

**REMOTE ONLINE SALES TAX: EXAMINING
THE IMPACT ON SMALL BUSINESSES OF THE
SUPREME COURT'S DECISION IN
*SOUTH DAKOTA V. WAYFAIR***

HEARING

BEFORE THE

**COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP
UNITED STATES SENATE**

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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WEDNESDAY, AUGUST 28, 2019

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP,
Concord, NH.

The Committee met, pursuant to notice, at 2:30 p.m., Grappone Conference Center, Concord, NH, Hon. Jeanne Shaheen, presiding.
Present: Senators Shaheen and Hassan.

**OPENING STATEMENT OF HON. JEANNE SHAHEEN, A U.S.
SENATOR FROM NEW HAMPSHIRE**

Senator SHAHEEN. Good afternoon, everyone. I would like to officially open this field hearing of the Senate Committee on Small Business and Entrepreneurship. I am Jeanne Shaheen, Senior Senator from New Hampshire and I am pleased to be joined by Maggie Hassan, who is New Hampshire's other Senator. I won't call you the Junior Senator.

Senator HASSAN. That is okay, I will take it. It's good.

[Laughter.]

Senator SHAHEEN. I wanted to start by explaining what we think will happen today as part of this official Small Business field hearing. This is an official hearing of the Small Business and Entrepreneurship Committee. It is open to the press and the public, and it will operate very much in the same way that a hearing in Washington would operate, expect that there will only be two of us here for this hearing. All testimony and responses to questions will become part of the Congressional record. And after my opening remarks, I will turn it over to Senator Hassan for her opening remarks. And just as in other committee hearings in Washington, although Senator Hassan is not on the Small Business Committee, we often sit in on other committee hearings and she will be doing that because this is an issue that she has worked on as well as I have.

After the opening, our witnesses, representing the small business community, will offer oral testimony in a five-minute speech. After their testimony concludes, I will begin with my questions. And while we do not have the usual yellow, red, and green buttons that they have in Washington to try and limit people to five minutes, we will try and keep our responses within five minutes. After I do

an initial round of questions, I will turn it over to Senator Hassan, and she will do an initial round, and we will go back and forth until we have exhausted all of the questions.

Again, like hearings in Washington, there will not be an opportunity for the public to ask questions. But if you have comments or questions that you would like to raise, you will be able to submit written testimony, and they will then go to any of our witnesses and they will respond to your questions in writing. I want to begin by thanking Jake Wenthouse, who is the counsel for the Majority on the Small Business committee. He works for Senator Rubio. Jake, where did you go? There is Jake. This is his first visit to New Hampshire. I told him that we made sure the weather was very nice for him. And also, with him is Ron Surhoff, who is from the staff of Ranking Member Cardin, who represents the Minority on the committee. So, thank you both for being here.

Before I turn it over to Senator Hassan, I want to explain briefly how we got where we are today in terms of this decision by the Supreme Court on *Wayfair* and the internet sales tax. Beginning in 1992, the Supreme Court had held that States could not force sellers to collect sales tax if they don't have a physical presence in their State. South Dakota, the State of South Dakota, challenged this rule. They argued that it was out of date due to advances in software and because e-commerce was resulting in more lost revenue to States. Wayfair and other online retailers argued, correctly I believe, that the burden of remote sales tax collection would be significant for small businesses.

Online retailers were not the only one sounding the alarm about the potential burden. In fact, a Government Accountability Office report that I along with Senator Wyden from Oregon requested in 2017 highlighted the number of burdens that small businesses would face if the internet sales tax went into place. That included software costs, ongoing administrative costs, complexity of thousands of different tax jurisdictions, and the risk of out-of-State audits. Despite these warning signs, the Supreme Court overturned a decade of its own precedent in deciding *South Dakota v. Wayfair*. That has ushered in a new era of significant compliance costs and tremendous confusion for many small businesses, particularly in States like New Hampshire where we do not have a sales tax and we have not had a real infrastructure for dealing with a sales tax burden.

Now since *Wayfair* was decided, many of the very risks that were warned against have materialized. Thirty-seven States and the District of Columbia now require remote sales tax collection, according to the National Conference of State Legislatures. And while some of these requirements are similar, others vary dramatically from State to State, with different implementation dates, the minimum Safe Harbor thresholds, and definitions of products and services that are subject to taxation, all of which increase the costs, the complication, and the confusion for small businesses. And so far, the argument that States are losing significant revenue to online sales really has not materialized.

An analysis of official State revenue estimates by the National Taxpayers Union found that since *Wayfair*, just two States have collected more than the General Accounting Office had estimated,

and the total amount among all 32 States surveyed represents an average of just 0.7 percent of general fined revenue, so much less than States claimed they were losing. So, the question is where do we go from here? New Hampshire has taken some steps at the State level to try and protect the State's small businesses. And I think these are admirable efforts, but I think as we will hear from our witnesses today, small businesses are already taking steps to comply, and our State's efforts alone do not seem to be what it will take to solve this problem. There are a number of pieces of legislation at the Federal level to address the online sales tax, one that would totally repeal and change the *Wayfair* decision.

I have introduced legislation that would ban retroactive taxation and would exempt small businesses with less than \$10 million in sales from out-of-State sales taxes. I am hopeful that some of these pieces of legislation might be taken up and actually considered. So, at this point, I look forward to hearing the testimony of our witnesses and let me turn it over to Senator Hassan for her opening thoughts, and then I will introduce the witnesses. Senator Hassan, thank you for being here.

**STATEMENT OF HON. MAGGIE HASSAN, A U.S. SENATOR FROM
NEW HAMPSHIRE**

Senator HASSAN. Well, thank you, Senator Shaheen, for holding this important hearing and for including me in it as this is a vital issue for businesses and people of New Hampshire. It is vital that we come together in New Hampshire to raise awareness about the Supreme Court's backward *Wayfair* decision because of the major burdens it imposes on small businesses. I would also like to thank the four witnesses who are here to testify today. By sharing your experiences, you are helping highlight the significant costs of the loan sales tax collection for businesses all across New Hampshire, from Dover, to Littleton, to Conway. I look forward to hearing from the panel and to our discussion.

Before turning back to Senator Shaheen, I would like to highlight two important points. First, it is essential that Congress move as quickly as possible to protect small businesses from the burdens and costs and heaps of red tape imposed by out-of-State Governments following the *Wayfair* decision. That is why along with Senator Shaheen, I helped introduce the Online Sales Simplicity and Small Business Relief Act, which would protect small businesses from owners compliance burdens, ban unfair retroactive taxes, and delay tax collection requirements. Congress should pass our common sense bill immediately, and I applaud Senator Shaheen for her continued leadership on this issue.

Second, hearings like the one we are having today are crucial for raising awareness about the massive costs and complexities of remote sales tax collection, which mostly hurt small businesses that are the backbone of our economy. That is why, as a member of the Senate's Finance Committee, which has jurisdiction over tax law, I am pushing forward the Finance Committee to convene hearings in Washington examining the tax of the *Wayfair* decision.

This decision is not only unfair to businesses who are forced to collect sales taxes for other States, it is unfair to all small businesses across the country that are navigating the thousands of tax

and jurisdictions which will now force them into the burdens and role of tax collectors. I am going to continue working with Senator Shaheen to find a bipartisan path forward, as well as pushing my colleagues on the Finance committee and in the Senate to provide relief from remote sales tax collection.

So, I look forward to working with everyone to make this happen. And again, thank you for holding this hearing. Senator Shaheen, back to you.

Senator SHAHEEN. Thank you. And thank you all very much, all of the witnesses who are here today, for taking time to come and share with us what you are experiencing as the result of the *Wayfair* decision. I am going to introduce each of our witnesses. First is Dwight Moore who is the CEO of Tradeport USA and employs 30 people at its headquarters in Dover, New Hampshire. And Tradeport is a small business center, Dwight will tell us more about it, but it really resells products returned by customers that would otherwise go to the landfill. Ailie Byers is President of three companies based in North Conway, including Centennial Auctions. She is also on the Board of Directors of the National Auctioneers Association, so she has a national perspective to share with us today.

John Hennessey is President of Littleton Coin, which employs nearly 300 people in Littleton, and sells coins and other collectible items online and by catalog. Thank you for being here. And Scott Badger is VP of Sales and Co-Founder of Lupine Pet based in Center Conway, which currently employs 65 people and manufactures and sells pet accessories. Thank you all for being here. Before we hear testimony from our witnesses, let me just recognize some of the Representatives in the audience.

We have Representatives from New Hampshire's Chambers of Commerce, including the Greater Salem Chamber, Souhegan Valley, and the Greater Derry Londonderry Chamber. So, thank you all very much for being here, and I want to also recognize Liz Gray from the Small Business Development Centers and Greta Johansson, who was the Director of the New Hampshire Small Business Office, SBA office here. Thank you both for being here as well.

And, finally, let me recognize the efforts, although I do not think any of them have joined us, but we may have some legislators joining us later who have been at the forefront of trying to address this issue at the State level. With that, let me conclude and turn the testimony over to our witnesses.

Mr. Moore, I am going to ask you to begin.

**STATEMENT OF DWIGHT MOORE, CEO, TRADEPORT, ACTON,
MA**

Mr. MOORE. Thank you so much, Senator Shaheen and Senator Hassan. I appreciate the opportunity to be here today. Again, my name is Dwight Moore. I am CEO and Partner of a company named Tradeport USA. We recently relocated from Somersworth, New Hampshire, to Dover, and the reason that we relocated is because our services are much in need and we are growing as a small business. But we are a small business, and among other things we do sell products that are returned by consumers. The majority of

our sales are through online channels such as Amazon, eBay, Newegg, Walmart, and others. And we primarily sell to consumers in the U.S.

Repurposing returned products that have historically ended up in landfills is both economically and environmentally responsible. Tradeport was founded in 2001. We currently provide over 30 jobs today, and with our growth we anticipate we are going to be adding many more new jobs in Dover. This testimony is very timely for me personally because just two weeks ago, I met with my CFO—the reason is so timely for me is because just two weeks ago my CFO and I sat down for an entire day and tried to understand the new tax requirements that resulted from the *Wayfair* case. You know, granted, we are a little bit behind the curve here, but we knew we had to get going so we spent the day doing that. Our goal was simple.

We set out to understand the requirements first, then we wanted to lay out a plan that would bring us into compliance if we met the individual State threshold levels. Granted, we are just starting. So far, my experience and feedback is that things are very convoluted and cumbersome. In order to gain an understanding of the requirements, we performed a thorough web search to find resources that describe the State-by-State requirements. What we found was that in addition to the State requirements, we would also have to navigate many local jurisdictions.

