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 OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. One of the Chamber's responsibilities is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

Many of the Chamber's members and affiliates regularly are subject to attempted taxation or the purported exercise of adjudicative (personal) jurisdiction, or both, by States other than their States of incorporation or principal places of business. They therefore have a substantial interest in the rules governing the extent to which, consistent with due process, a State may subject nonresident entities to its authority, whether in the form of taxation of the entity's property or requiring the entity to appear in the State's courts.

Petitioner's proposed rule is that a State may tax the *undistributed* income of a nonresident trust based solely on the residence of a contingent benefi-

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[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, or its counsel made a monetary contribution to its preparation or submission. Blanket consents from both parties to the filing of *amicus* briefs are on file with the Court.

ciary in the forum State. That rule, if accepted, would represent a dramatic and unwarranted weakening of the fundamental due process protections that this Court has repeatedly recognized. The Chamber therefore has a strong interest in affirmance of the judgment below.

INTRODUCTION AND SUMMARY OF ARGUMENT

The issue in this case is whether a State may tax the worldwide undistributed income of a nonresident trust solely because a contingent trust beneficiary happens to reside in the State, who may—but may not—receive a portion of that income in the future.

Due process requires more before a State may directly exercise its taxing authority over a nonresident entity.

This Court has framed the due process limits on state power somewhat differently depending on the type of authority asserted by the State—subjecting a nonresident to judicial jurisdiction, or taxing a nonresident, or applying the State's law to private parties' disputes.

This case does not require the Court to explore in detail the similarities or differences among these standards, because the Court's precedents make clear that the due process standard for specific judicial jurisdiction provides an appropriate analogy in ascertaining the requirements of the due process test governing a State's taxing power. See *Quill Corp.* v. *North Dakota*, 504 U.S. 298, 306-308 (1992).

Logic leads to the same conclusion. Judicial jurisdiction involves the direct exercise of authority by the State over a nonresident entity. It subjects the nonresident to potentially onerous financial obligations—the payment of a court judgment—as well as significant ancillary burdens such as requiring the party to appear and defend itself. Taxation is similar: the nonresident is forced to pay a financial exaction to the State, and typically is subject to ancillary audit and administrative burdens.

Indeed, for these reasons, the due process limitations imposed on a State's exercise of judicial jurisdiction and on its taxing authority each focus on fairness and predictability to the nonresident. These similarities make an analogy to judicial jurisdiction decisions wholly appropriate here.

Petitioner argues that judicial jurisdiction decisions are inapposite, appearing to claim that the power to tax should be assessed by reference to the due process standard governing application of a State's law as the rule of decision in non-tax, private disputes. But the Court has repeatedly rejected attempts to equate due process limits on choice-of-law with the due process limits on judicial jurisdiction, holding that a State's interest in applying its laws to a dispute does *not* automatically make its courts a fair forum in which a defendant can be required to appear and defend itself. Petitioner's attempt to distinguish the Court's judicial jurisdiction decisions is therefore unavailing.

Under the correct legal standard, the judgment below must be affirmed. The target of North Carolina's tax, the trustee, has no connection to North Carolina at all. The beneficiary has only a contingent interest—one that may never lead to any payment of trust funds. And, as this Court has recognized, the State cannot attribute the contacts of trust beneficiaries to the trustee in order to obtain jurisdiction over the trust. See *Hanson* v. *Denckla*, 357 U.S. 235 (1958). Well-established due process principles therefore preclude North Carolina's attempt to tax this trust.

ARGUMENT

I. The Robust Due Process Requirements This Court Has Articulated In The Specific Judicial Jurisdiction Context Provide An Appropriate Analogy In Assessing A State's Authority To Tax A Nonresident.

This Court has addressed the due process limits on a State's power to tax nonresidents in a significant number of decisions. *E.g.*, *Quill*, 504 U.S. at 308-310; *National Bellas Hess, Inc.* v. *Department of Revenue of Ill.*, 386 U.S. 753, 756-757 (1967); *American Oil Co.* v. *Neill*, 380 U.S. 451, 457-459 (1965); *Miller Bros. Co.* v. *Maryland*, 347 U.S. 340, 342 (1954); *Wisconsin* v. *J.C. Penney Co.*, 311 U.S. 435, 444-446 (1940).

Petitioner and respondent discuss those decisions in detail. But they also reference the Court's rulings addressing due process limits on other exercises of state authority.

Thus, respondent points to the Court's specific judicial jurisdiction decisions to bolster its position. Resp. Br. 23-30. Petitioner asserts that those decisions are inapposite in the tax context. Pet. Br. 21 n.9.

