

# LEGAL MEMORANDUM

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## Do Borders Matter? The Supreme Court Reviews Internet Sales Taxes

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### Abstract

*This month, the Supreme Court will hear a case dealing with whether states can require out-of-state retailers to collect sales taxes when their residents make a purchase online. The Court previously held in *Quill Corp. v. North Dakota* that retailers must have a physical presence in the state in order to be required to collect state sales tax. This case, involving a mail-order retailer, was decided years before online shopping existed. In 2016, South Dakota passed a law mandating that out-of-state retailers collect and remit sales tax, directly challenging the holding in *Quill*. The case at hand, *South Dakota v. Wayfair*, quickly made its way to the Supreme Court, which will decide whether *Quill* remains good law—and whether states may force businesses outside their borders to collect their taxes in the age of Internet shopping.*

### Introduction

On April 17, 2018, the Supreme Court of the United States will hear a case dealing with whether states can require out-of-state retailers to collect sales taxes when their residents make a purchase online. The Commerce Clause of the U.S. Constitution gives Congress the authority to regulate interstate commerce, and the dormant Commerce Clause prevents states from passing laws that discriminate against out-of-state retailers or otherwise unduly burden interstate commerce. The Court held in *Quill Corp. v. North Dakota* that retailers must have a physical presence in the state in order to be required to collect state sales tax. This case, involving a mail-order retailer, was decided years before online shopping existed, and now many states argue that they are missing out on billions of dollars in lost sales tax revenue.

### KEY POINTS

- In April, the Supreme Court will hear *South Dakota v. Wayfair*—and decide whether states may force businesses outside their borders to collect their taxes.
- The question is about the scope of a state's taxing authority. Should a distant state's tax code apply to a local seller, whose only connection with the state is through a shipping service?
- Proposals to overturn the physical presence standard in *Quill* and expand state taxing powers risk undermining foundational principles of competitive federalism while increasing compliance burdens on small businesses.
- Retailers should not be subject to mandates from states with which they have no physical connection and whose policymakers face no accountability for the tax and regulatory costs they impose.

This paper, in its entirety, can be found at <http://report.heritage.org/lm231>

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## Background

First enacted by Mississippi, state sales taxes have become a major source of revenue for state and local government budgets since the 1930s.<sup>1</sup> Today, 45 states and the District of Columbia impose state-wide sales taxes.<sup>2</sup> Thirty-eight states also have various local sales taxes resulting in more than 10,000 unique sales taxes, each with their own rates, rules, and definitions. In 2017, sales taxes were a \$386.2 billion cost to taxpayers, about 27 percent of all state and local revenue.<sup>3</sup>

Although sales taxes are thought of as being paid by consumers, retailers are the ones who are legally required to collect and remit the tax to the state. This system is simple when the buyer and seller are in the same place. Difficulties arise when requiring out-of-state sellers to collect taxes for another state.

Courts have long limited the power of state revenue collectors to force sellers in other jurisdictions to collect and remit their taxes. The Supreme Court, in its 1992 decision, *Quill Corp. v. North Dakota*, said that a state could only require the catalogue retailer to collect its sales tax if the business is physically present in the state, such as having a store or employees.<sup>4</sup> Two decades later, several states, led by South Dakota, claim that the Internet has fundamentally changed the nature of sales taxes. In *South Dakota v. Wayfair*, the Internet retailer argues that the state's physical borders should still constrain its taxing powers as they did in the days of mail-order catalogue sales.

The issue at hand in *Wayfair* is only superficially about e-commerce—just as *Quill* was not really about catalogue sales. The question is about the scope of a state's taxing authority. Should a distant state's tax code apply to a local seller, whose only connection with the state is through a shipping service?

The growth of e-commerce has increased remarkably, totaling \$452 billion for the U.S. in 2017. Still, this was less than 9 percent of all retail commerce.<sup>5</sup> As online commerce continues to grow, state

tax authorities increasingly see the limits imposed by *Quill* as imperiling their ability to maximize revenue collection. Brick-and-mortar retail businesses also worry about the perceived advantage granted to their online competitors selling similar products.

## Most Internet Retail Is Taxed

The political animus, which animates the so-called Internet sales-tax debate, is founded on a widespread belief that most Internet sales go untaxed. The tax-free Internet is a myth.

