CASE NO. 22-30373

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

HALSTEAD BEAD, Incorporated,
Plaintiff-Appellant

v.

KEVIN RICHARDS, in his official capacity as Louisiana Secretary of Revenue; AMANDA GRANIER, in her official capacity as Sales Tax Collector, Lafourche Parish, Louisiana; DONNA DRUDE, in her official capacity as Sales and Use Tax Administrator of Tangipahoa Parish, Louisiana; JAMIE BUTTS, in her official capacity as Sales Tax Auditor, Washington Parish, Louisiana; LAFOURCHE PARISH GOVERNMENT, Incorrectly referred to as Lafourche Parish; TANGIPAHOA PARISH, A Home Rule Chartered Parish; WASHINGTON PARISH, A Home Rule Chartered Parish,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA,
CIVIL ACTION NO. 2:21-CV-2106
Honorable Jane T. Milazzo, District Judge presiding

ORIGINAL BRIEF FOR DEFENDANTS-APPELLEES

Amanda Granier, Donna Drude, Jamie Butts, and the Lafourche Parish Government

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CERTIFICATE OF INTERESTED PERSONS

(1) No. 22-30373, *Halstead Bead v. Kevin Richard, et al.*, USDC No. 2:21-CV-2106

(2) The undersigned counsel of record certifies that the following listed persons, as described in 5th Cir. R. 28.2.1, have an interest in the outcome of this case. These representations are made in order that the judges of this Honorable Court may evaluate possible disqualification or recusal.

Appellees:

KEVIN RICHARD, in his official capacity as Louisiana Secretary of Revenue;
AMANDA GRANIER, in her official capacity as Sales Tax Collector, Lafourche Parish, Louisiana;
DONNA DRUDE, in her official capacity as Sales and Use Tax Administrator of Tangipahoa Parish, Louisiana;
JAMIE BUTTS, in her official capacity as Sales Tax Auditor, Washington Parish, Louisiana;
LAFOURCHE PARISH GOVERNMENT;
TANGIPAHOA PARISH, a Home Rule Chartered Parish; and
WASHINGTON PARISH, a Home Rule Chartered Parish.

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Dated: December 12, 2022

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to 5th Cir. Rule 28.2.3, Defendants-Appellees herein respectfully request oral argument. Given the importance of the relevant issues and complexity of the subject matter, oral argument will likely assist this Honorable Court with adjudicating this matter.

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STATEMENT OF THE ISSUES

1. Whether the Tax Injunction Act requires dismissal of Plaintiff-Appellant's complaint seeking federal injunctive and declaratory relief which, if granted, would enjoin, suspend or restrain the assessment, levy or collection of Louisiana state and local sales and use tax from remote sellers.

2. Whether Louisiana law and its state forums provide a plain, speedy and efficient remedy sufficient to satisfy the requirements of the Tax Injunction Act.

3. Whether principles of comity require dismissal of Plaintiff-Appellant's complaint.

STATEMENT OF THE CASE

I. Statutory and Factual Background.

Louisiana state law imposes a sales tax on every item of tangible personal property sold and delivered at retail in Louisiana. *See* La. R.S. 47:302(A). Additionally, Article VI, § 29 of the Louisiana Constitution authorizes a local governmental subdivision to levy a tax on the sale or use of tangible personal property. The sales tax is an excise tax that is imposed "*upon the transaction itself*, not the property involved in the transaction." *Bridges v. Production Operators, Inc.*, 07-0648 (La. App. 4 Cir.12/12/07); 974 So.2d 54, 58 (citing Bruce J. Oreck, *Louisiana Sales & Use Taxation,* § 2.1 (2d ed.1996)) (emphasis added). As the Louisiana Supreme Court described in *Word of Life Christian Center v. West*:

> "[T]he sales and use tax is "a single-stage tax on consumer spending that applies to final sales in Louisiana for personal use and consumption. The sales tax is a tax imposed on the buyer's use or consumption of the item sold, that is passed on to the buyer or consumer through the addition of the sales tax to the purchase price."

936 So.2d 1226, at 1233 (La. 2006).

Importantly, Article VII, Section 3 of the Louisiana Constitution and La. R.S. 47:337.14 set forth the method of collection of such sales taxes. Specifically, these provisions state that the sales and use tax levied by taxing authorities within a parish shall be collected by a single collector for each parish. *See* La. Const. Art. VII, Sec. 3(B) and La. R.S. 47:337.14. It is this essential collection feature of Louisiana sales tax law that Plaintiff-Appellant seeks to challenge in its Complaint. ROA.35-36.

In response to the U.S. Supreme Court's decision in *South Dakota v. Wayfair*, 585 U.S. ___, 138 S. Ct. 2080 (2018), the Louisiana Legislature created a framework to provide a "safe harbor" for "those who transact only limited business," as did South Dakota, by adopting the identical $100,000 annual sales or 200 transaction threshold limits through the passage of Act 5 of the 2018 2nd Extra. Session of the Louisiana Legislature ("Act 5").[2] The obligation to commence collection and reporting was not applied retroactively and began in 2018, following the passing of Act 5, *supra*. While Louisiana is not a party to the Streamlined Sales and Use Tax

[2] *See* La. R.S. 47:301(4)(m)(i).

Agreement, the Louisiana Legislature created the Louisiana Sales and Use Tax Commission for Remote Sellers (the "Remote Sellers Commission") – the single, state level administrator for registration, reporting and collections of remote sales. *Id*. By completing a single registration with the Remote Sellers Commission, a remote dealer files a single, monthly sales tax return with the Remote Sellers Commission, which is used to report all sales made into Louisiana. ROA.1249. Collection of delinquent taxes is centralized with the Remote Sellers Commission and the enabling statute requires the Remote Sellers Commission to follow collection remedies currently utilized by the State of Louisiana in tax related matters under Chapter 18 of Title 47. *See* La. R.S. 47:340(F). The Remote Sellers Commission is further vested with the power to make rules specifically to carry out its duties and responsibilities. *Id*.

Proof of the usefulness and ease of use of the Remote Sellers Commission is evident by the number of current remote sellers – over 7,391 registered remote sellers filing monthly returns with an average of approximately 233 new remote seller accounts each month.[3] Additionally, as of November 9, 2022, the Remote Sellers Commission has collected and distributed at least $908,031,697.35 in sales

[3] *See* the Remote Sellers Commission Collection and Distribution Report dated November 9, 2022 (the "Report"). The Report is available to the public at: https://revenue.louisiana.gov/Miscellaneous/RSC%20Collection%20and%20Distribution%20Report_11.9.22.pdf.

and use tax to the State and parish collectors since it began collecting on July 1, 2020.[4] It is this streamlined collection system for remote sellers that would also be permanently enjoined if Plaintiff-Appellant's requested relief is granted. ROA.1887-1888.

Plaintiff-Appellant, Halstead Bead, Inc. ("Halstead"), is a craft supplier located in Arizona. ROA.21. Based on the undisputed facts in the Record, Halstead currently: (1) does not meet the economic thresholds provided under Louisiana law, nor does it have physical nexus with Louisiana, and in turn, is not required to collect and remit state and local sales and use tax for its sales made into Louisiana; and (2) if it made additional, remote sales into Louisiana to meet the economic nexus thresholds provided under La. R.S. 47:301(4)(m)(i), and in turn, will be treated as a remote dealer under La. R.S. 47:301(4)(m). ROA.1252. With regard to the latter, Halstead would report and remit state and local sales tax for its remote sales made into Louisiana solely with the Remote Sellers Commission. *See* La. R.S. 47:302(W)(6).

