No. ______

In the Supreme Court of the United States

CYNTHIA BAUERLY, COMMISSIONER OF THE MINNESOTA DEPARTMENT OF REVENUE,
Petitioner,

v.

WILLIAM FIELDING, TRUSTEE, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the Minnesota Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Twenty-two states and the District of Columbia classify trusts as residents throughout their existence if the grantor was domiciled in-state at the time the trust became irrevocable. A resident trust in these jurisdictions is subject to income taxation on capital gains and other income from intangibles such as interest and dividends.

Deepening a conflict among the state high courts, however, the Minnesota Supreme Court held that the Due Process Clause prohibits Minnesota from applying its income tax to resident trusts that are administered by an out-of-state trustee. That is so, ruled the court, even though the trusts were funded by stock in a closely held family business headquartered in Minnesota; the capital gains being taxed resulted from the sale of stock in that Minnesota business; the trust documents were drafted and signed in Minnesota; the trust agreements incorporate Minnesota law; and one of the beneficiaries resides in Minnesota.

The question presented is:

Does the Due Process Clause prohibit states from imposing incomes taxes on statutory "resident trusts" that have significant additional contacts with the state, but are administered by an out-of-state trustee?

PARTIES TO THE PROCEEDINGS

The Petitioner is the Commissioner of the Minnesota Department of Revenue, Cynthia Bauerly. The Respondent is William Fielding, Trustee of four individual trusts founded by Reid and Ann MacDonald. The four trusts are Irrevocable GST Trust for Catherine Gray Macdonald, Maria V. MacDonald, Laura Reid MacDonald, and Vandever R. MacDonald.

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PETITION FOR A WRIT OF CERTIORARI

The Commissioner of the Minnesota Department of Revenue respectfully petitions this Court for a writ of certiorari to review the judgment of the Minnesota Supreme Court.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 916 N.W.2d 323 (Minn. 2018). The decision is also reprinted in Appendix A, hereto ("App.") at 1. The opinion and order of the Minnesota Tax Court are unreported, but are also reprinted and provided in Appendix B. App. at 31.

JURISDICTION

The Minnesota Supreme Court issued its decision on July 18, 2018. App. at 1. On October 4, 2018, Justice Gorsuch extended the time for filing this petition up to and including November 15, 2018. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law. . .

U.S. Const. amend. XIV, § 1.

The Minnesota statutory provisions that authorize the fiduciary income tax, delineate the definition of

"resident trust," and provide for the calculation of income related thereto are reproduced in Appendix C. App. 82-89.

INTRODUCTION

This case presents an important and recurring federal question that is in need of resolution by this Court: Can a state, consistent with the Due Process Clause of the Fourteenth Amendment, classify a trust administered outside its borders as a resident for income tax purposes? This Court has not spoken on the issue in decades, and its precedents point in opposite directions. As a consequence, state appellate courts are deeply divided on the correct answer.

Some state appellate courts have held that a state may impose an income tax on a trust even when the *trustee* resides out-of-state, so long as the *grantor* resided in-state when the trust became irrevocable. Other courts have required, on top of grantor residence, that the trust have some additional contacts with the state during the tax year. One other state high court has held that a state may tax a trust as a resident if a *beneficiary* of the trust resided in the state during the tax year. Under any of those rules, Minnesota could have taxed the trusts at issue here. Other state appellate courts, however, have focused on the residence of the trustee and held that the Due Process Clause bars states from taxing resident trusts administered out-of-state despite significant in-state contacts. The Minnesota Supreme Court's decision here deepens that conflict.

This Court's intervention is warranted not only because the Due Process Clause should not mean

different things in different states. Resolution is also needed because the flawed and outdated interpretation of the Clause adopted by the Minnesota Supreme Court and other courts is depriving states of significant revenues. Their rulings allow individuals to avoid taxes altogether on significant accumulations of wealth, merely by placing their assets in trusts and retaining trustees who reside in no-income-tax states. Whether such tax loopholes should exist might be an interesting policy question. But they are not compelled by the Constitution.

