No. 12-14009

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DR. BERND WOLLSCHLAEGER, et al.,

Plaintiffs-Appellees,

v.

GOVERNOR OF THE STATE OF FLORIDA, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Florida (Miami)
Honorable Marcia G. Cooke, District Judge

EN BANC BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PLAINTIFFS-APPELLEES AND FOR AFFIRMANCE

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No. 12-14009

Dr. Bernd Wollschlaeger, et al. v. Governor State of Florida, et al.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Circuit Rule 26.1-1, Amicus Curiae certify that the following persons and entities have an interest in the outcome of this appeal:

1. Abudu, Nancy;
2. ACLU Foundation of Florida, Inc.;
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4. Alachua County Medical Society;
5. American Academy of Child and Adolescent Psychiatry;
6. American Academy of Family Physicians;
7. American Academy of Family Physicians, Florida Chapter;
8. American Academy of Orthopaedic Surgeons;
9. American Academy of Pediatrics;
10. American Academy of Pediatrics, Florida Chapter;
11. American Association of Suicidology;
12. American Bar Association;
13. American College of Obstetricians and Gynecologists;
14. American College of Physicians, Florida Chapter;

15. American College of Preventative Medicine;
16. American College of Surgeons;
17. American Congress of Obstetricians and Gynecologists;
18. American Medical Association;
19. American Psychiatric Association;
20. American Public Health Association;
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DATED: April 26, 2016.

Respectfully submitted,

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By /s/ CALEB R. TROTTER
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TABLE OF CONTENTS

Page

Page

TABLE OF AUTHORITIES

Page

Cases

Page

Page

Statutes

Rule

Miscellaneous

Page

IDENTITY AND INTEREST OF AMICUS CURIAE

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[1] Pursuant to Federal Rule of Appellate Procedure 29(c)(5), Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

STATEMENT OF THE ISSUE

Whether content-based regulations of professional speech warrant strict scrutiny under the First Amendment.

SUMMARY OF THE ARGUMENT

Content-based regulations of speech receive strict scrutiny unless the category of speech being regulated has traditionally been subjected to less First Amendment protection. A majority of the United States Supreme Court has never held professional speech to be a category excluded from full protection. Yet lower courts have taken their cue from two Supreme Court concurring opinions to piece together a theory that allows them to scrutinize content-based professional speech regulations with less than strict scrutiny. Appellants (Florida) ask this Court to do the same here.

But Florida and the other lower courts have failed to persuasively show that professional speech has historically been viewed as warranting less than strict scrutiny or that any court reaching such a result is sufficiently supported. To the contrary, Supreme Court precedent shows that speech of substantially less subjective value is given full First Amendment protection. In an effort to diminish First Amendment scrutiny for professional speech, Florida analogizes professional speech to commercial speech. Yet that analogy only shows that applications of professional and commercial speech "doctrine" are confusing, contradictory, and lacking in any coherent principle other than bloated government power. As a result, this Court should not expand a

First Amendment exception, the validity of which is routinely called into doubt, to cover an entirely different category of speech. Instead, this Court should apply the standard default rule of strict scrutiny for content-based speech regulations to professional speech.

ARGUMENT AND CITATIONS OF AUTHORITY

I

STRICT SCRUTINY IS PROPER FOR ALL CONTENT-BASED SPEECH REGULATIONS, INCLUDING PROFESSIONAL SPEECH

The default rule for content-based speech regulations is that strict scrutiny is appropriate. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015). The United States Supreme Court has carved out very few specific categories of speech that may be regulated based on content without implicating First Amendment concerns. *United States v. Alvarez*, 132 S. Ct. 2537, 2544 (2012). Professional speech is not among those categories.[2] Nevertheless, finding support chiefly in one concurring Supreme Court opinion, some lower courts have cobbled together a professional speech "doctrine" such that content-based regulations of professional speech receive less-

[2] While "professional speech" is not clearly defined in the cases, it is undisputed in this case that the statute at issue implicates speech "occurring within the physician-patient relationship." Appellants' Br. at 41; *see also* Timothy Sandefur, *Free Speech For You and Me, But Not For Professionals*, Regulation 52-53 (Winter 2015-16).

demanding scrutiny. This Court should ensure full First Amendment protection of professional speech by requiring strict scrutiny of content-based regulations.

