

The Destructive Internet Sales Tax And Those Who Promoted It

All the world should be taxed –Caesar Augustus

The only difference between a tax man and a taxidermist is that the taxidermist leaves the skin. –Mark Twain

The power to tax is the power to destroy. –John Marshall – Chief Justice of the Supreme Court

What a pity we don't have more justices on the Supreme Court today like we did with founding father Chief Justice Marshall. He was the last chief justice who was born a British subject prior to the American Revolutionary War. He was right...the power to tax is the power to destroy. Oh, is it ever! [America's taxes are out of control!](#)

The recent high court decision in South Dakota v. Wayfair, Inc., which overturns an earlier [Supreme Court precedent](#), will boost state revenues at the expense of consumers and sellers who have avoided sales taxes in the past. But the justices did not specify what types of exceptions states may impose to limit the burden on small businesses.

The Scotus Vote

Justice Anthony Kennedy wrote the 5-4 decision, discarding the court's longstanding rule that states cannot require companies without a physical presence in their state to collect sales taxes. He was joined by Justices Clarence Thomas, Ruth Bader Ginsburg, Samuel Alito and Neil Gorsuch.

Chief Justice [John Roberts dissented](#) (his dissent well worth the read), saying the [decision should be left to Congress](#), and was joined by Justices Stephen Breyer, Sonia Sotomayor and

Elena Kagan. I agree with Justice Roberts, this is a decision which belongs to Congress as they have the final say over regulation of interstate commerce. The Court reversed the decision of [Quill Corp. v North Dakota](#).

University of Tennessee Law Professor Glenn Reynolds commented, "The Supreme Court [allowed](#) states to tax purchases made online from out-of-state sellers. I seem to remember something about "No taxation without representation," but apparently the majority (weirdly, Kennedy, Thomas, Gorsuch, Alito, and Ginsburg) forgot that. The opinion is a real piece of work, even going full 'You didn't build that' at one point. Roberts' dissent is right on the money, pointing out that such a dramatic change to the internet economy could have far-reaching consequences, and that Congress is much better suited to address the issue."

In this instance, stare decisis (Latin for "to stand by a decision") was discarded and obviously not of interest to the five justices who overturned the precedent. How I wish they would do the same with [Roe v Wade](#), and [NYTs Corp. v Sullivan](#).

Reversing Precedent

No sooner does Congress do something great like passing a tax reform bill that is already paying dividends for millions than members argue and promote a way to muck it all up. Not only is this more expensive for customers, it is a massive expansion of state taxing power and a complex and costly new mandate on businesses, and our President endorsed it. [[Link](#)] The [Hill reports](#) that more than 90 percent of every dollar spent on retail still winds up in the cash registers of brick-and-mortar stores.

The idea of internet taxes isn't a new one. The 1992 Supreme Court decision ([Quill Corp. v North Dakota](#)) stated that a business must have a physical presence within the state in order for the state to collect sales tax when someone

purchases from that business. This was the ruling, and basically it had always been this way. Years ago, we had catalogues that came via snail mail and if the company had no presence in the state, you did not pay taxes on your orders. It's been this way since I was a young bride and probably much earlier.

Legislation was introduced in 2012 to "level the playing field" via the Marketplace Fairness Act, so that local businesses didn't have "unfair competition" because of the local taxes. Leveling the playing field was another euphemism for helping big box stores and destroying small internet businesses. The [Marketplace Fairness Act](#) fortunately never left a Senate committee.

Former Tennessee Governor, and now Senator Lamar Alexander, tried to [sneak a law passing an internet sales tax](#) into the National Defense Authorization Act (NDAA) in early December, 2012. Senators Dick Durbin (D-IL), Mike Enzi (R-WY), and Lamar Alexander proposed a version of the [Marketplace Fairness Act](#) as an amendment to the NDAA. The Senate voted to close debate on the defense bill and proceed to a vote without considering the tax. Thank God!

Commerce Clause

The [Commerce Clause \(Article 1, Section 8, Clause 3 of the U.S. Constitution\)](#) was intended to facilitate free trade by giving the federal government limited power to ensure state governments did not impose taxes and regulations on out-of-state business. Contrary to modern belief, the Commerce Clause was not intended to give Congress power to regulate every sector of the economy. And the Commerce Clause was certainly not intended to allow Congress to help state governments collect taxes on purchases from out-of-state merchants.

Quill v. North Dakota represented a rare instance where the Supreme Court properly interpreted the Commerce Clause. Thanks

to the Quill decision, the Internet remained a tax-free zone until now, though some states required consumers to later pay taxes on products they purchased online. This freedom has helped turn the Internet into a thriving and dynamic sector of the economy, to the benefit of entrepreneurs and consumers.

