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Not-So-Sweet Home: Alabama Lawsuit Risks Constitutional Challenges to the State's Sales/Use Tax Regime

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In mid-August, Alabama cities and a school district (“localities”) sued the commissioner of the Alabama Department of Revenue seeking, in essence, to “de-simplify” the state’s sales and use tax system.^[1] The localities claim the “why” of their case is the millions of dollars in tax revenue they are losing every year under the current system. While the localities may view a revenue boost as a potential reward, the risks may be far more significant. If the localities prevail, the state’s home rule sales/use tax scheme is at higher risk of being found violative of the U.S. Constitution by a court of law.

Alabama is one of a handful of states (including Louisiana and Colorado) that authorizes home rule jurisdictions, permitting municipalities to impose, administer, and enforce their own sales/use taxes, separate and apart from sales/use taxes imposed at the state level. Home rule jurisdictions often present myriad compliance challenges to remote sellers, including the obligation to file voluminous returns as opposed to a single return filed at the state level and nonuniformity as it relates to tax ordinances, as local ordinances can have different tax types, tax bases, exemptions, and rates. Moreover, taxpayers are subject to audit and differing interpretations by the various taxing jurisdictions.

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To streamline and simplify its cumbersome home rule system, Alabama permits certain remote taxpayers to file a single combined state and local sales and use tax return with only the state. Alabama's Simplified Seller's Use Tax (SSUT) program pre-dates *Wayfair*^[2] and authorizes out-of-state sellers that exceed the state's economic nexus thresholds to collect and remit a flat 8% sellers use tax on all sales made to Alabama customers, regardless of where delivered. Alabama's program centralizes and simplifies local tax compliance for remote sellers and marketplace facilitators and thus mitigates undue burdens and discrimination concerns affecting interstate commerce.

The localities' lawsuit, however, seeks to shrink the pool of taxpayers eligible to participate in the SSUT program. Specifically, the complaint claims the existing program and the commissioner's implementation run afoul of the state constitution and the law itself. More fundamentally, and at the heart of the lawsuit's "why," the localities believe that *Wayfair* expands their authority and allows them to impose and administer their taxes on certain sellers/facilitators that participate in the SSUT program.

Despite the localities' claims, *Wayfair* does not give home rule jurisdictions carte blanche to enforce their tax reporting and collection obligations. While *Wayfair* upheld the validity of South Dakota's law requiring tax collection when specific dollar or transaction thresholds are met, the Court premised its holding on important guardrails, including the state's adoption of the Streamlined Sales and Use Tax Agreement (SSUTA) that kept sales tax compliance from being overly burdensome for remote retailers. *Wayfair* repeatedly emphasized South Dakota's adoption of the SSUTA, which requires a single state-level administration, simplified rates, and uniform definitions, features mirrored by Alabama's SSUT program. The Court observed that these streamlined features of a state tax system are designed to mitigate against discrimination and

undue burdens on interstate commerce in accord with the Commerce Clause of the U.S. Constitution.

In fact, following *Wayfair*, across the country taxpayers have been actively litigating against states' and localities' unconstitutional overreach with respect to taxation of remote sellers. In Louisiana and Colorado (other states like Alabama with home rule jurisdictions), remote sellers have challenged state and local tax obligations on constitutional grounds, including undue burden and discrimination. In Colorado, Wayfair LLC sued the City of Lakewood over its complex sales tax reporting requirements and alleged that the City's decentralized sales tax system unconstitutionally violated the company's right to engage in interstate commerce, a direct violation of the Commerce Clause.^[3] Similarly, an Arizona-based online business filed a lawsuit in federal court in the Eastern District of Louisiana, alleging that Louisiana's decentralized sales tax system and lack of uniformity present undue compliance burdens for remote sellers under *Wayfair*.^[4] And in Illinois, multiple pending lawsuits against the state are challenging the hybrid sourcing regime created by the state's Leveling the Playing Field law on grounds that the law discriminates against and imposes due burden on remote sellers in violation of the federal Commerce Clause and Uniformity Clause of the Illinois Constitution.

Across the country, remote sellers have demonstrated a willingness to litigate against state and local tax regimes that unfairly discriminate against and impose undue compliance burdens on them contrary to the U.S. Constitution. Will Alabama face the same fate? Stay tuned, as the localities' litigation against the commissioner is poised to be a determinative factor.

^[1] *City of Tuscaloosa v. Barnett*, No. 03-CV-2025-901301.00 (Cir. Ct. of Montgomery County, Ala.) (complaint filed Aug. 12, 2025).

[2] *South Dakota v. Wayfair, Inc.*, 585 U.S. 162 (June 21, 2018).

[3] *Wayfair LLC v. City of Lakewood, Colo.*, Case No. 2022CV30710 (Dist. Ct. of Jefferson County, Colo. 2022).

[4] *Halstead Bead, Inc. v. Lewis*, No. 2:21-CV-02106 (2021).

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