

No. A-_____

IN THE SUPREME COURT OF THE UNITED STATES

DELANO FARMS COMPANY, FOUR STAR FRUIT, INC., GERAWAN FARMING, INC.,
BIDART BROS., AND BLANC VINEYARDS,

Petitioners,

v.

CALIFORNIA TABLE GRAPE COMMISSION,

Respondent.

APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE
PETITION FOR CERTIORARI

To the Honorable Chief Justice Roberts:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, petitioners respectfully request a 14-day extension of time to petition for certiorari, to and including September 5, 2018, or such earlier date as the Court may deem appropriate. Respondent does not oppose this request.

The California Supreme Court rendered its decision in this case (reported at 4 Cal. 5th 1204) on May 24, 2018. *See* Tab A. Pursuant to this Court's Rules 13.1 and 13.3, petitioners' time to petition for certiorari currently expires on August 22, 2018. This application is being filed more than 10 days before that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

This case presents important constitutional questions about the scope and limits of the government speech doctrine. Specifically, the Supreme Court of California primarily relied upon this Court's precedent—most specifically *Johanns*

v. Livestock Marketing Assn., 544 U.S. 550 (2005)—to conclude that government speech protections should attach to private speech that is promulgated by a private industry-dominated group, is not overseen or controlled whatsoever by any democratically accountable government official, and is not attributed in any way to the government. The California Supreme Court thus fundamentally misinterpreted and misapplied the government speech doctrine, and in so doing, it also created an erroneous “totality of the relevant circumstances” test to determine whether the doctrine can apply to speech promulgated by private actors.

Because the court interpreted and applied federal precedent to interpret an analogous provision of the California State Constitution, it has opened the door for this Court’s review. *See Michigan v. Long*, 463 U.S. 1032, 1039 (1983) (finding this Court’s review appropriate where a “state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law”) (emphasis added); *Fla. v. Powell*, 559 U.S. 50, 130 S. Ct. 1195, 1198 (2010) (granting review upon finding that “although invoking Florida’s Constitution and precedent in addition to this Court’s decisions, the Florida court did not expressly assert that state-law sources gave [defendant] rights distinct from, or broader than, those delineated” under federal law).

Petitioners respectfully request additional time to petition for certiorari for three reasons. *First*, counsel need to assimilate relevant precedent from this Court’s recent Term, which was not treated in the briefing before the Court below. *Second*, the undersigned counsel, who is a full-time academic, has been working under pressing deadlines to complete his Tanner Lectures to be delivered at

Princeton University in the fall (with an accompanying book), as well as file another petition for certiorari in this Court, handle active litigation in the California Supreme Court and Appellate Court, and deliver several lecture series for law students in summer programs in the United States and abroad. *Third*, petitioners are in consultation with various *amici curiae* who may be interested in filing briefs in the case, and coordination with these potential *amici* also requires additional time. Moreover, there would be no prejudice to the respondent from this modest extension, to which respondent has consented.

Wherefore, petitioners respectfully request an order extending the time for petitioning for certiorari by 14 days, to and including September 5, 2018, or until such other time as the Court deems appropriate.

Respectfully submitted,



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