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A TAX WITH NO LOCATION CAN PRIORITIZE EDUCATION: THE IMPACT OF THE WAYFAIR DECISION

I. INTRODUCTION

A funding gap may not seem substantial when it is in regard to research or product development, but what about education? In the United States, there is a substantial funding gap in education, with school districts reporting higher poverty rates receiving less per-pupil funding than those with lower poverty rates.¹ But what if the states had the means and opportunity to start shrinking that gap and equalizing funding per pupil? This Article contends that the Supreme Court's recent decision in *South Dakota v. Wayfair*² has paved the way for states to start major education funding reform.

Part II of this Article will provide background into the taxing power of the federal, state, and local governments in the U.S. and the contributions they make to education funding. The second part will also discuss the previous requirement for retailers selling their products or services outside of states in which they have a presence. Then, it will discuss *South Dakota v. Wayfair* and the overruling of the previously well-established physical presence rule. Part III will analyze the possible impact that the *Wayfair* decision can have on education. It will discuss the states' ability to collect all sales taxes from remote sellers and how they are working toward creating a streamlined tax system in order to do so. In addition, Part III will demonstrate why the states should use the increase in tax income to further fund education and to equalize the amounts of money spent per student. Finally, Part IV of this Article suggests further impacts that the *Wayfair* case will have on education and beyond. Part V concludes this article with a discussion of what needs to come next.

1. Lauren Camera, *In Most States, Poorest School Districts Get Less Funding*, U.S. NEWS (Feb. 27, 2018, 12:01 AM), <https://www.usnews.com/news/best-states/articles/2018-02-27/in-most-states-poorest-school-districts-get-less-funding>.

2. 138 S. Ct. 2080 (2018).

II. BACKGROUND

A. *The Taxing Power*

The U.S. Constitution gives Congress the power to “regulate Commerce . . . among the several States[.]”³ Beyond that, however, Congress has generally left the Supreme Court to formulate rules and preserve the regulation of commerce.⁴ Throughout history, the Supreme Court has adjudicated Commerce Clause disputes to help interpret its meaning and reach.⁵ It has also been noted that, in some instances, Congress and the states have concurrent power to regulate commerce.⁶ Over time, the Court’s decisions established boundaries to a state’s ability to regulate commerce.⁷ “First, state regulations may not discriminate against interstate commerce; and second, [s]tates may not impose undue burdens on interstate commerce.”⁸ The Court noted that “[s]tate laws that ‘regulat[e] even-handedly to effectuate a legitimate local public interest . . . will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.’”⁹ In the past, states have been restricted on collecting sales tax from out-of-state retailers.¹⁰

Through the power granted by the federal government, states are able to collect sales tax on goods and services sold within that state, if the state should so choose.¹¹ Sales tax is generally charged on products that are sold from retailers to individual customers.¹² It is also an established tax, which requires that the rate does not differ based on the income of the payor.¹³ The tax is collected by the seller, who is then required to pass the tax along to the state.¹⁴ In 2017, states collected \$457 billion in sales tax.¹⁵ Sales tax makes up a large amount of

3. U.S. CONST. art. I, § 8, cl. 3.

4. *Wayfair, Inc.*, 138 S. Ct. at 2090 (quoting *S. Pac. Co. v. Arizona ex rel. Sullivan*, 325 U.S. 761, 770 (1945)).

5. *Id.* (citing *Gibbons v. Ogden*, 22 U.S. 1, 9 (1824)).

6. *Id.* See *Willson v. Black Bird Creek Marsh Co.*, 27 U.S. 245, 252 (1829).

7. *Wayfair, Inc.*, 138 S. Ct. at 2090.

8. *Id.* at 2091.

9. *Id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

10. See *Nat’l Bellas Hess, Inc. v. Ill. Dep’t of Revenue*, 386 U.S. 753, 758 (1967). See also *Quill Corp. v. North Dakota*, 504 U.S. 298, 317–18 (1992).

11. *State and Local Taxes*, U.S. DEP’T OF THE TREASURY, <https://www.treasury.gov/resource-center/faqs/Taxes/Pages/state-local.aspx> (last updated Dec. 5, 2010, 10:24 AM).

12. *The Consumer’s Guide to Sales Tax*, TAXJAR, <https://www.taxjar.com/guides/sales-tax-guide-for-consumers/#who-collects-sales-tax> (last updated Nov. 15, 2016).

13. . U.S. DEPARTMENT OF THE TREASURY, *supra* note 11.

14. TAXJAR, *supra* note 12.

15. *The State of State (and Local) Tax Policy*, TAX POL’Y CTR., <https://taxpolicycenter.org/briefing-book/how-do-state-and-local-sales-taxes-work> (last visited May 30, 2021).

the revenue received by states and localities.¹⁶ The money collected by the states typically goes to a general fund, which is spent on things such as police and fire departments and medical facilities.¹⁷

The Constitution also gives local governments the right to impose taxes on their residents.¹⁸ Local taxes can include sales taxes, individual income taxes, corporate income taxes, property taxes, and more.¹⁹ Local governments collected approximately \$124 billion as a result of sales tax in 2017.²⁰ The money collected from local taxes is used to fund areas such as education, public safety officers, and maintaining public roadways.²¹ Public schools throughout the U.S. receive funding from federal and state taxes, but nearly half comes from local taxes.²² Unfortunately, this funding is not sufficient to establish and maintain an improved education system; however, that could be remedied within the coming years.

B. State Spending of Tax Dollars

In 2018, the states and the District of Columbia spent over \$2 trillion in state revenues.²³ The majority of the money is spent on education (K-12), followed by Medicaid and Health Insurance programs, then higher education.²⁴ Approximately one-fourth of state spending goes toward K-12 education.²⁵ This spending typically comes in the form of grants to the school districts or the local governments responsible for them, rather than directly paying the costs and salaries required to run the schools.²⁶ Higher education is also a large part of

16. *Id.*

17. *What Is Sales Tax Revenue Spent On?*, ACCURATE TAX.COM (Apr. 10, 2017), <https://www.accuratetax.com/blog/sales-tax-revenue-spent/>.

18. U.S. DEPARTMENT OF THE TREASURY, *supra* note 11.

19. *An Overview of State and Local Taxes*, TAXSLAYER (Feb. 27, 2020), <https://www.taxslayer.com/blog/overview-state-local-taxes/>.

20. . TAX POLICY CENTER, *supra* note 15.

21. Amber Keefer, *Where Does the Money from Property Taxes Go?*, SFGATE (Dec. 19, 2018), <https://homeguides.sfgate.com/money-property-taxes-go-52339.html>.

22. Bruce J. Biddle & David C. Berliner, *Unequal School Funding in the United States*, 59 EDUC. LEADERSHIP 48, 48 (2002).

23. Laila Kearney, *U.S. state spending exceeds \$2 trillion in fiscal 2018: report*, REUTERS (Nov. 14, 2018, 11:26 PM), <https://www.reuters.com/article/us-usa-states-budget/u-s-state-spending-exceeds-2-trillion-in-fiscal-2018-report-idUSKCN1NK0G6>.

24. *Policy Basics: Where Do Our State Tax Dollars Go?*, CTR. ON BUDGET & POL'Y PRIORITIES (July 25, 2018), <https://www.cbpp.org/research/state-budget-and-tax/policy-basics-where-do-our-state-tax-dollars-go>.

