Rethinking Statewide Taxation of Nonresidential Property for Public Schools

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> The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative thinking as to public education, its methods, and its funding is necessary to assure both a higher level of quality and greater uniformity of opportunity.[1]

When a state relies on local property taxes as a source of funding for public schools, the property wealth disparities from district to district can give rise to inequities in both tax rates and per pupil expenditure levels. This situation has generated recurring constitutional objections based on federal and state equal protection claims. The California Supreme Court's 1971 decision in *Serrano v. Priest*[2] is often cited as the first state court decision to side with those objecting to the inequities arising from a reliance on local property taxes.[3] A little known fact, however, is that *Greencastle Township v. Black*,[4] an earlier Indiana Supreme Court decision, rejected a local property tax scheme in the fifties—in fact, in the *eighteen* fifties. 1854 to be exact.

That decision was overruled thirty years later by *Robinson v. Schenck*,[5] when the Indiana courts reopened the legal pathway permitting the use of local property taxes to finance public schools. But the issue was by no means resolved, as evidenced by a recent case in Indiana[6] and the constant stream of litigation throughout the nation in the past two decades. In 1973, the United States

1. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 58 (1973) (Powell, J.) (school financing based on local property taxes does not violate U.S. Constitution), *reh'g denied*, 411 U.S. 959 (1973).

2. 487 P.2d 1241 (Cal. 1971) (reliance on wealth of local school district denies equal protection), *cert. denied*, 432 U.S. 907 (1977).

3. *See, e.g.*, Jonathan M. Purver, Annotation, *Validity of Basing Public School Financing System on Local Property Taxes*, 41 A.L.R.3d 1220 (1972 & Supp. 1992).

4. Greencastle Township v. Black, 5 Ind. 557 (1854), *overruled by* Robinson v. Schenck, 1 N.E. 698, 707 (Ind. 1885).

5. Robinson v. Schenck, 1 N.E. 698 (Ind. 1885).

6. In 1987, several school corporations in Indiana filed a lawsuit challenging the constitutionality of the statutory scheme established to finance its public schools. Lake Cent. Sch. Corp. v. State, No. 487-109 (Lake Super. Ct. filed Feb. 20, 1987; renumbered No. 56C01-8703-CP-81, Newton Cir. Ct.). The case was settled in the summer of 1992, apparently due to the plaintiff school corporations' unwillingness to continue financing the lawsuit. The settlement agreement allows the schools to refile their suit in 1993, after the General Assembly has had an opportunity to consider alternative funding formulas. Susan Hanafee, *Money Concerns Help Settle Lawsuit on School Funding*, INDIANAPOLIS STAR, Aug. 4, 1992, at A1.

Supreme Court foreclosed potential federal equal protection claims in *San Antonio Independent School District v. Rodriguez*,[7] noting that education was not a fundamental right warranting heightened scrutiny.[8] As a consequence, suits based on state constitutional claims have flourished,[9] and to this day school finance reformers continue to make their cases in state courts around the country.[10] One proposal aimed at redressing fiscal disparities in school finance has been to remove nonresidential property from the local tax base for education purposes.[11] Empirical studies completed during the 1970's criticized this and other equalization proposals as counterproductive to equity objectives.[12] Critics argued that because low-income families are generally concentrated in areas rich in commercial wealth, pooling the revenues from such sources would sap the cities, disadvantaging the already disadvantaged. This Note reexamines and

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7. 411 U.S. 1 (1973).

8. *Id.* at 40 ("It should be clear . . . that this is not a case in which the challenged state action must be subjected to the searching judicial scrutiny reserved for laws that create suspect classifications or impinge upon constitutionally protected rights.").

9. Cases which have upheld state school financing formulas or made a determination that education is not a fundamental right triggering strict scrutiny include: Shofstall v. Hollins, 515 P.2d 590 (Ariz. 1973); Lujan v. Colorado State Bd. of Educ., 649 P.2d 1005 (Colo. 1982); McDaniel v. Thomas, 285 S.E.2d 156 (Ga. 1981); Thompson v. Engelking, 537 P.2d 635 (Idaho 1975); People *ex rel.* Jones v. Adams, 350 N.E.2d 767 (Ill. App. Ct. 1976); Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758 (Md. 1983); East Jackson Pub. Sch. v. State, 348 N.W.2d 303 (Mich. Ct. App. 1984); Board of Educ. of Levittown v. Nyquist, 439 N.E.2d 359 (N.Y. 1982), *dismissed*, 459 U.S. 1138 (1983); Britt v. North Carolina State Bd. of Educ., 357 S.E.2d 432 (N.C. Ct. App.), *discretionary review denied*, 361 S.E.2d 71 (N.C. 1987); Fair Sch. Finance Council of Okla. v. State, 746 P.2d 1135 (Okla. 1987); Olsen v. State, 554 P.2d 139 (Or. 1976); Danson v. Casey, 399 A.2d 360 (Pa. 1979); Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988); Kukor v. Grover, 436 N.W.2d 568 (Wis. 1989). Cases which have declared state financing formulas unconstitutional or made a determination that education is a fundamental right triggering strict scrutiny include: DuPree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90 (Ark. 1983); Serrano v. Priest, 487 P.2d 1241 (Cal. 1971); Horton v. Meskill, 376 A.2d 359 (Conn. 1977); Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989); Helena Elementary Sch. Dist. v. State, 769 P.2d 684 (Mont. 1989), *modified*, 784 P.2d 412 (Mont. 1990); Robinson v. Cahill, 355 A.2d 129 (N.J. 1976); Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989); Seattle Sch. Dist. No. 1 v. State, 585 P.2d 71 (Wash. 1978); Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979); Washakie County Sch. Dist. No. 1 v. Herschler, 606 P.2d 310 (Wyo. 1980), *cert. denied*, 449 U.S. 824 (1980).

10. *See* William Celis 3d, *23 States Face Suits on School Funds*, N.Y. TIMES, September 2, 1992, at B7 (detailing lawsuits filed by parents, school districts and civil rights organizations over state school financing).

11. *See* Ferdinand P. Schoettle, *Judicial Requirements for School Finance and Property Tax Redesign: The Rapidly Evolving Case Law*, 25 NAT'L TAX J. 455, 463-64 (1972).

12. *See* Robert P. Inman and Daniel L. Rubinfeld, *The Judicial Pursuit of Local Fiscal Equity*, 92 HARV. L. REV. 1662 (1979) (arguing that "only programs based on income redistribution or on centralized financing of local services will result in tax and spending equity"); Helen F. Ladd, *State-wide Taxation of Commercial and Industrial Property for Education*, 29 NAT'L TAX J. 143 (1976) (presenting data for Boston Standard Metropolitan Statistical Area suggesting that state-wide taxation of commercial and industrial property would have adverse distributional consequences for low-income areas); F. Howard Nelson, *A Note on the Effects of Commercial and Industrial Property in School Spending Decisions*, 37 NAT'L TAX J. 121, 124 (1984) ("In the Wisconsin statewide simulation, one can infer that resources devoted to education move from urban areas, characterized by higher concentrations of commercial and industrial property and higher incomes, to small and rural school districts."); Edward A. Zelinsky, *Educational Equalization and Suburban Sprawl: Subsidizing the Suburbs Through School Finance Reform*, 71 NW. U. L. REV. 161 (1976) (presenting data for Connecticut suggesting that many proposed equalization formulas would have adverse fiscal impact on Connecticut's central cities); Note, *A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars*, 81 YALE L.J. 1303 (1972) (presenting data for Connecticut suggesting that equalization plans could have an adverse redistributive impact).

reworks the proposal to tax nonresidential property on a statewide basis. Data examined from Indiana demonstrate that such a pooled revenue approach can relieve fiscal disparities, as well as generate collateral benefits for the state as a whole. The proposal is presented through a six-step analytical process. In Part I, I present an overview of the various interests at stake in school finance litigation through a brief assessment of the constitutional principles that generally govern a state funding system for public education. I present the *Greencastle* and *Robinson* decisions mentioned above as a paradigm of the contending constitutional and state interests. In Part II, I seek to define with greater precision the state interest in local control and the constitutional concern for tax and spending equity. I narrow the concept of local control to its essential core, defining it as local resident voter responsiveness to local educational needs. I argue that local control so defined is primarily a function of local control over residential property taxation.

In the Part III, I provide a theoretical analysis of the impact statewide taxation of nonresidential property would have on the contending objectives articulated in Part II. Drawing from the principles underpinning a statute developed for the Minneapolis-St. Paul metropolitan area, I put forth a proposal which distinguishes between residential and nonresidential property for school property tax purposes, leaving taxation of the former to localities while taxing the latter through a statewide system, the proceeds of which would be distributed to districts in inverse relation to their residential property taxing capacity. I refer to this proposal throughout the Note as STNP (Statewide Taxation of Nonresidential Property). In Part IV, I present the results of an empirical simulation of the STNP approach, using property tax and expenditure figures derived from the 1990-91 school year in Indiana. The data detailed in Part IV reveal that STNP provides for substantially greater fiscal equity and, contrary to previous studies, does not significantly jeopardize the fiscal position of school corporations in Indiana's largest urban centers. These results suggest that STNP would improve the fiscal position of most districts, including some of the districts in the state's largest cities.

