

No. 13-1175

**In The
Supreme Court of the United States**

—◆—
CITY OF LOS ANGELES,

Petitioner,

v.

NARANJIBHAI PATEL, et al.,

Respondents.

—◆—
**On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit**

—◆—
**BRIEF OF CALIFORNIA STATE SHERIFFS'
ASSOCIATION, CALIFORNIA POLICE CHIEFS'
ASSOCIATION, CALIFORNIA PEACE OFFICERS'
ASSOCIATION, NATIONAL SHERIFFS'
ASSOCIATION, MAJOR COUNTY SHERIFFS'
ASSOCIATION, AND LOS ANGELES COUNTY
POLICE CHIEFS' ASSOCIATION AS AMICI
CURIAE IN SUPPORT OF PETITIONER**

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***AMICUS CURIAE* BRIEF
IN SUPPORT OF PETITIONER**

Amici Curiae are the following associations:

California State Sheriffs' Association

California Police Chiefs' Association

California Peace Officers' Association

National Sheriffs' Association

Major County Sheriffs' Association

Los Angeles County Police Chiefs' Association

(collectively "*Amici Curiae*").¹ *Amici Curiae* respectfully submit the following brief in support of Petitioner, City of Los Angeles.

I. INTERESTS OF *AMICI CURIAE*.

Amici Curiae are the above Associations, whose members make up a vast array of law enforcement officers throughout the State of California and the United States. *Amici* Members represent policy making officials, management, and rank and file officers, providing a broad spectrum of law enforcement

¹ No party or counsel for a party authored this brief, in whole or in part. No person or entity other than *Amici Curiae*, its members, or its counsel made any monetary contribution to the preparation or submission of this brief. This representation is made in compliance with Rule 37.6 of the United States Supreme Court Rules. The parties have consented to the filing of this brief.

viewpoints, both at the local, county and national levels.

A. California State Sheriffs' Association

The California State Sheriff's Association ("CSSA") is a non-profit professional organization that represents each of the 58 California Sheriffs. It was formed to allow the sharing of information and resources between sheriffs and departmental personnel, in order to allow for the general improvement of law enforcement throughout the State of California.

B. California Police Chiefs' Association

California Police Chiefs' Association ("CPCA") represents virtually all of the more than 400 municipal chiefs of police in California. CPCA seeks to promote and advance the science and art of police administration and crime prevention, by developing and disseminating professional administrative practices for use in the police profession. It also furthers police cooperation and the exchange of information and experience throughout California.

C. California Peace Officers' Association

The California Peace Officers' Association ("CPOA") represents more than 2,000 peace officers, of all ranks, throughout the State of California. CPOA provides professional development and training for peace

officers, and reviews and comments on legislation and other matters impacting law enforcement.

D. National Sheriffs' Association

The National Sheriffs' Association is a 26 U.S.C. Section 501(c)(4) non-profit formed in 1940, which promotes the fair and efficient administration of criminal justice throughout the United States; and, in particular, in advancing and protecting the Office of Sheriffs throughout the United States. The Association has over 21,000 members and is the advocate for over 3,000 individual Sheriff Offices/Departments located throughout the United States. For 75 years, the National Sheriffs' Association has continuously promoted the public interest goals and policies of our nation's local law enforcement communities; and the National Sheriffs' Association continues to participate in judicial processes where the vital interests of law enforcement and its members are being affected.

E. Major County Sheriffs' Association

The Major County Sheriffs' Association ("MCSA") is a professional law enforcement association of elected sheriffs representing counties or parishes with 500,000 or more in population. MCSA is dedicated to preserving the highest integrity in law enforcement and the elected Office of the Sheriff. In particular, MCSA works to promote a greater understanding of law enforcement strategies to address future problems and identify law enforcement challenges facing its members. MCSA also advances legislative and

legal issues that will enhance the safety of its members' communities. MCSA also supports the development of innovative education along with prevention and enforcement strategies and programs. Further, MCSA facilitates the sharing of ideas, concepts and resources for the benefit of law enforcement.

F. Los Angeles County Police Chiefs' Association

Los Angeles County Police Chiefs' Association ("LACPCA") is a non-profit mutual benefit corporation that represents the 45 municipal police chiefs of Los Angeles County, who are devoted to promoting public safety and inter-agency cooperation within the Los Angeles County region. LACPCA focuses on advancing the science and art of police administration and crime prevention in Los Angeles County; coordinating the implementation of law enforcement efforts by local law enforcement leaders; and developing, teaching, and disseminating professional law enforcement practices.

