IT TAKES A FEDERALIST VILLAGE: A REVITALIZED PROPERTY TAX AS THE LINCHPIN FOR STABLE, EFFECTIVE K-12 PUBLIC EDUCATION FUNDING*

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"The property tax is one of the most maligned and least understood subjects of public and official discussion today."

Ralph Nader
Testimony before the Senate Subcommittee on Intergovernmental Relations
May 9, 1972[***]

I. INTRODUCTION

Public education in the United States is a big business. In the fall of 2011, more than 55.5 million students from kindergarten through 12th grade were expected to enroll in the nation's public schools[1] at a total cost of $599,145,678,000.[2] Though it is a service provided by local governments, its cost is borne by local,[3] state,[4] and, to a more limited extent, federal[5] taxpayers. Providing public education is a massive undertaking and no one level of government can solely bear its cost.

Governmental revenue sources, from which allocated shares of expense are presently borne, differ.[6] Local funding is provided predominately through taxes on real property, state funding comes primarily from individual income or retail sales taxes, and federal contributions are from income taxes.[7] Funding public education is a perpetual challenge, and the 2008 recession further complicated the situation.[8] Indeed, the recession has made it difficult to maintain even the status quo, and recently states have almost

[***] Property Tax Relief and Reform Act of 1973, Hearings before the Subcommittee on Intergovernmental Relations of the Committee on Government Operations United States Senate, 93rd Congress, First Session, May 2,3, and 4, 1973.

[1] U.S. CENSUS BUREAU, FACTS FOR FEATURES - BACK TO SCHOOL: 2011-2012 (2011) http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb11-ff15.html (last visited Aug. 19, 2013).

[2] MARK DIXON, U.S. CENSUS BUREAU, PUBLIC EDUCATION FINANCES: 2011, TABLE 1 SUMMARY OF PUBLIC ELEMENTARY-SECONDARY SCHOOL SYSTEM FINANCES BY STATE: FISCAL YEAR 2011 1, available at http://www2.census.gov/govs/school/11f-33pub.pdf.

[3] Id. (explaining that for fiscal year 2011, local sources provided slightly more than $259,490,000,000 to finance public elementary-secondary schools.); supra note 2, at 55 (establishing that this constituted 43.3% of all revenues).

[4] Id. at Table 1 (stating that for fiscal year 2011, state sources provided $265,948,389,000 to finance public elementary-secondary schools.); id., at 5, Table 5 (establishing that this constituted 44.4% of all revenues).

[5] Id. at Table 1 (stating that for fiscal year 2011, the federal government provided $73,706,695,000 to finance public elementary-secondary schools.); id. at 5, Table 5 (establishing that this constituted 12.3% of all revenues).

[6] Federal Education Budget Project, Federal, State, and Local K-12 School Finance Overview, NEW AMERICA FOUNDATION, http://febp.newamerica.net/background-analysis/school-finance.

[7] Id.

[8] MICHAEL LEACHMAN, CHRIS MAI, CENTER ON BUDGET AND POLICY PRIORITIES, MOST STATES FUNDING SCHOOLS LESS THAN BEFORE RECESSION (2013), available at http://www.cbpp.org/files/9-12-13sfp.pdf.

universally reported cuts in their share of support for education.[9] The trend toward diminished funding for public education must be arrested and reversed.[10] In seeking that reversal, policymakers must be aware of the differences among funding sources; property, income, and retail sales taxes do not share the same characteristics. The differing characteristics contribute to funding complexities and must be accommodated in order to work toward an optimal package.

II. SAN ANTONIO INDEPENDENT SCHOOL DISTRICT V. RODRIGUEZ

In 1973, the Supreme Court handed down its watershed school finance decision: San Antonio Independent School District v. Rodriguez.[11] The Court found that a public school-financing system based on local property taxes did not violate the Fourteenth Amendment's equal protection clause, stark resultant funding disparities notwithstanding.[12] The plaintiffs in Rodriguez unsuccessfully argued that education is a fundamental right under the United States Constitution and that a school funding system predicated upon local property taxes that impacted lower income groups created a suspect classification subject to strict scrutiny thereunder.[13]

Unlike the federal constitution, state constitutions guarantee the establishment of a public education system for state residents.[14] As a result of the Rodriguez decision, state courts became the exclusive forum in which questions of public school funding were litigated and the property tax remained at that litigation's center. This was likely inevitable for several reasons. First, the property tax provided the majority of financial support for k-12 public education nationally when Rodriguez was decided.[15] Second, the tax was already drawing taxpayer vitriol as a result of ongoing litigation in California.[16] Challenges to funding disparities stemming from reliance on prop-

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[9] Id.

[10] Id.

[11] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

[12] Id. at 29.

[13] Id.

[14] John Dayton & Anne Dupre, *School Funding Litigation: Who's Winning the War?*, 57 VAND. L. REV. 2351, 2356 (2004).

[15] From 1957 to 1977, school expenditure data were collected and published as a part of the Annual Government Finance Survey. Those data were reported in dollar amounts. Beginning with the 1978-79 academic year, the Bureau of the Census began to report distribution of Public School System General Revenue data by State in percentage terms. By that time, five years after San Antonio vs. Rodriguez was decided by the United States Supreme Court, nationally on average approximately 45% of funding for public schools was being provided by states. Despite the shift in reporting format, the patterns of support and expenditure are roughly comparable.

[16] See Serrano v. Priest, 487 P.2d 1241, 1244 (Cal. 1971) [hereinafter Serrano I].

erty tax revenues for funding were at the heart of California's Serrano cases.[17] In Serrano I,[18] two years before Rodriguez, the California Supreme Court held that the state's method of school funding violated the equal protection clause in both the United States and California constitutions. Five years after Rodriguez was decided, the California Supreme Court in Serrano II[19] held that state's method of school funding unconstitutional based solely on the California constitution. By then, challenges to school funding were completed or underway in a number of other states.[20] Further, political discourse in the 1970s was powerfully influenced by a nationwide anti-tax sentiment.[21] Congress had held hearings in 1973 in conjunction with failed Senate Bill 1255, "a bill to provide for a program of assistance to state governments in reforming their real property tax laws and providing relief from real property taxes for low-income individuals, and for other purposes."[22] These hearings were merely the tip of the iceberg; anti-tax activity was nascent in a number of states with California once again in the forefront of that movement.[23] Finally, the Supreme Court may have inadvertently contributed to the intensive focus on the elimination or modification of the tax as the heart of the funding disparities by virtue of critical comments made in handing down the Rodriguez decision. Justice Powell, in concluding the majority opinion noted that the Court had not placed its "judicial imprimatur on the status quo."[24] He continued: "[t]he need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax"[25] (emphasis added).

The cumulative effect of this broadly targeted negative sentiment has played a role in limiting the perceived range of options for school finance in the four decades since Rodriguez was decided. Whether well-advised or not, questions of finance from that point to the present have consistently treated limiting reliance on the use of the property tax as a primary objective. I

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[17] Kirk Stark & Jonathan Zasloff, Tiebout and Tax Revolts: Did Serrano Really Cause Proposition 13?, 50 UCLA L. REV. 801, 804 (2003).
[18] Serrano I, at 1244.
[19] Serrano v. Priest, 557 P.2d 929, 957–58 (Cal. 1976), supplemented, 569 P.2d 1303 (Cal. 1977) [hereinafter Serrano II].
[20] See e.g., Robinson v. Cahill, 303 A.2d 273, 291 (N.J. 1973) (explaining the "thorough and efficient" standard required equal educational opportunity); see also Olsen v. Oregon, 554 P.2d 139, 140 (Or. 1976).
[21] E.g., Robert F. Messinger, The Golden State v. the Silver State or State Taxation of Nonresidents' Pension Income, 2 ELDER L.J. 97, 98 (1994).
[22] Property Tax Relief and Reform Act of 1973: Hearing on S.B. 1255 Before the Subcomm. on Intergov*ernmental Relations of the S. Comm. on Gov't Operations*, 93d Cong. (1973).
[23] See generally DAVID O. SEARS & JACK CITRIN, TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA 2 (1928).
[24] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 58 (1973).
[25] Id.

submit that this strategy is currently proving particularly costly for public education. Additional support for public education can be realized with the property tax as an important part of that calculus and without imposing an undue additional burden on taxpayers.

The need to successfully address the present financial structure is clear. Currently available data helps establish that both inter-state[26] and intrastate[27] funding gaps persist for public education. Each level of government has continued to experience financial difficulties as the national economy continues to slowly rebound from the 2008 recession, a slow recovery that is expected to persist.[28] This economic reality jeopardizes any hope of achieving equity[29] over the long-term and more immediately threatens strides that have been made towards adequacy.[30] As one commentator put it: "Real concerns exist that state budget shortfalls will result in the type and magnitude of cuts in k-12 state aid that will either create or exacerbate inequities in resources available to those students most at risk of academic failure."[31] Further, reports reflecting levels of expenditure for public education for the last few years are gloomy; many states are cutting back on support.[32]

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[26] See THE EQUITY AND EXCELLENCE COMM' N, FOR EACH AND EVERY CHILD -- A STRATEGY FOR EDUCATION EQUITY AND EXCELLENCE 18 (2013) ("Wide disparities in funding levels among the states ranged from a low of $6,454 per pupil in Utah to $18,167 in New York in 2010.") (citing NAT'L CTR. FOR EDUC. STATISTICS, REVENUES AND EXPENDITURES FOR PUBLIC ELEMENTARY AND SECONDARY EDUCATION: SCHOOL YEAR 2009-10 (FISCAL YEAR 2010) 11-12 (2012)).

[27] See id. ("Funding also varies across districts within states. In most states, the highest-spending districts pay about twice as much per pupil as the lowest-spending districts. In some states, like California, the ratio is more than 3-to-1.").

[28] U.S. GOV'T ACCOUNTABILITY OFFICE, STATE AND LOCAL GOV'T'S FISCAL OUTLOOK 1 (April 2013 Update), available at www.gao.gov/assets/660/654255.pdf ("The state and local government sector continues to face near-term and long-term fiscal challenges which add to the nation's overall fiscal challenges. As shown in figure 1, the state and local sector faces a gap between revenue and spending and long-term fiscal challenges that grow over time. The model's simulation shows that the fiscal position of the sector will steadily decline through 2060 absent any policy changes.") The model attributes looming fiscal difficulties for the state and local sector to rapidly rising health care costs. It does not speak to the expense of providing public education at all. It assumes, in general, constancy in policies presently in place across state and local governments.

[29] I define "equity" to mean that the base amount set for each school district's per-pupil funding is supplemented to the extent necessary in order to address variations in educational needs and socioeconomic conditions. As such, it is not predicated upon absolute equality in comparative expenditures. See News from the Access Network, California Legislature Approves Reform Funding Legislation, National Education Access Network, July 10, 2013, at 2.

[30] "Adequacy" here means that level of expenditure sufficient to provide a sound basic education. In practice, its content will vary from state to state. See MICHAEL A. REBELL, EDUCATIONAL ADEQUACY, DEMOCRACY, AND THE COURTS 235 (2001), available at http://www.schoolfunding.info/resource_center/research/adequacychapter.pdf.

[31] See Faith E. Crampton & David C. Thompson, The Road Ahead for School Finance Reform: Legislative Trends 2011 and Beyond, 37 J. EDUC. FIN. 185, 196 (2011).

[32] See PHIL OLIFF, CHRIS MAI & MICHAEL LEACHMAN, CTR. ON BUDGET AND POLICY PRIORITIES, NEW SCHOOL YEAR BRINGS MORE CUTS IN STATE FUNDING FOR SCHOOLS 1 (2012), available at www.cbpp.org/files/9-4-12sfp.pdf (The report indicates that school funding has now fallen below pre-

Funding for the support of public education can be stabilized. Because support of public education is a classic example of fiscal federalism in action, I use this issue as a case study and identify ways in which the effort to achieve stable equitable funding for public schools has been undermined on the local, state, and federal levels of government as a result of both deliberate policies and unintended consequences. Moreover, I submit that financial stabilization can be achieved without identifying new sources of funding. Instead, stabilization must have at its base a revitalized ad valorem property tax; state resources that reliably defray local shortfalls; and federal assistance that supports the subnational effort.

I describe how this can be accomplished. Briefly, policy makers must be attuned to the characteristics of policy possibilities and revenue capacities on each level of government. This process implicates a basic understanding of the property, retail sales, and income taxes. Policy-makers must understand how present financial practices and decisions undermine local and state financial capacity. Issues of ultimate administration of the property tax must be highlighted and resolved in a complimentary manner. Finally, I distinguish between the challenges of establishing and maintaining appropriate support of public education that is stable enough to withstand the financial stresses uniquely and inextricably a part of cyclical economic behavior, especially economic downturns, and management during periods of greater economic exigency. I conclude by identifying complimentary actions policy makers should take on each level of government in order to respond appropriately to the differing challenges of this reimagined mutual effort.

