CASE NO. 13-4429
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

TARA KING, ED.D, *et al.*,

Plaintiffs-Appellants,

v.

GOVERNOR OF NEW JERSEY, *et al.*,

Defendants-Appellees,

GARDEN STATE EQUALITY,

Intervenor-Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY, CIVIL ACTION NO. 13-5038

PLAINTIFFS-APPELLANTS' PETITION FOR REHEARING EN BANC

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STATEMENT OF COUNSEL AND REASONS FOR GRANTING THE PETITION

Pursuant to Fed. R. App. P. 35 and 3d Cir. L.A.R. 35.1 (2011), the undersigned counsel for Plaintiffs-Appellants hereby provides the following statement and reasons for granting the Petition:

I express a belief, based on reasoned and studied professional judgment, that the panel decision is contrary to the decisions of the United States Court of Appeals for the Third Circuit and the Supreme Court of the United States, and that consideration by the full court is necessary to secure and maintain the uniformity of decisions in this Court, the Circuit Courts of Appeal, and the U.S. Supreme Court. Specifically,

(1) The panel's determination that admittedly content-based restrictions on the speech of licensed professionals need only satisfy intermediate scrutiny under the First Amendment is in direct conflict with the Supreme Court's decision in *National Institute for Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018), and the panel's decision is demonstrably wrong. Reconsideration by the full court is necessary to secure and maintain the consistency of this Court's decisions.

(2) The panel's determination that admittedly content-based restrictions on the speech of licensed professionals need only satisfy intermediate scrutiny under the First Amendment presents a question of exceptional importance in that it involves an issues on which the panel decision conflicts with the decision of the en

banc Eleventh Circuit in *Wollschlaeger v. Florida*, 848 F.3d 1293 (11th Cir. 2017) (en banc).

(3) The panel's determination presents a question of exceptional importance in that its decision conflicting with the Supreme Court's unequivocal precedent on the speech of licensed professionals continues to impose immediate, immeasurable, and irreparable injury on the First Amendment rights of Plaintiffs-Appellants, and conflicts with this Court's precedents in *Am. Iron & Steel Inst. v. EPA*, 560 F.2d 589 (3d Cir. 1997) and *United States v. Skandier*, 125 F.3d 178 (3d Cr. 1997), concerning recalling a mandate where a previous decision has been subsequently determined to be "demonstrably wrong." Reconsideration by the full court is necessary protect the constitutional rights and to secure and maintain uniformity of this Court's decisions.

LEGAL ARGUMENT

I. THE PANEL'S DETERMINATION THAT ADMITTEDLY CONTENT-BASED RESTRICTIONS ON THE SPEECH OF LICENSED PROFESSIONALS NEED ONLY SATISFY INTERMEDIATE SCRUTINY UNDER THE FIRST AMENDMENT IS IN DIRECT CONFLICT WITH UNEQUIVOCAL SUPREME COURT PRECEDENT AND AUTHORITATIVE PRECEDENT FROM THE EN BANC ELEVENTH CIRCUIT.

The Supreme Court's decision in *National Institute for Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (*NIFLA)* abrogated the panel's decision **by name** and unequivocally rejected its holding that different standards apply to so-called "professional speech." *NIFLA* also unequivocally rejected the

panel's determination that content-based restrictions on so-called "professional speech" need only satisfy intermediate scrutiny under the First Amendment.

A. The Supreme Court's Decision In NIFLA Abrogated The Panel's Decision By Name And Unequivocally Rejected The Panel's Central Holdings.

1. *NIFLA* Rejected The Panel's Holding That Different Standards Apply To So-Called "Professional Speech."

On June 26, 2018, the Supreme Court in *NIFLA* explicitly rejected the so-called "professional speech" rule adopted by *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014), *Moore-King v. Cnty. of Chesterfield*, 708 F.3d 560 (4th Cir. 2013) and the panel's decision in *King v. Governor of New Jersey*, 767 F.3d 216 (3d Cir 2014). *NIFLA* noted that each of these cases – including the panel's decision here – "have recognized 'professional speech' as a separate category of speech that is subject to different rules," *i.e.*, lesser versions of constitutional scrutiny. *NIFLA*, 138 S. Ct. at 2371. "So defined, these courts except professional speech from the rule that content-based regulations of speech are subject to strict scrutiny." *Id.* (citing *King*, 767 F.3d at 232).

