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BECOMING “AUDIT” IT CAN BE: IMPROVING PUBLIC SCHOOL FUNDING THROUGH A STREAMLINED SALES AND USE TAX AGREEMENT FOR REAL PROPERTY TAX

*Megan E. Bowling**

I. INTRODUCTION

In the early nineteenth century, famed Massachusetts Board of Education Secretary of State and state legislator Horace Mann launched his now-fabled campaign on the behalf of schools that “give every child a free, straight, solid pathway by which [they] can walk directly from the ignorance of an infant to . . . knowledge.”¹ Over the next two centuries, public school systems in the United States attempted to create just that, but it faced innumerable challenges along the way.² One of its most significant challenges both historically and presently is funding for K-12 public schools.³ The real property tax, a fundamental part of the current public school funding structure, has contributed to this challenge due to its varying use and inconsistent administration by state and intrastate governments.⁴

This Comment proposes that creating an administrative framework that supports intrastate governments is the ideal method for moving toward equitable and robust modern public education funding. This Comment uses the Streamlined Sales and Use Tax Agreement (“SSUTA”) as a model for this structure, and names the proposed structure the Streamlined Sales and Use Tax Agreement for Real Property (“SSUTARP”) for clarity. This Comment utilizes the state of Ohio and its intrastate government levels and school districts as a case study, primarily focusing

* Editor-in-Chief, 2023-2024, Associate Member, 2022-2023, *University of Cincinnati Law Review*. I would like to thank the many incredible public school teachers I know who work tirelessly to provide their students with the tools, guidance, and support they need to succeed—particularly my parents and my former teachers at Batavia—and whose impacts on their students are indelible.

1. *Fort Crook Masonic Lodge #250 Presents Plaque to Burney High Teachers*, PIT RIVER COUNTRY (Apr. 27, 2018), <https://pitrivercountry.com/2018/04/27/fort-crook-masonic-lodge-250-presents-plaque-to-burney-high-teachers/> [<https://web.archive.org/web/20221005062027/https://pitrivercountry.com/2018/04/27/fort-crook-masonic-lodge-250-presents-plaque-to-burney-high-teachers/>].

2. *See infra* Section II.

3. Sylvia Allegretto et al., *Public Education Funding in the U.S. Needs an Overhaul*, ECON. POL’Y INST. (July 12, 2022), <https://www.epi.org/publication/public-education-funding-in-the-us-needs-an-overhaul/#:~:text=Education%20funding%20generally%20is%20inadequate,funding%20per%20student%20than%20low%2D>.

4. *Id.*; *see infra* Parts II.B-D.

on Ohio public education history and the impact that the SSUTARP would have in the state.

Below, Section II summarizes the history of public education funding across the nation and within Ohio, highlighting the judicial and legislative foundations for its current structure as well as emphasizing findings of unconstitutionality and inequity within it. Section II also presents the SSUTA and its structure. Section III then explains the functions of the proposed SSUTARP, its possible implementation, its many benefits, and responses to potential points of opposition.

II. BACKGROUND

Before introducing the benefits and legal foundations of creating the SSUTARP, an overview of the history of the United States' public education funding is necessary.

A. A Brief History of Public Education Funding

Prior to the Revolutionary War, only a small number of children in the American colonies received any formal education.⁵ Though many were children in wealthy families with parents who could afford to fund their educations, others lived in towns and urban centers and had their educations funded through a patchwork of methods including taxes, donations, tuition, and state land-sale revenues.⁶

After the Revolutionary War, education for the public centered mainly around the young country's desires to unify its young colonists in their grammar, spelling, and religious beliefs, and funding remained disjointed.⁷ As time passed, the desire for accessible obligatory education increased alongside employers' needs for skills such as writing and mathematics.⁸ This "common school" movement was supported by those

5. *16.1 A Brief History of Education in the United States*, in *Sociology: Understanding and Changing the Social World*, (Univ. of Minn. Librs. Publ'g ed. 2016), <https://open.lib.umn.edu/sociology/chapter/16-1-a-brief-history-of-education-in-the-united-states/> (last visited Apr. 23, 2023).

6. *Id.*; Billy D. Walker, *The Local Property Tax for Public Schools: Some Historical Perspectives*, 9 J. EDUC. FIN. 265, 268 (1984); Richard Uhrig, *Low Fees, Large Barriers to Education: Evidence from Rate Bill Abolition in the United States* (May 23, 2023) (on file with Social Science Research Network). Many of these urban areas existed in New England. Walker, *supra*, at 269.

7. *16.1 A Brief History of Education in the United States*, *supra* note 5.

8. *Id.* Prior to the creation of publicly funded schools, other types of educational systems included charity schools, schools ran out of churches and homes, schools taught by traveling educators, apprenticeships, and a small handful of schools that were free to attend as they were funded by those living in the school's town. CTR. ON EDUC. POL'Y OF THE GEORGE WASHINGTON UNIV. GRADUATE SCH. OF EDUC. & HUM. DEV., HISTORY AND EVOLUTION OF PUBLIC EDUCATION IN THE US [hereinafter HISTORY AND EVOLUTION OF PUBLIC EDUCATION IN THE US],

who supported universal public education for all children.⁹ Many of these individuals believed that such schooling would lead to happy, productive citizens who would build a strong national economy, make moral decisions, and lead lives of purpose.¹⁰ Proponents also believed that universal public education would allow for integration and cohesion for people across different socioeconomic classes, and would provide particularly strong foundations for children of lower socioeconomic classes.¹¹

In the early nineteenth century, the first common schools were opened.¹² These schools, contrary to the goals of many universal schooling advocates, were not free for students due to a lack of robust government funding structures or other public funding mechanisms such as grants.¹³ In addition to being funded by taxes, common schools were sometimes funded by tuition in the form of rate bills or tuition paid by students' families.¹⁴ The specific method and ratio of funding varied not just state-to-state, but at the intrastate level as well.¹⁵ As rate bills were abolished over the nineteenth century, the need for a primary public funding channel increased, and thus, local taxes took an even more prominent role in the funding structure.¹⁶ Real and personal property, as visible indications of taxable wealth,¹⁷ took center stage.¹⁸

1. Real Property Tax as an Early Source of Funding

The first property taxes of early America were imposed much earlier than the time of the common schools' establishment.¹⁹ In fact, the Massachusetts Act of 1647, which codified the legality of funding Massachusetts public schools through public funds and local tax levies, was the first statute in New England to establish a real property tax.²⁰ As

<https://files.eric.ed.gov/fulltext/ED606970.pdf> (last visited on Apr. 23, 2023).

9. HISTORY AND EVOLUTION OF PUBLIC EDUCATION IN THE US, *supra* note 8.

10. *Id.*

11. *Id.* Additionally some were motivated to support public education because they did not want public education to be under the control of religious institutions. Walker, *supra* note 6, at 266. Unfortunately, not all proponents supported integration between socioeconomic classes. HISTORY AND EVOLUTION OF PUBLIC EDUCATION IN THE US, *supra* note 8.

12. Nancy Beadie, *Tuition Funding for Common Schools: Education Markets and Market Regulation in Rural New York, 1815–1850*, 32 SOC. SCI. HIST. 107, 107 (2008).

13. Walker, *supra* note 6, at 268.

14. Beadie, *supra* note 12, at 108. Rate bills were fees paid as tuition. *Id.*

15. *Id.* at 110.

16. Uhrig, *supra* note 6.

17. Walker, *supra* note 6, at 265.

18. Uhrig, *supra* note 6.

19. Walker, *supra* note 6, at 269.

20. *Id.*

opposed to the twenty-first century's in rem²¹ real property tax, the real property taxes of the past were in personam, meaning they were imposed against individuals, and were constant regardless of the property's value, collectively utilizing one's ability to pay as the basis for how much that individual was to be taxed.²² Other colonies soon adopted laws similar to the Massachusetts Act.²³ In the eighteenth century, many New England towns were given the authority to divide into school districts, and this authority included the right to provide necessary funds.²⁴

Though real property tax as a source for funding schools became well-established in New England, the tax was not used widely outside of the region, as western and southern colony localities opted for education funding through rate bills, charitable donations, private endowments, and general revenue portions.²⁵ In these colonies, real property taxation was seen as an infringement upon ownership rights and such taxation was not used for public education.²⁶

In the Northeast, however, real property taxes continued to be utilized from the time of the Revolutionary War until Reconstruction, and were typically administered and collected by local intrastate governments rather than by state governments.²⁷ This was partially because by the end of the eighteenth century only eight of the sixteen existing states mentioned education in their state constitutions, and those states did not want to cultivate ill will for collecting payments through an ineffective structure.²⁸ Additionally, the idea of state-level political control was not a political norm at the time.²⁹ Throughout the nineteenth century, state legislatures established permissive legislation, which gave the electorate of intrastate governments, like counties, the legal authority to vote upon their own taxes.³⁰

2. Early Legislative Mandates

Some states, like Ohio, stepped beyond enacting purely permissive

21. An *in rem* tax is one imposed against an item rather than a person. *Explain/Define In Rem Taxes.*, STUDY.COM, <https://homework.study.com/explanation/explain-define-in-rem-taxes.html#:~:text=Therefore%2C%20in%20rem%20tax%20refers,of%20mortgages%2C%20and%20real%20property.>

22. Walker, *supra* note 6, at 270.

23. *Id.*

24. *Id.*

25. *Id.* at 271.

26. *Id.* at 271-72. The one exception was New York. *Id.*

27. *Id.* at 273.

28. *Id.*

29. *Id.*

30. *Id.* at 274. This localized power, even though it was better aligned with the preference of local government as opposed to state-wide government, was still met by opposition. *Id.*

legislation.³¹ In Ohio, a state-wide county school tax was mandated in 1825.³² That same year, public common schools were established in the state.³³ A permanent school fund was established at the state-wide level two years later.³⁴ In 1831, a provision for all property holders' taxation in districts was created.³⁵ Then, in 1838, the first state real property tax levy was created, and by 1853, rate bills were abolished and Ohio schools became free for students to attend.³⁶

Until 1825, Ohio's real property tax system was structured through land classes, to which tax rates applied per acre.³⁷ Adjustments to the land did not affect its class, and property tended to be categorized into lower classes.³⁸ In 1825, the system changed so that tax rates became *ad valorem*,³⁹ and real property tax values broadened to include improvements to taxed land.⁴⁰ In 1931, the new Ohio constitution mandated that uniform taxation apply to land and land improvements.⁴¹

Though Ohio is an example of a state with a relatively uncomplicated adoption of local real property tax legislation and formalization, other states implemented the local real property tax only to be faced with more challenges and opposition.⁴²

Additionally, as states' roles in school funding legislation and structuring increased, intrastate governments were often required to abide by various state requirements to receive supplemental funding. For example, Vermont required towns to support schools via local tax to receive state aid.⁴³ New Jersey, Delaware, New York, and Wisconsin all required that intrastate governments match their received state aid by at least one-half, and these requirements meant that intrastate governments needed to rely on the easily accessible real property tax to obtain the education funding they needed.⁴⁴

31. *Id.*

32. *Id.* at 275.