III. SCHOOL FUNDING AFTER RODRIGUEZ: FROM INADEQUATE LOCAL AUTONOMY TO PROBLEMATIC FISCAL FEDERALISM

Efforts to reform finance of public education have both succeeded and failed in the state courts.[33] In the aftermath of Rodriguez, most states took

recession levels with thirty-five states providing less funding per student than they did five years ago).

[33] See David Card & A. Abigail Payne, School Finance Reform, the Distribution of School Spending, and the Distribution of Student Test Scores, 83 J. PUB. ECON. 49, 52-54 (2002) (showing that from 1975 to 1991, twelve state Supreme Courts found their school financing systems unconstitutional: Arkansas, California, Connecticut, Kansas, Kentucky, Montana, New Jersey, Texas, Washington, West Virginia, Wisconsin and Wyoming. Courts in fifteen states found the system satisfied the state constitution: Arizona, Colorado, Georgia, Idaho, Louisiana, Maryland, Michigan, Minnesota, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, and South Carolina. In twenty-one states, there was either no decision or no challenge: Alabama, Delaware, Florida, Illinois, Indiana, Iowa, Maine, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Tennessee, Utah, Vermont, and Virginia); NAT'L EDUC. ACCESS NETWORK, LITIGATION CHALLENGING CONSTITUTIONALITY OF K-12 FUNDING IN THE 50 STATES (2013), available at http://schoolfunding.info/wp-content/uploads/2013/07/Litigations-Challenging-Constitutionality-of-K-

steps to reform funding of public education addressing in some fashion poorer school districts' ability to be self-sustaining because of property wealth disparities, sometimes irrespective of the litigation outcome.[34] Although, the federal government continued to provide financial assistance federal funds did not constitute a significant percentage of monies spent.[35] Thus changes in the allocation of responsibility for funding public education, though comparatively uneven from state to state, followed in Rodriguez*'s* wake.[36]

As states assumed a larger role in funding public education, whether in the wake of litigation or shifting policy, the objective evolved from equality

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12-Funding.pdf, (as of July 2013, of the twenty-one states in the "no decision or no challenge" category, there remained only five states in which K-12 funding remained unchallenged: Delaware, Hawaii, Mississippi, Nevada, and Utah.); NAT'L EDUC. ACCESS NETWORK, "EQUITY" AND "ADEQUACY" SCHOOL FUNDING LIABILITY COURT DECISIONS (2013), available at http://schoolfunding.info/wp-content/uploads/2011/07/'Equity'-and-'Adequacy'-School-Funding-Decisions-by-Outcome2.pdf, (for this same group of states, plaintiffs have pressed winning claims in Massachusetts, New Hampshire, New Mexico, and Vermont.). In short, matters of school finance remain heavily litigated.

[34] Card & Payne, supra note 33, at 55, (showing data that refers to the states in which there had been litigation between 1975 and 1991. In the twelve states in which the school financing system had been held unconstitutional, five changed their systems. Changes were made in twelve of the fifteen states finding no constitutional violation. For the twenty-one states in which there had been no challenge, twelve changed their financing systems); id. at 67 (showing that the extent of change varied dependent upon whether or not there had been a finding of unconstitutionality. Though many states increased the extent to which state aid was allocated to low-income districts, the per student gap in state aid was greater where the financing system was found unconstitutional with statistically significantly greater aid going to low-income districts. Put slightly differently, states provided more aid to poorer districts in this group of states); see also Jeffrey S. Sutton, San Antonio Independent School District v. Rodriguez and Its Aftermath, 94 VA. L. REV. 1963, 1971–72 (2008) ("In the years before Rodriguez, and in the thirty-five years since, most state legislatures embraced wealth-equalization formulas for funding their public schools. Most states, whether before Rodriguez or after, adopted a foundation program, which represented a first step toward addressing property-wealth variations by guaranteeing a minimum amount of combined state and local funding regardless of how little money a school district contributed. By the mid-1970s, 18 states had improved on foundation programs by embracing variations on the "district power equalizing" approach advocated in Rodriguez.").

[35] See CONG. BUDGET OFFICE, BUDGET ISSUE PAPER, ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION: AN EXAMINATION OF ALTERNATIVE FEDERAL ROLES 11 (1977), available at http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/113xx/doc11375/1977_01_vocational.pdf (showing that from 1963-64 to 1975-76, federal support for all elementary and secondary schools ranged from 4.5% to 7.0%. In 1973-74, the federal contribution constituted 7.3% of such expenditures. The largest federal infusion of funds during this period occurred in 1971-72 when federal funds constituted 8.6% of expenditures by all elementary and secondary schools).

[36] THE OXFORD HANDBOOK OF STATE AND LOCAL GOVERNMENT FINANCE 524 (Robert D. Ebel & John E. Peterson, eds. 2012) (describing in one source the reactions to lawsuits across the states as follows: "First, not all lawsuits were favorable to the plaintiffs. One reason that courts sometimes rejected school-funding lawsuits was that policy judgments about public education were the responsibility of the state legislature. For example, the highest court in Massachusetts observed, "Because decisions about where scarce public money will do the most good are laden with value judgments, those decisions are best left to our elected representatives." Second, not all state legislatures reconstructed their school finance systems in response to a court mandate. In Ohio, where the school finance system was first ruled unconstitutional in 1997, as of 2007 the legislature had yet to reconstruct its school funding system. Finally, some states, such as Michigan, chose to reconstruct their school finance systems without being mandated to do so by a school-funding lawsuit.").

to adequacy and, beyond mere adequacy, adequacy with equitable overtones. An exhaustive discussion of the equality vis-à-vis adequacy or adequacy with equity evolution is well beyond the scope of this essay but a very rudimentary understanding of that evolution is useful. The initial aspirational objective of increased state funding, from the standpoint of the plaintiffs in Serrano and Rodriguez, was absolute equality in public school expenditures.[37] In order to close the funding gap between the richest and poorest school districts and provide educational opportunity regardless of the child's zip code, plaintiffs in this first wave of school finance cases sought to compel each state to provide an equal amount of support for each and every child. Equality per se, whether for financial or political reasons, did not become the norm.[38]

In the next wave of finance litigation, "adequacy" in financial support became the goal; local support supplemented by the state so as to enable each public school district to provide some legislatively determined minimal level of education.[39] Adequacy and equality are not necessarily coextensive. Once adequate expenditures as determined under state policy are deemed attained, state funding responsibility ends. Individual school districts remain free to spend additional amounts as they wish to in support of local schools. As matters presently stand, and regardless of the extent to which states moved to close their respective financial gaps, "adequacy" in funding appears to have become the prevailing standard. In general, a majority of states provided, and continue to provide, some pre-determined minimum support per student through foundation programs, even though the level of support is never stated in absolute dollar terms.[40] Many states,

[37] See Serrano II, 557 P.2d at 964 (Clark, J., dissenting) (noting that the majority had effectively required "absolute equality" in education); San Antonio Indep. Sch. Dist. v. Rodriguez, 337 F. Supp. 280, 285–86 (1971).

[38] Jeffrey S. Sutton, San Antonio Independent School District v. Rodriguez and Its Aftermath, 94 VA. L. REV. 1963, 1982 (2008) (with the caveat that "equity" should more accurately be read as "equality" in the following passage, one writer characterizes the policy and political choices to be made in this way:

"[A]ny policymaker or court that wants true equity must establish not just a rational floor of adequate school-district spending but a ceiling as well. True equity, indeed, requires that floor and the ceiling to be the same, or at least close to the same after accounting for cost-of-living differences within a State. But a ceiling requires capping of some sort, and the States that have tried it have gotten nowhere. Whether it was California, Washington, Colorado or Vermont, all either lacked the political will to enforce the ceiling or slipped too many loopholes into the capping laws to establish meaningful equity.").

[39] See Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 195 (Ky. 1989); see also Augenblick et al., Equity and Adequacy in School Funding, 7 FUTURE OF CHILDREN 63, 69 (1997).

[40] Id. at 65 (noting the foundation program guaranteeing some minimal per pupil expenditure as a starting point is the chosen mechanism for achieving this purpose in most states); see also Deborah A. Verstegen & Robert C. Knoeppel, From Statehouse to Schoolhouse: Education Finance Apportionment Systems in the United States, 38 J. EDUC. FIN. 145, 150–54 (2012) (noting Profs. Verstegen and Knoeppel describe the major state finance systems now in place. They include Foundation Programs (36 states); District Power Equalizing (3 states); Full State Funding (1 state); Flat Grant (1 state); and a

however, tailored adequacy to require something more than minimal adequacy.[41] As the states raised standards, foundation funding was increased in a complimentary manner.[42] Finally, that support varied dependent upon the general character of the school district, for example, rural vs. urban.[43] As such, where this factor was considered, states further supplemented local financing in order to subsidize costs of living differentials.[44]

Regardless of the standard in place, however, adequacy implemented simply by providing some pre-determined amount of support, even as adjusted to take district developmental character into account, that is, urban vs. rural, was questioned. The seminal concern remained funding needs driven by socioeconomic factors.[45] The hypothesis that equal amounts spent in two different school districts with different socioeconomic characteristics will quite likely generate different results has been addressed in a substantial body of research.[46] Though there is no absolute consensus, the proposition that socioeconomic background appears to affect educational outcomes is credible.[47] Students in underfunded districts continue to demonstrate overall lower levels of achievement.[48] Poorer school districts are unable to generate sufficient resources from district property tax rolls and need relatively greater amounts from state resources in order to close the gap.[49] As such, school districts serving concentrations of poorer children, poorly supported from local resources, will require relatively more support from state sources in order to meet the declared standard than will schools in richer districts.

A substantial minority of states began to address their perceived need for comparatively higher funding needs for poorer school districts through foundation plans that used either a minimal grant however defined as a starting point (rather than a flat grant) or a variable grant approach.[50] These policy makers have begun to go beyond adequacy, perhaps in response to judicial prodding, perhaps persuaded that there exists a link between spend-

combination approach (9 states)).

41 See Verstegen & Knoeppel, supra note 40, at 150–56.

42 Id. at 154.

43 Id. at 155.

44 Id. at 152.

45 See Card & Payne, supra note 33, at 56.

46 See, e.g., id. at 68 n.24.

47 See Robert H. Bradley & Robert F. Crown, Socioeconomic Status and Child Development, 53 ANN. REV. PSYCHOLOGY 371, 375–77 (2002).

48 See Joe Rucklick, Kids in Underfunded Schools Score Lower on Tests, CHI. DEFENDER, Oct. 13, 2001, at 1 available at http://search.proquest.com/docview/247069592/fulltext/1410857B492683305A9/-12?accountid=14731.

49 See Verstegen & Knoeppel, supra note 40, at 146.

50 See Card & Payne, supra note 33, at 52–54.

ing and educational outcomes.[51] In this subset of states minimal, but adjustable, foundation programs or variable grant programs contribute to the effort to move toward equity in school funding.[52]

Measuring the extent to which equity has been effectuated remains an elusive task. It is quite difficult either to definitely establish an aggregate cost for equity or to determine the extent to which it is actually achieved.[53] Several different methods have been used in this attempt. Relatively straightforward comparisons have considered local costs, local "effort," or per-pupil expenditures adjusted for variations in student need.[54] Alternatively, the effort may also be deeply data intensive, predicated upon statistical analyses of a variety of factors.[55] One 1990 analysis, for example, concluded that no more than seven of the fifty states had achieved a high degree of equity in educational finance.[56] Relying upon a variety of approaches, a 2011 study concluded that while expenditure inequalities remain pervasive, a handful of states have begun to somewhat close the gap. It reaches this conclusion, however, much more cautiously than the 1990 report.[57] Two caveats qualified the 2011 conclusion: the several analytical methods did not overlap and policymakers and advocates may not have clearly identified policy goals.[58] In fact, the list of states deemed to have made progress towards greater equity varied dependent upon the evaluative method used.[59] Despite that imprecision, this point was certain: though some states have begun to address equity concerns, overall poorer school districts remain relatively poorer.[60] "Equity" in public education finance has been and likely remains aspirational.

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[51] For a helpful discussion of this debate, see ANNA LUKEMEYER, COURTS AS POLICYMAKERS: SCHOOL FINANCE REFORM LITIGATION 12–14 (2003).

[52] See Card & Payne, supra note 33 at 52–53, Table1.

[53] This is necessarily the standard for comparison for two principal reasons: (1) there are no meaningful national data allowing this kind of comparison to be made; and (2) intra-district data appear not to be reported in a format permitting school-to-school comparisons. Id.

