

Court Permits States To Impose Sales Taxes On Online Retailers Under The Commerce Clause

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In prior cases going back to 1992, the Court had ruled that the Commerce Clause precluded States from imposing sales taxes on sellers who did not maintain a physical presence in the State. But then the Internet exploded, and online retailers like Amazon regularly sell products in the various States while eluding sales taxes. In [South Dakota v. Wayfair, Inc.](#), South Dakota passed a law to force online retailers to pay sales taxes, and asked the Court to reconsider its earlier precedent. In a 5-4 decision by Justice Kennedy, the Court overruled the physical presence requirement, deeming it flawed and not well-suited to the modern economy. Now, a State may tax an online retailer if it generally meets the same kind of substantial nexus that would enable the seller to be sued in the State under Due Process concerns. Justice Thomas filed a concurrence noting his regret that he did not earlier join Justice White's dissent opposing the physical presence requirement. Justice Gorsuch's concurrence noted his disagreements with some aspects of the majority's dormant Commerce Clause jurisprudence. Chief Justice Roberts, joined by Justices Breyer, Sotomayor, and Kagan, dissented, arguing that while the Court's prior precedent was wrongly decided, the development of E-commerce required a congressional fix to the problem, not a judicial one.

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