

No. _____

In the
Supreme Court of the United States

JERICHO BAPTIST CHURCH MINISTRIES, INC.,
(JERICHO DC),

Petitioner,

v.

BANK OF AMERICA, N.A.,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents the Court with an opportunity to review the fundamental, important, and recurring issue as to whether expert testimony is required in a banking case where the bank's mishandling of a business account is open and obvious. Specifically, the question presented is:

Did the Fourth Circuit err in affirming a district court's ruling that a banking expert was required to establish the bank's ordinary standard of care in a negligence and breach-of-contract case, when the bank had actual knowledge of ongoing litigation concerning between different factions of a business for control over the business's monies and accounts, and the bank disbursed account funds to one faction while simultaneously denying the other faction any right of access to the account?

PARTIES TO THE PROCEEDINGS

Petitioner and Defendant/Counter-Claimant-Appellant below

- Jericho Baptist Church Ministries, Inc.
(Jericho DC)

Respondent and Plaintiff-Appellee below

- Bank of America, N.A.

Defendants below (not involved in appeal)

- Jericho Baptist Church Ministries Inc.
(Jericho MD)
- Denise Killen
- Clifford Boswell
- Gloria McClam-Magruder
- Clarence Jackson
- Lynda Pyles

CORPORATE DISCLOSURE STATEMENT

Petitioner JERICHO BAPTIST CHURCH MINISTRIES, INC. (JERICHO DC) is not a subsidiary of any parent company. No publicly held corporation owns 10 percent or more of the Petitioner's stock.

LIST OF PROCEEDINGS

DIRECT PROCEEDINGS BELOW

Bank of America, N.A., Plaintiff-Appellee, v. Jericho Baptist Church Ministries, Inc., Jericho DC, Defendant-Appellant, and Jericho Baptist Church Ministries, Inc., Jericho MD; Denise Killen; Clifford Boswell; Gloria McClam-Magruder; Clarence Jackson; Lynda Pyles, Defendants. United States Court of Appeals for the Fourth Circuit, No. 20-1725, opinion entered October 19, 2022. Rehearing Denial entered December 30, 2022.

Bank of America, N.A., Plaintiff, v. Jericho Baptist Church Ministries, Inc., et al., Defendants, United States District Court for the District of Maryland, No. PX 15-02953, Opinion entered January 10, 2020.

RELATED PROCEEDINGS

Jericho Baptist Church Ministries, Inc. (D.C.) v. Jericho Baptist Ministries, Inc. (Md.), No. 16-cv-00647 (APM) (D.D.C.), voluntarily dismissed by Plaintiff on April 29, 2022.

Citibank, N.A. v. Jericho Baptist Church Ministries, Inc. (Jericho MD), et al., No. 8:15-cv-02953-PX (D. Md.), judgment and order declaring Jericho DC as the Church faction entitled to the remaining funds in the court's registry (entered November 20, 2018), and amended order (entered December 18, 2018).

Jackson v. George, No. 15-CV-773 (D.C.), order affirming judgment of D.C. Super. Ct. entered Sept. 22, 2016.

Bank of Am., N.A. v. Jericho Baptist Church Ministries, Inc., No. PX 15-02953 (D. Md.), order granting Jericho DC's motion for summary judgment, entered Sept. 9, 2016.

George v. Jackson, No. 2013 CA 007115 B (D.C. Super. Ct.), judgment that Jericho DC was the operative board in control of the Jericho Church, entered July 7, 2015.

Franklin v. Jackson, Civil Action No. DKC 14-0497 (D. Md.), order granting Defendants' motion for summary judgment, entered Mar. 13, 2015.

Chavez v. Jericho Baptist Church Ministries, Inc., No. 2604 (Md. App.), Opinion affirming judgment of Cir. Ct. for Prince George's County, Md., entered Mar. 13, 2015.

Chavez v. Jericho Baptist Church Ministries, Inc., No. CAL12-13537 (P.G. Cnty. Cir. Ct., Md.), order granting summary judgment to Defendants, entered Feb. 18, 2014.

Jericho Baptist Church Ministries, Inc. v. Peebles, No. PJM 13-2586 (D. Md.), order remanding case to the Cir. Ct. for Prince George's County, Md., entered Oct. 30, 2013.

