No. 18-457

IN THE

Supreme Court of the United States

NORTH CAROLINA DEPARTMENT OF REVENUE,

Petitioner,

v.

THE KIMBERLEY RICE KAESTNER 1992 FAMILY TRUST,

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF NORTH CAROLINA

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

May a State assert jurisdiction over a nonresident trustee based solely on the fact that a contingent beneficiary resides in that State?

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INTRODUCTION

This case concerns North Carolina's attempt to exercise jurisdiction over a person with whom it has no contacts. That person, a nonresident trustee, did not engage in any conduct purposefully availing himself of North Carolina, and the State disavows any argument to the contrary. Instead, the State seeks to base jurisdiction on a single fact: that a different person, a contingent trust beneficiary, happened to reside there.

Relying on that fact alone, the State taxed the nonresident trustee on the worldwide income of the trust property. The State imposed that tax even though the beneficiary was unaware of the trust for most of its existence, did not meet the trustee until halfway through the four-year tax period, and neither received nor was entitled to any trust income during the years involved.

All of the North Carolina courts rejected the State's assertion of power as a violation of fundamental principles of due process. Those decisions are correct and should be affirmed.

This Court has twice addressed and resolved the question presented, including in the foundational case of *Hanson v. Denckla*, 357 U.S. 235 (1958). There, the Court held that a State may not assert jurisdiction over a nonresident trustee based solely on the fact of a beneficiary's forum residence. That case resolves this one. The same result follows from the core principles this Court has applied in evaluating due process limits on state jurisdiction under *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

The State asks the Court to ignore the precedents that govern this case. Instead, the State justifies its jurisdictional overreach with exaggerated and misplaced policy concerns about the impact of the decision below on tax revenues. In reality, States have ample means of taxing trust income in ways that the decision below does not affect. At issue here is a highly unusual tactic that very few States have even attempted.

Ultimately, North Carolina's grievance is not that the States lack constitutional power to tax, but rather that the States with constitutional power to tax have chosen not to exercise it. That disagreement with the policy decisions of voters in other States does not grant North Carolina license to expand its jurisdiction beyond settled constitutional bounds.

STATEMENT OF THE CASE

I. THE TRUSTEE OWNED AND CONTROLLED THE TRUST PROPERTY, AND THE BENEFICIARIES HAD NO VESTED RIGHT TO TRUST ASSETS

The trust in this case was created in 1992 by a written agreement between a New York settlor and a New York trustee. The agreement granted the trustee ownership of the trust property and absolute discretion to control all trust matters, including investments and distributions. The beneficiaries were third parties to that agreement, with no present right to trust income or principal nor any guarantee that they would ever receive either.

A. The Agreement Between the Settlor and Trustee Granted the Trustee Absolute Discretion over the Trust Property

The settlor established the trust when he executed an agreement with the trustee "assign[ing], transfer[ring], and convey[ing] to the trustee" all of the trust property. App. 45. A non-grantor trust in the traditional common law model, the trust was "irrevocable and unamendable by the Settlor." Art. 10, App. 69. The settlor retained no control over the transferred assets.

Instead, the agreement bestowed "absolute discretion" over the administration and disposition of the trust property on the trustee. Art. 1 §§ 1.1, 1.2, 1.4, App. 45–46, 50–51. The trustee was empowered to "do all such acts, take all such proceedings and exercise all such rights and privileges . . . with respect to any such property, as if the absolute owner thereof and in connection therewith to make, execute and deliver any instruments and to enter into any covenants or agreements binding any trust hereunder." Art. 5 § 5.2(r), App. 60. Under the agreement, the trustee would make distributions of assets only "as the Trustee in the Trustee's absolute discretion may from time to time determine." Art. 1 § 1.1, App. 46. The trustee was also entitled to terminate the trust "at any time in [his] discretion." Art. 2, App. 51–52.

B. The Beneficiaries Did Not Own or Control the Assets and Were Not Guaranteed Ever to Receive a Distribution

The trust agreement conferred no property or authority on the beneficiaries, who were defined only as "a class of persons consisting of the Settlor's descendants, whenever born." Art. 1 § 1.1(a), App. 45. In addition to that class of contingent primary beneficiaries, the trust identified as secondary beneficiaries the settlor's spouse and sister. App. 52.

Because the trustee had sole and absolute discretion over trust administration, the beneficiaries could not compel distributions of any income or principal for any reason, including for financial support or for their health, education, or welfare. Art. 1, App. 44–46, 51. To guide the trustee's discretion, the trust agreement identified certain milestones that might warrant distributions, Art. 1 § 1.4, App. 50–51, but the power to make decisions about when, whether, and how to distribute trust property remained solely with the trustee. *Id.*

The trust agreement explicitly prohibited the beneficiaries from alienating or assigning trust property. Art. 12, App. 70–71. The beneficiaries' creditors could not reach trust assets, even upon the death of the beneficiaries, because the trust agreement prevented a beneficiary from appointing the balance of her interest to her estate creditors prior to termination. Art. 1 § 1.2(c)(2)(i), App. 47–48. The beneficiaries were not provided the right to influence, or even to receive notice of, investment decisions.

Any particular contingent beneficiary, moreover, was not guaranteed ever to receive any funds from the trust. The trustee was specifically empowered to pay some or all trust property to any one member of the contingent beneficiary class to "the exclusion of other [beneficiaries] in such manner as the Trustee may deem advisable." Art. 1 § 1.4, App. 50. Thus, although the trust contemplated distribution of assets to each of the settlor's descendants as they reached age 40, Art. 1, § 1.2(c)(1), App. 47, by that time the trustee could have distributed the entire trust to other beneficiaries. In addition, New York law permitted the trustee to exercise his discretion not to distribute on the beneficiary's fortieth birthday and instead to decant the assets into a new trust without the termination provision. N.Y. Est. Power & Tr. Law § 10-6.6(b); App. 96.

Ultimately, the contingent beneficiaries' only right with respect to the trust property was standing to sue. If a beneficiary disagreed with the trustee's decisions, she could bring an equitable action in New York alleging that the trustee abused his discretion. Restatement (Third) of Trusts § 50 (Am. Law Inst. 2003) ("A discretionary power conferred upon the trustee to determine the benefits of a trust beneficiary is subject to judicial control only to prevent misinterpretation or abuse of the discretion by the trustee."). Such a suit would face a formidable standard, requiring a showing of "abuses that are arbitrary or the result of bad faith." *Haynes v. Haynes*, 900 N.Y.S. 2d 22, 22 (N.Y. App. Div. 2010).

II. THE TRUSTEE HAD NO CONTACTS WITH NORTH CAROLINA

From its creation, the trust agreement and property had nothing to do with North Carolina. The trustee had no connection with that State, before or after the contingent beneficiary moved there.

A. The Trust Agreement, Trust Property, Settlor, and Trustees Had No North Carolina Contacts

The settlor and initial trustee were both residents and domiciliaries of New York. App. 39. They executed the trust agreement in New York, App. 75, and specified that it was subject to New York law. Art. 10, App. 69.

None of the trust property was located in North Carolina, and none of the trust income was derived directly from a North Carolina source. App. 41–42. The trust assets did not include any real property, in North Carolina or elsewhere. App. 41. The custodian of the trust assets was located in Massachusetts. *Id.* Other ownership documents and records were kept in New York. *Id.*

The initial trustee moved to Florida in 1995 and continued to administer the trust until he retired in 2005. App. 39. The settlor then appointed as trustee David Bernstein, who remained in that position during the relevant period. App. 39–41. Bernstein, who paid the tax at issue, was a resident and domiciliary of Connecticut when the settlor appointed him and throughout the relevant tax years. App. 40–41.[1]

[1] The trust agreement contemplated an initial term of 10 years, after which the trustee would divide the trust into separate shares for each of the settlor's then-living children, or if deceased, the children's then-living descendants. Art. 1 §§ 1.1, 1.2, App. 45–46. In 2002, the initial trustee informally divided the trust into three separate sub-trusts. App. 91. Bernstein formalized the division into separate trusts, including the named respondent here. App. 92. The same trust agreement continued to govern. Art. 1 § 1.2, App. 46.

B. The Trustee and Trust Property Had No Contacts with North Carolina as a Result of the Beneficiary's Residence

In 1997, five years after the trust's creation, one of the settlor's children, Kimberley Kaestner, moved to North Carolina. App. 11. During the tax years at issue, Ms. Kaestner, a contingent beneficiary, lived with her family in that State. *Id.*

For 10 years after she moved to North Carolina, and for the first 15 years the trust existed, Ms. Kaestner had no contact at all with the trustee. App. 84–86. The initial trustee and Ms. Kaestner were literal strangers; they never met or interacted. App. 83. Indeed, Ms. Kaestner did not even know that the trust existed when she moved to North Carolina. App. 84. She did not learn about the trust until nearly a decade later, in 2006—the second of the four tax years at issue—and her first meeting with Bernstein about the trust was not until 2007 in New York. App. 121, 106–07.

For the rest of the tax period, the trustee's interactions with Ms. Kaestner were "very infrequent[]." App. 127. He did not regularly inform her about the trust's performance, nor did he send her annual or quarterly reports about its status. *Id.*

There is no support for the State's incorrect assertion that the trustee "administered the Trust to satisfy Ms. Kaestner's needs." Pet. Br. 8.[2] In fact,

[2] The State mischaracterizes the record in several respects to portray inaccurately the interactions between trustee and beneficiary. It states, for example, that the trustee met with Ms. Kaestner "[o]n at least two occasions." Pet. Br. 8. As the North Carolina Supreme Court explained, "[t]he undisputed

(continued)

the trustee met with Ms. Kaestner only twice: once in 2007 and once in 2008. App. 106–07. Both meetings took place in New York and consisted of purely informational reports to educate Ms. Kaestner about the trust. App. 103–04. At no point did the trustee seek or accept investment input from Ms. Kaestner or any other beneficiary. App. 42. The trustee had no further meetings with the beneficiary during the tax years and, until this suit was filed, never traveled to North Carolina in his trustee capacity. App. 106–07.

