No.25-228

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UBER TECHNOLOGIES, INC., AND PORTIER, LLC,

Plaintiffs-Appellants,

and

MAPLEBEAR INC., D/B/A INSTACART,

Intervenor-Plaintiff-Appellant,

v.

CITY OF SEATTLE,

Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Washington (Seattle)
No. 2:24-cv-02103-MJP
The Honorable Marsha J. Pechman

BRIEF OF *AMICI CURIAE* LOCAL GOVERNMENTS IN OPPOSITION TO THE PETITION FOR REHEARING *EN BANC*

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DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A), undersigned counsel states that *amicus curiae* Local governments have no parent corporation and no publicly held company has 10% or greater ownership in it.

I have reviewed this form, FRAP 26.1, and Circuit Rule 26.1-1 and, to the best of my knowledge, have no information to disclose at this time.

Dated: June 15, 2026

Respectfully submitted,
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INTEREST OF AMICI CURIAE

Amici are the City of Portland and the County of San Diego, local governments who share a common interest and long-established authority to protect the health and welfare of their communities.[1] To achieve these ends, *amici* often enact legislation to set minimum standards and require transparency in the marketplace. *Amici* write in support of Appellee City of Seattle's opposition to Appellants Uber and Instacart's petition for rehearing *en banc*. Economic regulations protect the rights of *amici*'s residents by, among other functions, correcting information asymmetries between individuals—such as consumers, tenants, and workers—and businesses. *Amici* have further found through their policymaking experience that notice and disclosure requirements are integral to ensuring compliance with substantive regulations.

SUMMARY OF ARGUMENT

Appellants Uber Technologies, Inc., Portier, LLC, and Instacart and their *amici*[2] attempt to wield the First Amendment to undercut common and longstanding

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[1] No party or party's counsel authored this brief in whole or in part. No person other than *amici curiae*, including no party or party's counsel, contributed money intended to fund preparation or submission of this brief. Pursuant to Fed. R. App. P. 29(a)(2), all parties have consented to the filing of this brief.

[2] *Amici* Local Governments refer collectively to Uber Technologies, Inc., Portier, LLC, and Maplebear Inc. (d/b/a Instacart) as "Appellants" throughout, and specify the party name only when referring to one of the parties.

regulation of economic activity that protects consumers, workers, and tenants. A panel of this Court has already rejected this attempt. A panel majority found that Seattle's App-Based Worker Deactivation Rights Ordinance (the "Ordinance") adopts a sound approach to economic regulation that falls outside of First Amendment scrutiny.

Like other federal, state, and local laws, the Ordinance protects workers by requiring covered businesses to develop internal policies that comply with enumerated substantive standards and to notify their workers of those policies. Regulations across diverse sectors are replete with similar requirements. This is because it is uncontroversial that workers should have rights in the workplace and know what those rights are; childcare facilities should adopt, maintain, and disclose child safety policies; nursing homes should create and maintain admission and transfer policies to protect and notify residents of their rights; and consumers should know when security breaches have affected their personal data. These are routine policy decisions made by jurisdictions, including *amici*, on a wide range of issues. The majority correctly recognized the Ordinance for what it is—a commonplace economic regulation of conduct with the purpose of protecting and promoting the health, safety and welfare of Seattle's residents. Accepting Appellants' and their *amici*'s theory of how the First Amendment applies to the Ordinance would unravel numerous laws on which workers, consumers, and the broader public rely to make informed decisions and to understand their rights.

In addition, *amici* supporting Appellants spill much ink over the import of *Book People, Inc. v. Wong*, 91 F.4th 318 (5th Cir. 2024). But that decision holds no relevance here. The challenged law in *Book People* involved highly controversial speech which courts have long been recognized as expressive. By contrast, the Ordinance in this matter involves run-of-the-mill, non-expressive marketplace conduct regulation that historically stands outside of the reach of First Amendment review. Any other outcome would upend First Amendment jurisprudence. For the reasons set forth below, *amici* urge this Court to reject Appellants' invitation to revisit the panel's sound decision.

