STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 009498

GAJENDRA SINGH, M.D., and FORSYTH IMAGING CENTER, LLC,

Plaintiffs,

v.

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROY COOPER, Governor of the State of North Carolina, in his official capacity; MANDY COHEN, North Carolina Secretary of Health and Human Services, in her official capacity; PHIL BERGER, President Pro Tempore of the North Carolina Senate, in his official capacity; and TIM MOORE, Speaker of the North Carolina House of Representatives, in his official capacity,

Defendants.

BRIEF OF THE JOHN LOCKE FOUNDATION IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

The John Locke Foundation, as *Amicus Curiae*, hereby submits this brief in opposition to Defendants' Motion to Dismiss.

STATEMENT OF INTEREST

The John Locke Foundation was founded in 1990 as an independent, nonprofit think tank. We employ research, journalism, and outreach to promote our vision for North Carolina—of responsible citizens, strong families, and successful communities. We are committed to individual liberty and limited, constitutional government.

The John Locke Foundation has opposed North Carolina's Certificate of Need (CON) law for many years, not only because it is unconstitutional and violates the rights of North Carolinians, but also because it directly harms patients and taxpayers by making health care more expensive and less accessible. We therefore have an interest in presenting to this court the best and latest research pertaining to the questions presented in this case, including whether the CON law serves the public interest, whether it is rationally related to a legitimate legislative purpose, and whether the exclusive privilege it grants to a small number of medical service providers violates the North Carolina Constitution. The research we will present concerns, among other things, the origin, meaning, and application of the Constitution's Anti-Monopoly Clause, and the deleterious effect of CON laws on the economy and on public health.

ARGUMENT

In their Motion to Dismiss, Defendants begin their argument by stating, "To dispose of this case, the court need look no further than *Hope—A Women's Cancer Ctr., P.A. v. State*." (Defs.' Br. 3 (referring to 203 N.C. App. 359, 693 S.E.2d 673, *disc. review denied*, 364 N.C. 614, 754 S.E.2d 166 (2010)).) Defendants also state, "Plaintiffs lack standing to bring this case," and, "Plaintiffs cannot show the CON law is unconstitutional." (*Id.* 5, 7.)

As explained below, all three of these statements are false. Neither *Hope*, nor any of the other cases cited by Defendants, provides a sufficient basis for dismissing this case. Plaintiffs have suffered—and, unless the requested relief is granted, will continue to suffer—direct injury as a result of the enforcement of North Carolina's CON law. Each of Plaintiffs' constitutional claims is supported by law, and each states a claim for which relief may be granted.

I. PLAINTIFFS HAVE STANDING TO BRING THIS CASE.

In *Hope*, the Court of Appeals denied standing for one of the plaintiffs' claims because they "had not applied for a CON or filed a petition for a contested case hearing." *Hope*, *supra*, 203

N.C. App. at 608, 673 S.E.2d at 683. Defendants argue that Plaintiffs should be denied standing in the present case for the same reason, but this argument is specious for several reasons.

In *Hope*, the plaintiffs challenged the CON law on *three* counts and were denied standing for only one, namely, that "the exemption of CON law decisions from certain provisions of the APA, which provide for review of agency decisions" violated their constitutional right of access to the courts. *Id.* In the present case, however, Plaintiffs do not claim that "the procedures which the General Assembly has provided for review of CON decisions are inadequate." *Id.* Indeed, they do not raise an Article I, Section 18 challenge at all. Instead, they claim the entire CON law regime—including the certificate of need requirement itself—violates Sections 19, 32, and 34 of Article I.

