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Joseph B. Roesch
7th Judicial Circuit
Sangamon County, IL
2026MR000271

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

THE CHAMBER OF DIGITAL COMMERCE; ILLINOIS BLOCKCHAIN ASSOCIATION, Plaintiffs, v. DAVID HARRIS, in his official capacity as the Director of the Illinois Department of Revenue; and KWAME RAOUL, in his official capacity as the Illinois Attorney General, Defendants.	Case No. 2026-MR-000271
BLOCKCHAIN ASSOCIATION; CRYPTO COUNCIL FOR INNOVATION, Plaintiffs, v. DAVID HARRIS, in his official capacity as the Director of the Illinois Department of Revenue; KWAME RAOUL, in his official capacity as the Illinois Attorney General; and JOHN MILHISER, in his official capacity as the State's Attorney of Sangamon County, Defendants.	Case No. 2026-MR-000312

MOTION FOR LEAVE TO FILE AN AMICUS BRIEF
***INSTANTER* IN SUPPORT OF PLAINTIFFS**

1. The Securities Industry and Financial Markets Association ("SIFMA") and Chamber of Commerce of the United States of America ("Chamber") (collectively, the "Proposed Amici") hereby seek leave to file the attached Amici Curiae Brief of the Securities Industry and Financial Markets Association and Chamber of Commerce of the United States of America in Support of Plaintiffs, attached as Exhibit A.

2. SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. In the interest of the millions of customers served by members, SIFMA advocates on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. SIFMA members operate under detailed federal and state recordkeeping, supervisory, customer-protection, and risk-management requirements.

3. The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases that raise issues of concern to the nation's business community, including in Illinois courts and on matters of Illinois law. *See, e.g.*, Brief of Amici Curiae the Chamber of Commerce of the United States, American Medical Association, and Illinois State Medical Society in Support of Defendants, *Lutzenkirchen v. OSF Healthcare*, No. 132601 (Ill. Oct. 14, 2026); Brief of the Chamber of Commerce of the United States of America, American Bankers Association, and Illinois Bankers Association as Amici Curiae in Support of Defendant-Appellant and Reversal, *Martin v. Valdivia*, No. 132935 (Ill. Aug. 5, 2026); Brief of the Illinois Chamber of Commerce and the Chamber of Commerce of the United States of America as Amici Curiae in Support of Defendants-Appellants, *Wilson v. Napleton's Goldcoast Imps., Inc.*, Nos. 132430, 132511 (Ill. May 8, 2026); Brief of Amici Curiae Chamber of Commerce of the United States of America and Illinois Chamber of Commerce in Support of Defendants-Appellees, *Geller v. Uber Techs., Inc.*, No. 132066 (Ill. Feb. 25, 2026); Brief of Amici Curiae the National

Retail Federation, the Chamber of Commerce of the United States of America, the National Association of Manufacturers, the National Federation of Independent Business, Inc., the Illinois Manufacturers' Association, the Illinois Retail Merchants Association, and the Illinois Chamber of Commerce in Support of Defendant-Appellee, *Johnson v. Amazon.com Servs., LLC*, No. 132016 (Ill. Nov. 25, 2025); Brief of the Chamber of Commerce of the United States and Illinois Chamber of Commerce as Amici Curiae in Support of Defendant-Appellant Union Pacific Railroad Company and Reversal, *Clay v. Union Pac. R.R. Co.*, No. 25-2185 (7th Cir. Sept. 2, 2025).

4. In the immediate case, Proposed Amici have a strong interest in this challenge because their members will be directly affected. As Proposed Amici explain more fully in Exhibit A, the Illinois Digital Asset Tax Act, 35 ILCS 195/3-5 et seq. (the "Act"), will affect many businesses across the national economy. This includes both traditional financial services firms that offer digital asset products and services and the myriad businesses that use them. In addition, Proposed Amici's members operate in every state across the country and have a strong interest in the proper application of federal laws that limit discriminatory taxation of interstate commerce and the risks of double taxation. As a result, this Court's resolution of the issues presented in this case will have significant implications for Proposed Amici's members.

