No. _____

IN THE
Supreme Court of the United States

State of NEW YORK, State of CONNECTICUT,
State of MARYLAND, State of NEW JERSEY,
Petitioners,

v.

JANET YELLEN,
in her official capacity as Secretary of
the United States Department of Treasury, et al.,
Respondents.

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

PETITION FOR CERTIORARI

LETITIA JAMES
Attorney General
State of New York
BARBARA D. UNDERWOOD*
Solicitor General
STEVEN C. WU
Deputy Solicitor General
ESTER MURDUKHAYEVA
Senior Assistant
Solicitor General

28 Liberty Street
New York, New York 10005
(212) 416-8020
barbara.underwood@ag.ny.gov
**Counsel of Record*

(*Additional counsel on signature pages.*)

QUESTION PRESENTED

From the time of the first federal income tax in 1861, Congress has respected the States' sovereign authority to levy and collect taxes by providing for a deduction of all or substantially all state and local property and income taxes ("SALT") from federal taxable income. In 2017, Congress severely curtailed the SALT deduction for the first time in history. The 2017 tax legislation allows an individual to deduct a maximum of $10,000 of state and local taxes, regardless of that taxpayer's actual state and local tax burden.

The question presented is:

Whether Congress's imposition of a $10,000 cap on the SALT deduction violates Article I, Section 8 and the Tenth and Sixteenth Amendments of the United States Constitution.

PARTIES TO THE PROCEEDING

Petitioners, who were plaintiffs in the district court and appellants in the court of appeals, are the States of New York, Connecticut, Maryland, and New Jersey.

Respondents, who were defendants in the district court and appellees in the court of appeals, are Janet Yellen, in her official capacity as Secretary of the U.S. Department of Treasury,[i] U.S. Department of Treasury; Charles P. Rettig, in his official capacity as Commissioner of the U.S. Internal Revenue Service; the U.S. Internal Revenue Service; and the United States of America.

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[i] Secretary Yellen was substituted for the prior Secretary of the U.S. Treasury, Steven Mnuchin, when this action was pending in the court of appeals.

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

JURISDICTION

The court of appeals entered judgment on October 5, 2021. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent constitutional and statutory provisions are reproduced at Pet. App. 73a-74a.

INTRODUCTION

For over 150 years, Congress adhered to the constitutional principle that the federal income tax deduction for state and local taxes ("SALT") is essential to prevent the federal government from interfering with the States' sovereign authority to levy and collect property and income taxes in order to fund schools, roads, infrastructure, and other initiatives. In 2017, Congress broke with that uninterrupted practice by enacting a $10,000 cap on the SALT deduction. *See* An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 ("2017 Tax Act"), Pub. L. No. 115-97, § 11042, 131 Stat. 2054, 2085-86 (2017) (codified as amended 26 U.S.C. § 164(a)-(b)). Congress enacted the cap with the knowledge that it would inflict substantial economic harm on taxpayers in certain States, including those residing in the Petitioner States. And Congress enacted the cap with the intent that these and other harms to state fiscs would coerce Petitioners to lower their tax rates and reduce public investments.

The lower courts in this case acknowledged that the SALT deduction cap marked a dramatic departure from the historical balance of taxation authority between the federal government and the States. Nevertheless, both the district court and the court of appeals concluded that the Constitution does not limit Congress's authority to curtail (or even eliminate) the SALT deduction. Pet. App. 16a-22a, 54a-60a. And while the lower courts credited Petitioners' allegations of the considerable harms that the cap would impose on taxpayers in Petitioner States, both the district court and the court of appeals concluded that such harms are not sufficiently

coercive to violate the Tenth Amendment. Pet. App. 22a-26a, 60a-70a.

The decision below warrants this Court's review for several reasons. Congress's unprecedented curtailment of the SALT deduction presents a novel and important question about the limits of federal taxation power. And the harms of Congress's 2017 enactment are serious and ongoing. Every year that the cap is in effect, millions of taxpayers will pay billions of dollars in additional federal income taxes, forgo home ownership, or suffer other economic harms. The cap will also cost Petitioners hundreds of millions of dollars in lost revenues from real estate transfer and property taxes. And faced with these harms, Petitioners and other similarly situated States will face immense pressure to reduce their tax rates and eliminate public programs.

The decision below is not only important; it is also incorrect. Contrary to the court of appeals' reasoning, the SALT deduction is not merely a matter of congressional grace. Rather, the deduction is rooted in the structural limitations placed on the federal government by basic federalism principles in the Constitution. As Congress itself recognized for over 150 years, a deduction for all or nearly all state and local income and property taxes is necessary to avoid federal intrusion on state sovereign taxing authority and policies. And the $10,000 cap is also unconstitutionally coercive because it was openly targeted at a subset of politically disfavored States (including Petitioners) with the goal of forcing those States to adopt different taxation and spending policies. Congress's tax power, while broad, does not authorize such compulsion.

STATEMENT

A. The Constitutional and Historical Underpinnings of the SALT Deduction

1. The States' power to tax the "property, business, and persons, within their respective limits" dates to the colonial era and is a central feature of state sovereignty.[1] *Lane County v. Oregon*, 74 U.S. 71, 76-77 (1868). "The extent to which [such power] shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the legislatures to which the States commit the exercise of the power." *Id.* at 77.

Concern about the States' ability to maintain their sovereign taxing authority pervaded debates surrounding the ratification of the Constitution.[2] Although the Founders recognized the importance of creating a federal taxing power, they were also concerned that such power could be exercised to interfere with the States' taxing authority.[3] To prevent such encroachment, the Founders adopted a dual federalist approach to taxation and reserved to the States a concurrent taxing authority "restrained only by the will of the people expressed in the State constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the national government." *Id.* The ratification of the Tenth Amendment in

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[1] *See* Alvin Rabushka, *Taxation in Colonial America* 1, 144, 165, 170-78, 206-07, 715, 768 (2008); Edward R. A. Seligman, *The Income Tax: A Study of the History, Theory, and Practice of Income Taxation at Home and Abroad* 367-87 (2d ed. 1914).

[2] *See* 1 James Kent, *Commentaries on American Law* 367 (O. Halstead ed., 1826) (CA2 J.A. 185).

[3] *See id.*

1791 further confirmed that the federal government could not exercise its own taxing power in such a way as to encroach upon the States' sovereign taxing authority.[4]

During the first eight decades of the Republic, most taxes continued to be levied by the States, not the federal government. To the extent that the federal government imposed its own taxes, it respected the federalism principles enshrined in the Constitution by levying primarily customs duties and excise taxes, leaving undisturbed the revenue sources traditionally taxed by the States, such as property and income.[5] From the end of the War of 1812 until the Civil War, "[t]here were no federal income taxes, direct taxes, or excise taxes—in short, no internal taxes of any kind."[6]

As described in more detail below, every form of a federal income tax imposed between 1861 and 2017 included a deduction for all or substantially all state and local property and income taxes, in recognition of the constitutional imperative to preserve state sovereign taxation authority over property and income.

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[4] *See* U.S. Const. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

[5] *See* Roy G. Blakey & Gladys C. Blakey, *The Federal Income Tax* 2 (1940) (CA2 J.A. 191); *see also* Seligman, *supra*, at 389, 397-406 (describing the income taxes imposed by the States prior to the Civil War); William E. Foster, *Partisan Politics and Income Tax Rates*, 2013 Mich. St. L. Rev. 703, 710 n.40 (2013).

[6] Anuj C. Desai, *What a History of Tax Withholding Tells Us About the Relationship Between Statutes and Constitutional Law*, 108 Nw. U.L. Rev. 859, 871 (2014) (emphasis omitted).

2. The first federal income tax, which was enacted in 1861 to help defray the costs of the Civil War, provided that "in estimating [taxable] income, all national, state, or local taxes assessed upon the property, from which the income is derived, shall be first deducted." Act of Aug. 5, 1861, ch. 45, § 49, 12 Stat. 292, 309 (CA2 J.A. 194). The SALT deduction was maintained without change until the income tax lapsed in 1872.[7]

When the federal income tax was reenacted in 1894, Congress again provided a deduction for "all national, State, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year." Act of Aug. 27, 1894, ch. 349, § 28, 28 Stat. 509, 553 (CA2 J.A. 207).[8] After this Court invalidated the 1894 income tax as an unapportioned direct tax in *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895), subsequent legislative proposals to reinstate a federal income tax likewise uniformly included a comprehensive SALT deduction.[9]

3. Congress responded to *Pollock* by proposing the adoption of the Sixteenth Amendment, which expressly

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[7] *See* Act of July 1, 1862, ch. 119, § 91, 12 Stat. 432, 473-74; Act of June 30, 1864, ch. 173, § 117, 13 Stat. 223, 281; Act of Mar. 3, 1865, ch. 78, 13 Stat. 469, 479; Act of Mar. 2, 1867, ch. 169, § 13, 14 Stat. 471, 477-78; Act of July 14, 1870, ch. 255, § 9, 16 Stat. 256, 258 (CA2 J.A. 197-206).

[8] *See* Seligman, *supra*, at 508.

[9] *See, e.g.*, H.R. 5, 62d Cong. § 2 (1911) (proposing an income tax that included a deduction for "all national, State, county, school, and municipal taxes, not including those assessed against local benefits"); H.R. 2110, 61st Cong. § 2 (1909) (same); H.R. 1473, 61st Cong. § 2 (1909) (same); H.R. 110, 61st Cong. § 2 (1909) (same); H.R. 21216, 60th Cong. § 2 (1908) (same); H.R. 10548, 60th Cong. § 2 (1907) (same); H.R. 345, 60th Cong. § 2 (1907) (same).

authorized an unapportioned federal income tax.[10] *See* S. J. Res. 40, 36 Stat. 184 (1909). State legislators were concerned about the potential federalism ramifications of the Sixteenth Amendment.[11] To assuage these worries, supporters of the amendment provided repeated and vigorous assurances that the Sixteenth Amendment would not undermine or displace the long-standing federalism constraints on the federal government's tax power.[12] These assurances were important in persuading States to ratify the amendment. (*See* CA2 J.A. 32-33 (complaint) (discussing additional authorities).

Following ratification, Congress enacted the Revenue Act of 1913, which like all prior federal income taxes, included a deduction for "all national, State, county, school, and municipal taxes paid within the year." Ch. 16, § II(B), 38 Stat. 114, 167. An economist who

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[10] *See* U.S. Const. amend. XVI ("The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.").

[11] *See* John D. Buenker, *The Income Tax and the Progressive Era* 239, 250-55 (1985); John D. Buenker, *The Ratification of the Federal Income Tax Amendment*, 1 Cato J. 183, 204 (1981) (CA2 J.A. 210).

[12] *See, e.g.*, 45 Cong. Rec. 1696 (1910) (statement of Sen. William Borah, quoting *United States v. Railway Co.*, 84 U.S. 322 (1872)) ("The taxing power of the United States is subject to an implied restraint arising from the existence of the powers in the State which are obviously intended to be beyond the control of the General Government.") (CA2 J.A. 221); *Root for Adoption of Tax Amendment*, N.Y. Times, Mar. 1, 1910, at 4 (reproducing letter to New York state legislature from Sen. Elihu Root) ("the taxing power of the Federal Government does not . . . extend to the means or agencies through or by the employment of which the States perform their essential functions" including taxation (quotation marks omitted)) (CA2 J.A. 222).

advised the House Banking and Currency Committee on the 1913 Act explained that the purpose of the SALT deduction was to ensure the federal government did not interfere with the States' existing taxing powers. Because several States already had income tax regimes, "it was believed . . . the field ought to be shared with the states."[13] And this was accomplished by providing for "the general deduction of state and municipal taxes in computing income."[14]

4. In more than fifty different tax laws enacted over the following one hundred years, Congress maintained the core features of the SALT deduction, notwithstanding certain marginal modifications such as the creation of the standard deduction and the alternative minimum tax. (CA2 J.A. 259-548; *see also* J.A. 35-37 n.45 (complaint) (describing relevant tax statutes).) In the 1980s, for example, the Senate passed a sense-of-the-Senate amendment in response to proposals to curtail or eliminate the deduction, declaring that "the deduction for State and local taxes is a cornerstone of Federalism," and that curtailing the deduction "would constitute an unjustified Federal intrusion into the fiscal affairs of States and prejudice the right of State and local governments to select appropriate revenue measures." 132 Cong. Rec. 13,606-07, 13,610 (1986).

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[13] H. Parker Willis, *The Tariff of 1913: III*, 22 J. Pol. Econ. 218, 227 (1914) (CA2 J.A. 231).

[14] *Id.*

B. The SALT Deduction Cap and Its Harmful Effects on Petitioners

1. In 2017, Congress severely curtailed the SALT deduction for the first time in the history of federal income taxation. Prior to the 2017 Tax Act, federal law permitted individuals who itemized their individual income tax deductions to deduct, with only incidental limitations, all of their (a) state and local real estate taxes, (b) state and local personal property taxes, and (c) either state and local income taxes, or state and local sales taxes. *See* 26 U.S.C. § 164(a)-(b) (2016). Under the 2017 Tax Act, individuals may deduct only up to $10,000 total in (a) state and local real estate and personal property taxes, and (b) either state and local income taxes, or state and local sales taxes. Married taxpayers filing separately may deduct up to $5,000 each.[15] *See* 26 U.S.C. § 164(a)-(b).

The SALT deduction cap contains several features that are unprecedented in the history of federal income tax legislation. Specifically, the cap limits the deductibility of property and income taxes, both of which are significant sources of revenue for the States and have historically been deductible in full or nearly in full under the federal income tax regime. And the cap is the first direct dollar limitation on the deduction for state and local income and property taxes.

2. The $10,000 cap is exceptionally (and intentionally) low relative to the amount of state and local taxes paid by residents of certain States, including Petitioners. For example, in 2015, the average SALT deduction

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[15] The SALT deduction cap became effective in tax year 2018 and is presently set to expire after tax year 2025. *See* 26 U.S.C. § 164(b)(6).

claimed by the 3.3 million New York taxpayers who itemized their deductions on their federal tax returns was $21,943—more than double the $10,000 cap. (CA2 J.A. 66-67.) Accordingly, taxpayers in Petitioner States will pay billions of dollars in additional federal taxes, relative to what they would have paid had Congress enacted the 2017 Tax Act without the cap. (*See* CA2 J.A. 78, 89-90, 93, 145-148.) A cap on the deductibility of property taxes will separately raise the cost of home ownership in States with comparably higher property taxes, resulting in a decline in home equity values and home sales, which will in turn cost States millions of dollars in real estate transfer tax revenues. (CA2 J.A. 65, 68-69, 149-151.)

Unsurprisingly, the SALT deduction cap is a politically salient issue for taxpayers. By increasing taxpayers' federal tax burden and making state taxes more expensive, the new cap will inevitably make it more difficult for Petitioners to raise their own tax revenues, either by maintaining current tax rates or raising rates in the future. This increased burden will, in turn, impede Petitioners' ability to make public investments and maintain current levels of public services to support education, health care services, public security, and public infrastructure, among other things. (CA2 J.A. 41.)

3. Statements made by federal legislators and executive officials make clear that the SALT deduction cap was designed, at least in part, to compel Petitioners and other similarly situated States to lower their tax rates and to eliminate public programs funded with tax revenues. For example, in September 2017, then–Speaker of the House Paul Ryan argued that Congress should curtail the SALT deduction because "[p]eople in

states that have balanced budgets, whose state governments have done their job and kept their books balanced and don't have big massive pension liabilities, they're effectively paying for states that don't." (CA2 J.A. 575 (quotation marks omitted).) Several weeks later, Speaker Ryan reiterated: "I would argue we're propping up profligate, big government states and we're having states that actually got their act together pay for states that didn't."[16] (CA2 J.A. 612 (quotation marks omitted).) Then–Treasury Secretary Steven Mnuchin likewise stated: "I do hope that [the SALT deduction cap] sends a message to the state governments that, perhaps, they should try to get their budgets in line. . . . And the question is: why do you need 13 or 14% state taxes?" (CA2 J.A. 621 (quotation marks omitted).) And then-President Donald J. Trump characterized the SALT deduction cap and an "incentive" for taxpayers "to say, hey, make sure that your politicians do a good job of running your state. Otherwise, you are not going to benefit" from the 2017 Tax Act. (CA2 J.A. 582-583.)

