No. S203124

IN THE
SUPREME COURT OF CALIFORNIA

JERRY BEEMAN and PHARMACY SERVICES, et al.,
Plaintiffs-Respondents,
vs.
ANTHEM PRESCRIPTION MANAGEMENT, et al.
Defendants-Appellants

Question Certified from the En Banc United States Court of Appeals
for the Ninth Circuit, Case Nos. 07-56692, 07-56693

APPLICATION TO FILE BRIEF AND BRIEF OF *AMICI CURIAE* CONSUMER ACTION, CONSUMERS FOR AUTO RELIABILITY AND SAFETY, THE PUBLIC HEALTH LAW CENTER, INC., AND PUBLIC GOOD LAW CENTER IN SUPPORT OF PLAINTIFFS-RESPONDENTS

SETH E. MERMIN (SBN 189194)
THOMAS BENNIGSON (SBN 237804)
TIMOTHY SUN
PUBLIC GOOD LAW CENTER
3130 Shattuck Avenue
Berkeley, CA 94705
(510) 393-8254

Counsel for *Amici Curiae*

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(510) 393-8254

Counsel for *Amici Curiae*

APPLICATION TO FILE *AMICUS* BRIEF

Pursuant to the California Rules of Court, rule 8.520(f), the organizations described below respectfully request permission to file the attached brief as *amici curiae* in support of Plaintiffs-Respondents Jerry Beeman and Pharmacy Services, *et al*.

This application is timely made within 30 days after the filing of the reply brief on the merits. No party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief, and no other person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the *amici curiae*, their members, or their counsel in the pending appeal.

I. BACKGROUND OF *AMICI CURIAE*

Consumer Action has been a champion of underrepresented consumers nationwide since 1971. A non-profit 501(c)3 organization, Consumer Action focuses on consumer education that empowers low- and moderate-income and limited-English-speaking consumers to prosper financially. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change. By providing consumer education materials in multiple languages, a free national hotline, a comprehensive website, and annual surveys of financial and consumer services, Consumer Action helps consumers assert their rights in the marketplace and make financially savvy choices. Consumers are able to make better choices when businesses are more transparent, allowing consumers access to more information. The challenge to section 2527, and particularly the claim that companies' objective data should be viewed as protected speech meriting heightened scrutiny, therefore threatens harm to the very people that Consumer Action works to protect.

Consumers for Auto Reliability and Safety (CARS) is a national, award-winning non-profit auto safety and consumer advocacy organization dedicated to preventing motor vehicle-related fatalities, injuries, and economic losses. CARS has spearheaded enactment of numerous landmark laws to improve protections for the car-buying public, which have been signed into law by governors from both major parties, and has successfully petitioned the National Highway Traffic Safety Administration for promulgation of federal motor vehicle safety regulations. CARS has been a leading proponent of full disclosure of important and relevant information to consumers, including sponsoring first-in-the-nation legislation enacted in California to prohibit the imposition of secrecy in settlements with manufacturers who repurchase seriously defective "lemon" vehicles. The United States Congress has repeatedly invited the president of CARS to testify on behalf of the public regarding auto safety policies and practices, including air bags and other automatic restraints, flood and salvage vehicle safety issues, mandatory binding arbitration in auto sales contracts, and fraudulent and predatory auto sales practices.

The Public Health Law Center, Inc. is a non-profit, public interest legal resource center dedicated to improving health through the power of law. Located at the William Mitchell College of Law in Saint Paul, Minnesota, the Center helps local, state, and national leaders improve health by strengthening public policies. The Center serves as the National Coordinating Center of the Network for Public Health Law, which offers specialized legal assistance to health departments nationwide. In addition, the Center is home to the Tobacco Control Legal Consortium – America's legal network for tobacco control policy. The Center helps public officials and community leaders develop, implement and defend effective public health laws, including laws that require the disclosure of information. The Center works to protect the government's authority to require factual commercial disclosures that provide the accurate, material information necessary to make informed decisions about health, as well as the government's

authority to regulate deceptive and abusive business practices to protect consumers and the integrity of the marketplace.

The Public Good Law Center is a public interest law firm dedicated to the proposition that all are equal before the law. Through *amicus* participation in cases of particular significance for consumer protection, public health, and civil liberties, Public Good seeks to ensure that the protections of the law remain available to everyone. Public Good has submitted *amicus* briefs in this Court, in the United States Supreme Court, and in Courts of Appeals around the nation in cases involving freedom of speech and the disclosure of information.

II. INTEREST OF *AMICI CURIAE*

As organizations whose missions encompass the protection of consumers, especially consumers of limited means; the safeguarding of public health; and the maintenance of freedom of speech, *amici* are keenly aware of the importance – and highly interested in the validity – of consumer protection and public health laws. *Amici* are also aware that the effectiveness of regulatory efforts often depends on government's ability to require that businesses disclose information – to government agencies, to other businesses, and to the public. *Amici* are concerned that the reinterpretation of the California Constitution's Free Speech Clause urged by Appellants in this case could, if adopted, jeopardize a wide range of disclosure regimes on which consumers, regulators, and businesses heavily depend. From automobile safety reports to hospital infection records, and from toxic-substance discharge notices to sharing of medical records, the outcome of this case could have a profound impact on the safety, health and well-being of millions of Californians.

Amici seek to add to this case the perspective of public interest groups that work on behalf of consumers and public health, so that the Court may take into account the broader consequences of any particular interpretation of the Free Speech Clause. Disclosure and information sharing regimes across a broad range

of fields – among them environmental protection, finance, and medicine in addition to consumer protection and public health – could be affected by the Court's decision.

III. NEED FOR FURTHER BRIEFING

Amici believe that further briefing is necessary to explore matters not fully addressed by the parties' briefs, particularly the comparison of the free speech protections guaranteed by the Constitutions of California and the United States, a more accurate understanding of both clauses, and the reliance of vast sectors of the United States and California economies – as well as millions of consumers – on a constitutional regime permitting robust disclosure and information sharing requirements. *Amici* believe that organizations working with and on behalf of consumers and the public health, and with extensive experience with First Amendment law pertaining to mandated disclosures, can add substantially to the Court's analysis.

IV. CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request that the Chief Justice accept the accompanying brief for filing in this case.

Dated: March 6, 2013

Respectfully submitted,

By: _____

Seth E. Mermin
Thomas Bennigson
Timothy Sun
PUBLIC GOOD LAW CENTER
3130 Shattuck Ave.
Berkeley, CA 94705

Counsel for *Amici Curiae*

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Counsel for *Amici Curiae*

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INTRODUCTION & SUMMARY OF ARGUMENT

The critical issue before this Court is whether the Free Speech Clause of the California Constitution extends so far into the ordinary business of government as to forbid regulation of basic economic activity whenever that activity happens to involve language or information. Our state Constitution requires no such intrusion. In particular, article I, section 2 does not prohibit the Legislature from enacting a statute that requires nothing more than the gathering and mailing of unadorned statistical data.

