



NEWS RELEASE

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Petition for Certiorari Filed in South Dakota v. *Wayfair, Overstock and Newegg*

PIERRE, S.D. – Attorney General Marty Jackley announced today that he has filed a petition for certiorari, asking the United States Supreme Court to review the South Dakota Supreme Court decision in *State of South Dakota v. Wayfair, Overstock and Newegg*. The State asks the U.S. Supreme Court to overrule *Quill's* physical-presence requirement which currently prevents the State from requiring out-of-state retailers to remit taxes for sales made within South Dakota.

“The retail landscape significantly changed with the inception of the internet and access to online shopping. Federal law currently shields out-of-state businesses from remitting the same taxes as South Dakota businesses. Today the State asks the U.S. Supreme Court level to the playing field,” said Jackley.

In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the U.S. Supreme Court made a unique exception to the traditional dormant commerce clause analysis by requiring that a retailer have a “physical presence” within a State before a seller can be obligated to collect and remit that State’s sales taxes on purchases delivered into the State. The explosion of omnipresent online retailers and vast technological changes since *Quill* call for an end to the physical presence requirement. If the U.S. Supreme Court ultimately strikes down *Quill*, retail sales tax obligations can be applied fairly to both internet and main street businesses.

This case stems from a state law passed in 2016 that would require out-of-state retailers to collect and remit the sales tax similar to in-state retailers. The law applies to out-of-state retailers if they have more than \$100,000 in sales or complete more than 200 sales transactions per year within South Dakota.