No. 163, ORIGINAL

In the Supreme Court of the United States

FLORIDA,

Plaintiff,

v.

CALIFORNIA AND
FRANCHISE TAX BOARD OF CALIFORNIA,

Defendants.

On Motion for Leave to File Bill of Complaint

BRIEF FOR AMICUS CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES IN SUPPORT OF PLAINTIFF

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INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation.[1] It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber and its members have a strong interest in healthy competition among the states to attract business activities, in preventing state and local discrimination against interstate commerce, and in the enforcement of federal constitutional principles that prevent one state from imposing its public policy agenda on any other state. Accordingly, the Chamber has regularly filed amicus briefs in cases addressing such questions. *See, e.g.*, Br. for Amicus Curiae Chamber of Com. of the U.S., *Nat'l Pork Producers Council v. Ross*, No. 21-468 (U.S. June 17, 2022); Br.

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[1] Pursuant to Supreme Court Rule 37.6, amicus curiae states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Amicus curiae provided notice of its intent to file this brief to counsel of record for both parties at least 10 days before the brief's due date. *See* Sup. Ct. R. 37.2.

for Amicus Curiae Chamber of Com. of the U.S., *Wash. Bankers Ass'n v. Washington*, No. 21-1066 (U.S. Mar. 3, 2022).

The Chamber's members include a significant number of businesses that engage in commerce throughout the 50 states. As a result, they are subject to a host of state and local taxes across virtually every jurisdiction. Discriminatory state taxes can significantly affect their business operations—particularly their interstate activities. Properly interpreted, the Constitution protects the Chamber's members from discriminatory state laws that target out-of-state businesses and interstate commerce.

SUMMARY OF ARGUMENT

The Court should grant Florida's motion for leave to file a bill of complaint. This case presents a crucial opportunity to both invalidate California's unconstitutional tax regulation and provide much-needed guidance stemming the proliferation of state laws designed to control our national economy.

This Court has long recognized that the Constitution's express and structural provisions prohibit states from enacting laws that discriminate against interstate commerce or regulate extraterritorially. *See, e.g.*, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023); *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 154 (2023) (Alito, J., concurring in part and concurring in the judgment). Every state agreed to those limits on their sovereign authority upon entering the Union. But today, states across the nation continue adopting laws violating

those fundamental restraints. From California to Minnesota, states have leveraged their market power to adopt protectionist tax regimes discriminating against out-of-state businesses. And states increasingly have enacted laws imposing their political agendas beyond their borders on topics ranging from the environment to product safety to artificial intelligence. The regulation in this case—California's "special rule" that unconstitutionally taxes certain out-of-state corporations' revenue from their out-of-state business activities—is only one example of this trend. Consider as well California's new climate disclosure law, which requires businesses nationwide to report greenhouse gas emissions across their supply chains, no matter where they occur. *See* S.B. 253, 2023-2024 Reg. Sess. (Cal. 2023). Absent this Court's intervention, this trend will continue unchecked.

These state laws proliferate because, since this Court's *National Pork Producers* decision, confusion remains over when states unconstitutionally discriminate against interstate commerce or regulate extraterritorially. That decision did clarify the "antidiscrimination" rule at the "very core" of the Court's dormant Commerce Clause jurisprudence. *Nat'l Pork Producers*, 598 U.S. at 369 (citation omitted). And it reaffirmed that states cannot regulate extraterritorially. *See id.* at 375-76. Yet it left many key issues unresolved. Among those open questions are: how to identify and balance "undue burdens" under *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); to what extent the Commerce Clause or the

Constitution's structural provisions restrain extraterritorial state laws; and how the Constitution's other substantive provisions, including the Import-Export Clause, the Privileges and Immunities Clause, and the Full Faith and Credit Clause, restrict state regulatory authority.

This Court can begin addressing these key issues by taking more original jurisdiction disputes among states. Although this Court has in recent decades exercised its exclusive jurisdiction over state-versus-state suits sparingly, that approach threatens the very reason the Framers granted the Court original jurisdiction over such actions: to avoid interstate conflict. *See North Dakota v. Minnesota*, 263 U.S. 365, 373 (1923).

