Nos. 23-1535, 23-1645

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

L.M., A MINOR BY AND THROUGH HIS FATHER AND STEPMOTHER, CHRISTOPHER AND SUSAN MORRISON,
Plaintiff-Appellant,

v.

TOWN OF MIDDLEBOROUGH, MIDDLEBOROUGH SCHOOL COMMITTEE; CAROLYN LYONS, SUPERINTENDENT OF THE MIDDLEBOROUGH PUBLIC SCHOOLS, IN HER OFFICIAL CAPACITY; AND HEATHER TUCKER, ACTING PRINCIPAL OF NICHOLS MIDDLE SCHOOL, IN HER OFFICIAL CAPACITY,
Defendants-Appellees,

On Appeal from the United States District Court
for the District of Massachusetts, Eastern Division
Case No. 1:23-cv-11111-IT

BRIEF OF THE CENTER FOR AMERICAN LIBERTY AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

The Center for American Liberty has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

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STATEMENT OF INTEREST[1]

The Center for American Liberty (CAL) is a 501(c)(3) non-profit law firm dedicated to protecting free speech and civil liberties. CAL represents litigants across the country who are seeking to vindicate their First Amendment right to speak freely on issues of public concern. CAL has an interest in ensuring that this Circuit applies the correct legal standard in cases involving the First Amendment.

INTRODUCTION

The Supreme Court has long counseled that "[m]ere unorthodoxy or dissent from the prevailing mores is not to be condemned." *Sweezy v. New Hampshire*, 354 U.S. 234, 251 (1957). Indeed, "[t]he *absence* of such voices would be a symptom of grave illness in our society." *Id.* (emphasis added). Appellees have condemned "mere unorthodoxy"—the passive wearing of a t-shirt that dissents from the school's official messages regarding gender identity. The district court blessed their actions. That ruling cannot be sustained without embedding a "grave illness in our society" into the law.

"'[T]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" *Healy v. James*, 408 U.S. 169, 180

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amicus* or their counsel has made any monetary contributions intended to fund the preparation or submission of this brief. Appellant and Appellees have consented to the filing of this brief.

(1972) (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)). In a free society, there is no right to be free from dissenting or uncomfortable views. Even in public schools, "freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

Differing on things that "matter" or "touch at the heart of the existing order" can make people uncomfortable. It may upset people. But it does not make people "unsafe."

This is the fundamental flaw of the district court's opinion: it applies an expanded concept of "safety" that permits school officials to prohibit the expression of opinions that make fellow students uncomfortable. This approach is irreconcilable with *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), effectively guts the free expression of ideas, and utilizes impermissible viewpoint discrimination to impose a state-enforced orthodoxy that is incompatible with the First Amendment. This Court should reverse.

SUMMARY OF THE ARGUMENT

The district court's opinion does not faithfully apply *Tinker* and its progeny. *Tinker* held that a silent sartorial statement expressing students' views on an issue of public concern is core protected speech, even at school. There is no intellectually

consistent way to reconcile *Tinker*'s ruling that students must be allowed to wear black armbands with the district court's opinion holding Appellant may be prohibited from wearing a t-shirt expressing his view that there are only two genders.

To justify its sharp departure from the robust protection of free speech in *Tinker*, the district court relied upon a new and expanded understanding of "safety." This broad definition of "safety" conflates the emotional harm from being subjected to dissenting views with physical harm. It is derived from a broader trend in society that increasingly blurs the distinction between "speech" and "violence" and thus confuses intellectual discomfort with individualized threats to physical well-being.

This broader conception of safety cannot and should not be applied to speech in public schools. As a practical matter, it is contrary to the pedagogical mission of public schools. Rather than encouraging intellectual engagement, maturation, and development, it stifles all these things.

As a constitutional matter, this broad conception of safety is irreconcilable with the First Amendment. On its face, it creates a right to be free of discomfort and places that right above the right to free speech and free expression. This directly contradicts the Supreme Court's First Amendment jurisprudence. Moreover, Appellees' conduct—"promot[ing]" LGBTQ+ issues and opinions while suppressing dissenting views—constitutes impermissible viewpoint discrimination.

