No. 20-16758

United States Court of Appeals for the Ninth Circuit

NATIONAL ASSOCIATION OF WHEAT GROWERS ET AL.,
Plaintiffs – Appellees,

v.

XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Defendant – Appellant,

AND

LAUREN ZEISE, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT,
Defendant.

Appeal from the U.S. District Court
for the Eastern District of California
The Honorable William B. Shubb (No. 2:17-cv-02401-WBS-EFB)

AMICUS CURIAE BRIEF OF THE NATIONAL BLACK FARMERS ASSOCIATION IN SUPPORT OF APPELLANT AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amicus curiae National Black Farmers Association is a non-profit organization that has not issued shares or debt securities to the public. It has no parent companies, and no publicly held company has any form of ownership interest in it.

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INTEREST OF AMICUS CURIAE[1]

The National Black Farmers Association ("NBFA") is a nationwide, non-profit organization that supports the interests of Black and minority farmers. NBFA does so by bringing litigation against the government and private entities to combat discriminatory practices against minority farmers, and by lobbying Congress to protect Black farmers from the effects of decades of systemic racism in farming. NBFA now has over 100,000 members, including full-time and part-time farmers, land and timber owners, and concerned citizens in forty-two states.

A substantial proportion of NBFA's members have been exposed to and potentially injured by Roundup®, and its active ingredient, glyphosate. Indeed, some have already developed non-Hodgkin's lymphoma from their Roundup® use, and many fear that they will soon develop symptoms. The exposure is ongoing and will therefore get worse both for

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[1] Pursuant to Federal Rule of Appellate Procedure 29, NBFA submits this brief in support of defendant-appellant Xavier Becerra, in his official capacity as Attorney General of the State of California. All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no party or party's counsel made a monetary contribution to fund the preparation or submission of this brief. No person or entity other than *amicus curiae* or its counsel made a monetary contribution to the preparation or submission of this brief.

members who have already been exposed and for those likely to be exposed in the future. Accordingly, NBFA's members who have not yet become sick or have not yet been exposed will be more likely to develop cancer absent adequate warnings on Roundup® products.

NBFA has thus brought suit in the Eastern District of Missouri asserting design defect and failure to warn claims, seeking to either require clear warning labels on Roundup® products consistent with the findings of the International Agency for Research on Cancer ("IARC"), or to remove Roundup® products from the marketplace entirely. *Nat'l Black Farmers Ass'n v. Monsanto Co.*, No. 4:20-cv-01145-SRC (E.D. Mo. Aug. 26, 2020). Although that litigation is continuing and has now been consolidated before the MDL court in San Francisco, NBFA has a substantial interest in California protecting NBFA's members by seeking to require clear warning labels on Roundup® products under Proposition 65. That is because, absent some change in the status quo, plaintiffs' suit here and the district court's holding that Proposition 65's warning requirement as to glyphosate violates the First Amendment will likely result in further injury and death for NBFA's members.

SUMMARY OF THE ARGUMENT

I. NBFA's members rely on States to warn them about carcinogenic pesticides and herbicides, as California attempted to do here. There is weighty evidence demonstrating the carcinogenic nature of Roundup® products, including the IARC findings, actions of countries around the world, and three substantial jury awards in the United States.

And because of the long-lasting effects of generations of racial discrimination, a ruling for appellees here would fall especially hard on NBFA's members. Black and minority farmers have faced long-documented systemic racism and discrimination, often at the hands of the federal government. That discrimination has resulted in the devastation of the Black farming community and enormously disparate income for those Black farmers still left. NBFA was founded to fight against those effects, and the organization continues that important work today.

But—due to stubborn systemic inequalities—poor, rural, and minority farmers will often be unable to obtain and absorb the meaning of scientific studies on glyphosate and then take the steps necessary to protect themselves—particularly in the face of the much-better-funded effort of companies like the plaintiffs here to push out a contrary narrative.

The State thus plays a critical role in warning the public, including NBFA's members, that Roundup causes hematopoietic cancers like non-Hodgkin's Lymphoma through efforts like Proposition 65 and its implementing regulations.

