19-3962

United States Court of Appeals for the Second Circuit

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

Plaintiffs-Appellants,

v.

STEVEN T. MNUCHIN, in his 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.

On Appeal from the United States District Court
for the Southern District of New York

BRIEF AND SPECIAL APPENDIX FOR APPELLANTS

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PRELIMINARY STATEMENT

The states of New York, Connecticut, Maryland, and New Jersey (Plaintiff States) appeal from the dismissal of their complaint challenging the constitutionality of Congress's new $10,000 cap on the federal income tax deduction for state and local taxes ("SALT"). From the enactment of the first federal income tax during the Civil War until the most recent federal tax overhaul in 2017, Congress has provided a deduction for all or substantially all state and local property and income taxes. As every prior Congress has understood, this SALT deduction is necessary to ensure that the federal income tax power does not unduly interfere with the states' sovereign prerogative to determine whether and how to raise revenue to invest in residents, businesses, infrastructure, and more—authority that is guaranteed by the Tenth Amendment and by basic principles of federalism.

To vindicate their sovereign rights, the Plaintiff States filed this lawsuit to challenge the constitutionality of the new SALT deduction cap under Article I and the Tenth and Sixteenth Amendments of the United States Constitution. The United States District Court for the Southern District of New York (Oetken, J.) rejected the Defendants' various threshold objections to the Plaintiff States' claims, but it dismissed the complaint for failure to state a claim and denied the Plaintiff States' motion for summary judgment.[1]

This Court should reverse. Contrary to the district court's reasoning, the SALT deduction is not merely a matter of congressional grace. Instead, history establishes that the deduction has constitutional underpinnings and that Congress cannot drastically curtail the scope of the deduction without running afoul of basic federalism principles. Consistent congressional practice and constitutional understanding dating back over 150 years provide powerful evidence that Congress must provide a deduction for all or nearly all state and local income and property taxes to ensure that the federal government does not crowd states out of traditional sources of revenue and thereby interfere with their sovereign taxing authority.

The $10,000 cap is also unconstitutionally coercive. By raising the cost of state and local taxes, the cap on the SALT deduction inflicts

[1] The Defendants are Steven Mnuchin, Secretary of the United States Department of Treasury; the United States Department of Treasury; Charles P. Rettig, Commissioner of the Internal Revenue Service; the Internal Revenue Service; and the United States of America.

substantial financial harms that fall principally on the Plaintiff States, making it more difficult for them to raise the tax revenues necessary to fund vital public services. And the harm inflicted by the new cap is indisputably and intentionally targeted at a subset of politically disfavored states—including the Plaintiff States—based on the Defendants' disagreement with those states' policy choices, thus undermining the constitutional guarantee of equal sovereignty. Because of the new cap, the Plaintiff States must either suffer the financial injuries imposed by the cap or conform their taxation and fiscal policies to congressional preferences. Congress's tax power, while broad, does not authorize such compulsion.

ISSUE PRESENTED

Whether Congress's 2017 imposition of a novel $10,000 cap on the SALT deduction violates Article I and the Tenth and Sixteenth Amendments of the United States Constitution by (a) improperly interfering with the Plaintiff States' sovereign taxing authority, and (b) unduly coercing a small subset of States, including the Plaintiff States, into altering their sovereign policy choices by imposing substantial economic harm.

STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1340. On September 30, 2019, the district court entered a final judgment dismissing the complaint and denying summary judgment to the Plaintiff States. (Special Appendix (S.A.) 38.) The Plaintiff States filed a timely notice of appeal. (J.A. 728.) This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE CASE

A. The Constitutional Underpinnings of the Federal Tax Deduction for State and Local Taxes (SALT)

1. The power to tax income and property is an essential and original state power

As the Supreme Court has long recognized, "the power of taxation is indispensable" to the "existence of the States" and is "an essential function of [state] government." *Lane County v. Oregon*, 74 U.S. 71, 76 (1868). The states' power to tax long predates the United States. *See id.* During the colonial era, taxes were principally levied by the colonies. Likewise, under the Articles of Confederation, it was the states, not the federal government, that primarily levied taxes.[2] Although these levies took a variety of forms, the states relied heavily on property taxes and,

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

Where applicable, historical and secondary materials submitted as exhibits to the Plaintiff States' cross-motion for summary judgment are also cited in the Joint Appendix. For sources available on the internet, full URLs appear in the table of authorities. All websites were last visited on March 9, 2020.

to some extent, "faculty" taxes—a precursor to modern income taxes. *See id.* at 76-77. (*See also* Joint Appendix (J.A.) 22-23 (complaint).)

Concern about the states' ability to maintain their sovereign taxing authority pervaded debates surrounding the ratification of the Constitution.[3] 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' own taxing authority.[4] To prevent such encroachment, the Founders adopted a dual federalist structure and reserved to the states a concurrent taxing authority. As Alexander Hamilton explained, "the individual States would, under the proposed Constitution, retain an *independent and uncontrollable authority* to raise revenue to any extent of which they may stand in need, *by every kind of taxation*, except duties on imports and exports."[5] (*See also* J.A. 22-23 (complaint).) In 1791, the Founders ratified the Tenth Amendment, confirming that because the states reserved their original

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

[4] *See id.*

[5] *The Federalist* No. 33 (Alexander Hamilton) (J.A. 188) (emphasis added).

power to tax, the federal government could not exercise its own taxing power in such a way as to encroach upon the states' sovereign taxing authority.[6]

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.[7] 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."[8]

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[6] *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.") (S.A. 39).

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

[8] 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).

During this period, Congress occasionally contemplated exercising greater taxing power to address periods of acute financial stress, but it ultimately refrained from doing so to avoid intruding on the states' sovereign taxing authority. For example, during the War of 1812, Congress contemplated the first federal income tax to raise critically needed revenue. Although it was never enacted, the initial proposal for a federal income tax entirely exempted state and local taxes from federal taxation, providing that the federal income tax would extend "only to such capital or employments *as are not taxed by any existing laws*." 28 *Annals of Cong*. 1079 (1815) (emphasis added) (J.A. 193).[9] This proposal reflected the understanding of early Congresses that imposing a federal tax on revenue sources already taxed by the states would interfere with the states' taxing authority, and that, in the context of a federal income tax, the federal government was required to accommodate the states by exempting from taxation the income that taxpayers were already paying towards state and local taxes.

