NO. 25-475

In the Supreme Court of the United States

JASON CAMP,

Petitioner,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal of California, Second Appellate District

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

The Respondent LOS ANGELES UNIFIED SCHOOL DISTRICT is a public entity.

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INTRODUCTION

Respondent, the LOS ANGELES UNIFIED SCHOOL DISTRICT, Defendant in the civil action below ("Defendant" or "the School District"), submits the following brief in opposition to the petition for writ of certiorari filed by Jason Camp, Plaintiff in the case below ("Plaintiff" or "Mr. Camp"). Respectfully, the petition does not meet the criteria for review by this Court.

Plaintiff maintains that review is necessary to determine whether the School District's policies regarding the distribution of Title I[1] funds actually violated the law. (Petitioner For a Writ Certiorari ("Pet.") at i). However, in the decision below, the California Court of Appeal specifically stated: "*We caution that we do not decide whether defendant's allocation of Title I funds complies with federal and state law.*" (Petitioner's Appendix "App." 28a, n.17 (emphasis added)). Instead, the question before the California Court of Appeal was whether, pursuant to California law, Mr. Camp presented substantial evidence to show that he had reasonable cause to believe that he was reporting protected activity within the meaning of California Labor Code section 1102.5, commonly referred to as California's "whistleblower statute." (App.28a, n.17). Curiously, Plaintiff fails to even reference California Labor Code section 1102.5 in his petition.

Of course, this Court lacks jurisdiction to review a state court judgment that rests on independent and

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[1] Title I, Part A (Title I) of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, is a federally funded program to ensure all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach minimum proficiency. (20 U.S.C. § 6301)

adequate state grounds. *Foster v. Chatman*, 578 U.S. 488, 497, 136 S.Ct. 1737, 1745 (2016). Under California law, in order to prevail on a Labor Code section 1102.5 cause of action, a plaintiff must be able to cite to a specific statute which he claims to have reasonably believed was violated in relation to his disclosure, *by the time of trial*. (App. 24a). In its decision, the California Court of Appeal indicated Plaintiff based his California Labor Code section 1102.5 claim upon allegations that he had reasonable cause to believe he disclosed a violation of the law as he believed that Title I funds distributed after "norming day,"[2] should "follow" students who transfer schools thereafter. (App.25a). However, by the time of trial, Plaintiff had failed to identify a specific statute that he reasonably believed was violated, thereby precluding recovery under Labor Code section 1102.5, pursuant to California law. (App. 26a). In fact, Plaintiff was still unable to identify a statute that he reasonably believed was violated in his Respondent's Brief ("ROB") filed before the California Court of Appeal. (App.26a). Indeed, the California Court of Appeal stated:

> Plaintiff's respondent's brief does not succeed in filling in the gap. As before at the time of the disclosure and at trial, plaintiff still does not cite any rule, regulation, or statute proscribing the use of a norming day to allocate funds, specifying when the norming day must occur, requiring revision of allocations

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[2] The "norming" date is the date used to look at the student population and distribute Title 1 funds based on the socioeconomic levels of students; the School District uses a norming date in October following the start of the school year. (8 Reporter's Transcript ("RT") 4211:20-4214:24.)

> when students change schools, or requiring live credit recovery programs. Like the plaintiff in *Love*, plaintiff relies on "unnamed statute[s], rule[s], [and] regulation[s]" and fails to identify "any standard specifically." (*Love, supra*, 309 F.Supp.2d at 1135; *id.*, fn.5).

(App.26a). The California Court of Appeal found that Plaintiff's reliance upon the broad purposes of Title 1 was insufficient to support a claim under California Labor Code section 1102.5 and controlling California Supreme Court precedent interpreting the statute. (App.26a-27a). Thus, the California Court of Appeal found Plaintiff failed to submit substantial evidence to prevail on a California Labor Code section 1102.5 cause of action, as required under California law. (App.21a-22a).

While Plaintiff now relies upon 34 C.F.R. § 200.78 (see Pet. at i, App.43a-44a), which in no way establishes that the School District's distribution of Title 1 funds based upon the norming date set in October violated Title 1 or that funds must follow a student who transfers to another school during the school year, Plaintiff failed to cite 34 C.F.R. § 200.78 by the time of trial before the Los Angeles Superior Court, failed to cite 34 C.F.R. § 200.78 in his Respondent's Brief filed before the California Court of Appeal, failed to cite 34 C.F.R. § 200.78 at the time of oral argument before the California Court of Appeal, and failed to cite to 34 C.F.R. § 200.78 in his petition for review to the California Supreme Court. (App.22a, 25a-26a, Res.App.7a, Res. App.47a-48a). Plaintiff's failure to identify a specific statute upon which his California Labor Code section 1102.5 cause of action was based by the time of trial, is an independent and adequate state law ground

upon which to deny Plaintiff's petition to this Court. (App.25a-26a; *Ross v. Cnty. of Riverside*, 248 Cal. Rptr. 3d 696, 704 (Cal. App.4th Dist. 2019)).

