South Dakota v. Wayfair

Supreme Court Ruling on State Sales Tax

- When a consumer purchases goods or services, the consumer’s State often imposes a sales tax. This case requires the Court to determine when an out-of-state seller can be required to collect and remit that tax. All concede that taxing the sales in question here is lawful.

- The question is whether the out-of-state seller can be held responsible for its payment, and this turns on a proper interpretation of The Commerce Clause.

- In two earlier cases the Court held that an out-of-state seller’s liability to collect the tax to the consumer’s State depended on whether the seller had a physical presence in that State, but the mere shipment of goods into the consumer’s State did not satisfy the physical presence requirement.

- The Supreme Court looked over the analysis used in the past and found that it was no longer a clear or easily applicable standard, so arguments for reliance based on its clarity are misplaced and not applicable.

- One reason for this, is that consumers who are not being taxed on online purchases are not paying the sales tax later and are regularly failing to comply with lawful use taxes. Some remote retailers go so far as to advertise sales as tax free.

- The Court found that the physical presence rule in Quill was incorrect now.

- The Court now used a new analysis.
  - 1. Does the tax apply to an activity with a substantial nexus to the taxing state? A nexus is established when the taxpayer [or collector] ‘avails itself of the substantial privilege of carrying on business’ in that jurisdiction.
    - The Court found that an economic and virtual contract is enough.
  - 2. Is there another principal in the Commerce Clause that invalidates this?
    - The Court did not resolve this issue, but stated that Safe Harbor rules can apply and that there is no obligation to pay sales tax retroactively.

- This system standardizes taxes to reduce administrative and compliance costs: It requires a single, state level tax administration, uniform definitions of products and services, simplified tax rate structures, and other uniform rules.
It also provides sellers access to sales tax administration software paid for by the State. Sellers who choose to use such software are immune from audit liability.

- The Supreme Court found that states may require out-of-state/on-line sellers to collect state sales taxes.

**CONCLUSION** The Commerce Clause is meant to prevent States from discriminating between in-state and out-of-state firms. National Bellas Hess, Inc. v. Department of Revenue and Quill Corp. v. North Dakota), are against this. This has a long history of tax breaks for out-of-state Internet and mail-order companies at the expense of in-state brick-and-mortar competition. However, the new ruling expands the definition of “physical presence” to include economic and VIRTUAL contact to be enough. This allows states to require out-of-state/on-line sellers to collect state sales taxes.