COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA

No. 2023-CA-0069

KIMBERLY L. ROBINSON, SECRETARY OF THE DEPARTMENT OF REVENUE FOR THE STATE OF LOUISIANA AND CITY OF NEW ORLEANS DEPARTMENT OF FINANCE,

Plaintiffs-Appellants

VERSUS

PRICELINE.COM, INC., TRAVELWEB, LLC, TRIP NETWORK, INC., ORBITZ, LLC, INTERNETWORK PUBLISHING CORP. (d/b/a LODGING.COM), EXPEDIA, INC. (WA), HOTELS.COM, LP, HOTWIRE, INC., EGENCIA, LLC, TRAVELOCITY.COM LP, SITE59.COM LLC, DESTINATION MANAGEMENT, INC., AND DOES 1-1000, INCLUSIVE,

Defendants-Appellees

On Appeal from the 19th Judicial District Court for the Parish of East Baton Rouge, No. 650894, The Hon. Wilson Fields, Presiding
A Civil Proceeding

AMICI CURIAE BRIEF OF NETCHOICE, THE PELICAN INSTITUTE, AND THE TRAVEL TECHNOLOGY ASSOCIATION IN SUPPORT OF DEFENDANTS-APPELLEES

(Counsel Listed on Inside Cover)

Nicole Saad Bembridge (Pro Hac Vice)
Counsel of Record
Carl M. Szabo
Christopher J. Marchese
Paul D. Taske
NETCHOICE
1401 K. St. NW, Suite 502
Washington, DC 20005
(443) 254-6330
nsaadbembridge@netchoice.org

Sarah Harbison (LSBA #31948)
James Baehr (LSBA #35431)
PELICAN INSTITUTE
400 Poydras St., Suite 900
New Orleans, LA 70130
(504) 952-8016
sarah@pelicaninstitute.org

Laura Chadwick
TRAVEL TECHNOLOGY ASSOCIATION
3033 Wilson Blvd., Suite 700
Arlington, VA 22201
(703) 214-8878
lchadwick@traveltech.org

June 13, 2023

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INTERESTS OF *AMICI CURIAE*[1]

NetChoice, The Pelican Institute, and Travel Tech submit this brief as *amici curiae* in support of online travel facilitator Appellees (collectively, "Appellees" or "Expedia") and the decision of the 19th Judicial District Court ("JDC") for the Parish of East Baton Rouge (Hon. Wilson Fields, presiding) in this matter.

NetChoice is a national trade association of online businesses that works to protect free expression and promote free enterprise online. Toward those ends, NetChoice is engaged in litigation, *amicus curiae* work, and political advocacy. NetChoice currently has four active federal lawsuits over state laws that chill free speech or stifle commerce on the Internet. At both the federal and state level, NetChoice fights to ensure the internet stays innovative and free.

The Pelican Institute's Center for Technology and Innovation Policy focuses on policy change that allows entrepreneurs to thrive in Louisiana. Protecting free speech, fostering development of new technologies, and focusing deployment of broadband in a free market way are important pieces of our work. We strive to encourage light touch regulation that allows entrepreneurs to create jobs and consumers to access products and services in a rapidly changing market.

[1] No part of this brief was authored by any party's counsel, and no person or entity other than *amici* funded its preparation or submission.

The Travel Technology Association ("Travel Tech") is the voice of the travel technology industry, advocating for public policy that promotes transparency and competition in the marketplace to encourage innovation and preserve consumer choice. Travel Tech represents the leading innovators in travel technology, including online travel agencies and metasearch companies, short-term rental platforms, global distribution systems, and travel management companies.

Amici have a strong, shared interest in protecting both the flourishing online market for tourism to Louisiana and the separation of powers between and among the state's judicial, legislative, and administrative branches. This is best achieved by affirming the lower court's sound decision. While *amici* agree with the arguments presented by Appellees in their original brief, *amici*'s brief focuses on additional policy and statutory interpretation issues not previously addressed in the briefing to this Court. For the reasons explained below and in Appellees' Original Brief, *amici* submit that this Honorable Court should affirm the 19th JDC's Judgment in this case.