[9] *See also* U.S. Dep't of Treasury, State of the Treasury, Doc. No. 438, 13th Cong., 3d Sess., in 2 *American State Papers*, *Finance* 885, 887 (1815) (proposing consideration of an income tax to fund the War of 1812).

2. Congress has provided a deduction for all or nearly all SALT since the Civil War

Congress enacted the first federal income tax in 1861 to help defray the costs of the Civil War. Despite the nation's desperate need for funds, Congress understood the constitutional imperative to respect the states' sovereign taxing power and 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 (J.A. 194).

As the legislative history makes clear, Congress designed the first federal income tax to ensure that the new federal tax did not interfere with the states' traditional means of raising revenue. For example, House Ways and Means Committee member Justin Smith Morrill explained: "It is a question of vital importance to [the states] that the General Government should not absorb all their taxable resources—that the accustomed objects of State taxation should, in some degree at least, go untouched." *Cong. Globe*, 37th Cong., 2d Sess. 1194 (1862) (J.A. 195). Committee Chairman Thaddeus Stevens reiterated that, in enacting the federal income tax, Congress was concerned about avoiding "double taxation," and that it was a paramount goal of the drafters "to exclud[e] from this tax the articles and subjects of gain and profit which are taxed in another form." *Cong. Globe*, 37th Cong., 2d Sess. 1577 (1862) (J.A. 196).

Although the underlying income tax was modified several times during the Civil War, the SALT deduction was maintained without change until the income tax was allowed to lapse in 1872.[10] Following its lapse, the federal government "returned to reliance on tariffs and excises to fill the federal coffers."[11]

The Civil War income tax provided an important precedent for subsequent federal income tax regimes.[12] When the federal income tax was reenacted in 1894, legislators modeled the tax on the Civil War precedent, providing a broad 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.

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[10] *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 (J.A. 197-206).

[11] *See* Foster, *supra*, at 710 n.40.

[12] *See* Blakey & Blakey, *supra*, at 5 (J.A. 192).

509, 553 (J.A. 207).[13] The Supreme Court struck down the 1894 income tax as an un-apportioned direct tax in *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601 (1895). When efforts to revive a federal income tax nonetheless continued after *Pollock*, these proposals also uniformly included a broad SALT deduction modeled on the Civil War deduction.[14]

3. The framers of the Sixteenth Amendment acknowledged and incorporated the federalism concerns raised by the states during the ratification process

In 1909, Congress voted to adopt the Sixteenth Amendment to solidify Congress's authority to enact a federal income tax. What followed was a four-year ratification process in which legislators from states across the country raised concerns about the federalism implications of the amendment, fearing that it would expand the federal government's

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

[14] *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).

taxing power at the expense of the states. These federalism-based objections posed a serious obstacle to ratification.[15] (*See* J.A. 29-30 (complaint) (citing exemplar authorities).)

To overcome these concerns, the champions of the Sixteenth Amendment provided repeated and vigorous assurances that the federal government's taxing power had historically been subject to meaningful federalism constraints, and that those constraints would be unaffected by the Sixteenth Amendment. For example, U.S. Senator William Borah argued in widely publicized statements that the federal taxing power was limited by the dual tax sovereignty of the states, and that the federal government could not exercise its powers under the Sixteenth Amendment to unduly interfere with the states' own taxing authority. Borah stressed that the Sixteenth Amendment must be construed in light of the Founders' understanding, including their desire to preserve the independent and inviolable taxing power of the states. *See* 45 *Cong. Rec.* 1696-98 (1910) (J.A. 221). As Borah explained, "[t]he taxing power of the

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[15] *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) (J.A. 210).

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." *Id.* at 1696 (J.A. 221).[16]

Another United States Senator, who was also a former Secretary of State and Secretary of War, Elihu Root, expressed similar sentiments in a widely publicized letter to the New York State legislature.[17] Like Borah, Root argued that the proposed amendment must "be construed in the light of the judicial and political history which led to the proposal."[18] And in light of such an understanding, Root made clear that even under the Sixteenth Amendment "[t]he 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."[19] Rather, a "uniform, long-established, and indisputable rule" of construction

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[16] *See also* William E. Borah, *Income-Tax Amendment*, 191 N. Am. Rev. 755, 758 (1910) (arguing that "notwithstanding the unlimited taxing power of Congress when *standing alone*, it must be construed in the light of the fact that we have a dual Government" (emphasis added)) (J.A. 698).

[17] *See Root for Adoption of Tax Amendment*, N.Y. Times, Mar. 1, 1910, at 4 (reproducing letter from Root) (J.A. 22).

[18] *Id.*

[19] *Id.*

would prohibit the federal government from exercising its powers under the Sixteenth Amendment to encroach on "the powers or instrumentalities of the State."[20] These assurances, among others, were important in persuading states to ratify the amendment, notwithstanding their federalism concerns. (*See* J.A. 32-33 (complaint) (discussing additional authorities).)

4. After the ratification of the Sixteenth Amendment, Congress continued to respect the states' reserved tax authority

Consistent with the assurances provided by Borah, Root, and others, Congress adhered to the longstanding restrictions on its income taxing power when it enacted the first post-amendment income tax. The 1913 Revenue Act, like all prior federal income taxes, included a broad deduction for all "national, State, county, school, and municipal taxes paid within the year." Ch. 16, § II(B), 38 Stat. 114, 167 (1913) (J.A. 224). An economist who advised the House Banking and Currency Committee on the 1913 Act explained that, in drafting the new income tax, Congress "desired that the question of interference with state taxes should be very

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[20] *Id.*

carefully safeguarded."[21] And in the context of SALT in particular, the adviser explained that the deduction was included 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."[22] And this was accomplished by providing for "the general deduction of state and municipal taxes in computing income."[23]

For the next hundred years, Congress adhered to the same essential constitutional mandate: that to exercise its income taxing power, the federal government must accommodate the states' sovereign taxing authority by providing a deduction for all or a significant portion of SALT. Indeed, across fifty-one different Congresses and sixty-three different tax laws, Congress has preserved the core elements of the SALT deduction. (J.A. 259-548; *see also* J.A. 35-37 n.45 (complaint) (describing relevant tax statutes).)

