No. 17-494

In the Supreme Court of the United States

SOUTH DAKOTA,

Petitioner,

v.

WAYFAIR, INC., OVERSTOCK.COM, INC., AND NEWEGG, INC.,

Respondents.

On Writ of Certiorari to the Supreme Court of South Dakota

BRIEF OF *AMICI CURIAE* eBAY INC., *ET AL.*, IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Amici include eBay, Inc., and independent small businesses in all 50 States that operate on eBay's Marketplace platform. They submit this brief because, as businesses that make or facilitate online sales, they have considerable practical experience bearing on the discriminatory burden that online sellers would face if forced to collect tax on sales to purchasers in jurisdictions across the country. As *amici*'s experience demonstrates, abandoning the physical-presence requirement recognized by this Court's precedent as a necessary predicate for the imposition of such a tax-collection obligation would place crushing burdens on small online businesses, causing many to curtail operations and damaging the national economy. Accordingly, *amici*'s perspective and experience may assist the Court in resolving this case.

Because numerous *amici* have joined this brief, detailed descriptions appear in the Appendix.[1]

INTRODUCTION AND SUMMARY OF THE ARGUMENT

South Dakota and its *amici* make an extraordinary request. They urge the Court to overrule one of its decisions—*Quill Corp.* v. *North Dakota*, 504 U.S. 298 (1992), which held that a State may impose sales-tax collection obligations only on sellers with

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[1] Pursuant to this Court's Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission. The parties have submitted blanket consents to the filing of *amicus* briefs in this case.

an in-state physical presence—with no regard for the usual considerations of *stare decisis*. They make this request even though Congress could have, but thus far has chosen not to, set aside the *Quill* physical-presence requirement. And they would discard the requirement even though *Quill itself re*affirmed it: the Court there refused to overrule precedent requiring physical presence, finding that the requirement both is necessary to avoid undue burdens on interstate commerce and has engendered significant reliance interests.

In taking a second bite at this apple, 25 years after the Court in *Quill* refused to overrule its physical-presence precedent, South Dakota maintains that changes in the economy have rendered the *Quill* rule obsolete. But that is not so: The considerations that underlie *Quill* apply with undiminished force today. Absent the physical-presence requirement, hundreds of thousands (and possibly millions) of independent small businesses that make online sales—and that were created, and have flourished, in reliance on *Quill*—would be subjected to difficult, and sometimes insuperable, compliance burdens. Overruling *Quill* therefore would cause substantial damage to one of the most important and vibrant segments of the national economy. It also would create many new questions about application of the judicially created rule urged by South Dakota, leading to unnerving uncertainty for businesses that operate online and, inevitably, to extensive litigation.

The Court should not take such a destructive step. As the Court noted in *Quill* itself, modification of the physical-presence requirement, if any modification is indeed appropriate, should be made by Congress, the only body that is equipped to assess the

real-world effects of discarding the requirement and to calibrate any substitute rule in a manner that considers and appropriately balances all of the competing interests.

A. South Dakota's central contention is that satisfying tax collection obligations in the many thousands of U.S. jurisdictions that impose a sales tax would be cheap and simple. But that is false. The free software that South Dakota and its *amici* tout for this purpose has significant flaws and is untested at the scale envisioned, meaning that, if *Quill* is overruled, online sellers would have to (1) themselves master the tax laws of these myriad jurisdictions or (2) purchase expensive tax assistance. And online sellers *still* would be subject to numerous additional compliance burdens, including audits in States across the country, *qui tam* litigation if they under-collect tax, and consumer fraud suits if they over-collect. If anything, these burdens have grown since the time of the *Quill* decision.

B. Imposition of these burdens would have destructive effects on the innumerable independent small sellers now operating online. These businesses, which have few employees and typically lack back-office operations, do not have the resources needed to satisfy varying nationwide tax-collection obligations and the associated administrative and litigation burdens. The real-world experiences of *amici* here, which are detailed below, demonstrate that many small independent online sellers would respond to abandonment of the physical-presence rule by limiting their operations; some would go out of business. And that would have profoundly destructive effects on the national economy: Small online companies provide unique business opportunities for women,

minorities, and people with disabilities, while fostering growth and employment in areas of the country that otherwise have suffered from economic stagnation.

C. If the Court nevertheless overrules *Quill*'s Commerce Clause holding, it should make clear that the Due Process Clause continues to set significant limits on the authority of States to impose sales-tax collection obligations on independent small online sellers. Due process principles preclude States from setting regulatory or tax requirements on out-of-state entities that lack "minimum contacts" with the jurisdiction. In the circumstances here, such contacts exist only when the regulated entity *itself* purposefully creates contacts with the forum. That standard is not satisfied simply because the seller made its products available over Internet commerce marketplaces to potential buyers everywhere in the world—the only contact that independent small online sellers typically have with remote States.

ARGUMENT

I. Elimination Of The Physical-Presence Requirement Would Impose Extraordinary Burdens On Interstate Commerce, Disturb Settled Reliance Interests, And Damage The National Economy.

In *Quill*, the Court relied in substantial part on the importance of "limit[ing] the reach of state taxing authority so as to ensure that state taxation does not unduly burden interstate commerce." 504 U.S. at 313. In particular, the Court pointed to the burden of complying with tax-collection obligations "imposed by [what was then] the Nation's 6,000-plus taxing jurisdictions," which could "entangle [an out-of-state

seller] in a virtual welter of complicated obligations." *Id.* at 313 n.6 (citation omitted). The Court added that the physical-presence requirement "has engendered substantial reliance and has become part of the basic framework of a sizable industry." *Id.* at 317. The concurring Justices reiterated the importance of businesses' reliance on the physical-presence rule, recognizing that "we ought not visit economic hardship upon those who took us at our word." *Id.* at 320-21 (Scalia, J., concurring in part and concurring in the judgment).

In urging the Court to overrule *Quill*, the principal contention of South Dakota and the United States is that these considerations no longer apply. South Dakota assures the Court that the compliance difficulties discussed in *Quill* are now "cheap and easy to solve" (Pet'r Br. 44), while the United States blithely declares, with no real explanation, that the burdens are "manageable." U.S. Br. 22.

But those contentions are demonstrably false. Elimination of the *Quill* physical-presence requirement would impose enormous, and sometimes insurmountable, burdens on independent small businesses that rely on Internet sales—burdens that are, in significant respects, considerably *greater* than those that concerned the Court in *Quill*. And that effect, in turn, would disrupt and damage both a major industry that developed in reliance on the *Quill* rule and the broader national economy.

A. Requiring Small Sellers To Comply With Every Jurisdiction's Sales-Tax Collection Obligation Would Impose A Substantial Practical Barrier To Participating In Interstate Commerce.