SUMMARY OF ARGUMENT

The Louisiana State Constitution vests the power to set taxes in the state legislature, a power which "shall never be surrendered, suspended or contracted away." LA. CONST. art. X, § 1. To prevent other branches from encroaching on the legislature's tax setting powers, this Court has made it clear that "only th[e] services defined in [a taxing] statute are subject to the tax." *Intracoastal Pipe Serv. Co., Inc.*

v. Assumption Parish Sales and Use Tax Dep't., 558 So. 2d 1296, 1298 (La. App. 1 Cir. 1990). Yet Appellants ask this Court to *override* the plain meaning of duly-passed tax legislation to help generate more tax revenue. *See generally* La. Rev. Stat. Ann. § 47:301(6)(a) (defining the "hotel" subject to the tax statute as an establishment or person with a physical location where sleeping rooms are furnished). The Louisiana Legislature explicitly *rejected* Appellants' effort to make Appellees' online travel facilitation services subject to Louisiana sales tax or to make Appellees the "dealers" (instead of hotels) when acting as online travel facilitators in 2016. Now, having failed in their efforts to persuade the legislature to tax these companies, Appellants ask this Court to impose the same revision of the tax by judicial fiat.

Louisiana law is clear that the "sales of services" tax at issue is imposed on the act of (1) the furnishing (2) of a sleeping room (3) by a hotel. If any of these elements is missing, no tax is to be imposed. As the lower court correctly noted, Appellees are not "hotels" and do not furnish "sleeping rooms, cottages, or cabins" such that their online travel facilitation services could be considered a taxable service under La. R.S. 47:301(14). After all, the statute only applies to "specifically defined services." Louisiana law is equally clear that there can only be one "dealer" per transaction for hotel rooms subject to the tax. The dealer is the "performer of taxable services . . . as parties to the underlying transactions that are liable for collection of

the tax," here, necessarily, the hotel. *Normand v. Wal-Mart.com USA, LLC, 340 So. 3d 615, 629–30* (La. 01/29/20). Further, it makes no sense to consider Appellees the "dealer" under the statute given that they do not furnish hotel rooms and cannot transfer possession of them to guests—they are not parties to the "underlying" taxable transaction. To preserve the integrity of separation of powers in Louisiana, this Court should affirm the lower court's judgment that online travel facilitators are neither "hotels" whose services are subject to the tax nor the "dealers" with a tax collection and remittance obligation. La. Rev. Stat. Ann. § 47:301 (4), (6)(a).

Fairness, clarity, and certainty are essential components of a sound tax system. Appellants' actions violate all three of these tenets. While governments may of course change their laws, due process and fundamental fairness demand that governments provide taxpayers with notice of their obligations and responsibilities, with any change in the tax law to be made prospectively and by the legislative branch. Springing an unsupported and novel application of a tax statute on businesses never before covered by that statute, and in a manner the legislature did not intend, is arbitrary and unfair. This Court should reject Appellants' effort to undermine the integrity of the Louisiana tax system simply for the sake of raising revenue. A contrary holding would create a great deal of uncertainty in the tourism industry for intermediaries such as online travel facilitators, payment processors, credit card companies, and financial institutions.

Online travel facilitators help stimulate tax-revenue-raising tourism to Louisiana. Local hotels choose to advertise their rooms to customers on Appellees' travel marketplace websites; those websites act as facilitators to help the hotels fill rooms that would otherwise remain vacant. Yet by imposing taxes retroactively and prospectively and thereby raising prices to the hotels' travel consumers, Appellants' actions will hamper local tourism. The Louisiana Tourism Board recognized this in 2016 when it *opposed* amending La. R.S. 47:301 to prospectively apply the "sales of services" tax to the services of online travel facilitators or prospectively include online travel facilitators as the "dealer" required to collect and remit any tax amounts, which is the current responsibility of the hotels themselves.

For these reasons, as discussed more fully below, this Court should affirm.