STATEMENT

I. GRANTOR MACDONALD FUNDED FOUR TRUSTS WITH STOCK IN FARIBAULT FOODS, A CLOSELY-HELD MINNESOTA CORPORATION.

The grantor of the trusts at issue, Reid MacDonald ("Grantor MacDonald"), is a lifelong resident of Minnesota. From 1980 to 2014, Mr. MacDonald was president and chief executive officer of a closely held Minnesota corporation, Faribault Foods, Inc. ("Faribault Foods"). Faribault Foods is a food processing company founded in Faribault, Minnesota in 1895. It manufactured various products for sale to retailers, including vegetables, beans, pasta, specialty sauces, soups, chili, and beverages. Faribault Foods was a corporation organized under the laws of Minnesota, and it elected to be taxed as a small business corporation or "S corporation" under the Internal Revenue Code, making it a "pass-through" for income tax purposes. *See* I.R.C. § 1361(b). Faribault Foods established dual corporate offices in Minneapolis and Faribault, Minnesota. Additionally, Faribault

Foods leased manufacturing plants and warehouses in three Minnesota communities.

In 2009, Grantor MacDonald created irrevocable trusts (the "Trusts") for his four children: Maria V. MacDonald, Catherine Gray MacDonald, Laura Reid MacDonald, and Vandever R. MacDonald. The trust documents were drafted by Laura Carlson, a Minnesota attorney and partner at the Minneapolis office of the law firm Faegre & Benson LLP. The trust agreements provide that questions of law arising under the trusts were to be governed by the laws of Minnesota. The agreements incorporate Minnesota law in other ways, for example by requiring the Trustee to follow the rules of the Minnesota Revised Uniform Principal and Income Act. From the time of the Trusts' creation until September 19, 2014, the original signed trust agreements were maintained in Minnesota by Ms. Carlson. Additionally, Vandever MacDonald, who was a Minnesota resident at all times before and during 2014, was the primary beneficiary of one of the Trusts and a contingent beneficiary of the other three.

The trust agreements also explicitly authorize the trustee to acquire and retain additional stock in Faribault Foods. By 2014, each Trust owned 22,244 shares of stock in Faribault Foods, meaning each trust owned 4.226% of all the shares outstanding. The only other property the Trusts possessed prior to the sale of Faribault Foods stock in 2014 was nominal amounts of cash.

II. THE TRUSTS FILED TAX RETURNS AS MINNESOTA RESIDENT TRUSTS.

Most states impose a fiduciary income tax, which is generally a tax on trust income that is accumulated and not distributed to a beneficiary. *See* Hellerstein, Hellerstein, & Swain, State Taxation, ¶ 20.09 (3d ed. 2018). Minnesota, like most states, imposes this tax on income from intangible property when the trust in question is a "resident trust." Minn. Stat. § 290.17, subdivisions 1, 2, and 6 (2014). And Minnesota considers a trust to be a resident trust if the grantor of the trust was domiciled in-state when the trust became irrevocable. Minn. Stat. 290.01, subdivision 7b (2014).

From June 25, 2009 to December 31, 2011, Grantor MacDonald retained control over the Trusts' assets. The Trusts were, therefore, considered "grantor type trusts." Minn. Stat. § 290.01, subdivision (7b)(a) (2014); and I.R.C. §§ 671-678. As a result, the Trusts were not required to file income tax returns during this period. *Id.* Instead, their income or losses each year were reported on the grantor's individual income tax return. *Id.* On December 31, 2011, Grantor MacDonald relinquished control and the Trusts became irrevocable trusts under Minnesota law. Because Grantor MacDonald was a resident at that time, the Trusts were Minnesota resident trusts under Minnesota Statutes section 290.01, subd. (7b)(a)(2) (2014). The Trusts filed Minnesota fiduciary income tax returns as Minnesota resident trusts for 2012 and 2013. On their 2012 fiduciary income tax returns, the Trusts claimed tax credits which were only available to Minnesota residents: each trust claimed a credit of $4,685 for

income tax paid to other states. *See* Minn. Stat. § 290.06, subd. 22 (2014).

