No. _____

In the
Supreme Court of the United States

GERAWAN FARMING, INC.,

Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of California

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the State of California may impose a contract on one private employer and its employees through non-consensual, compulsory arbitration, thereby abrogating the workers' rights to determine their own bargaining representative, without violating the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the United Farm Workers of America ("UFW") was real party in interest below. Gerawan farmworkers seeking to decertify the UFW and/or to participate in the compulsory contracting proceedings sought to intervene in the administrative proceedings below, but were denied. They will appear as *amici curiae*.

CORPORATE DISCLOSURE STATEMENT

Gerawan Farming, Inc., has no parent corporation and has issued no stock to any publicly held corporation.

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PETITION FOR WRIT OF CERTIORARI

This case presents the question whether a state may impose contract terms on one private employer and its employees against their will by means of non-consensual arbitration. Under a 2002 amendment to California's Agricultural Labor Relations Act ("ALRA"), California's Agricultural Labor Relations Board ("ALRB") may compel a private agricultural employer into a state-administered process euphemistically known as "mandatory mediation and conciliation" ("MMC"), in which the ALRB *dictates* a collective bargaining agreement without the approval of the employer and without submitting the "agreement" to the workers for approval. A California appeals court held the MMC statute unconstitutional, but the California Supreme Court reversed. In doing so, the court expressly declined to follow this Court's on-point precedent, which requires the opposite conclusion.

In three related cases that are the foundation of modern labor law, this Court unanimously held that an analogous compulsory arbitration scheme infringes on the liberty and property interests of private employers and employees, and violates the employees' freedom of association. *See Wolff Packing Co. v. Indus. Court* (*Wolff I*), 262 U.S. 522 (1923); *Dorchy v. Kansas*, 264 U.S. 286 (1924); *Wolff Packing Co. v. Indus. Court* (*Wolff II*), 267 U.S. 552 (1925) (collectively, "*Wolff*" or "the *Wolff* trilogy"). *Wolff* established the constitutional dividing line between mandatory collective *bargaining* and compulsory *imposition of terms*, which has guided American labor law ever since. *See, e.g.*, *NLRB v. Jones & Laughlin Steel*

Corp., 301 U.S. 1, 45 (1937) (U.S. labor law "does not compel agreements between employers and employees," and "does not compel any agreement whatever"). The *Wolff* trilogy has never been overruled or even questioned by this Court or—until this case—any other court. With virtually no analysis or explanation, however, the California Supreme Court below dismissed *Wolff* as a "completely repudiated" relic of the *Lochner* era. App.18.

When a state court flouts this Court's holdings, certiorari is essential to maintain uniformity of federal law. *See* S. Ct. R. 10(c). The proper practice is for lower courts to "follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989).

But the need for this Court's intervention is especially acute in this case. The union that invoked the MMC statute against Petitioner—Gerawan Farming, Inc. ("Gerawan")—had "disappeared from the scene" for the preceding *17 years*, App.56, during which time the union made literally *no* contact with Petitioner or its employees. In late 2012, the union resurfaced and invoked MMC. In response, Gerawan farmworkers petitioned for a secret ballot decertification election. An election was held over four years ago; the ALRB impounded the ballots, set aside the election, dismissed the petition and, over the objections of Petitioner and thousands of its employees, imposed an MMC contract that requires the farmworkers to pay 3% of their earnings to the union and forces Petitioner to fire employees who refuse to comply. Even worse, the contract prevents

the employees from seeking to rid themselves of the union for years to come: As interpreted by the California Supreme Court, California labor law prohibits farmworker employees from seeking to decertify a union until the final year of a collective bargaining agreement, and the MMC decree is treated under California law as if it were a consensual collective bargaining agreement. App.52-53 (citing Cal. Labor Code §1156.7(c)).

In short, the MMC process imposes terms and conditions on one employer through a contract to which neither the employer nor the workers ever assented, fails to apply similar terms and conditions to similarly situated competitors, and abrogates the workers' freedom of association and self-determination. The California Supreme Court's decision upholding that scheme cannot be squared with this Court's clear precedent, and plainly warrants this Court's review.

OPINIONS BELOW

The California Supreme Court's opinion is reported at 405 P.3d 1087 and reproduced at App.1-54. The California Court of Appeal's opinion is reported at 187 Cal. Rptr. 3d 261 and reproduced at App.55-130. The ALRB's decision and order are available at 39 ALRB No. 17 and reproduced at App.131-33.

JURISDICTION

The California Supreme Court issued its opinion on November 27, 2017. On February 8, 2018, Justice Kennedy extended the time for filing this petition to and including March 28, 2018. This Court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant text of the Fourteenth Amendment to the U.S. Constitution, U.S. Const. amend. XIV, and relevant provisions of the ALRA, Cal. Labor Code §1140 *et seq*., are reproduced at App.134-141.

STATEMENT OF THE CASE

A. Legal Background

The National Labor Relations Act ("NLRA") exempts from its coverage "any individual employed as an agricultural laborer." 29 U.S.C. §152(3). In 1975, the California legislature filled this gap by enacting the ALRA, the professed purpose of which is to safeguard the right of employees to "bargain collectively through representatives *of their own choosing*." Cal. Labor Code §1152 (emphasis added).

"[T]he agency in charge of the [ALRA's] implementation and administration" is the ALRB. *J.R. Norton Co. v. ALRB*, 603 P.2d 1306, 1308 (Cal. 1979). One of the ALRB's primary functions is to "conduct[] and certify[] elections" pertaining to labor organizations. App.1-2 (citation omitted). Subject to certain restrictions as to timing, when a majority of the workforce petitions for decertification of a union, the workers are entitled to a secret ballot election to determine whether the union will retain its status as their bargaining representative. Cal. Labor Code §§1156, 1156.3, 1156.4; App.44-45. Until that election takes place, and until a ballot count results in the decertification of the bargaining representative, the union is "certified until decertified," whether or not that union has done anything to discharge its duty of fair representation. App.46.

