Case No. G059561

**IN THE COURT OF APPEAL**
**OF THE STATE OF CALIFORNIA**
**FOURTH APPELLATE DISTRICT, DIVISION THREE**

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**CALIFORNIA BUSINESS & INDUSTRIAL ALLIANCE,**
*Petitioner and Appellant*,
v.
**ROB BONTA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,**
*Defendant and Respondent*.

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On Appeal From The Superior Court Of Orange County
Case No. 30-2018-01035180-CU-JR-CXC
The Honorable Peter J. Wilson

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# *AMICUS CURIAE* BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONER AND APPELLANT

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# INTRODUCTION

The central question in this case is whether a statute that gives private parties authority to prosecute employers in the name of the State—including the powers to seek civil penalties that could be assessed and collected by the enforcing agency and to enter into settlements that bind the State—violates the separation of powers enshrined in the California Constitution when the prosecutorial action can be initiated without any government approval and no member of the Executive Branch is authorized to intervene and retake control of the litigation once the case has been filed. To state that question is to answer it.

As the United States Supreme Court and Ninth Circuit have explained in cases addressing similar challenges under the Federal Constitution, prosecutorial power can be delegated to non-Executive Branch officials only if the executive maintains "substantial authority" over the action. As those courts have made clear, statutes delegating such power must, *at minimum*, either (a) authorize the executive to perform a gatekeeping role that prevents litigation from being initiated without the executive's express authorization, or (b) authorize the executive to intervene at any time in the litigation and retake control from the party exercising the delegated authority.



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The statute at issue here, California's Private Attorneys General Act ("PAGA"), has neither of these safeguards. As Petitioner-Appellant has explained, the statute allows private parties to initiate litigation in the name of the State without any affirmative authorization from the California Labor & Workforce Development Agency (the "LWDA")—indeed, there is no indication that the LWDA even reviews the overwhelming number of PAGA notices it receives from private parties preparing to litigate. And although PAGA is purportedly modeled on California's False Claims Act (the "CFCA") and its federal equivalent, both of which allow the government to "take complete control" of the case at any stage of the litigation, PAGA "prevents California from intervening in a suit brought by the aggrieved employee[.]" (*Magadia v. Wal-Mart Assocs., Inc.* (9th Cir. 2021) 999 F.3d 668, 677.) PAGA is thus an "anomaly among modern *qui tam* statutes[.]" (*Ibid.* [noting that unlike other *qui tam* statutes, PAGA "represents a permanent, *full* assignment of California's interest to the aggrieved employee"].)

Because PAGA neither gives the LWDA a gatekeeping role on the front end, nor provides an opportunity to intervene and take over the litigation on the back end, PAGA "lacks the 'procedural controls' necessary to ensure that California—not the aggrieved employee (the



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named party in PAGA suits)—retains 'substantial authority' over the case." (*Ibid.* [quoting *Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.* (11th Cir. 2008) 524 F.3d 1229, 1234].) PAGA thus violates the separation of powers in violation of the California Constitution.

PAGA's constitutional defects take on heightened importance given the explosion of PAGA cases in recent years. Faced with the threat of crippling fines, California businesses have been forced to settle hundreds of meritless cases. These settlements—and the threat of future PAGA actions—have forced businesses to lay off employees or shut down altogether. The primary beneficiaries of these extortionate awards have been trial attorneys, not the employees PAGA is ostensibly designed to protect. Indeed, PAGA has been such a boon to the plaintiffs' bar that trial attorneys in other states are lobbying for similar statutes—infected with the same constitutional problems—that will lead to more shakedowns of the Chamber's members. This Court thus has a brief window in which to uphold the separation of powers before PAGA metastasizes further to the detriment of both businesses and their employees.



