No. 18-13894

In the United States Court of Appeals for the Eleventh Circuit

---

BRADLEY HESTER, on behalf of himself and those similarly situated,
Appellee/Intervenor-Plaintiff,

v.

MATTHEW GENTRY, *et al.*,
Appellants/Intervenor-Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
CASE NO. 5:17-CV-00270 (THE HON. J. MADELINE H. HAIKALA)

CORRECTED BRIEF OF AMICUS CURIAE PROFESSOR FRED O. SMITH JR. IN SUPPORT OF APPELLEE/INTERVENOR-PLAINTIFF AND AFFIRMANCE

FRED O. SMITH JR.
EMORY UNIVERSITY SCHOOL OF LAW
Gambrell Hall
1301 Clifton Road
Atlanta, GA 30322
(404) 727-0535
fred.smith@emory.edu

JONATHAN E. TAYLOR
GUPTA WESSLER PLLC
1900 L Street NW, Suite 312
Washington, DC 20036
(202) 888-1741
jon@guptawessler.com

Counsel for Amicus Curiae Professor Fred O. Smith Jr.

March 11, 2019

CERTIFICATE OF INTERESTED PERSONS

In compliance with Eleventh Circuit Local Rules 26.1-1, the undersigned certifies that in addition to those set forth in Appellee Bradley Hester's Brief of March 1, 2019, the following individuals have an interest in the outcome of this matter:

1. Smith Jr., Fred, (amicus curiae)
2. Taylor, Jonathan (counsel for amicus curiae)

/s/ Jonathan E. Taylor
Jonathan E. Taylor
Counsel for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Amicus curiae is not a corporation, has no parent corporation, and does not issue stock.

/s/ Jonathan E. Taylor
Jonathan E. Taylor
Counsel for Amicus Curiae

TABLE OF CONTENTS

Table of authorities iii

Interest of amicus curiae and summary of argument 1

Statement of issue 3

Argument 3

I. There is no basis in *Ex parte Young* for restricting its scope to cases in which the challenged conduct derives from a statute. 3

A. The Supreme Court has long allowed challenges to executive enforcement of unlawful judicial orders—a tradition relied on in *Ex parte Young*. 3

B. The reasoning of *Ex parte Young* has equal or more force when an official is acting without a statute's sanction. 6

II. Imposing a legislation-only limitation on *Ex parte Young* would undermine a wide range of constitutional litigation. 9

Conclusion 14

TABLE OF AUTHORITIES

Cases

Armstrong v. Exceptional Child Center, Inc.,
135 S. Ct. 1378 (2015) 8

Bland v. Roberts,
730 F.3d 368 (4th Cir. 2013) 12

Brown v. Board of Education of Topeka,
347 U.S. 483 (1954) 8

Brown v. Plata,
563 U.S. 493 (2011) 11

Buchwald v. University of New Mexico School of Medecine,
159 F.3d 487 (10th Cir. 1998) 11

Carr v. City of Florence,
916 F.2d 1521 (11th Cir. 1990) 13

Cunningham v. Neagle,
135 U.S. 1 (1890) 4, 5

Dunn v. Dunn,
219 F. Supp. 3d 1100 (M.D. Ala. 2016) 11

Edelman v. Jordan,
415 U.S. 651 (1974) 6

** Ex parte Young*,
209 U.S. 123 (1908) 1, 5, 6, 7

Harrell v. The Florida Bar,
608 F.3d 1241 (11th Cir. 2010) 12

Healy v. James,
408 U.S. 169 (1972) 10

Jones v. Perry,
215 F. Supp. 3d 563 (E.D. Ky. 2016) 13

Kenny A. ex rel. Winn v. Perdue,
356 F. Supp. 2d 1353 (N.D. Ga. 2005) 10

Lefemine v. Wideman,
672 F.3d 292 (4th Cir. 2012) 11, 12

Luckey v. Harris,
860 F.2d 1012 (11th Cir. 1988) 10

McCarthy ex rel. Travis v. Hawkins,
381 F.3d 407 (5th Cir. 2004) 10

Miller v. Davis,
123 F. Supp. 3d 924 (E.D. Ky. 2015) 13

Newman v. Graddick,
740 F.2d 1513 (11th Cir. 1984) 9

Nix v. Norman,
879 F.2d 429 (8th Cir. 1989) 12

Pennhurst State School & Hospital v. Halderman,
465 U.S. 89 (1984) 8

Perkins v. N. Pacific Railway Co.,
155 F. 445 (C.C.D. Minn. 1907) 4

Shah v. University of Texas Southwest Medical School,
129 F. Supp. 3d 480 (N.D. Tex. 2015) 11

