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 Appellate Division of the Los Angeles Superior Court

AMICUS CURIAE BRIEF OF NATIONAL CONFERENCE OF PERSONAL MANAGERS IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

Petitioner presents two queries about administrative authority, both of which resonate with the Court's recent actions to ensure agencies act within statutory bounds. It respectfully urges the Court to address these critical, unsettled questions of federal and constitutional law:

1) "Whether state procedural rules are 'adequate' under the Fourteenth Amendment when, in combination (limited-case misclassification, jurisdictional limits, and record-based affirmance), they foreclose any merits forum for preserved federal constitutional claims raised in the same litigation."

2) "Whether due process permits a State to retroactively void private contracts and compel disgorgement by relying on general severability statutes (Civ. Code §§ 1598–1599) as the operative 'penalty' where the governing licensing statute—the Talent Agencies Act—is concededly silent on remedies."

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

CA LABOR COMMISSION CASES

CONSTITUTIONAL PROVISIONS

CALIFORNIA STATUTES

OTHER AUTHORITIES

National Conference of Personal Managers. Inc. ("NCOPM"), a Nevada domestic nonprofit corporation, submits this amicus curiae letter under Supreme Court Rule 37.[1]

INTEREST OF AMICI

The National Conference of Personal Managers is the premier national trade association representing entertainment music, and talent managers. NCOPM has advocated for the professional advancement of personal managers nationwide and their artist clients for more than six decades. The NCOPM "Personal Manager Code of Ethics" and "Personal Management Agreement" have been accepted as established trade customs, practices, and usage in the entertainment industry.

NCOPM has long been heavily invested in finding ways to remedy the problems caused by the Labor Commissioner's interpretation and enforcement of the TAA. Some of that education is shared below.

On behalf of our membership and their client artists, plus personal managers nationwide and their artist clients, NCOPM respectfully urges the Court to grant review in the above-referenced case to consider the issues of due process created by the California Labor Commissioner's ("Commissioner", "CLC") enforcement of the California Talent Agencies Act (California Labor Code §1700 *et seq.*) ("Act", "TAA").

SUMMARY OF ARGUMENT

What is not unlawful, as memorialized by laws enacted by a legislature, is lawful.

That may be the most fundamental tenet of American jurisprudence. There is no written decree affirming one's ability to play catch in their backyard.

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[1] This brief was authored NCOPM President Clinton Billups. No one made a monetary contribution related to its submission.

affirming one's ability to play catch in their backyard.

The Talent Agencies Act has no codified statute barring unlicensed persons from working to procure employment for an artist (artist as defined CA Lab. Code § 1700.4(b)).

Following this tenet, anyone can lawfully procure employment for an artist, whether licensed or unlicensed.

This brief details how opposite to common understanding, California has never had laws that forbade unlicensed procurement, and yet, as applied, the Labor Commissioner subjects law-abiding personal managers, licensed sports agents and attorneys to sanction, which not only compromises those who are entwined in controversy, but every talent representative.

RATIONALE FOR GRANTING CERTIORARI

I. No Legislative Iteration of This Statute Has Prohibited Unlicensed Procurement

As stated in *Marathon v. Blasi*, 42 Cal. 4th 974, 985 (2008), "In 1982, the Legislature provisionally amended the Act to impose a one year statute of limitations, eliminate criminal sanctions for violations of the Act, and establish a "safe harbor" for managers to procure employment if they did so in conjunction with a licensed agent."

It is assumed the removed statutes were directly related to procuring without a talent agency license. That assumption is incorrect.

CA Labor Code § 1700.30 made it a misdemeanor for a talent agent to sell, transfer, or giving away "interest in or the right to participate in the profits of the agency without the written consent of the Labor

Commissioner," and per CA Labor Code § 1700.46, "A violation of this Chapter shall constitute a misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), or imprisonment for not more than 60 days, or both."[1]

It is obvious that giving equity or profit interest in a talent agency has nothing to do with unlicensed procurement.

