

No. 20-15568

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MACKENZIE BROWN,

Plaintiff-Appellant,

v.

STATE OF ARIZONA, *et al.*

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona
No. 2:17-cv-03536-GMS (Hon. G. Murray Snow)

**BRIEF OF NATIONAL WOMEN’S LAW CENTER AND 31 ADDITIONAL
ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF APPELLANT’S
PETITION FOR REHEARING OR REHEARING EN BANC**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(A), undersigned counsel certifies that no *Amici Curiae* is a subsidiary or affiliate of any publicly owned corporation not named in this appeal; none has a parent corporation; and there is no publicly held corporation that owns 10% or more of the stock of any of them. No *Amici Curiae* has a substantial financial interest in the outcome of the litigation.

Dated: April 4, 2022

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**INTRODUCTION AND STATEMENT OF *AMICI CURIAE*'S IDENTITY,
INTEREST, AND AUTHORITY TO FILE¹**

Title IX, which prohibits sex discrimination in education programs and activities that receive federal funding, is a broad, remedial statute that protects student survivors' access to the educational benefits and opportunities of their schools after experiencing sexual harassment. The protections afforded by Title IX are a critical means of addressing sexual harassment, including assault, in schools.

This case involves Plaintiff-Appellant Mackenzie Brown's Title IX suit against Defendants-Appellees (collectively "the University"), in which she alleged that the University's failure to stop Orlando Bradford's known pattern of violence against female students ultimately led to him abusing her at his off-campus house. The District Court granted the University's motion for summary judgment, finding that the University did not have "control over the context" of Bradford's abuse of Brown because the abuse occurred *off campus*; Brown appealed to the Ninth Circuit, which affirmed the District Court's decision.

¹ No counsel for any party authored this brief in whole or in part and no entity or person, aside from *Amici* and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Circuit Rule 29-2(a), all parties have consented to this brief's filing; however, Defendants-Appellees do not concede any points made herein.

The panel’s decision narrows Title IX’s scope by allowing schools to sweepingly ignore off-campus sexual harassment despite its disastrous consequences for students and their education. As such, NWLC and 31 additional *Amici* submit this brief to ask this Court to grant the petition to rehear this case. *Amici* aim to help this Court understand the range of ways that off-campus sexual harassment harms students’ access to education and how the panel’s decision impermissibly narrows the scope of actionable sex discrimination under Title IX, leaving many student survivors without a remedy. *Amici* ask that this Court protect students’ rights to access education—consistent with Title IX’s mandate—by holding that whether schools have control over the context of harassment is a fact-specific inquiry and may include harassment that occurs off campus.

The **National Women’s Law Center** (“NWLC”) fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to lives of women and girls. We use the law in all its forms to change culture and drive solutions to the gender inequities that shape our society and to break down barriers that harm all of us—especially women and girls of color, LGBTQ people, and low-income women and families. Since 1972, NWLC has worked to advance educational opportunities, income security, workplace justice, and health and reproductive rights for women and girls and has participated as counsel or *Amicus Curiae* in a range of cases before the Supreme Court, federal courts of appeals,

federal district courts, and state courts to secure protections against sex discrimination. NWLC's work includes advocating for the full and fair enforcement of Title IX of the Education Amendments of 1972 ("Title IX").

Additional *Amici* are also advocacy organizations, committed to ensuring that survivors are not denied justice for the harms they have faced. All *Amici* share an interest in eradicating sexual harassment and other forms of sex discrimination, including in schools.

ARGUMENT

I. OFF-CAMPUS SEXUAL HARASSMENT POSES A THREAT TO THOUSANDS OF STUDENTS

Despite Title IX's broad scope and remedial intent, students continue to experience sexual harassment, including assault, at an alarming rate. To create safe and non-discriminatory school climates consistent with Title IX's broad mandate, educational institutions across the country must be held responsible for addressing student-on-student sexual violence. The current decision in this case could serve to limit schools' responsibilities to address sexual harassment and assault to the relatively smaller percentage of students who experience sexual violence *on campus* and sets the stage for schools to ignore increased incidents of *off-campus* sexual violence that take place between students. This would leave significant numbers of college student survivors without Title IX rights and protections.

