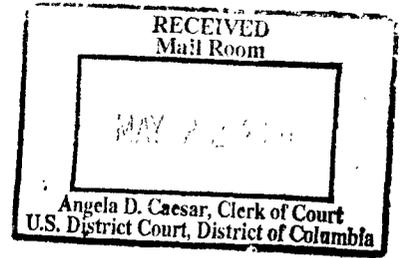


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant.

Case No. 17-cr-00232 (EGS)

Leave to file GRANTED

Erin J. Sullivan
United States District Judge

9-28-2020

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

COME NOW the undersigned and pursuant to this Court’s Minute Order of May 19, 2020 and LCv7(o) of the Rules of the United States District Court for the District of Columbia, move the Court for an order granting leave to file a Brief *Amici Curiae* of Separation of Powers Scholars Laurence H. Tribe, Philip Bobbitt, Lee C. Bollinger, Lea Brilmayer, Erwin Chemerinsky, George T. Conway III, Michael C. Dorf, Bruce Fein, Joshua A. Geltzer, Jeannie Suk Gersen, David M. Golove, Oona A. Hathaway, Harold Hongju Koh, Martha Minow, Richard W. Painter, Robert Post, Trevor Potter, Judith Resnik, Geoffrey R. Stone, and David A. Strauss, Supporting Denial of the Government’s Motion to Dismiss.¹

Pursuant to Local Rule 7(o)(2), movants state that counsel for Defendant Michael Flynn and for the United States were contacted on May 21, 2020 and asked for their positions as to the filing of this brief. They have not responded as of the date of this filing. Counsel for Interested

¹ Pursuant to Local Rule 7(o)(5) and FRAP 29(a)(4), counsel state that no party’s counsel authored the brief in whole or in part; no party or a party’s counsel contributed money that was intended to fund preparing or submitting the brief; and no person contributed money that was intended to fund preparing or submitting the brief.

Party Covington & Burling LLP responded that the firm is not a party to the case and does not consider itself to have any role in consenting to or opposing amicus filings.

Amici curiae share a strong academic and professional interest in the separation of powers and the rule of law. As discussed further below, *amici* have extensively studied, taught, written about, and litigated issues regarding the separation of powers, judicial independence, and the rule of law. *Amici* include some of the nation's most accomplished constitutional scholars. They are therefore well situated to assist the Court with regard to issues that the parties to this case – the government and Michael Flynn – will not address. Movants' position is not adequately represented by either party to this proceeding.

Amici respond in their proposed brief to the argument by some that the Executive Branch's prosecutorial discretion and the separation of powers compel this Court to grant the government's motion to dismiss. *Amici* explain that such suggestions are profoundly misguided. If anything, the separation of powers militates in the opposite direction and protects this Court's authority to complete the resolution of this case, free from the interference of the Executive Branch. By denying the government's motion, this Court would not be invading the prosecutorial discretion of the Executive Branch but rather ensuring the independence and integrity of the judiciary, which are fundamental values safeguarded by the separation of powers.

This case does not involve a decision by the Executive Branch simply to "drop" a prosecution. The prosecutors brought this case against Mr. Flynn in November 2017 and won it. They secured two guilty pleas and made their sentencing recommendations in the form of two sentencing memoranda. All that remains is for this Court to decide what sentence to impose,² and

² Although Mr. Flynn has sought to withdraw his plea of guilty, the Court has not resolved that request, and the government's motion to dismiss does not depend on the motion for withdrawal of the plea. Rather, the government seeks to dismiss the prosecution entirely.

sentencing is a core judicial (not executive) power. In fact, this Court was fully prepared to sentence Mr. Flynn on December 18, 2018, until he requested a continuance after this Court explained to him its usual practice of postponing sentencing until a defendant's cooperation with prosecutors is complete.

Where (as here) the Executive Branch has formally commenced a criminal proceeding, secured a guilty plea, and filed its sentencing recommendation, the judiciary acquires an independent stake in the matter. Both this Court and Judge Contreras held extensive colloquies with Mr. Flynn, ensuring that his guilty pleas were knowing, adequately counseled, fully voluntary, and properly predicated. This Court has already held a sentencing proceeding. It has made a significant commitment of the Article III Judicial Power in this proceeding. Under the separation of powers, courts do not simply do the bidding of the Executive Branch. Rather, they have a constitutionally established interest in their own integrity and independence, and a constitutional *duty* to protect that interest.

