NO. 22-15149

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CREIGHTON MELAND, JR.,
Plaintiff-Appellant,

v.

SHIRLEY N. WEBER,
In her official capacity as Secretary of State of the State of California
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of California, Sacramento
Honorable John A. Mendez, District Judge

Brief Of *Amicus Curiae* Hamilton Lincoln Law Institute In Support Of Appellant Meland And Reversal Of The District Court's Judgment Filed With Consent Of All Parties

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Rule 26.1 Corporate Disclosure Statement

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Interest of Amicus Curiae

Hamilton Lincoln Law Institute ("HLLI") is a public interest organization dedicated to protecting free markets, free speech, limited government, and separation of powers against regulatory abuse and rent-seeking. Attorneys at HLLI, which is independent of the parties to this action, litigate subjects relevant to this case, such as protecting shareholders from abusive class-action settlements and practices and against rent-seeking litigation and government-imposed burdens. *See, e.g.*, *In re Walgreen Co. Stockholder Litig.*, 832 F.3d 718 (7th Cir. 2016). To this end, HLLI often files amicus curiae briefs in cases that involve harm to shareholders or government overreach. *See, e.g.*, *House v. Akorn, Inc.*, No. 19-2401, Dkt. 29 (7th Cir. Nov. 25, 2019).

HLLI files this amicus brief in support of reversal of the district court's decision. Counsel for the parties to this appeal have consented to the filing.

Federal Rule of Appellate Procedure 29 Statement

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), HLLI affirms that no counsel for a party authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting the brief, and no person other than amicus, its members, or its counsel has made any monetary contributions intended to fund the preparation or submission of this brief.

Summary of Argument

In 2018, the Governor of California signed into law SB 826, adding §§ 301.3 and 2115.5 to the California Corporations Code. Under this law, any public corporation

whose principal executive offices are located in California is required to have at least one female director on its board by the end of 2019, no matter the particulars of the company. By the end of 2021, corporations subject to the law must have additional female board members, with the specific number tied only to the total size of the board of directors. *See* SB 826. The Secretary of State is required to publish reports detailing compliance with SB 826, and is authorized to impose penalties on corporations whose shareholders fail to elect the prescribed number of women. Fines are $100,000 for the first violation and $300,000 for each violation thereafter. *See id.*

This Court previously reversed the district court's decision finding that the plaintiff in the case, OSI Systems shareholder and appellant Creighton Meland, Jr., lacked standing to challenge SB 826. *See Meland v. Weber*, 2 F.4th 838, 842 (9th Cir. 2021). On remand, the district court denied Meland's motion for a preliminary injunction of SB 826, finding the statute satisfied intermediate scrutiny because it aimed to remedy past discrimination and was substantially related to that remedial purpose. ER12, 20. Meland now appeals. Hamilton Lincoln Law Institute submits this brief because, in holding that Meland was unlikely to prevail on the merits, the decision disregards the Constitution's promise of equal protection under the law and the importance of protecting fundamental shareholder voting rights from unconstitutional interference by the state.

SB 826 cannot survive intermediate scrutiny because it creates an untailored and unjustified gender quota for boards of directors, unconstitutionally encouraging Meland and other shareholders to vote for a company's directors based on a nominee's sex. The law imposes a stiff penalty on the corporation for shareholders' failure to vote in a

discriminatory way. But it also harms women. The rigid quota hides from view the underlying impediments to women's parity in corporate leadership and thus prevents implementation of an actual remedy, while perpetuating the view that women are less worthy of selection on the basis of merit. Not only does California offer no "exceedingly persuasive justification" for its discriminatory quota, it fails to show that the quota "substantially serve[s]" its interest in remedying past discrimination "*today*." *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1690 (2017) (emphasis in original). "Because the government made no effort to tailor its [quota] system," it is not "substantially related" to the objective of remedying past discrimination. *Vittolo v. Guzman*, 999 F.3d 353, 365 (6th Cir. 2021). *See* Section I.

