No. 26-

In the Supreme Court of the United States

DOLLAR BANK, FSB,

Petitioner,

v.

PATRICIA HARRIS, TAX COMMISSIONER OF OHIO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In a series of decisions stretching back nearly a century, this Court has established a judicially administrable test for identifying state taxes that unconstitutionally discriminate against interstate commerce. Under that so-called "internal-consistency test," the Court "'looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce intrastate.'" *Comptroller of the Treasury* v. *Wynne*, 575 U.S. 542, 562 (2015) (quoting *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U.S. 175, 185 (1995)).

This case involves an Ohio tax that is mathematically certain to impose a higher effective tax rate on multistate banks than on otherwise identical banks operating solely in Ohio. The Supreme Court of Ohio upheld the tax, however, on the ground that some Ohio banks would pay an effective tax rate as high as or higher than *materially different* multistate banks. The questions presented are:

1. Whether courts applying the internal-consistency test must compare the effects of a tax on otherwise identical interstate and intrastate businesses, or instead may uphold a tax because some intrastate businesses will pay the same effective tax rate as materially different interstate businesses.

2. Whether a State may impose a higher effective tax rate on interstate businesses, as compared to otherwise identical intrastate businesses, in order to incentivize investment in the State.

PARTIES TO THE PROCEEDING

Petitioner Dollar Bank, FSB, was appellant before the Supreme Court of Ohio.

Respondent Patricia Harris, Tax Commissioner of Ohio, was appellee before the Supreme Court of Ohio.

CORPORATE DISCLOSURE STATEMENT

Petitioner Dollar Bank, FSB, is a wholly owned subsidiary of Dollar Mutual Bancorp. Dollar Mutual Bancorp is a mutual holding company with no parent company and no shareholders. No publicly held company owns 10% or more of petitioner's stock.

RELATED PROCEEDINGS

Supreme Court of Ohio:

Dollar Bank, FSB v. *Harris, Tax Comm'r of Ohio*, No. 2025-0412 (Aug. 13, 2026)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Dollar Bank, FSB, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Ohio in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Ohio (App., *infra*, 1a-19a) is reported at 2026-Ohio-3069. The decision and order of the Ohio Board of Tax Appeals (App., *infra*, 20a-27a) and the final determination of the Tax Commissioner of Ohio (App., *infra*, 28a-30a) are not reported.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on August 13, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant provisions of the U.S. Constitution and the Ohio Financial Institutions Tax, codified at Ohio Rev. Code Ann. § 5726.01 et seq., are reproduced at App., *infra*, 31a-33a.

INTRODUCTION

This petition raises two questions of tremendous economic importance that have long divided the lower courts. One concerns whether state governments may use tax incentives that reward businesses with an existing in-state footprint, to the exclusion of otherwise similarly situated out-of-state businesses, as a means of encouraging local investment. This Court granted a writ of certiorari to resolve that issue in *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332 (2006), but was unable to do so after determining that the third-party challengers there lacked Article III standing. *See id.* at 354. The other, more specific question concerns application of the so-called "internal-consistency test," which this Court has long used to identify state and local taxes that create impermissible "incentive[s] for taxpayers to opt for intrastate rather than interstate economic activity." *Comptroller of the Treasury* v. *Wynne*, 575 U.S. 542, 545 (2015). Under the internal-consistency test, a tax is presumptively unconstitutional if its "identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce intrastate." *Id.* at 562 (citation omitted). The lower courts have disagreed, however, about whether to apply that test by looking to the ordinary operation of the challenged tax on otherwise identical interstate and intrastate businesses, or instead by asking whether there are hypothetical scenarios in which an intrastate taxpayer

would be treated no better than an interstate taxpayer. At least four courts employ the former approach, while three others—including the Supreme Court of Ohio here—employ the latter one.

The facts of this case present both questions cleanly, and in a manner that demonstrates their great financial significance. In 2014, Ohio began applying a new Financial Institutions Tax ("FIT") that modified the way it taxed banks operating in the State. Previously, Ohio had taxed all banks using a single rate. Under the FIT, however, Ohio adopted a new calculation that rewards banks that do more of their business in Ohio—shifting a portion of the then-existing tax burden from Ohio-based banks to their out-of-state competitors. The FIT does so by using a regressive tax structure under which a bank's effective Ohio tax rate is reduced for every dollar of "equity capital" over $200 million that is apportioned to the State. The effects are enormous. To give just one illustration, a mid-sized regional bank with $2 billion in total equity capital and no existing Ohio presence would pay more than three times as much in taxes under the FIT to open a new branch in Ohio as would an otherwise identical Ohio-based bank that opened the same branch. Those effects add up quickly: Counsel for the State acknowledged below that the FIT's structure has had an aggregate "billion dollar impact" on multistate banks.

The effects would be even larger if other States adopted Ohio's protectionist rate structure (as the internal-consistency test hypothesizes). Indeed, it is mathematically certain that if every State adopted its own version of the FIT, banks operating in interstate commerce would pay substantially higher taxes than would banks of comparable size that concentrated all of their operations in individual States.

Notwithstanding the FIT's discriminatory effects, however, the Supreme Court of Ohio upheld the tax by hypothesizing that in some circumstances an Ohio-based bank might pay the same effective tax rate as a materially different out-of-state bank (e.g., if the Ohio bank was substantially smaller). And while it acknowledged that the FIT gives banks a financial incentive to concentrate their operations in Ohio rather than spreading them across multiple States, it insisted that nothing in the Constitution precludes a State from encouraging investment within its borders by giving preferential treatment to companies with a large presence in the State.

That decision is impossible to reconcile with this Court's precedents. Just three years ago, all nine members of this Court agreed that "the 'very core' of [the Court's] dormant Commerce Clause jurisprudence" is the "antidiscrimination principle," which prohibits States from engaging in "'discrimination against interstate commerce.'" *Nat'l Pork Producers Council* v. *Ross*, 598 U.S. 356, 369-70 (2023) (citations omitted); *see id.* at 391-92 (Sotomayor, J., concurring in part) ("Warding off state discrimination against interstate commerce is at the heart of our dormant Commerce Clause jurisprudence."); *id.* at 393 (Barrett, J., concurring in part) ("Under our dormant Commerce Clause jurisprudence, one State may not discriminate against another's producers or consumers. A law whose burdens fall incommensurately and inexplicably on out-of-state interests may be doing just that."); *id.* at 394 (Roberts, C.J., concurring in part and dissenting in part) ("[M]any of the leading cases invoking the dormant Commerce Clause are properly read as invalidating statutes that promoted economic protectionism."). The tax here flouts that principle, indisputably subjecting multistate banks to a higher effective tax rate than

otherwise identical competitors that operate entirely or primarily in Ohio. This Court should therefore grant the writ of certiorari and reverse the judgment below.

