No. 25-611

IN THE

Supreme Court of the United States

DELTA AIR LINES, INC.,

Petitioner,

v.

OREGON DEPARTMENT OF REVENUE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OREGON

BRIEF OF *AMICUS CURIAE* INSTITUTE FOR PROFESSIONALS IN TAXATION

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INTEREST OF *AMICUS CURIAE*[1]

The Institute for Professionals in Taxation ("**IPT**") is a non-profit educational organization founded in 1976 under the laws of the District of Columbia. IPT's organizational purposes include the promotion of the uniform and equitable administration of taxes. It is also the only professional organization that educates, certifies, and establishes strict codes of conduct for state and local income, property, and sales and use tax professionals who represent taxpayers.

IPT has more than 4,100 members representing more than 1,400 corporations, firms, and taxpayers throughout the United States and Canada. Most of the Fortune 500 companies and numerous small businesses are represented within IPT's membership. Member representation spans the industry spectrum, including aerospace, agriculture, manufacturing, wholesale and retail, communications, healthcare, financial, oil and gas, hospitality, transportation, and other sectors.

IPT has an interest in this matter because its members have an interest in the fair, predictable and efficient administration of taxes. IPT is extremely concerned that if this Court does not reverse the Oregon supreme court's decision, taxpayers not just in

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[1] Pursuant to Supreme Court Rule 37, counsel for *Amicus* represents that none of the parties or their counsel, nor any other person or entity other than *Amicus* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for *Amicus* further certifies timely notice to and all parties of the intent to file this brief.

Oregon but across the country will be subject to increased targeting and unequal treatment by their respective departments of revenue. The Oregon supreme court will have set a dangerous precedent for unequal taxation and a path for tax imposition that is anything but uniform.

SUMMARY OF THE ARGUMENT

Equal means "neither less nor greater than the object of comparison," at least according to Murray, James A. H., ed. *A New English Dictionary on Historical Principles*. New York: Macmillan, 1897; New York: WEHD.com, 2025. wehd.com/31/Equal.html#1. (Last visited December 23, 2025.) Equality carries a notion of sameness, fairness and the American way. Equality is not only a Constitutional mandate, but it is also good public policy, especially in the area of taxation, as it limits a state's ability to skew markets and interfere with fair competition.

But equality does not always carry the day. Oregon's central assessment property tax regime requires the taxation of intangible property of a select few taxpayers, but not everyone else. This system is unequal on its face and the Oregon supreme court's decision approving this regime is in desperate need of review. This Court must clarify the constitutional standard and address the patent inequity that the Oregon courts allow (and that will result elsewhere if other jurisdictions follow their lead).

All taxpayers are entitled to the rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment, namely that a state may not deny them the "equal protection of the laws." U.S. Const. amend

XIV, § 1. Over the years, however, Oregon's property tax regime has become increasingly pronounced in its inequality. Some taxpayers are taxed "less" while others are taxed "greater" than the taxpayers of comparison—directly counter to the meaning of "equal." Perhaps there *may* have once been a rational basis for this system, that basis has faded.

Additionally, we are seeing a proliferation of other states adopting similarly unequal tax regimes, burdening just a select few with an incomparable tax burden. And as state and local budget shortfalls multiply, the Oregon supreme court's stamp of approval on this unequal tax will bolster additional states and localities in their quest to exact a huge toll from a minority of taxpayers. We do not see that stopping at Oregon's borders. A subset of multistate taxpayers will be especially singled out for higher tax assessments and idiosyncratic tax treatment among jurisdictions. Across the nation, equality and predictability in tax policy will suffer. The Oregon supreme court's decision in *Delta Air Lines, Inc. v. Oregon Department of Revenue* ("*Delta*"), must be overturned. No. SC070593 (Oregon Supreme Court, July 24, 2025).

ARGUMENT

I. THE OREGON SUPREME COURT'S DECISION IN *DELTA* VIOLATES THE SPIRIT AND LETTER OF EQUAL PROTECTION.

Back when Leland Stanford, J.P. Morgan, Andrew Carnegie, and Cornelius Vanderbilt amassed their fortunes and laid America's great railroads, the world was a different place. Taxing the railroads was notoriously difficult and numerous special tax rules existed (some persisting until today) to preserve tax equity as between the rails and other businesses.[2] Oregon's central assessment and unit valuation rules have their roots in this Gilded Age.[3]

When applied to valuing a railroad, Oregon's rules made sense. Given that the property value of a railroad is so much more than wood and metal stretched out on the ground, it is possible that these tailored rules even stood for equality and uniformity. At a time when all property was taxed (and taxed equally), it made sense for Oregon to engineer its approach to railroad valuation in a special way.

But the expansion of central assessment to non-railroad companies and the decision to target only those companies' intangible property for taxation has

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[2] See for example, property tax rules: Neb. Rev. Stat. Ann § 77-602; Miss. Code Ann. § 27-35-325; N.J. Stat. § 54:29A-10; franchise and income tax rules: Cal. Rev. & Tax. Code § 23362; Kan. Stat. Ann. § 79-32-297; N.J. Stat. § 54:29A-13; use tax rules: Cal. Rev. & Tax. Code § 6411; 35 Ill. Comp. Stat. Ann. 105/3-60; Tenn. Code Ann. § 67-6-321.