III. THE TRUSTS REALIZED A GAIN ON THE SALE OF FARIBAULT FOODS AND SOUGHT INCOME TAX REFUNDS.

The Trusts had trustees in California and Colorado until hiring William Fielding, a Texas resident, on July 24, 2014. On the same day, Mr. Fielding participated in a phone call with Grantor MacDonald and other shareholders of Faribault Foods to discuss the possible sale of the company's stock to La Costeña USA, Inc. Eight days later, all shareholders of Faribault Foods, including Grantor MacDonald and the Trusts, sold their shares of Faribault Foods to La Costeña USA, Inc. On their 2014 fiduciary income tax returns, the trusts collectively reported capital gains in the amount of $11,260,688.

IV. THE MINNESOTA SUPREME COURT RULED IN FAVOR OF THE TRUSTS.

The Trusts filed Minnesota fiduciary income tax returns for 2014 under protest, paying income taxes as resident trusts of Minnesota totaling $258,745 each on their more than $11 million capital gain. App. at 5. The Trusts later filed amended 2014 Minnesota fiduciary income tax returns seeking refunds of the taxes paid on the capital gain, claiming that they violated the Commerce and Due Process Clauses. The Commissioner of Revenue denied the Trusts' refund claims.

The Trusts appealed to the Minnesota Tax Court, challenging the taxes under both the Due Process and Commerce Clauses. App. at 7. The cases were

consolidated, and submitted for decision on stipulated facts and cross motions for summary judgment. App. at 6 The Tax Court denied the Commissioner's motion and granted the Trusts' motion on due process grounds, without reaching the Commerce Clause issue. App. at 21.

The Minnesota Supreme Court affirmed, holding that the Trusts' contacts with Minnesota were either "irrelevant or too attenuated" for due process purposes. App. at 13. First, the court held that instead of considering Grantor MacDonald's lifelong Minnesota residency, it would consider the Texas residency of Mr. Fielding, the trustee who was appointed on the day of the shareholder conference call to discuss the sale of Faribault Foods. App. at 16. The court also ruled that the trustee's legal ownership of the Trusts rendered the Trusts' ownership of the Minnesota pass-through corporation, Faribault Foods, irrelevant. *Id.* The court ruled further that beneficiary Vandever MacDonald's choice to remain a Minnesota resident in 2014 was not relevant because Vandever's Trust had a separate existence from Vandever. App. at 14. Finally, the court found the other contacts with Minnesota — including that the Trusts were created in Minnesota and incorporate Minnesota law — insufficient for due process purposes. App. at 21.

Two justices dissented, noting that Minnesota resident Grantor MacDonald chose to create the trust, chose to fund it with stock in his Minnesota pass-through corporation, and chose to make the Trusts irrevocable knowing that doing so would make the Trusts statutory residents of Minnesota. "Minnesota can properly require the Trusts to contribute to the

State for costs associated with providing these benefits, services and protections to the Trusts, the trustee, and the beneficiaries." App. at 26. The dissenting justices also found that the tax was consistent with the Commerce Clause and would have granted judgment for the Commissioner. App. at 29-30.

The Commissioner now brings this petition for certiorari.

REASONS FOR GRANTING THE WRIT

All but seven states in the United States impose some form of income tax. Of the remaining 44 states,[1] a majority (23) have statutes that classify trusts as resident taxpayers throughout the term of their existence if the grantor of the trust was domiciled in-state at the time that the instrument became irrevocable ("grantor-domicile statutes").[2] Minnesota is not the first state using such a statutory regime to

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[1] For purposes of this discussion, the term "states" includes the District of Columbia.

