No. 18-807

In The
Supreme Court of the United States

RANDOLPH S. BASKINS
AND BEVERLY J. BASKINS,

Petitioners,

v.

OKLAHOMA TAX COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Civil Appeals Of Oklahoma, Second Division

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does the Oklahoma capital gains deduction provided in Okla. Stat. tit. 68, § 2358(F), as applied to Randolph S. Baskins and Beverly J. Baskins, violate the Commerce Clause of the United States Constitution?

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STATEMENT

Petitioners provide two reasons for granting their petition. First: "to reaffirm the Dormant Commerce Clause and find that the Oklahoma capital gains statute is unconstitutional." Pet. 7. Second: "The Dormant Commerce Clause does apply." Pet. 13. In short, they seek error correction. That has never been a compelling reason to issue a writ of certiorari. Certiorari is particularly unwarranted because the error correction sought is for an alleged misapplication of law. *See* Sup. Ct. R. 10. And in a question presented that seeks invalidation of a state statute only "as applied" to the petitioners here. Pet. i. All of this, moreover, in a dormant Commerce Clause case in which the plaintiffs do not compete in the market they allege is being harmed, in which plaintiffs actually will *lose* money if they prevail, and in which plaintiffs failed to prove their claim factually. For these many reasons, review is not appropriate.

Even putting aside this Court's longstanding rules and practices, Petitioners do not show that this is an exceptional case that warrants certiorari for error correction. Subsidies or tax expenditures that incentivize businesses on the interstate market to choose one state over another do not categorically violate the Commerce Clause. The capital gains tax break at issue does not systematically penalize Oklahoma companies or their stockholders for engaging in interstate commerce. It does not discriminate in its availability or extent between in-state taxpayers and out-of-state taxpayers.

Nor does it cause the business activities of out-of-staters to be double-taxed or taxed at a higher rate. It erects no categorical impediments to interstate commerce. The deduction is a permissible subsidy, not an unlawful trade barrier. The extraordinary writ of certiorari is not warranted to disturb the judgment below.

I. Facts of the Case

Oklahoma imposes an income tax on the "Oklahoma taxable income" of individual residents and nonresidents, as well as corporations, that earn income in Oklahoma. *See* Okla. Stat. tit. 68, § 2355. Oklahoma taxable income is defined as the taxable income reported to the federal government as adjusted by Oklahoma law. *Id.* at § 2353(12). For residents, a tax credit is available for income derived from out-of-state sources and taxed by another state. *Id.* at § 2357. Similarly, for nonresidents, Oklahoma income tax is based on the share of the nonresident's income that derives from Oklahoma sources. *Id.* at § 2362.

Many exemptions, deductions, and credits are available under the Oklahoma Tax Code. *See generally id.* at §§ 2357.1–2357.404, 2358–2358.7, 3601–3612, 3901–3910. Some promote specific activities or industries in Oklahoma, ranging from childcare expenses to electricity generated by renewable energy facilities to donations to cancer research institutes. Okla. Stat. tit. 68, § 2357.27 (childcare); Okla. Stat. tit. 68, § 2357.32A (renewable energy); Okla. Stat. tit. 68, § 2357.45 (cancer research). Added by popular referendum in 2004,

the deduction at issue allows both resident and non-resident taxpayers to deduct from their Oklahoma adjusted gross income long-term capital gains arising from the sale of property located in Oklahoma or the sale of stock in an Oklahoma-headquartered company or partnership. *Id.* at § 2358(F); *see also Matter of Protest of Hare*, 398 P.3d 317, 317-18 (Okla. 2017).

Invoking this provision, Petitioners sought to deduct capital gains they realized from the sale of stock in two companies, one headquartered in the State of Oklahoma (Helmerich & Payne, Inc.) and the other headquartered in the State of Washington (Primus International Holding Co.). Pet. App. 12, 14-15. Respondent, the Oklahoma Tax Commission, accepted the deduction for the former but denied the deduction for the latter because the stock was not in a company headquartered in Oklahoma, as the statute requires. Pet. App. 12, 16.