C. Procedural Background

1. In July 2018, Petitioners brought this lawsuit challenging the SALT deduction cap as contrary to Article I, Section 8, and the Tenth and Sixteenth Amendments of the United States Constitution. Specifically, Petitioners argued that the SALT deduction cap interfered with Petitioners' sovereign taxing authority

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[16] As a factual matter, these statements are incorrect because residents of Petitioner States pay more in federal taxes than their residents receive in federal spending. (CA2 J.A. 54-55.)

by unduly coercing Petitioners to change their sovereign tax policies and by denying Petitioners equal sovereignty.

Respondents moved to dismiss the complaint, arguing that Petitioners lacked standing, that the action was barred by the Anti-Injunction Act, and that Petitioners' claims presented nonjusticiable political questions. Respondents further argued that the complaint should be dismissed for failure to state a claim. Petitioners opposed the motion to dismiss and cross-moved for summary judgment.

The U.S. District Court for the Southern District of New York rejected Respondents' threshold jurisdictional challenges, concluding that Petitioners had demonstrated a sufficient injury-in-fact to establish standing, that the Anti-Injunction Act did not bar the suit, and that the political question doctrine was inapplicable here. Pet. App. 39a-53a. But the court dismissed Petitioners' claims on the merits, holding that Petitioners had failed to demonstrate that "a dollar cap on the SALT deduction is unlawful *per se*" or that the negative economic effects of the SALT deduction cap were so severe as to impermissibly coerce the Petitioners into changing their state policies. Pet. App. 60a-61a, 69a-70a; *see* Pet. App. 54a-70a.

2. The U.S. Court of Appeals for the Second Circuit affirmed. The court of appeals agreed that Petitioners had standing and that the Anti-Injunction Act does not bar review.[17] Pet. App. 8a-16a. On the merits, the court concluded that neither Article I nor the Sixteenth Amendment prohibits Congress from curtailing (or even

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[17] Respondents abandoned on appeal their argument that this case presents a nonjusticiable political question. Pet. App. 8a.

theoretically eliminating) the SALT deduction. Pet. App. 16a-22a. The court accepted as true Petitioners' allegations that, as a result of the SALT deduction cap, their residents will pay billions of dollars in additional federal taxes and experience a decline in home equity values, among other harms. Pet. App. 23a. However, the court concluded that such injuries are not "significant enough to be coercive" for purposes of the Tenth Amendment. Pet. App. 24a. And the court concluded that the SALT deduction cap "has no effect on state sovereignty." Pet. App. 25a.

REASONS FOR GRANTING THE PETITION

A. This Case Raises a Novel and Important Question About the Federalism Limitations Placed on Federal Taxing Authority.

Certiorari is warranted because the court of appeals "decided an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c). This case raises a novel and important question about the limitations placed on the federal taxing power by the principles of federalism governing this nation's constitutional system.

While Article I and the Sixteenth Amendment granted Congress broad taxing authority, "[t]he taxing power of a State is one of its attributes of sovereignty . . . [that] exists independently of the Constitution of the United States, and [is] underived from that instrument." *Union Pac. R. v. Peniston*, 85 U.S. 5, 25 (1873); *see also Department of Revenue of Ore. v. ACF Indus., Inc.*, 510 U.S. 332, 345 (1994) (noting that "the taxation authority of state government" is "central to state sovereignty"). States have the power to tax property and income within their territories as they see fit. The

States' power of taxation "is not abridged by the grant of a similar power to the [federal] government." *McCulloch v. Maryland*, 17 U.S. 316, 425 (1819). Accordingly, Congress has no authority—under either Article I or the Sixteenth Amendment—to interfere with the States' sovereign taxation decisions, whether directly or indirectly. Indeed, the Sixteenth Amendment was enacted with the understanding that structural federalism prohibits such intrusion. And the Tenth Amendment affirmatively protects state taxation policy from coercive interference by the federal government.

The court of appeals' construction of these important federalism principles improperly deprived them of any substantial protective force. The court mistakenly construed the relevant question here as whether the *federal government* has a constitutional obligation "to protect taxpayers from the true costs of paying their state and local taxes" (Pet. App. 18a). But federalism principles here protect *the States'* sovereign taxing authority. The right question is whether there are limits to Congress's exercise of its taxing powers when, as the courts below acknowledged here, an exercise of those powers interferes with the States' ability to decide whether and how to levy and collect their own taxes.

More precisely, this case raises the novel question of whether a deduction for all or substantially all state and local property and income taxes is a constitutional safeguard necessary to ensure that the imposition of the federal income tax does not infringe upon the States' sovereign taxation powers. The question is novel because Congress has maintained a SALT deduction for all or nearly all state and local property and income taxes from the imposition of the first federal income tax in 1861 until 2017. And this Court has never had an

opportunity to address this question because, until recently, Congress has never broken with the long consensus that proper respect for the States' sovereign taxing authority requires the preservation of the SALT deduction.

This Court should address the question presented now rather than wait for a potential circuit split to arise. As an initial matter, this case is an ideal and ripe vehicle to address the question. Petitioners are aware of only one other case raising constitutional challenges to the SALT deduction cap, brought as a putative class action on behalf of individual taxpayers seeking a refund of taxes. *See* Am. Compl., *Sims v. United States*, No. 21-cv-1120, ECF No. 24 (D.N.J. Sep't 22, 2021). By virtue of being a putative class action of individual taxpayers seeking refunds, *Sims* involves potential procedural complexities that are not present here. The plaintiffs in *Sims* also raise numerous claims that are not part of Petitioners' lawsuit including assertions that the SALT deduction cap violates Article IV's Privileges and Immunities, Full Faith and Credit, and Guarantee clauses, the Ninth Amendment, and the reciprocal immunity doctrine. And *Sims* remains in very early stages, with the federal government's motion to dismiss having been filed on December 17, 2021.

At the same time, expeditious review of the issue is of paramount importance to Petitioners and other similarly situated States. As the court of appeals acknowledged, Petitioners have identified a litany of substantial harms arising from the SALT deduction cap, including the loss of "hundreds of millions of dollars of revenue from property taxes and real estate transfer taxes" (Pet. App. 9a), increased federal tax burdens for taxpayers, and declines in home equity values (Pet. App. 23a-24a). So long as the SALT deduction cap

is in effect, taxpayers in Petitioner States will be harmed, and Petitioners will be pressured to address the injurious effects of the cap by, among other things, reducing state and local taxes and reducing critical public programs. These are the exact harms that States should be shielded from under the structural federalist protections inherent in our constitutional system.

B. The Decision Below Is Incorrect.

Certiorari is also warranted because the decision below is incorrect on the merits and undermines this Court's federalism and Tenth Amendment jurisprudence.

1. The court of appeals erroneously determined that the Constitution does not mandate a SALT deduction for all or nearly all state and local property and income taxes. *See* Pet. App. 17a-22a.

First, the court of appeals incorrectly concluded that the $10,000 cap does not "unconstitutionally undermine[] [Petitioners'] state sovereign authority over fiscal matters or [Petitioners'] ability to raise revenues." Pet. App. 18a. As this Court has long recognized, Congress's taxing power is cabined by "certain virtual limitations" and cannot be used "to impair the separate existence and independent self-government of the States." *Veazie Bank v. Fenno*, 75 U.S. 533, 541 (1869); *see also National Fed'n of Indep. Bus. v. Sebelius* (*NFIB*), 567 U.S. 519, 578-79 (2012) (op. of Roberts, C.J.) (recognizing structural limits on Congress's tax power). As Petitioners explained to the courts below, a deduction for all or nearly all state and local property and income taxes ensures that States can raise tax revenues in furtherance of sovereign state objectives without fear that the federal government will impose a tax on the

same sources and thereby prejudice the State's revenue collection. The broad scope of the deduction is critical to its constitutional effectiveness: a severe curtailment such as the $10,000 cap dramatically increases the effective cost of state and local taxes for taxpayers, putting States in an untenable position of levying taxes on revenues that are also being taxed by the federal government. The cap therefore directly threatens States' ability to make their own sovereign decisions about how to levy and collect taxes.

Second, the court of appeals misconstrued the historical evidence supporting Petitioners' constitutional arguments. As explained above, Congress has consistently provided a deduction for all or nearly all state and local property and income taxes since the first federal income tax was imposed in 1861 and until the 2017 Tax Act. The court of appeals nevertheless interpreted these 150 years of uninterrupted congressional practice as merely reflecting the belief of individual legislators that a SALT deduction "reflected good tax policy and equitably divided scarce resources" between the federal and state governments. Pet. App. 19a.

The history does not support the court of appeals' interpretation. Contemporaneous evidence from the ratification of the Sixteenth Amendment and subsequent legislation showed that Congress did not merely believe that the SALT deduction was good policy—instead, the consensus was that it was constitutionally required to prevent intrusion into the States' sovereign taxation decisions. See *supra* at 6-8. Such "contemporaneous legislative exposition of the Constitution . . . acquiesced in for a long term of years, fixes the construction to be given its provisions." *Printz v. United States*, 521 U.S. 898, 905 (1997) (quotation marks omitted).

Rather than grapple with the longevity and purposes of the core SALT deduction (that is, to protect States' ability to tax property and income), the court focused on changes made on the margins of the SALT deduction within the last thirty years. For example, the court noted that the 1986 tax legislation eliminated the deduction for state and local sales taxes. Pet. App. 20a-21a. However, sales taxes are a relatively recent revenue source for the States, unlike property and income taxes, which were important sources of state revenues since the colonial era. Likewise, the court pointed to the "Pease limitation," under which taxpayers with adjusted gross incomes exceeding certain thresholds have been required to reduce the overall amount claimed in itemized deductions.[18] Pet. App. 21a (citing Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11102, 104 Stat. 1388, 1388-406). The Pease limitation is "not a true limit on deductions, but rather an increased tax rate" which was "designed in such a way that it [was] unlikely to have an effect on the value of itemized deductions," including the SALT deduction.[19]

The court was wrong to interpret these two changes as indicative that "Congress did not view its authority to limit the SALT deduction as subject to any relevant constitutional constraints" (Pet. App. 21a). To the contrary, Congress's determination to keep an uncapped deduction for state and local property and income taxes

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[18] The 2017 Tax Act suspended the Pease Limitation between tax years 2018 through 2025. *See* Pub. L. No. 115-97, § 11046, 131 Stat. at 2088 (codified at 26 U.S.C. § 68(f)).

[19] Jane G. Gravelle & Sean Lowry, Cong. Rsch. Serv., *Restrictions on Itemized Deductions: Policy Options and Analysis* 4, 5 (2014), https://crsreports.congress.gov/product/pdf/R/R43079.

while making changes to other provisions of the Tax Code reinforces rather than diminishes Petitioners' argument that the core SALT deduction for all or nearly all state and local property and income taxes is constitutionally mandated.

Third, the court of appeals erred in relying on *South Carolina v. Baker*, 485 U.S. 505 (1988), a case in which this Court upheld Congress's decision to eliminate the federal tax exemption for interest earned on state-issued bearer bonds. Pet. App. 21a-22a. The tax law in *Baker* did not implicate any traditional State power. Rather, *Baker* involved the tax treatment of bearer bonds, which were issued by States, the federal government, and private corporations alike. This Court therefore correctly concluded in *Baker* that "States have no constitutional entitlement to issue bonds paying lower interest rates than other issuers" because of favorable tax treatment. 485 U.S. at 525. By contrast, the SALT deduction directly implicates the States' sovereign taxation power and therefore raises structural federalism concerns that were simply not present in *Baker*.

2. The court of appeals likewise erroneously rejected Petitioners' Tenth Amendment challenge to the SALT deduction cap.

This Court has repeatedly "recognized limits on Congress's power . . . to secure state compliance with federal objectives." *NFIB*, 567 U.S. at 576 (op. of Roberts, C.J.). Although Congress may "'encourage a State to regulate in a particular way,'" it may not put so much pressure on the States as to effectively undermine their sovereignty. *Id.* at 576-77 (quoting *New York v. United States*, 505 U.S. 144, 166 (1992)). Among other things, Congress cannot use "financial inducements to exert 'a

power akin to undue influence'" over the States. *Id.* at 577 (quoting *Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937)). While Congress may provide "incentives for States to act in accordance with federal policies," when "pressure turns into compulsion, the legislation runs contrary to our system of federalism." *Id.* at 577-78 (citation omitted) (quoting *Steward Mach.*, 301 U.S. at 590).

The court of appeals made several errors in concluding that the SALT deduction cap is a permissible exercise of Congress's taxing authority. *See* Pet. App. 22a-26a. First, the court erred in concluding that the financial harms caused by the cap are not "significant enough to be coercive" for purposes of the Tenth Amendment. *See* Pet. App. 24a. Petitioners alleged that the cap would result in, among other things, billions of dollars in increased tax burdens for their residents, decreases in billions of dollars for home equity values and in-state spending, tens of thousands of lost jobs, and decreases in hundreds of millions of dollars in property and real estate transfer tax revenues—allegations that the court credited.[20] Pet. App. 23a-24a. Although

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[20] The court also suggested that comparing the tax burden for individuals under the 2017 Tax Act as enacted and the 2017 Tax Act if it had not included the SALT deduction cap "tells us nothing about the actual financial effects of the SALT deduction cap." Pet. App. 24a. But comparing the 2017 Tax Act with and without the SALT deduction cap is the logical starting point to assess the economic consequences of the cap, because it isolates the economic effects of the cap without considering extraneous provisions of the Act or other provisions of the federal tax code. This Court used the same approach in *NFIB* when considering whether the burdens imposed on the States by a particular provision of a statute are

(*continues on next page*)

the court found that these harms were less severe than "the threatened deprivation of 10 percent of the States' budgets at issue in *NFIB*" (Pet. App. 24a), *NFIB* did not suggest that the threatened loss there was a constitutional minimum to establish coercion. And the court of appeals did not consider whether the cumulative effect of the harms caused by the cap could be deemed sufficiently coercive.

Second, the court erroneously disregarded copious evidence that Congress deliberately targeted Petitioners and other similarly situated States in enacting the SALT deduction cap. Pet. App. 25a-26a. The Constitution incorporates a "fundamental principle of equal sovereignty among the States." *Shelby County v. Holder*, 570 U.S. 529, 544 (2013) (quotation marks and emphasis omitted). Here, that principle was violated because the SALT deduction cap was enacted with the purpose of coercing Petitioners to alter their sovereign tax policies.

The court of appeals recognized that "it is obviously true that members of Congress were aware that the SALT deduction cap would adversely affect some States more than others." Pet. App. 26a. However, the court concluded that "[t]he outsized effect of the SALT deduction cap on the [Petitioners] arises only because the [Petitioners] previously benefitted most from the SALT deduction, not because the cap applies to some States but not others." Pet. App. 25a. This analysis disregards the fact that even a facially neutral statute may transgress federalism principles if Congress has engaged in

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unduly coercive. *See* 567 U.S. at 575-88 (op. of Roberts, C.J.) (evaluating the coercive effect of the Affordable Care Act's Medicaid expansion requirement without considering the offsetting financial subsidies in the Affordable Care Act to the States).

"disparate treatment of States." *Shelby County*, 570 U.S. at 544. And here, as statements from multiple federal legislators and executive officials made clear, a dominant purpose of the 2017 enactment was not just to disfavor particular States, but more specifically to pressure them into abandoning their own state taxing and spending programs—an impermissible federal objective. *See Lane County*, 74 U.S. at 77.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York
BARBARA D. UNDERWOOD*
Solicitor General
STEVEN C. WU
Deputy Solicitor General
ESTER MURDUKHAYEVA
Senior Assistant
Solicitor General
barbara.underwood@ag.ny.gov

January 2022

* *Counsel of Record*

(*Counsel listing continues on next page.*)

WILLIAM TONG
Attorney General
State of Connecticut
CLARE KINDALL
Solicitor General
55 Elm Street
Hartford, CT 06106

BRIAN E. FROSH
Attorney General
State of Maryland
STEVEN SULLIVAN
Solicitor General
200 St. Paul Place
Baltimore, MD 21202

ANDREW J. BRUCK
Acting Attorney General
State of New Jersey
JEREMY FEIGENBAUM
Solicitor General
25 Market Street
Trenton, NJ 08625

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

STATE OF NEW YORK, STATE OF CONNECTICUT, STATE OF MARYLAND, STATE OF NEW JERSEY,

Plaintiffs-Appellants,

v.

