No. 14-402

# In The Supreme Court of the United States

STATE WATER CONTRACTORS, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, COALITION FOR A SUSTAINABLE DELTA, KERN COUNTY WATER AGENCY, SAN LUIS & DELTA-MENDOTA WATER AUTHORITY AND WESTLANDS WATER DISTRICT,

*Petitioners,*

vs.

SALLY JEWELL, ET AL.,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## *AMICUS CURIAE* BRIEF OF ASSOCIATION OF CALIFORNIA WATER AGENCIES AND SOUTHERN CALIFORNIA WATER COMMITTEE, ET AL. IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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## INTERESTS OF *AMICI CURIAE*[1]

The nine *Amici* organizations represent: (1) the largest coalition of public water agencies in the United States; (2) a non-profit water committee consisting of approximately 200 organizations dedicated to preserving the health and reliability of Southern California's water supply; (3) the leading Northern California water organization formed to ensure reliable and affordable water supplies for this region; (4) a non-profit trade association with approximately 3,000 member companies responsible for the production of approximately 70% of California's new homes built annually; (5) an association whose members comprise approximately 90% of the primary manufacturers of forest products in California; (6) a trade organization whose members construct nearly four of every five new homes in the nation each year; (7) the wholesale water provider for Southern Nevada's 2 million residents and nearly 40 million annual visitors; (8) a national coalition whose members harvest and manufacture wood products, paper, and renewable energy from Federal timber resources; and

[1] Pursuant to Rule 37 of the Rules of the Supreme Court of the United States, the undersigned counsel provided timely notice to counsel of record for the Petitioners and Respondents of the intention to file this *amicus curiae* brief in support of Petitioners. All parties have consented to the filing of this brief. *Amici* discloses that no counsel for a party authored this brief nor did any person or entity other than *Amici*, its members, or its counsel make a monetary contribution to the preparation or submission of this brief.

(9) a political subdivision that operates a 336-mile canal system that supplies approximately 1.6 million acre feet of Colorado River water annually to municipal, industrial, agricultural, and tribal customers throughout central and southern Arizona. Although these *Amici* have a diversity of missions and viewpoints, they collectively urge the Court to grant this Petition.

The Association of California Water Agencies ("ACWA") is a non-profit public benefit corporation organized and existing under California law since 1910. It is the largest coalition of public water agencies in the United States and includes 450 water providers, including cities, municipal water districts, irrigation districts, and county water districts in California, which provide water supplies for urban and agricultural use. These agencies develop water supply projects of all magnitudes, and manage, treat, and distribute water to rural and urban communities, farms, industries, and cities.

Southern California Water Committee ("SCWC") is a non-profit, non-partisan public education partnership established in 1984 and dedicated to informing Southern Californians about their water needs and California's water resources. Through measured advocacy, SCWC works to ensure the health and reliability of Southern California's water supply. Spanning Los Angeles, Orange, San Diego, San Bernardino, Riverside, Ventura, Kern and Imperial Counties, SCWC's approximately 200 member organizations include leaders from business, regional and

local government, agricultural groups, labor unions, environmental organizations, water agencies, and the general public.

Northern California Water Association ("NCWA") was formed in 1992 to present a unified voice to ensure that the Northern California region has reliable and affordable water supplies, both now and into the future. NCWA's membership is comprised of water districts, water companies, small towns, rural communities and landowners that beneficially use both surface and groundwater water resources in the Sacramento Valley. As a result, NCWA is the recognized voice of Northern California water. NCWA represents the entire Sacramento Valley, which extends from Sacramento to north of Redding, and between the crests of the Sierra Nevada and the Coast Range.

The California Building Industry Association ("CBIA") is a non-profit trade association comprised of approximately 3,000 member companies responsible for the production of approximately 70% of California's new homes built annually. CBIA's members are engaged in every aspect of planning, designing, financing, constructing, selling, and maintaining new residential communities throughout California. CBIA's membership includes environmental consultants, engineers, architects lenders, land planners, subcontractors, general contractors, material suppliers, interior designers, sales professionals, risk managers, insurers, and lawyers.

