No. 13-1175

In the Supreme Court of the United States

CITY OF LOS ANGELES, CALIFORNIA, PETITIONER

v.

NARANJIBHAI PATEL, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTIONS PRESENTED

1. Whether Los Angeles Municipal Code § 41.49 (2008), which requires that hotels make specified registry records about guests "available to any officer of the Los Angeles Police Department for inspection," may be challenged as facially invalid under the Fourth Amendment.

2. Whether Section 41.49 is facially invalid under the Fourth Amendment because it does not provide for judicial review before the police may conduct a registry inspection.

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INTEREST OF THE UNITED STATES

This case concerns whether a facial Fourth Amendment challenge may be maintained to a records-inspection statute and, if so, whether the statute is constitutional. Federal statutes authorize agencies to inspect and acquire business records in a variety of contexts that might give rise to facial Fourth Amendment challenges. The United States therefore has a substantial interest in the resolution of the questions presented.

STATEMENT

1. Since 1899, Los Angeles hotels have been required to maintain a guest register and to make that information available to police for inspection. See L.A., Cal., Mun. Code (LAMC) § 41.49 (2008) (Pet. Br.

App. SA 1); L.A., Cal., Penal Ordinance 5760 (New Series), § 995 (Apr. 28, 1899) (Pet. Br. App. SA 21). Under current law, codified in LAMC § 41.49, hotel operators must record the name and address of each guest; the name of the person who checked in the guest; the number of people in the party; the make, model, and license number of the guest's vehicle if it is parked on hotel property; the date and time of arrival; the scheduled departure date; the room number; the rate charged and amount collected; and the method of payment. LAMC § 41.49(2)(a). For guests who pay in cash, walk-in guests, and guests who rent a room hourly or for less than 12 hours, the operator must demand identification and record the number and expiration date of the identifying document. LAMC §§ 41.49(2)(a)(1)(iii) and (4). For guests who check in by electronic kiosk, the records must contain the guest's name, reservation information, and credit card information, as well as the identifying symbol of the kiosk the guest used to check in. LAMC § 41.49(2)(b).

These records may be maintained in a book, on cards, or electronically. LAMC § 41.49(1). They must be kept in the hotel's reception or check-in area, or an adjacent office. LAMC § 41.49(3)(a). They must be maintained for 90 days, unless "any other provision of law," "including the obligation to maintain and produce records for the purpose of paying a transient occupancy tax," requires retention for longer. LAMC § 41.49(3)(a) and (d).

Section 41.49(3)(a) mandates that the records "shall be made available to any officer of the Los Angeles Police Department for inspection." LAMC § 41.49(3)(a). "Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interfer-

ence with the operation of the business." *Ibid.* Failure to make the records available for inspection is a misdemeanor punishable by up to six months in prison and a $1000 fine. Pet. App. 5; see LAMC § 11.00(m) (2004) (Pet. Br. App. SA 26).

2. Respondents are owners and operators of motels in Los Angeles, and a lodging association. They sued the City of Los Angeles under 42 U.S.C. 1983, seeking declaratory and injunctive relief on the grounds that inspections pursuant to Section 41.49 violate the Fourth Amendment. Pet. App. 5-6. Respondents initially claimed that Section 41.49 was unconstitutional both as applied to them and "on its face in all its applications." J.A. 186-187. By stipulation, however, respondents abandoned their as-applied claims, leaving only the claim that Section 41.49(3)(a) is facially unconstitutional. See Pet. App. 5-6; J.A. 195. The parties also stipulated that respondents have been and continue to be subjected to mandatory record inspections under the ordinance without consent or a warrant. Pet. App. 37; J.A. 194-195.

The district court held a bench trial. "The only exhibit introduced at the bench trial was the text of LAMC § 41.49." Pet. App. 37, 49-53.

The district court granted judgment to petitioner. Pet. App. 38, 58. The court concluded that warrantless Section 41.49 inspections could not be justified as permissible administrative searches of closely regulated businesses, because petitioner had not established that the hotel industry is closely regulated. *Id.* at 53-55; see *New York* v. *Burger*, 482 U.S. 691 (1987). The court concluded, however, that hotel operators lack a reasonable expectation of privacy in the records that are subject to inspection. Pet. App. 55-57.

3. A panel of the court of appeals affirmed. Pet. App. 35-48. The panel stated that the Fourth Amendment applies when an officer violates a person's reasonable expectation of privacy or trespasses upon "persons, houses, papers, and effects." *Id.* at 39. The panel concluded that respondents had not shown that they, "let alone * * * all hotel operators," "have an objectively reasonable expectation of privacy in the information covered by [the] ordinance." *Id.* at 43. The panel also concluded that although "[t]he guest register covered by the city ordinance is a protected paper" under the Fourth Amendment, *ibid.*, respondents "failed to demonstrate that the limited intrusion authorized under the ordinance is unreasonable in their own particular circumstances, let alone in terms that would support a facial challenge to the ordinance," *id.* at 44.

Judge Pregerson dissented. Pet. App. 46. He would have held that the ordinance is facially invalid because it authorizes warrantless searches that do not fall within any well-established exception to the Fourth Amendment's warrant requirement. *Ibid.*

4. An en banc panel of the court of appeals reversed. Pet. App. 1-34. The court first concluded that "a police officer's non-consensual inspection of hotel guest records under § 41.49 constitutes a Fourth Amendment 'search'" under "either the property-based approach" of *United States* v. *Jones*, 132 S. Ct. 945 (2012), or "the privacy-based approach" of *Katz* v. *United States*, 389 U.S. 347 (1967). Pet. App. 6, 9.

Next, the court reasoned that, to determine whether "the searches authorized by § 41.49 are reasonable," it would "[o]rdinarily * * * balance 'the need to search against the invasion which the search en-

tails.'" Pet. App. 9 (quoting *Camara* v. *Municipal Court*, 387 U.S. 523, 537 (1967)). But here, the court of appeals determined, "th[e] balance has already been struck" by this Court. *Ibid.* Specifically, the court of appeals viewed *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1946), and *Donovan* v. *Lone Steer, Inc.*, 464 U.S. 408 (1984), as controlling. The court of appeals concluded that these cases "made clear that, to be reasonable, an administrative record-inspection scheme need not require issuance of a search warrant" but "must at a minimum afford an opportunity for pre-compliance judicial review, an element that § 41.49 lacks." Pet. App. 9-10. The court held that "[b]ecause this procedural deficiency affects the validity of all searches authorized by § 41.49(3)(a), there are no circumstances in which the record-inspection provision may be constitutionally applied." *Id.* at 14.

