No. 12-17808

In the United States Court of Appeals for the Ninth Circuit

GEORGE K. YOUNG, JR.,

Plaintiff-Appellant,

v.

STATE OF HAWAII, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Hawaii,
Case No. 1:12-cv-00336-HG-BMK (Hon. Helen W. Gillmor)

BRIEF AMICUS CURIAE OF THE NEW CIVIL LIBERTIES ALLIANCE IN SUPPORT OF PLAINTIFF-APPELLANT AND AFFIRMANCE OF THE PANEL DECISION

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CORPORATE DISCLOSURE STATEMENT AND FED. R. APP. P. 29(a)(4)(E) STATEMENT

The New Civil Liberties Alliance is a 501(c)(3) nonprofit organization organized under the laws of the District of Columbia. It has no parent corporation and no publicly held corporation owns ten percent or more of its stock.

All parties were timely notified and consented to the filing of this brief. No counsel for a party authored any part of this brief. No one other than amicus curiae, its members, or its counsel financed the preparation or submission of this brief.

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INTEREST OF AMICUS CURIAE

The New Civil Liberties Alliance (NCLA) is a nonpartisan, nonprofit civil rights organization and public-interest law firm. Professor Philip Hamburger founded NCLA to challenge multiple constitutional defects in the modern administrative state through litigation, *amicus curiae* briefs, and other advocacy.

The "civil rights" of the organization's name include rights at least as old as the U.S. Constitution itself, such as the due process of law, jury trial, and the right to live under laws made by the nation's elected lawmakers through constitutionally prescribed channels. Yet these selfsame rights are also very contemporary—and in dire need of renewed vindication—precisely because Congress, federal administrative agencies, and even courts have neglected them for so long.

NCLA aims to defend civil liberties—primarily by asserting constitutional constraints on the modern administrative state. Although Americans still enjoy the shell of their Republic, a very different sort of government has developed within it—a type, in fact, that the Constitution was designed to prevent. This unconstitutional state within the Constitution's United States is the focus of NCLA's concern.

In this instance, NCLA urges the *en banc* Court to reject the troubling line of thought expressed in the dissent from the panel opinion. First, federal courts should decline to defer to the state administrators' interpretations of state statutes.[1] Second, federal courts should decline to give *Turner* factfinding deference to state legislatures'

[1] For the sake of brevity, this brief uses the phrase "state administrators" for all Defendants-Appellees-Petitioners, *viz.*, the state, its governor, its attorney general, the Hawaii local governments, and local-government officials.

speculations and predictions. Instead, federal courts should use all available traditional tools of statutory construction to interpret statutory text, and district courts or juries should perform their traditional factfinding function.

SUMMARY OF THE ARGUMENT

The majority and dissenting opinions disagreed as to whether the interpretation of the Second Amendment and of state statutes and regulations provided by state administrators is owed any deference by federal courts. The majority did not afford deference because it saw no "reasonable fit" between the statutory scheme and public safety; the dissent would afford deference because it would perceive such a reasonable fit. *Young v. Hawaii*, 896 F.3d 1044, 1073, 1076 (9th Cir. 2018). The *en banc* Court should decide that no deference is owed to the interpretations offered by state or local government litigants.

Furthermore, two months after the three-judge panel issued its decision, the state administrators issued new, clarifying regulations. *See* Rehearing Pet. at 1. The *en banc* Court should decline to defer to such a *post hoc* rationalization or change in the litigating position of state-government litigants.

In *Turner Broadcasting System Inc. v. FCC*, the Supreme Court concluded: "In reviewing the constitutionality of a statute, courts must accord substantial deference to the predictive judgments of Congress." 520 U.S. 180, 195 (1997). The panel majority criticized legislative factfinding deference; the panel dissent would defer under *Turner* to the state legislature's speculation that restricting open-carry permits will reduce gun violence. *Young*, 896 F.3d at 1073–74, 1082. The *en banc* Court should decline, like the panel majority did, to extend *Turner* deference and instead empower trial and appellate judges to use traditional tools of statutory construction and district courts or juries to perform their traditional factfinding function.

