

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

VIDEO GAMING TECHNOLOGIES, INC.,

Respondent,

vs.

ROGERS COUNTY BOARD OF TAX ROLL CORRECTIONS, a political subdivision; CATHY PINKTERTON BAKER, Rogers County Treasurer, in her official capacity; and SCOTT MARSH, Rogers County Assessor, in his official capacity,

Petitioners.

On Petition for Writ of Certiorari
to the Oklahoma Supreme Court

**APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI**

Matthew Ballard
Todd Wagner
Rogers County District Attorney's Office
200 S. Lynn Riggs Blvd.
Claremore, Oklahoma 74017
(918) 923-4960
Todd.Wagner@dac.state.ok.us
Matt.Ballard@dac.state.ok.us

Matthew B. Free
Counsel of Record
Thomas A. Le Blanc
BEST & SHARP
One West Third Street, Suite 900
Tulsa, Oklahoma 74103
(918) 582-1234
mfree@bestsharp.com
tleblanc@bestsharp.com

Counsel for Petitioners

March 3, 2020

**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR
WRIT OF CERTIORARI**

*To the Honorable Sonia Sotomayor, Associate Justice of the United States and
Circuit Justice for the Tenth Circuit:*

1. Pursuant to Supreme Court Rules 13.5, 22, and 30.2, Petitioners respectfully request a 59-day extension of time, up to and including May 15, 2020, within which to file a petition for writ of certiorari to review the judgment of the Oklahoma Supreme Court in this case.
2. The Opinion of the Oklahoma Supreme Court is reported at *Video Gaming Technologies, Inc., Plaintiff, v. Rogers County Board of Tax Roll Corrections, et al.*, 2019 WL 6877909, __ P.3d __ (Okla. 2019) and attached as Exhibit A.
3. The Judgment of the Oklahoma Supreme Court was entered on December 17, 2019. Rehearing was not sought by any party.
4. Unless extended, the time for filing a petition for writ of certiorari will expire on March 17, 2020.
5. This Application is being filed more than ten (10) days prior to said date.
6. Pursuant to Rule 13.5, a Justice may, for good cause, extend the time for filing a petition for a writ of certiorari for a period not exceeding 60 days.
7. The jurisdiction of this Court would be invoked under 28 U.S.C. §1257(a). *E.g.*, *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, 171-172 (2009).
8. Petitioners' Petition for Writ of Certiorari will address whether the Indian Gaming Regulatory Act, 102 Stat. 2467, 25 U.S.C. § 2701 *et seq.*, and the

“particularized inquiry” balancing test developed in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) (“*Bracker*”) preempt application of a neutrally applicable Oklahoma state *ad valorem* tax on personal property owned by a non-Indian, out-of-state corporate entity and located in Rogers County, State of Oklahoma.

9. A federally-recognized Indian tribe is not a party to this litigation. Rather, the personal property at issue (e.g., slot-machines) were leased by Respondent to Cherokee Nation Entertainment, LLC, and said devices were used in its casino operations.
10. The Oklahoma Supreme Court found that Respondent was protected from State *ad valorem* taxation by application of the federal preemption balancing test contained in *Bracker*. *Exhibit A*.
11. In its opinion, the Oklahoma Supreme Court found that the “comprehensive regulations of IGRA occupy the field with respect to *ad valorem* taxes imposed on gaming equipment used exclusively in tribal gaming.” *Exhibit A*. And that, due to (a) the nature of those regulations, (b) the federal policies threatened by the *ad valorem* tax, and (c) the “lack of justification” for the tax “other than as a generalized interest in raising revenue,” the taxing of such gaming equipment – owned by a non-Indian private corporation – was “preempted.” *Exhibit A*.
12. The opinion of the Oklahoma Supreme Court is in direct conflict with the holding of the Second Circuit Court of Appeals in *Mashantucket Pequot Tribe*

v. Town of Ledyard, 722 F.3d 457 (2d Cir. 2013), where the Court found that a town's imposition of a state personal property tax on the lessors of slot machines used by a tribe at a casino was not preempted by the IGRA or the *Bracker* balancing test.

13. For that reason, Petitioners will assert that certiorari review is necessary pursuant to the guidance offered by Supreme Court Rule 10(b) (“[A] state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals . . .”).
14. Petitioners have a strong interest in collection of ad valorem taxes, as said taxes help fund the operation of Rogers County government, schools, law enforcement, health services, roads, and other government services within Rogers County, State of Oklahoma. The Oklahoma Supreme Court discounted this interest as a “generalized interest in raising revenue” and found it largely irrelevant pursuant to its *Bracker* analysis. *Exhibit A* at ¶41. The Petition for Writ of Certiorari will highlight deficiencies in this reasoning with respect to an *ad valorem* tax imposed on a non-Indian, out-of-state corporate entity.
15. Undersigned counsel of record for Petitioners requests this extension of time because he was recently retained in this matter and will require additional time to review and analyze the record and the relevant case law in order to draft the Petition for Writ of Certiorari. Previous general counsel for Petitioners, who drafted most of the underlying briefing, is no longer employed

by Petitioners and is unable to directly assist on the substantive briefing. Finally, the undersigned counsel of record has several additional appeals pending in the Oklahoma state court system that will require attention and briefing during the pendency of this proceeding. For that reason, the undersigned counsel reasonably believes an extension of fifty-nine (59) days to file the Petition for Writ of Certiorari is appropriate.

16. Accordingly, Petitioners respectfully request that an order be entered extending the time to file a Petition for Writ of Certiorari for fifty-nine (59) days, up to and including May 15, 2020.

DATED: March 3, 2020

Respectfully submitted,

/s Matthew B. Free

Matthew B. Free

Counsel of Record

Thomas A. Le Blanc

BEST & SHARP

One West Third Street, Suite 900

Tulsa, Oklahoma 74103

(918) 582-1234

mfree@bestsharp.com

tleblanc@bestsharp.com

Matthew Ballard

Todd Wagner

Rogers County District Attorney's Office

200 S. Lynn Riggs Blvd.

Claremore, Oklahoma 74017

(918) 923-4960

Todd.Wagner@dac.state.ok.us

Matt.Ballard@dac.state.ok.us

*Counsel for Petitioners Rogers County Board
of Tax Roll Corrections, a political
subdivision; Cathy Pinkerton Baker, Rogers*

County Treasurer, in her official capacity;
and *Scott Marsh*, Rogers County Assessor, in
his official capacity.