

No. 13-657

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**In the Supreme Court of the United States**

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MCLANE SOUTHERN, INC., PETITIONER

*v.*

CYNTHIA BRIDGES, SECRETARY OF THE DEPARTMENT OF  
REVENUE, STATE OF LOUISIANA, RESPONDENT.

\_\_\_\_\_  
*ON PETITION FOR A WRIT OF CERTIORARI TO THE  
LOUISIANA COURT OF APPEAL, FIRST CIRCUIT*

\_\_\_\_\_  
**BRIEF OF *AMICI CURIAE* INTERNATIONAL  
FOODSERVICE DISTRIBUTORS ASSOCIATION AND  
NATIONAL ASSOCIATION OF WHOLESALER-  
DISTRIBUTORS IN SUPPORT OF PETITION  
FOR WRIT OF CERTIORARI**

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## INTRODUCTION AND INTEREST OF *AMICI CURIAE*<sup>1</sup>

If there is a bedrock principle underlying the negative Commerce Clause, U.S. Const. Art. I, § 8, cl. 3, it is that “tariffs against the products of other States”—which this Court has identified as the “paradigmatic” examples of “law[s] discriminating against interstate commerce”—are “patently unconstitutional.” *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 193 (1994). This constitutional prohibition extends not only to explicit tariffs, but also to “state laws that aspire to reap some of the benefits of tariffs by other means.” *Ibid.*

The Louisiana excise tax challenged in this action<sup>2</sup> is just this kind of undercover tariff: While superficially neutral, it unconstitutionally discriminates against interstate commerce by effectively taxing transportation, distribution, and marketing activity that occurs outside of Louisiana, but exempting the same activity from taxation when it occurs in-state. As a tax on out-of-state commerce, it threatens the integrity and efficiency of the interstate distribution and wholesaling system.

In the modern economy, most goods pass through many hands—and across multiple state lines—before being purchased by the consumer. To promote economic efficiency, manufacturers often ship goods from the factory to national distributors, who sell them to regional whole-

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<sup>1</sup> *Amici* provided notice of their intent to file this brief to counsel of record for each party at least 10 days prior to the due date for filing, and all parties have consented to this filing. No counsel for a party authored this brief in whole or in part, and no person, other than the *amici* and their counsel, contributed money to its preparation or submission.

<sup>2</sup> La. Rev. Stat. Ann. §§ 47:841, 842, 854.

salers, who in turn disburse them to retail shops. Because each link in the distribution chain adds value and increases the price of the product to reflect the value added, the further along the chain a tax is imposed, the higher that tax will be.

Louisiana bases its excise tax on smokeless tobacco on the price paid by the first distributor to bring the product into Louisiana. For example, if a manufacturer sells smokeless tobacco to a distributor based *in Louisiana*, who then sells the product to a wholesaler, who sells it to a retailer, who sells to a consumer, the tax would be levied on the price invoiced to the initial distributor by the manufacturer. If, however, the supply chain is otherwise identical, except that the distributor and wholesaler are located *outside Louisiana* and sell to an in-state retailer, the tax would be assessed at the higher price charged to the retailer. The later in the distribution chain that the product enters Louisiana—and the more links in the distribution chain that occur outside the state—the higher the tax base, and the more expensive the tax. This regime puts goods that travel more extensively in interstate commerce at a competitive disadvantage.

While this case concerns a narrow excise tax on smokeless tobacco products, the rationale of the Louisiana Court of Appeal's decision sweeps far more broadly. States impose excise taxes on a wide range of goods—ranging from gasoline to alcohol to cigarettes to soft drinks—which make up a substantial percentage of the national economy. And the wholesale distribution industry itself is massive, representing nearly *\$5 trillion* in revenues in 2012. The decision below provides a blueprint for states to favor local interests, penalize out-of-state distributors, and introduce inefficiencies into the wholesale distribution sector that will have nationwide effects.