33. *Public Education, OHIO HIST. CENT.*, https://ohiohistorycentral.org/w/Public_Education#:~:text=In%20the%20General%20Assembly's%20session,schools%20in%20Ohio%20in%201825 (last visited Apr. 23, 2023).

34. Walker, *supra* note 6, at 275.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Ad valorem* taxes are those based on an item's assessed value. *Ad Valorem Tax*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/ad_valorem_tax.

40. Walker, *supra* note 6, at 275.

41. *Id.*

42. *See id.* at 275-76.

43. *Id.* at 276.

44. *Id.* at 276; *see id.* at 270. The rate bill abolishment discussed *supra* Part II.A also led to local taxes being used for school funding.

*B. Real Property Taxes as Public
Education Funds Today*

Throughout the twentieth century, the local real property tax's prominence increased primarily due to rising education costs and the tax's accessible, visible nature.⁴⁵ Factors such as increasing population rates, school attendance laws, broadening school curriculums, higher pay for teachers, and rising costs of living all contributed to the mounting cost of education.⁴⁶ In the earliest year from which data is available—1890—the local real property tax made up 67.9% of all public education revenue in the country.⁴⁷

In the twentieth century, as national and global events occurred that financially encumbered taxpayers, states subsidized funds at different rates and at different times to compensate for these financial droughts.⁴⁸ Consequently, the real property tax portion of public education revenue decreased.⁴⁹

For example, the ratio of real property tax, state funding, and federal funding used for public education changed during the twentieth century specifically due to public concerns about high real property taxes.⁵⁰ Though eighteen states had limitations on real property tax amounts by 1900, in the 1929-1930 academic year, local real property taxes made up 82.7% of the nation's school revenues while state aid provided 17% and federal aid provided 0.3%.⁵¹ The Great Depression, which began at the beginning of that academic year, spurred structural changes to protect families, and during the 1930s many states adopted tax limitations while simultaneously expanding state aid programs or subsidizing property taxes with sales or income taxes specifically dedicated to education.⁵² Today, all states have some form of real property tax limitation, regardless of its purpose or funding use.⁵³ However, virtually all other facets of public school funding vary state-to-state, meaning there is practically no state-to-state funding consistency.⁵⁴

Federal financial aid has never been a prominent source of primary

45. Walker, *supra* note 6, at 284.

46. *Id.*

47. *Id.*

48. One example was the Great Depression. *See id.* at 258-86.

49. *Id.* at 285. Similar changes occurred in the wake of the COVID-19 pandemic. Matt Barnum, *Schools Got \$190 Billion in COVID Relief from the Feds. What's Happened to It?*, CHALKBEAT (Feb. 3, 2022, 4:26 PM), <https://www.chalkbeat.org/2022/2/3/22916590/schools-federal-covid-relief-stimulus-spending-tracking>.

50. Walker, *supra* note 6, at 285-86.

51. *Id.* at 285.

52. *Id.*

53. *Id.*

54. *See* Barnum, *supra* note 49.

school funding for any state.⁵⁵ Though the federal government does provide some funding for grant programs, such as for schools with low-income students, students with disabilities, and public schools for neglected children or children living in foster care, as of 2020, federal aid made up only 8% of all public school revenue.⁵⁶

1. Zooming in: Ohio

In Ohio today, all real property is subject to property taxes unless otherwise noted in the Ohio Revised Code.⁵⁷ Real property is divided into two classes, with class I being residential and agricultural property, and class II being all other real property.⁵⁸ Ohio real property is taxed based on its marketplace value, as it is in all states.⁵⁹ Ohio real property is fully reappraised every six years by county auditors, and every three years, county auditors analyze any sales that have occurred for the property during the preceding three years and apply a percentage adjustment to the property value.⁶⁰ Beyond these periodic reviews, county auditors also must conduct annual reviews for any property that has undergone significant changes, such as damages or improvements.⁶¹ Such changes, in addition to sale values, can alter the value of the property.⁶² Notably, Ohio auditors are not permitted to use foreclosures in their appraisal process, as foreclosure is a judicial process and foreclosed properties are not comparable to other sold properties.⁶³

55. See *How Is K-12 Education Funded?*, PETER G. PETERSON FOUND., <https://www.pgpf.org/budget-basics/how-is-k-12-education-funded> (last visited Apr. 23, 2023).

56. *Id.*; *Public School Revenue Sources*, NAT'L CTR. FOR EDUC. STATS. (May 2023), <https://nces.ed.gov/programs/coe/indicator/cma/public-school-revenue>. Though after 2020 the federal government provided aid to public schools in the wake of the COVID-19 pandemic, this aid is temporary. Matt Barnum, *As Pandemic Aid Runs Out, America Is Set to Return to a Broken School Funding System*, CHALKBEAT (Aug. 25, 2022, 7:00 AM), <https://www.chalkbeat.org/2022/8/25/23318969/school-funding-inequality-child-poverty-covid-relief>.

57. See OHIO REV. CODE ANN. § 5709 (LexisNexis 2023). Some examples of exempted property are graveyards, veterans' monuments, children's homes, and historic buildings. *Id.* § 5725.

58. *Property Tax – Real Property*, OHIO TAX DEP'T 104, 105 https://tax.ohio.gov/static/communications/publications/property_tax_real_property.pdf (last visited Apr. 23, 2023).

59. OHIO ADMIN. CODE § 5703-25-05 (West 2021). *E.g.*, Glenn Hegar, *Property Tax System Basics*, TEXAS COMPTROLLER OF PUB. ACCTS., <https://comptroller.texas.gov/taxes/property-tax/basics.php#:~:text=Generally%2C%20all%20property%20must%20be.pressure%20to%20buy%20r%20sell> (last visited Apr. 23, 2023).

60. *Property Tax – Real Property*, *supra* note 58, at 104.

61. *Reappraisal FAQ*, FRANKLIN CNTY. AUDITOR, <https://www.franklincountyauditor.com/real-estate/appraisals/reappraisal-faq#:~:text=In%20Ohio%2C%20county%20auditors%20are,the%20county%20for%20this%20purpose> (last visited Apr. 23, 2023).

62. *Id.*

63. *Id.*

The Ohio constitution prohibits the government from levying property taxes, unless they are approved by votes, that exceed 1% of true value on an aggregate basis.⁶⁴ This is called the ten-mill limitation, and property taxes within these limits are known as inside millage.⁶⁵ The ten-mill limitation must be distributed and shared across any intrastate governments—including township, county, school district, city, or village—in which the property sits, and is used for those governments' various needs in whichever ways they elect.⁶⁶ One mill is measured as 0.001.⁶⁷ Because taxable value of real property cannot exceed 35% in Ohio,⁶⁸ the ten-mill limitation results in a tax limit of 0.35% on property.⁶⁹ The ten-mill limitation rises and falls directly in correlation with property value according to the auditors' appraisals.⁷⁰ School districts often receive four to six of the ten available mills.⁷¹

In addition to the ten-mill limitation for inside millage, intrastate governments may opt for outside millage exceeding the ten-mill limitation.⁷² This “outside millage” is created through elected property tax increases, which appear on voter ballots.⁷³ Government subdivisions, including school districts, rely on such levies and bonds for a variety of critical needs such as school operating funds, school construction or improvements, technology purchases, facility construction or improvements, safety, cultural centers, and debt payments for construction bonds.⁷⁴ Such levies may be used in times of emergency, may be “phased in” over time, or may be used to fill in funding gaps whenever state aid changes. School levies vary greatly in their characteristics, purposes, and timing, and can be extremely complex and

64. *Property Tax – Real Property*, *supra* note 58, at 104; OHIO REV. CODE ANN. § 5705.02 (LexisNexis 2023).

65. ANN. § 5705.02.

66. Rebecca C. Princehorn, *Demystifying Inside Millage*, BRICKER & ECKLER (Nov. 8, 2018), <https://www.bricker.com/insights-resources/publications/demystifying-inside-millage>.

67. Leah Curtis, *An Explanation of Ohio's Tax Rates, Millage*, OHIO FARM BUREAU FED'N (Apr. 3, 2015), <https://ofbf.org/2015/04/03/an-explanation-of-ohios-tax-rates-millage/>.

68. Land exclusively used for agricultural purposes is not subject to the 35% limitation. *Property Tax – Real Property*, *supra* note 58.

69. ANN. § 5715.01.

70. David A. Graham, *Understanding Real Estate Taxes in Ohio*, GREENE CNTY. OF OHIO, <https://www.greenecountyohio.gov/DocumentCenter/View/23348/Understanding-Real-Estate-Taxes-in-Ohio?bidId=> (last visited Apr. 23, 2023).

71. RICHARD A. LEVIN, OHIO DEP'T OF TAX'N, TAX RSCH. SERIES NUMBER ONE: PROPERTY TAXATION AND SCHOOL FUNDING 3 (2010), https://tax.ohio.gov/static/research/property_taxation_school_funding_2012c.pdf.

