

No. _____

In the Supreme Court of the United States

AMERICAN CAR RENTAL ASSOCIATION

Applicant,

v.

HEIDI HUMPHREYS, *in her official capacity as the Executive Director of the Colorado Department of Revenue*; SHOSHANA LEW, *in her official capacity as the Executive Director of the Colorado Department of Transportation*; CECIL GUTIERREZ, *in his official capacity as the Chair of the Colorado High-Performance Transportation Enterprise,*

Respondents.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable Neil M. Gorsuch
Associate Justice of the Supreme Court of the United States and Circuit
Justice for the Tenth Circuit

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Applicant states as follows:

Applicant American Car Rental Association is a nonprofit corporation. It has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

To the Honorable Neil M. Gorsuch, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit:

1. Under 28 U.S.C. § 2101(c) and Rules 13.5 and 22 of this Court, Applicant American Car Rental Association respectfully requests a 60-day extension of time, to and including December 24, 2026, to file a petition for a writ of certiorari.

2. The United States Court of Appeals for the Tenth Circuit entered its judgment and issued its opinion in this case on July 27, 2026. The opinion is reported at 182 F.4th 1254 and is attached as Exhibit A. No petition for rehearing was filed. This Court would have jurisdiction under 28 U.S.C. § 1254(1).

3. Under Rules 13.1, 13.3, and 30.1, the petition is currently due on Monday, October 26, 2026, because the ninetieth day following entry of judgment falls on Sunday, October 25, 2026. This application is being filed more than 10 days in advance of that deadline. No prior application for an extension has been made in this case.

4. This case concerns the preemptive scope of the Anti-Head Tax Act, 49 U.S.C. § 40116. The Act provides that a State may not “levy or collect a tax, fee, or charge . . . upon any business located at a commercial service airport . . . that is not generally imposed on sales or services by that State.” § 40116(d)(2)(A)(v). Colorado’s statutory and administrative scheme requires rental-car companies to calculate, collect, remit, and account for a congestion-impact fee for short-term vehicle rentals. Colo. Rev. Stat. § 43-4-806(7.6)(a)(I). The American Car Rental Association claimed that the AHTA preempts the fee.

5. A divided panel of the Tenth Circuit held that the fee is not preempted by the AHTA because it is imposed on rental-car customers, rather than rental-car companies, and therefore is not imposed “upon” an airport business. Judge Allison Eid dissented. In her view, the legal incidence of the fee rests on the rental-car companies because the law makes the companies legally responsible for collecting and remitting the fees and neither imposes liability on customers nor legally requires the companies to pass the fee through to customers.

6. The courts of appeals have divided over how to determine legal incidence when a law makes sellers responsible for calculating, collecting, and remitting a tax or fee but does not require them to pass it through to consumers. The Sixth and Ninth Circuits have held that legal incidence may rest on consumers even without a mandatory pass-through provision. *See Keweenaw Bay Indian Cmty. v. Rising*, 477 F.3d 881, 889-91 (6th Cir. 2007) (holding that a mandatory pass-through provision is “not an absolute prerequisite” to placing legal incidence on consumers); *Confederated Tribes & Bands of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078, 1087-89 (9th Cir. 2011) (applying a balancing test that considers mandatory pass-throughs along with other factors). The Eleventh Circuit, by contrast, has held that “[t]o shift the legal incidence to a consumer, . . . any pass-through [must] be mandatory.” *Seminole Tribe of Fla. v. Stranburg*, 799 F.3d 1324, 1349 (11th Cir. 2015). The Tenth Circuit appeared to adopt the latter approach in *Sac & Fox Nation of Missouri. v. Pierce*, 213 F.3d 566, 578 (10th Cir. 2000), but effectively adopted the former approach in this case.

7. Applicant recently engaged undersigned counsel, who did not represent Applicant in the proceedings below. This case presents complex questions and a detailed record. The requested extension would allow counsel sufficient time to review the record, analyze the issues presented, and prepare the petition. The extension is also necessary given the heavy press of matters the undersigned counsel is responsible for over the next month, including likely an opposition to a motion for summary judgment in *California v. EPA, et al.*, No. 1:26-cv-2185 (D.D.C.) (default briefing schedule subject to change), likely an opening brief in *State of California v. EPA, et al.*, No. 26-05336 (D.C. Cir.) (motion for expedition pending), and other active matters including extensive discovery proceedings and likely forthcoming depositions in *State Farm v. Jung*, No. 1:26-cv-00093 (D. Haw.).

8. For these reasons, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari up to and including December 24, 2026.

Dated: October 15, 2026

Respectfully submitted,

/s/ Katherine C. Yarger

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CERTIFICATE OF SERVICE

I certify that on October 15, 2026, I caused the above document to be served on the following by overnight commercial carrier and electronic mail where available:

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