Furthermore, as noted by the California Court of Appeal in its decision, under California Supreme Court precedent, a Plaintiff must show that his belief that he disclosed conduct that violated the law was objectively reasonable, in order to prove liability under California Labor Code section 1102.5. (App.24a-25). Under this standard, pursuant to California law, a disclosure is not protected where the Plaintiff merely disagrees with discretionary decisions and policy choices of its employer. (App.25a, citing *People ex rel. Garcia-Brower v. Kolla's, Inc.*, 529 P.3d 49, 59 (Cal. 2023) [308 Cal. Rptr.3d 388] (*Kolla's, Inc.*)). The California Court of Appeal found that Plaintiff's opinions regarding the School District's discretionary decisions and policy choices were not protected under California law. Again, this is another independent and adequate reason why the California Court of Appeal found the judgment must be reversed, as Plaintiff failed to submit sufficient evidence to justify the verdict. (App.28a)

Moreover, pursuant to California Supreme Court precedent, Labor Code section 1102.5 has a subjective, as well as an objective, component. The California Court of Appeal indicated that when Plaintiff was asked whether there is a Title I regulation "requir[ing] funds to follow a student," Plaintiff explained he "do[es] not know if there's a Title I regulation that requires that. But [he] believe[s] that is the actual pinpoint of the concern. If there isn't one, we need to address it." (App.7a). Plaintiff's failure to satisfy this facet of California Labor Code section 1102.5 is yet another indepen-

dent and adequate state law ground to justify the California Court of Appeal's decision.

As demonstrated, the California Court of Appeal properly reversed the judgment in Plaintiff's favor, as Plaintiff failed to present sufficient evidence to establish a violation of a California statute, based upon California law.

Additionally, the issues set forth in Plaintiff's petition for writ of certiorari were not presented to the California Supreme Court, further showing why review must be denied. (Res.App.8a). *Carter v. Kentucky*, 450 U.S. 288, 304, 101 S.Ct. 1112, 1121 (1981) (declining to reach the issue presented as it was not presented to or considered by the state Supreme Court). Rather, the issues Plaintiff presented before the California Supreme Court were based solely on what constitutes "objective reasonableness" under California Labor Code section 1102.5 based upon *Kolla's, Inc.,* 529 P.3d 49, and other California precedent. (Res.App.8a). Along these lines, Plaintiff has failed to comply with United States Supreme Court rule 14(g)(i), as Plaintiff cannot represent that the federal questions for which he seeks review before this Court were presented to the California Supreme Court, and has otherwise failed to comply with the rule. It is a misstatement of the record to contend the issues presented in the petition were properly preserved for review, and the School District objects to any such statements by Plaintiff.

Moreover, as indicated, in his petition for writ of certiorari, Plaintiff requests this Court to determine whether the School District's allocation of Title 1 funds violated 34 C.F.R. § 200.78. (Pet. at i, App.44a). However, Plaintiff failed to cite to 34 C.F.R. § 200.78, much less raise this issue, in his state court Respondent's Brief

filed before the California Court of Appeal. (Res.App. 47a-48a). Similarly, Plaintiff did not cite the authorities upon which he now relies in his Respondent's Brief, including *Bennett v. Kentucky Department of Education,* 470 U.S. 656 (1985). (Res.App.42a-47a). Hence, Plaintiff's arguments were forfeited under California law. Forfeiture is another independent and adequate state law basis upon which to deny his petition. This Court likewise will not consider arguments based upon statutes or case law not presented to the lower appellate courts nor briefed by the parties. *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 324, 119 S.Ct. 1961, 1970 (1999) ("*Grupo*").

Furthermore, in his petition, Plaintiff makes numerous incorrect factual and legal representations. None of the questions presented by the Plaintiff for review has any factual basis – there is no foundation for Plaintiff's claims of deliberate and systemic manipulation of federal Title 1 funds by the School District. Plaintiff makes such claims throughout his petition, which should be disregarded. (See Pet. at i, 3, 9, 12, 13, 21, 29). Plaintiff's statements are unsupported by any citations to the record, and there were no such findings in the case below. This case does not involve any determination of fraud or that the School District actually misused Title 1 funds in its use of a norming date in October. In fact, as indicated, the California Court of Appeal specifically declined to reach the issue of whether the School District's use of funds actually violated Title 1. (App.28a, n.17).

Also, in his Petition, Plaintiff relies upon cases wherein the United States Secretary of Education demanded repayment based on a determination that States violated requirements that Title I funds be

used to supplement, and not to supplant, state and local expenditures for education, and cases based upon the False Claims Act. Those cases have no bearing on this matter, wherein the California Court of Appeal determined Plaintiff failed to establish with substantial evidence that he should prevail on his state law cause of action for a violation of California Labor Code section 1102.5.

It is improper for Plaintiff to attempt to seek review by this Court in a misguided attempt to present new arguments in order to overturn the California Court of Appeal's decision. Certainly, Plaintiff fails to show why this Court should intervene and grant review over the California Court of Appeal's proper determination that Plaintiff failed to submit substantial evidence to establish a violation of California Labor Code section 1102.5, at the time of the jury trial before the Los Angeles Superior Court. Consistent with California Supreme Court precedent and the purpose of the California whistleblower statute, the Court of Appeal found Plaintiff could not establish a violation of California Labor Code section 1102.5(b) based upon California precedent. (App.17a).

For the reasons set forth herein, Mr. Camp's petition should be denied.