72. Curtis, *supra* note 67.

73. *Id.*

74. *Understanding School Levies*, OHIO SCH. BDS. ASS'N 2, <https://www.ohioschoolboards.org/sites/default/files/OSBAUnderstandingLeviesFactSheet.pdf> (last visited Apr. 23, 2023).

detailed, but are necessary for public school survival.⁷⁵ Additionally, these levies impact people who live within the borders of the school district, but who have no children attending the school district, as they still must pay any required levied taxes.⁷⁶

Elected outside millage also faces limitations, called tax reduction factors.⁷⁷ These factors were created by Ohio legislation commonly known as House Bill 920, and they limit tax increases and decreases that occur after auditors' reappraisals.⁷⁸ The factors are meant to ensure that school districts and other intrastate governments do not receive windfall revenues and that they receive the same amount of millage throughout the entirety of a voted levy.⁷⁹ The procedure for applying these factors requires the state's Department of Tax Equalization to calculate a reduction in elected levies so that the same amount of dollars is given to each intrastate government as was the previous year, ensuring that the levy is frozen at the millage for the year in which it first went into effect.⁸⁰ That percentage is the "tax reduction factor" and is applied to real property parcels.⁸¹ Though these factors provide some taxpayer relief, they prevent school districts from receiving the full amounts that elected levies originally designated for them.⁸² This is worsened because Ohio does not provide any state reimbursement for revenue that cannot be collected due to the factors.⁸³

Because tax reduction factors prevent outside millage from increasing with inflation, it is possible that over time, inflation would cause a levied tax to reduce to zero. To prevent that, there is a twenty-mill floor in effect for school districts' outside millage.⁸⁴ To combat this low floor, school districts commonly reallocate inside millage to outside millage, so long

75. *See id.*

76. *See id.*

77. *See Levin, supra* note 71.

78. OHIO REV. CODE Ann. § 5703.04 (LexisNexis 2023); *see Property Tax – Real Property, supra* note 58.

79. *Real Estate Tax Reductions*, LUCAS CNTY. AUDITOR, <https://co.lucas.oh.us/1404/Real-Estate-Tax-Reductions#:~:text=In%201976%2C%20the%20legislature%20enacted,windfall%E2%80%9D%20revenues%20for%20taxing%20districts> (last visited Apr. 23, 2023).

80. *Id.*; *Glossary of School Finance Terms*, REYNOLDSBURG CITY SCHS., <https://www.reyn.org/GlossaryofTerms.aspx> [<https://web.archive.org/web/20210919055249/https://www.reyn.org/GlossaryofTerms.aspx>] (last visited Apr. 23, 2023).

81. *Real Estate Tax Reductions, supra* note 79.

82. *Id.*

83. *Id.*

84. OHIO REV. CODE ANN. § 319.301(E)(2) (LexisNexis 2023); *Property Tax – Real Property, supra* note 58, at 105. Notably, a district that levies less than twenty mills will not be increased to twenty mills. *Id.*

as the reallocation is subject to a public hearing process.⁸⁵ Additional levies are also utilized to combat the low floor, but due to their elected nature, are never guaranteed.⁸⁶

Lastly, there are three primary credit programs which taxpayers in Ohio may utilize: a 10% credit applied to all non-business property, a 2.5% applied to all homesteads occupied by the homeowner, and a homestead exemption which provides owner-occupants who are at least sixty-five or permanently and totally disabled with a credit that adjusts for inflation each year.⁸⁷ To add more complexity to the already convoluted structure, the Ohio Department of Education and Workforce reimburses schools for their portions of the tax credits, the Tax Commission reimburses government subdivisions with their portions of the tax credits, and the county auditors receive 3% of what is reimbursed as payment for administering a homestead exemption and 2% of what is reimbursed as payment for administering a 2.5% non-business property credit.⁸⁸

The mathematical equation for determining an Ohio taxpayer's net property tax can be calculated as:

$$\text{Inside millage} + (\text{Outside millage} - \text{Tax reduction factors}) - (10\% \text{ credit} + 2.5\% \text{ credit} + \text{homestead exemption})$$

These complexities are specific to Ohio, and each state determines its own calculation, structure, and processes.⁸⁹

2. Comprehensive Funding Sources as of the 2019-2020 Academic Year

As of 2020,⁹⁰ local real property tax made up 37% of public school funding for schools across the country and made up 42% of Ohio's school funding.⁹¹ New Hampshire had the highest percentage of local property tax making up its school funding with 62%, while Vermont ranked lowest at 0%.⁹²

85. ANN. § 5705.314.

86. DeRolph v. State, 677 N.E.2d 733, 739-40 (Ohio 1997).

87. *Real Estate Taxes: Ten Percent and Two and Half Percent Credits, and Homestead Exemption, by County, Distributed during Calendar Year 2013 (for Tax Year 2012)*, OHIO DEP'T OF TAX'N, <https://tax.ohio.gov/researcher/tax-analysis/tax-data-series/publications-tds-property/pd1cy13> (last visited Apr. 23, 2023). Homesteads are residential dwellings plus up to one acre of attached land. *Id.*

88. *Id.* There are other reimbursements not attached to credits that the states give to schools. See *Overview of School Funding*, OHIO DEP'T OF TAX'N, <https://education.ohio.gov/Topics/Finance-and-Funding/Overview-of-School-Funding> (last visited by Apr. 23, 2023).

89. See DeRolph, 677 N.E.2d at 737-47.

90. The year of the most recent data available as of the completion of this writing in 2023.

91. *Public School Revenue Sources*, *supra* note 56.

92. *Id.* Since 1998, Vermont has utilized state-level property taxes, rather than local property taxes, to fund its public schools. Satya Marar, *Vermont's School Funding Model Promotes Equity Across School*

As of 2020, local property tax made up an astounding majority of the local revenue value utilized for the nation's public schools: 81%.⁹³ The other 20% came from taxes such as income tax and sales and use tax.⁹⁴ Ninety-nine percent of Connecticut's local revenue allocated for public schools came from local property taxes, and no other state had a higher percentage.⁹⁵

State aid for schools on a national level as of 2020 was approximately 47%, compared to Ohio's 41%.⁹⁶

3. A Big Problem Created on a Small Level

Though the freedom given to the school funding process provides flexibility, for state and intrastate governments it also leads to discrepancies and inequities that impact students and educators.⁹⁷ A recent example occurred in central Ohio's Franklin County, where in 2021 an Ohio State University Kirwan Institute research report revealed that real property values had been incorrectly assessed for nearly a decade.⁹⁸

Even without such egregious errors, inequities virtually always exist for school districts in low-income areas.⁹⁹ There, taxpayers may not have income available to make frequent home improvements which could increase property value and thus increase inside millage. Similarly, low-income areas may not have as many successful businesses, thus robbing their schools of property taxes from class II commercial buildings.¹⁰⁰ Moreover, the state and federal funding available to these schools is not enough to level the playing field for their students.¹⁰¹ Even when funding

Districts, REASON FOUND. (June 24, 2020), <https://reason.org/commentary/vermonts-school-funding-model-promotes-equity-across-school-districts/>.

93. *Public School Revenue Sources*, *supra* note 56.

94. *How State & Local Dollars Fund Public Schools*, ALLOVUE: THE BOTTOM LINE, <https://blog.allovue.com/how-state-local-dollars-fund-public-schools#:~:text=Funding%20for%20public%20school%20districts,funding%20coming%20from%20federal%20funds> (last visited Apr. 23, 2023).

95. *Public School Revenue Sources*, *supra* note 56.

96. *Id.*

97. See Jim Weiker, *Poor and Black Franklin County Neighborhoods Were Overvalued for Real Estate Taxes for Years, New Report Finds*, COLUMBUS DISPATCH (July 12, 2021, 12:01 AM), <https://www.dispatch.com/story/business/2021/07/15/franklin-county-poor-and-black-neighborhoods-overtaxed-years/7940896002/>.

98. *Id.*

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

100. Cory Turner et al., *Why America's Schools Have a Money Problem*, NPR (Apr. 18, 2016, 5:00 AM), <https://www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem>.

101. *Id.*

is equalized, simply providing equal funding is often not enough to support the academic needs of students in low-income communities, which can include specialized support staff and free or reduced meals.¹⁰² Instead, structural support is required to support these schools.¹⁰³

Impoverished schools can struggle to attract and retain teachers due to pay gaps for the teachers they hire.¹⁰⁴ Graduation rates, attendance numbers, and school and student performance in mandatory school testing also lag behind in impoverished schools.¹⁰⁵ In Ohio, economically disadvantaged students have proficiency levels 16.1% lower in English language arts and 17.3% lower in math compared to all students assessed comprehensively.¹⁰⁶ These disparities are even more significant considering that some states utilize performance-based funding for their public schools, meaning that struggling schools that fail to meet certain benchmarks due to lack of funding and resources remain stuck in a perpetual cycle of inadequate funding.¹⁰⁷ From 2012 until 2013 for example, Ohio itself offered a \$17-per-pupil bonus to school districts rated as “excellent” or “excellent with distinction” by the state.¹⁰⁸

4. Zooming in: A Tale of Two Districts

These inequities are particularly well-illustrated through an assessment of schools in two Ohio counties.

In Hamilton County, the Indian Hill School District sees more than

102. THE EDUC. TR., FUNDING GAPS: AN ANALYSIS OF SCHOOL FUNDING EQUITY ACROSS THE U.S. AND WITHIN EACH STATE 4 (2018), <https://edtrust.org/wp-content/uploads/2014/09/Funding-Gaps-2018-Report-UPDATED.pdf>.

103. *See id.*

104. *Unequal Opportunities: Fewer Resources, Worse Outcomes for Students in Schools with Concentrated Poverty*, THE COMMONWEALTH INST., <https://thecommonwealthinstitute.org/research/unequal-opportunities-fewer-resources-worse-outcomes-for-students-in-schools-with-concentrated-poverty/> (last visited Apr. 23, 2023).

105. *Id.*

106. J. CHRISTOPHER WOOLARD, OHIO SCHOOL & DISTRICT RESULTS 2022–2023 2, https://reportcardstorage.education.ohio.gov/2023appsettings/State_Report_Card.pdf?sv=2020-08-04&ss=b&srt=sco&sp=rlx&se=2031-07-28T05:10:18Z&st=2021-07-27T21:10:18Z&spr=https&sig=nPOvW%2Br2caitHi%2F8WhYwU7xqalHo0dFrudeJq%2B%2Bmyuo%3D (last visited Dec. 18, 2023). In Ohio, “economically disadvantaged” includes students who are eligible for a free or reduced lunch; students whose siblings are eligible for a free or reduced lunch; students who receive public assistance; and students whose parents or guardians have completed a Title I student income form and meet the income guidelines specified. *FY2014 District Profile Report*, OHIO DEP’T OF EDUC. & WORKFORCE, <https://education.ohio.gov/Topics/Finance-and-Funding/School-Payment-Reports/District-Profile-Reports/FY2014-District-Profile-Report> (last visited Dec. 18, 2023).

107. *See* Doug Mesecar & Don Soifer, *How Performance-Based Funding Can Improve Education Funding*, BROOKINGS: BROWN CTR. CHALKBOARD (Feb. 24, 2016), <https://www.brookings.edu/blog/brown-center-chalkboard/2016/02/24/how-performance-based-funding-can-improve-education-funding/>.

