Supreme Corporate Tax Giveaway: Who Would Benefit from the Roberts Court Striking Down the Mandatory Repatriation Tax?

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About the Roosevelt Institute

The Roosevelt Institute is a think tank, a student network, and the nonprofit partner to the Franklin D. Roosevelt Presidential Library and Museum that, together, are learning from the past and working to redefine the future of the American economy. Focusing on corporate and public power, labor and wages, and the economics of race and gender inequality, the Roosevelt Institute unifies experts, invests in young leaders, and advances progressive policies that bring the legacy of Franklin and Eleanor Roosevelt into the 21st century.

About the Institute for Taxation and Economic Policy

The Institute for Taxation and Economic Policy (ITEP) is a nonprofit, nonpartisan tax policy organization that analyzes tax proposals and provides data-driven recommendations to shape equitable and sustainable tax systems. ITEP's expertise and data uniquely enhance federal, state, and local policy debates by revealing how taxes affect people at various levels of income and wealth, and people of different races and ethnicities.

Executive Summary

Later this year, the Supreme Court will hear what could become the most important tax case in a century. In *Moore v. US*, ostensibly about the tax liability of an American family with minority shares in an Indian farming firm, the Roberts Court's decision could stretch far beyond the plaintiffs themselves. The court could decide to place new limits on Congress's authority to tax income under the 16th Amendment. While the court might take a narrow view based only on the facts and petitioners at hand, the court could also issue a broad decision that taxing income—of an individual or of a corporate shareholder—requires realization, and that income taxation on multiple years of accrued income is unconstitutional. If it makes such a broad ruling, the Roberts Court would suddenly supplant Congress as a major American tax policymaker, putting at legal jeopardy much of the architecture of laws that prevent corporations and individuals from avoiding taxes, and introducing great uncertainty about our democracy's ability to tax large corporations and the most affluent.

New research presented here from the Institute for Taxation and Economic Policy (ITEP) and the Roosevelt Institute reveals how much specific corporations would save from a ruling by the Roberts Court striking down one particular provision at stake in *Moore*—the Mandatory Repatriation Tax ("MRT," "repatriation tax," or "transition tax"). We have identified almost 400 multinational corporations that would, if this tax is ruled unconstitutional for corporations, collectively be granted $271 billion in tax relief by the Roberts Court, according to these corporations' own estimates. These are precisely the US multinational firms that have been willing and able to aggressively shift profits offshore for decades, and the amount of tax relief they would receive is the bulk of the $340 billion in revenue that the repatriation tax is projected to bring in. Amongst the biggest winners from annulment of the repatriation tax, Apple would be given $37 billion in tax relief, Microsoft $18 billion, Pfizer $15 billion, Johnson & Johnson $10 billion, and Google $10 billion. Just 20 companies account for over 60 percent of the tax savings identified here—all companies at the top of the Fortune 500. And this would hardly be a generalized tax break: The benefits from a high court ruling of this kind would be heavily concentrated in the pharmaceutical and tech sectors. Big Pharma would receive 23 percent of the total benefits, and Big Tech a hefty 45 percent of the total tax savings identified. In all, according to our estimates, 75 percent of the benefits of striking down the MRT would go to just three sectors: tech, pharmaceuticals, and finance.

In *Moore,* the Roberts Court could decide with the stroke of a pen to simultaneously forgive big business decades of tax dues in the billions; increase the federal deficit; jeopardize future public revenue and essential social programs; aggravate the disadvantages facing domestic, taxpaying competitors; escalate these multinational companies' already sizeable after-tax profits; and further enrich their shareholders.

Two of the most notable of these shareholders are sitting on the Supreme Court itself. Here, we uncover that, according to their most recent financial disclosures, Chief Justice John Roberts and Justice Samuel Alito together hold stock in 19 companies set to receive over $30 billion in tax relief from a broad ruling striking down the repatriation tax for corporations. The fact that these justices might determine the outcome of a case that could grant a $30 billion tax windfall to precisely the companies in which they have direct ownership stakes presents a clear conflict of interest that puts into question the justices' integrity and impartiality in *Moore*. More broadly, the findings in this brief open a window into the intertwined nature of economic and judicial power in the US today, and illustrate how tax policy by "judicial say-so," as Franklin D. Roosevelt once put it, would represent a deep challenge to American democracy in the 21st century.

Introduction

In December, the Supreme Court will hear what could become the most important tax case in a century. In *Moore v. US*, ostensibly about the tax liability of an American family—Charles and Kathleen Moore—with minority shares in an Indian farming firm, the Roberts Court's decision could stretch far beyond the plaintiffs themselves. The case could reach into long-standing constitutional questions about the definition of income, and how it can be taxed under the 16th Amendment. The Roberts Court could choose to invalidate the Mandatory Repatriation Tax ("MRT," "repatriation tax" or "transition tax"), thereby making the 2017 tax law's tax cuts for multinational corporations even more generous. What's more, the Roberts Court could choose to invalidate—or at least open up for future litigation—much of the architecture of laws that prevent corporations from avoiding taxes by claiming their profits are earned offshore. The court could also undermine the recently passed Corporate Alternative Minimum Tax and put international efforts to curb corporate tax avoidance at risk (Kamin et al. 2023; Avi-Yonah 2023; Bunn et al. 2023). The Roberts Court could go even further by preempting the ability of the American people to more effectively tax the ultra-affluent. As such, the Roberts Court could decide to whip up a "perfect storm" for tax policy in *Moore* by upending fundamental elements of the tax code, introducing great uncertainty about our democracy's ability to tax large corporations and the most wealthy.