*Amici* are two major trade associations whose members' businesses rely on free and unimpeded interstate commerce. The International Foodservice Distributors Association (IFDA) is a trade association representing foodservice distributors throughout North America and internationally whose members operate more than 700 distribution facilities with annual sales of more than \$127 billion. They provide hundreds of jobs in each of their communities. IFDA's members make the food away from home industry possible, ensuring food safety in the delivery of food to restaurants and institutions that depend critically on unimpeded supplies to serve their clients—including nursing homes, hospitals, military mess halls, and school cafeterias.

The National Association of Wholesaler-Distributors (NAW) is a non-profit trade association that represents the wholesale distribution industry. NAW is comprised of direct member companies and a federation of more than 100 national, regional, state, and local associations and their members firms, which together include approximately 40,000 companies operating at over 150,000 locations throughout the nation. NAW's members play a critical role in the United States economy—they are the links in the marketing chain between manufacturers and retailers as well as commercial, institutional, and governmental end-users. While wholesaler-distributors vary widely in size, they are typically small to medium size, closely held businesses that provide stable, well-paying jobs to over five million Americans. Nearly all of NAW's members engage in interstate commerce; even those members who are not directly affected by the Louisiana excise tax at issue benefit from the open national marketplace ensured by the Commerce Clause.

*Amici's* members engage is precisely the kind of interstate transportation, distribution, and marketing that

is disparately affected by Louisiana’s discriminatory tax scheme. They believe, as did the framers of the Commerce Clause, that both economic efficiency and consumer welfare are best promoted by robust competition in a truly “national free market.” *Wyoming v. Oklahoma*, 502 U.S. 437, 469 (1992). Taxes like Louisiana’s discourage companies from doing business across state lines and make the national economy less efficient. Accordingly, *amici* urge this Court to grant certiorari to review Louisiana’s impermissibly discriminatory tax regime.

### SUMMARY OF ARGUMENT

I. Although Louisiana does not call its excise tax a tariff, it has the same economic effect: It taxes the distribution costs factored into a product’s price when the distribution takes place out of state, but not when it occurs in Louisiana. The result is that a product purchased by an out-of-state wholesaler for resale in Louisiana will ultimately be taxed more heavily than the same product purchased by an in-state wholesaler from the same source. This tax scheme discriminates against interstate commerce and violates the Commerce Clause.

II. The legal and economic implications of this case extend well beyond the taxation of smokeless tobacco in a single jurisdiction. The Louisiana model of applying a shifting tax base to tax out-of-state distribution activity while exempting in-state activity could be applied to excise taxes for other products like gasoline, alcohol, and cigarettes. It could even be applied to a general use and sales tax. In short, Louisiana’s tax scheme provides a blueprint for states to advantage locally produced and distributed goods while taxing the nearly \$5 trillion interstate wholesaling and distribution industry. These economic penalties on interstate commerce skew economic decision-making and decrease efficiency by incenting in-



state buyers to prefer locally distributed goods, and pressuring out-of-state suppliers and distributors to move operations to the taxing jurisdiction.

## ARGUMENT

### I. Louisiana’s Excise Tax Unconstitutionally Discriminates Against Out-Of-State Distribution Activity

#### A. Louisiana’s method of calculating its excise tax base subjects out-of-state distribution activity to a disparately higher tax burden

Louisiana’s excise tax violates the Commerce Clause because it imposes a higher tax on products manufactured and distributed outside of Louisiana than it does on products manufactured and distributed in-state.

The 20% tax is assessed on “the dealer who first sells, uses, consumes, handles or distributes” smokeless tobacco in the state, La. Rev. Stat. Ann. § 47:854, and is based on “the manufacturer[’]s net invoice price as invoiced to the Louisiana tobacco dealer, by the manufacturer, jobber, or other persons engaged in selling tobacco products,” *id.* § 47:841(E). Because the tax base is not fixed until the product enters Louisiana, the more transportation, marketing, and distribution activity occurring outside the state that is factored into the product’s price, the higher the tax base. In contrast, such activity occurring *after* the product enters Louisiana is not subject to the excise tax. The result, as respondent admits, is that smokeless tobacco that enters Louisiana “at the end of a long distribution supply chain will have a resultant higher tax than smokeless tobacco purchased and taxed at the end of a short distribution and supply chain.” Resp. Br. 10; see also App. 11a–12a, 15a (acknowledging “McLane’s increased tax obligation” as an out-of-state distributor).

