No. _______

**IN THE SUPREME COURT OF THE UNITED STATES**

STATE OF NEW YORK, STATE OF CONNECTICUT, STATE OF MARYLAND, and STATE OF NEW JERSEY, *Petitioners*,

v.

JANET YELLEN, in her official capacity as Secretary of the United States Department of Treasury, UNITED STATES DEPARTMENT OF TREASURY, CHARLES P. RETTIG, in his official capacity as Commissioner of the United States Internal Revenue Service, UNITED STATES INTERNAL REVENUE SERVICE, UNITED STATES OF AMERICA, *Respondents*.

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

**To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit:**

Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicants State of New York, State of Connecticut, State of Maryland, and State of New Jersey respectfully seek a 60-day extension of the deadline to file a petition for writ of certiorari seeking review of the Second Circuit's decision in *State of New York et al. v. Yellen*, 15 F.4th 569 (2d Cir. 2021) (attached as Appendix A). In that decision, the Second Circuit affirmed the dismissal of Applicants' constitutional challenges to the portion of the 2017 Tax Cuts and Jobs Act ("2017 Tax Act") which imposed a $10,000 cap on the federal tax code's state and local tax ("SALT") deduction.

The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1340. The Second Circuit had appellate jurisdiction under 28 U.S.C. § 1291. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The Second Circuit issued the opinion and entered judgment for Respondents on October 5, 2021. Under Rule 13.3, the time for Applicants to file their petition, unless extended, will expire on January 3, 2022. Thus, Applicants are filing this application for an extension of time more than "10 days before the date the petition is due." Rule 13.5. With the requested extension, the deadline to file a petition for writ of certiorari would be March 4, 2022.

Respondents consent to this request.

## BACKGROUND

From the enactment of the first federal income tax during the Civil War until the 2017 Tax Act, Congress had allowed taxpayers to deduct all or substantially all state and local property taxes from their taxable income. The 2017 Tax Act upended the federal tax system by limiting the SALT deduction to $10,000, an action that was intended to and did harm a subset of States including Applicants. *See* An 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, § 11042, 131 Stat. 2054, 2085-86 (2017) (H.R. 1). In 2018, the four Applicant States sued the federal Government, arguing that the SALT cap violates Article I, Section 8, and the Tenth and Sixteen Amendments of the United States Constitution. The court of appeals' decision

affirmed the district court's dismissal of Applicants' constitutional challenges, holding that Applicants had failed to demonstrate that the SALT deduction cap expressly violated Article I, Section 8, and the Sixteenth Amendment, and holding that the negative economic effects of the cap were not so severe as to impermissibly coerce Applicants into changing their state taxation policies, in violation of the Tenth Amendment.

## REASONS FOR GRANTING AN EXTENSION OF TIME

Applicants request an extension of sixty (60) days of the deadline to file a petition for writ of certiorari. With the requested extension, Applicants' deadline to file a petition for writ of certiorari would be March 4, 2022.

This case involves substantial matters of national importance and presents challenging constitutional questions about the interplay of the federal taxation system and state sovereignty over local tax policy. Applicants seek additional time to permit thorough deliberation on whether to file a petition for certiorari raising these issues, including time for consultation with relevant government officials in four different States, at least two of whom have taken office only within the last six months. The decision to file a petition for writ of certiorari in an appeal of this magnitude as well as the petition itself require several layers of review in the offices of each of the four Applicant States, requiring more than the usual allotment of time. On the existing schedule, the consultation, review, and approval processes would be

extremely challenging given conflicting holiday commitments and operational challenges and disruptions due to the ongoing and worsening COVID-19 crisis.

In addition to the need for wide consultation and deliberation, the press of other work and the commitments of the attorneys assigned to this case make it difficult to prepare a petition in the allotted time. The undersigned counsel is currently supervising multiple briefs and oral arguments in this Court—including a respondents' brief for a coalition of States and municipalities in *West Virginia v. Environmental Protection Agency*, No. 20-1530, which is due in this Court on January 18, 2022—and in the Second Circuit and New York Court of Appeals. Moreover, the line attorney most familiar with this case recently departed the office. The new attorney who has been assigned to this matter is responsible for several substantial upcoming filings and arguments, including a significant oral argument in the Second Circuit in two consolidated matters on February 16, 2022.

An extension in this case will not prejudice Respondents, because the challenged provision of the 2017 Tax Act remains in effect. Counsel for Respondents, Assistant United States Attorney Jean-David Barnea, has advised that Respondents consent to the requested 60-day extension, and has confirmed that such consent was given pursuant to consultation with the Office of the Solicitor General.

There is good cause for a 60-day extension. Accordingly, Applicants respectfully request that the Court extend the deadline to file a petition for writ of certiorari by sixty (60) days, to and including March 4, 2022.

Dated: New York, New York
December 23, 2021

Respectfully submitted,

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# APPENDIX

19-3962-cv
New York v. Yellen

1 **UNITED STATES COURT OF APPEALS**
2 **FOR THE SECOND CIRCUIT**
3
4 August Term, 2020
5
6 (Argued: December 3, 2020 Decided: October 5, 2021)
7
8 Docket No. 19-3962-cv
9
10 _________________________________________________
11
12 STATE OF NEW YORK, STATE OF CONNECTICUT, STATE OF MARYLAND,
13 STATE OF NEW JERSEY,
14
15 Plaintiffs-Appellants,
16
17 v.
18
19 JANET YELLEN, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE
20 UNITED STATES DEPARTMENT OF TREASURY, UNITED STATES
21 DEPARTMENT OF TREASURY, CHARLES P. RETTIG, IN HIS OFFICIAL
22 CAPACITY AS COMMISSIONER OF THE UNITED STATES INTERNAL
23 REVENUE SERVICE, UNITED STATES INTERNAL REVENUE SERVICE, AND
24 UNITED STATES OF AMERICA,
25
26 Defendants-Appellees.*
27
28 _________________________________________________
29
30 Before:
31
32 SACK, CHIN, and LOHIER, Circuit Judges.
33
34 New York, Connecticut, Maryland, and New Jersey (the "Plaintiff States")
35 appeal from a judgment of the United States District Court for the Southern

* The Clerk of Court is directed to amend the caption of this case as set forth above.

