No. 12-16775

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLIFFORD JOHNSON
Plaintiff - Appellant

v.

UNITED STATES DEPARTMENT OF THE TREASURY;
JACOB LEW
Defendants - Appellees

On Appeal from the United States District Court
for the Northern District of California

Hon. William H. Alsup

PETITION FOR REHEARING EN BANC

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ABBREVIATIONS

APA = Administrative Procedures Act, 5 U.S.C. § 702

AOB = Appellant's Opening Brief, filed 2/19/2013

complaint = First Amended Complaint for Declaratory Relief, filed 2/29/2012 at ER III 73-85 (the original complaint was not served)

ARB = Appellant's Reply Brief, filed 4/2/2013

ER M n = Excerpts of Record, Volume M page n

FRAP = Federal Rules of Appellate Procedure

FRCP = Federal Rules of Civil Procedure

PM = Panel Memorandum, filed 5/30/2014

RAB = Respondent's Answering Brief, filed 3/20/2013

Treasury = Department of the Treasury *and* the Secretary of the Treasury

QUESTIONS OF EXCEPTIONAL IMPORTANCE ARE RAISED

Under FRAP Rule 35(a)(2), within 45 days of the May 30, 2014 panel decision plaintiff-appellant Johnson petitions for a rehearing en banc on the ground that the following exceptionally important matters of first impression are raised:

When the federal government authoritatively and persistently publishes a categorical misrepresentation so as to suppress a disfavored viewpoint (herein advocating new issues of United States notes versus Federal Reserve notes), can one whose petition is thereby impaired sue for findings of misrepresentation to mitigate this abusive impairment of the First Amendment right to petition, and, if not, does independently unconstitutional conduct make a difference?

In such a suit, is standing sufficiently alleged when the misrepresentation on its face fundamentally contradicts the plaintiff's petition?

1. THE FIRST AMENDMENT COMPLAINT

The complaint (ER III 73-85), filed February 29, 2012, alleges that Johnson advocates issues of United States (versus Federal Reserve) currency, including by "the petition at Exhibit B [urging] that all paper money forthwith issue as United States notes." A "Categorical Misrepresentation" is then alleged, as follows:[1]

[1] ER III 74-75. Also alleged are "Financial Misrepresentations" in pertinent part approved by the Treasury, and thereby impaired "coin-swap" petitions. Concerning these, Johnson accepts the panel's finding of insufficient traceability to the Treasury's conduct.

> [T]he Treasury…website [ER III 39] thrice dismiss[es] United States notes as obsolete [since 1971, when the gold standard was repudiated,] by the following categorical falsehood:
>
> > United States Notes serve no function that is not already adequately served by Federal Reserve Notes.
>
> In fact, only United States notes adequately serve the functions of: **(a)** large, direct, prompt debt reduction; **(b)** interest-free financing; **(c)** exact economic tailoring; and **(d)** pay-as-you-go, collection-free, flat-tax funding.

The authoritative form of the canned misrepresentation, and how it impairs Johnson's petition for United States notes, are alleged as follows (ER III 75 ¶7):

> Said Treasury.gov website puffs the Treasury's unique status as the nation's definitive source for information re the nation's currency and debt; stresses that reducing financial illiteracy is an urgent Treasury duty; and promises the utmost care and integrity in publishing related facts. Wherefore, said categorical [] misinformation[] officially and authoritatively contradict[s] and so greatly impair[s] Johnson's petitions.

Also alleged are Johnson's futile correctional demands. ER III 76-77.

Johnson prays that the court declare the alleged misrepresentation false and misleading, thus mitigating the abusive impairment of his petition for new United States notes instead of Federal Reserve notes. Johnson also seeks further mitigation through declarations of concomitant unconstitutionality. ER III 78.

