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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 *AMICI CURIAE* ELECTRONIC PRIVACY INFORMATION CENTER (EPIC) AND THIRTY-SIX TECHNICAL EXPERTS AND LEGAL SCHOLARS IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICI CURIAE*

The Electronic Privacy Information Center (EPIC) is a public interest research center in Washington, D.C.[1] EPIC was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other constitutional values.

EPIC routinely participates as *amicus curiae* before this Court in cases concerning emerging privacy and civil liberties issues: *See, e.g.*, *Riley v. California*, 134 S. Ct. 2473 (2014); *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653 (2011); *Doe v. Reed*, 561 U.S. 186 (2010); *Hiibel v. Sixth Judicial Dist. Ct. of Nevada*, *Humboldt Cnty.,* 542 U.S. 177 (2004); *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Stratton, Ohio*, 536 U.S. 150 (2002).

EPIC believes that individuals have a constitutional right to gather at hotels for political and religious purposes without being subject to police inspection. Hotel guests also have a privacy interest in limiting the collection of their personal information by hotels. In this case, both free association and privacy interests weigh against the routine collection and suspicionless inspection of

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[1] Both parties have filed letters of consent to the filing of all *amicus* briefs with the Clerk of the Court pursuant to Rule 37.3. In accordance with Rule 37.6, the undersigned states that no monetary contributions were made for the preparation or submission of this brief, and this brief was not authored, in whole or in part, by counsel for a party.

information about hotel guests. Guest registries can reveal the political, religious, and social affiliations of people who gather at hotels to associate with others of like mind. These associations can reveal intimate personal facts, such as one's drug dependency, alcohol abuse, or depression. The personal data gathered by hotels are also at risk due to the increasing incidence of data breach and identity theft. These guest registries should not be made routinely available to the police for inspection, and they should not be collected or retained for that purpose.

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SUMMARY OF THE ARGUMENT

At issue in this case is whether a city can authorize the police to routinely inspect hotel guest registries without any individualized suspicion or judicial supervision. Los Angeles Municipal Code § 41.49 implicates not only the business practices of hotels, but also the privacy and First Amendment interests of hotel guests who frequently gather at hotels for political and religious purposes.

This Court long ago recognized that the freedom of individuals to associate with others of like mind is a core First Amendment right; the abridgment of this right occurs where the government seeks to identify people who participate in these activities. This ordinance, which grants local officials the authority to inspect guest registries of hotels in Los Angeles, directly implicates the freedom to participate in political, social, and religious associations that rely on hotels to facilitate their meetings and conferences. This Court has ruled that laws mandating disclosure of political contributions and associations must survive "exacting scrutiny." The general governmental interest in deterring criminal activity is not sufficient to justify such a broad intrusion into the associational activities of individuals who gather at hotels in Los Angeles.

ARGUMENT

In the years since this case was filed, millions of people from across the country have gathered at hotels in the Los Angeles area for political and religious purposes. For example, the National Association for the Advancement of Colored People (NAACP) brought more than 5,000 members to Los Angeles for its annual convention in July of 2011, Nat'l Ass'n for the Advancement of Colored People, *NAACP 2011 Sponsorship Opportunities Packet* 2 (2011), and those members were encouraged to stay at four hotels in the downtown Los Angeles area: the Wilshire Grand Hotel, the JW Marriott Hotel, the Luxe, and the Sheraton Downtown Los Angeles, Nat'l Ass'n for the Advancement of Colored People, *Housing Information & Schedule At-A-Glance* 4 (2011).[2] More than 4,000 attended the 2014 Annual Conference of the National Council of La Raza at the Los Angeles Convention Center in July of 2014, with attendees staying at the JW Marriott and other downtown hotels. Corin Hirsch, *Post Con: How La Raza Put On Two Shows at Once*, Convene (Sept. 2014).[3] In June 2012, more than 20,000 people attended the 2012 American Library Association's annual conference at the Anaheim Convention Center, with attendees staying at nearby hotels in

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[2] *Available at* http://naacp.3cdn.net/83832e137abdf80397_sem6ieklb.pdf.

