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WRITING CONTEST ESSAY WRITTEN BY JUSTIN FISHER.**

**Uneven Stages: How Inconsistent State Taxation Undermines the Entertainment Industry.**

In May 2023, Taylor Swift’s “Eras Tour” became the largest concert series in American history. The tour generated five billion dollars.<sup>1</sup> When Taylor Swift arrived in Philadelphia<sup>2</sup> in May 2023, more than 120,000 fans filled Lincoln Financial Field over the two nights, generating millions of dollars for the local economy. While the performances resulted in roaring ovations, they also triggered tax liabilities in certain jurisdictions. The tax imposed upon entertainers and athletes is known as the jock tax. The jock tax began as a retaliatory measure against professional athletes, but it has now spread into a complex and inequitable tax regime ensnaring unsuspecting performers as well as small-time hip-hop artists, indie bands, and Broadway touring casts.

What most fans do not realize is that behind the scenes, Swift’s accountants must prepare Pennsylvania income tax returns reporting the income she earned in the Commonwealth of Pennsylvania.<sup>3</sup> This process is repeated in other states following her performances in Boston, Massachusetts,<sup>4</sup> East Rutherford, New Jersey,<sup>5</sup> Atlanta, Georgia,<sup>6</sup> Los Angeles, California<sup>7</sup> and any other state and local jurisdictions that impose income taxes.

For performers of Swift’s stature, the costs of compliance are nominal compared to her billion-dollar tour revenues.<sup>8</sup> However, for the thousands of mid-tier and lesser known artists who travel the country performing in vans and buses, the jock tax has become a serious financial hurdle. Hip-hop artists on small-label deals, indie rock bands, and Broadway touring casts are unequally impacted by the jock tax. They might owe only a minimal amount, yet they face hours of recordkeeping and steep accounting fees to ensure compliance. The jock tax is neither uniform nor efficient.<sup>9</sup> States calculate taxable income differently and apply different apportionment rules.<sup>10</sup> No matter the size of the crowd or the revenue generated, every state demands the same thing: compliance. In many cases, this cost of compliance exceeds the total tax itself.

This Article argues that the jock tax is an unconstitutional and economically irrational system of state taxation.<sup>11</sup> First, the jock tax offends both the Commerce Clause<sup>12</sup> and Due Process

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<sup>1</sup> See Bret Wilhite, *Economics (Taylor’s Version)*, ABERDEEN INVESTMENTS, <https://www.aberdeeninvestments.com/en-us/investor/insights-and-research/economics-taylors-version>.

<sup>2</sup> Phila., Pa., Ordinances Ch. 19-1500 (2025) (stating that the city of Philadelphia has a city wage tax for all income earned in the city).

<sup>3</sup> 61 Pa. Code Ch. 109.

<sup>4</sup> 830 CMR 62.5A.1.

<sup>5</sup> N.J. Stat. Ann. § 54A:5-8 (2025).

<sup>6</sup> Ga. Code Ann. § 48-7-50 (2024).

<sup>7</sup> Cal. Code Regs. tit. 18, § 17951–5 (2025).

<sup>8</sup> See generally Alicia Adamczyk, *Taylor Swift’s Eras Tour Will be the First to Shatter \$1 Billion in Ticket Sales, Making a Lot of People Richer: ‘The Dollar Bill Should Have Her Face on it’*, FORTUNE (Aug. 10, 2023), <https://fortune.com/2023/08/10/taylor-swift-eras-tour-one-billion-revenue-breakdown/>.

<sup>9</sup> The jock tax lacks uniformity and efficiency because states apply conflicting apportionment formulas which create overlapping liabilities and compliance costs that exceed the minimal revenue collected.

<sup>10</sup> See Andrey Yushkov, *State Individual Income Tax Rates and Brackets, 2025*, TAX FOUNDATION (Feb. 18, 2025), <https://taxfoundation.org/data/all/state/state-income-tax-rates/> (discussing the different way that states implement taxes).

<sup>11</sup> U.S. CONST. art. I, § 8, cl. 3; see *infra* Part IV.

<sup>12</sup> See *infra* Part II.A.