Once we felt that we had our arm somewhat around the overall tax requirements, we then created our own sales tax requirements document that describes the compliance rules to the best of our ability. As I sit here today, I am not 100 percent confident that we have got it completely right. We then created a computer program, internally into our computer, into our company, and using our computer systems, we generated some sales reports from 2018 to 2019. And we tried to determine what our sales were on a State-by-State basis.

So, our thinking was that by comparing the requirements to our sales reports, you would have a basic understanding of where we have to, or where we have a State obligation. And what we found was that there are about 12 States that we believe we have an obligation. We still have not quite figured out the local jurisdiction piece yet, and we are going to be continuing to work on that. As I testified earlier, we mainly sell online using these large channels such as Amazon, eBay, Newegg, and others. We then researched what, if any, support the channels provide to help small companies and sellers like us comply with the tax requirements. What we discovered so far is that they all do it a little bit differently. This really complicates the task of collecting sales tax, registering in the States, and file. We are hopeful that the sales channels would provide some support and relief from our administrative burdens associated with sales tax compliance rules.

Although our research is still very much a process, please let me describe briefly what we found out while researching channels. Amazon has a software tool that will calculate the sales tax for the States and local jurisdictions for the States that we tell them that we think we comply or that we meet the thresholds for. Of course, Amazon charges a fee for that. It is 2.9 percent on the sales tax

liability. Amazon will collect the sales tax and provide us a report. Once we receive the report, then we are responsible for registering and filing in each State and local jurisdiction. eBay takes a slightly different approach. They have a free software program that will collect, register, and file in States on our behalf in 21 States. It seems like we are on our own for the remaining States and we have to figure that all out.

Newegg is still like eBay in that they would collect, register, and file for us but they only do that for 19 States. Like eBay, Newegg's tool is free, but again, we are on our own to comply with the States that Newegg does not address. As a result, we at Tradeport have come to the conclusion that we cannot do this ourselves. We are going to need some help. So, we are in the process of obtaining quotes from third-party companies that claim to have built integrations with the online channels and that will help facilitate the sales tax compliance requirements.

The purpose of my testimony today is to share with you the experience that we have had and the frustration of the process. We want to be in compliance, but as you can see from my testimony, it will be both administratively and costly burdensome. For a company like Tradeport with under \$10 million in sales, this is a significant drain on our resources. From a personal standpoint.

I believe new laws that exempt small businesses would be a huge help in maintaining a vibrant community of smaller and online sellers that do not have all the necessary resources to navigate the complex rules.

[The prepared statement of Mr. Moore follows:]



August 26, 2019

Senator Shaheen, and other members of the Committee, thank you for inviting me to testify today. My name is Dwight Moore, and I am CEO and partner of a company named Tradeport USA, LLC. We recently relocated from Somersworth, NH to Dover, NH to meet the growing demand for our services. Tradeport is a small business that among other things, resells products that are returned by consumers. The majority of our sales are through online channels such as Amazon, eBay, Newegg, Walmart.com, etc., and we primarily sell to consumers in the US. Repurposing returned products that have historically ended up in landfills is both economically and environmentally responsible. Founded in 2001, Tradeport currently provides 30 good jobs here in New Hampshire, and I anticipate that number will continue to grow.

This testimony is very timely for me because just two weeks ago, my CFO and I spent an entire day trying to understand the new sales tax requirements that resulted from the Wayfair case. Our goal was simple. First, we set to understand the requirements. Then we wanted to lay out a plan that would bring us into compliance if we met the individual state threshold levels. Granted, we are just starting the process, but so far, my experience and feedback is that things are very convoluted and cumbersome.

In order to gain an understanding of the requirements, we performed a thorough web search to find resources that described the state-by-state requirements. What we found out was that in addition to the state requirements, we would also have to navigate the many local jurisdictions sales tax requirements within many of the states. Once we felt we had our arms somewhat around the overall tax requirements, we created a Sale Tax Requirements document that described the compliance rules to the best of our ability. As I sit here today, I am still not 100% confident that we have it completely "right".

We then created a new computer program from our ERP(Enterprise Resource Planning) system to give us a historical State-by-State sales report for 2018 and year-to-date for 2019. We then compared the Sales Tax Requirements document that we created to the State-By-State Sales Report. I believe this gives us a pretty good idea of

the 12 states we will have a sales tax obligation. We still haven't quite figured out all the requirements for the local jurisdictions within each state yet.

As I testified earlier, we mainly sell online using large channel partners such as Amazon, eBay, Newegg, Walmart.com, etc. We then researched what if any support the channels provide to help sellers like us comply with the new sales tax requirements. What we have discovered so far is that they all do it a little differently. This really complicates the tasks of collecting sales tax, registering in the states, and filing.

We were hopeful that the sales channels would have some support and relief from the administrative burdens associated with the sales tax compliance rules. Although our research is still very much in process, please let me describe what we found out from our research of the channels.

Amazon has a software tool that will calculate the sales tax for the states and local jurisdictions for the states that we tell them we will meet the state's thresholds. Amazon's fee for this service is 2.9% of our sales tax liability. In order to identify the states, we need to predict the sales for our products based on historical reports. Although history is a good predictor of the future, it doesn't guaranty we will select the correct states. Amazon will collect the sales tax and provide us a report (and by-the-way, they don't guaranty the accuracy. We are still responsible for any mistakes and all sales tax liability). Once we receive their report, we are then responsible for registering and filing in each state and local jurisdiction.

eBay takes slightly different approach. They have a free software tool that will collect, register, and file sales taxes on our behalf for 21 states. It seems like we are on our own for the remaining states.

Newegg is similar to eBay in that they will collect, register, and file for us, but they only do that for 12 states. Like eBay, Newegg's tool is free. But again, we are on our own to comply with the states that Newegg doesn't address.

As a result, we have come to the conclusion that we cannot perform the collection, registrations, and filings by ourselves. We are now in the process of obtaining quotes from third-party companies that claim to have built integrations with the channels and will facilitate the sales tax compliance.

The purpose my testimony today is to share with you the sales tax compliance difficulties that we have experienced so far, and to express our frustration with the process. We want to be in compliance, but as you can see from my testimony, it will be both administratively burdensome and costly. For a company with sales under \$10M, this is a significant drain on our resources.

From a personal standpoint, I believe new laws that exempt small businesses would be a huge help in maintaining a vibrant community of smaller online sellers that don't have all the necessary resources to navigate the complex rules.

Lastly, thank you for the opportunity to testify today. I will do my best in responding to any questions you may have.

Sincerely,

Dwight Moore, PE
CEO
Tradeport
1 Progress Drive
Dover, NH 03820

Senator SHAHEEN. Thank you very much.
Ms. Byers.

**STATEMENT OF AILIE BYERS, PRESIDENT, ALPENGLOW
BENEFIT AUCTIONS, NORTH CONWAY, NH**

Ms. BYERS. Senator Shaheen, thank you for inviting me to testify today on the impact of the *Wayfair* decision here. Senator Hassan, thank you for being here as well. My name is Ailie Byers and I am the President of Alpenglow Benefits and CFO of Scofield and Centennial Auctions. I also have a master's degree in public administration. My family company was founded 40 years ago. We now service clients all over the United States and we are based primarily in New Hampshire.

In 2018, I was elected to the National Auctioneers Association Board of Directors, and in that capacity, I engaged in weekly calls about the *Wayfair* decision and its impact on our profession. The NAA has just under 4,000 members and represents around 2,000 companies. Over 67 percent of our members work with companies that have 4 or less full-time employees, and about 92 percent have over 20 employees. Auction professionals collectively facilitate commerce in America on a massive scale, selling billions of dollars of assets each year.

Auctioneers have built their business models on a physical presence rule pre-*Wayfair*. We now face an overwhelming tax environment charged with financial burdens and legal uncertainty. While large retailers may be able to meet the burden of complying with multiple State and local taxing systems, many auction companies do not have the resources to absorb the costs of such compliance. Each auction is unique unto itself in terms of the items we are selling, the number of items we auction, the makeup of the buyers, as well as location of the sale. We have learned that all of our options, be they live, online, or simulcast, are all affected by this decision.

A significant difference for our industry versus retails at large is that auction companies do not typically own the goods we sell in auction. Instead, we are acting as agents of the sellers, and an overwhelming majority of assets we sell are non-consumables, so we do not have repeat buyers. We sell a broad range of products, from pots and pans to large commercial machinery. Auctions are open to the public so anyone from anywhere can show up and register to bid at an auction. Since the *Wayfair* decision, depending on definitions, about 42 States have enacted legislation similar to South Dakota.

One of the hardest problems with compliance is the lack of standardization, both the thresholds each State has established as passible is not standardized. With customers across the country, these new tax laws mean auction professionals face the overwhelming task of determining the correct taxing authority and the tax rate for each customer, as well as the proper classification of each item in nearly 10,000 jurisdictions in the United States. There is no national clearinghouse for this information. Not only are States unaware of all the jurisdiction exemptions within their State, there are also State situations like Home Rule in Alaska, where the State itself does not collect sales tax; however, municipalities within inside the State do. These thresholds include eco-

nostic, marketplace, click through, and affiliate nexuses. They are all unique, and with at least one State, Kansas, having a threshold that is only one dollar for one transaction.

During the arguments of the case, ease of compliance proffered. However, while basic versions of tax software may be available for low monthly fees, substantial fees apply for premium services. Additionally, the cost and staff time of integrating software into existing systems, which can be particularly challenging as all the items and prices vary significantly from auction to auction with minimal overlap, this even before any tax liability is factored in.

Lastly, the most troublesome is the retroactive tax liability for prior sales that is now allowed in some places. How one is supposed to go back to prior year buyers and collect sales tax for those items is an interesting intellectual exercise, but it is practically impossible. The argument for the collection of sales taxes by remote sellers is usually characterized as a means of fairness between small main street shops and massive online companies. However, the financial, logistical, and staffing requirements necessary to comply with the myriad of taxing jurisdictions does just the opposite. Main Street shops are the ones that cannot afford to meet these requirements. If anything, an undo consequence of these regulations is forcing small companies out of business. In Kansas, there is a 50-year-old auction company that has four full-time employees.

As of last month, they have crossed the threshold in three States. They forecast that in 18 months they will be out of business due to compliance issues and costs. At the Federal level, the Senate Bill 2350, sponsored by Senator Shaheen, as well as HR 1933 over in the House are bills designed to mitigate the impact of the *Wayfair* decision on small businesses as I have outlined. Finally, the number one misunderstanding of the *South Dakota v. Wayfair* ruling is interstate versus online commerce. It does not matter if you sell a product through e-commerce in the internet or if an individual comes into your store and buys the product and pays for it on-site, the final destination of the items sold is determined as tax liability as we have been informed by multiple State taxing agencies. Therefore, it is not a matter of online merchants selling their wares across State lines. Any product crosses the State lines is classified as interstate commerce, and thus the seller is a remote seller.

