

# THE MORAL LIBERAL

## Abusive California Labor Law to Be Considered by State's High Court

Ilya Shapiro

May 28, 2016

California has a “mandatory mediation and conciliation process” whereby unions can force agricultural employers into collective bargaining and also bind the employers to the terms of a collective-bargaining agreement drawn up by a “neutral” mediator. This is the only such compulsory-bargaining law in the country.

One employer successfully challenged the process in the California court of appeal on the grounds of “class of one” discrimination (treating this employer differently than others)—and separation-of-powers violation. That ruling is now on appeal to the California Supreme Court.

Cato has joined the National Federation of Independent Business and four agricultural associations on an amicus brief supporting the farming company. We argue that the compulsion regime is unconstitutional for two reasons.

First, it imposes mini-labor codes to govern the relations of individual employers and their employees’ unions. It doesn’t provide any safeguard to ensure that similarly situated employers or unions will be treated similarly. It allows mediators to wield legislative authority irrationally and arbitrarily. It therefore denies affected parties the equal protection of the laws, in violation of the U.S. and California Constitutions.

Second, the compulsion regime delegates substantial legislative authority to private-party mediators. It doesn’t provide these mediators with any goal or purpose that they must achieve in drafting collective bargaining agreements. It doesn’t give them any standard or rule by which to achieve any goal or purpose. It fails to establish any adequate safeguards against the abusive exercise of the power delegated. The compulsion regime therefore violates the non-delegation doctrine—delegating legislative powers to an executive agency—and the separation of powers.

In the case of *Gerawan Farming, Inc. v. Agricultural Labor Relations Board*, the California high court should affirm the judgment.

*Ilya Shapiro is a Senior Fellow in constitutional studies at the Cato Institute and editor-in-chief of the Cato Supreme Court Review.*