Clause<sup>13</sup> because it subjects performers to redundant and discriminatory tax regimes without fair apportionment.<sup>14</sup> Second, it disproportionately harms working-class entertainers while generating negligible revenue for states. Finally, it undermines the overall cultural and economic value of touring entertainment.

The solution to this injustice lies in federal reform. I propose that Congress enact legislation that 1) establishes a de minimis exemption for short-term performers, 2) mandates uniform apportionment standards, and 3) preempts inconsistent state laws.<sup>15</sup> This reform aligns taxation with constitutional principles, reduces compliance costs, and preserves the vitality of America's entertainment industry.

## PART I: HISTORY OF THE JOCK TAX

The jock tax was created in the 1960s but made its way back into the spotlight in 1991 when California taxed Michael Jordan on income he earned during the Chicago Bulls NBA Finals games in Los Angeles.<sup>16</sup> In response, Illinois retaliated by taxing California athletes.<sup>17</sup> Not long after, other states took notice and started doing the same. By the mid-1990s, almost every state with a professional sports team imposed a nonresident income tax on visiting players.<sup>18</sup>

Despite its name, the “jock tax” is not limited to professional athletes. Rather, it applies broadly to any nonresident<sup>19</sup> individual who earns income within a state's borders. Entertainers such as musicians, actors, and comedians are also subject to these rules. State tax authorities have issued guidance confirming that touring performers must apportion their income according to the number of performance days in each jurisdiction, a method the Internal Revenue Service has also recognized as a standard practice.<sup>20</sup>

The consequences of the jock tax can be significant. A musician who performs in twenty states must apportion income across each state, often filing more than a dozen separate returns.<sup>21</sup> Unlike professional athletes who are backed by powerful unions, most entertainers lack the resources to navigate this web of tax policy.

Although states justify the jock tax on the grounds that individuals should be taxed where their income is earned, the jock tax is fundamentally biased. It was enacted to get back at the Chicago Bulls for beating the Los Angeles Lakers in the National Basketball Association Championship in 1991.<sup>22</sup> Traveling accountants, corporate executives, and remote workers are

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<sup>13</sup> U.S. CONST. amend. XIV, § 1; *see infra* Part II.B.

<sup>14</sup> *See infra* Part III.

<sup>15</sup> *See infra* Part V.

<sup>16</sup> *See Breaking Down the “Jock Tax”*, H&R BLOCK, <https://www.hrblock.com/tax-center/income/wages/the-jock-tax> (last visited Oct. 7, 2025).

<sup>17</sup> *Id.*

<sup>18</sup> *See* Andrew Wilford, *Jock Taxes – Juice That Isn't Worth the Squeeze?*, NTUF (Aug. 15, 2024), <https://www.ntu.org/foundation/detail/suggested-title-jock-taxes-juice-that-isnt-worth-the-squeeze>.

<sup>19</sup> N.Y. Tax Law § 605(b)(2) (McKinney 2025) (“A nonresident individual means an individual who is not a resident or a part-year resident”).

<sup>20</sup> *See* Julia Kagan, *Non-Resident Entertainers Tax*, INVESTOPEDIA (Nov. 28, 2020), <https://www.investopedia.com/terms/n/non-resident-entertainers-tax.asp>; *see also* Will Kenton, *183-Day Rule: Definition, How It's Used for Residency, and Example*, INVESTOPEDIA (Jun. 15, 2024), <https://www.investopedia.com/terms/1/183-day-rule.asp>; *see also* I.R.S., Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities* (2023).

<sup>21</sup> *See* Kate Dore, *Entertainers Working in Multiple States Run Into Tax Issues. Here Are Ways to Avoid Those Problems*, CNBC (last updated Aug. 12, 2021, 9:46a.m.), <https://www.cnn.com/2021/07/25/here-are-tax-workarounds-for-entertainers-working-in-various-states.html>.

<sup>22</sup> *Supra* note 16.

generally not required to apportion their income among multiple states.<sup>23</sup> For some reason, entertainers are treated differently when the essence of their work is identical. They all work in different states but, only entertainers have the responsibility of remitting taxes in those states.