As with the NLRA, the ALRA long required employers and certified unions to negotiate in good faith, without compelling "either party to agree to a proposal or require the making of a concession." Cal. Labor Code §1155.2(b). But in 2002, at the behest of the United Farm Workers of America ("UFW"), California concluded that a bargaining process requiring mutual consent to the terms did not lead often enough to collective bargaining agreements. App.6-7. The legislature thus deviated from the federal model by imposing compelled contracting—or "compulsory interest arbitration"—via MMC. App.7; *see* Cal. Labor Code §1164 *et seq*. As the Court of Appeal below observed, although the MMC statute "refer[s] to the end result as a 'collective bargaining agreement,' there is no agreement." App.112. The employer does not "agree to be bound by the terms of employment imposed" or "agree to submit to interest arbitration at all." App.112. Nor are the workers allowed to vote on whether to accept the contract, as is typical in the case of a contract negotiated between management and labor. The "agreement" is in reality a state-imposed directive, its terms set by the state labor board.

The MMC statute applies when the employer and the union have failed to reach agreement over an initial collective bargaining agreement. *See* Cal. Labor Code §1164(a). The process begins when the union files "a declaration that the parties have failed to reach a collective bargaining agreement and a request that the [ALRB] issue an order directing the parties to mandatory mediation and conciliation of their issues." *Id* §1164(a)(1). The declaration must satisfy three conditions: "(a) the parties have failed to

reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (b) the employer has committed an unfair labor practice, and (c) the parties have not previously had a binding contract between them." *Id.* Significantly, the prerequisite unfair labor practice need not relate to the breakdown in negotiations, or indeed to collective bargaining at all. It may (as in this case) relate to events preceding the certification of the union. The MMC statute does not require that the union engage in any bargaining between its initial request and its invocation of MMC; the clock runs even if the union does nothing.[1] Pending decertification petitions do not stay MMC proceedings. *Id.* §1158.

If the ALRB concludes these conditions are satisfied, it "shall immediately issue an order directing the parties to mandatory mediation and conciliation." Cal. Labor Code §1164(b). The state provides a list of approved mediators; if one party refuses to participate in the selection of a mediator, the other party will make that selection. Once empaneled, the mediator may order the parties to submit position statements as to "disputed" contract terms, issue subpoenas, conduct "off the record" confidential mediation, conduct "on the record" trial-like proceedings, and sanction parties who refuse to "participate or cooperate" in the MMC process. *See* Cal. Code. Regs, tit. 8, §20407. Absent agreement, the

[1] The conditions described in text apply to unions that were certified before January 1, 2003. A union certified after that date may request MMC anytime 90 days after making an initial bargaining request with the employer, without satisfying any other condition. *See* Cal. Labor Code §1164(a).

mediator dictates the terms of the collective bargaining agreement—a function beyond the role of "mediator" in the ordinary sense of that term.

The statutory "mediator" has broad discretion to set the terms in accordance with his own views of industrial policy, and may impose conditions on one employer that are not imposed on a competitor. In doing so, the mediator "may consider" certain statutory factors to guide his decisionmaking, such as "[t]he financial condition of the employer and its ability to meet the costs of the contract," but there is no legal requirement that he in fact apply those criteria in reaching his decision. Cal. Labor Code §1164(e). Moreover, the statutory criteria are "nonexclusive" and thus do not preclude the "mediator" from considering factors not listed, nor does the statute provide guidance as to how he should weigh each listed factor should he decide to apply them. App.35.

After the "mediator" decides the terms of the collective bargaining agreement, the employer and the union—but not the workers—have seven days to petition the ALRB for modification of that decision. Cal. Labor Code §1164.3(a). ALRB review is discretionary, highly deferential, and limited to considering whether certain provisions are "unrelated to wages, hours, or other conditions of employment," "based on clearly erroneous findings of material fact," or "arbitrary or capricious." *Id.* Unless the ALRB finds error, the "mediator's" report becomes the final order of the ALRB. *Id.* §1164.3(d).

Within 30 days after the ALRB's order becomes final, the employer and the union may seek review

before either a California appeals court or the California Supreme Court. *Id.* §1164.5(a). The workers may not. Judicial review is limited to examining whether the ALRB "acted without, or in excess of, its powers or jurisdiction"; the ALRB failed to "proceed[] in the manner required by law"; or "[t]he order or decision of the [ALRB] was procured by fraud or was an abuse of discretion." *Id.* §1164.5(b). A court may also determine whether the order violates the U.S. Constitution or the California Constitution. *Id.* §1164.5(b)(4).

After judicial review, the MMC order is treated by law as if it were a consensual collective bargaining agreement, with the consequence that employees may not seek to decertify the union until the contract's final year. *See* App.52-53 (citing Cal. Labor Code §1156.7(c) (decertification petition "shall not be deemed timely unless it is filed during the year preceding the expiration of a collective-bargaining agreement")). By invoking MMC, therefore, a union facing the prospect of decertification can maintain its position as exclusive bargaining representative for years, without any showing of support by the workers it purportedly represents.

B. Factual Background

1. Petitioner Gerawan Farming, Inc. ("Gerawan") is a family-owned agricultural employer that has been harvesting, packing, and shipping stone fruit and table grapes in California's San Joaquin Valley for 80 years. During the course of the year, it employs some

5,000 farmworkers, who consistently earn the highest wages in the industry. App.119 n.38; CR.358.[2]

In 1990, Respondent UFW won a run-off election to become the Gerawan workers' certified bargaining representative. App.11. After a preliminary bargaining session in 1995, the UFW "disappeared from the scene" and ceased all contact with Gerawan and its workers for almost two decades. App.12; App.56. During this time, Gerawan's business model changed significantly. As the Court of Appeal summarized without deciding, "[t]o ensure the quality of its produce, [Gerawan] … developed unique interactive methods to maintain quality control at each step of the harvesting and packing process, including an ability to respond to problems in any individual worker's performance in real time." App.58. To retain and reward productive employees, Gerawan "has consistently paid its direct-hire employees substantially more than the average industry wage, with many being compensated on a sliding-scale system (within a targeted per hour range) based on quality and productivity." App.58. "[T]hese operational features have been and still are central to its ongoing success." App.58.

