

March 16, 2020

Re: Senate Bill 462-Proponent

Committee: Assessment and Taxation

Testimony By: Senator Mike Thompson

Madam Chair and committee members, thank you for providing me the opportunity to testify in favor of the Kansas Business Financial Protection Act.

Wayfair Decision Overview:

- Wayfair case was a South Dakota law claiming that the state had the authority to collect sales tax from any business that made at least 200 transactions or \$100,000 in sales into South Dakota in a single year
- Other states, such as South Dakota are using out-of-state businesses to collect sales taxes from residents within their state borders
- Kansas businesses now face the prospect of trying to collect taxes in thousands of different jurisdictions
- 45 states have sales tax, with over 12,000 taxing jurisdictions
- Places the burden of figuring out the various tax strategies at each point of sale outside of Kansas...on the businesses in this state.
- In addition, there are different ways that the same item being sold may be categorized in each location. This creates a confusing, costly, and time consuming burden on our businesses .
- The State of Kansas should not be in the position of enforcing other state's tax law on our business. That is the underlying principle of this bill.

Background:

Under the SCOTUS Bellas Hess and Quill decisions, South Dakota could not require an out-of-state business to collect its sales tax on South Dakota citizens if the business lacked a physical presence in South Dakota. Without the physical presence, South Dakota had to rely on its residents to pay the use tax owed on their purchases from out-of-state sellers. As in Kansas, this was hard to enforce.

According to the Wayfair decision, because South Dakota has no state income tax, it had to put substantial reliance on its sales and use taxes to *“fund essential services. Those taxes account for over 60 percent of its general fund.”*

Therefore, in 2016, South Dakota enacted S. 106, “An Act to provide for the collection of sales taxes from certain remote sellers, to establish certain Legislative findings, and to declare an emergency.” The Act requires out-of-state sellers to collect and remit sales tax “as if the seller had a physical presence in the state.

“To that end, the Act requires out-of-state sellers to collect and remit sales tax “as if the seller had a physical presence in the state.” §1. The Act applies only to sellers that, on an annual basis, deliver more than \$100,000 of goods or services into the State or engage in 200 or more separate transactions for the delivery of goods or services into the State.”

So, in effect, because South Dakota could not tax their own citizens, they are requiring businesses in other states to do it for them.

What This Bill Would Do:

The state of Kansas, under the Kelly administration, is following South Dakota’s lead, albeit without the limits of \$100K or 200 transactions. This legislation would not alter that, nor could it prevent other states from requiring Kansas businesses to comply with their tax laws. It would, however, prohibit the Kansas department of revenue from helping other states enforce their laws on Kansas citizens and their businesses.

In other words, if South Dakota wanted to require a business in Kansas that sold goods or services to a South Dakota citizen, South Dakota could still do that, but the Kansas department of revenue could not provide South Dakota with a Kansas business' financial information. One of the roles of government is to protect its citizens, and Kansas must protect the identity and financial information of businesses that reside in our state.

Horowitz: Supreme Court declines to intervene ... where it actually belongs

Daniel Horowitz · February 25, 2020

Robert Alexander | Getty Images

Does the Supreme Court control the outcome of broad political and social questions? Not at all. The Constitution vests the high court with mandatory original jurisdiction over only four types cases, which tend to be pretty uncommon. But these very cases seem to be the only ones the Supreme Court declines to take.

There's a dirty little secret about our political system that few realize. Congress has plenary power over the entirety of what is known as the Supreme Court's "appellate jurisdiction." That means that Congress can regulate or exclude any type of case from the Supreme Court's reach through the appeals process, except for one of the four types where the Constitution vests it with "original jurisdiction." One of those cases just came before the Supreme Court, and on Monday, the court finally showed humility at the wrong time and declined to take the appeal.

Art. III, § 2, cl. 1 of the Constitution vests the high court with original jurisdiction over "all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states."

Well, Arizona has a complaint that California is taxing Arizona citizens who have nebulous ties to the Golden State and thereby draining Arizona's government revenue. California assesses an \$800 "doing business" tax against Arizona businesses and banks that conduct no real business in California, other than a passive investment in a California company. Since the "doing business" taxes are deductible, Arizona loses an estimated \$484,000 in tax revenue every year. According to Arizona's attorney general, Mark Brnovich, 13,300 Arizona-based LLCs pay about \$10.6 million a year in California taxes without having any presence in California.

