No. S19G1491

In the Supreme Court of Georgia

PREMIER HEALTH CARE INVESTMENTS, LLC, *Appellant*
v.
UHS OF ANCHOR, *Appellee*.

On Appeal from the Georgia Court of Appeals,
Case No. A19A0425

Brief *Amicus Curiae* of the New Civil Liberties Alliance in Support of Neither Party

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INTEREST OF AMICUS

Amicus Curiae the New Civil Liberties Alliance is a nonprofit, nonpartisan organization devoted to defending civil liberties. As a public-interest law firm, NCLA was founded to challenge multiple constitutional defects in the modern administrative state through original litigation, *amicus curiae* briefs, and other means of advocacy.

The "civil liberties" of the organization's name include rights at least as old as the U.S. Constitution itself, such as jury trial, due process of law, the right to be tried in front of an impartial and independent judge, and the right to be subject only to penalties that are both Constitutional and have been promulgated by Congress. Yet these selfsame civil rights are also very contemporary—and in dire need of renewed vindication—precisely because administrative agencies have trampled them for so long.

NCLA aims to defend civil liberties—primarily by asserting constitutional constraints on the Administrative State. Although Americans still enjoy the shell of their Republic, there has developed within it a very different sort of government—a type, in fact, that the Constitution was designed to prevent. This unconstitutional state within the Constitution's United States and the State of Georgia is the focus of NCLA's concern.

This case is particularly important to NCLA. It provides an opportunity for this Court to fulfill its fundamental duty "to say what the law is" and denounce deference to agency interpretations of statutes and regulations. In doing so, NCLA believes the Court would honor its duty to protect the due process of law for all litigants and bolster the confidence of the people in the courts.

SUMMARY OF ARGUMENT

The Georgia Constitution and Code of Judicial Conduct require judges to exercise independent judgment and to refrain from bias when interpreting the law. These are foundational constitutional requirements for an independent judiciary. Moreover, the due process principles enshrined in the Georgia Constitution and the Fourteenth Amendment to the U.S. Constitution, as well as judicial canons, forbid judges from exercising or showing bias for or against a litigant when resolving disputes. These judicial duties are so axiomatic that they are seldom mentioned or relied upon in legal argument because even to suggest that a court might depart from its duty of independent judgment or display bias toward a litigant is disturbing.

Yet deference to agency statutory interpretations flouts these bedrock constitutional principles. Unfortunately, repeated citations and incantations of any legal precedent run the danger of producing uncritical and unthinking acceptance. The constitutional problems with the court-created deference doctrine discussed in this brief remain as acute as ever.

This *amicus curiae* brief focuses solely on the constitutional arguments for rejecting deference doctrines and reaffirming the judiciary's role to say what the law is. *Amicus curiae* takes no position on the other issues to be addressed on appeal or the outcome of the appeal.

ARGUMENT

Granting deference to agency interpretations of statutes or rules is inconsistent with both the state and federal constitutions for two reasons. First, judicial deference requires judges to abandon their duty of independent judgment in violation of the Georgia Constitution. Second, judicial deference runs afoul of due process guarantees and the judicial code of conduct when it commands judicial bias towards a litigant.

I. JUDICIAL DEFERENCE VIOLATES THE GEORGIA CONSTITUTION BY REQUIRING JUDGES TO ABANDON THEIR DUTY OF INDEPENDENT JUDGMENT

Judicial deference compels judges to abandon their duty of independent judgment. The Georgia Constitution established the judiciary as a separate and independent branch of government, with constitutional protections for judges' salary and limitations on their removal, in order to shield their independent judgement from the influence of the political branches. *See* Ga. Const. art. VI, § 7, ¶ V ("An incumbent's salary, allowance, or supplement shall not be decreased during the incumbent's term of office."); Ga. Const. art. VI, § 7, ¶ VII (enumerating the limited instances in which a judge may be removed or forced to retire). The First Canon of the Georgia Code of Judicial Conduct states: "[a]n *independent* and honorable judiciary is indispensable to justice in our society. Judges shall participate in establishing,

maintaining, and enforcing high standards of conduct and shall personally observe such standards of conduct so that the integrity and independence of the judiciary may be preserved." Ga. CJC Canon 1 (emphasis added). The Georgia Supreme Court has observed that "[t]he codes of judicial conduct adopted by the States serve to maintain the integrity of the judiciary and the rule of law, and should be construed and applied to further the preservation of the integrity and independence of the judiciary." *Mayor & Aldermen of City of Savannah v. Batson-Cook Co.*, 291 Ga. 114, 115, 728 S.E.2d 189, 191 (2012) (internal quotations and citations omitted).

