

No. 16-2325

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Greater Baltimore Center
for Pregnancy Concerns, Inc.,
Plaintiffs-Appellees,

v.

Mayor and City Council of Baltimore;
Catherine E. Pugh, in her official capacity as Mayor of Baltimore;
Leana S. Wen, M.D., in her official capacity as
Baltimore City Health Commissioner,
Defendant-Appellant.

On Appeal from the United States District Court for the
District of Maryland | No. 10-cv-00760-MJG
Honorable Marvin J. Garbis

**BRIEF FOR DR. KESTEN C. GREEN
AS AMICUS CURIAE IN SUPPORT OF GREATER BALTIMORE
CENTER FOR PREGNANCY CONCERNS, INC.,
AND AFFIRMANCE OF THE JUDGMENT**

Blaine H. Evanson
Daniel Nowicki
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071
(213) 229-7228
bevanson@gibsondunn.com

Counsel for Amicus Curiae Dr. Kesten C. Green

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*¹

Amicus curiae Dr. Kesten C. Green is a researcher at the University of South Australia Business School, University of South Australia, where he has served since 2009. He previously founded and directed several businesses, including an economic forecasting and consulting firm, and a market and social research firm. Dr. Green obtained his PhD in management science in 2003, and has been responsible for useful scientific findings that have advanced knowledge in the fields of public policy, marketing, forecasting, and management.

Dr. Green has researched and conducted experimental analysis of the effects of governmentally mandated disclaimers, such as those required by the City of Baltimore's pregnancy-center compelled-speech ordinance challenged by the plaintiff pregnancy center here. Dr. Green concludes from his research that a governmentally compelled disclaimer such as the Baltimore ordinance at issue in this case will present an

¹ In accordance with Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, *amicus curiae* state that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than *amicus curiae* and their counsel contributed money that was intended to fund preparing or submitting this brief. All parties have consented to the filing of this brief. Fed. R. App. P. 29(a)(2).

obstacle to women who are seeking to make informed decisions about their healthcare.

BACKGROUND

Plaintiff Greater Baltimore Center for Pregnancy Concerns, Inc., is a faith-based nonprofit organization that provides pregnancy-related services and counseling—and which does not provide or refer clients for abortions. J.A. 1248–49. This case involves the Center’s challenge to the City of Baltimore’s Ordinance 09-252, which requires the Center—and organizations like it—to place a “conspicuously posted” disclaimer in its waiting room stating that it “does not provide or make referral for abortion or birth-control services.” Balt. City Health Code § 3-502. The ordinance applies to any “limited-service pregnancy center,” which are organizations, like the Center:

- (1) whose primary purpose is to provide pregnancy-related services; and
- (2) who:
 - (I) for a fee or as a free service, provides information about pregnancy-related services; but
 - (II) does not provide or refer for:
 - (A) abortions; or
 - (B) nondirective and comprehensive birth-control services.

Baltimore City Health Code § 3-501.

The Center challenged the ordinance as unconstitutional both on its face and as-applied to the Center, alleging that the ordinance violates the First Amendment guarantees of free speech and assembly, the First Amendment guarantee of the free exercise of religion, the Fourteenth Amendment's Equal Protection Clause, and the Conscience Clause of the Maryland Health Code. J.A. 28–32. The district court held that the ordinance unconstitutionally infringes on the Center's freedom of speech, and granted the Center summary judgment based on its as-applied free speech claim. J.A. 1287, 1290.

ARGUMENT

The City of Baltimore's content-based regulation of the Center's speech should be subject to much more exacting scrutiny than the City contends. But even under the City's proposed relaxed standard, the ordinance should be invalidated: The best evidence available leads to the conclusion that mandated disclaimers *increase* confusion by disrupting the efforts of consumers and providers to seek and to provide information that consumers regard as relevant, and thereby leads consumers to make inferior decisions.

I. The City's Proposed Standard of Scrutiny Is Unsupported by the Law

The City argues that the Court should review the ordinance at issue under an extremely deferential standard of scrutiny—whether the disclaimers mandated by the ordinance “are reasonably related to the State’s interest in preventing deception of consumers.” Blue Br. at 38.