In Part V, I provide a constitutional analysis of this proposal, suggesting arguments which could be framed in opposition to and in favor of such a school funding system. Finally, I briefly discuss a handful of collateral policy issues which would necessarily be implicated by the proposal to tax nonresidential property on a statewide basis.

I. STATE CONSTITUTIONS AND PUBLIC SCHOOL FINANCE

A. *Constitutional Principles Governing School Finance in Indiana*

Like most state constitutions, the Indiana Constitution contains provisions pertaining to education[13] and tax uniformity.[14] The provisions regarding education are outlined in article 8, section 1, which reads:

> Knowledge and learning, generally diffused throughout a community, being essential to the preservation of free government; it shall be the duty of the General Assembly to encourage by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a *general and uniform* system of Common Schools, wherein tuition shall be without charge, and equally open to all.[15]

With respect to uniformity of taxation, article 10, section 1 of the Indiana Constitution states that "[t]he General Assembly shall provide, by law, for a *uniform and equal rate of property assessment and taxation* and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal."[16] Reading these two clauses together brings into clearer focus the debate concerning fiscal disparities in public school finance. A reliance on the wealth of local school districts arguably leads to a nonuniform system of schools (because of varying levels of per pupil expenditure) and nonuniform rates of taxation.[17] These were precisely the concerns that occupied the Indiana Supreme Court in 1854 and in 1885, in the *Greencastle* and *Robinson* decisions which determined the course of school funding in Indiana. These two cases form a paradigm of today's debate regarding school finance reform. While the *Greencastle* decision looks to the state for compliance with a strict view of uniformity in education and taxation, the *Robinson* decision adopts the broader, more deferential view of uniformity, leaving financing specifics to legislative discretion. In many ways, those who seek judicial assistance in school finance reform today make the argument of the *Greencastle* court, while state attorneys general, in contrast, argue in favor of the sort of judicial deference articulated in *Robinson*. These arguments have emerged repeatedly throughout the country

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13. *See* Julie K. Underwood and William E. Sparkman, *School Finance Litigation: A New Wave of Reform*, 14 HARV. J.L. & PUB. POL'Y 517, 533 n.54 (1991) (listing education articles of state constitutions).

14. *See* WADE J. NEWHOUSE, CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION (2d ed. 1984) (providing state-by-state analysis of state constitutions' tax uniformity provisions).

15. IND. CONST. art. VIII, § 1 (emphasis added).

16. *Id.* art. X, § 1 (emphasis added).

17. Another important factor in tax uniformity is uniformity in valuation standards. The current Indiana property tax system has been criticized as "archaic" and ripe for reform. *See* Lawrence A. Jegen, III & John R. Maley, *Developments in Indiana Tax Law: Further Refinements of the Indiana Tax Court's Jurisdiction, and the Attack on Indiana's Property Tax System*, 24 IND. L. REV. 1125, 1153 (1991); *see also* Larry J. Stroble & Ronald D'Avis, *Current Issues Affecting Indiana Tax Policy*, 22 IND. L. REV. 449 (1988) (giving overview of current issues in Indiana property taxation).

in the past twenty years, and the recent legal battle over school finance reform in Indiana has been in large part a debate over these two cases.[18]

B. *The Litigators' Perspective: The Strict View of Uniformity in* Greencastle

The Indiana Supreme Court decided *Greencastle v. Black*[19] in 1854. In June, 1852, the Indiana legislature enacted a statute providing for a general and uniform system of common schools and school libraries. The statute contained provisions for the funding of the state's public schools, including section 130, which read as follows:

> The voters of any township shall have power at any general or special meeting to vote a tax for the purpose of building or repairing school houses, and purchasing sites therefor, providing fuel, furniture, maps, apparatus, libraries or increase thereof, or to discharge debts incurred therefor, and for continuing their schools after the public funds shall have been expended, to any amount not exceeding annually . . . fifty cents on each poll.[20]

In April, 1853, the voters of Greencastle township authorized a local tax of fifteen cents on each $100 worth of property for common school purposes. Alexander Black, a property owner who had voted against the tax, brought suit against the county treasurer for the $26.20 assessed against his property, alleging that the local tax was unconstitutional. The Indiana Supreme Court accepted Black's argument, finding section 130 repugnant to the 1851 constitution. In an extraordinary opinion, the court anticipated many of the issues which would arise a century later in school finance litigation in California, Texas, New Jersey and elsewhere:

> [T]he state occupies the position of a parent to her children, whose duty it is to see that all are equally provided with the means of education. For the purpose of supplying such means, the constitution authorizes her not only to use the funds heretofore set apart for that purpose, but to compel the elder brothers of the same family, by "a uniform and equal rate of assessment and taxation," to aid her in carrying out the scheme; and as the diffusion of knowledge and learning is regarded by the constitution as "essential to the preservation of free governments," it would seem but just that those who enjoy such a government should equally assist in contributing to its preservation. The inhabitants

18. *See* Defendants' Reply Brief at 1, Lake Cent. Sch. Corp. v. State of Indiana, Cause No. 56C01-8703-CP-81 (Newton Cir. Ct.) ("[P]laintiffs essentially concede that they are requesting this Court to either overrule or ignore the controlling precedent that has been established in the State of Indiana, *Robinson v. Schenck*.")

19. 5 Ind. 557 (1854).

20. IND. CODE chap. 98, § 130 (1852). The rights of school districts in assessing property tax levies are presently codified at IND. CODE § 6-1.1-19 et seq. (1992).

> of one county or township should not be compelled to bear greater burdens than are borne by all.[21]

Under such a view of tax uniformity, varying tax rates from district to district unquestionably violate the state constitution. In terms of current taxing inequities, this view regards as constitutionally unacceptable the fact that taxpayers in Gary shoulder an 8.19% property tax burden, while taxpayers in Prairie Township bear only a 1.18% rate.[22] The *Greencastle* critique is not limited to tax rate inequities, however, as evidenced by the attention accorded by the court to the education article:

> [I]f the provisions of section 130 are to be regarded as constitutional, the uniformity of the common school system would be at once destroyed. In some townships, taxes would be assessed by vote, and in others not; in some, a sufficient amount might be raised to support their schools six, nine or twelve months; so that there would really exist no uniformity either as to the time the school should be kept, or as to the amount of the taxes to be paid by the inhabitants of the respective townships.
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> But the want of uniformity would not be the only evil resulting from such a construction, as the power of controlling schools would necessarily, to a great extent, pass from the state and the superintendent into the hands of the local authorities of the different townships. Should the legislature pass a law for the assessment of a mere nominal tax, (a supposition not remote from probability,) the whole school system would be left to the mercy of a popular vote of the different townships; and thus all the evils of the old system which were intended to be avoided by the new constitution—inequality of education, inequality of taxation, lack of uniformity in schools, and a shrinking from legislative responsibilities, would be the inevitable result.[23]

The rhetoric of *Greencastle* is today quite familiar, and for many the inequities in taxes and in school quality have in fact persisted.[24] The state's countervailing argument in favor of local control of school finance, however, carried irrepressible logical and practical force. In spite of the *Greencastle* decision, the Indiana General Assembly enacted a statute in 1867 permitting districts to assess local property taxes. Three decades later, the Indiana Supreme Court

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21. 5 Ind. at 563-64.

22. *See* INDIANA FARM BUREAU, SCHOOL STATISTICAL REPORT 39, 88 (1991).

23. 5 Ind. at 564.

24. For example, in New Hampshire, where nearly 90% of the resources dedicated to public education are derived from local property taxes, the State Board of Education recently moved to eliminate virtually all minimum education standards. Many superintendents now fear that property-poor districts will be unable to sustain programs previously mandated by the state, due to an unwillingness among taxpayers to shoulder even greater tax burdens. Property-wealthy districts, in contrast, have the ability to generate revenue less painfully and may be able to sustain current programs with only minor tax increases. William Celis 3d, *Furor in New Hampshire on Vote to Cut Standards*, N.Y. TIMES, Aug. 26, 1992, at B7.

upheld the statute, thereby putting its constitutional imprimatur on what had become a legislative reality and the national norm.

C. *The State Perspective: The Broad Interpretation of Uniformity in* Robinson

In 1885 the Indiana Supreme Court overruled *Greencastle* in *Robinson v. Schenck*.[25] In that case, taxpayer Schenck challenged a local tax against his property in the city of Vevay. Though the tax at issue related to teachers' salaries rather than school buildings as in *Greencastle*, the case bore much resemblance to the previous suit, and the Court refused to distinguish the two cases. In explicitly overruling *Greencastle*, the court upheld as constitutional a statute empowering the school trustees of cities to levy local property taxes. The court's opinion established a powerful legal foundation for local control and local financing, noting:

> It is possible, and only possible, to build up an efficient system by leaving local school matters, under proper general laws, to the people of the different localities . . . . [T]he only way in which a great and efficient common school system can be successfully maintained is to entrust to the people of the different localities, by general laws, the government of local school affairs.[26]

Such a forceful endorsement of local control against constitutional concerns could only be accomplished by a high degree of deference to legislative discretion in the area of school finance. Uniformity was interpreted broadly, requiring only that statutes be uniformly applicable to all school corporations, not that all school corporations benefit uniformly from the statute. In expressing this broader view of uniformity, however, the Court was careful to articulate what it viewed as the constitutional parameters of legislative discretion:

> The Legislature may, in their discretion, support all the schools of the State by means of a general levy directly made by a legislative act, or they may thus provide for part of the expense of maintaining the schools, or they may delegate to local officers the power to levy such taxes as in their judgment may be needed to supply the wants of the local schools and make them useful and effective. . . . The Legislature shall not make an unequal distribution of money derived from a general levy, make an unequal general levy, or *grant to some school corporations benefits or rights withheld from others.*[27]

25. 1 N.E. 698 (Ind. 1885).
26. *Id.* at 699.
27. *Id.* at 705 (emphasis added).

