

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

v.

STEVEN MNUCHIN, in his official capacity
as Secretary of the United States Department
of Treasury; the UNITED STATES
DEPARTMENT OF THE TREASURY;
CHARLES P. RETTIG, in his official capacity
as Commissioner of the United States Internal
Revenue Service; the UNITED STATES
INTERNAL REVENUE SERVICE; and the
UNITED STATES OF AMERICA,

Defendants.

Civil Action No. 1:18-cv-06427 (JPO)

DECLARATION OF OWEN T. CONROY

OWEN T. CONROY, declares under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an Assistant Attorney General in the Office of the Attorney General of the State of New York, counsel for Plaintiff State of New York. I make this declaration in opposition to Defendants' motion to dismiss and in support of the Plaintiff States' cross-motion for summary judgment.

2. Attached as Plaintiffs' Exhibit 1 is a true and accurate copy of relevant excerpts from James Kent, *Commentaries on American Law* (O. Halsted ed., 1826).

3. Attached as Plaintiffs' Exhibit 2 is a true and accurate copy of *The Federalist* No. 33 (Hamilton).

4. Attached as Plaintiffs' Exhibit 3 is a true and accurate copy of relevant excerpts from Roy G. Blakey & Gladys C. Blakey, *The Federal Income Tax* (1940).

5. Attached as Plaintiffs' Exhibit 4 is a true and accurate copy of 28 Annals of Cong. 1079 (Jan. 18, 1815).

6. Attached as Plaintiffs' Exhibit 5 is a true and accurate copy of an excerpt from the Act of Aug. 5, 1861, ch. 45, 12 Stat. 292, 309.

7. Attached as Plaintiffs' Exhibit 6 is a true and accurate copy of The Congressional Globe, 37th Cong., 2d Sess. 1194 (1862).

8. Attached as Plaintiffs' Exhibit 7 is a true and accurate copy of The Congressional Globe, 37th Cong., 2d Sess. 1577 (1862).

9. Attached as Plaintiffs' Exhibit 8 is a true and accurate copy of an excerpt from the Act of July 1, 1862, ch. 119, 12 Stat. 432, 473-74.

10. Attached as Plaintiffs' Exhibit 9 is a true and accurate copy of an excerpt from the Act of June 30, 1864, ch. 173, 13 Stat. 223, 281.

11. Attached as Plaintiffs' Exhibit 10 is a true and accurate copy of an excerpt from the Act of March 3, 1865, ch. 78, 13 Stat. 469, 479.

12. Attached as Plaintiffs' Exhibit 11 is a true and accurate copy of an excerpt from the Act of March 2, 1867, ch. 169, 14 Stat. 471, 478.

13. Attached as Plaintiffs' Exhibit 12 is a true and accurate copy of an excerpt from the Act of July 14, 1870, ch. 255, 16 Stat. 256, 258.

14. Attached as Plaintiffs' Exhibit 13 is a true and accurate copy of an excerpt from the Act of August 27, 1894, ch. 349, 28 Stat. 509, 553.

15. Attached as Plaintiffs' Exhibit 14 is a true and accurate copy of an excerpt from

John D. Buenker, *The Ratification of the Federal Income Tax Amendment*, 1 Cato J. 183, 204 (1981).

16. Attached as Plaintiffs' Exhibit 15 is a true and accurate copy of *Hughes is Against Income Amendment*, N.Y. Times, Jan. 6, 1910, at 2.

17. Attached as Plaintiffs' Exhibit 16 is a true and accurate copy of relevant excerpts from John D. Buenker, *The Income Tax and the Progressive Era* (1985).

18. Attached as Plaintiffs' Exhibit 17 is a true and accurate copy of *Georgia Avoids Income Tax*, N.Y. Times, Aug. 6, 1909, at 1.

19. Attached as Plaintiffs' Exhibit 18 is a true and accurate copy of *Decisive Blow at the Income Tax Amendment*, Daily Press (Newport News, V.A.), Mar. 10, 1910, at 4.