Contrary to the City’s assertion, “[m]andating speech that a speaker would not otherwise make” constitutes “a content-based regulation of speech,” subject to “exacting” scrutiny. *Riley v. Nat’l Fed’n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 795 (1988). The City’s argument in favor of a much less demanding “reasonably related” test rests on the untenable premise that the Center is engaged in “commercial” speech, and therefore that the City is merely regulating the Center’s “commercial” and “professional” activities. Blue Br. at 20. But the Center is not a commercial enterprise; it has no economic motivation in seeking to provide charitable services to its clients, and the compelled disclaimer in its waiting rooms is unrelated to any advertisement for services. *See Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore*, 721 F.3d 264, 285 (4th Cir. 2013) (explaining that speech may be commercial if it (1) is an advertisement,

(2) refers to a specific product or service, *and* (3) is economically motivated). The City cannot shield the ordinance from scrutiny by analogizing the requirement that a charity display unwanted and potentially upsetting messages to the regulation of profit-seeking professionals. Blue Br. at 38 (comparing the Ordinance to rules governing attorney contingency-fee disclosures). The “State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.” *N.A.A.C.P. v. Button*, 371 U.S. 415, 439 (1963).

By regulating the speech of only pregnancy crisis centers that do not provide abortions, the ordinance works that most “egregious form of content discrimination”—discrimination by viewpoint. *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995). And as viewpoint-based discrimination, the ordinance is unconstitutional under practically *any* standard. *See Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995) (“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.”); *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the

government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”).

Even if the ordinance were “mere” content discrimination, it could survive the requisite strict constitutional scrutiny only if the City could “show that the regulation is a precisely drawn means of serving a compelling state interest.” *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 530, 540 (1980). That it cannot do, as the Center demonstrates in its brief. *See* Red Br. 43–59.

II. The Ordinance’s Mandated Disclaimers Increase, Rather Than Reduce, Consumer Confusion

Regardless of the standard under which the Court analyzes the City’s compelled disclaimer ordinance, it cannot survive any level of review. Even under the City’s standard, a “warning or disclosure” is “appropriately required” only if it “dissipate[s] the possibility of consumer confusion or deception.” Blue Br. at 38–39. Yet the City’s mandated disclaimers utterly fail to “dissipate” any confusion—indeed, if the mandated disclaimers have any effect at all, it is to *increase* consumer confusion.

A. Mandated Disclaimers Generally Increase Consumer Confusion

Numerous empirical studies have concluded that mandated disclaimers do not lead to better-informed decisions, but rather to increased confusion. See Kesten Green & J. Scott Armstrong, *Evidence on the Effects of Mandatory Disclaimers in Advertising*, 31 *Journal of Public Policy & Marketing* 293–304 (2012) (finding a lack of any experimental evidence to support the contention that mandatory disclaimers provide net benefits to consumers); see also Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 *U. Pa. L. Rev.* 647, 665 (2011) (concluding that even as the number of disclosure laws “grows, so also grows the evidence that mandated disclosure repeatedly fails to accomplish its ends”); *id.* at 735 (noting the likelihood that mandatory disclosure’s “only incidental effects are negative: indifference, numbness, alienation, and even oppression”); Molly Mercer & Ahmed E. Taha, *Unintended Consequences: An Experimental Investigation of the (in)effectiveness of Mandatory Disclosures*, 55 *Santa Clara L. Rev.* 405, 409 (2015) (experimental evidence shows that “mandatory disclosures—even those with strong intuitive support—can harm the very people they are intended to help”).

In the absence of government-mandated disclaimers, market² participants generally have incentives to seek and to provide accurate and useful information. Sellers or service providers wish to cultivate customer loyalty by providing truthful information that warns consumers of potential shortcomings of the product, informs them of product benefits that they may not understand, and rebuts false or misleading claims of competing providers. Green and Armstrong, *Effects of Mandatory Disclaimers*, at 293–94.