Jericho Baptist Church Ministries, Inc. v. Gloria McClam-Magruder, No. 2023 (Md. Ct. Spec. App.), order reversing judgment entered by Cir. Ct. for Prince George's County, Md., entered Sept. 19, 2012.

Jericho Baptist Church Ministries, Inc. v. Peebles, No. 1953 (Md. Ct. Spec. App.), order reversing judgment entered by Cir. Ct. for Prince George's County, Md., entered September 19, 2012.

Jericho Baptist Church Ministries, Inc. v. Gloria McClam-Magruder, No. CAL11-00873 (P.G. Cnty. Cir. Ct., Md.), summary judgment for Plaintiff (Jericho MD), entered Oct. 25, 2011.

Jericho Baptist Church Ministries, Inc. v. Peebles, No. CAL10-33647 (P.G. Cnty. Cir. Ct.), summary judgment for Plaintiff (Jericho MD), entered Oct. 25, 2011.

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The opinion of the United States Court of Appeals for the Fourth Circuit affirming the district court's grant of summary judgment to Respondent is reproduced in Appendix A at App.1a to the Petition and is unpublished. The opinion also may be accessed at 2022 U.S. App. LEXIS 29020 (4th Cir. Oct. 19, 2022). The Fourth Circuit's subsequent order denying Petitioner's motion for rehearing en banc is reproduced in Appendix D at App.34a to the Petition and is unpublished.

The opinion of the United States District Court for the District of Maryland is reproduced in Appendix B at App.7a to the Petition and is unpublished. The district court's opinion also may be accessed at 2020 U.S. Dist. LEXIS 4653 (D. Md. Jan. 10, 2020). The district court's prior memorandum opinion that largely denied Respondent's initial motion for summary judgment is reproduced in Appendix C to the Petition and is unpublished. This opinion also may be accessed at 2019 U.S. Dist. LEXIS 21153 (D. Md. Feb. 8, 2019).

JURISDICTION

The date on which the United States Court of Appeals for the Fourth Circuit decided the case was October 19, 2022. A timely petition for rehearing en banc was denied by the Fourth Circuit on December 30, 2022, and a copy of the order denying rehearing en banc is reproduced in Appendix D of this Petition

at App.34a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND JUDICIAL RULES INVOLVED

The full text of the following statutes and rules involved in this case are set out in Appendix E to this Petition at App.35a.

- 28 U.S.C. § 1254
- 28 U.S.C. § 2107
- U.S. Sup. Ct. R. 10
- Fed. R. App. P. 4
- Fed. R. App. P. 26
- Md. Code, Com. Law § 3-103
- Md. Code Ann., Com. Law § 4-103

STATEMENT OF THE CASE

This matter involves a dispute over the right of control over account funds between two factions of the Jericho Baptist Church Ministries, Inc. (the “Jericho Church”) known as Jericho DC and Jericho MD. For over four years, the Bank of America (the “Bank”) disbursed the Jericho Church’s account funds to Jericho MD representatives but simultaneously denied account access to Jericho DC. The Bank engaged in this course of action despite its full knowledge of

ongoing litigation between the two factions over the right to control the Jericho Church's assets and accounts.

Litigation between Jericho DC and Jericho MD began in October 2010. For the next six years, several related cases were filed and contentiously litigated in the state and federal courts of Maryland and the District of Columbia.

As early as 2011, Bank officials recognized that a conflict existed between Jericho DC and Jericho MD regarding control of the Jericho Church. Attorneys for both boards issued correspondence to the Bank warning the Bank that each side took the position that it had the right to control the Jericho Church's account funds held by the Bank, and Bank representatives held internal discussions concerning the status of the ongoing litigation.

Despite the Bank's knowledge of the ongoing litigation proceedings between Jericho DC and Jericho MD, the Bank continuously allowed Jericho MD representatives, particularly Denise Killen, to withdraw funds from the Jericho Church's accounts. At the same time, the Bank wholly denied account access to Jericho DC representatives. In unilaterally deciding to side with Jericho MD, the Bank relied on certain unauthenticated 2009 documents submitted by Denise Killen that purported to confer the sole right of access to the Jericho Church's accounts on Killen and Jericho MD. However, Bank representatives admitted that they ignored all Jericho Church documents filed with the Bank prior to October 19, 2009, including the signature card of Joel Peebles, a Jericho DC representative, that had been on file with the Bank since 1999.

