No. 19-7017

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIMON BRONNER, *et al.*,
Plaintiffs-Appellants,
v.
LISA DUGGAN, *et al.*,
Defendants-Appellees.

Appeal from a Decision of the
United States District Court for the District of Columbia
Honorable Rudolph Contreras, U.S. District Judge
Case No. 1:16-CV-00740-RC

CORRECTED APPELLANTS' BRIEF

JEROME M. MARCUS, ESQ.
MARCUS & AUERBACH LLC
1121 North Bethlehem Pike
Suite 60-242
Spring House, Pennsylvania 19477
(215) 885-2250
jmarcus@marcusauerbach.com

L. RACHEL LERMAN, ESQ.
BARNES & THORNBURG LLP
2029 Century Park East
Suite 300
Los Angeles, California 90067-2904
(310) 284-3871
rlerman@btlaw.com

JENNIFER GROSS, ESQ.
THE DEBORAH PROJECT, INC.
7315 Wisconsin Avenue, Suite 400 West
Bethesda, Maryland 20814
(301) 349-1302
jgross@deborahproject.org

Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

JURISDICTIONAL STATEMENT

The United States District Court for the District of Columbia ("the district court") had jurisdiction over this case under 28 U.S.C. § 1332. This Court has jurisdiction over the district court's February 4, 2019 order dismissing the case under 28 U.S.C. § 1291. Notice of appeal was timely filed on March 3, 2019.

INTRODUCTION

This appeal presents this Court with a simple task of error correction. The trial court's dismissal of the case for failure to meet the amount in controversy requirement – after nearly three years of litigation that proceeded well into discovery, and in explicit reversal of its earlier decision to the contrary – is in breach of clear Supreme Court precedent, long followed in this and every other court. *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288–90 (1938) ("*Red Cab*"). *See* 14AA Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3702.4 (4th ed.) ("*Wright & Miller*") (describing as "an easily stated, well-settled principle" that amount in controversy is determined as of the time that an action is commenced); *see e.g.,*

Naegele v. Albers, 110 F. Supp. 3d 126, 141–42 (D.D.C. 2015), *aff'd*, 672 F. App'x 25 (D.C. Cir. 2016) (refusing to dismiss because "the amount in controversy requirement was satisfied as of the lawsuit's inception"). Included among the remedies sought are injunctive and declarative relief prohibiting ongoing annual withdrawals from the ASA Trust Fund in excess of $100,000 per year; it is apparent that these planned annual withdrawals are included in "the object of the litigation," and that even a single year of the requested equitable relief would satisfy the minimum amount in controversy required for diversity jurisdiction. *Hunt v. Washington State Apple Advertising Commission,* 432 U.S. 333, 347 (1977).

The actions of defendants Lisa Duggan, Curtis Marez, Neferti Tadiar, Sunaina Maira, Chandan Reddy, J. Kehaulani Kauanui, Jasbir Puar, John F. Stephens, and Steven Salaita ("the Individual Defendants," and, collectively with ASA, "Defendants") are equally egregious. Beginning in 2012, the individual Defendants launched a hostile takeover of a small academic society – the American Studies Association ("ASA") – with a modest endowment of less than $1.5 million. In clear breach of its status as an academic, rather than

political organization, these people launched what was, at the outset, a purposefully secret plan – emails reveal an explicit decision *not* to tell members what their goal was – to attain control of the ASA solely so they could cause it adopt an extremely controversial and politically charged resolution boycotting all academic institutions in Israel. When a membership vote was held on the resolution it failed; yet Defendants took the extraordinary step of declaring victory anyway and placing the resolution in the Society's formal records as if properly adopted. It remains there to this day. The resulting refusal to engage in academic intercourse with scholars from one country was immediately denounced by a chorus of leading academics, current and former presidents of the American Association of University Professors, and former leaders of the ASA itself, and even the *New York Times*.

Having attained control of the ASA, Defendants proceeded to change by-law provisions governing how money could be removed from the endowment – again, without telling the membership why this change was being adopted. Once in place, Defendants used the new provision to remove hundreds of thousands of dollars from the endowment, and to spend it, *inter alia,* lobbying for state legislation

supportive of their desire to boycott the entire Israeli academic community.

The latter actions were revealed through discovery and analysis of the ASA's Form 990's, because Defendants had not – and to this day still have not – distributed to the ASA membership the required financial reports that would have shown what they were doing.

When they learned of it, Plaintiffs amended their complaint to seek recoupment, to the ASA's coffers, of the amounts Defendants had improperly converted to their own purposes. The trial court granted leave to add these claims, in obedience of District of Columbia Court of Appeals decisions holding that individual members of a non-profit corporation may seek such relief on behalf of the entity itself.

Yet when it decided dismiss the case, the trial court revisited this decision as well, and again reversed itself, now concluding – incorrectly, as we show below – that Plaintiffs were seeking to obtain this money for themselves; that they had no right to do so; and therefore that the amount of the looted funds did not count toward satisfaction of the amount in controversy requirement. The trial court the made similarly erroneous decision to essentially ignore the value, to the ASA, of the

equitable and injunctive relief Plaintiffs seek here, again, in the service of its goal to dismiss the case.

The result is this appeal, which asks this Court to do no more than enforce clear and long-standing Supreme Court precedent, and to apply the relevant binding decisions on state law issued by the District of Columbia courts.

STATEMENT OF ISSUES

1. Whether the district court erred in reversing, three years into the litigation, its original decision that the amount in controversy was adequate for purposes of diversity jurisdiction;

2. Whether, in applying the amount in controversy requirement, the district court improperly understated the value of the equitable relief and punitive damages at issue;

3. Whether the district court erred in concluding that the Professors lack standing to seek monetary damages on behalf of the ASA for breach of fiduciary duty, *ultra vires* acts, and waste, when binding authority from the District of Columbia Court of Appeals holds that they do have such standing;

4. Whether the district court erred when it dismissed the Professors' *ultra vires* claim on the merits.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

A. The Parties are Individual Professors Who Belong or Have Belonged to the ASA, Defendant ASA, and Defendant Individuals Controlling the ASA.