We in the auction world do not want to die a death by a thousand cuts. We facilitate an open, transparent, and competitive market where all have the ability to buy and sell. The *Wayfair* decision is an existential threat to us. I would like to thank you for the opportunity to testify today. I look forward to responding to your questions.

[The prepared statement of Ms. Byers follows:]



Written Testimony for the U.S. Senate
Committee on Small Business and Entrepreneurship

Remote Online Sales Taxes: Examining the Impact on Small Businesses of the
Supreme Court's Decision in South Dakota v. Wayfair

By Ailie F. Byers, MPA, CAI, BAS, AMM
President Alpenglow Benefit Auctions
National Auctioneers Association Board of Directors

Senator Shaheen and to those on the committee who are not present, thank you for being here, and for inviting me to testify today before the Senate Committee on Small Business and Entrepreneurship on the impact to the Wayfair decision.

My name is Ailie F. Byers, and I am President of Alpenglow Benefits, and CFO of Scofield & Centennial Auctions. I also have a master's degree in public administration from the University of Georgia.

I am a professional auctioneer in a thirty-eight-year-old New Hampshire family business. We have three distinct units of our company. Our parent company, Scofield Auctions, focuses on real estate and appraisal work. Centennial is our division with an exclusive focus on collector coins & stamps. Alpenglow Benefits is our consultation and fundraising event group for our work with non-profit organizations. We are based in North Conway, New Hampshire. Our company has three full-time employees, one part-time employee, and on event/auction days our staff can be as large as twenty.

We began as a small husband and wife firm that facilitated estate sales for families and communities in New Hampshire and Maine. We have since grown and evolved our business model. I was lucky enough to start working for the company when I was seven years old. Six years ago, I came back to New Hampshire to work full time and take over the company. We now service clients all over the United States, with many of them being on the eastern seaboard. Our coin & stamps sales, under the banner of Centennial Auctions, take place in Nashua, NH. Our non-profit business has clients all over the United States and has had fundraising events in ten states.

I am honored to have been elected, in 2018, to the National Auctioneer Association's (NAA) Board of Directors. In that role, I work with auctioneers and staff from all over the United States on issues affecting our business and livelihood. We are working diligently to protect the interest of our members and the auction profession generally. I serve on the Council on Future Practices

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workgroup and am chair of the Advocacy Committee and the Sales Tax Taskforce. As such, I am engaged in weekly calls about the Wayfair Decision and how it is impacting NAA members.

The NAA has around thirty-six hundred members in all states of the union. We represent about two-thousand companies. Over 67% of our members work for companies that have four or fewer full-time employees. We are the definition of “mom-and-pop” shops. We are composed of thousands of individuals all of whom decided to take a risk and join a profession that is rather uncommon. Our industry has changed as it has evolved, as any industry must do in order to thrive; however, the basics of our job have not changed.

An auction occurs when consumers gather physically or online to buy an item by bidding against each other until the highest offered price is reached. Often, we refer to this as the open and competitive bidding process. The word “auction” derives from the Latin word “auctus,” which means “increasing.” In our industry, we can have auctions that are live, online, or simulcast (where the live auction also has bidders who are participating via the internet). Although the delivery method may vary, they all share the method of sale and thus are auctions.

Records handed down from the ancient Greeks document auctions occurring as far back as 500 BCE. In Rome, around the time of Christ, auctions were popular for family estates and the selling of the plunder of war. Roman Emperor Marcus Aurelius sold family furniture at auction to satisfy debts. In 193 CE, the Praetorian Guard put the entire Roman Empire on the auction block.

American auctions date back to the arrival of the Pilgrims on America’s eastern shores in the 1600s and continued in popularity during colonization with the sale of crops, imports, livestock, tools, and entire farms. America’s first president, George Washington, was an avid auction buyer. Today auctions facilitate the movement of billions of dollars of assets each year.

With the long history of auctions in this country, we are quite proficient at adaption and change. However, the NAA believed, as did our members, that the potential transformations that the Supreme Court’s ruling in *South Dakota vs. Wayfair, Inc.* could precipitate were potentially catastrophic. Thus, the NAA, on behalf of the auction industry and 38 state associations, filed an amicus brief that outlined concerns of auction companies and other smaller remote sellers that were not addressed by the major online retailers². However, in June 2018, the Supreme Court found in favor of South Dakota, 138 S. Ct. 2080, and effectively overturned the longstanding *Bellas Hess* and *Quill* decisions that required a physical presence in a state before sales tax could be collected.

Auction professionals have built our business models on the physical-presence rule of *Bellas Hess* and *Quill* to determine when to collect and remit sales tax. The certainty afforded by these Supreme Court decisions has allowed the auction profession to evolve and embrace online and other forms of interstate sales. With the *South Dakota v. Wayfair* decision, however, auction companies now face an overwhelming tax environment charged with financial burden and legal uncertainty. While large retailers may be able to meet the burden of complying with multiple

² Dunitz, Warren, and Marshall, “Brief of Amicus Curiae National Auctioneers Association and 38 State Auctioneer Associations in Support of the Respondents.”

state and local taxation regimes, many auction companies and other small businesses do not have the resources to absorb the costs of such compliance. As stated by one scholar, “[t]he result is a situation the Founders sought to prevent: states disrupting interstate commerce with a death by a thousand cuts.”³ For NAA members, this ruling represents a threat to our very existence.

As explained in the following synopsis of the auction industry, the imposition of state sales taxes is a particularly acute problem for many smaller auction companies and imposes significant burdens on interstate commerce conducted by all auction companies. Each auction is unique onto itself, in terms of the items we are selling, the number of items (lots) in the auction, the makeup of the buyers, as well as the location of the sale. In the opinion of many⁴, the imposition of sales taxes on remote sellers, especially smaller remote sellers such as auctioneers, creates a significant and unacceptable burden on interstate commerce.

We in the auction industry are governed by the Uniform Commercial Code (UCC), a comprehensive set of laws that govern commercial transactions and business dealings in the United States. Section 2-328 of the UCC specifically deals with auctions. Forty-nine of the states have adopted the UCC including section 2-328 into their state regulations. However, many state laws and regulations regarding remote seller sales tax violate the basic tenets of UCC 2-328 (e.g., defining what constitutes a sale, when liability changes hands, and when the sale is final etc.).

More than 94% of auction companies in the NAA have fewer than twenty employees. Although most auction companies are small and often family-owned businesses, auction professionals collectively facilitate commerce in America on a massive scale, selling a diverse variety of goods via live, online and simulcast auctions, as mentioned previously. Auction professionals sell billions of dollars of idle assets each year, putting those assets back to work, and providing a valuable service to businesses, governments, individuals, communities, and the broader society.

A significant difference for our industry, versus retailers at large, is that auction companies do not typically own the goods they sell at auctions, serving instead as agents of the sellers by overseeing the marketing and logistics of the auction. As agents, auction professionals collect and remit sales taxes on the sale of goods sold and delivered in the jurisdiction of the auction. As we facilitate the asset distribution of our sellers, we do not know what we are selling until we have a contract with the seller. We sell a broad range of products from pots and pans to large commercial machinery. It is not uncommon to have a \$100,000 John Deere tractor as well as the kitchen table in the same sale.

An overwhelming majority of the assets we sell are non-consumables; therefore, we do not have a large pool of repeat buyers. Our ability to forecast the location of our buyers is limited. We

³ Henchman, “Brief of Tax Foundation as Amicus Curiae in Support of Neither Party.”

⁴ Clement, Murphy, and Rowen, “Brief for Amici Curiae National Taxpayers Union Foundation, Americans for Prosperity, Freedomworks, Freedom Partners Chamber of Commerce, and Institute for Policy Innovation in Support of Respondents”; Myles, Cannon, and Calhoun, “Brief of Americans for Tax Reform as Amicus Curiae in Support of the Respondents”; Dunitz, Warren, and Marshall, “Brief of Amicus Curiae National Auctioneers Association and 38 State Auctioneer Associations in Support of the Respondents”; Henchman, “Brief of Tax Foundation as Amicus Curiae in Support of Neither Party”; Shapiro, Burrus, and Larosiére, “Brief for the Cato Institute as Amicus Curiae in Support of the Respondents.”

know the “types” of buyers we have, but not the specific location demographics on them. Most auctions are open to the public, so anyone from anywhere can show up to register and bid at an auction. Thus we are challenged to forecast what state nexus we may trigger with our sales.

Another challenge we face is the limited turnaround time we have to sell the goods for our consigners. It is not uncommon for a firm to have under a month from the time we sign a contract to the date of sale. One of the major selling points of the auction method is the ability to turn around the assets for cash in a short amount of time. This is a hallmark of the industry, so if auction firms must expend additional time to research and determine all the possible tax implications of each item, we lose one of our major market advantages.

Since the *South Dakota v. Wayfair* decision, forty-two states have enacted legislation similar to South Dakota. These states changed their statutes to collect sales tax on out-of-state retailers via a range of nexus theories (e.g., economic, marketplace, click-through, affiliate, etc.). Navigating the myriad jurisdictions, requirements, and changes is burdensome and costly. Additionally, states are currently able to impose retroactive tax liability on businesses for prior sales; this only compounds the burdens on small businesses like those in the auction industry.

Nationally there are an estimated 10,000⁵ tax jurisdictions in the United States that impose a sales tax (as of June 30, 2017) ranging by state on the high end from 1,277 in Missouri, 1,153 in Texas, and 908 in Iowa, to just one each in other states such as Connecticut, Indiana, Kentucky, Maine, and Maryland. Far from getting fewer, the number of sales tax jurisdictions grows each year.

States that support the *South Dakota v. Wayfair* decision view it as a means to require out-of-state retailers to pay their “fair share” of state sales tax while purportedly imposing a “negligible burden” on interstate commerce. However, many legislatures used the South Dakota thresholds [minimum dollar threshold (of \$100,000 in sales) or a minimum number of transactions (200)] as a basis for their thresholds. South Dakota has a population of 865,000. This *de minimis* threshold has the effect of excluding sellers with incidental sales into South Dakota. The state established a level that would not create an undue burden on interstate commerce and sellers in fairness to the commerce clause. If applied proportionally by population or economy, the thresholds for larger states would be significantly increased. However, this is not the case. If it were, New York’s threshold, strictly on the basis of population would be \$2.28 million, but in fact it is \$500,000 in sales and a mere 100 transactions.

As a result of this ruling, states are creating the scenario that the Commerce Clause sought to avoid: an un-sound tax policy⁶. States are using the *Wayfair* decision to levy taxes not only from those in-state businesses and residents who benefit from provided goods and services but also forcing out-of-state sellers into their taxing regime based on as little as one transaction or one dollar, as Kansas has now done⁷. James Madison in *The Federalist Papers* No. 42 warned against

⁵ Email from Tricia Schafer-Petrecz, Pub. Relations & Soc. Media Lead, Vertex, Inc., to Joseph Henchman, Exec. Vice President, Tax Foundation

⁶ Wall Street Journal, “Opinion | State Tax Collectors Want You.”

