Bar Misc. 4186
S202512

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re SERGIO C. GARCIA on Admission

BRIEF OF AMICI CURIAE

THE LA RAZA LAWYERS ASSOCIATION OF SACRAMENTO AND THE ASIAN/PACIFIC BAR ASSOCIATION OF SACRAMENTO IN SUPPORT OF THE COMMITTEE OF BAR EXAMINERS' MOTION FOR ADMISSION OF SERGIO C. GARCIA TO THE STATE BAR OF CALIFORNIA

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INTRODUCTION

The only reason this matter is before the Court is because of the possibility that 8 U.S.C. section 1621(c) may prohibit an undocumented person from being allowed to practice law in a state court. This question rests on the notion that being licensed to practice law in a state court is equivalent to a person being issued a professional license by an agency of the State (*see* 8 U.S.C. § 1621(c)(1)(A)). Before we analyze the statute's application, we should first consider the context in which it was adopted.

8 U.S.C. section 1621(c) was enacted by Congress as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (110 Stat. 2260; Pub. L. No. 104-1930) (hereafter "the Act") which was designed to restrict welfare and public benefits for aliens. The Act, H.R.Rep. No. 3734, 104th Congress, 2nd Sess. pp. 2183-2893 (1996), was a bipartisan proposal to restrict the availability of state and local public benefits to unqualified aliens or nonimmigrants (1996 U.S. Code Cong. & Admin. News, p. 2770). This was Congress' last attempt at a compromise bill to impose such restrictions. The previous bill proposals whose provisions were much more restrictive were vetoed by President Clinton (see *Id*. at p. 2891). In passing this bill H.R.Rep. No. 3734, 104th Congress, 2nd Sess. pp. 2183-2893 (1996), Congress recognized the following:

> Under *Plyler vs. Doe* (457 U.S. 202 (1982)), States may not deny Illegal alien children access to a public elementary education without authorization from Congress. However, the

> narrow 5-4 Supreme Court decision may imply that illegal aliens may be denied at least some State benefits and that Congress may influence the eligibility of illegal aliens for State benefits. Many, but not all, State general assistance laws currently deny illegal aliens means-tested general assistance. (*Id*. at pp. 2770-2771) (Emphasis added.).[1]

Congress recognized at that time, that, where a denial of benefits is not inconsistent with federal immigration law, the states have broader authority to deny benefits and that states often do deny certain benefits to nonimmigrants (*Id*. at p. 2504). Thus, 8 U.S.C. section 1621, as part of the Act, was intended by Congress to see how far the federal government could go to compel the states and local governments to deny any state or local public benefit to noncitizens who are either not qualified aliens or nonimmigrants (*Id*. at p. 2767). Since the legislative history of the Act is virtually nonexistent as to the meaning of 8 U.S.C. section 1621 in the context of the questions raised before the Court, we can only surmise as to the alleged underpinnings of Congressional authority that would require this Court to deny Garcia's admission to the State Bar of California.

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[1] See Berg, *May Congress Grant the States the Power to Violate the Equal Protection Clause - Aliessa v. Novello and Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,"* (2002-2003) 17 B.Y.U. J. Pub. L. 297.

ARGUMENT

I. 8 U.S.C. Section 1621(c) Does Not Require The California Supreme Court To Adopt A Rule That Makes It Mandatory That Only Those Eligible For Admission To The State Bar Are Those Applicants Who Can Establish Lawful Presence In The United States.

At the time that 8 U.S.C. section 1621 was enacted, Congress recognized that there was no federal law barring legal temporary residents (i.e., nonimmigrants) from certain state and local benefits (*Id*. at pp. 2772). In enacting the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress assumed that it had the authority to impose such restrictions on the granting of a state or local public benefit to someone who is unable to establish lawful presence in the United States. In this regard, we can find no authority for this proposition in the legislative history of the Act. Thus, we are left to consider the words of the statute as it would apply to Garcia's admission to the State Bar.