In defiance of these principles, judicial deference commands Georgia judges to abandon their independence by giving controlling weight to an agency's opinion of what a statute means—not because of the persuasiveness of the agency's argument, but only because this administrative entity has addressed the interpretive question before the Court. *See Michigan v. EPA*, 135 S. Ct. 2699, 2712 (2015) (Thomas, J., concurring) ("'The judicial power … requires a court to exercise its independent judgment in interpreting and expounding upon the laws.' […] [Agency] deference precludes judges from exercising that judgment[.]") (quoting *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 119 (2015) (Thomas, J., concurring)).

This abandonment of judicial responsibility is not tolerated in any other context, and it should not be accepted by a truly independent judiciary. The Georgia

Code of Judicial Conduct's and the Georgia Constitution's mandate of judicial independence cannot be facilely displaced. Judicial deference allows a non-judicial entity to usurp the judiciary's power of interpretation and commands judges to "defer" to the legal pronouncements of a supposed "expert" body that is external to the judiciary. The Origin and Structure of Government Section of the Georgia Constitution provides for the separation of legislative, judicial, and executive power. Ga. Const. art. I, § 2, ¶ III. "The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others […]." *Id.* Affirming the separation of powers provision in its own constitution, the Arkansas Supreme Court recently rejected judicial deference to agency interpretations of statutes:

> Even more concerning is the risk of giving core judicial powers to executive agencies in violation of the constitutional separation of powers. *See* Ark. Const., art. 4, §§ 1–2. Indeed, the separation of powers doctrine is "a basic principle upon which our government is founded and should not be violated or abridged." *Protect Fayetteville v. City of Fayetteville*, 2019 Ark. 28, at 7, 566 S.W.3d 105, 109–110 (internal quotation omitted). The judicial branch has the "power and responsibility to interpret the legislative enactments." *Id.* And the executive branch has the "power and responsibility to enforce the laws as enacted and interpreted by the other two branches." *Id.* By giving deference to agencies' interpretations of statutes, the court effectively transfers the job of interpreting the law from the judiciary to the executive. This we cannot do.

Mary Katherine Myers, Widow of Michael Earl Myers and Administratrix of the Estate of Michael Earl Myers, Deceased, v. Yamato Kogyo Company, Ltd., et. al, 2020 Ark. 135, *2 (2020).

In the end, judicial deference is a command that courts abandon their duty of independent judgment and assign controlling weight to a non-judicial entity's interpretation of a statute. It is no different in principle than an instruction that courts must assign weight and defer to statutory interpretations announced by a congressional committee, a group of expert legal scholars, or the *Atlanta Journal-Constitution* editorial page. In each of these absurd scenarios, the courts similarly would be following another non-judicial entity's interpretation of a statute so long as it is not "clearly wrong", even if the court's own judgment would lead it to conclude that the statute means something else.

To be clear, a court can consider, among many other things, an agency's interpretation and give it weight according to its persuasiveness. *See, e.g.*, *Tetra Tech EC, Inc. v. Wisconsin Dep't of Revenue*, 914 N.W.2d 21, 53 (2018) (noting "administrative agencies can sometimes bring unique insights to the matters for which they are responsible" but that "does not mean we should defer to them"); *Myers*, 2020 Ark. at *3 (2020) ("An unambiguous statute will be interpreted based solely on the clear meaning of the text. But where ambiguity exists, the agency's interpretation will be one of our many tools used to provide guidance."). An agency is entitled to

have its views heard and considered by the court, just as any other litigant or *amicus*, and a court may and should consider the "unique insights" an agency may bring on account of its expertise and experience. *Tetra Tech*, 914 N.W.2d at 53 (2018). "'[D]ue weight' means 'respectful, appropriate consideration to the agency's views' while the court exercises its independent judgment in deciding questions of law"; due weight "is a matter of persuasion, not deference." *Id.*

