No. 21-55855

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOBILIZE THE MESSAGE, LLC, MOVING OXNARD FORWARD, INC., and STARR COALITION FOR MOVING OXNARD FORWARD,

Plaintiffs – Appellants,

v.

ROB BONTA,

Defendant – Appellee.

On Appeal from the United States District Court
for the Central District of California
Honorable Virginia A. Phillips, Chief District Judge

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITION FOR REHEARING EN BANC

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Corporate Disclosure

Pursuant to Federal Rule of Appellate Procedure 26.1, Pacific Legal Foundation states that it has no parent corporation and that no publicly held corporation owns 10% of more of its stock.

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Interest of Amicus Curiae

Pacific Legal Foundation[1] litigates matters affecting the public interest at all levels of state and federal courts. PLF represents entrepreneur clients who rely on communication to build their businesses and livelihood and to educate the public about matters within their expertise. In furtherance of PLF's continuing mission to defend individual and economic liberty, the Foundation has participated in several cases before the courts on matters affecting the public interest, including issues related to the First Amendment and economic regulation. *See, e.g.*, *Am. Soc'y of Journalists & Authors, Inc. v. Bonta* (*ASJA*), 15 F.4th 954 (9th Cir. 2021); *City of Austin, Texas v. Reagan National Advertising of Austin, LLC*, 142 S.Ct. 1464 (2022); and *Reed v. Town of Gilbert*, 576 U.S. 155 (2015).[2]

Introduction and Summary of Reasons for Granting the Petition

The California Labor Code—similar to California's Private Postsecondary Education Act (PPEA)—"favors particular kinds of speech and particular speakers through an extensive set of exemptions." *Pacific Coast Horseshoeing School v. Kirchmeyer*, 961 F.3d 1062, 1072 (9th Cir. 2020) (interpreting PPEA). "That means [these exemptions] necessarily disfavor[] all other speech and speakers." *Id*.

[1] Per Fed. R. App. P. 29(a)(4)(E), no party's counsel authored any part of this brief, and no person other than Amicus Curiae and its members made any contribution intended to fund the preparation or submission of this brief.

[2] Pursuant to Circuit Rule 29-2(a), all parties have consented to the filing of this amicus brief.

Assembly Bill 5 (AB5), as amended and codified in Sections 2775–2787 of the California Labor Code, governs employee classification, imposing a strict "ABC test" that renders most workers employees. Exemptions in Section 2783 favor "marketing, that is, speech with a particular content," *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 564 (2011), by applying less restrictive employee classification rules to door-to-door solicitation involving commercial rather than political speech. *See* Cal. Labor Code § 2783(e). Exemptions also exist for newspaper delivery, but not delivery of other similar written materials. *Id.* § 2783(h)(1). Section 2783 is therefore a content-based law "defining regulated speech by its function or purpose." *Reed*, 576 U.S. at 163. The only way to know how Section 2783 applies to door-to-door solicitation is through "official scrutiny of the content of publications," *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 229 (1987), to determine the "function or purpose" of the speech, *Reed*, 576 U.S. at 163.

The panel majority erred by applying no First Amendment scrutiny at all to Section 2783. The panel creates a conflict with this Court's on-point decision in *Pacific Coast*, and ignored the "the crucial first step in the content-neutrality analysis" required by *Reed*. The panel further erred by considering AB5 as a whole, rather than interpreting the constitutionality of specific provisions that apply to individual speakers. In doing so, the panel created a rule of decision that effectively exempts byzantine legislation from judicial review and allows the State to strangle

constitutional rights amid a tangle of regulations and exemptions. The full Court must correct the panel decision.