STATE STATUTE AT ISSUE

Cal. Lab. Code § 1102.5(b)

> An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

STATEMENT OF THE CASE

Following a jury trial, the Plaintiff prevailed on a single cause of action for a violation of Labor Code section 1102.5. (App.3a). Subsequently, the School District filed several appeals to the Second Appellate District of the California Court of Appeal, which were consolidated and assigned to Division 5 of the Court, Case Number, B318925. (App.2a, 21a-22a, 34a).

On May 8, 2023, the School District filed its Opening Brief on appeal, setting forth numerous grounds for reversal of the judgment in favor of Plaintiff on his Labor Code section 1102.5 claim, including the argument that Plaintiff failed to submit substantial evidence of an objectively reasonable belief that the School District's distribution of Title I funds was illegal, as required by the statute. (App.3a). Rather, pursuant to School District policy, once funds are distributed to a school, they are not taken away, and a principal does not have an objectively reasonable belief that he is "disclosing" a violation of law when he tells a school district that he wants more funds distributed to his school. (App.21a-22a).

On October 18, 2023, Plaintiff filed his Respondent's Brief. Therein, Plaintiff acknowledged that disagreements over discretionary decisions and policy choices are excluded from whistleblower protection under California law, and cannot give rise to a cause of action under California Labor Code section 1102.5.

Despite the fact that they are now the authorities for which Plaintiff seeks review by this Court in his petition, Plaintiff did not discuss or even cite to 34 C.F.R. § 200.70, 34. C.F.R. § 200.78 or 34 C.F.R. § 200.79, in the Respondent's Brief that Plaintiff filed before the California Court of Appeal. (Res.App.48a).

On March 25, 2022, Division Five of the Second Appellate District of the California Court of Appeal issued its (unpublished) decision in this matter. (App.2a). The Court of Appeal reversed the judgment in Plaintiff's favor on his cause of action for a violation of California Labor Code section 1102.5, and reversed the order denying the School District's motion for judgment notwithstanding the verdict on Plaintiff's cause of

action for a violation of California Labor Code section 1102.5. (App.2a, 34a).

The Court of Appeal summarized the evidence at trial (App.4a-12a), noting that, as to the California Labor Code section 1102.5(b) cause of action, the claim was based upon whether Plaintiff reasonably believed he disclosed a violation of Title I. (App.18a-19a). When Plaintiff was asked whether there is a Title I regulation "requir[ing] funds to follow a student," Plaintiff explained he "do[es] not know if there's a Title I regulation that requires that. But [he] believe[s] that is the actual pinpoint of the concern. If there isn't one, we need to address it." (App.7a). The Court of Appeal further stated Plaintiff's friend and fellow options principal, Dr. Alex Placencio, testified the School District has "tremendous discretion" as to how it distributes Title I funds among schools and he has not "suggested that the funds were being illegally used." (App.7a).

The Court of Appeal indicated that Dr. Carol Alexander, a School District employee involved in creating budgets, testified that "Title I funds are set based on a norm day" (the fifth Friday of the school year) and she does not "know of a district that has the Title I funds moved midyear" if students change schools. (App.8a). She "[could not] even think of a way that you would manage it with a student movement within the school year because you have to write a plan, and you provide a plan of action of how you're going to serve those kids based on that. [¶] And if that funding is constantly changing midyear, it would be very hard to follow through on that plan . . . ." (App.8a).

The Court of Appeal relied upon existing California precedent in finding Plaintiff failed to establish a

violation of California Labor Code section 1102.5(b). (App.23a-28a). The Court noted that in assessing whether an employee has reasonable cause to believe information discloses a violation of law, courts look to whether the employee is "able to point to some legal foundation for his suspicion—some statute, rule or regulation which may have been violated by the conduct he disclosed." (App.24a, citing to *Ross,* 248 Cal. Rptr. 3d 696 at 704). In other words, under California law, although the employee need not cite any specific statute or regulation to their employer *at the time of the disclosure*, a finder of fact must have some benchmark against which to assess reasonableness. (App.24a). By the time a lawsuit is filed and certainly by the time of trial, a plaintiff must be able to identify a specific statute or law that he maintains was violated and show that he reasonably believed he was disclosing information which violated that statute. (App.24a-26a).

The Court of Appeal cited to *Kolla's, Inc.,* 529 P.3d 49 in stating that section 1102.5(b) imposes a requirement of objective reasonableness, and excludes from whistleblower protection disclosures that involve disagreements over *discretionary decisions, policy choices,* interpersonal dynamics, or other nonactionable issues. (App.24a-25a, citing *Kolla's, Inc.*, *supra*, 529 P.3d at 59). The Court of Appeal noted Title I does not address or mandate a specific time of the year to determine the distribution of the funds. (App.25a-26a, 28a). Per established district policy, the School District uses a "norming" date of October of each school year to determine the amount of funds to distribute to the respective schools. (App.7a-8a). Plaintiff believed the funds should have "followed" students who took classes mid-year at his continuation high school.