Plaintiffs and appellants Drs. Simon Bronner, Michael Rockland, Michael Barton, and Charles Kupfer ("the Professors") are professors of American Studies; all are current or former long-time members of the ASA. Both Dr. Bronner and Dr. Rockland are lifetime members of the ASA and recipients of the ASA's high honor, the Turpie Award. Dr. Bronner was the editor of the *Encyclopedia of American Studies* ("the *Encyclopedia*"), one of the ASA's two primary publications, the other being the *American Quarterly*. Until November 2016, the editors of the *Encyclopedia* and the *American Quarterly* also held the status of officers of the ASA and (non-voting) members of the National Council by virtue of their roles as editors of the ASA's flagship publications. As discussed below, the ASA bylaws were changed in

November 2016, following the commencement of this litigation, and stripping Plaintiff Bronner of his status as an officer and member of the National Council.

The American Studies Association ("ASA") is a nonprofit academic association incorporated in the District of Columbia for purposes of promoting the academic field of American Studies, including the promotion and encouragement of research, teaching, and publication in the field. According to the ASA charter, the organization was "organized exclusively for education and academic purposes." (App. 21, 50.)

Defendants Lisa Duggan, Curtis Marez, Neferti Tadiar, Sunaina Maira, Chandan Reddy, J. Kehaulani Kauanui, Jasbir Puar, John F. Stephens, and Steven Salaita are ASA members who have served on the ASA National Council or in other leadership positions. Each was heavily involved in pursuing the adoption of a boycott of Israeli colleges, universities, and other academic institutions ("the Academic Boycott"). All are leaders of the U.S. Academic and Cultural Boycott of Israel, or USACBI. Most serve on the USACBI Organizing Collective.

B. Defendants' Efforts to Advance the Academic Boycott

As alleged in the operative complaint (the Second Amended Complaint ("SAC")), and beginning in 2012, certain Defendants "launched a scheme to co-opt ASA's National Council and key ASA committees, with the purpose of causing ASA to officially endorse a boycott of Israeli academic institutions," consistent with the Academic Boycott organized, promoted and endorsed by USACBI. (App. 347.) According to the SAC, only those who strongly supported the Academic Boycott were nominated to run for President of the ASA. (App. 125-35). The nomination process was also manipulated to maximize the number of persons on the National Council who actively sought and promoted boycotting Israel. *Id*. Defendants ensured that only those intending to adopt the Academic Boycott were nominated to sit on the National Council; meanwhile, these nominees withheld from the ASA general membership that primary goal was to see the ASA adopt the Academic Boycott. (App. 130-34).

Defendants expended substantial efforts and resources to ensure that the ASA would adopt, promote, and sustain the Academic Boycott. Dissenting opinions and information unfavorable to the adoption of the

Academic Boycott were suppressed.

When the National Council was unable to come to an agreement to unanimously adopt the Academic Boycott, a compromise was made providing for a vote of the entire membership – but the steps were taken to ensure a favorable outcome for Defendants. Defendants froze the ASA's membership rolls to prevent members adverse to the Academic Boycott from voting; indeed, and email exchange between Defendants John Stephens and Sunaina Maira reflects Defendant Stephens' view of the best date to freeze the rolls to minimize the number of votes opposing the Academic Boycott and maximize the number of votes in favor. (App. 153-58) (quoting email from Defendant Stephens to Defendant Maira: "for now the risk is to cut off supporters, no opponents. Once a vote is announced, the risk shifts dramatically in the other way," *id*. 157).

When the members of the ASA finally voted on the Academic Boycott in November of 2013, Defendants claimed victory. In fact, they had lost the vote. Of the 1,252 who voted on the measure, only 827 voted in favor – less than the two-thirds the ASA Bylaws require to pass a resolution supporting public action. (App. 51, ASA Bylaws, Art. XI,

sec. 3.[1])

Contrary to Defendants' victorious announcements, the measure did not pass. Also contrary to Defendants' claims, the Academic Boycott was not the product of a grass-roots movement with wide support among ASA members. Only 21% of the ASA's 3,853 actually voted for the measure.

C. Defendants Invade the ASA Trust and Endowment Fund to Support the Academic Boycott.

Following the adoption of the Academic Boycott, the ASA's financial health declined substantially. The ASA incurred substantial expenses related to the Academic Boycott, including hiring an additional employee to handle the great increase in workload associated with the ASA's public position, as well as legal and public relations costs, *inter alia*. At the same time, revenues fell. The ASA's 990s reflect the nonprofit operating at a great loss for each of the past three fiscal years; prior to the adoption of the Academic Boycott, and going back as far as 2002, the ASA only reported expenses greater than revenues in one year – 2008, during the Great Recession.

---

[1] To pass with 1,252 voting, 835 would need to vote in favor.

To cover the increase in expenses and decline in membership revenue resulting from the Academic Boycott, Defendants invaded the ASA's Trust and Endowment fund. Because the ASA Bylaws did not allow for annual withdrawals from the Trust Fund of the size required, Defendants once again changed the Bylaws.

Beginning in fiscal year 2015 and continuing at least through the fiscal year ending in July 2017, Defendants' Academic Boycott was funded with annual withdrawals of over $100,000 per year from the ASA Trust Fund. Prior to the adoption of the Academic Boycott, and going back at least until 2002, there were no withdrawals from the fund. Documents produced by Defendants in discovery show that the withdrawals were made to cover the increase in expenses arising from the Academic Boycott, and a plan to continue annual withdrawals of over $100,000 per year.

II. PROCEDURAL HISTORY

A. The Professors' Lawsuit

1. The initial complaint

On April 20, 2016, the Professors filed a complaint ("the original complaint") in the district court alleging (1) a derivative claim for

breach of fiduciary duty, (2) direct and derivative claims for *ultra vires* acts, (3) direct and derivative claims for waste, (4) a direct claim for breach of the D.C. Nonprofit Corporations Act, or, in the alternative, a direct claim for breach of contract and (6) a direct claim for breach of contract arising from Defendants' refusal to allow Professor Barton to vote on the Academic Boycott. (App. 25-31).

The three derivative claims were brought by Professor Bronner on behalf of the ASA. Pursuant to § 29–411.02 of the D.C. Code, derivative claims involving nonprofit corporations ("nonprofits") must be brought by either (1) an officer or director of the nonprofit, or (2) a member or group of members with 5% of voting power *or* a group of 50 members.[2]

On June 23, 2016, the Professors filed the First Amended

---

[2] The complete text of the statute provides:

§ 29–411.02. Standing.