1 District of New York (Oetken, J.) granting the defendants' motion to dismiss for
2 failure to state a claim and denying the States' cross-motion for summary
3 judgment. The States allege that the $10,000 cap on the federal income tax
4 deduction for money paid in state and local taxes, enacted as part of the 2017 Tax
5 Cuts and Jobs Act, violates the United States Constitution. They argue that the
6 state and local tax deduction is constitutionally mandated, or alternatively that
7 the cap violates the Tenth Amendment because it coerces them to abandon their
8 preferred fiscal policies. The District Court held that the States had standing and
9 that their claims were not barred by the Anti-Injunction Act ("AIA"), 26 U.S.C.
10 § 7421(a), but it concluded that the claims lacked merit. We agree with the
11 District Court, and we therefore **AFFIRM** the judgment.
12
13 CAROLINE A. OLSEN, Assistant Solicitor General
14 (Barbara D. Underwood, Solicitor General, Steven C.
15 Wu, Deputy Solicitor General, on the brief), for Letitia
16 James, Attorney General for the State of New York,
17 New York, NY, for Plaintiff-Appellant State of New
18 York.
19
20 Mark F. Kohler, Assistant Attorney General, for William
21 Tong, Attorney General for the State of Connecticut,
22 Hartford, CT, for Plaintiff-Appellant State of
23 Connecticut.
24
25 Steven M. Sullivan, Solicitor General, for Brian E. Frosh,
26 Attorney General for the State of Maryland, Baltimore,
27 MD, for Plaintiff-Appellant State of Maryland.
28
29 Jeremy Feigenbaum, Counsel to the Attorney General,
30 for Gurbir S. Grewal, Attorney General for the State of
31 New Jersey, Trenton, NJ, for Plaintiff-Appellant State of
32 New Jersey.
33
34 JEAN-DAVID BARNEA, Assistant United States Attorney
35 (Rebecca S. Tinio, Benjamin H. Torrance, Assistant
36 United States Attorneys, on the brief), for Audrey

1 Strauss, Acting United States Attorney for the Southern
2 District of New York, New York, NY, for Defendants-
3 Appellees.
4
5
6 LOHIER, Circuit Judge:

7 The federal tax code's state and local tax ("SALT") deduction has long
8 permitted taxpayers to deduct from their taxable income all the money they paid
9 in state and local income and property taxes. In 2017, however, Congress passed
10 the Tax Cuts and Jobs Act (the "2017 Tax Act" or the "Act"), Pub. L. No. 115-97,
11 131 Stat. 2054, which imposed a $10,000 cap on the SALT deduction. The
12 immediate impact of the new cap was felt most acutely in States where the state
13 and local tax liability of residents often exceeds the $10,000 maximum. Four of
14 the States most affected—New York, Connecticut, New Jersey, and Maryland,
15 the plaintiffs here—sued the federal Government,[1] asserting that Congress's new
16 cap on the SALT deduction either is unconstitutional on its face or
17 unconstitutionally coerces them to abandon their preferred fiscal policies. The
18 Government responded that the United States District Court for the Southern

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[1] The defendants include the Internal Revenue Service and its Commissioner and the United States Department of Treasury and its Secretary.

1 District of New York (Oetken, J.) lacked subject matter jurisdiction to consider
2 the States' claims, and also defended the cap on the merits.
3 The District Court rejected the Government's jurisdictional defense but
4 dismissed the complaint for failure to state a claim. On appeal, the Plaintiff
5 States argue that the District Court erred on the merits, while the Government
6 continues to maintain that the District Court lacked jurisdiction and otherwise
7 defends the District Court's judgment. Finding no error in the District Court's
8 conclusions, we AFFIRM.

9 BACKGROUND

10 I.

11 We start with a quick bit of history. The United States has not always
12 levied a federal income tax. In its first decades, the federal Government
13 remained small enough that it could fund itself almost entirely through customs
14 duties and tariffs. See Aaron T. Knapp, The New Jersey Plan and the Structure of
15 the American Union, 15 Geo. J.L. & Pub. Pol'y 615, 643–44 (2017). The cost of
16 waging the Civil War made that approach impossible. Congress, prodded by the
17 need to tap new sources of revenue to pay for the war, enacted the first federal
18 income tax in 1861. See Act of Aug. 5, 1861, ch. 45, § 49, 12 Stat. 292, 309. Even

1 then, as the Government scrounged for funds first to pay for and then to recover
2 from the war, Congress created a nearly unlimited SALT deduction. "[I]n
3 estimating [federally taxable] income," Congress determined, "all national, state,
4 or local taxes assessed upon the property, from which the income is derived,
5 shall be first deducted." Id.; see Act of July 1, 1862, ch. 119, § 91, 12 Stat. 432,
6 473–74; Act of June 30, 1864, ch. 173, § 117, 13 Stat. 223, 281; Act of Mar. 3, 1865,
7 ch. 78, 13 Stat. 469, 479; Act of Mar. 2, 1867, ch. 169, § 13, 14 Stat. 471, 478; Act of
8 July 14, 1870, ch. 255, § 9, 16 Stat. 256, 258. The tax expired in 1872, but Congress
9 revived it in 1894, along with the SALT deduction. See Act of July 14, 1870, § 10,
10 16 Stat. at 158; Act of Aug. 27, 1894, ch. 349, § 28, 28 Stat. 509, 553. A year later, in
11 1895, the Supreme Court struck down the 1894 tax, holding that it violated the
12 constitutional prohibition against direct taxes not apportioned among the States
13 in proportion to their relative populations. See Pollock v. Farmers' Loan & Tr.
14 Co., 158 U.S. 601, 637 (1895); see also U.S. Const. art. I, § 9, cl. 4.
15 The ratification of the Sixteenth Amendment in 1913 empowered Congress
16 to "lay and collect taxes on incomes, from whatever source derived, without
17 apportionment among the several States." U.S. Const. amend. XVI. Immediately
18 after the Amendment was ratified, Congress reinstated the federal income tax

1 and reintroduced the SALT deduction for "all national, State, county, school, and
2 municipal taxes paid within the year, not including those assessed against local
3 benefits." Act of Oct. 3, 1913, ch. 16, § II(B), 38 Stat. 114, 167.