ARGUMENT

I. FEDERAL COURTS OWE NO DEFERENCE TO STATE ADMINISTRATORS' INTERPRETATIONS OF THE FEDERAL CONSTITUTION OR OF STATE STATUTES AND REGULATIONS

The panel majority called out the dissent's "willingness to defer entirely to the State regarding the constitutionality of section 134-9." *Young*, 896 F.3d at 1073 (citing Haw. Rev. Stat. § 134-9). The majority, instead, followed the proper methodology of looking at the original public understanding of the Second Amendment as well as invoking all available traditional tools of interpretation to determine the constitutionality of the challenged Hawaii statutes and regulations. The dissent's "willingness to defer" to state administrators' interpretations is disturbing, and the *en banc* Court should expressly reject it because such deference is unconstitutional on multiple levels.

The Supreme Court's deference doctrines such as *Chevron* or *Auer* apply, if at all, to interpretations of *federal* statutes or regulations offered by *federal* executive agencies.[2] Applying that deference framework to interpretations of the *federal* constitution and *state* statutes and regulations offered by *state* executive officials would be grave folly.

Such deference violates the Constitution for three separate and independent reasons. First, it requires federal judges to abandon their duty of independent judgment in violation of Article III and the judicial oath. Second, it violates the Due Process Clause by commanding judicial bias toward a litigant. Third, even if deference to federal-agency interpretations were sometimes justified under an implicit- or explicit-Congressional-

[2] *Chevron, U.S.A., Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837 (1984); *Auer v. Robbins*, 519 U.S. 452 (1997).

delegation theory, that justification is nonexistent when it comes to federal-court deference to state administrators' interpretations.

A. The Deference Framework Violates Article III by Requiring Judges to Abandon Their Duty of Independent Judgment

Doctrines of judicial deference such as *Chevron* and *Auer* compel judges to abandon their duty of independent judgment. The federal judiciary was established as a separate and independent branch of the federal government, and its judges were protected in their tenure and salary to shield their independent judgment from the influence of the political branches.

Despite these extraordinary measures, deference doctrines command Article III judges to abandon their independence by giving controlling weight to an agency's opinion of what a statute means—not because of the agency's persuasiveness, but rather based solely on the brute fact that the administrator has addressed the interpretive question before the Court. *See Michigan v. EPA*, 135 S. Ct. 2699, 2712 (2015) (Thomas, J., concurring) (quoting *Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1217 (2015) (Thomas, J., concurring)).

This abandonment of judicial responsibility has not been tolerated in any other context—and it should never be accepted by a truly independent judiciary. The deference doctrines allow a non-judicial entity to usurp the judiciary's power of interpretation, and then command judges to "defer" to the legal pronouncements of a supposed "expert" body entirely external to the judiciary.

Article III not merely empowers but requires independent judges to resolve "cases" and "controversies" that come before them. *See Cohens v. Virginia*, 19 U.S. 264,

404 (1821) ("We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution."). Article III makes no allowance for judges to abandon their duty to exercise their own independent judgment, let alone to rely upon the judgment of entities that are not judges and do not enjoy life tenure or salary protection.

To be clear, there is nothing at all wrong or constitutionally problematic about a federal court that considers a state agency's interpretation and gives it weight according to its persuasiveness. *See, e.g.*, *Tetra Tech EC, Inc. v. Wisconsin Dep't of Revenue*, 914 N.W.2d 21, 53 (Wis. 2018) (noting "administrative agencies can sometimes bring unique insights to the matters for which they are responsible" but that "does not mean we should defer to them"). An agency is entitled to have its views heard and considered by the court, just as any other litigant or *amicus*, and a court may and should consider the "unique insights" an agency may bring on account of its expertise and experience. *Id.* "'[D]ue weight' means 'respectful, appropriate consideration to the agency's views' while the court exercises its independent judgment in deciding questions of law"—due weight "is a matter of persuasion, not deference." *Id.*

Recognizing an argument's persuasive weight does not compromise a court's duty of independent judgment. But the deference doctrines require far more than respectful consideration of an agency's views; they command that courts give weight to those views simply because the agency espouses them, and they instruct courts to subordinate their own judgments to the views preferred by the agency. The Article III duty of independent judgment allows (indeed, requires) courts to consider an agency's views and to adopt them *when persuasive*, but it absolutely forbids a regime in which courts

"defer" or give automatic and controlling weight to a non-judicial entity's interpretation of statutory language—particularly when that interpretation does not accord with the court's sense of the best interpretation.