The Court has not had occasion to explore in detail how the due process limits on different categories of state authority relate to one another. There is no need to do so in this case, because it is settled that the due process standard for specific personal jurisdiction provides an appropriate analogy for the due process test governing a State's taxing power. And that analogy supports the conclusion that petitioner may not tax the trust here.

A. The Court Has Framed The Due Process Limits On State Authority Somewhat Differently In Different Contexts.

It is a fundamental principle of due process that before a State can directly exercise its authority over a nonresident individual or corporation, there must be an adequate connection between that individual or corporation and the State.

In general terms, whether an exercise of state authority comports with the "traditional notions of fair play and substantial justice" underlying the Due Process Clause turns on whether the defendant has relevant minimum contacts with the forum State. *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945).

1. To exercise specific judicial jurisdiction over a nonresident defendant, the defendant's "suit-related conduct" must create a "*substantial connection* with the forum State." *Walden* v. *Fiore*, 571 U.S. 277, 284 (2014) (emphasis added). That is, the court must find a substantial relationship between the forum, the defendant's contacts with the forum, and the particular plaintiff's claim, so that it is "reasonable" to require the defendant to appear in the forum to defend against that claim. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980).

Importantly, specific judicial jurisdiction must be based on the defendant's *own* purposeful contacts with the forum State that give rise to the claim to be adjudicated. This principle was first recognized in the Court's seminal decision in *International Shoe* and reiterated in every case in which the Court has upheld the exercise of specific judicial jurisdiction. See *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 479 (1985) (noting that the "franchise dispute grew directly out of" the defendant's activities in Florida); *Calder* v. *Jones,* 465 U.S. 783, 789 (1984) (defendants' actions were "expressly aimed at California"); *Keeton* v. *Hustler Magazine, Inc.,* 465 U.S. 770, 780 (1984) (claims "ar[o]se[] out of the very activity being conducted" by the defendant in New Hampshire); *McGee* v. *International Life Ins. Co.,* 355 U.S. 220, 223 (1957) (suit "based on a contract" performed in California); *International Shoe,* 326 U.S. at 320 ("The obligation which [was] here sued upon arose out of th[e] [defendant's] very activities" in Washington).

These requirements for assertion of judicial jurisdiction reflect the fairness concerns animating the Due Process Clause. See, *e.g.*, *Burger King*, 471 U.S. at 464, 472. They provide a "degree of predictability" to defendants, especially corporate defendants, so that they can "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. And they protect important federalism interests by preventing States from reaching beyond their borders to adjudicate claims over which they "may have little legitimate interest." *Bristol-Myers Squibb Co.* v. *Superior Court of Cal.*, 137 S. Ct. 1783, 1780-1781 (2017) (*BMS*).[2]

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[2] The Court has applied a different, less stringent due process test for determining whether a State may adjudicate the claim of an absent, nonresident member of a plaintiff class. A forum

2. To impose a tax on a nonresident, due process "requires some definite link, some 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 must be rationally related to values connected with the taxing State." *Quill*, 504 U.S. at 306 (quotation marks and citations omitted).

As in the context of judicial jurisdiction, these due process limitations on a State's power to tax promote fairness and predictability. They ensure that a nonresident who lacks sufficient connections to the State will be not be subject to the State's coercive power and that the nonresident has "fair warning that its activity may subject it to the jurisdiction of a foreign sovereign." *Quill*, 504 U.S. at 308 (quotation marks and alterations omitted).

3. The Court has also addressed the due process limits on application of a State's law to provide the rule of decision in a dispute among private parties. In that situation, the State "'must have a significant

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may exercise such jurisdiction "even though that plaintiff may not possess the minimum contacts with the forum which would support personal jurisdiction over a defendant." *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 811 (1985). All that is required is notice, an opportunity to be heard, an opportunity to opt out, and adequate representation of the interests of the absent class members. *Id*. at 811-812.

It reached this conclusion because nonresident members of a plaintiff class are not subject to the "burdens imposed upon defendants"; for instance, they "need not hire counsel or appear," "are almost never subject to counterclaims or cross-claims, or liability for fees or costs," and "are not subject to coercive or punitive remedies." *Shutts*, 472 U.S. at 810. The lesser standard in *Shutts* thus relates solely to the due process rights of plaintiffs, not defendants. See *BMS*, 137 S. Ct. at 1782-1783.

contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.'" *Shutts*, 472 U.S. at 818. The State must have these contacts with each plaintiff's claim to ensure that application of the law is not arbitrary and unfair. *Id*. at 821-822. In addition, "[w]hen considering fairness in this context, an important element is the expectation of the parties." *Id*. at 822; see also *Allstate Ins. Co.* v. *Hague*, 449 U.S. 302, 312-313 (1981) (plurality).

