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Attorneys for Plaintiff Leisl M. Carpenter

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

LEISL M. CARPENTER,

Plaintiff,

v.

THOMAS J. VILSACK, in his official
capacity as Secretary of the United States
Department of Agriculture, and

ZACH DUCHENEAUX, in his official
capacity as Administrator of the Farm Service
Agency,

Defendants.

No. 21-CV-103-F

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Plaintiff Leisl M. Carpenter is a Wyoming rancher and the young mother of a 19-month
2 old son. She is of Danish, Norwegian, and Swedish ancestry. She and her husband Tim sell
3 weaned calves, grass finished or corn fed beef, grass hay, livestock protein supplements, custom
4 hay, and cull cows and bulls. Because she has no job other than ranching, her entire family's
5 income stems from the ranch. Although she meets the definition of "socially disadvantaged" for
6 some purposes relating to the U.S. Department of Agriculture's Farm Service Agency loans, she
7 is not covered by the American Rescue Plan Act, signed in March 2021. On the other hand, if she
8 were a different race—regardless of whether she was affected by COVID-19 or in fact needed loan
9 forgiveness—the federal government would automatically forgive her loan.

10 Ms. Carpenter brings this complaint against Defendants Thomas J. Vilsack, Secretary of
11 the United States Department of Agriculture, and Zach Ducheneaux, Administrator of the Farm
12 Service Agency (FSA), as follows:

13 INTRODUCTION

14 1. The Constitution requires that "all racial classifications imposed by government
15 must be analyzed by a reviewing court under strict scrutiny." *Johnson v. California*, 543 U.S.
16 499, 505 (2005) (internal quotation marks omitted). "We have insisted on strict scrutiny in every
17 context, even for so-called 'benign' racial classifications, such as race-conscious university
18 admissions policies, race-based preferences in government contracts, and race-based districting
19 intended to improve minority representation." *Id.* at 505 (internal citations omitted).

20 2. Equal protection under the law is the cornerstone of modern-day American
21 constitutional jurisprudence. It is the principle etched into our nation and was "[p]urchased at the
22 price of immeasurable human suffering." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 240
23 (1995) (Thomas, J., concurring in part and concurring in judgment).

24 3. In March 2021, however, Congress opted to enshrine into law race classifications
25 that divide American citizens by skin color, and which are unmoored from any interest that the
26 government may have in remedying past discrimination.
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1 4. In the American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (2021)
2 (“ARPA”), Congress allotted billions of dollars in debt relief to “socially disadvantaged” farmers
3 and ranchers. The program will erase the debts of certain farmers and ranchers who took out loans,
4 but only for farmers or ranchers of races.

5 5. The program does so by providing a payment in an amount up to 120 percent of the
6 outstanding indebtedness, to remain available until expended, for the cost of loan modifications
7 and payments under this section.

8 6. A “socially disadvantaged farmer or rancher” is defined by federal law, 7 U.S.C. §
9 2279(a)(5), as “a farmer or rancher who is a member of a socially disadvantaged group.”

10 7. In turn, a “socially disadvantaged group” is a “group whose members have been
11 subjected to racial or ethnic prejudice because of their identity as members of a group without
12 regard to their individual qualities.” 7 U.S.C. § 2279(a)(6).

13 8. The United States Department of Agriculture (“USDA”) interprets the phrase
14 “socially disadvantaged group” to include explicit racial classifications. Indeed, to be eligible for
15 ARPA’s debt relief, farmers and ranchers must be “Black, American Indian/Alaskan Native,
16 Hispanic, or Asian, or Hawaiian/Pacific Islander.” *See American Rescue Plan Debt Payments*
17 *FAQ*, at Question 1, at <https://www.farmers.gov/americanrescueplan/arp-faq> (last visited, May 23,
18 2021).