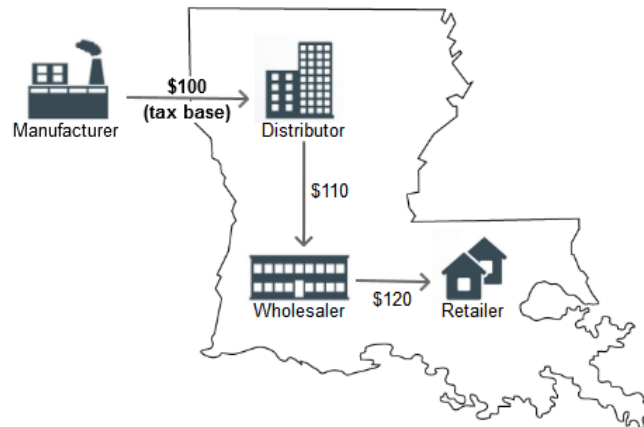
The out-of-state transportation, marketing, and distribution activity that is disparately impacted by the tax is essential to interstate commerce. Distributors and wholesalers play a vital economic role, facilitating efficient exchange and adding value to products at each link in the distribution chain. It would be inefficient—and often, impossible—for manufacturers to sell their products directly to consumers. Instead, they rely on intermediaries like distributors and wholesalers, who make products available when, where, and in the sizes and quantities that customers want. For example, wholesalers can break bulk by purchasing large quantities of goods from manufacturers and selling amounts to many different customers. Wholesalers also reduce the number of transactions by consolidating a wide range of products in a single location, so that a customer—whether a retail outlet or the ultimate consumer—can conveniently purchase a variety of goods from a single seller at the same time. They facilitate the transport and storage of goods, moving products from the factory to warehouses and other locations where they are held until they are wanted by customers. And they offer valuable services like providing credit to purchasers and accepting customer returns. See generally Jean-Paul Rodrigue & Markus Hesse, *The Geography of Transport Systems* 205–212 (2d ed. 2009); Michael R. Solomon & Elnora W. Stuart, *Marketing: Real People, Real Choices* 451–452 (7th ed. 2011).

In short, distributors and wholesalers create the economic channels through which interstate commerce flows; they enable efficient distribution and add value. In turn, they recoup their expenses and earn a profit by marking up the product's sale price at each link in the distribution chain. For commodities, transportation and logistics costs typically represent 20% to 50% of a product's total end cost. Rodrigue & Hesse at 207. These ac-

tivities make up a significant percentage of the national economy. In 2012, for example, the wholesale trade sector realized revenues of approximately \$4.9 trillion, employed 5.7 million workers, and comprised 5.6% of the United States' total GDP. Alan Beaulieu & Jon Murphy, State of the Wholesale Distribution Industry, <http://www.naw.org/about/industry.php> (last visited Jan. 1, 2014); see also U.S. Census Bureau, Wholesale Trade, <http://www.census.gov/econ/wholesale.html> (collecting economic data on wholesale trade sector) (last visited Jan. 1, 2014).

