Case No. S226538

IN THE SUPREME COURT OF CALIFORNIA

DELANO FARMS COMPANY, FOUR STAR FRUIT, INC., GERAWAN FARMING, INC., BIDART BROS., AND BLANC VINEYARDS
Plaintiffs and Petitioners,

v.

CALIFORNIA TABLE GRAPE COMMISSION
Defendant and Respondent.

SUPREME COURT
FILED

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Deputy

AFTER A DECISION BY THE COURT OF APPEAL, FIFTH DISTRICT

Case No. F067956

REPLY TO ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

The Table Grape Commission's ("TGC" or "the Commission") Answer to the Petition for Review is most illuminating for what it does not say. The Commission effectively admits that the Secretary of the California Department of Food and Agriculture ("CDFA") is not *required* to approve the content of the TGC's advertisements before they are promulgated, and that *in fact* the Department has not done so. The Commission does not claim that the Secretary (or her designee) has ever *in fact* overseen, reviewed, approved, or vetoed the content of the Commission's generic advertisements of California table grapes. As the record shows, she has never altered a single word in a single one of those ads. (*See* 8 CT 1741-44.) For all we know from the Answer, the Secretary has never even seen a TGC ad before it was published. (*See ibid.*)

The TGC instead embraces the legal position that power to compel independent farmers to contribute to its commercial messages is unchallengeable as government speech, "*regardless* of whether CDFA reviews and approves particular Commission ads." (Answer, p.29).[1] To be government speech, according to the Answer, it suffices that CDFA has theoretical *authority* to intervene, even if only in "exceptional" cases, which have never occurred. (*Ibid.*) As will be discussed, the Commission's legal

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[1] All emphasis is added unless otherwise noted.

position is in open conflict with this Court's holding in *Gerawan Farming, Inc. v. Kawamura* (2004) 33 Cal.4th 1 ("*Gerawan II*").

We acknowledge that the Ninth Circuit rendered a holding more to the Commission's liking, as a matter of federal constitutional law. (*Delano Farms Co. v. California Table Grape Com.* (9th Cir. 2009) 586 F.3d 1219.)[2] But *Gerawan II* and the U.S. Supreme Court's opinion in *Johanns* make clear that under both California and U.S. Constitutional law, the promotional advertising of an industry board—even one whose members are formally appointed by the government—is not "government speech" unless a politically accountable government official either has the legal obligation to review and approve the messages or does so in fact.

In opposing this Court's review, the Commission recapitulates the errors of the court below. The Commission gives no weight to this Court's analysis and holding in *Gerawan II*, instead endorsing the contrary analysis of the Ninth Circuit. In so doing, the Commission sweeps under the rug dispositive language in *Johanns v. Livestock Marketing Association* (2005) 544 U.S. 550, which is in full accord with *Gerawan II*. The Commission's alternative argument that it is a "government entity" whose speech is therefore immune from constitutional review is equally incompatible with

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[2] The TGC is incorrect to state that adoption of our position would "split with the Ninth Circuit on a question of federal law." (Answer, p.3.) This petition arises under the California Constitution only.

Gerawan II and *Johanns*. Because the Court of Appeal reached an erroneous result on an important question of constitutional law that is in conflict with this Court's precedent and which sharply curtails the right of free speech, its decision warrants this Court's review.[3]

ARGUMENT

THE COMMISSION PRESENTS NO PERSUASIVE REASON TO DENY REVIEW

A. The Commission is Incorrect that CDFA Effectively Controlled the Commission's Speech, Even if CDFA Never Reviewed the Commission's Promotional Materials

The Answer only highlights the deficiencies in the Court of Appeal's holding that the TGC's promotional messages are government speech. The Commission contends that the dispositive "question is whether CDFA has the *legal authority* to control the Commission," even if CDFA is not legally obligated to review the Commission's promotional messages and CDFA never exercised any control in practice. (Answer, p.3.) The Commission cannot square that position with this Court's decision in *Gerawan II*, and it barely tries. *Gerawan II* held that the speech of a government-empowered industry board "may ... be considered government speech *if in fact* the message *is decided upon by the Secretary or other government official pursuant to statutorily derived regulatory authority*." (33 Cal.4th at 28.)

[3] The Answer devotes several pages to describing the TGC's various activities. This case is solely a challenge to assessments used for promotional or other speech-related activities.

