Nos. 13-252 & 13-259

IN THE
Supreme Court of the United States

OVERSTOCK.COM, INC.,
Petitioner,
AND
AMAZON.COM LLC AND AMAZON SERVICES LLC,
Petitioners,
v.
NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, ET AL.,
Respondents.

On Petitions for a Writ of Certiorari to the New York Court of Appeals

BRIEF OF TAX FOUNDATION AND NATIONAL TAXPAYERS UNION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

JOSEPH D. HENCHMAN*
**Counsel of Record*
TAX FOUNDATION
529 14th Street N.W., Ste. 420
Washington, DC 20045
(202) 464-6200
henchman@taxfoundation.org
Counsel for Amici Curiae

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

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INTEREST OF *AMICI CURIAE*[1]

[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici,* their members, or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2(a), counsel for *amici* represent that all parties were provided notice of *amici*'s intention to file this

Tax Foundation and National Taxpayers Union submit this brief as *amici curiae* in support of Petitioner in the above-captioned matter.

The Tax Foundation is a non-partisan, non-profit research organization founded in 1937 to educate taxpayers on tax policy. Based in Washington, D.C., we seek to make information about government finance more accessible to the general public. Our analysis is guided by the principles of sound tax policy: simplicity, neutrality, transparency, and stability. The Tax Foundation's Center for Legal Reform furthers these goals by educating the legal community about economics and principled tax policy.

The National Taxpayers Union (NTU) was founded by concerned taxpayers in 1969. It is a non-profit, non-partisan membership organization devoted to protecting the interests of federal, state, and local taxpayers through public education, lobbying, and litigation on tax, spending, regulatory, and economic issues. NTU represents over 362,000 members in all fifty states and frequently challenges improper or illegal taxation on behalf of taxpayers.

This Court's decision will provide guidance on the line between states' power to shape their tax systems and the limits on that power guarded by the Commerce Clause. Because *Amici* have testified and written extensively on the issues involved in this case, because this Court's decision may be looked to as authority by other courts analyzing whether specific state tax practices violate the Commerce Clause, and because any decision will significantly impact taxpayers,

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brief at least 10 days before its due date. Letters from the parties consenting to the filing of the brief have been filed with the Clerk of the Court.

Amici have institutional interests in this Court's ruling.

SUMMARY OF ARGUMENT

While this Court has previously explained that there are limits to state authority to tax interstate commerce, states do not believe that the Court meant what it said in *Quill*, and they misconstrue what the Court allowed in *Scripto* and *Tyler Pipe* as a floor rather than a ceiling. An increasing number of states are asserting tax authority beyond these limits, as in this case, and states' belief that they may do so is preventing meaningful congressional action to enact a balanced congressional solution to state taxation of Internet transactions.

The complex, burdensome sales taxes that this Court in *Quill* worried would be inflicted on interstate commerce have only gotten more complex and more burdensome. As some states treat the posting of a website link as advertising (and not nexus-creating), others treat it like an in-state sales force (and therefore nexus-creating), and still others offer only ambiguity, the national economy is harmed as taxpayers face a guessing game when it comes to whether they will be required to collect and remit taxes. Technology, far from solving the problem, has only given states new avenues for exporting their tax burdens and imposing burdens on interstate commerce.

This Court should take the opportunity to grant these petitions as a chance to redirect state efforts toward constructive action, while also preventing increasingly harmful damage to interstate commerce.

ARGUMENT

I. THIS COURT'S GUIDANCE IS NEEDED TO REDUCE UNCERTAINTY FOR TAXPAYERS AND DISCOURAGE STATE EFFORTS TO OBSTRUCT A CONSTITUTIONAL SYSTEM OF INTERSTATE TAXATION.

A. This Court Has Previously Explained that State Authority to Tax Interstate Commerce Has Limits.

The people of the United States adopted the U.S. Constitution in large part because their existing national government had no power to stop states from imposing tax and trade barriers between each other, to the detriment of the national economy. *See, e.g.*, *EEOC v. Wyoming*, 460 U.S. 226, 244-45 (1983) (Stevens, J., concurring) ("[The commerce] clause was the Framers' response to the central problem that gave rise to the Constitution itself."); *Gibbons v. Ogden*, 22 U.S. 1, 224 (1824) (opinion of Johnson, J.) (stating that pre-constitutional state taxation of interstate commerce was "destructive to the harmony of the States, and fatal to their commercial interests abroad. This was the immediate cause that led to the forming of a convention.").