G. *Amici Curiae* Interests in This Matter

This case raises important issues for *Amici Curiae*. Municipalities and Counties represented by the members of *Amici* have hotel guest registry inspection ordinances similar to the one at issue in the City of Los Angeles, or may be able to make use of such regulations for the benefit of those jurisdictions that do not already utilize such regulations. The type of ordinance at issue in this matter serves as a vital

tool to local law enforcement in combating crimes. The invalidation of the ordinance in this case by the Ninth Circuit Court of Appeals prevents police and sheriffs' departments from accessing information for regulatory verification and for use as a vital law enforcement resource.

Since *Amici* represent the interests of a wide variety of law enforcement in California and throughout the nation, *Amici* provide this Court with a valuable perspective into the potential implications of the *en banc* opinion in this matter. Such perspective includes anecdotal information from its members about the actual use and enormous value of the regulation at issue. The underlying law enforcement issues relevant to the challenged City of Los Angeles regulation impact important public safety concerns that are critical locally, as well having widespread and national implications.

Given the significant ramifications of the Ninth Circuit's *en banc* opinion striking down the regulation of the City of Los Angeles, *Amici* respectfully submit this *Amici Curiae* brief in order to provide their perspective relating, in particular, to actual implementation of the type of regulation at issue.

II. SUMMARY OF THE ARGUMENT

Amici Curiae represent the interests of law enforcement with wide-ranging experience utilizing hotel and motel registry information. Such information is routinely used by *Amici* to impede human

trafficking and prostitution. Frequent and regular inspection of the registry information required to be maintained by the City of Los Angeles ordinance deters such crimes and permits the more immediate identification of and aid to victims of human trafficking and compelled prostitution. These are very serious public safety concerns justifying governmental intrusion into the records at issue. Indeed, the search of hotel and motel business records, in the limited way provided for in the ordinance of the City of Los Angeles, is both constitutionally reasonable under the circumstances and within the exception to the warrant requirement provided as to “closely regulated” businesses, such as hotels and motels. Finally, a facial challenge cannot be found where, as here, only some applications, at most, may be found unconstitutional.

III. ARGUMENT

A. Introduction.

Hotels and motels are the types of business that have the potential to become a haven of criminal activity that can detrimentally impact local jurisdictions. Most notably, these businesses can present a significant law enforcement and general public safety concern as to prostitution and human/sex trafficking, in particular. At issue before this Court is a City of Los Angeles municipal ordinance that permits City police officers to inspect registration records of hotels and motels, which are required to contain certain, minimal guest information and are required to be

maintained for the purpose of City inspection. Since the privacy interests of these businesses is extremely limited and law enforcement governmental concerns are of enormous magnitude, the City's warrantless, administrative search requirements are reasonable and constitutional. Indeed, hotels and motels are "closely regulated" businesses, for which limited administrative searches are permissible. The special concerns presented by compelled prostitution and human trafficking, especially involving minors, are of such magnitude that the limited searches permitted by the ordinance of the City of Los Angeles are constitutionally permissible. The hands of law enforcement must not be tied so that officers are thwarted in their legitimate efforts to rescue victims of human/sex trafficking from bondage.

B. Hotel and Motel Registration Information Is Used to Combat Human Trafficking and Prostitution, Which Are Crimes That Are Especially Hard to Detect and Which Implicate Significant Public Health and Safety Concerns.

The practical impact of the Ninth Circuit's *en banc* opinion in this matter cannot be gainsaid. There are two key crimes which can be regularly furthered or harbored by hotels and motels – human trafficking and prostitution, the latter of which is often compelled prostitution. These are frequently transitory crimes, for which time is of the essence in locating

victims, particularly minor females, who oftentimes are participating in these activities against their will.

In addition, the Ninth Circuit's *en banc* opinion undermines the deterrent benefit of the City's ordinance. Because customers of hotels and motels are aware that their name and basic identifying information, including vehicle information, is being collected at registration, and they know that such information is being shared with law enforcement, customers are discouraged from using these locations for these types of crimes, as well as other crimes.

The value of *Amici* is that they can provide this Court with a practical perspective as to the importance and implementation of the ordinance provisions at issue in this matter. The ordinance of the City of Los Angeles is not limited to this City alone, but is similar to local ordinances throughout the State of California and other jurisdictions. The impact of the Court's opinion in this matter is more widespread than simply in the City of Los Angeles.

More importantly, as the California Attorney General has recognized, "California . . . is one of the nations' top four destination states for trafficking human beings," so this is a matter of widespread and critical significance. OFFICE OF THE ATTORNEY GENERAL, CAL. DEP'T OF JUSTICE, "The State of Human Trafficking in California 2012," at 3. Human trafficking, including sex trafficking, is "a rapidly growing and evolving criminal enterprise, [that] presents unique challenges for law enforcement." *Id.* at 71. The State

of “California has nine regional anti-human trafficking task forces.” *Id.* at 29.

