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SLLC Files Supreme Court Amicus Brief in Internet Sales Tax Case

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The State and Local Legal Center (SLLC) filed a Supreme Court [amicus brief](#) in one of the most important cases of the organizations 35-year tenure: *South Dakota v. Wayfair*.

In this case South Dakota is asking the Supreme Court to rule that states and local governments may require retailers with no in-state physical presence to collect sales tax. Ruling this way will require the Supreme Court to overturn long-standing precedent.

In 1967 in [National Bellas Hess v. Department of Revenue of Illinois](#), the Supreme Court held that per its Commerce Clause jurisprudence, states and local governments cannot require businesses to collect sales tax unless the business has a physical presence in the state.

Twenty-five years later in [Quill v. North Dakota](#) (1992), the Supreme Court reaffirmed the physical presence requirement but admitted that “contemporary Commerce Clause jurisprudence might not dictate the same result” as the Court had reached in *Bellas Hess*.

Customers buying from remote sellers still owe sale tax but they rarely pay it when the remote seller does not collect it. Congress has the authority to overrule *Bellas Hess* and *Quill* but has thus far not done so.

In March 2015 Justice Kennedy wrote a concurring opinion stating that the “legal system should find an appropriate case for this Court to reexamine *Quill*.” Justice Kennedy criticized *Quill* in [Direct Marketing Association v. Brohl](#) for many of the same reasons the SLLC stated in its *amicus* brief in that case. Specifically, internet sales have risen astronomically since 1992 and states and local governments are unable to collect most taxes due on sales from out-of-state vendors.

Following the Kennedy opinion, a number of state legislatures passed laws requiring remote vendors to collect sales tax in clear violation of *Quill*. South Dakota’s [law](#) was the first ready for Supreme Court review. It requires out-of-state retailers to collect sales tax if they annually conduct \$100,000 worth of business or 200 separate transactions in South Dakota.



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The SLLC [amicus brief](#) points out that states and local governments lost an estimated \$26 billion in sales tax revenue in 2015 because they were unable to collect owed taxes. The brief encourages the Court to overturn *Quill*. If the Court decides to replace the physical presence requirement the SLLC encourages the Court to adopt an economic nexus requirement—like the one the South Dakota legislature adopted.

Tillman Breckenridge, Bailey Glasser, and Patricia Roberts, William & Mary Law School Appellate and Supreme Court Clinic, wrote the SLLC [amicus brief](#) which the following organizations joined: the National Governors Association, the [National Conference of State Legislatures](#), the [The Council of State Governments](#), the [National Association of Counties](#), the [National League of Cities](#), the [United States Conference of Mayors](#), the [International City/County Management Association](#), the [International Municipal Lawyers Association](#), the Government Finance Officers Association, National Public Labor Relations Association, the International Public Management Association for Human Resources, National State Treasurers Association, National School Boards Association, AASA, the School Superintendents Association, the National Association of Elementary School Principals, and the Association of School Business Officials International.

The Supreme Court will hear oral argument in this case on April 17. It will issue an opinion by the end of June.

To learn more about the case, you can listen to a recent [podcast](#) hosted by the International Municipal Lawyers Association (IMLA).