Shareholders such as Meland may have many reasons for rejecting the quotas imposed by SB 826 and for not wanting to consider the sex of a nominee simply to ensure a state-mandated ratio of women when they choose directors for their corporations. SB 826 wrongly attempts to delegitimize those reasons while encouraging shareholders to discriminate in their selection of directors based on the nominees' sex. *See* Section II.

The district court's judgment should be reversed.

Argument

I. SB 826 harms women and cannot survive intermediate scrutiny.

The quota imposed by SB 826 harms women—the very people it purports to help. With a monolithic approach, set to apply in perpetuity, the state encourages society to accept the pernicious view that female board members are chosen for their

sex rather than their qualifications. Legally mandated quotas might appear to be a quick fix to increase the representation of women on corporate boards. But quotas do not remove the barriers, biases, and other systemic and structural impediments to achieving gender parity in corporate boardrooms, let alone successfully remedy past discrimination. Research shows that instead of addressing barriers that may prevent more women from being elected in the first place, quotas like the one mandated by SB 826 create a sense of complacency and false belief that gender diversity has been achieved, while also undermining the perceived competence of the women serving as directors and discouraging qualified women from stepping forward to serve.

The district court erred by disclaiming the notion that a gender-based quota needed to be "narrowly tailored." Without citing *Morales-Santana*, 137 S. Ct. 1678, and instead relying on *Associated Gen. Contractors of Cal., Inc. v. City & Cty. of San Francisco*, 813 F.2d 922, 941-42 (1987), the district court did not make the appropriate inquiry and thus disregarded the many ways in which SB 826 is not appropriately tailored to achieve its purported interest in remedying past discrimination. In other constitutional areas employing intermediate scrutiny, there is ordinarily no question that the law demands narrow tailoring. *See Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 945 (9th Cir. 2011) (*en banc*) (First Amendment); *Heller v. District of Columbia*, 670 F.3d 1244, 1258 (D.C. Cir. 2011) (Second Amendment); *but see Duncan v. Bonta*, 19 F.4th 1087, 2021 U.S. App. LEXIS 35256, at *152 n.8 (9th Cir. 2021) (*en banc*) (Bumatay, J., dissenting) (observing that this Court has irresponsibly "dispensed with the requirement of narrow tailoring" in Second Amendment cases).

The harm from quotas such as those mandated by SB 826 goes beyond covering up the systemic barriers that women face at the highest rung of the corporate ladder. At one point, the court below suggests that SB 826 does not impose a quota because "corporate board seats are not a fixed resource" but instead "may be added and thus displacement of male directors is not an inevitable outcome." ER19. This proves too much because the same could be said of the size of incoming classes at a university. The district court did concede that SB 826 imposes "rigid numerical requirements," *i.e.*, a quota. ER20.

Legally mandated quotas risk creating stereotype threat—a vicious cycle whereby the group the law aims to help becomes scrutinized for underperformance and members of the group underperform because, by being reminded of the negative stereotype that underlies the quota, they subconsciously conform to it. *See* Anat Bracha, *et al.*, *Affirmative Action and Stereotype Threat* (Federal Reserve Bank of Boston, Working Paper No. 13-14, 2013) (finding that gender-based affirmative action "negatively affects high-ability women").[1] In other words, "discrimination itself perpetuates archaic and stereotypic notions incompatible with equal treatment guaranteed by the Constitution." *Morales-Santana*, 137 S. Ct. at 1698 n.21. Amicus recognizes the benefit that a diversity of perspectives and life experiences may bring to business affairs, including by having women and other underrepresented groups on the board. But requiring shareholders to elect a woman—any woman, regardless of qualifications—on a specified timeline to avoid the punitive effect of a quota law risks creating stigma and resentment from those

[1] Available at https://www.bostonfed.org/publications/research-department-working-paper/2013/affirmative-action-and-stereotype-threat.aspx.

who do not qualify for special treatment. *Cf. Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (noting that laws that provide favorable treatment based on race-based classifications "may in fact promote notions of racial inferiority and lead to a politics of racial hostility").

Quotas also create a perception that once a corporation has checked the box of the state-prescribed quota, it has done enough to remediate past discrimination. Without a set quota, shareholders may be more likely to go farther and thoughtfully consider a greater number of diverse candidates for election. SB 826's quota thus makes it more likely that female board members become a token for the company to point to as evidence of its diversity, allowing it to avoid the hefty fines of SB 826 and to call it a day.