As a result of those incentives, buyers will expend effort to seek out information that they find valuable, and will reward sellers that provide accurate and helpful information by choosing to patronize those sellers in the first instance, by repeating their patronage, and by recommending the seller to others. *Id.* at 294. Sellers that do not provide useful information will fail to attract consumers, and those that provide false information will fail to retain them. *Id.* at 293–94. While some sellers may try to trick consumers into patronizing them, doing so is inconsistent

² This brief uses terms such as “market,” “seller,” and “buyer” to describe a system of voluntary interaction and exchange, and the participants in that system, regardless of whether the exchanges are commercial or profit-driven.

with long-run success. *Id.* at 294. Buyers know that, and so tend to prefer established sellers if they are not knowledgeable about the particular good or service. *Id.*

By injecting their own speech into the marketplace through mandatory messages, government regulators disrupt the free flow of information from sellers to the detriment of consumers. *Id.* at 294–295. Regulators’ decisions are not informed by the rational analysis that motivates market participants to share and seek out information. *Id.* Instead, the decision to require a disclaimer is often motivated by ideological preferences or by the lobbying of interest groups (including lobbying from service providers seeking to harm their competitors). *Id.* at 294.³

³ The Baltimore ordinance was *not* developed to combat consumer confusion, but was driven by the lobbying of pro-abortion advocacy groups, based on a report from the NARAL Pro-Choice Maryland Fund (which believes Crisis Pregnancy Centers “lie again and again” to pregnant clients), and advocated by Planned Parenthood of Maryland. J.A. 51 (explaining that then-City Council President Rawlings-Blake “introduced the measure after meeting with abortion rights advocacy groups”); <http://itslies.org/> (NARAL site describing crisis pregnancy centers); Julie Scharper, “Pregnancy center sign bill passes,” Baltimore Sun, November 24, 2009 (archived at https://web.archive.org/web/20100808075700/http://articles.baltimoresun.com/2009-11-24/news/bal-md.abortion24nov24_1_jeffrey-d-meister-

Given the subversion of natural incentives produced by mandated speech laws, there should be little surprise that the empirical evidence demonstrates that mandated messages are ineffective at improving consumer understanding or decision-making. Often, mandated messages are developed to “solve” an information deficiency problem that never existed in the first place. *Id.* at 297–298 (FTC-mandated disclaimers did not change experiment subjects’ assessment of products, and FDA disclaimer produced no effect on perception of product). In other cases, consumers react to the perceived government intrusion on their freedom of choice by doing the opposite of what the regulator wanted them to do.

pregnancy-centers-poor-women). Indeed, the City’s officers admitted that they never subjected the mandated disclaimer to testing, or otherwise empirically evaluated the disclaimer’s effectiveness. J.A. 999–1000. This is unfortunately typical of mandated disclaimer laws. *See* Green and Armstrong, *Effects of Mandatory Disclaimers*, at 294 (explaining that mandated disclaimers, because they originate without the self-interested information providing and information seeking motivations of market participants, are typically driven by regulators’ “temptation to impose their own beliefs on others,” and by lobbying by special interest advocacy groups); Ellen P. Goodman, *Visual Gut Punch: Persuasion, Emotion, and the Constitutional Meaning of Graphic Disclosure*, 99 Cornell L. Rev. 513, 545 (2014) (explaining that compelled speech may be the product of government “using its regulatory powers to privilege a favored value rather than to fill a ‘purely factual’ information deficit”).

See id. at 295 (park service sign discouraging fossilized wood theft led to increased theft, and an age restriction disclaimer on pornographic books increased desire to read the books); *id.* at 297 (“NO DIVING” sign increased diving, alcohol warning increased desire to drink, disclaimer regarding presence of violence in films increased viewership of violent films). Indeed, some consumers who are exposed to disclaimers describing a statement as false will remember only the statement, without the disclaimer—and believe the statement to be true. *Id.* at 298.