This Court has held that one such restraint is substantial nexus: a state may not impose a tax collection obligation on a taxpayer unless that taxpayer has a significant presence in the state. *See, e.g.*, *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977) (stating the rule). In *Quill*, this Court reaffirmed that substantial nexus means physical presence. *See Quill Corp. v. North Dakota*, 504 U.S. 298, 311 (1992) (citing cases supporting this rule); *see also Nat'l Geographic*

Soc. v. Cal. Bd. of Equalization, 430 U.S. 551, 556 (1977) (rejecting a "slightest presence" standard as insufficient).

This requisite physical presence may be established one of two ways. *See Quill*, 504 U.S. at 306-07 (describing two lines of cases).

Primarily, physical presence can be established by the taxpayer having in-state employees, offices, or retail outlets, so long as they constitute more than a slightest presence, even if the employees or offices are not engaged in soliciting sales in the state. *See, e.g.*, *Standard Pressed Steel Co. v. Dep't of Revenue of Washington*, 419 U.S. 560, 562 (1975) (finding physical presence due to an in-state full-time employee); *Nat'l Geographic*, 430 U.S. at 560-61 (finding physical presence due to local stores and in-state agents engaged in solicitation); *National Bellas Hess, Inc. v. Dep't of Revenue of Illinois*, 386 U.S. 753, 758 (1967) (rejecting the state's ability to impose sales tax collection obligations on "those who do no more than communicate with customers in the State by mail or common carrier as part of a general interstate business.").

Alternatively, physical presence can be deemed or "attributed" to a company maintaining arrangements with independent persons physically present in the state, but only if these persons are engaged in local solicitation or sales support vital to the establishment and operation of the company's in-state market. *See Tyler Pipe Indus. v. Dep't of Revenue of Washington*, 483 U.S. 232, 250 (1987) (finding attributed physical presence where the in-state independent contractors' "activities performed in [the] state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in [the] state for the sales"); *Scripto, Inc. v. Carson*, 362 U.S.

207, 211 (1960) (finding physical presence where ten independent contractors engaged in a "local function of solicitation" that was "effective[] in securing a substantial flow of goods into [the state]"). This scenario has been described by this Court as the "furthest extension" of nexus. *See Quill Corp.*, 504 U.S. at 306.

The physical presence rule articulated in *Quill* comports roughly with what economists call the "benefit principle": the idea that the taxes one pays should be a rough proxy for the government services that one consumes. *See, e.g.*, HARVEY S. ROSEN, PUBLIC FINANCE 467 (7th ed. 2005). State spending overwhelmingly, if not completely, is meant to benefit the people who live and work in the jurisdiction. The primary beneficiaries of education, health care, roads, and police protection are state residents. The benefit principle means that residents should be paying taxes where they work and live, and jurisdictions should not tax those who don't work and live there.

The astonishing technological developments of the past few decades have been possible in no small part because states have been restrained by the Constitution, Congress, and the courts from obliterating it with burdensome and discriminatory tax policies. *See, e.g.*, *Leveling the Playing Field for Small Businesses: Hearing Before the U.S. Senate Committee on Commerce, Science, and Transportation*, 112th Cong. (2012) (testimony of Joseph Henchman), http://goo.gl/bl9Eov (listing state efforts to expand nexus ruled unconstitutional by lower courts); *The Proper Role of Congress in State Taxation: Hearing Before the U.S. Senate Finance Committee*, 112th Cong. (2012) (testimony of Joseph Henchman), http://goo.gl/ncX6Wg (listing federal statutes preempting state and local tax authority that have

succeeded in removing burdens on interstate commerce). Justice Scalia, while skeptical of the judiciary's role in adjudicating dormant commerce clause disputes, correctly concluded that the standard is a successful and workable one as evidenced by now 46, then "25 years of experience under the decision." *Quill Corp.*, 504 U.S. at 320 (Scalia, J., concurring). To the extent litigation has occurred about the physical presence rule, it has been because of state efforts to expand their powers beyond it.