As procuring employment for an artist was not reserved for licensees in any of the statutes "of this Chapter," §1700.46 axiomatically could not relate to procuring.

Procuring employment is only mentioned in the Act in § 1700.4(a), as one of the three defining activities of a talent agent. As the petition delineates, just being a defined activity of a regulated profession in no way reserves that activity for licensees; the licensing scheme must also expressly prohibit unlicensed persons from such actions. *See* Petition B.7, pp. 28-30.

Though Labor Code § 1700.5 requires persons to obtain a license 'to engage in or carry on the occupation of a talent agency," this language regulates entry into the profession itself. It does not reserve procurement or any other activity for licensees.

"A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required. … This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause

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[1] *See* Talent Agencies Act – Legislative History & Predecessor Statutes ("TAA Legislative History") https://www.scribd.com/document/932944666/Talent-Agencies-Act-Legislative-History-Predecessor-Statutes, p. 113-14.

of the Fifth Amendment." *FCC v. Fox Television Stations,* 567 U.S. 239, 253 (2012).

This is not the gap-filling of an ambiguous regulation. Rather it is an administrative agency creating regulation and consequences—criminal consequences—out of whole cloth.

II. Were Unlicensed Procurement A Criminal Act, Voidance Would Be Legally Supportable

"Where a statute prohibits or attaches a penalty to the doing of an act, the act is void." *Smith v. Bach*, 183 Cal. 259, 262 (1920). The TAA has no penalty.

This rule controls even if no statute reserves the activity for licensees. "The imposition by statute of a penalty implies a prohibition of the act to which the penalty is attached, and a contract founded upon such act is void." *Id.* at 262-263. The TAA provides neither a prohibition nor penalty provision.

The 1913 Private Employment Agencies Act and its antecedent, the General Employment Agencies Act ("GEAA"), both made it a misdemeanor to "open up and conduct" an employment agency without obtaining the relevant license. *See* TAA Legislative History Predecessor Statutes at 3, Section 2.

In 1943 the Legislature enacted the Artists' Managers Act[2], a licensing scheme specifically for managers. Whereas the GEAA defined agents who procure and might direct and counsel; the AMA defines a manager as a person engaging:

> "in the occupation of advising, counseling or directing artists in the

[2] The terms "artist manager" and "personal manager" are synonymous. "Personal manager" is the more accepted vernacular term today, though many, especially in the music industry still refer to themselves as 'artists' managers.'

> development of their professional careers and who procures, offers, promises or attempts to procure employment or engagements for an artist only in connection with and as a part of the duties and obligations of such person contract under a contract with such artist by which such person contracts to render services in the nature above mentioned to such artist. *Id.* at 24.

The AMA (*Id.*, pp. 24-27) neither prohibited the selling of an artists' management firm without the CLC's written consent, nor via statute bar non-licensed persons from engaging in the defining activities of an artists' manager.

In 1959, the Legislature amended the AMA's code numbers to begin as they appear today, starting with § 1700. The Legislature also added the penalty provisions from the GEAA, requiring transactions related to the ownership and profits of an artists' managers to receive CLC consent (*Id.* at 64) and adding § 1700.46 as stated above; making it a misdemeanor to violate any provision of the chapter.

However, while adding those sanctions, not in 1943, 1959 or at any time including today, has the Legislature ever enacted a provision in the AMA or TAA barring unlicensed persons from procuring employment opportunities for an artist client.

Since 1953, the enforcement has been ultra vires. The Commissioner may have felt the removal of the criminal statute was unwarranted or unwise. However, as this Court made clear in *Utility Air Regulatory Group v. Environmental Protection Agency,* 573 U.S. 302, 321 (2014), an administrative agency "may not rewrite clear statutory terms to suit its own sense of how the statute should operate."

III. As Applied, Voidance Is A Criminal Remedy

It is simply an assumption, because the Act states—CA Labor Code § 1700.44(b)—that violating the Act is not a criminal act, that the sanction is civil.