The government's motion improperly seeks to make this Court complicit in the Executive Branch's virtually unheard-of about-face in the Flynn prosecution, by asking this Court to grant its motion under Fed. R. Crim. P. 48(a) and find that dismissal is in the "public interest." *Rinaldi v. United States*, 434 U.S. 22, 29, n. 15 (1977) (citing *United States v. Ammidown*, 497 F.2d 615, 620 (D.C. Cir. 1973)). In addition, the government seeks to nullify this Court's determination formally accepting Mr. Flynn's guilty plea. The motion, in effect, seeks to reduce this Article III Court to a subordinate of the Article II Department of Justice, treating the federal judiciary as though it were an agency located on the Executive Branch organization chart headed by the President.

Neither the government nor Mr. Flynn can point to any case in which the Executive Branch has moved to dismiss a prosecution this late in the day, after a guilty plea has been secured (let alone two guilty pleas) and a sentencing proceeding has already been commenced. The absence of precedent is telling; it confirms the constitutional defect in the government's motion.

The sentencing phase of a criminal proceeding is uniquely within this Court's purview. As the D.C. Circuit explained, in a decision that has been repeatedly mischaracterized by Mr. Flynn and his supporters, "the Executive's traditional power over *charging decisions*" exists simultaneously with "the Judiciary's traditional authority over *sentencing decisions*." *United States v. Fokker Services, B.V.*, 818 F.3d 733, 746 (D.C. Cir. 2016) (emphasis added). By recognizing the court's role in the sentencing context, which is part of the judiciary's authority protected by the separation of powers, *Fokker Services* (which involved a deferred prosecution agreement rather than a case in which a guilty plea had already been entered) undermines rather than supports the government's motion.

The separation of powers protects this Court's authority to complete the resolution of this case, free from the interference of the Executive Branch. As Alexander Hamilton recognized, "[t]he complete independence of the courts of justice is peculiarly essential in a limited Constitution." *The Federalist No. 78*, at 466.

Amici are well situated to assist the Court:

Laurence H. Tribe is the Carl M. Loeb University Professor at Harvard University and Professor of Constitutional Law at Harvard Law School, where he has taught since 1968 and where, in 2016, he gave the keynote address on separation of powers. The title "University Professor" is Harvard's highest academic honor, awarded to just a handful of professors at any given time and to just 72 professors in all of Harvard University's history. Professor Tribe helped

draft the constitutions of South Africa, the Czech Republic, and the Marshall Islands. He has written more than 115 books and articles, including the treatise, *American Constitutional Law*, cited more than any other legal text since 1950. Former U.S. Solicitor General Erwin Griswold wrote: “[N]o book, and no lawyer not on the [Supreme] Court, has ever had a greater influence on the development of American constitutional law,” and the *Northwestern Law Review* opined that no one else “in American history has... simultaneously achieved Tribe’s preeminence . . . as a practitioner and . . . scholar of constitutional law.” The *New York Times* has described him as “arguably the most famous constitutional scholar and Supreme Court practitioner in the country.” He was appointed in 2010 by President Obama and Attorney General Holder to serve as the first Senior Counselor for Access to Justice. He has testified before the U.S. Congress approximately 47 times and has argued 36 cases before the U.S. Supreme Court, as well as dozens of cases before many other courts, prevailing in approximately three-fifths of those cases. He has received 11 honorary degrees and has been elected to the American Academy of Arts and Sciences and to the American Philosophical Society.

Philip Bobbitt is Herbert Wechsler Professor of Federal Jurisprudence and Director of the Center for National Security at the Columbia Law School. After clerking for the Hon. Henry J. Friendly, he taught for many years at the University of Texas Law School. He has served in several administrations, both Republican and Democratic, as Associate Counsel to the President, Legal Counsel to the Senate Iran-Contra Committee, the Counselor on International Law at the State Department, Strategist in Residence in the Office of the Secretary to the Navy, and Director for Intelligence, Senior Director for Critical Infrastructure, and Senior Director for Strategic Planning at the National Security Council. He is the author of ten books including *Constitutional Fate: Theory of the Constitution* and *The Shield of Achilles: War, Peace and the Course of History*. He

is a member of the American Academy of Arts & Sciences and a Life Member of the American Law Institute.