Judge Tallman dissented, joined by Judges O'Scannlain, Clifton, and Callahan. Pet. App. 14-24. Judge Tallman reasoned that Section 41.49 could be construed to apply in a manner consistent with the Fourth Amendment. For example, "the ordinance would apply to hoteliers with equal force if Los Angeles police officers arrived at a hotel with a legitimate search warrant and the hotelier refused to produce the register." *Id.* at 17. The ordinance could also be validly applied when police request the information in exigent circumstances. *Id.* at 18.

Judge Clifton also dissented, joined by Judges O'Scannlain, Tallman, and Callahan. Pet. App. 25-34. Judge Clifton reasoned that "[t]he absence of judicial review establishes only that the ordinance might not qualify for the recognized exception for administrative

subpoenas or inspections." *Id.* at 27. In his view, the majority failed to address whether a warrantless search under the ordinance was otherwise reasonable. *Id.* at 27-29. Judge Clifton concluded that an evidentiary showing is necessary to establish the hotel owners' expectation of privacy in their records, but that respondents had made no such showing. *Id.* at 33-34.

SUMMARY OF ARGUMENT

I. The court of appeals should not have entertained respondents' facial constitutional challenge to Los Angeles's hotel-registry maintenance and inspection statute. Facial challenges are a disfavored means of constitutional adjudication because, among other things, they often require speculation about the application of a provision to numerous contexts that are not presented by a particular case. That concern is heightened in the context of Fourth Amendment reasonableness challenges. Such challenges turn on particularized assessments of the interests implicated by a search or seizure, and when a variety of fact patterns may arise under a statute, it is difficult to consider them all in a single case. This Court's decision in *Sibron* v. *New York*, 392 U.S. 40 (1968), accordingly establishes that courts should adjudicate Fourth Amendment claims by assessing the constitutionality of concrete searches or seizures, and not through the "abstract and unproductive exercise" of comparing the language of a statute against the language of the Fourth Amendment. *Id*. at 59.

Here, respondents' facial challenge should have been rejected at the outset because respondents introduced no concrete evidence whatsoever about registry inspections and Section 41.49 inspections may occur in a variety of circumstances that implicate

materially different constitutional considerations. This Court has never found a "facial" Fourth Amendment violation in a case on such an extraordinary posture.

Indeed, some Section 41.49 inspections will be more than just materially distinguishable from the circumstance the court of appeals focused upon—they will be categorically reasonable and therefore constitutional. For example, application of Section 41.49(3)(a) would be constitutional in any inspection performed under exigent circumstances. Contrary to the court of appeals' conclusion, Section 41.49(3)(a) has a role to play in this context: the threat of penalties could allow an exigent inspection to succeed even when the hotel operator would otherwise refuse to consent. Similarly, some hotels may openly share registry information for commercial or other reasons and thus have little or no privacy expectation. These circumstances provide a sufficient basis to reject respondents' facial challenge. At a minimum, *Sibron* counsels that a court can and should exercise its traditional equitable discretion to decline to grant such broad injunctive or declaratory relief in a Fourth Amendment case when the record is as bare-bones as this one.

II. The court of appeals also erred in concluding that Section 41.49 is unreasonable for the inspections that it believed characteristic: inspections of hotel registries performed in a hotel lobby or otherwise without official entry into a private space.

Such inspections are reasonable and therefore constitutional. Section 41.49 is tailored to further important governmental interests in deterring prostitution, drug dealing, and other crimes that are facilitated by anonymous use of hotel rooms. Section 41.49

also assists efforts to locate missing persons. Section 41.49 requires all hotel visitors to identify themselves; it requires hotels to maintain records containing precisely defined information about guests; and it enables police to quickly inspect these records. The possibility of unannounced inspections, backed by penalties, encourages hotels to demand that guests identify themselves and thus discourages the anonymous use of short-term or unscrupulous hotels for criminal activity. And any intrusion on privacy is highly limited: Section 41.49 inspections can be performed without official entry into any private space and do not involve disclosure of highly confidential information.

Finally, Section 41.49 tightly restricts police discretion. It describes with particularity the registry to be inspected, precisely what information must be made available, where the register must be kept, and for how long records must be maintained. It also limits the circumstances under which inspections may be performed.

The court of appeals erred in holding that *Oklahoma Press* and *Lone Steer* had "already * * * struck" the Fourth Amendment balance here and require an opportunity for judicial review before a person may suffer penalties for refusing an inspection demand. Pet. App. 9. In those cases, judicial review was necessary to ensure that administrative subpoenas authorized under the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*, were "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." Pet. App. 11-12 (quoting *See* v. *City of Seattle*, 387 U.S. 541, 544 (1967)). But here, the court of appeals itself recognized that judicial review is *not*

needed to ensure that Section 41.49 inspections are sufficiently limited, relevant, and specific: Section 41.49 already ensures that itself. *Ibid.*

As a result, judicial review has little or no work to do under Section 41.49. The procedural requirement of *Oklahoma Press* and *Lone Steer* should not be extended to a context where the substantive requirements of those cases are already served. Moreover, judicial review would undermine the regulatory scheme. Litigation delays would give hotel operators an increased opportunity to forge their records or otherwise evade the identification requirement, which would undermine the deterrent effect of unannounced inspections and hinder efforts to find missing persons.

ARGUMENT

THE LOS ANGELES HOTEL RECORD-INSPECTION PROVISION SHOULD NOT HAVE BEEN HELD FACIALLY INVALID

The Fourth Amendment prohibits "unreasonable searches and seizures." The court of appeals invalidated Los Angeles's hotel record-inspection law on its face—that is, in all applications to all contexts—because it does not require pre-compliance judicial review. That challenge should have been rejected for two reasons. First, facial invalidation was an inappropriate response to respondent's Fourth Amendment claim. Second, the inspection scheme satisfies constitutional reasonableness requirements.

