STETSON BUSINESS LAW REVIEW

AMERICA'S MOST HATED TAX?: WHY PROPERTY TAXES ARE UNFAIR AND REGRESSIVE TAXATION

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I. INTRODUCTION

Founding father Benjamin Franklin said in 1789, "nothing can be said to be certain, except death and taxes."[2] Even in a newfound country with a slim federal government found in part on anti-tax sentiment, the need for the government to bring in revenue was not in dispute. In the new United States, property taxes were some of the earliest taxes imposed, first being implemented on the federal level in 1798 (as well as locally around that same time).[3] Despite strong anti-feudal sentiments and being referred to as "free and common socage," property taxes endured through time because these taxes were typically both collected and spent locally on infrastructure valued highly by taxpayers.[4] While many bemoan their property taxes—which are known as "America's Most-Hated Tax"[5]—support of property taxation remains strong to this day for similar reasons.

Traditionally, the United States has moved towards progressive income taxes being a primary source of revenue for both the federal and many state governments, although that trend has slowed and even reversed in recent decades.[6] Yet, property taxes account for 72.1 percent of local tax collections and 31.9

2. Letter from Benjamin Franklin to Jean-Baptiste Le Roy, THE WRITINGS OF BENJAMIN FRANKLIN VOL. 10 (1856) at 410.

3. Alana Semuels, *The Feudal Origins of America's Most-Hated Tax*, THE ATLANTIC (Aug. 24, 2016), https://www.theatlantic.com/business/archive/2016/08/the-feudal-history-of-property-tax-in-america/497099/.

4. *See id.*

5. *Id.*

6. Thomas Piketty & Emmanuel Saez, *How Progressive is the U.S. Federal Tax System? A Historical and International Perspective*, 21 J. OF ECON. PERSP. 3, 22 (2007).

percent of all state and local tax collections in the United States.[7] While in theory, the incidence of property taxes should fall on those with more property, the reality of how governments impose property taxes often means that is not the case.[8]

To provide a rudimentary illustration of this concept: housing is a fundamental human need. Yet, someone who makes $100,000 likely does not spend four times as much of their income on housing as someone who makes only $25,000 per year, and someone who makes $1 million per year likely does not spend ten times as much of their income on housing as the person making $100,000 per year. Additionally, lower income people are more likely to rent than own their properties, and rental properties are typically subject to higher property taxes.[9] On top of that, most homeowners have a mortgage to finance their home ownership, while property taxes are generally based on market value of real estate and not a homeowner's equity.[10]

This paper seeks to investigate the true state of the regressivity of property taxes in the United States. This paper hypothesizes that property taxes are a regressive form of taxation, and that localities would be better served by other options if legally available to them and otherwise practicable. The paper will begin with an overview of the different types of property and local taxing schemes that exist in the United States and by explaining the rationale behind property taxes. From there, the terms "regressive tax" and "wealth tax" will be defined to communicate how property taxes act as a regressive wealth tax. Some of the regressive implications of property taxes, such as the impact on those with fixed incomes, during economic recessions, and access to affordable

7. Janelle Fritts, *To What Extent Does Your State Rely on Property Taxes*, TAX FOUNDATION (May 27, 2020), https://taxfoundation.org/state-property-tax-reliance-2020/.

8. *See* Wallace E. Oates & William A. Fischel, *Are Local Property Taxes Regressive, Progressive, or What?*, 69 NAT. TAX. J. 415, 417 (June 2016).

9. Drew Desilver, *As National Eviction Ban Expires, a Look at Who Rents and Who Owns in the U.S.*, PEW RSCH. CTR. (Aug. 2, 2021), https://www.pewresearch.org/fact-tank/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/.

10. *See* John Wake, *U.S. Has 3rd Lowest Percentage of Households That Own Their Homes Without Mortgages*, FORBES (Mar. 31, 2023), https://www.forbes.com/sites/johnwake/2023/03/31/us-has-3rd-lowest-percentage-of-households-that-own-their-homes-without-mortgages/?sh=5c78ed443124; *see also* Michael Neal, *Mortgage Debt Has Peaked. Why Has the Share of Homeowners with a Mortgage Fallen to a 13-Year Low?*, URB. INST. (Aug. 20, 2019), https://www.urban.org/urban-wire/mortgage-debt-has-peaked-why-has-share-homeowners-mortgage-fallen-13-year-low.

housing, will be touched upon throughout this paper. While policymakers have attempted solutions towards addressing this regressivity, those solutions have often been incomplete or simply shifted the regressivity towards others. Finally, I will discuss some new policy proposals that seek to address this issue of regressivity and offer alternatives to property taxes.

II. AN OVERVIEW OF PROPERTY AND OTHER LOCAL TAXING SCHEMES IN THE UNITED STATES

The U.S. Constitution provides the power for the government to levy taxes. Article I, Section 8, Clause 1 states that "Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence [sic] and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."[11] This power has been interpreted to "embrace[] every conceivable power of taxation" at the federal level.[12] Historically, these taxes have included income taxes, wealth taxes, and tariffs among other things.[13] However, this broad power only applies to the federal government.

The U.S. Constitution does not impede the ability of states to impose most taxes. The 10th Amendment to the U.S. Constitution states, "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[14] In layman's terms, that means that matters not addressed by the U.S. Constitution are left to the discretion of the states. There are some exceptions to this autonomy of state governments to address their own taxing power, such as when state taxation interferes with interstate commerce, but property taxes, the focus of this paper, would seldom fall into that classification. Every state and the District of Columbia impose property taxes.[15]

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11. U.S. CONST. art. I, § 8, cl. 1.
12. Brushaber v. Union Pacific Railroad Co., 240 U.S. 1, 12 (1916).
13. *A Short History of Taxes*, FORBES (Apr. 14, 2010, 2:42 PM), https://www.forbes.com/2010/04/14/tax-history-law-personal-finance-tax-law-changes.html?sh=6bca697a1cf8.
14. U.S. CONST. amend. X.
15. *How Do State and Local Property Taxes Work?,* TAX POL'Y CTR. (May 2020), https://www.taxpolicycenter.org/briefing-book/how-do-state-and-local-property-taxes-work.

While property taxes are typically imposed and collected by local governments, the powers of local governments are limited to those enumerated in their state's constitution and laws.[16] Dillon's Rule illustrates this concept, and states that local governments "may engage in an activity only if it is specifically sanctioned by the state government."[17] Thus, state governments can define the parameters within which local governments can collect taxes. While the U.S. Supreme Court upheld this philosophy, states often do sanction local governments to undertake a lot of responsibilities when it comes to taxation. [18]

Under the doctrine of "home rule," an authority granted by states to local governments, a local city or county can act autonomously in setting up a system of government and enacting local ordinances.[19] One model principle of home rule is the Local Fiscal Authority Principle, which states:

> Home rule should guarantee local fiscal authority and recognize the value of fiscal stability at the local level. This principle accordingly includes local power to raise revenue and manage spending consistent with local budgets and priorities. To support local fiscal authority, a state should ensure adequate intergovernmental aid for general welfare at the local level and be prohibited from imposing unreasonable unfunded mandates.[20]

Most states defer to Dillon's Rule over complete "home rule."[21] However, because Dillon's Rule enables states to give municipalities autonomy over certain things, many cities enjoy what is effectively "home rule" on a wide range of issues. Since

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16. DANIEL R. MANDELKER ET AL., STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM 41–42 (5th ed. 2002).