ARGUMENT

I. THE PANEL OPINION CORRECTLY RECOGNIZES THAT THE ORDINANCE RELIES ON WELL-ESTABLISHED, BROADLY ACCEPTED FORMS OF ECONOMIC REGULATION

The panel correctly recognized that the Ordinance fits squarely in an established and widely accepted category of economic regulation. Now, Appellants ask this Court to treat the Ordinance as a novel and constitutionally suspect incursion on corporate speech. That premise is wrong. Not only would doing so disturb vast swaths of employment, housing, consumer protection, and public health regulations, but *en banc* review is further unwarranted because the panel applied *settled* doctrine to a *settled* category of regulation. No reason to revisit exists.

The First Amendment's coverage has never tracked the colloquial meaning of "speech." *See City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989) ("It is possible to find some kernel of expression in almost every activity a person undertakes . . . but such a kernel is not sufficient to bring the activity within the protection of the First Amendment."). Much "speech"—the words that constitute sexual harassment, disclosures in securities filings, and workplace policies—has been correctly recognized as not meriting First Amendment protection.[3] "Th[e] Court has long recognized . . . that some forms of expression are not entitled to any protection at all under the First Amendment, despite the fact that they could reasonably be thought protected under its literal language." *Spence v. Washington*, 418 U.S. 405, 417 (1974) (Rehnquist, J., dissenting). As the Second Circuit recently observed, there exists "'a longstanding tradition in this country' of requiring employers to provide workers with notices of their rights, 'supported by a historical warrant.'" *CompassCare v. Hochul*, 125 F.4th 49, 65 (2d Cir. 2025) (quoting *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 795, 792 (2011)). The panel appropriately relied on

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[3] *See e.g.*, *Full Value Advisors, LLC v. S.E.C.*, 633 F.3d 1101 (D.C. Cir. 2011) (rejecting First Amendment objection to SEC regulations); *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294, 316 (1st Cir. 2005) (rejecting First Amendment challenge to "routine disclosure of economically significant information" because "[t]he idea that these thousands of routine regulations require an extensive First Amendment analysis is mistaken.") (controlling concurrence); *United States v. Sindel*, 53 F.3d 874, 878 (8th Cir. 1995) (rejecting First Amendment challenge to required tax return disclosures).

that tradition. *See Uber Techs., Inc. v. City of Seattle*, 168 F.4th 1202, 1216 (9th Cir. 2026).

Accepting Appellants' and their *amici*'*s* theory of how the First Amendment applies to the Ordinance would call into question myriad laws on which workers, consumers, and the public more broadly rely to make informed decisions and to understand their rights. Cities, states, and the federal government routinely enact regulations that set minimum standards for business conduct and require notice or disclosure as part of statutory schemes to promote public health, safety, privacy, and fairness in commercial transactions, among other policy goals. Such regulations are prevalent across a wide range of issue areas including employment, real estate, health, data privacy, and consumer protection. The mechanics of these laws vary: some require companies to provide information about internal policies, others require companies to provide general information about rights under state or local law (often using templates provided by relevant agencies) or data and information related to health and safety, and still others require development of internal policies while others assume that regulated businesses will develop policies to ensure compliance with law. In each case, the law requires companies to provide information that they may not otherwise choose to provide.

A. Laws at All Levels of Government Have Requirements Similar to the Seattle Ordinance.

The Ordinance is one of many laws across the Circuit that require employers to develop internal policies that implement substantive workplace protections and to distribute those policies to employees or prospective employees. For example, California law requires employers to "develop and distribute to its employees a harassment, discrimination, and retaliation prevention policy" that is consistent with protections guaranteed under state law. Cal. Code Regs. Tit. 2, § 11023, subd. b. The City of Los Angeles's Fair Chance Initiative for Hiring Ordinance requires employers to include an affirmative statement in job postings that they will consider applicants with criminal histories, and to perform an individualized "written assessment" before making an adverse decision based on an applicant's history. L.A., Cal. Mun. Code §189.03, §189.04. Likewise, Seattle's Paid Sick Leave and Safe Time Ordinance requires employers to notify employees of their right to paid sick leave, both by posting a standard government notice and by providing information about their company's specific policy. Seattle, Wash. Mun. Code § 14.16.045.[4] San Francisco's Lactation Ordinance creates substantive rights to