Yet under the standard of review advanced by Appellant here, this Court should afford "judicial deference … [to] the agency's interpretation of statutes it is charged with enforcing or administering and the agency's interpretation of rules and regulations it has enacted to fulfill the function given it by the legislative branch." *Pruitt Corp. v. Ga. Dept. of Cmty. Health*, 284 Ga. 158, 159 (2008); Appellant Brief at 10. Recognizing an argument's persuasive weight does not compromise a court's duty of independent judgment. But deference requires far more than respectful consideration of an agency's views. Deference dictates courts to give weight to those views simply because the agency espouses them, and it instructs courts to subordinate their own judgments to the views preferred by the agency. The judicial duty of independent judgment allows (indeed, requires) courts to consider an agency's views and to adopt them *when persuasive*, but it forbids a regime in which courts "defer" or give automatic and controlling weight to a non-judicial entity's interpretation of

statutory language—particularly when that interpretation does not accord with the court's sense of the best interpretation.

II. JUDICIAL DEFERENCE VIOLATES THE DUE PROCESS CLAUSE BY REQUIRING JUDGES TO SHOW BIAS IN FAVOR OF AGENCIES

A related, serious problem with judicial deference is that it requires the judiciary to display systematic bias in favor of agencies whenever they appear as litigants. *See generally* Philip Hamburger, Chevron *Bias*, 84 Geo. Wash. L. Rev. 1187 (2016).[2] It is bad enough that a court might abandon its duty of independent judgment by "deferring" to a non-judicial entity's interpretation of a statute. But for a court to abandon its independent judgment in a manner that favors an actual *litigant* before the court violates due process is inherently objectionable. The U.S. Supreme Court held that even the *appearance* of potential bias toward a litigant violates the Due Process Clause. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 886–87 (2009) (applying the objective standards of the Due Process Clause of the Fourteenth Amendment may require recusal even when there is no actual bias). And the Georgia Code of Judicial Conduct mandates that a judge "shall perform the duties of judicial office impartially[.]" Ga. Code Jud. Conduct Canon 2.

[2] Hamburger explains that "the Constitution prohibits judges from denying the due process of law, and judges therefore cannot engage in systematic bias in favor of the government. Nonetheless, judges defer to administrative interpretation, thus often engaging in systematic bias for the government and against other parties." *Id.* at 1250.

Georgia judges take an oath to "administer justice without respect to person" and to "faithfully and impartially discharge and perform all the duties incumbent on me," and judges take great pride in meeting these commitments. Ga. Code Ann. § 15-6-6. Nonetheless, judicial deference doctrines insidiously compel otherwise scrupulous judges sworn to administer justice impartially to remove the judicial blindfold and tip the scales in favor of the government's position. This practice must stop.

Judicial deference institutionalizes a regime of systematic judicial bias, by requiring courts to "defer" to agency litigants whenever a disputed question of statutory interpretation arises. Rather than exercise their own judgment about what the law is, deference doctrines instruct judges to grant "controlling weight" to the assertions of one of the litigants before them "unless it is plainly erroneous or inconsistent with the [rule]." *The Atlanta Journal & Constitution v. Babush,* 257 Ga. 790, 792, 364 S.E.2d 560 (1988); *but see City of Guyton v. Barrow*, 305 Ga. 799, 802, 828 S.E.2d 366, 369 (2019) (clarifying that Georgia courts "defer to an agency's interpretation only when we are unable to determine the meaning of the legal text at issue").

Imagine a judge who took a step further and openly admitted to accepting a government-litigant's position by default. And, in doing so, this judge automatically rejected any competing argument offered by the non-government litigant unless the

government's position was clearly wrong. This is perilously close to what judges do whenever they apply deference doctrines in cases where an agency appears as a litigant. The government litigant wins simply by showing that its preferred interpretation of the statute is not "plainly erroneous", while the opposing litigant gets no such latitude from the court and must show that the government's view is not merely wrong, but clearly so. An initial finding that the legal text is ambiguous or subject to multiple interpretations does not change this calculus. *But cf.*, *City of Guyton*, 305 Ga.at 804, 828 S.E.2d at 370 ("Because the rule is not ambiguous, we do not reach the question of whether deference is appropriate in the case of true ambiguity.")