ARGUMENT

I. APPELLANTS' EFFORT TO SUBJECT ONLINE TRAVEL FACILITATORS TO THE TAX VIOLATES THE SEPARATION OF POWERS REQUIRED BY THE LOUISIANA CONSTITUTION

"The accumulation of all powers, legislative, executive and judicia[l] in the same hands . . . may justly be pronounced the very definition of tyranny." James Madison, FEDERALIST NO. 47, 1788. Because "the preservation of liberty requires" checks and balances on government authority, the Louisiana Constitution mirrors the federal Constitution's sharp delineation of legislative, executive, and judicial powers. *Id.;* LA. CONST. art. II, § 1. Louisiana vests the ability to set taxes in the state

legislature, a power which "shall never be surrendered, suspended or contracted away." LA. CONST. art. X, § 1. Further, to resist improper encroachment on the legislature's vested powers, this Court has already made it clear that "only th[e] services defined in [a taxing] statute are subject to the tax." *Intracoastal Pipe Serv. Co., Inc.*, 558 So. 2d at 1298. Yet by asking this Court to override the plain meaning of duly passed legislation—the meaning accepted by Louisiana tax collectors for nearly seventy years—appellants seek to "surrender[]" and "suspend[]" the legislature's power by judicial fiat. *Id.; see generally* La. Rev. Stat. Ann. § 47:301(14).

The tax "on the furnishing of sleeping rooms … by hotels" here "dates to 1948, well before the advent of the internet economy." Appellees' Br. 18; La. R.S. 47:301(6)(a); La. Acts 1948, No. 9 § 6 (1948 Reg. Sess.). This tax was applied exclusively to the services of physical hotels for almost seventy years until this litigation started, and for good reason: "A plain reading of the language of the entirety of La. R.S. 47:301(6)(a) clearly defines 'hotel' as an establishment or person with a physical location where rooms are furnished." *Lopinto v. Expedia, Inc. (WA)*, 2021-132 (La. App. 5 Cir. 12/23/21), 335 So. 3d 432, 434. Further, a plain reading of the relevant "dealer" statute shows that *the* "dealer" for purposes of collecting tax on the furnishing of a sleeping room by a hotel is the hotel itself (and not a third-

party online travel facilitator). *See* La. R.S. 47:301(4)(f)(i); *Lopinto*, 335 So. 3d at 434; *Normand*, 340 So. 3d at 629.

By asking this Court to find that online travel facilitators are "hotels" and also the "dealers" required to collect and remit any applicable taxes, Appellants arbitrarily diverge from Louisiana's almost 70-year interpretation of the statutes—and from the legislature's clear intent in drafting them—so they can generate more tax revenue on each hotel room stay. Making tax laws and imposing taxes on specific sales transactions and services, however, are tasks reserved for the legislature, and this Court should decline Appellants' invitation to subvert the legislature's constitutionally enumerated role. *See generally* David S. Tatel, *Separation of Powers and Statutory interpretation: A Battle Hidden in Plain Sight*, Proceedings of the American Philosophical Society, Vol. 163, No. 3 (2019) (explaining that separation of powers is often "fought out on the often-dreary terrain of statutory interpretation" as government officials construe statutory ambiguity in the light most favorable to aggrandize their powers). To preserve the integrity of separation of powers in Louisiana, this Court should affirm the lower court's judgment.

A. The Louisiana Legislature Explicitly Decided Not to Tax Online Travel Facilitators or Make Them the "Dealers"

In 2016, the Louisiana Department of Revenue tried to pass prospective legislation to add online travel facilitators like Appellees to the definition of "dealers" for purposes of any sales tax collection and remittance responsibilities and to the definition of "hotels" for purposes of sales taxability. La. H.B. 722. This effort summarily failed in the legislature, which rejected the State and the local government's efforts to impose tax on the online travel facilitators' services *on top of* what they already pay on the price of the room. The Louisiana Tourism Board, itself, opposed the collector's effort to expand the tax base to online travel facilitators like Appellees. Appellees' Br. 17. There can be no doubt that the statute, as written, is not intended to apply to Appellees' services. If the existing statute here already applied to online travel facilitators, as Appellants argue, the Department's efforts to pass prospective legislation in 2016 would have been unnecessary.

The "merchant model" transactions at issue in this case are the same as they were in 2016, when the legislature expressly rejected the collectors' attempts to change the law to reach Appellees. Then as now, the "sales of services" tax can be properly imposed only on the taxable service of the furnishing of a sleeping room by a hotel. La. R.S. 47:301(14)(a) (the tax applies to (1) the furnishing (2) of a sleeping room (3) by a hotel). If the service provider at issue is not furnishing sleeping rooms or is not a hotel, then those services are necessarily not subject to the tax.

