No. 21-966

In the Supreme Court of the United States

STATE OF NEW YORK, ET AL., PETITIONERS

v.

JANET L. YELLEN,
SECRETARY OF THE TREASURY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly determined that Congress acted within its "plenary power under the Constitution to tax income and to grant exemptions from that tax," *Lyeth* v. *Hoey*, 305 U.S. 188, 194 (1938), by placing a limit on the amount of state and local taxes that individual taxpayers may deduct from their federally taxable incomes, 26 U.S.C. 164(b)(6).

2. Whether the court of appeals correctly determined that the limitation Congress placed on individual taxpayers' deductions for state and local taxes does not constitute impermissible coercion of the States in violation of the Tenth Amendment.

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

New York v. *Mnuchin*, No. 18-cv-6427 (Sept. 30, 2019)

United States Court of Appeals (2d Cir.):

New York v. *Yellen*, No. 19-3962 (Oct. 5, 2021)

TABLE OF CONTENTS

Page

Opinions below ... 1
Jurisdiction ... 1
Statement ... 1
Argument ... 9
Conclusion ... 24

TABLE OF AUTHORITIES

Cases: Page

Arias v. *DynCorp*, 752 F.3d 1011 (D.C. Cir. 2014) ... 22
Brushaber v. *Union Pac. R.R.*, 240 U.S. 1 (1916) ... 10
CIC Servs., LLC v. *IRS*, 141 S. Ct. 1582 (2021) ... 23
Commissioner v. *Sullivan*, 356 U.S. 27 (1958) ... 10, 11
Enochs v. *Williams Packing & Navigation Co.*, 370 U.S. 1 (1962) ... 23
Helvering v. *Gerhardt*, 304 U.S. 405 (1938) ... 17, 18
Lane Cnty. v. *Oregon*, 74 U.S. (7 Wall.) 71 (1869) ... 17
Lyeth v. *Hoey*, 305 U.S. 188 (1938) ... 6, 10, 11, 16
McCulloch v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819) ... 18
Murphy v. *National Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018) ... 19
National Fed'n of Independent Bus. v. *Sebelius*, 567 U.S. 519 (2012) ... 20, 21, 23
New York v. *United States*, 505 U.S. 144 (1992) ... 19, 20
Pennsylvania v. *Kleppe*, 533 F.2d 668 (D.C. Cir.), cert. denied, 429 U.S. 977 (1976) ... 22
Pollock v. *Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895) ... 2
Printz v. *United States*, 521 U.S. 898 (1997) ... 19

Cases—Continued: Page

South Carolina v. *Baker*,
485 U.S. 505 (1988) ... 7, 11, 12, 14
South Carolina v. *Regan*, 465 U.S. 367 (1984) ... 7, 23
South Dakota v. *Dole*, 483 U.S. 203 (1987) ... 19
Stewart v. *Kempthorne*,
554 F.3d 1245 (10th Cir. 2009) ... 22
United States v. *Bennett*,
232 U.S. 299 (1914) ... 6, 8, 10
United States v. *New Mexico*, 455 U.S. 720 (1982) ... 12
Weston v. *City Council of Charleston*,
27 U.S. (2 Pet.) 449 (1829) ... 12
Wyoming v. *Oklahoma*, 502 U.S. 437 (1992) ... 22
Wyoming v. *United States Dep't of Interior*,
674 F.3d 1220 (10th Cir. 2012) ... 22
XY Planning Network, LLC v. *SEC*,
963 F.3d 244 (2d Cir. 2020) ... 22

Constitution and statutes:

U.S. Const.:
Art. I:
§ 8 ... 5, 8
§ 9, Cl. 4 ... 2
Amend. X ... 5, 8, 9, 19, 21
Amend. XVI ... *passim*
Act of Aug. 5, 1861, ch. 45, § 49, 12 Stat. 309 ... 2
Act of Oct. 3, 1913, ch. 16, § II(B), 38 Stat. 167 ... 2
Act to Provide for Reconciliation Pursuant to Titles
II and V of the Concurrent Resolution
on the Budget for Fiscal Year 2018,
Pub. L. No. 115-97, 131 Stat. 2054:
§ 11001, 131 Stat. 2054 ... 5
§ 11021, 131 Stat. 2072 ... 5

Statutes—Continued: Page

§ 11022, 131 Stat. 2073 5
§ 11042, 131 Stat. 2085-2086 4
§ 11046, 131 Stat. 2088 5
§ 12003, 131 Stat. 2095 5
American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 501, 118 Stat. 1520-1521 3
Declaratory Judgment Act, 28 U.S.C. 2201 *et seq.* 23
28 U.S.C. 2201(a) 23
Individual Income Tax Act of 1944, ch. 210, § 9, 58 Stat. 236-238 3
Revenue Act of 1964, Pub. L. No. 88-272, § 207(a), 78 Stat. 40-41 3
Revenue Act of 1978, Pub. L. No. 95-600, § 111, 92 Stat. 2777 3
Revenue Reconciliation Act of 1990, Pub. L. No. 101-508, Tit. XI, § 11103, 104 Stat. 1388-406 to 1388-407 4
Tax Anti-Injunction Act, 26 U.S.C. 7421(a) 6, 10, 23
Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085:
§ 134, 100 Stat. 2116 3
§ 701, 100 Stat. 2320-2345 4
26 U.S.C. 68 14
26 U.S.C. 164 2
26 U.S.C. 164(a) 13
26 U.S.C. 164(a)-(c) (1958) 3
26 U.S.C. 164(b)(5)(A) 3, 13
26 U.S.C. 164(b)(6) 4, 16
26 U.S.C. 164(b)(6)(B) 4

