No. 25-944

IN THE

Supreme Court of the United States

ROBINHOOD MARKETS, INC., ET AL.,

Petitioners,

v.

VINOD SODHA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF AMICUS CURIAE PROFESSOR JOSEPH A. GRUNDFEST IN SUPPORT OF PETITIONERS

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Other Authorities **Page(s)**

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INTEREST OF AMICUS CURIAE*

Joseph A. Grundfest is the William A. Franke Professor of Law and Business (Emeritus) at Stanford Law School. He served as a Commissioner of the Securities and Exchange Commission from 1985 to 1990.

Professor Grundfest has taught and written in the field of securities law for decades. He has published extensively on federal securities regulation in leading law journals, including the Harvard, Yale, and Stanford law reviews, and has filed amicus briefs in significant securities cases before this Court, including *Slack Technologies, LLC* v. *Pirani*, 598 U.S. 759 (2023), and *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258 (2014).

Professor Grundfest has written specifically on Section 11 of the Securities Act of 1933—the statute at the center of this case. See, *e.g.*, Joseph A. Grundfest, *Morrison, The Restricted Scope of Securities Act Section 11 Liability, and Prospects for Regulatory Reform*, 41 Iowa J. Corp. L. 1 (2015). He was a member of the Commission that adopted the 1989 amendments to Item 303. See *Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures*, 54 Fed. Reg. 22,427 (May 24, 1989). Also, as a member of the audit committees of three publicly traded corporations, KKR, Inc., Oracle Corp., and Financial En-

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* Pursuant to this Court's Rule 37.2, amicus provided timely notice to all parties of his intent to file this amicus brief. Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than amicus or his counsel made a monetary contribution to this brief's preparation.

gines, he has personally experienced the challenges posed by SEC disclosure requirements, including under Section 11 and Item 303.[†]

[†] Amicus has previously provided consulting services to Robinhood Markets, Inc., one of the petitioners. Amicus has no current financial relationship with any party to this case. Although no rule imposes a duty to disclose this prior engagement, amicus provides this information for the sake of full transparency.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should grant the petition because the decision below is wrong, deepens confusion in the lower courts, and upends the basic design of the federal securities laws by transforming a system of periodic disclosure into one of quasi-continuous disclosure.

The petition correctly identifies the Ninth Circuit's most immediate error. Section 11 of the Securities Act of 1933 does not require disclosure of information merely because a court later deems it material. It imposes liability for omissions only when they render an affirmative statement misleading. The Ninth Circuit collapsed those distinct requirements, treating the alleged materiality of omitted interim financial information as enough by itself to create a duty to disclose. That holding alone warrants review. It also deepens an acknowledged circuit split by rejecting the First Circuit's narrower "extreme departure" test and aligning itself with the Second Circuit's equation of materiality with duty to disclose. See *Stadnick* v. *Vivint Solar, Inc.*, 861 F.3d 31, 36 (2d Cir. 2017); *Shaw* v. *Digital Equipment Corp.*, 82 F.3d 1194, 1210 (1st Cir. 1996); see also Pet. App. 27a ("[W]e hold that the *Shaw* test is not the law of this circuit.").

But the error runs deeper. The Ninth Circuit's decision does not merely adopt the wrong standard for disclosure of interim financial information. Like the other circuits to address this issue, it assumes that Section 11 imposes some duty to disclose such information in the first place. It does not. Here, Robinhood's offering documents, issued during Q2, accu-

rately reported its Q1 2021 results, and no one disputes that those results were accurate. The Ninth Circuit nevertheless held that those offering documents could be actionable because they were not accompanied by still-developing Q2 metrics, even though Q2 had not yet closed and Robinhood therefore had no final Q2 results to report. That holding necessarily creates a duty to update accurate historical results: It treats disclosure of completed Q1 results as legally insufficient unless accompanied by developing information from ongoing Q2 activity, thereby requiring Robinhood to update closed-quarter results with still-unfolding quarter-to-date performance.