Further, under the sales tax statutes, the "dealer" is the party to the taxable transaction with the legal responsibility to remit taxes to the taxing authority. *Lopinto,* 335 So. 3d. at 445. And there can only be one "dealer" per transaction for the taxable service of the "furnishing of sleeping rooms … by hotels." Appellees' Br. 18. The dealer is the ". . . performer of taxable services . . . [the] parties to the underlying transactions that are liable for collection of the tax." *Normand,* 340 So. 3d at 629–30. Here, that is necessarily the hotel. It makes no sense to consider Appellees the "dealer" given that they do not have hotel rooms or the ability to transfer possession of them to guests: the underlying taxable transaction. *Id.*

This appeal is an effort to raise more tax revenue without the statutory authority to do so. But the pecuniary interests of the executive branch are not a legitimate basis for this Court to diverge from the statutory text. *E.g., New Orleans v. Scramuzza*, 507 So.2d 215, 219 (La. 1987) (explaining "the fiscal needs of the City are irrelevant" to the court's decision over whether the tax applies). The statute applies to "dealers" and "hotels," not "any intermediary that aids or enables" hotel room sales. *Normand,* 340 So. 3d at 615.

B. Appellants Ask This Court to Adopt an Unsupported Interpretation of the Statute by Judicial Fiat

As this Court has noted, when a law's definitions are clear and its application does not lead to absurd consequences, the law must be applied as written, and no

further speculation about the intent of the legislature may be made. *See generally Intracoastal Pipe Service Co., Inc. v. Assumption Parish Sales and Use Tax Dep't*., 558 So. 2d 1296, 1298 (La. App. 1 Cir. 1990); *see also* La. Civ. Code Ann. art. 9. The government may only levy a tax if it has "clear and unambiguous" statutory authority that "leaves no question but that such tax is due and payable." *Brown v. LaNreflects the*2d 33, 35 (La. 1963). This reflects the foundational American legal principle that it is "it is emphatically the province and duty of the judicial department to say what the law is," not what it should be. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Here, as the trial court noted, "what the law is" is clear: "(1) Expedia provides travel facilitation services—only hotels furnish sleeping rooms; and (2) Expedia is not a 'hotel' [subject to the tax] because it does not own, operate, or control the establishments as defined by law." Appellees' Br. 1. The trial court's conclusions echo those made in the Fifth Circuit last year when it affirmed summary judgment for the same defendants—Appellees in this case—on the same claims under the same statute. *See generally Lopinto,* 335 So. 3d 432.

Appellants argue that online travel facilitators should somehow be taxable because they "sell" the taxable service of furnishing sleeping rooms. Appellants' Br. 6. The tax, however, is *not* imposed on the selling of the taxable service of furnishing sleeping rooms, the selling of hotel room reservations, or the selling of hotel room stays. Rather, the tax is imposed on the actual taxable service itself: the furnishing

of the sleeping room by a hotel. If the legislature wanted to include the word "sale" in the hotel taxing provision in La. R.S. 47:301(14)(a), it could have done so, just as it did in the services taxing statute immediately below it in La. R.S. 47:301(14)(b)(i)(aa) (imposing the "sales of services" tax on "the *sale* of admissions to places of amusement …").

Additionally, Appellants disregard plain language in the taxing statute explaining that the taxable "service" must be performed by a hotel. La. R.S. 47:301(14)(a). But as the lower court in this case found, Appellees are *not* hotels and do not sell hotel rooms or the service of furnishing hotel rooms. Appellees merely facilitate reservations between hotels and travelers, as third-party online travel facilitators, and any taxable "sale" that occurs is between the hotel and the traveler consumer. R. 3037.