⁷ Weisgerber, “Notice 19-04 Sales Tax Requirements For Retailers Doing Business in Kansas.”

such activity “[T]he mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned before public bodies as well as individuals, by the clamors of impatient avidity for immediate and immoderate gain.”⁸

States and their legislatures were wooed by the idea of billions of dollars in untapped revenue. Estimates ranged from \$8.5 billion to \$25.9 billion, by the Government Accountability Office (GAO) and the National Conference of State Legislatures (NCSL), respectively. Although this seems like a considerable additional revenue, it only accounts for less than 2% of states’ spending in FY2017. The return on investment is quite low. In fact, estimates coming out of states for FY2018 are showing a much lower return, of around \$3.6 billion or 0.7% of general fund revenue. Why? Well per the Census Bureau, 89% of all retail sales are still transacted in brick-and-mortar stores. The GAO estimates that of the remaining 11% of virtual stores, 80% of them were already being collected under pre-South Dakota v. Wayfair agreements^{9,10}.

The Streamlined Sales Tax and Use Agreement (SSUTA) was designed to achieve more straightforward and uniform state sales tax regulations the imposition of which would not be an undue burden on interstate commerce. The SSUTA is a multistate effort to adopt simplified administration and remittances, establish uniform definitions of items subject to tax, and require uniformity between state and local sales tax bases. Twenty-four states have joined SSUTA¹¹.

However, as it has not achieved full adaption, SSUTA has been less successful than it could be, mainly due to the nonparticipation by a majority of states, including the large economies of California, Florida, Illinois, Massachusetts, New York, and Texas. Some states refuse to join to maintain idiosyncratic sales tax practices (Maryland’s “rounding rule”¹², or Chicago’s decision to tax sales of soda, bottled water, non-soda drinks, restaurant meals, groceries, and candy, all at different tax rates. Currently, there has been no clear or clean answer to how states are implementing sales taxes on remote sellers, nor as to what is taxable.

One example of this is that members of the NAA have received instructions from the Minnesota Department of Revenue, which is a part of the SSUTA, “for sales and use tax purposes, a sale takes place where the tangible personal property is received. Risk of loss has no bearing for sales and use tax purposes”¹³. In layman’s terms, they do not distinguish on the basis where our auctions take place, whether it be online or in a live auction. We have been told that if the auction house ships the item, then the sale is sourced to the location the item is delivered to (Minn. Stat. 297A.668, subd. 2(c)) not the location of the sale. As a founding member of the

⁸ “The Federalist Papers - Congress.Gov Resources - Congress.Gov Resources.”

⁹ Amazon, Walmart, Apple, The Home Depot, Costco, and Macy’s already had business models that required them to collect tax for their web sales. These companies alone represent more than 60 percent of e-commerce sales.

¹⁰ Moylan and Wilford, “Wayfair Revenue Estimates Come Up Short.”

¹¹ Including Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming. The District of Columbia is also a member. Tennessee is an associate member.

¹² Requiring vendors to round remainders of 4 and above up, rather than 5 and above- Comptroller of Maryland, Maryland Sales & Use Tax.

¹³ Hopkins, Minnesota Department of Revenue.

SSUTA, Minnesota maintains veto power on the SSUTA board. The Minnesota Department of Revenue indicated its ruling is in line with SSUTA provisions and policy for all SSUTA states (SSUTA, Sec 301A(1)).

In practical terms, this means that if we have a live sale in New Hampshire, where all of the staff work, all of the bids taken and executed and all of the payments are made in New Hampshire, but, the item was shipped by the auction firm to Minnesota, then it would be considered a taxable sale to Minnesota by their department of revenue. In fact, the Minnesota Department of Revenue has stated that if the auction house maintains an address on file for a buyer, and on the invoice it shows a Minnesota address, even if the auction house does not ship the item and has no knowledge of how it was transported, then it would be considered a taxable sale to Minnesota by their department of revenue (Minn. Stat. 297A.668, subd. 2(c)), unless the auction house can prove they DID NOT ship it.

At the federal level, S.2350 Online Sales Simplicity and Small Business Relief Act of 2019 sponsored by Senator Jeanne Shaheen, as well as H.R.1933, Sponsored by Representative F. James Sensenbrenner, are bills designed to mitigate the impact of the South Dakota v. Wayfair decision on small businesses.

As previously discussed, one of the hardest problems with compliance is the lack of standardization. Both the thresholds that each state has established as well as what is taxable are not standardized. Auction companies face a complex web of state and local sales tax collection obligations. With customers across the country, these new tax laws mean that auction professionals face the overwhelming and daunting task of determining the correct taxing authority and tax rate for each customer as well as the proper classification of each item sold in nearly 10,000 different taxing jurisdictions in the United States. With the myriad of ways that states set up their taxing regulations, it is almost impossible for a small business to comply with every jurisdiction. Not only are states unaware of all the exceptions within each state, but there are also situations like Alaska, where the state itself does not collect sales tax; however, municipalities within the state can charge and collect sales tax. For a business to know this, they would have to go to each taxable jurisdiction and verify for each such jurisdiction whether there is a tax and how it is to be remitted. Businesses are now required to determine the applicable sales tax, collect, and then remit the tax to the buyer's local taxing jurisdiction. Yet, there is no national clearinghouse for this information. This creates an undue burden on interstate commerce of small businesses.

During the oral arguments of the South Dakota v. Wayfair case, ease of compliance was considered. Both in written testimony and oral arguments, discussion of how tax software was available to alleviate the burdens and make collection easy took place¹⁴. However, while basic versions of tax software may be available for low monthly fees, substantial fees apply for premium services including support for additional jurisdictions, ready-to-file return preparation, and actual remittance of sales taxes to each taxing authority¹⁵. Auction companies must also

¹⁴ Deutsch, Hunt, and Plc, "Brief of The National Association of Certified Service Providers and the Software & Information Industry Association as Amici Curiae in Support of Neither Party."

¹⁵ Sutton, Jr., "Brief of the American Academy of Attorney – Certified Public Accountants as Amicus Curiae in Support of Respondents."

consider the cost and staff time of integrating software into existing accounting and payment systems, which can be particularly challenging as the items and prices vary significantly for each auction with minimal overlap. Small businesses cannot afford to hire tax compliance professionals or spend hours of staff time on compliance. This creates an undue burden on interstate commerce for these small businesses.

Lastly and most troublesome is the retroactive sales tax liability for prior sales that is now possible under the legislation of some states. Due to the court's decision to overturn Quill, all regulations that have been in place at state and local levels before the decision are now fully legal and enforceable. This means that even though a company was not legally required to pay sales tax for remote sales prior to 2018, now states can send tax bills for years prior. How one is to go back to prior year's buyers and collect sales taxes for those items is a most interesting intellectual exercise, but it is impossible in practical terms. This creates an undue burden on interstate commerce for these small businesses.

The argument for the collection of sales taxes by remote sellers is usually characterized as a means to create fairness between small mom-and-pop / brick-and-mortar / Main Street shops and massive behemoth online companies. A common term is "making an equal playing field" for everyone selling. However, the financial, logistical, and staffing requirements necessary to comply with the myriad of taxing jurisdictions does just the opposite. Small mom-and-pop / brick-and-mortar / Main Street shops are the ones that cannot afford to meet the requirements. If anything, an undo consequence of these regulations is forcing these small companies out of business. In Kansas, there is a fifty-year-old auction company that has four full-time employees. As of last month, they had crossed the threshold of remote sales tax regulations of three states. They forecast that within eighteen months they will be out of business due to the overhead costs created by these compliance issues.

Finally, the number one misunderstanding of the South Dakota v. Wayfair ruling is interstate versus online commerce. Of the forty-two states that have enacted legislation, only one has used the term "online" in its regulations. It does not matter if you sell a product through e-commerce on the internet or if an individual comes into your store buys a product and pays for it on site. The final destination of the item sold determines its tax liability. If you walk into a bike shop, test out a bunch of bikes, have the bike fitted for your specific size, and then have the bike shipped to your home, if that home is in a different taxing jurisdiction the tax liability for remote sales tax is based on the destination of that bike and not the point of sale. Therefore, it is not a matter of online merchants selling their wares across state lines; any product that crosses state lines is classified as interstate commerce and thus the seller is a remote seller.

We in the auction world do not want to die a death by a thousand cuts. We have adapted to the changing landscape of the economy and our place in it. We work for our sellers to help them achieve the best price in the marketplace for the property they own. We have mastered the marketing challenges of selling assets in numerous classes. We facilitate an open, transparent, and competitive market where all have the ability to buy and sell. The South Dakota v. Wayfair decision is an existential threat to us. Please help us mitigate the impact of this decision on our industry and livelihoods.

I'd like to thank you for the opportunity to testify today. I look forward to responding to any questions you may have today or which are submitted later for the record.

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Senator SHAHEEN. Thank you very much, Ms. Byers.
Mr. Hennessey.

**STATEMENT OF JOHN HENNESSEY, PRESIDENT, LITTLETON
COIN COMPANY, LITTLETON, NH**

Mr. HENNESSEY. Senator Shaheen, Senator Hassan, thank you for the opportunity to testify today. I am John Hennessey of Littleton Coin Company. We are a small business of 275 employees located in Littleton, New Hampshire, which is our only physical business location. We have been in operation since 1945 when our founder Maynard Sundman started the business after returning from service in the U.S. Army during World War II.

Our mission is to bring the joy of coin collecting to as many people as possible, and we serve coin collectors in all 50 States primarily through the mail. As a New Hampshire company, we have never previously been subject to collect State and local sales taxes, nor have we needed to implement any administrative processes, software, computer systems, or in-house expertise to do so. The June 2018 Supreme Court decision requiring us to become the tax collector for up to 12,000 State and local jurisdictions created an immediate and significant risk to our business. Most concerning, the decision provided no implementation period for us to become compliant, immediately exposing us to up to \$100,000 of tax liability per month with no way to calculate and collect the taxes from our customers, leaving us liable to pay the bill ourselves.

Our best-case scenario was to become compliant by January 2019, which was no small feat. Now, meeting this timeline meant incurring significant costs to purchase software, hire outside tax and legal experts, hire outside software developers, devote our internal IT developers to changing our computer systems, and focus our entire employee base to redesign our administrative processes to understand, calculate, explain to customers, and collect sales tax in all States and up to 12,000 total jurisdictions. To date, we have spent \$275,000 to become compliant to the best of our interpretation under each State's laws by this January 2019 date.