STATEMENT OF THE CASE

A. Legal Background

When the Framers met in Philadelphia in the summer of 1787, chief among their concerns were "the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." *Hughes* v. *Oklahoma*, 441 U.S. 322, 325 (1979). In the years immediately following independence, "each State was free to adopt measures fostering its own local interests without regard to possible prejudice to nonresidents." *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U.S. 564, 571 (1997). The result was "a 'conflict of commercial regulations, destructive to the harmony of the States.'" *Ibid.* (quoting *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 224 (1824) (Johnson, J., concurring in the judgment)). By 1787, "state interference with interstate commerce was cutting off the lifeblood of the Nation." *Nat'l Pork Producers*, 598 U.S. at 404 (Kavanaugh, J., concurring in part and dissenting in part).

That "central concern of the Framers . . . was an immediate reason for calling the Constitutional Convention." *Hughes*, 441 U.S. at 325. By granting Congress "plenary authority over interstate commerce," the Framers sought to establish that "our economic unit is the Nation," *Oregon Waste Sys., Inc.* v. *Dep't of Env't Quality*, 511 U.S. 93, 98 (1994) (citation omitted), and to prevent any "State from retreating into economic isolation or jeopardizing the welfare of the Nation as a whole," *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U.S. 175, 179-80 (1995).

The "principle that our economic unit is the Nation . . . has as its corollary that the states are not separable economic units." *H.P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. 525, 537-38 (1949). This Court has therefore long understood the Commerce Clause to contain an implicit "negative command, known as the dormant Commerce Clause, prohibiting certain state taxation even when Congress has failed to legislate on the subject." *Jefferson Lines*, 514 U.S. at 179. State taxes violate that command when they "'discriminat[e] against interstate commerce.'" *Nat'l Pork Producers*, 598 U.S. at 369-70 (citation omitted).

Courts and scholars have long recognized, however, that it can be difficult to "smoke out a hidden protectionism." *Id.* at 379 (citation and internal quotation marks omitted). This Court has therefore developed several judicially administrable tests designed to differentiate permissible variations in state policy (such as States that choose to adopt higher or lower tax rates than their neighbors for all businesses) from impermissible discrimination. *See Wynne*, 575 U.S. at 562.

Of particular relevance here is the "internal consistency" test, which asks whether "the imposition of a tax identical to the one in question by every other State would add no burden to interstate commerce that intrastate commerce would not also bear." *Jefferson Lines*, 514 U.S. at 185. In applying the internal-consistency test, a court "simply looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce intrastate." *Ibid.* If a tax fails the test, it "shows as a matter of law that a State is attempting to take more than its fair share of taxes from the interstate transaction, since allowing such

a tax in one State would place interstate commerce at the mercy of those remaining States that might impose an identical tax." *Ibid.*

Because the internal-consistency test turns on the structure of the tax alone, it is more straightforward to administer than other dormant Commerce Clause inquiries. By "hypothetically assuming that every State has the same tax structure," the test "allows courts to isolate the effect of a defendant State's tax scheme." *Wynne*, 575 U.S. at 562. It thus does not require courts to weigh local benefits against burdens on commerce, *cf. Nat'l Pork Producers*, 598 U.S. at 380-82 (plurality opinion) (describing the difficulty of weighing "incommensurable" goods), and it does not require any inquiry into legislative motive. Instead, it reduces to arithmetic: If the test shows that a tax falls more heavily on interstate commerce than on purely local businesses, then the tax reflects unconstitutional discrimination. *See Wynne*, 575 U.S. at 561-62.

B. Factual And Procedural Background

1. In 1994 and 2010, Congress enacted a pair of statutes that substantially encouraged the growth of multistate banking. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 613, 124 Stat. 1376, 1614 (2010); Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338; *see also* Christian A. Johnson & Tara Rice, *Assessing a Decade of Interstate Bank Branching*, 65 Wash. & Lee L. Rev. 73, 76 (2008) (reporting that the number of bank branches operated by out-of-state banks grew from 62 in 1994 to 24,728 in 2005). This case involves one in a series of state laws enacted in response that seek to tax those multistate banks more heavily than their local competitors. *See* Pet. for Cert. at

4-7, *Washington Bankers Ass'n* v. *State of Washington*, No. 21-1066 (Jan. 28, 2022) (discussing another such law).

Historically, all banks doing business in Ohio paid a corporate franchise tax that was calculated using the same fixed tax rate regardless of how much business a given bank did in the State. *See* Ohio Rev. Code Ann. §§ 5733.01(B), 5733.06; *see also* Ohio Leg. Serv. Comm'n, Bill Analysis of Sub. H.B. 510, at 3-4, https://perma.cc/4D4Q-8AE7. But following enactment of Dodd-Frank, Ohio fundamentally altered that arrangement through its adoption of the Financial Institutions Tax in 2012. Designed to generate revenue equivalent to the prior corporate franchise tax, the FIT implemented a new regressive tax structure under which banks that do most or all of their business in the State benefit from a lower effective tax rate than otherwise identical multistate banks that do most of their business elsewhere. *See* Ohio Leg. Serv. Comm'n, Bill Analysis of Sub. H.B. 510, at 6 (describing statutory adjustment mechanisms ensuring collection of tax revenue roughly equivalent to revenue previously collected under the corporate franchise tax); Ohio House Ways and Means Comm., Testimony of Tax Comm'r Joseph Testa on Tax Provisions of H.B. 487 ("Testa Testimony"), at 2 (Mar. 21, 2012), https://perma.cc/9TEX-6CHY (explaining that the FIT was designed to be "revenue-neutral").

The FIT achieves that effect through three steps. *First*, a bank must calculate its total "equity capital," which roughly approximates the bank's net worth. *See* Ohio Rev. Code Ann. § 5726.01(S). *Second*, the bank determines the portion of its total equity capital allocated to Ohio in a particular year based on the percentage of the bank's gross receipts attributable to Ohio operations; if 10% of the bank's total revenue comes from Ohio-based

sources, for example, then 10% of its total equity capital would be treated as "Ohio equity capital" in that year. *See* Ohio Rev. Code Ann. § 5726.05. *Third*, Ohio then applies a regressive rate structure to the resulting figure, taxing a bank's first $200 million of Ohio equity capital at 0.8%; taxing its next $1.1 billion of Ohio equity capital at 0.4%; and taxing any additional Ohio equity capital at 0.25%. *See* Ohio Rev. Code Ann. § 5726.04(A)(1)(b).