Before Ms. Kaestner turned 40 in June 2009, after the tax years in dispute, the trustee exercised his discretion under New York law to decant the trust property into a new trust rather than distribute the assets. App. 96–97.

The trustee never distributed any of the trust income at issue here to Ms. Kaestner or any other North Carolina beneficiary during the tax period. App. 43.

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evidence in the record shows that contact between Bernstein and Kaestner regarding administration of the trust was infrequent—consisting of only two meetings during the tax years in question." Pet. App. 17(a).

Similarly, the State incorrectly asserts that the trustee made a loan to Ms. Kaester "[n]ear the end of the tax years at issue." Pet. Br. 36. As the North Carolina Supreme Court noted, that loan was made in 2009, after the tax period. Pet. App. 3(a). That court correctly concluded that "[a]ny connection between plaintiff and North Carolina based on the loan is . . . irrelevant given that the loan was issued in January 2009, after the tax years at issue." Pet. App. 17(a); *see also* App. 113 (noting that the loan was in 2009).

III. NORTH CAROLINA TAXED THE TRUSTEE ON ALL OF THE TRUST INCOME, AND ALL OF THE NORTH CAROLINA COURTS HELD THE TAX UNCONSTITUTIONAL

North Carolina taxed the trustee on the worldwide income of the trust for the years 2005 to 2008, even though none of that income had been generated in North Carolina or received by a North Carolina resident. The sole basis for the tax was the fact that a contingent trust beneficiary lived there during those years, triggering a statute requiring "the fiduciary responsible for administering the . . . trust [to] pay" tax on the income of the trust property "that is for the benefit of a resident of this State." N.C. Gen. Stat. § 105–160.2 (2017).

The trustee paid under protest and then brought suit in the name of the trust challenging the constitutionality of the tax. All of the North Carolina courts held that the tax violated both the Due Process Clause of the Fourteenth Amendment and the North Carolina Constitution.

The North Carolina Business Court invalidated the tax primarily on the basis of *Quill*, 504 U.S. 298, and the minimum-contacts analysis that case prescribes. The court noted the State's agreement that "the only connection" supporting the tax "is the residence of the beneficiaries." Pet. App. 54a. Premising jurisdiction on that single fact, the court reasoned, failed for a number of reasons. That theory contradicted the fundamental principle that "[t]he focus of the due process inquiry must be on the entity being called upon to pay taxes," *id.* at 51a, and instead "conflat[ed] the beneficiaries' contact[s]" with those of the taxpayer. *Id.* at 54a. Moreover, the court noted, the State's argument "ignores the undisputed facts that [the beneficiaries] had no control over [trust] assets or ability to generate income from those assets, and had no authority to compel [the trustee] to distribute income." *Id.* at 55a.

The court therefore concluded that the State lacked the minimum connection necessary to justify the tax. The court further held that *Quill* invalidated the tax for the similar reason that the taxed income bore no rational relationship with the State. *Id.* at 58a. In addition, the court reasoned that the tax failed Commerce Clause scrutiny on multiple grounds, including that "the mere presence of the beneficiaries" was not a "substantial nexus" with that State for a tax on undistributed trust income. *Id.* at 65a, 67a–68a.

The Court of Appeals unanimously affirmed the Business Court, concluding that "North Carolina did not demonstrate the minimum contacts necessary to satisfy the principles of due process." Pet. App. 27a. That conclusion rested on the same observations that drove the Business Court's holding and on this Court's decisions addressing due process limits on taxation of trust income. *Id.* at 38a–40a. The Court of Appeals deemed it unnecessary to reach the Commerce Clause.

The North Carolina Supreme Court affirmed. Like the lower courts, that court considered whether the State could tax the trust income "solely based on the North Carolina residence of the beneficiaries during the tax years." Pet. App. 2a. The court reasoned that, under *Quill*'s requirement of a "minimum connection[—]more commonly referred to as minimum contacts"—the taxpayer's "minimum contacts with the taxing state cannot be established by a third party's" actions. *Id.* at 10a, 13a. Applying this Court's cases elaborating on due process guarantees, the North Carolina Supreme Court concluded that "[w]hen, as here, the income of a foreign trust is subject to taxation solely based on its beneficiaries availing themselves of the benefits of our economy and the protections afforded by our laws, those guarantees are violated." *Id.* at 18a.

One justice dissented. Even that justice, however, did not adopt the State's argument that the fact of a beneficiary's residence alone supports jurisdiction. Instead, the dissenting justice agreed that the "proper due process analysis focuse[s] upon the activities of" the trustee in light of the beneficiary's residence, which is "relevant, but not dispositive." Pet. App. 24a–25a & n.2. Thus, not a single judge in the North Carolina system who reviewed this case agreed with the State's position.

The State sought certiorari limited to the "narrow question" of whether the challenged tax is justified based "solely on the presence of an in-state beneficiary." Pet. Rep. in Supp. of Cert. 6–7 ("[T]his case is an ideal vehicle: It presents the beneficiary's in-state residency in clean form, allowing the Court to resolve the question presented without the need to consider other types of jurisdictional contacts.").

SUMMARY OF ARGUMENT

North Carolina's exercise of jurisdiction over a nonresident trustee with no connection to the State, based solely on the fact that a contingent beneficiary lived there, violates the Due Process Clause.

I. This Court has twice addressed and decided the question presented, and those precedents control here.

A. As part of a series of decisions on the constitutional limits of trust taxation, this Court held that the State where a beneficiary resided could not, on that basis alone, tax a nonresident trustee on trust property the resident beneficiary neither received nor controlled. *Safe Deposit & Tr. Co. v. Virginia*, 280 U.S. 83 (1929). That decision rested on practical considerations of actual control and ownership, and it aligns with the principles of fundamental fairness that animate contemporary due process cases. The State's effort to dismiss *Safe Deposit* as based on the physical location of the taxed property mischaracterizes its reasoning and ignores its central place in a principled, practical, and fair framework for defining the outer bounds of state jurisdiction to tax trust property.

B. This Court reached the same conclusion in *Hanson v. Denckla*, 357 U.S. 235 (1958), a pillar of due process jurisprudence. In *Hanson*, the Court held that a State may not assert jurisdiction over a nonresident trustee based solely on the forum residence of beneficiaries. Focusing on the trustee's own actions, the Court articulated the requirement of "purposeful availment" that remains the constitutional touchstone. The Court specifically refused to attribute a beneficiary's forum contacts to the trustee, reasoning that "[t]he unilateral activity of those who claim some relationship with a nonresident . . . cannot satisfy the requirement of contact with the forum State." *Id.* at 253.

Hanson is not distinguishable in any material respect. There is no practical difference between asserting jurisdiction over the trust property and asserting jurisdiction over the trustee who owns the trust property. And state jurisdiction to tax is informed by the same principles governing jurisdiction to adjudicate. *Hanson*'s reasoning and result control this case, and unless this Court repudiates both, North Carolina cannot prevail here.

II. The due process principles elaborated in this Court's subsequent decisions confirm the holding of *Safe Deposit* and *Hanson* and invalidate the North Carolina tax.

A. Due process requires minimum contacts between the State and the taxpayer and a rational relationship between the tax and fiscal values connected to the State. *Quill*, 504 U.S. 298.

Under this Court's decisions, the focus of the minimum-contacts inquiry must be the taxpayer's own conduct. The State does not argue that the taxpayer engaged in any conduct by which he purposefully availed himself of North Carolina. Instead, the State supports jurisdiction solely by pointing to a different person's conduct—the decision of a contingent trust beneficiary to live there. That argument fails: a nonresident's relationship with a forum resident, without more, cannot establish the necessary minimum connection. Similarly, taxing the trustee for the worldwide income of the trust based on the possibility that a contingent beneficiary might someday receive it in North Carolina does not qualify as the rational fiscal relationship that *Quill* requires.

B. The State principally contends that the forum contacts of any one "trust constituent" are attributable to anyone else in the trust relationship, including the trustee. But this Court's precedent and the distinct roles of trustees and beneficiaries under basic tenets of trust law foreclose the State's effort to fuse them for jurisdictional purposes. And what the State decries as the "separateness theory" of trust constituents is a consequence of North Carolina's own law, which treats the trustee and beneficiary as independent actors who cannot bind one another.

C. Jurisdiction over the trustee cannot rest on the ground that the State provided public services to the beneficiary. This Court has previously rejected that argument, which, like the State's main theory, focuses on the wrong party and does not show that the *trustee* purposefully availed himself of the forum.

The argument also assumes facts that are not true. The State claims that the beneficiary consumed state resources without paying taxes in return, but in fact, she did pay taxes on all income she had actually received and enjoyed during the tax years. She had not received—and might never have received—income of a trust she did not control and did not know existed, and there is no basis to treat that income as if it were hers. Similarly, the State asserts that the protections it provided the beneficiary spared the trustee from having to furnish equivalent services. In truth, the trustee had no obligation to provide the beneficiary anything in the tax years other than the good-faith exercise of his absolute discretion.

The State's public-benefits argument is boundless. It would permit jurisdiction over the trustee not just in any State where a contingent beneficiary resides, but also in any State that, because the beneficiary spent time there, could claim to have provided her the interim protections of its laws.

D. The existence of a fiduciary relationship with a forum resident does not create jurisdiction over the trustee wherever any beneficiary decides to move. This Court has repeatedly held that assuming a role with fiduciary obligations to a resident does not constitute purposeful availment. The circumstances of this case demonstrate why the State's argument is incorrect. The trustee and beneficiary were literal strangers for the first 15 years of the trust's existence, and their interactions thereafter were "very infrequent[.]" App. 127.

