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South Dakota Supreme Court Rules in Favor of Remote Retailers; Next Step US Supreme Court?

Yesterday, the South Dakota Supreme Court released its much-anticipated opinion in the *Wayfair* litigation, affirming a March 2017 trial court decision granting the remote retailer's motion for summary judgment on the basis that the economic nexus law enacted in 2016 (SB 106) is unconstitutional and directly violates the US Supreme Court's dormant Commerce Clause precedent in *Quill Corp. v. North Dakota*.

The South Dakota litigation remains at the front of the pack of a host of state court cases challenging similar state economic nexus laws across the United States. The expedited review (and decision) by the South Dakota Supreme Court here is significant, and puts the litigation well within the range of cases that would be decided by the end of the October 2017 Term (*i.e.*, by July 2018), assuming cert is granted—which is by no means a guarantee. The state has 90 days to file a cert petition with the US Supreme Court, which can be extended upon request. Stay tuned, as this litigation is far from over and the sitting US Supreme Court will be tasked with deciding whether they will honor Justice Kennedy's request to bring a case before the Court in *DMA v. Brohl*.

The full South Dakota Supreme Court opinion is available here.

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Article by Stephen P. Kranz, Mark Yopp and Eric Carstens

McDermott Will & Emery

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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