



## **Eight Groups Support Supreme Court Consideration of Moore v. United States**

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March 30, 2023

The Moores’ Supreme Court challenge to an unprecedented tax—a tax which the government labels a income tax, but is actually a property tax—received a major boost on Monday. Eight different organizations filed briefs in support of Supreme Court consideration of the Moores’ case.

Here are some excerpts from those briefs:

The Americans for Tax Reform brief carefully explains why the tax that the Moores faced was not an income tax. The brief explains: (1) contemporary dictionary definitions when the Sixteenth Amendment was ratified, (2) contemporary legal authorities, (3) the textual context of the amendment, (4) pre-ratification case law, (5) contemporary state law, (6) the first federal laws implementing the income tax, (7) the problems with a wealth tax as expressed when the Sixteenth Amendment was ratified, (8) and the Supreme Court’s interpretation of “income” under the Sixteenth Amendment. The brief finds that “the Ninth Circuit has now subjected over 66 million Americans to an unconstitutional wealth tax and has invited Congress to adopt similarly unconstitutional proposals.” The brief urges the Supreme Court to consider the case as it “raises an issue of immediate and exceptional national significance concerning Congress’s taxing power, and the law would benefit from this Court’s clarification.”

The Buckeye Institute also noted that the Ninth Circuit decision conflicts with both the text and Supreme Court precedent. Its brief highlighted how the Ninth Circuit’s decision will ultimately harm everyday Americans, including the “stock held by millions of Americans in their retirement and investment accounts.” Such “shareholders are functionally no different than the Moores—minority investors who do not have the power

to require a payment.” But even beyond this: “[u]nder the Ninth Circuit’s reasoning, however, Congress *could* impose an unapportioned tax on farmers or other landowners for unrealized appreciation to their property.” “Yet in that scenario the farmer has not realized any gain or received any new income—he has simply gained additional tax liability.” The result is that “[s]ome, perhaps many, would be faced with the prospect of selling or otherwise losing their property.”

The Cato Institute filed a brief noting how unprecedented this tax was. It recognized that the Mandatory Repatriation Tax creates a kind of fictional dividend – but being a fiction, it’s a tax on something the taxpayer never received. According to Cato, “the Ninth Circuit severely misread this Court’s decision in *Horst*.” This is because “If realization were not a requirement for income tax at all [as the Ninth Circuit claimed], the Court would not have explained at length why the father realized income by the act of giving the gift.” “The novelty and significance of both the Mandatory Repatriation Tax, and the Ninth Circuit’s reasoning in upholding the tax, call for this Court’s review.”

Landmark Legal Foundation argued that “This case concerns whether Congress can redefine the text of the Sixteenth Amendment so that the Apportionment Clause and Direct Tax Clause are effectively removed from the Constitution.” “Taken to its logical end, the Ninth Circuit would free Congress from nearly all constitutional restraints on the taxing power.”

The Manhattan Institute for Policy Research and Professors Erik M. Jensen and James W. Ely filed a brief arguing that the Ninth Circuit “ignores the text, history, and tradition of the Constitution’s taxation provisions and announces a new and expansive definition of income with troubling practical implications.” They argued that “[b]y contorting the meaning of ‘income’ beyond recognition, the opinion opens the door to a federal taxation of wealth and property that would have been odious to the Founders and the ratifiers of the Sixteenth Amendment alike.”

The Pacific Research Institute, along with Professor Hank Adler, focused on how “even the heightened prospect of the federal government exercising the newly expanded authority created by the Ninth Circuit will cause substantial economic uncertainty.” This is why the Institute believes the Court needs to take this case now rather than wait for future harm. “Even the mere possibility of such taxes now being on the table to sate the federal government’s seemingly uncontrollable appetite for spending would likely add uncertainty and fear into an already jittery market and banking system.”

Southeastern Legal Foundation focused on history, text, and precedent. For instance, the amendment requires that income be “derived” from a “source.” The brief concludes that “[t]he decision below leaves Petitioners on the hook for thousands of dollars in income taxes despite not having received any income.”

The United States Chamber of Commerce, representing millions of businesses around the country, discussed the harm that the Ninth Circuit decision would cause to the economy. The Chamber notes that businesses can only invest when there is certainty in the legal rules. Otherwise, not only do companies have to hire lawyers, accountants, and other experts, they also need to act far more cautiously; these defensive precautions harm consumers. Forcing a small or startup company to pay out dividends early to pay such taxes starves such businesses of the capital they need to grow.

The Chamber's deadpan account of the Ninth Circuit's decision is especially worth reading:

“[H]ere is how the court of appeals analyzed the novel statute's constitutionality:

The Sixteenth Amendment allows the federal government to tax income without apportionment. *Id.* at 11.

Income is difficult to define. *Id.*

Realization of income is not a constitutional requirement. *Id.* at 12.

Taxable gains are construed broadly and are not always shielded by the corporate form. *Id.* at 12– 13.

The MRT is thus constitutional. *Id.* at 13–14.

Nowhere in that reasoning did the court explain what income actually is, much less how the Moores' business interest, undisputedly lacking any realization, can still qualify as income.”

Each of these briefs underscores why this case is so essential for the Supreme Court to consider. Such extensive support further demonstrates how the Ninth Circuit decision would cause substantial harm throughout the country if allowed to stand without review. We look forward to the Supreme Court's decision about whether to hear this case.