Nos. 16-5300 & 16-5343

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CITIZENS FOR RESPONSIBILITY & ETHICS IN WASHINGTON AND MELANIE SLOAN,

Plaintiffs-Cross-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee,

AMERICAN ACTION NETWORK,

Intervenor-Appellant.

On Appeal from the United States District Court for the District of Columbia
Case No. 1:14-cv-01419-CRC (Hon. Christopher R. Cooper)

APPELLANT AMERICAN ACTION NETWORK'S OPPOSITION TO THE FEDERAL ELECTION COMMISSION'S MOTION TO DISMISS FOR LACK OF JURISDICTION

American Action Network respectfully opposes the motion of the Federal Election Commission ("FEC" or "Commission") to dismiss these cross-appeals for lack of jurisdiction and standing. The Commission's motion should be denied. This Court's jurisdiction is expressly granted by statute, and American Action Network has standing to challenge an Order that continues to subject it to the risk of further enforcement proceedings at the Commission or in district court.

The Commission's jurisdictional challenge rests solely on 28 U.S.C. § 1291, which provides the Court with jurisdiction to review "final decisions of the district courts." But the Commission's arguments about the applicability of 28 U.S.C. § 1291 are irrelevant because jurisdiction exists under two other statutes—the Federal Election Campaign Act, which states that "[a]ny judgment of a district court under this subsection may be appealed to the court of appeals . . .," 52 U.S.C. § 30109(a)(9), and the declaratory judgment statute, which states that a court's declaration of the "rights and other legal relations" of the parties is a "final judgment" and "shall be reviewable as such," 28 U.S.C. § 2201(a). There is, therefore, no need to determine whether 28 U.S.C. § 1291 applies because Congress intended this Court to have jurisdiction over this appeal pursuant to 52 U.S.C. § 30109(a)(9) and 28 U.S.C. § 2201(a).

The Commission's standing argument fares no better. But for the Order on appeal, American Action Network would be free from the risk of further enforcement proceedings. Instead, the district court rejected a dismissal of the proceedings that cleared American Action Network of all charges, and subjected American Action Network to further scrutiny by the FEC. And, while the enforcement proceedings were again dismissed on remand, the lawfulness of that dismissal is at issue in two pending district court cases. The Order on appeal, as a result, still has the potential to subject American Action Network to an intrusive

and burdensome enforcement investigation at the FEC or in district court. *See* 52 U.S.C. § 30109(a)(8)(C). That risk is a sufficient injury, traceable to the Order on appeal, to provide American Action Network standing to proceed.

The Commission raises additional arguments, suggesting that these appeals may be moot, *see* Mot. at 15 n.8, and that the parties have somehow conceded that the Court lacks jurisdiction by filing a motion to hold the case in abeyance, *see* Mot. at 2, 11. These arguments are not supported by the record and do nothing to eliminate the jurisdiction that Congress explicitly intended this Court to exercise. The Commission's motion to dismiss should be denied.

I. BACKGROUND

This appeal seeks review of a district court judgment that declared the Commission's dismissal of an enforcement proceeding against American Action Network "contrary to law" because it relied, in part, on judicial precedent that the court found is "out of step with the legal consensus." *See CREW v. FEC*, No. 1:14-cv-01419 (CRC), 2016 WL 5107018, at *9 (D.D.C. Sept. 19, 2016) (Mot. Ex. 1). The enforcement proceeding began in June 2012, when Cross-Appellants, Citizens for Responsibility & Ethics in Washington and Melanie Sloan (collectively, "CREW") filed an administrative complaint with the Commission, alleging that American Action Network had violated the Federal Election Campaign Act by failing to register as a "political committee" and comply with the

related disclosure and regulatory requirements. *Id.* at *3. American Action Network responded to the complaint, explaining that it is not a "political committee" for purposes of the Federal Election Campaign Act, but is instead an issue advocacy group. Political committee status is limited to "organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Buckley v. Valeo*, 424 U.S. 1, 79 (1976). An organization "fits neither of these descriptions" if "[i]ts central organizational purpose is issue advocacy, although it occasionally engages in activities on behalf of political candidates." *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 252 n.6 (1986).

