

No. 25A_____

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED NATURAL FOODS, INC.,
DOING BUSINESS AS UNITED NATURAL FOODS INC. & SUPERVALU, INC.

Applicant,

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

**Application 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 Fifth Circuit**

**APPLICATION TO THE HONORABLE SAMUEL A. ALITO, JR.,
AS CIRCUIT JUSTICE**

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CORPORATE DISCLOSURE STATEMENT

United Natural Foods, Inc. has no parent corporation, and, to its knowledge as of this date, BlackRock, Inc. is the only publicly held company that owns 10% or more of its stock. SuperValu, Inc. is a wholly owned subsidiary and/or affiliate of United Natural Foods, Inc.

APPLICATION FOR EXTENSION OF TIME

In accordance with Rules 13.5 and 30.2 of the Rules of this Court, applicant United Natural Foods, Inc. respectfully requests a 30-day extension of time, to and including September 25, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The court of appeals entered its judgment on May 28, 2025. Unless extended, the time for filing a petition for a writ of certiorari will expire on August 26, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1). The opinion of the court of appeals, reported at 138 F.4th 937 is attached as Exhibit A.

1. This case was previously before the Court on a petition for a writ of certiorari from the April 24, 2023, judgment of the court of appeals. In that decision, a divided Fifth Circuit panel upheld a National Labor Relations Board (“NLRB”) order ruling that the Acting General Counsel of the NLRB had unreviewable authority to unilaterally dismiss the administrative complaint that the NLRB had previously issued on applicant’s unfair labor practice charge against the two local affiliates of the International Brotherhood of Teamsters. *United Nat. Foods, Inc. v. NLRB*, 66 F.4th 536, 538 (2023), cert. granted, judgment vacated, 144 S. Ct. 2708 (2024). Applicant argued that the NLRB’s General Counsel has no such authority when, as here, a properly filed motion for summary judgment, which if granted would dispose of the entire administrative case, is pending before the multimember Board. In those circumstances, the General Counsel’s attempt to unilaterally dismiss the complaint before the Board could rule on the dispositive motion would impermissibly infringe on the Board’s adjudicative authority.

2. Applying *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 840 (1984), the Fifth Circuit majority rejected applicant’s argument. The majority determined that the National Labor Relations Act is ambiguous on whether the NLRB’s General Counsel retains unreviewable authority to unilaterally dismiss an administrative complaint while a motion for summary judgment is pending before the Board. *United Nat. Foods*, 66 F.4th at 543, 545-546. The majority applied “*Chevron* deference,” *id.* at 543 (citation omitted), and stated that “while one can reasonably argue that under a de novo interpretation of the NLRA, the General Counsel might not have discretion to withdraw a complaint after a motion for summary judgment has been filed, we are not interpreting the NLRA de novo,” *id.* at 545. The majority then relied principally on this Court’s *Chevron*-era decision in *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. 112 (1987) (*UFCW*), and stated: “the Supreme Court was clear in *UFCW* that our task is only to determine whether the Board’s categorization of the RD Order as prosecutorial is ‘permissible,’ and in that case the Court specifically ‘h[e]ld that it is a reasonable construction of the NLRA to find that until the [administrative] hearing begins, * * * dismissal determinations are prosecutorial.’” *United Nat. Foods*, 66 F.4th at 545 (quoting *UFCW*, 484 U.S. at 125-126).

3. While applicant’s petition for certiorari was pending, this Court overruled *Chevron* in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The Court then granted the petition, vacated the Fifth Circuit’s judgment, and remanded the

case for further consideration in light of *Loper Bright*. See *United Nat. Foods*, 144 S. Ct. at 2708.

4. On May 28, 2025, a divided Fifth Circuit panel again entered judgment against applicant and in favor of the NLRB. *United Nat. Foods, Inc. v. NLRB*, 138 F.4th 937 (5th Cir. 2025). The majority acknowledged that *Loper Bright* required the court to exercise “independent judgment” in reviewing the NLRB’s interpretation of the statute. *Id.* at 948. Yet the majority rejected applicant’s statutory-interpretation arguments and instead placed “greater weight on the Supreme Court’s authoritative holding in *UFCW* that ‘it is a reasonable construction of the NLRA to find that until the hearing begins, * * * dismissal determinations are prosecutorial.’” *Ibid.* (quoting *UFCW*, 484 U.S. at 125-126).