The complaint states a classic First Amendment claim against government conduct intentionally impairing the right to petition. But because the abusive conduct is misrepresentation, the below-discussed "government speech" doctrine presumptively exempts the Treasury from such a First Amendment claim. To rebut

this presumption, the complaint on its face alleges a misrepresentation that is not only categorical, authoritatively published as objective, and final, but that also satisfies four further illicit sets of circumstances, including (ER III 77-78 ¶11):

> ***(i) [Intentional] Viewpoint Coercion.*** In all public fora, Johnson's viewpoint is repudiated by the abusively induced ignorant recitation of said falsehoods…
>
> ***(iii) Independent Unconstitutionality: Fiat Money Power.*** …[T]he Framers' final vote on money powers delisted paper money...Before voting, Madison obtained firm agreement that the delisting did "not disabl[e] the government from the use of public notes as far as they could be safe and proper." Said falsehoods impermissibly suppress the use of public notes as far as they can be safe and proper, contrary to the Framers' explicit commitment… U.S. Const., Art. I, Sec. 8, Cl. 4, 11; *Notes Of The Federal Convention* (Aug. 16, 1787)…

2. THE PANEL'S MEMORANDUM AFFIRMING A LACK OF STANDING

The panel's Memorandum ("PM"), filed May 30, 2014, begins (PM 1-2):

> Clifford Johnson appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 [sic[2]] action alleging that the United States Department of the Treasury and the Secretary of the Treasury violated his First Amendment right to freedom of expression by publishing statements about Federal Reserve notes that are contrary to Johnson's views and allegedly false.

[2] The citation of 42 U.S.C. § 1983 is inappropriate. The statute does not apply to federal defendants, is not alleged in the complaint, and is nowhere argued. Jurisdiction is alleged "under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201 (declaratory judgment); and U.S. Const., Amnd. 1 (plaintiff's right to petition impaired)." ER III 73. On appeal, Johnson did argue the Administrative Procedures Act ("APA"), 5 U.S.C. § 702 (AOB 10), but this is immaterial, in that *Valley Forge*, *infra*, at 487 n. 24 held the APA insufficient to overcome a lack of standing under *Lujan*, *infra*, as found herein.

Johnson alleges an *impaired right to petition*, which the panel broadens to a "*violated right to [] freedom of expression*." Standing depends on "that concrete adverseness that sharpens the presentation of issues" (*Valley Forge College v. Americans United*, 454 U.S. 464, 486), and so the rewording is prejudicially vague. The panel then found a lack of standing, in full as follows (PM 2-3):

> The district court properly concluded that Johnson failed to allege the essential elements of Article III standing, including personal injury that is fairly traceable to defendants' allegedly false representations and likely to be redressed by an order granting Johnson a declaratory judgment. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (identifying three core requirements for standing under Article III of the United States Constitution); *Valley Forge[, supra]* at 474-75, 485-86 (1982) (no standing where allegations constitute nothing more than the "generalized grievances" of one who observes government conduct with which he disagrees).[3]

3. THE INCORPORATED DISTRICT COURT RULING RE STANDING

The panel's decision merely cuts and pastes the conclusions of the June 14, 2012 order dismissing the action under FRCP Rules 12(B)(1), (6). In full, this is the district court's no less conclusory supporting analysis re standing (ER I 14):

[3] The panel added: "We do not consider arguments and allegations raised for the first time on appeal." This responds to a "Circumstantial Case Update" letter filed July 1, 2013, re the "$1 Coin-Swap Bills" petition alleged at ER III 74. The letter gave notice of new facts re standing to sue a director of the Government Accountability Office, and suggested that the panel "word its opinion so as to indicate whether amendments based on such facts would be fit or futile." The panel's response leaves open the door to a distinct action re the "Coins Act" (S. 1105/H.R. 3305, now stuck in committees).

> Here, the fact that the Treasury website contradicts Mr. Johnson's position, and that other sources have adopted the Treasury's views, does not constitute an injury in fact. Mr. Johnson also does not establish a causal connection between the Treasury's conduct and his own petitions. Furthermore, any assertion that a favorable judicial decision would redress Mr. Johnson's alleged injuries by improving the effectiveness of his petitions is purely conjectural and insufficient to justify standing. Prudential considerations also demonstrate the lack of standing; Mr. Johnson's interest in petitioning for support of his proposal is a generalized grievance no different from every citizen's interest in proper application of the Constitution.

In an October 24, 2012, clarifying order, the district court did no more than incorporate these conclusions re standing. ER I 3-4.