Because of the FIT's structure, any bank with more than $200 million in total equity capital whose receipts are spread across multiple States will always have a higher effective tax rate than an otherwise identical bank whose receipts are concentrated in Ohio. For example, a bank with $1.5 billion in equity capital and all of its receipts attributable to Ohio will pay 0.8% on the first $200 million of equity capital; 0.4% on the next $1.1 billion; and 0.25% on the next $200 million, for an effective tax rate of 0.43% on its (entirely) Ohio-based operations. An otherwise identical bank with $1.5 billion in equity capital but only one-tenth of its receipts attributable to Ohio, on the other hand, will have $150 million in Ohio equity capital and an effective tax rate of 0.8%—85% higher than its Ohio-based competitor. And if the Ohio bank and the out-of-state bank were to open identical new branches side-by-side in downtown Columbus, the tax bill for the out-of-state bank would increase by more than three times as much as the tax bill for the in-state bank, because each marginal dollar of Ohio equity capital (up to $200 million) would be taxed at 0.8%, rather than 0.25%. That effect was by design: As the Ohio Tax Commissioner testified when the FIT was first proposed, the tax's structure was designed to give "community banks . . . an effective reduction in their tax burdens" by imposing increased taxes on "out-of-state

institutions that sell into Ohio's market but have limited property and payroll here." Testa Testimony, *supra*, at 4.

2. Petitioner Dollar Bank, FSB, is a chartered federal savings bank headquartered in Pittsburgh, Pennsylvania. App., *infra*, 2a. During tax years 2016-2020, Dollar Bank had a total equity capital of between $800 million and $1.1 billion. *See* Pet. Ohio Sup. Ct. Br., Ex. 3, https://perma.cc/DDY2-LG8W. Dollar Bank never generated more than one-fifth of its gross receipts in Ohio, however, and its Ohio equity capital therefore never exceeded $200 million. App., *infra*, 23a. As a result, Dollar Bank's effective tax rate under the FIT was 0.8% throughout the relevant period. *Ibid.* That was substantially higher than the rate the State would have applied to an otherwise identical competitor based entirely in Ohio. *Id.* at 15a & n.1. In 2020, for example, such a taxpayer would have paid an effective tax rate under the FIT of just 0.47%.

In 2020, Dollar Bank filed refund applications with the Ohio Tax Commissioner for FIT payments made during the tax years at issue. Dollar Bank argued, among other things, that Ohio's method of calculating the FIT unconstitutionally discriminated against interstate banks in violation of the dormant Commerce Clause.

In support, Dollar Bank explained that the FIT fails the internal-consistency test that this Court has applied to identify such unconstitutional discrimination. *See* pp. 6-7, *supra.* Unlike many other graduated state tax regimes (including Ohio's own income-tax regime), the FIT apportions the relevant tax base between States *before* applying its graduated tax rate.[1] As a result, if every State

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[1] *See*, *e.g.*, Ark. Code Ann. § 26-51-201; Cal. Rev. & Tax. Code § 17041; Mo. Rev. Stat. § 143.011; Md. Code Ann., Tax-Gen. § 10-105;

adopted a FIT identical to Ohio's, banks engaged in interstate commerce would pay more than otherwise identical banks operating in only a single State, since a greater proportion of the multistate bank's equity capital would be taxed at the highest 0.8% rate. For example, a bank with $150 million in Ohio equity capital and $650 million in Pennsylvania equity capital—approximating Dollar Bank's position in 2016—would pay a 0.8% tax on all $150 million of its Ohio equity capital, 0.8% on the first $200 million of its Pennsylvania equity capital, and 0.4% on the remaining $450 million of its Pennsylvania equity capital. An otherwise identical competitor with $800 million in total equity capital that operated only in Ohio, in contrast, would pay 0.8% on the first $200 million of Ohio equity capital and 0.4% on the next $600 million. The multistate bank in that scenario would have a total tax bill of $4.6 million, while the bank doing business only in Ohio would have a tax bill of just $4 million, even though its total equity capital was the same.

Dollar Bank sought refunds of the excess tax it had paid in each of tax years 2016 through 2020 as a result of the FIT's discriminatory structure.

3. The Tax Commissioner denied Dollar Bank's refund claims on the sole ground that the Commissioner lacked jurisdiction to review the constitutionality of the FIT. App., *infra*, 28a-30a. The Board of Tax Appeals affirmed on the same basis. *Id.* at 20a-27a.

4. Dollar Bank appealed to the Supreme Court of Ohio, which affirmed on the merits. App., *infra*, 1a-19a.

N.Y. Tax Law § 601; Ohio Rev. Code Ann. § 5747.02; Va. Code Ann. § 58.1-320.

As noted, Dollar Bank argued that the FIT was internally inconsistent because, "[i]f every state enacted a tax identical to the [FIT], . . . a person doing business in multiple states [would] pay more, in the aggregate, than a person conducting the same business entirely within a single state." *Id.* at 11a (emphasis and citation omitted). The Supreme Court of Ohio rejected that position, however, after finding that in some circumstances a hypothetical intrastate bank could have a higher effective tax rate under the FIT than a (differently situated) multistate bank. *See id.* at 15a-16a (observing that "a hypothetical bank located only in Ohio that has $400 million in Ohio equity capital" would "pay a higher effective Ohio tax rate" than "a multistate bank that has $1500 million in equity capital that is evenly divided among three states").

The court did not dispute that in comparing *similarly situated* banks, the FIT's structure means that every multistate bank with more than $200 million in total equity capital will pay a higher tax rate than an otherwise identical bank that operates in just one State. *See id.* at 17a. And it conceded that Dollar Bank would pay less in taxes if it concentrated its business in Ohio rather than operating in multiple States. *See id.* at 15a (acknowledging that Dollar Bank's "calculations are correct"). But the court found that result unproblematic because, in the court's view, "[t]he disparity exists simply because Ohio chooses to impose a regressive tax that incentivizes banks to increase their Ohio equity capital," which the court did not believe reflected "any discrimination against interstate commerce." *Ibid.*

The court acknowledged that a "regressive state-tax structure has the potential to tax similarly sized businesses more if they spread their activities around

various states than if they concentrate their activities in a single state." *Id.* at 17a. It concluded that the Ohio legislature was free to "create a tax policy that incentivizes financial institutions to do business in Ohio," however, because "the Commerce Clause does not erect a per se barrier against a state's adoption of tax policies that seek to achieve 'fair encouragement of in-state business.'" *Ibid.* (quoting *Armco Inc.* v. *Hardesty*, 467 U.S. 638, 645 (1984)).