II. Proceedings Below

Petitioners filed a protest with the Oklahoma Tax Commission, arguing that they were entitled to the tax deduction for the Primus capital gain because the tax incentive violated the dormant Commerce Clause. Pet. App. 8, 32-33. Petitioners sought the deduction as part of a protective claim in an amended return because the constitutionality of a similar deduction was then being challenged in another pending case, *CDR Systems Corp. v. Oklahoma Tax Commission*, 339 P.3d 848 (Okla. 2014). Pet. App. 15, 18. The deduction at issue in

CDR is in the same statutory section as the deduction challenged here, but applies to corporate (as opposed to individual) income tax. *See* Okla. Stat. tit. 68, § 2358(D).

The Oklahoma Supreme Court in *CDR* ultimately upheld the deduction. The *CDR* Court began by noting: "Most, if not all states, have tax incentives whose primary purpose is to attract business to the state and to promote economic development within the state" and "Oklahoma is no different." *CDR*, 339 P.3d at 850. When such incentives are challenged under the Commerce Clause, "these types of cases often 'turn[] on the unique characteristics of the statute at issue and the particular circumstances in each case.'" *Id.* at 851 (quoting *Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318, 329 (1977)).

As a threshold matter, the *CDR* Court held that the taxpayer had failed to prove its Commerce Clause claim by putting forward evidence demonstrating the deduction in fact interfered with interstate commerce and discriminated against substantially similar entities based on their participation in interstate commerce. *Id.* at 853-55; *see also id.* at 858. "[I]n the absence of actual or prospective competition between the supposedly favored and disfavored entities in a single market there can be no local preference, whether by express discrimination against interstate commerce or undue burden upon it, to which the dormant Commerce Clause may apply." *Id*. at 854 (quoting *Gen. Motors Corp. v. Tracy*, 519 U.S. 278 (1997)).

The *CDR* Court then held that, even if the taxpayer had put forth enough evidence to bring a Commerce Clause claim, "the deduction does not facially discriminate against interstate commerce, it does not have a discriminatory purpose, and the deduction has no discriminatory effect on interstate commerce." *Id.* at 859. The court noted that "the deduction at issue in this case is quite different from the more familiar targets of Commerce Clause attacks, which, like tariffs, either protect local businesses from multistate competitors or extract tax revenues disproportionately from out-of-state businesses. Whereas the out-of-state challenger to these sorts of provisions can convincingly complain that the state unfairly excluded or penalized outsiders, such pleas are far less compelling when the challenged provision is instead designed to invite, even to entice, the outsiders in." *Id.* at 854-55 (citation and internal marks omitted). Here, "[t]he deduction is a tool used by the state to compete for business investment in Oklahoma's economy by granting the tax deduction to both in-state and out-of-state businesses" and it "does not penalize the out-of-state activities of corporations doing business in Oklahoma." *Id.* at 856.

Following the Oklahoma Supreme Court's decision in *CDR*, the Oklahoma Tax Commission denied Petitioners' tax protest because their arguments were foreclosed by that ruling. Pet. App. 34. Petitioners did not point out any differences between the deduction they challenge and the one at issue in *CDR*, nor bring forward any legal arguments that the *CDR* court did not address, nor raise a new set a facts that would

counsel a different outcome. Instead, they argued only that the *CDR* decision was wrong. Pet. App. 4. The Oklahoma Court of Civil Appeals, accordingly, summarily affirmed the Tax Commission in an unpublished opinion noting their lack of authority to overrule the state supreme court. Pet. App. 4-6. The Oklahoma Supreme Court denied certiorari. Petitioners now seek a writ of certiorari in this Court.

REASONS FOR DENYING THE PETITION

I. Petitioners seek only error correction in an as-applied challenge alleging that the state courts misapplied the law to the facts of their case.

Petitioners seek certiorari for purported error correction. *See* Pet. ii. The Question Presented asks whether the challenged tax incentive "as applied" to Petitioners "violate[s] the Commerce Clause." Pet. i. "The court should grant certiorari," Petitioners contend, "in order to reaffirm the Dormant Commerce Clause and find that the Oklahoma capital gains statute is unconstitutional. . . ." Pet. 7. The petition argues that the court below "is mistaken" and that "[t]he statute in question violates the Commerce Clause." *Id.*

But this Court and its members have long recognized that a request for error correction is not a compelling reason for certiorari. *Ross v. Moffitt*, 417 U.S.