4. THE DISTRICT COURT'S "LIMITLESS BULLY PULPIT" DOCTRINE

Although not reached by the panel, government speech doctrine is developed on the record. The district court's leading and only non-conclusory ground for dismissal emphatically affirmed a limitless "bully pulpit" rationale, thus (ER I 14):

> [Johnson seeks] an injunction whereby this Court would regulate what the Treasury can and cannot say on this subject. This remarkable proposition has no support in the law. Our elected leaders necessarily adopt policy positions. By virtue of their "bully pulpit," they necessarily receive more attention than the rest of us. Nonetheless, it cannot possibly be the law that this circumstance violates anyone's right to say whatever they want about public policy. To rule otherwise would invite thousands of lawsuits by those seeking to regulate through the courts what elected officials and their appointees can and cannot say in support of public policy. This would be an unthinkable result. Mr. Johnson's claim is rejected on the merits.

In its October 24, 2012 order (ER I 3-4), the district court stated that this language embraced misrepresentation, indicating that it must be read as applying to all such speech—hence the "limitless" label. By adding that "government speech *immunity* was not reached," the district court implicitly upheld an unqualified sort of government speech *right*. This dangerous doctrine is fostered, if not affirmed, by the panel's bald statement that the "district court properly" found no standing.

5. THAT "UNITED STATES NOTES SERVE NO FUNCTION NOT ALREADY SERVED BY FEDERAL RESERVE NOTES" IS A MISREPRESENTATION OF "TRANSCENDENT IMPORTANCE"

As exhibited at ER III 39, under the FAQ banner "*What are United States notes and how are they different from Federal Reserve notes?*", the Treasury's statement that "*United States notes serve no function not already served by Federal Reserve notes*" squarely squelches public debate re the interest-saving *et alia* advantages of fiat United States notes over fiat Federal Reserve notes. Such advantages are set forth in President Lincoln's June 23, 1862 half-page "President's Message in favor of a National Currency, but vetoing irredeemable [fiat] bank notes" -- just like today's Federal Reserve notes. Congress concurred, and so issued the famous United States "greenback" dollar. Later, Congress made a record of the controversy as a matter of "transcendent importance…for present and future reference." United States notes were found "indispensably necessary, and a most powerful instrumentality in saving the government". *History Of The Legal*

Tender Paper Money Issued During The Great Rebellion, Senate Sub-Committee of Ways and Means (1869) at 6, App. A at 36. AOB 21-22; ER III 46-49.[4]

6. JOHNSON CLEARLY DOES NOT LACK STANDING

Lujan at 560 defines "injury in fact" as "an invasion of a legally protected interest." Herein, the First Amendment protects Johnson's invaded right to petition. This renders frivolous the district court's unargued announcement that (ER I 14)

> the fact that the Treasury website contradicts Mr. Johnson's position, and that other sources have adopted the Treasury's views, does not constitute an injury in fact.

Likewise, the Treasury simply announced that having one's petitioning rendered "less plausible or effective … does not rise to the level of a violation under any law." ER III 66. But *any* such non-trivial impairment of the First Amendment right to petition is *per se* an injury in fact, under *Lujan*.

Whether that injury gives rise to an actionable violation is circumstantial. "Heightened scrutiny" is warranted if official conduct "threaten[s] to distort the market for ideas [or] raises suspicions that the objective was, in fact, the suppression of certain ideas." *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 660 (1994). Herein, a distortion of the market for ideas intended to suppress

[4] Today, President Obama's many references to the economic marvel that Lincoln's administration wrought underscore the public importance of renewed debate re fiat United States notes, versus fiat bank notes. ER III 20 n. 8. See also *Lincoln's Populist Sovereignty: Public Finance Of, By, and For the People*, 12 Chap. L. Rev. 561 2008-2009, by Professor Canova (ER II 40-69).

United States notes are taken-as-true facts, but *the level of scrutiny has been below due process minima owing to the turning of a blind eye to misrepresentation.*[5]

"[I]t does not matter how many persons have been injured," as long as the injury is "concrete and personal." *Lujan*, at 581. Johnson does not sue on injuries that all share when the government lies, owing to inflated climates of distrust, unaccountability, oppression, and herein also of national debt. His viewpoint, favoring United States notes over Federal Reserve notes, is understood by few, shared by fewer, and petitioned for by fewer.[6] ER III 23 n.11.