25. *Id.*

26. *Id.*

what states spend their tax dollars on.²⁷ Together, K-12 education and higher education make up about 41% of state spending.²⁸

Public welfare is another major part of state spending.²⁹ Public welfare includes “Medicaid, Temporary Assistance for Needy Families, [] Supplemental Security Income[,]” and more.³⁰ States, and the federal government, fund Medicaid and the Children’s Health Insurance Program to benefit low-income families.³¹ Approximately seventy-four million low-income persons are provided coverage through Medicaid and other programs.³² According to the National Association of State Budget Officers, public welfare (including public assistance and Medicaid) represented 29.8% of state expenditures in 2020 while elementary and secondary education only represented 19%.³³ Public welfare has been increasing since 1977, while spending on education has been decreasing overall.³⁴

The remaining budget typically goes to transportation, corrections, disability, pensions, health benefits for public employees, environmental projects, police, and local government aid.³⁵ The percentages of spending vary in each state but, on average, education receives the most spending.³⁶ And, until recently, the sales tax received by a state to be included in the budget could only come from retailers who had a physical presence in that state.³⁷

C. *The Physical Presence Rule*

In 1967, the Supreme Court was presented with the issue of whether a company was required to collect sales tax from customers who purchased their products from out of state.³⁸ National Bellas Hess (“National”) sold assorted products to consumers by mailing catalogues to

27. *Id.*

28. *Id.*

29. *State and Local Finance Initiative*, URBAN INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/state-and-local-expenditures> (last visited May 30, 2021).

30. *Id.*

31. . CENTER ON BUDGET AND POLICY PRIORITIES, *supra* note 24.

32. *Id.*

33. STATE EXPENDITURE REPORT: FISCAL YEARS 2018–2020, NAT’L ASS’N OF ST. BUDGET OFFICERS 16, tbl.5 (2020).

34. See URBAN INSTITUTE, *supra* note 29, at tbl. “State and Local Direct General Expenditures.”

35. CENTER ON BUDGET AND POLICY PRIORITIES, *supra* note 24.

36. *Id.*

37. See *infra* Part II.C.

38. See *Nat’l Bellas Hess, Inc. v. Ill. Dep’t of Revenue*, 386 U.S. 753, 758 (1967).

customers.³⁹ National's principal place of business was in Missouri, but it mailed catalogues and flyers to recent, current, and potential customers throughout the nation.⁴⁰ The Illinois Department of Revenue argued that National should be required to collect and pay sales tax on goods sold to customers in Illinois in accordance with state law.⁴¹ National argued that the requirement to pay in Illinois created an "unconstitutional burden [on] interstate commerce" and violated due process.⁴² The Supreme Court agreed with National and created the physical presence rule.⁴³ The Court noted that the Commerce Clause was put in place to prevent "unjustifiable local entanglements" in the economy.⁴⁴ Therefore, unless a retailer had a sufficient physical presence in the state, such as retail outlets or salespeople, the state lacked the authority to require the company to collect and remit sales tax in that state.⁴⁵

More than twenty years later, the Court chiseled away at the physical presence rule but did not destroy it.⁴⁶ North Dakota challenged the physical presence rule when it filed an action to require Quill Corporation ("Quill") to collect sales tax on goods sold within the state.⁴⁷ Quill, an office supplies provider, had offices or warehouses in California, Illinois, and Georgia.⁴⁸ To gather business, Quill mailed its catalogues around the nation, advertised in periodicals, and made telephone calls to potential clients.⁴⁹ The goods sold to customers in North Dakota were delivered by mail or common carrier from outside of the state.⁵⁰ North Dakota argued that Quill should be required to collect and remit state sales tax since Quill was maintaining a "place of business" in the state by creating demand for their product within the state.⁵¹ The Supreme Court determined that the Due Process Clause is not violated by requiring out-of-state businesses to collect

39. *National Bellas Hess v. Illinois*, WIKIPEDIA, https://en.wikipedia.org/wiki/National_Bellas_Hess_v._Illinois#:~:text=National%20Bellas%20Hess%20was%20a%20mail%20order%20seller%20of%20various%20consumer%20products.&text=orders%20for%20merchandise%20were%20mailed,use%20tax%20from%20its%20customers (last updated Apr. 13, 2021, 1:27 AM).

40. *Nat'l Bellas Hess, Inc.*, 386 U.S. at 754–55.

41. *Id.* at 754.

42. *Id.* at 756.

43. *See id.* at 758.

44. *Id.* at 760.

45. *Id.* at 758.

46. *See generally* *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

47. *Id.* at 303.

48. *Id.* at 302.

49. *Id.*

50. *Id.*

51. *Id.* (quoting N.D. CENT. CODE § 57-40.2-07 (1991)).

sales tax from their customers if the business “purposefully avails itself of the benefits of an economic market in the forum State.”⁵² However, the Court upheld the physical presence rule established in *National Bellas Hess v. Department of Revenue*, stating that “a corporation may have the ‘minimum contacts’ with a taxing State as required by the Due Process Clause, and yet lack the ‘substantial nexus’ with that State as required by the Commerce Clause[,]” which is a “means for limiting state burdens on interstate commerce.”⁵³

Since the establishment of the physical presence rule in 1967 and the refusal to overturn it in 1992,⁵⁴ e-commerce has been growing rapidly.⁵⁵ In 2020, consumers spent a whopping \$861.12 billion on e-commerce, an increase of 44% compared to 2019.⁵⁶ In the past, because the physical presence rule created a loophole, states could not require out-of-state sellers to collect taxes without a physical presence, resulting in an unfair price advantage for out-of-state sellers as well as a loss of tax revenue to the state on much of the e-commerce.⁵⁷ Due to the increase in remote sellers without a physical presence, the rule continues to become “further removed from economic reality and results in significant revenue losses to the States.”⁵⁸

The states have attempted to prevent these revenue losses by enacting regulations that expand the meaning of physical presence for remote sellers.⁵⁹ Some states, such as Massachusetts and Ohio, have created regulations that establish a physical presence if the remote sellers have an application (“app”) available for download within the state or place cookies on the browsers of in-state residents.⁶⁰ Other states have created a click-through nexus, “which define[s] nexus to include out-of-state sellers that contract with in-state residents who

52. *Quill Corp.*, 504 U.S. at 307. See also *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985).

53. *Quill Corp.*, 504 U.S. at 313.

54. See generally *id.*

55. *U.S. E-Commerce Sales as a Percent of Total Sales*, MARKETPLACE PULSE, <https://www.marketplacepulse.com/stats/us-e-commerce/us-e-commerce-sales-as-a-percent-of-total-sales-20> (last visited Nov. 3, 2019).

56. Fareeha Ali, *US ecommerce grows 44.0% in 2020*, DIGITAL COM. 360 (Jan. 29, 2021), <https://www.digitalcommerce360.com/article/us-e-commerce-sales/#:~:text=consumers%20spent%20%24861.12%20billion%20online,the%2015.1%25%20jump%20in%202019>.

57. *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2092 (2018) (citing ARTHUR B. LAFFER & DONNA ARDUIN, *PRO-GROWTH TAX REFORM AND E-FAIRNESS* 4 (2013); U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-114, *SALES TAXES: STATES COULD GAIN REVENUE FROM EXPANDED AUTHORITY, BUT BUSINESSES ARE LIKELY TO EXPERIENCE COMPLIANCE COSTS* 15 (2017)).

58. *Wayfair, Inc.*, 138 S. Ct. at 2092.

59. *Id.* at 2097–98.