Online retailers tax the vast majority of purchases. A recent Government Accountability Office (GAO) report found that “state and local governments can, under current law, require remote sellers to collect about 75 to 80 percent of the taxes that would be owed if all sellers were required to collect tax on all remote sales at current rates.”<sup>6</sup> These results are corroborated by a recent survey that found that more than two-thirds of all consumers said they paid sales tax on their most recent online purchase.<sup>7</sup>

The largest online retailers are physically present in most states and thus collect sales taxes on most transactions. Wal-Mart and Apple, for example, have brick-and-mortar stores, which allow states to require tax collection on sales made into the state.<sup>8</sup> Amazon.com, the largest online retailer, accounting for almost half of all online retail sales, collects taxes in *every* state with a sales tax.<sup>9</sup> Most out-of-state e-commerce providers are small and medium businesses. A few of the larger providers, such as Wayfair and Overstock, are well known, but most providers are smaller individuals, like those selling unique and handmade items on Etsy.

The forgone state sales tax revenue due to *Quill*'s protections is relatively minor. The GAO estimates that state and local governments could raise taxes by between \$8 billion to \$13 billion a year if they could expand collection to out-of-state sellers (which is currently prohibited by *Quill*).<sup>10</sup> Such a tax increase is about 2 percent to 4 percent of state and local sales tax receipts and less than 1 percent of total receipts.<sup>11</sup> State efforts in California and New York to expand their sales taxes to online sellers have been marked by smaller than expected revenues.<sup>12</sup>

## The “Dormant” Commerce Clause and Out-of-State Retailers

The Commerce Clause of the Constitution grants Congress the authority to regulate commerce among

the states, acting “both as a power delegated to Congress and as a constraint upon state legislation.”<sup>13</sup> The Supreme Court has recognized that there is a negative command in the Commerce Clause—known as the dormant Commerce Clause—that bars states from passing laws that discriminate against out-of-state retailers or otherwise unduly burden interstate commerce. As the Court explained in *Gibbons v. Odgen*, this negative command fixed a problem that arose between the states under the Articles of Confederation. The dormant Commerce Clause prevents “the collection of a revenue from imposts and duties on imports and exports; or from a tonnage duty.”<sup>14</sup>

In *National Bellas Hess, Inc. v. Department of Revenue* (1967), the Court explained, “The very purpose of the Commerce Clause was to ensure a national economy free from such unjustifiable local entanglements.”<sup>15</sup> In *Bellas Hess*, the Court ruled that the Commerce Clause and the Due Process Clause of the Fourteenth Amendment prevent a state from forcing out-of-state mail-order retailers that lack a “minimum connection” to the state to collect taxes on purchases made by residents of the state. The Court noted the “sharp distinction... between mail order sellers with retail outlets, solicitors, or property within a State and those who do no more than communicate with customers in the State by mail or common carrier as part of a general interstate business.”<sup>16</sup> The Court concluded that it would be “difficult to conceive of commercial transactions more exclusively interstate in character” and “a domain where Congress alone has the power of regulation and control.”<sup>17</sup>

A decade later, in *Complete Auto Transit, Inc. v. Brady* (1977), the Court reviewed a challenge to a state tax on automobiles shipped into the state.<sup>18</sup> The Court upheld the tax, noting that the Commerce Clause does not “relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing business.”<sup>19</sup> The Court identified four requirements for determining whether a state tax “produces a forbidden effect”<sup>20</sup> on interstate commerce:

1. The tax “is applied to an activity with a substantial nexus with the taxing State”;
2. It “is fairly apportioned”;

3. It “does not discriminate against interstate commerce”; and
4. It “is fairly related to the services provided by the State.”<sup>21</sup>

Then, in *Quill Corp. v. North Dakota* (1992),<sup>22</sup> the Court heard another challenge involving a state’s attempt to force out-of-state mail-order retailers to collect sales tax. The North Dakota Supreme Court determined that the *Complete Auto* four-part test had replaced the earlier physical-presence requirement from *Bellas Hess*, noting “the tremendous social, economic, commercial, and legal innovations since 1967” made the earlier decision “obsole[te].”<sup>23</sup>

