No. 18-60582

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

WALTER C. LANGE

Petitioner - Appellant

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent - Appellee

On Appeal from the United States Tax Court, No. 11492-17L

BRIEF FOR APPELLANT

Walter C. Lange
1807 N. Shary Rd.
Mission, TX 78572
(956) 581-5559

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Appellant certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have and interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Appellant

Walter C. Lange

Appellee

Commissioner of Internal Revenue

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Tax Court

/s/ Walter C. Lange, Appellant

STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully waives oral argument. This appeal will require the Court to interpret old laws surrounding the collection of federal taxes and due process questions. A few minutes of verbal exchange will do little to supplement an effort to research these issues. Oral argument will not assist the Court in resolving these issues.

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JURISDICTIONAL STATEMENT

Walter C. Lange appeals from a Decision in the United States Tax Court in Docket No. 11492-17L entered on April 27, 2018 pursuant to proceedings before Judge James L. Halpern in Dallas, Texas on April 16, 2018. The Notice of Appeal was deposited with the U.S. Postal Service on July 16, 2018, within the time specified in Tax Court rule 190.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the 5th Circuit panel in 1984 make the extreme error of creating an impossible character of taxation called direct tax without apportionment in violation of the *Brushaber* case?

2. Since *Brushaber* characterized the income tax as indirect, does it further classify it as an excise tax?

3. An excise tax is a privilege tax. Is the privilege that triggers the tax the activity of doing business with the federal government? Can a tax return negate the presumption of doing business with the federal government?

4. By removing Alaska from the definition of the United States in 1959 did legislature signal that residents of the Several States (and not of the Federal States) were not automatically doing business with the federal government and must do something to trigger the federal privilege such as enter into contract?

5. Can the assessment of penalties claiming Argument 44 violations which were abandoned during litigation be revived, reassessed and ruled an Argument 46 violation without further violation of Due Process?

6. Is Argument 46 an impermissibly vague addition to the list or contrary to congressional intent?

7. Was the information on the returns sufficient to support the self-assessment, did the numbers add correctly and was it consistent?

8. If the self assessment was not valid, why were the §6203 records of assessment prepared by the Service not timely sent upon request?

9. Can the *Parker* decision be reversed by only a panel?

STATEMENT OF THE CASE

This matter arose from a collection due process action under 26 USC 6330. Respondent issued notices of intent to levy against Petitioner claiming frivolous returns for years 2007, 2009 and 2012. The collection due process hearing resulted in no relief for Petitioner.

Appeal to the Tax Court resulted in four of the six penalties, of $5,000.00 each, being abandoned as claims for lack of record evidence (2007) or duplicate penalties (2012). Petitioner now appeals the 2 remaining penalties and the Tax Court initiated $2,500.00 penalty under 26 USC 6673 for discussion of forbidden issues. Each issue presents questions of controlling law that need *de novo* review.

For the collection efforts to represent due process these efforts and activities must always abide by the equitable doctrine of 'Clean Hands.' Unfortunately this principle has been violated on several levels. Through discovery, Petitioner found The Internal Revenue Service (Service) assessed the penalties as Argument 44 under the I. R. Bulletin 2010-17. This was an obvious violation of the 'Clean Hands' rule because Petitioner has never claimed a religious exemption which is the basis of Argument 44. So, the original assessment was fraudulently procured.

Respondent admitted there was no Argument 44 violation, ROA.132 and ROA.213 (Excerpt 4), but urged the Court to reclassify and re-assess this penalty

pursuant to something Respondent called "flush" language, presumably Argument 46. The Court affirmed the penalties under broad language that had nothing to do with Argument 44. This is another example of lack of 'clean hands' in the collection of taxes.

The Tax Court went on to characterize the annual distribution to Petitioner as a 'pension amount' and that is therefore 'gross income' and reportable. Petitioner has always shown in the 1040 return that any distribution is not in connection to the exercise of a federal privilege. The retirement distribution is not federally connected and cannot be 'gross income' and each return accurately reflects that truth.

Unfortunately, in 1984 the 5th CCA added confusion to this discussion by inventing a type of tax not allowed by the Constitution. The *Parker* decision misread or misinterpreted the *Brushaber* case in a way the *Brushaber* Court considered impossible. Only by correcting the *Parker* decision can the truth of Petitioner's returns be explained and shown correct.

The Court further inserted itself into the assessment process by finding and attempting to insert other Tax Court opinions as an argument for assessment. But, the Service did not use a Tax Court opinion as the foundation of the penalty. At least, it is so assumed. Never has the Service responded to requests for a genuine

record of assessment. The Court also stated both Forms 4852 were incorrect without showing a connection to the federal system.