60. *Id.* See 830 MASS. CODE REGS. 64H.1.7 (2017). See also OHIO REV. CODE ANN. § 5741.01(1)(2)(c)(i) (LexisNexis 2018).

refer customers for compensation.”⁶¹ Additionally, some states, Colorado for example, have imposed “notice and reporting requirements” on remote retailers.⁶² Most states have established some sort of nexus system that creates a physical presence for remote sellers in order to collect some portion of sales tax from these retailers.⁶³ Before the Supreme Court decided *South Dakota v. Wayfair*, there was increasing consideration of the impact that expanded authority would have. The decision in *Wayfair* finally made this expansion to state authority a reality.

D. South Dakota v. Wayfair

South Dakota is one of many states that has a sales tax, which generally requires sellers to collect the tax from customers and remit the tax to the Department of Revenue.⁶⁴ Under the physical presence rule, South Dakota had to rely on the consumers to pay a use tax on the goods or services purchased from remote sellers; however, compliance rates were known to be quite low.⁶⁵ Due to this, South Dakota estimated its losses at about \$48 to \$58 million in revenue every year.⁶⁶ The legislature in South Dakota determined that “the inability to collect sales tax from remote sellers was ‘seriously eroding the sales tax base’ and ‘causing revenue losses and imminent harm . . . through the loss of critical funding for state and local services.’”⁶⁷ In response to this, South Dakota legislature established an Act that required the remote sellers to collect and remit sales tax just as a seller with a physical presence would, but the Act only applied to those sellers who delivered \$100,000 or more worth of goods or services to the state or those who engage in 200 or more transactions for goods or services to be delivered to the state.⁶⁸ The Act was to be stayed until its constitutionality could be properly determined.⁶⁹

Wayfair, Inc., Newegg, Inc., and Overstock.com, Inc. (collectively “Wayfair”) are companies that do not have real estate or employees in South Dakota, but deliver goods to consumers in South Dakota.⁷⁰ Al-

61. *Wayfair, Inc.*, 138 S. Ct. at 2098. See N.Y. TAX LAW § 1101(C)(II) (McKinney 2019).

62. *Wayfair, Inc.*, 138 S. Ct. at 2098. See COLO. REV. STAT. § 39-21-112(3.5) (2010).

63. For the nexus rules of each state, see *Remote Seller Nexus Chart*, SALES TAX INST., sales-taxinstitute.com/resources/remote-seller-nexus-chart (last updated May 4, 2021).

64. *Wayfair, Inc.*, 138 S. Ct. at 2088.

65. *Id.*

66. *Id.*

67. *Id.* (quoting S. 106, 2016 Leg. Assemb., 91st Sess. § 8(1) (S.D. 2016)).

68. *Id.* at 2089.

69. *Id.* The proposed version remains unenacted as continues to undergo review by the courts to determine whether it is constitutional.

70. *Wayfair, Inc.*, 138 S. Ct. at 2089.

though the companies met the requirements of the new Act, none of these companies collected or remitted sales tax in South Dakota.⁷¹ South Dakota sought a declaration that the Act's requirements were valid, and thus applicable to Wayfair.⁷² Although South Dakota knew that the Act could not survive under the physical presence rule created in *National Bellas Hess* and *Quill*, the action taken by the state emphasized the importance of reviewing the previous cases in consideration of the reality of the current economy.⁷³ The trial court granted summary judgment to Wayfair, and it was later affirmed by the South Dakota Supreme Court.⁷⁴ Essentially, South Dakota forced the hand of the U.S. Supreme Court by creating legislation that required its review. Thus, the Supreme Court granted certiorari to determine whether an out-of-state seller can be required to collect and remit sales tax.⁷⁵

1. *Issues with the Physical Presence Rule*

The physical presence rule has been subject to criticism over the years.⁷⁶ In *Wayfair*, the Court focused on three issues with the physical presence rule, including: (1) interpretation of substantial nexus requirement, (2) creation of market distortions, and (3) arbitrary distinction from the modern Commerce Clause.⁷⁷

The minimum contacts and substantial nexus standards considered under the Due Process Clause and the Commerce Clause can be significantly similar when determining whether a state can impose a tax.⁷⁸ Under Due Process, a substantial nexus is required, but the Court in *Quill* determined that a physical presence is not required to meet this burden.⁷⁹ However, without the bright-line test of a physical presence, compliance with the differing tax jurisdiction across the country could create an undue burden on remote sellers, which the Commerce Clause is intended to prevent.⁸⁰ These costs of compliance are largely unrelated to a company's physical presence or lack thereof.⁸¹ For example, a smaller company with one or two salespe-

71. *Id.* (citing *State v. Wayfair Inc.*, 901 N.W. 2d 754, 759–60 (S.D. 2017)).

72. *Id.*

73. *Id.*; S. 106, § 8.

74. *Wayfair, Inc.*, 138 S. Ct. at 2089.

75. *Id.* at 2089–90.

76. *See generally, e.g.*, ARTHUR B. LAFFER & DONNA ARDUIN, PRO-GROWTH TAX REFORM AND E-FAIRNESS (2013).

77. *Wayfair, Inc.*, 138 S. Ct. at 2093.

78. *Id.*

79. *Id.*

80. *Id.* (citing *Quill Corp. v. North Dakota*, 504 U.S. 298, 313 n.6 (1992)).

81. *Id.*

ople in a large number of states could be more burdened with compliance costs than a larger company with warehouses or stores in only a small number of states.⁸²

The creation of market distortions is also a byproduct of the physical presence rule.⁸³ A market distortion is created by government intervention in a market, such as a price ceiling or tax subsidies.⁸⁴ *National Bellas Hess* and *Quill* formed market distortions by disadvantaging local and interstate businesses with a physical presence because remote sellers, without a physical presence, avoided the tax collection burden and were able to offer lower prices.⁸⁵ Thus, the Supreme Court's rejection of the physical presence rule is needed to ensure that requiring a physical presence does not create disadvantageous market distortions.⁸⁶

The physical presence rule makes no sense in a country with remote sellers; rather, the rule makes arbitrary distinctions.⁸⁷ For example, under *Quill*, a furniture company with both a warehouse in South Dakota, and a warehouse in any other state, is required to collect sales tax on every sale in South Dakota, even if that sale is of furniture from the warehouse in the other state.⁸⁸ On the other hand, a company that does not have a physical presence in South Dakota, but does have an online showroom that customers in both South Dakota and across the country can purchase from, is not subject to the same tax.⁸⁹ The states should be able to consider the basic principles of the Commerce Clause when enacting tax laws rather than "anachronistic formalisms" of the physical presence rule.⁹⁰

3. *The Physical Presence Rule and Today's E-Commerce*

The U.S. economy has undergone dramatic changes as a result of the power and dominance of the Internet.⁹¹ E-commerce sales have been increasing ever since they have been tracked by the Department of Commerce⁹² and the growth is likely to continue.⁹³ With this increase, states have struggled to define and apply the physical presence

82. *Id.*

83. *Wayfair, Inc.*, 138 S. Ct. at 2094.

84. Will Kenton, *Market Distortion*, INVESTOPEDIA (Apr. 13, 2018), <https://www.investopedia.com/terms/m/marketdistortion.asp> (last updated Feb. 23, 2021).

85. *Wayfair, Inc.*, 138 S. Ct. at 2094.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* at 2095.

91. *Wayfair, Inc.*, 138 S. Ct. at 2097.

