asserts Plaintiff’s fundamental constitutional rights protected by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Defendants have punished Plaintiff’s private political speech on account of its viewpoint by reprimanding Plaintiff in violation of Plaintiff’s right to freedom of speech protected by the First Amendment. Defendants have in place a policy, practice, and/or custom that grants them the discretion to subjectively determine which personal, political speech is permitted and which speech is restricted in violation of the First Amendment. Furthermore, Defendants have denied Plaintiff access to a forum for her speech based on its viewpoint thereby depriving Plaintiff of

the equal protection of the law guaranteed by the Fourteenth Amendment.

2. As a result of Defendants' violations of Plaintiff's fundamental constitutional and statutory rights, Plaintiff seeks declaratory and injunctive relief as well as nominal and compensatory damages, and attorneys' fees and costs.

JURISDICTION AND VENUE

3. The action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343.

4. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rule 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

5. Plaintiff's claims for nominal and compensatory damages are authorized under 42 U.S.C. § 1983 and by the general legal and equitable powers of this Court.

6. This Court is authorized to award reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988.

7. Venue is proper in the Western District of Louisiana, pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred within this district.

PLAINTIFF

8. Plaintiff Deborah Vailes is and was at all relevant times herein a resident of Pineville, Louisiana.

9. Plaintiff was at all relevant times employed as a teacher at the Pineville Junior High School in the Rapides Parish School District.

10. Plaintiff is a devoted teacher who teaches Resource Corrective Reading, English Language Arts, and Social Studies at the junior high level.

11. Plaintiff loves teaching children how to improve their reading and helping children become lifelong learners.

12. Plaintiff devotes herself to arming her students with confidence in their scholastic abilities and to helping her students to discover a love for learning.

13. It is Plaintiff's mission to motivate and inspire her students.

14. Plaintiff specifically dedicates her work to children with special needs. This is because Plaintiff believes this is an area where her talents for inspiring and motivating others can flourish. Helping special needs children become better readers is Plaintiff's passion.

15. When given the opportunity to attend a three day workshop in order to implement a new corrective reading program, Plaintiff seized the opportunity. For two years, Plaintiff implemented the corrective reading program at Alexandria Middle Magnet School, where she spent eight years teaching.

16. Plaintiff attends workshops and helps to implement corrective reading programs including Direct Instruction, Read 180, and System 44 at Pineville Junior High School, the school where she is currently assigned.

17. For Plaintiff, the best reward she can receive is watching her students succeed. The best part of Plaintiff's school day is when she sits beside two or three of her students and listens to them read.

DEFENDANTS

18. Defendant Rapides Parish School District (hereinafter “School District”) located in Alexandria, Louisiana, is a public entity established and organized under the laws of Louisiana, with the authority to sue and be sued. Pineville Junior High School is a school operated by and located within the School District in Pineville, Louisiana.

19. The School District and its officials are responsible for its own administrative and educational operations and for creating, adopting, ratifying, and enforcing the policies, practices, customs and/or procedures of the School District, including the unconstitutional policies, practices, customs, and/or procedures set forth in this Complaint.

20. The School District and its officials are responsible for the training and supervision of its teachers, including the training and supervision of Defendant Dr. Dana Nolan. The School District’s failure to adequately train and supervise its employees, including Defendant Dr. Dana Nolan, was a moving force behind the constitutional violations set forth in this Complaint.

21. Defendant Dr. Dana Nolan, at all relevant times, was the Principal of Pineville Junior High School employed by the School District. As a principal, Defendant Dr. Dana Nolan is required to enforce the policies, practices, customs, and/or procedures of the School District, including the unconstitutional policies, practices, customs, and/or procedures set forth in this Complaint. Defendant Dr. Dana Nolan was also at all relevant times, a state actor required to act in accordance with the United States Constitution. Defendant Dr. Dana Nolan is named in both her official and individual capacities.

FACTUAL PREDICATE

22. “I HATE COMMON CORE!” is a statement that millions of Americans are repeating over and over again on the internet, at their local school board meetings, and in any forum where their voices can be heard.