(App.25a). Notwithstanding the plain, logistical issues with such a plan (App.8a), Plaintiff's opinion regarding the distribution of Title I funds was not mandated by a statute identified by Plaintiff, which stated that a School District must have in place a policy whereby already distributed funds must transfer to a different high school, if a student started taking classes at a continuation high school mid-year.[3] (App.24a-25a). As indicated, Plaintiff admitted before the jury that he did not know if Title I requires the funds to "follow" a student, but he thought this *ought* to be the plan. (App.21a, 28a). The Court of Appeal found that Plaintiff's reliance upon the broad purposes of Title 1 was insufficient to support a claim under California Labor Code section 1102.5 and controlling California Supreme Court cases interpreting the statute. (App.28a).

Following the denial of Plaintiff's petition for rehearing by the California Court of Appeal, the Plaintiff filed a petition for review by the California Supreme Court, requesting review of the following issues:

1. Does the Court of Appeal's decision misinterpret *People ex rel Garcia-Brower v. Kolla's, Inc.'s* (2023) 14 Cal.5th 719, 734 "objective reasonableness" limitation in Labor Code section 1102.5(b) by disregarding substantive law and Legislative intent, thereby threatening to eviscerate whistleblower protection throughout California?

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[3] In his Respondent's Brief, Plaintiff stated the passporting program allowed students at the traditional high school to take classes at the continuation high school without "overtly enrolling there," in any event. ROB, at p. 26.

2. Does the Court of Appeal's decision contradict this Court's holding in *Green v. Ralee Eng'g Co.* (1988) 19 Cal.4th 66, 87, that an employee's suspicions of illegal activity are "reasonably based" where an employee reports conduct that violates the public policies embodied in the law, regardless of whether the conduct actually violates the law?

3. Does the Court of Appeal's application of this Court's "objective reasonableness" dicta in *Kolla's Inc.* (2023) 14 Cal.5th 719 734 effectively require a whistleblower to prove an actual violation of law under Labor Code section 1102.5(b), conflating subdivisions (b) and (c)?

(Res.App.8a). The California Supreme Court denied Plaintiff's petition for review. (App.1a).

REASONS FOR DENYING THE PETITION

I. This Court Lacks Jurisdiction Over Plaintiff's Petition, Which Was Denied on Independent and Adequate State Law Grounds.

As indicated above, there is no federal question for this Court to review. Rather, in its unpublished decision, the California Court of Appeal specifically stated it was *not* deciding whether the School District's allocation of Title I funds complied with federal law. (App.28a, n.17). Nevertheless, in his petition, Plaintiff fails to advise this Court that the reversal of the judgment by the California Court of Appeal was

based upon the sufficiency of the evidence Plaintiff presented at trial to establish a state law claim based upon an alleged violation of a California statute, California Labor Code section 1102.5, under the parameters of California law.

Per established district policy, the School District uses a "norming" date of October of each school year to determine the amount of funds to distribute to the respective schools. (App.7a-8a). Plaintiff believed the funds should have followed students who took classes mid-year at his continuation high school. (App.25a). Notwithstanding the plain, logistical issues with such a plan (App.8a), Plaintiff's opinion regarding the distribution of the funds was not supported by an explicit statute that was identified by Plaintiff at the time of trial, as required by California law. (App.24a-25a, 27a-28a). Advocating for a new plan does not equate to a "disclosure" that the existing plan is illegal, under California law, which specifically prohibits employee disagreements regarding policies and discretionary decisions from protected whistleblower status. Accordingly, the California Court of Appeal properly found Plaintiff failed to show he had an *objectively reasonable belief* that that the School District acted unlawfully. (App.24a, 28a).

More specifically, the California Court of Appeal determined that Plaintiff's disclosure, as the term is defined under California Labor Code section 1102.5, was legally insufficient. (App.24a-25a, 28a). The California Court of Appeal stated that in assessing whether an employee has reasonable cause to believe information discloses a violation of law, courts look to whether the employee is "able to point to some legal foundation for his suspicion—some statute, rule or

regulation which may have been violated by the conduct he disclosed." (App.24a, citing to *Ross,* 248 Cal. Rptr. 3d at 704). Although the employee need not cite any specific statute or regulation *to their employer* at the time of the disclosure, he must be able to do so by the time of trial. (App.24a-26a). In this case, Plaintiff *conceded* at trial that he did not know if there was a Title I regulation that required funds to follow a student, and he remained unable to identify any rule, regulation or statute which established such a rule, in his Respondent's Brief that he filed before the California Court of Appeal. (App.26a).

The Court of Appeal cited to *Love v. Mot. Industries, Inc.*, 309 F. Supp. 2d 1128 (N.D. Cal. 2004), wherein summary judgment was granted in favor of the employer because the plaintiff failed to specify the statute that he reasonably believed was violated in relation to his disclosure. (App.25a-26a). "The "[p]laintiff's silence [was] telling and indicate[d] a lack of any foundation for the reasonableness of his belief." (App.25a). The plaintiff's assertion "that several OSHA standards may have been violated" did not suffice where he "*still could not point to any standard specifically*." (App.25a (emphasis added)).