92. *Id.*

rule in the “Cyber Age.”⁹⁴ Attempts made to apply the physical presence rule to the growing online retail sales market have proved impractical.⁹⁵ The physical presence rule has never been correct or efficient, but the Internet revolution has made the error increasingly outrageous and extraneous.⁹⁶

3. *The Physical Presence Rule Overruled*

After considering the issues with the physical presence rule and its negative impact on the states, the Court overruled *National Bellas Hess* and *Quill*.⁹⁷ Thus, the determination as to whether a state can require the collection of sales tax is “whether the tax applies to an activity with a substantial nexus with the taxing State.”⁹⁸ This nexus is established when the tax collected “‘avails itself of the substantial privilege of carrying on business’ in that jurisdiction.”⁹⁹ In *Wayfair*, the nexus is clearly established by any business that meets the requirements of the Act—more than \$100,000 of goods or services delivered to South Dakota or at least 200 individual transactions causing delivery to South Dakota within the year.¹⁰⁰ These requirements would not be met unless *Wayfair* availed itself to the benefits of doing business in South Dakota, thus creating a substantial nexus.¹⁰¹ As a result of this case, South Dakota is permitted to require the collection of sales tax from *Wayfair*.¹⁰²

III. ANALYSIS

Abolishing the physical presence rule will lead to a drastic increase in sales tax income that has no locality, so states can—and should—use the money to improve their education systems because the current systems are disadvantageous to many students. The states that see these increases will have the opportunity to make significant changes. The implementation of this decision by the states has been varied in time and process¹⁰³ but states who choose to enact laws that permit

93. *Id.* See also *eCommerce*, STATISTA, <https://www.statista.com/outlook/dmo/ecommerce/worldwide> (last visited May 30, 2021).

94. *Wayfair, Inc.*, 138 S. Ct. at 2097.

95. *Id.*

96. *Id.*

97. *Id.* at 2099.

98. *Id.* (citing *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977)).

99. *Id.* (quoting *Polar Tankers, Inc. v. City of Valdez*, 557 U.S. 1, 11 (2009)).

100. *Wayfair, Inc.*, 138 S. Ct. at 2089, 2099.

101. *Id.* at 2099.

102. *Id.*

103. See, e.g., David Gamage et al., *Taxing E-Commerce in the Post-Wayfair World*, 58 WASH. U. J.L. & POL’Y 71 (2019).

the collection of taxes from out-of-state companies will receive benefits to the states and their citizens, which in turn, will improve their education system.

Currently, around fifty-one million students attend public schools in the United States.¹⁰⁴ Of those fifty-one million, approximately thirty million are enrolled in elementary schools.¹⁰⁵ Those in elementary school, particularly kindergarten through second grade, are in some of the most important years of their schooling.¹⁰⁶ In these early years, children acquire knowledge and skills more rapidly.¹⁰⁷ The knowledge and skills, particularly whether a student can read proficiently, can strongly predict outcomes for the student later in school and life.¹⁰⁸ Unfortunately, “fourth-graders who cannot meet [the National Assessment of Educational Progress’s] proficient level in reading today are all too likely to become our nation’s lowest-income, least-skilled, least-productive, and most costly citizens” in the future.¹⁰⁹ Approximately 75% of fourth grade students who are not proficient readers will remain that way; they also typically have more social problems and behavioral issues later in school.¹¹⁰ Each “student who does not complete high school costs our society an estimated \$260,000 in lost earnings, taxes, and productivity.”¹¹¹ It is clear that the states’ education systems that are currently in place are not sufficient, and an increase in spending is a positive start to spark necessary change.

A. Education Funding and Spending

Federal funding represents approximately 8% of funding for education, but the remainder comes from state and local governments.¹¹² State funding comes from a variety of taxes and other sources, such as

104. CENTER ON BUDGET AND POLICY PRIORITIES, *supra* note 24.

105. Erin Duffin, *Elementary schools in the U.S. – Statistics & Facts*, STATISTA (Jan. 28, 2020), <https://www.statista.com/topics/1733/elementary-schools-in-the-us/>.

106. Sara Mead, *Don’t Forget the Early Elementary Years*, U.S. NEWS (Oct. 6, 2016, 8:00 AM), <https://www.usnews.com/opinion/articles/2016-10-06/early-elementary-education-years-are-important-for-public-policy>.

107. *Id.*

108. *Id.* See also EARLY WARNING! WHY READING BY THE END OF THIRD GRADE MATTERS, ANNIE E. CASEY FOUND. 9 (2010) (discussing the importance of proficiency in reading by a third-grade level).

109. ANNIE E. CASEY FOUNDATION, *supra* note 108, at 7.

110. *Id.*

111. *Id.* at 5 (citing Richard W. Riley & Terry K. Peterson, *Before the ‘Either-Or’ Era*, EDUC. WEEK (Sept. 19, 2008), www.edweek.org/ew/articles/2008/09/24/05riley.h28.html).

112. Mike Maciag, *States That Spend the Most (and the Least) on Education*, GOVERNING (June 4, 2019), <https://www.governing.com/topics/education/gov-state-education-spending-revenue-data.html>. For more information on the contribution from state and local sources, see *id.*

state-sponsored lottery games.¹¹³ Approximately 25% of spending goes towards public schools grades K-12.¹¹⁴ The states typically give the funds to the administrative bodies that are within the state, which then distribute the money to schools.¹¹⁵ Most states use formula funding to determine how the money should be distributed.¹¹⁶ These formulas include factors like local wealth, school enrollment, and student characteristics.¹¹⁷ The funding typically goes toward salaries, supplies, utilities for the buildings, and the like.¹¹⁸

Local taxes primarily come from property taxes paid by the residents, but sales tax, income tax, and other sources contribute as well.¹¹⁹ These taxes are then used to fund the local public services that are provided, such as education, garbage pickup, or road maintenance.¹²⁰ Although there is federal and state funding, school districts rely heavily on these local taxes.¹²¹ Unfortunately, this means localities with a smaller property tax base collect less taxes from their residents, and thus have less funding to support the local school districts.¹²²

1. *Decrease in State Spending on Education*

“The relative decline of American education is untenable for our economy, unsustainable for our democracy, and unacceptable for our children.”¹²³ A proper education, especially for students in their early years, is incredibly important not only for their future, but also for the future of the economy.¹²⁴ So it begs the question: why is funding so

113. *Education Funding: State and Local Sources*, FINDLAW, <https://education.findlaw.com/curriculum-standards-school-funding/education-finance-and-funding-state-and-local-sources.html> (last visited May 30, 2021).

114. Alia Hoyt, *How the Cost of Education Works*, HOW STUFF WORKS (Nov. 4, 2014), <https://money.howstuffworks.com/personal-finance/family-finance/cost-of-education1.htm>.

115. *Id.*

116. Dale Mezzacappa, *What is a state education funding formula?*, CHALKBEAT PHILA. (Oct. 2, 2014, 6:37 AM), <https://thenotebook.org/articles/2014/10/02/what-is-a-state-education-funding-formula/>.

117. *Id.*

118. Michael Leachman & Eric Figueroa, *K-12 School Funding Up in Most 2018 Teacher-Protest States, But Still Well Below Decade Ago*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 6, 2019), <https://www.cbpp.org/research/state-budget-and-tax/k-12-school-funding-up-in-most-2018-teacher-protest-states-but-still>.

119. Hoyt, *supra* note 114.

120. Keefer, *supra* note 21.

121. *Id.*

122. *Id.*

123. Obama Outlines Five Top Education Priorities, PBS (Mar. 10, 2009, 11:45 AM), https://www.pbs.org/newshour/education/education-jan-june09-education_03-10.