108. Ohio Legislative Service Commission, 2011-12 DIGEST OF ENACTMENTS 2011, at 44.

90% of its revenue come from local real property taxes.¹⁰⁹ The school district is among the top 5% in Ohio, and its inside millage rate is 6.41 of the ten available mills.¹¹⁰ Class I property in the district is taxed at a rate of 28.08% and class II property is taxed at 26.67%.¹¹¹ Considering revenue from all sources, the district spends \$17,047 per student.¹¹² Over \$15,342 of this spend per student comes from local property taxes.¹¹³ The district's median household income is \$218,073.¹¹⁴ The median value of owner-occupied homes is \$675,100.¹¹⁵

In Clermont County, Batavia Local School District sits a little less than twenty miles from Indian Hill.¹¹⁶ Though both districts' high schools serve suburban communities and have a little more than 600 students,¹¹⁷ Batavia Local Schools' inside millage rate is only 4.30 of the ten available mills, and its performance places it only in the top half of districts in the state.¹¹⁸ Class I property in the district is taxed at a rate of 34.65% and class II property is taxed at 54.68%. Even still, considering revenue from all sources, the district spends only \$10,072 per student—not even 60% of what Indian Hill spends.¹¹⁹ The median household income in the

109. *May 4, 2021 FAQ*, INDIAN HILL SCH. DIST., <https://www.indianhillschools.org/May42021FAQ.aspx> (last visited Dec. 18, 2023).

110. *2022 Aggregate Property Tax Rates by School District*, OHIO DEP'T OF TAX'N, <https://tax.ohio.gov/researcher/tax-analysis/tax-data-series/abstracts/2022-sd-rates> (last visited Dec. 18, 2023); *Indian Hill Exempted Village School District*, PUB. SCH. REV., <https://www.publicschoolreview.com/ohio/indian-hill-exempted-village-school-district/3904543-school-district> (last visited Dec. 18, 2023).

111. *2022 Aggregate Property Tax Rates by School District*, *supra* note 110.

112. *Indian Hill Exempted Village*, U.S. NEWS EDUC., <https://www.usnews.com/education/k12/ohio/districts/indian-hill-exempted-village-100654> (last visited Dec. 18, 2023).

113. *See id.*; *May 4, 2021 FAQ*, *supra* note 109.

114. *Is The Village of Indian Hill the Best Ohio City for Your Business?*, OHIO DEMOGRAPHICS, <https://www.ohio-demographics.com/the-village-of-indian-hill-demographics#:~:text=In%202021%2C%20the%20median%20household,Hill%20families%20live%20in%20poverty> (last visited Dec. 18, 2023).

115. *Indian Hill Exempted Village School District, OH*, CENSUS REP., <https://censusreporter.org/profiles/97000US3904543-indian-hill-exempted-village-school-district-oh/> (last visited Dec. 18, 2023).

116. *Driving Directions from Batavia High School to Indian Hill High School*, GOOGLE MAPS, <https://www.google.com/search?q=google+maps+batavia+high+school+to+indian+hill+high+school&ok=google+maps+batavia+high+school+to+indian+hill+high+school&aqs=chrome..69i57j69i64.9686j1j4&sourceid=chrome&ie=UTF-8> (last visited Apr. 23, 2023).

117. *Overview of Indian Hill High School*, U.S. NEWS EDUC., <https://www.usnews.com/education/best-high-schools/ohio/districts/indian-hill-exempted-village/indian-hill-high-school-15388> (last visited Dec. 18, 2023); *Overview of Batavia High School*, U.S. NEWS EDUC., <https://www.usnews.com/education/best-high-schools/ohio/districts/batavia-local/batavia-high-school-15457> (last visited Dec. 18, 2023).

118. *Batavia Local School District*, PUB. SCH. REV., <https://www.publicschoolreview.com/ohio/batavia-local-school-district/3904630-school-district> (last visited Dec. 18, 2023); *2022 Aggregate Property Tax Rates by School District*, *supra* note 110.

119. *Overview of Batavia Local*, U.S. NEWS EDUC.,

district is \$55,169.¹²⁰ The median value of owner-occupied homes is \$231,100.¹²¹

The unbridled freedom given to state and intrastate governments to determine their own hyper-local funding regimes is a significant part of what has led to these inequities between similar sized communities like Indian Hill and Batavia.¹²² There is practically no consistent protocol for public school fund collection, and this increases the likelihood of inequitably supplied resources and opportunities for students across Ohio and the country.¹²³ Remarkable evidence of this issue lies in the fact that five states' public school funding policies have been found to violate their own states' constitutions, including Ohio's.¹²⁴

C. Ohio's Patchwork History

Ohio has attempted to solve this unconstitutionality and confusion through a patchwork of reactive pieces of legislation and court decisions.¹²⁵ Below, the preeminent case in which Ohio's public school funding system was deemed unconstitutional, and the reactive steps that followed, are examined.

1. *DeRolph v. Ohio I*

In December 1991, the Ohio Coalition for Equity and Adequacy of School Funding in Perry County, Ohio filed suit on behalf of the Northern Local School District in central Ohio, seeking a determination of the constitutionality of Ohio's public education funding system.¹²⁶

<https://www.usnews.com/education/k12/ohio/districts/batavia-local-111415#:~:text=Overview%20of%20Batavia%20Local,district's%20minority%20enrollment%20is%2010%25> (last visited Dec. 18, 2023).

120. *Is Batavia the Best Ohio City for Your Business?*, OHIO DEMOGRAPHICS, <https://www.ohio-demographics.com/batavia-demographics> (last visited Dec. 18, 2023).

121. *Batavia Local School District, OH*, CENSUS REP., <https://censusreporter.org/profiles/97000US3904630-batavia-local-school-district-oh/> (last visited Dec. 18, 2023).

122. See Barnum, *supra* note 49.

123. See *id.*

124. *Landmark US Cases Related to Equality of Opportunity in K-12 Education*, STANFORD EQUAL. OF OPPORTUNITY & EDUC. MCCOY FAM. CTR. FOR ETHICS IN SOC'Y, <https://edeq.stanford.edu/sections/section-4-lawsuits/landmark-us-cases-related-equality-opportunity-k-12-education> (last visited Apr. 23, 2023).

125. See *DeRolph v. State*, 780 N.E.2d 529, 529-33 (Ohio 2002).

126. *DeRolph v. State*, 677 N.E.2d 733, 733-36 (Ohio 1997); Sue W. Yount, *Chronology of the DeRolph v. Ohio School Funding Litigation*, BRICKER & ECKLER, <https://www.bricker.com/resource-center/derolph/key-resources/resource/chronology-of-the-derolph-v-ohio-school-funding-litigation-412> (last visited Apr. 23, 2023).

Ohio's constitution requires "[t]he general assembly [to] make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, [to] secure a thorough and efficient system of common schools throughout the state[.]"¹²⁷ The plaintiff failed to see a thorough and efficient system for all students.¹²⁸

The trial involved more than 5,600 pages of transcript, the admission of 450 exhibits into evidence, and sixty-one witnesses who either testified or submitted a deposition.¹²⁹ Remarkably, the opposing parties argued little about any presented facts, and both even agreed that the state's funding system was inadequate and in need of what the defendant State Board of Education described as "comprehensive reform."¹³⁰ The State Board of Education even brought forth three reform goals of equity, adequacy, and funding reliability.¹³¹ The trial court ruled in favor of the school district, ordering the Superintendent of Public Instruction (the state's chief education officer) and the State Board of Education to propose legislative reform to the state's General Assembly to eliminate the wealth-based disparities seen between the state's public school districts.¹³² Though the State Board of Education did not appeal the decision, the Ohio Attorney General did.¹³³ The result: a reversal of the trial court's decision by way of a split decision.¹³⁴ Unsurprisingly, the case was appealed and reviewed by the Ohio Supreme Court.¹³⁵ Justice Sweeney, writing for the majority, recognized the importance of the case:

Today, Ohio stands at a crossroads. We must decide whether the promise of providing to our youth a free, public elementary and secondary education in a "thorough and efficient system" has been fulfilled. The importance of this case cannot be overestimated. It involves a wholesale constitutional attack on Ohio's system of funding public elementary and secondary education. Practically every Ohioan will be affected by our decision¹³⁶

The Court had no choice, Justice Sweeney concluded, other than to find that the current legislation failed to provide a thorough and efficient system of public education and was thus unconstitutional.¹³⁷

127. OHIO CONST. art. VI, § 2.

128. *DeRolph*, 677 N.E.2d at 733-36.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*; OHIO REV. CODE ANN. § 3301.12 (LexisNexis 2023).

133. *DeRolph*, 677 N.E.2d at 733-36.

134. *Id.*

135. *Id.*

136. *Id.* at 736-37.

137. *Id.*

Justice Sweeney's decision relied upon the fact that the use of real property taxes caused wealth-based disparities, denying many students of the education they should receive.¹³⁸ He emphasized the complexity of the Ohio public school funding system and its real property tax collection,¹³⁹ specifically the "phantom revenue"¹⁴⁰ contributed to by the tax reduction factors of House Bill 920, and the fact that only schools with wealthier residents had the ability to levy benchmarks whenever inflation rose.¹⁴¹

He also emphasized that multiple other states had determined similar rulings, such as Texas in *Edgewood Independent School District v. Kirby*:¹⁴²

Property-poor districts are trapped in a cycle of poverty from which there is no opportunity to free themselves. Because of their inadequate tax base, they must tax at significantly higher rates in order to meet minimum requirements for accreditation; yet their educational programs are typically inferior. The location of new industry and development is strongly influenced by tax rates and the quality of local schools. Thus, the property-poor districts with their high tax rates and inferior schools are unable to attract new industry or development and so have little opportunity to improve their tax base.¹⁴³

The *DeRolph* court detailed a recent Ohio study.¹⁴⁴ Its results: 50% of Ohio's school buildings were at least fifty years old, and 15% were at least seventy years old.¹⁴⁵ Only 31% of these buildings' roofs were satisfactory, 19% of their windows are sufficiently maintained, and 20% had access for handicapped individuals.¹⁴⁶ Shockingly, just 30% had fire alarm systems.¹⁴⁷ Reports of carcass-like buildings, asbestos, and cockroach-laden bathrooms were shared.¹⁴⁸ When it came to students' educations, the reports were not much better.¹⁴⁹ The court noted a lack of honors courses, junior high science lab, visual arts courses, and poor proficiency test scores, as well as a profound lack of technology for students in all the plaintiff districts.¹⁵⁰

138. *Id.* at 737-38.