REASONS FOR GRANTING THE PETITION

The Supreme Court of Ohio acknowledged that the FIT imposes higher effective tax rates on multistate banks than on otherwise identical banks based solely in Ohio, and that the State adopted that approach precisely because it wishes to "incentivize[] financial institutions to do business in Ohio." App., *infra*, 17a. The court nevertheless upheld the law, reasoning that because *some* Ohio banks might have effective tax rates equivalent to *some* (substantially different) multistate banks, the law survives the internal-consistency test.

That decision implicates two separate, pre-existing conflicts among the lower courts—one concerning the appropriate comparators when applying the internal-consistency test, and the other concerning the degree of latitude States have under the Commerce Clause to incentivize local investment through differential taxation of multistate competitors. As to the first question, a majority of courts have recognized that a tax fails the internal-consistency test if its application by every State would disadvantage interstate commerce as a whole, regardless of whether there are individual circumstances in which an intrastate business is treated no better than a differently situated multistate business. And as to the second question, a majority of courts have recognized that a State's interest in incentivizing investment within its

borders does not justify tax structures that treat intrastate taxpayers more favorably than multistate taxpayers.

The decision below sided with the minority of courts on both issues. In doing so, it barreled over the "antidiscrimination principle" that lies at "the 'very core' of [this Court's] dormant Commerce Clause jurisprudence." *Nat'l Pork Producers Council* v. *Ross*, 598 U.S. 356, 369-70 (2023) (citation omitted). The Court should accordingly grant a writ of certiorari and reverse, rather than allowing the Supreme Court of Ohio to have the last word about the State's unabashed choice to "favor[] banks that do more business in Ohio" at the expense of out-of-state competitors like Dollar Bank. App., *infra*, 16a.

I. The Decision Below Deepened Splits Over Both Questions Presented

This Court's review is warranted because the decision below deepened two entrenched splits among the federal courts of appeals and state courts of last resort. *See* Sup. Ct. R. 10(b).

A. The Decision Below Extended A 4-2 Split Regarding The Proper Comparators In Applying The Internal-Consistency Test

The Supreme Court of Ohio held that a tax survives the internal-consistency test if any multistate business could ever have a lower effective tax rate than any intrastate business, regardless of whether those hypothetical businesses are otherwise similarly situated and regardless of the tax's effect on interstate commerce as a whole. *See* App., *infra*, 14a-17a. Specifically, the court acknowledged that the FIT will "tax similarly sized businesses more if they spread their activities around

various states," but held that the FIT is nevertheless permissible because "a hypothetical bank located only in Ohio that has $400 million in Ohio equity capital" would be taxed more heavily than "a multistate bank that has $1500 million in equity capital that is evenly divided among three states." *Id.* at 15a-17a.

In so holding, the court deepened an existing conflict regarding how to apply the internal-consistency test to regressive taxes, including flat-fee taxes and taxes with declining graduated rates.[2] Of the federal courts of appeals and state courts of last resort to address the issue, four have held that a regressive tax fails the test whenever its application by every State would cause interstate businesses to pay a higher effective tax rate than otherwise similarly situated intrastate businesses. Two others—in addition to the Supreme Court of Ohio here—have held that even where that is true, a tax may still survive the test if there are circumstances in which a hypothetical interstate business would pay a lower effective tax rate than a *differently* situated intrastate business.

1. The First Circuit, Massachusetts Supreme Judicial Court, Maine Supreme Judicial Court, and New Jersey Supreme Court have all held that a tax violates the internal-consistency test if its adoption by every State would disproportionately burden interstate commerce, even if some interstate businesses might pay a lower

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[2] Flat-fee taxes are a subset of regressive taxes, in that they effectively tax income or capital up to the amount of the fee at a rate of 100%, then impose a rate of 0% on income or capital above that amount. *See*, *e.g.*, *Regressive Tax*, Black's Law Dictionary (12th ed. 2024) ("A flat tax . . . is usu. considered regressive . . . .").

effective tax rate than (or the same tax rate as) some intrastate businesses.

Most recently, in *American Trucking Ass'ns* v. *Rhode Island Turnpike & Bridge Authority*, 123 F.4th 27 (1st Cir. 2024), the First Circuit held that Rhode Island violated the internal-consistency test by adopting a cap on flat-fee tolls imposed on tractor-trailers. As the court explained, "local tractor-trailers disproportionately benefited from the caps as compared to out-of-state tractor-trailers, thereby reducing the per-mile tolls paid on average by in-state tractor-trailers." *Id.* at 43. Moreover, "if each state adopted an identical toll regime . . . tractor-trailers staying within state borders would pay *on average* substantially less per mile than those engaged in interstate travel." *Id.* at 44 (emphasis added). The court therefore found the cap unconstitutional even though some out-of-state tractor-trailers would pay an effective rate the same as (or even lower than) some in-state tractor-trailers, depending on the number of miles they drove in Rhode Island. *See id.* at 43 (noting that "out-of-state and in-state tractor-trailers can both benefit from the statutory caps").