Thomas v. Loney,
134 U.S. 372 (1890) 4

* *Virginia Office for Protection & Advocacy v. Stewart*,
563 U.S. 247 (2011) 2, 6, 8

Verizon Maryland. Inc. v. Public Service Commission of Maryland,
535 U.S. 635 (2002) 12

Welch v. Laney,
57 F.3d 1004 (11th Cir. 1995) 13

Widmar v. Vincent,
454 U.S. 263 (1981) 10

Books and articles

Erwin Chemerinsky, *Federal Jurisdiction* (7th ed. 2016) 7, 8

John Harrison, *Ex Parte Young*, 60 Stan. L. Rev. 989 (2008) 5

Fred O. Smith Jr., *Abstention in the Time of Ferguson*, 131 Harv. L. Rev. 2283 (2018)..... 1, 8

Fred O. Smith Jr., *Local Sovereign Immunity*, 116 Colum. L. Rev. 409 (2016)..... 1

Charles Wright & Arthur Miller, *Federal Practice and Procedure* (3d ed. 2018) 8, 9

INTEREST OF AMICUS CURIAE AND SUMMARY OF ARGUMENT[1]

Amicus Fred O. Smith Jr. is an Associate Professor at Emory University School of Law and a scholar of the federal judiciary and constitutional law whose research focuses on state sovereignty and representative government. His work has appeared in numerous journals, including the Harvard Law Review, Stanford Law Review, Columbia Law Review, and New York University Law Review. *See, e.g.*, *Abstention in the Time of Ferguson*, 131 Harv. L. Rev. 2283 (2018). As someone who has studied and written extensively about sovereign immunity, *see, e.g.*, *Local Sovereign Immunity*, 116 Colum. L. Rev. 409 (2016), he has an interest in ensuring that the doctrine is not distorted to hinder the vindication of federal constitutional rights—especially rights as important as those violated here.

The plaintiffs in this case have sued a state official seeking prospective relief to remedy ongoing violations of their federal constitutional rights. For over a century, it has been clear that sovereign immunity does not bar such claims. *See, e.g., Ex parte Young*, 209 U.S. 123 (1908). The Supreme Court has repeatedly "held that in determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly

[1] No counsel for a party authored this brief in whole or in part, and no person other than the amicus curiae or his counsel made a monetary contribution to its preparation or submission. All parties have consented to the filing of this brief.

characterized as prospective." *Va. Office for Protection & Advocacy v. Stewart*, 563 U.S. 247, 255 (2011) (internal citations omitted). If so, sovereign immunity will not bar suit.

Sheriff Gentry concedes that, under this rule, "a suit seeking prospective declaratory and injunctive relief to remedy alleged violations of federal law may be brought against an individually named State officer in his or her official capacity." Gentry Br. 16. And he does not deny that this case meets that description. Instead, he asks this Court to create a new exception to the rule—one that would render federal courts powerless to entertain suits seeking to prevent ongoing constitutional violations if the source of the violations "is not a statute." Gentry Br. 20.

Professor Smith files this brief to explain why this Court should reject that extraordinary request. The Sheriff's proposed "legislation-only" theory conflicts with prevailing precedent. It finds no support in the logic of *Ex parte Young*. And it cannot be reconciled with innumerable cases, in a range of contexts, authorizing prospective relief against state actors even though the source of the alleged violation was not a statute. If accepted, Sherriff Gentry's theory would blow a hole through *Ex parte Young* that would severely undermine the protection of federal rights. Rather than adopt his theory as the new law of this Circuit, the Court should follow Supreme Court precedent, conduct the "straightforward inquiry" it calls for, and find that sovereign immunity does not bar the plaintiffs' claims for prospective relief.