Even when the government is not a litigant, but appears as an amicus, deferring to the government's position still denies due process to whichever litigant stands opposed to the government's position. Rather than have the opportunity to convince an impartial magistrate of the rightness of the litigant's cause, that litigant is forced to try to overcome the government's thumb on the scale for her opponent. Such favoritism may happen even when the government's position is created in the course of that very litigation. *See, e.g., United Student Aid Funds, Inc. v. Bible*, 136 S. Ct. 1607, 1608 (2016) (Thomas, J., dissenting from the denial of certiorari) (criticizing the Seventh Circuit for deferring under *Auer* to an agency's interpretation of its rules that was set forth in an amicus brief); *see also Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1734 (2018) (holding that agency and

judicial proceedings are required to provide "neutral and respectful consideration" of a litigant's views free from hostility or bias); *id.* at 1734 (Kagan, J., concurring) (agreeing that the Constitution forbids agency or judicial proceedings that are "infected by . . . bias").

III. OTHER STATES ARE ABANDONING JUDICIAL DEFERENCE DOCTRINES OVER INDEPENDENCE AND BIAS CONCERNS

There is a growing trend among states rejecting deference to an administrative agency's interpretation of statutes and rules in favor of an impartial judiciary and separation of powers. In 2018, the people of Florida amended their state constitution to provide a guarantee that when "interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo." Fla. Const. art. V, § 21. Other state supreme courts have taken up the constitutional critiques of the court-created doctrine and rejected judicial deference.

Mississippi courts once reviewed agency interpretations of a statute as "a matter of law that is reviewed *de novo*, but with great deference to the agency's interpretation." *Miss. Methodist Hosp. & Rehab Ctr., Inc. v. Miss. Div. of Medicaid*, 21 So.3d 600, 606 ¶ 15 (Miss. 2009), *abrogated by King v. Mississippi Military Dep't*, 245 So.3d 404 (Miss. 2018). The court explained that the "duty of deference derives from our realization that the everyday experience of the administrative agency gives

it familiarity with the particularities and nuances of the problems committed to its care which no court can hope to replicate." *Id.*; *but see Baldwin v. United States*, 2020 WL 871675, 2020 U.S. LEXIS 1359, 140 S. Ct. 690, 692–93 (2020) (Thomas, J., dissenting from denial of certiorari) ("In the past, I have left open the possibility that 'there is some unique historical justification for deferring to federal agencies.' […] It now appears to me that there is no such special justification and that [judicial deference] is inconsistent with accepted principles of statutory interpretation from the first century of the Republic.") (quoting *Michigan v. EPA*, 135 S. Ct. at 2712). But in 2018, the Mississippi Supreme Court rejected this rationale and "abandon[ed] the old standard of giving deference to agency interpretations of statutes." *King*, 245 So.3d at 408 ("[I]n deciding no longer to give deference to agency interpretations, we step fully into the role the Constitution of 1890 provides for the courts and the courts alone, to interpret statutes.").

Wisconsin also once showed "great weight deference" to agency statutory interpretations. That practice was originally premised on similar reasoning supporting deference in Mississippi courts. But Wisconsin has now reversed course as well. *See Tetra Tech*, 914 N.W.2d at 33–34 (tracing the roots of its deference doctrine to "language of persuasion" and an "acknowledge[ment] that a change in an ancient practice could have unacceptably disruptive consequences."). Where Wisconsin courts "once treated an agency's interpretation of a statute as evidence of its meaning [],"

the "reach of the deference principle" first expanded to "something the courts could do in interpreting and applying a statute, but were not required to do." *Id.* at 36, 37. Later, a 1995 decision from the Wisconsin Supreme Court "made the deference doctrine a systematic requirement upon satisfaction of its preconditions" and "[i]t accomplished this feat by promoting deference from a canon of construction to a standard of review." *Id.* The *Tetra Tech* court explained this was an important step in the evolution of the deference doctrine:

> Enshrining this [deference] doctrine as a standard of review bakes deference into the structure of our analysis as a controlling principle. By the time we reach the questions of law we are supposed to review, that structure leaves us with no choice but to defer if the preconditions are met.

Id. at 38.