II. Appellees' position that the First Amendment here requires *reducing* access to truthful information is wrong and should be rejected. Companies like Bayer and Monsanto will always claim that cancer warnings are "misleading" because the scientific method constantly requires partial judgments and conclusions that can later be upset by further data. But the First Amendment's solution is more speech, not less. The plaintiffs here remain free to launch wide-ranging ad campaigns setting out any truthful and non-misleading message they want to share with consumers about the state of the science. But the State of California also remains free to demand that the limited warning required by Proposition 65 reach the users of the products that Bayer and Monsanto wish to continue marketing to its citizens, so that those citizens will have some way to get the whole story.

III. Ultimately, Proposition 65 asks very little of Monsanto. The current reality is that (1) state tort and products liability law in many or

most states already permits removing Roundup® from shelves entirely if it is a proven carcinogen; and likewise, (2) Monsanto's actions are sanctionable in every state to the tune of many millions of dollars when plaintiffs can prove their case to a jury, as has already successfully happened three times. NBFA's view is that Monsanto has created a vicious cycle of reliance on its products, resulting in an ever-increasing use of dangerous chemicals, including cancer-causing Roundup®, and that the best way to stop this cycle of harm and reliance is to force Monsanto to remove its products from the market or make them safe. And, importantly, no one doubts that state law can take *that* step under the First Amendment. Appellees thus need to explain why California's warning requirement—which imposes *far less* burden on Monsanto—cannot be sustained on the basis of the same evidence that already has cost Monsanto tens of millions in tort compensation and convinced a neutral expert body that it causes hematopoietic cancers. They cannot do so; this Court should hold that their position that the First Amendment prohibits California from requiring a simple, truthful message consistent with the findings of a respected international organization and multiple civil juries is obviously incorrect.

ARGUMENT

I. NBFA's Members Rely on States Like California to Warn Them About Carcinogenic Pesticides.

The district court below failed to appreciate the serious consequences of its decision, particularly for Black and minority farmers like those represented by NBFA. The reality on the ground is that NBFA members rely on federal *and state* authorities to provide easy-to-understand warnings so that farmers can comprehend the risks they face when using certain pesticides. The IARC has already concluded that the active ingredient in Roundup® products is carcinogenic, yet Monsanto continues to resist commonsense warnings on those products. Should this Court uphold the district court's decision, it will aggravate this serious failure to warn farmers who lack the means or ability to follow scientific studies and reports on the cancer-causing nature of Roundup® products.

a. The Scientific Basis for the Proposition 65 Warning

Contrary to the district court's holding, there is a serious scientific basis for believing that Roundup® products cause cancer. Indeed, at this point, it is fair to say that Roundup® causes cancer, in much the same way we now say that smoking causes lung cancer: Not everyone who smokes develops lung cancer—indeed, the overwhelming majority of even

very heavy smokers do not die of lung cancer—and it often takes decades for the disease to manifest. And some scientists can no doubt dispute the causal evidence or maintain that other causes predominate without violating their conscience. But it is nonetheless fair for regulators to require warnings based on what the existing data shows, and the existing data indicates here that Roundup® and its active ingredient glyphosate are indeed carcinogenic.

Apparently finding itself more competent to evaluate the carcinogenic nature of glyphosate and Roundup® than the IARC and California's Office of Environmental Health Hazard Assessment ("OEHHA"), the district court concluded that "the great weight of evidence indicates that glyphosate is not known to cause cancer," and therefore that the Proposition 65 warning would be "misleading." *Nat'l Ass'n of Wheat Growers v. Becerra*, 468 F. Supp. 3d 1247, 1260 (E.D. Cal. 2020). That conclusion is simply false.