Rejecting the panel's decision in *King*, *NIFLA* held that "**this Court [the Supreme Court] has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'**" *Id.* at 2371-72 (emphasis added). *NIFLA* noted that the High Court

has "been reluctant to mark off new categories of speech for diminished constitutional protection," as the panel did in *King*, and explicitly held that Supreme Court precedents "**do not recognize such a tradition for a category called 'professional speech**." *Id.* at 2372 (emphasis added). In fact, *NIFLA* specifically noted that differential treatment of so-called "professional speech" is dangerous, unprincipled, and susceptible to government abuse. Indeed, "[t]he dangers associated with content-based regulations of speech are also present in the context of professional speech. As with other kinds of speech, regulating the content of professionals' speech 'poses the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress an unpopular opinion." *Id.* at 2374 (citing *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1988)).

NIFLA concluded that this danger of censorship is too great to withstand the First Amendment. Rejecting the panel's decision in *King* and the other "professional speech" cases, *NIFLA* noted that

> [a]ll that is required to make something a 'profession,' **according to these courts [including *King*]**, is that it involves personalized services and requires a professional licensed from the State. But that gives the States the unfettered power to reduce a group's First Amendment rights simply by imposing a licensing requirement. **States cannot choose the protection that speech receives under the First Amendment, as that would give them a powerful tool to impose invidious discrimination of disfavored subjects**.

Id. at 2375 (emphasis added).

As *NIFLA*'s plain language establishes beyond debate, the Supreme Court explicitly **and by name** rejected the panel's differential treatment of the speech of licensed professionals, and made it abundantly clear that **all** content-based restrictions on speech – including speech by professionals as in this case – must be subjected to and must survive strict scrutiny. Thus, the panel's disparate treatment of professional speech has been irretrievably cast aside as a matter of settled constitutional law.

2. *NIFLA* Rejected The Panel's Determination That Content-Based Restrictions on So-Called "Professional Speech" Need Only Receive Intermediate Scrutiny.

a. The panel held that A3371 was a content-based restriction on so-called "professional speech," but needed to satisfy only intermediate scrutiny.

The panel stated numerous times that A3371 regulated speech. *King v. Governor of N.J.*, 767 F.3d 216, 224 (3d Cir. 2014) ("the verbal communication that occurs during SOCE counseling is speech"); *id.* at 224-25 ("We hold these communications are 'speech' for purposes of the First Amendment."); *id.* at 225-26 (holding that states are not permitted to label speech as conduct and avoid First Amendment review); *id.* at 228-29 ("Simply put, speech is speech, and it must be analyzed as such for purposes of the First Amendment."); *id.* at 229 ("we conclude

that the verbal communications that occur during SOCE counseling are not 'conduct,' but rather 'speech' for purposes of the First Amendment.").[1]

The panel also unequivocally held that A3371 was a content-based restriction on speech. *Id.* at 236 ("we agree with Plaintiffs that A3371 discriminates on the basis of content"). In fact, the panel held that it had "little doubt" that A3371 was a content-based prohibition on speech because "A3371, on its face, prohibits licensed counselors from speaking words with a particular content." *Id.* at 236 n.20. Indeed, "Plaintiffs want to speak to minor clients, and whether they may do so under A3371 depends on what they want to say." *Id.* As such, the panel was clear that A3371 prohibited **speech** and did so on the basis of **content.**

Nevertheless, despite the Supreme Court's past precedent that content-based restrictions on speech must satisfy strict scrutiny, the panel held that A3371 regulated speech on the basis of content in a way that does not trigger strict scrutiny. *King*, 767 F.3d at 236 ("we reject Plaintiffs argument that A3371 should be subject to strict scrutiny because it discriminates on the basis of content and viewpoint"). The panel held that "although we agree with Plaintiffs that A3371 discriminates on

