

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

WAYFAIR INC.,
OVERSTOCK.COM, INC.,
and NEWEGG INC.,

Defendants and Appellees.

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APPEAL FROM THE CIRCUIT COURT OF
THE SIXTH JUDICIAL CIRCUIT
HUGHES COUNTY, SOUTH DAKOTA

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THE HONORABLE MARK W. BARNETT
Judge

* * * *

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CONSIDERED ON MOTION
JULY 25, 2018
OPINION FILED 08/09/2018

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PER CURIAM

[¶1.] On September 13, 2017, this Court issued its opinion in *State v. Wayfair Inc.*, 2017 S.D. 56, 901 N.W.2d 754. We affirmed the circuit court’s summary judgment for internet sellers and held that the statutory scheme requiring these sellers with no physical presence in South Dakota to collect and remit sales tax violates the Commerce Clause.

[¶2.] On June 21, 2018, the United States Supreme Court vacated our judgment and remanded the case for further proceedings not inconsistent with its opinion. *South Dakota v. Wayfair, Inc.*, 585 U.S. ___, 138 S. Ct. 2080, 2100 (2018). “Any remaining claims regarding the application of the Commerce Clause in the absence of *Quill* [504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992)] and *Bellas Hess* [386 U.S. 753, 87 S. Ct. 1389, 18 L. Ed. 2d 505 (1967)] may be addressed in the first instance on remand.” *Id.*

[¶3.] On July 23, 2018, this Court received and filed certified copies of the United States Supreme Court’s mandate and judgment in *Wayfair*. Two days later, on July 25, 2018, the State filed a motion requesting that we remand the matter to the circuit court for further proceedings not inconsistent with the United States Supreme Court’s opinion in *Wayfair*. Internet sellers filed no response to the State’s motion. *See* SDCL 15-26A-87.2.

[¶4.] Accordingly, the circuit court’s order granting defendants’ motion for summary judgment is reversed, and the case is dispositively remanded for further proceedings not inconsistent with the United States Supreme Court’s opinion in *Wayfair*.

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[¶5.] GILBERTSON, Chief Justice, and ZINTER, KERN, JENSEN, and
SALTER, Justices, participating.