I. The Panel Majority Conflicts with Circuit and Supreme Court Precedent By Applying No First Amendment Scrutiny to a Content-Based Regulation

The panel majority concluded that AB5's exemptions "do not depend on the communicative content, if any, conveyed by the workers but rather on the workers' occupations." *Mobilize the Message, LLC v. Bonta*, No. 21-55855, 2022 WL 6632087, at *8 (9th Cir. 2022). But the panel never asked the obvious next question: What defines workers' occupations? Dissenting Judge Van Dyke confronted that question directly: AB5 creates occupational classifications that "turn predominantly, if not entirely, on the content of the workers' speech." *Id*. at *9 (Van Dyke, J., dissenting).

The panel majority's failure to look past the "occupation" label effectively "skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face." *Reed*, 576 U.S. at 165. That allowed AB5 to "escape classification as facially content based simply by swapping an obvious subject-matter distinction for a 'function or purpose' proxy that achieves the same result." *City of Austin v. Reagan Nat'l Advert. of Austin*, 142 S.Ct. 1464, 1474 (2022). The panel erred by shortcutting the First Amendment analysis.

Nor was it appropriate for the panel to disregard this Court's point-by-point refutation of the panel's reasoning in *Pacific Coast*. The panel disregarded the First Amendment implications of AB5 because it burdens, rather than bans, speech; that distinction has no support in the case law, and it was also explicitly rejected as "not essential" in *Pacific Coast*. 961 F.3d at 1071 n.5.

A. The Panel Opinion Conflicts with *Pacific Coast*

The panel here made the same errors that this Court corrected in *Pacific Coast*. That case involved a First Amendment challenge to California's Private Postsecondary Education Act (PPEA), which limits the ability of post-secondary schools to charge tuition to students without a high school degree, unless they pass a test showing they have the "ability to benefit" from the course of instruction. *Id*. at 1066.

The district court in *Pacific Coast* concluded that the ability-to-benefit rule "does not prohibit the imparting or disseminating of information. Instead, [the court] determined that the law regulates only conduct … and any burdens on speech were 'incidental,' resulting from the government's regulation of commercial transactions." 961 F.3d at 1067–69. Likewise, the panel here concluded that the challenged laws are "a regulation of economic activity, not speech." *Mobilize the Message*, 2022 WL 6632087 at *7. "'It does not, on its face, limit what someone can or cannot communicate. Nor does it restrict when, where, or how someone can speak.

It instead governs worker classification … [of] given occupations under given circumstances.'" *Id*. (quoting *ASJA*, 15 F.4th at 961–62).

This Court rejected that "incidental" characterization in *Pacific Coast*: "when the Act is viewed in its entirety, it becomes clear that it controls more than contractual relations. It also regulates what kind of educational programs different institutions can offer to different students. Such a regulation squarely implicates the First Amendment." 961 F.3d at 1069. Section 2783, viewed in the context of the entire article, limits the kind of speech independent contractors can engage in by imposing the ABC test only on unfavored speech. A door-to-door solicitor selling copies of J.D. Vance's *Hillbilly Elegy* is exempt from the ABC test under Section 2783(e), but the same solicitor must be an employee to discuss J.D. Vance the candidate. *See* Cal. Labor Code § 2783(e). That is both absurd and plainly content-based. Similarly, a newspaper prepared by candidates must be distributed by employees, but a newspaper that fits the statutory definition of Section 2783(h)(2)(A) can be delivered by an independent contractor. The same person, driving the same car, could deliver both papers, but must be paid and regulated differently based on only one thing: the communicative content of the paper being delivered. The First Amendment is squarely implicated by that burden.

As in *Pacific Coast*, the question here is not whether AB5 places a burden on Appellants—"it plainly does, as do California's tax, zoning, and workplace laws. …

The question is whether, in the course of that regulation, the Act implicates heightened First Amendment scrutiny. One way for us to tell is to ask whether the [law] differentiates between speech or speakers. … It does." 961 F.3d at 1070–71 (tidied). *Pacific Coast* based that conclusion on the observation that, like AB5, the statute at issue there was riddled with exceptions that turned on either: (1) the content of educational instruction, or (2) the speakers' identity. The exceptions demonstrated that the Act did more than merely impose an incidental burden on speech: it "target[s] speech based on its communicative content." 961 F.3d at 1070–71 (quoting *Reed*, 576 U.S. at 163). "The PPEA thus favors particular kinds of speech and particular speakers through an extensive set of exemptions." 961 F.3d at 1071–72. AB5 also favors particular kinds of speech and particular speakers through a set of exemptions that apply based on the content of workers' speech.