In October 2012, after virtually every employee who voted in the 1990 election had retired or left the company, the UFW suddenly resurfaced. App.12. "Gerawan asked the UFW to explain its absence but

[2] "CR" refers to the Certified Record filed with the California Supreme Court.

"the UFW refused." App.12.[3] The parties then engaged in 10 bargaining sessions, during which the UFW failed to make any economic proposals, and in March 2013 the union unilaterally invoked MMC against Gerawan. App.12. After finding that the statutory prerequisites had been satisfied, the ALRB in April 2013 compelled the parties into MMC. App.60; CR.146. The unfair labor practice against Gerawan that served as the legal predicate for MMC occurred in the early 1990s, *before* the ALRB even certified the UFW as the bargaining representative for Gerawan's workers, and had nothing to do with the inability of the parties to reach an agreement. *See* App.83-84.

Gerawan farmworkers asked for permission to observe the MMC sessions. The UFW opposed their request; Gerawan did not. The "mediator" barred their entry. The workers then asked the ALRB for leave to intervene. The ALRB denied their motion, holding that the sessions were "confidential and open only to parties," and that the UFW "already adequately represented their interests," CR.232, 235 (quotation marks omitted), even though a majority of the employees then working had signed a petition calling for an election to decertify the UFW as their bargaining representative. The workers then asked for permission to silently observe the "on the record" portion of the MMC process, but the ALRB denied this request too, holding that the public interest was not served by their presence. CR.275-84.

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[3] Gerawan filed an unfair labor practice charge against the union due to its absence for the previous 17 years. *See* CR.42-44. The ALRB dismissed the charge as time-barred.

After two "mediation" sessions, the "mediator" declared the "off the record" process "exhausted," and held two days of "on the record" hearings. CR.361. Thereafter, in September 2013, the "mediator" issued a report unilaterally fixing the terms of the "agreement." App.13. Among other provisions, the imposed contract:

- Required all Gerawan employees to pay union dues or agency fees to the UFW, amounting to 3% of their gross pay, CR.368-71;
- Imposed a "union security" provision, which requires Gerawan to terminate any employee who refuses to pay those dues or agency fees, CR.368-71;
- Imposed retroactive wage increases, though in an amount less than the 3% exacted by the union, CR.416-17;
- Adopted time-consuming dispute-resolution procedures as to individual grievances, contrary to the real-time system long in place for resolution of workplace issues, CR.384-85;
- Imposed "length of service" provisions, thereby stripping employees of their seniority if they have any break in employment, as agricultural employees often do, CR.374-77; and
- Precluded the employees from striking, which had been the farmworkers' primary means of expressing their dissent, CR.386.

As the "mediator acknowledged, imposition of the 3% payment on employees on pain of being fired was "decidedly the thorniest" issue, because "[t]he election which resulted in [the] certification [of the UFW]

occurred so long ago that it is highly unlikely that any members of [Gerawan's] current work force participated in it." CR.370.[4] Despite these misgivings, he imposed the union security provision on the ground that without it the union would be "placed at a decided disadvantage." CR.371. In fact, adding the Gerawan workers to the UFW's rolls would double its total membership and therefore its revenues from union dues and fees.[5]

Notably, the MMC contract reduced most workers' take-home pay, because the newly-imposed union fees exceeded their pay increase. *See, e.g.*, CR.417. Moreover, the anti-strike provision was supported by the union and opposed by the employer. The only strikes in recent memory were to protest the actions of the union and the ALRB. *See, e.g.*, ABC30 Action News, *Many Workers With Gerawan Farming Protest United Farm Workers Union* (Sept. 30, 2013), https://tinyurl.com/yd7rxdn4.

In addition to the union fee and anti-strike clauses, various provisions of the MMC order would disrupt decades-old practices that have enabled Gerawan to produce the highest quality fruit, and provided its workers with extremely flexible working conditions.

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[4] There were also legal difficulties. It has been the policy of California, before and after the adoption of the ALRA, that "union security" provisions "should result from 'voluntary agreements between employer and employees.'" *Chavez v. Sargent*, 339 P.2d 801, 820 (Cal. 1959) (quoting Cal. Labor Code §923); *Pasillas v. ALRB*, 156 Cal. App. 3d 312, 346 (1984).

[5] *See* UFW, 2012 Form LM-2 Annual Report (2013) (noting UFW had 4,443 members). Gerawan employs over 5,000 direct-hire workers. CR.358.

For example, workers could come and go as they please from year to year (or even within a production season) without losing their right to return to work when work was available, and without losing credit for their past work history. Workers could also work in any crew they wished rather than being assigned by rigid seniority rules, thereby allowing workers to work alongside family members or friends. Ignoring the past practice developed by Gerawan and its employees, the mediator generally adopted the UFW's seniority proposals, which would end these mutual work accommodations.

In addition, the mediator's terms and conditions would disrupt Gerawan's quality control system, which involves prompt in-field checking of the harvested fruit containers. That process would no longer be usable since the MMC contract subjected every quality control correction to a cumbersome grievance and arbitration procedure.

Furthermore, the mediator's terms and conditions would apply even to workers hired by farm labor *contractors*, who work only a small part of the year at Gerawan, despite the fact that the UFW's collective bargaining agreements with other agricultural employers regularly exclude farm labor contractors from all or part of its collective bargaining agreements. This forces the contract employees to pay agency fees to a union that provides them with no representation during the vast majority of the year, when they are working elsewhere.

Unlike a consensual collective bargaining agreement, the MMC contract was not submitted to the workers for their approval or disapproval.

Gerawan sought review of the mediator's decision with the ALRB.

2. Worried that the long-absent union would attempt to impose fees and other requirements on them without their consent, Gerawan farmworkers began to mobilize in the summer of 2013. Hundreds and sometimes over a thousand workers staged numerous protests against both the UFW and the ALRB—including a bus trip by 400 workers to Sacramento to ask the ALRB to conduct an election. The ALRB turned away these workers, and then charged Gerawan with committing an unfair labor practice by not "prevent[ing] the bus trip from occurring," and failing to "terminate[], discipline[], reprimand[], or punish[]" the participants for this exercise of their right to petition for redress of grievances. 42 ALRB No. 1 at 42 (2016). Local and national press widely covered the various worker protests, some of which were said to be the largest in county history. *See, e.g.*, Erika Cervantes, *Farm Workers Protest Against Union—Say Their Rights Have Been Violated*, KMPH Fox 26 (Sept. 25, 2013), https://tinyurl.com/yar2uuc8; Jane Wells, CNBC, *Union Tangles With Big Farm After 20-Year Absence* (Sept. 25, 2013), https://tinyurl.com/y7bvmeao.