[3] http://www.pcma.org/convene-content/convene-article/2014/09/01/post-con-how-la-raza-put-on-two-shows-at-once.

the Anaheim area. Andrew Albanese, *ALA 2012 Attendance Roughly Flat with 2011*, Publishers Wkly. (June 26, 2012).[4]

Under Los Angeles Municipal Code (LAMC) § 41.49, the names of conference attendees are retained for ninety days and made available to police for warrantless inspection. Given the significant First and Fourth Amendment interests at stake in the collection, retention, and inspection of these sensitive guest lists, this Court should affirm the judgment of the Ninth Circuit and find that LAMC § 41.49 is facially unconstitutional.

* * *

The plaintiffs in this case brought a facial challenge to LAMC § 41.49, which "permits law enforcement to demand inspection" of hotel records "at any time without consent or warrant." *Patel v. City of Los Angeles*, No. 05–1571, 2008 WL 4382755 at *2 (C.D. Cal. Sept. 5, 2008). The lower court found that the plaintiffs had standing to bring this challenge because their guest registries have been and continue to be inspected without a warrant by the police. *Id*. Therefore, the issue before this Court is whether LAMC § 41.49 is facially invalid under the Fourth Amendment because it authorizes warrantless searches of hotel guest registries.

More is at stake in this case than an individual hotel owner's interest in inspection of a particular

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[4] http://www.publishersweekly.com/pw/by-topic/digital/conferences/article/52786-ala-2012-attendance-roughly-flat-with-2011.html.

guest registry. Hotel patrons have distinct privacy and free assembly interests in their personally identifiable information that is collected and disseminated to the police. Political groups, religious organizations, and social activists regularly gather at hotels in the United States to meet, to express opinions, and to organize. The collection of guest registry information is akin to the collection of membership lists for political and religious organizations, which this Court has found implicates significant First Amendment interests. *NAACP v. Alabama ex rel Patterson*, 357 U.S. 449 (1958) [hereinafter *NAACP v. Alabama*]. Because of the constitutional interests at stake, a facial challenge is appropriate to consider the impact of this ordinance not only on the hotel owner, but on hotel guests throughout Los Angeles (and similarly situated cities). The First Amendment interests in this case trigger facial review.

The "ultimate touchstone of the Fourth Amendment is 'reasonableness,'" *Riley v. California*, 134 S. Ct. 2473, 2482 (2014) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)), but the Court has held that "reasonableness generally requires the obtaining of a judicial warrant" before law enforcement officers can search for criminal evidence. *Id.* (quoting *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995)). The ordinance in this case clearly fails to satisfy the warrant requirement. But even under the more permissive balancing test employed in administrative search and special needs cases, LAMC § 41.49 unreasonably impinges on the Fourth and First Amendment rights of hotels and hotel guests.

In some "special needs" and administrative inspection cases, the Court has held that a search might be reasonable if it "balance[s] the privacy-related and law enforcement-related concerns. . . ." *Maryland v. King*, 133 S. Ct. 1958, 1970 (2013) (quoting *Illinois v. McArthur*, 531 U.S. 326, 331 (2001)). The Court has also permitted "searches for certain administrative purposes without particularized suspicion of misconduct, provided that those searches are appropriately limited." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000). The warrantless searches authorized by LAMC § 41.49 are not appropriately limited or balanced against the substantial impact on the Fourth and First Amendment interests of hotels and hotel guests. Specifically, whatever impact the ordinance may have on potential criminal activity is miniscule compared to the harm caused by unmasking anonymous members of political groups.

The Fourth Amendment protects an individual's "ability to maintain a degree of public anonymity against the government" and "allows us to control how much information about our political and religious beliefs, thoughts, sensations, or emotions are disclosed." Jeffrey Rosen, *Symposium Keynote Address*, 65 Rutgers L. Rev. 965, 976 (2013). Opposition to unrestrained searches of personal information "was in fact one of the driving forces behind the Revolution itself." *Riley*, 134 S. Ct. at 2494.

Furthermore, the Constitution protects the right of individuals to be free from compelled disclosure of their associations with political, religious, and activist organizations. *See NAACP v.*

Alabama, 357 U.S. at 463. This fundamental right to associational privacy ensures that "the government may not force even a controversial group to identify its members, absent establishing a compelling state interest in disclosure." Anita L. Allen, *Associational Privacy and the First Amendment: NAACP v. Alabama, Privacy and Data Protection*, 1 Ala. C.R. & C.L.L. Rev. 1, 13 (2011). The ordinance in this case impairs the exercise of this fundamental right.

