

No. 19-692

In the
Supreme Court of the United States

SUNIL DEO,
Petitioner,
v.

CALIFORNIA,
Respondent.

**On Petition for a Writ of Certiorari to the
Court of Appeal of California,
Fourth Appellate District, Division One**

**MOTION FOR LEAVE TO FILE *AMICUS*
BRIEF AND AMICUS CURIAE BRIEF
OF CALIFORNIA LAND TITLE ASSOCIATION
IN SUPPORT OF PETITIONER**

CHARLES A. HANSEN
Counsel of Record
MARK D. EPSTEIN
WENDEL ROSEN LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036
(510) 834-6600
chansen@wendel.com
mepstein@wendel.com

*Counsel for Amicus Curiae
California Land Title Association*

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

MOTION FOR LEAVE TO FILE

Movant California Land Title Association (“CLTA”) respectfully requests leave to file the accompanying brief as *amicus curiae* in support of the Petition for Writ of Certiorari filed by Sunil Deo. The Petitioner, Sunil Deo, supports this motion and supports having the movant submit the accompanying *amicus* brief. The respondent, People of the State of California, has not responded to the movant’s and *amicus curiae*’s request for their consent to the filing of this motion and *amicus* brief. Therefore, this motion is required pursuant to Rules 37.2(a) and 37.3(a) of the Rules of the Supreme Court of the United States.

IDENTITY AND INTERESTS OF MOVANT

Movant, CLTA, is (www.CLTA.org) is a statewide trade association existing as a nonprofit corporation under California law. Its principal offices are located at 1215 K Street, Suite 1816, Sacramento, California 95814. CLTA’s membership includes virtually all “title insurers,” “underwritten title companies,” and “controlled escrow companies” who conduct business in the State of California, as those terms are defined by California Insurance Code sections 12340.4, 12340.5, 12340.6. CLTA’s membership also includes affiliate members such as attorneys, lenders, builders, surveyors, trustees, escrow agents, consultants and computer firms. As part of its functions, CLTA acts as spokesperson and representative of its members in matters of common concern, and pursuant to its role as an advisory organization. CLTA also is an “advisory organization” as that term is defined in section 12340.8 of the California Insurance Code. CLTA prepares and

recommends to its membership and to the California Department of Insurance standard title insurance policy forms and endorsements as well as procedural manuals. CLTA is active in the advocacy and monitoring of legislation and regulations affecting the title industry. CLTA also monitors judicial decisions affecting the title industry and files briefs in cases of statewide significance. CLTA has appeared as an *amicus curiae* in a number of cases before the California Supreme Court and the California Courts of Appeal. This case presents a matter of direct interest to CLTA and its members.

REASONS TO GRANT LEAVE TO FILE THE ACCOMPANYING AMICUS BRIEF

Pursuant to Rule 37.2(b) of the Rules of the United States Supreme Court, movant CLTA respectfully seeks leave to file the accompanying *Amicus Curiae* brief in support of the Petition for Writ of Certiorari filed by Petitioner Sunil Deo on the grounds that the proffered *amicus* brief would bring several categories of relevant and additional matters to the Court's attention:

1. First, the CLTA's *amicus* brief addresses the impact that the relevant portions of the statute at issue, California Penal Code section 115, and the published California Court of Appeal decision that applies the statute, *People v. Astorga-Leidera*, 35 Cal.App.5th 646 (2019), will have on the holders of fee title to real property – owners – rather than the impact they will have on real property lienholders, which is the focus of the Petitioner's brief.

2. Second, the CLTA *amicus* brief addresses the reasons why California Penal Code section 115, and the application of the statute by the California Court of Appeal in the *People v. Astorga-Leidera, supra*, decision run afoul of the Due Process Clause of the Fifth Amendment to the United States Constitution and its application to the states via the Fourteenth Amendment under the balancing test adopted by this Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The manner in which of California Penal Code sections 115(e) and (f) enable a criminal law court to summarily declare, adjudge and decree a deed to be void following an abbreviated hearing, and for the same court to disregard the findings and conclusions on the same matter by a coequal civil law court before which a quiet title action is pending: (1) unfairly violates a competing claimant's property interests; (2) will usually impair the interests of more than one stakeholder; (3) the decision by the criminal law court based on a truncated and limited procedure; and (4) the governmental interest in making the correct decision on the issue is well worth any increased fiscal and administrative burdens that allowing the competing civil quiet title action to proceed would entail.