A majority of Gerawan farmworkers formally petitioned the ALRB to conduct a secret ballot election to decertify the long-absent UFW. They had to go through this process twice. The ALRB's Regional Director summarily dismissed their first decertification petition in late September 2013. CR.351; *see also* ALRB Admin. Order No. 2013-37 (Sept. 26, 2013). In response, over 1,000 Gerawan

workers staged a one-day walkout. That walkout coincided with release of the "mediator's" proposed MMC order. After seeing the "contract," but unable to vote on it, an overwhelming majority of the employees signed another decertification petition in October 2013. This time, overruling the objections of the Regional Director, the ALRB held that the petition raised a bona fide question as to the UFW's representational status, Cal. Labor Code §1156.7(d), and conducted a secret ballot election on November 5, 2013 to allow Gerawan farmworkers "to decide whether to decertify UFW as the[] bargaining representative." App.61. Thousands of workers voted,[6] but the ALRB did not count their votes. Instead, based on unfair labor practice charges lodged by the UFW, relating to alleged misconduct occurring months before the election, the ALRB "impounded" the ballots. App.61.

On November 13, 2013, Gerawan asked the ALRB to temporarily stay the MMC proceedings until the ballots could be counted and the UFW's representational status resolved, but the ALRB denied the request the next day "without explanation." App.61. The ballots still have not been counted.[7]

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[6] Press reports stated that workers cast 2,600 ballots. Tim Sheehan, *Rising Expenses, Accusations of Bias Confront State Agency in Gerawan Farm-Labor Conflict*, Fresno Bee (July 31, 2015), https://tinyurl.com/yblty9hv.

[7] Gerawan and the employees are currently challenging the ALRB's refusal to count the ballots in California state court. *See Gerawan Farming, Inc. v. ALRB*, No. F073720 (Cal. Ct. App.); *Lopez v. ALRB*, No. F073730 (Cal. Ct. App); *Gerawan Farming, Inc. v. ALRB*, No. F073769 (Cal. Ct. App.).

3. On the same day that the employees filed their second decertification petition, the ALRB denied Gerawan's exceptions as to all but six terms drafted by the MMC mediator. App.13; CR.721-29. All the terms summarized above survived ALRB review. The "mediator's" second report then became the final order of the ALRB as of November 19, 2013. App.13. Treated as a collective bargaining agreement under state law, the MMC order has a three-year term. App.52. By operation of law, the workers cannot obtain decertification until it has expired.

As the Court of Appeal noted, "it is undisputed that when the [ALRB] adopted the mediator's report on November 19, 2013, and thereby approved the [collective bargaining agreement] as determined by the mediator, it did so despite the intervening decertification election, which may have ousted UFW." App.61-62. This sequence of events sparked massive employee protests. *See, e.g.*, Robert Rodriguez, *Gerawan Workers Protest Outside Court of Appeal in Fresno*, Fresno Bee (Apr. 14, 2015), https://tinyurl.com/yaahyhfh; Robert Rodriguez, *Anti-Union Gerawan Workers Rally Against State Labor Board*, Fresno Bee (Oct. 1, 2014), https://tinyurl.com/yab6c96y; Erika Cervantes, *Farmworkers Protest Against Union*, KMPH Fox 26 (Aug. 26, 2014), https://tinyurl.com/y84dmvlk.

C. California Court of Appeal Proceedings

Gerawan appealed the ALRB's MMC order to a California appeals court, contending, among other things, that the order was invalid because the MMC statute violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. App.13. The

appellate court set aside the ALRB's order, holding the MMC statute unconstitutional on equal protection grounds and reserving judgment on the due process claim. The court also concluded that the MMC statute resulted in an improper delegation of legislative authority under the California Constitution, and that the ALRB abused its discretion in failing to consider Gerawan's defense to MMC based on the UFW's 17-year abandonment of Gerawan's employees. App.107, 120.

As the appellate court explained, the MMC statute is "'the very antithesis of equal protection'" and is unconstitutional even under rational basis review. App.118 (citation omitted). "[E]qual protection of the law means that all persons who are similarly situated with respect to a law should be treated alike under the law." App.109. In the MMC context, the court continued, "each imposed CBA will … be its own set of rules applicable to one employer, but not to others, in the same legislative classification." App.117. Thus, "the necessary outworking of the MMC statute is that each individual employer (within the class of agricultural employers who have not entered a first contract) will have a distinct, unequal, individualized set of rules imposed on it." App.117. As the court observed, "the risk is simply too great that results will be based largely on the subjective leanings of each mediator or that arbitrary differences will otherwise be imposed on similar employers in the same classification—particularly as there is no objective standard toward which the mediator is required to aim." App.118-19.

D. California Supreme Court Proceedings

The UFW and the ALRB sought review in the California Supreme Court, which reversed in an opinion by Justice Goodwin Liu. The court first held that the MMC statute does not unconstitutionally infringe any due process right.[8] Without reasoned analysis, the court held that this Court's *Wolff* cases had been "completely repudiated." App.18. To support that proposition, the court cited one of its own decisions and a Yale Law Review article, as well as this Court's decision in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), which did not mention *Wolff* and did not involve compulsory interest arbitration. App.18.

The court also reversed the appellate court's equal protection holding. The court first concluded that it was proper to "apply the same rational basis test to a final order by the [ALRB] … as [it] would apply to a legislative act." App.21. Applying that standard of review, the court found that "the Legislature reasonably could have concluded that a mediation process followed by binding arbitration in the event of a bargaining impasse would … facilitate the adoption of first contracts," or alternatively that "facilitating first contracts furthers the goal of 'ensuring stability' in the agricultural industry." App.22.

