

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 In the June 2018 *Wayfair* ruling, the U.S. Supreme Court struck down the outdated and arbitrary physical nexus standard, stating it was "unsound and incorrect".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,

International Council of Shopping Centers  
Institute of Real Estate Management (IREM)  
Nareit  
National Association of Realtors®  
National Association of Wholesaler-Distributors  
National Retail Federation  
Retail Industry Leaders Association  
The Real Estate Roundtable