III. Misplaced policy concerns about the impact of the decision below on state tax revenues do not justify the State's jurisdictional overreach. Those concerns are greatly exaggerated. States have ample means of taxing trust income unaffected by the ruling below. States make individual decisions about whether to tax trust income within their jurisdiction, and those choices reflect considered judgments about tax policy. Limits on state jurisdiction are a consequence of federalism, which promotes and respects the sovereign right of each State to set its tax policy without interference from other States that lack a legitimate interest. North Carolina's jurisdiction does not expand because it disagrees with the policy choices of other States to refrain from exercising their constitutional power.

ARGUMENT

I. THIS COURT'S DECISIONS RESOLVE THIS CASE AND COMPEL THE HOLDING BELOW

This Court's decisions foreclose North Carolina's attempt to exercise jurisdiction over a taxpayer with no forum contacts. Cases decided specifically in the context of trust taxation have already addressed and rejected the State's position. And the foundational minimum-contacts case of *Hanson v. Denckla* confirms the correctness of the Court's previous decisions in the *International Shoe* framework.

A. *Safe Deposit* and Its Corollary Decisions Invalidate the North Carolina Tax

The Court has resolved the question presented as part of a series of decisions that establish common-sense and fair due process limits on trust taxation. Under those decisions, a State may tax a resident trustee for property he owns, and it may tax a resident beneficiary for property she receives or controls. A State may not, however, tax a nonresident trustee for no reason other than the residence in the State of a beneficiary who has not received and lacks possession or control of the trust property.

1. This Court has rejected the tax North Carolina imposed

In *Brooke v. City of Norfolk*, 277 U.S. 27 (1928), this Court considered whether a State may tax a resident beneficiary on the assets of an out-of-state trust. The trust was created by the will of a Maryland citizen conveying the trust property to a Maryland trustee for the benefit of the Virginia-resident petitioner and her descendants. The petitioner had paid Virginia "without question a tax upon the income received by her," but she challenged Virginia's power to tax her for the undistributed Maryland trust property. *Id.* at 28.

The Court held the tax unconstitutional on the basis of fundamental principles of fairness. The premise of the attempted tax, the Court observed, was "that the petitioner is chargeable as if she owned the whole" trust, and not just the income she actually received. *Id.* Rejecting that premise, the Court contrasted the petitioner's situation with that of a taxpayer who "actually us[ed]" the property. *Id.* at 29. Here, the Court explained, "the property is not within the State, does not belong to the petitioner and is not within her possession or control. The assessment is a bare proposition to make the petitioner pay upon an interest to which she is a stranger. This cannot be done." *Id.*

One year later, the Court addressed the corollary question to *Brooke*, which is also the question presented in this case: If the State may not tax a resident beneficiary on undistributed out-of-state trust property, may the State tax an out-of-state trustee on the sole ground that the beneficiary is a resident? Considering the same realities of actual control and ownership underlying *Brooke*, the Court held that such a tax offends due process. *Safe Deposit*, 280 U.S. 83.

The trust property in *Safe Deposit* was held by a Maryland trustee for the benefit of the settlor's two Virginia-resident sons. Under the trust agreement, the trustee was to own the property until distribution of half of the assets to each son as he reached 25. Although neither son had yet received any distributions, Virginia taxed the Maryland trustee based on the fact of the beneficiaries' Virginia residence.

This Court invalidated the Virginia tax on the trustee as a violation of the Due Process Clause, focusing on the practical realities of the trust relationship. Under the doctrine that intangible property follows its owner, the Court reasoned, Virginia could as a general matter assert jurisdiction over trust property even though it was located outside the State's territorial borders. That general rule applied, however, only if it aligned with reality—only if, as the State contended, the beneficiaries "really owned the [trust] fund." *Id.* at 91.

In truth, the Court recognized, the State's argument "plainly conflict[ed] with fact"; the beneficiaries did not own the trust assets and "no person in Virginia ha[d] present right to their enjoyment or power to remove them." *Id.* at 92. Because "nobody within Virginia ha[d] present right to their control or possession, or to receive income therefrom, or to cause them to be brought physically within her borders," the Court held that Virginia lacked jurisdiction to tax the trust assets through the nonresident trustee. *Id.* at 91.

The Court distinguished previous cases that had permitted taxation by highlighting practical differences in true ownership and control. In those other cases, the Court reasoned, the resident had either "full power to control the deposits" or "control and present right to all benefits arising from the property"; "[t]he legal title was not held by another with the duty to retain possession, as in the present cause." *Id.* at 94. The Court thus concluded that taxation of a nonresident trustee based solely on the forum residence of a beneficiary "would result in inescapable and patent injustice," violating the principles of fairness the Due Process Clause protects. *Id.* at 92.[3]

As this description illustrates, there is no merit to Petitioner's effort to dismiss *Safe Deposit* as beholden to a "rigid" *Pennoyer*–based rule of "physical presence." Pet. Br. 27–28. *Safe Deposit* relied on the same "traditional notions of fair play and substantial justice" that continue to animate due process jurisprudence. The Court did *not* reject Virginia's exercise of jurisdiction because the trust property was physically located outside of the State's border. Quite the contrary, the Court noted that it could—and ordinarily would—uphold jurisdiction based on the intangibles-follow-the-owner fiction even though the property was not physically present

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[3] The State seizes on references in *Safe Deposit* to "double taxation" in an effort to cast that decision as resting on outdated concerns. In fact, this Court had already held more than a decade before—in a case *Safe Deposit* specifically cited—that the Due Process Clause does not categorically forbid "double taxation." *See Fidelity & Columbia Tr. Co. v. City of Louisville*, 245 U.S. 54, 58 (1917) ("[L]iability to taxation in one State does not necessarily exclude liability in another.").

The Court's driving concern in *Safe Deposit* was instead that the attempted tax was "double and oppressive" because it would permit any State in which a beneficiary or trustee lived to tax the whole trust as a resident. That concern remains just as vital today and independently dooms the North Carolina tax under the Commerce Clause. *See Comptroller of the Treasury of Md. v. Wynne*, 135 S. Ct. 1787, 1795 (2015) (holding that the Constitution prohibits a state tax scheme that risks "double taxation of income earned out of the State" in a manner that disfavors interstate activity).

in the State. The Court rejected that fiction precisely because it "plainly conflict[ed] with fact": the beneficiaries did not really own the trust property, nor did they own, control, or actually receive any trust income.[4]

The State's characterization of *Safe Deposit*'s reasoning—that "once the Court decided that the trust property itself was not physically present in the State, the case was over"—is simply wrong. Pet. Br. at 27. In fact, the reasoning in *Safe Deposit* reflects the "highly realistic" approach that this Court has prescribed for due process inquiries. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 (1985).

2. *Safe Deposit* is part of a fair, principled, and practical due process framework

Brooke and *Safe Deposit* form part of a fairness-based framework for constitutional jurisdiction in the trust taxation context. Complementing those decisions, and completing the principles they established, is an additional pair of cases confirming that States may assert jurisdiction when doing so aligns with the reality of actual ownership and control of trust property.

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[4] Similarly, there is no merit to *amicus*' argument that the result in *Safe Deposit* and *Brooke* depended on the particular type of tax involved. *See* Brief for Tax Law Professors at 16–18. In both cases, the Court concluded that the tax was unconstitutional because it attributed to the beneficiaries ownership of intangible property that was not actually theirs, and to which they were "a stranger." *Brooke*, 277 U.S. at 29. That rationale has nothing to do with whether the tax is on principal or instead on income.

First, in *Guaranty Trust Co. v. Virginia*, 305 U.S. 19 (1938), the Court held that Virginia could tax a resident beneficiary on income she actually received from an out-of-state trust. *Id.* at 23; *see also Maguire v. Trefry*, 253 U.S. 12 (1920). Rejecting the beneficiary's Due Process Clause challenge, the Court relied on decisions upholding taxes imposed on income to those who actually "recei[ved] and enjoy[ed]" it. *Lawrence v. State Tax Comm'n*, 286 U.S. 276, 281 (1932) (permitting taxes on "the economic interest realized by the receipt of income or represented by the power to control it"); *New York ex. rel. Cohn v. Graves*, 300 U.S. 308, 312 (1937) (noting that the petitioner actually "received" the taxed funds "as a part of her income in the tax years").

Second, in *Greenough v. Tax Assessors of Newport*, 331 U.S. 486 (1947), the Court upheld a tax on a resident trustee for trust property he legally owned. Although the beneficiary, the other trustee, and the records were elsewhere, the Court again focused on ownership and control, reasoning that the State could tax the resident trustee because "the intangibles are subject to [his] immediate control" and the State "offer[s] benefit and protection through its law to the resident trustee as the owner of intangibles." *Id.* at 493, 496. The Court cited and specifically distinguished *Safe Deposit* on the ground that, in that case, the trust assets were "actually in the hands of the nonresident trustee and not subject to the control" of the resident beneficiary. *Id.* at 496.

The State relies heavily on *Greenough*, attempting to portray it as a repudiation of *Safe Deposit* and a fundamental shift in reasoning. This, too, is a mischaracterization. *Greenough* did not endorse a nebulous inquiry permitting the State to blend "the contacts of people in the trust relationship," such that the jurisdictional contacts of any one person in that relationship can be attributed to any other. Pet. Br. 28. To the contrary, *Greenough* followed the same path marked by *Brooke*, *Safe Deposit*, and *Guaranty Trust*, focusing on the particular person whom the State sought to tax and evaluating whether the realities of *that* person's circumstances supported jurisdiction. That focus remains a central requirement of due process. *See infra* pp. 32–33; *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (forum contacts must be those of the "defendant *himself*"). In *Greenough*, the Court upheld jurisdiction because the person with forum contacts owned and controlled the property; in *Safe Deposit*, there was no jurisdiction because the person with forum contacts did not own or control the property.