I. Guest Privacy is Critically Important for Hotels, and the Unnecessary Retention of Guest Data Increases Privacy and Data Security Risks

Privacy is of the utmost importance to hotels, as an industry association has described in a report outlining basic hotel privacy principles. *See generally* Mark G. Haley & Jungsun Kim, *Principles of Privacy: Defining & Implementing Sound Privacy Practices in Hospitality* (2d. ed. 2009).[5]

> Hoteliers have been the trustees and guardians of guest privacy since the earliest inns. Guests maintain an explicit expectation of privacy as a core component of the guest-innkeeper relationship. Guest privacy's central position in that relationship has been codified in both statutory and case law. Hotel guest privacy has been enshrined in this way for so long because hoteliers

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[5] *Available at* http://www.ahla.com/uploadedFiles/Privacy.pdf.

> are privy to innumerable details about guest preferences and behavior. There is nothing new about the privacy obligation of hoteliers and the expectation of guests.

Id. at 1. As hotels recognize, collection of guest information presents "numerous threats to privacy" including "both criminal and potentially discriminatory abuse." *Id*. at 3.

The routine police inspection of guest registries breaks the bond of trust between hoteliers and their guests, and the routine retention of guests' personal information creates significant risks of financial fraud and identity theft. A recent report addressing the use of new technologies in the hotel industry found that among hotel operators, "[p]rotecting data security and privacy represented the most important issue" related to using new technologies. Pearl Brewer, Jungsun Kim, Thomas R. Schrier & John Farrish, *Current and Future Technology Use in the Hospitality Industry* 15 (2008).[6] Any customer data that hotels collect is at risk of being stolen from that hotel's servers and used for criminal purposes. For example, in 2012 hackers stole credit card numbers and other personal information of more than 600,000 guests of Wyndham Worldwide Hotels, which resulted in "at least $10.6 million in fraudulent

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[6] *Available at* http://www.ahla.com/uploadedFiles/AHLA/Members_Only/Property_and_Corporate/Property_-_Publications/Current%20and%20Future%20Technology.pdf.

charges." Craig Timberg, *FTC Sues Wyndham Hotels Over Hacker Breaches*, Wash. Post (June 26, 2012).[7]

The Federal Trade Commission (FTC) sued Wyndham in federal court after the agency discovered that the hotel failed to adequately protect customer data. *Id*. According to the FTC's "5 key principles" of data security, one of the most important things that hotels and other companies can do to improve data security is to minimize the data that they collect about their customers and properly dispose of any data that they no longer need. Fed. Trade Comm'n, *Protecting Personal Information: A Guide for Business* 3 (2011).[8]

The need to improve data security is a national priority. According to the FTC, identity theft is the number one concern of American consumers. Press Release, Fed. Trade Comm'n, *FTC Announces Top National Consumer Complaints for 2013* (Feb. 27, 2014).[9] In 2014 alone, personal information including credit card numbers and other sensitive data about tens of millions of consumers were stolen from major retailers, including Target and The Home Depot. *See*,

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[7] http://www.washingtonpost.com/business/economy/2012/06/26/gJQATDUB5V_story.html.

[8] *Available at* http://www.ftc.gov/system/files/documents/plain-language/bus69-protecting-personal-information-guide-business_0.pdf.

[9] http://www.ftc.gov/news-events/press-releases/2014/02/ftc-announces-top-national-consumer-complaints-2013.

e.g., Julie Creswell & Nicole Perlroth, *Ex-Employees Say Home Depot Left Data Vulnerable*, N.Y. Times (Sept. 19, 2014);[10] Michael Riley et al., *Missed Alarms and 40 Million Stolen Credit Card Numbers: How Target Blew It*, Bloomberg Businessweek (Mar. 13, 2014).[11] In November 2014, hackers infiltrated computer systems at Sony Pictures Entertainment and stole "[e]verything and anything" including "contracts," "salary lists," "medical records," "social security numbers," and more. Michael Cieply & Brooks Barnes, *Sony Cyberattack, First a Nuisance, Swiftly Grew Into a Firestorm*, N.Y. Times, Dec. 30, 2014, at A1.