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**ARGUMENT**

## I. PAGA Violates California's Separation of Powers Doctrine, Which Is Based on The Federal Constitutional System

"From its inception, the California Constitution has contained an explicit provision embodying the separation of powers doctrine." (*Super. Ct. v. Cnty. of Mendocino* (1996) 13 Cal.4th 45, 52 [citing Cal. Const. of 1849, art. III, § 1, now art. III, § 3].) This doctrine, which "long predates [California's] Constitution[,]" was viewed by "[t]he 'leading Framers' of the federal Constitution" as "'the central guarantee of a just government.'" (*Obrien v. Jones* (2000) 23 Cal.4th 40, 65 [Kennard, J., dissenting] [quoting *Freytag v. Comm'r* (1991) 501 U.S. 868, 870].) Although the "doctrine does not create an absolute or rigid division of functions[,]" (*Lockyer v. City and Cnty. of S.F.* (2004) 33 Cal.4th 1055, 1068), it "unquestionably places limits upon the actions of each branch with respect to the other branches." (*Cnty. of Mendocino*, 13 Cal.4th at 52.)

The California Constitution, like its federal counterpart, vests executive power in the Executive Branch. (See Cal. Const. art. V.) "The supreme executive power [] is vested in the Governor[,]" but the Attorney General, "[s]ubject to the powers and duties of the Governor," is the "chief law officer of the State" and has the duty to "see that the laws of the



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State are uniformly and adequately enforced." (*Id.* art. V, §§ 1, 13.) In short, the role of these "executive branch officials is to enforce statutory laws[.]" (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1167 ([Kennard, J., concurring] [citing *Lockyer*, 33 Cal.4th at 1068].) These functions can, of course, be delegated to other individuals within the Executive Branch appointed by the Governor or who report to the Attorney General. (See, e.g., Cal. Const. art. V, § 13 [Attorney General has "direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law"].) For example, the LWDA, a cabinet-level agency, enforces wage and labor standards through the Division of Labor Standards Enforcement (the "DLSE"). (Lab. Code §§ 90.5, 98.) The DLSE is overseen by the Labor Commissioner, who is appointed by the Governor. (*Id.* §§ 79–90.5; see also *Rebolledo v. Tilly's Inc.* (2014) 228 Cal.App.4th 900, 914 [Commissioner has "broad authority to reject, investigate, adjudicate, or litigate (on behalf of the employee), depending on the nature of the employee's claim"].)

But while the Executive Branch is free to divide responsibility among its constituent parts, the California Constitution does not confer executive power on either the Legislative or the Judicial Branch. Nor



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does it authorize unelected citizens to wield executive power. The issue here is whether—and under what circumstances—the Legislature may delegate prosecutorial authority to individuals outside the Executive Branch. Because California's Constitution was modeled after the Federal Constitution, this Court should look to federal separation of powers decisions addressing similar issues for guidance. (See *People v. Bunn* (2002) 27 Cal.4th 1, 5 [federal separation of powers decisions are "persuasive for state separation of powers purposes"] [citing *Plaut v. Spendthrift Farm, Inc.* (1995) 514 U.S. 211]; *People v. King* (2002) 27 Cal.4th 29, 31 ["In analyzing that issue, we find persuasive for California purposes the federal separation of powers principles recently explained in *Plaut*[.]"]; *Carmel Valley Fire Protection Dist. v. State* (2001) 25 Cal.4th 287, 306 [discussing separation of powers reasoning in *Bowsher v. Synar* (1986) 478 U.S. 714, and *I.N.S. v. Chadha* (1983) 462 U.S. 919].)

The most on-point federal decisions addressing the constitutional limits restricting delegations of executive power to individuals outside the Executive Branch are *Morrison v. Olson* (1988) 487 U.S. 654, and *U.S. ex rel. Kelly v. Boeing Co.* (9th Cir. 1993) 9 F.3d 743. As those decisions make clear, although executive power can be delegated to individuals outside the Executive Branch under certain conditions,



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PAGA "impermissibly undermines" the powers of the Executive Branch by granting third parties unfettered discretion to wield executive power without any meaningful government supervision. (See *Morrison*, 487 U.S. at 695.)