(a) A derivative proceeding may be brought in the Superior Court by:

(1) A member or members having 5% or more of the voting power, or by 50 members, whichever is less; or

(2) Any director or member of a designated body.

(b) The plaintiff in a derivative proceeding shall be a member, director, or member of a designated body at the time of bringing the proceeding. A plaintiff that is a member shall also have been a member at the time of any action complained of in the derivative proceeding.

Complaint ("FAC"). The amendment was made "as a matter of course" pursuant to Rule 15(a)(1)(b) of the Federal Rules of Civil Procedure. (App. 15). The FAC brought the same claims and allegations as the original complaint, including the exact same six counts.

The FAC, which was verified by Professor Bronner, was filed for purposes of satisfying Federal Rule of Civil Procedure 23.1. Rule 23.1 requires that derivative complaints brought in federal court "must be verified." Fed. R. Civ. Proc. 23.1(b). Aside from the inclusion of the verification, there were no substantive differences between the original complaint and the FAC.

2. Defendants secretly change the ASA bylaws to strip Professor Bronner of his officer status and remove him from the National Council.

In November 2016, at the first annual meeting after the filing of the original complaint, the National Council changed the ASA Bylaws to deny officer status and a place on the National Council to the editor of the *Encyclopedia* – namely, Dr. Bronner. The change in the ASA Bylaws was kept very quiet – not even Dr. Bronner was informed that his status as an officer, and his position on the National Council (as well as those of future editors of the *Encyclopedia*) were under

reconsideration. Even after the change in the Bylaws was implemented, the ASA leadership failed to inform Dr. Bronner or the ASA membership of the change.

By the time the district court ruled on the FAC, Professor Bronner had been stripped of standing to bring new derivative claims or to amend the derivative claims in the FAC.

B. The FAC Survives Defendants' Motion to Dismiss and the First Attack on the Amount in Controversy.

1. The district court finds that the Professors' allegations easily satisfy § 1331's amount in controversy requirement.

Defendants filed a motion to dismiss the FAC on July 7, 2016. (ECF No. 21). Defendants' first argument was that the district court could not exercise subject matter jurisdiction over the case because the amount in controversy did not exceed $75,000, the minimum required for diversity cases under 28 U.S.C. § 1331.

The district court rejected Defendants' argument, stating: "Plaintiffs' claims plainly meet the low standard for establishing a sufficient amount in controversy." (App. 59) ("*Bronner I*," published at 249 F. Supp. 3d 27 (D.D.C. 2017)).

Notably, the district court referenced not just monetary damages,

but also the injunctive and declarative relief sought, and the FAC's allegations of "improper expenditure of ASA funds" and "attempt[s] to appropriate the assets and reputation of the ASA." As discussed below, every allegation and form of relief sought in the FAC was reasserted in the SAC, along with numerous new allegations drawn from discovery, which revealed that Defendants' improper expenditures were and are substantially larger than previously known, and include large annual withdrawals from the ASA's Trust Fund, in excess of $75,000 each year.

2. The district court dismisses the derivative claims on procedural grounds.

The District Court dismissed the FAC's three derivative claims for failing to satisfy D.C. Code § 29-411.03, which proscribes filing a derivative claim prior to issuing a letter of demand to the board of the corporation and the subsequent expiration of 90 days.[3]

---

[3] D.C. Code § 29-411.03 states, in full:

A person shall not commence a derivative proceeding until:

(1) A demand in the form of a record has been delivered to the nonprofit corporation to take suitable action; and

(2) Ninety days have expired from the date the demand was effective unless:

The FAC alleged that it would be futile to make a demand on the National Council, but the district court did not agree, and dismissed the derivative claims for failure to satisfy the procedural requirement. The dismissed claims included the claim for breach of fiduciary duty, which was brought solely as a derivative claim and the derivative portions of the claims for *ultra vires* acts and for waste.

3. The district court dismisses the *ultra vires* claim for failure to state a claim.

The FAC alleged that the adoption of the Academic Boycott was an *ultra vires* act – that is, that it fell outside of the powers afforded to the nonprofit under the its founding documents. The FAC presented three bases for the *ultra vires* claim: (1) that the acts of adopting the Academic Boycott and the acts taken to advance the Academic Boycott were outside the ASA's powers to act, as defined by the ASA's corporate mission statement; (2) that the Academic Boycott violated an express

---

(A) The person has earlier been notified that the demand has been rejected by the corporation; or

(B) Irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

provision of the ASA's Charter that requires that "[n]o substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation"; and (3) that the Academic Boycott violated a longstanding practice of the ASA to avoid acts that "advance a particular position on questions of U.S. government policy." (App. at 21) (quoting the Statement of Election to Accept of the American Studies Association, ¶ Third at (4)).

The district court rejected all three theories and dismissed the direct claim alleging *ultra vires* acts. For purposes of this appeal, only the first theory is at issue. The SAC brought additional claims for *ultra vires* acts, including claims that allege that a "substantial part of the activities" of the ASA are spent attempting to influence legislation and that certain actions taken to adopt the Academic Boycott and further the Defendants' personal political goals violated longstanding practice of the ASA, the ASA's express bylaws, or both; those claims were not dismissed on the merits and remained pending when the case was dismissed for lack of jurisdiction.

C. The District Court Finds for the Second Time that the Amount In Controversy Requirement Is Satisfied and Confirms Jurisdiction.

1. The Professors File the SAC.

In November 2017, following the production of documents in discovery revealing additional actionable conduct by Defendants and evidence of the increase in expenses and decrease in revenues resulting from the Academic Boycott, as well as the withdrawal of hundreds of thousands of dollars from the ASA Trust (and the plan to continue withdrawing over $100,000 per year), the Professors moved to amend the complaint to add additional claims and defendants.

Defendants opposed the motion to amend, arguing, *inter alia*, that the complaint was brought in bad faith, that amendment would be futile, and that the Professors were dilatory in moving to amend. The district court rejected all of these arguments and granted leave to file the SAC. (App. 196-204) ("*Bronner II*," published at 324 F.R.D. 285 (2018).