Unfortunately, that time and money spent would have otherwise been devoted to growing our business and maintaining and creating jobs in New Hampshire. Even more significant costs and risks to our business still exist going forward. The biggest risk and potential costs loom as States begin to attempt to collect retroactive taxes from us for periods prior to January 2019. They start their audits of our sales and use tax collection reporting, and even expand their reach to additional taxes such as income tax. We are already beginning to receive notices from the States, and every one of them requires time for my staff and often a consultation with our tax advisor and attorney, both at significant costs.

Worse further will be one, two, or three years from now when each State begins sending us audit notices. We will be subject to 45 separate annual State audits, and we cannot estimate how many countless county and local audits as well. Each one will take a lot of time and effort to document and improve our compliance, and if there is a question as to whether we have interpreted the law correctly, we will pay significant legal costs to support our position. And if unsuccessful, we are forced to foot the bill ourselves de-

spite our best efforts at understanding and complying with the laws.

I will provide one brief example of why this is such a significant risk. There is the tax law on just one State for just one of the coins that we sell. If the coin is legal tender, it is not taxable. If it is not legal tender, then if its value is determined by fluctuations in the gold bullion market, it is not taxable. If its value is determined by its rarity, it is taxable. In fact, the value of this coin is determined by both and I must choose either one or the other. Further, if the coin is taxable, and a customer purchases three of them in separate transactions, they are taxable. If the customer purchases those same three coins in a single transaction, they are not taxable. However, if that customer returns one of the coins, the remaining two then become taxable again.

I sell thousands of products and I must attempt to correctly apply the laws of 45 States and 12,000 jurisdictions to every one of them. The Supreme Court left the door open for Congress to act and we need Congress to level the playing field.

One, we need a reasonable time period to have to become compliant and be protected from retroactive taxation. Two, one audit from one's home State, for example, will provide a reasonable administrative burden. And three, limit the reach to sales and use tax and not expose us to have to defend against overreach into income and other State taxes. This new State tax requirement is complex, distracting, and extremely costly. We are doing our best effort to comply; however, without reasonable simplification and protection, this will continue to hurt our business and divert resources that would otherwise be used to invest in our business and our employees.

Thank you for the opportunity to testify today. Look forward to responding to any questions you have.

[The prepared statement of Mr. Hennessey follows:]



John E. Hennessey
 Vice President
 Littleton Coin Company, Inc.
 1309 Mt. Eustis Road
 Littleton, NH 03561

Senator Shaheen, and other members of the Committee, thank you for the opportunity to testify today. I'm John Hennessey, Vice President of Littleton Coin Company, Inc. We're a small business of 275 employees located in Littleton, NH, which is our only physical business location. We've been in operation since 1945 when our founder, Maynard Sundman, returned to Littleton to start his business after serving our country in the US Army during WWII. Most recently, for the benefit of our employees and their jobs remaining in Littleton, his son and our current President David Sundman sold 100% of the business to our employees in 2017 through an employee stock ownership plan.

Our mission is to bring the joy of coin collecting to as many people as possible throughout the United States. We serve coin collectors in all 50 states by delivering coins and currency through mail order directly to their homes. As a NH company, we have never previously been subject to collect state and local sales taxes, nor have we previously needed to implement any administrative processes, software, computer systems, or in-house expertise to do so.

The June 2018 US Supreme Court decision requiring us to become the tax collector for up to 12,000 different state and local jurisdictions created an immediate and significant risk to our business. Most concerning, the decision provided no implementation period for us to become compliant, immediately exposing us to up to \$100,000 of tax liability per month with no way to calculate and collect the taxes from our customers, leaving us liable to pay the bill ourselves.

With this clock ticking, we made the decision to rush to become compliant as soon as possible, which we determined best case scenario to be January 1, 2019. Meeting this timeline meant incurring significant cost to purchase software, hire outside tax and legal experts, hire outside software developers, devote our internal IT developers to changing our computer systems, and focus our entire employee base to redesign our administrative processes to understand, calculate, explain to customers, and collect sales tax in every state and up to 12,000 total jurisdictions.

To date, we have spent \$275,000 to comply with this new requirement. Based on this effort, we became compliant to the best of our interpretation of each state's laws by January 1, 2019. Unfortunately, those funds and six months of time from my team would have otherwise been devoted to growing our business and maintaining and creating jobs.

Unfortunately, even more significant risk and cost to our business still exists going forward. Costs include annual software licensing, tax filings, administrative cost, and customer service explaining and collecting tax. However, the biggest risk and potential costs loom as states begin to attempt to collect retroactive taxes from us for periods prior to our compliance date, start their audits of our sales and use tax collection and reporting, and even expand their reach to additional taxes such as income tax.

We are already beginning to receive these notices from states, and every one requires attention from my staff and usually a consultation with our tax advisor and attorney, both at significant cost, to help us interpret the request and the proper application of state and local tax law.

Worse further, will be one, two, or three years from now when each state begins sending us these audit notices. We will be subject to 45 separate annual audits, and countless county and local audits. Each one will take time to prepare source documents and records to prove our compliance. And if there's a question as to whether we've interpreted a law correctly, we will have to pay significant legal costs to support our position, and if we are to be unable to successfully do that, we will be forced to foot the bill ourselves since we would not have collected those amounts from customers, despite our best efforts at understanding and complying with the laws.

I'll provide one brief example of why this is such a significant risk. Here is an example of the tax law in just one state, for just one product we sell to customers. I have a gold coin that sells for \$400. If it is "legal tender" it is not taxable. If it is not "legal tender", if its value is determined by fluctuations in the gold bullion market it is not taxable. If its value is determined by its rarity, it is taxable. The value of this coin is determined by both, and I must choose one or the other with no further guidance from the state. Further, if this coin is determined to be taxable and a customer purchases three of these coins in separate transactions they are taxable. If a customer purchases those same three coins in a single transaction they are not taxable. However, if that customer returns one of those coins a month later, the remaining two coins are now taxable again even though no tax was collected. I sell thousands of products, and I must attempt to correctly apply the laws of 45 taxing states and a total of 12,000 jurisdictions to each one.

The Supreme Court left the door open for Congress to act, and we need Congress to level the playing field and help remote sellers collect these taxes while continuing to operate and grow our businesses without undue cost and risk. 1. We need a reasonable period to become compliant and be protected from retroactive taxation prior to our ability to implement tax collection, which for my business was January 1, 2019, 2. Provide for one audit, from one's home state for example, to provide a reasonable administrative burden in complying with tax collection, and 3. Limit the reach to sales and use tax and not expose us to have to defend against overreach into income and myriad other state taxes.

This new requirement for our business is complex, distracting, and extremely costly. We are giving our best effort to comply, however without reasonable simplification and protection this is hindering our business and diverting resources that would otherwise be used to invest in growing our business and invested in our employees.

Thank you for the opportunity to testify today. I look forward to responding to any questions you may have today, or which are submitted later for the record.

Senator SHAHEEN. Thank you very much.
Mr. Badger.

**STATEMENT OF SCOTT BADGER, CO-FOUNDER, LUPINE PET,
CENTER CONWAY, NH**

Mr. BADGER. Thank you, Senator Shaheen and Senator Hassan for giving me this opportunity and thank you to the other members of the committee. My name is Scott Badger. Lupine's small business started in 1991 with 65 people. We do our own production here in New Hampshire and most of our sales are to retailers across the country. We also sell to consumers via our own website and through Amazon primarily. Since the *Wayfair* decision last year, we have spent literally hundreds of hours researching to put in place the systems necessary to continue our sales, both retail and wholesale and be tax compliant in other States. Beyond the time we have invested, and we will now continue to invest, financial costs will be in excess of \$20,000 a year just for the annual software fees.

Additionally, we will be paying the service company that we use for every filing at \$50 per filing 4 to 12 times per year per State. In fact, in some States we will be paying more to file than taxes collected. In fact, that happened last month in two States. As problematic as the financial cost is, we found the software companies seem to be as unprepared as anyone for this *Wayfair* decision. After spending a couple months researching developers and providers, it then took us five months after signing on to one to get set up so that we could start collecting sales tax. It took so long partly because the company was swamped with new business prompted by the *Wayfair* decision, but also because the conflicting answers and information that we were getting from that company staff not just about sales tax but even as to how their own systems work because of the complexities of the landscape.

We realized that, with the exponential rise in online shopping and most States' dependency on sales tax revenue, taxing online sales is probably inevitable. But the problem is that suddenly laws written for intrastate taxation are now being applied to interstate taxation, and the resulting compliance costs to any business are not only greatly out of scale for the taxes collected, but also sound prohibitively expensive for small businesses. So that online small business development is not significantly restricted, at least two things need to happen. First, requirement of interstate online taxation should be paused, as was mentioned, for a reasonable period while everyone, States, software companies, and businesses, or online sellers have a reasonable opportunity to prepare.

Second, interstate taxation needs to be made far less complex and costly for online sellers to be compliant. There is already an initiative called the streamline sales tax, SST, where 24 States have joined, and it streamlines the rate structure, registration process, and financing, and also pushes the cost of collection services needed on to the States. It is only fair that States wanting to collect sales tax on online sales do so in a way, like with the SST program, that isn't an undue burden or cost to online businesses.

In the end, online taxation should be simplified in ways that allow businesses to take care of without the necessity of costly soft-

ware services, like it is for in-State regular businesses. Fifty dollars probably is not a reasonable amount for charges for a filing, but just as it seems crazy for us to pay \$50 to remit \$39 in one State last month, and so it doesn't make any sense for that State to pay \$50 plus additional fees to get \$39.

There are two things that would allow businesses to handle the collection of remittance on their own, a single rate per State, not variable by county, burrow, district, side of the street, etc. And common registration—final forms. If online sales tax collection and remittance were simplified in these ways, not only would small businesses benefit by not having to incur the very burdensome costs, as have been described by everyone here, in time and money to be compliant, but the States could probably benefit as well by the increased participation in online tax collection.

If though there is no change, online small business development would be significantly restricted not just by the cost itself, but also by the advantage the current scale of sales tax compliance gives large retailers. Now I have one particular story. We just started collecting sales tax in July. And so, we did our first filing a couple weeks ago. And once one State said thank you very much, what about June? And I get to the retroactive thing.

And so, we paid \$100 in sales tax, remitted \$100 in sales tax, to the State in July. June would probably be about the same. Our provider kindly offered to do an expedited filing for \$750.

