No. 25-798

IN THE
Supreme Court of the United States

Rick Siegel,

Petitioner,

v.

Jude Salazar

Respondent.

On Petition for A Writ of Certiorari to the Court of Appeal of California, Second Appellate District, Division Five

AMICUS CURIAE BRIEF OF INDEPENDENT ATTORNEYS AND SPORTS AGENTS IN SUPPORT OF CERTIORARI

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INTEREST OF AMICI CURIAE

Amici are transactional attorneys and licensed sports agents, including professionals licensed in California and others practicing across the United States.[1]

Negotiating contracts for artist and athlete clients is a defining activity of both professions. Yet for some seven decades, the California Labor Commissioner has enforced a regime under which these very activities—conduct expressly authorized by, and essential to, our respective licensing schemes—are deemed unlawful unless we also obtain a talent agency license, a violation of the state's Talent Agencies Act ("TAA," "Act").

No statute regulating attorneys or sports agents contains any reference to the TAA, and the TAA contains no reference to attorneys or sports agents. Nothing in any of the three professions' licensing statutes provides notice that our ordinary, licensed professional activities are subject to a second, unrelated licensing requirement.

The enforcement of law cannot rest on the most questionable of parental principles: "because we said so." This case is not theoretical. The questions presented—issues the petition shows have been repeatedly and inexplicably avoided by California's

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[1] Amici certify that this brief was authored by counsel for amici and no part of the brief was authored by any attorney for a party. No party, or any other person or entity, made any monetary contribution to the preparation or submission of this brief. Amici also certifies that notice to counsel was given.

courts—bring to the fore whether attorneys and sports agents who live in California, or who have clients who do now or may at some point in the future live or work in California (which is virtually all of us), may lawfully perform the very work for which we were examined, licensed, authorized, and required to complete continuing education courses.

The Commissioner's interpretation subordinates us to an occupation that imposes no comparable requirements of training, competence, or qualification, leaving us to face the risk of losing our contractual rights and being ordered to return otherwise deserved and earned compensation for engaging in the exact activities our licenses authorize.

Amici therefore have a direct and substantial interest in ensuring that due process, notice, and statutory limits on administrative authority are faithfully applied.

SUMMARY OF ARGUMENT

The California Labor Commissioner's interpretation creates an unintelligible licensing system in which professionals licensed as a sports agent or attorney lose their contractual rights under an unrelated statute, the Talent Agencies Act.

The TAA is a licensing scheme neither a lawyer nor a sports agent has reason to consult, and nothing in its text provides notice that its requirements apply to anyone other than talent agents.

Licensed sports agents are authorized to negotiate endorsement deals yet the Commissioner

sanctions them as if a talent agency license is also required. Attorneys representing artist clients are similarly treated.

Certiorari would resolve whether due process permits an administrative agency to void contracts based on prohibitions the Legislature never enacted that licensed professionals of other occupations have no reason to know exist, and whose application would require holding that talent agents cannot negotiate contracts without violating the State Bar Act—a conclusion the Commissioner has never embraced.

RATIONALE FOR CERTIORARI

I. THE ENFORCEMENT PROTECTS NEITHER TALENT REPRESENTATIVES NOR ARTISTS

Proper licensing regulations protect the public while enabling trained professionals to serve their clients. The system depends on statutory clarity: professionals must know what conduct their licenses authorize and what additional requirements, if any, apply to their work.

As procurement is currently enforced, the TAA offers neither clarity for talent representation professionals nor meaningful protection for the public.

The Commissioner's regime finds the procuring of an endorsement deal for an athlete—such as the $5,000,000 Nike shoe contract referenced in the petition (at p. 20 n. 2)—is treated as conduct requiring a talent agency license.

Less than one percent of one percent of aspiring athletes ever reach the professional level, and only a fraction of those athletes attract significant endorsement deals. The enforcement therefore does not protect the general public; rather, it provides protections for individuals without need for such regulatory shelter.

It is the same for artists—unemployment rate for actors, writers, directors and other artists approaches ninety percent, even during strong economic periods. It defies logic to assume artists would choose to be limited by a monopoly in a single category of representatives, rather than benefit from publicists, producers, personal managers and/or marketing executives, all potentially working to help them obtain employment.

II. LICENSED PROFESSIONALS CANNOT COMPLY WITH REQUIREMENTS THE LEGISLATURE DOES NOT REQUIRE

Proper licensing schemes protect the public by clearly defining what conduct a license authorizes.

The Labor Commissioner does the opposite.