A. *Lowe v. S.E.C.* Should Be Given Little Weight

Justice White's concurring opinion in *Lowe v. S.E.C.*, 472 U.S. 181, 211, 105 S. Ct. 2557, 2573 (1985), has enjoyed an oversized influence on decisions about the First Amendment's protection of professional speech. Despite being joined by only two Justices, and having never received an approving citation from a majority of the Supreme Court, the lower courts have fashioned the professional speech "doctrine" primarily around the framework provided by Justice White's *Lowe* concurrence. *See* Paul Sherman, *Occupational Speech and the First Amendment*, 128 Harv. L. Rev. F. 183, 186-87 n.26 (2015) (collecting cases).

At issue in *Lowe* was whether an unregistered investment advisor's publication of a newsletter offering impersonal investing suggestions was prohibited by a statute that banned the unregistered offering of investing advice, and, if so, whether the statute violated the First Amendment. 472 U.S. at 183-86, 105 S. Ct. at 2559-61. The Court construed the statute to exempt publishers of investing newsletters from the statute's definition of "investment advisors," and as a result the Court did not reach the First Amendment question. *Id*. at 211, 105 S. Ct. at 2573. Concurring in the judgment, Justice White declined to apply the rule of constitutional avoidance because he disagreed with the majority's construction of the law. Justice White concluded that

the statute *did* cover publishers of investing newsletters, and therefore proceeded to analyze whether the restriction on speech violated the First Amendment. 472 U.S. at 227, 105 S. Ct. at 2581-82.

To analyze speech of a professional, Justice White declared that when a "personal nexus" exists between the professional and the client and the professional "takes the affairs of a client personally in hand and purports to exercise judgment on behalf of the client," this is "professional practice," such that the regulation of the professional's speech is merely incidental to regulation of the profession and not subject to First Amendment scrutiny. 472 U.S. at 232, 105 S. Ct. at 2584. Applying this test to the statute at issue in *Lowe*, Justice White determined that preventing unregistered investment advisors from publishing impersonal investing suggestions went beyond regulating who may practice the profession and was a direct—not incidental—restraint on speech. 472 U.S. at 233, 105 S. Ct. at 2584-85. Because the publishing activities constituted speech fully protected by the First Amendment, the law was "presumptively invalid" and could only be upheld in the "most extraordinary circumstances." 472 U.S. at 234, 105 S. Ct. at 2585.

The key to Justice White's concurrence is whether a "personal nexus" exists when a professional speaks, and whether the personal nexus exists within a "fiduciary relationship" between the professional and client. *See* Sherman, 128 Harv. L. Rev. F. at 187. If so, then regulation of the speech is considered incidental to regulation of

the profession, and no First Amendment concerns arise. *See* 472 U.S. at 232, 105 S. Ct. at 2584. Only if neither the "personal nexus" nor "fiduciary relationship" exist, then the speech is fully protected under the First Amendment. Justice White thereby carved out a substantial amount of speech uttered by professionals as unprotected by the First Amendment and subject to government regulation, with only the deferential rational basis review to check government overreach.

In the absence of further guidance from the Supreme Court, Justice White's approach has become the typical starting point for courts addressing regulations impacting the speech of professionals. Some courts increased the amount of unprotected speech by only looking for a "personal nexus" regardless of the existence of a "fiduciary relationship." *See, e.g.*, *Locke v. Shore*, 682 F. Supp. 2d 1283, 1292 (N.D. Fla. 2010), *aff'd*, 634 F.3d 1185 (11th Cir. 2011) (aesthetic recommendations of interior designers); *Moore-King v. Cnty. of Chesterfield*, 708 F.3d 560, 568 (4th Cir. 2013). There are only a few exceptions where courts viewed restrictions on giving individual advice as implicating the First Amendment. *See, e.g.*, *Stuart v. Camnitz*, 774 F.3d 238, 246-48 (4th Cir. 2014) (a law requiring doctors who perform abortions to provide patients with information designed to dissuade patients from the procedure warrants heightened First Amendment scrutiny); *Argello v. City of Lincoln*, 143 F.3d 1152, 1153 (8th Cir. 1998) (ban on fortune telling violates First

Amendment); *Adams v. City of Alexandria*, 878 F. Supp. 2d 685, 690-91 (W.D. La. 2012) (same).