Now that status has been changed by an alliance of big business and tax-hungry state governments seeking new powers to force out-of-state business to collect state sales taxes. Far from updating the Constitution to fit the needs of the 21st century, the National Internet Tax Mandate is a throwback to [18th century mercantilism](#).

The National Internet Tax Mandate also flies in the face of the original purpose of the Commerce Clause and sets a dangerous precedent. Contrary to modern political thought, the Commerce Clause was not intended to grant Congress unfettered regulatory power. Instead, it was meant to enable Congress to guarantee free trade among the states by ensuring states could not impose onerous regulations or taxes on out-of-state businesses. By giving states the power to impose their sales taxes on out-of-state businesses, the National Internet Tax Mandate flips the Commerce Clause on its head. [Link](#)

Taxation Without Representation is Tyranny.

Small Businesses Destroyed

Small business is supposed to be the engine of economic growth and the internet is now the engine of small business growth. The Scotus decision is potentially the engine of small business death. This is a job for Congress before the [small businesses fail](#). Federal legislation is required. Absent such a solution, the little engine that could, small online business, may immediately become the little engine that can't.

The Supreme Court decision may be like Valentine's Day candy for big-spending governors, but it is a chocolate-covered sucker punch for the American people. Those of us who still

value low taxes and fiscal responsibility at every level of government will need to join in to save internet small businesses. The politicians who support this mandate and do nothing for the little guys will hopefully receive thorns, not roses, from the American people. With over 10,000 city, county, and state sales taxes in America, the costs to very small internet businesses are astronomical and untenable.

Online sellers would have to keep track of each state and locality's definition of what constitutes a taxable good. They would also have to stay up-to-date on thousands of various filing and registration procedures, threshold amounts and sales tax holidays just to remain in compliance. That suffocating deluge of red tape will close businesses, kill jobs and increase the cost of goods to customers.

The operations of small businesses are different than large retailers, and state tax actions targeting them raise additional legal questions that are not addressed by this decision. Congress needs to step in and provide clear tax rules, with a strong small business exemption, to help small businesses take advantage of the internet to grow and create local jobs.

This really is Taxation Without Representation.



**Tennessee's Governor
Haslam**

It was Tennessee's neo-con Republican [Governor Haslam who started the ball rolling](#) for internet taxes when he was elected in 2010. He got together with his good friend, Senator Lamar Alexander (R-TN).

On February 14, 2013, [neo-con Trotskyite Senator Lamar Alexander](#) (R-TN) joined fellow lawmakers in reintroducing a bill that would allow all states to require online retailers to collect sales tax just like their "Main Street" rivals, all at the behest of his friend Bill Haslam. Governor Bill Haslam also spread his desire for internet taxes via the National Governor's Association. New Jersey's Governor Chris Christie was [on board](#) early in 2014, as were many other governors who wanted and needed more taxpayer dollars in their coffers. The State of Tennessee has billions in rainy-day funds, but they always want more.

Haslam's 2010 campaign for Governor claimed he was a conservative Christian. He is anything but. Thrilled to be invited to the Obama White House, Haslam eagerly joined with Education Czar Arne Duncan to [completely destroy Tennessee's public education](#). And Governor Haslam's good friend, Sen. Lamar Alexander helped Obama lock in common core in America's public schools. [Link](#)

Our Governor [promoted Agenda 21](#) in Knoxville when he was Knoxville City Mayor and then throughout the state when he became Governor. [Link](#)



Last year the governor raised our gasoline tax by six cents a gallon for regular and 13 cents for diesel. The Haslam family owns [Pilot Oil and Flying J](#). The gasoline tax monies collected by the stations do not have to be turned into the state for 45 days, and companies like Haslam's make beaucoup bucks on the interest every month while holding these funds. Another little monetary plus for his family owned business.

FBI and IRS Agents Execute Warrants at PFJ

Back in April of 2013, FBI and IRS agents executed sealed search and seizure warrants at [Pilot Oil Flying J](#) (PFJ) headquarters in Knoxville, TN as part of an investigation into one of the largest family-owned companies in the United States. Billionaire [Jimmy Haslam](#), brother of Governor Bill Haslam, is the company CEO in addition to owning the Cleveland Browns.

The investigation revolved around the application of rebates to a small group of PFJ trucking company customers and how the small truckers were cheated. None of the Haslams were charged.

Conclusion

This Scotus decision has hurt all of middle America, and regrettably it's unlikely it will ever be overturned.

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