5. Proposed Amici's brief will assist the Court by providing a broader perspective on how the Act impacts not just crypto-native platforms, but banks, broker-dealers, custodians, advisers, and asset managers. Proposed Amici also explain the practical and operational difficulties of complying with this first-of-its-kind tax, including the challenge of identifying the Illinois customers subject to the tax, identifying the value of the assets, and identifying activity that triggers the tax's application. Finally, Proposed Amici explain how the Act discriminates against digital-asset services and taxes value that has not been created in Illinois. Proposed Amici respectfully

submit that, as the voice of financial institutions and the business community more broadly, their unique perspective will assist the Court in addressing the statutory and constitutional questions in this case and explaining the adverse consequences of upholding the Act.

6. While there is no direct rule allowing for an amicus brief like that proposed, Illinois Supreme Court Rule 345, which permits the filing of an amicus curiae brief by leave of court, provides relevant criteria for consideration here, as do cases decided under that rule. In this instance, Proposed Amici respectfully submit that their brief offers "ideas, arguments, or insights helpful to resolution of the case" that the parties have not addressed, as well as a unique perspective into the economic and practical consequences of the Act. *Kinkel v. Cingular Wireless, L.L.C.*, No. 100925, 2006 Ill. LEXIS 1, at *2-3 (Jan. 11, 2006). Both criteria favor accepting the Proposed Amici's brief *instanter*.

7. We consulted with counsel for all defendants, but have not yet received a response. In order to ensure timely filing, we filed without their response. We will supplement our motion if they respond.

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WHEREFORE, the Securities Industry and Financial Markets Association and the Chamber of Commerce of the United States of America respectfully request that this Court grant leave to file the attached *Amici Curiae* Brief in Support of Plaintiffs.

Dated: November 6, 2026

Respectfully Submitted,

/s/ Marlon Paz

Marlon Q. Paz (*Pro Hac Vice* – # 6356269)
STEPTOE LLP
1330 Connecticut Ave., NW
Washington, DC 20036
Phone: (202) 429-6477
Email: mpaz@steptoe.com

Vincent P. (Trace) Schmeltz III (# 6273010)
STEPTOE LLP
227 West Monroe Street, Suite 4700
Chicago, IL 60606
Phone: (312) 577-1227
Email: tschmeltz@steptoe.com

Counsel for Amici Curiae The Securities Industry and Financial Markets Association and Chamber of Commerce of the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2026, a true and correct copy of the foregoing **MOTION FOR LEAVE TO FILE AN AMICUS BRIEF *INSTANTER* IN SUPPORT OF PLAINTIFFS** was served upon counsel of record via the Court's electronic filing system and electronic mail.

/s/ Trace Schmeltz
Vincent P. (Trace) Schmeltz III (# 6273010)

Counsel for Amici Curiae The Securities Industry and Financial Markets Association and Chamber of Commerce of the United States of America

EXHIBIT A

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

THE CHAMBER OF DIGITAL COMMERCE; ILLINOIS BLOCKCHAIN ASSOCIATION, Plaintiffs, v. DAVID HARRIS, in his official capacity as the Director of the Illinois Department of Revenue; and KWAME RAOUL, in his official capacity as the Illinois Attorney General, Defendants.	Case No. 2026-MR-000271
BLOCKCHAIN ASSOCIATION; CRYPTO COUNCIL FOR INNOVATION, Plaintiffs, v. DAVID HARRIS, in his official capacity as the Director of the Illinois Department of Revenue; KWAME RAOUL, in his official capacity as the Illinois Attorney General; and JOHN MILHISER, in his official capacity as the State's Attorney of Sangamon County, Defendants.	Case No. 2026-MR-000312

AMICI CURIAE BRIEF OF THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION AND CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PLAINTIFFS

Marlon Q. Paz (*Pro Hac Vice* - # 6356269)
Vincent P. (Trace) Schmeltz III (# 6273010)
STEPTOE LLP
1330 Connecticut Avenue NW
Washington, D.C. 20036
(202) 429-6477
mpaz@steptoe.com

Counsel for Amici Curiae Securities Industry and Financial Markets Association and Chamber of Commerce of the United States of America

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The Securities Industry and Financial Markets Association ("SIFMA") and the Chamber of Commerce of the United States of America ("Chamber") file this brief as amici curiae in support of Plaintiffs' challenge to the Illinois Digital Asset Tax Act, 35 ILCS 195/3-5 et seq. (the "Act").