The Attorney General’s Office recognizes that particular businesses can facilitate human trafficking including, specifically, hotels and motels. The Attorney General reports that “[i]n 2001, a major sex trafficking ring was shut down in San Diego,” which included “[c]harges against the owners of a motel in Oceanside who, according to the indictment, set aside rooms apart from the rest of their legitimate customers where girls and women were housed, charged the gang members/pimps a higher rate for the rooms . . . and warned the gang members of inquiries by law enforcement.” *Id.* at 25. Although this may present an extreme example of active participation by a motel in prostitution and human trafficking crimes, the problems presented by the transient and often anonymous nature of hotel and motel customers underscore the significant law enforcement interest at issue.

This is especially critical because the Federal Bureau of Investigation rates the San Francisco, Los Angeles, and San Diego metropolitan areas in California as areas of “high intensity child prostitution” within the United States. CALIFORNIA CHILD WELFARE COUNCIL, Walker, Kate, “Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California,” at iii. Exploited children involved in human trafficking are “often moved from city to city” and the crime is often concealed, with “exploiters us[ing] motels,” for instance, as locations for the exploitation. *Id.* at 24-25.

A 2013 report by the Polaris Project concluded that “[p]imp-controlled sex trafficking was the most commonly referenced form of sex trafficking, occurring in places like hotels and motels, streets, and truck stops, and was often facilitated online,” based on data from the National Human Trafficking Resource Center. NATIONAL HUMAN TRAFFICKING RESOURCE CENTER, “Human Trafficking Trends in the United States 2007-2012,” at 6. In fact, the Project identified California as the highest state for potential trafficking cases reported to the Resource Center. *Id.* at 9 & Appendix 2.

The Office of Community Oriented Policing Services (“COPS”) of the Department of Justice has recognized in training materials that “budget” motels provide a haven for criminal activity generally, but especially those crimes that prey on victims and flourish with anonymity. OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, U.S. DEP’T OF JUSTICE, PROBLEM-ORIENTED GUIDES FOR POLICE, PROBLEM-SPECIFIC GUIDES SERIES NO. 30, Schmerler, Karin, “Disorder at Budget Motels.” COPS recognized that “[m]otels and hotels house people only temporarily, often in commercial areas with high crime rates.” *Id.* at 2. It is this very essence of the hotel and motel industry that requires regulation for critical public safety. Specifically, as COPS recognized, motels, often with drive up access to guests, “allow[] problem guests and visitors to come and go without being seen by motel personnel” and “allow unrestricted and

anonymous access to guest quarters at any hour of day or night.” *Id.* at 5-6.

COPS specifically recommends to motels that photo identification be obtained for all adult guests and visitors, which “reduces the perception of anonymity at motels, reinforces personal accountability for behavior, and provides police with important information should a crime occur. . . .” *Id.* at 21. Specifically, motel “[s]taff should record all guest and visitor information on a government-approved registration form readily accessible to police. . . .” *Id.* at 22.

Some members of *Amici* are also part of the Orange County Human Trafficking Task Force, which specifically recognizes the value of obtaining room registration information from hotels and motels as a key tool in deterring, preventing and regulating the use of these facilities in ways that are a significant risk to the public health and welfare.

In particular, this task force has had experience with motel room registration information leading directly to the rescue of human trafficking victims. For instance, in the course of a direct investigation of prostitution occurring at a motel, officers gained information from the motel that the room was being rented for the prostitute by a male pimp, and identification of that individual, by name and vehicle, led to the discovery of another prostitute who was a victim of human trafficking. The task force would not have been able to locate the latter victim without the information about the pimp, obtained from the motel

registration. And, since human trafficking victims are often moved from one place to another in order to avoid detection, the transitory nature of this crime makes time of the essence in obtaining such information and locating the perpetrators and victims.

In fact, the task force has found that its human trafficking cases lead to motels a majority of the time. In human trafficking, it is not merely a matter of a hotel or motel room being used for prostitution activity, but the task force also finds that a motel room is often the place of confinement. Human trafficking victims are not permitted to leave a hotel or motel room and are often kept in an unfamiliar location or are coerced by threats of violence to themselves or their family. The fact that a room is not locked does not obviate the fact that it is a place from which victims cannot escape. Room registration information is often essential to human trafficking investigations because these are the places where the majority of the victimization takes place and this information leads to officers' ability to locate victims before they are moved to another location.