[54] Bruce D. Baker et al., Is School Funding Fair? A National Report Card, 5 (Sept. 2010), http://www.schoolfundingfairness.org/National_Report_Card.pdf.

[55] Id at 7.

[56] See Augenblick et al., supra note 39, at 73. The latter comparison is predicated upon the coefficient of variation. It measures the funding levels of all of the districts in a state and determines how tightly they are clustered. The tighter the cluster, the greater the deemed degree of equity. As of 1990, these authors report that "the level of equity was relatively high in 7 states; moderate in 38 states; and low in 4 states." Id. If the data are analyzed slightly less generously, the numbers of states deemed to have achieved moderate equity drops to 26 and those achieving low equity rises to 15.

[57] Compare id. (concluding that seven states have high fiscal equity using a moderate measurement), with Diana Epstein, Measuring Inequity in School Funding, CTR. FOR AM. PROGRESS, 16–17 (Aug. 2011) (concluding that the data is incomplete and a more comprehensive measurement is needed).

[58] Epstein, supra note 57, at 14.

[59] Id.

[60] See id. at 14–17. There is also a quite startling inter-state spread. For example, New York spends more

Finally, as noted earlier, the federal role in financing public education has remained quite limited from 1973 to the present.[61] This level of involvement is consistent with the federal role in k-12 public education over time. The federal government has never assumed a direct significant financial role in supporting public education. The level of federal support provided through direct subsidies has been and remains in the ten percent range. Further, federal support has historically been earmarked for particular programs, usually of a compensatory nature.[62] This means that state and local governments do not have unrestricted use of federal funds; subnational use of federal funds to to tailor educational programs to meet specific local needs has been circumscribed.[63]

Clearly, the present onus for funding public education is borne, though unevenly, by all three levels of government. States have assumed financial responsibility in a different manner after Rodriguez. From very substantial reliance by local school districts on local property taxes for funding, increased state participation in financial support for public education has opened state tills.[64] This expanded state role has stopped short of full funding, however; Hawaii is the only state that has assumed sole responsibility for funding public education.[65] In all other states, levels of participation continue to evolve.

At a minimum, this very brief discussion establishes that determining how and to what extent to fund public education remains a work in progress. Though equity concerns are being addressed in many states, equity remains largely aspirational. Adequacy also remains, at best, under-realized; states by their own terms have not yet succeeded in adequately educating all of the students enrolled in their public schools. This is evidenced in several ways. Internationally, American schoolchildren are increasingly

than $15,000 annually on its students; Tennessee spends slightly more than $8500. See id. at 5. In the absence of a federal Constitutional right to education, however, this is not a primary focus.

[61] Daphne A. Kenyon, Providing and Financing K-12 Education, in OXFORD HANDBOOK OF STATE AND LOCAL GOVERNMENT 530 (Robert D. Ebel & John E. Petersen, eds., 2012).

[62] See id. ([Federal support has been provided primarily through Title I] "to improve the academic achievement of disadvantaged, poor children"); and the Individuals with Disabilities Education Act ("IDEA"). Id. Because these are categorical programs, continued receipt of these funds is predicated upon documented use for the designated purposes. Id.

[63] See id. This observation is predicated upon the assumption that pupil needs targeted through these programs were not otherwise being met by states. There is the possibility that fungible state money that would otherwise be used for these purposes could then be redirected to some other use – whether educational or not.

[64] See Verstegen & Knoeppel, supra note 40, at 150–154 (2012). The major state finance systems now in place include Foundation Programs (36 states); District Power Equalizing (3 states); Full State Funding (1 state); Flat Grant (1 state); and a combination approach (9 states). Id. at 151.

[65] Id.

less competitive.[66] Further, a troubling achievement gap persists as classrooms become increasingly segregated by race and socio-economic status.[67] Students in underfunded districts continue to demonstrate overall lower levels of achievement and poorer school districts remain relatively underfunded.[68]

All of this has become even more difficult in the present economic environment. Most recently, as the economic effects of the 2008 recession continue to reverberate, states and localities have been cutting funding for public education.[69] A short review of the characteristics of revenue streams on each of the three levels of government usefully provides the context for understanding the inevitability of the current cutbacks.

IV. LESSONS FROM FISCAL FEDERALISM

There exists an important difference between funding sources for state vis-à-vis local governments generally. Local governments continue to rely to a significant degree on revenues from real property taxes in order to fund public services.[70] These public services include public education, which is arguably local government's single most important activity. In contrast, states rely primarily on a combination of retail sales taxes and state individual taxes for revenues.[71]

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[66] See THE EQUITY AND EXCELLENCE COMM'N, U. S. DEP'T OF EDUC., FOR EACH AND EVERY CHILD – A STRATEGY FOR EDUCATIONAL EQUITY AND EXCELLENCE 12–13 (2013), available at http://www2.ed.gov/about/bdscomm/list/eec/equity-excellence-commission-report.pdf ("In the OECD's Programme for International Student Assessment (PISA) rankings for 2009, the United States was 27th in math. . . . In terms of 'advanced' performance on math, 16 countries produced twice as many high-achievers per capita as the United States. Indeed, in mathematics, only one in four of America's 52 million K-12 students is performing on par today with the average student in the highest-performing school systems in the world – which are now in Singapore, Hong Kong, Finland, Taiwan and South Korea.").

[67] See, e.g., GARY ORFIELD & CHUNGMEI LEE, BROWN AT 50: KING'S DREAM OR PLESSY'S NIGHTMARE? 3 (2004), available at http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-50-king2019s-dream-or-plessy2019s-nightmare/orfield-brown-50-2004.pdf.

[68] Id. at 21–22.

[69] See Michael Leachman & Chris Mai, Most States Funding Schools Less Than Before the Recession, CTR. ON BUDGET & POL'Y PRIORITIES 1 (Sept. 12, 2013), http://www.cbpp.org/files/9-12-13sfp.pdf.

[70] See, e.g., Gregory K. Ingram & Hal Woman, Foreword to EROSION OF THE PROPERTY TAX BASE: TRENDS, CAUSES, AND CONSEQUENCES, at vii, vii (Nancy Y. Augustine, et al. eds., 2009) [hereinafter EROSION OF THE PROPERTY TAX BASE] ("The property tax is a major source of revenue for local governments in the United States now comprising nearly half of own source revenue and underpinning the provision of core local government services.").

[71] See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 287–89, Tables 452 & 453 (2012), available at http://www.census.gov/prod/2011pubs/12statab/stlocgov.pdf. Seven states do not collect personal income: Alaska, Florida, Nevada, South Dakota, Texas , Washington, and Wyoming. See id. at 289, Table 453. New Hampshire and Tennessee tax investment income but not wages and salaries. Which States Rely on Which Tax, NAT'L CONF. OF ST. LEGISLATURES 2,

The revenue reliance difference has several important implications. Generally speaking, the base for the property tax is the fair market value of property annually determined.[72] The cyclical nature of base determination means less volatility in revenues generated therefrom. In short, though an economic downturn may bring with it reduced real property values, because property values are annually assessed, declines in value will take a cycle or two to become extant. There will be some lag time between economic slowdown and decline in property value. For this reason, revenues from property taxes will remain more stable during recessionary periods and, dependent upon the depth of recessionary activity, property taxes may be entirely inured from reduced productivity.

On the other hand, retail sales taxes and income taxes are much more volatile.[73] As employment levels stagnate or unemployment rises, incomes diminish.[74] Inevitably, diminished economic activity reduces consumer spending, and income tax collections and state revenues correspondingly decline. Further, the decline is likely to be both much more immediate and more precipitous than would be true in the case of the property tax. In short, the property tax is relatively more inelastic and less volatile than income and retail sales taxes. These characteristics manifestly affect public school funding.

As noted earlier, post Rodriguez states moved toward assuming significantly increased funding responsibility for public education though local property tax revenues continued to provide a substantial portion of funds expended.[75] The realignment of funding sources, however, brought with it the risks inextricably intertwined with a given revenue source. In this instance, property tax funding, which proved relatively stable, though inadequate, because of sometimes great variations in the value of underlying tax rolls, was increasingly supplemented and in Hawaii replaced entirely by state funding that has proven more generous but also more volatile. In short,

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http://www.ncsl.org/documents/fiscal/WhichStatesRelyonWhichTax.pdf (last visited Oct. 11. 2013). On average, personal income taxes constitute thirty-seven percent of all state revenues. See id. at 288–89, Table 453. Forty-five states currently tax general sales; Alaska, Delaware, Montana, New Hampshire and Oregon do not. See id. at 288, Table 453. On average, one third of state revenues are derived from sales taxes. See id. The balance of collections is from property, corporate, excise, and severance taxes and a variety of fees and charges. See id. at 288–89, Table 453.

72 Woods Bowman et al., Preferential Treatment of Property Used for Social Purposes: Fiscal Impacts and Public Policy Implications, in EROSION OF THE PROPERTY TAX BASE, supra note 70, at 270.

73 Elizabeth McNichol, Strategies to Address the State Tax Volatility Problem: Eliminating the State Income Tax Not a Solution, CTR. ON BUDGET & POL'Y PRIORITIES 1, 3, 11 (Apr. 18, 2013), http://www.cbpp.org/files/4-18-13sfp.pdf.

74 Id. at 3.

75 See Card & Payne, supra note 33, at 52–53; Verstegen & Knoeppel, supra note 40, at 150–52.

reliance on state sources of revenue simultaneously provided increased funding for public education and introduced unanticipated funding instability as state economies expanded and contracted in sync with the national economy.

The effect of this endemic volatility in state revenue has been clearly evidenced by recent reductions in support.[76] The most recent prolonged economic downturn has provided a particularly trenchant example of the financial perils of relying heavily on state revenues for support of public education. This effect would have quite likely gone unnoticed in the years following Rodriguez; prior to the most recent recession the national economy had consistently expanded with relatively short periods of contraction.[77] State economies tracked the national economy.[78]

V. THE PRESENT LOCAL-STATE FUNDING ENVIRONMENT

In a best case scenario state and local governments could, as partners, renegotiate the terms of public school finance making the financial accommodations necessary to stabilize funding. Ideally, any effort to stabilize funding would be predicated upon an informed accommodation of the comparative characteristics of revenue sources thus avoiding a reprise of the patterns of reliance that have led to the current financial troubles. This scenario is not possible in the present environment. In the four decades that have elapsed since Rodriguez, monumental shifts in the fiscal relationship between states and locals as well as significant changes in the relative political power of the several players have occurred. Both sets of factors now inevitably and profoundly affect the future of this.

A. States vis-à-vis Local Governments

1. Fierce Criticism of the Property Tax

Taxpayer resistance to the property tax ran deep during the 1970s and Californians were at the epicenter of that unrest.[79] Opposition to the tax was built on a coalition of taxpayers having varying complaints. One set of property owners objected to rapidly escalating property tax burdens driven

[76] OLIFF ET AL., supra note 32, at 1.
[77] See US Business Cycle Expansions and Contractions, NAT'L BUREAU ECON. RES., 1 (Apr. 23, 2012), http://www.nber.org/cycles/US_Business_Cycle_Expansions_and_Contractions_20120423.pdf.
[78] Cf. Rebecca M. Hendrick & James C. Garand, Variation in State Economic Growth: Decomposing State, Regional, and National Effects, 53 J. POL. 1093, 1100–01 (1991).
[79] ALVIN RABUSHKA & PAULINE RYAN, THE TAX REVOLT 1–2 (1982).

by rapidly appreciating assessed values subjected to unchanged tax rates.[80] On the other hand, litigation challenging unequal public school funding attributable to underlying variations in property tax rolls resulted in the judicial directive to redistribute "excess" collections to poorer school districts, a prospect deemed completely unacceptable to another set of property owners.[81] California's Serrano decisions, ultimately finding constitutionally deficient that state's reliance on the property tax to fund public education, are thus thought by many to have played an important role in fomenting the taxpayer resistance that ultimately led to that state's constitutional amendment, popularly known as Proposition Thirteen.[82] In 1978, through citizen initiative, California amended the California constitution in a manner that imposed significant limitations on the extent to which the property tax could be utilized to fund local government in general. California was not the only state in which taxpayers proactively sought collectively to limit what was popularly perceived to be an unacceptably excessive property tax burden.[83] The California experience provided a catalyst to a movement that had national ramifications. Comparable state-based taxpayer activity was widespread during the early 1970s.[84]

There was also national fallout. During his 1972 State of the Union address, President Richard Nixon declared that "[t]he property tax is one of the most oppressive and discriminatory of all taxes" and later that year pledged to "make my final recommendation for relieving the burden of property taxes."[85] In 1973 Congress held hearings on the property tax.[86] The importance of the tax as a revenue source was clear; local governments relied almost exclusively on the tax for revenues. It is also clear, however, that the tax was generally perceived to be a little understood administrative disaster, deeply resented by taxpayers, characterized by administrative misfeasance (if not malfeasance), and with little transparency. Ralph Nader's

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[80] Id. at 10–11.