For all these reasons, this Court should reverse.

ARGUMENT

I. The District Court's Opinion is Irreconcilable with *Tinker*.

The district court's analysis is irreconcilable with *Tinker*. *Tinker*'s core teaching is that silently wearing an article of clothing that expresses a political opinion is protected speech, even at school. The mere fact that others may disagree with that opinion—even strongly—is insufficient to place the speech beyond protection. In short, the fact that others may get upset at the content of speech does not make the speech itself disruptive.

Comparing and contrasting the facts and analysis in *Tinker* with those in this case illustrates why this is so.

The *Tinker* plaintiffs wore black armbands to "publicize their objections to the hostilities in Vietnam and their support for a truce." 393 U.S. at 504. Appellant wore a t-shirt, first, to communicate his "view on a subject that has become a political hot topic," *L.M. v. Town of Middleborough*, No. 1:23-CV-11111-IT, 2023 WL 4053023, at *3 (D. Mass. June 16, 2023), and second, to communicate his views on school censorship, *id.*, at * 7.

Tinker characterized the students' actions as "a silent, passive expression of opinion, unaccompanied by any disorder or disturbance *on the part of petitioners*." 393 U.S. at 508 (emphasis added). Here, there is nothing indicating that *Appellant*

engaged in any disruptive behavior beyond wearing a t-shirt with a message that some students and faculty disapproved. *L.M.*, 2023 WL 4053023, at *2.

Tinker observed that the wearing of black armbands "does not concern aggressive, disruptive action or even group demonstrations." 393 U.S. at 508. So it was with Appellant—his speech was peaceful and initially involved only himself. And even when Appellant gained followers, there were only three individuals who wore similar clothing. *L.M.*, 2023 WL 4053023, at *4. This was hardly a "group demonstration," let alone an "aggressive" or "disruptive action."

In *Tinker*, the students' decision to wear arm bands to protest the Vietnam War was not a uniformly popular decision. A few students even "made hostile remarks to the children wearing armbands." *Tinker*, 393 U.S. at 508 (discussing *Terminiello v. Chicago*, 337 U.S. 1 (1949)). The record here lacks even this patina of disruption. There is no indication that students or staff made hostile remarks to Appellant or otherwise created a disturbance. Instead, "some students and staff complained [*to Appellees*] that the shirt made them upset." *L.M.*, 2023 WL 4053023, at *2.[2]

[2] Appellees claim to have restricted the second version of the shirt, the Taped Shirt, in part based on threats received from members of the community. The District Court did "not consider[]those threats" in applying *Tinker*. *L.M.*, 2023 WL 4053023, at *7 n.5.

In *Tinker*, the Supreme Court noted that it was " also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance." 393 U.S. at 510. Rather, the black armbands were "singled out for prohibition." *Id.* Here, the district court noted that "L.M. was permitted to wear other t-shirts" with political messages, "including ones with the messages: 'Don't Tread on Me'; 'First Amendment Rights'; 'Freedom Over Fear'; and 'Let's Go Brandon.'" *L.M.*, 2023 WL 4053023, at *2. But *Tinker* treated the school's allowance of other speech as evidence of "clearly" constitutionally impermissible viewpoint discrimination. 393 U.S. at 511 ("Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible."). Applying *Tinker*, the district court should have arrived at the same conclusion here.

Tinker declared, "[i]n our system, state-operated schools may not be enclaves of totalitarianism. . . . [S]tudents may not be regarded as closed-circuit recipients of what the State chooses to communicate" and "may not be confined to the expression of those sentiments that are officially approved." 393 U.S. at 511. Here, the district court concluded that Appellees could prevent Appellant from wearing his shirt because "[s]chool administrators were well within their discretion to conclude that the statement 'THERE ARE ONLY TWO GENDERS' may communicate that only

two gender identities—male and female—are valid." *L.M.*, 2023 WL 4053023, at *6. At the same time, the school "promote[d] messages commonly associated with 'LGBTQ Pride,'" including "observ[ing] events like 'Pride Month,' and 'Pride Day' in support of the LGBTQ+ community." *Id.*. at * 1. According to the district court, school officials *could* confine student expression to "officially approved" sentiments, at least with respect to gender identity.