The Tax Court also erred by failing to give Revised Statutes § 3185 (1876) the controlling position in the legal framework it requires. The United States Supreme Court offers us further guidance on the issue of statutory construction generally:

> "By 1 U.S.C. 54(a), 1 U.S.C.A. 54(a) the Code establishes 'prima facie' the laws of the United States. But the very meaning of 'prima facie' is that the Code cannot prevail over the Statutes at Large when the two are inconsistent." *Stephan v. United States*, 319 U.S. 423 (1943). [The section 1 USC 54(a) to which the court refers is now 1 USC 204]

By ignoring Revised Statutes § 3185, the Court failed to see the limitation against any levy process against an annual filer of tax returns, including petitioner.

SUMMARY OF THE ARGUMENT

The lack of 'Clean Hands' is evident at the level of the Service, the Tax Court and even the Fifth Circuit Court of Appeals. The Tax Court relied on bad law and failed to correctly apply the correct legal standards and this Court should **review these standards *de novo*.**

At the Service level the use of Argument 44 in assessing the penalty was clearly fraudulent as admitted by Respondent. Second, the use of a levy in the collection process against a person required to file an annual return "annual filer" is contrary to the enacted laws. Third, the failure to reply to all requests for a record of assessment, in whatever form the Service preserves this record, is likely based on a planned system of evading legal requirements.

The errors of the Tax Court are fairly straight forward. Instead of being an objective evaluator of the facts and the law, the prior Court substituted his own theories and evidence in place of those of the Service. The Court used finely etched wording to mislead, restate and re-assess every issue presented. This requires a ***de novo*** review by this Court.

Last but not least, in 1984 this 5th CCA deliberately confused the laws of taxation by violating the constitutional requirement that there are only 2 types of tax. There is only (1.) Direct tax with apportionment and (2.) Indirect tax with

uniformity. This Court in the *Parker* case tried to invent a third type of tax labeled 'direct tax without apportionment' in violation of the constitution. This Court pretended to correctly read the *Brushaber* case, but failed. Once this fiction was introduced, clarity was gone and reasoned discussion with the Service became impossible. All attempts to return to a legal process have become difficult.

Since an income tax is an indirect tax it is called either an impost, an excise or a duty. As such it requires the exercise of privilege to trigger this imposition. The trigger must be some form of contact or contract with the federal system with regard to each item of remuneration. Being a resident of a 'several' state, in the geographic sense, is not sufficient in itself since all 'several' states have been removed from the definition of the United States in Title 26. As a consequence, Petitioner's 1040 filings are an attempt to follow the law as written and undo any presumption of being in the federal system in the contractual sense. All claims that these 1040 returns lack substantial correctness are false claims. All claims that Petitioner demonstrated a 'desire to delay or impede' are also false claims. All frivolous penalties must fall before a valid self-assessment under the law. A review *de novo* will reveal these facts.

ARGUMENT

The Tax Court erred in the decision entered April, 27, 2018 in the following: 1. By affirming the frivolous penalty of $5,000.00 each for the dates 4/25/2016 and 6/20/2016 for the 2009 and 2012 returns, and 2. By assessing an additional penalty of $2,500.00 under § 6673(a)(1).

Before discussing the nature of these errors the general issue of judicial misconduct needs to be reviewed *de novo* for a better perspective on opinion clarity and context slipping on important issues.

I. The relevant Judicial Malpractice started in 1984 in the Fifth Circuit Court of Appeals in the *Parker* case.

In response to appellant Alton Parker's contention on appeal that, "the IRS and the government in general, including the judiciary, mistakenly interpret the sixteenth amendment as allowing a direct tax on property (wages, salaries, commissions, etc.) without apportionment," the 5th Circuit appellate panel says:

> "The Supreme Court promptly determined in Brushaber v. Union Pacific Ry. Co., 240 U.S. 1, 36S.Ct. 236, 60 L.Ed. 493 (1916), that the sixteenth amendment provided the needed constitutional basis for the imposition of a direct non-apportioned income tax." *Parker v. Comm'r*, 724 F.2d 469 (5 th CA, 1984)

However, going straight to the words of the *Brushaber* court itself -- we find that the unanimous Supreme Court says *exactly the opposite* of the misrepresentation by the *Parker* court:

> "We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it..." *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916)

The *Brushaber* court goes on to point out that the very suggestion of a non-apportioned direct tax is because such a tax would cause:

> "...one provision of the Constitution [to] destroy another; that is, [it] would result in bringing the provisions of the Amendment [supposedly] exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned." *Ibid.*

On the surface, a simple judicial error does not rise to the level of malice. After all, an old quote states: 'Never attribute to malice what ignorance will explain.' Unfortunately, the old quote fails us. The 5th CCA has as a primary task of the interpretation of law and aligning that interpretation with the Supreme Court. The presumption that this could happen because of ignorance or accident is

not rational. For this Court to violate that trusted duty of adherence to precedent requires malice aforethought.