[4] As Seattle points out, Uber and Instacart are also subject to other municipal ordinances enacted by the City that require employers to have agreements in writing and to notify workers of their rights. *See* Appellee Br. at 12. For instance, Seattle's App-Based Workers Minimum Payment Ordinance requires network companies to

lactation accommodations in the workplace and requires every covered employer both to create a conforming internal written policy and to "engage in an interactive process" with an employee to determine an appropriate lactation location and schedule. S.F., Cal. Lab. and Emp. Code § 31.5. The ordinance further compels employers to distribute internal policies to all employees upon hiring and upon request, and to include them in any employee handbook. *Id*.

Workplace regulations routinely do more than require notice; they prescribe the substantive standards to which employment policies must conform. California law requires every industrial employer to implement an Injury and Illness Prevention Program "in writing" that includes "provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal." Cal. Code Regs. tit. 8, § 3203(a)(3) (2020). Likewise, Arizona requires every healthcare employer to develop a written workplace violence prevention plan that "includes components that are specifically tailored to the conditions and hazards of the health care employer's sites and patient-specific risk factors." Ariz. Rev. Stat. Ann. § 36-420.03 (2025). Oregon requires every public employer to create a written policy that "seeks to prevent workplace harassment." Or. Rev. Stat. ch. 243.319 (2025). California also requires community colleges to set forth "reasonable but specific

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provide workers with a notice of their rights regarding minimum payments. Seattle, Wash. Mun. Code § 8.37.100.

standards" for "faculty to meet in the performance of their duties." Cal. Educ. Code § 87664 (2025).

Numerous federal laws also use Seattle's policy directive and disclosure approach to compliance. Requirements for corporations to establish, implement and disclose workplace safety policies and procedures appear throughout the regulations under the Occupational Safety and Health Act. *See, e.g.*, 29 C.F.R. § 1910.38 (employers must have an emergency action plan and be made available to employees); 29 C.F.R. § 1910.1030 (covered employers "shall establish a written Exposure Control Plan designed to eliminate or minimize employee exposure" and make such plan available to employees); 29 C.F.R. § 1910.1200 (employers must develop and maintain a "written hazard communication program" for hazardous chemicals in the workplace).

As these examples illustrate, the approach Seattle has adopted in the Ordinance—requiring employers to conform their workplace policies to statutory standards, then provide notice to workers of those policies—is commonplace. The Second Circuit recently recognized this in upholding a law similar to the Ordinance that required employers to provide workers with notices of their rights, noting that "many [] state and federal laws require[e] workplace disclosures—in employee handbooks or through other means, and by all employers or certain categories of employers—of health, safety, and civil rights information." *CompassCare*, 125

F.4th at 65. Laws at all levels of government contain substantive worker protections, require employers to develop compliant internal policies, and require employers to notify employees or potential employees of those policies. This approach makes sense: governments have determined that to achieve certain policy goals, it is necessary not only to enact substantive protections but also to ensure that protected individuals receive notice of their rights.

B. Accepting Appellants' Theory Would Endanger a Broad and Stable Category of Established Law Beyond Workplace Regulation.

The stakes of Appellants' First Amendment theory extend well beyond this case. If creating and alerting workers of a written workplace policy were elevated to "speech" subject to First Amendment scrutiny, a vast range of established regulatory requirements—on which renters, workers, consumers, business competitors, and the public have relied for decades—would suddenly become constitutionally suspect.