3. The CLTA's *amicus* brief also addresses the ramifications of California Penal Code section 115, and the application of the statute by *People v. Astorga-Leidera, supra*, for the widely recognized principle of judicial comity, which generally calls for one court in the same jurisdiction and the same level as a second court to refrain from exercising jurisdiction over a matter involving the same parties and issues to avoid placing an unnecessary burden on the judiciary, and

avoid the chaos and embarrassment of conflicting judgments.

These issues are relevant and fundamental to the issues that are raised by the Petition. For these reasons, movant CLTA respectfully submits that the filing of the accompanying *amicus curia* brief will aid the Court, and respectfully requests that the Court accept the CLTA's brief for its consideration.

Respectfully submitted,

CHARLES A. HANSEN
Counsel of Record
MARK D. EPSTEIN
WENDEL ROSEN LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036
(510) 834-6600
chansen@wendel.com
mepstein@wendel.com

Counsel for Amicus Curiae
California Land Title Association

QUESTIONS PRESENTED

California Penal Code sections 115(e) and (f) allow a prosecuting agency, after a person is convicted or pleads guilty to procuring a deed by fraud or forgery, to make a written motion upon which the court may adjudge the deed to be void *ab initio* after a single summary hearing on the matter. Anyone who holds actual or putative title to the real property in question prior to that point will thereby be stripped of their ownership because a deed that is deemed void is ineffective to transfer any title to the grantee under California law.

(1) Does the State of California's application of Penal Code Sections 115(e) and (f) violate an adversely affected putative property owner's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution by enabling the state to deprive them of their property without a reasonably thorough and fair adjudicatory process that is commensurate with the permanence and gravity of the harm they stand to suffer as a result of the state's action?

(2) California Penal Code Section 115(f)(9)(B) imbues a criminal law court with the discretion to deem a deed void *ab initio*, and in so doing, to disregard any pending quiet title action filed by a putative property owner in a coequal civil court where that party is seeking a judicial determination of the validity of the same deed at issue in the criminal law case. Does this discretion constitute an arbitrary and capricious act by the criminal court that deprives a putative property owner of their due process rights of

redress before the civil law court under the Fifth and Fourteenth Amendments to the United States Constitution?

(3) Does California's application of Penal Code Section 115(f)(9)(B), which enables a criminal law court to declare a deed void and thereby preempt a coequal civil law court that is adjudicating the same issue in another previously filed action, run afoul of the Doctrine of Judicial Comity and traditional notions of fundamental fairness?

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IDENTITY AND INTEREST OF AMICUS CURIAE¹

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As part of its functions, CLTA acts as spokesperson and representative of its members in matters of common concern. CLTA is also an "advisory organization" as that term is defined in section 12340.8 of the California Insurance Code, and accordingly prepares and recommends to its membership and to the California Department of Insurance standard title

¹ Pursuant to Rule 37.6 of the United States Supreme Court, counsel for movant and *amicus curiae* authored this motion and brief in whole, and no counsel for a party authored the motion in brief in whole or in part, nor did any person or entity other than the movant/*amicus* and its counsel make a monetary contribution to the preparation or submission of the motion in brief. Counsel of record for all parties received timely notice of *amicus curiae*'s intention to file this brief, and consent to file was granted by Petitioner. Respondent has not responded to the request for consent.

insurance policy forms and endorsements as well as procedural manuals.

CLTA is active in the advocacy and monitoring of legislation and regulations affecting the title industry. CLTA also monitors judicial decisions affecting the title industry and files briefs in cases of statewide significance. CLTA has appeared as an amicus curiae in a number of cases before the California Supreme Court and the California Courts of Appeal.

This case presents a matter of direct interest to CLTA and its members.

SUMMARY OF ARGUMENT

Under California Penal Code Section 115(e)(1), an adjudication of a civil matter, that a false or forged deed is void ab initio, may be made by a California criminal court without any meaningful opportunity to participate in the process on the part of those parties whose interest(s) in the property may be annulled.