The "personal nexus" and "fiduciary relationship" approach should be given little weight by this Court. Because Justice White concluded that there was no personal nexus with impersonal investing newsletters, his entire discussion establishing the approach now used by lower courts was unnecessary. Sherman, 128 Harv. L. Rev. F. at 186. Even if the Court looks to that discussion for guidance, it lacks support in any controlling Supreme Court opinion. *See Pickup v. Brown*, 740 F.3d 1208, 1221 (9th Cir. 2013) (O'Scannlain, J., dissenting from order denying rehearing *en banc*) (noting that the Supreme Court has never recognized "professional speech" as a distinct category of speech).

All Justice White could point to was Justice Jackson's concurring opinion in *Thomas v. Collins*, 323 U.S. 516, 544, 65 S. Ct. 315, 329 (1945), which declared—also without citation—that there is always a "rough distinction" between permissible regulations of a profession and impermissible speech restrictions. *Id*. at 544-48, 329-31 (Jackson, J., concurring); Sherman, 128 Harv. L. Rev. F. at 186. Justice Jackson offered no basis for that distinction and, in any event, opined that speaking professions should receive *more* protection, not less. 323 U.S. at 547, 65 S. Ct. at 330. Filling the gap on his own, Justice White declared a "personal nexus" to

be the distinguishing factor that places professional speech regulations outside First Amendment protection. 472 U.S. at 232, 105 S. Ct. at 2584.

This Court should not follow the approach created by two conflicting Supreme Court concurring opinions, citing no authority, that have received no subsequent approval (or even citation) by a majority of the Supreme Court. Nor should this Court be persuaded by the expansive interpretations of lower courts that serve to erode First Amendment protection of speech. Instead, this Court should analyze regulations of speech of professionals the same way it does other content-based speech regulations: with strict scrutiny. *See Reed*, 135 S. Ct. at 2226; *Burk v. Augusta-Richmond Cnty.*, 365 F.3d 1247, 1251 (11th Cir. 2004); *Conant v. Walters*, 309 F.3d 629, 637-39 (9th Cir. 2002).

B. The Supreme Court Is Appropriately Reluctant To Expand the Categories of Speech That Receive Little or No First Amendment Protection

There are few exceptions to the rule that content-based speech regulations are subject to strict scrutiny. Content-based speech regulations are generally only permitted within the few " 'historic and traditional categories [of expression] long familiar to the bar.' " *Alvarez*, 132 S. Ct. at 2544 (citation omitted). Those accepted categories are: incitement, obscenity, defamation, speech integral to criminal conduct, true threats, fighting words, fraud, child pornography, and speech presenting some serious threat preventable by the government. *Id*. at 2544 (summarizing cases). The

Supreme Court has expressed reluctance to add more categories of speech to the traditionally recognized list. *United States v. Stevens*, 559 U.S. 460, 472, 130 S. Ct. 1577, 1586 (2010) ("Our decisions [identifying categories of speech] cannot be taken as establishing a freewheeling authority to declare new categories of speech outside the scope of the First Amendment."). Courts could only justify an additional category's exclusion from First Amendment protection if there is "persuasive evidence that a novel restriction on content is part of a long (if heretofore unrecognized) tradition of proscription." *See id.*; *Brown v. Ent. Merchants Ass'n*, 131 S. Ct. 2729, 2734 (2011).

