No. 13-15684-E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ASSOCIATION FOR DISABLED AMERICANS, INC., *et al.*,

Plaintiffs-Appellants

v.

REINFELD ANDERSON FAMILY LTD PRT, *et al.*,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF OF THE UNITED STATES AS AMICUS CURIAE SUPPORTING PLAINTIFFS-APPELLANTS AND URGING REVERSAL

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Case No. 13-15684-E

Association for Disabled Ams., Inc., et al. v. *Reinfeld Anderson Family Ltd Ptr, et al.*

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, Amicus United States certifies that the Certificate of Interested Persons and Corporate Disclosure Statement that Appellants filed with their Corrected Initial Brief for Appellants is complete.

s/ Robert A. Koch
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Date: April 22, 2014

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INTEREST OF THE UNITED STATES

This case involves a doctor's termination of the doctor-patient relationship after the patient sought to make the doctor's office wheelchair accessible. The patient sued under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794. Title III of the ADA prohibits disability discrimination in places of public accommodation including, as here, a doctor's office and the building housing a doctor's office. 42 U.S.C. 12181 *et seq.* Title V of the ADA prohibits

retaliation against an individual for asserting rights under Title III. 42 U.S.C. 12203. Section 504 prohibits disability discrimination by those who receive federal funding, including a concomitant prohibition against retaliation. 29 U.S.C. 794, 794a; see *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 183, 125 S. Ct. 1497, 1509-1510 (2005).

This case involves the proper interpretation of the prohibition against retaliation under those anti-discrimination statutes. The United States has the statutory authority to enforce the prohibition against retaliation under both the ADA and Section 504. See 42 U.S.C. 12188(b) (Title III), 12203(c) (Title V); 29 U.S.C. 794a (Section 504). The United States thus has a substantial interest in this appeal.

STATEMENT OF THE ISSUES

The United States will address the following issues:

1. Whether a doctor's termination of the doctor-patient relationship because the patient sued to make the doctor's office accessible constitutes prohibited retaliation under the ADA, 42 U.S.C. 12203.

2. Whether a district court may order reinstatement of the doctor-patient relationship as a remedy to prohibited retaliation under the ADA.

STATEMENT OF THE CASE

1. Statutory And Regulatory Background

a. Congress enacted the ADA in 1990 to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. 12101(b)(1). Congress found that "discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, *health services*, voting, and access to public services." 42 U.S.C. 12101(a)(3) (emphasis added). Congress thus sought "to address the major areas of discrimination faced day-to-day by people with disabilities," 42 U.S.C. 12101(b)(4), and specifically listed health care as one.

Title III of the ADA prohibits disability discrimination in places of public accommodation: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. 12182(a). Congress defined public accommodations to include a "professional office of a health care provider," 42 U.S.C. 12181(7)(F), and established that discrimination includes "a failure to remove architectural barriers * * * where such removal is readily achievable," 42 U.S.C.

12182(b)(2)(A)(iv). Title III creates a right of action for private litigants to seek injunctive relief to remedy such prohibited discrimination. Section 12188(a)(1) of Title III specifically incorporates the remedies and procedures of 42 U.S.C. 2000a-3(a), which authorizes "a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order." 42 U.S.C. 2000a-3(a), 12188(a)(1).

Title V of the ADA prohibits retaliation against any individual who "made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under" the ADA. 42 U.S.C. 12203(a); see also 28 C.F.R. 36.206(c)(4) (prohibiting "[r]etaliating against any person because that person has participated in any investigation or action to enforce the [ADA]" in public accommodations). Title V allows victims of retaliation to seek the same type of relief provided in the underlying ADA title. See 42 U.S.C. 12203(c) (incorporating the remedies and procedures of Titles I, II, and III for retaliation claims brought under Title V); *Shotz* v. *City of Plantation*, 344 F.3d 1161, 1181 n.31 (11th Cir. 2003) (stating that the anti-retaliation provision "provides the same remedies and procedures for victims … as in the underlying title" (emphasis and citation omitted)).