600, 617 (1974).[1] Nor does this Court take cases to, as Petitioners seek, "reaffirm" this Court's case law. *See Powell v. Nevada*, 511 U.S. 79, 86 (1994) (Thomas, J., dissenting).

Moreover, petitions are "rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Sup. Ct. R. 10. Petitioners make no claim that the Oklahoma Supreme Court failed to apprehend the correct law to apply to their claims—indeed, the *CDR* Court quoted, cited, and discussed at length all of this Court's cases relied on in the petition (and more). At most, Petitioners argue that the Oklahoma court misapplied that law. This is precisely the type of case that this Court, as memorialized in its Rules, does not take. Review should be denied.

II. The petition presents a poor vehicle to address any Commerce Clause issues raised.

Even were the Court inclined to evaluate the permissibility of the Oklahoma tax incentive, this case presents numerous hurdles to doing so.

To start, Petitioners do not claim to be victims of the alleged market discrimination they challenge. They point to the "fierce competition *among businesses*

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[1] *See also*, *e.g.*, *City & Cty. of San Francisco, Calif. v. Sheehan*, 135 S. Ct. 1765, 1780 (2015) (Scalia, J., concurring in part and dissenting in part); *Martin v. Blessing*, 134 S. Ct. 402, 405 (2013) (statement of Alito, J., respecting the denial of certiorari); *Watt v. Alaska*, 451 U.S. 259, 275 (1981) (Stevens, J., concurring).

in the 'common market' for investor funds." Pet. 14 (emphasis added); *see also id.* at 15 ("The proper scope of the factual inquiry" in this case is "the competition for business investment. The disputed statute gives Oklahoma headquartered companies a competitive advantage over companies headquartered elsewhere."). But unlike *CDR*, Petitioners here are not a business headquartered outside Oklahoma competing for investment dollars; they are investors. The alleged market distortion does not harm them. They have lost no competitive advantage. Even if the statute discriminates as they claim, it does not discriminate between investors based on the investors' geography. They, like any resident or nonresident, could have just as easily invested in an Oklahoma company and lawfully received the deduction (as they did with their Helmerich & Payne investment). *See* Pet. App. 12. In short, Petitioners are seeking to vindicate alleged market rights of companies seeking investment, rather than their own rights.

The unsuitability of this case as a vehicle for review is compounded by the fact that, if Petitioners prevail, they stand to *lose* money, not gain it. Eliminating the challenged deduction means that Petitioners will still not receive the deduction for their sale of the Primus stock, *and* they will lose the deduction they received for their Helmerich & Payne stock. *See* Pet. App. 12. Petitioners will end up paying more taxes.

Petitioners could not argue that the Oklahoma headquarters requirement can be severed from the rest of the challenged deduction because their case is

built around the idea that the entire purpose of the statute is to incentivize companies to headquarter in Oklahoma and investors to invest in Oklahoma companies. Pet. 15-16 & nn.1-2 (citing *CDR*, 339 P.3d at 856); *see also CDR*, 339 P.3d at 850. This is bolstered by the text of the statute itself, which allows the deduction only for "qualifying gains" and then repeatedly defines "qualifying gains" as those resulting from Oklahoma-based investments. *See* Okla. Stat. tit. 68, § 2358(F); *see also id.* at § 2358(D). Since a statute is not severable under Oklahoma law if severance would significantly alter the purpose of the statute, the tax incentive must stand or fall as a whole. *See* Okla. Stat. tit. 75, § 11a; *Okla. Corr. Prof'l Ass'n, Inc. v. Jackson*, 280 P.3d 959, 965 (Okla. 2012).[2] Severance would effectively rewrite the statute to create a deduction for *every* long-term capital gain, causing a significant drop in state revenue that the Legislature could not have intended, with no corresponding benefit to the state economy. *See infra* 18. And without severance, the alleged legal flaw will be redressed only by requiring Petitioners to pay more taxes.