Although the imposition of local property taxes for school purposes was constitutionally protected through *Robinson*, the mandate to the legislature was not unchecked. For example, under *Robinson* the General Assembly may not permit local property taxation in some districts while prohibiting it in others. However, as long as the rights under any legislative scheme are available to all districts, the constitution is not implicated. The standards of uniformity expounded in the constitution were not suspended, but rather broadened to incorporate a wider array of financing choices for the legislature. The challenge then, as now, was to balance the need to create a uniform system of schools with the demand for local control over some portion of the school financing system.

D. *The Financing of Indiana's Public Schools*[28]

Like most states, Indiana has sought to balance the requirements of equity and local control through a financing system which combines local, state, and federal resources. Prior to 1974, Indiana funded its schools through a foundation program, under which school districts were provided with state grant assistance once local property taxes were levied at a state-determined minimum rate.[29] In 1974, the Indiana legislature changed its funding formula to incorporate a property tax freeze at 1973 levels. While this system has undergone occasional modifications in the past two decades, its basic structure remains essentially in place.[30] The local contribution consists primarily of resources derived from local property tax levies against parcels located within the taxing jurisdiction. The rates established for this purpose are governed by statutory limitations. Each school corporation is assigned a Maximum Normal Tax Levy (MNTL), which is the 1973 actual tax levy adjusted to reflect minor increases. State support consists primarily of a basic per pupil grant, which ensures receipt of the previous year's state contribution and adjusts for growth in per pupil counts. The State also guarantees a minimum per pupil revenue ($3,045 for 1991-92), where local taxes plus the standard basic grant are insufficient in generating this amount.[31]

Under the current formula, the local share of total school expenditures has decreased substantially over the period beginning with the property tax freeze.

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28. For a recent study of Indiana's public school funding system, see Marilyn R. Holscher, Note, *Funding Indiana's Public Schools: A Question of Equal and Adequate Educational Opportunity*, 25 VAL. U. L. REV. 273 (1991). For a more thorough treatment of the development of Indiana school finance, see ROBERT G. LEHNEN & CARLYN E. JOHNSON, FINANCING INDIANA'S PUBLIC SCHOOLS: AN ANALYSIS OF THE PAST AND RECOMMENDATIONS FOR THE FUTURE (1984).

29. For an overview of the pre-1974 Indiana school finance system, see Edward W. Najam, Jr., *Public School Finance in Indiana: A Critique*, 48 IND. L.J. 70 (1972).

30. IND. CODE § 6-1.1-19 et seq. (1992).

31. For a general overview of the financing of Indiana's public schools, see INDIANA DEP'T OF EDUC., DIGEST OF PUBLIC SCHOOL FINANCE IN INDIANA: 1991-93 BIENNIUM (1992).

In the mid-1980's, the proportions of state and local contribution leveled off at roughly 35% from local resources and 65% from the state.[32] An assumption generally drawn from an increase in the state share of financing is greater fiscal equity; however, a recent study of the implications of Indiana's system of property tax restrictions offers different conclusions:

> Despite the state assuming more of the expenditures, the share of the expenditures paid by the local taxing districts has made school operating expenditures more inequitable.
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> In Indiana, there still exists (as of the 1985-86 school year) a relationship between a school taxing district's wealth and the amount that the taxing district spends on its pupils. Those taxing districts that have more wealth, as measured by the assessed valuation per pupil, spend more money on their pupils than those taxing districts that have less wealth.
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> This study provides strong evidence that within Indiana, fiscal inequity exists for pupils and taxpayers.[33]

In addition to these continuing questions of tax and spending uniformity under Indiana's current system, there are reasons to believe that local control weakened with the onset of property tax limitations. The MNTL governs the amount of tax revenues a locality can generate and it can only be exceeded through authorization of an excessive levy by local referendum. Ironically, the challenge presented in *Robinson* of balancing local control and uniformity seems to have given way to a rejection of both, re-igniting the concerns of inequity and inefficiency articulated in *Greencastle*.

II. DEFINING THE CONTENDING INTERESTS

A principal challenge to the Indiana legislature today is to bring the debate regarding school finance back into the realm of the *Robinson* decision of 1885. In *Robinson*, the Indiana Supreme Court sought to accommodate both the state's interest in local control and the constitutional concerns of education and tax uniformity. In contrast, the school funding structure presently in place in Indiana reduces local control and seems to disregard the constitutional principles of uniformity. For example, the statutory limitations on property tax levies significantly impair local districts' capacity to meet increasing expenditure needs.[34] One recent study presents new evidence that property tax limitations

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32. *See* INDIANA FARM BUREAU, SCHOOL STATISTICAL REPORT 9-10 (1991).

33. R. Craig Wood et al., *Equity in Indiana School Finance: A Decade of Local Levy Property Tax Restrictions*, 16 J. EDUC. FIN. 83, 92 (1990).

34. *See* Larry J. Gambaiani, *The Problems and Concerns of Overseeing the Financial Aspects of a Small School Corporation in Indiana: A Practitioner's Viewpoint*, 55 CONTEMP. EDUC. 156 (1984) ("Unlike the years prior to 1974 when a board could advertise to their public that they wished to raise tax rates a few cents to allow them the flexibility they felt they would need in their coming year's operation, it is difficult

of the sort employed in Indiana have a greater effect on property tax revenue growth and municipal revenues than previously thought.[35] The policy of limiting property tax levies, therefore, must be reconsidered in order to bring into play the objectives of local control and tax and spending equity. Crucial in prioritizing these objectives, however, is a recognition that too much enthusiasm for one necessarily impairs the other. A careful definition of both, therefore, is the first step.

A. *The State Objective of Local Control*

The principle of local control has been a central point of controversy in school finance reform due to the polarity of views regarding its role. While reformers generally point out that deference to local control has the dangerous potential of veiling state neglect, defenders of local control highlight the need to create fiscal incentives to spark local school reform. One understandable concern is that an increased state presence in school financing will create greater state (and hence less local) regulation of school policies and administration.[36] The U.S. Supreme Court articulated such concerns in *San Antonio Independent School District v. Rodriguez*.[37] Another worrisome possibility is that support for public schools will diminish if the direct connection between local wealth and local schools is severed. In *Serrano v. Priest*,[38] the landmark ruling on California's school funding system, the California Supreme Court recognized this distinction between administrative and fiscal control.[39] Though acknowledging the importance of both, the court found the first, the state interest in decentralized administration, unpersuasive as a rationale for the state's reliance on local property wealth:

> [E]ven assuming arguendo that local administrative control may be a compelling state interest, the present financial system cannot be considered necessary to further this interest. No matter how the state decides to finance its system of public education, it can still leave this decision-making power in the hands of local districts.[40]

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and sometimes impossible today to expand the 'money pie' in the Indiana school corporation's General Fund over and above the increase provided by the State.").

35. *See* Anne E. Preston & Casey Ichniowski, *A National Perspective on the Nature and Effects of the Local Property Tax Revolt, 1976-1986*, 44 NAT'L TAX J. 123 (1991).

36. For an overview of the administrative aspects of local control, see Charles F. Faber, *Is Local Control of the Schools Still a Viable Option?*, 14 HARV. J.L. & PUB. POL'Y 447 (1991).

37. 411 U.S. 1, 49-51 (1973).

38. 487 P.2d 1241 (Cal. 1971).

39. *Id.* at 1241.

40. *Id.* at 1260.

While local administration may be an important objective, there is no reason to suspect that the decentralization of authority is necessarily untenable under alternative schemes of school financing.

The state's interest in local fiscal control, however, is more directly threatened by attacks on the local property tax. The theory behind local fiscal control is that communities will be most responsive to educational needs if given the means to express their support of local schools through locally assessed property taxes. The argument is a forceful one, and at least one author has suggested that *Serrano*'s mandate to divorce local property wealth from school spending served to provoke California's limits on property taxation via Proposition 13.[41] Although that contention is no doubt disputable, the argument against pouring all local revenues into a statewide pool carries much intuitive weight: in the absence of a clear, local connection between burden (taxation) and benefit (education), continued support for basic school funding rests on a dubious foundation. Local taxpayers are likely to perceive the social benefit of funding their own local public schools, but may be more resistant to taxes which are funneled through the state capital to schools in other corners of the state. Therefore, the crucial variable in protecting local fiscal control is the local resident voter's perception as to where her property tax revenues are being spent. To maintain local fiscal control and to avoid severing the burden-benefit connection, local control over residential wealth is necessary. This logic, however, does not require retention of *nonresidential* property in the local tax base.[42]

B. *Tax and Spending Uniformity*

Just as absolute local control would eliminate the possibility of creating greater equity in school finance, so too would an insistence on penny-for-penny spending uniformity botch local control. This buck-per-kid approach would require massive central involvement in the budgeting process, leaving no room for local fiscal incentives. Similarly, perfectly equitable tax rates across all districts would only exacerbate inequities, in addition to silencing the voice of local communities.