American Action Network's status as an issue advocacy organization is supported by its official statements and qualification as a social welfare organization that is exempt from taxation under Section 501(c)(4) of the Internal Revenue Code. *See, e.g.*, Mot. Ex. 2 at 2. But CREW claimed that American Action Network should have been regulated as a "political committee" because of its spending between July 23, 2009, and June 30, 2011, which CREW alleged was sufficiently campaign-related to evidence a "major purpose" to nominate or elect candidates. During that time (which included the 2010 election cycle), American Action Network devoted only about fifteen percent of its spending to independent expenditures (advertisements that expressly advocated the election or defeat of a

federal candidate). *See CREW*, 2016 WL 5107018, at *12. But CREW claimed that American Action Network's additional spending on electioneering communications that focused on legislative issues salient to its purpose, such as healthcare reform and federal spending, were also indicative of a "major purpose" to elect candidates. *Id.* at *3; Mot. Ex. 2 at 6-7.

In June 2014, the Commission deadlocked over whether the record supported CREW's charges, and so dismissed the complaint. *CREW*, 2016 WL 5107018, at *3. The three Commissioners who voted to dismiss the complaint supplied the Commission's statement of reasons. *Id.* They found that American Action Network is not a political committee because it does not have as its "major purpose" the nomination or election of candidates. *Id.* In reaching this conclusion, they "excluded from their 'major purpose' inquiry all of [the] spending on electioneering communications, considering all of those communications to be 'genuine issue advertisements' unrelated to the election of candidates." *Id.* at *4.

CREW challenged the Commission's statement of reasons pursuant to the Administrative Procedure Act and the Federal Election Campaign Act's judicial review provision, 52 U.S.C. § 30109(a)(8)(A). *See CREW*, 2016 WL 5107018, at *4. The district court granted the Commission's motion to dismiss the Administrative Procedure Act claims based on the exclusivity of the Federal Election Campaign Act's judicial review provision. *CREW*, 164 F. Supp. 3d 113

(D.D.C. 2015). The district court also granted American Action Network's motion to intervene as a party defendant. *See CREW*, 2016 WL 5107018, at *4. The parties then filed cross-motions for summary judgment on the Federal Election Campaign Act claims. *Id.*

On September 19, 2016, the district court entered summary judgment for CREW. Among other things, it held that the Commission's statement of reasons included a "legal error . . . that is, the erroneous understanding that the First Amendment effectively required the agency to exclude from its consideration all non-express advocacy in the context of disclosure." *Id.* at *11.[1] The district court declared the dismissal decision "'contrary to law,' and . . . 'direct[ed] the Commission to conform with [this] declaration within 30 days'" or file an appeal. *Id.* at *12 (quoting 52 U.S.C. § 30109(a)(8)(C)). The district court did not require

[1] American Action Network has challenged this holding in this appeal. *See* American Action Network's Statement as to Issues It Intends to Raise (Nov. 23, 2016) (Doc. #1647621). It has also challenged the district court's predicate holding that the Commission's decision that issue advertisements are not indicative of a major purpose to nominate or elect candidates was not entitled to deference under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). The district court's decision includes two additional holdings: (1) that the Commission could reasonably conclude that a group's relevant spending needs to exceed fifty percent of its total spending before that spending indicated the entity's "major purpose," *CREW*, 2016 WL 5107018, at *12, and (2) that, "at least as applied to" the other challenged enforcement matter (involving Americans for Job Security, an entity unrelated to American Action Network), the Commission adopted an improper standard for determining the relevant time period for evaluating an organization's spending, *id.*

any particular result on remand, leaving it to the Commission to apply the new approach in the first instance. *Id.* at *11, 12.