JANET YELLEN, in Her Official Capacity as Secretary of the United States Department of Treasury, UNITED STATES DEPARTMENT OF TREASURY, CHARLES P. RETTIG, in His Official Capacity as Commissioner of the United States Internal Revenue Service, UNITED STATES INTERNAL REVENUE SERVICE, and UNITED STATES OF AMERICA,

Defendants-Appellees.*

Docket No. 19-3962-cv

August Term, 2020

Argued: December 3, 2020

Decided: October 5, 2021

Before: SACK, CHIN, and LOHIER, Circuit Judges.

LOHIER, Circuit Judge:

The federal tax code's state and local tax ("SALT") deduction has long permitted taxpayers to deduct from

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

their taxable income all the money they paid in state and local income and property taxes. In 2017, however, Congress passed the Tax Cuts and Jobs Act (the "2017 Tax Act" or the "Act"), Pub. L. No. 115-97, 131 Stat. 2054, which imposed a $10,000 cap on the SALT deduction. The immediate impact of the new cap was felt most acutely in States where the state and local tax liability of residents often exceeds the $10,000 maximum. Four of the States most affected—New York, Connecticut, New Jersey, and Maryland, the plaintiffs here—sued the federal Government,[1] asserting that Congress's new cap on the SALT deduction either is unconstitutional on its face or unconstitutionally coerces them to abandon their preferred fiscal policies. The Government responded that the United States District Court for the Southern District of New York (Oetken, *J.*) lacked subject matter jurisdiction to consider the States' claims, and also defended the cap on the merits.

The District Court rejected the Government's jurisdictional defense but dismissed the complaint for failure to state a claim. On appeal, the Plaintiff States argue that the District Court erred on the merits, while the Government continues to maintain that the District Court lacked jurisdiction and otherwise defends the District Court's judgment. Finding no error in the District Court's conclusions, we AFFIRM.

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

BACKGROUND

I.

We start with a quick bit of history. The United States has not always levied a federal income tax. In its first decades, the federal Government remained small enough that it could fund itself almost entirely through customs duties and tariffs. *See* Aaron T. Knapp, *The New Jersey Plan and the Structure of the American Union*, 15 Geo. J.L. & Pub. Pol'y 615, 643–44 (2017). The cost of waging the Civil War made that approach impossible. Congress, prodded by the need to tap new sources of revenue to pay for the war, enacted the first federal income tax in 1861. *See* Act of Aug. 5, 1861, ch. 45, § 49, 12 Stat. 292, 309. Even then, as the Government scrounged for funds first to pay for and then to recover from the war, Congress created a nearly unlimited SALT deduction. "[I]n estimating [federally taxable] income," Congress determined, "all national, state, or local taxes assessed upon the property, from which the income is derived, shall be first deducted." *Id.*; *see* Act of July 1, 1862, ch. 119, § 91, 12 Stat. 432, 473–74; Act of June 30, 1864, ch. 173, § 117, 13 Stat. 223, 281; Act of Mar. 3, 1865, ch. 78, 13 Stat. 469, 479; Act of Mar. 2, 1867, ch. 169, § 13, 14 Stat. 471, 478; Act of July 14, 1870, ch. 255, § 9, 16 Stat. 256, 258. The tax expired in 1872, but Congress revived it in 1894, along with the SALT deduction. *See* Act of July 14, 1870, § 10, 16 Stat. at 158; Act of Aug. 27, 1894, ch. 349, § 28, 28 Stat. 509, 553. A year later, in 1895, the Supreme Court struck down the 1894 tax, holding that it violated the constitutional prohibition against direct taxes not apportioned among the States in proportion to their relative populations. *See Pollock v. Farmers' Loan & Tr. Co.*, 158 U.S. 601, 637 (1895); *see also* U.S. Const. art. I, § 9, cl. 4.

The ratification of the Sixteenth Amendment in 1913 empowered Congress to "lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States." U.S. Const. amend. XVI. Immediately after the Amendment was ratified, Congress reinstated the federal income tax and reintroduced the SALT deduction for "all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits." Act of Oct. 3, 1913, ch. 16, § II(B), 38 Stat. 114, 167.

And "from then to now, some form of [SALT] deduction . . . has been a mainstay of the federal Tax Code." *New York v. Mnuchin*, 408 F. Supp. 3d 399, 404 (S.D.N.Y. 2019). But amendments to the Tax Code have over time also made the deduction more difficult or less attractive for taxpayers to claim. In 1944, for example, Congress introduced the standard deduction, which is a predetermined sum that taxpayers can choose to deduct instead of deducting their identifiable itemized expenses. *See* Individual Income Tax Act of 1944, Pub. L. No. 78-315, § 9, 58 Stat. 231, 236–38. As the District Court noted, the emergence of the standard deduction "meant that, in practice, the SALT deduction remained relevant for only those taxpayers who chose to itemize their deductions." *Mnuchin*, 408 F. Supp. 3d at 404. Twenty years later, in 1964, Congress altered the SALT deduction directly: it provided that only certain enumerated types of state and local taxes were deductible and disallowed deductions for any other state and local taxes. *See* Act of Feb. 26, 1964, Pub. L. No. 88-272, § 207, 78 Stat. 19, 40–42; *see also* Gladriel Shobe, *Disaggregating the State and Local Tax Deduction*, 35 Va. Tax Rev. 327, 338 (2016). In effect, the 1964 amendment inverted the traditional legislative approach to the SALT deduction under which "all state and local

taxes were deductible *unless* specifically disallowed." *See* Shobe, *supra*, at 338 (emphasis added).

Since 1964, legislation has only further limited the availability of the deduction. In 1986, in the wake of a debate about repealing the deduction, Congress enacted a comprehensive alternative minimum tax ("AMT") scheme, providing taxpayers with an additional method to calculate their tax liability without resorting to the deduction. *See* Tax Reform Act of 1986, Pub. L. No. 99-514, § 134, 100 Stat. 2085, 2320–45. The AMT requires high-income taxpayers to calculate their tax liability using both traditional and alternative methodologies, and to pay the greater amount. If the alternative methodology results in a greater tax liability, the taxpayer is prevented from claiming the SALT deduction. *See id.* at 2321. At the same time, Congress removed *sales* taxes from the list of deductible state and local taxes. *See id.* § 134, 100 Stat. at 2116. Not long thereafter, in 1990, Congress enacted the so-called "Pease limitation," under which taxpayers with adjusted gross incomes exceeding certain specified thresholds were required to reduce the overall amount claimed in itemized deductions, including SALT deductions, by up to eighty percent. *See* Omnibus Budget Reconciliation Act, Pub. L. No. 101-508, § 11,103, 104 Stat. 1388, 1388-406 (1990) (codified at 26 U.S.C. § 68(a)). Finally, in 2004 Congress reinstated the deduction for state and local sales taxes but forced taxpayers to choose between deducting state and local sales taxes and deducting state and local income taxes, thereby reducing the number of taxpayers claiming the latter. *See* American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 501, 118 Stat. 1418, 1520–21.

The SALT deduction nevertheless remained durable until 2017. Eligible taxpayers could, subject to

the standard deduction, the AMT, and the Pease limitation, always elect to deduct *all* state and local real and personal property taxes as well as either all state and local income taxes or all state and local sales taxes. *See* 26 U.S.C. § 164(a)(1)–(3), (b)(5) (effective Dec. 18, 2015 to Dec. 21, 2017).

In 2017, however, Congress took a sharp turn by passing the Act. As relevant here and as noted above, the Act prohibits taxpayers from claiming a SALT deduction of more than $10,000—a cap that exists regardless of a taxpayer's state and local tax burden. *See* 2017 Tax Act § 11,042, 131 Stat. at 2085–86 (codified at 26 U.S.C. § 164(b)(6)).[2] Congressional and executive branch proponents of the new cap on the SALT deduction openly proclaimed that it would adversely impact States with higher overall state and local taxes significantly more than other States. According to then-Speaker of the House Paul Ryan, for example, the SALT deduction had created a disparity in which "[p]eople in states that have balanced budgets, whose state governments have done their job and kept their books balanced and don't have massive pension liabilities, they're effectively paying for states that don't." Joint App'x 575; *see also id.* at 612 ("[W]e're propping up profligate, big government states and we're having states that actually got their act together pay for states that didn't."). Another member of Congress asserted that the Act would not be "as good" for "New Jersey, New York, and other states that have horrible governments." *Id.* at 616. Then-Treasury Secretary

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

Mnuchin "hope[d]" that the SALT deduction cap would "send[ ] a message to the state governments that, perhaps, they should try to get their budgets in line" and implied that "13 or 14% taxes" are unacceptably high. *Id.* at 621. And President Trump stated that the new law "creat[es] an incentive" for state politicians to "do a good job of running [their] state." *Id.* at 582–83.

II.

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

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

Before the District Court, the Government moved to dismiss these claims on the ground that the Plaintiff States lacked standing, that their claims presented a non-justiciable political question, and that the claims

were in any event barred by the Anti-Injunction Act ("AIA"), 26 U.S.C. § 7421(a). As noted, although the District Court rejected the Government's jurisdictional arguments, it held that the Constitution does not require a SALT deduction as part of every federal income tax scheme and that the complaint failed to assert a plausible claim of coercion.

This appeal followed the District Court's judgment dismissing the complaint.

DISCUSSION

I.

We review the District Court's entire decision *de novo*. Before considering the merits of the Plaintiff States' claims, we must first address the Government's jurisdictional arguments that the States lack standing to sue and that this action is barred by the AIA.[3]

A.

We agree with the District Court that the Plaintiff States have standing to proceed with their constitutional claims. To satisfy the "'irreducible constitutional minimum' of standing," a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 136 S. Ct. 1540, 1547 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Each element of standing "must be supported . . . with the manner and degree of evidence required at the successive stages of litigation,"

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

and at the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice." *Lujan*, 504 U.S. at 561. Where, as here, the defendants' challenge to the plaintiffs' standing is "facial," meaning that the defendants do not offer any evidence of their own, our task is to determine whether, "accepting as true all material factual allegations of the complaint, and drawing all reasonable inferences in favor of the plaintiff[s]," the complaint "alleges facts that affirmatively and plausibly suggest that the plaintiff[s] ha[ve] standing to sue." *Carter v. HealthPort Techs., LLC*, 822 F.3d 47, 56–57 (2d Cir. 2016) (quotation marks omitted). The Government does not dispute that "any injuries the States suffer as a result of the SALT cap are traceable to the Government's enforcement of the cap and so would be remedied by an injunction that bars enforcement." *Mnuchin*, 408 F. Supp. 3d at 408. The question of standing therefore turns solely on whether the Plaintiff States have sufficiently alleged an injury in fact.

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

market value of all coal mined in the state. *See id.* at 442, 445. The Supreme Court held that Wyoming had standing to challenge the Oklahoma law because it had demonstrated a "direct injury in the form of a loss of specific tax revenues." *Id.* at 448.

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

Setting *Wyoming* aside, the Government casts about to analogize this case to a smattering of cases in which our sister circuits held that a State or foreign government lacked standing. But the cases to which the Government points us all involve allegations of generalized economic harm only, not, as here and in *Wyoming*, allegations detailing specific reductions in tax revenue. *See Arias v. DynCorp*, 752 F.3d 1011, 1015 (D.C. Cir. 2014) (alleging that the defendant's conduct generally "cost them tax revenue," as estimated by new budget deficits); *Iowa ex rel. Miller v. Block*, 771 F.2d 347, 353 (8th Cir. 1985) (alleging that if disaster-relief programs were not implemented, "agriculture produc-

tion will suffer, which will dislocate agriculturally-based industries, forcing unemployment up and state tax revenues down"); *Pennsylvania ex rel. Shapp v. Kleppe*, 533 F.2d 668, 670–72 (D.C. Cir. 1976) (alleging that the Small Business Administration's failure to introduce a more effective and longer-lasting disaster-relief program caused "injury to [the state's] economy" and "reduction of state tax revenues").

And in both *Wyoming v. United States Department of Interior*, 674 F.3d 1220 (10th Cir. 2012), and *Stewart v. Kempthorne*, 554 F.3d 1245 (10th Cir. 2009), on which the Government also relies, the state plaintiffs failed to plausibly allege that they had lost or would lose specific tax revenues. *See Wyoming v. U.S. Dep't of Interior*, 674 F.3d at 1234; *Stewart*, 554 F.3d at 1254. Neither of these cases, however, involved the combination of "[b]asic economic logic," *Am. Inst. of Certified Pub. Accts. v. IRS*, 804 F.3d 1193, 1198 (D.C. Cir. 2015), and declarations from tax and budgetary experts that exists in the case before us, *see McCardell v. U.S. Dep't of Hous. & Urb. Dev.*, 794 F.3d 510, 520 (5th Cir. 2015). Here, for example, New York provided a specific estimate that the SALT deduction cap will cause New York's real estate transfer tax revenue to decrease by $15.3 million in 2019 and $69.2 million in 2020. Joint App'x 69. Maryland specifically estimated that the 2017 Tax Act would cause Maryland's real estate transfer tax revenue to decrease by $52.3 million in two years. *Id.* at 95. And New Jersey supplied expert declarations estimating that the 2017 Tax Act would cause New Jersey's real estate transfer tax revenue to decrease by a total of $105.1 million in 2019 and 2020. *Id.* at 150. Here, in other words, the Plaintiff States, which claim that the new tax burden will significantly decrease the tax revenue from residents, are not engaged in "pure

speculation and fantasy," *Lujan*, 504 U.S. at 567. Far from "guesswork as to how independent decision-makers"—their own residents—"will exercise their judgment," *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 413, 133 S.Ct. 1138, 185 L.Ed.2d 264 (2013), the chain of economic events that the Plaintiff States have proffered in this case strikes us as realistic, and the challenged action's effect on their residents' decisions seems to us entirely "predictable," *Dep't of Commerce v. New York*, – U.S. –, 139 S. Ct. 2551, 2566 (2019).

For these reasons, we conclude that the Plaintiff States have standing to sue the Government and challenge the SALT deduction cap. Their allegations that the cap will decrease the frequency and price at which taxable real estate transactions occur by measurably increasing the cost of those transactions reflect specific lost tax revenues and suffice to support standing.

B.

We are similarly unpersuaded by the Government's jurisdictional argument under the AIA. As relevant here, the AIA provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). "The manifest purpose of [the AIA] is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund." *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962); *see also United States v. First Nat'l City Bank*, 568 F.2d 853, 856 n.10 (2d Cir. 1977).

The Government argues that the AIA bars this lawsuit as a "suit for the purpose of restraining the

assessment or collection of any tax." Appellee's Br. 22–28. But its argument ignores that the AIA was never intended to leave a party without *any* forum in which to assert its tax claims.

Consider *South Carolina v. Regan*, 465 U.S. 367, 373 (1984), in which the Supreme Court held that the AIA does not apply to tax claims that the plaintiff could not assert elsewhere. *See Larson v. United States*, 888 F.3d 578, 587 n.11 (2d Cir. 2018). There, South Carolina sought an injunction against the federal Tax Equity and Fiscal Responsibility Act, which taxed the interest on certain state-issued, unregistered bearer bonds, while interest on state-issued registered bonds remained non-taxable. *See Regan*, 465 U.S. at 371. South Carolina challenged the tax, asserting that it "destroy[ed South Carolina's] freedom to issue obligations in the form that it chooses." *Id.* at 371–72. The Government responded, as it does here, that the AIA barred South Carolina's claim. After reviewing the history of the AIA and its amendments, however, the Supreme Court held that the AIA does not bar "actions brought by aggrieved parties for whom [Congress] has not provided an alternative remedy." *Id.* at 378. South Carolina's challenge, the Court explained, could proceed in federal court because "Congress ha[d] not provided the plaintiff with an alternative legal way to challenge the validity of a tax." *Id.* at 373.

With respect to the applicability of the AIA, the claims of the Plaintiff States and those of South Carolina in *Regan* are materially the same. To begin, the Plaintiff States cannot assert their claims in a forum other than federal court and cannot themselves bring a refund suit here. Moreover, as *Regan* reminds us, the AIA applies "only when Congress has provided an alternative avenue for an aggrieved party to litigate its

claims *on its own behalf*." *Id.* at 381 (emphasis added). Aggrieved parties are not obliged to find taxpayers willing to litigate their claims and trust that those taxpayers will litigate them effectively. *Id.* at 380. We do not "lightly attribute to Congress an intent to require plaintiff[s] to find a third party to contest [their] claims." *Id.* at 381. Because the Plaintiff States must be permitted to pursue their claims on their own behalf, it seems to us irrelevant that a third party may have an incentive to challenge the SALT deduction cap in a refund suit even if the Plaintiff States cannot. *Id.* at 380–81.