b. Section 504 of the Rehabilitation Act of 1973 prohibits disability discrimination in programs or activities that receive federal financial assistance:

"No otherwise qualified individual with a disability * * * shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. 794(a). Outside the employment context, Section 504 incorporates the "remedies, procedures, and rights set forth in [T]itle VI of the Civil Rights Act." 29 U.S.C. 794a(a)(2). This includes a right to be free from retaliation. See *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 183, 125 S. Ct. 1497, 1509-1510 (2005) (holding that "retaliation * * * is intentional conduct that violates the clear terms of the statute" under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* (internal quotation marks and citation omitted)); *Barnes* v. *Gorman*, 536 U.S. 181, 185, 122 S. Ct. 2097, 2100 (2002) (stating that the Court interprets the rights and remedies of Title IX and Title VI of the Civil Rights Act "consistently"); *Shotz*, 344 F.3d at 1170 n.12 ("We construe Titles VI and IX *in pari materia*."). Victims of discrimination may seek injunctive relief and compensatory damages. See *Alexander* v. *Sandoval*, 532 U.S. 275, 279, 121 S. Ct. 1511, 1516 (2001) ("[P]rivate individuals may sue to enforce * * * Title VI and obtain both injunctive relief and damages.").

Each federal agency has regulations that further implement Section 504 in the agency's grants and programs. As here, in the context of recipients of Medicare and Medicaid funds, the applicable regulations that the Department of

Health and Human Services has promulgated prohibit funding recipients from maintaining inaccessible facilities, 45 C.F.R. 84.21-84.23, and from retaliating against an individual because the individual made a complaint under the Act, see 45 C.F.R. 84.61 (incorporating 45 C.F.R. 80.6-80.10 and 45 C.F.R. Pt. 81), 80.7(e) (prohibiting "[i]ntimidatory or retaliatory acts").

2. Statement Of The Facts

In 2012, Daniel Ruiz was hospitalized for eight days, during which Dr. Howard Reinfeld was his attending physician. Doc. 20 at 4. At discharge, the hospital set a follow-up appointment for Ruiz at Reinfeld's private practice. Doc. 20 at 4. Upon attending the appointment, Ruiz—who requires a wheelchair to ambulate—encountered a series of architectural barriers outside the building, inside the building, and inside Reinfeld's office. Doc. 20 at 4, 8-9. For example, the building entrance door, building and office restrooms, and office examination table all were not wheelchair accessible. Doc. 20 at 9.

Ruiz sued Dr. Reinfeld, Reinfeld's practice, and the owner of the office building, the Reinfeld Anderson Family Ltd Prt. Doc. 20 at 4-6. The complaint alleged violations of Title III of the ADA, 42 U.S.C. 12181 *et seq.*; Section 504, 29 U.S.C. 794; and the Florida Americans With Disabilities Accessibility Implementation Act, Fla. Stat. § 553.501 *et seq.* (2013). Doc. 20 at 7-20. The complaint sought injunctive relief to remedy the accessibility barriers under all

three laws against all three defendants, as well as compensatory damages under Section 504 for emotional and dignitary harm.[1] Doc. 20 at 7-8, 11-13.

Seven days after Ruiz served Reinfeld with the lawsuit, Reinfeld sent Ruiz a letter discharging Ruiz as a patient due to a "conflict of interest." Doc. 20 at 24 & Ex. 1. The letter referred Ruiz to three doctors in the area. Doc. 20, Ex. 1. Six days later, the Reinfeld Anderson Family Ltd Ptr filed a motion to dismiss the complaint, arguing that, based on the letter, Ruiz was no longer Reinfeld's patient. Doc. 18. Ruiz amended the complaint to add a claim for retaliation, alleging that he "was discharged as a result of the instant lawsuit * * * with the intent of intimidating, coercing, retaliating and threatening" him for filing suit. Doc. 20 at 27. All three defendants then filed motions to dismiss for lack of standing. Docs. 24-25, 31.