Nothing in the text or history of the Free Speech Clause requires that this Court depart from the general rule of deference to legislative authority over economic matters. To the contrary, the clause's express limitation to "sentiments" underscores its lack of application to the transfer of data among businesses. The neutral numerical information that section 2527 of the Civil Code requires to be reported cannot plausibly be considered an expression of Appellants' opinions or emotions.

To the extent that First Amendment precedent may, by analogy, inform this Court's analysis of the Free Speech Clause, that precedent does not indicate a contrary conclusion. Federal case law does not mandate heightened scrutiny for every regulation that touches upon information – especially for regulations that provide more, not less, information. In any event, First Amendment case law can have no more than persuasive effect on this Court's independent interpretation of our state charter. And the reasoning that might lead to a requirement that government satisfy heightened scrutiny in regulating basic economic activity is far from persuasive. To the contrary, the current case presents this Court with the opportunity to make clear that the California Constitution, at least, does not require the judiciary to interpose itself in the regulation of basic economic activity, which remains inherently "a matter for the legislative judgment." (*West Coast Hotel Co. v. Parrish* (1937) 300 U.S. 379, 400; *see also*

Industrial Welfare Com. v. Superior Court (1980) 27 Cal.3d 690, 731-32 ["'[T]imes without number we have said that the Legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power'"], quoting *West Coast Hotel*, 300 U.S. at p. 398.)

Section 2527 should therefore not be subject to any level of constitutional scrutiny beyond the rational basis review accorded neutral, economic regulation. To hold otherwise – to subject even modest economic regulation to heightened scrutiny simply because it requires a limited transfer of statistical information – would be to imperil countless existing regulations covering everything from accident reports to anticompetitive trade practices to tax returns. The Free Speech Clause compels no such result.

ARGUMENT

The expansion of the Free Speech Clause (Cal. Const., art. I, § 2) urged on this Court finds no support in the text of the clause, in case law interpreting the clause, or indeed in precedent involving the clause's federal constitutional analogue, the First Amendment (U.S. Const., 1st Amend.). By declining Appellants' invitation to apply heightened scrutiny to the collection and transfer of pricing statistics, this Court may avoid distending the Free Speech Clause in a way that could cause regulatory paralysis in California and at the same time dilute and trivialize the vital protections that the clause does provide.

I. THE TEXT OF THE FREE SPEECH CLAUSE DOES NOT PROVIDE HEIGHTENED PROTECTION TO THE TRANSFER OF STATISTICAL DATA.

The California Constitution's Free Speech Clause does not provide heightened scrutiny to the transfer of unadorned data. Article I, section 2 provides that "Every person may freely speak, write and publish his or her *sentiments* on all subjects being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." (Cal. Const., art. I, § 2, italics added.) The second sentence largely tracks the text of the First Amendment ("Congress shall make no law… abridging the freedom of speech, or of the press"). If the Free Speech Clause extends protection beyond that of the First Amendment, then that additional protection presumably must reside in the clause's first sentence. But the reimbursement data that section 2527 requires claims processors to report do not come within that sentence's scope.

The first sentence of the Free Speech Clause protects only expression of "sentiments." (Cal. Const., art., I § 2.) Thus, its scope "must depend on the meaning of the term 'sentiments.'" (*Pines v. Tomson* (1984) 160 Cal.App.3d 370, 394.) Based on the text itself, its history, and its interpretation by California courts, the statistical data required by section 2527 cannot plausibly be viewed as expressing the sentiments of any speaker, nor as interfering with the expression of any speaker's sentiments, at least insofar as the requirement to provide such data does not interfere with the expression of the speaker's own views.

California courts have, unsurprisingly, analyzed the plain meaning of the term "sentiments" as referring to opinion and emotion. (*See Guglielmi v. Spelling-Goldberg Productions* (1979) 25 Cal.3d 860, 867, fn. 8 (conc. opn. of Bird, C.J.) ["As Webster confirms, 'sentiments' encompasses not only thoughts but the attendant emotions"]; *Pines*, *supra*,

160 Cal.App.3d at p. 394 ["'sentiment' is defined as '1. a complex combination of feelings and *opinions* 2. An *opinion*, etc., often colored by emotion 3. appeal to the emotions, or sensitivity to this 4. maudlin emotion'"], citing Webster's New World Dictionary (1976), italics added by *Pines*.) The *Pines* court therefore concluded that "it is plain that the 'sentiments' to which article I, section 2, subdivision (a) refers include statements of editorial thought, emotion and opinion." (*Id.* at p. 395.) A set of data on reimbursement rates does not fit into any of these categories.

This judicial understanding of the word "sentiments" is consistent with its historical usage, which likewise referred to political or ideological opinion. Blackstone's Commentaries – the likely model for the California Constitution (*see Los Angeles Alliance for Survival v. City of Los Angeles* (2000) 22 Cal.4th 352, 366, fn. 9) – offer a telling description:

> Every freeman has an undoubted right to lay what sentiments he pleases before the public . . . . To subject the press to the restrictive power of a licenser, as was formerly done . . . is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of *all controverted points in learning, religion, and government* …. Neither is any restraint hereby laid upon freedom of thought or enquiry: liberty of private sentiment is still left….

(4 Blackstone's Commentaries 152, italics added; *see also Dailey v. Superior Court* (1896) 112 Cal. 94, 98 [quoting much of this passage as evidence of the "meaning" of the Free Speech Clause].) The right to "speak, write and publish his or her sentiments," then, was originally understood as protecting speech deemed essential for political, religious, and ideological freedom. The claimed right to avoid transparency about reimbursement rates does not contribute in any way to such freedom of thought or enquiry.

In light of this history, and the courts' understanding that the plain meaning of "sentiments" is opinions and emotions, it is clear that the

neutral price data reports required by section 2527 cannot be considered to involve "sentiments." The reports themselves are not inherently expressive; the data do not, on their own or in conjunction with a preface and summary, express any opinion or emotion about any topic, much less about a controverted point in learning, religion, or government.

Appellants' protestations to the contrary are unavailing. Appellants would have it that section 2527 "forces prescription claims processors to support a political position that is directly adverse to their interests," in that pharmacists could use the reports to lobby for higher reimbursement rates. (Brief for Appellants, at p. 39.) There is, however, a fundamental difference between – on the one hand – a political position, and – on the other hand – the facts that may be cited in support of that political position. Even if the legislative purpose of section 2527 was to improve reimbursement rates for pharmacists (*see* Brief for Appellants, at p. 38), the actual statistics claims processors are required to gather and transmit do not carry any political or ideological point of view; in fact, they do not convey any opinion or emotion whatsoever. The statistical reports may have much, some, or no effect at all on reimbursement rates, depending on what the statistics themselves reveal and on what, if anything, insurance companies decide to do with that information. Claims processors remain free to express their own views about the data, and to make any representations they wish as to what policy conclusions to draw from the data.

In sum, because the required reports do not contain any opinions or emotions, they do not constitute protected "sentiments" under California's Free Speech Clause.

II. CASE LAW CONFIRMS THAT THE CALIFORNIA CONSTITUTION IS NO MORE PROTECTIVE OF THE DATA AT ISSUE HERE THAN IS THE FIRST AMENDMENT.

