

Crapo Statement at Hearing on SCOTUS Wayfair Decision

June 14, 2022

Washington, D.C.--U.S. Senator Mike Crapo (R-Idaho), Ranking Member of the U.S. Senate Finance Committee, delivered the following remarks at a hearing entitled, "Examining the Impact of *South Dakota v. Wayfair* on Small Businesses and Remote Sales."

The text of Ranking Member Crapo's remarks, as prepared, is below.

"Thank you, Mr. Chairman. And thank you to our witnesses for joining us today in person.

"The Supreme Court's 2018 *Wayfair* decision significantly changed the sales tax landscape for states and online businesses. Post-*Wayfair*, states can require online sellers to collect and remit sales taxes from residents of sales tax states.

"The decision highlights the challenges for both the public and private sector to evolve with the rapid growth of e-commerce. The share of commerce conducted online has grown dramatically in recent decades due to technological innovation. The COVID-19 pandemic, and the resulting disruptions to normal life, have further fueled its growth.

"The Internet has been a boon to both buyers and sellers. Sellers have gained access to new markets, while buyers are no longer limited to brick-and-mortar retailers in their vicinity. However, as *Wayfair* acknowledges, the growth of e-commerce put traditional mechanisms for collecting sales tax at risk.

"The Government Accountability Office reported in 2017 that state governments were losing out on billions of sales tax revenue as a result of online sales in the pre-*Wayfair* environment. Many states and municipalities rely on sales tax revenues to fund essential services. In fact, 45 states and the District of Columbia impose taxes on remote sales that exceed an economic nexus threshold.

"The Tax Foundation notes that in 32 states, these sales taxes account for more than one-fifth of total state and local tax collections. In 11 states, general sales taxes account for more than one-third of total state and local tax collections.

"By giving states the ability to collect sales tax from residents even when a sale occurs remotely, *Wayfair* attempted to address the disparate treatment of brick-and-mortar stores and online sellers. Notably, it does not result in sales tax being imposed on residents of non-sales tax states.

"However, in light of states' expanded rights and sellers' access to new markets, online businesses, and small businesses in particular, face new responsibilities and challenges.

“The different standards and thresholds between states and localities can create a burdensome and complex system that makes compliance difficult for small businesses. Sellers now must either learn to comply with the rules of myriad tax jurisdictions where their customers reside, or hire specialized advisors.

“This compliance can be time-consuming and expensive, especially for small businesses and for merchants in states that do not levy sales taxes, but that must collect and remit sales tax to other jurisdictions. While states and multi-state organizations have taken important steps to attempt to ease these burdens, a comprehensive solution to this problem remains elusive. The right of states to levy taxes, and empower their municipalities to do the same, is well-founded on the principle of state sovereignty.

“On the other hand, as stated in *Wayfair*, ‘States may not impose undue burdens on interstate commerce.’ Accordingly, a balance must be struck between ensuring states can collect sales tax due and ensuring that business activity is not stifled, particularly as the risk of recession rises.

“Businesses should be able to determine the taxes that are due, collect them, and remit them to the relevant authorities with minimal headache and expense. A sales tax system with more consistent thresholds and standards would allow businesses to more efficiently comply, and provide tax certainty, reducing the risk of future audits and penalties.

“Our witnesses will share their important perspectives, including on the challenges small businesses are facing and how tax advisors are approaching the post-*Wayfair* landscape.

“I look forward to hearing what steps can be taken to ease the burdens facing small businesses, and how states, multi-state organizations, and even Congress may have a role in creating a more efficient and less burdensome approach.”