IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

NATIONAL SMALL BUSINESS UNITED (D/B/A NATIONAL SMALL BUSINESS ASSOCIATION) AND ISAAC WINKLES,

Applicants,

v.

SCOTT BESSENT, IN HIS OFFICIAL CAPACITY AS THE SECRETARY OF THE UNITED STATES DEPARTMENT OF THE TREASURY, UNITED STATES DEPARTMENT OF THE TREASURY, AND ANDREA GACKI, IN HER OFFICIAL CAPACITY AS THE DIRECTOR OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK,

Respondents.

APPLICATION TO THE HON. CLARENCE THOMAS 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 ELEVENTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), Applicants National Small Business United and Isaac Winkles hereby move for an extension of time of 60 days, to and including May 15, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition is March 16, 2026.

In support of this request, Applicants state as follows:

1. The U.S. Court of Appeals for the Eleventh Circuit rendered its decision on December 16, 2025 (Exhibit A). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case concerns an unconstitutional and unprecedented effort by the federal government to insert itself into an area traditionally reserved to the states.

As this Court has emphasized, "[c]orporations are creatures of state law." *Cort v. Ash*, 422 U.S. 66, 84 (1975). Indeed, "[n]o principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations." *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987).

3. In 2021, however, Congress upended that paradigm and intruded deeply into traditional state authority when it enacted the Corporate Transparency Act ("CTA") as Title LXIV of the 2021 National Defense Authorization Act. *See* Pub. L. No. 116-283, §§6401-03, 134 Stat. 3388, 4604-625 (2021). The CTA imposes a federal obligation on the vast majority of entities formed under state law—*i.e.*, "tens of millions" of entities, most of which are "smaller," 86 Fed. Reg. 69,920, 69,928, 69,956 (Dec. 8, 2021)—to report to the federal government sensitive, personally identifiable information of all individuals who own or control 25% or more of a reporting company's ownership interests or who exercise "substantial control" over the affairs of the company. *See* 31 U.S.C. §5336(a)(3), (a)(11), (b)(2). The CTA applies without regard to whether a reporting company engages in *any* conduct whatsoever, let alone engages in interstate commerce or any other legitimate field of federal regulation. Failure to report this sensitive beneficial-owner information is a felony punishable by up to $10,000 in fines and two years in prison. *See id.* §5336(h)(3)(A).

4. In September 2022, the Treasury Department issued a final rule implementing the CTA's disclosure mandate. *See* 87 Fed. Reg. 59,498 (Sept. 30, 2022). Soon thereafter, Applicants—an Ohio nonprofit corporation that represents over 65,000 small businesses and entrepreneurs located in all 50 states, as well as an

individual who owns two small businesses in Alabama—filed suit in the Northern District of Alabama.[1] Among other things, they argued that the CTA exceeds Congress' authority and unconstitutionally usurps the states' role in American corporate law. They also argued that the CTA's mandatory disclosure regime, which does not merely require companies to retain records generated as an incidental byproduct of their principal business but forces all beneficial owners to surrender personal information that has nothing to do with a reporting company's commercial activities, violates the Fourth Amendment's guarantee against unreasonable searches and seizures.

5. In a 53-page opinion, the district court agreed that the CTA is unconstitutional. The court held that, contrary to the government's understanding, "neither the Commerce, Taxing, and Necessary and Proper Clauses, nor Congress's foreign affairs and national security powers, justified the CTA." Exhibit A at 6. Because that holding proved dispositive, the court did not address Applicants' other arguments, including their Fourth Amendment argument. *See* Exhibit A at 7.

6. After hearing argument and deliberating for nearly 14 months, the Eleventh Circuit reversed. The court of appeals first found the CTA justified by Congress' power under the Commerce Clause. The court explained that "the corporate form is understood to be 'the foundation of the modern market economy'"

[1] During the course of this litigation, the Treasury Department issued an interim final rule exempting domestic companies from the CTA's reporting requirements. Because this litigation challenges the CTA itself, the rulemaking does not moot this case, as all parties agree. *See* Exhibit A at 5 & n.1. Indeed, the expansive breadth of that regulatory exception underscores that Congress overstepped by a considerable margin.

and stated that "requiring … corporate entities to provide beneficial ownership information" to federal regulators is "comparable to" the activity deemed sufficiently commercial in *Wickard v. Filburn*, 317 U.S. 111 (1942). Exhibit A at 11. The court also asserted that Congress could have rationally determined that "the regulated conduct has a substantial aggregate effect on interstate commerce." Exhibit A at 15. Finally, after having upheld the CTA under the Commerce Clause, the court rejected Applicants' argument that the CTA violates the Fourth Amendment, positing that "the CTA's disclosure requirement is reasonable." Exhibit A at 21.

7. Applicants anticipate filing a petition for a writ of certiorari that highlights the profound errors with and the far-reaching consequences of the Eleventh Circuit's decision. The CTA seeks to regulate corporate entities without regard to whether they undertake any activity subject to federal regulation, simply because their owners formed those entities under state law. That is a paradigmatic effort to regulate mere status and "inactivity," which lies beyond Congress' legitimate reach under the Commerce Clause. *NFIB v. Sebelius*, 567 U.S. 519, 555 (2012). Furthermore, the obligation to turn over information to the government (and continually update it) to aid federal law-enforcement efforts without any suspicion and without regard to whether the information constitutes business records generated as a byproduct of the corporation's actual activities plainly violates the Fourth Amendment. The entire point of the Fourth Amendment is to prevent the government from engaging in suspicionless and warrantless searches of this sort, and the mere fact of corporate existence, or that a beneficial owner has an interest in a

state-chartered entity, does not authorize the federal government to evade that limitation. In short, the decision below provides a green light for the federal government to assume command of American corporate law and to countermand the Fourth Amendment simply because an individual has exercised a right to form, own, and/or control an entity under state law.

8. Applicants' lead Supreme Court counsel—Paul D. Clement, who did not serve as Applicants' lead counsel in the lower courts—has substantial briefing and argument obligations between now and the current due date of the petition. Those obligations include oral argument in *Montgomery v. Caribe Transport II, LLC*, No. 24-1238 (U.S.) (scheduled for Mar. 4, 2026); oral argument in *Ninth Inning Inc. v. Nat'l Football League, Inc.*, No. 24-5493 (9th Cir.) (scheduled for Mar. 9, 2026); a petition for a writ of certiorari in *Fairfield Sentry Ltd. v. Citibank NA London*, No. ____ (U.S.) (due Mar. 13, 2026); and preparation for oral argument in *In re The Church of Jesus Christ of Latter-day Saints Tithing Litigation*, No. 25-4068 (10th Cir.) (scheduled for Mar. 17, 2026). Applicants accordingly request a 60-day extension of time to permit their counsel to prepare a petition that will fully address the critically important issues raised by the decision below.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including May 15, 2026, be granted within which NSBA may file a petition for a writ of certiorari.

Respectfully submitted,

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