Thank you for this opportunity. I look forward to your questions.
[The prepared statement of Mr. Badger follows:]



Scott Badger
Owner
Lupine Pet Products

Senator Shaheen, and other members of the Committee, thank you for the opportunity to testify today. My name is Scott Badger and I'm an owner and VP of Sales at Lupine Pet Products, which is a pet accessory manufacturing business located in Conway, NH. We're a small business, started in 1991, that now employs 65 people. We do all of our own production here in NH and though most of our sales are to retailers across the country, we also sell direct to consumer off our own website and through Amazon. Since the Wayfair decision, we've spent, literally, hundreds of hours over the past year to research and put in place the systems necessary to continue our sales, both retail and wholesale, and be tax compliant in other states. Beyond the time we've invested (and will now continue to invest) the financial cost will be in excess of \$20,000 a year just for the annual software fees. Additionally, we'll be paying the software/service company for every filing -- \$50 each, 4 to 12 times a year, per state. In fact, in some states we'll be paying more to file than the collected taxes we're remitting! The real winners of Wayfair are the tax compliance software companies.

As problematic as the financial cost, is the more basic issue of understanding sales tax law--different in every state--sufficiently to be compliant. And not just for each state, but for every tax jurisdiction in each state. Some states have more tax jurisdictions than the rest of the world combined! Our efforts to learn were frequently frustrated by the software companies' unwillingness to provide any tax law clarification, suggesting we should speak with a tax professional, while the tax professionals we talked with advised asking the software companies.... In the end, because of the complex and dynamic nature of the laws, not only is it simply not possible for any online seller to properly collect sales tax without the help, and cost, of sales tax compliance software, but complete compliance may not even be possible.

Further compounding the problem, is that we've found the software companies are as unprepared as anyone. After spending a couple months researching the available software, it then took us five months after signing on with one to get set up so that we could actually start collecting sales tax. It took so long, partly because the company was swamped with new business prompted by the Wayfair decision, but also because of conflicting answers and information we were getting from that company's staff, not just about sales tax law, but even as to how their own systems work, due to the complexities involved.

We chose one of the most well established enterprise solutions available. Their sales team offered us software solutions to take care of our Amazon sales, direct to consumer sales off our website, and our wholesale sales to other dealers. After signing the contract, though, we discovered that the Amazon solution doesn't exist yet, the integration for our accounting software (which would handle our wholesale sales) isn't sufficiently developed to be useful, and there are problems with their website integration which require manual corrections. In all, most of what we thought would be taken care of automatically, we have to do manually at the cost of 15-20 hours a month. And even with all the extra effort, it's not possible for Lupine to be fully compliant without having to subsidize at least some of the taxes that should be coming from our customers instead...



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As bad as our experience has been with the vendor we chose, and though we were ready to walk away from the money (and time) we'd already spent with them, we looked extensively at every other software solution available and none appeared any more capable.

We realize that with the exponential rise in online shopping, and most states' dependency on sales tax revenue, taxing online sales is inevitable. But the problem is that, suddenly, laws written for intra-state taxation are being applied to inter-state taxation and the resulting bureaucratic cost to any business is not only greatly out of scale to the taxes collected, but is also prohibitively expensive for small businesses.

So that online small business development isn't significantly restricted, at least two things need to happen. First, requirements of interstate online sales taxation should be paused for a reasonable period of time while everyone; states, software providers and online sellers, have a reasonable opportunity to prepare. Second, interstate online sales taxation needs to be made far less complex and costly for an online seller to be compliant. There's already an initiative called the Streamlined Sales Tax (SST) that 24 states have joined and which streamlines the rate structure, registration process and filings, and also puts the cost of collection software/service needed on to the states. It's only fair that states wanting to collect sales tax on online sales do so in a way, like the SST, that isn't an undue burden or cost to online sellers.

In the end, online taxation should be simplified in ways that allow businesses to take care of it without the necessity of costly software and services, like it is for in-state brick & mortar businesses. Fifty dollars probably isn't an unreasonable filing charge, but just as it seems crazy to pay \$50 (plus annual fees) to remit \$39 to one state last month, it also doesn't make sense for that state to be the one covering the service costs and pay in excess of \$50 to collect \$39. The two things that would allow businesses to handle collection and remittance on their own are, single rate per state (not variable by county, city, borough, or district) and common registration and filing forms.

If online sales tax collection and remittance were simplified in these ways, not only would small businesses benefit by not having to incur the very burdensome costs in time and money to be compliant, but the states would benefit as well by the increased participation of online sales tax collection.

If, though, there is no change, online small business development will be significantly restricted not just by the cost itself, but also by the advantage that the current scale of sales tax compliance cost gives large retailers.

This is a very important small business issue and I thank you for the opportunity to testify. I look forward to the questions you may have today or that may be submitted to the record.



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Senator SHAHEEN. Thank you very much, Scott, and thank you all. You have certainly pointed out the challenges that this decision presents. I have to say there were numerous pieces of legislation in Congress to try and impose legislatively what the court has done, and unfortunately all of those were defeated.

So, it is unfortunate that the court did not listen to some of those debates in Congress. I think most of you have referred to the challenges of compliance and the cost, but can I ask for the entire panel whether you have got a total up-front cost of compliance, whether you have broken that down by what you think it will be annually, and have you figured in the hours that are included as well, and do you have an overall estimate, each of you, on what this is going to mean for your business? I will ask you to go first.

Mr. MOORE. Sure. Since we started recently, I have done a back of the napkin calculation on that, and it looks like it is going to represent 1 or 2 percent of sales.

Ms. BYERS. For our personal coin business, coin auction, I have not calculated that out because I usually do not have any impressions since our sales rely on in-person sales happening in-State. We would not fall under this auspice. Right now, it is going to be most likely in the thousands of dollars but as an option, we do not know what we are selling or when we are selling it. That can change any given time because I can sell a coin for \$100,000. And I will go from not being inside the threshold of any State to crossing the thresholds within a matter of seconds, and not knowing at that time.

Senator SHAHEEN. And so, one of the things you pointed out is that you are acting on behalf of a seller. Is it your understanding that the seller also has to pay a tax on that item or how does that break down?

Ms. BYERS. No, the most guidance we have gotten from different revenue agencies in different States has been that since we are the agent just, we are the fiscal agent for the seller, that it is our responsibility because we are the ones actually producing the sale, so it would be under the auspices of our companies. But since we don't own the product, our margins are very small. So, a 2 percent mark, you know, percent of what our sales are on a margin where we are billing three or four, like that is why the company in Kansas has said, they hit one more State threshold, or they maintain the current thresholds and they cannot afford to maintain their position and shut down.

Mr. MOORE. If I could add to that, most of our business is also on consignment and I asked the experts what they could find on this and they said no, it is our obligation since we are selling the product.

Senator SHAHEEN. And then you pass that along? I assume you will try and pass that along to a subgroup that you are representing because it will be difficult to absorb all of those costs once and so that will have an impact on the business going forward in that respect.

Mr. MOORE. Yes, it would really change the business model.

Senator SHAHEEN. Yes. John, you were very good about pointing at what your compliance costs have been to date. Will that be an annual amount, or do you know?

Mr. HENNESSEY. Yes, the initial cost was \$275,000. The ongoing cost will be, or the known costs are friendlier software costs, which will run around \$20,000 per year. It is the unknown costs that are most significant and anytime that we find out we have not programmed our software correctly or new States come online or new local jurisdictions, we will have to spend significant money to either use internal resources or hire outside expensive software consultants to come in and tweak the software for us. And we know that we have gotten some things wrong, we just do not know which things. So, it will continue to be very expensive as well as just simply filing costs. We pay \$30 every time we file any monthly tax return.

Senator SHAHEEN. And can I ask, what tax jurisdiction had—in the anecdote that you gave us about the challenges?

Mr. HENNESSEY. Yes. There are many very similar to that so I would not pinpoint it to any one State. I had a whole book full that I could have used, and I just chose that one.

Senator SHAHEEN. I just thought that would be really helpful in terms of testimony on the floor of the Senate to talk about the challenges that small businesses are facing. It would be nice to go back to the Senators from that State to talk about why that is so challenging.

Mr. HENNESSEY. Yes. I will be happy to share that with you.

Senator SHAHEEN. Good. And Scott, you talk about some of the particulars that look at costs overall.

Mr. BADGER. Yes, like John from \$20,000 a year just for the annual software fees. It is \$20 for filing every time. Per year, per State it is \$400. And then, perhaps naively, but I am hoping that once things settle out a bit at least, that we maybe look at only 10 to 20 hours a month in-house work.

This is also not counting at all the retroactive liability that we incur for compliance at time. And then, quite frankly we cannot properly, completely be compliant. We are going to have to subsidize some of the taxes ourselves, particularly with Amazon because there just isn't a solution that overlaps with the SST program that allows us to pass through the taxes to Amazon collections in some States. So, we are going to have to subsidize some of the taxation ourselves.

And a more general point is that through all of this, when we asked the software companies for help or advice, they purposely did not want to give us that kind of opinion. They pointed us to tax professionals. We asked the tax professionals and they said, well those software companies are the ones that really the ones doing it, you should talk to them. There really isn't anyone you can go to get all the answers.

Senator SHAHEEN. Thank you.

Senator HASSAN.

Senator HASSAN. Thank you. And again, thank you to all four of you not only for being here but for very illuminating testimony. I have one question that I wanted to direct to Mr. Hennessey and Mr. Moore, and then another question to Ms. Byers and Mr. Badger. We will cover the four people that way and then get back to re-assessing expenditure.

So, Mr. Hennessey, I wanted to start with following up on the issue that I have heard from all of you about the inadequacy of software options here. It is clear from your testimony that even after having spent thousands of dollars on compliance software, significant risks and costs still remain for small businesses required to collect taxes for other States. You mentioned that you are already receiving sales tax collection notices from other States, which requires staff time and consultation with tax professionals, as Mr. Badgers points out.

Can you tell us more about the staff time and monetary costs that you are incurring since these notices despite having compliance software? I think that there is this assumption that if you just get the software, right, it is going to take care of it. And do you expect the cost to rise in the future years? Just a little bit more following up on what Senator Shaheen just asked.

Mr. HENNESSEY. Yes, Senator. The first offer that States made was recently and each of them was offering their own version of free software, and that would be far more expensive than the software I am purchasing because of the implementation complexities.

So, we chose one of the Nation's leading software packages to calculate taxes for State and local use. And despite that, with our specific products, they have unique State laws to themselves and therefore this national tax software was not equipped to handle the nuances in each State for our products. Therefore, we had to hire experts to help us interpret each State law and then program this national software package to correctly calculate the tax to these places.

And much like Scott was saying, we know that there are some things we just could not physically program correctly and we have been footing the bill for some of the tax ourselves because we could not properly charge our customers. So in addition to that, when we receive the notices of the audits, not only will we I am sure find things that they would interpret us to have done incorrectly.

But it takes us a lot of time to gather the documentation and confirm with our experts who are charging us expert rates to give us advice to interpret these laws, which we have never had to interpret in the past. So very difficult for me to quantify a cost for those. I will be able to retrospectively and unfortunately, but staff time internally is significant as well, primarily when interacting with our customer base. They are learning these texts for the first time related to our product as well.