When *Quill* reached the U.S. Supreme Court, the Court acknowledged that its due process jurisprudence had “evolved substantially” between 1967 and 1992, “abandon[ing] formalistic tests that focused on a defendant’s ‘presence’ within a State in favor of a more flexible inquiry into... [its] contacts with the forum.”<sup>24</sup> But the Court upheld the physical-presence requirement of *Bellas Hess* based on the Commerce Clause, finding that this falls within the first step of the *Complete Auto* test. The Court explained, “a vendor whose only contacts with the taxing State are by mail or common carrier lacks the ‘substantial nexus’ required” by *Complete Auto* and the Commerce Clause.<sup>25</sup> Though it overruled the due process holding of *Bellas Hess*, the Court noted that the Due Process and Commerce Clauses “pose distinct limits on the taxing power of the States” and “reflect different constitutional concerns.”<sup>26</sup> The Court further noted, “No matter how we evaluate the burdens that use taxes impose on interstate commerce, Congress remains free to disagree with our conclusions.”<sup>27</sup> In a concurring opinion, Justice Antonin Scalia underscored this, writing, “Congress has the final say over regulation of interstate commerce, and it can change the rule of *Bellas Hess* by simply saying so.”<sup>28</sup>

Nearly 25 years later, in *Direct Marketing Association v. Brohl* (2015), the Court heard a case involving Colorado’s requirement that out-of-state retailers notify customers of their use-tax liability and report purchases to the state. Nine other states have adopted similar notice-and-reporting laws in an attempt to circumvent *Quill*.<sup>29</sup> Though the case did not involve a state’s attempt to require out-of-state retailers to collect sales tax, Justice Anthony Kennedy wrote a concurring opinion suggesting that, in light of the

“dramatic technological and social changes that ha[ve] taken place in our increasingly interconnected economy,” the “legal system should find an appropriate case for this Court to reexamine *Quill* and *Bellas Hess*,” which “now harm[] States to a degree far greater than could have been anticipated earlier.”<sup>30</sup>

### Arguments at the Supreme Court

The legal system quickly followed Justice Kennedy’s advice. In the spring of 2016, the South Dakota legislature passed S.B. 106 to remedy the state’s “inability to effectively collect [sales tax] from remote sellers who deliver tangible personal property, products transferred electronically, or services directly into South Dakota.”<sup>31</sup> The law mandates that any out-of-state retailer that lacks a physical presence in the state “shall remit the sales tax and shall follow all applicable procedures and requirements of law” if it makes at least 200 sales transactions or has a gross revenue of more than \$100,000 in sales within the state.<sup>32</sup> The legislature indicated that the law would not apply retroactively to previous sales and that its requirements “would be appropriately stayed by the courts until the constitutionality of this law has been clearly established by a binding judgment, including...a decision from the Supreme Court of the United States abrogating its existing doctrine.”<sup>33</sup> Six states have adopted laws similar to South Dakota’s S.B. 106.<sup>34</sup>

Shortly thereafter, the state filed an action in state court against Wayfair, Overstock.com, and Newegg for failure to comply with S.B. 106.<sup>35</sup> The court ruled for the retailers. On appeal, the South Dakota Supreme Court affirmed, finding that this situation was indistinguishable from *Quill* and that the state could not “impose a valid obligation on [the retailers] to collect and remit sales tax...because none of them had a physical presence in the state.”<sup>36</sup> That court concluded that “[h]owever persuasive the State’s arguments” may be, it was bound to follow *Quill* because only the U.S. Supreme Court has “the prerogative of overruling its own decisions.”<sup>37</sup> South Dakota petitioned the U.S. Supreme Court for review, asking the Court to overrule *Quill*’s “sales-tax-only, physical-presence requirement.”

In its brief, South Dakota argues that *Quill* and *Bellas Hess* are outliers and should be overruled. It asserts that what makes a seller “‘present’ in our States and in our lives...now has little to no relationship with where that seller inhabits a

brick-and-mortar building, and much more to do with their [sic] scale or economic presence in the forum.”<sup>38</sup> The “physical-presence test,” the state maintains, “now consistently reaches those who are present in physical but trivial ways and ignores those who are present in non-physical but meaningful ways.”<sup>39</sup> South Dakota argues that even under the doctrine of *stare decisis*—guideposts for when the Court will overrule a past decision or invoke the doctrine (“to stand by things decided”) to uphold that decision—there are sufficient justifications, including changed circumstances and a lack of workability, for overturning both *Quill* and *Bellas Hess*.<sup>40</sup> The United States filed an *amicus curiae* brief in support of South Dakota, arguing that the Court should not extend the physical presence standard to e-commerce, which allows out-of-state retailers to “establish a pervasive and continuous presence...available to every state resident 24 hours a day...even in States where they have no employees or physical property.”<sup>41</sup>