The Commission deadlocked on whether to file an appeal, and so did not appeal. *See* Mot. at 7. In the thirty days following the district court's decision, however, the Commission reopened the administrative proceeding, reconsidered the record under the new approach mandated by the district court, and again voted on the matter. *See* Mot. Ex. 2. The Commission again deadlocked on whether the record supported the charges, and the complaint was again dismissed. *Id.* On October 19, 2016—thirty days after the district court's order—the three Commissioners who voted to dismiss supplied the Commission's statement of reasons. *Id.*

On November 14, 2016, CREW filed two challenges to the Commission's new statement of reasons. *See* Mot. at 9. Below, CREW filed a motion for an order to show cause, seeking a ruling that the Commission violated the Order on appeal and triggered CREW's right to file a civil action against American Action Network. *See* Pls. Mot. For An Order To Defendant Federal Election Commission To Show Cause, No. 1:14-cv-01419 (CRC), Dkt. No. 57 (Nov. 14, 2016). Whether CREW may itself sue American Action Network depends on 52 U.S.C. § 30109(a)(8)(C), which states that the district court "may direct the Commission to conform with [its contrary to law] declaration within 30 days, failing which the

complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint." Because of this pending post-judgment motion, CREW and American Action Network filed a motion to hold these cross-appeals in abeyance pending its disposition. *See* Mot. to Hold Case in Abeyance (Nov. 15, 2016) (Doc. #1646225).

In addition to its post-judgment motion below, CREW filed a new district court action asking the district court to find that further enforcement proceedings at the Commission are required because the Commission's dismissal on remand was arbitrary, capricious, an abuse of discretion, and contrary to law, or, alternatively, that CREW has a right to sue American Action Network directly. *See* Compl. at 27-28, No. 1:16-cv-02255 (CRC), Dkt. No. 1 (Nov. 14, 2016).

II. ARGUMENT

There is no reason to dismiss this appeal. The Court's jurisdiction is expressly established by statute. American Action Network faces the specter of further enforcement proceedings because of the Order on appeal, and so has standing to challenge it. The Commission's suggestion that dismissal is justified because of mootness considerations or the pending motion to hold the case in abeyance are meritless and do not cast any doubt on Congress's decision to provide jurisdiction in these circumstances.

A. This Court Has Jurisdiction Over These Cross-Appeals.

The Commission's motion to dismiss devotes several pages to the "detailed statutory scheme" that applies to this dispute under the Federal Election Campaign Act. *See* Mot. at 1-2, 3-5. But wholly absent from the Commission's brief is the appellate review provision in the Federal Election Campaign Act that explicitly grants the Court jurisdiction over "any judgment" issued under 52 U.S.C. § 30109(a), including the judgment that is the subject of this appeal.

Under the Federal Election Campaign Act, "[a]ny person who believes a violation of this Act . . . has occurred, may file a complaint with the Commission." 52 U.S.C. § 30109(a)(1). If that complaint is dismissed, "[a]ny party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1) . . . may file a petition with the United States District Court for the District of Columbia." *Id.* § 30109(a)(8)(A). The remedies available to the district court, should it disagree with the Commission, are statutorily limited: its judgment "may declare that the dismissal of the complaint . . . is contrary to law, and may direct the Commission to conform with such declaration within 30 days . . . ." *Id.* § 30109(a)(8)(C). The statute then includes an explicit, jurisdiction-granting, appellate provision, which states that "[a]ny judgment of a district court under this subsection *may be appealed* to the court of appeals . . . ." *Id.* § 30109(a)(9) (emphasis added).

This appellate review of "any judgment" issued pursuant to 52 U.S.C. § 30109(a) makes good sense because a judgment that "declare[s] that the dismissal of the complaint . . . is contrary to law," *id.* § 30109(a)(8)(C), by definition is a declaratory judgment. And Congress long has provided that a declaratory judgment is a "final judgment" and "shall be reviewable as such." 28 U.S.C. § 2201(a). The Federal Election Campaign Act, therefore, merely confirms that a declaratory judgment issued under its judicial review provision falls within the general rule that declaratory judgments are final and subject to immediate appellate review.