A proper understanding of the term "sentiments" reveals that the scope of what is protected by the Free Speech Clause in this case is commensurate with the scope of what is protected by the federal Constitution. While the Free Speech Clause is often said to be more protective than the First Amendment (*see, e.g., Wilson v. Superior Court* (1975) 13 Cal.3d 652, 658), this "does not mean that it is broader in all its applications." (*Los Angeles Alliance, supra*, 22 Cal.4th at p. 367.) To the contrary, California courts generally "follow the United States Supreme Court in matters concerning free speech doctrine . . . 'unless persuasive reasons are presented for taking a different course.'" (*Gallo Cattle Co. v. Kawamura* (2008) 159 Cal.App.4th 948, 959, citing *People v. Teresinski* (1982) 30 Cal.3d 822, 836.) The specific instances in which speech has been found to be protected under the Free Speech Clause but not the First Amendment have largely been limited to the context of speech on private property that functions as public space. (*See, e.g., Fashion Valley Mall, LLC v. Nat. Labor Relations Bd.* (2007) 42 Cal.4th 850; *Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899.) This distinction has no bearing on the present case.

Amici are aware of only one decision not pertaining to the restriction of speech on private property in which this Court's case law with respect to the Free Speech Clause has departed from First Amendment case law. In *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, this Court found that an agricultural program compelling plum growers to fund generic advertising implicated the Free Speech Clause, despite the fact that the U.S. Supreme Court, in *Glickman v. Wileman Bros.* (1997) 521 U.S. 457, had

earlier held that similar programs did not violate the First Amendment. Yet *Gerawan* hardly signaled a permanent divergence between the two speech clauses; to the contrary, this Court's disagreement with the *Glickman* decision was vindicated when the U.S. Supreme Court the following year largely reversed course in *United Foods v. United States* (2001) 533 U.S. 405. Further, certain expansive rhetoric in *Gerawan* regarding a divergence in the two standards has not been borne out in later decisions of this Court. (*See, e.g., Golden Gateway Center v. Golden Gateway Tenants' Assn.* (2001) 26 Cal.4th 1013, 1024-1029 (plur. opn.) [providing textual and historical analysis missing in *Gerawan Farming* and rejecting its most expansive language as "nonbinding dictum"].) Finally, although arguably neither *Gerawan* nor *Glickman* involved speech on fundamental questions of politics and ideology, each did involve, unlike the reports required by section 2527, expressions of opinion and emotion concerning the merits of certain products – *i.e.,* sentiments.

In any event, this Court has never held that the California Constitution protects speech that is not protected by the First Amendment, but only that it affords, in some circumstances, *stronger* protection to protected speech. In other words, the protections of the California Constitution may sometimes be broader, particularly with respect to the setting in which the speech occurs, but the scope of what is protected is *not* broader. This Court's approach in *Fashion Valley Mall, supra,* illustrates the point: the Court first looked to the U.S. Supreme Court's determination that boycotting "is a form of speech or conduct that is ordinarily entitled to protection" under the United States Constitution (42 Cal.4th at p. 867, quoting *NAACP v. Claiborne Hardware Co.* (1982) 458 U.S. 886, 907), and only then went on to hold that the California Constitution "provides greater, not lesser protection *for this traditional form of free speech*." (*Fashion Valley Mall, supra,* 42 Cal.4th at p. 868, italics added.) In other

words, whether boycotts should be considered protected speech at all under the California Constitution was determined through First Amendment analysis. It was only the *degree* of protection offered by the federal and state constitutional schemes that differed in the circumstances of that case.

As this Court has observed in an analogous line-drawing context, "The state Constitution's free speech provision is … in some ways is broader than the comparable provision of the federal Constitution's First Amendment," (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 958-959), but "[t]his court has never suggested that the state and federal Constitutions impose *different boundaries* between the categories . . . ." (*Id.* at p. 959, italics in original).) Though the Court there was alluding to the boundary between commercial and noncommercial speech, the broader point applies here: the Free Speech Clause does not expand the category of protected speech.

Finally, this Court, interpreting the state's own charter as well as the First Amendment, has historically refused to extend free speech protection to mundane economic matters – even when those matters involved speech: "The right of free speech protected by the federal and state constitutional guaranties is not an absolute right which carries with it into businesses and professions total immunity from regulation in the performance of acts as to which speech is a mere incident or means of accomplishment." (*In re Porterfield* (1946) 28 Cal.2d 91, 101; *see also Powers v. Floersheim* (1967) 256 Cal.App.2d 223, 233) [rejecting claim that regulating the sale of payment demand and skip tracing forms used in debt collection "would infringe upon freedom of speech. No opinion, thought, expression, or other form of information is contained in the forms under discussion. They are merely tools of a trade, much as a hammer is a tool of the trade of carpentry"].)

III. THE CONVEYANCE OF PURELY FACTUAL DATA IS NOT SUBJECT TO THE FEDERAL CONSTITUTION'S LIMITS ON COMPULSION OF SPEECH.

Federal law, too, recognizes limitations on the reach of the First Amendment. In particular, the U.S. Supreme Court has recognized that while the First Amendment protects against compelled statements of conscience, it generally does not stand in the way of government efforts to increase, rather than restrict, the amount of factual information available in the marketplace.

A. Because Section 2527 Neither Requires Endorsement Of A Particular Viewpoint Nor Interferes With Claims Processors' Own Message, It Does Not Invoke Heightened Protection Under The Compelled Speech Doctrine.

Compelled speech subject to heightened First Amendment scrutiny occurs when there is coerced "endorse[ment]" of a government-mandated viewpoint, or "interference with a speaker's desired message." (*See Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* (2006) 547 U.S. 47, 62, 64 (*FAIR*).) When a regulation neither compels a particular viewpoint nor interferes with the speaker's own message, there is no compelled "speech" in the constitutional meaning of the term. The limited distribution of statistical data entirely lacking in expressive content neither endorses any point of view nor interferes with claims processors' ability to disseminate their own views, and therefore does not trigger First Amendment scrutiny under the compelled speech doctrine.

The high court's detailed analysis of the First Amendment compelled speech doctrine in *FAIR, supra,* illustrates why this is so.[1] In

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[1] Appellants are plainly incorrect in seeking to minimize the relevance of *FAIR* by arguing that the statute at issue in that case "did not regulate 'speech' at all," but only "conduct." (Brief for Appellants at pp. 28-29, 30.) In reality, the high court analyzed the statute as a regulation of speech under the compelled speech doctrine (*see FAIR*, 547 U.S. at pp. 61-66), as

that case, law schools alleged that their First Amendment rights were infringed by a federal statute conditioning funds on the schools' providing access to military recruiters, despite the law schools' opposition to military policy discriminating against gay men and lesbians. (547 U.S. at pp. 51-52.) The Court found that the law did not warrant heightened First Amendment scrutiny, even though it necessarily compelled a certain amount of involuntary informational speech—for example, the schools were required to send out emails or post notices announcing the recruiters' schedules. (*Id.* at pp. 62-63.)

