EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ISRAEL ALVARADO, ET AL,	:	
	:	
v.	:	**Case No. 1:22-cv-0876**
	:	
LLOYD AUSTIN, ET AL	:	
	:	

DECLARATION OF ARTHUR A. SCHULCZ, SR.

Pursuant to 28 U.S.C. §1746 I, ARTHUR A. SCHULCZ, SR., declare as follows:

1. My name Arthur A. Schulcz, Sr. I live at 21043 Honeycreeper Pl., Leesburg, VA. I am older than 18 years and have personal knowledge of and am competent to testify on the matters herein.

2. I write to specifically to address my qualifications for class counsel including my experience in complex civil litigation involving numerous parties, both plaintiffs and defendants. That experience demonstrates my preparation, willingness and ability to prosecute this action with vigor.[1]

3. First, I bring to this litigation both a working knowledge of the military as well as a legal background in class actions and complex litigation involving multiple parties, including United States agencies and local governments.[2]

4. After retiring from the Army in 1986 and graduating from Law School and passing the

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[1] 7A WRIGHT, MILLER & KANE, *Federal Practice and Procedure: Civil 2d* § 1769.1 at 375 ("In sum, the lawyer must be willing and able to vigorously prosecute the action.")

[2] *See Jenkins v. Raymark Indus., Inc., 782 F.2d 468, 472 (5th Cir. 1986)Jenkins v. Raymark Indus., Inc.,* 782 F.2d 468, 472 (5th Cir. 1986)(Counsel found adequate in light of past experience in asbestos cases, which included trials with multiple plaintiffs)

bar in 1989, I joined a firm specializing in environmental law with the majority of my work in the area addressed by the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") and commonly referred to as "Superfund", 42 U.S.C. § 9601, *et. seq*. The firm also handled issues and matters involving the Resource Conservation and Recovery Act (RCRA)[3] and the transpiration of hazardous substances.

5. Superfund litigation has been characterized by (a) the large number of potentially responsible parties ("PRPs"), often several hundreds and occasionally, in the thousands, *e.g.*, Operating Industries Inc., near Los Angeles, CA (almost 4000 potentially responsible parties), who transported hazardous substances, manufactured them, or whose waste products had hazardous substances which were found at landfills or hazardous waste sites; and (b) the high frequency of resulting third-party litigation among the PRPs.

6. While the U.S. Environmental Protection Agency ("EPA") is normally the plaintiff, it is not unusual to find among the defendants other United States agencies, *e.g.,* Military Services, airports, various state organizations, local municipalities and government bodies, and a wide variety of private parties from individuals to large, multinational corporations.

7. For example, in *United States v. Midwest Solvent Recovery, Inc.,* Civil Action H-79-556 (ND Ind.) (*Midco*), I represented two defendants with the largest combined liability at two CERCLA sites in Gary, Indiana, from 1990 until 2005. The EPA sued nine generator PRP defendants who then filed third-party "contribution" claims against over one hundred other parties, including the Army; the State of Indiana and a county government; and other large and small companies. In the *Midco* case, I oversaw a $43 million remedy on behalf of almost 40

[3]RCRA is the the public law that creates the framework for the proper management of hazardous and non-hazardous solid waste and the transpiration of hazardous substances.

settling parties under the 1992 *Midco* consent decree until 2005.

8. At other sites, I represented PRP groups as lead counsel in negotiating settlements, helped form PRP groups or coalitions and played a key role in CERCLA litigation, including appellate practice.

9. Superfund litigation is similar to class actions in that it involves complex litigation in which a counsel can represent the interests of multiple parties (sometimes with very different interests) in pursuit of a common goal, settlement with the government while reducing the risk and cost to the client or clients. This often involves procedural and litigation issues common to class actions, including providing notice to many parties and representing many interests.

10. Prior to my becoming involved in litigation against the Navy on behalf of Navy Non-liturgical chaplains in 1999, I litigated and/or defended clients in Superfund cases in Indiana, Illinois, Wisconsin, Kansas and Missouri, Oklahoma, Texas, California, Michigan, New Jersey, and Pennsylvania. I was also the lead attorney in a successful challenge to New York City's regulations controlling the design and use of diesel, paint solvent and gasoline delivery trucks that conflicted with Department of Transportation national fuel tanker vehicle safety criteria and specifications.

11. In 2000, my practice began shifting from environment to religious liberties for a variety of reasons. I filed *Chaplaincy of Full Gospel Churches v. Danzig* (Navy Sec.), 99-cv-2945 (D.D.C.) November 5, 1999, challenging the Navy's religious prejudice and denominational preferences in promotions and other career benefits.

A. In March, 2000, I filed *Adair v. England,* 00-cv-566 (D.D.C.), a putative class action on behalf of Non-liturgical chaplains. *Adair v. England*, 209 F.R.D. 5 (D.D.C. 2002), granted the motion for class certification. When the Navy discharged the last active duty plaintiff destroying the class in 2006, the *Adair* plaintiffs dissolved the class. I filed another class action

on bahalf of 41 chaplains in the Northern Distict of Florida, *Gibson v. U.S. Navy*, in 2006 which was subsequentltly transferred to the District of Columbia over the plaintiffs' objections.