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

[22] *Id.*

[23] *Id.*

Until the most recent tax overhaul, Congress has never significantly curtailed the scope of the SALT deduction. To the contrary, Congress has repeatedly reaffirmed the central role the deduction plays in safeguarding our system of tax federalism. For example, when considering reforms to the tax code in 1963, a House Report stated that the SALT deduction was necessary to protect federalism when "the State and local governments on one hand and the Federal Government on the other hand tap this same revenue source." H.R. Rep. No. 88-749, at 48 (1963) (J.A. 233).

In the 1980s, proposals to curtail the deduction were defeated after a number of elected officials argued that repealing the SALT deduction was unconstitutional. For example, U.S. Senator Daniel Patrick Moynihan explained to Congress that repealing the SALT deduction would violate federalism principles and disrupt the "constitutional balance in some fundamental way." *Income Tax Deductions of State and Local Governments: Hearing Before the S. Comm. on Fin.*, 99th Cong. 70 (1985) (J.A. 252).[24] Senator Durenberger of Minnesota likewise observed that

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[24] *See also* Daniel Patrick Moynihan, *Constitutional Dimensions of State and Local Tax Deductibility*, 16 Publius 71 (1986) (arguing that a repeal of the SALT deduction would be unconstitutional on federalism grounds); 132 *Cong. Rec.* 13609 (1986) (statement of Senator Moynihan)

"[s]ince the creation of the Federal income tax, the deduction has been accepted as a necessary feature of federalism." 132 *Cong. Rec.* 13,608 (1986) (*See also* J.A. 38 (complaint) (discussing other authorities).) Responding to these concerns, the Senate passed a sense-of-the-Senate amendment, 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 (1986) (emphasis added); *see also id.* at 13,610.

("For eliminating this deduction not only threatens the independent revenue-raising power of the States and dangerously undermines the federalist distribution of power but, to my mind, constitutes the most extreme form of Federal intrusion into States' fiscal affairs.").

B. The 2017 Tax Act's Radical Departure from Longstanding Historical Practice and Constitutional Understanding

1. Congress drastically curtails the scope of the SALT deduction

The 2017 tax overhaul fundamentally broke with this historical precedent and understanding by severely curtailing the scope of 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" or "Act"), Pub. L. No. 115-97, § 11042, 131 Stat. 2054, 2085-86 (2017) (H.R. 1). 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 (1) state and local real estate taxes, (2) state and local personal property taxes, and (3) either state and local income taxes, or state and local sales taxes. *See* 26 U.S.C. § 164(a)-(b) (2012). By contrast, under the 2017 Tax Act, individuals may deduct only up to $10,000 total in (1) state and local real and personal property taxes, and (2) either state and local income taxes, or state and local sales taxes. Married taxpayers filing separately may deduct up to $5,000 each.[25] *See* 26 U.S.C. § 164(a)-(b).

The cap on the SALT deduction is unprecedented in several respects. First, although Congress has previously carved out particular types of state and local taxes from the deduction, such as sales and fuel taxes, Congress has always preserved the deductibility of property and income taxes—taxes that are historically significant to the states, and which remain a central means by which states generate revenue. (*See* J.A. 42 (complaint).)

Second, the new cap is the first *direct* dollar limitation on the deduction for state and local *income* and *property* taxes. Congress has previously imposed general limitations on itemized deductions that tangentially affect some taxpayers' ability to claim the full SALT deduction. But these measures were often intended to maintain the progressive nature of the income tax and to raise revenue, rather than to

[25] The new cap on the SALT deduction became effective in tax year 2018 and will expire after 2025 without further action by Congress. *See* 26 U.S.C. § 164(b)(6).

curtail the deduction for taxpayers of all incomes.[26] Moreover, the effect of these general provisions on the deductibility of SALT was tangential at best.[27] (J.A. 42 (complaint).)

Third, the $10,000 cap is exceptionally low, especially relative to the amount that many taxpayers in the Plaintiff States pay in SALT. For example, in 2015, the average SALT deduction 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. (J.A. 66-67.)

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[26] For example, the so-called "Pease Limitation" imposed an overall limit on the amount taxpayers may claim in itemized deductions if the taxpayer's income exceeds a certain threshold. *See* Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11103, 104 Stat. 1388, 1388-406 (codified at 26 U.S.C. § 68(a) (2012)). The Pease Limitation was designed "so that the resultant tax increases were borne by taxpayers at the upper end of the income spectrum." Gregg A. Esenwein, Cong. Research Serv. (CRS), *The PEP and Pease Provisions of the Federal Individual Income Tax* 4 (2006) (internet).

[27] *See, e.g.*, Jane G. Gravelle & Sean Lowry, CRS, *Restrictions on Itemized Deductions: Policy Options and Analysis* 5 (2014) (internet).

2. The Plaintiff States suffer substantial harms because of the SALT deduction cap

a. The SALT deduction cap hurts the Plaintiff States' economies and undermines their sovereign taxing authority

As the Plaintiff States explained in the complaint, and as the district court acknowledged in finding that the Plaintiff States had standing (S.A. 12-16), the SALT deduction cap will injure the Plaintiff States' economic and sovereign interests in several ways.

First, because of the new cap, taxpayers in the Plaintiff States 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.[28] (*See* J.A. 78, 89-90, 93, 145-148.)

Second, the SALT deduction cap, as applied to property taxes in particular, will substantially depress real estate prices in New York by making it more expensive to own a home, thereby diminishing home equity value in the State by approximately $63.1 billion. The resulting

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[28] *See also, e.g.*, Grant A. Driessen & Joseph S. Hughes, CRS, *The SALT Cap: Overview and Analysis* 1 (Mar. 2020) (internet) ("[T]he SALT cap increases the tax liability of certain taxpayers, which increases federal tax revenues relative to what otherwise would have been collected without a limitation in place.").

loss in home equity values is likely to decrease in-state spending, lead to tens of thousands of lost jobs, reduce home sales, and cost the State millions of dollars a year in real estate transfer tax revenues. And the other Plaintiff States are likely to experience similar effects. (J.A. 65, 68-69, 149-151.)