When considering the "plain meaning" of a statute, we find that the same rules that apply to the statutory interpretation of a state statute also apply to the interpretation of a federal statute (see *Caminetti v. United States* (1917) 242 U.S. 470, [61 L.Ed. 442]. The meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, the sole function of the courts is to enforce it according to its terms (*Id*. at pp. 452-453). Thus, in the absence of Congressional intent to the contrary, where the language of the statute is

plain and unambiguous, we must consider the statutory words in their ordinary and usual sense and with the meaning commonly attributed to them (*Id*. at p. 453).

8 U.S.C. section 1621(c)(1)(A) defines, in part, "State or local public benefit" as any professional license provided by an agency of the state. However, the statute does not define what is meant by an "agency of the state." If we consider the ordinary and usual meaning of the words, we must look to its commonly used application in defining what we mean by an "agency of the state." For example, in California, the California Public Records Act defines a "public agency" as any state or local agency (Gov. Code § 6252, subd. (d)). That act further defines "state agency" as "every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution (Gov. Code § 6252, subd. (f)). Thus, both the State Legislature and the Judiciary are specifically excluded from the definition of "state agency."

Another example is the definition of "public agency" for purposes of the California Environmental Quality Act (CEQA) (Division 13 (commencing with Section 21000) of the Public Resources Code, which defines "public agency" as "any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision" (Public Resources

Code § 21063.). The Resources Agency of the State of California has interpreted this to mean that "public agency" does not include the courts of the state or the agencies of the federal government (Title 14, California Code of Regulations, Sec. 15379; see *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 269; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 128). Moreover, in construing the usual and ordinary meaning of the term "an agency of the state" we must construe the language in the context of the statute as a whole and the overall statutory scheme, and we give "significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose" (*Los Angeles Unified School District v. Superior Court* (2007) 151 Cal.App.4th 759, 767-768). In this regard, we can find no legislative history to the contrary and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 contains no definition of what it means by "an agency of the state."

Thus, we ask the Court to find that Congress did not intend to include state courts within the meaning of an "agency of the state" as that term is used in 8 U.S.C. section 1621(c)(1)(A). We, therefore, urge the Court to adopt the most reasonable and plain meaning of the term "an agency of the state" and to hold as a matter of law that the term does not include the courts of a state.

A. 8 U.S.C. Section 1621(c)(2)(c) On Its Face Would Permit Garcia To Be Sworn In At A Mexican Consulate Or At Any Location Where He Is Not Physically Present In The United States.

If, for the sake of argument, this Court were to decide that 8 U.S.C. section 1621 applies to Garcia, then any exception provided by the statute would also apply to Garcia. 8 U.S.C. section 1621(c)(2)(c) contains one such exception. That exception provides that the term "state or local public benefit" does not apply to the issuance of a professional license to a foreign national not physically present in the United States. This language is recognition that federal immigration law does have some limits with respect to state authority to issue professional licenses to noncitizens. Again, the statute is bereft of any legislative history that might shed some light on this question. Nevertheless, if we apply this exception to Garcia, the Court may consider whether Garcia could be sworn in at a Mexican consulate or if he were to return to Mexico whether he may be sworn in there.

First, we must consider what is meant by "not physically present in the United States." If we apply the principles of statutory construction which we have previously cited for this purpose, it seems plain that physical presence in a state would include physical presence in a foreign country or territory. Certainly, "Estados Unidos de Mexico" or Mexico would constitute a foreign country and Garcia's physical presence in that country would satisfy the meaning of 8 U.S.C. section 1621(c)(2)(c).

Moreover, for purposes of establishing physical presence outside the United States, it is well-established that a Mexican consulate is a "foreign state" (see *Gerritsen v. De La Madrid Hurtado* (9th Cir. 1987) 819 F.2d 1511, 1517; 28 U.S.C. § 1603(a) and (b)). In contrast, the federal statute also defines "United States" as "all territory and waters, continental or insular, subject to the jurisdiction of the United States" (28 U.S.C. § 1603(c)). Thus, we may conclude from a reading of the language of the statute that consulate territory is not within the jurisdiction of the United States because as a "foreign state" the Mexican consulate is not territory within the jurisdiction of the United States. As a foreign state, a Mexican consulate is entitled to immunity from jurisdiction of courts of the United States unless a specific exception applies, or unless some international agreement to which the United States is a party otherwise provides. (*See Perez v. The Bahamas* (D.D.C. 1980) 482 F.Supp. 1208, affd. (D.C. Cir.1981) 652 F.2d 186, cert. den. (1981) 454 U.S. 865, [70 L.Ed.2d 166].)

