

Wiley Files Amicus Brief in Support of Petitioners in Supreme Court Case *American Society of Journalists and Authors, Inc. v. Bonta*

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Wiley, a preeminent Washington, DC law firm, recently filed an amicus brief in the U.S. Supreme Court on behalf of several groups that support the petitioners in the case *American Society of Journalists and Authors, Inc. v. Bonta*, which challenges California's Assembly Bill 5 ("AB5") legislation on First Amendment grounds. Those groups include the Independent Institute, the National Federation of Independent Business Small Business Legal Center, Americans for Prosperity Foundation, and New Jobs America.

The brief recommends that the Court grant the petition for a writ of certiorari or, in the alternative, grant the petition, vacate, and remand (GVR) to the Court of Appeals in light of the Court's recent First Amendment decision in *City of Austin v. Reagan National Advertising*.

This case asks the Supreme Court to weigh in on AB5, which required more than a million of the state's independent contractors be recategorized as employees. As a result of this legal status change, AB5 harmed California's independent contractors and small businesses, as well as restricted the First Amendment rights of the petitioners: freelance journalists, authors, photographers, and videographers. Wiley's *amicus* brief argues that AB5 imposes "content-based speech restrictions that deprive speech-creators of their livelihoods and that curtail their ability to produce content for a broad variety of publications." The brief further argues that "AB5 has fundamentally transformed California's labor market for the worse, harming independent contractors and small businesses alike. . . .

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Independent contractors [lost] the benefits of flexibility, autonomy, and economic opportunity that encouraged them to become independent contractors in the first place. Small businesses are similarly harmed by AB5 as they must weather the additional costs and nonfinancial burdens caused by the reclassification of independent contractors as employees.”

Additionally, in the alternative to granting cert. on the merits, Wiley urged the Court to GVR in light of its recent decision in *City of Austin v. Reagan National Advertising*. The *Reagan* decision was issued on Thursday, April 21, 2022—the day before Wiley’s *amicus* brief was filed—and it addressed whether a regulation is unconstitutionally content-based and the process by which a court must employ for First Amendment challenges. Wiley anticipated that the *Reagan* decision may affect the First Amendment issues presented in this case, and it posed its unique request for a GVR. Wiley was the only brief to request GVR.

Wiley attorneys Krystal B. Swendsboe, Thomas M. Johnson, Jr., and R. Shane Roberts, Jr. authored the brief.

Wiley has previously discussed AB5 in Wiley’s podcast “Discussing California’s A.B.5: Considerations for Employers.” Wiley has also filed two *amicus* briefs in the 9th Circuit Court of Appeals on behalf of the Independent Institute, arguing that AB5 is unconstitutional. *See here* and *here*.