* * *

There is no occasion for the Court in this case to address in detail the similarities and differences among the standards that apply in these three different contexts. As we next explain, there can be no doubt that this Court's decisions applying the specific judicial jurisdiction test provide an appropriate analogy for the tax context.

B. Precedent And First Principles Demonstrate The Relevance In The Tax Context Of Decisions Applying The Due Process Standard For Specific Judicial Jurisdiction.

Respondent is correct to invoke decisions involving the due process limits on judicial jurisdiction to demonstrate that application of the North Carolina tax would violate the due process limits on the State's taxation power. That conclusion is supported by this Court's precedent and by the similar interests implicated by subjecting a nonresident to a tax and to judicial jurisdiction.

First, in determining whether application of a state tax to a nonresident comports with due process, this Court has relied on cases addressing the due process standard for judicial jurisdiction.

The Court's articulation of the due process limitations on tax jurisdiction in *Quill* expressly "[a]pplied" the due process principles from this Court's modern "judicial jurisdiction" cases. 504 U.S. at 307-308 (citing *International Shoe*, 326 U.S. at 316; *Shaffer* v. *Heitner*, 433 U.S. 186, 212 (1977); *Burger King,* 471 U.S. at 476). The standards announced in these cases, the Court explained, should be applied to the requirement for tax jurisdiction—which it phrased in terms analogous to the minimum contacts required for personal jurisdiction: that there be a "definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax." *Id.* at 306 (quotation marks omitted).

Indeed, *International Shoe* itself involved both judicial jurisdiction and tax jurisdiction issues. The Court held that "[t]he activities which establish [International Shoe's] 'presence' subject it alike to taxation by the state and to suit to recover the tax." 326 U.S. at 321.

Second, the burden imposed by application of a state tax closely resembles the heavy burden imposed when a nonresident is forced to appear in court. It is therefore logical that the standard for assessing the minimum contacts required for a State to tax a nonresident would be similar to the test that applies to subjecting a nonresident to judicial jurisdiction.

In both the tax and judicial jurisdiction contexts, the limitations imposed by due process protect nonresident entities from the direct assertion of authority by the State. An adverse judicial judgment subjects the nonresident defendant to the "full powers of the forum State to render judgment *against* it." *Shutts*, 472 U.S. at 808. The defendant

> must generally hire counsel and travel to the forum to defend itself from the plaintiff's claim, or suffer a default judgment. The defendant may be forced to participate in extended and often costly discovery, and will be forced to respond in damages or to comply with some other form of remedy imposed by the court should it lose the suit. The defendant may also face liability for court costs and attorney's fees.

Ibid. Indeed, the "coercive or punitive remedies" that the defendant faces, *id*. at 810, typically take the form of an order to pay money—with the constraints on the amount supplied not by due process limits on jurisdiction but only by the substantive statutory and constitutional law governing the claim—or to take actions that usually impose a significant financial burden on the defendant.

A nonresident faced with a state tax faces similar burdens: the obligation to pay the tax upon pain of criminal prosecution; to submit to potential audit and investigation by the State; and, typically, to proceed through the forum State's administrative or judicial processes (or both) in order to challenge the tax. As the Court held over half a century ago, "seizure 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." *Miller Bros.*, 347 U.S. at 342.

Third, petitioner is wrong in asserting that judicial jurisdiction cases are not relevant. It relies on a sentence in Justice Scalia's concurring opinion in *Quill* (which was joined by Justices Kennedy and Thomas). See Pet. Br. 21 n.9. The concurrence agreed with the majority's due process holding—overruling *Bellas Hess*, 386 U.S. 753, because it was inconsistent with *International Shoe* and subsequent judicial jurisdiction decisions—but stated: "I do not understand this to mean that the due process standards for adjudicative jurisdiction and those for legislative (or prescriptive) jurisdiction are necessarily identical." *Quill*, 504 U.S. at 319-320.

To begin with, saying the two standards are not "necessarily identical" does not mean that judicial jurisdiction decisions are inapposite when a case involves jurisdiction to tax nonresidents. It simply means that the two tests may not be the same in every single respect.