Denying Plaintiffs standing to seek relief for the constitutional violations they *actually* allege on the basis of a Court of Appeals holding regarding a constitutional violation *they do not* allege would be profoundly unjust. In 2018, when Plaintiffs filed their Complaint, all the approved CONs for fixed MRI scanners in Forsyth County were taken. Plaintiffs were, therefore, "categorically banned" from purchasing a CON at that time. (Compl. ¶¶ 163-164.) Moreover, while it is true that, subsequent to the filing of the Complaint, the Department of Health and Human Services decided to make on additional CON available, the cost of attempting to obtain that CON would be prohibitive. In their Complaint, Plaintiffs estimate the total cost of filing a CON application and litigating it through to completion at "close to half a million dollars." (*Id.* ¶ 168.) They also state that, "Dr. Singh could purchase (or lease with an option to purchase) a refurbished MRI scanner for under $750,000." (*Id.* ¶ 134.)

A small, independent provider of low-cost medical services cannot afford to spend $500,000 competing with large, well-heeled health care conglomerates for the privilege of buying a $750,000 piece of equipment, and the fact that the CON erects such an absurd and unfair financial

barrier is part of what makes it unconstitutional. Denying Plaintiffs standing to complain about that barrier because they have not bankrupted themselves trying to surmount it would mean that only large, well-heeled health care conglomerates could afford to defend their constitutional rights. Ironically, that really would deny access to the courts for Plaintiffs and other small, independent health care providers.

II. PLAINTIFFS' CONSTITUTIONAL CLAIMS ARE SUPPORTED BY LAW.

As noted above, Defendants assert that, "Plaintiffs cannot show the CON law is unconstitutional." (Defs.' Br. 7.) In support of that assertion, they attempt to show—sometimes, but not always, citing *Hope* as authority—that the CON law does not, in fact, violate Plaintiffs' constitutional rights in any of the ways alleged in the Complaint. (Defs.' Br. 7-13.) While Defendants' arguments defending the CON law are presented on their merits, their purpose, presumably, is to show, *as a matter of law*, that each of Plaintiffs' claims must necessarily fail under any tenable legal theory. In fact, however, none of Plaintiffs' constitutional claims fails as a matter of law.

A. Plaintiffs' Anti-Monopoly Clause does not fail as a matter of law.

North Carolina's original CON law was enacted in 1971. 1971 N.C. Sess. Laws 1715. In 1973, the N.C. Supreme Court found that the law "establish[ed] a monopoly in the existing health care providers contrary to the provisions of Article I, 34 of the Constitution of North Carolina." *In re Certificate of Need for Aston Park Hosp., Inc.*, 282 N.C. 542, 551, 193 S.E. 2d 729, 736 (1973). The current CON law establishes exactly the same kind of monopoly in existing health care providers, and, since the present case is the first to challenge the current law on the basis of the Anti-Monopoly Clause since the *Aston Park* decision was handed down, the Supreme Court's holding in that case governs.

Surprisingly, Defendants do not mention *Aston Park* in their discussion of Plaintiffs' Anti-

Monopoly Clause claim. They do not mention the Court of Appeals' decision in *Hope* either, presumably because, in *Hope*, the plaintiffs did not raise an Anti-Monopoly Clause challenge and the Court of Appeals did not consider the issue. Instead, Defendants cite *State v. Atlantic Ice and Coal Co.*, 210 N.C. 742, 747-48, 188 S.E.2d 412, 415 (1936), *American Motors Sales Corp. v. Peters*, 311 N.C. 311, 317 S.E.2d 351 (1984), and *Madison Cablevision, Inc. v. Morganton*, 325 N.C. 634, 386 S.E.2d 200 (1989). (Defs.' Br. 8 & 9.) In the context of the present case, however, those holdings are irrelevant because the monopolies alleged in those cases were different in kind from the monopoly alleged in *Aston Park* and in the present case.

In *Atlantic Ice and Coal* and *American Motor Sales*, the Court considered the question of whether, and how, the Anti-Monopoly Clause applies to businesses that have achieved monopoly power through success in the market place. In *Madison Cablevision* it considered the question of whether, and how, the clause applies to a city's decision to operate its own cable television service. These are interesting questions, and the fact that they arose at all demonstrates how much the meaning of the word "monopoly" has evolved over the years. However, neither of those questions arises in the present case, and the definitions and standards that the Court applied in those cases are therefore irrelevant.

