No. 15-17189

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO CASINO IN PLYMOUTH
and CITIZENS EQUAL RIGHTS ALLIANCE

Plaintiffs-Appellants,

v.

RYAN ZINKE, Secretary, United States Department of the Interior; JOHN TASHUDA, Acting Assistant Secretary-Indian Affairs; BUREAU OF INDIAN AFFAIRS; UNITED STATES DEPARTMENT OF THE INTERIOR; *et al.*

Defendants-Appellees,

and IONE BAND OF MIWOK INDIANS,

Intervenor-Defendan-Appellee.

Appeal from the United States District Court for the Eastern District of California
Case No. 2:12-cv-1748 TLN-CKD

FEDERAL DEFENDANTS' RESPONSE IN OPPOSITION TO PETITION FOR REHEARING AND REHEARING EN BANC

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GLOSSARY OF ACRONYMS AND ABBREVIATIONS

APA ..... Administrative Procedure Act

BIA..... Bureau of Indian Affairs

CERA..... Citizens Equal Rights Alliance

DktEntry..... Court of Appeals Docket Entry

ECF ..... District Court Electronic Case File

ER ..... Plaintiffs' Excerpts of Record

FSER..... Federal Defendants' Supplemental Excerpts of Record

IGRA..... Indian Gaming Regulatory Act

Interior ..... Department of the Interior

IRA..... Indian Reorganization Act

Mem. ..... memorandum decision (Oct. 6, 2017)

NCIP ..... No Casino In Plymouth

INTRODUCTION

This appeal involves a May 24, 2012 Record of Decision ("2012 ROD") by the Department of the Interior ("Interior") to acquire approximately 228 acres of land in Plymouth California ("Plymouth Parcels") in trust for the Ione Band of Miwok Indians ("Ione Band" or "Band"), and to declare the Plymouth Parcels eligible for gaming under the Indian Gaming Regulatory Act ("IGRA"). Plaintiffs-Appellants No Casino in Plymouth ("NCIP") and Citizens Equal Rights Alliance ("CERA") filed suit under the Administrative Procedure Act ("APA"), alleging: (1) that the Ione Band is not eligible for a trust-acquisition under the Indian Reorganization Act ("IRA") and (2) that the Department's then Acting Assistant Secretary-Indian Affairs lacked delegated authority from the Secretary to issue the 2012 ROD. The district court rejected these arguments on the merits and Plaintiffs appealed. In an unpublished memorandum decision issued on October 6, 2017 ("Mem."), this Court vacated the district court's judgment and remanded with instructions for the district court to dismiss for lack of subject-matter jurisdiction, because Plaintiffs failed to demonstrate Article III standing. Mem. at 3-4.

Plaintiffs seek rehearing en banc on the theory that the panel held Plaintiffs to a higher burden on standing than required under Supreme Court and Circuit precedent. Alternatively, Plaintiffs ask the panel to rehear the case to consider a standing declaration that Plaintiffs proffered for the first time *after* oral argument.

As explained herein, the panel followed well-established law in articulating Plaintiffs' burden and properly declined to consider Plaintiffs' untimely standing declaration. Plaintiffs' petition for rehearing and rehearing en banc should be denied. If the panel determines, however, that Plaintiffs' untimely declaration should be considered, the panel should grant rehearing and summarily affirm the district court judgment for reasons stated by this court in its opinion in the related appeal by the County of Amador, California. *See County of Amador v. Dept. of Interior*, 872 F.3d 1012 (2017) (No. 15-17253).[1]

BACKGROUND

A. Proceedings Below

In their First Amended Complaint, Plaintiffs alleged: (1) that NCIP is a non-profit California corporation with "members who own homes and operate businesses in and around the areas that are included in the [2012] ROD," and (2) that CERA is a non-profit South Dakota corporation with members in twenty-two states, including members in California who live "in an[d] around the areas included in the [2012] ROD," and "one board member" who "resides in Amador County near the [Plymouth] Parcels." ER 56 (¶¶ 13-14). In their answers, Federal Defendants and Intervenor-Defendant denied these allegations, citing the lack of

[1] The County of Amador also filed a petition for rehearing en banc. The Federal Defendants are filing a response in opposition to that petition simultaneously with the filing of this response.

sufficient information upon which to form a belief about the truth of the claims. ER 82 (¶¶ 13-14); ER 106 (¶¶ 13-14); *see also* Fed. R. Civ. P. 8(b)(5).