4 And "from then to now, some form of [SALT] deduction . . . has been a
5 mainstay of the federal Tax Code." New York v. Mnuchin, 408 F. Supp. 3d 399,
6 404 (S.D.N.Y. 2019). But amendments to the Tax Code have over time also made
7 the deduction more difficult or less attractive for taxpayers to claim. In 1944, for
8 example, Congress introduced the standard deduction, which is a predetermined
9 sum that taxpayers can choose to deduct instead of deducting their identifiable
10 itemized expenses. See Individual Income Tax Act of 1944, Pub. L. No. 78-315, §
11 9, 58 Stat. 231, 236–38. As the District Court noted, the emergence of the
12 standard deduction "meant that, in practice, the SALT deduction remained
13 relevant for only those taxpayers who chose to itemize their deductions."
14 Mnuchin, 408 F. Supp. 3d at 404. Twenty years later, in 1964, Congress altered
15 the SALT deduction directly: it provided that only certain enumerated types of
16 state and local taxes were deductible and disallowed deductions for any other
17 state and local taxes. See Act of Feb. 26, 1964, Pub. L. No. 88-272, § 207, 78 Stat.
18 19, 40–42; see also Gladriel Shobe, Disaggregating the State and Local Tax

1 Deduction, 35 Va. Tax Rev. 327, 338 (2016). In effect, the 1964 amendment
2 inverted the traditional legislative approach to the SALT deduction under which
3 "all state and local taxes were deductible unless specifically disallowed." See
4 Shobe, supra, at 338 (emphasis added).

5 Since 1964, legislation has only further limited the availability of the
6 deduction. In 1986, in the wake of a debate about repealing the deduction,
7 Congress enacted a comprehensive alternative minimum tax ("AMT") scheme,
8 providing taxpayers with an additional method to calculate their tax liability
9 without resorting to the deduction. See Tax Reform Act of 1986, Pub. L. No. 99-
10 514, § 134, 100 Stat. 2085, 2320–45. The AMT requires high-income taxpayers to
11 calculate their tax liability using both traditional and alternative methodologies,
12 and to pay the greater amount. If the alternative methodology results in a
13 greater tax liability, the taxpayer is prevented from claiming the SALT
14 deduction. See id. at 2321. At the same time, Congress removed sales taxes from
15 the list of deductible state and local taxes. See id. § 134, 100 Stat. at 2116. Not
16 long thereafter, in 1990, Congress enacted the so-called "Pease limitation," under
17 which taxpayers with adjusted gross incomes exceeding certain specified
18 thresholds were required to reduce the overall amount claimed in itemized

1 deductions, including SALT deductions, by up to eighty percent. See Omnibus
2 Budget Reconciliation Act, Pub. L. No. 101-508, § 11,103, 104 Stat. 1388, 1388-406
3 (1990) (codified at 26 U.S.C. § 68(a)). Finally, in 2004 Congress reinstated the
4 deduction for state and local sales taxes but forced taxpayers to choose between
5 deducting state and local sales taxes and deducting state and local income taxes,
6 thereby reducing the number of taxpayers claiming the latter. See American Jobs
7 Creation Act of 2004, Pub. L. No. 108-357, § 501, 118 Stat. 1418, 1520–21.
8 The SALT deduction nevertheless remained durable until 2017. Eligible
9 taxpayers could, subject to the standard deduction, the AMT, and the Pease
10 limitation, always elect to deduct all state and local real and personal property
11 taxes as well as either all state and local income taxes or all state and local sales
12 taxes. See 26 U.S.C. § 164(a)(1)–(3), (b)(5) (effective Dec. 18, 2015 to Dec. 21,
13 2017).
14 In 2017, however, Congress took a sharp turn by passing the Act. As
15 relevant here and as noted above, the Act prohibits taxpayers from claiming a
16 SALT deduction of more than $10,000 — a cap that exists regardless of a
17 taxpayer's state and local tax burden. See 2017 Tax Act § 11,042, 131 Stat. at

1 2085–86 (codified at 26 U.S.C. § 164(b)(6)).[2] Congressional and executive branch
2 proponents of the new cap on the SALT deduction openly proclaimed that it
3 would adversely impact States with higher overall state and local taxes
4 significantly more than other States. According to then-Speaker of the House
5 Paul Ryan, for example, the SALT deduction had created a disparity in which
6 "[p]eople in states that have balanced budgets, whose state governments have
7 done their job and kept their books balanced and don't have massive pension
8 liabilities, they're effectively paying for states that don't." Joint App'x 575; see
9 also id. at 612 ("[W]e're propping up profligate, big government states and we're
10 having states that actually got their act together pay for states that didn't.").
11 Another member of Congress asserted that the Act would not be "as good" for
12 "New Jersey, New York, and other states that have horrible governments." Id. at
13 616. Then-Treasury Secretary Mnuchin "hope[d]" that the SALT deduction cap
14 would "send[] a message to the state governments that, perhaps, they should try
15 to get their budgets in line" and implied that "13 or 14% taxes" are unacceptably
16 high. Id. at 621. And President Trump stated that the new law "creat[es] an

[2] The Act's $10,000 cap on the SALT deduction is scheduled to sunset after the 2025 taxable year, see 26 U.S.C. § 164(b)(6), at which time the Pease limitation, which the Act suspended, is scheduled to resume, see 2017 Tax Act § 11,046, 131 Stat. at 2088 (codified at 26 U.S.C. § 68(f)).

1 incentive" for state politicians to "do a good job of running [their] state." Id. at
2 582–83.

3 II.

4 The Plaintiff States commenced this action to enjoin the Government from
5 enforcing the SALT deduction cap, claiming that it violates the Sixteenth
6 Amendment. They argued that any federal income tax must permit "a deduction
7 for all or a significant portion of state and local taxes." Joint App'x 59. They also
8 claimed that the SALT deduction cap violates both Article I, Section 8 and the
9 Tenth Amendment because it coerces them to lower taxes or cut spending.

10 The Plaintiff States contend that taxpayers in their states are likely to bear
11 the brunt of the cap, as a disproportionate share of their taxpayers' state and
12 local tax burdens exceed the $10,000 maximum. According to them, the cap
13 increases the effective cost of state and local property taxes, renders
14 homeownership more expensive, depresses home equity values, and slows the
15 real estate market in their respective states. As a result, the Plaintiff States say,
16 they will collect reduced revenue from property taxes and real estate transfer

1 taxes, which will force them to significantly reorder their fiscal and tax policies to
2 make up for the shortfalls.
3 Before the District Court, the Government moved to dismiss these claims
4 on the ground that the Plaintiff States lacked standing, that their claims
5 presented a non-justiciable political question, and that the claims were in any
6 event barred by the Anti-Injunction Act ("AIA"), 26 U.S.C. § 7421(a). As noted,
7 although the District Court rejected the Government's jurisdictional arguments,
8 it held that the Constitution does not require a SALT deduction as part of every
9 federal income tax scheme and that the complaint failed to assert a plausible
10 claim of coercion.
11 This appeal followed the District Court's judgment dismissing the
12 complaint.

