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TO: NAW Direct Members

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A federal legislative solution to the state sales tax collection loophole benefiting remote-only sellers to the competitive disadvantage of local brick-and-mortar distributors and retailers remains elusive. However, the federal judiciary may be in the process of moving the needle on the “e-Fairness” issue.

As we reported last fall, the State of South Dakota passed a law requiring remote sellers to collect and remit the state’s sales tax on certain transactions, knowing that their law was almost certain to be struck down as violating the Supreme Court’s *Quill* decision barring states from requiring that the taxes be collected by remote sellers without a physical presence – nexus – in the state.

The law was, as expected, invalidated by the South Dakota Supreme Court, and South Dakota filed a petition asking the Supreme Court of the United States to hear and decide their case (*South Dakota v. Wayfair, Inc., Overstock.com, Inc., and Newegg, Inc.*). NAW filed an *amicus curiae* (“friend of the court”) brief in support of South Dakota’s petition.

We are very pleased to report that on Friday, January 12th, the justices agreed that the time has come to review applicable precedents and reconsider this issue, and granted the State’s petition for a Writ of Certiorari in *South Dakota v. Wayfair*.

For more on this issue, please see NAW’s “Marketplace Fairness” issue brief. Go to:
https://www.naw.org/issue_brief/marketplace-fairness/

Additional information is provided in our “Legal Update,” as well. Go to:
https://www.naw.org/issue_brief/legal-update/