The plaintiffs themselves have less than $15,000 directly at stake. But they and their supporters are clearly pushing the court to issue a broad ruling that would not only strike down the repatriation tax itself but also radically impinge on Congress's taxing authority, invalidating many other long-standing provisions of tax law and blocking future proposals before Congress in the future.

This brief will uncover which multinational corporations would benefit from a ruling striking down the repatriation tax, by how much, and why this matters for the future of US tax policy. In addition to the corporate parties of interest, we also uncover which Supreme Court justices own stock in some of the same corporations that would benefit from their own decision, revealing clear conflicts of interest that should, at the very least, warrant recusal.

What is perhaps most at question in *Moore* is not only the integrity and impartiality of the Roberts Court itself: The case also throws into stark relief critical questions about the proper role and function of the Supreme Court in deciding key features of economic life. The findings in this brief open a window into the intertwined nature of economic and judicial power in the US today, and illustrate how tax policy by "judicial say-so," as Franklin D. Roosevelt once put it, would represent a deep challenge to American democracy in the 21st century (Roosevelt 1937).

What Is the Repatriation Tax, and Why Did a Republican-Controlled Congress Enact It?

For decades before 2017, Americans (individuals and corporations) owning stock in a foreign corporation were allowed to defer payment of US tax on profits generated by the offshore company until those profits were "repatriated." Though easily misunderstood as actually moving assets back to the US, much of these offshore profits were already onshore in many respects; repatriation was mostly just a change in accounting treatment on paper. This arrangement fueled a wave of profitable American multinationals shifting their profits overseas to lower their tax bills. These corporations often accomplished this through creative accounting that made their profits—particularly profits from intangible goods and services—appear to be earned by subsidiary corporations in low-tax jurisdictions.

Often, these companies did little or no real business in these foreign countries, and in some cases the offshore subsidiaries in question were little more than a post office box. But this practice provided an effective tax shelter for companies looking to defer paying US tax on accumulated earnings (CRS 2021). Essentially an interest-free loan by the federal government, this tax shelter provided American multinationals—such as Apple, Pfizer, and Microsoft—significant financial advantages over domestic competitors. By 2015, some of the most profitable companies in the world had together accumulated, over decades, more than $2.6 trillion of earnings and profits in their controlled foreign subsidiaries overseas

(Barthold 2016). Much of this went untaxed in the United States, avoiding the 35 percent top corporate tax rate that those profits would have faced immediately each year if they had been made in the US by the parent company. These multinationals couldn't transfer those "specific" offshore profits to pay out shareholders—but those big holdings of foreign profits meant they could borrow extremely cheaply and so still make record cash payouts to US shareholders (through share repurchases and dividends) in the years leading up to 2017. Compared to simply "repatriating" the profits and paying US tax on them, these maneuvers saved these multinational companies sizable amounts of money they would have had to pay in US taxes. By 2017, Fortune 500 corporations had been able to save an estimated $752 billion in taxes on these earnings (Phillips et al. 2017). Apple, for example, has proven to be one of the most effective firms at avoiding paying US taxes on its offshored earnings and profits. The tech giant has done so by artificially shifting much of its income made from intangibles like licenses for brands and intellectual property into subsidiaries strategically incorporated in lower-tax jurisdictions such as Ireland. By 2017, Apple had booked $252.3 billion in profits offshore. The company was then able to leverage the tax rules in effect pre-2017 to defer paying US tax on that amount, avoiding an estimated $78.5 billion in US taxes (ITEP 2017).

In 2017, Republican legislators passed the Tax Cuts and Jobs Act, which was later signed by the president. These Trump tax cuts lowered the corporate tax rate to 21 percent and moved the US away from a worldwide corporate tax system that taxed overseas earnings to a new semi-territorial system that generally exempts offshore earnings by US firms, even if the earnings are repatriated (TPC n.d.). But, critical tax experts warned at the time, had this transition happened in one fell swoop, US multinationals would suddenly owe no US tax on past earnings accumulated offshore—completely forgiving the US tax bill that companies had already deferred for years by keeping their profits offshore on paper. This would put a dent in federal revenue, increase the deficit, and create further pressure to cut essential public programs. It would also create significant competitive disadvantages to all the domestic companies that had paid tax over all those decades.

Instead of a complete tax giveaway, lawmakers decided to institute what was essentially a compulsory tax holiday. A one-time transition tax—which became known as the Mandatory Repatriation Tax—had the effect of forgiving the existing federal tax on these offshore profits and instead required owners of these offshore corporations to pay a one-time tax at a much lower rate (8 percent or 15.5 percent, depending on liquidity) than was applicable at the time those profits were moved offshore (generally 35 percent minus any foreign tax credits if the US owner was a large multinational corporation, as was overwhelmingly the case). Congress also gave the firms eight years to pay these dues.

