No. 23-3581

IN THE

United States Court of Appeals for the Ninth Circuit

THE IMPERIAL SOVEREIGN COURT OF THE STATE OF MONTANA, *et al.*,
Plaintiffs-Appellees,

v.

AUSTIN KNUDSEN, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Montana,
District Court Case No. CV 23-50-BU-BMM, Honorable Brian M. Morris

BRIEF OF AMICI CURIAE THE AMERICAN CIVIL LIBERTIES UNION AND THE ACLU OF MONTANA FOUNDATION, INC. IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, Amici Curiae state that they are non-profit entities that do not have parent corporations and that no publicly held corporation owns 10 percent or more of any stake or stock in amici curiae.

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INTEREST OF AMICI CURIAE[1]

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization dedicated to defending the principles of liberty and equality embodied in the Constitution. The ACLU of Montana Foundation, Inc. ("ACLU of Montana") is one of the ACLU's statewide affiliates. As organizations dedicated to protecting free expression and the equal rights of lesbian, gay, bisexual, and transgender people, amici have a strong interest in ensuring that the freedom to perform drag and attend drag performances is not unconstitutionally abridged.

SUMMARY OF ARGUMENT

Live theatrical and musical performances are protected speech, and minors who wish to attend such performances have a First Amendment right to do so. "No doubt a State possesses legitimate power to protect children from harm, but that does not include a free-floating power to restrict the ideas to which children may be exposed." *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794 (2011) (citations omitted). "Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas

[1] Amici sought consent from counsel for all parties and none oppose the filing of this brief. *See* Fed. R. App. P. 29(a)(2). Amici declare that no party or party's counsel authored the brief in whole or in part or contributed money intended to fund the preparation or submission of the brief, and that no one other than Amici, their members, or their counsel contributed money intended to fund preparation or submission of the brief.

or images that a legislative body thinks unsuitable for them." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213–14 (1975).

Those principles control this case. Montana's House Bill 359 (the "drag ban") censors vast amounts of protected speech in the presence of minors without any showing that the speech is obscene as applied to minors or anyone else. Indeed, the legislature specifically removed language from the bill that would have incorporated the constitutional test for obscenity. ER-21. The statute's ban on "drag story hour" directly targets speech that is not sexual in any way. It prohibits schools and libraries from allowing a fully clothed "drag queen or drag king" to "read[] children's books and engage[] in other learning activities with minor children present." ER-209-210. And the statute's ban on so-called "sexually oriented performances" prohibits performances in the presence of minors that "appeal to a prurient interest," without any regard for whether the performances are patently offensive or lack serious literary, artistic, political, or scientific value for minors as required under Supreme Court precedent. ER-209-210.

These broad prohibitions on speech are not justified by a compelling governmental interest. In evaluating speech restrictions premised on the need to protect minors, courts "must distinguish the State's interest in protecting minors from actual psychological or neurological harm from the State's interest in controlling minors' thoughts. The latter is not legitimate." *Video Software Dealers*

Ass'n v. Schwarzenegger, 556 F.3d 950, 962 (9th Cir. 2009), *aff'd sub nom. Brown v. Ent. Merchants Ass'n*, 564 U.S. 786 (2011). As Defendants' brief makes clear, Montana's law seeks to restrict drag performances because the legislators disagree with the *messages* conveyed by drag performers about gender, not because of any objective harm. *See* Appellants' Br. 40, ECF No. 10. "The Constitution exists precisely so that opinions and judgments" about these issues "are for the individual to make, not for the Government to decree, even with the mandate or approval of a majority." *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 818 (2000). Because every application of the drag ban is a content-based restriction that flagrantly violates the First Amendment, the district court properly held that the statute is likely facially invalid and preliminarily enjoined its enforcement.