INTEREST OF AMICI CURIAE

SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. In the interest of the millions of customers served by members, SIFMA advocates on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. SIFMA members operate under detailed federal and state recordkeeping, supervisory, customer-protection, and risk-management requirements.

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

Amici have a strong interest in this challenge because their members will be directly affected by it. As *amici* explain more fully below, the Act will affect the activities of not only crypto-native trading platforms, but also many other businesses across the national economy. This includes both traditional financial services firms that offer digital asset products and services, and the myriad businesses that use them. In addition, *amici's* members operate in every state across the country and have a strong interest in the proper application of federal laws that limit discriminatory taxation of interstate commerce and the risks of double taxation. *Amici* address the operational consequences of measuring a service tax by the value of the underlying asset, the treatment of comparable financial services, and the risk of overlapping state taxation. Those issues bear directly on the statutory and constitutional questions before the Court.

INTRODUCTION

Congress has described the internet as "the primary driver of U.S. economic growth, innovation, and productivity." H.R. Rep. No. 113-510, 5 (2014). *Amici*'s members work diligently to advance those goals and harness the technological resources that the internet provides. The Act is an unlawful impediment to those efforts. The Act taxes the receipt of specified financial services by reference to the value of the digital asset involved, rather than the service charge or the customer's gain. 35 ILCS 195/3-20(a). Its consequences impact services provided by banks, broker-dealers, custodians, other companies, and their customers. As Plaintiffs thoroughly explain, the Act flouts Congress's judgment that discriminatory taxes on electronic commerce should be prohibited, and it violates both the Dormant Commerce Clause and the Illinois Constitution's Uniformity Clause. The Act also creates a compliance nightmare for the covered entities that must implement it and will negatively impact businesses across the national economy.

To begin, the Act operates unlike any other tax on financial services activity. Rather than taxing income, profit, or the price of a financial service, the law taxes assets. The Act imposes 0.2% of "the value of the digital asset to which" an exchange, transfer, or storage service *relates*, Act § 3-20(a), and calls its levy a tax on the customer's "privilege" of receiving digital asset business activity. This means that a customer who loses money owes the same tax as a customer who earns a profit. A customer who pays a modest custody fee faces tax measured by the full account value. And a customer who moves the same asset between two accounts faces tax (potentially on both ends) without a sale, a gain, or a change in beneficial ownership. There is no materially similar taxation regime for financial services not involving digital assets—or, indeed, for any other type of services.

In addition, although one might assume that the Act would affect primarily crypto-native platforms, digital asset activity is far from limited to those business models. This unprecedented tax will need to be collected not just by a targeted group of digital asset exchanges, but by the many banks, broker-dealers, custodians, and other financial markets participants now providing digital asset products and services. And the Act's sweeping definitions of covered entities ensure that the tax will broadly affect many other companies currently offering digital asset products and services.

The complexity of complying will place a significant burden on these businesses. Compliance requires firms to connect customer-location information, asset valuations, service

classifications, collection procedures, and tax reporting information. Act §§ 3-15, 3-20, 3-25, 3-40, 3-45. And existing reporting and valuation systems do not by themselves resolve which event triggers this tax, which asset value applies, or how to collect dollars for a service involving no cash proceeds. Because the Act imposes novel obligations on companies, building and maintaining the necessary infrastructure will be a heavy lift, all under the threat of statutory criminal penalties. Act § 3-55.