I. RESPONDENTS' FACIAL CHALLENGE TO SECTION 41.49 SHOULD NOT HAVE BEEN ENTERTAINED

The court of appeals erred by entertaining respondents' facial challenge to Section 41.49. Respondents introduced no evidence whatsoever about con-

crete inspections, thereby depriving the court of the specific factual predicate generally needed to adjudicate Fourth Amendment claims. Moreover, inspections pursuant to Section 41.49 may occur under a variety of different circumstances raising materially different constitutional issues. Facial attacks are the rare exception to the general rule that a constitutional claim should be addressed on its case-specific facts, and respondents' factually undeveloped request for the court to invalidate a statute on Fourth Amendment grounds was especially inappropriate.

A. Facial Constitutional Challenges Are Disfavored

In *United States* v. *Salerno*, 481 U.S. 739 (1987), this Court held that, to succeed in a facial challenge, a challenger generally must prove "that no set of circumstances exists under which the [law] would be valid." *Id.* at 745; accord, *e.g.*, *Anderson* v. *Edwards*, 514 U.S. 143, 155 n.6 (1995); *Reno* v. *Flores*, 507 U.S. 292, 301 (1993). Some members of this Court dispute that principle and would require the challenger to prove only that the statute lacks a "plainly legitimate sweep." *United States* v. *Stevens*, 559 U.S. 460, 473 (2010) (quoting *New York* v. *Ferber*, 458 U.S. 747, 770 (1982)) (noting dispute); *Washington State Grange* v. *Washington State Republican Party*, 552 U.S. 442, 449 & n.6 (2008) (*Grange*) (same). All agree, however, that "[f]acial challenges are disfavored" and that "the normal rule" is as-applied litigation with "partial, rather than facial, invalidation" as the remedy for a successful constitutional claim. *Grange*, 552 U.S. at 450; *Ayotte* v. *Planned Parenthood*, 546 U.S. 320, 329 (2006) (quoting *Brockett* v. *Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985)).

"Facial challenges are disfavored for several reasons." *Grange*, 552 U.S. at 450. "Claims of facial invalidity often rest on speculation." *Ibid.* Accordingly, they invite premature interpretation of statutes based on hypothetical or inadequately developed facts. *Sabri* v. *United States*, 541 U.S. 600, 609 (2004). Facial challenges also run contrary to "fundamental principle[s]" of constitutional avoidance and judicial restraint. *Grange*, 552 U.S. at 450. And facial challenges, by applying broadly to contexts not before the court, "threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Id.* at 451 (quoting *Regan* v. *Time, Inc.*, 468 U.S. 641, 652 (1984) (plurality op.)).

Facial review of state statutes raises additional concerns and warrants additional caution. Facial invalidation of one provision in a statutory scheme may raise severability issues. See Henry Paul Monaghan, *Overbreadth*, 1981 Sup. Ct. Rev. 1, 5-6. The general rule, however, is that state courts should have the first opportunity to address "how far parts of [the state law] may be sustained if others fail." *Yazoo & Miss. Valley R.R.* v. *Jackson Vinegar Co.*, 226 U.S. 217, 219-220 (1912). Similarly, federal courts should hesitate to strike down state laws when state courts "have had no occasion * * * to accord the law a limiting construction to avoid constitutional questions." *Grange*, 552 U.S. at 450.

B. Fourth Amendment Unreasonableness Claims Raise Particularly Unsuitable Contexts For Facial Adjudication

The reasons that facial challenges are generally disfavored apply with particular force to claims that a statute authorizes unreasonable searches or seizures in violation of the Fourth Amendment. Fourth Amendment analysis is highly context-sensitive. Courts should be especially cautious when addressing a facial challenge in any Fourth Amendment reasonableness case—and their caution should be at its apex when the record includes no evidence about concrete searches or seizures.

1. "[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Heien* v. *North Carolina*, No. 13-604 (Dec. 15, 2014), slip op. at 5 (quoting *Riley* v. *California*, 134 S. Ct. 2473, 2482 (2014)). Absent more precise guidance from the founding era, the reasonableness of a warrantless search or seizure requires "a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests * * * at stake." *Plumhoff* v. *Rickard*, 134 S. Ct. 2012, 2020 (2014) (citation omitted). This balancing "depends on the context within which a search takes place." *Maryland* v. *King*, 133 S. Ct. 1958, 1978 (2013) (quoting *New Jersey* v. *T.L.O.*, 469 U.S. 325, 337 (1985)); see also *Samson* v. *California*, 547 U.S. 843, 848 (2006) (depends on "the totality of the circumstances" (citation omitted)); *O'Connor* v. *Ortega*, 480 U.S. 709, 715 (1987) ("differ[s] according to context"). Because the Fourth Amendment inquiry is so context-sensitive, a court's ability to balance the competing interests will often benefit from concrete

evidence about what exactly the interests are and how exactly they are implicated. See *Warshak* v. *United States*, 532 F.3d 521, 528 (6th Cir. 2008) (en banc) ("Concerns about the premature resolution of legal disputes have particular resonance in the context of the Fourth Amendment.").

In *Sibron* v. *New York*, 392 U.S. 40 (1968), this Court made clear that courts should generally refrain from adjudicating the constitutionality of searches and seizures authorized by a statute as an abstract matter, and instead should adjudicate the constitutionality of particular searches or seizures pursuant to that statute. In *Sibron*, two criminal defendants sought to suppress evidence that was collected when, pursuant to a New York statute, police had stopped and searched them without a warrant. *Id.* at 44-50. Both parties urged the Court to decide the constitutionality of the statute "on its face," without regard to the circumstances of either search. *Id.* at 59. This Court refused the bait. "The constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Ibid.* This Court also described as "abstract and unproductive" the "exercise of laying the extraordinarily elastic categories of [the state law] next to the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible." *Ibid.* The state law was also "susceptible to a wide variety of interpretations," leaving open questions about the scope of the statutory authority and its limits. *Id.* at 60.

This Court's decisions on administrative searches and seizures reinforce the point. For example, this Court stated in *See* that the validity of a warrantless

search or seizure pursuant to an administrative scheme "can only be resolved * * * on a case-by-case basis under the general Fourth Amendment standard of reasonableness." 387 U.S. at 546. And in *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978), this Court explained that "[t]he reasonableness of a warrantless search * * * will depend upon the specific enforcement needs and privacy guarantees of each statute." *Id*. at 321.