A. Sexual Harassment in Schools is a Widespread and Systemic Problem Leading to Adverse Educational Impacts.

Sexual violence is already widespread and systemic, claiming more than 400,000 victims in the United States each year. It is particularly pervasive in college, happening both on and off campus, where 25.9 percent of women, 6.8 percent of men, and 22.8 percent of transgender, non-binary, and gender-nonconforming students report being sexually assaulted during their time as undergraduates.² Notably, off-campus sexual victimization is more prevalent than on-campus victimization; one study found that 33.7 percent of rapes of college students occurred on campus, while 66 percent of rapes occurred off campus.³

Irrespective of where a student experiences sexual violence, its educational impact is significant. One study noted that academic success is heavily dependent on student engagement—that is, a student’s class attendance, completion of assignments, and successful course completion—and that sexual violence disrupts

² See David Cantor et al., Association of American Universities, *Report on the AAU Climate Survey on Sexual Assault and Sexual Misconduct*, at ix (2020), [https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_\(01-16-2020_FINAL\).pdf](https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_(01-16-2020_FINAL).pdf).

³ Bonnie Fisher et al., *The Sexual Victimization of College Women*, U.S. Dep’t of Justice 18-20 (2000), <https://www.ojp.gov/pdffiles1/nij/182369.pdf>.

such engagement, leading to academic decline.⁴ Indeed, for student survivors, sexual assault has been “associated with more academic problems including lower grade point average, dropping out, and self-regulated learning problems,”⁵ to say nothing of the physical and psychological harms suffered. A recent survey of student survivors found that, of the students who reported they had experienced sexual violence to their schools, 27 percent took a leave of absence, 20 percent transferred to another school, and about 10 percent dropped out of school.⁶ Further, studies show that sexual victimization has a greater impact on survivors’ academic performance than other forms of victimization.⁷ For example, student survivors of sexual violence saw a more significant decline in their GPA than students victimized by physical or verbal violence.⁸ These harms not only precipitate long-term impacts on survivors’

⁴ See Cecilia Mengo & Beverly M. Black, *Violence Victimization on a College Campus: Impact on GPA and School Dropout*, 18 J. Coll. Student Retention: Research, Theory & Prac. 234, 239-40, 247 (2016).

⁵ Taylor D. Molstad et al., *Sexual Assault as a Contributor to Academic Outcomes in University: A Systematic Review*, Trauma Violence Abuse 1, 10 (2021), <https://journals.sagepub.com/doi/pdf/10.1177/15248380211030247>.

⁶ Know Your IX, *The Cost of Reporting: Perpetrator Retaliation, Institutional Betrayal, and Student Survivor Pushout 1* (2021), <https://www.knowyourix.org/wp-content/uploads/2021/03/Know-Your-IX-2021-Report-Final-Copy.pdf>.

⁷ Cecilia Mengo, *supra* note 4, at 245.

⁸ *Id.*

financial and professional futures,⁹ but they are among the very consequences of sexual harassment that Title IX was intended to remedy to preserve students' access to educational benefits in the face of sex-based discrimination.

B. Most Sexual Harassment Against College Students Occurs Off Campus Because Most College Students Live Off Campus

Schools like the University attract and admit thousands of students annually from out of town, if not out of state. Increasingly, however, schools do not, or cannot, provide opportunities for admitted students to reside in on-campus housing. Recent statistics suggest that nearly nine in ten college students live off campus.¹⁰ In fact, roughly 84 percent (39,422 students) of the estimated 46,932 students at the University reside off campus.¹¹ The University has capacity to house only roughly 8,000-9,000 students in university student housing, which includes both on-campus

⁹ Know Your IX, *supra* note 6, at 7, 9 (survivors frequently lose scholarship funds due to withdrawing from courses, and that the impact of the trauma on their grades forced them to change career paths).