Meanwhile, customers in Illinois, including small businesses beginning to incorporate digital assets into their operations, will experience the downstream costs of fewer opportunities to use digital assets or higher prices for doing so.

The State's agreement to stay effectiveness and enforcement of the Act until July 1, 2027 provided an immediate reprieve for covered businesses, but it does not resolve the Act's validity, nor does it minimize the significant cost and burden that it will impose on current business. *See* Joint Motion for Entry of Scheduling Order ¶ 3, Blockchain Ass'n v. Harris, No. 2026 MR 000312 (Cir. Ct. Sangamon Cnty. Oct. 13, 2026). Because the Act contravenes the Internet Tax Freedom Act by charging a gross-asset tax exclusively on electronic commerce, violates the Dormant Commerce Clause because it is not fairly apportioned, and violates the Illinois Uniformity Clause because it does not provide a real and substantial basis for the tax classification, this Court should hold that it is unlawful and issue a decision before businesses are required to comply.

ARGUMENT

1. The Act imposes significant compliance burdens on financial institutions and their customers.

A. The tax will broadly impact banks, broker dealers, custodians, advisers, and asset managers—not just crypto native platforms.

The Act imposes a first-of-its-kind tax on digital-asset transactions and storage. As Plaintiffs explain at length[1] the tax adopts a highly unusual scheme in which tax is assessed based "upon the privilege of receiving any digital asset business activity by a customer in this State at the rate of 0.2% of the value of the digital asset to which the digital asset business activity relates." Act § 3-20(a).

[1] *See* Mem. of Law of Pls. in Supp. of Their Mot. for Summ. J. (Nov. 4, 2026).

Although crypto-native platforms may be the Act's primary target, the tax sweeps much farther. It requires "digital asset brokers" to meet its various requirements to register with the Illinois Department of Revenue; collect the tax from covered customers; file returns and remit collected taxes to the Department; and keep records of covered transactions. The Act defines "digital asset broker" by reference to the federal information-reporting definition for persons that regularly effect digital asset transfers for others, sweeping in numerous members of *amici* beyond crypto-native platforms. *See* Act § 3-15. Some of these members provide trading and custody services for digital assets to institutional and retail customers. Some offer digital assets to the market, including stablecoins, which are designed to hold a constant value pegged to another financial asset—typically the U.S. dollar. Others are preparing to do so.[2] Because these entities operate in Illinois, they expect to be swept into the "digital asset broker" definition of the Act.

The breadth reflects a changing financial landscape in which traditional financial institutions, with support of federal banking regulators, are increasingly engaged in digital-asset activities. For example, the GENIUS Act established a regulatory framework for payment stablecoins. 12 U.S.C. §§ 5901–5916. The Office of the Comptroller of the Currency issued an interpretive letter in 2025 confirming that national banks and federal savings associations "may provide and outsource cryptocurrency custody and execution services on behalf of customers." Interpretive Letter 1184 (May 2025). The Federal Reserve released a policy statement rescinding certain limits on banks' digital asset activities in light of "its evolving understanding of the risks of the crypto-asset sector and its desire to facilitate innovation in a manner consistent with safety and soundness and preserving the stability of the U.S. financial system." Policy Statement on Section 9(13) of the Federal Reserve Act, 90 Fed. Reg. 59731, 59732 (Dec. 22, 2025). And the FDIC, OCC, and Department of Treasury are undertaking rulemaking to implement the GENIUS Act's stablecoin framework for bank-linked stablecoin issuance. *See* GENIUS Act Requirements and Standards for FDIC-Supervised Permitted Payment Stablecoin Issuers and Insured Depository Institutions, 91 Fed. Reg. 18,534 (proposed Apr. 10, 2026) (to be codified at 12 C.F.R. pts. 324, 330, 350), *available at* https://www.fdic.gov/board/federal-register-notice-genius-act-requirements-and-standards-fdic-supervised-permitted.

