No. 17-3244

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JENNIFER SWEDA et al.,
Plaintiffs-Appellants,

v.

THE UNIVERSITY OF PENNSYLVANIA et al.,
Defendants-Appellees.

APPEAL FROM DECISION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
No. 2:16-cv-04329-GEKP

BRIEF OF *AMICI CURIAE* AMERICAN COUNCIL ON EDUCATION AND OTHER HIGHER EDUCATION ASSOCIATIONS IN SUPPORT OF DEFENDANTS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel certifies that none of the *amici* is a subsidiary of any other corporation, and that no publicly held corporation owns 10% or more of its stock.

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INTEREST OF *AMICI CURIAE*

This brief is filed on behalf of eight organizations that represent the interests of institutions of higher education.[1]

The **American Council on Education** (ACE) is the major coordinating body for American higher education. Its approximately 1,800 institutional and association members reflect the extraordinary breadth and contributions of degree-granting institutions in the United States. Believing that a strong higher education system is the cornerstone of a democratic society, ACE participates as *amicus curiae* on occasions where a case presents issues of substantial importance to higher education in the United States.

The **American Association of State Colleges and Universities** (AASCU) includes as members more than 400 public colleges, universities, and systems whose members share a learning- and teaching-centered culture, a historic commitment to underserved student popula-

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), *amici* state that no party's counsel authored this brief either in whole or in part, and further, that no party or party's counsel, or person or entity other than *amici*, *amici*'s members, and their counsel, contributed money intended to fund preparing or submitting this brief. This brief is accompanied by a motion for leave to file pursuant to Fed. R. App. P. 29(a)(3).

tions, and a dedication to research and creativity that advances their regions' economic progress and cultural development.

The **Association of American Universities** (AAU) is a non-profit organization, founded in 1900 to advance the international standing of United States research universities. AAU's mission is to shape policy for higher education, science, and innovation; promote best practices in undergraduate and graduate education; and strengthen the contributions of research universities to society. Its members include 62 public and private research universities.

The **Association of Community College Trustees** (ACCT) is a non-profit educational organization of governing boards, representing more than 6,500 elected and appointed trustees who govern over 1,100 community, technical, and junior colleges in the United States.

The **Association of Public and Land-grant Universities** (APLU) is a research, policy, and advocacy organization dedicated to strengthening and advancing the work of public universities. With a membership of 236 public research universities, land-grant institutions, state university systems, and affiliated organizations, APLU's agenda is built on the three pillars of increasing degree completion and academic success, advancing scientific research, and expanding engagement. Annually, its 194 U.S. member campuses enroll 4 million undergraduates and 1.2 million graduate students, award 1.1 million degrees, employ 1 million faculty and staff, and conduct $40.7 billion in university-based research.

The **College and University Professional Association for Human Resources** (CUPA-HR), the voice of human resources in higher education, represents more than 23,000 human-resources professionals at over 2,000 colleges and universities. Its membership includes 93 percent of all United States doctoral institutions, 78 percent of all master's institutions, 53 percent of all bachelor's institutions, and nearly 600 two-year and specialized institutions.

The **Council of Independent Colleges** (CIC) represents 684 private, nonprofit liberal arts colleges and universities and 83 state councils and other higher education organizations.

The **National Association of Independent Colleges and Universities** (NAICU) serves as the unified national voice of private, nonprofit higher education in the United States. It has more than 1,000 members nationwide.

INTRODUCTION AND SUMMARY OF ARGUMENT

For 100 years, American institutions of higher education have been committed to fostering retirement security for the professionals who dedicate their careers to educating our next generation. The retirement system for higher education has always looked different than the system for industrial, corporate America. Whereas American industry preferred a system (the pension system) that incentivized a lifelong relationship between employers and their workers, colleges and universities implemented a system of annuities that achieved a similar guarantee of lifelong income without hampering the movement of personnel that is essential to academic life. When large companies introduced 401(k) plans more than a half-century later to supplement weakened pensions—and ultimately to supplant them—institutions of higher education had no reason to abandon the system that has, for generations, sustained academics after their teaching days have ended. So even as mutual funds have been added to collegiate retirement plans, annuities remain at their core.