To begin with, South Dakota declares that calculating and collecting the sales tax due in every jurisdiction across the Nation "is a trivial matter" (Pet'r Br. 45), an assertion that it repeats throughout its brief with metronomic regularity. *Id*. at 2, 13, 45-47. But that simply is not so. The number of taxing jurisdictions has grown substantially since the decision in *Quill*; the Government Accountability Office recently reported that between 10,000 and 12,000 jurisdictions now collect sales tax, "each with potentially different tax rates, different rules governing tax-exempt goods and services, [and] different product categories." U.S. Gov't Accountability Off., GAO-18-114, *Sales Taxes: States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs* 3 (2017) (GAO Report), perma.cc/JS9Q-67X4. For several reasons, subjecting small independent online businesses to tax-collection obligations in each of these jurisdictions would "unduly burden interstate commerce." *Quill*, 504 U.S. at 313.

1. Determining the sales tax due in myriad jurisdictions is a complex and labor-intensive task.

At the outset, determining the correct amount of sales tax due in myriad jurisdictions certainly is not as simple as "typing a shipping address into a search bar." Pet'r Br. 45. See Resp'ts Br. 30-32.

First, it often is not apparent whether the item being sold is even taxable. Slight product differences can engender significant taxability differences. For a flavor of the complexity, consider these representative examples:

- When shipping to Minnesota, a standard blanket is subject to sales tax at the State rate of 6.5% (plus any local rates); but a *baby receiving blanket* would be exempt from tax. Compare Minn. Stat. § 297A.62.1, with Minn. Stat. § 297-A.67.8(b).
- When shipping to Texas, deodorant is subject to sales tax at the State rate of 6.25% (plus any local rates); but deodorant *with antiperspirant* would be exempt. *Grocery and Convenience Stores: Taxable and Non-taxable Sales*, Tex. Comptroller of Pub. Accounts (Nov. 2012), goo.gl/TAibMW.

A vendor must know to look for these sorts of distinctions, and must check them in every jurisdiction into which it makes a sale. And, as discussed below, miscalculations in either direction, resulting in over- or under-collection of taxes, can have significant adverse legal consequences for the vendor.

Second, the vendor must determine the applicable tax rate. Rates vary by location, and can vary within five-digit zip codes—and even within city blocks. To offer just one example, consider Bonner Springs, Kansas, a suburb of Kansas City. If a seller uses Bonner Springs' five-digit zip code 66012, it will charge 7.5% state and local sales tax. But if the seller uses the nine-digit zip code 66012-1402 (still Bonner Springs), the rate will increase to 9.25%. If the

product instead is shipped a few houses down the street to where the nine-digit zip code is 66012-7086, the rate will again be 7.5%.

Rates also may vary by sales price,[2] by the customer's intended use of the product,[3] or by more obscure distinctions; for example, when shipping to Illinois, a *Snickers* bar would be "candy" taxed at the State rate of 6.25% (plus any local rate); but a *Twix* bar would be taxed at the reduced rate for "food" of 1% (plus any local rate). Compare Ill. Admin. Code tit. 86, § 130.310(a), with Ill. Admin. Code tit. 86, § 130.310(d)(7) (defining "candy" and excluding items containing flour).

These state tax rates and rules change with regularity. For example, looking at just one State, between the filing date of South Dakota's brief on February 26, 2018, and the date this brief is filed, at least 44 of the 1,785 taxing localities in California changed their sales tax rates, requiring vendors to update the rates they previously used.

2. Inexpensive software does not solve the complexity problem.

South Dakota and its *amici* do not contend that small online businesses realistically are capable of themselves making these determinations necessary

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[2] For example, if a vendor sells a dress to a buyer in Connecticut for less than $1000 the sales-tax rate is 6.25%, but if the sale price is more than $1,000 the rate jumps to 7%.

[3] For example, when shipping to New Jersey, yarn intended for art projects would be subject to the State rate of 6.25%, but yarn that the purchaser intends to knit into clothing would be exempt from tax. *New Jersey Sales Tax Guide*, N.J. Div. of Taxation, 22-23 (July 2017), perma.cc/FKL4-MBH4.

to collect sales tax in thousands of jurisdictions across the country, or that requiring them to make those calculations as a condition of doing business online would be permissible under the Commerce Clause. Instead, they suggest that "free" or inexpensive software solves this compliance problem by providing a simple tool for determining tax rates, inviting readers to "try it" for themselves. Pet'r Br. 45. So we tried it—and discovered that South Dakota's free software is no solution at all, making errors and containing omissions that would serve as a trap for unwary or unsophisticated vendors.

The free version of TaxCloud.net cited by South Dakota does not bring many of the distinctions listed above to a vendor's attention. To offer just one of many possible examples, although TaxCloud.net correctly computed the New Jersey sales tax rate for "clothing" as 0%, it incorrectly computed the rate for "scarves" as 6.25% (TaxCloud.net category "Clothing: scarves"). The correct rate for scarves sold into New Jersey is 0%. *Notice: Sales and Use Tax Exemption for Clothing Under the Streamlined Sales and Use Tax Law*, N.J. Div. of Taxation, 1 (revised 9/1/06), perma.cc/XX8S-4PU8. A vendor using the TaxCloud.net software touted by South Dakota in its brief therefore would have over-collected New Jersey sales tax on its sale of scarves—an error, as we explain below (*infra*, pp. 13-14), that would subject the seller to suit by overcharged purchasers.[4] See GAO Report at 17 (noting similar examples).

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[4] Errors of this sort affect many vendors: on March 8, 2018, there were 542,911 active eBay.com listings for "scarf" or "scarves."

And there are other problems with reliance on free software as an answer to the constitutional concerns that underlie the *Quill* rule. Software cannot determine *how* to categorize each of the myriad products offered for sale online. See *Ibid.* This is a significant real-world issue: On eBay alone, the more than one *billion* items for sale fall into more than *17,000* categories and subcategories, while in 2016 the typical eBay seller that made annual sales of between $10,000 and $500,000 had customers in 314 different taxing jurisdictions.[5]

Thus, free software is not a complete answer to the "virtual welter of complicated obligations" that concerned the Court in *Quill*. 504 U.S. at 313 n.6. In fact, South Dakota's *amicus* NASCP concedes this point, warning users that, "[i]f you are aware * * * of an item-specific tax or exemption in a jurisdiction you do business in, and don't see that item singled out in the drop-down menu, you can contact the software provider, who will verify the information and modify the software accordingly[.]" Br. 17 n.20.