As discussed above, there is no persuasive evidence to support the assertion that professional speech has traditionally been considered of "low value" and unworthy of meaningful First Amendment protection. Rather, the few lower court opinions to discuss the issue—mostly confined to cases involving fortune telling and sexual orientation change therapy efforts—are far from uniform in their analyses. Therefore, this Court should not take the gratuitous step of adding professional speech to the unprotected list.

First, in *Argello*, the Eighth Circuit struck down a city ban on fortune telling as a content-based speech regulation due to the lack of a compelling interest, and refused to apply the commercial speech exception because regulated speech "*is the transaction,*" and fraud was not targeted by the ordinance. *Argello v. City of Lincoln*,

143 F.3d 1152, 1152-53 (8th Cir. 1998). But in *Moore-King v. Cnty. of Chesterfield*, the Fourth Circuit applied Justice White's personal nexus analysis from *Lowe* to uphold licensing regulations of fortune tellers. 708 F.3d 560, 568-69 (4th Cir. 2013). Second, in *Pickup*, a Ninth Circuit panel held a law regulating sexual orientation change therapy efforts to be regulation of conduct—not speech—based on a "continuum" distilled from Justice White's *Lowe* concurrence and subsequent cases, resulting in no First Amendment application. *Pickup v. Brown*, 740 F.3d 1208, 1227-30 (9th Cir. 2013). But in an opinion joined by two other judges, Judge O'Scannlain dissented from the denial of rehearing *en banc* and faulted the panel for playing a "labeling game" and failing to cite any authority for the proposition that speech uttered by professionals does not receive any First Amendment scrutiny. *Pickup*, 740 F.3d at 1218-21. Third, in *King v. Governor of New Jersey*, 767 F.3d 216, 224-33 (3d Cir. 2014), the Third Circuit, drawing on Judge O'Scannlain's dissenting opinion in *Pickup*, rejected the holding of *Pickup* and instead held sexual orientation change therapy efforts to be speech protected by the First Amendment, but applied diminished scrutiny based on Justice White's *Lowe* concurrence. 767 F.3d 216, 224-33 (3d Cir. 2014).

C. Strict Scrutiny Should Apply Regardless of the "Value" of Professional Speech

Recent Supreme Court decisions employ strict scrutiny to uphold First Amendment protection for various types of low-value speech that legislatures attempted to outlaw based on its content, including depictions of animal cruelty (*Stevens*), violent video games (*Brown*), outright lies about military awards (*Alvarez*), and advice to terrorist organizations (*Holder v. Humanitarian Law Project*, 561 U.S. 1, 26-28, 130 S. Ct. 2705, 2723-24 (2010)). Despite the "low value" of depictions of animal cruelty, lies, or "obscenely" violent video games, the Court could find no American tradition of prohibiting depictions of animal cruelty, *Stevens*, 559 U.S. at 469, 130 S. Ct. at 1585, or lying generally, *Alvarez*, 132 S. Ct. at 2545-46, or applying obscenity doctrine to anything other than sexual conduct, *Brown*, 131 S. Ct. at 2734, and therefore held that government limits on those expressive activities had to withstand strict scrutiny. *Alvarez*, 132 S. Ct. at 2548; *Brown*, 131 S. Ct. at 2738.

In *Chaplinsky v. New Hampshire*, the Supreme Court described the distinction between protected and unprotected categories of speech by reasoning that unprotected categories are "of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." 315 U.S. 568, 572, 62 S. Ct. 766, 769 (1942). But the Court recently clarified that this language only describes the rationale for excluding a few categories

of speech from First Amendment protection—it is not a test to be employed by the courts. *Stevens*, 559 U.S. at 471, 130 S. Ct. at 1586. Thus, for First Amendment purposes, strict scrutiny applies even when the government articulates a weighing of costs and benefits of the value or importance of particular speech to justify a law regulating content. *Id*.

In this case, Florida advocates for reduced scrutiny because of the existing extent of regulation of the *practice* of the medical profession, implying that professional speech as a whole is less valuable than fully protected speech. Appellants' Br. at 36-37. The only support Florida offers for such a sweeping implication are cases that rely and expand on Justice White's *Lowe* concurrence, and a three-sentence "discussion" from the plurality opinion in *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 884, 112 S. Ct. 2791, 2824 (1992). Appellants' Br. at 36.

