

No. 25-326

**In the
Supreme Court of the United States**

REAL ESTATE EXCHANGE, INC.,

Petitioner,

v.

ZILLOW GROUP, INC. AND
NATIONAL ASSOCIATION OF REALTORS,

Respondents.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF AMICUS CURIAE
ANTITRUST EDUCATION PROJECT
IN SUPPORT OF PETITIONER**

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October 14, 2025

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INTEREST OF THE AMICUS¹

Amicus, the Antitrust Education Project, is supporting the Petitioner in asking that this Court grant certiorari to review and reverse the decision of the Ninth Circuit in *Real Estate Exchange Inc. v. Zillow Group, Inc.*, No. 24-685, 2025 WL 670967 (9th Cir. Mar. 3, 2025), insofar as that decision upheld the lower court’s decision holding that an agreement to impose a non-binding rule cannot constitute an agreement under Section 1 of the Sherman Act. The decision, which deepens a split among the Circuit Courts of Appeals, departs from settled antitrust jurisprudence and in particular from the consumer welfare standard. The Antitrust Education Project is an organization committed to combatting the rising politicization and concomitant deterioration of antitrust theory, jurisprudence, and enforcement practices by advocating that the consumer welfare standard should continue to serve as the centerpiece concept of American antitrust jurisprudence. The Project promotes education of the current generation of American law students, practitioners, and jurists about the consumer welfare standard, and advocates for the vigorous application of that standard by the enforcement agencies and by the courts.

¹ Pursuant to SUP. CT. R. 37.6, amicus certifies that no counsel for any party authored this brief in whole or in part, no party or party’s counsel made a monetary contribution to fund its preparation or submission, and no person other than amicus or his counsel made such a monetary contribution. Pursuant to SUP. CT. R. 37.2, notice of intent to file this brief was provided to counsel for the parties by the Antitrust Education Project on October 2, 2025.

SUMMARY OF ARGUMENT

There is today a marked absence of free and open competition in the market for real estate services. Americans directly experience it whenever they buy or sell a home. Everyone pays the price in the form of higher costs, decreased output of new houses, fewer jobs in the construction and durable goods sectors, and the social costs of delayed family formation, that are the inevitable result of the exorbitant commissions and fees that these gatekeepers of the American dream extract from those seeking to acquire a home of their own. The suppression of new entry and the prevention of innovative disruption by the National Association of Realtors (“NAR”) has benefitted only its 1.4 million members who, insulated from competition, have continued to charge supra-competitive prices for service that can charitably be described as a lackluster relic of the pre-Internet era.

A combination of legal errors committed below has permitted this patent violation of the Sherman Act to continue. First, the court held that competitors do not enter into an agreement for purposes of Section 1 of the Sherman Act if they agree to impose only a non-binding rule, thereby falling into the error of confusing the question of an agreement’s existence with the question of its efficacy; this has deepened an existing circuit split between the Ninth and Tenth Circuits, on the one hand, and the First, Third, and Fifth Circuits on the other. Second, the court ignored that, by subsequently accepting an invitation to join an agreement, a party may become a party to that agreement. Here, there is no circuit split, only clear error.

This Court should grant the petition for certiorari, however, not merely to correct these errors and resolve the split between the Circuits, but also, and far more importantly, to affirm the continuing vitality of the consumer welfare standard that has guided the antitrust enterprise for the past half century. The case presents a fitting opportunity to do so not only because of the central role that the housing industry plays in the life of our nation, but also given that the decision below presents a textbook example of a court falling into error by seeking to protect competitors rather than consumers, and stifling innovation and new entry in order to shelter legacy market participants.

Ever growing numbers of lawyers and legal scholars are urging the courts to abandon the consumer welfare standard and succumb to the old temptation to transform the magna carta of American competition into a tool for the advancement of idiosyncratic ideological aims and the enforcement of individual preferences. This petition presents the court with the opportunity to put a definitive halt to this effort and restore consumer welfare to its rightful place as the lodestar of the American antitrust enterprise. The Court should therefore grant the petition for certiorari and reverse the decision of the Ninth Circuit.