19 9. The USDA considers Plaintiff Leisl Carpenter to be “socially disadvantaged” in
20 some respects regarding her loan status, although not under ARPA. *See id.* at Question 1 (“Section
21 2501 [of the Food, Agriculture, Conservation and Trade Act of 1990] does not include gender.
22 While some women may be eligible [for ARPA debt relief] due to their race or ethnicity, gender
23 is not an eligible criterion in and of itself, based on the law enacted by Congress.”). She is not
24 considered to be a part of any of these racial categories and would generally be considered white
25 or Caucasian.
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1 10. Defendants are responsible for running this race-based loan-forgiveness program
2 through the Farm Service Agency. Defendants assert that the purpose of this program is to remedy
3 “systemic racism” within USDA and more broadly “across agriculture.”

4 11. The United States Constitution “forbids” discrimination by the federal government
5 “against any citizen because of his race.” *Adarand*, 515 U.S. at 216 (internal citations omitted).
6 When the government distributes “benefits on the basis of individual racial classifications,” as
7 Defendants do in this case, the government bears the burden of meeting “strict scrutiny.” In other
8 words, the government must prove that its discriminatory benefit is narrowly tailored and serves a
9 compelling government interest. *Id.* at 227. It cannot do so here.

10 12. Defendants’ use of race discrimination as a tool to end “systemic racism” is patently
11 unconstitutional and should be enjoined by the Court. Enjoining this discriminatory conduct will
12 promote equal rights under the law for all American citizens and promote efforts to stop further
13 racial discrimination because “[t]he way to stop discrimination on the basis of race is to stop
14 discriminating on the basis of race.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551
15 U.S. 701, 748 (2007) (plurality opinion).

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17 **PARTIES**

18 13. Plaintiff Leisl Maria Carpenter owns a ranch in Albany County, near Laramie, in
19 the District of Wyoming. Ms. Carpenter is a Wyoming rancher whose family started ranching in
20 the Centennial Valley following their immigration to the United States from Denmark, Norway,
21 and Sweden. In 2012, she took out a real estate loan from the FSA, which is covered under the
22 terms of ARPA.¹ Ms. Carpenter’s Promissory Note names the FSA’s office located in Wheatland,
23 Wyoming, as the payee for the USDA. Ms. Carpenter would be eligible for the loan forgiveness
24 program in Section 1005 of ARPA, and future FSA loans, except for the fact that she is not a
25 member of any of the racial groups that are eligible for loan forgiveness.

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¹ Ms. Carpenter’s loan was taken in her maiden name, Leisl Maria Stonum.

1 14. Defendant Thomas J. Vilsack is the Secretary of Agriculture. He is responsible for
2 leading the USDA, which includes the FSA. Under Section 1005 of ARPA, Defendant Vilsack is
3 required to provide debt relief to certain farmers based on race. He is sued in his official capacity.

4 15. Defendant Zach Ducheneaux is the Administrator of the FSA. Among other things,
5 FSA oversees certain loan programs. Under Section 1005 of ARPA, FSA will provide debt relief
6 to certain farmers with direct loans or USDA-backed loans based on race. He is sued in his official
7 capacity.

8 **JURISDICTION AND VENUE**

9 16. This Court has jurisdiction over this complaint under 28 U.S.C. §§ 1331 and 1343
10 because this case presents a substantial question of federal law, specifically whether Section 1005
11 of ARPA—and Defendants’ implementation of that section—violates the United States
12 Constitution’s guarantee of equal protection of the laws.

13 17. This Court has authority to issue a declaratory judgment and to order injunctive
14 relief and other relief that is necessary and proper pursuant to 28 U.S.C. §§ 2201 and 2202.

15 18. Venue is appropriate in this district under 28 U.S.C. § 1391(e)(1). A substantial
16 part of the events giving rise to this claim occurred in this district, Defendants maintain one or
17 more offices and employees in this district, a substantial part of the property subject to this action
18 is situated in this district, and a plaintiff resides in this district.

19 **Ms. Carpenter is a Rancher with Outstanding Debt on an FSA Loan**

20 19. Despite being the young mother of an 18-month old son, Ms. Carpenter continues
21 to ranch in Albany County, Wyoming.