Penal Code Section 115(f)(9)(B) imbues the criminal law court with the discretion to unilaterally disregard an action pending before a companion civil law court in the same jurisdiction when someone who holds putative title to the subject property has previously filed an action to quiet title in which they ask that court to decide the validity of the very same deed that is the subject of the prosecutor's motion. Section 115(f)(9)(B) therefore enables the criminal law court to arbitrarily preempt the civil law court and make a final and binding determination regarding the validity of the deed. Thus, after a single abbreviated and summary proceeding in which someone who holds a putative

interest in the property has a right to appear and present evidence, but no right to conduct discovery or to the safeguards that a full trial on the merits would afford them, that person can have their title annulled and taken away from them.

The language of California Penal Code Sections 115(e) and (f) enables one state court to arbitrarily disregard and override another coequal court and decide whether a deed is void *ab initio*. In that regard, and as applied against Petitioner by the California Court of Appeal below, Penal Code Section 115 deprives one of their title to real property without due process.

The Due Process Clause of the Fifth Amendment to the United States Constitution, as extended to the states of this country via the Fourteenth Amendment, guarantees that, “no person shall . . . be deprived of life, liberty or property, without due process of law.” With regard to property, the purpose of the Due Process Clause is to protect an owner’s use and possession of property from arbitrary encroachment and to minimize substantively unfair or mistaken deprivation of their property. *U.S. v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993); *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1983).

The analysis of whether a procedure is sufficient to satisfy a property owner’s Constitutional right to due process requires that such procedural protections be afforded to the putative property owner as the particular situation demands, but generally requires that the specific dictates of the procedure take into consideration: (1) the nature and scope of the property interest that will be affected by the official action;

(2) the risk of an erroneous deprivation of such interest through the procedures that the government is using; (3) the probable value, if any, of additional or substitute procedural safeguards; and (4) the government's interest, including the function involved in the physical and administrative burdens that any additional or substitute procedural requirements would entail. *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976); *Goldberg v. Kelly*, 397 U.S. 254, 263-272 (1972).

In California and most other states, when the validity of one's land title is disputed or called into question, it is rare that the title issue(s) at hand will only impact the interests of one or two stakeholders. Rather, in most instances many different parties—fee title holders, lien holders, lessees, easement holders, tax collectors, judgment creditors, future interest holders, and others—will simultaneously have a stake in the real property in question. In other words, land title records are in the public domain, and a court action to void title to land probably will in most instances have a ripple effect, potentially disadvantaging many stakeholders at one time, most of whom may have had nothing to do with the events that gave rise to the criminal proceedings or the peremptory voiding of title.

Property ownership is a fundamental right that is rooted in the Constitution, as well as the social and political fabric of our country. That's why in California, a putative property owner whose title to property is called into question or is challenged by another party has the right to affirm his or her property ownership by way of a comprehensive judicial action to quiet title to the property, pursuant to California Code of Civil

Procedure Section 760.010, et seq. An action to quiet title affords a putative real property owner the right to fully plead their case, conduct discovery, call and cross-examine witnesses, and otherwise hold a full trial on the merits of their asserted ownership claim. The availability of fully-developed civil quiet title procedure and due process safeguards is particularly important given that an often large group of interest holders may be profoundly affected by a summary court decision.

On the other hand, California Penal Code Sections 115(e) and (f), and the California Court of Appeal decision construing those code sections that gives rise to this Petition, allow a criminal court to summarily deprive someone of their property following a truncated single hearing procedure, without due process, where they are afforded no right to conduct discovery nor any genuine opportunity to fully adjudicate the issues on the merits.

Penal Code Section 115(f)(9)(B) also gives the criminal law court the right, following the truncated proceeding, to arbitrarily usurp another court's jurisdiction to decide the issue of a deed's validity from a civil law court even when a putative owner has previously commenced an action to quiet title to the same property. The criminal law court need not even consider the existence of the pending quiet title action. California's application of this statute to render a deed void when another action is pending before a coequal court to adjudicate the validity of the same deed deprives a property owner of his or her due process rights under the Fifth and Fourteenth Amendments to the United States Constitution. It also runs afoul of

the Doctrine of Judicial Comity and traditional notions of fundamental fairness.