Certainly Justice Scalia's statement provides no basis for equating the due process standard governing state taxation with the due process test for determining a State's authority to apply non-tax laws to disputes between private parties—which is what petitioner appears to contend by referring generally to "legislative jurisdiction."

That is because the Court's precedents addressing the due process limits on application of a State's non-tax law in the context of a private dispute permit application of a State's law in circumstances in which the State could not require a party to appear as a defendant in its courts.

For example, in *Shaffer*, the Court explained that it had previously "rejected the argument that if a State's law can properly be applied to a dispute, its courts necessarily have jurisdiction over the parties to that dispute." 433 U.S. at 215. The Court quoted its prior explanation that the State "does not acquire * * * jurisdiction by being the center of gravity of the controversy": when the "issue is personal jurisdiction, not choice of law," it must be "resolved * * * by considering *the acts of the [defendants]*." *Ibid.* (emphasis added and quotation marks omitted) (quoting *Hanson*, 357 U.S. at 254).

Subsequent decisions reaffirm that distinction between judicial jurisdiction and jurisdiction to apply a State's non-tax law. A year after *Shaffer*, the Court explained that California's undeniable "substantial interests in protecting resident children and in facilitating child-support actions on behalf of those children" did not suffice to exercise personal jurisdiction over the appellant, "who lacks any * * * relevant contact with the State, either to defend a child-support suit or to suffer liability by default." *Kulko* v. *Superior Court of Cal.*, 436 U.S. 84, 100-101 (1978) (citing *Shaffer*, 433 U.S. at 215). As a plurality of Justices later summarized, "[t]he Court has recognized that examination of a State's contacts may result in divergent conclusions for jurisdiction and choice-of-law purposes." *Allstate Ins. Co.*, 449 U.S. at 317 n.23 (plurality) (citing *Kulko*, 436 U.S. at 98; *Shaffer*, 433 U.S. at 215); see also *id.* at 320 n.3 (Stevens, J., concurring in the judgment) ("[T]he Court has made it clear over the years that the personal jurisdiction and choice-of-law inquiries are not the same.").

The reason for this distinction is the very different focus of the two standards. The due process limitations on judicial jurisdiction focus on the nonresident *entity*—the defendant—over whom the State is directly exerting authority. As this Court has put it in that context, the "primary concern" is the "burden on the *defendant*." *BMS*, 137 S. Ct. at 1780 (emphasis added). The federalism concerns are heightened as well: "*even if* the forum State *has a strong interest in applying its law to the controversy*; * * * the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *Id.* at 1780-1781 (emphasis added) (quoting *World-Wide Volkswagen*, 444 U.S. at 294).

In contrast, when the question involves the application of a State's non-tax law, typically to provide the substantive rule of decision in a private dispute, the focus is on the State's interest in the *subject matter* of the dispute. *Shutts*, 472 U.S. at 818 (the State "'must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair'").

Taxing power more closely resembles judicial jurisdiction, because it is an assertion of direct state power over the target of the tax, not merely over the particular controversy. See pages 9-10, *supra*.

The key to understanding the sentence in Justice Scalia's opinion lies in his citation of *Asahi Metal Industry Co.* v. *Superior Court of California*, 480 U.S. 102 (1987), and *American Oil*, 380 U.S. 451, just after his statement that he did not interpret the majority's opinion to mean that the standards for judicial and legislative jurisdiction were necessarily identical. Those citations show that his statement was meant to preserve in the context of tax jurisdiction his position in *Asahi* (as part of a plurality) that the "stream of commerce" theory is not a valid ground for judicial jurisdiction. See *Asahi*, 480 U.S. at 108-113 (plurality); see also *American Oil*, 380 U.S. at 457-

458 (rejecting a similar theory in the tax jurisdiction context).

In other words, Justice Scalia wanted to make sure that any subsequent decisions weakening judicial jurisdiction would not spill over to the tax jurisdiction context. As it turns out, the Court never endorsed the "stream of commerce" approach to judicial jurisdiction. See *J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 883-885 (2011) (plurality). To the contrary, the Court in recent years has rejected efforts to weaken the due process test for specific judicial jurisdiction, in particular lower courts' unreasonably expansive approaches to jurisdiction. See, *e.g.*, *BMS*, 137 S. Ct. 1773; *Walden*, 571 U.S. 277. Accordingly, Justice Scalia's concurrence offers petitioner no support for applying a weakened due process standard in the tax jurisdiction context.

* * *

In sum, because a State's imposition of a tax on a nonresident imposes burdens similar to those resulting when a nonresident is forced to appear in a State's courts, it is logical for this Court to look to its precedents in the judicial jurisdiction context.