Members of *Amici* further report that they often do not have to resort to enforcement of local regulations permitting law enforcement access to hotel and motel registration information. Indeed, such information is widely provided voluntarily by these business establishments, such as in Santa Monica, Riverside, and Signal Hill. These experiences support the claim by the City of Los Angeles that hotels and motels do not widely regard registration information as private

business records. To the contrary, these records are often freely shared with law enforcement.

Other members of *Amici* also report that hotel and motel registration information is used in other ways that deter or disrupt human trafficking, and which allows officers to quickly identify victims and end victimization. In particular, such information is regularly used to quickly corroborate victim and witness statements. For instance, a human trafficking victim who is occupying a rented hotel or motel room may report that he or she stayed in the room with the suspect, that the room was rented by the suspect for the victim's use, or that the victim rented the room but used the suspect's identifying information (such as the suspect's address, phone number or vehicle information).

The registration information can immediately aid officers in verifying the status of a witness or participant in illegal activity as a victim, allowing officers to get the victim swiftly out of the situation, as well as putting the victim in touch with necessary support services. Such information can also aid in identifying or locating the suspect and additional victims, before they can be quickly secreted away without detection.

The immediacy of access to registration information can be critical in these circumstances. The registration information can also be pivotal because victims and witnesses may not know a suspect by a full name, but only by a nickname or moniker. In addition, other victims can be expeditiously identified

and located with registration information that is more detailed than the minimal information often known by victims and witnesses.

More importantly, the above circumstances may be avoided altogether by ordinances like that in the City of Los Angeles. When registration information requires government-issued identification or even just documents customers' full names and vehicle information, this requirement deters criminals from using these areas for these types of crimes. Since the individuals perpetrating human trafficking and compelled prostitution crimes are frequently known to their victims or to witnesses by nicknames, and they want their names and crimes to remain anonymous, they are deterred from using hotels and motels for their crimes because of the very fact that their identities are required to be disclosed to hotel and motel operators. The deterrent effect is particularly successful because these perpetrators also know that the information they are required to provide as a customer is subject to regular and periodic inspections by law enforcement. Ordinances like that of the City of Los Angeles directly impact the use of hotels and motels for these very serious crimes.

Regular inspection of hotel and motel registrations is also paramount. It provides information about how well the business itself is run – whether the business establishment may be facilitating, either intentionally or unknowingly, victimization. Most importantly, when registration information can be regularly inspected, deficiencies in information can be

pointed out to hotel and motel operators. This maintains the integrity not only of the information kept, but also encourages operators themselves to understand the importance of the information and to engage in a partnership with law enforcement for the betterment of the community as a whole, including the operator's business interests.

There is an immeasurable deterrent effect in the keeping of such information by hotels and motels, due to the widely known fact that such information is kept and regularly reviewed by law enforcement. Recording of the registry information helps reduce and deter prostitution and other crimes at hotels and motels generally. This is an enormous public benefit that must be recognized in balancing the limited, commercial privacy interest at stake here.

Members of *Amici* recognize, from decades of law enforcement experience, that hotels and motels can attract certain illegal activity. These illegal activities often consist of prostitution, including compelled prostitution associated with human trafficking, for which the registration information is useful in combatting, as discussed above. However, such illegal activity can also include identify theft, fraud, forgery, and narcotics sales and manufacturing. Because of the generally and undeniably transient nature of hotel and motel occupancy by all users, such crimes can regularly occur without much success in detection. Registration information serves as a deterrent to all of these crimes.

Both hotel and motel operators, and customers, are aware that such records are kept and can be subject to review by law enforcement. These records serve to end the anonymity otherwise associated with hotel and motel occupancy, and that can allow customers to regularly use these locations with impunity for illegal activity. This deterrent effect is also worthy of value in the balancing that this Court must do of governmental versus privacy interests.

The deterrent effect of the City's ordinance has been found to actually exist in Los Angeles in the wake of its regulation having been found invalid. The City's Police Department reports to *Amici* that, after it ceased enforcement of the ordinance in response to the *en banc* opinion, there has been an overall decrease by more than 40% of all human trafficking-related arrests.² Notably, only the Police Department's Vice and Human Trafficking units utilize the ordinance. Specifically, there was a decrease of over 50% in the rescue of minors from human trafficking in the

² These arrests include contacts with victims that start off as an "arrest," but are later characterized as the rescue of a minor from human trafficking. They also include arrests for the suspects who are transporting the victims of human trafficking, as well as perpetrators of the "traditional" crimes of pimping, pandering, and prostitution. However, even some of these "traditional" arrests can involve human trafficking or other compelled prostitution, because a person engaging in these "traditional" crimes may be a victim of human trafficking or compelled prostitution but may be unwilling to accept social services assistance to escape from the individuals who are supervising or controlling their prostitution activities.

six-month period after the Ninth Circuit invalidated the City's ordinance.