Under the relevant statute, CDFA has authority to review the TGC advertising messages only upon petition from an "aggrieved party" and only for narrow legal defects: to determine whether the Commission's action is "not substantially sustained by the record, was an abuse of discretion, or illegal." (*See* Cal. Food & Agric. Code § 65650.5). It is hard to see how these administrative law concepts could logically be applicable to ads for table grapes; it strains credulity to suggest that the existence of such narrow legal review means that "in fact the message is decided upon by the Secretary." (*Gerawan II*, 33 Cal.4th at 28.) That narrow standard of review no more makes the Commission's messages "government speech" than the Administrative Procedure Act makes routine agency action in Washington the "regulatory policy" of the D.C. Circuit.

No wonder the TGC skips past the relevant statute and focuses instead on CDFA's own policy manual, which, under the heading "Non-routine Review," imposes no oversight obligation but merely "reserves the right" for CDFA to "exercise exceptional review" of the Commission's advertisements. Putting aside the fact that a mere policy manual lacks the force of law, (*see Christensen v. Harris County* (2000) 529 U.S. 576, 587 (noting that agency manuals "lack the force of law")), "exceptional review" is just that: an exception.

The Commission concedes that CDFA has never actually engaged in such exceptional review, but belittles petitioners' "theory that government

speech requires day-to-day micromanagement of the Commission's work by CDFA." (Answer, p.3.) What the Commission disparages as micromanaging, however, this Court in *Gerawan II* considered essential to ensure the political accountability that would render speech the government's own. This Court explained that remand was necessary because "there are *factual questions* that may be determinative of the outcome," including "whether the Secretary's approval of the marketing board's message is in fact pro forma" or "whether the marketing board is in de facto control of the generic advertising program." (33 Cal.4th at 28.) "De facto" means *in actual practice*, not in theory.

The Commission feebly contends that "*Gerawan II* did not set the metes and bounds of the government speech defense," but "merely identified potentially relevant considerations ... and then remanded for further development." (Answer, p.25.) But that argument collapses on itself. If, as the Commission contends, actual oversight by the Secretary was not material to the analysis, there would have been no need for a remand in *Gerawan II* to consider the facts. The Commission makes the baffling assertion that, "[f]aced with ... dueling factual contentions arising from the particular theory of government speech argued in the case, the Court [in *Gerawan II*] unsurprisingly accorded the parties the opportunity to resolve the factual issues upon which *they* had clearly joined issue." (Answer, p.26 (emphasis in original).) But courts do not defer to the parties' chosen parameters of a

constitutional debate—if the Court did not deem the factual disagreement dispositive of the constitutional question, it would not have remanded the case. (*See Gerawan II*, 33 Cal.4th at 6.)

Contrary to the Commission's suggestion, adhering to *Gerawan II* does not require this Court to interpret the California free speech clause more broadly than the First Amendment—not that there would be anything wrong with that in any event. (*See* Answer, p.27.) *Gerawan II* and the U.S. Supreme Court's decision in *Johanns* are in harmony. (*See* Pet. Rev., pp.22-28.) *Johanns* stands for the same proposition that government-empowered industry boards may not compel unwilling parties to contribute to their commercial speech unless accountable government officials control the message "from beginning to end." (*Johanns*, 544 U.S. at 560.)[4]

The facts of this case are virtually the opposite of those in *Johanns*. In *Johanns*, Department of Agriculture officials carefully vetted the advertisements of the Beef Board, as the law required. But the Commission insists that *Johanns* "stressed that far from setting a floor that must be met in

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[4] In one respect, this Court's government speech jurisprudence is more demanding than *Johanns*. For speech to be treated as "government speech" under the California Constitution, this Court requires that it be attributed to the government and not, for example, to California table grape growers. (*Gerawan II*, 33 Cal.4th at 28.) *Johanns* rejected such a requirement for purposes of analysis under the First Amendment. (544 U.S. at 564 n.7.) If this petition is granted, petitioners will argue that the record demonstrates the TGC ads do not satisfy this requirement. (*See* 8 CT 1743:25-1744:2; 9 CT 2045:6-2046:7.)