Casey's minimal discussion of professional speech offers no assistance to this Court. The Fourth Circuit decision in *Stuart*, 774 F.3d at 238, which thoroughly analyzed *Casey* and lower court opinions applying *Casey* to other professional speech cases in the context of state-compelled speech regulations of abortion, is instructive. *Stuart* recognized the limited usefulness of *Casey*, and criticized the Fifth Circuit's view in *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 575 (5th Cir. 2012), that *Casey* is the "antithesis of strict scrutiny." 774 F.3d at 248-49.

The *Stuart* panel highlighted the narrow application of *Casey*'s three sentences, and disagreed that *Casey* announced a definitive level of scrutiny of abortion regulations that compel speech. *Stuart*, 774 F.3d at 249. To the contrary, "the plurality simply stated that it saw 'no constitutional infirmity in the requirement that the physician provide the information mandated by the State *here*.'" *Id*. (emphasis added in *Stuart*).

Stuart itself drew the opposite conclusion, but in a similar manner, about the challenged law in that case, in striking down North Carolina's "Display of Real-Time View Requirement." 774 F.3d at 248. Even though the compelled speech aspect of the law was a "clearly content-based regulation of speech," the challenged law also regulated abortion providers' conduct. *Id*. at 245. Therefore, the *Stuart* panel declined to decide what level of scrutiny was appropriate in that case—or similar cases—because the law was unconstitutional under either intermediate or strict scrutiny. *Id*. at 247 n.3, 248. As a result, even if one accepts that there is a "continuum" of protection from pure speech to conduct, *see Pickup*, 740 F.3d at 1227-29—as does Florida here—*Stuart* counters Florida's view and application of the continuum in this case. Rather than placing the continuum's midpoint of First Amendment protection at covering professional speech as defined by Justice White in *Lowe*, *see* Appellants' Br. at 36, the better understanding is that the midpoint—which warrants *at least* intermediate scrutiny—covers laws that

inextricably combine content-based speech regulations with regulations of professional conduct. 774 F.3d at 248.

Florida's claim that speech of professionals in "traditionally regulated" professions is less protected fails to account for the full First Amendment protection extended to depictions of animal cruelty, lies, or violent video games, all of which are also traditionally subject to regulation. It is further inconsistent with judicial recognition that professional speech "may be entitled to 'the strongest protection our Constitution has to offer.'" *Conant*, 309 F.3d at 637 (quoting *Fla. Bar v. Went For It*, *Inc.*, 515 U.S. 618, 634, 115 S. Ct. 2371, 2381 (1995)). Thus, because Florida failed to distinguish treatment-specific regulations from the content-based speech ban on all Florida doctors at issue here, the general rule of strict scrutiny must apply.

II

THE "COMMERCIAL SPEECH DOCTRINE" PROVIDES NO BLUEPRINT FOR PROFESSIONAL SPEECH

The commercial speech doctrine is in such disarray that it should not provide the model for any jurisprudence whatsoever. It certainly offers no compelling analogy to professional speech. Claudia E. Haupt, *Professional Speech*, 125 Yale L. J. 1238, 1264 (2016).

The varied and confusing history of the commercial speech doctrine demonstrates the Supreme Court's inability to settle on any comprehensive—or

comprehensible—way to analyze commercial speech short of giving it the strict scrutiny that the language of the First Amendment seems to demand. In 1942, the United States Supreme Court removed the protections of the First Amendment from applying to commercial speech, *Valentine v. Chrestensen*, 316 U.S. 52, 54, 62 S. Ct. 920, 921 (1942), then reinstated them in 1976. *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 761-62, 96 S. Ct. 1817, 1825-26 (1976). Because the Supreme Court did not clarify how to analyze content-based regulations of commercial speech, the Court later derived a four-part test in *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 564, 100 S. Ct. 2343, 2350 (1980), and modified it in *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 504, 116 S. Ct. 1495, 1508 (1996). In all, much like professional speech cases, confusion and inconsistency have been the only guarantees in cases analyzing commercial speech regulations. *See 44 Liquormart*, 517 U.S. at 526-28, 116 S. Ct. at 1520 (Thomas, J. concurring); Daniel Halberstam, *Commercial Speech, Professional Speech, and the Constitutional Status of Social Institutions*, 147 U. Pa. L. Rev. 771, 779-89 (1999) (discussing the inconsistent approach taken by courts and the calling into doubt of *Central Hudson* and commercial speech doctrine).