17. *Cities 101—Delegation of Power*, NAT'L LEAGUE OF CITIES, https://www.nlc.org/resource/cities-101-delegation-of-power (last accessed July 22, 2023).

18. *See* Hunter v. Pittsburgh, 207 U.S. 161, 178–79 (1907); Trenton v. New Jersey, 262 U.S. 182, 186–87 (1923).

19. *Home Rule*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/home_rule (last accessed July 22, 2023).

20. Richard Briffault et al., *Principles of Home Rule for the Twenty-First Century*, Va. Pub. L. & Legal Theory Research Paper No. 2020-16 (Feb. 19, 2020), at 23.

21. As of 2016, 39 states officially employed Dillon's Rule to all municipalities and 11 employed "home rule" at least to some extent. *Local Government Authority*, NAT'L LEAGUE OF CITIES, https://web.archive.org/web/20160804131854/http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-powers/local-government-authority (last accessed July 22, 2023).

"home rule" is given to localities by their state, it is not an absolute power. Notably, state governments have the power to preempt local laws. The role of preemption is growing, with the National League of Cities reporting that "[s]tate-level politicians are actively working to overturn the will of people in cities—both through preemption and Dillon's Rule provisions."[22]

As of 2017, forty-two states had some sort of preemption towards the power of local governments to tax.[23] As all states have property taxes, these preemptions do not prohibit property tax but rather address technicalities such as "elements of the revenue structure, including: cap on the property tax rate; limit on the growth in local property assessment; and/or limit on the total levy (revenue) growth from property taxes from year to year."[24] In fact, preemption of other forms of taxation often leave local governments with little choice other than to impose property taxes to raise sufficient revenue to pay for the local government's responsibilities.

III. THE RATIONALE OF PROPERTY TAXES

While we have established that property taxes are the predominant form of local government taxation, a more important question is why this is the case. Local governments have historically favored property taxes because they have been a rather stable source of revenue and because of the behavior they incentivize.

A. Property taxes allow people to "vote with their feet" on where to live.

The behavior incentivized by property taxes is best summarized by the Tiebout Hypothesis, first coined by economist Charles Tiebout in 1956.[25] The Tiebout Hypothesis can be summarized as stating:

22. Nicole DuPuis et al., *City Rights in an Era of Preemption: A State-by-State Analysis*, NAT'L LEAGUE OF CITIES 1 (Feb. 2018), https://www.nlc.org/wp-content/uploads/2017/02/NLC-SML-Preemption-Report-2017-pages.pdf.

23. *Id.* at 3.

24. *Id.* at 20.

25. *See generally* Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. OF POL. ECON. 416 (1956).

> If there are a number of alternative communities (or jurisdictions) in which a consumer can choose to live and these differ in their provision of local public goods, then the consumer's choice of location provides a very clear signal of preferences. The chosen location is the one offering the provision of local public goods closest to the consumer's ideal, and through community choice preference revelation takes place. It follows that if there are enough different types of community and enough consumers with each kind of preference, then all consumers will allocate themselves to a community that is optimal for them and each community will be optimally sized. This ensures that the market outcome is efficient. It can be said that consumers reveal their preferences by "voting with their feet" and this ensures the construction of efficient communities.[26]

Essentially, Tiebout theorized that different local governments will attract different types of residents based on what services they decide to provide, and will tax their residents accordingly to provide those services. Anecdotally, there is some truth to this—for example, I grew up in a town with extremely high property taxes to sustain a public school system on par with private schools where nearly 100 percent graduated high school and went onto prestigious colleges. Because of this public school system, families with children decided to move to the town.

Grassmueck's findings support the Tiebout hypothesis, in that people tend to be attracted by higher levels of taxes and spending at the local level as long as they perceive a higher level of quality for the services they are being afforded.[27]

An additional rationale for property taxes is that property owners are "dependent" on the government to protect their property rights.[28] To protect their property, property owners depend on fire and police departments, as well as proper record keeping and a strong legal system, in order to protect and preserve their wealth.[29] After all, "rights are meaningless unless enforced

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26. *Tiebout Hypothesis*, OXFORD REFERENCE, https://www.oxfordreference.com/view/10.1093/oi/authority.20110803104612771 (last accessed July 22, 2023).
27. Georg Grassmueck, *What Drives Intra-county Migration: The Impact of Local Fiscal Factors on Tiebout Sorting*, 41 REV. REG'L STUD. 119, 136 (2011).
28. Stephan Holmes & Cass R. Sunstein, *Why We Should Celebrate Paying Taxes*, CHICAGO TRIB., (Apr. 14, 1999), http://home.uchicago.edu/~csunstei/celebrate.html.
29. *Id.*

by government."[30] Meanwhile, a homeless person living on the streets, or even someone renting their home, does not receive this level of benefit.

While Tiebout's hypothesis offers a compelling market-driven narrative, the ability of people to "vote with their feet" on where to live is in fact far more limited. That is because of "realities such as limited job opportunities, consumer voters not having total knowledge of the choices of public goods in all communities, limits to mobility, moving costs, etc."[31] Saltz & Kapener assessed multiple variables that could drive people to migrate. They found, after analyzing the literature, that people are more likely to move to areas with more government services when it is a local move.[32]

While that trend is general for the population as a whole, it is reversed for those over 55; people over 55 are more likely to migrate to areas with lower property taxes.[33] Specifically, for the elderly, "$100 increase in annual property taxes is associated with a 0.73 percentage point increase in the two-year mobility rate for homeowners over the age of 50.[34] This is an 8 percent increase from the baseline two-year mobility rate of 9 percent."[35] This trend would be rationalized under Tiebout's model because in theory, elderly residents likely are not reliant on services typically funded through property taxes like public schools.[36] However, the reality is far more complicated, as certain assumptions (such as people being fully mobile, being able to choose between communities freely, and commuting costs) are easier said than done for most people, including those who may be more statistically mobile.[37] Additionally, there are noneconomic reasons why people live where they do; for example, many people seek to be near family, friends, certain recreational activities, high-quality healthcare, and the list goes on and on.

The "benefit principle of taxation" bases taxes to pay for public-goods expenditures on a politically-revealed willingness

30. *Id.*
31. Ira S. Saltz. & Don Capener, *60 Years Later and Still Going Strong: The Continued Relevance of the Tiebout Hypothesis*, 46(1) J. OF REG'L ANALYSIS & POL'Y 72, 73 (2016).
32. *Id.* at 74.
33. *Id.* at 75.
34. Hui Shan, *Property Taxes and Elderly Mobility*, 67 J. OF URB. ECON. 194, 194 (2010).
35. *Id.*
36. Saltz & Capener, *supra* note 32, at 75.
37. *Id.* at 76–78.

to pay for benefits received.[38] That is because the level of taxation "help[s] determine what activities the government will undertake and who will pay for them."[39] This concept is fairly similar to the Tiebout Hypothesis, as it essentially means that people are willing to pay more in property taxes when they perceive a value in the benefits received from them, and those that will not get those benefits can "vote with their feet" accordingly.