On July 7, 2015, in the District of Columbia case captioned *George v. Jackson*, No. 2013 CA 007115 B (D.C. Super. Ct. July 7, 2015), the Honorable Stuart G. Nash of the District of Columbia Superior Court ruled that Jericho DC had rightful control over the Church’s operations and assets. On September 22, 2016, the District of Columbia Court of Appeals affirmed Judge Nash’s ruling. *See Jackson v. George*, 146 A.3d 405, 419 (D.C. 2016).

In the meantime, on September 29, 2015—almost three months after Judge Nash ruled that Jericho DC was the faction with rightful control over the Church’s assets—the Bank filed a Complaint for interpleader with the district court below. In that Complaint, the Bank requested that the district court determine whether Jericho DC or Jericho MD owned and controlled the Jericho Church’s bank accounts and assets, which then exceeded six million dollars. Jericho DC filed a Counterclaim against the Bank for breach of contract and negligence/gross negligence.

In a decision rendered February 8, 2019, the district court largely denied the Bank’s initial motion for summary judgment. The court determined that sufficient evidence demonstrating the Bank’s dereliction existed to reach the trier of fact because the Bank “was on notice as early as October 2010 that Jericho MD’s representative Denise Killen may not have been duly authorized to act on the Church’s behalf.” (App.26a). Specifically, the court agreed with Jericho DC that a reasonable jury could conclude that the Bank’s “failure to take any action to preserve the funds in the Church accounts, despite ample actual knowledge of a bona fide dispute as to which faction controlled the Church, violate[d] the Bank’s implied

contractual duty to exercise ordinary care” after March 2011. (App.26a). Although the Bank certainly knew by March 2011 of the contentious litigation between the two competing factions within the Church, “it for the next four years allowed . . . Killen to authorize disbursements, in direct contradiction to the documents presented by Joel Peebles.” (App.27a).

Following the district court’s denial of the Bank’s initial motion for summary judgment, the parties engaged in pretrial discovery. Jericho DC retained Susan Riley as its banking expert. However, on the Bank’s motion, the district court struck Ms. Riley as unqualified. The Bank then moved for summary judgment on the grounds that Jericho DC could not meet its burden of proving the Bank failed to act with ordinary care, as Jericho DC no longer had an expert witness to instruct the jury on this issue. Jericho DC objected to the Bank’s motion in part on the grounds that, under the circumstances, no expert testimony was required to enable the jury to determine that the Bank failed to act with ordinary care in its handling of the Jericho Church’s accounts throughout the ongoing litigation between Jericho DC and Jericho MD.

On January 10, 2020, the district court entered summary judgment in the Bank’s favor. The court concluded that Jericho DC was required to provide expert testimony to the jury on the Bank’s standard of care, and that the absence of a qualified expert necessarily meant that Jericho DC would be unable to satisfy this requirement. (App.7a). The district court rejected Jericho DC’s contention that the under the circumstances, the Bank’s negligence was so obvious that the jury could rely on its common experience to

find the Bank failed to exercise ordinary care in allowing Jericho MD to withdraw funds from the Jericho Church’s accounts despite its knowledge of ongoing litigation between Jericho MD and Jericho DC over the right to control said accounts. (App.14a).

Jericho DC appealed the district court’s grant of summary judgment in favor of the Bank. However, by a Judgment Order and unpublished per curium opinion filed on October 19, 2022, the Fourth Circuit affirmed the district’s court’s decision. (App.1a). In an Order entered December 30, 2022, the Fourth Circuit also denied Jericho DC’s motion for rehearing en banc. (App.34a).