13 DISCUSSION

14 I.

15 We review the District Court's entire decision de novo. Before considering
16 the merits of the Plaintiff States' claims, we must first address the Government's

1 jurisdictional arguments that the States lack standing to sue and that this action
2 is barred by the AIA.[3]

3 A.

4 We agree with the District Court that the Plaintiff States have standing to
5 proceed with their constitutional claims. To satisfy the "'irreducible
6 constitutional minimum' of standing," a "plaintiff must have (1) suffered an
7 injury in fact, (2) that is fairly traceable to the challenged conduct of the
8 defendant, and (3) that is likely to be redressed by a favorable judicial decision."
9 Spokeo, Inc. v. Robins, 578 U.S. 330, 136 S. Ct. 1540, 1547 (2016) (quoting Lujan v.
10 Defs. of Wildlife, 504 U.S. 555, 560 (1992)). Each element of standing "must be
11 supported . . . with the manner and degree of evidence required at the successive
12 stages of litigation," and at the pleading stage, "general factual allegations of
13 injury resulting from the defendant's conduct may suffice." Lujan, 504 U.S. at
14 561. Where, as here, the defendants' challenge to the plaintiffs' standing is
15 "facial," meaning that the defendants do not offer any evidence of their own, our
16 task is to determine whether, "accepting as true all material factual allegations of

[3] The Government does not press on appeal its alternative jurisdictional argument that this case presents a non-justiciable political question, and as a result we do not address that argument.

1 the complaint, and drawing all reasonable inferences in favor of the plaintiff[s],"
2 the complaint "alleges facts that affirmatively and plausibly suggest that the
3 plaintiff[s] ha[ve] standing to sue." Carter v. HealthPort Techs., LLC, 822 F.3d
4 47, 56–57 (2d Cir. 2016) (quotation marks omitted). The Government does not
5 dispute that "any injuries the States suffer as a result of the SALT cap are
6 traceable to the Government's enforcement of the cap and so would be remedied
7 by an injunction that bars enforcement." Mnuchin, 408 F. Supp. 3d at 408. The
8 question of standing therefore turns solely on whether the Plaintiff States have
9 sufficiently alleged an injury in fact.

10 The Plaintiff States principally argue that they have standing because the
11 SALT deduction cap is estimated to cause them to lose at least hundreds of
12 millions of dollars of revenue from property taxes and real estate transfer taxes.
13 In addressing the argument, we consider Wyoming v. Oklahoma. 502 U.S. 437,
14 447–48 (1992). There, Wyoming challenged an Oklahoma law that required coal-
15 fired power plants in Oklahoma to burn a mixture of coal at least ten percent of
16 which was mined in-state. Id. at 440, 444. Before Oklahoma enacted the law at
17 issue, its utilities "exclusively us[ed] Wyoming coal." Id. at 443, 448 n.9. But the
18 Oklahoma law reduced the demand for Wyoming coal, causing Wyoming to lose

1 significant revenue from severance taxes, which were assessed as a percentage of
2 the fair market value of all coal mined in the state. See id. at 442, 445. The
3 Supreme Court held that Wyoming had standing to challenge the Oklahoma law
4 because it had demonstrated a "direct injury in the form of a loss of specific tax
5 revenues." Id. at 448.

6 The Government attempts to distinguish Wyoming, arguing that it
7 recognizes only a very narrow exception to the general rule that a reduction in
8 tax revenues constitutes a generalized grievance that is not cognizable for
9 purposes of standing. Narrow or not, the "exception" to the rule applies here.
10 The Plaintiff States allege that the SALT deduction cap, among other effects,
11 makes homeownership more expensive for taxpayers whose state and local tax
12 liability exceeds $10,000: the cap prohibits taxpayers from deducting the full
13 amount of their property taxes from their federally taxable income, thereby
14 increasing their federal income tax liability. Because it makes homeownership
15 more expensive, the cap reduces demand in the housing market, causing lower
16 prices and fewer sales, and leads to specific losses in tax revenue derived from
17 property and real estate transfer taxes.

1 Setting Wyoming aside, the Government casts about to analogize this case
2 to a smattering of cases in which our sister circuits held that a State or foreign
3 government lacked standing. But the cases to which the Government points us
4 all involve allegations of generalized economic harm only, not, as here and in
5 Wyoming, allegations detailing specific reductions in tax revenue. See Arias v.
6 DynCorp, 752 F.3d 1011, 1015 (D.C. Cir. 2014) (alleging that the defendant's
7 conduct generally "cost them tax revenue," as estimated by new budget deficits);
8 Iowa ex rel. Miller v. Block, 771 F.2d 347, 353 (8th Cir. 1985) (alleging that if
9 disaster-relief programs were not implemented, "agriculture production will
10 suffer, which will dislocate agriculturally-based industries, forcing
11 unemployment up and state tax revenues down"); Pennsylvania ex rel. Shapp v.
12 Kleppe, 533 F.2d 668, 670–72 (D.C. Cir. 1976) (alleging that the Small Business
13 Administration's failure to introduce a more effective and longer-lasting disaster-
14 relief program caused "injury to [the state's] economy" and "reduction of state
15 tax revenues").

16 And in both Wyoming v. United States Department of Interior, 674 F.3d
17 1220 (10th Cir. 2012), and Stewart v. Kempthorne, 554 F.3d 1245 (10th Cir. 2009),
18 on which the Government also relies, the state plaintiffs failed to plausibly allege

1 that they had lost or would lose specific tax revenues. See Wyoming v. U.S.
2 Dep't of Interior, 674 F.3d at 1234; Stewart, 554 F.3d at 1254. Neither of these
3 cases, however, involved the combination of "[b]asic economic logic," Am. Inst.
4 of Certified Pub. Accts. v. IRS, 804 F.3d 1193, 1198 (D.C. Cir. 2015), and
5 declarations from tax and budgetary experts that exists in the case before us, see
6 McCardell v. U.S. Dep't of Hous. & Urb. Dev., 794 F.3d 510, 520 (5th Cir. 2015).
7 Here, for example, New York provided a specific estimate that the SALT
8 deduction cap will cause New York's real estate transfer tax revenue to decrease
9 by $15.3 million in 2019 and $69.2 million in 2020. Joint App'x 69. Maryland
10 specifically estimated that the 2017 Tax Act would cause Maryland's real estate
11 transfer tax revenue to decrease by $52.3 million in two years. Id. at 95. And
12 New Jersey supplied expert declarations estimating that the 2017 Tax Act would
13 cause New Jersey's real estate transfer tax revenue to decrease by a total of $105.1
14 million in 2019 and 2020. Id. at 150. Here, in other words, the Plaintiff States,
15 which claim that the new tax burden will significantly decrease the tax revenue
16 from residents, are not engaged in "pure speculation and fantasy," Lujan, 504
17 U.S. at 567. Far from "guesswork as to how independent decisionmakers" – their
18 own residents – "will exercise their judgment," Clapper v. Amnesty Int'l USA,