These concerns are supported by empirical data. A study reported by Forbes found that a company's diversity quota caused both men and women to believe that "merit seemingly played a lesser role" than gender in hiring decisions. *See* Meir Shemla & Anja Kreienberg, *Gender Quotas in Hiring Drive Away Both Women and Men*, Forbes (Oct. 16, 2014) (discussing results of their study).[2] The same study found that this stigma prevented people from applying when they knew a diversity quota was involved. *Id.* ("gender quotas drive top talent away"). *Id.* Studies also show that there is no "trickle down" effect to the rest of a corporation when gender quotas are in effect. For example, in Germany and Sweden, where gender quotas have resulted in women holding 30% and higher of directorships, only 2% of CEOs are women. *See* Subodh Mishra, *Women*

[2] Available at https://www.forbes.com/sites/datafreaks/2014/10/16/gender-quotas-in-hiring-drive-away-both-women-and-men/#466152dd1235.

in the C-Suite: The Next Frontier in Gender Diversity, Harvard Law School Forum on Corporate Governance (Aug. 13, 2018).[3] It is thus no exaggeration to suggest that SB 826 creates "the risk of board gender diversity becoming a check-the-box exercise for boards without further diversity and inclusion in the entire organization." *See* Mikayla Kuhns, et al., *California Dreamin': The Impact of the New Board Gender Diversity Law*, The CLS Blue Sky Blog.[4]

Moreover, quotas tend to result in companies appointing "diverse" people already in their own networks and who may already serve on other boards. A study from Norway—the first country to introduce gender quotas for corporate boards in 2003, serves as an example. The study found that the only way board quotas have helped women is by benefiting the small, select group of elite women chosen to serve, many of whom hold multiple board positions. Even as companies in Norway have met the legally mandated 40% board representation, only 7% of its companies have a female CEO or equivalent. *See Ten years on from Norway's quota*, The Economist (Feb. 17, 2018).[5] Quotas exacerbate rather than remedy the broader problem of director candidates typically being drawn from a narrow segment of corporate executives, meaning that the those who realize any benefit from SB 826 will be those who have already achieved positions of or proximity to power and the attendant personal wealth associated

[3] Available at https://corpgov.law.harvard.edu/2018/08/13/women-in-the-c-suite-the-next-frontier-in-gender-diversity/.

[4] Available at https://clsbluesky.law.columbia.edu/2019/01/04/california-dreamin-the-impact-of-the-new-board-gender-diversity-law/.

[5] Available at https://www.economist.com/business/2018/02/17/ten-years-on-from-norways-quota-for-women-on-corporate-boards.

therewith, while failing to increase opportunities for women more broadly. *See id.* Rather than expand opportunity, board quota laws allow the already elite to scoop up more opportunities for themselves.

There are superior and better-tailored ways to achieve the goals of SB 826. For example, increasing numbers of companies nationwide are signing a pledge to interview and consider at least one qualified woman and person of color for every open executive position and to "speak up for, support and celebrate" the advancement of these individuals. *See* Becky Jacobs, *Utah businesses promise to interview at least one person of color for top-level jobs*, The Salt Lake Tribune (July 29, 2020).[6] These and other promising private market forces are driving an increase in corporate board diversity. "The record-breaking influx of female board members observed in the past [few] years is primarily driven by private ordering through company-shareholder engagement, shareholder proposals, and an increasing number of large asset managers adopting voting policies emphasizing board gender diversity." Kuhns, *supra*, The CLS Blue Sky Blog. These results show that state-mandated quotas are not the optimal path to their intended outcome and are not appropriately tailored.