Other references and court rulings follow reinforcing the correct reading of *Brushaber*. Contemporary expert commentary on the *Bushaber* decision emphasizes the fact that it actually says the opposite of the bizarre and incorrect declaration of the *Parker* court:

> "The Amendment, the [Supreme] court said, judged by the purpose for which it was passed, does not treat income taxes as direct taxes but simply removed the ground which led to their being considered as such in the Pollock case, namely, the source of the income. Therefore, they are again to be classified in the class of indirect taxes to which they by nature belong. " Cornell Law Quarterly, 1 Cornell L. Q. 298 (1915-16)

> "In *Brushaber v. Union Pacific Railroad Co.*, Mr. C. J. White, upholding the income tax imposed by the Tariff Act of 1913, construed the Amendment as a declaration that an income tax is "indirect," rather than as making an exception to the rule that direct taxes must be apportioned." Harvard Law Review, 29 Harv. L. Rev. 536 (1915-16)

...as do later expert statements on the subject:

> "The income tax... ...is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax; it is the basis for determining the amount of tax." ...and,

> "[T]he amendment made it possible to bring investment income within the scope of the general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty..." Treasury Department

> legislative draftsman F. Morse Hubbard in Congressional testimony in 1943.
>
> "The Supreme Court, in a decision written by Chief Justice White, first noted that the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the Constitution, quoted above. Direct taxes were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment..." Legislative Attorney of the American Law Division of the Library of Congress Howard M. Zaritsky in his 1979 Report No. 80-19A, entitled 'Some Constitutional Questions Regarding the Federal Income Tax Laws'

Twenty years after *Brushaber*, the Supreme Court reiterates its unequivocal holding that the 16th Amendment did NOT authorize a "direct, non-apportioned tax" of any kind or on anything in dismissing an argument that a federal tax on "income" (in this case under the provisions of the Social Security Act) can be construed as a direct non-apportioned tax:

> "If [a] tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. Cf. *Burnet v. Brooks*, 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; *Brushaber v. Union Pacific R. Co.*, 240 U. S. 1, 240 U. S. 12 Whether the [income] tax is to be classified as an "excise" is in truth not of critical importance [for purposes of this analysis]. If not that, it is an "impost", or a "duty". A capitation or other "direct" tax it certainly is not." *Steward Machine Co. v. Collector of Internal Revenue*, 301 U.S. 548 (1937)

So, the 5th Circuit's declaration in *Parker* is a blatant misrepresentation in response to Alton Parker's contention that "the IRS and the government in general,

including the judiciary, mistakenly interpret the sixteenth amendment as allowing a direct tax on property (wages, salaries, commissions, etc.) without apportionment." The *Brushaber* court says the *exact opposite* of the false statement to which the Circuit Court resorts in lieu of an actual rebuttal of Parker's contention, and does so in no uncertain terms.

II. **An Excise Tax might be based in contract:** Having established the income tax is an indirect tax, the next step is to verify the term 'excise' as the most appropriate characterization.

> "I hereby certify that the following is a true and faithful statement of the gains, profits, or income of _____ _____, of the _____ of _____, in the county of _____, and State of _____, whether derived from any kind of property, rents, interest, dividends, salary, or from any profession, trade, employment, or vocation, or from any other source whatever, from the 1st day of January to the 31st day of December, 1862, both days inclusive, and subject to an income tax under the excise laws of the United States." The "affirmation" on the first income tax return form.

Clearly the use of the 'excise' term was proper at the beginning of this form of taxation.

> "As was said in the *Thomas* case, 192 U. S. 363, supra, the requirement to pay [excise] taxes involves the exercise of privileges..." *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911).

That exercise of privilege requires a targeted specie of actions. The title of the 1862 act that started this tax gives the overview.

> "Salaries and Pay of Officers and Persons in the Service of the United States, and Passports." United States Statutes at Large Vol 53 Pt 1 p 5, published by U.S. Government Printing Office, Washington 1939.

It may eventually be determined that the basis of the 'Federal Income Tax' is any and all types of contract with the 'Federal' government, especially employment contracts. The wording of the definition of employee becomes more understandable.