ARGUMENT

I. Drag Performances Are Protected Speech.

Drag performances, like other live theatrical productions, are protected speech. *See Woodlands Pride, Inc. v. Paxton*, No. H-23-2847, 2023 WL 6226113, at *13 (S.D. Tex. Sept. 26, 2023), *appeal docketed*, No. 23-20480 (5th Cir. Sept. 29, 2023) (collecting cases). "[M]otion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works fall within the First Amendment guarantee." *Schad v. Borough of Mount Ephraim*, 452 U.S. 61,

65 (1981). And those protections extend not only to "political and ideological speech" but also to pure "[e]ntertainment." *Id.*

Many people—including, but by no means limited to, people who are LGBTQ—attend drag shows because of the "political, social, and cultural messages involved in drag performances." *Woodlands Pride*, 2023 WL 6226113, at *14. "Given current political events and discussions, drag shows . . . are indisputably protected speech and are a medium of expression, containing political and social messages regarding (among other messages) self-expression, gender stereotypes and roles, and LGBTQIA+ identity." *S. Utah Drag Stars v. City of St. George*, No. 4:23-CV-00044-DN-PK, 2023 WL 4053395, at *20 (D. Utah June 16, 2023). But drag performances would still constitute protected speech even if they lacked a discernable or valuable message. The "First Amendment is not an art critic," *Norma Kristie, Inc. v. City of Oklahoma City*, 572 F. Supp. 88, 91 (W.D. Okla. 1983), and the "right to receive information and ideas, regardless of their social worth, is fundamental to our free society," *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (citing *Winters v. New York*, 333 U.S. 507, 510 (1948)).

Defendants assert that restrictions on drag performances are restrictions on conduct, not speech. *See* Appellants' Br. at 31. But the Supreme Court made clear in *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557–58 (1975), that live performances are protected mediums of expression and that the "conduct" of

performers cannot be disaggregated from their speech. The Court explained that, "[b]y its nature, theater usually is the acting out—or singing out—of the written word, and frequently mixes speech with live action or conduct." *Id.* "But that is no reason to hold theater subject to a drastically different standard" than other protected mediums of expression. *Id.* at 558.

Because live performances are a protected medium of expression, restrictions on the costumes and attire of live performers must be analyzed as restrictions on speech, even if the same costumes and attire would not be inherently expressive in other contexts. Thus, in *Southeastern Promotions,* the Supreme Court held that a municipality could not stop the performance of the musical "Hair" even though scenes in the play involved nudity and simulated sex that would have violated indecent exposure ordinances off the stage. In doing so, the Supreme Court rejected the district court's analysis, which had characterized those features of the musical as "criminal conduct" that "was neither speech nor symbolic speech, and was to be viewed separately from the musical's speech elements." *Id.* at 551–52. Similarly, in *Edge v. City of Everette*, 929 F.3d 657 (9th Cir. 2019), this Court held that coffee baristas were not engaging in expressive conduct by wearing G-strings and pasties at work, but simultaneously emphasized that the baristas did not claim to be engaging in live performances, "thereby disavowing the First Amendment protections available for that conduct." *Id.* at 669.

Because live performances are a protected medium of expression there is also no need to identify a "particularized message" in the performance. *Contra* Appellants' Br. at 33. That requirement applies only to regulations of expressive conduct. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.,* 515 U.S. 557, 569 (1995). When a medium of expression is at issue, "the Supreme Court and [this] [C]ourt have recognized various forms of entertainment and visual expression as purely expressive activities, including music without words, dance, topless dancing, movies, parades with or without banners or written messages, and both paintings and their sale," and have done so "without relying on" the "particularized message" test for expressive conduct. *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1060 (9th Cir. 2010) (citations omitted). For example, because "music is a form of expression protected by the First Amendment," this Court has explained that if legislators "passed an ordinance forbidding the playing of rock and roll music, they would be infringing a First Amendment right even if the music had no political message—even if it had no words." *Cinevision Corp. v. City of Burbank*, 745 F.2d 560, 567 (9th Cir. 1984) (quoting *Reed v. Vill. of Shorewood*, 704 F.2d 943, 950 (7th Cir. 1983)) (cleaned up).