Senator HASSAN. Thank you. And Mr. Moore, I would like to go to a little bit of the same issue with you. I am really looking at whether there is adequate existing software options for relieving small businesses of the burden here that is the tax collection burden.

In your testimony you discussed the support services offered by various online sales tools for collecting sales taxes. You make the important point that regardless of the help of these services, you are still ultimately responsible for accurately determining sales tax liability. It is another example of the unfair burden that *Wayfair* has placed squarely on the shoulders of small businesses.

So, can you tell us how Tradeport is managing all of that uncertainty regarding whether you accurately determine the right amount of sales tax to collect in so many different jurisdictions?

Mr. MOORE. So that is a great question. And when we did our research on the channels to see what kind of support we were going to get, I will use Amazon as an example, they made it perfectly clear that even though they will provide all the reports, they are not going to guarantee the accuracy of laws and we are still ultimately responsible. They are there to—and you pay them to use it, right. So, we are still very early in the process.

When I went out into my network and started interviewing some so-called experts, I was just so sticker shocked at some of the fees because of course the first thing that they have to come in and do is this whole assessment that was just a crazy endeavor. I am fortunate enough to have one of my partners who owns an accounting firm that specializes in small business tax. Unfortunately, he does not have many clients that are online sellers. So, he and his team have to spend hours and hours doing the research to come up with the requirements document that we spoke about.

Senator HASSAN. So, I am taking from your comments that it would be helpful if Congress could ensure that there was some leniency for small businesses who are being forced to act as tax collectors and doing their best in good faith but may not get everything right?

Mr. MOORE. Absolutely.

Senator HASSAN. I have a question for both Ms. Byers and Mr. Badger, and then turn back to Senator Shaheen. Ms. Byers, in your testimony you point out that one of the hardest problems with remote sales tax collection is the lack of standardization across State tax laws.

States have different thresholds, we have heard that from all of you, for whether small businesses have to collect sales taxes as well as different standards for what is and is not taxable, and there is not even a national clearinghouse for all of this information.

If States had to meet a Federally developed minimum threshold for accessibility or ease of filing in order to collect from out-of-State sellers, would that reduce some of the burdens imposed by *Wayfair*?

Ms. BYERS. If there was standardization across all the taxing jurisdictions, I think we would all agree with definitely reduce overhead costs both in terms of what the thresholds were to be crossed, and I think the other thing that would be really important is getting everyone on board with what is taxable was not. As Mr. Hennessey talked about, the coins are a moving target, and as they talked about in the case, you know, you get in situations in New Jersey where a skein of yarn you buy, if it is going to be used for craft, it is taxable, but if it is going to be used to make a sweater, it is not. It would not be that surprising to most people as someone selling it if I then ask you what you are going to use this for.

Most people don't want to tell me what they are using it for because it is none of my business. So, trying to comply with a State saying well, you know, what is it being used for, I am not the one using it. I am the one who sold it. So, I think that is one of the problems with standardizations, not only getting just 45 States to

agree on what the threshold is, but then all those 45 States all agree in like the Twix bars, is it a candy bar or is it piece of food.

Those kinds of standardizations would be very helpful. It would not alleviate the problem, but it would make it a lot more manageable and reasonable.

Senator HASSAN. Thank you. And Mr. Badger, I will just follow up. You talked about the importance that streamlining would have if States had to meet a Federal development threshold for accessibility or ease of filing in order to collect from out-of-State sellers. Would that reduce some of the burdens that you are facing?

Mr. BADGER. Certainly. And from my part, we agree if we sell one product, then there is no question if it is taxed so I do not think I face some of the complexities that are described here. But, you know, as I said, really, I think what would make all this work a lot better is to not require these types of expensive services that are needed to be compliant.

A single rate per State, and it could be a different rate for each State, but just one rate per State, and, you know, similar filing and registration forms. And then we can take care of it internally without the need for the services, and that would certainly reduce costs and probably be less time on our part than it will be using the services.

Senator HASSAN. Thank you very much.

Senator Shaheen.

Senator SHAHEEN. Thank you. One of the things that I think is admirable is the fact that each of you, as business owners, is spending the time and money to try and fly with this new position.

I have heard anecdotally, however, that there are a number of small businesses that either do not know about the decision or are not sure that they really need to comply, and I just wondered if, without naming names, whether you have had any conversations with any of your business colleagues who have commented on compliance, and whether this is something that they need to do, and whether you have heard that this is something that businesses do not know about or they do not know how to comply and they are not sure they are going to? It is fair to say.

Mr. MOORE. I can make a comment. Again, in our business model, we have hundreds of customers that provide inventory to us, and consign it, and then sell them on their behalf. And there is a wide variety of types and sophistication, but anecdotally, some of them absolutely want to understand and we will do some of that research.

Then there are others that just said, you know what, it is so complex, and rules seem to be changing so they are just going to wait.

Ms. BYERS. Yes, I would say that a majority of business owners in this group I talk to are unaware of it, and also because of the media constantly when they are referring to it refer to it as an internet sales tax. I know in talking with businesses in New Hampshire, since they do not sell on the internet, they assume it does not apply to them, so they are not going to worry about it. And then the ones that are aware of it, I would say a fair amount just put their head in the sand because it is impossible to comply with all of them, so we are not going to bother about any of them.

Mr. HENNESSEY. Yes, I think what I have seen is that other companies that are in States that have sales tax have to be compliant for that State and can be a little further ahead of the curve because it is just familiar territory, but I have talked to a lot of businesses that are unaware or have said that they are going to wait for the State to come to them. It is probably not going to work out very well. Probably more so not really getting on it.

Mr. MOORE. From the few businesses I have talked to throughout the country, the other three businesses here are far ahead of the curve and still facing the complexities that they have described. There are many businesses that I agree simply are overwhelmed and do not know where to begin.

Senator SHAHEEN. Well, Ms. Byers, you pointed out the auction house that anticipated they might be out of business if they had to continue to comply. Have any of you considered any decisions about the future of your businesses that will be affected by this decision, or have you talked to any other business owners who have seen this as an impediment to growing their businesses? You are nodding your head.

Ms. BYERS. For my personal company, last year my plan was to radically increase the amount of sales we did, use the internet to facilitate a lot more coin sales. And as soon as we kind of got wind of the *Wayfair* decision or that the Supreme Court was taking the case, knowing potentially what would happen, I just had to pump the brakes on it and then once the decision came down in June, I basically decided I am not touching that business model and using that to increase us at all because the compliance costs will override any benefit the company would make so the potential that I was seeing to potentially have some more employees and grow the business has just been pushed down and kind of pushed aside.

And I know for other auction companies, they are modifying their business plans moving forward and either are not growing at the rate they were dissipating because they figured, as the other gentleman talked about, that their 10 percent they had kind of banked way to increase and put back into business, they are now using for compliance or really what they are doing, they are holding it aside for when that order comes and knocks on the door because they know it is going to be nasty, but they just do not know how nasty. So, we are not going to hire any person to kind of grow the side of it, we are just going to put that money aside and wait for the auditor.

Senator SHAHEEN. That is a sad commentary. Anybody else have any—

Mr. BADGER. Yes. I think the most aspiring new businesses and who are not even aware of the decision, let alone aware of the complexities and costs that they are facing. And certainly, many warned that it would result in such change of their plans. It may result in some changes in how we sell in Amazon.

One of the small things, is not big in terms of the dollars for sales, but you know just for helping things out is that we have a program where nonprofits can purchase our products and because they are nonprofits, they do not have to pay sales tax. Unfortunately, when we get the work from Amazon, there is no indication that it was made by a nonprofit, and then we see this taxed and

we think, there is no tax on it and we think there should be, then we can try to find your way into the Amazon system.

If you have never tried that, I cannot tell you how incredibly complex it is. But we would try to get into the system and find the certificate that was filed with the order that was then attached to the transaction, then we edit it in the software to remove the tax that we at that point aligned.

Senator SHAHEEN. Mr. Hennessey, do you have anything—

Mr. HENNESSEY. Yes, I think more significant will be a couple years from now when States come knocking on small businesses doors who do not realize what they needed to be doing to comply, or could not figure it out, and we will hear some really sad story then.

Senator SHAHEEN. Let me just recognize two legislators who have come into the room. Representative Almy and Representative Meigs are here and I know that you have both worked, or trying to, mitigate in the State legislature the impacts of the *Wayfair* decision. So, thank you both for your efforts.

Clearly, we have a lot more work to do. I want to go back to the conversation that a number of you have made recommendations on and that is, what could be done to help address this in a way that makes it easier for businesses? We talked about standardization, we talked about some sort of a pause on when the legislation becomes effective, a minimum level of sales for businesses to exempt certain businesses.

Are there other recommendations that you all would have that we should be thinking about in Washington as we think about how do we take this court decision and make it work better for small business?

Mr. BADGER. One tax rate per State would be extremely helpful, and also one audit nationally, or at the very least one audit per State.

Senator SHAHEEN. Okay. One audit nationally is—

Mr. BADGER. Would be really great. And just the simplification overall, really. And again, the States will benefit nothing, I don't think—the simpler it is, the more businesses will comply, and to a point where we need to comply.

Senator SHAHEEN. Anything else?

Mr. HENNESSEY. You know, just standardization of thresholds.

Senator SHAHEEN. Senator Hassan.

Senator HASSAN. Well, thank you. And again, this has been really helpful. I wanted to start this question with Ms. Byers, but then ask everybody to comment. Ms. Byers, your testimony rightly emphasizes that compliance burdens imposed by the *Wayfair* decision are far more likely to hurt small businesses than major companies, and this is going to impact businesses in every State, including those with sales taxes.

And I think that is really important because there has been a little bit of a focus on the few States that don't have sales taxes, and everybody thinks we are just concerned because we do not have sales taxes. But as your testimony makes clear, you mentioned an auction company in Kansas, for example, that is struggling with the sales tax collection burdens. And I know you closely track these issues as chair of the sales tax task force, which is a mouthful, for

the National Auctioneers Association. So, can you tell us how *Wayfair* is hurting small businesses and States with sales taxes so that we can convey this to our colleagues in the Senate as we continue to push forward?

Ms. BYERS. Sure. I would say there are 45 States that have sales tax, and a majority of the members of the NAR in those States, a few hang out here in New Hampshire. So, and I this has been alluded to by the other gentleman is that we have that first case where we actually had a person reach out to us and tell us the actual numbers which is lovely too. It is nice to have facts to respond, it is horrible to say going out of business, but a lot of the auction companies they kind of all feel it coming down the road, but we don't actually have cases yet because the States have been very good about not sending the auditors out.