2. The parties submit supplemental briefing addressing the amount in controversy in light of D.C. Code § 29-406.31(d).

In the same decision, the district court directed the parties to

submit supplemental briefs addressing the following question: whether D.C. Code § 29-406.31(d) immunizes the defendants from liability for monetary damages, and, if so, whether the amount in controversy in this case exceeds the minimum required for jurisdiction.[4]

D.C. Code § 29-406.31(d) provides:

> a director of a charitable corporation shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for: (2) An intentional infliction of harm[.]

D.C. Code § 29-406.31(d). The Professors' Supplemental Brief argued that Defendants were not immunized by § 29-406.31(d), because their actions, as alleged, constituted "intentional infliction of harm," an

---

[4] Subsection (d) of the statute provides, in full:

(d) Notwithstanding any other provision of this section, a director of a charitable corporation shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(1) The amount of a financial benefit received by the director to which the director is not entitled;

(2) An intentional infliction of harm;

(3) A violation of § 29-406.33; or

(4) An intentional violation of criminal law.

D.C. Code Ann. § 29-406.31(d).

explicit exception to § 29-406.31(d). In support of this argument, the Professors' supplemental briefs included explicit and exact references to information produced in discovery evidencing that Defendants acted to adopt and promote the Academic Boycott with knowledge that their actions would likely harm the ASA. (App. 210-22, 232-35, 271-72.)

The Professors' supplemental briefs also argued that even if § 29-406.31(d) immunized the defendants from liability for monetary damages, the value of injunctive and declaratory relief at issue in the SAC would still exceed the jurisdictional minimum. In particular, the Professors' first supplemental brief presented, in detail, the extent of ongoing financial injury to the ASA, including withdrawals from the ASA Trust Fund in excess of $100,000 per year. *Id.*

The district court again finds that the amount in controversy requirement is satisfied and that the court has jurisdiction over the case.

Agreeing with the Professors, the district court found that D.C Code § 29-406.31(d) did not immunize Defendants from liability for monetary damages, as the SAC alleged intentional infliction of harm, invoking the second exception to the exculpation statute. (App. 285-92.)

ARGUMENT

SUMMARY OF ARGUMENT

The Professors argue the following:

1. The district court erred in revisiting the amount in controversy following the finding that the amount in controversy was satisfied based on the facts and circumstances at the time of the lawsuit commenced;

2. Even if monetary damages are not available, the amount in controversy is satisfied;

3. Monetary damages are available under binding District of Columbia precedent;

4. The adoption of the Academic Boycott, and acts in furtherance of the Academic Boycott, are *ultra vires* as they are not encompassed by the ASA's mission statement.

STANDARD OF REVIEW

This Court reviews *de novo* the district court's finding that the minimum required amount in controversy is not met. *See*, *e.g.*, *Martin v. Gibson,* 723 F.2d 989, 992–93 (D.C.Cir.1983) (per curiam) (reversing

dismissal for failure to meet the amount in controversy requirement; no deference to the district court judgment); *Love v. Budai,* 665 F.2d 1060, 1063–64 (D.C.Cir.1980) (per curiam) (same).

I. THE DECISION TO REVISIT THE AMOUNT IN CONTROVERSY THREE YEARS INTO THE CASE CONSTITUTES REVERSIBLE ERROR.

A. The Amount in Controversy Is Assessed as of the Filing of the Complaint; Subsequent Dismissal of Claims Does Not Destroy Jurisdiction.

The district court's decision is incorrect, and must be reversed, because it is directly contrary to a clear and uncomplicated Supreme Court holding: the question of whether the amount in controversy requirement is satisfied for purposes of diversity jurisdiction is determined on the facts and circumstances **at the time the case is filed in federal court** and is unaffected by subsequent events in the case, including the dismissal of claims. *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288–90 (1938) ("*Red Cab*"). *Red Cab* provides the standard for **how** to measure the amount in controversy as well as **when** to do so:

> [T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must

> appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal. . . . **Events occurring subsequent to the institution of suit which reduce the amount recoverable below the statutory limit do not oust jurisdiction**.

Red Cab, 303 U.S. at 288–90 (emphasis added). The *Red Cab* rule is universally applied today. 14AA Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3702.4 (4th ed.) ("*Wright & Miller*") (describing as "an easily stated, well-settled principle" that amount in controversy is determined as of the time that an action is commenced); *see e.g., Naegele v. Albers*, 110 F. Supp. 3d 126, 141–42 (D.D.C. 2015), *aff'd*, 672 F. App'x 25 (D.C. Cir. 2016) (holding that diversity jurisdiction exists because "the amount in controversy requirement was satisfied as of the lawsuit's inception"); *Nwachukwu v. Karl*, 223 F.Supp.2d 60, 66 (D.D.C. 2002).

Under *Red Cab*'s "well-settled principle," there are very few circumstances – none of which is present here – that allow for dismissal for lack of jurisdiction later in the case, upon revisiting the amount in controversy, as long as the plaintiff's initial assessment was made in good faith. *See* 1A Fed. Proc., L. Ed. § 1:458 (subsequent events "which reduce the amount recoverable below the statutory limit are generally

regarded as not affecting jurisdiction").

Specifically, the subsequent dismissal of claims bringing the amount in controversy below the required minimum – as in this case – does not oust the court of jurisdiction. *Id.*; *Parham v. CIH Properties, Inc.*, 208 F. Supp. 3d 116, 123 (D.D.C. 2016) (amount in controversy decreased significantly with dismissal of tort claims, but "subsequent decrease in the amount in controversy does not divest this Court of jurisdiction"); *Paley v. Estate of Ogus*, 20 F. Supp. 2d 83, 93 (D.D.C. 1998) (denying motion to dismiss following dismissal of claims, "satisfaction of the jurisdictional amount is determined by the amount of damages that the plaintiff claims at the initiation of the lawsuit, as long as the claim apparently is made in good faith").

The most recent cases in this circuit are consistent. *See, e.g.*, *Pietrangelo v. Refresh Club, Inc.*, No. 18-CV-1943 (DLF), 2019 WL 2357379, at *7–8 (D.D.C. June 4, 2019) ("well settled that the amount-in-controversy requirement is assessed as of the date the complaint is filed"; *Quizinsight.com P'ship v. Tabak*, No. 18-CV-1878 (DLF), 2019 WL 4194433, at *3 (D.D.C. Sept. 4, 2019) (citing *Pietrangelo*).

B. The District Court's Finding that the Professors Cannot Collect Monetary Damages Is a Subsequent Event that Does Not Oust Jurisdiction.