In August 2016, a dozen lawsuits were filed against private universities with generous retirement benefits. The thrust of those nearly identical cases is that university 403(b) plans should look just like corporate 401(k) plans—and that the universities have violated ERISA by failing to offer plans following corporate norms. Indeed, in an interview with the *New York Times*, plaintiffs' counsel admitted that his goal is to force 403(b) plans offered by universities to be the "same" as 401(k) plans offered by "for-profit companies." Tara Siegel Bernard, *M.I.T., N.Y.U. and Yale Are Sued Over Retirement Plan Fees*, N.Y. TIMES, Aug. 9, 2016 (quoting Jerome J. Schlichter, counsel for Plaintiffs-Appellants).

Retirement norms in higher education are quite different from the corporate world. Colleges and universities have taken great strides to ensure the financial security of their retirees—by providing generous employer contributions and investment arrays offering ample opportunities for long-term stability. Corporations have tended to favor systems that prioritize personal autonomy.

ERISA does not require a one-size-fits-all approach to retirement. Rather, fiduciaries are obligated to act with the diligence "under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B).

University 403(b) plans do not present the same "circumstances" as corporate 401(k) plans—and they are not "enterprise[s] of a like character and with like aims." Plaintiffs cannot paper over the historical and present-day differences between corporate and educational retirement plans to require that they all look alike.

Although based on a flawed predicate, these lawsuits are no trivial matter. If the flimsy allegations of Plaintiffs' complaint—which rest on apples-to-oranges comparisons between 403(b) and 401(k) plans—are sufficient to state a claim for breach of fiduciary duty under ERISA, then there is no meaningful way for fiduciaries to protect themselves from being sued. Such an outcome would discourage thoughtful individuals from serving as fiduciaries in the first instance, which would undermine the good governance that these Plaintiffs claim to be pursuing.

ARGUMENT

I. University 403(b) Plans Have A Unique Pedigree.

"[T]he 403(b) plan marketplace is unique" and "significant[ly] differen[t] from 401(k) plans."[2] That phenomenon is a result, no doubt,

[2] U.S. Dep't of Labor, Adv. Council on Empl. Welfare & Pension Benefit Plans, *Current Challenges and Best Practices for ERISA Com-*

of the circumstances that led to the University retirement system at the turn of the 20th Century—which bears no historical resemblance to the rise of 401(k) plans in the 1980s and 1990s.

A. The Development of 403(b) Plans.

By most accounts, the collegiate retirement system owes its start to Andrew Carnegie. Carnegie "became concerned about the cause of the teacher when he was made a trustee of Cornell University in 1890."[3] "In 1905, concerned about the poverty that seemed the common fate of retired teachers, he gave the then colossal sum of $10 million to fund the pensions of teachers at thirty universities."[4] As he explained in his letter of gift, he hoped "to remove a source of deep and constant anxiety to the poorest paid and yet one of the highest of all professions."[5]

In 1906, Congress chartered the Carnegie Foundation for the Advancement of Teaching, and endowed it with the mission "[t]o provide

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pliance for 403(b) Plan Sponsors 5, 9 (2011), https://www.dol.gov/sites/default/files/ebsa/about-ebsa/about-us/erisa-advisory-council/current-challenges-and-best-practices-for-erisa-compliance-for-403b-plan-sponsors.pdf.

[3] WILLIAM C. GREENOUGH, COLLEGE RETIREMENT AND INSURANCE PLANS 8 (1948).

[4] IRVING S. SCHLOSS & DEBORAH V. ABILDSOE, UNDERSTANDING TIAA-CREF 19 (2001).

[5] GREENOUGH, *supra* note 3, at 9.

retiring pensions, without regard to race, sex, creed, or color, for the teachers of universities, colleges, and technical schools in the United States, the Dominion of Canada, and Newfoundland."[6]

Despite Carnegie's initial contribution (and subsequent contributions made directly by Carnegie and by the Carnegie Corporation of New York), it was clear almost immediately that it would not be enough money to achieve his goal of making retiring allowances "a part * * * of our American system of education, so that the teacher may feel that the retiring allowance to which he is entitled is one of the compensations which go with small pay and modest living."[7] In 1918, then, the Carnegie Foundation founded the Teachers Insurance and Annuity Association, which is now known as TIAA.[8] From its founding, TIAA has assured retirement security for university faculty by providing annuities. Indeed, "[t]he TIAA annuity contract incorporates fundamental provi-

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[6] Act to Incorporate the Carnegie Foundation for the Advancement of Teaching, ch. 636, 34 Stat. 59 (Mar. 10, 1906).