The New Jersey Supreme Court took a similar approach in *American Trucking Ass'ns* v. *State*, 852 A.2d 142 (N.J. 2004). That case involved a flat fee imposed for the privilege of transporting municipal waste in the State. Because of the flat fee's regressive effect, the court recognized that "out-of-state [entities] will pay a distinctly higher cost per activity *on average* than in-state [entities] will pay." *Id.* at 165 (emphasis added). The fee therefore violated the internal-consistency test, and the dormant Commerce Clause, notwithstanding the State's invocation of "data showing that [some] individual out-of-state companies had lower costs per manifest or costs per tonnage than NJ companies experienced." *Ibid.*

Earlier decisions by the high courts of Massachusetts and Maine follow the same course. In *American Trucking Ass'ns* v. *Secretary of Administration*, 613 N.E.2d 95 (Mass. 1993), the Massachusetts Supreme Judicial Court held that certain flat-fee taxes imposed on vehicles operating in Massachusetts violated the internal-consistency test because "[i]f each State imposed flat fees of these types for passing through its jurisdiction, an impermissible interference with free commerce would result." *Id.* at 101. Although the record "d[id] not include statistics regarding the average number of miles traveled annually in Massachusetts by local trucks and by those registered in other jurisdictions," the court found it "intuitively obvious" that local trucks *on average* "derive far greater economic benefit from each of the challenged fees paid than do interstate trucks." *Ibid.* That was sufficient to establish impermissible discrimination against interstate commerce, regardless of whether some individual local trucks might drive fewer miles than some trucks from outside the Commonwealth. *See ibid.*

Likewise, in *American Trucking Ass'ns* v. *Secretary of State*, 595 A.2d 1014 (Me. 1991), the Maine Supreme Judicial Court struck down a flat fee imposed on vehicles that transported hazardous materials in the State. The court explained that "if each state imposed such a fee, a truck traveling 100,000 miles interstate could conceivably pay 49 times more in hazardous waste tariffs than a truck that traveled 100,000 miles strictly within the state." *Id.* at 1017. The fee thus violated the internal-consistency test, *see ibid.*, notwithstanding the fact that a truck that traveled just 2,000 miles in a single State would pay the same effective rate per mile as a truck traveling 100,000 miles across all 50 States.

2. In contrast to those four decisions, two other state courts of last resort have held—like the decision below—that a state tax satisfies the internal-consistency test whenever the State can show that there are some instances in which an intrastate business will have an effective tax rate as high as, or higher than, an interstate business.

In *American Trucking Ass'ns* v. *Department of Transportation*, 124 P.3d 1210 (Or. 2005), the Oregon Supreme Court sustained a flat tax on heavy trucks. Oregon primarily taxed heavy trucks on a per-mile basis according to their weight. *Id.* at 1212. For trucks carrying certain commodities, however, Oregon provided the option to pay a flat tax. *Id.* at 1213. As the Oregon Court of Appeals had explained, the flat tax would result on average in a higher per-mile rate for trucks that operated in multiple States than for trucks that drove the same number of miles in Oregon alone. *See id.* at 1214. The Oregon Supreme Court nevertheless held that the tax was permissible because "[i]nterstate and intrastate operations alike are free to either pay the weight/mile tax or the flat fee." *Id.* at 1219.

Similarly, in *In re Alternative Minimum Tax Refund Cases*, 546 N.W.2d 285 (Minn. 1996), the Minnesota Supreme Court considered a challenge under the internal-consistency test to the State's alternative minimum corporate franchise tax ("AMT"). The plaintiffs established that certain hypothetical corporations would pay more in franchise taxes under the AMT if they operated both inside and outside of Minnesota than if they operated solely within the State. *Id.* at 288. The court rejected the challenge, however, on the ground that the plaintiffs identified "no existing taxpayer with the same financial circumstances as" the hypothetical corporations,

and "none of the representative plaintiffs' tax situations reveal a similar constitutional violation." *Id.* at 290. In other words, because some interstate businesses were treated the same as some intrastate businesses, it did not matter whether others were not.

The decision below goes even further. Like the Oregon and Minnesota courts, the Supreme Court of Ohio upheld a regressive tax because some interstate businesses would pay an effective rate no higher than some intrastate businesses. App., *infra*, 15a-16a. The court extended their reasoning, though, sustaining the FIT by comparing businesses that are not even similarly situated—"a hypothetical bank located only in Ohio that has $400 million in Ohio equity capital" and "a multistate bank that has $1500 million in equity capital." *Ibid.*

B. The Decision Below Also Deepened A 5-2 Split Over Whether States Can Use Tax Advantages For In-State Businesses To Incentivize In-State Investment

In addition to deepening the existing split over application of the internal-consistency test to regressive taxes, the decision below also implicates a separate conflict over whether (and in what circumstances) States may permissibly use tax advantages for in-state businesses to encourage in-state investment. *See* App., *infra*, 16a (explaining that the FIT is permissible because it "simply favors banks that do more business in Ohio"). This Court granted a writ of certiorari to address that issue more than two decades ago. *See DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 340 (2006) (noting conflict). The Court was unable to resolve the conflict, however, because it determined that the challengers there—third parties who objected to the discriminatory tax preferences—lacked Article III standing to maintain their suit. *See id.* at 354.

The conflict persists to this day, and this case—in which Dollar Bank unquestionably has standing to challenge the denial of its own refund applications—provides an ideal vehicle in which to address it.

1. On one side of the split, at least five courts—the Sixth Circuit, the New York Court of Appeals, and the Supreme Courts of New Hampshire, Pennsylvania, and South Carolina—have held that the dormant Commerce Clause forbids States from providing tax advantages for in-state (but not out-of-state) activities as a way of incentivizing in-state investment.

In *Cuno* v. *DaimlerChrysler, Inc.*, 386 F.3d 738 (6th Cir. 2004), the Sixth Circuit held that Ohio had violated the dormant Commerce Clause when it offered a location-based tax credit to induce an auto manufacturer to expand its business operations in Toledo. The defendants had argued that "tax incentives, like the Ohio tax credit, are permissible as long as they do not penalize out-of-state economic activity." *Id.* at 745. The Sixth Circuit disagreed. While the court was "sympathetic to efforts by the City of Toledo to attract industry into its economically depressed areas," it nevertheless concluded that the tax credit violated the dormant Commerce Clause because it "create[d] location incentives through the state's power to tax." *Id.* at 746.[3]

Similarly, in *Aurora Corp. of Illinois* v. *Tully*, 457 N.E.2d 735 (N.Y. 1983), the New York Court of Appeals held that the State had violated the dormant Commerce Clause by imposing a higher license fee on foreign corporations than it did on domestic corporations. The

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[3] As noted above, this Court later vacated the Sixth Circuit's decision on standing grounds without reaching the merits. *See DaimlerChrysler Corp.*, 547 U.S. at 354.

court noted that "the legislative intent behind" the tax scheme "was to make it more profitable for foreign corporations doing business in New York to incorporate in this State," and that "New York lawmakers hoped to induce businesses to abandon their current domiciles to come to New York." *Id.* at 739. That goal, the court concluded, was impermissible. "While there is certainly nothing wrong with a State attempting to attract foreign businesses to it," the court explained, "the commerce clause does not permit this to be done by enacting laws that favor local enterprises at the expense of foreign ones." *Ibid.*