In March 2015, the IARC, a widely respected agency of the World Health Organization, issued an evaluation of several herbicides, including glyphosate. *IARC Monographs Vol. 112: evaluation of five organophosphate insecticides and herbicides*, IARC (Mar. 20, 2015),

https://bit.ly/3jJvtFk. That evaluation was based, in part, on studies of human exposure to glyphosate in several countries, tracked over time since 2001. *Id.* The IARC classified glyphosate as a Group 2A herbicide, meaning that it is "probably carcinogenic to humans." *Id.* In particular, it concluded "there was *limited evidence of carcinogenicity* in humans for non-Hodgkin lymphoma." *Id.*

Both before and after IARC announced its glyphosate assessment, several countries around the world instituted actual bans on the sale of Roundup® and other glyphosate-containing herbicides. The following countries or their localities have either outright bans on these products, have imposed restrictions on them, or have issued statements of an intent to do so: Argentina, Australia, Austria, Bahrain, Barbados, Belgium, Bermuda, Brazil, Canada, Columbia, Costa Rica, Czech Republic, Denmark, El Salvador, Fiji, France, Germany, Greece, India, Italy, Kuwait, Luxembourg, Malawi, Malta, Mexico, Netherlands, New Zealand, Oman, Portugal, Qatar, St. Vincent and the Grenadines, Saudi Arabia, Scotland, Slovenia, Spain, Sweden, Thailand, United Arab Emirates, United Kingdom, and Vietnam. *See* Baum Hedlund, *Where Is Glyphosate Banned?*, https://bit.ly/3jEWUji (last visited Jan. 11, 2021).

Moreover, three U.S. juries have agreed with appellant that Roundup® is carcinogenic. In 2018, Dewayne Johnson, a Black public-school groundskeeper, became the first person to take Monsanto to trial before a jury on allegations that Roundup® caused his non-Hodgkin lymphoma. Sam Levin, *The Man Who Beat Monsanto: "They Have to Pay for Not Being Honest"*, The Guardian (Sept. 26, 2018), https://bit.ly/3aYoXXe. A unanimous jury agreed, awarding Mr. Johnson $289 million in compensatory and punitive damages. *Id.* That jury specifically found that Roundup® products are a "substantial danger" to humans and that Monsanto failed to warn consumers of that danger. *See* Verdict Form, *Johnson v. Monsanto Company*, No. CGC-16-550128 (Cal. Super. Ct., Cty. of S.F., Aug. 10, 2018), *available at* https://bit.ly/3b0OUWd.

On cross-appeal, the court affirmed that there was "substantial evidence support[ing] the award of punitive damages," including evidence "from which the jury could infer that Monsanto acted with a conscious disregard for public safety by discounting legitimate questions surrounding glyphosate's genotoxic effect and failing to conduct adequate studies." *Johnson v. Monsanto Co.*, 52 Cal. App. 5th 434, 456-57 (2020), *as modified on denial of reh'g* (Aug. 18, 2020), *review denied* (Oct. 21, 2020). And

while that court did reduce the damages awards, they still amounted to over $20.5 million. *Id.* at 463. This suit involves the same discounting of dangers for which Monsanto was rightly sanctioned before a jury of its peers.

Likewise, in 2019, a federal jury ruled for Edwin Hardeman on similar claims that Monsanto caused his non-Hodgkin's lymphoma. Sam Levin, *Monsanto Found Liable for California Man's Cancer and Ordered to Pay $80m In Damages*, The Guardian (Mar. 27, 2019), https://bit.ly/3d34tiu. That jury awarded Mr. Hardeman $80 million in damages and unanimously found that Roundup® was a "substantial factor" in causing his cancer. *Id.* That case is currently on appeal before this Court. *Hardeman v. Monsanto Co.*, No. 19-16636 (9th Cir.).

Finally, also in 2019, a California jury ordered Monsanto "to pay a couple more than $2 billion in damages after finding that its Roundup weed killer caused their cancer – the third jury to conclude that the company failed to warn consumers of its flagship product's dangers." Patricia Cohen, *$2 Billion Verdict Against Monsanto Is Third to Find Roundup Caused Cancer*, N.Y. Times (May 13, 2019), https://nyti.ms/2NmqApq. Strikingly, *both* Mr. and Ms. Pilliod developed non-Hodgkin's lymphoma

after using Roundup® on their property for decades. *Id.*; *see also Pilliod v. Monsanto Co.*, Alameda County Superior Court Case No. RG17862702.