B. Property taxes are efficient.

Because there is a finite and fixed amount of land, many believe that makes property taxes a very efficient tax.[40] In his hallmark work *The Wealth of Nations*, Adam Smith noted that land value increases are generally not created by any action of a landowner, and therefore the resulting rents[41] and other monetary gains[42]:

> are a species of revenue which the owner, in many cases, enjoys without any care or attention of his own. Though a part of this revenue should be taken from him in order to defray the expenses of the state, no discouragement will thereby be given to any sort of industry. The annual produce of the land and labour of the society, the real wealth and revenue of the great body of the people, might be the same after such a tax as before.[43]

While Smith's reflection dealt with a more agrarian society where much of income was generated off of land, there is merit to

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38. *See generally* Graeme S. Cooper, *The Benefit Theory of Taxation*, 11 AUSTL. TAX F. 397 (1994).

39. *Taxation—The Benefit Principle,* BRITANNICA, https://www.britannica.com/topic/taxation/The-benefit-principle (last accessed July 22, 2023).

40. Kyle Pomerleau, *A Property Tax is a Wealth Tax, but . . .* , TAX FOUND. (Apr. 30, 2019), https://taxfoundation.org/property-tax-wealth-tax/.

41. "Thanks to the work of Smith and his intellectual successor David Ricardo, 'rent' has for economists come to have the specific meaning of unearned income from a resource whose supply is fixed. Or something like that. By that definition, income from land ownership other than rent payments (capital gains from selling land that has appreciated in value, for example) also amounts to 'rent.'" Justin Fox, *Why Economists Love Property Taxes and You Don't*, BLOOMBERG (Nov. 28, 2017, 7:00 AM), https://www.bloomberg.com/opinion/articles/2017-11-28/why-economists-love-property-taxes-and-you-don-t#footnote-1511307967325.

42. *Id.*

43. Adam Smith, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 693 (The Elec. Classics Series, 2005).

this argument. The appreciation of real estate value is considered "unearned income" akin to any other income generated from investments.[44] When realized, appreciation of real estate value would be taxed as capital gains, which are currently taxed at a more favorable rate than wages.[45] Additionally, realized appreciation on primary residences is often exempted from capital gains.[46] Of course, Smith's analysis differs from realities over the evolution of the industrialized economy and the current tax code.

While Smith's argument regarding the efficiency of property taxes may be obsolete in certain ways—namely because other taxing structures are in place and valuing real estate includes a multitude of factors—there is still an efficiency argument to be made. In most places in the United States, there are relatively strong records of property data that can be utilized.[47] That leads to property taxes in the United States having a rather high "coverage ratio."[48] Additionally, there are strong legal mechanisms such as liens which make them collectable, thus yielding a high "collection ratio."[49] While "[p]roperty taxation is a very administrative-intensive tax which requires proactive, intentional tax base identification, tax base valuation, tax liability assessment, tax billing and collection, tax enforcement, and taxpayer service and dispute resolution,"[50] the strong legal structure and recordkeeping

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44. *See generally* Lester B. Snyder, *Taxation with an Attitude: Can We Rationalize the Distinction Between "Earned" and "Unearned" Income?*, 18 VA. TAX REV. 241 (1998).

45. *How are Capital Gains Taxed?*, TAX POL'Y CTR., https://www.taxpolicycenter.org/briefing-book/how-are-capital-gains-taxed (last accessed July 22, 2023).

46. *Topic No. 701 Sale of Your Home*, IRS, (Jan. 27, 2023), https://www.irs.gov/taxtopics/tc701.

47. Roy Kelly, *Making the Property Tax Work*, 4 INT'L CTR. FOR PUB. POL'Y, Working Paper no. 13-11, 2013, https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1041&context=icepp, at 4.

48. "The Coverage Ratio (CVR) is defined as the amount of taxable property captured in the tax registry, divided by the total taxable property in a jurisdiction. This ratio measures the completeness of the tax roll information and is determined by the administrative efficiency of identifying and capturing property data using field surveys, secondary property information, and/or taxpayer-provided information, and ensuring the correct application of legally approved exemptions, reductions and tax relief policies." *Id.* at 6.

49. "The Collection Ratio (CLR) is defined as the annual tax revenue collected over total tax liability billed. This ratio measures collection efficiency on both current liability and tax arrears, determined largely by political will, taxpayer service and the effective use of incentives, sanctions and penalties." *Id.*

50. *Id.* at 14.

of the United States leads many analysts to conclude it to be an efficient tax.[51]

C. Property taxes are a relatively stable source of revenue, even during recessions.

"The property tax had always been regarded as an excellent revenue source for local governments because of its stability."[52] Hayashi described property taxes as either "countercyclical," which means "a property tax regime that mitigates community risk and makes recessions shallower," or as "procyclical" when a property tax regime worsens community risk and deepens recessions.[53] It's been observed that "falling property values do not immediately reduce property tax revenue if the fall in value was preceded by several years of growth."[54] This leads to a procyclical tax that can run contrary to current economic circumstances, but can ensure more steady government revenues.[55]

However, the housing boom of the late 1990s and 2000s, and the subsequent Great Recession challenge this narrative. During this boom, municipal revenue growth grew faster than the economy as a whole.[56] Thus, there was "relative stability of the property tax as a source of central city revenue during the eleven years between 1997 and 2008."[57] When the recession and housing market crash occurred, the average municipality's property tax revenue fell by 7.8% while housing prices fell by 11.3%.[58] This revenue decrease was larger than the revenue decreases that resulted from state-level budget cuts.[59] However, many cities could more easily adjust property taxes; the result is that the share of local tax collections coming from property taxes increased from

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51. *See* Tracy Gordon, *Critics Argue The Property Tax Is Unfair. Do They Have A Point?*, TAX POL'Y CTR. (Mar. 9, 2020), https://www.taxpolicycenter.org/taxvox/critics-argue-property-tax-unfair-do-they-have-point.
52. John L. Mikesell & Cheol Liu, *Property Tax Stability: A Tax System Model Of Base And Revenue Dynamics Through The Great Recession And Beyond*, 13 PUB. FIN. & MGMT. 310, 314 (2013).
53. Andrew T. Hayashi, *Countercyclical Property Taxes*, 40 VA. TAX REV. 1, 5–6 (2020).
54. Andrew Hayashi & Ariel Jurow Kleiman, *Property Taxes During the Pandemic*, 96 TAXNOTES STATE 1461, 1462 (2020).
55. *Id.*
56. Howard Chernick et al., *The Impact of the Great Recession and the Housing Crisis on the Financing of America's Largest Cities*, 41 REG. SCI. AND URB. ECON. 372, 376 (2011).
57. *Id.* at 380.
58. *Id.* at 378.
59. *Id.* at 379.