2. In rare circumstances, this Court has issued decisions that could be described as "invalidating" statutes that authorized warrantless searches or seizures. See *Berger* v. *New York*, 388 U.S. 41 (1967); see also *Payton* v. *New York*, 445 U.S. 573 (1980); *Torres* v. *Puerto Rico*, 442 U.S. 465 (1979); *Barlow's,* 436 U.S. at 311. Unlike *Sibron*, however, none of these cases "discuss the distinction between as-applied and facial challenges, and accordingly [they] did not reach * * * the question whether it would have made sense to proceed differently." *Warshak*, 532 F.3d at 530.

More fundamentally, *Berger*, *Payton*, *Torres*, and *Barlow's* are consistent with *Sibron*. They all involve typical as-applied litigation arising from particular searches that were performed or attempted. *Berger*, *Payton*, and *Torres* involved motions to suppress evidence collected from warrantless searches or seizures of individual defendants. The courts had the benefit of a concrete factual record about those searches and seizures; standing and ripeness were obvious (the challenger was being prosecuted based on that evidence); and the remedy was retrospective and narrow (suppression of the evidence). See *Berger*, 388 U.S. at 45; *Payton*, 445 U.S. at 576-583; *Torres*,

442 U.S. at 467-468.[1] These cases "invalidated" the underlying statutes, if at all, only in the sense that their substantive rule of decision would govern similar cases as a matter of stare decisis. A future court faced with a search under different circumstances could, however, potentially find those differences material and reach a different outcome.

In *Barlow's*, this Court affirmed an injunction and declaratory judgment "that [Section 8(a) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(a)] is unconstitutional insofar as it purports to authorize inspections without warrant or its equivalent." 436 U.S. at 325. But unlike this case, *Barlow's* had the benefit of a concrete record with evidence of actual attempts to search a particular area of a particular place of business at particular times. See *id.* at 309-310. And this Court recognized that crafting a prospective decree may be an additional difficulty, even when a concrete Fourth Amendment violation is found. This Court noted that "[t]he injunction * * * should not be understood to forbid the Secretary from exercising the inspection authority conferred by § 8 pursuant to regulations and judicial process that satisfy the Fourth Amendment." *Id.* at 325 n.23.

3. This court has never applied an overbreadth-type analysis in a Fourth Amendment case, and it

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[1] *Berger* also addressed a statute governing the issuance of a warrant, and thus interpreted the Fourth Amendment's Warrant Clause, not the Reasonableness Clause. See 388 U.S. at 54-56. The procedural requirements of the Warrant Clause may be less sensitive to individualized circumstances, and thus more amenable to facial-style challenges, than the Reasonableness Clause. See *Sibron*, 392 U.S. at 59 (distinguishing *Berger* on this basis).

should not do so here. Overbreadth is limited to "relatively few settings, and, generally, on the strength of specific reasons weighty enough to overcome [the Court's] well-founded reticence." *Sabri*, 541 U.S. at 609-610. But this is not an appropriate vehicle for addressing the issue because respondents have not raised an overbreadth claim. Respondents have not argued that Section 41.49 inspections of their hotels are unconstitutional because of the way Section 41.49 applies to others, in contrast to the way it applies to them. Respondents' contention is that *every* warrantless Section 41.49 inspection is equally unconstitutional *for the same reason*, irrespective of who is being searched: respondents argue that all such inspections are unconstitutional because they lack a warrant or pre-compliance judicial review.

On respondents' view of the Fourth Amendment, the constitutionality of every warrantless inspection pursuant to Section 41.49(3)(a) is thus a "common question of law" that a court can decide "in one stroke." *Wal-Mart Stores, Inc.* v. *Dukes*, 131 S. Ct. 2541, 2551 (2011). But respondents' demands must be rejected if respondents fail to prove that individualized circumstances of particular inspections will not lead to different outcomes in some circumstances, *or* if they cannot show that pre-compliance judicial review is a requirement for all Section 41.49 inspections.

C. Respondents' Facial Challenge To Section 41.49 Should Have Been Rejected At The Threshold

Respondents' case is not the rare exception in which a facial Fourth Amendment challenge should be entertained. Respondents alleged that they "have been and continue to be subjected to searches and seizures of their motel registration records by police,

pursuant to [Section 41.49], without consent or a warrant." J.A. 37. Specifically, respondents argue (1) that every warrantless inspection pursuant to Section 41.49 is an unreasonable search because Section 41.49(3)(a) empowers officers to demand to inspect a hotel's registry and the hotel must comply or face penalties, whereas, in their view, the Fourth Amendment mandates a warrant or pre-compliance judicial review; and (2) they are therefore entitled to a declaration that all Section 41.49 inspections are unconstitutional and an injunction against such future inspections. *Id.* at 36. If granted, this broad relief would effectively render Section 41.49(3)(a)'s inspection requirement "facially invalid."

Respondents' suit should have been rejected under *Sibron* without adjudicating the merits of their underlying claims. If respondents had introduced evidence of particular record inspections, under *Sibron* review would have been limited to typical as-applied litigation on the validity of those inspections and whether and how to provide prospective relief if a violation were found. Respondents instead introduced no evidence whatsoever about concrete inspections performed pursuant to Section 41.49, yet they demanded that all such inspections be declared unconstitutional. By choosing not to place any facts before the court, respondents deprived the court of the concrete factual predicate generally needed to adjudicate Fourth Amendment claims. This oversight was particularly problematic because respondents failed to demonstrate that all (or even virtually all) Section 41.49 inspections implicate materially identical Fourth Amendment considerations. Rather, a wide range of situations exists in which the constitutional analysis of

registry inspections could significantly differ from the bare-bones paradigm assumed by the court of appeals. Indeed, application of Section 41.49(3)(a) will be categorically reasonable in a significant range of circumstances. See Pet. Br. 19-20.

1. Notwithstanding that respondents' registries "have been" inspected pursuant to Section 41.49, Pet. App. 37, respondents introduced "no concrete facts to analyze the circumstances of [any] individual search." Pet. App. 19 (Tallman, J., dissenting). Compounding the problem, respondents failed to introduce other evidence that could be relevant to the Fourth Amendment analysis: How do respondents maintain their registries? Do they take steps to protect the privacy of their registries? What is industry practice? How do the police typically perform inspections? Under what circumstances? Respondents thus asked the federal courts to engage in the "abstract and unproductive exercise" of comparing Section 41.49's language to "the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible," which *Sibron* generally forbids. 392 U.S. at 59.