**A.** *Morrison* involved a constitutional challenge to certain provisions of the Ethics in Government Act of 1978, which authorized the appointment of an independent counsel. (487 U.S. at 660–61.) Among other issues, the appellant contended that the Act "impermissibly undermine[d]" the powers of the Executive Branch by "reduc[ing] the amount of control or supervision that the Attorney General and, through him, the President exercises over the investigation and prosecution of a certain class of alleged criminal activity." (*Id.* at 695.) Although the statute authorized a broad delegation of executive power, the Court upheld the statute because it gave "the Attorney General several means of supervising or controlling the prosecutorial powers that may be wielded by an independent counsel." (*Id.* at 696.) Most significantly, the Court noted that "[n]o independent counsel may be appointed without a specific request by the Attorney General, and the Attorney General's decision not to request appointment if he finds 'no reasonable grounds to believe that further investigation is warranted' is committed to his



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unreviewable discretion." (*Ibid.*) Thus, "[n]otwithstanding the fact that the counsel [wa]s to some degree 'independent' and free from executive supervision to a greater extent than other federal prosecutors," the Court concluded that "the Executive Branch [has] sufficient control over the independent counsel to ensure that the President is able to perform his constitutionally assigned duties." (*Ibid.*)

The Ninth Circuit applied a similar test in *Boeing*, where the defendant moved to dismiss a *qui tam* action under the False Claims Act (the "FCA") because, *inter alia*, the FCA "undermine[d] the authority and independence of" the Executive Branch by handing prosecutorial authority to private citizens. (9 F.3d at 750 [citing *Mistretta v. United States* (1989) 488 U.S. 361, 382].) Although the United States Supreme Court had "never considered a situation where Congress ha[d] sought to disperse some quantum of executive authority amongst the general public[,]" (*ibid.*), the Ninth Circuit followed *Morrison* in asking whether the challenged statute "'disrupt[ed] the proper balance between the coordinate branches [by] prevent[ing] the Executive Branch from accomplishing its constitutionally assigned functions.'" (*Id.* at 751 [quoting *Morrison*, 487 U.S. at 695].) Because the Ninth Circuit regarded prosecutions under the FCA as "executive" in nature, it looked to



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whether the *qui tam* provisions of the FCA "as a whole" "accord[ed] the Executive Branch 'sufficient control' over the conduct of relators[.]'" (*Id.* at 752; *id.* at 751 [quoting *Morrison*, 487 U.S. at 696].) The Ninth Circuit concluded that although the government does not have authority to "prevent the initiation of prosecution" under the FCA—as the Attorney General does with respect to an independent counsel under the Ethics in Government Act—there was no separation of powers problem because "the government has greater authority to limit the conduct of the prosecutor and ultimately *end* the litigation in a qui tam action" under the FCA. (*Id.* at 754.) The Court explained:

> The government can intervene in a[n] [FCA] case and then take primary responsibility for prosecuting the action; it can seek judicial limitation of the relator's participation; it can move for dismissal of a case which it believes has no merit, after notice to the relator and opportunity for a hearing; it can seek a judicial stay of the relator's discovery regardless of whether it intervenes; and it remains free to seek any alternate remedies available, including through any administrative proceeding.

(*Id.* at 753.) As described below, the State can take none of those actions in a PAGA case.

Together, *Morrison* and *Boeing* stand for the proposition that to avoid violating the separation of powers, a statute conferring prosecutorial authority on individuals outside the Executive Branch



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must either provide the executive with sole authority over the *initiation* of any prosecution or give the executive ongoing authority to intervene at any time and *terminate* the prosecution. Absent at least one of these essential features, a statute allowing non-Executive Branch officials to prosecute cases in the name of the State fails to "give the Executive Branch sufficient control over the [prosecutor] to ensure that the [Executive Branch] is able to perform [its] constitutionally assigned duties." (*Morrison*, 487 U.S. at 696.)