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[5] South Dakota's *amicus* National Association of Certified Service Providers (NACSP) points to a website with category label codes (or "TICs") to address this problem. Br. 15-18. But even leaving aside the difficulty posed by products that do not fall neatly into conventional categories (*e.g.*, is a Twix bar candy or food?), the software makes many head-scratching distinctions. For example, the general category for "clothing" (TIC 20010) lists 35 items, including "bathing suits," even though there is a separate TIC for "swimsuits" (TIC 92012); and "scarves," even though there is a separate TIC for "scarves" (TIC 92013). Yet the sales tax treatment varies by TIC code. For example, TaxCloud.net indicates that a vendor should charge New Jersey sales tax on a scarf if using TIC 92013 (Scarves) but should not charge New Jersey sales tax if using the general TIC for clothing (20010).

This is a delicate way of acknowledging that vendors cannot safely rely on free software to solve their compliance problems, and that they must familiarize themselves with "item-specific tax[es] or exemption[s]" in the jurisdictions where they sell.

Absent the *Quill* rule, then, a small business could be assured of tax compliance only if it researches for itself the taxability of every product that it sells. Such research would involve locating, accessing, and understanding the sales-tax provisions in every State and local taxing jurisdiction where its products are purchased. It hardly needs extensive proof that this would be an impossibly massive undertaking.

Moreover, the software invoked by South Dakota has never been used on anything remotely like the massive scale that would follow abandonment of the *Quill* rule. To date, of course, businesses have been required to collect sales tax only where they have physical locations, meaning that small businesses have been able to focus their tax collection efforts on a very limited number of jurisdictions with which they have familiarity. It is not at all clear that free software is capable of accommodating millions of small businesses that suddenly would be required to collect tax for the first time in thousands of separate jurisdictions. South Dakota therefore is urging the Court to take an enormous gamble in overturning a long-settled constitutional rule—a request predicated on the untested assumption that legal and compliance issues, which have been expensive and challenging for even the largest businesses to address, would suddenly become cheap and simple for small retailers to resolve.

Nor is more expensive (and, presumably, less error-prone) software a satisfactory alternative, even if it is assumed that such software really is up to the task. South Dakota and its *amici* do not suggest that such sophisticated software is within the financial reach of small businesses; notably, they do not mention such software's costs. On the available evidence, that cost is substantial, running to as much as $200,000 annually—not counting "start-up costs and additional administrative costs," "labor intensive" "mapping" of product categories, and "additional costs to better integrate sales tax software with existing business information systems * * * or regularly reconcile receipts and records manually to prepare sales tax returns for all states where [the business] makes sales." See GAO Report at 19-20. Although it is a truism that interstate commerce must pay its own way, a rule that effectively requires small businesses to pay hundreds of thousands of dollars annually in compliance costs as the practical condition of selling products across the Nation surely would impose an undue burden on interstate sales. This, too, is not debatable: South Dakota's *amicus* Multistate Tax Commission concedes that for small sellers, even with the assistance of available software, the cost of tax collection and remittance "alone may be prohibitive." Br. 9.

3. Audits and litigation would add to compliance costs.

The substantial cost of determining the tax due is not the only compliance burden that would confront small businesses if the physical-presence rule is repudiated. See GAO Report at 19 (software "licensing fees are only one of multiple costs required to collect sales taxes in multiple states").

a. One source of compliance expense—stemming from audits—is especially notable. Audits are expensive and distracting, demanding numerous financial documents, including sales ledgers and receipts, bank records, inventory and purchase records, and income tax returns. If the auditor believes sales tax should have been collected on a particular transaction, the burden will be on the vendor to demonstrate that the auditor is incorrect. See GAO Report at 19-22.

For small businesses, the prospect of undergoing such audits in dozens of States across the country is daunting. The average small business owner who is audited expends many thousands of dollars to resolve the inquiry (whether or not that inquiry was meritorious)—a potentially prohibitive cost for even a successful small enterprise.[6]

b. Absent the physical-presence requirement, small businesses also would face the risk of two types of lawsuits in jurisdictions across the country: *qui tam* actions and consumer class-action challenges.

Small sellers are likely to make occasional errors in the calculation of the tax due, either because they use defective software or due to the complexity of the tax-collection process. And in light of that complexity, sellers could easily be *accused* of making such er-

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[6] The experience of *amicus* 411Marine is typical; an audit in its home State required expenditure of $8000 in administrative costs. See page 20, *infra*; see also Br. United Network Equipment Dealers Ass'n 9 (citing evidence that small companies pay $5,000 in audit fees per $1 million in revenue). Audits in distant States, requiring travel and retention of out-of-state accounting assistance or counsel, would be significantly more expensive.

rors even if they did not. These errors (or accusations) could have significant, and very expensive, legal consequences.

If a vendor collects too *little* in tax, it could be subject to *qui tam* litigation seeking recovery of the amount underpaid. At least ten States permit such suits, and they are brought with some frequency. See, *e.g.*, Debra Cassens Weiss, *Chicago Lawyer Has Filed More Than 900 Qui Tam Actions Against Internet Retailers*, ABA Journal, Oct. 21, 2016, perma.cc/8AYH-LBTJ. But if the vendor collects too *much* in tax, it could be subjected to consumer class action suits seeking damages for overcharging. These sorts of suits, too, are frequent. See, *e.g.*, *Frate* v. *Dunkin' Brands, Inc.*, No. BER-L-1271-16, 2016 N.J. Super. Unpub. LEXIS 1499 (N.J. Super. Ct. Law Div. June 28, 2016); *Kawa* v. *Wakefern Food Corp. Shoprite Supermarkets, Inc.*, 24 N.J. Tax 444 (N.J. Super. Ct. App. Div. 2009).

Many consumer fraud and false claims/*qui tam* provisions carry the potential of treble damages and the payment of the relator's attorneys' fees, in addition to any tax deficiency found to exist. And compounding the threat to vendors, even though the standard statute of limitations period for the assertion of tax against a sales-tax filer is three or four years, the statute of limitations in a *qui tam* suit often exceeds that period (New York's is 10 years).

Against this background, it is undeniable that the burden on small businesses associated with a universal sales-tax collection obligation would be enormous. Even under current law, a study conducted by PricewaterhouseCoopers LLP determined that, for sellers with annual sales under $1,000,000, the cost of complying with sales-tax collection obligations

is 16.84% of state and local sales tax collected. *Retail Sales Tax Compliance Costs: A National Estimate*, PricewaterhouseCoopers, 12 (Apr. 7, 2006), perma.cc/6DCP-LH48. Inevitably, this burden would grow exponentially if *Quill* were overruled.

4. The exception for small sellers in South Dakota's law should not affect the Court's analysis.

Finally, these dangers are not vitiated by the inclusion in South Dakota's law of an exception that purports to protect small sellers. That law, enacted for the express purpose of challenging *Quill*, is a stalking horse; if *Quill* is overruled, many States undoubtedly will impose sales-tax collection requirements to the limits of their constitutional authority. See Resp'ts Br. 50-52. As it is, 23 States that encompass 70% of the U.S. population have refused to adopt the Streamlined Sales and Use Tax Agreement (SSUTA), another much-touted voluntary state effort to simplify sales tax collection. Compare Pet'r Br. 13-14, with Resp'ts Br. 17-19. And the request by South Dakota's *amicus* Multistate Tax Commission that States be allowed to seek sales tax retroactively if *Quill* is overruled suggests the aggressive tack that state tax collectors can be expected to take. MTC Br. 18-19. See Resp'ts Br. 62-65.