The Court's judicial jurisdiction cases have played an important role in protecting defendants, especially corporate defendants, from expansive and unwarranted exercises of state authority. The Court therefore should take care not to call into question any of its established principles of specific personal jurisdiction.

II. Settled Due Process Principles Prohibit A State From Taxing Undistributed Income Of A Nonresident Trust Based Solely On The Forum Residence Of A Contingent Beneficiary.

The Court's due process precedents require rejection of petitioner's theory that a State may tax the entire undistributed income of a nonresident trust based solely on the residence of a contingent beneficiary. See Am. Coll. of Tr. & Estate Council (ACTEC) Br. 35 ("Taxing the trustee based on the contacts of the beneficiary with the taxing state appears to be at odds with the thrust of the *International Shoe* framework.").

1. The fundamental flaw in petitioner's approach is that it overlooks the absence of any contacts between the trust—which for tax (and many other legal) purposes is represented by the *trustee*, certainly not by a contingent beneficiary—and the State. As the Court explained in *Walden,* the "defendant *himself*" (571 U.S. at 284) (quotation marks omitted) must be the one who "form[s] the necessary connection with the forum State" (*id.* at 285). "[A] defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Id.* at 286; accord *BMS*, 137 S. Ct. at 1781.

In *Quill*, the Court therefore reiterated the requirement in the tax jurisdiction context of a "minimum connection * * * between a state and the person, property or transaction it seeks to tax." 504 U.S. at 306 (quoting *Miller Bros.*, 347 U.S. at 344-345). The residence of a contingent beneficiary does not demonstrate any connection between the State and either the taxpayer or the taxed property.

To begin with, there can be no credible argument that the *undistributed* worldwide income of the nonresident trust has any connection to North Carolina. If income is actually distributed to the beneficiary in North Carolina, then North Carolina could tax the beneficiary herself as an individual taxpayer. See Resp. Br. 43, 50-51; ACTEC Br. 9. But that situation is not presented in this case. Nor does this case present the situation in which trust income has its source in the forum State. Moreover, as respondent points out, the contingent beneficiary here may never receive any income from the trust at all. Resp. Br. 3-5.

Next, the taxpayer in this case is undoubtedly the trustee, not the contingent beneficiary. North Carolina taxed the trustee, who paid the tax under protest before bringing suit to challenge its validity. See Resp. Br. 9. That is consistent with the general law of trusts, under which "[a] trust acts and is acted upon only by and through its trustee." ACTEC Br. 5. And the "liability of the Trustee for failure to file a tax return or to make the estimated tax payments is the same as that of an individual." Bogert et al., *The Law of Trusts and Trustees* § 265 (2018); see also Unif. Tr. Code § 816.[3]

Similarly, this Court has recognized that in the context of traditional trusts like the one in this case, the trustee's citizenship "is all that matters" for pur-

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[3] As respondent points out, North Carolina law itself treats the trustee and the trust beneficiary as independent actors and prohibits the State's courts from adjudicating disputes involving trusts that are principally administered elsewhere. Resp. Br. 41-43 & nn.11-12. The administration of a trust is of course carried out by the trustee, not the beneficiary.

poses of diversity jurisdiction, *Americold Realty Tr.* v. *Conagra Foods, Inc.*, 136 S. Ct. 1012, 1016 (2016), and trustees are the "real parties in interest for procedural purposes" in legal matters regarding the trust, *Navarro Sav. Ass'n* v. *Lee*, 446 U.S. 458, 462 (1980).

The conclusion that the trustee's own contacts with the forum State should govern the State's exercise of jurisdiction over the trustee as taxpayer is compelled by the Court's decision in *Hanson*.

The Court there rejected the Florida courts' attempt to exercise jurisdiction over a Delaware trustee based only on the the facts that the settlor later moved there (after creating the trust elsewhere) and that "the settlor and most of the appointees and beneficiaries were domiciled in Florida." 357 U.S. at 254. The problem with that argument was the lack of any relevant contacts by the *trustee* with Florida: the Court explained that "the record discloses no instance in which the trustee performed any acts in Florida." *Id.* at 252. And the Court made clear that "[t]he unilateral activity of those who claim some relationship with a nonresident defendant"—*i.e.*, the choice by the settlor and the beneficiaries to live in the forum State—"cannot satisfy the requirement of contact with the forum State." *Id.* at 253. Simply put, the jurisdictional question "is resolved * * * by considering the acts of the trustee," not other parties that have a relationship to the trust. *Id.* at 253-254.[4]

[4] *Shaffer* confirms that there is no meaningful difference for due process purposes between the State's assertion of authority over a nonresident and its assertion of authority over the nonresident's property. In *Shaffer*, the Court rejected the assertion of personal jurisdiction based on a Delaware statute "that al-

2. Petitioner points out that the relevant trust was formed at a time when the contingent beneficiary resided in North Carolina. Pet. Br. 7. But the residence of a contingent beneficiary constitutes no contact at all between the taxpayer (the trustee) and the State itself—much less the purposeful availment of a State's laws that is necessary to permit the exercise of the State's taxing authority.

