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Opinion | Best of the Web

When Will Washington Stop Helping Amazon? The Supreme Court gives the online giant a new advantage to squash potential competitors.

By James Freeman
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Just a few short years after the federal government [eliminated](#) Amazon's most formidable competition in book sales, Washington is now helping the tech giant prevent upstarts from challenging its position in electronic commerce.

Years from now Thursday's 5-4 *Wayfair* decision allowing state and local governments to force out-of-state retailers to collect taxes will be the one that Clarence Thomas, Samuel Alito and Neil Gorsuch regret the most. The other two Justices in support, Ruth Bader Ginsburg and Anthony Kennedy, will likely be less bothered by the disruption of commerce that is sure to result.

For decades the law has prevented America's 10,000 taxing authorities from imposing collection burdens on people with no physical presence in their jurisdictions. The court has now repealed that sensible standard and invited a million bureaucratic definitions to bloom. If Justices thought the physical-presence standard was arbitrary, wait until they get a look at the multitude of replacements that will begin oozing out of municipal revenue departments.

The idea that this is a restoration of federalism is a howler—states have never in the history of the republic enjoyed such power to hassle people outside their borders. The power to tax also means the power to impose reporting rules and the power to audit. Now state and city governments are free to impose burdens that crush distant small businesses and there will be no political accountability—because the tax collectors will be oppressing people with no representation in the abusive jurisdiction...

...Tonya Garcia at MarketWatch [notes the upside](#) for the reigning champion of online retailing:

Amazon already collects sales tax on its own goods. Experts say third parties and small businesses are the companies that will really be affected by the case.

"The smaller companies are going to have the problem," said Paul Graney, state and local tax leader at Marcum LLP, who notes the complexity in learning state tax rates and implementing a system for collecting the right amount... Details about who will now have to pay sales tax, how much and where still have to be worked out... As the issue is sorted out, Amazon could turn the ruling into a new revenue stream, according to Graney.

"It could be a boon for Amazon," he said, proposing that the company could say, "We'll start collecting the sales tax for you and we attach a fee."

Other companies with a marketplace, like [Walmart](#) Inc. could also go down this route, he said.

So the benefits extend from the largest online retailer all the way to the largest bricks-and-mortar retailer. Now they can both squeeze more revenue out of mom-and-pop online sellers. How did a decision that trashes long-established precedent, helps state and local tax departments and hurts small businesses at the expense of giant corporations ever get three conservative votes?

There may be no answer, but Congress must act immediately to write a new standard that gives potential competitors at least a fighting chance against Amazon...