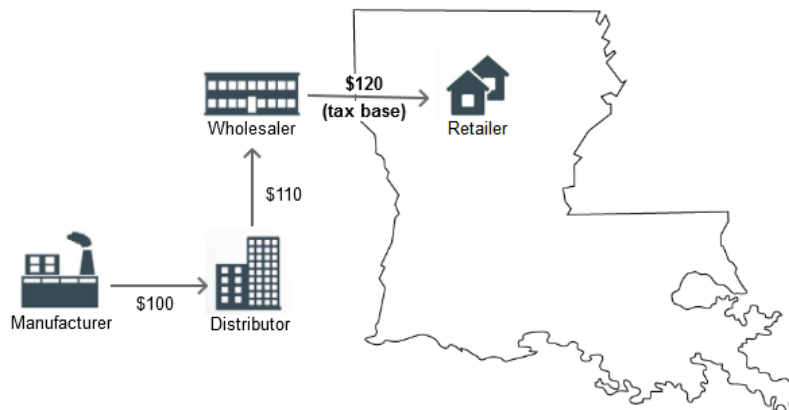
Louisiana's method of calculating its excise tax base burdens interstate commerce by taxing this transportation, marketing, and distribution activity when it occurs out-of-state, but not when it occurs in-state. The diagrams below illustrate this discriminatory effect. Imagine the following distribution chain:

- A manufacturer sells a product to a distributor for \$100.
- The distributor sells the product to a wholesaler for \$110.
- The wholesaler sells the product to a retailer for \$120.
- Finally, the retailer sells the product to the ultimate consumer for \$150.



**Diagram 1**

*When distribution and wholesaling take place in state, the tax base is lower (\$100).*



**Diagram 2**

*When distribution and wholesaling take place out of state, the tax base is higher (\$120).*

How does a tax regime like Louisiana's affect this distribution chain? If, as pictured in Diagram 1, the manufacturer sells directly to a distributor located in Louisiana, the 20% excise tax will be assessed on the manufacturer's \$100 invoice price to the distributor, as the first Louisiana dealer. The distributor will pay \$20, and the subsequent costs of distribution within Louisiana will be effectively exempt from the excise tax.

If, however, the manufacturer sells to an out-of-state distributor, who in turn sells to an out-of-state wholesaler, who then sells to a Louisiana retailer (as reflected in Diagram 2), the tax will be assessed on the price invoiced by the wholesaler to the retailer—here, \$120. The retailer will pay \$24, with the extra \$4 reflecting taxation of the out-of-state distributor's and wholesaler's activities, as factored into the invoice price. That extra \$4 will translate into higher prices to consumers or lower revenues.

In short, Louisiana's method of calculating its excise tax based on the price invoiced when the product first enters the state results in out-of-state transportation, distribution, and marketing activities being taxed, while similar in-state activities are not. Given two identical products, the one that has moved more extensively through the channels of interstate commerce will be taxed more heavily. While the *tax rate* remains nominally the same, the effect of the shifting *tax base* is as if Louisiana had imposed a surcharge on goods that pass through interstate commerce.

### **B. Louisiana's discriminatory taxation of out-of-state distribution activity violates the Commerce Clause**

This differential tax treatment of out-of-state economic activity violates the Commerce Clause. This Court has long held that a state may not use its taxing power to

discriminate against out-of-state products or services. See, e.g., *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 574–575 (1997) (“A State’s ‘power to lay and collect taxes \* \* \* cannot be exerted in a way which involves a discrimination against [interstate] commerce.’”) (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 596 (1923)); *Fulton Corp. v. Faulkner*, 516 U.S. 325, 331 (1996) (a state may not “‘tax[] a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State’”) (quoting *Chemical Waste Management, Inc. v. Hunt*, 504 U.S. 334, 342 (1992)); *American Trucking Ass’ns v. Scheiner*, 483 U.S. 266, 286 (1987) (“a state tax that favors in-state business over out-of-state business for no other reason than the location of its business is prohibited by the Commerce Clause”); *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 272 (1984) (“a State may not tax interstate transactions in order to favor local businesses over out-of-state businesses”); *Boston Stock Exchange v. State Tax Comm’n*, 429 U.S. 318, 337 (1977) (“no State may discriminatorily tax the products manufactured or the business operations performed in any other State”).