[1] This Court, and others, have also subsequently recognized this Court's holding in *King* that A3371 prohibited speech. *See Nat'l Ass'n for the Advancement of Multijurisdictional Practice v. Castille*, 799 F.3d 216, 221 (3d Cir. 2015) (noting *King*'s holding that A3371 "prohibit[ed] a category of professional speech"); *Wollschlaeger v. Florida*, 848 F.3d 1293, 1307 (11th Cir. 2017) (en banc) (noting this Court's *King* holding that SOCE counseling is speech).

the basis of content, **it does so in a way that does not trigger strict scrutiny**." *Id.* (emphasis added); *id.* at 237 ("we conclude that A3371 does not trigger strict scrutiny by discriminating on the basis of content"). The panel concluded that intermediate scrutiny was the proper constitutional test for A3371's content-based restriction on speech. *Id.* ("we believe intermediate scrutiny is the applicable standard of review in this case").

b. The Supreme Court unequivocally rejected the panel's holding that content-based restrictions on the speech of licensed professionals need only satisfy intermediate scrutiny.

While *NIFLA* fully abrogated the panel's decision, the Supreme Court's opinion in *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015), handed down the firm rule: **all content-based restrictions of speech must survive strict scrutiny**. *Id.* at 2227. Indeed, "a law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus towards to ideas contained in the regulated speech." *Id.* In handing down that firm rule, the Supreme Court unequivocally stated that it applied equally to **any** content-based regulation of the speech of licensed professionals. *Id.* at 2229 ("it is no answer to say that the purpose of these regulations was merely to insure high professional standards"). The Supreme Court eviscerated any notion that a content-based restriction on the speech of licensed professionals needed only satisfy lesser constitutional scrutiny. The Supreme Court put the final nail in the coffin in *NIFLA*.

Noting *Reed*'s firm rule, *NIFLA* affirmed that **all** content-based prohibitions on speech are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *NIFLA*, 138 S. Ct. at 2371. That firm rule is also true in the context of the speech of licensed professionals. "[T]his Court's precedents have long protected the First Amendment rights of professionals." *Id.* at 2474. Indeed,

> this Court has applied strict scrutiny to content-based laws that regulate the noncommercial speech of lawyers . . . professional fundraisers . . . and organizations that provided specialized advice about international law. And the Court emphasized that the lawyer's statements in *Zauderer* would have been 'fully protected' if they were made in the context other than advertising. . . . Moreover, **this Court has stressed the danger of content-based regulations in the fields of medicine and public health, where information can save lives**.

Id. (emphasis added) (internal citations and quotations omitted).

Thus, *NIFLA* made it clear that the speech of licensed professionals is not subject to diminished constitutional protection merely because they are licensed by the State. *NIFLA* explicitly rejected by name the panel's determination in *King* that content-based regulations of the speech of licensed professionals is not subject to strict scrutiny. **The panel's central holding is therefore no longer good law**. Because the panel applied intermediate scrutiny to an admittedly content-based restriction on the speech of licensed professionals, *NIFLA* abrogates the panel's central holding.

B. The Panel's Decision Conflicts With The En Banc Eleventh Circuit Decision in *Wollschlaeger.*

The panel decision in *King* also relied on the now rejected panel's decision in *Wollschlaeger v. Florida*, 760 F.3d 1195 (11th Cir. 2014), to suggest that "we believe a professional's speech warrants lesser protection only when it is used to provide personalized services to a client based on the professional's expert knowledge and judgment." *King*, 767 F.3d at 232 (citing *Wollschlaeger*, 760 F.3d at 1218). But the Eleventh Circuit sitting en banc overruled its own panel opinion in *Wollschlaeger v. Florida*, 848 F.3d 1293 (11th Cir. 2017) (en banc). The overruled *Wollschlaeger* panel opinion, like the panel here in *King*, *Moore-King v. Cnty. of Chesterfield*, 708 F.3d 560 (4th Cir. 2013), and *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2013), said that a challenged content-based regulation of licensed doctor's speech was merely "a valid regulation of professional conduct that has only an incidental effect on physician's speech," *Wollschlaeger*, 760 F.3d at 1217, and thus was only subject to rationale basis review. *Id.* at 1219-20.