[7] Henry S. Pritchett, *Mr. Carnegie's Gift to the Teachers*, 83 OUTLOOK 120, 121 (May 19, 1906).

[8] *See* TIAA, *Our History*, https://www.tiaa.org/public/why-tiaa/who-we-are.

sions specially designed for college retirement plans" with an eye toward "advanc[ing] the cause of education as a whole."[9]

An annuity is effectively an insurance policy. "Under a classic fixed annuity, the purchaser pays a sum certain and, in exchange, the issuer makes periodic payments throughout, but not beyond, the life of the purchaser." *NationsBank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 262 (1995). "Economists and insurance experts agree that annuities can play a key role in providing stable retirement income that lasts for the lifetime of retired workers and their spouses."[10] Studies show that retirees with savings that generate a periodic annuity are better able to enjoy retirement, because they do not face the anxiety entailed in managing a dwindling pool of assets.[11] As a result, the U.S.

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[9] GREENOUGH, *supra* note 3, at 14, 17.

[10] Barry P. Bosworth et al., Do Retired Americans Annuitize Too Little?: Trends in the Share of Annuitized Income 1, Center for Retirement Research at Boston College, Working Paper 2015-9 (2015), http://crr.bc.edu/wp-content/uploads/2015/06/wp_2015-9.pdf.

[11] *See, e.g.*, Jonathan Gardner & Nathan Schneeberger, *'Lucky Few' Retirees: Financially Comfortable but Health Costs Loom Large*, TOWERS WATSON INSIDER (Nov. 2014), https://www.towerswatson.com/en-US/Insights/Newsletters/Americas/insider/2014/lucky-few-retirees-financially-comfortable-but-health-costs-loom-large ("Retirees with a greater share of income from an employer pension or annuity were less concerned about financial risks and more confident of their financial fu-

Government Accountability Office in 2016 issued a report recommending that the Secretary of Labor "help encourage plan sponsors to offer lifetime income options" as part of their retirement plans.[12]

For university employees, annuities replicate the guaranteed income of a pension without requiring the loyalty to a single employer that traditional, defined benefit plans have been designed to promote.[13] Collegiate annuities were designed to facilitate the "free interchange of professors"[14] between institutions—and, as a result, the free movement of ideas. So they were designed to allocate individual rights to participants (not to institutions) and to be readily portable.[15]

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tures than similar retirees whose income came from more variable sources, such as defined contribution accounts.").

[12] GAO, 401(k) Plans: DOL Could Take Steps to Improve Retirement Income Options for Plan Participants 55, GAO-16-433 (2016), https://www.gao.gov/assets/680/678924.pdf.

[13] *See, e.g.*, Teresa Hassara, *The 403(b) Lifetime Income Lesson for 401(k) Plans*, Pensions & Investments, Nov. 30, 2015, http://www.pionline.com/article/20151130/PRINT/311309998/the-403b-lifetime-income-lesson-for-401k-plans; David Pratt, *To (b) or Not to (b): Is That the Question? Twenty-First Century Schizoid Plans Under Section 403(b) of the Internal Revenue Code*, 73 ALB. L. REV. 139, 172 (2009).

[14] GREENOUGH, *supra* note 3, at 9.