Congress's decision to provide appellate jurisdiction over "any judgment"—including those that declare the dismissal of a complaint "contrary to law" and direct the Commission to conform with that declaration in 30 days—was particularly appropriate. 52 U.S.C. § 30109(a)(8)(C), (a)(9). Such a judgment has the potential to trigger a burdensome and intrusive investigation, at the Commission or in district court, notwithstanding the fact that the agency that is vested with the "primary and substantial responsibility for administering and enforcing" the Federal Election Campaign Act had initially declined to engage in such a proceeding. *See Buckley*, 424 U.S. at 109; 52 U.S.C. § 30109(a)(8)(C). Furthermore, any such investigation will burden First Amendment activity that the Commission previously found entirely lawful.

The Federal Election Campaign Act, as a result, explicitly provides the Court with jurisdiction over this appeal. The Commission does not address this grant of jurisdiction in its motion to dismiss, but instead devotes its argument to whether jurisdiction exists under 28 U.S.C. § 1291, the statute that provides jurisdiction over "final decisions of the district courts." Under that statute, the Commission argues that "[i]t is well settled that, as a general rule, a district court order remanding a case to an agency for significant further proceedings is not final." Mot. at 10 (quoting *Pueblo of Sandia v. Babbitt*, 231 F.3d 878, 880 (D.C. Cir. 2000)). But this case does not require jurisdiction under 28 U.S.C. § 1291, so the question of whether the Order on appeal is a "final decision" for purposes of 28 U.S.C. § 1291 is beside the point.

The Commission does not cite any cases that grapple with the express jurisdiction-granting language of 52 U.S.C. § 30109(a)(9). Nor does it explain why the Court should ignore that language here. Instead, with one exception, the Commission relies on cases that involve other agencies and other statutes. *See, e.g.*, *Sierra Club v. U.S. Dep't of Agric*., 716 F.3d 653, 656 (D.C. Cir. 2013) (cited at Mot. at 11); *N. Carolina Fisheries Ass'n, Inc. v. Gutierrez*, 550 F.3d 16, 19 (D.C. Cir. 2008) (cited at Mot. at 2); *Lakes Pilots Ass'n, Inc. v. U.S. Coast Guard*, 359 F.3d 624, 625 (D.C. Cir. 2004) (cited at Mot. at 12); *Occidental Petroleum Corp. v. SEC*, 873 F.2d 325, 330 (D.C. Cir. 1989) (cited at Mot. at 12). And in the

one case that does involve the Commission and the Federal Election Campaign Act, *see Democratic Nat'l Comm. v. FEC*, No. 99-5123, 1999 WL 728351 (D.C. Cir. Aug. 4, 1999) (cited at Mot. at 13), the Commission fails to note that the parties briefed *only* the question of jurisdiction under 28 U.S.C. § 1291. For good reason—in that case, the district court order did *not* include a declaration under 52 U.S.C. § 30109(a)(8)(C). Instead, according to the motion to dismiss that the Commission filed there, the "district court did not address any of the substantive or procedural issues in the case before granting the request to remand." FEC Mot. to Dismiss at 1, No. 99-5123 (June 2, 1999). Instead, "[b]oth parties to the case agreed to the remand" so that the Commission could consider "intervening judicial developments." *Id.* at 1, 4. This meant that "[t]he remand order . . . plainly was not 'conclusive' of any issue, nor did it 'resolve important questions'; the district court simply sent the case back to the agency to permit it to consider new developments in the first instance, without resolving any issues at all." FEC Mot. to Dismiss Reply at 2, No. 99-5123 (June 21, 1999).

This appeal is far different. The district court repeatedly noted that its work was guided by the Federal Election Campaign Act's judicial review provision. *See, e.g.*, *CREW*, 2016 WL 5107018, at *1, 5, 7, 10, 12 (citing 52 U.S.C. § 30109(a)(8)(C)). The district court quoted that provision when issuing its declaration "that the Commissioners' decision to apply [an] express advocacy/issue

speech distinction in the realm of disclosure, thereby excluding all non-express advocacy speech from consideration, was 'contrary to law.'" *See id.* at *10 (quoting 52 U.S.C. § 30109(a)(8)(C)). And it quoted the statute when clarifying that its judgment required an appeal or action taken to "'conform with [this] declaration within 30 days'" *See id.* at *12 (quoting 52 U.S.C. § 30109). The court's judgment, as a result, "*may be appealed to the court of appeals*." 52 U.S.C. § 30109(a)(9) (emphases added). The Commission's jurisdictional challenge should be rejected.