The classic reconciliation of equity and local control concerns is the district power equalizing approach, which Professors Coons, Clune and Sugarman outlined in *Private Wealth and Public Education.*[43] Under the district power

41. *See* William A. Fischel, *Did* Serrano *Cause Proposition 13?*, 42 NAT'L TAX J. 465 (1989). Proposition 13 amended the California constitution to provide for sharp restrictions on the ability of local governments to generate revenues through property taxes.

42. *But see* Helen F. Ladd, *Local Education Expenditures, Fiscal Capacity, and the Composition of the Property Tax Base*, 28 NAT'L TAX J. 145 (1975) (suggesting resident voters may perceive they bear part of property tax levied on local firms, either in reduced future tax base due to locational changes sparked by local tax rates or in higher prices for locally consumed goods).

43. JOHN E. COONS ET AL., PRIVATE WEALTH AND PUBLIC EDUCATION (1970).

equalizing scheme, each school district would receive the same per pupil amount for an equal tax effort. The object is to divorce district wealth from expenditure levels, to ensure that, for example, a 3% rate will generate an equal per pupil amount regardless of district property wealth. This approach has been criticized on several grounds.[44] First, to the extent that assessment is left to local officials, district power equalizing creates an incentive for districts to assess low and tax high. Another disadvantage of this approach is that it does not address the issue of tax uniformity, and the potential benefits to be derived from taxing nonresidential property on a uniform basis throughout the state. Third, the equalizing technique leaves open the possibility (however unlikely) of localities abandoning their schools, enunciating as its foremost concern district wealth neutrality to the potential detriment of adequate per pupil spending. Finally, the district power equalizing approach is politically vulnerable, because it requires additional state taxes in order to compensate property-poor districts. In the end, the debate over the district power equalizing approach may not have revealed solutions, but it has highlighted the difficulty of addressing multifarious interests from a theoretical perspective. The STNP proposal faces many of the same criticisms. The next two sections, therefore, will provide theoretical and empirical analyses of STNP.

III. THEORETICAL ANALYSIS OF THE STNP PROPOSAL

Once the definition of local control as control over local residential property wealth is accepted, retention of nonresidential property in the local tax base is no longer justified under a local control rationale. The next analytical step is to appraise the intuition behind the proposal to remove nonresidential property from local taxation for school funding purposes. In 1971, the Minnesota legislature enacted into law a statute removing from local tax bases in the Minneapolis-St. Paul area a portion of the growth in local commercial and industrial wealth. A theoretical analysis of the STNP approach, therefore, begins with an examination of the Minnesota law.

A. *The Conceptual Framework of Minnesota's Fiscal Disparities Act*

The Metropolitan Fiscal Disparities Act[45] governs the seven-county metropolitan area of Minneapolis-St. Paul and provides a mechanism under which 40% of increased revenue resulting from property tax on commercial and industrial property is pooled and redistributed to communities according to their

44. For general criticism of the district power equalizing approach, see Schoettle, *supra* note 11; Inman & Rubinfeld, *supra* note 12; Zelinsky, *supra* note 12.

45. MINN. STAT. ANN. § 473F.01 (West Supp. 1992).

population and fiscal capacity. The statute sets forth several purposes, four of which are relevant to the inquiry of this Note:

> (1) To provide a way for local governments to share in the resources generated by the growth of the area . . . ; (2) To increase the likelihood of orderly urban development by reducing the impact of fiscal considerations on the location of business and residential growth and of highways, transit facilities and airports; (3) To establish incentives for all parts of the area to work for the growth of the area as a whole; (4) To provide a way whereby the area's resources can be made available within and through the existing system of local governments and local decision making. . . .[46]

In upholding the constitutionality of the Metropolitan Fiscal Disparities Act, the Supreme Court of Minnesota issued dicta[47] alluding to the connection between the challenged statute and the then recent *Rodriguez* decision of the U.S. Supreme Court. Citing the Court's call for "innovative and new thinking," Justice Otis of the Minnesota Supreme Court added that "[t]he fiscal disparities statute is a bold and imaginative departure from conventional devices for balancing the benefits and burdens of taxation."[48]

Although the STNP approach rests upon many of the same principles as Minnesota's Metropolitan Fiscal Disparities Act, the two differ in important respects. Under the Minnesota statute, the pooled portion of commercial-industrial property tax revenues is derived only from 40% of revenue increments, or commercial growth. Because the program is focused on growth in the tax base, it is primarily aimed at managing fiscal competition among the competing jurisdictions for new investment. Nonetheless, the concept of pooling property tax revenues derived from nonresidential property and dedicating those resources to municipalities according to population and fiscal capacity has clear relevance to the issue of equitable school funding. Underpinning both the Minnesota Act and STNP is the policy norm that revenues generated from taxing nonresidential property need not necessarily be distributed according to the situs of such property. Dispensing with situs permits the state government instead to distribute these revenues according to need, thereby minimizing fiscal disparities and the constitutional infirmities associated therewith.

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46. *Id.*

47. Village of Burnsville v. Onischuk, 222 N.W.2d 523, 532 (Minn. 1974), *appeal dismissed*, 420 U.S. 916 (1975).

48. *Id.*, quoting *Rodriguez*, 411 U.S. 58 (1973).

B. *Determining an Appropriate Distribution Formula*

Under a system allocating the authority to tax nonresidential property to the state, only residential property taxation remains in the control of the local jurisdictions.[49] There are a variety of ways of taxing nonresidential property on a statewide basis and allocating the proceeds according to residential taxing capacity. In her classic study of the proposal to pool and redistribute nonresidential property tax revenues, Professor Helen Ladd uses the following formula:

$$A2 = \frac{\frac{PUB_{district}}{WR_{district}}}{\sum_i \left(\frac{PUB_i}{WR_i}\right)}$$

where *A2* is the portion of the pooled revenues to be received by the district, *PUB* is the number of public school students in the district, *WR* is the per pupil residential wealth of the district, and *i* represents the districts.[50] Thus, as Ladd notes, "the share received by each community varies [1] directly with the number of students and [2] inversely with the residential wealth per pupil."[51] Under the Ladd formula, the amount a district will receive from the pooled revenues depends upon how that district's pupil count and residential wealth factors compare to the same factors in other districts. This result is due to Ladd's disregard for one of the primary advantages of the property tax, its budgetary flexibility. The property tax permits local governments to assess the value of property, and determine a tax rate which will generate sufficient revenues to cover local budgetary needs. Ladd moves backward, setting the rate against nonresidential property first, and distributing the fixed total proceeds according to her formula. This achieves tax-neutrality with respect to nonresidential property, which renders a fair simulation, but unnecessarily distorts the distribution of funds.

49. Many types of property could correspond to either category or constitute entirely separate categories. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1987 CENSUS OF GOVERNMENTS, TAXABLE PROPERTY VALUES ix. [hereinafter CENSUS OF GOVERNMENTS]. The *Census of Governments* breaks down property according to use into the following categories: nonfarm residential property, acreage (agricultural), vacant platted lots, commercial and industrial, other, and unallocable. *Id.* This Note distinguishes only between residential and nonresidential property. A different legislative scheme could of course provide for more detailed distinctions.

50. Ladd, *supra* note 12, at 148.

51. *Id.*

The problem with the Ladd formula is that it does not provide a good proxy for need. A mathematical hypothetical puts this problem into better perspective. Suppose District *A* has a pupil count of 60,000 and residential wealth of $18,000 per pupil, while District *B* has a pupil count of 50,000 and residential wealth of $15,000 per pupil. Under Ladd's formula, the numerator for each district is 3.34, indicating that both districts will receive the same portion of the state's pooled commercial-industrial property tax revenues. But at a 4% rate against its $18,000 per pupil residential wealth, District *A* can generate $720 per pupil, while District *B* can generate only $600 per pupil. To arrive at a similar per pupil level of, for example, $1,000, District *A* needs $16,800,000 while District *B* needs $20,000,000. Ladd's approach confers equal amounts upon districts of differing needs.

The hypothetical is complicated by consideration of a third district, *C*, which, let us suppose, has a pupil count of 8,000 and residential wealth per pupil of $50,000. Under Ladd's formula, District *C* by mathematical necessity receives some portion of the pool. Yet a 4% rate can generate $2,000 per pupil in District *C*, a figure hardly illustrative of need for further assistance. The demographic reasons behind this distortion are hinted at by Professor Zelinsky, who has noted:

> [T]he size of a particular community is highly correlated with the proportion of its residents attending the public schools. Larger cities tend to have a relatively small proportion of their populations enrolled in the public education system. In smaller communities, a significantly larger share of the residents are public school pupils. This finding is consistent with independent evidence that the households which leave the central city for the suburbs tend to be families with large numbers of school age children and that a prime motivation for emigration to outlying communities is the belief that the suburbs offer a healthier environment for raising young children.[52]

Given these demographic realities, the residential wealth per pupil for large cities is likely to be high, as compared to the state's other communities. It should come as no surprise, therefore, that the distribution formula that Professor Ladd presents adversely impacts urban centers. Under the Ladd formula, every district receives something, notwithstanding its actual need. And just as some districts will receive more than they need, other districts will receive less. To arrive at a distribution formula which is more reflective of each district's actual ability to generate resources, a specific baseline of need is required. Nonresidential property tax revenues may then be used to offset those amounts which local residential property is unable to generate. The result, therefore, is that revenues generated by nonresidential wealth will be targeted to those communities where

52. Zelinsky, *supra* note 12, at 183 (citations omitted).

homeowner wealth is the weakest. This Note employs such a needs-focused approach.