75.5% to 80.3% between 2007 and 2011 in spite of collapsing real estate values.[60]

The short-term impacts of a recession on property taxes are limited. Research indicates a "three year lag between housing price changes and tax revenue [because] of assessment practices that only slowly brought assessed values into line with market values and of various caps and limitations built into the taxing process."[61]

Throughout the most recent pandemic-induced recession, property taxes remained a steady source of revenue because real estate values were resilient, and in fact increased, in spite of a recession in the broader economy.[62] This has caused local tax collections, which are disproportionately through property taxes, to rise, while state tax collections, which are more heavily income and sales tax, have decreased.[63] This further demonstrates the stability of property tax revenue. However, this inflexibility does have real downsides which I will discuss later in this Paper.

D. Property taxes are better than the alternatives.

Most municipal governments cannot either logistically or legally implement an income tax on their own.[64] That leaves only a few viable alternatives to property taxes to raise revenue for local government. One such option is implementing a local sales tax. However, sales taxes are typically considered regressive[65] and can lead to a reduction in consumer spending, which impedes economic

60. John Mikesell & Cheol Liu, *Property Tax Stability: A Tax System Model Of Base And Revenue Dynamics Through The Great Recession And Beyond*, 13 PUB. FIN. AND MGMT. 310, 312 (2013).

61. *Id.* at 315.

62. Charles S. Gascon & Jacob Haas, *The Impact of COVID-19 on the Residential Real Estate Market*, FED. RSRV. BANK OF ST. LOUIS (Oct. 6, 2020), https://www.stlouisfed.org/publications/regional-economist/fourth-quarter-2020/impact-covid-residential-real-estate-market.

63. Jared Walczak, *State Tax Collections Down 4.4 Percent Through September, While Local Tax Collections Rise*, TAX FOUND.: TAX POL'Y BLOG (Dec. 17, 2020), https://taxfoundation.org/state-tax-revenue-state-tax-collections-2020/.

64. Jared Walczak et al., *Local Income Taxes: A Primer*, TAX FOUND. (Feb. 23, 2023), https://taxfoundation.org/local-income-taxes-2023/.

65. TAX POL'Y CTR. BRIEFING BOOK, *Who Bears the Burden of a National Retail Sales Tax?,* (May 2020), https://www.taxpolicycenter.org/briefing-book/who-bears-burden-national-retail-sales-tax#:~:text=Because%20lower%2Dincome%20households%20spend,sharply%20as%20household%20income%20rises.

growth.[66] Another alternative is increasing "fines, fees and charges, which raise less revenue and often disparately impact vulnerable populations."[67] Therefore, even those who are concerned about tax regressivity and want a more progressive tax system might find property taxes the most palatable available option for local government taxation.

IV. DEFINING PROGRESSIVE TAX, REGRESSIVE TAX, & WEALTH TAX

A key component of the thesis of this Paper is that property taxes are both a regressive tax and a wealth tax. In order to demonstrate the truth of this statement, it is important to define the terms progressive tax, regressive tax, and wealth tax. While property taxes are not a pure wealth tax, it is a concept worth considering. The more pressing issue is whether property taxes are a progressive tax or regressive tax.

A "progressive tax" is a tax where "the average tax burden increases with income. High-income families pay a disproportionate share of the tax burden, while low- and middle-income taxpayers shoulder a relatively small tax burden."[68] An example of a "progressive tax" regime would be our U.S. federal income tax system (at least in the simplest of conceptions), where those who earn more money pay a higher marginal tax rate.[69] In the United States, the result of a progressive tax system is that the top 1% of income earners earned 22.2%of the national income, yet paid 42.3% of federal income taxes, in 2020.[70] Meanwhile, the lowest 50% of income earners, who earn about ten percent of the national income, pay approximately 2% of all federal income taxes.[71]

66. Andrew Hayashi & Ariel Jurow Kleiman, *Local Governments Need More Revenue. Try Progressive Property Taxes.*, THE WASHINGTON POST (May 7, 2020), https://www.washingtonpost.com/opinions/2020/03/20/coronavirus-is-upending-society-here-are-ideas-mitigate-its-impact/?arc404=true#Hayashi-Kleiman.

67. *Id.*

68. *Progressive Tax*, TAX FOUND., https://taxfoundation.org/tax-basics/progressive-tax/ (last visited Mar. 27, 2023).

69. *Id.*

70. Erica York, *Summary of the Latest Federal Income Tax Data, 2023 Update*, TAX FOUND. (Jan. 26, 2023), https://taxfoundation.org/publications/latest-federal-income-tax-data/.

71. *Id.*

The opposite of a "progressive tax" is a "regressive tax." Under a regressive tax, "the average tax burden decreases with income. Low-income taxpayers pay a disproportionate share of the tax burden, while middle- and high-income taxpayers shoulder a relatively small tax burden."[72] Regressive taxes can take a few different forms. Regressive taxes are often implemented at a flat tax rate, but become regressive because "lower-income individual[s] may face a higher tax burden than a higher-income individual with the same amount of consumption."[73] Since consumption taxes like sales and excise taxes tend to be at flat rates, they are two of the most common regressive taxes.[74] While less common, it could also theoretically take the form of marginal tax rates that decrease the higher the level of income is.[75]

A wealth tax is a tax "imposed on an individual's net wealth, or the market value of their total owned assets minus liabilities. A wealth tax can be narrowly or widely defined, and depending on the definition of wealth, the base for a wealth tax can vary."[76] While property taxes are imposed based on the valuation of an asset, a wealth tax is imposed on the gross value of that asset and does not take into consideration any liabilities connected to that asset. Since 62.9% of homeowners have a mortgage, a liability directly connected to the asset property taxes are imposed on, it would not meet this traditional definition of a wealth tax for most homeowners.[77] However, for a significant portion of homeowners (37.1%), property taxes come close to meeting this definition.[78]

V. PROPERTY TAXES ARE REGRESSIVE: THE CASE

While there is not a long-term consensus behind property taxes being regressive, there is a plethora of recent evidence to

72. *Regressive Tax,* TAX FOUND., https://taxfoundation.org/tax-basics/regressive-tax/ (last accessed July 22, 2023)
73. *Id.*
74. *Id.*
75. *Id.*
76. *Wealth Tax,* TAX FOUND., https://taxfoundation.org/tax-basics/wealth-tax/ (last accessed July 22, 2023).
77. Michael Neal, *Mortgage Debt Has Peaked. Why Has the Share of Homeowners with a Mortgage Fallen to a 13-Year Low?*, THE URBAN INST. (Aug. 20, 2019), https://www.urban.org/urban-wire/mortgage-debt-has-peaked-why-has-share-homeowners-mortgage-fallen-13-year-low.
78. *Id.*

make the case that they are.[79] Historically, property taxes were not considered regressive.[80] This was generally assumed under the "capital-tax view" which presumed that "local property taxes are largely shifted onto owners of capital throughout the economy," thus making them progressive.[81] These views were typically based upon the statutory incidence of property taxes rather than economic incidence.[82] Even decades ago, the measure of their progressivity was rapidly decreasing.[83]