On September 30, 2013, the district court dismissed the amended complaint with prejudice. Doc. 75 at 11. First, the court examined Ruiz's accessibility claim under the ADA and Section 504. The court held that Ruiz lacked standing to seek injunctive relief because he "lack[ed] the specific intent to return to the Premises." Doc. 75 at 6. Ruiz pleaded that he intended to see Reinfeld only in the doctor-patient context which, the court held, Reinfeld had terminated. Doc. 75 at

[1] Ruiz was joined in the complaint by co-plaintiff organization Association for Disabled Americans, Inc. The organization asserted associational standing only as to the claims for injunctive relief. Because the organization predicated its standing entirely on Ruiz's, we discuss only his claims.

5-6. The court reasoned that Reinfeld could not be forced to accept Ruiz as a patient because the "physician-patient relationship is [a] special type of relationship with an 'imperative need for confidence and trust'" that "must be free from governmental interference." Doc. 75 at 6 (quoting *Trammel* v. *United States*, 445 U.S. 40, 51, 100 S. Ct. 906, 913 (1980)). Thus, the court explained, "Dr. Reinfeld is under no obligation to continue a physician-patient relationship with a patient who filed a lawsuit against him." Doc. 75 at 6. Because the court held that Ruiz could not show a future injury to warrant injunctive relief, the court dismissed Ruiz's ADA, Section 504, and state law accessibility claims in their entirety. Doc. 75 at 6-7. The court's dismissal for lack of standing to seek injunctive relief included a *sub silentio* dismissal of Ruiz's claim for compensatory relief under Section 504. See Doc. 75 at 5-7; see also Doc. 75 at 3 (framing the case as one for injunctive relief only).

The court also rejected Ruiz's retaliation claim under the ADA.[2] Doc. 75 at 9-10. The court first examined whether the termination of the doctor-patient relationship was causally related to the filing of a lawsuit and held, without crediting Ruiz's allegations, that it was not. Doc. 75 at 9-10. The court then stated that, even assuming Ruiz's allegation that Reinfeld discharged him because of the lawsuit, such a termination was justified because "the physician-patient

[2] Although both the ADA and Section 504 similarly prohibit retaliation, Ruiz alleged only an ADA retaliation claim. Doc. 75 at 21-27.

relationship is based on trust and confidence, and the existence of a lawsuit may create conflict of interests warranting the termination of this relationship." Doc. 75 at 10. The court stated that "[f]inding otherwise would prevent physicians from terminating a relationship with a patient, when they can no longer share the trust and confidence that is so fundamental to this type of relationship." Doc. 75 at 10.

SUMMARY OF THE ARGUMENT

Ruiz clearly pleaded a prima facie case of retaliation under the ADA. He alleged that Reinfeld discharged him as a patient a mere one week after he served Reinfeld with a complaint alleging that Reinfeld's offices were inaccessible in violation of federal law. Such temporal proximity is all that the ADA requires to properly allege causation. Because Ruiz stated a prima facie case of retaliation, the district court's holding to the contrary should be reversed and remanded for the court to conduct a standard pretextual inquiry.

If the evidence on remand shows that Reinfeld discharged Ruiz as a patient because the alleged "conflict of interest" was caused by Ruiz's accessibility suit against him, then Ruiz must prevail on his retaliation claim. Adverse action taken in response to a lawsuit under the ADA is the very definition of retaliation, and doctors are not exempt from the ADA's anti-retaliation provision. Further, reinstatement of the doctor-patient relationship is within a district court's equitable discretion to remedy retaliation under the ADA. Because the district court erred in

holding that Ruiz had not pleaded adequate facts to sustain a claim of retaliation, the court's judgment regarding retaliation should be vacated and remanded for further proceedings. Because the district court's resolution of Ruiz's retaliation claim may implicate his standing to seek injunctive relief, and because the court erred in dismissing Ruiz's request for compensatory relief *sub silentio*, the court's dismissal of Ruiz's accessibility claims also should be vacated and remanded.