In this case, Florida alleges that California unconstitutionally pilfers its tax revenue. Yet Florida lacks any forum beyond this original jurisdiction action in which to litigate this dispute. 28 U.S.C § 1251. Plus, taxpayers themselves have only limited and exceedingly inefficient vehicles to bring these claims.

This Court should therefore grant Florida's motion and prevent states from legislating to tax or otherwise regulate conduct beyond their borders. States should not assume that this Court will tolerate "an attitude of permissiveness toward state laws despite their extraterritorial effects" merely because such effects do not *alone* automatically render those laws unconstitutional under the Commerce Clause. *Dormant Commerce Clause—Interstate Commerce—State Law—Extraterritoriality*—National Pork

Producers Council v. Ross, 137 Harv. L. Rev. 330, 336 (2023) (hereinafter "*National Pork Producers*"). Direct extraterritorial state regulation remains unconstitutional. And extraterritorial effects may still suggest unconstitutional discrimination violating the Commerce Clause, as well as violations of the Constitution's other provisions or structural limits. The Court should thus hear Florida's lawsuit and ensure states cannot enact increasingly complex schemes to control our national economy.

ARGUMENT

I. This Court should address the proliferation of discriminatory and extraterritorial state regulations disrupting interstate commerce.

The Framers called the Constitutional Convention, in substantial part, to prevent "tendencies towards economic Balkanization." *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 517 (2019). Yet today, states like California increasingly leverage their market power to discriminate against interstate commerce and impose their political will on citizens and businesses far beyond their borders. This trend will continue until the Court clarifies and strengthens its longstanding precedents prohibiting discriminatory and extraterritorial state laws.

A. States like California increasingly discriminate against interstate commerce and unconstitutionally impose their political will beyond their borders.

The Constitution prohibits states from enacting protectionist laws discriminating against interstate commerce, which impose one state's political agenda on citizens and businesses in *other* states. But that is exactly what states across the country are doing at an alarming pace. The topics of these state laws vary substantially, from the environment to product safety to artificial intelligence. All have deleterious consequences on interstate commerce. California's "special rule" here, taxing certain out-of-state corporations for out-of-state business activities that have no connection to California, illuminates this trend.

1. This Court has long held that the Commerce Clause prohibits protectionist state laws that excessively burden interstate commerce. Modern dormant Commerce Clause jurisprudence is "driven by concern about 'economic protectionism, that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.'" *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337-38 (2008) (citation omitted). Thus, "state statutes that clearly discriminate against interstate commerce are routinely struck down." *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 274 (1988). "[T]his antidiscrimination principle lies at the 'very core' of

our dormant Commerce Clause jurisprudence." *Nat'l Pork Producers*, 598 U.S. at 369.

The dormant Commerce Clause likewise forbids "even-handed[]" laws that impose burdens on interstate commerce that are "clearly excessive" compared with their "putative local benefits." *South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 173 (2018) (quoting *Pike*, 397 U.S. at 142). Facially neutral laws violate the Commerce Clause when their "practical effects" disclose "the presence of a discriminatory purpose." *Nat'l Pork Producers*, 598 U.S. at 377. Under this approach, the "courtroom door[s]" are open even to challenges brought against laws that impose "nondiscriminatory burdens." *Id.* at 379 (citation omitted).

Extraterritorial state laws present similar constitutional concerns, because they discriminate, burden, or invade other states' sovereignty. "No State can legislate except with reference to its own jurisdiction." *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881). After all, states have equal sovereignty. Our nation "was and is a union of States, equal in power, dignity and authority," and "the constitutional equality of the States 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). "The sovereignty of each State, in turn, implie[s] a limitation on the sovereignty of all its sister States." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980); *accord Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 245 (2019). Principles of "sovereignty and comity" importantly guide how this

Court "resolve[s] disputes about the reach of one State's power." *Nat'l Pork Producers*, 598 U.S. at 376 (discussing efforts to "mediate competing claims of sovereign authority under our horizontal separation of powers").