The New Hampshire Supreme Court reached the same conclusion in *Smith* v. *New Hampshire Department of Revenue Administration*, 692 A.2d 486 (N.H. 1997). That case involved a challenge to New Hampshire's interest and dividends tax, which taxed investment income earned from out-of-state banks while exempting investment income earned from in-state banks. The court held that the tax violated the dormant Commerce Clause. Under the State's tax scheme, the court explained, "New Hampshire residents have a strong economic incentive to invest in banks located within the State." *Id.* at 497. And that incentive "violate[d] the principle that state statutes may not constitutionally encourage the development of local industry by means of taxing measures that impose greater burdens on economic activities taking place outside the State than would be placed on similar activities within the State." *Ibid.*

Likewise, in *PPG Industries, Inc.* v. *Board of Finance & Revenue*, 790 A.2d 252 (Pa. 1999), the Pennsylvania Supreme Court held that the Commonwealth's capital stock tax violated the dormant Commerce Clause because it included an exemption for manufacturing plants located

in Pennsylvania. The court explained that the "manufacturing exemption" was "a locational incentive that was created in order to establish a favorable climate in Pennsylvania for manufacturers and thus encourage the development of industry." *Id.* at 256 (internal quotation marks omitted). Notwithstanding the Commonwealth's argument that such an incentive did not discriminate against interstate commerce, the court concluded that "employing the manufacturing exemption to the capital stock tax as a means of inducing other business operations, i.e., manufacturing, to be performed in Pennsylvania . . . affords preferential treatment to corporations that engage in manufacturing activities in the Commonwealth." *Id.* at 259. That, the court observed, "is the exact type of 'economic Balkanization' the Commerce Clause protects against." *Id.* at 259-60 (footnote omitted) (quoting *Hughes* v. *Oklahoma*, 441 U.S. 322, 325 (1979)).

Finally, in *Orthofix, Inc.* v. *South Carolina Department of Revenue*, 903 S.E.2d 496 (S.C. 2024), the South Carolina Supreme Court struck down a sales tax exemption for medical equipment sold by businesses located in the State. State officials had argued that the exemption was constitutional on the ground that "the differential treatment of in-state and out-of-state sellers is merely intended to 'promote economic development' in South Carolina." *Id.* at 500. But the court rejected that argument, explaining that "a State may not tax interstate transactions in order to favor local businesses over out-of-state businesses." *Ibid.* (citation omitted). Indeed, the court found, the exemption "foster[ed] the type of economic protectionism prohibited by the dormant Commerce Clause." *Id.* at 501.

2. Contrary to the decisions just described, the Michigan Supreme Court and the Oklahoma Supreme

Court—along with the decision below—have expressly endorsed taxes that incentivize local business through differential treatment.

In *Caterpillar, Inc.* v. *Department of Treasury, Revenue Division*, 488 N.W.2d 182 (Mich. 1992), the Michigan Supreme Court upheld the State's capital acquisition deduction, which, as relevant, allowed taxpayers to reduce their tax base by the amount they had spent on real property, "provided that the assets are physically located in Michigan." *Id.* at 187. The plaintiff argued that this aspect of Michigan's deduction was "discriminatory because it was enacted to promote investment in Michigan." *Id.* at 192. But the court rejected that position based on its view that "the promotion of development and investment of business in Michigan does not violate the Commerce Clause." *Ibid.*; *see DaimlerChrysler Corp.*, 547 U.S. at 340 (discussing conflict between *Caterpillar* and the Sixth Circuit's decision in *Cuno*, *supra*).

Similarly, in *CDR Systems Corp.* v. *Oklahoma Tax Commission*, 339 P.3d 848 (Okla. 2014), the Oklahoma Supreme Court upheld a corporate income tax deduction for capital gains resulting from the sale of assets of companies headquartered in Oklahoma. A corporate taxpayer challenged the deduction as discriminatory after being denied a deduction on the ground that the corporation was not headquartered in Oklahoma at the time it sold its assets. *Id.* at 851-52. The court rejected the challenge, however, finding that the deduction was a permissible "tool used by the state to compete for business investment in Oklahoma's economy." *Id.* at 856. The court concluded, moreover, that it was legitimate for Oklahoma to "structur[e] the state's tax system to encourage the

growth and development of intrastate commerce and industry." *Id.* at 858.

The decision below adopts the same type of reasoning. Like the Michigan and Oklahoma courts, the Supreme Court of Ohio treated the FIT's in-state preference as a legitimate policy choice rather than as discrimination, concluding that the tax "simply favors banks that do more business in Ohio." App., *infra*, 16a. In the court's view, the disparity faced by multistate banks "exists simply because Ohio chooses to impose a regressive tax that incentivizes banks to increase their Ohio equity capital," and it is the legislature's prerogative to "create a tax policy that incentivizes financial institutions to do [more] business in Ohio" even if that incentive comes at the expense of interstate commerce. *Id.* at 15a, 17a.

II. The Decision Below Is Wrong

In addition to implicating two longstanding conflicts of authority, the decision below is also wrong. Contrary to the views of the Supreme Court of Ohio, the FIT violates the internal-consistency test because its application by every State would cause banks operating across state lines to pay more than otherwise identical banks operating in a single State. It is no answer that some materially different intrastate banks could pay similar amounts. Nor does Ohio's desire to incentivize local business justify the FIT's structure. As this Court has repeatedly explained, the Commerce Clause forbids such discriminatory incentives.

A. The FIT Fails The Internal-Consistency Test

The internal-consistency test provides a mechanism for courts to smoke out discrimination by "isolat[ing] the effect of a defendant State's tax scheme." *Comptroller of the Treasury* v. *Wynne*, 575 U.S. 542, 562 (2015). Unlike other dormant Commerce Clause inquiries, the internal-

consistency test requires no balancing of incommensurable interests and no inquiry into legislative motive; it turns on the structure of the tax alone. If a tax fails the test, it "shows as a matter of law that a State is attempting to take more than its fair share of taxes from the interstate transaction, since allowing such a tax in one State would place interstate commerce at the mercy of those remaining States that might impose an identical tax." *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U.S. 175, 185 (1995).