REASONS FOR GRANTING THE PETITION

I. THE FOURTH CIRCUIT’S DECISION SANCTIONED THE DISTRICT COURT’S EXTREME AND UNWARRANTED DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL DECISIONS AS TO CALL FOR THE EXERCISE OF THIS COURT’S SUPERVISORY POWER

Petitioner respectfully seeks a writ of certiorari because the Fourth Circuit upheld and thereby sanctioned the district court’s extreme and unwarranted departure from the accepted and usual course of judicial decisions as to call for the exercise of this Court’s supervisory power. *See* U.S. Sup. Ct. R. 10(a). The decision involves the fundamentally important and recurring issue of whether expert testimony is required to establish a bank’s ordinary standard of care owed when the bank has actual knowledge of

ongoing litigation between different factions within a business for control over the business account holder's assets and accounts and yet intentionally chooses to disburse account funds to one faction while simultaneously denying the other faction access to the account.

Under established Maryland law, expert testimony is not required where the defendant's alleged breach of duty, if proven, "would be so obviously shown that the trier of fact could recognize it without expert testimony." *Schultz v. Bank of Am., N.A.*, 413 Md. 15, 29, 990 A.2d 1078, 1086 (2010); *see also Crockett v. Crothers*, 264 Md. 222, 224, 285 A.2d 612, 614 (1972). In this case, the Bank's dereliction of duty was so clear that expert testimony was not required to enable the jury to determine that the Bank breached the standard of ordinary care that it owed to its customer, the Jericho Church.

Whether a banking expert is required in an uncomplicated case that does not require specialized knowledge is a recurring and important issue. Unless this Court steps in, Jericho DC and similarly situated account holders will have no recourse against or protection from a bank that purposefully and unilaterally decides to side with one party in ongoing litigation without good cause. Through this course of action, the Bank recklessly takes the chance that the rightful business account holder will be deprived of funds that properly belong to it. The Court should require the Bank to conform with the ordinary standard of care that is easily recognizable by a jury utilizing its common knowledge and experience.

A. Negligence

Under Maryland law, it is well-established that a bank may be held liable for the tort of negligence for the “wrongful disbursement of funds belonging to a depositor.” *Taylor v. Equitable Tr. Co.*, 269 Md. 149, 156, 304 A.2d 838, 842 (1973). This is exactly what transpired in the present case.

Maryland courts “have emphasized . . . that experts are not needed when ‘the alleged negligence is so obvious that the trier of fact could easily recognize that such actions would violate the applicable standard of care.’” *Jones v. State*, 425 Md. 1, 26, 38 A.3d 333, 348 (2012) (quoting *Schultz*, 413 Md. at 29, 990 A.2d at 1087). “If a jury can use its ‘common knowledge or experience’ to recognize a breach of a duty, then expert testimony is unnecessary to calibrate the exact standard of care owed by the defendant.” *Id.* at 27, 38 A.3d at 348.

Under these principles, “bank customers are not necessarily required in all cases to introduce such evidence through an expert. Although expert testimony may ordinarily be necessary to prove the standard of care used by banks in the community, some acts committed by banks may be so obviously negligent that the trier of fact can easily recognize that the actions violate the standard of care.” *RBS Citizens v. Aresty*, Civil Action No. 09-10116-LTS, 2011 U.S. Dist. LEXIS 119237, at *3 (D. Mass. Oct. 14, 2011) (discussing Maryland cases). “The question of whether a bank was negligent in paying an item, that is, whether the bank paid the item in accordance with reasonable commercial standards, . . . is one which must be decided upon the facts of each particular case.”

Bank of S. Maryland v. Robertson's Crab House, Inc., 39 Md. App. 707, 714, 389 A.2d 388, 393 (1978).

In *Taylor*, Equitable, a bank, transferred funds from a depositor's account after a third party presented Equitable with an unendorsed check on the depositor's account. The Maryland Court of Appeals ruled that there was "no doubt that Equitable was negligent in not insisting on written instructions from Taylor", the account holder, and in not verifying the presenter's authority to act for Taylor. *Taylor*, 269 Md. at 158, 304 A.2d at 843.

The *Taylor* opinion does not state or even indicate that expert testimony was presented at trial to support either party's position on the issue of negligence. Despite the lack of any discussion of an expert's opinion on the issue of the bank's standard of care, the Maryland Court of Appeals ruled that the bank was negligent in allowing the improper and unauthorized disbursement of funds from Taylor's account. *Id.*

In *Schultz*, the court stated that "[e]xpert testimony may not have . . . been necessary" in *Taylor* "due to the seemingly obvious nature of the bank's negligence." *Schultz*, 413 Md. 31 n.12, 990 A.2d at 1088 n.12. According to the *Schultz* court, "there was 'no doubt' the bank [in *Taylor*] was negligent when it transferred funds without determining whether the transfer was authorized[.]" *Schultz*, 413 Md. 31 n.12, 990 A.2d at 1088 n.12.