Plaintiffs moved for summary judgment without presenting any affidavits or other evidence to support their standing allegations. *See* ECF 72-1. In their cross-motion for summary judgment, Federal Defendants sought dismissal for lack of jurisdiction, citing Plaintiffs failure to proffer evidence in support of standing. ECF 90-1 at 5. The Federal Defendants observed that Plaintiffs' allegations were not evidence. *Id.* at 6 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). They further observed that, even if Plaintiffs had presented evidence that one or more of their members owned property or lived near the Plymouth Parcels, such evidence, was insufficient by itself to show injury in fact. *Id.* at 6-7.

In their opposition to Defendants' motions for summary judgment, Plaintiffs argued that they had standing in light of the Supreme Court's decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S.Ct. 2199 (2012) ("*Patchak*"). *See* ECF #93 at 23. Plaintiffs argued that their "interest in the environmental and economic well-being of Plymouth, Amador County, and the State of California" was "identical" to the interest of the Plaintiff in *Patchak.* *Id.* But Plaintiffs again offered no affidavit or other evidence supporting their factual allegations regarding standing. *Id.*

Instead, with their response, Plaintiffs filed a "Statement of Undisputed Facts," which repeated without evidentiary support the averments from the First Amendment Complaint (ER 56 (¶¶ 13-14)): that NCIP "has members who own homes and operate businesses in and around . . . areas . . . included in the [2012] ROD," and that CERA has "members in California in and around the areas included in the [2012] ROD." ECF #93-1 at 2 (¶¶ 9-10). Plaintiffs also alleged, without supporting evidence, that the proposed tribal gaming facility would have "many negative impacts" with respect to traffic, safety, pollution, and crime on "all residents in the area." ECF #93-1 at 8 (¶ 67). And Plaintiffs averred that Interior was required by its own regulations to consider Plaintiffs "interests in the environmental and economic well-being of Plymouth, Amador County, and the State of California," before taking the Plymouth Parcels into trust. *Id.* (¶ 66) (citing 25 C.F.R. §§ 151.10(f), 151.10(h)).

In a memorandum decision, the district court stated without analysis that "in consideration of the arguments made by the parties, Plaintiffs have standing to sue." ER 17 n.7. On the merits, the district court granted summary judgment to the Defendants on all claims. ER 20-39.

B. Appeal Proceedings

On appeal, in addition to defending the district court's merits judgment, Federal Defendants again argued that Plaintiffs failed to meet their burden on

standing. *See* Federal Appellees' Answering Brief at 26-28 (Aug. 1, 2016) (DktEntry #26). In their reply brief, Plaintiffs argued for the first time that their standing was demonstrated by materials in the administrative record. *See* Appellants' Reply Brief at 32 (Oct. 26, 2016) (DktEntry #40). In a single block citation, Plaintiffs cited more than one hundred pages of comment letters and related materials. *See* Reply Brief at 30 (citing SER 1096-1207). But Plaintiffs again did not name any individual member or point to specific parts of the cited materials showing particularized and concrete injury to an individual member.[2]

Shortly after oral argument—in response to questions raised by the panel regarding Plaintiffs' standing—Plaintiffs for the first time filed a standing declaration. DktEntry #66 at 2-7 (declaration of Dueward W. "Butch" Cranford II). In that declaration, Mr. Cranford averred that he is a founding member of NCIP and member of CERA, *id.* at 2 (¶¶ 2-3), that he owns and lives on a five-acre property "near the proposed casino site," *id.* at 3 (¶7), and that he owns two other homes "adjacent to and less than a mile from the proposed casino site." *Id.* Mr. Cranford further averred that the proposed casino "will destroy the quiet foothill lifestyle" enjoyed by Plymouth residents, *id.* at 5 (¶ 19), and that the environmental analysis for the proposed trust acquisition and gaming facility did not adequately

[2] Plaintiff identified particular letters for the first time in their petition for rehearing (Pet. at 6-7).

evaluate casino water use and the availability of an adequate water supply, *id*. at 5-6 (¶¶ 21-24).