The proper application of the internal-consistency test in this case is straightforward. As discussed above, the FIT apportions a bank's equity capital based on gross receipts, *see* Ohio Rev. Code Ann. § 5726.05, then taxes the resulting Ohio equity capital at regressive rates of 0.8%, 0.4%, and 0.25%, *see* Ohio Rev. Code Ann. § 5726.04(A)(1)(b). If every State adopted that same tax scheme, it is mathematically certain that any multistate bank with more than $200 million in total equity capital would pay more in taxes than an otherwise identical bank that operated only in a single State. Returning to an earlier example, a bank with $1.5 billion in equity capital that did all of its business in Ohio would pay 0.8% on the first $200 million, 0.4% on the next $1.1 billion, and 0.25% on the final $200 million, for a total tax bill of $6.5 million. By contrast, a bank of the same overall size with operations spread evenly among ten States (with $150 million in equity capital attributed to each) would pay a 0.8% tax rate on its entire equity capital base, for a total tax bill of $12 million—nearly twice as high as the intrastate bank's.

The Supreme Court of Ohio did not, and could not, dispute that math. *See* App., *infra*, 15a. Instead, it chose to reject comparisons between otherwise similarly

situated in-state and multistate banks in favor of comparisons between materially different banks. It observed, for example, that "a hypothetical bank located only in Ohio that has $400 million in Ohio equity capital" would "pay a higher effective Ohio tax rate" than "a multistate bank that has $1500 million in equity capital that is evenly divided among three states." *Id.* at 15a-16a.[4] In the court's view, that comparison between substantially different banks was enough to get the FIT past the internal-consistency test.

Contrary to the Supreme Court of Ohio's reasoning, however, a tax does not pass the internal-consistency test just because in some scenarios an interstate business might pay the same amount as an intrastate business. Instead, this Court's decisions make clear that a tax fails the test where, as here, interstate businesses would be worse off than "otherwise identical" intrastate businesses if every State were to adopt it. *American Trucking Ass'ns* v. *Scheiner*, 483 U.S. 266, 285 n.20 (1987) (citation omitted). That focus on otherwise identical comparators is necessary in light of what the Solicitor General has described as "the internal-consistency test's sole purpose: to 'isolate the effect of a defendant State's tax scheme' to determine if it 'inherently discriminate[s] against interstate commerce . . . .'" Br. for the United States as Amicus Curiae at 13, *Zilka* v. *Philadelphia Tax Rev. Bd.*, No. 23-914 (U.S. Dec. 9, 2024) (emphases omitted) (quoting *Wynne*, 575 U.S. at 562).

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[4] The court also emphasized that "[a]n in-state or out-of-state bank with the same amount of total Ohio equity capital pays the same Ohio tax rates." App., *infra*, 10a; *see id.* at 12a (similar). Whenever an intrastate bank and a multistate bank have the same amount of Ohio equity capital, however, the multistate bank will necessarily be larger (because it has capital in other States as well).

In *Scheiner*, for example, the Court struck down flat taxes imposed on trucks operating in Pennsylvania because the taxes disproportionately affected out-of-state trucks that spread their total mileage over multiple States, as compared to in-state trucks that drove the same number of miles entirely within Pennsylvania (and thus had a lower cost per mile). *See* 483 U.S. at 285-86. It was true, of course, that an in-state truck that drove fewer total miles might pay the same effective rate within Pennsylvania as a given out-of-state truck, but that did not excuse the tax's discriminatory structure. *See id.* at 286. Instead, what mattered was that the challenged taxes, "if adopted by many cities and states, b[ore] much more heavily in the aggregate on a firm that sells in many places than on a firm otherwise identical (and in particular, with the same total quantity of sales) that sells in only one place." *Id.* at 285 & n.20 (citation omitted). *Contra* App., *infra*, 11a (asserting that this Court "has never adopted" an "aggregation approach" to the internal-consistency test).

The Supreme Court of Ohio claimed to find support for its contrary view in this Court's later decision in *American Trucking Ass'ns* v. *Michigan Public Service Commission*, 545 U.S. 429 (2005), in which the Court upheld a flat fee that Michigan imposed on trucks that made point-to-point hauls within Michigan. *See* App., *infra*, 16a-17a. But as this Court subsequently explained in *Wynne*, the plaintiffs in the Michigan case had failed to show that "the challenged tax imposed a heavier burden on interstate truckers in general than it did on intrastate truckers." 575 U.S. at 563-64 n.7.[5] In this case, by

[5] The First Circuit has likewise rejected the argument that *Michigan Public Service Commission* "pared back" the test articulated in *Scheiner*, explaining that "there is no language in that case so

contrast, there is no question that the FIT imposes a heavier burden on "interstate [banks] in general." *Ibid.* Indeed, *every* multistate bank with more than $200 million in total equity capital will have a higher effective tax rate than an otherwise identical intrastate bank, and in no case will an intrastate bank pay a higher effective tax rate than an otherwise identical multistate bank.

The Supreme Court of Ohio also suggested that ruling in favor of Dollar Bank "would require [it] to conclude that the Commerce Clause forbids all regressive tax structures." App., *infra*, 17a. That is simply incorrect. As Dollar Bank explained below, Ohio could cure the discrimination against interstate commerce by setting a bank's tax rate based on its total equity capital and then apportioning the resulting tax based on gross receipts, as many other jurisdictions already do. *See* pp. 10-11 & n.1, *supra*. A ruling for Dollar Bank thus would not take regressive tax structures off the table; it would simply require that they be applied in a non-discriminatory fashion, consistent with existing practice in many other States.

B. The FIT Incentivizes In-State Business Only By Impermissibly Discriminating Against Multistate Banks

The Supreme Court of Ohio also erred in holding that the FIT was permissible because "Ohio's tax scheme simply favors banks that do more business in Ohio." App., *infra*, 16a. The court did not deny that Dollar Bank would pay a lower effective tax rate if it concentrated its business in Ohio. *See* p. 12, *supra*. But the court thought the "disparity exists simply because Ohio chooses to impose a

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stating, nor has the Supreme Court subsequently so suggested." *Rhode Island Tpk. & Bridge Auth.*, 123 F.4th at 44.

regressive tax that incentivizes banks to increase their Ohio equity capital, not because of any discrimination against interstate commerce." App., *infra*, 15a. In the court's view, Ohio was free to "create a tax policy that incentivizes financial institutions to do business in" the State. *Id.* at 17a.