124. See generally Brent Radcliffe, *How Education and Training Affect the Economy*, INVESTOPEDIA, <https://www.investopedia.com/articles/economics/09/education-training-advan>

low? Although K-12 education accounts for about 21% of state spending, on average,¹²⁵ it is not enough to fund an education system that leads to successful students. Many states have cut formula funding to well below levels not seen since 2008.¹²⁶ Some states, such as Texas, are now 20% below the 2008 levels because of more and more cuts to funding.¹²⁷ Overall, twenty-nine states are providing less funding per student than was provided in 2008, according to the U.S. Census Bureau.¹²⁸ The 2008 recession was a major cause of the reduction in spending on education due to a sharp decrease in state revenue.¹²⁹ However, some states disproportionately cut spending rather than using a more proportionate mix, which has contributed to further revenue shortfalls and the continued strain on the education budget.¹³⁰

Due to the deep cuts made by state governments, many teachers began to protest their low pay and other shortages of funding.¹³¹ This forces teachers to take action to protect both themselves and their pay, and also resources for the students, because the states are not doing so. In Spring 2018, most states that saw protests were those that had the biggest cuts in formula funding.¹³² Many of these states boosted their funding, partially due to the protests,¹³³ but the funding is still not sufficient enough for neither a successful education system nor sufficient resources for teachers and students. Teachers in cities all across the United States are continuing to protest. For example, the teachers in Chicago, home to the third largest public school system in the U.S., went on strike in October 2019.¹³⁴ The teachers' union called for the teachers to stop working to continue their fight for further increases in education spending and support.¹³⁵ The students want to

tages.asp#:~:text=A%20country's%20economy%20becomes%20more,require%20literacy%20and%20critical%20thinking.&text=IN%20this%20sense%2C%20education%20is,an%20investment%20in%20better%20equipment (last updated May 11, 2021).

125. See URBAN INSTITUTE, *supra* note 29 and accompanying text.

126. Leachman & Figueroa, *supra* note 118. The levels dropped so low in and after 2008 to due to the Great Recession and its impact on states' ability to raise local taxes. For a comprehensive explanation, see Michael Leachman et al., *A Punishing Decade for School Funding*, CTR. ON BUDGET & POL'Y PRIORITIES (Nov. 29, 2017), <https://www.cbpp.org/research/state-budget-and-tax/a-punishing-decade-for-school-funding>.

127. Leachman & Figueroa, *supra* note 118.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. Leachman & Figueroa, *supra* note 118.

134. Brendan O'Brien, *Striking Chicago teachers clog traffic, classes canceled again Thursday*, REUTERS (Oct. 23, 2019, 6:19 AM), <https://www.reuters.com/article/us-chicago-education/striking-chicago-teachers-clog-traffic-classes-canceled-again-thursday-idUSKBN1X21EG>.

135. *Id.*

learn, and the teachers want to teach them, but without proper resources, the students suffer as a result of funding issues they are unable to control or resolve themselves.

2. *Inequality in Education Spending*

Beyond the decrease in spending, funding for education continues to face the negative effects of inequality in local funding. Because education funding is largely derived from local taxes, school funding within a state often has large disparities from locality to locality, due to gaps between wealthier and poorer communities.¹³⁶ For example, Illinois spends an average of \$5,991 per student; however, within Illinois, certain districts spend up to \$11,507 per student while other districts only spend \$5,260.¹³⁷ The huge gaps in funding come largely from “the reliance on property taxes as a primary source of funding for schools.”¹³⁸ Schools in wealthier areas are able to raise more money due to the higher value of local property and the residents’ ability to pay higher taxes.¹³⁹

States often try to give more money to the districts with less to spend on education, but it is often not enough to erase the large gaps in funds.¹⁴⁰ Courts also endorse the idea of the states filling in the funding gaps; however, this action is essentially endorsing the fractured system that is in place.¹⁴¹ Currently, “the U.S. spends approximately 7 percent—or \$1,000—less per pupil on students educated in our nation’s highest poverty districts than those educated in the wealthiest.”¹⁴²

B. No More Physical Presence Requirement

The increased spending capabilities of the states after *Wayfair* arises from the overruling of the physical presence requirement. Modern e-commerce cannot logically align with a test that requires a physical

136. Biddle & Berliner, *supra* note 22, at 61. For a list of the average annual expenditures per student in each state, see *id.*, at 49, fig.1. See also Maciag, *supra* note 112.

137. Biddle & Berliner, *supra* note 22, at 49.

138. Laura Meckler, *Report finds \$23 billion racial funding gap for schools*, WASH. POST (Feb. 25, 2019, 11:01 PM), https://www.washingtonpost.com/local/education/report-finds-23-billion-racial-funding-gap-for-schools/2019/02/25/d562b704-3915-11e9-a06c-3ec8ed509d15_story.html.

139. *Id.*

140. *Id.*

141. *Nonwhite School Districts Get \$23 Billion Less Than White Districts Despite Serving the Same Number of Students*, EDBUILD, <https://edbuild.org/content/23-billion> (last visited May 30, 2021).

142. Ivy Morgan & Ary Amerikaner, *Funding Gaps 2018*, THE EDUC. TRUST (Feb. 27, 2018), <https://edtrust.org/resource/funding-gaps-2018/>.

presence as created in *Quill*.¹⁴³ It does not follow that “a single employee or a single warehouse should create a substantial nexus while ‘physical’ aspects of pervasive modern technology should not.”¹⁴⁴ Because of technological advances, consumers are closer to retail stores than they have ever been, regardless of the distance from the consumer to a physical location.¹⁴⁵ Access to a website within a state can create a meaningful presence in the state, just like that of an actual retail location.¹⁴⁶

In a nation so technologically driven, remote sellers should not be allowed to escape an obligation to collect and remit sales tax in states where their customers reside.¹⁴⁷ Because the remote sellers were able to avoid collecting sales tax, the states were left with collecting a use tax from their residents who purchase goods and services from remote sellers.¹⁴⁸ Since the compliance with this use tax is notoriously low, those who purchase from out-of-state retailers were unfairly shifting the burden to customers of retailers with a physical presence.¹⁴⁹ The physical presence rule undermined the necessary confidence in the tax system due to the advantage given to remote sellers over in-state competitors who collect sales tax.¹⁵⁰ Additionally, the physical presence rule unnecessarily harmed free markets by preventing participants from competing on a level playing field and has limited the ability of the states to seek long-term benefits.¹⁵¹

There has been an Internet revolution since the *Quill* case was decided.¹⁵² The power and prevalence of the Internet has “changed the dynamics of the national economy.”¹⁵³ The large increase in e-commerce sales has also increased the revenue deficiency of the states who collect sales and use taxes.¹⁵⁴ Wayfair argued that in this Internet revolution, the physical presence rule has been beneficial for companies to grow their business without requiring the maneuvering of the obstacle that is the nationwide sales tax collection.¹⁵⁵ However, any issues that a company may face in state sales tax collection may soon

143. *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2086 (2018).

144. *Id.* at 2095.

145. *Id.* (citing *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 18 (2015)).

146. *Id.* (citing *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 18 (2015)).

147. *Id.*

148. *Id.* at 2096.

149. *Wayfair, Inc.*, 138 S. Ct. at 2088.

150. *Id.* at 2096.

151. *Id.*

152. *Id.* at 2097.