That rule cannot be squared with the basic design of the federal securities laws or with this Court's precedents. The securities laws establish a regime of periodic reporting, not rolling financial disclosure. Issuers report completed quarterly results on prescribed deadlines. They do not, absent a specific statutory or regulatory command, provide real-time updates about still-developing financial performance as a quarter unfolds. The Ninth Circuit's rule—like the First and Second Circuits' variants—breaks from that framework, overrides Congress's and the Commission's chosen reporting regime, and imposes disclosure obligations the securities laws do not require.

ARGUMENT

I. SECTION 11 DOES NOT CREATE A DUTY TO UPDATE

Plaintiffs do not allege that Robinhood's registration statement contained any false statement. Their theory is instead that Robinhood's accurate disclosure of Q1 2021 results was not enough unless the offering

documents also included still-developing Q2 information before Q2 had closed. That is a duty-to-update theory in substance. It treats disclosure of completed quarterly results as legally insufficient unless accompanied by developing information from a still-open quarter.

Section 11 imposes no such duty. Nothing in its text requires issuers to pair accurate historical financial disclosures with developing information from a still-open quarter. And this Court's decision in *Macquarie Infrastructure Corp.* v. *Moab Partners, L. P.*, 601 U.S. 257 (2024), confirms that materiality alone does not create a disclosure obligation. The broader securities-law framework points the same way: Federal law requires periodic reporting of completed financial periods, not rolling disclosure of still-developing quarter-to-date results. By holding otherwise, the Ninth Circuit not only committed the error the petition correctly identifies—collapsing materiality into misleadingness—but also replaced the securities laws' periodic-reporting regime with a judicially created duty to update that Congress and the Commission never adopted. Each error independently warrants this Court's review; together, they make review imperative.

1. Section 11 targets false or misleading registration statements. At most, it imposes a duty to *correct* false or misleading statements; it does not create a duty to *update* accurate historical disclosures. The statute imposes liability only if a registration statement contains "an untrue statement of a material fact" or omits a material fact that was either (1) "required to be stated therein" or (2) "necessary to make the statements therein not misleading." 15 U.S.C.

§ 77k(a). Section 11 thus targets statements that were incorrect when made and therefore require correction. It does not target accurate historical disclosures that allegedly appear incomplete in light of developing information from an ongoing reporting period.

Courts have long recognized that the duty to correct and the duty to update are different. See, *e.g.*, *Stransky* v. *Cummins Engine Co.*, 51 F.3d 1329, 1331-1332 (7th Cir. 1995) (distinguishing between duty to correct and duty to update); *In re Burlington Coat Factory Securities Litigation*, 114 F.3d 1410, 1430 (3d Cir. 1997) (same). A company has a duty to correct when it "makes a historical statement that, at the time made, the company believed to be true, but as revealed by subsequently discovered information actually was not." *Stransky*, 51 F.3d at 1331. That duty applies only when the initial statement was "*in*correct when made." *Gallagher* v. *Abbott Laboratories*, 269 F.3d 806, 810 (7th Cir. 2001). In contrast, the duty to update requires companies to supplement prior disclosures that were "reasonable at the time made" but became "misleading when viewed in the context of subsequent events." *Burlington Coat Factory*, 114 F.3d at 1431.

Section 11's focus on "untrue statement[s]" and omissions that render any statements "misleading," 15 U.S.C. § 77k(a), makes clear that it is concerned with companies issuing inaccurate disclosures in the first instance—not accurate historical disclosures that plaintiffs seek to pair with developing information from a still-open quarter. Section 11 may therefore require correction of disclosures that were inaccurate when made. But nothing in the statutory text creates

a duty to accompany accurate historical disclosure with interim information from an ongoing quarter.

