

No. 24-10287

In the United States Court of Appeals for the Fifth Circuit

JAMES DONDERO; HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; THE DUGABOY INVESTMENT TRUST; NEXPOINT
REAL ESTATE PARTNERS, L.L.C.; AND GET GOOD TRUST,

Plaintiffs-Appellants,

v.

STACEY G. JERNIGAN; HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Texas, Dallas Division

No. 3:23-CV-0726-S

**REPLY BRIEF IN SUPPORT APPELLANTS' MOTION FOR
LEAVE TO FILE A REPLY BRIEF IN SUPPORT OF
REHEARING EN BANC**

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Appellee Highland Capital Management L.P. (Highland) opposes our motion for leave to file a reply brief in support of rehearing en banc, its arguments against our request are meritless. Highland’s claim that the proposed reply brief in support of hearing en banc makes “new arguments never preserved for appeal”¹ is false. The appellants’ panel-stage brief made clear that the district court abused its discretion by “misapplying the law as to both mandamus relief and the underlying § 455 question,”² which fully preserves the proposed reply brief’s claim that an error of law is an abuse of discretion *per se*. And even if Highland were right to claim that the proposed reply brief contains unpreserved arguments, that is no reason for this Court to deny consideration of the entire brief.

Highland also claims that the “numerous arguments against rehearing” presented in its response to our petition for rehearing en banc are insufficient to justify a reply,³ but the entire point of reply briefs to address the arguments that an opposing party makes in response to a motion. If Highland thinks its arguments should go unanswered, then it must justify that stance rather than assert that our desire to address those arguments in a reply brief is somehow improper. *See* Appellees’ Br. in Opp. to Mot., ECF No. 123, at 1 (“[L]itigants invariably want the last word.”).

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1. Appellees’ Br. in Opp. to Mot., ECF No. 123, at 2 .
 2. Appellants’ Br., ECF No. 37, at 45.
 3. Appellees’ Br. in Opp. to Mot., ECF No. 123, at 1.

CONCLUSION

The Court should grant the appellants' motion for leave to file a reply brief in support of their petition for rehearing en banc.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE
with type-volume limitation, typeface requirements,
and type-style requirements

1. This motion complies with the type-volume limitation of Fed. R. App. P. 40(d)(3)(A) because it contains 282 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This motion complies with the type face and type-style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and Fed. R. App. P. 32(a)(6) because it uses Equity Text B 14-point type face throughout, and Equity Text B is a proportionally spaced typeface that includes serifs.

Dated: January 6, 2025

/s/ Jonathan F. Mitchell
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CERTIFICATE OF ELECTRONIC COMPLIANCE

Counsel also certifies that on January 6, 2025, this brief was transmitted to Mr. Lyle W. Cayce, Clerk of the United States Court of Appeals for the Fifth Circuit, via the court's CM/ECF document filing system, <https://ecf.ca5.uscourts.gov>

Counsel further certifies that: (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned with the most recent version of VirusTotal and is free of viruses.

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CERTIFICATE OF SERVICE

I certify that on January 6, 2025, this document was electronically filed with the clerk of the court for the U.S. Court of Appeals for the Fifth Circuit and served through CM/ECF upon all counsel of record in this case.

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