

September 17, 2018

The Honorable Mitch McConnell
Majority Leader
U. S. Senate
Washington, DC 20510

The Honorable Chuck Schumer
Minority Leader
U. S. Senate
Washington, DC 20510

The Honorable Paul Ryan
Speaker of the House
U. S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U. S. House of Representatives
Washington, DC 20515

Dear Sirs and Madam,

On behalf of the undersigned organizations and the companies we represent, with both an online and physical presence, we oppose legislation that would erode the progress towards tax parity that was handed down by the United States Supreme Court in the June 2018 *Wayfair* decision.

Over the better part of a decade, the stakeholders listed below have undertaken significant efforts to establish economic parity between online and brick-and-mortar sellers that would better reflect the changing dynamics of today's omnichannel marketplace. In the June 2018 *Wayfair* ruling, the U.S. Supreme Court struck down the outdated and arbitrary physical nexus standard, stating it was "unsound and incorrect". In its place, the Court pointed to the sufficient economic nexus standard, paired with a prohibition against imposing undue burden on businesses. The Court also recognized the South Dakota statute at question in the litigation as the standard bearer.

Since the *Wayfair* decision was handed down, the states have been undertaking an orderly and transparent process to implement policies based on this new standard. As issues related to implementation arise, they are being addressed by state governments. Furthermore, the states are aware of the need to follow the prescription laid out by the Supreme Court, or else they leave themselves open to further litigation that could undermine the ruling that we have all worked for decades to obtain.

At this time, there are no states collecting retroactively under the *Wayfair* standard. Furthermore, we do not see any state attempting to collect retroactively using the increased authority granted by the Supreme Court. States are addressing the decision judiciously, based on each individual state's legislative calendar, existing policies and appetite for collection and simplification. Finally, the Court commended the South Dakota economic nexus standard of 200 transactions or \$100,000 in sales as an appropriate standard. Given that this issue is about each state's right to control its budget and revenue authority, we believe that this is a more fitting standard than a national small seller limit that would be filled with legal and implementational problems.

We strongly believe that the time for Congress to act was prior to the *Wayfair* decision and has now passed. For Congress to insert themselves post-ruling only creates additional uncertainty and further complicates the implementation process, while undermining the level playing field created by the *Wayfair* decision. If in the future, tangible, not speculative, problems arise from state implementation

of the new standard, we would welcome the opportunity to work with Congress to address those concerns.

Sincerely,

National Trade Associations:

American Veterinary Medical Association
Food Marketing Institute
Home Furnishings Association
International Council of Shopping Centers
Institute of Real Estate Management (IREM)
Jewelers of America
Nareit
National Association of Realtors®
National Association of Wholesaler-Distributors
National Grocers Association
National Retail Federation
National Ski & Snowboard Retailers Association
National Sporting Goods Association
Retail Industry Leaders Association
The Real Estate Roundtable

State Trade Associations:

Alabama Retail Association
Arizona Retailers Association
Arkansas Grocers and Retail Merchant Association
California Retailers Association
Connecticut Retail Merchant Association
Colorado Retail Council
Florida Retail Federation
Georgia Retailers
Idaho Retailers Association
Illinois Retail Merchants Association
Indiana Retail Council
Kentucky Retail Federation
Louisiana Retailers Association
Maryland Retailers Association
Michigan Retailers Association
Minnesota Retailers Association
Missouri Retailers Association
Missouri Tire Industry Association
Nebraska Retail Federation
New Jersey Retail Merchants Association
New Mexico Retail Association
North Carolina Retail Merchants Association
North Dakota Retail Association
Ohio Council of Retail Merchants
Oklahoma Retail Merchants Association

Pennsylvania Retailers Association
Retail Association of Maine
Retail Association of Nevada
Retail Council of New York State
Retailers Association of Massachusetts
South Carolina Retail Association
South Dakota Retailers Association
Tennessee Retail Association
Texas Retailers Association
Utah Food Industry Association
Utah Retail Merchants Association
Virginia Retail Federation
Virginia Retail Merchants Association
Washington Retail Association