2. This textual conclusion is reinforced by this Court's holding in *Macquarie*. Just two Terms ago, this Court affirmed that "[s]ilence, absent a duty to disclose, is not misleading under Rule 10b-5," 17 C.F.R, § 240.10b-5, and that "[e]ven a duty to disclose * * * does not automatically render silence misleading under Rule 10b-5(b)." *Macquarie*, 601 U.S. at 265 (internal quotation marks omitted). This Court explained that a company violates Rule 10b-5(b) only if it omits information that "renders affirmative statements misleading." *Ibid.* That reasoning applies here because Rule 10b-5 and Section 11 are nearly identical: both target untrue statements and omissions that make statements misleading. And that parallel is no accident. Rule 10b-5 was drawn directly from Section 17(a), and Section 11 uses materially the same language.[*]

Rule 10b-5 was "patterned directly upon Section 17(a) of the 1933 Act," with the only substantive change being that the rule applies to purchases as well as sales of securities. 3 Thomas L. Hazen, *The Law of Securities Regulation* § 12.16 (9th ed. 2025);

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[*] To be sure, some lower courts in the Rule 10b-5 context have suggested that a duty to update may arise in limited circumstances. But the circuits are split, and even those recognizing such a duty have confined it to forward-looking statements or "definite positive projections." *Backman* v. *Polaroid Corp*., 910 F.2d 10, 17 (1st Cir. 1990); see also *Stransky*, 51 F.3d at 1332 (rejecting any duty to update). No court has held that Rule 10b-5 imposes a duty to update a statement lacking "forward intent and connotation." *Backman*, 910 F.2d at 17.

see also Joseph A. Grundfest, *Disimplying Private Rights of Action under the Federal Securities Laws: The Commission's Authority*, 107 Harv. L. Rev. 961, 980 n.71 (1994) (showing that Rule 10b-5's "operative provisions" are "drawn directly from [Section] 17"). Indeed, as Commission staffer Milton Freeman later recalled, "in drafting Rule 10b-5," he "looked at Section 10(b) and * * * at Section 17, and * * * put them together," with the only discussion being whether the phrase "in connection with the purchase and sale" should be at the beginning or end of the rule." Grundfest, *Disimplying Private Rights* at n.71 (quoting Milton Freeman, *Conference on the Codification of the Federal Securities Laws*, 22 Bus. Law. 793, 922 (1967)).

Section 17, in turn, makes it unlawful to offer or sell securities "by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made * * * not misleading." 15 U.S.C. § 77q(a).

Section 11 uses materially the same language. Like Section 17, it targets "untrue statement[s]" and omissions of material facts necessary to make other statements "not misleading." Compare 15 U.S.C. § 77k(a), with 15 U.S.C. § 77q(a).

The chain is thus straightforward: Congress used this formulation in Section 17; the Commission carried it into Rule 10b-5; and Congress used the same formulation in Section 11. Given those textual similarities, the three provisions should share the "same meaning." *Smith* v. *City of Jackson*, 544 U.S. 228, 233 (2005); see also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252

(2012) ("Statutes *in pari materia* are to be interpreted together, as though they were one law.").

This Court has long held that, "when Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes." *Smith*, 544 U.S. at 233. There is accordingly no reason to interpret Section 11's prohibitions of false and misleading statements differently from Section 17's. There is also no reason to believe that the Commission did not import that same meaning from Sections 17 and 11 into Rule 10b-5, when it adopted Section 17's operative text effectively verbatim. This Court's "unanimous interpretation" of Rule 10b-5 in *Macquarie* "is therefore a precedent of compelling importance" here. *Id*. at 234; see also Pet. App. 22a n.3 (recognizing that the "misleading" prongs of Rule 10b-5 and Section 11 are "nearly identical" and interpreting them similarly).

That shared text, lineage, and meaning make the consequence here straightforward. Just as a "failure to disclose information" can only support a Rule 10b-5 claim if it "renders affirmative statements made misleading," *Macquarie*, 601 U.S. at 265, a registration-statement omission triggers Section 11 liability only when it results in a misleading statement—not merely when the omission is material. Contra Pet. App. 24a.

