



September 30th, 2026

Honorable Patricia Guerrero, Chief Justice
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Re: *Coleman v. United Services Automobile Ass’n*, No. 25-793 (9th Circuit); Supreme Court No. S298496 – Letter Supporting Request for Decision of Certified Questions (Cal. R. Ct. 8.548(e))

Dear Chief Justice Guerrero and Associate Justices:

Consumer Federation of America respectfully urges the Court to grant the Ninth Circuit’s request and decide both certified questions in *Coleman v. United Serves Automobile Ass’n*, No. 25-793 (9th Cir). As advocates for consumers, including Service Members, Veterans, and their families, we believe that these questions should be resolved in the interest of justice and marketplace fairness. Beyond the current and former enlisted personnel who are the plaintiffs and class members in this case, these questions seek an important clarification about the protections and rights afforded all insurance consumers under Proposition 103 and California law.

The Consumer Federation of America (CFA)¹ is an association of over 200 state and local consumer groups that works to advance consumer interests through research, advocacy, and education. For over three decades, CFA has conducted research concerning the auto insurance market and advocated on behalf of insurance consumers to address key issues related to affordability, availability, and fairness in the auto insurance market. The organization has long studied the impact of Proposition 103, assessing it as a model reform for other states.² As noted below, CFA has paid particular attention to the availability of civil remedies for alleged violations of Proposition 103, including in an amicus brief submitted to this Court in *Villanueva v. Fidelity National Title Co.* (2021) 11 Cal.5th 104.³

¹ <https://consumerfed.org>

² See, for example, “Auto Insurance Regulation – What Works” (February 11, 2019) <https://consumerfed.org/news/press-releases/americans-could-save-billions-on-auto-insurance-through-stronger-consumer-protections-and-improved-state-regulations/>

³ CFA’s amicus brief is available at 2020 WL 418747.



Additionally, Veteran Saves⁴, a program of CFA’s America Saves⁵ project, is dedicated to empowering Service Members transitioning out of the military, Veterans, and their families to build financial confidence, save effectively, and reduce debt. America Saves aims, through its Veteran Saves program, to address the unique financial challenges faced by transitioning Service Members and Veterans. Its initiatives focus on practical support such as reducing debt, navigating housing transitions, securing access to reliable banking, and managing the financial aspects of entering civilian employment, including the purchase of insurance products. We therefore have a strong interest in the outcome of this case and its impact on Service Members and Veterans, as well as its broader implications for all consumers spending money on insurance coverage.

The first question presented to the Court asks whether USAA can lawfully charge junior enlisted servicemembers higher premiums than officers for statutory good driver coverage. The second question asks the Court to decide whether those same servicemembers can recover the premiums they overpaid through a lawsuit. As of this writing no California court has answered the first question, and California courts have issued conflicting rulings on the second question. Only this Court can resolve the questions with binding effect.

USAA sorts servicemembers based on their pay grade. Its underwriting guidelines assign officers and senior enlisted members in paygrades E-7 and above to United Services Automobile Association, which offers lower rates to good drivers than does USAA General Indemnity Company (GIC), to which enlisted members in paygrades E-6 and below are consigned. *Coleman v. United Servs. Auto. Ass’n*, No. 25-793, slip op. at 6 (9th Circuit September 10th, 2026) (order certifying questions). The parties do not dispute that almost 200,000 California policyholders are harmed by USAA’s underwriting. The good drivers who pay the higher premiums are the most junior members of the military—individuals and families that absorb the costs of relocation, deployment, and childcare on the lowest military pay.

Section 1861.02(b)(1) of the California Insurance Code, enacted by Proposition 103, requires insurance companies to sell a Good Driver Discount policy to any person who meets the statutory qualifications. Section 1861.16(b) of the California Insurance Code, which is an amendment to Proposition 103, stipulates that an insurance company must sell a good driver a policy “from an insurer within that common ownership, management, or control group, which offers the lowest rates for that coverage.” The California Legislature passed this amendment to close a loophole where insurance companies steered good drivers into higher-price affiliates. *Coleman*, slip op. at 7. USAA claims that section 11628(f)(1), which was passed by the

⁴ <https://veteransaves.org>

⁵ <https://americasaves.org>



Legislature after Proposition 103, not only allows insurance companies to limit coverage to persons in military service “or segments of categories thereof” but also lets them charge one rank more than another, “notwithstanding” the protections of Proposition 103.

The Ninth Circuit Court of Appeals asks whether section 1861.16(b) prohibits USAA’s practices. As the Ninth Circuit points out, two federal district judges in this case reached opposite conclusions. The first judge ruled that nothing in section 11628(f)(1) excuses compliance with section 1861.16(b), while the second judge ruled that it does. *Coleman*, slip op. at 8-9, 11. Section 11628(f)(1) intended to allow an insurance company to only sell insurance policies to military personnel. Whether this section allows USAA to give a lieutenant a larger good driver discount than a sergeant with the same record is a question of California law with major statewide consequences, and the Court should decide it.