B. An Increasing Number of States Assert Tax Authority Beyond These Limits.

Thirteen states have adopted statutes to expand sales and use tax collection authority over remote (out-of-state) sellers in recent years, including New York, with its statute challenged in this case.

The statute, N.Y. Tax Law § 1101(b)(8)(vi), expands the definition of sales solicitation to include an out-of-state seller who "enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers . . . to the seller" and such sales exceed $10,000 per year. *Id.* Because the Internet transgresses state borders, New York's law will apply both to retailers that target sales to New York residents and to retailers who sell generally to everyone on the Internet, and may or may not end up selling to New Yorkers. The court below states that the state need not prove that solicitation happened, but can just assume it did and consequently find nexus, unless the retailer proves it didn't. *See Overstock.com, Inc. v. New York State Dep't of Taxation and Finance*, 987 N.E.2d 621, 627 (N.Y. 2013) ("[I]t is not unreasonable to presume that affiliated website

owners residing in New York State will reach out to their New York friends, relatives, and other local individuals in order to accomplish this purpose.").

If, however, a seller presents "proof that the resident with whom the seller has an agreement did not engage in any solicitation in the state on behalf of the seller" during that year period, the seller will not be considered engaged in solicitation. *Id.* While this "rebuttable presumption" or "safe harbor" is impossible because it requires somehow proving that someone else *didn't* do something on the Internet, the court below upheld the statute primarily because the rebuttable presumption at least theoretically permits taxpayers to prove solicitation did not occur. *See id.* at 626-27 ("[N]o one disputes that a substantial nexus would be lacking if New York residents were merely engaged to post passive advertisements on their websites."). The court below was also reassured that the Department of Revenue voluntarily chose not to enforce the "other consideration" language in the statute, which would necessarily encompass this passive advertising activity. *See id.* ("[T]he agency charged with enforcing the statute has expressly acknowledged that mere advertising is beyond the scope of the provision."); *id.* at 629 (Smith, J., dissenting) ("Read literally, the statute would reach essentially all Internet advertising that links to a seller's website: it includes any agreement for referral of customers, by a link or otherwise, 'for a commission or other consideration.' Since this literal reading would unquestionably render the statute unconstitutional, the Department of Taxation and Finance has adopted a narrowing construction, largely ignoring the words "or other consideration," and applying the presumption only where the website receives a commission or similar compensation. . . .").

Under this Court's precedents, a company can be found to be physically present in a state if it either (1) has in-state employees, even if these employees do not engage in solicitation or (2) uses in-state independent contractor solicitors, if this use is significantly associated with the company's ability to maintain an in-state market and results in a substantial flow of goods into the state. The New York statute conflates these two standards, permitting a finding a physical presence when the company uses in-state independent contractors, even if they do not engage in solicitation, so long as it results in a relatively modest ($10,000 per year) level of sales, and even if this level of sales is immaterial to the company's market in the state. *See, id.* at 626 ("Active in-state solicitation that produces a significant amount of revenue qualifies as more than a 'slightest presence'. . . ."). The court below states that the state need not prove that solicitation happened, but can just assume it did and consequently find nexus, unless the retailer proves it didn't. *See id.* at 627 ("[I]t is not unreasonable to presume that affiliated website owners residing in New York State will reach out to their New York friends, relatives, and other local individuals in order to accomplish this purpose.").

Following New York's 2008 enactment of this "click-through nexus" or "Amazon affiliate nexus" statute, other states have followed with similar enactments:

- North Carolina in 2009 adopted an identical statute, with the rebuttable presumption language and the $10,000 threshold. *See* N.C. GEN. STAT. § 105.164.8(b)(3).
- Rhode Island in 2009 adopted a statute with the rebuttable presumption language and a

lower $5,000 threshold. *See* R.I. GEN. LAWS § 44-18-15(a)(2).