Therefore, the inability of the City to have access to the inspection provisions of its ordinance as to hotel and motel registration information has had a direct negative impact in the fight against human trafficking, in particular. Without the City's ordinance, officers lose an essential tool in preventing the use of hotels and motels within the City for these particularly despicable crimes that have devastating effects on the lives of individuals, particularly females and minors.

C. The Fourth Amendment Permits the Reasonable Searches Provided for in the Hotel/Motel Registration Information Ordinance of the City of Los Angeles.

Generally, the Fourth Amendment "prohibits only *unreasonable* searches." *Bell v. Wolfish*, 441 U.S. 520, 558-59 (1979) (emphasis added) (citing *Carroll v. United States*, 267 U.S. 132, 147 (1925)). Specifically, this Court in *Bell* explained:

The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a *balancing* of the need for the *particular* search against the invasion of *personal* rights that the search entails. Courts must consider the *scope* of the particular intrusion, the *manner* in which it is conducted,

the *justification* for initiating it, and the *place* in which it is conducted.

Bell, at 558-59 (italics added) (citing *United States v. Ramsey*, 431 U.S. 606 (1977); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *Terry v. Ohio*, 392 U.S. 1 (1968); *Katz v. United States*, 389 U.S. 347 (1967); *Schmerber v. California*, 384 U.S. 757 (1966)).

However, the Fourth Amendment does not protect “[w]hat a person knowingly exposes to the public.” *Katz v. United States*, 389 U.S. 347, 351 (1967). For instance, this Court has “held that a ‘mere handwriting exemplar . . . like the voice or body itself, is an identifying physical characteristic outside its [Fourth Amendment] protection.’” *United States v. Dionisio*, 410 U.S. 1, 6-7 (1973) (quoting *Gilbert v. California*, 388 U.S. 263, 266-67 (1967)). Further, customers likely have no Fourth Amendment rights as to information voluntarily shared with businesses. *See, e.g., United States v. Willis*, 759 F.2d 1486, 1498 (11th Cir. 1985) (“courts have refused to find such an interest in records similar to the [hotel and motel] registration records here”).

From the perspective of the customer of hotels and motels, there is no expectation of privacy in the identifying information provided under the City’s ordinance. As the Ninth Circuit found in *United States v. Cormier*, 220 F.3d 1103, 1108 (9th Cir. 2000), hotel and motel registration records were found “not [to] contain highly personal information” about the

customer, but “merely stated his name and room number.”

Notably, customers may provide at least some of the information required by the City’s ordinance in the public registration area of a hotel or motel. *See, e.g., Patel v. City of Los Angeles*, 738 F.3d 1058, 1073 (9th Cir. 2013) (Clifton, J., dissenting) (“a guest registry may be a publicly accessible book in a publicly accessible hotel lobby”). In fact, information such as a customer name may even be provided *verbally* in these public areas. In addition, information such as vehicle license plate, make and model of a vehicle on the hotel or motel premises are all information readily visible to the public.

Nonetheless, the hotel and motel operators challenging the City of Los Angeles ordinance at issue here assert that they have a Fourth Amendment right to privacy to those check-in business records. But, as the dissent to the *en banc* opinion points out, *Cormier* demonstrates that hotels and motels may readily consent to the search of such records. As discussed above, the common experience of members of *Amici* is that hotels and motels do regularly and voluntarily provide registration information to law enforcement, for their own benefit.

As such, the dissent recognizes that “if there are hotels that do not view guest registry information as private to themselves, the inspection permitted by the ordinance may not be unreasonable.” *Id.* In fact,

even the City's ordinance contemplates that the information required to be maintained, and what may be inspected by law enforcement, may be "a guest registry [that] may be a publicly accessible book in a publicly accessible hotel lobby." *Id.* The ordinance itself mandates that the registration information required to be maintained by hotels and motels must be kept "in the guest reception or guest check-in area or in an office adjacent to that area." *Id.* at 1062 (quoting Los Angeles Municipal Code § 41.49 (3)(1)). At least in some instances, there is no question that the requirements of the City's ordinance relate to information that is not protected by the Fourth Amendment because it is collected and kept in an open, public area of hotels and motels.

Fundamentally, this Court must *balance* the interests in the information sought, and the reasonable expectation of privacy in those particular records, with the governmental interest in such information. Under the City's ordinance, the balance, taking into account all of the circumstances, tips in favor of finding that the limited intrusion permitted by the ordinance is constitutional.