Third, the many financial harms caused by the SALT deduction cap will undermine the Plaintiff States' ability to maintain their current taxation and fiscal policies. By increasing taxpayers' federal tax burden and making state taxes more expensive, the new cap will inevitably make it more difficult for the Plaintiff States to raise their own tax revenues, either by maintaining current tax rates or raising rates in the future.[29] This increased burden will, in turn, impede the Plaintiff States' ability to make public investments and maintain current levels of public services

[29] *See also id.* at 3 ("The SALT deduction provides state and local governments with an increased ability to levy taxes by reducing the after-tax cost of state and local taxes to taxpayers. By limiting the deduction's benefits, the SALT cap increase the cost (or 'price') of state and local taxes for affected taxpayers.").

to support education, health care services, public security, and public infrastructure, among other things.[30] (J.A. 41 (complaint).)

b. The burdens of the SALT deduction cap fall disproportionately on the Plaintiff States

The financial costs of the SALT deduction cap will be disproportionately borne by the Plaintiff States. The Plaintiff States are among the states with the highest percentages of taxpayers whose federal tax burden increased under the 2017 Tax Act. Moreover, each of the Plaintiff States received a smaller share of the federal tax cuts in the 2017 Tax Act than their share of the federal tax base. And although the 2017 Tax Act reduced the portion of the federal government's income tax revenues paid by most other States, it increased the portion of the federal government's income tax revenues paid by taxpayers in the Plaintiff States. (J.A. 80-85.)

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[30] *See also id.*; Erin Scharff, *Preemption and Fiscal Authority*, 45 Fordham Urb. L.J. 1270, 1290 (2019) ("The deduction cap is an additional constraint on the ability of local governments to increase revenue and thus pay for needed local services. As a result, local governments may need to cut services.").

Most states fare much better under the 2017 Tax Act. For example, Alaska received a 137 percent share of the tax cuts in the 2017 Tax Act, compared to its share of the federal tax base. Texas received 127 percent, and Florida received 122 percent. Moreover, only 5 percent and 2 percent of taxpayers in Florida and North Dakota, respectively, will see their net federal taxes increase, as compared to 13 percent in New York, 12 percent in Maryland, 11 percent in New Jersey, and 9 percent in Connecticut.[31] (J.A. 81-85.)

c. Legislators enacted the cap expressly to pressure particular states to change their tax and public policy decisions

The legislative history of the 2017 Tax Act makes clear that the disproportionate harm the Plaintiff States will suffer because of the SALT deduction cap was no accident. Rather, statements from lawmakers and executive officials responsible for enforcing the cap make clear that

[31] Recent studies have confirmed the disparate effects. *See, e.g.*, David Altig et al., *Did the 2017 Tax Reform Discriminate Against Blue State Voters?* 23, Fed. Reserve Bank of Atlanta Working Paper Series, Paper No. 2019-7 (2019) (internet) (finding a disparate effect on consumption across red and blue states caused predominantly by the SALT deduction cap).

Congress was aware that the financial costs of the SALT deduction cap would not fall evenly across the states, and that Congress enacted the cap, at least in part, to compel the Plaintiff States to lower their tax rates and to eliminate the important public programs the Plaintiff States have chosen to fund with state 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." (J.A. 575 (quotation marks omitted).) A few weeks later, Speaker Ryan reiterated the point: "I would argue we're propping up profligate, big government states and we're having states that actually got their act together to pay for states that didn't." (J.A. 612 (quotation marks omitted).) (Both times, Speaker Ryan was incorrect, as the Plaintiff States pay more in federal taxes than their residents receive in federal spending.[32] (J.A.

[32] In 2018, for example, New Yorkers contributed approximately $22 billion more in revenue to the federal government than the State received back in federal spending overall—the largest negative balance of payment of any State. *See* Laura Schultz & Michelle Cummings,

54-55 (complaint).) Republican Congressman Duncan Hunter similarly commented on the targeted effects of curtailing the SALT deduction: "California, New Jersey, New York, and other States that have horrible governments, yes. It's not as good for those states." (J.A. 616 (quotation marks omitted); *see also* J.A. 53-54 (complaint) (describing additional commentary).)

Members of the executive branch echoed these views and expressed their hope that curtailing the deduction would force the Plaintiff States to change their policies. For example, Treasury Secretary Steven Mnuchin 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?" (J.A. 621 (quotation marks omitted).) During an interview with Sean Hannity, President Trump singled out Florida's Republican-led state government for praise, stating that "those are the people that frankly should—the people that had the intelligence to elect them should really benefit. And that's what we are doing. We are creating an incentive." (J.A.

Giving or Getting? New York's Balance of Payments With the Federal Government: 2020 Report 5-7, 9-10, SUNY Rockefeller Inst. of Gov't (Jan. 2020) (internet).

583.) He continued: "[I]t's finally time 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. (J.A. 582.)

Republican political commentators were even more candid about their goals for curtailing the SALT deduction, with one admitting that "[t]he fact that these tax increases will fall most heavily on 'blue' parts of the country is obviously not an accident," and another declaring that curtailing the deduction meant "death to democrats." (J.A. 619, 633.)

C. Procedural Background

On July 17, 2018, the states of New York, Connecticut, New Jersey, and Maryland filed a complaint challenging the constitutionality of the new SALT deduction cap, arguing that the cap violates Article I, Section 8, and the Tenth and Sixteenth Amendments of the United States Constitution by interfering with the Plaintiff States' sovereign taxing authority, by unduly coercing the Plaintiff States to change their sovereign tax policies, and by denying the Plaintiff States equal sovereignty under the law. (J.A. 58-60.)

The Defendants moved to dismiss the complaint, arguing that the Plaintiff States lacked standing, that the action was barred by the Anti-

Injunction Act (AIA), and that Plaintiff States' claims were non-justiciable under the political question doctrine. The Defendants further argued that the complaint should be dismissed for failure to state a claim. The Plaintiff States opposed the motion to dismiss and cross-moved for summary judgment. (J.A. 7, 152-155.)

The district court agreed with the Plaintiff States on all of the threshold issues, finding that they had demonstrated a sufficient injury-in-fact to establish standing, that the AIA did not bar the suit, and that the political question doctrine was no bar to the court's resolution of the constitutional claims. (S.A. 12-23.)

The court nonetheless dismissed the complaint, holding that the Plaintiff States had failed to allege a constitutional violation. Specifically, the court held that the Plaintiff States 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 Plaintiff States into changing their state policies. (S.A. 23-37.)