Consumers also tend to apply the message of a disclaimer beyond its purportedly narrow context. For example, if a seller is forced to make a disclaimer about one product, consumers will negatively judge its other products—and may even judge other sellers more harshly as well. *Id.* at 297 (readers of seller’s FTC-mandated disclaimer were likely to misperceive its message, and assess the seller more negatively in ways unrelated to the disclaimer); *id.* (mandated disclaimer led experiment subjects to be more critical of another firm’s similar product); *id.* at 298 (disclaimer led consumers to make poorer health decisions); *id.* at 301 (disclaimer regarding dentist credentialing organization’s non-association with another dentist organization led readers to reject

credentialed dentists in favor of non-credentialed dentists). It is no surprise, then, that special interest advocates will expend considerable resources to support the imposition of a supposedly circumscribed disclaimer on their opponents—as they are rightly confident that the seemingly tailored disclaimer will be interpreted by the public as a broader statement of government opprobrium. *See id.* at 297.

In short, experiments offer no empirical support for the belief that mandated disclaimers increase consumer welfare, and instead provide substantial scientific evidence that disclaimers increase confusion and lead to inferior decisions. *See id.* at 302.

B. Baltimore’s Mandated Disclaimer Ordinance Will Increase Consumer Confusion

Despite the evidence of mandated disclaimers’ detrimental effects—and the City’s failure to empirically evaluate its own disclaimer’s effectiveness (J.A. 999)—the City argues that *its* mandated disclaimers “are reasonably related to the State’s interest in preventing deception of consumers” (Blue Brief at 38), because they are somehow “related to” preventing “deception and confusion” caused by a “pattern of deceptive advertisements,” which “target women seeking abortion care without alerting them that Pregnancy Centers do not offer abortion or most forms

of contraception.” Blue Br. at 40. The City also claims that the posted sign “is the most effective way to protect consumers from deception and confusion” caused by any pregnancy center affiliate’s advertising. *Id.* at 40-41. The City’s claim is completely contrary to the empirical evidence and well-accepted principles of marketing and consumer behavior.

The research by Dr. Green and others discussed above strongly suggests that a mandated disclaimer like the one required by the Baltimore ordinance will cause consumer confusion. The disclaimers might cause readers to view the services that the pregnancy centers’ *do* provide in a negative light because they interpret the sign as a government warning about the center. Or the disclaimers may lead prospective clients to be less vigilant in their dealings with the center, and be less skeptical in their evaluation of the statements of center staff because they interpret the sign as a signal that the center is government-approved. No matter the specifics of how prospective clients interpret the mandated message, the insertion of the voice of government will—by raising unanswered questions about its purpose in the minds of readers—lead to increased confusion and poor decisions.

There is little reason to suppose that potential clients entering the Greater Baltimore Center for Pregnancy Concerns have any question regarding the Center's stance on abortions. "If a woman walks in seeking an abortion, she is told immediately, or very soon after arriving, that the Center does not provide or refer for abortion services." J.A. 1249. Similarly, "if someone calls to make an appointment and they ask about our abortion services, or if [the Center] perform[s] abortions, the first thing [staff members] say to them is [the Center does] not perform or refer for abortions." *Id.* The Center's Commitment of Care, which the City admits is "in full view of clients, generally in the reception area," explicitly states that the Center "do[es] not offer, recommend or refer for abortions or abortifacients (birth control)[.]" J.A. 828; Blue Br. at 1–2. The City cannot dispute that the Center's refusal to provide abortions is abundantly clear to any visitor; indeed, no City representative has *ever* even visited the Center's facilities to investigate whether any visitors have been or could be misled. J.A. 1247.

Rather than correcting a misunderstanding regarding whether the Center provides abortions, the disclaimers mandated by the Baltimore ordinance are more likely to lead clients to view the Center more

negatively overall. *See, e.g.,* Green and Armstrong, *Effects of Mandatory Disclaimers*, at 297 (discussing studies showing corrective advertisements for a company's product reduced consumers' perceptions of unrelated products from that company); *id.* (doctor's pre-treatment disclaimer of his conflict of interest in recommending the procedure lowered patients' likelihood to return to that doctor for any treatment); *id.* at 298 (truthful cautionary disclaimer led to consumers choosing to avoid beneficial product); *id.* (study of viewers of drug advertisements revealed that viewers were less likely to remember and understand the benefits of a drug when shown a disclaimer of specific risks of the drug); *see also* Ben-Shahar and Schneider, *Failure of Mandated Disclosure*, at 744 (explaining the "teaching to the test" effect, whereby short, simple mandatory disclosures "disproportionately focus[] the attention of recipients to these items," and thus "other important aspects of the transaction are overlooked"); *id.* at 746 (noting that making mandated disclosures short and brief enough to read results in them being "fatally simple-minded, incomplete, and misleading").