Greenough and *Safe Deposit* are in harmony with one another and with *Brooke* and *Guaranty Trust*. Together, they establish an analytical construct consistent with first principles of fairness. A State may tax a resident beneficiary on income that she actually receives or controls (*Guaranty Trust*), and a State may tax a resident trustee on trust income that he owns and controls (*Greenough*). But a State may not tax a resident beneficiary on out-of-state trust income that she neither actually receives nor controls (*Brooke*), and, absent some other jurisdictional basis, a State may not tax a nonresident trustee for trust income that a resident beneficiary neither actually receives nor controls (*Safe Deposit*).

This framework, and particularly the holding of *Safe Deposit*, compelled the conclusion of every court to consider this case. Here, as in *Safe Deposit*, the State sought to tax the trust based solely on the residence of a beneficiary. As in *Safe Deposit*, the State relied on the beneficiary's forum contacts by arguing that the resident beneficiary "really own[s]" the trust property. *Safe Deposit*, 280 U.S. at 91. Here, as there, that argument "plainly conflicts with fact"; neither the beneficiary nor anyone else "within [the taxing State] ha[d] present right to [the funds'] control or possession" or "present right to their enjoyment." *Id.* at 91–92. Thus, as in *Safe Deposit*, the North Carolina tax is "unjust and oppressive," an effort to confiscate property over which the State has no constitutional jurisdiction. *Id.* at 93; *see Miller Bros. Co. v. Maryland*, 347 U.S. 340, 342 (1954) ("[S]eizure of property by the State under pretext of taxation when there is no jurisdiction or power to tax is simple confiscation and a denial of due process of law.").

B. *Hanson v. Denckla* Confirms the *Safe Deposit* Result and Resolves this Case

The outcome in *Safe Deposit* is confirmed by *Hanson v. Denckla*, 357 U.S. 235 (1958). The issue in that canonical due process case was whether a State could exercise jurisdiction over a nonresident trustee based on, among other things, the fact that the trust beneficiaries resided there. The Court held that the beneficiaries' residence in the State did not supply the minimum contacts necessary to sustain jurisdiction over the trustee.

1. *Hanson* rejected jurisdiction over a trustee based on the residence of a beneficiary

Hanson concerned a trust agreement executed in Delaware between a Pennsylvania-domiciled settlor and a Delaware trustee. The trustee was to provide income for life to the settlor as a beneficiary, with the remainder to be paid to other beneficiaries that the settlor designated. The settlor later moved to Florida, where she executed a power of appointment naming certain beneficiaries.

After the settlor's death, two of her children sued in Florida state court challenging the validity of the appointment. The beneficiaries, who were Florida residents, appeared as defendants, but the nonresident Delaware trustee was not served and did not appear. The defendants moved to dismiss on the ground that jurisdiction over the Delaware trustee would violate the Due Process Clause. The Florida courts rejected that contention and held the appointment invalid.

This Court reversed on the ground that Florida lacked jurisdiction over the trustee. The Court began by noting that, "[a]s technological progress has increased the flow of commerce between States, the need for jurisdiction over nonresidents has undergone a similar increase." *Id.* at 250–51. Nevertheless, the Court cautioned, "it is a mistake to assume that this trend heralds the eventual demise of all restrictions" on constitutional jurisdiction, and, even under the "flexible standard of *International Shoe*," the Court concluded that the trustee was not within the State's power. *Id.* at 251.

Whether jurisdiction is proper, the Court explained, depends on the existence of "minimal contacts" with the trustee "that are a prerequisite to [the State's] exercise of power." *Id.* (internal citations omitted). The Court "fail[ed] to find such contacts in the circumstances of this case": The trustee "has no office in Florida, and transacts no business there. None of the trust assets has ever been held or administered in Florida, and the record discloses no solicitation of business in that State." *Id.* In addition, the Court observed, the trust was created "without any connection with the forum State": "The agreement was executed in Delaware by a trust company incorporated in that State and a settlor domiciled in Pennsylvania. The first relationship Florida had to the agreement was years later when the settlor became domiciled there, and the trustee remitted the trust income to her in that State." *Id.* at 252.

Throughout the analysis, the Court trained its focus on the trustee's own actions and conduct, rejecting efforts to attribute to the trustee forum contacts of other parties to the trust relationship. Thus, the Court noted that while the settlor and life beneficiary "carried on several bits of trust administration" in Florida, "the record discloses no instance in which the *trustee* performed any acts in Florida" that would support jurisdiction. *Id.* (emphasis added).

The Court similarly rejected the contention that Florida acquired jurisdiction over the trustee because the settlor and life beneficiary exercised the power of appointment in that State. It was specifically in this context that the Court articulated what is now a hallmark principle of due process:

> The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. The settlor's execution in Florida of her power of appointment cannot remedy the absence of such an act in this case.

Id. at 253–54 (internal citation omitted).

Finally, the Court addressed directly the argument that jurisdiction over the Delaware trustee was proper "because the settlor and most of the appointees and beneficiaries were domiciled in Florida." *Id.* at 254; *see id.* at 258 (Black, J., dissenting) (contending that Florida had power over the trustee because "the primary beneficiaries also lived in that State"). Basing jurisdiction on the presence of a beneficiary, the Court concluded, "is a nonsequitur." *Id.* at 254. While that fact could empower Florida to adjudicate the rights of the resident parties, it did not create jurisdiction over a different, nonresident entity. The issue, the Court explained, is jurisdiction, "not choice of law," and the jurisdictional question "is resolved . . . by considering the acts of the trustee," not those of other parties. *Id.* at 253–54.

Like *Safe Deposit*, *Hanson* resolves this case. In *Hanson*, as here, the issue was the validity of jurisdiction over a trustee as owner of the trust property in dispute. Like the State in this case, the *Hanson* petitioners and the dissenting opinion argued that the fact of in-state beneficiaries supported jurisdiction. The Court's response to that argument—that jurisdiction must be based on "the acts of the trustee," not the "unilateral activity" of a different person in the trust relationship, *id.* at 253—is dispositive here.

2. *Hanson* is materially indistinguishable

The State attempts to distinguish *Hanson* on two grounds, neither of which has merit.

First, the State contends that *Hanson* does not apply because it addressed jurisdiction to adjudicate, rather than jurisdiction to tax. The same principles govern in both contexts. *International Shoe* itself addressed jurisdiction both to tax and to adjudicate, reasoning that the "activities which establish[ed] [the corporation's] 'presence' subject it alike to taxation by the state and to suit to recover the tax." 326 U.S. at 321; *see id.* (concluding that minimum contacts gave the State "constitutional power to lay the tax and to subject appellant to a suit to recover it"). The very decision that the State describes as establishing the controlling test, *Quill Corp. v. North Dakota*, resolved the tax dispute there by relying on adjudicative jurisdiction cases. 504 U.S. at 307–08 (discussing *International Shoe*, *Shaffer v. Heitner*, and *Burger King*). The *Quill* Court "framed the relevant inquiry as whether" the taxpayer "had minimum contacts with the jurisdiction 'such that the [tax] does not offend traditional notions of fair play and substantial justice.'" *Id.* at 307 (quoting *Int'l Shoe Co.*, 326 U.S. at 316).

The *Quill* Court's reliance on adjudicative jurisdiction cases was correct. "Jurisdiction is as necessary to valid legislative as to valid judicial action." *St. Louis v. Ferry Co.*, 78 U.S. (11 Wall.) 423, 430 (1870). The Due Process Clause "protect[s] a person against having the Government impose burdens upon him except in accordance with the valid laws of the land," *Giaccio v. Pennsylvania*, 382 U.S. 399, 403 (1966), and that principle "is no less true with respect to the power of a sovereign to resolve disputes through judicial process than with respect to the power of a sovereign to prescribe rules of conduct for those within its sphere." *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 879 (2011) (plurality opinion). In both contexts, the minimum-contacts requirement ensures "fair warning that [a person's] activity may subject [him] to the jurisdiction of a foreign sovereign." *Quill*, 504 U.S. at 312 (citing *Shaffer*, 433 U.S. at 218 (Stevens, J., concurring)).

Thus, the "minimum connection" necessary for a State directly to demand money from a person under threat of criminal penalty does not meaningfully differ from the "minimum contacts" necessary for the State to require the person to defend against that demand. Indeed, this Court has used the formulations interchangeably. *E.g, South Dakota v. Wayfair Inc.*, 138 S. Ct. 2080, 2091 (2018) (describing an earlier tax decision as holding that the taxpayer "lacked the requisite minimum contacts with the State required by the . . . Due Process Clause"). And this Court has routinely applied minimum-contacts concepts when addressing state power to tax. *E.g.*, *Polar Tankers, Inc. v. City of Valdez*, 557 U.S. 1, 11 (2009) ("[A] nondomiciliary jurisdiction may constitutionally tax property . . . when the taxpayer avails itself of the substantial privilege of carrying on business in that jurisdiction.") (internal citation and quotation marks omitted).[5]

Second, Petitioner incorrectly contends that *Hanson* does not apply because it concerned jurisdiction over the trustee, rather than over the trust. Pet. Br. 24. This Court long ago dismissed as an "ancient form without substantial modern justification" the "fiction that assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property." *Shaffer*, 433 U.S. at 212. In both this case and *Hanson*, the person over whom the State asserted jurisdiction is the trustee. That was so in *Hanson* because the trustee owned the assets in dispute. It is so here because the trustee owns the income the State seeks to tax.

That the trustee is the relevant party for jurisdictional purposes is also a consequence of the State's own law. North Carolina imposes an income tax on individuals and then separately, in the statute at issue, requires the trustee to pay tax on trust income. N.C. Gen. Stat. § 105-160.2 (2017) ("The fiduciary responsible for administering the estate or trust shall pay the tax computed under the provi-

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[5] The State itself relies on adjudicative jurisdiction cases when it deems them helpful. Pet. Br. 45 (invoking the "modern analysis under the Due Process Clause" and citing *International Shoe*), 26 n.11 (relying on *Burger King*), 28 (relying on adjudicative jurisdiction cases to urge rejection of *Safe Deposit*).

sions of this Part."); N.C. Dep't of Rev., Form D-407A (2018) (directing that "the fiduciary must file" the return reflecting trust income).

