IN THE
SUPREME COURT OF THE UNITED STATES

No. ___

GERAWAN FARMING, INC.,

Applicant,

v.

AGRICULTURAL LABOR RELATIONS BOARD,

Respondent.

APPLICATION TO THE HONORABLE ANTHONY M. KENNEDY FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

Pursuant to Supreme Court Rule 13(5), applicant Gerawan Farming, Inc. ("Gerawan") hereby moves for an extension of time of 30 days, to and including Wednesday, March 28, 2018, for the filing of a petition for a writ of certiorari to review the decision of the Supreme Court of California dated November 27, 2017 (Exhibit 1). The jurisdiction of this Court is based on 28 U.S.C. §1257(a).

1. Unless an extension is granted, the deadline for filing the petition for certiorari is February 26, 2018.

2. This case presents the question whether a state may constitutionally impose initial collective bargaining agreements on private employers and unions without obtaining each party's consent—and without waiting to count the votes in an election to decertify the union.

3. In 1975, the California legislature enacted the Agricultural Labor Relations Act ("ALRA") seeking to fill a gap in the National Labor Relations Act ("NLRA"), which exempts "any individual employed as an agricultural laborer." 29 U.S.C. §152(3). In 2002, the California legislature passed the "mandatory mediation and conciliation" ("MMC") statute as an amendment to the ALRA. *See* Cal. Labor Code §1164 *et seq*. The MMC statute permits a union to ask California's Agricultural Labor Relations Board ("ALRB") to compel an employer into a proceeding that ultimately results in the imposition of a "collective bargaining agreement" on the employer and its farmworkers—including, as relevant here, where the employer and the union "fail to reach agreement" 12 months after the initial request to bargain is made. Under the MMC statute, a state-designated neutral initially presides over compulsory mediation between the union and employers. But if mediation fails to resolve all of the "disputed terms" of the contract provisions proposed by the parties, the mediator, now acting as an arbitrator, conducts "on the record" proceedings where witnesses are examined and evidence is admitted. Based on that "official record," the state arbitrator dictates the collective bargaining agreement himself, *without* the parties' mutual consent. Once reduced to a decision and final order of the ALRB, the "agreement" is a judicially-enforceable order of the state, applicable to one employer alone and to its workers.

4. Gerawan is a farming business that has consistently paid its workers the highest average wage compared to its closest competitors.

5. The United Farm Workers of America ("UFW") became the certified bargaining representative for Gerawan's workers in 1992, but from 1995 to 2012, the UFW made no attempt to negotiate a collective bargaining agreement with Gerawan. The union essentially disappeared from the scene. The union resurfaced in October 2012 after a 17-year hiatus, and then invoked the MMC statute against Gerawan. Gerawan was forced into compulsory interest arbitration, after which the arbitrator unilaterally dictated the terms of the collective bargaining agreement.

6. Soon after the arbitrator issued his report, but before it became the final order of the ALRB, a majority of Gerawan employees filed a petition to decertify the UFW. The ALRB therefore conducted a decertification election on November 5, 2013. The ALRB impounded the ballots, based on eleventh-hour election objections filed by the UFW, which both Gerawan and the decertification petitioners strenuously dispute. Gerawan requested that the ALRB temporarily stay the MMC proceedings pending resolution of these post-election challenges, so as to obtain a vote tally before the MMC contract could be imposed. The ALRB summarily denied that motion. To this day, the ALRB still has not counted the ballots from the decertification vote.

7. The state-imposed "agreement" would (among other things) require all Gerawan farmworkers to pay 3% of their wages to the UFW, and compel Gerawan to fire those who refused to pay the union. Moreover, by force of law, the MMC "contract" would preclude any decertification election until the last year of the term of the "contract." *See* Cal. Labor Code §1156.7(c).