Miscellaneous: Page

Cong. Budget Office, *The Deductibility of State and Local Taxes* (Feb. 2008), https://go.usa.gov/xwBmx 2, 14, 19

Cong. Research Serv.:

Itemized Tax Deductions for Individuals: Data Analysis (Sept. 21, 2017), https://go.usa.gov/xt2DZ 3

Tax Reform: The Alternative Minimum Tax (Dec. 4, 2017), https://go.usa.gov/xtTqu 4

The Economic Effects of the 2017 Tax Revision: Preliminary Observations (June 7, 2019), https://go.usa.gov/xtTxz 5, 20

The 2017 Tax Revision (P.L. 115-97): Comparison to 2017 Tax Law (Feb. 6, 2018), https://go.usa.gov/xwByW 5

Gladriel Shobe, *Disaggregating the State and Local Tax Deduction*, 35 Va. Tax Rev. 327 (2016) 3

U.S. Congress, Joint Comm. on Taxation, *Estimated Budget Effects of the Conference Agreement for H.R. 1, the "Tax Cuts and Jobs Act"* (Dec. 18, 2017), https://go.usa.gov/xwByK 5

Jared Walczak, Tax Found., *Unpacking the State and Local Tax Toolkit: Sources of State and Local Tax Collections* (June 2017), https://perma.cc/3MMG-MEPR 15

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 15 F.4th 569. The opinion of the district court (Pet. App. 27a-70a) is reported at 408 F. Supp. 3d 399.

JURISDICTION

The judgment of the court of appeals was entered on October 5, 2021. The petition for a writ of certiorari was filed on January 3, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Since the inception of federal income taxes, Congress has permitted taxpayers to deduct from their federally taxable income certain amounts that they have paid in state and local taxes. Pet. App. 3a. Over the last several

decades, that state-and-local-tax (SALT) deduction—currently codified at 26 U.S.C. 164—has been repeatedly and substantively revised.

The first federal income-tax statute, enacted in 1861 to help finance the Civil War, provided for a categorical, ostensibly unlimited SALT deduction, which stated that, "[i]n estimating [federally taxable] income, * * * all national, state, or local taxes assessed upon the property, from which the income is derived, shall be first deducted." Pet. App. 3a (quoting and adding bracketed phrase to Act of Aug. 5, 1861, ch. 45, § 49, 12 Stat. 309). Subsequent income-tax provisions carried forward that approach. See *ibid.* (collecting statutes). In *Pollock* v. *Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895), this Court held invalid the federal income tax then in effect, on the ground that it was a direct tax not properly apportioned among the States. *Id.* at 617-637; see U.S. Const. Art. I, § 9, Cl. 4. In 1913, ratification of the Sixteenth Amendment was completed. It expressly grants Congress the "power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." U.S. Const. Amend. XVI. When Congress reinstated the federal income tax, it again provided for a virtually unlimited SALT deduction. Pet. App. 4a; see Act of Oct. 3, 1913, ch. 16, § II(B), 38 Stat. 167.

In the ensuing decades, however, Congress enacted several provisions that have substantially limited the SALT deduction and its effect. Cong. Budget Office, *The Deductibility of State and Local Taxes* 4-5 (Feb. 2008) (CBO *Deductibility*), https://go.usa.gov/xwBmx. In 1944, Congress established the standard deduction, a predetermined sum that taxpayers may opt to deduct

instead of claiming itemized deductions. See Individual Income Tax Act of 1944, ch. 210, § 9, 58 Stat. 236-238. "[T]he emergence of the standard deduction 'meant that, in practice, the SALT deduction remained relevant for only those taxpayers who chose to itemize their deductions.'" Pet. App. 4a (quoting *id.* at 33a). As of 2014, only 30% of American taxpayers itemized their deductions. Cong. Research Serv., *Itemized Tax Deductions for Individuals: Data Analysis* 2 (Sept. 21, 2017), https://go.usa.gov/xt2DZ.

Congress subsequently enacted measures that directly curtailed the scope of the SALT deduction. In 1964, Congress limited the deduction to certain specified categories of state and local taxes. See Revenue Act of 1964, Pub. L. No. 88-272, § 207(a), 78 Stat. 40-41 (amending 26 U.S.C. 164(a)-(c) (1958)); see also Pet. App. 4a (citing Gladriel Shobe, *Disaggregating the State and Local Tax Deduction*, 35 Va. Tax Rev. 327, 338 (2016)). In later years, Congress further narrowed the list of state and local taxes included in the SALT deduction. In 1978, Congress excluded gasoline and motor-fuel taxes. See Revenue Act of 1978, Pub. L. No. 95-600, § 111, 92 Stat. 2777. And in 1986, it removed sales taxes. Tax Reform Act of 1986 (1986 Act), Pub. L. No. 99-514, § 134, 100 Stat. 2116. Congress partially reinstated the SALT deduction's applicability to sales taxes in 2004, by permitting taxpayers to deduct either their sales taxes or their state and local income taxes, but not both. See American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 501, 118 Stat. 1520-1521; see 26 U.S.C. 164(b)(5)(A).