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

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

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

In *Yakama Indian Nation*, a Native American tribe, a tobacco manufacturer organized under tribal laws, and the individual owner of the manufacturer (himself a tribal member) jointly sued for injunctive and declaratory relief barring the imposition of a federal tobacco excise tax on the manufacturer on the ground that the tax violated the General Allotment Act, 25 U.S.C. § 331 *et seq.*, as well as the Treaty with the Yakama, 12 Stat. 951 (1855). *See Yakama Indian Nation*, 843 F.3d at 811. The Ninth Circuit concluded that the suit was barred by the AIA. The court explained that unlike South Carolina's interest in *Regan*, "the Yakama Nation's

asserted injury flows from the taxation of its members, and thus is wholly derivative" of the injury suffered by the corporate and individual tribal members and taxpayers who litigated the case jointly with the tribe. *Id.* at 815. The manufacturer and its owner, in other words, "share[d] the Yakama Nation's interest in preventing taxation" and "appear[ed] to have every incentive to raise [the Yakama Nation's] claims in a refund suit." *Id.* Indeed, the Ninth Circuit asserted, the Yakama Nation's interest in avoiding the taxation of its members was "inextricably intertwined" with the interests of the two other plaintiffs "in avoiding their own taxation." *Id.* at 816.

The case before us presents an altogether different situation. We cannot fairly describe the injuries claimed by the Plaintiff States as "wholly derivative" of injuries to the taxpayers in those States flowing from the 2017 Act. We have already noted, for example, the absence of taxpayers in this litigation, in contrast to the important role of the manufacturer and the individual tribal member in the proceedings in *Yakama Nation* to undo the tax that was most directly imposed on them. Moreover, while each Plaintiff State might soften the burden on taxpayers by lowering its own state taxes, doing so would neither restore the lost state tax revenue nor free the States from what they allege is federal oversight over their state fiscal policies.

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

II.

Turning to the merits, the Plaintiff States argue that the SALT deduction is required by the text of Article I, Section 8 and the Sixteenth Amendment of

the Constitution. The SALT deduction cap, they say, effectively eliminates a constitutionally mandated deduction for taxpayers. The Plaintiff States also argue that the SALT deduction coerces them to abandon their preferred fiscal policies, in violation of the Tenth Amendment. After "paus[ing] to consider the implications" of the arguments on both sides, as well as the history of the deduction and the precedent that binds us, we conclude that the SALT deduction cap is constitutional. *Nat'l Fed'n of Indep. Bus. v. Sebelius ("NFIB")*, 567 U.S. 519, 550 (2012) (opinion of Roberts, *C.J.*) (quotation marks omitted).

A.

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

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

[4] *See* U.S. Const. art. I, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . . but all Duties, Imposts and Excises shall be uniform throughout the United States"); U.S. Const. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.");

Constitution provides the beginning rather than the final answer to every inquiry into questions of federalism." *Garcia v. San Antonio Met. Transit Auth.*, 469 U.S. 528, 547 (1985). "In order to be faithful to the underlying federal premises of the Constitution, courts must look for the postulates which limit and control." *Id.* (quotation marks omitted).

The Plaintiff States argue that principles of federalism protect each State's "sovereign authority to raise revenue and determine their own fiscal priorities" and bar the federal Government from crowding States "out of traditional revenue sources." Appellants' Br. 31. But they have not demonstrated how the 2017 cap on the deduction unconstitutionally undermines their state sovereign authority over fiscal matters or their ability to raise revenue. The Plaintiff States fail to plausibly allege that their taxpayers' total federal tax burden is now so high that they cannot fund themselves. And while they argue that the SALT deduction lowers "the effective cost of state and local taxes," Appellants' Br. 37–38, they point us to nothing that compels the federal Government to protect taxpayers from the true costs of paying their state and local taxes.

As the Plaintiff States urge and the District Court explored, we may also seek an answer in, among other things, "historical understanding and practice" relating to this issue. *Printz v. United States*, 521 U.S. 898, 905 (1997). How the SALT deduction has historically been perceived might shed light on the structural limitations on Congress's power "that ultimately arise from the

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U.S. Const. amend. XVI ("The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.").

Constitution itself," *Mnuchin*, 408 F. Supp. 3d at 416 (citing *Printz*, 521 U.S. at 918, 922). In fact, the history of the deduction helps the Plaintiff States virtually not at all.

It is true that there have long been individual legislators who believed that a SALT deduction (or some variation of it) reflected good tax policy and equitably divided scarce resources between the federal Government and the States. *See Cong. Globe*, 37th Cong., 2d Sess. 1194 (1862) (reproduced at Joint App'x 195) (Congressman Morrill of Vermont describing the "vital importance to [the States] that the [federal] Government should not absorb all their taxable resources," without referring to the SALT deduction); *see also* H. Parker Willis, *The Tariff of 1913: III*, 22 J. Pol. Econ. 218, 227 (1914) (reproduced at Joint App'x 231) (recounting that the legislators who passed the 1913 federal income tax believed "the field ought to be shared with the states" and that "[t]he best way to do this" was through a SALT deduction, but that legislators originally planned to provide the deduction only "in those states that already had" an income tax); H.R. Rep. No. 88-749 at 48 (1963) (reproduced at Joint App'x 233) (explaining that the SALT deduction is "an important means of accommodation where both the State and local governments on one hand and the Federal Government on the other hand tap th[e] same revenue source"). When a 1986 tax bill proposed eliminating the deduction for state and local sales taxes, for example, some members of the Senate launched a full-scale defense of the deduction. 132 Cong. Rec. 13,590 (1986). Senator Durenberger of Minnesota explained that "[s]ince the creation of the Federal income tax" the SALT deduction "has been accepted as a necessary feature of federalism" because "[i]t preserves a portion of the tax base for

State and local governments to fund the services which we count on them to provide," 132 Cong. Rec. 13,608. Those words echoed earlier predictions of Senator Moynihan of New York, who warned that eliminating the deduction would "change the constitutional balance in some fundamental way," as "more and more decisions will be made in Washington." *Income Tax Deductions of State and Local Governments: Hearing on Tax Reform Proposals Before the S. Comm. on Finance*, 99th Cong., at 70 (1985) (reproduced at Joint App'x 252). The Senate then passed a resolution proclaiming that the SALT deduction was "a cornerstone of Federalism" and that eliminating it would "constitute an unjustified Federal intrusion into the fiscal affairs of States" and "prejudice the right of State and local governments to select appropriate revenue measures." 132 Cong. Rec. 16,070.

But the voices of those individual members of Congress have over time been drowned out by the overall statutory history of the deduction, which reflects that Congress was principally concerned with reserving taxable resources for the States by various means. At best, Congress viewed the SALT deduction as only one means to achieve this result. Recall that in the same year that the Senate passed its resolution, Congress proceeded to eliminate the deduction for state and local sales taxes. *See* Tax Reform Act of 1986, Pub. L. No. 99-514, § 134, 100 Stat. 2085, 2116. The Plaintiff States downplay this legislative development by claiming that sales taxes are not nearly as important as income and property taxes. Their argument is hard to accept. The earlier Senate resolution on which the Plaintiff States rely itself ascribed at least equal importance to each of these sources of state revenue and expressly recognized that sales taxes constituted "the largest source of reve-

nue for all States combined." 132 Cong. Rec. at 16,070. And as we have seen, the Tax Reform Act of 1986 diminished the role of the SALT deduction in the federal tax scheme. *See* Pub. L. No. 99-514, § 701, 100 Stat. at 2320–45. Congress curtailed the deduction again in 1990 when it introduced the Pease limitation, which reduced the value, if not the applicability, of the SALT deduction for high-income earners. *See* Omnibus Budget Reconciliation Act, Pub. L. No. 101-508, § 11,103, 104 Stat. at 1388–406. Prior to 2017, it appears, Congress did not view its authority to limit the SALT deduction as subject to any relevant constitutional constraints. This supports our conclusion that the Constitution itself does not limit Congress's authority to impose a cap.

We cannot help but note that the Plaintiff States' arguments mimic those that the Supreme Court rejected in *South Carolina v. Baker*, 485 U.S. 505, 515–27 (1988). In *Baker*, the Court finally addressed the merits of the claims that had been at issue in *Regan* and held that Congress had the power to tax interest earned on state-issued bonds even though it had not previously done so. If anything, South Carolina's claims in *Baker* were stronger than those of the Plaintiff States. While Congress has amended the SALT deduction over the years, the tax at issue in *Baker*—which would have removed the exemption for interest earned on state-issued bonds—really *was* novel. Congress had not tinkered with the exemption until it imposed the tax. *See id.* at 523. And in contrast to the SALT deduction, the possibility that Congress might tax state-issued bonds was debated in the run-up to ratification of the Sixteenth Amendment. *See Hughes Is Against Income Amendment*, N.Y. Times, Jan. 6, 1910, at 2. The Supreme Court nonetheless determined that "the

owners of state bonds have no constitutional entitlement not to pay taxes on income they earn from state bonds, and States have no constitutional entitlement to issue bonds paying lower interest rates than other issuers." *Baker*, 485 U.S. at 525.

Consistent with *Baker*, and for the other reasons set forth above, we reject the Plaintiff States' contention that the Constitution *mandates* the SALT deduction.

B.

The Plaintiff States alternatively assert that the SALT deduction cap coerces them to abandon their preferred fiscal policies in favor of lower taxes and reduced spending, in violation of the Tenth Amendment. We agree with the District Court that the plaintiffs fail to state a Tenth Amendment claim. We are not persuaded that the cap unconstitutionally infringes on state sovereignty.

Congress may use its taxing and spending authority to "encourage a State to regulate in a particular way," and may "hold out incentives to the States as a method of influencing [their] policy choices." *New York v. United States*, 505 U.S. 144, 166 (1992). But there are limits. That "pressure" may not amount to "compulsion" because "[t]he Constitution simply does not give Congress the authority to require the States to regulate," directly or indirectly. *NFIB*, 567 U.S. at 578 (opinion of Roberts, *C.J.*) (quotation marks omitted). We therefore consider whether the Plaintiff States "ha[ve] a legitimate choice" not to adopt the policy the federal Government seeks to encourage, *id.*, or whether the financial inducement in reality "is a gun to the head," *id.* at 581.

The Supreme Court has only once deemed a condition unconstitutionally coercive in violation of the Tenth Amendment. In *NFIB*, Congress "threaten[ed] to withhold all of a State's Medicaid grants, unless the State accept[ed] . . . new[,] expanded funding and comply[d] with the conditions that come with it." *Id.* at 575. Two factors especially drove the result in *NFIB*. First, Congress had required that the States comply with the conditions to receive not only new Medicaid funding but also Medicaid funding (upon which the States had come to rely) that would have been available even under the preexisting regulatory scheme. *See id.* at 580 ("When, for example, such conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes."); *id.* at 582–84. Second, Congress had threatened to withhold funds constituting over ten percent of state budgets. *Id.* at 581–82. *NFIB* was thus unlike *South Dakota v. Dole*, 483 U.S. 203 (1987), in which the Supreme Court rejected a challenge to the constitutionality of a spending condition that threatened to withhold funding worth "less than half of one percent" of the state's budget. *NFIB*, 567 U.S. at 581.

The Plaintiff States claim that their citizens face a comparably substantial harm: their federal tax burdens will rise, the value of their homes will fall, and their jobs will disappear. Specifically, the Plaintiff States allege that their taxpayers "will pay hundreds of millions of dollars in additional federal taxes, relative to what they would have paid had Congress enacted the 2017 Tax Act without the cap." Appellants' Br. 23. We accept these allegations as true, and we assume without deciding that a claim of coercion under the Tenth Amendment can arise from injuries to a State's citizens

rather than to the State itself. Yet even then, we conclude that the Plaintiff States have failed to plausibly allege that their injuries are significant enough to be coercive. As the district court correctly noted, the Plaintiff States relied on an improper comparison between their taxpayers' federal tax burden under the 2017 Tax Act as enacted, and their taxpayers' federal tax burden under a hypothetical version of the 2017 Tax Act without the SALT deduction cap. Such a hypothetical tells us nothing about the actual financial effects of the SALT deduction cap on the Plaintiff States' taxpayers. And even if such a comparison were instructive, the cost to individual taxpayers pales in comparison to the threatened deprivation of 10 percent of the States' budgets at issue in *NFIB*.

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

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

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

The Plaintiff States try again to improve their claims by asserting that the SALT deduction cap violates the independent constitutional principle of equal sovereignty among the States. Congress knew, they say, that the cap's injuries would be unevenly distributed. In pursuing this tack, the Plaintiff States rely on *Shelby County v. Holder*, 570 U.S. 529 (2013), to claim that facially neutral laws like the SALT deduction cap can violate the principle of equal state sovereignty if they affect States differently. In *Shelby County*, the Supreme Court reviewed the Voting Rights Act's coverage formula, which determined which States are required to obtain the federal Government's approval before changing their voting procedures. *See id.* at 537–40. The formula was held unconstitutional not because it yielded results that differed across States, but because it did so based on facts that, in the majority's view, were outdated and no longer true. *See id.* at 550–51; *compare South Carolina v. Katzenbach*, 383 U.S. 301 (1966). Here, as explained, the SALT deduction cap has no effect on state sovereignty. The outsized effect of the SALT deduction cap on the Plaintiff States arises only because the Plaintiff States previously benefitted most from the SALT deduction, not because the cap applies to some States but not others. We agree with the District Court that "the bare

fact that an otherwise valid federal law necessarily affects the decisional landscape within which states must choose how to exercise their own sovereign authority hardly renders the law an unconstitutional infringement of state power." *Mnuchin*, 408 F. Supp. 3d at 416–17.

Finally, the Plaintiff States complain that Congress unfairly targeted them. Given our discussion of the statutory history, it is obviously true that members of Congress were aware that the SALT deduction cap would adversely affect some States more than others. But the SALT deduction cap is not unlike the countless federal laws whose benefits and burdens are unevenly distributed across the country and among the several States. As noted above, "Congress may use its spending power to create incentives for States to act in accordance with federal policies," as long as "pressure [does not] turn[ ] into compulsion." *NFIB*, 567 U.S. at 577–78 (quotation marks omitted). At most, Plaintiff States' allegations reflect that lawmakers were focused on the permissible legislative purpose of influencing tax policy. Nothing in *Shelby County* suggests that the equal sovereignty principle bars such a purpose.

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

CONCLUSION

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

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-v-

STEVEN T. MNUCHIN, in his official capacity as Secretary of the United States Department of Treasury, UNITED STATES DEPARTMENT OF TREASURY, DAVID J. KAUTTER, in his official capacity as Acting Commissioner of the Internal Revenue Service, UNITED STATES INTERNAL REVENUE SERVICE, and the UNITED STATES OF AMERICA,

Defendants.

18-CV-6427 (JPO)

OPINION AND ORDER

J. PAUL OETKEN, District Judge:

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act,[1] Pub. L. No. 115-97, 131 Stat. 2054 (2017), which made several substantial amendments to the federal Tax Code. Among other things, the Act took the novel step of placing an upper limit on the amount a taxpayer may deduct from

[1] The Act is more formally denominated "An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018."

her federally taxable income to offset those sums she has paid toward certain state and local taxes (the "SALT cap"). *Id.* § 11042, 131 Stat. at 2085–86.

Concerned that the introduction of the SALT cap could impair their ability to pursue their own preferred tax policies, four Plaintiff States—Connecticut, Maryland, New Jersey, and New York (the "States")—filed this suit against the federal government (the "Government"), alleging that the SALT cap violates the federalism principles that undergird the U.S. Constitution.[2] (Dkt. No. 1.) The Government has moved to dismiss, contending that this Court lacks jurisdiction over the suit and that the States have failed to state a valid legal claim. (Dkt. No. 42.) The States, in turn, have filed a cross-motion for summary judgment. (Dkt. No. 44.) For the reasons that follow, the Government's motion to dismiss is granted and the States' cross-motion is denied.

I. Background

The Court begins its treatment of this case's background by providing some historical context regarding the federal government's taxing power and the deduction affected by the SALT cap. The Court then describes the enactment of the SALT cap and the public discussion around it. Finally, the Court explains the path this litigation has traveled to date.