It is not. There are mechanisms for civil forfeiture—affirmed claims of fraud/constructive fraud, conversion, breach of contract or fiduciary duty, abuse, or non-performance. But the underlying controversy, as these controversies almost always are, solely about unlicensed procurement.

There is one other way contractual rights can be voided: as a remedy, following statutory guidelines, after one is convicted of a crime. As the punishment does not align to any civil rationale for voidance, and the Legislature previously labelled the punishment as criminal, labelling the sanction as civil defies logic.

Only after *Marathon,* which was asked to—and affirmed—a court of appeals finding that the Commissioner must consider the general principles of severability (CA Civil Code §§ 1598 and 99) should it find a violation, did any TAA agency ruling speak to the remedy being civil,[3] and even then, not as authority to void.

An analysis of California licensing schemes is more damning. All voidance provisions are incorporated into statutes stating how engaging in the regulated activity is a misdemeanor or felony. For example, California Business and Professions Code § 7031 both states unlicensed contracting a criminal offense and provides how unlicensed contractors cannot recover compensation.

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[3] *See* https://www.dir.ca.gov/dlse/DLSE-TACs.htm; no published determination between 1971 and 2018 mentions voidance being a civil penalty.

When the Legislature intends voidance as a remedy, it says so explicitly alongside the prohibition. The TAA contains no such provision. Moreover, the Legislature provides for judicial enforcement for such controversies, not administrative adjudication.

§ 7031 exemplifies this approach: it bars unlicensed contractors from maintaining actions in court and allows clients to sue in "any court of competent jurisdiction" to recover payments. The statute does not give the Contractors State License Board authority to adjudicate—rather the Legislature recognizes these are private rights to be enforced through the judiciary.

The Legislature directing §7031 claims to a court aligns to a basic principle of jurisprudence: that all who are accused of engaging in a crime have the right to a jury trial; allowing the Construction Board to be the first adjudicator would deny that.

The TAA contains no analogous provision. It does not bar unlicensed persons from bringing actions in court. It does not grant artists a private right of action to void contracts. Instead, the CLC has arrogated to itself the power to void contracts are void and to order disgorgement—powers never legislatively granted... which in every other like situation is a criminal sanction.

While the administrative agency's actions are unconstitutional either way, the implication of the sanctions correctly categorized as a criminal remedy is material:

1. California's personal managers, publicists, producers, attorneys and licensed sports agents are entwined into a controversy, accused of wrongfully helping their artist clients maximize the quality and quantity of their

employment opportunities without a talent agency license, an unexpressed but enforced violation; and

2. the talent representatives' contractual rights are voided, an unexpressed but enforced criminal remedy without the constitutional right of having a jury trial.

Having to defend unexpressed regulations and being subjected to a criminal penalty without standard rules of evidence and discovery or having a jury decide their fate is a fundamental violation of due process. Such violations are not cured by post-hoc judicial review—the enforcement is infected from its inception.

IV. TAA Enforcement Affects Every Aspect of Talent Representatives' Professional Life

NCOPM is uniquely positioned to speak to the pain caused by the Commissioner's enforcement.

Artists hire talent representatives to help change their career plateau. Often—in large part because the Act's enforcement offers a "get out of paying free" card—the artists do not live up to their financial obligations of the compact.

Most representatives then either walk away from the owed monies or settle for cents on the dollar, knowing that as the Talent Agencies Act is currently enforced, it is rare to prevail in litigation.

For those representatives who do prosecute their rights through litigation, instead of being seen as plaintiff, they become the accused. Not because they failed. Had they failed, the parties would have just disengaged, these controversies are initiated only when the artists find gainful employment and utilize the Act to profit further.

From years of our surveys, discussion and legal research, NCOPM estimates that since 1967, when Jefferson Airplane avoided paying their manager Matthew Katz (*Buchwald v. Superior Court,* 254 Cal.App.2d 347 (1967) some twelve million dollars in commissions, over five-hundred million dollars ($500,000,000) in otherwise due compensation has been either forfeited, settled away, or abandoned.