Lee C. Bollinger became Columbia University's 19th president in 2002 and is the longest serving Ivy League president. Bollinger is Columbia's first Seth Low Professor of the University, a member of the Law School faculty, and one of the nation's foremost First Amendment scholars. His latest book, *The Free Speech Century*, co-edited with Geoffrey R. Stone, was published in the fall of 2018 by Oxford University Press. Bollinger is a director of Graham Holdings Company (formerly The Washington Post Company) and serves as a member of the Pulitzer Prize Board. From 2007 to 2012, he was a director of the Federal Reserve Bank of New York, where he also served as Chair from 2010 to 2012. From 1996 to 2002, Bollinger was the President of the University of Michigan. He led the university's historic litigation in *Grutter v. Bollinger* and *Gratz v. Bollinger*, Supreme Court decisions that upheld and clarified the importance of diversity as a compelling justification for affirmative action in higher education.

Lea Brilmayer is the Howard Holtzmann Professor of International Law at Yale Law School. She is the country's foremost authority on conflict of laws and has written eight books and dozens of articles on that subject, as well as on American civil procedure and federal jurisdiction, international tribunals, international jurisprudence, U.S. Constitutional law, and contracts (her favorite course to teach). She has authored numerous briefs on cases in a variety of domestic and international tribunals, including the U.S. Supreme Court and the international Permanent Court of Arbitration. Her most recent book is the forthcoming *Contracts: The Five Essential Concepts*.

Erwin Chemerinsky became the 13th Dean of Berkeley Law on July 1, 2017, when he joined the faculty as the Jesse H. Choper Distinguished Professor of Law. Prior to assuming this

position, from 2008-2017, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at University of California, Irvine School of Law, with a joint appointment in Political Science. Before that he was the Alston and Bird Professor of Law and Political Science at Duke University from 2004-2008, and from 1983-2004 was a professor at the University of Southern California Law School, including as the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science. He also has taught at DePaul College of Law and UCLA Law School. He is the author of twelve books, including leading casebooks and treatises about constitutional law, criminal procedure, and federal jurisdiction. His most recent books are, *We the People: A Progressive Reading of the Constitution for the Twenty-First Century* (Picador Macmillan) published in November 2018, and two books published by Yale University Press in 2017, *Closing the Courthouse Doors: How Your Constitutional Rights Became Unenforceable* and *Free Speech on Campus* (with Howard Gillman). He also is the author of more than 200 law review articles. He is a contributing writer for the Opinion section of the Los Angeles Times, and writes regular columns for the Sacramento Bee, the ABA Journal and the Daily Journal, and frequent op-eds in newspapers across the country. He frequently argues appellate cases, including in the United States Supreme Court. In 2016, he was named a fellow of the American Academy of Arts and Sciences. In 2017, National Jurist magazine again named Dean Chemerinsky as the most influential person in legal education in the United States.

George T. Conway III was a litigator in private practice at a major law firm in New York City for over three decades. He has litigated and drafted briefs on a variety of constitutional matters in federal and state courts, including separation-of-powers questions before the Supreme Court of the United States. He is a founder of Checks & Balances, a group of conservative and libertarian

lawyers devoted to the defense of the rule of law and is a member of the Board of Visitors of the Federalist Society for Law & Public Policy Studies. He is also a contributing columnist for *The Washington Post*, and has written extensively for the *Post* and other publications on constitutional questions, including the authority of the executive and the role of the judiciary.

Michael C. Dorf is the Robert S. Stevens Professor of Law at Cornell Law School, where he teaches constitutional law, federal courts, and related subjects. He has authored or co-authored six books and over one hundred scholarly articles and essays for law journals and peer-reviewed science and social science journals. He also frequently writes for the general public. In addition to occasional contributions to *The New York Times*, *USA Today*, *CNN.com*, *The Los Angeles Times*, and other wide-circulation publications, Professor Dorf has been writing a bi-weekly column since 2000 and publishes a popular blog, *Dorf on Law*. Dorf received his undergraduate and law degrees from Harvard. He served as a law clerk for Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit and then for Justice Anthony M. Kennedy of the U.S. Supreme Court. He maintains an active pro bono practice mostly consisting of writing Supreme Court briefs. Before joining the Cornell faculty, Professor Dorf taught at Rutgers-Camden Law School and at Columbia Law School, where he was Vice Dean and the Isidor & Seville Sulzbacher Professor of Law.