B. American Action Network Has Standing To Pursue Its Appeal.

The Commission's challenge to American Action Network's standing must also be denied. The Commission argues that American Action Network is "not *currently* suffering any actual, concrete injury that is fairly traceable" to the Order on appeal. Mot. at 14-15 (emphasis added). Not so. Because of the Order on appeal, American Action Network risks further enforcement proceedings at the Commission or in district court. That is more than sufficient "injury" to provide it standing to appeal.

Importantly, the Commission's argument is limited to this moment in time. It does not dispute that American Action Network had standing during the first thirty days following the district court's issuance of the Order on appeal—before the Commission again dismissed the matter on remand and issued its new

statement of reasons to demonstrate that it had "conform[ed] with [the court's] declaration within 30 days" as ordered. *See CREW*, 2016 WL 5107018, at *12 (quoting 52 U.S.C. § 30109); *see also* Mot. at 13 (challenging standing only because "the American Action Network matter was again dismissed on remand"). And it concedes that American Action Network will have standing later if the pending "post-remand district court proceedings" subject American Action Network to further enforcement proceedings. *See id.* at 12 (stating that American Action Network is "not permanently barred from seeking this Court's review" of the Order on appeal). The Commission only disputes that American Action Network has standing right now.

But the Commission's recognition that American Action Network may be harmed in the future confirms that American Action Network has standing now. To be sure, American Action Network is currently the beneficiary of a favorable decision from the Commission. But American Action Network is also currently governed by the declaratory judgment that the district court entered. And even the Commission acknowledges that American Action Network may be subjected to further enforcement proceedings because that declaration reopened an investigation that had been closed. CREW has asked the district court to require further investigation of American Action Network both at the Commission and in an independent civil action filed pursuant to 52 U.S.C. § 30109(a)(8)(C). *See* Pls.

Mot. For An Order To Defendant Federal Election Commission To Show Cause, No. 1:14-cv-01419 (CRC), Dkt. No. 57 (Nov. 14, 2016); Compl. at 27-28, No. 1:16-cv-02255 (CRC), Dkt. No. 1 (Nov. 14, 2016). But for the Order on appeal, CREW would be barred from even asking for such relief.

American Action Network thus has standing for the same reason standing was found in *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312 (D.C. Cir. 2015). There, as here, the Commission challenged an organization's standing because it "currently faces no exposure to further enforcement proceedings before the FEC because it won a favorable ruling." *Id.* at 316. But there, as here, the only reason the organization did not "currently" face exposure to further proceedings was because that ruling was being challenged in pending litigation. *Id.* This Court recognized that the litigation meant that it was very much possible that the organization could "return to the position of a respondent subject to enforcement proceedings before a federal agency." *Id.* at 317. That possibility was "a significant injury in fact" that provided standing. *Id.* at 318.

So too here. American Action Network could "return to the position of a respondent subject to enforcement proceedings before a federal agency," *id.* at 317, because the Order on appeal invalidated a ruling that clearly and unequivocally found that American Action Network is not a political committee. American Action Network, therefore, has a significant and direct interest in defending that

ruling in this appeal and returning to the position that shielded it from all further litigation and liability. That is all that is required to provide American Action Network with standing. The Commission's challenge should be denied.

C. The Commission's Other Arguments Are Meritless.

1. These Cross-Appeals Are Not Moot.

The Commission argues in a footnote that this appeal may be moot because the statement of reasons issued on remand "supersedes the initial statement of reasons that was the subject of the district court opinion on appeal here." Mot. at 15 n.8. Of course, "[a] footnote is no place to make a substantive legal argument on appeal." *See CTS Corp. v. EPA*, 759 F.3d 52, 64 (D.C. Cir. 2014). But, footnote or not, the argument is meritless.