[2] *See, e.g.*, Gina Heeb, *These Banks Are Banding Together to Launch a Stablecoin*, Wall St. J. (Sept. 1, 2026), https://www.wsj.com/finance/banking/these-banks-are-banding-together-to-launch-a-stablecoin-6de07eff ("Twenty-one firms, including several megabanks, plan to establish a company that would help guard against competition from digital assets.").

In light of the changing federal regulatory landscape, it is perhaps no surprise that an increasing number of financial institutions are incorporating digital assets into their businesses. As the World Economic Forum reported, "[f]inancial services companies across the value chain—including asset managers, financial market infrastructures, payment providers, fintechs, and investors—are incorporating blockchain-enabled solutions." Sandra Waliczek, *A Digital Economy at an Inflection Point: What to Expect for Digital Assets in 2026*, Jan. 13, 2026, available at https://www.weforum.org/stories/financial-and-monetary-systems/digital-economy-inflection-point-what-to-expect-for-digital-assets-in-2026.[3] These companies see the potential for tokenized assets and shared-ledger technology to accelerate settlement, reduce reconciliation costs, and improve liquidity management. *See* Securities Industry & Financial Markets Ass'n, Members of the U.S. Financial Sector Demonstrate Feasibility of Multi-Asset and Cross-Network Settlement Using Shared Ledger Technology (Dec. 5, 2024).

Even outside of financial services companies, digital asset use is expanding, with nearly 4 out of 10 merchants accepting digital assets at checkout .[4] Retailers often choose to do so in response to consumer demand, including demand from international shoppers who can forgo burdensome currency conversions by using digital assets. Digital assets also facilitate trading in some video games and virtual worlds, while NFT smart contracts support arrangements for compensating artists upon resale.[5]

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[3] *See also* Boston Consulting Group, *The Future of Digital Assets* (May 18, 2026), https://www.bcg.com/publications/2026/the-future-of-digital-assets-in-finance#:~:text=Digital%20assets%20are%20no%20longer,reach%20far%20beyond%20crypto%20itself (digital assets are becoming a structural force across payments, capital markets, and financial infrastructure); Morgan Stanley Institute, *Digital Assets Push Into the Mainstream as Global Adoption Surges* (Feb. 27, 2026), https://www.morganstanley.com/insights/articles/digital-assets-push-into-the-mainstream-as-global-adoption-surges (digital assets are transforming the global financial system).

[4] *Crypto Goes Mainstream: 4 in 10 U.S. Merchants Accept Digital Assets*, PAYPAL NEWSROOM (Jan. 27, 2026), https://newsroom.paypal-corp.com/2026-01-27-Crypto-Goes-Mainstream-4-in-10-US-Merchants-Accept-Digital-Assets; *see also* BNY, *The Digital Revolution: Transforming Financial Market Infrastructure* (Nov. 2025), https://www.bny.com/assets/corporate/documents/pdf/insights/bny-digital-revolution.pdf.

[5] *See* Consumer Fin. Prot. Bureau, *Banking in Video Games and Virtual Worlds*, "Crypto-Asset Related Virtual Worlds" (Apr. 4, 2024) (describing crypto-assets used for purchases within virtual worlds and traded through external platforms); U.S. Pat. & Trademark Off. & U.S. Copyright Off., Non-Fungible Tokens and Intellectual Property: A Report to Congress 40–42 (Mar. 2024) (discussing smart-contract arrangements for artists' resale compensation and limitations on enforcement).

Small business owners, in particular, "are eager to learn more about crypto and how to successfully implement it for their business."[6] "Among those who are familiar, crypto is seen as becoming more broadly acceptable and offering a competitive advantage for small businesses." *Id.*

B. Covered businesses will be required to build and maintain new compliance systems.

For those companies swept in as "digital asset brokers," compliance with Illinois' new tax alone will constitute a significant drain on business activities and innovation. The Act would require covered members of SIFMA and the Chamber to collect and remit a customer tax measured by the value of the underlying digital asset, imposing compliance obligations distinct from their existing Illinois tax responsibilities. With the advent of this tax, however, not only will they have to begin doing so, but they will have to do so in a world of uncertainty. *Amici*'s members are already expending substantial resources trying to figure out whether they can convert existing systems for withholding federal taxes into systems that can calculate, collect, and remit the Illinois state taxes imposed by the Act. If they cannot do so, they will incur substantial expense to build out new systems and connect various existing systems.