1 568 U.S. 398, 413 (2013), the chain of economic events that the Plaintiff States
2 have proffered in this case strikes us as realistic, and the challenged action's
3 effect on their residents' decisions seems to us entirely "predictable," Dep't of
4 Commerce v. New York, — U.S. —, 139 S. Ct. 2551, 2566 (2019).
5 For these reasons, we conclude that the Plaintiff States have standing to
6 sue the Government and challenge the SALT deduction cap. Their allegations
7 that the cap will decrease the frequency and price at which taxable real estate
8 transactions occur by measurably increasing the cost of those transactions reflect
9 specific lost tax revenues and suffice to support standing.
10 B.
11 We are similarly unpersuaded by the Government's jurisdictional
12 argument under the AIA. As relevant here, the AIA provides that "no suit for
13 the purpose of restraining the assessment or collection of any tax shall be
14 maintained in any court by any person, whether or not such person is the person
15 against whom such tax was assessed." 26 U.S.C. § 7421(a). "The manifest
16 purpose of [the AIA] is to permit the United States to assess and collect taxes
17 alleged to be due without judicial intervention, and to require that the legal right
18 to the disputed sums be determined in a suit for refund." Enochs v. Williams

1 Packing & Navigation Co., 370 U.S. 1, 7 (1962); see also United States v. First
2 Nat'l City Bank, 568 F.2d 853, 856 n.10 (2d Cir. 1977).
3 The Government argues that the AIA bars this lawsuit as a "suit for the
4 purpose of restraining the assessment or collection of any tax." Appellee's
5 Br. 22–28. But its argument ignores that the AIA was never intended to leave a
6 party without any forum in which to assert its tax claims.
7 Consider South Carolina v. Regan, 465 U.S. 367, 373 (1984), in which the
8 Supreme Court held that the AIA does not apply to tax claims that the plaintiff
9 could not assert elsewhere. See Larson v. United States, 888 F.3d 578, 587 n.11
10 (2d Cir. 2018). There, South Carolina sought an injunction against the federal Tax
11 Equity and Fiscal Responsibility Act, which taxed the interest on certain state-
12 issued, unregistered bearer bonds, while interest on state-issued registered bonds
13 remained non-taxable. See Regan, 465 U.S. at 371. South Carolina challenged the
14 tax, asserting that it "destroy[ed South Carolina's] freedom to issue obligations in
15 the form that it chooses." Id. at 371–72. The Government responded, as it does
16 here, that the AIA barred South Carolina's claim. After reviewing the history of
17 the AIA and its amendments, however, the Supreme Court held that the AIA
18 does not bar "actions brought by aggrieved parties for whom [Congress] has not

1 provided an alternative remedy." Id. at 378. South Carolina's challenge, the
2 Court explained, could proceed in federal court because "Congress ha[d] not
3 provided the plaintiff with an alternative legal way to challenge the validity of a
4 tax." Id. at 373.

5 With respect to the applicability of the AIA, the claims of the Plaintiff
6 States and those of South Carolina in Regan are materially the same. To begin,
7 the Plaintiff States cannot assert their claims in a forum other than federal court
8 and cannot themselves bring a refund suit here. Moreover, as Regan reminds us,
9 the AIA applies "only when Congress has provided an alternative avenue for an
10 aggrieved party to litigate its claims on its own behalf." Id. at 381 (emphasis
11 added). Aggrieved parties are not obliged to find taxpayers willing to litigate
12 their claims and trust that those taxpayers will litigate them effectively. Id. at
13 380. We do not "lightly attribute to Congress an intent to require plaintiff[s] to
14 find a third party to contest [their] claims." Id. at 381. Because the Plaintiff States
15 must be permitted to pursue their claims on their own behalf, it seems to us
16 irrelevant that a third party may have an incentive to challenge the SALT
17 deduction cap in a refund suit even if the Plaintiff States cannot. Id. at 380–81.

1 The Government attempts to confine Regan to those "narrow
2 circumstances" in which taxpayers have "little incentive" to incur and challenge
3 the disputed tax. Appellees' Br. 24. But Regan appears to have carved an
4 exception to the AIA that is not quite as narrow as the Government claims. As
5 the Court explained in Regan, there is no guarantee that a taxpayer willing to
6 challenge the disputed tax will "present the relevant arguments on [the State's]
7 behalf," as opposed to arguments that highlight the taxpayer's more individual
8 interests. Id. at 380 (quotation marks omitted).

9 Continuing to press its argument that the AIA bars this lawsuit because
10 there are alternative ways for the Plaintiff States to advance their claims, the
11 Government relies on two decisions from our sister circuits, RYO Machine, LLC
12 v. United States Department of Treasury, 696 F.3d 467 (6th Cir. 2012), and
13 Confederated Tribes & Bands of Yakama Indian Nation v. Alcohol & Tobacco
14 Tax & Trade Bureau, 843 F.3d 810 (9th Cir. 2016). As with the other decisions on
15 which the Government relies to advance its jurisdictional arguments, both RYO
16 Machine and Yakama Indian Nation are distinguishable.

17 First, in RYO Machine, the Sixth Circuit considered a suit by
18 manufacturers and a retailer of high-speed cigarette rolling machines to enjoin

1 enforcement of a rule taxing the retailers as "manufacturers of tobacco products."
2 RYO Machine, 696 F.3d at 468–69. The court held that the manufacturers were
3 not entitled to injunctive relief and distinguished the case from Regan. Unlike
4 Regan, where South Carolina "sought to preserve its own ability to issue
5 unregistered bonds," the Sixth Circuit explained, the manufacturers sought "to
6 preserve the position of their customers and thereby to protect themselves from
7 lost profits." Id. at 472. In other words, the rule may have injured the
8 manufacturers, but the manufacturers' lawsuit aimed to vindicate the rights of
9 their retailers. Here of course, the Plaintiff States — like South Carolina in Regan
10 — contend that the SALT deduction cap violates their own constitutional rights.
11 And unlike RYO Machine, in which one of the retailers subject to the tax "was
12 originally part of th[e] lawsuit," id., the Plaintiff States have not litigated this case
13 jointly with taxpayers. Indeed, the Government has not identified a single
14 taxpayer challenge to the SALT deduction cap.