Notably, the California Court of Appeal indicated the Plaintiff argued he had reasonable cause to believe his complaints that Title I funds did not "follow" students who changed schools after the early school year norming day disclosed a violation of Title I. (App.25a). However, the Court found there was insufficient evidence to prove a California Labor Code section 1102.5 cause of action, because Plaintiff conceded at trial that he "do[es] not know if there's a Title I regulation that requires that," as required under

California law to establish a violation of Labor Code section 1102.5. (App.22a, 24a, *Ross,* 248 Cal. Rptr. 3d at 704). The California Court of Appeal further found Plaintiff's Respondent's Brief still did not cite to any rule, regulation, or statute proscribing the use of a norming day to allocate funds, or specifying when the norming day must occur. (App.26a). The Court of Appeal indicated that Plaintiff's reliance upon unnamed statutes, rules, and regulation, or the broad purpose of Title I, was insufficient to prove a violation of California Labor Code section 1102.5. (App.26a, 28a).

The California Court of Appeal then noted the only statute relied upon by Plaintiff was 20 U.S.C. § 6301 for an equitable education, in addition to case law summarizing the purpose of Title 1, which was insufficient to prove a violation of California Labor Code section 1102.5, under California law. (App.26a-28a). At trial and at oral argument, Plaintiff did not cite any statute indicating Title 1 funds which have been distributed to a school should follow a student who transfers midyear. (App.22a, 26a).

Although the statute in no way stands for such a proposition, Plaintiff now relies upon 34 C.F.R. 200.78. (Pet. at i, App.43a-44a). However, he failed to rely upon this statute at the time of trial or in the Respondent's Brief he filed before the Court of Appeal. (App.47a-48a). Pursuant to California law, Plaintiff's belated to attempt to find a statute which he objectively believed was violated after oral argument and in his petition for rehearing to the California Court of Appeal (which does not support the argument in any event) was too late. *In re Foster*, 300 Cal. Rptr. 3d 860, 871 n.8 (Cal. App. 1st Dist. 2022), *as modified on*

denial of reh'g (Dec. 1, 2022) (citations omitted) (it is a fundamental principle of appellate practice that new arguments and authorities generally cannot be asserted for the first time in a petition for rehearing and will be disregarded by the court; counsel must ensure that all points are properly presented in the original briefs and argument before the matter is submitted, for once the case is submitted, it will be assumed that counsel have presented all the reasons upon which they rely for an affirmance or a reversal of the judgment). As demonstrated, under California law, Mr. Camp failed to establish a cause of action under Labor Code section 1102.5 as a matter of law, and Plaintiff cannot retroactively attempt to fix the error by asking this Court to determine he disclosed conduct which violated a statute, 34 C.F.R. § 200.78, which was not presented to the Los Angeles Superior Court by the time of trial, and was not provided to the California Court of Appeal.

Plaintiff's failure to identify the statute that he allegedly objectively reasonably believed was violated is an independent and adequate basis upon which to find that he was not entitled to judgment on his California Labor Code section 1102.5 cause of action, as a matter of law. The failure to provide a specific statute that was allegedly violated by the School District's unremarkable use of a norming date in October resulted in a failure to prove a Labor Code section 1102.5 cause of action under California law.

Moreover, under California Supreme Court precedent, California Labor Code section 1102.5(b), imposes a requirement of objective reasonableness, and excludes from whistleblower protection disclosures that involve disagreement over *discretionary decisions, policy*

choices, interpersonal dynamics, or other nonactionable issues. (App.24a-25a, citing *Kolla's, Inc.*, 529 P.3d at 59). Tremendous discretion is afforded to schools regarding Title I funds. See *Dept. of Educ., State of Hawaii v. Bell*, 770 F.2d 1409, 1413 (9th Cir. 1985). As acknowledged by the California Court of Appeal, evidence was presented at trial showing the Los Angeles Unified School District has a policy of distributing funds based on the "norming date." (App.8a). During trial, witness Carol Alexander explained that if that funding was constantly changing midyear, it would be very hard to follow through on the plan created for use of the Title I funds. (App.8a).

The California Court of Appeal properly found the Plaintiff failed to set forth sufficient evidence to establish a violation of California Labor Code section 1102.5. (App.3a, 21a-22a, 28a). Instead, Plaintiff's issues with the date chosen to determine allocation of the funds, pursuant to public school policy, was merely a disagreements over *discretionary decisions and policy choices.* (App.28a). As this type of disagreement was not protected under California law and Labor Code section 1102.5, the Court of Appeal found Plaintiff did not make a protected disclosure. (App.28a). Plaintiff explained he "do[es] not know if there's a Title I regulation that requires that. But [he] believe[s] that is the actual pinpoint of the concern. If there isn't one, we need to address it." (App.7a). However, pursuant to California law, a principal lobbying for more money for his school does not have an objectively reasonable belief that he is disclosing a violation of the law.

In fact, the Court of Appeal found that Plaintiff's argument is "precisely the sort of 'disagreement[ ] over . . . policy choices' that section 1102.5(b) excludes

from whistleblower protection, under California Supreme Court precedent, thereby mandating reversal of the judgment. (App.28a, citing *Kolla's, Inc.,* 529 P.3d at 59). Plaintiff's "disclosures" were really simply disagreements over discretionary decisions and policy choices under Title I, and are not protected whistleblower disclosures under section 1102.5(b). *Kolla's, Inc.,* 529 P.3d at 59. During trial, Plaintiff did not proffer any evidence of an objectively reasonable belief that Title I funds were being used illegally. Rather, Plaintiff testified that he was *concerned* that Title I funds did not follow students. (App.7a-8a, 22a). Advocating for a new plan does not equate to a "disclosure" that the existing plan is illegal. (App.28a). The Court of Appeal properly found Plaintiff failed to show he had an *objectively reasonable belief* that that the School District acted unlawfully. (App.24a-25a, 28a).