STANDARD OF REVIEW & SUMMARY OF ARGUMENT

This Court reviews de novo a district court's dismissal of a claim and denial of summary judgment. *See, e.g.*, *Harris v. Mills*, 572 F.3d 66, 71 (2d Cir. 2009) (grant of motion to dismiss); *Burakovic v. Building Serv. 32 BJ Pension Fund*, 609 F.3d 133, 137 (2d Cir. 2010) (denial of motion for summary judgment). This Court should reverse the district court's decision to dismiss the Plaintiff States' constitutional challenge to the SALT deduction cap and grant summary judgment to the Plaintiff States.

First, contrary to the district court conclusion below, Congress's drastic curtailment of the SALT deduction violates basic requirements of federalism. Consistent historical practice and constitutional understanding for over 150 years establish that the SALT deduction is a constitutional requirement. Because Congress cannot severely curtail the scope of that deduction without encroaching on the states' sovereign taxing authority, the new cap violates foundational principles of federalism. In reaching a contrary conclusion, the district court disregarded the SALT deduction's unique and uniform history and the implications of that history for the scope of the federal government's Article I taxing power.

Second, the district court erred in concluding that the new $10,000 cap on the SALT deduction was not unduly coercive. The SALT deduction was put in place to prevent the federal government from interfering with the states' sovereign taxing powers. By capping that deduction and significantly raising the cost of state and local taxes, Congress has targeted the Plaintiff States for disfavored treatment, forcing them to choose between substantial economic harm or altering their sovereign policy choices. Moreover, this direct interference with a sensitive tool of state policymaking disproportionately injures the Plaintiff States (and a few others), violating the principle of equal sovereignty. In dismissing this claim, the district court improperly discounted the Plaintiff States' economic harm. It also failed to consider the federal government's targeting of the Plaintiff States, which makes the coercive effects of the SALT deduction cap especially improper. The fact that the SALT deduction cap is facially neutral cannot legitimize such disparate and coercive treatment of sovereign states.

ARGUMENT

POINT I

THE SALT DEDUCTION CAP UNCONSTITUTIONALLY INFRINGES ON THE STATES' SOVEREIGN TAXING POWERS

The SALT deduction is, at its core, a protection for the states' sovereign authority to raise revenue and determine their own fiscal priorities. By allowing taxpayers to reduce their federal tax liability to account for state and local taxes, the SALT deduction effectively makes it less costly for states and localities to raise tax revenue, thereby ensuring that they are not crowded out of traditional revenue sources—like income and property taxes—by the federal government imposing a tax on the same sources.

In providing this protection in every federal income tax for over 150 years, Congress has not merely made an "accommodating policy choice" as a matter of grace, as the district court concluded. (S.A. 29.) Rather, Congress's consistent practice and repeatedly expressed views on the necessity and importance of the SALT deduction make clear that the deduction is a constitutional requirement, and that Congress cannot severely curtail the scope of the deduction without violating basic principles of federalism.

A. Longstanding Historical Practice and Understanding Establish that Congress Cannot Drastically Curtail the SALT Deduction.

The Supreme Court has long recognized the importance of history in interpreting the scope of congressional power. Indeed, the Court has noted that when Congress exercises a new power, "[p]erhaps the most telling indication" of a "severe constitutional problem" is "the lack of historical precedent." *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 505 (2010) (quotation marks omitted). While novelty is not necessarily fatal, the fact that "earlier Congresses avoided use" of a particular power provides "reason to believe that the power was thought not to exist." *Printz v. United States*, 521 U.S. 898, 905 (1997); *accord Alden v. Maine*, 527 U.S. 706, 715-29 (1999) (recounting the history of sovereign immunity to interpret the Eleventh Amendment). Here, history provides powerful evidence that Congress cannot drastically curtail the SALT deduction without infringing on core constitutional protections for federalism.

Until the 2017 Tax Act, Congress's respect for the SALT deduction was consistent and longstanding. When Congress enacted the first federal income tax in 1861, in the midst of the Civil War, it included a broad deduction for all state and local taxes. *See* Act of Aug. 5, 1861, ch. 45, § 49, 12 Stat. 292, 309 (J.A. 194). As legislators then explained, it was "a question of vital importance to [the states] that the General Government should not absorb all their taxable resources—that the accustomed objects of State taxation should, in some degree at least, go untouched." *Cong. Globe*, 37th Cong., 2d Sess. 1194 (1862) (J.A. 195). Accordingly, Congress structured the new tax, including the SALT deduction, to ensure that the federal government did not unduly encroach on the states by crowding them out of traditional revenue sources, like property and income taxes. See *supra* at 9-11. That Congress included the deduction notwithstanding the nation's dire revenue crisis—and when the nation's very survival was at stake—constitutes powerful evidence that Congress understood itself to be subject to a constitutional mandate.

The debates over the Sixteenth Amendment confirm this longstanding constitutional understanding. As explained above (see *supra* at 12-14), supporters of the amendment alleviated the states' federalism concerns by making clear that the Sixteenth Amendment would not supplant the structural constraints that had historically prevented the federal government from exercising its taxing power at the states' expense. Those assurances took concrete form in the first post-amendment income tax, which—like all prior income tax laws—contained a broad deduction for all SALT. *See* Revenue Act of 1913, ch. 16, § II(B), 38 Stat. 114, 167 (J.A. 225). An expert who advised Congress on the law explained that Congress included the SALT deduction for federalism reasons—i.e., to ensure the "field" was "shared with the states."[33] This federalism-based explanation is particularly illuminating given the Supreme Court's recognition that "contemporaneous legislative exposition of the Constitution . . . , acquiesced in for a long term of years, fixes the construction to be given its provisions." *Printz*, 521 U.S. at 905 (quotation marks omitted).

More recent Congresses have likewise adhered to this consistent practice and understanding. Although subsequent Congresses have tinkered at the margins of the SALT deduction, Congress has never directly limited the deduction for state and local income and property taxes in the way that the 2017 Tax Act does. See *supra* at 11-14.

[33] Willis, *supra*, at 227 (J.A. 231).

Moreover, Congress has repeatedly expressed its view that the SALT deduction is a necessary federalism protection with constitutional underpinnings. For example, in the 1960s, a House Report concluded that it was necessary to retain the SALT deduction to protect the sovereign powers of the states when "the State and local governments on one hand and the Federal Government on the other hand tap this same revenue source." H.R. Rep. No. 88-749, at 48 (J.A. 233). And in the 1980s, in conjunction with a defeat of a prior attempt to curtail the SALT deduction, the Senate passed a sense-of-Senate amendment declaring that "any tax reform legislation should preserve the full deduction for State and local sales, real and personal property, and income taxes." 132 *Cong. Rec.* 13,607 (1986). As the amendment explained, "the deduction for State and local taxes is a *cornerstone of Federalism*," and curtailing the deduction "would constitute an unjustified Federal intrusion into the fiscal affairs of States." *Id.* at 13,606 (emphasis added).