Identifying the Illinois customers subject to the tax will itself be a challenge. Many members do not currently have systems for identifying IP addresses for purposes of withholding taxes, and so they will need to figure out how to integrate those functionalities if they are to properly identify and assess taxes for Illinois customers. Then they will need to create new systems and policies to determine when the presumption of an Illinois location from the IP address is overcome by other evidence. Because some customers use virtual private networks or other tools that may make IP address a poor proxy for customer location, members will need to create new methods for evaluating IP data to avoid taxing customers who are not covered by the Act or failing to tax those who are.

Identifying the value of the asset adds another layer to the challenge. Typically, withholding taxes are calculated by taking a percentage of the U.S. dollar proceeds generated by a trade and withholding that amount from the proceeds before they are returned to the customer. This tax, however, must be calculated based on an estimate of the U.S.-dollar value of the underlying asset,

[6] *Empowering Small Business: The Impact of Technology on U.S. Small Business*, U.S. CHAMBER OF COMMERCE, 4th ed., at 24 (2025), https://www.uschamber.com/assets/documents/20251621-CTEC-Empowering-Small-Business-Report-2025-v1-r10-Digital-FINAL.pdf.

even when no U.S. dollars are involved, such as for transfer and custody services. That requires developing new methods for valuing non-cash assets and for collecting a tax in U.S. dollars when the transaction or service does not involve such dollars.

Identifying activity triggering the tax adds a third layer of difficulty. The Act imposes its tax on "any single occurrence of exchanging, transferring, or storing a digital asset as part of a business or on behalf of a customer who has entered into an agreement with a business for the provision of those services." Act § 3-15. A typical case involves a customer buying an asset through a broker: exchanging cash for the asset; crediting the customer's account; and then taking ongoing custody of the asset. The Act states that a bundle of separate services count as separate sales, but it does not provide criteria for determining when services are "separate." Often, factors such as price, contract terms, the procedures involved, and commercial substance point to different conclusions. Blockchain Association Compl. ¶ 47. For a broker that transfers, or effects the transfer of, an asset several times before it reaches its custodial destination, how much tax is owed will depend on how Illinois counts exchanges, credits, transfers, control, and storage. For continuous custody, the Act does not expressly specify when one taxable storage occurrence ends and another begins. The Department's draft rules would generally tax separately paid storage once, regardless of duration, and would exclude additional storage payments absent further asset movement. But the draft does not clearly explain how subsequent deposits, partial withdrawals, or internal balance adjustments affect the taxation of assets already in custody. Act §§ 3-15, 3-20; Ill. Dep't of Revenue, Digital Asset Tax Act Draft Proposed Rules § 497.110(a), (d)(2)–(4), at 7, 11–12 (Sept. 28, 2026); Blockchain Association Compl. ¶ 48.

All of the above requires businesses to divert time and money away from offering products and services to customers, creating compliance costs that are particularly burdensome for small businesses that operate with narrower profit margins. And hanging over all of these compliance decisions are the Act's onerous penalties. Section 3-55 provides that a broker who breaches any of its provisions commits a Class 3 felony. This criminal risk necessarily increases the compliance burdens on affected companies. The potential downside to members who have done their best to comply in good faith is significant.

For *amici*'s members that are not swept into the Act as "digital asset brokers" but have benefited from the increasing availability of digital asset products and services, the tax will also

cause harm. The tax will make digital asset transactions and storage more expensive for Illinois customers and may lead to a reduction in the products and services that are offered here.

These harms cannot be remedied retrospectively. Refunds of the tax payments will not reimburse expenditures to design and implement collection systems or restore business lost during implementation. As a result, this Court should address the Act's validity before businesses complete implementation under the revised timetable.