2. Respondents' failure to introduce any evidence of concrete Section 41.49 inspections should have been fatal because such inspections can occur under a variety of factual circumstances that implicate very different Fourth Amendment considerations. Indeed, some Section 41.49 inspections will be categorically reasonable.

a. Section 41.49(3)(a) could be constitutionally applied in exigent-circumstances inspections. See *Kentucky* v. *King*, 131 S. Ct. 1849, 1856 (2011). That doctrine enables police to enter a private place without a

warrant "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury"; "when they are in hot pursuit of a fleeing suspect"; "to prevent the imminent destruction of evidence"; or because there is a likelihood that a suspect will imminently flee. *Ibid.* (quoting *Brigham City* v. *Stuart*, 547 U.S. 398, 403 (2006)); see *Missouri* v. *McNeely*, 133 S. Ct. 1552, 1558-1559 (2013); *Georgia* v. *Randolph*, 547 U.S. 103, 117 n.6 (2006). Here, police could have reasonable cause to believe, for example, that someone who presents an imminent danger to himself or others is present in a particular hotel. Officers could inspect the registry to locate the individual and the room where he is staying. Officers might also have a need to inspect hotel records when in hot pursuit of a suspect. Section 41.49(3)(a) could be constitutionally applied to impose penalties upon a hotel owner who refuses under these circumstances.

The court of appeals found this possibility irrelevant to the constitutionality of Section 41.49 because an inspection under exigent circumstances would "compl[y] with the Fourth Amendment whether § 41.49 is on the books or not." Pet. App. 14. The court in effect concluded that, in exigency cases, Section 41.49(3)(a) is superfluous. This is incorrect. Registry records may be stored in a locked drawer, kept in a locked office, or—if maintained electronically—be encrypted or password-protected. Without Section 41.49(3)(a), hotels could refuse to give police access to the records. Section 41.49(3)(a), however, makes such a refusal punishable by a fine or imprisonment. LAMC § 11.00(m); see Pet. App. 5. The ordinance therefore has a role to play in exigent circumstances.

b. Officers could similarly invoke Section 41.49(3)(a) when a hotel operator lacks an objectively reasonable expectation of privacy in the registry information. For example, if a hotel leaves the register in the lobby in a place where any guest could see it, Section 41.49(3)(a) could be validly applied if the hotel operator nonetheless refused to show the register to police. If a hotel openly shared its registry information with a group of other hotels, officials could also invoke Section 41.49(3)(a) to demand production of or access to that information, without giving rise to a Fourth Amendment problem. See *United States* v. *Miller*, 425 U.S. 435, 442-443 (1976). Respondents offered no evidence about industry-wide or prevalent local practices and made no record-specific showing concerning the uses hotels made of the information gathered pursuant to the unchallenged record-keeping provisions of Los Angeles law. See Pet. App. 5 (noting that respondents "do not challenge" Section 41.49's requirements that they identify their guests and record and maintain that information).

Respondents thus did not merely invite speculation and conjecture about one set of circumstances without the benefit of record evidence about concrete searches, respondents invited speculation and conjecture ranging across a wide variety of possible factual circumstances and multiple areas of substantive Fourth Amendment law. Under *Sibron*, such a broad and abstract facial claim fails as a matter of law. And because respondents abandoned their case-specific as-applied claims, respondents had no potentially viable claims to adjudicate.

D. Courts Have Equitable Discretion To Decline To Enjoin, Or Declare Unconstitutional, All Searches or Seizures Under A Statute When The Record Is Inadequate

Respondents' failure to introduce evidence of concrete searches also provides an appropriate basis for a district court to exercise its traditional equitable discretion to deny respondents the broad injunctive and declaratory relief they seek. To obtain the prospective relief sought here, respondents not only had to show on the merits that the warrantless inspections they seek to enjoin—all Section 41.49 inspections—violate the Fourth Amendment. They also had to satisfy the prudential and equitable requirements that apply whenever a plaintiff demands declaratory or injunctive relief. Depending on the circumstances of a case, this second burden can be weighty and respondents did not carry it here.

1. "The injunctive and declaratory judgment remedies are discretionary." *Abbott Labs.* v. *Gardner*, 387 U.S. 136, 148 (1967). "An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto* v. *Geertson Seed Farms*, 561 U.S. 139, 165 (2010). To obtain a permanent injunction, a plaintiff must prevail on the merits *and* demonstrate: "(1) that [she] has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Id.* at 156-157 (quoting *eBay Inc.* v. *MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)).

Similarly, the Declaratory Judgment Act provides that federal district courts "may" issue a declaratory judgment, not that they *shall* issue such a judgment. 28 U.S.C. 2201(a). This permissive language grants federal district courts "unique and substantial discretion in deciding whether to declare the rights of litigants." *Wilton* v. *Seven Falls Co.*, 515 U.S. 277, 286 (1995); see also *Abbott Labs.*, 387 U.S. at 149.

In exercising its equitable discretion, a district court may consider "(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *National Park Hospitality Ass'n* v. *Department of the Interior*, 538 U.S. 803, 808 (2003).[2] A claim may be unfit for decision if "further factual development would 'significantly advance [courts'] ability to deal with the legal issues presented.'" *Id.* at 812 (quoting *Duke Power Co.* v. *Carolina Envt'l Study Grp., Inc.*, 438 U.S. 59, 82 (1978)); see also *Thomas* v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985). Prospective relief may also be imprudent or inequitable if the claim does not "admit 'of specific relief through a decree of a conclusive character, as distinguished from an opinion advising on what the law would be upon a hypothetical state of facts.'" *Calderon* v. *Ashmus*, 523

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[2] Whatever the continuing vitality of refusing to exercise Article III jurisdiction for prudential reasons, see *Susan B. Anthony List* v. *Driehaus*, 134 S. Ct. 2334, 2347 (2014); *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377, 1386-1388 (2014), this Court has not cast doubt on its holdings that a district court has discretion to decline to grant declaratory or injunctive relief for equitable and prudential reasons, see, *e.g.*, *Monsanto*, 561 U.S. at 156-157; *MedImmune* v. *Genentech, Inc.*, 549 U.S. 118, 136 (2007); *Abbott*, 387 U.S. at 148.

