

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

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

Defendants and Appellees.

* * * *

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

* * * *

THE HONORABLE MARK W. BARNETT
Judge

* * * *

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and appellant.

* * * *

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

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Attorneys for defendants
and appellees.

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*.

#28160

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

STATE OF SOUTH DAKOTA

In the Supreme Court

I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this

9th day of Aug. 20 18

[Signature]
Clerk of Supreme Court
Deputy

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

AUG 09 2018

[Signature]
Clerk

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

STATE OF SOUTH DAKOTA,
Plaintiff and Appellant,

vs.

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

ORDER OF REVERSAL
and
DISPOSITIVE REMAND

#28160

Appellant State of South Dakota's having served and filed a motion for remand in the above-entitled matter on July 25, 2018, and no response having been filed thereto and the Court having considered said motion and having filed its decision in writing, now, therefore, for the reasons stated in #28160, *State v. Wayfair Inc., 2018, S.D. 62*, it is

ORDERED that the circuit court's order granting defendants' motion for summary judgment be reversed and the case is dispositively remanded for further proceedings not inconsistent with the United States Supreme Court's opinion in *South Dakota v. Wayfair, Inc., 585 U.S. ___*, 138 S. Ct. 2080, 2100 (2018).

DATED at Pierre, South Dakota this 9th day of August, 2018.

BY THE COURT:

[Signature]

David Gilbertson, Chief Justice

ATTEST:

[Signature]
Clerk of the Supreme Court

(SEAL)

PARTICIPATING: Chief Justice David Gilbertson and Justices Steven L. Zinter, Janine M. Kern, Steven R. Jensen and Mark E. Salter.