Case No. S241948

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA CHAMBER OF COMMERCE et al.,

Plaintiffs and Appellants,

v.

STATE AIR RESOURCES BOARD et al.,

Defendants and Respondents;

THE NATIONAL ASSOCIATION OF MANUFACTURERS,

Intervenor and Appellant;

ENVIRONMENTAL DEFENSE FUND et al.,

Intervenors and Respondents.

Third Appellate District, Case No. C075930
Sacramento County Superior Court, Case No. 34-2013-80001464
The Honorable Timothy M. Frawley, Judge

THE NATIONAL ASSOCIATION OF MANUFACTURERS' REPLY IN SUPPORT OF PETITION FOR REVIEW

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I.

INTRODUCTION

Petitioner the NAM previously showed that review is warranted because (1) the Court of Appeal abandoned this Court's settled framework for analyzing whether regulatory fees are "taxes" under Proposition 13 (Pet. 18–23), (2) under that settled framework, the $12 to $70 billion dollars that the Air Resources Board ("ARB") will raise by selling allowances are unconstitutional taxes under Proposition 13 (*id.* at 23–30), and (3) the competing standard adopted by the Court of Appeal eviscerates Proposition 13 by abandoning the core constraint—an identifiable and judicially enforceable limit on the revenues raised—that distinguishes legitimate regulatory fees from "special taxes" under Proposition 13 (*id.* at 30–37).

ARB and its intervenors do not dispute that the Court of Appeal declined to follow the test in *Sinclair Paint Co. v. State Board of Equalization*, (1997) 15 Cal.4th 866, or that ARB's revenue-raising allowance auctions and reserve sales could not survive under that test. They do not defend the Court of Appeal's holding that these revenues are "voluntary" because regulated parties can avoid them by "choos[ing] to leave the state." (App. 41–42.) Nor do they dispute that, under the decision below, ARB could extract however much it wants from regulated parties without *any* constraint. (App. 51 n.31.)

Respondents instead argue that this wholesale abandonment of settled law is of limited significance. They contend that Cap-and-Trade is a unique

program, and that the legal standard adopted below is unimportant because, prospectively, Proposition 26 has amended Proposition 13. (ARB Br. 10–11; Intv'rs Br. 8–13.) But the decision below will continue to govern the myriad regulatory programs either adopted or amended pursuant to statutes enacted before the effective date of Proposition 26. Moreover, even if limited to the Cap-and-Trade Program, the proper legal standard governing whether ARB can raise tens of billions of dollars in revenue under a statewide program from regulated parties is unquestionably an "important question of law" that should be resolved finally by this Court. (*See* Cal. R. Ct. 8.500(b)(1).) In all events, review is warranted precisely to resolve "uncertainty about the auction's legality." (Intv'rs Br. 18.)

II.

ARGUMENT

A. The Decision Below Conflicts With *Sinclair Paint* And Other Cases Holding That Charges Imposed For Regulatory Purposes Must Comply With *Sinclair Paint.*

ARB and its intervenors argue that this Court's review is unwarranted because "the Court of Appeal merely applied existing precedent." (ARB Br. 12; *see* Intv'rs Br. 7 [arguing the decision below merely applied "longstanding legal principles of taxation"].) The opposite is true: review is warranted because the Court of Appeal *refused* to apply existing precedent.

As the NAM showed, this Court's decision in *Sinclair Paint* sets forth the framework for assessing whether charges purportedly imposed for regulatory purposes are in fact taxes subject to Proposition 13. (Pet. 18–23.) Neither ARB nor its intervenors seriously defend the Court of Appeal's facile rationale for disregarding *Sinclair Paint*, *i.e.*, that ARB did not call the allowance charges "regulatory fees." (*See* App. 36 ["The Board's regulations do not purport to impose a regulatory fee on polluters, but instead call for the auction of allowances, a different system entirely."].) Instead, they advance a number of alternative rationales, but these rationales were not the basis for the decision below, and in any event they fare no better.[1]

First, ARB argues that "[i]f the auction system is not a tax, Proposition 13 does not apply, and the *Sinclair Paint* test is not relevant." (ARB Br. 13.) This reasoning puts the cart before the horse. The *Sinclair Paint* test *determines* whether a charge purportedly imposed for regulatory purposes is a tax. Under *Sinclair Paint*, regulatory charges become taxes if they exceed the reasonable cost of regulation, fail to bear a reasonable relationship to the