The State responded in *Pacific Coast* by urging that the PPEA's exemptions for recreational and other schools, but not vocational schools, went to the "type of instruction, not speech." Appellee Br. at 39, *Pacific Coast Horseshoeing Sch., Inc. v. Kirchmeyer*, No. 18-15840. *Pacific Coast* rejected this formulation. 961 F.3d at 1068–69. The panel here revived that false distinction as an "occupation, not speech" argument. *Mobilize the Message*, 2022 WL 6632087 at *7.

The panel's only effort to distinguish *Pacific Coast* and other speech precedents is to repeat a single footnote from *ASJA*, that relies on reasoning explicitly rejected in *Pacific Coast*. The *ASJA* panel asserted *Pacific Coast*:

> concerned a law that "squarely" implicated the First Amendment by "regulat[ing] what kind of educational programs different institutions can offer to different students."

ASJA, 15 F.4th at 962 n.7 (quoting *Pacific Coast*). Whereas here, according to the panel, "Section 2783 does not target certain types of speech." *Mobilize the Message*, 2022 WL 6632087 at *8. But in *Pacific Coast* this Court was uninterested in whether the PPEA *prevented* a student from enrolling or simply *burdened* students' ability to enroll by precluding the school from charging tuition. 961 F.3d at 1071 n.5. ("The question of how the Act is enforced is not essential [to] our disposition here."). What matters—both here and in *Pacific Coast*—is *why* the burden applies: because the law "requires authorities to examine the contents of the message to see if a violation has occurred." 961 F.3d at 1073 (tidied). *See also Sorrell*, 564 U.S. at 565–66 ("Lawmakers may no more silence unwanted speech by burdening its utterance than by censoring its content.").

Pacific Coast conflicts with the panel's "economic activity not speech" reasoning, it conflicts with the panel's "occupation, not speech" reasoning, and it conflicts with the panel's rationale for distinguishing *Pacific Coast* and other speech precedents. The two decisions are irreconcilable, requiring the full Court's review.

B. The Panel Opinion Conflicts with *Reed* and *Sorrell*

Like the panel reversed in *Reed*, the panel here skipped "the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face." *Id*. at 165. Section 2783 indisputably favors marketing of commercial products over Appellants' marketing of political ideas. *Sorrell*, 564 U.S. at 564.

Whether a worker's solicitations and deliveries fall within the exemptions for door-to-door solicitation and newspaper delivery (Section 2783(e), (h)(1)) "depend[s] entirely on [its] communicative content." *Reed*, 576 U.S. at 164. This resembles the facially content-based sign code in *Reed*:

> If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election ….

Id. at 164–65. Similarly, if a door-to-door solicitor is selling copies of John Locke's Two Treatises of Government, he can work as an independent contractor; but if he goes door-to-door to pitch political candidates who support Lockean government, he must be hired as an employee. A contractor can deliver newspapers in the morning, but then must be an employee to deliver political pamphlets in the afternoon. That other exemptions to the ABC test depend on non-speech factors, *Mobilize the Message*, 2022 WL 6632087 at *7, does not change that the exemptions here turn entirely on content. Under *Sorrell* and *Reed*, the panel owed at least some First Amendment scrutiny to this facially content-based distinction.

One might wonder whether government has a substantial or compelling interest in burdening the speech of independent political activists. At this juncture, though, it does not matter why the legislature favored some speech and speakers over others—the simple fact that it has picked winners and losers based on the content of speech requires strict scrutiny. Yet the panel applied no scrutiny at all.