This case obviously opens up a nasty can of worms related to interstate taxation and the concept of taxation without representation. As the National Taxpayers Union warned in an amicus brief: "California's cross-border seizure of funds from the bank accounts of Arizona residents amounts to casus belli in the classic sense of requiring collective self-defense. But unlike conventional cross-border raids that rely on physical mobilization, technological advances allow California to reach into Arizona bank accounts without physically traveling outside its own borders. This precedent, if allowed to stand, would allow any state with revenue aspirations to reach passive investors in every other state by using multistate banks as conduits for backdoor extractions."

In other words, this is exactly why we have a federal government and more specifically why the Constitution mandated that the Supreme Court mediate these disputes.

Instead, the Supreme Court dismissed Arizona's motion yesterday without offering any explanation. Now Arizona has no recourse but to sue in California state courts, which our Founders sought to avoid, for obvious reasons.

Justice Thomas, joined only by Justice Alito, tore into his colleagues for dismissing this case.

The Constitution establishes our original jurisdiction in mandatory terms. Article III states that, “[i]n all Cases . . . in which a State shall be [a] Party, the supreme Court shall have original Jurisdiction.” §2, cl. 2 (emphasis added). In this circumstance, “[w]e have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.” *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821) (Marshall, C. J., for the Court). Our original jurisdiction in suits between two States is also “exclusive.” §1251(a). As I have previously explained, “[i]f this Court does not exercise jurisdiction over a controversy between two States, then the complaining State has no judicial forum in which to seek relief.” *Nebraska v. Colorado*, 577 U. S. ___, ___ (2016) (opinion dissenting from denial of motion for leave to file complaint) (slip op., at 2). Denying leave to file in a case between two or more States is thus not only textually suspect, but also inequitable.

Well, indeed, the modus operandi of the federal courts these days is to “usurp what is not given” to them, while declining to exercise “the jurisdiction which is given.” It’s truly ironic to watch the federal courts insert themselves into all issues of internal order within a state where they doesn’t belong, be it life, marriage, election law, or internal economic issues. We have federal courts hearing cases that statute explicitly precludes them from hearing. We have federal courts abusing the rules of standing. And we have federal courts issuing injunctions outside the parties properly before the court.

Yet there is this erroneous perception that the federal courts reign supreme over the other branches and can usurp their power with impunity, when in fact the opposite is true. There can be no greater authority on this matter than Chief Justice Oliver Ellsworth, who served as the first Senate Judiciary Committee chairman and is often called “the father of the national judiciary.” Writing an opinion in a 1796 case, Ellsworth authoritatively asserted, “If Congress has provided no rule to regulate our proceedings, we cannot exercise an appellate jurisdiction; and if the rule is provided, we cannot depart from it.”

As Clarence Thomas wrote in a 2018 case, “When Congress strips federal courts of jurisdiction, it exercises a valid legislative power no less than when it lays taxes, coins money, declares war, or invokes any other power that the Constitution grants it.”

For example, Congress stripped the federal courts of all power to block deportations under “expedited removal,” but the courts are issuing injunctions anyway. There is no apparent will on the part of the Supreme Court to remove its inferior courts from this realm.

Yet when it comes to an interstate dispute, the one area where the high court *must* insert itself, plaintiffs are told to go to *the other state's court* for relief because the justices have washed their hands of the case. Truly a system upside down.

Perhaps, if the Supreme Court doesn't want to use its power where the Constitution *requires* it, Congress should negative its power in all the cases where that authority exists solely at the *discretion* of Congress.