ARGUMENT

DOCTORS ARE NOT EXEMPT FROM THE ADA'S RETALIATION PROVISION, AND REINSTATING THE DOCTOR-PATIENT RELATIONSHIP IS A REMEDY WITHIN A COURT'S DISCRETION

A. Standard Of Review

This court reviews de novo a district court's dismissal of a complaint, "accept[ing] as true the facts as set forth in the complaint and draw[ing] all reasonable inferences in the plaintiff's favor." *Randall* v. *Scott*, 610 F.3d 701, 705 (11th Cir. 2010).

B. Ruiz Pleaded A Prima Facie Case Of Retaliation

The district court erred in holding that Ruiz failed to plead a prima facie of retaliation. To establish a prima facie case of retaliation, "a plaintiff must show that (1) []he engaged in statutorily protected expression; (2) []he suffered an adverse ... action; and (3) the adverse action was causally related to the protected expression." *Shotz* v. *City of Plantation*, 344 F.3d 1161, 1180 (11th Cir. 2003)

(citation omitted). A plaintiff can satisfy causation "if he provides sufficient evidence that the decision-maker became aware of the protected conduct, and that there was a close temporal proximity between this awareness and the adverse ... action." *Id.* at 1180 n.30 (citation omitted).

Once a prima facie case has been established, the defendant "must proffer a legitimate nondiscriminatory reason for the adverse ... action," and the plaintiff then must "demonstrate that these reasons are mere pretext to conceal the retaliation." *Shotz*, 344 F.3d at 1183 n.34 (citation omitted).

Here, Ruiz plainly met the prima facie requirements: (1) Ruiz filed a lawsuit under the ADA and Section 504, (2) Ruiz suffered the adverse action of being discharged as a patient, and (3) Reinfeld discharged Ruiz as a patient only one week after Ruiz served him with the complaint. Such temporal proximity is all that the law requires to properly allege causation. See *Shotz*, 344 F.3d at 1180 n.30 (finding causality uncontroverted where protected activity occurred and the adverse action "was embarked on soon thereafter," noting that "[a] period as much as one month between the protected activity and the adverse action is not too protracted"). Thus, Ruiz's complaint clearly sufficed to state a cause of action for retaliation. The district court's holding to the contrary should be reversed and remanded for the court to evaluate Reinfeld's proffered justifications for pretext.

The district court also erred in holding that Reinfeld's discharge of Ruiz as a patient because Ruiz filed an ADA claim was not retaliatory. The district court instead found that Reinfeld's discharge of Ruiz because of the lawsuit was "warrant[ed]" because "[f]inding otherwise would prevent physicians from terminating a relationship with a patient, when they can no longer share the trust and confidence that is so fundamental to this type of relationship." Doc. 75 at 10. But allowing doctors to claim a "conflict of interest" anytime they are sued under the ADA would create, for doctors, an exemption from claims of retaliation that contravenes the plain text and intent behind the ADA.

The ADA was intended to provide individuals with disabilities nondiscriminatory access to health care that previously had been denied to them. It prohibits doctors from maintaining an inaccessible office. See 42 U.S.C. 12182(a) ("any place of public accommodation"), 12181(7)(F) ("professional office of a health care provider"), 12182(b)(2)(A)(iv) ("failure to remove architectural barriers"). And it prohibits doctors from acting adversely against a patient because the patient has sued to seek access to an inaccessible office. See 42 U.S.C. 12203(a) ("discriminat[ion] against any individual * * * because such individual made a charge"). A doctor may not like being sued by a patient to comply with anti-discrimination laws passed by Congress decades ago, but Congress prohibited

doctors, as it prohibited others, from acting adversely against the patient in response to a lawsuit filed under the ADA.

