

THOMAS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 17–494

SOUTH DAKOTA, PETITIONER *v.* WAYFAIR, INC.,
ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
SOUTH DAKOTA

[June 21, 2018]

JUSTICE THOMAS, concurring.

Justice Byron White joined the majority opinion in *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U. S. 753 (1967). Twenty-five years later, we had the opportunity to overrule *Bellas Hess* in *Quill Corp. v. North Dakota*, 504 U. S. 298 (1992). Only Justice White voted to do so. See *id.*, at 322 (opinion concurring in part and dissenting in part). I should have joined his opinion. Today, I am slightly further removed from *Quill* than Justice White was from *Bellas Hess*. And like Justice White, a quarter century of experience has convinced me that *Bellas Hess* and *Quill* “can no longer be rationally justified.” 504 U. S., at 333. The same is true for this Court’s entire negative Commerce Clause jurisprudence. See *Comptroller of Treasury of Md. v. Wynne*, 575 U. S. ___, ___ (2015) (THOMAS, J., dissenting) (slip op., at 1). Although I adhered to that jurisprudence in *Quill*, it is never too late to “surrende[r] former views to a better considered position.” *McGrath v. Kristensen*, 340 U. S. 162, 178 (1950) (Jackson, J., concurring). I therefore join the Court’s opinion.