

No. A-_____

In the Supreme Court of the United States

LION RAISINS, INC., AND LION FARMS, LLC, PETITIONERS

v.

KAREN ROSS, AS SECRETARY OF DEPARTMENT OF FOOD AND AGRICULTURE,
RESPONDENT

*APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL,
THIRD APPELLATE DISTRICT*

**APPLICATION OF PETITIONERS TO THE
HONORABLE ELENA KAGAN AS CIRCUIT JUSTICE**

APPLICATION FOR EXTENSION OF TIME

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

Pursuant to 28 U.S.C. §§ 1257(a), 2101(c) and Supreme Court Rules 13.5 and
22, petitioners Lion Raisins, Inc. and Lion Farms, LLC, respectfully request a 59-
day extension of time within which to file a petition for writ of certiorari in this
case, to and including Friday, January 28, 2022.

CORPORATE DISCLOSURE STATEMENT

Lion Raisins, Inc. and Lion Farms, LLC have no parent corporations, nor
does any publicly held company own 10% or more of either's stock.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is the decision of the California Court of Appeal, Third Appellate District, in the case of *Lion Raisins, Inc., et al. v. Ross* (“Op.”) (attached).¹ That decision, issued on May 25, 2021, held that the bloc-voting provisions of the California Marketing Act of 1937, which give cooperating marketing associations disproportionate and often decisive voting power in referenda over government regulations known as marketing orders, were consistent with the Equal Protection Clause and this Court’s right-to-vote jurisprudence. Op. 26-32. Petitioners sought review from the California Supreme Court, which denied review on September 1, 2021 (“Order”) (attached).

JURISDICTION

The judgment of the California Court of Appeal, Third Appellate District, was rendered on May 25, 2021. The California Supreme Court denied petitioners’ petition for review on September 1, 2021. This Court has jurisdiction over any timely filed petition in this case pursuant to 28 U.S.C. §§ 1257(a) and 2101(c). Under Rule 13.1 of the Rules of this Court, a petition for certiorari is due to be filed on or before November 30, 2021. As required by Rule 13.5, this application is being filed more than 10 days before the petition is due.

BACKGROUND

This case arises out of a raisin marketing order authorized by The California Marketing Act of 1937. The Act “constitutes a legislative entrustment of the power

¹ Below, this case was consolidated with *People ex rel. Ross v. Raisin Valley Farms, LLC*. Op. 2-3. The appeal, however, in that case was dismissed.

to regulate the marketing of agricultural commodities to those who produce or otherwise deal with such products, subject to the approval of the secretary.” *Gerawan Farming, Inc. v. Kawamura* 33 Cal.4th 1, 26 (2004). Like its federal counterpart and other state analogs, the Act empowers cooperating marketing associations “to bloc vote on behalf of [their] members.” Op. 7 (citing Cal. Food & Agric. Code § 58999). This bloc-voting procedure gives associations outsized influence over the terms and administration of marketing orders, allowing them to regulate and tax other producers in a manner that favors large associations and disfavors smaller, independent producers.

In *Reynolds v. Sims*, 337 U.S. 533 (1964), this Court articulated the “one person, one vote” principle, under which each person’s vote must be approximately equal in weight to that of any other person in a representative election. Time and again in the decades since, this Court has taken up the question of whether and to what degree particular elections are subject to strictures of the Fourteenth Amendment’s Equal Protection Clause. *E.g.*, *Avery v. Midland Co.*, 390 U.S. 474 (1967); *Hadley v. Junior College District of Metropolitan Kansas City, Mo.*, 397 U.S. 50 (1970); *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719 (1973); *Ball v. James*, 451 U.S. 355 (1981); *Bd. of Estimate v. Morris*, 489 U.S. 688 (1989); *Quinn v. Millsap*, 491 U.S. 95 (1989); *Rice v. Cayetano*, 528 U.S. 495 (2000).

The court below, drawing on *Salyer* and *Ball* and the California Supreme Court’s decision in *Southern Cal. Rapid Transit Dist. v. Bolen*, 1 Cal.4th 654 (1992), held that the bloc-voting rule does not “offend[] the ‘one person, one vote’ principle

articulated in *Reynolds*.” Op. 27. In rejecting petitioners’ federal constitutional challenge to the bloc-voting rule, the court reasoned that because the marketing order serves “a specialized governmental function that has a disproportionate effect on a definable segment of the community,” the “voting power ‘may be apportioned in ways which give greater influence to the citizens most affected by the organization’s functions’ without violating the guarantee of equal protection.” Op. 28 (quoting *Bolen*, 1 Cal.4th at 665).

REASONS JUSTIFYING AN EXTENSION OF TIME

Petitioners request this 59-day extension of time because Petitioner’s counsel were retained last week, were not involved in the proceedings below, and require additional time to familiarize themselves with the record, research the complex legal issues presented in this case, and prepare a petition that fully addresses the important and far-reaching issues raised by the decision below in a manner that will be most helpful to the Court. The legal issues in this case implicate this Court’s substantial equal protection jurisprudence, and preparing the petition will require careful study of these numerous precedents.

In addition, the undersigned counsel have substantial professional commitments, including teaching obligations at Stanford Law School, an appellees’ brief due November 8, 2021 in *NetChoice LLC, et al. v. Attorney General, State of Florida, et al.*, No. 21-12355 (11th Cir.), an opposition to a motion to dismiss due November 8, 2021 in *Kaplan v. Cani*, No. 21-2367 (Fed. Cir.), a motion to dismiss and an opposition to a motion for preliminary injunction due December 2, 2021, in *Trump v.*

YouTube, LLC, No. 5:21-cv-08009 (N.D. Cal.), a reply in support of a motion to dismiss due December 23, 2021, and a hearing on the motion to dismiss on January 13, 2022, in *Karri v. Oclaro Inc.*, No. 3:18-cv-03435 (N.D. Cal.), a reply to brief in opposition due December 29, 2021 in *Adir International, LLC, et al. v. Starr Indemnity and Liability Company*, No. 21-357 (U.S.), and an appellee's brief due January 7, 2022 in *Steinhaus, et al. v. Dropbox, Inc.*, A161603 (Cal. Ct. App.). Additional time is therefore needed to prepare the petition in this case.

Respondent does not consent to an extension of time.

CONCLUSION

For the foregoing reasons, petitioners request a 59-day extension, to and including to and including Friday, January 28, 2022, within which to file a petition for certiorari.

STEFFEN N. JOHNSON
*Wilson Sonsini
Goodrich & Rosati, PC
1700 K Street, NW
Washington, DC 20006
(202) 973-8800
sjohnson@wsgr.com*

Respectfully submitted,


MICHAEL W. MCCONNELL
*Wilson Sonsini
Goodrich & Rosati, PC
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300
mmconnell@wsgr.com*

Counsel for Petitioners

NOVEMBER 2, 2021