B. I also successfully appealed the District Court's holding that an allegation of denominational preference in violation of the Establishment Clause did not provided the irreparable harm necessary to support a preliminary injunction. *See Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 302 (D.C. Cir. 2006), cited by ECF 60 (PI Memo) at 3-4, 13, 28, 34.

12. For over 22 years, I have represented Military Chaplains and chaplain endorsing agencies in issues involving religious liberties through education of Congressional Representative and Senators and litigation. For example, in 2005 the Air Force published a regulation prohibiting chaplains from providing sectarian prayers at command functions, *e.g.*, invocations at military school or training graduations, retirement ceremonies. In 2006, the Navy published a similar regulation.

13. As general counsel for the International Conference of Evangelical Chaplain Endorsers ("ICECE"), I worked with members of Congress to protect the rights of chaplains to pray according to their conscience and faith tradition, a right recognized later in the *Town of Greece v. Galloway,* 134 S. Ct. 1811 (2014). which echoed many of ICECE's arguments. *E.g.*,

> The First Amendment is not a majority rule, and government may not seek to define permissible categories of religious speech. Once it invites prayer into the public sphere, government must permit a prayer giver to address his or her own God or gods as conscience dictates, unfettered by what an administrator or judge considers to be nonsectarian.

Id. at 1822-23. *See also id.* at 1823 ("Our tradition assumes that adult citizens, firm in their own beliefs, can tolerate and perhaps appreciate a ceremonial prayer delivered by a person of a different faith.").

14. The House language for the 2007 National Defense Authorization Act ("NDAA")

contained language protecting chaplains rights to follow their conscience while the Senate version did not. Congress resolved the dispute through the 2007 NDAA's directive language telling the Air Force and Navy to withdraw the regulations.

15. In my same role as ICECE's General Counsel, I became involved in the process that eventually produced § 533 of the 2013 NDAA, which protects chaplains' rights to follow their conscience as formed by their faith.

16. ICECE continued working with members of Congress after 2007 trying to eliminate the confusion in a chaplain's dual role as a commissioned denominational or faith group representative to the military and a commissioned officer. Chaplains are not and cannot be a "government religious official" as many military personnel and leaders saw them.

17. There were many disputes best described as theological issues, conservative versus liberal, evangelical versus liturgical. These included:

A. An attempted censorship of a chaplain before a memorial service in Iraq and a dispute after the service.

B. Suppression of an Evangelical (Baptist) service in Iraq in 2007.

18. For example, an endorsing agency I represent, the Associated Gospel Churches ("AGC"), provided language for a September 2014 House Armed Services Committee hearing on religious freedom for military personnel and chaplains. *See* Complaint Exhibit 5, "The Associated Gospel Churches' Perspective on Religious Liberty, Including Military Prayer and Religious Speech Problems" and Exhibit 6, "The Associated Gospel Churches' Supplement to its Perspective on Religious Liberty, Including Military Prayer and Religious Speech Problems."

19. I have personal knowledge of both the exhibits and the events that they describe. I was and still am AGC's General Counsel. I was intimately involved in providing counsel to the AGC and its chaplains involved in the incidents described; I drafted both documents and the copies in

the Complaint came from my files.

20. These are not the only reports of religious discrimination.

21. A number of public disputes in 2011 and 2012 involved chaplains accused of "offending" some other military personnel by what the chaplain said in chapel services, activities, or counseling addressing "sin" in regard to sexual conduct or activities.

22. I was involved in a meeting in the House of Representatives in 2011 convened to address the issue of religious liberty and free speech and how to resolve threats to it while protecting both liberty and faith in a constitutional neutral manner. The result of that was § 533 of the 2013 NDAA.

23. As ICECE's Executive Director and General Counsel, I had numerous meetings with the Executive Directors of the Armed Forces Chaplains Board asking when the comprehensive education program providing specific Religious Liberty training the 2018 NDAA language directed for chaplains, JAGs and commanders, specifically including § 533 and the Religious Freedom Restoration Act directed in the regulations. In 2021 I was told the new DoD I 1300.17 satisfied that requirement, a point I disagree with because it delegates responsibility for the training, rather than provide the required training program so that there is uniformity across all services.

24. Finally, counsel has aggressively sought to resolve the issues of this case by identifying and addressing issues unique to chaplains, *e.g.,* Section 533 and establishment clause issues, through filing a request for a preliminary injunction[4] addressing Plaintiffs major claims. The named plaintiffs have brought this action in a timely manner, and they have timely moved for

[4] ECF No. 59

class certification, satisfying the facial indicia of adequate representation.[5]

I make this declaration under penalty of perjury, it is true and accurate to the best of my ability, and it represents the testimony I would give if called upon to testify in a court of law.

Respectfully submitted,

September 19, 2022

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[5] *See* NEWBERG & CONTI, NEWBERG ON CLASS ACTIONS §§ 3.42 & 3.43 (3d ed. 1992).