3. The Ninth Circuit's continual-disclosure rule also cannot be squared with the current regulatory framework for affirmative disclosures. Where affirmative disclosure is warranted, the Commission has

specified periodic and event-driven mechanisms to provide it. The Commission currently requires quarterly and annual reporting—filed on Forms 10-Q and 10-K, respectively. 17 C.F.R. §§ 240.13a-13, 240.13a-14, 249.308a, 249.310. And it requires current reports on Form 8-K for specified events (§§ 240.13a-11, 249.308)—such as entry into a material agreement (Form 8-K Item 1.01), completion of a significant acquisition (Form 8-K Item 2.01), bankruptcy or receivership (Form 8-K Item 1.03), or key management changes (Form 8-K Item 5.02). It also requires intra-quarter reporting in connection with certain cybersecurity breaches. See *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, 88 Fed. Reg. 51,896 (Aug. 4, 2023) (codified at 17 C.F.R. §§ 229.106, 232, 239, 240, 249).

The Commission's enumeration of specific events that trigger affirmative-disclosure obligations—beyond default quarterly and annual reporting—reinforces that there is no freestanding continuing duty to disclose material information. Where the Commission has required intra-quarter disclosures, it has done so expressly. It has not expressly imposed a continuing affirmative-disclosure obligation for registration statements. The absence of such an express regulation here further demonstrates that no such obligation exists.

The Ninth Circuit's decision thus improperly creates a continual-disclosure obligation that the Commission has rightly declined to impose—and that decision cannot stand. The interpretations by the First and Second Circuits that also impose Section 11 duties to update are also incorrect for the same reasons.

II. ITEM 303 CREATES NO DUTY TO UPDATE

Section 11 imposes no obligation to accompany accurate historical quarterly disclosures with post-quarter information. But the Ninth Circuit reached the same erroneous result through a second, distinct analytic move: It construed Item 303 of Regulation S-K to require disclosure of incomplete, out-of-quarter financial developments in a registration statement. See Pet. App. 86a-87a (Rawlinson, J., dissenting) (majority's approach "exposes Robinhood to strict liability under Section 11 for not disclosing certain 'incomplete intra-quarterly results' occurring within months of the IPO"). Item 303's text forecloses that reading.

Item 303 requires disclosure of certain "known trends or uncertainties" in SEC filings, 17 C.F.R. § 229.303(b)(2)(ii), but it does so within the federal securities laws' periodic-reporting framework. It does not create a free-floating duty to update triggered by the effectiveness of a registration statement, or by any other event. To the contrary, this Court has explained that Item 303 "requires companies to disclose certain information in *periodic* filings with the SEC." *Macquarie*, 601 U.S. at 259 (emphasis added). The obligation is thus tied to periodic filings—not to the filing or effectiveness of a registration statement.

Item 303's text leaves no room for the Ninth Circuit's contrary reading. Item 303 requires registrants to discuss "material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided." 17 C.F.R. § 229.303(c)(1). That command is backward-looking. It requires discussion only through the date of the most recent interim balance sheet actually

provided. It does not require discussion of developments arising after that date.

The same is true of Item 303's treatment of results of operations. It requires discussion of "the most recent fiscal year-to-date period for which a statement of comprehensive income is provided and the corresponding year-to-date period of the preceding fiscal year." 17 C.F.R. § 229.303(c)(2)(i). Again, the obligation is tied to the most recent period for which financial statements are provided. It does not extend beyond that period to later, still-developing events.

Item 303 likewise calls for discussion of "the most recent quarter for which a statement of comprehensive income is provided" and a comparative period. 17 C.F.R. § 229.303(c)(2)(ii). Once more, the rule is pegged to the most recent completed quarter for which financial statements are included. It does not extend to information arising after the close of that quarter. If the Commission had wanted Item 303 to require disclosure of developments after that quarter closed, it would have said so. It did not.

Robinhood therefore complied with Item 303 regardless whether the subsequent financial data could be characterized as a "known trend." The rule does not call for discussion of information arising after the most recent interim financial statements provided.

The Commission's most recent amendments to Item 303 underscore the point. In modernizing and streamlining the rule, the Commission again specified the temporal scope of required management discussion and analysis, yet nowhere required disclosure of developments occurring after the most recent completed interim period. See *Management's Discussion*

and Analysis, Selected Financial Data, and Supplementary Financial Information, 86 Fed. Reg. 2080 (Jan. 11, 2021). That choice reflects regulatory judgment. When an agency carefully defines the periods that trigger disclosure, courts may not treat its decision not to require real-time supplementation as an invitation to impose that obligation themselves. See *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 565 (1980) ("[C]aution must temper judicial creativity in the face of * * * regulatory silence.").