23. By simply typing “Common Core” into the Google internet search engine, it takes only .23 of a second to yield over 49,400,000 websites discussing and debating the widely criticized, less often defended subject.

24. Indeed, the implementation of the Common Core has caused uproar from caring parents, grandparents, and educators alike and has sparked an impassioned national debate.

25. Common Core State Standards (“Common Core”) are national standards in education incentivized by the U.S. Department of Education through its educational reform fund, Race to the Top.

26. The National Governors Association and the Council of Chief State School Officers together formed Common Core as a set of academic standards to be used in common across all states. Common Core is a set of learning standards in English language arts and mathematics. These standards, if adopted by a state, replace the existing state standards in these subject areas.

27. The U.S. Department of Education “absolutely encouraged” the adoption and implementation of Common Core by all of the states. *See* (<http://www.ed.gov/news/speeches/duncan-pushes-back-attacks-common-core-standards>, last visited Feb. 18, 2015). The U.S. Department of Education finances each state that adopts Common Core through large federal subsidies. *See* (<http://www.ed.gov/news/press->

releases/statement-national-governors-association-and-state-education-chiefs-common-core-, last visited Feb. 18, 2015).

28. To date, Common Core has been adopted by 43 states. *See* (<http://www.corestandards.org/standards-in-your-state/>, last visited Feb. 18, 2015).

29. Common Core was adopted by the State of Louisiana on July 1, 2010, with full implementation set for the 2013-14 school year.

30. Common Core and its implementation is a national issue.

31. Common Core and its implementation is a matter of public concern.

32. Among the many concerns regarding Common Core, the implementation of Common Core's Eureka math has garnered nationwide criticism and disapproval.

33. Common Core's Eureka math diverges from traditionally taught mathematical methods, frequently adding numerous steps and confusing teachers, students, and parents alike.

34. Information pertaining to and examples of Common Core's Eureka math (also described as "the new way") are shared extensively on the internet with such postings as:

"old fashion" way

32

-12

20

The "New" way

32-12= _____

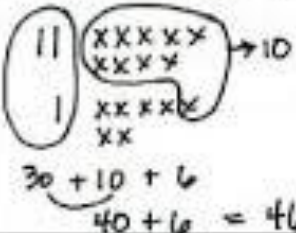
12 + 3 = 15

15 + 5 = 20

20 + 10 = 30

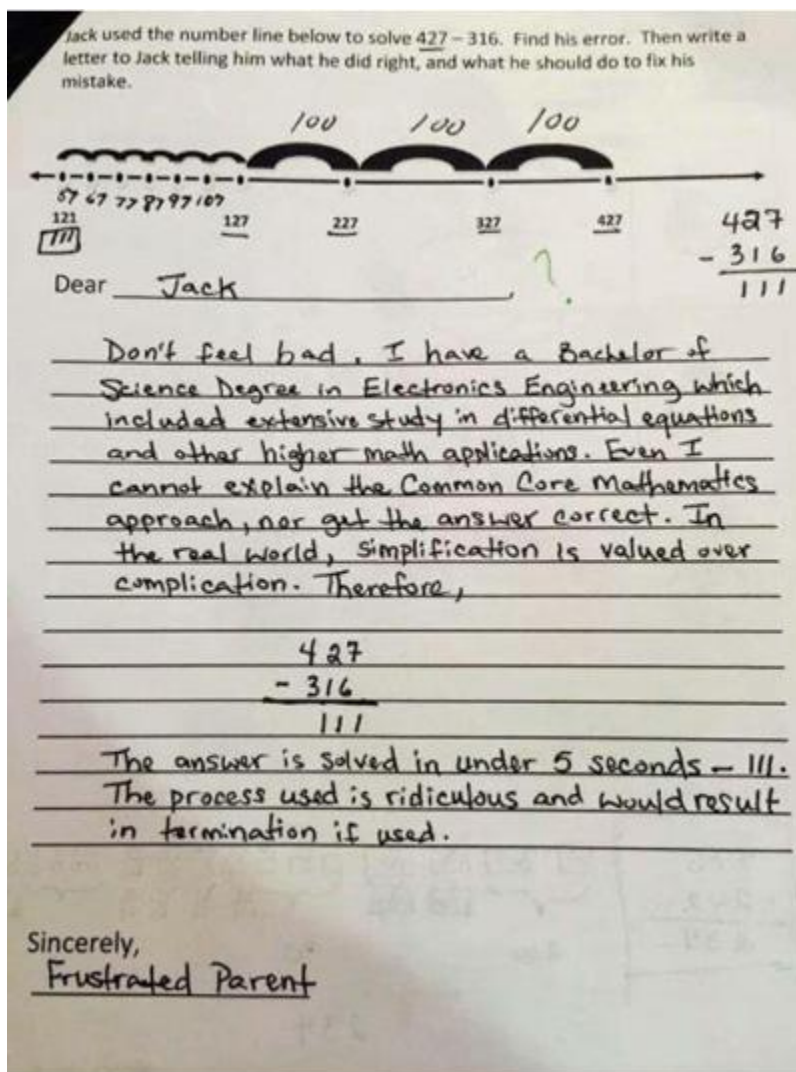
30 + 2 = 32

20 ← Answer

The old way:	The new way:
$\begin{array}{r} 1 \\ 29 \\ + 17 \\ \hline 46 \end{array}$	$\begin{array}{r} 20 + 9 \\ 10 + 7 \\ \hline 30 + 16 \\ (10 + 6) \\ 40 + 6 = 46 \end{array}$
<p>We use the word evidence in math to help students find evidence in the text that shows this math situation is increasing (adding), decreasing (subtracting), or comparing (finding the amount that is different: more or less.)</p>	 $30 + 10 + 6 = 40 + 6 = 46$

Such examples frequently leave teachers, parents, and students puzzled why the Common Core aligned math problems add numerous, seemingly unneeded steps and why the Common Core curriculum overly complicates formerly simplistic mathematics.

35. In a different Common Core math internet post, a North Carolina father shares that he tried to help his son solve a mathematical word problem about a fictional student named Jack. The problem directs students to analyze Jack's drawings/calculations to figure out why Jack solved the problem incorrectly. The problem includes a number line with several arcs indicating that Jack erroneously counted backwards while trying to calculate 427 minus 316. Students are directed to "write a letter to Jack telling him what he did right and what he should do to fix his mistake." The perplexing and convoluted problem led to the North Carolina father posting his answer to the problem on the internet:



36. Issues involving Common Core have spawned frustration across the nation from both the Republican and the Democrat political parties.

37. Heartbreaking pictures of little girls anguished, with tears in their eyes, trying to complete seemingly illogical Common Core math assignments that even the child's parents cannot understand have surfaced widely in the media.

38. The pictures capture a fair critique of the implementation of the Common Core curriculum and the palpable frustration of millions nationwide.

39. Before school on September 23, 2014, Plaintiff viewed one of the many photographs of a little girl, visibly upset due to the implementation of Common Core on the social media website “facebook.”

40. At approximately 5:58am, Plaintiff re-posted, commonly known on facebook as “shared,” the photograph critiquing the implementation of Common Core on her personal facebook page.

41. The picture displayed a little girl crying due to the shortcomings of Common Core math and espoused a personal and political view pertaining to the efficiency and effectiveness of Common Core.

42. The post did not represent an official position of any School District or State.

43. The post represented the personal opinion and personal concerns of Plaintiff.

44. The post was on Plaintiff’s personal time outside of work hours.

45. The post was made using Plaintiff’s private, at-home computer and did not involve the use of school property.

46. Later that day at approximately 1:09pm after discovering the post through a third party, Defendant Dr. Dana Nolan gave Plaintiff her first ever written reprimand, called by the School District as a “documented conference,” due to the facebook post. (Attached as Exhibit 1).