¹⁰ Rochelle Sharpe, *How Much Does Living Off-Campus Cost? Who Knows?*, N.Y. Times (Aug. 5, 2016), <https://www.nytimes.com/2016/08/07/education/edlife/how-much-does-living-off-campus-cost-who-knows.html>.

¹¹ It is estimated that roughly 87 percent of students nationally at colleges and universities reside off campus. *Id.*

dormitories and off-campus student housing.¹² As more students live off campus, the neighborhood that surrounds the school becomes part of the university experience.

More and more, schools like the University are outsourcing their housing needs to for-profit companies, in “so-called public-private partnerships.”¹³ The net result of increasing student enrollment and on-campus housing shortages is that substantial percentages of students live off campus for most of their college careers. As the University does not have sufficient housing for its student body, thousands of students who come to Tucson for the sole purpose of attending the University must at some point during their college years find housing elsewhere, usually at near-campus apartment buildings and houses. Indeed, the University endorses and advertises many of these campus-adjacent apartments and homes and refers to them as its “off-campus partners.”¹⁴

¹² The University itself acknowledges that “[o]n-campus housing is not guaranteed and is highly competitive.” *On-Campus Housing*, Univ. of Ariz., <https://global.arizona.edu/international-students/campus-housing> (last visited Mar. 23, 2022).

¹³ Jon Marcus, *More Colleges and Universities Outsource Services to For-Profit Companies*, Hechinger Report (Jan. 8, 2021), <https://hechingerreport.org/more-colleges-and-universities-outsource-services-to-for-profit-companies/>.

¹⁴ *Off-Campus Housing*, Univ. of Ariz., <https://offcampus.arizona.edu/> (last visited Mar. 23, 2022).

II. THE PANEL MAJORITY’S NARROW INTERPRETATION IS AT ODDS WITH THE PURPOSE AND SCOPE OF TITLE IX.

Fifty years ago, Title IX was enacted during a historic push towards gender equity in the law, society, and across institutions. The relevant statutory text is broad in scope and provides: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). This text compelled the Supreme Court to instruct that, in order to implement its far-reaching intent, they “must accord [Title IX] a sweep as broad as its language.” *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982); *see also Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005) (noting the court’s “repeated holdings construing ‘discrimination’ under Title IX broadly”).

In light of this broad mandate, the Supreme Court held in *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), that a funding recipient may be liable in a private damages action where “the funding recipient acts with deliberate indifference to known acts of harassment in its program or activities.” *Id.* at 633. Primary among Title IX’s objectives is to avoid using federal funding to support discriminatory practices. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998). Title IX makes actionable the “deprivation of access to the educational

opportunities provided by the school,” *Davis*, 526 U.S. at 650, which also requires schools to respond to reported sexual harassment. It is well-established that schools are obligated to take such action when they “exercised substantial control over both the harasser and the context in which the known harassment occurred.” *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1105 (9th Cir. 2020) (quoting *Davis*, 526 U.S. at 645).

In this case, the Court interpreted this required “control over . . . the context” element too narrowly, holding that the University did not exercise substantial control over Bradford’s abuse of Brown. Slip op. at 13. In doing so, it adopted an overly broad blanket legal rule that a school *never* has control over off-campus student housing. PFREB at 1, 6. This narrow reading of “control over context” conflicts with Title IX’s broad scope and remedial purpose. It also ignores the realities of student housing at schools like the University. The Court’s unjustifiably sweeping ruling would undermine schools’ incentives to protect their students from recurring sexual harassment and resulting adverse impacts to their access to education, exactly contrary to Title IX’s purpose. Creating a standard that allows schools to categorically ignore off-campus sexual harassment fundamentally promotes discrimination, as it provides an incentive for schools to ignore educational harm to students and leaves scores of students without meaningful protection or recourse under Title IX.

A. The Panel’s Decision Ignores the Reality that Schools, Including the University, Exercise Significant Control Over Some Off-Campus Housing.