In 1776, when the Anti-Monopoly Clause was originally added to the state constitution, the word "monopoly" meant, specifically, an exclusive privilege granted to one or more private parties by the state, and the Anti-Monopoly Clause was originally added to the state constitution for the precise purpose of forbidding such monopolies. Despite the semantic changes that have occurred since 1776, "an exclusive privilege granted by the state" continues to be a standard meaning of the word "monopoly," and the Anti-Monopoly Clause continues to forbid the state

from granting such privileges.[1] The North Carolina Supreme Court acknowledge all of this in *State v. Harris*:

> Monopoly, as originally defined, consisted in a grant by the sovereign of an exclusive privilege to do something which had theretofore been a matter of common right. The exclusion of others from such common right is still considered a prominent feature of monopoly, and the consequent loss to those excluded of opportunity to earn a livelihood for themselves and their dependents ... has been considered the prime reason for the public policy then adopted into the Constitution. *State v. Harris*, 216 N.C. 746, 761, 6 S.E.2d 854, 864 (1940).

Defendants might wish to argue that, despite the straightforward applicability of the Anti-Monopoly Clause, the legislative findings appended to the new CON law are sufficient grounds for dismissing Plaintiffs' Anti-Monopoly Clause claim. That argument fails for a number of reasons,[2] including this: as Defendants themselves acknowledge, the rational basis test only applies where "the right allegedly infringed upon is not a fundamental right." (Defs.' Br. 12.) In the Anglo-American legal tradition, the right to earn a living by engaging in a lawful occupation is, and has always been, regarded as fundamental.[3] Plaintiffs' attempt to defend that right under the North Carolina Constitution cannot be summarily dismissed on the basis of the Court of Appeals' rational basis review in *Hope*. This court must conduct its own review under a standard appropriate for a fundamental right.

B. Plaintiffs' Exclusive Emoluments Clause does not fail as a matter of law.

All of the arguments provided in the preceding discussion of Plaintiffs' Anti-Monopoly Clause claim also apply to their claim under the Exclusive Emoluments Clause. In addition to finding that the CON requirement established "a monopoly in the existing hospitals contrary to Article I, 34 of the Constitution of North Carolina," in *Aston Park* the Supreme Court also found

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[1] Jon Guze, *North Carolina's Anti-Monopoly Clause: Still Relevant After All These Years*, 2 POLITICAL ECONOMY IN THE CAROLINAS. 102 (2019). See, also, Steven G. Calabresi & Larissa Leibowiz, *Monopolies and the Constitution: A History of Crony Capitalism*, 36 HARV. J. L. & PUB. POL.. 984 (2013).
[2] See, *infra* at 8.
[3] Timothy Sandefur, *The Right to Earn a Living*, CATO INSTITUTE. (2010).

that that the CON requirement was "a grant to them of exclusive privileges forbidden by Article I, 32." *Aston Park*, *supra*, 282 N.C. at 551, 193 S.E. 2d at 736. The new CON law grants exactly the same kind of exclusive privileges, and, since the present case is the first to challenge the current law on the basis of the Exclusive Emoluments Clause since the *Aston Park* decision was handed down, the Supreme Court's holding in that case governs.

As with Plaintiffs' Anti-Monopoly Clause claim, Defendants do not deal with the Supreme Court's *Aston Park* holding in their discussion of the Exclusive Emoluments claim, nor do they cite the Court of Appeals' decision in *Hope*. Instead, they cite *Lowe v. Tarble*, 312 N.C. 467, 323 S.E.2d 19 (1984), and *Town of Emerald Isle by and through Smith v. State*, 320 N.C. 640, 360 S.E.2d 756 (1987). However, in these cases the Supreme Court dealt with issues that are far removed from the issues raised in the present case. In *Lowe v. Tarble*, the issue was whether a law treating uninsured defendants differently from those with liability insurance granted an exclusive emolument to the latter. In *Emerald Isle v. State*, the question was whether an act prohibiting motor vehicle access adjacent to public beach access facilities granted an exclusive emolument to the owners of beachfront property in the vehicle-free area.