> (c) Employee - For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation. 26 USC § 3401(c)

This definition is limited to public salaries by contract with the federal government and therefore become wages. Please notice the use of the special work 'includes' in this context. By using the verb 'includes' legislature is signaling they are not using the phrase 'including, but not limited to' as a more expansive term. Instead, the term 'includes' really means 'including, but limited to those things in the same general class' as explained in some significant instances. The United States Treasury Department has concisely expressed this

rule: "The terms "includes and including" do not exclude things not enumerated which are in the same general class;" 27 CFR 26.11 and 27 CFR 72.11 Here's how the United States Supreme Court explains the rule: "[T]he verb "includes" imports a general class, some of whose particular instances are those specified in the definition." *Helvering v Morgan's, Inc*, 293 U.S. 121, 126 fn. 1 (1934); and, "[I]ncluding... ...connotes simply an illustrative application of the general principle." *Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 62 S.Ct. 1 U.S. (1941).

Within this context it becomes important to mention another use of the verb 'includes': "(26) Trade or business: The term "trade or business" includes the performance of the functions of a public office." 26 U.S. Code § 7701 - Definitions.

The Tax Court was critical of the 1040 filings that were the subject of the frivolous complaints and assumed that the filings lacked "substantial correctness." Once it is established there was no Federal contract or contact was involved, the 1040 filings were more than "substantially correct," they were the only valid method of reporting.

III. Argument 44 has no substitute: In reply to a Motion for Summary Judgment and again in the Pretrial Memorandum for Respondent, Counsel for

Commissioner admitted, "Notice 2010-33, . . . Paragraph 44 on this list . . . admittedly is not applicable to petitioner. However, flush language under Paragraph 46 states, ..." ROA.132 and ROA.213 (Record Excerpt 4). There is no record that the 'flush language' was ever used in the original assessment. The Due Process Hearing was based on Argument paragraph 44, not 46. Form 8278 for both years mentions Arg 44, not Arg 46. ROA.94- 96 (Excerpt 7). For the Court to switch from a Service based assessment to a Judicial re-assessment is a violation of all standards of due process. This is similar to the card game children play call 'Go Fish' where in mid game you get to change what is in your hand. Here the change is without notice and the litigant got flushed to argument 46.

IV. Records of Assessment - Fact or Fiction: Each and every request for a Record of Assessment (a partial sample of these ROA.102-119) has gone unanswered. Not a single sample has been provided. The presumption is the Service would provide each one if it existed. In addition, as explained in the Notes on Record of Assessment (ROA.12-16, ROA.376-380), the 'frivolous' penalty must be assessed as a tax and signed under penalties of perjury..

> *26 C.F.R. § 301.6020-1(b) Execution of returns-*
> *1) In general.*
> *If any person required by the Internal Revenue Code or by the regulations to make a return ... fails to make such return at the time prescribed therefore, or makes, willfully or otherwise, a false, fraudulent or frivolous return, the Commissioner or other authorized Internal Revenue Officer*

> *employee shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. ...*
> *(2) Form of the return.*
> *A document (or set of documents) signed by the Commissioner or other authorized Internal Revenue Officer or employee shall be a return for a person described in paragraph (b)(1) of this section if the document (or set of documents) identifies the taxpayer by name and taxpayer identification number, contains sufficient information from which to compute the taxpayer's tax liability, and purports to be a return.*

So now we have a critical additional element which must be present and accounted for before a "frivolous return penalty" can actually be assessed: a sworn signature, putting a government official at risk of the penalties of perjury if he or she is falsely (or negligently) asserting that the government has a valid claim to seize property from someone else.

As explained in Exhibit 2, ROA.85-89 (excerpt 9), of the Tax Court Petition, the "frivolous" penalty must be assessed as a tax like any other under 26 USC. The assessment of such taxes can only be per a return. A return on which a penalty can be assessed must be sworn under penalties of perjury. This means, of course, that if no sworn return asserting the "frivolous return penalty" exists, no such penalty can be, or has been, lawfully assessed.

Where no actual sworn 6020(b) return exists no filed return has been actually even alleged-- much less "determined"-- to be "frivolous". The making of a sworn 6020(b) return is the legal and legally-required means by which such an

allegation is made, according to the law; there is no other mechanism provided by which this allegation can be made. Second, this means if there are no sworn 6020(b) returns, there can also be no legally-applicable penalties and none have actually been assessed.

V. **Levy on an annual filer is not permitted by statute.** It never has been. An attempt was made in the prior Court to explain why that is, but to no avail. ROA.386-391 and ROA.228-234 (excerpt 7). To address this issue, Revised Statutes §3185 was presented to the Court (excerpt 7.7). As can be seen in the text, returns required to be made annually 'annual filers' as a class are completely omitted.

