

APP No. _____

IN THE SUPREME COURT OF THE UNITED STATES

NATIONAL RELIGIOUS BROADCASTERS NONCOMMERCIAL MUSIC LICENSE COMMITTEE,
Petitioner,

v.

COPYRIGHT ROYALTY BOARD AND LIBRARIAN OF CONGRESS,
Respondents.

On Application for an Extension of Time
to File Petition for a Writ of Certiorari to the
United States Court of Appeals for the District of Columbia Circuit

**PETITIONER'S APPLICATION TO EXTEND TIME
TO FILE PETITION FOR WRIT OF CERTIORARI**

KARYN K. ABLIN
FLETCHER, HEALD & HILDRETH, PLC
1300 N. 17th Street
11th Floor
Arlington, VA 22209
(703) 812-0443
ablin@fhhlaw.com

JOHN J. BURSCH
Counsel of Record
ALLIANCE DEFENDING FREEDOM
440 First Street, N.W., Suite 600
Washington, D.C. 20001
(616) 450-4235
jbursch@ADFLegal.org

Counsel for Petitioner

Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Petitioner National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC) states that it is the noncommercial arm of the National Religious Broadcasters Music License Committee (NRBMLC). The NRBMLC is a standing committee of the National Religious Broadcasters (NRB), a trade association representing more than 1,300 radio and television stations, program producers, multimedia developers, and related organizations around the world. The NRB is a non-profit corporation with no parent corporation, and no publicly held company has a 10% or greater ownership interest in the NRB.

To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit:

Pursuant to this Court’s Rules 13.5, 22, 30.2, and 30.3, Petitioner NRBNMLC respectfully requests that the time to file its Petition for Writ of Certiorari in this matter be extended for 30 days up to and including January 25, 2024. The Court of Appeals issued its opinion on July 28, 2023. (Appendix (“App.”) A) and denied rehearing en banc on September 27, 2023 (App. B). Absent an extension of time, the Petition for Writ of Certiorari would be due on December 26, 2023. Petitioner is filing this Application more than ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1). Respondents do not object to NRBNMLC’s request.

Background

Under limited statutory licenses, the Copyright Royalty Board establishes rates under which noninteractive webcasters—those whose listeners cannot select the content—pay royalties to sound recording copyright owners where parties cannot agree to rates. The Board must set rates that represent what “would have been negotiated in the marketplace between a willing buyer and a willing seller.” 17 U.S.C. §§112(e)(4), 114(f)(1)(B).

Among large noncommercial webcasters, there are two relevant groups: webcasters who are affiliated with National Public Radio (NPR) and webcasters who are not, the latter of which are almost exclusively religious. For NPR, the Board adopted rates that NPR and SoundExchange, Inc.—representing record company

sellers—proposed as willing buyers and sellers, which are excellent evidence of large, noncommercial, willing-buyer-willing-seller rates. Yet instead of adopting those rates—or anything close—for religious webcasters, the Board forced them to pay a rate for webcasting to listeners above an audience of 218 average listeners (the size of a small college lecture hall) that is *over 17 times* the average NPR rate.

That’s a violation of the Religious Freedom Restoration Act (RFRA), which prohibits federal agencies from substantially burdening religious exercise “even if the burden results from a rule of general applicability.” 42 U.S.C. §2000bb-1(a). If “a law that operates so as to make the practice of ... religious beliefs more expensive in the context of business activities imposes a burden on the exercise of religion,” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014) (quotation omitted), that is doubly so when religious broadcasters are forced to pay *17 times* more than the secular NPR rate to webcast to listeners above a minimal audience.

A D.C. Circuit panel rejected the RFRA and First Amendment claims brought by Petitioner NRBNMLC because (1) there was “no record finding” of a disparity and (2) to the extent a disparity exists, it penalizes secular, non-NPR webcasters as much as religious, non-NPR webcasters. SlipOp.33-34 (Ex.A). But the Government’s briefing conceded a disparity, and this Court has held that it is no answer to a religious discrimination allegation that the Government “treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam) (citation omitted).

The end result is that noncommercial religious webcasters are greatly disincentivized from disseminating religious speech beyond a minimal audience, whereas Government-favored NPR webcasters face no such speech suppression. This disparity is even starker because NPR webcasters do not have to pay the fees; the Government pays them. This unlawful disparate burden placed on religious speech *vis-a-vis* secular speech is of exceptional importance. Further, no Circuit split need develop before this issue is ripe for determination by this Court, as appeals from these cases are heard exclusively by the U.S. Court of Appeals for the D.C. Circuit. Petitioner intends to ask the Court to review this error to correct the D. C. Circuit's error, which affects noncommercial religious broadcasters nationwide.

Reasons For Granting An Extension Of Time

The time to file a Petition for a Writ of Certiorari should be extended for 30 days for the following reasons:

1. Petitioner's Counsel of Record, John J. Bursch, was not actively involved in the litigation below until preparation of the petition for rehearing en banc. It will take time for Mr. Bursch to familiarize himself fully with the substantial record and prepare a concise petition of maximum helpfulness to the Court. In addition to the upcoming Christmas holiday and scheduled time away from the office, Mr. Bursch has numerous litigation deadlines in the weeks leading up to and immediately following the current deadline as follows:

- Oral argument on December 8, 2023 before the U.S. Court of Appeals for the Fourth Circuit, *Planned Parenthood South Atlantic v. Kerr*, Case No. 21-1043.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.