State laws "*directly* regulating out-of-state transactions by those with *no* connection to the State" test "the territorial limits of state authority under the Constitution's horizontal separation of powers." *Id.* at 376 n.1 (citation modified). This Court has "long recognized that the Constitution restricts a State's power to reach out and regulate conduct that has little if any connection with the State's legitimate interests." *Mallory*, 600 U.S. at 154 (2023) (Alito, J., concurring in part and concurring in the judgment) (citation modified). This restriction is an "obvious and necessary result of our constitutional order," and "is expressed in the very nature of the federal system that the Constitution created and in numerous provisions that bear on States' interactions with one another." *Id.* (citation modified) (citing *N.Y. Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914)).

Beyond the Commerce Clause and the Constitution's structure, the Court has also invoked various other constitutional provisions to limit state laws regulating extraterritorially, including the Due Process Clause and the Full Faith and Credit Clause. *See Nat'l Pork Producers*, 598 U.S. at 376. Under the Due Process Clause, no state may regulate absent some "minimal connection" between the state and the conduct it seeks to control. *Trinova Corp. v. Mich. Dep't of Treasury*, 498 U.S. 358, 373 (1991). In the

taxing context, for instance, the Due Process Clause requires a "rational relationship between the income attributed to the States and the intrastate values of the enterprise" before a state may tax income generated beyond its borders. *Mobil Oil Corp. v. Comm'r of Taxes*, 445 U.S. 425, 436-37 (1980) (citation omitted).

Under the Full Faith and Credit Clause, states may not "adopt[] any policy of hostility to the public Acts" of another state. *Carroll v. Lanza*, 349 U.S. 408, 413 (1955); *see Nat'l Pork Producers*, 598 U.S. at 409 (Kavanaugh, J., concurring in part and dissenting in part). From that Clause, this Court has drawn an "unavoidable" conclusion: one state is not required to "substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events." *Pac. Emps. Ins. Co. v. Indus. Accident Comm'n of Cal.*, 306 U.S. 493, 502 (1939).

Members of this Court have further observed that other provisions, like the Import-Export Clause and the Privileges and Immunities Clause, may provide additional limits on state regulatory power. *See Nat'l Pork Producers*, 598 U.S. at 370 (citing cases). For instance, Justice Scalia explained that a primary purpose of the Import-Export Clause was to "address[] the evils of local impediments to commerce by prohibiting States from imposing certain especially burdensome taxes" and duties on imports from other States. *Comptroller of Treasury of Md. v. Wynne*, 575

U.S. 542, 573-74 (2015) (Scalia, J., dissenting). Thus, as Justice Kavanaugh recognized, state laws that impose "conditions [on the] sale of a good" or "production practices in another State" may raise "serious questions" under the Import-Export Clause. *See Nat'l Pork Producers*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part). Justice Kavanaugh additionally observed that "one State's efforts to effectively regulate" production in other states may also "raise significant questions" under the Privileges and Immunities Clause. *Id.* at 409. And Justice Gorsuch has similarly suggested that limits prohibiting discriminatory state laws may "flow[] from Article IV's Privileges and Immunities Clause." *Wayfair*, 585 U.S. at 190-91 (Gorsuch, J., concurring).

The Constitution thus imposes numerous limits on states' legislative and regulatory authority implicating interstate commerce.

2. Every state agreed to these limits on their sovereign authority when entering the Union, but numerous states have enacted or proposed laws violating them.