Relying on California Labor Code § 1700.44(d)—"It is not unlawful … to act in conjunction with, and at the request of, a licensed talent agency in the negotiation of an employment contract"—the Commissioner concludes negotiation is an element of procurement and, when performed for an artist, is lawful only if the negotiator first obtains a talent agency license under § 1700.5.

California Business and Professions Code § 18895.2(b)(1) defines a sports agent as one who "for compensation procures, offers, promises, attempts, or negotiates to obtain employment for any person with a professional sports team or organization or as a professional athlete."

Section 18895.2(c) provides that "employment as a professional athlete" includes employment pursuant to an endorsement contract.

Section 18895.2(d) defines "endorsement contract" as any "agreement pursuant to which a person is employed or receives remuneration for any value or utility that the person may have because of publicity, reputation, fame, or following obtained because of athletic ability or performance."

Despite this explicit statutory authorization—and despite the TAA containing no language restricting sports agents from procuring endorsement contracts—the Labor Commissioner entwines sports agents into TAA controversies for engaging in conduct they are expressly licensed to perform.

The same is true for attorneys. California defines the practice of law not by statute—the State Bar Act contains no definition—but by case law.

The California Supreme Court has long held that the practice of law includes "the preparation of legal instruments and contracts by which legal rights are secured." *Baron v. City of Los Angeles*, 2 Cal.3d 535, 542 (1970). *Bacall v. Shumway*, 61 Cal.App. 5th 950, 955 (2021), affirmed that a personal manager who had voluntarily given up his law license later engaged in

the unlicensed practice by "corresponding with attorneys about a contract, redlining agreements, and making comments on proposed contracts."

In short, it is negotiating, what talent agents every day—without first becoming licensed attorneys.

Despite the TAA containing no language restricting attorneys from negotiating contracts for artist clients, the Labor Commissioner entwines attorneys into TAA controversies for engaging in conduct they are expressly licensed—and obligated—to perform.

This enforcement regime raises serious issues of due process and separation of powers.

Under *Connally v. General Construction Co.*, 269 U.S. 385, 390 (1926), a statute is unconstitutional if "men of common intelligence must necessarily guess at its meaning and differ as to its application."

Here, neither the TAA nor the governing statutes for sports agents or attorneys give notice that they must also obtain talent agency licenses to negotiate contracts. The Commissioner's regime thus imposes penalties based on a nonexistent requirement—one no reasonable professional would infer. Due process does not permit regulated parties to be punished for failing to comply with obligations never codified.

Lambert v. California, 355 U.S. 225 (1957), holds that due process prohibits the government from punishing individuals for failing to comply with a regulatory duty unless the Legislature has clearly imposed that duty and the individual had actual or probable notice of it.

BMW of North America, Inc. v. Gore, 517 U.S. 559, 574 (1996) confirms that civil penalties must satisfy the same basic due process protections as criminal sanctions. While these voidances are civil, the punitive effect is indistinguishable from a criminal penalty.

The Commissioner's interpretation fails both requirements: the Legislature never imposed a duty on sports agents or attorneys to obtain talent agency licenses, and nothing in their licensing statutes—or in the TAA—suggests such a requirement exists. Punishing licensed professionals for violating a nonexistent obligation is precisely the kind of due-process violation *Lambert* forbids.

For over a century, this Court has upheld a basic tenet of the separation of powers: an administrative agency may "fill up the details" but not create crimes or penalties not authorized by the Legislature. *United States v. Grimaud*, 220 U.S. 506 (1911).

Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), reaffirmed that courts—not agencies—interpret statutes, and that an agency cannot expand a statute beyond its text or impose requirements the Legislature did not clearly authorize.

Loper Bright expressly instructed federal courts not to defer to agency interpretations of statutes. That principle applies with equal force when state courts adjudicate federal constitutional challenges.

Under the Supremacy Clause, the United States Constitution is "the supreme Law of the Land; and the judges in every State shall be bound thereby." U.S. Const. art. VI, cl. 2. State courts do not satisfy their

obligation to federal supremacy when, rather than conducting an independent examination, it defers to a state agency's interpretation of a statute when the question is whether the interpretation of a statute violates the federal Constitution.

To hold otherwise would permit state agencies to insulate their actions from federal constitutional review simply by offering an interpretation—precisely the dynamic *Loper Bright* rejected.

When a regulated party claims that an agency's statutory construction deprives them of due process or exceeds the bounds of delegated authority, the court must independently determine what the statute means. The Commissioner's interpretation is entitled to no deference in this proceeding.