22 20. Ms. Carpenter raises about 575 head of cattle and farms hay on her 160-acre ranch,
23 which has been in her family since they homesteaded the land in 1894.

24 21. Ms. Carpenter has FSA loans and is otherwise eligible for the loan forgiveness
25 program in Section 1005 of ARPA, except that her ancestors were from Denmark, Norway, and
26 Sweden, and she is commonly considered white or Caucasian.
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1 22. Under existing law, Ms. Carpenter would be prohibited from obtaining further loans
2 from the Department if she received any form of debt forgiveness on her FSA loans.

3 23. Ms. Carpenter's Promissory Note contains the following statement, on Page 1:
4 "The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and
5 activities on the basis of race, color, national origin . . ."

6 **President Biden Signs the American Rescue Plan Act**

7 24. On March 11, 2021, President Biden signed ARPA into law.

8 25. In a Rose Garden ceremony, President Biden emphasized that the \$1.9 trillion in
9 spending authorized by ARPA was necessary in response to COVID-19. Biden said: "It directly
10 addressed the emergency in this country. Because it focuses on what people need most." *See*
11 President Joe Biden on the American Rescue Plan and recovery, CNBC YouTube Channel, at
12 <https://www.youtube.com/watch?v=dj2zCWetr1Y> (Time Stamp 3:33).

13 26. In Section 1005 of ARPA, Congress appropriated "such sums as may be necessary"
14 to pay for the cost of loan modifications and payments for "each socially disadvantaged farmer or
15 rancher as of January 1, 2021." ARPA § 1005(a)(1)-(2).

16 27. Section 1005(a) requires Defendant Vilsack to use the appropriated funds to
17 "provide a payment in an amount up to 120 percent of the outstanding indebtedness of each socially
18 disadvantaged farmer or rancher as of January 1, 2021." ARPA § 1005(a)(2).

19 28. A "socially disadvantaged farmer or rancher" has "indebtedness" if that farmer or
20 rancher owes money on a "direct farm loan made by the Secretary" or a "farm loan guaranteed by
21 the Secretary." ARPA § 1005(a)(2)(A)-(B).

22 29. Finally, Section 1005(a)(3) states that "the term 'socially disadvantaged famer or
23 rancher' has the meaning given in section 2501(a) of the Food, Agriculture, Conservation, and
24 Trade Act of 1990 (7 U.S.C. § 2279(a))." That Act defines "socially disadvantaged farmer or
25 rancher" as "a farmer or rancher who is a member of a socially disadvantaged group." 7 U.S.C. §
26 2279(a)(5). "Socially disadvantaged group," in turn, is defined as "a group whose members have
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1 been subjected to racial or ethnic prejudice because of their identity as members of a group without
2 regard to their individual qualities.” 7 U.S.C. § 2279(a)(6).

3 30. Defendants Vilsack and Ducheneaux are responsible for the implementation of the
4 loan forgiveness provisions in ARPA Section 1005.

5 31. On March 25, 2021, Defendant Vilsack offered written testimony to the House of
6 Representatives Committee on Agriculture. *See Opening Statement of Thomas J. Vilsack Before*
7 *the House Committee on Agriculture – Remarks as Prepared*, (March 25, 2021), at
8 [https://www.usda.gov/media/press-releases/2021/03/25/opening-statement-thomas-j-vilsack-](https://www.usda.gov/media/press-releases/2021/03/25/opening-statement-thomas-j-vilsack-house-committee-agriculture)
9 [house-committee-agriculture](https://www.usda.gov/media/press-releases/2021/03/25/opening-statement-thomas-j-vilsack-house-committee-agriculture) (last visited, May 24, 2021).

10 32. In true doublespeak fashion, Defendant Vilsack claimed that he would be
11 committed to rooting out discrimination within the Department: “I am here today to say that racism
12 and discrimination have no place at the Department of Agriculture. I will not tolerate it, and I am
13 committed to rooting it out and establishing a relationship with producers that is built on a
14 commitment to equity, trust and customer service.”