SB 826 is also overbroad because it assumes that all corporations are monolithic, but this is obviously not correct. Corporations subject to SB 826 cover a broad array of industries. There is a great degree of variability among corporations, even within the same general industry groups. Further, there is a great degree of variation between males

[6] Available at https://www.sltrib.com/news/2020/07/29/utah-businesses-promise/#:~:text=NEWSLETTERS-,Utah%20businesses%20promise%20to%20interview%20at%20least%20one%20person%20of,top%2Dlevel%20positions%20at%20companies.

and females within industries. For instance, women make up a disproportionate percentage in the workforce in several industries or job categories. Recent Bureau of Labor Statistics data show that women make up a disproportionate share of the workforce in human resources (80%), veterinary medicine (82%), public relations (68%), educational and health services (75%), social services (84%), personal care (71%) and professional services such as accounting and payroll (61%).[7] This translates into a greater percentage of women reaching the highest ranks of corporations in those industries, and from which one would find the likely candidates to fill board positions. It is unclear how a quota "substantially serve[s]" an interest in remedying discrimination in these industries. *See Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 728 (1982) ("readily apparent that a State can evoke a compensatory purpose to justify an otherwise discriminatory classification only if members of the gender benefited by the classification actually suffer a disadvantage"). "[G]eneral claims of societal discrimination are not enough." *Vittolo*, 999 F.3d at 364.

McKinsey & Company's 2021 annual report on Women In the Workplace shows that women make up a significant portion of C-suite (*i.e.*, senior executive) ranks in banking/consumer finance (30%), consumer goods (31%), professional services (38%), healthcare services (28%), and public/social services (38%).[8] The same report indicated that industries that have a lower proportion of women, not surprisingly tend to have a

[7] Bureau of Labor Statistics Reports, Women in the labor force: a databook Table 14 Employed people, by detailed industry and gender, 2019 annual averages, April 2021; available at bls.gov/opub/reports/womens-databook/2020/home.htm.

[8] *See* McKinsey & Company, *Women in the Workplace 2021*, at 55-56; available at mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace.

lower percentage of women at the upper-most ranks.[9] Accordingly, it makes sense that corporations in some industries might naturally have a higher or even disproportionate number of female directors. Conversely, those industries that still tend to be dominated by males such as technology, heavy industry, or oil and gas likely will have a deeper pool of male candidates with the background, skills and experience that shareholders would expect to see in board members for those corporations.

This does not mean, however, that industries that still tend to be disproportionately male, particularly at the senior executive and board level, will remain that way. Indeed, industries such as banking and financial services that were once dominated by males, now have females making up a majority of the workforce[10] and consequently, women have risen to the highest echelons of corporate leadership.[11] Such progress means there is a deeper pool of females who will have the requisite

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[9] *Id.* For example, only 40% of entry level jobs in the energy and basic materials industry are held by women, with only 21% of C-suite positions held by women. Similarly, women make up 38% of entry level position in the oil and gas industry, and 10% of C-suite positions. The technology and engineering/industrial manufacturing industries have similar percentages.

[10] Bureau of Labor Statistics Reports, *supra* note 3. Table 14 shows females account for 54.7% of workforce in Finance and Insurance and 59.5% in banking and related activities.

[11] Kate Kelly, *JPMorgan Chase Elevates Two Women to Senior Positions, Fueling Succession Talk*, N.Y. TIMES, May 18, 2021; Jack Kelly, *Citigroup's Jane Fraser Will Be The First Female CEO of a Top-Tier Investment Bank*, FORBES, Sept. 10, 2020; Benjamin Snyder, *Abigail Johnson Named CEO of Fidelity Investment*, FORTUNE, Oct. 13, 2014. REUTERS, *City National Bank Names JPMorgan's Kelly Coffey as CEO*, Oct. 24, 2108; Nandita Bakhshi, *A Former Bank Teller, is CEO of Bank of the West*, GLOBAL INDIA TIMES, June 15, 2021.

background, experience and skill set that would make them good candidates to be elected by shareholders to board seats—without the quota required by SB 826.

II. SB 826's woman quota compels private shareholders to engage in discrimination based on sex while impinging on their freedom to vote independently.