The California Forestry Association ("CFA") was formed in 1991 as a trade association for California's forest industry. CFA represents forestry professionals committed to the conservation of California's forest resources, sustainable use of renewable resources, environmentally and economically sound forest policies and responsible forestry. CFA's members include biomass energy producers, environmental consultants, financial institutions, forest landowners, forest products producers, loggers, registered professional foresters, wholesalers and retailers, wood products manufacturers, and others who are interested in responsible forest policies.

National Association of Homebuilders (NAHB), founded in 1942, is a Washington, D.C.-based trade association of more than 800 state and local associations whose mission is to enhance the climate for housing and the building industry. About one-third of NAHB's 140,000 members are homebuilders and/or remodelers, and its builder members construct about 80% of the new homes built each year in the United States. The remaining members are associates working in closely related fields within the housing industry, such as mortgage finance and building products and services. Chief among NAHB's goals is providing and expanding opportunities for all people to have safe, decent and affordable housing. As the voice of America's housing industry, NAHB helps promote policies that will keep housing a national priority.

The Southern Nevada Water Authority ("SNWA") is the wholesale water provider to the 2 million

residents and nearly 40 million annual visitors to the Las Vegas Valley. While southern Nevada does not receive water from the California state water projects involved in this case, its interests are implicated nonetheless. Nevada and California both rely on water from the drought-stricken Colorado River to supply the needs of their residents and visitors. To the extent California would look to shared resources from the Colorado River to make up for shortfalls in California state water project supplies, all Colorado River water users have a stake in this case.

The Federal Forest Resource Coalition is a unique national coalition of small and large companies and regional trade associations whose members harvest and manufacture wood products, paper, and renewable energy from Federal timber resources. With members in more than two dozen states, the Coalition is building a national voice for sound management of our Federal forests. Coalition members employ over 350,000 workers in over 650 mills, with payroll in excess of $19 billion. The Coalition will work with allied industry, conservation, and local government groups to support a growing and sustainable Federal timber program.

The Central Arizona Water Conservation District is a political subdivision of the State of Arizona charged with operating the Central Arizona Project, a 336-mile canal system that supplies approximately 1.6 million acre feet of Colorado River water annually to municipal, industrial, agricultural and tribal customers throughout central and southern Arizona.

The *Amici* organizations are uniquely situated to provide the Court with a broad-based water user, building industry, forest policy, and stakeholder perspective. They have a strong interest in orderly and efficient water resource management and planning, to ensure a long-term, reliable water supply is available to meet California and the nation's ever-increasing demands for water. Having identified this case as one of critical importance to their members, the *Amici* respectfully request this Court to grant this Petition.

## SUMMARY OF ARGUMENT

The Association of California Water Agencies, Southern California Water Committee, Northern California Water Association, California Building Industry Association, California Forestry Association, National Association of Homebuilders, the Southern Nevada Water Authority, the Federal Forest Resource Coalition, and the Central Arizona Water Conservation District (collectively, "*Amici*") respectfully support Kern County Water Agency, Coalition for a Sustainable Delta, Metropolitan Water District of Southern California, State Water Contractors, San Luis & Delta-Mendota Water Authority, and Westlands Water District (collectively, "Petitioners") in their Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

This case presents a series of important questions relating to the proper application of the Endangered Species Act ("ESA") to the two largest water projects in the Nation: Central Valley Project ("CVP") and the California State Water Project. The resolution of these issues will impact water availability to large portions of the Western States. In this context, the court should address questions about the use of science by federal regulatory agencies that implicate thousands of decisions across the nation each year. This case represents a dramatic narrowing of this Court's carefully considered decision in *National Association of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007) regarding limits on the ESA, creating conflict with other jurisdictions. For all of these reasons, this Court should grant the petition for certiorari.

## ARGUMENT

### I. The Continued Operation Of The CVP Is An Issue Of National Significance.

Certiorari may be granted to address cases of national significance and to address important questions of federal law. Rules of the Supreme Court of the United States, Rule 10(c). This case is of paramount national importance because it addresses the critical intersection of scientific principles and the ESA in the context of the major California water supply projects.