15 33. On March 26, 2021, Defendant Ducheneaux authored a blog post detailing how
16 FSA intends to implement Section 1005 of ARPA. *See Zach Ducheneaux, “American Rescue*
17 *Plan Socially Disadvantaged Farmer Debt Payments,”* (March 26, 2021), at
18 [https://www.farmers.gov/connect/blog/loans-and-grants/american-rescue-plan-socially-](https://www.farmers.gov/connect/blog/loans-and-grants/american-rescue-plan-socially-disadvantaged-farmer-debt-payments)
19 [disadvantaged-farmer-debt-payments](https://www.farmers.gov/connect/blog/loans-and-grants/american-rescue-plan-socially-disadvantaged-farmer-debt-payments). According to this [document](#): “USDA recognizes that
20 socially disadvantaged farmers and ranchers have faced systemic discrimination with cumulative
21 effects that have, among other consequences, led to a substantial loss in the number of socially
22 disadvantaged producers, reduced the amount of farmland they control, and contributed to a cycle
23 of debt that was exacerbated during the COVID-19 pandemic.”

24 34. Defendant Ducheneaux explained that through ARPA, FSA will provide “historic
25 debt relief to socially disadvantaged producers including Black/African American, American
26 Indian or Alaskan native, Hispanic or Latino, and Asian American or Pacific Islander.”
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1 35. According to Defendant Ducheneaux, “[a]ny socially disadvantaged borrower with
2 direct or guaranteed farm loans as well as Farm Storage Facility Loans qualifies.” Defendant
3 Ducheneaux defines “socially disadvantaged” borrowers as only those borrowers “with direct or
4 guaranteed farm loans as well as Farm Storage Facility Loans” and who are members of one or
5 more of the following racial groups: “Black/African American, American Indian or Alaskan
6 native, Hispanic or Latino, and Asian American or Pacific Islander.”

7 36. On or about April 12, 2021, USDA updated its website to provide further
8 information about the payments under Section 1005 of ARPA. The [website](#) confirms that only
9 certain farmers will be eligible based on race: “Eligible borrowers include those who identify as
10 one or more of the following: Black/African American, American Indian, Alaskan native,
11 Hispanic/Latino, Asian American, or Pacific Islander.” *See American Rescue Plan Debt Payments*,
12 at <https://www.farmers.gov/americanrescueplan>.

13 37. Although public officials have made stray comments about remedying past
14 discrimination committed by the Department of Agriculture, Defendant Vilsack made clear the
15 real reasons for ARPA’s race classifications: “[T]hese provisions recognized that on top of the
16 economic pain caused by the pandemic’s impact on the economy and agriculture, socially
17 disadvantaged farmers are also dealing with a disproportionate share of COVID infection rates,
18 hospitalizations, death and economic hurt.” *See id.* (“The law provides funding to address
19 longstanding racial equity issues within the Department and *across agriculture*.”) (emphasis
20 added).

21 38. To be clear, the program at issue does not target farmers or ranchers who suffered
22 economic pain during the COVID-19 crisis. Nor does it target farmers or ranchers who contracted
23 COVID-19. It does not even target farmers or ranchers who have suffered discrimination, much
24 less at the hands of the Department of Agriculture. Under the relevant provisions, it forgives the
25 loans of farmers or ranchers whose race matches the race of a group whose members have suffered
26 discrimination, per the Department. (A farmer or rancher who is a member of a socially
27 disadvantaged group.) As Secretary Vilsack stated in his testimony, part of his goal is to make it
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1 clear to Congress and the public that “that prosperous farmers of color means a prosperous
2 agricultural sector and a prosperous America.”

3 39. In fact, socially disadvantaged farmers who were previously successful claimants
4 in class action settlements (e.g., Pigford, Keepseagle) and received debt forgiveness are eligible
5 for further debt forgiveness. *See American Rescue Plan Debt Payments FAQ*, at Question 3.