In this connection, we note that when an applicant is notified that he or she has satisfied the requirements for admission to practice law in California, the applicant is advised that the Committee of Bar Examiners of the State Bar has obtained an order of the Supreme Court of California permitting him or her to take the attorney's oath of office. The notice specifically states that the oath may be taken before anyone authorized to administer oaths and that if the applicant is currently residing outside of

California, it is not necessary for the applicant to return to California to take the attorney's oath. The notice does not require that the applicant must be physically present in California or the United States to take the oath. Thus, Garcia could proceed to a local Mexican consulate or step across the United States border, to Canada or Mexico, and be admitted to the practice of law in California as long as he is sworn in by someone authorized to administer oaths under California law.

B. No Other Federal Or State Law Preempts Or Applies To The Court's Authority To Set The Requirements For Individuals To Practice Law In A State Court.

In California, the California Supreme Court has exclusive jurisdiction over state bar admission (see *In re Lavine* (1935) 2 Cal.2d 324, 327-329; hereafter "*Lavine*"). *Lavine* involved a 1933 "pardon statute" which purported to reinstate, or to direct the Court to reinstate, without a showing of moral rehabilitation, an attorney who had received an executive pardon of an offense upon which his or her disbarment was based (*Id*. at p. 329). The Court held that the statute was unconstitutional and void as a legislative encroachment upon the inherent power of the Court to admit attorneys to the practice of law and was tantamount to the vacating of a judicial order by legislative mandate (*Ibid*.). Thus, this Court held that an "attorney is an officer of the court and whether a person shall be admitted is a judicial, and not a legislative, question (*Id*. at p. 328).

Although the Legislature may determine additional criteria for admission to the State Bar, that criteria is at best a minimum standard to be considered by the Court (*Id*. at p. 328). Section 6060.6 of the Business and Professions Code is a good example of this balance of authority that exists among the legislative, judicial, and executive branches of government. That section allows the Committee of Bar Examiners to accept, and the State Bar to process, an application from an individual containing a federal tax identification number, or other appropriate identification number as determined by the State Bar, in lieu of a social security number, if the individual is not eligible for a social security account number at the time of the application and is not in noncompliance with a judgment or order for child or family support pursuant to section 17520 of the Family Code (see also Cal. Rules of Court, rule 9.22).

Thus, the Legislature may proscribe some of the terms for admission to the practice of law in California courts if those terms are reasonable and do "not deprive the judicial branch of its power to proscribe additional conditions under which applicants shall be admitted, nor take from the courts the right and duty of actually making orders admitting them" (*Lavine*, *supra* at p. 328; see Bus. & Prof. Code § 6060). The right to practice law presupposes in an applicant integrity, legal standing and attainment, but also the exercise of a special privilege, that is highly personal and in the nature of a public trust, the granting of which privilege

to an individual is conceded to be the exercise of a judicial function (*Lavine*, supra at pp. 327-328).

With respect to federal preemption, it has long been recognized by the United States Supreme Court that federal authorities have no power over the admission of an applicant or an attorney to a state bar except to correct a state's constitutional violation (see *Schware v. Board of Bar Examiners* (1957) 353 U.S. 232, 238-239, [1 L.Ed.2d 796]; hereafter "*Schware*"). In *Schware*, the Board of Bar Examiners of New Mexico and the state's supreme court had denied the applicant's opportunity to take the bar examination because of his past affiliation as a member of the Communist Party (*Id*. at pp. 237-238). The Court recognized that mere membership in the Communist Party without any evidence that the individual actively advocated the violent overthrow of the United States and the lack of any evidence of moral turpitude does not justify an inference that an applicant presently has bad moral character (*Id*. at pp. 242-246).