U.S. 740, 746 (1998) (quoting *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 241 (1937)).

2. Here, *Sibron* further indicates that granting equitable relief in the form of an injunction or declaratory judgment would not have been a prudent exercise of discretion. Again, respondents voluntarily chose to introduce no evidence whatsoever about past Section 41.49 inspections, notwithstanding that respondents could have easily done so: Respondents' registries have been inspected in the past. Pet. App. 37. Respondents thus asked the federal courts to invalidate all Section 41.49 inspections without regard to the concrete facts of any inspection or the variety of circumstances under which such inspections may occur. In such circumstances, district courts can appropriately exercise their traditional equitable discretion to decline to engage in the "abstract and unproductive exercise" of comparing a statute's language to "the categories of the Fourth Amendment in an effort to determine whether the two are in some sense compatible." *Sibron*, 392 U.S. at 59.

When a federal court is asked to halt the operation of a regulatory program that governmental authorities deem important to deter and prevent crime, it should not wield that authority based on factually undeveloped Fourth Amendment claims that are inapplicable to many of the situations that may arise under the statute. A prudent exercise of judicial power would lead a court to refuse to grant prospective relief under such circumstances, without need to adjudicate the merits of the underlying constitutional claims.

II. INSPECTIONS AUTHORIZED BY SECTION 41.49 ARE CONSTITUTIONALLY REASONABLE UNDER THE CIRCUMSTANCES ENVISIONONED BY THE COURT OF APPEALS

Even under the suppositions of the court of appeals—that it had identified the exclusive scenario to which Section 41.49 applied and that a facial challenge was appropriate—the inspections authorized under Section 41.49 are valid under the Fourth Amendment. The court of appeals analyzed the validity of Section 41.49 inspections on the premise that the papers to be inspected were sufficiently private to fall within the Fourth Amendment and that the inspections would be performed without police entry into a private space. Pet. App. 7-11. Contrary to the court's conclusion, that fact-pattern does not amount to an unreasonable search and seizure because the hotels have no opportunity for pre-compliance review. Rather, the Los Angeles provision authorizes a limited and reasonable inspection program that would be frustrated if the police were required to seek a court order in advance of each inspection—without countervailing benefit to respondents' privacy-related interests.

A. Inspections Authorized By Section 41.49 Are Reasonable Under A Fourth Amendment Test That Balances The Government Interests Against The Intrusion On Privacy Interests

While certain searches, particularly of a home, may generally be undertaken only after the police secure a warrant supported by probable cause, see, *e.g.*, *Kentucky* v. *King*, 131 S. Ct. at 1856, regulatory schemes that authorize inspections may often be reasonable without a warrant or probable cause. One means of analyzing such schemes is under the closely regulated

business doctrine of *New York* v. *Burger*, 482 U.S. 691 (1987). As petitioner argues, Section 41.49 inspections are reasonable under that doctrine. See Pet. Br. 29-47. But even assuming that Los Angeles hotels are not a closely regulated industry, general Fourth Amendment reasonableness principles, see pp. 12-13, *supra*, validate the Los Angeles hotel-registry inspection scheme.

A warrantless search without probable cause is particularly likely to be reasonable if the governmental need is especially great; it involves modest intrusions on the individual's privacy; and protections are in place that limit the discretion of officers in the field. *Maryland* v. *King*, 133 S. Ct. at 1969; see, *e.g.*, *Illinois* v. *McArthur*, 531 U.S. 326, 330-331 (2001); *Skinner* v. *Railway Labor Execs.' Ass'n*, 489 U.S. 602, 622-633 (1989); *Camara* v. *Municipal Court*, 387 U.S. 523, 534-540 (1967). Under that standard, the Section 41.49 inspections envisioned by the court of appeals are reasonable.

1. Section 41.49(3)(a) serves important government interests.

a. Section 41.49 "discourage[s] the use of hotel and motel rooms for illegal activities, particularly prostitution and narcotics offenses." Ordinance 177,966, Pmbl. (Oct. 6, 2006) (Pet. Br. App. SA 8); see Pet. App. 10. Rent-by-the-hour, "no-tell motels," that are hotbeds of prostitution, drug dealing, and other illegal activity pose serious threats to the public safety and welfare. See, *e.g.*, *United States* v. *Singh*, 518 F.3d 236 (4th Cir. 2008) (affirming convictions of motel operators involved in a prostitution ring); *United States* v. *Adamson*, 441 F.3d 513, 520 (7th Cir. 2006) (discussing a motel that was "generally viewed as a site of frequent

criminal activity"); Press Release, U.S. Atty's Office for the W. Dist. of Wash., *Feds Seize Three Long-Time Problem Motels in Tukwila as Part of Year-Long Initiative* (Aug. 27, 2013), http://www.fbi.gov/seattle/press-releases/2013/feds-seize-three-long-time-problem-motels-in-tukwila-as-part-of-year-long-initiative (reporting seizure of three motels that "accounted for approximately 17 percent of the [local police department's] calls for service"). Requiring visitors to identify themselves—and requiring hotels to record that information—deters visitors from using an anonymous stay at a hotel to facilitate criminal activity. See Ordinance 177,966, Pmbl.; Pet. 29.