In so holding, the decision below departed from this Court's cases, which make clear that a desire to incentivize in-state investment does not provide States with a license to give preferential treatment to in-state businesses. In *Boston Stock Exchange* v. *State Tax Commission*, 429 U.S. 318 (1977), for example, the Court held unconstitutional a New York tax on securities transactions that imposed higher rates on transactions involving out-of-state sales by nonresidents than on transactions involving in-state sales by nonresidents. *Id.* at 319. The differential tax treatment was motivated by a desire "to encourage the effecting by nonresidents of the state of New York of their sales within the state of New York and the retention within the state of New York of sales involving large blocks of stock." *Id.* at 327. This Court held that such encouragement was impermissible. While each State was free to "compete with other States for a share of interstate commerce," the Court observed, "no State may discriminatorily tax the products manufactured or the business operations performed in any other State." *Id.* at 336-37.

Likewise, in *Westinghouse Electric Corp.* v. *Tully*, 466 U.S. 388 (1984), the Court considered the constitutionality of a tax credit that New York allowed companies to apply against certain types of income related to exports. As relevant, the tax credit increased as companies increased the percentage of their exports that were shipped from New York (and decreased as companies increased the

percentage of their exports that were shipped from other States). *Id.* at 400. As in *Boston Stock Exchange*, the credit was enacted to "provide a positive incentive for increased business activity in New York State." *Id.* at 393. And as in *Boston Stock Exchange*, the Court concluded that the incentive scheme was impermissible. The Court's holding was categorical: "no State, consistent with the Commerce Clause, may impose a tax which discriminates against interstate commerce by providing a direct commercial advantage to local business." *Id.* at 403 (internal quotation marks and alterations omitted).

The Court reached a similar conclusion in *Bacchus Imports, Ltd.* v. *Dias*, 468 U.S. 263 (1984). There, the Court reviewed a challenge to an excise-tax exemption that Hawaii afforded to certain locally produced beverages. The State had argued that "there was no discriminatory intent on the part of the legislature because the exemptions in question were not enacted to discriminate against foreign products, but rather, to promote a local industry." *Id.* at 273 (internal quotation marks omitted). The Court rejected that position, explaining that "[t]he determination of constitutionality does not depend upon whether one focuses upon the benefited or the burdened party." *Ibid.* Rather, "[a] discrimination claim, by its nature, requires a comparison of the two classifications, and it could always be said that there was no intent to impose a burden on one party, but rather the intent was to confer a benefit on the other." *Ibid.*

This Court's cases thus make clear that "a State may not . . . favor local businesses over out-of-state businesses." *Id.* at 272; *see Wynne*, 575 U.S. at 549 (explaining that States may not "impose a tax which discriminates against interstate commerce . . . by

providing a direct commercial advantage to local business" (citation omitted)).

The decision below failed to follow that teaching. Instead, the Supreme Court of Ohio cited this Court's decision in *Armco Inc.* v. *Hardesty* for the principle that "the Commerce Clause does not erect a per se barrier against a state's adoption of tax policies that seek to achieve 'fair encouragement of in-state business.'" App., *infra*, 17a-18a (quoting 467 U.S. 638, 645 (1984)). *Armco*, however, supports precisely the opposite conclusion from the one the decision below sought to draw. In *Armco*, the Court held that West Virginia had impermissibly discriminated against interstate commerce by imposing a manufacturing tax on in-state businesses while exempting those businesses from a wholesale tax paid by out-of-state businesses. 467 U.S. at 644. The Court explained that the tax scheme was internally inconsistent because, if every State adopted it, interstate businesses would pay both taxes, while intrastate businesses would pay only one. *Ibid.* The Court noted, however, that it would be permissible for West Virginia to impose only a wholesale tax, because if every State imposed only a wholesale tax, then businesses selling in-state would pay the same amount as businesses selling across state lines. While a West Virginia wholesale tax could, in practice, interact with another State's tax in a way that disincentivized interstate commerce, any such disincentive "would not arise from impermissible discrimination against interstate commerce but from fair encouragement of in-state business." *Id.* at 645.

In other words, the *Armco* Court concluded that encouragement of in-state business is "fair," and thus constitutional, where it is not the product of "impermissible discrimination against interstate

commerce." *Ibid.* But where, as here, a state tax scheme violates the internal-consistency test in a manner that demonstrates its discriminatory effect, *Armco* does not authorize the scheme simply because it seeks to incentivize local business. Rather, as *Boston Stock Exchange*, *Westinghouse*, and *Bacchus* explain, a desire to encourage in-state business cannot excuse differential treatment of interstate commerce. The decision below erred in reaching a contrary conclusion.

III. The Issues Are Important, And This Case Is An Ideal Vehicle To Resolve Them

The stakes in this case are high. Counsel for the State acknowledged below that the FIT's structure has resulted in an aggregate "billion dollar impact" for multistate banks that pay higher effective tax rates than their intrastate counterparts. *See* Oral Arg. at 14:20, *Dollar Bank, FSB* v. *Harris*, 2026 WL 2339052 (Aug. 13, 2026) (No. 2025-0412), https://perma.cc/24WX-VE6W. That result not only violates the Constitution, but also frustrates Congress's deliberate effort to open up local banks to interstate competition. *See* p. 7, *supra*; *see also* S. Rep. No. 103-240, at 10, 12 (1994) (explaining that geographic restrictions left banks "vulnerable to downturns in the local economies where they do business," while allowing interstate competition would facilitate "'wider consumer choices at better prices'" (quoting testimony of Federal Reserve Chairman Alan Greenspan)).

If the decision below is allowed to stand, moreover, it will incentivize Ohio and other States to apply similar taxes to other industries. Any business whose tax base is apportioned among multiple States is vulnerable to a tax with the same structure, and the decision below creates a roadmap for States that want to privilege "community"

businesses while increasing taxes for "out-of-state institutions that sell into [a local] market but have limited property and payroll [t]here." Testa Testimony, *supra*, at 4. That is precisely the sort of "economic protectionism" that "the Commerce Clause prohibits," *Nat'l Pork Producers*, 598 U.S. at 369 (citation omitted), and it threatens to spark the "tendencies toward economic Balkanization" that the Framers sought to suppress, *Hughes*, 441 U.S. at 325. But this Court will often be the only federal forum available to hear challenges to discriminatory state tax schemes, as the Tax Injunction Act generally channels those challenges to state court. *See* 28 U.S.C. § 1341. Without this Court's intervention, the decision below thus threatens to open up a new front in the "commercial warfare between states." *H.P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. 525, 533 (1949).

CONCLUSION

The petition for a writ of certiorari should be granted.

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