Louisiana law is equally clear that there can only be one "dealer" per transaction for hotel rooms subject to the tax. The dealer is the "performer of taxable services . . . as parties to the underlying transactions that are liable for collection of the tax," here, necessarily, the hotel. *Normand*, 340 So. 3d at 629–30. Appellants try to avoid the law by arguing that there can somehow be two dealers: the party that furnishes the taxable service (the hotel); and the party that "sells" the taxable service (the online travel facilitators). It makes no sense to consider Appellees the "dealer" given that they do not furnish hotel rooms and cannot transfer possession of them to

guests—they are not parties to the "underlying" taxable transaction. Appellants' remaining arguments for taxability of Appellees' nontaxable facilitation services—their "gross proceeds" argument, "real object/essence of the taxable transaction" argument, and their "bundling/separately stated" argument—have already been rejected by both the lower court in this case, and the lower court and Court of Appeal in *Lopinto*. *See, e.g.*, Reasons for Judgment, *Lopinto*, 790-815, p.6 (24th JDC, 9/16/20). For the same sound reasons, this Court should reject them in the instant appeal.

The Louisiana Supreme Court has made it clear that "definitions of the thing taxed should not be extended beyond the clear import of the wording of the statute." *Cleco Evangeline, LLC v. Louisiana Tax Comm'n,* 2001-2162 (La. 4/3/02), 813 So. 2d 351, 354. To preserve proper separation of powers in Louisiana, this Court should deny Appellants' atextual interpretation of the statutes.

II. FAIRNESS, CLARITY, AND CERTAINTY ARE ESSENTIAL COMPONENTS OF A SOUND TAX SYSTEM

Taxing jurisdictions have an obligation to clearly tell taxpayers what the laws are and how they apply and should make them easy to administer. *See generally* John A. Miller, Indeterminacy, Complexity, and Fairness: Justifying Rule Simplification in the Law of Taxation, 68 Wash. L. Rev. 1 (1993) (explaining that

fairness, clarity, and certainty are critical qualities of a sound tax system).[2] Reflecting the importance of fairness, clarity, and certainty to a sound tax system, the U.S. Joint Committee on Taxation (JCT), U.S. Government Accountability Office (GAO), and Association of International Certified Professional Accounts (AICPA) have all published criteria for a sound tax system. AICPA, *Tax Policy Concept Statement 1: Guiding principles of good tax policy: A framework for evaluating tax proposals* at 4, Association of International Certified Professional Accountants (summarizing the JCT, GAO, and AICPA's criteria for sound tax policy).[3] Though each organization's criteria differ in number and form, all three include fairness, clarity, and certainty: "Tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where and how the tax is to be accounted for." *Id.; see also* Chris Jacobs, *Reforming the Tax System in Louisiana: A Jobs and Opportunity Agenda for Louisiana* at 2, 8, The Pelican Institute for Public Policy (explaining the unnecessary complexity of the Louisiana tax code suppresses economic growth).[4] Springing an unsupported application of a taxing statute on a taxpayer whose operations were never before targeted by the statute, as here, violates all three of these tenets. *See* Miller, *supra,* at 1.

[2] Available at https://tinyurl.com/38wbhr87.
[3] Available at https://tinyurl.com/ye2xmtee.
[4] Available at https://tinyurl.com/26txak2x.

First, while governments may change their laws and policies, fairness requires that they follow due process to implement new tax policy. *Id.* "A plain reading of the language of the entirety of [the statute] clearly defines 'hotel' as an establishment or person with a physical location where rooms are furnished." *Lopinto*, 335 So. 3d at 434. Expedia does not have a "physical location where rooms are furnished." *Id.* In any event, "Appellants try to stretch the tax statute to a new and different industry that did not even exist when the tax statute was enacted," here, the Appellees' businesses. Appellees' Br. 2. But "laws, like contracts, are to be construed in light of conditions as they existed at the time of their enactment," and imposing a novel application of the statute to businesses the legislature did not intend to cover is both arbitrary and unfair. *Union Sulphur Co. v. Parish of Calcasieu*, 96 So. 787, 788 (La. 1923).