all cases, this degree of control was '*more* than adequate.'" (Answer, p.16 (quoting *Johanns* at 563) (emphasis in Answer).) The Supreme Court stressed no such thing. The Secretary's actual oversight and control, to which the opinion returned time and again, was the centerpiece of the Court's analysis. As the Court held, "[w]hen, as here, the government sets the overall message to be communicated *and approves every word that is disseminated*, it is not precluded from relying on the government-speech doctrine." (*Id.* at 562; *see also id.* at 560-61 (the Secretary "*exercise[d] final approval authority over every word used in every promotional campaign*"); *id.* at 554 (by statutory requirement the "Secretary or his designee ... *approve[d] each project* and, in the case of promotional materials, the content of each communication"); *id.* at 561 (the "record demonstrates that the Secretary exercise[d] final approval authority *over every word used in every promotional campaign*"); *ibid.* ("All proposed promotional messages are reviewed by Department officials *both for substance and for wording*, and some proposals are rejected or rewritten by the Department.").)

Indeed, just today, the U.S. Supreme Court reaffirmed that core principle, holding that the design of Texas's specialty license plates is government speech in part because the Texas Department of Motor Vehicles Board "must approve every specialty plate design proposal before the design can appear on a Texas plate" and has "*actively exercised this authority.*" (*Walker v. Texas Division, Sons of Confederate Veterans, Inc.* (2015) 576

U.S. __, No. 14-144 (Slip Op. at 11).) Citing *Johanns*, the Court concluded that Texas "has effectively controlled the messages [conveyed] by exercising final approval authority over their selection." (*Ibid.* (internal quotation marks omitted).)

Rather than grapple with *Johanns*' overarching emphasis on mandatory and actual control,[5] the Commission reverts to the Ninth Circuit's *ipse dixit* that "*Johanns* 'did not ... define minimum requirements.'" (Answer, p.28 (citing *Delano Farms*, 586 F.3d 1219).) The Commission thus duplicates, rather than justifies, the Court of Appeal's error in deferring to the Ninth Circuit on a question of state constitutional law. (*See People v. Teresinski* (1982) 30 Cal.3d 822, 835-36 (decisions of the U.S. Supreme Court, not those of lower federal courts, "are entitled to respectful consideration").)

Notably, the Commission does not mention, let alone defend, the Court of Appeal's erroneous reliance on *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, which concerned state court deference to lower federal courts'

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[5] The Commission makes much of CDFA's power to audit the Commission. (*See* Answer, p.18.) Aside from the obvious fact that a financial audit has nothing to do with advertising content, CDFA has not even consistently exercised its audit power, further demonstrating the Commission's autonomous status. The last several audits before this litigation, for example, were conducted by a private CPA firm engaged and paid by the Commission itself, not the State's Office of State Audits and Evaluations (*See* 8 CT 1736), just as this litigation is being conducted by a private law firm, not the State Attorney General.

interpretation of *federal* law. (*See* Pet. Rev., p.20.) That is because federal courts "must defer to the judgment of a state court on interpretations of state law," and not the reverse. (*Bui v. Alarcon* (9th Cir. 2000) 234 F.3d 1279.) That distinction is particularly pertinent here, where the Ninth Circuit's decision is in tension with precedent from this very Court: whereas *Gerawan II* remanded for further fact-finding about de facto control of the generic advertising program, the Ninth Circuit declined to consider the Secretary's actual oversight for the reason that "*federal* courts are ill-equipped" to review the operation of a state program. (*Delano Farms*, 586 F.3d at 1230.)

The Answer cites four cases that, it says, have rejected the contention "that *Gerawan II* sets forth the exclusive test for government speech." (Answer, p.26.) Three of those were federal cases and the fourth was a California Court of Appeal decision;[6] and all lack authority to downgrade the precedential significance of this Court's decisions. In truth, the TGC does not wish to restore *Gerawan II* to the status of a non-"exclusive" test for government speech; it treats *Gerawan II* as if it had been overruled, on the basis of conflict with the Ninth Circuit, without review and argument in this Court. But Ninth Circuit and intermediate appellate decisions are not the

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[6] The cited California appellate decision, *Gallo Cattle Co. v. Kawamura* (2008) 159 Cal.App.4th 948, 957, supports petitioners' argument here that *Johanns* requires that the advertising "*content [be] overseen and subject to the control of a politically accountable official.*"

proper avenue for reversing this Court's holdings of state constitutional law. This Court alone should decide whether *Gerawan II* remains good law.