A. Property taxes do not achieve horizontal or vertical equity.

Horizontal equity is "[a] principle used to judge the fairness of taxes, which holds that taxpayers who have the same income should pay the same amount in taxes."[84] This principle is used to assess whether tax burdens are fairly distributed. "Because owners of high-priced properties pay a lower effective tax rate than owners of low-priced properties, the property tax, as typically administered, does not satisfy horizontal equity."[85]

Vertical equity means "imposing a proportionately smaller tax burden on lower-income households than on high-net-worth households."[86] Property taxes fail at this mission because subject to exemptions, which will be addressed later, real property tends to be taxed at a fixed, flat rate. Additionally, lower-income households tend to spend a higher percentage of their income on housing than high-net-worth households.[87] That means a higher percentage of their income goes towards property taxes.

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79. Wallace E. Oates & William A. Fischel, *Are Local Property Taxes Regressive, Progressive, or What?*, 69 NAT. TAX. J. 415 (2016).

80. *See* Daniel B. Suits, *Measurement of Tax Progressivity*, 67 AM. ECON. REV. 747 (1977).

81. Oates & Fischel, *supra* note 79.

82. *Id.* at 416.

83. Suits, *supra* note 80, at 750.

84. Joseph J. Cordes, *Horizontal equity,* THE URBAN INST. (Oct. 1, 1999), https://www.urban.org/sites/default/files/publication/71101/1000533-Horizontal-Equity.PDF.

85. Christopher Berry, *Reassessing the Property Tax*, THE UNIV. OF CHICAGO HARRIS SCH. OF PUB. POL'Y AND THE COLL., at 19, (Jan. 2021), https://cpb-us-w2.wpmucdn.com/voices.uchicago.edu/dist/6/2330/files/2019/04/Berry-Reassessing-the-Property-Tax-Jan21.pdf.

86. *Vertical Equity*, CORP. FIN. INST., (Feb. 2, 2023), https://corporatefinanceinstitute.com/resources/economics/vertical-equity/.

87. JOINT CTR. FOR HOUSING STUDIES OF HARVARD UNIV., THE STATE OF THE NATION'S HOUSING 2015, (Jun. 24, 2015), https://www.jchs.harvard.edu/sites/default/files/media/imp/jchs-sonhr-2015-full_0.pdf.

B. Property taxes are not a true wealth tax.

Many characterize property taxes as a wealth tax, and wealth taxes are typically progressive. However, property taxes are not a true wealth tax, and thus are not as progressive as a true wealth tax. Property owners pay property tax on the assessed value of their property rather than the amount of equity they have in their homes. To illustrate:

> Suppose your only asset is a house worth $200,000 — slightly more than the median U.S. home. If you pay typical property taxes of 1 percent, that's $2,000 each year in taxes. But if you've borrowed three-fourths of the money for the house, your net worth is only $50,000. So that $2,000 property tax bill amounts to 4 percent of your net worth. That's a 4 percent wealth tax.[88]

Many people thought Sen. Elizabeth Warren's 2% wealth tax proposal on assets over $50 million was radical, but the consensus was that it was progressive.[89] However, the average property tax rate is higher than that in a few states.[90] And unlike Sen. Warren's proposal which affects a small percentage of Americans, property taxes impact any American seeking housing. Additionally, wealthier homeowners likely have more equity in their homes, meaning that less wealthy homeowners likely pay a higher rate on their home equity.[91] While describing property taxes as a "regressive middle-class wealth tax" is not technically correct given the basis for the tax, it is not a truly facetious remark either and represents a core issue of the current property tax regime, at least for those who do not favor regressive taxes.[92]

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88. Arik Levinson, *America's Regressive Middle-Class Wealth Tax*, THE HILL (Nov. 20, 2019, 2:30 PM), https://thehill.com/opinion/finance/471313-americas-regressive-middle-class-wealth-tax.
89. *Id.*
90. Janelle Cammenga, *How High are Property Taxes in Your State?*, TAX FOUND. (Aug. 26, 2020), https://taxfoundation.org/how-high-are-property-taxes-in-your-state-2020/.
91. Alexandra Killewald & Brielle Bryan, *Does Your Home Make You Wealthy?*, THE RUSSELL SAGE FOUN. J. OF SOC. SCI., 2 JSTOR. 110, 110–120 (2016).
92. Levinson, *supra* note 88.

C. Property tax relief programs only benefit homeowners, and sometimes they are regressive beyond that.

Homeowners tend to have higher incomes than renters; in 2016, homeowning households had nearly double the household income of renting households.[93] Despite homeowners generally having this higher level of income, they in fact get tax breaks for being homeowners. All but three states offer homestead exemption and property tax credit programs that tend to reduce the tax-burden on owner-occupied housing.[94] "Homestead exemptions reduce the amount of *property value* subject to taxation, either by a fixed dollar amount or by a percentage of home value. Property tax credits, in contrast, directly reduce the homeowner's tax bill by a fixed dollar amount or certain percentage."[95] The designs and eligibility criteria for these programs differ by state. As of 2012, "59% of state programs provided flat dollar exemptions, 19% provided percentage exemptions, and the final fifth used property tax credits or other more complicated formulas to determine the amount of tax relief for each homeowner."[96]

Percentage exemptions/credits are regressive in practice. This is because "percentage exemptions favor owners with higher-valued homes: a 10% across-the-board reduction lowers property taxes by only $100 on the $100,000 home but $400 on the $400,000 home."[97] However, flat dollar exemptions are the most popular form of property tax relief.[98] This is likely because on its face, it might appear to make property taxes more progressive because "homeowners with lower-valued homes usually receive the largest tax cuts in percentage terms."[99] Additionally, many of these programs receive full or partial funding from state governments

93. JOINT CTR. FOR HOUSING STUDIES OF HARVARD UNIV., AMERICA'S RENTAL HOUSING 2017, at 7–12, (2017), https://www.jchs.harvard.edu/sites/default/files/02_harvard_jchs_americas_rental_housing_2017.pdf.

94. Adam H. Langley, *How Do States Spell Relief?*, LINCOLN INST. OF LAND POL'Y, (Mar. 23, 2023, 2:39 PM), https://www.lincolninst.edu/publications/articles/how-do-states-spell-relief.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

which "can help mitigate disparities in property wealth across localities."[100]

Despite property tax relief programs having progressive components, the fact that they tend only to be available for owner-occupied housing coupled with the fact that homeowners tend to have a far higher household income means that in reality, these often well-intended programs only further the regressivity of the property tax.

D. Renters, who tend to be lower income, bear much of the incidence of property taxes without the benefits of homestead exemptions and other tax breaks for owner-occupants.