Second, reversing the lower court's judgment would undermine clarity in the Louisiana tax code. The legislature defined "hotel" narrowly as "an establishment consisting of sleeping rooms," something online travel facilitators do not have. LAC 61:I.4301 ("Hotel") (the term hotel has been defined to be "somewhat more restrictive than normally constructed, both as to the use of the facility and relative size."). Thus, Appellees cannot be "hotels" under any reasonable reading of the statute. Further, there can only be one "dealer" under the relevant statute. *Normand*, 340 So. 3d at 626 (explaining that "references to 'the' dealer (as opposed to 'a'

dealer)" in the statute mean there can only be one dealer). It makes no sense to suddenly change the subject of the relevant taxing and "dealer" statutes from hotels—which it has applied to, without controversy, since 1948—to online travel facilitators. La. Acts 1948, No. 9 § 6 (1948 Reg. Sess). Far from a "clear" tax policy, the interpretation Appellants ask this Court to adopt is arbitrary.

Third, if, as Appellants argue, facilitating the furnishing of hotel rooms by hotels can suddenly make a business subject to the tax and make the facilitator *the* "dealer," then marketing agencies, travel agencies, and even payment processors could be targeted by Louisiana tax collectors next. This creates a great deal of uncertainty in the tourism industry; in modern transactions there are all kinds of intermediaries, including "payment processors, credit card companies, [and] financial institutions." *Lopinto,* 335 So. 3d at 445. Appellants' reading of the statute "to make 'dealers' of all these parties for one underlying service would be absurd." Appellees' Br. 19. But as the Louisiana Supreme Court already noted, "[t]he fact that the intermediary transmits the funds to the sellers . . . does not cause the intermediary to assume the sellers' legal obligation to collect taxes. A contrary interpretation . . . would authorize the imposition of liability for sales tax on any intermediary that aids or enables sellers to reach new customers . . ." *Normand,* 340 So. 3d at 631. To preserve fairness, clarity, and certainty in the Louisiana tax code, this Court should affirm the lower court's judgment.

Additionally, Appellants' push for Appellees to remit taxes, penalties, and interest with a lookback period of almost 20 years despite (1) the plain language of the relevant statutes; (2) the applicable legislative history that confirms the plain language and legislative intent; and (3) prior audits from both the Louisiana Department of Revenue and the City of New Orleans that were concluded with *zero* tax amounts assessed disregards the United States Supreme Court's instruction against retroactive enforcement. In *South Dakota v. Wayfair, Inc.*, the Court laid out several reasons that caused them to look kindly upon South Dakota's law, including its explicit *rejection* of retroactive enforcement. 138 S. Ct. 2080 (2018); Andrew Moylan, Andrew Wilford, and Eric Peterson, *Post*-Wayfair *Sales Tax Reform in Louisiana,* National Taxpayers Union Foundation and Pelican Institute for Public Policy.[5] Yet by asking this Court to impose roughly $57,000,000 in taxes over almost a 20-year period in this situation, Appellants effectively request the retroactive enforcement the Court warned against.

III. APPELLANTS' INTERPRETATION OF THE STATUTE WOULD REDUCE TOURISM TO LOUISIANA

"The Expedia app is one of the most-used travel apps for booking and researching travel destinations." Geoff Whitmore, *Expedia App Integrates*

[5] Available at https://tinyurl.com/26txak2x.

ChatGPT, Forbes (Apr. 12, 2023).[6] Travelers choose Expedia because it allows them to compare a host of travel options, book all components of their trip in one, easy-to-navigate platform at the "best possible rates," and access aggregated reviews. *Id.;* No Vacation Required, *The Benefits Of Booking A Hotel Through Expedia*, Explore by Expedia (Oct. 4, 2016).[7] Hotels choose Expedia because it allows them "to reach a larger customer base and provides them commission-free facilitation," helping them fill rooms that would otherwise remain vacant. Appellees' Br. 2. In this way, Appellees' services stimulate tax-revenue-raising tourism to the state. Yet Appellants' effort to impose additional tax on Appellees' services can undermine this effect by resulting in higher prices of reservations made through Expedia and all other online travel facilitation sites, limiting the value these facilitators provide to consumers and impacting tourism in Louisiana.

Appellees already receive estimated tax amounts required by statute on the price of each hotel room for which they facilitate reservations and forward that sum to the hotel, which, as the dealer, remits the tax to the state and local collectors pursuant to the statute. Appellees' Br. 18. Accepting Appellants' definition of Appellees as a "hotel" and the "dealer," itself, would require Appellees to charge the traveler consumers tax on a sum *higher* than what the customers pay to the actual hotel. La. R.S. 47:301(4)(f)(i), (6)(a). This will distort their business model in

[6] Available at https://tinyurl.com/5xmn6d8y.
[7] Available at https://tinyurl.com/3vw57t38.

foreseeable ways—all of them harmful to the Louisiana tourism industry.