In any event, without examining or opining on the merits of the commercial speech doctrine, it can uncontroversially be described as an exception to the general rule that content-based speech regulations receive strict scrutiny. *See Sorrell*, 131 S.

Ct. at 2672; *Reed*, 135 S. Ct. at 2226-27. The most common reasons given for subjecting commercial speech restrictions to less than strict scrutiny include: protecting the public from "commercial harms;" *Sorrell*, 131 S. Ct. at 2672 (citing *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 426, 113 S. Ct. 1505, 1515 (1993)), and the risk of fraud. *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388-89, 112 S. Ct. 2538, 2546 (1992) (citing *Va. Bd. of Pharm.*, 425 U.S. at 771-72, 96 S. Ct. at 1830-31). In the context of professional trades, specific regulations prohibiting false or misleading professional conduct suffices to allay those concerns. *See*, *e.g.*, Fla. Stat. Ann. § 458.331 (West 2013). Subjecting other content-based professional speech regulations to less than strict scrutiny is unnecessary and inappropriate.

First, the concern for protecting the public from "commercial harms" relates to people suffering financial loss as a result of untruthful or misleading advertisements. *See Bolger v. Youngs Drug Prod.'s Corp.*, 463 U.S. 60, 81-82, 103 S. Ct. 2875, 2888 (1983) (Stevens, J., concurring). However, the public is protected from potential commercial harms stemming from false professional speech due to requirements for professional malpractice insurance with its close connection to the recognized standard of care for that profession. *See* Haupt, 125 Yale L.J. at 1267. For example, Florida doctors generally must maintain professional malpractice insurance to cover claims and costs arising out of the care provided or failed to be provided. Fla. Stat. § 458.320. If the doctor is exempt from required malpractice insurance, the doctor

must still post a notice alerting all patients to the doctor's lack of insurance. *Id*. Requirements such as these result in accountability for professional speech, eliminating the need for further regulation.

Second, the risk of fraud is best mitigated through the use of existing anti-fraud laws. Since "the First Amendment does not shield fraud," *Illinois ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612, 123 S. Ct. 1829, 1836 (2003), the government is able to prosecute, and thereby deter, speech that defrauds the public without tailoring its laws to pass scrutiny under the First Amendment. *See id*. at 538 U.S. at 621, 123 S. Ct. at 1841; *see also* Fla. Stat. Ann. § 458.331(1)(k)-(l). Therefore, Florida can prevent doctors from intentionally misleading patients into unnecessarily divulging personal information without implicating the First Amendment, unlike the law at issue here.

Even if this Court were to find commercial speech somewhat analogous to professional speech, this Court should still apply strict scrutiny, as is the trend in more recent commercial speech cases. *See Reed*, 135 S. Ct. at 2235 (Breyer, J. concurring) ("[T]he Court has applied the heightened 'strict scrutiny' standard even in cases where the less stringent 'commercial speech' standard was appropriate.") (citation omitted); Haupt, 125 Yale L.J. at 1265. Therefore, caution warrants against expanding the commercial speech doctrine to include professional speech when the basis for commercial speech doctrine is itself tending to provide greater scrutiny.

CONCLUSION

In deciding the issues in this case, this Court should clarify that the simplest approach to professional speech that is most consistent with binding First Amendment precedent recognizes professional speech as entitled to full First Amendment protection, and thus content-based regulations of professional speech should receive strict scrutiny.

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Respectfully submitted,

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1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 4,024 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

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I hereby certify that on April 26, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the 11th Circuit through the Court's CM/ECF system.

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