2. The Act discriminates against digital-asset services and taxes value that has not been created in Illinois.

A. The Act contravenes the Internet Tax Freedom Act by charging a gross-asset tax exclusively on electronic commerce.

Congress enacted the Internet Tax Freedom Act ("ITFA") to "enhance" electronic commerce's "development" and "eliminate[] efforts that will impede its growth." H.R. Rep. No. 105-570, pt. 1, at 7 (1998). To that end, the ITFA "establishes a national policy against State and local government interference with interstate commerce on the Internet." H.R. Rep. No. 105-825, 1545 (1998). It does so by imposing a ban on "discriminatory taxes on electronic commerce." Pub. L. 105-277 § 1101(a), 112 Stat. 2681-719 (1998).[7] A tax is considered to be discriminatory if it is not applied in a general way to transactions involving similar property, goods, services, or information that are obtained by other methods. *Id.* § 1104(2)(A)(i), 112 Stat. 2681-724. The definition also covers a collection obligation placed on an intermediary. *Id.* § 1104(8)(A), 112 Stat. 2681-726.

The Illinois Supreme Court has already ruled once that the ITFA preempted an Illinois statute. *See Performance Marketing Ass'n v. Hamer*, 2013 IL 114496 paragraphs 19 and 22–23. There, the Illinois statute specifically targeted online performance marketing while excluding similar offline arrangements from the collection rule. *See id.* The Illinois Supreme Court explained that the ITFA did not permit imposing a discriminatory tax on the internet performance marketing arrangements for tax collection as compared to a similar type of service being provided for offline advertising. *Id.* ¶ 19.

[7] The ITFA's ban was initially temporary, but Congress made it permanent in 2016. See Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. 114-125, § 922, 130 Stat. 122, 281 (2016); codified at 47 U.S.C. § 151 note. Recognizing that internet commerce is "inherently susceptible to multiple and discriminatory taxation in a way that commerce conducted in more traditional ways is not," H.R. Rep. No. 105-570, pt. 1, at 29 (1998), Congress determined that making the ITFA permanent was necessary to foster economic growth, H.R. Rep. No. 113-510, at 5.

This case presents a close analogy to *Performance Marketing*. Illinois does not apply a 0.2% gross-value tax—or any tax—when a customer exchanges dollars for foreign currency at a physical exchange office, when cash or securities are transferred between accounts, or when money or precious metals are deposited with a custodian. But the Act provides that online exchange, transfer, and storage functions are subject to tax whenever the asset falls within the definition of a digital asset. The service is the same; it is the digital nature of the asset and the electronic method of exchange that determines the tax. Therefore, the Act is preempted by the ITFA.

B. The Act contravenes the Dormant Commerce Clause

Setting aside the express efforts of Congress to promote the development of electronic commerce, Illinois' action here also runs afoul of the U.S. Constitution's effort to avoid balkanization of the States. One of the ways it does so is by ensuring that each State taxes only its fair share of an interstate transaction. To make that evaluation, courts look at both internal and external consistency. *See Goldberg v. Sweet*, 488 U.S. 252, 260–61 (1989). When assessing internal consistency, courts consider what result would obtain if each state introduced the same tax; for external consistency courts ask whether the state's tax goes beyond the amount of value that can fairly be attributed to activity carried out within the state. *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 514 U.S. 175, 184–85 (1995). In this case, the Act fails twice over. For internal consistency, assume Indiana enacts an identical statute. Both laws would allow the state to assume that an event takes place within its jurisdiction on the basis of several different indicators, including IP address and mailing address. *See* Act § 3-25. As a result, one transaction could qualify for the tax in both places. An Indiana resident placing an order while physically in Illinois would face a presumption of Indiana location from the home address and Illinois location from the IP address. If both presumptions remain operative for the same service, both States would tax the event. Without an effective means of eliminating the overlap, identical statutes expose interstate transactions to a burden that intrastate transactions avoid. *See Jefferson Lines*, 514 U.S. at 185. If both States taxed the same transaction under those sourcing rules, the Act provides no express credit for tax paid to the other State. *Cf. Goldberg v. Sweet*, 488 U.S. 252, 264 (1989) (explaining how Illinois's credit for tax paid to another State on the same interstate call prevented double taxation).