There was a paper that came out saying that last year Hawaii was going to start sending out the audit letters to everyone and the rest of the State's revenue groups kind of went to Hawaii and were like, don't, just hold the line, because we're getting money coming in that we were not getting before, and as soon as you remove the carrot and bring out the stick, everyone is going to run to the edges. So, we know it is coming down the pipe and there are companies that are not feeling it, but it is hard because no one has actually gotten the official letter shipment from the different States.

And the companies that are in compliance because they are trying to find out about it, they are just still trying to wrap their brains around it. Like, you know, we have spent \$20,000 dollars this year. We think we are in compliance, but that could change because the State legislators also are changing their rules. You know, California is a good example that everyone kind of worried about. You know, they have set three thresholds over the course of three years that will change the numbers.

Some States used to have higher thresholds and are lowering them down because they want to get more income. So even if you build a software program and it is perfectly acceptable, on any given day and usually in the spring, those numbers are changing or what is taxable is changing. So, you are kind of trying to run ahead of a wave that you can never get out of the way of. That is—we know it is coming but it is hard to kind of get anyone to be like, you know, my seven-year-old company is going to be gone in a year.

Senator HASSAN. Right. Mr. Moore, what about you? Are you hearing from other businesses and States that have sales taxes?

Mr. MOORE. Yes. Our customers are all across the United States to supply inventory and one of the challenges that they have is that a lot of these are resellers or they are buying product with someone else, and then they are reselling it and then what we get are their returns. So, returns historically and years ago were not that important but now it is really a difference between profitability and how profitable you are as a company. So, the recovery that we can get in repurposing those products is really, really important to them. I know it pass through 1 or 2 percent, and on really thin margins to begin with, is huge.

Senator HASSAN. Mr. Hennessey.

Mr. HENNESSEY. You know, an example would be a company similar size in the Midwest that is in a taxable State and being a

taxable State with only one physical location simply provides you that slate head start because you are collecting in that one State, but you still must learn the remaining 44 States and local jurisdiction. So, it is just a small step in the right direction. But it is just as daunting for companies elsewhere.

Senator HASSAN. Mr. Badger.

Mr. BADGER. I do not really have much to add to that but a couple points that have not come out. One is that the way people purchase products, from when they purchase products, they start to matter. They instead make it become determined by who is charging taxes and who is not charging tax.

And so, for a small company, they actually enjoy some of an advantage to the point where they need to start collecting tax because they can offer product up to 10 percent less than a company that is charging tax. And the other point that really has not come up is that while this is the additional money is going to States who collect tax, it is based on added taxation of their own citizens. So, it is a new tax.

Senator HASSAN. Thank you. I have one other topic to ask about it. So and again I will start with Ms. Byers because it seems to be that the other thing you mentioned in your testimony that is a particularly difficult and perplexing issue to deal with is that there are so many different kinds of the so-called nexus requirements that States have passed following the *Wayfair* decision, including economic marketplace, click through, and affiliate nexus. All of you mentioned this at some level, so starting with Ms. Byers, could you just give us an overview of these different requirements and how the complexities of determining nexus makes promoting a sales tax collection so burdensome for small businesses?

Ms. BYERS. Sure. So, the old rule of thumb that we had with Quill was physical presence which basically meant the employee and inventory—there was something physical in a State and that was what everyone worked of which is very easy to conceptualize something in the State. Economic nexus is the next most common one most States are using and that is saying that they need to have a certain number of transactions or a certain number of sales, and we are usually using gross sales, to determine that you have economic viability in that State and therefore you owe money to that State for the sales part of it. We also have a situation which is the economic plus nexus, which has to do with cookies.

Massachusetts has in the legislature a cookie nexus, so if any transaction between me and anybody else, for some reason there was to be a cookie placed on any physical computer inside the State of Massachusetts, even if I was selling from New Hampshire to Maine, but the server went through Massachusetts, technically in Massachusetts law, that is a cookie nexus and I have therefore transactions on their State which is a little hard to get your brain around. You have to track the digital footprint for that.

And affiliate nexus has to do with having a business that is tied to that State in some way. So maybe one of your major supply partners is in that State so therefore you have an affiliate nexus, which again, is not a direct correlation between the customer and the buyer and seller has to do with how the business models work. The click-through nexus has to do with links on a website, again, kind

of like the cookie nexus but slightly different. So, if someone wanted to buy something and they clicked through a site, then click through to another site, to your site, since then clicked to those two initial sites, those are nexus inside those other States where those sites are being posted.

And then the marketplace facilitator law, which is kind of the one that everyone heard about this year again with California because there are so many businesses out there, is the one that conceptualizes eBay. So, although I might be doing sales inside New Hampshire to someone else in New Hampshire, eBay as a facilitator of me selling it, they are going to kind of keep track of what I am doing and how to do it. So again, a gentleman selling a coin in Missouri to someone in California, even though that transaction itself probably did not cross the threshold, eBay as a company since it is going through the eBay site is going to cross that threshold so they are going to collect taxes on all those smaller transactions because the State has said the facilitator, once you cross our thresholds, you have to collect taxes on all those transactions.

So even though the seller is only doing \$10,000, \$5,000 in business, eBay is doing 10 million in business, so they are going to cross the threshold and then that contact makes click.

Senator HASSAN. To say that business owners have to learn a lot about a lot of different things is an understatement right there, so thank you. Does anybody else have anything to add on those issues?

Mr. MOORE. I will just dive into it. I am with nexus, because if within that, there is—the standard is a 100,000 sales, 200 transactions. Some States it is 4, some States is 10, and some States is retail only, some States is wholesales, freights included in some States and in other States, etc. And so even within that single component, there are layers and layers of complexity.

Senator HASSAN. Thank you.

Mr. HENNESSEY. That is what I was talking about, the standardization and that should apply also. The only thing I would also add that is another level of complexity is we are selling on Amazon, geographic nexus gets complex because when you add inventory into the FBA program, they can put it in any one of their warehouses around the United States, and that comes the nexus for you.

Senator HASSAN. Thank you very much.

Senator SHAHEEN. Thank you. I just have a final couple of things. Mr. Badger, you talked about the SST initiative. Do you know who is heading that up? Is that something that—

Mr. BADGER. There is an SST board. I believe it is made up of all the States that are—just, there are several levels, there are advisors, etc. As I said, it is sort of the right start to things, but it really needs all States to be involved. There are a couple of things about it though that really need to be modified. One is that part of the program you have to work with one of the certified compliance services.

It is a very short list and at least a couple we could not use because of the software we use for our accounting, etc. Ones that don't want any more SST clients because their filing rate has been negotiated down. They would rather take on non-SST and get more

for filing. So, then one other last thing is that through the SST program, those client service companies are the ones liable for any audit, which in turn makes them somewhat paranoid about what advice they give. But also, how they handle things.

That is where we had a problem with Amazon SST because we are working with a company that is not the company that does the calculation for Amazon. So, our company does not trust that company. Our company does their own calculation and we will only remit that calculation even if it is less than or more than what we charge the customer. If it is more than, that is okay, we can just subsidized the difference. If it is less than, then technically you should be sending out a refund check to that customer. And at that point you collected taxes that were not remitting. And yet the one paying is not a big deal. All those checks are something of a big deal. Having all those checks and never cashed is a huge deal.

Senator SHAHEEN. I am just trying to think about where else there might be help in responding to the decision.

Mr. BADGER. And I think SST, that is the right direction. It just needs to be cleaned up a little bit. But really that is the direction it needs to go in. And again, it needs to go further to the point where those service providers aren't necessary to the business to take care of things on their own if they choose and right now, that is not possible.

Senator SHAHEEN. Can I ask the committee staff, is the committee familiar with the SST initiative?

Mr. WENTHOUSE. Yes. We have been monitoring its progress.

Senator SHAHEEN. I would suggest that we ought to think about bringing them in along with some of the other folks who are working on compliance for a hearing, for a Small Business hearing. I know we have got representatives from the chambers who are here, and I assume that they are here partly to find out how they can be helpful with questions that small businesses may ask them. Are there any initiatives that you all have been part of on the part of the Chambers of Commerce or any associations that you are part of, obviously the Auctioneer Association is one of those, who are trying to provide help to small businesses and dealing with this decision?

Mr. BADGER. I do not know if anybody out there. The closest we can find is there is sort of this almost like a vending machine type setup for legal advice where you go online, put in your credit card, you are given a one-hour appointment, and then you get some advice. Sort of—like five cent—

[Laughter.]

Senator SHAHEEN. Kind of like an 800 network.

Mr. BADGER. Beyond that, you know, as I said, if we ask the client service companies, they say they do not want to be liable for that. Tax professionals, they say ask the software company because they do not want to tax you for doing it. I do not think there really is that type of resource out there.

Mr. HENNESSEY. We are historically a catalog mailer and there is an organization called the American Catalog Association that has done a considerable amount of work to help small businesses like us understand and advocate for our interests. So, they have been a very good resource for us. Their assistance goes so far, and

then when you get into more products specific, business specific, we hire our own experts.

Senator SHAHEEN. Anybody else has had any luck with having outreach?

Ms. BYERS. Well our Association, obviously, has been entirely involved. We actually filed an amicus brief on behalf of Wayfair kind of to make the point of small businesses, and then also in the coin-ing world, there is the Industry Council on Tangible Assets, which has done some work. Being that they are focused solely on coins, they are usually doing work at the State level in terms of making the exemptions for bullion, the exemptions for collector coins that is very specific to asset class.

Besides that, most chambers I have interacted with either are unaware or just, you know, they think that they only can control potentially what is in their jurisdiction in their State. They are working inside their State, but after that it is going to the Federal Government to talk to them, welcome that lobbying in you guys' part.

Senator SHAHEEN. I also have no further questions, so can I just ask the panelists if there is anything else that any of you would like to raise before we close the hearing?

Mr. MOORE. I don't have any questions. I just really appreciate your efforts in this area.

Mr. HENNESSEY. Yes, absolutely. Thank you for having the hearing.

Senator SHAHEEN. Thank you all very much. I am hopeful that as Congress learns more about the challenges that small businesses are facing, there will be more opportunity to pass some legislation spun in a way that could be really helpful.

Mr. BADGER. And pushing that is really all small businesses, not just in taxed States.

Senator HASSAN. That is right. And I think that is one of the tasks in front of us is to engage Senators and tell them that this really does impact their State, you know. And certainly, one of the tasks that I have on the Finance committee, so we will continue to work on that.

Senator SHAHEEN. Well, again, thank you all so much for being here. To everyone in the audience, thank you all very much. Anyone who would like to submit written testimony, we have two weeks. So, two weeks from today, we can accept written testimony. And we would appreciate any comments that any of you have.

Thank you all. I will close this hearing at this point officially.

[Whereupon, at 3:48 p.m., the hearing was adjourned.]