[2] *See* Conn. Gen. Stat. § 12-701 (2018); Del. Code Ann. tit. 30 § 1601 (2018); D.C. Code § 47-1809.01 (2018); 35 Ill. Comp. Stat. 5/201 (2018); Iowa Admin. Code § 701-89.3 (2018); La. Stat. Ann. § 47:300.10 (2018); Me. Rev. Stat. Ann. tit. 36, § 5102(4) (2018); Md. Code Ann., Tax-Gen. § 10-101 (2018); Mich. Comp. Laws § 206.18 (2018); Minn. Stat. § 290.01 (2018); Mo. Rev. Stat. § 143.331 (2018); Mont. Admin. R. 42.30.101 (2018); Neb. Rev. Stat. Ann. § 77-2714.01 (2018); N.J. Stat. Ann. § 54A:1-2 (2018); N.Y. Tax Law § 605 (2018); Okla. Stat. tit. 68, § 2353 (2018); 72 Pa. Cons. Stat. § 7301 (2018); 1956 R.I. Gen. Laws § 44-30-5 (2018); Utah Code Ann. § 59-10-201 (West 2018); Vt. Stat. Ann. tit. 32, § 5811; Va. Code Ann. § 58.1-302 (2018); W. Va. Code R. 110-21-7 (West 2018) ; Wis. Stat. § 71.14(3) (2018).

face a Due Process challenge. Eight other states have adjudicated due process challenges to grantor-domicile statutes. *see* infra sections I.B and I.C. And three other states have faced due process challenges to similar statutes. *Id.* Among those three is North Carolina, which is also currently petitioning this Court for review in *North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family Trust*, Supreme Court Case No. 18-457.

More concerning than the increasing litigation, however, is the inconsistent nature of the resulting decisions of the various state appellate courts that have considered the issue. Four state courts, consistent with this Court's decisions in *Curry v. McCanless*, 307 U.S. 357 (1939) and *Greenough v. Newport*, 331 U.S. 486 (1947), have recognized that states have broad authority to impose income taxes on trusts with due process contacts to the state.[3] *See* infra Section I.B. Five other states, however, including Minnesota, have determined, based primarily on *Safe Deposit & Trust Co. of Baltimore, Maryland v. Commonwealth of Virginia,* 280 U.S. 83 (1929), that the state is barred from taxing the accumulated intangible income[4] of a

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[3] The Minnesota Supreme Court cited both *Curry* and *Greenough* as authority for its decision; however, neither *Curry* nor *Greenough*, found that the Due Process Clause restricted situs for taxation to a single jurisdiction. In fact, the opposite is true. Accordingly, while the Minnesota Supreme Court relied on those rulings, its holding is not consistent with them.

[4] It is worth observing that the dispute in this case (and in other cases raising analogous issues) focuses exclusively on accumulated income *from intangibles*, which is taxable in full by the state of trust's residence, however, defined and is not taxed in other states

trust administered outside its borders. *See* infra Section I.C. The result is that the Due Process Clause means different things in different states – a result that cannot be constitutionally correct. The Court should resolve this split in authority. The decisions of the state courts' abrogating jurisdiction also unfairly endanger an important revenue stream, and allow residents to use the Due Process Clause to create an income tax loophole.

I. THE MINNESOTA SUPREME COURT'S DECISION DEEPENS A CONFLICT AMONG STATE APPELLATE COURTS ON THE LIMITS THE DUE PROCESS CLAUSE PLACES ON STATE TAXATION OF TRUSTS ADMINISTERED OUT OF STATE.

A. This Court's Due Process Jurisprudence Concerning States' Taxation of Trusts Points in Different Directions.

State appellate courts that have sustained challenges to grantor-domicile statutes commonly cite *Safe Deposit & Trust Co. v. Virginia*, 280 U.S. 83 (1929). In *Safe Deposit,* an individual domiciled in Virginia established a trust in Maryland for the benefit

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on the basis of the "source" of such income. As explained in Hellerstein, Hellerstein, & Swain, *State Taxation* (2018) ¶ 20.09[2]:

> When a trust accumulates income, and therefore is taxable on such income under federal law and the law in most states, the state statutory schemes generally provide for the taxation of all such income by the state where the trust is a resident; for taxation of such portion of the income derived from sources within the state where the trust is not a resident; and for a credit in the state of residence for taxes imposed by other states on a source basis.

