

July 23, 2018

Chairman Bob Goodlatte and Ranking Member Jerry Nadler
House Judiciary Committee
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Goodlatte, Ranking Member Nadler, and Members of the Judiciary Committee,

On behalf of the millions of citizens represented by the undersigned organizations, we commend you for holding a hearing to address the critical issue of state tax power in the internet age. In the wake of the Supreme Court's recent decision in the case of *South Dakota v. Wayfair*, states are aggressively moving to expand their authority outside their borders, threatening interstate commerce and small internet-enabled businesses in particular. This hearing can serve as a first step to Congress acting to prevent the harmful disruption to prudent principles of tax administration that is currently brewing at the state level.

After failing to convince Congress to pass a law granting them the power to tax non-resident businesses, states took matters into their own hands by passing unconstitutional laws with an eye toward convincing the Supreme Court to take up a case. In *South Dakota v. Wayfair*, the Supreme Court did just that, overturning decades of common sense precedent by ruling that states can require collection of their taxes by businesses with no physical presence inside their borders. The resulting rush of state actions could force sellers all across the country to collect and remit sales tax for as many as 12,000 taxing jurisdictions nationwide, a task that would be difficult for any business but is particularly burdensome for small businesses.

While the Court gave some cursory guidance to states to reduce the compliance and interstate commerce burdens of such collection schemes, a few sentences in a majority opinion is no match for Congressional legislation in setting out clear standards. For example, the Court indicated that it views favorably a simplified statewide administration program for sales taxes, but stopped short of clearly requiring it in order for a collection regime to be constitutional. It also distinguished between large businesses and smaller ones, citing South Dakota's small seller exception as a key feature minimizing its negative impact on internet commerce, but did not clearly identify a specific minimum threshold for constitutionality.

No Supreme Court case involving one small state can possibly set reasonable nationwide standards. That is why this hearing is so important to start the



important work of Congress in crafting a solution to end confusion and create sensible rules that minimize burdens to interstate commerce and mitigate the impact on small internet retailers.

This work cannot begin quickly enough. States are proceeding with abandon on laws that may not meet current constitutional standards, while vexing and unanticipated questions in many other areas of law are surfacing. Though *Wayfair* was a sales tax case, practitioners are just now beginning to investigate the full impact it could have in business income tax, individual income tax, and regulation issues that cross state borders.

Much as controlling a nuclear reaction requires the insertion of control rods to slow the fission process, controlling runaway state actions that could damage interstate commerce requires Congressional action to slow and rationalize the process. First and foremost, Congress should act to stop a mad dash for new cross-border power. Then it can do the difficult but necessary work of establishing a responsible national approach to the vital questions surrounding taxes and the internet. For all the foregoing reasons, we applaud your decision to hold this hearing and look forward to supporting the committee's work moving forward.

Sincerely,

Andrew Moylan
National Taxpayers Union

Jeff Mazzella,
Center for Individual Freedom

Grover Norquist
Americans for Tax Reform

Katie McAuliffe
Digital Liberty

Phil Kerpen
American Commitment

Jason Pye
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Norm Singleton
Campaign for Liberty

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