Apart from altering the list of state and local taxes that could be deducted, Congress also enacted provisions that substantially limit the value of the SALT deduction

to those taxpayers who claim it. As part of a 1986 tax reform, Congress imposed an Alternative Minimum Tax (AMT), which certain taxpayers must pay if it would result in a higher tax than the amount computed under ordinary rules. See 1986 Act § 701, 100 Stat. 2320-2345; Cong. Research Serv., *Tax Reform: The Alternative Minimum Tax* 1 (Dec. 4, 2017), https://go.usa.gov/xtTqu. The AMT is calculated without regard to the SALT deduction; consequently, "[i]f the [AMT] methodology results in a greater tax liability, the taxpayer is prevented from claiming the SALT deduction." Pet. App. 5a. Another limitation was imposed in 1990, when Congress enacted the "Pease limitation," *ibid.*, under which itemized deductions claimed by individual taxpayers whose incomes exceed certain thresholds are reduced by up to 80%. See Revenue Reconciliation Act of 1990, Pub. L. No. 101-508, Tit. XI, § 11103, 104 Stat. 1388-406 to 1388-407.

2. The provision at issue in this case was enacted in 2017, and it further limits the value of the SALT deduction by imposing a time-limited cap of $10,000 (or $5000 for married taxpayers filing separately) on the amount of state and local taxes that individuals may deduct from their incomes. Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (2017 Act), Pub. L. No. 115-97, § 11042, 131 Stat. 2085-2086 (26 U.S.C. 164(b)(6)(B)). The 2017 Act's cap applies only from 2018 to 2025 and will sunset automatically thereafter. 26 U.S.C. 164(b)(6) (establishing cap for the "taxable year[s] beginning after December 31, 2017, and before January 1, 2026").

The SALT-deduction cap imposed by the 2017 Act was enacted as part of broader legislation that made

substantial revisions to many provisions of the Internal Revenue Code. Among other changes, the 2017 Act lowered tax rates for most individual income-tax brackets; nearly doubled the standard deduction; added a new "family credit" for taxpayers with dependents; suspended the Pease limitation; and limited the individual AMT by raising exemption amounts and thresholds. See 2017 Act §§ 11001, 11021, 11022, 11046, 12003, 131 Stat. 2054, 2072, 2073, 2088, 2095; Pet. App. 59a n.11. The effects of the provisions that reduced many taxpayers' liability were partially offset by revenue-raising provisions in the statute, including the SALT-deduction cap now at issue. Cong. Research Serv., *The 2017 Tax Revision (P.L. 115-97): Comparison to 2017 Tax Law* 3 (Feb. 6, 2018), https://go.usa.gov/xwByW (estimating costs of 2017 Act); U.S. Congress, Joint Comm. on Taxation, *Estimated Budget Effects of the Conference Agreement for H.R. 1, the "Tax Cuts and Jobs Act"* 2, item I.D.1 (Dec. 18, 2017), https://go.usa.gov/xwByK (projecting revenue expected to be generated by limiting the SALT deduction and other deductions). Overall, the 2017 Act slightly decreased individual taxpayers' aggregate federal-income-tax liability. Cong. Research Serv., *The Economic Effects of the 2017 Tax Revision: Preliminary Observations* 8 (June 7, 2019) (CRS *Effects*), https://go.usa.gov/xtTxz.

3. Petitioners—the States of New York, Connecticut, Maryland, and New Jersey—commenced this suit in 2018, alleging that Congress's 2017 cap on the SALT deduction violates Article I, Section 8 of the Constitution and the Tenth and Sixteenth Amendments. Compl. ¶¶ 124-140. Petitioners asserted that "a deduction for all or a significant portion of state and local taxes is constitutionally required because it reflects structural

principles of federalism embedded in the Constitution." Compl. ¶ 5. They additionally alleged that the 2017 Act's SALT-deduction cap "violates principles of equal state sovereignty." Compl. ¶ 17. Petitioners' complaint sought a "[d]eclar[ation] that the provision of the [2017 Act] imposing a $10,000 cap on the SALT deduction is unauthorized by and contrary to the Constitution" and asked the district court to "[e]njoin [the United States] from enforcing the new cap on the SALT deduction." Compl. ¶ 141 (citation omitted).

The district court granted respondents' motion to dismiss. Pet. App. 27a-70a. The court disagreed with the government's threshold contentions that the petitioner States lack standing to challenge a statutory limitation on deductions of taxes owed by individual residents, *id.* at 44a-45a, and that their suit seeking to declare invalid and to enjoin enforcement of the 2017 Act's SALT-deduction cap is barred by the Tax Anti-Injunction Act (AIA), 26 U.S.C. 7421(a), Pet. App. 46a-48a. But the court held that petitioners' challenge to the 2017 Act's cap fails on the merits. *Id.* at 53a-70a.

The district court rejected petitioners' contention that "the Constitution * * * bar[s] *any* congressional effort to tax a substantial portion of the sums a taxpayer has paid toward state and local taxes." Pet. App. 54a. The court observed that "Congress holds 'plenary power under the Constitution to tax income and to grant exemptions from that tax,'" *id.* at 56a (quoting *Lyeth* v. *Hoey*, 305 U.S. 188, 194 (1938)), and that such "plenary power 'knows no restriction except where one is expressed in or arises from the Constitution,'" *ibid.* (quoting *United States* v. *Bennett*, 232 U.S. 299, 306 (1914)). The court noted that petitioners "ha[d] cited no constitutional principle that would bar Congress from exer-

cising its otherwise plenary power to impose an income tax without a limitless SALT deduction" and had "acknowledg[ed] that no such limitation appears in the Constitution's text." *Id.* at 54a, 56a.