The *Wollschlaeger* panel opinion on which *King* relied is no longer good law, having been rejected by the en banc Eleventh Circuit Court as a "dubious constitutional enterprise." *Wollschlaeger*, 848 F.3d at 1309 (en banc) (emphasis added). There, the law in question "expressly limit[ed] the ability of certain speakers—doctors and medical professionals—to write and speak about a certain topic—the ownership of firearms—and thereby restrict[ed] their ability to

communicate and/or convey a message." *Id.* The en banc Eleventh Circuit had no doubt these restrictions "trigger First Amendment scrutiny. **'[S]peech is speech, and it must be analyzed as such for the purposes of the First Amendment**.'" *Id.* at 1308 (quoting *King*, 767 F.3d at 229) (emphasis added). Indeed, "[w]hat the Supreme Court said in concluding its analysis in *Button* seems to **fit like a glove here**: "A state may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." *Id.* (quoting *Button*, 372 U.S. at 439 (emphasis added)). Thus, the panel's opinion is in direct conflict with the decision of the en banc Eleventh Circuit on an identical issue.

II. THE PANEL'S DETERMINATION PRESENTS A QUESTION OF EXCEPTIONAL IMPORTANCE IN THAT ITS DECISION CONFLICTS WITH THE SUPREME COURT'S PRECEDENT ON THE FIRST AMENDMENT RIGHTS OF LICENSED PROFESSIONALS, CONTINUES TO IMPOSE IMMEDIATE, IMMEASURABLE, AND IRREPARABLE INJURY ON PLAINTIFFS-APPELLANTS, AND UNDERMINES THE PUBLIC INTEREST IN THE INTEGRITY OF THE JUDICIARY.

A. The Panel's Refusal To Recall The Mandate Continues To Impose Immediate, Immeasurable, and Irreparable Injury on Appellants' Constitutionally Guaranteed Liberties.

While *NIFLA*'s abrogation of the panel's decision by itself warrants a recall of the mandate, such action is even more imperative where – as here – Plaintiffs-Appellants still suffer under the unconstitutional yoke of A3371. Appellants have been wrongly silenced in their constitutionally protected speech, and that irreparable harm was permitted, then **and now**, by the panel's unconstitutional opinion. *See*

supra Section I. Such a loss of constitutional rights is unquestionably irreparable constitutional injury. *See, e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *see also Swartzwelder v. McNeilly*, 297 F.3d 228, 241-42 (3d Cir. 2002) (same). As this Court has held, threatened investigation and punishment for violations of a professional restriction on First Amendment rights "is sufficient to show irreparable harm." *Abu-Jamal v. Price*, 154 F.3d 128, 136 (3d Cir. 1998). Appellants have suffered, are suffering, and will continue to suffer irreparable harm until the mandate upholding the constitutionality of A3371 is recalled. Such irreparable and constitutional injury justifies recalling the erroneous decision and mandate.

B. The Panel's Refusal To Recall The Mandate Undermines The Public Interest In The Integrity Of The Judiciary.

The public interest in this matter clearly favors recalling the mandate. Indeed, the protection of constitutional rights is of the highest public interest. *Elrod*, 427 U.S. at 373. Additionally, "**the public interest is best served by eliminating unconstitutional restrictions**." *Swartwelder v. McNeilly*, 297 F.3d 228, 242 (3d Cir. 2002) (emphasis added). There is simply no interest – public or otherwise – in the protection or enforcement of unconstitutional laws. *See ACLU v. Ashcroft*, 322 F.3d 244, 250 n.11 (3d Cir. 2003). In fact, maintaining the constitutionally infirm judgment here is directly contrary to the public interest. *Stilp v. Contino*, 743 F.