In reaching this conclusion the *FAIR* Court contrasted the neutral, incidental speech at issue in the case before it with two types of earlier cases finding compelled speech: cases in which speakers were required to profess a certain point of view, and cases in which a law's requirements interfered with speakers' communication of their own point of view. First, the high court held that equating a requirement to post scheduling information with a requirement to recite or convey ideologically repugnant messages would "trivializ[e] the freedom" protected in the seminal compelled speech cases. (*FAIR*, *supra*, 547 U.S. at p. 62, discussing *W. Va. State Bd. of Educ. v. Barnette* (1943) 319 U.S. 624, 637 [government may not "prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion" by requiring students to recite Pledge of Allegiance] and *Wooley v. Maynard* (1977) 430 U.S. 705, 707 [government may not require citizens to speak in way "repugnant to their moral, religious, and political beliefs" by mandating they display license plates with "Live Free or Die" motto].) Therefore, the Court did not apply

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well as analyzing it as a regulation of conduct. (*See id.* at pp. 66-68.) *FAIR*'s clarification of the limits of the compelled speech doctrine cannot be ignored.

heightened constitutional scrutiny to the law at issue. (*FAIR*, *supra*, 547 U.S. at pp. 61-65.)

Equating section 2527's reporting requirement with the violations of freedom of conscience in *Barnette* and *Wooley* would similarly trivialize the First Amendment. (*See FAIR*, *supra*, 547 U.S. at p. 62.) The reports here do not "invade the sphere of intellect and spirit" (*Barnette*, *supra*, 319 U.S. at p. 642), nor do they encroach upon the claims processors' "moral, religious, and political beliefs." (*Wooley*, *supra*, 430 U.S. at p. 707.)

Claims processors in the case at bar are not being compelled to endorse any objectionable viewpoint. (*Cf. FAIR*, *supra*, 547 U.S. at p. 62, contrasting the "endorse[ment]" at issue in *Barnette* and *Wooley*; *United Foods*, *supra*, 533 U.S. at p. 415 [the First Amendment prohibits compelled subsidization of an objectionable message when support for the message, rather than economic regulation, is the "principal object" of the regulatory scheme].) As in *FAIR*, "[t]here is nothing in this case approaching a Government-mandated pledge or motto" that claims processors "must endorse." (*FAIR*, *supra*, 547 U.S. at p. 62.)

Indeed, section 2527 does not call for claims processors to endorse any viewpoint at all. The claims processors are not required to state any conclusions about the data, nor advocate for or condemn any course of action for their clients to take. Whatever action insurance companies may decide to take in response to the required reports, the reports *themselves* cannot possibly be said to manifest a "point of view [the speaker] finds unacceptable." (*Wooley, supra,* 430 U.S. at p. 707.) Similarly, that the claims processors in this case may object to the goal of increasing reimbursement rates does not mean that their First Amendment rights are violated by a requirement that they, like the law schools in *FAIR*, disseminate to a limited group of individuals information that is entirely lacking in "expressive quality." (*FAIR*, *supra*, 547 U.S. at p. 64.)

The *FAIR* Court also distinguished earlier cases in which requirements interfered with the speaker's own message: An order requiring a utility to include a consumer advocacy organization's newsletter along with its own newsletter in its bill mailing packet was struck down because the utility would be compelled to "help disseminate hostile views." (*Pac. Gas & Elec. Co. v. Pub. Util. Comm.* (1986) 475 U.S. 1, 14 (plur. opn.) (*PG&E*).) Similarly, a Florida statute requiring a newspaper to print a reply from any candidate it criticized was struck down, in part because the anticipated expense of printing replies would discourage the newspaper from publishing controversial articles in the first place. (*Miami Herald Publishing Co. v. Tornillo* (1974) 418 U.S. 241, 257.) Claims processors are not required to "disseminate hostile views" (*PG&E*, *supra*, 475 U.S. at p. 14) – section 2527 does not require them to include in their reports, for example, a recommendation to increase pharmacist reimbursements. To the contrary, they are not required to disseminate any views at all. As in *FAIR*, *supra*, where "nothing in the [statute] restrict[ed] what the law schools [could] say about the military's policies" (547 U.S. at p. 65), nothing in section 2527 restricts what claims processors can say about pharmacy reimbursement rates – in fact they remain completely free to include in their reports vehement condemnations of higher reimbursements.

Because section 2527 neither compels the endorsement of a viewpoint nor interferes with a speaker's desired message, the measure does not warrant heightened scrutiny under the compelled speech doctrine.

B. Since Section 2527 Does Not Interfere With Appellants' Communication Of Their Own Messages, *Riley* Supports Rather Than Threatens The Statute's Constitutionality.

Although the dissemination in this case of neutral statistical data cannot plausibly be considered to interfere with the claims processors' own message, Appellants urge this Court to apply strict scrutiny to section 2527

and to strike the measure down under the high court's decision in *Riley v. National Federation of the Blind* (1988) 487 U.S. 781. (Brief for Appellants, at pp. 22-23, 26.) But *Riley* teaches a lesson far different from the one which Appellants derive.

Riley struck down a state statute requiring professional fundraisers for charities to affirmatively disclose to potential donors the average percentage of funds actually turned over to the charities. (487 U.S. at pp. 786, 803.) However, the high court explicitly found that the state could "constitutionally require fundraisers to disclose … financial information to the State." (*Id.* at p. 795.) Thus, the constitutional infirmity in the challenged statute was not that fundraisers were required to disclose factual information that they would have preferred not to disclose. Rather, the infirmity was that they were required to affirmatively include such disclosures in their solicitations, thus changing the character of and interfering with the communication of their own message. The high court compared the requirement to onerous hypothetical requirements that might similarly be imposed on a speaker's communication of her own message: "[W]e would not immunize a law requiring a speaker favoring a particular government project to state at the outset of every address the average cost overruns in similar projects, or a law requiring a speaker favoring an incumbent candidate to state during every solicitation that candidate's recent travel budget." (*Id.* at p. 798.) The First Amendment violation was thus wholly equivalent to the burden imposed on a utility required to supplement its newsletter with a newsletter advocating an opposing position (*PG&E*, *supra*, 475 U.S. 1) or the burden on a newspaper required to publish responses to its criticisms of candidates (*Tornillo*, *supra*, 418 U.S. 241). By contrast, the requirement that claims processors furnish certain data to insurance companies, unlinked to any communication of any viewpoint – or indeed any other message – leaves them free to continue to

engage in any other communications without any burden whatsoever, and does not alter the content of any speech claims processors may otherwise engage in. It is analogous to a requirement that fundraisers disclose certain financial information to the state, and is equally inoffensive to the First Amendment.