Management of a business is vested in the board of directors, which oversees the corporate executives and other managers. State corporate codes vest directors with "substantial authority and wide discretion," and "[i]t is generally agreed that directors are the ultimate managers of the business." Julian Velasco, *The Fundamental Rights of the Shareholder*, 40 U.C. Davis L. Rev. 407, 410 (2006) (citing Del. Code Ann. Tit. 8, § 141(a); Model Bus. Corp. Act. § 8.01(b)). The only ability shareholders have to exercise control over the corporation exists through their right to vote on certain important matters relating to the business—chiefly, the right to elect the directors. *See MM Cos. v. Liquid Audio, Inc.*, 813 A.2d 1118, 1126 (Del. 2002) ("The stockholders' power is the right to vote on specific matters, in particular, in an election of directors.") "The number-one voting item in corporate elections is and always has been the election of directors." Ken Bertsch, *The Value of Shareholder Voting*, The CLS Blue Sky Blog (Apr. 23, 2020) (noting that shareholder voting is a "critical accountability structure").[12]

SB 826 recognizes the role of shareholders in electing directors, stating that "each director [of corporations subject to the law] is elected by shareholder vote." ER628.

[12] Available at https://clsbluesky.law.columbia.edu/2020/04/23/the-value-of-shareholder-voting/.

And, in fact, the shareholders of OSI Systems—including Meland—are responsible for electing the members of the corporation's board of directors. ER625.

For decades courts have protected shareholder voting rights from interference. In doing so, they recognize the "central importance of the [shareholder] franchise to the scheme of corporate governance." *Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651, 659, 663 (Del. 1988) (setting aside board's action to expand the size of its membership for the primary purpose of interfering with shareholder vote in contested director election); *Liquid Audio, Inc.*, 813 A.2d 1118 (similar). "The shareholder franchise is the ideological underpinning upon which the legitimacy of directorial power rests." *Blasius Indus.*, 564 A.2d at 659. It is what "legitimates the exercise of power by some (directors and officers) over vast aggregations of property that they do not own." *Id.*; *see also* Bertsch, *The Value of Shareholder Voting*, *supra*. The integrity and independence of the shareholder voting process, therefore, is essential to "[m]aintaining a proper balance in the allocation of power between the stockholders' right to elect directors and the board of directors' right to manage the corporation." *Liquid Audio*, 813 A.2d at 1127.

This balance of power is important because, even unimpeded, shareholders' voting rights can be a relatively weak power. Directors control the proxy mechanism, and because of the diffuse control of shareholders, incumbent board members often become entrenched and are rarely voted out of office. Julian Velasco, *Taking Shareholder Rights Seriously*, 41 U.C. Davis L. Rev. 605, 612 (2007). Once elected, a director has tremendous influence over the affairs of the corporation, while shareholders have little. Shareholders vote only on the matters submitted to them, and, generally, corporate bylaws require that the directors first must propose such matters for voting. Even then,

shareholders may only vote for or against a proposal; they may not modify it to suit their preferences. As a result, directors are often able to prevent a shareholder vote on many matters that the directors would prefer to avoid having shareholders decide. *Id.* at 612-13. Although shareholders can amend the bylaws to changes certain voting rules, the amendment process is difficult and can easily be undone by directors, who also have authority to amend the bylaws and can thus unwind any changes made by the shareholders. *Id.* at 614.

The initial election therefore takes on increased importance. In that initial election and even in the reelection of long-time directors, voting "provides a channel for communication between shareholders, the board, and management." David Yermack, *Shareholder Voting and Corporate Governance*, 2 Ann. Rev. Fin. Econ. 103 (2010). Any interference with this communication and this fundamentally important element of shareholder governance accordingly has been, and should be, rejected.

Now, however, with SB 826, the State of California is effectively trying to compel shareholders to discriminate on the basis of sex by setting a woman quota for corporate boards and punishing shareholders' refusal to do so. Specifically, SB 826 burdens the right of Meland, as an OSI shareholder, and all other shareholders of California-based corporations to freely choose directors to oversee the management and strategic direction of the company. Not only does SB 826 burden shareholders, it targets them. *Meland v. Weber*, 2 F.4th 838, 845 (9th Cir. 2021) ("corporate shareholders are an object of SB 826").