In 2017, two years before the district court's order from which this appeal is taken – the district court determined that the amount in controversy requirement was met, ruling that it "is far from legally certain that Plaintiffs could not recover over $75,000." *Bronner v. Duggan*, 249 F. Supp. 3d 27, 37-38 (D.D.C. 2017).

Federal jurisdiction thus attached in 2017.

The Decision does not question the Professors' good faith, nor does it address *Red Cab*'s rule that the amount in controversy assessment is based on the facts and circumstances at the commencement of the case.

As the Decision states, the Professors protested the court's repeated revisiting of the amount in controversy:

> [Plaintiffs]protest that this Court has already thrice concluded that it has subject matter jurisdiction over this action. [That] point is, however, of little significance because the Court has an 'ongoing obligation to ensure that 'it is acting within the scope of its jurisdictional authority.'" [Citations.] The Court shall thus revisit its subject matter jurisdiction yet again.

Decision at 10, citing *Hardy v. N. Leasing Sys., Inc.*, 953 F. Supp. 2d 150, 155 (D.D.C. 2013) and *Henderson ex rel. Henderson v. Shinseki*,

562 U.S. 428, 434 (2011) ("courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction").

While it is true that federal courts are obliged to ensure that they are properly exercising jurisdiction, the cases on which the court relied are inapposite to the assessment of the amount in controversy. District courts are not obliged to ensure that the diversity cases in front of them **maintain** the minimum required amount in controversy, because jurisdiction is based on the amount in controversy **at the commencement of the suit**. As discussed above, the courts maintain jurisdiction even when the amount in controversy falls below the required amount; thus, the requirement that federal courts continually ensure that they have jurisdiction does not require or even permit repeated reassessment of the amount in controversy.

II. EVEN WITHOUT INCLUDING MONETARY DAMAGES OWED TO THE ASA, PLAINTIFFS ESTABLISHED AT THE OUTSET THAT THE AMOUNT IN CONTROVERSY EXCEEDS THE REQUIRED MINIMUM.

"For a court to dismiss a suit for failure to adequately plead the amount in controversy, 'it must appear to a legal certainty that the claim is really for less than the jurisdictional amount.'" *Doe v. Exxon*

Mobil Corp., 69 F. Supp. 3d 75, 97–98 (D.D.C. 2014) (quoting *Red Cab*); *Info. Strategies, Inc. v. Dumosch*, 13 F. Supp. 3d 135, 140–41 (D.D.C. 2014). The "legal certainty" standard is particularly strict, and even more so where, as here, the plaintiffs originally brought the complaint in federal court (as opposed to cases that defendants remove from state court). "The default rule governing the amount-in-controversy requirement is that 'the sum claimed by the plaintiff controls if the claim is apparently made in good faith.'" *Info. Strategies,* 13 F. Supp. 3d at 140–41, *quoting Red Cab Co.,* 303 U.S. at 288. "There is a strong presumption favoring the amount alleged by the plaintiff"; therefore, "it is difficult for a dismissal to be premised on the basis that the requisite jurisdictional amount is not satisfied." *Woodmen of World Life Ins. Soc'y v. Manganaro*, 342 F.3d 1213, 1216 (10th Cir. 2003); see also *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 553 (2014) (""When a plaintiff invokes federal-court jurisdiction, the plaintiff's amount-in-controversy allegation is accepted if made in good faith"); *Pietrangelo v. Refresh Club, Inc.*, No. 18-CV-1943 (DLF), 2019 WL 2357379, at *6 (D.D.C. June 4, 2019) (*quoting Dart Cherokee Operating Co.*).

"[T]he legal certainty test is generally only met in three situations," none of which is at issue here:

> 1) when the terms of a contract limit the plaintiff's possible recovery to less than the required jurisdictional amount;
>
> 2) when a specific rule of substantive law or measure of damages limits the amount of money recoverable by the plaintiff to less than the necessary number of dollars to satisfy the requirement; and
>
> 3) when independent facts show that the amount of damages claimed has been inflated by the plaintiff merely to secure federal court jurisdiction.

Doe v. Exxon, 69 F. Supp. 3d at 97–98 (citing 14AA Charles Alan Wright et al., *Federal Practice & Procedure* § 3713 (4th ed.2011).).

As noted above, none of the three situations listed above applies in this case. First, there is no contract limiting damages. Second, there is no specific rule of law limiting the amount of damages available, including punitive damages, or limiting the valuation of the injunctive relief and declaratory relief sought. Third, there is no evidence, and Defendants have never argued, that the Professors inflated the amount of damages claimed in bad faith. Indeed, the district court had already addressed and rejected Defendants' argument that the SAC was filed in bad faith. (App. 200-03), *Bronner II*, 324 F.R.D. 285, 292-93 (D.D.C.

2018).

Thus, under *Red Cab* and its progeny, the Professors satisfied the "extremely strict" legal certainty standard, as indeed the district court found in 2017.

A. The Professors Adequately Alleged an Amount in Controversy in Excess of the Jurisdictional Minimum.

Consistent with the standard set forth above, a finding that the amount in controversy is satisfied does not require a specific breakdown or exact valuation by plaintiffs:

> Even a 'cursory' allegation of the amount in controversy, if it exceeds the jurisdictional requirement, is sufficient to evade dismissal. 14AA Charles Alan Wright et al., *Federal Practice & Procedure* § 3702 (4th ed. 2011).

Info. Strategies, 13 F. Supp. 3d at 140–41; *see also Coster v. Schwat*, No. 18-CV-01995 (APM), 2019 WL 1876998, at *1 (D.D.C. Apr. 26, 2019) ("To be sure, Plaintiff could have pleaded the amount in controversy with greater particularity. But her complaint is sufficient at this stage to survive a motion to dismiss"). "Moreover, the "legal certainty" standard applies to complaints for declaratory or injunctive relief in the same way that it does for damages. *See Smith v. Washington,* 593 F.2d 1097, 1099 (D.C. Cir.1978) (citing *Hunt v. Wash. State Apple Adver.*

Comm'n, 432 U.S. 333, 346–48, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977))." *Info. Strategies,* 13 F. Supp. at 141.