This represents not merely lost income—it represents compensation for work already performed. Services rendered. Careers built. Opportunities created. All uncompensated because of the Commissioner's extrajudicial enforcement of a prohibition that does not exist.

The compromises caused by the Commissioner's enforcement do not begin when a working client withholds owed monies. For over six decades, NCOPM members, other artists' managers and talent representatives have operated under a cloud of legal uncertainty. It is the constant threat that their contracts will be voided years after formation, regardless of their performance or their clients' satisfaction.

The assumption that only talent agents can lawfully procure has led to discriminatory conduct, making it harder for NCOPM members to accomplish our objectives.

The Commissioner's interpretation has created systemic discrimination throughout the industry. Casting directors refuse to take calls from personal managers, citing the "illegal procurement" rationale. Casting notice services—the primary means by which representatives learn about available roles—have historically restricted or denied access to non-licensed representatives. Studio business affairs executives decline to negotiate with managers, treating them as

participants in unlawful conduct.

The cruelty of this system is that these industry gatekeepers are acting rationally. If procurement by unlicensed representatives truly were illegal, refusing to facilitate such conduct would be appropriate. But as demonstrated above, no such prohibition exists. The entire industry has organized itself around a phantom regulation—one the Commissioner enforces but the Legislature never enacted.

If the Act clearly gave licensed talent agents a monopoly on helping artists get work, these barriers would be understandable; why be an accessory to unlawful conduct?

It is why this court's granting certiorari in this matter is so important. After years—decades of trying unsuccessfully to get the Commissioner and state courts to provide an answer to this most basic question—where does the Labor Commissioner get its power to impact a person's contractual rights without statutory authority—acceptance of this petition would finally give the tens of thousands of entertainment industry professionals clarity as to whether their actions are in fact illegal, or whether it is the Labor Commissioner acting extrajudicially.

Because California courts have uniformly declined to entertain these constitutional objections, this Petition is the sole viable means for national resolution.

The Commissioner's ongoing enforcement of a non-existent penalty violates the Due Process Clauses of the Fifth and Fourteenth Amendments by imposing criminal-equivalent forfeitures without statutory authority or fair notice.

V. The Commissioner's Enforcement Compromises All But Those Abusing It

It is not just those who can be entwined into a Labor Commission Controversy—the personal managers, sports agents, attorneys, publicists, producers, talent agents from outside domiciles, including international—who are negatively affected by the CLC's enforcement. The artists, the very group the Act is supposed to protect, are also lessened.

Personal manager Ted Gardner was responsible for growing the careers of a coterie of rock bands, most notably, Jane's Addiction, and with them, co-founded the country's most successful music festival, Lollapalooza.

After the Labor Commissioner voided his contractual rights to his compensation for his work with the rock band 'Tool' (Cal. Lab. Comm'n. TAC 2001-35 (2002), he moved back to his native Australia. He famously said to his neighbor, by coincidence the Petitioner, "Why stay in a country where I don't know if I'll get the benefits of my labors?"

How many bands might have gone farther in their careers had Gardner not taken understandable umbrage? This is a common theme; Petitioner left personal management after his 2008 *Marathon v. Blasi* matter was decided.

And each time a talent representative leaves the occupation, all already proven they possessed the skills to build careers (Petitioner helped develop the careers of, among others, Leah Remini, Ellen DeGeneres, Seth Rogen, Craig Ferguson, and Nia Vardalos (while her manager, he developed the script and sold MY BIG FAT GREEK WEDDING to Tom

Hanks production company[4]), all their other artist clients lost the person they counted on for their continued career growth.

VI. Conclusion

For the reasons stated above, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

H. Joseph Normand, Esq.
For National Conference of Personal Managers

[4] Ms. Vardalos had talent agents for acting who were not equipped to market literary properties, which left only the manager to accomplish that objective. Had he not, not only would it have lessened his client, but the State of California would also have lost millions in tax revenue from a property that grew to garner more than a billion dollars in film, tv and ancillary revenues.