California, Arizona and Nevada's water agencies, citizens, agricultural crops, economy, and natural resources all depend upon proper implementation of section 7 of the ESA consultation by federal agencies and reviewing courts where those agencies fail to act consistent with the statute and applicable regulations. Failure to adhere to the mandates of section 7 and apply the correct standards when reviewing agency decisions undermines the integrity of the process, resulting in bad agency decisions with potentially devastating consequences. This case illustrates the wide-ranging consequences of such failures.

Together with the California State Water Project, the CVP "suppl[ies] water originating in northern California to more than 20 million agricultural and domestic consumers in central and southern California." Pet. App. 25a. The CVP's importance stems in part from its vital support of California irrigated agriculture. The agricultural community in California depends on CVP water. The nation, in turn, depends on California agriculture. California produces one-third of the country's vegetables and two-thirds of the country's nuts and fruits each year.[2]

The flawed application of section 7 to CVP operations has greatly reduced the project's ability to

[2] U.S. Department of Agriculture, California Agricultural Statistics 2012 Crop Year, *available at* http://www.nass.usda.gov/Statistics_by_State/California/Publications/California_Ag_Statistics/Reports/2012cas-all.pdf (last visited Oct. 31, 2014).

provide water supply, sparking new disputes and seriously impacting the nation's critical agricultural sector. *See*, *e.g.*, *Pac. Coast Fed'n of Fishermen's Associations v. U.S. Dep't of Interior*, 996 F. Supp. 2d 887 (E.D. Cal. 2014). At the same time, an extraordinary drought, combined with other stressors (e.g., predation, invasive species, contamination), have resulted in the decline of several listed species. *See Friant Water Authority v. Jewell*, 2014 U.S. Dist. LEXIS 72155 at * 25 (E.D. Cal. May 27, 2014) (noting that "California is in the midst of an historic, extreme drought"); Pet. App. 114a (discussing other stressors of predation, macrophytes, and microsystis).

The significance of this case extends beyond California's water supply. For one thing, California, Arizona and Nevada share the waters of the Colorado River, and California is more dependent on this source because of the Ninth Circuit's decision. For another, there are many other large federal water projects operated by the Corps of Engineers and Bureau of Reclamation throughout the nation. The Court's guidance is needed to define the proper scope of future section 7 consultations involving federal water projects. In addition, Section 7 consultations frequently affect key infrastructure and resource projects throughout the country. Federal agencies are continuously consulting regarding the effects of water projects, hydropower projects, building projects, grazing enterprises, and mining operations on species listed under the ESA. *See*, *e.g.*, *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096

(10th Cir. 2010) (Federal Water Projects); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 524 F.3d 917 (9th Cir. 2007) (Federal Columbia River Power System); *Fla. Key Deer v. Paulison*, 522 F.3d 1133 (11th Cir. 2008) (FEMA's administration of the National Flood Insurance Program in Florida); *Grand Canyon Trust v. U.S. Bureau of Reclamation*, 691 F.3d 1008 (9th Cir. 2012) (Annual Operating Plans for Operation of Glen Canyon Dam); *Ctr. for Native Ecosystems v. Cables*, 509 F.3d 1310 (10th Cir. 2007) (authorization of livestock grazing in a national forest). Even "completed" consultations remain subject to re-initiation of consultation as necessary. 50 C.F.R. § 402.16.

Under the express language of the statute, section 7 consultation extends to all federal agency decisions to fund, authorize, or carry actions where they may affect listed species. A Supreme Court decision clarifying the scope of section 7 consultation is needed to provide courts, government agencies, and private parties with a consistent body of law guiding their implementation of the section 7 regulatory program going forward.

## II. The Ninth Circuit's Refusal To Consider The Human Impacts Of The Agency Action Disrupts The Delicate Balance Between Human And Environmental Considerations That Congress Requires In The Implementation Of The Endangered Species Act Across The State And Country.

Since this Court's pronouncement in *Tennessee Valley Authority v. Hill* that the ESA requires federal agencies "to halt and reverse the trend toward species extinction, whatever the cost," 437 U.S. 153, 184 (1978), this Court and Congress have emphasized that those costs can and now must be considered in the ESA analysis. As described in the Petition for Writ of Certiorari, Congress immediately responded to *TVA v. Hill* by, in part, requiring agencies to develop *reasonable* and *prudent* alternatives to avoid potential jeopardy to a threatened or endangered species. *See* 16 U.S.C. § 1536(b)(3)(A). FWS later interpreted such alternatives to be those that are both economically and technologically feasible. 50 C.F.R. § 402.02. The Ninth Circuit allowed FWS to ignore its own requirement that the alternatives be economically feasible. Pet. App. 125a.

