

## Wayfair Lawyer George Isaacson Dies At 74

By **Maria Koklanaris**

Law360 (August 22, 2023, 8:52 PM EDT) -- George S. Isaacson, who argued before the U.S. Supreme Court in the landmark Wayfair case on behalf of retailers and propelled a 20-person firm in Lewiston, Maine, into a nationally known powerhouse for commerce clause and nexus issues, has died, according to a statement from his firm.




George S. Isaacson, who propelled a 20-person firm in Lewiston, Maine, into a nationally known powerhouse for commerce clause and nexus issues, died Saturday. He was 74. (AP Photo/Andrew Harnik)

The firm, Brann & Isaacson, issued a statement Monday saying Isaacson had died Saturday at 74. People close to him who spoke to Law360 on Tuesday characterized Isaacson's life as one of devotion to his family, the law and academic scholarship — he taught constitutional law at Bowdoin College for a half-century. Finally, and always, they said, there was his beloved Maine.

"He wouldn't have it otherwise," said Martin Eisenstein, Brann & Isaacson's managing partner, speaking of Isaacson's life as a third-generation Mainer. "He liked the fact that he had a law firm in Maine and not in New York."



Isaacson, a graduate of Bowdoin and the University of Pennsylvania Law School, had been a lawyer since 1973. But it was two things quintessentially Maine — fly-fishing and L.L. Bean — that turned him into a state and local tax lawyer.

Having joined his firm in part because L.L. Bean was a longtime client — Isaacson was not the person in the name of the firm but was a distant cousin of firm founder Peter Isaacson — he and the company were


soon connected. He became L.L. Bean's outside general counsel and in 1986 entered the state and local tax world via [L.L. Bean v. Pennsylvania Department of Revenue](#) . In that case, the Commonwealth Court of Pennsylvania found that L.L. Bean's relationship with a Pennsylvania company to which it sold products did not constitute a physical presence for sales and use tax purposes.

After the case, the now-defunct Direct Marketing Association, then representing mainly catalog companies, invited Isaacson to give a speech. He then served the association its lawyer for decades, and many of the best-known sales and use tax cases of the last 30 years bear his name.

"George was, quite simply, the finest attorney I have ever encountered," said Matthew Schaefer, a onetime partner at Brann & Isaacson who now has his own firm. "He was not only a brilliant legal scholar and analyst of complex legal issues, he was also a strategic thinker of unparalleled skill and creativity, with a clear-eyed focus on his clients' interests."

Schaefer said working with Isaacson, including as co-counsel on the two U.S. Supreme Court cases Isaacson argued, will always be treasured experiences. The first was in [Direct Marketing Association v. Brohl](#) . There, the court ruled unanimously in March 2015 on the narrow question of whether the [Tax Injunction Act](#)  barred the marketing association from bringing suit to enjoin the state of Colorado from enforcing its sales and use tax reporting regime. The court found no bar and remanded the case to the Tenth Circuit, where Justice Neil Gorsuch was then a judge. The Tenth Circuit reviewed the question of whether the reporting regime violated the commerce clause and found it did not. On Dec. 12, 2016, the U.S. Supreme Court declined to grant a writ of certiorari, leaving the Tenth Circuit's decision intact.

That decision proved a harbinger of sorts for Isaacson's better-known U.S. Supreme Court appearance — the most consequential state tax decision of the last three decades. The high court decided that South Dakota's law requiring remote sellers without a physical presence in the state to collect and remit sales and use tax was permissible under the commerce clause.

In a 2018 interview that came before the opinion in [South Dakota v. Wayfair](#) , but after Isaacson and South Dakota Attorney General Marty Jackley argued before the justices, Isaacson **told Law360** that the court was being asked to make a policy decision.

"Can the court fashion a policy standard or policy criteria that is either similar to, or a substitute for, what Congress can do?" Isaacson asked. "The court had made clear it is not a legislative body and should not be making legislative-type decisions. I don't think we want to have a U.S. Supreme Court that is going to weigh economic policy implications and then craft what it considers to be good policy."

That was a loss, but Isaacson kept going, watchful to make sure that Wayfair, now decided, wouldn't be applied retroactively. In December 2022, his firm turned that into a win before Massachusetts' highest court. The Massachusetts Supreme Judicial Court affirmed that the Wayfair decision cannot be applied retroactively and made clear that electronic cookies didn't constitute physical presence before the ruling.

"George was a great man in every sense of the word," Eisenstein said. "His professional accomplishments are so numerous that it would take up to several pages to list them, but we should call out his two landmark arguments before the U.S. Supreme Court and his victories in many ground-breaking cases throughout the country."

Both Schaefer and Eisenstein said, however, that legal brilliance in the courtroom was only part of Isaacson's legacy. He was a civic leader, having served two terms as chairman of the board of MaineHealth, as well as serving on other nonprofits. And he was a consummate teacher, they said. Eisenstein noted that Isaacson's constitutional law classes at Bowdoin, which he began teaching at 26, were often standing-room-only as his reputation spread.

And Isaacson was happy to share his expertise with other students too, said Richard Pomp, tax professor at University of Connecticut.

"He would come down and talk to my students. He would enthrall them with inside baseball" from his cases, Pomp said. "And he would give them advice. They loved that."

Other state tax professionals spoke about Isaacson's kindness as well. Jeffrey Friedman, tax partner at Eversheds Sutherland, remembered a spirited disagreement he had with Isaacson early on.

"I was young and stubborn, and he was quite mature," Friedman told Law360. "I left that discussion frustrated."

Isaacson's response, Friedman said, was to send Friedman a gift honoring the birth of his first daughter, now 26. The gift was the classic Maine children's tale "Blueberries for Sal," by Robert McCloskey.

"With the nicest note, and that became one of her favorite books," Friedman said. "You know, I was not one of his members, or his clients, or his constituency that he needed to be nice to me. He was nice to me because he wanted to be, and it had such an impact."

Isaacson is survived by his wife of 42 years, Margaret McGaughey Isaacson, a retired appellate chief at the U.S. Attorney's Office for the District of Maine, in Portland. They met in law school and went on to have three children and seven grandchildren.

Eisenstein said Isaacson had many passions: "Most of all, his family."

--Editing by Tim Ruel and Khalid Adad.

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