

SD v Wayfair - Prediction of Opinion Based On Justice Comments

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Prediction - at least 5 justices vote to sustain the SD ruling saying the SD law violates Quill (making Quill still good law)

Wayfair Favorable

SD Favorable

Could go for either side

Sotomayor	Pg 2, 21-25	Isn't the problem that you don't have a mechanism to collect tax from consumers?
	Pg 4, 10-14	I'm not concerned with your scheme. I'm concerned by the many unanswered questions that overturning precedents will create a massive amount of lawsuits
	Pg 4, 15-21	There is the retroactive question, despite you (SD) saying you are not retroactive
	Pg 4, 22-	We have the question of the level of contact that it takes to create nexus. Complete Auto test? Pike?
	Pg 5, 4-9	What happens when the tax program breaks down and merchants can't keep track of who they've sold to?
	Pg 5, 10-13	You are introducing a whole new host of problems to put behind something that has been in place for 30 year
	Pg 6, 8-10	What will the minimum amount of sales be everywhere else (even though 200 sales is in the SD statute)
	Pg 6, 14-16	What are we going to do with all the costs you are going to put on small businesses?
	Pg 6, 23-	[the small instate sellers] are not put in a disadvantage by Quill, but by the fact there are massive discount sellers, not just on internet but in stores
	Pg 7, 12-18	[the cost of purchasing software] doesn't include the cost of auditing, integrating the program, or maintenance
	Pg 8, 1-2	there's five states that don't centralize the [sales tax process]
	Pg 19, 22-	To US Attorney - the idea Congress can fix our overruling Quill doesn't do any help for what would happen in the interim before Congress acts
	Pg 41, 8-13	Is there anything we could do that would give Congress a signal that it should act more affirmatively in this area?
Pg 53, 18-	is there anywhere I can read that defines what is a small business in America?	
Pg. 56, 19-20	What does Pike give us is one sale is enough (to give nexus)?	
Pg. 60, 1-4	A number of state are already making it retroactive	
Roberts	Pg 8, 15-20	asked if there would be a constitutional minimum.
	Pg 9, 3-9	Hinted that if we move from physical presence, then we would need a constitutional minimum contact.
	Pg 17, 4-17	Some briefs hint the economic impact has peaked...
	Pg 18, 1-10	Sure ecommerce is expanding, but the coverage of taxes collected by the state are expanding as well.
	Pg 21, 24-	Ask US attorney if there is a constitutional minimum even on a micro business
	Pg 41, 20-25	Maybe Congress, or the majority, have already made the decision that they are going to leave it the way it has been for 25 years
	Pg 52, 4-6	What is the reliance you are talking about, other than retroactivity?
Pg 52, 19-23	the (reliance) benefit comes not just from the fact (remote sellers) don't have to collect, but also from the fact the people aren't paying use tax	
Alito	Pg 9, 25-	Option A - eliminate Quill and let states do whatever they want with retroactivity or Option B uphold Quill and let Congress limit retroactivity
	Pg 14, 7-10	If Quill is overruled, then we incentive does Congress have to act?
	Pg 27, 6-13	Do you have any doubt that the state and municipalities tottering on the edge of insolvency have strong incentives to grab everything they possibly can?
	Pg 28, 23-	Ask US attorney whether this law could be retroactively applied.
Kagan	pg 10, 18-23	The fact Congress has not acted makes the bar of overturning Quill very high because Congress has been well aware of the issue and could have acted
	Pg 11, 1-7	Isn't the fact that Congress is best equipped to decide if there is a constitutional minimum a reason for leaving Quill intact
	Pg 23, 11-16	Is this the reason that we should live this to Congress, because Congress is best to decide

	Pg 46, 15-20	I think Justice Ginsburg was perhaps suggesting that all these (compliance functions) would be taken over by companies like Amazon, eBay, and Etsy and they would do it for their retailers.
	Pg 46, 21-25	Now it is ironic that problem with Quill is that it benefited the big internet retailers, but now we are going to overturn Quill to benefit the exact same (big internet companies)
Ginsburg	Pg 11, 16-25	if Quill is wrong, then why should this court just say that it will let Congress fix an obsolete decision?
	Pg 16, 25-	Congress could take care of retroactivity if we overturn Quill
	Pg 23, 2-5	Ask US attorney - isn't Congress equipped to establish a constitutional minimum
	Pg 29, 17-21	Ask US attorney, what is the government's view on a prospective only opinion
	Pg 33, 8-13	Why isn't it equalizing sellers by making both the instate and out of state sellers collect tax.
	Pg 33, 13-14	All who exploit an instate market are subject to the in-state tax
	Pg 39, 7-12	(in a Colorado type law) it is more efficient to collect tax by the retailer than to have the state go after the consumer
	Pg 44, 3-12	What shouldn't the Court take responsibility to keep our case law in tune with the current commercial arrangements? Why should be ask Congress to overturn our obsolete precedent?
	Pg 45, 15-19	Don't you think there's enough incentive in the systems that if we did overrule Quill, than entrepreneurs would produce software that would meet the market need?
	Pg. 48, 3-8	I they open a store in the state, then they get hit by the remote sellers. It is the small sellers in the state that are suffering
	Pg. 49, 18-23	But that (opening up remote sellers to nexus with even 1 sale into a state) would appeal to Congress because it would not appear to be increasing taxes, but rather fixing something
	Pg. 50, 15-17	We saw today that Congress can sometimes act with rapidity
Breyer	Pg 12, 17-24	Because Congress can act, there is no reason for treating this case specially (by overturning it)
	Pg 13, 3-14	We have briefs from three senators and Goodlatte saying Congress was about to act.
	Pg 25, 5-24	Large internet retailers have almost an oligopoly and overruling Quill would create barriers to entry for small businesses, which are the only line of defense we have against these oligopolies
	Pg 31, 17-25	Software makes it easy, but there are 12 mistakes in SD alone; more than 10,000 jurisdictions
	Pg 32, 1-3	\$500 for every mistake, which equates to billions
	Pg 32, 3-5	Then we have class action law suits
	Pg 36, 13-20	How much does it cost a mandolin seller who sells mandolins on the internet to sell them in 50 states? How much does it cost him to enter the market?
	Pg 57, 2-13	Complete Auto discusses nexus such that the benefits of state revenue do not outweigh the compliance cost associated with the tax collection obligations UNTIL - I think of 10,000 cases brought by 20,000 lawyers to decide nexus on a jurisdiction by jurisdiction basis, this was my problem with Complete Auto
Gorsuch	Pg 34, 12-22	Why should we favor a particular business model the relies not on brick and mortar but mail order?
	Pg 37, 21-23	The cost starts at \$12. So the (\$250,000 number) is a little misleading.
	Pg 38, 3-16	The choice is between SD type law or Colorado type reporting law. I think the Colorado type law may be more burdensome.
Kennedy	Pg 42, 13-21	You are telling us that Congress should act on the backdrop that this Court has made in incorrect decision
Thomas		nothing, zilch, nada