Section 41.49 unjustifiably exposes sensitive consumer data to the risk of data breaches and frustrates the ability of hotels to provide their guests proper data security. The ordinance forces hotels to unnecessarily retain guest registry information for ninety days, thereby increasing the likelihood that guests' personal information could be improperly obtained. Because this requirement exists only to enable routine police inspections of guest registries, *see* LAMC § 41.49(3)(a), it is imperative that this Court consider the interests of hotels and their guests in minimizing the unnecessary collection of guests' personal information. As the President recently emphasized, protecting consumer privacy is critical to our American values. "We pioneered the Internet, but

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[10] http://www.nytimes.com/2014/09/20/business/ex-employees-say-home-depot-left-data-vulnerable.html.

[11] http://www.businessweek.com/articles/2014-03-13/target-missed-alarms-in-epic-hack-of-credit-card-data.

we also pioneered the Bill of Rights, and a sense that each of us as individuals have a sphere of privacy around us that should not be breached, whether by our government, but also by commercial interests." Remarks at the Federal Trade Commission Constitution Center, 2015 Daily Comp. Pres. Doc. 22 (Jan. 12, 2015).

II. Routine Disclosure of Guest Registries to the Police Implicates Protected First Amendment Interests

The routine inspection of hotel guest registries not only threatens the business interests of hotels, it also chills activity protected by the First Amendment. Countless political, religious, and social activist organizations gather at hotels to organize and coordinate their constituents. The Los Angeles ordinance impinges upon the freedom of those who participate in these First Amendment-protected activities.

"[O]ne of the foundations of our society is the right of individuals to combine with other persons in pursuit of a common goal by lawful means." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 933 (1982). The exercise of this fundamental right "has traditionally been through the media of political associations." *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). Indeed, "Americans of all ages, all stations of life, and all types of disposition," observed the historian Alexis de Tocqueville, "are forever forming associations." Alexis de Tocqueville, *Democracy in America* 513 (J.P. Mayer ed., George Lawrence trans., Anchor Books 1969) (1840). The absence of the right to free association in the

proposed federal constitution, which was recognized by several early state constitutions, arguably fueled the hesitation of several states to ratify the federal constitution. Mark D. Bauer, *Freedom of Association for College Fraternities After Christian Legal Society and Citizens United*, 39 J.C. & U.L. 247, 272 (2013). Thus, states including Virginia, North Carolina, New York, and Rhode Island proposed amendments that enumerated the people's right to free association. *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins* 140–41 (Neil H. Cogan ed., 1997). Voluntary private associations, suggested James Madison, maximized the opportunity for self-realization and stood as a bulwark against the dangers of a centralized government. David F. Epstein, *The Political Theory of the Federalist* 58–59 (1984).

The American tradition of protecting free association has necessarily underscored the importance of gathering places, and in this regard hotels have played a distinctive role. As both meeting places and lodging accommodations, hotels "brought local people together, put them into contact with strangers and outsiders, and tied them into larger networks of commerce, politics, and association." A.K. Sandoval-Strausz, *Hotel: An American History* 232 (2007). In the 1790s, national holidays were regularly marked by festive public gatherings, which commonly included parades, a reading of the Declaration of Independence, prayers, and political speeches by local activists. Jeffrey L. Pasley, *The Cheese and the Words: Popular Political Culture and Participatory Democracy in the Early American Republic*, in *Beyond the Founders: New Approaches to the Political*

History of the Early American Republic 31, 40 (Jeffrey L. Pasley et al. eds., 2004). Groups would start their gatherings in the streets and often end with festivities at hotels. *Id.* Between 1793 and 1801, more than three-quarters of civic festivals organized by Federalists were held in hotels. Simon P. Newman, *Parades and the Politics of the Street: Festive Culture in the Early American Republic* 89, 220 n.18 (1997). The Founders themselves recognized the crucial role of public houses in a just democracy. Speaking to the early American tradition of small, self-governing communities, James Madison argued that a geographically-distant central government could indeed administer the vast United States but proposed expanding and improving public houses. *The Federalist* No. 14, at 97–98 (James Madison) (Clinton Rossiter ed., 1961) ("[T]he intercourse throughout the Union will be facilitated by new improvements. Roads will everywhere by shortened and kept in better order; accommodations for travelers will be multiplied and ameliorated.").