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[1] ARB and its intervenors note that the dissent below also did not apply *Sinclair Paint*. But the dissent's reason for finding *Sinclair Paint* "of limited use (but not of no use)" rests on a misapprehension of *Sinclair Paint*'s holding and petitioners' position. (App. 54.) *Sinclair Paint* did not hold "that the state exaction there at issue was a regulatory fee and not a tax." (*Id.*) It held that the exaction *would be* a regulatory fee *if* it were shown on remand that it complied with the criteria set forth in the Court's decision; otherwise, it would be a tax. (15 Cal.4th at 881.) Likewise, petitioners' position here is that the allowance charges could in theory be regulatory fees if they met the *Sinclair Paint* test; but because they do not, they are taxes.

burdens imposed by the payers, or are levied for unrelated revenue purposes. (15 Cal.4th at 881.) Thus, in asserting that *Sinclair Paint* is "not relevant" because the allowance charges are not taxes, ARB simply begs the question.

Second, ARB and its intervenors argue that *Sinclair Paint* "only applies to measures that *shift the costs* of a program." (ARB Br. 15; *see also* Intv'rs Br. 15 ["*Sinclair Paint* addresses charges imposed to *fund* regulatory activities."].) But that is exactly what the allowance charges do—they shift the costs of State programs relating to GHG emissions to regulated entities. And they fund regulatory activities in precisely the same sense as the charges in *Sinclair Paint*, which shifted the costs associated with lead pollution to regulated parties. (15 Cal.4th at 880 ["fees can 'regulate' business entities without directly licensing them by mitigating their operations' adverse effects"].) Despite their valid regulatory purpose, *Sinclair Paint* held that the regulatory fees at issue in that case would be taxes if they failed to satisfy the criteria set forth above. (*Id.* at 881.) The same is true of the allowance charges here.

Third, ARB and its intervenors argue that the auctions were not designed to raise revenue for GHG mitigation, but to serve other regulatory purposes. (ARB Br. 9; Intv'rs Br. 11–12.) That argument is irrelevant under the Court of Appeal's test. Moreover, it ignores the extensive evidence in the administrative record showing that ARB adopted revenue-raising auctions precisely because they would raise revenue. (Pet. 27–28.) Even the majority

below, which likewise ignored the extensive evidence demonstrating ARB's revenue-raising purpose, correctly concluded that ARB "intended to generate revenue" and thus rejected ARB's indefensible position that the "billions of dollars of anticipated auction revenues" were just "a fortuitous byproduct of the regulations." (App. 34 n.25.)

Fourth, ARB and its intervenors recycle the Court of Appeal's argument that "plaintiffs misconstrue *Sinclair Paint* as prescribing th[e] test not only for fees, but for any revenue-generating measure enacted without a two-thirds legislative majority." (ARB Br. 13; *see also* Intv'rs Br. 14.) That is incorrect. The NAM has never argued that "'every payment to the government must be either a fee or a tax.'" (ARB Br. 13 [quoting App. 35–36].) As the NAM explained, *Sinclair Paint* applies to charges "imposed pursuant to the police power to regulate the payers' activities." (Pet. 21.) Neither ARB nor its intervenors respond to the NAM's actual argument, and neither cites a single case upholding such a charge without applying *Sinclair Paint*. They cite cases involving a variety of other kinds of exactions, but none involving a charge that was purportedly imposed pursuant to the police power to regulate the payers' activities. (ARB Br. 13–14; Intv'rs Br. 14 [citing cases involving tax penalties, business district improvement assessments, and off-airport car rental charges].) And they simply ignore the long line of authority

in which this Court and the courts of appeal have consistently applied *Sinclair Paint* to charges that were purportedly imposed for regulatory purposes. (Pet. 19 & n.6.)

Fifth, intervenors argue there is no conflict because "[p]laintiffs have never identified a single case in which a court has considered a charge or regulatory mechanism anything like the auction." (Intv'rs Br. 15.) But as the NAM explained in detail, without any response from ARB or its intervenors, *Sinclair Paint* itself involved a charge that is closely analogous to the allowance charges. (Pet. 20–21.) Like the charges in *Sinclair Paint*, the allowance charges are imposed pursuant to the police power on businesses whose operations emit GHGs, and they generate revenue used to fund a regulatory program that is purportedly designed to address the actual or anticipated adverse effects of the fee payers' operations. (*Id.*) Thus, while it is trivially true that *Sinclair Paint* did not involve an auction of GHG emissions allowances, ARB and its intervenors fail to explain why the *legal principles* the Court applied there do not apply equally here.

