SUPREME COURT OF THE UNITED STATES

No. 91–194

QUILL CORPORATION, PETITIONER *v.* NORTH DAKOTA BY AND THROUGH ITS TAX COMMISSIONER, HEIDI HEITKAMP

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH DAKOTA

[May 26, 1992]

JUSTICE SCALIA, with whom JUSTICE KENNEDY and JUSTICE THOMAS join, concurring in part and concurring in the judgment.

National Bellas Hess, Inc. v. *Department of Revenue of Ill.*, 386 U. S. 753 (1967), held that the Due Process and Commerce Clauses of the Constitution prohibit a State from imposing the duty of use-tax collection and payment upon a seller whose only connection with the State is through common carrier or the United States mail. I agree with the Court that the Due Process Clause holding of *Bellas Hess* should be overruled. Even before *Bellas Hess*, we had held, correctly I think, that state regulatory jurisdiction could be asserted on the basis of contacts with the State through the United States mail. See *Travelers Health Assn.* v. *Virginia ex rel. State Corp. Comm'n*, 339 U. S. 643, 646–650 (1950) (Blue Sky laws). It is difficult to discern any principled basis for distinguishing between jurisdiction to regulate and jurisdiction to tax. As an original matter, it might have been possible to distinguish between jurisdiction to tax and jurisdiction to compel collection of taxes as agent for the State, but we have rejected that. *National Geographic Soc.* v. *California Bd. of Equalization*, 430 U. S. 551, 558 (1977); *Scripto, Inc.* v. *Carson*, 362 U. S. 207, 211 (1960). I agree with the Court, moreover, that abandonment of *Bellas Hess*'s due process holding is compelled by reasoning "[c]om-parable" to that contained in our post-1967 cases dealing with state jurisdiction to adjudicate.

Ante, at 8. I do not understand this to mean that the due process standards for adjudicative jurisdiction and those for legislative (or prescriptive) jurisdiction are necessarily identical; and on that basis I join Parts I, II, and III of the Court's opinion. Compare *Asahi Metal Industry Co.* v. *Superior Court*, 480 U. S. 102 (1987) with *American Oil Co.* v. *Neill*, 380 U. S. 451 (1965).

I also agree that the Commerce Clause holding of *Bellas Hess* should not be overruled. Unlike the Court, however, I would not revisit the merits of that holding, but would adhere to it on the basis of *stare decisis*. *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167, 204 (1990) (SCALIA, J., concurring in judgment). Congress has the final say over regulation of interstate commerce, and it can change the rule of *Bellas Hess* by simply saying so. We have long recognized that the doctrine of *stare decisis* has "special force" where "Congress remains free to alter what we have done." *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172–173 (1989). See also *Hilton* v. *South Carolina Pub. Railways Comm'n*, 502 U. S. ___, ___ (1991) (slip op., at 4); *Illinois Brick Co.* v. *Illinois*, 431 U. S. 720, 736 (1977). Moreover, the demands of the doctrine are "at their acme . . . where reliance interests are involved," *Payne* v. *Tennessee*, 501 U. S. ___, ___ (1991) (slip op., at 18). As the Court notes, "the *Bellas Hess* rule has engendered substantial reliance and has become part of the basic framework of a sizeable industry," *ante*, at 17.

I do not share JUSTICE WHITE's view that we may disregard these reliance interests because it has become unreasonable to rely upon *Bellas Hess*, *post*, at 11–12. Even assuming for the sake of argument (I do not consider the point) that later decisions in related areas are inconsistent with the principles upon which *Bellas Hess* rested, we have never acknowledged that, but have instead carefully distinguished the case on its facts. See, *e.g.*, *D. H. Holmes Co.* v. *McNamara*, 486 U. S. 24, 33 (1988); *National Geographic Soc.*, *supra*, at 559. It seems to me

important that we retain our ability—and, what comes to the same thing, that we maintain public confidence in our ability—sometimes to adopt new principles for the resolution of new issues without abandoning clear holdings of the past that those principles contradict. We seemed to be doing that in this area. Having affirmatively suggested that the "physical presence" rule could be reconciled with our new jurisprudence, we ought not visit economic hardship upon those who took us at our word. We have recently told lower courts that "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, [they] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477, 484 (1989). It is strangely incompatible with this to demand that private parties anticipate our overrulings. It is my view, in short, that reliance upon a square, unabandoned holding of the Supreme Court is *always* justifiable reliance (though reliance alone may not always carry the day). Finally, the "physical presence" rule established in *Bellas Hess* is not "unworkable," *Patterson*, *supra*, at 173; to the contrary, whatever else may be the substantive pros and cons of the rule, the "bright-line" regime that it establishes, see *ante*, at 15–16, is unqualifiedly in its favor. JUSTICE WHITE's concern that reaffirmance of *Bellas Hess* will lead to a flurry of litigation over the meaning of "physical presence," see *post*, at 10, seems to me contradicted by 25 years of experience under the decision.

For these reasons, I concur in the judgment of the Court and join Parts I, II, and III of its opinion.