Thus, notwithstanding the dictum in *Riley* that any mandated speech that "a speaker would not otherwise make necessarily alters the content of the speech" (487 U.S. at p. 795), it is clear that the compelled factual statements in that case were problematic only because they actually interfered with communication of the speaker's viewpoint. Indeed *Riley*'s dictum has no applicability to the present case, in which the mandated disclosures are not linked to any other communications by claims processors, and so there is no speech that might be altered by the required disclosures. Therefore, *Riley* is entirely consistent with *FAIR* (which succeeded it) and other high court cases analyzing compelled speech that have struck down involuntary statements of fact only when such statements would interfere with the speaker's own message. (*See, e.g.*, *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.* (1995) 515 U.S. 557, 572-573 [order to allow gay rights organizations to participate in parade was tantamount to compelled speech in violation of the First Amendment, because it would "alter the expressive content of th[e] parade"]; *PG&E*, *supra*, 475 U.S. at p. 14; *Tornillo*, *supra*, 418 U.S. at p. 257;[2] *Talley v. California* (1960) 362 U.S. 60 [striking down law requiring that all pamphlets bear the name and address of pamphleteer because requiring such disclosure would discourage the publishing and

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[2] *Tornillo* was one the principal precedents relied on in *Riley*. (*See Riley*, 487 U.S. at p. 795, citing 418 U.S. at p. 256). Thus it is telling for interpreting *Riley* that the *Tornillo* decision was based on the equal-time law's interference with the newspaper's communication of its own views.

dissemination of pamphlets]; *McIntyre v. Ohio Elections Com.* (1995) 514 U.S. 334 [striking down prohibition on anonymous publication of campaign literature because the ban might intimidate speakers into silence].[3]

A careful analysis of First Amendment precedent thus reveals that laws requiring factual disclosures are subject to heightened scrutiny, and may violate the First Amendment, only when they interfere with speakers' communication of their own views. (*Riley*, *supra*, 487 U.S. at pp. 799-800.) Notably, the claims processors here do not identify any communications in which they engage or wish to engage that would be burdened by the entirely separate requirement that they provide factual data to insurance companies. Unlike *Riley*, where the high court feared that the fundraisers would simply cease engaging in solicitations if compelled to include unfavorable disclosures (*id*. at p. 800), there is no danger in the

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[3] Appellants' other attempts to find authority for the proposition that any requirement to speak or provide factual information is sufficient to warrant heightened First Amendment review are equally unavailing. (*See* Brief for Appellants at p. 32, fn. 10.) None of these cases supports such a proposition. The high court's concern in *Hurley* was a requirement that would "alter the expressive content of th[e] parade" (515 U.S. at pp. 572-573; *see also FAIR*, *supra*, 547 U.S. at p. 63 ["[t]he expressive nature of the parade was central to our holding in *Hurley*"]) – which is not a relevant concern here. The Tenth Circuit's overly broad dictum in *Axson-Flynn v. Johnson* (10th Cir. 2004) 356 F.3d 1277 that "the First Amendment prohibits . . . being forced to speak rather than to remain silent" finds no support in *Wooley* and *Hurley*, the two cases it cites for the proposition. (*Id.* at p. 1284, fn. 4.) Finally, the actual holding in *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore* (4th Cir. 2012) 683 F.3d 539 was that the factual disclosures mandated for pregnancy centers were unconstitutional because they "inevitably alter[ed] the course of a center's communications with a client." (*Id.* at p. 558, internal quotation omitted.) All of the foregoing cases, like *Riley* itself, are thus consistent with the unbroken line of compelled speech cases that find compelled factual statements to violate the First Amendment only insofar as the statements interfere with the speaker's own message.

present case that claims processors will be cowed into silencing their opinions on pharmacy reimbursement rates. Thus, *Riley* ultimately *supports* the constitutionality of section 2527.

C. Because *Sorrell* Did Not Change The Compelled Speech Doctrine, It Has No Direct Bearing On This Case.

The remaining decision on which Appellants principally rely provides no greater support. In *Sorrell v. IMS Health Inc*. (2011) 131 S.Ct. 2653, the high court found that a Vermont law restricting the use of doctors' prescription histories violated the First Amendment because it disfavored certain users and uses of the regulated information. (*Id*. at p. 2667.) Appellants would have this Court infer from the suggestion in dicta in *Sorrell* that even dry data may sometimes implicate "speech within the meaning of the First Amendment" (*ibid.*) that required disclosure of such information offends the First Amendment.[4] In fact, the *Sorrell* decision, which concerned *restrictions* on the dissemination and use of information (*ibid.*), did nothing to change the law concerning freedom from compelled speech applicable to this case.

As explained in the previous section, compelled disclosure of facts offends the First Amendment only when and only insofar as it changes or interferes with a speaker's expression of her own message. *Sorrell*, a case that involved no disclosures or required communication of any sort, did nothing to change that standard. At most the dictum relied on by Appellants might suggest a broadened conception of what counts as factual speech, such that requiring it might implicate the First Amendment *if it*

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[4] In fact, contrary to Appellants' representations (*see* Appellants' Brief, at pp. 19, 21), the *Sorrell* Court never held that dry data constituted "speech" in the case before it, much less that they constitute "speech" under all circumstances. The Court explicitly declined to decide that issue (131 S. Ct. at p. 2667), finding that the case could "be resolved even assuming … that prescriber-identifying information is a mere commodity." (*Ibid*.)

changed or interfered with the speaker's own message. Or the case might have no bearing on required speech at all.[5] In any event, in *this* case, there is no speaker's message to be interfered with.

"The constitutional equivalence of compelled speech and compelled silence" (*Riley*, *supra*, 487 U.S. at p. 797) has never been found to extend to the dissemination of purely factual information that does not interfere with the speaker's message. In the context of laws requiring the provision of routine factual information, it is well established that "the First Amendment interests implicated by disclosure requirements are substantially weaker than those at stake when speech is actually suppressed." (*Zauderer* v. *Office of Disciplinary Counsel* (1985) 471 U.S. 626, 651, fn.14; *see also id.* at p. 650 ["constitutionally protected interest in *not* providing any particular factual information … is minimal"], italics in original.) "[M]andated disclosure of accurate, factual … information … furthers, rather than hinders, the First Amendment goal of the discovery of

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[5] In interpreting the California Constitution's Free Speech Clause, this Court is of course not bound to follow the high court's suggestion in *Sorrell* that under the First Amendment raw information is protected speech. First, the high court did not actually adopt that holding – perhaps because a majority of Justices did not agree with the proposition. Second, there are with respect to this suggestion "persuasive reasons . . . for taking a different course" – particularly insofar as the *Sorrell* decision has already been the subject of rather "incisive academic criticism." (*Teresinski*, *supra*, 30 Cal.3d at p. 836.) *See, e.g.,* Tamara R. Piety, *A Necessary Cost of Freedom? The Incoherence of Sorrell v. IMS* (2012) 64 Ala. L. Rev. 1; Calvin Massey, *Uncensored Discourse Is Not Just For Politics* (2012) 36 Vermont L. Rev. 845; Jennifer L. Pomeranz, *No Need to Break New Ground: A Response to the Supreme Court's Threat to Overhaul the Commercial Speech Doctrine* (2012) 45 Loy. L.A. L. Rev. 389; Samantha Rauer, *When The First Amendment and Public Health Collide: The Court's Increasingly Strict Constitutional Scrutiny of Health Regulations That Restrict Commercial Speech* (2012) 38 Am. J. L. & Med. 690; Isabelle Bibet-Kalinya, *A Critical Analysis of* Sorrell v. IMS Health, Inc.: *Pandora's Box At Best* (2012) 67 Food & Drug L.J. 191.

truth and contributes to the efficiency of the 'marketplace of ideas.'" (*Nat. Electrical Manufacturers Assn. v. Sorrell* (2d Cir. 2001) 272 F.3d 104, 114.) "For the state to mandate disclosures designed more fully and completely to convey information is … to advance, rather than to contradict, pertinent constitutional values." (Robert Post, *The Constitutional Status of Commercial Speech* (2000) 48 U.C.L.A. L. Rev. 1, 28.)