II. Procedural Background.

Halstead filed suit seeking declaratory and injunctive relief on the grounds that essential sales and use tax powers granted to the Defendant-Appellee collectors under the Louisiana Constitution and related statutes, which comprise the structure

[4] *See* the Report, *supra*.

and content of Louisiana's state and local sales tax system, unconstitutionally burden interstate commerce in violation of the Commerce Clause and the Due Process Clause of the United States Constitution. ROA.35-36. Halstead's alleged injury from these provisions of law is that it "risks" losing potential revenue from Louisiana customers by refusing, on its own volition, to surpass the economic thresholds set forth under La. R.S. 47:301(4)(m)(i) and subject itself to Louisiana's sales tax system. ROA.25.

It is worth noting that Halstead's Complaint set forth a fundamentally flawed understanding of Louisiana's current state and local sales and use tax system and how that system would apply to Halstead's own business. For instance, Halstead failed – either erroneously or intentionally – to mention the availability of the Remote Sellers Commission to remote sellers, such as Halstead, that meet the economic thresholds set forth in La. R.S. 47:301(4)(m)(i). ROA.1251. Based on the explanation of the Remote Sellers Commission set forth in (I) above, Paragraphs 78 (Louisiana requires parish-by-parish registration and reporting), 79 (each taxing jurisdiction may create its own definitions), 80 (no single point of contact for out-of-state sellers required to collect Louisiana taxes), 81 (no software much less state supplied software for registering and reporting), 82 (no safe harbor as a result of no state-approved software) of Halstead's Complaint, which serve as the basis and

fabric of Halstead's claims of undue burden, are absolutely and patently false statements. ROA.31.

In response to the Complaint, Defendants-Appellees moved to dismiss the suit, arguing (as relevant here) that federal court jurisdiction is barred by the Tax Injunction Act ("TIA"), 28 U.S.C. § 1341, and by the broader principle of federal comity. ROA.1261-1265. The district court (Milazzo, J.) ultimately dismissed Halstead's action concluding that (1) the district court lacked jurisdiction under the TIA as Halstead's relief would restrain the collection of sales and use taxes, and that Louisiana law provides an adequate remedy in the form of an action for a declaratory judgment; and (2) comity would separately demand abstention by the federal courts. ROA.1895. Halstead filed a notice of appeal shortly thereafter. ROA.1899. The Court *did not* rule on the Commerce Clause or Due Process claims asserted by Halstead. Nevertheless, Halstead raises the merits of these claims in its appeal to this Court. *See* Opening Brief for Plaintiff-Appellant ("Appellant Brief") at 44-59. These issues are respectfully not before the Court.

SUMMARY OF THE ARGUMENT

The district court correctly granted Defendants-Appellees' Motion to Dismiss, finding that (1) the TIA barred federal jurisdiction, and (2) principles of comity separately warranted its dismissal.

The TIA bars the federal courts from entertaining Halstead's claims as the requested relief would be impermissibly disruptive of Louisiana's tax system. While Halstead purports to challenge only regulatory burdens and not the actual payment of Louisiana sales and use tax, Halstead's requested relief would undoubtedly enjoin, suspend or restrain the Louisiana's sales and use tax collection system since a "dealer" or "remote seller" under Louisiana law is responsible for collecting sales taxes at the point of sale. Louisiana also affords Halstead a plain, speedy, and efficient remedy through its state courts pursuant to its Declaratory Judgment provisions and similar provisions available at the Louisiana Board of Tax Appeals. As such, Halstead's Complaint is precisely the type of action Congress meant to prevent when it enacted the TIA.

Moreover, because Louisiana provides an adequate remedy in its laws to hear Halstead's constitutional challenge, the principles of comity independently warrant the dismissal as such a challenge would directly interfere with the ongoing important state/sovereign interests of Louisiana and its parishes.

Although Halstead's constitutional challenges are not currently before this Court's appellate jurisdiction, Defendants-Appellees assert that Halstead's Commerce Clause and Due Process challenges are without merit. Louisiana, by imposing sales tax collection requirements on remote sellers which meet the "economic nexus" thresholds as established by the U.S. Supreme Court in *Wayfair*,

has not disparately impacted or hindered interstate commerce (comparable to in-state sellers) and satisfies *Wayfair*'s Commerce Clause and Due Process Clause analyses. *See* 138 S. Ct. at 2090-91, 201.

ARGUMENT

I. STANDARD OF REVIEW.

This Court reviews dismissals pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on a *de novo* standard. *See Moran v. Kingdom of Saudi Arabia*, 27 F.3d 169, 171 (5th Cir. 1994). A motion under 12(b)(1) should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief. *Benton v. United States*, 960 F.2d 19, 21 (5th Cir. 1992). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1187 (2d Cir. 1996).

II. THE TAX INJUNCTION ACT PRECLUDES FEDERAL COURT JURISDICTION OVER HALSTEAD'S CHALLENGE.

The TIA provides that "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341. The TIA "has its roots in equity practice, in principles of federalism, and in recognition of the imperative need of a State to administer its own fiscal operations." *Tully v. Griffin, Inc.*, 429 U.S. 68, 73 (1976). The primary purpose of the TIA was "to limit

drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes." *California v. Grace Brethren Church*, 457 U.S. 393, 408-09 (1982) (internal quotation omitted). The TIA is a "broad restriction on federal jurisdiction in suits that impede state tax administration" that bars this Court from entertaining Halstead's claims as the federal litigation "would be impermissibly disruptive of [Louisiana's] tax system". *United Gas Pipe Line Co. v. Whitman,* 595 F.2d 323, 326, 329 (5th Cir. 1979).

Moreover, the "Tax Injunction Act imposes an equitable duty on federal district courts to refrain from exercising jurisdiction over claims arising from state revenue collection except when state remedies could prevent a taxpayer from asserting a federal right." *Smith v. Travis County Educ. Dist.*, 968 F.2d 453, 455 (5th Cir. 1992) (quoting *McQueen v. Bullock*, 907 F.2d 1544, 1547 (5th Cir. 1990)). "This restraint emerges from 'the scrupulous regard [of the federal courts] for the rightful independence of state governments . . . and a proper reluctance to interfere by injunction with their fiscal operations.'" *Id*. (quoting *Matthews v. Rodgers*, 284 U.S. 521, 525 (1932)). The TIA is meant to be "a broad jurisdictional impediment to federal court interference with the administration of state tax systems." *Washington v. Linebarger, Goggan, Blair, Pena*, 338 F.3d 442, 444 (5th Cir. 2003). Because Congress's intent in enacting the TIA was to minimize federal-court

interference with state tax administration, the TIA's bar has been extended to "declaratory as well as injunctive relief." 457 U.S. at 411.

The following two-part inquiry must be made before a court applies the TIA as a jurisdictional barrier: (1) whether the relief requested would enjoin, suspend or restrain the assessment, levy or collection of any tax under state law; and (2) whether such state provides a plain, speedy and efficient remedy in its courts. The district court correctly concluded that both thresholds were satisfied, and as a result, the TIA precluded federal jurisdiction over Halstead's challenge. ROA.1893. As set forth below, the district court's ruling should be affirmed.