Supp. 2d 460, 470 (M.D. Penn. 2010) (quoting *ACLU v. Reno*, 217 F.3d 162, 180 (3d Cir. 2000) ("**Curtailing constitutionally protected speech will not advance the public interest**." (emphasis added)). A3371 restricts speech on the basis of content and unconstitutionally chills the First Amendment rights of Appellants. Recalling the mandate is necessary to advance the public interest**.**

Failing to recall the mandate also undermines the integrity of this Court's judgments. A seminal consideration in recalling a mandate is "protecting the integrity of a court's earlier judgment." *Am. Iron & Steel Inst. v. EPA*, 560 F.2d 589, 596 (3d Cir. 1977); *see also Zipfel v. Halliburton Co.*, 861 F.2d 565, 567 (9th Cir. 1988) (same). When the panel's decision was eviscerated by the Supreme Court in *NIFLA*, the only hope of protecting the integrity of this Court's decision is to recall the mandate because judicial integrity is "jeopardized when the solemn declarations of a court are called into question by a later Supreme Court decision." *Am. Iron*, 560 F.2d at 596. Indeed, this Court has "an obligation to recall the mandate in order to preserve the integrity of the judicial process," including "when recall is necessary to prevent an erroneous ruling from working an injustice." *Thompson v. Calderon*, 120 F.3d 1045, (9th Cir. 1997), *rev'd on other grounds Calderon v. Thompson*, 523 U.S. 538 (1998). Thus, the panel's refusal to recall the mandate undermines the public interest in the integrity of this Court's decisions and works a manifest injustice on Appellants. Review by the full court is necessary to correct this grave error.

III. THE PANEL'S DETERMINATION CONFLICTS WITH THIS COURT'S BINDING PRECEDENTS REGARDING RECALLING THE MANDATE WHERE THE ORIGINAL DECISION WAS PROVEN TO BE "DEMONSTRABLY WRONG" OR CALLED INTO QUESTION BY SUBSEQUENT SUPREME COURT PRECEDENT.

A. The Panel Should Have Recalled The Mandate When *NIFLA* Abrogated Its Decision By Name And Eviscerated Its Rationale.

The panel's refusal to recall the mandate of its decision is also in direct conflict with this Court's precedents in *American Iron & Steel Institute v. EPA*, 560 F.2d 589, 593 (3d Cir. 1977) and *United States v. Skandier*, 125 F.3d 178 (3d Cir. 1997). In those cases, this Court explicitly recognized that "recall of a mandate might be justified if a subsequent Supreme Court decision 'showed that (the) original judgment was demonstrably wrong.'" *Id.* at 594 (quoting *Legate v. Maloney*, 348 F.2d 164, 166 (1st Cir. 1965)). Or, as was the case in *American Iron*, even if not demonstrably wrong, the mandate was called into question by the subsequent decision. *Id.*at 596.

> Where, as here, a decision of the Supreme Court the preeminent tribunal in our judicial system departs in some pivotal aspects from those of lower federal courts, amendatory action may be in order to bring the pronouncements of the latter courts into line with the views of the former. As noted above, recall of a mandate traditionally has been warranted when and to the extent necessary "to protect the integrity" of a court's earlier judgment. Certainly, such integrity may be jeopardized when the solemn declarations of a court are called into question by a later Supreme Court opinion. Recall of a mandate, in such a situation, would appear to be an appropriate response by a court of appeals.

Id. Finding that the subsequent Supreme Court case did not render the panel's prior decision wrong, but did depart in a pivotal aspect from the panel's analysis, this Court granted the motion to recall the mandate. *Id.* at 600.