Moreover, compliance with state-by-state and locality-by-locality small-business exemptions, if they indeed are created, would itself place substantial burdens on small businesses, with sellers having to wade through a patchwork of varying exemption rules. For any business whose sales approach small-business exemption thresholds, tracking whether the business qualifies for an exemption in each jurisdiction where it sells could be more burdensome than

simply collecting taxes. And the mere *existence* of a tax on remote sellers (even if a seller qualifies for an exemption) would carry hidden costs by creating the risk of audits and tax penalties.

South Dakota's emphasis on the limits in its law—and the suggestion by *amici* like the Tax Foundation that these limits are crucial to the law's constitutionality (see Br. 10-18)—thus serve principally to demonstrate that any action in this area should be taken by Congress, which is the only body able to adopt uniform nationwide protections for small sellers.

B. Abandonment Of The Physical-Presence Requirement Would Impede The Operations Of Small Businesses And Damage The National Economy.

If the physical-presence requirement is abandoned, the tax-collection burdens described above would fall disproportionately on small and "micro-businesses" (the latter generally defined as having fewer than five employees)—a particularly valuable, but vulnerable, segment of the economy. The high cost and practical difficulty of compliance would force many of these businesses to restrict their operations, or cease operating altogether, and would discourage other aspiring entrepreneurs from starting new businesses in the first place. That outcome would have destructive consequences for the national economy. The Court's recognition in *Quill* that the physical-presence requirement "ha[d] engendered substantial reliance and has become part of the basic framework of a sizable industry" (504 U.S. at 317) applies with even greater force today, as removal of *Quill*'s "basic framework" would injure a vastly larg-

er number of people, and affect a much larger industry, than it would have in 1991.

1. Most online businesses are small, operate on tight margins, and cannot absorb substantial new tax-collection compliance costs.

The overwhelming majority of businesses that sell online are very small, even vis-à-vis other sectors of the small-business community. In 2014, for example, eBay alone provided a platform for hundreds of thousands of commercial sellers with annual sales that exceeded $10,000 but were less than $1 million. Additional business owners rely on other platforms (like Etsy) and on social media sites (like Facebook and Instagram) or non-marketplace platforms (like Symphony Commerce, Squarespace, Magento, CommerceHub, Drupal Commerce, and Shopify) to launch and run their small and micro-businesses. So it is certain that there are many hundreds of thousands, and more likely millions, of small businesses operating today in the United States that sell their products and services online.

These small businesses simply are not equipped to handle the burden of tax compliance and enforcement in more than 10,000 jurisdictions across the Nation. Such businesses typically have minimal, or no, back-office staffs. Because they operate on very small margins, they lack the option of outsourcing tax compliance burdens. In fact, 40% of all small business owners cite themselves as the primary person tasked with regulatory compliance for their company, and reported spending at least five hours every month on that task. Only 21% had designated legal counsel or human resources staff to keep them abreast of regulations that might affect their busi-

ness. *2017 NSBA Small Business Regulations Survey* Nat'l Small Bus. Ass'n, 6-7 (Jan. 18, 2017), perma.cc/YBF8-3BVH.

Given the limited resources and tight margins of small online businesses, the imposition of sales-tax compliance burdens in many thousands of jurisdictions certainly would deter growth and encourage sellers to avoid markets where tax compliance expenses and audit exposure risk would outweigh the marginal opportunity for increased profit; would put some sellers out of business altogether; and would discourage the creation of new businesses. Although the United States declares that online sellers maintain a "virtual presence" everywhere (Br. 27), overruling *Quill* would impose *real* burdens on these sellers that, given the States' current ability to collect the bulk of tax due on remote sales (see GAO Report at 8), would be "'clearly excessive.'" U.S. Br. 23.

2. The circumstances of amici*, which are typical of small businesses that sell online, demonstrate the crucial role of the physical-presence rule.*

This concern is not theoretical: it is borne out by the real-world experiences of *amici* here. The following examples are typical of small independent businesses that use the eBay platform. Four of these five businesses have sold to customers in all 50 States (the fifth has customers in all States but Alaska and Hawaii), and absent the *Quill* rule therefore would be required to comply with tax-collection obligations all across the Nation.

Colleen Rast would never have started Great Sky Gifts—which sells apparel, collectibles, and lo-

cally made gifts and food on eBay and other online platforms—in 2001 had she been required to figure out how to collect and remit taxes for every U.S. state and local jurisdiction. The physical-presence rule allowed her to instead focus her time and resources on creating and growing her business. She now employs three full-time and two part-time individuals and rents a 6,000-square-foot warehouse in her hometown of Kalispell, Montana. That growth, in turn, has benefited other local businesses in her community, permitting her to purchase, and sell online, products from those businesses. She also has mentored other local businesses on how to expand by selling online.

This growth, however, would not cover the burden of collecting taxes, and of potentially being audited, in all jurisdictions into which Mrs. Rast sells goods. Recently, as a result of state rules requiring her to collect and remit taxes for her products that are sold on Amazon.com and pass through Amazon warehouses, she has begun collecting tax on sales in 13 States, and she has been audited in Arizona. The complexity and expense of these burdens leads her to believe that, if she is subject to sales-tax collection obligations in all States and local jurisdictions where she sells her products, she would close her business—to the detriment of her current employees, the local businesses whose products she purchases and sells, and the other local businesses she mentors.

Chris Bright started 411Marine with his family to reduce landfill waste by dismantling old vessels and recycling their parts. Expanding their business to sell parts on eBay allowed them to survive the economic downturn in 2007; had they been required to collect and remit sales tax nationwide at that

time, they would have had to close their business. That remains a concern. 411Marine's annual net revenues are approximately $60,000, barely enough to cover the $8,000 (plus innumerable hours and stress) it has cost to respond to an audit in Mr. Bright's home State of South Carolina. It is certainly not enough to cover the cost of audits in other States and the $50,000 it would cost to hire an additional employee to ensure compliance with tax rules in jurisdictions across the Nation. These prospective costs, and the added worry that would come with them, make Mr. Bright fear that, if the physical-presence rule is repudiated, he will have to close 411Marine—resulting in five employees losing their jobs and more waste filling local landfills.