C. *Mechanics of the Proposed Distribution Formula*

Rather than focusing on the comparison of districts' pupil-to-wealth ratios, the STNP proposal establishes a target level of per pupil taxing capacity. Assuming a hypothetical state's taxable property to consist of 60% residential property and 40% nonresidential property, the state will assess and tax the 40% nonresidential property on a statewide basis and distribute the proceeds according to each district's remaining residential property taxing capacity. If *TAV* is the state's total assessed valuation, then under the hypothetical division above, *TAV* x 0.60 equals the value of residential property, or *RV*, and *TAV* x 0.40 equals the value of nonresidential property, or *NRV*. While *RV* will remain within the exclusive taxing authority of the localities in which it is located, the state will use the proceeds derived from the uniform statewide taxation of *NRV* to ensure that a given rate *T* assessed against each district's *RV* generates a certain minimum per pupil revenue level, *Y*. The purpose of the *NRV* pool, therefore, will be to equalize the districts' remaining taxing capacity up to the amount *Y*.

Once *T* is imposed against the districts' differing values of local residential property, it will generate varying per pupil amounts from district to district. These amounts, subtracted from the *Y* figure, determine the amount per pupil to be received from the nonresidential pool. Where *T* can generate substantial revenues, the district will receive a smaller proportion of the *NRV* pool. If *T* generates very little, the districts will benefit significantly from the *NRV* pool. In both cases, local districts will be permitted to tax their residential tax base beyond *T*, if a district so chooses, to derive any extra revenues per pupil that local programs might necessitate.

Concrete figures help to put this hypothetical into perspective. For purposes of empirical analysis, suppose the state wants to guarantee that for each school corporation a 2.5% tax rate on its residential property will generate $1135 per pupil. I choose these figures to ensure that the proposal is tax-neutral with respect to nonresidential property. Therefore, a rate of 3.03%, equal to the previous burden on nonresidential property, must be assessed against all nonresidential property in the state.[53] This has the simple effect of ensuring that each school corporation may derive a total of $1135 per pupil from a 2.5% tax against its residential property. If 2.5% generates $3000 per pupil, a district will derive no resources from the pool. If 2.5% generates $1134, a district will receive $1 per pupil.

53. The aggregate tax burden on nonresidential property for the 119 sample school corporations was 3.03%. Several different rate-revenue combinations were simulated to determine which combination would create the same aggregate burden on nonresidential property. This approach ensures tax-neutrality with respect to nonresidential property.

The overall effect, therefore, is to distribute the resources derived from the state's nonresidential property wealth to those districts which have low levels of residential property wealth per pupil. Local control, defined as local resident voter responsiveness to local educational needs, is preserved. Tax equity is achieved with respect to nonresidential property, and with respect to residential property, equal tax effort will generate equal resources, up to the minimum guaranteed nonresidential pool grant. Those inequities generated from taxing beyond the trigger rate are left unaddressed in order to preserve some degree of local fiscal control.

The most crucial aspect of this proposal, however, is that it raises a new line of normative policy questions. In the past, school finance reformers have challenged states' reliance on local property wealth disparities as without a rational basis. In contrast, the formula proposed herein would oblige legislators to set residential and nonresidential rates in accordance with reasoned policy considerations. The accidents of property wealth that school corporations now face would be replaced by equal access to a level of taxing capacity determined by the state. And to the extent local control is a legitimate state interest, the figures may be modified to increase the portion of funding not subject to equalization. The proposal permits legislators to weigh the concerns of equity, local control and the distribution of the tax burden. At present, districts have widely varying taxing capacities, local fiscal decisions are governed by levy limitations, and one's tax burden depends largely upon the degree of wealth in the community. On an intuitive level, the STNP proposal works to redress these problems, but an empirical analysis is needed to gauge the proposal's actual impact.

IV. EMPIRICAL ANALYSIS OF THE STNP PROPOSAL

Whether STNP will in fact work to ameliorate fiscal disparities in school finance is a question that can only be resolved empirically. The analysis provided below is an effort to approximate STNP's empirical effect on local General Fund property taxes in a sampling of twenty-eight Indiana counties and the 119 school corporations within those counties.[54] Although the figures used here were derived from the most recent and detailed sources available, it is important to recognize that this simulation, like any other, has important statistical

54. The 28 counties are those used by the Census Department in the 1987 *Census of Governments* in determining Indiana's taxable property values. The survey methodology explains that "[t]he sample was designed to yield simple unbiased estimates of statewide assessed value aggregates that would be subject to relative standard errors of no more than 2 percent for most States, and no more than 3 percent for New Hampshire, Rhode Island, and Vermont." CENSUS OF GOVERNMENTS, *supra* note 49, at vi. A more detailed explanation of survey methodology is contained in the introduction to the document at v-xxiv.

limitations[55] which suggest that the true impact of STNP can only be understood through actual implementation.

A. *School Expenditure and Property Value Data Examined*

To conduct the simulation, the assessed value, per pupil assessed value, General Fund tax rate, and per pupil revenue generated by such rate were compiled for each of the sample school corporations. Using 1986 percentages to distinguish local property values by use category,[56] the total nonresidential value and the per pupil residential value of each school corporation were derived. The per pupil residential value of each school corporation was then multiplied by 2.5% and subtracted from $1135 to derive a per pupil amount to be secured from the pooled nonresidential property tax revenues. Multiplying this amount by each school corporation's pupil count gives a total amount to be received from the pooled revenues.

As noted above, these calculations ensure that the 2.5% tax burden on residential property (local) and a 3.03% tax burden on nonresidential property (statewide) will generate for all school corporations a minimum per pupil property tax revenue of $1135. The simulation assumes that school districts will work to sustain their current revenue levels, taking advantage of the pooled resources if eligible.

B. *Results of the Simulation*

The most significant result of the STNP simulation is that all of the 119 districts' ability to generate revenue would be equalized up to a per pupil revenue figure of $1135. Because local property wealth disparities are the focus of the legal objections to current school funding systems, the uniformity and equal protection claims which litigants continue to raise around the country would be moot under STNP. This is not to say that the quality of education would be uniform as a consequence of these changes, but rather that the local wealth disparities giving rise to constitutional claims are specifically redressed.

Under the combination of figures used for this simulation, nonresidential property taxpayers in the aggregate should be indifferent to STNP, because the

55. Three primary sources provide the statistics for simulation. Per pupil expenditure and assessment figures used herein are for the 1990-91 school year and are set forth in THE INDIANA FARM BUREAU, SCHOOL STATISTICAL REPORT 1991, *supra* note 22. The percentage breakdown of property values by use category is set forth in CENSUS OF GOVERNMENTS, *supra* note 49. The figures are broken down principally by county and occasionally by city. An important assumption concerning these breakdowns, however, is that the ratio of residential to nonresidential property is uniform within any given county. The simulation incorporates cities' distinct use category percentages where available. Income and poverty status information used herein is set forth in BUREAU OF THE CENSUS, U.S. DEP'T. OF COMMERCE, 1990 CENSUS OF POPULATION AND HOUSING, SUMMARY SOCIAL, ECONOMIC, AND HOUSING CHARACTERISTICS: INDIANA (1992) [hereinafter 1990 CENSUS OF POPULATION AND HOUSING].

56. CENSUS OF GOVERNMENTS, *supra* note 49 at 96-99.

total burden on nonresidential property is unchanged. Of course, those with prior rates above 3.03% would benefit from the proposal, while those with rates lower than 3.03% would lose. School districts, in contrast, will either maintain previous revenue levels or undergo a per pupil revenue increase up to the $1135 figure. The residential property taxpayer also either stands to gain or lose, through higher or lower property tax rates. All of this suggests that this proposal would face widely varying proponents and opponents. Nonetheless, armed with constitutional arguments and the alternative prospect of court intervention, proponents of a system to tax nonresidential property on a uniform statewide basis could likely garner sufficient political force for implementation.

With respect to the overall impact on General Fund tax rates and per pupil revenues generated thereby, school corporations fall into one of three categories as a result of the simulation. Category I school corporations are listed in Table A.1 of the Appendix and include those whose residential value when taxed at 2.5% generates more than $1135. Because of the high level of residential wealth in these communities, their schools will not draw from the pool. Nine of the 119 school corporations fall into this category. In effect, these nine school corporations must increase their tax rates in order to sustain previous revenue levels because nonresidential property is removed from their taxable property and nothing is added. All nine Category I school corporations, therefore, will lose under this proposal.