[81] See William A. Fischel, Did Serrano Cause Proposition 13?, 42 NAT'L TAX J. 465, 465 (1989).

[82] Id. at 467 (discussing voter response to the landmark 1971 decision of Serrano v. Priest).

[83] TJ Holmes, Are You Paying Excessive Property Taxes?, CNN NEWSROOM, Apr. 4, 2010, http://newsroom.blogs.cnn.com/2010/04/02/are-you-paying-excessive-property-taxes/.

[84] See, e.g., Steven Hayward, The Tax Revolt Turns 20, POL'Y REV. 9, (1998) ("Within two years of [the adoption of California's Proposition 13], 43 states implemented some kind of property-tax limitation or relief, 15 states lowered their income-tax rates, and 10 states indexed their state income taxes for inflation."); see also David M. Cutler et al., Restraining the Leviathan: Property Tax Limitation in Massachusetts, 71 J. PUB. ECON. 313, 315 (1999) (discussing Proposition 2 and ½, a successful 1980 ballot initiative to reduce property taxes). With regard to property tax limitations only, however, anti-tax activity has persisted. Prof. Sokolow reports that between 1970 and 1995, forty-two states adopted at least 68 measures likely surpassing the number of such measures in any comparable quarter in American history. Alvin D. Sokolow, infra note 120, at 170.

[85] Property Tax Relief and Reform Act of 1973, Hearings Before the Subcomm. on Intergovernmental *Relations of the S. Comm. on Gov't Operations*, 93d Cong. 788 (1973) [hereinafter Hearings].

[86] Id. at 742–43.

comments during an earlier set of hearings accurately summarized the litany of complaints. Nader "charged that 'the property tax is one of the most maligned and least understood subjects of public and official discussion today.'"[87] He contended that the property tax had become oppressive to homeowners because, among other things, as applied it was "rife with corruption, favoritism, antiquated laws, and secrecy."[88]

The recommendations made for improvement by Nader and others became a matter of record but little else. The hearings contributed nothing to the improvement of the tax. Despite strides to advance the administration of the tax, no action was taken on "A Bill to Provide for a Program of Assistance to State Governments in Reforming Their Real Property Tax Laws and Providing Relief from Real Property Taxes for Low-Income Individuals, and for Other Purposes" offered by Mr. Muskie (D-Maine) and others.[89] Rather, at the end of the day, the hearings seemed only to have provided grist for the "eliminate-the-property-tax" mill. Any chance on the federal level to secure a commitment of resources to support the continuing professionalization of the tax's implementation and administration was lost.

In short, during this period proactive taxpayers initially located primarily in states permitting citizen initiatives, such as California and Massachusetts, began and dominated a national debate that made property tax limitation an urgent agenda item across the country.[90] As described in the next sections, the movement to limit the property tax literally took on a life of its own in the vast majority of states, including non-initiative states.

2. The Loss of Local Control; State Appropriation of Property Tax Policy

Against this backdrop, the developments in the states during the four decades since 1973 are unsurprising. Legislative activity throughout that period has been replete with the imposition of expansive tax and expenditure limitations (TELs), cumulatively significantly diminishing the tax's revenue productivity. Overall tax limitations have been enacted in virtually every state and have been both general through, for example millage limits,[91] rate increase limits,[92] assessment limitations;[93] and specific,[94] such as

[87] Id.

[88] Id. at 743.

[89] Id. at 241–61.

[90] Glynn W. Fisher, History of Property Taxes in the United States, ECON. HISTORY, http://eh.net/encyclopedia/article/fisher.property.tax.history.us (last visited Sept. 18, 2013).

[91] The property tax is determined in mills with one mill = 1/10 of a cent. See BLACKS'S LAW DICTIONARY 1084 (9th ed. 2009). For example, a parcel of taxable property with an assessed value of $100,000 taxed by a governmental unit having a millage rate of 10 mills will have a property tax bill of

relief targeted by age, disability, or military status. In addition, thirty-six states impose limits on local jurisdictions' ability to generate revenues beyond some specified point, or to make expenditures.[95] The cumulative effect of the combination has been unavoidable. These changes have limited property tax revenue potential, eroded the tax base, and undermined local ability to meet rising costs incident to necessary services. Often these effects have occurred in tandem.

In addition to these broadly cast limitations and targeted relief provisions, states have enacted a smorgasbord of laws enabling a mélange of practices and initiatives.[96] Many fall under the heading of economic revitalization. Some result in locally based initiatives, while others may originate from state agencies.[97] They all, however, share a common characteristic. Like TELs, they, too, compromise the ability to use the property tax to support public education.

The seminal example of local projects compromising the use of the property tax can be drawn from "Tax Increment Financing" (TIF) schemes. One writer described TIFs as "the most widely used local government program for financing economic development in the United States and the District of Columbia."[98] TIF programs have been implemented in forty-nine states, as well as the District of Columbia and across all kinds of communities.[99] In brief, local governments use these programs to subsidize public infrastructure improvements incident to economic revitalization in some defined area.[100] Public costs for such improvements are met by first floating bonds to

$1,000 annually ($100,000x.01).

92 See generally Terri A. Sexton, Assessment Limits as a Means of Limiting Homeowner Property Taxes, in EROSION OF THE PROPERTY TAX BASE, supra note 70, at 117, 118–25. (Assessment limits restrict the extent to which the property tax base (the property's value) can be annually increased for property tax purposes. While Proposition 13 limits the extent of annual increase to 2%, it is by no means the only such limitation presently extant. The extent of base erosion will be driven by the divergence between assessment cap and property appreciation. As the gap between these two values widens (lowering assessment rate and increasing value in property), the rate of erosion in the base will accelerate).

93 Id. at 117, 118–25.

94 John H. Bowman, Residential Property Tax Relief Measures, in EROSION OF THE PROPERTY TAX BASE, supra note 70, at 73, 91 n.29.

95 Bing Yuan et al., Tax and Expenditure Limitations and Local Public Finances, in EROSION OF THE PROPERTY TAX BASE, supra note 70, at 149, 155.

96 Id. at 155.

97 Accord id., at 157.

98 See Richard Briffault, The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government, 77 U. CHI. L. REV. 65, 65 (2010) (providing a general overview of tax increment financing).

99 Id.

100 See id. at 78 (Of note, as originally designed, TIFs were intended to reverse blight. At present, however, the standard for establishment of a TIF has evolved to "something a lot more like 'underdevelopment.'").

fund the project and then by using the increase in property tax collections to pay the interest on those bonds (hence the term tax increment financing). In short, the indebtedness is serviced by the anticipated increase in property tax collections.[101] Thus, as the effort matures and the assessed value of encompassed properties increases, increased collections are not collected by the local government or other affected governmental entities for general use. Instead, increases are earmarked for the enterprise. Without this diversion, rising property values would produce increased tax revenues for the use of the governmental entities having overlapping jurisdictional control.

Two TIF features merit emphasis here: (1) property owners continue to bear liability for the total property tax including amounts levied against the increased value, and (2) the governmental unit in which the TIF is located freezes the assessment base of overlapping districts at pre-improvement levels.[102] The ability to foreclose financial benefits to other entities has been characterized as "[b]y far the greatest moral hazard posed by TIFs."[103] Although national data is not available, the amounts involved are likely substantial. One scholar commented on the absence of either state or national data on the number of TIFs, but observed that studies suggest that the number of such districts could "reach well into the thousands."[104] Another scholar reported that "[e]ven 10 years ago, California TIF districts were estimated to receive 10 percent of all property tax revenue in the state, or $2.1 billion annually, and to have accumulated $51 billion in bonded indebtedness."[105] In Chicago, where former Mayor Richard M. Daly declared TIF "the only game in town," there were 162 TIFs in 2010, covering approximately 30% of the city's area and containing roughly 10% of the tax base."[106] That commenter reported that collections from TIF districts would

[101] See id. at 66.

[102] See Joan M. Youngman, TIF at a Turning Point: Defining Debt Down, ST. TAX NOTES, May 2, 2011, at 321 ("TIFs can be invisible to taxpayers, because the assessor continues to value property as before and the taxpayer continues to pay taxes in the same way. But tax collections are now divided between the portion attributable to values in place at the time the TIF district was established and the portion that represents value increases since then."), available at http://www.lincolninst.edu/subcenters/significant-features-property-tax/upload/sources/ContentPages/documents/State%20Tax%20Notes%20-%20TIF.pdf.

[103] Id. at 324.

[104] Briffault, supra note 98, at 70.

[105] Youngman, supra note 102, at 324; see also William Fulton, Op-Ed., Getting Real About Redevelopment in California, L.A. TIMES, Jan. 12, 2012, http://articles.latimes.com/2012/jan/12/opinion/la-oe-fulton-redevelopment-20120112. (Governor Jerry Brown was successful in ending TIF initiatives in California.)

[106] ROBERT BRUNO & ALISON DICKSON QUESADA, TAX INCREMENT FINANCING AND CHICAGO PUBLIC SCHOOLS: A NEW APPROACH TO COMPREHENDING A COMPLEX RELATIONSHIP, UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN 4–5 (2011) available at http://www.ler.illinois.edu/labor/images/Bruno_Quesada_12152011.pdf.

exceed $500 million in 2010 and 2011.[107] The substantial sums involved led another Chicago commentator to suggest that increases in value incident to the TIFs located there be allocated in their entirety to the support of the city's public schools.[108]

State approved programs that permit local governments to abate property tax liability entirely are even more problematic because the opportunity to collect tax revenue is entirely foregone. Abatement is the key element under Stand Alone Property Tax Abatement Programs (SAPTAPs), as well as other more broadly cast programs that incorporate this feature.[109] The term characterizes programs that afford, to qualifying business property, a partial or complete forgiveness of property tax liability for some predetermined period.[110] Two quite famous beneficiaries of such programs have been Mercedes Benz and BMW,[111] though there have been countless others.[112]

Nationally, such initiatives have become ubiquitous. A 2005 study determined that at that time thirty-five states permitted some form of SAPTAP.[113] This number was increased to forty-two in 2007, following the identification of the seven states that included abatement as a part of a larger economic initiative.[114] These programs remain controversial, as data have not yet definitively established their effectiveness.[115] That debate cannot be resolved here, but this much is certain: local taxpayers may be denied an opportunity for political input, but will nevertheless bear the burden of de-

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[107] Id. at 7.

[108] See Shari S. Lindsey, Comment, A Global-City Status at the Expense of Black and Latino Youth: *How Chicago's TIF Districts Disparately Impact CPS Students*, 6 DEPAUL J. SOC. JUST. 23, 29 (2012).

[109] See Esteban G. Dalehite et al., Variation in Property Tax Abatement Programs Among States, 19 ECON. DEV. Q., 157, 158 (May 2005).

[110] See Robert W. Wassmer, Property Tax Abatement as a Means of Promoting State and Local Economic Activity, in EROSION OF THE PROPERTY TAX BASE, supra note 70, at 221, 222 (defining "SAPTAP").

[111] Adam M. Zaretzky, Are States Giving Away the Store? Attracting Jobs Can Be A Costly Venture, THE REG'L ECON., (Sep. 10, 2013, 02:17 PM), http://www.stlouisfed.org/publications/re/articles/?id=1875. The package offered to Mercedes Benz by the state of Alabama included a $300 million plant (leased to Mercedes Benz for $100 annually); German language and culture classes for employees' children; and tax breaks worth at least $300 million. A comparable package was offered by the state of South Carolina to BMW in a successful attempt to attract an automobile assembly plant.

[112] Id.

[113] E.g., Dalehite, supra note 109, at 161-62.

[114] See Wassmer, supra note 110, at 224.

[115] See Wassmer, supra note 110, at 224–25 (Arguments against SAPTAPs include questionable level of influence of taxes on location decisions; effect of local pro-business expenditures; and the real possibility that enactments of SAPTAPS is a zero-sum game as more and more states jump onto the bandwagon. Arguments supporting SAPTAPS focus on positive effect on business location decisions); see also Kirk J. Stark & Daniel J. Wilson, What Do We Know About the Interstate Economic Effects of State Tax Incentives, 4 GEO. J. L. & PUB. POL'Y 133, 163–64 (2006) (suggesting that Congress "undertake a careful and thorough evaluation of the nationwide effects of state tax incentives").

fraying any incidental increased public costs.[116] For example, employees, suppliers, and patrons of the new plant will use local roads maintained by local public works entities under the oversight of local law enforcement agencies and will take advantage of water and sewer, and other general services. In short, property owners will be entitled to all of the benefits of property ownership in the affected area, including use at will, of these and all other public amenities, but without the burdens of property taxation. Assuming reasonably that the property owned by newcomers is of significant value, foregone property tax collections could be substantial. It is important to note that though there are exceptions, states rarely hold localities financially harmless under these schemes in spite of the expected overall enhancement in economic activity. Put slightly differently, a successful outcome may enhance state revenues through increased state individual income and retail sales tax collections, but local governments are left to defray increased expense without any increase in available resources.