The district court additionally rejected petitioners' contention that the 2017 Act constitutes "improper federal interference with the states' taxing power." Pet. App. 57a (brackets and citation omitted). The court explained that petitioners "remain free to exercise their tax power however they wish," and it reasoned that "the bare fact that an otherwise valid federal law necessarily affects the decisional landscape within which states must choose how to exercise their own sovereign authority hardly renders the law an unconstitutional infringement of state power." *Ibid.* The court noted that petitioners' position is inconsistent with *South Carolina* v. *Baker*, 485 U.S. 505 (1988), in which this Court rejected a contention that Congress had exceeded its authority by eliminating "a longstanding federal tax exemption for interest earned on state-issued bearer bonds." Pet. App. 57a-58a. The district court also found unpersuasive petitioners' claim that the 2017 Act had an impermissible purpose and effect of "coerc[ing] certain targeted states" to alter their tax policies. *Id.* at 60a; see *id.* at 60a-70a.

4. The court of appeals affirmed. Pet. App. 1a-26a. The court agreed with the district court that petitioners have standing to challenge the SALT-deduction cap, stating that petitioners had alleged "specific reductions in tax revenue" that the cap would cause them. *Id.* at 10a; see *id.* at 8a-12a. The court of appeals also concluded that the AIA does not bar petitioners' suit. *Id.* at 12a-16a. The court construed this Court's decision in *South Carolina* v. *Regan*, 465 U.S. 367 (1984), as estab-

lishing that "the AIA does not apply to tax claims that the plaintiff could not assert elsewhere." Pet. App. 13a. In the court of appeals' view, petitioners have no other avenue to assert their claims, and therefore the AIA does not apply. See *id.* at 13a-16a.

On the merits, the court of appeals rejected petitioners' contention that the 2017 Act's SALT-deduction cap exceeds Congress's authority. Pet. App. 17a-26a. The court noted that "Congress's broad power to tax is limited only by restrictions 'expressed in or arising from the Constitution,'" and none of the provisions invoked by petitioners—Article I, Section 8; the Tenth Amendment; and the Sixteenth Amendment—"expressly require[s] the SALT deduction or limit[s] Congress's tax power to do away with it." *Id.* at 17a (quoting *Bennett*, 232 U.S. at 306) (brackets omitted).

The court of appeals explained that petitioners' contrary argument rests instead on "their position that, until 2017, Congress had never" eliminated or curtailed the SALT deduction. Pet. App. 17a. But the court observed that "the history of the deduction helps [petitioners] virtually not at all." *Id.* at 19a. The court acknowledged comments by "individual legislators who believed that a SALT deduction (or some variation of it) reflected good tax policy," but it found that "the voices of those individual members of Congress have over time been drowned out by the overall statutory history of the deduction, which reflects that Congress was principally concerned with reserving taxable resources for the States by various means," of which the SALT deduction was only one. *Id.* at 19a-20a. Like the district court, the court of appeals observed that petitioners' contentions "mimic those that [this] Court rejected in" *Baker*, which "held that Congress had the power to tax interest on

state-issued bonds even though it had not previously done so." *Id.* at 21a.

The court of appeals also rejected petitioners' coercion claim. Pet. App. 22a-26a. The court observed that petitioners' argument depends on an "improper comparison" between the 2017 Act as enacted and "a hypothetical version of the 2017 Tax Act without the SALT deduction cap"—a hypothetical that reveals "nothing about the actual financial effects of the SALT deduction cap" on taxpayers. *Id*. at 24a. But even accepting that comparison, and assuming without deciding that a claim of coercion can arise from alleged injuries to a State's citizens rather than to the State itself, the court "f[ound] it implausible that the amounts" of tax revenue that petitioners will allegedly lose are sufficient to "give rise to a constitutional violation." *Id.* at 24a; see *id.* at 23a-24a.

ARGUMENT

The court of appeals correctly concluded that Congress did not exceed its broad authority over taxation by placing a $10,000 limit on the amount of state and local taxes that individual taxpayers may deduct from their incomes. No constitutional principle obligated Congress to provide for any SALT deduction or precluded Congress from imposing a new limit on the deduction it had previously allowed. Nor does the cap that Congress imposed on individuals' deductions constitute coercion of the States in violation of the Tenth Amendment. The court of appeals' decision does not conflict with any decision of this Court or of another court of appeals. This case, brought by States seeking to invalidate and enjoin a limitation on an income-tax deduction for individual taxpayers, would be an unsuitable vehicle in any event because petitioners lack standing, and

their suit is barred by the Tax Anti-Injunction Act, 26 U.S.C. 7421(a). Further review is not warranted.

1. Petitioners contend (Pet. 16) that the Constitution "mandate[s] a SALT deduction for all or nearly all state and local property and income taxes." See Pet. 16-19. The court of appeals correctly rejected that contention. Pet. App. 17a-22a.

a. This Court has long recognized that Congress's "complete and all embracing authority to tax" is "exhaustive and embraces every conceivable power of taxation." *Brushaber* v. *Union Pac. R.R.*, 240 U.S. 1, 12-13 (1916). Congress's taxing power "knows no restriction except where one is expressed in or arises from the Constitution." *United States* v. *Bennett*, 232 U.S. 299, 306 (1914). Congress's "plenary" power encompasses, *inter alia*, the authority "to tax income and to grant exemptions from that tax." *Lyeth* v. *Hoey*, 305 U.S. 188, 194 (1938). The Sixteenth Amendment expressly empowers Congress "to lay and collect taxes on incomes, from whatever source derived." U.S. Const. Amend. XVI. And "[d]eductions" from the income that is subject to federal taxation "are a matter of grace and Congress can, of course, disallow them as it chooses." *Commissioner* v. *Sullivan*, 356 U.S. 27, 28 (1958).