First, the Commission's claim that the second statement of reasons "supersedes" the first statement of reasons is not supported by the record. The district court did not vacate the first statement of reasons. Nor did the Commission state in its second statement of reasons that it was superseding the first statement of reasons. *See* Mot. Ex. 2. If anything, it did the opposite—it incorporated its first statement of reasons into the second statement of reasons, except for those portions deemed contrary to law by the district court. *See id.* at 2. Where amended pleadings are concerned, courts have held that a second pleading does not supersede the earlier pleading where it "specifically refers to and incorporates by

reference the earlier pleading." *McManus v. Williams*, 519 F. Supp. 2d 1, 5 (D.D.C. 2007) (citing cases). The same is true here—and distinguishes this case from those on which the Commission relies. In each, the second agency decision explicitly superseded the first. *See Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 71 (D.C. Cir. 2011) ("By its terms, the 2008 Record of Decision superseded the 2000 Record of Decision."); *Ctr. for Sci. in the Pub. Interest v. Regan*, 727 F.2d 1161, 1163 (D.C. Cir. 1984) ("The new rule rescinded [the prior rule].").

Second, even if the second statement of reasons did supersede the first, this case is not moot. A case only "becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" *Safari Club Int'l v. Jewell*, 842 F.3d 1280, 1287 (D.C. Cir. 2016) (citation omitted). The issues in this appeal remain very much alive. Regardless of what happened on remand, American Action Network continues to face the prospect of further enforcement proceedings and liability because of the Order on appeal.

Third, the Commission's mootness argument is particularly misplaced because it would deny jurisdiction in the precise circumstances that Congress intended for it to apply. Congress granted this Court jurisdiction over "any judgment" of the district court—including those that require the Commission to

conform to the district court's declaration within thirty days. 52 U.S.C. § 30109(a)(8)(C), (a)(9). A district court cannot insulate its judgment from review by ordering swift agency action. That result would render the issues in the appeal "capable of repetition, yet evading review"—and thus still live and subject to the Court's jurisdiction. *See, e.g.*, *Delta Air Lines, Inc. v. Civil Aeronautics Bd.*, 674 F.2d 1, 4 (D.C. Cir. 1982). The Commission's "suggestion" of mootness, Mot. at 15 n.8, must be rejected.

2. The Parties Did Not Concede That These Appeals Are Improper.

Finally, the Commission argues that American Action Network and CREW admitted that these "appeals are premature and improper" by filing a motion to hold this case in abeyance pending resolution of CREW's post-judgment motion. *See* Mot. at 2, 11. Not so. The motion merely alerts the Court to the potential for judicial efficiency; it does not (and cannot) deny this Court of the jurisdiction that it has been given to resolve this appeal.

And importantly, the Commission concedes that regardless of how this motion is resolved—and regardless of how the pending abeyance motion is resolved—the Court will have jurisdiction to review the Order at some juncture. *See* Mot. at 12. For reasons that American Action Network has detailed, the most efficient approach is to place this appeal in abeyance until CREW's post-judgment motion is resolved—something that the Court can do even before resolving this

motion. *See* American Action Network's Reply in Support of Motion to Hold Case in Abeyance (Dec. 8, 2016) (Doc. #1650126). The Court could also set this case for briefing and argument now, as its jurisdiction is sure. But, even if the Court were to grant the Commission's motion to dismiss, it should do so with the express clarification that American Action Network retains its right to challenge the errors in the Order on appeal.

III. CONCLUSION

For the foregoing reasons, the Court should deny the Commission's motion to dismiss for lack of jurisdiction.

Respectfully submitted,

/s/ Claire J. Evans

Claire J. Evans
Jan Witold Baran
Caleb P. Burns
Stephen J. Kenny
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
Tel.: 202.719.7000
Fax: 202.719.7049

January 23, 2017

Counsel for American Action Network

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

I hereby certify, on this 23rd day of January, 2017, that:

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. 32(f), this document contains 4,251 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. 32(a)(6) because this document was prepared in a proportionally spaced typeface using Microsoft Word 2010 in a 14-point Times New Roman font.

/s/ Claire J. Evans
Claire J. Evans

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2017, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, thereby serving all persons required to be served.

/s/ Claire J. Evans
Claire J. Evans