In the present case, Plaintiffs claim that North Carolina's CON law grants an exclusive emolument to the health care conglomerates that hold the existing CONs. That claim cannot be dismissed as a matter of law on the basis of the tenuously related precedents cited by Defndants. *Aston Park* is the governing precedent, and, under *Aston Park*, Plaintiffs have unquestionably stated a claim for which relief may be granted.

C. Plaintiffs' due process claim does not fail as a matter of law.

While the plaintiffs in *Hope* did not challenge the CON law on the basis of the Anti-Monopoly or Exclusive Emoluments Clauses, they did claim it violated their right to due process under Article I, § 19. When the Court of Appeals considered that claim, it found that the legislative

findings appended to the CON law were sufficient on their face to meet the rational basis standard of enquiry that, it held, is appropriate for due process claims. *Hope*, *supra*, 203 N.C. App. at 605, 673 S.E.2d at 681. Defendants argue that the court's rational basis analysis in *Hope* should suffice to dispose of the present case (Defs.' Br., 14.), but that argument fails for two reasons.

First, as Plaintiffs note in their Complaint, the underlying rationale for the CON law ceased to apply in the mid-1980s. While the hospital associations and other interested parties had their own reasons to support it, the 1978 CON law was initially predicated on two facts about federal health care law: the fact that the cost-plus system used for Medicare and Medicaid reimbursements encouraged an over-provision of medical services, and the fact that—in a ham-fisted attempt to discourage over-provision—Congress had passed the National Health Planning and Resource Development Act (NHPRDA) which required states to adopt CON laws in order receive federal funding. (Compl., ¶¶ 63-67.) However, the adoption of a fixed fee-for-service system for Medicare and Medicaid reimbursement in 1984, and the repeal of NHPRDA in 1986, completely undermined the CON law's rationale. (*Id.* ¶¶ 68-71). In *Hope*, the Court of Appeals did not take notice of these changes, presumably because the defendants did not enter them into the record. In the present case, however, Plaintiffs *have* called the court's attention to these changes, and it must, therefore, take those changes into consideration as it conducts its own analysis.

Also requiring judicial notice and consideration is an abundance of new evidence showing the deleterious economic and public health effects of CON laws, much of which has only become available since *Hope* was decided in 2010. For the court's convenience, citations to and summaries of the studies that make up this new evidence are provided in an Appendix. As the court will see, these studies thoroughly rebut the legislative findings that the Court of Appeals relied on in *Hope* and make a mockery of the suggestion that the CON law is rationally related to a legitimate public purpose.

Defendants would no doubt urge the court to ignore this evidence and simply defer to the legislature's unsupported assertion that limiting the number of medical service providers is an effective and necessary way to reduce the cost and improve the availability of medical care. However, judicial deference does not mean abject, unquestioning servility. A pro forma listing of implausible legislative findings cannot permanently immunize legislation against judicial scrutiny, especially when, as in this case, fundamental constitutional rights and public health are at stake. As circumstances change, and as new factual evidence accumulates, the time must come when those changed circumstances and that new evidence become sufficient to overcome a presumption of constitutionality based solely on decades-old legislative findings. In the case of North Carolina's Certificate of Need law, that time is now.

D. Plaintiffs' equal protection claim does not fail as a matter of law.

All of the arguments provided in the preceding discussion of Plaintiffs' due process claim also apply to their equal protection claim. As explained above, this court has been presented with evidence that was not before the *Hope* court when it conducted its rational basis review. That evidence shows that the original rationale for the CON law no longer applies and thoroughly refutes the legislative findings that the *Hope* court relied upon in its analysis. It therefore behooves this court conduct its own review based on the evidence before it—evidence that proves beyond doubt that the CON law harms the public by making health care more expensive and less accessible. Plaintiffs' right to provide MRI services on equal legal terms with the large health care conglomerates in Forsyth County cannot be dismissed without taking that evidence into consideration.