[15] *See, e.g.*, Adv. Council, *supra* note 2, at 5-6 ("[M]any 403(b) plans have consisted solely of participant-owned annuity contracts and/or custodial accounts. Under these contracts and/or accounts, the plan participants possessed many (and sometimes all) the contractual

The launch of the collegiate retirement system of annuities predates, by decades, enactment of Section 403(b) of the Internal Revenue Code. In 1942, Congress bestowed tax-preferred status to contributions by charitable organizations toward their employees' annuities.[16] And in 1958, Congress enacted Section 403(b), which defined the amounts that could be contributed to so-called "tax-sheltered annuities."[17] In 1974, Congress permitted 403(b) plans to offer investments other than annuities, thus allowing 403(b) plans to include custodial accounts containing mutual funds in addition to annuities.[18]

Notwithstanding this statutory change, the prominence of annuities remains a defining characteristic of 403(b) plans.[19] This phenomenon has a variety of root causes. *First*, university employees are familiar with and trusting of annuities as a key to maintaining a stable re-

rights associated with these accounts and contracts, and the plan participants interacted directly with the service providers for the plan."); GREENOUGH, *supra* note 3, at 15 ("All rights in the [TIAA] contract are vested in the staff member or his beneficiary. If he changes jobs, he takes the contract with him, including the rights established by all premiums paid up to that time.").

[16] Revenue Act of 1942, Ch. 619, § 162, 56 Stat. 798, 862.

[17] Technical Amendments Act of 1958, Pub. L. No. 85-866, § 23, 72 Stat. 1606, 1620-21 (codified at 26 U.S.C. § 403(b)).

[18] ERISA, Pub. L. No. 93-406, § 1022(e), 88 Stat. 829, 1072 (1974) (codified as amended at 26 U.S.C. § 403(b)(7)).

[19] *See* Adv. Council, *supra* note 2, at 17, 20.

tirement income, having viewed the successful retirements of their predecessors. *Second*, because the contracting parties to an annuity are frequently the insurer and the plan participant, the plan sponsor lacks the authority to take money out of annuities. *Third*, annuity providers typically penalize or restrict withdrawals in exchange for offering the most favorable rates. So plan participants are naturally reluctant to transition away from annuities. *Fourth*, the Internal Revenue Code imposes limitations on the investment options in a 403(b) plan—where only annuities and registered mutual funds are permitted[20]—that do not apply in the 401(k) context.

The importance of annuities to the system of academic retirement is exemplified by the Statement of Principles on Academic Retirement and Insurance Plans, which is prepared and periodically revised by a joint committee of the American Association of University Professors and the Association of American Colleges (now known as the Association of American Colleges and Universities).[21] The Statement encourages member-institutions to "provide for a plan of retirement annuities"

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[20] *See* I.R.C. § 403(b).

[21] *See* AAUP, *Statement of Principles on Academic Retirement and Insurance Plans,* https://www.aaup.org/file/retirement-and-insurance-plans.pdf.

that will generate, for a typical individual retiring at a normal age, "two-thirds of the yearly disposable salary (after taxes and other mandatory deductions) during the last few years of full-time employment."[22]

B. The Development of 401(k) Plans.

The origin story for 401(k) plans differs markedly from the history of 403(b) plans. 401(k) plans were designed to supplement pensions. "[W]hen ERISA was enacted" in 1974, "the defined benefit plan was the norm of American pension practice." *LaRue v. DeWolff, Boberg & Assocs.*, 552 U.S. 248, 255 (2008) (alteration and internal quotation marks omitted). Indeed, Congress did not even authorize 401(k) plans until 1978.[23]

Given their role as supplements to pensions, early 401(k) plans were not built around annuities. Although the market for for-profit retirement plans has changed dramatically in the past forty years—such that "defined benefit plans are now largely limited to the public sector, very large employers, and multi-employer plans of large national unions

[22] *Id.*

[23] Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2763.

such as the Teamsters"[24]—401(k) plans have largely retained their original structures.

The data reflect the differences between 403(b) and 401(k) plans. Whereas 68 percent of 403(b) retirement plans offer annuities among the plan investment options—and likely an even greater percentage of *university* 403(b) plans—only 6 percent of 401(k) plans do.[25] And because annuities bring administrative and contractual complexities, the differences between 403(b) and 401(k) plans are pervasive.[26]

C. ERISA's Fiduciary Duties Must Be Applied In Recognition Of The Differences Between 403(b) And 401(k) Plans.

Plaintiffs' expressed intent—to penalize universities for not offering 401(k) plans that typify the for-profit market—is sharply at odds with the obligations that underlie ERISA.