Thus, the Court found that a state cannot exclude an individual from the practice of law in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (*Id*. at pp. 238-239). In making its ruling, the Court recognized that a state can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an

applicant to the bar, but that any qualification must have a rational connection with the applicant's fitness or capacity to practice law (*Id*. at p. 239; *accord, Konigsberg v. State Bar of California* (1957) 353 U.S. 252, [1 L.Ed.2d 810]; hereafter "*Konigsberg*"). In *Konigsberg,* the companion case to *Schware,* the Court held, among other things, that in reviewing the state's denial of an individual's right to practice law on federal constitutional grounds, the Court is justified in searching the record to determine whether the applicant's failure to prove his good moral character and his loyalty to the United States has a reasonable basis in the evidence (*Id*. at pp. 262-264). Thus, in the absence of a violation of a federal constitution right, under what other theory may federal authorities exercise power over the admission of an applicant to a state bar?

We next consider whether Congress' plenary power over immigration matters would compel this Court to exclude applicants who are otherwise eligible to practice law in California from admission to the State Bar. In this regard, recent developments in immigration law have a bearing on this question. On June 15, 2012, Secretary Janet Napolitano of the United States Department of Homeland Security announced "that effective immediately, certain young people who were brought to the United States as young children**,** do not present a risk to national security or public safety, and meet several key criteria will be considered for relief from

removal from the country or from entering into removal proceedings."[2] Garcia meets all of the key criteria except for one; he is above the age of thirty. The young people who would otherwise be categorized as unqualified aliens or nonimmigrants under 8 U.S.C. section 1621 are undocumented or lack lawful presence in the United States. Pursuant to Napolitano's directive, these young people will be considered for relief from removal from the country or from entering into removal proceedings and will be eligible to receive deferred action for a period of two years, subject to renewal, and will be eligible to apply for work authorization. This illustrates the complexity and arbitrariness of federal immigration law. But for his age, Garcia, under this new exception created in the absence of congressional action, would be authorized to work.

In *Arizona v. United States* (2012) 567 U.S. __; 183 L. Ed. 2d 351 the syllabus of the United States Supreme Court's opinion sets forth the federal government's broad, undoubted power over immigration and alien status, which "rests, in part, on its constitutional power to 'establish an uniform Rule of Naturalization,' Article I, Sec. 8, clause 4 of the United States Constitution, and on its inherent sovereign power to control and conduct foreign relations (*Id*. at p. 366). It follows, as stated by the Court, that the Supremacy Clause gives Congress the power to preempt state law

[2] Janet Napolitano, Secretary of U.S. Department of Homeland Security, Press Release (June 15, 2012)

and that state laws are preempted when they conflict with federal law, including when they stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (see *Hines* v. *Davidowitz* (1941) 312 U.S. 52, 67).Thus, this Court must consider whether admitting Garcia to the State Bar would stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

In this regard, we must ask whether granting Garcia a license to practice law in a state court in California stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the Immigration Reform and Control Act of 1986 (IRCA), the comprehensive framework for "combating the employment of illegal aliens" (see *Hoffman Plastic Compounds, Inc.* v. *NLRB* (2002) 535 U.S. 137, 147) because Garcia would be able to engage in unauthorized employment. As Garcia has already demonstrated in his brief in chief and as the record demonstrates Garcia has not engaged in any unauthorized employment in supporting his family and in paying for his education and would be able to engage in employment that would not violate any federal immigration law. Thus, this Court has no reason to believe that if Garcia is licensed to practice law in California state courts that he will use that license to violate federal immigration law.

Finally, we think that the federal constitutional Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution, may not be used to support federal authority over the Court's exclusive jurisdiction to determine who may be authorized to practice law in a state court. We raise this issue because it has been previously presented before this Court that granting Garcia a license to practice law in California state courts is tantamount to granting him a license to engage in employment and he is not authorized to engage in such employment under federal immigration laws. With this in mind, we should point out that the act of taking the oath to become an attorney and counselor at law licensed to practice in all the courts of the state does not compel Garcia to practice at all. It doesn't even compel him to engage in any activity that would meet the definition of interstate commence (*National Federation of Independent Business v. Sebellius* (June 28, 2012, Nos. 11-393, 11-398, 11-400) 567 U. S. __ [2012 U.S. LEXIS 4876] hereinafter "*Sebellius*").