Indeed, exempting doctors from the ADA's anti-retaliation provision, as the district court did, would gut the ADA's enforcement scheme regarding a place of public accommodation that Congress explicitly intended to cover, *i.e.*, healthcare offices. See *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 180, 125 S. Ct. 1497, 1508 (2005) ("Indeed, if retaliation were not prohibited, Title IX's enforcement scheme would unravel."); see also *Barnes* v. *Gorman*, 536 U.S. 181, 184-185, 122 S. Ct. 2097, 2099-2100 (2002) (discussing the consistent and often coextensive enforcement schemes of Title IX, Title VI of the Civil Rights of 1964, the ADA, and the Rehabilitation Act). Further, the American Medical Association's Code of Medical Ethics Opinions (AMA Ops.) prohibit doctors from "declin[ing] to accept patients because of * * * any * * * basis that would constitute invidious discrimination" and require that doctors "place patients' welfare above their own self-interest." AMA Ops. 9.12 & 10.015, http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics.page (last visited Apr. 21, 2014). In particular, "[u]nder *no* circumstances may physicians place their own financial interests above the welfare of their patients. * * * If a conflict develops between the physician's financial

interest and the physician's responsibilities to the patient, *the conflict must be resolved to the patient's benefit*." AMA Op. 8.03 (emphases added).

Creating this blanket exemption for doctors from claims of retaliation conflicts with a decision of the First Circuit that, in our view, properly implements the anti-discrimination prohibition on retaliation. In *Lesley* v. *Chie*, 250 F.3d 47 (1st Cir. 2001), the court assessed a claim for retaliatory discharge of a patient under Section 504 and stated that "[p]hysicians * * * are just as capable as any other recipient of federal funds of discriminating against the disabled, and courts may not turn a blind eye to the possibility that a supposed exercise of medical judgment may mask discriminatory motives or stereotypes." *Id.* at 54. The court thus held that "a patient may challenge her doctor's decision to refer her elsewhere by showing the decision to be devoid of any reasonable medical support * * * to determine whether the decision was unreasonable *in a way that reveals it to be discriminatory*." *Id.* at 55.

Here, Ruiz alleged that Reinfeld discharged him as a patient because of his lawsuit, the very definition of retaliation. Doc. 20 at 27. Doctors are not exempt from the ADA's anti-retaliation provision, and the district court's holding to the contrary should be vacated.

C. Reinstatement Is A Possible Remedy For Retaliation By A Doctor

A court has discretion to order that a doctor reinstate a patient who was dismissed for filing a disability discrimination claim. The ADA authorizes courts to issue injunctions that "make the plaintiff whole" for discrimination the plaintiff has suffered. *Farley* v. *Nationwide Mut. Ins. Co.*, 197 F.3d 1322, 1338-1339 (11th Cir. 1999) (internal quotation marks and citation omitted); see 42 U.S.C. 12203(c) (incorporating the remedies and procedures of 42 U.S.C. 12188), 12188(a)(1) (incorporating the remedies and procedures of 42 U.S.C. 2000a-3(a)), 2000a-3(a) (authorizing "a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order"). This power is historically "broad" and flexible. See, *e.g.*, *Milliken* v. *Bradley*, 433 U.S. 267, 281, 97 S. Ct. 2749, 2757 (1977) ("[B]readth and flexibility are inherent in equitable remedies." (citation omitted)); *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 496, 121 S. Ct. 1711, 1720 (2001) ("[W]hen district courts are properly acting as courts of equity, they have discretion unless a statute clearly provides otherwise."). Reinstatement is among the equitable remedies available under the ADA and the statutes upon which it was based. See, *e.g.*, *Farley*, 197 F.3d at 1339 (describing reinstatement as the preferred remedy when plaintiff was terminated from job in violation of ADA).

A rule that reinstatement is unavailable in the context of doctor-patient relationships does not have a basis in the ADA. Nothing in the ADA exempts doctors from the full spectrum of relief that courts may traditionally allow under their equitable authority. And the ADA's explicit inclusion of doctors' offices as places of "public accommodation" subject to the ADA's requirements, 42 U.S.C. 12181(7)(F), strongly suggests that the ADA was intended to allow plaintiffs to obtain injunctions of this type, because a contrary rule would provide doctors sued by patients with an escape-hatch to evade ADA liability entirely. As this suit illustrates, were reinstatement unavailable as a remedy, a physician might successfully deprive a patient of the ability to challenge the physical configuration of a medical facility by dismissing the patient and depriving him of standing. And the retaliation would trigger no consequence, because damages are unavailable to private plaintiffs, and the only equitable remedy that would remedy the retaliation would be unavailable. A construction of the ADA's remedial scheme that would enable doctors to render the statute's protections unenforceable by private plaintiffs is not consistent with the statute as a whole.