Congress' logic in creating reasonable and prudent alternatives was to enable action agencies and FWS to work with each other and find a way to protect endangered species while promoting agency activities. The terms "reasonable" and "prudent" inherently involve the balancing of interests and an

effort to find a solution furthering all public interests, not just the interest of endangered species protection.

The Ninth Circuit decision ignores this important policy choice by Congress. In doing so, this decision upsets the important balance of human and environmental interests involved in ESA decisions across the country. It gives FWS carte blanche to alter federal actions and projects across the country without so much as an explanation of the feasibility of those alterations. This result is not only contrary to sound public policy, it contravenes congressional mandate and the agency's own regulations.

## III. Evaluation Of Whether The Agency Relied On The Best Available Science Requires Expert Opinion Beyond Those Considered By The Agency To Ensure Technical Excellence And Transparency.

Managing an entire ecosystem is complicated. Those complications are magnified in the context of water resources. A single decision about a three-inch fish can dramatically affect the water supply of 20 million people. Pet. App. 29a. Congress recognized sophisticated analysis is needed by directing the FWS to use "the best scientific and commercial data available" when making determinations about endangered species. *See* 16 U.S.C. § 1536(a)(2). Neither the courts nor FWS can be selective in the expert opinions that they consider. FWS' determination of the "best

available science" requires evaluating data from multiple experts and sources.

Although complex, scientific decision-making in the environmental management realm is not immune from judicial review. The Administrative Procedure Act ("APA") requires a court reviewing a biological opinion to determine whether an agency actually used the best scientific data available "in accordance with the law." 5 U.S.C. § 706(2)(A). Few if any judges are qualified to evaluate for themselves the scientific data and analysis underlying an environmental management decision. Thus, the APA does not require district court judges to bring their personal understanding of the scientific processes behind an agency decision in determining whether that decision was made with the best scientific and commercial data available. *Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005). Evidence outside the administrative record is appropriate when it is necessary to explain technical terms or complex subject matter. (*Ibid.*) Accordingly, the Petition should be granted to correct the Ninth Circuit's misguided prohibition on the use of expert testimony to evaluate whether an agency used the best available science.

It is essential the Service consistently apply the "best available science" requirement to ensure that the resulting ESA decisions are scientifically and legally credible. Both "jeopardy" determinations and the "reasonable and prudent alternatives" to avoid jeopardy must be based on the best available science. *See* 50 C.F.R. § 402.14(g)(8). Concerns regarding the

adequacy of the science used in ESA decision-making by federal agencies continues to be a centerpiece of Congressional debates and the subject of repeated judicial decisions. *See* Congressional Research Service, *The Endangered Species Act And "Sound Science"* (January 23, 2013); *see, e.g., Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 525 (9th Cir. 2010) ("it was incumbent on the Service to use the best information available to prepare a comprehensive biological opinion considering all stages of agency action. . . ."); *Pac. Coast Fed'n of Fishermen's Associations v. U.S. Bureau of Reclamation*, 426 F.3d 1082, 1094 (9th Cir. 2005) (court rejects wildlife agency argument that it is not required to provide quantitative data analysis and invalidates biological opinion for failure to explain the jeopardy determination); *Conner v. Burford*, 848 F.2d 1441, 1453 (9th Cir. 1988) ("incomplete information about post-leasing activities does not excuse the failure to comply with the statutory requirement of a comprehensive biological opinion using the best information available"); *Roosevelt Campobello Intern. Park Comm'n v. U.S. Envt'l Prot. Agency*, 684 F.2d 1041, 1052 n. 9 (1st Cir. 1982) ("the ALJ's failure to require, at a minimum, that 'real time simulation' studies be done to assure the low risk of an oil spill prior to granting the permit violated his duty to 'use the best scientific . . . data available.").