Congress' power to regulate commerce presupposes the existence of commercial activity to be regulated (*Ibid.*). The United States Supreme Court held that this Court's precedent reflects the following understanding: As expansive as this Court's cases construing the scope of the commerce power have been, they uniformly describe the power as reaching "activity." (*Id*. at p. 43; see, e.*g., United States* v. *Lopez* (1995) 514 U.S. 549, 560). Thus, the federal Commerce Clause may only reach existing commercial

activity and not those who choose not to engage in that activity. With no doubt, Congress or the United States Supreme Court may regulate who may practice in a federal court, but not in a state court.[3] In *Sebellius*, the Court recognized construing the Commerce Clause to permit Congress to regulate individuals precisely *because* they are doing nothing would open a new and potentially vast domain to congressional authority (*Sebellius*, supra at p. 45).

Thus, we can find no other federal or state law that would preempt or apply to the Court's authority to set the requirements for individuals to practice law in California state courts or provides federal authority and power over the admission of an applicant to the State Bar except to correct a state's constitutional violation.

[3] The Real ID Act of 2005, 119 Stat. 302, enacted May 11, 2005, seeks to compel states to adopt certain standards by January 15, 2013, for a state driver's license, which presently entitles the licensee to drive anywhere in the United States or a U.S. territory, by imposing requirements, the noncompliance of which, would deny licensees access to federal buildings and air travel. However, the driver's license from a noncomplying state would still be valid and honored by another state. Thus, Congress lacks the authority to compel compliance except where it has the federal constitutional power to do so (i.e., Commerce Clause, national security, etc.). Moreover, section 12801.5 of the Vehicle Code, which requires satisfactory proof that an applicant's presence in the United States is authorized under federal law, is not required by any federal law.

II. If 8 U.S.C. Section 1621(c) Is Applicable, Then An Exception Exists Pursuant To 8 U.S.C. Section 1621(d) Because California Law As Provided For By The Legislature Or An Order Of The California Supreme Court Admitting Garcia To The State Bar Would Constitute Enactments Of A State Law After August 22, 1996, Which Affirmatively Provides For Such Eligibility.

Even if 8 U.S.C. section 1621(c) were to apply, 8 U.S.C. section 1621(d), provides for exceptions wherein individuals who are foreign nationals, including Garcia, may be admitted to the State Bar.

8 U.S.C. section 1621(d) provides the following:

> "A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the *enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.* (Italics added.)

Thus, the Congress did not intend to preempt state law in all respects, allowing for exceptions with changes in state law or rules after August 22, 1996.

A. Amendments To Business And Professions Code Section 6060 After August 22, 1996, Allows For Individuals To Be Admitted To The State Bar Even If They Are Foreign Nationals.

This Court held that citizenship is not a requirement to be admitted to the State Bar. (*Raffaelli v. Committee of Bar Examiners* (1972) 7 Cal.3d 288.) A year later, the United States Supreme Court held that a foreign citizen could not be barred from taking the Connecticut Bar exam. (*In re*

Griffiths (1973) 413 U.S. 717.) In so doing, the United States Supreme Court noted ;

> In 1873, this Court noted that admission to the practice of law in the courts of a state "in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any state, or in any case, to depend on citizenship at all. Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State. (Citation omitted)." (*Id*. at 719.)

In the 40 years since these cases were decided, citizenship requirements and even state residency requirements[4] have been stricken from the requirements for admission to the State Bar.

During the 1995-1996 Regular Session, the State Legislature submitted to the governor, Senate Bills 1321 and 1950. The bills made affirmative changes to Business and Professions Code section 6060 to allow for individuals who studied law in foreign states or countries as well as those who were licensed to practice in foreign countries to become members of the State Bar. A plain reading of the amendment indicates that individuals from foreign countries could attain membership in the State Bar. According to the Legislative Counsel's Digest for Senate Bill 1321 when it was introduced, it affirmatively added these new provisions relating to out-of-state or foreign attorneys.