STATEMENT OF ISSUE

Ex parte Young permits suits seeking prospective relief against state officials who are alleged to be violating federal law. Should this Court create an exception to *Ex parte Young* that would preclude suits where the basis for the violation of federal law "is not a statute"? Gentry Br. 20.

ARGUMENT

I. There is no basis in *Ex parte Young* for restricting its scope to cases in which the challenged conduct derives from a statute.

Sheriff Gentry's legislation-only theory is at war with the animating principles of *Ex parte Young*. This is so for two reasons. *First*, the Court in *Ex parte Young* itself drew support from earlier cases in which the challenged conduct did not involve a statute. It specifically relied on, and recognized the importance of, cases challenging the executive enforcement of unlawful judicial orders. *Second*, a core rationale for *Ex parte Young* is that a state executive official who violates the Constitution necessarily acts in a manner that the State, as a sovereign, did not countenance. This rationale carries *more force*—not less—when an official's actions are not condoned by an act of the state legislature.

A. The Supreme Court has long allowed challenges to executive enforcement of unlawful judicial orders—a tradition relied on in *Ex parte Young*.

In *Ex parte Young*, Minnesota Attorney General Edward Young refused to comply with a federal court order that enjoined him from enforcing unconstitutional

railroad rates in the State. *See Perkins v. N. Pac. Ry. Co.*, 155 F. 445 (C.C.D. Minn. 1907) (enjoining enforcement of the State's newly enacted railroad-rate reduction). Young contended that the underlying suit in *Perkins* violated sovereign immunity to the extent that the suit was, at its core, a suit against the State of Minnesota. The Supreme Court famously rejected this defense, recognizing an exception to sovereign immunity for cases in which plaintiffs sue state officials (rather than the State itself) for prospective relief from ongoing violations of federal constitutional rights.

In reaching this result, the Court relied heavily on the existence of habeas cases against state executive officials who had enforced unlawful detentions. One case it cited was *Thomas v. Loney*, 134 U.S. 372 (1890), in which a police sergeant was sued based on an allegedly unconstitutional warrant issued by a justice of the peace. After finding that the warrant violated federal law, the Court terminated the prosecution and ordered the sergeant to release the prisoner. Another case was *Cunningham v. Neagle*, 135 U.S. 1 (1890), in which state officials charged a U.S. marshal with murder because he had killed someone while acting as a bodyguard for Justice Field. The marshal sought relief against a sheriff, and the Court ultimately ordered the marshal's release. *Id.* at 76. It did so not because California's murder laws were unconstitutional, but because state *courts* had no authority to prosecute a federal official under these circumstances. *See* John Harrison, *Ex Parte Young*, 60 Stan. L. Rev.

989, 1003–04 (2008) (noting that the marshal "did not argue that he was held pursuant to an invalid statute.").

The *Ex parte Young* Court reasoned that if sovereign immunity did not bar those suits (and their like), there was no reason why it should bar suit against Young. *See* 209 U.S. at 168 ("It is somewhat difficult to appreciate the distinction which, while admitting that the taking of such a person from the custody of the state by virtue of service of the writ on the state officer in whose custody he is found is not a suit against the state, and yet service of a writ on the attorney general, to prevent his enforcing an unconstitutional enactment of a state legislature, is a suit against the state.").

Sheriff Gentry's legislation-only theory cannot be reconciled with this legal tradition. It would seemingly close the door to all cases against state executive officials—including habeas cases—in which the claimant cannot identify an unconstitutional statute. Nothing about *Ex parte Young* countenances, let alone requires, this ahistorical and disruptive result. Quite the opposite: Just as the Court in *Ex parte Young* found it "difficult to appreciate the distinction," *id.*, it is difficult to understand why sovereign immunity should block a suit like this one, where the use of a rigid bail schedule results in unconstitutional pretrial detentions, but not suits seeking to enjoin the enforcement of state legislation.