**B.** PAGA incorporates neither of these features. As Petitioner-Appellant has explained, the only hint of executive control provided by PAGA is in the statute's *qui tam* "notice" provisions, but those provisions do not give any Executive Branch official sole authority over the initiation of a PAGA action. On the contrary, PAGA allows a relator to file an action regardless of whether the LWDA even *reviews* the notice—much less investigates the underlying the complaint. (See Lab. Code § 2699.3, subd. (a)(1)–(2) [authorizing commencement of a civil action if the LWDA does not respond within 65 days].) And as Petitioner-Appellant has demonstrated, PAGA notices are almost never reviewed or investigated by the LWDA. (Opening Br. at 42.) Thus, unlike the independent counsel provision upheld in *Morrison*, a PAGA action can



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be initiated without any involvement on the front end by the Executive Branch.

Nor does PAGA authorize the LWDA to intervene and terminate the litigation after it has commenced. Although a PAGA plaintiff must serve a copy of the complaint on the LWDA, (Lab. Code § 2699, subd. (l)(1)), "once California elects not to issue a citation, the State has no authority under PAGA to intervene in a case brought by an aggrieved employee." (*Magadia*, 999 F.3d at 677.) Instead, the statute gives the relator total control over the litigation, including over whether to settle. (Lab. Code § 2699, subd. (l)(2).) And any settlement or judgment the relator obtains binds the State and absent third parties because "PAGA represents a permanent, *full* assignment of California's interest to the aggrieved employee." (*Magadia*, 999 F.3d at 677.) As the Ninth Circuit has recognized, "PAGA thus lacks the 'procedural controls' necessary to ensure that California—not the aggrieved employee (the named party in PAGA suits)—retains 'substantial authority' over the case." (*Ibid.*)

Defendant-Respondent contends that the LWDA can intervene as-of-right under Code of Civil Procedure Section 387 and "direct the case." (Resp. Br. at 53.) But intervention as-of-right must be "upon timely application," so the LWDA cannot intervene at *any time* in the litigation.



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(Code Civ. Proc. § 387, subd. (d)(1).) And though PAGA requires a party to serve the LWDA with a copy of any proposed settlement, (Lab. Code § 2699, subd. (l)(2)), nothing in the statute authorizes the LWDA to intervene to block an unfair or attorney-friendly settlement. Similarly, while the LWDA is free to file amicus briefs in the appellate courts, the agency has no statutory right to intervene at that stage of the proceedings.

PAGA thus violates bedrock separation of powers principles explicitly recognized under the United States Constitution and applicable to the California Constitution.

**C.** The California Supreme Court's ruling in *Iskanian v. CLS Transportation Los Angeles LLC* (2014) 59 Cal.4th 348, is not to the contrary. In *Iskanian*, the Court addressed a claim that PAGA violates the rule set forth in *County of Santa Clara v. Superior Court* (2010) 50 Cal.4th 35, which held that government entities can hire private contingency counsel to prosecute actions only if the private counsel is "subject to the supervision and control of government attorneys" such that "the discretionary decisions vital to an impartial prosecution are made by neutral attorneys." (59 Cal.4th at 389.) Because PAGA plaintiffs



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are not subject to such supervision, the defendant in *Iskanian* claimed that PAGA violates *County of Santa Clara*.

In rejecting that challenge, the Court noted that the defendant's theory would apply not just to PAGA but to "all qui tam actions," including those initiated under the CFCA. (Resp. Br. at 19–20 [quoting *Iskanian*, 59 Cal.4th at 390].) That is because PAGA and other *qui tam* statutes are alike insofar as they do not require the type of day-to-day supervision as when a government entity hires contingency counsel to prosecute public nuisance claims. This similarity between PAGA and other *qui tam* statutes was fatal to the defendant's claim because the Court has long held that *qui tam* statutes are "a legitimate exercise of legislative authority." (*Iskanian*, 59 Cal.4th at 390.) To avoid calling all *qui tam* statutes into question, the Court thus cabined the rule announced in *County of Santa Clara* "to circumstances in which a government entity retains a private law firm or attorney as outside counsel." (*Id.* at 390–91.)