A. The Relief Requested by Halstead in its Complaint Would Enjoin, Suspend or Restrain the Assessment, Levy or Collection of Louisiana State and Local Sales and Use Tax.

The district court correctly found that while Halstead purported to challenge only regulatory burdens and not the actual payment of Louisiana sales and use tax, Halstead's requested relief undoubtedly would enjoin, suspend or restrain the assessment, levy or collection of Louisiana's sales and use taxes. ROA.1890. As set forth below, the court's decision should be affirmed as (1) Halstead is challenging Louisiana's sales and use tax collection system, not simply "registration and reporting requirements", and (2) the Supreme Court case law cited by Halstead in support of the exclusion of the TIA to its challenge are distinguishable and not applicable.

1. Halstead is Challenging Louisiana's Tax Collection System, Not Merely the Regulatory Features of Such System.

The TIA bars federal district courts from granting declaratory as well as injunctive relief in cases challenging ***state tax systems*** (emphasis added). 457 U.S. at 408 (citing *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 299 (1943).[8] And fundamental to Louisiana's sales tax system is the dealer/retailer's statutory requirement that the collection of sales taxes take place at the point of sale from its customers. Under La. R.S. 47:337.17(A)(1), as it relates to sales taxes imposed by local governments, the sales tax "shall be collected by the dealer from the purchaser or consumer." Subsection C further provides that any dealer who fails to collect the sales tax shall be liable for the tax and pay the tax himself.[9] The State imposes a similar collection responsibility on the dealer for State sales taxes. *See* La. R.S. 47:303.[10]

Thus, intrinsic to Louisiana state and local sales tax collections is the legal requirement that the retail seller (dealer) collect the transactional tax at the time of sale. This requirement is longstanding. *See*, *e.g.*, *Trestman v. Collector of Revenue*, 96 So.2d 713 (La. 1957) (highlighting the importance of requiring the seller to

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[8] *See also Travis County Educ. Dist.*, 968 F.2d 453.

[9] La. R.S. 47:337.17(C).

[10] "Dealer" is generally defined in La. R.S. 47:301(4)(b) as: Every person who sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, or consumption, or distribution, or storage to be used or consumed in the taxing jurisdiction, tangible personal property as defined herein.

collect taxes at the time of purchase).[11] This requirement, since the *Wayfair* decision, is also imposed on remote sellers, who are required to register with and remit sales taxes to the Remote Sellers Commission under La. R.S. 47:340(G).

Halstead argues in its Appellant Brief that its relief does not affect the collection of sales tax, suggesting that Louisiana and its parish collectors are still left with a use tax remedy directly from the consumer. *See* Appellant Brief at 34. This notion is fundamentally flawed. As illustrated below, Halstead's challenge substantially impacts the collection process imbedded in Louisiana law.

In Halstead's case, as a craft bead seller, if it engaged in 200 annual transactions (a threshold for filing and remitting as a remote seller under La. R.S. 47:301(4)(m)(i)(bb)) to different Louisiana customers, with each transaction having a value of $500, the local tax on each transaction would be roughly $25 per transaction. If not collected at the time of the transaction, the Collector would be left without a meaningful remedy – if it was even able to identify the purchaser. If each sale was for $2,000, the local use tax would then be only roughly $100, and the cost of collection would make collection directly against the customer for use tax on such transactions impracticable. Certainly this was part of the rationale in creating

[11] *Trestman* highlights the importance of requiring the seller to collect taxes at the time of purchase. Seller asserted wholesale sales were allegedly to non-resident seamen and the dealer had no records (which could have been used identify the purchasers). 96 So.2d at 714.

the statutory scheme used in Louisiana requiring the dealer to collect (as a privilege of doing business in Louisiana) sales taxes at the point of sale.[12] Sales generated by high-volume/low-transactional-value sellers such as grocery stores, convenience stores, cash sales, outlet mall sales, and sales of small-ticket items would effectively be uncollectible if not for the dealer's responsibility to collect sales taxes at the time of the sale with the corresponding obligation to register as a dealer and file and remit monthly returns. So any injunction enjoining the dealer's responsibility under Louisiana law will drastically impact the collection system under Louisiana law.

In *Washington v. Linebarger, et al.*, this Court considered a challenge to a local *ad valorem* tax penalty used to "defray the costs of collection" – not the tax itself. 338 F.3d 442 (5th Cir. 2003). In affirming the District Court's dismissal of the claim (pursuant to the TIA), this Court noted:

> Accordingly, we agree with the district court for the reasons stated in its Order, that the challenged penalty "*is inexorably tied to the tax collection itself, which `sustains the essential flow of revenue to the government.*'" (Emphasis Appellee) District Court Order and Reasons, 3-4 (citing *Home Builders Ass'n of Miss.,* 143 F.3d at 1011.). Moreover, this Circuit has held that federal district courts are prohibited from deciding disputes involving tax related concepts or functions similar to this *ad valorem* penalty due to the jurisdictional limitations imposed by the Tax

[12] La. R.S. 47:303 (State) and La. R.S. 47:337.15 (Local) (permitting collection of the tax from dealers); La. R.S. 47:304 (State) and La. R.S. 47:337.17 (Local) (requiring collection of the tax at the time of the transaction by the dealer from the customer).

> Injunction Act. *See, e.g., Dawson v. Childs,* 665 F.2d 705, 710 (5th Cir.1982) (involving the dissolution of tax liens).
>
> Further, as the district court noted, the plain language of the Tax Injunction Act's jurisdictional limitation is not focused on taxes only, but rather the broader activities of assessing, levying, and collecting taxes. The challenged ordinance states that the additional penalty is to "defray the costs of collection." Code City of New Orleans § 150-46.3, Ord. No. 18637. Therefore, because of the Tax Injunction Act, this challenge to the collection of taxes cannot be heard in federal district court.

Id. at 444.

Halstead is directly challenging the collection of sales tax by remote sellers under Louisiana law by thwarting the statutorily imposed scheme of requiring dealers to collect sales taxes at the time of the retail sale. Thus, similar to *Washington v. Linebarger, et al.*, Halstead's challenge is "inexorably tied" to the broader activity of tax collection by remote sellers at the time of the purchase. In support of its challenge, Halstead argues and queries whether Louisiana can commandeer businesses to act as its tax collecting agents "via unruly system with traps for the unwary." Appellant Brief at 34. While this assertion is perhaps overly dramatic and fraught with hyperbole, requiring a dealer to collect on behalf of state and local government has been the linchpin of Louisiana's system of sales tax collection on retail sales for at least 70 years. *See*, *e.g.*, *Trestman*, 96 So.2d 713. Clearly the statutory obligations placed on dealers who sell at retail are "inexorably

tied to the tax collection itself, which sustains the essential flow of revenue to the government." *See Linebarger, et al*., 338 F.3d 442.

The District Court agreed finding that the reporting and remitting requirements are not a means to facilitate the collection of taxes in Louisiana, they are the process of collection itself. ROA.1890. As such, Halstead's requested relief would halt the collection of sales and use taxes from remote sellers entirely.

2. The U.S. Supreme Court Cases Cited by Halstead are Distinguishable to its Current Challenge.

Halstead asserts that regulatory challenges are not subject to the TIA's jurisdictional bar relying on two recent Supreme Court cases: (1) *Direct Marketing Assn. v. Brohl*, 575 U.S. 1, 135 S. Ct. 1124 (2015) ("*DMA*"), and (2) *CIC Servs., LLC v. Internal Rev. Serv.*, 593 U.S. ___, 141 S. Ct. 1582 (2021) ("*CIC Services*"), each involving a reporting mandate separate from any tax. As shown below, Halstead's challenge would undoubtedly stop the actual sales tax collection of remote sellers in Louisiana, and as such, is distinguishable from those mere regulatory challenges made in *DMA* and *CIC Services*.

