COMPTROLLER OF THE TREASURY OF MARYLAND

v. WYNNE ET UX.

CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

No. 13–485. Argued November 12, 2014—Decided May 18, 2015

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, and SOTOMAYOR, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined as to Parts I and II. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined except as to the first paragraph. GINSBURG, J., filed a dissenting opinion, in which SCALIA and KAGAN, JJ., joined.

This case involves the constitutionality of an unusual feature of Maryland's personal income tax scheme. Like many other States, Maryland taxes the income its residents earn both within and outside the State, as well as the income that nonresidents earn from sources within Maryland. But unlike most other States, Maryland does not offer its residents a full credit against the income taxes that they pay to other States. The effect of this scheme is that some of the income earned by Maryland residents outside the State is taxed twice. Maryland's scheme creates an incentive for taxpayers to opt for intrastate rather than interstate economic activity.

We have long held that States cannot subject corporate income to tax schemes similar to Maryland's, and we see no reason why income earned by individuals should be treated less favorably. Maryland admits that its law has the same economic effect as a state tariff, the quintessential evil targeted by the dormant Commerce Clause. We therefore affirm the decision of Maryland's highest court and hold that this feature of the State's tax scheme violates the Federal Constitution.

II

A

The Commerce Clause grants Congress power to "regulate commerce . . . among the several States." Art. I, § 8, cl. 3. These "few simple words . . . reflected a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." Hughes v. Oklahoma, 441 U. S. 322, 325–326 (1979). Although the Clause is framed as a positive grant of power to Congress, "we have consistently held this language to contain a further, negative command, known as the dormant Commerce Clause, prohibiting certain state taxation

even when Congress has failed to legislate on the subject." Oklahoma Tax Comm'n v. Jefferson Lines, Inc., 514 U. S. 175, 179 (1995).

This interpretation of the Commerce Clause has been disputed. See Camps Newfound/Owatonna, Inc. v. Town of Harrison, 520 U. S. 564, 609–620 (1997) (THOMAS, J., dissenting); Tyler Pipe Industries, Inc. v. Washington State Dept. of Revenue, 483 U. S. 232, 259–265 (1987) (SCALIA, J., concurring in part and dissenting in part); License Cases, 5 How. 504, 578–579 (1847) (Taney, C. J.). But it also has deep roots. See, e.g., Case of the State Freight Tax, 15 Wall. 232, 279–280 (1873); Cooley v. Board of Wardens of Port of Philadelphia ex rel. Soc. for Relief of Distressed Pilots, 12 How. 299, 318–319 (1852); Gibbons v. Ogden, 9 Wheat. 1, 209 (1824) (Marshall, C. J.). By prohibiting States from discriminating against or imposing excessive burdens on interstate commerce without congressional approval, it strikes at one of the chief evils that led to the adoption of the Constitution, namely, state tariffs and other laws that burdened interstate commerce. Fulton Corp. v. Faulkner, 516 U. S. 325, 330–331 (1996); Hughes, supra, at 325; Welton v. Missouri, 91 U. S. 275, 280 (1876); see also The Federalist Nos. 7, 11 (A. Hamilton), and 42 (J. Madison).

Under our precedents, the dormant Commerce Clause precludes States from "discriminat[ing] between transactions on the basis of some interstate element." Boston Stock Exchange v. State Tax Comm'n, 429 U. S. 318, 332, n. 12 (1977). This means, among other things, that a State "may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State." Armco Inc. v. Hardesty, 467 U. S. 638, 642 (1984). "Nor may a State impose a tax which discriminates against interstate commerce either by providing a direct commercial advantage to local business, or by subjecting interstate commerce to the burden of 'multiple taxation.'" Northwestern States Portland Cement Co. v. Minnesota, 358 U. S. 450, 458 (1959) (citations omitted).

B

Our existing dormant Commerce Clause cases all but dictate the result reached in this case by Maryland's highest court. *** In all *** of these cases, the Court struck down a state tax scheme that might have resulted in the double taxation of income earned out of the State and that discriminated in favor of intrastate over interstate economic activity. As we will explain, see Part II–F, infra, Maryland's tax scheme is unconstitutional for similar reasons.

C

The principal dissent distinguishes these cases on the sole ground that they involved a tax on gross receipts rather than net income. *** The discarded distinction between taxes on gross receipts and net income was based on the notion, endorsed in some early cases, that a tax on gross receipts is an impermissible "direct and immediate burden" on interstate commerce, whereas a tax on net income is merely an "indirect and incidental" burden. United States Glue Co. v. Town of Oak Creek, 247 U. S. 321, 328–329 (1918); see also Shaffer v. Carter, 252 U. S. 37, 57 (1920). This arid distinction between direct and indirect burdens allowed "very little coherent, trustworthy guidance as to tax validity." 2

Trost §9:1, at 212. And so, beginning with Justice Stone's seminal opinion in Western Live Stock v. Bureau of Revenue, 303 U. S. 250 (1938), and continuing through cases like J. D. Adams and Gwin, White, the direct-indirect burdens test was replaced with a more practical approach that looked to the economic impact of the tax. These cases worked "a substantial judicial reinterpretation of the power of the States to levy taxes on gross income from interstate commerce." 1 Trost §2:20, at 175.

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For its part, petitioner distinguishes J. D. Adams, Gwin, White, and Central Greyhound on the ground that they concerned the taxation of corporations, not individuals. But it is hard to see why the dormant Commerce Clause should treat individuals less favorably than corporations.

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Attempting to explain why the dormant Commerce Clause should provide less protection for natural persons than for corporations, petitioner and the Solicitor General argue that States should have a free hand to tax their residents' out-of-state income because States provide their residents with many services. As the Solicitor General puts it, individuals "reap the benefits of local roads, local police and fire protection, local public schools, [and] local health and welfare benefits." Brief for United States as Amicus Curiae 30.