ARGUMENT

I. The Summary Hearing Mandated by California Penal Code Sections 115(e) and (f) Does Not Afford Due Process to a Third Party Putative Property Owner

The Fifth and Fourteenth Amendments to the United States Constitution guaranty that no person in this country shall be deprived of property without due process of law. This Court has long held that due process requires that such procedural protections must be afforded to the affected person(s) in jeopardy of having their property rights abrogated by the government as the particular situation demands.

A. Penal Code Sections 115(e) and (f) Do Not Afford a Putative Property Owner a Reasonable Opportunity to Investigate, Prepare or Present Their Case

The California Penal Code summary procedure used to declare a deed void *ab initio* fails to satisfy the due process factors enumerated by this Court. Under California Penal Code sections 115(e) and (f), once a person is convicted or pleads guilty to the crime of procuring a deed by fraud or forgery, the prosecuting agency may make a written motion upon which the court, after a single summary hearing on the matter shall adjudge the alleged false or forged instrument to be void *ab initio*, if the court determines that it is appropriate to do so under applicable law. Anyone who held actual or putative title to the real property in

question prior to that point will thereby be stripped of their property ownership because a deed that is adjudged to be void is ineffective to transfer any title to the grantee under California law. *Firato v. Tuttle*, 48 Cal.2d 136, 139 (1957); *Bryce v. O'Brien*, 5 Cal.2d 615, 616 (1936).

Due process is not a technical conception or one that has a fixed content unrelated to time, place and circumstances. *Gilbert v. Homar*, 520 U.S. 924, 930 (1997); *Cafeteria & Restaurant Workers v. McElroy*, 367 U.S. 886, 895 (1961). Rather, to determine what process is constitutionally due in a given circumstance, this Court has generally balanced four distinct factors:

- (1) The private interest that will be affected by the official action taken by the government;
- (2) The risk of an erroneous deprivation of that private interest through the procedures that are used; and
- (3) The probable value, if any, that would be afforded by additional or substitute procedural safeguards; and
- (4) The magnitude of the government's interests involved in the matter.

Logan v. Zimmerman Brush Co., 455 U.S. 422, 454 (1982); *Gilbert v. Homar*, *supra*, 520 U.S. at 930; *Mathews v. Eldridge*, *supra*, 424 U.S. at 335.

Property ownership is a sacred and fundamental right in the United States, one that is plainly stated as a protected right in the Fifth and Fourteenth

Amendments themselves, and one that, as this Court has written an untold number of times, cannot be taken by the government without notice and an adequate opportunity to be heard. *See United States v. \$8,850 in Currency*, 461 U.S. 555, 562, n. 12 (1983); *Fuentes v. Shevin, supra*, 407 U.S. at 82; 49; *U.S. v. James Daniel Good Real Property, supra*, 510 U.S. at 48-49.

Applying the factors that are enumerated above to the summary procedure mandated by California Penal Code Sections 115(e) and (f), the procedure does not hold up as Constitutionally valid. It fails to afford a putative property owner with due process. This is particularly true where the putative property owner has previously commenced, or is defending his or her title in a previously commenced, action to quiet title to the same property.

The State of California recognizes that the issue of who holds title to real property can become disputed, and that title to real property can be clouded, due to claimed deed forgeries or for any number of other reasons. The state has therefore enacted an entire statutory scheme devoted to establishing a process whereby one can pursue an action in the state's civil courts to quiet title to real property when the validity, status or priority of one's title is called into question.

Under California law, when two or more persons have competing claims to the same real property, any of the claimants may initiate a civil action to quiet title to the property in the name(s) of one or more of the claimants. It is a judicial process by which a landowner, or a claimed landowner, may establish his,

her or their interest(s) in a particular parcel of real property as against anyone else who may have a competing claim or interest. Cal. Code Civ. Proc., §§760.010-760.060; *Peterson v. Gibbs*, 147 Cal.1, 5-6 (1905). The purpose of a quiet title action is to determine “all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he [or she] may be entitled to.” *Walters v. Fidelity Mortgage of Calif.*, 730 F. Supp. 2d 1185, 1197 (E.D. Cal. 2010); *Newman v. Cornelius*, 3 Cal.App.3d 279, 284 (1970).