5. Judge Oldham dissented. In his view, the “further consideration” ordered by this Court in light of *Loper Bright* had been “an empty formality” for the majority. *Id.* at 953. The majority simply “recycl[ed] the same reasons it provided two years ago to justify deferring to the Board.” *Ibid.* Judge Oldham voiced concern that lower courts might be tempted to respond to *Loper Bright* by seeking to “narrow[] [it] from below.” *Ibid.* (citing Richard M. Re, *Narrowing Supreme Court Precedent from Below*, 104 Geo. L.J. 921, 923 (2016)). “[T]he same judges who might otherwise say ‘we defer to the agency’ might now be tempted to say ‘the agency’s reading of the statute is the best and only permissible one.’” *Id.* at 954. “It would be most unfortunate if the Supreme Court overruled *Chevron* only for inferior courts to continue delegating the judicial power to administrative agencies.” *Ibid.*

6. This case presents important issues warranting this Court’s review. The Fifth Circuit majority’s decision to place “great[] weight” on whether the NLRB offered “a reasonable construction of the NLRA” is inconsistent with *Loper Bright* because it resurrects the now-overruled approach of *Chevron*. Under *Chevron*, the key question was indeed whether the agency offered “a reasonable interpretation” of the statute. 467 U.S. at 844. But that is true no more. Now, courts must ask not whether an interpretation is reasonable but whether it is “the one [that] the court, after applying all relevant interpretive tools, concludes is best.” *Loper Bright*, 603 U.S. at 400. “In the business of statutory interpretation, if it is not the best, it is not permissible.” *Ibid*. In brushing aside applicant’s arguments in favor of the agency’s “reasonable construction,” the majority failed to give full effect to *Loper Bright* and this Court’s remand order, as Judge Oldham highlighted. *United Nat. Foods*, 138 F.4th at 953.

7. Applicant respectfully requests a 30-day extension of time to file the petition in this case. Good cause exists for the extension.

(a) Counsel of record unexpectedly was required to travel and remain out-of-town commencing on Saturday, August 2, 2025, based on a medical emergency involving a family member (his sister-in-law) who unexpectedly experienced a cardiac arrest and complications on Friday, August 1, 2025, after which she remained unconscious in the intensive care unit at Tufts Medical Center in Boston until she passed away on Tuesday, August 5, 2025, causing the counsel of record to have ad-

ditional personal commitments, some of which remain ongoing. Additionally, between the judgment entered on May 28, 2025, and the current deadline of August 26, 2025, the counsel of record has had numerous pressing professional obligations including, among others, a post-hearing brief (following a two-week evidentiary hearing) in *United Natural Foods, Inc. and Teamsters Locals 117 and 313*, FMCS Case No. 240419-05481 (Kenneth J. Latsch, arbitrator) (filed July 28, 2025) (an arbitration proceeding ordered by the court in *United Natural Foods, Inc. v. Teamsters Locals 117 and 313*, No. 2:19-CV-01736 (W.D. Wash.)); a post-hearing reply brief in the same arbitration matter (due on August 18, 2025); and numerous representation and unfair labor practice cases pending at the National Labor Relations Board.

(b) In addition, the counsel with principal responsibility for preparing the petition has had numerous pressing professional obligations that have interfered with the preparation of the petition. These include, among others: an opening brief in *Duke v. Luxottica U.S. Holdings Corp.*, No. 24-3207 (2d Cir.) (filed June 11, 2025); a response brief in *Carlisle v. The Board of Trustees of the American Federation of the New York State Teamsters Conference Pension & Retirement Fund*, No. 25-511 (2d Cir.) (filed June 16, 2025); an opening brief in *CBW Bank v. FDIC*, No. 25-3056 (10th Cir.) (filed June 20, 2025); a principal and response brief in *Holmes v. American HomePatient Inc.*, No. 24-2875 (3d Cir.) (filed June 20, 2025); a response brief in *Hutchins v. HP Inc.*, No. 25-826 (9th Cir.) (filed July 2, 2025); oral argument in *McLean v. Delta Air Lines Inc.*, No. 24-11946 (11th Cir.) (heard July 22, 2025); an opening brief in *Milligan v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 25-1385

(4th Cir.) (filed July 28, 2025); a petition for permission to appeal in *Lockheed Martin Corp. v. Konya*, No. 25-180 (4th Cir.) (filed Aug. 1, 2025); a reply brief in *Holmes v. American HomePatient, Inc.*, No. 24-2875 (3d Cir.) (filed Aug. 11, 2025); and a response to a petition for rehearing in *ECB USA, Inc. v. Savencia Cheese USA, LLC*, No. 23-12580 (11th Cir.) (filed Aug. 11, 2025). Additional time is needed to permit the preparation and printing of the petition.

8. For all these reasons, applicant respectfully requests that the time to file its petition for a writ of certiorari be extended by 30 days to September 25, 2025.

Respectfully submitted,

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August 13, 2025

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