A. Historical Background

The federal government derives its authority to "lay and collect Taxes" from Article I, section 8 of the U.S. Constitution. U.S. Const. art. I, § 8, cl. 1. But, as

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[2] The defendants here, more specifically, are the United States, the U.S. Internal Revenue Service and its Commissioner, and the U.S. Department of Treasury and its Secretary.

all taxpayers well know, this grant of authority has not displaced the concurrent taxing power of the states. *See Gamble v. United States*, 139 S. Ct. 1960, 1969 (2019) (citing taxation as an example of dual state-federal regulation "that comes immediately to mind"). Nor was it intended to do so. As the Constitution was being ratified, the Framers attempted to address concerns about the scope of the proposed federal tax authority by reassuring the public that although a federal law "laying a tax for the use of the United States would be supreme in its nature, and could not legally be opposed or controlled," a federal law "for abrogating or preventing the collection of a tax laid by the authority of the State . . . would not be the supreme law of the land, but a usurpation of power not granted by the Constitution." The Federalist No. 33 (Alexander Hamilton); *see also* Bruce Ackerman, *Taxation and the Constitution*, 99 Colum. L. Rev. 1, 7 (1999) (describing ratification-era fears that the Constitution's "wide grant of taxing authority" would "centraliz[e] tyranny"). Soon after ratification, the introduction of the Tenth Amendment created an explicit textual guarantee "reserv[ing] to the States respectively, or to the people," any "powers not delegated to the United States by the Constitution, nor prohibited by it to the States." U.S. Const. amend. X.

In the nation's early years, the federal government wielded its taxing power with relative modesty, collecting virtually all its revenue from customs duties alone. *See* Aaron T. Knapp, *The New Jersey Plan and the Structure of the American Union*, 15 Geo. J.L. & Pub. Pol'y 615, 643 (2017). There were, to be sure, a few early, unpopular efforts to implement limited excise and property taxes, as well as the occasional temporary tax designed to plug wartime revenue gaps, but up through the first half of the nineteenth century the

federal government generally steered wide of taxes that reached within the states' borders.[3] *See id.*; William E. Foster, *Partisan Politics and Income Tax Rates*, 2013 Mich. St. L. Rev. 703, 707–08 & n.27. Indeed, from the end of the War of 1812 until the Civil War, "[t]here were no federal income taxes, direct taxes, or excise taxes—in short, no internal taxes of any kind." Anuj C. Desai, *What a History of Tax Withholding Tells Us About the Relationship Between Statutes and Constitutional Law*, 108 Nw. U. L. Rev. 859, 871 (2014).

The financial burdens of the Civil War, though, "necessitated a dramatic shift in federal tax policy," *id.*, and the result was "the first federal income tax in U.S. history," *id.* at 872. As initially enacted in 1861, that tax imposed a 3% levy on annual income over $800 but provided that, "in estimating [taxable] income, all national, state, or local taxes assessed upon the property, from which the income is derived, shall be first deducted." Act of Aug. 5, 1861, ch. 45, § 49, 12 Stat. 292, 309. While the specifics of the tax underwent several modifications over the years it was in effect, the deduction for state and local taxes remained substantially intact. *See* Act of July 1, 1862, ch. 119, § 91, 12 Stat. 432, 473–74; Act of June 30, 1864, ch. 173, § 117, 13 Stat. 223, 281; Act of Mar. 3, 1865, ch. 78, 13 Stat. 469, 749; Act of Mar. 2, 1867, ch. 169, § 13, 14 Stat. 471, 478; Act of July 14, 1870, ch. 255, § 9, 16 Stat. 256, 258.

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[3] The fact that early Congresses did not tax more aggressively does not mean that they never considered doing so. One bill proposed during the War of 1812, for example, would have directed the Committee of Ways and Means to "inquire into the expediency" of instituting a federal income tax, although it would have limited the objects of taxation to "such capital or employments as [were] not taxed by any existing laws." 28 Annals of Cong. 1079 (1815).

Shortly after the Civil War, in 1872, the federal income tax was left to lapse, and "the nation returned to reliance on tariffs and excises to fill the federal coffers." Foster, *Partisan Politics and Income Tax Rates*, 2013 Mich. St. L. Rev. at 710 n.40. But by 1894, rising popular support for progressive taxation prompted Congress to give the federal income tax another go. *Id.* at 710–11. The resulting tax, like its predecessors, excluded "all national, State, county, school, and municipal taxes, not including those assessed against local benefits," from taxable income. Act of Aug. 27, 1894, ch. 349, § 28, 28 Stat. 509, 553. And, like its predecessors, the tax enacted in 1894 was short lived. The very next year, in *Pollock v. Farmers' Loan & Tr. Co.*, 157 U.S. 429 (1895), the Supreme Court held that the federal income tax violated the constitutional requirement that any "direct" taxes be apportioned among the states in relation to their relative populations, *id.* at 582–83; *see also* U.S. Const. art. I, § 9, cl. 9 ("No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.").

Pollock drew a backlash and, with it, a push to eliminate the apportionment requirement that had scuppered Congress's 1894 efforts. *See* Erik M. Jensen, Murphy v. Internal Revenue Service*, the Meaning of "Income," and Sky-Is-Falling Tax Commentary*, 60 Case W. Res. L. Rev. 751, 770–71 (2010). Thus, in 1909, Congress passed a proposed constitutional amendment that would guarantee it the "power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." U.S. const. amend. XVI. Of course, the proposed amendment had its detractors. For example, New York's then-

Governor, Charles Evans Hughes, opposed ratification out of concern that it would allow the federal government to tax income derived from state or municipal bonds.[4] *See* Marjorie E. Kornhauser, *The Origins of Capital Gains Taxation: What's Law Got to Do with It?*, 39 Sw. L.J. 869, 918 n.295 (1985). And state legislators from Virginia and Georgia described their (at times racist) fears that the amendment would permit federal intrusion into state matters. *See* Robin L. Einhorn, *Look Away Dixieland: The South and the Federal Income Tax*, 108 Nw. U. L. Rev. 773, 792–94 (2014). But such hesitations were unavailing, and upon the proposed amendment's 1913 ratification, the Sixteenth Amendment became the law of the land.

Congress wasted little time in flexing its newly defined taxing authority. On October 3, 1913, it enacted the first federal income tax of the twentieth century. Act of Oct. 3, 1913, ch. 16, § II, 38 Stat. 114, 166–81. That tax, like its nineteenth-century forebears, deducted from taxable income "all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits." *Id.* § II(B), 38 Stat. at 167. And from then to now, some form of state and local tax deduction (a "SALT deduction"), has been a mainstay of the federal Tax Code. (*See* Dkt. Nos. 54-28 to 54-83.) As the House

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[4] William Borah, a U.S. Senator from Idaho, responded to Governors Hughes' concerns by expressing his view that the Constitution would not permit federal taxation of state and local bond income notwithstanding the proposed amendment because, "however full the grant of power of taxation might be in the Constitution, there must always be subtracted from that power the right of the different [state] sovereignties to perform their functions as such." 45 Cong. Rec. 1696 (1910). Other federal legislators expressed similar views. (*See, e.g.*, Dkt. No. 47-20.)

Committee on Ways and Means explained in 1963, the deduction "represents an important means of accommodation where both the State and local governments on one hand and the Federal Government on the other hand tap th[e] same revenue source." H.R. Rep. No. 88-749, at 48 (1963).

Notwithstanding its baseline durability, the SALT deduction has taken various forms over the years. *See* Gladriel Shobe, *Disaggregating the State and Local Tax Deduction*, 35 Va. Tax Rev. 327, 337–39 (2016) (detailing the deduction's post-1913 history) (hereinafter, "Shobe, *Disaggregating*"). For one thing, the 1944 enactment of a standard deduction—a predetermined sum that taxpayers may elect to deduct from their taxable income in lieu of itemizing their specific deductible expenses—meant that, in practice, the SALT deduction remained relevant for only those taxpayers who chose to itemize their deductions. *See* Individual Income Tax Act of 1944, Pub. L. No. 78-315, § 9, 58 Stat. 231, 236–38. And even beyond making general changes to the federal tax scheme that indirectly influence the role of the SALT deduction, Congress has from time to time amended the deduction directly. In 1964, for example, Congress "enumerated the types of [state and local] taxes that were deductible and disallowed a deduction for any other state and local taxes," thus departing from the earlier rule that "all state and local taxes were deductible unless specifically disallowed." Shobe, *Disaggregating*, 35 Va. Tax Rev. at 338; *see also* Revenue Act of 1964, Pub. L. No. 88-272, § 207, 78 Stat. 19, 40. And in 1986 (in a move that has since been walked back) Congress eliminated the deduction for

state and local sales taxes.[5] Tax Reform Act of 1986, Pub. L. No. 99-514, § 134, 100 Stat. 2085, 2116; *see also* American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 501, 118 Stat. 1418, 1520–21 (partially reinstating the state and local sales tax deduction).

Matters continued thus into the twenty-first century, with the SALT deduction standing as an enduring component of the federal tax scheme, subject to periodic refinement. As the law stood at the beginning of December 2017, just prior to the enactment of the SALT cap, taxpayers who chose to itemize their deductions could typically deduct from their federally taxable income, among other things, (1) all state and local real and personal property taxes and (2) their choice of all state and local income taxes or all state and local sales taxes. 26 U.S.C. §§ 164(a)(1)–(3), (b)(5) (effective Dec. 18, 2015 to Dec. 21, 2017).

B. The SALT Cap

The 2017 Tax Cuts and Jobs Act changed the ballgame. After its enactment, a taxpayer could, as before, claim a federal tax deduction for (1) state and local real and personal property taxes and (2) a choice of state and local income taxes or state and local sales taxes. 26 U.S.C. §§ 164(a)(1)–(3), (b)(5). But the newly enacted catch was that these claimed deductions could not total any more than $10,000 for single or jointly

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[5] The 1986 amendment followed a national debate over whether Congress should repeal the SALT deduction altogether. *See* Shobe, *Disaggregating*, 35 Va. Tax Rev. at 338–39. Among those opposing repeal was New York's then-Governor, Mario Cuomo, who described repeal as "an attack . . . on the idea of the Republic" that "would certainly intrude on States['] rights." *The Impact of Repeal of the Deductions for State and Local Taxes: Hearings Before the Subcomm. on Monetary and Fiscal Policy of the J. Econ. Comm.*, 99th Cong. 87 (1985).

filing married taxpayers or any more than $5,000 for a married taxpayer filing separately. *Id.* § 164(b)(6)(B).

The States represent that the introduction of this ceiling has fundamentally altered the tax landscape. New York claims, for example, that those of its taxpayers who itemize deductions claimed an average SALT deduction of $21,943 prior to the introduction of the cap. (Dkt. No. 46 ¶ 33.) But because the cap now prevents taxpayers from deducting even half that amount, New York predicts that its taxpayers will in many cases see their federal tax bills rise and will, in all, end up paying a total of $121 billion more into the federal coffers between 2018 and 2025 than they would have paid absent the cap. (Dkt. No. 46 ¶ 50.) Connecticut, Maryland, and New Jersey have concerns as well. Among the three of them, they estimate that in 2018 alone their taxpayers paid $7.5 billion more to the federal government than they would have paid without the cap. (Dkt. No. 46 ¶¶ 51–53.) Such tax hikes, moreover, are not spread evenly across the nation. Because the cap's effect on any given taxpayer depends on whether her state and local tax bill exceeds the $10,000 (or $5,000) ceiling, taxpayers in states and localities with higher taxes will, on average, feel a greater financial pinch as a result of the cap than will taxpayers in states and localities with lower taxes. And taxpayers in the Plaintiff States here fall into the former category. All in all, the States allege that, nationwide, they have "the highest percentages of taxpayers whose federal tax burden increased under the 2017 Tax Act." (Dkt. No. 46 ¶ 47.)

Further, the States maintain, the exclusively Republican legislators who voted to enact the SALT cap—and the Republican president who signed it into law—*intended* this differential impact. According to

the States, the cap's "true purpose" was "to coerce a handful of States with relatively high taxpayer-funded public investments—States that are primarily Democratic leaning—to change their tax policies." (Dkt. No. 1 ("Compl.") ¶ 107.) If there were doubt on that point, the States believe, one need only listen to the cap's supporters. For example, former House Speaker Paul Ryan has said that the cap would lead people in high-tax states to "see their true cost of government." Mike DeBonis, *To Make Their Tax Plan Work, Republicans Eye a Favorite Blue-State Break*, Wash. Post, Sept. 16, 2017. And President Trump has said that the cap would encourage citizens to "make sure that [their] politicians do a good job of running [their] state." *President Trump Vows Largest Tax Cut in the History of This Country*, Fox News, Oct. 11, 2017. Other members of Congress and the executive branch have expressed similar views. *See, e.g.*, *First on CNBC: Transcript: Treasury Secretary Steven Mnuchin Speaks with CNBC's "Squawk Box" Today*, CNBC, Oct. 12, 2017 (Treasury Secretary Steven Mnuchin's statement that the cap would spare the federal government from "continu[ing] to subsidize the states"); *Rep. Duncan Hunter Said GOP Tax Bill Could Cost Californians More than Others, but He Still Supports It*, San Diego Union Tribune, Oct. 30, 2017 (Representative Duncan Hunter's statement that the new tax law would "not [be] as good" for "California, New Jersey, New York and other states that have horrible governments"); Sahil Kapur, *'Death to Democrats': How the GOP Tax Bill Whacks Liberal Tenets*, Bloomberg, Dec. 5, 2017 (Senator Ted Cruz's statement that he hoped the SALT cap would make "state and local officials . . . less eager to jack up the taxes on hard working Americans").

Being among the states thus supposedly targeted, the Plaintiff States here resolved to take responsive action — and so they found their way to federal court.

C. Procedural Background

The States filed this suit on July 17, 2018. (Dkt. No. 1.) According to their complaint, the SALT cap "disregards Congress's hitherto unbroken respect for States' distinct and inviolable role in our federalist scheme" and "deliberately seeks to compel certain States to reduce their public spending." (Compl. ¶ 1.) In doing so, the complaint maintains, the cap falls foul of the "structural constraints" that the Constitution, through Article I, section 8 and the Tenth and Sixteenth Amendments, places "on the federal government's ability to use its tax power to interfere with the sovereign authority of the States to determine their own taxation and fiscal policies." (Compl. ¶ 117; *see also id.* ¶¶ 124–140.) The States thus seek a declaration that the cap is unconstitutional and an injunction that bars the Government from enforcing it. (Compl. at 50.)

On November 2, 2018, the Government moved to dismiss for lack of jurisdiction and for failure to state a valid legal claim. (Dkt. No. 42.) The States opposed the motion and filed a cross-motion for summary judgment. (Dkt. No. 44.) Briefing was complete as of March 22, 2019 (*see* Dkt. Nos. 43, 45, 53, 57), and the Court held oral argument on the motions on June 18, 2019 (Dkt. No. 61). The parties have ably presented the case, and the Court is prepared to rule.

II. Legal Standards

Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) allow a party to move to dismiss a complaint for, respectively, lack of subject-matter jurisdiction and

failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(1), 12(b)(6). When deciding a Rule 12(b)(1) or 12(b)(6) motion, a court must "construe[] the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." *Lubrano v. United States*, 448 F. App'x 159, 159 (2d Cir. 2012) (summary order) (quoting *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002)). A case may be dismissed for lack of jurisdiction under Rule 12(b)(1) "when the district court lacks the statutory or constitutional power to adjudicate it," *id.* (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)), and a case may be dismissed for failure to state a claim under Rule 12(b)(6) if the complaint fails to plead "enough facts to state a claim to relief that is plausible on its face," *id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Federal Rule of Civil Procedure 56(a), meanwhile, requires a court to grant summary judgment in favor of a moving party if that party can demonstrate that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Under Rule 56, a fact is "material" if it "might affect the outcome of the suit under the governing law," and a factual dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Jeffreys v. City of N.Y.*, 426 F.3d 549, 553 (2d Cir. 2005) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). When assessing a summary judgment motion, "a court must construe the evidence in the light most favorable to the nonmoving party, drawing all inferences in that party's favor." *Id.*

III. Discussion

The Court begins, as it must, by considering whether this case falls within its subject-matter jurisdiction. The Court then turns to the merits.