Land title records are typically kept in the public domain, and a criminal court’s decision to void a deed under California Penal Code Sections 115 (e) and (f) is likely to have a domino effect in most instances, simultaneously abrogating the interests of several stakeholders in the subject property without a fair opportunity to be heard and present their cases to the court. That’s why civil quiet title actions are often multi-party affairs in which people with remote, contingent, possible and minor interests in land are named, served and given a chance to benefit from due process.

The quiet title statutory scheme provides a number of procedural safeguards that include, among other things, a manner in which to reduce the risk that a forgotten or unknown person who may have an ownership interest in the property is provided with notice of a quiet title action, and an opportunity to respond to it. *See, e.g.*, Cal. Civ. Proc. Code § 762.070 (rights of unknown defendants), and §§ 763.010 – 763.040 (conditions required for service of process by

publication). Litigants in an action to quiet title may avail themselves of the full range of discovery procedures that are afforded to civil litigants in other types of actions, and they are entitled to a full court trial on the merits. Cal. Civ. Proc. Code § 764.010. The availability of a fully-developed civil quiet title procedure and due process safeguards is particularly important given that an often large group of interest holders who have relied upon the integrity of the public records--secured lenders, judgment creditors , lessees, easement holders, among others-- may be profoundly affected by a summary order entered by the criminal law court without safeguards to ensure that they have had their due process.

California Penal Code Sections 115(e) and (f), on the other hand, provide a truncated summary procedure that is paltry by comparison to a quiet title action. The statute enables a criminal law court to declare a deed void following a single hearing on a noticed motion by the prosecutor that may be scheduled ninety calendar days from the date the motion is made. While the statute allows any party who claims an interest in the property “to be heard and present information to the court,” such an interested party is not afforded any right to conduct discovery or otherwise participate in the case prior to that hearing, rendering any due process afforded in the criminal law court to be illusory at best.

As a result, a party who has a putative interest in the real property in question is not allowed to adequately investigate the prosecutor’s claims and is left to improvise a defense of their property title as best

as they can. This arbitrarily and unfairly places property stakeholders fates in the hands of one court, in a case to which they are not even a party and in which they were not previously entitled to participate. In short, by the time an interested party is given the right to address the criminal court in an abbreviated hearing, the adverse decision has already been made, and convincing the court that its decision was in error is far more difficult to accomplish.

B. It's Fundamentally Unfair to Require a Putative Property Owner to Defend His or Her Title Without the Ability to Conduct Discovery

Without a party's right to conduct discovery and have a trial on the merits, a property owner may be deprived of their property based on a court acting on a motion, with limited evidence and no participation of a party whose interest will be affected. As early as 1947, this Court recognized that a party's right to conduct discovery is a fundamental element of due process. *See Hickman v. Taylor*, 329 U.S. 495, 507 (1947) ("We agree, of course, that the deposition-discovery rules are to be accorded a broad and liberal treatment to effectuate their purpose that civil trials in the federal courts no longer need be carried on in the dark...Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.")); *Schlagenhauf v. Holder*, 379 U.S. 104, 114 (1964).

Federal Rule of Civil Procedure 56 which controls summary judgment procedures, is instructive by analogy. Rule 56 has embedded within it an express

carve out to protect a litigant's fundamental right to have an adequate opportunity to conduct discovery. Fed. R. Civ. P. 56(f); *Burlington Northern Santa Fe R. Co. v. Assiniboine and Sioux*, 323 F.3d 767, 773 (9th Cir. 2003); *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001). In *Burlington Northern Santa Fe R. Co.*, *supra* at 773, the Ninth Circuit Court of Appeals commented in its decision that, "Where...a summary judgment motion is filed so early in the litigation, before a party has had any realistic opportunity to pursue discovery relating to its theory of the case, district courts should grant any Rule 56(f) motion fairly freely." This Court has construed Rule 56(f) as requiring, rather than merely permitting, discovery, "...where the non-moving party has not had the opportunity to discover information that is essential to its opposition." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986).