In sum, the district court's opinion purports to be grounded in *Tinker*, citing or referencing it ten times. Yet as demonstrated above, at every fork in the road, the district court chose to depart from *Tinker's* teachings and rush headlong in the opposite direction.

II. The District Court Opinion is Rooted in a Concept of Purported Generalized Emotional "Safety" that is Derived from the Internet and Academia.

To justify its dramatic departure from *Tinker*, the district court relied on a broad conception of student "safety." This is consistent with a growing trend in society since the turn of the last century but irreconcilable with the First Amendment and the principles underlying a commitment to free speech.

a. The District Court Opinion is Based on Purported Generalized Emotional "Safety" Concerns.

This is not a case about bullying or harassment. Instead, it is based on generalized concerns for purported emotional "safety." The district court candidly acknowledged that it was taking "[a] broader view directed at students' safety."

2023 WL 4053023, at *6. In doing so, the district court noted that "the School's rational [sic] for prohibiting the Shirt is not that L.M. is bullying a specific student, but that a group of potentially vulnerable students will not feel *safe*." *Id.* (emphasis added).

The district court based its conclusion on generalized concerns about student "safety," stating that Appellant was "unable to counter [Appellees'] showing that enforcement of the Dress Code was undertaken to protect the invasion of the rights of other students to a *safe* and *secure* educational environment." *Id.* According to the district court, this was because "the statement 'THERE ARE ONLY TWO GENDERS' may communicate that only two gender identities–male and female–are valid, and any others are invalid or nonexistent, and to conclude that students who identify differently, whether they do so openly or not, have a right to attend school *without being confronted by messages attacking their identities*." *Id.* (emphasis added). The district court also cited the generalized need for school districts to provide a "safe" learning environment in assessing both the potential for irreparable harm and the balance of public interests in assessing Plaintiff's motion for preliminary injunction. *Id.* at *8.

This is not "safety" in any traditional sense of the word. This is a generalized concept of emotional "safety" that functionally defines "unsafe" as synonymous with "uncomfortable."

b. The District Court's View of "Safety" Derives from the Defining Down of the Term in Internet and Academic Discourse

The district court's novel understanding of "safety" did not arise in a vacuum. It can be understood by tracing shifts in how people, particularly in certain online communities and elite academic institutions, talk about "safety."

"In the twentieth century, the word 'safety' generally meant physical safety." Greg Lukianoff & Jonathan Haidt, The Coddling of the American Mind: How Good Intentions and Bad Ideas Are Setting Up a Generation for Failure 24 (2018). In the school environment, ensuring "safety" meant things like preventing fights or sexual assaults on school grounds. However, particularly over the past decade, "the meaning of 'safety' underwent a process of 'concept creep' and expanded to include '*emotional* safety.'" *Id.* (emphasis added).

The concept of "trigger warnings" illustrates this evolution. The notion of being "triggered" originated in discussions around post-traumatic stress disorder and was used to refer to the idea that sensory inputs, such as sights, sounds, or smells, could "trigger" memories of traumatic events. *See Trauma Reminders: Triggers*, U.S. Dept. of Veterans Affairs, National Center for PTSD, available online at https://www.ptsd.va.gov/understand/what/trauma_triggers.asp (last visited Sept. 29, 2023); *see also* Anya Kamenetz, *Half of Professors In NPR Ed Survey Have Used 'Trigger Warnings,'* National Public Radio (Sept. 7, 2016), available online at https://www.npr.org/sections/ed/2016/09/07/492979242/half-of-professors-in-npr-

ed-survey-have-used-trigger-warnings ("For survivors of combat violence, sexual abuse or other trauma, certain sights, sounds, smells or other reminders can bring on intense emotional and even physical reactions, like a full-blown panic attack.") (last visited Sept. 29, 2023).