Wayfair and the other respondents argue that the Court should retain the physical presence standard because “in short, borders matter.”<sup>42</sup> The retailers explain, “What occurs inside a state’s borders has always been the critical foundation for a state’s taxing and regulatory authority.”<sup>43</sup> They maintain that in deciding *Quill*, the Court “did not misunderstand the clear economic calculus before it. Rather, it made a considered judgment that the aggregate burdens of nationwide sales tax collection, and their impact on the national economy, justified the retention of the physical presence rule.”<sup>44</sup> Further, the underlying rationale for *Quill* is “the recognition that nationwide sales tax compliance would unduly burden remote sellers engaged in interstate commerce, and damage the national economy as a result.”<sup>45</sup> The physical presence rule “minimizes those burdens and serves to promote a national market in which new entrants do not face unreasonable barriers to entry, small and medium companies can reach consumers throughout the country, and larger players are not subject to inconsistent and excessive regulation in hundreds or thousands of jurisdictions.”<sup>46</sup> The respondents conclude that Congress, not the Court, should be responsible for deciding whether and to what extent to change the physical presence rule.

### Compliance Costs and Federalism

Proposals to overturn the physical presence standard in *Quill* and expand state taxing powers risk

undermining foundational principles of competitive federalism while increasing compliance burdens on small businesses.

Permitting interstate tax collection would undermine local business owners' ability to vote on tax laws that affect them. Without a physical presence standard, local Oregon e-retailers would suddenly have to comply with every sales tax law in over 10,000 state and local taxing jurisdictions. If states wish to impose costs on retailers within their borders, they should be able to do so. However, retailers should not be subject to mandates from states with which they have no physical connection—and whose policymakers face no accountability for the tax and regulatory costs they impose.

Interstate taxation would also introduce a new disparity. Local brick-and-mortar stores have only the compliance burden of their state and local tax systems. Expanded interstate taxes would subject remote sellers to tax systems in *every state* in which they have a customer. The compliance burdens for online retailers could be prohibitively expensive. Even with new technology solutions and simplified state sales taxes, the cost of new tax software, compliance and liability costs, claims by tax-exempt customers, inquiries from tax authorities, and time to address the inevitable glitches are overwhelming costs to small businesses.<sup>47</sup>

The physical presence standard preserves the natural limits of state revenue collectors and protects out-of-state retailers from undue compliance burdens. Internet vendors should be taxed on an equal footing with brick-and-mortar retailers—at the “origin of sale.”<sup>48</sup> Because legislators have enlisted businesses as their tax collectors, the tax collection is best tied to the business location.

### Remote Transactions Parity Act

For decades, critics have worked to rollback limits on interstate taxes through various congressional proposals to overturn *Quill*.<sup>49</sup>

The Remote Transactions Parity Act of 2017 (H.R. 2193) (RTPA) is the most recent proposal to move towards a “destination based” sales tax under which businesses are required to collect sales taxes based on where their customers live. The proposals abolish *Quill*'s physical presence standard and require businesses in states across the country—including those without a sales tax—to collect and remit taxes in every state to which they ship.

The RTPA incentivizes states to simplify their sales tax systems by only authorizing the new taxing powers for states that sign an interstate compact known as the Streamlined Sales and Use Tax Agreement or take certain specified steps to independently streamline sales tax rules. The bill also includes an exemption for some small businesses to reduce compliance burdens, but it does not apply to small sellers who use electronic marketplaces like eBay to access their customers.<sup>50</sup>

In May of 2013, the Senate passed a similar bill, the Marketplace Fairness Act (MFA).<sup>51</sup> The bill did not advance in the more tax-averse House of Representatives.<sup>52</sup>

Another proposal by House Judiciary Chairman Bob Goodlatte (R-VA), titled the Online Sales Simplification Act of 2016, attempted to back off the heavy-handed, destination-based approach under the MFA and the RTPA.<sup>53</sup> Under Goodlatte's proposal, the tax base would be set by the seller's home state, and the tax rate would be set by the buyer's home state. Each state would be required to set a single tax rate for this purpose, rather than have retailers sort through the multitude of local rates that otherwise would apply.<sup>54</sup>

Under each of the proposals discussed above, retailers in states without a sales tax would face a regulatory burden that their own state specifically declined to impose. Any federally required obligation to levy other jurisdictions' local taxes is a dangerous extension of the reach of state tax collectors.