In reality and under the law, there is thus no difference between asserting jurisdiction over the trustee as legal owner of the trust property and asserting jurisdiction over the "trust abstraction."[6] Relying on such a distinction represents the height of the "kind of formalism" that the State purports to disavow. Pet. Br. 25.

Hanson therefore controls here. That decision is a pillar of modern due process jurisprudence, its reasoning often recited and its result consistently reaffirmed.[7] Unless this Court repudiates both, North Carolina cannot prevail in this case.

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[6] Nor does the name of the party in the case caption make any difference. "[L]egal proceedings involving such traditional trusts are effectively brought by or against their trustees[.]" *Raymond Loubier Irrevocable Tr. v. Loubier*, 858 F.3d 719, 722 (2d Cir. 2017); *see also Americold Realty Tr. v. Conagra Foods, Inc.*, 136 S Ct. 1012, 1016 (2016) ("Traditionally . . . legal proceedings involving a trust were brought by or against the trustees in their own name[,]" and the trustee is also the relevant party "if the trust, as an entity, [is] sued.").

[7] Since deciding *Hanson*, this Court has invoked it as a key authority in nearly every subsequent due process decision. *See, e.g.*, *Bristol-Myers Squibb Co. v. Superior Ct.*, 137 S. Ct. 1773, 1780 (2017); *Walden*, 571 U.S. at 284–85, 288; *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011); *Nicastro*, 564 U.S. at 877, 880–82; *Asahi Metal Industry Co., Ltd. v. Superior Ct.*, 480 U.S. 102, 109–10 (1987); *Burger King*, 471 U.S. at 474; *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 713–14 (1982); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294–98 (1980);

(continued)

II. DUE PROCESS PRINCIPLES COMPEL THE DECISION BELOW AND REFUTE THE STATE'S JURISDICTIONAL THEORIES

The holdings of *Safe Deposit* and *Hanson* align with the core set of principles this Court has prescribed for evaluating the outer constitutional limits of state jurisdiction. The State agrees that the outcome here should turn on "'the traditional notions of fair play and substantial justice' that shape modern analysis under the Due Process Clause." Pet. Br. 45 (quoting *International Shoe*). But aside from invoking "[f]reeform notions of fundamental fairness divorced from traditional practice," *Nicastro*, 564 U.S. at 880, the State does not attempt—and even urges this Court to avoid—application of the concrete principles that define the modern due process framework. Pet. Br. 21 n.9. Those tenets defeat the State's jurisdictional theories.

A. The State Cannot Show the Minimum Connection or Rational Relationship Necessary to Assert Jurisdiction

For the State to satisfy the Due Process Clause, it must establish that there exist minimum contacts, a "minimum connection, between a state and the person, property or transaction it seeks to tax, and that the income attributed to the State for tax purposes [is] rationally related to [fiscal] values connected with the taxing State." *Quill*, 504 U.S. at

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Kulko v. Superior Ct., 436 U.S. 84, 92–101 (1978); *Shaffer*, 433 U.S. at 215–16.

306 (internal quotation marks and citations omitted).[8]

The North Carolina tax fails this standard. The State's attempt to assert jurisdiction over the trustee based on nothing more than the forum residence of a contingent beneficiary conflicts with settled law that directs the focus on the trustee's own conduct. And the State cannot tax the worldwide income of the trust on the mere speculation that a forum resident may someday receive it.

1. Jurisdiction depends on the contacts of the taxpayer with the State and cannot rest solely on the taxpayer's relationship with a forum resident

"The inquiry whether a forum State may assert . . . jurisdiction over a nonresident [taxpayer] focuses on the relationship" between the taxpayer and the State. *Walden*, 571 U.S. at 283–84 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)) (internal quotation marks omitted). The State cannot establish jurisdiction by pointing to the forum contacts of other parties; "[r]ather, it is the [taxpayer's own] conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* at 285.

The necessary relationship "must arise out of contacts that the [nonresident] *himself* creates with

[8] The State mischaracterizes the constitutional test. It asserts that "the Trust has the burden of establishing two elements": that the State "lacks a minimum connection," and that the amount taxed is "not rationally related" to the taxing State. Pet. Br. 15. As the party asserting jurisdiction, the State must satisfy both parts of the *Quill* standard.

the forum State." *Id.* at 284 (citing *Burger King*, 471 U.S. at 475) (internal quotation marks omitted). On that basis, this Court has "consistently rejected attempts to satisfy the . . . minimum contacts inquiry by demonstrating contacts between [third parties] and the forum State." *Id.* at 284. The "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a [nonresident] has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984).

Nor can jurisdiction be based solely on "the [taxpayer's] contacts with persons who reside" in the forum State. *Walden*, 571 U.S. at 285. The taxpayer's "relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction." *Bristol-Myers*, 137 S. Ct. at 1781 (quoting *Walden*, 571 U.S. at 286).

The irreducible due process requirement remains the one *Hanson* established in the trust context: "[I]t is essential in each case that there be some act by which the [taxpayer] purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." 357 U.S. at 253; *see Goodyear*, 564 U.S. at 924; *Burger King*, 471 U.S. at 474 ("[T]he constitutional touchstone remains whether the [individual] purposefully established 'minimum contacts' in the forum State.").

2. There are no minimum contacts between the trustee and North Carolina

These enduring principles control this case. The State sought to tax the trustee on income of trust property he owns and controls. It designated him as the person required to pay the tax. *See supra* p. 9. The jurisdictional inquiry therefore focuses on whether the trustee *himself* has minimum contacts with North Carolina.

The trustee has no such minimum contacts here. He did not engage in any conduct "purposefully avail[ing] [him]self of the privilege of conducting activities within the forum state." *Hanson*, 357 U.S. at 253. The State does not even attempt to argue otherwise. Instead, the State cites a single fact as grounds for jurisdiction: that a contingent beneficiary happened to move to North Carolina. Pet. Rep. in Supp. of Cert. 6–7 (asserting that this case presents only the question whether jurisdiction is proper based "solely on the presence of an in-state beneficiary").

Under this Court's decisions, the question presented thus answers itself. "If the question is whether an individual's [relationship] with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot." *Burger King*, 471 U.S. at 478. A different person "cannot be the only link between the [taxpayer] and the forum." *Walden*, 571 U.S. at 285.

"In short, when viewed through the proper lens—whether the [taxpayer's] actions connect him to the forum—[the trustee] formed no jurisdictionally relevant contacts with" North Carolina. *Walden*, 571 U.S. at 289. Because the trustee lacks "the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him," *Hanson*, 357 U.S. at 251, North Carolina's "unacceptably grasping" attempt at jurisdiction violates the Due Process Clause. *Daimler AG v. Bauman*, 571 U.S. 117, 138 (2014).

3. There is no rational relationship between the taxed income and North Carolina's fiscal values

The North Carolina tax also fails the *Quill* requirement that the "income attributed to the State for tax purposes" must be "rationally related to [fiscal] values connected with the taxing State." 504 U.S. at 306.

The State taxed the worldwide income of the trust property through the trustee. None of that income was earned in the State, and no one in North Carolina received or enjoyed it during the relevant tax years. The State did not give the trustee "anything for which it could ask return," nor did the taxed income "bear[] fiscal relation to protection, opportunities, and benefits given by the state." *Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 444 (1940). The sole basis for the State's attribution of every penny of income to North Carolina was the possibility that the contingent beneficiary might someday receive it in North Carolina. That speculative basis does not satisfy *Quill* or due process.

B. The Contacts of Any "Trust Constituent" Are Not Attributable to Everyone Else in the Trust Relationship

The State's principal theory for jurisdiction is that the forum contacts of a beneficiary are attributable to the trustee. According to the State, the contacts of any person in the trust relationship are effectively the contacts of "the trust," and those contacts therefore bind the other "trust constituents" for jurisdictional purposes. Thus, in the State's view, any State that has contacts with any "trust constituent" may assert jurisdiction over all other people associated with the trust.

That contention is incorrect. It conflicts with basic features of trust law and the actual relationship between trustee and beneficiary, it conflicts with the way in which this Court has approached questions of jurisdiction in the trust context, and it conflicts with North Carolina's own law.

1. The beneficiary and trustee are not agents, and the beneficiary does not represent the trust property

The State's argument misconceives the distinct roles that trustees and beneficiaries occupy in a traditional trust. Those distinct roles preclude the State's effort to treat the beneficiary and trustee as one for jurisdictional purposes on the ground that both are "trust constituents."

The trustee, not the beneficiary, represents the trust property and bears its rights and obligations. He can bind the trust property and is liable for all obligations incurred during the administration of the trust, including third-party claims against the trust assets. Austin W. Scott, William F. Fratcher & Mark L. Ascher, Scott & Ascher on Trusts ("Scott & Ascher on Trusts") §§ 26.1, 26.4 (5th ed. 2007); *Greenough*, 331 U.S. at 494 n.19 ("As a trustee holds the estate . . . he is personally bound by the contracts he makes as trustee, even when designating himself as such."). For procedural purposes, the trustee's domicile is dispositive, *see Americold*, 136 S Ct. at 1016, and "legal proceedings involving such traditional trusts are effectively brought by or against their trustees[.]" *Loubier*, 858 F.3d at 722.

Consistent with this principle, the trustee is liable for taxes assessed on the trust and for failure to file returns or pay taxes. Unif. Tr. Code § 816 (2000); George Gleason Bogert et al., *The Law of Trusts and Trustees* § 265 (2018) ("The liability of the Trustee for failure to file a tax return or to make estimated tax payments is the same as that of an individual.")