The most predictable consequence is that prices could rise as a result of the additional tax amount, thereby reducing the attractiveness of Louisiana as a tourist destination. It is useful to remember that many travelers maintain strict budgets, and from those travelers Louisiana would receive the same total tax revenue whether it is remitted by their hotel, by a dining establishment, or by another entertainment service. By electing to increase the first cost many travelers see, the net effect of discouraging visitors may reduce total tax income even if Appellees' interpretation is accepted by the Court. Recognizing the harm an additional tax on Appellees' services would inflict on tourism in the State, the Louisiana Tourism Board *opposed* expanding the tax base and changing who the statutory "dealer" should be for these hotel transactions in 2016. La. H.B. 722 (2016 Reg. Sess.); *see also Lopinto*, 335 So. 3d at 443 and n.7.

It is not an exaggeration to say that Louisiana's economy relies on tourism, especially now, as historically held oil and gas jobs continue to leave the state. Eric L. Taylor, *Can renewable energy projects replace Louisiana's lost oil and gas jobs?*, Greater Baton Rouge Business Report (Mar. 1, 2023) (explaining that, since 2014, Louisiana has continually lost upstream oil and gas jobs).[8] According to the State Department of Culture, Recreation and Tourism, the leisure and hospitality industry

[8] Available at https://tinyurl.com/5nj3d3tf.

is the fourth largest employer in the State. Department Of Culture, Recreation & Tourism, *2022 Louisiana Tourism By The Numbers* (2022).[9] In 2022, Visitors spent $17.1 billion in Louisiana, generating $1.9 billion in total state and local tax revenue, which "saves each household in Louisiana an additional $1,068 in taxes." *Id.* The additional tax Appellants seek to impose on Appellees' travel facilitation services will inhibit the vitality of this critical industry.

[9] Available at https://tinyurl.com/2jp8hxdb.

CONCLUSION

For all these reasons, and those set forth by Appellees, this Court should *affirm.*

Respectfully submitted,

DATED June 9, 2023
/s/ Nicole Saad Bembridge

Nicole Saad Bembridge (Pro Hac Vice)
Counsel of Record
Carl M. Szabo
Christopher J. Marchese
Paul D. Taske
NETCHOICE
1401 K. St. NW, Suite 502
Washington, DC 20005
(443) 254-6330
nsaadbembridge@netchoice.org

Sarah Harbison (LSBA #31948)
James Baehr (LSBA #35431)
PELICAN INSTITUTE
400 Poydras St., Suite 900
New Orleans, LA 70130
(504) 952-8016
sarah@pelicaninstitute.org

Laura Chadwick
TRAVEL TECHNOLOGY ASSOCIATION
3033 Wilson Blvd., Suite 700
Arlington, VA 22201
(703) 214-8878
lchadwick@traveltech.org

June 13, 2023

CERTIFICATE OF COMPLIANCE AND SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing brief was prepared in conformity with the Uniform and Local Rules applicable to the Louisiana First Circuit Court of Appeal. I further certify that the foregoing was forwarded via electronic mail to all counsel on this 13th day of June, 2023.

_____/s/ Nicole Saad Bembridge_____
[Nicole Saad Bembridge]

Nicole Saad Bembridge (Pro Hac Vice)
Counsel of Record
Carl M. Szabo
Christopher J. Marchese
Paul D. Taske
NETCHOICE
1401 K. St. NW, Suite 502
Washington, DC 20005
(443) 254-6330
nsaadbembridge@netchoice.org

Sarah Harbison (LSBA #31948)
James Baehr (LSBA #35431)
PELICAN INSTITUTE
400 Poydras St., Suite 900
New Orleans, LA 70130
(504) 952-8016
sarah@pelicaninstitute.org

Laura Chadwick
TRAVEL TECHNOLOGY ASSOCIATION
3033 Wilson Blvd., Suite 700
Arlington, VA 22201
(703) 214-8878
lchadwick@traveltech.org

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