A. Jurisdiction

The Government raises three challenges to this Court's subject-matter jurisdiction. First, it argues that the States lack standing to bring the claims they have asserted. (Dkt. No. 43 at 9–14.) Second, it argues that the Anti-Injunction Act, 26 U.S.C. § 7421(a), strips this Court of jurisdiction. (Dkt. No. 43 at 14–17.) Third, it argues that the case presents a nonjusticiable political question. (Dkt. No. 43 at 17–18.) The Court addresses these arguments in turn.[6]

1. Standing

Article III of the U.S. Constitution provides that "[t]he judicial power" of the federal courts "shall extend" only to certain sorts of "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1. Not every "legal dispute," though, "qualif[ies] as a genuine case or controversy" for constitutional purposes. *Dep't of Commerce v. New*

[6] Thomas Scambos has filed an *amicus* brief raising a fourth argument as to why this Court lacks subject-matter jurisdiction over this case. (Dkt. Nos. 32–33.) His argument invokes Article III, section 2 of the U.S. Constitution, which provides in relevant part that, "[i]n all cases . . . in which a state shall be party, the Supreme Court shall have original jurisdiction." U.S. Const. art. III, § 2, cl. 2. Because plaintiffs here are states, Scambos argues, Article III, section 2 confers authority on the Supreme Court—but not the district courts—to take original jurisdiction over this case. (Dkt. No. 32 exh. 1 at 2.) Scambos, though, overlooks that where, as here, "a State is suing parties who are not other States, the original jurisdiction of [the Supreme] Court is not exclusive." *Illinois v. City of Milwaukee*, 406 U.S. 91, 101 (1972); *see also* 28 U.S.C. § 1251(b). The provision he cites therefore poses no impediment to this Court's jurisdiction.

York, 139 S. Ct. 2551, 2565 (2019). Rather, "to prevent the judicial process from being used to usurp the powers of the political branches," a plaintiff may invoke the federal courts' jurisdiction only if it shows that it has standing, *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013), or, in other words, that it has "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination," *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

To establish the "irreducible constitutional minimum of standing," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992), a plaintiff "must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent, that the injury is fairly traceable to the defendant, and that it is likely that a favorable decision will redress that injury," *Massachusetts*, 549 U.S. at 517. Here, any injuries the States suffer as a result of the SALT cap are traceable to the Government's enforcement of the cap and so would be remedied by an injunction that bars enforcement. The remaining question for standing purposes, then, is whether the States have adequately shown "a concrete and particularized injury that is either actual or imminent." *Id.*

The Supreme Court has recognized that "States are not normal litigants for the purposes of invoking federal jurisdiction." *Massachusetts*, 549 U.S. at 518. Under the *parens patriae* doctrine, for example, an injury to a state's quasi-sovereign interests, such as its interest in the "health and well-being—both physical and economic—of its residents in general," *Connecticut v. Cahill*, 217 F.3d 93, 97 (2d Cir. 2000) (quoting *Alfred L.*

Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 607 (1982)), may sometimes be sufficient to support the state's standing to sue "on behalf of [its] citizens," *Connecticut v. Physicians Health Servs. of Conn., Inc.*, 287 F.3d 110, 119 (2d Cir. 2002). But because the States have disclaimed any intent to sue in a *parens patriae* capacity here (Dkt. No. 45 at 7 n.6), they must show that at least one of them has suffered "a direct, tangible injury" to its own proprietary or sovereign interests, *Cahill*, 217 F.3d at 97; *see also Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006) ("[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement.").

The States identify three injuries that they contend are sufficiently concrete, particularized, and actual or imminent to support standing. First, they claim that the SALT cap will "make it more difficult for [them] to maintain their current taxation and fiscal policies" because it "will force [them] to choose between their current level of public investments and higher tax rates." (Compl. ¶ 15; *see also* Dkt. No. 45 at 6–8.) Second, they claim that they "will lose specific streams of tax revenue due to the decline in home equity value and lower household spending caused by the new cap on the SALT deduction." (Dkt. No. 45 at 8.) Finally, they claim that they have suffered an injury to their "equal sovereignty" simply by virtue of having been "expressly targeted . . . for unequal treatment" vis-à-vis other states by Congress. (Dkt. No. 45 at 9.)

The Court addresses only the second of these injuries, *i.e.*, the diminished tax revenues the States allege they will suffer due to the SALT cap. The States claim that "[b]y capping the deductability of property taxes," the cap "makes homeownership more expensive

and decreases the value of real estate." (Compl. ¶ 99.) New York, for one, estimates that its citizens will see a $63.1 billion loss of home equity due to the cap. (*Id.*) As a result, the States allege, homeowners will see smaller returns when they sell their homes and, even before then, will see a drop in the value of what is, for many, "their most important asset." (Compl. ¶ 100.) These economic consequences, New York predicts, will lead to decreased household spending and delayed home sales and will thereby reduce its revenues from sales taxes and real estate transfer taxes. (Compl. ¶¶ 101–102.) Maryland and New Jersey anticipate similar results, projecting millions of dollars of lost real estate transfer tax revenue in the coming years. (Compl. ¶¶ 103–104.)

Expected financial loss can constitute the sort of concrete and particularized injury that is capable of supporting standing. *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362 (2019) (citing a probability of "*some* financial injury" as sufficient to establish standing). And the states, no less than private citizens, are entitled to invoke that principle in demonstrating their standing to sue. Most notably, the Supreme Court held in *Wyoming v. Oklahoma*, 502 U.S. 437 (1992), that a state's "loss of specific tax revenues" is a "direct injury" capable of supporting standing, *id.* at 448. In that case, Wyoming challenged an Oklahoma law that had led certain Oklahoma power plants to decrease their use of Wyoming-mined coal. *Id.* at 440, 445–46. On cross-motions for summary judgment, the Supreme Court considered evidence that Wyoming's severance tax revenues had dropped since the effective date of the Oklahoma law and held on the basis of this evidence that Wyoming had standing to challenge the law. *Id.* at 446–48. In so holding, the Court distinguished earlier cases that had "denied

standing to States where the claim was that actions taken by United States Government agencies had injured a State's economy and thereby caused a decline in general tax revenues." *Id.* at 448. None of these earlier cases, the Court explained, had identified "a direct injury in the form of a loss of *specific* tax revenues" such as the severance tax revenues Wyoming had placed at issue. *Id.* (emphasis added).

As in *Wyoming*, the States here have cited specific revenues—most persuasively, real estate transfer tax revenues—that will allegedly be diminished absent judicial intervention. The Government attempts to paint this theory of injury as "insufficiently particular," arguing that, "under [the States'] theory, they would have standing to challenge *any* federal tax increase that generally reduced their citizens' spending power and, conceivably, their own tax revenues." (Dkt. No. 53 at 6.) But this ungenerous characterization misses the mark. At least with respect to real estate transfer taxes, the States have staked out an entirely plausible theory of injury with the requisite specificity: by effectively raising state property taxes, the SALT cap reduces the value of a homeowner's property, thereby discouraging home sales and decreasing the revenues the States are able to collect by taxing such sales. Perhaps a full evidentiary record would reveal that the States' theory of injury is not borne out by reality. But for purposes of withstanding the Government's Rule 12(b)(1) motion, the States have alleged an injury that, if proved, would give them a sufficiently concrete stake in the outcome of this suit to establish their standing.[7]

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[7] The Court acknowledges that the States have moved for summary judgment and that the requirements for establishing standing at the summary judgment stage are more stringent than they are at the pleading stage. *See Lujan*, 504 U.S. at 561. But

See Lujan, 504 U.S. at 561 (noting that "general factual allegations of injury resulting from the defendant's conduct may suffice" to establish standing "[a]t the pleading stage").

Nor is the Court persuaded by the Government's claim that the States' asserted financial injury is "too speculative" or insufficiently imminent for standing purposes. (Dkt. No. 43 at 13.) Certainly, "[a]llegations of *possible* future injury" cannot support standing. *Clapper*, 568 U.S. at 409 (alteration in original) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)). The Supreme Court, after all, has "repeatedly reiterated that 'threatened injury must be *certainly impending* to constitute injury in fact,'" *id.* (quoting *Whitmore*, 495 U.S. at 158), and has rejected theories of injury that "rel[y] on a highly attenuated chain of possibilities," *id.* at 410. But the Government here has presented the Court with no reason to doubt the "[b]asic economic logic" that supports the States' prediction that the SALT cap will reduce their real estate transfer tax intake. *Am. Inst. of Certified Pub. Accountants v. IRS*, 804 F.3d 1193, 1198 (D.C. Cir. 2015) (quoting *United Transp. Union v. ICC*, 891 F.2d 908, 912 n.7 (D.C. Cir. 1989)). Under the "lenient" standard "for reviewing standing at the pleading stage," the Court concludes that the States' credible claim that the SALT cap will reduce the revenues they glean from real estate transactions by depressing their housing markets does not require the sort of "conjecture" or "unwarranted inferences" that would render a claimed injury too

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because the Court ultimately decides that the States' complaint must be dismissed pursuant to Rule 12(b)(6), *see infra* Section III.B, the Court does not reach the States' motion for summary judgment and so need not decide whether the States' evidentiary showing would suffice to establish standing at that stage.

speculative to support standing at the motion-to-dismiss stage. *Baur v. Veneman*, 352 F.3d 625, 636–37 (2d Cir. 2003).

Thus, by plausibly alleging that the SALT cap will decrease their real estate transfer tax revenues and that this injury can be redressed through the declaratory and injunctive relief they seek in this litigation, the States have established their standing for purposes of withstanding the Government's Rule 12(b)(1) motion. In light of this conclusion, the Court need not decide whether the States' two other alleged injuries—*i.e.*, pressure to change their tax policies and an injury to their equal sovereignty—are viable grounds for establishing standing here.

2. Anti-Injunction Act

The Government next argues that the Anti-Injunction Act ("AIA") bars the States' suit. With exceptions not relevant here, the AIA provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). In other words, the AIA "withdraw[s] jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the collection of federal taxes," *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 5 (1962), thereby "permit[ting] the United States to assess and collect taxes alleged to be due without judicial intervention, and . . . requir[ing] that the legal right to the disputed sums be determined in a suit for refund," *id.* at 7. Because the States here seek to enjoin enforcement of the SALT cap (*see* Compl. at 50), the Government

argues that the AIA strips this Court of jurisdiction over their claims (Dkt. No. 43 at 14–17).

The Government's argument cannot square with the Supreme Court's opinion in *South Carolina v. Regan*, 465 U.S. 367 (1984). In *Regan*, the Court considered South Carolina's challenge to the elimination of a federal tax exemption that had formerly excluded interest earned on state-issued bearer bonds from federally taxable income.[8] *Id.* at 370–71. The federal government argued in that case that the AIA barred South Carolina's claims, *id.* at 370, but the Court saw things differently, holding that the AIA was "not intended to bar an action where . . . Congress has not provided the plaintiff with an alternative legal way to challenge the validity of a tax," *id.* at 373. Because South Carolina had no "alternative avenue . . . to litigate its claims on its own behalf," the Court concluded that the state's injunctive suit could go forward. *Id.* at 381.

As in *Regan*, the parties here have identified no mechanism other than an injunctive suit by which the States might "on [their] own behalf" challenge the legality of the SALT cap. *Id.* Instead, the Government argues that the States might be able to seek relief by persuading one of their aggrieved taxpayers to challenge the SALT cap in a refund action. (Dkt. No. 43 at

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[8] Bearer bonds, one of the two forms in which states have historically issued bonds, are characterized by their "mechanisms used for transferring ownership and making payments." *South Carolina v. Baker*, 485 U.S. 505, 508 (1988). Specifically, "[o]wnership of a bearer bond . . . is presumed from possession and is transferred by physically handing over the bond," and the holder of a bearer bond can obtain interest payments "by presenting bond coupons to a bank that in turn presents the coupons to the issuer's paying agent." *Id.* The other traditional type of bond—the registered bond—operates differently. *See id.*

16–17.) In the Government's view, *Regan* was a unique case in which there was "no reason why any individual taxpayer would have the incentive to challenge" the law eliminating the exemption for bearer-bond interest because the law was designed to discourage states from issuing bearer bonds in the first place. (Dkt. No. 53 at 7.) Because the States' individual taxpayers here, in contrast, will continue to pay state and local taxes regardless of the law affecting the federal deduction, the Government claims that those taxpayers will have every reason to bring post-payment refund actions challenging the law and that *Regan* therefore does not apply. (Dkt. No. 43 at 15–16.)

The Government's narrow understanding of *Regan* finds no support in the opinion itself. In *Regan*, the Court framed its analysis by noting that its earlier AIA cases dealt with situations in which "the plaintiff had the option of paying [a challenged] tax and bringing a suit for a refund," and that existing case law had thus not decided "whether the Act would apply to an aggrieved *party* who could not bring a suit for a refund." *Regan*, 465 U.S. at 374 (emphasis added). And the Court answered that question in the negative, holding in light of the AIA's "purposes and the circumstances of its enactment" that "Congress did not intend the Act to apply to actions brought by aggrieved *parties* for whom it has not provided an alternative remedy." *Id.* at 378 (emphasis added). Emphasizing that South Carolina's bondholders—not South Carolina itself—would "be liable for the tax on the interest earned on" state bearer bonds, *id.* at 379, the Court concluded that South Carolina was "unable to utilize any statutory procedure to contest the constitutionality" of the tax law at issue and that the AIA therefore did not bar its suit, *id.* at 380.

In reaching its conclusion, the *Regan* Court never hinted that the AIA would have applied had South Carolina been able to pursue its claims indirectly by encouraging a third party to bring suit. Rather, *after* concluding that South Carolina's suit could proceed, the Court went on to note that its conclusion was "only *buttresse*[*d*]" by its uncertainty as to whether South Carolina could "obtain judicial review of its claims by issuing bearer bonds and urging a purchaser of those bonds to bring a suit contesting the legality" of the resulting tax. *Id.* (emphasis added). And to whatever extent this uncertainty *did* inform *Regan*'s holding, the Court did not present it as a case-specific aspect of the particular tax at issue. Rather, the only explanation the *Regan* Court gave for its doubt as to whether "[South Carolina] would be able to convince a taxpayer to raise its claims," *id.*, was that the Internal Revenue Service "routinely audits the returns of taxpayers who litigate claims for refunds," *id.* at 380 n.18. It was thus *general* uncertainty over a state's ability to rely on its taxpayers that gave the Court confidence in its clear, categorical holding that "the [AIA] was intended to apply only when Congress has provided an alternative avenue for an aggrieved party to litigate its claims *on its own behalf*." *Id.* at 381 (emphasis added).

That holding applies with full force here. It may well be the case that the States' taxpayers will have incentive to challenge the SALT cap in individual refund suits. But those suits will not afford the States themselves an opportunity to assert the sovereign interests that are threatened by the SALT cap. Just as South Carolina was entitled to seek to protect its own interest in issuing bearer bonds without relying on the arguments of its taxpayers, the States here need not cross their fingers and hope that future refund actions

brought by third parties will adequately address their fears that the SALT cap will unlawfully interfere with their own tax policies.

Of course, the analysis would be different if the States sought in this action to assert the rights of their taxpayers—rights that the taxpayers could defend themselves in a refund action. *Regan* does not allow taxpayers to "evade the [AIA] by forming organizations to litigate their tax claims," *id.* at 381 n.19, and courts have relied on that notion to hold that the AIA bars a plaintiff that is not itself subject to a given tax from seeking injunctive relief in the hopes of "preserv[ing] the position" of a third party that is, *RYO Machine, LLC v. U.S. Dep't of Treasury*, 696 F.3d 467, 472 (6th Cir. 2012). The Sixth Circuit, for example, has held that the AIA barred a suit brought by companies that hoped to enjoin an agency rule that threatened their profits by imposing a tax on their customers. *Id.* And the Ninth Circuit has held that the AIA barred an American Indian tribe from bringing an injunctive suit aimed at protecting a specific third-party tribal corporation from the application of a federal excise tax. *Confederated Tribes & Bands of the Yakama Indian Nation v. Alcohol & Tobacco Tax & Trade Bureau*, 843 F.3d 810, 811 (9th Cir. 2016).

But, as noted, the States have disclaimed any intent to invoke the rights of their citizens. (Dkt. No. 45 at 7 n.6.) Instead, they claim that the SALT cap violates *their own* sovereign rights by transgressing the constitutional limits on federal power (Compl. ¶ 88) and "depriving them of their authority to determine their own taxation and fiscal policies without federal interference" (Compl. ¶ 86). This claimed injury is hardly "derivative of any injury suffered by" the States' taxpayers. *Yakama Indian Nation*, 843 F.3d at 815.

Critically, it would persist even if the States elected to blunt the SALT cap's effect on their taxpayers altogether by, for example, dramatically reducing state tax rates. Just as the AIA in *Regan* posed no obstacle to South Carolina's efforts to seek the injunction of a federal tax law that, South Carolina claimed, deterred it from pursuing its preferred fiscal policies—*i.e.*, the issuance of bearer bonds—the AIA poses no jurisdictional impediment here, where the States seek to enjoin a federal tax law that, they claim, will cause them to forego *their* preferred fiscal policies—*i.e.*, the continued imposition of specific tax rates.