The Commissioner's regime withers under the light of *Grimaud* and *Loper Bright*: it creates a new licensing requirement for sports agents and attorneys that appears nowhere in the TAA or their governing statutes, and then imposes penalties based on that nonexistent obligation.

Separation of powers does not permit an agency to legislate under the guise of interpretation.

III. IF EXEMPTION FROM REGULATION MUST BE EXPRESSED IN STATUTE, EVERY CONTRACT EVER NEGOTIATED BY A TALENT AGENT WITHOUT A BAR LICENSE HAS BEEN UNLAWFUL

The petition cites the Commissioner's rationale for voiding the contractual rights of licensed sports

agents and attorneys who negotiate artists' or athletes' contracts, how the attorney in *Solis v. Blancarte,* Cal. Lab. Comm'n. TAC 27089 (2013) acted unlawfully by renegotiating a local sports anchor's contract because "the provisions of the TAA do not contain or recognize any such exemption."

The State Bar Act does not provide an exemption for talent agents. Using the Commissioner's logic—absence of exemption equals prohibition—every contract a talent agent has ever negotiated without a law license violates the State Bar Act. Every agent who negotiated a recording contract, management agreement, or employment contract engaged in unauthorized practice of law. Every talent agent contract in California history is invalid.

The Commissioner has never taken this position. The Commissioner has never suggested talent agents need law licenses. This selective application reveals the Commissioner's interpretation to be results-oriented, not principle-based.

The Commissioner invokes "absence of exemption" to expand its own regulatory authority over sports agents and attorneys. But it conveniently ignores the reciprocal logic that would subject talent agents—the very profession the Commissioner claims to regulate—to another agency's jurisdiction.

The Commissioner cannot have it both ways. Either absence of exemption creates prohibition, or it does not. If it does, talent agents need law licenses. If it does not—and the Commissioner's treatment of

talent agents proves it does not—then sports agents and attorneys do not need talent agency licenses.

The only coherent reading is that licensing statutes regulate entry into a profession. They do not, in silence, create monopolies over specific activities. The Sports Agents Act regulates sports agents. The State Bar Act regulates attorneys. The TAA regulates talent agents. None purports to reserve overlapping activities exclusively for one profession—and it is illogical to think it would be the profession—talent agent—requiring no proof of qualifying proficiency.

Had the Legislature intended sports agents and attorneys to also hold talent agency licenses to negotiate for athletes and artists, it would have enacted such legislation; at minimum created a cross-reference in the TAA. Had the Legislature intended talent agents to need law licenses to negotiate, it would have been memorialized in statute.

The Legislature did none of these things because it intended none of these results. The Commissioner has manufactured prohibitions from silence—prohibitions that invalidate the very licensing scheme the Commissioner administers.

Such actions are ultra vires and must be stopped. This is not regulatory gap-filling or reasonable interpretation. It is the enforcement of prohibitions that do not exist in statute, applied to professionals who have no notice they are subject to those prohibitions. A statutory scheme that produces such contradictory results is the very definition of the vagueness and unpredictability *Connally* forbids, and

precisely the kind of arbitrary and unpredictable enforcement the Due Process Clause prohibits.

IV. THE ENFORCEMENT CREATES ABSURD AND LEGALLY UNTENABLE RESULTS

The practical consequences of the Commissioner's interpretation prove its invalidity.

Consider the sports agent licensed under section 18895.2(c) to negotiate endorsement deals. That agent represents a professional athlete who receives an offer from a major corporation for an endorsement agreement. The athlete is not an actor, musician, or entertainer. But the corporation's advertising campaign will feature the athlete in commercials. Does this make the athlete an "artist" under the Talent Agencies Act? Does the sports agent now need a talent agency license?

The statutes provide no answer. The Sports Agents Act says the agent is licensed for this work. The Talent Agencies Act does not mention sports agents or athletes. Yet the Commissioner's enforcement suggests the answer is yes—the agent needs a second license, and without it, the endorsement contract is void.

Consider the attorney negotiating a production agreement for a musician client. The attorney is licensed to negotiate contracts. The work falls squarely within the practice of law. But the client is an artist. Does this trigger the Talent Agencies Act? Must the attorney obtain a talent agency license or refuse the representation?

Again, the statutes provide no guidance. The State Bar Act confirms this is legal work. The Talent Agencies Act does not address attorneys. Yet the Commissioner has voided such contracts, holding that attorneys cannot negotiate for artist clients without talent agency licenses.

These are not edge cases. They represent everyday professional activities—activities for which sports agents and attorneys are specifically licensed. Yet the Commissioner's interpretation makes those activities potential violations, with devastating consequences: contract voidance, disgorgement of earned compensation, and professional liability.