Bruce Fein was associate deputy attorney general and general counsel of the Federal Communications Commission under President Reagan. He served as research director for House Republicans on the Joint Congressional Committee on Covert Arms Sales to Iran. Mr. Fein has testified on scores of occasions before the House and Senate Judiciary and Foreign Relations Committees. He is author of *Constitutional Peril: The Life and Death Struggle for Our*

Constitution and Democracy and American Empire Before the Fall. He is founding partner of Fein & DelValle, PLLC.

Joshua A. Geltzer serves as the founding Executive Director of the Institute for Constitutional Advocacy and Protection as well as Visiting Professor of Law at Georgetown University Law Center. He is involved in litigating major separation-of-powers issues and also teaches about the separation of powers in multiple contexts, including that of national security law. He is an International Security Program Fellow at New America and an Executive Editor at *Just Security*. Geltzer served from 2015 to 2017 as Senior Director for Counterterrorism at the National Security Council staff, having served previously as Deputy Legal Advisor to the National Security Council and as Counsel to the Assistant Attorney General for National Security at the U.S. Department of Justice. He is the author of *US Counter-Terrorism Strategy and al-Qaeda: Signalling and the Terrorist World-View*, published by Routledge; and his writings have appeared in a wide range of scholarly and popular publications including *The Atlantic*, the *Berkeley Journal of International Law*, *Defense One*, *Foreign Policy*, the *Journal of Constitutional Law*, the *New York Times*, *Parameters*, *Politico*, *Studies in Conflict & Terrorism*, and the *Washington Post*. He has testified before Congress on multiple occasions and has appeared on BBC, Bloomberg TV, CBS, CNN, C-SPAN, Fox News, MSNBC, National Public Radio, and more. Geltzer is a life member of the Council on Foreign Relations, a member of the American Law Institute, and a member of the American Bar Association's Rule of Law Initiative board.

Jeannie Suk Gersen is the John H. Watson, Jr. Professor of Law at Harvard Law School, where she teaches Constitutional Law, Criminal Law, and Criminal Adjudication. The author of three books and many scholarly articles, Professor Gersen also writes for the general public as a Contributing Writer to the *New Yorker*. Her honors include the Guggenheim Fellowship, the Law

and Society Association's Herbert Jacob Book Prize, the National Asian Pacific American Bar Association's Best Under 40 Award, and Harvard Law School's Sacks-Freund Teaching Award. She clerked for Judge Harry T. Edwards of the United States Court of Appeals for the D.C. Circuit and for Justice David H. Souter of the Supreme Court of the United States, and then served as an Assistant District Attorney at the Manhattan District Attorney's Office. She has testified before congressional committees in the House and the Senate, and is an elected member of the American Law Institute.

David M. Golove is the Hiller Family Foundation Professor of Law at New York University School of Law, where he has been teaching since the year 2000. He teaches Constitutional Law and Federal Courts, as well as courses in constitutional history and foreign relations law, and has written extensively in these areas, including (with Bruce Ackerman), *Is NAFTA Constitutional?* (Harvard University Press 1995) and (with Daniel Hulsebosch), *A Civilized Nation: The Early American Constitution, the Law of Nations, and the Pursuit of International Recognition*, 85 NYU L. Rev. 932 (2010). Most of his research and writing focuses on the separation of powers and the historical role of the courts, especially in delicate disputes like those involving national security and foreign affairs.

Oona A. Hathaway is Gerard C. and Bernice Latrobe Smith Professor of International Law and Counselor to the Dean at Yale Law School and Professor of Political Science at the Yale University Department of Political Science. She teaches a number of topics, including Constitutional Law, Intelligence Law, and Foreign Relations Law, and she has written extensively on separation of powers issues. From 2014 until 2015, she served in the Office of the General Counsel of the Department of Defense as Special Counsel for National Security Law. Since 2005, she has served on the Advisory Committee on International Law for the Legal Adviser, U.S.