The "special rule" challenged here is a prime example. By statute, California calculates taxes that certain corporations owe on business income using a "single-sales factor" methodology, which works in tandem with a "special rule." Mot.10-15. The single-sales factor is "a fraction, the numerator of which is the total sales of the taxpayer in California during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year." Cal. Rev. & Tax Code § 25134. That sales factor

is then multiplied against a corporation's business income to determine the tax owed. Mot.9. This methodology is largely consistent with that of other states, and this Court has previously upheld a similar methodology against a Commerce Clause challenge. *See Moorman Mgmt. Co. v. Bair*, 437 U.S. 267, 274 (1978).[2]

By regulation, however, California unconstitutionally alters the formula. Its "special rule" excludes the gross receipts from both the numerator and denominator of the sales factor (*i.e.*, the ratio calculation as a whole). Cal. Code Regs., tit. 18 § 25137(c)(1)(A). In doing so, the "special rule" dramatically inflates the sales factor used in the tax calculation. California then multiplies that inflated sales factor against the totality of a business's income, in which California *includes* those "substantial" "occasional" out-of-state sales the "special rule" *excluded* to determine the sales factor. Mot.12. As a result, the "special rule" allows California to manipulate the single-sales factor to tax all of the corporation's business income, even if a significant amount of income resulted from conduct with no connection at all to California.

This "special rule" unconstitutionally taxes certain out-of-state businesses, and reduces the taxes

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[2] The Chamber takes no position on whether the single-sales factor methodology, which this Court upheld in *Moorman*, 437 U.S. at 274, is the best method for states to calculate corporate taxes. Rather, the Chamber contends that California has unconstitutionally manipulated that methodology through the adoption of its "special rule."

owed by businesses that stay in or relocate to California. Mot.13. California's regulation thus raises constitutional problems not presented in *Moorman*. Plaintiff's illustration in their motion for leave demonstrates this point well. Mot.12-13. As that example shows, California's "special rule" results in many out-of-state businesses incurring substantially higher California tax obligations than identically situated California companies. *See id.* California's tax laws therefore violate a "fundamental principle[] of the Commerce Clause": no state "may impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business," *Maryland v. Louisiana*, 451 U.S. 725, 754 (1981) (quotation omitted).

Singling out certain entities for special taxes precisely because of the degree to which they "participate[] in interstate commerce" is discrimination against interstate commerce, plain and simple. *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 578 (1997); *see, e.g.*, *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 42 n.9 (1980) ("[D]iscrimination based on the extent of local operations is itself enough to establish the kind of local protectionism" that is virtually per se invalid). Imposing special taxes on those who engage in more out-of-state business is the "quintessential evil" of the kind of protectionist tax scheme that the Commerce Clause guards against. *Wynne*, 575 U.S. at 545.

California is not alone in implementing this type of unconstitutional tax regulation. Minnesota has already adopted a nearly identical law. *See* Minn. Stat.

§ 290.191(5) (2019). And Massachusetts is currently considering a similar rule. *See* 830 Mass. Code Regs. § 63.38.1 (proposed).

3. These unconstitutional tax regimes are just the tip of the iceberg. States across the nation increasingly have enacted laws and regulations imposing their political will on citizens and businesses located in other states. One of the chief culprits is California, which has enacted or proposed many laws on wide-ranging topics setting a regulatory floor for the rest of the nation due to California's considerable market power. *See Nat'l Pork Producers*, 598 U.S. at 365-66; *id.* at 405 (Kavanaugh, J., concurring in part, dissenting in part); *National Pork Producers*, 137 Harv. L. Rev. at 337 (observing that "California's economic power is largely to thank for the out-of-state" implementation of its laws, and that "blue states may increasingly use their economies to strong-arm corporations into complying with the values of their residents").

Consider, for instance, California's new climate disclosure law. California will require companies across the United States—with just minimal operations in California—to report greenhouse gas emissions across their entire supply chains as their own, no matter where those emissions occur and despite the fact that it would be nearly impossible to calculate this accurately. *See* S.B. 253, 2023-2024 Reg. Sess. (Cal. 2023). Following California's lead, other states have proposed similar statutes. *See, e.g.*, H.B. 25-1119, 75th Gen. Assem., Reg. Sess. (Colo. 2025); S.B. 4117, 2024-2025 Reg. Sess. (N.J. 2025); H.B.