The Commission also contends that review is unwarranted because in "the ten years since ... *Johanns* not a single commodity promotion program has been found unconstitutional under the Free Speech Clauses of the U.S. or California Constitutions." (Answer, pp.12-13.) But these cases demonstrate that the reasoning of the Ninth Circuit and court below is out of step with every other decision interpreting *Johanns*. (*See* cases cited in Answer, p.13 n.5.) In each of those cases, the program at issue shared the same key feature as that in *Johanns*: the Secretary was required to exercise final approval authority over the marketing campaigns. It is unremarkable, then, that these cases upheld such programs as constitutional. And each took pains to emphasize, as did *Johanns*, the government's "meticulous, detail-oriented, sometimes intense, word-for-word process" of reviewing the advertisements at issue.[7]

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[7] *In re Wilson* (U.S.D.A. Nov. 28, 2005, No. 01-0001) 2005 WL 3436555, at *16-19; *see also In re Red Hawk Farming & Cooling* (U.S.D.A. Nov. 8, 2005, No. 01-0001) 2005 WL 3118142, at *8-13 (same for National Watermelon Promotion Board); *Cochran v. Veneman* (M.D.Pa. 2003) 252 F.Supp.2d 126, 130 ("Advertising created by the Dairy Board ***must be approved***" by Department of Agriculture); *American Honey Producers Ass'n v. USDA* (E.D.Cal. May 8, 2007, No. 05-1619) 2007 WL 1345467, at *9-10 ("Through the Honey Act, Congress provided for the USDA to exercise, ***and the USDA does exercise, close control over the messages*** that the Honey Board disseminates" and that control was not just "***pro forma***"); *Cricket Hosiery, Inc. v. United States* (Ct. Int'l Trade 2006) 429 F.Supp.2d 1338, 1343-1346 ("[T]he Cotton Board ***shall***

Thus, what the Commission describes as the Secretary's "extraordinary step" in *Johanns* of reviewing the Beef Board's advertisements, (Answer, p.16), is in fact an ordinary feature of many commodity advertising programs. The TGC is an outlier. And if anything, these decisions cited by the Commission illustrate that it is eminently practicable to design a commodity program with the government oversight necessary to confer constitutional immunity on the program's speech. The legislature simply did not do so here.

B. The Commission is Incorrect that the Commission is a Government Entity Whose Speech is the Government's Own

The Commission also argues that this Court should deny review because in the alternative (and although not a basis for the Court of Appeal's holding) the Commission is a government entity whose speech necessarily constitutes government speech. (Answer, p.14.) The TGC claims this is so because, among other things, it was created by the California legislature to further government objectives, it is sometimes referred to as a state agency,

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... develop and submit to the Secretary for his approval any advertising or sales promotion ... and ... ***any such plan or project must be approved by the Secretary before becoming effective.***"); *Avocados Plus Inc. v. Johanns* (D.D.C. 2006) 421 F.Supp.2d 45, 50-55 ("***Most importantly*** for the First Amendment analysis, moreover, the Secretary ***must review and approve any promotion or advertisement ... before it can be disseminated to the public.***"); *Dixon v. Johanns* (D.Ariz. Nov. 21, 2006, No. CV-05-03740) 2006 WL 3390311, at *12-13 (same).

and the Secretary has the power to appoint and remove every commissioner. (Answer, pp.20-24.) It is clear from *Gerawan II* and *Johanns*, however, that appointment and removal of the Commissioners by the Secretary, or the Commission's designation as a "state agency," is not enough.

The Commission contends that "*Gerawan II* said nothing about the plum board's status as a 'government entity.'" (Answer, p.31.) This ignores the Court's extended analysis of *Keller v. State Bar of California* (1990) 496 U.S. 1, which indicated that a Board's status as a legislative creation does not suffice to confer the protections of government speech. (*See* Pet. Rev., p.16.) The Commission entirely bypasses *Keller* (as well as *Gerawan II*'s endorsement of it) except to point out that in *Keller* several of the State Bar's board were *not* appointed by the Governor. (Answer, p.33 n.12.) But that distinction is immaterial; *Gerawan II* concluded that the Plum Board was "comprised of and funded by plum producers" and "is in that respect similar to the State Bar." (33 Cal.4th at 28.) *Gerawan II* then turned to consider the Secretary's degree of actual control over the advertising content.