Defendant-Respondent contends that this holding forecloses Petitioner-Appellant's claim because if *qui tam* statutes are a "legitimate exercise of legislative authority[,]" PAGA must be too. (Resp. Br. at 20–21.) But *Iskanian* did not hold that PAGA is like a *qui tam* statute in *all*



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respects. And unlike the challenge in *Iskanian*, the separation of powers claim here would *not* implicate other *qui tam* statutes. In other words, this Court could invalidate PAGA without disturbing the CFCA or any other *qui tam* statute. That is because, as described above, *qui tam* statutes authorize the government to intervene at any time and retake control of the litigation, while PAGA does not. Indeed, that difference is central to Petitioner-Appellant's claim that PAGA violates the separation of powers doctrine by unconstitutionally delegating executive authority. Accordingly, the fact that *qui tam* statutes like the CFCA may pass constitutional muster cannot save PAGA under the dual tests set forth in *Morrison* and *Boeing*.

For these reasons, this Court should reverse the trial court's order sustaining Defendant-Respondent's demurrer and hold that PAGA violates the separation of powers.

## II. PAGA's Constitutional Defects Allow Opportunistic Plaintiffs' Attorneys to Unfairly Prey on California Businesses, and PAGA-like Statutes Are Springing Up Around the Country

**A.** Since its passage in 2004, PAGA has been a growing scourge on California businesses. The total number of PAGA notices filed annually ballooned from 335 in 2004 to 6,515 in 2020. (See Cal. Dep't of Indus. Relations, PAGA Case Search, https://tinyurl.com/2p83km4d/.)



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Meanwhile, of the over 9,000 PAGA notices filed between fiscal years 2016 and 2018, the LWDA conducted a pre-investigative inquiry "to determine whether to accept cases for investigation or authorize commencement of private litigation" for only *forty-nine*—or *0.5%*—of notices, and actually retained only *thirty*—or *0.3%*—of cases. (DLSE FY 19/20 Budget Change Proposal, Analysis of Problem (May 10, 2019), at 2, *available at* https://tinyurl.com/mry9mfhx.) The LWDA did not even *review* two thirds of notices filed between fiscal years 2016 and 2018. (*Ibid.*) In other words, the vast majority of PAGA actions have been pursued without *any* government involvement, putting private parties and their attorneys in the driver's seat wielding unchecked executive powers.

The LWDA's own budget request for the 2019/2020 fiscal year indicated that fewer than half of all notices filed between fiscal years 2016 and 2018 led to civil complaints. (*Id.* at 6.) As the LWDA explained, there is evidence that some plaintiffs and their attorneys are pursuing frivolous claims "only to settle quickly for little money[.]" (*Ibid.*) In other words, plaintiffs routinely give businesses notice of their intent to sue not because they have valid claims, but because they know that businesses will pay to avoid the cost of litigation. These types of



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shakedowns provide no social benefit and do not advance the State's interests.

Other PAGA cases proceed to litigation but ultimately result in a settlement. Again, the evidence suggests that plaintiffs' attorneys, not employees, are the primary beneficiaries of such settlements. The LWDA reviewed 1,546 settlement agreements between fiscal years 2016 and 2018 and concluded that *seventy-five percent* of those settlements "fell short of protecting the interests of the state and workers[,]" "reflecting the failure of many private plaintiffs' attorneys[.]" (*Id.* at 1, 6.)