[3] 1909 Or. Laws, ch. 218, § 5.

created patent inequality that no longer has any basis in theory or logic. Whatever justification existed for valuing railroad property as a unit (and assigning the administrative function of assessment to the state), it cannot justify the decision to tax the contracts, assembled workforce, and intellectual property of only centrally assessed companies, while all other companies who own the same property are not subject to tax. As both the statutes and the landscape have evolved, the unequal impact of Oregon's treatment of intangible property has become constitutionally intolerable. Over time, the rules have derailed.

The expansion of central assessment to non-railroad companies and the decision to target only those companies' intangible property for taxation has created patent inequality that no longer has any basis in theory or logic. Whatever justification existed for valuing railroad property as a unit (and assigning the administrative function of assessment to the state), it cannot justify the decision to tax the contracts, assembled workforce, and intellectual property of only centrally assessed companies, while all other companies who own the same property are not subject to tax. As both the statutes and the landscape have evolved, the unequal impact of Oregon's central assessment provisions have been increasing. Today the system no longer works and it has instead become Constitutionally intolerable. Over time, the rules have derailed.

Oregon Revised Statutes section 308.515(1) divides taxpayers into two groups. Enumerated taxpayers are subject to property tax as assessed by the Oregon Department of Revenue ("Department of Revenue") while all other taxpayers are subject to

property tax assessed by the counties. The former approach is referred to as "central assessment." Oregon Revised Statutes section 307.030 makes that division problematic in that it exempts from property tax the intangible property of only one of these groups (the majority) while section 308.555 authorizes the Department of Revenue to value and tax the entire property of enumerated taxpayers, including intangibles of every kind. This approach is referred to as "unit valuation."

The specific group of taxpayers subject to central assessment includes taxpayers in the following industries: air transportation, water transportation, air or railway express; communication; heating; gas; electricity; pipeline and toll bridge.

For these taxpayers, the base upon which their tax is calculated is different than that of other taxpayers. With the majority group of taxpayers is subject to a tax on their real and personal property, enumerated taxpayers pay tax on their real property, personal property ***and*** their ***intangibles*** including shares of stock,[4] software, contract rights, customer lists, assembled workforce, trade secrets, patents, trademarks, copyrights, and goodwill. ORS § 308.515(1).

As a result of the rule today, a small group of taxpayers bears an outsize property tax burden relative to both the assets shown on their balance

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[4] Note also how ironic is a property tax on capital stock, whose value is already a reflection of the property of the issuer. The inclusion of capital stock in the property tax base is duplicative nonsense.

sheets and their effective property tax rate in comparison with taxpayers in the majority group. The Oregon supreme court's decision, blessing this outcome, driving a final spike in the violation of Equal Protection rights for the taxpayer and other centrally assessed property taxpayers in Oregon.

A. The Impact of Oregon's Central Assessment Regime Today is Unconstitutional

The types of taxpayers subject to central assessment have changed significantly over the years as has the Oregon supreme court's views on intangibles. Accordingly, Oregon's central assessment regime has mutated and morphed into an unconstitutional justification for raising revenue from a select few taxpayers.

When Oregon's central assessment regime was first introduced in 1909, *all* property was subject to tax, and intangibles were different. The competitive landscape did not revolve around software and trade secrets the way it does now. When workforces assembled in a nineteenth century railyard, they were more likely gathered for a strike than as an assembled workforce whose value could be booked. Taxation of yesteryear intangibles may not have been egregious. But that was then.

Today a handful of unrelated industries have been tied to the tracks, bearing tax on a base entirely different than the base upon which other taxpayers' assessment is calculated. While the the vast majority of statutes applying to taxpayers (i.e., locally assessed taxpayers) prohibit the assessment of property tax on their intangibles, taxpayers subject to central

assessment and unit valuation do not. Given the extraordinary value of intangibles held by taxpayers today, the result is that a handful of taxpayers pay vastly higher tax on a much larger tax base while most taxpayers do not. In effect, while a few hundred centrally assessed companies pay tax on the goodwill and other intangible property on their balance sheets, the hundreds of thousands of other companies holding the same property in the same way are not subject to the same tax.

The Fourteenth Amendment prohibits states, including Oregon, from denying "any person within its jurisdiction the equal protection of the laws." The safeguards of the Equal Protection Clause extend to all areas of governmental regulation, including taxes and taxation. *See e.g.*, *Allegheny Pittsburgh Coal Co. v. Cty. Com.*, 488 U.S. 336 (1989). Generally, for tax issues, the Equal Protection Clause requires that similarly situated individuals be taxed similarly. This Court can, and indeed has, struck down taxes previously under an Equal Protection challenge. *See, e.g., Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 (1985); *Allegheny*, 488 U.S. 336. Oregon's central assessment system is rife with problems, and this Court should act to strike down this odious decision as the Oregon supreme court has run wildly off track.