6 40. The USDA has stated that individuals who receive loan forgiveness under the
7 ARPA will be eligible for future FSA loans. *See American Rescue Plan Debt Payments FAQ*, at
8 Question 29 at <https://www.farmers.gov/americanrescueplan/arp-faq>.

9 41. As for timing and process, it appears that USDA will soon be reaching out to begin
10 providing payments to those individuals who meet the racial classifications, based on the
11 information in USDA’s files. *See American Rescue Plan Debt Payments FAQ*, at Question 9-10
12 (“Question 9: Do I need to apply or take any action to receive a debt payment? A. No action on
13 your part is needed right now.”); *see id.* at Question 10 (“Details of the process and your debt
14 payment will be reviewed with you prior to final processing.”) at
15 <https://www.farmers.gov/americanrescueplan/arp-faq>.

16 42. Upon information and belief, the USDA further instructs potential applicants who
17 are “uncertain of [their demographic designation on file at FSA]” to call their local service center
18 to verify their classification on record, and to update as needed.

19 43. Upon information and belief, on or about May 4, 2021, USDA sent correspondence
20 to borrowers who have not previously designated details about their demographic information
21 including race and ethnicity data, to “encourage” them to contact their local FSA Service center to
22 update their demographic information in FSA records.

23 44. Beginning in the week of May 24, 2021 and continuing through June 2021, Direct
24 Loan borrowers will receive a letter from FSA, outlining the payment they will receive, and that
25 they will need to sign and return it. Guaranteed Loan borrowers will be available within 120 days.
26 *See American Rescue Plan Debt Payments*, at <https://www.farmers.gov/americanrescueplan>.
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(Fifth Amendment of the United States Constitution)
(Equal Protection Violation)

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2 52. Plaintiff realleges and incorporates by reference the allegations set forth above as
3 if fully set forth herein.

4 53. “[T]he moral imperative of racial neutrality is the driving force of the Equal
5 Protection Clause, and racial classifications are permitted only as a last resort.” *Bartlett v.*
6 *Strickland*, 556 U.S. 1, 21 (2009). “[A]ll racial classifications, imposed by whatever federal, state,
7 or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. *Adarand*,
8 515 U.S. at 227. “Under strict scrutiny, the government has the burden of proving that racial
9 classifications are narrowly tailored measures that further compelling governmental interests.”
10 *Johnson v. California*, 543 U.S. at 505. When the government invokes an interest as meeting strict
11 scrutiny, the court must closely examine how the government has gone about satisfying that
12 interest. *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 299 (2013) (“Strict scrutiny does not
13 permit a court to accept a school’s assertion that its admissions process uses race in a permissible
14 way without closely examining how the process works in practice.”).

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16 54. “The liberty protected by the Fifth Amendment’s Due Process Clause contains
17 within it the prohibition against denying to any person the equal protection of the laws.” *United*
18 *States v. Windsor*, 570 U.S. 744, 774 (2013).

19 55. Section 1005 of ARPA imposes racial classifications. Farmers or ranchers with
20 direct farm loans, guaranteed farm loans, or Farm Storage Facility Loans qualify for loan
21 forgiveness only if they are members of one of the following racial groups: Black/African
22 American, American Indian or Alaskan native, Hispanic or Latino, or Asian American or Pacific
23 Islander.

24 56. Defendants are responsible for interpreting and implementing Section 1005 of
25 ARPA.

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57. Although Plaintiff is a rancher with a direct FSA loan, and otherwise eligible for the loan forgiveness program under Section 1005 of ARPA, she is ineligible for this federal benefit because she is white.

58. Plaintiff is harmed by the Defendants’ racial classifications because, but for Plaintiff’s skin color, she would be receiving up to 120% of the value of her outstanding debt and she would use that money to benefit her ranch and family.

59. The racial classifications under Section 1005 of ARPA do not satisfy strict scrutiny. There is no compelling interest in providing subsidies by scattershot to farmers and ranchers simply on the basis of their membership in a racial group.