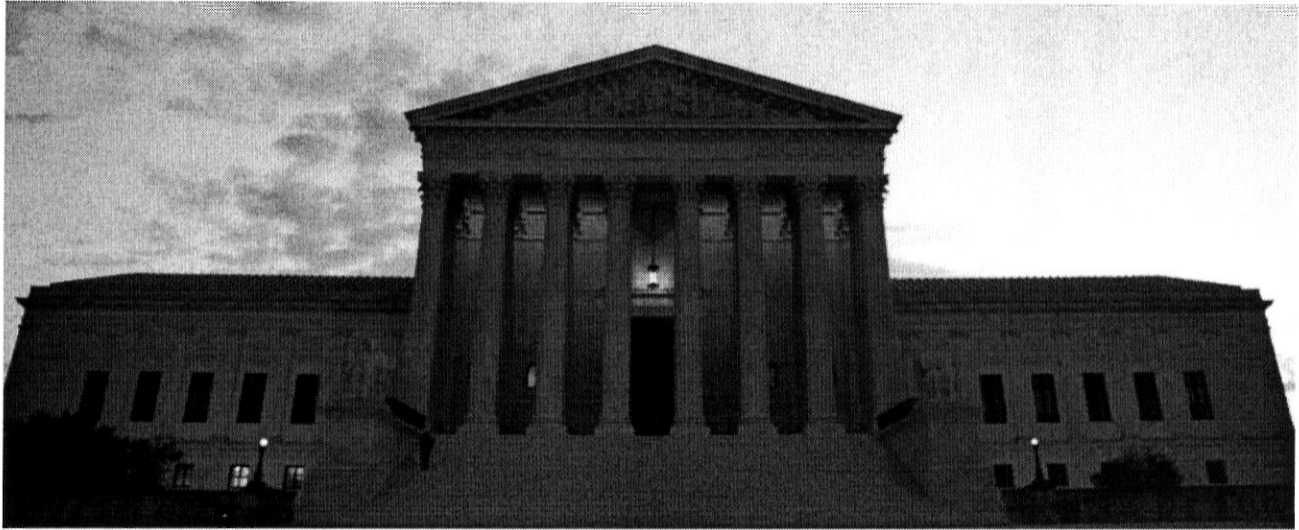
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[INTERNET SALES TAX LAWS](#)

The Supreme Court's Online Sales Tax Ruling Is Already a Huge Headache for Small Businesses

An overlooked ruling could force small businesses to pay sales tax in dozens, even hundreds, of jurisdictions where they have no representation.

ERIC BOEHM | 3.19.2019 10:00 AM



When he started selling race car equipment 40 years ago, Chris Heitman never imagined that he'd have to learn which states charge sales tax for fireproof underwear.

"Is it clothing? Is it specialized equipment? That's the question," he says. And since the answer isn't always clear, he errs on the side of charging the tax—better to overcharge a customer than to face the wrath of the taxman, after all.

Heitman and his wife, Carla, have been running [Pegasus Auto Racing Supplies](#) since they founded the company back in 1980, out of a two-story building in New Berlin, Wisconsin. Until last year, that meant Heitman was responsible for collecting and paying sales taxes to exactly one place: the Wisconsin Department of Revenue. But thanks to an under-the-radar ruling from the U.S. Supreme Court in June, he's now receiving letters, phone calls, and emails from revenue officials across the country, each wanting a piece of his business.

The source of Heitman's frustrations is [Wayfair v. South Dakota](#), which allowed states to collect sales taxes from online businesses located beyond their borders. Many states view the *Wayfair* ruling as a potential tax revenue windfall in which the taxes are paid by non-residents who can't vote against them. That's why businesses like Heitman's are now facing the chilling prospect of owing taxes in dozens, and possibly hundreds, of different jurisdictions—while being hounded by out-of-state tax collectors.



Image courtesy Chris and Clara Heitman

Since the Supreme Court issued its ruling in June, Heitman has been scrambling to become compliant with tax commissions and revenue departments from coast to coast. He's spent thousands of dollars on new software to help navigate the complexities of state sales tax law, but that's only been so much help. "It almost seems like I have another full time job dumped on me with this sales tax thing," he says. "It's burning me out."

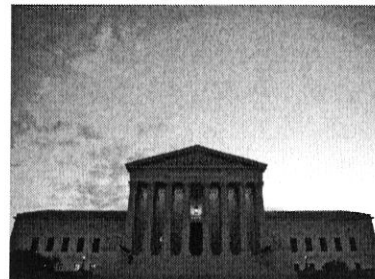
As the 2019 tax season begins, states are ramping up efforts to squeeze extra revenue out of remote retailers like Heitman, putting an expensive new burden on businesses that have found broad customer bases online. The burden is particularly large in the five U.S. states that charge no sales tax, where entrepreneurs could now be charged with paying a tax they have never had to pay before, to a government over which they have no voice. And while Congress could clean up the Supreme Court's mess, it's far from certain that it will.