The text of the drag ban, and Defendants' own brief, leave no doubt that Montana's drag ban targets the speech of drag *performances*, not merely the conduct of wearing particular clothing. The statute defines a drag queen as a "performer who

adopts a flamboyant or parodic feminine persona with glamorous or exaggerated costumes and makeup." ER-208; *see* Appellants' Br. at 49. Indeed, Defendants argue that "no reasonable construction of HB359 could conclude that a person can be criminalized simply for dressing in 'drag.'" Appellants' Br. at 26. The statute thus applies to drag *performers* precisely because of the expressive nature of the performances. That is a speech restriction, pure and simple.

II. The Drag Ban Facially Violates The First Amendment.

The drag ban is flagrantly unconstitutional in all its applications. The statute censors a wide range of speech that is not obscene for minors or anyone else. It even prevents fully clothed drag queens from reading children's books out loud to minors. The stated justifications for the ban are to protect minors from messages the legislature thinks are harmful and unsuitable for them, which is the essence of a content-based restriction that requires strict scrutiny. The drag ban's prohibitions on non-obscene speech cannot withstand strict scrutiny and are wildly overbroad in comparison to any arguable legitimate sweep.

A. The Drag Ban Prohibits Minors from Viewing Protected Speech that Is Not Obscene for Them.

Minors who wish to attend drag performances have a First Amendment right to speak, and to be spoken to. "[M]inors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to

them." *Brown*, 564 U.S. at 794 (quoting *Erznoznik*, 422 U.S. at 212–213) (citation omitted). The government cannot, for example, make it a crime to admit minors to a "rock concert" or "political rally." *Id.* at 795 n.3. Thus, "[a]lthough we apply a 'variable standard' for obscenity to minors . . . the state may not restrict adults from sharing material with minors that is not obscene for minors." *Powell's Books, Inc. v. Kroger*, 622 F.3d 1202, 1215 (9th Cir. 2010). Such restrictions "impinge[] on the rights of all individuals to legitimately share and access non-obscene materials without the interference of the state." *Id.*

Defendants assert that drag performances are "indecent and inappropriate for minors," Appellants' Br. at 27, but they do not assert that drag performances are "obscene" for minors. Nor could they. The constitutional test for obscenity for minors was established by *Miller v. California*, 413 U.S. 15 (1973), and *Ginsberg v. New York*, 390 U.S. 629 (1968). *See Brown*, 564 U.S. at 808 (Alito, J., concurring) (discussing the *Miller/Ginsberg* standard); *Video Software Dealers Ass'n*., 556 F.3d at 959 (same); *Powell's Books*, 622 F.3d at 1213 (same). "Under *Miller* [and *Ginsberg*], an obscenity statute must contain a threshold limitation that restricts the statute's scope to specifically described 'hard core' materials." *Brown*, 564 U.S. at 808 (Alito, J., concurring) (citing *Miller*, 413 U.S. at 23–25). "Materials that fall within this 'hard core' category may be deemed to be obscene if three additional requirements are met." *Id.*

(1) An "average person, applying contemporary community standards must find the work, taken as a whole, appeals to the prurient interest [for minors]";

(2) "[T]he work must depict or describe, in a patently offensive way [with respect to what is appropriate for minors], sexual conduct specifically defined by the applicable state law; and"

(3) "[T]he work, taken as a whole, must lack serious literary, artistic, political, or scientific value [for minors]."

Id. (quoting *Miller*, 413 U.S. at 24) (alterations incorporated).

The drag ban flunks the *Miller/Ginsberg* test. "[U]nder any test of obscenity as to minors . . . 'such expression must be, in some significant way, erotic.'" *Erznoznik*, 422 U.S. at 213 n.10 (quoting *Cohen v. California*, 403 U.S. 15, 20 (1971)). Ignoring those limitations, the drag ban defines "drag story hour" as "an event hosted by a drag queen or drag king who reads children's books and engages in other learning activities with minor children present," regardless of whether the drag performance is sexual or erotic in any way. ER-209. And the drag ban censors those non-sexual performances regardless of whether they appeal to the prurient interest, describe sexual conduct in a patently offensive way, or have serious literary, artistic, political, or scientific value for minors. ER-209-210.