For some prospective clients, the disclaimer is likely to *undermine* the City's claimed purpose of shielding clients from unscrupulous or

misleading pregnancy center representatives given that consumers often become *less* vigilant, not more, when confronted with a government-mandated warning. Green and Armstrong, *Effects of Mandatory Disclaimers*, at 295 (describing evidence on the operation of consumer's "risk compensation" in response to mandated disclaimers); Ben-Shahar and Schneider, *Failure of Mandated Disclosure*, at 740 (suggesting that mandated disclosures "cause consumers to reduce their level of caution and self-protection").

And because government-required warnings often mislead consumers into believing that the government has already warned them of any relevant risks, the mandated disclaimer may actually encourage pregnancy center attendees to consider the statements made by center representatives less critically. See Green and Armstrong, *Effects of Mandatory Disclaimers*, 295, 297–98 (describing evidence that consumers act more recklessly when presented with mandated disclaimers); Mercer and Taha, *Unintended Consequences*, at 440 (describing experimental results showing that tested "disclosures were not only ineffective, they were harmful: the disclosures generally increased, rather than decreased, consumer optimism"). The disclaimer

might discourage some center attendees from seeking abortion services they might have otherwise considered. By signaling that other center attendees must not be considering abortion, the mandated disclaimer reinforces the reader's belief that *avoiding* abortion is common behavior. See Green and Armstrong, *Effects of Mandatory Disclaimers*, at 295 (disclaimers articulating or suggesting a “descriptive-norm” reinforce behavior they were intended to prohibit, by signaling that the behavior is common).

The disclaimer may also engender a revolt against the mandatory message's potential implication that the pregnancy centers are somehow deficient in their services. For example, individuals who are already inclined to use a center's services might react defensively to the mandated disclaimer and its indication of government opprobrium by trusting center representatives *more*. Green and Armstrong, *Effects of Mandatory Disclaimers*, at 295; see also Mercer and Taha, *Unintended Consequences*, at 428 (reviewing the empirical evidence that mandated warnings, “especially those issued by authoritative sources,” can “increase the very behaviors they are meant to discourage,” due to psychological “reactance” to perceived threats to freedom of choice); *id.* at

441 (explaining the experimental finding that counter-productive “reactance” to mandated speech remains significant even when the disclaimer does nothing but briefly and “simply infor[m]” consumers of truthful facts); Goodman, *Visual Gut Punch*, at 531 (2014) (explaining, in the context of disclosures required of some doctors before they can *perform* an abortion, that “when the government makes a captive audience listen against its will to a government message, it runs roughshod over individuals’ right to control their own development and decision-making processes”).

In short, the mandatory disclaimer sends confusing messages to potential clients, might encourage decisions directly contrary to the purported purpose of the disclaimer, and leads consumers to engage in inferior decision-making. The City’s mandated disclaimer does not “dissipate” any confusion—rather, it almost surely *increases* consumer confusion.

C. Invalidating the Baltimore Ordinance Will Increase the Dissemination of Accurate Information and Improve Client Choice

Removing the forced disclaimer requirement would eliminate a source of consumer confusion, and would allow the incentives that

naturally lead to the dissemination of accurate and helpful information to re-assert themselves. The pregnancy centers are naturally incentivized to provide clients with accurate and useful information, and to avoid the reputational harm that would result if center clients felt that they had been misled. The natural incentives of clients and providers to obtain and to provide helpful relevant information offer better protection for vulnerable clients than do however-well-intentioned government-mandated disclaimers that inevitably subvert those incentives. *See* Green and Armstrong, *Effects of Mandatory Disclaimers*, at 293 (describing sellers' motivations to provide accurate information and cultivate positive customer relationships); Ben-Shahar and Schneider, *Failure of Mandated Disclosure*, at 730 (explaining that "recognizing the presence of sophisticated consumers and seeking to please them, businesses voluntarily disclose information and make it useful").