ARGUMENT

I. The Ninth Circuit Erroneously Concluded That An Agreement To Adopt A Non-Binding Rule Is Not An Agreement Under The Sherman Act.

Section 1 of the Sherman Act prohibits every “contract, combination * * * or conspiracy” that

unreasonably restrains trade. 15 U.S.C. § 1. “The question whether an arrangement is a contract, combination, or conspiracy is different from and antecedent to the question whether it unreasonably restrains trade.” *American Needle, Inc. v. Nat’l Football League*, 560 U.S. 183, 186 (2010). To constitute a Section 1 contract, combination, or conspiracy, an arrangement must be (a) an agreement (b) between two or more entities capable of engaging in concerted action. *Id.* at 189–190. If there has been no such agreement, then there has been no concerted action. But wherever competitors have agreed to adopt rules, guidelines, or standards, then their “activities constitute concerted action that is not categorically beyond the coverage of § 1.” *Id.* at 186. And “the legality of that concerted action must be judged under the Rule of Reason.” *Id.*

The Ninth Circuit’s ruling that the agreement by the members realtors of the NAR to adopt the Segregation Rule is not an agreement because that rule is “optional” ignores two of the three ways in which this Court has acknowledged that even an optional rule may violate the antitrust laws: first, where members of an association are competitors and either participate in the adoption of the rule or have delegated the authority to adopt and promulgate the rule to the association, the adoption of the rule itself constitutes concerted action that is subject to antitrust scrutiny; and, second, where the optional rule invites the members of an association to agree to adopt and enforce the “optional” standard, and the members signal their agreement by so doing.

A. Even An Agreement to Adopt an Optional Rule is an Agreement.

Both the District Court and Court of Appeals erred by holding that the Segregation Rule was not the product of an agreement because it “is entirely optional and has not been adopted by approximately 29% of NAR-affiliated MLSs.” Pet.App.29a; *See also id.* at 3a (“The rule was in fact optional and does not establish a Section 1 agreement by itself.”). This is wrong under settled precedent and as a matter of simple common sense insofar as it overlooks that the adoption of the optional rule was itself the product of an agreement among competitors and thus was, standing alone, concerted action.

The adoption of the Segregation Rule constituted concerted action for purposes of Section 1 because a decision by the NAR board of directors reflects concerted action on the part of competitors. As this Court explained in *American Needle, Inc. v. National Football League*, the inquiry into whether there has been concerted action looks to whether there has been an agreement that deprives the marketplace of independent centers of decisionmaking:

The key is whether the alleged contract, combination, or conspiracy is concerted action—that is, whether it joins together separate decisionmakers. The relevant inquiry, therefore, is whether there is a contract, combination, or conspiracy amongst separate economic actors pursuing separate economic interests, such that the agreement deprives the marketplace of independent centers

of decisionmaking, and therefore of diversity of entrepreneurial interests, and thus of actual or potential competition.

560 U.S. at 195 (cleaned up). The membership of the NAR board of directors includes competitors in the industry, including individual REALTORS®² and representatives from each of the 75 largest real estate firms.³ The decision by the NAR to adopt even an optional rule, therefore, itself reflected “concerted action under Section 1 that joins together separate decisionmakers” in the formulation of an agreed upon result.

This is not to say that an optional rule or discretionary standard is indistinguishable from a mandatory or binding one. The optional nature of the rule likely mitigates the quantum of its anticompetitive effect. It does not, however, alter the fact that the decision to adopt the rule was concerted action under Section 1. Competitors can agree to compete vigorously and, while it is hard to imagine how such an agreement would fail to pass survive scrutiny under the Rule of Reason, it would nevertheless constitute concerted action under the Sherman Act. A non-binding rule or standard may impose less of a restraint on

² A REALTOR® is defined by the NAR as “a member of NAR, National Association of REALTORS® as well as a licensed real estate professional. ... a REALTOR® pledges to uphold integrity, honesty, and client interests through NAR Code of Ethics and complete ethics training every three years.” *When Is a Real Estate Agent a REALTOR®?*, NAT’L ASS’N OF REALTORS, <https://perma.cc/3GQL-2G4Y>.