Johnson's petition is inevitably impaired by the misrepresentation, because the latter forces the fundamentally contradictory belief that United States notes and Federal Reserve notes are now one and the same, *for all intents and purposes*.[7]

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[5] From the outset, Johnson has stressed that the action rests on demonstrable hard-fact misrepresentation. ER III 17. This court even stayed the appeal to require a response to Johnson's objection (at ER II 85) that it was not clear whether the district court had duly noticed misrepresentation. Nevertheless, *the district court, the Treasury, and the panel have nowhere addressed or cited a single authority that addresses any sort of misrepresentation*, let alone the dispositive corollaries of viewpoint suppression and vitiated consent. In lieu of responsive points and authorities, hard-fact misrepresentation is palmed off as debatable disagreement, wherever it counts.

[6] The ignorant populace is differently harmed, by the affront to its right to know and its "First Amendment right to avoid becoming the courier for the State's ideological message." *Wooley v. Maynard*, 430 U.S. 705, 717 (1977). On the other hand, no First Amendment injury is suffered by banking interests that promote the mistaking of bank notes for government notes, or by savvy economists and wonks who ingenuously inveigh that it is unthinkable to trust the government to print its very own paper money.

[7] From birth, all see grand "United States" captions on both sides of every money note, above national symbols and officious Treasury authentications; and all hear pundits debate whether the government is printing too much or not enough money. The at issue

Johnson cannot point to an official Treasury FAQ to win his case, as can political opposition (which incidentally raises equal protection concerns). The district court underscored causation as self-evident, by using the phrase "bully pulpit" in painting the complaint as the misdirected pique of just another loser in the jungleplace of ideas that all must share. Likewise, the Treasury conceded that its contrary statement would make Johnson's petition "less plausible or effective." ER III 66. Far from conjectural, causation is impossible to miss.[8]

As for remedial likelihood, a brandishable finding of misrepresentation would manifestly mitigate the cause of injury; and further findings of concomitant unconstitutionality would justifiably add further teeth to Johnson's petitions.

7. GOVERNMENT SPEECH AS A QUALIFIED IMMUNITY DOCTRINE

The government speech doctrine exempts government speech only insofar as it invades non-establishment clause First Amendment rights, consistently with equal protection.[9] However, "virtually all governmental activity involves

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misrepresentation sustains a popular mindset to which it makes no sense to propose to *start* issuing United States notes, as Johnson-the-petitioner can testify to. ER I 19.

[8] Causation and the injury of impaired petitioning are of the factual ilk routinely adjudicated in anti-trust litigation attacking the abusive exploitation of media dominance to coercively prejudice counterparties against disadvantaged competition. Foundational evidence showing the parties' relative market positions and postures, plus a showing of the abusive exploitation of media dominance, is usually proof enough. The natural effects of a monopoly's publications and of a limiting judicial order are generally presumed. See, e.g., *Associated Press v. United States*, 326 U.S. 1, 17, 18 (1945).

[9] As expounded by the Supreme Court and this circuit, the government speech doctrine largely comprises cases deciding whether speech was that of the government. If

speech,"[10] and "[i]t is almost impossible to concoct examples of viewpoint discrimination…that cannot otherwise be repackaged ex post as 'government speech.' "[11] Wherefore, Johnson construes government speech doctrine as one of necessarily *qualified immunity*.

Official misrepresentations are a natural exception to the immunity, when designed to deprive the public of the informed consent that pretty much defines republican government. See, e.g., the dictum of *R. J. Reynolds Tobacco Company v. Bonta*, 272 F. Supp.2d 1085, 1107 (E. D. Cal. 2003) that "[g]overnment speech that 'drowns out' private speech may violate the First Amendment." See also *Rosenberger v. Rector And Visitors Of Univ. of VA.*, 515 U.S. 819, 828-829 (1996), and *Turner supra, at* 642-643, re the especially egregious nature of viewpoint suppression by impaired rights to petition.[12]

Johnson construes four government speech immunity rationales: (1) The government is supposed to express and promote its own viewpoints, the remedy for those who disagree being the ballot box. (2) The more government speech the

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so, immunity has been found. See, e.g., *Delano Farms v. CA Table Grape Com'n*, 586 F.3d 1219, 1244 (9th Cir. 2009). If not, compelled speech issues might be reached.