> R. S. Sec. 3185. All returns required to be made monthly by any person liable to tax shall be made on or before the tenth day of each month, and the tax assessed or due thereon shall be returned by the Commissioner of Internal Revenue to the collector on or before the last day of each month. All returns for which no provision is otherwise made shall be made on or before the tenth day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made. When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of five per centum, together with interest at the rate of one per centum per month, upon such tax from the time the same became due; but no interest for a fraction of a month shall be demanded: Provided, that notice of the time when such tax becomes due and payable is given in such manner as may be prescribed by the Commissioner of Internal Revenue. It shall then be the duty of the collector, in case of the non-payment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with five per centum added thereto, and interest

> at the rate of one per centum per month, as aforesaid, in the manner prescribed by law; and if said tax, penalty, and interest, are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law. Revised Statues § 3185. ROA.235

The Act of June 30, 1926, H.R. 10000, was in fact the Act in which Congress authorized the "United States Code", and this act is still in effect. The preamble of this Act clearly states that the coding process does not have the effect of "repealing or amending any such law, or as enacting as new law any matter contained in the Code."

> "AN ACT TO consolidate, codify, and set forth the general and permanent laws of the United States in force December seventh, one thousand nine hundred and twenty-five
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fifty titles hereinafter set forth are intended to embrace the laws of the United States, general and permanent in their nature, in force on the 7th day of December, 1925, compiled into a single volume under the authority of Congress, and designated "The Code of the Laws of the United States of America."
>
> Sec. 2. In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States --
>
> (a) The matter set forth in the Code, evidenced as hereinafter in this section provided, shall establish prima facie the laws of the United States, general and permanent in their nature, in force on the 7th day of December, 1925; but nothing in this Act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the Code. In case of any inconsistency arising through omission or otherwise between the provisions of any section of this Code and the corresponding portion of legislation heretofore enacted effect shall be given for all purposes whatsoever to such enactments.

(b) Copies of this Act printed at the Government Printing Office and bearing its imprint shall be conclusive evidence of the original of the Code in the custody of the Secretary of State."

(c) The Code may be cited as "U.S.C." Title 1 U.S.C. preamble, June 30, 1926. H.R. 10000.

Obviously congressional intent to modify the law was lacking during the codification of prior statutes. Therefore, R.S. 3185 was never modified to include persons required to file annual returns 'Annual Filers' in the distraint process. The 1939 version of R.S. 3185 is shown in § 3310 as copied in ROA.229-230. The present statute of 26 USC 6331 is also shown in ROA.228 (excerpt 7). At no time did Congress add the persons required to file annual returns to the list of returns eligible for distraint. The legislative authority to levy on any 'Annual Filer' is non-existent. Any attempt in this context is void ab initio and the notice of intent to levy on Petitioner is a nullity.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court to conduct a *de novo* review of the record and reverse the decision of the Tax Court sustaining the $5,000.00 penalties for tax year 2009 assessed April 25, 2016 and tax year 2012 assessed June 20, 2016. Appellant also requests the I.R.C. §6673(a)(1) penalty of $2,500.00 be set aside. Appellant also requests any further relief to which he may be justly entitled.

Respectfully Submitted

Walter C. Lange

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2018, printed copies of the foregoing Appellant Brief was (1.) filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit by depositing ~~10~~ 7 (via ECF) copies with the USPS for priority delivery to Office of the Clerk, United States Court of Appeals 5th Circuit, 600 S. Maestri Place, New Orleans, LA 70130, and (2.) sent to Counsel for Respondent/Appellee by depositing 1 copy with the USPS for priority delivery to Gretchen M. Wolfinger (lead counsel), U.S. Department of Justice, Tax Division, P.O. Box 502, Washington, DC 20044.

/s/ Walter C. Lange

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(a)(7)(B) because it contains 5,167 words, as determined by the word-count function of WordPerfect X6, excluding the parts of the brief exempted by Federal Rules of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2.

2. This brief complies with the typeface requirements of Federal Rules of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rules of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using WordPerfect X6 in 14-point Times New Roman font.

/s/ Walter C. Lange

CERTIFICATE OF ELECTRONIC COMPLIANCE

I hereby certify that, in the foregoing brief, which was not filed using the Fifth Circuit CM/ECF document filing system, but in the CD copy supplied with the brief, (1) the privacy redactions required by Fifth Circuit Rule 25.2.13 have been made, (2) the electronic submission is an exact copy of the paper document, and (3) the document has been scanned for viruses with the most recent version of Windows Defender and is free of viruses.

/s/Walter C. Lange

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