8. Gerawan sought review of the MMC decision and order in a California state appeals court, on a variety of legal and constitutional grounds. The appellate court unanimously held the MMC statute violates the Equal Protection Clause of the Fourteenth Amendment. As the court explained, compelled MMC is "the very antithesis of equal protection," because "each individual employer (within the class of agricultural employers who have not entered a first contract) will have a distinct, unequal, individualized set of rules imposed on it." The court thus found it unnecessary to reach the constitutional due process claim Gerawan had also raised.

9. The Supreme Court of California reversed. The court first addressed Gerawan's due process claim and found that the MMC statute is not unconstitutional on due process grounds. In doing so, the court acknowledged that a "trilogy of cases" from this Court had declared unconstitutional another state statute that included a compulsory interest arbitration provision similar to the one in the MMC statute. *See* Op.15. The court reasoned, however, that those cases were no longer good law, for they were issued in the 1920s during the *Lochner* era. Op.15-16 (citing *Wolff Co. v. Industrial Court*, 262 U.S. 522 (1923) ("*Wolff I*"); *Dorchy v. Kansas*, 264 U.S. 286 (1924); *Wolff Packing Co. v. Indus. Court*, 267 U.S. 552 (1925) ("*Wolff II*")).

10. Next, the court addressed Gerawan's equal protection argument, and concluded that the MMC statute passes muster there as well. The court rejected the notion that the MMC statute arbitrarily applies only to a subset of private agricultural employers—*i.e.*, only those employers lacking a first contract that a union compels into arbitration—in part because the MMC statute technically permits

employers to request MMC against the wishes of the union as well. Op.18-19. In addition, the court disagreed that the MMC statute arbitrarily treats differently "*each* individual agricultural employer *within* the covered class of employers"—*viz.*, the select subset of employers compelled into arbitration. Opp.19. As the court explained, "[a]rbitrary treatment is of course possible," Opp.24, but the state has a "legitimate interest in ensuring that collective bargaining agreements are tailored to the unique circumstances of each employer," Opp. 22. In all events, the court reasoned, "an initial collective bargaining agreement does not last forever," and "[i]f the employees are dissatisfied with either the collective bargaining agreement or their union's representation, then they can petition to decertify the union in the [final] year" of the collective bargaining agreement. Opp.43.

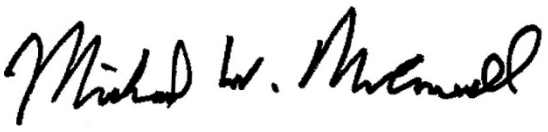
11. The Supreme Court of California's decision cannot be reconciled with precedent from this Court and other courts. This Court held long ago that states may not impose state-drafted contracts on private employers and their employees engaged in ordinary commerce. *See Wolff I*, 262 U.S. 522; *Dorchy*, 264 U.S. 286; *Wolff II*, 267 U.S. 552. Those decisions remain binding precedent, and the Supreme Court of California's conclusion otherwise conflicts with judgments from other federal courts of appeals and state high courts that treat them as such. Moreover, the Supreme Court of California's approval of compulsory interest arbitration is particularly egregious in this case, because Gerawan's employees have for years been seeking to decertify the very union that instigated compulsory arbitration under the MMC statute. Finally, the decision below is inconsistent with this Court's precedent

interpreting the Equal Protection Clause, the "core concern" of which is to act "as a shield against arbitrary classifications." *Engquist v. Oregon Dept. of Agric.,* 553 U.S. 591, 598 (2008). As the state intermediate court concluded below, arbitrary treatment is inevitable here: "the necessary outworking of the MMC statute is that each individual employer … will have a distinct, unequal, individualized set of rules imposed on it" by an arbitrator exercising virtually unfettered discretion.

12. Counsel of Record, Michael W. McConnell, was not involved in the proceedings below and requires additional time to research the extensive factual record and complex legal issues presented in this case. Furthermore, Mr. McConnell is a full-time professor of law at Stanford Law School and has substantial teaching obligations between now and the current due date of the petition, which falls in the middle of the academic term.

13. For the foregoing reasons, applicant requests that an extension of time to and including Wednesday, March 28, 2018, be granted within which applicant may file a petition for a writ of certiorari.

Respectfully submitted,



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