³ *Composition*, NAT’L ASS’N OF REALTORS, <https://perma.cc/RPB5-WJ57>.

competition than a mandatory one. But an agreement to adopt a non-binding rule or standard is no less an agreement than one to adopt one that is mandatory and binding. In short, the court below fell into the trap identified by Judge Posner of “failing to distinguish between the existence of a conspiracy and its efficacy.” *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 656 (7th Cir. 2002).⁴

B. Even An Optional Rule May Invite Competitors to Take Concerted Action.

The second error below was the assumption shared by the district court and the court of appeals

⁴ A failure to distinguish between unilateral and concerted action may have contributed to the making of this error. Indeed, both the Ninth Circuit and, before it the Tenth Circuit, effectively applied the standard that is used when a manufacturer unilaterally announces a suggested price or policy, in which case there is no concerted action but only the unilateral action of the manufacturer, to analyze an agreement by competitors, acting as members of a trade association, to announce a suggested rule, in which case there is an agreement, made when those competitors agree to the adoption of the optional rule.

In the former case, the manufacturer is free to suggest and even to enforce whatever price or policy it prefers, for as this Court has made clear, such “[i]ndependent action is not proscribed. A manufacturer of course generally has a right to deal, or refuse to deal, with whomever it likes, as long as it does so independently.” *Monsanto v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 761 (1984) (citing *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919)). In the latter case, however, the action of the trade association members is analyzed using the rule of reason. *National Soc’y of Pro. Eng’rs v. United States*, 435 U. S. 679, 687–92, 697 (1978) (prohibiting the Society from adopting any “opinion, policy statement, or guideline stating or implying that competitive bidding is unethical”).

that, where a defendant was not an original party to the agreement to promulgate a non-binding rule, its subsequent decision to adopt the rule to which the original conspirators agreed cannot form the basis for § 1 liability. One need not get in on the ground floor to be held liable under § 1. Nor does a defendant who subsequently agrees to adopt and adhere to an existing restraint of trade immunized from liability by the fact that it chose to do so freely. Indeed, it would be perverse if one could be held liable for choosing to join an agreement only if one in fact had no choice but to do so.

II. The Ninth Circuit Decision Would Harm Consumer Welfare.

A. The Sherman Act Protects Competition To Protect Consumers.

Antitrust jurisprudence once reflected a raft of subjective biases and idealized visions of commerce that had little grounding in economics, tended to punish reasonable business arrangements, promoted inefficiency, and thwarted the basic purposes of the antitrust laws; namely, the promotion of the well-being of the American consumer. Indeed, for the first half of the last century, the focus of American antitrust policy and enforcement remained the protection of “small dealers and worthy men,” *United States v. Trans-Missouri Freight Ass’n*, 166 U.S. 290, 323 (1897), against competition from larger, more efficient enterprises. Untethered from the original purpose of the Sherman Act, the courts came to prefer, on account of its “social and moral” effects, “a system of small producers, each dependent for his success upon his own skill and character, to one in which the great

mass of those engaged must accept the direction of a few.” *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 427 (2d Cir. 1945) (Hand, J.). This effort to combat the “curse of bigness” continued well into the 1970s.

The courts have now accepted that “Congress designed the Sherman Act as a ‘consumer welfare prescription.’” *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979) (quoting ROBERT H. BORK, *THE ANTITRUST PARADOX* 66 (1978)).⁵ The recovery of the Sherman Act’s original meaning and the restoration of the antitrust laws to the service of their intended purpose owes much to the efforts of Judge Robert H. Bork, who argued persuasively that “[t]he whole task of antitrust can be summed up as the effort to improve allocative efficiency without impairing productive efficiency so greatly as to produce either no gain or a net loss in consumer welfare.”⁶ Judge Bork established that the overriding purpose of the antitrust laws is to enhance “consumer welfare,” that is, the “maximization of wealth or consumer want satisfaction.”⁷ And to achieve that end, the Congress intended for the courts to focus on the task of “distinguish[ing] between agreements or activities that increase wealth through

⁵ See, e.g., Robert H. Bork, *Legislative Intent and The Policy of The Sherman Act*, 9 J. L. & ECON. 7 (1966); Einer Elhauge, *Tying, Bundled Discounts, and the Death of the Single Monopoly Profit Theory*, 123 HARV. L. REV. 399, 435–42 (2009) (showing that case law, legislative history and sound policy all support a consumer welfare standard).