Congress has acted well within that power both in establishing, and in placing limits on, the deduction for state and local taxes. As the courts below observed, no constitutional provision compels Congress to provide any SALT deduction, let alone a deduction of a particular amount. Pet. App. 17a, 54a. Congress thus was free to refrain from taxing income that taxpayers used to pay state and local taxes, as early income-tax statutes did. See p. 2, *supra*. Congress was equally free to curtail the scope of the SALT deduction by making partic-

ular types of state and local taxes nondeductible—and to enact other measures that diminish the deduction's practical significance—as Congress did in subsequent legislation. See pp. 2-4, *supra*. So, too, Congress was entitled to place a quantitative limit on the amount of state and local taxes that taxpayers may deduct from their federally taxable incomes.

b. In the courts below, petitioners acknowledged that no requirement of a "limitless SALT deduction" "appears in the Constitution's text." Pet. App. 54a, 56a. Their principal argument below, which they renew (Pet. 17-19) in this Court, was that "Congress is constitutionally foreclosed from eliminating or curtailing the SALT deduction" because, "until 2017, Congress had never done so." Pet. App. 17a. Petitioners' conclusion is unsound because both its legal and its factual premises are unfounded. *Id.* at 17a-22a, 56a-60a.

The necessary legal premise of petitioners' argument (Pet. 17-19) is that Congress, having historically permitted a particular deduction from taxable income, is obligated to preserve that deduction in perpetuity. But petitioners point neither to any provision of the Constitution nor to any precedent of this Court to support that proposition. Such a constraint would be incompatible with Congress's "plenary" power "to tax income and to grant exemptions," *Lyeth*, 305 U.S. at 194, and with the essential character of deductions as "a matter of grace" that "Congress can * * * disallow * * * as it chooses," *Sullivan*, 356 U.S. at 28.

Moreover, as both courts below recognized, petitioners' position is difficult to reconcile with this Court's decision in *South Carolina* v. *Baker*, 485 U.S. 505 (1988). Pet. App. 21a-22a, 57a-60a. The Court in *Baker* rejected South Carolina's constitutional challenge to a statutory

provision that removed the tax-exempt status of interest on state-issued bearer bonds. 485 U.S. at 515-527. The Court acknowledged that, until the enactment of the challenged provision, Congress had "always exempted state bond interest from taxation by statute, beginning with the very first federal income tax statute." *Id.* at 523. Citing that historical practice, South Carolina contended that "the legislative history of the Sixteenth Amendment * * * manifests an intent to freeze into the Constitution the tax immunity for state bond interest that existed in 1913." *Id.* at 522 n.13. This Court rejected that contention, concluding that the State had "no constitutional entitlement" to have interest on its bearer bonds exempt from federal taxation. *Id.* at 525. As the court of appeals observed, petitioners' arguments here "mimic those that [this Court] rejected" in *Baker*. Pet. App. 21a.

Petitioners attempt (Pet. 19) to distinguish *Baker* by asserting that the taxation of income from state-issued bearer bonds "did not implicate any traditional State power." But the issuance of bonds is an "operation essential to the important objects for which the government was created." *United States* v. *New Mexico*, 455 U.S. 720, 731 (1982) (quoting *Weston* v. *City Council of Charleston*, 27 U.S. (2 Pet.) 449, 467 (1829)); see also *Baker*, 485 U.S. at 531-533 (O'Connor, J., dissenting) (discussing the importance of bond revenue to state and local governments). As the district court noted, congressional supporters and opponents of the Sixteenth Amendment expressed concern about taxing income from state and local bonds because of the importance of bond issuance to state and local governments. Pet. App. 32a & n.4.

Petitioners' factual premise—that until 2017 Congress had never meaningfully limited the SALT deduction, purportedly based on a belief that it was constitutionally required—is equally unsupported. As discussed above, Congress has repeatedly altered, and substantially narrowed, the SALT deduction since the inception of the federal income tax. See pp. 2-4, *supra*. As originally enacted in the 19th century, and as reinstated in 1913 following the Sixteenth Amendment's ratification, the SALT deduction encompassed all types of state and local taxes. But Congress later curtailed the deduction to reach only certain specified types of state and local taxes, while excluding others. The deduction now encompasses only state and local property taxes and, at the taxpayer's option, either income or sales taxes. 26 U.S.C. 164(a) and (b)(5)(A). Moreover, since 1944, the SALT deduction has benefited only taxpayers who itemize their deductions; it is unavailable to many taxpayers who pay the AMT; and for those taxpayers subject to the Pease limitation while it was operative between 1990 and 2017, the deduction was already less than the amount of state and local taxes they had actually paid. See pp. 2-4, *supra*.

The historical record thus demonstrates that, throughout the federal income tax's history, Congress has "not view[ed] its authority to limit the SALT deduction as subject to any relevant constitutional constraints" and has not hesitated to curtail the SALT deduction and its effect where Congress deemed it appropriate. Pet. App. 21a. As the court of appeals observed, "[i]f anything, South Carolina's claims" that this Court found unpersuasive in *Baker* "were stronger than those" that petitioners raise here. *Ibid.* "While Congress has amended the SALT deduction over the years,

the tax at issue in *Baker* * * * really *was* novel," and Congress's ability to impose such a tax "was debated in the run-up to ratification of the Sixteenth Amendment." *Ibid.* This Court nevertheless upheld Congress's imposition of the tax. See *Baker*, 485 U.S. at 517-527.