15 In Yakama Indian Nation, a Native American tribe, a tobacco
16 manufacturer organized under tribal laws, and the individual owner of the
17 manufacturer (himself a tribal member) jointly sued for injunctive and
18 declaratory relief barring the imposition of a federal tobacco excise tax on the

1 manufacturer on the ground that the tax violated the General Allotment Act, 25
2 U.S.C. § 331 et seq., as well as the Treaty with the Yakama, 12 Stat. 951 (1855).
3 See Yakama Indian Nation, 843 F.3d at 811. The Ninth Circuit concluded that the
4 suit was barred by the AIA. The court explained that unlike South Carolina's
5 interest in Regan, "the Yakama Nation's asserted injury flows from the taxation
6 of its members, and thus is wholly derivative" of the injury suffered by the
7 corporate and individual tribal members and taxpayers who litigated the case
8 jointly with the tribe. Id. at 815. The manufacturer and its owner, in other
9 words, "share[d] the Yakama Nation's interest in preventing taxation" and
10 "appear[ed] to have every incentive to raise [the Yakama Nation's] claims in a
11 refund suit." Id. Indeed, the Ninth Circuit asserted, the Yakama Nation's
12 interest in avoiding the taxation of its members was "inextricably intertwined"
13 with the interests of the two other plaintiffs "in avoiding their own taxation." Id.
14 at 816.
15 The case before us presents an altogether different situation. We cannot
16 fairly describe the injuries claimed by the Plaintiff States as "wholly derivative"
17 of injuries to the taxpayers in those States flowing from the 2017 Act. We have
18 already noted, for example, the absence of taxpayers in this litigation, in contrast

1 to the important role of the manufacturer and the individual tribal member in the
2 proceedings in Yakama Nation to undo the tax that was most directly imposed
3 on them. Moreover, while each Plaintiff State might soften the burden on
4 taxpayers by lowering its own state taxes, doing so would neither restore the lost
5 state tax revenue nor free the States from what they allege is federal oversight
6 over their state fiscal policies.

7 Because Regan's exception to the AIA applies to the facts of this case, we
8 hold that the AIA does not foreclose our review of the Plaintiff States' claims.

9 II.

10 Turning to the merits, the Plaintiff States argue that the SALT deduction is
11 required by the text of Article I, Section 8 and the Sixteenth Amendment of the
12 Constitution. The SALT deduction cap, they say, effectively eliminates a
13 constitutionally mandated deduction for taxpayers. The Plaintiff States also
14 argue that the SALT deduction coerces them to abandon their preferred fiscal
15 policies, in violation of the Tenth Amendment. After "paus[ing] to consider the
16 implications" of the arguments on both sides, as well as the history of the
17 deduction and the precedent that binds us, we conclude that the SALT deduction

1 cap is constitutional. Nat'l Fed'n of Indep. Bus. v. Sebelius ("NFIB"), 567 U.S.
2 519, 550 (2012) (opinion of Roberts, C.J.) (quotation marks omitted).

3 A.

4 What really propels the plaintiffs' view that Congress is constitutionally
5 foreclosed from eliminating or curtailing the SALT deduction is their position
6 that, until 2017, Congress had never done so. We disagree that the Constitution
7 imposes such a constraint on Congress.

8 To explain why we disagree, we start with the text of the relevant
9 constitutional provisions. Congress's broad power to tax is limited only by
10 restrictions "expressed in or aris[ing] from the Constitution." United States v.
11 Bennett, 232 U.S. 299, 306 (1914). Of course, Article I, Section 8, the Tenth
12 Amendment, and the Sixteenth Amendment do not expressly require the SALT
13 deduction or limit Congress's tax power to do away with it.[4] But we recognize
14 that "the text of the Constitution provides the beginning rather than the final

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[4] See U.S. Const. art. I, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . . but all Duties, Imposts and Excises shall be uniform throughout the United States"); U.S. Const. amend. X ("The 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. XVI ("The Congress shall have 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.").

1 answer to every inquiry into questions of federalism." Garcia v. San Antonio
2 Met. Transit Auth., 469 U.S. 528, 547 (1985). "In order to be faithful to the
3 underlying federal premises of the Constitution, courts must look for the
4 postulates which limit and control." Id. (quotation marks omitted).
5 The Plaintiff States argue that principles of federalism protect each State's
6 "sovereign authority to raise revenue and determine their own fiscal priorities"
7 and bar the federal Government from crowding States "out of traditional
8 revenue sources." Appellants' Br. 31. But they have not demonstrated how the
9 2017 cap on the deduction unconstitutionally undermines their state sovereign
10 authority over fiscal matters or their ability to raise revenue. The Plaintiff States
11 fail to plausibly allege that their taxpayers' total federal tax burden is now so
12 high that they cannot fund themselves. And while they argue that the SALT
13 deduction lowers "the effective cost of state and local taxes," Appellants' Br. 37–
14 38, they point us to nothing that compels the federal Government to protect
15 taxpayers from the true costs of paying their state and local taxes.
16 As the Plaintiff States urge and the District Court explored, we may also
17 seek an answer in, among other things, "historical understanding and practice"
18 relating to this issue. Printz v. United States, 521 U.S. 898, 905 (1997). How the

1 SALT deduction has historically been perceived might shed light on the
2 structural limitations on Congress's power "that ultimately arise from the
3 Constitution itself," Mnuchin, 408 F. Supp. 3d at 416 (citing Printz, 521 U.S. at
4 918, 922). In fact, the history of the deduction helps the Plaintiff States virtually
5 not at all.