B. Deference Doctrines Violate the Due Process Clause by Requiring Judges to Show Bias in Favor of Agencies

A related and equally serious problem with deference doctrines like *Chevron* and *Auer* is that they require the judiciary to display systematic bias in favor of agencies whenever they appear as litigants. *See generally* Philip Hamburger, Chevron *Bias*, 84 Geo. Wash. L. Rev. 1187 (2016). It is bad enough that a court would abandon its duty of independent judgment by "deferring" to a non-judicial entity's interpretation of a statute. But for a court to abandon its independent judgment in a manner that favors an actual *litigant* before the court is worse. The Supreme Court has held that even the *appearance* of potential bias toward a litigant violates the Due Process Clause. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Masterpiece Cake Shop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1734 (2018) (Kagan, J., concurring) (agreeing that the Constitution forbids adjudicatory proceedings that are "infected by … bias"); *Mayberry v. Pennsylvania*, 400 U.S. 455, 469 (1971) (Harlan, J., concurring); *Com. Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 150 (1968) (courts "not only must be unbiased but also must avoid even the appearance of bias"); *Tumey v. Ohio*, 273 U.S. 510, 532 (1927) ("Every procedure" that might lead a judge "not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.").

Yet deference doctrines institutionalize a regime of systematic judicial bias, by requiring courts to "defer" to agency litigants whenever a disputed question of law

arises. Rather than exercise their own judgment about what the law is, judges defer to the judgment of one of the litigants before them.

A judge who openly admitted that he or she accepts a government-litigant's interpretation of a statute whenever it is "reasonable"—and that he or she automatically rejects any competing interpretations that might be offered by the non-government litigant—would ordinarily be impeached and removed from the bench for exhibiting bias and abusing power. Yet this is exactly what judges do whenever they defer to a government litigant's position under *Chevron*. The government litigant wins simply by showing that its preferred interpretation of the statute is "reasonable" even if it is wrong—while the opposing litigant gets no such latitude from the court and must show that the government's view is not merely wrong but *unreasonably* so.

Judges take an oath to "administer justice without respect to persons" and to "faithfully and impartially discharge and perform all the duties incumbent upon me," and judges are ordinarily very careful to live up to these commitments. 28 U.S.C. § 453. Nonetheless, under the deference doctrines, otherwise scrupulous judges who are sworn to administer justice "without respect to persons" must remove the judicial blindfold and tilt the scales in favor of the government's position.

Though the deference doctrines involve an institutionally imposed bias rather than personal prejudice, the resulting partiality is inescapable. Deference doctrines like *Chevron* require judges systematically to favor an agency's statutory interpretations over those offered by opposing litigants. And lower court judges are forced to give up their duty of impartiality. Unsurprisingly, many federal judges are openly skeptical of such deference doctrines. Abbe R. Gluck & Richard Posner, *Statutory Interpretation on the Bench:*

A Survey of Forty-two Judges on Federal Courts of Appeal, 131 Harv. L. Rev. 1298, 1300 (2018) ("Most of the judges we interviewed are not fans of *Chevron*[.]").

In short, no rationale can defend a practice that weights the scales in favor of a *government* litigant—the most powerful of parties—and that commands systematic bias in favor of the government's preferred interpretations of federal statutes. Whenever deference is given in a case in which the government is a party, the courts are denying due process by showing favoritism to the government's interpretation of the law. *See Tetra Tech*, 914 N.W.2d at 50 (prohibiting *Chevron*-style deference in the Wisconsin state courts because its "systematic favor deprives the non-governmental party of an independent and impartial tribunal"). Other states have joined the chorus in rejecting *Chevron*-style deference at the state level. Ariz. Rev. Stat. § 12-910(E) (amended in 2018 to forbid deferential judicial review for questions of law); *Myers v. Yamato Kogyo Co. Ltd.*, 597 S.W.3d 613 (Ark. 2020) (rejecting "great deference"; courts decide all questions of law *de novo*); *King v. Mississippi Military Dep't*, 245 So.3d 404 (Miss. 2018) (rejecting deference to agency interpretations of statutes).