Despite the significant—and increasing—number of students living in off-campus housing,¹⁵ there is little question that schools continue to exercise substantial authority to discipline students for off-campus misconduct. Here, for example, there appears to have been no dispute that the University had the authority to take disciplinary action against Bradford for other off-campus misconduct.¹⁶ As the dissent emphasizes, the University—and its football team in particular—specifically conditioned Bradford’s ability to live at an off-campus apartment (which was funded by the University through scholarship money) on his lack of misconduct. Slip op. at 22 (Fletcher, J., dissenting). As Judge Fletcher recognized, if the coaches had been advised of his known sexual misconduct, they would have “thrown [Bradford] off the team,” ending his scholarship and ability to remain at the University. *Id.*

¹⁵ See Rochelle Sharpe, *supra* note 10; see generally Part I.B., *supra*.

¹⁶ See Student Code of Conduct, Ariz. Bd. of Regents Policy No. 5-308(F)-(G) (2020), <https://public.azregents.edu/Policy%20Manual/5-308-Student%20Code%20of%20Conduct.pdf>. While schools like the University currently possess and exercise such disciplinary authority over gender-based violence and other misconduct that occurs off campus, see, e.g., *id.*, the panel’s decision gives schools permission not to do so. This may very well disincentivize schools from adopting similar disciplinary policies that address off-campus misconduct.

Additionally, even in the absence of these facts showing the University’s control over context of Bradford’s abuse in his off-campus apartment, the University has control over context of off-campus misconduct by its own admission—that is, its Student Code of Conduct permits punishment for conduct endangering “any member of the university community,” regardless of where such conduct occurs.¹⁷ Further, at Section (F)(17), the Policy even specifically prohibits “[o]ff-campus conduct that a reasonable person would believe may present a risk or danger to the health, safety or security of the board or university community or to the safety or security of the board or university property.” As a result, the University can and does take disciplinary measures to address off-campus harms. Indeed, the University repeatedly investigated and disciplined students for off-campus assault, including Bradford’s off-campus assaults of Brown at issue in this case. Slip op. at 9. That the assaults against Brown occurred off campus does not mean the University was unable to prevent them from happening, and of course it did not prevent the University from responding to prevent a hostile educational environment *on campus*—over which it undisputedly exercises control—as it must under Title IX. Put simply, schools retain “disciplinary authority” over students and certainly can

¹⁷ Student Code of Conduct, *supra* note 16, at 5-308(F)(2), (17), (G).

and do exercise that form of control over student misconduct that occurs off campus. Slip op. at 36-37 (Fletcher, J., dissenting) (citing *Davis*, 526 U.S. at 646-47).

Accordingly, under the panel's decision, schools would be legally presumed not to exercise control over sexual assaults in off-campus student housing even as they regularly exercise control over off-campus behavior through their policies and disciplinary authority. Students who suffer either sexual harassment or the known risk of sexual harassment would be left without a remedy under Title IX only because the sexual harassment occurs off campus—and these harmful impacts would continue to grow along with the trend of students moving off campus.

B. The Panel's Decision Will Leave Many Student Survivors Without Critical Civil Rights Protections.

The panel's decision would also result in increased harms to student survivors because if schools are no longer liable for addressing off-campus harassment, survivors of off-campus harassment will be left without support, further impeding their access to education. Additionally, as schools are already increasingly shifting students off campus, the panel's decision could further incentivize schools to purposefully move student housing off campus as a way to avoid civil rights liability, further cutting students off from their Title IX civil rights protections, including accommodations and supportive measures that help allow survivors to overcome the impact of harassment and meaningfully access the school's educational programs.

Title IX enforcement focuses on remedying a denial of access to the educational benefits and opportunities provided by the school. Such actionable harms may include the obvious “overt, physical deprivation of access to school resources,” *Davis*, 526 U.S. at 650, but more often they manifest in “a drop in grades, missing school, being forced to transfer schools, or mental health issues requiring therapy or medication.” *Id.* at 652. Of course, these harms are inflicted on victims’ on-campus learning regardless of where they were assaulted. *See Farmer v. Kan. State Univ.*, 918 F.3d 1094, 1105 (10th Cir. 2019).