PTSD is a serious medical condition. It "is caused by an extraordinary and terrifying experience, that "would have to 'evoke significant symptoms in almost everyone' and be 'outside the range of normal human experience.'" Lukianoff & Haidt, *supra* at 25 (citation omitted). Thus, concerns around being "triggered" began in the context of serious, individualized mental health concerns derived from objectively atypical experiences.

The concept expanded with the rise of the internet. "Tracking down the first time the phrase 'trigger warning' appeared on the internet proves nearly impossible, but it's clear that the term did not enter the web fully formed." Ali Vingiano, *How The "Trigger Warning" Took Over The Internet*, Buzzfeed News (May 5, 2014), available online at https://www.buzzfeednews.com/article/alisonvingiano/how-the-trigger-warning-took-over-the-internet (last visited on Sept. 29, 2023). It appears to have initially appeared "in self-help and feminist forums to help readers who might have post traumatic stress disorder to avoid graphic content that might cause painful memories, flashbacks, or panic attacks." Jenny Jarvie, *Tigger Happy*, The New Republic (Mar. 3, 2014), available online at

https://newrepublic.com/article/116842/trigger-warnings-have-spread-blogs-college-classes-thats-bad (last visited Sept. 29, 2023). "Some version of the term began appearing on feminist message boards in discussions of sexual assault in the late '90s." Vingiano, *supra*.

From there, its use grew on user-generated content sites, like Live Journal, through the early-to-mid 2000s before dramatically expanding with the rise of new social media sites, like Facebook and Tumblr, in the late 2000s. *Id.*

By the late 2000s and early 2010s, the concept of a "trigger warning" crept away from its original roots in PTSD. As one content creator acknowledged, "[w]e switched to content notes in 2011 or 2012 to acknowledge that even if somebody isn't triggered, there still might be something that they don't want to read," such as content concerning perceived "racism, ableism, colonialism, depression, or eating disorders." *Id.* By 2016, "[i]n the media and elsewhere online, language similar to trigger warnings [wa]s often used more broadly to label material that concerns sexual abuse or sexual assault, that is potentially racially or politically offensive, or graphically violent or sexual." Kamenetz, *supra*. In this context, "triggering" was no longer a reference to serious, individualized medical concerns. It was instead a generalized reference to a wide array of topics people might find uncomfortable or objectionable, all under the rubric of "safety."

By the mid-2010s, the phenomena had escaped the idiosyncratic confines of the internet and began impacting debate in the real world, or at least what passes for it on college campuses. By 2016, a survey by National Public Radio found that over half of college and university professors had used "trigger warnings" in their classes. *Id.*

As with online debate, standards for what required a "trigger warning" broadened and became less individualized. Thus, by 2014, students at Wellesley College sought to have a statute of a man in his underwear removed on the grounds that it was a "potentially triggering sculpture." Jennifer Medina, *Warning: The Literary Canon Could Make Students Squirm*, The New York Times (May 17, 2014), available online at https://www.nytimes.com/2014/05/18/us/warning-the-literary-canon-could-make-students-squirm.html (last visited on Sept. 29, 2023). At Oberlin College, "a draft guide was circulated that would have asked professors to put trigger warnings in the syllabuses" that would flag "anything that would suggest the inferiority of anyone who is transgender (a form of discrimination known as cissexism) or who uses a wheelchair (or ableism)," as well as "[b]e[ing] aware of racism, classism, sexism, heterosexism, cissexism, ableism, and other issues of privilege and oppression." *Id.* Similarly, in 2015, students at Columbia University sought "a letter to faculty about potential trigger warnings and suggestions for how to support triggered students" based on the premise that such warning is necessary

for students to "feel safe in the classroom." Kai Johnson, Tanika Lynch, Elizabeth Monroe, and Tracey Wang, *Our Identities Matter in Core Classrooms*, Columbia Spectator (Apr. 30, 2015), available online at https://liberalstudiesguides.ca/wp-content/uploads/sites/2/2015/07/Columbia-University-students-say-identities-matter-in-core-curriculum-classes.pdf (last visited on Sept. 29, 2023).