Indeed, recent data indicate that employees fare worse in private PAGA suits than in administrative processes handled by the LWDA. (CABIA Foundation, California Private Attorneys General Act of 2004 (March 2021), at 3, 9, 13, *available at* https://tinyurl.com/2p82bns8.) This is unsurprising given PAGA's unconstitutional structure, which allows plaintiffs' attorneys to use the threat of civil penalties to pressure businesses into settlements that favor attorneys over employees without any risk that the government will intervene to protect employees' interests.

A small number of PAGA claims are litigated to final judgment. In such cases, California businesses have paid, on average, $1,232,000 per case—more than double the average $504,000 per case for LWDA-



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decided cases. (*Id.* at 1.) Yet employees recover *about half as much* from court-decided cases as from LWDA-decided cases, and it takes them *approximately 50% longer* to recover. (*Ibid.*)

In other words, PAGA punishes businesses but does little to help employees. The LWDA itself has acknowledged that PAGA may be "abused by those who may leverage the threat of litigation on behalf of many workers to benefit only a few." (DLSE FY 19/20 Budget Change Proposal, Analysis of Problem (May 10, 2019), at 2.)

Even worse, PAGA lawsuits often lead to layoffs and business closures that further harm employees. California's Employment Development Department (the "EDD") requires large employers doing business in the state to file Worker Adjustment and Retraining Notifications ("WARN") notices at least 60 days before conducting mass layoffs or closures. Between 2014 and 2020, over one hundred California businesses with seventy-five or more employees filed WARN notices with the EDD within eighteen months of receiving a PAGA notice. (Cal. Bus. & Indus. Alliance, PAGA Claims Contribute to Employee Layoffs in California, *available at* https://tinyurl.com/muwphnd5.) Because PAGA's civil penalty provision—$100 per violation per employee per pay period for a first violation, and $200 for each subsequent violation—does not discriminate based on the size of the penalized business, PAGA is



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especially threatening to small, less-profitable businesses, which are not required to submit WARN notices. (See Lab. Code § 2699, subd. (f)(2).) It is therefore reasonable to conclude that PAGA notices lead to even more closures and layoffs at small businesses than they do at large ones.

Even the Legislature has recognized these problems. For example, in 2018, the Legislature acknowledged the widespread criticism that PAGA "can easily be abused, especially by . . . unscrupulous plaintiffs' attorneys. In the hands of these attorneys . . . PAGA enables 'gotcha' lawsuits in which employers find themselves tied up in expensive litigation and confronting significant penalties and attorney's fees awards for what they feel are very technical or trivial violations, at best." (June 25, 2018 Sen. Jud. Comm. Rpt. on A.B. 1654 (2017–18 Reg. Sess.).) But instead of repealing or meaningfully reforming PAGA to eliminate these "frivolous lawsuits," the Legislature exempted one politically connected group, unionized construction workers, from PAGA's requirements. (*Ibid.*) The Legislature conceded that it could "be difficult, from a policy point of view, to rationalize denying future requests for PAGA exemptions under similar circumstances."[2] (*Ibid.*)

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[2] Assembly Bill 1654 (2017–18 Reg. Sess.) precludes "employee[s] in the construction industry" from bringing "aggrieved employee" suits under PAGA "with respect to work performed under a valid collective bargaining agreement" if the agreement, in relevant part, "[p]rohibits all



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True to its word, the Legislature has continued to hand out piecemeal exemptions to politically favored groups. This past September, it exempted unionized janitorial employees from PAGA,[3] again acknowledging that PAGA "lawsuits remain a costly and time-intensive process[,]" and that "generally an action under PAGA means a costly battle for both the employee and employer with little upside." (Sept. 7,

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of the violations of [the Labor Code] that would be redressable pursuant to [PAGA]," "provides for a grievance and binding arbitration procedure to redress those violations," and "[e]xpressly waives the requirements of [PAGA] in clear and unambiguous terms." Although the agreement must "[a]uthorize[] the arbitrator to award any and all remedies otherwise available under [the Labor Code]," the bill does not "authorize[] the award of penalties . . . that would be payable to the [LWDA]." (*Ibid.*) The bill thus removes the hammer of civil penalties that plaintiffs' attorneys use to pressure defendants into settling even frivolous cases and prevents unscrupulous plaintiffs' attorneys from settling away the rights of certain unionized workers. The bill also protects businesses that employ unionized construction workers from being sued into bankruptcy, which protects unionized employees from PAGA-induced layoffs.