## PART II: CONSTITUTIONAL CONCERNS

### A. DUE PROCESS AND MINIMUM CONTACTS

Under the Due Process Clause, states may tax nonresidents only if there exists a “minimum connection” between the taxpayer and the state.<sup>24</sup> In *Miller Bros. Co. v. Maryland*, the Supreme Court held that taxes require a definite link between the state and the income earned.<sup>25</sup> The question in *Miller*, was whether the vendor subjected itself to the taxing power of Maryland based on its acts or course of dealing.<sup>26</sup> The court went on to explain that “due process requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.”<sup>27</sup> For touring entertainers the act of performing a single show in a jurisdiction is often sufficient to satisfy this minimum-connection requirement. The minimal connection, however, does not stop states from asserting their taxing authority over a performer’s earnings attributable to that performance.

Moreover, in *Quill Corp. v. North Dakota*, the Supreme Court invalidated a use-tax collection regime for lack of sufficient contacts, despite a far more substantial economic presence than a single performance.<sup>28</sup> This illustrates the Court’s persistence that there be limits on state taxing authority. While entertainers establish physical presence in a state when they perform, applying the jock tax to ancillary income such as merchandise or royalties, goes beyond those limits and risks violating Due Process.<sup>29</sup>

### B. COMMERCE CLAUSE AND FAIR APPORTIONMENT

Through the Commerce Clause, Congress holds the authority to regulate interstate economic activity, including the power to tax income earned in the course of interstate commerce.<sup>30</sup> The Commerce Clause allows Congress to step in where state tax systems conflict or create inefficiencies, ensuring national uniformity.<sup>31</sup>

The Supreme Court in *Complete Auto Transit, Inc. v. Brady* laid out four prongs for determining if a state tax can withstand Commerce Clause scrutiny. The prongs are: 1) substantial nexus with the taxing state; 2) fairly apportioned; 3) does not discriminate against interstate commerce; and 4) is fairly related to the services provided by the state.<sup>32</sup>

For entertainers, the first prong—substantial nexus—appears straightforward: the physical performance in the state creates a sufficient connection. Yet, the Supreme Court’s jurisprudence suggests nuance. In *Quill*, the Court held that mere economic presence, absent physical presence,

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<sup>23</sup> See Wilford, *supra* note 18 (“While most taxpayers expect to file tax returns in one or two states, athletes must file returns in each state that they play in with an individual income tax.”).

<sup>24</sup> *Quill Corp. v. North Dakota*, 504 U.S. 298, 306 (1992) (finding the rule based off the facts that Quill Corporation was a mail-order office supply retailer that was incorporated in Delaware and had offices in Illinois, California, and Georgia. Moreover, Quill sold items to customers in North Dakota without establishing a physical presence there. North Dakota attempted to require Quill to collect and remit use tax on the sales made in North Dakota).

<sup>25</sup> *Miller Bros. Co. v. Maryland*, 347 U.S. 340, 344–45 (1954).

<sup>26</sup> *Miller Bros Co.*, 347 U.S. at 344.

<sup>27</sup> *Id.* at 344–45.

<sup>28</sup> *Quill Corp.*, 504 U.S. at 306.

<sup>29</sup> *Id.*

<sup>30</sup> U.S. CONST. art. I, § 8, cl. 3.

<sup>31</sup> *Id.*

<sup>32</sup> *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

was insufficient for sales-tax nexus.<sup>33</sup> *South Dakota v. Wayfair* reversed *Quill* by abandoning the physical-presence requirement in the sales-tax context.<sup>34</sup> The reasoning for the abandonment highlights the importance of tailoring nexus principles to burdens on interstate commerce. One-night performances that require disproportionate compliance burdens may strain the notion of substantial nexus in a way that implicates due fairness. Although some might consider this the cost of doing business, complying with this tax burden is almost too much to ask of these performers. The cost of doing business at this point, has exceeded any profit from an artist's show.

