

No. 21-15430

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ACA CONNECTS, et al.,
Plaintiffs-Appellants,

v.

XAVIER BECERRA,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of California
(No. 2:18-cv-2684)

**BRIEF OF TECHFREEDOM AS *AMICUS CURIAE*
IN SUPPORT OF APPELLANTS AND REVERSAL**

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INTEREST OF *AMICUS CURIAE**

TechFreedom is a nonprofit, nonpartisan think tank based in Washington, D.C. It is dedicated to promoting technological progress that improves the human condition. It seeks to advance public policy that makes experimentation, entrepreneurship, and investment possible.

TechFreedom has been a prominent voice in all aspects of the net neutrality debate. In its 2018 *Restoring Internet Freedom* order, for instance, the Federal Communications Commission cited TechFreedom’s comments 29 times. See *In re Restoring Internet Freedom*, 33 FCC Rcd. 311 (2018). The unifying theme of TechFreedom’s work is a belief that there is, in fact, broad agreement on the core principles of net neutrality. Only by enacting those principles, in *federal* legislation, can we end the “net neutrality” wars that have raged at the FCC. If the fight is instead allowed (improperly) to drift into the states, it will metastasize into a mess of contradictory enactments, understandings, and implementations of even the most basic net neutrality concepts.

* No party’s counsel authored any part of this brief. No one, apart from TechFreedom and its counsel, contributed money intended to fund the brief’s preparation or submission. All parties have consented to the brief’s being filed.

SUMMARY OF ARGUMENT

The Internet is a complex, even emergent, system. You might expect, therefore, that a law requiring providers to serve it with “neutrality” would be detailed. Yet “detailed” is not a label one could apply to California’s new net neutrality law, SB-822. The law’s main set of restrictions, codified at California Civil Code Section 3101, spans less than 500 words. Among those words, moreover, are a number of open-ended terms, each of which invites a wide array of possible readings. “Several words” in a law such as Section 3101 can “spawn hundreds of pages of text” as an agency, or a court system, “offers more and more detail” on what the law, along with its spinoff regulations and court decisions, “demand of regulated entities.” *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1020 (D.C. Cir. 2000).

This might not be a problem if SB-822 were *the* law to govern the Internet across the nation. But it’s not. If SB-822 is allowed to stand, it will be open season for passing state-level net neutrality laws. A second law could contradict the first, a third could contradict the first two, and so on. And some or all of them are certain to contradict any federal regime—be it the current “light touch” system, or instead a new set of

common-carriage rules—laid down by the FCC. Although conflicting rules might be tolerable when the subject (say, tort law) is one of traditional state concern, and the product component (say, a warning label) can be adjusted by state, cf. *Wyeth v. Levine*, 555 U.S. 555 (2009), it is totally unworkable on the Internet, which can't be chopped up and served state-by-state.

Our focus, in this brief, is conflict preemption. The Court will hear plenty, in other briefs, about (1) how SB-822 is a common-carriage law that conflicts with the federal government's classification of Internet broadband as an information service, and (2) how SB-822 is a heavy-handed regulation that conflicts with the federal government's light-touch regulatory regime.

We write to go a step further. As we will explain, the problem is not simply that *this* state law conflicts with the *current* federal standards. *Even* if the FCC imposed new net neutrality standards, and *even* if other states then passed their own *identical* net neutrality laws, there would *still* be conflicts (and a need for preemption), because states' respective court systems would adopt different readings of the vast ambiguities that will exist in *any* net neutrality law. It's not even clear, for instance, what

services fall within SB-822’s definition of “broadband Internet access service.” A debate has arisen about whether “public safety” services should automatically fall within the definition, and, if so, what counts as serving “public safety.” Other important terms in SB-822, meanwhile, such as “reasonable network management,” “zero rating,” and “category,” are at once broad, vague, and ill-defined. If multiple states placed these terms in separate net neutrality laws, state attorneys general, state regulatory bodies, and state courts would give the terms different meanings with different scopes. Despite an *apparent* uniformity, at the level of individual words, regulated entities would ultimately be exposed to incompatible demands.