1. The District Court Erred in Valuing the Declarative and Injunctive Relief at Issue.

The Professors seek equitable relief for numerous violations of law, including, *inter alia*, expenditures by the ASA to advance the personal political goals of the Defendants, in violation of their fiduciary duties to both the organization and its members and constituting corporate waste, and large withdrawals from the ASA Trust Fund to cover those expenditures, in violation of the ASA Bylaws, and again, in breach of the Defendants' fiduciary duties.

Whether in the form of injunctive relief or declarative relief, the remedies for these claims easily value well in excess of $75,000. Indeed, just one year of injunctive relief proscribing withdrawal from the ASA Trust Fund exceeds the $75,000 minimum requirement. And, although the district court held that the Professors lack standing to seek damages (to themselves) for these expenditures, that finding was restricted to monetary damages. The claims were not dismissed, and the requested equitable relief remains in controversy. The Decision, however, does not adequately consider them.

a) The district court incorrectly valued the injunctive relief sought by the Professors.

The Decision includes only a very brief discussion of injunctive relief, stating, "Plaintiffs seek to require ASA to comply with its governing documents and halt improper payments; there is no indication that such relief would cost ASA any money implement." *Bronner IV*, 364 F. Supp. 3d at 22. But in this case, there is more to the valuation of injunctive relief than the administrative cost to ASA of "halting improper payments." As discussed above, withdrawals from the ASA Trust Fund by the individual defendants and payments for improper purposes are at issue, and exceeding $100,000 per year since the filing of the complaint, the jurisdictional minimum is easily satisfied.

The district court correctly stated that, when injunctive relief is sought, "the amount-in-controversy may be measured by (1) the value of the right that the plaintiffs seeks to enforce, or (2) the cost to the defendants to remedy the alleged denial of that right." *Bronner IV* at 22; *Info. Strategies, Inc. v. Dumosch*, 13 F. Supp. 3d 135, 142 (D.D.C. 2014). Here, the value of the right that the Professors seek to enforce through injunction is easy to describe – it is exactly the amount to be

withdrawn from the ASA for these purposes, over $100,000 per year, beginning with the filing of the complaint. And that is also the value lost to the Individual Defendants, who would no longer benefit from the use of such funds to further their personal political goals, including the Academic Boycott.

The district court cites no authority supporting its decision to limit the valuation of injunctive relief to the cost of implementing the injunction, a measure that is unrelated to "the value of the right that the plaintiffs seeks to enforce," and only represents one component of "the cost to the defendants to remedy the alleged denial of that right."

Decisions by courts in this circuit regularly include additional components in calculating the value of injunctive relief. For example, in *Information Strategies v. Dumosch*, a case involving breach of a covenant not to compete and misappropriation of trade secrets, the court valued the injunction to enforce the non-compete agreement as the potential loss in revenue to the plaintiff, Information Strategies, as a result of the defendant doing business in the area covered by the non-compete agreement. 13 F. Supp. 3d 135, 142 (D.D.C. 2014). And, with respect to the claim for misappropriation of trade secrets, the injunction

again was estimated at the value to Information Strategies of the defendant not disclosing their trade secrets. Recognizing that that value to the plaintiff could only be estimated, the court stated that "courts do not have to ascertain the value of injunctive relief precisely; so long as a plaintiff's pleadings amount to more than 'a formal allegation' that the relief is worth more than $75,000, that is sufficient." *Id.* at 141-42 (citing *Smith v. Washington,* 593 F.2d 1097, 1100–01 (D.C. Cir. 1978).

b) The district court failed to take into account the value of declarative relief.

The district court did not discuss or include any assessment of the amount in controversy with respect to the claims for declarative relief.

"Where a plaintiff seeks declaratory relief, the amount in controversy is the 'value of the object of the litigation.' *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 347 (1977)." *Walker v. Waller*, 267 F. Supp. 2d 31, 32 (D.D.C. 2003). Here, the Professors seek declaratory relief establishing, *inter alia*, that expenditures in furtherance of the Academic Boycott and withdrawals from the ASA Trust are illegitimate. Therefore, the amount in controversy includes the value of those improper payments and trust

fund withdrawals – easily satisfying the $75,000 minimum requirement for jurisdiction.

B. The District Court Erred in Failing to Consider Punitive Damages.

"It is clear that punitive damages should be considered in determining the jurisdictional amount in controversy." *Hartigh v. Latin*, 485 F.2d 1068, 1071–72 (D.C. Cir. 1973), *citing Bell v. Preferred Life Assurance Society*, 320 U.S. 238, 240 (1943); *Lopez v. Council on Am.-Islamic Relations Action Network, Inc.*, 741 F. Supp. 2d 222, 233 (D.D.C. 2010).

In *Bronner III*, the district court found that the Individual Defendants were not covered by D.C. Code § 29-406.31(d), which exculpates directors of charitable corporations from liability for monetary damages, because "Plaintiffs District court… sufficiently pleaded that that the Individual Defendants' conduct rises to the level of intentional infliction of harm[.]" *See* § 29-406.31(d)(2). The district court added that "Defendants here not only allegedly subverted the ASA's voting procedures, but also allegedly improperly diverted its resources and misled it members in service of a harmful purpose. Accordingly, the Professors have alleged that Defendants' conduct rises

to the level of intent to harm the ASA[.]" *Bronner III* at 293-94 (listing numerous specific allegations of intentional infliction of harm).

The same findings are sufficient to show that the Professors have alleged, at a minimum, "ill will, recklessness, wantonness, oppressiveness, [or] willful disregard of the plaintiff's rights," and thus satisfy the standard for punitive damages available in relation to breach of fiduciary duty. *Gov't. of Rwanda v. Rwanda Working Group*, 227 F.Supp.2d 45, 70 (D.D.C. 2002).

The fact that the Professors did not specifically pray for punitive damages in the operative complaint is of no effect. Claims for damages, including different types of damages, are not limited to those specified in the prayer for relief. Rule 54(c) of the Federal Rules of Civil Procedure explicitly provides that, with the sole exception of default judgments, "[e]very other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." Fed. R. Civ. P. 54(c).[5] *See In re Lorazepam & Clorazepate Antitrust Litig.*, 531 F. Supp. 2d 82, 100-01 (D.D.C. 2008)

[5] Moreover, the operative complaint includes a general damages clause in the prayer, seeking "such other and further relief as is just and equitable." (SAC at p. 82, ¶ 8.)