47. Defendants reprimanded Plaintiff due to Plaintiff posting an “anti-Common Core” post on her personal facebook page.

48. Plaintiff had shared the photograph on facebook due to her concern for her granddaughter who currently attends the second grade at a nearby public school.

49. The Defendants' reprimand called for Plaintiff to "[r]efrain from putting opinion about public education on social media" and to "[r]emove post from social media site-asap." (Exhibit 1).

50. Defendant Dr. Dana Nolan told Plaintiff that "you work for the public, you do not have an opinion. You are not to discuss your opinion in any way in public. Not on any social media, or any other public forum. If you are approached by the newspaper or tv, say, I cannot discuss this" or words to that effect.

51. Defendant Dr. Dana Nolan's reprimand was pursuant to School District policy.

52. The School District maintains a policy on Employee Conduct, duly enacted by the Rapides Parish School Board, which calls for teachers to "[r]efrain from promoting personal attitudes and opinions for matters other than general discussion."

53. Defendants frequently have directed and continue to direct teachers not to exercise their personal opinions regarding matters of public concern.

54. Upon receiving the written reprimand, Plaintiff felt violated, but complied with the Defendants' wishes because Plaintiff was afraid of losing her job.

55. Plaintiff deleted the post, pursuant to the instructions of the Defendants.

56. In Plaintiff's fifteen (15) years of teaching, including twelve (12) years of teaching specifically in the Rapides Parish School District, Plaintiff had never before received a reprimand or documented conference.

57. On or about September 25, 2014, Defendant Dr. Dana Nolan held a mandatory faculty meeting.

58. At the meeting, Defendant Dr. Dana Nolan told the faculty of Pineville Junior

High School that she wrote Plaintiff a reprimand due to posting a negative opinion about Common Core on facebook. Defendant Dr. Dana Nolan warned the faculty to refrain from sharing their personal opinions or speaking out in any way.

59. Due to an unrelated investigation of Defendants' alleged unethical grading policies, local media interviewed approximately twelve School District teachers.

60. The twelve teachers requested that reporters not use their names because they feared that they would lose their jobs by speaking out.

61. One of those teachers leaked to the media information pertaining to Plaintiff's facebook post and the Defendants' subsequent written reprimand.

62. On October 4, 2014, local media reported that "a teacher got written up for stating her opinion of Common Core on facebook" or words to that effect.

63. On or about October 8, 2014, the Governor of the State of Louisiana heard of the Defendants policies, actions, practices, and customs, and issued an executive order.

64. The Executive Order states "As part of the ongoing discussion among state and local education officials, teachers, parents, and stakeholders regarding classroom curriculum and testing, and as part of the larger discussion of the quality of Louisiana's educational system, legal guarantees afforded to all citizens shall be maintained and provided to teachers." (Executive Order BJ 2014-12, available at <http://gov.louisiana.gov/index.cfm?md=newsroom&tmp=detail&articleID=4696&printer=1>, last visited Feb. 18, 2015).

65. Since the issuance of the Executive Order and now having come forward regarding the facebook post, Plaintiff has been harassed at work and fears for her job.

66. Administrators frequently visit her room, whereas prior to September 23, 2014, a

classroom visit from an administrator was a rare occurrence.

67. Defendants have provided a disagreeable and hostile work environment for Plaintiff.

68. Prior to September 23, 2014, Plaintiff was responsible for her students' Independent Education Plan folders. She has since been ordered by Defendant Dana Nolan to give those folders to her colleague and has been stripped of the responsibility she previously enjoyed.

69. Plaintiff has now been re-titled as the teacher to handle the Emotionally Disturbed ("E.D.") students.

70. Colleagues have informed Plaintiff that the E.D. teacher's position will be dissolved at the end of the school year, and likewise, Plaintiff will be terminated.

71. Plaintiff, who prior to re-posting the information pertaining to Common Core on her facebook page used to have a stellar personnel file, has now received three additional documented conferences from Defendant Dana Nolan for petty reasons motivated by retaliation for Plaintiff.