Halstead contends that the Supreme Court's decision in *DMA* is applicable here as Halstead is allegedly only making a regulatory challenge. *See* Appellant Brief at 31. The plaintiff in *DMA* challenged a Colorado law that "requir[ed] retailers that do not collect Colorado sales or use tax to notify Colorado customers of their use-tax liability and to report tax-related information to customers and the

Colorado Department of Revenue." 575 U.S. at 4. The Court in *DMA* held that the TIA did not bar a suit challenging state-law notice and reporting requirements that were intended to facilitate the assessment and collection of taxes owed by Colorado residents. 575 U.S. at 16.

The *DMA* Court first held that Colorado's notice and reporting requirements had not "enjoin[ed]" the "'assessment, levy or collection'" of any "tax." 575 U.S. at 7-12. The *DMA* Court reasoned that providing notice to customers of their tax obligations, and reporting transactions to the State, are distinct from and "precede the steps of 'assessment' and 'collection'" of taxes. *Ibid.* ***Conversely, in this instance, Appellant seeks to enjoin its responsibility to "collect" at the time of the transaction.***

Halstead asserts that by using the narrow definitions of "assessment, levy, and collection" found by the *DMA* Court, none of these three factors of Louisiana's sales and use tax systems would be affected by its requested relief. Appellant Brief at 32. The *DMA* Court defined "collection" as "the act of obtaining payment of taxes due." 575 U.S. at 10. Using such a definition of "collection" here, it is clear that Halstead's requested relief of permanently enjoining the reporting and remitting requirements for remote sellers, including the operations of the Remote Sellers Commission,

would halt the collection of sales and use taxes from remote sellers in Louisiana entirely.[13]

The *DMA* Court also rejected an argument that, "[b]ecause the notice and reporting requirements [we]re intended to facilitate collection of taxes…the relief sought [an order enjoining the notice and reporting requirements]…would 'limit, restrict, or hold back' the Department's [tax] collection efforts." 575 U.S. at 12. The Court held that this potential downstream effect did not trigger the TIA's bar on federal-court orders that "restrain" state tax assessment or collection. *Id.* at 12-14. In doing so, the Court construed the term "restrain" to encompass only "orders that stop (or perhaps compel)" the assessment or collection of tax, not orders that "merely inhibit [ ] those activities." *Id.* at 13-14. As discussed above, ***Halstead's requested relief would completely stop the collection of Louisiana sales taxes from remote sellers, not merely inhibit.***

Additionally significant was that at the time of the *DMA* decision, *Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904, 119 L.Ed.2d 91 (1992), overruled on other grounds by *Wayfair*, 138 S. Ct. 2080., was still the law of the land and no sales tax *collection* obligations for remote sellers existed at that point. Conversely, with such sales tax collections currently in place, Halstead's challenge herein is a

[13] Defendants-Appellees' assertion that the TIA jurisdictional barrier is applicable is not solely limited to the assertion that the "collection" of taxes would be enjoined, suspended, or restrained.

direct challenge to the collection of tax by remote sellers and Louisiana's statutory sales tax structure post *Wayfair*.

In *CIC Services*, as in *DMA*, the Court held that the complaint could not be considered an attempt to "restrain" the "assessment," "levy," or "collection" of a tax, and the Court thus concluded that the statutory bar did not apply because the asserted claims for relief challenged only a reporting requirement, without contesting an underlying tax obligation. 141 S. Ct. at 1592. As discussed above, Halstead's requested relief would completely stop the collection of Louisiana sales and use taxes from remote sellers and therefore its challenge is distinguishable from *CIC Services*. However, the *CIC Services* Court did explain the correct analysis for whenever a federal court considers a challenge to state tax legislation. First, a court "look[s] to the face of the . . . complaint" to "determine the suit's object," that is, "the 'relief requested'—the thing sought to be enjoined". 141 S. Ct. at 1589-90 (citations omitted); *see also Hibbs v. Winn*, 542 U.S. 88, 89 (2004) ("To determine whether this litigation falls within the TIA's prohibition, it is appropriate, first, to identify the relief sought."). The pertinent statutory bar of the TIA, "kicks in when the target of a requested injunction is a tax obligation." 141 S. Ct. at 1590.

When the foregoing is applied to Halstead's complaint, the *CIC Services* Court's analysis compels the conclusion that the TIA bars this suit. While Halstead repeatedly purports to challenge only regulatory burdens (registration, reporting,

etc.), Halstead's Complaint specifically requests that the Court declare that Louisiana's parish-by-parish sales and use tax registration and remitting requirements found in Louisiana Constitution, Article VII, Section 3 and La. R.S. 47:337.14, unconstitutionally burden interstate commerce in violation of the Commerce Clause of the United States Constitution and violate the Due Process Clause of the Fourteenth Amendment both on their face, and as applied to the activity of Halstead. ROA.35-36. From the very first paragraphs to the "Prayer for Relief," the Halstead's Complaint makes it clear that "the target of [Halstead's] requested injunction is a tax obligation". 141 S. Ct. at 1590. Moreover, this extreme prayer for relief as applied to remote sellers, such as Halstead, would involve a prohibition of the Remote Sellers Commission, the single entity in Louisiana for the collection and administration of state and local sales and use tax on remote sales sourced to Louisiana taxing jurisdictions. *See* ROA.1887-1888; *see also* La. R.S. 47:340(G).

Since neither *DMA* nor *CIC Services* apply to Halstead's challenge, this Honorable Court should follow the vast fast federal precedent, including its own past precedent, applying the TIA as a broad jurisdictional impediment to federal court interference with the administration of state tax systems." *See, e.g.*, *United Gas*, 595 F.2d 323.[14] Based on the foregoing, the district court correctly held that Halstead's

[14] *See also American Civil Liberties Union v. Bridges*, 334 F.3d 416 (5th Cir. 2003) (finding the TIA barred jurisdiction of a challenge to a tax exemption); *Travis County Educ. Dist., 968 F.2d 453* (finding the TIA barred jurisdiction of a property

requested relief would enjoin suspend, or restrain the assessment, levy, or collection of a tax under Louisiana law. This Court should affirm.

B. Halstead Has Plain, Speedy, and Efficient Remedies Available in Louisiana State Forums.

The district court correctly determined that Halstead has a plain, speedy, and efficient remedy available in Louisiana's state courts. ROA.1892-1893. In fact, Halstead has two: the *first* is pursuant to the Louisiana Declaratory Judgment procedure as proscribed the Louisiana Legislature and as interpreted by Louisiana state courts. *See* Louisiana Code of Civil Procedure ("La. C.C.P.") articles 1871 and 1872. The *second* is pursuant to La. R.S. 47:1407(7), which was recently enacted to grant the Louisiana Board of Tax Appeals (or the "Board") the explicit jurisdiction to hear actions related to the constitutionality of Louisiana sales and use tax law. *See* Act No. 365 of the 2019 Regular Session of the Louisiana Legislature.

1. Halstead Has a Plain, Speedy, and Efficient Remedy Available in State Court Pursuant to the Louisiana Declaratory Judgment Act.