The "fairly apportioned" prong is where the most concern lies. States have created formulas which are inconsistent and result in convergent claims.<sup>35</sup> Some states base their formulas on "performance days," while others use "duty days" in their calculations.<sup>36</sup> Duty days might work for athletes because they have regimented seasons, but an entertainer's work is less structured. A Broadway cast member on tour might rehearse in one state, perform briefly in another, and travel extensively in between. Applying rigid day-counting formulas risks attributing more income to a state than is reasonably connected to that state's economic activity. The Court in *Container Corp. of America v. Franchise Tax Board* stressed that apportionment must be internally consistent, avoiding scenarios where multiple states could end up taxing more than 100% of income.<sup>37</sup> This creates a practice of double taxation, contradicting Supreme Court precedent requiring internal consistency in state tax regimes.<sup>38</sup>

The second prong the jock tax fails is that it is facially discriminatory. It targets a discrete class of nonresidents—entertainers—while leaving similarly situated professionals untouched. If states disproportionately target nonresidents for enforcement—scrutinizing visiting performers while largely ignoring resident taxpayers with similar income profiles—such disparity crosses constitutional lines. The Supreme Court has consistently struck down tax schemes that burden interstate commerce through discriminatory classifications.<sup>39</sup>

### C. EQUAL PROTECTION CONCERNS

Although courts allow states broad discretion in tax classifications, the arbitrary singling out of entertainers invites Equal Protection scrutiny. The Equal Protection Clause is also relevant particularly if entertainers with modest earnings bear compliance costs disproportionate to their actual liabilities. As Justice Jackson warned, "taxation is not a field where the Equal Protection Clause is entirely dormant."<sup>40</sup> Here, the jock tax punishes mobility and visibility. These are traits inherent to a performer's work.

## PART III: COMPLIANCE BURDEN ON TOURING ARTISTS

### A. SUPERSTARS AND COMPLIANCE INFRASTRUCTURE

For global superstars such as Taylor Swift, compliance with the jock tax is a minor administrative matter. Her 2023 tour grossed more than \$5 billion, supported by a sophisticated

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<sup>33</sup> *Quill Corp.*, 504 U.S. at 306 (differing from income tax in the sense that companies with no physical presence in a state still have to remit income tax).

<sup>34</sup> *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2099 (2018).

<sup>35</sup> *What is State Tax Apportionment and How do You Calculate it?*, THOMSON REUTERS TAX & ACCOUNTING (Nov. 13, 2023), <https://tax.thomsonreuters.com/blog/state-tax-apportionment-calculate-it/> (describing the different ways states define apportionment).

<sup>36</sup> See *supra* note 16.

<sup>37</sup> *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 169 (1983).

<sup>38</sup> *Comptroller of Treasury of Md v. Wynne*, 575 U.S. 542 (2015).

<sup>39</sup> *Fulton Corp. v. Faulkner*, 516 U.S. 325, 333 (1996).

<sup>40</sup> *Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n*, 488 U.S. 336, 345 (1989) (Jackson, J., concurring).

legal and accounting team capable of managing the required filings in every jurisdiction.<sup>41</sup> Even so, state taxation drains millions from tour revenues. In southern California alone, Swift's shows likely triggered seven-figure obligations.<sup>42</sup>

#### B. INDEPENDENT MUSICIANS AND DISPROPORTIONATE COSTS

For emerging artists, the economic burden is far more severe. Consider an independent band earning \$1,200 for a single performance in Ohio. Although their state tax liability might amount to less than \$50, compliance with Ohio's nonresident filing requirements could generate accounting fees exceeding \$500.<sup>43</sup> When repeated across the stops of a national tour, these costs can surpass the performers' total earnings.

Industry groups have repeatedly raised alarms about this injustice. The American Federation of Musicians has warned that burdensome taxation discourages small acts from touring across state lines, putting a chokehold on career development and cultural exchange.<sup>44</sup> Unlike professional athletes with multimillion-dollar contracts, small to mid-level performers cannot absorb these costs.

#### C. BROADWAY AND THEATRICAL PRODUCTIONS

Touring Broadway shows face unique challenges. Cast members are constantly rotating across multiple states, triggering dozens of filing obligations. Producers often must withhold state taxes from weekly paychecks, creating administrative overhead that rivals payroll for the entire production company.<sup>45</sup>

### PART IV: PUBLIC POLICY ISSUES

Beyond its constitutional infirmities, the jock tax also represents poor fiscal policy. The revenue it generates is minimal: California, for example, collects less than 0.1% of its annual budget from nonresident entertainer taxation.<sup>46</sup> Several states, including Tennessee, have repealed their versions of the tax altogether after concluding that the administrative costs outweighed any meaningful fiscal benefit.<sup>47</sup> Public Law 86-272, for example, restricts states from imposing income tax on out-of-state sellers whose only activity is soliciting orders for tangible goods.<sup>48</sup> Yet the broader costs—lost tours, discouraged cultural exchanges, and reduced artistic diversity—are immeasurable.