153. *Id.*

154. *Id.*

155. *Wayfair, Inc.*, 138 S. Ct. at 2098.

be resolved by software designed to clear up the problems.¹⁵⁶ Also, if deemed necessary, Congress can step in and address the problems through legislation.¹⁵⁷ Likewise, the South Dakota legislation at issue protects those who only do a small amount of business within the state,¹⁵⁸ as it requires a minimum dollar amount or number of transactions before the collection of sales tax is required.¹⁵⁹ The Commerce Clause will also protect against any undue burdens on interstate commerce, as it is intended to do, no matter the size of the business.¹⁶⁰

The unfair and unjust impact that the physical presence rule had on businesses makes it easy to justify its overruling. Without the rule to limit the sales tax income for states, they will see immense benefits, favorable to the state and its citizens. These benefits can create a lasting impact on many state-run programs.

C. *Impact on the States*

Through the *Wayfair* decision, the Supreme Court created an economic nexus for out-of-state sellers that allows states to collect sales tax simply by the retailers' action of selling goods or performing services in that state.¹⁶¹ However, the Court did not create requirements or standards for state laws that create the economic nexus; rather, they just discussed the beneficial aspects of the South Dakota law, so the specific burden on businesses is not completely known.¹⁶² Since the decision was announced, states have begun to take action and establish legislation aligned with *Wayfair*. While some states have been proposing and adopting thresholds similar to South Dakota,¹⁶³ others have vetoed related bills.¹⁶⁴

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* at 2089.

160. *Id.* at 2098.

161. Donna Niesen & April Meade, *What the Wayfair Decision Means for Out-of-State Sellers*, KATZ SAPPER & MILLER (Oct. 5, 2018), <https://www.ksmcpa.com/blog/what-the-wayfair-decision-means-for-out-of-state-sellers>.

162. *Id.* For more information about the requirements of the South Dakota out-of-state retailers' law, see *Wayfair, Inc.*, 138 S. Ct. at 2089.

163. *Q1 2019 Updates for Economic Nexus Thresholds on Remote Sellers for Sales and Use Taxes*, BDO U.S. (Apr. 2019), <https://www.bdo.com/insights/tax/state-and-local-tax/q1-2019-updates-for-economic-nexus-thresholds-on-r>. For more information about suggested and adopted laws related to *Wayfair*, see Phil Horwitz, *Wayfair and You: How Economic Nexus Laws Will Impact Businesses*, MOSS ADAMS (Feb. 27, 2019), <https://www.mossadams.com/articles/2019/february/wayfair-implications-for-sellers>.

164. *State Notices & Resources for Remote Sellers*, SALES TAX INST., <https://www.salestaxinstitute.com/resources/state-notices-resources-for-remote-sellers> (last updated May 26, 2021).

In states where legislation has been enacted, the out-of-state sellers have responsibilities they must fulfill once they meet the threshold. Although the timing differs, generally once the retailer meets the applicable threshold, they are required to register and remit sales tax.¹⁶⁵ In Illinois, for example, the thresholds are the same as South Dakota: \$100,000 gross receipts or 200 or more separate transactions.¹⁶⁶ A retailer must determine whether they meet the criteria for the preceding twelve months on a quarterly basis.¹⁶⁷ If an out-of-state retailer meets either of the thresholds for the preceding twelve months, they are considered to be maintaining a business in Illinois.¹⁶⁸ If that is the case for a retailer, they “are required to collect and remit tax and file returns for the subsequent year.”¹⁶⁹ States that have enacted economic nexus legislation have relatively similar laws.¹⁷⁰

The states have faced issues with the lack of uniformity in sales tax administration for years.¹⁷¹ Although most states have worked to create uncomplicated nexus legislation, there are still difficulties that can cause problems for the retailers trying to determine if, and how much, they are required to remit to the state. In the United States, there are over 10,000 sales tax jurisdictions, creating increased difficulty for states requiring compliance by remote sellers.¹⁷² If states have “a single point of collections and administration, a uniform tax base, and a simple and reliable way to identify the appropriate local tax rate[.]” remote sellers will likely have no issue complying with the sales tax laws in place.¹⁷³ However, this is not the case in most states. In the United States, forty-five states and Washington D.C., levy sales tax on

165. *What do I need to know about the Wayfair case and economic nexus?*, SALES TAX INST., https://www.salestaxinstitute.com/sales_tax_faqs/wayfair-economic-nexus (last visited May 30, 2021). For information on the effective date of *Wayfair* legislation, the threshold, registration date requirements, and more, for each state, see *Economic Nexus State Guide*, SALES TAX INST., <https://www.salestaxinstitute.com/resources/economic-nexus-state-guide> (last visited May 30, 2021).

166. *Illinois Enacts Economic Nexus Legislation*, SALES TAX INST. (June 11, 2018), <https://www.salestaxinstitute.com/resources/illinois-enacts-economic-nexus-legislation> (last visited May 30, 2021). For more information about the economic nexus law in Illinois, see 30 ILL. COMP. STAT. 105/6z-81 (2020).

167. SALES TAX INSTITUTE, *supra* note 166.

168. *Id.*

169. *Id.*

170. See *Economic Nexus State Guide*, *supra* note 165 and accompanying text.

171. Jared Walczak & Janelle Cammenga, *State Sales Taxes in the Post-Wayfair Era*, TAX FOUND. (Dec. 12, 2019), <https://taxfoundation.org/state-remote-sales-tax-collection-wayfair/#Uniformity>.

172. *Id.*

173. *Id.*

the purchases made by its residents.¹⁷⁴ Thirty-eight of the states, one of which has no statewide sales tax, have local sales tax.¹⁷⁵ Of the states that collect sales tax, four of them have home rules, which allow the local governments to establish their own rules and rates for sales tax.¹⁷⁶ Since many states have now established legislation requiring remote sellers to collect sales tax, the states have also begun to create streamlined sales tax systems to minimize compliance burdens.¹⁷⁷

Twenty-three states have joined the Streamlined Sales Tax Project (“Project”), requiring a uniform tax base and a single administration point, which includes accepting limits to the introduction of tax rate complexity.¹⁷⁸ This Project also promotes software solutions which would incorporate the regimes of all other member states into a free software, “working with six Certified Service Providers to integrate [the] information into the systems of commonly used sales tax compliance vendors.”¹⁷⁹ The member states also have the option to use a free Certified Automated System, which interfaces with the seller’s present system to help apply proper tax rates, determine the amount of tax to pay, and more.¹⁸⁰ States that have not joined the Project have begun working independently with Certified Service Providers to provide software that can be used by remote sellers.¹⁸¹ There has also been work by the Streamlined Sales Tax Governing Board to allow states that are not members of the Project to use its central registration software.¹⁸² In many of the remaining states that do not have a streamlined system in place, tools and portals are offered to assist sellers, although they can still be quite burdensome.¹⁸³ As of December

174. Linda C. Brinson, *How State Sales Taxes Work*, HOW STUFF WORKS (Mar. 24, 2010), <https://money.howstuffworks.com/personal-finance/personal-income-taxes/state-sales-taxes.htm>.