But this relationship between the trustee and the trust property does not apply to beneficiaries. The trustee does not represent the beneficiary: the trustee is not the beneficiary's agent and has no power to subject the beneficiary to third party claims. Scott & Ascher on Trusts §27.1; *see also* Restatement (Third) of Trusts § 103 (Am. Law Inst. 2003). This is true even when the trustee enters into a contract in the proper performance of his duties and purports to bind the beneficiaries personally. Scott & Ascher on Trusts §27.1 (The trustee "has no authority to act on behalf of the beneficiaries personally and is not subject to their control.")

Similarly, the beneficiary cannot bind trust property that does not legally belong to her. Where, as here, the trust instrument conveys to the trustee absolute discretion over the disposition of the trust property, a transferee or creditor of a beneficiary cannot compel the trustee to make distributions. Restatement (Third) of Trusts § 60 (Am. Law Inst. 2003). The beneficiary's inability to bind the trustee is reinforced by the inclusion of a spendthrift provision like the one in the trust agreement here, prohibiting the beneficiary from assigning or otherwise attaching the trust assets. Art. 12, App.

70 (prohibiting "attachment, execution, garnishment, sequestration or other seizure under any legal, equitable or other process.")

As a result, the State's assertion that a beneficiary "is a trust's most important constituent" means nothing in this context. Pet. Br. 29. Each of the "trust constituents" serves a distinct role; the trust cannot exist until the settlor expresses his intent to create it, and the trust cannot operate without a trustee to administer it.[9] The relevant question, however, is not the "importance" of the "constituent," but instead whether the practical nature of the relationships justifies the State's assertion of power over one person based on the actions of another. Under basic principles of trust law, the beneficiary's role does not support attribution of her actions to the trustee.

2. This Court's decisions in the trust context focus on the contacts of the person over whom the State asserts jurisdiction

This Court does not amalgamate the contacts of all "trust constituents" when evaluating jurisdiction over a person who is part of a trust relationship. Instead, as discussed above, *supra* § II(A), this Court

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[9] The beneficiary need not be ascertainable, or indeed in existence, at the time the trust is created. N.C. Gen. Stat. § 36C-4-409(1) (trust "without a definite or definitely ascertainable beneficiary" is valid); Scott & Ascher on Trusts §12.1. "Thus, for example, a trust can be created for the benefit of a child not born or conceived at the time of the creation of the trust, or for the benefit of a definite class of persons although the identity of the individuals comprising its membership is not ascertained or ascertainable at the time of the trust's creation." Restatement (Third) of Trusts, § 2 (Am. Law Inst. 2003).

has consistently focused on the particular person over whom the State seeks jurisdiction and decided whether that person's conduct gives rise to the necessary minimum connection. That is as true in the trust context as it is in due process jurisprudence generally.

Hanson exemplifies the proper analysis. There, the Court focused on the nonresident trustee and concluded that the trustee's own contacts did not support jurisdiction. The Court rejected an effort to attribute to the trustee the conduct of other parties in the trust relationship, emphasizing that "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." 357 U.S. at 253. The State's basic theory in this case—treating the "trust constituents" as if they were interchangeable agents of a single trust entity—is the opposite of *Hanson*'s reasoning.

The State incorrectly invokes two cases to support its theory. First, the State contends that *Greenough* "treated a trust and its constituents as inextricably intertwined," Pet. Br. 26, such that "a trust constituent's residency in a state connects the trust to the state." *Id.* at 30.

That is a misreading of *Greenough.* The issue in *Greenough* was not whether jurisdiction was proper because *any* "trust constituent" resided in the State. Rather, the question was whether jurisdiction was proper specifically because the resident was a *trustee*. The Court upheld jurisdiction because of the unique features of the trustee's role as "the owner of the intangibles." 331 U.S. at 493; *see id.* ("This close relationship between the intangibles and the *owner* furnishes an adequate basis for the tax *on the owner* by the state of his residence . . . . The state of the *owner's* residence supplies the *owner* with the benefits and protection inherent in the existence of an organized government.") (emphases added).

Because the beneficiary is not the owner of the trust property, the reasoning of *Greenough* does not "appl[y] equally to this case." Pet. Br. 30. As discussed above, *supra* pp. 21–22, the Court in *Greenough* distinguished *Safe Deposit* on exactly that basis. *Greenough*, 331 U.S. at 496 (noting that *Safe Deposit* "held invalid a state's tax on a trust's intangibles" because the property was "actually in the hands of the nonresident trustee and not subject to the control" of the resident beneficiary).

Second, the State contends that *Stone v. White*, 301 U.S. 532 (1937), rejected the "separateness theory" under which the contacts of people in the trust relationship are evaluated individually. *Stone* did not involve jurisdiction and did not change this Court's understanding of trust law. That case addressed a trust that gave the beneficiary an absolute right to the income "at such times and in such amounts as she should deem best." *Id.* at 533. In that context, the Court upheld imposition on the trustees of a tax that the beneficiary should have paid because it was on income that had been distributed to her. Given the beneficiary's actual ownership of the trust income and absolute right to demand it, the Court reasoned that it need not "shut its eyes to the fact that in the realm of reality it was the beneficiary's money which paid the tax." *Id.* at

535. Nothing in *Stone* affects the jurisdictional principles relevant here.[10]

3. North Carolina law treats beneficiary and trustee as separate and distinct entities

Not only are trustees and beneficiaries treated as separate and distinct under settled trust law and this Court's precedents, but they are also treated as independent actors by North Carolina itself.

Consistent with trust law generally, North Carolina statutes carefully assign the trustee and beneficiary distinct roles. In addition to authority conferred by the terms of the trust, the trustee possesses "[a]ll powers over the trust property that an unmarried competent owner has over individually owned property," as well as any "other powers appropriate to achieve the proper investment, management, administration or distribution of the trust property." N.C. Gen. Stat. § 36C-8-815 (2017). The trustee is empowered to "enforce claims of the trust and to defend claims against the trust." N.C. Gen. Stat. § 36C-8-811 (2018). North Carolina law further permits the trustee, among other things, to invest trust property, borrow money, abandon or

[10] The State also incorrectly describes *Americold*, asserting that "[b]ecause of the abstract nature of a trust," the Court held that a trust's citizenship is determined by its membership. Pet. Br. 23 n.10. The entity in *Americold* "call[ed] itself a trust," but the Court concluded that the entity actually had "little in common with [a] traditional" trust. 136 S. Ct. at 1016. "For a traditional trust" like the one here, the Court confirmed, the trustee's "citizenship is all that matters for diversity purposes." *Id.*; *see also Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 462 (1980) ("[T]rustees are real parties in interest for procedural purposes").

relinquish rights, change the character of the trust property, and, with respect to securities, "exercise the rights of an absolute owner." N.C. Gen. Stat. § 36C-8-816 (2018).

The beneficiary has no comparable rights or powers. In fact, the trustee need not even "inform[] any beneficiary in advance of transactions relating to trust property." N.C. Gen. Stat. § 36C-8-813(b)(1) (2018). The beneficiary of a discretionary trust like the one here cannot encumber or transfer her interest in the trust, and a "creditor or assignee of a beneficiary may not reach a discretionary trust interest or a distribution by the trustee before its receipt by the beneficiary." N.C. Gen. Stat. § 36C-5-504(b) (2018). The discretionary beneficiary's only concrete right is to sue for abuse of discretion in complying with a standard for distribution. N.C. Gen. Stat. § 36C-5-504(e) (2018).[11]

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[11] North Carolina follows the majority rule that its courts are the appropriate forum only for "a trust having its principal place of administration in this State." N.C. Gen. Stat. § 36C-2-202 (2018). *See also* Restatement (Second) of Conflict of Laws § 267 (Am. Law Inst. 1971); Scott & Ascher on Trusts, § 45.2.2.6. Indeed, North Carolina law specifically prohibits the State's courts from adjudicating disputes involving out-of-state trusts absent extraordinary circumstances. *See* N.C. Gen. Stat. § 36C-2-203(2) (2018) ("The clerk of court shall not, over the objection of a party, entertain proceedings under this section involving a trust having its principal place of administration in another state except" when, among other things, "the interest of justice otherwise would be seriously impaired."). Thus, unlike in *Greenough*, the tax cannot be justified by the benefit the State provides the trustee in the form of access to its courts. North Carolina courts would be presumptively closed to disputes between the trustee and fiduciary over this trust. *Cf. Greenough*, 331 U.S. at 495 ("There may be matters of trust

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The State's tax system reinforces that separation between beneficiary and trustee. North Carolina law imposes a tax on beneficiaries as individual taxpayers for the income actually distributed to them. It separately imposes on trustees a tax for the income of the trust property they represent. N.C. Gen. Stat. § 105-160.2 (2017) ("The fiduciary responsible for administering the estate or trust shall pay the tax" on trust income); *see Sabine v. Gill*, 51 S.E.2d 1, 4–5 (N.C. 1948) (concluding that, as a result of North Carolina tax statutes, "the distance here between the trustees and the beneficiary seems to be too great for the judiciary to close the gap by making them to all intents and purposes one," and that "[t]he trusteeship is far from a mere agency which might lend itself to the concept of constructive holding" for the beneficiary).

What the State calls the "separateness theory" is, therefore, the result of its own laws.[12]

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administration which can be litigated only in the courts of the state that is the seat of the trust.").

[12] North Carolina's statutes reflect "the tendency of modern law to treat trusts as distinct legal entities" akin to corporations. Restatement (Third) of Trusts § 2 (Am. Law. Inst. 2003), comment i; *see id.* at comment a (describing as "outmoded" the "concept that a trust is not an entity"); N.C. Gen. Stat. § 36C-1-103(12) (2018) (defining "person" to include a trust); N.C. Gen. Stat. § 58-1-5(9) (2018) (defining a trust as a "person" for insurance purposes).

