

No. 25A\_\_\_\_\_

In the  
Supreme Court of the United States

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PERFECTION BAKERIES, INC.,

Applicant,

v.

RETAIL, WHOLESALE AND DEPARTMENT STORE  
INTERNATIONAL UNION AND INDUSTRY PENSION FUND,

Respondent.

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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*Counsel for Applicant*

November 18, 2025

## **APPLICATION**

To the Honorable Clarence Thomas, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit:

Pursuant to Supreme Court Rule 13.5 and 28 U.S.C. § 2101(c), Applicant Perfection Bakeries, Inc. respectfully requests a 35-day extension of the time within which to file a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in the above-captioned case.

1. The Eleventh Circuit issued its opinion on August 1, 2025 (Attached at App. 1a-43a) and denied Applicant's petition for panel rehearing on September 9, 2025. (App. 44a) Unless extended, the time to file a petition for certiorari will expire on December 8, 2025. This application is timely, as it is being filed more than ten days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of the Court would be invoked under 28 U.S.C. § 1254(1).

2. Under Supreme Court Rules 13.5 and 30.1, if this application is granted, the deadline would be January 12, 2026.

3. The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) amended ERISA and, among other things, created “withdrawal liability,” which is essentially an amount a plan charges an employer who withdraws from the plan in a complete withdrawal or a partial withdrawal. Under the MPPAA, the amount of “withdrawal liability” is calculated by determining the withdrawn employer’s “allocable amount of unfunded vested benefits” and then adjusting that amount by four potential adjustments. 29 U.S.C. § 1381(b)(1).

Where an employer has previously incurred “withdrawal liability” for a partial withdrawal, the statute requires that “any withdrawal liability ... in a subsequent plan year shall be reduced by ... any partial withdrawal liability ... for a previous plan year.” 29 U.S.C. § 1386(b)(1). In essence, a partial withdrawal liability creates a credit that reduces any “withdrawal liability” in a subsequent year “by the amount” of the partial “withdrawal liability” incurred in a prior year. *Id.*

4. The Eleventh Circuit held 2-1 that the Respondent properly applied Applicant’s credit for a 2017 prior partial withdrawal as one of the four adjustments to its “allocable amount of unfunded vested benefits” for a subsequent complete withdrawal in 2019, rather than as

a direct reduction to its fully calculated complete “withdrawal liability” for that plan year.

This ruling effectively reduced to zero Applicant’s multi-million-dollar credit for its prior partial withdrawal liability, like applying a tax credit from one year to reduce one’s gross income in a subsequent year, rather than the actual tax liability for that year. As Judge Brasher noted in his dissent, Applicant’s “reading of the statute applies the reduction to ‘withdrawal liability’ – the amount at the end of the four-step process – as the text of the statute provides. But the Fund’s alternative reading does not.” (App. 34a)

5. The decision below also conflicts with the long-standing opinion of the Pension Benefit Guaranty Corporation, the federal agency charged with implementing Title IV of ERISA. *See Trs. of Iron Workers Local 473 Pension Trust v. Allied Prod. Corp.*, 872 F.2d 208, 210 fn. 2 (7th Cir. 1989) (“The PBGC’s views are entitled to deference because of its responsibility to enforce Title IV of ERISA ... which includes ERISA’s withdrawal liability provisions.”); and *Blessitt v. Retirement Plan for Employees of Dixie Engine Co.*, 848 F.2d 1164, 1172 n.19 (11th Cir. 1988) (“we owe particularly great deference to PBGC interpretations of Title IV

of ERISA[.]”). Just five years after Congress enacted the MPPAA, that agency opined that the method upheld by the Eleventh Circuit was “clearly erroneous.” PBGC Op. Ltr. 85-4 (January 30, 1985). Thus, this case presents an important question as to the proper interpretation of the plain language of the statute.

6. The requested 35-day extension to file a certiorari petition is necessary because the undersigned counsel needs additional time to review the record and the law and prepare the petition and appendix. Counsel’s daughter was married two weekends ago, for which counsel was out of the office most of that week. Counsel is still catching up, and the past week has been battling a lingering sickness which kept him out of the office two days last week. This and the press of other ongoing matters has caused counsel to be busier than normal both leading up to and since the wedding. Moreover, undersigned counsel is the only attorney at his firm with experience in handling withdrawal liability matters.

An extension will allow counsel the necessary time to research and prepare a thorough petition that will meaningfully assist this Court and still meet all his other professional obligations. This application is not

intended to and will not create undue delay, nor will it unfairly prejudice Respondent.

7. Accordingly, for the reasons stated above, Applicant respectfully requests that an order be entered granting a 35-day extension to file a petition for a writ of certiorari, to and including January 12, 2026.

Respectfully submitted,

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## APPENDIX

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|-------------------------------------------------------------------|-----|
| Court of appeals opinion .....                                    | 1a  |
| Court of appeals order denying petition for panel rehearing ..... | 44a |