Section 2783 differs from "generally applicable" laws because its burdens apply differently based on the type of speech it covers. The Supreme Court upheld the Fair Labor Standards Act (FLSA) against a First Amendment challenge because "the Act's purpose was to place publishers of newspapers upon the same plane with other businesses," *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 194 (1946); the National Labor Relations Act, because "[t]he business of the Associated Press is not immune from regulation because it is an agency of the press," *Assoc. Press v. NLRB*, 301 U.S. 103, 132 (1937); the Sherman Act, because "a combination to restrain trade in news and views has [no] constitutional immunity," *Assoc. Press v. United States*, 326 U.S. 1, 20 (1945); and cable television taxes, because "[t]here is nothing in the language of the statute that refers to the content of mass media communications," *Leathers v. Medlock*, 499 U.S. 439, 449 (1991). Appellants do not seek immunity or special treatment; they seek equal treatment without regard to the content of their speech—precisely the guarantee extended by *Sorrell* and endorsed in *Reed*.

It is not "'difficult to see how any occupation-specific regulation of speakers would avoid strict scrutiny.'" *Cf. Mobilize the Message*, 2022 WL 6632087 at *7 (quoting *ASJA*, 15 F.4th at 963–64). This case does not implicate cases permitting less scrutiny of laws regulating uncontroversial factual disclosures in commercial transactions, *cf. Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978), nor even commercial speech generally, *see Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980).

FLSA regulations are not implicated by this case either, because they depend on how work is performed and worker qualifications—not content. *See, e.g.*, 29 C.F.R. § 541.301 (governing "work requiring advanced knowledge" in a "field of science or learning" "customarily acquired by a prolonged course of specialized intellectual instruction"). Other FLSA regulations govern "work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor," 29 C.F.R. § 541.302(c)–(d), and this reveals the problem with Section 2783 that the federal regulations avoid: under Section 2783 why workers speak and what they say determines how they are regulated.

Similarly, regulations that turn on licensure—e.g., laws regulating the practice of law or medicine—do not depend on the content of speech. *See* 29 C.F.R. § 541.304. They focus on whether certain conduct constitutes the practice of the regulated profession. *See Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S.Ct.

2361, 2373–74 (2018) (distinguishing "regulation of professional conduct" from a law that "regulates speech as speech"); *Cap. Associated Indus., Inc. v. Stein*, 922 F.3d 198, 208 (4th Cir. 2019) ("As CAI recognizes, the practice of law has communicative and non-communicative aspects."). Conversely, Section 2783 bases its exemptions only on the "function or purpose," viz. "the content," of workers' speech. This is a facially content-based burden on speech, contrary to the panel ruling.

II. Individual Statutory Provisions That Target Speech Implicate the First Amendment

The panel also erred by reviewing AB5 solely as economic regulation even when identifiable individual sections specifically target speech and speakers. *Mobilize The Message*, 2022 WL 6632087 at *8 ("Section 2783 does not target certain types of speech. Unless an occupational exemption exists, the ABC test "'applies across California's economy.'") (citing *ASJA*, 15 F.4th at 962–63). Dissenting Judge Van Dyke correctly offered this rejoinder:

> This misunderstands the relevant First Amendment inquiry. Plaintiffs are not required to engage in some balancing test where the constitutional parts of AB 5 are weighed against the unconstitutional parts of AB 5. Even if most aspects of a given law regulate broadly without regard to speech, that cannot possibly protect the parts of that law that do distinguish on speech. If this were true, the government could circumvent the First Amendment simply by hiding content-based distinctions within a sweeping regulation. Rather, the proper inquiry is whether the exact exemptions challenged here predominately turn on the content of the workers' speech.

2022 WL 6632087 at *10 (Van Dyke, J., dissenting). This view is correct and should be adopted by the whole Court. Any discrete section of legislation that impinges on the First Amendment rights of *individuals* requires strict scrutiny, even if it is buried amid a tangle of regulations and exemptions. Free speech rights cannot be dependent on the style and length of legislation.