In its October 6, 2017 memorandum decision, the panel held that the Plaintiffs' had not supported their standing-related allegations with affidavits or other evidence, that Federal Defendants' had not stipulated to Plaintiffs' alleged "undisputed facts," and that the administrative record materials cited by Plaintiffs were not "admissible to establish Plaintiffs' standing" because they did not meet the procedural requirements of Federal Rule of Civil Procedure 56. Mem. at 3 (citing *Defenders of Wildlife*, 504 U.S. at 561). The panel did not address the Cranford declaration.

DISCUSSION

I. PLAINTIFFS FAILED TO PROVE STANDING IN THE PROCEEDINGS BELOW

To have standing to invoke the jurisdiction of the federal courts under Article III of the Constitution, a plaintiff must demonstrate, at an "irreducible minimum," an "actual or imminent" injury that is (1) "concrete and particularized," (2) "fairly traceable" to the challenged action, and (3) likely to be "redressed by a favorable ruling." *Defenders of Wildlife*, 504 U.S. at 560 (1992) (citations and internal quotations marks omitted). When an organization sues on behalf of its members, it must show that at least one of its members has suffered such injury.

Teamsters Local Union No. 117 v. Washington Dept. of Corrections, 789 F.3d 979, 985 (9th Cir. 2015).

As the Supreme Court explained in *Defenders of Wildlife*, a plaintiff's burden to prove the facts necessary to establish "injury in fact" and the other elements of standing is no different from the plaintiffs' burden on the merits. *See* 504 U.S. at 561-62. When responding to a motion for summary judgment, a plaintiff may not rest on the factual allegations in an unverified complaint, but must submit affidavits or other evidence, in accordance with the requirements of Rule 56. *Id.* at 561. Under that rule, a plaintiff "asserting that a fact cannot be . . . genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A).

As documented above (pp. 2-6), Plaintiffs NCIP and CERA filed no affidavits or declarations, and cited no record evidence on standing, in the proceedings below, but instead rested on their unverified allegations. For this reason, the district court lacked jurisdiction, and the panel correctly remanded for dismissal. In their petition for rehearing and rehearing en banc, Plaintiffs contend that the panel erred by not crediting: (a) the supposed "undisputed" facts that the Plaintiffs alleged below; (b) certain evidence from the administrative record that

Plaintiffs proffered for the first time on appeal; and (c) the Supreme Court's rulings in *Patchak* and *Lexmark International, Inc. v. Static Control Components Inc.*, 134 S.Ct. 1377 (2014). These arguments are each mistaken and do not demonstrate any ground for rehearing.

A. The Panel Correctly Held that Defendants Did Not Stipulate to Plaintiffs' Allegations

Plaintiffs argue (Pet. at 14) that Federal Defendants' should be deemed to have "admitted" Plaintiffs' allegations regarding standing, because Federal Defendants "did not oppose [Plaintiffs'] statement of undisputed facts or offer contrary evidence disputing NCIP's standing." This argument disregards Plaintiffs' failure to meet their initial burden.

Under the local rules of the Eastern District of California, any motion for summary judgment

> shall be accompanied by a "Statement of Undisputed Facts" that shall enumerate discretely each of the specific material facts relied upon in support of the motion and cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon to establish the fact.

E.D. Cal. R. 260(a). Any opposition to such motion "shall reproduce the itemized facts" from the Statement of Undisputed Facts and admit or deny each fact, and each denial shall be supported with a record citation. E.D. Cal. R. 260(b). As Plaintiffs note (Pet. at 14), under Local Rule 260 and Federal Rule 56, the failure to deny a properly-supported "undisputed fact" may be treated as an admission for

summary judgment purposes. *See Beard v. Banks*, 548 U.S. 521, 527 (2006); *Martinez v. Columbia Sportswear*, 859 F. Supp. 2d 1174, 1177 (E.D. Cal. 2012).