C. The *En Banc* Ninth Circuit Has No Occasion to Defer to the State Administrators' Interpretations in this Case

The state administrators are not just interpreting state statutes and regulations in this case, they are also interpreting the scope of the Second Amendment. The panel dissent's "willingness to defer entirely to the State regarding the constitutionality of section 134-9," is all the more troubling in this context. *Young*, 896 F.3d at 1073. That is because the delegation and ambiguity rationales do not work in the situation presented here. Moreover, the government litigant has changed its litigating position mid

litigation, which is one more reason to deny deference. Also, it is not clear whether state courts would defer to the state administrators' interpretations of the federal constitution.

Defenders of deference have tried to avoid the independent-judgment and bias problems by pretending that the underlying statute authorizes the agency to choose from among a menu of "reasonable" options, thereby creating an "implied delegation" of lawmaking authority that binds subsequent judicial decisionmaking. *See Chevron*, 467 U.S. at 844; *see also* Kenneth W. Starr, *Judicial Review in the Post*-Chevron *Era*, 3 Yale J. on Reg. 283, 308–09 (1986). They cannot so pretend in the situation presented here.

It would be absurd to justify deference in this case based on the theory that the Constitution or Congress expressly or impliedly delegated interpretive authority over the scope of the Second Amendment to state administrators. There is no excuse to fall back on the delegation-theory fiction in this case. When it comes to federal-agency interpretations, from the delegation-theory perspective, a court is not actually deferring to an agency's interpretation of a statute. Instead, the court interprets the statute broadly to vest the agency with discretion to choose among multiple different policies, which makes the agency's choice conclusive and binding on the courts. This notion supposedly enables "deference" to coexist with the judicial duty of independent judgment, and it is often invoked to reconcile *Chevron* or *Auer* with § 706 of the Administrative Procedure Act and *Marbury v. Madison*'s pronouncement that "it is emphatically the province and duty of the judicial department to say what the law is." 5 U.S. 137, 177 (1803).

If a court simply interprets the statute, that is not deference. And if the government litigant persuades the court that the statute can carry only one meaning and that

meaning is the one proposed by the government litigant, then the government's argument and the court's decision rely on neither delegation nor deference. Many judges have written opinions urging courts to use all available tools of statutory construction, questioning the deference doctrines and the misguided delegation rationale on which they rest.[3]

The only time a deference doctrine comes into play is when the underlying *statutory* language is *ambiguous*. The ambiguity rationale, as here, is inapposite when it comes to interpreting a provision of the United States Constitution. The panel majority's approach of looking at the original public understanding of the Second Amendment was unquestionably the correct methodology to use—one that the *en banc* Court should adhere to and affirm. The panel majority was correct in concluding that the "interpretation" of the Second Amendment (if one could call it that) contained in the challenged

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[3] *See Wilson v. Safelite Group, Inc.*, 930 F.3d 429 (6th Cir. 2019); *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142 (10th Cir. 2016); *De Niz Robles v. Lynch*, 803 F.3d 1165 (10th Cir. 2015) (per Gorsuch, J.); *Egan v. Delaware River Port Auth.*, 851 F.3d 263, 278–283 (3d Cir. 2017) (Jordan, J., concurring but writing separately to "note my discomfort with" *Chevron* deference); *King v. Mississippi Military Dep't*, 245 So.3d at 408 (Miss. 2018); *In re Complaint of Rovas Against SBC Michigan*, 754 N.W.2d 259, 271 (Mich. 2008); *Oregon Restaurant & Lodging Ass'n v. Perez*, 843 F.3d 355 (9th Cir. 2016) (O'Scannlain, J., dissenting from denial of rehearing *en banc*, joined by nine other Judges of the Ninth Circuit); *Arangure v. Whitaker*, 911 F.3d 333 (6th Cir. 2018) (per Thapar, J.); *Garfias-Rodriguez v. Holder*, 702 F.3d 504 (9th Cir. 2012) (*en banc*) (Kozinski, J., "disagreeing with everyone" & Reinhardt, J., dissenting); *Valent v. Commissioner of Social Security*, 918 F.3d 516, 525 (6th Cir. 2019) (Kethledge, J., dissenting); *MikLin Enterprises, Inc. v. NLRB*, 861 F.3d 812 (8th Cir. 2017) (*en banc*); *Marmolejo-Campos v. Holder*, 558 F.3d 903 (9th Cir. 2009) (*en banc*) (per Berzon, J., dissenting, joined by Pregerson, Fisher, Paez, JJ.); *Carter v. Welles-Bowen Realty, Inc.*, 736 F.3d 722, 729 (6th Cir. 2013) (Sutton, J., authoring the panel opinion and writing a separate concurrence); *American Inst. for Int'l Steel, Inc. v. United States*, 376 F. Supp. 3d 1335, 1345 (C.I.T. 2019) (Katzmann, J., dubitante).