72. Defendant Dana Nolan has shown an increased hostility for Plaintiff since September 23, 2014.

73. Defendants have and continue to chill Plaintiff's freedom of speech.

74. Due to Defendants' acts, policies, procedures, and/or customs, Plaintiff fears the loss of her job if she were to post anything on facebook again or speak out about a matter of public concern.

75. Pursuant to Defendants' acts, omissions, policies, practices, and/or customs,

Defendants made a subjective determination based upon Plaintiff's private speech regarding a matter of public concern, while other employees were allowed to express various messages posted on their facebook pages.

76. Defendants' employees may express views that support or compliment Common Core. Defendants have not reprimanded other employees for having facebook accounts and posting opinions or for voicing opinions not concerning Common Core or in favor of Common Core.

77. Defendants, through their policies, acts, customs, and procedures grant administrators, such as Defendant Dr. Dana Nolan, unbridled discretion to subjectively determine on an ad hoc basis which speech is permitted and which speech is prohibited.

78. Plaintiff expressed her personal opinion about the implementation of Common Core. Plaintiff's speech was not expressed as part of her official duties at Pineville Junior High School. Plaintiff's protected speech; however, was a substantial or motivating factor in Defendants reprimanding Plaintiff.

79. Public employees do not surrender their First Amendment rights by reason of their employment. The First Amendment protects a public employee's right to speak as a citizen addressing matters of public concern.

80. By re-posting or sharing the photograph on facebook, Plaintiff engaged in political speech and personal expression. Plaintiff's speech is subject to the highest degree of First Amendment protection.

81. Defendants, by their acts, omissions, policies, practices, and/or customs, have punished Plaintiff for expressing her political and personal message, thereby restricting speech

based upon its content and viewpoint.

82. Defendants' acts, omission, policies, practices, and/or customs do not comport with constitutional safeguards protecting speech and were enforced against Plaintiff merely upon Defendants' desire to avoid the discomfort and unpleasantness that sometimes might accompany what could constitute an unfavorable viewpoint.

83. Defendants' acts, omission, policies, practices, and/or customs are unconstitutional as applied to Plaintiff's speech as set forth in this Complaint.

84. Defendants' policies are unconstitutional because they allow for ad hoc suppression of speech based upon Defendants' subjective assessments made under impermissibly vague standards of determining which messages are acceptable and which are not.

85. Defendants' policies are unconstitutional because they reach more broadly than is reasonably necessary to protect legitimate state interests at the expense of protected First Amendment freedoms.

86. Plaintiff's personal and political messages cannot be banned by Defendants as set forth herein. The mere expression of the ideas and viewpoint in Plaintiff's re-post or sharing of a photograph on facebook did not warrant the punishment meted out by Defendants.

87. Defendants' acts, omission, policies, practices, and/or customs have chilled and continue to chill Plaintiff's constitutionally protected speech, causing her distress and fear for her job and earning capacity.

FIRST CLAIM FOR RELIEF
FREEDOM OF SPEECH – FIRST AMENDMENT

88. Plaintiff hereby incorporates by reference all above-stated paragraphs.

89. By reason of the aforementioned due to the training, supervision, acts, policies, practices, customs, and/or procedures created, adopted, committed, and enforced under color of state law, Defendants deprived Plaintiff of her right to freedom of speech in violation of the First Amendment as applied to the states and their political subdivisions under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

90. On or about September 23, 2014, Defendant Dr. Dana Nolan, acting pursuant to School District training, supervision, policies, practices, customs, and/or procedures, reprimanded and punished Plaintiff from exercising her right to freedom of speech. Defendants' actions injured Plaintiff in a way likely to chill a person of ordinary firmness from further participation in that speech activity. Plaintiff's constitutionally protected speech motivated Defendant Dr. Dana Nolan's adverse actions. Consequently, Defendant Dr. Dana Nolan acted with a retaliatory intent or motive.