### Conclusion

The Supreme Court should be guided by Justice Scalia's concurring opinion in *Quill*, in which he wrote, “Congress has the final say over regulation of interstate commerce, and it can change the rule of *Bellas Hess* by simply saying so.”<sup>55</sup> The Court knows well that Congress's actions can affect pending cases. Indeed, this happened in another case this term, *United States v. Microsoft*, a challenge to the government's ability to access electronic communications stored outside the borders of the United States pursuant to the Stored Communications Act of 1986. While the case was pending, Congress passed the CLOUD Act, which amended the earlier law and made the case moot. The justices are likely aware that Congress is currently looking at the very issue presented in *South Dakota v. Wayfair*.

Upholding the *Quill* physical-presence test promotes certainty for businesses that worry about the

costs of a complying with every state tax code and continues to give Congress space to determine the best path forward.

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## Endnotes

1. Portions of this brief draw heavily from James L. Gattuso, *Taxing Online Sales: Should the Taxman's Grasp Exceed His Reach?* HERITAGE FOUNDATION BACKGROUNDER No. 2817 (June 19, 2013), <http://www.heritage.org/taxes/report/taxing-online-sales-should-the-taxmans-grasp-exceed-his-reach>.
2. A 46th state, Alaska, has locally imposed sales taxes, but no statewide levy. Delaware, Montana, New Hampshire, and Oregon have no sales taxes.
3. U.S. CENSUS BUREAU, QUARTERLY SUMMARY OF STATE & LOCAL TAX REVENUE: QUARTER FOUR, TABLE 1, [HTTPS://WWW.CENSUS.GOV/DATA/TABLES/2017/ECON/QTAX/HISTORICAL/Q4.HTML](https://www.census.gov/data/tables/2017/econ/QTAX/HISTORICAL/Q4.HTML) (table showing national totals of state and local tax revenue by type of tax) (accessed April 3, 2018).
4. 504 U.S. 29 (1992).
5. U.S. Census Bureau News, *Quarterly Retail E-Commerce Sales, 4th Quarter 2017* (Feb. 16, 2018), <https://www2.census.gov/retail/releases/historical/ecommm/17q4.pdf>.
6. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-114, STATES COULD GAIN REVENUE FROM EXPANDED AUTHORITY, BUT BUSINESSES ARE LIKELY TO EXPERIENCE COMPLIANCE COSTS (Nov. 2017), <https://www.gao.gov/assets/690/688437.pdf> (accessed April 2, 2018) [hereinafter GAO Report].
7. Don Davis, *Sales Tax Is Less of a Factor In Online Shoppers' Buying Decisions*, DIGITAL COMMERCE 360 (Aug. 9, 2016), <https://www.digitalcommerce360.com/2016/08/09/sales-tax-less-factor-online-shoppers-purchases/>.
8. Jeffrey A. Eisenach and Robert E. Litan, *Uncollected Sales Taxes on Electronic Commerce: A Reality Check*, EMPIRIS LLC (Feb. 2010), <https://netchoice.org/wp-content/uploads/eisenach-litan-e-commerce-taxes.pdf>.
9. Amazon does not collect sales tax on transactions with third-party vendors. Chris Isidore, *Amazon To Start Collecting State Sales Taxes Everywhere*, CNNTECH (Mar. 29, 2017), <http://money.cnn.com/2017/03/29/technology/amazon-sales-tax/index.html>; BI Intelligence, *Amazon Accounts For 43% of US Online Retail Sales*, BUSINESS INSIDER (Feb. 3, 2017), <http://www.businessinsider.com/amazon-accounts-for-43-of-us-online-retail-sales-2017-2>.
10. GAO Report, *supra* note 6.
11. *Id.* This also includes the author's calculations.
12. Korey Clark, *SNCF Spotlight: Online Sales Tax Push Continues Despite Disappointing Returns*, STATE NET CAPITOL JOURNAL, Vol. XXI, No. 7 (March 11, 2013), <https://www.lexisnexis.com/legalnewsroom/corporate/b/business/archive/2013/03/08/online-sales-tax-push-continues-despite-disappointing-returns.aspx>.
13. Heritage Guide to the Constitution, art. I, sect. 8, cl. 3, *available at* <https://www.heritage.org/constitution/#!/articles/1/essays/38/commerce-among-the-states>.
14. 22 U.S. (9 Wheat.) 1, 236 (1824); *see also* *Welton v. Missouri*, 91 U.S. 275 (1875); *Pike v. Church*, 397 U.S. 137 (1970).
15. 386 U.S. 753, 760 (1967).
16. *Id.* at 759.
17. *Id.* at 759-60.
18. 430 U.S. 274 (1977).
19. *Id.* at 288.
20. *Id.* at 288.
21. *Id.* at 279.
22. 504 U.S. 298 (1992).
23. *North Dakota v. Quill Corp.*, 470 N.W.2d 203, 208 (1991).
24. *Quill*, 504 U.S. at 307.
25. *Id.* at 311.
26. *Id.* at 305.
27. *Id.* at 318.
28. *Id.* at 320 (Scalia, J., concurring in the judgment).
29. Joseph Bishop-Henchman, *Should Congress Act Before SCOTUS On Online Sales Taxes?* TAX FOUNDATION FISCAL FACT No. 579 (March 13, 2018), <https://taxfoundation.org/congress-act-scotus-online-sales-taxes/>.
30. *Direct Marketing Association v. Brohl*, 135 S. Ct. 1124, 1135 (2015) (Kennedy, J., concurring). On remand to the U.S. Court of Appeals for the Tenth Circuit, then-Judge Neil Gorsuch wrote a concurring opinion highly critical of the validity of *Bellas Hess* and *Quill*.
31. S.D. Codified Law § 10-64-1(1).
32. S.D. Codified Law § 10-64-2.
33. S.D. Codified Law § 10-64-1(10).

