

Silvia Lopez and Gerawan workers
c/o Attorney Paul Bauer
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Email: SilviaLopez@PickJustice.com

August 13, 2018

Chief Justice Cantil-Sakauye and Associate Justices
California Supreme Court
350 McCallister Street, Room 1295
San Francisco, CA 94102

RECEIVED

RE: Gerawan Farming v. Agricultural Labor Relations Board, No. S249865

AUG 15 2018

Dear Chief Justice and Associate Justices:

CLERK SUPREME COURT

Our attorney Michael Carvin sent the attached letter to you about the ALRB wanting to destroy our votes. Those of us listed below and on the second page are just some of the thousands of Gerawan workers who agree with his letter.

Thousands of us have protested many times and signed petitions to vote. Watch us protest here:

PickJustice.com/Thousands

On August 26, 2014 thousands of us delivered more than 800 declarations to ALRB to tell ALRB that we voted on our own, in the election ALRB ran, with no pressure or obligation. But ALRB threw those declarations away without any response. The ALRB judge also ignored the declarations when we testified about them. Here's a video of a thousand of us giving the declarations to ALRB:

PickJustice.com/800Declarations

The ALRB wants to destroy our votes and force a contract on us that we don't want and would have lowered our pay. Please protect us. Thank you.

Sonia Lopez	Carmen Perez	Leonardo Diaz	Santiago Garcia
Rodriguez	Ramon Delgado	Maribel Basurto	Paulino Lorenzo
Leticia Luciano	Maria De Los	Estela Gomez	Ana A Romero
Evilia Calvillo	Angeles L	Felipe Penaloza	Rosario Garcia
Angel Rincon	Maria G Guzman	Ana M Martinez	Rosalva Carillo
Javier Zamora	Roberto Bautista	Fernando	Silvia Rodriguez
Delgado	Cruz	Hernandez	Jose Ibarra
Edith Hernandez	Mireya Martinez	Adela Ramirez	Jesus Padilla
Vergara	Eneoina Duarte	Francisco Lopez	Leticia Martinez
Luis Martinez	Roque W Perez	Roque Perez Lopez	Miguel Fernandez
Gonzalez	Roberto Angeles	Homero Lopez	Anayeli Ventura
Santos Quezada	Cruz	Ignacia Hernandez	Lucerecia Ventura
Gisela Castro	Bernabe Ortiz	Teofilo Berdeco	Maria Ortiz
Harlan Garcia	Romero Ortiz	Angela Vazques	Susana Juarez
Feliberto Garcia	Jovita Eligio	Edgar Ocampo	Reynalsabel Nunez
Pedro Duarte	Jessica Sandoval	Rigoberto Mateo	Lujan
Torres	Raul Blas	Pedro Berdejo	Lorenzo Paredes
Araceli Luna	Miguel Fonceca	Vasquez	Alfredo Hernandez
Sonia Alfaro	Jesus Hernandez	Teodara Rosas	Gueron
Gustavo Prado	Filberto Albino	Matividad Molina	Juan Bernardo E

Casimira Gomez
Agustin Gonzales
Puscido Mendoza
Maria Hinojosa
Manuel Villa
Lombera
Maria de Jesus R.R
Araceli Paredes
Elizabeth Villareal
Hilda Nolasco
Juan Ramirez
Jose Bautista
Erasmus Albarran
Lorena Garcia
Noemi Salos
Ana Luisa Ruiz
Javier Ruiz
Marcos Molcarrio
Javier Lujan
Lean Tuburcso
Elizabeth Pozos
Estela Guzman
Jose Luis Sarao
Jose Cornelo
Hediccabeto
Felix Eligio
Maria Estrada
Lidia Urieta
Rafael Aguilar
Amelia Juarez De
Padilla
Irma Villa De
Olivares
Charlie Vargas
Palomino
Maria Ortiz
Raul Eduardo Pena
Lopez
Lazaro Sanchez
Rolando Padilla
Judith Solis
Flavio Ventura
Luna
Lydia Perez
Maria Govea
Maria Felix
Mileydi Esparza
Alfonso Carillo
Rosalinda Ramirez
Claudia Regoledo
Guadalupe Ramos