Finally, the court dismissed the notion that the MMC statute violates equal protection because it

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[8] The appellate court did not reach the due process issue because its equal protection and state-law holdings fully resolved the case. The California Supreme Court addressed the due process claim *sua sponte*. App.17.

treats differently "*each* individual agricultural employer *within* the covered class of employers"—*i.e.*, the subset of employers forced into compulsory interest arbitration. App.23. The court agreed that differences in treatment under the MMC statute are "intentional," but it concluded that treatment is not irrational, for the legislature has a "legitimate interest in ensuring that collective bargaining agreements are tailored to the unique circumstances of each employer." App.27. Although "[a]rbitrary treatment is of course possible under the MMC statute," the court acknowledged, App.29, an arbitrator's "discretion" is "channeled" by the statutory factors, such as "[t]he financial condition of the employer and its ability to meet the costs of the contract," and thus the MMC statute is not unconstitutional under the Equal Protection Clause, App.27. In all events, the court reasoned, "an initial collective bargaining agreement does not last forever," and "[i]f the employees are dissatisfied with either the collective bargaining agreement or their union's representation, then they can petition to decertify the union in the third year" of the collective bargaining agreement. App.52-53 (citing Cal. Labor Code §1156.7(c)).[9]

REASONS FOR GRANTING THE PETITION

American labor law is based on three reinforcing principles: first, that employees have a free association right to choose whether to join together in a union; second, that the employer must bargain exclusively with the employees' freely chosen labor representative; and third, that absent special

[9] The court also rejected Gerawan's state-law arguments.

circumstances where continuity of operations is in the vital public interest, neither management nor labor may be compelled to reach a bargain or to accept terms against their will. *See Wolff I*, 262 U.S. 522; *Dorchy*, 264 U.S. 286; *Wolff II*, 267 U.S. 552; *see also Jones & Laughlin,* 301 U.S. at 45 (rejecting due process challenge to the NLRA on the ground that the statute "does not compel agreements between employers and employees," and "does not compel any agreement whatever."); *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 108 (1970) (NLRA prohibits "official compulsion over the actual terms of the contract"). In short, the Constitution does not permit the state to force workers or employers to accept specific contract terms against their will simply because that is the government's preferred labor policy. That holding of the *Wolff* trilogy has never been disturbed.

In the decision below, however, the California Supreme Court explicitly declined to follow *Wolff*, and upheld a state statute that allows a state labor board to impose terms on unwilling workers and employers, based on the views of a single "mediator," and to treat that order as if it were a consensual collective bargaining agreement. The terms imposed by this order are applicable by design only to a single workplace, without any basis in generally applicable legislative policies, and the order abrogates the workers' right to rid themselves of a union that has not represented their interests. The MMC statute is unconstitutional under the Fourteenth Amendment and this Court's precedent interpreting it. This Court should accordingly grant review and reverse.

I. The Decision Below Violates The Fourteenth Amendment.

"No State shall … deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." U.S. Const. amend. XIV, §1. California's law mandating compulsory arbitration and allowing the ALRB to impose contract terms on certain parties without imposing similar terms on similarly situated parties violates both due process and equal protection.

A. California's Compulsory Arbitration Scheme Deprives Farm Owners and Farmworkers of Liberty and Property Without Due Process of Law.

There can be no doubt that the MMC process implicates the liberty and property of both farmworkers and owners.[10] Indeed, the MMC order compels the Gerawan farmworkers to pay 3% of their gross earnings to a union that had abandoned them for almost 20 years. It likewise requires Gerawan's owners to increase wage rates (in some cases, retroactively), even though they had long been paying

[10] Gerawan has standing to seek redress not only for the violations of its own rights, but the rights of its employees. *See, e.g.*, *Truax v. Raich*, 239 U.S. 33, 38-39 (1915); *Wolff I*, 262 U.S. at 541. Under California law, only the employer and the union, not the workers, can challenge the imposition of an MMC order, Cal. Labor Code §1164.5(a), and the union's interests are diametrically opposed to the workers' interests here. Although representatives of the workers have obtained counsel and will present their views directly to this Court as *amici curiae*, only Gerawan is able to raise their interests in this legal proceeding.

the highest wage rates in the industry; it displaces a system developed by Gerawan for real-time resolution of workplace problems, which is essential for meeting quality standards for perishable fresh produce; and it disrupts a flexible seniority system tailored to the needs of seasonal workers. The order further requires Gerawan to fire any employees who refuse to pay their earnings to the union.

Most egregiously, the MMC scheme deprives the farmworkers of their freedom of association guaranteed under the Constitution. *See Jones & Laughlin*, 301 U.S. at 33 (the right of laborers to organize and select their representatives is a "fundamental right"); *Metro. Edison Co. v. NLRB,* 460 U.S. 693, 708 (1983); *see also* Cal. Labor Code §1140.2 (describing the right of agricultural employees to decide on a union as "freedom of association"). When workers are dissatisfied with a union, the only means by which they can dissociate with the union is to petition for a decertification election and then to vote to decertify.

According to the court below, "[s]o long as the employees can petition for a new election if they wish to remove the union, the employer has no real cause for concern about whether it is bargaining with the true representative of its employees." App.52. But in the next breath, the court acknowledges that imposition of the MMC order has the legal effect of barring workers from seeking to decertify the union until the final year of the contract. App.52-53. Because the MMC statute affords the state-imposed MMC order the legal effect of a collective bargaining agreement, Cal. Labor Code §1156.7(c), an MMC order

bars decertification petitions until the final year of its applicability, no matter how large a majority of the workers wish to rid themselves of the union. This "makes these [farmworkers] and others similarly situated [] prisoners of the Union." *Emporium Capwell Co. v. W. Addition Cmty. Org.*, 420 U.S. 50, 73 (1975) (Douglas, J., dissenting).

These interests unquestionably constitute liberty and property within the broad definitions of those terms in the Fourteenth Amendment. *Jones & Laughlin*, 301 U.S. at 33, 45; *Wolff I*, 262 U.S. 522; *see also Greene v. McElroy*, 360 U.S. 474, 492 (1959) ("the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment"). At one and the same time, the MMC process abridges the liberty of both workers and owners, who have the right to determine these matters between themselves by bargaining. *See Truax,* 239 U.S. at 38 (recognizing the liberty interest of an employer not to be compelled to fire workers it wishes to retain). The next question is whether they were deprived without due process of law. The answer is yes.