While Wisconsin courts recognized this deference doctrine "allowed the executive branch of government to authoritatively decide questions of law in specific cases brought to our courts for resolution," the court never "determine[d] whether this was consistent with the allocation of governmental power amongst the three branches." *Id.* at 40. After concluding that its "deference doctrine cedes to administrative agencies some of our exclusive judicial power[,]" it "necessarily follow[ed] that when [an] agency comes to [the court] as a party in a case, it—not the court—controls some part of the litigation." *Id.* at 49. "When a court defers to the governmental party, simply because it is the government, the opposing party is unlikely to

be mollified with assurances that the court bears him no personal animus as it does so." *Id.*

The *Tetra Tech* court recognized Wisconsin's deference doctrine "deprive[d] the non-governmental party of an independent and impartial tribunal," while granting the "rule of decision" to an "administrative agency [that] has an obvious interest in the outcome of a case to which it is a party." *Id.* at 50. The court concluded that "deference threatens the most elemental aspect of a fair trial"—a fair and impartial decisionmaker. *Id.* By rejecting the deference doctrine, the court "merely [] join[ed] with the ancients in recognizing that no one can be impartial in his own case." *Id.*

A Georgia native recently underscored the rejection of this rationale, concluding that judicial deference "differs from historical practice in at least four ways." *Baldwin*, 140 S. Ct. at 694 (Thomas, J.).

> First, it requires deference regardless of whether the interpretation began around the time of the statute's enactment (and thus might reflect the statute's original meaning). Second, it requires deference regardless of whether an agency has changed its position. Third, it requires deference regardless of whether the agency's interpretation has the sanction of long practice. And fourth, it applies in actions in which courts historically have interpreted statutes independently.

Id.

In short, no rationale can support a practice that weights the scales in favor of a *government* litigant—the most powerful of parties—and that commands systematic bias in favor of the government's preferred interpretations of statutes. Whenever

deference is applied in a case in which the government is a party, the courts deny due process to the non-governmental litigant by showing favoritism to the government's interpretation of the law.

IV. THE COURT SHOULD REJECT JUDICIAL DEFERENCE NOTWITHSTANDING *STARE DECISIS* CONCERNS

This Court has never addressed these constitutional objections to judicial deference.[3] So *stare decisis* presents no obstacle to addressing these arguments, since judicial precedents do not resolve issues or arguments that they never raised or discussed. *See Waters v. Churchill*, 511 U.S. 661, 678 (1994) (plurality opinion) ("Cases cannot be read as foreclosing an argument that they never dealt with.").[2] Moreover, as Justice Kavanaugh noted in his recent concurrence addressing the "muddle" of the United States Supreme Court's application of *stare decisis*, "[t]he Court's precedents . . . pronouncing the Court's own interpretive methods and principles typically do not fall within [the] category of stringent statutory stare decisis." *Ramos v. Louisiana*, 2020 WL 1906545 (April 20, 2020) (Kavanaugh, J., concurring in part) (slip op. at 7, 5 n.2) (citing *Leegin Creative Leather Products, Inc. v. PSKS,*

[3] *Amicus curiae* is unaware of any cases addressing these precise constitutional objections. This Court granted certiorari in *City of Guyton v. Barrow* "to address questions of deference to agency." 305 Ga. at 801, 828 S.E.2d at 368. However, because the Court found the "rule [wa]s not ambiguous," it did "not reach the question of whether deference is appropriate in the case of true ambiguity." 305 Ga. at 804, 828 S.E.2d at 370.

Inc., 551 U. S. 877, 899–907 (2007); *Kisor v. Wilkie*, 139 S. Ct. 2400, 2424–2449 (2019) (Gorsuch, J., concurring in judgment) (slip op. at 34–36).