Cynthia Manzo
Vanessa Barragan
Claudia Barrera
Jose Luis Zavala
Nunez
Jose Valdinos G
Luis Villalobos
Gonzalo Perez
Caleb Charles
Justo Ruiz Lopez
Juan Martinez
Maricela Nunez
Jose Javier
Valderrana
Erick Hernandez
Amelia Juarez De
Padila
Ediberto Padilla
Isabel Morales
Fabian Martinez
Lopez
Ofelia Gomez
Chavez
Sergio Lopez
Padilla
Alejandrina
Martinez De
Padilla
Rigoberto Padilla
Juan Martinez
Jorge Meza
Rolando Padilla
Clara Lopez
Martinez
Judith Solis
Angelica Bautista
Sandra Baltazar
Isabel Sandoval De
Tolentina
Ma Dolores
Cervantes
Lorena Gutierrez
Veronica Diaz
Ali Hernandez
Erica Carrasco
March D Sandoval
Maria De Colores
Hilda Cedario
Margarita Valencia
Veronica Ramirez
Gerardo Jaimes

Leticia Garcia
Rosa Martha
Jaimes
Diana Escobar De
Loera
Jose de Jesus
Loera Velasco
Evellia Calullo
Jose Hernandez
Alicia Perez
Rosa M Ramos
Leticia Diaz
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Reina Majors
Maria Hernandez
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Mayra Sylves
Claudia Arroyo
Rosa Martinez
Ysaura Cristobal
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Norma Amaya
Nayeli Zavala
Nunez
Maria Cedarin
Angel Lopez
Lazaro Sanchez
Sandra Almanza
Ema Luis Martinez
Erika Rivera
Norma Trejo
Jesus Castellanos
Jose Luis Salvador
Veronica Vargas
Rafael Garcia
Venustio Marcial
Diaz

Avana Flores
Salgado
Jose Luis Ochoa
Edith Santiago
Gonzalo Campos
Amalia Becera
Ramon Leon
Edgar Felix Ayon
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Eleazar Ramires
Angel Santamasia
Erick Martinez
Roberto Martinez
Julio Gomez
Emanuel E Padilla
Martinez
Pedro Lopez
Garcia
Victor Herreson
Jose Baltazar
Duenas
Epigmenlo Lopez
Lopez
Armando
Hernandez
Rutilio Morales
Jorge Bautista
Catalina Vasquez
Adriana Vasquez
Esteban Acevedo

PROOF OF SERVICE

I am over 18 years of age and not a party to this action. My business address is: 4900 California Ave, Tower B, 2nd Floor, Bakersfield, CA 93309.

On August 15, 2018, I delivered the following document to the California State Supreme Court in San Francisco and caused the document to be served on each interested party, as stated on the attached service list:

Letter from Silvia Lopez and Gerawan workers dated August 13, 2018 in RE: Gerawan Farming v. Agricultural Labor Relations Board, No. S249865.

The document was served and delivered in person to the Court's Clerk office.

Executed on August 15, 2018, at San Francisco, CA.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Jesse Rojas', with a stylized flourish extending to the right.

Jesse Rojas

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August 7, 2018

Chief Justice Cantil-Sakauye
and Associate Justices
California Supreme Court
350 McAllister Street, Room 1295
California, CA 94102

**Re: Letter of *Amicus Curiae* Silvia Lopez Opposing Petitions for
Review in *Gerawan Farming, Inc. v. Agricultural Labor
Relations Board*, No. S249865**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Amicus curiae Silvia Lopez respectfully asks this Court to deny review in this case.

For seventeen years leading up to 2012, farmworkers at Gerawan Farming, Inc., bargained with their employer on their own, without the involvement of a union. This arrangement worked well, since the farmworkers earned the highest wages in the industry. In 2012, United Farm Workers of America appeared on the scene, claiming to be the workers' rightful bargaining representative. The Union had won an election to become the workers' representative in 1990, but had inexplicably abandoned the workers and stopped all contact with the company starting in 1995. Invoking California's mandatory mediation and conciliation procedure, the resurfaced Union secured a mediator-imposed "agreement" that required Gerawan's workers to pay fees to the Union, prohibited the workers from striking, and stripped some workers of seniority. The effect of the newly imposed union fees was to *reduce* most workers' take-home pay. See Consolidated Answer 13.

