TO: US Senator Jeanne Shaheen  
US Senator Maggie Hassan  
US Representative Annie Kuster  
US Representative Chris Pappas  

FROM: Kathleen Reardon, CEO, NH Center for Nonprofits  

DATE: September 24, 2019  

RE: Examining the Impact of the Supreme Court’s South Dakota vs. Wayfair Decision on Nonprofits  

NH Center for Nonprofits  

The NH Center for Nonprofits (The Center) is a 501(c)(3) nonprofit, statewide association dedicated to elevating the visibility, strength and status of the nonprofit sector by providing programs and resources to maximize nonprofits’ capacity to serve the citizens and communities of New Hampshire. The Center strengthens and gives voice to the state’s nonprofit sector through leadership, collaboration, and learning opportunities.  

In response to the recent hearing convened by the US Senate Committee on Small Business and Entrepreneurship on August 28, 2019 in Concord, New Hampshire on Remote Online Sales Taxes: Examining the Impact on Small Business of the Supreme Court’s Decision in South Dakota versus Wayfair, the Center is pleased to share the perspective of the nonprofit sector with our congressional delegation.  

Wayfair for Nonprofits  

The Wayfair decision arose from a 2016 South Dakota law that imposed state sales taxes on internet sales of vendors that made at least 200 transactions with or $100,000 in sales to residents in the state. South Dakota argued that an economic presence test, rather than a physical presence test, should be recognized as legally sufficient to extend sales tax liability. The Court, reversing longstanding precedent, ruled that South Dakota’s law was a sufficient alternative and found that the state statute “did not impose an undue burden on interstate commerce.” The opinion, however, did not identify the factors states must show to establish enough economic presence, leaving states to determine appropriate thresholds when crafting new tax policies. The Court also failed to differentiate between nonprofit corporations and for-profit corporations, making charitable nonprofit organizations subject to new potential tax exposure that cuts into valuable mission-related resources.  

As states around the country gear up to impose sales taxes on out of state entities, there is growing concern from nonprofits that generate mission-related revenue through online auctions and online marketplaces, on
new taxes and compliance costs. The impact could be particularly jarring to New Hampshire nonprofits that have grown financial models based on the low-tax climate of New Hampshire. These same nonprofits that have served New Hampshire communities for decades now find themselves exposed to potential taxation from the approximately 12,000 taxing jurisdictions in the United States.

Economic Impact of NH Nonprofits

A new report released by the Center this summer highlights the economic impact New Hampshire nonprofits have on the state’s economy. The report, entitled *New Hampshire’s Nonprofit Sector in Brief*, highlights the $11 billion in yearly revenue from the state’s 6,547 charitable nonprofits. These resources are invested in mission-related work including human services, arts and the environment. Redirecting resources to comply with *Wayfair* would redirect resources dedicated for mission related purposes. In addition, the majority of New Hampshire’s nonprofits are small with 71% serving their communities with less than a $50,000 annual budget and leveraging impact through volunteerism. The lack of extra resources dedicated to overhead and administration make nonprofits particularly vulnerable to newly imposed costs.

It is worth noting that these new costs come on the heels of the impact of sweeping federal tax reform. The expansion of the standard deduction has greatly lessened the value of the charitable deduction since there are fewer itemizers. In addition, nonprofits have been hit with new UBIT taxes related to employee benefits, including a new “parking tax”.

New Laws and Policy Proposals

The Center is tracking the new laws at the state and federal levels and favors protections for the nonprofit sector. New Hampshire’s legislature has passed, and the Governor has signed, Senate Bill 242 that requires foreign taxing jurisdictions to provide notice through the NH Department of Justice and limits the pressures on NH sellers’ compliance. In addition, the Center also favors a bill in the US Senate, S. 128, *Stop Taxing Our Potential Act*, sponsored by both of New Hampshire’s Senators.

At the same time as New Hampshire implements some limited protections and Congress considers new legislation, states around the country are passing a variety of new statutes with the goals of importing new tax dollars over state lines. The ambiguity of this new environment is challenging for a nonprofit sector that was designed to serve community, rather than serve as a tax base for other states.

Conclusion

Thank you for the opportunity to share the concerns of the NH Center for Nonprofits on the impact of the *Wayfair* decision on the nonprofit sector. We look forward to continue to engage on the issue.