

No. _____

In The
Supreme Court of the United States

MINERVA DAIRY, INC., and ADAM MUELLER,

Petitioners,

v.

SHEILA HARSDORF, in her official capacity as Secretary of the Wisconsin Department of Agriculture Trade and Consumer Protection; BRAD SCHIMEL, in his official capacity as the Attorney General for the state of Wisconsin; and PETER J. HAASE, in his official capacity as Bureau Director of the Division of Food and Recreational Safety within the Wisconsin Department of Agriculture, Trade and Consumer Protection,

Respondents.

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

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

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To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States, and Circuit Justice for the Seventh Circuit:

Pursuant to Rule 13.5, Petitioners Adam Mueller and Minerva Dairy, Inc., respectfully request a **60-day extension** of time in which to file their petition for writ of certiorari in this Court, to and including **March 4, 2019**.

Petitioners will seek review of an opinion of the United States Court of Appeals for the Seventh Circuit filed on October 3, 2018, attached as Exhibit A. The time to file a petition for writ of certiorari in this Court currently expires on January 2, 2019, and this application has been filed more than ten days before that date. This Court has jurisdiction under 28 U.S.C. § 1254.

This case involves a challenge under the United States Constitution's Commerce Clause and Fourteenth Amendment to a Wisconsin law that prohibits butter from being sold in the state unless it undergoes a government mandated taste test and is marked with a corresponding grade. *See* Wis. Stat. § 97.176(1); Wis. Admin. Code ATCP § 85.06(2). Petitioners argue that the law unduly burdens interstate commerce and deprives butter makers of their right to earn a living free of arbitrary or irrational government interference.

Minerva Dairy is a small, family-owned dairy located in Ohio that has produced its artisanal products since 1894. Its butter does not taste like the generic commodity butter made by other producers, because the company has distinguished itself as an Amish-style slow churned butter which results in a creamier consistency

and different flavor than traditional table butter. The challenged law threatens to shut Minerva Dairy butter out of the market.

The Seventh Circuit upheld the grading law on the theory that, under a dormant Commerce Clause analysis, *Pike* balancing only applies where a law has a discriminatory effect on out-of-state commerce, and the butter grading law had no such effect. Petitioners believe that this interpretation of *Pike* not only conflicts with the Supreme Court's decision in *Pike* itself, it also conflicts with every circuit court to have considered the question.

The Seventh Circuit also upheld the grading law under the Fourteenth Amendment because it reasoned that butter grading ensures that consumers purchase butter that lives up to their expectations about taste. Petitioners believe that the state has no legitimate interest in establishing taste standards for a given commodity, and that any such scheme is inherently arbitrary.

The petition will present the Court with important constitutional questions regarding the scope of dormant Commerce Clause protection, the proper level of scrutiny under the rational basis test, and what qualifies as a legitimate state interest. These questions pose significant ramifications for the economic rights of people across the country and are ripe for review by this Court.

Petitioners' counsel have a significant workload overlapping with the current due date of the petition. The obligations of counsel, Joshua P. Thompson, include an opening brief due in mid-January in *Lent v. Cal. Coastal Comm'n*, No. B292091, (Cal. Ct. App. Aug. 29, 2018) (notice of appeal filed), and, together with counsel

Wencong Fa, preliminary injunction briefing regarding *Christa McAuliffe Intermediate School PTO, Inc. et al. v. De Blasio, et al.*, 1:18-cv-11657-ER (S.D.N.Y. complaint filed Dec. 13, 2018), and a petition for rehearing in the Ninth Circuit in *Armstrong v. Walborn*, No. 16-35422, 2018 WL 6434389 (9th Cir. Dec. 7, 2018)—both due mid-January.

The obligations of Counsel Anastasia P. Boden include briefing on motion for summary judgment in the matter of *CG4, LLC, et al. v. Hill, et al.*, No. 1:18-cv-00360-AJT-IDD (E.D. Va.), with reply briefs due January 14, 2019 and a hearing on January 22, 2019; an opening brief in the Eleventh Circuit in *Taylor v. Polhill et al.*, No. 18-14934, due on January 7, 2019, and together with counsel Wencong Fa, a petition for writ of certiorari at this Court from *Interpipe Contracting, Inc. v. Becerra*, 898 F.3d 879 (9th Cir. 2018), due February 18, 2018.

Further, Petitioners' counsel work at a nonprofit public interest foundation where the resources necessary during these high volume times are limited. Petitioners therefore request an extension to allow counsel to fully research the issues presented and draft a petition for writ of certiorari that concisely and cogently frames the issues for the Court. 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. Petitioners have requested no previous extension from this Court.

WHEREFORE, Petitioners respectfully request that an order be entered extending the time to file a petition for writ of certiorari to and including **March 4, 2019.**

DATED: December 19, 2018.

Respectfully submitted,

s/ Joshua P. Thompson
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