Crucial to understanding the context is that this repatriation tax wasn't a wholly new, additional tax imposed on multinationals and individuals. It adjusted the timing of taxing realized income (Kamin et al. 2023), and was, again, essentially a "tax holiday" arrangement that provided a steeply discounted tax rate on earnings previously untaxed by the US. Without the MRT, those US multinationals most aggressively avoiding US tax by shifting profits overseas would have been allowed to incorporate trillions of dollars back into the parent companies and pay out shareholders without ever paying US income tax on these earnings at all.

During the debate leading to the enactment of the 2017 law, many economists and tax experts pointed out that the officially "unrepatriated" offshore profits were the fruits of economic activity that occurred in the past. As such, changing the tax treatment for such profits would not affect investment decisions and other business decisions going forward (Tax Reform 2013). In other words, providing this tax break for accumulated offshore profits could not "incentivize" desirable investment behavior, or any type of behavior, among corporations and investors going forward. Such a tax break would provide only an unearned windfall to corporations and their shareholders.

In the end, the repatriation tax was a boon for US multinationals, especially the tech and pharmaceutical companies that claimed to generate revenue from intangible assets like intellectual property that they held through their offshore subsidiaries. Pharmaceutical giants Johnson & Johnson, Pfizer, Merck, and Abbott Laboratories, for example, saved an estimated $42.5 billion as a result of the MRT (Lusiani 2019). By forgiving a significant amount of the taxes that were to be eventually paid on these offshore profits, the MRT provided an outsized break to American corporations over the long term, totaling more than $400 billion according to one estimate (ITEP 2017).

Despite providing a significant long-term tax break to corporate America, the MRT raised revenue within the 10-year budget window that Congress pays attention to when determining the deficit effect of legislation. In contrast to prior law allowing American multinational corporations and other American investors to delay paying taxes on offshore, unrepatriated profits for decades or indefinitely, the new law required payment within eight years of enactment. As a result, the MRT was officially estimated to raise more than $300 billion during the 10-year budget window, which congressional Republicans depicted as offsetting the significant tax cuts embedded in the Tax Cuts and Jobs Act.

The Supreme Court Decides to Weigh In on the Repatriation Tax through *Moore v. US*

When the Supreme Court decided to grant *cert* in *Moore v. US*, few legal observers thought immediately of the Fortune 500. In its amicus brief, the Chamber of Commerce—which supported the 2017 tax law because of its already big tax cuts for corporations—didn't once mention the extraordinary additional tax breaks its large corporate members could receive if the court were to strike down the MRT as the Moores ask (Chamber of Commerce 2023).

Superficially, the case deals with the federal government's ability to tax the reinvested profits of an Indian farm equipment company, in which Charles and Kathleen Moore invested $40,000 in 2005. The repatriation tax put into place in 2017 required the Moores to pay a one-time tax of $14,729 on the company's undistributed earnings since 2005. That such a case involving such modest sums would make it all the way to the high court indicates that there is much more at play than a single family's tax refund. Indeed, the Moores' case is being shepherded by the libertarian Competitive Enterprise Institute and high-end legal counsel, with amicus support from lobbyists friendly to big business, like the Chamber of Commerce and Americans for Tax Reform (Chamber of Commerce 2023; Americans for Tax Reform 2023), and media support such as a spread of strategically placed op-eds in the *Wall Street Journal*.

According to legal scholars, the Supreme Court could rule in a variety of different directions—each with different impacts on Congress's past and future taxing powers (Herzfeld 2023). That the court decided to take the case at all indicates that at least four justices believe that the constitutionality of this tax provision, at least as applied to the Moores, is up for debate. The central legal issue at play is whether undistributed earnings can be taxed as income under the Constitution, and whether the tax can apply to pre-2017 earnings. In particular, the Moores' white-shoe legal team argues that under a very strict reading of the 16th Amendment, the federal government can only tax earnings or income when realized through some sort of transaction, such as through a sale or property exchange. Since the Moores didn't sell or receive a distribution from their foreign company, the argument goes, they shouldn't have to pay the repatriation tax and should receive a refund.

The government, on the other hand, argues that almost a century of tax law precedent has established Congress's broad authority to decide when and how to tax income, even without a specific realization event. What's more, the income was clearly realized by the corporation, which is sufficient for income taxation of shareholders under various provisions of the existing tax code. While the court might take a narrower view based only on the facts and petitioners at hand, the court could also issue a broad decision that taxing income—of an individual or a corporate shareholder—requires realization, and that income taxation on multiple years of accrued income is unconstitutional.

If the court makes such a broad ruling, the Roberts Court would suddenly supplant Congress as a major American tax policymaker, possibly rendering unconstitutional many provisions that make the current tax system function (Kamin et al. 2023; Rosenthal and Avi-Yonah 2023). The justices could strike down—or put at legal jeopardy—key pillars of US corporate tax. One of the most established of these pillars is known as Subpart F, which was enacted in 1962 to prevent American corporations from avoiding taxation through offshore entities or controlled foreign corporations. Provisions related to Global Intangible Low-Taxed Income (GILTI), the branch profits tax; tax treatment of corporate debt; and others could be uprooted by five justices (Avi-Yonah 2023). The Corporate Alternative Minimum Tax—enacted as part of the Inflation Reduction Act to create a basic corporate tax floor—as well as international efforts to curb international tax avoidance could be made constitutionally invalid (Bunn et al. 2023). The Roberts Court could even preemptively undermine the will of Congress by invalidating future measures to more effectively tax the ultra-affluent in ways that are both administrable and arguably constitutional (Glogower et al. 2021a and 2021b). The consequences could be profound, weakening or negating many of the intertwining provisions that hold significant parts of the tax code together.