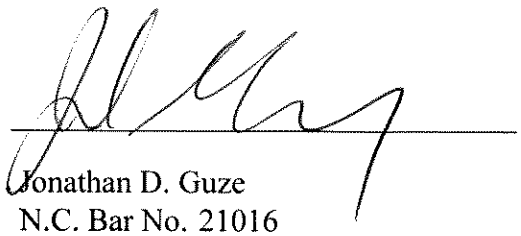
CONCLUSION

As shown above—and contrary to what Defendants argue in their Brief—Plaintiffs *do* have standing to bring this case, their challenges to North Carolina's CON law *do not* fail as a

matter of law. Accordingly, Defendants' Motion to Dismiss should be denied in its entirety.

This the 30th day of September, 2019.

JOHN LOCKE FOUNDATION

By: 

Jonathan D. Guze
N.C. Bar No. 21016

4800 Six Forks Rd, Suite 220
Raleigh, NC 27609
Office: 919-828-3876
Mobile: 919-375-2021
Fax: 919-821-5117
Email:jguze@johnlocke.org

APPENDIX

CON LAW STUDIES: 2010-2019

Susan L. Averett, Sabrina Terrizzi, and Yang Wang, *Taking the CON out of Pennsylvania: Did Hip and Knee Replacement Patients Benefit?,* (IZA Inst. of Labor Econ., Discussion Paper No. 10917, July 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3029787 (finding no adverse effects on cost or quality when CON laws expired in PA).

James Bailey, *Does "Excess Supply" Drive Excess Health Spending? The Case of Certificate-of-Need Laws,* 33(4) JOURNAL OF PRIVATE ENTE. 91, (2018), available at http://journal.apee.org/index.php?title=2018_Journal_of_Private_Enterprise_Vol_33_No_4_Winter_parte5 (finding that supply restrictions lead to price increases even in relatively price inelastic markets like healthcare).

Matthew C. Baker and Thomas Stratmann, *Are Certificate-of-Need Laws Barriers to Entry? How They Affect Access to MRI, CT, and PET Scans,* MERCATUS CENTER (GEORGE MASON UNIV.), Jan. 2016, available at https://www.mercatus.org/system/files/Stratmann-CON-Barriers-to-Entry.pdf (documenting that patients in CON states utilize fewer imaging services, are more likely to travel across state-lines for services due to higher costs or restricted access to care).

Matthew C. Baker and Thomas Stratmann, *Barriers to Entry in the Health Care Markets: Winners and Losers from Certificate-of-Need Laws,* MERCATUS CENTER (GEORGE MASON UNIV.), 2017, available at https://www.mercatus.org/system/files/stratmann-barriers-to-entry-con-wp-mercatus-v1.pdf (states with CON laws "demonstrate less market entry and lower market penetration of nonhospital and new hospital providers than do states that do not have those laws.").

Joel C. Cantor et al., *Effects of Regulation and Competition on Health Care Disparities,* 34 (1), J. HEALTH POL. POL'Y & L. 63-91, (2009), available at https://read.dukeupress.edu/jhppl/article-abstract/34/1/63/63740/Effects-of-Regulation-and-Competition-on-Health?redirectedFrom=fulltext (increased hospital capacity through CON reform led to a large reduction in racial disparity).

Zack Cooper et al., *The Price Ain't Right? Hospital Prices and Health Spending on the Privately Insured,* 2-38 (Nat'l Bureau of Econ. Research, Working Paper No. 21815, 2015), available at https://www.nber.org/papers/w21815.pdf ("Prices at monopoly hospitals are 12 percent higher than those in markets with four or more rivals.").

Scott Eastman, Christopher Koopman, and Thomas Stratmann, *Certificate-of-Need Laws and North Carolina: Rural Health Care, Medical Imagining, and Access,* MERCATUS CENTER (GEORGE MASON UNIV.), May 2016, available at https://www.mercatus.org/system/files/Koopman-CON-Rural-North-Carolina-MOP-v1.pdf (applying empirical data to NC to demonstrate reduced access to care [particularly in rural communities] and increased out-of-state travel for health services).