Over time associations expanded beyond their local borders and increasingly used hotels as places to gather with distant members and associates. In Cleveland, for example, the Cleveland Hotel and Kennard House, hosted trade associations like the Ohio railroad men in 1854, the Ohio Editorial Association in 1858, the American Pharmaceutical Association in 1872, and the Ohio State Dairymen's Association in 1876. Sandoval-Strausz at 245. By the start of the twentieth-century, hotel-based business conventions became so commonplace that group portraits of conferees seated at tables in hotel

ballrooms had become its own photographic subgenre. *Id.*

Hotels also attracted political activity. In 1860, the Democratic Party hosted its national convention at South Carolina's Charleston Hotel. *The Democratic Convention—Where Shall It Be Held?,* N.Y. Times, Mar. 19, 1860, at 4. The Republicans, meanwhile, held their national convention at the Tremont House hotel in Chicago. Sandoval-Strausz at 252. Hotels also hosted election victory parties, such as the one thrown by Democrats at Cleveland's American House hotel to celebrate James Buchanan's presidential victory in 1848. *Id.* at 233.

In addition to serving as venues for business and political groups, hotels were common forums for groups formed around social activism and religion. From the mid 1800s to the early 1900s, child welfare groups and the orphans in their care routinely traveled from New York to western states in search of adoptive families. The groups used hotels both for lodging accommodations and also as a staging place to meet potential adoptive parents. *Id.* at 258. *See also The Orphan Trains*, The Children's Aid Society.[12] The Presbyterian General Assembly sent more than 500 delegates to Saratoga, NY in 1890, where they "throng[ed] the corridors of hotels . . . ." *Presbyterians in Council*, N.Y. Times, May 15, 1890, at 3. Two years later, the Christian Endeavor Society convened in New York City, where more than 20,000 delegates from across the United States filled local

[12] http://www.childrensaidsociety.org/about/history/orphan-trains (last visited Jan. 27, 2015).

hotels, with each state's delegation assigned to a particular venue. *Great Throngs Expected—Coming Council of Christian Endeavor Societies*, N.Y. Times, June 25, 1892, at 9.

The tradition of major social, political, and religious groups relying on hotels to host annual meetings and conferences continues today. Hotels in the Los Angeles area have hosted and will host members of groups that focus on the treatment of sensitive medical conditions, members of religious groups, members of political advocacy organizations, and other conventions focused on free-speech-related activities.

- Alcoholics Anonymous will host an annual AALA Roundup in May 2015, with members staying at the LA Downtown Hotel.[13]
- The American Library Association (ALA) hosted its 2012 Annual Convention at the Anaheim Convention Center, with attendees staying at hotels in the Anaheim area.[14]
- The NAACP held its 102nd Annual Convention at Los Angeles Convention Center in 2011, with attendees staying at four hotels in the downtown Los Angeles area: the Wilshire Grand Hotel, the JW Marriott Hotel, the Luxe, and the Sheraton Downtown Los Angeles.[15]

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[13] AALA, *Hotel*, http://www.aalaroundup.org/hotel.html (last visited Jan. 22, 2015).

[14] Albanese, *supra*.

[15] NAACP, *Housing Information & Schedule At-A-Glance* 4 (2011).

- The Juvenile Diabetes Research Fund (JDRF) will host TypeOneNation, an "educational and networking conference for adults and children with type 1 diabetes," in March 2015 at the Radisson in Los Angeles.[16]
- The annual Abilities Expo, the "go-to source for the [c]ommunity of people with disabilities"[17] will be held in March 2015, with participants staying at the LA Hotel Downtown and the Luxe City Center Hotel.[18]
- The National Council of La Raza, the "largest national Hispanic civil rights and advocacy organization in the United States [working] to improve opportunities for Hispanic Americans" hosted its 2014 Annual Conference at the Los Angeles Convention Center, with members staying at the JW Marriott.[19]

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[16] Juvenile Diabetes Research Foundation (JDRF), *Type One Nation Summit* (2015), http://la.jdrf.org/event/type-one-nation-summit.