The argument for requiring disclaimers is particularly weak in this case, given that the pregnancy centers that are the target of the regulation are charitable organizations that seek to develop lasting long-term counseling and support relationships with vulnerable clients. While, in the commercial sphere, some advertisers may deliberately

mislead consumers in the hope of short-term profits, most service providers are incentivized to avoid deceptive advertising in order to develop long-term, positive relationships with their customers. Green and Armstrong, *Effects of Mandatory Disclaimers*, at 293–94. And where, as here, the “service provider” is a charity—and thus is not seeking profits—even the relatively weak incentive to mislead for short-term profit is absent.

If a pregnancy center were deceiving new clients into believing that the center provided abortions, those clients would not only abandon the center but inform other potential clients to avoid it as well. *See* Green and Armstrong, *Effects of Mandatory Disclaimers*, at 294 (describing consumer reactions to deceptive advertising). Given that the long-term viability of the pregnancy center would be threatened if they were to engage in such deceptive behavior, to do so would be irrational.⁴ The

⁴ The City’s prior Interim Health Commissioner explained in her deposition that it is “not an uncommon practice for providers in the community” to test their outreach materials with the community, “because at the end of the day, it’s not helpful to put something out that you are trying to convey ... and people are not getting that information accurately.” J.A. 999–1000. And while acknowledging that most providers are incentivized to test and hone their messaging to ensure consumers are “getting [disseminated] information accurately,” she also

Center's continued survival as a service provider is evidence that its clients do not consider themselves to have been misled.

Eliminating the mandatory disclaimers will lead to more informed consumer choices. Consumers who are seeking a service provider for a risky and costly endeavor—such as dental surgery or reproductive health care—already have the incentive to expend considerable effort to educate themselves about the benefits and drawbacks of alternative providers. Green and Armstrong, *Effects of Mandatory Disclaimers*, at 298. By confusing consumers about the nature of a service provider with an arbitrary message from authority, mandatory disclaimers cause them to make *inferior* choices in high-stakes situations. *Id.* at 298–301 (describing experiment analyzing the effects of governmentally mandated disclaimers on potential implant-dentistry customers). Given prospective clients' strong incentives to educate themselves about their reproductive healthcare options, eliminating the muddling influence of the mandatory disclaimers will increase the relevance and importance of the information upon which clients base their choice of provider. Ben-

admitted that the City did not test its own disclaimer to ensure it was accurately understood. *Id.*

Shahar and Schneider, *Failure of Mandated Disclosure*, at 746 (explaining that in the absence of mandated disclosures, people are incentivized to seek, and the market is incentivized to provide, relevant and helpful advice).

Affirming the district court's grant of summary judgment and injunction against the operation of the Baltimore ordinance would allow for the natural incentives of the providers and consumers to re-assert themselves in shaping the messages conveyed by the pregnancy centers. Conversely, allowing the City to continue requiring pregnancy centers to post disclaimers will result in more consumer confusion, not less.

CONCLUSION

The Baltimore ordinance cannot be justified under any standard of scrutiny. The Court should affirm the judgment of the district court.

Dated: April 3, 2017

Respectfully submitted,

/s/ Blaine H. Evanson

Blaine H. Evanson
Daniel Nowicki
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071
(213) 229-7228
bevanson@gibsondunn.com

Counsel for Amicus Curiae
Dr. Kesten C. Green

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with Federal Rule of Appellate Procedure 29(a)(5) because it is 4101 words long and therefore no more than half the length authorized for the parties' principal briefs, excluding the parts of the brief exempted by Rule 32(f).

2. This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point New Century Schoolbook font.

Dated: April 3, 2017

/s/ Blaine H. Evanson

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I hereby certify that on April 3, 2017, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system.

I further certify that on April 3, 2017, an electronic copy of the foregoing document was served electronically by the Notice of Docket Activity on counsel for all parties.

/s/ Blaine H. Evanson

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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