In particular, “[t]he paradigmatic example of a law discriminating against interstate commerce is the protective tariff, \* \* \* which taxes goods imported from other States, but does not tax similar products produced in State.” *West Lynn Creamery*, 512 U.S. at 193. Such laws, which “handicap[] out-of-state competitors” and “artificially encourage[] in-state production even when the same goods could be produced at a lower cost in other States,” have “long been recognized as violative of the Commerce Clause.” *Ibid.* Indeed, because “tariffs are so patently unconstitutional that our cases reveal not a single attempt by a State to enact one,” this Court has been

especially diligent in reviewing “state laws that aspire to reap some of the benefits of tariffs by other means.” *Ibid.*

The Court has repeatedly applied this principle to invalidate state laws that discriminate against interstate commerce even absent explicit discrimination in tax rates. For example, in *Bacchus Imports*, the Court struck down Hawaii’s 20% excise tax on liquor, which exempted fruit wine and brandy distilled from a native plant. The Court held the law unconstitutional because it “had both the purpose and effect of discriminating in favor of local products.” 468 U.S. at 273. As the Court later explained, “[b]y granting a tax exemption for local products, Hawaii in effect created a protective tariff. Goods produced out of State were taxed, but those produced in State were subject to no net tax.” *West Lynn Creamery*, 512 U.S. at 197. In the same vein, Louisiana’s excise tax subjects out-of-state distribution activities to taxation, while effectively exempting in-state distribution.

In *Scheiner*, the Court invalidated Pennsylvania’s “facially neutral” annual highway tax because it effectively imposed a higher per-mile charge on out-of-state trucks than on local trucks:

In practical effect, since they impose a cost per mile on appellants’ trucks that is approximately five times as heavy as the cost per mile borne by local trucks, the taxes are plainly discriminatory. Under our consistent course of decisions in recent years a state tax that favors in-state business over out-of-state business for no other reason than the location of its business is prohibited by the Commerce Clause.

483 U.S. at 286. Here, too, businesses with out-of-state distribution networks bear a disproportionately heavy cost of Louisiana’s excise tax, which similarly “exerts an inexorable hydraulic pressure on interstate businesses to

ply their trade within the State that enacted the measure rather than ‘among the several States.’ ” *Id.* at 286–287 (quoting U.S. Const. Art. I, § 8, cl. 3).

Finally, in *Halliburton Oil Well Cementing Co. v. Riley*, 373 U.S. 64 (1984), the Court struck down a Louisiana tax on out-of-state goods and services that was strikingly similar to the excise tax challenged here. In that case, Louisiana applied a single tax rate to oil drilling equipment used in the state. However, the use tax—like the excise tax on smokeless tobacco—was levied on a shifting and discriminatory tax base: It included the cost of equipment assembly that was performed out-of-state, but exempted the same activities from taxation when they were carried out in Louisiana. *Id.* at 67. The Court noted that “[a]lthough the [tax] rate is the same, the appellant’s tax base is increased through the inclusion of its product’s labor and shop overhead,” resulting in a “substantial” tax inequality between in-state and out-of-state producers. *Id.* at 70–71. It concluded that permitting this sort of tacit discrimination “would ‘invite a multiplicity of preferential trade areas destructive of the very purpose of the Commerce Clause.’ ” *Id.* at 72–73 (quoting *Dean Milk Co. v. Madison*, 340 U.S. 349, 356 (1951)).

If the Commerce Clause prohibits Louisiana from taxing out-of-state labor and assembly costs while exempting similar in-state activities, then perforce it must also prohibit the state from taxing out-of-state distribution costs while exempting their in-state counterparts. Under *Halliburton* and this Court’s long-standing Commerce Clause jurisprudence, such discriminatory treatment is unconstitutional.



**C. Louisiana’s arguments defending its discriminatory tax regime are unavailing**

1. In its brief in opposition, Louisiana stresses the fact that its excise tax is, on its face, “determined in the same manner for both in-state and out-of-state tobacco dealers.” Resp. Br. 7. But this Court’s precedent makes clear that one must look beyond this sort of superficial neutrality to the actual economic impact of the tax. As *Halliburton* put it, “equality for the purposes of competition and the flow of commerce is measured in dollars and cents, not legal abstractions.” 373 U.S. at 70; see also *West Lynn Creamery*, 512 U.S. at 201 (“Our Commerce Clause jurisprudence is not so rigid as to be controlled by the form by which a State erects barriers to commerce. \* \* \* ‘The commerce clause forbids discrimination, whether forthright or ingenious.’”) (quoting *Best & Co. v. Maxwell*, 311 U.S. 454, 455–456 (1940)).