Petitioners attempt (Pet. 18) to downplay the prior limitations Congress has placed on the SALT deduction as de minimis. That characterization cannot be squared with the historical record. Pet. App. 20a-21a, 58a-59a. For example, petitioners seek (Pet. 8) to dismiss the AMT as a "marginal modification[ ]." Before 2017, however, the AMT had "increasingly eliminate[d] the benefit of the state and local tax deduction for many middle-class taxpayers." CBO *Deductibility* iii. Indeed, the SALT deduction was "one of the tax preferences that the AMT was designed to constrain," and that deduction was "[t]he largest preference that taxpayers" were required to "forgo under the AMT." *Id.* at 1-2, 3. Petitioners similarly try (Pet. 18 & n.19) to brush aside the Pease limitation because its applicability depended on a taxpayer's income. But they fail to confront its effect of reducing by up to four-fifths the aggregate value of itemized deductions (including the SALT deductions) that could be claimed by a taxpayer subject to it. See p. 4, *supra*; Pet. App. 59a n.11; 26 U.S.C. 68.

Petitioners acknowledge (Pet. 18) that Congress removed sales taxes from the SALT deduction altogether in 1986—a change that was only partially undone in 2004, Pet. App. 5a. See p. 3, *supra*. In the court of appeals, petitioners sought to minimize that limitation on the ground that "sales taxes are not nearly as important as income and property taxes." Pet. App. 20a. As the court of appeals observed, that "argument is hard to accept." *Ibid.* According to one study, "[s]ales taxes gen-

erated 31.4 percent of state tax revenue in fiscal year 2014, and are a significant source of revenue for all 45 states which impose them." Jared Walczak, Tax Found., *Unpacking the State and Local Tax Toolkit: Sources of State and Local Tax Collections* 1 (June 2017) (Walczak), https://perma.cc/3MMG-MEPR. The same study found that, in more than a dozen States, state and local sales-tax revenue in Fiscal Year 2014 exceeded both property-tax and individual-income-tax revenue, and in seven States revenue from state and local sales taxes exceeded the revenue from property and individual income taxes combined. *Id.* at 3. Considering state taxes exclusively, the relative importance of sales taxes is even more pronounced. See *id.* at 12 (state-level sales-tax revenue exceeded revenue from both property and individual income taxes in 19 States and exceeded revenue from property and individual income taxes combined in 17 States).

In this Court, petitioners attempt (Pet. 18) to dismiss Congress's exclusion of sales taxes from the SALT deduction in 1986 on the theory that "sales taxes are a relatively recent revenue source for the States," in comparison to property and income taxes. They accordingly frame (Pet. 19) the "constitutionally mandated" SALT deduction that they assert as encompassing only "all or nearly all state and local property and income taxes." But the proportion of state and local tax collections attributable to sales taxes has generally been steady since the 1940s, accounting on average for roughly one-third or more of the total. Walczak 14. In any event, petitioners identify no sound reason why Congress's power to establish and limit a SALT deduction should vary from one type of tax to another based on how long state and local governments have relied on that particular type of

tax to derive substantial revenue. Congress's curtailment of the SALT deduction for sales taxes is powerful evidence that there is no constitutional entitlement to the sweeping deduction that petitioners posit.

c. Petitioners additionally contend (Pet. 14) that a comprehensive SALT deduction is constitutionally required to avoid "interfere[nce] with the states' ability to decide whether and how to levy and collect their own taxes." See Pet. 16-17. The court of appeals correctly rejected that argument. Pet. App. 18a.

Petitioners do not allege that the 2017 Act's amendment of the SALT deduction forbids the States from imposing any taxes or that it places any legal strictures on the States' own sovereign taxing power. The relevant provision is not addressed to the States at all and speaks only to the amount of state and local taxes that individual taxpayers may deduct from their own federally taxable incomes. See 26 U.S.C. 164(b)(6).

Petitioners instead assert (Pet. 17) that the 2017 Act's SALT-deduction cap "increases the effective cost of state and local taxes for taxpayers," and thereby makes it more difficult for States to impose the full extent of taxes that they would prefer. They contend (Pet. 16-17) that "all or nearly all" state and local income and property taxes their residents pay must be shielded from federal taxation to "ensure[] that States can raise tax revenues in furtherance of sovereign state objectives without fear that the federal government will impose a tax on the same sources." But petitioners identify neither any constitutional provision establishing nor any precedent recognizing a constitutional limitation on Congress's "plenary power * * * to tax income and to grant exemptions from that tax," *Lyeth*, 305 U.S.

at 194, that guarantees the States an exclusive right to tax particular portions of their residents' incomes.