In housing, "good cause" eviction laws generally require a landlord to have a valid basis for an eviction and to give individualized notice of the reason(s) they seek to recover possession of a rental unit. Cal. Civ. Code § 1946.2 ("the owner of the residential real property shall not terminate a tenancy without just cause," and the reasons for eviction "shall be stated in the written notice to terminate tenancy."); Or. Rev. Stat. § 90.427(3)(c)(A) ("the landlord may terminate the tenancy only … [f]or a tenant cause and with notice in writing"); Berkeley, Cal. Mun. Code §

13.76.130 (landlord must "specify just cause"—such as nonpayment of rent or owner move-in—"in the notice of termination" for the notice to be effective).

Across the Ninth Circuit, state law requires sellers of residential property to deliver written disclosure statements covering known property defects so the buyer may make an informed decision about the purchase. Alaska Stat § 34.70 *et seq*.; Cal. Civ. Code § 1102 *et seq*.; Haw. Rev. Stat. §§ 508D-1, 508D-4; Idaho Code §§ 55-2504, 55-2506; Nev. Rev. Stat. § 113.100 *et seq*.; Or. Rev. Stat. § 105.465; Wash. Rev. Code § 64.06.020. Federal law requires sellers of pre-1978 residential housing to provide buyers with a written lead paint disclosure. 42 U.S.C. § 4852d. Local ordinances require landlords to provide notice of legal rights. Portland, Or. City Code § 30.01.086, subd. (C); San Diego, Cal. Mun. Code § 98.0705.

Federal law similarly requires development of policies that comply with law and disclosure of such policies. Housing and Urban Development regulations require public housing agencies to "establish and adopt written policies for admission of tenants . . . consistent with the fair housing and equal opportunity provisions of § 5.105 of this title" and to publish those policies. 24 C.F.R. § 960.202. Nursing homes must also create, implement and provide notice of a laundry list of policies, including procedures for admissions, transfer and discharge, and bed-hold policies to name a few. *See, e.g.*, 42 C.F.R. §483.15.

Consumer protection law also offers numerous analogies to the Ordinance.

State laws require data brokers to create content that allows consumers to opt out of the sale of their personal data. *See*, *e.g.*, Cal. Civ. Code § 1798.100(A) (California Consumer Privacy Act); Mont. Code Ann. § 30-14-2812 (Montana Consumer Data Privacy Act). State laws across the Circuit also require businesses to notify affected consumers of data security breaches within specific timeframes and with specified content. *See, e.g.*, Ariz. Rev. Stat. §§ 18-552, 18-545; Cal. Civ. Code §§ 1798.29, 1798.82; Or. Rev. Stat. §§ 646A.600–646A.628; Wash. Rev. Code §§ 19.255.010, 42.56.590.

The Fair Credit Reporting Act requires all credit reporting agencies ("CRAs") maintain "reasonable procedures" to ensure accuracy of their reports. 15 U.S.C. § 1681e. And, upon request from a consumer, CRAs must disclose in writing all information in that consumer's file. 15 U.S.C. §§ 1681g, 1681h (Fair Credit Reporting Act § 609a). According to the Consumer Financial Protection Bureau, Congress enacted this protection as a means of increasing transparency and accuracy in credit reporting, considering "[t]he potential for the vast quantity of information contained in consumer files to include errors poses significant risks to accuracy, fairness, and consumer privacy in the consumer reporting system."[5]

The federal Real Estate Settlement Procedures Act (RESPA) requires loan

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[5] Fair Credit Reporting; File Disclosure, 89 Fed. Reg. 4167. (Jan. 23, 2024), https://perma.cc/67CP-JS84.

servicers to provide borrowers with complete information about their loan account (or to respond to requests indicating the requested information is not available), allowing the borrower to identify any errors in their account. 12 C.F.R. § 1024.36. Consumer education and accuracy goals also underlie Washington's insurance code, which requires an insurer to give notice of their "actual reason" for canceling a policy, allowing consumers to correct errors and to take steps to prevent future cancellations. Wash. Rev. Code § 48.18.290.

Institutions of higher education and loan financiers are required to make disclosures that allow potential students to determine whether the education or loan is an adequate bargain. Private lenders who made federally insured student loans must comply with applicable interest and fee charge limitations and also disclose loan information and repayment options, including resources for loan repayment assistance. 34 C.F.R. § 682.202; 682.205. Institutions of higher education must disclose financial assistance options, graduation rates, and job placement rates. 34 C.F.R. § 668.41.

