

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Online Merchants Guild,

Applicant,

v.

**Nicolas Maduros,
Director,
California Dept. of Tax & Fee Administration,**

Respondent.

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

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Counsel for the Online Merchants Guild

Disclosure Statement

The Online Merchants Guild has no parent corporation and no publicly held corporation owns 10% or more of its stock.

/s/ Aaron K. Block

Counsel for the Online Merchants Guild

To the Honorable Elena Kagan, Associate Justice of the United States Supreme Court and Circuit Justice for the Ninth Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner the Online Merchants Guild respectfully requests a 30-day extension of time, up to and including May 3, 2023, to file a petition for a writ of certiorari to the Supreme Court of the United States, seeking review of the Ninth Circuit's decision in *Online Merchants Guild v. Nicolas Maduros*.

1. The Ninth Circuit issued its ruling on November 9, 2022. A copy of the order is attached as Appendix A. Petitioner timely sought rehearing, which the Ninth Circuit denied on January 3, 2023. A copy of the order denying rehearing is attached as Appendix B. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1), and the time to file a petition for a writ of certiorari will otherwise expire on April 3, 2023. This Application for Extension of Time is timely filed on March 10, 2023, more than ten days prior to the date on which the time for filing the petition is to expire.

2. This is Petitioner's first request for an extension of time to file a petition for a writ of certiorari.

3. Petitioner the Online Merchants Guild is a small trade association whose members supply goods to Amazon on consignment through the Fulfilled by Amazon program. 9th Cir. Op. at 3. This case arises from Respondent the California Department of Tax & Fee Administration's demands that the merchants register

with the agency for “seller’s permits” or face imprisonment. *Id.* at 4–5. The underlying purpose of the registration demands is eventually to make hundreds of thousands of small businesses outside of California pay for sales taxes that Amazon did not collect on Amazon.com sales some ten years ago; based on evidence that subsequently emerged, Petitioner alleges that Respondent looked the other way on Amazon’s non-collection while the state was seeking Amazon’s development (e.g., “HQ2”) in California. *Id.* at 4–7. The Online Merchants Guild contends that Respondent’s registration demands, *inter alia*, violate the federal Internet Tax Freedom Act, 47 U.S.C. § 151, Note, as well as the Due Process Clause and the Commerce Clause.

4. Merits aside, such a case naturally raises the question whether the Tax Injunction Act, 28 U.S.C. § 1341, bars federal jurisdiction. Petitioner framed its basis for federal jurisdiction according to this Court’s decisions in *Direct Marketing Association v. Brohl*, 575 U.S. 1 (2015), and *CIC Services, LLC v. Internal Revenue Service*, 141 S. Ct. 1582 (2021). Both decisions emphasize that only claims directly seeking to enjoin “discrete” acts of “assessment, levy or collection” are subject to the Tax Injunction Act, while claims challenging “information gathering” measures like “reporting requirements” are not. *E.g.*, 575 U.S. at 8–11. The district court nonetheless dismissed the case on the grounds that the Tax Injunction Act stood in the way.

5. The Ninth Circuit agreed that Petitioner’s claims directly challenge a “registration” requirement, not acts of assessment, levy, or collection, but concluded

that the Tax Injunction Act nonetheless applied. 9th Cir. Op. at 5. The Ninth Circuit alternatively affirmed abstention on comity grounds, even though the parties agreed that Petitioner and its members could not ever challenge registration demands in California state court; under California law, state courts may only hear refund claims, not challenges to information-gathering measures. *Id.* at 11–12.

Abstention was proper, the Ninth Circuit concluded, despite this Court’s holdings that, for comity abstention to be in play, states must provide a remedy so that “the Federal rights of the persons could otherwise be preserved unimpaired.” *Direct Mktg. Ass’n*, 575 U.S. at 15 (cleaned up).

6. These issues implicate exceptionally important questions, affecting hundreds of thousands of small businesses. The decisions below suggest that some lower courts may be struggling to measure the contours of the Tax Injunction Act in light of *Direct Marketing Association* and *CIC Services*. And if Petitioner’s members cannot seek to vindicate their rights in federal court, they likely cannot vindicate them anywhere.

7. Good cause exists for the requested extension. Petitioner is a small, nonprofit trade association with limited staff and resources, which serves small businesses. Petitioner is currently determining whether to proceed with a petition for a writ of certiorari to this Court, although it is likely that Petitioner will seek certiorari. Additional time is needed for further consultation and analysis with Petitioner’s stakeholders. Also, an extension of time would better enable Petitioner to prepare a petition that would be most helpful to the Court’s decision-making process.

8. This request is made in good faith and for the reasons set forth above, not for the purposes of delay.

WHEREFORE, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 30 days, up to and including May 3, 2023.

Respectfully submitted this 10th day of March, 2023.

/s/ Aaron K. Block

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CERTIFICATE OF SERVICE

I, Aaron K. Block, certify that on March 10, 2023, a copy of this application was served by email and U.S. mail to the counsel listed below in accordance with Supreme Court Rule 22.2 and 29.3:

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