175. Walczak & Cammenga, *supra* note 171.

176. Gail Cole, *What You Need to Know About Home Rule and Effects on Sales Tax*, ACCOUNTINGWEB (Aug. 23, 2019), <https://www.accountingweb.com/tax/sales-tax/what-you-need-to-know-about-home-rule-and-effects-on-sales-tax>. The states that do not collect sales taxes are Alaska, Delaware, Montana, New Hampshire, and Oregon. Tonya Moreno, *The 5 U.S. States Without a Statewide Sales Tax*, THE BALANCE, <https://www.thebalance.com/states-without-a-sales-tax-3193305> (last updated Mar. 12, 2021). Alabama, Alaska, Arizona, Colorado, and Louisiana all have a home rule which allows the local governments to establish a sales tax. Gail Cole, *What’s home rule? How does it affect sales tax?*, AVALARA (Aug. 6, 2019), <https://www.avalara.com/us/en/blog/2019/08/how-does-home-rule-affect-sales-tax-compliance.html>. Some states, including Illinois, have a form of home rules as well, but they are more limited in scope and do not allow the local governments to administer their own sales tax. *Id.*

177. Walczak & Cammenga, *supra* note 171.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Walczak & Cammenga, *supra* note 171.

2019, only four states lack a centralized system that allow sellers to make central payments.¹⁸⁴ These systems that are in place will make it easier for out-of-state retailers and states to manage the sales tax system post-*Wayfair*.

Alongside the streamlined systems, the states will also experience an increase in tax income. The Government Accountability Office (“GAO”) made estimates that took into consideration the total income from e-commerce and other remote sales, the sales of exempt products, the taxes paid by sellers due to the nexus, and the taxes paid by the purchasers.¹⁸⁵ Using data from many different sources and on 31 product categories, the GAO found that in 2017 there was approximately \$285 to \$364 billion in e-commerce and remote sales across the United States.¹⁸⁶ Determining the taxability of the remote sales was more difficult. Before *Wayfair*, some states had already created legislation that established a nexus so they could collect a portion of the taxes from remote sellers.¹⁸⁷ The GAO determined that almost no out-of-state retailers were able to collect 100% of taxes.¹⁸⁸ Internet retailers, for example, were only able to collect 78–86% of the collectible sales tax.¹⁸⁹ Once all of the applicable determinations were made, the GAO determined that with the ability to secure all collectible taxes, there would be an increase in tax income between \$8.5 and \$13.4 billion.¹⁹⁰ This considerable increase will allow the states to make dramatic changes to their education systems that will make a positive impact on the students within these systems.

184. *Id.*

185. *Wayfair FAQs – Top Questions About the U.S. Supreme Court Decision and Economic Nexus Laws*, BDO U.S. (Sept. 2018), <https://www.bdo.com/insights/tax/state-and-local-tax/wayfair-faqs-%E2%80%93-top-questions-about-the-u-s-suprem>.

186. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-18-114, SALES TAXES: STATES COULD GAIN REVENUE FROM EXPANDED AUTHORITY, BUT BUSINESSES ARE LIKELY TO EXPERIENCE COMPLIANCE COSTS 9 (2017).

187. *See supra* notes 61–63 and accompanying text.

188. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-18-114, SALES TAXES: STATES COULD GAIN REVENUE FROM EXPANDED AUTHORITY, BUT BUSINESSES ARE LIKELY TO EXPERIENCE COMPLIANCE COSTS 159 (2017).

189. *See id.* at 35–39 (analyzing percentages of other out-of-state sales and how the percentages were determined).

190. . *Id.* at 12. The GAO used various contributions for different sources to establish their estimates for the tax income increase. *Id.* at 12–13. For the final calculation the GOA determined the total e-commerce and other remote sales less sales of exempt products to find the taxable sales, regardless of the nexus. *Id.* at 9. The taxable sales amount was then multiplied by the tax rate to find the potential tax revenues. Taxes paid by sellers due to the nexus and the taxes paid by purchasers are subtracted from the potential tax revenues to determine the potential revenue gains. *Id.* at 12. For detailed information see generally *id.*

D. An Emphasis on Education

Due to the streamlined and simplified tax systems that the states are establishing, the excess sales tax income will be received by the states rather than localities within them. With the over \$13 billion increase in tax income,¹⁹¹ states should put an emphasis on education funding and focus on improving the quality of all their schools. Currently, state governments, rather than federal or local governments, are in the best position to establish a system that guarantees high-quality education for every student.¹⁹² A study by the National Bureau of Economic Research found that foundation plans are quite effective in reducing the funding gap between wealthy and poor districts.¹⁹³ Foundation plans guarantee a minimum amount of funding for each student.¹⁹⁴ The state would estimate the contribution that local taxes would make to education and provide the remaining funding required to meet the minimum.¹⁹⁵ However, providing equal funding is only the first step.

After *Wayfair*, states are in the unique position to push for education reform that may actually be possible. Beyond providing equal per-pupil funding, states can implement policies and programs that ensure equal access to important educational services, such as after school programs.¹⁹⁶ Schools will also have the ability to hire highly qualified teachers and improve the curriculum, which will facilitate improved outcomes for the students.¹⁹⁷ Now that states have the excess tax income necessary, the state governments need to put time and effort into efficiently funding the education systems within their borders.

E. Benefits of Increased Spending

The future of the United States “depends heavily on the quality of its schools.”¹⁹⁸ Students benefit greatly from sufficiently funded education systems, and the idea that an increase in funding is not benefi-

191. See *supra* note 190 and accompanying text.

192. Carmel Martin et al., *A Quality Approach to School Funding*, CTR. FOR AM. PROGRESS (Nov. 13, 2018, 12:01 AM), <https://www.americanprogress.org/issues/education-k-12/reports/2018/11/13/460397/quality-approach-school-funding/>.

193. C. Kirabo Jackson et al., *The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms*, 131 Q.J. ECON. 157, 162 (2016).

194. Martin et al., *supra* note 192.

195. Jackson et al., *supra* note 193, at 179–80.

196. Martin et al., *supra* note 192.

197. *Id.*

198. Leachman et al., *supra* note 126.

cial to the students is fundamentally false.¹⁹⁹ Typically, “aggregate per-pupil spending is positively associated with improved student outcomes.”²⁰⁰ A study showed that “‘a 10% increase in per pupil spending each year for all 12 years of public school leads to 0.31 more completed years of education, about 7% higher wages, and a 3.2 percentage-point reduction in the annual incidence of adult poverty.’”²⁰¹ With increased funding for schools, students could experience smaller class sizes, additional instruction and support, and higher quality educators, among many other things, all of which would benefit the students.²⁰²

An increase in spending can enable students to have greater access to improved resources. This includes more curriculum options and improved facilities.²⁰³ Currently, there are many important services that are simply unavailable to students in low-income districts, but are available to those in higher-income areas.²⁰⁴ An improved early education can decrease the differences between high- and low-income students, which can “have a lasting impact on student achievement.”²⁰⁵ A rigorous curriculum can enable students to be better prepared for college and work, but a small “percentage of high-poverty students have access to high school curriculum that prepares them” for their futures.²⁰⁶ Expanding the “access to high-quality care can help parents give children the start in life they desire for them.”²⁰⁷ Enabling equal access to sufficient education is a very important step on the way to improving the education system in the United States; however, much more is required.

If schools were allocated more funds, they could reduce the size of classes, add early childhood programs, hire better quality teachers, and much more.²⁰⁸ An effective curriculum can help students, especially in early education, build “cognitive and non-cognitive skills”

199. David Evans, *Education spending and student learning outcomes*, WORLD BANK BLOGS (Jan. 17, 2019), <http://blogs.worldbank.org/impac evaluations/education-spending-and-student-learning-outcomes>.

200. Bruce D. Baker, *How Money Matters for Schools*, LEARNING POL’Y INST. (Dec. 13, 2017), <https://learningpolicyinstitute.org/product/how-money-matters-report>.