The foregoing sources all involve the context of commercial speech targeted to consumers, where this doctrine has been most fully developed, but the reasoning applies to factual disclosures generally[6]: factual

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[6] In any event, if the reimbursement data required by section 2527 constitute speech at all within the meaning of the Free Speech Clause, any speech at issue here constitutes (at most) commercial speech under this Court's precedents. In California, whether speech is commercial depends on "the speaker, the intended audience, and the content of the message." (*Kasky v. Nike, Inc.*, *supra*, 27 Cal.4th at p. 960.) As in *Kasky*, the first element, commercial speakers, is satisfied because the claims processors who are required to produce data "are engaged in commerce." (*Id.* at p. 963.) "The second element – an intended commercial audience – is also satisfied." (*Ibid.*) The insurers who receive the data are likewise engaged in commerce. Finally, "[t]he third element – representations of fact of a commercial nature – is also present." (*Ibid.*) The claims processors are required to make "factual representations about [their] own business operations …, address[ing] matters within [their] own knowledge." (*Ibid.*) If the disclosures at issue can be distinguished from run-of-the-mill commercial speech, as Appellants urge, on the basis that the mandated information "is not directed to an audience who may be influenced by that speech to engage in a commercial transaction with the claims processor" (Brief for Appellants, at p. 45), this distinction does not render the communications at issue *more* protected than commercial speech. To the contrary, because all that is at issue is the transmission of business data from one firm to another, if the transmission is not commercial speech, it is likely not protected speech at all. (*See* Post, *supra*, at pp. 24-25 [noting that commercial speech must be distinguished not only from more protected speech, but also from entirely unprotected "commercial communications" that are "'linked inextricably with the commercial arrangement' in which [they] occur[], so that regulation of the arrangement can also restrict the

disclosures of all sorts tend to further the First Amendment goals of discovery of truth and fostering a robust marketplace of ideas. Moreover, compelled factual disclosures have been treated differently from suppression of speech in entirely non-commercial contexts as well. In campaign finance law, for example, it is well established that mandated disclosures are subject to less rigorous First Amendment scrutiny than are restrictions on spending for political speech or even restrictions on political contributions, which are in turn subject to less rigorous than restrictions on spending. (*See*, *e.g., Citizens United v. Federal Election Com.* (2010) 130 S.Ct. 876, 914 [citing earlier cases].) This reduced scrutiny applies in part because disclosure requirements "do not prevent anyone from speaking" (*ibid.*, quoting *McConnell v. Federal Election Com.* (2003) 540 U.S. 93, 201), and in part because of the public's "informational interest." (*Id.* at pp. 915-916.) Required disclosures about political spending are not generally considered impermissible compelled speech under the First Amendment; they become problematic under the First Amendment only in the rare instances when it can be demonstrated that they are likely to deter speakers from speaking, because of fear of publicity or even retaliation. (*See, e.g.*, *McIntyre*, *supra*, 514 U.S. 334.)

Since *Sorrell* in no way changed the law of compelled speech, the decision does not affect the outcome of this case. Because section 2527 involves disclosures rather than restrictions on the dissemination of information – because it increases rather than decreases the flow of information in the marketplace – the statute falls beyond the scope of *Sorrell*, and within the bounds of the fundamental principle that "the preferred First Amendment remedy is 'more speech.'" (*Brown v. Hartlage*

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speech by which the arrangement is constituted"], quoting *Edenfield v. Fane* (1993) 507 U.S. 761, 767.)

(1982) 456 U.S. 45, 61, quoting *Whitney v. California* (1927) 274 U.S. 357, 377 (conc. opn. of Brandeis, J.).)

IV. SUBJECTING ECONOMIC REGULATIONS LIKE SECTION 2527 TO HEIGHTENED SCRUTINY UNDER THE FIRST AMENDMENT WOULD ENDANGER COUNTLESS ORDINARY ECONOMIC REGULATIONS THAT REQUIRE THE DISCLOSURE OR TRANSFER OF INFORMATION.

As a regulation of economic activity and a measure that does not burden speech, section 2527 warrants only deferential rational basis review. (*See United States v. Carolene Products Co.* (1938) 304 U.S. 144, 152 [applying rational basis review to economic regulation]; *Williamson v. Lee Optical Of Oklahoma* (1955) 348 U.S. 483, 491 [same].) Applying heightened scrutiny to measures that have no connection to the sentiments at the heart of the Free Speech Clause would have the effect of displacing the legislature's economic policy judgments with that of the judiciary, an outcome long decried by this Court. (*See American Bank & Trust Co. v. Community Hospital* (1984) 36 Cal.3d 359, 369 ["Since the demise of the substantive due process analysis of *Lochner v. New York* (1905) 198 U.S. 45 . . . it has been clear that the constitutionality of measures affecting such economic rights under the due process clause does not depend on a judicial assessment of the justifications for the legislation or of the wisdom or fairness of the enactment. So long as the measure is rationally related to a legitimate state interest, policy determinations as to the need for, and desirability of, the enactment are for the Legislature"].) An unbounded interpretation of the First Amendment would be no more appropriate, and no less destructive, than the limitless reading of the Due Process Clause

during the *Lochner* era.[7]

Under the heightened scrutiny promoted by Appellants, countless well-accepted laws and regulations could be struck down simply because they "mandat[e] that citizens provide specified information to the government or other citizens, or requir[e] them to facilitate the speech of others." David W. Ogden, *Is There a First Amendment "Right to Remain Silent"?* (1993) 40 Fed. B. News & J. 368, 369.

> There are literally thousands of similar regulations on the books – such as product labeling laws, environmental spill reporting, accident reports by common carriers, SEC reporting as to corporate losses and (most obviously) the requirement to file tax returns to government units who use the information to the obvious disadvantage of the taxpayer. The idea that these thousands of routine regulations require an extensive First Amendment analysis is mistaken.

(*Pharmaceutical Care Management Assn. v. Rowe*, (1st Cir. 2005) 429 F.3d 294, 316 (conc. opn. of Boudin, C.J.) [noting the danger in applying heightened scrutiny to the "routine disclosure of economically significant information designed to forward ordinary regulatory purposes"].)

> Numerous examples could be cited of communications that are regulated without offending the First Amendment, such as the exchange of information about securities, *SEC v. Texas Gulf Sulphur Co.,* 401 F.2d 833 (CA2 1968), corporate proxy

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[7] The *ipse dixit* offered by one court of appeal offers no principled distinction. (*See A.A.M. Health Group, Inc. v. Argus Health Systems, Inc.* (Cal. Ct. App., Feb. 28, 2007, No. B183468) 2007 WL 602968 at p.*5 [while it is "a well settled principle" that a court should not determine the wisdom of purely economic regulations, "those cases involved challenges that certain laws violated due process, not the right to free speech"].) Justice Kennedy in *Sorrell v. IMS Health* similarly provided no reasoning to support a distinction, stating without elaboration, "The Constitution 'does not enact Mr. Herbert Spencer's Social Statics.' *Lochner v. New York*, 198 U.S. 45 . . . (1905) (Holmes, J., dissenting). It does enact the First Amendment." (131 S.Ct. at p. 2665). These unsupported statements of distinction are hardly sufficient to provide this Court with grounds for a radical reinterpretation of the Free Speech Clause.