- Arkansas in 2011 adopted a statute with the rebuttable presumption and a $10,000 threshold. *See* ARK. CODE § 26-52-117(d)-(e).
- Vermont in 2011 adopted a statute with the rebuttable presumption and a $10,000 threshold, with a further requirement that it not take effect until similar legislation passes 15 other states. *See* VT. STAT. tit. 32, § 9783(b)-(c).
- California in 2012 adopted a statute with the rebuttable presumption, a $10,000 threshold, and a further requirement that the out-of-state seller have national sales of at least $1 million. *See* CAL. REV. & TAX § 6203(b)(5).
- Georgia in 2012 adopted a statute with the rebuttable presumption and a higher $50,000 threshold. *See* GA. CODE § 48-8-2(8)(M).
- Maine in 2013 adopted a statute with the rebuttable presumption and a $10,000 threshold. *See* ME. REV. STAT. tit. 36, § 1754-B(1-A)(C).
- Minnesota in 2013 adopted a statute with the rebuttable presumption and a $10,000 threshold. *See* MINN. STAT. § 297A.66(4a).

While these nine states[2] have statutes that at least theoretically allow taxpayers to rebut the presumption that they are physically present in the state due to compensated referral agreements with in-state affiliates, three states have enacted statutes that

[2] Missouri erroneously appears on some recent lists due to legislation passed but subsequently vetoed by their Governor. *See* 2013 MO. H.B. 253. Utah and West Virginia also erroneously appear on some lists due to statutes entitled "affiliate nexus" but that are unrelated to the one discussed here.

make the presumption that in-state solicitation occurred to be *irrefutable*:

- Connecticut in 2011 adopted a statute with a $2,000 threshold and no rebuttability. *See* CONN. GEN. STAT. § 12-407(a)(12)(L).
- Illinois in 2011 adopted a statute with a $10,000 threshold and no rebuttability. *See* 35 ILL. COMP. STAT. 105/2 & 110/2. This statute is currently under review by the Illinois Supreme Court after being struck down by a lower court. *See Performance Marketing Ass'n, Inc. v. Homan*, 2012 WL 1986181 (Ill. Cir. Ct. May 11, 2012).
- Texas in 2011 adopted a statute expanding the definition of "retailer" to include any out-of-state seller who "derives receipts" from sales in the state, *see* TEX. TAX CODE § 151.107(a)(3), and any out-of-state seller who delivers items to customers in the state, *see* TEX. TAX CODE § 151.107(a)(8). The statute has no minimum threshold and no rebuttability. The Texas Comptroller has advised that it will not apply the statute to out-of-state sellers using common carriers to deliver products into the state, although the statute does encompass such activity. *See* GrantThornton LLP, *Texas Enacts Major Legislation that Includes Sales Tax Affiliate Nexus Provisions* at 2 (Aug. 9, 2011), http://goo.gl/nIuIuF.

Additionally, Colorado in 2010 enacted a "warning law" requiring Internet retailers to notify customers that they owe use tax on their purchase and, more

problematically, to report details of customers' purchases to state authorities.[3] *See* COLO. REV. STAT. § 39-21-112(3.5). This statute faced a First Amendment challenge due to that latter requirement. *See Direct Mktg. Ass'n v. Huber*, No. 10-CV-01546-REB-CBS, 2012 WL 1079175, at *6 (D. Colo. Mar. 30, 2012) (enjoining the statute on First Amendment grounds), *rev'd sub nom. Direct Mktg. Ass'n v. Brohl*, --- F.3d ----, 2013 WL 4419324, at *14-15 (10th Cir. Aug. 20, 2013) (finding the Tax Injunction Act denies federal court jurisdiction over the notice statute). *See also* Joseph Henchman, *Colorado's Amazon Tax: It's an Amazon Tax*, TAX FOUNDATION TAX POLICY BLOG (Mar. 10, 2010), http://goo.gl/jsVsGV ("The compliance burden has been contrived to be so burdensome that it's not much different from a sales tax compliance obligation.").

There is strong likelihood that litigation over these statutes will reach this Court in future years. This may especially occur if the New York statute is valid only because taxpayers may rebut the presumption of attributional nexus, as their highest court ruled. The Connecticut, Illinois, and Texas statutes would not be valid under that rationale.

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[3] Oklahoma, South Dakota, and Vermont have also enacted "warning law" statutes, but only with the requirement that taxpayers be notified at the time of purchase that they may owe use tax. *See* OKLA. STAT. § 710:65-21-8; S.D. CODIFIED LAWS § 10-63-2; VT. STAT. tit. 32, § 9783(b)-(c). North Carolina adopted a regulatory ruling imposing requirements similar to the Colorado law; the ruling was subsequently invalidated by a federal judge and abandoned by the department. *See* Tiffany Kaiser, "Amazon Privacy Lawsuit Settled Between NC Department of Revenue, ACLU," *Daily Tech* (Feb. 9, 2011), http://goo.gl/vIUXNe.