This rule applies, however, only "if the movant satisfies its initial burden." *Id.* at 1177; *accord Beard*, 548 U.S. at 527. Because Plaintiffs had the burden to prove standing and failed to provide evidentiary support for their standing allegations as required by local rule and Federal Rule 56, the Federal Defendants had no obligation to produce evidence to dispute Plaintiffs' allegations. *Id.* After Plaintiffs filed their Statement of Undisputed Facts without proper evidentiary support, Federal Defendants continued to contest Plaintiffs standing in light of the unsupported allegations. *See* ECF #94 at 8-11. Thus, as the panel correctly held (Mem. at 3), Federal Defendants did not stipulate to Plaintiffs' allegations. Rather, Federal Defendants were entitled to summary judgment on the issue of standing, in light of Plaintiffs' failure to meet their initial evidentiary burden. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323-26 (1986).

B. The Panel Correctly Determined that Plaintiffs' Belated Citation to the Administrative Record Was Insufficient to Show Standing

The panel also correctly concluded that Plaintiffs did not meet their evidentiary burden on summary judgment by belatedly citing to the administrative record. In their reply brief, Plaintiffs argued for the first time that their standing was evidenced by informal comment letters that they submitted to Interior in opposition to the land-into-trust application by the Ione Band. *Compare* Plaintiffs'

Reply Brief at 30-32 *with* ECF #93 at 23 (standing argument before district court). Although this Court ordinarily will not consider an argument raised for the first time on appeal, *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009), the panel considered Plaintiffs argument and held that the materials cited by Plaintiffs were not "admissible to establish . . . standing," because they did not "meet the [procedural] requirements of Federal Rule of Civil Procedure 56." Mem. at 3.

Contrary to Plaintiffs' argument (Petition at 12-17), this holding is correct and does not conflict with precedent from any court. As noted above (p. 7), when making or responding to a motion for summary judgment, a party must support or dispute necessary factual allegations via affidavits, declarations, depositions, stipulations, or "other materials" "in the record." Fed. R. Civ. P. 56(c)(1)(A). In an action challenging agency action, the administrative record arguably becomes part of the court's record. Consistent with this view, the D.C. Circuit has stated that a petitioner, on a petition for review of agency action filed originally in the court of appeals, may rely on the administrative record to establish Article III standing, if the materials in the administrative record are "sufficient" for this purpose. *See Sierra Club v. EPA*, 292 F.3d 895, 899 (D.C. Cir. 2002).[3]

[3] The D.C. Circuit held that, in such cases, the "petitioner's burden of production in the court of appeals is the same as that of a plaintiff moving for summary judgment in district court." *Id.* at 899. The D.C. Circuit has since adopted a local rule for cases involving "direct review . . . of administration actions." *See* D.C. Cir. R. 28(a)(7). Under this rule, when a petitioner's "standing is not apparent from the

It does not follow, however, that any assertion in any document in an administrative record will constitute competent evidence to show standing at the summary judgment phase of a suit challenging agency action. In notice-and-comment proceedings before an agency, any person or entity professing an interest in the proposed action may submit comments, and all comments ordinarily become part of the administrative record, without verification, whether or not the submitter would have standing to object to the proposed action in court. In contrast, "[i]t is well settled that unauthenticated documents cannot be considered on a motion for summary judgment." *Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir. 1987); *see also* Fed. R. Civ. P. 56(a)(4) ("an affidavit or declaration" in support of a motion for summary judgment "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated"). Because informal comment letters submitted during agency notice-and-comment proceedings do not conform in "manner and degree" to the evidence generally required for summary judgment, *id.*, the panel correctly held (Mem. at 3) that such letters are insufficient to demonstrate a plaintiff's standing to challenge agency action in court. *See Defenders of Wildlife*, 504 U.S. at 561. Plaintiffs cite no authority to the contrary.