⁶ BORK, *THE ANTITRUST PARADOX*, *supra*, at 91.

⁷ Bork, *Legislative Intent*, *supra*, at 7.

efficiency and those that decrease it through restriction of output.”⁸

Antitrust “has a built-in preference for material prosperity, but it has nothing to say about the ways prosperity is distributed or used.”⁹ But there is “not a scintilla of support” in the Sherman Act’s legislative history for “broad social, political, and ethical mandates.”¹⁰ “Consumer welfare,” properly understood, thus includes the maximizing of economic efficiency but excludes anything having to do with the fairness of commercial transactions and economic transfers, or with achieving a just distribution of wealth and economic power.

Beginning in the 1970s, this originalist understanding of the Sherman Act gained widespread acceptance and the aim of antitrust scrutiny has progressively shifted from the “protection of competition as a process of rivalry to the protection of competition as a means of promoting economic efficiency.” *Olympia Equip. Leasing Co. v. W. Union Tel. Co.*, 797 F.2d 370, 375 (7th Cir. 1986) (Posner, J.). The focus of the analysis remains on protecting competition, not competitors. *Brunswick Corp. v. Pueblo Bowl-O-Mat*,

⁸ *Id.*

⁹ BORK, *THE ANTITRUST PARADOX*, *supra*, at 90; *See also id.* at 111 (“[I]t seems clear the income distribution effects of economic activity should be completely excluded from the determination of the antitrust legality of the activity. It may be sufficient to note that the shift in income distribution does not lessen total wealth, and a decision about it requires a choice between two groups of consumers that should be made by the legislature rather than by the judiciary.”).

¹⁰ Bork, *Legislative Intent*, *supra*, at 10.

Inc., 429 U.S. 477, 488 (1977) (“The antitrust laws ... were enacted for ‘the protection of competition, not competitors.’ ” (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962))). But the effect of a restraint on competition is analyzed specifically “with the interests of consumers, not competitors, in mind.” *Novell, Inc. v. Microsoft Corp.*, 731 F.3d 1064, 1072 (10th Cir. 2013) (Gorsuch, J.). The aim, in other words, is to “distinguish[] between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer’s best interest.” *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007); *Accord Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018).

Antitrust is today no longer a tool for the imposition by the judiciary of ideological and aesthetic preferences on the free market. The futile struggle to promote the small over the big and to sort the worthy from the unworthy has ended, replaced by a focus on promoting innovation, raising output, lowering prices, and broadening consumer choice, all to be achieved by fostering free and open competition. The innovation, growth, and rising living standards that have characterized the past 45 years bear eloquent witness to the long-lasting, positive impact of the antitrust revolution ushered in by the Judge Bork and the proponents of the Chicago School.

The price of economic prosperity remains eternal judicial vigilance. Today, there are voices on both the left and right calling for a return to the mistakes of the past. The cry is again raised in favor of embracing more sweeping standards that would serve social and

moral agenda, aims that lie entirely outside the purview of the antitrust laws.¹¹ Again, the nation’s successful and most innovative companies find themselves under attack solely because of their innovation and success, either because they have become too big for the tastes of the hipster antitrust movement or have transgressed the political preferences of the antitrust enforcers. Again, there are those who seek to use the competition laws to promote the personal and political rather than efficiency, innovation, and consumer welfare.

If the original intention of the Congress that enacted the Sherman Act is to be respected, then the consumer welfare standard must remain the lodestar by which the antitrust enterprise is conducted. For it is the consumer welfare standard that permits the enforcers and the courts alike to distinguish between bigness that is the fruit of anticompetitive conduct or that is being abused to restrain competition, thwart efficiency, and harm the consumer, and bigness that is merely the consequence “of a superior product, business acumen, or historic accident.” *United States v. Grinnell Corp.*, 384 U.S. 563, 570–71 (1966). It is only by looking to efficiency, price, and innovation, and not to diversity, equity, and inclusion, that the courts will ensure that the antitrust laws are not diverted into the service of the prevailing predilections of the day but continue to serve their original purpose of promoting competition and benefitting the American consumer.