What's more, the provision most directly at stake is the Mandatory Repatriation Tax, which the Moores are asking the court to strike down. A SCOTUS decision rendering the MRT unconstitutional could open the floodgates for legal teams from the world's most profitable (and most tax-averse) corporations to seek billions of dollars in tax breaks by attacking this, as well as other parts of the tax code that they would argue are similar in some way to the MRT, such as those described above.

If companies' ability to defer paying US tax on offshore earnings pre-2017 was an interest-free loan by the government, by annulling the repatriation tax, the Roberts Court would be essentially granting full loan forgiveness to some of the world's most profitable corporations for tax dues they accrued over decades of offshoring profits.

Who Benefits from the Roberts Court Invalidating the Repatriation Tax?

Who would benefit from a ruling by the Roberts Court striking down the MRT? To date, the lion's share of the attention surrounding the *Moore* case has been on the humble sums to be refunded to the Moores, with much less consideration of the corporate sector with the most pecuniary interest at stake. To properly understand the interests at play and to help inform the reasoning of the case, it is critical for all parties to have a baseline information about who the real winners of certain rulings would be.

For the first time since *cert* was granted in this case, we have examined hundreds of publicly traded company disclosures to uncover the largest corporate beneficiaries of any SCOTUS decision striking down the repatriation tax. If the Roberts Court strikes down the transition tax, we identify that 389 multinational corporations would collectively be allocated $271 billion in tax relief, according to company estimates.[1] This is the bulk of the $340 billion in revenue that the repatriation tax was projected to raise (JCT 2017).[2]

The corporations identified here include some of the world's most profitable companies. The biggest beneficiaries are precisely those US multinational firms that were willing and able to aggressively shift profits offshore over the past decades.[3] Importantly, this is not in any way a generalized business tax cut.

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[1] These aggregate and per-company tax breaks from invalidating the MRT include the total cash taxes paid by the companies as of their last annual SEC filing, as well as future repatriation tax liabilities on the firms' books that they are obligated to pay through 2024. Together, this sum captures the total repatriation tax due to be paid over the eight years Congress has allotted to do so. See Annex A for more details on our methodology.

[2] Our $271 billion total estimate does not include all taxpayers who would benefit from the repatriation tax being found unconstitutional. Due to data limitations, this estimate does not include some large publicly traded corporations that underreported their transition tax liability, nor the tax relief for privately held companies, nor the minority of affected taxpayers who, like the plaintiffs in this case, are individuals rather than corporations.

[3] See Annex A for the full table of firms set to benefit most from a broad SCOTUS ruling making the repatriation tax unconstitutional.

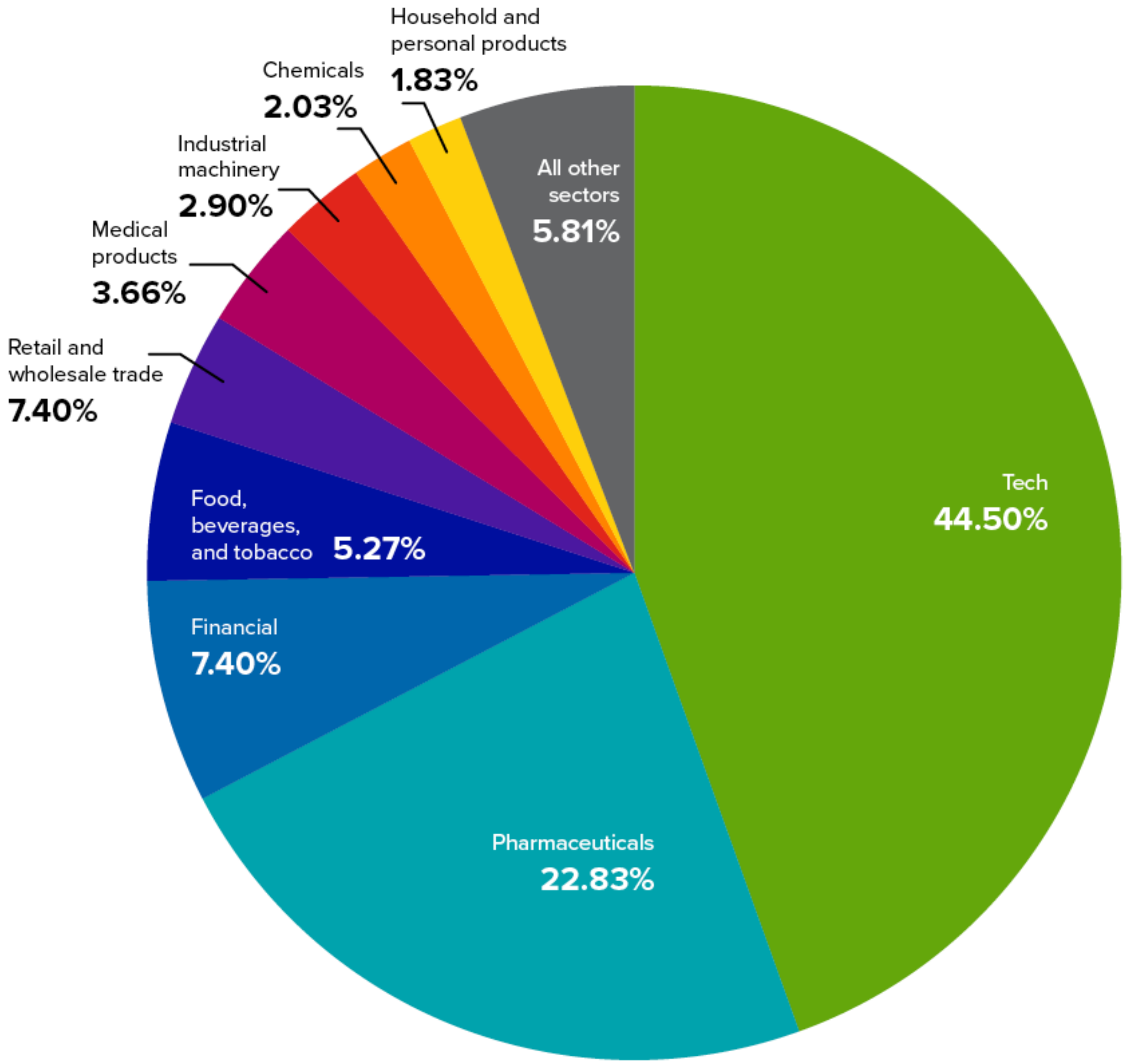
Table 1: Corporations Set to Benefit Most from SCOTUS Ruling Striking Down MRT, Based on Company Repatriation Tax Expense Disclosures, 2017–2022