Most analogous to the instant matter is *Archer Daniels Midland v. McNamara*, 544 F. Supp. 99, 103 (M.D. La. 1982), wherein the plaintiff, ADM, sought a declaratory judgment concerning the constitutionality of Louisiana's gasoline statutes. ADM argued that it had no remedy under La. R.S. 47:1576 because it was

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tax challenge); *Anr Pipeline Co. v. La. Tax Comm'n*, 646 F.3d 940 (5th Cir. 2011); *Moss v. State of Ga.*, 655 F.2d 668 (5th Cir. 1981); *Dawson v. Childs*, 665 F.2d 705 (5th Cir. 1982); *A Bonding Co. v. Sunnuck*, 629 F.2d 1127 (5th Cir. 1980).

not personally liable for the taxes. 544 F. Supp. at 102. Similar to Halstead here, ADM only had "potential liability as a collector of taxes" based on its classification as a "dealer" under Louisiana's gasoline tax law existing at that time. *Id*. The Court declined to address whether ADM had a remedy under La. R.S. 47:1576 relying instead on the "'plain, speedy and efficient remedy' to contest the validity of the taxes" under Louisiana C.C.P. arts. 1871 and 1872. *Id*. at 104.

In so holding, the Court found that the statute "clearly [] allows ADM to present this question to the appropriate state court for decision." *Id*. at 103. The Court rejected ADM's argument that jurisprudence prevented ADM from proceeding under the Declaratory Judgment Statute, stating:

> ADM contends that *Giraud v. City of New Orleans*, 359 So.2d 294 (4 Cir. 1978), writ denied, 362 So.2d 579, bars it from proceeding under the state declaratory judgment statutes. The Court disagrees. In *Giraud*, the court ruled that a suit for recovery of taxes paid under protest is the only remedy available to taxpayers seeking to challenge the validity of an ad valorem property tax. The court held that the taxpayer could not seek declaratory relief. The *Giraud* case is clearly distinguishable from the case sub judice. In *Giraud*, declaratory relief was unavailable to taxpayers because of the § 1576 remedy. **ADM is not a taxpayer under the facts of this case and thus, may not be able to avail itself of the procedures set forth in § 1576. However, there is nothing in the *Giraud* case which precludes a party, such as ADM, from availing itself of the procedures set forth in the state declaratory judgment statute to challenge the constitutionality of a state tax.**

Id. at 103–04 (emphasis added). The Court concluded by finding "[i]t is clear that Articles 1871 and 1872 of the Louisiana Code of Civil Procedure specifically authorize declaratory actions to determine the validity and constitutionality of a state statute." *Id*.

See also ERA Helicopters, Inc. v. State of La. Through Dep't of Revenue & Tax'n, 651 F. Supp. 448 (M.D. La. 1987), (concluding that Louisiana's Declaratory Judgment Act, contained in La. C.C.P. arts. 1871 and 1872, gave the taxpayer a plain, speedy, and efficient remedy with regard to that state's sales and use taxes); and *Edwards v. Transcon. Gas Pipe Line Corp.*, 464 F. Supp. 654 (M.D. La. 1979) (recognizing the declaratory relief sought by plaintiff in challenging the constitutionality of first use tax on natural gas was available in state court pursuant to La. C.C.P. art. 1871).

2. None of the Cases Relied Upon by Halstead Prevent it From Seeking the Same Declaratory Relief Sought Here in State Court.

The cases relied upon by Halstead in its Appellant Brief are distinguishable as they each involve ***taxpayer*** claims that were disallowed due to a failure to meet the specific notice requirements of the governing procedural statutes, *i.e.*, the failure to protest the payment when made, or the failure to file a suit against the within the prescribed time.

Jackson v. City of New Orleans, 2012-2742 (La. 1/28/14); 144 So.3d 876, involved a state constitutional challenge of an ordinance imposing a penalty

(designated as collection fees by the City) on delinquent *ad valorem* ***taxpayers***. On appeal, the taxpayers/plaintiffs argued that the statute requiring payment under protest was unconstitutional because the actual penalties and fees at issue were ultimately declared to be unconstitutional. The Court found "no merit in this assertion". 144 So.3d at 895. In so ruling, the Court reasoned that states are allowed to impose "various procedural requirements on actions for post-deprivation relief" such as the payment under protest provisions at issue therein. *Id*. at 896. Accordingly, the Court found that the district court had properly sustained the City's exceptions of no cause of action as to the plaintiffs that failed to comply with the procedural legal requirements. By comparison, Halstead has no legal requirement to pay under protest at this point. It is not a dealer under Louisiana law (having failed to meet the definitional, economic thresholds set forth in La. R.S. 47:301(4)(m)(i)), is not a taxpayer, and is not exclusively tied to a post-deprivation remedy as proscribed in *Jackson*.

Similarly, *Austin v. Town of Kinder*, 36 So. 2d 48 (La. Ct. App. 1948), involved a refund claim against the Town of Kinder seeking to recover ***taxes paid by the plaintiff*** related to package liquor store and retail beer licenses. In response, Kinder filed exceptions of no cause and/or no right of action which were overruled by the trial court. 36 So. 2d at 49. The appellate court reversed the decision of the trial court and sustained Kinder's exception of no right of action as a result of the

plaintiff's failure to comply with the procedural requirements of the applicable statute (*i.e.*, payment under protest and timely filing of suit). *Id*. at 50. Again, Halstead files no refund claim herein, only a challenge to the constitutionality of the state and local sales tax collection statutes. *Austin* has no relevancy herein.

Finally, *Bridges v. Smith*, 2001-2166 (La. App. 1 Cir. 9/27/02); 832 So. 2d 307, *writ denied,* 2002-2951 (La. 2/14/03), 836 So. 2d 121, was a Louisiana state income tax case filed by the Department of Revenue for the State of Louisiana against ***taxpayers*** that filed a joint Louisiana income tax return as non-residents. Suit was filed by the Department for delinquent state income taxes, penalties and interest following the taxpayers' failure to timely respond to a notice sent by the Department. 832 So. 2d at 308. *Bridges v. Smith* involved the alternative remedies available to the Department of Revenue to collect what it determined to be delinquent income taxes – the formal assessment process (La. R.S. 47:1561, *et seq*.), or ordinary suit.[15] *Bridges* has no relevancy to the issues herein.

3. In Addition, Halstead Has a Plain, Speedy, and Efficient Remedy Available Before the Board of Tax Appeals Pursuant to La. R.S. 47:1407.

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[15] "In the instant case, the Department chose to enforce the collection of the taxes by means of filing an ordinary suit against the taxpayers on December 27, 2000. The fact that the Department sent a notice of the tax due prior to filing the suit did not preclude the Department from proceeding by ordinary suit thereafter." 832 So. 2d at 312.

In addition to availing itself of suit in Louisiana district court, Halstead may also seek a declaratory judgment from the Louisiana Board of Tax Appeals pursuant to La. R.S. 47:1407(7). La. R.S. 47:1407(7) specifically provides:

> The jurisdiction of the board shall extend to the following:
>
> …
>
> (7) A petition for declaratory judgment or other action relating to any state or local tax or fee, concerning taxing districts and related proceeds, or relating to contracts related to tax matters; and including disputes related to the ***constitutionality of a law or ordinance or validity of a regulation concerning any related matter or concerning any state or local tax or fee***.[16]

The plain and unambiguous language of the relevant provision – that the Board's jurisdiction extends to "[a] petition for declaratory judgment or other action…related to the constitutionality of a law or ordinance or validity of a regulation concerning any related matter…" – and the legislative history (*see* footnote 17) concerning same, demonstrate that La. R.S. 47:1407 extends the jurisdiction of the Board to Halstead's claims here.