Similarly, in *Skandier* this Court found that recall was justified when a subsequent Supreme Court case clarified the question of whether the Antiterrorism and Effective Death Penalty Act of 1996 applied retroactively to habeas corpus petitions. "[W]e believe that [*United States v.*] *Lindh* [521 U.S. 320 (1997)] has clarified the matter, discerning a Congressional intent not to allow the application of the chapter 153 amendments to pending cases unless specifically provided for elsewhere in the Act." *Skandier*, 125 F.3d at 183. "To that extent, this case falls within the [*American Iron and Steel*] criterion listed above. Accordingly, Skandier's motion must be granted." *Id.*

In this case, recall of the mandate is warranted not merely because a subsequent case has implicitly clarified or questioned one issue, but because the Supreme Court has **explicitly abrogated** the panel's decision, **and every decision upon which the panel's judgment was based**. *See supra* Section I. *NIFLA* does not merely "depart in a pivotal aspect" from the panel's decision, but actually references it by name and declares that it is incompatible with Supreme Court precedent and the mandates of the First Amendment. *NIFLA*, 138 S. Ct. at 2371-2375. Consequently, this is an even more exceptional case requiring recall of the mandate

than was *American Iron*. Recalling the mandate is also particularly critical because of the far-ranging effects that the panel's now-abrogated opinion and the *Pickup* opinion have had across the country, as the *NIFLA* decision attests.

B. Neither The Passage Of Time, Nor Conclusion To Final Judgment Warrants Maintaining A Mandate Eviscerated By The Supreme Court's Decision In *NIFLA*.

Importantly, neither the passage of time (even several years), nor the conclusion of a case to final judgment justifies the panel's refusal to abide by this Court's binding precedents and recall the mandate in a matter where the Supreme Court eviscerated the decision upon which the mandate was based. Indeed, countless circuit courts – including this Court – have recognized that recalling the mandate is appropriate even if there has been a significant passage of time between the issuance of the mandate and the subsequent Supreme Court decision. *See, e.g.*, *Skandier*, 125 F.3d at 183 (motion to recall mandate granted 19 months after initial determination, immediately following a Supreme Court decision affecting the plaintiff's claims); *Am. Iron & Steel*, 560 F.2d at 590- 91 (motion to recall mandate granted 21 months after mandate issued); *United States v. Emeary*, 794 F.3d 526, 529 (5th Cir. 2015) (motion to recall mandate granted five years after mandate issued); *United States v. Davila*, 890 F.3d 583, 585 (5th Cir. 2018) (motion to recall mandate granted one year after mandate issued due to intervening appellate court decision); *United States v. Smith*, 685 F. App'x 270, 271 (4th Cir. 2017) (motion to recall mandate granted

16 months after mandate issued); *Mars, Inc. v. Coin Acceptors, Inc*., 557 F.3d 1377, 1378 (Fed. Cir. 2009) (motion to recall mandate granted 8 months after mandate issued); *Zipfel v. Halliburton Co.*, 861 F.2d 565, 567 (9th Cir. 1988) (motion to recall mandate granted 15 months after mandate issued). Reconsideration by the full court is necessary to recall the mandate working manifest injustice on Appellants.

CONCLUSION

Because *NIFLA* mandates the application of strict scrutiny to all content-based restrictions on speech, including those of licensed professionals, and because this Court's panel decision has been explicitly overruled, the mandate must be recalled. *King* is no longer good law, and it is imposing irreparable injury on Appellants to this very day. Recalling the mandate is necessary, appropriate and imperative, and the panel's refusal to do so warrants reconsideration by the full court to secure and maintain the uniformity of this Court's decisions and to protect cherished First Amendment freedoms.

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CERTIFICATE OF SERVICE AND ECF COMPLIANCE

I hereby certify that on this 25th day of October, 2018: (1) I caused Appellants' Petition for Rehearing En Banc to be filed electronically via the Court's CM/ECF system and to be served upon all counsel of record via Notice of Docket Activity through the Court's electronic filing system and that all counsel of record are electronic filing users; and (2) a virus check was performed on the Brief, no viruses were found, and that the antivirus software used was Microsoft Forefront Client Security.

/s/ Mary E. McAlister
Mary E. McAlister
Attorney for Appellants

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This document complies with the word limit of Fed. R. App. P. 35(b)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this documents contains 3,801 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared using Microsoft Word 2016 in 14-point Times New Roman.

/s/ Mary E. McAlister
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