20. Attached as Plaintiffs' Exhibit 19 is a true and accurate copy of 45 Cong. Rec. 1696 (Feb. 10, 1910).

21. Attached as Plaintiffs' Exhibit 20 is a true and accurate copy of *Root for Adoption of Tax Amendment*, N.Y. Times, Mar. 1, 1910, at 4.

22. Attached as Plaintiffs' Exhibit 21 is a true and accurate copy of *Bailey Speaks at Columbia*, Watchman and Southron (Sumter, S.C.), Feb. 19, 1910, at 6.

23. Attached as Plaintiffs' Exhibit 22 is a true and accurate copy of an excerpt from the Revenue Act of 1913, ch. 16, § II(B), 38 Stat. 114, 167.

24. Attached as Plaintiffs' Exhibit 23 is a true and accurate copy of relevant excerpts from H. Parker Willis, *The Tariff of 1913: III*, 22 J. Pol. Econ. 218 (1914).

25. Attached as Plaintiffs' Exhibit 24 is a true and accurate copy of an excerpt from H.R. Rep. No. 88-749 (1963).

26. Attached as Plaintiffs' Exhibit 25 is a true and accurate copy of relevant excerpts

from Sarah F. Liebschutz & Irene Lurie, *The Deductibility of State and Local Taxes*, 16 *Publius* 51 (1986).

27. Attached as Plaintiffs' Exhibit 26 is a true and accurate copy of relevant excerpts from *Tax Reform Proposals—XIX: Hearing Before the S. Finance Comm.*, 99th Cong. 70 (1985).

28. Attached as Plaintiffs' Exhibit 27 is a true and accurate copy of relevant excerpts from *The Impact of Repeal of the Deductions for State and Local Taxes: Hearings Before the Subcomm. on Monetary and Fiscal Policy of the Joint Economic Committee*, 99th Cong. 87 (1985).

29. Attached as Plaintiffs' Exhibit 28 is a true and accurate copy of an excerpt from the Revenue Act of 1916, ch. 463, § 5(a), 39 Stat. 756, 759.

30. Attached as Plaintiffs' Exhibit 29 is a true and accurate copy of an excerpt from the Revenue Act of 1917, ch. 63, § 1201, 40 Stat. 300, 330.

31. Attached as Plaintiffs' Exhibit 30 is a true and accurate copy of an excerpt from the Revenue Act of 1918, ch. 18, § 214(a)(3), 40 Stat. 1057, 1067.

32. Attached as Plaintiffs' Exhibit 31 is a true and accurate copy of an excerpt from the Revenue Act of 1921, ch. 136, § 214(a)(3), 42 Stat. 227, 239.

33. Attached as Plaintiffs' Exhibit 32 is a true and accurate copy of an excerpt from the Revenue Act of 1924, ch. 234, § 214(a)(3), 43 Stat. 253, 270.

34. Attached as Plaintiffs' Exhibit 33 is a true and accurate copy of an excerpt from the Revenue Act of 1926, ch. 27, § 214(a)(3), 44 Stat. 9, 26.

35. Attached as Plaintiffs' Exhibit 34 is a true and accurate copy of an excerpt from the Revenue Act of 1928, ch. 852, § 23, 45 Stat. 791, 799.

36. Attached as Plaintiffs' Exhibit 35 is a true and accurate copy of an excerpt from the Revenue Act of 1932, ch. 209, § 23, 47 Stat. 169, 179-80.

37. Attached as Plaintiffs' Exhibit 36 is a true and accurate copy of an excerpt from the National Industrial Recovery Act of 1933, ch. 90, 48 Stat. 195.

38. Attached as Plaintiffs' Exhibit 37 is a true and accurate copy of an excerpt from the Revenue Act of 1934, ch. 277, § 23, 48 Stat. 680, 688.

39. Attached as Plaintiffs' Exhibit 38 is a true and accurate copy of an excerpt from the Revenue Act of 1935, ch. 829, 49 Stat. 1014.

40. Attached as Plaintiffs' Exhibit 39 is a true and accurate copy of an excerpt from the Revenue Act of 1936, ch. 690, § 23, 49 Stat. 1648, 1658-59.

41. Attached as Plaintiffs' Exhibit 40 is a true and accurate copy of an excerpt from the Revenue Act of 1937, ch. 815, § 1, 50 Stat. 813, 816.