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administrative record," the petitioner must submit supplemental evidence and argument addressing standing. *Id.*

To be sure, there is precedent for the proposition that, when a plaintiff is the "object" of agency action—e.g., when a plaintiff has applied for an administrative benefit or is party to an administrative adjudication—there generally will be "little question" regarding the plaintiff's standing to challenge an adverse agency decision. *Defenders of Wildlife*, 504 U.S. at 561-62; *see also Sierra Club*, 292 F.3d at 900; *Fund for Animals v. Norton*, 322 F.3d 728, 734 (D.C. Cir. 2003). Here, however, NCIP and CERA participated in the proceedings before Interior only as *opponents* of a third-party application by the Ione Band. This type of participation—open to any person or entity without regard to personal interest or injury—does not give the Plaintiffs "self-evident" standing to challenge Interior's decision. *Sierra Club*, 292 F.3d at 900; *see also Defenders of Wildlife*, 504 U.S. 562 (when plaintiff is not the object of government action, standing is "substantially more difficult" to establish).

Further, the two cases that Plaintiffs cite from this Court (Pet. at 13) are inapposite. In *Occidental Engineering Co. v. INS*, 753 F.2d 766 (9th Cir. 1985), this Court held that a party cannot avoid summary judgment on the merits of an APA suit by disputing facts in the administrative record, because the district court does not sit as a trier of fact on such questions, but instead reviews the agency's findings under a deferential standard. *Id.* at 769 (citing 5 U.S.C. § 706(2)). In *Northwest Motorcycle Association v. USDA*, 18 F.3d 1468 (9th Cir. 1994), this

Court held that an *agency* did not act arbitrarily in relying on comment letters to find a "user conflict" for purposes of closing forest trails to motorized vehicles. *Id.* at 1475-76. Neither case addressed the use of informal comment letters to show standing, a matter on which the district court is the trier of fact.

Finally, even if comment letters might be sufficient, in theory, to show Article III standing at the summary-judgment phase of a suit challenging agency action, the comment letters belatedly cited by NCIP and CERA in this case (Pet. at 6-7) fall short on substance. These letters assert general grievances on behalf of the surrounding community, but they do not present particular facts about the letter writers, such as their place of residence in relation to the Plymouth Parcels, or the concrete injuries they will suffer from tribal gaming on those parcels. *Id.* Moreover, comment letters submitted between 2003 and 2009 do not show that the letter writers were members of NCIP or CERA or were residents of Plymouth or Amador County at the time of NCIP's suit in 2012. For this reason alone, the panel's refusal to find standing based on the comment letters was not error.

C. The Panel's Decision Is Not Contrary to *Patchak* or *Lexmark International*

Contrary to Plaintiffs' argument (Pet. at 12-13), there is also no conflict between the panel's decision and the Supreme Court's opinions in *Patchak* and *Lexmark*. Similar to the present case, *Patchak* involved a suit by a property owner who alleged that a decision by Interior to take land into trust for tribal gaming

would negatively impact the use and enjoyment of his neighboring property. *See* 567 U.S. at 213. Unlike the present case, however, *Patchak* did not involve Article III standing. Rather, the Supreme Court addressed whether the plaintiff had "*prudential* standing" to sue under the APA, in light of arguments that plaintiff's concerns regarding property use did not fall within the "zone of interests" of the IRA. *Id.* at 224-25. In rejecting that argument, the Supreme Court observed that the "zone of interests" test "is not meant to be especially demanding." *Id.* at 225 (quoting *Clarke v. Securities Industry Ass'n.*, 479 U.S. 388, 399 (1987)). In *Lexmark* the Supreme Court reiterated this view that the "zone of interests" test represents a "lenient approach." 134 S.Ct. at 1389.

As the Supreme Court also explained in *Lexmark*, the "zone of interest" test is properly viewed as a tool of statutory construction for determining whether and when Congress intended to provide a cause of action. *Id.* at 1387-89. *Patchak* and *Lexmark* stand for the proposition that the "zone of interest" test should be applied "lenient[ly]" in APA cases, in light of the "generous review provisions" provided by that statute. *Id.* at 1389 (internal quotations marks omitted). This holding has no bearing on Article III standing or on the *procedural* requirements a party must meet to establish such standing in response to a motion for summary judgment.