("This Court, therefore, must 'grant the relief to which the party is entitled.'") (citation omitted).

Accordingly, when a complaint alleges the necessary elements for damages, such damages are included in the amount in controversy, regardless of whether they are specifically pleaded in the complaint. *See, e.g., Bartnikowski v. NVR, Inc.,* 307 Fed. Appx. 730, 735 (4th Cir. 2009) (including liquidated damages in the amount-in controversy although plaintiff did not specifically pray for liquidated damages in its complaint); *Back Doctors Ltd. v. Metro. Prop. and Cas. Ins. Co.*, 637 F.3d 827, 821 (7th. Cir. 2011) (including potential punitive damages towards the amount-in-controversy requirement where plaintiff successfully plead elements for such damages but did not specifically ask for them); *Doss v. Am. Family Home Ins., Inc.*, 47 F.Supp.3d 836, 841 (W.D. Ark. 2014) ("the relevant question here is whether the allegations in the Complaint constitute the type of conduct that could potentially support an award of punitive damages").

It would be prejudicial and fundamentally unfair to the Professors to exclude potential punitive damages from the amount in controversy, considering the timing of the District court's revisit of the

issue. The parties have been litigating this case for three years. In discovery received and reviewed after the filing of the operative complaint, the Professors have obtained significant and substantial evidence supporting additional claims as well as the potential for punitive damages. To dismiss the case on the basis of the court deciding that one form of damages is not available, while excluding other forms of damages (and potential new claims) clearly favors the defendants, who benefit from dismissal despite the fact that discovery has shown that they bear greater liability, not less.

III. BINDING DISTRICT OF COLUMBIA PRECEDENT AND THE CLEAR LANGUAGE OF THE COMPLAINT DEMONSTRATE THAT THE DISTRICT COURT ERRED WHEN IT FOUND THAT THE PROFESSORS LACK STANDING TO SEEK COMPENSATION IN THE FORM OF ASA FUNDS.

A. The Dismissal of Claims for Monetary Damages Is Based on the Erroneous Belief that the Professors Seek to Recover for Themselves the Hundreds of Thousands of Dollars Misappropriated from the ASA.

Following the principles set forth in *Daley* and *Jackson*, the Professors brought direct claims against the Individual Defendants for corporate waste and breach of fiduciary duties arising from financial

mismanagement of the ASA, including massive withdrawals from the ASA Trust Fund that deplete the fund by over $100,000 per year. Aside from injunctive and declaratory relief intended to prevent further waste and injury to the ASA, the Professors seek actual damages to return to the ASA the hundreds of thousands of dollars wrongfully withdrawn from Trust Fund. The operative complaint thus seeks "[a]ctual damages on behalf of the American Studies Association from the Individual Defendants . . . representing the amounts of all money expended, and the value of all American Studies Association assets appropriated . . ." (App. 190.)

These damages are intended to make **the ASA** whole. However, the district court inferred that the Professors seek monetary damages for themselves, personally, rather than for the ASA. For example, the district court states:

> Plaintiffs claim that—merely by their position as ASA members—they are entitled to collect hundreds of thousands of dollars allegedly misappropriated from ASA's trust fund. If the Court agreed, it would be opening the floodgates to duplicative litigation as other ASA members rushed to collect the same damages.

(App. 45.) This fundamental misunderstanding clearly drove the district

court's finding that the Professors lack standing to seek actual damages (on behalf of the ASA), but does not otherwise find that Plaintiffs lack standing to seek injunctive and declaratory relief for the very same claims.

The assumption that Plaintiffs believe "they are entitled seek to collect hundreds of thousands of dollars" to themselves clearly led to the finding that "Plaintiffs lack standing to seek damages arising from ASA's alleged injuries," the conclusion that it "is therefore a legal certainty that Plaintiffs cannot collect the damages they claim ASA is owed," and ultimately the dismissal of the case for failure to satisfy the minimum amount in controversy.

A curious outcome of the Decision is that, without saying so, it limits the key holdings in *Daley* and *Jackson* to injunctive and declaratory relief. As discussed in the next section, this limitation is not justified or explained, and is ultimately inconsistent with the Court of Appeals' decisions in those cases.

B. The District Court's Finding that Plaintiffs Lack Standing to Seek Reimbursement of Funds Misappropriated from the ASA Conflicts with Binding Precedent from the District of Columbia Court of Appeal.

The District of Columbia's highest court, the D.C. Court of Appeals, has twice held that members of nonprofit corporations have standing to bring direct claims for mismanagement of the nonprofit. *Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723, 728-30 (D.C. 2011); *Jackson v. George*, 146 A.3d 405, 415 (D.C. 2016). First in *Daley*, and then in *Jackson*, the Court of Appeal rejected defense arguments that claims brought by members for injury to a nonprofit corporation must be brought as derivative claims – even though the claims "'speak largely of injuries to the [nonprofit entity] and its assets and property[.]'" *Jackson*, 146 A.3d at 415.

In *Daley*, the Court of Appeal held that the body of law that requires shareholders to bring derivative claims for injury to the corporation does not and should not govern claims by members of nonprofit corporations:

> The trial court [dismissed the claims] on the ground that the suit was brought in the members' own names rather than as a derivative suit. [Citation.] We think this is too expansive a view of the

> requirement of derivative suits. To begin with, the total equation of a stockholder in a for-profit corporation complaining of financial losses with a member of a nonprofit corporation in an on-going dues-paying basis aimed at social and charitable purposes and the accompanying emotional connotations is an uneasy fit.

Daley, 26 A.3d at 729. *Daley* properly recognizes that the question is one of standing, and, after applying the elements set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61(1992), held:

> On its face, it would seem almost self-evident that members of a nonprofit organization whose revenue depends in large part upon the regular recurring annual payment of dues by its members have standing to complain when allegedly the organization and its management do not expend those funds in accordance with the requirements of the constitution and by-laws of that organization.