The central meaning of due process, tracing back to its origins in Magna Charta, is that no one may be divested of their rights except by generally applicable law. As Blackstone explained, the law is "not a transient sudden order … to or concerning a particular person; but something permanent, *uniform, and universal*." 1 William Blackstone, Commentaries *44 (emphasis added); *see also* Akhil Reed Amar, *Intratextualism*, 112 Harv. L. Rev. 747, 772 (1999)

("The framers of the Fourteenth Amendment believed that due process of law meant a suitably general evenhanded law."). California may set minimum-wage and maximum-hour laws; it may establish rules for recognition of labor unions; and it has broad discretion to regulate workplaces through law. But it cannot by decree compel one employer and its workers to enter into the state's notion of a proper "contract" or craft legal rules applicable to them and no one else.

This is not a question of *substantive* due process, as the California Supreme Court mistakenly assumed by its citation to *West Coast Hotel*. App.18. Petitioner has never asked the courts to recognize new liberties outside the scope of positive law or enumerated constitutional rights. Rather, this is a due process case in the most classic sense of due process: Petitioner objects that its positive law rights, and those of its employees, are being taken away not by law but by arbitrary fiat. As Justice Breyer explained in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 587 (1996) (Breyer, J., concurring), decrees imposing special restrictions or obligations on particular individuals "depriv[e] citizens of life, liberty, or property, through the application, not of law and legal processes, but of arbitrary coercion."

The California Supreme Court attempted to portray the MMC process as merely "a continuation of the ordinary bargaining process," and compulsory arbitration as a mere "bargaining tool." App.48-49. But compulsion is not bargaining. *Virginian Ry. Co. v. Ry. Employees*, 300 U.S. 515, 543, 548 (1937). Neither Gerawan nor its workers agreed to compulsory arbitration as a "bargained-for" exchange.

14 Penn Plaza LLC v. Pyett, 556 U.S. 247, 257 (2009); *see also Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ*, 489 U.S. 468, 479 (1989) (arbitration "is a matter of consent, not coercion"). Instead, Gerawan was forced into this process based on the exercise of the state's "coercive power" over its employment relationship. *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982). "The terms of the 'agreement' determined by the arbitrator [are] imposed upon [the employer] by force of law." App.7 (citation omitted)). It is "a law that destroys or impairs the lawful contracts of citizens … [and] takes property from A and gives it to B." *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 388 (1798).

The ad hoc, arbitrary drafting of private contracts by a "mediator," which is then imposed by a state agency, without any chance for workers or owners to disapprove, neither "promote[s] collective bargaining" nor "ensure[s] stability in the agricultural labor force." App.26. It is a coercive substitute for collective bargaining. Not surprisingly, the result has been pickets and protests by Gerawan farmworkers opposed to a "contract" they were not permitted to vote on, and that would saddle them with a union that a majority of the employees had petitioned to decertify. The appeals court below aptly described this situation as a "crisis of representation," App.100-101, but it is also much more than that: It is a violation of the Constitution and this Court's precedent.

B. This Court Has Already Concluded That Compulsory Arbitration Schemes Similar to California's Scheme Violate Due Process.

The California Supreme Court acknowledged the "rareness" of forced contracting schemes in the context of private employers and employees outside of wartime or other national emergency. App.19. That is an understatement. California is the first and so far the only state to enact a scheme imposing forced contracting on private parties engaged in ordinary commerce, presumably because such a scheme is unconstitutional under this Court's *Wolff* trilogy. *See United Steelworkers of Am. v. United States*, 361 U.S. 39, 74-75 (1959) (Douglas, J., dissenting) (citing *Wolff* as the reason why collective bargaining, not compulsory arbitration, is the norm).

In *Wolff I*, this Court examined a Kansas statute that "compel[led]" employers and employees in the food, clothing, and fuel industries "to continue in their business and employment on terms fixed by an agency of the state, if they cannot agree." 262 U.S. at 533-34. Among other provisions, the statute required employers "to pay the wages fixed" by the state agency in compulsory arbitration proceedings, and forbade the workers to "strike against them." *Id.* at 540. This Court unanimously held that the Kansas Act violated the Due Process Clause, *id.* at 544, by "depriv[ing] [employers] of freedom of contract and workers of a most important element of their freedom of labor" through a system of compulsory arbitration, *id.* at 542. As the Court emphasized, "[w]ithout this joint

compulsion, the whole theory and purpose of the act would fail." *Id.* at 541.

The Court addressed the same Kansas statute one year later in *Dorchy,* this time in a case brought on behalf of labor. A union official was prosecuted for calling for a strike against a coal mine, in violation of the statute. *Dorchy*, 264 U.S. at 288-89. In a unanimous opinion by Justice Brandeis, the Court reiterated its holding in *Wolff I* that "the system of compulsory arbitration as applied to packing plants violates the federal Constitution," and it likewise concluded that the same system was unconstitutional as applied to coal mines. *Id.* at 289. The Court then proceeded to explain that the constitutionality of the particular provision before it depended on whether it was part of "the system of compulsory arbitration" or not. *Id.* at 289-90. If the provision could not be severed from the statute because it was "an intimate part of the system of compulsory arbitration [already] held to be invalid," then it would "fall[] with" that system too. *Id.* at 291.

The Court addressed the same statute a third time the following year in *Wolff II*, which considered whether the state could regulate hours (as opposed to wages) through compulsory interest arbitration. 267 U.S. 552. Again, the Court concluded that it did not matter whether the arbitration proceedings addressed wages, hours, or any other condition of employment, because it was the compulsory nature of the proceedings that rendered the regulation unconstitutional. *Id.* As the Court observed, the statute "shows very plainly that its purpose is not to regulate wages or hours of labor either generally or in

particular classes of businesses," *id.* at 565, but rather "is intended to compel … the owner and employees to continue the business on terms which are not of their making," *id.* at 569. In short, the non-general and compulsory nature of the proceedings and the manner by which terms were imposed rendered the statute unconstitutional. *Id.*

Unless and until these precedents are reversed *by this Court*, they are binding on the lower federal courts and on state courts, including the California Supreme Court. *See Hohn v. United States*, 524 U.S. 236, 252-53 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality."); *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (same); *Rodriguez de Quijas*, 490 U.S. at 484 (same).