The Supreme Court Overturns a Sales Tax Precedent

The question of whether states can charge taxes on out-of-state goods predates the U.S. Constitution. In fact, it's one of the primary reasons it came into being in 1787.

The Articles of Confederation allowed each state to set its own rules for cross-border trade, creating barriers to interstate commerce. The Constitution thus gave the federal government explicit control over interstate commerce. In Federalist 42, James Madison said this was necessary, because otherwise states "would nourish unceasing animosities, and not improbably terminate in serious interruptions of the public tranquility."

In the decades that followed, various Supreme Court rulings developed into a legal doctrine known as the "dormant Commerce Clause." This assumes the Constitution forbids state-level policies that limit the free flow of commerce. That rationale was the basis of *Quill Corp v. North Dakota*, a 1992 Supreme Court ruling blocking North Dakota from collecting sales tax from a catalog-based office retailer that sold goods to other businesses in the state, but that did not have a physical location in North Dakota.



BIM YOUNG/REUTERS/Newscom

Last year, South Dakota succeeded where North Dakota had failed. At the root of the *Wayfair* case was a South Dakota law claiming that the state had the authority to collect sales tax from any business that made at least 200 transactions or \$100,000 in sales into South Dakota in a single year. The Supreme Court upheld that law, and ruled that the 1992 North Dakota ruling was "unsound and incorrect," as Justice Anthony Kennedy put it in the majority opinion—the last that he would author before retiring in July.

The earlier *Quill* ruling, he wrote, had become "a judicially created tax shelter for businesses that decide to limit their physical presence and still sell their goods and services to a state's consumers—something that has become easier and more prevalent as technology has advanced." The 5-4 majority cut across the Supreme Court's usual ideological lines, with Ruth Bader Ginsburg joining conservative justices Clarence Thomas, Samuel Alito, Neil Gorsuch, and the moderate Kennedy in support of South Dakota's law.

The court's liberal wing, minus Ginsburg, joined Chief Justice John Roberts' dissenting opinion, which largely agreed with Kennedy that *Quill* was decided incorrectly, but insisted it was Congress' duty to fix that problem.

"By suddenly changing the ground rules, the Court may have waylaid Congress' consideration of the issue," Roberts wrote. States had been petitioning Congress for years to change the rules for interstate sales taxes, but Roberts worried that an abrupt change of direction ordered by the courts would steer state efforts towards "securing new tax revenue from remote sellers."

A Ruling Both "Sweeping and Vague"

In the months since the *Wayfair* ruling, Roberts' concerns have been vindicated. The ruling was both "sweeping and vague," says Andrew Moylan, vice president of the National Taxpayers Union Foundation, a nonprofit that advocates for lowering taxes. "The result is that there's an enormous amount of gray area that states, businesses, and policy experts are trying to define in the face of very thin guidance from the Court."

The most important of those gray areas is the question of when a business is considered to have done enough business in a certain state to owe sales tax there. The South Dakota law that was the basis of the *Wayfair* case specifies a threshold of 200 transactions or \$100,000 worth of sales. That's a high enough threshold to exempt most small businesses and online sellers from owing sales taxes to South Dakota. But using the same standards in a state with a lot more potential buyers—California, for example, whose economy is more than 50 times larger than South Dakota's—has the potential to ensnare many more businesses.

With no clear instruction from the federal government, states have quickly stepped up to fill in their own. Days after the ruling, lawmakers in New Jersey introduced a bill to hit out-of-state retailers with a 6.625 percent tax on sales into the state—and state lawmakers touted the potential for it to generate more than \$300 million in annual revenue.

In many cases, new legislation wasn't even required. In January, the New York Department of Taxation and Finance reinterpreted existing sales tax rules to cover any business that does more than \$300,000 of gross sales in the state or made 100 transactions with New York customers. The California Department of Tax and Fee Administrators announced in December that remote sellers will owe taxes if they do more than \$100,000 in California sales or have 200 transactions. The state expects to generate \$500 million from those new collections. Most other states have made similar changes to their laws or tax codes, or are now considering such changes.