In the present case, the Bank's deficient actions in its handling of the Jericho Church's accounts were likewise of such an open and obvious nature that there could be "no doubt" the Bank was negligent. *Id.* Specifically, the undisputed evidence shows that for

over four years, the Bank disbursed funds from the Jericho Church's accounts to Jericho MD representatives while simultaneously refusing account access to Jericho DC representatives. The Bank chose to act in this manner despite its actual knowledge that the two Jericho Church factions were engaged in ongoing and contentious litigation over the very issue of the rightful ownership of the Church's account funds.

Regardless of which Jericho Church faction had rightful control over the accounts, the way that the Bank handled the Church's accounts was clearly reckless and irresponsible. *See id.; Taylor*, 269 Md. at 158, 304 A.2d at 843. No expert testimony was required "to calibrate the exact standard of care owed" by the Bank to the Jericho Church. *Jones*, 425 Md. at 27, 38 A.3d at 348. The Bank's actions were so obviously wrongful that there was no need for a banking expert to explain to the jury exactly why the Bank's course of conduct below the ordinary standard of care applicable to banking representatives. Instead, members of the jury could rely on their common knowledge and experience to find that the Bank acted negligently. *See Taylor*, 269 Md. at 158, 304 A.2d at 843.

This conclusion is unaffected by the Bank's submission of unauthenticated documents from 2009 that purported to confer the right of access to the Jericho Church's accounts solely upon Jericho MD representatives. Bank representatives admitted that they ignored all Church documents filed with the Bank prior to October 19, 2009, including the 1999 signature card of Jericho DC representative, Joel Peebles, which was still on file with the Bank. By ignoring all pre-October 19, 2009, Church documents. the Bank obviously failed to exercise ordinary care in its

handling of the Church/Jericho DC's accounts. *See Taylor*, 269 Md. at 158, 304 A.2d at 843.

In short, the jury could utilize its “common knowledge or experience’ to recognize [the Bank’s] breach of a duty,” and, therefore, expert testimony was unnecessary to establish the Bank’s ordinary standard of care. *Jones*, 425 Md. at 27, 38 A.3d at 348. In ruling otherwise, the district court and the Fourth Circuit departed from the accepted and usual course of Maryland judicial decisions in an extreme and unwarranted manner that calls for the exercise of this Court’s supervisory power. *See U.S. Sup. Ct. R. 10(a)*. The Bank’s actions should not be condoned or protected under the guise of professional conduct of such complexity that expert testimony is required.

B. Breach of Implied Contract

Pursuant to Md. Code Ann., Com. Law § 4-103(a), a bank has an implied contractual duty to use ordinary care in disbursing a depositor’s funds, and this duty is nondelegable. *Gillen v. Maryland Nat'l Bank*, 274 Md. 96, 101, 333 A.2d 329, 333 (1975). In this regard, ordinary care “means observance of the reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged.” Md. Code, Com. Law § 3-103(a)(7).

When the district court below denied the Bank’s initial motion for summary judgment on Jericho DC’s breach of implied contract claim, it correctly determined that sufficient evidence existed to create a question of material fact on this issue. In so doing, the court emphasized that the Bank “was on notice as early as October 2010 that Jericho MD’s representative Denise

Killen may not have been duly authorized to act on the Church's behalf." (App.26a) A reasonable jury could conclude that the Bank's "failure to take any action to preserve the funds in the Church accounts, despite ample actual knowledge of a bona fide dispute as to which faction controlled the Church, violate[d] the Bank's implied contractual duty to exercise ordinary care[.]" (App.26a) Although the Bank was well aware of the ongoing litigation between Jericho DC and Jericho MD over the right to govern the Jericho Church, the Bank "for the next four years allowed . . . Killen to authorize disbursements, in direct contradiction to the documents presented by Joel Peebles." (App.27a).