Mohamad Elbarasse, Christopher Koopman, and Thomas Stratmann, *Certificate-of-Need Laws: Implications for Georgia,* MERCATUS CENTER (GEORGE MASON UNIV.), Mar. 2015, available at https://www.mercatus.org/system/files/Koopman-Certificate-of-NeedGA-MOP.pdf (in Georgia, "these programs could mean approximately 13,227 fewer hospital beds, between 20 and 40 fewer hospitals offering magnetic resonance imaging (MRI) services, and between 50 and 71 fewer hospitals offering computed tomography (CT) scans.").

Omar Galarraga et al., *The Impact of Certificate-of-Need Laws on Nursing Home and Home Health Care Expenditures,* 73 (1) MED CARE RES. REV. 85-105, (2016), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4916841/ (noting CON states experienced faster Medicare and Medicaid spending growth on nursing homes than non-CON states).

David Grabowski, *Nursing Home Certificate-of-Need Laws Should be Repealed,* HEALTH AFFAIRS, Jun. 9, 2017, https://www.healthaffairs.org/do/10.1377/hblog20170609.060529/full/ (CON laws stifle innovation for "...a sector badly in need of modernization.").

Christopher Koopman and Thomas Stratmann, *Entry Regulation and Rural Health Care: Certificate-of-Need Laws, Ambulatory Surgical Centers, and Community Hospitals,* MERCATUS CENTER (GEORGE MASON UNIV.), Feb. 2016, available at https://www.mercatus.org/system/files/Stratmann-Rural-Health-Care-v1.pdf (indicating CON states have 30% fewer rural hospital, and 13% fewer rural ambulatory surgical centers, per capita).

Matthew D. Mitchell, *Do Certificate-of-Need Laws Limit Spending?,* MERCATUS CENTER (GEORGE MASON UNIV.), Sept. 2016, available at https://www.mercatus.org/system/files/mercatus-mitchell-con-healthcare-spending-v1a.pdf (summarizing four decades of empirical data and economic reasoning that shows CON has failed to lower costs, and if anything, raises them).

Matthew D. Mitchell, *The Health Care Laws You Should be Paying Attention to (and Probably Aren't),* MERCATUS CENTER (GEORGE MASON UNIV.), Nov. 30, 2016, available at https://www.mercatus.org/%5Bnode%3A%5D/commentary/health-care-laws-you-should-be-paying-attention-and-probably-arent (review of 20 academic studies reveals no evidence CON laws reduce spending, and the majority associated them with higher expenditures).

Maureen K. Ohlhausen, *Certificate-of-Need Laws: A Prescription for Higher Costs,* 30 (1) ANTITRUST (AM. BAR. ASS'N), Fall 2015, available at https://www.ftc.gov/system/files/documents/public_statements/896453/1512fall15-ohlhausenc.pdf (about cross-subsiding indigent care - "Because the cost of CON laws is never disclosed or even evaluated, this informal and imprecise funding mechanism violates fundamental norms of good government.").

Katherine Restrepo, *The Case Against CON: A Law that Prevents Healthcare Innovation,* 468 JOHN LOCKE FOUNDATION (Jun. 3, 2015), available at https://www.johnlocke.org/research/the-case-against-con-a-law-that-prevents-health-care-innovation/(lifting restrictions on gastroenterology in 2005 produced $224 million in Medicare savings over six years). (operating room demand has been supplemented with procedure rooms, skewing perception of their demand and thus "need"). (high out-patient traffic in rural counties

could be served by opening ambulatory surgical centers, currently restricted under CON).

Jordan Roberts, *Reforming North Carolina's Certificate-of-Need Laws,* JOHN LOCKE FOUNDATION, Apr. 12, 2019 https://www.johnlocke.org/update/reforming-north-carolinas-con-laws/ (diagnostic centers, ambulatory surgical centers among CON restricted services that would pose cheaper alternatives to hospitals).