Department of State. She is a member of the American Society of International Law (Vice President (2018-2020); Strategic Initiatives Committee Chair (2018-2020); Judicial Outreach Committee (2019-)), the Council on Foreign Relations (since 2010), the American Law Institute (since 2017), the Board of Editors, Yale Journal of International Law (since 2009), and the Board of Editors, J. of International Law & International Relations (since 2006). She is a Reviewer for International Organization, International Studies Quarterly, Journal of Conflict Resolution, Journal of Peace Research, Human Rights Quarterly, Oxford University Press, Princeton University Press, Yale University Press.

Harold Hongju Koh is Sterling Professor of International Law at Yale Law School, where he served as Dean from 2004-09. He has served as Assistant Secretary of State for Democracy, Human Rights and Labor (1998-2001) and Legal Adviser (2009-13) of the U.S. Department of State, as well as Attorney-Adviser in the Office of Legal Counsel, U.S. Department of Justice (1983-85). He is the author of numerous articles and books on separation of powers issues, has testified frequently before Congress on such topics, and has appeared as counsel on such matters in numerous courts, most recently as co-Director of Yale Law School's Peter Gruber Rule of Law Clinic. He has been elected to the American Academy of Arts and Sciences and the American Philosophical Society.

Martha Minow is the 300th Anniversary University Professor at Harvard University. Since 1981, she has taught at Harvard Law School, where she was previously the Carter Professor of General Jurisprudence and served as Dean from 2009 to 2017. Her honors include the Sargent Shriver Equal Justice Award (2016); the Joseph B. and Toby Gittler Prize, Brandeis University (2016); nine honorary degrees (in law, education, and humane letters); the Gold Medal for Outstanding Contribution to Public Discourse, awarded by the College Historical Society of

Trinity College, Dublin; and the Sacks-Freund Teaching Award, awarded by the Harvard Law School graduating class. She served for eight years as Vice-Chair of the Legal Services Corporation, the bipartisan, government-sponsored organization that provides civil legal assistance to low-income Americans. She also previously served on the board of the American Bar Foundation. After completing her undergraduate studies at the University of Michigan, Minow received a master's degree in education from Harvard and her law degree from Yale. She clerked for Judge David Bazelon of the United States Court of Appeals for the D.C. Circuit and then for Justice Thurgood Marshall of the Supreme Court of the United States.

Richard W. Painter is the S. Walter Richey Professor of Corporate Law at the University of Minnesota and was the chief White House ethics lawyer under President George W. Bush from 2005 to 2007. He is a member of the American Law Institute (ALI) and associate reporter for the ALI Principles of Government Ethics. Professor Painter is the author of many law review articles and books on ethics in banking, in the legal profession and in government, including *Getting the Government America Deserves: How Ethics Reform Can Make a Difference* (Oxford University Press 2009) and *Professional and Personal Responsibilities of the Lawyer* (with the late Judge John T. Noonan, Jr., USCA 9) (Foundation Press, 3rd ed. 2011). He received his B.A. in history from Harvard University and his J.D. from Yale University.

Robert Post is Sterling Professor of Law at Yale Law School. He served as the School's 16th dean from 2009 until 2017. Before coming to Yale, he taught at the University of California at Berkeley School of Law. He specializes in constitutional law, with a particular emphasis on the First Amendment. He is also a legal historian who is currently writing Volume X of the Oliver Wendell Holmes Devise History of the Supreme Court of the United States, which will cover the period 1921-30 when William Howard Taft was Chief Justice. Post has written and edited

numerous books, including *Citizens Divided: A Constitutional Theory of Campaign Finance Reform* (2014), which was originally delivered as the Tanner Lectures at Harvard in 2013; *Democracy, Expertise, Academic Freedom: A First Amendment Jurisprudence for the Modern State* (2012), which was originally delivered as the Rosenthal Lectures at Northwestern University; *For the Common Good: Principles of American Academic Freedom* (with Matthew M. Finkin, 2009), which has become the standard reference for the meaning of academic freedom in the United States; and *Prejudicial Appearances: The Logic of American Antidiscrimination Law* (2001), which was original delivered as the Brennan Lectures at Berkeley. Professor Post publishes regularly in legal journals and other publications; exemplary articles and chapters include “Data Privacy and Dignitary Privacy: Google Spain, The Right to be Forgotten, and the Construction of the Public Sphere” (*Duke Law Journal*, 2018); “The Politics of Religion: Democracy and the Conscience Wars,” in *The Conscience Wars: Rethinking the Balance Between Religion, Identity, and Equality* (Susanna Mancini and Michel Rosenfeld, eds., Cambridge University Press 2018); “Theorizing Disagreement: Reconceiving the Relationship Between Law and Politics” (*California Law Review*, 2010); “Roe Rage: Democratic Constitutionalism and Backlash” (with Reva Siegel, *Harvard Civil-Rights Civil-Liberties Law Review*, 2007); “Federalism, Positive Law, and the Emergence of the American Administrative State: Prohibition in the Taft Court Era” (*William & Mary Law Review*, 2006); “Foreword: Fashioning the Legal Constitution: Culture, Courts, and Law” (*Harvard Law Review*, 2003); and “Subsidized Speech” (*Yale Law Journal*, 1996). He is a member of the American Law Institute and a fellow of both the American Philosophical Society and the American Academy of Arts and Sciences.