Notably, the ordinance requires that certain minimal, primarily general identifying information be obtained by hotel and motel operators of guests at check-in. Respondents do not seek to protect any privacy interest of their guests, and the District Court and Ninth Circuit Court of Appeals below recognized none. Therefore, the guests have no protectable

interest in the information maintained by hotels and motels under the City's ordinance. Instead, it is only the operators' interest in such information as a business record that is at issue in the matter before this Court, and the operators' privacy interests in such information is limited. *See, e.g., New York v. Burger*, 482 U.S. 691, 700 (1987) ("An expectation of privacy in commercial premises, however, is different from, and indeed less than, a similar expectation in an individual's home.").

Further, as discussed in detail above, there are substantial governmental interests at issue in the information sought in hotel and motel registries. Critical matters of public health and safety, and the deterrence and prevention of crime, including the abuse of minors, are at stake. These significant interests tip the constitutional analysis in favor of upholding the City's regulation.

D. The Ordinance Concerns the Regulation of "Closely Regulated" Businesses, Which Provides an Exception to the Fourth Amendment's Requirement for a Warrant for Searches.

In addition to the above, there is an exception to the Fourth Amendment altogether for "closely regulated" businesses. This Court has recognized the ability of governmental entities to establish a regulatory scheme that permits limited, warrantless searches of closely regulated businesses under certain

circumstances. *See generally, New York v. Burger*, 487 U.S. 691 (1987). In *Burger*, this Court found that a junkyard was a closely regulated business for which the owner had a lower expectation of privacy. *Id.* at 703. Limited intrusion was permitted where there was a substantial governmental interest, surprise inspections were a necessary enforcement tool, and there was a constitutionally adequate substitute for a warrant. *Id.* at 702-03.

This Court has periodically recognized other businesses as “closely regulated” for purposes of applying the above exception to the warrant requirement. For instance, in *United States v. Biswell*, a pawnshop was recognized as “closely regulated,” because the matters at issue were “of central importance to federal efforts to prevent violent crime and to assist the States in regulating the firearms traffic within their borders.” *United States v. Biswell*, 406 U.S. 311, 316 (1972). This conclusion was reached, this Court found, even though “[f]ederal regulation of the interstate traffic in firearms is not as deeply rooted in history as is governmental control of the liquor industry.” *Id.* at 315.

Indeed, as Petitioner City of Los Angeles details in its brief to this Court, the City actually has a long history of regulating in the precise manner permitted in the challenged ordinance. Brief for Petitioner (“Pet. Br.”) at 4-7 (Los Angeles ordinance in effect in various forms since 1899). Further, inns and hotels also have a long history of being regulated. Pet. Br. Parts II.A.1. (historical regulation of hotels) and II.B.1. (same).

In fact, there are various other industries that may be recognized as “closely regulated” by local governmental entities. For instance, adult businesses are often heavily regulated by zoning ordinances in cities. Although their operations may not be regulated, zoning-related aspects of such businesses are uniformly regulated in order to ameliorate negative secondary effects regularly associated with such businesses. In *Andy’s Rest. & Lounge v. City of Gary*, 466 F.3d 550, 557 (7th Cir. 2006), the Court of Appeals found, in dicta, that an adult business was a closely regulated one because

any concerns about privacy violations are abated by the language of the statute that limits inspection to assuring compliance with the specific requirements of the Ordinance – that is the open booth requirement, the hours of operation restrictions, the prohibition of physical contact, and other requirements as specifically listed in the Ordinance. In other words, as counsel assured the panel at oral argument, officers or agents of the City cannot enter non-public areas of the premises, . . . or do anything other than check for compliance with the requirements of the Ordinance.

Id.

Similarly, the district court in *Alexis, Inc. v. Pinellas County*, 194 F. Supp. 2d 1336, 1350-51 (M.D. Fla. 2002), found that adult businesses were closely regulated, due, at least in part, to the fact that there

was “substantial governmental interest in preserving the morals and safety of the community or [regulation of these businesses] is necessary to combat the perceived secondary effects of such businesses.”

Local agencies thus must be able to determine businesses that must be closely regulated. Even if such regulation is not particularly extensive as to the businesses operations, there are certain businesses which have negative secondary effects in terms of potential nuisance impact, or that implicate very serious threats to local communities by the potential harboring of criminal activities which are particularly detestable – such as human and sex trafficking in relation to the hotel and motel industry. Protection against the impacts associated with such businesses, by local regulation, is not only laudable but a moral imperative.