[17] Abilities Expo, *Discover Earth Shaking Opportunities for the L.A. Disability Community* (2015), http://www.abilities.com/losangeles.

[18] Abilities Expo, *First-Rate Accommodations Round Out Abilities Expo* (2015), http://www.abilities.com/losangeles/hotel.html.

[19] National Council of La Raza (NCLR), *NCLR Annual Conference—Book Your Hotel* (2014), *available at* https://web.archive.org/web/20140708055849/http://www.nclr.org/index.php/events/nclr_annual_conference/book_your_hotel.

- The California Republican Party hosted their fall 2014 convention at the Los Angeles Airport Marriott in September 2014.[20]
- The AFL-CIO 2013 Convention was held at the Los Angeles Convention Center, with members staying at the Westin Bonaventure Hotel & Suites.[21]

In addition to these recent and upcoming events hosted at Los Angeles area hotels, many other prominent political organizations have gathered their members for annual events at hotels around the country each year.

- The Conservative Political Action Conference (CPAC), the nation's "largest gathering of conservatives," took place at the Gaylord Hotel at National Harbor in March 2014.[22]
- The Federalist Society held its 2014 National Lawyers Convention at The Renaissance

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[20] California Republican Party, *Hotel Reservations and Information* (2014), https://web.archive.org/web/20140708065610/http://www.cagop.org/hotel-reservations-and-information/.

[21] AFL-CIO, Convention Program 8 (2013), *available at* http://www.aflcio.org/content/download/97091/2645431/programFINAL.pdf.

[22] Rebecca Ballhaus, *CPAC 2014 Schedule Features Ted Cruz, Chris Christie*, Wall St. J. (Mar. 5, 2014), http://blogs.wsj.com/washwire/2014/03/05/cpac-2014-schedule-features-ted-cruz-chris-christie/.

Mayflower Hotel in Washington, DC in November 2014.[23]

- The American Constitution Society (ACS) held its 2014 National Convention at the Capital Hilton Hotel in Washington, DC, in June 2014.[24]
- The National Rifle Association (NRA) held its 2014 Annual Meetings & Exhibits at the Indianapolis Convention Center, with members staying in many hotels in the downtown Indianapolis area.[25]
- DEF CON hosts an annual conference of hackers, computer security researchers, and activists each summer at the Rio Hotel in Las Vegas.[26]

All of these groups are engaged in First Amendment-protected activities, but their right to

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[23] The Federalist Society, *2014 National Lawyers Convention* (2014), http://www.fed-soc.org/events/detail/2014-national-lawyers-convention.

[24] American Constitution Soc'y for Law and Policy, *2014 National Convention—Frequently Asked Questions*, https://www.acslaw.org/convention/2014/FAQ (last visited Jan. 22, 2015).

[25] The Nat'l Rifle Ass'n of America, *NRA 2014—Hotel & Travel* (2014), https://web.archive.org/web/20140326135759/http://www.nraam.org/hotel-travel/hotel-travel-overview.aspx.

[26] *See, e.g.*, DEF CON Commc'ns, Inc., *DEF CON 21—Venue* (2013), https://www.defcon.org/html/defcon-21/dc-21-venue.html.

freely assemble at conventions and meetings is inhibited by LAMC § 41.49 and similar provisions that limit the ability to participate without being subject to police inspection. The inspection provision gives any law enforcement officer authority to inspect guest lists of the hotels where these groups convene, to literally take names, and to therefore create pseudo membership lists.

While the presence of these political organizations in Los Angeles at a particular moment in time is a public fact, the members of these groups have a constitutional interest in safeguarding their identities against unnecessary disclosure and a privacy interest in limiting the unnecessary collection and retention of their personal information by hotels. These interests outweigh the government's speculative interest in inspecting guest registries. And it is no answer that the constitutional impact is diminished simply because hotel guests at political conferences may not be aware that the police are routinely inspecting their hotel records.

III. The Court Has Found That Laws Inhibiting the Freedom of Political, Religious, and Social Organizations Must Survive Exacting Scrutiny

This Court has made clear that individuals "have a right to privacy of belief and association." *Doe v. Reed*, 561 U.S. 186, 206 (2010). In recognition of this right, the Court has overturned provisions that required individuals to reveal their identities to participate in political and religious activities. *See, e.g.*, *Watchtower Bible and Tract Soc'y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 166 (2002); *Buckley*

v. American Constitutional Law Found., Inc., 525 U.S. 182, 199 (1999); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341 (1995); *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 91 (1982); *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 544 (1963); *NAACP v. Alabama*, 357 U.S. at 462.