Congress's consistent historical practice and understanding of the import of the SALT deduction is precisely the kind of evidence the Supreme Court has previously relied on when it has determined that modern Congresses have exceeded their powers under the Tenth

Amendment. For example, in *Printz,* in finding the Brady Act's conscription of state officers unlawful, the Court relied heavily on the absence of executive-commandeering statutes, both by "early Congresses" and "in our later history." 521 U.S. at 905-16. Here, Congress's consistent inclusion of the SALT deduction, coupled with its repeated reaffirmation of the deduction's constitutional underpinnings, likewise provides powerful evidence that Congress must provide a deduction for all or nearly all state and local property and income taxes.

B. The Cap on the SALT Deduction Cannot Be Reconciled with this Consistent Historical Practice and Understanding.

The district court correctly recognized the importance of history in construing the scope of Congress's powers as a general matter. It also recognized the SALT deduction's unique historical pedigree. (S.A. 24-25.) Nonetheless, it concluded that the Plaintiff States had failed to allege a constitutional violation. (S.A. 26-37.) The district court's reasoning was flawed in several respects.

First, in reaching its conclusion that the Plaintiff States failed to allege a federalism violation, the district court relied heavily on the scope of Congress's taxing powers under Article I.[34] (S.A. 25-27.) But Congress's taxing powers are not so unlimited. The Supreme Court has long recognized that Congress's 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, 577 (2012) (recognizing structural limits on Congress's tax power).

Although Congress certainly has significant taxing power, the 2017 Tax Act's drastic and unprecedented curtailment of the SALT deduction exceeds Congress's authority by directly interfering with states' ability to generate revenue to sustain their operations. As explained above, the SALT deduction ensures that states are not crowded out of traditional revenue sources, like property and income taxes, when the federal government taxes the same objects. When the scope of the deduction is

[34] *See* 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.") (S.A. 39).

curtailed, the effective cost of state and local taxes increases, making it more difficult for states to raise revenue from these traditional sources. By threatening the very core of the Plaintiff States' ability to generate revenue and fund vital operations and services, the SALT deduction cap constitutes precisely the kind of "'power akin to undue influence'" that exceeds Congress's Article I taxing powers. *NFIB*, 567 U.S. at 578 (quoting *Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937)).

Second, the district court relied heavily on *South Carolina v. Baker*, 485 U.S. 505 (1988), a case in which the Supreme Court upheld Congress's decision to eliminate the federal tax exemption for interest earned on state-issued bearer bonds. (S.A. 27-28.) But the tax law challenged in *Baker* was critically different from the one at issue here. As Chief Justice Rehnquist observed in *Baker*, the elimination of the tax exemption for interest earned on bearer bonds had only a "*de minimis* impact on the States." *Baker*, 485 U.S. at 529 (Rehnquist, C.J., concurring). Indeed, the Special Master appointed to adjudicate the case made factual findings that eliminating the tax immunity of interest on state-issued bearer bonds would have no "substantive effect on the abilities of States to raise debt capital, on the political processes by which States decide to issue debt, or on the power of the States to choose the purpose to which they will dedicate the proceeds of their tax-exempt borrowing." *Id.* These factual findings explain why the exemption at issue in *Baker* was not a central federalism protection notwithstanding its historical longevity. The SALT deduction cap is fundamentally different, interfering with policy choices at the core of state sovereignty by making it more difficult for states to raise revenue through taxes that are a central component of state and local fiscal policies.

The tax law challenged in *Baker* was also blanket reform that did not target any unique power of the states. *See* 485 U.S. at 526-27. The federal government and private corporations, like the states, were also in the business of issuing bearer bonds, and the law challenged in *Baker* altered the tax-exempt status of the interest earned on all unregistered bonds, not just those issued by the states. *See id.* at 510-11; *see also id.* at 526-27.[35] The SALT deduction cap, by contrast, is targeted exclusively

[35] Moreover, in *Baker*, unlike in this case (see *infra* at 46-50), the Court found South Carolina's Tenth Amendment claim deficient, in part because there was no allegation, much less evidence, that South Carolina had been targeted for less favorable treatment. *Baker*, 485 U.S. at 512-13.

at a sovereign power the states share only with the federal government—the power to tax.

Finally, the district court emphasized the fact that Congress has previously imposed indirect limitations on the SALT deduction. (S.A. 28.) But the examples on which the district court relied were all recent tax reforms of uncertain constitutionality, which were not directly targeted at the SALT deduction or at particular states, and which had, at most, indirect effects on the SALT deduction. For example, 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.[36] *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). But the Pease limitation is "not a true limit on deductions, but rather an increased tax rate," as the Congressional Research Service has explained.[37] And it was "designed in

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[36] 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)).

[37] Gravelle & Lowry, *supra*, at 4; *see also* Thomas L. Hungerford, CRS, *Deficit Reduction: The Economic and Tax Revenue Effects of the*

such a way that it [was] unlikely to have an effect on the value of itemized deductions," including the SALT deduction.[38]

The SALT deduction cap is dramatically different. As the district court acknowledged, the 2017 Tax Act is the first enactment "that has *directly* limited the deduction for state and local income and property taxes." (J.A. 24 (quotation and alteration marks omitted.) Moreover, the SALT deduction cap imposes an unusually low dollar limitation that has far more severe effects for the deductibility of SALT than any previous indirect limitation. For example, the *average* federal SALT deduction in 2015 for the 3.3 million New Yorkers who itemized their federal tax returns was $21,943—or more than twice the new cap. (J.A. 66-67.) The indirect and inconsequential effect of the previous indirect limitations on the SALT deduction cannot overcome nearly two centuries of history in which Congress respected the states' sovereignty by providing a near total deduction for all state and local income and property taxes.[39]

Personal Exemption Phaseout (PEP) and the Limitation on Itemized Deductions (Pease) 2-3 (2013) (internet).

[38] Gravelle & Lowry, *supra*, at 5.