The drag ban's censorship of "sexually oriented performances" is almost as bad. Even assuming for the sake of argument that the "threshold" categories in the definition of "sexually oriented performances" are sufficiently "hard core" and well-

defined to comply with *Miller/Ginsberg*, [2] the remainder of the definition fails to comply with the three additional *Miller/Ginsberg* requirements. The statute censors sexually oriented performances based solely on whether they are "intended to appeal to a prurient interest in sex," without requiring that the performance be "considered as a whole," as mandated by *Miller*/*Ginsberg*. ER-209. The omitted "taken 'as a whole,' language is crucial because the First Amendment requires the consideration of context." *ACLU v. Ashcroft*, 322 F.3d 240, 252 (3d Cir. 2003), *aff'd and remanded*, 542 U.S. 656 (2004). Even worse, the drag ban does not require that the performances describe sexual conduct in a patently offensive way and does not have an exception for performances that have serious literary, artistic, political, or scientific value for minors.

Because the drag ban does not adhere to the constitutional test for obscenity for minors, the ban must be judged by the same standards that apply to other regulations of non-obscene speech.

B. The Drag Ban Is Subject to Strict Scrutiny.

The drag ban is a content-based restriction on speech that must be subjected to strict scrutiny. *See Brown*, 564 U.S. at 799 (applying strict scrutiny to law prohibiting sale of video games to minors). Defendants' various attempts to escape

[2] *But see* ER-47 (correctly noting that the definitions of the threshold conduct covered by the "sexually oriented performance" prohibition "run a significant risk of vagueness and overbreadth").

strict scrutiny conflict with binding precedent and with basic First Amendment principles.

Defendants assert that the drag ban is a regulation of expressive conduct subject only to intermediate scrutiny under *United States v. O'Brien*, 391 U.S. 367 (1968). *See* Appellants' Br. at 34-36. But, as discussed above, live performances are unquestionably a protected medium of expression that are treated as pure speech, not merely expressive conduct. *See Anderson*, 621 F.3d at 1060.

Defendants also assert that the drag ban is a content-neutral law directed at the "secondary effects" of the performances on minors, and not based on the performances themselves. Appellants' Br. at 38. But the Supreme Court squarely rejected that argument in *Playboy*, explaining that when the "overriding justification for the regulation is concern for the effect of the subject matter on young viewers," it "is the essence of content-based regulation." 529 U.S. at 811–12. And "the lesser scrutiny afforded regulations targeting the secondary effects of crime or declining property values has no application to content-based regulations targeting the primary effects of protected speech." *Id.* at 815.

Defendants' own brief makes clear that the drag ban targets the allegedly harmful *primary* effects of the speech, not its secondary effects. As justification for the drag ban, Defendants quote one witness as testifying that "the drag queen might appear as a comic figure, but he carries a *serious message*: the deconstruction of sex,

the reconstruction of child sexuality, and the subversion of middle-class family life." Appellants' Br. at 40 (emphasis added). Defendants quote another witness testifying that "[s]ubjecting children to drag shows or drag queen story hour[s] are indoctrinating and grooming children to believe that it is normal for men to play dress-up" and testifying that "[t]heir appearance does not evoke one of a woman deserving of respect" and "is a mockery of women [that] perpetuates our sexual objectification." Appellants' Br. at 40-41. Far from supporting Defendants' assertions that the drag ban is content neutral, these objections to the allegedly harmful message of the performances illustrate the content- and viewpoint-based discrimination embedded in the law. *Cf. Am. Booksellers Ass'n, Inc. v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986) (holding that a law prohibiting sexually explicit depictions of the subordination of women is a content-based restriction on speech).