B. The reasoning of *Ex parte Young* has equal or more force when an official is acting without a statute's sanction.

Nor does the logic of *Ex parte Young* support a legislation-only limitation. A key tenet of the decision is that suits for prospective relief against state officials to restrain federal constitutional violations are not to be treated as suits against States for sovereign-immunity purposes. *See Va. Office for Protection & Advocacy*, 563 U.S. at 255 ("[*Ex parte Young*] rests on the premise—less delicately called a 'fiction'—that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes."); *Edelman v. Jordan*, 415 U.S. 651 (1974) (affirming this principle and explaining the distinction between suits for prospective relief and retrospective relief). Under the reasoning of *Ex parte Young*, when state officials violate the federal constitution, they are necessarily "proceeding without the authority of . . . the state in its sovereign or governmental capacity," 209 U.S. at 159. On this reasoning, unconstitutional actions by state actors, by their very nature, cannot be official acts of the State. And so suits that seek prospective relief from these actions are not barred by sovereign immunity.

While this reasoning undoubtedly applies when an executive official is responsible for enforcing an unconstitutional statute, it is not limited to that narrow context. *Ex parte Young* explained that when a state official violates the supreme law of the land, that official is "stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The state has

no power to impart to him any immunity from responsibility to the supreme authority of the United States." *Id.* at 160. That is equally true when a state official's acts are not sanctioned by (or are in incompatible with) a state statute.

If anything, this rationale applies with more force, not less, in that context. Under *Ex parte Young*, an executive official who enforces an unconstitutional law enacted by the people of the State is "proceeding without the authority of . . . the state." *Id.* at 159. It would make no sense to conclude that the official suddenly regains the authority of the State when engaging in unconstitutional conduct that has *not* been sanctioned by the people of the State through legislation.

This understanding, moreover, comports with the most authoritative scholarly expositions of the *Ex parte Young* doctrine. *See, e.g.*, Erwin Chemerinsky, *Federal Jurisdiction* § 7.5.1 (7th ed. 2016) ("[I]f a state government is acting in violation of federal law, pursuant to an unconstitutional statute *or otherwise*, suit to enjoin the impermissible behavior may be brought in federal court by naming the state officer as the defendant.") (emphasis added).

More broadly, as discussed in the next section, were courts to create a new exception to *Ex parte Young* for unconstitutional conduct that does not involve statutes, it would undermine the important role that the doctrine has come to have in constitutional litigation. "This doctrine has existed alongside [the Supreme Court's] sovereign-immunity jurisprudence for more than a century, accepted as necessary to

'permit the federal courts to vindicate federal rights.'" *Va. Office for Protection & Advocacy*, 563 U.S. at 254–55 (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984)).[2] The doctrine is "indispensable to the establishment of constitutional government and the rule of law." 17A Charles Wright & Arthur Miller, *Federal Practice and Procedure* § 4231 (3d ed. 2018); *see also* Fred O. Smith, Jr., *Abstention in the Time of Ferguson*, 131 Harv. L. Rev. 2283, 2290 (2018) ("This ruling has served as an indispensable pillar of constitutional litigation."). Simply put, "[w]ithout *Young*, federal courts often would be powerless to prevent state violations of the Constitution and federal laws." Chemerinsky, *Federal Jurisdiction* §7.5.1.

So "it is not extravagant to argue that *Ex parte Young* is one of the three most important decisions the Supreme Court of the United States has ever handed down." 17A Wright & Miller, *Federal Practice and Procedure* § 4231. To be sure, cases that revitalize substantive constitutional principles—such as *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)—are profoundly important in our history as a republic. But *Ex parte Young* gives life to these cases by allowing for meaningful enforcement of the substantive rights they recognize. "*Ex parte Young* permitted suits to restrain school board members and other state officials from maintaining racial segregation in the

[2] And the principles it embodies are even older: "The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1384 (2015).

public schools," ensuring that sovereign immunity would not be used to nullify one of our most hard-fought and revered constitutional rights. 13 Wright & Miller, *Federal Practice and Procedure* § 3524.3. Given its place in facilitating the rule of law and of the U.S. Constitution, creating *any* exception to the doctrine should be done only with the utmost caution, and only for the most compelling reasons. The massive exception urged in this case, however, has absolutely nothing to recommend it.