Gerawan's workers, led by *amicus* Silvia Lopez, strongly objected to the Union's conduct. In September 2013, Ms. Lopez collected enough signatures to

trigger an election to decertify the union. The Agricultural Labor Relations Board initially refused to hold the election, but 1,000 to 2,000 workers walked off the job to demand a vote, and 300 to 400 workers traveled by bus to Sacramento to protest the Board's decision. Thereafter, in October 2013, over 2,000 workers filed a second decertification petition. The Board, at last, held an election. To this day, however, it has not counted the ballots, on the ground that Gerawan allegedly engaged in unlawful practices in the lead-up to the election. See Consolidated Answer 13–14.

The California Court of Appeals has now ordered the Board to tally the votes cast before adjudicating the validity of the election. The Board and the Union, however, have asked this Court to review and overturn that order—so that the results of the election remain secret from the company, the workers, and the courts. This effort to smother worker democracy in a blanket of secrecy is fundamentally wrong.

First, a long line of judicial decisions holds that votes already cast should be counted, even if the election was allegedly tainted by irregularities. This Court long ago held that “it would be a most dangerous interference by the courts to prevent” canvassers from “announc[ing] the result of [the] election,” even if the election were “contested.” *People ex rel. Attorney General v. Board of Supervisors*, 16 P. 776, 778 (Cal. 1888). Instead, it is “more appropriate” to review challenges “after the election”—in other words, after the ballots have all been cast and counted. *Mulkey v. Reitman*, 413 P.2d 825, 829 (Cal. 1966) (in bank). This Court is far from alone in reaching these conclusions: “The courts have held (practically unanimously) that election officers may not be restrained from canvassing the vote and declaring the election, even though it be alleged that there was fraud or illegality in the election.” *State ex rel. Sathre v. Byrne*, 258 N.W. 121, 125 (ND 1934). This principle applies with even greater force than usual in this case, because (even on the Board's and the Union's own version of events) the alleged irregularity taints at most the campaign leading up to the election, not the ballot-casting itself.

Second, refusing to count ballots already cast violates the fundamental rights of the voters. The Fourteenth Amendment to the United States Constitution protects the right of a qualified voter to have his vote counted: “It has

been repeatedly recognized that all qualified voters have a constitutionally protected right to vote *and to have their votes counted.*” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (emphasis added). The First Amendment to the United States Constitution protects the same right: “First Amendment speech through the vote would [be] effectively extinguished if [the Government] block[s] releasing and certifying the results. To cast a lawful vote only to be told that the vote will not be counted or released is to rob the vote of any communicative meaning whatsoever.” *Turner v. D.C. Board of Elections & Ethics*, 77 F. Supp. 2d 25, 31 (DDC 1999). The California Constitution, too, protects this right: “A voter who casts a vote in an election in accordance with the laws of the State *shall have the vote counted.*” Cal. Const. art. II, § 2.5 (emphasis added). In accordance with California law, Ms. Lopez and other Gerawan workers have cast ballots in a decertification election. To refuse to tally those votes would deprive them of their rights under both the Federal and the California Constitution.

Third, refusing to count ballots already cast erodes public confidence in the integrity of elections. It is a “basic principle, inherent in our Constitution and our democracy, that every legal vote should be counted.” *Bush v. Gore*, 531 U.S. 1046, 1048 (2000) (Stevens, J., dissenting). As a result, “preventing [a count] from being completed will inevitably cast a cloud on the legitimacy” of the electoral process. *Id.* Put simply, “where persons who are eligible to vote lose faith that their ballot will count they will conclude that voting does not matter”; they “may decline to exercise the franchise, thereby giving up the most fundamental right of our democracy as completely as if it had been taken forcibly.” *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823, 829 (ND Ohio 2004).