The Court "has long recognized the 'vital relationship between' political association 'and privacy in one's associations.'" *Doe v. Reed*, 561 U.S. at 232 (Thomas, J., dissenting) (citing *NAACP v. Alabama*, 357 U.S. at 462). The Court has also found that anonymity serves many important purposes, and that "[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." *McIntyre*, 514 U.S. at 341–42.

A law purporting to compel disclosure of associational information is subject to "exacting scrutiny." *Doe v. Reed*, 561 U.S. at 196. This standard requires a "substantial relation" between the disclosure requirement and "an overriding and compelling state interest" *Id*. at 232 (citing *Brown*, 458 U.S. at 91). The government regulation must also be "tailored to" the state's interest. *Watchtower*, 536 U.S. at 165–68. The standard applies "even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure." *Buckley v. Valeo*, 424 U.S. 1, 65 (1976) (citing *NAACP v. Alabama*, 357 U.S. at 461).

The Court first articulated the right to associational privacy in *NAACP v. Alabama*, where it held unanimously that a state law requiring the local chapter of the NAACP to disclose names and addresses of all members violated the members' rights of speech and assembly. 357 U.S. at 463. In *NAACP*, state officials demanded membership information as part of a suit against the group for allegedly violating a state law requiring registration of foreign corporations. *Id.* at 451. The NAACP agreed to disclose the names of its officers, but argued that mandatory disclosure of rank-and-file members violated the members' First Amendment right of "lawful association in support of their common beliefs." *Id.* at 460.

The Court noted that "[i]t is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *Id.* at 460. And because the compelled disclosure would have exposed NAACP's members to economic and physical reprisal, the law was

> likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the [NAACP] and dissuade others from joining it because of fear of exposure of their beliefs shown

> through their associations and of the consequences of this exposure."

Id. at 462–63. The Court found that the state's interest in disclosure must be "compelling" to justify the deterrent effect that disclosure would have on the members' right to association. *Id* at 463. But because Alabama's interest in enforcing the state business statute had no "substantial bearing" on disclosure of the NAACP's members, the state had "fallen short of showing a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have." *Id.* at 464–65.

Hotel patrons in Los Angeles face the persistent specter of governmental inquiry into their associational ties. By mandating the collection of guest registry information and providing the police with the authority to inspect registries without warrant or restriction, LAMC § 41.49 provides the mechanism to identify participants in political, social, and religious conferences, and threatens to chill these associational freedoms. "Awareness that the Government may be watching chills associational and expressive freedoms." *United States v. Jones*, 132 S. Ct. 945, 956 (2012) (Sotomayor, J., concurring). The Fourth and First Amendments require greater protections against inspection by law enforcement when such important rights are at stake. After all, "the Founders did not fight a revolution to gain the right to government agency protocols," which is why the Fourth Amendment typically requires judicial supervision to conduct a search. *Riley v. California*, 134 S. Ct. 2473, 2491 (2014). For those "extensive

intrusions that significantly jeopardize [individuals'] sense of security . . . . more than self-restraint by law enforcement officials is required." *Smith v. Maryland*, 442 U.S. 735, 751 (1979) (Marshall, J., dissenting) (quoting *United States v. White*, 401 U.S. 745, 786 (1971) (Harlan, J., dissenting)).

IV. A Facial Challenge Is the Proper Vehicle to Evaluate This Ordinance Because It Implicates the Interests of Hotel Patrons

This matter comes before the Court on a facial challenge to the constitutionality of LAMC § 41.49. Such a challenge is rare in the Fourth Amendment context, but it is appropriate in this case to consider the validity of the ordinance on its face because, as the City described, the purpose of the regulation is not to gather evidence but to "discourage" the use of hotels and motels by certain patrons. L.A., Cal., Ordinance 17796 (Oct. 6, 2006). Specifically, the ordinance was intended to discourage the use of hotels by individuals who wish to preserve their anonymity or otherwise limit the disclosure of their personal information to the police through random inspection. This implicates the associational privacy of those guests engaged in First Amendment-protected activities who may wish to preserve their anonymity and may also deter participation in political gatherings where anonymity is an important or necessary element.