This Court could thus affirm on the alternative ground that the State, having decided to treat trusts as corporate-like entities that are separate and distinct from trust beneficiaries, cannot then deny that separate status for jurisdictional purposes by arguing that the trust and its beneficiaries are effectively one and the same.

C. The State Cannot Assert Jurisdiction over the Trustee on the Basis of Public Services Provided to a Beneficiary

The State next contends that it may tax the trustee in exchange for the public services it provided to the resident beneficiary. Pet. Br. 30–36. That argument fails for three basic reasons.

First, it suffers from the same flaw as the State's principal theory, "improperly attribut[ing] [another person's] forum connections to the [taxpayer] and mak[ing] those connections decisive in the jurisdictional analysis." *Walden*, 571 U.S. at 289 (internal citation and quotation marks omitted). The State focuses on benefits provided to the beneficiary, but the State taxed the trustee, so the relevant question is what benefits the *trustee* received. The State posits indirect ways in which North Carolina helped the trustee because of his relationship with the beneficiary. But "financial benefits accruing . . . from a collateral relationship to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with the State." *World-Wide Volkswagen*, 444 U.S. at 299. On that basis, the Court rejected in *Kulko* exactly the argument the State is now advancing. There, the Court addressed the contention that California's jurisdiction over a Florida parent was proper because of public benefits California had provided his minor child:

> The court below stated that the presence in California of appellant's daughter gave appellant the benefit of California's police and fire protection, its school system, its hospital services, its

> recreational facilities, its libraries and museums . . . . But, in the circumstances presented here, these services provided by the State were essentially benefits to the child, not the father, and in any event were not benefits that appellant purposefully sought for himself.

436 U.S. at 94 n.7 (internal quotation marks omitted). That reasoning is even more compelling in this case. *Kulko* involved a parent with mandatory support obligations to the resident, whereas the trustee here had no legal obligation to provide anything to the beneficiary during the relevant period. And in *Kulko*, the parent sent the resident to the forum State to live. The trustee here, in contrast, had no control over the beneficiary's choice of residence.

Second, the State's public-benefits argument rests on premises that are incorrect, factually and legally. The State claims unfairness in the beneficiary consuming state resources without paying for them. But the beneficiary did pay North Carolina tax on all income that she and her family had actually received in exchange for the "benefits and protections that come with residency in North Carolina." Pet. Br. 34. The beneficiary had not received, had no right to receive, and did not own or control any of the income on trust property during the tax years. Whether to distribute that income was left to "the Trustee's absolute discretion." Art. 1 § 1.1(a), App. 46. Indeed, the beneficiary may not ever have received any trust assets. *See supra* pp. 3–5. There is thus no basis for treating the income as if it were hers. *Cf. Sabine*, 51 S.E.2d at 5 (rejecting beneficiary's claimed deduction for taxes paid by the trustee because, under North Carolina statutes, the property belonged to the trustee "and [became] hers only by distribution").

The State also misstates the record in arguing that the protections North Carolina provided the beneficiary "replaced services that the Trust otherwise would have had to buy" for her. Pet. Br. 34–35. In fact, the trustee was not required to provide any income or principal to the beneficiary during the years at issue. While the trust agreement highlighted certain life events as guidance to the trustee, Art. 1 § 1.4(c), App. 51, the decision whether to distribute income and principal remained the trustee's alone. *Id.* at 46–47. That decision could be challenged only if it were "arbitrary or the result of bad faith." *Supra* p. 5.

Third, there are no discernable limits to the theory that a State may premise jurisdiction over a trustee on public services to a beneficiary. That theory would not be limited to the beneficiary's residence. It would also permit taxation by any State that, because the beneficiary spent a meaningful amount of time there, could claim to have "give[n] the beneficiary the interim protection of its laws" and provided her valuable services. Pet. Br. 33 (internal quotation marks omitted); *cf. Walden*, 571 U.S. at 290 (rejecting respondent's theory as overbroad because it would support jurisdiction not only in the forum State but also "wherever else [a third party] might have traveled").

Nor would the State's theory be confined to the trust context. According to that theory, when a State provides benefits and protections to a person while property she may someday receive generates income elsewhere, "it is only fair" to permit the State to "demand a return" by taxing the current property owner for that income. Pet. Br. 17. This reasoning would apply to a parent who resides in New York and executes a will that contemplates the eventual distribution of all his assets to his only child, who resides in North Carolina. The State could equally contend in those circumstances that "North Carolina offered [the child] wide-ranging protections and services" while "income accumulated for [her] benefit," Pet. Br. 17, and on that basis impose a tax directly on the New York parent's income. Even the State would presumably not endorse that unfair result.

D. A Fiduciary Relationship with a Forum Resident Does Not Constitute Purposeful Availment by the Trustee

The State argues that the fiduciary nature of the trust relationship necessarily creates constitutional jurisdiction over the trustee wherever a beneficiary decides to live. Pet. Br. 26 & n.11. This Court has twice rejected that contention, and this case demonstrates why it should do so again.

In *Shaffer v. Heitner*, the Court considered whether Delaware could exercise jurisdiction over nonresident corporate officers of a Delaware corporation. Both the dissent and the appellee contended that the officers' decision to accept their positions and thereby to assume fiduciary obligations to a Delaware resident provided sufficient "contacts, ties, or relations" with that State to support jurisdiction. *Id.* at 213–14 (internal quotation marks omitted). The dissent argued that the officers "voluntarily associated themselves with the State[,]

. . . invoking the benefits and protection of its laws, by entering into a long-term and fragile relationship with one of its" residents. *Id.* at 227–28 (Brennan, J., dissenting) (internal citation and quotation marks omitted). The Court disagreed, holding that the acceptance of fiduciary obligations to a forum resident does not constitute "purposeful[] avail[ment] of the privilege of conducting activities within the forum State." *Id.* at 216 (internal citation and quotation marks omitted).

Hanson, of course, stands for the same proposition in the trust context. The Court refused to uphold jurisdiction over a nonresident trustee despite the trustee's fiduciary obligations to the resident beneficiaries. There, too, the Court rejected the argument that jurisdiction was proper because the trustee had availed itself of the forum by "maintain[ing] business relations" with the settlor and beneficiary, *id.* at 259 (Black, J., dissenting), or because the "community of interest" between the trust constituents was "so close" as to deem them "in privity," *id.* at 263 (Douglas, J., dissenting).

The State attempts to analogize this case to *Burger King*, but that comparison is inapt. Pet. Br. 26 & n.11. The Court upheld jurisdiction there because the franchisee had "deliberately reached out . . . and negotiated with a Florida corporation," entered into a commercial contract governed by Florida law, and accepted the "exacting regulation" of his business by the Florida corporation. 471 U.S. at 479–80 (internal quotation marks omitted).

No such circumstances are present here. The trustee did not reach into North Carolina to initiate a relationship, he has no contractual relationship with the beneficiary, the trust is not governed by North Carolina law, the trustee is not subject to control or regulation by any North Carolina party, and he owed the North Carolina beneficiary nothing other than the good-faith exercise of his absolute discretion. The beneficiary's decision to reside in North Carolina "was completely adventitious as far as [the trustee] was concerned." *Rush v. Savchuk*, 444 U.S. 320, 328–29 (1980). "He had no control over that decision," and he did not by accepting the settlor's appointment subject himself to jurisdiction "in any state to which a potential [beneficiary] might decide to move." *Id.* at 329.

This case illustrates the error in the State's argument. For the first 15 years of the trust's existence, the beneficiary did not know the trust existed, and she never met the initial trustee. *See supra* p. 7. Even after the beneficiary eventually learned of the trust, she interacted "very infrequently" with the trustee and met with him only twice, both times in New York. App. 106–07, 126. That is not the kind of relationship that, by its nature, is necessarily so "intensive" and "inextricably intertwined" that jurisdiction over the trustee must follow the beneficiary. Pet. Br. 26 & n.11.

III. NORTH CAROLINA DOES NOT ACQUIRE JURISDICTION BECAUSE IT DISAGREES WITH THE TAX POLICY OF OTHER STATES

The State attempts to justify its jurisdictional overreach by advancing a series of policy arguments centered on the concern that the decision below opened a "judicially created tax shelter." Those arguments are incorrect and vastly overstated; the States have ample means of taxing trust income.

The State's real complaint is not that States lack constitutional power to tax, but rather that some of the States that possess power to tax have chosen not to use it. That disagreement does not give North Carolina license to extend its jurisdiction beyond constitutional boundaries.

A. States Have Ample Means of Taxing Trust Income Undisturbed by the Decision Below

The premise of North Carolina's policy argument is that the decision below "lays waste to the states' taxing authority" because it deprives States of the ability to tax trust income. Pet. Br. 2. As the Brief for the American College of Trust and Estates Counsel ("ACTEC Br.") demonstrates, that is simply not the case. States tax trust income in many different ways that the decision below does not disrupt. *See* ACTEC Br. 12–19 (describing the numerous ways in which States tax trusts).

The various approaches the States have employed largely align with the same considerations of actual ownership, control, and receipt underlying this Court's decisions. Thus, States tax the income of a grantor trust—one where the settlor retains control or ownership of the property—to the resident settlor.[13] When the beneficiary actually receives distributions, the State of the beneficiary's residence

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[13] Jerome R. Hellerstein & Walter Hellerstein, *State Taxation* ¶ 20.09 (2019). For the federal rule, *see* 26 U.S.C.A. § 676 (a) (1986) ("The grantor shall be treated as the owner of any portion of a trust . . . where at any time the power to revest in the grantor title to such portion is exercisable by the grantor or a nonadverse party, or both.")

collects taxes.[14] States also tax trust income to the extent it is sourced to property or activity occurring within that State.[15]

This case concerns accumulated trust income that the trustee does not distribute in a particular year. States may and do tax such income in several ways. North Carolina incorrectly asserts that the decision below means that "the only state that can tax trust income is the state where a trustee lives." Pet. Br. 17. To be sure, a State with a resident trustee may tax undistributed income each year it is generated.[16] So, too, may a State in which a trust is administered.[17] But the State where the beneficiary resides may also collect taxes on accumulated income that was not distributed in a given year in one of two ways. If the beneficiary has an absolute right to the income, the beneficiary's State of residence may tax her for it regardless whether the income was distributed.[18] If, as here, the beneficiary's interest is instead contingent, the State of the beneficiary's residence may, pursuant to a "throwback" tax regime, collect tax on accumulated income from

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[14] *See Lawrence*, 286 U.S. at 280–81 (noting the established principle that the State of residence may tax an individual on all actual income from whatever source derived).