The only way forward for net neutrality—the only way, that is, to create net neutrality rules *while* respecting the objectives of Congress and the FCC—is for the rules to be set at the federal level. If and when that is done, a single, hierarchical federal court system can consider disputes over vague terms, resolve them, and ensure that the country is subject to a single, uniform body of Internet broadband regulation.

ARGUMENT

A state law may not stand “as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Arizona v. United States*, 567 U.S. 387, 399 (2012). The appellants have established that SB-822 is just such an obstacle. They make two key points. First, the FCC has determined that the services at issue are lightly regulated information services. Yet SB-822 requires that these same services be provided on general and indiscriminate terms—that they be provided, in other words, as heavily regulated common carriage. See *Verizon v. FCC*, 740 F.3d 623, 650 (D.C. Cir. 2014) (common carriage is, by definition, not an information service); *Cellco P’ship v. FCC*, 700 F.3d 534, 547 (D.C. Cir. 2012) (“If a carrier is forced to offer service indiscriminately and on general terms, then that carrier is being relegated to common carrier status.”).

Second, the FCC has separately determined that the services at issue should be subject to “light touch” regulation. See *In re Restoring Internet Freedom*, 33 FCC Rcd. 311, ¶¶ 86-87 (2018). “When federal officials determine, as the FCC has here, that restrictive regulation of a particular area is not in the public interest, States are not permitted to

use their police power to enact such a regulation.” *Cap. Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 708 (1984).

These two points are valid and compelling. Yet the need for preemption becomes still clearer when one considers the second-order consequences if the trial court’s denial of a preliminary injunction is allowed to stand. If state regulation of the Internet is allowed, it will be *cumulative*. Even if federal net neutrality rules were in place, and even if the states passed laws that matched that federal net neutrality regime *and each other*, state-by-state regulation would be an obstacle to the objectives of Congress. This is so because such regulation would place, upon an inherently national (and international) Internet framework, a set of conflicting, and even contradictory, regulatory mandates.

I. EVEN IF OTHER STATES ADOPTED LAWS IDENTICAL TO CALIFORNIA’S, ISPS WOULD FACE CONFLICTING DEMANDS ARISING FROM DIVERGENT INTERPRETATIONS OF VAGUE TERMS.

The problem we raise is best illustrated by looking at some of the broad terms in SB-822, exploring how those terms are vague and open to interpretation, and then considering what will happen if multiple states try to pass, interpret, and apply those terms in parallel.

A. “Broadband Internet Access Service” (Public Safety).

Start with what SB-822 aims to regulate: “fixed broadband Internet access service.” What is “fixed broadband Internet access service”? California treats it as a kind of common-carriage data transmission. See Cal. Civ. Code § 3100(b). But precisely how the term is defined will determine the scope of the entire rest of the law. Is it comprised only of “mass market” retail service, as the FCC declared in both its 2015 *Open Internet* order and its 2018 *Restoring Internet Freedom* order? *In re Protecting & Promoting the Open Internet*, 30 FCC Rcd. 5601, ¶ 363 (2015); *In re Restoring Internet Freedom*, 33 FCC Rcd. 311, ¶ 21 (2018). Or does it include various other special-purpose and negotiated contracts between a provider and its customers? If different states each decide to regulate “fixed broadband Internet access service,” but then each give that term a different definition, regulated entities will be subject to altogether different regulatory regimes.

To get a sense of the stakes, consider the purported interplay between broadband Internet and public safety. A number of groups have “voiced concerns” about the “threat to public safety” that might arise if broadband Internet is *not* subject to net neutrality rules. *Mozilla Corp. v.*

FCC, 940 F.3d 1, 60 (D.C. Cir. 2019). For example, Santa Clara County’s “emergency personnel” use “an Internet-based system” to “populate, monitor, and act on situational data,” and the county insists that net neutrality is needed to ensure the personnel have “speedy and unimpeded access” to that system. *Id.* To illustrate the potential harm to public safety that it has in mind, the county points to an “(apparently accidental) decision by Verizon” to slow an Internet-access system used by “Santa Clara firefighters while they were battling a devastating California wildfire” in June 2018. *Id.* at 61.