The Supreme Court and the Ninth Circuit made it clear that courts reviewing agency decision-making processes may utilize expert testimony as background

information. *See Asarco, Inc. v. U.S. Envt'l Prot. Agency*, 616 F.2d 1153, 1160 (9th Cir. 1980) (a reviewing court may consider expert testimony for "background information . . . or for the limited purposes of ascertaining whether the agency considered all the relevant factors or fully explicated its . . . conduct or grounds of decision"); *Citizens to Pres. Overton Park v. Volpe*, 401 U.S. 402, 420 (1971) (requiring that a court's review be "based on," but not limited to, the record before the agency), *abrogated on a different point of law*; *Camp v. Pitts*, 411 U.S. 138, 142 (1973) (holding that the administrative record should be the "focal point for judicial review," not prohibiting admission of new evidence). Indeed, expert testimony beyond what is contained in the administrative record is frequently necessary to explain to the court that scientific data not considered by the agency or thereby included in the administrative record is not in fact "the best scientific and commercial data available." As the Ninth Circuit previously stated, it "will often be impossible, especially when highly technical matters are involved, for the court to determine whether the agency took into consideration all relevant factors unless it looks outside the record to determine what matters the agency should have considered but did not." *Asarco*, 616 F.2d at 1160.

Here, however, the Ninth Circuit declared that the district court judge admitted too much background information when evaluating whether FWS used the best scientific data available. Pet. App. 51a-54a. The purpose of the APA is to prevent practices

"embodying in one person or agency the duties of prosecutor and judge." *Wong Yang Sung v. McGrath*, 339 U.S. 33, 41 (1950), *superseded by statute on another point of law*. Using the best available science ensures that agencies do not become scientific islands unto themselves, ignoring data or using poor data where it suits their perceived purposes. *Bennett v. Spear*, 520 U.S. 154, 176-77 (1997) ("[T]he obvious purpose of the requirement . . . is to ensure that the ESA not be implemented haphazardly, on the basis of speculation or surmise . . . we think it readily apparent that another objective (if not indeed the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives.").

In spite of finding the 2008 Biological Opinion to be a "big mess" with the potential for an enormous impact on 20 million Californians, Pet. App. 25a, the Ninth Circuit effectively decided that reviewing courts should take agency scientists at their word. In doing so, the court below betrayed the promises of both the best available science requirement of Section 7 and judicial review of agency action.

The "best available science" requirement is more than just a box an administrative agency must check when it makes a decision affecting millions of Americans. The best science is vital to avoid creating unintended consequences. For example, providing enough fresh water for delta smelt can result in depleting reservoir cold-water pool reserves that are needed for other listed species. Reducing water for

agriculture can harm terrestrial and waterfowl species residing in rice ponds. By failing to recognize the District Court's need to admit expert testimony to evaluate whether FWS used the best available science, the Ninth Circuit decision created an increased likelihood of serious, unintended consequences from agency decision-making. The Ninth Circuit effectively reads out any meaningful review of an agency decision so long as the agency produces a record vaguely related to its decision. It also renders courts' review of agency decision-making largely meaningless in an age when the majority of agency determinations – particularly in the environmental realm – depend on complex scientific analyses. In so doing, the Ninth Circuit undermines transparency in agency decisions. In sum, the Ninth Circuit's decision grants unfettered discretion for agencies to manipulate problematic data and methodology in pursuit of their perceived mandates.

## IV. The Court Should Review The Ninth Circuit's Erroneous Holding With Respect To Nondiscretionary Actions.

In the District Court and on appeal Plaintiffs-Appellees, relying on *Home Builders*, argued that the FWS violated the ESA by failing to separate discretionary actions from non-discretionary actions in setting the environmental baseline. Pet. App. 133a-137a. This argument was rejected by the District Court based on its conclusion that *Home Builders* did not address this issue, but rather, addressed

"whether the Section 7 consultation obligation attaches to a particular agency action at all." *Id*. On appeal, the Ninth Circuit agreed with the District Court's analysis, which should have disposed of the issue. *Id*.

