

No. XXX

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In The  
Supreme Court of the United States

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WISCONSIN DEPARTMENT OF REVENUE, et al.,

Petitioners,

v.

UNION PACIFIC RAILROAD COMPANY,

Respondent.  
— ◆ —

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A  
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT  
— ◆ —

**APPLICATION TO THE HONORABLE BRETT M. KAVANAUGH,  
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED  
STATES AND CIRCUIT JUSTICE FOR THE SEVENTH CIRCUIT**  
— ◆ —

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Pursuant to this Court's Rule 13.5 and 28 U.S.C. § 2101(c), Petitioners Wisconsin Department of Revenue and Peter Barca, in his official capacity as the Secretary of the Wisconsin Department of Revenue, request a 21-day extension of time, to and including January 27, 2020, to file their petition for certiorari in this Court. In support of the application, Petitioners state as follows:

1. The United States Court of Appeals for the Seventh Circuit issued a panel decision on October 7, 2019. The decision is attached. The Seventh Circuit also entered judgment on October 7, 2019. Absent an extension of time, the petition for a writ of certiorari would be due on January 6, 2020, as the 90th day falls on Sunday January 5, 2020. Petitioners file this application at least ten days before the petition's due date. *See* Sup. Ct. R. 13.5.

2. The Court to which certiorari would be directed is the United States Court of Appeals for the Seventh Circuit. This Court would have jurisdiction to review the judgment of the United States Court of Appeals for the Seventh Circuit under 28 U.S.C. § 1254.

3. This case presents an important question about the interpretation of Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("4-R Act"), codified at 49 U.S.C. § 11501(b)(4). Subsections (b)(1)–(3) provide specific requirements for state property taxes on railroads, while subsection (b)(4) prohibits states from "[i]mpos[ing] another tax that discriminates against" railroads. 49 U.S.C. § 11501(b)(4). This Court previously addressed subsection (b)(4) in *Department of Revenue of Oregon v. ACF Industries, Inc.*, 510 U.S. 332 (1994). That case left open

the question of whether subsection (b)(4) prohibited a tax system “in which the railroads—either alone or as part of some isolated and targeted group—are the only commercial entities subject to an ad valorem property tax.” *Id.* at 346. The Seventh Circuit held that subsection (b)(4) did prohibit a tax of this sort, and that Wisconsin violated subsection (b)(4) by taxing railroads’ intangible personal property while exempting other taxpayers’ intangible personal property. The petition will present the question of whether subsection (b)(4) applies to property taxes and, if it does, whether Wisconsin’s tax system violates the narrow exception left open in *ACF Industries*.

4. Petitioners seek a 21-day extension for two reasons: other cases requiring the attention of counsel and the lack of availability of those at the Wisconsin Department of Revenue and the Wisconsin Department of Justice to adequately review the petition before it is filed.

5. Counsel had a brief due on December 16, 2019, in *Skindzelewski v. Jones*, No. 2018AP623 (Wis. Sup. Ct.). Counsel recently filed a brief on December 13, 2019 in *Wisconsin Department of Revenue v. Deere & Co.*, No. 19-cv-2596 (Wis. Cir. Ct. Dane Cty.). These briefs have interfered with counsel’s ability to research and prepare a petition for review that could be adequately reviewed by the Wisconsin Department of Revenue and others within the Wisconsin Department of Justice before the holiday period.

6. The current due date follows shortly after the Christmas and New Year's period. Wisconsin recognizes Christmas Eve, Christmas Day, New Year's Eve, and New Year's Day as holidays for state employees. Counsel will be traveling and out of the office for several days before and after Christmas. The same is true for those at the Wisconsin Department of Revenue and the Wisconsin Department of Justice who need to review and approve of the petition before filing.

7. Counsel will likely be unable to complete a draft of the petition with sufficient time for the Department of Revenue and Department of Justice to adequately review the petition before it would need to be filed on January 6, 2020.

8. Therefore, Petitioners request a 21-day extension of time so that counsel and the Department of Revenue can devote adequate time and attention to the petition. No meaningful prejudice would arise from the requested extension. I have contacted counsel for the respondent, Union Pacific Railroad Company, and respondent does not object to the request for an extension.

Dated this 18th day of December, 2019.

Respectfully submitted,

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