The absurdity multiplies when interstate practice is considered. A sports agent licensed in New York represents a basketball player who signs with a California team. The agent negotiates an endorsement deal with a California-based company. Under the Commissioner's interpretation, that agent needed a California talent agency license. How would the agent know this? New York does not require talent agency licenses for sports agents. The agent's license authorizes endorsement negotiations. Nothing in the Sports Agents Act mentions talent agents.

The same problem affects attorneys. An entertainment lawyer licensed in Tennessee represents a country music artist who records in Nashville but performs in California. The lawyer negotiates the artist's touring contracts. Under the Commissioner's interpretation, those California performance contracts require a California talent

agency license. How would a Tennessee lawyer, licensed to practice law and negotiate contracts, know that California imposes this additional requirement?

The Commissioner's interpretation makes it impossible for professionals to practice across state lines without risking contract voidance years after the fact. It treats licensed professionals as if they should have consulted statutes regulating different professions entirely—statutes that never mention their professions and to which no cross-reference exists.

This is not reasonable regulation. It is a trap enforced against professionals acting in good faith within the scope of their licenses. Statutes must be interpreted to avoid absurdity; the Commissioner's interpretation makes absurd results unavoidable.

V. THIS CASE EXEMPLIFIES THE BROADER CONSTITUTIONAL PROBLEM

The situation facing sports agents and attorneys exemplifies the core constitutional violation Petitioner asks this Court to address: an administrative agency enforcing prohibitions the Legislature never enacted.

The Talent Agencies Act does not prohibit sports agents from negotiating endorsement deals. It does not prohibit attorneys from negotiating contracts for artists. It does not require either profession to obtain talent agency licenses. These prohibitions exist only in the Commissioner's interpretation.

The Commissioner points to the Act's definition of "talent agency" and argues that because the statute

defines who needs a license, it implicitly reserves those activities for licensees. This reasoning fails for multiple reasons.

First, defining who needs a license to enter a profession is not the same as prohibiting unlicensed persons from specific activities. Every licensing statute defines its scope. That does not mean all related activities become monopolies for licensees. Doctors are licensed to practice medicine, but nurses, physician assistants, and emergency medical technicians all perform medical activities without medical licenses. The medical licensing statute's definition of medical practice does not prohibit these other professionals from their work.

Second, as detailed above, if the Commissioner's logic were correct, sports agents and attorneys would be barred from negotiating for artists—but conversely, talent agents be barred from negotiating contracts without law licenses.

Third, the Legislature knows how to prohibit unlicensed activity when it wishes to do so. The Petition demonstrates this. When California wanted to prohibit unlicensed employment agency activity, it said so explicitly: the predecessor General Employment Agencies Act made it a misdemeanor to "open up and conduct" an agency without a license. The Talent Agencies Act contains no analogous prohibition regarding procurement.

The Commissioner may want only talent agents to procure employment for artists. The Commissioner

may think sports agents and attorneys should need talent agency licenses.

But the Commissioner's preferences are not law. As this Court emphasized in *Utility Air Regulatory Group v. EPA*, an administrative agency "may not rewrite clear statutory terms to suit its own sense of how the statute should operate." 573 U.S. 302, 321 (2014).

That principle applies with full force here. The Commissioner has imposed prohibitions omitted by the Legislature. The statutes' silence is not an ambiguity gap; it is the Legislature's policy choice that these activities remain unregulated.

VI. REVIEW IS ESSENTIAL TO STOP THE LABOR COMMISSIONER'S INTENTIONAL ULTRA VIRES ACTIONS

Simply stated, denying the writ for petition for certiorari will not just allow, but encourage the Labor Commissioner to continue to compromise another generation of personal managers, sports agents, publicists, producers, and attorneys by enforcing nonexistent regulation.

One might think this kind of spotlight might get the Commissioner to act within the law. But if the Legislature's 1982 removal of all related sanctions did not stop the ultra vires activity; if the Commissioner's own 1985 admission that the regime was unconstitutionally vague did not stop it; if the Court of Appeals in 2006 and the California Supreme

Court's 2008 acknowledgement that the TAA provides no remedy did not stop it, only this Court can.

If this Court does not grant review, California will continue operating under a regulatory regime where the rules exist not in statutes but in an administrative agency's interpretations—interpretations that change over time, that conflict with licensing statutes, and that professionals cannot discover through reasonable inquiry. That is not the rule of law. It is the rule of administrative fiat.

CONCLUSION

For these reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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