Sixth, ARB argues that the decision below did not "creat[e] any new test," but "merely applied existing precedent." (ARB Br. 12.) According to ARB, the decision did not break any new ground because it simply applied *Sinclair Paint*'s observation that "[m]ost taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges." (15 Cal.4th at 874.) But that observation was

just the prologue of *Sinclair Paint*'s analysis, which ultimately yielded a *legal test* to determine when regulatory charges are, in fact, taxes. There is no question that the Court of Appeal declined to apply *Sinclair Paint*'s actual test. (App. 37 ["Having concluded the *Sinclair Paint* test does not apply, we must next consider what test *does* apply to ascertain whether a tax is being imposed."].) Like the Court of Appeal, which fashioned its new test by cherry-picking passages from *Sinclair Paint* and other fee cases, ARB is content to rely on fee cases when they suit its purposes, but it "jettison[s] the critical constraints they impose to prevent evasion of Proposition 13." (Pet. 31–32.)

For these reasons, the decision below conflicts with *Sinclair Paint* and other decisions of this Court and the courts of appeal holding that a charge imposed for regulatory purposes "becomes a tax" if it does not meet *Sinclair Paint*'s test. (*Cal. Farm Bureau Fed'n v. State Water Res. Control Bd.* (2011) 51 Cal.4th 421, 438.) At a minimum, the question whether *Sinclair Paint* controls here is an important threshold legal question that warrants this Court's review, and not, as ARB would have it, merely a routine matter of applying "settled legal principles to these facts." (ARB Br. 12.) Only this Court can definitely resolve the proper scope and application of its decisions. The Court should grant review to settle this important question.

B. The Significant Legal Errors In The Decision Below Warrant Review By This Court.

ARB acknowledges that "a significant legal error in a decision affecting a large statewide program might in some circumstances warrant this court's intervention." (ARB Br. 15.) Respondents do not dispute that the tens of billions of dollars that ARB will raise through Cap-and-Trade auctions and reserve sales make it a "large statewide program," but instead oppose review because the decision below "was well-reasoned, and there is no error to correct." (*Id.*) That argument cannot survive scrutiny.

First, as discussed above, the decision suffers from a foundational legal error because the Court of Appeal concluded that it was "not bound to apply the *Sinclair Paint* test to assess the legality of the auction system." (App. 35.) That threshold ruling is significant because neither ARB nor its intervenors dispute that if *Sinclair Paint* applies, then the allowance charges (at auctions and reserve sales) would be unconstitutional taxes. Moreover, the substitute test adopted by the Court of Appeal for determining whether the allowance revenues are taxes likewise suffers from significant legal error.

Second, the Court of Appeal's ruling that that allowance revenues were not taxes because "participation is voluntary" (App. 29), is likewise a significant error. The Court of Appeal concluded that allowance revenues were "voluntary" because regulated parties could avoid them by "choos[ing]

to leave the state." (App. 41–42.) Under that reasoning, sales taxes, real-estate taxes and income taxes would not be "compulsory" because taxpayers could avoid them by leaving California. That reasoning conflicts directly with established precedent holding that "[a] tax does not lose its revenue-generating character because there is a theoretical but unrealistic way to escape the tax's purview." (*Citizens for Fair REU Rates v. City of Redding* (2015) 233 Cal.App.4th 402, 413, *review granted* Apr. 29, 2015, S224779.) Respondents do not defend the Court of Appeal's analysis. (ARB Br. 12; Intv'rs. Br. 16.)

The Court of Appeal further erred in holding that the billions of dollars in anticipated revenues were not "compulsory" because allowance purchases are akin to (1) "development fees" that are "imposed only if a developer elects to develop" (App. 37–38), or (2) "[r]egulatory fees" for which "fee payers have some control both over when, and if, they pay any fee" (*id.* at 38). Under settled law, this so-called non-compulsory nature of "development fees" and "regulatory fees" does not insulate them from necessary scrutiny under Proposition 13.