6 It is true that there have long been individual legislators who believed that
7 a SALT deduction (or some variation of it) reflected good tax policy and
8 equitably divided scarce resources between the federal Government and the
9 States. See Cong. Globe, 37th Cong., 2d Sess. 1194 (1862) (reproduced at Joint
10 App'x 195) (Congressman Morrill of Vermont describing the "vital importance to
11 [the States] that the [federal] Government should not absorb all their taxable
12 resources," without referring to the SALT deduction); see also H. Parker Willis,
13 The Tariff of 1913: III, 22 J. Pol. Econ. 218, 227 (1914) (reproduced at Joint App'x
14 231) (recounting that the legislators who passed the 1913 federal income tax
15 believed "the field ought to be shared with the states" and that "[t]he best way to
16 do this" was through a SALT deduction, but that legislators originally planned to
17 provide the deduction only "in those states that already had" an income tax);
18 H.R. Rep. No. 88-749 at 48 (1963) (reproduced at Joint App'x 233) (explaining that

1 the SALT deduction is "an important means of accommodation where both the
2 State and local governments on one hand and the Federal Government on the
3 other hand tap th[e] same revenue source"). When a 1986 tax bill proposed
4 eliminating the deduction for state and local sales taxes, for example, some
5 members of the Senate launched a full-scale defense of the deduction. 132 Cong.
6 Rec. 13,590 (1986). Senator Durenberger of Minnesota explained that "[s]ince the
7 creation of the Federal income tax" the SALT deduction "has been accepted as a
8 necessary feature of federalism" because "[i]t preserves a portion of the tax base
9 for State and local governments to fund the services which we count on them to
10 provide," 132 Cong. Rec. 13,608. Those words echoed earlier predictions of
11 Senator Moynihan of New York, who warned that eliminating the deduction
12 would "change the constitutional balance in some fundamental way," as "more
13 and more decisions will be made in Washington." Income Tax Deductions of
14 State and Local Governments: Hearing on Tax Reform Proposals Before the S.
15 Comm. on Finance, 99th Cong., at 70 (1985) (reproduced at Joint App'x 252). The
16 Senate then passed a resolution proclaiming that the SALT deduction was "a
17 cornerstone of Federalism" and that eliminating it would "constitute an
18 unjustified Federal intrusion into the fiscal affairs of States" and "prejudice the

1 right of State and local governments to select appropriate revenue measures."
2 132 Cong. Rec. 16,070.
3 But the voices of those individual members of Congress have over time
4 been drowned out by the overall statutory history of the deduction, which
5 reflects that Congress was principally concerned with reserving taxable resources
6 for the States by various means. At best, Congress viewed the SALT deduction
7 as only one means to achieve this result. Recall that in the same year that the
8 Senate passed its resolution, Congress proceeded to eliminate the deduction for
9 state and local sales taxes. See Tax Reform Act of 1986, Pub. L. No. 99-514, § 134,
10 100 Stat. 2085, 2116. The Plaintiff States downplay this legislative development
11 by claiming that sales taxes are not nearly as important as income and property
12 taxes. Their argument is hard to accept. The earlier Senate resolution on which
13 the Plaintiff States rely itself ascribed at least equal importance to each of these
14 sources of state revenue and expressly recognized that sales taxes constituted
15 "the largest source of revenue for all States combined." 132 Cong. Rec. at 16,070.
16 And as we have seen, the Tax Reform Act of 1986 diminished the role of the
17 SALT deduction in the federal tax scheme. See Pub. L. No. 99-514, § 701, 100 Stat.
18 at 2320–45. Congress curtailed the deduction again in 1990 when it introduced

1 the Pease limitation, which reduced the value, if not the applicability, of the
2 SALT deduction for high-income earners. See Omnibus Budget Reconciliation
3 Act, Pub. L. No. 101-508, § 11,103, 104 Stat. at 1388–406. Prior to 2017, it appears,
4 Congress did not view its authority to limit the SALT deduction as subject to any
5 relevant constitutional constraints. This supports our conclusion that the
6 Constitution itself does not limit Congress's authority to impose a cap.

7 We cannot help but note that the Plaintiff States' arguments mimic those
8 that the Supreme Court rejected in South Carolina v. Baker, 485 U.S. 505, 515–27
9 (1988). In Baker, the Court finally addressed the merits of the claims that had
10 been at issue in Regan and held that Congress had the power to tax interest
11 earned on state-issued bonds even though it had not previously done so. If
12 anything, South Carolina's claims in Baker were stronger than those of the
13 Plaintiff States. While Congress has amended the SALT deduction over the
14 years, the tax at issue in Baker—which would have removed the exemption for
15 interest earned on state-issued bonds—really was novel. Congress had not
16 tinkered with the exemption until it imposed the tax. See id. at 523. And in
17 contrast to the SALT deduction, the possibility that Congress might tax state-
18 issued bonds was debated in the runup to ratification of the Sixteenth

1 Amendment. See Hughes Is Against Income Amendment, N.Y. Times, Jan. 6,
2 1910, at 2. The Supreme Court nonetheless determined that "the owners of state
3 bonds have no constitutional entitlement not to pay taxes on income they earn
4 from state bonds, and States have no constitutional entitlement to issue bonds
5 paying lower interest rates than other issuers." Baker, 485 U.S. at 525.
6 Consistent with Baker, and for the other reasons set forth above, we reject
7 the Plaintiff States' contention that the Constitution mandates the SALT
8 deduction.
9 B.
10 The Plaintiff States alternatively assert that the SALT deduction cap
11 coerces them to abandon their preferred fiscal policies in favor of lower taxes and
12 reduced spending, in violation of the Tenth Amendment. We agree with the
13 District Court that the plaintiffs fail to state a Tenth Amendment claim. We are
14 not persuaded that the cap unconstitutionally infringes on state sovereignty.
15 Congress may use its taxing and spending authority to "encourage a State
16 to regulate in a particular way," and may "hold out incentives to the States as a
17 method of influencing [their] policy choices." New York v. United States, 505
18 U.S. 144, 166 (1992). But there are limits. That "pressure" may not amount to

1 "compulsion" because "[t]he Constitution simply does not give Congress the
2 authority to require the States to regulate," directly or indirectly. NFIB, 567 U.S.
3 at 578 (opinion of Roberts, C.J.) (quotation marks omitted). We therefore
4 consider whether the Plaintiff States "ha[ve] a legitimate choice" not to adopt the
5 policy the federal Government seeks to encourage, id., or whether the financial
6 inducement in reality "is a gun to the head," id. at 581.
7 The Supreme Court has only once deemed a condition unconstitutionally
8 coercive in violation of the Tenth Amendment. In NFIB, Congress "threaten[ed]
9 to withhold all of a State's Medicaid grants, unless the State accept[ed] . . . new[,]
10 expanded funding and complie[d] with the conditions that come with it." Id. at
11 575. Two factors especially drove the result in NFIB. First, Congress had
12 required that the States comply with the conditions to receive not only new
13 Medicaid funding but also Medicaid funding (upon which the States had come to
14 rely) that would have been available even under the preexisting regulatory
15 scheme. See id. at 580 ("When, for example, such conditions take the form of
16 threats to terminate other significant independent grants, the conditions are
17 properly viewed as a means of pressuring the States to accept policy changes.");
18 id. at 582–84. Second, Congress had threatened to withhold funds constituting

1 over ten percent of state budgets. Id. at 581–82. NFIB was thus unlike South
2 Dakota v. Dole, 483 U.S. 203 (1987), in which the Supreme Court rejected a
3 challenge to the constitutionality of a spending condition that threatened to
4 withhold funding worth "less than half of one percent" of the state's budget.
5 NFIB, 567 U.S. at 581.