The Court of Appeal found the School District was entitled to judgment notwithstanding the verdict on the whistleblower claim. (App.34a). Again, the Plaintiff's petition to this Court must be denied, based upon the aforementioned independent and adequate state law grounds to support the judgment.

In addition, in *Kolla's, Inc.*, this Court stated section California Labor Code 1102.5(b), "does not protect employees *who do not believe* or *who unreasonably believe* that the information they are disclosing shows a violation of the law." (*Kolla's, Inc., supra*, 529 P.3d at 57 (emphasis added).) Accordingly, under California Supreme Court precedent, there is both a subjective and objective component to proving a claim under California Labor Code section 1102.5. The Court of Appeal indicated that Plaintiff conceded during trial

that he "[did] not know if there's a Title I regulation that requires funds to follow a student" and he remained unable to identify any rule, regulation, or statute even arguably requiring this. (App.22a).

Based on the evidence presented a trial, the Plaintiff could not establish a subjective belief that he disclosed a violation of the law, and could not show that he was entitled to prevail under California Labor Code section 1102.5. *See Vatalaro v. Cnty. of Sacramento*, 294 Cal. Rptr. 3d 389, 399 (Cal. App. 3d Dist. 2022) (plaintiff's statement that she did know if there was an unlawful violation was a clear concession that she did not have an understanding that her job description violated civil service rules).

As shown, Plaintiff could not satisfy the subjective component of California Labor Code section 1102.5, which is yet another independent and state law ground justifying the Court of Appeal's decision.

II. Plaintiff's Arguments Were Not Presented for Review to the California Supreme Court.

The issues set forth in Plaintiff's petition were not presented to the California Supreme Court (Res.App.8a), and thus the Plaintiff's petition must be denied. *Carter v. Kentucky*, 450 U.S. 288, 304, 101 S.Ct. 1112, 1121 (1981) (declining to reach the issue that was not presented to or considered by the state Supreme Court); *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 267, n.7, 104 S.Ct. 3049, 3053 (1984) (the argument was not presented to the Supreme Court of Hawaii and that court did not proceed on any such basis).) "Since the State Supreme Court did not pass on the question now urged, and since it does not appear to have been properly presented to that court

for decision, we are without jurisdiction to consider it in the first instance here." *CIO v. McAdory*, 325 U.S. 472, 477, 65 S.Ct. 1395, 1398 (1945); *Wilson v. Cook*, 327 U.S. 474, 483, 66 S.Ct. 663, 668 (1946) (but we are not free to consider these grounds of attack for the reason that they were not presented to the Supreme Court of Arkansas or considered or decided by it); and *Lear, Inc. v. Adkins*, 395 U.S. 653, 680, 89 S.Ct. 1902, 1916 (1969).

As set forth above, the only issues Plaintiff presented for review by the California Supreme Court pertained to whether the California Court of Appeal's decision misinterpreted California Supreme Court precedent regarding Labor Code section 1102.5(b), and the extent of whistleblower protection in California. (Res.App.8a). Hence, Plaintiff's petition for a writ of certiorari must be denied.

III. Plaintiff's Arguments Are Forfeited Under State and Federal Law.

The issues presented by Plaintiff for review by this Court were not properly presented before the California Supreme Court and the lower courts.

In his petition, Plaintiff requests this Court to determine whether the School District's allocation of Title 1 funds violated 34 C.F.R. § 200.78. (Pet. at i, App.43a-44a). Certainly, the evidence at trial did not establish the School District violated 34 C.F.R. § 200.78. Moreover, Plaintiff failed to even cite to 34 C.F.R. § 200.78 (or 34 C.F.R. § 200.79), much less raise this issue, in his state court Respondent's Brief filed before the California Court of Appeal, resulting in a waiver of the argument. (Res.App.47a-48a). *Inter-insurance Exch. v. Collins*, 37 Cal. Rptr. 2d 126 (Cal.

App. 2d Dist. 1994) (the absence of a legal argument or citation to authority allows this Court to treat a party's contentions as waived); *Tiernan v. Trustees of Cal. State U. & Colleges*, 655 P.2d 317, n.4 (Cal. 1982) (the Court has the discretion to treat as waived any issue not properly raised in a brief or sufficiently developed); and *Hernandez v. First Student, Inc.*, 249 Cal. Rptr. 3d 681, 690 (Cal. App. 2d Dist. 2019) (court may disregard arguments that are not supported by pertinent legal authority).

Moreover, under California law, it is a fundamental principle of appellate practice that new arguments and authorities generally cannot be asserted for the first time in a petition for rehearing before the California Court of Appeal, and will be disregarded by the court. *In re Foster*, 300 Cal. Rptr. 3d 860, 871 (Cal. App. 1st Dist. 2022), *as modified on denial of reh'g* (Dec. 1, 2022).