[15] *See, e.g.*, Me. Stat. tit. 36, §§ 5163, 5175-A (2017); Mich. Comp. Laws § 206.110 (2018); R.I. Gen. Laws §§ 44-30-16, 44-30-35 (2018); *see also* ACTEC Br. 5 n.12.

[16] *See, e.g.*, Ariz. Rev. Stat. Ann. §§ 43-1301(1)(b)(5) (2019); Ark. Code Ann. § 26-51-203 (2019); Cal. Rev. & Tax. Code § 17742 (2019).

[17] *See, e.g.*, Colo. Rev. Stat. § 39-22-103(10) (2018); S.C. Code Ann. § 12-6-30(5) (2018). *See also* ACTEC Br. 10–11.

[18] *See* 26 U.S.C.A. §§ 671, 678(a) (1954).

distributions made in future years. In States with such a throwback tax, income that was not taxed in the year it was generated is taxed to the resident beneficiary if and when she actually receives it—not, as with North Carolina's tax, to the nonresident trustee based on speculation that the resident beneficiary someday *might* receive it.[19] *See* ACTEC Br. 15–19 (explaining the operation of the "throw-back" tax).

Thus, the ruling below rejected a single, specific tactic that only North Carolina and two other States have even attempted: taxing a trustee with which the State has no connection, on income that has not been distributed, solely on the possibility that at some later point the income might be distributed to a resident contingent beneficiary.[20] The North

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[19] *See, e.g.*, 61 Pa. Code § 105.5(c) (2019); Cal. Rev. & Tax Code § 17745(b) (2019); N.Y. Tax Law § 612(b)(40) (2019).

[20] Only Tennessee and Georgia also have statutes taxing nonresident trustees for undistributed income solely on the ground that a contingent beneficiary resides in the State. Tenn. Code § 67-2-110(a) (2018); Ga. Code Ann. § 48-7-22(a)(1)(C) (2017). Tennessee, however, has voted to eliminate the income tax entirely as of January 1, 2021. *See* H.R. 534, 110th Gen. Assemb., Reg. Sess. (Tenn. 2017) (enacted). Practitioners disagree about whether Georgia law actually requires such a tax on nonresident trustees. *See* ACTEC Br. 11 n.11 (citing Ga. Comp. R. & Regs. 560-7-8- 35(1)(d)).

California imposes such a tax only if the resident beneficiary actually receives, or has a noncontingent right to receive, the income in a particular year. Cal. Rev. & Tax Code § 17742(a) (2019); Franchise Tax Board, TAM 2006-2002, p. 2 ("A resident beneficiary whose interest in a trust is subject to the sole and absolute discretion of the trustee holds [only] a contingent interest in the trust."), *available at*

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Carolina courts correctly concluded that this method did not respect constitutional limits on jurisdiction.

B. Differences in Tax Policy Are a Consequence of Federalism and Do Not Expand North Carolina's Jurisdiction

The myriad approaches to trust taxation reflect the different choices of voters in the various States. North Carolina's disagreement with those choices does not permit it to assert jurisdiction over persons with whom it lacks the requisite minimum contacts.

There is no dispute that the income of this trust was within the taxing power of multiple States. Whether and how the income was actually taxed turned on the tax laws of the particular States with jurisdiction—laws that reflect those States' considered policy choices. In light of those choices, North Carolina and its State *amici* cannot attribute the results to the judiciary. Connecticut joins the State *amici* despite the fact that, as the State of the trustee's residence, it could have taxed the very income at issue in this case but chose not to. The State of Washington joins, expressing "grave concern" about the revenue impacts of the decision below, despite the fact that it imposes no income tax at all on anyone. Brief for Minnesota *et al.*, at 1.

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https://www.ftb.ca.gov/law/Technical_Advice_Memorandums/2006/20060002.pdf.

The remaining statutes that North Carolina cites (Pet. Br. 6 n.1) require further connections with the taxing State and therefore do not implicate the question presented here: whether a State may tax a nonresident trustee based solely on the fact of a resident contingent beneficiary.

North Carolina itself has decided not to tax trust income on the ground that a trustee or other fiduciary, as opposed to a beneficiary, resides in the State. Nor does North Carolina tax on the ground that the trust is administered there. That choice, which aligns with the State's concerted efforts to court a thriving banking industry,[21] is within the State's "sovereign right to formulate tax policy," *id.* at 9, reflecting a judgment to forgo certain tax revenue in favor of other objectives.

But differences among state tax laws, and concomitant respect for the limits of state power, do not create and have never been considered a "judicially created tax shelter." Instead, they are critical features of federalism. Observing the constitutional boundaries of state jurisdiction furthers the States' prerogative to make individualized choices without interference from other States that lack a legitimate interest. *See Bristol-Myers*, 137 S. Ct. at 1780–81 ("The sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States."). Indeed, one of the key functions of the minimum-contacts principle is to ensure that States "do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292.

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[21] *See Key Industries in North Carolina – Business & Financial Services*, North Carolina Dep't of Commerce (touting the State's "low tax burdens" as a prime reason "financial institutions flock to North Carolina"; citing as a "competitive advantage" that "NC is ranked No. 1 for lowest state and local tax burden in the United States") (last visited March 14, 2019), https://www.nccommerce.com/business/key-industries-north-carolina/business-financial-services.

The decision below does not "end the states' ability to adopt tax approaches" to address the concerns that North Carolina perceives. Pet. Br. 42. The States can and frequently do reconsider the decisions they have made in this context.[22]

North Carolina's true complaint is thus not about the lack of state power to tax, but instead about the decision of certain States not to exercise that power. This Court has refused to base jurisdiction on these sorts of differences among laws in non-forum States. *E.g.*, *Keeton*, 465 U.S. at 779 ("Whether Ohio's limitations period is six months or six years does not alter the jurisdictional calculus in New Hampshire"; that other States would apply different rules "has nothing to do with the contacts" that matter for jurisdictional purposes). North Carolina's policy disagreements with other States are similarly irrelevant to its constitutional jurisdiction. *See Greenough*, 331 U.S. at 490 ("Neither the expediency of the levy nor its economic effect on the economy of the taxing state is for our consideration.").[23]

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[22] Tennessee, for example, voted in 2017 to eliminate the income tax. *See supra* n.20. In 2010, Washington voters considered but defeated a ballot initiative imposing an income tax. *See* Sec'y of State, State of Wash., Initiative Measure No. 1098 (filed Apr. 27, 2010), *available at* https://www.sos.wa.gov/elections/initiatives/text/i1098.pdf. In 2006, the Florida legislature repealed an intangible personal property tax. H.B. 209, 2006 Leg., Reg. Sess. (Fla. 2006) (enacted). In 2002, Ohio adopted an income tax on trustees. H.R. 675, 124th Gen. Assemb., Reg. Sess. (Ohio 2002) (enacted).

[23] Equally misplaced is the State's concern that the decision below will motivate behavior intended to minimize state tax burdens. Only North Carolina and two other States currently impose the tax at issue, so its invalidation will have little

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C. *Wayfair* Is Not Relevant

North Carolina repeatedly invokes *South Dakota v. Wayfair*, 138 S. Ct. 2080 (2018), but that case is not relevant here. *Wayfair*, a Commerce Clause decision, endorsed the minimum-contacts framework that both parties agree governs this case. *Wayfair* rejected a physical-presence rule that played no part in the decisions below because *Quill* long ago rejected that requirement in the due process context.

The Court overruled previous cases in *Wayfair* based on intervening "dramatic technological and social changes" reflected in e-commerce. *Id.* at 2095 (internal quotation marks omitted). Technological changes have not had the same impact on trust administration. At least since *Greenough*, this Court has recognized that trustees are not stationary or affixed to one State. 331 U.S. at 493 ("The trustee of today moves freely from state to state. The settlor's residence may be one state, the seat of a trust another state and the trustee or trustees may live in still another jurisdiction or may constantly change their residence."); *see Hanson*, 357 U.S. at 250–51

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practical effect. In any event, taxpayer decisions based on the differential impact among state laws are a consequence of federalism. That individuals routinely consider how they would fare under various State tax regimes has no relevance to North Carolina's jurisdiction, nor is it a "fairness" argument in the State's favor. "Over and over again courts have said that there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant." *Comm'r v. Newman*, 159 F.2d 848, 850–851 (2d Cir. 1947) (Learned Hand, J., dissenting).

(rejecting jurisdiction over the trustee even while recognizing that "technological progress has increased the flow of commerce between States").

To the extent *Wayfair* has any application, it confirms the decision below. In *Wayfair*, South Dakota argued that a nonresident taxpayer's own forum-directed conduct created a sufficient nexus for the State to collect sales tax from resident customers. Here, in contrast, North Carolina seeks to assert jurisdiction over one party based entirely on the forum contacts of someone else. Thus, if there is any analogy to be drawn to *Wayfair*, it demonstrates the error of North Carolina's position, which is the equivalent of contending that the respondent in *Wayfair* could be taxed by every State in which any one of its beneficial shareholders resided, based solely on the fact of their residence. That argument fails under the most basic principles of due process.

CONCLUSION

Respondent respectfully submits that the judgment of the court below should be affirmed.

Respectfully submitted,

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