In *United Parcel Service of America, Inc. v. Kimberly Robinson, Secretary of the Louisiana Department of Revenue*, BTA Docket No. 12592D (07/14/21); 2021 WL 4296492, ("*UPS*") the Board of Tax Appeals found that legislative acts expanded the Board's jurisdiction to a concurrent basis with district courts concerning tax matters, including constitutional challenges. In so holding, the Board

[16] Emphasis added.

considered the legislative history of Acts 278 (HB 516, 2020), 365 (HB583, 2019), and 446 (HB 428, 2019).[17] *UPS*, 2021 WL 4296492 at *3. The Board correctly concluded that "2019 Constitutional Amendment No. 3 was adopted to expand the Board's jurisdiction to a concurrent basis with a district court on tax matters, which would include the jurisdiction to hear both facial and as-applied [constitutional] challenges." *UPS*, 2021 WL 4296492, at *3 citing La. Const. Art. V, Sec. 35.

In *UPS*, the plaintiff sought declaratory relief alleging that "it [did] not have sufficient minimum contacts to support taxation in Louisiana." *UPS*, 2021 WL 4296492, at *1. The Department of Revenue excepted to the Board's subject matter jurisdiction claiming that UPS did not "challenge the constitutionality of a specific law or ordinance or the validity of a regulation." *UPS*, 2021 WL 4296492, at *2. Markedly, the Board noted in its decision that "both parties failed to address the catchall provision of La. R.S. 47:1431(E) which allows any aggrieved party to file a

[17] Specifically, the Board reviewed the "Digest for Act 365 [which] states: Existing law authorizes state courts to provide a legal remedy in cases where taxes are claimed to be an unlawful burden upon interstate commerce or when the collection of taxes violates any Act of Congress, the U.S. Constitution, or the Constitution of La. New law retains existing law and extends this jurisdiction to the Board of Tax Appeals (the board) to handle such cases. New law also authorizes state courts and the board to provide a legal remedy for cases where taxes are claimed to be unconstitutional. Existing law authorizes a court of competent jurisdiction to determine in an action for declaratory judgment the validity or applicability of a rule. New law retains existing law and additionally authorizes the board to make such determination."

petition with the board for 'all matters related to state or local taxes or fees.' La. R.S. 47:1407(3)." *UPS*, 2021 WL 4296492, at *2.

The Board further noted that although it previously lacked jurisdiction over constitutionality claims concerning taxing statutes or related ordinances, "2019 Constitutional Amendment No. 3 was adopted to expand the Board's jurisdiction to a concurrent basis with a district court on tax matters, which would include the jurisdiction to hear both facial and as-applied challenges." *UPS*, 2021 WL 4296492, at *3 citing La. Const. Art. V, Sec. 35.

The Board denied the Department's Exception of Lack of Subject Matter Jurisdiction concluding:

> Ultimately, it is the facts and circumstances of each case that dictate whether a petitioner can seek relief from the Board in an "as-applied" challenge to the constitutionality of a tax statute or ordinance or the validity of a regulation. **In no way should this holding be construed so as to prevent a taxpayer from petitioning the Board to challenging the facial constitutionality of a law or ordinance or the validity of a regulation under La. R.S. 47:1407(7).**

UPS, 2021 WL 4296492, at *5 (emphasis added).

The Board's *UPS* decision further illustrates that Judge Milazzo correctly determined that Halstead has a plain, speedy, and efficient state remedy – in fact multiple avenues to seek redress either in state court or at the Board. Thus, the

district court's conclusion that the statutory requirements of the Tax Injunction Act application have been satisfied should be affirmed.

C. This Suit is Precisely the Type of Action Congress Meant to Prevent When it Enacted the Tax Injunction Act.

The TIA seeks to free States' tax collection procedures "from interference by the federal courts[.]" *Great Lakes Dredge & Dock Co.*, 319 U.S. at 301. Even before the TIA's enactment, the Supreme Court had counseled against entertaining federal suits "to enjoin the collection of a state tax," because "scrupulous regard for the rightful independence of state governments" and "a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it." *Matthews*, 284 U.S. at 525. The primary purpose of the TIA was "to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes." *Grace Brethren Church*, 457 U.S. at 408-09 (1982) (internal quotation omitted). The TIA prohibits claims for declaratory as well as injunctive relief. *Id*. at 411. The Supreme Court has declared that the TIA "has its roots in equity practice, in principles of federalism, and in recognition of the imperative need of a state to administer its own fiscal operations. *Tully*, 429 U.S. at 73.[18]

[18] The power to tax is basic to the ability of the State to exist. *M'Culloch v. Maryland*, 17 U.S. (4 Wheat) 316, 339 (1819) (Marhsall, J.); *see also Arkansas v. Farm Credit Servs. of Cent. Arkansas*, 520 U.S. 821, 826 (1997) ("The States'

This case implicates similar concerns. Halstead purports to represent the interests of remote sellers by seeking to enjoin the State's effort to raise revenue through its collection of sales tax on remote sales made into Louisiana needed for public services (fast approaching one-billion dollars in sales tax collections and remittance to the State and local governments).[19] Halstead failed to substantively address/apply the availability of the Remote Sellers Commission in its Complaint, which serves as the single entity in Louisiana for the collection and administration of state and local sales and use tax on remote sales sourced to Louisiana taxing jurisdictions. At its core, Halstead's Complaint is nothing more than a general grievance of Louisiana's state and local sales and use tax system and is asking the federal courts to intervene.

With this background, Halstead requests for the federal courts to permanently enjoin Defendants-Appellees from enforcing local sales and use tax registration and reporting requirements against remote sellers, which would include the operations of the Remote Sellers Commission.[20] ROA.35-36. Accordingly, it is clear that granting the extreme relief requested by Halstead would enjoin, suspend, or restrain the assessment, levy, or collection of taxes by the State and parishes, which includes

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interest in the integrity of their own processes is of particular moment respecting questions of state taxation").

[19] *See* the Report, *supra*.

[20] *See supra*.

the Defendant-Appellee local collectors in this action. As such, the exercise of federal jurisdiction herein would go against one of the legislative purposes in enacting the TIA: "the elimination of disruption in state and local financing by out-of-state corporations bringing suit in federal court". *United Gas*, 595 F.2d at 329.

For the very reasons that motivated Congress to enact it, the TIA requires dismissal of this action.

III. PRINCIPLES OF COMITY INDEPENDENTLY WARRANT THE DISMISSAL OF HALSTEAD'S ACTION BECAUSE LOUISIANA PROVIDES AN ADEQUATE REMEDY IN ITS LAWS.

Halstead's primary challenge to the application of comity to this case is its assertion that there no state remedies available. *See* Appellant Brief at 40. As set forth above, Louisiana provides two forms of remedies in the form of the Louisiana Declaratory Judgment Act and through the Board of Tax Appeals, pursuant to La. R.S. 47:1407(7).[21] Thus, with a state remedy available to Halstead, its assertion that comity should not be applied in this matter should be denied.

The comity doctrine reflects:

> a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways.