The Internet-access systems used by emergency personnel, and an incident in which a provider accidentally limited available speeds over such a system, are strange things to cite in a discussion of the need for common-carrier rules, because such systems have *never been common carriage*. As the FCC’s 2015 net neutrality order notes, “broadband Internet access service” is offered “directly to the public.” 30 FCC Rcd. 5601, ¶ 363. Similarly, SB-822 defines “broadband Internet access service” as “a *mass-market retail* service” that connects to “*all or substantially all* Internet endpoints.” Cal. Civ. Code § 3100(b) (emphasis added).

The services provided to emergency responders like the Santa Clara Fire Department, by contrast, are offered through negotiated “enterprise” contracts. As Verizon itself explained, in discussing the June 2018 incident, “these are sophisticated contracts similar to other large agreements that government entities use to buy most goods and services on favorable terms for a fair price.” Letter from Kathleen M. Grillo, Senior VP/Deputy General Counsel, Verizon, to Senators Dianne Feinstein & Kamala Harris (Sept. 13, 2018), available in Joint Brief for Intervenors USTelecom, et al., in Support of Respondents, Addendum, *Mozilla Corp. v. FCC*, No. 18-1051 (D.C. Cir, Nov. 27, 2018). The “public safety services” defined in federal law, at 47 U.S.C. § 337(f)(1), are “not made commercially available to the public by the provider,” and are “excluded from the definition of mobile broadband Internet access service.” 30 FCC Rcd. 5601, ¶ 188.

What’s more, the Internet is a “best efforts” system. See *In re Protecting & Promoting the Open Internet*, 29 FCC Rcd. 5561, ¶ 102 & n.226 (2014). Unlike, say, the 911 system, the Internet may stop working during a power outage. It is therefore unreasonable to expect the Internet to serve as a comprehensive, faultless, guaranteed emergency system.

We could go on. See Comments of TechFreedom at 18-46, *In re Restoring Internet Freedom*, WC Dkt. No. 17-108 (FCC Apr. 20, 2020). Even California’s own attorney acknowledged, at the hearing before the trial court in this case, that the Santa Clara fire incident would “not technically have been a violation of the 2015 FCC order.” Tr. 16:1-4 (ER-22).

Still, nothing that the FCC says, or that California says, or that we say will stop a vocal set of interest groups from continuing to argue that “fixed broadband Internet access service” must include, within its meaning, any Internet-related service that somehow connects to public safety. At the federal level, they will point to the hortatory statement, in 47 U.S.C. § 151, that one of the FCC’s general purposes is to “promot[e] safety of life and property through the use of wire and radio communications.” But see, e.g., *Jang v. Lynch*, 812 F.3d 1187, 1192 (9th Cir. 2015) (rejecting a party’s reliance on “a hortatory description of congressional purpose”—“that methodology is flawed”). In California, meanwhile, they might latch on to Section 3100(b)’s announcement that “a functional equivalent” of mass-market, substantially-all-endpoint service qualifies as “fixed Broadband Internet access service.” In other

states, they might find yet other statutory hooks. The bottom line is that absent preemption, interest groups are likely, in some places, to succeed in getting “fixed broadband Internet access service” defined in a way that includes special rules for activities that relate to “public safety.”

But the needs of “public safety” do not connect to any concrete facet of broadband Internet. Pretending they do is like looking for bird droppings in a cuckoo clock—it’s a category error. And because what serves public safety is a distinct question from what counts as broadband Internet, the two questions can’t be made to yield the same answer unless that answer is *almost anything*. If a negotiated contract for a tailored emergency-response service is “equivalent” to “a mass-market retail service” that connects to “all or substantially all Internet endpoints,” anything can count as a mass-market retail service, *etc.*, and thus be subjected to the full panoply of common-carriage regulation.

Without preemption, in short, each state can decide to jam a distinct amount of “public safety” into its definition of “fixed broadband Internet access service.” One state might decide to bestow *de facto* common-carriage status on services provided via enterprise contract to government emergency responders. Another might decide that

emergency responders' data must get *priority* treatment—that is, the *opposite* of common carriage.