Petitioners' argument appears (Pet. 16-17) to rest instead on an unstated limitation on Congress's taxing power purportedly implicit in "principles of federalism," Pet. App. 18a. But this Court long ago called for the greatest caution in considering such contentions, observing that, to the extent any such implied limitations exist, they must be "narrowly limited." *Helvering* v. *Gerhardt*, 304 U.S. 405, 416 (1938). "[A]ny allowance of a tax immunity for the protection of state sovereignty is at the expense of the sovereign power of the nation to tax." *Ibid.*; see *Lane Cnty.* v. *Oregon*, 74 U.S. (7 Wall.) 71, 77 (1869) ("[I]n the case of a tax on the same subject by both governments, the claim of the United States, as the supreme authority, must be preferred."). That is all the more true where, as here, a federal tax is imposed directly on "individual taxpayers" but is then "said to be passed on to the state." *Gerhardt*, 304 U.S. at 418. As the Court explained in *Gerhardt*,

> if every federal tax * * * whose economic burden reaches in some measure the state or those who serve it, were to be set aside as an infringement of state sovereignty, it is evident that a restriction upon national power, devised only as a shield to protect the states from curtailment of the essential operations of government which they have exercised from the beginning, would become a ready means for striking down the taxing power of the nation.

Id. at 417. Rather than invite judicial creation of atextual limitations on Congress's express taxing power, the Court commended the "usual processes of political action," which preserve a "reasonable scope for the independence of state action" against abuse of the federal

power to tax. *Id.* at 416; see *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819).

Moreover, the specific unstated limitation on Congress's taxing power that petitioners ask the Court to infer—which would prelude Congress from "impos[ing] a tax on the same *sources*" that a State has decided (or might decide) to tax, Pet. 16-17 (emphasis added)—cannot be squared with the Sixteenth Amendment's text. The Amendment expressly authorizes Congress to tax "incomes, from whatever sources derived." U.S. Const. Amend. XVI. Petitioners' no-overlapping-taxation principle also proves too much, because the availability of a SALT deduction does not prevent both levels of government from taxing the same income. For example, if a State imposes a 10% tax on an individual's income, the source being taxed is all of the taxpayer's taxable income, not just the 10% slice that is remitted to the State. The SALT deduction, when available, prevents the federal government from taxing that 10% slice, but both governments are still taxing the other 90% (subject to other exclusions and deductions). Construing the Constitution to compel a SALT deduction thus would not even vindicate the principle that petitioners seek to invent.

In any event, as the court of appeals correctly found, petitioners "have not demonstrated how the 2017 cap on the deduction unconstitutionally undermines their state sovereign authority over fiscal matters or their ability to raise revenue." Pet. App. 18a. They have not "plausibly allege[d] that their taxpayers' total federal tax burden is now so high that they cannot fund themselves." *Ibid.* Instead, petitioners seek to maximize "an indirect federal *subsidy* to the state and local governments," which the SALT deduction provides by "de-

creas[ing] the net cost to taxpayers of paying those taxes." CBO *Deductibility* ix (emphasis added). As the court of appeals observed, petitioners seek in effect to require Congress "to protect taxpayers from the true costs of paying their state and local taxes," but they have "point[ed] * * * to nothing that compels the federal Government" to do so. Pet. App. 18a.

d. Petitioners do not contend that the decision below conflicts with the decision of any other court of appeals concerning Congress's authority to impose a quantitative limit on the SALT deduction. Further review is not warranted.

2. Petitioners additionally contend (Pet. 19-22) that the 2017 Act's limitation on the SALT deduction impermissibly coerces the States to alter their tax policies in violation of the Tenth Amendment. The court of appeals correctly rejected that contention. Pet. App. 22a-26a.

The Tenth Amendment provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. Amend. X. This Court has stated that, under the "anticommandeering doctrine," "Congress may not simply 'commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'" *Murphy* v. *National Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1475, 1477 (2018) (citation omitted; brackets in original); see, *e.g.*, *Printz* v. *United States*, 521 U.S. 898, 924 (1997). But the Court also has long recognized that Congress may, through its enactments, provide "incentives" for States to legislate or regulate in particular ways. *New York* v. *United States*, 505 U.S. 144, 166 (1992); see *South Dakota* v. *Dole*, 483 U.S. 203 (1987).

Petitioners point to nothing in the 2017 Act's SALT-deduction limitation that commandeers the state legislative process by compelling States to adopt any particular federal program. Like every federal tax law, the Act alters the financial consequences of a variety of economic activities and choices. And, viewed in isolation, the newly imposed quantitative limit on the SALT deduction may increase the federal tax liability of certain individuals who reside in the petitioner States. But those consequences do not dictate what if any measures States should take to address their own tax policy. At most, the 2017 Act provides an "incentive[ ]" for States to avoid certain policies. *New York*, 505 U.S. at 166.

Moreover, as the court of appeals found, the harms that petitioners posit depend on an "improper" comparison between the 2017 Act and a "hypothetical" version of the same statute without the SALT-deduction cap. Pet. App. 24a. Taken as a whole, the statute as enacted decreased Americans' tax liability in the aggregate, see CRS *Effects* 8, undercutting petitioners' argument that they have been impermissibly pressured by a drastic increase in their residents' federal tax obligations. Nor have petitioners pointed to any authority supporting their implicit assumption that costs imposed on a State's residents can give rise to a claim of unconstitutional coercion on behalf of the State itself.

But even considering the SALT-deduction cap standing alone, its effect on petitioners "pales in comparison to the threatened deprivation" in *National Federation of Independent Business* v. *Sebelius*, 567 U.S. 519 (2012) (*NFIB*), the only case in which this Court has found a financial incentive to be unconstitutionally coercive on States. Pet. App. 24a. Even assuming that the 2017 Act will affect petitioners' economies and their

residents' real-estate values as they allege, it is "implausible that the amounts in question give rise to a constitutional violation." *Ibid.*; see *id.* at 25a ("Without more, quantitative losses constituting such a small portion of a State's budget will not exert such undue pressure as to raise a genuine constitutional concern."). And, as the lower courts noted, the "States had developed intricate statutory and administrative regimes" in reliance on the Medicaid funds at issue in *NFIB*. *Id.* at 68a (quoting *NFIB*, 567 U.S. at 581) (brackets omitted); see also *id.* at 23a (noting that "States had come to rely" on Medicaid funding).