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[2] State courts make the initial remedial determination when a tax scheme is ruled unconstitutional. As here, "[w]here 'the federal constitutional issues involved [in the remedial determination] may well be intertwined with, or their consideration obviated by, issues of state law,' [this Court's] practice is to leave the remedy for the state supreme court to fashion on remand." *Fulton Corp. v. Faulkner*, 516 U.S. 325, 347 (1996) (second alteration in original) (quoting *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 277 (1984)). The outcome upon reversal in this case would "be dictated by the [statute's] severability clause." *Id*.

Lastly, the facts in evidence make it a poor candidate for certiorari. Petitioners urge that the Oklahoma Supreme Court erred when it held that the evidence in *CDR* did not demonstrate the market competition necessary for a dormant Commerce Clause claim. Pet. 13-17; *see also CDR*, 339 P.3d at 854-55, 858. But Petitioners concede that this is a *factual* inquiry. Pet. 15 (arguing about the "proper scope of the *factual* inquiry in the existence of competition" (emphasis added)); *id.* at 14 (distinguishing the "factual circumstances in the case at bar" with those of this Court's decision in *General Motors*). While Petitioners posit the existence of "fierce competition" in the "'common market' for investor funds" impeded by the challenged deduction, Pet. 14, they cite no *evidence* they presented below to prove this aspect of their claim. Like the plaintiff in *CDR*, Petitioners make factual assertions without marshalling any facts to support them. The Court should not grant review of an issue without the plaintiffs having first done the work to prove their case.

III. Oklahoma's capital gains tax deduction is not barred by the dormant Commerce Clause.

The above factors, individually and taken together, are sufficient to deny review. A brief consideration of the merits of Petitioners' claim confirms that conclusion.

The Commerce Clause, absent federal legislation, does not by its plain text impose restrictions on the

States. *See* U.S. CONST. art. I, § 8, cl. 3.[3] Nonetheless, the "central concern of the Framers" that has animated this Court's negative or dormant Commerce Clause jurisprudence is the desire "to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." *Wardair Canada, Inc. v. Florida Dep't of Revenue*, 477 U.S. 1, 7 (1986) (citation omitted). The aim is at "preventing a State from retreating into economic isolation or jeopardizing the welfare of the Nation as whole" by erecting trade barriers. *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179-80 (1995). Thus, this Court tends to invalidate a law as discriminatory if it "taxes a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State." *Fulton Corp. v. Faulkner*, 516 U.S. 325, 332 (1996) (citations omitted). "The paradigmatic example of a law discriminating against interstate commerce is the protective tariff or customs duty, which taxes goods imported from other States, but does not tax similar products produced in State." *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 193 (1994). In other words, to the extent that the dormant Commerce Clause has any footing in the text of the Commerce Clause, it is to prevent attempts by states to punish commerce simply because it is commerce "among the several States." U.S. CONST. art. I, § 8, cl. 3.

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[3] Although constitutional impositions on state authority to regulate commerce can be found in Section 10 of Article I, Petitioners did not bring any claims under these provisions.

The Oklahoma capital gains income tax deduction does not interfere with interstate commerce by discriminating against it. Okla. Stat. tit. 68, § 2358(F). It does not tax out-of-state businesses selling goods and services in Oklahoma at a higher rate. *Cf. Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 270-73 (1984). Nor does it penalize in-state businesses for choosing to engage in interstate commerce. *Cf. Fulton*, 516 U.S. at 333. The deduction is equally available to in-state and out-of-state investors. For investors outside Oklahoma, the deduction *encourages* interstate commerce by providing them a tax incentive to invest in Oklahoma-headquartered companies. The incentive also encourages in-state investors to invest in Oklahoma, just as much as a low sales tax or income tax rate encourages residents to shop or work in-state. Quite unlike imposing a tariff on imported goods, the incentive boosts local businesses only by lowering the cost of investing in Oklahoma, whether the investors are in Oklahoma or outside it. The deduction imposes no direct financial burden on out-of-state actors at all. The tax incentive is part of the robust competition between states to create a hospitable climate for capital investment. It does not impede interstate commerce.