Ultimately, then, this Court concludes that the States' efforts to secure an injunction of the SALT cap in this litigation do not fall foul of the AIA's jurisdictional bar.[9]

3. Political Question Doctrine

Finally, the Government argues that the present dispute simply lies beyond the scope of judicial cognizance and so is barred by the political question doctrine. (Dkt. No. 43 at 17–18.) The political question doctrine creates a "narrow exception" to the general rule that "the Judiciary has a responsibility to decide cases properly before it." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012). The doctrine bars a court from resolving a dispute over which it would otherwise have jurisdiction if the dispute "involves a political question . . . where there is 'a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially

[9] In light of this conclusion, the Court need not address the States' argument that states are not the sort of "person[s]," 26 U.S.C. § 7421(a), that are subject to the AIA in the first place (Dkt. No. 45 at 10 n.12).

discoverable and manageable standards for resolving it.'" *Id.* (alteration in original) (quoting *Nixon v. United States*, 506 U.S. 224, 228 (1993)). The Government neither does nor plausibly could argue that the Constitution commits responsibility for policing the limits of federal tax authority vis-à-vis the states to the legislative and executive branches alone. *See, e.g.*, *Baker*, 485 U.S. at 511–15 (resolving a Tenth Amendment challenge to a federal tax). Accordingly, this Court need only ask whether there exist judicially discoverable and manageable standards for resolving the dispute before it.

To decide whether such standards exist, the Court must first identify the specific issue it is being asked to resolve. The Court is guided in this analysis by the Supreme Court's decision in *Zivotofsky*. In that case, an American born in Jerusalem asked to have "Israel" rather than "Jerusalem" listed as the place of birth on his passport. 566 U.S. at 191. Although a federal statute entitled him to have his request granted, the State Department refused to comply, citing its "long-standing policy of not taking a position on the political status of Jerusalem." *Id.* Litigation ensued, and the State Department sought dismissal on political question grounds. *Id.* The Supreme Court was unmoved. *Id.* at 201. While the Court accepted that framing the case "in terms of whether the Judiciary may decide the political status of Jerusalem" would raise justiciability concerns, *id.* at 197, the Court explained that such a framing would "misunderstand[] the issue presented," *id.* at 195. The case did not ask the courts "to supplant a foreign policy decision of the political branches with [their] own unmoored determination of what United States policy toward Jerusalem should be," but instead asked them only to conduct the "familiar judicial exer-

cise" of interpreting the federal statute at issue and gauging its constitutionality. *Id.* at 196. Far from "turn[ing] on standards that defy judicial application," this task demanded the sort of "examination of . . . textual, structural, and historical evidence" that is well within the judicial purview. *Id.* at 201 (quoting *Baker*, 369 U.S. at 211).

So too here. This is not a case that asks the courts to resolve a matter of opinion. *See Padavan v. United States*, 82 F.3d 23, 27 (2d Cir. 1996) (concluding that courts lack standards for adjudicating "the question [of] whether immigration control is a failure"). Nor is it a case that asks courts to undertake an "unprecedented intervention in the American political process" that could end up demanding quintessentially political, rather than legal, judgment calls. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2498 (2019) (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 306 (2004) (Kennedy, J., concurring in judgment)). Nor yet is it a case in which there is simply no law to apply. *See 767 Third Ave. Assocs. v. Consulate Gen. of the Socialist Fed. Republic of Yugoslavia*, 218 F.3d 152, 161 (2d Cir. 2000) (finding no legal basis for deciding what successor liabilities follow upon the dissolution of a nation state). This case, instead, asks this Court to use familiar tools of constitutional interpretation to decide whether a specific statute oversteps the bounds of federal authority. "This is what courts do." *Zivotofsky*, 566 U.S. at 201; *see, e.g.*, *New York v. United States*, 505 U.S. 144, 182 (1992) (analyzing the "constitutional plan" to resolve a claim that Congress had "exceed[ed] its authority relative to the States").

In arguing that this case demands a standardless inquiry barred by the political question doctrine, the Government simply states, without elaboration, that

the States have suggested "no clear, neutral standards or criteria for deciding when a given SALT deduction limit or cap passes constitutional muster." (Dkt. No. 43 at 17.) But the parties' briefs, which adroitly engage a considerable body of existing precedent, give the lie to this *ipse dixit*. Certainly, the fact that the States have had difficulty articulating just when any given SALT cap transgresses constitutional limits may have consequences for the merits of their argument that *this* SALT cap does so. It hardly deprives this Court, however, of a neutral legal framework for assessing that argument.

In sum, this Court has little trouble concluding that this case is susceptible to judicial resolution and that the political question doctrine therefore poses no jurisdictional impediment.

B. Merits

Having satisfied itself of its jurisdiction over this case, the Court turns to the merits. The States claim that the SALT cap "violates the Tenth Amendment and the constitutional guarantees of federalism" (Compl. ¶ 129) and "exceeds Congress's powers under Article I, Section 8 of the United States Constitution" (Compl. ¶ 139) and the Sixteenth Amendment (Compl. ¶ 133). In essence, despite invoking three distinct constitutional provisions, the States raise a single claim: that the SALT cap exceeds the federal tax power by verging into territory that is constitutionally reserved to the states. In making this claim, the States pursue two principal lines of argument.

First, they argue that the SALT deduction has a special historic status, such that *any* attempt to eliminate or substantially curtail it would upset the constitutional balance of state-federal power. Alternatively,

they argue that the particular statute at issue here represents an unlawful effort by Congress to wield its regulatory authority in a way that coerces specifically targeted states in the exercise of their sovereign powers. The Court considers these arguments in turn.

1. The Constitutional Status of the SALT Deduction

The States first argue that the Constitution contains a limitation on the federal tax power that would bar *any* congressional effort to tax a substantial portion of the sums a taxpayer has paid toward state and local taxes. (Dkt. No. 45 at 14–26.) While acknowledging that no such limitation appears in the Constitution's text, the States argue that the limitation can nonetheless be "inferred from the 'essential postulates' of the Constitution's history and structure." (Dkt. No. 45 at 14 (quoting *Printz v. United States*, 521 U.S. 898, 918 (1997)).) In particular, the States recount the SALT deduction's "extraordinarily long and consistent history" and urge the Court to conclude that it has been Congress's "constitutionally grounded views about state sovereignty and the limits of federal taxing power" that have driven it to include a "near-total SALT deduction" in every prior version of the federal income tax. (Dkt. No. 45 at 15.)

The States are correct that the SALT cap is in some ways unprecedented. As the Court has already explained, the availability of an uncapped deduction for state income and property taxes (albeit not for state sales taxes) has been a mainstay of the federal income tax since that tax's earliest inception. Certainly, as the Government points out, Congress has over the years altered what sorts of state and local taxes are eligible for deduction and has made changes to the structure of

the Tax Code that, as a practical matter, have limited the amount of state and local tax liabilities that certain taxpayers can fruitfully deduct. (Dkt. No. 43 at 26–28.) The Government, though, has identified no prior statute that has "*directly* limit[ed] the deduction for state and local income and property taxes" to a specifically identified dollar amount. (Dkt. No. 45 at 21.)

And the States are further correct that when "there is no constitutional text speaking to [a] precise question," courts may seek an answer in, among other things, "historical understanding and practice." *Printz*, 521 U.S. at 905. So, for example, in *Printz v. United States*, the Supreme Court, when invalidating a federal law that required state and local law enforcement officers to perform background checks on potential handgun purchasers, found it relevant that "compelled enlistment of state executive officers for the administration of federal programs [was], until very recent years . . . , unprecedented." *Id.* at 905. And in *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010), the Supreme Court cited the historical novelty of a statute that placed unprecedented restrictions on the President's ability to remove certain executive-branch officers as a sign of unconstitutionality, *see id.* at 505–06.

Mere "[l]egislative novelty," however, "is not necessarily fatal." *Nat'l Fed. of Indep. Business v. Sebelius* (*NFIB*), 567 U.S. 519, 549 (2012) (opinion of Roberts, C.J.). Even if historic practice "tends to negate the existence of [an asserted] congressional power," practice alone is "not conclusive." *Printz*, 521 U.S. at 918. Rather, courts look to historic practice to inform their understanding of the structural limitations that ultimately arise from the Constitution itself. In *Printz*, then, the novelty of the law at issue was instructive

only insofar as it clarified how the constitutionally enshrined "division of power between State and Federal Governments" had historically been viewed. *Id.* at 922. And in *Free Enterprise Fund*, the Court considered past legislative practice not for its own sake, but only as an aid in understanding the scope of "[t]he executive power" that the Constitution explicitly vests in the President. *Free Enter. Fund*, 561 U.S. at 492 (alteration in original) (quoting U.S. Const. art. II, § 1, cl. 1).

Instead of looking at the SALT cap's novelty alone, then, this Court must ask whether the fact that Congress has not previously imposed such a cap arises out of a structural limitation built into the constitutional plan. And this is where the States run into trouble. The Supreme Court has held that Article I, section 8, from which the federal government derives its power to "lay and collect Taxes," U.S. Const. art. I, § 8, cl. 1, "is exhaustive and embraces every conceivable power of taxation," *Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1, 12 (1916), including the power "to lay and collect income taxes," *id.* at 13. Accordingly, Congress holds "plenary power under the Constitution to tax income and to grant exemptions from that tax." *Lyeth v. Hoey*, 305 U.S. 188, 194 (1938). That plenary power "knows no restriction except where one is expressed in or arises from the Constitution." *United States v. Bennett*, 232 U.S. 299, 306 (1914).

The States have cited no constitutional principle that would bar Congress from exercising its otherwise plenary power to impose an income tax without a limitless SALT deduction. In the main, they rely on the notion that the Tenth Amendment preserves states' "power to tax all property, business, and persons, within their respective limits," *Thomson v. Union Pac.*

R.R. Co., 76 U.S. 579, 591 (1869), and so bars "improper [federal] interference with the [s]tates' taxing power" (Dkt. No. 45 at 16). Even absent an uncapped SALT deduction, though, states remain free to exercise their tax power however they wish. To be sure, the SALT cap, like any other feature of federal law, makes certain state and local policies more attractive than others as a practical matter. But the bare fact that an otherwise valid federal law necessarily affects the decisional landscape within which states must choose how to exercise their own sovereign authority hardly renders the law an unconstitutional infringement of state power.[10] *Cf. Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 552 (1985) ("State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power."); *Goldin v. Baker*, 809 F.2d 187, 191 (2d Cir. 1987) (considering a Tenth Amendment challenge to a federal tax on certain income and rejecting it on the ground that "the power to tax private income has been expressly delegated to Congress" (quoting *Regan*, 465 U.S. at 418 (Stevens, J., concurring in part and dissenting in part))).

The Supreme Court's opinion in *South Carolina v. Baker* dispels any remaining doubt on this point. In *Baker*, the Court rejected the claim that Congress had overstepped its constitutional authority when it eliminated a longstanding federal tax exemption for interest

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[10] To be sure, the States argue that the particular SALT cap at issue here represents a uniquely coercive exercise of federal power, and that the burdens it imposes on state regulatory authority go beyond the sort of incidental effects that any other federal law might create. (Dkt. No. 45 at 26–36.) The Court addresses that argument below. *See infra* Section III.B.2.

earned on state- issued bearer bonds. *Baker*, 485 U.S. at 527. Despite the "historical fact that Congress ha[d] always exempted state bond interest from taxation by statute, beginning with the very first federal income tax statute," *id.* at 523, the Court rejected the idea that this exemption had been "frozen into the Constitution," *id.* at 522 n.13. Concluding that nothing in the Constitution itself *mandated* the longstanding exemption that Congress had previously seen fit to offer as a matter of grace, the Court perceived no constitutional flaw in the law that did away with the exemption, *id.* at 527, notwithstanding the dissent's concern that the law could have "devastating effects . . . on state and local governments," *id.* at 533 (O'Connor, J., dissenting).

That case governs here. As in *Baker*, the parties seeking to impose a limitation on the federal government's plenary tax power in this case have made a strong showing that Congress has historically exempted certain income from federal taxation. But also as in *Baker*, those parties have failed to identify a persuasive basis for reading such an exemption into the Constitution itself. If anything, *Baker* presented a better opportunity for recognizing a constitutionally rooted limitation on the federal tax authority than this case does. This is true for two reasons.

First, *Baker* addressed past legislative practice that was more consistent than the historic practice upon which the States rely here. Prior to the law at issue in *Baker*, Congress had never before taxed interest earned on state-issued bonds, making the challenged law a stark historical outlier. *See Baker*, 485 U.S. at 523. Here, however, although a direct cap on the deduction for sums paid toward state and local income and property taxes is a legislative novelty, Congress has previously limited the deduction for state and local

sales taxes, *see* 100 Stat. at 2116, and has in the past, moreover, indirectly limited the SALT deduction altogether for certain taxpayers. In 1990, for example, Congress enacted the Pease limitation, under which taxpayers with adjusted gross incomes over a certain threshold were required to apply a specified reduction to the total amount they claimed in itemized deductions.[11] *See* Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11102, 104 Stat. 1388, 1388-406 (codified at 26 U.S.C. § 68). And the Pease limitation has been upheld as constitutional over objections that it exceeded Congress's lawful tax authority by effectively limiting the SALT deduction. *Campbell v. United States*, No. 00 Civ. 4746, 2001 WL 1262934, *2–4 (S.D.N.Y. Oct. 22, 2001), *aff'd*, 45 F. App'x 50 (2002).

Second, the relevant historical record in *Baker* betrayed express legislative doubt as to the constitutionality of limiting the deduction at issue. As the Court has explained, the issue of whether the Sixteenth Amendment allowed Congress to tax interest earned on state-issued bonds was a source of explicit uncertainty during the ratification debates. *See supra* Section I.A & n.4. The States point to no comparable evidence that shows that the SALT deduction has historically been seen as constitutionally required. Legislators, of course, have accepted the uncontroversial proposition that Congress may not directly interfere with the states' exercise of their sovereign tax powers. *See* 45 Cong. Rec. 1696 (1910) (noting one Senator's view that "there must always be subtracted from" the federal tax power "the right of the different [state] sovereignties to

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[11] The Tax Cuts and Jobs Act has suspended the Pease limitation for any taxable year beginning after December 31, 2017, and before January 1, 2026. *See* Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 11046, 131 Stat. at 2088 (codified at 26 U.S.C. § 68(f)).

perform their functions as such"). But, as set out above, a SALT cap does not necessarily work such interference. And while the States highlight legislative statements that reference the SALT deduction in connection with states' rights, *see supra* note 5, these sparse, ambiguous references to federalist principles fail to demonstrate a widely held, longstanding view that, in including an uncapped SALT deduction in every past federal income tax, Congress has been responding to a constitutional imperative rather than making an accommodating policy choice. Indeed, one of the Founding-era sources the States have cited took the view that if dual state-federal taxation under the new Constitution led to the "improper accumulation of taxes on the same object," the result "would be a mutual inconvenience, not arising from a superiority or defect of power on either side, but from an *injudicious* exercise of power by one or the other." The Federalist No. 33 (Alexander Hamilton) (emphasis added). It then expressed a "hope[]" that "*mutual interest*," rather than legal mandate, "would dictate a concert in this respect." *Id.* (emphasis added).

The Court recognizes that the SALT cap is in many ways a novelty. But the States have failed to persuade the Court that this novelty alone establishes that the SALT cap exceeds Congress's broad tax power under Article I, section 8 and the Sixteenth Amendment.

2. Coercion

Unable to establish that a dollar cap on the SALT deduction is unlawful *per se*, the States next pursue a narrower argument that takes aim at the specific cap enacted here. Put briefly, the States argue that the purpose and effect of *this* SALT cap is to coerce certain targeted states into bringing their tax policies in line

with the federal government's preferences. (Dkt. No. 45 at 26– 36.) And this sort of targeted coercion, the States maintain, violates the Constitution. (*Id.*)

The States' coercion argument rests on the principle that the Tenth Amendment restricts Congress's ability to "direct or otherwise motivate the States to regulate in a particular field or a particular way." *New York*, 505 U.S. at 161. Most fundamentally, "Congress may not simply 'commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'" *Id.* (quoting *Hodel v. Va. Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 288 (1981)). And just as Congress may not "directly . . . compel the States" to implement a federal program, *id.* at 166, it exceeds the scope of its constitutional authority if it "indirectly coerces a State to adopt a federal regulatory system as its own," *NFIB*, 567 U.S. at 578 (plurality opinion).