Further, many courts have found that a survivor may continue to suffer from a sexually hostile environment, resulting in a detriment to her educational opportunities, when she is forced to continue to go to school with her assailant. *See Doe ex rel. Doe v. Coventry Bd. of Educ.*, 630 F.Supp.2d 226, 233 (D. Conn. 2009) (concluding that “the mere fact that [the victim and perpetrator] attended school together” could constitute a negative impact due to the “constant potential for interactions between the two” and the continued exposure of the victim to her assailant); *Kinsman v. Fla. State Univ. Bd. of Trs.*, No. 4:15CV235-MW/CAS, 2015 WL 11110848, at *4 (N.D. Fla. Aug. 12, 2015) (possibility of “further encounters ‘between a rape victim and her attacker could create an environment sufficiently hostile to deprive the victim of access to educational opportunities’”) (citation omitted). This, too, would occur regardless of whether the initial assault occurred on

campus. *See Doe v. E. Haven Bd. of Educ.*, 200 F.App’x 46, 48-49 (2d Cir. 2006) (whether victim was deprived educational opportunities as a result of being forced to attend school with her assailant following off-campus assault is a question for the finder of fact); *see, e.g., Kinsman*, 2015 WL 11110848, at *1, *4.

However, under the panel’s decision, there is a risk courts could find, for example, that a student raped or sexually assaulted by another student off campus deserves no protection from further encountering her assailant on campus, but a student who is raped on campus does; or, that a school has an obligation to protect students from a known rapist *only if* the additional violence perpetrated by the same rapist occurred on campus. A school might then be responsible for addressing a sexual assault that occurs a meter into campus, but not across the street—even if the school’s authority to discipline the named harasser is unchanged by location. Or, if a student is invited to a professor’s home for a social event, such as a dinner, and is sexually assaulted there, schools may be able to disclaim control and responsibility for supporting the survivor, even though she is guaranteed to encounter her attacker on campus. This categorical rule would lead to unfair and illogical results.

As set forth above, *see* Part II, *supra*, the Supreme Court has “repeated[ly] . . . constru[ed] ‘discrimination’ under Title IX broadly.” *Jackson*, 544 U.S. at 174. However, by creating a bright-line rule that as a legal matter, absent a school-sponsored activity or event, only *on-campus* harassment falls within a school’s

control—regardless of facts to the contrary—the focus of the legal inquiry thus inappropriately shifts from an institution’s responsibility to address the impact of harassment on access to education, and instead toward the location of perpetrators. *See, e.g., Hall v. Millersville Univ.*, 22 F.4th 397, 405 (3d Cir. 2022) (rejecting bright-line exclusion of entire categories of individuals for purposes of substantial control element). Put simply, the focus shifts from supporting survivors while they are on campus—as is clearly Title IX’s intent—and instead allows Title IX’s protections to turn on the often-arbitrary distinctions between “on” and “off” campus.

C. The Panel’s Decision Creates Perverse Incentives for Schools and Sweeps Too Broadly.

The panel’s decision may also incentivize schools in this Circuit to minimize their exposure to liability in ways that *increase* the risks to student survivors of sexual harassment, sexual assault, and other forms of sex-based discrimination, contravening Title IX’s purposes and policies.

For example, schools would be able to relieve themselves of liability for harassment by moving more students, especially known perpetrators like Bradford, into off-campus housing. As a result, the harassment would occur with increasing frequency in “campus-adjacent” housing, while the resulting lost opportunities and hostile educational environment *on* campus persist. Schools would also be able to

eject students from on-campus housing as a *punishment* for their sexual misconduct, with the perverse effect of eliminating the school's liability for any future misconduct those students commit—even if the school knows that other students continue to face a significant risk of future harassment. Based on the panel's holding, schools would then be insulated from further responsibility or liability under Title IX even when, as here, those students proceed to sexually harass and assault more students off campus as a direct and foreseeable result of their continued enrollment. *See slip op.* at 13-14.