of his two young children who were also domiciled in Virginia. *Id.* at 89-90. He died shortly thereafter, and the property remained in the Maryland trust pending the 25th birthdays of the two children. *Id.* At the time, Virginia's property tax statutes required that the beneficiaries be classified as the owners of the property, which meant that the corpus of the trust was subject to its annual property tax. *Id.* at 91. This Court held that the Due Process Clause forbade Virginia from so taxing the trust's property because the property (securities) was located in, and subjected to taxation by, Maryland. *Id*. at 93. The Court wrote that "[t]he adoption of a contrary rule would 'involve possibilities of an extremely serious character' *by permitting double taxation*, both unjust and oppressive." *Id.* at 93 (emphasis added).

Ten years later, this Court abandoned this central premise of *Safe Deposit* in *Curry v. McCanless,* 307 U.S. 357 (1939). There, the Court recognized that two states can have coextensive taxing jurisdiction over intangible property held in a trust. *Id*. at 366-367. The *Curry* case arose from a dispute between two states, each claiming the authority to impose an inheritance tax on intangibles in a trust. *Id.* at 360–61. The trust was administered in Alabama, but the grantor and all of the beneficiaries were domiciled in Tennessee. *Id.* The Court held that, as far as the Due Process Clause was concerned, both states could impose a tax. *Id.* at 372–74. The Court ruled that a state's power to tax with regard to intangible property is "made effective only through control over and protection afforded to those persons whose relationships are the origin of the rights." *Id.* at 366. "Shares of corporate stock may be taxed at the domicile of the shareholder and also at

that of the corporation which the taxing state has created and controls." *Id.* at 368. This is because the "[p]rotection, benefit, and power over the subject matter are not confined to either state." *Id.*

The Court reaffirmed *Curry* in *Greenough v. Tax Assessors of City of Newport*, 331 U.S. 486 (1947). In *Greenough*, the Court held that the Due Process Clause permitted Rhode Island to tax a New York trust holding stock in a New York corporation because there was a Rhode Island trustee. Rhode Island, the Court said, "does offer benefit and protection through its law to the resident trustee," a connection that is sufficient to establish taxing authority for due process purposes. *Id.* at 496–97. *Curry* and *Greenough* thus grant broad authority to states to tax intangible property held in trust where there is a contemporaneous connection between the trust and the state. *See* Hellerstein, Hellerstein, & Swain, *State Taxation* (2018) ¶ 20.09[2][b] (stating that *Safe Deposit* is inconsistent with the Court's "modern Due Process jurisprudence").

The courts that have upheld grantor-domicile statutes have relied on *Curry* and *Greenough*. Other courts, however, persist in relying on *Safe Deposit*.

B. Four Jurisdictions Have — In Conflict with the Minnesota Supreme Court — Applied *Curry* and *Greenough* to Allow an Income Tax on Intangible Property Held by Trusts Administered in Other States.

Based on *Curry* and *Greenough*, three states and the District of Columbia, all of which have a statutory grantor-domicile rule, have upheld the broad authority

of their legislatures to impose income taxes on trusts' income from intangibles when the trusts maintain contacts with the states. In *Chase Manhattan v. District of Columbia*, the district's highest court held that the district may tax a testamentary trust throughout the term of its existence even if the only connection between the trust and the district is that the testator was domiciled there at the time of death. 689 A.2d 539, 547 (D.C. 1997). The court recognized that the District "created the legal environment which permitted the trust to come into existence, established the trust when [grantor's] will was probated, and has provided access to its courts to all parties with an interest (or potential interest) in the trust." *Id.* at 545. The court rejected the theory that the statutory residency rule violated due process requirements because the trustee was located out of State. *Id.* 544-47. The court in *Chase Manhattan* also observed that because New York, like the District and a majority of other income tax states, employed a statutory grantor-domicile rule that the trust's income would not be taxed twice. *Id.* at 546. Similarly, in this case, the Trusts are not subject to multiple taxes because Minnesota employs a grantor-domicile statute and Texas does not have an income tax.