Laurie Wong also cannot afford the $10,000 her accountant estimates an audit would cost—much less multiples of that if she were subject to audits in all the States in which she sells goods. Nor can she afford the tripling of her accounting budget that would result if she were required to collect and remit taxes in multiple jurisdictions. Instead, she would have to curtail many of the programs that her not-for-profit business, Reflections of Trinity, provides to help members of her Georgia community—programs including a food pantry that provides nearly 600 boxes of food a week to those in need; a senior bridge program, which delivers food to seniors in three communities; and dental outreach and services for seniors. These programs were made possible by Mrs. Wong expanding from selling donated goods out of a brick-and-mortar store to selling on eBay. The online sales have helped Reflections of Trinity's revenue grow from approximately $100,000 annually to approximately $500,000, while its paid staff has grown from two to ten. But the added costs of figuring the

tax due from sales in innumerable jurisdictions would directly reduce the funds available for the essential services Reflections of Trinity provides to its community.

The experiences of Mrs. Rast, Mr. Bright, and Mrs. Wong are echoed by those of **Angie Nelson**—who fears that elimination of the physical-presence rule would force her to scrap her plans for expanding her electronics recycling and resale business, eliminate the eBay storefront that generates 80% of her sales, and dismiss her eleven employees; of **Tony Brocato**—who worries that his family-owned tire and appliance store would have to stop selling on eBay, dismiss the four local workers it hired in response to its online growth, and reduce its donations to local charities; and of thousands of other small business owners in communities across America.

3. Eliminating the physical-presence rule would stunt economic growth and diminish opportunities for previously marginalized groups.

The social and economic harms that would follow from abandonment of the physical-presence rule—in lost innovation, income, job stability and creation, and expanded opportunity for marginalized communities—would far outweigh whatever limited increase in tax revenue States might obtain from those small businesses that do survive.

The Internet makes it possible for anyone, anywhere, to operate a national or international business—and as the experiences of *amici* here demonstrate, innumerable small businesses are doing just that. This unprecedented opportunity has permitted women and minorities to create small businesses at

higher rates than ever before. As the histories of online sellers like Colleen Rast, Laurie Wong, and Angie Nelson suggest, the schedule and geographic flexibility provided by eBay and other Internet platforms is opening doors to success outside of traditional employment paths that many women have found appealing. It surely is no coincidence that the emergence of Internet businesses corresponded with exponential growth in the number of businesses owned by African-American women (historically one of the most marginalized groups), which has increased by 322% since 1997. Amy Haimerl, *The Fastest-Growing Group of Entrepreneurs in America*, Fortune, June 29, 2015, goo.gl/C5AQkx.

Similarly, a collaborative study by Facebook, the U.S. Chamber of Commerce Technology Engagement Center, and Morning Consult found that African-American, Hispanic, and veteran business owners were 36%, 40%, and 34% more likely, respectively, to build their businesses on Facebook, as compared to other business owners. *Examining the Impact of Technology on Small Business*, U.S. Chamber of Commerce, Morning Consult & Facebook, 8 (Jan. 18, 2018), perma.cc/5FT5-33BT ("*Examining the Impact"*). The same groups were 25%, 31%, and 25% more likely than other business owners to have used Facebook to conduct business with entities in other cities, counties, or States. *Ibid.* This data confirms that the Internet is creating non-traditional pathways to employment and success for members of the workforce that face special challenges.

And more generally, e-commerce has fostered growth and employment across the country. Because online sales permit entrepreneurs in even the most remote locations to operate a national business,

growth in e-commerce micro-businesses is far more geographically diverse than that in the rest of the economy. According to a 2016 study by the Economic Innovation Group (EIG), more than *half* of the net business growth since the Great Recession has occurred in just 20 large metropolitan counties, located in just seven States. *The New Map of Economic Growth & Recovery*, Econ. Innovation Grp., 9 (May 2016), perma.cc/8NRQ-RV3Y. Moreover, 59% of counties (home to almost one-third of the U.S. population) experienced a *reduction* in total businesses from 2010 to 2014. *Id.* at 7. On eBay, however, the top 50% of net business growth was distributed among almost four times as many counties (75), and nearly 75% of counties experienced net small business growth on eBay. *Platform-Enabled Small Businesses and the Geography of Recovery*, eBay, 12-13 (Jan. 2017), perma.cc/22YL-UKGX. Further, more than 10% of that small business growth came from counties with fewer than 100,000 people. *Id.* at 4.

Overall, small and micro-businesses operating online have expanded economic opportunities for previously marginalized groups. They also have fostered revitalization of smaller communities that otherwise have been left out of the post-recession recovery. By greatly burdening the businesses whose growth has fostered these developments, abandonment of the physical-presence rule would undermine both of these boons to the national economy.

4. Elimination of the physical-presence rule would place small online businesses at a significant competitive disadvantage.

In nevertheless contending that *Quill* has had harmful economic effects, South Dakota and its *amici* insist that the physical-presence rule gives online

businesses an unfair competitive advantage over their brick-and-mortar counterparts. Pet'r Br. 10-11. But whether or not this contention would have been accurate a generation ago, it is not today: the competitive effects highlighted by South Dakota have been overtaken by more recent changes in the marketplace.

Although South Dakota and its *amici* treat e-commerce and brick-and-mortar businesses as mutually exclusive, that is not the competitive reality today. The top players in today's e-commerce marketplace all have *both* an online *and* a physical presence in virtually every State.[7] As the GAO Report observed (at 9): "Many of the largest Internet sellers are established retail chains or consumer brands with a physical presence, such as retail stores, in all, or nearly all, of the 45 states (plus the District of Columbia) that have a statewide sales tax." A quick perusal of the "top 50" online retailers confirms that observation. Topping the list are chains like Wal-Mart, Target, Apple, Macy's, and Nordstrom, which collect and remit sales tax nationwide.[8] And although Amazon was once the *bête-noir* of brick-and-mortar retailers, it now has its own nationwide network of increasingly local facilities across the country, including a growing range of logistics centers as well as interconnected brick-and-mortar retail operations—causing it, as of 2017, to collect sales tax in *all* jurisdictions. This evolution has "sharply altered the political and economic dynamics" of the e-commerce

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[7] Arthur Zaczkiewicz, *Amazon, Wal-Mart and Apple Top List of Biggest E-Commerce Retailers*, WWD, Apr. 7, 2017, goo.gl/keJdfR.

[8] *Ibid.*

market and the pool of sellers that benefit from the *Quill* rule.[9]

Consequently, the most constitutionally significant marketplace change since the decision in *Quill* has not been the rise of large online retailers that escape sales-tax collection obligations. Instead, it is that e-commerce has made it possible for *very small* businesses to have a *universal* geographic reach. Indeed, a 2012 World Bank research paper found that Internet platforms like eBay reduce the "friction of distance" (the transaction costs that preclude otherwise mutually beneficial transactions between remote buyers and sellers), with the "distance effect [being] 65 percent smaller online than offline." Andreas Lendle et. al., *There Goes Gravity: How eBay Reduces Trade Costs*, Policy Research Working Paper No. 6253, World Bank, 3 (Oct. 2012), perma.cc/D9SC-N54N. That reality is obvious: Prior to the development of e-commerce (that is, when *Quill* was decided), small independent sellers such as *amici* here could not have found customers and sold their products across the Nation and around the world—the sales that make operation of their businesses feasible.