II. Imposing a legislation-only limitation on *Ex parte Young* would undermine a wide range of constitutional litigation.

Sheriff Gentry's legislation-only theory not only defies the logic of *Ex parte Young*, but also cannot be reconciled with innumerable cases seeking prospective relief against state officials to prevent ongoing violations of federal constitutional rights—cases that, on his theory, could not have been brought. As even a small sample of these cases illustrates, the consequences of accepting his theory are hard to overstate: It would upend the consensus approach in the federal courts and undermine federal constitutional rights of every stripe.

To get a sense of the theory's far-reaching effects, first consider cases involving constitutionally imposed duties. Section 1983 is often used to enforce constitutional duties owed to populations with special needs. These include prisoners experiencing mental illness, *see, e.g.*, *Newman v. Graddick*, 740 F.2d 1513 (11th Cir. 1984); people living with disabilities, *see, e.g.*, *McCarthy ex rel. Travis v. Hawkins*, 381 F.3d 407 (5th Cir. 2004); indigent defendants, *see, e.g.*, *Luckey v. Harris*, 860 F.2d 1012 (11th Cir.

1988); and children in foster care, *see, e.g.*, *Kenny A. ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353 (N.D. Ga. 2005). Cases of this ilk generally involve no unconstitutional statute, but instead challenge official action undertaken by a state officer that results in a constitutional violation. On Sheriff Gentry's theory, these cases could no longer be brought.

The Sheriff's theory would also impede suits against state executive officials who carry out an illegal regulations, judicial orders, or customs. One example concerns challenges to policies of state universities. These cases have long been an integral part of the Supreme Court's First Amendment jurisprudence (to say nothing of its affirmative-action jurisprudence, which could also be undermined by the Sheriff's theory). In *Healy v. James*, 408 U.S. 169 (1972), for instance, the Court allowed a lawsuit by students against state-university administrators who made a discretionary decision to deny official recognition to a student group. Though their actions did not stem from a statute, sovereign immunity proved no obstacle to granting injunctive relief.

Likewise, in *Widmar v. Vincent*, 454 U.S. 263 (1981), the Court barred the enforcement of a university regulation that discriminated against religious groups notwithstanding the fact that this case, too, did not involve a statute. On Sherriff Gentry's view, sovereign immunity should have stood in the way of those religious students being able to vindicate their First Amendment rights. *See also Buchwald v.*

Univ. of N.M. Sch. of Med., 159 F.3d 487 (10th Cir. 1998) (constitutional challenge to state-medical-school admissions policy could proceed for prospective relief against individual defendants under *Ex parte Young*); *accord Shah v. Univ. of Tex. Sw. Med. Sch.*, 129 F. Supp. 3d 480 (N.D. Tex. 2015) (dismissed student's due-process claims for injunctive relief could proceed under *Ex parte Young*).

Prison-overcrowding cases provide another example. *See, e.g.*, *Brown v. Plata*, 563 U.S. 493 (2011). To take a recent example from within this Circuit, Alabama prisoners sought a declaration that state prison officials were "committing an ongoing violation of the Eighth and Fourteenth Amendments" and requested a "prospective injunction . . . requiring [those officials] to implement a plan to change the policies and practices" that created the constitutional violation. *Dunn v. Dunn*, 219 F. Supp. 3d 1100, 1161 (M.D. Ala. 2016). The defendants claimed that the suit was barred by sovereign immunity, but the court had no trouble holding that "this case, and the relief plaintiffs have requested, falls squarely within the *Ex parte Young* exception," even though no state statute was challenged. *Id.*

Still another example involves First Amendment claims against sheriffs. In *Lefemine v. Wideman*, 672 F.3d 292 (4th Cir. 2012), *judgment vacated on other grounds*, 568 U.S. 1 (2012), an abortion protester sued a sheriff and his deputies for violating his First Amendment rights by forcing him to remove signs during a demonstration. The Fourth Circuit sided with the protestor and held that, "under the doctrine of *Ex parte*

Young, . . . injunctive relief against a state officer in his official capacity may be appropriate if 'the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Id.* at 304. (quoting *Verizon Md. Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002)). The court thought it irrelevant that the sheriff was not enforcing a statute.