The States contend that this principle applies here. Although they have not identified any specific federal policy that the SALT cap is designed to coerce them into adopting, they allege that the cap constitutes an effort to disincentive them, in general terms, from imposing high tax rates. (Dkt. No. 45 at 26–29.) Worse yet, they go on, this coercive effect is no mere incident of an otherwise innocent piece of legislation. To the contrary, they argue, Congress *intended* that the SALT cap would effectively compel certain disfavored, high-taxing states to alter their tax policies. (Dkt. No. 45 at 29–33.) Thus, the States conclude, the SALT cap not only works an unlawful coercive effect in violation of the Tenth Amendment, but it does so in a disparate manner that violates the constitutional principle of equal sovereignty among the states. (*Id.*)

As an initial matter, this Court declines to speculate on Congress's motives in passing the SALT cap. Even assuming, favorably to the States, that Congress enacted the cap in the hopes of prompting states to lower their taxes, the Supreme Court's opinion in *South Dakota v. Dole*, 483 U.S. 203 (1987), makes clear that an otherwise valid federal law does not offend the Constitution simply because it seeks to affect state policies. In *Dole*, the Court rejected a claim that Congress had exceeded its constitutional authority by directing the Secretary of Transportation to withhold certain federal highway funds from any state that authorized anyone younger than twenty-one to drink alcohol. *See id.* at 205–06. Even assuming that Congress had no power to "regulate drinking ages directly," the Court held, Congress nevertheless had the constitutional authority to "act[] indirectly under its spending power to encourage uniformity in the States' drinking ages." *Id.* at 206. The Court's reasoning was straightforward. Beginning with the established principle that the Constitution gives Congress broad power to "authorize expenditure of public moneys for public purposes," *id.* at 207 (quoting *United States v. Butler*, 297 U.S. 1, 65 (1936)), the Court saw no constitutional problem with Congress's choice to use that power to give "relatively mild encouragement to the States to enact higher minimum drinking ages than they would otherwise choose," *id.* at 211. This was so, the Court reasoned, because even if the challenged law favored certain state-level policy choices over others, the ultimate decision of where to set the drinking age "remain[ed] the prerogative of the States not merely in theory but in fact." *Id.* at 211–12.

The same reasoning applies here. The federal taxing power, like the spending power, "gives the Federal

Government considerable influence even in areas where it cannot directly regulate." *NFIB*, 567 U.S. at 537. Just as Congress may impose conditions on federal spending in order to encourage federally preferred state-level policies, it may also influence the states by "enact[ing] a tax on an activity that it cannot authorize, forbid, or otherwise control." *Id.* Thus, in the tax context, no less than in the spending context, a court will typically not "[i]nquir[e] into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it." *Sonzinsky v. United States*, 300 U.S. 506, 513–14 (1937); *cf. United States v. Kahriger*, 345 U.S. 22, 27 (1953) (upholding a federal tax despite "legislative history indicating a congressional motive to suppress" intrastate gambling activity (footnote omitted)), *overruled in part on other grounds by Marchetti v. United States*, 390 U.S. 39, 54 (1968). So even if, as the States contend, Congress enacted the SALT cap in order to exert downward pressure on state and local tax rates, such a motive poses no constitutional problem as long as the states remain free "not merely in theory but in fact" to set their own tax policies.[12] *Dole*, 483 U.S. at 211–12.

Nor have the States shown that legislative intent would be relevant even if, as they claim, Congress intended for the SALT cap's adverse effects to fall disproportionately on certain states. Article I, section 8

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[12] The Government, of course, disputes that the States have produced sufficient evidence to establish that Congress harbored any particular motive in enacting the SALT cap. (Dkt. No. 43 at 35–38.) Because the Court concludes that the States' arguments fail on the merits even if Congress *was* motivated by a desire to influence state and local tax policy, the Court need not decide whether the States' evidence of legislative intent is sufficient to create a factual dispute.

permits Congress to enact a tax that does not "fall[] equally or proportionately on each State," as long as the tax "operates with the same force and effect in every place where the subject of it is found." *United States v. Ptasynski*, 462 U.S. 74, 82 (1983) (quoting *Ptasynski v. United States*, 550 F. Supp. 549, 553 (D. Wyo. 1982)). Here, the SALT cap applies equally to all state and local taxes across the nation, such that the disparate nature of its effects would not ordinarily raise constitutional concerns. The States, of course, contend that the cap violates an independent constitutional principle announced by the Supreme Court in *Shelby County v. Holder*, 570 U.S. 529 (2013)—namely, "the principle that all States enjoy equal sovereignty," *id.* at 535. *Shelby County*, though, is inapposite. In that case, the Court invalidated part of a statutory scheme that required some (but not all) states "to obtain federal permission before enacting any law related to voting," *id.* at 535, a requirement that the Court viewed as an "extraordinary departure from the traditional course of relations between the States and the Federal Government," *id.* at 545 (quoting *Presley v. Etowah Cty. Comm'n*, 502 U.S. 491, 500–01 (1992)). That scheme bears no resemblance to the SALT cap, which applies to *every* state's taxpayers and does not require *any* state to "beseech the Federal Government for permission" to exercise its sovereign powers. *Id.* at 544. Put simply, nothing in *Shelby County* suggests that the equal sovereignty principle bars Congress from using its tax powers to incentivize state-level policy changes simply because it knows that some states will feel those incentives more forcefully than others.[13] *See Florida v.*

[13] Even further afield are *Massachusetts v. United States Department of Health & Human Services*, 682 F.3d 1 (1st Cir. 2012), and *Windsor v. United States*, 699 F.3d 169 (2d Cir. 2012),

Mellon, 273 U.S. 12, 17 (1927) ("Congress cannot accommodate its legislation to the conflicting or dissimilar laws of the several states, nor control the diverse conditions to be found in the various states, which necessarily work unlike results from the enforcement of the same tax.").

To assess the States' coercion claim, then, the Court must look to the SALT cap's effects rather than to the aims Congress might have had in enacting it. Specifically, the Court considers whether the States have sufficiently alleged that the SALT cap goes beyond the "relatively mild encouragement" that the Constitution permits, *Dole*, 483 U.S. at 211, and constitutes an unlawful "gun to the head," *NFIB*, 567 U.S. at 581 (plurality opinion), by effectively coercing them into changing their tax laws. In arguing that the cap will

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aff'd, 570 U.S. 744 (2013), upon which the States rely for the proposition that, "[i]n federalism cases, courts have probed deeply into Congress's motives for enacting legislation" (Dkt. No. 57 at 15). *Massachusetts* and *Windsor* involved equal protection challenges to an unprecedented federal law that defined marriage as exclusively heterosexual and thereby "intrude[d] extensively into a realm that ha[d] from the start of the nation been primarily confided to state regulation—domestic relations and the definition and incidents of lawful marriage." *Massachusetts*, 682 F.3d at 12; *see also Windsor*, 699 F.3d at 186 (characterizing the law as "an unprecedented breach of longstanding deference to federalism"). But it is well established that the question of legislative purpose is central to the equal protection analysis, *see, e.g.*, *Washington v. Davis*, 426 U.S. 229, 240–41 (1976), whereas, as the Court has already explained, Congress commits no constitutional violation merely because it uses its tax powers with the intent of encouraging state-level policy changes. And, unlike the law at issue in *Massachusetts* and *Windsor*, the SALT cap falls well within an area of traditional federal regulation, *i.e.*, the area of "tax[ing] income and . . . grant[ing] exemptions from that tax." *Lyeth*, 305 U.S. at 194.

indeed have an impermissible coercive effect, the States point to a number of facts that they characterize as undisputed. First, they claim that their taxpayers will pay "billions of dollars in additional federal income taxes because of the cap on the SALT deduction, relative to what they would have paid if the 2017 Tax Act had been enacted without the cap." (Dkt. No. 46 ¶ 49; *see also id.* ¶¶ 50–54.) Second, the States claim that the SALT cap will "make[] homeownership in the Plaintiff States more expensive and decrease[] the value of real estate in the Plaintiff States by billions of dollars" (Dkt. No. 46 ¶ 57; *see also id.* ¶¶ 58, 63, 65), with New York in particular predicting that this drop in property values will cause lower household spending, reduced in-state sales, and significant in-state job losses (Dkt. No. 46 ¶¶ 59–61). Finally, the States anticipate that the SALT cap will cause them to lose millions of dollars in real estate transfer tax revenue.[14] (Dkt. No. 46 ¶¶ 62, 64, 66.)

Ultimately, though, the Court cannot conclude that these claimed harms, even if real, are sufficient to establish that the SALT cap is coercive. Two considerations lead to this result.

First, the States' estimates of how much the SALT cap increases their taxpayers' federal tax bill are based on a flawed assumption. In making these estimates, the States have compared their taxpayers' situation under

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[14] Claiming an additional purported harm, the States further point to evidence that the SALT cap places a burden on them and their taxpayers that is disproportionate to the burden it places on other states and their taxpayers. (Dkt. No. 46 ¶¶ 47–48, 55–56.) But the fact that the SALT cap might burden the Plaintiff States more than it burdens other states does not speak to the issue of whether the cap's impact on the Plaintiff States is so grave as to render it coercive.

the Tax Cuts and Jobs Act as it has been enacted—SALT cap and all—to their taxpayers' situation as it would have been had Congress passed the Act without the SALT cap. (*See* Dkt. No. 46 ¶¶ 49–54.) There is no reason to believe, though, that the Tax Cuts and Jobs Act would have looked anything like the enacted version had Congress not been able to cap the SALT deduction in order to counterbalance other of the Act's provisions that *lower* tax burdens, including for taxpayers in the Plaintiff States. The States, of course, respond that "[a] court considering the constitutionality of a particular statutory provision necessarily looks to that provision's effect—not the effects of the entire enactment that contained it." (Dkt. No. 57 at 9–10.) But that general proposition carries little water here. The gravamen of the States' coercion claim, after all, is that the SALT cap's effects will be so severe that the States will be compelled to change the fiscal policies that were in effect at the time of the cap's enactment. It would make no sense for the Court, in assessing that claim, to disregard contemporaneous developments that may have blunted the cap's supposed ill effects by giving the States' taxpayers offsetting gains.[15]

Second, even if the Court does follow the States in isolating the effects of the SALT cap from all other effects of the statute in which the cap is embedded, the States have not plausibly alleged that the cap's effects are so harmful that Congress has engaged in "economic dragooning that leaves the States with no real option

[15] The States also point out that their estimates of the SALT cap's effects on property values and real estate transfer tax revenues do account for all changes the Tax Cuts and Jobs Act has made to the federal Tax Code. (Dkt. No. 61 at 52:8–17.) But the States never argue that these lesser effects, standing alone, create an unconstitutional degree of coercive pressure.

but to acquiesce" in the federal government's preferred state and local tax policies. *NFIB*, 567 U.S. at 582. In essence, the States allege that the SALT cap will burden their taxpayers so heavily that the States will be compelled to adopt ameliorative policies in response. But the States have failed to show that the financial burden their taxpayers will experience as a result of the SALT cap is any more severe than the sort of burden that might accompany any other statewide economic disappointment. And, having failed to make such a showing, the States are unable to take the necessary further step of plausibly suggesting that the SALT cap puts them to the forced choice of lowering tax rates or facing budgetary catastrophe. Indeed, at argument, counsel for the States as much as conceded that the cap's "budgetary implications are difficult to predict and pinpoint." (Dkt. No. 61 at 33:4–5.)

Comparing the situation here to the situation the Supreme Court confronted in *National Federation of Independent Business v. Sebelius* underscores the frailty of the States' coercion theory. In *NFIB*, the Supreme Court considered a federal law that threatened to withhold all Medicaid funding from any state that refused to expand its existing Medicaid program in specified ways. *See* 567 U.S. at 575–76 (plurality opinion). Noting that "Medicaid spending account[ed] for over 20 percent of the average State's total budget, with federal funds covering 50 to 83 percent of those costs," and that "States ha[d] developed intricate statutory and administrative regimes over the course of many decades to implement their objectives under existing Medicaid," *id.* at 581, the Court held that the law represented an unconstitutional federal effort to coerce the states into adopting the federally desired expansion, *id.* at 585. But whereas the law at issue in

NFIB put a state to the choice of either administering its Medicaid program in the precise way Congress directed or else suffering a "threatened loss of over 10 percent of [its] overall budget," *id.* at 582, the SALT cap simply requires the States to either exercise their sovereign powers—howsoever they wish—to avert or assuage the cap's effects or else suffer the uncertain budgetary effects of doing nothing.[16] If being put to such an open-ended choice is coercion, it will be the rare piece of federal legislation that comports with the Tenth Amendment.

In the end, Congress enacted the SALT cap pursuant to its broad tax powers under Article I, section 8 and the Sixteenth Amendment. The cap, like any federal tax provision, will affect some taxpayers more than others and, by extension, will affect some states more than others. But the cap, again like every other feature of the federal Tax Code, is a part of the landscape of federal law within which states make their decisions as to how they will exercise their own sovereign tax powers. Because the States have failed to

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[16] The States maintain that the increased federal tax burden their taxpayers will face as a result of the SALT cap is "similar in magnitude" to the amount of federal funds the law at issue in *NFIB* placed in jeopardy. (Dkt. No. 45 at 27.) Even if true, this point holds little weight. For one thing, the *absolute* value of the costs a challenged law threatens to impose means little without knowing the value of those costs *relative* to a state's overall budget. *Cf. NFIB*, 567 U.S. at 582 n.12 (plurality opinion) ("'Your money or your life' is a coercive proposition, whether you have a single dollar in your pocket or $500."). And for another thing, even if the States' *taxpayers* here might in the aggregate face an increased federal tax burden equivalent to the amount of Medicaid funding at risk in *NFIB*, nothing in the present record indicates that the States *themselves* are facing an economic threat equivalent to the threat the states faced in *NFIB*.

plausibly allege that the cap, more so than any other major federal initiative, meaningfully constrains this decision-making process, this Court has no basis for concluding that the SALT cap is unconstitutionally coercive.

IV. Conclusion

For the foregoing reasons, the Government's motion to dismiss is GRANTED and the States' cross-motion for summary judgment is DENIED.

The Clerk of Court is directed to close the motions at Docket Numbers 42 and 44 and to close this case.

SO ORDERED.

Dated: September 30, 2019
New York, New York

_____

J. PAUL OETKEN
United States District Judge

APPENDIX C

DATE FILED: 9/30/2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-v-

STEVEN T. MNUCHIN, in his official capacity as Secretary of the United States Department of Treasury, UNITED STATES DEPARTMENT OF TREASURY, DAVID J. KAUTTER, in his official capacity as Acting Commissioner of the Internal Revenue Service, UNITED STATES INTERNAL REVENUE SERVICE, and the UNITED STATES OF AMERICA,

Defendants.

18-CV-6427 (JPO)

JUDGMENT

It is hereby ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion and Order dated September 30, 2019, the Government's motion to dismiss is granted and the state's cross-motion for summary judgment is denied; accordingly, this case is closed.

Dated: New York, New York
September 30, 2019

RUBY J. KRAJICK
Clerk of Court

By:_____
Deputy Clerk

THIS DOCUMENT WAS
ENTERED ON 10/1/2019

APPENDIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. art. I, § 8, cl. 1

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States[.]

U.S. Const. amend. X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Const. amend. XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

26 U.S.C. § 164

(a) General rule

Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

(1) State and local, and foreign, real property taxes.

(2) State and local personal property taxes.

(3) State and local, and foreign, income, war profits, and excess profits taxes.

* * *

(b) Definitions and special rules

For purposes of this section—

* * *

(5) General sales taxes

For purposes of subsection (a)—

(A) Election to deduct State and local sales taxes in lieu of State and local income taxes

At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

(i) without regard to the reference to State and local income taxes, and

(ii) as if State and local general sales taxes were referred to in a paragraph thereof.

* * *

(6) Limitation on individual deductions for taxable years 2018 through 2025

In the case of an individual and a taxable year beginning after December 31, 2017, and before January 1, 2026—

* * *

(B) the aggregate amount of taxes taken into account under paragraphs (1), (2), and (3) of subsection (a) and paragraph (5) of this subsection for any taxable year shall not exceed $10,000 ($5,000 in the case of a married individual filing a separate return).

* * *