[39] Congress's decision in 1986 to limit taxpayers' ability to deduct state and local sales taxes, *see* Tax Reform Act of 1986, Pub. L. No. 99-

POINT II

THE SALT DEDUCTION CAP IMPERMISSIBLY COERCES THE PLAINTIFF STATES INTO CHANGING THEIR PREFERRED TAXATION AND FISCAL POLICIES

The Supreme Court has repeatedly "recognized limits on Congress's power . . . to secure state compliance with federal objectives." *NFIB*, 567 U.S. at 576. 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)). A federal statute transgresses that line if it directly mandates that states perform, or decline to perform, certain regulatory actions. *See, e.g.*, *Murphy v. National Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1478 (2018) (invalidating federal statute prohibiting state authorization of sports gambling).[40] But state sovereignty

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514, § 134, 100 Stat. 2085, 2116 (J.A. 480), is likewise irrelevant, because (a) Congress left undisturbed the unlimited deduction for income and property taxes, and (b) sales taxes are far less significant to most States and localities than income and property taxes. (J.A. 556-557.)

[40] *See also, e.g.*, *Printz*, 521 U.S. at 933 (federal government may not compel states to perform background checks on handgun purchasers); *New York*, 505 U.S. at 174-75 (federal government may not compel states either to take title to nuclear waste or to enact particular waste regulations).

is equally violated where, as here, Congress uses "financial inducements to exert 'a power akin to undue influence'" over the states. *NFIB*, 567 U.S. at 577 (quoting *Steward Machine*, 301 U.S. at 590)). Congress may provide "incentives for States to act in accordance with federal policies," but "when 'pressure turns into compulsion,' the legislation runs contrary to our system of federalism." *Id.* at 577-78 (quoting *Steward Mach.*, 301 U.S. at 590) (citation omitted).

Although the Supreme Court has not "'fix[ed] the outermost line' where [permissible] persuasion gives way to [impermissible] coercion," *id.* at 585 (quoting *Steward Mach.*, 301 U.S. at 591), its decision in *NFIB* provides a useful starting point. In *NFIB*, the Court held that Congress had impermissibly coerced the states by threatening them with the loss of all federal Medicaid funds—which amounted to over ten percent of most states' total budgets—if they did not expand their Medicaid programs. *See id.* The Court found that "[t]he threatened loss of over 10 percent of a State's overall budget is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion." *Id.* at 582. Moreover, the harms threatened by the loss of Medicaid funding were amplified because the states had "developed intricate statutory and administrative regimes over the course of many decades to implement their objectives under existing Medicaid," all of which would be undermined by the loss of Medicaid funding. *Id.* at 581.

Here, the magnitude of the harms that the Plaintiff States will suffer because of the new SALT deduction cap is comparable. In 2020 alone, New York taxpayers will pay an additional $14.8 billion in federal income taxes to the federal government compared to what they would have paid if the 2017 Tax Act did not include the SALT deduction cap. And between 2018 and 2025, New York taxpayers will pay an additional $121 billion. Taxpayers in the other Plaintiff States will experience similar increases.[41] (J.A. 78, 89-90, 93, 145-148.) These figures are similar in

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[41] The district court dismissed this injury because it is based on a comparison of the 2017 Tax Act with and without the SALT deduction, as opposed to a world without the 2017 Tax Act. (S.A. 34.) 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. The Supreme Court has used the same approach when it has considered whether the burdens imposed on the states by a particular provision of a statute are unduly coercive. *See, e.g.*, *NFIB*, 567 U.S. at 575-88 (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).

magnitude to the federal Medicaid funding that these states receive, and that the statutory provision in *NFIB* threatened to eliminate.

Moreover, the economic costs of the SALT deduction cap extend well beyond the increased tax liability of taxpayers in the Plaintiff States. As noted above (see *supra* at 21-22), the SALT deduction cap is also likely to depress home values by increasing the cost of home ownership. In the aggregate, home equity values in New York State alone could decline by $63.1 billion, which could cause in-state spending to decline by $1.26 to $3.15 billion and the loss of between 12,500 and 31,300 jobs. (J.A. 68-69.)

The other Plaintiff States are likely to experience similar harms. For example, because of the decline in home equity values, New Jersey estimates that it is likely to lose approximately $105.1 million in revenues from assessments on property and property transfers from fiscal year 2019 through fiscal year 2020. (J.A. 150-151.)

The district court found the Plaintiff States' financial injury insufficient to support a claim of unconstitutional coercion, concluding that 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 disappointment." (S.A. 35.) But this analysis failed to acknowledge that it is not merely the magnitude of the financial injury, but its effect of coercing the states, that gives rise to a constitutional violation. *See NFIB*, 567 U.S. at 577 (quotation marks omitted). And here, there is evidence that the Plaintiff States were not just subject to coercion; they were targeted by Congress and will suffer a disproportionate injury because of how they chose to exercise their sovereign authority to raise revenue.

In enacting the SALT deduction cap, Congress directly targeted a vital tool—state and local taxes—on which the Plaintiff States (and others) depend to raise revenue. As explained above (at 21-22), the direct effect of the SALT deduction cap is to significantly raise the cost of these taxes, making it more difficult for the Plaintiff States to maintain their current tax policies or to raise tax revenues in the future. Capping the deductibility of SALT therefore punishes the Plaintiff States for exercising a core sovereign function. Such pressure is both more direct and more perverse than the threat to withhold federal grant money in *NFIB* and *South Dakota v. Dole*, 483 U.S. 203 (1987).

The financial harms inflicted by the SALT deduction cap are also targeted at only a subset of states. Unlike the financial inducements in

NFIB and *Dole*, which were offered to all states on equal terms, the Plaintiff States (and a handful of others) disproportionately bear the financial costs of the SALT deduction cap because of the sovereign policy choices they have made to invest in generous public programs. As explained above (at 23-24), the Plaintiff States are among the states with the highest percentages of taxpayers whose federal tax burden increased under the 2017 Tax Act. Moreover, each of the Plaintiff States received a smaller share of the federal tax cuts in the 2017 Tax Act than their share of the federal tax base. (J.A. 80-85.) And although the 2017 Tax Act reduced the portion of the federal government's income tax revenues paid by most other states, it increased the portion of the federal government's income tax revenues paid by taxpayers in the Plaintiff States, even though they already pay an outsized percentage of the federal income taxes. (J.A. 683-642.) And the harms to the Plaintiff States will persist unless they bow to federal coercion by cutting state-funded services and lowering state taxes. By contrast, states that have adopted less generous public policies get a better deal under the 2017 Tax Act and face no equivalent pressure.[42] (See *supra* at 23-24; J.A. 80-81, 84-85.)