Expert testimony was not needed to enable the jury to determine whether the Bank did, in fact, breach the duty of ordinary care it owed to the Jericho Church. The lower courts' issuance of summary judgment to the Bank on the grounds that Jericho DC did not have a banking expert to explain the standard of care to the jury represents an extreme and unwarranted departure from established Maryland law.

In *Saxon Mortg. Servs., Inc. v. Harrison*, 186 Md. App. 228, 290-91, 973 A.2d 841, 878 (2009), a bank paid on a check that was indorsed with only part of the payee's name in violation of its own internal training guidelines and the instructions on the back of the check. The court ruled that the issue as to whether the bank violated a standard of care owed to its customer was not "so particularly related to some science or profession that it is beyond the ken of the average lay[person]," and, therefore, expert testimony was not required. (internal quotation marks omitted).

A similar conclusion was reached in *Free State Bank & Tr. Co. v. Ellis*, 45 Md. App. 159, 411 A.2d 1090, *cert. denied*, 288 Md. 734 (1980). There, a bank released a deed of trust securing a \$200,000 promissory note which was payable to a customer and had been assigned to the bank as collateral for the customer's loan. In ruling that no expert testimony was required to establish the bank's failure to exercise ordinary care, the court stated: "Although there may be situations that necessitate expert testimony relative to the standard of care required of a bank in dealings with customers, this case is not of that category." *Ellis*, 45 Md. App. at 163, 411 A.2d at 1092.

The present case is factually analogous to *Saxon* and *Ellis*. The Bank engaged in a four-years-long course of conduct wherein it intentionally chose to disburse funds from the Jericho Church's accounts Denise Killen and Jericho MD and to refuse access to Jericho DC and Joel Peebles. The Bank chose to engage in this course of dealing despite its knowledge that the two Church factions were engaged in contentious litigation over the very issue of the rightful ownership of the Jericho Church's account funds. The Bank's breach of the duty of ordinary care it owed to its rightful bank customer—regardless of whether that customer was Jericho DC or Jericho MD—is clearly within the "ken of the average layperson." *Saxon*, 186 Md. App. at 291, 973 A.2d at 878. In one respect, the breach is self-evident. In another respect, the Bank should not have taken sides if it were going to discredit its own account holder's account.

Unlike *Schultz*, the present case does not involve the intricacies of a bank's internal management of accounts. In further contrast to *Schultz*, the analysis

as to whether the Bank breached its duty of ordinary care is unaffected by the identity of the true owner of the account. Regardless of which Church faction—Jericho DC or Jericho MD—had rightful ownership and control over the Church’s accounts, the Bank breached its duty of ordinary care by unilaterally choosing to recognize one faction as valid and the other as invalid, in the face of its actual knowledge that the identical issue was being heavily litigated in several state and federal courts. The Bank’s dereliction of duty is obvious, if not blatant. It is well within the common experience of the jury to conclude that the Bank failed to exercise ordinary care in its handling of the Church’s accounts. *See Jones*, 425 Md. at 27, 38 A.3d at 348; *Schultz*, 413 Md. at 29, 990 A.2d at 1086; *Saxon*, 186 Md. App. at 291, 973 A.2d at 878; *Ellis*, 45 Md. App. at 163, 411 A.2d at 1092. Hence, no expert testimony was required to assist the jury in determining whether the Bank was liable to Jericho DC for breach of implied contract.

Under established precepts of Maryland law, the disqualification of Jericho DC’s banking expert should not have been fatal to Jericho DC’s continued pursuit of its claims against the Bank for negligence and breach of contract. By affirming the district court’s issuance of summary judgment in favor of the Bank on the grounds that Jericho DC’s expert had been disqualified, the Fourth Circuit effectively sanctioned the district court’s extreme and unwarranted departure from established Maryland law. This departure from the accepted and usual course of judicial decisions calls for the exercise of this Court’s supervisory power. *See U.S. Sup. Ct. R. 10(a)*. For reasons of fundamental fairness to all business account holders within the

State of Maryland, Petitioner's Petition for Writ of Certiorari should be granted.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that a writ of certiorari issue to review the judgment of the Fourth Circuit on the question presented herein.

Respectfully submitted,

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