42. Attached as Plaintiffs' Exhibit 41 is a true and accurate copy of an excerpt from the Revenue Act of 1938, ch. 289, § 23, 52 Stat. 447, 460-61.

43. Attached as Plaintiffs' Exhibit 42 is a true and accurate copy of an excerpt from the Internal Revenue Code of 1939, ch. 2, § 23, 53 Stat. 1, 12.

44. Attached as Plaintiffs' Exhibit 43 is a true and accurate copy of an excerpt from the Revenue Act of 1939, ch. 247, 53 Stat. 862 (1939).

45. Attached as Plaintiffs' Exhibit 44 is a true and accurate copy of an excerpt from the Revenue Act of 1940, ch. 419, 54 Stat. 516.

46. Attached as Plaintiffs' Exhibit 45 is a true and accurate copy of an excerpt from the Revenue Act of 1941, ch. 412, § 202, 55 Stat. 687, 700.

47. Attached as Plaintiffs' Exhibit 46 is a true and accurate copy of an excerpt from the Revenue Act of 1942, ch. 619, 56 Stat. 798.

48. Attached as Plaintiffs' Exhibit 47 is a true and accurate copy of an excerpt from the

Revenue Act of 1943, ch. 63, 58 Stat. 21.

49. Attached as Plaintiffs' Exhibit 48 is a true and accurate copy of an excerpt from the Revenue Act of 1945, ch. 453, 59 Stat. 556.

50. Attached as Plaintiffs' Exhibit 49 is a true and accurate copy of an excerpt from the Revenue Act of 1948, ch. 168, 62 Stat. 110.

51. Attached as Plaintiffs' Exhibit 50 is a true and accurate copy of an excerpt from the Revenue Act of 1950, ch. 994, 64 Stat. 906.

52. Attached as Plaintiffs' Exhibit 51 is a true and accurate copy of an excerpt from the Revenue Act of 1951, ch. 521, 65 Stat. 452.

53. Attached as Plaintiffs' Exhibit 52 is a true and accurate copy of an excerpt from the Internal Revenue Code of 1954, ch. 736, § 164(a), 68A Stat. 3, 47.

54. Attached as Plaintiffs' Exhibit 53 is a true and accurate copy of an excerpt from the Technical Amendments Act of 1958, Pub. L. No. 85-866, 72 Stat. 1606.

55. Attached as Plaintiffs' Exhibit 54 is a true and accurate copy of an excerpt from the Revenue Act of 1964, Pub. L. No. 88-272, § 207, 78 Stat. 19, 40-42.

56. Attached as Plaintiffs' Exhibit 55 is a true and accurate copy of an excerpt from the Act of Oct. 27, 1972, Pub. L. No. 92-580, 86 Stat. 1276 (1972).

57. Attached as Plaintiffs' Exhibit 56 is a true and accurate copy of an excerpt from the Tax Reform Act of 1976, Pub. L. No. 94-455, § 1951(3), 90 Stat. 1520, 1837.

58. Attached as Plaintiffs' Exhibit 57 is a true and accurate copy of an excerpt from the Revenue Act of 1978, Pub. L. No. 95-600, § 111, 92 Stat. 2763, 2777.

59. Attached as Plaintiffs' Exhibit 58 is a true and accurate copy of an excerpt from the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, § 101(b), 94 Stat. 229, 250.

60. Attached as Plaintiffs' Exhibit 59 is a true and accurate copy of an excerpt from the Act of Jan. 14, 1983, Pub. L. No. 97-473, § 202, 96 Stat. 2605, 2609.

61. Attached as Plaintiffs' Exhibit 60 is a true and accurate copy of an excerpt from the Social Security Amendments of 1983, Pub. L. No. 98-21, § 124, 97 Stat. 65, 90-91.

62. Attached as Plaintiffs' Exhibit 61 is a true and accurate copy of an excerpt from the Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 474(r), 98 Stat. 494, 844.

63. Attached as Plaintiffs' Exhibit 62 is a true and accurate copy of an excerpt from the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, § 516, 100 Stat. 1613, 1771.