In all events, Item 303 cannot be construed to override Section 11. Even if Item 303 could be read more broadly in isolation, it cannot be interpreted to impose a disclosure obligation that Section 11 itself does not recognize. "An agency's regulation cannot 'operate independently of' the statute that authorized it." *FEC* v. *Cruz*, 596 U.S. 289, 301 (2022) (quoting *California* v. *Texas*, 593 U.S. 659, 679 (2021)). This Court has accordingly long held that regulations may not be interpreted to "create a rule out of harmony with the statute." *Manhattan General Equipment Co.* v. *Commissioner of Internal Revenue*, 297 U.S. 129, 134 (1936); see also *United States* v. *LaBonte*, 520 U.S. 751, 757 (1997) (when a regulation "is at odds" with a statute, the regulation "must give way"). The Ninth Circuit's construction of Item 303 does exactly that.

The proper reading of Item 303 is therefore straightforward. Faced with a potentially broad regulatory phrase like "known trends," this Court should adopt the permissible interpretation that keeps the regulation in harmony with the statute. See *Decker* v. *Northwest Environmental Defense Center*, 568 U.S. 597, 609 (2013); see also *United States* v. *Vogel Fertilizer Co.*, 455 U.S. 16, 25 (1982) (courts must "consider

first whether the [r]egulation harmonizes with the statutory language"). Here, that means reading Item 303 as its text demands: it requires discussion of trends and uncertainties in time periods limited by prior periodic filings. It does not require disclosure of trends or uncertainties arising after those periods.

The weight of authority has taken that approach. Courts have been reluctant to impose liability for failure to disclose financial data from a quarter in progress because—as the Fifth Circuit explained—such data is "necessarily incomplete." *Kapps* v. *Torch Offshore, Inc.*, 379 F.3d 207, 221 (5th Cir. 2004) (quoting *Zucker* v. *Quasha*, 891 F. Supp. 1010, 1016 (D.N.J. 1995), aff'd, 82 F.3d 408 (Table) (3d Cir. 1996)). The Eleventh Circuit also concludes that Item 303 does not require disclosure of partial-quarter prescription data. *Oxford Asset Management, Ltd.* v. *Jaharis*, 297 F.3d 1182, 1190 (11th Cir. 2002). And the Southern District of New York has repeatedly declined to treat Item 303 as requiring "real-time disclosures" of intra-quarter performance. *Willard* v. *UP Fintech Holding Ltd.*, 527 F. Supp. 3d 609, 620 (S.D.N.Y. 2021); see also *In re AT&T/DirecTV Now Securities Litigation*, 480 F. Supp. 3d 507, 529 (S.D.N.Y. 2020); *Schoenhaut* v. *American Sensors, Inc.*, 986 F. Supp. 785, 791 (S.D.N.Y. 1997). The panel majority broke from that understanding.

Certiorari is additionally warranted to restore the proper relationship between Section 11 and Item 303 and to prevent the Ninth Circuit's rule from becoming a template for reintroducing continuous-update liability in public-offerings nationwide.

III. THIS COURT'S REVIEW IS FURTHER WARRANTED BECAUSE OF THE COMMISSION'S PROPOSED MOVE TO SEMIANNUAL REPORTING

Securities and Exchange Commission Chairman Paul Atkins has announced that the SEC intends to propose a rule change—supported by the Administration—that would permit public companies to transition from quarterly to semiannual reporting. See, *e.g.*, Soyoung Ho, *SEC to Revisit Semiannual Reporting After Trump's Call for Change*, Thomson Reuters (Sept. 18, 2025), https://tinyurl.com/5eavtyxm.