These are but a few examples of the many laws that share the Ordinance's structure and that federal, state, and local governments have enacted to further legitimate policy goals. Appellants' theory offers no principled basis for disturbing the Ordinance while leaving these requirements intact. The answer cannot be that workplace notice somehow differs from real estate disclosure or credit reporting notice in constitutionally meaningful ways. The answer the panel gave—that these requirements regulate conduct, with any incidental speech component insufficient to trigger First Amendment scrutiny—is the correct one, and it is the only answer consistent with the established coverage of the First Amendment.

Accordingly, Appellants' theory of the First Amendment as it applies to the Ordinance's required development of compliant workplace policies, notice of deactivation, and access to records substantiating deactivation (§§ 8.40.070 and 8.40.080), threatens to upend transparency and abuse-prevention mechanisms that are present across a wide swath of laws. *En banc* review to adopt a contrary rule would not merely resolve this case; it would unsettle a foundational premise of law.

II. NO CIRCUIT SPLIT EXISTS BETWEEN THE PANEL OPINION AND *BOOK PEOPLE V. WONG*

In support of Appellants, *amici* Washington Food Industry Association argue for *en banc* review based on an alleged circuit split. *Amici* are wrong. The alleged split stems from whether the "speech" at issue merits First Amendment protection and, if so, whether it conflicts with the application of *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985) in *Book People v. Wong*. *Uber v. Seattle* and *Book People* reach different outcomes because they addressed fundamentally different laws. Two distinctions between the laws at bar explain—and justify—the divergent outcomes. First, as argued by Appellees and correctly decided by the panel, the First Amendment does not and should not reach economic regulation of non-expressive conduct. Second, *Book People* involved prior restraint elements that do not exist in the Ordinance. Far from exposing doctrinal inconsistency, those differences demonstrate that the panel opinion sits squarely within the First Amendment's mainstream framework for economic regulation. Appellants' attempt to stretch the panel opinion into something other than a mainstream analysis of economic regulation attempts too much and should fail.

A. Both Decisions Accord with Long-Settled Principles of First Amendment Coverage.

The different conclusions reached in *Book People* and *Uber* reflect a well-established distinction between activities the First Amendment covers and those it does not. The Ordinance falls within domains historically outside the reach of the First Amendment: intra-company economic regulations and employment terms.[6] As Seattle's brief explains, Appellants function within a dense web of existing labor standards law—the federal FLSA, state wage-and-hour laws, the common law of at-will employment, and Seattle's own prior gig-worker protections. The panel correctly observed that the Ordinance is "a modern version of established workplace

[6] *See* Frederick Schauer, The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Salience, 117 Harv. L. Rev. 1765, 1766 (2004) (collecting cases, including regulation examples of telemarketing, workplace harassment and securities transactions).

disclosure laws"—a category with a "longstanding tradition in this country." *Uber Techs.,* 168 F.4th at 1216 (quoting *CompassCare*, 125 F.4th at 65).

Disclosures of employment terms are uncontroversial and factual in the constitutionally relevant sense: as described above, providing workers with fair notice of rights and procedures is commonplace and widespread. *See also, e.g.* Mont. Code Ann. § 39-2-904(b) (prohibiting termination without good cause after a probationary period). And a deactivation policy—once adopted—consists of factual statements about what conduct will and will not result in termination. Whether or not the company would have chosen different standards in the absence of the Ordinance, the resulting policy "will be 'literally true.'" *Uber Techs.,* 168 F.4th at 1217.