There is a bit of debate as to who bears the incidence of property taxes on a rental property. On the one hand, the property owner physically pays property tax bills in the United States. On the other hand, a landlord likely considers the expenses of operating a rental property, including property taxes, when determining how much rent to charge their tenant. Under that setup, a renter effectively pays for property taxes as part of their rent. However, economists frequently do analyze who bears the incidence of different forms of taxation, and property taxes are no different.

Renters often prefer property tax increases over increases to income or sales taxes in comparison to homeowners.[101] That is likely because it does not directly hit them as they do not pay the property tax bill directly. However, the traditional view is that renters still pay property taxes; the traditional view is that renters bear the burden of the tax on improvements while landlords bear the burden of the land tax.[102] On the contrary, what Heilburn characterizes as the "new view"[103] is the belief that landlords bear the burden of the property tax, because the savings/investment rate does not significantly change based on rate of return, and that a property tax simply lowers the rate of return on that investment.[104]

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100. *Id.*

101. Eric J. Brunner et al., *Homeowners, Renters, and the Political Economy of Property Taxation*, 53 REG. SCI. AND URB. ECON. 38 (2015).

102. *See* James Heilburn, *Who Bears the Burden of the Property Tax?*, 35 ACAD. OF POL. SCI. 57, 58–60 (1983).

103. Since this article was written in 1983, it isn't a particularly new view.

104. Heilburn, *supra* note 102, at 61.

However, Martinez-Vazquez and Sjoquist concluded that landlords can shift property taxes to their tenants if their tenants are willing to pay for the local government services financed by those taxes.[105] A true answer to this question depends on assumptions about the elasticities of rental housing supply and demand.[106] However, theory and reality do differ. The *Orlando Sentinel* reported in 2015 that "[r]enters and vacation-home owners now shoulder a bigger share of Florida property taxes than homeowners and owners of commercial property."[107] That same report stated that landlords typically "don't disclose [property] taxes, and renters end up being clueless about how taxes impact their rents," but that one landlord said he "can either go broke or pass the [increased property] tax along to my renters," saying that taxes staying flat would have saved his tenants 10% that year.[108]

While the answer to this fundamental question varies, there is evidence that multi-family housing, which is typically rental housing, is taxed at a far higher rate than owner-occupied single-family homes.[109]

E. Assessments that serve as the basis of property taxes over-assess lower-valued properties.

There is a growing body of research that indicates that the property tax assessments on properties in lower-income neighborhoods are generally over-assessed when compared to market values (often disproportionately people of color).

105. Jorge Martinez-Vazquez & David Sjoquist, *Property Tax Financing, Renting, and the Level of Local Expenditures*, 55 S. ECON. J. 424, 429 (1988).

106. Richard W. England, *Tax Incidence and Rental Housing: A Survey and Critique of Research*, 69 NAT. TAX J. 435, 456 (2016).

107. Mary Shanklin, *Property-tax burden shifts to renters, second-home owners*, ORLANDO SENT. (Nov. 11, 2015, 5:53 PM), https://www.orlandosentinel.com/business/os-florida-property-taxes-20151110-story.html.

108. *Id.*

109. Jack Goodman, *House, Apartments, and Property Tax Incidence*, 9 (Am. Real Est. and Urb. Econ. Ass'n. Working Paper No. W05-2, 2005).

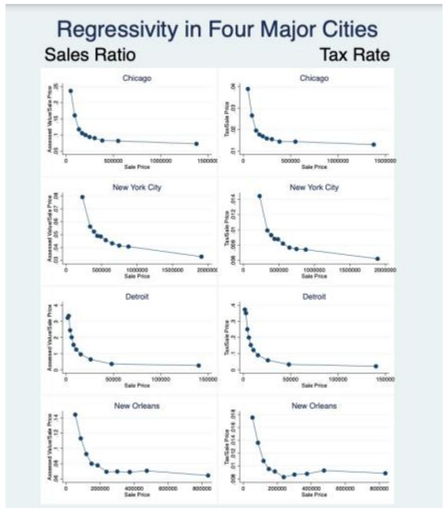

Figure 1: Regressivity in Chicago, Detroit, New Orleans, and New York

[110]

The chart above illustrates this issue in four major cities—Chicago, New York City, Detroit, and New Orleans. As for why this is the case, Berry offers a number of reasons. One reason is data and modeling limitations, because:

> Most statistical models used in assessment are based on some form of conditional averaging; that is, the assessed value for a particular property is based on the average value of other properties with the same observable characteristics. Depending on the jurisdiction, such conditional averaging may be implemented through a regression model or a comparables-based method (Gloudemans and Almy 2011; Officers 2018a). In either case, a property whose value is below average relative to its observable characteristics will be over-assessed, while a property whose price is high relative to its observable features will be under-assessed.[111]

Berry's analysis assumes that properties with similar "observable characteristics" should be similarly valued in the real estate market, which is something difficult to ascertain. Another reason is that "current assessments are based on sales from prior

110. *Reproduced from* Berry, *supra* note 85, at 26.
111. *Id.* at 4.

years and the interval between reassessments can be two to four years," if not longer.[112]

Alongside these procedural concerns, there are also explicit policy decisions that can fuel this trend. One of these policies is a cap on the annual increase of the taxable value of a property.[113] Since low-valued and high-valued homes often appreciate at different rates, this policy can in theory fuel regressivity or progressivity.[114] In situations where such a cap yields a lower tax burden, it is in theory regressive as it lowers the effective tax rate on a higher period asset. Specifically, such policies have been regressive in New York City but mildly progressive in Chicago.[115] While "assessment caps contribute to regressivity in some localities . . . caps do not have such impacts in general."[116]

Another specific concern is the classification of properties—whether it be a single-family home, condo, commercial, agricultural, industrial, or some other classification.[117] Sometimes, different classifications of properties are taxed at different rates, while other times, assessors and appraisers "use different statistical models for evaluating multi-family and single-family homes."[118] On a whole, "Duplexes and condominiums exhibit greater within-category regressivity than single-family homes" but differences between categories are not a driving force on average.[119] However, regressivity in the assessments for duplexes and condominiums is troubling since lower-end duplexes and condominiums likely attract lower-income individuals.

While Berry's overall findings on assessments are not particularly troubling, there are some incredibly problematic case studies. One of these case studies was in Cook County, Illinois, home to Chicago. While Illinois in theory has "a simple flat-rate property tax,"[120] the reality is far more confusing. John McCarron, a journalist with the *Chicago Tribune* and expert in property tax,

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112. *Id.* at 5. From personal experience, the wait for assessments can be much longer; my parents just got their first reassessment in nearly a decade in which home values in their area have generally decreased.

113. *Id.* at 3.

114. *Id.* at 5–6.

115. *Id.* at 15.

116. *Id.*

117. *Id.* at 16.