201. Evans, *supra* note 199 (quoting C. Kirabo Jackson et al., *supra* note 195).

202. Baker, *supra* note 200.

203. Martin et al., *supra* note 192.

204. *Id.*

205. *Id.*

206. *Id.*

207. THE ECONOMICS OF EARLY CHILDHOOD INVESTMENTS, EXEC. OFF. OF THE PRESIDENT OF THE U.S. 35 (Jan. 2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/early_childhood_report_update_final_non-embargo.pdf.

208. Baker, *supra* note 200.

that will be beneficial down the line.²⁰⁹ Improving the training and mentoring for teachers also enables a stronger curriculum, among other things.²¹⁰ “No other in-school factor has as significant an impact on student achievement as the teacher at the front of the room.”²¹¹ For example, students who have the ability to have high-quality interactions with their teachers have better outcomes.²¹²

There are many benefits that the United States would experience with an improved education system. The President’s Council of Economic Advisers did an analysis regarding these benefits and found that “existing research suggests expanding early learning initiatives would provide benefits to society of roughly \$8.60 for every \$1 spent”²¹³ In addition, improved education will expand the skilled workforce and increase the earnings of those within it.²¹⁴ Investments in education also lead to “reductions in crime, and lower expenditures on health care”²¹⁵ Overall, increasing education funds can improve many aspects of society, and, as a result of the *Wayfair* decision, the states have the money to do so.

IV. IMPACT

A. Future Legislation

Over a year after the *Wayfair* decision was announced, many states have followed the path of South Dakota and created economic nexus legislation.²¹⁶ Moving forward, it is likely that states that do not have nexus legislation will work toward enacting it. States are also putting their own stamp on the legislation through things like different thresholds, systematic solicitation of sales, or systematic exploitation of the

209. THE EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES, *supra* note 207, at 26.

210. *Id.* at 27.

211. Martin et al., *supra* note 192.

212. THE EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES, *supra* note 207, at 27.

213. *Id.* at 2.

214. *Id.* at 35.

215. *Id.* at 9.

216. In Illinois, for example, businesses with an economic nexus, meaning \$100,000 in gross receipts or at least 200 transactions within a year, must collect retailer’s occupation tax on those sales as of January 1, 2021. Gail Cole, *Illinois requires remote sellers and marketplaces to collect local sales tax starting January 2021*, AVALARA (Mar. 26, 2021), <https://www.avalara.com/blog/en/north-america/2020/12/illinois-requires-remote-sellers-and-marketplaces-to-collect-local-sales-tax-starting-january-2021.html>. For an overview of the legislation enacted by each state, see David Casper & Dylan Lien, *States Respond to SCOTUS Wayfair Decision*, EIDEBAILLY (MAY 2, 2020), <https://www.eidebailly.com/insights/articles/2018/7/states-respond-to-scotus-wayfair> (last visited May 30, 2021).

market.²¹⁷ Each state will also work toward establishing precedent and legislation that helps retailers determine the exact meaning of different aspects of the laws in place.²¹⁸ States are also facing issues with the legislation put in place before *Wayfair* that were used to permit the states to collect on taxes through things such as a click-through nexus or cookie nexus.²¹⁹ Many of the laws are being challenged in courts across the country so the states will likely have to decide whether the benefits of keeping these laws outweigh the costs.²²⁰ In the meantime, businesses will also have to stay compliant with economic nexus laws and any others created previously or risk facing penalties.²²¹

B. Better Education for Future Generations

With the ability to collect more taxes on out-of-state retailers, amounting to around \$8 to \$13 billion per year,²²² states will now have the capital to spend more on education. There is no question that an increase in spending on education has positive impacts on the students in the public-school system.²²³ Finance reforms could provide more equitable and adequate funding which could lead to “improvements in the level and distribution of student outcomes.”²²⁴ Although money alone is not the answer, with an increase in spending and sufficient allocation of the funds, the students and teachers would see immense benefits,²²⁵ along with the United States as a whole.

C. Small vs. Large Businesses

Although some argue that the physical presence rule was beneficial to small businesses and start-ups because it allowed them to use the Internet to grow their businesses without being subject to state tax,²²⁶ the thresholds put in place by South Dakota, and many other states, will give small businesses a reasonable degree of protection.²²⁷ Busi-

217. Mark Friedlich, *Wayfair on its first anniversary*, ACCT. TODAY (June 20, 2019, 9:00 AM), <https://www.accountingtoday.com/list/the-supreme-courts-wayfair-decision-on-its-first-anniversary>.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *See supra* note 190 and accompanying text.

223. *See supra* Part III.D.

224. Baker, *supra* note 200 (internal citations omitted).

225. *Id.*

226. *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2098 (2018).

227. *Id.*

nesses are only required to collect and remit taxes if they do a certain amount of business in the state, and the laws are not retroactive.²²⁸

Likewise, concerns about the ability to collect sales tax in an inexpensive and simple way are being addressed. For multistate tax collection, advanced software is required, and it can be expensive, time consuming, and labor-intensive to use and integrate.²²⁹ However, there are some state provisions, and possible federal regulations, that will benefit small businesses.²³⁰ Congress has two bills pending, the Remote Transactions Parity Act and the Marketplace Fairness Act, and several others have been introduced, which would state the simplifications that states must make to enable them to collect tax from remote sellers.²³¹ The GAO also suggests small business exemptions that would allow businesses that did not meet an overall sale threshold to be exempt from any remote sales tax collection and remittance.²³² With the *Wayfair* decision being almost three years old, the full extent of the impact on retailers is not known, but local and federal governments are working toward creating a level playing field for businesses both large and small.

V. CONCLUSION

The decision by the Supreme Court in *South Dakota v. Wayfair* is a turning point for sales tax. It changed the game by giving states, rather than local governments, control over a large increase in tax dollars to be spent within their borders. Although compliance with the Nexus laws that states put in place may take some time,²³³ the impact will be considerable.²³⁴ A \$13.4 billion increase in tax revenue is tremendous,²³⁵ and the impact could be extraordinary. The U.S. needs to put more emphasis on education and using this money to increase spending on education is essential to reduce the gap, create more successful

228. *Id.*

229. *See supra* Part III.C.

230. Joseph Bishop-Henchman, *What Does the Wayfair Decision Really Mean for States, Businesses, and Consumers?*, TAX FOUND. (July 9, 2018), <https://taxfoundation.org/what-does-the-wayfair-decision-really-mean-for-states-businesses-and-consumers/>.

231. *Id.* *See also* *Federal legislative update on post-Wayfair*, AM. INST. OF CPAs, <https://www.aicpa.org/content/dam/aicpa/advocacy/state/downloadabledocuments/federal-post-wayfair.pdf> (last visited May 30, 2021).

232. UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 57, at 25.

233. Gail Cole, *Wayfair turns 2, but survey shows many businesses still unaware of economic nexus*, AVALARA (June 1, 2020), <https://www.avalara.com/us/en/blog/2020/06/wayfair-turns-2-but-many-businesses-still-unaware-of-economic-nexus.html#:~:text=wayfair%20overturned%20the%20physical%20presence,a%20sales%20tax%20collection%20obligation>.

234. *See supra* note 190 and accompanying text.

235. *Id.*

school systems, and enable increasingly favorable outcomes for the students. The issue now is convincing state governments to spend their increased tax revenue on education rather than increasing the budget for things like public welfare or law enforcement.

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