

No. _____

In the
Supreme Court of the United States

INTERPIPE CONTRACTING, INC.;
ASSOCIATED BUILDERS AND CONTRACTORS OF
CALIFORNIA COOPERATION COMMITTEE, INC.,

Petitioners,

v.

XAVIER BECERRA, in his official capacity as
Attorney General of the State of California;
CHRISTINE BAKER, in her official capacity as
Director of the California Department of Industrial Relations;
JULIE A. SU, in her official capacity as
California Labor Commissioner, Division of Labor Standards Enforcement,

Respondents.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

**APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES**

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Counsel for Petitioner Interpipe Contracting, Inc.

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Ninth Circuit:

Pursuant to Rule 13.5, Petitioner Interpipe Contracting, Inc. (Interpipe) respectfully requests a **60-day extension** of time in which to file its petition for writ of certiorari in this Court, to and including **February 18, 2019**.

Petitioner will seek review of an opinion of the United States Court of Appeals for the Ninth Circuit filed on July 30, 2018, attached as Exhibit A. The Ninth Circuit denied a petition for rehearing on September 21, 2018. *See* Exhibit B. The time to file a petition for writ of certiorari in this Court currently expires on December 20, 2018, and this application has been filed more than ten days before that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Petitioner Interpipe and Petitioner Associated Builders and Contractors of California Cooperation Committee, Inc. (ABC-CCC) will file separate petitions for writ of certiorari. Interpipe's petition will be based on an NLRA preemption challenge to California's SB 954, while ABC-CCC's petition will be based on a challenge of the constitutionality of SB 954 under the First Amendment.

On November 26, 2018, ABC-CCC filed its Application (18A566) to extend time to file a petition for a writ of certiorari from December 20, 2018 to February 18, 2019, submitted to Justice Kagan. On November 29, 2018, that Application (18A566) was granted by Justice Kagan extending the time to file until February 18, 2019, attached as Exhibit C. Interpipe respectfully requests it be granted a similar extension of time to file its petition.

This case involves Interpipe’s challenge under the Supremacy Clause (National Labor Relations Act (NLRA) Preemption) to a California law (SB 954, Cal. Lab. Code § 1773.1(a)(8)). In California, public contractors such as Interpipe must pay their employees the “prevailing wage,” a predetermined rate set by the California Department of Industrial Relations. Employers can satisfy this requirement by paying cash and providing benefits, including contributing to various worker programs and funds. Prior to SB 954, employers could contribute to any recognized “Industry Advancement Fund” (IAF) and receive a corresponding credit toward their prevailing wage obligation. An IAF is a non-profit group that advocates on industry issues. SB 954 changed the law so employers can now only receive credit for a contribution to an IAF if that contribution is required under a Collective Bargaining Agreement (CBA). This effectively makes only IAFs that engage in union-approved speech eligible for prevailing wage contribution credit.

Petitioner Interpipe, through Petitioner ABC-CCC (an IAF), advocates in favor of “open-shop” policies, and specifically advocates against Project Labor Agreements (PLAs). Interpipe’s anti-PLA advocacy runs contrary to union positions. Because no union will negotiate a CBA that requires contributions to ABC-CCC, SB 954 effectively shuts down Interpipe’s anti-PLA advocacy. Interpipe contends this state action is invalid because it is preempted by the NLRA.

The district court denied the Petitioners’ motion for a preliminary injunction and dismissed their complaint for failure to state a claim. The Ninth Circuit affirmed

and held that SB 954 is not preempted by the NLRA, and is not unconstitutional under the First Amendment.

The petition to be filed by Interpipe will present the Court with important constitutional questions regarding the scope of NLRA preemption and this Court's 2008 decision in *Chamber of Commerce v. Brown*. These questions to be raised by Interpipe's petition pose significant ramifications for public works contractors across the country and are ripe for review by this Court.

Petitioner's counsel is a three attorney firm that has pursued Interpipe's case since its inception, and is most familiar with the complex facts and law of this case. Interpipe's counsel has a significant workload between now and the current due date of the petition, and requests an extension to allow counsel to fully research the issues presented and carefully draft a petition for writ of certiorari that concisely and cogently frames the issues for the Court.

In addition, Interpipe believes there would be great value to this Court and all parties in keeping Interpipe's petition on a parallel timeframe with ABC-CCC's petition. As noted above, ABC-CCC has already been granted a 60 day extension of time to file its petition, attached as Exhibit C.

The unopposed 60-day extension sought herein will work no hardship on any party, and no action is pending that could be adversely affected by the requested extension of time. Petitioner has requested no previous extension from this Court.

WHEREFORE, Petitioner respectfully requests that an order be entered extending the time to file a petition for writ of certiorari to and including **February 18, 2019.**

DATED: December 4, 2018.

Respectfully submitted,

DAVID P. WOLDS *

**Counsel of Record*

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