Trevor Potter is a former commissioner and chairman of the United States Federal Election Commission. He is the Founder and President of the Campaign Legal Center, a nonprofit

organization which works in the areas of campaign finance and elections, political communication and government ethics. His government experience includes service as assistant general counsel of the United States Federal Communications Commission (1984-1985) and attorney with the United States Department of Justice (1982-1984). He served as General Counsel to the 2000 and 2008 Presidential campaigns of Senator John McCain and Deputy General Counsel to the George H.W. Bush 1988 campaign.

Judith Resnik is the Arthur Liman Professor of Law at Yale Law School and the Founding Director of the Liman Center for Public Interest Law. She teaches courses on federalism, procedure, courts, prisons, equality, and citizenship. Her scholarship focuses on the relationship of democratic values to government services such as courts, prisons, and post offices; the roles of collective redress, class actions, and arbitration; contemporary conflicts over privatization; the relationships of states to citizens and non-citizens; the forms and norms of federalism; and equality and gender. Professor Resnik's books include *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms* (with Dennis Curtis, Yale University Press, 2011); *Federal Courts Stories* (co-edited with Vicki C. Jackson, Foundation Press, 2010); and *Migrations and Mobilities: Citizenship, Borders, and Gender* (co-edited with Seyla Benhabib, NYU, 2009). In 2014, Resnik was the co-editor (with Linda Greenhouse) of the Daedalus volume, *The Invention of Courts*.

Geoffrey R. Stone is the Edward H. Levi Distinguished Professor of Law at the University of Chicago. Professor Stone has served as Dean of the University of Chicago Law School and as Provost of the University of Chicago. He is one of our nation's preeminent constitutional scholars and has been elected a member of the American Law Institute, the American Academy of Arts and Sciences and the American Philosophical Society. He is the co-author of one of our nation's

leading Constitutional Law casebooks and has written several important and influential books in the field of Constitutional Law, including *Perilous Times: Free Speech in Wartime* (2004), *War and Liberty: An American Dilemma* (2007); *Top Secret: When Government Keeps Us in the Dark* (2007), *Sex and the Constitution* (2018) and *Democracy and Equality: The Enduring Constitution Vision of the Warren Court* (2020). In addition, he has served as an editor of *The Supreme Court Review* for almost thirty years and is the editor of a twenty-volume series with Oxford University Press titled *Inalienable Rights*.

David A. Strauss is the Gerald Ratner Distinguished Service Professor at the University of Chicago Law School and the Faculty Director of the Law School's Supreme Court and Appellate Clinic. He worked in the Department of Justice, in the Office of Legal Counsel and as an Assistant to the Solicitor General, in both Democratic and Republican Administrations, and he has been Special Counsel to the Committee on the Judiciary of the United States Senate. He is the author of *The Living Constitution* (Oxford University Press, 2010) and several influential articles on constitutional law and other subjects. He was elected to the American Academy of Arts and Sciences in 2001. He was a visiting professor at Harvard Law School in 2011, 2017, and 2019. He has won the graduating students' award for teaching excellence at the University of Chicago Law School five times. He has been an editor of the *Supreme Court Review* since 1989, and he has argued nineteen cases before the U.S. Supreme Court.

CONCLUSION

The motion for leave to file should be granted.

Respectfully submitted.

/s/ Jonathan S. Massey

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Dated: May 22, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May 2020, I caused a true and correct copy of the foregoing to be electronically mailed to the following:

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