> statements, *Mills v. Electric Auto-Lite Co.,* 396 U.S. 375 (1970), the exchange of price and production information among competitors, *American Column & Lumber Co. v. United States,* 257 U.S. 377 (1921), and employers' threats of retaliation for the labor activities of employees, *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 618 (1969). *See Paris Adult Theatre I v. Slaton,* 413 U.S. 49, 61-62 (1973). Each of these examples illustrates that the State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity.

(*Ohralik v. Ohio State Bar Assn.* (1978) 436 U.S. 447, 456.)

Yet the potential disruptive sweep of Appellants' proposed standard for both the First Amendment and the Free Speech Clause reaches still farther than these abbreviated lists.[8] Heightened scrutiny would call into question laws requiring information sharing among businesses. (*See, e.g.*, Robinson-Patman Act, 15 U.S.C. § 13(d) [requiring wholesalers to make products available on equal terms by, among other things, informing all competing retailers of the availability and terms of distribution]; Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1108(b)(2) [directing that service providers disclose to plan fiduciaries a description of the services to be provided and compensation to be received].) It would cast doubt on statutes imposing on firms a wide variety of reporting requirements safeguarding against financial malfeasance, ensuring access to

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[8] *See ARP Pharmacy Services, Inc. v. Gallagher Bassett Services, Inc.* (2006) 138 Cal.App.4th 1307, 1321-1322 [finding section 2527 not narrowly tailored enough to survive strict scrutiny because the government itself could have done the studies to obtain the relevant data and either the government or the pharmacists themselves could have disseminated the information to the insurance companies].) This same reasoning could of course apply to almost any regulation requiring certain information to be reported – the government could always more directly involve itself in any regulation, and it could always be the distributor of information – which suggests that virtually any regulation that is reviewed under strict scrutiny would likely fall.

benefits, and protecting the environment, among other worthy aims. (*See, e.g.*, Bank Secrecy Act, 31 U.S.C. § 5318A, 31 C.F.R. § 110 [mandating that if financial institution discovers identifies a suspicious account it share account information with the Treasury Department]; 42 U.S.C. § 1395y(b)(8) [requiring insurers to report the identity of a Medicare beneficiary whose illness, injury, incident, or accident is at issue, in order to coordinate benefits]; 40 C.F.R., § 110 [directing any person in charge of a vessel or drilling platform to report oil spills].) It could undermine statutes mandating the adoption and disclosure of privacy policies. (*See, e.g.,* Children's Online Privacy Protection Act, 15 U.S.C. § 6502(b) [requiring operators of websites directed to children that collect personal information to provide notice concerning their practices]; Gramm-Leach-Bliley Act, 15 U.S.C. § 6803(a) [mandating that financial institutions clearly disclose privacy practices with respect to nonpublic personal information].)

And it would directly impact not only federal regulatory regimes, but also California statutes and regulations. Broad swaths of the state's administrative law could be called into question, from environmental regulations (*see, e.g.*, Cal. Water Code, §§ 13267, 13383 [mandating monitoring and reporting program for waste discharge]; 14 Cal. Code Reg., § 873.5(a)(2) [imposing liability for failure to report disabled vessel leaking oil]) to tax provisions (*see* 22 Cal. Code Reg., § 1088.5-1 [requiring that employer report new employees to Employment Development Department within 20 days]), from statutes governing proxy statements and annual reports to shareholders (*see* Cal. Corp. Code, § 25148) to laws requiring disclosure of annual financial and other information to condominium homeowners. (*See* Cal. Civ. Code, § 1365.) Presumably car dealers and repair facilities would quickly challenge laws requiring that they inform the public about where to lodge official complaints against them (*see* Cal. Civ. Code, § 2982(h); Cal. Bus. & Prof Code, § 9884.17); creditors would likely

do the same with respect to statutes requiring them to advise defaulting debtors of their legal rights. (*See* Civ. Code, §§ 2924c(b) [real property foreclosure], 2983.2 [automobile repossession].)

The impact of this proposed regime extends far beyond disclosures of factual information directly to the public, which – at least when they involve the prevention of consumer deception – are now subject to a standard very like rational basis review. (*See Milavetz Gallop & Milavetz v. United States* (2010) 130 U.S. 1324, 1328; *Zauderer v. Office of Disc. Counsel*, *supra*, 471 U.S. at pp. 650-51; *Nat. Electrical Manufacturers Assn. v. Sorrell*, *supra*, 272 F.3d at p. 116 [listing statutes].) The proposed regime would extend even further, to encompass communications among businesses, reports to government, and any other requirement that a business transfer information. What Appellants urge on this Court is no easily cabined proposal; to the contrary, it could throw a wrench deep into the workings of the modern regulatory state. Indeed, since essentially every business transaction is premised on the exchange of words (*i.e.*, an offer and acceptance), virtually the entire field of business regulation could come under review – in a fashion distinctly and disturbingly reminiscent of the unmourned *Lochner* era.

CONCLUSION

Section 2527 is an economic regulatory provision that asks for nothing more than the reporting of neutral pricing data, unadorned by commentary, opinion, or emotion. It neither requires the affirmation of any government-mandated belief nor interferes with claims processors' ability to communicate their desired message. The measure thus should not be subject to heightened scrutiny under the Free Speech Clause. To hold otherwise could threaten not only vast numbers of ordinary business regulations simply because they involve the transfer of words or numbers, but also the vibrancy of the Free Speech Clause itself and the expression

which it is designed to protect, by trivializing the Clause's vital protections. "Nothing could be more damaging to the First Amendment" – or the Free Speech Clause – "than to . . . transform it into a mere basis for reviewing economic regulations." Post, *The Constitutional Status of Commercial Speech*, *supra*, 48 UCLA L. Rev. at 10.

Dated: March 6, 2013

Respectfully submitted,

By: _____

Seth E. Mermin
Thomas Bennigson
Timothy Sun
PUBLIC GOOD LAW CENTER
3130 Shattuck Ave.
Berkeley, CA 94705

Counsel for *Amici Curiae*

CERTIFICATE OF COMPLIANCE

Counsel of record hereby certifies, pursuant to rule California Rule of Court 8.204(c)(1), the enclosed **BRIEF OF AMICI CURIAE** contains 7663 words, including footnotes and headings but exclusive of tables and signature block, this certificate of compliance, and declaration of mail service. Counsel derives this number from the word count provided by Microsoft Word word-processing software.

Dated: March 6, 2013

By: _____
Thomas Bennigson
Counsel for *Amici Curiae*

PROOF OF SERVICE

I, the undersigned, declare that I am a citizen of the United States, over the age of 18 years, employed in the City and County of San Francisco, California, and not a party to the within action. My business address is 3130 Shattuck Ave, Berkeley, CA 94705.