Fourth, refusing to count ballots already cast disregards the “strong public policy supporting transparency in government.” *Engineers v. Superior Court*, 165 P.3d 488, 331 (Cal. 2007). In the California Court of Appeal’s words, the Board’s “secretive approach” violates “the fundamental principle that open and transparent government are an essential check against the arbitrary exercise of official power.” *Gerawan Farming, Inc. v. ALRB*, 23 Cal. App. 5th 1129, 1220 n. 106 (2018). “Something seems greatly amiss when a statutory election process has been commenced and secret ballot votes have been duly cast by the workers, but all pertinent information about what happened in the

election—*i.e.*, the vote tally—is suppressed or concealed by the government agency entrusted with that statutory process. Even if, hypothetically, the situation were one in which the Board could properly exercise discretion to set aside the election, why not do so in a transparent fashion, in the light of day, so that it would be known *what* is being set aside?” *Id.*

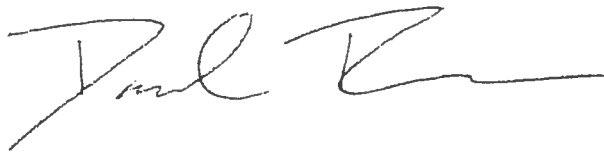
Fifth, a refusal to count the votes undermines the judicial process by forcing courts to rule on challenges to an election before it is necessary to do so. It is well established that “the rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court.” *People ex rel. Lynch v. Superior Court*, 464 P.2d 126, 127 (Cal. 1970) (in bank). To rule on a challenge to the election before the votes have been counted is to risk issuing an advisory opinion: The side challenging the result could have won anyway, in which case the court need not rule on the challenge. In this case, it makes no sense to rule on the Union’s claim that Gerawan improperly influenced the election before the courts even know whether the Union won or lost that election: If the Union won, no ruling would be necessary.

The Board and Union offer three justifications for continuing to keep the result of the election secret, but none is persuasive. One, the Board asserts that Gerawan and Ms. Lopez previously “defended” an order to “impound” the ballots. ALRB Petition 25–26. But temporarily impounding the ballots in order to preserve the status quo is quite different from permanently refusing to count them. Two, the Board asserts that the refusal to count the ballots advances the “goal[] of ... protecting employee free choice from unlawful interference or coercion.” ALRB Petition 26. But any alleged interference or coercion is fully remedied by invalidating the *results* of the election. A refusal to count the ballots adds nothing except a cloud of secrecy. Three, the Board and Union assert that disclosing “a vote count tainted by employer misconduct” would undermine the “status of the exclusive bargaining representative” and the “peace and stability” of the workplace. ALRB Petition 26; *see* Union Petition 32–33. This remarkable argument rests on the incorrect premise that workers are “better kept in ignorance than trusted with correct ... information.” *Bates v. State Bar of Arizona*, 433 U.S. 350, 374 (1977). To the extent the Board and the Union fear that disclosure of an ostensibly tainted vote count will present “an inaccurate picture” about the Union’s level of support, “the preferred remedy

is more disclosure, rather than less" (*id.*): The Union remains free to explain to the workers why it views the result of the election as illegitimate. What the Board and the Union may not do, however, is to prevent everyone from finding out the result in the first place.

This Court should therefore deny review and allow the votes cast by Ms. Lopez and her colleagues to be counted.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael A. Carvin". The signature is fluid and cursive, with a long horizontal stroke at the end.

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David T. Raimer
Vivek Suri
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Counsel for Silvia Lopez

PROOF OF SERVICE

I am over 18 years of age and not a party to this action. I am employed in the county where the mailing took place. My business address is: 51 Louisiana Avenue N.W., Washington, D.C. 20001.

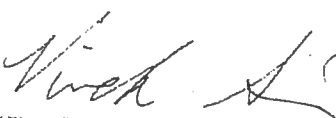
On August 7, 2018, I caused the following document to be served on each interested party, as stated on the attached service list:

Letter of Amicus Curiae Silvia Lopez Opposing Petitions for Review in Gerawan Farming, Inc. v. Agricultural Labor Relations Board, No. S249865

The document was served by FedEx, an express service carrier that provides overnight delivery. I caused true copies of the foregoing document to be placed in sealed envelopes or packages designated by the express service carrier, addressed, as stated on the attached service list, with fees for overnight delivery paid or provided for.

Executed on August 7, 2018, at Washington, D.C.

I declare under penalty of perjury that the foregoing is true and correct.


Vivek Suri

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