3673, 104th Gen. Assem., Reg. Sess. (Ill. 2025); S.B. 6092, 2023-2024 Reg. Sess. (Wash. 2024).

Another California law sets recyclability labeling standards for certain packaging. For national businesses, these standards require either creating California-only packaging or redesigning all packaging nationwide to meet California's standards. *See* Cal. Pub. Res. Code § 42355.51; *National Pork Producers*, 137 Harv. L. Rev. at 338 (explaining that California's recycling laws "effectively forc[e] companies of all sorts and from all over the country to rethink the packaging of their goods").

The list goes on. California is now regulating or attempting to regulate topics as wide ranging as artificial intelligence, *see* A.B. 1018, 2025-2026 Reg. Sess. (Cal. 2025), and single-use plastic waste, *see* Cal. Pub. Res. Code §§ 42040, *et seq*.

Unfortunately, other states and municipalities are now increasingly following California's lead. *See, e.g.*, S.B. 205, 74th Gen. Assem., Reg. Sess. (Colo. 2024) (imposing rigorous requirements on any business that develops artificial intelligence platforms, and which conducts business in Colorado); N.Y.C. Admin. Code §§ 20-870*, et seq*. (regulating companies' use of artificial intelligence in their hiring processes); N.Y. Envt'l Conservation L. §§ 76-0101, *et seq*. (establishing a "Climate Change Superfund," which holds out-of-state companies liable for the alleged effects of worldwide greenhouse gas emissions); 10 Vt. Stat. Ann. §§ 596, *et seq*. (establishing similar "Climate Superfund Cost Recovery Program").

This proliferation of state laws intruding upon interstate commerce and imposing regulations extraterritorially recently prompted the U.S. Department of Justice to issue a request for information regarding "state laws having significant adverse effects on the national economy." 90 Fed. Reg. 39427 (capitalization altered). The Chamber, along with numerous other business organizations, responded by highlighting the regulatory burdens these state laws impose that hinder growth, innovation, and competition across the national economy. *See, e.g.*, U.S. Chamber of Com., Resp. to RFI (Sept. 15, 2025), available at https://perma.cc/L7HJ-WWAR; Am. Bankers Ass'n, Resp. to RFI (Sept. 15, 2025), available at https://perma.cc/DEQ3-JSYE. The public comments in response to the Justice Department's request for information identify hundreds of state laws from across the country that negatively affect business operations.

As the Chamber explained in its response to the Department of Justice's request for information, "a national market allows businesses to operate across state lines without facing inconsistent regulations, duplicative compliance costs, or barriers to entry. This uniformity fosters competition, lowers prices, and expands consumer choice. It also enables economies of scale and facilitates the free flow of goods, services, labor, and capital. By contrast, a patchwork of state-specific rules can stifle growth, create legal uncertainty, and disadvantage smaller firms that lack the resources to navigate complex regulatory

landscapes." *See* U.S. Chamber of Com., Resp. to RFI, https://perma.cc/L7HJ-WWAR.

This trend threatens to realize the Framers' fears of a fragmented national economy. And absent this Court's intervention, this trend will continue unabated, especially if an adversely affected state's only recourse is to pass its own set of laws controlling the national economy rather than unilaterally disarming.

B. To correct this disruptive trend, the Court should strengthen its precedents prohibiting discriminatory and extraterritorial state regulations.

Although this Court has consistently held unconstitutional state laws discriminating against interstate commerce or regulating outside a state's borders, this jurisprudence nevertheless has left many questions unanswered. The Court should use cases like this one to clarify and strengthen this caselaw by halting the further proliferation of state laws disrupting our national economy.