Yet if South Dakota prevails, these small Internet businesses will be subject to multi-state tax burdens that are exponentially greater than those im-

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[9] Eric Schulzke, *The Era of Sales-Tax-Free Online Shopping Is Nearly Over. Here's How It Ended.*, Deseret News, June 7, 2017, goo.gl/9M3hHm. See also Stefany Zaroban, *Earnings Preview: Amazon Accounts for 43% of All US Online Sales in 2016,* Digital Commerce 360, Feb. 1, 2017, perma.cc/8PQJ-SFZ7 (estimating that Amazon's 2016 sales accounted for between 33 and 43 percent of all U.S. online retail); Resp'ts Br. 46-49.

posed on their *equivalently sized* brick-and-mortar counterparts. Consider two start-up retailers, one brick-and-mortar and one Internet-based. The brick-and-mortar business selects its physical site (and tax jurisdiction), and must learn only one set of tax collection rules, file one set of returns, and submit to one set of audits. In contrast, an e-commerce business *starts out* on a national (or even global) scale, and thus would wade into a morass of conflicting tax regulations from virtually its first sale—and that burden would grow rapidly as buyers from additional remote locations select the seller's wares. The net effect of overturning *Quill*, then, would be to impose a disproportionate burden *on small remote sellers*, giving equivalently situated in-state brick-and-mortar vendors a competitive windfall.

And that is not all. The dichotomy between online and brick-and-mortar retailers is breaking down for all sizes of business, with as many as 75% of *small* businesses in the United States using at least one major digital platform for sales. *Examining the Impact* at 3. Those brick-and-mortar (or, more accurately, "brick-and-click") local businesses are now getting the advantage of the *Quill* rule when they make online sales into other jurisdictions, just like businesses that operate only on the Internet. But overruling *Quill* would subject these brick-and-click businesses' online sales to the same burdens that are outlined above, with the almost certain result that these businesses also would sometimes choose to limit the scope of their operations. The result would be to suppress nationwide commerce and economic activity.

* * * * *

The premises on which South Dakota rests its argument are false. If *Quill* is overruled, tax compliance will not be painless; for small online sellers, complying with tax-collection obligations in remote jurisdictions would be daunting, prohibitively expensive, and sometimes impossible. Rejecting the physical-presence rule would not restore competitive balance; instead, it would place small online sellers at a profound competitive disadvantage. And although South Dakota posits that *Quill* had unintended practical consequences, that decision simply *affirmed* existing law and *preserved* reliance interests; it is the dramatic change urged by South Dakota that would have devastating—and, so far as this Court is concerned, literally incalculable—effects on innumerable businesses that developed and operate in reliance on the *Quill* rule.

At bottom, South Dakota's case turns on factual assertions about the ease of compliance and competitive realities that are hotly contested—we submit that they are wrong—and that an appellate court simply is not equipped to assess. If this Court nevertheless accepts the State's argument and overrules *Quill*, but proves incorrect in its factual assumptions, its decision will cause devastating injury to hundreds of thousands of small businesses and the untold millions of people who own and work for them. The Court should not take such a blind leap of faith. It should reaffirm *Quill*, leaving South Dakota free to present its empirical arguments to the proper audience: Congress.

II. Due Process Limits The Tax-Collection Burdens That May Be Imposed On Out-of-State Sellers.

For the reasons addressed above, the Court should not disturb the Commerce Clause holding of *Quill*. But if the Court disagrees with that submission, its decision also should take account of the *other* relevant constitutional limit on the States' power to tax and regulate: The Due Process Clause precludes the imposition of obligations on out-of-state entities that have not purposefully availed themselves of the opportunity to do business in the regulating State. Under this long-standing constitutional principle, an out-of-state seller does not subject itself to a State's sales-tax collection obligations simply by making its wares available on the Internet.

The existence of this due process limit, and the complexity of the due process litigation that inevitably would follow repudiation of the *Quill* Commerce Clause rule, *itself* counsels against overruling *Quill*. If the Court does reject *Quill*'s Commerce Clause holding, however, it should make clear that due process continues to bar the imposition of tax-collection obligations on sellers that lack a sufficiently substantial connection with the taxing State.[10]

A. Due Process Limits State Power To Tax And Regulate.

1. Due process limitations, although "closely related" to Commerce Clause considerations, impose

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[10] The United States and others of South Dakota's *amici* recognize that due process is an independent constraint on state power to tax. See U.S. Br. 13 n.1; Law Professors & Economists Br. 10 n.6.

"analytically distinct" constraints on a State's power to tax and regulate. *Quill*, 504 U.S. at 305 (quotation omitted). See also, *e.g.*, *MeadWestvaco Corp.* v. *Illinois Dep't of Revenue*, 553 U.S. 16, 24 (2008). As the Court explained in *Quill*: "Due process centrally concerns the fundamental fairness of governmental activity. Thus, at the most general level, the due process nexus analysis requires that we ask whether an individual's connections with a State are substantial enough to legitimate the State's exercise of power over him." 504 U.S. at 312.

These due process fairness concerns shape the limits on a State's ability to exercise its authority over persons or entities outside its borders. Perhaps the most familiar of these due process restrictions are those on the scope of a State's adjudicative authority over nonresidents, where it is settled that a state court may exercise personal jurisdiction only over nonresidents who have sufficient "minimum contacts" with the court's State. *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316-17 (1945); see, *e.g.*, *Bristol-Myers Squibb Co.* v. *Superior Ct. of Cal., San Fran. Cty.*, 137 S. Ct. 1773, 1779 (2017).

And of particular relevance here, very similar limits govern both "a State's power to enact substantive legislation" (*Edgar* v. *Mite Corp.*, 457 U.S. 624, 643 (1982) (quotation omitted)) and its authority to tax, where the Due Process Clause demands "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax." *Quill*, 504 U.S. at 306 (quoting *Miller Bros. Co.* v. *Maryland*, 347 U.S. 340, 344-345 (1954)). See also *Moorman Mfg. Co.* v. *Bair*, 437 U.S. 267, 272-273 (1978). This is not surprising, as the Court's seminal decision stating the due process limits on

state adjudicative jurisdiction, *International Shoe*, also addressed—and used a similar standard to define—state authority to tax. See *Shaffer* v. *Heitner*, 433 U.S. 186, 203 (1977); *International Shoe*, 326 U.S. at 321.

2. In assessing whether minimum contacts that are sufficient to support exercise of a State's regulatory or adjudicatory authority exist, courts are guided by two fundamental considerations.