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<sup>41</sup> See Wilhite, *supra* note 1.

<sup>42</sup> See Theron Mohamed, *Taylor Swift is Slated to Give a \$320 Million Boost to a Single US County—More Than WeWork's Entire Market Value*, BUSINESS INSIDER (Aug. 10, 2023), <https://www.businessinsider.com/taylor-swift-eras-tour-local-economy-la-county-wework-value-2023-8>.

<sup>43</sup> See generally *Annual Tax Rates*, OHIO DEPARTMENT OF TAXATION, <https://tax.ohio.gov/individual/resources/annual-tax-rates> (last visited Oct. 7, 2025).

<sup>44</sup> See Michael E. Williams, *Tax Considerations for Touring Artists and Companies*, PRAGERMETIS (Jul. 24, 2025), <https://pragermetis.com/insights/tax-considerations-for-touring-artists-and-companies>.

<sup>45</sup> See *The Employer's Guide to Payroll Taxes*, PAYCHEX (last updated Sep. 26, 2024), <https://www.paychex.com/articles/payroll-taxes/employers-guide-to-payroll-taxes>.

<sup>46</sup> See *California Withholding Requirements*, FINANCE AND BUSINESS, <https://financeandbusiness.ucdavis.edu/finance/tax-reporting-compliance> (last visited Oct. 7, 2025).

<sup>47</sup> See Katherine Loughhead, *Nonresident Income Tax Filing by State, 2025*, TAX FOUNDATION (Apr. 15, 2025), <https://taxfoundation.org/data/all/state/nonresident-income-tax-filing/>.

<sup>48</sup> Pub. Law 86-272.

Swift’s “Eras Tour” exemplifies the positive spillovers of live performances. Local businesses, hotels, and restaurants reaped billions from concertgoers.<sup>49</sup> Burdening such activities such as live performances with double taxation is economically fruitless.

## PART V: PROPOSED REFORM: A FEDERAL UNIFORM RULE FOR ENTERTAINMENT TOURS

### A. DE MINIMIS EXEMPTIONS

The first potential jock tax solution is for Congress to establish a threshold below which entertainers would be exempt from filing obligations. For example, the threshold could be set at fewer than ten performance days per year in a state. This solution mirrors proposals in the Mobile Workforce State Income Tax Simplification Act, which sought to protect traveling employees from fragmented state taxation.<sup>50</sup> By establishing a de minimis threshold like the one above, Congress could significantly reduce compliance burdens without depriving states of meaningful revenue.

### B. UNIFORM APPORTIONMENT

For higher-earning performers like Swift, Congress should require uniform apportionment based on a standardized formula that all states follow. Duty-day or performance-day methods should be harmonized to prevent unconstitutional double taxation. Current duty-day and performance-day methods very widely risking unconstitutional double taxation. Following tax collection, a single federal system could handle the paperwork and divide the tax revenue among the states so performers would only need to file once instead of in every state.

If Congress fails to act, states could coordinate through the Multistate Tax Commission to adopt uniform formulas for apportioning entertainers’ income. Rather than deciding between the duty day and the performance day formulas, a new formula could tie apportionment to actual ticket revenue earned in that jurisdiction. This approach will better align tax liability with economic activity and reduce and possibly eliminate the risk of multiple taxation.

### C. FEDERAL PREEMPTION

Lastly, Congress should also expressly preempt discriminatory state taxation of entertainers. The Constitution grants Congress the power to regulate interstate commerce, and to ensure that fragmented state regimes fall squarely within their authority.<sup>51</sup> Under the Supremacy Clause, federal law preempts state law where 1) Congress expressly preempts, 2) Congress has so pervasively occupied a field that no room remains for state regulation, or 3) state law conflicts with federal law by frustrating its objectives.<sup>52</sup> While Congress has not yet expressly preempted state income taxation of nonresident performers, a compelling case can be made for field and conflict preemption.