Category II school corporations are listed in Table A.2 of the Appendix and include those whose residential value when taxed at 2.5% does not generate $1135, but whose previous per pupil revenue was less than $1135. It is assumed for the purposes of the simulation that these corporations will take advantage of the pool, even though prior local property tax revenues were less than $1135. Therefore, all of these school corporations will move to a 2.5% General Fund rate and a $1135 per pupil revenue level. Fifty-nine of the 119 school corporations fall into this category. To determine whether these fifty-nine gain or lose under this proposal, the previous per pupil taxable property figures for each of them were compared with the per pupil taxable property figure equivalent to the 2.5%, $1135 combination, or $45,400. Four of the fifty-nine school corporations had per pupil taxable property figures exceeding $45,400 and therefore will lose under this proposal. The remaining fifty-five, however, benefit from a more advantageous rate-revenue combination than under the status quo. Fifty-five of the fifty-nine Category II school corporations, therefore, will gain under this proposal, while four will lose.

Category III school corporations are listed in Table A.3 of the Appendix and include those whose residential value at 2.5% does not generate $1135, but whose per pupil revenue level was greater than $1135. These school corporations will draw from the pool. However, because the amount received from the pool is insufficient to match the prior revenue level, it is assumed the school corporation will further tax its local residential property to reach that prior

amount. Such school corporations will tax beyond the trigger rate of 2.5%, at a rate potentially above or below its previous rate. Fifty-one of the 119 school corporations fall into this category. Of those fifty-one school corporations, fifteen would be able to sustain their current per pupil expenditure levels at lower tax rates. The remaining thirty-six must exceed previous rates in order to sustain their previous per pupil revenue levels. Thirty-six of the Category III school districts, therefore, will lose under this proposal, while fifteen will gain.

Among Categories I, II and III, therefore, seventy-one school corporations enhance their fiscal position under STNP and forty-eight lose, assuming a trigger rate of 2.5% and a baseline property tax revenue figure of $1135. The simulation assumes that no new revenues are to be derived from taxing nonresidential property. Under a nonresidential property tax rate of 3.4% rather than 3.03%, the proposed formula could accommodate a residential trigger rate of 2.5% and a baseline revenue figure of $1200. Such figures would result in eighty-six school corporations benefiting from the proposal and thirty-three school corporations losing. Alternatively, the legislature could choose to reduce the property tax burden on nonresidential property and offset those reductions with general state revenues. What becomes clear is that, apart from the specific results of any particular combination of figures, an important benefit of this proposal is the array of financing alternatives it produces for state lawmakers. Businesses would no longer be subject to widely varying tax burdens due to locational decisions, and school corporations would be less restricted by property wealth factors in spending decisions. But the overall benefits to the state have never been the source of the academic dispute regarding statewide taxation of nonresidential property for public schools. Despite the benefits STNP generates with respect to equity and efficiency, detractors have held that STNP should be rejected for its adverse effect on large urban centers. An inquiry as to the specific impact of this proposal on urban areas, therefore, is the next step.

C. *Large Cities: Impact of the STNP Simulation on Indiana's Urban Areas*

As noted, the primary academic concern regarding the pooling of nonresidential tax revenues has been the potential for an adverse distributional effect on urban areas, given their concentration of high levels of commercial and industrial property and low-income families.[57] Therefore, specific results of the simulation for Indiana's ten largest school corporations are summarized in Table 1 below:

57. *See generally*, Ladd, *supra* note 12.

TABLE 1. *Indiana's Ten Largest School Corporations*

School Corporation	*M.H.I.*[58]	*Current*[59]	*Proposed*[60]
Indianapolis Pub. Sch.	$18,019	3.06%, $1292	3.21%, $1292
Fort Wayne Comm. Sch.	$26,344	2.62%, $1297	3.07%, $1297
Gary Community Sch. Corp.	$19,390	5.97%, $1213	3.21%, $1213
Evansville-Vand. Sch. Corp.	$25,798	3.57%, $1658	4.36%, $1658
South Bend Comm. Sch. Corp.	$24,131	2.79%, $1245	2.88%, $1245
Vigo County Sch. Corp.	$23,505	3.55%, $1011	2.50%, $1135
Hammond City Sch.	$26,883	6.21%, $1357	4.34%, $1357
MSD of Wayne Township	$27,124	2.56%, $1357	3.20%, $1357
Anderson Comm. Sch. Corp.	$23,221	3.11%, $1081	2.50%, $1135
MSD of Perry Township	$32,047	2.46%, $1010	2.50%, $1135

The results of the simulation for the state's ten largest school corporations reveal that half would improve their fiscal positions under this proposal while half would lose. Of particular concern is the proposal's effect on Indianapolis Public Schools, the state's largest school district. Nonetheless, three separate aspects of these results suggest that the impact on school districts in Indiana's urban areas is generally neutral, and would be unlikely to raise concerns so grave as to override the greater fiscal equity which STNP generates for the state as a whole.

First, seven of the ten largest school districts fall into Category III, which means that residential wealth was low enough to qualify them for receipt of pooled resources, but that revenue levels were higher than the $1135 per pupil amount. The extent to which these school corporations lose under STNP, therefore, is attributable more to prior revenue levels than to the adverse effect of the formula on their taxing capacity. This is not to suggest that these school districts should simply spend less money, but rather that (1) revenue levels should be financed from increased local residential property tax rates, or (2) the state should provide greater assistance to accommodate these districts' desired revenue levels.

Second, to the extent that these districts would be required to raise local residential property tax rates, the degree of tax increase is slight. Indianapolis would move from a 3.06% rate to a 3.21% rate, while Fort Wayne would bear a 3.07% rate, rather than its previous 2.62% rate. These minor increases square with the intuition that not all large cities have low levels of residential property

58. Median Household Income. 1990 CENSUS OF POPULATION AND HOUSING, *supra* note 55.

59. 1990-91 General Fund tax rate and revenue level. INDIANA FARM BUREAU, SCHOOL STATISTICAL REPORT 1991, *supra* note 22.

60. Under Proposed STNP Approach, General Fund tax rate and revenue level.

wealth, and that removing nonresidential property from large cities' property tax bases will not necessarily cripple their fiscal capacity.

Third, STNP would greatly enhance the fiscal capacity of cities such as Gary and Hammond, where tax rates previously were abnormally high. This is particularly important for Gary, where the level of household income is low and the percentage of persons with poverty status is high. The consequence, therefore, is that where residential property wealth is weakest, the school districts stand to gain, while areas with high levels of residential property will be required to depend upon that portion of their tax base more than before. Given the competing objectives of local control and tax and spending equity, this is precisely the desired outcome. The current reliance on the situs of nonresidential property as determinative of taxing authority creates wealth disparities which raise constitutional difficulties. In contrast, eliminating situs as a source of school districts' taxing rights gives the state greater flexibility to accommodate competing constitutional concerns.

D. *Transporting STNP to States with Distinct Demographic Characteristics*

Although it is clear that different demographic characteristics will alter the impact of STNP in other states, there are reasons to believe that its benefits are not limited to states such as Indiana. It is true that where nonresidential property wealth is heavily concentrated in high poverty areas, application of the proposal in an unmodified fashion could have an adverse effect on the urban poor. States such as Illinois or New York, which have large urban centers and distressed inner city public schools, must be wary of depriving poorer schools of the nonresidential property tax revenues they currently receive. This admonition, however, should not diminish the value of STNP even in such large urban center states.

The object of STNP is to rationalize the distribution of property wealth for school funding purposes. In response to those who argue that school finance reform could jeopardize the tax base of America's cities, it should be made clear that any benefit to urban schools under current property wealth-based systems is mere happenstance. States can ensure adequate resources for schools with students of low-income families more explicitly by capturing that greater need in the pupil count portion of a distribution formula. If, for example, a state considers each student from a low-income family as 1.5 students, then the flow of resources into low-income areas would be statutorily ensured. For some states, such an approach may be politically unrealistic, but its availability should at least serve to refute those who argue that equalization strategies necessarily result in a "befuddled Robin Hood" approach, sifting revenues from the inner city to the suburbs.

V. CONSTITUTIONAL ANALYSIS OF THE STNP PROPOSAL

The STNP approach is not immune from its own potential constitutional difficulties. Under the uniformity clause of most states' constitutions, a taxing scheme which subjects residential and nonresidential property within a single jurisdiction to differing rates might be called into question. In Indiana, this possibility springs from a 1983 decision of the Hendricks County Circuit Court, where a statute imposing a tax on interstate motor carriers' indefinite-situs distributable property was rejected on uniformity and interstate commerce grounds.[61] The Indiana Supreme Court affirmed the lower court's interstate commerce ruling but did not reach the uniformity issue.[62] Despite the view of the lower court, there is ample reason to believe that the current proposal would withstand a uniformity challenge.

First, the authority of the Indiana General Assembly to classify property for tax purposes is beyond question. In a 1909 case, the Indiana Supreme Court validated the legislature's classification authority in the area of real property taxation in order to serve the dual ends of ensuring a more just valuation of distinct properties and providing for a more just distribution of property tax revenues.[63] Second, it is well established under Indiana law that the standard for determining tax uniformity is that a tax for local purposes must be uniform throughout the local jurisdiction, while a statewide tax must be uniform throughout the state.[64] Under STNP, local residential property taxes would be directed to local schools (local purpose) and would be the same throughout the school corporation (local uniformity). Nonresidential property taxes would be employed to ameliorate fiscal disparities throughout the state (state purpose) and the rate against such property would be the same throughout the state (statewide uniformity).