statutes, regulations, and the litigating position taken by the state administrators, is incompatible with the Second Amendment.

Two months after the panel's decision, the state administrators seem to have changed their interpretation. See Rehearing Pet. at 1 (stating that "victims of domestic violence, individuals who face a credible threat of armed robbery or violent crime, and other private persons may [now] be eligible for open-carry licenses"). Even under the *Chevron–Auer* methodology, which should be inapplicable here in any event, such "*post hoc* rationalization" or a "merely convenient litigating position" receives no deference from federal courts. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2417 (2019) (cleaned up) (quoting *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012)).

Moreover, even if the *Chevron–Auer* framework were applicable here, it would be odd for *federal* courts to defer to *state* administrators' interpretations of the *federal* Constitution or *state* statutes and regulations when it is not entirely clear that the *state*'s high court affords such deference. *See, e.g.*, *Gillan v. Gov't Employees Insurance Co.*, 194 P.3d 1071, 1085–86 (Haw. 2008) (Acoba, J., concurring) ("[T]he interpretation of a statute … is a question of law, and, hence, this Court is competent to perform that task without reference to an agency's interpretation of the subject statute[.]") (collecting cases). Federal courts' deference, if the state courts do not so defer, would enable parties to forum shop to attain their desired standard of deference. The *en banc* Court should, therefore, reject deference for this additional reason in this context.

II. FEDERAL COURTS SHOULD NOT DEFER TO STATE ADMINISTRATORS' FACTUAL SPECULATIONS UNDER *TURNER* AND THEREBY FORECLOSE TRADITIONAL FACTFINDING BY TRIAL COURTS AND JURIES

In addition to rejecting the *Chevron–Auer* deference framework, the *en banc* Court should also decline to afford *Turner* deference in this case. First, as with *Chevron* or *Auer* deference, the *Turner* doctrine developed in the context of federal courts deferring to a coequal branch's (Congress's) "predictive judgments." 520 U.S. at 195. The Supreme Court has not deferred under *Turner* to a *state* legislature's or a *state* political subdivision's predictive judgment. *See, e.g.*, *McDonald v. City of Chicago*, 561 U.S. 742, 922 (2010) (Breyer, J., dissenting) (mentioning that the majority declined to defer under *Turner* to the local legislative body's factfinding). *Turner* deference, as a categorical matter, is ill-suited in situations where federal courts evaluate state or local legislative bodies' factual speculations.

In federal cases, factual questions are determined by the trier of fact—either by a jury or at a bench trial. In affording *Turner* deference, however, judges abdicate their (or the jury's) factfinding function to Congress. Such abdication is doubly egregious. First, *Turner* replaces judicial triers of fact, who are subject to the full panoply of federal rules of procedure and evidence, with Congressional staffers' drafting of statutory findings-of-fact or preamble provisions, which are not subject to the same truth-seeking rigors. Second, *Turner* prematurely forecloses the development of evidence and judicial factfinding by operation of regular, federal-court procedures. Such a transfer of factfinding from United States courthouses across the Nation to the United States Capitol in Washington, DC raises multiple constitutional concerns.

The same objections that lead courts validly to reject reliance on legislative history—such as its being drafted after the fact—are applicable to *Turner* deference. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 369–390 (Thompson/West 2012) (discussing reasons why "no recourse may be had to legislative history"). But the constitutional problems run even deeper.