Put another way, commerce that flows across Oklahoma's borders may receive the same deduction as commerce within them. The tax incentive does not tax gains from investments that come into Oklahoma from out of state more than gains from intrastate investments. Similarly, the tax incentive's limitations affect both residents (like Petitioners) and nonresidents (like

the plaintiffs in *CDR*) who chose not to contribute to Oklahoma's economy. Whatever indirect effects it might have on interstate investment decisions, the net effect is not an overall burden on interstate commerce. That is, "[w]hen the account is made up, the stranger from afar is subject to no greater burdens as a consequence of ownership than the dweller within the gates." *Henneford v. Silas Mason Co.*, 300 U.S. 577, 584 (1937). The tax break encourages investment in Oklahoma whether the investor or the company invested in engaged in intrastate commerce or interstate commerce. And so the State has "not discriminate[d] between transactions on the basis of some interstate element." *Fulton*, 516 U.S. at 332 (quoting *Boston Stock Exchange*, 429 U.S. at 332 n.12).

Far from the trade barrier that was the Founders' concern, the deduction instead operates at most as an indirect subsidy for Oklahoma industry. Such subsidies are not only permissible, but they advance important state interests: "It is a laudatory goal in the design of a tax system to promote investment that will provide jobs and prosperity to the citizens of the taxing State." *Trinova Corp. v. Mich. Dep't of Treasury*, 498 U.S. 358, 385 (1991). "States [may structure] their tax systems to encourage the growth and development of intrastate commerce and industry" and may "compete with other States for a share of interstate commerce; such competition lies at the heart of a free trade policy." *Boston Stock Exchange*, 429 U.S. at 336-37. Thus, States have "broad discretion to make policy decisions concerning state spending in different ways depending

on their perceptions of wise state fiscal policy." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 346 (2006) (cleaned up). So state spending on "[d]irect subsidization of domestic industry does not ordinarily run afoul of [the dormant Commerce Clause's] prohibition." *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278 (1988); *see also Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 816 (1976) (Stevens, J., concurring) (The Commerce Clause does not "inhibit a State's power to experiment with different methods of encouraging local industry. Whether the encouragement takes the form of a cash subsidy, a tax credit, or a special privilege intended to attract investment capital, it should not be characterized as a 'burden' on commerce.").

And tax expenditures like the challenged deduction are often "economically and functionally indistinguishable from a direct monetary subsidy." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 859 (1995) (Thomas, J., concurring); *cf. Westinghouse Elec. Corp. v. Tully*, 466 U.S. 388, 405 (1984) (refusing to "attach any constitutional significance to such formal distinctions that lack economic substance" in Commerce Clause case). The deduction, like a subsidy, operates to encourage those on the interstate investment market to choose Oklahoma—not to impede or stop interstate commerce altogether.

Indeed, the deduction is simply one of myriad incentives, tax breaks, and tax structures that states

employ to compete for business and investment.[4] When Virginia entices Amazon to establish a headquarters in Arlington with tax incentives,[5] or Indiana seeks to prevent Carrier from moving out of state through tax breaks,[6] those states do not violate the Constitution. Petitioners nonetheless seek invalidation of all statutes that give one state's businesses "a competitive advantage over companies headquartered elsewhere," or that provide a tax structure that "affects decision making" such that businesses "make locational decisions on the basis of the tax." Pet. 15-16 & n.2; *see also* Pet. 7-8. But this is true about everything from Texas's lack of an income tax to Delaware's lack of a sales tax. Washingtonians are attracted to shop in Oregon by the absence of a sales tax, and it is not a Commerce Clause problem that the same tax incentive induces Oregonians to stay put. The Constitution "does not prohibit

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[4] *See Hughes*, 426 U.S. at 817 (Stevens, J., concurring) (noting the "countless situations during the past two centuries in which the several States have experimented with different methods of encouraging local enterprise" consistent with "the common and correct interpretation of the Commerce Clause as primarily intended (at least when Congress has not spoken) to inhibit the several States' power to create restrictions on the free flow of goods within the national market, rather than to provide the basis for questioning a State's right to experiment with different incentives to business").

[5] *See* HQ NOVA, *Virginia's Proposal & Local Proposals*, https://hqnova.com/info.html (accessed April 2, 2019).