Third, the general reluctance of courts to intrude upon legislative authority, particularly when the object of new legislation is to remedy constitutionally suspect policies, would weigh against a challenge to STNP. More specifically, because a primary object of STNP is to provide for greater tax uniformity, it is unlikely that the court would return the state to a less uniform system of taxation in the name of a formalistic view of tax uniformity. Ironically, the very case providing the constitutional basis for the current system would likewise work to sustain STNP. Rather than mandating specific funding policies, the *Robinson* court established a firm and lasting groundwork for legislative discretion in the area of school finance.[65] In addition, in considering any

61. Private Truck Council of America, Inc. v. Huie, No. CV 882-361 (Hendricks Cir. Ct., Ind. Apr. 20, 1983), *aff'd*, Huie v. Private Truck Council of America, Inc., 466 N.E.2d 435 (Ind. 1984).

62. Huie v. Private Truck Council of America, Inc., 466 N.E.2d 435 (Ind. 1984).

63. Clark v. Vandalia R.R., 86 N.E. 851 (Ind. 1909).

64. Board of Comm'rs v. State *ex rel.* Shields, 58 N.E. 1037 (Ind. 1900).

65. Robinson v. Schenck, 1 N.E. 698 (Ind. 1885). *See supra* notes 25-27 and accompanying text.

challenge to STNP, the Indiana courts would benefit from the wisdom of the Minnesota Supreme Court, which upheld the Metropolitan Fiscal Disparities Act against a uniformity challenge.[66]

Finally, if the STNP approach failed to survive a constitutional challenge, an alternative means of accomplishing the identical policy ends exists. A state could simply demand that its school districts transfer the revenues generated from a given portion of nonresidential property taxes to the state government. The state government could then distribute those resources to school districts according to the formula detailed above. Although such an approach would lack the interdistrict taxpayer uniformity benefits of STNP, it could accomplish the same district equalization objectives. This alternative approach again illustrates that a uniformity challenge to STNP would likely hinge on formalistic reasoning. The STNP proposal is designed to accommodate the requirements of the education clause and the tax uniformity clause simultaneously, rather than focusing on one to the exclusion of the other.

VI. COLLATERAL POLICY ISSUES

In addition to providing both greater spending and tax uniformity and local fiscal control, the STNP proposal implicates a variety of collateral policy issues which are worthy of general note here.

A. *Distribution of State Aid Not Derived from Property Taxes*

In addition to the equalization formula suggested above, fiscal equity would be further promoted by distributing nonproperty tax state resources according to other differences in districts' fiscal capacity. One proposal is that greater resources be distributed to large cities because of the burden on these municipalities of other noneducational expenses. This phenomenon has been termed "municipal overburden," and has figured prominently in both academic literature and litigation regarding school finance reform.[67] Another possibility is to disburse state aid in a manner sensitive to local cost differentials.[68] Such a proposal would help to eliminate fiscal disparities, allocating greater funds to districts with higher local costs.

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66. Village of Burnsville v. Onischuk, 222 N.W.2d 523 (Minn. 1974), *appeal dismissed*, 420 U.S. 916 (1975).

67. For a treatment of the economics behind the concept of municipal overburden, see Harvey E. Brazer & Therese A. McCarty, *Municipal Overburden: A Fact in School Finance Litigation?*, 18 J.L. & EDUC. 547 (1989).

68. *See* Katharine L. Bradbury et al., *State Aid to Offset Fiscal Disparities Across Communities*, 37 NAT'L TAX J. 151 (1984) (presenting method of measuring cost differences across communities to assist in ameliorating fiscal disparities).

B. *Tax Abatements and Deterioration of the Commercial-Industrial Tax Base*

Statutes authorizing localities to grant businesses property tax abatements as a means of attracting investment would necessarily be affected by STNP.[69] Although removing school property tax abatements from communities' economic development arsenals might hinder their efforts to attract new business, it is unlikely that cities and towns would be significantly impacted. In addition to the abatement of general revenue property taxes, local communities would still have alternative means of attracting commercial investment to the area. A central policy norm underlying STNP is that schools are simply too important to be subtracted from the tax benefit generated by local commercial development.[70] In addition, like the Minnesota Fiscal Disparities Act, the STNP approach seeks to deter an ill-advised fiscal competition among local communities for limited business investment, at the expense of public schools.

STNP would also insulate schools from deterioration of the local commercial-industrial tax base. By providing for state control of property taxes against businesses, any revenue losses incurred from interdistrict or interstate locational changes would be borne by schools throughout the entire state. Likewise, new investment anywhere in the state would benefit all schools throughout the state. At present, commercial and industrial locational decisions benefit or harm particular schools disproportionately because of the reliance on situs as giving rise to districts' authority to impose property taxes. This proposal would eliminate that concern and establish incentives for communities to work for the benefit of the entire state.

C. *State Expertise and Assessment Valuation Standards*

STNP would provide the Indiana legislature the opportunity to modernize the present property tax system with respect to assessment valuation standards. In Indiana today, the standards by which property is valued are determined by the State Board of Tax Commissioners, in contrast to the fair market value standard generally used in most states.[71] There are three generally accepted methods for valuing business property: the market approach,[72] the income approach,[73] and the cost approach.[74] Adoption of a market approach or some

69. IND. CODE § 6-1.1-12.1 (1992) provides for tax abatements in economic revitalization areas, which include areas unable to support normal economic development.

70. *See* William Celis 3d, *Schools Lose Money in Business Tax Breaks*, N.Y. TIMES, May 22, 1991, at A1, B9.

71. *See* Stroble & D'Avis, *supra* note 17.

72. The market approach to property valuation generally involves the use of actual or comparative sales prices as a benchmark in determining the value of a parcel.

73. The income approach is generally considered to be an effective means of assessing the value of commercial property. It involves the capitalization of future cash flows to determine present value.

74. The cost approach to property valuation uses an estimate of the replacement cost of property to determine a parcel's value.

combination of the three accepted valuation standards would ensure greater assessment uniformity and promote the just valuation of commercial property. Furthermore, assessment reform would work to foreclose potential constitutional challenges to the current system. Although these goals could be accomplished through local assessors and without the implementation of STNP, assessment reform might be facilitated if coupled with a policy to assess and tax nonresidential property on a statewide basis.

VII. CONCLUSION

The purpose of this Note has been to examine the proposal to tax nonresidential property on a statewide basis and to distribute those resources to school districts according to their residential property taxing capacity. Under the system by which almost all states currently finance public education, school districts applying equal tax effort against local property will generate disparate spending levels, due to their varying levels of property wealth. Likewise, equitable spending levels require the imposition of inequitable tax rates. The STNP approach would make the money-raising game fairer by advancing the tax revenues generated by nonresidential property to those districts where homeowner wealth is the weakest.

I have presented the STNP proposal first by demonstrating that a school finance system that relies on property taxes must seek to balance the concerns of tax and spending equity with the state interest in local control. I then focused on the fiscal incentives at the core of local control and suggested that local control may be defined as control over local residential property taxation. Using this definition, I argued that removing nonresidential property from local tax bases does not undermine local control. To retain local control under a system which provides for greater fiscal equity, I suggested that nonresidential property tax resources be pooled and redistributed to school districts in inverse relation to their residential taxing capacities. The results of an empirical simulation suggested that such a system could provide for greater tax and spending equity, without structural biases against those communities most in need of assistance. I attempted to defeat some potential constitutional objections to STNP and suggested arguments in its favor.

It should be clearly understood that the STNP approach I have proposed here is aimed at redressing the fiscal disparities that currently exist among school corporations, and not as a means of creating equal educational opportunity for all schoolchildren. To mistake fiscal equity for equal educational opportunity ignores the far greater complexities associated with providing children from diverse backgrounds the equal opportunity to benefit from the public school system. The object of this Note has been to offer a structure of taxation grounded in principles of fairness and sensitive to the need for local fiscal incentives.