139. *Id.*

140. *Id.* at 739-40.

141. *Id.*

142. *Id.* at 737-38; *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 399 (Tex. 1989).

143. *DeRolph*, 677 N.E.2d at 741-42 (quoting *Edgewood*, 777 S.W.2d at 393).

144. *Id.* at 742.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.* at 742-43.

149. *Id.* at 744-45.

150. *Id.*

The Court emphasized that while some "equity funds" had been established to supplement low-income districts since the suit was first filed, such funds had been used to purchase technology, which could not even be used until fundamental problems like faulty wiring, asbestos, and lack of teachers were fixed.¹⁵¹ Justice Sweeney remanded the case, but stayed the effect of the decision for one year so that a new funding system could be developed.¹⁵²

2. *DeRolph v. Ohio II, III, and IV*

Three years later, the Ohio Supreme Court ruled in the second *DeRolph* case, holding that the funding system remained unconstitutional, with none of the previously identified problems solved.¹⁵³ The following year, in 2001, the third *DeRolph* case upheld the unconstitutional finding but ruled that the funding system could become constitutional when, first: the state's school cost formula was revised to include the richest and poorest schools as well as schools that met twenty of twenty-seven performance standards; and second: when the state's parity aid program supplementing poor districts' funds was fully funded.¹⁵⁴ This second requirement had to occur two years earlier than originally planned.¹⁵⁵

In 2002, the Ohio Supreme Court issued a reconsideration decision for its fourth and final chapter in the *DeRolph* saga. The Court noted that while there had been a focus on increased funding since the prior three *DeRolph* cases, no systematic overhaul had occurred, which was the core requirement of the case holdings: "We iterate that the constitutional mandate must be met."¹⁵⁶

3. Ohio's State-Level Legislation

Each state's school funding legislation is unique,¹⁵⁷ but one rare piece of constancy among the states can be found in their uniformity clauses, similar to the Uniformity Clause of the U.S. Constitution, which itself gives the federal government the power of taxation and aims to protect

151. *Id.* at 746-47.

152. *Id.* at 747.

153. *DeRolph v. State*, 728 N.E.2d 993, 1020 (Ohio 2000).

154. *DeRolph v. State*, 754 N.E.2d 1184, 1200-01 (Ohio 2001).

155. *Id.*

156. *DeRolph v. State*, 780 N.E.2d 529, 530-32 (2002). This ruling was upheld in 2003 in *State v. Lewis*, which reiterated that it was the legislature's duty to remedy the flawed system. *State v. Lewis*, 789 N.E.2d 195, 202-03 (Ohio 2003).

157. *50-State Comparison: K-12 and Special Education Funding*, EDUC. COMM'N OF THE STATES, <https://www.ecs.org/50-state-comparison-k-12-and-special-education-funding/> (last visited Apr. 24, 2023).

taxpayers from unjust taxation by preventing preferential tax treatment to wealthy property owners.¹⁵⁸ Ohio's uniformity clause requires that land, including "improvements thereon . . . be taxed by uniform rule according to value."¹⁵⁹ Practically, this results in the 35% tax limit for real property, and also requires that property be valued at its true, reasonable, non-biased arms-length cost.¹⁶⁰

Ohio has also developed legislation in the wake of the *DeRolph* cases.¹⁶¹ Most notably, in 2021, Governor Mike DeWine signed into law the Fair School Funding Plan ("FSFP").¹⁶² The FSFP's primary aim is to increase the amount of spending the state spends on each student in its public schools, utilizing realistic educational needs to determine the factual amount required to educate students across the state.¹⁶³ Prior to the FSFP's enactment, the Ohio state government spent \$6,020 per student, and this number was not based upon precise measurements or tests.¹⁶⁴ As written, the FSFP can only accomplish its goals after six years of implementation (and so long as the law is reenacted every two years).¹⁶⁵ In March 2023, the state only provided roughly \$6,500 per student, despite the fact that the plan was supposed to be one-third of the way complete.¹⁶⁶ The plan also does nothing for real property tax administration and collection, and though in April 2023 the Ohio House voted to reenact the FSFP for another two years, many school districts are concerned that the six-year timeline is not accelerated enough, and that future funding for private school vouchers could put the FSFP's implementation at risk.¹⁶⁷

158. U.S. CONST. art. I, § 8, cl. 1.

159. OHIO CONST. art. XII, § 2.

160. *Property Tax – Real Property*, *supra* note 58, at 104.

161. Andrew Welsh-Huggins, *What Changes Under Ohio's New Fair School Funding Plan?*, ASSOCIATED PRESS (July 14, 2021), <https://apnews.com/article/business-government-and-politics-education-ohio-5520e5cfd8048bd65e7670649caf7d62>.

162. *Id.*

163. *Id.*

164. *Id.*

165. Tanisha Pruitt, *2022-23 Budget Review: K-12 Education*, POL'Y MATTERS OHIO 2, <https://www.policymattersohio.org/files/assets/k-12.pdf> (last visited Apr. 23, 2023).

166. Aaron Churchill, *Ohio's New School Funding Formula: What Is the "State Share" Mechanism, and Will It Function Properly Over the Long Term?*, THOMAS B. FORDHAM INST. (Feb. 21, 2023), <https://fordhaminstitute.org/ohio/commentary/ohios-new-school-funding-formula-what-state-share-mechanism-and-will-it-function#:~:text=Note%3A%20The%20median%20district's%20base,phased%2Din%E2%80%9D%20base%20amount>.

167. Terrence Glassmeyer, *Principal: DeWine, Lawmakers Treating Schools the Way Lucy Treats Charlie Brown*, COLUMBUS DISPATCH (Feb. 22, 2023, 5:45 AM), <https://www.dispatch.com/story/opinion/columns/guest/2023/02/22/terrence-glassmeyer-hope-for-fair-school-funding-plan-dashed-with-bill-dewine-plan-ohio-columbus/69916983007/>; Sarah Buduson, *Every Ohio Family Can Now Get a Private School Voucher; Some Say it Helps Students, Experts Call it 'Harmful,'* NEWS 5 CLEVELAND (Aug. 18, 2023, 10:45 AM),

The Ohio legislature has considered additional pieces of legislation affecting real property taxes and school funding, two of which are House Bill 126 and House Bill 1.¹⁶⁸ House Bill 126, which passed in April 2022, restricts school districts' ability to complain about property valuation for commercial properties.¹⁶⁹ This means that schools could very likely receive inaccurate funding amounts.¹⁷⁰ House Bill 1, on the other hand, if signed into law by Governor DeWine, would change the state's tax structure, rolling property taxes back 10%.¹⁷¹

D. Fiscal Federalism and the Federal Landscape

1. Fiscal Federalism

Fiscal federalism is a policy area focusing on the economic relationships that federal, state, and intrastate government powers hold and how these powers divide their taxing and spending powers.¹⁷² In a federalist system such as the U.S., redistributive decisions are made in respect to the various levels' amounts of responsibility.¹⁷³ Fiscal federalism principles suggest that a more centralized system of distribution is most effective and appropriate.¹⁷⁴ Simultaneously, fiscal federalism principles necessitate the avoidance of too much centralization, thus requiring a balance of control.¹⁷⁵

Notably, today, there is little federal caselaw and legislation related to real property taxes and their use for public education funding.¹⁷⁶ Below,

<https://www.news5cleveland.com/news/local-news/investigations/every-ohio-family-can-now-get-a-private-school-voucher-some-say-it-helps-students-experts-call-it-harmful>; *see, e.g.*, Laura Hancock, *Ohio Should Fund Public Schools Over Private, 43 Urban Districts Say in Letter*, CLEVELAND.COM (May 10, 2023, 1:41 PM), <https://www.cleveland.com/news/2023/05/ohio-should-fund-public-schools-over-private-43-urban-districts-say-in-letter.html>.

168. Tonisha Johnson, *House Bill 1 Could Affect Funding for School Districts Statewide*, SPECTRUM NEWS 1 (Apr. 12, 2023, 4:15 PM), <https://spectrumnews1.com/oh/columbus/news/2023/04/10/how-much-could-hb-1-hurt-school-districts-if-passed->; J. Donald Mottley, *Ohio House Bill 126 Revises School Board Role in Property Tax Valuation Appeal*, TAFT L. (Apr. 13, 2022), <https://www.taftlaw.com/news-events/law-bulletins/ohio-house-bill-126-revises-school-board-role-in-property-tax-valuation-appeal>.

169. Mottley, *supra* note 168.

170. *See id.*

171. Johnson, *supra* note 168.

172. *Fiscal Federalism*, CTR. FOR THE STUDY OF FEDERALISM, https://encyclopedia.federalism.org/index.php?title=Fiscal_Federalism (last visited Apr. 23, 2023).

173. Howard Chernick, *A Reconsideration of the Optimal Assignment of Redistribution Under Fiscal Federalism*, in 100 PROCEEDINGS. ANNUAL CONFERENCE ON TAXATION AND MINUTES OF THE ANNUAL MEETING OF THE NATIONAL TAX ASSOCIATION, 216 (2007).

174. *Id.*

175. *See id.*

176. *See How Is K-12 Education Funded?*, *supra* note 55.

this Article explores this area's most impactful United States Supreme Court case and the existing federal framework.

2. Federal Caselaw and Legislation

In *San Antonio Independent School District v. Rodriguez*, Mexican American parents of public school students sued on behalf of their children who attended schools outside of San Antonio, Texas.¹⁷⁷ Their class action suit claimed that the Texas school funding system violated the federal constitutional rights of their children, and others, who lived in areas with low real property tax bases.¹⁷⁸ The parents argued that the funding system, like those in nearly every other state,¹⁷⁹ violated the Equal Protection Clause of the Fourteenth Amendment, which guarantees that states are to practice equal protection, govern impartially, and to not draw distinctions between people on differences irrelevant to legitimate government purposes.¹⁸⁰ Though a district court held for the parents, the Supreme Court concluded that wealth inequity, though present in the case, is “relative” and cannot be “identified or defined in customary equal protection terms,” and thus did not create an identifiable class of people, meaning there could be no claim of comparative wealth discrimination.¹⁸¹

Additionally, though the majority noted the critical need for strong education, and even mentioned the Court's historic reverence for equality in education in cases such as *Brown v. Board of Education*, it found that education is not a fundamental liberty or right.¹⁸² It also found that a service's importance is not sufficient to determine whether it falls under the examination of the Equal Protection Clause.¹⁸³ Finally, the Court found that it is not within its “constitutional prerogative” to invalidate funding measures due to unequal burdens caused by the relative wealth of the areas in which people live.¹⁸⁴

Justices Marshall, White, and Brennan authored dissents, each expressing their conclusions that the reliance on the real property system tax system “discriminates against those children and their parents who live in districts where the per-pupil tax base is sufficiently low.”¹⁸⁵

177. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 4-5 (1973).