However, the Ninth Circuit went on to discuss what it referred to as "the real question" that remained after *Home Builders* – what counts as a non-discretionary action. Pet. App. 135a. Without analysis or explanation, it appears that the Ninth Circuit concluded that only a "statutory obligation" can "count" as a non-discretionary action to which Section 7(a)(2) does not apply. The Ninth Circuit stated that Plaintiffs-Appellees had not pointed the court to any "statutory obligation" imposed on Bureau of Reclamation that was "both mandatory and inconsistent with its obligations under the ESA." Pet. App. 137a. In a footnote, the Ninth Circuit dismissed various water contracts and a California State Water Resources Control Board decision. Plaintiffs-Appellees brought these to the court's attention as limiting Bureau of Reclamation's discretion, but the court concluded that these obligations "do not approach the statutory mandate the Court found EPA was under in *Home Builders*." Pet. App. 137a n. 45. This conclusion conflicts with this Court's holding in *Home Builders*, as well as the Ninth Circuit's most recent decision in *NRDC v. Jewell*, 749 F.3d 776 (9th Cir. 2014).

In *Home Builders*, this Court held that Section 7(a)(2) applies only "to 'actions in which there is discretionary Federal involvement or control.' 50 C.F.R.

402.03." *Home Builders*, 551 U.S. at 673. In *NRDC*, the Ninth Circuit sitting en banc, considered whether Bureau of Reclamation's renewal of Sacramento River Settlement Contracts were exempt from Section 7(a)(2)'s consultation requirement. The Ninth Circuit, relying on the holding in *Home Builders* concluded that an action is non-discretionary "only if another *legal obligation* makes it impossible for the agency to exercise discretion for the protected species' benefit." *NRDC*, 749 F.3d at 784. The Ninth Circuit found that Bureau of Reclamation retained "some discretion" to act for the benefit of the species when renewing the contracts. *Id*. at 784-85. As a result, Bureau of Reclamation was required to consult under the ESA prior to renewing the contracts. *Id*.

Under the rulings in *Home Builders* and *NRDC*, consultation is required whenever the agency has "some discretion" to take action for the benefit of the species. *NRDC*, 749 F.3d at 784; *Home Builders*, 551 U.S. at 673. There is no requirement in either case that the "legal obligation" be statutorily mandated. *NRDC*, 749 F.3d at 783-85; *Home Builders*, 551 U.S. at 673. Given the conflict between the opinions in *Home Builders* and *NRDC* and the Ninth Circuit's holding in this case, the decision must be reconsidered by this Court.

## V. The Ninth Circuit Decision Conflicts With Its Previous Decision.

In *San Francisco BayKeeper v. Whitman*, 297 F.3d 877 (9th Cir. 2002), the Ninth Circuit upheld the introduction of evidence by the District Court which was not part of the record assembled by EPA. The evidence refuted the claim of inaction by California with respect to the promulgation of a total maximum daily load ("TMDL") under the Clean Water Act. The Ninth Circuit said:

> "Baykeeper is correct that generally judicial review of agency action is based on a set administrative record. However, when a court considers a claim that an agency has *failed* to act in violation of a legal obligation, 'review is not limited to the record as it existed at any single point in time, because there is not final agency action to demarcate the limits of the record.' *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 560 (9th Cir. 2000); see also, *Independence Min. Co., Inc. v. Babbin*, 105 F.3d 502, 511 (9th Cir. 1997) (noting that when a suit challenges agency inaction, district court can consider supplemental statements of an agency position because there is no date certain by which to define the administrative record). The reason for this rule is that when a court is asked to review agency inaction before the agency has made a final decision, there is often no official statement of the agency's justification for its actions or inactions." (297 F.3d 877, 886 (2002).)

In the instant action, the Ninth Circuit refused to allow the District Court to exercise the same discretion to cure the lack of "official statement of the agency's justification" to address the failure to reconcile the use of two different models, DAYFLOW and CASIM II. (*San Luis & Delta-Mendota Water Authority v. Jewell, et al.*, 747 F.3d 581 (9th Cir. 2014)). Because the two Ninth Circuit decisions conflict with one another, this Court must review the instant decision.

## CONCLUSION

For the foregoing reasons, the *Amici* request that the Court grant the Petition for Writ of Certiorari filed by Petitioners.

Respectfully submitted,

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