

No. 22-

IN THE
Supreme Court of the United States

ASSOCIATION DES ÉLEVEURS DE CANARDS
ET D'OIES DU QUÉBEC, *et al.*,

Petitioners,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF
CERTIORARI**

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RULE 29.6 DISCLOSURE STATEMENT

Petitioners are Association des Éleveurs de Canards et d'Oies du Québec, HVFG LLC, and Sean “Hot” Chaney. No Petitioner has a parent corporation, and no publicly held company has a 10% or greater ownership interest in any Petitioner.

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

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5 and 22 of the Rules of this Court, Petitioners Association des Éleveurs de Canards et d'Oies du Québec, HVFG LLC, and Sean “Hot” Chaney, respectfully apply for a 45-day extension of time to file their petition for certiorari in this Court, to and including November 14, 2022.

The judgment for which review is sought is *Ass’n des Éleveurs de Canards et d’Oies du Québec v. Bonta*, 33 F.4th 1107 (9th Cir. 2022). Copies of the Ninth Circuit’s published opinion and of the order denying rehearing are attached hereto as Appendices A and B, respectively. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The judgment of the Ninth Circuit was entered on May 6, 2022. An order denying rehearing en banc was entered on July 1, 2022. As a result, unless extended, the current due date for Petitioners’ petition for certiorari in this Court is September 29, 2022. This application is being filed more than 10 days before that date. Petitioners have not previously sought any extension of time from this Court. And Respondent has kindly consented to Petitioners’ requested extension.

As shown by the split opinion below, this case raises significant questions of nationwide importance under both the Supremacy Clause and the dormant Commerce Clause. More specifically, this case concerns the scope of federal preemption under the Poultry Products Inspection Act (PPIA) — on which the panel below divided — as well as fundamental issues of horizontal federalism. While this case involves the duck liver product known as *foie gras*, the issues it raises — about

the PPIA’s preemptive effect on the production of USDA-approved meat and poultry products and California’s interference with the agricultural policies of other States — impact every meat and poultry producer in the country, whether the resulting product is foie gras or chicken fingers.

As to preemption, Petitioners challenge a California statute¹ that — by prohibiting their federally-inspected poultry products if they include an ingredient produced in a way that California’s legislature dislikes — makes it physically impossible for Petitioners to comply with both federal and state law. In 2015, the district court agreed with Petitioners that the California law is expressly preempted as an “ingredient requirement” under the PPIA and enjoined enforcement of the ban. But, in a prior appeal in this case in 2017, the Ninth Circuit reversed.

Petitioners filed a petition for a writ of certiorari, and this Court called for the views of the Solicitor General. The SG told the Court that a “critical premise” remained to be established and that “a state law that prohibited the only extant methods for producing products containing certain ingredients may be preempted by the PPIA.” On remand, Petitioners established this premise (which California did not contradict), but the district court nevertheless dismissed Petitioners’ express preemption and impossibility preemption claims. The court of appeals issued a split opinion: two judges said they were bound to affirm by circuit precedent from the prior appeal in this case, in which the Ninth Circuit had held that California could escape

¹ Cal. Health & Safety Code § 25982 (which, despite the name of the code in which it was placed, has nothing to do with either health or safety).

preemption by enacting a total ban on federally-inspected commerce. But another judge dissented to explain how the California ban is plainly preempted, noting the majority’s “head-on collision with” *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472 (2013). The preemption issues alone — as to which the Ninth Circuit deviates not only from *Bartlett* but also from the Sixth Circuit in *Armour & Co. v. Ball*, 468 F.2d 76 (6th Cir. 1972) and from this Court’s unanimous opinion in *Nat’l Meat Ass’n v. Harris*, 565 U.S. 452 (2012) — are enough to warrant this Court’s review.

In addition, this case raises cert-worthy issues under the dormant Commerce Clause. In a prior preliminary injunction appeal in this case, over a dozen States joined as *amici* in support of Petitioners’ position that — at least in the free trade area known as the United States — California may not ban commerce in wholesome products from other States or countries based only on its feelings about the comfort of farm animals raised far beyond its borders. Indeed, one very similar dormant Commerce Clause issues that will be the subject of the petition in this case is currently at the merits stage before this Court in *Nat’l Pork Producers Council v. Ross* (No. 21-468), in which 26 States (and Petitioners) are *amici*.

Petitioners have at all times been represented by the undersigned counsel, a member of the Bar of this Court (and currently the only lawyer in his office). Despite his diligence to date, counsel will not have sufficient time to prepare and file the petition for a writ of certiorari by September 29th and respectfully requests this extension for several reasons. First, in addition to the regular press of client business, counsel has an opening brief due in a California appellate court on September 26th

as well as briefing due on a dispositive motion in a California federal court on September 27th, both of which require considerable preparation that has greatly limited counsel's time to properly prepare the petition in this case. Second, the Jewish high holidays, which counsel observes with his family, are starting on September 25th and concluding on October 5th, which further limits counsel's bandwidth. Third, counsel must travel to Germany next month to meet with an elderly client and local counsel there about a time-sensitive case (in California), forcing him to lose up to a week of preparation time. And the record in this case now spans 10 years, including three court of appeals opinions and legal issues that are the subject of hundreds of pages of briefing in similar cases before this Court (e.g., no. 21-468).

Finally, there can be no prejudice from this brief requested extension, as reflected by Respondent's consent.

For these reasons, Petitioners respectfully request that an order be entered extending their time to petition for certiorari in this case by 45 days, to and including November 14, 2022.

Dated: September 15, 2022

Respectfully submitted,

/s/ Michael Tenenbaum
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