178. *Id.* at 5-6.

179. *Id.* at 17.

180. *Id.* at 6; U.S. CONST. amend. XIV.

181. *Rodriguez*, 411 U.S. at 19, 27.

182. *Id.* at 30.

183. *Id.* at 29-30.

184. *Id.* at 54.

185. *Id.* at 70 (White, J., dissenting).

3. The Every Student Succeeds Act

In 2015, President Obama signed the Every Student Succeeds Act ("ESSA") into law, which Congress reauthorized in 2021.¹⁸⁶ The ESSA reauthorizes the Elementary and Secondary Education Act, a fifty-year-old national education law.¹⁸⁷ The ESSA aims to grow educational innovation, requires that American students all be taught to high standards, and protects America's disadvantaged and high-need students.¹⁸⁸ While the ESSA attempts to establish accountability by requiring states to submit implementation plans to the federal Department of Education and also authorizes federal funds for public schools,¹⁸⁹ data indicates that the ESSA has not increased equity or allowed states to adequately meet needs of high-need or at-risk students.¹⁹⁰

E. The Streamlined Sales and Use Tax Agreement

In addition to the real property tax, several other taxes deeply impact Americans' daily lives. Two of those are the sales and use tax, which apply to "retail sale, lease, and rental of tangible personal property as well as well as the sale of selected services."¹⁹¹ Use taxes are collected in an equal amount to sales taxes when sales taxes are not collected from a consumer.¹⁹² In Ohio, the state sales and use tax rates are 5.75%, and regional transit authorities and counties may levy additional tax amounts.¹⁹³ Like the real property tax, sales and use tax rates differ vastly in each state, as well as between intrastate governments within each state.¹⁹⁴

186. *Every Student Succeeds Act*, U.S. DEP'T OF EDUC., <https://www.ed.gov/essa?src=rn> (last visited Apr. 23, 2023); Alexandra Walsh et al., *Has the "Every Student Succeeds Act" Left Children Behind?*, REGUL. REV. (Aug. 6, 2022), <https://www.theregreview.org/2022/08/06/saturday-seminar-has-the-every-student-succeeds-act-left-children-behind/>.

187. *Every Student Succeeds Act*, *supra* note 186.

188. *Id.*

189. *Every Student Succeeds Act*, OHIO DEP'T OF EDUC., <https://education.ohio.gov/getattachment/Topics/Every-Student-Succeeds-Act-ESSA/Federal-Funding-Topic-Discussion-Guide.pdf.aspx> (last visited Apr. 23, 2023).

190. Walsh et al., *supra* note 186.

191. *Sales & Use Tax*, OHIO DEP'T OF TAX'N, <https://tax.ohio.gov/business/ohio-business-taxes/sales-and-use/sales-use-tax> (last visited Apr. 23, 2023).

192. *Id.*

193. *Id.*

194. See Janelle Fritts, *State and Local Sales Tax Rates, 2023*, TAX FOUND. (Feb. 7, 2023), <https://taxfoundation.org/data/all/state/2023-sales-tax-rates-midyear/>.

For example, though Ohio's rate is 5.75%, some states have no sales tax.¹⁹⁵ Colorado has the nation's lowest rate at 2.9%.¹⁹⁶ California has the highest rate at 7.25%.¹⁹⁷

Ohio's average local sales and use tax rates are 1.49%, which is added to the state's 5.75% tax.¹⁹⁸ In Hamilton County, where Indian Hill Schools sit, the county-wide sales tax rate is 2.05%, and some of the county's cities apply an additional tax.¹⁹⁹ Clermont County, the home of Batavia Local Schools, has a sales tax rate of 1%, and some of its cities apply an additional tax.²⁰⁰

As the internet began to transform commerce, the collection of sales and use tax became more challenging, and the need for simplicity and modernization became evident.²⁰¹ For example, Congress attempted to prohibit states from collecting online commerce sales taxes, and to prevent that, lawmakers created the Streamlined Sales and Use Tax Agreement ("SSUTA") in October 2005.²⁰² Forty-four states and the District of Columbia have adopted the SSUTA.²⁰³ Its purpose is to

provide a road map for states who want to simplify and modernize sales and use tax administration in their states in order to substantially reduce the burden of tax compliance. The SSUTA focuses on improving sales and use tax administration systems for all sellers and for all types of commerce

. . . .²⁰⁴

States must choose to join the SSUTA, with full members being those whose tax laws fully comply and have been accepted by 75% of the agreement's governing board.²⁰⁵ Associate members are states that have

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.* Notwithstanding the 13 states with an average local tax rate of 0%, Idaho has the lowest with 0.02%, and Alabama's is highest at 5.25%. *Id.*

199. *Ohio Sales Tax Rates: Hamilton County*, SALES TAX HANDBOOK, <https://www.salestaxhandbook.com/ohio/rates/hamilton-county> (last visited Apr. 23, 2023).

200. *Ohio Sales Tax Rates: Clermont County*, SALES TAX HANDBOOK, <https://www.salestaxhandbook.com/ohio/rates/clermont-county> (last visited Apr. 23, 2023).

201. *About Streamlined FAQs*, STREAMLINED SALES TAX GOVERNING BD., INC., <https://www.streamlinedsalestax.org/Shared-Pages/faqs/faqs---about-streamlined> (last visited Apr. 23, 2023).

202. Streamlined Sales and Use Tax Agreement, Art. VII, § 701 (2018); *see* CONG. RSCH. SERV., IF11947, THE INTERNET TAX FREEDOM ACT AND FEDERAL PREEMPTION 1, (Oct. 18, 2021).

203. *About Streamlined FAQs*, *supra* note 201.

204. *About Streamlined FAQs*, *supra* note 201.

205. Judith Lohman, *Update on Streamlined Sales and Use Tax Agreement*, CONNECTICUT GEN. ASSEMBLY (Aug. 21, 2012), <https://www.cga.ct.gov/2012/rpt/2012-R-0340.htm>.

achieved substantial compliance with the agreement.²⁰⁶ Ohio became a full member of the agreement in 2014.²⁰⁷

The SSUTA's administrative uniformity requirements include that: products are to be taxed per the location of a business when the purchaser is a business; products are to be taxed per the location of the purchaser when the purchaser is not a business; and products are to be taxed per the location of the seller when there is no obtainable purchaser address.²⁰⁸ The SSUTA also provides its member states with the ability to interpret the reception of computer software, though the most logical conclusion occurs when such technology, like software as a service (commonly called "SaaS"), is considered as received at the location of the purchaser or first user.²⁰⁹

The SSUTA reduces businesses' administrative costs by reducing the jurisdictions in which a business must file, report, and pay sales and use tax.²¹⁰ Thus, the information a business must know to simply conduct its business is minimized.²¹¹ The SSUTA also reduced businesses' administrative costs by not convicting businesses for any crimes, even if they charge too much or too little tax, so long as they calculate tax based on the state's rate and boundary files.²¹²

Additionally, the SSUTA requires that its member states provide databases with tax rates for all local jurisdictions, identifying all tax rates for nine- and five-digit zip codes, or specific addresses.²¹³ These databases are available to businesses for no charge.²¹⁴

Businesses in states adhering to the SSUTA also have the option of utilizing Certified Service Providers ("CSPs").²¹⁵ CSPs perform all of the business's sales and use tax functions, thus taking administrative

206. *Id.* The agreement also has advisor states that are not compliant with the agreement but are represented on the agreement's governing board. *Id.*

207. *Ohio State Details*, STREAMLINED SALES TAX GOVERNING BD., INC., <https://www.streamlinedsalestax.org/state-details/ohio> (last visited Apr. 23, 2023).

208. 1 LEXIS STATE TAX GUIDE ON DIGITAL CONTENT & CLOUD SERVICES § 5.02, LEXISNEXIS, https://plus.lexis.com/document/?pdmfid=1530671&crld=d5f7dcbd-efdc-4cf7-9469-72779870d512&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A57XY-42Y0-R03N-J0NB-00000-00&pdcontentcomponentid=396288&pdteaserkey=&pdispamode=false&pdworkfolderlocatorid=NOT_SAVED_IN_WORKFOLDER&ecomp=674k&earg=sr0&prid=6a0fd18f-8fd4-4a59-9514-70ea4996a1ee&cbc=0%2C0 (last visited Apr. 23, 2023).

209. *See id.*

210. *About Streamlined FAQs*, *supra* note 201.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Certified Service Providers*, STREAMLINED SALES TAX GOVERNING BD., INC., <https://www.streamlinedsalestax.org/certified-service-providers/certified-service-providers-about> (last visited Apr. 23, 2023).

responsibilities away from the business.²¹⁶ Additionally, states fund the costs of CSPs for businesses without a physical presence in their states, further reducing the businesses' expenses.²¹⁷

Though the SSUTA provides businesses with administrative solutions and cost reductions for sales and use tax, the SSUTA leaves out several types of tax, notably, real property tax.²¹⁸ However, just as the sales and use tax required nearly twenty years ago, the property tax is clearly in dire need of reevaluation and administrative uniformity. A legislative proposal similar to the SSUTA, but applied to real property tax, would provide uniformity both within states and between states, thus increasing equitable educational opportunities for public school students across the country.

III. DISCUSSION

Though property taxes have long been hyper-localized, with state and local governments holding onto a wide breadth of freedom, this approach has not led to an equitable or easily understood system of school funding.²¹⁹ Instead, an approach exhibiting greater state uniformity is required to create greater equity and increased educational opportunity both across Ohio and the nation.

The SSUTA, a state government level administrative structure developed in response to changing commerce standards, is an ideal structure to modify and use as a state-based structure to standardize property tax administration. Property tax is not covered by the SSUTA, but just as the SSUTA helps states administer sales and use tax, a modified version of the SSUTA would easily do the same for real property tax.