This Court's *National Pork Producers* decision highlights many unresolved issues. To be sure, it did clarify several key points. The majority recognized that an "antidiscrimination" rule "lies at the 'very core' of the Court's dormant Commerce Clause jurisprudence." *Nat'l Pork Producers*, 598 U.S. at 369. The Court also firmly rejected any "*per se*" rule under the dormant Commerce Clause rendering facially neutral state laws regulating in-state commerce automatically unconstitutional merely because of

some "practical effect" on out-of-state commerce. *Id.* at 375-76. But the Court simultaneously reaffirmed that a state law's out-of-state practical effects may still suggest unconstitutional purposeful discrimination against interstate commerce, and that the "courtroom door" remains "open to challenges premised on even nondiscriminatory burdens," especially for state laws "imped[ing] the flow of commerce." *Id.* at 379 & n.2 (citation modified). The Court likewise reaffirmed that state laws "that *directly* regulate[] out-of-state transactions" remain unconstitutional. *Id.* at 376 n.1. After recognizing these principles, the Court turned down a challenge to California's Proposition 12, which prohibited the sale of pork from pigs raised in what California considered to be inhumane conditions. *Id.* at 363-64, 391.

But the tension among these holdings leaves open many questions, which threaten to increase—not curtail—state regulatory efforts disrupting the national economy. To begin, litigants for years could challenge a state law under the Commerce Clause by showing it imposes "undue burdens on interstate commerce" that are "clearly excessive in relation to the putative local benefits." *Wayfair*, 585 U.S. at 173 (citing *Pike*, 397 U.S. at 142).

The Court's fractured opinion in *National Pork Producers* provides many different views on when this doctrine invalidates state laws. For instance, Members of this Court disagreed whether the plaintiffs had sufficiently showed that Proposition 12 imposed "undue burdens" on interstate commerce. The minority concluded they had not, despite the

market-wide consequences of compliance that the out-of-state pork producers had allegedly incurred due to California's law. *See Nat'l Pork Producers*, 598 U.S. at 383-87. But five Justices concluded otherwise. *See id.* at 394 (Barrett, J., concurring in part); *id.* at 397 (Roberts, C.J., concurring in part and dissenting in part). Justice Barrett reasoned that the plaintiffs had satisfied this requirement because the "complaint plausibly allege[d] that Proposition 12's costs are pervasive, burdensome, and will be felt primarily (but not exclusively) outside California." *Id.* at 394 (Barrett, J., concurring in part). And the Chief Justice, joined by Justices Alito, Kavanaugh, and Jackson, explained that the plaintiffs had identified "broad[,] market-wide *consequences* of compliance," which amounted to "economic harms that [the Court's] precedents have recognized can amount to a burden on interstate commerce." *Id.* at 397 (Roberts, C.J., concurring in part and dissenting in part).

The Court also voiced different views on the doctrine's balancing test. A minority—Justices Thomas, Gorsuch, and Barrett—concluded that judges were not up to the task of balancing in *National Pork Producers* because "the benefits and burdens of Proposition 12 are incommensurable." *Id.* at 393 (Barrett, J., concurring in part); *id.* at 380-83. But "a majority of the Court" disagreed, concluding "that it is possible to balance benefits and burdens under the approach set forth in *Pike*." *Id.* at 396-97 (Roberts, C.J., concurring in part and dissenting in part); *id.* at 392-93 (Sotomayor, J., concurring in part). The Court, however, did not undertake that inquiry there, so this

decision provides little guidance restraining future state regulatory efforts to regulate the national economy.

Further, though every Justice acknowledged that the "courtroom door" remains open "to challenges premised on even nondiscriminatory burdens," *id.* at 379 (citation modified), the Court provided no guidance as to what factors substantiate the "small number of . . . cases [that] have invalidated state laws that appear to have been genuinely nondiscriminatory." *Id.* (citation modified); *see id.* at 392 (Sotomayor, J., concurring in part); *see id.* at 396 (Roberts, C.J., concurring in part and dissenting in part). A majority did clarify that such challenges are not limited to state laws "regulat[ing] the instrumentalities of transportation." *Id.* at 396 (Roberts, C.J., concurring in part and dissenting in part); *see id.* at 392 (Sotomayor, J., concurring in part). But the Court did not elaborate further.