118. *Id.*

119. *Id.*

120. Daniel P. McMillen, *Assessment Regressivity*, THE LINCOLN INST. OF LAND POL'Y (Jan. 2011), https://www.lincolninst.edu/publications/articles/assessment-regressivity.

observed that "In all the topics I covered during my time at the Tribune, nothing was as confusing as property tax assessment."[121] McCarron's confusion is understandable as the "Cook County Assessor's Office (CCAO) has not been completely transparent with their practices."[122] The result of these practice is that "residents in working-class neighborhoods were more likely to receive property tax bills that assumed their homes were worth more than their true market value" while "many living in the county's wealthier and mostly white communities . . . caught a break because property taxes weren't based on the full value of their homes."[123] The result is that "people living in poorer areas tended to pay more in taxes as a percentage of their home's value than residents in more affluent communities."[124] Since people living in poorer areas also generally have a lower income than those in more affluent communities, this presumably means these people are also paying a higher percentage of their income towards their property taxes. These issues occur due to problematic modeling as well as "owners of high-priced homes are far more likely to appeal" their tax assessments.[125]

F. Property taxes run procyclical to the economy, meaning they worsen recessions.

As mentioned earlier, property taxes can be either "countercyclical," which means "a property tax regime that mitigates community risk and makes recessions shallower," or as "procyclical" when a property tax regime worsens community risk and deepens recessions.[126] However, they typically run pro-cyclically because "falling property values do not immediately reduce property tax revenue if the fall in value was preceded by several years of growth."[127] This can prove disastrous to those who

121. Sahi Padmanabhan, *Regression: Cook County Property Tax Assessments Consistently Flawed,* FOURTEEN E. (Nov. 1, 2018), http://fourteeneastmag.com/index.php/2018/11/01/regression-cook-county-property-tax-assessments-consistently-flawed/.

122. *Id.*

123. Jason Grotto, *An Unfair Burden,* THE CHI. TRIB. (June 10, 2017), http://apps.chicagotribune.com/news/watchdog/cook-county-property-tax-divide/assessments.html.

124. *Id.*

125. *Id.*

126. Hayashi, *supra* note 53, at 6–7.

127. Hayashi & Kleiman, *supra* note 54, at 1462.

are detrimentally impacted by the recession.[128] During times of recession, it makes the most sense to allocate additional taxes on those experiencing the least amount of hardship.[129] Income taxes—being based on a current year's income—are good at doing just that.

G. The inflation of housing costs over time leads to a regressive tax on those with fixed income.

The rise of the cost of housing is a form of inflation. In the tax world, the incidence of inflation "is said to fall most heavily on persons with fixed incomes (for example, retired persons) and those who hold their savings in cash and cash-equivalents."[130] While this is sometimes addressed through homestead exemptions and caps on valued assets, it frequently is not. This is evidenced by Shan's finding among those over 50 that a $100 increase in annual property taxes is associated with a 0.73 percentage point increase in the 2-year mobility rate for homeowners over the age of 50, which is an 8%increase from the baseline 2-year mobility rate of 9%.[131]

VI. THE FEDERAL TAX SYSTEM FURTHERS REGRESSIVITY OF PROPERTY TAXES.

As a matter of law, Americans can currently deduct up to $10,000 per person (or $5,000 if filing as married filing separately) on their tax returns.[132] This includes property taxes. Ostensibly speaking, this deduction exists to (a) prevent double taxation and (b) encourage home ownership. Before the Tax Cuts and Jobs Act of 2017, this deduction was unlimited.[133] Since the enactment of the Tax Cuts and Jobs Act, there has been a political push spearheaded by Senate Majority Leader Chuck Schumer (D-NY) to restore the unlimited state and local tax deduction ("SALT

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128. Hayashi & Kleiman, *supra* note 66.

129. Hayashi, *supra* note 53, at 16.

130. *See generally* Allison Christians, *Introduction to Tax Policy Theory*, (May 29, 2018) (unpublished manuscript) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3186791).

131. Hui Shan, *Property Taxes and Elderly Mobility*, 67 J. OF URB. ECON. 194, 201 (2010).

132. *Topic No. 503 Deductible Taxes*, INTERNAL REVENUE SERV., (Mar. 3, 2023), https://www.irs.gov/taxtopics/tc503.

133. Erin Gobbler, *State and Local Tax (SALT) Deduction: What it is and How it Works*, BANKRATE (Nov. 8, 2019), https://www.bankrate.com/taxes/salt-tax-deduction/.

deduction").[134] Former House Speaker Nancy Pelosi (D-CA) and President Joe Biden are also on record as supporting the restoration of the unlimited SALT deduction.[135] At one point, nearly two dozen Democratic members of the House of Representatives vowed to support other taxes increases only if the unlimited SALT deduction is restored.[136] As it currently stands, the unlimited SALT deduction is set to return in 2026.[137]

The problem with the SALT deduction—and the reason it furthers the regressivity of property taxes—is that the vast majority of the benefits go to relatively high-income households, while lower and middle-income households either do not itemize their deductions or do not have a sufficient tax burden to maximize the deduction.[138] Even with the current cap on the SALT deduction, around three-quarters of the benefit goes to families in the top quintile of income distribution; 26% to the 95th-99th percentile; and over 12% to the top 1%.[139]

Restoring the unlimited SALT deduction would only make property taxes more regressive. According to research from the Tax Policy Center, almost all of the benefits (96%) from restoring the unlimited SALT deduction would go to the top quintile of earners, a majority would benefit the top one percent of earners (representing a tax cut of $33,100 to them), and twenty-five percent (25%) would benefit the top 0.1% (for an average tax cut of $145,000).[140] The benefit to the middle class is negligible; the remaining four percent of the benefit of removing the cap would go the middle class (i.e. middle 60%), for an average annual tax cut

134. Jordan Weissmann, *Democrats Should Keep Soaking New York and New Jersey on Taxes*, SLATE (Mar. 18, 2021, 2:01 PM), https://slate.com/business/2021/03/state-and-local-tax-deduction-salt-democrats-schumer.html.

135. Christopher Pulliam & Richard Reeves, *The SALT Tax Deduction is a Handout to the Rich. It Should be Eliminated, Not Expanded*, BROOKINGS, (Sep. 4, 2020), https://www.brookings.edu/blog/up-front/2020/09/04/the-salt-tax-deduction-is-a-handout-to-the-rich-it-should-be-eliminated-not-expanded/.

136. Laura Division & Laura Litman, *SALT'S Absence in Manchin, Schumer Talks Signals New Hurdles*, BLOOMBERG (July 13, 2022, 4:21 PM), https://www.bloomberg.com/news/articles/2022-07-13/salt-s-absence-in-manchin-schumer-talks-signals-problems-ahead?leadSource=uverify%20wall.

137. *Id.*

138. *Direct Federal Grants Are the Most Progressive and Effective Way to Fund Public Investments. Temporary Fiscal Relief*, ECON. POL'Y INST., (Dec. 18, 2019), https://www.epi.org/press/direct-federal-grants-to-state-and-local-governments-are-the-most-progressive-and-effective-way-to-fund-public-investments-temporary-fiscal-relief-can-also-help-states-fight-recessions/.