6 The Plaintiff States claim that their citizens face a comparably substantial
7 harm: their federal tax burdens will rise, the value of their homes will fall, and
8 their jobs will disappear. Specifically, the Plaintiff States allege that their
9 taxpayers "will pay hundreds of millions of dollars in additional federal taxes,
10 relative to what they would have paid had Congress enacted the 2017 Tax Act
11 without the cap." Appellants' Br. 23. We accept these allegations as true, and we
12 assume without deciding that a claim of coercion under the Tenth Amendment
13 can arise from injuries to a State's citizens rather than to the State itself. Yet even
14 then, we conclude that the Plaintiff States have failed to plausibly allege that
15 their injuries are significant enough to be coercive. As the district court correctly
16 noted, the Plaintiff States relied on an improper comparison between their
17 taxpayers' federal tax burden under the 2017 Tax Act as enacted, and their
18 taxpayers' federal tax burden under a hypothetical version of the 2017 Tax Act

1 without the SALT deduction cap. Such a hypothetical tells us nothing about the
2 actual financial effects of the SALT deduction cap on the Plaintiff States'
3 taxpayers. And even if such a comparison were instructive, the cost to
4 individual taxpayers pales in comparison to the threatened deprivation of 10
5 percent of the States' budgets at issue in NFIB.

6 To further explain the threat of harm, the Plaintiff States add that the SALT
7 deduction cap could cause home equity values in New York State alone to
8 plummet by over $60 billion, in-state spending to decrease by $1.26 to $3.15
9 billion, and the economy to lose between 12,500 and 31,300 jobs. Without
10 baseline figures to put these numbers in context, however, we are not convinced
11 by the argument. We do not mean to minimize the Plaintiff States' losses or the
12 impact of the cap on their respective economies. But we find it implausible that
13 the amounts in question give rise to a constitutional violation.

14 Similar problems plague the Plaintiff States' suggestion that their reduced
15 tax revenues coerce them to change their fiscal policies and approaches. They
16 argue that New Jersey, for example, is likely to lose over $100 million in property
17 and real estate transfer taxes in 2019 and 2020. See Appellants' Br. 45. But New
18 Jersey's budget in 2019 alone was $37.3 billion. See New Jersey Office of

1 Management & Budget, Citizen's Guide to the Budget: Fiscal Year 2019 at 3 (Dec.
2 2018), available at https://bit.ly/2OABSac. Without more, quantitative losses
3 constituting such a small portion of a State's budget will not exert such undue
4 pressure as to raise a genuine constitutional concern. See NFIB, 567 U.S. at 581
5 (explaining that it was "easy to see how the Dole Court concluded that the
6 threatened loss of less than half of one percent of South Dakota's budget" passed
7 constitutional muster).

8 The Plaintiff States try again to improve their claims by asserting that the
9 SALT deduction cap violates the independent constitutional principle of equal
10 sovereignty among the States. Congress knew, they say, that the cap's injuries
11 would be unevenly distributed. In pursuing this tack, the Plaintiff States rely on
12 Shelby County v. Holder, 570 U.S. 529 (2013), to claim that facially neutral laws
13 like the SALT deduction cap can violate the principle of equal state sovereignty if
14 they affect States differently. In Shelby County, the Supreme Court reviewed the
15 Voting Rights Act's coverage formula, which determined which States are
16 required to obtain the federal Government's approval before changing their
17 voting procedures. See id. at 537–40. The formula was held unconstitutional not
18 because it yielded results that differed across States, but because it did so based

1 on facts that, in the majority's view, were outdated and no longer true. See id. at
2 550–51; compare South Carolina v. Katzenbach, 383 U.S. 301 (1966). Here, as
3 explained, the SALT deduction cap has no effect on state sovereignty. The
4 outsized effect of the SALT deduction cap on the Plaintiff States arises only
5 because the Plaintiff States previously benefitted most from the SALT deduction,
6 not because the cap applies to some States but not others. We agree with the
7 District Court that "the bare fact that an otherwise valid federal law necessarily
8 affects the decisional landscape within which states must choose how to exercise
9 their own sovereign authority hardly renders the law an unconstitutional
10 infringement of state power." Mnuchin, 408 F. Supp. 3d at 416–17.

11 Finally, the Plaintiff States complain that Congress unfairly targeted them.
12 Given our discussion of the statutory history, it is obviously true that members of
13 Congress were aware that the SALT deduction cap would adversely affect some
14 States more than others. But the SALT deduction cap is not unlike the countless
15 federal laws whose benefits and burdens are unevenly distributed across the
16 country and among the several States. As noted above, "Congress may use its
17 spending power to create incentives for States to act in accordance with federal
18 policies," as long as "pressure [does not] turn[] into compulsion." NFIB, 567 U.S.

1 at 577–78 (quotation marks omitted). At most, Plaintiff States' allegations reflect
2 that lawmakers were focused on the permissible legislative purpose of
3 influencing tax policy. Nothing in Shelby County suggests that the equal
4 sovereignty principle bars such a purpose.

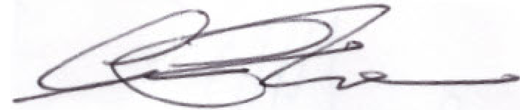
5 In summary, we agree with the District Court that the SALT deduction cap
6 is not coercive in violation of the Tenth Amendment or the principle of equal
7 sovereignty.

8 CONCLUSION

9 For the foregoing reasons, the judgment of the District Court is
10 **AFFIRMED**.

## CERTIFICATE OF SERVICE

I, Oren L. Zeve, a member of the Bar of this Court, hereby certify that on December 23, 2021, a copy of this Application for Extension of Time to File a Petition for a Writ of Certiorari was served by United States Postal Service first-class/priority mail to Jean-David Barnea, Assistant United States Attorney, United States Attorney's Office for the Southern District of New York, 86 Chambers Street, Fl. 3, New York, New York 10007, counsel for respondents. I further certify that on December 23, 2021, a copy of this Application for Extension of Time to File a Petition for Writ of Certiorari was sent by electronic mail to Mr. Barnea at Jean-David.Barnea@usdoj.gov and to the Office of the Solicitor General at SupremeCtBriefs@usdoj.gov. I further certify that all parties required to be served have been served.



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