Timothy Sandefur, *CON Job,* 34 (2) REGULATION 42, (2011), available at https://www.questia.com/magazine/1G1-261729721/con-job-state-certificate-of-necessity-laws-protect (highlighting explicit and implicit costs resulting from CON law enforcement).

Jon Sanders, *Certified: The Need to Repeal CON,* 445 JOHN LOCKE FOUNDATION (Oct. 25, 2013), available at https://www.johnlocke.org/app/uploads/2016/06/Spotlight445CON.pdf (NC has some of the most restrictive CON laws in the country, only 23 out of 100 counties have more than one hospital and 17 still don't have any).

Darpana Sheth and Thomas Stratmann, *Health Care Cartels Limit Americans' Options,* MERCATUS CENTER (GEORGE MASON UNIV.), Oct. 14, 2014, available at https://www.mercatus.org/expert_commentary/health-care-cartels-limit-americans-options (maintaining CON limits access to innovative and life-saving medical advancements such as virtual colonoscopies).

Thomas Stratmann, *The Failure of Alaska's Certificate-of-Need Laws,* MERCATUS CENTER (GEORGE MASON UNIV.), Apr. 7, 2017, available at https://www.mercatus.org/publications/corporate-welfare/failure-alaska's-certificate-need-laws (using empirical data, shows Alaskans have reduced access to healthcare and imaging services because of CON).

Thomas Stratmann and Jacob W. Russ, *Do Certificate-of-Need Laws Increase Indigent Care?,* (Mercatus Center at George Mason Univ., Working Paper No. 14-20, 2014), available at https://www.mercatus.org/system/files/Stratmann-Certificate-of-Need.pdf (CON states requiring charitable care offerings do not have higher rates of uncompensated care compared to Non-CON states).

Thomas Stratmann and David Wille, *Certificate-of-Need Laws and Hospital Quality,* MERCATUS CENTER (GEORGE MASON UNIV.), Sept. 2016, available at https://www.mercatus.org/system/files/mercatus-stratmann-wille-con-hospital-quality-v1.pdf ("We find that nearly all the quality measures [8 out of 9] are statistically significantly worse in CON states than in non-CON states.").

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day a copy of the foregoing Brief in Oppostion to Defendants' Motion of Dismiss was served on the following electronically and via United States Mail, First Class postage pre-paid, and addressed as follows:

Derek L. Hunter
John H. Schaeffer
Attorney General's Office
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
Email:dhunter@ncdoj.gov

Gary S. Qualls
Susan K. Hackney
Steven G. Pine
K&L Gates, LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560
Email: gary.qualls@klgates.com

Joshua A. Windham, Esquire
Renee D. Flaherty, Esquire
Institute for Justice
901 North Glebe Road, Suite #900
Arlington, VA 22203
Email: jwindham@ij.org

Emily Grace Watson, Attorney at Law
6255 Town Center Drive, Suite 840
Clemmons, NC 27012
Email: emily.watson.esquire@icloud.com

Kenneth L. Burgess
S. Todd Hemphill
Poyner & Spruill, LLP
P.O. Box 389
Raleigh, NC 27602
Email: kburgess@poynerspruill.com

Marcus Hewitt
Troy Shelton
Fox Rothschild, LLP
P.O. Box 27525
Raleigh, NC 27611
Email: mhewitt@foxrothschild.com

Matthew W. Wolfe
Robert A. Leandro
Parker Poe Adams & Bernstein, LLP
P.O. Box 1801
Raleigh, NC 27602
Email: mattwolfe@parkerpoe.com

John E. Branch, III, Esquire
Shanahan McDougal, PLLC
128 E. Hargett Street, Suite #300
Raleigh, NC 27601
Email: JBranch@shanahanlawgroup.com

This the 30th day of September, 2019.

JOHN LOCKE FOUNDATION

By: _____

Jonathan D. Guze
N.C. Bar No. 21016

4800 Six Forks Rd, Suite 220
Raleigh, NC 27609

Office: 919-828-3876
Mobile: 919-375-2021
Fax: 919-821-5117
Email: jguze@johnlocke.org