Indeed, once it's assumed that some assemblage of Internet customers are “public safety” entities entitled to common carriage, or even to perks, the free-for-all is truly on. When the possibility of special “public safety” privileges was raised before the FCC, an astounding array of groups stepped forth to claim the mantle of “public safety” and the prize of special treatment. Reply Comments of TechFreedom at 6, 10 n.39, *In re Restoring Internet Freedom*, WC Dkt. No. 17-108 (FCC May 20, 2020). Rest assured that these groups will now seek special treatment in every state which passes a net-neutrality law, and that each group is likely to obtain such treatment in proportion to its political power. In one state, emergency responders might get data priority when they exchange messages with each other. In another state, emergency services might get data priority when they communicate with the public. In another, home alarm companies might get priority status; in yet another, devices that convey data to or from the power grid might obtain it. Some intrepid state might even try to hand Internet service providers the nightmare task of sorting out which “civil society actors, non-profit associations, and

citizen organizations” are “engaged in public safety” and therefore to be favored. *Id.* at 6 (quoting Comments of Digital Civil Society Lab at 3, *In re Restoring Internet Freedom*, WC Dkt. No. 17-108 (FCC Apr. 20, 2020)).

It might seem far-fetched that net *neutrality* rules would lead to *preferential* treatment. It is not. As the number of groups clamoring for “public safety” status before the FCC shows, the idea of glomming public-safety privileges onto common carriage is *à la mode*. Nor would it be hard to concoct a rationale for doing so. When it comes to California law, it would simply be a matter of reading Section 3101’s references to “reasonable network management” as a *mandate* to be “reasonable,” and then decreeing that “reasonable network management” requires treating “public safety” data a certain way.

B. “Reasonable Network Management.”

What’s “reasonable” is a matter of opinion. Yet Section 3101 subjects several terms to caveats about “reasonableness.” An ISP may not block “lawful content, applications, services, or nonharmful devices,” *except* when doing so is “reasonable network management.” Cal. Civ. Code § 3101(a)(1). An ISP may not impair or degrade “lawful Internet traffic” based on its “content, application, or service,” *except* when doing

so is “reasonable network management.” *Id.* § 3101(a)(2). And an ISP may not “*unreasonably*” interfere with or disadvantage an end user’s selection, or a provider’s delivery, of broadband Internet or Internet content. *Id.* § 3101(a)(7)(A) (emphasis added).

A judicial decision that applies a “reasonableness” standard does not *follow* rules so much as it *invents* rules. “A ‘reasonableness’ requirement varies, like the length of the chancellor’s foot, from judge to judge.” *Johnson v. Daley*, 339 F.3d 582, 593 (7th Cir. 2003) (Easterbrook, J.). The judge is asked, in effect, to find facts, consider competing interests, and then, after weighing the “totality of the circumstances,” emit an answer. A basic aspect of justice—and, for regulated entities, of efficiency—is the like treatment of like cases. Yet a “reasonableness” inquiry is *not* likely to ensure such consistency. Different judges will see facts differently, balance interests differently, and reach disparate results.

We’ve already mentioned some of the different ways states might elect to shoehorn “public safety” mandates into the concept of “reasonable network management.” States are also likely to reach different conclusions about what counts as “reasonable network management” of

extreme data users—people who consume terabytes of data. It certainly seems “reasonable” to make edge-case users (people who, for instance, use a residential broadband connection to run a full-fledged business) pay for their disproportionate data use. Conversely, it seems “unreasonable” to make low-intensity users subsidize high-intensity ones. See, e.g., Geoffrey Manne & Ian Adams, *In Defense of Usage-Based Billing*, Truth on the Market, <https://bit.ly/3fs7iuY> (July 13, 2020). But what are the “reasonable” lines? What amount of data consumption renders someone a super-user who can legally be subjected to restrictions (or forced to negotiate an enterprise contract)? Without preemption, each state can apply a distinct set of “reasonable network management” rules for data use and extreme data users.

The very concept of state regulation of data use is problematic. Because data packets are sliced and diced and sent all over the Internet, it’s not quite right even to say that data use “occurs” “in” a given jurisdiction. Data can, at best, be reverse tracked, and found to have been either interstate or intrastate, in hindsight. Given the Internet’s packet-switched architecture, however, few data transfers are truly intrastate. Almost all data bounces between states at some point. And unless states

apply the same rules to data that passes through their borders—and if left to their own devices, they won’t—chaos will ensue.