[21] *See supra.*

Levin v. Commerce Energy, Inc., 560 U.S. 413, 421 (2010) (quoting *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 112 (1981)). "Comity's constraint has particular force when lower federal courts are asked to pass on the constitutionality of state taxation of commercial activity." *Id*. Thus, even where the TIA does not preclude jurisdiction, "principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration." *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 586, 115 S. Ct. 2351, 132 L.Ed.2d 509 (1995).

As such, Defendants-Appellees reassert that Halstead's challenge is separately barred by the broader principle of federal comity. Discussed thoroughly above, the relief sought by Halstead would directly interfere with the ongoing fiscal operations of Louisiana and its parishes, which implicates an important state/sovereign interest. *See supra.* In addition, Halstead can receive proper adjudication of its federal constitutional arguments through Louisiana's court system. *See supra.* Under these circumstances, dismissal of Halstead's Complaint pursuant to the comity doctrine is warranted.

The district court agreed, finding that comity would separately demand abstention in this case even if the TIA was found not to apply. ROA.1893-1894. Thus, the district court's decision should be affirmed.

IV. HALSTEAD HAS NOT PLEAD VALID CONSTITIONAL CLAIMS.

The district court ruled in favor of Defendants-Appellees' Motion to Dismiss, without providing an opinion on the merits of Halstead's constitutional challenges. ROA.1895. As such, these issues are not before this Court's appellate jurisdiction. Nevertheless, since Halstead has argued its constitutional challenges in its Appellant-Brief[22], Defendants-Appellees will briefly reply.

A. Halstead's Hypothetical Commerce Cause Claim.

Beginning on Page 52 of its Appellant Brief, Halstead complains that Louisiana's sales and use tax system is in violation of the Commerce Clause; however, Halstead has *never* met Louisiana's definition of being a "remote seller" because Halstead has *never* made annualized sales in Louisiana of more than 200 transactions or $100,000 in revenue from its sales. As the district court aptly stated in its Order and Reasons, "Plaintiff has never met the threshold number of sales in Louisiana and is therefore not subject to the tax laws that it challenges." ROA.1882.

Based on Halstead's annualized sales as set forth by Halstead in its Complaint, Halstead bears absolutely no requirement to separately register as a "dealer" with multiple Parishes, nor does Halstead incur any obligation to file returns and remit local sales taxes to any local collector, despite Halstead's inaccurate representations to the contrary set forth in its Complaint. ROA.1252. Nevertheless, and assuming

[22] *See* Appellant Brief at 52-59.

arguendo that Halstead was actually a "remote dealer" meeting the thresholds set forth in La. R.S. 47:301(4)(m)(i), Halstead's Commerce Clause violation argument would fail.

Halstead highlights the factors of South Dakota's sales and use tax system discussed by the U.S. Supreme Court in *Wayfair*; however, it should be noted that the Supreme Court enunciated these "standards" within the following context:

> Concerns that complex state tax systems could be a burden on *small business* are answered in part by noting that, as discussed below, there are various plans already in place to simplify collection; and since in-state businesses pay the taxes as well, the risk of discrimination against out-of-state sellers is avoided. And, if some small businesses with only *de minimus* contacts seek relief from collection systems thought to be a burden, those entities may still do so under other theories.

Wayfair, 138 S. Ct. at 2099 (emphasis added).

Halstead sells its products "primarily online" and advertises online through Google, Facebook, Instagram, etc. and through "influencers" throughout the country. ROA.23. Through its operations and advertising reach, Halstead sells items and remits taxes to twenty (20) states. *Id.*

However, considering the standards enunciated by the U.S. Supreme Court in *Wayfair* to the *actual* facts herein, the requirement for "dealers" defined under La.

R.S. 47:301(4)(m) to file and remit taxes to the Remote Sellers Commission is neither discriminatory nor unduly burdensome.[24]

As noted above, in response to the Supreme Court's decision in *Wayfair*, the Louisiana Legislature established economic thresholds (annual gross revenues over $100,000 or 200 or more transactions made into Louisiana) that must first be met before an out-of-state seller that lacking a physical presence in Louisiana would be subjected to Louisiana's sales tax collection and remittance requirements. Additionally, the Louisiana Legislature created the Remote Sellers Commission,

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[24] As the *Wayfair* Court noted, "This Court's [Commerce Clause] doctrine has developed further with time. Modern precedents rest upon two primary principles that mark the boundaries of a State's authority to regulate interstate commerce. First, state regulations may not discriminate against interstate commerce; and second, States may not impose undue burdens on interstate commerce. State laws that discriminate against interstate commerce face 'a virtually per se rule of invalidity.' [] State laws that 'regulat[e] even-handedly to effectuate a legitimate local public interest ... will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.' [] Although subject to exceptions and variations, [] these two principles guide the courts in adjudicating cases challenging state laws under the Commerce Clause." 138 S. Ct. at 2090-91 (internal citations omitted). The *Wayfair* Court further stated that, "[t]hese principles also animate the Court's Commerce Clause precedents addressing the validity of state taxes. *Id*. at 2091. In addressing the now-accepted framework for state taxation in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L.Ed.2d 326 (1977), the Court stated that "a State 'may tax exclusively interstate commerce so long as the tax does not create any effect forbidden by the Commerce Clause.' [] After all, 'interstate commerce may be required to pay its fair share of state taxes.' [] The Court will sustain a tax so long as it (1) applies to an activity with a substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services the State provides." *Wayfair*, 138 S. Ct. at 2091 (internal citations omitted).

which is the singular state level administrator for registration, reporting and collections of remote sales. Halstead has failed to sufficiently address and apply the availability of the Remote Sellers Commission to its status as a "remote seller." Contrary to Halstead's blatantly incorrect assertions in its Appellant Brief, Halstead would complete a single registration, would file a single monthly return, and would remit state and local sales and use tax for its remote sales made into Louisiana solely with the Remote Sellers Commission. ROA.1249, 1251. Thus, Louisiana's sales tax system for remote sellers is neither discriminatory not unduly burdensome.

Further, as it relates to the specific burdens claimed to be placed on Halstead by Louisiana's sales and use tax system, Halstead has not pointed to any definitions of taxable goods or services that apply to it which are not "uniform" between the State and any Parishes. In contrast, all sales and use tax "definitions," by law, are uniformly applied to both state and local jurisdictions. *See* La. R.S. 47:337.6(B). Halstead states on pages 54-55 of its Appellant Brief that Louisiana "does not provide convenient software that calculates out-of-state sellers' tax liability." In contrast, Halstead, either through ignorance of its availability or by intentional omission, fails to disclose that the Uniform Local Sales Tax Board provides a free tax rate lookup tool that enables any party to enter a municipal address and receive: (1) the State and local tax rates; (2) any applicable exemptions or exclusions, and (3)

vendors' compensation rates.[25] Finally, while Halstead complains that Louisiana's system supposedly allows for "disparate tax treatment of the same company between parishes," Halstead cannot allege that it received any such treatment in Louisiana. Halstead's cherry-picked, hypothetical, anecdotal and often inaccurate complaints about Louisiana's sales and use tax system should not be viewed as serious or pervasive flaws by this Court.

While Louisiana does not pretend to have a simplified tax rate structure, the filing and reporting for remote sellers is made simple by virtue of the creation of the Remote Sellers Commission and its online portal. Given the foregoing, Halstead's challenge fails under the Commerce Clause as plead in its Complaint since the requirement for "dealers" defined under La. R.S. 47:301(m)(i) to file and remit taxes to the Remote Sellers Commission is neither discriminatory nor unduly burdensome. *See Wayfair,* 138 S. Ct. at 2090-91.