C. Granting These Petitions Gives This Court An Opportunity to Redirect State Efforts Toward Constructive Action, Preventing Increasingly Harmful Damage to Interstate Commerce.

Eight of these thirteen states (California, Colorado, Connecticut, Illinois, Maine, New York, North Carolina, and Texas) have notably declined to join the Streamlined Sales Tax Project (SSTP), a joint effort by states and the business community to reduce sales tax compliance and administrative burdens. This effort to balance state sovereignty with the need for simpler rules and remittance procedures has been severely hamstrung by the refusal of many large states to participate, including California, Illinois, New York, and Texas. While no state should be compelled to participate in SSTP, SSTP suffers because many states believe they can have their cake and eat it too by just asserting expanded nexus authority with click-through nexus statutes. These states prefer to roll the dice and hope that this Court will do nothing as they assert tax authority over the entire Internet, rather than go through the hard work required by SSTP, such as centralizing tax collection and auditing, reducing local sales tax complexity, adopting uniform definitions of items, and compensating vendors for administrative costs.

Congress is actively considering legislation defining the scope of state tax authority over Internet transactions. While the political debate over the bill is complex and not germane to this Court's consideration of this case, progress has been remarkable but faces continued state resistance to meaningful limits on their ability to export tax burdens and impose excessive compliance costs on interstate commerce. *See,*

e.g., Joseph Henchman, *House Chairman Goodlatte Releases Principles for Taxing Internet Sales*, TAX FOUNDATION TAX POLICY BLOG (Sep. 20, 2013), http://goo.gl/FnChCx; Joseph Henchman, *What's in the Marketplace Fairness Act?*, TAX FOUNDATION TAX POLICY BLOG (Apr. 26, 2013), http://goo.gl/W6knXK; Joseph Henchman, *Marketplace Fairness Act Introduced*, TAX FOUNDATION TAX POLICY BLOG (Feb. 28, 2013), http://goo.gl/iLptPi; Paul J. Gessing, *The Race to Cyberspace: Internet Taxation and State Tax Competition*, NATIONAL TAXPAYERS UNION POLICY PAPER 103 (Nov. 21, 2000), http://goo.gl/H10qP1 (describing options, including streamlined sales tax, exempting e-commerce from sales tax, strengthening nexus rules, and an origin-based system of sales tax collection).

In *Quill*, this Court expressed concern that the North Dakota tax collection requirement would impose the varied compliance burdens of 6,000-plus taxing jurisdictions on every business in the nation who merely advertised and sold into the state by common carrier. *See Quill Corp.*, 504 U.S. at 313 n.6. *See also National Bellas Hess*, 386 U.S. at 759-60 ("The many variations in rates of tax, in allowable exemptions, and in administrative and record-keeping requirements could entangle National's interstate business in a welter of complicated obligations to local jurisdictions with no legitimate claim to impose 'a fair share of the cost of local government.'").

Things have not gotten simpler. At last count, there are 9,646 sales tax jurisdictions in the United States, with scores of new ones created each year. *See, e.g.*, *Leveling the Playing Field for Small Businesses: Hearing Before the U.S. Senate Committee on Commerce, Science, and Transportation*, 112th Cong. (2012) (testimony of Joseph Henchman),

http://goo.gl/bl9Eov. Over the nine-year period from 2003 to 2011, there were 5,866 changes to sales tax rates or bases, an average of over 50 per month. *See id.* Six states still permit local jurisdictions to define a sales tax base completely different from the state sales tax base. *See id.* Seventeen states mandate temporary "holidays" from the sales tax for specific items, increasing complexity particularly for remote sellers. *See id.* The increasingly arbitrary lines states are drawing between nearly identical products highlight the complexity that threatens to be imposed 9,646-times-over if they insist on every Internet retailer following their maddening rules. *See, e.g.*, Josh Barro, "Want to Sell an Ice Cream Cake? Just Fill Out These Simple Forms," FORBES (Apr. 3, 2012), http://goo.gl/zAAT5I (describing a Wisconsin revenue bulletin explaining the taxation of ice cream cakes, taxable in seven scenarios and non-taxable in three scenarios); Scott Drenkard, *Overreaching on Obesity: Governments Consider New Taxes on Soda and Candy*, TAX FOUNDATION SPECIAL REPORT NO. 196 (Oct. 31, 2011), http://goo.gl/9fYe7r (describing differing state tax treatment between soft drinks, juice, coffee, milk, bottled water, food, and candy); Joseph Henchman, *You Helped End the Iowa Pumpkin Tax*, TAX FOUNDATION TAX POLICY BLOG (Oct. 26, 2011), http://goo.gl/6RL94D (describing an Iowa revenue ruling instructing retailers to tax pumpkins sold for decorative purposes but exempt pumpkins sold for consumption purposes).