Thus, even if regulated parties had some measure of control over the imposition of "development fees" and "regulatory fees," those fees still must be scrutinized to determine whether they are "special taxes" under Proposition 13. Under settled precedent, "*development fees* exacted in return for building permits or other governmental privileges" are analyzed to determine

"*if* the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer." (*Sinclair Paint*, 15 Cal.4th at 875 [citing multiple court of appeal decisions] [second emphasis added].) Likewise, "regulatory fee[s]" are examined to determine *if* they "do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged" and "are not levied for unrelated revenue purposes." (*Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [quoting *Mills v. Cnty. of Trinity* (1980) 108 Cal.App.3d 656, 659–660].) The court below erred by eliminating any judicially enforceable constraint on the amount of fees that can be charged to regulated parties under Proposition 13.

Third, respondents argue that the Court of Appeal properly ruled that allowance revenues are not a tax because allowances "have economic value" (ARB Br. 16), and "bidders receive valuable intangible assets" (Intv'rs. Br. 17). The very same is true of "development fees," which are "exacted" by the government "in return for building permits or other governmental privileges" (*Sinclair Paint*, 15 Cal.4th at 875 [emphasis omitted]), and which, contrary to the decision below, are scrutinized to determine whether they are excessive and thus "special taxes" subject to Proposition 13 (*id.*). Likewise, "regulatory fees" unquestionably provide a valuable intangible benefit, *i.e.*, legal authorization to engage in a regulated activity, but they too are reviewed by courts to determine if they are excessive and thus "special taxes" under Proposition 13. (*Id.* at 876.)

For example, in *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control District* (1988) 203 Cal.App.3d 1132, the Court of Appeal ruled that regulatory fees apportioned among polluters based on the "amount of emissions discharged" were not a "special tax" because they (1) did "not exceed the reasonable cost of providing services necessary to the activity for which the fee was charged" and (2) were "not levied for unrelated revenue purposes." (*Id.* at 1135, 1145–46 [citing *Pennell*, 42 Cal.3d at 375]; *accord Sinclair Paint*, 15 Cal.4th at 876 [citing cases].) In stark contrast, the decision below abandons any and all judicial constraints on the *amount* of revenue raised by ARB through the sale of allowances.

Finally, ARB insists that it has no blank check because "auction proceeds" may not "be used for general revenue purposes." (ARB Br. 16.) That argument likewise ignores the decision below, which states, point blank, that "the expenditures are not relevant here." (App. 51 n.31.) Thus, under the decision below, how the State chooses to spend some or all of the estimated $12 to $70 billion in revenue raised by ARB is irrelevant under Proposition 13. The Court of Appeal's decision thus eviscerates Proposition 13 by eliminating any judicial limit on the amount of revenue that can be raised or the purposes for which that revenue can be expended.

C. The Questions Presented Are Important And Warrant This Court's Review.

This case, dealing with an "innovative regulatory program" (ARB Br. 10) that extracts tens of billions of dollars from California businesses (JA460), carries precisely the sort of "statewide importance" that ARB and its intervenors concede warrants this Court's review (Intv'rs Br. 8; *see* ARB Br. 15). They nevertheless attempt to brush the case aside as having "meager" significance. (Intv'rs Br. 7.) These arguments fail.

First, ARB and its intervenors assert that, because Proposition 13 was amended, prospectively, by Proposition 26 in 2010, the proper interpretation of Proposition 13 is "increasingly academic." (Intv'rs Br. 8–13; ARB Br. 11.) That is wrong. The decision below will continue to govern cases subject to Proposition 13 for years to come.

ARB and its intervenors do not dispute that the "Proposition 13 version of Article XIIIA" continues to govern the constitutionality of any revenue-raising statutes—or regulations adopted under such statutes—enacted while Proposition 13 "was in effect." (Intv'rs Br. 9; *see* ARB Br. 13.) Nor can they dispute the obvious fact that innumerable statutory provisions were enacted in the three-plus decades between Proposition 13's adoption in 1978 and its prospective amendment in 2010, and that countless such provisions will remain in force for years or decades to come. And they concede that the opinion below will be "binding precedent" for any "cases to which the pre-

Proposition 26 version of Article XIIIA remains applicable." (Intv'rs Br. 10.) Indeed, the cap-and-trade regulation at issue here was first adopted in 2011, and amended several times since then, but the original regulation and subsequent amendments remain subject to Proposition 13 because the purported statutory authorization in AB 32 was enacted in 2006.[2]