The possibility of unannounced inspections is vital to encourage hotels to maintain accurate records and to allow police to verify whether they are doing so. See Ordinance 177,966, Pmbl.; cf. *Burger*, 482 U.S. at 710 ("unannounced, even frequent, inspections are essential" (citation omitted)). Without the availability of such inspections, the opportunities for fabrication of guest registries, with no realistic possibility of detection, would thwart the scheme's effectiveness. If hotels can avoid the registry requirements, they can cater to guests who desire anonymity for criminal conduct—and the hotels can then become havens for crime.

b. Making guest information available for inspection assists police in finding missing persons, including fugitives, probationers, suspects, and potential witnesses. Pet. 29; see Ordinance 177,966, Pmbl.; *e.g.*, *State* v. *Brown*, No. 1 CA-CR 07-0921, 2009 WL 960790, at *1 (Ariz. Ct. App. Apr. 9, 2009) (discussing police use of a hotel register to find a probationer). Section 41.49 is the key enforcement mechanism that

supports the requirement that hotels have visitors identify themselves and keep records of their visitors' identities. Inspection of the records enables police to determine swiftly whether a person is staying at a particular hotel: police can demand to inspect the register without having to seek a court order, issue a subpoena, or face litigation delays before compliance. Even when Fourth Amendment standards of exigency are not present, the prospect of obtaining registry information immediately serves important government interests.

c. The strength of the government interests underlying Section 41.49 is confirmed by historical tradition and widespread practice. "The innkeeper has from the earliest time been recognized as engaged in a public employment" such that the inn is "affected with a public interest." Joseph Henry Beale, Jr., *The Law of Innkeepers and Hotels* §§ 51, 52, at 35-36 (1906) (citation omitted); see David S. Bogen, *The Innkeeper's Tale: The Legal Development of a Public Calling*, 1996 Utah L. Rev. 51, 89-90 (1996). Both today and at common law, it has been a crime for an inn to refuse a paying guest without just cause. See Cal. Penal Code § 365 (West 2010); 4 William Blackstone, *Commentaries* *168; Beale § 53, at 37; Joseph Story, *Commentary on Bailments* § 470 & nn.7 & 8, at 437 (9th ed. 1878).

The need for a hotel to register its guests (and for officials to inspect the registry) is a corollary to the hotel's longstanding public role as a place for any transient visitor to stay. Los Angeles hotels have been subject to registry maintenance and inspection laws since 1899. See L.A., Cal., Penal Ordinance 5760 §§ 995, 997 (Apr. 28, 1899) (Pet. Br. App. SA 20). And

registry maintenance and inspection laws are common in many other jurisdictions. See Pet. Br. 36 n.3 (collecting citations); Pet. App. 66-107 (same).

2. Section 41.49 inspections impose little intrusion into a hotel operator's privacy. That is especially true where, as the court of appeals assumed, inspections are performed without demanding entry into a private place.

"The businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property." *See*, 387 U.S. at 543. But "[a]n expectation of privacy in commercial premises * * * is different from, and indeed less than, a similar expectation in an individual's home." *Burger*, 482 U.S. at 700. The expectation of privacy is particularly weak here. Inspections may be performed by inspecting the records in the hotel lobby, by demanding the records electronically, or otherwise without any entry into a private space. Such an inspection would involve a smaller intrusion than in cases like *See* and *Barlow's*. "An entry into the public lobby of a motel and restaurant for the purpose of serving an administrative subpoena is scarcely the sort of governmental act which is forbidden by the Fourth Amendment." *Donovan* v. *Lone Steer, Inc.*, 464 U.S. 408, 413 (1984). Hotel lobbies are defined as "public place[s]" under municipal law. LAMC § 41.59(A)(2) (2001). Indeed, *Lone Steer* distinguished *See* on the grounds that serving a subpoena in a hotel lobby was "quite different" from warrantless inspections that require entry into a private place of business. See *Lone Steer*, 464 U.S. at 414.

Hotels also have little privacy interest in the required information. Guests themselves have no reasonable expectation of privacy in the information recorded by the hotel operator. See *United States* v. *Miller*, 425 U.S. 435, 442-443 (1976); Pet. App. 8. Businesses also must frequently disclose similar information about past transactions to authorities. *E.g.*, *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 59-67 (1974) (*California Bankers*). Indeed, Los Angeles hotels must already disclose much of the same information to comply with the "transient occupancy tax." See LAMC § 21.7.11 (2000).

The court of appeals found that "customer lists, pricing practices, and occupancy rates," are "commercially sensitive." Pet. App. 6-7. But hotels typically advertise their prices, including online; California law mandates that hotels must conspicuously post their room rates, Cal. Civ. Code § 1863 (West 2010); and the familiar "no vacancy" sign on a motel informs the public about occupancy. An inspection also would not reveal customer *lists*, pricing *practices*, and occupancy *rates* unless it involved collecting and analyzing registry information in the aggregate. An inspection that merely involves viewing the registry without copying it, or that involves copying only a handful of records, would impose little or no intrusion into any such broader commercial interests.

3. Section 41.49 also tightly limits police discretion. Cf. *Maryland* v. *King*, 133 S. Ct. at 1969-1970 ("The need for a warrant is perhaps least when the search involves no discretion that could properly be limited by the interpo[lation of] a neutral magistrate between the citizen and the law enforcement officer." (citation omitted)). Unlike in *Camara*, *See*, or *Barlow's*, Sec-

tion 41.49(3)(a) does not permit a wide-ranging inspection of a place (or a wide-ranging demand for documents) to search for a variety of possible violations. Rather, Section 41.49 inspections are confined by statute to a tightly limited scope. Section 41.49 authorizes inspection of only one thing: the registry. Section 41.49 defines precisely what information must be made available, how it must be kept, for how long (typically 90 days), and where it must be stored (in or adjacent to the lobby). See LAMC §§ 41.49(1), (2)(a), (3)(a) and (3)(c). Section 41.49 also restricts the timing and manner of a search: "Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." LAMC § 41.49(3)(a). An officer could ask the hotel operator whether a guest is staying there; view a single page of entries; or even view a single entry to learn whether a person is currently a guest. If a hotel maintains the information electronically, it could print out the requested information and nothing more.

Affording an opportunity for pre-compliance judicial review thus would not only frustrate the deterrence purpose of the search, see pp. 25-26, *supra*, it would also afford little benefit in cabining police discretion or safeguarding interests protected by the Fourth Amendment.

B. Pre-Compliance Judicial Review Is Not Necessary To Render Section 41.49 Inspections Constitutional

The court of appeals erred in concluding that this Court has "already * * * struck" the Fourth Amendment balance as to the reasonableness of Section 41.49 inspections. Pet. App. 9-10. The court of appeals interpreted *Lone Steer* and *Oklahoma Press*

Publishing Co. v. *Walling*, 327 U.S. 186 (1946), as establishing both a substantive requirement and a procedural requirement that extended to all Section 41.49 inspections. First, the government may not demand access to business records unless the demand is "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." Pet. App. 11 (quoting *See*, 387 U.S. at 544). Second, "[t]he party subject to the demand must be afforded an opportunity to 'obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply.'" Pet. App. 12 (quoting *See*, 387 U.S. at 545); see *Lone Steer*, 464 U.S. at 415; *Oklahoma Press*, 327 U.S. at 208-209.