Additionally, practices limiting available resources for public education seem particularly ill informed. Numerous studies have consistently identified an educated base from which to draw employees, as well as effective schools in general as important state attributes for businesses.[117] Limiting or waiving property tax liability undermines a state's ability to invest in education, a resource that has consistently proven important to stimulating economic activity.[118] States would seem well advised to refrain from this kind of counter-productive bargaining.

For all of these reasons, from what had been a source of revenue exclusively under the control of local government, the property tax has devolved into a source of revenue over which states have assumed significant political control. Neither states nor local governments are being advantaged by the tax's relative stability. Instead, the tax is consistently less productive in overall percentage terms because of limitations imposed upon its use.[119] The

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[116] See generally DaimlerChrysler Corp. v. Cuno, 547 U.S. 332 (2006) (holding that Ohio taxpayers lacked standing to sue to stop tax benefits despite the fact that Ohio taxpayers would bear a disproportionate burden of these tax benefits).

[117] See generally Wassmer, supra note 110, at 228 ("[An] educated workforce some firms bring to a locality generate 'agglomeration economies' to local firms in the form of increased productivity (through a greater exchange of ideas or a bigger pool of labor to draw from)....If the firm can reasonably locate elsewhere, it is rational for the jurisdiction to offer an incentive up to the value of these benefits").

[118] See generally Yuan, supra note 95, at 157 ("Local tax and expenditure limitations that target property taxes, traditionally the major source of funding for public education, have led to spending cuts in public schools, higher teacher-student ratios, limited starting teacher salaries, and declined teacher quality, all of which are likely to compromise the quality of educational services.").

[119] See Nancy Y. Augustine et al., The Property Tax Under Siege, in EROSION OF THE PROPERTY TAX BASE, supra note 70, at 1, 2 ("Although the property tax is the largest single source of state and local revenues, the extent of the decline of the property tax is clear. State and local governments raised $335.7 billion in property taxes in 2005, compared with $263 billion from the general sales tax and $240.9 bil-

tax's potential productivity is further undermined by states' propensity toward using property tax relief as one more bargaining chip in packages designed to enhance economic activity.

3. The Local Effect of State Appropriation of Policy

Though local governments are clearly stakeholders in matters pertaining to local finance, they have not played an influential role as these practices have unfolded.[120] In a federalist system of governance, local government officials should play an influential role during the legislative process on matters relating to the financial practices that directly affect local ability to govern. Instead, as local control over the property tax has eroded, representatives of local governments have increasingly been relegated to the role of supplicants to the state having only the latitude afforded to onlookers. In short, the intervening decades have been characterized by a monumental shift in the dynamics of power in the states, and local governments have been the losers.[121]

The previous explanations did not speak to the limitations imposed upon funding for public education. Nonetheless, understanding the effect of these limitations is salient in this context precisely because public education is generally not protected from the overall revenue limiting effects of practices like those described. This is an important point; revenue loss attributable to TELs may adversely affect factors generally considered indicative of the quality of education. For example, though not irrefutable, credible data supports a strong inference that increased student-teacher ratios, lower teacher salaries, and loss of experienced teachers, follow in the wake of TEL-related reductions in funding.[122] The legislative failure to avoid this effect is arguably at odds with the wishes of states' electorates. Available studies

lion from the personal income tax. Local property taxes accounted for 72.4 percent of local tax revenues in 2005 and 45.8 percent of total local general own-source revenues. Fifty years ago, local property taxes raised $14.4 billion in local revenues, which accounted for 87.2 percent of local tax revenues and 69.5 percent of total local own-source general revenues.").

[120] See generally Alvin D. Sokolow, The Changing Property Tax and State-Local Relations, 28 PUBLIUS 165, 165–67 (1998) ("State control over local government revenues has been increasing for more than two decades. Restrictions on local use of the property tax, the traditional top revenue source for local governments in the United States, contribute greatly to this trend….[S]tate actions that eliminate or severely reduce local control over the property tax undercut the political as well as the fiscal autonomy of communities.").

[121] See id. at 181 ("In many states...key decisions about local government revenues have been transferred from local arenas to state capitols….This [makes] local governments and the associations that represent them...more vulnerable to circumstances beyond their control.").

[122] See generally Yuan, supra note 95, at 162–67. "[C]ountrywide school district data...demonstrated that local property tax limitations led to higher student-teacher ratios and lower starting salaries for teachers." Id. at 163.

suggest that, notwithstanding deep and undeniable public resistance to paying taxes in general, the majority of Americans continue to view public education, supported by the property tax, as a matter of paramount importance.[123] While it remains difficult to sort out taxpayer preferences, this sentiment emerges in spite of what appears to be a commonly held view that government at all levels is too big.[124] A compelling argument can be made that public sentiment favors protecting funding for locally provided public education from the effects of limitations as those described.

A handful of states have safeguarded school districts from the effects of TIFs and SAPTAPs.[125] Four of the SAPTAP states protect revenues for public schools, as do eight of the TIF states.[126] Overall, however, state policymakers (and, perhaps, properly informed voters) have failed to provide ex ante global protection for local governments in general, and school districts in particular, during the TELs enactment process.[127]

To bring this part of the discussion full circle, I submit that the argument against the use of the property tax to finance public education has been only partially correct in the last several decades. Without question, funding disparities were inevitable because of wide variances, then and now, in the value of underlying property. Challenges to the legality of those variations were, and remain, warranted. Additionally, as the Congressional Hearings of 1973 demonstrate, the property tax was much vilified during that period due to administrative shortcomings.[128] Presently, the property tax is much better administered,[129] but it has now been hobbled by an assortment of limitations that compromise its revenue-generating potential. It is quite probable that the present, more effectively administered, property tax would

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[123] See generally Bill Simonsen & Mark D. Robbins, Reasonableness, Satisfaction, and Willingness to Pay Property Taxes, 38 URBAN AFFAIRS REV. 831, 844 (2003) (When asked about cutting services to offset the tax loss, 67% of people said they would strongly oppose a service cut to public education); Thomas I. Miller & Michelle A. Miller, *Standards of Excellence: U.S. Residents' Evaluation*s of Local Government Services, 51 PUB. ADMIN. REV. 503, 508 (1993) (Schools were ranked 8th in importance of locally provided services); DAVID O. SEARS & JACK CITRIN, TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA 48, 49 (1982) ("[P]rograms whose benefits are available to everyone, at least in principle, such as police and fire and schools, are more widely favored than those with more specialized clienteles….") (emphasis added).

[124] See Sears, supra note 123, at 70 ("Americans in general, do seem to want 'something for nothing' where government is concerned. They want smaller government and lower taxes, but they want to maintain or even expand services in most areas of state and local government responsibility.").

[125] See NAT'L EDUC. ASS'N, PROTECTING PUBLIC EDUCATION FROM TAX GIVEAWAYS TO CORPORATIONS 18 (2002).

[126] Id. at 15.

[127] Id.

[128] Hearings, supra note 85, at 2 (opening statement of Sen. Edmund S. Muskie, Chairman, Subcomm. Intergovernmental Relations).

[129] Glenn W. Fisher, History of Property Taxes in the United States, EH.NET (Feb. 1, 2010, 6:21 PM), http://eh.net/encyclopedia/article/fisher.property.tax.history.us

bring a quantum of greatly needed stability to public school finance. Moreover, additional local revenues could be generated if the limitations were appropriately modified for school funding purposes. The latter point is of particular import in light of the political dynamics and economic pressures that presently characterize state politics, discussed further below.

B. On the State Level

To reiterate, the state role in financing public education continues to be of compelling importance. On the state level, however, financial difficulty is not a limitation on state modes of generating revenues. Rather, difficulties for states stem from the broadening spectrum of increasingly expensive financial demands.[130] Although states have rapidly expanded their financial role in the k-12, states have long played an important role in supporting public education.[131] Most recently, rapidly increasing healthcare costs have placed enormous pressure on state budgets.[132] Thus, available data reports that the most expensive items at present are healthcare and education in that order.[133] These two areas, along with expenditures for higher education, presently account for more than one-half of most state budgets.[134]

Systematically meeting these increasing financial challenges has been difficult for states. As has been noted, states rely principally upon state income taxes, retail sales taxes, or some combination thereof for revenues. Both of these revenue sources are quite volatile. Legislators attempt to manage this volatility by making appropriate base or rate adjustments in these taxes in periods of particular financial stress. However, as a matter of routine, they are understandably loath to do so. Hence, revenue fluctuation is inevitable as state economies expand and contract in sync with the national economy. States are likely to have little control over the ebb and flow of the larger economy and very limited room for compensatory adjustment in times of financial exigency. This is especially true if financial fluctuation is national in scope, as was the case with the most recent recession.

[130] NAT'L ASSOC. STATE BUDGET OFFICERS, STATE EXPENDITURE REPORT: EXAMINING FISCAL 2010-2012 STATE SPENDING 1 (2012).

[131] Id. at 2 (indicating that from 2010 to 2012, state expenditures for elementary and secondary education constituted an average of 20 percent of all spending).

[132] Id. (indicating that from 2010 to 2012, state expenditures for Medicaid average 23 percent of total expenditures); see also Report: Health Care Spending Slowdown? Not for States and Localities, PEW CHARITABLE TRUSTS (Jan. 29, 2013), http://www.pewstates.org/research/reports/ (last visited Aug. 21, 2013) (finding that health care spending for state and local governments increased 10% in 2011, consuming the largest share of state resources than has been the case since 1987 and health care spending remains a source of fiscal pressure and may double by 2060.)

[133] See id.

[134] NAT'L ASSOC. STATE BUDGET OFFICERS, supra note 130, at 3.

Moreover, states' ability to anticipate and plan adequately for such fluctuations is quite constrained. With the exception of Vermont, all states must maintain a balanced budget.[135] States thus cannot engage in deficit spending. "Rainy day funds," essentially state savings accounts, are maintained in most states and could provide a financial cushion during periods of economic exigency.[136] However, even where they presently exist, these funds have not always proven efficacious. Funds must be appropriately structured with regard to deposits; otherwise, poorly designed rainy day funds would just become one more demand competing for finite state resources.[137] Rainy day funds are dependent for funding upon the same sources that fund state services generally. In periods of economic stress, they may be underfunded and subject to limitations that compromise the extent to which they may be so used.[138] Thus, while creating and maintaining rainy day funds constitute sound state policy, they cannot be funded in the absence of surplus funds available for accumulation, or funds designated for that purpose. These deposits are a line item within state budgets and are not an exception to the requirement for a balanced budget. In short, even with regard to management of rainy day funds, states are expected to construct balanced budgets for some predetermined period and to adhere to those budgets.[139] If revenue

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[135] See NAT'L CONF. STATE LEG., NCSL FISCAL BRIEF: STATE BALANCED BUDGET PROVISIONS 2 (2010). The balanced budget requirement generally speaking applies to appropriations from the state's general fund, important to recognize in this context since in the vast majority of states the general fund is the source of state-provided support for public education. Id. at 1. As such, states will not be able to engage in deficit spending in order to redress any shortfalls in funding for k-12 public education. Though a balanced budget requirement is not constitutionally-based in all of the forty-nine states subject to this constraint, the report notes that some combination of constitutional and statutory language compelling (1) required balance in a governor's proposed budget; (2) required balance in the state budget as enacted; or (3) the inability to carry a budgetary deficit forward from one fiscal period to the next effectively assures this outcome in each such state. In addition to Vermont, Wyoming, North Dakota, and Alaska are deemed by some scholars to be exceptions to the balanced budget requirement. Id.

[136] ELIZABETH MCNICHOL & KWAME BOADI, CTR. ON BUDGET AND POLICY PRIORITIES, WHY AND HOW STATES SHOULD STRENGTHEN THEIR RAINY DAY FUNDS: RECESSION HIGHLIGHTED IMPORTANCE OF FUNDS AND NEED FOR IMPROVEMENTS 1 (2011). Presently, forty-five states as well as the District of Columbia maintain a rainy day fund in some form. The five states that do not presently maintain a rainy day fund are Arkansas, Colorado, Illinois, Kansas, and Montana. Id.

[137] Id. at 13–14 (discussing how general funding would ideally occur during periods of economic expansion – perhaps as a percentage of any revenue surpluses and that this kind of automatic allocation should be suspended or at least subject to review in order to replenish funds depleted by withdrawals made to address shortfalls).

