

IN THE SUPREME COURT OF THE UNITED STATES

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No. 17-494

SOUTH DAKOTA, PETITIONER

v.

WAYFAIR, INC., ET AL.

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ON WRIT OF CERTIORARI  
TO THE SUPREME COURT OF SOUTH DAKOTA

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States as amicus curiae, respectfully moves that the United States be granted leave to participate in oral argument in this case and that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting petitioner. Petitioner has agreed to cede ten minutes of its argument time to the United States.

This case concerns the application of the dormant Commerce Clause to a state tax-collection requirement. The United States

has a substantial interest in the Court's resolution of the question presented because the rules that govern in this area will significantly affect the functioning of the national economy and the States' financial stability. The United States has participated as amicus curiae in past cases concerning the application of the dormant Commerce Clause to state tax laws. See Comptroller of Treasury v. Wynne, 135 S. Ct. 1787 (2015); American Trucking Ass'ns v. Michigan Pub. Serv. Comm'n, 545 U.S. 429 (2005).

The United States has filed a brief as amicus curiae supporting petitioner in which it argues that this Court's decisions in Quill Corp. v. North Dakota, 504 U.S. 298 (1992) (Quill), and National Bellas Hess, Inc. v. Department of Revenue, 386 U.S. 753 (1967) (Bellas Hess), should not be interpreted to apply to Internet commerce. Quill and Bellas Hess held that the dormant Commerce Clause precludes the States from requiring traditional mail-order retailers, whose only connection to the States is by mail or common carrier, to collect sales taxes on purchases made by state residents. Although the reasoning of Quill and Bellas Hess is incorrect, the United States contends that those decisions need not be overruled in order to hold that Internet retailers, whose connection to the States in which they do business is far more

pervasive than that of traditional mail-order retailers, may be required to collect valid state sales taxes.

Petitioners and the courts below have assumed that the reasoning of Quill and Bellas Hess necessarily applies to Internet retailers, and petitioners therefore urge that those decisions be overruled. Although the United States contends that the holdings of Quill and Bellas Hess do not necessarily apply to Internet retailers, it agrees with petitioners that, if this Court concludes otherwise, it should overrule those decisions on the ground that they are poorly reasoned and unworkable in the age of modern e-commerce.

Because the United States' participation in oral argument is likely to be of material assistance to the Court, the United States respectfully requests that it be granted ten minutes of petitioner's allotted argument time.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

MARCH 2018