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CONTACT: David Schwarz
(310) 277-1010 and DSchwarz@irell.com

CA Supreme Court to Hear Oral Argument on Constitutional Challenge to ALRB Compulsory Contracting Statute

Fresno, CA — On September 5, 2017, [the California Supreme Court will hear arguments](#) to decide whether the state can force an agency-dictated “collective bargaining agreement” on an employer and its employees. The arguments will center around so-called “Mandatory Mediation and Conciliation” (MMC) amendments to the Agricultural Labor Relations Act (ALRA), which the California Court of Appeal held violate equal protection principles and unlawfully delegate power to the state’s Agricultural Labor Relations Board to impose the United Farm Workers on Fresno-based Gerawan Farming and its employees. On May 15, 2015, [that court unanimously held](#) that the ALRB’s forced contracting scheme is “the antithesis of equal protection” because it imposes a contract “by administrative edict” based on “a distinct, unequal, individualized set of rules” for each employer.

The Supreme Court will also decide whether the UFW can invoke this compulsory arbitration process, even though the UFW abandoned the Gerawan employees for almost twenty years. The Court of Appeal held that the ALRB’s blanket refusal to consider the UFW’s dereliction of its duties could result in a “crisis of representation” at Gerawan: “It is clear that the employees’ right to a representative of their own choosing would be seriously jeopardized in the situation of abandonment by a union where, as here, the absentee union suddenly reappeared on the scene to demand the MMC process.”

[MMC is a uniquely coercive form of government intervention](#) in private employer relations. No other state allows an administrative agency to draft and impose contracts dictating wages, hours, and terms of employment on private companies and employees, without even letting the employees vote on it. In this case, since UFW had [disappeared for almost two decades](#), 99% of the Gerawan employees [never voted for UFW](#) representation, yet the state is trying to force a contract on them anyway.

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Nearly a century ago, the United States Supreme Court unanimously struck down a scheme similar to MMC, holding that it infringes both the employer’s right to contract and the employees’ freedom of association, including the right to strike. The MMC contract set aside by the Court of Appeal bars worker strikes, even though [such strikes have been the Gerawan employees’ primary means of expression](#). The MMC contract also compels Gerawan to fire workers who refuse to pay three percent of their earnings to the UFW, “whether,” as the Court of Appeal held, “the employees want its representation or not.”

Rejecting the ALRB’s argument that employees could mount a decertification effort against a heretofore-absent union, the Court of Appeal held that “[r]ealistically, a decertification option would often be too late to stop the MMC process.”

In fact, thousands of Gerawan employees successfully petitioned for the right to hold an election to determine whether to oust the UFW. That election was held nearly four years ago. Though the ALRB supervised and ran the election, it refused to count the ballots, and [instead imposed the MMC contract](#) after the election.

In April, 2016, the ALRB set aside the election it ran, without ever counting the ballots, concluding that it was “impossible” to determine whether the workers’ decertification petition reflected the “true sentiments” of Gerawan’s employees. The ALRB’s General Counsel asked the ALRB to destroy the ballots. Gerawan employees have asked the Court of Appeal to order the ALRB to count their votes.

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[Download Summary of History between Gerawan, UFW, and ALRB](#)