At most, the 2017 Act merely "affects the decisional landscape within which states must choose how to exercise their own sovereign authority." Pet. App. 57a; see *id.* at 69a ("[T]he SALT cap simply requires the States to either exercise their sovereign powers—howsoever they wish—to avert or assuage the cap's effects or else suffer the uncertain budgetary effects of doing nothing. If being put to such an open-ended choice is coercion, it will be the rare piece of federal legislation that comports with the Tenth Amendment." (footnote omitted)).

Petitioners do not allege that the court of appeals' rejection of their Tenth Amendment challenge conflicts with the decision of any other court of appeals. Further review is not warranted.

3. Even if the questions that petitioners present otherwise warranted review, this case would not be a suitable vehicle to address them because judicial review is precluded for at least two independent reasons.

a. Petitioners have not suffered an injury sufficient to confer standing. The court of appeals accepted petitioners' allegations that the SALT-deduction cap will affect real-estate prices, which could in turn decrease

real-estate sales, which in turn could reduce petitioners' real-estate transfer-tax revenues. Pet. App. 8a-12a. But a State lacks standing to assert a claim that federal actions "injured a State's economy and thereby caused a decline in general tax revenues." *Wyoming* v. *Oklahoma*, 502 U.S. 437, 448 (1992) (describing decisions of courts of appeals).

To be sure, this Court has held that a State has standing based on a reduction in "specific tax revenues," where the affected tax was "directly linked" and "demonstrably affected" by a defendant's actions. *Wyoming*, 502 U.S. at 448, 450; see *id.* at 448-450. That test was satisfied in *Wyoming*, where one State limited the amount of coal that could be bought from neighboring States, thus directly reducing the neighboring State's revenue from taxes on the sale of coal. *Ibid.* But *Wyoming* is far afield from the attenuated and speculative link petitioners assert in this case. A mere allegation that a State's "tax revenues were reduced * * * is the sort of generalized grievance about the conduct of government, so distantly related to the wrong for which relief is sought, as not to be cognizable for purposes of standing." *Pennsylvania* v. *Kleppe*, 533 F.2d 668, 672 (D.C. Cir.) (cited in *Wyoming*, 502 U.S. at 448), cert. denied, 429 U.S. 977 (1976). Where "diminution of tax receipts is largely an incidental result of the challenged action," as here, a State lacks standing. *Ibid.*; accord *XY Planning Network, LLC* v. *SEC*, 963 F.3d 244, 252 (2d Cir. 2020); *Arias* v. *DynCorp*, 752 F.3d 1011, 1015 (D.C. Cir. 2014) ("Lost tax revenue is generally not cognizable as an injury-in-fact for purposes of standing."); *Wyoming* v. *United States Dep't of Interior*, 674 F.3d 1220, 1234 (10th Cir. 2012); *Stewart* v. *Kempthorne*, 554 F.3d 1245, 1254 (10th Cir. 2009).

b. Separately, the AIA bars this action because Congress has forbidden federal courts from entertaining lawsuits seeking to enjoin the collection of taxes. The AIA provides that, with specified exceptions, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. 7421(a); see *CIC Servs., LLC* v. *IRS*, 141 S. Ct. 1582, 1588 (2021). The Declaratory Judgment Act, 28 U.S.C. 2201 *et seq.*, also makes an express exception for disputes "with respect to Federal Taxes," 28 U.S.C. 2201(a). Petitioners' complaint sought both declaratory and injunctive relief against the 2017 Act's limitation on the SALT deduction. Compl. ¶ 141. By the AIA's terms, the suit is therefore barred.

The court of appeals permitted this action to proceed based on *South Carolina* v. *Regan*, 465 U.S. 367 (1984), which it construed as holding that the bar does not apply if its application would risk precluding any judicial review. *Id.* at 380-381; see Pet. App. 12a-16a. But the narrow, case-specific exception recognized in *Regan* does not apply here. In *Regan*, it was "by no means certain" that taxpayers would have both the incentive and ability to "raise [the State's] claims." 465 U.S. at 380.

Unlike in *Regan*, individual taxpayers have both the ability and the incentive to challenge the SALT-deduction cap by suing for a refund of allegedly overpaid taxes—precisely the type of suit that Congress, in enacting the AIA, intended to serve as the ordinarily exclusive means of adjudicating the legality of tax laws. See *NFIB*, 567 U.S. at 543; *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. 1, 5-7 (1962). Indeed, as petitioners observe (Pet. 15), individual taxpayers in New

Jersey have filed a putative class-action suit in which they seek a refund of taxes paid on the ground that the SALT-deduction cap is unconstitutional for various reasons. See generally Supp. Compl. at 1-30, *Sims* v. *United States*, No. 21-cv-1120 (D.N.J. Sept. 22, 2021). The government's motion to dismiss that case on the merits of the plaintiffs' constitutional claims is currently pending. Gov't Mot. to Dismiss, *Sims*, *supra* (D.N.J. Dec. 17, 2021). Such suits illustrate the lack of any need to permit circumvention of the AIA to enable judicial review of claims like those raised by petitioners. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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