As Gregg Lukianoff and Jonathan Haidt observed, "[i]t's hard to imagine how novels illustrating classism and privilege could provoke or reactivate the kind of terror that is typically implicated in PTSD. Rather, trigger warnings are sometimes demanded for a long list of ideas and attitudes that some students find politically offensive, in the name of preventing other students from being harmed." Gregg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, The Atlantic (Sept. 2015), https://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/ (last viewed Oct. 1, 2023). What began as a term referring to a serious, individualized mental health condition became a term referring to broad-based protection from anything that might make a reader or viewer uncomfortable, often under the pretense of keeping readers or viewers "safe."

The endpoint of this logic was reflected in a 2017 *New York Times* opinion piece provocatively titled *"When is Speech Violence?"* Lisa Feldman Barrett, *When is Speech Violence?* The N.Y. Times (Jul. 14, 2017), available online at https://www.nytimes.com/2017/07/14/opinion/sunday/when-is-speech-

violence.html (last visited Sept. 29, 2023). According to the author, "we must halt speech that bullies and torments" because "[f]rom the perspective of our brain cells, the latter is literally a form of violence." *Id.*

For many, "speech" has thus become equivalent to "violence" when it has a "negative impact on members of protected identity groups." Lukianoff & Haidt, *supra* at 85. And related, "safety" refers to a generalized freedom from hearing or encountering ideas that may be uncomfortable, rather than individualized threats to one's physical well-being or even individualized bullying or harassment.

III. An Expanded Concept of Generalized Emotional Safety is Harmful to Students and Incompatible with the First Amendment

a. Equating Generalized Discomfort with Danger Harms Students' Development

This expansion of the concept of "safety" to include safety from ideas listeners may find uncomfortable is itself harmful to students.

"[T]hose who guide and train our youth" play a "vital role in a democracy." *Sweezy*, 354 U.S. at 250. "Teachers and students must always remain free to inquire, to study, and to evaluate to gain a new maturity and understanding; otherwise, our civilization will stagnate and die." *Id.* "[O]ur history says that it is this sort of hazardous freedom—this kind of openness [to dissenting views]—that is the basis of our national strength and of the independence and vigor of Americans who grow

up and live in this relatively permissive, often disputatious, society." *Tinker*, 393 U.S. 508–09.

Should the district court's opinion stand, public school students will be deprived of the invaluable educational exercise of being exposed to ideas that differ from the state-sponsored message and, consequently, being forced to challenge their own viewpoints. Indeed, the skills derived from being forced to reconcile one's opinions against another's are essential life skills that generate discernment, empathy, and intellectual rigor. Students should be encouraged to understand that messages with which they disagree are acceptable and countering them is an opportunity for intellectual and psychological growth.

Suffocation of robust debate harms our nation's youth in the long term. "A culture that allows the concept of 'safety' to creep so far that it equates emotional discomfort with physical danger is a culture that encourages people to systematically protect one another from the experiences embedded in daily life that they need to become strong and healthy." Lukianoff & Haidt, *supra* at 29. "If we protect children from various classes of potentially upsetting experiences, we make it far more likely that those children will be unable to cope with such events when they leave our protective umbrella. The modern obsession with protecting young people from 'feeling unsafe' is . . . one of the (several) causes of the rapid rates of adolescent depression, anxiety, and suicide . . . ." *Id.* at 24.