Even if the panel were correct in its conclusion that the University did not exercise control over the context of Brown's harassment in *this* case, its categorical and overly broad decision has potential to foreclose liability in cases where schools certainly exercise control. Courts have recognized that Title IX requires schools to address an on-campus hostile environment that arises from a sexual assault occurring off campus. *See, e.g., L.E. v. Lakeland Joint Sch. Dist. #272*, 403 F.Supp.3d 888, 900-01 (D. Idaho 2019) (even if initial harassment was not within school's control, the school had control over whether to allow offenders to remain on campus, and consequently over the subsequent harassment and allegedly hostile environment that resulted from that decision); *Feminist Majority Found. v. Hurley*, 911 F.3d 674, 688 (4th Cir. 2018) (considering that a school exercised control where it could have engaged in conduct that would have corrected the harassment); *cf. Farmer v. Kan.*

State Univ., No. 16-CV-2256-JAR-GEB, 2017 WL 980460, at *10 (D. Kan. Mar. 14, 2017) (rejecting argument that university had no obligation to respond because it “did not have ‘contemporaneous control’” over the alleged assailant and fraternity house), *aff’d*, 918 F.3d 1094 (10th Cir. 2019).

D. Reversing the Panel’s Decision Will Not Inappropriately Expand Funding Recipients’ Liability Under Title IX.

Finally, contrary to the panel’s claim, interpreting the “control over context” element coextensively with a school’s disciplinary authority would not open the floodgates to litigation by overly expanding the parameters of potential liability. First, the fact that schools may have control over *some* off-campus harassment does not mean they will have control over *all* off-campus harassment. Where a court may find sufficient control in a student’s apartment next to campus, rented for the sole purpose of attending the school, under certain circumstances, another may refuse to find sufficient control while students are on a vacation out of town, or in one of the hypotheticals posed by the majority, slip op. at 18. Second, for Title IX liability, several additional requirements must also be met. As the majority acknowledges, the harassment must be: (a) based on sex; (b) perpetrated against a person at the school; (c) perpetrated by another individual over whom the school exercised substantial control; and (d) so severe, pervasive, and objectively offensive that it deprived the student of access to educational opportunities or benefits. *Id.* at 12-13. Thus clearly,

even where Title IX does apply, schools are certainly not automatically subject to liability for all harassment that occurs. *Davis*, 526 U.S. at 648. “On the contrary, the recipient must merely respond to known peer harassment in a manner that is not clearly unreasonable.” *Id.* at 649; *see also Hall*, 22 F.4th at 407 (noting that liability for a third party’s known harassment of a recipient’s student would not “open the floodgates and subject universities to unwarranted liability under Title IX” given the “high bar to establish liability for deliberate indifference under Title IX” and the many elements of a Title IX claim that must be met).¹⁸

Thus, it is simply untrue that allowing the necessary fact-specific inquiry as to the parameters of Title IX protections for off-campus sexual assault would lead to a significant increase in liability, given all the existing legal requirements for any finding of Title IX liability.

¹⁸ The panel’s concern about expanding schools’ liability under Title IX also overlooks the significant barriers survivors face to reporting sexual violence in the first place. Often, survivors must contend with responses by their schools that discourage reporting, including institutional indifference to their victimization and victim-blaming by school officials when seeking support in the wake of assault—not to mention the widespread belief that women and girls lie when coming forward about sexual violence. *Know Your IX*, *supra* note 6, at 12. These experiences alone obfuscate a survivor’s ability to access recourse under Title IX—making them less likely to want to report at all.

CONCLUSION

The panel's decision improperly narrows the scope of Title IX's protections and remedies in a categorical manner, allowing more schools to ignore sexual harassment despite its continued harms on students in violation of the letter, purpose, and spirit of Title IX. *Amici* urge this Court to grant the petition and hold that whether Title IX provides protections against and remedies for sexual assault that happens in off-campus housing is a fact-specific inquiry.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief contains 4,158 words, excluding those parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). The brief's type size and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6).

I certify that this brief is an amicus brief and complies with the word limit of Circuit Rule 29-2(c)(2).

Dated: April 4, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 4, 2022.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished using the appellate CM/ECF system.

Dated: April 4, 2022

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