[10] *United States v. United Foods, Inc.*, 533 U.S. 405, 424 (2001) (dissenters).

[11] *Sutcliffe v. Epping School Dist.*, 584 F.3d 314, 337 (1st Cir. 2009) (part. dissent).

[12] The only viewpoint discrimination cases cited outside of Johnson's papers -- *Minnesota Bd. For Community Colleges v. Knight*, 465 U.S. 271 (1984), and *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999), cited at ER III 66, RAB 15 – held that a petitioner is not as a rule entitled under the First Amendment to a response from the government. No misrepresentation was at issue, of course.

better, because it increases information and so government accountability. (3) The government needs "elbow room" (aka "breathing space") to operate. (4) Not to immunize government speech would invite floods of frivolous litigation.

Accepting that *mere* misrepresentation is presumed immunized for elbow room and to curtail frivolous litigation, Johnson contends this presumption is rebutted if: (1) the misrepresentation is a matter of hard (categorical/numeric) fact;[13] (2) it authoritatively issues as objective fact; (3) the government refuses to correct it; *and* (4) special illicit circumstances exist, including where the misrepresentation (i) is designed to suppress plaintiff's viewpoint; (ii) entails independent unconstitutionality; *and/or* (iii) shows institutional capture on the official record. Given these prerequisites, no First Amendment suit would stand against mere deceit, mistake, opinion, position, deliberative statement, transparent statistic (such as the unemployment rate and consumer price index), and so on.

Criterion (i) should suffice, since a "purpose to suppress speech[14] [with] unjustified burdens on expression renders it unconstitutional"; "[v]iewpoint

[13] The marketplace of ideas has such failings that even hard facts must often be adjudicated. See *Facts and the First Amendment*, 57 UCLA L. Rev. 897 (2009-2010), by Professor Schauer.

[14] Less than a clear and convincing standard is required to prove "intent … to deter public comment on a specific issue of public importance." *Crawford-El v. Britton*, 523 U.S. 574, 592 (1998). The Treasury's insider expertise and puffed purpose of financial literacy (ER III 76) give rise to a conclusive common law known-or-should-have-known scienter. If not, consistent collateral conduct, such as the "Financial Misrepresentations" at ER III 75-76, could be produced to show intent.

discrimination is [] egregious"; and "the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge."[15] Deceit *contracts* this spectrum, and *reverses* the core government speech rationales, for by deception the government keeps information from and misleads the electorate. Government by consent is not enhanced, but vitiated. Note well that government distortions of fact often incidentally carry over to judicial proceedings. *Legal Services Corporation v. Velazquez*, 531 U.S. 533, 541, 546 (2001).

McDonald v. Smith, 472 U.S. 479, 485 (1985) held that even speech immunized by the First Amendment right to petition forfeits immunity, even re damages, when it misrepresents without "probable cause" -- let alone where it misrepresents to suppress a disfavored political viewpoint. Re government misrepresentation, *Bivens* tort rationales apply.[16] It would seem at cross purposes for the judiciary, having created the *Bivens* tort, to herein repudiate a purely declaratory mandate of the Administrative Procedures Act, 5 U.S.C. § 702.

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[15] *Sorrell*, *infra*, at 10; *Rosenberger*, *supra*, at 829; and *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965). For a comprehensive analysis, see *Viewpoint Neutrality and Government Speech*, 52 B.C. L. Rev. 695 (2011), by Professor Blocher.

[16] "[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Bivens v. Six Unknown Fed. Narcotic Agents*, 403 U.S. 388, 392 (1971). Misrepresentation by government officials that frustrates the right to petition gives rise to *Bivens* torts, even for damages. *Christopher v. Harbury*, 536 U.S. 403 (2002). (Also on point is *Wood v Moss*, U.S. No. 13-115 (pending) discussed at ARB 12-13.)

8. THERE SHOULD BE A GOVERNMENT DECEPTION DOCTRINE

Without the right to know, "freedom of the press is a river without water." *In re Mack*, 126 A.2d 679, 689 (Pa. 1956) (Musmanno, J., dissenting). And when the government lies, freedom of the press becomes a river of poison.