The Connecticut Supreme Court applied "the same fundamental reasoning" in considering that state's authority to impose an income tax on an inter vivos trust where the beneficiary was a resident of the state during the tax year. *Chase Manhattan Bank v. Gavin*, 733 A.2d 782, 801 (Conn. 1997). The necessary due process connection between the trust and the state was established even though the trustee was a domiciliary of New York, did not maintain a presence in

Connecticut, and no trust asset was located in Connecticut. *Id*. at 786–87.

Missouri courts consider six points of contact in evaluating the constitutionality of the application of its grantor- domicile statute:

> (1) the domicile of the settlor, (2) the state in which the trust is created, (3) the location of trust property, (4) the domicile of the beneficiaries, (5) the domicile of the trustees, and (6) the location of the administration of the trust.

In re Swift, 727 S.W.2d 880, 882 (Mo. 1987). If the first two contacts in the list are established, the trust is a resident trust under Missouri statute. *Id.* In *Swift*, The Missouri Supreme Court ruled that a testamentary trust left by a Missouri resident could not be classified as a "resident trust" when it was administered in Illinois and when none of the other contacts contemplated in the list of six was present. *Id.* at 883. However, the Missouri Supreme Court has gone on to rule that if *any* of the other contacts in the list is present, including by the presence of a contingent beneficiary, that the application of the statute passes muster under the Due Process Clause. *Westfall v. Dir. of Revenue*, 812 S.W.2d 513, 514 (Mo. 1991). Once again, Minnesota would have prevailed under that test for it has contacts (1), (2), (3), and (4).

Most recently, the Ohio Supreme Court affirmed the constitutionality of an income tax applied to a Delaware trust set up by an Ohio resident to hold the stock of an Ohio business. *T. Ryan Legg Irrevocable Tr. v. Testa*, 75 N.E.3d 184 (Ohio 2016), *cert. denied,* 138

S. Ct. 222 (2017). Quoting *Curry*, the *Legg* court reasoned that the "power to dispose of the intangibles was a potential source of wealth which was property in [his] hands from which [he] was under the highest obligation, in common with [his] fellow citizens of [Ohio], to contribute to the support of the government whose protection [he] enjoyed." *Id*. at 198 (quoting *Curry*, 307 U.S at 370-71) (alterations in original). Here, too, Minnesota's contacts with the Trusts are more than sufficient under the Ohio Supreme Court's approach.

These four state high courts held that state taxes on trusts satisfied the Due Process Clause, even though the trustees administered them out of state. The District of Columbia Court of Appeals held that the grantor-domicile rule is constitutionally valid *per se* when applied to trusts created by in-state domiciliaries; the Connecticut Supreme Court held that a state tax on a trust is constitutionally valid *per se* when a beneficiary is an in-state resident; and the Ohio and Missouri Supreme Courts required contacts — on top of the grantor's domicile — that Minnesota easily satisfied here.

C. Several Other Appellate Courts Join the Minnesota Supreme Court in Requiring that the Trustee be Located In-State.

Five state appellate courts, including Minnesota's, have declared that application of grantor-domicile statutes violates the Due Process Clause where the trustee is located out of state. Four of them, including Minnesota, have done so on the basis of this Court's

ruling in *Safe Deposit*.[5] The first such case was *Mercantile-Safe Deposit & Trust Company v. Murphy*, 19 A.D.2d 765 (N.Y. App. Div. 1963), *aff'd*, 203 N.E.2d 490 (N.Y. 1964). In *Mercantile* the grantor of the trust was domiciled in New York and the trustee was located in Maryland. *Id.* After the settlor's death the trust was maintained for the benefit of the grantor's widow, who also remained domiciled in New York after his death, in the same way that the beneficiaries in *Curry* remained domiciled in Tennessee. *Id.* Nevertheless, the New York Appellate Division found the imposition of the resident income tax unconstitutional under *Safe Deposit*. *Id.* at 766.