Perhaps Monsanto has a story to tell that can chalk such developments—and such consistent verdicts against them—up to random chance. *And it is free to tell consumers that story*—on television, in newspapers, on Facebook, and in expensive online advertisements that follow Roundup® users around the internet (provided it sticks to telling the non-misleading truth). But it is obtuse to deny that there is strong evidence here that Roundup® causes cancer, and that the limited warning to the public Proposition 65 requires is somehow more likely to mislead them than it is to inform.

Indeed, in light of all of this evidence, it is somewhat incredible that the district court saw fit to substitute its own judgment for that of the State of California and the international panel of experts on which it relied—especially considering that 63% of California voters approved Proposition 65 in 1986. *About Proposition 65*, OEHHA, https://bit.ly/2ZwIuIO (last visited Feb. 13, 2021). The people of California overwhelmingly entrusted their government to inform them about hazardous, cancer-causing chemicals when corporations fail to do so themselves. Moreover, the

State is in a far better position to evaluate health risks and consequences for its citizens, and courts owe due deference to the public health assessments of state experts. And the need for state action is especially salient for those farmers who otherwise are unlikely to obtain this important information without state involvement.[2]

b. Ruling for Appellees Would Exacerbate the Inequalities Experienced by NBFA's Members.

A history of serious racial discrimination against Black farmers means that prohibiting California's Proposition 65 warning would fall especially hard on NBFA's members.

1. NBFA was founded in 1995 by John W. Boyd, Jr., a fourth-generation Black farmer from Baskerville, Virginia, in the wake of repeated instances of discrimination. *About Us*, Nat'l Black Farmers Assoc., https://bit.ly/3d33VZY (last visited Feb. 11, 2021). Ever since, NBFA has been at the forefront of challenging discriminatory conduct by the U.S. Department of Agriculture and pursuing legislation for its members. For

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[2] For example, it is likely that not all of NBFA's members have access to safety sheets or OSHA warnings—*i.e.*, those who work on small or family farms. The Proposition 65 warning thus provides an important gap-filling function to reach those farmers who would otherwise lack access to this safety information.

example, the organization's claims of discriminatory loan and subsidy distribution have since been acknowledged by the USDA. *Id.* Black farmers were routinely denied government assistance at the same level as white farmers, leading to bankruptcies and foreclosures. *See* Congressional testimony of John W. Boyd, Jr., Founder and President, NBFA, *available at* https://bit.ly/2ZawuwG.

In the 1990s, Black farmers pursued a class action civil rights strategy in the courts, resulting in the "largest-ever civil rights class action settlement in American history." *About Us*, NBFA, *supra*. In *Pigford v. Glickman*, a U.S. District Court recognized that "[f]or decades . . . the Department of Agriculture and the county commissioners discriminated against African American farmers when they denied, delayed or otherwise frustrated the application of those farmers for farm loans and other credit and benefit programs." 185 F.R.D. 82, 85 (D.D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000), *and enforcement denied sub nom. Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008). The court continued: "These events were the culmination of a string of broken promises that had been made to African American farmers for well over a century." *Id.* To get a

sense of the "devastating impact on African American farmers . . . . According to the Census of Agriculture, the number of African American farmers ha[d] declined from 925,000 in 1920 to approximately 18,000 in 1992." *Id.* at 87.

It is hardly surprising, then, that the structural consequences of this targeted racial discrimination continue today. For example, "of the country's 3.4 million total farmers, only 1.3%," are Black, and Black farmers "own a mere 0.52% of America's farmland. By comparison, 95% of US farmers are white." Summer Sewell, *There were nearly a million black farmers in 1920. Why have they disappeared?*, The Guardian (Apr. 29, 2019), https://bit.ly/3rKAIHv. Further, Black farmers on average "make less than $40,000 annually, compared with over $190,000 by white farmers." *Id.* And "Black farmers obtained only about $11 million in microloans designed for small farmers in 2015, or less than 0.2 percent of the roughly $5.7 billion in loans administered or guaranteed by the Agriculture Department that year." Hiroko Tabuchi & Nadja Popovich, *Two Biden Priorities, Climate and Inequality, Meet on Black-Owned Farms*, N.Y. Times (Jan. 31, 2021), https://nyti.ms/377GE5r.