It's not just states. In many places, counties and cities have their own sales taxes applied on top of the state rate. In the 45 states with sales taxes, there are more than 12,000 tax jurisdictions, says Moylan. Although it is unlikely that a small business would do enough sales in that many locations to hit the sales tax threshold, it's not impossible. Heitman does enough sales in California that he worries he could be on the hook for taxes in some of those local jurisdiction too—although he's not entirely sure.

"It almost seems like I have another full time job dumped on me with this s@

Determining where and what a business owes is its own burden, and the largest costs are born by medium-sized businesses like Heitmans. Bigger businesses are better able to handle the increased compliance costs created by *Wayfair*, and truly small businesses are unlikely to surpass the various sales thresholds to trigger tax collections—but for those in the middle, the sudden shift in the playing field is "hair-raising," says David Mittelstadt, a tax attorney from Chattanooga, Tennessee, and chairman of the Tennessee Bar Association's tax section.

The transaction limits are what will capture many of them, he predicts. "Because, you know, 200 sales when you're selling industrial turbines is one thing," says Mittelstadt. "If you're selling t-shirts, you could hit those thresholds at a very low volume of sales."

That's exactly what's facing Kenny Ballard, CEO of The Mountain, a New Hampshire-based company that sells T-shirts online—including the internet-famous shirt featuring three wolves howling at the Moon. At approximately \$25 per shirt, 200 sales into a certain state is a mere \$5,000 in revenue for Ballard's company but would be enough to trigger tax obligations, cutting into profits and requiring new expenditures on reporting and compliance.

For business owners, the challenge isn't just determining *if* they owe, it's determining *what*. State sales tax codes are notoriously complex, and no two are exactly alike. In Pennsylvania, for example, most clothing is exempt from the state's 6 percent sales tax—unless it is considered formalwear or recreational equipment. In practice, that means a pair

of gloves would not be taxed, except if it's considered skiing equipment, in which case the exact same pair of gloves *would* be taxed. New York taxes Yoo-hoo, a milky, chocolatey drink—but not chocolate milk. Coffee is not subject to sales tax in Colorado, but you will be charged tax if you get a to-go cup with a lid, which is considered "nonessential packaging" under state law.

That's why Heitman spends a lot of time thinking about the tax status of fireproof underwear, but he's hardly alone. Micro-retailers operating through marketplace sites like Etsy, for example, sell all variety of handmade items—from homemade moccasins to unicorn fluff. Adding to the confusion, transactions of non-taxable goods in some states still count towards the overall transaction threshold that determines whether a seller has to pay taxes. Since the *Wayfair* ruling, Etsy has updated its seller handbook to keep users aware of the shifting playing fields, and the platform is now collecting and paying sales taxes on behalf of users in states where the laws have changed.

For small businesses operating outside of an online marketplace, software can help navigate the complexity of suddenly having to understand thousands of different tax codes. But it's only so useful, and it can be expensive. Heitman says he paid \$6,000 for a program that calculates taxes owed based on buyers' ZIP codes, but it's also brought him additional frustration. "Some of the addresses cannot be validated," he says, recalling an order that was shipped to a building at Newark Airport. The address was rejected because it was not in the U.S. Postal Service database. "Apparently the Postal Service doesn't deliver there—but this was a large package shipped by UPS."

"It's just ridiculously time-consuming every month," he says.

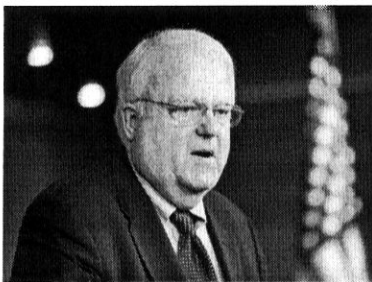
A Problem Fixed by Software—or Congress?

In writing the majority opinion in *Wayfair*, Justice Kennedy waved away some of Roberts' worries about how the court's abrupt overturning of the decades-old precedent would create chaos by pointing to the fact that computers could solve the mess—or that they would, maybe.