First, "the relationship must arise out of contacts that the 'defendant *himself*' creates with the forum State." *Walden* v. *Fiore*, 134 S. Ct. 1115, 1122 (2014). This means that the "unilateral activity of another party * * * is not an appropriate consideration when determining whether a defendant has sufficient contacts with the forum State to justify an assertion of jurisdiction." *Helicopteros Nacionales de Colom., S.A.* v. *Hall*, 466 U.S. 408, 417 (1984).

Second, the "minimum contacts" inquiry focuses on "the defendant's contacts with *the forum State itself*, not the defendant's contacts with persons who reside there." *Walden*, 134 S. Ct. at 1122 (emphasis added). This requirement demands that the defendant "'deliberately' * * * engage[] in significant activities *within* a State" or "creat[e] '*continuing* obligations' between himself and residents of the forum." *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 475-476 (1985) (emphasis added) (quotations omitted).

Under these principles, "an individual's contract with an out-of-state party *alone*" cannot "automatically establish sufficient minimum contacts" for the exercise of jurisdiction. *Burger King*, 471 U.S. at 478. Rather, due process requires some act by which the regulated party "purposefully 'reach[es] out beyond'

their State," as by "entering in a contractual relationship that 'envision[s] continuing and wide-reaching contacts' in the forum state." *Walden*, 134 S. Ct. at 1122 (quoting *Burger King*, 471 U.S. at 473, 480).

B. Many Small And Medium-Sized Online Businesses Do Not Have Purposeful Contacts With States Where Purchasers Of Their Products Reside.

1. In many cases, these due process constraints will prohibit States from imposing tax-collection obligations on out-of-state businesses that operate online. Most small and medium-sized online businesses—*amici* here, for example—do nothing to purposefully target *particular* States, and thus lack the minimum contacts with those States that are required to support the assertion of state authority.

Of course, a business makes a deliberate decision to offer its goods or services online, where they will be available to customers everywhere in the world. And "in a sense, the internet operates 'in' every state regardless of where the user is physically located" *Shrader* v. *Biddinger*, 633 F.3d 1235, 1240 (10th Cir. 2011). A website, however, "is not *directed at* customers in [a particular State], but instead is available to all customers throughout the country who have access to the Internet." *Trintec Indus., Inc.* v. *Pedre Promotional Prods., Inc.*, 395 F.3d 1275, 1281 (Fed. Cir. 2005) (emphasis added). So far as the online seller is concerned, that the buyer lives in one jurisdiction as opposed to another is largely irrelevant; the only connection is that the remote jurisdiction "is where the purchaser happen[s] to reside," a contact that is insufficient to establish jurisdiction. *Boschetto* v. *Hansing*, 539 F.3d 1011, 1019 (9th Cir. 2008). And

this conclusion is even stronger when the business's contact with buyers in other States is mediated primarily or entirely through a website operated by *another* entity like eBay, Etsy, or Amazon.

Accordingly, "the mere operation of a commercially interactive web site should not subject the operator to jurisdiction anywhere in the world." *Toys "R" Us, Inc.* v. *Step Two, S.A.*, 318 F.3d 446, 454 (3d Cir. 2003). It is not enough to satisfy due process requirements that the business hopes—or knows—that establishing an online presence will result in sales to persons who live in States other than its own: In selling goods or services, an online business ordinarily does not "avail[] itself of the 'substantial privilege of carrying on business' within [the buyer's] State." *Exxon Corp.* v. *Department of Revenue of Wis.*, 447 U.S. 207, 220 (1980). Cf. *Walden*, 134 S. Ct. at 1124. In fact, the *seller* does nothing in, or to target, the buyer's State at all. See *American Oil Co.* v. *Neill*, 380 U.S. 451, 457 (1965) (Idaho's tax on sales in Utah held invalid "despite the fact that the vendor knew that the goods were destined for use in that State").

2. It is no answer that *purchasers* of the online seller's product live in and benefit from services provided by the taxing State. The purchaser is subject to use tax where he or she lives and uses that product, but that does not justify imposing a burden on the *seller*: "[a] sales tax and a use tax * * * are * * * taxes on different transactions and for different opportunities afforded by a State." *McLeod* v. *J.E. Dilworth Co.*, 322 U.S. 327, 330-331 (1944). And an online business has *no* connection, let alone a substantial one, with the relationship between the buyer and the

buyer's State that supports imposition of a tax-collection obligation.

The Court already has reached that conclusion, in circumstances that, although lower-tech, were in principle quite similar to those here. In *Miller Brothers*, Maryland attempted to collect a use tax from a Delaware vendor that sold items to Maryland residents, noting that the vendor's "advertising with Delaware papers and radio stations, though not especially directed to Maryland inhabitants, reached, and was known to reach, their notice." 347 U.S. at 342. The Court rejected that argument. It held that such "incidental effects of general advertising" were not sufficient to show the business's "invasion or exploitation of the consumer market *in Maryland*." 347 U.S. at 347 (emphasis added). Nor was it sufficient that the business "delivered some purchases to common carriers consigned to Maryland addresses," and even delivered products to Maryland in "its own vehicles." *Id.* at 342. As the Court held, "the burden of collecting or paying" the purchaser's tax "cannot be shifted to a foreign merchant in the absence of some jurisdictional basis not present here." *Id.* at 357. The parallel to an online seller, whose website also "reach[es]" buyers in the taxing State and whose products are delivered to purchasers there, is apparent.[11]

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[11] The rejection of the petitioner's due process challenge in *Quill* is wholly consistent with this view. Compared to the individual *amici* here, Quill was a juggernaut, doing more than $200 million a year in national sales, more than $1 million of which were in North Dakota. 504 U.S. at 302. To obtain these significant North Dakota revenues, Quill targeted North Dakota with massive quantities of catalogues and flyers (*id.* at 304), each year mailing over 230,000 pieces of mail (collectively weighing

In short, when the seller's only connection to the taxing State rests on the fortuity that one of the State's citizens has purchased something from the seller's website and thereby incurred a tax obligation, the seller does not "'deliberately' * * * engage[] in significant activities within a State" or "creat[e] 'continuing obligations'" necessary to establish minimum contacts for taxing purposes. *Burger King*, 471 U.S. at 475-476 (quotations omitted). In these circumstances, a State no more may conscript an out-of-state defendant into collecting a tax the State imposes on its own citizens than it may hale an out-of-state defendant into court based on the State's contacts with the plaintiff. *See Walden*, 134 S. Ct. at 1122.

3. To be sure, application of due process principles to Internet commerce may pose difficult questions in particular circumstances. Cf. *J. McIntyre Mach., Ltd.* v. *Nicastro*, 564 U.S. 873, 890 (2011) (Breyer, J., concurring). That is all the more reason for the Court not to jump into the briar patch by overruling *Quill* and uprooting 50 years of Commerce Clause jurisprudence.