[138] Id. at 1–2 (discussing how most states cap the size of their rainy day at levels that may be too low. As a result, balances may provide critical funding during shorter-term downturns but may quickly be exhausted when recessionary activity persists over a longer period. Even if adequately funded – 10% or more of the state budget is a suggested minimum target – procedural or substantive restrictions may limit positive effect. For example, a legislative supermajority may be required before funds can be tapped for any purpose, or limits may be placed on the extent funds may be used at any one time).

[139] See NAT'L CONF. STATE LEG., supra note 135, at 2 ("Two points can be made with certainty … [m]ost states have formal balanced budget requirements with some degree of stringency, and state political cultures reinforce the requirements").

projections are not met, and rainy day funds are unavailable, cuts in anticipated funding will follow.

Unlike the cuts recently imposed by national sequestration, state funding cuts are unlikely to be automatically imposed. Instead, there will likely be some hearing process for determining and implementing cuts deemed necessary and appropriate. Some state programs may be modified while others may remain untouched. Some degree of political jockeying is likely inevitable when determining and implementing these cuts. State governors may also become involved in the process, as most states permit governors to exercise a line-item veto.[140] That power could come into play in this process, as it does in the regular budgeting process.

To be sure, public education will have its advocates. Realistically, however, public education will likely be disadvantaged by the political realities of this process on the state level. Public education simply has not been accorded the primacy that would be likely on the local level, as it must compete with other fiscal priorities for limited state funding. Budget-busters such as Medicaid and unfunded pension liabilities[141] now loom very large on states' fiscal horizons. Unlike the relative power position on the local level, public schools, for purposes of state politics, become just one more supplicant competing with other important state initiatives for limited financial resources. Given current economic realities, there is little likelihood of significant additional resources from the state.

VI. THE WAY FORWARD

The parameters of local governance, including all financial matters, are controlled by state legislatures. States must act if changes are to be made to public education funding through more strategic reliance on the property tax.

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[140] See NAT'L CONF. STATE LEG., TABLE 6.3: GOVERNORS' VETO POWER REGARDING APPROPRIATIONS LEGISLATION (2008), available at http://www.ncsl.org/issues-research/budget/gubernatorial-veto-authority-with-respect-to-major.aspx.

[141] See John W. Schoen, Pandemic of Pension Woes is Plaguing the Nation, CNBC, Aug. 5, 2013, http://www.cnbc.com/id/100929269. ("A CNBC.com analysis of more than 120 of the nation's largest state and local pension plans finds they face a wide range of burdens as their aging workforces near retirement." Only seventeen states have funded a majority of their projected pension liability, the rest are attempting to make up shortfalls).

A. Protecting Funding for Public Education?

Several ex post protective strategies designed to protect public education funding against the negative effect of restrictive provisions are presently in place. First, the failure to protect public education funding has been mitigated to some extent by giving to local voters the power to override TELs. A majority of states that subject school districts to TEL provisions also give voters in school districts the power through majority vote to override limitations.[142] The few studies conducted, however, report quite limited voter success with such efforts.[143] This difficulty is unsurprising in light of changing demographics. Voters with school-age children no longer constitute a majority coalition in many school districts.[144] It is one thing for a voter to intellectually support public education as a theoretical matter, and quite another to support referenda cutting against personal economic interests. Indeed, limitations may exacerbate preference differences.

As state tax revenues diminish, harder choices will have to be made by state policymakers. Provisions, such as local voting referenda, may simply not be enough. For example, and practically, if the twin demographic trends towards relatively greater childlessness and increasing population age continue, override provisions may become increasingly of little use for many identifiable subgroups, including voters with children. The political clout of persons with school-aged children will wane through sheer lack of numbers. In this scenario and very superficially, the preferences of an aging demographic for services of particular interest to them and their families will likely take precedence for those voters over the need to provide public education, a service that may be viewed as only of indirect benefit.

Other provisions are similarly flawed. A few states give schools boards veto power over property tax abatement or TIF-based diversion – a concession that at least allows school board input.[145] Again, however, the few studies available suggest that school boards rarely use the power in defense of school funding.[146] Finally, an enterprise may agree to make a Payment in

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[142] See Garry Young et al., Efforts to Override School District Property Tax Limitations, in EROSION OF THE PROPERTY TAX BASE, supra note 70, at 197 ("...35 states impose some type of TEL on their school district. However, most (26) of these states provide their local governments with some capacity to override the limitation, typically through a referendum held among voters in the school district.").

[143] See id., at 217 ("TEL overrides fail and they fail often.").

[144] The most recent census data reports that in 2010 fifty-five percent of family households were childless. See U.S. CENSUS BUREAU, U.S. DEPT. OF COMMERCE, 2012 STATISTICAL ABSTRACT OF THE UNITED STATES 56, Table 64 (2012).

[145] See NAT'L EDUC. ASS'N, supra note 125, at 3.

[146] Id. at 17.

Lieu of Taxes (PILOT).[147] PILOTs, however, have two shortcomings: they are voluntary payments, and they rarely fully compensate schools districts for taxes that might otherwise have been paid.[148] At the end of the day, most school districts will not be adequately reimbursed (if at all) for revenues forgone as a result of TIFs or SAPTAPs.

Quite simply, state financial support will likely be critically important for public schools in property poor districts if those schools are to be adequately and equitably funded. State financial support for public education has deteriorated markedly in recent years. The Center on Budget and Policy Priorities recently reported that thirty-seven states cut funding for schools in 2011, thirty states spent less for their schools in 2011 than in 2007, and seventeen states had made cuts exceeding 10% of pre-recession spending.[149] Some negative measures of the cuts can easily be taken. For example, more than 250,000 jobs in local school districts have been eliminated since September 2008.[150] The extent to which the cuts in funding and personnel undermine education, and education reform in particular, however, is less easily measured but is likely to be no less real. Compromised educational opportunities will be inevitable if, as has been reported, teachers are denied professional support such as opportunities for additional training, class sizes are increased, and instructional time is either truncated or eliminated.[151] As matters presently stand, the property tax is the only source of replacement for lost state funds. There is little likelihood that the property tax as currently administered can generate significant additional resources. Further, even if the property tax is restructured as suggested, a revenue gap between available funds and funds needed for an adequate and equitable education could remain. For all of these reasons, many school districts will continue to be compelled to look to the state for financial assistance. Thus, state and local financial roles must still very much go hand in hand.

Finally, greater financial independence could translate into greater citizen involvement in public education. It has been said that "[t]he obverse of state centralization is the loss of local control."[152] Arguably, then, if loss of local control has led to civic disengagement in public education, increased local autonomy could restore that engagement to some extent. Heightened involvement would not be without risk. Local officials would once again be called upon to make potentially difficult financial and policy decisions.

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[147] Id. at 18.
[148] Id.
[149] OLIFF & LEACHMAN, supra note 32, at 1.
[150] Id. at 10.
[151] Id. at 12.
[152] Sokolow, supra note 120, at 182.

Taxpayers could once again revolt against higher tax burdens. Tensions between interest groups with conflicting agendas could also escalate. Despite the possibility of tensions however, the prospect of improved education seems worth the risk. The property tax works because, once in place, liability cannot be avoided. Real property is immovable. Since liability is certain, all affected taxpayers have a vested interest in benefits received. Taxpayers are likely to be more attentive to how public services, including public education, are provided and are likely to be vested in the outcomes. Increased personal liability for funding education grounded in a visible and effective property tax can ultimately enhance public support for, and interest in, this extraordinarily important civic enterprise.

However, an important caveat remains. Because of persisting intra-state funding differentials stemming from variations in the values of underlying properties in the respective school districts, I am not advocating exclusive or even primary, reliance on the property tax for funding purposes. Nor do I suggest the repeal of overall reasonable limitations on, for example, permissible millage rates. States could also continue to provide targeted relief from the property tax burden for all other purposes as deemed appropriate. The financial role played by the property tax in funding public education, however, could and should be more robust than is presently the case for both financial and civic reasons. The adjustments suggested would promote the realization of additional funding exclusively for and critical to efficient and stable school finance. This goal can be accomplished without sacrificing reasonable protections against undue tax burdens for property owners.

VII. STATE + LOCAL GOVERNMENT EQUALS NINETY PERCENT OF NECESSARY FUNDING

In the years since Rodriguez, states have become much more involved in the financial support of public education and expenditures supporting public education have increased sometimes markedly. This expanded role, however, has brought with it burdens as well as benefits. Expanded support has resulted in beneficial and additional funding for public education in prosperous times. However, most recently during hard economic times, school districts have had to rely on volatile revenue sources and reduced funding as states revenues have contracted.

As explained, the volatility in state revenue sources undermines locals' ability to provide consistent and effective education in the schools. The financial ebb and flow has also created increased financial and political pressure. Public education is incontrovertibly an additional big-ticket item and major administrative responsibility for states. Moreover, oversight is not limited merely to finance, but also necessarily includes policy matters such as the demands of "No Child Left Behind," and a myriad of indirect financial issues, such as teacher tenure and the management of so-called "failing schools."[153] Financial issues may become conflated with these additional concerns. Further, financial complexity on the state level extends beyond funding education. Legislative bodies must also address for example, demands incident to providing healthcare, and properly funding financially public pension systems. In short, crafting economic policy on the state level necessarily encompasses numerous pressing matters, in addition to public education, that compete for limited legislative attention and state revenues. It is little wonder then that states have freely and without consulting local governments instituted policies that have worked to the detriment of public education. As noted, these policies have included property tax relief as incentives to targets for economic development. Power has clearly been usurped by the states. That political dynamic will not be altered in public education's favor as long as school districts remain more dependent than may be necessary on state revenues. A revitalized property tax would reintroduce an additional degree of financial leverage on both the state and local levels. As such, school districts would enjoy a correspondingly expanded political role in matters related to education in their districts.

A. Reinstating Local Funding Capacity

The present funding challenges provide an opportunity to rethink prior funding strategies and to design schemes that would extricate the funding of education from these pervasive limitations once and for all. Providing stable and adequate funding for public education must be treated as a matter of utmost importance. States can take a first, important step in this quest by protecting property tax revenues allocated to support of education from the entire range of limitations described. The percentage of property tax revenues dedicated to public education should be immunized from limitations of any kind. To put it differently, support of education must take precedence over state policies and practices that otherwise undermine tax collections. As has been explained, those practices include TELs, revenue diversions, and a plethora of non-income based tax forgiveness programs. Protecting

[153] See No Child Left Behind Act of 2001, 20 U.S.C. § 6301 (2006); see also SUSANNA LOEB & LUKE C. MILLER, INST. FOR RESEARCH ON EDUC. POLICY & PRACTICE, A REVIEW OF STATE TEACHER POLICIES: WHAT ARE THEY, WHAT ARE THEIR EFFECTS, AND WHAT ARE THEIR IMPLICATIONS FOR SCHOOL FINANCE? 31 (2006) (discussing various states' tenure policies and how they impact teaching standards and ability to discipline and dismiss teachers that are not meeting certain standards); James G. Cibulka, Educational Bankruptcy, Takeovers, and Reconstitution of Failing Schools, 102 Y.B. NAT'L SOC'Y STUD. OF EDUC. 249, 260–62 (2003) (discussing different approaches in reconstituting schools that are deemed failing by federal standards set forth in No Child Left Behind).

support for public education can be accomplished in this fashion even if limitations are otherwise left in place. This redesign would be a daunting challenge. Successful redesign, however, could reintroduce to some extent the stability in funding that is presently missing

B. Reaffirming State Financial Commitment to Public Education

States must first move away from using property tax concessions as a mechanism for economic growth. This practice compromises local government's ability to fund local services, including public education. Even if such initiatives are successfully undertaken and the state's economy expands, increased retail sales and individual income tax collections will not inure to the benefit of the locals; those revenue sources belong to the state. Ironically, failure to invest in public education could well undermine a state's ability to invest in one of the assets that contribute to the expansion of the economy: an educated work force. In short, there is little that recommends broad concessions of this kind.

Even assuming that states move to immunize and stabilize the property tax, poorer districts will continue to experience difficulty in generating funds substantially equivalent to those of richer school districts because of wide variations in the value of districts' taxable property. To remedy this inevitable difficulty, states must make funding public education from stable, recurrent sources of revenue a priority. While some reliance on specific revenue sources might be a means of supplemental funding for education, states must refrain from too much reliance on such sources. For example, earmarked excise taxes, such as those levied against tobacco, alcohol, or gaming, should not be the primary source of funding

Realistically, states will occasionally face periods of financial exigency over which they have no control. A modified and revitalized property tax should provide some protection from possible reductions in state support, as long as recessions are not prolonged. Property tax revenues and state general source revenues in combination provide the best hope for stable funding.