2. The district court's holding is wrong on the law, as the State persuasively argues. But here, NBFA hopes to stress to this Court the truly disparate effects a holding for appellees would have on Black and minority farmers.

NBFA's members acutely feel the harms caused by Roundup® and Monsanto, including the lack of warning labels. Many of NBFA's members are rural Black farmers. Due to long-documented disparities in literacy and education rates, rural Black farmers have been and continuously are harmed by the absence of a plain, clear warning on Roundup® products. Moreover, many NBFA members have no reliable connection to the Internet or ready sources on the complex, yet critical information farmers need to protect themselves. Monsanto is clearly uninterested in resolving this problem itself. But such situations are *precisely* the time States should most step in to protect its citizens, just as California has attempted to do here. Appellees' effort to stop California from doing so will disproportionately harm NBFA members, a result this Court ought to seriously consider and avoid.

II. The Correct Solution Here Is More Speech, Not Less.

In weighing the First Amendment issues involved in this case, NBFA also urges the Court to remember that California is seeking to *increase* access to truthful speech and information, while appellees' effort is directed at *restraining* it. "At the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern." *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988). Any attempt to restrict speech and information under the banner of the First Amendment should therefore be met with skepticism, especially when the ability of one party to disseminate their version of the story is so much greater.

Companies like Monsanto that produce carcinogenic products will nearly always claim that cancer warnings are "misleading" because the scientific method requires updating prior hypotheses, considering new data over time, and making judgments based on sometimes incomplete or partial data. Indeed, strictly speaking, every single scientific statement is only a hypothesis that remains falsifiable in light of new and different data. Accordingly, as we all know, it is not hard to find a contrary opinion on nearly any scientific conclusion and then call the issue

"controversial." But companies in Monsanto's position also often have the upper hand in disseminating their version of the story, which is why warning labels are such an effective, important public health tool.

Consider, for example, that Bayer and Monsanto can (1) reach farmers directly through their control of the seed market and thus control over local sources of information, *see supra* Part III; (2) advertise on television, in newspapers, on social media, and through search engine advertisements; (3) share information on its packaging; (4) lobby state and federal legislatures and regulators; and (5) push its products with large farming conglomerates and the farming industry writ large. In so doing, they can tell their (truthful, non-misleading) side of the story however they want, including through slickly produced and vivid advertisements carefully designed by corporate experts in consumer persuasion to change the maximum number of minds. California's requirement does not interfere with that vital First Amendment right at all. It only insists that a much-less-vivid version of the other side of the story reach consumers through the product label.

Appellees' suit is thus, in reality, an attempt to make sure that Monsanto's story will always win out, not because of its superior arguments in the "marketplace of ideas," but because consumers making decisions in the marketplace never hear any other ideas. This is not the First Amendment's design. Just as Monsanto is free to spread truthful, non-misleading information about its products, so is California. And warning labels have long been recognized as an appropriate way for the government to do so. *See, e.g.*, *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2376 (2018) ("we do not question the legality of health and safety warnings long considered permissible").

Further, in this particular case, warnings labels are even more desirable than usual. Many of the most vulnerable individuals exposed to Roundup® are itinerant, rural workers who would be exceedingly difficult to reach through other means. If the warning is right there on the product, the State at least has a chance of making workers aware of the information they may need to protect themselves—including basic steps they might choose to take to limit their overall exposure when working with Roundup®. Making sure listeners can get all that information—

and then make their own choices—is at the very core of the First Amendment's free-speech guarantee.