A. The Nature of the Burden on Speech Must Focus on Individual Speakers

This Court should grant rehearing to engage in a practical assessment of the financial and other burdens suffered by the *individuals* who claim violation of free speech rights. *See McCutcheon v. Federal Election Comm'n*, 572 U.S. 185, 205 (2014) (courts assessing First Amendment speech rights appropriately focus on the individual, not the collective public interest). "Where a law is subjected to a colorable First Amendment challenge, the rule of rationality which will sustain legislation against other constitutional challenges typically does not have the same controlling force." *City of Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, 496 (1986). Courts "may not simply assume that the ordinance will always advance the asserted state interests sufficiently to justify its abridgment of expressive activity." *Id.* (citation omitted).

The question here is whether AB5 discriminates against speech on the basis of content, in violation of the First Amendment, by classifying canvassers who speak about "consumer products" more favorably than canvassers who speak about

politics, and by classifying workers who deliver particular newspapers more favorably than workers who deliver ballot petitions and other campaign material. The panel majority incorrectly ignored the *individual* rights of the canvassers and deliverers of communications containing political content, viewing the speakers as nothing more than occupational categories unworthy of judicial scrutiny. *See Mobilize the Message*, 2022 WL 6632087 at *11 (Van Dyke, J., dissenting) ("Regardless of whether such content-based distinctions hide under the veneer of a labor classification, the First Amendment's protections remain the same.").

Regulations need not uniquely burden speech to warrant First Amendment review. For example, in *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988), the Supreme Court held that Virginia's tort of intentional infliction of emotional distress was "a law of general applicability" unrelated to the suppression of speech, but when used to penalize the expression of opinion, the law was subject to First Amendment scrutiny. *See also Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 662 (1994).

This Court employed the correct approach in *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808 (9th Cir. 2013), when considering the validity of a day laborer traffic law: "Arizona may prohibit pedestrians and motorists from blocking traffic, and it has done so." *Id*. at 818. But "it may not, consistent with the First Amendment, use a content-based law to target individuals for lighter or harsher punishment because

of the message they convey while they violate an unrelated traffic law. Such disparate treatment implicates the First Amendment." *Id.* at 823.

The Second Circuit applies the same analysis in day laborer traffic cases to ensure protection of individual speech rights. *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 112 (2d Cir. 2017) ("Although the Ordinance has a conduct component—the attempted stopping of a vehicle—the Ordinance only punishes such conduct if done 'for the purpose of soliciting employment.'" Town officials who "monitor and evaluate the speech of those stopping or attempting to stop vehicles … may sanction the speaker only if a suspect says the wrong thing, for example, 'hire me' as opposed to 'tell me the time.'"). *See also Cornelio v. Connecticut*, 32 F.4th 160, 169 (2d Cir. 2022) ("It is well-established that First Amendment rights may be violated by the chilling effect of governmental action that falls short of a direct prohibition against speech.") (citation omitted); *Stonewater Roofing, Ltd. v. Tex. Dep't of Ins.*, 641 S.W.3d 794, 803 (Tex. App.–Amarillo 2022) (First Amendment scrutiny required "even if these prohibitions restrict speech only incidentally in the regulation of non-expressive professional conduct").

A law that restricts speakers' ability to be compensated "unquestionably imposes a significant burden on expressive activity" even when it "neither prohibits any speech nor discriminates among speakers based on the content or viewpoint of

their messages." *United States v. Nat'l Treasury Employees Union (NETU)*, 513 U.S. 454, 468 & n.15 (1995); *Simon & Schuster v. Members of New York Crime Victims Board*, 502 U.S. 105, 115 (1991) ("A statute is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content of their speech"). Depriving speakers of compensation "induces them to curtail their expression." *NETU,* 513 U.S. at 469. Moreover, exemptions to economic regulations that significantly burden speech must be scrutinized to ensure protection of First Amendment rights, regardless of the regulations' effect on other industries. *Cf. Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 361, 366–67 (3d Cir. 1999) (Alito, J.) (employing this approach in the free exercise context); *see also Missouri Broadcasters Ass'n v. Schmitt*, 946 F.3d 453, 458–59 (8th Cir. 2020) (statute regulating economic activity that does not mention speech explicitly still subject to First Amendment scrutiny because "its *practical operation* restricts speech based on content and speaker identity") (emphasis added).