¹¹ See, e.g., Hon. Douglas H. Ginsburg, *Wither The Consumer Welfare Standard?*, 46 HARV. J. L. & PUB. POL’Y 69, 72–81 (2023).

B. The Decision Below Contradicts The Consumer Welfare Standard.

The Ninth Circuit has joined the Tenth Circuit in creating a safe harbor in which those competitors who seek to restrain competition and inflict harm on consumers may find unfailing shelter from antitrust scrutiny. The standard they have announced would license competitors to restrain competition whenever competition can be restrained by means of a non-binding rule, standard, or guideline. It is not merely that such agreements would survive antitrust scrutiny under this standard; they would not be subject to antitrust scrutiny *at all*. And where, as here, that non-binding rule suffices to protect inefficient incumbents against competition from new entrants, it is the consumer who will suffer the harms lower quality service, reduced choice, and higher prices, fees, and commissions.

On its face, the NAR's Segregation Rule purports merely to separate the MLS listings offered by members of the NAR from the non-MLS listings offered by realtors who are not members. In its effect, however, the rule resulted in the listings offered by new entrants being made invisible to consumers. After Zillow agreed to comply with the NAR's Segregation Rule and redesigned its website to separate listings from non-NAR realtors, Consumer traffic to the new entrant's website plummeted by 90 percent. That new entrant, Petitioner Real Estate Exchange, was forced out of business.

The harm was not merely to these competitors, of course, but to competition and to consumers as well. The facts and the data speak for themselves. Realtors

continue to extract six percent of every real estate transaction that takes place in the United States, a figure that has remained constant for over half a century, even as buyers have come use the Internet to perform most of the work that once would have required the use of a buyer's agent, and even as house prices have experienced inflation far in excess of the rate at which wages have increased.¹² As a 2020 study revealed, the stifling of competition in the market for realtor services has resulted in Americans now paying more, substantially more, when they buy or sell their home than their counterparts in other developed countries:¹³

Country	Average Commission
US	6%
Australia	5.7%
Canada	5%
New Zealand	4.3%
Argentina	4.2%
Israel	4%
France	3.9%

¹² Veronica Dagher, *Almost No One Pay a 6% Real-Estate Commission—Except Americans: How the rest of the world buys and sells homes explained, in three charts*, WALL ST. J. (Nov. 16, 2023), <https://perma.cc/CZA7-3D2P> (“In the pre-internet days, a buyer agent’s main job was to screen and filter listings for hopeful home buyers. Today, much of that early house hunting can be done online.”).

¹³ Property 118.com News Team, *Global Estate Agent Commission Comparison*, PROPERTY118 (Aug. 26, 2020), <https://perma.cc/FPA8-CQZC>.

Italy	3.4%
Japan	3.15%
Spain	2.75%
Germany	2.7%
UK	1.8%
China	1.75%
Singapore	1.5%
Netherlands	1.5%
Hong Kong	0.75%
South Korea	0.55%

Id. The Wall Street Journal reported in 2023 that even consumers in Russia (3.5%) and Red China (2.5%) pay substantially less when they buy and sell their homes than American consumers.¹⁴

The members of the NAR were able to agree upon a mechanism that would prevent a new entrant introducing price competition into this market. What is more, they were able to immunize their agreement from scrutiny by devising a restraint that, while highly effective at barring that new entry, was formally optional and non-binding. They were able to do this because the analysis embraced by the Ninth Circuit unavoidably turns a blind eye to the actual and demonstrable economic effects of a restraint so long as the parties characterize the restraint as optional. An agreement that restrains competition in practice will pass muster, therefore, so long as it might not have restrained competition in theory. This represents the

¹⁴ Dagher, *supra* at n.11.

triumph of form over substance and, more importantly, over competition.