[6] *See* Ted Mann, *Carrier Will Receive $7 Million in Tax Breaks to Keep Jobs in Indiana*, WALL STREET JOURNAL (Dec. 2, 2016), http://bitly.com/2WPMzET (describing the "relatively standard package of state incentives" offered to keep Carrier operations in state).

all state action designed to give its residents an advantage in the marketplace." *New Energy*, 486 U.S. at 278. Petitioners seek invalidation of the Oklahoma deduction—and by extension many other efforts by States to compete on the interstate market—by stretching the Constitution beyond what its text and history permit.

Nor does upholding Oklahoma's deduction contravene the holdings of this Court's cases, or cases from other states, cited by Petitioners. Petitioners simply list cases from various jurisdictions applying "case-by-case" dormant Commerce Clause analysis to "the unique characteristics of the statute at issue and the particular circumstances in each case." *Boston Stock Exchange*, 429 U.S. at 329; *Westinghouse Elec. Corp.*, 466 U.S. at 403. They do not identify a genuine division of authority.

Petitioners primarily point to the Nevada Supreme Court's decision in *Worldcorp v. Nev. Dep't of Taxation*, 944 P.2d 824 (Nev. 1997), to show the "[un]constitutionality of state tax incentives." Pet. 8-9. In that case, the court struck down Nevada's law taxing gross receipts from the sale of aircraft only if the purchasing air carrier did not maintain its central office in the state. *Worldcorp*, 944 P.2d at 825. In other words, out-of-state companies paid a sales tax that in-state companies did not for transactions in Nevada—categorically burdening interstate commerce. It was a classic tariff. Beyond the superficial similarity of a state headquarters element, the Nevada statute and the Oklahoma deduction share little in their actual

operation. Oklahoma does not tax companies differently based on headquarters under the challenged deduction, thereby directly punishing interstate commerce. It instead provides a tax break to individual investors—irrespective of residence—who realized a capital gain in the sale of stock in an Oklahoma-headquartered company. The Oklahoma deduction is available to those who invest in Oklahoma regardless of whether they are engaging in intrastate or interstate commerce. Meanwhile, the higher tax burden imposed by Nevada applied only to companies headquartered outside Nevada and doing business in Nevada. The Oklahoma deduction does not punish businesses for engaging in interstate commerce.

Petitioners also rely on this Court's decision in *Fulton*, which struck down a North Carolina franchise tax "on a fraction of the value of corporate stock owned by [state] residents inversely proportional to the corporation's exposure to the State's income tax." 516 U.S. at 327. Under this tax scheme, the more business the company did out of state, the more North Carolina residents who were shareholders were taxed. Thus, the only effect of this tax structure was to punish North Carolina residents for engaging in interstate commerce—and the State conceded its facial discrimination. *Id.* at 333. Oklahoma's tax break does nothing of the sort. "[A] company does not disqualify for the deduction because it increases its activities in another state." *CDR*, 339 P.3d at 856. Those who are engaging in interstate commerce—*i.e.*, nonresidents investing in Oklahoma companies—can get the deduction just like

residents making the same investments. Unlike both the statutes in *Fulton* and *Worldcorp*, the central inquiry to determine the Oklahoma deduction's applicability is not—formally or practically—the extent to which the transaction or business activity is interstate. The Oklahoma deduction does not systematically discriminate against interstate commerce.

Indeed, Petitioners' attempt to extend the Oklahoma deduction to all persons with capital gains would lead to absurd results. It would require Oklahoma, for example, to give a deduction equivalent to the income a nonresident made on a sale of stock in a company that has no connection to Oklahoma. A nonresident could thereby reduce her Oklahoma taxable income through a transaction that Oklahoma could not tax in the first place, without providing any corresponding benefit to Oklahoma. This would essentially transform the deduction into a negative tax, giving a subsidy to an out-of-state taxpayer for an act that contributes nothing to Oklahoma, its economy, or its people. "[T]he Commerce Clause surely does not impose on the States any obligation to subsidize out-of-state business." *Hughes*, 426 U.S. at 815-16 (Stevens, J., concurring).[7]

[7] For example, suppose a Florida resident owned rental property in Oklahoma and stock in an Alabama company. If the Oklahoma company headquarters requirement is removed, the Floridian could sell the Alabama stock, and then deduct the amount realized from that capital gain to reduce the taxes paid to Oklahoma on the income from the Oklahoma rental property.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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