There is a balance that must be struck between the requirement for a regulated industry and an important governmental interest under the “closely regulated” businesses exception to the Fourth Amendment warrant requirement. This standard is subject to a sliding scale that can afford very significant governmental interests more weight in the balancing when there are more minimal regulations of an industry. Where, as here, there is a very low expectation of privacy in merely commercial records, which are minimally intruded upon and for which there is no privacy interest in the information actually being inspected, then a lower showing is required

to demonstrate a permissible inspection scheme for a closely regulated industry.

In fact, local governmental agencies can be afforded some degree of latitude to utilize local regulations in combatting age-old problems, especially when these may manifest in ever-changing methods for coercion and criminal enterprise. Some flexibility should be afforded to local agencies in controlling “closely regulated” businesses, particularly where such businesses may permit or, even unwittingly, facilitate particularly contemptible crimes that take advantage of the most vulnerable in society.

The *Biswell* Court recognized that the governmental interest underlying a regulation and its administrative search component are critical: “Large interests are at stake, and inspection is a crucial part of the regulatory scheme, since it assures that weapons are distributed through regular channels and in a traceable manner and makes possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms.” *United States v. Biswell*, 406 U.S. 311, 315-16 (1972).

Similar significant interests are of concern here as well, in that hotel and motel registration information is used primarily to combat the significant health and safety concerns associated with human/sex trafficking and prostitution, both of which frequently involve minors. To put it plainly, the direct victims of such crimes, in many cases children, are rescued from dire circumstances due to the regular

maintenance and inspection of hotel and motel registration information.

The interests at stake are, if anything, superior to those interests protected in *Biswell*, since they are directly related to the preservation of personal dignity and saving of young lives. The widespread victimization at issue here presents a significant societal problem which justifies the limited administrative searches provided for in the City's ordinance.

Combatting sex trafficking has been recognized as a significant governmental interest. For instance, in *United States v. Chang Da Liu*, 538 F.3d 1078, 1084 (9th Cir. 2008), the Court held that, in “balanc[ing] the federal interests served by the legislation [criminalizing sex trafficking] against the degree of intrusion into local affairs . . . the balance tips in favor of applicability [of Congressional authority] because [of] the federal government's significant interest in combating international sex trafficking. . . .”

These significant interests and the transient nature of the crimes, discussed above, satisfy the first and second requirements under *Burger*. Finally, a constitutionally adequate substitute for a warrant requirement is provided. The City's ordinance permits review of *only* the registration record information required, and permits such inspections where the records are required to be maintained, primarily public areas – “in the guest reception or guest check-in area or in an office adjacent to that area.” *Patel*, 738 F.3d at 1061 (quoting Los Angeles Municipal Code § 41.49 (3)(a)).

As the dissent recognizes, “[t]he ordinance narrowly cabins officer discretion by permitting only inspections of the specified guest registry information.” *Id.* at 1073-74. The limited nature of the City’s regulation is in direct contrast with the regulation found unconstitutional in *Tucson Women’s Clinic v. Eden*, 379 F.3d 531 (9th Cir. 2004), which permitted the unlimited search of a medical clinic, including personal medical records, for which there was unquestionably Fourth Amendment protection.

Finally, the *en banc* opinion concludes that the City’s ordinance is unconstitutional primarily because “it authorizes inspections of those records without affording an opportunity to ‘obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply.’” *Patel*, at 1065 (quoting *See v. Seattle*, 387 U.S. 541, 545 (1967)). However, what was at issue in *See* was the administrative search of the whole of a corporate or commercial premises or corporate books and records in their entirety.

The scope of a permissible search under the ordinance at issue here is distinctly different, in that the City of Los Angeles’s ordinance allows only a very narrow inspection of hotel and motel registration records. These records contain information that is voluntarily provided by registered guests, who themselves have no expectation of privacy in that information. Further, the inspections can occur in entirely public areas, as referenced above.

The district court in *Free Speech Coalition v. Holder*, 957 F. Supp. 2d 564 (E.D. Penn. 2013), determined that a regulatory requirement for movie producers to maintain identifying information about pornography participants, which could be searched by law enforcement without a warrant, was valid under the Fourth Amendment. At issue were regulatory requirements that imposed “recordkeeping, labeling, and inspection requirements on producers of sexually explicit media,” in order to combat child pornography. *Id.* at 568. The court determined that the business was “closely regulated,” based on the fact that producers were subject to such recordkeeping requirements as to participants, which regulations had as their aim the protection of the safety and welfare of children. *Id.* at 605.