If the Ninth Circuit's "duty to update" is allowed to stand, semiannual reporting will materially expand the window of registrants' potential litigation exposure. Under the current quarterly regime, any alleged "update" obligation would arise, at most, within a 90-day cycle. Under a semiannual regime, registrants within the Ninth Circuit could face claims for failing to disclose alleged "known trends" that emerge during a six-month, 180-day cycle. Assuming that events triggering potential Item 303 obligations are randomly distributed over time, doubling the length of the time period subsequent to the most recent periodic filing will double the incidence of disputes over duties to update under Section 11.

This result would distort the regulatory balance the Commission is attempting to recalibrate. A shift to semiannual reporting is meant to reduce compliance burdens and give companies greater room to focus on long-term strategy and capital formation. See Matthew Kaplan et al., *The End of Quarterly Reporting in the United States?*, Harv. L. Sch. F. on Corp. Governance (Oct. 5, 2025). But judicially created up-

dating obligations would move in the opposite direction. They would impose an additional disclosure regime, enforced through private litigation, on top of the framework the Commission itself has chosen. For registration statements, semiannual reporting would then exist in name only, because disclosure policy would be shaped not by the Commission's rulemaking authority, but by after-the-fact judicial expansion.

IV. THIS CASE PRESENTS THE COURT WITH AN OPPORTUNITY TO PROVIDE CLARITY ON DISCLOSURE OBLIGATIONS THAT *FACEBOOK* AND *NVIDIA* ULTIMATELY DID NOT

The questions presented are pure questions of statutory interpretation. They were fully aired below and have been extensively considered by courts across the country. This case is therefore an excellent vehicle for resolving an important legal issue with nationwide consequences for companies conducting public offerings. See Pet. 36. In that sense, it is nothing like the Court's recent experience with *Facebook, Inc.* v. *Amalgamated Bank*, No. 23-980 (U.S. Dec. 26, 2024) and *NVIDIA Corp.* v. *E. Ohman J:Or Fonder AB*, No. 23-970 (U.S. Jan. 13, 2025)—both of which presented significant case-specific vehicle issues.

Facebook presented the question whether failing to disclose that a warned-of risk had previously materialized was misleading. At oral argument, the parties seemed to agree, at least in part, on the answer to that question. See Tr. of Oral Arg. at 51:2-6 (Plaintiffs' counsel conceding that "as to the actual question presented, we agree that a risk disclosure is not misleading because it omits disclosure of an event that is immaterial because it risks no business harm."). Fur-

ther, that question turned on case-specific disputes—such as whether investors knew about the previously materialized risk when the relevant statement was made—that may have rendered the case a suboptimal vehicle to address disclosure obligations. See *In re Facebook, Inc. Securities Litigation*, 87 F.4th 934, 950 (9th Cir. 2023) (noting disagreement over the factual record). The Court ultimately dismissed the case as improvidently granted.

In *NVIDIA*, plaintiffs alleged that the company and certain officers made misleading statements about the significance of cryptocurrency demand on the company's financial performance. See *E. Ohman J:Or Fonder AB* v. *NVIDIA Corp.*, 81 F.4th 918, 923 (9th Cir. 2023). The questions presented concerned the adequacy of plaintiffs' pleading of scienter and falsity under the PSLRA, including whether expert analysis could substitute for particularized factual allegations. Similar to *Facebook*, several Justices raised concerns at oral argument about the fact-bound issues the Court may need to address in resolving the specific question presented. Tr. of Oral Arg. at 11:16-22, 37:19-21. *NVIDIA* was also dismissed as improvidently granted.

This case is fundamentally different from *Facebook* and *NVIDIA*. The Ninth Circuit adopted two legal rules—its interpretations of Section 11 and Item 303—that implicitly, and wrongly, authorize a duty to update. Whether those rules are correct is a pure question of law. It does not depend on the precise events preceding the effectiveness of Robinhood's registration statement, or on the details of the post-quarter developments plaintiffs allege. It turns on straightforward questions of statutory and regulatory

interpretation. So unlike *Facebook* and *NVIDIA*—both of which posed case-specific vehicle issues—this case presents a clean, recurring, and dispositive legal issue that warrants this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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