C. Avoiding Dead Ends?

I have suggested that states should insulate the property tax from the effects of TELs and other limitations to the extent that those revenues are used to support public education. States should cease to use property taxes as a bargaining chip in non-educational contexts. Essentially, some percentage of property tax revenues would be earmarked for public education. The larger question, however, is whether states can or should attempt to engage in comparable "earmarking" using available funds.

State legislatures have generally refrained from engaging in this kind of earmarking with regard to general revenues – revenues generated through retail sales and income taxes.[154] General revenues are available to defray the overall expenses of the state, irrespective of the manner in which the obligations arise, general revenues are fungible.

It is less clear whether revenues derived from specific kinds of activity have been similarly treated as fungible. In recent years, states have expanded revenue collections through a variety of fees, charges, and excise taxes. The former two categories of collections must generally be used to provide services to those upon whom the levies are imposed. In comparison, excise taxes collections have been variously treated.

The most notorious excise taxes are the "sin" taxes: those imposed upon the sale of alcoholic beverages, tobacco products, and, most recently, gaming.[155] All states tax the sale of alcoholic beverages and tobacco products.[156] At present, forty states and the District of Columbia use lotteries as a means of producing revenue.[157] In response to the urging of interest groups, states may earmark excise taxes collected from the sale of alcoholic beverages or tobacco products for use in educational programs or to meet increased health care costs incurred by individuals engaging in those behaviors. Such initiatives have been relatively few in number. In contrast, earmarking gaming proceeds for support of public education seems to have gained greater political traction; a number of states presently dedicate at least a portion of these collections to support public education.[158] This decision has been driven by economic considerations. Gaming proceeds have seemed to be a growing source of revenue that, if reliable, could provide a stable and increasing source of funding.[159]

While the use of gaming proceeds in this fashion is still of relatively recent vintage and remains somewhat exceptional, it has already raised a number of vexing issues. First, there is the question of financial stability. It

[154] One exception to this is Virginia, which earmarks a percentage of revenues from its retail sales tax in order to finance public k-12 education. School Finance, VA. DEP'T OF EDUC., http://www.doe-.virginia.gov/school_finance/ (last visited Oct. 4, 2013).

[155] I use "gaming" in this context to include both lotteries and casino gambling.

[156] NATIONAL SURVEY OF STATE LAWS 781–90 (Richard A. Leiter, ed., 6th ed. 2008).

[157] Id. at 723, 725.

[158] This subset of states include California, Florida, Georgia, Illinois, Nebraska, New Jersey, New Mexico, Ohio, South Carolina, Texas, Virginia, and West Virginia. Id. at 724–36.

[159] See William C. Rivenbark & Bradley B. Rounsaville, The Incidence of Casino Gaming Taxes in Mississippi: Setting the Stage, 20 PUB. ADMIN. Q. 129, 129 (1996) ("Games of chance," in one variation or another have been chosen by many state governments as their "economic savior").

is simply not evident that gaming will continue to be the financial bonanza for states as it was originally projected to be because as more and more states enact legislation enabling gaming, overall collections are spread more thinly. Collections have slowed, if not stagnated, and the aggregate amount is divided by an increasing number of states.[160] Gaming proceeds do not have the long term financial "heft" that is critical to provide "adequate," and certainly not "equitable," public school funding.[161] Further, there is the question of tax incidence: who bears the burden of this tax? The majority of available studies conclude that the implicit gaming tax, like excise taxes on alcohol and tobacco, falls disproportionately on less affluent taxpayers.[162] In other words, these taxes are regressive in effect. The regressive effect may be offset, however, to the extent that gaming proceeds are earmarked for public education.

This is a significant point. Earmarking assures poorer individuals benefits from gaming revenues, which is important because the low-income demographic is most heavily engaged in this activity.[163] Essentially, this demographic would self-finance its use of public education. Unfortunately, it is not clear whether sustained increases in such support have occurred in states where gaming proceeds are earmarked for public education. More often, data shows that this source of funding has displaced support that would otherwise have been provided from general revenues.[164] Further and alarmingly, as gaming proceeds have declined, or costs have increased, general revenues have not been allocated in order to redress the shortfall.[165] Earmarking from excise taxes could be an important way to supplement public school funding, but it should be no more than that. These studies suggest

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[160] William Selway & Timothy R. Homan, Lottery Jackpots Are No Sure Thing for Ailing U.S. States as Sales Decline, BLOOMBERG, Jan. 7, 2011, http://mobile.bloomberg.com/news/2011-01-07/jackpots-no-sure-thing-for-ailing-states-as-lottery-sales-slide.html.

[161] This has led some commentators to characterize lotteries as a "fiscal hoax." The number of lottery players may be quite high in the early years of a lottery but will receive less and less play as the newness wears off. States relying on gaming revenues may thus find actual revenues insufficient to cover expenses. Rodney E. Stanley & P. Edward French, Can Students Truly Benefit From State Lotteries: A Look at Lottery Expenditures Towards Education in the American States, 40 SOC. SCI. J. 327, 329 (2003).

[162] See Ross Rubenstein & Benjamin Scafidi, Who Pays and Who Benefits? Examining the Distributional Consequences of the Georgia Lottery for Education, LV NAT'L TAX J. 223, 236 (2002) ("[T]he vast majority of research has found lotteries to be a highly regressive method of raising revenue"); Thomas A. Garrett, Earmarked Lottery Revenues for Education: A New Test of Fungibility, 26 J. EDUC. FIN. 219, 237 ("[L]otteries are generally accepted as regressive").

[163] Garrett, supra note 162, at 237.

[164] The concept of fungibility explains this phenomenon. Lottery monies may replace rather than supplement nonlottery monies previously used to support education, leading one author to conclude that state lotteries are "robbing Peter to pay Paul." When lottery revenues fall short, legislatures may not redress the shortfall with nonlottery funds. Several studies have concluded that over time states that had adopted lotteries earmarking gaming revenues for support of public education actually decreased spending on education. See Stanley & French, supra, note 161, at 329–30.

[165] Id.

that earmarking excise taxes, as the sole support for public education, is almost certainly a questionable policy choice. Revenues from excise taxes may prove to be a welcome windfall for cash-strapped states appropriate for ad hoc use. Such revenues, however, should not provide the sole support for a recurring predictably high-cost expense like public education.

VIII. THE FEDERAL ROLE

A. Funding Everyday Operation

As previously noted, direct federal financial support for schools has been both limited and earmarked for particular purposes. Despite continuing calls for an increase in direct, regularized, and unrestricted support, there is little evidence that such increases will be Congressionally approved. In fact, given the current Congressional political climate, the contrary is more likely.[166] Most observers expect budget debates to dominate federal political discourse for the foreseeable future.

This possibility of additional federal support might have a different outcome if indirect support is considered. In a given tax year, individual taxpayers may have made outlays under circumstances, specifically described in the Internal Revenue Code of 1984, that cumulatively exceed the standard deduction amount.[167] These taxpayers will be able to deduct that larger figure in lieu of the standard deduction.[168] Under the tax expenditure budget concept, the ability to deduct these specific amounts is considered a tax benefit, equivalent to a direct subsidy.[169] An important source of indirect support for local government is provided through the Internal Revenue Code, via the deduction paid or incurred by the taxpayer for specified state and local taxes (the SALT deduction).[170] The deduction, available since the inception of the federal income tax in 1913, has historically included the property tax within the ambit of taxes for which the deduction is allowed.[171]

[166] See Crampton & Thompson, supra note 31, at 196 ("A new commitment to fiscal austerity at the state level and a policy shift from fiscal stabilization and economic stimulus to deficit reduction at the federal level will likely present new challenges to K-12 education funding.").

[167] See I.R.C. §§ 163(h)(mortgage interest on principal residence), 164 (taxes), 170(charitable contributions), 213 (medical expenses) (1986) (provisions authorizing what have come to be primary deductions for taxpayers who itemize).

[168] See generally, I.R.C. § 63.

[169] See Stanley Surrey, Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures, 83 HARV. L. REV. 705 (1970) (complete discussion of the tax expenditure concept).

[170] I.R.C. § 164.

[171] CONGRESSIONAL BUDGET OFFICE, THE DEDUCTIBILITY OF STATE AND LOCAL TAXES, Preface, 2 (2008), available at http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/88xx/doc8843/02-20-state_local_tax.pdf.

One commenter estimated that the property tax deduction generated approximately \$16.5 billion to \$17.1 billion for public k-12 education in 2009 as then, and currently, structured.[172]

There are limitations applicable to the deduction. It is available only to individual taxpayers who are property owners who have paid the tax and who itemize when determining tax liability.[173] The majority of individual taxpayers does not itemize, opting instead to use the standard deduction in determining taxable income.[174] Thus, the availability of a deduction for property taxes paid is of no consequence for non-itemizing taxpayers.

The corollary of this last point is important: the inability to deduct forecloses the possibility of indirect support for the sub-national governmental entity. In short, though some percentage of non-itemizers quite likely bears a property tax burden, non-itemizers receive no subsidy from the federal fisc through an itemized deduction. They are essentially compelled to treat any property tax burden as any other nondeductible personal expense. The expense remains a non-deductible outlay and the cost to the non-itemizing taxpayer does not constitute a cost to the federal government. In other words, the more than \$16 billion referred to above is exclusive of the property tax borne by non-itemizers. Because non-itemizers take no deduction, liability provides no additional indirect federal expenditure for support of local government.

An example may be helpful here. Assume three taxpayers: A, B, and C have each paid \$1000 under their local property tax. Taxpayer A is an itemizer whose income places him in a 15% marginal rate bracket. Taxpayer B is also an itemizer whose income places her in a 31% marginal rate bracket. Both are able to deduct \$1000 for property taxes paid. Because A is able to take the deduction, A will not have to pay \$150 in income tax. A's property tax expense has been subsidized by the federal treasury to that extent. In effect, the federal treasury pays that amount to the subnational taxing entity on A's behalf. Note, however, that A has still incurred a cost for this benefit: \$850 in this case, or the difference between the outlay and the subsidy. Taxpayer B also receives a subsidy from the treasury, but because B is in a higher marginal bracket, B's subsidy is greater than that of A. B's subsidy is \$310 and B has incurred a personal cost of \$690. Note the "upside-down"

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172 See WAYNE C. RIDDLE, CTR. ON EDUC. POL'Y., PUBLIC EDUCATION BENEFITS FROM THE FEDERAL INCOME TAX DEDUCTION FOR STATE AND LOCAL TAXES AND OTHER SPECIAL PROVISIONS 3 (2011), available at http://webcache.googleusercontent.com/search?q=cache:MI639ppE3WwJ:www.cep-dc.org/cfcontent_file.cfm%3FAttachment%3DRiddle_Paper_TaxExpenditures_41311.pdf+&cd=1&hl=en&ct=clnk&gl=us.

173 Id. at 1.

174 Id. at 7 (stating that "[n]ationwide, an average of 33.0% of all individual federal income tax returns included an itemized deduction for state and local taxes in 2007.").

effect of the subsidy. If we assume that A has the lower income of the two taxpayers, the more affluent taxpayer has received the higher subsidy. This is the reverse of what would be expected through a program providing a direct subsidy. To complete the example, Taxpayer C also incurs a property tax cost of $1000 but is unable to itemize and cannot take a deduction for the property tax paid. C is forced to bear the entire cost of the outlay without any subsidy whatsoever. In turn, nothing is paid to the subnational unit on C's behalf.

It logically follows that support for local government, specifically public education, could be indirectly increased by expanding, for federal income tax purposes, the availability of a carefully crafted, favorable treatment for property tax liability imposed to support public schools. A more universally available deduction solely for property taxes paid to support public education may accomplish this goal.[175] Extending the subsidy analogy, the federal government would indirectly assume a greater share of the cost of providing public education locally. As such, more generous treatment of this expense for federal income tax purposes might lessen resistance to property tax increases. Such a deduction may be an administrative challenge to implement for non-itemizers and could be quite expensive if it were taken without limit by upper-income, itemizing taxpayers. The example demonstrates this. The higher marginal rate bracket taxpayer received the higher subsidy.