Also, Mr. Camp failed to identify the statute in the operative Fourth Amended Complaint, the statute was not provided as a jury instruction to the jury in deciding the objective reasonableness of Plaintiff's contention that reasonable cause existed to believe the School District was violated, and the statute was not referenced in his petition for review before the California Supreme Court. (App.4a, 22a, 25a-26a, Res.App.6a-7a).

Moreover, while Plaintiff maintains review should be granted to determine if the California Court of Appeal's unpublished decision regarding the requirements to satisfy a cause of action under California Labor Code section 1102.5 conflicts with *Bennett v. Kentucky Department of Education,* 470 U.S. 656 (1985) (Pet., at p. i), *Bennett* was not cited or relied

upon by Plaintiff in the briefs he submitted to the California Supreme Court. (Res.App.5a). Similarly, the remaining authorities now relied upon by Plaintiff were not cited to the lower California courts, and do not have any bearing on this case. (App.5a-6a, 42a-47a).

Additionally, pursuant to federal law, arguments not presented to the lower courts in the opening briefs are not preserved for review by this Court. *Radio Station WOW v. Johnson*, 326 U.S. 120, 128, 65 S.Ct. 1475, 1480 (1945) (questions first presented to the highest State court on a petition for rehearing are too late for Supreme Court review).

As Plaintiff never raised 34 C.F.R. 200.78 or the issues presented to the California Court of Appeal in his Respondent's Brief, the matter cannot properly be before this Court. Plaintiff has forfeited the arguments set forth in his petition, which are without merit in any event. Plaintiff cannot attempt to rectify the error by seeking Supreme Court review. Plainly, Plaintiff has set forth no proper grounds for review by this Court. Consistent with existing precedent and the purpose of California's whistleblower statute, the Court of Appeal properly applied the law pertaining to section 1102.5(b) claims, and found Plaintiff could not prevail on his cause of action. (App.24a-28a). Accordingly, as correctly found by the California Court of Appeal, Plaintiff failed to submit substantial evidence to sustain a verdict in his favor under California law. (App.3a, 21a-22a, 28a, 34a). There are no grounds for the United States Supreme Court to interfere with the state law decision.

IV. The Cases Relied Upon by Plaintiff Are Inapplicable.

The federal cases relied upon by Plaintiff to attempt to argue what does and does not constitute a Title I violation, have no bearing on this case. Again, the California Court of Appeal reversed the judgment as it found that Plaintiff failed to submit sufficient evidence to establish a violation of California Labor Code section 1102.5, under the requirements of California law. The California Court of Appeal explicitly stated: "*We caution that we do not decide whether defendant's allocation of Title I funds complies with federal and state law.*" (App.28a, n.17 (emphasis added)). Along these lines, the cases relied upon by Plaintiff to attempt to show the School District violated Title 1, which in no way show unlawful conduct, are inapplicable.

In his petition, Plaintiff relies upon *Bennett v. Kentucky Dep't of Educ.*, 470 U.S. 656, 658, 105 S.Ct. 1544, 1547 (1985). In *Bennett,* the Court assessed whether the United States Secretary of Education correctly demanded repayment based on a determination that Kentucky violated requirements that Title I funds be used to supplement, and not to supplant, state and local expenditures for education. The case has no bearing on whether Plaintiff submitted sufficient evidence to establish a violation of California Labor Code section 1102.5.

The False Claims Act makes liable anyone who "knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government." 31 U.S.C. § 3729(a)(2). *U.S. ex rel. Hendow v. Univ. of Phoenix*, 461 F.3d 1166, 1168 (9th Cir. 2006). The False Claims Act has nothing to do with this matter, and Plaintiff's

reliance on the foregoing case is misplaced. Likewise, Plaintiff cites to *Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 181, 136 S.Ct. 1989, 1996 (2016). In that case, the Court found that liability under the False Claims Act for failing to disclose violations of legal requirements does not turn upon whether those requirements were expressly designated as conditions of payment. Again, this matter does not involve the False Claims Act, and the case has no bearing on whether Plaintiff submitted sufficient evidence to establish a violation of California Labor Code section 1102.5. The same is true of *Wells v. One2One Learning Found.*, 39 Cal. 4th 1164, 1179, 141 P.3d 225, 229 (2006), another case involving the False Claims Act.

Plaintiff also cites to *Bell v. New Jersey*, 461 U.S. 773, 775, 103 S.Ct. 2187, 2189 (1983). The *Bell* case addressed the rights of the federal government when a state misuses funds advanced as part of a federal grant-in-aid program under Title I and the manner in which the Government may assert those rights, and has no relevance to this civil action by Plaintiff alleging a cause of action under California Labor Code section 1102.5.

Plaintiff also relies upon *Wadler v. Bio-Rad Lab'ys, Inc.*, 916 F.3d 1176, 1187 (9th Cir. 2019), wherein the Court held the statutory provisions of the Foreign Corrupt Practices Act were not protected activity under Sarbanes-Oxley (SOX). The case has nothing to do with the underlying case and whether Plaintiff submitted substantial evidence at trial to prove liability against the School District under California Labor Code section 1102.5.

Moreover, Plaintiff's section III, C., regarding unrelated investigations and settlements post-dating

the pertinent dates of this matter is irrelevant. Similarly, there is no merit to Plaintiff's statement that the views of the solicitor general should be solicited, in this action wherein Plaintiff failed to submit sufficient evidence to establish a violation of California Labor Code section 1102.5.