But assuming *arguendo* that *stare decisis* would apply to agency deference here, this Court should reject it. Confronted with a question of *stare decisis*, this Court considers "the age of precedent, the reliance interests at stake, the workability of the decision, and, most importantly, the soundness of its reasoning. The soundness of a precedent's reasoning is the most important factor." *Olevik v. State*, 302 Ga. 228, 245, 806 S.E.2d 505, 519 (2017). While Georgia affords respect to the principles of *stare decisis*, this Court is not bound by the doctrine when: 1) the precedent is recently imported from federal law; 2) the reliance interests at stake include fundamental elements of the rule of law, such as an impartial and independent judiciary; and 3) the soundness of the precedent's reasoning has been questioned by lower courts in this state, critiqued by Justices of the U.S. Supreme Court, and rejected by sister supreme courts when confronted with these constitutional objections to deference. Indeed, "[a] wrong cannot be sanctioned by age and acquiescence and transformed into a virtue. Indifference and lack of vigilance have lost some of the dearest rights to the people, but they can always be regained by energy and persistence." *Terrell v. Middleton*, 187 S.W. 367, 373 (Tex. Civ. App. 1916), *writ denied*, 108 Tex. 14, 191 S.W. 1138 (1917); *see also Driscoll v. Burlington-Bristol Bridge Co.*,

8 N.J. 433, 494–95, 86 A.2d 201, 231 (1952) ("…we are not impressed by the plaintiffs' argument that the practice is to the contrary, for if that is the practice, it should be terminated, not perpetuated.").*Stare decisis* therefore presents no obstacle to analyzing these constitutional objections and declaring judicial deference unconstitutional. And in all events, a court's ultimate duty is to uphold the Constitution—even if that comes at the expense of judicial opinions that never considered the constitutional problems with what they were doing. *See Graves v. New York*, 306 U.S. 466, 491–92 (1939) (Frankfurter, J., concurring) ("[T]he ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it."). This approach makes particularly good sense where, as here, lower courts have openly questioned the deference doctrine's viability. *See UHS of Anchor, L.P. v. Dep't of Cmty. Health*, 351 Ga. App. 29, 33–34, 830 S.E.2d 413, 418 (2019) (observing that while Georgia courts afford deference to agency interpretations "for the time being[,]" "[s]ome judges of th[at] Court believe the time has come to reconsider such deference.").

Another temptation this Court should avoid is to table the constitutional questions surrounding judicial deference through the use of its tools of statutory construction. *See City of Guyton*, 305 Ga. at 804, 828 S.E.2d at 370 ("After using all tools of construction, there are few statutes or regulations that are truly ambigu-

ous."). But the constitutional infirmities of the deference doctrine will haunt the judiciary so long as the doctrine and arguably "ambiguous text" lurk in the case law. This case presents an opportunity to eliminate that lurking threat. Indeed, because of the courts' duty to say what the law is, it must opine on the doctrine's failings. *See id.* at 799 ("At the core of the judicial power is the authority and the responsibility to interpret legal text."). *Amicus curiae* respectfully asks the Court to refuse to grant deference to the agency's interpretation of the statutes or rules at issue and to repudiate judicial deference on constitutional grounds in its opinion.

The Court should make the above declaration—if only to avoid the potential hazard judicial deference presents to lower courts in Georgia. The Code of Judicial Conduct requires a judge to "disqualify themselves in any proceeding in which their *impartiality* might reasonably be questioned, or in which: the judge has a personal bias or prejudice concerning a party[.]" Ga. Code Jud. Conduct Rule 2.11 (A)(1). Though judicial deference involves an institutionally imposed bias rather than personal prejudice, the resulting partiality is inescapable, because the doctrine requires judges to systematically favor an agency's statutory interpretations over those offered by opposing litigants. And judges cannot excuse this bias by invoking their duty to follow precedent, for there is no "superior-orders defense" available in the Code of Judicial Conduct. These fundamental constitutional questions will continue to plague punctilious judges until this Court addresses them.

Deference to an administrative agency's interpretations of statutes and regulations puts lower court judges in an impossible situation; it is an assault on their duty of independence, their oath, and the unbiased due process of law that courts owe to each and every litigant that appears before them. It compels them to betray the core responsibilities of judicial office. It is long past time for conscientious judges to call out the ways in which this "deference" has misled the judiciary—and to advocate a return to the judicial independence and unbiased judgment that Georgia's Constitution demands.

CONCLUSION

The Court should declare judicial deference unconstitutional in its opinion.

Date: April 27, 2020

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I certify that an electronic copy of the foregoing Brief of *Amicus Curiae* New Civil Liberties Alliance was filed using the Court's electronic filing system, and .pdf copies of the brief have been served via email on counsel of record, as follows:

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