The Court has held that forcing individuals to identify themselves can have a chilling effect on political activities and associational freedoms. *See Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 212 (1999). Compelled disclosure can

"burden the ability to speak" and "seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Doe v. Reed*, 561 U.S. 186, 203 (2010) (Alito, J., concurring) (citing *Citizens United v. FEC*, 558 U.S. 310, 366 (2010) and *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. at 64).

The interest of individuals to be free from such compelled disclosure is significant, and is distinct from the requirement that any particular individual establish injury-in-fact in order to satisfy Article III standing requirements. *See Clapper v. Amnesty Int'l, USA*, 133 S. Ct. 1138, 1152–53 (2013). Unlike the plaintiffs in *Clapper*, the plaintiffs in this case have established that they have suffered an injury-in-fact under the Fourth Amendment—the inspection of their guest registries by the police. *See Patel v. City of Los Angeles*, No. 05-1571, 2008 WL 4382755 at *2 (C.D. Cal. Sept. 5, 2008) ("Plaintiffs <u>have been subject to and continue to be subject to</u> searches and seizures of motel registration records by the Los Angeles Police Department without consent or warrant pursuant to LAMC § 41.49, which permits law enforcement to demand inspection of motel registers at any time without consent or warrant.") (emphasis added).

Given the nature of the challenge and of LAMC § 41.49, it is appropriate for the Court to consider not only the interests of the government and the interests of the plaintiffs, but also the interests of hotel patrons in Los Angeles. As the Court recognized in *Doe v. Reed*, a facial challenge is an appropriate mechanism to evaluate a state regulation authorizing the disclosure of names and other personal information. The plaintiffs in *Doe* sought an

injunction barring the secretary of state "from making referendum petitions available to the public." *Doe v. Reed*, 561 U.S. at 194. The Court recognized that while the complaint did not seek to strike down the Washington Public Records Act (PRA) "in all its applications," it was a facial challenge in the sense that it was "not limited to plaintiffs' particular case, but challeng[ed] the application more broadly to all referendum petitions." *Id*. The plaintiffs in *Doe* argued that disclosure of their names and contact information under the PRA, which they were required to submit in order to sign a state referendum petition, was a violation of the First Amendment. *Id*. at 190–94.

As the Court explained in *Doe*, a facial challenge considers not only the harm that would be suffered by the individual plaintiffs, but also the harm that would be suffered by others subject to the government regulation. *See Doe v. Reed*, 561 U.S. at 200 ("The question before us, however, is not whether PRA disclosure violates the First Amendment with respect to those who signed the R-71 petition, or other particularly controversial petitions. The question instead is whether such disclosure in general violates the First Amendment rights of those who sign referendum petitions."). For this reason, a facial challenge is particularly appropriate where a law "'on its face impose[s] a severe burden,'—compelled disclosure of privacy in political association protected by the First Amendment." *Doe v. Reed*, 561 U.S. at 230–31 (Thomas, J., dissenting) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)).

The mandated retention of personal information about guests and routine police inspection of hotel guest registries implicates the privacy and constitutional interests of hotel guests throughout the Los Angeles area. A facial challenge to the practice is appropriate and the ordinance should be overturned because it authorizes searches that are unreasonable under the Fourth Amendment. The "fact that technology has made it easier to collect, store, and share data revealing individuals' group memberships" should not diminish this Court's protection of these constitutional rights. Anita L. Allen, *Associational Privacy and the First Amendment: NAACP v. Alabama, Privacy and Data Protection*, 1 Ala. C.R. & C.L.L. Rev. 1, 13 (2011). As the Court recognized in *NAACP v. Alabama*, the "close ties between the right of privacy, political association, and social change" underscore the importance of protecting the anonymity of individuals' private associations. Marc Rotenberg, *Technology and Privacy: Old Problems and New Challenges*, 34 Hum. Rts. (2007).

CONCLUSION

For the foregoing reasons, *amicus* respectfully ask this Court to affirm the decision of the Ninth Circuit below.

Respectfully submitted,

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