National Pork Producers also leaves open which extraterritorial laws violate the Constitution's structural principles. On the one hand, a majority of the Court rejected a "*per se* rule against the enforcement of state laws that have 'extraterritorial effects.'" *Id.* at 390 (citation modified); *see id.* at 394 (Roberts, C.J., concurring in part and dissenting in part) (same). On the other, the Court reaffirmed that state laws that "*directly* regulate[] out-of-state transactions by those with *no* connection to the State" likely transgress the "territorial limits of state authority under the Constitution's horizontal separation of powers." *Id.* 376 n.1. While several

Members of the Court addressed concerns about Proposition 12's extraterritorial sweep, none comprehensively addressed this under a horizontal federalism analysis. *See id.* at 400 (Roberts, C.J., concurring in part and dissenting in part); *id.* at 405-08 (Kavanaugh, J., concurring in part and dissenting in part). Without guidance on how the Constitution's structure restricts states' regulatory powers, "California's novel and far-reaching" approach will "provide a blueprint for other States." *Id.* at 407 (Kavanaugh, J., concurring in part and dissenting in part).

Still other constitutional questions remain after *National Pork Producers*. The Court has not clarified how the Import-Export Clause, the Privileges and Immunities Clause, or the Full Faith and Credit Clause restrict discriminatory or extraterritorial state laws. *See id.* at 408-10 (Kavanaugh, J., concurring in part and dissenting in part). Multiple current and former Members of this Court have recognized these provisions should curtail some state laws controlling our national economy. *See, e.g.*, *id.* (citing cases).

With these open questions following *National Pork Producers*, states will increasingly use their market power to strong-arm the rest of the nation into complying with their vision of our national economy. The Court should address these textual and structural constitutional issues now to constrain these disruptive state laws.

II. This Court can provide much needed guidance, stemming the trend of state laws seeking to control the national economy, by accepting more state-versus-state original jurisdiction lawsuits.

This Court should clarify and strengthen its precedents in this area through its original jurisdiction over state-versus-state actions. In recent decades, this Court has sparingly exercised that jurisdiction. The Chamber respectfully submits that this Court should be more open to granting original jurisdiction in cases like this one, which will provide needed clarity on the extent to which states can enforce laws with the effect of regulating well beyond their own borders.

The Constitution expressly states that "the Supreme Court shall have original jurisdiction" over "controversies between two or more states." U.S. Const. art. III, § 2. By statute, Congress has made that grant of jurisdiction "exclusive." 28 U.S.C. § 1251(a).

Despite that original and exclusive jurisdiction, this Court has rarely adjudicated state-versus-state cases outside certain, limited contexts. Fewer such cases land on the Court's docket primarily as a result of its practice requiring states to seek leave before filing a complaint. *See* Sup. Ct. R. 17. Under this procedure, the Court routinely denies leave, often without explanation. *See, e.g.*, *New Hampshire v. Massachusetts*, 141 S. Ct. 2848, 2848 (2021) (mem.) ("Motion for leave to file a bill of complaint denied. Justice Thomas and Justice Alito would grant the motion."). For instance, one study concluded that,

from 1961 to 2022, the Court refused to hear nine of the ten tax complaints and ten of the twelve challenges to extraterritorial regulations that states brought in this Court against other states. *See* Heather Elliott, *Original Discrimination: How the Supreme Court Disadvantages Plaintiff States*, 108 Iowa L. Rev. 175, 224 (2022). These denials leave states "without *any* judicial forum" in which to bring their claims. *Texas v. California*, 141 S. Ct. 1469, 1469 (2021) (mem.) (Alito, J., dissenting from denial of motion for leave to file complaint).