The sales tax analysts at the Tax Foundation struggle to keep up with all this; National Taxpayers Union members report that the job is even harder for those trying to keep up while primarily trying to run

their business. *See also* Pricewaterhouse Coopers, *Retail Sales Tax Compliance Costs: A National Estimate* (Apr. 7, 2006) (estimating the compliance cost of sales tax to be 3.09 percent of the total sales tax collected for all retailers, 13.47 percent for small retailers, 5.2 percent for medium retailers, and 2.17 percent for large retailers).

As some states treat the posting of a website link as advertising (and not nexus-creating), others treat it like an in-state sales force (and therefore nexus-creating), and still others offer only ambiguity, the national economy is harmed as taxpayers face a guessing game when it comes to whether they will be required to collect and remit taxes. In Illinois, for example, several Internet businesses had to end affiliate programs or even move states to remain viable. *See, e.g.*, Diana Sroka Rickert, "Amazon tax an Illinois disaster," CHICAGO TRIBUNE (Apr. 4, 2013) ("Overstock.com and Amazon.com ended their relationships with Illinois-based marketing affiliates. Chicago-based CouponCabin moved to Indiana. And FatWallet.com, which had been headquartered near Rockford for three years, skipped the border to Wisconsin."). The Rhode Island tax led to *reduced* tax collections as Internet affiliate income dropped due to the tax's disruptive effect on interstate commerce. *See* Joseph Henchman, *"Amazon Tax" Laws Signal Business Unfriendliness and Will Worsen Short-Term Budget Problems*, TAX FOUNDATION SPECIAL REPORT NO. 176 (Mar. 8, 2010), http://goo.gl/QdqY5N ("State Treasurer Frank Caprio echoed this, saying, 'The affiliate tax has hurt Rhode Island businesses and stifled their growth, as they've been shut out of some of the world's largest marketplaces, and should be repealed immediately.'").

With the increasing role that e-commerce plays in the economic integration we have today, the economic costs of nexus uncertainty burden and impede the economy much more than ever before. *See, e.g.*, Daniel Shaviro, *An Economic and Political Look at Federalism*, 90 MICH. L. REV 895, 902 (1992) ("Today's more integrated national economy presents far greater opportunities than existed in 1787 for states in effect to reach across their borders and tax nonconsenting nonbeneficiaries."); Joseph Henchman, *Why the Quill Physical Presence Rule Shouldn't Go the Way of Personal Jurisdiction*, 46 STATE TAX NOTES 387, 395 (2007), http://goo.gl/5pZaBX ("While some constitutional principles surely must be revisited to apply them to new circumstances, the idea that parochial state interests cannot burden interstate commerce remains a timeless principle regardless of how sophisticated technology may be.").

A balanced congressional solution to state taxation of Internet transactions will likely happen only when states accept that their ability to export tax burdens and impose burdensome compliance obligations on interstate commerce is not unlimited and unrestrained, and that some or all of their recent click-through nexus statutes transgress those limits. *Cf.* JAMES MADISON, THE FEDERALIST NO. 42 (1787) ("[T]he mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned, before public bodies as well as individuals, by the clamors of an impatient avidity for immediate and immoderate gain.").

CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court grant the petitions for certiorari.

Respectfully submitted,

JOSEPH D. HENCHMAN*
**Counsel of Record*
TAX FOUNDATION
529 14th Street N.W.,
Suite 420
Washington, DC 20045
(202) 464-6200
henchman@taxfoundation.org
Counsel for Amici Curiae

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