Halstead also cites *Pike v. Bruce Church*, 397 U.S. 137 (1970) for the proposition that a Commerce Clause violation can be established if a burden imposed on commerce is "clearly excessive in relation to the putative local benefits," and if a State can accomplish its goals "by a more reasonable means." Appellant Brief at 56-57. However, "[s]tate laws frequently survive this *Pike* scrutiny". *Department of Revenue of Kentucky v. Davis*, 553 U.S. 328, 170 L. Ed. 2d 685, 128 S. Ct. 1801

[25] Available to the public at https://lulstb.com//.

(2008). More importantly, Halstead has failed to apply a complete *Pike* Balancing Test, such as the analysis used by this Court in *National Solid Waste v. Pine Belt Regional*, 389 F.3d 491 (5th Cir. 2004) (upholding solid waste flow control ordinances that mandated disposal at facilities owned by the public authority). The *National Solid Waste* Court first identified a legitimate local, public purpose to be advanced by the ordinance: economic viability of the public authority's landfill. 389 F.3d at 502. The Court then identified the burden imposed on interstate commerce. *Id.* In analyzing this second-prong, the Court specified that:

> To succeed in a challenge to a regulation under the *Pike* balancing test, the challenging party must show that the regulation has "a disparate impact on interstate commerce." [] The "incidental burdens to which *Pike* refers are the burdens on interstate commerce that exceed the burdens on intrastate commerce." [] "Where a regulation does not have this disparate impact on interstate commerce, then we must conclude that ... [it] has not imposed any incidental burdens on interstate commerce" and, therefore, that it passes the *Pike* test. []

Id. (internal quotations and citations omitted).

The *National Solid Waste* Court upheld the ordinance finding no disparate impact on interstate commerce, stating "[t]he burdens imposed by the ordinances on interstate commerce, however, are no greater than those imposed on intrastate commerce… In fact, the burden imposed on wholly intrastate contracts…will likely be greater than that imposed by the flow control ordinances on plaintiffs' interstate contracts." *Id*.

Applying the *Pike* Balancing Test described in *National Solid Waste* to Halstead's claim herein, it is readily apparent that such a challenge fails. First, there should be no dispute that sales and use tax taxes needed to fund public services is a legitimate local, public purpose intended to be advanced by Louisiana's sales and use tax collection system (including the Remote Sellers Commission). Second, and similar to the *National Solid Waste* ordinance, there is no disparate impact on interstate commerce as the burdens on interstate commerce do not exceed the burdens on intrastate commerce. If Halstead was legally required to register and report as a dealer in every parish in which it sold to a customer (it is not, *see supra*), it would bear the same sales tax compliance burdens imposed on local businesses selling throughout the State. However, with the availability of the Remote Sellers Commission and its beneficial features (single registration, single monthly tax return, taxpayer online portal, etc.) to remote sellers, Louisiana's sales tax system actually treats online retailers, such as Halstead, more favorably than Louisiana treats its in-state brick and mortar businesses. Thus, similar to this Court's decision in *National Solid Waste*, Halstead has not shown a disparate impact on interstate commerce relative to intrastate commerce and its *Pike* challenge fails.

B. Halstead's Hypothetical Due Process Claim.

The Due Process Clause provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, §

1. The Due Process Clause "centrally concerns the fundamental fairness of governmental activity." *Quill*, 504 U.S. at 312.

In the context of state taxation, the Due Process Clause limits states to imposing only taxes that "bea[r] fiscal relation to protection, opportunities and benefits given by the state." *Wisconsin* v. *J. C. Penney Co.*, 311 U.S. 435, 444 (1940). The power to tax is, of course, "essential to the very existence of government," *McCulloch*, 4 Wheat. at 428, but the legitimacy of that power requires drawing a line between taxation and mere unjustified "confiscation." *Miller Brothers Co. v. Maryland*, 347 U.S. 340, 342 (1954). That boundary turns on the "[t]he simple but controlling question . . . whether the state has given anything for which it can ask return." *J. C. Penney Co.*, 311 U.S. at 444. In *Wayfair*, the Supreme Court noted, "State taxes fund the police and fire departments that protect the homes containing their customers' furniture and ensure goods are safely delivered; maintain the public roads and municipal services that allow communication with and access to customers; support the sound local banking institutions to support credit transactions and courts to ensure collection of the purchase price." *Wayfair*, 138 U.S. at 2096 (citing *Quill*, 504 U.S. at 328).

The Court applies a two-step analysis to decide if a state tax abides by the Due Process Clause. *See Quill* 504 U.S. at 306. First, and most relevant here, there must be "some definite link, some minimum connection, between a state and the person,

property or transaction it seeks to tax." *Id.* Second, "the income attributed to the State for tax purposes must be rationally related to values connected with the taxing State." *Id.* (internal quotations omitted).

To determine whether a State has the requisite "minimum connection" with the object of its tax, this Court borrows from the familiar test of *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). *See Quill*, 504 U.S. at 307. A State has the power to impose a tax only when the taxed entity has "certain minimum contacts" with the State such that the tax "does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.*, 326 U.S. at 316; *see also Quill*, 504 U.S. at 308. The "minimum contacts" inquiry is "flexible" and focuses on the reason- ableness of the government's action. *Quill*, 504 U. S. at 307. Ultimately, only those who derive "benefits and protection" from associating with a State should have obligations to the State in question. *International Shoe*, 326 U. S. at 319.

Halstead argues on Page 59 of its Appellant Brief that Louisiana's "…system is so arbitrary and irrational as to violate due process. Local governments gain little, if any, revenue from this system, but impose heavy compliance costs on out-of-state sellers and penalize those that err in determining the applicable rate or definitions for a transaction." Yet again, Halstead makes a statement to this Court that is completely and verifiably inaccurate while simultaneously failing to support its fantastical claims with examples and allegations as to how Halstead is impacted.

Defendants-Appellees placed into the Record affidavits from the Remote Sellers Commission and the administrators of each of the Defendant-Appellee local collectors detailing the exact amount of local sales taxes collected from the Remote Sellers Commission. This significant sum, which is fast approaching $1 billion in total state and local sales tax collections, is far from "little, if any, revenue" asserted by Halstead without citation or support. Similarly, while Halstead pillories Louisiana's sales and use tax system as "arbitrary and irrational," it fails to allege specific examples as applied to its operations to support such a bold claim.

Admittedly, today, Halstead does not have minimum contacts with Louisiana. Its sales into Louisiana are considered *de minimus* and below the threshold statutory standard set by Louisiana law in accordance with the *Wayfair* ruling. Louisiana and its parishes have taken nothing nor demanded anything of Halstead. On the other hand, should Halstead one day meet the definitional standard found in La. R.S. 47:301(4)(m)(i), these threshold standards would satisfy the minimum connection or contacts threshold as found in *Wayfair*. But as Halstead's Complaint currently exists before this Court, these Due Process claims are clearly moot and premature.

CONCLUSION

The judgment of the of the district court should be affirmed.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to attorneys of record.

s/ Patrick M. Amedee

Patrick M. Amedee

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation set forth in Fed. R. App. P. 32(a)(7)(B)(i) because it contains approximately 11,200 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaces typeface using Microsoft Office Word in Times New Roman 14-point font.

Respectfully submitted,

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