	Company	Six-Year Total ($ billions)
1	Apple	37.3
2	Microsoft	18.4
3	Pfizer	15.0
4	Johnson & Johnson	10.1
5	Google	10.0
6	Cisco Systems	8.1
7	Amgen	7.3
8	Oracle	7.3
9	Gilead Sciences	5.9
10	Intel	5.9
11	Merck	5.2
12	Coca-Cola	4.9
13	Abbvie	4.5
14	PepsiCo	4.3
15	Procter & Gamble	3.8
16	J.P. Morgan Chase & Co.	3.7
17	Eli Lilly	3.6
18	Goldman Sachs Group	3.3
19	HP	3.3
20	Broadcom	3.3

Among the biggest winners, Apple would be given $37 billion in tax relief from annulment of the repatriation tax, Microsoft $18 billion, Pfizer $15 billion, Johnson & Johnson $10 billion, and Google $10 billion. This comes at a moment when these companies are reporting bumper profits and using excess cash to buy back billions of dollars of their own stock. Just 20 companies account for over 60 percent of the tax savings identified here—all companies at the top of the Fortune 500.[4] What's more, the benefits from a high court ruling of this kind would be heavily concentrated in the pharmaceutical and tech sectors. Big Pharma would receive 23 percent of the total benefits, and Big Tech a hefty 45 percent of the total tax savings identified. In all, 75 percent of the benefits of striking down the MRT, according to our estimates, would go to just three sectors: tech, pharmaceuticals, and finance.

[4] See Annex B for our methodology.

Figure 1: Corporate Tax Relief from SCOTUS Ruling Striking Down MRT, by Sector (Percentage of Total)



In *Moore*, the Roberts Court could decide with the stroke of a pen to simultaneously forgive big business decades of tax dues, increase the federal deficit over the long run, jeopardize future public revenue and essential social programs, escalate these multinational companies' already sizeable after-tax profits, and further enrich their shareholders. The billions of dollars in newly received tax relief could also provide these corporations more dry powder to use to undercut and even acquire smaller domestic competitors in the near future. This sort of tax policy by Supreme Court fiat would also damage the public's trust in the institution.

Conflicts of Interest Put In Question the Impartiality and Integrity of the Roberts Court

America's largest and most profitable corporations are not the only entities that would benefit from the Supreme Court finding the repatriation tax unconstitutional. Their shareholders would too.

Two of the most notable of these shareholders are sitting on the Supreme Court itself. According to their most recent financial disclosures, both Chief Justice John Roberts and Justice Samuel Alito hold stock in companies set to benefit in the billions from a broad ruling striking down the repatriation tax.

According to his financial disclosures for 2022, Chief Justice Roberts owns between half a million and one million dollars of stock in Thermo Fisher Scientific . This health-care company could receive a $1.4 billion tax break should his court unilaterally invalidate the repatriation tax for corporations. He also owns up to $250,000 of stock in Lam Research, a semiconductor firm, which could receive $868 million in tax relief from such a ruling (Roberts 2023).