ERISA's fiduciary standards require a fiduciary to act as would a reasonable individual in similar circumstances who is familiar with

[24] Pratt, *supra* note 13, at 144.

[25] *Compare* Plan Sponsor Council of Am., 2017 403(b) Plan Survey tbl.58 (2017), *available at* Doc. 134-5, *Sacerdote v. N.Y. Univ.*, No. 1:16-cv-06284-KBF (S.D.N.Y. filed Jan. 10, 2018), *with* Deloitte, Defined Contribution Benchmarking Study 20 (2017), https://www2.deloitte.com/content/dam/Deloitte/us/Documents/human-capital/us-hc-defined-contributions-benchmarking-survey-report.pdf.

[26] Adv. Council, *supra* note 2, at 17, 20, 22.

such matters. In the university context, that standard requires 403(b) fiduciaries to measure themselves by the conduct of fiduciaries to similar plans, not to measure themselves by the conduct of the cohort of 401(k) fiduciaries overseeing different types of plans.

Put simply, "ERISA protects plan participants' reasonable expectations *in the context of the market that exists*." *Rosen v. Prudential Ret. Ins. & Annuity Co.*, 2016 WL 7494320, at *17 (D. Conn. Dec. 30, 2016) (emphasis added). After all, ERISA determines a fiduciary's obligation to exercise care prudently and with diligence "under the circumstances *then prevailing*." 29 U.S.C. § 1104(a)(1)(B) (emphasis added). ERISA thus offers no relief to plaintiffs who "seek to transform the market itself." *Rosen*, 2016 WL 7494320, at *17.

This insight into the fiduciary obligations imposed by ERISA is critical for the instant appeal. In their efforts to state a claim, Plaintiffs-Appellants try comparing the investment options offered in the University of Pennsylvania's 403(b) plan to the investments offered by the "average defined contribution" plan. Pltfs.' Br. 10. But as explained above, a typical 403(b) plan for higher-education employees will bear little resemblance to the "average defined contribution" plan. Likewise, Plaintiffs assert that the recordkeeping arrangement employed by the University of Pennsylvania deviates from the market "[f]or large defined contribution plans." Pltfs.' Br. 14.

Statements such as those answer questions not posed by ERISA. If forced to confront the market in which the University of Pennsylvania's plan actually operates, Plaintiffs could not make these sweeping statements. For example, Plaintiffs' challenge to the use of two recordkeepers—TIAA handled the plan participants' annuities and Vanguard oversaw the plan participants' investments in mutual funds—is a challenge to a practice that dominates the market for 403(b) retirement plans in higher education. Indeed, one of the documents cited by Plaintiffs in their complaint effectively demonstrates that they are trying to use ERISA's liability for fiduciary duty to impose liability on fiduciaries who acted in a manner entirely consistent with industry norms: When Purdue University took steps to consolidate its recordkeepers less than ten years ago, it concluded that "[n]o higher education institution of Purdue's size and level of assets has implemented a single service provider/open architecture structure of this kind."[27] That report scarcely supports a claim that every other educational institution was imprudent.

Throughout their Amended Complaint, Plaintiffs try to disparage the plan at issue by comparing it to supposed norms in the "defined contribution" context—an apparent conflation of 403(b) and 401(k) plans. But no breach of fiduciary duty can be described by asserting that individuals in *different* contexts would have acted differently. And for good reason. It makes good sense to require employers to be mindful of trends in their industry and to administer their retirement plans in a manner consistent with their peers. But broadening that obligation would impose substantial costs without any apparent gain. As to the former, there would be a real burden on university employees if they were required to track the evolution of employee benefits in Silicon Valley or the Rust Belt. That institutions of higher education typically look inward to benchmark their benefits offerings reflects the similarity in retirement objectives among employees at institutions of higher educa-

[27] James S. Almond, *403(b) Plan Redesign—Making A Good Retirement Plan Better*, http://www.pionline.com/article/20151130/PRINT/311309998/the-403b-lifetime-income-lesson-for-401k-plans.

tion—at least as compared to the cohort in for-profit industries. It also reflects the similarities in legal requirements, the similarities in historical progression, and the similarities in internal governance.