B. The Imposition of Unequal Taxes is Proliferating at the States and Local Level

As states increasingly struggle to make ends meet, they are turning time and again to select groups of taxpayers or specific industries to cover those shortfalls. In other words, the states have determined

it is easier to target specific groups of taxpayers—often those with an out-of-state presence that do not vote—to fix their problems as opposed to adopting taxes based on sound tax policy that have a broader impact. Without a defensible policy rationale, and flying in the face of the U.S. Constitution, these certain taxpayers are becoming the piggybanks of last resort.

By way of example, we have seen several states and localities ignore the Equal Protection Clause when adopting new taxes. On November 6, 2018, local voters approved the Clean Energy Surcharge ("CES") as set forth in Portland, Oregon's General Election Ballot Measure 26-201 (2018). The measure imposed a one percent surcharge on the retail sales of certain "large retailers" within the city. The city's Revenue Division applies CES using a revenue threshold to distinguish applicable taxpayers from the rest. PORTLAND CITY CODE § 7.07.010(N). This approach has resulted in CES being born unequally by a select group of multistate businesses.

Up the West Coast and subject to certain exemptions, the Washington legislature tacked a surcharge this year on top of the business and occupation ("B&O") tax, the state's gross receipts tax, but only for certain taxpayers. Washington HB 2081 - 2025-26. Beginning January 1, 2026, businesses with Washington taxable income of $250,000,000 or more in a calendar year are subject to an additional half percent charge on top of the regular B&O tax. With a revenue threshold that high, the statewide surcharge will land squarely on the shoulders of a small subsection businesses, creating a competitive advantage for others.

And again, elsewhere, the Massachusetts legislature tacked on a 4% surcharge to the personal income tax bills of taxpayers earning more than $1,000,000 per year beginning in 2023. Mass. Ann. Laws ch. 62, § 4(d). The threshold is indexed to inflation, but continues to have the same effect each year, separating taxpayers into groups, only one of which bears the tax. *Id*.

In the same vein, the California Legislative Analysts' Office has just recently received and reviewed a proposed initiative that would create a new tax on the wealth of California's billionaires. A.G. File No. 25-0024, Amendment #1. If placed on the ballot in 2026 and passed by voters (which looks increasingly likely), a tiny, tiny, tiny fraction of a percent of California's tax-paying population would incur an enormous one-time assessment in the form of a novel wealth tax to prop up the state's healthcare system. The rest of California's taxpayers would see no change at all.

Additionally, we have seen states and localities target specific industries, imposing punitive taxes to punish those who are perceived as negative actors. For example, Colorado and Minnesota both impose retail delivery fees upon certain large retailers making delivery of taxable items. *See e.g.* Colo. Rev. Stat. § 43-4-218; Minn. Stat. Ann. § 168E.01; Berkeley Municipal Code 7.72.010. Washington D.C. as well as several localities impose additional taxes on "sugary beverages." *See e.g.* Oakland, California Code of Ordinances Sec. 4.52.030; Boulder, Colorado Municipal Code Sec. 3-16-4; Philadelphia Code § 19-4101. And, finally, Maryland and Washington state have both singled out digital advertisers as being

worthy of additional taxes. (Md. Tax-General Code Ann. § 7.5-102; Washington S.B. 5814), and there are several states that have proposed imposing additional taxes on social media platforms. *See e.g.*, California AB 796; Nebraska LB504, Indiana HB1312 Washington HB 2038.

These taxes and proposals all have a consistent theme—they apply only to a specific type of taxpayer. The chosen taxpayer sees their tax burdens increase exponentially while the vast majority of taxpayers continue to pay tax at the general/lower rate, as if success and growth were problems to be penalized or outcomes to be disincentivized. While these taxes are also discriminatory, in violation of the Commerce Clause, states and localities have become emboldened because state courts have turned a blind eye to the issues these taxes raise. And without this Court's intervention, the states will continue to tread on the rights of taxpayers to be treated equally—as the states are required.

The individual and cumulative effect of these taxes is unequal treatment. They will have an impact on the competitive landscape. They will discourage companies from operating on a multijurisdictional basis. They will create uncertainty and frustration for taxpayers who already make significant contributions to state and local fiscs.

C. This Court Must Intervene and Address the Standard

IPT and its members annually see an increasing number of targeted taxes being implemented across the country. And right behind the implementations is a freight load of litigation as taxpayers feel the

inherent unfairness of this approach to taxation and seek relief in every venue that can hear them.

This Court has an opportunity to intervene and address the applicable standard. Taxpayers desperately need clarity and predictability concerning this issue. States need to be rerouted. This Court must step up and overturn the Oregon supreme court's decision in *Delta*. Without Equal Protection guardrails, the states will continue to push the boundaries, passing and imposing significantly unequal and unfair tax burdens on specific, narrow groups of taxpayers.

CONCLUSION

For the foregoing reasons, *Amicus* requests that this Court grant a writ of certiorari and reverse the decision of the Oregon supreme court.

Respectfully submitted,

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