

Chair and Members of the Committee,

My name is Deb Peters, a former South Dakota State Senator and Certified Public Accountant. I was the driving force behind *South Dakota v. Wayfair*, the landmark case that reshaped sales tax collection and nexus rules. Over the years, Maryland has benefited significantly from the revenue generated by e-commerce sales tax collection.

I am representing the Americans for Digital Opportunity powered by the Association of National Advertisers, testifying in opposition to HB 1554 and SB 1045. This proposal would create a litany of unnecessary legal and administrative burdens for the state.

Maryland is already embroiled in litigation over its 2021 digital advertising gross receipts tax, with litigation still ongoing. Enacting this additional, complex tax measures will only invite further legal challenges.

The proposed legislation will effectively impose two different sales tax rates - 6% on tangible personal property and 2.5% on business-to-business services, raises significant constitutional concerns. It conflicts with both the *Wayfair* decision and the Dormant Commerce Clause by creating unnecessary complexity without addressing the need for simplification and uniformity.

The Supreme Court, in *Wayfair*, emphasized that tax policies must be structured to reduce administrative burdens. South Dakota's approach did this by establishing clear sales and transaction thresholds to protect small businesses, ensuring the tax was not retroactive, and participating in the Streamlined Sales and Use Tax Agreement to simplify compliance. Maryland, by contrast, has not taken similar steps. Instead, these bills introduce new complexities and provide no protections for small businesses, making compliance more costly and difficult.

Beyond these practical concerns, the bills raise serious constitutional issues. The Supreme Court's *Complete Auto Transit v. Brady* (1977) decision established a four-part test for state taxes under the Dormant Commerce Clause, and Maryland's proposal fails to meet these standards. It is unclear how the state will determine nexus for remote services, particularly with today's digital economy. If other states also impose taxes on these services, businesses could face double taxation and an overwhelming administrative burden.

Additionally, there is no clear framework for how digital advertising, which spans multiple states, would be sourced and taxed. Maryland has not demonstrated how these taxes fairly relate to the services provided to impacted businesses, further weakening the case for their implementation.

With Maryland already facing legal challenges over its digital advertising tax, this new proposal would only add to the uncertainty, potentially leading to double or even triple taxation of the same services.

The administrative complexity of enforcing a sales tax on services is another major concern. Unlike tangible goods, services are not tied to a single location. Many providers already pay income tax - now Maryland proposes layering an additional sales tax on top, without a clear plan for tracking, sourcing, and enforcing compliance. Given that people from all over the world provide services into Maryland, how will the state prove that it has the sourcing jurisdiction to apply and demand tax to be collected?

These bills introduce more legal uncertainty, increase compliance burdens, and will likely lead to costly litigation, while hurting businesses and making Maryland less competitive.

For all these reasons, I ask you for an unfavorable report on HB 1554 and SB 1045.