According to his latest financial disclosure for 2022, Justice Alito holds stock in 17 corporations that would together receive almost $30 billion in tax breaks from a SCOTUS decision to annul the repatriation tax.[5] Johnson & Johnson, in which Justice Alito owns up to $50,000 worth, would collect over $10 billion in tax relief if he and his colleagues annul the repatriation tax. Procter & Gamble—in which Alito holds up to $50,000 worth of shares—would be granted $3.8 billion. Justice Alito also holds up to $50,000 in ownership stakes each in Abbvie, Abbott Laboratories, and Mondelez, companies set to receive $4.5 billion, $3 billion, and $1.3 billion in tax relief respectively from a broad ruling striking down the transition tax (Alito 2023b).[6]

With these ownership stakes, Justices Roberts and Alito would benefit directly from any decision that transfers billions of dollars from the Treasury into the coffers of the companies

[5] These companies are AES Corp, 3M, Abbott Laboratories, Abbvie, Becton Dickinson & Co, Boeing, Caterpillar, Corteva Inc, Dow Inc., Johnson & Johnson, Mondelez International, Parker Hannifin, Phillips 66, Procter & Gamble, Raytheon Technologies, Sealed Air Corp, and TJX Cos. Together, they would receive $29.98 billion from a court ruling annulling the repatriation tax.

[6] The Public Information Office of the Supreme Court of the United States declined to comment on whether Chief Justice Roberts or Justice Alito have sold any of this stock in 2023. Although it is possible that both justices sold these shares sometime in 2023, it is unlikely given that both have held onto these ownership stakes for some years and have not publicly shared any intention to sell them in advance of hearing the *Moore v. US* case.

in which they own shares. How? The unexpected excess capital from the tax break would likely push company stock price upward, which would enhance the net wealth of the justices. The companies might decide to use this windfall to increase their regular dividends, or issue a special dividend, both of which would result in fresh cash in the justices' brokerage accounts. Or, the companies could decide to spend their new tax breaks to buy back their own shares, which would drive up stock prices and boost asset appreciation for shareholders. This is precisely what happened when the repatriation tax steeply reduced US tax rates on these same offshore profits in 2017, according to Federal Reserve economists (Smolyansky et al. 2019). No matter the mechanism, the net wealth of the justices would only improve from a SCOTUS ruling striking down the repatriation tax.

This would not be the first time the Supreme Court of the United States moved markets with its decisions. Historical evidence suggests that Supreme Court decisions do indeed move stock price and thus the net wealth of shareholders, sometimes significantly. From 1999 and 2013, for example, decisions of the Supreme Court of the United States drove more than $140 billion of changes in wealth in relevant equity markets (Katz et al. 2015).

Should Chief Justice Roberts and Justice Alito Recuse Themselves from Moore v. US?

With this new evidence on the direct financial interest of two Supreme Court justices in the outcome of *Moore v. US*, the question arises: Should Chief Justice Roberts and Justice Alito recuse themselves from this case, given the clear and direct conflicts of interest surfaced in this brief? In a response to a letter from Senator Dick Durbin (D-IL) dated August 3, 2023, urging his recusal from the *Moore* case, Justice Alito flatly responded that there "no valid reason for my recusal in this case" (Alito 2023a).

Federal law requires judges to recuse themselves from cases in which they hold a financial interest (e.g., stock) in companies that are parties to said case (28 USC § 455, Liljeberg v. Health Svcs. Acq. Corp. 1988). Justice Alito has recused himself on many occasions in which companies with shares he owns were parties to the case (Pescovitz 2020). For example, Justice Alito recused himself from a Johnson & Johnson *cert* case, in which the company sought to overturn a $2.1 billion damages award related to carcinogens in its baby powder (Stephenson 2021).

However, despite their significant financial interest, neither Roberts nor Alito have chosen to recuse themselves from *Moore v. US*. Current federal law on stock-based recusal does not apply to corporations that are third-party beneficiaries of, but not stated petitioners in, the case at hand. Yet, the real-world conflict of interest is not weaker just because a benefitting company is not listed as a plaintiff. In fact, Johnson & Johnson, in which Justice Alito holds up to $50,000 worth of shares, could receive a $10 billion windfall from the *Moore* case. That's almost five times larger than the $2.1 billion baby powder case affecting the same company, and from which Alito recused himself in 2020. How could Alito's impartiality not be reasonably questioned? Neither benefit nor bias changes because certain beneficiaries are not listed as petitioners.

The *Moore* case could hand the ultimate tax policymaking power of the nation to two men who own stock in the principal beneficiaries. At the end of the day, Justices Roberts and Alito should not be deciding cases—especially those which would invalidate the will of Congress—in which they have very real, direct personal financial interests at play. The fact that these justices might determine the outcome of a case that could grant an over $30 billion tax windfall to precisely the companies they have direct ownership stakes in presents a clear conflict of interest which puts at question the court's integrity and impartiality. The Roberts Court is already the most pro-business court of all time, according to prominent legal academics (Epstein and Gulati 2022; Salmon 2022). *Moore v. US* risks becoming one of the clearest illustrations yet of the court's starkly pro-corporate bias.

Conclusion: Why *Moore* Matters for the Future of US Tax Policy

For close to a century, the Supreme Court has recognized that there is no single, constitutionally mandated definition of realization of income for tax purposes, describing it as an "administrative convenience" rather than a constitutional requirement (Rosenthal and Avi-Yonah 2023). A broad, even extreme ruling by the Roberts Court to overturn a century of precedent—with the express effect of favoring businesses in which two justices own stock—would only deepen the public's suspicions about the integrity of the judiciary. Indeed, it could mark a new chapter of this country's experiment with democracy.