Plaintiffs make no secret that they want to *change* the 403(b) market, to make it look more like the 401(k) market. But a claim for breach of fiduciary duty is not the right mechanism for their quest. For purposes of ERISA, Plaintiffs cannot state a claim for fiduciary breach by comparing apples and oranges.

II. Plaintiffs' Approach Would Needlessly Disincentivize Qualified Individuals From Serving As Fiduciaries.

In resolving the parties' dispute, the Court should be mindful of the practical consequences. As demonstrated by the number of copycat cases that have been filed—not to mention the statements by Plaintiffs' counsel to the press—Plaintiffs did not file this lawsuit because the University of Pennsylvania is an outlier; they filed this lawsuit because the University of Pennsylvania acted in accordance with industry norms. Given that, similar lawsuits could no doubt be filed against a large number of institutions of higher education.

And it is not just the *universities* that have been placed in legal jeopardy. This action was filed against the University of Pennsylvania and its current Vice President of Human Resources, Jack Heuer. R.27, ¶ 24. The copycat lawsuits that have been filed against other institutions of higher education have targeted individual faculty and staff members—sometimes more than a *dozen* of them—serving voluntarily on their university's fiduciary committee.[28] Under ERISA, co-defendants are, generally speaking, individually liable for damages. That means that faculty members volunteering to serve on university committees to represent the interests of their cohort are being subjected to claims for hundreds of millions of dollars.

To be sure, such fiduciaries may be covered by insurance or indemnity agreements. But the burdens of litigation on defendants are real. Indeed, when the plaintiffs suing Cornell University sought to add 29 individual defendants to their case, the presiding judge issued a remarkable order:

> Plaintiffs shall address why they need to name 29 additional individuals as defendants other than (a) they think they can; and (b) the assertion of multi-million dollar claims against these individuals who served on a committee at their employer's request has the tremendous power to harass

[28] *See, e.g.*, *Tracey v. Mass. Inst. of Tech.*, No. 1:16-cv-11620-NMG (D. Mass. filed Mar. 1, 2018), ECF No. 98; *Sacerdote v. N.Y. Univ. School of Med.*, No. 1:17-cv-08834-KBF (S.D.N.Y. filed Jan. 10, 2018).

> these individuals because they will be required to list the lawsuit on every auto, mortgage or student financial aid application they file.[29]

Those concerns underscore an important consideration for this Court. The standard for surviving a motion to dismiss will dictate the frequency with which these lawsuits are filed, which will, in turn, dictate the willingness of qualified individuals to serve as fiduciaries. A system of freewheeling litigation—in which even standard industry practices can be challenged through years of onerous litigation—is anathema to the recruitment of a sound fiduciary committee. As in other cases, ERISA class actions should be permitted to proceed to discovery only if a violation of the law is *plausible*, rather than *possible*. Any other standard is a recipe for undermining the interests of the individuals who claim to be asking the courts for assistance.

CONCLUSION

For the foregoing reasons, the district court's judgment should be affirmed.

[29] *Cunningham v. Cornell Univ.*, No. 1:16-cv-06525-PKC (S.D.N.Y. Jan. 19, 2018), ECF No. 122.

Dated: April 12, 2018

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CERTIFICATE OF COMPLIANCE

I, Brian D. Netter, counsel for *amici curiae*, certify that I am a member in good standing of the Bar of this Court.

I further certify, pursuant to Fed. R. App. P. 32(g), that the brief is proportionally spaced, has a typeface of 14 points or more, and contains 3,802 words, exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f).

The brief has been prepared in proportionally-spaced typeface using Microsoft Word 2007 in 14-point Century Schoolbook font. As permitted by Fed. R. App. P. 32(g)(1), I have relied upon the word-count feature of this word-processing system in preparing this certificate. The text of the electronic brief is identical to the text of the paper copies, and the electronic brief has been scanned by Microsoft System Center Endpoint Protection engine version 1.1.14700.5, with antivirus version 1.265.485.0, which did not detect a virus.

Dated: April 12, 2018

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the CM/ECF system. I certify that service will be accomplished by the CM/ECF system, which will send notice to all users registered with CM/ECF.

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