60. Remedying societal discrimination does not constitute a compelling interest under the Fifth Amendment’s equal protection principles. *Fisher v. Univ. of Texas at Austin*, 570 U.S. at 318 (permitting such an interest would have “no logical stopping point”).

61. Nor is Section 1005 narrowly tailored, since it is both underinclusive—it does not provide relief to white or Caucasian farmers who have contracted COVID-19 or suffered due to COVID-19—and overinclusive—it includes farmers or ranchers who may meet the racial qualifications, but who have not contracted COVID-19, suffered uniquely due to COVID-19, or suffered discrimination on any basis.

62. Because the racial classifications under Section 1005 of ARPA are not narrowly tailored to serve a compelling government interest, they cannot survive strict scrutiny.

SECOND CLAIM FOR RELIEF

(Illegally Allowing Future Eligibility)

63. Plaintiff realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

64. Prior to the enactment of the ARPA, the Department was prohibited, by statute, from providing future loans to persons who receive forgiveness of a direct or guaranteed loan, except in narrowly specified circumstances. *See* 7 U.S.C. § 2008h(b).

1 65. Prior to the enactment of the ARPA, the Department was prohibited, by statute,
2 from providing debt forgiveness on a direct loan to any person who had previously received debt
3 forgiveness. *See* 7 U.S.C. § 2008h(c).

4 66. As the ARPA was originally proposed, Section 1005 provided that the provision of
5 a payment under paragraph (2) to a socially disadvantaged farmer or rancher shall not affect the
6 eligibility of such farmer or rancher for a farm loan after the date on which the payment is provided.
7 *See* American Rescue Plan Act of 2021, 117 H.R. 1319, 2021 H.R. 1319, 117 H.R. 1319, Title I,
8 § 1005(3) (“EFFECT ON ELIGIBILITY.-- Notwithstanding any other provision of law, the
9 provision of a payment under paragraph (2) to a socially disadvantaged farmer or rancher shall not
10 affect the eligibility of such farmer or rancher for a farm loan after the date on which the payment
11 is provided.”) (proposed language).

12 67. This provision did not make it into Section 1005 as enacted.

13 68. Yet on or about May 21, 2021, citing no statutory authority, the Department stated,
14 *ipse dixit*, on its website that persons who receive loan forgiveness under the ARPA will be eligible
15 for future FSA loans. *See American Rescue Plan Debt Payments FAQ*, at Question 29
16 <https://www.farmers.gov/americanrescueplan/arp-faq>.

17 69. Because the Department has no authority to treat anyone who received loan
18 forgiveness as eligible for future loans, but has said that it will do so anyway, it will be acting
19 unlawfully.
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RELIEF REQUESTED

Plaintiff respectfully requests that this Court:

A. Enter a declaratory judgment that the racial classifications under Section 1005 of ARPA are unconstitutional under the Equal Protection principles of the Fifth Amendment of the United States Constitution.

B. Enter a declaratory judgment that Plaintiff is eligible to receive loan forgiveness pursuant to ARPA.

C. Enter a declaratory judgment that providing further loans to those who receive loan forgiveness is illegal.

D. Enter an order permanently enjoining Defendants from applying racial classifications when determining eligibility for loan modifications and payments under Section 1005 of ARPA.

E. Enter an order permanently enjoining Defendants from declaring Plaintiff ineligible for future FSA loan participation, to the extent that such participation is permitted for recipients of ARPA relief.

F. In the alternative, enjoin Defendants from enforcing Section 1005 of the American Rescue Plan of 2021 in its entirety and enjoining Defendants from distributing loan assistance under Section 1005 to farmers and ranchers.

G. Enter an award for nominal damages of \$1.00.

H. Award Plaintiff such costs and attorney fees as allowed by law; and

I. Grant Plaintiff such other and further relief as the Court deems appropriate.

1 DATED this 24th day of May, 2021.

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3 Respectfully submitted,

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5 /s/ Timothy M. Stubson

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