B. Treating a Law's Effect on Individual Speech Rights Is Consistent with the Law of Severability

AB5, as amended, is a complex attempt to regulate huge swaths of California's economy. Like other long, complex statutes, it "reflect[s] numerous compromises and bargains." Robert L. Nightingale, Note, *How to Trim a Christmas Tree: Beyond Severability and Inseverability for Omnibus Statutes*, 125 Yale L. J. 1672, 1676 (2016). Perhaps anticipating that such complicated regulations and

exemptions might leave certain provisions vulnerable to legal challenges, the AB2257 amendments to AB5 added a severability clause. Cal. Labor Code § 2787.

The clause highlights the general rule that exists even without such explicit direction. When a constitutional flaw exists in such a statute, courts "try to limit the solution to the problem, severing any problematic portions while leaving the remainder intact." *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 508 (2010) (cleaned up); *Seila Law v. Consumer Fin. Prot. Bureau*, 140 S.Ct. 2183, 2208 (2020) (Roberts, C.J., joined by Alito & Kavanaugh, JJ.) ("It has long been settled that 'one section of a statute may be repugnant to the Constitution without rendering the whole act void.'" (citation omitted)). This demonstrates the panel's flaw in reviewing AB5 as a single entity, rather than a collection of discrete provisions.[3] While the meaning of a particular provision may be interpreted in accordance with the entire law's objective and policy, *Wyoming Farm Bureau Fed. v. Babbitt*, 199 F.3d 1224, 1235 (10th Cir. 2000), constitutional challenges focus on individual sections.

The Supreme Court applied the general rule of severability to First Amendment claims in *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985),

[3] Federal courts apply state law to determine severability, *Leavitt v. Jane L.*, 518 U.S. 137, 139–40 (1996), and California law permits severability when an invalid provision is "grammatically, functionally, and volitionally separable." *Gerken v. Fair Political Practices Comm'n*, 6 Cal. 4th 707, 714 (1993).

reversing this Court's facial invalidation of a state obscenity statute according to the "normal rule that partial, rather than facial, invalidation is the required course." Noting that "the same statute may be in part constitutional and in part unconstitutional," the *Brockett* Court held that "if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected." *Id*. at 502 (quotations and citations omitted). Similarly, in *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 549 (2001), the Supreme Court affirmed a Circuit Court's invalidation of a "fragment" of a statutory provision that violated the First Amendment while leaving the rest of the statute in place. *See also NetChoice, LLC v. Attorney General, Florida*, 34 F.4th 1196, 1231 (11th Cir. 2022) (affirming a district court's preliminary injunction of a law's provisions "that are substantially likely to violate the First Amendment" while reversing the injunction as to the law's provisions "that aren't likely unconstitutional.").

The general law of severability combined with the actual severance clause in the legislation challenged in this case highlight panel's error in refusing to consider the speech-restricting portions of AB5 as discrete infringements on the First Amendment. This fundamental error warrants rehearing by the full Court.

Conclusion

For the foregoing reasons, Amicus respectfully requests that the Court grant Appellants' Petition for Rehearing En Banc.

DATE: November 4, 2022.

Respectfully submitted,

s/ Deborah J. La Fetra
Deborah J. La Fetra
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Attorneys for Amicus Curiae

Certificate of Service

I hereby certify that on November 4, 2022, 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.

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s/ Deborah J. La Fetra
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Certificate of Compliance for Briefs

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I am the attorney or self-represented party.

This brief contains 4,088 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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DATE: November 4, 2022.

s/ Deborah J. La Fetra
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