Rather than accept this Court's word in *Wolff* regarding the unconstitutionality of compulsory interest arbitration, however, the California Supreme Court declared that *Wolff* had been "completely repudiated." App.18. The court did not cite any authority of *this* Court that had done so, nor did it even discuss *Wolff*'s holding. The *only* precedent of this Court cited below to support the conclusion that compulsory interest arbitration is constitutional—*West Coast Hotel*—does not even mention *Wolff* or discuss forced contracting. *See* App.18.

To the contrary, *West Coast Hotel* addressed the constitutionality of a minimum-wage law that generally applied to all women and minors in the State of Washington. *See* 300 U.S. at 386. But *Wolff* was not about the "regulat[ion] [of] wages or hours of labor

either generally or in particular classes of business." *Wolff II*, 267 U.S. at 565. Instead, *Wolff* dealt with a "system of compulsory arbitration" that produced individualized, state-imposed labor contracts that extended no further than the employer and its workers subject to this joint compulsion. *Id.* at 569 ("Whether it would be valid had it been conferred independently of the system and made either general or applicable to all businesses of a particular class we need not consider, for that was not done.").[11]

To be sure, *Wolff* does not categorically preclude a state from fixing wages, hours, or conditions of employment through compulsory arbitration and forced contracting, just as other constitutional rights are not absolute.[12] "[G]reat temporary public

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[11] Other cases decided in the same term as *West Coast Hotel* reaffirm, rather than repudiate, *Wolff*'s key holdings. *Virginian Railway*, for example, rested on the distinction between the "voluntary submission to arbitration" and compelled agreements between employer and employees. 300 U.S. at 543, 548; *see also Carmichael v. S. Coal & Coke Co.*, 301 U.S. 495 (1937) (applying similar constitutional principles to local assessments not governed by general principles of law); *Jones & Laughlin*, 300 U.S. at 44-45 (rejecting a due process clause challenge to the NLRA).

[12] While the "public affectation" doctrine discussed in *Wolff* was rejected in *Nebbia v. New York*, 291 U.S. 502 (1934), *Wolff* did not rest its holding on this basis. *See* Alpheus T. Mason, *The Labor Decisions of Chief Justice Taft*, 78 Univ. Penn. L. Rev. 585, 619-20 (1930) (explaining that Chief Justice Taft did not rely on the "clothed in a public interest" theory, but rather upon the compulsion of "continuity" in operations). No decision of this Court suggests otherwise. *See Nebbia*, 291 U.S. at 537 n.39 (distinguishing *Wolff*); *Lincoln Fed. Labor Union v. Nw. Iron & Metal Co.*, 335 U.S. 525, 536 & n.6 (1949) (same).

exigencies" due to wartime or national emergencies may require "the exercise of the power of compulsory arbitration" as to one business or class of businesses, 262 U.S. at 542, and so too might regulation to avoid a "possible danger of monopoly," or where "the obligation to the public of continuous service is direct, clear, and mandatory," as would be the case involving public utilities or other services on which the public depends, *id.* at 539-41.[13] However, outside of these narrow circumstances, something more than "mere legislative declaration" is required to justify such "drastic regulation" or "drastic exercise of control" over one business and its employees. *Id.* No such justification exists here.

This Court has never questioned, let alone overruled, the *Wolff* trilogy, as even modern advocates of compulsory interest arbitration acknowledge. *See* William B. Gould IV, *Some Reflections on Contemporary Issues in California Farm Labor*, 50 U.C. Davis L. Rev. 1243, 1251 n.31 (2017) (former ALRB Chairman recognizing that MMC statute's constitutionality depends on *Wolff* trilogy); Jean R. Sternlight, *Rethinking the Constitutionality of the*

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[13] Most cases of compulsory interest arbitration are in the public sector, where the government perforce consents to it*, see, e.g., Municipality of Anchorage v. Anchorage Police Dep't Emps. Ass'n*, 839 P.2d 1080, 1082-83 (Alaska 1992) (police officers); *Caso v. Coffey*, 359 N.E.2d 683, 687 (N.Y. 1976) (firefighters); or where "[a] stoppage in utility service so clearly involves the needs of a community as to evoke instinctively the power of government," *Bus Emps. v. Wis. Emp't Relations Bd.,* 340 U.S. 383, 405 (1951); s*ee also, e.g.*, *Fairview Hosp. Ass'n v. Pub. Bldg. Serv. & Hosp. & Inst. Emps. Union Local No. 113 A.F.L.*, 64 N.W.2d 16, 28 (Minn. 1954) (hospital workers).

Supreme Court's Preference for Binding Arbitration, 72 Tul. L. Rev. 1, 83 (1997) ("[T]he Court has never expressly overruled *Wolff*."). The California Supreme Court thus "has decided an important federal question in a way that conflicts with relevant decisions of this Court," which is by itself a basis for certiorari. *See* S. Ct. R. 10(c). Indeed, it is the regular practice of this Court to grant review of a lower court decision that explicitly purports to overrule one of this Court's precedents. *See, e.g.*, *Bosse v. Oklahoma*, 137 S. Ct. 1, 2 (2016); *Tenet v. Doe*, 544 U.S. 1, 10 (2005); *Rodriguez de Quijas*, 490 U.S. at 484. The same result is warranted here so this Court may decide once and for all whether states may constitutionally impose contract terms on a private employer and its employees against their will via non-consensual arbitration.

C. California's Compulsory Arbitration Scheme Violates Equal Protection.

The MMC statute is unconstitutional for another reason too: As the intermediate appellate court recognized, it is the "very antithesis of equal protection." App.118.