[3] Senate Bill 646 (2021–22 Reg. Sess.), like Assembly Bill 1654 (2017–18 Reg. Sess.), see *supra* footnote 2, precludes "janitorial employees" from bringing "aggrieved employee" suits under PAGA "with respect to work performed under a valid collective bargaining agreement" if the agreement, in relevant part, "[p]rohibits all of the violations of [the Labor Code] that would be redressable pursuant to [PAGA]," "provides for a grievance and binding arbitration procedure to redress those violations," "allows the labor organization to pursue a grievance on behalf of all affected employees," "[e]xpressly waives the requirements of [PAGA] in clear and unambiguous terms[,]" and "[a]uthorizes the arbitrator to award any and all remedies otherwise available under [the Labor Code]," although again the bill does not "authorize[] the award of penalties . . . that would be payable to the [LWDA]."



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2021 Sen. Comm. on Lab., Pub. Emp't & Ret. Rpt. on S.B. 646 (2021–22 Reg. Sess.).) Frivolous PAGA actions—which are facilitated by PAGA's unconstitutional structure—are a plague on *every* industry in California, not just those with effective lobbying arms.

The specter of PAGA liability continues to grow. The California Labor Code comprises thousands of individual Sections, and provisions in recent bills, such as Assembly Bill 5, purport to impose *retroactive liability* on certain California businesses. (See A.B. 5 (2019–20 Reg. Sess.) ["specified Labor Code provisions of the bill apply retroactively to existing claims and actions to the maximum extent permitted by law"].) PAGA therefore provides a vehicle for asserting claims against unsuspecting companies based on *past conduct* that was entirely legal at the time. Although a few politically connected interest groups have successfully lobbied for exemptions, plaintiffs' attorneys stand to make a fortune extorting the remainder of California businesses not exempted under these provisions.

**B.** Influential interest groups in other states, seeing the opportunity PAGA provides for lucrative settlements and damages awards, have begun to push their own legislatures to adopt PAGA-like statutes. PAGA copycats have been introduced in Illinois (S.B. 0983 (2017)), Vermont (S. 139 (2019)), Colorado (H.B. 20-1415 (2020)), New



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Jersey (A. 2548 (2020); S. 921 (2020)), Connecticut (H.B. 6475 (2021)), Maine (S.P. 525 (2021)), New York (A.B. 5876 (2021); S. 12 (2021)), Oregon (H.B. 2205 (2021), and Washington (H.B. 1076 (2021)). California's experience shows that if these or similar bills become law, they will be used not to benefit employees, but to punish local businesses.

As the recent push to enact such statutes makes clear, PAGA is both malignant and metastasizing. The longer PAGA's constitutional violations go unchecked, the longer it will devastate American businesses. And if PAGA is allowed to stand, the bills it has inspired in other states may also be enacted into law, exacerbating the damage. Upholding the separation of powers in this case would help slow the spread of this unconstitutional disease beyond the borders of California.

## CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's order sustaining Defendant-Respondent's demurrer to the first cause of action in CABIA's First Amended Complaint.



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Dated: December 31, 2021 Respectfully submitted,

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**CERTIFICATE OF WORD COUNT**
**(Cal. Rules of Court, rule 8.486(a)(6))**

I hereby certify that the attached amici curiae brief of the Chamber of Commerce of the United States of America consists of 4374 words as counted by the Microsoft Word version 2102 word processing program used to generate the brief.

Dated: December 31, 2021 *<u>/s/Robert E. Dunn</u>*

Robert E. Dunn



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