V. Plaintiff's Petition Should Be Denied as the Petition Sets Forth Factual and Legal Misrepresentations That Are Unsupported by the Record.

An appellate court will not consider any claims that are not supported by the record. *N/S Corp. v. Liberty Mut. Ins. Co.*, 127 F.3d 1145, 1146 (9th Cir. 1997). Throughout his petition, Plaintiff makes statements unsupported by the record, including that the School District deliberately manipulated Title I funds. (See Pet. pp. i, 3-5, 8-10, 12, 13, 16, 20-22, 29).

In contrast to the representations made in his petition, there was no finding below of an intentional misappropriation or manipulation of funds by the School District. As indicated, the California Court of Appeal specifically indicated it was not determining whether the School District misused Title 1 funds. (App.28a, n.17). Rather, the Court found the Plaintiff failed to submit sufficient evidence to establish a violation of Labor Code section 1102.5.

Nevertheless, in his petition, Plaintiff incorrectly represents the School District intentionally manipulated the distribution of Title 1 funds. (See Pet. at i, 3-5, 8-10, 12, 13, 16, 20-22, 29). There was no such finding in the court below. The Court of Appeal indicated that, Dr. Carol Alexander, a School District employee involved in creating budgets, testified that

"Title I funds are set based on a norm day" (the fifth Friday of the school year) and she does not "know of a district that has the Title I funds moved midyear" if students change schools. (App.8a). She "[could not] even think of a way that you would manage it with a student movement within the school year because you have to write a plan, and you provide a plan of action of how you're going to serve those kids based on that. [¶] And if that funding is constantly changing midyear, it would be very hard to follow through on that plan . . . ." (App.8a).

Testimony at trial by Plaintiff's friend and colleague, Dr. Alex Placencio, indicated that the School District has "tremendous discretion" as to how it distributes Title I funds among schools and he has not "suggested that the funds were being illegally used." (App.7a). Plaintiff conceded he did not know if a regulation required Title 1 funds to follow a student midyear. (App.7a).

Furthermore, there is no merit to Plaintiff's reference to the School District's "evidentiary failure to respond to Camp's allegation that the School District had systematically manipulated the norming deadlines despite being the repository of information on rank and file allocation of Title I funds." (Pet. at 8). It was Plaintiff who carried the evidentiary burden to establish the elements of his Labor Code section 1102.5 cause of action. *Lampkin v. Cnty. of Los Angeles*, 334 Cal. Rptr. 3d 681, 684 (Cal. App. 2d Dist. 2025), reh'g denied (July 25, 2025), *review denied* (Sept. 17, 2025) (the plaintiff's burden is to prove that he engaged in protected whistleblowing activity, and this activity was "a contributing factor" in his employer's decision to take some action against him); Lab. Code

§ 1102.6. The Court of Appeal did not determine whether the School District actually misused Title I funds. (App.28a, n.17).

The California Court of Appeal noted the Plaintiff maintained he was fired from his position as principal at the continuation school based on a pretextual finding that he falsified students' grades to make them eligible to play football at an affiliated school. (App.3a-34a). The California Court of Appeal indicated that it emerged during an investigation that two students received A grades for a summer class that made them eligible to play football, and that Plaintiff signed the "complimentary report" forms indicating the students were doing "outstanding work" during a course that took place from July 28, 2016 through August 12, 2016, and a counselor stated she entered official grades for students based on these complimentary reports. (App.9a-10a). However, no summer classes were in session at that time. (App.10a). Plaintiff's handwritten notes indicated the final grade for the course, but Plaintiff maintained he understood the grades were for a period ending in September. (App.10a).

The Court of Appeal noted that Plaintiff testified at trial that the football coach approached him to determine if certain grades could be deemed summer school grades rather than a fall class. (App.10a). Plaintiff further testified that someone altered official records to reflect the students completed the course in August rather than September, and that these reports were used to enter grades without his approval. (App.10a-11a). During trial, Plaintiff acknowledged that he did not disclose a text message he received from the assistant coach during the investigation of

the allegations against him. (App.11a). The Court of Appeal noted that although Plaintiff suggested the football coach took the reports from his desk, the investigator testified Plaintiff acknowledged making a mistake of some sort. (App.11a). Plaintiff advised the investigator that he did not know who accessed the student information and changed the date of completion for the course for the two students. (App.11a). Plaintiff was given a notice of unsatisfactory acts that accused him of falsifying grades for the two students. (App.11a).

VI. Plaintiff's Arguments Have No Merit.

The authorities relied upon by Plaintiff in no way establish that the School District violated Title 1 simply by using its norming date to properly allocate Title 1 funds. Plaintiff's reliance upon 34 C.F.R. § 200.78 is misplaced, as the statute does not state that the School District violated any law by properly distributing Title I funds on its norming date, or by not having a policy in place whereby funds follow a student who attends classes at another school midyear. Again, however, this matter involves whether Plaintiff satisfied the requirements to prove a violation of the state law statute, California Labor Code section 1102.5, which he failed to do.

CONCLUSION

Based upon the foregoing, the School District respectfully submits the Plaintiff's petition should be denied.

Respectfully submitted,

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November 17, 2025