Under the MMC statute, each workplace subjected to compulsory interest arbitration is subject to *different* regulation. That is because the MMC statute provides the "mediator" virtually unfettered discretion to dictate the terms and conditions of employment at the particular workplace. While the MMC statute provides a list of five factors that an arbitrator "may" consider when fashioning his order, Cal. Labor Code §1164(e), those factors are "nonexclusive," App.36, and he ultimately may attach

whatever significance he desires to each of the listed factors—or consider and reject them entirely. As the appeals court observed below, the guidance provided in the MMC statute is no guidance at all, nor does it offer any "objective standard toward which the mediator is required to aim." App.118-19.

Put differently, "the necessary outworking of the MMC statute is that each individual employer … will have a distinct, unequal, individualized set of rules imposed on it." App.117. And this case "is an example of this very problem": Gerawan will be forced to increase its wages notwithstanding that it *already* "paid its employees the highest average wages among its closest competitors." App.119 n.38. The "mediator" also imposed cumbersome procedures for resolving work issues, which are inconsistent with the need of growers to react quickly to issues affecting product freshness and quality. CR.384-85. And he imposed a "union security" provision on the workers, costing them 3% of their gross earnings, despite general California state policy allowing such provisions only by voluntary agreement. *See* n.4, *supra.* None of these onerous terms is based on any generally applicable state law or policy. Undoubtedly, a state could impose such requirements on the industry as a whole under its police power (however unwise this would be), but it cannot constitutionally impose them on Gerawan without imposing them on similarly situated competitors.

The Equal Protection Clause is premised on the understanding that "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The Equal

Protection Clause thus "emphasizes disparity in treatment … between classes of individuals whose situations are arguably indistinguishable," *Ross v. Moffitt*, 417 U.S. 600, 609 (1974), and its "core concern" is to act "as a shield against arbitrary classifications," *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 598 (2008). Accordingly, if a law "single[s] out" individuals "in an arbitrary and irrational fashion," that law "violates the Equal Protection Clause under even [this Court's] most deferential standard of review." *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 83 (1988); *see also Vill. of Willowbrook v. Olech*, 528 U.S. 562, 565 (2000).

The MMC statute permits "classes of individuals whose situations are arguably indistinguishable," *Ross*, 417 U.S. at 609, to be regulated in an entirely "arbitrary and irrational fashion," *Bankers Life*, 486 U.S. at 83. That is because MMC orders are crafted by officials who have neither the legal obligation nor the practical capacity to ensure that similarly situated growers are treated the same way. Each workplace subjected to MMC will have its own minimum-wage law, its own maximum-hour law, its own rules for handling workplace issues, and its own union security requirements—not because of a reasoned analysis of relevant differences among workplaces, but because the system is arbitrarily imposed on one employer at a time.

According to the California Supreme Court, however, this constitutional vice is really a virtue. As it explained, "individualized determinations are rationally related to the Legislature's legitimate interest in ensuring that collective bargaining

agreements are tailored to the unique circumstances of each employer." App.27. But regulation by "individualized determinations" is nothing more than an invitation to arbitrariness. In this case, for example, the "mediator" imposed grievance procedures and seniority rules wholly divorced from the "unique circumstances" of the Gerawan operations; he required a wage increase in a workplace already paying the highest rates in the industry; and he awarded fees to a union that had abandoned the workers for almost two decades and was facing a decertification election.

Justice Robert Jackson had the better of the argument when he warned in *Railway Express v. New York*, 336 U.S. 106, 112 (1949), that "nothing opens the door to arbitrary action so effectively as to allow … officials to pick and choose only a few to whom they will apply legislation." That perfectly describes what the MMC statute does, and that is why it cannot survive under the Equal Protection Clause.

II. The Question Presented Is Important.

Whether government authorities may foist contracts upon private parties over their objections is an issue of paramount importance.

To begin with, the decision below will affect all employers and employees in California's agricultural industry—the state's "most vital industry"—who may now have state-drawn contracts imposed on them without the protections of due process and equal protection. App.7. But there is no principle in the decision below that limits its reasoning just to California or even to the agricultural context. The NLRA exempts *all* "individual[s] employed as …

agricultural laborer[s]," not just California's agricultural laborers, 29 U.S.C. §152(3), and thus the reasoning below could be adopted in *any* state. And if the court below is correct that "no authority" exists that holds compulsory arbitration unconstitutional, App.19, a state could constitutionally impose compulsory interest arbitration in virtually *any* circumstance that falls under an NLRA exemption, *see* 29 U.S.C. §152(3) (listing other exemptions).

Nor is the constitutionality of compulsory interest arbitration an issue that affects state governments alone. Since California enacted the MMC statute, federal legislators have repeatedly introduced bills that would amend the NLRA—which currently prohibits "official compulsion over the actual terms of the contract," *H.K. Porter Co.*, 397 U.S. at 108—to allow compulsory interest arbitration on a far broader scale than California allows. *See* H.R. 5000, 114th Cong. (2016); H.R. 1409, 11th Cong. (2009); H.R. 800, 110th Cong. (2007); H.R. 1696, 109th Cong. (2005); H.R. 3619, 108th Cong. (2003); *see also* S. 560, 111th Cong. (2009); S. 1041, 110th Cong. (2007); S. 842, 109th Cong. (2005); S. 1925, 108th Cong. (2003).

The question presented is therefore of grave national importance. For almost 100 years, the *Wolff* trilogy and this Court's subsequent labor law decisions have provided a constitutional barrier against this sort of coerced contracting. If the California Supreme Court's rejection of the authority of those precedents is allowed to stand, we may expect to see attempts to replicate the MMC scheme in states all over the country, and at the national level as well.

But the broad national significance of this case should not obscure the human impact on Gerawan and its employees. Unless this Court grants review, the workers will be required to abide by a contract they were not permitted to ratify, which empowers a labor union for which few if any of them ever voted and which abandoned them for nearly two decades to extract 3% of their earnings, and strips them of both their sole legal mechanism for redress and of their most potent means of protest. It requires the employer to fire workers it wishes to retain and to sacrifice flexible labor practices that have enabled it to flourish in a competitive market. These requirements benefit neither workers nor owners. In the end, if it really is now the law that governments enjoy almost limitless power to impose contracts on private parties engaged in ordinary commerce, despite this Court's clear precedent to the contrary, then Gerawan and its employees at least deserve to have this Court—not a state court—render that judgment.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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