Nor can the drag ban's restrictions be defended as merely imposing restrictions on government subsidized activities. *Contra* Appellants' Br. at 28. The drag ban is not directed at the government's own speech, or even at speech subsidized by the government, but rather at the speech of private entities who use government property or receive government funding for unrelated reasons. Thus, the ban on "drag story hour" applies to private speech that takes place in libraries or on school property even though library meeting rooms and student club activities are

usually designated public forums in which viewpoint discrimination in prohibited. *See Doe v. City of Albuquerque*, 667 F.3d 1111, 1130 (10th Cir. 2012) (library); *Concerned Women for Am. Inc. v. Lafayette Cnty.*, 883 F.2d 32, 35 (5th Cir. 1989) (library auditorium); *Widmar v. Vincent*, 454 U.S. 263, 277 (1981) (student club); *Healy v. James*, 408 U.S. 169, 187 (1972) (same); *Gay Lesbian Bisexual All. v. Pryor*, 110 F.3d 1543, 1549 (11th Cir. 1997) (same).

The drag ban's prohibition on "sexually oriented performances" is even broader. It applies to all government-owned property, including traditional public forums such as sidewalks and parks, *see Santopietro v. Howell*, 73 F.4th 1016, 1023 (9th Cir. 2023), and designated public forums such as government-owned performance venues, *see Cinevision*, 745 F.2d at 567. And the ban applies to private speech on any property owned by an entity that has received even a penny of state subsidies for any reasons. Unlike conditions on subsidies that have been upheld by the Supreme Court, the drag ban unconstitutionally "place[s] a condition on the *recipient* of the subsidy rather than on a particular program or service, thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the [government] funded program." *Rust v. Sullivan*, 500 U.S. 173, 197 (1991); *see FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 400 (1984) (invalidating funding condition that prohibited stations from engaging in editorial activity even if a station "receives only 1% of its overall income" from the subsidized

funds and even if it uses "wholly private funds to finance its editorial activity"); *Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521, 541 (N.D. Cal. 2020) (enjoining executive order that prohibited federal contractors from providing diversity training to their own employees "untethered to the use of the federal funds").

None of Defendants' contentions can save the drag ban's content-based censorship from strict scrutiny.

C. The Drag Ban Fails Strict Scrutiny.

The Supreme Court has made clear that "restrictions based on content must satisfy strict scrutiny." *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018). To satisfy strict scrutiny the government must demonstrate that its restriction on non-obscene speech is "a narrowly tailored effort to serve [a] compelling government interest." *Sable Commc'ns of Cal. v. FCC*, 492 U.S. 115, 131 (1989). And "[w]here the designed benefit of a content-based speech restriction is to shield the sensibilities of listeners, the general rule is that the right of expression prevails, even where no less restrictive alternative exists." *Playboy*, 529 U.S. at 813.

Defendants' brief attempts to defend the drag ban under intermediate scrutiny, but does not even address whether the drag ban can survive the strict scrutiny standard. In evaluating speech restrictions premised on the need to protect minors, courts "must distinguish the State's interest in protecting minors from actual

psychological or neurological harm from the State's interest in controlling minors' thoughts. The latter is not legitimate." *Video Software Dealers Ass'n.,* 556 F.3d at 962. As Defendants' brief makes clear, however, the law seeks to restrict drag performances because the legislators disagree with the *messages* conveyed by drag performers about gender, not because of any objective harm. That is not a compelling interest, or even a legitimate one. "No doubt a State possesses legitimate power to protect children from harm, but that does not include a free-floating power to restrict the ideas to which children may be exposed." *Brown*, 564 U.S. 794 (citations omitted); *accord Cinevision*, 745 F.2d at 573 (invalidating ban on rock concerts motivated by city's "desire to inculcate the 'proper' community values in its youth"). A contrary rule "would risk leaving regulations in place that sought to shape our unique personalities or to silence dissenting ideas." *Playboy*, 529 U.S. at 818.

D. The Drag Ban Is Facially Overbroad.

The drag ban is also facially overbroad. A statute is overly broad if it "punishes a substantial amount of protected free speech, judged in relation to the statute's plainly legitimate sweep." *Virginia v. Hicks*, 539 U.S. 113, 118–19 (2003) (internal quotation marks omitted). "The overbreadth doctrine serves to protect constitutionally legitimate speech not merely *ex post*, that is, after the offending statute is enacted, but also *ex ante*, that is, when the legislature is contemplating what

sort of statute to enact." *Massachusetts v. Oakes*, 491 U.S. 576, 586 (1989) (opinion of Scalia J., joined in relevant part by a majority of the Court).