By making the entry of goods into Louisiana the “taxable moment,” the state necessarily ensures that prior out-of-state distribution costs will be included in the tax base, while subsequent in-state costs will not. Regardless of its superficial neutrality, the excise tax fails to meet the “condition precedent for a valid use tax on goods imported from out-of-state”: “equal treatment for in-state and out-of-state taxpayers similarly situated.” *Halliburton*, 373 U.S. at 70.

2. Louisiana acknowledges that under its tax regime, smokeless tobacco “purchased and taxed at the end of a long distribution supply chain” will have a higher price and a higher tax, placing it at a competitive disadvantage. Resp. Br. 10. But it proceeds to argue that this disadvantage does not implicate the Commerce Clause because it is “a product of McLane’s decision to purchase smoke-

less tobacco through a distribution supply chain rather than directly from a manufacturer.” *Id.* at 10–11.

This argument misses the point. What offends the Commerce Clause is not that Louisiana taxes the costs incurred along the distribution chain, but that it taxes only *out-of-state* distribution costs, while effectively exempting similar *in-state* activity. As explained above, a product could travel through precisely the same distribution chain with exactly the same pricing mark-ups at each link; under Louisiana’s system, the product with more out-of-state links will face a heavier tax burden.<sup>3</sup> That is discrimination against interstate commerce pure and simple, and it cannot survive constitutional scrutiny.

3. Finally, Louisiana argues that its excise tax scheme actually “discourage[s] smokeless tobacco manufacturers from moving to Louisiana,” because doing so would make them taxable entities under the statute. Resp. Br. 10. But there is no question that under the state’s tax regime, a product manufactured in Louisiana will face the lowest tax burden of all, because there typically will be no out-of-state distribution activities to inflate the tax base. And even if moving production to Louisiana would subject manufacturers to out-of-pocket taxation, the state’s larger conclusion does not follow. Tobacco manufacturers can pass the cost of excise taxes on to later participants in the distribution chain and, ultimate-

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<sup>3</sup> For this reason, Louisiana’s comparison of its excise tax regime to a standard retail sales tax is inapposite. See Resp. Br. 11. While a sales tax calculated on the price paid by the ultimate consumer will necessarily reflect an accumulation of markups imposed by distributors and other middlemen, it will reflect out-of-state and in-state markups *equally*. The excise tax at issue, in contrast, taxes out-of-state distribution costs incurred before the product’s entry into Louisiana, but excludes subsequent in-state distribution costs.

ly, on to the consumer. But “[t]he idea that a discriminatory tax does not interfere with interstate commerce ‘merely because the burden of the tax was borne by consumers’ in the taxing State” has been “thoroughly repudiated.” *West Lynn Creamery*, 512 U.S. at 202 (quoting *Bacchus Imports*, 468 U.S. at 272). What matters for the purpose of Commerce Clause analysis is not who pays the tax out-of-pocket. What matters is the fact that a distribution chain with more out-of-state links will face a higher overall tax burden, placing its participants at a competitive disadvantage. As this Court has recognized, “the imposition of a differential burden on any part of the stream of commerce—from wholesaler to retailer to consumer—is invalid, because a burden placed at any point will result in a disadvantage to the out-of-state producer.” *West Lynn Creamery*, 512 U.S. at 202.

## **II. The Legal And Economic Implications Of This Case Extend Far Beyond The Taxation Of Smokeless Tobacco In Louisiana**

While this petition nominally concerns a narrow excise tax on smokeless tobacco products, it is really about the economic integrity and efficiency of the United States’ interstate distribution system. The Louisiana court’s rationale extends beyond smokeless tobacco. It provides a blueprint for states to tax the \$5 trillion national wholesale distribution industry across a wide range of goods and products, and threatens the free flow of trade across state borders that the Commerce Clause was intended to ensure.