The Ninth Circuit’s decision thus ignores this court’s oft-repeated injunction to “seek the central substance of the situation, not its periphery,” when analyzing the effect of a restraint on competition. *United States v. Sealy, Inc.*, 388 U.S. 350, 353 (1967); *See also American Needle, Inc.*, 560 U.S. at 191–92; *Timken Roller Bearing Co. v. United States*, 341 U.S. 593 (1951); *United States v. Gen. Motors Corp.*, 384 U.S. 127 (1966); *United States v. New Wrinkle, Inc.*, 342 U.S. 371 (1952); *United States v. Am. Tobacco Co.*, 221 U.S. 1063 (1911). Indeed, as this Court has repeatedly affirmed, the analysis under the antitrust laws is concerned not with the formalities competitors use to enter their agreement to restrain trade, but with the “demonstrable economic effect” that the restraint has in practice. *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 58–59 (1977); *See also Business Electronics Corp. v. Sharp Electronics Corp.*, 485 U.S. 717, 724 (1988). For it is only by keeping the focus of the analysis squarely on those demonstrable economic effects that the courts can ensure that consumers are receiving the benefits of the competition the Sherman Act protects.

Had the courts below subjected it to scrutiny under the rule of reason, they would have found that, although formally non-binding, the NAR’s Segregation Rule was in terms of its demonstrable economic effects indistinguishable from a predatory group boycott undertaken to deny market access to a new entrant threatening to introduce technological innovation and competition. The courts have long recognized

the anticompetitive effects of such boycotts and have condemned them, even when compliance with them was formally optional, as antithetical to the Sherman Act. *See, e.g., United States v. Terminal R.R. Ass'n of St. Louis*, 224 U.S. 383, 409-410 (1912) (condemning *use of control exercised over existing approaches to river crossing to exclude competitors*); *Gamco Inc. v. Providence Fruit & Produce Bldg*, 194 F.2d 484, 487-89 (1st Cir. 1952) (condemning coordinated refusal to renew lease to competitor); *United States v. Sw. Greyhound Lines, Inc.*, 1953 Trade Cases ¶ 67,470, 1953 WL 100908 (N.D. Okla. Mar. 27, 1953) (competitors' actions resulting in tenant who refused to cease competing with them being evicted from main bus terminal violated both § 1 and § 2 of Sherman Act). Indeed, as Judge Bork observed, these sorts of "predatory boycotts engaged in by members of a joint venture are relatively easy to spot."¹⁵ It would have been easy to spot here, as well, had the Ninth Circuit not adopted a rule that requires the courts to close their eyes.

It is a rule, moreover, that appears to have resuscitated the long-discredited preference for the small, inefficient, legacy merchants. There may be reasons why the legacy realtors now working in the United States need to be sheltered from change, from innovation, and from free and open competition. As Judge Bork observed nearly half a century ago, it is not for the courts, but for the legislature, to decide if and when the American consumer is to bear the cost of

¹⁵ BORK, THE ANTITRUST PARADOX, *supra*, at 336-37 (observing that court in *Southwestern Greyhound* "had no difficulty in perceiving the connection between the evicted tenant's increased competition and the eviction").

shielding an inefficient form of commerce from competition:

Courts are the wrong institution for these unstructured interpersonal comparisons both because political choices of this nature should, in a society with our presuppositions about democracy, be made by elected and representative institutions, and because the courts do not have the facilities for fact-finding on a broad scale that are available to the legislature. The admission by a court of goals in conflict with the consumer welfare into the adjudicative process, therefore, involves a serious usurpation of the legislative function by the judicial arm.¹⁶

If realtors alone, unlike stock brokers, bookstore owners, and mom-and-pop groceries, are to be excluded from the reach of the antitrust laws and protected from the sort of disruption the Internet has introduced into these other sectors or our economy, it is for Congress, the branch of government most directly answerable to the individual American consumer who would pay the price for that decision, to grant that exemption.

¹⁶ BORK, *THE ANTITRUST PARADOX*, *supra*, at 83; *See also Marrese v. Am. Acad. of Orthopaedic Surgeons*, 706 F.2d 1488, 1497 (7th Cir. 1983) (“[A] consumer has no interest in the preservation of a fixed number of competitors greater than the number required to assure his being able to buy at the competitive price.”) (Posner, J.).

CONCLUSION

This Court should grant the petition for certiorari, reverse the decision of the Ninth Circuit, and reaffirm that the Sherman Act was enacted as a prescription for consumer welfare.

October 14, 2025

Respectfully submitted,

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