And again, it is not hard to imagine “reasonable network management” getting turned into a *mandate* with which ISPs must comply. Should that occur, ISPs will likely face *conflicting* directives. One state could say that reasonableness entails letting super-users consume *unlimited* data, while another could say that it requires that super-users’ unthrottled data use be *capped* in order to protect ordinary users from network congestion during peak usage hours. The Supreme Court once opined that letting a state require “contoured” mudflaps, when most trucks used (and one state required) “straight” mudflaps, would result in a “rather massive . . . burden on interstate commerce.” *Bibb v. Navajo Freight Lines*, 359 U.S. 520, 528 (1959) (striking down the “contoured” mudflap law). The burden of incompatible “reasonable network management” rules would make the burden of incompatible mudflap rules seem quaint by comparison.

C. “Zero rating” a “Category.”

“Zero rating” is the exclusion of certain content from an ISP customer’s basic data allowance. An ISP might, for instance, let users

watch movies from a streaming platform without that data counting toward their plans' data allowances. Section 3101 bans zero rating "in exchange for consideration, monetary or otherwise, from a third party." Cal. Civ. Code § 3101(a)(5). It also bans zero rating "some Internet content, applications, services, or devices in a category of Internet content, applications, services, or devices, but not the entire category." *Id.* at § 3101(a)(6).

"Officials at the Department of Veterans Affairs," reported *Politico*, the day SB-822 went into effect, "are privately sounding the alarm that California's new net neutrality law could cut off veterans nationwide from a key telehealth app." John Hendel, *VA Asking California If Net Neutrality Law Will Snag Veterans' Health App*, *Politico*, <https://politi.co/39tMDCJ> (Mar. 25, 2021). ISPs warned the VA that the law's ban on zero rating "could force them to end agreements offering free, subsidized data to veterans participating in the telehealth app called VA Video Connect." *Id.* Although the VA story spurred a handful of outlets to reflect on SB-822's unintended consequences, see Editorial, *Net Neutrality Nails Veterans*, *Wall St. J.*, <https://on.wsj.com/3rDirLL> (Mar. 25, 2021) ("Well, well, look who's breaking the internet."); other commentary was

(unsurprisingly, given the tenor of the net neutrality debate) uproarious, see Karl Bode, *Telecom Using Veterans as Props to Demonize California’s Net Neutrality Law*, Techdirt, <https://bit.ly/3mdbNec> (Mar. 26, 2021); Harold Feld, *No, California Net Neutrality Law Did Not “Nail” Veterans—Carriers Are Using Vets as Pawns*, Wetmachine, <https://bit.ly/2QSKhXK> (Mar. 16, 2021).

Yet even those who claim that SB-822 did *not* cause the VA incident must confirm Section 3101’s *ambiguity* in order to make their case. “Does [California’s] net neutrality law prevent carriers from zero rating the VA’s video conferencing application[?]” asks one commentator. Feld, *supra*. “Short answer: no, *but* the carriers will need *to open up their zero rating a tad*[.]” *Id.* (emphasis added). Why? Because Section 3101 allows zero rating so long as it is applied to an “entire category” of content or is “application agnostic.” Cal. Civ. Code § 3101(a)(6), (a)(7)(B). Yet as the commentator acknowledges, saying the “carriers will need to open up their zero rating a tad” leaves unresolved the question of *how much*. How much, exactly, is a “tad”? (Is that a unit of measure?) What *counts* as a “category” or as “application agnostic”?

Can the carrier define the “category” as “all government applications?” “All veterans health services?” “All VA

applications?” Or something else similarly narrow to prevent veterans and their providers from selecting a preferred commercial application? Can the carriers simply exempt “all veterans’ health-related video conferencing,” without regard to whether the veteran and her healthcare provider select a different application so that the zero rating is suitably “application agnostic,” or does application agnostic require a somewhat broader array of choices?

Feld, *supra*. Exactly so. Although we’d add: how on earth would ISPs track something like “veterans’ health-related video conferencing” across different apps? American ISPs don’t have the kind of deep-packet inspection technology that would enable them to monitor individual conversations. And even if they did, would we want them monitoring private conversations? And even if we would, by what criteria would conversations qualify as “veterans’ health-related” conversations? And what would be the criteria for the many other types of data (for charity work, school instruction, *etc.*) that would no doubt join veterans’ healthcare in the bucket of content entitled to special treatment?