At their core, debates about tax policy revolve around competing sets of values and principles: equity or hierarchy, shared sacrifice or self-centeredness, democracy or minority rule. As eminent fiscal sociologists put it, "Taxes formalize our obligations to each other. They define the inequalities we accept and those that we collectively seek to redress" (Martin et al. 2010). It comes as no surprise that the country's corporate and economic elite would look to use any means to limit Congress's authority to tax their enormous incomes. That some members of America's judicial elite might join them to weaken or even terminate adequate taxation of corporate income—potentially for generations—illustrates just how concentrated and interlocking power is in the US today. Short-circuiting democracy through the courts to prevent current and future tax measures that limit special privileges of the wealthy few would run counter to representative government. And tax policy by Supreme Court fiat would only serve to advance a vision of America that is unreflective of, and unprepared for, the economy of the 21st century.

US history reflects a deep skepticism toward concentrated power of all kinds—political, economic, and indeed judicial. Democracy—and a dispersion of this power through check and balances—has long been considered the best arbiter of challenging questions around tax and fiscal policy. Whatever the eventual outcome in *Moore*, democracy and the Constitution require that the American people—through their duly elected representatives—determine the future of tax policy, even if that means changing the current structure and rules governing the Supreme Court to restore balance (Tucker 2018). FDR's words echo loudly today: "We want a Supreme Court which will do justice under the Constitution—not over it. In our Courts we want a government of laws and not of men" (Roosevelt 1937).

Annex A: Top 100 corporations that would benefit from the Roberts Court invalidating the repatriation tax

Top 100 Transition Tax Expense Disclosures, 2017-2022[7]			
	Company	Industry	Six-Year Total ($ millions)
1	Apple	Tech	37,300
2	Microsoft	Tech	18,400
3	Pfizer	Pharmaceuticals	15,040
4	Johnson & Johnson	Pharmaceuticals	10,100
5	Google	Tech	9,952
6	Cisco Systems	Tech	8,100
7	Amgen	Pharmaceuticals	7,300
8	Oracle	Tech	7,252
9	Gilead Sciences	Pharmaceuticals	5,926
10	Intel	Tech	5,900
11	Merck	Pharmaceuticals	5,224
12	Coca-Cola	Food, beverages, and tobacco	4,900
13	Abbvie	Pharmaceuticals	4,500
14	PepsiCo	Food, beverages, and tobacco	4,247
15	Procter & Gamble	Household and personal products	3,800
16	J.P. Morgan Chase & Co.	Financial	3,700
17	Eli Lilly	Pharmaceuticals	3,600
18	Goldman Sachs Group	Financial	3,320
19	HP	Tech	3,300
20	Broadcom	Tech	3,245
21	Abbott Laboratories	Pharmaceuticals	3,010
22	Meta	Tech	2,900
23	Medtronic	Medical products and equipment	2,600
24	Bristol-Myers Squibb	Pharmaceuticals	2,555
25	Qualcomm	Tech	2,500
26	Walmart	Retail and wholesale trade	2,313
27	Honeywell International	Industrial machinery	1,950
28	Celgene	Pharmaceuticals	1,890

[7] For a full accounting of the transition tax expenses of all 389 companies included in this study, see: https://docs.google.com/spreadsheets/d/1gHVbXa2XY-ntcIgiC3jtLWr-5Fwo6nTK/edit?usp=sharing&ouid=100087768456651348609&rtpof=true&sd=true.

29	Nike	Retail and wholesale trade	1,875
30	American Express	Financial	1,703
31	Philip Morris International	Food, beverages, and tobacco	1,700
32	Caterpillar	Industrial machinery	1,647
33	Paypal Holdings	Financial	1,490
34	Thermo Fisher Scientific	Medical products and equipment	1,367
35	Mondelez International	Food, beverages, and tobacco	1,279
36	McDonald's	Retail and wholesale trade	1,275
37	Berkshire Hathaway	Financial	1,259
38	Danaher	Medical products and equipment	1,257
39	Booking Holdings	Tech	1,254
40	Western Digital	Tech	1,250
41	eBay	Tech	1,169
42	General Electric	Industrial machinery	1,155
43	Visa	Financial	1,147
44	Corning	Tech	1,099
45	Franklin Resources	Financial	1,069
46	Micron Technology	Tech	1,020
47	Nvidia	Tech	1,004
48	Applied Materials	Tech	1,001
49	Dell Technologies	Tech	1,000
50	Becton Dickinson	Medical products and equipment	997
51	Biogen	Pharmaceuticals	955
52	Western Union	Financial	942
53	Corteva	Chemicals	928
54	AES	Utilities, gas, and electric	869
55	Lam Research	Tech	868
56	3M	Chemicals	842
57	Gen Digital	Tech	836
58	Stryker	Medical products and equipment	835
59	Dow Chemical	Chemicals	789
60	Analog Devices	Tech	755
61	Walgreens Boots Alliance	Retail and wholesale trade	750
62	Marriott International	Miscellaneous services	748
63	NetApp	Tech	742
64	Valero Energy	Utilities, gas, and electric	740
65	Allergan	Pharmaceuticals	728
66	Texas Instruments	Tech	714
67	Bank of New York Mellon Corp.	Financial	687
68	Illinois Tool Works	Miscellaneous manufacturing	676
69	Microchip Technology	Tech	658