The Act also lacks external consistency. It imposes tax on the full value of an asset, even though that value has no direct relationship to the value of the services that the broker provided in Illinois. Transfers of $10,000 and $10 million may involve similar amounts of operational effort, yet the bigger transfer is subject to a tax amounting to one thousand times that of the smaller one. The fact that there may be several statutory events constituting that transfer further widens this imbalance. Illinois therefore asserts value and activity which it has neither created nor carried out.

C. The Act's classification does not satisfy the Illinois Uniformity Clause.

The Illinois Constitution requires reasonable classifications for nonproperty taxes, Ill. Const. art. IX, § 2, and the Illinois Uniformity Clause requires a nonproperty tax classification to rest on a real and substantial difference between those taxed and those not taxed, with a reasonable relationship to the legislation's object or public policy, *Marks v. Vanderventer*, 2015 IL 116226, ¶ 19. "[T]he uniformity clause was intended to be a broader limitation on legislative power to classify for nonproperty tax purposes than the limitation of the equal protection clause and was meant to insure that taxpayers would receive added protection in the state constitution based upon a standard of reasonableness that is more rigorous than that contained in the federal constitution." *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 153 (2003).

Those baseline standards are not met here. Brokerage, transfer, and custody services provide similar economic functions across asset classes. Whatever differences exist between digital and traditional assets, they do not justify charging one customer a percentage of a digital asset's gross value for custody or transfer while exempting similar services for traditional assets like cash, securities, and precious metals. Nor do they justify charging a tax exclusively on digital assets for procedural steps like transfers, that do not change beneficial ownership or economic exposure.

The tax imposed by the Act unconstitutionally favors business models and market participants based purely on the underlying infrastructure rather than the economic substance of the asset class. *Arangold Corp.*, 204 Ill. 2d at 153 ("a nonproperty tax classification" survives only if it is "based on a real and substantial difference between the people taxed and those not taxed" and "bears some reasonable relationship to the object of the legislation or to public policy"). A dollar of value exchanged, transferred, or held is the same economic event whether the record of ownership sits on a blockchain or in a traditional book-entry system. The only difference is the

technology used to accomplish it. This is discrimination of exactly the kind that neutral tax principles forbid. A well-designed tax reaches like economic activity alike; it does not hinge liability on the particular infrastructure a firm chooses to deliver an otherwise identical service.

The resulting market treatment lacks neutrality. A firm's tax cost depends on the asset and infrastructure used, not on the service fee or customer gain. This difference affects prices, product availability, custody options, and regulated firms' ability to compete with providers of untaxed financial services. The burden extends to established companies, including broker-dealers, banks, custodians, advisers, and asset managers serving Illinois customers, not just to stand-alone crypto platforms. The Act thus draws arbitrary distinctions among economically comparable services, in violation of the Uniformity Clause and at the expense of a broad range of businesses.

CONCLUSION

Amici respectfully support Plaintiffs' request for a prompt declaration that the Act is unlawful and an injunction against its enforcement. Absent prompt relief, their members will be forced to either expend substantial time and resources complying with the Act's unconstitutional mandates or to forgo doing business in Illinois.

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Respectfully Submitted,

/s/ Marlon Paz

Marlon Q. Paz (*Pro Hac Vice* – # 6356269)
STEPTOE LLP
1330 Connecticut Ave., NW
Washington, DC 20036
Phone: (202) 429-6477
Email: mpaz@steptoe.com

Vincent P. (Trace) Schmeltz III (# 6273010)
STEPTOE LLP
227 West Monroe Street, Suite 4700
Chicago, IL 60606
Phone: (312) 577-1227
Email: tschmeltz@steptoe.com

Counsel for Amici Curiae The Securities Industry and Financial Markets Association and Chamber of Commerce of the United States of America