Thus, if an administrative agency decides tomorrow (or next week, or next year, or in a decade) to adopt a program or amend an existing program that generates revenue pursuant to a statute enacted any time between 1978 and 2010, the Court of Appeal's rejection of *Sinclair Paint* will control. (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara Cnty.* (1962) 57 Cal.2d 450, 455 ["Decisions of every division of the District Courts of Appeal are binding ... upon all the superior courts ...."]; *cf.* Intv'rs Br. 11 [citing cases from 2013 and 2015 applying Proposition 13].) That scenario is not at all unlikely; administrative agencies regularly adopt and amend programs that impose financial exactions that could be challenged under *Sinclair Paint*. (*See* Pet. 19 [collecting cases].) But under the "binding precedent" below, such exactions will be lawful as long as they "do not purport to impose a regulatory fee," deal with some ostensibly "voluntary" activity, and confer

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[2] Intervenors are wrong when they argue that the NAM has not challenged ARB's authorization to raise billions in revenue. (Intv'rs Br. 9 n.1; *but see* ARB Br. 17 [recognizing that the NAM disputed that "AB 32 granted the Board statutory authority" to raise revenue].) Indeed, the NAM highlighted that the decision below as to statutory authorization is "foreclosed by the canon of constitutional doubt." (Pet. 5 n.1.)

some sort of value on the payer—*regardless* of the purposes for which the revenues are used. (App. 36–37; *see* Pet. 30–37.) Review by this Court of the decision below thus presents a critical question of ongoing significance.

Second, ARB and its intervenors contend that review is unnecessary because the decision below is relevant only to "cap-and-trade programs with auction components," and the State is unlikely to replicate this "unique" program. (ARB Br. 11; *see* Intv'rs Br. 7, 11–12.) Both the premise and the conclusion of this argument are wrong. The Court of Appeal's reasoning drastically undermines the safeguard adopted by the People of California in Proposition 13 in a manner that is not limited to the specific program at hand. The "test" adopted below applies to *any* revenue-raising "regulations [that] do not purport to impose a regulatory fee." (App. 36.) Indeed, ARB itself endorses the application of the decision below to any exactions other than "cost-shifting fees." (ARB Br. 14–15.) The Court of Appeal's decision thus has implications far beyond this case. (*See* Pet. 30–37.)

But even if that were not so, review would still be warranted because of the statewide importance of the Cap-and-Trade Program and its revenue-raising auctions and reserve sales. ARB and its intervenors concede, as they must, that this Court "review[s] … issues of statewide importance." (Intv'rs Br. 8 [quoting *S. Cal. Ch. of Associated Builders & Contractors, Inc. v. Cal. Apprenticeship Council* (1992) 4 Cal.4th 422, 431 n.3]; *see* ARB Br. 15.) And they agree that the Cap-and-Trade Program—of which the auctions are

"an important component" (ARB Br. 11)—is "*enormously important*" to the State of California. (Intv'rs Br. 6 [emphasis added].) Indeed, there is no serious dispute that this program—and specifically the auctions and reserve sales that extract tens of billions of dollars from California businesses—are of surpassing importance to the State and its citizenry. (*See* ARB Br. 10–11 [this "innovative" program addresses "pressing" State concerns]; *id.* at 16 [emphasizing "the importance of reducing emissions," which "implicates virtually all aspects of the econom[y]"].) This case thus "directly implicat[es] important public policies" that justify this Court's review. (*See* Abbott et al., *California Civil Appellate Practice* [3d ed. May 2017 update] § 22.5.)

This Court has frequently granted review of such issues based on their importance to the State. For example, this Court reviewed the validity of "an air pollution control regulation" issued by a pollution control district, explaining that the case "raise[d] issues of statewide importance to the public health and the future of air pollution control regulation throughout California." (*W. Oil & Gas Ass'n v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408, 411.) Likewise, the Court has granted review to determine whether a challenged governmental program complied with an important constitutional provision adopted by referendum. (*E.g.*, *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 541–42.) Here, the challenged regime is projected to transfer tens of billions of dollars from private businesses to the State but was not approved by the two-thirds vote

of the Legislature that the People demand of revenue-raising measures. Whether this program is lawful is as important as many other issues this Court has reviewed because they "present[ ] an issue of public significance." (Abbott, *supra*, § 22.6.[3]) In short, a case of this economic and societal consequence is one this Court should decide.

