Below is a short summary of the opening brief in the case of *DMA v. Brohl*, filed on September 9, 2014. The case will be heard by the Supreme Court of the United States on December 8, 2014. In the lawsuit, DMA contends that a Colorado law requiring companies to turn over confidential purchase history information unfairly discriminates against interstate commerce by targeting solely out-of-state merchants and constitutes an invasion of consumer privacy.

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Introduction to *DMA v. Brohl*

The issue presented in *DMA v. Brohl* focuses on whether the Tax Injunction Act's bar against federal court jurisdiction to hear taxpayer challenges to state tax assessments applies to a state law that does not impose any tax but creates regulatory obligations that are only indirectly related to state taxes.

The case arises from the DMA's challenge under the Commerce clause of the U.S. Constitution against the imposition of a set of informational notice and reporting obligations on out-of-state retailers not subject to sales and use tax obligations under Colorado law. The Tax Injunction Act (TIA), passed by Congress in 1937, provides that federal courts may not "enjoin, suspend or restrain the assessment, levy or collection" of any state tax.

Despite the non-tax nature of the DMA's challenge, the Tenth Circuit Court of Appeals held that the suit could not be brought in federal court because of the Tax Injunction Act. According to the Tenth Circuit, the TIA's jurisdictional bar extends to any suit that "would enjoin a procedure required by the state's taxing statutes and regulations that *aims to enforce and increase* tax collection."

DMA argues that the "Colorado Act does not impose a tax, or a tax collection obligation, upon out-of-state retailers." The purpose of DMA's challenge is, therefore, not to "Enjoin, suspend, or restrain the assessment, levy, or collection" of Colorado use taxes, but rather to prevent the imposition of discriminatory and burdensome regulatory obligations upon an affected set of its membership.

Summary of the DMA Argument

1. The TIA does not prohibit challenges brought by non-taxpayers who are not contesting state tax liability, either their own or anyone else's.
2. The Tenth Circuit misconstrues the Colorado Act's notice and reporting requirements by referring to them as "collection methods," when out-of-state retailers affected by the requirements are not required to collect, report, or pay any state tax.
3. State courts are capable of protecting federal rights, but access to federal courts by non-resident companies and individuals when federal constitutional rights are at issue is a significant factor in promoting confidence in our nation's judicial system.