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South Dakota v. Wayfair: A Look at the Cert Petition

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At the time of this writing, the state tax community is abuzz with speculation about whether the U.S. Supreme Court will decide to hear South Dakota v. Wayfair, the case addressing the constitutionality of South Dakota's sales tax economic nexus statute and the continuing vitality of Quill's physical presence rule. The petition for a writ of certiorari and amicus briefs in support of the petition have now been filed. They criticize Quill and physical presence from a variety of different angles. This article summarizes the main arguments from the petition and from the amicus briefs. It then enumerates potential actions the Court could take in response to the petition. It concludes that sales/use tax nexus complexity will likely continue to persist regardless of what the Court decides to do (or not do) in response to the South Dakota v. Wayfair cert petition.

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