



February 25, 2026

Via E-mail & U.S. Mail

Bob Nelson
Chairman
Santa Barbara County Board of Supervisors
105 E Anapamu Street
Santa Barbara, CA 93101
nelson@bos.countyofsb.org

Re: Santa Barbara County Wine Improvement District

Dear Chairman Nelson:

We represent Flying Goat Cellars, a winery located in the City of Lompoc in Santa Barbara County. As you know, in February 2025 the Santa Barbara County Board of Supervisors (“Board”) approved the creation and implementation of the Santa Barbara County Wine Improvement District (“SBCWID”). The SBCWID is a “benefit assessment district” created for the purpose of raising revenue for the Santa Barbara Vintners Association (“SBV”) to use for advertisements and promotions for the Santa Barbara wine industry. This revenue is raised by levying a one-percent assessment of the gross sales revenue of assessed wine tasting facilities, and on purchases made within the state.¹ All wineries that make qualifying sales are required to pay this assessment, and all are now *de facto* members of the SBV, irrespective of their desire or agreement with the promotional priorities of the SBV.

¹ According to SBV, the one-percent assessment applies to all direct to consumers sales, including: Wine sales (tasting room, online, and phone orders); wine club shipments; tasting fees, tours, and event tickets, merchandise and prepared food. Exempted from assessment are wholesale wine sales and out-of-state transactions.

We write to express concerns that the creation of this benefit assessment violates the First and Fifth Amendments of the U.S. Constitution. The assessment unconstitutionally compels speech and forces association, as each winery is now required to be associated with the SBV. Further, the assessment amounts to a taking under the Fifth Amendment and there is no legitimate public use justifying the taking.

First, the First Amendment’s protections for free speech prohibit the government from compelling speech through subsidization of speech with which the subsidizer disagrees. *See United States v. United Foods, Inc.*, 533 U.S. 405 (2001). These protections apply to so called “commercial speech” as well. *Id.* at 415–16 (A mandatory assessment on all mushroom sellers to fund advertisements to boost mushroom sales unconstitutionally compelled speech). As the Supreme Court has recently put it “[c]ompelling a person to subsidize speech of other private speakers raises ... First Amendment concerns.” *Janus v. AFSCME*, 585 U.S. 878, 893 (2018); *see also Cal-Almond, Inc. v. U.S. Dep’t of Agric.*, 14 F.3d 429 (9th Cir. 1993) (holding that the Department of Agriculture’s almond marketing program violated producers’ First Amendment rights by requiring the funding of certain advertisements).

Courts have only upheld similar assessments that compel speech when part of a larger regulatory scheme or when the speech being subsidized is “government speech.” Neither exception applies here. There is no larger regulatory scheme with the SBCWID and the speech of the Association is not government speech, as the Association is a private entity. Importantly, the Board is not required to approve of the advertisements, and no member of the Board sits on the SBV Board to directly oversee the operations of the SBCWID.

Here, Flying Goat Cellars does not support the advertisement and the promotional direction of the SBV. The County, however, is forcing Flying Goat to monetarily support the speech of a private entity—the SBV—against its wishes.

Second, the First Amendment protects the right to freely associate or, importantly here, *not associate* with a particular group. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (“Freedom of association ... plainly presupposes a freedom not to associate”). Here, all wineries in Santa Barbara County are effectively *de facto* members of the SBV.² None of the wineries received an opportunity to opt-in or opt-out of this association. Flying Goat and its owner do not want to associate with SBV and its advertising priorities.

Compelled membership is only permissible if it serves a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedom. *See Crowe v. Oregon State Bar*, 112 F.4th 1218, 1233 (9th Cir. 2024). Here, there is no *compelling* state interest in promoting a private organization’s choice of advertising activities in the County. Even if there was a compelling state interest, there are less restrictive means of achieving that interest that respect the rights of wineries who do not wish to be associated with the SBV.

Accordingly, to comply with the First Amendment, the County must ensure individual wineries like Flying Goat have the opportunity to opt-in to the SBV—or at least be given the opportunity to *opt-out* of the SBV—and the associated one-percent assessment that functions as a membership fee.

² The Santa Barbara Vintners Board of Directors is considering allowing wineries outside of Santa Barbara County that are interested in joining the Association to pay a one-percent assessment fee just like current *members*. *See* Santa Barbara Vintners Board of Directors Meeting; November 18, 2025, meeting notes. <https://vintnersconnect.com/wp-content/uploads/2026/01/November-18-2025-SBV-Board-Meeting-Minutes.pdf>.

The SBCWID also raises constitutional concerns under the Fifth Amendment. The Fifth Amendment takings clause provides that no “private property [shall] be taken for public use, without just compensation.” It protects “private property,” including personal property and real property. *See Horne v. Dep’t of Agric.*, 576 U.S. 350 (2015). The Supreme Court has consistently held that a physical appropriation of property is a *per se* taking, even when the taking is monetary. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 615 (2013) (explaining “we have repeatedly found takings where the government, by confiscating financial obligations, achieved a result that could have been obtained by imposing a tax.”); *see also Brown v. Legal Found. of Wash.*, 538 U.S. 216 (2003) (holding that the mandated transfer of interest from IOLTA to the Washington Bar Association’s charitable foundation constituted a *per se* taking); *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980).

Here, there has been a physical taking of money—Flying Goat’s personal property. The taking violates the Constitution because the taking is not for a “public use.” *Horne*, 576 U.S. 370–71 (Thomas, J., concurring). Instead, the County gives the money that has been extracted from wineries directly to a private organization to be used for the benefit of other private businesses and wineries in the County.

To prevent ongoing and future violations of Flying Goat’s constitutional rights, and the possibility of a lawsuit seeking to enforce those rights, we respectfully request that the County amend the ordinance to require that a winery is only a part of the Association, and thereby required to pay the fee, if the winery voluntarily “opts-in” to the SBCWID.

Our staff is available at any time to discuss the constitutional issues raised by the SBCWID.

Chairman Bob Nelson
February 25, 2026
Page 5 of 6

We appreciate your prompt and thoughtful consideration of these matters and look forward to receiving confirmation that the County has taken actions to bring its BID into compliance with the U.S. Constitution.

Should you have any questions regarding this matter, please do not hesitate to contact me directly at (602) 633-8996 or ashelton@goldwaterinstitute.org.

Regards,



Adam Shelton
Staff Attorney
Scharf-Norton Center for Constitutional Litigation
at the Goldwater Institute

cc:
Roy Lee
roylee@countyofsb.org

Laura Capps
lcapps@countyofsb.org

Joan Hartmann
jhartmann@countyofsb.org

Steve Lavagnino
Steve.lavagnino@countyofsb.org

Mona Miyasato, County Executive Officer
mmiyasato@countyofsb.org

Rachel Van Mullem, County Counsel
Rvanmull@countyofsb.org

Mary Pat Barry, Senior Deputy County Counsel
mpbarry@countyofsb.org

Caroline Patton Kim, Senior Deputy County Counsel
ckim@countyofsb.org

Chairman Bob Nelson
February 25, 2026
Page 6 of 6

Alison Laslett, CEO of SBV
alison@sbcountywines.com

Pierre LaBarge, President
pierre@labargewinery.com

Steve Gerbac, Vice President
Steven@Rusack.com

Jason Djang, Secretary
jason@braveandmaiden.com

Philip Carpenter, General Manager
phil@sbcountywines.com