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24 tons) to North Dakota customers. *North Dakota* v. *Quill Corp.*, 470 N.W.2d 203, 205 (N.D. 1991). Quill also licensed custom software to buyers that, the state supreme court found, gave Quill a property interest in property located in the State. *Id.* at 216.

Based on these extensive and intentional contacts, the Court found "no question that Quill ha[d] purposefully directed its activities at North Dakota residents" and "that the magnitude of those contacts [was] more than sufficient for due process purposes." 504 U.S. at 308. In contrast, a business that does not target a State, instead selling products via generally accessible third-party platforms like eBay, has not "purposefully directed its activities" at the buyer's State.

But whatever the precise contours of the Due Process Clause's restraints on state authority, those limits are real and have a substantial scope. And just as "[i]t may be fundamentally unfair to require a small Egyptian shirt maker * * * or a Kenyan coffee farmer, selling its products through international distributors, to respond to products-liability tort suits in virtually every State in the United States" (*Nicastro*, 564 U.S. at 892 (Breyer, J. concurring)), so too would it be fundamentally unfair to subject each of the myriad e-businesses operating today, selling products over the Internet and through online platforms, to the massive burden of assessing and collecting taxes in thousands of jurisdictions throughout the United States—jurisdictions in which the business has no substantial operations and with which it lacks traditional minimum contacts.

For these reasons, if the Court overrules *Quill* it should make clear that the Due Process Clause's guarantee of the "fundamental fairness of governmental activity" (*Quill*, 504 U.S. at 312) limits State power to impose tax-collection obligations on online businesses.

CONCLUSION

The decision of the South Dakota Supreme Court should be affirmed.

Respectfully submitted.

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APPENDIX

DESCRIPTIONS OF THE *AMICI CURIAE*

eBay Inc., is a global e-commerce company that operates through its Marketplace, StubHub, and Classifieds platforms. It connects millions of buyers and sellers around the world. Its platforms enable sellers to organize and offer their inventory for sale, and buyers to find and purchase it. Founded in 1995 in San Jose, California, eBay is one of the world's largest and most vibrant marketplaces for discovering great value and unique selection. As of December 31, 2017, eBay's Marketplace and StubHub platforms had over one billion live listings around the globe.

Frederickson's, located in Sheffield, Alabama, sells luxury appliances.

Blonde Giraffe Fashions, located in Sitka, Alaska, sells fashions.

Revivelt, located in Mesa, Arizona, sells refurbished computer parts and electronics.

Knife Art, located in Little Rock, Arkansas, sells quality cutlery.

eWaste Direct, Inc., located in Livermore, California, is a recycling store for outdated computer equipment.

The Pros Closet, located in Boulder Colorado, sells bicycles, parts, and accessories.

Omni Comics & Cards, located in Wethersfield, Connecticut, sells collectibles.

Sound of Tri State, located in Claymont, Delaware, sells electronics.

Textile Magic, located in Washington, D.C., sells a variety of textiles.

QuikDrop, located in Stuart, Florida, sells collectibles and is a consignment drop-off store.

Reflections of Trinity, located in Powder Springs, Georgia, is a charity business that sells clothes to provide for a community resource center.

Andres Harnisch Brokerage Inc., located in Honolulu, Hawaii, is a dealer in antiques, jewelry, and collectibles.

Garden Devotions, located in Post Falls, Idaho, sells religious statuary and home and garden decor.

BubbleFast, LLC, located in Gurnee, Illinois, sells eco-friendly supplies.

Speed Outfitters, located in Elkhart, Indiana, sells motorcycle parts and gear.

Geothermal Products, located in Ankeny, Iowa, is a green business that sells geothermal installations.

Outdoor Power Deals, located in Basehor, Kansas, sells outdoor equipment and parts.

Loucon LLC, located in Murray, Kentucky, sells sporting goods.

Jen Picked, located in West Monroe, Louisiana, sells fashion.

Enjoyment for Everyone, located in Westbrook Maine, sells clothing.

Green Living LLC, located in Silver Spring, Maryland, sells vitamins.

Golf Etail, located in Springfield, Massachusetts, sells gold equipment.

Suit Depot, located in Oak Park, Michigan, sells men's suits and blazers.

Relay Networks, located in Deephaven, Minnesota, sells indoor and outdoor networking solutions.

Adam Pollock LLC, located in Madison, Mississippi, sells jewelry, diamonds, and watches.

College-Therapy-Fund, located in Dardenne Prairie, Missouri, sells antiques and vintage jewelry.

Great Sky Gifts, located in Kalispell, Montana, sells apparel, collectibles, and locally made gifts and food.

Gongs Unlimited, located in Lincoln, Nebraska, sells gongs.

Motorcycle Works, located in Carson City, Nevada, sells motorcycle parts.

Coast to Coast, located in Newport, New Hampshire, sells Chinese antiques.

Seamless Development, located in Cherry Hill, Nerw Jersey, sells custom e-commerce software.

Native Treasures of New Mexico, located in Peralta, New Mexico, sells Native American jewelry and art.

NYC Fitness Family and Finds, located in New York City, New York, sells brand-name clothing and household items.

Better Deals 123, located in Wake Forest, North Carolina, sells smart phone accessories.

Outdoor Bunker, located in Fargo, North Dakota, sells hunting, camping, and survival gear.

The Music Farm, located in Canton, Ohio, sells guitars and electronics.

Dashkin, located in Broken Arrow, Oklahoma, sells car parts.

541 Motorsports, located in Grants Pass, Oregon, sells car parts.

Zig's Truck and Auto Accessories, located in Pittston, Pennsylvania, sells truck and auto parts.

Divas Rack 13, located in North Providence, Rhode Island, sells clothing.

ABC Motors & Marine, located in Hardeeville, South Carolina, sells parts, engines, and accessories for boats.

RC Hunting Store, located in Aberdeen, South Dakota, sells hunting gear.

Mac Nash, located in Hendersonville, Tennessee, sells collectible toys.

G-Brats Guitars, located in Midlothian, Texas, sells guitars.

MDG Sales, located in South Jordan, Utah, sells electronics, DVDs, and movies.

Al's Snowmobile Parts Warehouse. located in Newport, Vermont, sells used snowmobile, ATV, and UTV parts.

C2 Management, located in Berryville, Virginia, sells recycled electronics.

Tuff Rooster, located in Nine Mile Falls, Washington, sells descaling tablets and solutions, as well as brand name clothing.

Sarge & Reds, located in Harpers Ferry, West Virginia, sells playing cards.

DRL Communications, located in Mukwonago, Wisconsin, sells radio equipment.

Mid Mod, located in Cheyenne, Wyoming, sells modern furniture.