Petitioner's argument that the trustee's administration of the trust for the potential benefit of a North Carolina resident establishes sufficient contacts with the State is the same argument this Court rejected in *Walden*. The Court there held that acts by the defendant affecting the resident of a State are not sufficient to justify the State's exercise of specific judicial jurisdiction over that defendant. Rather, the Court's "'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Walden*, 571 U.S. at 285; see also *Burger King*, 471 U.S. at 478 ("If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in

low[ed] a court of that State to take jurisdiction of a lawsuit by sequestering any property of the defendant that happens to be located in Delaware." 433 U.S. at 189. The Court rejected that attempt to evade the limitations on *in personam* jurisdiction by creating *in rem* jurisdiction over the sequestered property; instead, the Court held that "*all* assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." *Id.* at 212 (emphasis added); accord *Quill*, 504 U.S. at 307. Under those standards, jurisdiction was lacking, because of "the absence of sufficient contacts among the defendants, the litigation, and the State of Delaware." *Shaffer*, 433 U.S. at 189; see also *id.* at 213-214.

the other party's home forum, we believe the answer clearly is that it cannot.").

Here, any contacts by the trustee were directed at the contingent beneficiary, who happened to reside in North Carolina at the time. There simply was no purposeful availment by the trustee of North Carolina's laws or of any market created by those laws. The contingent beneficiary's key relationship to the trust is that she is the settlor's daughter—a relationship that pre-dated, and had nothing to do with, her presence in North Carolina.

Petitioner also points to two meetings that the trustee had with the contingent beneficiary. But those meetings took place in New York and demonstrate no conduct directed by the trustee towards North Carolina—as opposed to, as in *Walden*, towards a person who resides there (and was not even present there at the time of the meetings). Moreover, those "infrequent" meetings, Pet. App. 17a, are the type of "attenuated contacts" that cannot support specific judicial jurisdiction, *Walden*, 571 U.S. at 286 (quotation marks omitted)—and therefore cannot support North Carolina's claim of power to tax the trust.

3. Finally, acceptance of petitioner's jurisdictional arguments would work a dramatic change in the Court's due process jurisprudence that would impose substantial, wholly unjustified burdens on the business community and the federal system.

Permitting a State to tax property or transactions in the absence of substantial purposeful contacts by an entity being taxed would eliminate any predictability regarding the States in which an entity might be subject to taxation. A taxpayer could not assess his potential exposure to taxes if the types of attenuated contacts advanced by petitioner qualified as minimum contacts with the forum.

Applying tax jurisdiction in such an unpredictable and indiscriminate manner would be unfair to nationwide businesses and irreconcilable with the Due Process Clause. See *Nicastro,* 564 U.S. at 885 (plurality) (explaining that "[j]urisdictional rules should avoid the[] costs [of unpredictability] whenever possible"). Moreover, such an approach would cast doubt on this Court's judicial jurisdiction standard and the critical role it plays in protecting corporate defendants from unjustified exercises of state authority.

Requiring sufficient contacts between the State and the taxpayer also avoids the significant federalism problems that would result from petitioner's approach. Just as due process protects important federalism interests by preventing States from reaching beyond their borders to adjudicate claims over which they "may have little legitimate interest," *BMS*, 137 S. Ct. at 1780-1781, so too does it prevent States from taxing property or transactions without a sufficiently legitimate interest.

To be sure, multiple States may tax income. But here, North Carolina has attempted to tax the *entirety* of a nonresident trust's income based solely on the residence of a contingent beneficiary who may or may not receive a portion of that income in the future. That choice, if permitted, would effectively override the policy judgments of States that have chosen not to tax income at all, or not to tax trust income based on the situs of administration or the residence of the trustee. See Resp. Br. 53-55.

CONCLUSION

The judgment of the Supreme Court of North Carolina should be affirmed.

Respectfully submitted.

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