The *Turner* Court deferred to legislative findings only to ascertain "real harm" that could factually show that the asserted government interest was important. 520 U.S. at 195. When assessing "the fit between the asserted interests and the means chosen to advance them," the Court applied no deference. *Id.* at 213. Instead, the Supreme Court required the government litigant to *prove* its case like any other ordinary litigant must. *Id.* at 214; *see also Bd. of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989) ("[S]ince the State bears the burden of justifying its restrictions, … it must affirmatively establish the reasonable fit we require."). *Turner* rests on the rationale that the legislature is "far better equipped than the judiciary to make sensitive public policy judgments," *Kachalsky v. County of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012) (cleaned up). But once that policy judgment is made, the federal court owes a duty of independent, bias-free decisionmaking in evaluating whether that policy judgment is constitutional.

Turner deference leads to ossification of factual conclusions that have not undergone judicial factfinding—*i.e.*, a process designed to distill truth. The dissent would defer under *Turner* to the state legislature's unproven speculation that restricting open-carry permits only to security personnel will reduce gun violence. If deferred to, that opinion testimony, which, *inter alia*, is not subject to cross-examination or protection against hearsay, would be ossified as the factual predicate for the Court's decision as to

Haw. Rev. Stat. § 134-9's constitutionality. Playing ostrich in a manner that shirks a core responsibility and competency of federal courts raises serious due process concerns.

As with *Chevron* or *Auer* deference, *Turner* requires judges to abandon their duty of independent judgment. That violates the Due Process Clause by commanding judicial bias toward a litigant. *Turner* commands Article III judges to abandon their independence by giving controlling weight to legislative factfinding—not because of its accuracy, impartiality, or persuasiveness, but rather based solely on the brute fact that a few documents got appended to the legislative record. Several judges have called out the defects in and declined to apply *Turner* deference for these reasons.[4]

The *en banc* Court should, instead, engage in ordinary textual analysis of the statutes before it and empower federal district courts to engage in regular factfinding before resorting to *Turner* as a valid framework for deciding whether a particular statute is constitutional. Otherwise, the Court will have produced a potent concoction—and one poisonous to civil liberties—whereby the government litigant receives deference to both its statements of fact under *Turner* and its conclusions of law under *Chevron* or *Auer*.

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[4] *See Nat'l Ass'n of Mfrs. v. Taylor*, 582 F.3d 1 (D.C. Cir. 2009); *Chamber of Commerce for Greater Philadelphia v. City of Philadelphia*, 319 F. Supp. 3d 773 (E.D. Pa. 2018), *reversed by* 949 F.3d 116 (3d Cir. 2020); *Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2014), *affirmed en banc by* 824 F.3d 919 (9th Cir. 2016); *Nat'l Abortion Federation v. Gonzales*, 437 F.3d 278 (2d Cir. 2006), *vacated on other grounds by* 224 Fed. App'x 88 (2d Cir. 2007); *Rhode v. Becerra*, __ F. Supp. 3d __, 2020 WL 2392655 (S.D. Cal. Apr. 23, 2020); *Rideout v. Gardner*, 123 F. Supp. 3d 218 (D.N.H. 2015).

CONCLUSION

The *en banc* Court should follow the panel majority and conclude that the challenged statutes and regulations are unconstitutional.

Respectfully submitted, on June 4, 2020.

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CERTIFICATE OF SERVICE

I certify that this brief was filed using the Case Management / Electronic Case Filing (CM/ECF) system of the U.S. Court of Appeals for the Ninth Circuit. Counsel for all parties are registered CM/ECF users. Service is accomplished by the CM/ECF system.

/s/ Aditya Dynar
ADITYA DYNAR

Dated: June 4, 2020

CERTIFICATE OF COMPLIANCE

This brief contains **4,067** words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type style and typeface comply with Fed. R. App. P. 32(a)(5) and (6) because it is proportionally spaced, includes serifs, and is 14-point.

I certify that this brief is an amicus brief and complies with the word limit of 5,000 words set by the Court's order dated April 30, 2020, and it complies with the requirements of Fed. R. App. P. 29(a)(5), Cir. R. 32-1, Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

/s/ Aditya Dynar
ADITYA DYNAR

Dated: June 4, 2020