The Commission nevertheless contends that under *Johanns*: "An entity that, like the Beef Board, is created by the government to further government objectives and whose decision-makers are subject to the government's power of appointment and removal is a government entity for government speech purposes." (Answer, pp.32-33.) *Johanns* stands for nothing of the sort. On the contrary, although the members of the Beef Board

were appointed by the Secretary, and its mission defined by statute, that was not enough—the Court cared only whether the "message set out in the beef promotions is from beginning *to end* the message established by the Federal Government." (*Johanns*, 544 U.S. at 560.) The Commission even acknowledges as much, conceding that it "is true that *Johanns* implied that the Beef Board was a full-fledged 'government entity' ... on the basis of the Secretary's authority to appoint its members ... [b]ut that finding *was not itself sufficient to dispose of Johanns*." (Answer, p.32.)

That admission puts the nail in the coffin of the Commission's government entity defense. But trying to raise it back from the dead, the Commission resorts to an outright misrepresentation of *Johanns*, arguing that the Beef Board's status as a government entity was insufficient to dispose of the case only because the "governmental status of the Beef *Operating Committee*—the *separate* entity that designed the advertising program at issue—remained unclear, because only *half* of its members were appointed ... by the Secretary[.]" (*Ibid.* (emphasis in original).) The Commission then twice represents that *Johanns* "assumed for purposes of its decision that the Operating Committee ... was 'a nongovernmental entity.'" (*Id.*, pp.15 n.6, 32.) On the contrary, the Court in *Johanns* regarded the Beef Board itself as the only constitutionally significant entity; the status of the Operating Committee was legally insignificant. As the Court stated:

> We therefore need not label the Operating Committee as "governmental" or "nongovernmental." The entity to which assessments are remitted is the Beef Board, all of whose members are appointed by the Secretary pursuant to law. The Operating Committee's only relevant involvement is ancillary—it designs the promotional campaigns, which the Secretary supervises and approves—*and its status as a state actor thus is not directly at issue.*

(*Johanns*, 544 U.S. at 560 n.4.) The Commission's attempt to distinguish *Johanns* is thus unavailing.

The Commission nonetheless resorts to tautology, arguing that "[p]etitioners cannot possibly mean what they say" because "[s]peech by a government entity is by definition government speech." (Answer, p.30.) But that oversimplification overlooks that this Court has rejected the idea that acting by virtue of statutory authority is sufficient to shield speech from any constitutional review. Instead, this Court has been sensitive to the reality that some government-*created* entities do not speak or act for the representatives of the people. As *Gerawan Farming, Inc. v. Lyons* ("*Gerawan I*") observed, marketing order programs are "not so much a mechanism of regulation of the producers and handlers of an agricultural commodity by a governmental agency, as a mechanism of self-regulation by the producers and handlers themselves." ((2000) 24 Cal.4th 468, 503 n.8; *see also Country Eggs, Inc. v. Kawamura* (2005) 129 Cal.App.4th 589, 597 ("Labeling an entity as a 'state agency' in one context does not compel treatment of that entity as a 'state agency' in all contexts.") (citation omitted).)

Here, all eighteen industry members of the Commission (out of nineteen) are elected by other industry members for the express purpose of representing private interests. Despite the formality of appointment by the Secretary, the commissioners are in no real sense accountable to the people of California, but only to the dominant interests in the table grape industry. This Court and the U.S. Supreme Court have consistently maintained that statutorily-empowered but realistically *private* power to compel support for speech is subject to constitutional constraint (as well as constraint under other fields of law such as antitrust, *see North Carolina State Bd. of Dental Examiners v. F.T.C.* (U.S. 2015) 135 S.Ct. 1101) unless democratically accountable officials maintain *actual control*—not merely theoretical veto or removal authority.[8] Otherwise, private interests armed with the power of the state could compel speech that serves the interests of dominant parties in the industry with no real democratic or constitutional oversight. As this Court recognized in *Gerawan I*, "[g]eneric advertising can be manipulated to serve the interests of some producers rather than others, as by allowing some to develop a kind of brand by means of funds assessed from all and then use it for their own exclusive benefit." (24 Cal.4th at 504.)

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[8] Even *Dept. of Transportation v. Assoc. of American Railroads* (U.S. 2015) 135 S.Ct. 1225, 1233, upon which the TGC relies, (*see* Answer, p. 34 n.13), looked to "the practical reality of federal control and supervision" to determine whether Amtrak is a governmental entity.