Finally, intervenors argue that the petitions should be denied because granting review would prolong "uncertainty about the auction's legality caused by this litigation," which "has interfered with the program's operation." (Intv'rs Br. 18.) But as intervenors admit, "the practical impact of the continuing litigation on the program, standing alone, could hardly justify refusing review of an unsettled legal quandary of statewide consequence." (*Id.* at 20.) Because this case involves both a "legal quandary" (in the form of a conflict of authority) and obvious "statewide consequence," intervenors' argument supports review by this Court.

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[3] *See, e.g.*, *Today's Fresh Start, Inc. v. L.A. Cnty. Office of Educ.* (2013) 57 Cal.4th 197, 211 [constitutionality of school charter revocation procedures]; *Atwater Elementary Sch. Dist. v. Cal. Dep't of Gen. Servs.* (2007) 41 Cal.4th 227, 231 [standards for teacher discipline]; *Landgate, Inc. v. Cal. Coastal Comm'n* (1998) 17 Cal.4th 1006, 1016 [whether Coastal Commission's assertion of jurisdiction amounted to a taking]; *Voters for Responsible Ret. v. Bd. of Supervisors* (1994) 8 Cal.4th 765, 771 [applicability of referenda to county employer-employee agreements]; *Western Steamship Lines, Inc. v. San Pedro Peninsula Hosp.* (1994) 8 Cal.4th 100, 106 [application of Medical Injury Compensation Reform Act]; *S. Cal. Ch. of Associated Builders*, 4 Cal.4th at 431 n.3 [ERISA preemption].

Insofar as "doubt about the auction's constitutionality" is interfering with the Cap-and-Trade Program's operation (*id.* at 20), the proper—indeed, the only—way to conclusively dispel that doubt is for this Court to have the final word on the auction's constitutionality. (*Cf. Deronde v. Regents of Univ. of Cal.* (1981) 28 Cal.3d 875, 879–80 [where lower court decision "cast a substantial cloud of uncertainty" over state university's operations involving an "important question of continuing statewide interest," this Court decided the case despite mootness], *superseded on other grounds*, *Strauss v. Horton* (2009) 46 Cal.4th 364, 447 n.25.) Absent a ruling from this Court, other litigants are free to challenge the auction's legality, and another Court of Appeal panel is free to conclude, as did Justice Hull's thorough dissent below, that the program violates Proposition 13. (*E.g.*, *People v. Jones* (1982) 128 Cal.App.3d 253, 261–62 [agreeing with and adopting the reasoning of the dissent from a prior Court of Appeal decision].) Petitioners' own concerns about uncertainty therefore weigh in favor of granting review and determining finally whether *Sinclair Pant* controls here, and whether the revenue-raising aspect of the Cap-and-Trade Program is lawful under the California Constitution.

III.

CONCLUSION

For these reasons, the Court should grant the petition.

Dated: June 26, 2017

Respectfully submitted,

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ATTORNEYS FOR INTERVENOR AND APPELLANT THE NATIONAL ASSOCIATION OF MANUFACTURERS

CERTIFICATION OF WORD COUNT

Pursuant to California Rule of Court 8.504(d), I certify that, according to the word count generated by the word processing program used to prepare this document, this petition for review contains 4,165 words, excluding the material set forth in Rule 8.504(d)(3).

Dated: June 26, 2017

Sean A. Commons

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 West Fifth Street, Suite 4000, Los Angeles, California 90013-1010.

On June 26, 2017, I served the foregoing document described as THE NATIONAL ASSOCIATION OF MANUFACTURERS' REPLY IN SUPPORT OF PETITION FOR REVIEW on all interested parties in this action as follows (or as on the attached service list): see Attached Service List.

☒ (VIA OVERNIGHT COURIER) I served the foregoing document(s) by FedEx for overnight delivery. I placed true copies of the document(s) in a sealed envelope addressed to each interested party as shown above. I placed each such envelope, with FedEx fees thereon fully prepaid, for collection and delivery at Sidley Austin LLP, Los Angeles, California. I am readily familiar with Sidley Austin LLP's practice for collection and delivery of express carrier package for delivery with FedEx. Under that practice, the FedEx package(s) would be delivered to an authorized courier or dealer authorized by FedEx to receive document(s) on that same day in the ordinary course of business.

☒ (VIA ELECTRONIC TRANSMISSION) Pursuant to CRC 8.212(c)(2), I transmitted a PDF version of the document(s) to the California Court of Appeal through the California Court of Appeal, Third Appellate District's ECF system.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 26, 2017, at Los Angeles, California.

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