64. Attached as Plaintiffs' Exhibit 63 is a true and accurate copy of an excerpt from the Tax Reform Act of 1986, Pub. L. No. 99-514, §§ 134, 1432, 100 Stat. 2085, 2116, 2729.

65. Attached as Plaintiffs' Exhibit 64 is a true and accurate copy of an excerpt from the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 1941(b)(2)(A), 102 Stat. 1107, 1323.

66. Attached as Plaintiffs' Exhibit 65 is a true and accurate copy of an excerpt from the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 1018(u)(11), 102 Stat. 3342, 3590.

67. Attached as Plaintiffs' Exhibit 66 is a true and accurate copy of an excerpt from the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11111(a), 104 Stat. 1388, 1388-410.

68. Attached as Plaintiffs' Exhibit 67 is a true and accurate copy of an excerpt from the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312.

69. Attached as Plaintiffs' Exhibit 68 is a true and accurate copy of an excerpt from the

Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1704(t)(79), 110 Stat. 1755, 1891.

70. Attached as Plaintiffs' Exhibit 69 is a true and accurate copy of an excerpt from the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788.

71. Attached as Plaintiffs' Exhibit 70 is a true and accurate copy of an excerpt from the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38.

72. Attached as Plaintiffs' Exhibit 71 is a true and accurate copy of an excerpt from the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, 117 Stat. 752.

73. Attached as Plaintiffs' Exhibit 72 is a true and accurate copy of an excerpt from the Working Families Tax Relief Act of 2004, Pub. L. No. 108-311, 118 Stat. 1166.

74. Attached as Plaintiffs' Exhibit 73 is a true and accurate copy of an excerpt from the American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 501(a), 118 Stat. 1418, 1520.

75. Attached as Plaintiffs' Exhibit 74 is a true and accurate copy of an excerpt from the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, § 403(r)(1), 119 Stat. 2577, 2628.

76. Attached as Plaintiffs' Exhibit 75 is a true and accurate copy of an excerpt from the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, 120 Stat. 345.

77. Attached as Plaintiffs' Exhibit 76 is a true and accurate copy of an excerpt from the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, § 103(a), 120 Stat. 2922, 2934.

78. Attached as Plaintiffs' Exhibit 77 is a true and accurate copy of an excerpt from the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, § 201(a), 122 Stat. 3765, 3864.

79. Attached as Plaintiffs' Exhibit 78 is a true and accurate copy of an excerpt from the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1008, 123 Stat. 115, 317.

80. Attached as Plaintiffs' Exhibit 79 is a true and accurate copy of an excerpt from the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 9015(b)(2)(A), 124 Stat. 119, 871.

81. Attached as Plaintiffs' Exhibit 80 is a true and accurate copy of an excerpt from the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 722(a), 124 Stat. 3296, 3316.

82. Attached as Plaintiffs' Exhibit 81 is a true and accurate copy of an excerpt from the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 205(a), 126 Stat. 2313, 2323.

83. Attached as Plaintiffs' Exhibit 82 is a true and accurate copy of an excerpt from the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295, §§ 105(a), 209(c), 221(a)(12)(D), (26), (95)(B)(ii), 128 Stat. 4010, 4013, 4028, 4038, 4040 & 4051.

84. Attached as Plaintiffs' Exhibit 83 is a true and accurate copy of an excerpt from the Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, § 106(a), 129 Stat. 2242, 3046.

85. Attached as Plaintiffs' Exhibit 84 is a true and accurate copy of Tax Policy Center, *Briefing Book: How Do State and Local Individual Income Taxes Work*.

86. Attached as Plaintiffs' Exhibit 85 is a true and accurate copy of New York State Dep't of Taxation and Finance, *Fiscal Year Tax Collections: 2017-2018*.

87. Attached as Plaintiffs' Exhibit 86 is a true and accurate copy of an excerpt from the State of New York FY 2019 Enacted Budget Financial Plan.

88. Attached as Plaintiffs' Exhibit 87 is a true and accurate copy of relevant excerpts from New York Office of the Comptroller, *New York's Balance of Payments in the Federal Budget, Federal Fiscal Year 2016*, at 3-6 (2017).

