Excerpt from **Camps Newfound/Owatonna, Inc. v. Town of Harrison**, 520 U.S. 564 (1997).

Ninety five percent of petitioner's campers come from out of state. Insofar as Maine's discriminatory tax has increased tuition, that burden is felt almost entirely by out of staters, deterring them from camping in Maine. In sum, the Maine statute facially discriminates against interstate commerce, and is all but per se invalid. See, e.g., *Oregon Waste*, 511 U. S., at 100-101.

We recognize that the Town might have attempted to defend the Maine law under the per se rule by demonstrating that it " `advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.' " Id. at 101. In assessing respondents' arguments, we would have applied our "strictest scrutiny." *Hughes v. Oklahoma*, 441 U.S. 322, 337 (1979). This is an extremely difficult burden, "so heavy that `facial discrimination by itself may be a fatal defect.' " *Oregon Waste*, 511 U. S. at 101; see *Chemical Waste Management, Inc. v. Hunt*, 504 U.S. 334, 342 (1992) ("Once a state tax is found to discriminate against out of state commerce, it is typically struck down without further inquiry"). Perhaps realizing the weight of its burden, the Town has made no effort to defend the statute under the per se rule, and so we do not address this question.[16]

The unresolved question presented by this case is whether a different rule should apply to tax exemptions for charitable and benevolent institutions. Though we have never had cause to address the issue directly, the applicability of the dormant Commerce Clause to the nonprofit sector of the economy follows from our prior decisions.

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[16] Justice Scalia submits that we err by declining to address an argument that the Town itself did not think worthy of pressing. But even if there were reason to consider the State's compliance with the per se rule, the Town would not prevail. In the single case Justice Scalia points to in which we found the per se standard to have been met, *Maine v. Taylor*, 477 U.S. 131 (1986), the State had no " `reasonable nondiscriminatory alternatives,' " *Oregon Waste*, 511 U. S. at 101, to the action it had taken. Absent a bar on the import of certain minnows, there was no way for Maine to protect its natural environment from the hazard of parasites and nonnative species that might have been accidentally introduced into the State's waters.

In contrast, here Maine has ample alternatives short of a facially discriminatory property tax exemption to achieve its apparent goal of subsidizing the attendance of the State's children at summer camp. Maine could, for example, achieve this end by offering direct financial support to parents of resident children. Though we have not had the occasion to address the issue, it might also be permissible for the State to subsidize Maine camps directly to the extent that they serve residents. See *West Lynn Creamery, Inc. v. Healy*, 512 U. S., at 199, n. 15; *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278 (1988) (noting that "[d]irect subsidization of domestic industry does not ordinarily run afoul" of the Commerce Clause).

While the Town does argue its case under the less exacting analysis set forth in, e.g., *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970), "this lesser scrutiny is only available `where other [nondiscriminatory] legislative objectives are credibly advanced and there is no patent discrimination against interstate trade.' " Because the Maine statute is facially discriminatory, the more deferential standard is inapplicable.