Even if there is no requirement that this Court adjudicate *all* cases brought under its original and exclusive jurisdiction,[3] the Chamber respectfully submits that this Court should nonetheless adjudicate *more* of them. When the states joined the Union, they gave up their rights to the diplomatic settlement of controversies between sovereigns and the possible

[3] Several current and former Members of this Court have criticized this approach as ignoring the "virtually unflagging" obligation to hear and decide cases within this jurisdiction. *Texas*, 141 S. Ct. at 1469 (Alito, J., dissenting from denial of motion for leave to file complaint); *see, e.g.*, *Louisiana v. Mississippi*, 488 U.S. 990, 990 (1988) (mem.) (White, J., dissenting) ("[T]his is no way to treat a sovereign State that wants its dispute with another State settled in this Court."). As Justice Alito, joined by Justice Thomas, has explained, "the Court has never provided a convincing justification for [its] practice." *Texas*, 141 S. Ct. at 1470 (Alito, J., dissenting from denial of motion for leave to file complaint) (citing *Cohens v. Virginia*, 6 Wheat. 264 (1821) (Marshall, C.J.) ("We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.")).

resort to force, trading them for adjudication and resolution by this Court. *See Texas v. New Mexico*, 462 U.S. 554, 571 n.18 (1983). The Framers thus saw original jurisdiction lawsuits in this Court as the way to avoid the need for political settlements—or the resort to violent conflict—between the states. *See North Dakota*, 263 U.S. at 373.

This suit is one such original case that the Court should hear. Florida has alleged that California's discriminatory and extraterritorial "special rule" deprives Florida of tax revenue. *See* Mot.4. Florida has no alternative forum to bring this case. It cannot challenge California's "special rule" in any other federal court, *Mississippi v. Louisiana*, 506 U.S. 73, 77-78 & n.1 (1992), or in any other state's courts, *Franchise Tax Bd. of Cal.*, 587 U.S. at 236. Accordingly, Florida's complaint readily satisfies this Court's current requirements for obtaining leave to file. *See Mississippi*, 502 U.S. at 552-53 (explaining that states must show the "seriousness and dignity" of their claim and that there is no "alternative forum in which the issue tendered can be resolved").

Failing to exercise jurisdiction here will have at least two main negative consequences. First, California's unconstitutional tax scheme will likely remain in place for many more years, subjecting businesses across the country—including the Chamber's members—to impermissible tax burdens. Florida has no alternative forum in which it can bring this case. And taxpayers have only two avenues in California through which to potentially challenge the application of its "special rule": (1) administrative

proceedings before the Franchise Tax Board or (2) refund actions in California Superior Court. Neither will resolve the issues presented here in a timely manner. Taxpayers may not bring constitutional challenges, like that at issue here, before the Franchise Tax Board. *See, e.g.*, *Shiseido Cosmetics (Am.) Ltd. v. Franchise Tax Bd.*, 235 Cal. App. 3d 478, 483 (Cal. Ct. App.–3d Dist., 1991) (explaining that constitutional issues are "beyond the jurisdiction" of California's tax agencies). And actions in California Superior Court, where those challenges may be raised, first require the taxpayer to pay the tax and then bring a refund claim. *See* Cal. Revenue & Tax Code § 19382. Such actions take years to percolate through the courts. *See, e.g.*, Appellants' Supp. Opening Br., *In re Pfizer Burgundy Inc. (FKA Wyeth)*, No. 250318930 (Cal. Off. Tax. App. May 6, 2025) (describing California refund action which has been ongoing since 2017).

Second, denying leave to file may send a message to other states that they may continue to enact state laws seeking to control the national economy. As exhibited by the increasing number of offending state laws, states like California now consistently use their economic power and political will to adopt regulations "that can reverberate outside their borders." *National Pork Producers*, 137 Harv. L. Rev. at 335. As explained above, many states are already doing so, enacting laws that set the regulatory floor nationwide for topics ranging from the environment to product safety to artificial intelligence. *See supra* Part I.A. If the Court denies leave here, that problem will only deepen.

On the other hand, granting Florida's motion, and others like it, will have salutary benefits. It will signal to states that this Court will check regulatory overreach when states seek to control the national economy. And it will give the Court additional opportunities to answer many of the questions left unanswered in this area. *See supra* Part I.B.

CONCLUSION

The Court should grant Plaintiff's Motion for Leave to File a Bill of Complaint.

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