The court of appeals recognized that Section 41.49 itself "appear[ed] to satisfy" the substantive requirement "by adequately specifying (and limiting the scope of) the records subject to inspection." Pet. App. 11-12. But it nonetheless concluded that *Oklahoma Press* and *Lone Steer* required pre-compliance judicial review, which it described as an "essential procedural safeguard against arbitrary or abusive inspection demands." *Id.* at 12. That conclusion was unfounded.

1. This Court has not "already * * * struck" the constitutional balance here. This Court has never assessed the constitutionality of any inspection of a hotel registry, much less the validity of every possible inspection under this particular scheme. And when evaluating the constitutionality of warrantless inspections of a business for fire-code violations, this Court emphasized that "[a]ny constitutional challenge to such programs can only be resolved, as many have been in the past, on a case-by-case basis under the

general Fourth Amendment standard of reasonableness." *See*, 387 U.S. at 546.

The procedural requirement of *Oklahoma Press* and *Lone Steer* does not logically apply when the law itself provides adequate substantive protections. As the court of appeals itself recognized (Pet. App. 11-12), judicial review is not needed to ensure Section 41.49 inspections are "sufficiently limited in scope, relevant in purpose, and specific in directive" because Section 41.49 already ensures just that. See pp. 29-30, *supra*.

The narrowness of Section 41.49 inspections contrasts with *Oklahoma Press* and *Lone Steer*, which addressed administrative subpoenas under the FLSA. The FLSA authorizes the Secretary of Labor to "require by subpoena * * * the production of *all* * * * documentary evidence relating to *any* matter under investigation." 15 U.S.C. 49 (emphases added); 29 U.S.C. 209. And the Secretary has broad authority to "investigate and gather data regarding the wages, hours, and other conditions and practices of employment * * * and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any employer is violating the Act." 29 U.S.C. 211(a); see *Lone Steer*, 464 U.S. at 409 n.1, 411 n.2. This Court thus found that judicial review plays an important role in ensuring that FLSA subpoenas are "sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *See*, 387 U.S. at 544; see also *Lone Steer*, 464 U.S. at 415; *Oklahoma Press*, 327 U.S. at 208-209. But here, judicial review of Section 41.49 inspections would do little or no substantive work because Section

41.49 itself ensures that inspections are appropriately tailored. Indeed, it is unclear what test a court would even apply in reviewing an inspection demand and on what basis, if any, a court could deny such a request.

The court of appeals suggested that a neutral magistrate could provide a check against abusive inspections. Pet. App. 12. But respondents have made no showing that Section 41.49's extensive ex ante safeguards, coupled with existing ex post remedies, provide inadequate protection from abuse. For example, Section 41.49(3)(a) mandates that, "[w]henever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." *Ibid.* A hotel may be able to resist a penalty if officers violated that provision—or seek a narrow fact-based injunction.

Furthermore, unlike in *Oklahoma Press* or *Lone Steer*, requiring pre-enforcement review here would obstruct the operation of the regulatory scheme. Pre-enforcement review did not materially alter the scheme in *Oklahoma Press* or *Lone Steer*: FLSA subpoenas already provided the recipient advance notice before documents had to be produced, and thus invariably involved some delay. But adding delay and providing notice would be problematic here, where notice and delay can defeat the purpose of Section 41.49 inspections. Under Section 41.49, the possibility of a surprise inspection, backed by penalties, encourages compliance with the identification and recordation requirements. But if the hotel operator could refuse to comply and demand judicial review, hotels would have both notice and opportunity to fill in the information retroactively—or even to forge or falsify records. This could reduce the frequency with which

hotels demand identification and thereby increase the anonymous use of hotel rooms as a place for prostitution, drug dealing, or other crimes. Similarly, if officers are searching for a missing person, under Section 41.49 they may quickly inspect any hotel's registry to see if she is there. With pre-compliance judicial review, however, any hotel owner could refuse to answer until the officer obtains a subpoena. This delay could increase the likelihood that the missing person moves elsewhere before she is found.

2. Section 41.49 inspections are constitutional for similar reasons that justified the required financial disclosures upheld in *California Bankers*. That case addressed a challenge that banks brought to the requirement, under the Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114, that financial institutions file reports disclosing details about domestic transactions in currency more than $10,000. 416 U.S. at 25-26, 37-39. The required reports contained the name, address, occupation, and social security number of the person conducting the transaction; "a summary description of the nature of the transaction"; "the type, amount, and denomination of currency involved"; "a description of any check involved in the transaction"; "the type of identification presented"; and "the identity of the reporting financial institution." *Id.* at 39 n.15.

The Court had "no difficulty" determining that these mandated disclosures were constitutional. *California Bankers*, 416 U.S. at 66. The Court explained that "corporations can claim no equality with individuals in the enjoyment of a right to privacy." *Id.* at 65 (quoting *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950)). And in the context of required busi-

ness disclosures, the Court explained, the "gist" of the Fourth Amendment's protection "is in the requirement * * * that the disclosure sought shall not be unreasonable." *Id.* at 67 (citation omitted). The Court determined that the "regulations [did] not impose unreasonable reporting requirements on the banks." *Ibid.* The Court observed that much of the information a bank had to report the bank "already possesse[d] or would acquire in its own interest." *Ibid.* "To the extent that the regulations * * * require the bank to obtain information from a customer simply because the Government wants it," the Court concluded, "the information is sufficiently described and limited in nature, and sufficiently related to a tenable congressional determination as the improper use of transactions of that type in interstate commerce, so as to withstand" Fourth Amendment scrutiny. *Ibid.*

Like the mandated disclosures under the Bank Secrecy Act, Section 41.49 delimits narrowly and precisely what information hotel operators must disclose, and even without the ordinance's collection requirements hotel operators would already possess much if not all of that information. As in *California Bankers*, Section 41.49's inspection requirement is also closely tailored to the governmental interests served by the ordinance. Accordingly, the constitutionality of Section 41.49 inspections follows from *California Bankers*.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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