C. Whether the Forced Subsidy of the Commission's Speech Survives Constitutional Scrutiny was Not Considered by the Court of Appeal and is Not Within the Scope of this Petition

Finally, the Commission urges that review is unwarranted because the forced subsidy of the Commission's speech would survive constitutional scrutiny. (Answer, pp.35-39.) That is highly unlikely. In a decision the Commission neither cites nor discusses in this context, the U.S. Supreme Court squarely held that compelled agricultural promotional programs of this sort violate the First Amendment unless part of a comprehensive regulatory scheme. (*See U.S. v. United Foods* (2001) 533 U.S. 405.) In *Gerawan II*, this Court pointed to the analysis in *United Foods* that "even viewing commercial speech as entitled to lesser protection, we find no basis ... to sustain the compelled assessments sought in this case." (33 Cal.4th at 16 (quoting *United Foods*, 533 U.S. at 410).) The TGC offers no reason why this case would come out any other way.

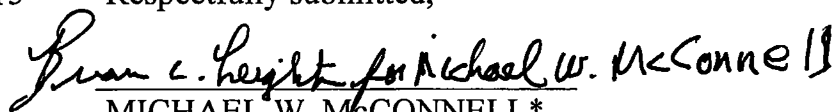
In any event, the Court of Appeal did not pass on this question and it is therefore beyond the scope of this petition. But even assuming the Commission could ultimately prevail on the merits, the government speech question is independently important: unless the decision below is reversed, industry boards of this sort will have free rein to compel subsidy of their speech without any judicial—or genuine democratic—oversight.

The Commission trivializes petitioners' free speech claims with insinuations that petitioners are not familiar with the Commission's ads. (Answer, pp.3-4, 17.) But this case was decided on summary judgment, and the Court "must view the evidence in a light favorable to plaintiff as a losing party, liberally construing her evidentiary submission ... and resolving any evidentiary doubts or ambiguities in plaintiff's favor." (*Saelzer v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) Petitioners presented evidence to support their claim that the Commission's generic ads, by marketing all California table grapes collectively, harm petitioners' ability to promote and distinguish their own high-quality products. Petitioners have argued, for example, that they should not be "forced to pay money to a group of competitors" to spend as those competitors wish, even if "counterproductive" to petitioners' aims. (8 CT 1744-45, 1782-83.) This Court has recognized the serious harm such ads may inflict on the producers' livelihood. As *Gerawan I* observed, "when some producers ... develop and use brands in marketing their goods, and others do not, the former may find themselves disadvantaged by generic advertising in their competition against the latter." (24 Cal.4th at 504; *see also United Foods*, 533 U.S. 405 (holding unconstitutional a federal statute that required mushroom handlers to fund a generic message).)

If this Court grants review and reverses the Court of Appeal's holding about government speech, the appellate court will have an opportunity to

consider the government's purported justifications for imposing this substantial burden on the petitioners. In the meantime, these alleged justifications do not diminish the importance of the questions properly presented here for review.

Dated: June 18, 2015 Respectfully submitted,



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CERTIFICATE OF WORD COUNT
PURSUANT TO RULE RULE 8.504(d)(1)

Pursuant to California Rule of Court 8.504(d)(1), counsel for Petitioners hereby certifies that the number of words contained in this Petition for Review, including footnotes but excluding the Table of Contents, Table of Authorities, and this Certificate, is 4,197 words as calculated using the word count feature of the computer program used to prepare the brief.

Dated: June 18, 2015

Respectfully submitted,

By: ______________________
Michael W. McConnell

PROOF OF SERVICE

I declare that:

I am employed in the County of Fresno, California.
I am over the age of eighteen years and not a party to the within action; my business address is 701 Pollasky, Clovis, California 93612.

On June 18, 2015, I served a copy of the attached **REPLY TO ANSWER TO PETITION FOR REVIEW** on the interested parties herein by placing a true copy thereof in a sealed envelope, fully prepaid, and addressed as follows:

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Client - Plaintiff/Petitioner

Honorable Judge Donald S. Black
Fresno County Superior Court
1130 "O" Street
Fresno, CA 93721-2220
Superior Court Judge

Clerk of the Court
COURT OF APPEAL
FIFTH APPELLATE DISTRICT
2424 Ventura Street
Fresno, CA 93721
Appellate Court

I declare under penalty of perjury of the State of California that the foregoing is true and correct and that this Declaration was executed this 18th day of June, 2015, at Clovis, California. I declare that I am employed in the office of a member of the Bar of this Court at whose direction this service was made.

Kimberly R. Barker