To make matters worse, Congress knew that the Plaintiff States in particular would be uniquely injured by the SALT deduction cap and enacted it with the knowledge and expectation that the adverse effects of the cap would compel the Plaintiff States to change their policies. For example, Republican Congressman Duncan Hunter commented on the SALT deduction: “California, New Jersey, New York, and other states that have horrible governments, yes. It’s not as good for those states.” (J.A. 616 (quotation marks omitted).) Then-Speaker of the House Paul Ryan argued that the 2017 Tax Act 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.” (J.A. 575 (quotation marks omitted).) These and other

[42] *See also* Meg Wiehe, *Final GOP-Trump Bill Still Forces California and New York to Shoulder a Larger Share of Federal Taxes Under Final GOP-Trump Tax Bill; Texas, Florida, and Other States Will Pay Less*, Inst. on Taxation & Econ. Policy (Dec. 17, 2017) (internet) (J.A. 638-642).

statements (see *supra* at 25-27; J.A. 53-54 (complaint)) establish not just coercive but punitive intent that was simply absent in *NFIB* and *Dole*.

Moreover, by directly interfering with a sensitive area of state policymaking in a way that disproportionately injures a handful of politically disfavored states, the SALT deduction cap also violates the constitutional requirement that "[e]ach state stand[] on the same level with all the rest." *Kansas v. Colorado*, 206 U.S. 46, 97 (1907). As the Supreme Court has explained, the Constitution incorporates a "fundamental principle of *equal* sovereignty among the States," which is "essential to the harmonious operation of the scheme upon which the Republic was organized." *Shelby County v. Holder*, 570 U.S. 529, 544 (2013) (quotation marks omitted).

The district court incorrectly dismissed evidence of targeting because courts, as a general matter, do not question legislative motive. (S.A. 30-33.) But as the Supreme Court most recently reaffirmed in *Shelby County,* motive matters in federalism cases. When the federal government "intru[des] into sensitive areas of state and local policymaking," courts must conduct a searching inquiry of the legislative rationale. *Shelby County*, 570 U.S. at 545 (quotation marks omitted); *see* *also United States v. Constantine*, 296 U.S. 287, 294-96 (1935) (federal tax law that punished violations of state liquor laws must be viewed in light of "its purpose and operation, regardless of name"). Here, that inquiry makes clear that the SALT deduction cap was enacted with the purpose of coercing the Plaintiff States to alter their sovereign tax policies in contravention of basic federalism principles.[43]

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[43] In dismissing the relevance of *Shelby County*, the district court overlooked important similarities between the Voting Rights Act's preclearance requirement and the SALT deduction cap. (*See* S.A. 32-33.) By its terms, the preclearance requirement applied to "*any* State or in *any* political subdivision" if that jurisdiction satisfied certain statutory criteria. *See* 52 U.S.C. § 10303(b) (previously codified at 42 U.S.C. § 1973b(a)) (emphasis added). And those criteria were "reverse-engineered" such that Congress identified the jurisdictions that it wanted subject to the preclearance requirement "and *then* came up with the criteria to describe them." *Shelby County*, 570 U.S. at 551 (quotation marks omitted). The SALT deduction cap functions similarly. Although it is facially neutral, the $10,000 cap inflicts economic pain only on taxpayers who pay over $10,000 in SALT, and Congress was well aware that those taxpayers are concentrated in the Plaintiff States. Coupled with statements from lawmakers and executive officials that they hoped to force the Plaintiff States to change their policies, the $10,000 cap functions much like the formula in *Shelby County*—"subjecting a disfavored subset of States to 'extraordinary legislation otherwise unfamiliar in our federal system.'" *Id.* at 552 (quoting *Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 211 (2009)).

The district court also relied heavily on the fact that the SALT deduction cap, on its face, applies equally to all states and discriminates primarily in its effects. (S.A. 32-33.) But nothing in the Supreme Court's case law suggests that the right to equal state sovereignty is infringed only by facial discrimination. To the contrary, *Shelby County* suggests that equal sovereignty is a flexible principle that is "highly pertinent" whenever the federal government engages in "disparate treatment of States." 570 U.S. at 544. Indeed, while recognizing that the principle was originally invoked to address inequality in the "admission of new States," *Shelby County* applied the doctrine in an entirely new context that had little connection to the doctrine's original invocation—i.e., to determine the continuing validity of the Voting Rights Act's preclearance requirement.[44] *See id.* at 544-45. When, as here, a facially neutral statute intentionally imposes disproportionate and significant harm on a subset

[44] The district court's reliance (S.A. 33) on *Florida v. Mellon* was also misplaced, because the Court did not address an equal sovereignty claim in that case, and "there [was] no substance in the contention that the state has sustained, or is immediately in danger of sustaining, any direct injury as the result of the enforcement of the action in question." *See* 273 U.S. 12, 18 (1927).

of politically disfavored states, the deprivation of sovereignty is just as insidious as if the law directly named the Plaintiff States.

CONCLUSION

The district court should reverse the decision below and grant the Plaintiff States' motion for summary judgment.

Dated: New York, New York
March 9, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a) of the Federal Rules of Appellate Procedure, William P. Ford, an employee in the Office of the Attorney General of the State of New York, hereby certifies that according to the word count feature of the word processing program used to prepare this brief, the brief contains 10,129 words and complies with the typeface requirements and length limits of Rule 32(a)(5)-(7) and Local Rule 32.1.

/s/ *William P. Ford*

Special Appendix

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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) <u>OPINION AND ORDER</u>

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 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

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[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."

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 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

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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.

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).

[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).

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.

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

[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.)

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 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

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

[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).

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 "constru[e] 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

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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]

[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.

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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 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] *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

[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 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.

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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 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 16–17.)

[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.*

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 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

[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).

statute entitled him to have his request granted, the State Department refused to comply, citing its "longstanding 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 exercise" 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.

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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

[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.

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 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

[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)).

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 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 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

[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.

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. 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

[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), *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.

"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 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 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

[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.

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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 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

[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.

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.

[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

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 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

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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*.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

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.

---X

18 **CIVIL** 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 THE DOCKET ON 10/1/2019

Constitutional 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.