

No. _____

IN THE
Supreme Court of the United States

ANIMAL LEGAL DEFENSE FUND; IOWA CITIZENS FOR COMMUNITY IMPROVEMENT;
BAILING OUT BENJI; PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC.; CENTER
FOR FOOD SAFETY,

Petitioners,

v.

KIMBERLY REYNOLDS; TOM MILLER, ATTORNEY GENERAL OF IOWA; DREW B. SWANSON,
MONTGOMERY COUNTY ATTORNEY,

Respondents.

**APPLICATION TO THE HON. BRETT M. KAVANAUGH
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

Pursuant to Rule 13(5) of the Rules of this Court, Petitioners Animal Legal
Defense Fund, Iowa Citizens for Community Improvement, Bailing Out Benji,
People for the Ethical Treatment of Animals, Inc., and Center for Food Safety
(collectively, Petitioners) move for an extension of time of 30 days, up to and
including December 8, 2021, within which to file a petition for a writ of certiorari.

1. The decision below is *Animal Legal Defense Fund, et. al. v. Kimberly Reynolds, et. al.*, 8 F.4th 781 (8th Cir. 2021) (No. 19-1364) (attached as Exhibit 1). The Court of Appeals issued its judgment on August 10, 2021 (the opinion was amended on August 13, 2021). Unless extended, Petitioners' time to seek certiorari in this Court expires November 8, 2021. Petitioners are filing this Application at least ten days before that date. *See* S. Ct. R. 13.5. The jurisdiction of this Court is

based on 28 U.S.C. § 1254(1). Respondents have authorized us to state that they have no objection to this extension request.

2. This case concerns the constitutionality of Iowa’s “Agricultural Production Facility Fraud” statute. That state law, known as an “Ag-Gag” law, provides in relevant part that a person is “guilty of agricultural production facility fraud,” a criminal misdemeanor, if the person “willfully … [o]btains access to an agricultural production facility by false pretenses.” Iowa Code § 717A.3A (2012). The same Iowa Ag-Gag law also contains a provision criminalizing making a false statement as part of an employment application with an agricultural production facility. *See id.*

Iowa enacted these provisions in 2012 after investigations revealed animal abuse at several agricultural facilities. Undercover investigators gained employment at agricultural facilities and documented mistreatment of animals. That documentation was then revealed to the public. Other undercover investigations likewise revealed improper food safety practices and violations of labor and environmental law.

3. Petitioners—animal protection organizations, a food safety organization, and a grassroots advocacy organization whose work includes protecting workers’ rights and Iowa’s water quality—sued the Governor, Attorney General, and Montgomery County Attorney. They challenged the law under the First and Fourteenth Amendments. *Animal Legal Defense Fund*, 8 F.4th at 783-84. The district court ruled on cross motions for summary judgment that the challenged

provisions effected a content-based restriction on speech in violation of the First Amendment. *Id.* at 784.

In a divided panel decision, the Eighth Circuit affirmed in part and reversed in part. The Eighth Circuit reversed the district court's judgment as to Iowa's Ag-Gag access provision. Relying on this Court's decision in *United States v. Alvarez*, 567 U.S. 709 (2012), the Eighth Circuit concluded that the access provision was permissible under the First Amendment because it prohibited false speech associated with a legally cognizable harm. *Animal Legal Defense Fund*, 8 F.4th at 785-86. The Eighth Circuit held unconstitutional the Ag-Gag law's employment-related provision, however, because it lacked a materiality limitation.

4.a. A 30-day extension within which to file a certiorari petition is reasonable and necessary. As the panel's separate majority, concurring, and dissenting opinions reflect, the Eighth Circuit's decision upholding the state Ag-Gag law's criminal proscription on obtaining access to an agricultural production facility by false pretenses implicates controversial questions under the First Amendment and under this Court's decision in *Alvarez*.

Moreover, other courts of appeals have addressed other states' Ag-Gag laws and have come to varying conclusions. The Tenth Circuit, for example, held that the Kansas Ag-Gag law is unconstitutional because it reflects impermissible viewpoint discrimination on speech. *See Animal Legal Def. Fund v. Kelly*, 9 F.4th 1219 (10th Cir. 2021); *see also Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184 (9th Cir. 2018).

b. Undersigned counsel has only recently been retained to represent Petitioners in this matter. Additional time is therefore necessary for counsel to become fully familiar with the issues, the decision below, the record, and the relevant case law.

c. The request is further justified by counsel's press of business on numerous other matters that are currently pending. Among other matters, the undersigned counsel is responsible for an oral argument before this Court in *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, No. 20-915 (U.S.) on November 8, 2021; a reply in support of certiorari in *SNH SE Ashley River Tenant, LLC, et al. v. Thayer W. Arredondo*, No. 21-196 (U.S.) due November 15, 2021; a reply in support of certiorari in *Derick Donovan Roberts v. Merrick B. Garland*, No. 21-161 (U.S.) due November 22, 2021; a reply in support of certiorari in *Johnson & Johnson, et al. v. Mississippi, ex rel. Lynn Fitch*, No. 21-348 (U.S.) due November 22, 2021; and a reply brief in *Bradley Acaley v. Vimeo, Inc.*, No. 20-2047 (7th Cir.) due November 22, 2021.

The requested extension of thirty days is modest and would cause no prejudice to Respondents. Petitioners have advised Respondents of their intent to seek the requested 30-day extension, and Respondents have advised that they have no objection.

Respectfully submitted,



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