VIII. APPENDIX

TABLE A.1. *Category I School Corporations*

School Corporation	*Current Rate & Revenue*	*Proposed Rate & Revenue*
Carmel-Clay Sch.	2.89%, $1807	3.90%, $1807
Whiting City Sch.	3.32%, $4561	5.79%, $4561
Prairie Twp. Sch.	0.67%, $ 648	1.03%, $ 648
MSD of Pike Twp.	2.15%, $3124	3.60%, $3124
MSD of Washington Twp.	2.04%, $1765	3.42%, $1765
Speedway City Sch.	2.37%, $2696	3.97%, $2696
Duneland Sch. Corp.	2.69%, $2174	3.80%, $2174
Washington Twp. Sch.	2.72%, $1933	3.84%, $1933
South Spencer Co. Sch. Corp.	1.86%, $2281	4.99%, $2281

TABLE A.2. *Category II School Corporations*

School Corporation	*Current Rate & Revenue*	*Proposed Rate & Revenue*
NW Allen County Sch.	2.27%, $ 896	2.50%, $1135
Flat Rock-Hawcreek Sch. Corp.	1.96%, $ 534	2.50%, $1135
Lebanon Comm. Sch. Corp.	2.84%, $1022	2.50%, $1135
Western Boone Co. Sch.	2.68%, $1022	2.50%, $1135
Brown County Sch. Corp.	1.53%, $ 584	2.50%, $1135
Carroll Cons. Sch. Corp.	2.58%, $1094	2.50%, $1135
Delphi Comm. Sch. Corp.	2.63%, $1064	2.50%, $1135
Delaware Comm. Sch. Corp.	2.23%, $ 634	2.50%, $1135
Harrison-Wash. Sch. Corp.	1.98%, $ 597	2.50%, $1135
Liberty-Penn Comm. Sch. Corp.	2.62%, $ 707	2.50%, $1135
Daleville Comm. Sch.	2.40%, $ 733	2.50%, $1135
Fairfield Comm. Sch.	2.11%, $1030	2.50%, $1135
Goshen Comm. Sch.	2.31%, $1133	2.50%, $1135
New Albany-Floyd Sch. Corp.	2.71%, $ 913	2.50%, $1135
Hamilton Heights Sch. Corp.	3.37%, $1096	2.50%, $1135
Marion-Adams Sch.	2.81%, $ 862	2.50%, $1135
Westfield-Wash. Comm. Sch.	2.09%, $1064	2.50%, $1135
North Harrison Sch. Corp.	2.01%, $ 468	2.50%, $1135
South Harrison Sch. Corp.	2.03%, $ 647	2.50%, $1135
Franklin Twp. Sch.	1.69%, $ 615	2.50%, $1135
Lakeland Sch. Corp.	2.39%, $1037	2.50%, $1135

TABLE A.2. *Category II School Corporations (continued)*

School Corporation	*Current Rate & Revenue*	*Proposed Rate & Revenue*
Prairie Heights Sch. Corp.	2.17%, $ 893	2.50%, $1135
Crown Point Comm. Sch. Corp.	2.78%, $ 736	2.50%, $1135
Griffith Public Sch.	3.17%, $ 800	2.50%, $1135
Hanover Comm. Sch. Corp.	4.04%, $ 762	2.50%, $1135
Highland Town Sch.	3.32%, $1040	2.50%, $1135
Sch. Corp. of Hobart	6.75%, $1053	2.50%, $1135
Hobart Twp. Comm. Sch. Corp.	3.56%, $ 318	2.50%, $1135
Lake Ridge Sch.	4.56%, $ 623	2.50%, $1135
Lake Station Comm. Sch.	3.62%, $ 346	2.50%, $1135
Tri-Creek Sch. Corp.	4.10%, $ 918	2.50%, $1135
LaPorte Comm. Sch. District	2.95%, $1081	2.50%, $1135
New Prairie Utd. Sch. Corp.	2.86%, $1116	2.50%, $1135
Alexandria Comm. Sch. Corp.	2.53%, $ 586	2.50%, $1135
Anderson Comm. Sch. Corp.	3.11%, $1081	2.50%, $1135
Elwood Comm. Sch. Corp.	2.99%, $ 639	2.50%, $1135
South Madison Sch. Corp.	2.07%, $ 497	2.50%, $1135
West Central Comm. Sch. Corp.	2.48%, $ 745	2.50%, $1135
Franklin Twp. Sch. Corp.	3.36%, $1036	2.50%, $1135
MSD of Decatur Twp.	2.97%, $ 718	2.50%, $1135
MSD of Perry Twp.	2.46%, $1010	2.50%, $1135
Monroe Co. Comm. Sch. Corp.	2.95%, $ 845	2.50%, $1135
Richland-BeanBloss. Sch. Corp.	2.36%, $ 854	2.50%, $1135
Portage Twp. Sch.	3.32%, $ 993	2.50%, $1135
Porter Twp. Sch.	2.79%, $1063	2.50%, $1135
Boone Twp. Sch.	2.37%, $ 605	2.50%, $1135
Pleasant Twp. Sch.	3.16%, $1107	2.50%, $1135
Mishawaka City Sch.	4.08%, $1127	2.50%, $1135
Penn-Harris-Madison Sch. Corp.	3.33%, $1125	2.50%, $1135
Union-North Utd. Sch. Corp.	2.27%, $ 659	2.50%, $1135
Scott Co. Sch. District #1	3.12%, $ 598	2.50%, $1135
Scott Co. Sch. District #2	2.33%, $ 662	2.50%, $1135
North Spencer Co. Sch. Corp.	2.33%, $1032	2.50%, $1135
Switzerland Co. Sch. Corp.	2.30%, $ 628	2.50%, $1135
Vigo County Sch. Corp.	3.55%, $1011	2.50%, $1135
Centerville-Abington Sch.	3.17%, $ 771	2.50%, $1135
Nettle Creek Sch. Corp.	3.24%, $1086	2.50%, $1135
Northeastern Wayne Sch.	2.06%, $ 503	2.50%, $1135
Western Wayne Sch.	2.59%, $ 688	2.50%, $1135

TABLE A.3. *Category III School Corporations*

School Corporation	*Current Rate & Revenue*	*Proposed Rate & Revenue*
East Allen County Sch.	3.04%, $1394	3.38%, $1394
Fort Wayne Community Sch.	2.62%, $1297	3.07%, $1297
MSD of SW Allen County	3.37%, $2143	4.98%, $2143
Bartholomew Cons. Sch. Corp.	2.38%, $1241	2.85%, $1241
Eagle Union Comm. Sch. Corp.	2.69%, $1228	2.87%, $1228
Monroe Comm. Sch. Corp.	2.43%, $1229	3.07%, $1229
Mt. Pleasant Twp. Sch. Corp.	3.76%, $1370	3.62%, $1370
Muncie Comm. Sch.	3.17%, $1235	2.91%, $1235
Baugo Comm. Sch.	2.30%, $1183	2.67%, $1183
Concord Comm. Sch.	2.74%, $1483	3.67%, $1483
Elkhart Comm. Sch.	2.40%, $1429	3.60%, $1429
Middlebury Comm. Sch.	2.71%, $1286	3.08%, $1286
Wa-Nee Comm. Sch.	2.29%, $1296	3.02%, $1296
Hamilton Southeast Sch.	2.82%, $1709	3.78%, $1709
Noblesville Sch.	2.88%, $1218	2.76%, $1218
Kankakee Valley Sch. Corp.	4.00%, $3081	9.03%, $3081
Rensselaer Central Sch. Corp.	2.38%, $1238	3.01%, $1238
Westview Sch. Corp.	2.46%, $1152	2.59%, $1152
East Chicago City Sch. Corp.	4.05%, $2845	6.75%, $2845
Gary Community Sch. Corp.	5.97%, $1213	3.21%, $1213
Hammond City Sch.	6.21%, $1336	4.16%, $1336
Lake Central Sch. Corp.	4.23%, $1278	3.33%, $1278
Merrillville Comm. Sch. Corp.	2.79%, $1263	2.99%, $1263
Munster Comm. Sch.	3.61%, $1566	4.23%, $1566
South Central Sch. Corp.	4.29%, $1435	3.88%, $1435
Michigan City Area Sch.	3.52%, $1334	3.31%, $1334
Cass Twp. Sch.	3.18%, $1428	3.50%, $1428
Dewey Twp. Sch.	4.35%, $1519	4.19%, $1519
New Durham Twp. Sch.	3.95%, $1315	3.33%, $1315
Beech Grove City Sch.	2.83%, $1255	2.95%, $1255
Indianapolis Public Sch.	3.06%, $1292	3.21%, $1292
MSD of Lawrence Twp.	2.26%, $1438	3.30%, $1438
MSD of Warren Twp.	2.90%, $1806	4.30%, $1806
MSD of Wayne Twp.	2.56%, $1357	3.20%, $1357
Crawfordsville Comm. Sch.	2.97%, $1464	4.02%, $1464

TABLE A.3. *Category III School Corporations (continued)*

School Corporation	*Current Rate & Revenue*	*Proposed Rate & Revenue*
N. Montgomery Sch. Corp.	2.94%, $1583	4.39%, $1583
S. Montgomery Sch. Corp.	2.68%, $1141	2.53%, $1141
Valparaiso Comm. Sch.	3.04%, $1188	2.69%, $1188
Union Twp. Sch.s	3.26%, $1272	3.00%, $1272
Morgan Twp. Sch.s	2.97%, $1289	3.00%, $1289
John Glenn Sch. Corp.	3.40%, $1224	2.85%, $1224
South Bend Comm. Sch. Corp.	2.79%, $1245	2.88%, $1245
LaFayette Sch. Corp.	3.36%, $1853	4.78%, $1853
Tippecanoe Sch. Corp.	2.34%, $1278	2.96%, $1278
West Lafayette Sch. Corp.	2.72%, $2017	4.58%, $2017
Evansville-Vand. Sch. Corp.	3.57%, $1658	4.37%, $1658
Richmond Comm. Sch. Corp.	3.25%, $1290	3.14%, $1290
Frontier Sch. Corp.	3.28%, $1486	4.54%, $1486
North White Sch. Corp.	3.35%, $1773	5.68%, $1773
Tri-County Sch. Corp.	2.61%, $2072	5.61%, $2072
Twin Lakes Sch. Corp.	2.51%, $1193	2.82%, $1193