By contrast, Texas's READER Act ("READER") required book vendors seeking to sell to public schools to rate each book as "sexually explicit," "sexually relevant," or no rating. *Book People*, 91 F.4th at 325–26. The rating had to be based on whether the material described sexual conduct "in a way that is patently offensive," accounting for "(1) the explicitness or graphic nature of a description or depiction of sexual conduct," "(2) whether the material consists predominantly of or contains multiple repetitions of depictions of sexual or excretory organs or activities," and "(3) whether a reasonable person would find that the material intentionally panders to, titillates, or shocks the reader." *Id.* at 326. The Fifth Circuit correctly recognized that rating the sexual offensiveness of books in school libraries is "neither factual nor uncontroversial" as it requires "[b]alancing a myriad of factors that depend on community standards. *Id*. at 340.

Whether a book is "patently offensive" is precisely the kind of question the First Amendment exists to keep open to pluralistic resolution.[7] The Fifth Circuit broke no new doctrinal ground in finding First Amendment protection warranted for speech in that setting. *See Book People*, 91 F.4th at 338–40. Likewise, the panel in this case adhered to longstanding First Amendment jurisprudence when it found the Ordinance outside the reach of constitutional review, and its decision should not be disturbed.

B. *Book People* Implicates Prior Restraint Doctrine; the Seattle Ordinance Does Not.

The two laws also diverge structurally in a way that further justifies their different constitutional treatment. READER did not merely direct vendors to publish information; it required them to submit rated material to a government agency, which then used those ratings as the basis for excluding books from school libraries. *Book People*, 91 F.4th at 326–27. Though the Fifth Circuit did not reach the prior

[7] *See generally,* Amanda Shanor, *First Amendment Coverage,* 93 N.Y.U. L. Rev. 318 (2018) (offering a descriptive theory of what 'speech' is protected by the First Amendment and arguing that "[c]overage depends. . . on whether or not the audience of the activity is pluralistic").

restraint argument, *id.* at 340, READER bears the hallmarks of systems the Supreme Court has treated as prior restraints: government review of content as a precondition to distribution.

The foundational case is *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963), which struck down Rhode Island's "Commission to Encourage Morality in Youth." The Commission had no formal enforcement power—it simply identified objectionable books and sent letters encouraging distributors not to carry them. The Supreme Court nonetheless held this was an unconstitutional prior restraint because the practical effect was suppression: distributors complied to avoid prosecution, and the Commission's notices operated as governmental pronouncements that targeted speech would be sanctioned. *Id.* at 67–68. READER was more coercive still: it formally required vendors to submit ratings and imposed legal penalties and commercial consequences for noncompliance.

Seattle's Ordinance operates nothing like that. The government does not review Appellants' deactivation policy before it reaches workers. The Ordinance does not condition Appellants' right to communicate on governmental approval of the communication's content. The city reviews compliance only after the fact, and only for consistency with the Ordinance's requirement that the policy articulate the company's grounds for worker deactivation. Communication flows from employer to worker, not from employer to government for clearance. That is the structure of a labor regulation, not a licensing scheme for speech. Thus, the Fifth Circuit's disposition of a fundamentally distinct form of regulation does not call the panel's analysis into question and furnishes no basis for *en banc* review.

CONCLUSION

Appellants' desire to revisit the panel's sound and well-reasoned decision would not only upend this Court's precedents but also have compounding detrimental effects. For the reasons above, and those ably provided by Defendant-Appellee, no *en banc* review is warranted.

Dated: June 15, 2026

Respectfully submitted,

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STATEMENT OF RELATED CASE

In accordance with Circuit Rule 28-2.6, proposed *amici* identify the following related case:

- *Maplebear Inc., et al. v. City of Seattle*, Case No. 25-231. This case is an appeal arising from the same Order denying a request for a preliminary injunction.

Dated: June 15, 2026

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CERTIFICATE OF COMPLIANCE

9th Cir. Case Number(s) 25-228

I am the attorney or self-represented party.

This brief contains 3,947 **words,** including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

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  [ ] a party or parties are filing a single brief in response to multiple briefs.
  [ ] a party or parties are filing a single brief in response to a longer joint brief.

[ ] complies with the length limit designated by court order dated ______________.

[ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature *s/ Naomi Tsu* **Date June 15, 2026**

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing documents on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Dated: June 15, 2026

s/Naomi Tsu

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