70	MasterCard	Financial	657
71	Adobe	Tech	651
72	Cognizant Technology Solutions	Tech	635
73	Xilinx	Tech	611
74	Activision Blizzard	Tech	570
75	VF	Miscellaneous manufacturing	533
76	Colgate-Palmolive	Household and personal products	531
77	Baxter International	Medical products and equipment	508
78	MetLife	Financial	501
79	Agilent Technologies	Tech	499
80	Boston Scientific	Medical products and equipment	499
81	Waters	Miscellaneous manufacturing	490
82	Zimmer Biomet	Medical products and equipment	477
83	BlackRock	Financial	477
84	Praxair	Chemicals	467
85	State Street Corp.	Financial	454
86	Carrier Global	Industrial machinery	453
87	McKesson	Retail and wholesale trade	452
88	Stanley Black & Decker	Industrial machinery	450
89	GlaxoSmithKline	Pharmaceuticals	449
90	Juniper Networks	Tech	431
91	Altria Group	Food, beverages, and tobacco	427
92	CBS	Miscellaneous services	422
93	Schlumberger	Oil, gas, and pipelines	410
94	Cummins	Industrial machinery	409
95	Walt Disney	Miscellaneous services	400
96	Rockwell Automation	Miscellaneous manufacturing	396
97	Autodesk	Tech	392
98	Albemarle	Chemicals	387
99	Prudential Financial	Financial	361
100	Hanesbrands	Miscellaneous manufacturing	357

Annex B: Corporate tax benefits from the Roberts Court invalidating the repatriation tax, by sector

Sector	Sum ($millions)	Percentage of Total
Tech	$120,507	44.50%
Pharmaceuticals	$61,811	22.83%
Financial	$20,045	7.40%
Food, beverages and tobacco	$14,258	5.27%
Retail and wholesale trade	$10,184	3.76%
Medical products and equipment	$9,915	3.66%
Industrial machinery	$7,862	2.90%
Chemicals	$5,504	2.03%
Household and personal products	$4,965	1.83%
Misc. manufacturing	$4,897	1.81%
Misc. services	$3,719	1.37%
Utilities, gas and electric	$2,040	0.75%
Oil, gas and pipelines	$1,281	0.47%
Motor vehicles and parts	$883	0.33%
Aerospace and defense	$881	0.33%
Healthcare	$512	0.19%
Telecommunications	$458	0.17%
Network and other communications equipment	$321	0.12%
Mining	$194	0.07%
Publishing and printing	$134	0.05%
Engineering and construction	$114	0.04%
Transportation	$113	0.04%
Electronics and electrical equipment	$94	0.03%
Metals and metal products	$82	0.03%
TOTAL	**$270,771**	

Annex C: Methodology

All of the company-specific transition tax estimates presented in this report are taken directly from the annual financial reports published by each company (10-Ks), all of which are available on the website of the Securities and Exchange Commission (SEC). The SEC requires publicly traded companies to disclose, in the income tax note of their annual reports, any factors materially affecting the companies' income tax rate for the current year.

All of the companies listed here provided their own estimate for the specific effect of the section 965 transition tax. Any company that estimated the effect of the Tax Cuts and Jobs Act (TCJA) overall, but did not specifically break out the effect of the transition tax, is excluded from this analysis. This means a number of companies with substantial amounts of offshore profits before 2017, many of which likely paid a substantial amount of transition tax, are excluded from our list. IBM is a prominent example.

In a small number of cases in which reported liability (that is, the size of the check the company believes it will write to tax authorities) exceeded the initially calculated expense, the larger liability number is used, and in cases in which liability is estimated to be less than expense because of foreign tax credits or net operating loss carryforwards, the smaller number is used.

The SEC requires companies to estimate the effect of tax legislation such as the TCJA at the time of passage, which means that for the vast majority of companies, for which the fiscal year overlaps with the calendar year, the effect of the TCJA was calculated for the year ending December 31, 2017. Because the TCJA was enacted in mid-December of 2017, many companies were unable to complete the accounting for the TCJA in their 2017 report and modified their initial estimates in 2018 or even 2019. The estimates reflected here reflect all of these post-2017 revisions.

Because the transition tax was levied in 2017, this brief includes a number of companies that no longer exist due to consolidation or bankruptcy, or that have since merged or spun off.

Information on the assets of Supreme Court justices was found in the justices' own financial disclosure statements (SCOTUS blog). Information for all justices holding individual shares of public companies was included. Justices are required to release annual financial disclosure reports under the Ethics in Government Act. Most filed this year by the deadline, with the exception of Justices Clarence Thomas and Samuel Alito, who were granted extensions for their 2022 filings. Within these financial disclosures, justices report various assets, including any ownership of stock in individual companies, the type and general amount received in income, the gross value in the reporting period, and any relevant transactions. The amounts received and held are not precise but in bands. Disclosures for the past two years are found here. More historic holdings can be found here.

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