In *Blue v. Dep't of Treasury*, 462 N.W.2d 762 (Mich. Ct. App. 1990), the Michigan Court of Appeals ruled that Michigan's statute classifying a testamentary trust as a resident violated the Due Process Clause even though the trust owned real property in Michigan. The court ruled that *Safe Deposit* controlled the outcome, and that the trusts' remaining connections to Michigan were too attenuated to support taxing jurisdiction under the Due Process Clause. *Id.* at 764.

In *Residuary Trust A v. Director Division of Taxation*, the New Jersey Tax Court held that the state's statute imposing a grantor-domicile rule deprived a New York trustee of property without due process with respect to a testamentary trust

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[5] The other decision was *Linn v. Dep't of Revenue*, 2 N.E.3d 1203 (Ill. Ct. App. 2013), which held that application of the grantor-domicile rule was unconstitutional under the physical presence test in *Quill v. N. Dakota*, 504 U.S. 298, 112 S. Ct. 1904 (1992), *overruled S. Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

administered in New York. 27 N.J. Tax 68 (2013), *aff'd on other grounds Residuary Trust A v. Director Division of Taxation*, 28 N.J. Tax 541 (N.J. Super. Ct. App. Div. 2015). In so ruling, the New Jersey Tax Court relied primarily on two of its own precedents: *Pennoyer v. Taxation Div. Director*, 5 N.J. Tax 386 (1983), and *Potter v. Taxation Div. Director*, 5 N.J. Tax 399 (1983). The earlier *Pennoyer* and *Potter* cases dealt with *inter vivos* trusts administered outside New Jersey and based their due process rulings primarily on this Court's ruling in *Safe Deposit*.

The Minnesota Supreme Court's decision deepened the split between the states. Citing *Safe Deposit*, the court determined that the stock in a Minnesota corporation and the presence of a Minnesota beneficiary were irrelevant due process connections to tax the Trusts' income. App. at 13, and 16. Rather, the court emphasized that the trustee was a Texas resident who was barely present in Minnesota during the tax year and performed all trust activities outside of the state. App. at 4, and16. The dissent, by contrast, took an appropriately broad view of the State's taxing authority, and recognized that the *Safe Deposit* rule had been long ago been abandoned. App. 24-28. (citing *Legg* and *Chase Manhattan* as well as leading scholars).

II. THIS CASE IS A GOOD VEHICLE TO RESOLVE A SIGNIFICANT ISSUE OF FEDERAL LAW.

As the discussion above shows, the outcome of this case turns on which precedent controls. The amount of state tax revenue potentially affected by these cases is significant. According to data compiled by the Internal Revenue Service, more than 2.7 million trusts filed

income tax returns in 2014, and paid more than $120 billion dollars in income taxes.[6] States imposing income taxes rely on trusts to contribute a significant portion of their annual tax revenues. In 2016 alone, Minnesota collected $117.1 million in fiduciary income taxes. This revenue stream is imperiled in the future under the Minnesota Supreme Court's ruling, and the State is already facing more than 300 claims for refund based on the outcome of this case.

Additionally, the case provides a clear planning opportunity for individuals to avoid significant amounts of the states' income tax. Under the Minnesota Supreme Court's decision, individuals owning any form of intangible property can completely avoid the State's individual income tax on capital gains by contributing the property to a trust and then engaging an out-of-state trustee to sell the property. The grantor and beneficiary can both remain domiciled in Minnesota, and under the court's decision they are entitled to use the Due Process Clause as a shield to their home-state's income tax.

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[6] *See* Internal Revenue Service, SOI Tax Stats—Fiduciary Returns—Sources of Income, Deductions, and Tax Liability— Type of Entity: 2014, available at https://www.irs.gov/statistics/soi-tax-stats-fiduciary-returns-sources-of-incomedeductions-and-tax-liability-by-type-of-entity.

CONCLUSION

Just last Term, this Court rejected a "judicially created tax shelter" that constituted "an extraordinary imposition by the Judiciary on States' authority to collect taxes and perform critical public functions." *Wayfair*, 138 S. Ct. 2080, at 2095. The Minnesota Supreme Court and many other state courts have created another tax shelter not mandated by the Constitution. This Court's intervention is again needed. The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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