"The Framers created a Federal Government of limited powers, and assigned to this Court the duty of enforcing those limits." *National Federation Of Independent Business v. Sebelius*, 11-393, at 59 (U.S. 6-28-2012). Johnson alleges limits to the abusive exercise of the government's natural "bully pulpit" speech monopoly, protecting the First Amendment right to petition.

Freedom of speech is "cut of the same cloth" as the right to petition, as also are the rights to free thought, and to know; and all such rights are equal, at law. *McDonald, supra*, at 482. In fact, all other communicative rights undergird the right to petition, which is a decisional apex that depends upon all of the First Amendment's factual fruits. As causal chains of facts entirely fail if but one be false; as rivers of information are poisoned by but one toxic source; so the right to petition, being of the widest, must also be of the wisest constitutional weft.

Government Speech in Transition 57 S. D. L. Rev. 421 (2012) by Professor Norton provides a cogent synopsis of current government speech doctrine. ER II 33-39. This and numerous law journal articles make it clear that there is as yet no exception for deception, and that it is high time there was. Case law confirms

ripeness, and the decision herein conflicts with the applicable dicta and doctrine. Thus, *Simon & Schuster v. Crime Victims Bd.*, 502 U.S. 105, 116 (1991) advised:

> In the context of financial regulation, it bears repeating … that the Government's ability to impose content-based burdens on speech raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace.

R. J. Reynolds Tobacco Co. v. Shewry, 423 F.3d 906, 923 (9th Cir. 2005) advised:

> "[G]overnment is no more free to disregard constitutional and other legal norms when it speaks than when it acts." *Bonta*, [*supra*] at 1110. For example, there may be instances in which the government speaks in such a way as to make private speech difficult or impossible, or to interfere with some other constitutional right, which could raise First Amendment concerns. See *Warner Cable Comm. v. City of Niceville*, 911 F.2d 634, 638 (11th Cir. 1990) ("[T]he government may not speak so loudly as to make it impossible for other speakers to be heard by their audience. The government would then be preventing the speakers' access to that audience, and First Amendment concerns would arise.").

Caruso v. Yamhill County Ex Rel. County Com'r, 422 F.3d 848, 855 (9th Cir. 2005) advised (citations omitted):

> We … reject the State's suggestion that no scrutiny is warranted because the speech … is the government's. We have elsewhere identified "several recognized instances of constitutional limitations on government speech." For example, the First Amendment may limit government speech that "make[s] private speech difficult or impossible."

Exempting government misrepresentation from First Amendment suits substantively conflicts with decisions beyond this circuit, e.g.: *Warner, supra*; *Foxworthy v. Buetow*, 492 F. Supp.2d 974 (S.D.Ind. 2007) (misrepresentation

injurious to right to petition actionable); *The Baltimore Sun Co. v. Ehrlich*, 437 F.3d 410, 415 (4th Cir. 2006) (retaliatory speech actionably chills free speech).

In this circuit, such exemption runs counter to *Sorrell v. IMS Health, Inc.*, 10-779 (U.S. 6-23-2011), which at 22 held that finding "expression too persuasive does not permit [the State] to quiet the speech or to burden its messengers"; and to *Kearney v. Foley & Lardner*, 590 F.3d 638, 644 (9th Cir. 2009), which held that government conduct loses all legitimacy by "intentional misrepresentations" or by "furnishing with predatory intent false information," so as to foil the contrary petitions of a private party. Worse, such an exemption dangerously decrees that the electorate is competent to vote on what it is deceived about.

CONCLUSION

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Board of Education v. Barnette,* 319 U.S. 624, 642 (1943). In a matter of major public importance, the panel herein has furtively insinuated the eviscerating caveat, "except by deceit." A publishable decision is called for, to refix Freedom's falling star and relearn Lincoln's lingering lore.

Respectfully submitted,

July 14, 2014 [s/] Clifford Johnson
Clifford Johnson, appellant pro se

CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Circuit Rule 35-4, the attached Petition for Rehearing En Banc is proportionately spaced, has a typeface of 14 points or more, and contains 3,133 words.

Dated: July 14, 2014

[s/] Clifford Johnson
Clifford Johnson, appellant pro se

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 15, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 14, 2014

[s/] Clifford Johnson
Clifford Johnson, appellant pro se