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[4] In *Supreme Court of New Hampshire v. Piper* (1984) 470 U.S. 274, the U.S. Supreme Court struck down the in-state residency requirement for admission to the New Hampshire Bar.

The bills were approved by the governor on September 24, 1996, and filed with the Secretary on September 25, 1996, a month after August 22, 1996.

While the practice of law can include appearance in state courts, many attorneys rarely make an appearance in court and are primarily involved in giving legal advice, legal research, reviewing records, drafting contracts, etc. However, in order to give legal advice, one must be a member of the State Bar. Once admitted, an attorney can live, work, and reside in another state or country, so long as he or she complies with continuing education credits and otherwise complies with the rules to maintain good standing. Technology is abundant to perform legal research, communications with clients, continuing education, all of which can be accomplished without residing in California or the United States.

Thus, California rejected residency requirements in this state or even in this country to be admitted to the State Bar when it amended Business and Professions Code Section 6060[5] in September of 1996. Individuals like Garcia, who has complied with all requirements of the State Bar, should not be denied admission solely because he has not received permanent residence status, where no such requirement exists.

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[5] The Legislature also enacted Business and Professions Code section 6060.6 in 2005 allowing for individuals to provide identification numbers other than Social Security or Tax Identification numbers as determined by the State Bar when applying or renewing a license to practice law in California.

B. In Setting Standards For Admission To The State Bar, The Court Acts In A Legislative Capacity And Any Holding Of The Court In The Form Of An Order, Decision, Opinion, Decree Or Rule, Is A State Law.

This Court has inherent authority over the admission and discipline of attorneys in California and this authority has long been recognized (Cal. Rules of Court, Rule 9.2, citing subd. (d) and (f) of sec. 18, art. VI, Cal. Const.; *Stratmore v. State Bar* (1975) 14 Cal. 3d 887, 889). Moreover, this Court has the authority to adopt rules relating to the regulation of the admission and discipline of attorneys. (*In re Atty. Discipline Sys.* (1998) 19 Cal.4th 582.

As this Court has stated:

> "Indeed, every state in the United States recognizes that the power to admit and to discipline attorneys rests in the judiciary. [Citation.] 'This is necessarily so. An attorney is an officer of the court and whether a person shall be admitted [or disciplined] is a judicial, and not a legislative, question.' [Citations.]" (*Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal. 3d 329, 336-337 [178 Cal. Rptr. 801, 636 P.2d 1139], fns. omitted.) "This principle, which was first recognized in California in 1850 [citation], has been reaffirmed on numerous occasions. [Citations.]' (*Id*. at p. 336, fn. 5; see also *In re Shannon* (1994) 179 Ariz. 52 [876 P.2d 548, 571] ['The judiciary's authority to regulate and control the practice of law is universally accepted and dates back to the year 1292.']; Martineau, The Supreme Court and State Regulation of the Legal Profession (1980-1981) 8 Hastings Const. L.Q. 199, 202 ['In each state it is the supreme court, with or without the legislative approval, that dictates the standards for education, admission and discipline of attorneys.' (Fn. omitted.)].) 6 Our more recent decisions have continued to recognize this power." (E.g., *Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal. 4th 525, 542-544 [28 Cal. Rptr. 2d 617, 869 P.2d 1142]; *Howard v. Babcock* (1993) 6 Cal. 4th

> 409, 418 [25 Cal. Rptr. 2d 80, 863 P.2d 150, 28 A.L.R.5th 811].) (*In re Atty. Discipline Sys., supra,* 19 Cal.4th at 592-593.)
>
> This Court has also noted that:
>
> "Witkin has described our authority in this area as follows: 'The important difference between regulation of the legal profession and regulation of other professions is this: Admission to the bar is a judicial function, and members of the bar are officers of the court, subject to discipline by the court. Hence, under the constitutional doctrine of separation of powers, the court has inherent and primary regulatory power. [Citations.]'" (1 Witkin, Cal. Procedure (4th ed. 1996) Attorneys, § 356, p. 438, original italics.) (*Id.* at 593.)