On March 6, 2013, I caused the document entitled below to be served on the parties in this action listed below by placing true and correct copies thereof in sealed envelopes and causing them to be served, as stated:

APPLICATION TO FILE BRIEF AND BRIEF OF *AMICI CURIAE* CONSUMER ACTION, CONSUMERS FOR AUTO RELIABILITY AND SAFETY, THE PUBLIC HEALTH LAW CENTER, INC., AND PUBLIC GOOD LAW CENTER IN SUPPORT OF PLAINTIFFS-RESPONDENTS

By U.S. Mail:

I am also readily familiar with Public Good Law Center's practice for collection and processing of documents for mailing with the United States Postal Service, being that the documents are deposited with the United States Postal Service with postage thereon fully prepaid the same day as the day of collection in the ordinary course of business.

THE CONSUMER LAW GROUP
Alan M. Mansfield
10200 Willow Creek Rd, Ste 160
San Diego, CA 92131

Attorneys for Plaintiffs-Respondents JERRY BEEMAN, PHARMACY SERVICES, *et al.*

PEITZMAN WEG, LLP
Michael A. Bowse
2029 Century Park East, Ste 3100
Los Angeles, CA 90067

Attorneys for Plaintiffs-Respondents JERRY BEEMAN, PHARMACY SERVICES, *et al.*

HUSCH BLACKWELL, LLP
Thomas M. Dee
Christopher A. Smith
190 Carondelet Plaza, Ste 600
St. Louis, MO 63105-3441

Attorneys for Defendant-Appellant EXPRESS SCRIPTS, INC.

GIBSON DUNN & CRUTCHER, LLP
Theodore J. Boutrous, Jr.
Gail E. Lees
Christopher Chorba
333 South Grand Avenue
Los Angeles, CA 90071-3197

Attorneys for Defendant-Appellant EXPRESS SCRIPTS, INC.

MORGAN LEWIS & BOCKIUS LLP
Molly Moriarty Lane
Thomas M. Peterson
One Market Street
Spear Street Tower
San Francisco, CA 94105-1126

AND

MORGAN LEWIS & BOCKIUS LLP
Richard S. Odom
300 South Grand Avenue
Twenty-Second Floor
Los Angeles, CA 90071

Attorneys for Defendant-Appellant ANTHEM PRESCRIPTION MANAGEMENT, INC.

MORRISON & FOERSTER, LLP
Benjamin J. Fox
555 West Fifth Street, Ste 3500
Los Angeles, CA 90013-1024

Attorneys for Defendant-Appellant ARGUS HEALTH SYSTEMS, INC.

KATZ HENRI & YOON LLP
Michael I. Katz
4 Park Plaza, Suite 1040
Irvine, CA 92614

Attorneys for Defendant-Appellant ARGUS HEALTH SYSTEMS, INC.

MUSICK PEELER & GARRETT, LLP
Kent A. Halkett
One Wilshire Blvd., Suite 2000
Los Angeles, CA 90017

Attorneys for Defendant-Appellant BENESCRIPT SERVICES, INC.

STEPTOE & JOHNSON, LLP
Jason Levin
633 West Fifth Street, Suite 700
Los Angeles, CA 90071

AND

STEPTOE & JOHNSON, LLP
Martin D. Schneiderman
mschneiderman@steptoe.com
1330 Connecticut Avenue, NW
Washington, D.C. 20036-1795
Tel: (202) 429-6282

Attorneys for Defendant-Appellant ADVANCE PCS; ADVANCE PCS HEALTH, L.P., Successor in Interest to FFI RX MANAGED CARE, INC.; PHARMACARE MANAGEMENT SERVICES, INC. and TDI MANAGED CARE SERVICES, INC. dba

ECKERD HEALTH SERVICES
PILLSBURY WINTHROP
SHAW PITTMAN LLP
Brian D. Martin
501 W. Broadway, Suite 1100
San Diego, CA 92101

AND

PILLSBURY WINTHROP
SHAW PITTMAN, LLP
Thomas N. Makris
2600 Capitol Avenue, Suite 300
Sacramento, CA 95816-5930

Attorneys for Defendant-
Appellant FIRST HEALTHCARE
SERVICES CORP

SNR DENTON, LLP
Robert F. Scoular
601 S. Figueroa Street, Ste 2500
Los Angeles, CA 90017-5704

Attorneys for Defendant-
Appellant CARDINAL HEALTH
MPB, INC. formerly known as
MANAGED PHARMACY
BENEFITS, INC.

ROXBOROUGH POMERANCE
NYE & ADREANI, LLP
Marina N. Vitek
5820 Canoga Ave., Suite 250
Woodland Hills, CA 91367

Attorneys for Defendant-
Appellant NATIONAL
MEDICAL HEALTH
CARD SYSTEMS, INC.

DYKEMA GOSSETT, LLP
J. Kevin Snyder
Vivian I. Kim
333 South Grand Ave., Suite 2100
Los Angeles, CA 90071

Attorneys for Defendant-
Appellant PRIME
THERAPEUTICS

SNELL & WILMER, LLP
Sean M. Sherlock
600 Anton Blvd., Suite 1400
Costa Mesa, CA 92626-7689

Attorneys for Defendant-
Appellant RESTAT, LLC

KIRTLAND & PACKARD, LLP
Robert Muhlbach
2041 Rosecrans Ave., 3rd Floor
El Segundo, CA 90245

Attorneys for Defendant-
Appellant RX SOLUTIONS,
INC.

REED SMITH, LLP
Kurt C. Peterson
Kenneth N. Smersfelt
Brett L. McClure
Margaret M. Grignon
355 South Grand Ave., Suite 2900
Los Angeles, CA 90071-1514

Attorneys for Defendant-
Appellant TMESYS, INC.

McDERMOTT WILL & EMERY LLP
Robert P. Mallory
Matthew Oster
2049 Century Park East, Ste 3800
Los Angeles, CA 90067-3218

Attorneys for Defendant-Appellant WHP HEALTH INITIATIVES, INC.

HOGAN & LOVELLS US, LLP
Neil R. O'Hanlon
1999 Avenue of the Stars, Ste 1400
Los Angeles, CA 90067

Attorneys for Defendant-Appellant MEDE AMERICA CORP.

HOLLAND & KNIGHT, LLP
Richard Thomas Williams
400 South Hope Street, 8th Fl.
Los Angeles, CA 90071

Attorneys for Defendant-Appellant TDI MANAGED CARE SERVICES, INC.

ORRICK HERRINGTON & SUTCLIFFE, LLP
Richard S. Goldstein
51 West 52nd Street
New York, NY 10019-6142

Attorneys for Defendant-Appellant MEDCO HEALTH SOLUTIONS

Clerk, United States Court of Appeals, Ninth Circuit
The Richard H. Chambers Courthouse
125 South Grand Avenue
Pasadena, CA 91105

Office of the Attorney General
Consumer Law Section
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Paul Zellerbach
District Attorney
County of Riverside
3960 Orange Street
Riverside, CA 92501

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed this 6th day of March, 2013 at Oakland, California.

_____

THOMAS BENNIGSON