If the Court concludes that, under normal principles of statutory interpretation, section 11628(f)(1) overrides section 1861.16(b), the Ninth Circuit then asks whether that would make section 11628(f)(1) an invalid legislative amendment of Proposition 103 under this Court’s decision in *Amwest Surety Insurance Co. v. Wilson*, 11 Cal. 4th 1243, 1265 (1995). USAA’s premise – that the Legislature may restrict the application of a ballot initiative after its passage merely by inserting a superseding “notwithstanding” clause – cannot be squared with Proposition 103’s conditions on legislative amendment, as discussed in *Amwest*, and would impair California’s voters’ exercise of their initiative rights.

The second question is also important for military families. If sections 1860.1 and 1860.2 bar refunds whenever an insurance company violates the requirement to offer a good driver policy at the lowest available price, an enlisted family could prove that USAA violated section 1861.16(b) and still recover none of the overcharges.

Sections 1860.1 and 1860.2 are relics of the insurance regime that preceded Proposition 103.⁶

Section 1860.1 provided protections against antitrust claims for anti-competitive actions permitted under the old regime. It was retained by the voters to provide antitrust immunity only for the greatly narrowed concerted action permitted by section 1861.03(b). (See *Donabedian v. Mercury Insurance Co.* (2004) 116 Cal.App.4th 968, 990-991 [“this is not to say that sections 1860.1 and 1860.2 no longer serve any purpose. For example, insurers are still permitted to engage in some concerted and joint activity under provisions of McBride-Grunsky that Proposition 103 did not repeal.”])

⁶ CFA carefully analyzed these provisions in its extensive amicus brief in *Villanueva*, see footnote 3 above.



Section 1860.2 sought to bar the application of laws outside the Insurance Code, which Proposition 103 specifically permits. (Section 1861.03(a); see *Donabedian, supra*, 116 Cal.App.4th at 978 [“[T]he statutory sections that permit this suit are part of the same chapter as section 1860.2 and are not ‘other law.’”])

The Ninth Circuit correctly found that California Courts of Appeal are divided on whether those two sections nonetheless bar consumer claims, with several Court of Appeal decisions holding that 1860.1 and 1860.2 have a reach never contemplated when those statutes were adopted and retained by the electorate in 1988. This Court should resolve the conflict.

By accepting this case and deciding both questions, the Court will “secure uniformity of decision” and “settle an important question of law,” which are the grounds on which this Court exercises its discretion under California Rule of Court 8.548(f)(1).

We therefore respectfully urge the Court to grant the Ninth Circuit’s request and decide both certified questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Heller', is positioned above the typed name.

Douglas Heller, Director of Insurance
Consumer Federation of America

PROOF OF SERVICE
BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION,
EMAIL TRANSMISSION AND/OR PERSONAL SERVICE

State of California, City of Los Angeles, County of Los Angeles

I am over the age of 18 years and not a party to the within action. My business address is 1620 I Street, NW - Suite 200, Washington, DC 20006.

On September 30, 2026, I caused service of true and correct copies of the document entitled

LETTER SUPPORTING REQUEST FOR DECISION OF CERTIFIED QUESTIONS

upon the persons named in the attached service list, in the following manner:

1. If marked FAX SERVICE, by facsimile transmission this date to the FAX number stated to the person(s) named.
2. If marked EMAIL/ELECTRONIC SERVICE, by electronic mail transmission this date to the email address stated or by submitting an electronic version of the document to TrueFiling through the user interface at www.tf3.truefiling.com.
3. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, by placing this date for collection for regular or overnight mailing true copies of the within document in sealed envelopes, addressed to each of the persons so listed. I am readily familiar with the regular practice of collection and processing of correspondence for mailing of U.S. Mail and for sending of Overnight mail. If mailed by U.S. Mail, these envelopes would be deposited this day in the ordinary course of business with the U.S. Postal Service. If mailed Overnight, these envelopes would be deposited this day in a box or other facility regularly maintained by the express service carrier, or delivered this day to an authorized courier or driver authorized by the express service carrier to receive documents, in the ordinary course of business, fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 30, 2026 at Los Angeles, California.



Douglas Heller

Service List

Harvey J. Rosenfield
Benjamin Powell
Consumer Watchdog
6330 San Vicente Boulevard, Suite 250
Los Angeles, CA 90048
Harvey@consumerwatchdog.org
Ben@consumerwatchdog.org

- ☐ FAX
☐ U.S. MAIL
☐ OVERNIGHT MAIL
☐ HAND DELIVERED
☒ EMAIL/ELECTRONIC SERVICE

Counsel for Plaintiffs and Appellants

Kahn Abrahm Scolnick
Daniel Rolf Adler
James Alexander Tsouvalas
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
KScolnick@gibsondunn.com
dadler@gibsondunn.com
jtsouvalas@gmail.com

- ☐ FAX
☐ U.S. MAIL
☐ OVERNIGHT MAIL
☐ HAND DELIVERED
☒ EMAIL/ELECTRONIC SERVICE

Counsel for Defendants and Respondents

Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939
Clerk_opinions@ca9.uscourts.gov

- ☐ FAX
☐ U.S. MAIL
☐ OVERNIGHT MAIL
☐ HAND DELIVERED
☒ EMAIL/ELECTRONIC SERVICE