The district court specifically concluded that “[t]he governmental interest informing the regulatory scheme – combatting child pornography – is substantial. Meanwhile, the Statutes and regulations provide ‘a constitutionally adequate substitute for a warrant’ because they notify producers that inspections can occur on a regular basis. . . .” *Id.* at 605-06. Similar to the ordinance at issue here, the regulations at issue in *Free Speech* “circumscribe[d] the time, place and scope of the inspections,” “refer[red] to the ‘limited nature of the records inspection,’” and “provid[ed] that the inspections should be ‘conducted so as not to unreasonably disrupt the operations of the establishment.’” *Id.*

The *Free Speech* Court noted that such a regulatory scheme was also valid if it was “‘necessary to further [the] regulatory scheme,’” and that unannounced inspections could be justified when they “serve[d] as a credible deterrent.” *Id.* (quoting *New York v. Burger*, 482 U.S. 691, 702 (1987) (change in original); *Biswell*, 406 U.S. 311, 316 (1972)). The court did find a portion of the regulation at issue in *Free Speech* to be impermissible, but that was to the extent the unannounced inspections permitted searches of producers’ records at their *residences*. In that regard, *Free Speech* implicated privacy concerns that are not at issue in this matter.

However, a critical final point of the *Free Speech* court’s conclusion was the court’s finding that, even despite constitutional deficiencies found in one potential application of the regulation, *i.e.*, searches of producers’ residences, such potential unconstitutional application is not a fatal flaw for purposes of a *facial* challenge. Similarly here, and as discussed below, potential unconstitutional applications of the ordinance of the City of Los Angeles do not constitute a successful *facial* challenge.

E. This Facial Challenge to the City’s Ordinance Cannot Be Upheld When There Are Potentially Both Valid and Invalid Applications.

One key problem presented by Respondents’ facial challenge to the City’s ordinance is the very first point noted by the dissent, which recognizes that

“the validity of a warrantless search should generally be decided in the concrete factual context of an *as-applied* challenge.” *Patel*, 738 F.3d at 1070 (Clifton, J., dissenting) (emphasis added). In point of fact, the dissent emphasizes that “a facial challenge fails unless ‘the law is unconstitutional in *all* of its applications.’” *Id.* (emphasis added) (quoting *Washington State Grange v. Washing State Repub. Party*, 552 U.S. 442, 449 (2008)).

Indeed, when the Third Circuit considered the administrative search provisions in regulations of pornographic media in *Free Speech Coalition v. Attorney Gen. of the U.S.*, 677 F.3d 519, 543 (3d Cir. 2012), before remanding to the district court on the Fourth Amendment issue, the court of appeals found that a “factual context is necessary for determining whether the government’s conduct was a ‘search’ under the Fourth Amendment.” Further, the court of appeals found that it could not determine “whether plaintiffs have an objective expectation of privacy in the searched areas and effects unless the contours of the alleged searches are more fully delineated,” and that “further development of the record is necessary to determine whether the administrative search exception to the expectation-of-privacy test is applicable.” *Id.* at 544. The court noted that “[f]actors to consider when determining whether a particular industry is closely regulated include: duration of the regulation’s existence, pervasiveness of the regulatory scheme, and regularity of the regulation’s application.” *Id.*

In the context of this case, the Ninth Circuit's *en banc* opinion cannot stand, in that it ignores the long-held requirement that facial invalidity can be found only if there is *no* constitutional application of the challenged ordinance at all. As the dissent recognizes, there are potential applications of the City's code requirements which would be constitutional. Local legislatures must be permitted to fashion regulations, particularly when they are attempting to combat evasive evils that test law enforcement tools, unless such regulations are so plainly and *completely* unconstitutional in *every* instance. Such a rule properly recognizes the separation of powers between the judiciary and local legislative and executive authority.

IV. CONCLUSION

There can be no greater governmental interest than those for which the City's ordinance is used. Hotels and motels, by their fundamental nature, provide transient accommodations. These transient accommodations are capitalized on by criminals for the exploitation of others, especially women and minors.

Under these circumstances, the limited inspection of business registration records required to be kept by ordinance of the City of Los Angeles is not unreasonable under Fourth Amendment jurisprudence, particularly where hotels and motels satisfy the *Burger* requirements for closely regulated businesses. The interests at stake are simply too significant to be predominated by the virtually non-existent

privacy interests of hotels and motels in the minimal identifying information of their customers. It is constitutionally permissible, and simply not too much to ask of hotel and motel operators, to permit the review of these records by law enforcement, where such review has a significant deterrent effect and, more importantly, is invaluable for locating and rescuing victims of prostitution and human trafficking.

Dated: December 19, 2014

Respectfully submitted,

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