91. The School District's policies, practices, customs, and/or procedures as set forth in this Complaint were the moving force behind the violation of Plaintiff's right to freedom of speech, and these policies, practices, customs, and/or procedures have had a chilling effect on the rights of teachers, including Plaintiff, in violation of the First Amendment.

92. The School District's failure to adequately train and supervise its employees as set forth in this Complaint was a moving force behind the violation of Plaintiff's right to freedom of speech, and this failure to adequately train and supervise has had a chilling effect on the free speech rights of teachers, including Plaintiff, in violation of the First Amendment.

93. By favoring speech that approves of and promotes “Common Core” over Plaintiff’s speech critiquing “Common Core,” Defendant Dr. Dana Nolan’s violation of Plaintiff’s right to freedom of speech was viewpoint based in violation of the First Amendment.

94. The School District’s training, supervision, policies, practices, customs, and/or procedures that were the moving force behind the violation of Plaintiff’s right to freedom of speech were viewpoint based in violation of the First Amendment.

95. As a direct and proximate result of Defendants’ violation of the First Amendment, Plaintiff has suffered irreparable harm, including the loss of her fundamental constitutional rights, entitling her to declaratory and injunctive relief. Additionally, Plaintiff is entitled to compensatory and nominal damages for the loss of her constitutional rights.

SECOND CLAIM FOR RELIEF
EQUAL PROTECTION OF THE LAW – FOURTEENTH AMENDMENT

96. Plaintiff hereby incorporates by reference all above-stated paragraphs.

97. By reason of the aforementioned training, supervision, acts, policies, practices, customs, and/or procedures committed, created, adopted, and enforced under color of state law, Defendants have deprived Plaintiff of the equal protection of the law guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

98. By favoring speech that promotes and approves of “Common Core” and punishing Plaintiff’s less favored view toward “Common Core,” Defendants have violated the Equal Protection Clause of the Fourteenth Amendment.

99. Defendants' policies pertaining to free speech were selectively enforced against Plaintiff on account of her political viewpoint on "Common Core" in violation of the Equal Protection Clause of the Fourteenth Amendment.

100. Defendants' policies pertaining to free speech as applied against Plaintiff's political speech on or about September 23, 2014, violates the Equal Protection Clause of the Fourteenth Amendment.

101. By favoring speech that approves of and promotes "Common Core" over Plaintiff's political speech critiquing "Common Core," Defendants deprived Plaintiff of the equal protection guarantee of the Fourteenth Amendment.

102. The School District's training, supervision, policies, practices, customs, and/or procedures that were the moving force behind the violation of Plaintiff's fundamental constitutional rights deprived Plaintiff of the equal protection guarantee of the Fourteenth Amendment.

103. As a direct and proximate result of Defendants' violation of the Equal Protection Clause, Plaintiff has suffered irreparable harm, including the loss of her fundamental constitutional rights, entitling her to declaratory and injunctive relief. Additionally, Plaintiff is entitled to compensatory and nominal damages for the loss of her constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Deborah Vailes asks this Court:

- A. Assume jurisdiction over this matter;
- B. Enter a judgment and decree declaring the Defendants violated Plaintiff's fundamental constitutional rights as set forth in this Complaint;

C. Enter a judgment and decree declaring that Defendants' training, supervision, policies, practices, customs, and/or procedures that disfavor speech and any viewpoint critiquing "Common Core" violate Plaintiff's fundamental constitutional rights to freedom of speech and the equal protection of the law as set forth in this Complaint;

D. Enter a preliminary and permanent injunction enjoining Defendant from applying and enforcing their unconstitutional speech actions, policies, practices, and procedures against Plaintiff as described above;

E. Award Plaintiff monetary damages to compensate her for her present and continuing loss of free speech, and for all other actual injuries Plaintiff has suffered as a result of Defendants' conduct as described above;

F. Award Plaintiff nominal damages as set forth in this Complaint;

G. Award Plaintiff her reasonable attorney fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and

H. Grant any such further relief as the Court should find just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues triable of right by a jury.

Respectfully submitted,

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**Pro hac vice motion pending*