1. Several other states already use Louisiana’s method of applying a shifting tax base to tax only out-of-state distribution activity in the smokeless tobacco context. See Pet. Br. 18. And if the decision below is allowed to stand, its rationale could be applied to any interstate distribu-

tion chain, not merely those involving smokeless tobacco. Virtually any discriminatory excise tax on virtually any commodity could be molded to withstand constitutional scrutiny. Schemes similar to Louisiana's could be applied to excise taxes on other products, including gasoline, alcohol, cigarettes, and soft drinks. See Pet. Br. 20. Because interstate distribution networks are ubiquitous, allowing a state to tax out-of-state distribution while exempting in-state distribution provides an effective license to tax interstate commerce.

Indeed, there would be nothing stopping a state from reconfiguring its general sales and use tax—which, as Louisiana recognizes in its Opposition, is ultimately just “another excise tax,” Resp. Br. 11—along the lines of Louisiana's smokeless tobacco tax. It would be patently unconstitutional for a state to impose a higher sales tax rate on products manufactured outside the state. However, a state could achieve the same result by calculating its sales tax based, not on the final retail sale price, but on the price of the product when it first entered the state. This would have the effect of taxing out-of-state distribution costs while exempting corresponding in-state costs—and thus providing a built-in tax advantage for locally produced and distributed products.

2. Tax schemes like Louisiana's place interstate commerce at a competitive disadvantage vis-à-vis otherwise identical commerce carried out within the taxing state's borders. As a consequence, they “exert an inexorable hydraulic pressure on interstate businesses to ply their trade within the State that enacted the measure.” *Scheiner*, 483 U.S. at 286. As a leading treatise observes, “[h]ow can a business that conducts its ‘upstream’ \* \* \* operations” outside the taxing state “not feel pressure to move those operations” into the state “to lower the tax (and, presumably, the price) at which its [products are]

sold ‘downstream’ ”? 1 Jerome R. Hellerstein & Walter Hellerstein, *State Taxation* ¶ 4.14[3][n] at 4-177 (3d ed. 2013).

This results in business decisions driven by state tax structures rather than economic efficiency. In-state retailers and distributors will have strong incentives to minimize tax costs—and thus lower product price—by purchasing products that entered the state early in the distribution chain. At the same time, out-of-state suppliers and distributors will have strong incentives to locate their operations within the state in order to meet this demand. For example, an out-of-state distributor may establish a warehouse in the taxing state simply to allow a product to be shipped into the state earlier in the distribution chain and therefore reduce its tax base.

Such behavior is economically inefficient. One way that the interstate distribution system increases efficiency is by allowing the establishment of centralized distribution centers at which products can be inexpensively consolidated, stored, and shipped across state lines when customers need them. But when operational decisions are driven by the desire to avoid state tax liability rather than logistical efficiency, it imposes a deadweight loss on the system.

These problems are magnified when multiple states impose discriminatory tax regimes like Louisiana’s, resulting in a race to the bottom. As the Court explained in *Halliburton*:

If Louisiana were the only State to impose an additional tax burden for such out-of-state operations, the disparate treatment would be an incentive to locate within Louisiana; it would tend to neutralize advantages belonging to the place of origin. \* \* \* If similar unequal tax structures were adopted in other

States, a not unlikely result of affirming here, the effect would be more widespread. The economic advantages of a single assembly plant for the appellant's multistate activities would be decreased for units sent to every State other than the State of residence. At best, this would encourage the appellant to locate his assembly operations in the State of largest use for the units. At worst, it would encourage their actual fractionalization or discontinuance. Clearly, approval of the Louisiana tax in this case would invite a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause.

373 U.S. at 72–73 (citations and internal quotation marks omitted). Upholding Louisiana's excise tax scheme would encourage the very "tendencies toward economic Balkanization" that the Framers of the Commerce Clause sought to protect against. *Granholm v. Heald*, 544 U.S. 460, 472 (2005) (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 325–326 (1979)).

### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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