The single hearing procedure by which a criminal law court is empowered to summarily adjudicate whether a deed is void or valid pursuant to California Penal Code Sections 115(e) and (f) is akin to a summary judgment motion, albeit a procedure whereby a party who stands to lose their property doesn't even have the right to conduct any discovery. The gravity of the interest that can be lost – someone's ownership of their real property – by the criminal law court's decision on a prosecutor's motion to have a deed declared void is too great to be decided on such a truncated procedure. On balance, it would benefit the government and all parties involved for the parties to be afforded the opportunity to conduct discovery and have a full trial on the merits.

II. Penal Code Section 115(f)(9)(B) Runs Afoul of Established Principles of Comity and Fundamental Fairness

When two concurrent actions are pending in companion California courts to determine the validity of the same deed, one a civil action to quiet title to real property and the second a criminal forgery case pursuant to California Penal Code Section 115, regardless of which case was filed first, Section 115(f)(9)(B) arbitrarily gives the criminal court the right to disregard and preempt the civil court action. This flies in the face of traditional notions of comity and fundamental fairness.

It has been stated in many California published opinions that where two courts have concurrent jurisdiction over a class of cases, the one that first should assume jurisdiction over the subject matter of a particular controversy. *Plant Insulation Co. v. Fibreboard Corp.*, 224 Cal.App.3d 781, 786 (1990); *People v. American Autoplan*, 20 Cal.App.4th 760, 769, 770 (1993).

Federally, there is a generally recognized Doctrine of Judicial Comity which permits a District Court to decline to exercise jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district. *Great Northern Railway Co. v. National Railroad Adjustment Board*, 422 F.2d 1187, 1193 (7th Cir. 1970). The purpose of the Comity Doctrine is to avoid placing an unnecessary burden on the judiciary, and to avoid the embarrassment of conflicting judgments. *Great*

Northern Railway Co. v. National Railroad Adjustment Board, supra, 422 F.2d at 1193.

When cases involving identical issues are pending before two federal district courts, “though no precise rule has evolved, the general principle is to avoid duplicative litigation.” *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). In most “cases of concurrent jurisdiction, the court which first has possession of the subject must decide it.” *Smith v. M'Iver*, 22 U.S. 532, 535 (1824). While this principle of comity between courts is not absolute, “ this Court has explained that, “[W]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation, does not counsel rigid mechanical solution of such problems. The factors relevant to wise administration here are equitable in nature.” *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183-184 (1952):

The Ninth Circuit has framed the issue as follows:

“Normally sound judicial administration would indicate that when two identical actions are filed in courts of concurrent jurisdiction, the court which first acquired jurisdiction should try the lawsuit and no purpose would be served by proceeding with a second action. However, this ‘first to file’ rule is not a rigid or inflexible rule to be mechanically applied, but rather is to be applied with a view to **the dictates of sound judicial administration.**”

Pacesetter Systems, Inc. v. Medtronic, Inc., 678 F.2d 93, 95 (9th Cir. 1982) [Bold added for emphasis.].

While the Doctrine of Judicial Comity is not strict or rigid in its application, the manner in which California Penal Code Section 115(f)(9)(B) allows a criminal law court to override a coequal civil law court is. It unfairly affords the California criminal law court with the preemptive authority over a civil law court that is concurrently adjudicating the same matter. It is arbitrary, unfair, and runs contrary to this Court's proclamation that such issues should be resolved equitably rather than according to rigid and inflexible rules.

CONCLUSION

Though the public policy underlying California Penal Code Section 115 to criminalize the deliberate procurement and recording of fraudulent deeds and other instruments affecting title to real property is sound, the statute is poorly drafted and ill-considered with regard to the ramifications of subsections (e) and (f). This is demonstrated by the manner in which it has been applied by the California Court of Appeal in *People v. Astorga-Leidera*. Sections 115(e) and (f) run afoul of Constitutional due process and sound principles of comity and fairness. For these reasons, the Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

CHARLES A. HANSEN
Counsel of Record
MARK D. EPSTEIN
WENDEL ROSEN LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036
(510) 834-6600
chansen@wendel.com
mepstein@wendel.com

Counsel for Amicus Curiae
California Land Title Association