Below, the SSUTARP's functions are outlined, followed by an explanation of the SSUTARP's numerous legal benefits and policy-focused advantages, concluding with potential points of opposition and rebuttals to those points.

A. What a SSUTA for Real Property Tax Would Include

A SSUTA for real property tax, the SSUTARP, would “provide a road map for states who want to simplify and modernize [real property] tax administration in their states in order to substantially reduce the burden

216. *Id.*

217. *About Streamlined FAQs*, *supra* note 201.

218. *See id.*

219. *See supra* Parts II.C.1-2, II.D.2.

of [real property] tax compliance," as the current SSUTA structure does.²²⁰ It would focus on "improving real property tax administration systems for all [taxpayers]"²²¹ thus benefitting all resources that utilize real property tax for funding—primarily, public schools.²²² Just like the SSUTA, the SSUTARP would not change real property tax rates, but would create uniformity and structure on the state level that impacts, and in the long-run improves, intrastate real property taxation.

Specifically, the SSUTARP would apply administrative uniformity for each state through seven functions that are similar to those of the SSUTA.²²³ The first would be for appraisal to occur at the same frequency, and in the same years, for intrastate level auditors in all states. Ohio's timing of full appraisals every six years and sale analyses every three years could be utilized in all states.²²⁴ This would ensure that all properties across the country would be taxed at precisely the same time, thus utilizing the same inflation rates and increasing the likelihood of property tax equity. Secondly, the SSUTARP would require that all real property tax rates, inside and outside millage rates, credit programs, and reimbursement sources are easily accessible for public schools and taxpayers, thus creating greater candidness and comprehension for these groups.

A third function would be a singular property tax limitation ratio across all states, such as Ohio's ten-mill limitation. Such a uniform limitation would enable all real property to carry the same tax value across the country. Fourth, the SSUTARP would reduce tax reduction factors in each state; for example, all states' tax reduction factors could sit at a 50% inflation rate in each state. This would allow outside millage rates to adjust with inflation.

Fifth, CSPs would be utilized for the SSUTARP just as they are for the SSUTA. This would reduce administrative costs and burdens for intrastate governments.²²⁵ Sixth, like the SSUTA, the SSUTARP would further reduce costs by not convicting school districts or other intrastate governments for crimes even if they charge too much or too little tax, so long as they calculate tax and do so based on the correct rate.²²⁶ Finally, the SSUTARP would have full and associate member states, just as the

220. *About Streamlined FAQs*, *supra* note 201.

221. *Id.*

222. *See supra* Part II.B.2.

223. *See supra* Part II.E.

224. *See Reappraisal FAQ*, *supra* note 61.

225. *See Certified Service Providers*, *supra* note 215.

226. *About Streamlined FAQs*, *supra* note 201.

SSUTA does.²²⁷ Below, the reasons why the SSUTARP would succeed in Ohio and in other states are detailed.

B. The SSUTA Already Combats Complex Tax Structures and Has Positively Impacted Ohio and the Country

The SSUTA has positively impacted the states that have become members of its policy.²²⁸ The SSUTA, member states recognize, is “revenue neutral,” and in the “long term . . . will protect the current sales tax base and will result in increased ability to collect sales tax that is due to the State since taxpayer compliance will be facilitated by explaining sales tax obligations, sales tax exemption procedures and administrative and privacy issues.”²²⁹ In other words, the SSUTA does not have authority to alter state or intrastate tax rates.²³⁰ The SSUTARP would do the same.

In Ohio, the SSUTA helps the state and intrastate governments collect on untaxed sales revenue that is typically lost due to being from out-of-state vendors.²³¹ Each year, Ohio loses an average of \$350 million on untaxed sales by out-of-state vendors, a significant impact.²³² A similar impact could be seen through the SSUTARP, especially in situations in which real property taxes are collected inaccurately.²³³

Additionally, as the SSUTA’s use of CSPs has already reduced sales and use tax administrative burdens and costs across the country, the SSUTARP’s use of CSPs would do the very same for school districts and other intrastate governments by transferring administrative responsibilities and costs to from schools to CSPs. Schools and intrastate governments could use their previous administrative dollars on students instead of on real property tax administration. The decision to limit convictions of school districts and other intrastate governments for those that calculate taxes at the correct rate would do the same, as judicial costs could be reduced. Furthermore, the nature of the SSUTARP’s consistent

227. *Id.*

228. *See Ohio Recertifies Compliance with the Requirements of the Streamlined Sales Tax Agreement*, OHIO DEP’T OF TAX’N, <https://tax.ohio.gov/business/ohio-business-taxes/sales-and-use/streamlined-sales-tax> (last visited Apr. 23, 2023).

229. N.J. Off. of Admin. L., Proposed New Rules: N.J.A.C. 18:24B (Apr. 20, 2009), <https://www.state.nj.us/treasury/taxation/pdf/sstpregs.pdf>.

230. *Id.*

231. *Ohio Recertifies Compliance with the Requirements of the Streamlined Sales Tax Agreement*, *supra* note 228.

232. *Id.*

233. *See, e.g., Weiker, supra* note 97.

structure would help ensure that the very *need* to convict schools for taxation issues is reduced.²³⁴

Lastly, the SSUTA is already effectively applied to states and their intrastate governments, including Ohio, which has been a member for nearly a decade.²³⁵ Since the same government levels are involved with the collection and administration of real property tax, the structure of the SSUTA could easily be used in the SSUTARP by these same government levels to apply to real property tax.²³⁶

*C. The SSUTARP Would Work in Conjunction
with Historical and Modern Practices
and Modern Needs*

1. The SSUTARP Would Work in Conjunction
with Historical Practices

Just as it has been for nearly five centuries, the real property tax's use remains a firm tradition in this country that is embedded in public education funding.²³⁷ This tradition is a large part of why the tax remains in use.²³⁸ And while an item's long-term use is not an indication of its effectiveness, it can be an indication of how difficult it might be to get rid of the item. In the case of the real property tax, this is especially true considering that the tax makes up such a significant portion of public education funds.²³⁹ Further, because the SSUTARP would not abrogate the real property tax or its use in public education funding, the SSUTARP would work well alongside the tax's long-standing use.

The SSUTARP would also allow the intrastate government collection of real property tax collection to continue as it has for years.²⁴⁰ The SSUTARP would benefit intrastate governments because it would remove administrative stress from them by placing that stress on SSUTARP administrators. Therefore, traditional American tax collection practices themselves could continue, albeit with more structure and intelligibility created by the SSUTARP and its seven functions. Additionally, because of the oversight of the SSUTARP, issues such as those that were discovered in Franklin County in 2021 would be more

234. See Benjamin Brandall, *Why Process Standardization Improves Quality, Productivity, and Morale*, PROCESS STREET (May 30, 2018), <https://www.process.st/process-standardization/>.

235. *About Streamlined FAQs*, *supra* note 201; *Ohio State Details*, *supra* note 207.

236. *See id.*

237. Walker, *supra* note 6, at 288.

238. *Id.*

239. *See supra* Part II.B.2.

240. Walker, *supra* note 6, at 273-74.

likely to be noticed and stopped through SSUTARP administration.²⁴¹

2. The SSUTARP Would Meet Modern Needs

Though there is no internet or virtual space for real property as there is for the sale of goods and services, administration of the real property tax suffers from a multitude of problems, and the application of the SSUTA for real property tax would modernize nearly five centuries of complex, hyper-localized, multi-level taxation practices.²⁴² Funding incongruities for public schools have existed since the Revolutionary War,²⁴³ and the SSUTARP's novel structural remedies that standardize appraisal timing, inside and outside millage rates, property tax limitation ratios, and tax reduction factors while still allowing intrastate governments to decide their own real property tax rates would be the first of its kind. Such a solution would present a uniform, yet flexible, solution.

Additionally, the federal legislature and judiciary continually seek new ways to modernize and simplify tax structures and tax collection, which can easily be seen through the SSUTA's creation, through court cases interpreting the SSUTA, and through state-level legislation such as Ohio House Bill 126.²⁴⁴ The SSUTARP would be a logical addition to these efforts.

3. The SSUTARP Would Increase the Likelihood of Meeting the Educational Needs of Modern Youth

Not dissimilarly from Americans after the Revolutionary War,²⁴⁵ many Americans today desire effective, vocation-preparing education for young people.²⁴⁶ Education issues heavily influence how Americans vote,²⁴⁷ and most Americans desire for education to be deemed a "public good."²⁴⁸

241. See, e.g., Weiker, *supra* note 97.

242. See *supra* Parts II.A-D.

243. 16.1 *A Brief History of Education in the United States*, *supra* note 5.

244. E.g., *Deep Dive: The Unfolding Legacy of South Dakota v. Wayfair*, PYMNTS (Sept. 5, 2019), <https://www.pymnts.com/next-gen-sales-tax/2019/wayfair-marketplace-facilitator-economic-nexus-ecommerce/>.

245. 16.1 *A Brief History of Education in the United States*, *supra* note 5.

246. See Zachary Wright, *Think Education Is a Public Good? Think Again.*, ED POST (Jan. 13, 2020), <https://www.edpost.com/stories/think-education-is-a-public-good-think-again>.

247. Tim Walker, *Poll: Majority of Public Wants Greater Federal Support for Education*, NAT'L EDUC. ASS'N (Aug. 25, 2020), <https://www.nea.org/advocating-for-change/new-from-nea/poll-majority-public-wants-greater-federal-support-education>.

248. Wright, *supra* note 246. To be deemed an economic public good, something must be nonexcludable and nonrivalrous, meaning it is available to all and that multiple persons can access the item without reducing the amount left for others. *Id.*

Additionally, recent studies indicate that a "strong majority" of the U.S. public wants the federal government to take on a more active role in improving public education.²⁴⁹

The SSUTARP, by creating a consistent structure across all adopting states, would bolster efforts for equity, further recent legislative and judicial efforts, increase transparency to the public, and support correctly and easily measuring property taxes, thus providing school funding. Thus, the SSUTARP would pair well with the will and goals of the American people.²⁵⁰ Additionally, if widely supported by the federal government, the SSUTARP would bolster public confidence in the federal government's education efforts.

The SSUTARP would also improve public school funding structures in an era of increasing alternatives to public schools, such as charter schools.²⁵¹ One primary reason parents choose to send their children to charter schools is due to the resources, innovation, and enrichment opportunities that charter schools provide while still being free to attend.²⁵² The SSUTARP's seven functions would provide structure for real property taxes, create a more uniform taxation system, and lead to large-scale education reform, since all member states would, specifically, use the same uniform state-to-state appraisal timing, inside and outside millage rates, property tax limitation ratios, and tax reduction factors.