The drag ban is overbroad because every application of the statute to speech that is not obscene for minors necessarily implicates First Amendment protected speech. Likewise, every application of the ban to speech that is not obscene for minors is a content-based regulation of protected speech that fails strict scrutiny. *See Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 256 (2002) (concluding that prohibition in Child Pornography Prevention Act of 1996 is "overbroad and unconstitutional" because it "covers materials beyond the [unprotected] categories recognized in [*New York v.*] *Ferber*[, 458 U.S. 747 (1982)] and *Miller*").

Defendants assert that the district court erred in failing to save the drag ban from overbreadth by giving it a limiting construction. But to save a statute from overbreadth, the statute must be "readily susceptible" to such a construction. *United States v. Stevens*, 559 U.S. 460, 481 (2010). The courts may "not rewrite a law to conform it to constitutional requirements, for doing so would constitute a serious invasion of the legislative domain and sharply diminish [legislatures'] incentive to draft a narrowly tailored law in the first place." *Id.* (cleaned up).

Here, Defendants fail to identify any limiting construction that could save the statute—much less, a readily susceptible one. The only potential limitation that could arguably save the drag ban would be to narrow the statute to performances

that are obscene for minors under *Miller/Ginsberg*.[3] But that limitation is impossible here because the "Montana legislature considered and ultimately rejected incorporating the *Miller* test during the amendment process." ER-21. To bring the statute into compliance with *Miller/Ginsberg*, this Court would have to override the manifest intent of the legislature, rewrite the statute to conform to the first prong of the *Miller/Ginsberg* test, and insert the second and third prongs of the *Miller/Ginsberg* test, which were deliberately left out. The Supreme Court and this Court have repeatedly rejected similar attempts to narrow statutes to comply with *Miller/Ginsberg* when the legislature deliberately departs from the constitutional test for obscenity. *See Powell's Books*, 622 F.3d at 1215 (refusing to "insert missing terms into the statute or adopt an interpretation precluded by the plain language of the ordinance") (quoting *Foti v. City of Menlo Park*, 146 F.3d 629, 639 (9th Cir. 1998)); *Erznoznik*, 422 U.S. at 216 n.15 ("The only narrowing construction which

[3] Confining the drag ban to performances that are obscene for minors would still fail to cure the statute's pervasive viewpoint discrimination against the "message" conveyed by drag performances. "The government may not regulate [unprotected speech] based on hostility—or favoritism—towards the underlying message expressed." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 386 (1992). A statute confined to obscenity for minors (but not obscenity for adults) would also be subject to challenge for infringing on the constitutional rights of adults who wish to attend drag shows but are prevented from doing so. *See Reno v. ACLU*, 521 U.S. 844, 875 (1997) ("Government may not reduce the adult population to only what is fit for children.") (cleaned up).

occurs to us would be to limit the ordinance to movies that are obscene as to minors" but "rewriting of the ordinance would be necessary to reach that result.").

Because the drag ban does precisely what the First Amendment prohibits, the district court properly found that the statute was likely unconstitutional and issued a preliminary injunction against its enforcement.

CONCLUSION

The district court's preliminary injunction should be affirmed.

Respectfully submitted,

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February 15, 2024

CERTIFICATE OF SERVICE FOR ELECTRONIC FILING

I hereby certify that on February 15, 2024, I electronically filed the foregoing Amici Curiae Brief with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit through the appellate CM/ECF system. I further certify that all parties required to be served have been served.

Dated: February 15, 2024

Respectfully submitted,

/s/ Joshua A. Block
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AMERICAN CIVIL LIBERTIES UNION FOUNDATION

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 4,405 words, excluding the items exempted by Fed. R. App. P. 32(f), and complies with the length specifications set forth by Fed. R. App. P. 29(a)(5). I further certify that this brief was prepared using 14-point Times New Roman font, in compliance with Fed. R. App. P. 32(a)(5) and (6).

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