"Eventually, software that is available at a reasonable cost may make it easier for small businesses to cope with these problems," he wrote. And if that doesn't fix it, he added with one of the all-time great hand-waves in Supreme Court history: "In all events, Congress may legislate to address these problems if it deems it necessary and fit to do so."

So, will it?

Even before *Wayfair*, there were good reasons for congressional action on an issue that fits very squarely within the enumerated power of the federal government to regulate interstate commerce. In the wake of last year's Supreme Court ruling, congressional involvement now seems both more urgently needed and less likely to happen.



Bill Clark/CQ Roll Call/Newscom

One potential vehicle for resolving problems created by *Wayfair* is a bill sponsored by Rep. Jim Sensenbrenner (R-Wisc.), first introduced in October and likely to be re-introduced to the new session of Congress within the coming weeks. His bill, the Online Sales Simplicity and Small Business Relief Act, would add important specifics like prohibiting states from collecting out-of-state sales taxes on transactions that occurred before January 1, 2019, essentially giving businesses much-needed time to get up to speed on the new requirements without suddenly being hit with tax bills they weren't expecting.

Most important of all, the bill would create a \$10 million sales tax exemption for all small businesses that do not have a physical presence in a given state. That means upping the \$100,000 threshold in the South Dakota law that triggered the *Wayfair* case to a level far in excess of what a small business would have in sales—effectively removing the ability of states to target all but the largest of remote sellers.

"Small business owners, in particular, have shared fears that they will be unable to bear the new compliance burdens and may have to shutter their businesses," Sensenbrenner says. "I've heard from online sellers in Wisconsin and across the country who are concerned with the complexity of the post-*Wayfair* tax regime."

The bill is likely to have bipartisan support in the House this year, with Reps. Anna Eshoo (D-Calif.) and Zoe Lofgren (D-Calif.) lined up as co-sponsors, along with Rep. Jeff Duncan (R-S.C.).

But cities and states eyeing a windfall in new tax revenue are likely to organize against congressional action. Late last year, a coalition of groups including the Council of State Governments, National Association of Counties, and the United States Conference of Mayors sent [a letter](#) to Congress decrying efforts to "undermine" the *Wayfair* ruling.

States With No Sales Tax Fight Back

While many states likely will work to keep the *Wayfair* ruling, a smaller group are already organizing to fight its effects. No state is likely to fight harder than New Hampshire, which has a long track record of defending its residents from out-of-state tax collection.

In December 1976, the New Hampshire State Police literally arrested two agents from the Massachusetts Tax Commission. The agents had been staking out a parking lot in the small town of Hinsdale, barely five miles north of the Massachusetts border, looking for Massachusetts license plates as part of an effort by other New England states to crack down on tax-free cross-border holiday shopping. Unhappy with other states targeting shoppers and businesses in New Hampshire, Gov. Meldrim Thomson told the state police to keep an eye out for revenue agents—and to charge them with loitering if they were caught.

The two officers were released without charges, but the incident prompted the president of the Massachusetts State Senate to threaten—only probably in jest—to declare war on New Hampshire. The arrests were part of a long-simmering conflict between New Hampshire and its neighboring states over sales tax collection. Following *Wayfair*, New Hampshire has been moving to fortify itself once again.

"Our retailers don't have the infrastructure set up to collect sales taxes," says Nancy C. Kyle, president of the New Hampshire Retailers Association. "New Hampshire has chosen to balance its budget without the use of sales taxes, so making our businesses collect sales taxes for other states, that's just ludicrous."

So while other states hurried to legalize out-of-state tax collections in the wake of the *Wayfair* ruling last year, New Hampshire's lawmakers were rushing to the barricades. Gov. Chris Sununu called the state legislature into a special session to create a legislative task force to address the *Wayfair* ruling and issued an executive order telling the Department of Justice to monitor for tax collection activities by other states against New Hampshire businesses. "Our goal is basically to create every possible barrier that you can imagine, so that even if we are forced to do it, it would be really hard for any jurisdiction to try to do it," Sununu, a Republican, [told](#) the *Conway Daily Sun* at the time.

The state also set up [a website](#) inviting businesses to report collection efforts—although the website is clear that the state will not represent New Hampshire-based businesses if they are targeted by out-of-state revenue hounds.