This Court has held that legislative enactments relating to the admission to practice law in this State are "…valid only to the extent they do not conflict with the rules for admission adopted or approved by the judiciary. When conflicts exist, the legislative enactment must give way." (*Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724[6], 728-729.)

Rule 9.30 of the Rules of Court adopts Business and Professions Code Section 6060 (e) (2)[7] which allows for individuals who studied law in a foreign state or country to receive credit for that study in order to take the

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[6] In *Merco Constr. Engineers, Inc.*, Civil Procedure Code Section 90 as it existed then, allowed for a corporate party in municipal court to appear through a director or other employee regardless of whether that individual was an attorney or not. This Court held that the statute offended the separation of powers clause of the Constitution and had no force and effect.

[7] Bus. Prof. Code section 6060 was amended and enacted after August 22, 1996, the most recent amendment to section (a) of Rule 9.30 became effective January 1, 2007.

bar examination. (*Ibid*.) Moreover, foreign attorneys can be authorized to practice in this state without taking a bar examination[8].

Therefore, this Court has the inherent authority to affirmatively rule that an individual need not be a permanent resident of the United States to be admitted to practice law in the State of California. In effect, it would be the law in the State of California as it applies to membership in the California State Bar post August 22, 1996 (see *Cooper v. Swoap* (1974) 11 Cal.3d 856, 886 (J. Clark, dissenting: "The California Constitution makes this court the final authority on matters of state law. (Cal. Const., art. VI, sec. 1)"). Thus, foreign nationals including Garcia can and should be admitted if he or she has otherwise complied with the requirements to become a member of the California Bar.

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[8] Rule 9.44 of the Court Rules allows for foreign attorneys to become legal consultants to render legal service without taking the Bar Examination. No California legislation is cited as the basis for the rule.

CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to grant the Committee of Bar Examiners' Motion to Admit Sergio C. Garcia as a member of the California State Bar without further delay.

Dated: July 17, 2012

Respectfully submitted,
Anthony P. Marquez, and
Joshua Kaizuka

By: _____
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CERTIFICATION OF COMPLIANCE

Pursuant to Rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that this **BRIEF OF AMICI CURIAE THE LA RAZA LAWYERS ASSOCIATION OF SACRAMENTO AND THE ASIAN/PACIFIC BAR ASSOCIATION OF SACRAMENTO IN SUPPORT OF THE COMMITTEE OF BAR EXAMINERS' MOTION FOR ADMISSION OF SERGIO C. GARCIA TO THE STATE BAR OF CALIFORNIA** contains 5,440 words, excluding the tables and this certificate, according to the word count generated by the computer program used to produce this document.

Dated: July 17, 2012

By: _____
Anthony P. Marquez
Attorneys for Amicus Curiae
La Raza Lawyers Association of Sacramento Asian/Pacific Bar Association of Sacramento

DECLARATION OF SERVICE BY OVERNIGHT DELIVERY

I am employed in Sacramento County, California. I am over the age of 18 years, and I am not a party to the within action. My business address is 1115 H Street, Sacramento, CA 95814.

On July 17, 2012, I served the following documents:

- **BRIEF OF AMICI CURIAE.**

by placing a true copy in a sealed envelope designated by Federal Express for overnight delivery, with delivery fees fully paid, addressed to:

Rachel Simone Grunberg
Office of the General Counsel, State Bar of California
180 Howard Street
San Francisco, CA 94105-1639
Telephone: (415) 538-2309

Committee of Bar Examiners of the State Bar of California
1149 S. Hill Street
Los Angeles, CA 90015
Telephone: (415) 538-2300

Jerome Fishkin
Fishkin & Slatter LLP
1575 Treat Boulevard, Suite 215
Walnut Creek, CA 94598
Telephone: (925) 944-5600

and then depositing the envelope in a box regularly maintained by Federal Express.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: July 17, 2012

Anthony P. Marquez