This argument fails because corporations also benefit heavily from state and local services.

The sole remaining attribute that, in the view of petitioner, distinguishes a corporation from an individual for present purposes is the right of the individual to vote. The principal dissent also emphasizes that residents can vote to change Maryland's discriminatory tax law. Post, at 3–4.

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The principal dissent and JUSTICE SCALIA respond to these holdings by relying on dictum in Goldberg v. Sweet, 488 U. S. 252, 266 (1989), that it is not the purpose of the dormant Commerce Clause "'to protect state residents from their own state taxes.'" Post, at 3 (GINSBURG, J., dissenting); post, at 5 (SCALIA, J., dissenting). But we repudiated that dictum in West Lynn Creamery, Inc. v. Healy, 512 U. S. 186 (1994), where we stated that "[s]tate taxes are ordinarily paid by in-state businesses and consumers, yet if they discriminate against out-of-state products, they are unconstitutional." Id., at 203. And, of course, the dictum must bow to the holdings of our many cases entertaining Commerce Clause challenges brought by residents. We find the dissents' reliance on Goldberg's dictum particularly inappropriate since they do not find themselves similarly bound by the rule of that case, which applied the internal consistency test to determine whether the tax at issue violated the dormant Commerce Clause. 488 U. S., at 261.

D

[The dissent] confuses what a State may do without violating the Due Process Clause of the Fourteenth Amendment with what it may do without violating the Commerce Clause. The Due Process Clause allows a State to tax "all the income of its residents, even income earned outside the taxing jurisdiction." Oklahoma Tax Comm'n v. Chickasaw Nation, 515 U. S. 450, 462–463 (1995). But "while a State may, consistent with the Due

Process Clause, have the authority to tax a particular taxpayer, imposition of the tax may nonetheless violate the Commerce Clause." Quill Corp. v. North Dakota, 504 U. S. 298, 305 (1992) (rejecting a due process challenge to a tax before sustaining a Commerce Clause challenge to that tax).

There is no merit to petitioner's argument that Maryland is free to adopt any tax scheme that is not actually intended to discriminate against interstate commerce. Reply Brief 7. The Commerce Clause regulates effects, not motives, and it does not require courts to inquire into voters' or legislators' reasons for enacting a law that has a discriminatory effect. See, e.g., Associated Industries of Mo. v. Lohman, 511 U. S. 641, 653 (1994); Philadelphia v. New Jersey, 437 U. S. 617, 626– 627 (1978); Hunt v. Washington State Apple Advertising Comm'n, 432 U. S. 333, 352–353 (1977).

JUSTICE SCALIA, with whom JUSTICE THOMAS joins as to Parts I and II, dissenting.

I

The fundamental problem with our negative Commerce Clause cases is that the Constitution does not contain a negative Commerce Clause. It contains only a Commerce Clause. Unlike the negative Commerce Clause adopted by the judges, the real Commerce Clause adopted by the People merely empowers Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, §8, cl. 3. The Clause says nothing about prohibiting state laws that burden commerce. Much less does it say anything about authorizing judges to set aside state laws they believe burden commerce.

The clearest sign that the negative Commerce Clause is a judicial fraud is the utterly illogical holding that congressional consent enables States to enact laws that would otherwise constitute impermissible burdens upon interstate commerce. See Prudential Ins. Co. v. Benjamin, 328 U. S. 408, 421–427 (1946). How could congressional consent lift a constitutional prohibition? See License Cases, 5 How. 504, 580 (1847) (opinion of Taney, C. J.).

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II

The failings of negative Commerce Clause doctrine go beyond its lack of a constitutional foundation, as today's
decision well illustrates.

1. One glaring defect of the negative Commerce Clause is its lack of governing principle. Neither the Constitution nor our legal traditions offer guidance about how to separate improper state interference with commerce from permissible state taxation or regulation of commerce. So we must make the rules up as we go along. That is how we ended up with the bestiary of ad hoc tests and ad hoc exceptions that we apply nowadays, including the substantial nexus test, the fair apportionment test, and the fair relation test, Complete

Auto Transit, Inc. v. Brady, 430 U. S. 274, 279 (1977), the interest-on-state-bonds exception, Department of Revenue of Ky. v. Davis, 553
U. S. 328, 353–356 (2008), and the sales-taxes-on-mailorders exception, Quill Corp., supra, at 314–319.

The internal consistency rule invoked by the Court nicely showcases our ad hocery. Under this rule, a tax violates the Constitution if its hypothetical adoption by all States would interfere with interstate commerce.

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2. Another conspicuous feature of the negative Commerce Clause is its instability. Because no principle anchors our development of this doctrine—and because the line between wise regulation and burdensome interference changes from age to economic age—one can never tell when the Court will make up a new rule or throw away an old one. “Change is almost [the doctrine’s] natural state, as it is the natural state of legislation in a constantly changing national economy.”

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3. A final defect of our Synthetic Commerce Clause cases is their incompatibility with the judicial role. The doctrine does not call upon us to perform a conventional judicial function, like interpreting a legal text, discerning a legal tradition, or even applying a stable body of precedents. It instead requires us to balance the needs of commerce against the needs of state governments. That is a task for legislators, not judges.

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III

For reasons of stare decisis, I will vote to set aside a tax under the negative Commerce Clause if (but only if) it discriminates on its face against interstate commerce or cannot be distinguished from a tax this Court has already held unconstitutional. American Trucking Assns., 545 U. S., at 439 (SCALIA, J., concurring in judgment).