The district court decision fails to address this state-encouraged discrimination by shareholders arising from SB 826's quota requirement. Instead, the district court

found that "SB 826 is substantially related to its remedial goal and likely to survive a facial challenge." ER22. The only other factor the district court mentioned was to add an editorial comment that enjoining SB 826 would not be in the public interest. ER22-23.

SB 826 seeks to force shareholders, every year, to perpetuate sex-based discrimination in the election of directors. ER625. It is passing strange to try to remedy discrimination by encouraging it; the way to "stop discrimination on the basis of [gender] is to stop discriminating on the basis of [gender]." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No.* 1, 551 U.S. 701, 748 (2007). And just as California has the obligation under the Fourteenth Amendment not to adopt private prejudice as its own,[13] it has a reciprocal obligation not to promote private prejudice. *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 711 (9th Cir. 1997) (holding that it is equal protection violation where "the government requires or encourages" discrimination "against others based on their . . . sex").

That SB 826 requires shareholders to engage in unconstitutional discrimination is a concern recognized even by the law's supporters. The Assembly Committee on Judiciary reported that "SB 826 would likely be challenged on equal protection grounds and the means that the bill uses, which is essentially a quota, could be difficult to defend." *Corporations: Boards of Directors*, Assembly Committee on Judiciary, SB 826 (June 26, 2018). Then-Governor Jerry Brown further recognized in his signing letter that "serious legal concerns have been raised" about the law and these "potential flaws …

[13] *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).

may prove fatal to its ultimate implementation."[14] The potential flaws included, of course, the sex-based preferences built into SB 826 that can be justified only by specific evidence and findings—absent from the legislative findings for SB 826—of past or present discrimination in the particular field subject to the preferences. *See Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (1978).

The corporation cannot take the action required by SB 826 to avoid the imposition of a penalty; only shareholders can elect directors of OSI Systems. *See* ER625. SB 826 impermissibly substitutes the judgment of shareholders with that of the legislature. Moreover it does so by imposing a one-size-fits-all quota system that is superficial in its application and only varies based on the size of the board.

"Like racial classifications, sex-based discrimination is presumptively invalid." *Vittolo*, 999 F.3d at 364. Such discrimination requires 'an exceedingly persuasive justification.'" *Morales-Santana*, 137 S.Ct. at 1690 (quoting *United States v. Virginia,* 518 U.S. 515, 531 (1996)). By placing a burden on one of the most important shareholder rights, and mandating that shareholders discriminate on the basis of sex, SB 826 violates the constitution's equal protection clause. The district court was wrong to hold otherwise. *See, e.g.*, *Monterey Mech. Co.*, 125 F.3d at 711; *Bras v. California Pub. Utilities Comm'n*, 59 F.3d 869, 873-75 (9th Cir. 1995).

Rather than allowing shareholders to evaluate current and prospective board members—either male or female—based on their background, skills and experience,

[14] *See* John Woolfolk, *California becomes first state to require women on corporate boards*, The Mercury News (Sept. 30, 2018), *available at* https://www.mercurynews.com/2018/09/30/california-becomes-first-state-to-require-a-woman-on-corporate-boards/.

SB 826 imposes a rigid framework that relies on superficial generalizations about women. The Supreme Court views such laws with a high degree of skepticism. *Morales-Santana*, 137 S.Ct. at 1690 (viewing with "suspicion laws that rely on 'overbroad generalizations about the different talents, capacities, or preferences of males and females'") (quoting *United States v. Virginia,* 518 U.S. at 533). The district court failed to exercise that high degree of skepticism and, accordingly, its ruling is in error and should be reversed.

Conclusion

HLLI respectfully asks the Court to reverse the district court's order.

Dated: March 2, 2022

Respectfully submitted,

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Certificate of Compliance
Pursuant to 9th Circuit Rule 32-1 for Case Number 18-56371

I certify that: This brief complies with the length limits permitted by Ninth Circuit Rule 32-1. The brief is 4,166 words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Executed on March 2, 2022.

/s/ Anna St. John
Anna St. John

Proof of Service

I hereby certify that on March 2, 2022, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Ninth Circuit using the CM/ECF system, which will provide notification of such filing to all who are ECF-registered filers.

/s/ Anna St. John
Anna St. John