III. Label Warnings Ask Very Little of Monsanto.

California's Proposition 65 warning is, frankly, the very least that should be done with regard to protecting farmers from Roundup®. To be clear, despite the overheated rhetoric of plaintiffs and their *amici* below, this case ***does not concern*** any kind of ban on Roundup®, and it will not require Monsanto to take it off of shelves. All it requires is putting consumers in a better position to judge whether the benefits of Roundup® are worth the risks. Assuming Monsanto is right that Roundup® is highly useful and mostly safe, it is overwhelmingly likely to convince farmers that continuing to use it is in their interest. Conversely, if one accepts the judgment of the independent experts like the IARC and the three separate juries that have heard and decided the evidence (as California is certainly entitled to do), Monsanto is *still* likely to convince farmers to keep using it—perhaps with limited precautions designed to mitigate the risks that really do exist. And that is particularly because Roundup® is, at this point, an engrained part of the commercial farming

ecosystem and, just like cigarettes, will be hard to quit even for those who know the risks.

That is partly why, in NBFA's view, requiring only a warning is actually insufficient: The evidence is adequate right now to require Monsanto to stop selling its life-threatening product, and to hold Monsanto liable for enormous damages for the harms it causes, so that Monsanto will have a complete incentive to either make it safe or make sure it is used as safely as possible. But that just goes to show that, *a fortiori*, the evidence is adequate to support the much more limited step of requiring a warning when Roundup® is sold so that farmers can make the decision for themselves. And that warning remains a major improvement over the status quo, where thousands of Black farmers are daily exposed to a carcinogen without knowing the dangers involved at all.

To understand NBFA's position, one must grasp the vicious cycle Monsanto has created. *See* Compl. at 2-3, *Nat'l Black Farmers Ass'n v. Monsanto Co.*, No. 4:20-cv-01145-SRC (E.D. Mo. Aug. 26, 2020), ECF 1. Unaware of the above-described dangers, farmers have been bullied by Monsanto's aggressive business practices into purchasing its Roundup Ready® seeds and thus Roundup® products containing glyphosate. *Id.*

Over the last few decades, Monsanto has purchased local, conventional seed sellers and removed their products from market, leaving its own "Roundup Ready®" seeds as the only real option available to many farmers. *Id.* And to justify the costs associated with buying these genetically engineered and much more expensive seeds, these farmers are compelled in turn to buy and use Roundup® herbicides containing glyphosate, because the only benefit of Roundup Ready® crops is that they can be sprayed indiscriminately with glyphosate without killing them. *Id.* In this commercial environment, Monsanto controls not only the supply of seeds, but the supply of information that farmers regularly receive from (what used to be independent) seed sources. Label warnings are thus vitally needed to reach local farmers who are by now accustomed to the conclusion that using Roundup® is safe and unavoidable.

Compounding this problem, some weeds have naturally become resistant to Roundup® over time, meaning that multiple chemicals (including dangerous ones like 2,4-D, a component of Agent Orange) must be used to ensure the same yield. *Id.* Monsanto has created a situation, then, in which rural Black farmers have been basically forced into using Roundup Ready® seeds developed by Monsanto, which require the use of

dangerous chemicals without proper warnings—including glyphosate-containing Roundup®— that then must be made more dangerous over time. *Id.* Having bred super-weeds by using Monsanto's products and been deprived of resources to adopt alternative practices by decades of discrimination, NBFA's members are exposed to more carcinogens like glyphosate that, in turn, lead to lethal cancers. *Id.*

This is why NBFA believes that the only way to break this cycle is to force Monsanto to stop selling its carcinogenic product, and that States would be right (and fully free under the First Amendment) to do so. Indeed, we think state tort laws around the country already permit that result. But the only important point for present purposes is that California's Proposition 65 warning requires far less than that. Instead, all it requires is spreading potentially life-saving information that will help enable farmers like NBFA members who are very unlikely to know of the real risks of Roundup® to take steps to protect themselves if they so choose.

CONCLUSION

The District Court's judgment should be reversed.

February 19, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Circuit Rules 29 and 32-3(2) because it contains 4,281 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 29.

Pursuant to Federal Rule of Appellate Procedure 29, this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 Century Schoolbook 14-point font.

February 19, 2021

/s/ Thomas C. Goldstein
Thomas C. Goldstein

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 19, 2021. All participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Thomas C. Goldstein
Thomas C. Goldstein