

No. 18-

IN THE
Supreme Court of the United States

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

Petitioners,

v.

XAVIER BECERRA, 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**

MICHAEL TENENBAUM
Counsel of Record
1431 Ocean Avenue, Suite 400
Santa Monica, California 90401
(424) 246-8685
mt@post.harvard.edu
Counsel for Petitioners

RULE 29.6 DISCLOSURE STATEMENT

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

To the Honorable Anthony M. Kennedy, 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 Rule 13.5 of the Rules of this Court, Petitioners Association des Éleveurs de Canards et d'Oies du Québec, HVFG LLC, and Hot's Restaurant Group, Inc., respectfully apply for a 30-day extension of time to file their petition for certiorari in this Court, to and including March 9, 2018.

The judgment of the Ninth Circuit was entered on September 15, 2017, and an order denying rehearing en banc was entered on November 9, 2017; as a result, the current due date for Petitioners' petition for certiorari in this Court is February 7, 2018. This application is being filed more than 10 days before that date. Petitioners have not previously sought any extension of time from this Court.

Copies of the Ninth Circuit's 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).

As shown by the opinion below, this case raises significant questions under the Supremacy Clause, as it concerns the scope of federal preemption under the Poultry Products Inspection Act. Where Congress has provided that “ingredient requirements . . . in addition to, or different than, those made under this chapter may not be imposed by any State . . . with respect to articles prepared at any [USDA-inspected slaughterhouse or processing facility] in accordance with the requirements under this chapter,” 21 U.S.C. 467e, can California ban the sale of a meat or poultry product — produced in exact conformance with the federal requirements — based on the presence of a poultry ingredient produced in a way

that California dislikes? In *National Meat Association v. Harris*, this Court unanimously held that the identical preemption clause in the Federal Meat Inspection Act “sweeps widely” and that California’s similar ban on the sale of pork products from nonambulatory pigs would “make a mockery” of federal preemption. 565 U.S. 452, 459, 464 (2012).

Indeed, this Court squarely rejected the Ninth Circuit’s reasoning that “states are free to decide which animals may be turned into meat.” *Id.* at 465 (“We think not.”). Like in *National Meat*, the district court here correctly held that the California law is preempted. But the Ninth Circuit reversed, in an opinion that not only flouts the teachings of this Court in *National Meat* but also runs counter to other circuits. While this case involves the duck liver product known as *foie gras*, the issues it raises — about the scope of the federal preemption for USDA-approved meat and poultry products — affect every meat and poultry producer in the country, whether the resulting product is foie gras or frozen chicken.

Petitioners have at all times been represented in the courts below 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 writ of certiorari by February 7th and respectfully requests an extension for several reasons. First, counsel has been preparing amicus briefs for filing in this Court in two significant original jurisdiction cases, *Missouri v. California*, No. 22O148, and *Indiana v. Massachusetts*, No. 22O149, which are due by February 2nd, i.e., just days before

the current due date for the petition in this case. Second, counsel is facing a statute of limitations deadline for filing a new action that arises out of a complex case, which, with the prospect of settlement unlikely, requires the preparation of the initial filings in that case by the first week in February. Finally, counsel got married this month and frankly had not anticipated how much time a large wedding and its associated planning and family obligations would consume in his schedule. (Counsel is also traveling with his bride on a pre-planned trip out of the country from January 28th through February 6th.)

There can be no prejudice from this brief requested extension, as the district court's permanent injunction has been in place for over three years at this point (and the Ninth Circuit stayed the issuance of its mandate pending resolution of the petition for certiorari), and even the California legislature itself had delayed the effective date of the statute at issue for more than seven years.

For these reasons, Petitioners respectfully request that an order be entered extending their time to petition for certiorari in this case by 30 days, to and including March 9, 2018.

Dated: January 23, 2018

Respectfully submitted,

/s/ Michael Tenenbaum
MICHAEL TENENBAUM
THE OFFICE OF MICHAEL TENENBAUM, ESQ.
1431 Ocean Avenue, Suite 400
Santa Monica, California 90401
(424) 246-8685
mt@post.harvard.edu
Counsel for Petitioners

CERTIFICATE OF SERVICE

I, Michael Tenenbaum, counsel for Petitioners and a member of the Bar of this Court, hereby certify that on the 23rd day of January, 2018, a copy of this Application for Extension of Time to File a Petition for Writ of Certiorari in this case was mailed, first-class postage prepaid, to Aimee Feinberg, Esq., Office of the Attorney General of California, 1300 I St., Sacramento, CA 95814, counsel for the respondent in this case. I also emailed a courtesy copy of this document to Ms. Feinberg at aimee.feinberg@doj.ca.gov on this same date. I thus certify that all parties required to be served have been served.

/s/ Michael Tenenbaum

MICHAEL TENENBAUM

THE OFFICE OF MICHAEL TENENBAUM, ESQ.

1431 Ocean Avenue, Suite 400

Santa Monica, California 90401

(424) 246-8685

mt@post.harvard.edu

Counsel for Petitioners