The district court adopted a limited view of the equitable relief permitted under the ADA on the ground that the doctor-patient relationship involves "confidence and trust" that may be undermined by the filing of a lawsuit. See Doc. 75 at 6 (quoting *Trammel* v. *United States*, 445 U.S. 40, 51, 100 S. Ct. 906, 913

(1980)). To be sure, in any context, reinstatement of a wrongly-terminated plaintiff compels the resumption of a relationship that may have been damaged by the ill will that often attends litigation. But the particular nature of the doctor-patient relationship does not require a broad exception to the rule that permits injunctions despite this ill will. Even if a doctor feels ill will toward a patient, the doctor is ethically obligated to treat the patient's welfare as paramount when providing care. See, *e.g.*, AMA Op. 10.015. And professional norms—as well as antidiscrimination laws—acknowledge that doctors may be required to treat patients toward whom they feel discomfort or ill will, by barring doctors—regardless of any prejudices they may hold—from terminating patients based on race, gender, sexual orientation, or the carrying of infectious diseases such as HIV. See AMA Op. 10.05.

Courts are experienced at determining on a case-by-case basis when "discord and antagonism between the parties"—or other case-specific considerations—make it impracticable to order particular injunctive relief. See *Farley*, 197 F.3d at 1339 (citation omitted). While the district court may consider on remand whether particular facts or circumstances make it impossible for a doctor-patient relationship to continue in this case, a rule that private plaintiffs are categorically unable to obtain relief for doctors' retaliation in violation of the ADA finds no basis in the statute and would undermine the ADA's enforcement.

D. The District Court Erred In Dismissing Ruiz's Accessibility Claims

The district court's legal errors on Ruiz's retaliation claim infected its analysis of Ruiz's standing to assert his accessibility claims. The court found that Ruiz failed to allege the real and immediate harm necessary to satisfy injunctive relief standing requirements. Doc. 75 at 6; see *Houston* v. *Marod Supermarkets, Inc.*, 733 F.3d 1323, 1328 (11th Cir. 2013) (enumerating Article III standing requirements). The court stated that Ruiz lacked the necessary specific intent to return to the premises because Reinfeld had discharged him as a patient. Doc. 75 at 6. But reinstatement of Ruiz as Dr. Reinfeld's patient, were that ordered, would alter the basis for that holding. Moreover, the court dismissed *sub silentio* Ruiz's claim for damages under Section 504 based on its determination that Ruiz lacked the immediacy required to seek *injunctive* relief, but immediacy is not required to seek *compensatory* relief. See *Houston*, 733 F.3d at 1328. The district court's dismissal of Ruiz's accessibility claims thus should be vacated and remanded.

CONCLUSION

The district court's judgment should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the attached BRIEF OF THE UNITED STATES AS AMICUS CURIAE SUPPORTING PLAINTIFFS-APPELLANTS AND URGING REVERSAL:

(1) complies with Federal Rules of Appellate Procedure 29(d) and 32(a)(7)(B) because it contains 3,943 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii); and

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

s/ Robert A. Koch
ROBERT A. KOCH
Attorney

Dated: April 22, 2014

CERTIFICATE OF SERVICE

I certify that on April 22, 2014, I electronically filed the foregoing BRIEF OF THE UNITED STATES AS AMICUS CURIAE SUPPORTING PLAINTIFFS-APPELLANTS AND URGING REVERSAL with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system and that seven paper copies identical to the electronically filed brief were sent to the Clerk of the Court by certified First Class mail, postage prepaid.

I also certify that counsel of record who are registered CM/ECF users will be served by the appellate CM/ECF system.

s/ Robert A. Koch
ROBERT A. KOCH
Attorney