Without preemption, a “category,” for the purpose of permissible zero rating, could be one thing in one state, another thing in another. This won’t do, however, because it would be

exceedingly difficult, if not impossible, for ISPs to set such standards state-by-state.

II. ONLY A FEDERAL STANDARD, APPLIED IN FEDERAL COURT, CAN SUPPLY THE UNIFORM RULES THE INTERNET NEEDS.

None of this is to say that there shouldn't be a net neutrality law. That is not what this case is about. What this case is about is whether those who want such a law—as we do—should have to proceed at the federal level. It's clear that we all should. Letting this fight (improperly) spread to the states will leave everyone stuck, indefinitely, with inconsistent and contradictory states rules.

To be sure, litigation is sometimes needed to work out the meaning of vague terms in a new law. The unique problem here, however, as Congress and the FCC have recognized, is that the Internet is a cross-border infrastructure in need of national, uniform regulation. Imposing *one* set of vague rules, at the federal level, gives *one* hierarchical court system (the federal courts) a fighting chance to flesh out *one* consistent reading of each disputed term. Imposing *fifty* sets of vague rules, at the state level, leaves *fifty* court systems free each to read terms in its own way and to impose its own unique requirements.

Consider the Telephone Consumer Protection Act (TCPA), a federal law that bars certain uses of an “automatic telephone dialing system.” The TCPA defines an automatic telephone dialing system as “equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1). As then-Judge Barrett observed, this definition “is enough to make a grammarian throw down her pen.” *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 460 (7th Cir. 2020). “There are,” she explained, “at least *four* ways of reading the statutory definition of ‘automatic telephone dialing system,’” *id.* at 463 (emphasis added), at least three of which were adopted by at least one federal court. The Third and Eleventh Circuits (and Judge Barrett, writing for the Seventh Circuit) adopted one reading, the Ninth Circuit another, and at least one district court yet another. *Id.* at 463-64. (And other courts had “alluded” to the fourth reading, “although none ha[d] adopted it.” *Id.* at 464.)

Fortunately, we have a hierarchical federal court system. In July 2020, the Supreme Court granted a petition for certiorari, and this month it resolved, a case involving the definition of “automatic telephone dialing system.” *Facebook v. Duguid*, No. 19-511 (U.S., Apr. 1, 2021). Its

ruling adopts the first of the four readings. Lawyers might continue to debate whether the ruling is objectively “right” or “wrong” as a matter of legislative interpretation. Regardless, the ruling *resolves the issue*, in that it imposes *one* reading of “automatic telephone dialing system,” a reading that will apply, henceforth, in every federal court.

Now imagine if “automatic telephone dialing system” were a term that appeared in many states’ laws. State supreme courts could break along exactly the four-way split discussed by now-Justice Barrett, and . . . that’d be it. There would be no one to decide among them which interpretation should prevail, since the federal Supreme Court “generally defer[s]”—when no federal constitutional questions are present—“to state courts on the interpretation of state law.” *Bush v. Gore*, 531 U.S. 98, 114 (2000) (Rehnquist, C.J., concurring); see, e.g., *Enter. Irrigation Dist. v. Canal Co.*, 243 U.S. 157, 164 (1917) (when a “non-federal ground is independent . . . and broad enough to sustain the judgment,” the “judgment does not depend upon the decision of any federal question and we have no power to disturb it”).

This outcome—regulated entities left to struggle, indefinitely, with trying to comply with four different readings of the same words—simply

won't do for the Internet. The Internet is a vast, integrated, global network. ISPs cannot cut it into pieces and serve it in slices, like a cake.

CONCLUSION

The order denying the appellants' motion for a preliminary injunction should be reversed.

April 13, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify:

(i) That this brief complies with the type-volume limits of Fed. R. App. P. 29(a)(5) because it contains 4,445 words, excluding the parts exempted by Fed. R. App. P. 32(f).

(ii) That this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared using the Word component of Microsoft Office 365 and is set in 14-point Century Schoolbook font.

April 13, 2021

/s/ Corbin K. Barthold

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2021, a true and correct copy of the foregoing was filed with the Clerk of the United States Court of Appeals for the Ninth Circuit via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

/s/ Corbin K. Barthold