34. Indiana, Maine, North Dakota, Vermont, and Wyoming. See Bishop-Henchman, *supra* note 29.
35. A fourth defendant, Systemax Inc., agreed to comply with the law and was dismissed from the lawsuit.
36. South Dakota v. Wayfair Inc., 901 N.W.2d 754, 760 (2018).
37. *Id.* at 761.
38. Petitioner's Brief at 29, South Dakota v. Wayfair, Inc. (No. 17-494).
39. *Id.* at 30.
40. *Id.* 51-58.
41. Brief for the United States as Amicus Curiae Supporting Petitioner at 9, South Dakota v. Wayfair, Inc. (No. 17-494).
42. Respondents' Brief at 11, South Dakota v. Wayfair, Inc. (No. 17-494).
43. *Id.*
44. *Id.* at 25.
45. *Id.* at 41.
46. *Id.*
47. GAO Report, *supra* note 6.
48. Adam D. Thierer and Veronique de Rugy, *The Internet Tax Solution: Tax Competition, Not Tax Collusion*, CATO POLICY ANALYSIS No. 494 (Oct. 23, 2003), <https://www.cato.org/publications/policy-analysis/internet-tax-solution-tax-competition-not-tax-collusion>.
49. Adam D. Thierer, *The NGA's Misguided Plan to Tax the Internet and Create a New National Sales Tax*, HERITAGE FOUNDATION BACKGROUNDER No. 1343 (Feb. 4, 2000), [http://thf\\_media.s3.amazonaws.com/2000/pdf/bg1343es.pdf](http://thf_media.s3.amazonaws.com/2000/pdf/bg1343es.pdf).
50. Remote Transactions Parity Act of 2017, H.R.2193, 115th Cong. (2017), *available at* <https://www.congress.gov/bill/115th-congress/house-bill/2193>.
51. Marketplace Fairness Act of 2013, S.743, 113th Cong. (2013), *available at* <https://www.congress.gov/bill/113th-congress/senate-bill/743>.
52. Marketplace Fairness Act of 2013, H.R.684, 113th Cong. (2013), *available at* <https://www.congress.gov/bill/113th-congress/house-bill/684/actions>.
53. Online Sales Simplification Act of 2016; *available at* <http://www.rstreet.org/wp-content/uploads/2016/08/082516-Draft-Language.pdf> (accessed April 9, 2018) (draft bill).
54. James L. Gattuso, *Goodlatte's Internet Sales Tax Plan Is Better, But Still Falls Short*, HERITAGE FOUNDATION (Aug. 29, 2016), <https://www.heritage.org/government-regulation/commentary/goodlattes-internet-sales-tax-plan-better-still-falls-short>.
55. *Quill*, 504 U.S. at 320 (Scalia, J., concurring).