#### i. FIELD PREEMPTION

Field preemption happens when federal regulation implicitly precludes state regulation or when states try to regulate a field where there is a sufficiently dominant federal interest.<sup>53</sup> Congress passed the Internet Tax Freedom Act (“ITFA”) to prevent states from imposing discriminatory and multiple taxes on internet commerce, recognizing the need for uniformity in a highly dynamic

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<sup>49</sup> See Miranda Nazzaro, *Taylor Swift Show Gave Philly Best Month of Hotel Revenue Since Pandemic: Fed Report*, THE HILL (Jul. 12, 2023, 6:34 p.m.), <https://thehill.com/blogs/in-the-know/4094311-taylor-swift-philly-best-month-hotel-revenue/>.

<sup>50</sup> See generally Mobile Workforce State Income Tax Simplification Act, S. 1443, 199th Cong. (2025-26).

<sup>51</sup> See *supra* note 30.

<sup>52</sup> See *Preemption*, NAT’L ASS’N OF ATTORNEYS GEN., <https://www.naag.org/issues/supreme-court/preemption/>.

<sup>53</sup> See *Federal Preemption*, CONGRESS.GOV, <https://www.congress.gov/crs-product/R45825> (last visited Oct. 7, 2025).

industry.<sup>54</sup> Entertainment touring presents a strikingly similar problem solved by the ITFA: both involve inherently interstate transactions that states attempt to tax little by little, creating friction with national economic integration. Because Congress acted to preempt state taxes on digital commerce, it is a logical solution to do similar action for live entertainment.

ii. *CONFLICT PREEMPTION*

Also, conflict preemption adds to case. Conflict preemption occurs when compliance with both state and federal regulations is impossible or when abiding by state law frustrates the purpose of federal goals.<sup>55</sup> The federal government has an interest in promoting the arts and culture in America, as evidenced by the U.S. Department of State's Arts Diplomacy programs.<sup>56</sup> Subjecting American musicians to excessive tax burdens at home undermines their ability to tour, expand audiences, and represent U.S. culture internationally. When state tax schemes frustrate federal cultural policy objectives, preemption principles demand federal intervention.

Moreover, in *Arizona v. United States*, the Court ruled that a state law conflicting with federal law is preempted where "compliance with both federal and state regulations is a physical impossibility."<sup>57</sup> States have also struck down double taxation of interstate income, a problem musicians like Taylor Swift face when they file in multiple states.<sup>58</sup> Preemption would not necessarily eliminate state taxation of entertainment income but it would impose consistency, fairness, and uniformity as discussed above.

## PART VI: CONCLUSION: PROTECTING CREATIVE LABOR THROUGH TAX FAIRNESS

The jock tax started as a political stunt and has sunk into constitutional quicksand. For touring entertainers—from Taylor Swift packing stadiums to indie artists scraping by in small clubs—it now means double taxation, steep compliance costs, and headaches no other profession faces. Congress can put things right. A simple fix—setting a de minimis exemption, creating one clear apportionment formula, and stopping states from piling on overlapping taxes—would keep revenue fair while protecting the cultural and economic energy that live music brings to every corner of the country. Until lawmakers act, every performance carries a hidden price tag: a tax system out of tune with both the Constitution and the music it threatens to silence.

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<sup>54</sup> See *The Internet Tax Freedom Act and Federal Preemption*, CONGRESS.GOV, <https://www.congress.gov/crs-product/IF11947>.

<sup>55</sup> See *supra* note 53.

<sup>56</sup> See generally *Funding Opportunities—U.S. Department of State*, League of American Orchestras, <https://americanorchestras.org/funding-opportunities-u-s-department-of-state/>; see also *Bureau of Educational and Cultural Affairs*, U.S. Dep't of State, <https://www.state.gov/bureaus-offices/under-secretary-for-public-diplomacy-and-public-affairs/bureau-of-educational-and-cultural-affairs/>.

<sup>57</sup> See *Arizona v. United States*, 567 U.S. 387, 399 (2012) (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1962)).

<sup>58</sup> See *Comptroller of the Treasury of Md. v. Wynne*, 575 U.S. 542, 561–63 (2015).