89. Attached as Plaintiffs' Exhibit 88 is a true and accurate copy of 26 U.S.C. § 164(a)-

(b) (as effective December 18, 2015 to December 21, 2017).

90. Attached as Plaintiffs' Exhibit 89 is a true and accurate copy of Pub. L. No. 115-97, § 11042.

91. Attached as Plaintiffs' Exhibit 90 is a true and accurate copy of Mike DeBonis, *To Make Their Tax Plan Work, Republicans Eye a Favorite Blue-State Break*, Wash. Post, Sept. 16, 2017.

92. Attached as Plaintiffs' Exhibit 91 is a true and accurate copy of *Transcript: President Trump Vows Largest Tax Cut in History*, Fox News, Oct. 11, 2017.

93. Attached as Plaintiffs' Exhibit 92 is a true and accurate copy of *First on CNBC: Transcript: Treasury Secretary Steven Mnuchin Speaks with CNBC's "Squawk Box" Today*, CNBC, Oct. 12, 2017.

94. Attached as Plaintiffs' Exhibit 93 is a true and accurate copy of Lindsey McPherson, *Brady and Ryan Mulling Big Gamble on Key Tax Deduction*, Roll Call, Oct. 16, 2017.

95. Attached as Plaintiffs' Exhibit 94 is a true and accurate copy of Joshua Stewart, *Rep. Duncan Hunter said GOP tax bill could cost Californians more than others, but he still supports it*, San Diego Union Tribune, Oct. 30, 2017.

96. Attached as Plaintiffs' Exhibit 95 is a true and accurate copy of *GOP Leaders to Governors: Lower State Taxes*, Wall Street Journal, Oct. 31, 2017.

97. Attached as Plaintiffs' Exhibit 96 is a true and accurate copy of Ramesh Ponnuru, *Red States, Blue States, and Taxes*, Nat'l Rev. (Nov. 8, 2017).

98. Attached as Plaintiffs' Exhibit 97 is a true and accurate copy of *Mnuchin Fires Warning Shot to High-Tax States: Get Control of Your Budgets*, Fox Business, Nov. 9, 2017.

99. Attached as Plaintiffs' Exhibit 98 is a true and accurate copy of *Transcript: Moore*

Back on Campaign Trail, CNN, Nov. 28, 2017.

100. Attached as Plaintiffs' Exhibit 99 is a true and accurate copy of Sahil Kapur, '*Death to Democrats*': *How the GOP Tax Bill Whacks Liberal Tenets*, Bloomberg, Dec. 5, 2017.

101. Attached as Plaintiffs' Exhibit 100 is a true and accurate copy of Institute on Taxation and Economic Policy, *Final GOP-Trump Bill Still Forces California and New York to Shoulder a Larger Share of Federal Taxes Under Final GOP-Trump Tax Bill; Texas, Florida, and Other States Will Pay Less* (Dec. 17, 2017).

102. Attached as Plaintiffs' Exhibit 101 is a true and accurate copy of N.J.S.A. § 54:4-66.9.

103. Attached as Plaintiffs' Exhibit 102 is a true and accurate copy of N.Y. State Fin. Law § 92-gg.

104. Attached as Plaintiffs' Exhibit 103 is a true and accurate copy of 2018 Conn. Legis. Serv. P.A. 18-49 (S.B. 11).

105. Attached as Plaintiffs' Exhibit 104 is a true and accurate copy of Laura Davison, Lynnley Browning, and Ben Steverman, *New York, Connecticut Taxpayers Have Plan B Options to Beat SALT*, Bloomberg, Aug. 27, 2018.

106. Attached as Plaintiffs' Exhibit 105 is a true and accurate copy of Contributions in Exchange for State or Local Tax Credits, 83 Fed. Reg. 43563-01 (proposed August 27, 2018) (to be codified at 26 C.F.R. pt. 1).

107. Attached as Plaintiffs' Exhibit 106 is a true and accurate copy of relevant excerpts from William E. Borah, *Income-Tax Amendment*, 191 N. Am. Rev. 755 (1910).

Dated: December 14, 2018

/s/ Owen T. Conroy
OWEN T. CONROY