II. THE PANEL PROPERLY DECLINED TO CONSIDER PLAINTIFFS' POST-ARGUMENT STANDING DECLARATION

This Court will not allow a party to supplement the record on appeal, absent extraordinary circumstances." *Teamsters Local Union*, 789 F.3d at 986. When filing the Cranford declaration, after oral argument, Plaintiffs asserted only that the declaration "respond[ed] to the Court's questions" at argument. DktEntry #66 at 1. In their petition for rehearing (Pet. at 9-11), Plaintiffs rely on the Cranford declaration as though it were timely filed. Plaintiffs proffer no good cause or excuse for the late filing, and they do not cite any extraordinary circumstances warranting the late filing.

In *Teamsters Local Union*, this Court accepted standing affidavits that were filed by a plaintiff union in response to a motion to dismiss on appeal. *See* 789 F.3d at 986. But in that case, unlike here, the state-government defendant never moved, in district court, for summary judgment on standing and did not otherwise contest the union's standing allegations. *Id.* Moreover, during discovery, the defendant "acknowledged in general terms" the "job-related harms" asserted by the union as a basis for standing. *Id.* On these facts, this Court agreed to accept the affidavits "for the limited purpose" of confirming the acknowledged harms. *Id.*; *see also Americans for Safe Access v. DEA*, 706 F.3d 438, 443 (D.C. Cir. 2013) (court may accept supplemental affidavits where petitioner "reasonably, but

mistakenly, believed that the initial filings . . . had sufficiently demonstrated standing").

In the present case, in contrast, Federal Defendants challenged Plaintiffs' standing throughout the district court proceedings, *see supra* pp. 2-6, giving Plaintiffs ample notice of the need to produce declarations or other evidence to prove standing. Because Plaintiffs provided no excuse for failing to present a standing declaration to the district court and offered no justification for supplementing the record on appeal, the Cranford declaration is not properly considered. On this record, Plaintiffs lack any basis for arguing that the panel improperly "overlooked" this evidence. *See* Fed. R. App. P. 40(a)(2).

III. PLAINTIFFS' CLAIMS LACK MERIT FOR REASONS STATED IN THIS COURT'S OPINION IN *COUNTY OF AMADOR*

Should this Court consider the untimely Cranford declaration and find standing on that basis, this Court should grant rehearing and summarily affirm. Plaintiffs raised two principal arguments on appeal: (1) that the then Acting Assistant Secretary-Indian Affairs lacked delegated authority to sign the 2012 ROD approving the trust acquisition; and (2) that the Ione Band was not federally recognized in 1934 and thus not eligible for a trust acquisition under the IRA. This Court addressed and rejected both arguments in its October 6, 2017 opinion in *County of Amador* (No. 15-17253), a companion case also involving Interior's

2012 decision to take the Plymouth Parcels into trust for the Ione Band. *See County of Amador*, 872 F.3d at 1019 n.5 (Acting Assistant Secretary "automatically" assumed Assistant Secretary's authority to take land into trust under the IRA and was thus "empowered to take the Plymouth Parcels into trust"); *id.* at 1020-24 (IRA does not require a showing that Ione Band was federally recognized in 1934).

CONCLUSION

For the foregoing reasons, the petition for rehearing and rehearing en banc should be denied.

Respectfully Submitted,

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December 22, 2017
DJ No. 90-6-21-01054

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Federal Defendants' Answering Brief* 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 **December 22, 2017.**

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.

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Form 11. Certificate of Compliance Pursuant to 9th Circuit Rules 35-4 and 40-1 for Case Number 15-17189

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the back of each copy of the petition or answer.*

I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached petition for panel rehearing/petition for rehearing en banc/answer to petition (check applicable option):

☒ Contains 3,882 words (petitions and answers must not exceed 4,200 words), and is prepared in a format, type face, and type style that complies with Fed. R. App. P. 32(a)(4)-(6).

or

☐ Is in compliance with Fed. R. App. P. 32(a)(4)-(6) and does not exceed 15 pages.

Signature of Attorney or Unrepresented Litigant: s/ John L. Smeltzer

Date: Dec 22, 2017

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