26 A.3d at 729; *see Jackson*, 146 A.3d at 415.

The district court here stated that "Plaintiffs cannot claim relief for ASA's injuries unless ASA is made a plaintiff through a derivative action, or unless another exception to the third-party or shareholder standing doctrines applies." (App. 454.) This finding conflicts with *Daley* and *Jackson*, which explicitly hold that members of a non-profit may bring exactly those types of claims, for exactly those types of injuries to the non-profit, and may bring them directly. Indeed, *Daley*

and *Jackson* expressly state that the shareholder standing rule does not apply to members of nonprofits who bring claims for financial injury to the nonprofit that resulting from mismanagement – including claims for corporate waste, breach of fiduciary duty, and *ultra vires* acts – the very types of claims at issue in *Daley* and *Jackson* and also at issue in this case. *See, e.g., Daley*, 26 A.3d at 729.

It may well be true that members of a nonprofit cannot collect, for themselves, monetary damages equal to the injury suffered by the nonprofit corporation, but that is a question of damage calculation, not third-party or shareholder standing rules. *Daley* and *Jackson* hold that the third-party and shareholder standing rules do not apply; the Decision conflicts with that holding.

Although the Decision does not explicitly state that *Daley* and *Jackson* are wrongly decided, the finding that the Professors lack standing to seek monetary damages, and the reasoning given for that finding, do conflict with the Court of Appeals' holdings in the two cases. Indeed, the district court relied on the very same third-party standing cases that *Daley* and *Jackson* reject, and the district court's application of the shareholder standing rules – rules that *Daley* explicitly held do

not, and should not, apply to members of nonprofits. *See Daley*, 26 A.3d at 729.

Finally, nothing in either *Daley* or *Jackson* holds that monetary damages, in the form of compensation to the ASA – not the Professors – are unavailable. This finding by the district court is unsupported by D.C. law, and the consequential dismissal of the case constitutes reversible error.

IV. THE DISTRICT COURT ERRED WHEN IT DISMISSED THE ULTRA VIRES CLAIM BROUGHT IN THE FAC.

In *Bronner I*, the district court dismissed the Professors' claim alleging that the adoption of the Academic Boycott (and the acts taken in furtherance of the Academic Boycott) – acts that simply did not fall within the boundaries of the ASA's mission statement, set forth in the ASA's Bylaws – were *ultra vires*. *Bronner I*, 249 F. Supp. 3d at 47-48. The district court set forth the standard: "Actions taken by the organization that are 'expressly prohibited by statute or by-law' or outside the powers conferred upon it by its articles of incorporation are *ultra vires*. *Id*. However, with respect to the Professors' claim that the nonprofits' acts relating to the Academic Boycott were "outside the

powers conferred upon it by its articles of incorporation," the district court dismissed the *ultra vires* claim, finding instead that the acts at issue were not *ultra vires* because they were not "expressly prohibited" by the ASA's Bylaws. 249 F. Supp. 3d at 48.

The district court erred when it invoked the "expressly prohibited" standard into this *ultra vires* analysis. While acts that are "expressly prohibited by statute or by-law" are *ultra vires*, they do not constitute the universe of *ultra vires* acts. A corporation's mission statement sets the standard for what is, and is not, *ultra vires*. An act that falls outside of the universe of activity defined by the corporate mission statement is *ultra vires* – whether or not it also conflicts with a statute or by-law.

Here, the acts engaged by Defendants in promotion of the Academic Boycott simply were not and are not encompassed by the description of the ASA's mission. The district court, however, found that these acts were not *ultra vires* simply because they did not violate an *express* purpose.

An act that expressly violates a statute is illegal; an action that expressly violate a bylaw constitutes a breach of contract. *Ultra vires* acts constitute a larger set of activities; they include any acts outside of

the corporate mission statement – whether or not they expressly violate the corporations' bylaws. Here, the acts alleged by the Professors are not encompassed by the ASA's mission statement and the dismissal of the *ultra vires* should be reversed.

CONCLUSION

For all the reasons detailed above, the Professors ask this Court to reverse the district court's order finding that the amount in controversy fails to meet the jurisdictional requirement, to reverse the finding that the district court lacks jurisdiction, and to reverse the dismissal of the *ultra vires* claim.

Dated: October 9, 2019

By: /s/*Jennifer Gross*

Jerome M. Marcus, Esq.
MARCUS & AUERBACH LLC
1121 N. Bethlehem Pike
Suite 60-242
Spring House, PA 19477
Phone: (215) 885-2250
jmarcus@marcusauerbach.com

Jennifer Gross, Esq.
THE DEBORAH PROJECT, INC.
7315 Wisconsin Avenue
Suite 400 West
Bethesda, MD 20814
Phone: (301) 349-1302
jgross@deborahproject.org

L. Rachel Lerman, Esq.
BARNES & THORNBURG LLP
2029 Century Park East, Suite 300
Los Angeles, CA 90067-2904
Phone: (310) 284-3871
rlerman@btlaw.com

Aviva Vogelstein, Esq.
D.C. Bar No. 1024231
THE LOUIS D. BRANDEIS CENTER FOR HUMAN RIGHTS UNDER LAW
1717 Pennsylvania Avenue NW
Suite 1025
Washington, DC 20006-4623
Phone: (202) 559-9296
avogelst@brandeiscenter.com

Eric D. Roiter
Lecturer in Law
BOSTON UNIVERSITY SCHOOL OF LAW
765 Commonwealth Avenue
Boston, MA 02215
(617) 734-8266
eroiter@bu.edu

Joel Friedlander
FRIEDLANDER & GORRIS, P.A.
1201 N. Market Street, Suite 2200
Wilmington, DE 19801
Phone: (302) 573-3502
jfriedlander@friedlandergorris.com

Counsel for Appellants

CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies that this document complies with the type-volume limitation. The document includes 9,983 words, less than the 13,000 limitation. The document is formatted in 14-point type.

Dated: October 9, 2019

By: */s/Jennifer Gross*

Jennifer Gross, Esq.
D.C. Bar No. 1003811
THE DEBORAH PROJECT, INC.
7315 Wisconsin Avenue
Suite 400 West
Bethesda, MD 20814
Phone: (301) 349-1302
jgross@deborahproject.org

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2019, I electronically filed the foregoing **CORRECTED BRIEF OF APPELLANTS** with the Clerk of the Court for the United States Court of Appeals for the District of Columbia through the appellate CM/ECF system.

Dated: October 9, 2019

By: /s/*Jennifer Gross*

Jennifer Gross, Esq.
THE DEBORAH PROJECT, INC.
7315 Wisconsin Avenue
Suite 400 West
Bethesda, MD 20814
Phone: (301) 349-1302
jgross@deborahproject.org