"You can't let one state impose its law on another state. That's my real concern," says state Rep. Betty Gay (R-Rockingham). She's sponsoring [a bill](#) this year declaring the right of New Hampshire businesses to refuse to collect and remit sales tax to other states on the grounds that such a requirement would violate the state and federal constitution. Other bills would require out-of-state taxing authorities to comply with all New Hampshire revenue laws before being able to collect from in-state businesses, as well as force other states to reimburse New Hampshire businesses for any costs incurred.

It might not require the physical arrest of revenue offices, but New Hampshire public officials are doing everything short of standing at the border and daring other states to try it.

"It's part of our identity, and it's part of how we survive as a state," says Gay. Forcing New Hampshire businesses to collect sales taxes for other states would be "more than an inconvenience or an expense," she says. "It would be cutting us off at the knees."

They might get some help from Congress too. Last month, Sens. Jeanne Shaheen (D-N.H.), Maggie Hassan (D-N.H.), and Jon Tester (D-Mont.) teamed up to introduce [a bill](#) fully overturning the *Wayfair* ruling. Montana is another of the five states with no sales taxes (Alaska, Delaware, and Oregon are the other three).

"States like New Hampshire have a competitive advantage because of our lack of a sales or income tax," Hassan told *Reason*. "I'm deeply concerned that the backward Supreme Court ruling would threaten that advantage or inhibit economic growth by requiring small businesses to collect internet sales tax for other states."

It's familiar territory for Hassan. In 2009, as a member of the state House, she sponsored a bill to make it illegal for New Hampshire to share tax information with other states.

"There's something psychological about not having to pay a sales tax that people really enjoy. You have an 8 percent sale—no one is going to go to that. But to avoid paying the 8 percent sales tax, they'll drive up here to New Hampshire," says Kyle. "They feel like they are sticking it to the government."

"It's Going to Be Just Horrendously Expensive"

The days of paying no sales tax online in states like New Hampshire may feel good, but they are probably coming to an end. Even critics of the *Wayfair* ruling don't deny that the *Quill* decision—decided two years before Amazon.com existed, when mail order catalogs were the cutting edge of retail—was an anachronism. With e-commerce accounting for more than \$500 billion in sales during 2018, and certain to keep growing, it was really only a matter of time before states convinced Congress or the courts to let them have a larger slice of that pie.

It's up to Congress, then, to restrict overly aggressive state revenue departments, limit the confusion facing e-retailers of all sizes, and help small businesses that cannot afford the burden of dealing with hundreds of different taxing jurisdictions at once.

"It costs a lot just to have our accounting firm do our sales tax returns just for our home state of Wisconsin," says Heitman. "If I start having them do all these individual tax returns for all these states it's going to be just horrendously expensive."

State lawmakers and tax officials don't have much of an incentive to follow in New Hampshire's footsteps. In fact, the opposite is true. But even in the absence of federal legislation, state policymakers should be careful not to break the Golden Rule. "Do unto residents of other states as you would have those states do to your residents," says Bartlett Cleland, a vice president of the American Legislative Exchange Council. In the rush to squeeze cash from other states, lawmakers might end up encouraging more aggressive raiding of their own businesses, he warns.

That sounds a lot like what was happening during the Articles of Confederation. "I think a lot of this is a failure to appreciate history," says Cleland. "I don't think anybody is thinking about the very logical conclusions to these things."



Alex Edelman/CNP/AdMedia/SIPA/Newscom

If states wrote simple, flat tax requirement for out-of-state retailers, Heitman says that would help. Illinois, for example, has a flat rate of 6 percent for online sales taxes, which at least does away with confusion over what items are subject to tax. Better, he says, would be a federal law that exempts the first \$500,000 of sales into any state. That's the sales threshold that Texas set on January 1 when it announced it would start collecting taxes from remote sellers.

Until that happens, Heitman will have to keep trying to figure out whether Connecticut taxes fireproof underwear. "My wife, she can see that it's stressing me out. What do you do? Do you keep fighting it or just give up? I hate talking that way, but it's just frustrating."

ERIC BOEHM is a reporter at *Reason*.

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