The same was true in *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013), another case involving First Amendment claims against a sheriff. Here, the claims were grounded in a retaliation theory—failing to reappoint plaintiffs based on their support for his electoral opponent—and had nothing to do with a statute. The court allowed the claims to proceed under *Ex parte Young* to the extent they sought reinstatement. *See also Nix v. Norman*, 879 F.2d 429 (8th Cir. 1989) (similar).

This Court, too, has sustained challenges to non-legislative state policies. It has never found that they were barred by sovereign immunity because they did not involve a state statute. *Harrell v. The Florida Bar*, 608 F.3d 1241 (11th Cir. 2010), for example, involved free-speech and vagueness claims against state-bar officials. The claims challenged lawyer-advertising rules promulgated by the Florida Supreme Court—not the Florida legislature. No matter. This Court allowed the claims to proceed to a determination on the merits. *Id.* at 1271.

And then there are cases involving marriage. Two examples from Kentucky suffice to make the point: The first, *Jones v. Perry*, 215 F. Supp. 3d 563 (E.D. Ky.

2016), was brought by a couple applying for a marriage license (one of whom was a state prisoner). They challenged a county clerk's policy of requiring both parties to physically appear at the clerk's office to apply for the license. This policy was entirely elective, and the in-person requirement appeared nowhere in a statute. In granting injunctive relief, the court noted that "this case falls comfortably within the boundaries of the *Ex parte Young* exception." *Id.* at 568 n.3. The second, *Miller v. Davis*, 123 F. Supp. 3d 924 (E.D. Ky. 2015), was a case seeking injunctive relief against a county clerk for refusing to issue a marriage license to a same-sex couple. The court held that sovereign immunity posed no barrier to this relief. *Id.* at 933–34.

Legions of other cases abound. Rather than embrace a radical exception that would sweep within it all of these cases, this Court should follow the rule it has already laid down: "the Eleventh Amendment does not insulate state officials acting in their official capacities from suit in federal court, at least to the extent the complainant seeks prospective injunctive relief." *Welch v. Laney*, 57 F.3d 1004, 1008 (11th Cir. 1995); *see also Carr v. City of Florence*, 916 F.2d 1521, 1525 n.2 (11th Cir. 1990) ("Prospective injunctive relief may be sought in 'a suit challenging the constitutionality of a state official's action.'" (citation omitted)). There is no reason to reverse course here.

CONCLUSION

This Court should affirm the district court's conclusion that the claims for prospective relief against Sheriff Gentry are not barred by sovereign immunity.

Respectfully submitted,

/s/ Jonathan E. Taylor

JONATHAN E. TAYLOR
GUPTA WESSLER PLLC
1900 L Street NW, Suite 312
Washington, DC 20036
(202) 888-1741
jon@guptawessler.com

FRED O. SMITH JR.
EMORY UNIVERSITY SCHOOL OF LAW
Gambrell Hall
1301 Clifton Road
Atlanta, Ga 30322
(404) 727-0535
fred.smith@emory.edu

Counsel for Amicus Curiae

March 11, 2019

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)

I hereby certify that my word processing program, Microsoft Word, counted 3,317 words in the foregoing brief, exclusive of the portions excluded by Rule 32(a)(7)(f). This brief also complies with the typeface and type style requirements of Rules 32(a)(5) and 32(a)(6) because it appears in 14-point roman Baskerville, a proportionally spaced typeface.

/s/ Jonathan E. Taylor

March 11, 2019 Jonathan E. Taylor

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2019, I electronically filed the foregoing Brief for Professor Fred O. Smith Jr. with the Clerk of the Court of the U.S. Court of Appeals for the Eleventh Circuit by using the Appellate CM/ECF system. All participants are registered CM/ECF users and will be served by the Appellate CM/ECF system.

/s/ Jonathan E. Taylor

Jonathan E. Taylor