Destroying critical thinking to avoid emotional upset is damaging our nation's youth and flips the meaning of "violence" on its head. "The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, (rather) than through any kind of authoritative selection.'" *Tinker*, 393 U.S. at 512. Instead of suppressing dissent, public schools should encourage students to voice their views for the benefit of the entire school environment.

b. Restricting Speech Based on Concern for Generalized Emotional "Safety" is Irreconcilable with the First Amendment

i. The First Amendment Protects Expression of Ideas that Make Others Uncomfortable, Even in Schools

Popular opinions do not need legal support. It is the opinions that are unpopular, unorthodox, or that make people uncomfortable that need to be protected. *See generally Mahoney Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038, 2046 (2021) (noting that protecting expression "must include the protection of unpopular ideas, for popular ideas have less need for protection."). And this is precisely the protection that the First Amendment provides.

This basic protection applies even in the school environment. "[T]he school itself has an interest in protecting a student's unpopular expression" and "in ensuring that future generations understand the workings in practice of the well-known

aphorism: 'I disapprove of what you say, but will defend to the death your right to say it." *Id.*

Appellees may view Appellant's t-shirts as distasteful. But that does not matter for First Amendment purposes. "We cannot lose sight of the fact that, in what otherwise might seem a trifling and annoying instance of individual distasteful abuse of a privilege, these fundamental societal values are truly implicated." *Id.* at 2048 (quoting *Cohen v. California*, 403 U.S. 15, 25 (1971)). Merely invoking the word "safety" does not change this calculus because it does not change the fundamental nature of what Appellees seek to do: ban unpopular speech because it might make some people uncomfortable.

Contrary to the district court's conclusion, Appellant's shirts fall well within the protections of the First Amendment. As *Mahoney Area School District* reiterated, "for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." 141 S. Ct. at 2048 (quoting *Tinker*, 393 U.S. at 509). Appellees cannot make that showing here.

ii. Schools Cannot Engage in Viewpoint Discrimination in the Name of Generalized Emotional "Safety"

To make matters worse, Appellees are also engaged in blatant viewpoint discrimination. "It is axiomatic that the government may not regulate speech based

on its substantive content or the message it conveys." *Rosenberger v. Rector of the Univ. of Virginia*, 515 U.S. 819, 828 (1995) (citing *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 96 (1972)). "Discrimination against speech because of its message is presumed to be unconstitutional." *Rosenberger*, 515 U.S. at 828.

"When the government targets not subject matter but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Id.* at 829 (citing *R.A.V. v. St. Paul*, 505 U.S. 377, 391 (1992). "The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Id.* (citing *Perry Ed. Assn. v. Perry Loc. Educators' Assn.,* 460 U.S. 37, 46 (1983)). There is no "emotional safety" exception to this constitutional requirement.

Appellees do not disapprove of the discussion of the *subject* of gender identity at school. To the contrary, Appellees "promote[] messages commonly associated with 'LGBTQ Pride,'" "observe[] events like 'Pride Month,' and 'Pride Day' in support of the 'LGBTQ+ community,'" and have "had a Gay Straight Alliance Club since at least 2018, '[t]o further the goal of providing support to students who are part of the LGBTQ+ community.'" *L.M.*, 2023 WL 4053023, at *1.

Appellees *do* disapprove certain *opinions or perspectives*. As indicated above, speakers, including the school itself, can "promote[]" messages concerning

gender identity and "observe" holidays celebrating gender identity. But if a speaker dissents from this establishment viewpoint, Appellees deem such transgressions "unsafe" and ban them. This is paradigmatic viewpoint discrimination. It is wrong. And it is unconstitutional.

CONCLUSION

Appellant's message and conduct falls squarely within the protections of the First Amendment, even within the special confines of a school environment. The district court erred and should be reversed.

Date: October 2, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this document complies with the type-volume limitations set forth in Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 4,109 words.

I further certify that 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 in a proportionally spaced typeface using Microsoft Word 2016 in a 14-point Times New Roman font.

Dated: October 2, 2023

By: /s/ *Gary Lawkowski*

Counsel for Amicus Curiae
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CERTIFICATE OF SERVICE

I hereby certify that on this same date, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system, which electronically served a copy on all counsel of record.

Dated: October 2, 2023

By: /s/ *Gary Lawkowski*

Counsel for Amicus Curiae Center for American Liberty