In contrast, a capped credit for a specified percentage of the tax liability has much to recommend it. Unlike an income tax deduction, a credit is taken after tentative federal income tax liability has been determined. It is a dollar-for-dollar reduction of federal tax liability that would otherwise be borne. The credit would be available to all taxpayers bearing the expense and would replace the income tax deduction presently available insofar as property taxes paid to support public education are concerned. Importantly, all taxpayers eligible for the credit would be equally advantaged, regardless of income levels. Thus, a capped credit would not result in a disproportionate benefit for more affluent taxpayers and the "upside-down" subsidy effect would likewise be avoided. Assuming the appropriateness of any preferential treatment for state and local taxes, a credit is also more protective

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[175] See generally Darien Shanske, How Less Can be More: Using the Federal Income Tax to Stabilize State and Local Finance, 31 VA. TAX. REV. 413, (2012). For many of the reasons discussed earlier – i.e., lessening volatility and increasing stability – Prof. Darien Shanske urged the federal government to provide an incentive to states to move to greater reliance on the property tax. Pursuant to his proposal, this would be accomplished by expanding the deduction for the property tax and limiting or eliminating the deduction for state income or sale taxes. Unlike what I have proposed here, he recommends an above the line deduction that could be taken by all taxpayers without itemizing. His proposal also goes to the deduction for property taxes generally rather than for that percentage allocated for support of public education.

of the federal fisc.[176] A credit can be capped at levels deemed appropriate by federal policy-makers and, as a result, the total cost of a subsidy provided through a credit can be more easily controlled. A credit differs from an income tax deduction in that the cost of a deduction to the treasury is not easily contained and, as demonstrated, will be driven by the deduction's value to the taxpayer. Finally, a capped credit for that percentage of property tax liability earmarked for support of public k-12 education would communicate a powerful, federal preference use of a stable source of revenue for financing this important public good.[177]

This approach can also provide a mechanism for additional state support. Forty-three of the fifty states have an income tax on individual incomes in place.[178] These are piggybacked reporting systems. As such, taxpayers determine liability for state income tax purposes under some variant of the federal statute.[179] Given this parallel, electing states could also permit a tax credit for property tax paid to support public education against its respective state liability. Like its federal counterpart, the credit would be a dollar-for-dollar reduction of state tax liability. Therefore, to the extent that a state chose to permit this credit, an increase in support indirectly provided through the state would result.[180]

To reiterate, additional federal and state financial support for public education can be provided indirectly by more expansive treatment of property tax expenses for the support of public education by taxpayers in their respective school districts. Policy makers on the local, and even state, levels would determine the levels of liability. The credit would be available for

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[176] See generally Martin A. Sullivan, Why the SALT Deduction is Always Under Attack, TAX NOTES (Dec. 17, 2012), http://taxprof.typepad.com/files/137tn1261.pdf (providing a brief summary of the case for retention of the SALT deduction). Perennial talk of tax reform always includes discussion of possible repeal of some or all of the presently available itemized deductions. The SALT deduction is continuously and prominently mentioned as a primary candidate for repeal.

[177] See generally Kirk J. Stark, The Federal Role in State Tax Reform, 30 VA TAX REV. 407, 438 (2010) (arguing that federal government has unwittingly stacked the deck in favor of state revenue volatility by permitting the deduction of some state taxes but not others, further suggesting that short of repeal of the SALT deduction, using a flat rate credit for some or all of the state and local taxes currently deductible). Stark characterized the property tax as "a relatively stable source of revenue." An approach such as the one advocated here would be a smaller step away from federal policies that undermine state reliance on more stable sources of revenue for support of public education.

[178] FED'N OF TAX ADM'RS, STATE INDIVIDUAL INCOME TAXES (2013) available at http://www.taxadmin.org/fta/rate/ind_inc.pdf.

[179] Stark, supra note 177, at 423.

[180] Professor Stark recently succinctly explained the prevalence of piggybacked state income tax systems. The groundwork laid by Congress for the individual income and corporate taxes is not replicated for any other tax. That existing framework along with extensive federal-state cooperation and information sharing make irresistible (first) reliance on an income tax system by states and (second) use of the federal structure to implement the state effort. See Stark, supra note 177, at 424.

some capped amount of the property taxes paid to support public schools. This scheme provides additional resources to local school districts through state and federal governments and, concomitantly, the ability to set policy on those levels. By the same token, because it is an indirect subsidy, federal policy would not control the use of funds. The availability of a credit would also quite likely make increased property tax liability more politically palatable for taxpayers. The universally available character of the credit does this work; the outlay would enable any taxpayer bearing this cost to have it taken into account for tax purposes without the need to itemize on the tax return. Thus senior, childless, non-itemizing taxpayers could take the credit in the appropriate amount in addition to the taxpayer in a household that includes school-aged children. It would be available to all qualifying taxpayers having positive tax liability.

Under a proposal like this one, the treatment of renters is admittedly problematic. Tax relief for renters is certainly a compelling concern; renters are likely to bear some part of the cost of the property tax as a pass-through from landlords. They are also likely as a group to relatively heavily utilize public schools for their children's educations. A few states have provided a deduction for renters,[181] and this may be an area in which additional states find it appropriate to provide a comparable deduction or credit for state income tax purposes. Further, an alternative mechanism might be identified for states without an income tax.

Finally, a comparable approach might be taken for federal tax purposes for qualifying charitable contributions. The work of The National School Foundation Association (NSFA) is instructive in this area. Founded in 2002, NSFA's mission aims "to encourage the growth and development of k-12 foundations among school and districts across the US and Canada."[182] NSFA membership includes foundations, not a part of local school district, but that are "involved in three main activities: raising, handling, and redirecting money" in order to support local schools.[183] NSFA reports there are presently more than 4,800 school foundations in the United States.[184]

Under present law, itemizing taxpayers can make qualifying charitable deductible contributions to public schools, districts, or foundations. Most contributions are likely to be made on behalf of schools or school districts

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[181] Amy Sterling Casil, Tax Deductions for Renting Tenants, HOUSTON CHRON. (2013) available at http://smallbusiness.chron.com/tax-deductions-renting-tenants-23630.html.
[182] Membership, NAT'L SCH. FOUND. ASS'N, http://www.schoolfoundations.org/en/membership/ (last visited Sept. 23, 2013).
[183] Research Findings, NAT'L SCH. FOUND. ASS'N, http://www.schoolfoundations.org/en/resources/research_findings.cfm (last visited Sept. 23, 2013).
[184] Id.

in which taxpayers have some personal interest. This deduction might be tweaked in order to provide an incentive for qualifying contributions to entities other than those in which the taxpayer has a more direct personal interest. For example, a credit against tax liability could be permitted for charitable contributions made to foundations or state administered agencies that serve schools or districts that enroll a disproportionately high percentage of low-income students. Alternatively, a deduction might only be allowed if the taxpayer contributes to a fund or to school serving less affluent families.[185] A source of funding providing additional support for such schools would likely be quite useful. Without this kind of incentive for contribution, supplementary assistance of this kind would almost certainly be unavailable to poorer districts.

In short, an income tax credit, especially for property taxes, could be specifically crafted to support public education. This concept could be extended to include charitable contributions by disinterested donors to funds designated for the support of officially designated public schools. In both cases, the credit would be an important way to increase federal funding for public education without a corresponding increase in federal control or oversight. The concept could also inform comparable legislation enacted by states.

As is the case with any indirect expenditure, there could be an additional cost to the affected treasury if the property tax credit is more broadly available than the present deduction for property taxes paid. Similarly, a new credit for designated charitable deduction would carry with it some additional expense to the federal fisc. Support of public education in this fashion, however, is consistent with the Congressional policy that underlies the deduction for qualifying state and local taxes in addition to charitable contributions. Allowing the property tax deduction, in either its original or restructured form, effectively subsidizes an important state undertaking having state constitutional stature. Though this deference is not compelled under the federal constitution, it is entirely permissible as a matter of policy. Similarly, Congress provides the charitable deduction as an incentive to taxpayers to provide support for charitable or educational purposes. Support of public education as suggested here fits neatly into several of these categories. Finally, as noted earlier, if properly structured, additional cost to the federal government could be kept within acceptable bounds.

[185] Thanks to my colleague, Michael Doran, for this suggestion.

B. Federal Financial Assistance During Economic Exigencies

Taxes on income are the primary source of revenue for the government, generating more than 60% of all revenue.[186] As a result of this revenue, in addition to a variety of excise taxes, the business cycle will affect revenue ebb and flow at the national level. There is, however, an important difference between the federal and state governments. Currently, there is no requirement that the federal budget be balanced. As such, in times of recession, and given its superior access to capital markets, the federal government can borrow in order to maintain governmental services until the economy recovers.

The ability to borrow enables the national government to extend financial assistance to subnational governments during periods of economic exigency should it choose to do so, just as Congress did during the recent Great Recession.[187] Approximately $48 billion in State Fiscal Stabilization Funds authorized by the American Recovery and Reinvestment Act of 2009 was provided to support local education in 2010.[188] The obvious difficulty, of course, is the ad hoc nature of the infusion of funds. There will be no further distributions for this purpose. Arguably, however, the federal government did precisely what it should do in such circumstances; provide assistance, limited in time and amount, to assist the state and local governments through a difficult financial period.

IX. CONCLUSION

Public education is arguably the most important service provided by government and various courts have touted its importance time after time. The language in Serrano I is illustrative: "[E]ducation is crucial to democratic government, individual well-being, and individual economic mobility."[189] There is little question that an educated populace is critical to an effectively functioning democratic society. The necessary education cannot be accomplished without sufficient and stable financial support. All levels of government must be involved in this effort.

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[186] The Tax Policy Briefing Book, TAX POL'Y CTR., http://www.taxpolicycenter.org/briefing-book/background/numbers/revenue.cfm (last visited Sept. 23, 2013). This source notes that as of 2010, individual income taxes accounted for 42% of federal tax revenue in 2010. Id. Historically, the personal income tax has provided almost half of the federal government's total tax revenue. Id.

[187] See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

[188] State Fiscal Stabilization Fund, U.S. DEP'T OF EDUC. (Mar. 7, 2009), http://www2.ed.gov/policy/gen/leg/recovery/factsheet/stabilization-fund.html.

[189] ANNA LUKEMEYER, COURTS AS POLICYMAKERS: SCHOOL FINANCE REFORM LITIGATION 4 (2003).

Neither school districts nor state governments acting alone possess the necessary fiscal capacity to meet even the minimal challenge of adequacy. On the local level, school districts have been deeply disadvantaged by voter and state imposed limitations on the ability to generate revenues from property taxes. As lawmakers for local government, it is incumbent upon state legislators and policymakers to take steps to reverse the effect of these limitations by rethinking the structuring of economic initiatives. States must refrain from imposing limitations, or engaging in initiatives, that undermine locals' ability to be as self-sufficient as possible. The local property tax remains the best way to raise local revenue for public education. Further, local power to impose the tax for this limited purpose should not be abrogated by TELs, or other measures of overly broad property tax relief. States can begin the process of revitalizing the tax by crafting economic initiatives that protect public education from the effects of using property tax diversions or abatement incident to incentives for development.

Even assuming that states adopt this stance, wide variations in the value of districts' taxable property will continue to make generating substantial funding, equal to that provided by richer school districts, impossible for poorer school districts. State assistance to poorer districts will be critical if adequate and equitable funding is to be a reality. In providing this support, states must make funding from general source revenue a priority. While some earmarking from specific revenue sources might be exploited to supplement funding for education, states must refrain from relying exclusively on such sources. Earmarking from excise taxes, such as tobacco, alcohol, or gaming, should not, in any case, be the primary source of funding. Realistically, states will occasionally face periods of financial exigency over which they have no control. A modified and revitalized property tax should, however, provide some protection from possible reductions in state support as long as recessions are not prolonged.

The assistance of the federal government remains critically important to achieving stable, efficient funding. Federal assistance for particular purposes, such as that provided through Title I and IDEA, should be continued. Importantly, as I have demonstrated, additional federal financial assistance for unrestricted use need not be in the form of direct subsidies; instead, a credit available to all taxpayers bearing this cost provided through the Internal Revenue Code would work well for this purpose. The credit, especially in combination with a state level credit, could contribute significantly to stabilizing revenues over time.

Indeed, treating that part of the property tax liability earmarked for support of public education as a credit against what would otherwise be income tax liability would signal a powerful federal preference for reliance on a stable source of funding for public education. A credit is also particularly attractive from the federal point of view in light of Congress' ability to control its ultimate cost to the federal treasury while simultaneously according to all taxpayers bearing this cost some message of relief. As such, the credit could well shore up routine financing and make the cost of supporting public education more politically palatable. Finally, the role of the federal government during periods of economic exigency would be clearer. The federal government would remain a resource for critical support during such periods of economic stress, as it did subsequent to the Great Recession.

Local, state, and federal governments must act in tandem if meaningful progress is to be made in stabilizing and increasing funding for education. The continuing quest for new revenue sources is likely to continue to prove elusive. That reality does not, however, foreclose the possibility of more effectively using available funding sources with a reconceived and revitalized property tax as the linchpin of that effort.

Determining how best to provide stable and effective funding for public education is undeniably a demanding task. A stable and effective foundation is indispensable to providing a world-class education to American school children. In the quest to provide a publicly supported education to American children that is adequate, equitable and second to none, failure is truly not an option.