The SSUTARP would also improve public perception about the real property tax. Today, the tax is often criticized by Americans who believe it does not adequately provide children with a sufficient education.²⁵³ However, the SSUTARP's uniform characteristics focused on real, equitable change, would likely improve the public opinion of the real property tax and help the public understand and appreciate the tax's benefits.

249. Walker, *supra* note 247.

250. *See id.*

251. Kayla Jimenez, *School Choice Remains Popular Following COVID Closures. What it Means for Students and Schools.*, USA TODAY (Feb. 1, 2023, 5:00 AM), <https://www.usatoday.com/story/news/education/2023/02/01/where-school-choice-leave-student-schools/11114960002/>.

252. David Buice, *Top 10 Reasons to Choose a Charter School over Private or Public*, DALLAS MORNING NEWS (Mar. 15, 2021, 1:00 PM), <https://www.dallasnews.com/sponsored/2021/03/15/top-10-reasons-to-choose-a-charter-school-over-private-or-public/>.

253. Walker, *supra* note 6, at 273; Tracy Gordon, *Critics Argue the Property Tax Is Unfair. Do They Have a Point?*, URB. INST. & BROOKINGS INST. TAX POL'Y CTR, (Mar. 9, 2020), <https://www.taxpolicycenter.org/taxvox/critics-argue-property-tax-unfair-do-they-have-point>.

*D. The SSUTARP Would Not Conflict
with Fiscal Federalism*

The SSUTARP would not violate the principles of fiscal federalism because it would present redistributive decisions to the more centralized powers of the states and the nation, despite removing some autonomy from intrastate governments. Notably, the SSUTARP would not dictate how each state and county must allocate their property taxes to schools, nor control levies or real property taxation rates. However, it would improve the administration of the real property tax—the funding source itself. This would be the best step toward systemic improvement without fully dismantling the parts of the education funding system that are effective, and without robbing intrastate governments of all flexibility and autonomy. It would allow for state- and nation-wide learnings because each member state would adopt these same protocols: state-to-state appraisal timing, inside and outside millage rates, property tax limitation ratios, and tax reduction factors. This standardization, akin to the control variables of a study or survey, would allow the nation, each state, and intrastate governments to fully understand their funding failures, and more importantly, solutions to those failures.²⁵⁴

Additionally, fiscal federalism as it has typically been implemented through the current public education funding system has led to great inequity and confusion for taxpayers and political leaders.²⁵⁵ Thus, the SSUTARP's changes would present a step toward solving equity problems.

Finally, because fiscal federalism principles necessitate a balance of control amongst economic and political powers,²⁵⁶ the SSUTARP would be an excellent structure because it would not remove all power from local governments and would allow for member states to decide if they would want to be full or associate member states.²⁵⁷

*E. The SSUTARP is a Strong Method for Combatting
Unconstitutionality at All Levels*

As seen in all four *DeRolph* cases, as well as in the cases that *DeRolph* relied upon, public school funding has been found to violate states' constitutions because its current use of real property tax does not provide a thorough and efficient education system.²⁵⁸ The SSUTARP would

254. See Brandall, *supra* note 234.

255. *E.g.*, *DeRolph v. State*, 677 N.E.2d 733, 742-44 (Ohio 1997).

256. Chernick, *supra* note 173, at 216.

257. See *supra* Part III.B.

258. *E.g.*, *DeRolph*, 677 N.E.2d at 742-44.

provide a remedy toward long-term accurate real property tax, and thus, school revenue, collection for school districts. Such a system would lead to practices in line with state constitutions because it would thoroughly and efficiently affect the real property tax administration through the application of uniform state-to-state appraisal timing, inside and outside millage rates, property tax limitation ratios, and tax reduction factors. This would allow for all students to receive robust educations regardless of the property values in the areas they live.

The SSUTARP, by reducing the tax reduction factors, would also limit the phantom revenue criticized by Justice Sweeney in *DeRolph I* and provide schools with the funding they require in accordance with their elected levies, thus increasing the likelihood of providing a thorough and efficient system of public education as required by the state's constitution.²⁵⁹

The lack of success of the various solutions presented in each *DeRolph* case evidences the clear need for the SSUTARP, as the other solutions attempted to-date have failed to achieve equity, and a systematic overhaul is still needed.

Furthermore, through a sustainable and long-standing structure, the SSUTARP would help prevent schools from becoming stuck in a perpetual cycle of insufficient funding, or from being forced to require performance-based funding, like Ohio's 2012 and 2013 per-pupil bonus.²⁶⁰ Instead, the unconstitutional inequity found in the *DeRolph* cases and *Edgewood* would be minimized, as schools would more likely receive the funding they need to educate their students no matter where those students live.²⁶¹

The SSUTARP, by applying a consistent system of real property process, would also support adherence to state uniformity clauses because, by their nature, processes, transparency, and state-to-state standardization can provide a safeguard against covert practices and dishonesty.²⁶² Furthermore, the identical state-to-state appraisal timing and rates would help ensure that land and land improvements are "taxed by uniform rule according to value" as required by the clause.²⁶³

Finally, though in *San Antonio Indep. Sch. District v. Rodriguez* the Supreme Court found public school funding through real property taxes to be constitutional, the three dissenting justices' constitutionality

259. OHIO CONST. art. VI, § 2.

260. See Mesecar & Soifer, *supra* note 107; Ohio Legislative Service Commission, *supra* note 108, at 44.

261. *DeRolph v. State*, 677 N.E.2d 733, 741-42 (1997).

262. See *supra* Part III.E.; Brandall, *supra* note 254.

263. OHIO CONST. art. XII, § 2.

concerns were seen in the *DeRolph* saga, and they are still seen today, fifty years after their concerns were first articulated.²⁶⁴

F. *The SSUTARP and Ohio Legislation in 2023*

Because the FSFP, the law most prominent in education reform in Ohio today, may not be moving quickly enough, and in light of uncertainties over future funding for private school vouchers,²⁶⁵ the SSUTARP's implementation is especially important because Ohio may soon need a more robust public education funding structure. The SSUTARP is also important in the face of legislation such as House Bill 126 and House Bill 1. These bills restrict school districts' ability to complain about incorrect real property valuation and decrease real property taxes.²⁶⁶ These changes necessitate a structure that can deliver equitable funding to students even when legislative changes occur.

G. *Possible Opposition to the SSUTARP*

One possible objection to the SSUTARP could be that it would reduce tax reduction factors, thus increasing the amounts that individuals are taxed. However, other tax rates fluctuate with inflation, including sales and use tax.²⁶⁷ To create consistency and transparency, and in the interest of equity and long-term change, this possible complaint, which would not create long-term issues nor higher taxes, could be alleviated through clear and effective communication to taxpayers.²⁶⁸

Second, the fact that the SSUTARP would take away some autonomy from intrastate governments is an aspect of the SSUTARP that could face opposition. However, this reduction in autonomy would lead to greater state-to-state consistency. This result, along with the many benefits of the SSUTARP—particularly increased equity improved constitutionality—would make the trade off more than worth it.

Third, Ohio political leaders may raise opposition.²⁶⁹ However,

264. See *supra* Parts II.B.3-4, II.C.1-2, II.D.2.

265. See *supra* note 167.

266. See *supra* note 168; Yount, *supra* note 126.

267. Justin Theal & Sheanna Gomes, *Elevated Inflation Raises Risk of Fiscal Stress for States*, THE PEW CHARITABLE TRS. (Jan. 11, 2023), <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/01/11/elevated-inflation-raises-risk-of-fiscal-stress-for-states#:~:text=Sales%20taxes%20are%20generally%20calculated,ups%20and%20downs%20of%20inflation.>

268. See Larry DeBoer, *Capital Comments: What Happens to Property Taxes During Inflation?*, PURDUE UNIV. EXTENSION (Jan. 4, 2022), <https://extension.purdue.edu/news/2022/01/what-happens-to-property-taxes-during-inflation.html>.

269. See Laura Hancock, *Gov. Mike DeWine's Education Budget Proposal Provides Something for Almost Anyone. Will the Legislature Pass It?*, CLEVELAND.COM (Feb. 6, 2023),

Governor DeWine has expressed his support of education reform in the state and has even supported legislation that would give his office more oversight over education in the state.²⁷⁰ His desire for state-level oversight would be actualized by the SSUTARP.

Finally, though it is true that the SSUTARP would not solve all inequities, such as the fact that low-income areas do not benefit from the same real property values as higher income areas,²⁷¹ the SSUTARP would serve as the first and only type of federal administrative function to push toward greater administrative consistency, transparency, and education—all steps toward fully equitable school funding.

IV. CONCLUSION

Great change often starts with a single step. The SSUTARP would be an ideal first step toward establishing structure and uniformity for the complex national landscape of real property taxation, leading to great results by adopting a structure that consists of seven simple yet comprehensive elements: (1) appraisal occurring at the same frequency, and in the same years, for intrastate level auditors; (2) a requirement that all real property tax rates, inside and outside millage rates, credit programs, and reimbursement sources are easily accessible for public schools and taxpayers; (3) a singular property tax limitation ratio; (4) reduced tax reduction factors; (5) the utilization of CSPs; (6) the decision to not convict school districts or other intrastate governments for crimes even if they charge too much or too little tax, so long as they calculate tax and do so based on the correct rate; and finally, (7); the option for adopting states to become full or associate members of the SSUTARP.

As Justice Marshall eloquently articulated in his *Rodriguez* dissent, this writer is, “for one . . . unsatisfied with the hope of an ultimate ‘political’ solution sometime in the indefinite future while, in the meantime, countless children unjustifiably receive inferior educations that ‘may affect their hearts and minds in a way unlikely ever to be undone.’”²⁷² The SSUTARP’s seven functions would create consistency, structure, and transparency for Ohio and each state that adopts it, just as the SSUTA has, thereby leading to more accurate real estate valuation, tax collection, tax learnings, and significantly more equitable funding for those relying on real property tax the most: countless children across the country.

<https://www.cleveland.com/news/2023/02/gov-mike-dewines-education-budget-proposal-provides-something-for-almost-anyone-will-the-legislature-pass-it.html>.

270. *Id.*

271. Turner et al., *supra* note 100.

272. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 71-72 (1973).