139. Pulliam & Reeves, *supra* note 135.

140. *Id.*

of a little less than $27.[141] To put some context on this level of regressivity, the SALT deduction is far more regressive than the whole of the 2017 Tax Cuts and Jobs Act—a piece of legislation that is frequently lambasted by those who want a more progressive tax code.

The sum of all this is that wealthier people, who already see a lower proportion of their income go towards property taxes, can in turn minimize their federal tax burden based on their property tax payments while poor, working, and middle-class people cannot do the same with their property tax payments. This is ultimately a question of federal tax policy, but federal lawmakers should consider the center-left Brookings Institution's conclusion that "At best, the SALT deduction is a warped way to do social policy; at worst it is a politically motivated handout to the richest people in the richest places. Either way, it is bad policy—especially at a time of rising inequality."[142] And while in theory conservatives are generally supportive of tax cuts, the conservative publication *The National Review* characterized the unlimited SALT deduction as a "tax bailout for rich liberals," because more liberal states and areas tend to have higher state and local taxes.[143]

Federal lawmakers might also want to consider the implications of the mortgage interest tax deduction—which is problematic for similar reasons to property taxes. By allowing those who itemize their deductions to deduct their mortgage interest, the mortgage interest tax deduction provides "unwarranted subsidies for the purchase of expensive homes by high-income taxpayers but does little to promote homeownership by those of more modest means."[144] Ultimately, it too is a regressive policy choice that benefits high-income homeowners while providing no benefit to owners of modest homes and renters. However, as these are decisions of the federal tax system, they are not the topic of this paper.

141. *Id.*
142. *Id.*
143. Brad Polumbo, *Chuck Schumer's Tax Bailout for Rich Liberals*, NAT'L REV. (Apr. 6, 2021, 6:30 AM), https://www.nationalreview.com/2021/04/chuck-schumers-tax-bailout-for-rich-liberals/.
144. Alan D. Viard, *Proposal 8: Replacing the Home Mortgage Interest Deduction*, BROOKINGS (June 2016), https://www.brookings.edu/wp-content/uploads/2016/06/THP_15WaysFedBudget_Prop8.pdf.

VII. THE LEGALITY OF REGRESSIVE PROPERTY TAXATION

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution states that states shall not "deny to any person within its jurisdiction the equal protection of the laws."[145] Despite that text, courts have found the Equal Protection Clause to "not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike."[146]

In the case of *Nordlinger v. Hahn*, the U.S. Supreme Court considered whether California's property tax system, which capped the permissible increases of both property tax rates and assessed values and allowed people over 55 and children who inherited homes from their parents to avoid reassessment, violated the Equal Protection Clause.[147] The Court found that this difference in treatment between newer and older owners was constitutional because it "rationally furthers a legitimate state interest."[148] The Court supported this conclusion by noting that both newer and older homeowners benefit from this policy, and that the only different treatment was "the basis on which the[] property is initially assessed."[149]

However, this was not a unanimous decision. In his dissent, Justice Stevens noted that "some homeowners pay 17 times as much in taxes as their neighbors with comparable property.[150] For vacant land, the disparities may be as great as 500 to 1."[151] While the legislative history may have supported there being a legitimate state interest in the passage of this policy, I have difficulty conceptualizing the state interest in that reality. As Justice Stevens noted, "the rationale for such disparity is not merely 'negligible,' it is nonexistent. Such a law establishes a privilege of a medieval character: Two families with equal needs and equal resources are treated differently solely because of their different

145. U.S. CONST. amend. XIV.
146. Nordlinger v. Hahn, 505 U.S. 1, 10 (1992).
147. *Id.* at 3.
148. *Id.* at 11.
149. *Id.* at 12.
150. *Id.* at 76–77.
151. *Id.* at 29.

heritage."[152] While not binding law, past dissents can often form the foundation of future rulings.[153]

In deciding *Nordlinger*, the Supreme Court notably did not overturn *Allegheny Pittsburgh Coal Co. v. County Commissioner*. In that case, the Court held that "the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings."[154] That led to the Court concluding that the "relative undervaluation of comparable property . . . denies petitioners the equal protection of the law."[155] However, that ruling did "not prevent the State of California from classifying properties on the basis of their value at acquisition" in *Nordlinger*, "so long as the classification is supported by a rational basis."[156]

In addition, "most state constitutions require 'uniformity' or 'proportionality' in tax rates applied to property within a given class."[157] By the time of the Civil War, sixteen states placed "uniformity clauses" regarding property taxes in their state constitutions.[158] The theory behind "uniformity clauses" is "[prohibiting] using the property tax to favor or penalize the owners of particular kinds of property by setting particularistic schedules of tax rates."[159]

While inequalities of local tax rates within a state are certainly legal, some of the end products are not. For example, disparities in school funding caused by different property tax rates and bases have been found to violate the Equal Protection Clause of the U.S. Constitution.[160] Property taxes remain constitutional, but there are legitimate interpretations of both how the implementation and effects of property taxes could violate the key

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152. *Id.* at 30.
153. *See generally* Warren Richey, *Dissenting Opinions as a Window on Future Rulings*, THE CHRISTIAN SCI. MONITOR (July 1, 2002), https://www.csmonitor.com/2002/0701/p01s02-usju.html. While this certainly is a phenomenon, this author does not see the current Supreme Court changing course on this issue anytime soon.
154. Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n, 488 U.S. 336, 346 (1989).
155. *Id.*
156. Nordlinger v. Hahn, 505 U.S. 1, 23 (1992).
157. Berry, *supra* note 85, at 20.
158. Robin L. Einhorn, *Species of Property: The American Property-Tax Uniformity Clauses Reconsidered*, 61 J. ECON. HIST. 974, 979 (2001).
159. *Id.* at 974.
160. *See* Van Dusartz v. Hatfield, 334 F. Supp. 870, 876 (D. Minn. 1971). This will be discussed in more detail later in Section IX.

facets of our Constitution and its concepts of fairness and equal protection.

VIII. CUTTING EDGE SOLUTIONS ATTEMPTING TO ADDRESS REGRESSIVITY.

While property taxes are still the predominant form of local taxation in the United States, there is a growing recognition that there are issues when it comes to affordable housing.

In Florida, a bipartisan group of legislators have introduced legislation permitting counties and municipalities to "to adopt ordinances to grant ad valorem tax exemptions to property owners whose properties are used for affordable housing."[161] If enacted, this legislation would help to address the regressivity of property taxes when it comes to lower-valued rental properties. However, when recently talking to one of the sponsors of this legislation (Rep. Ben Diamond of St. Petersburg), it seems like this legislation is not advancing this year.

Additionally, Hayashi and Kleiman have proposed transitioning to an explicitly progressive property tax system.[162] They characterize a progressive property tax as a "tax [that] could feature rates that increase with property values, income-based tax relief or deferral of payment" for groups such as senior citizens, the disabled, and the unemployed.[163] Notably, deferral of payment for specified groups is fairly akin to some already existing exemptions. However, Hayaski and Kleiman note that many of these reforms face "legal and political barriers," to which they urge "[s]tate legislatures [to] move quickly to delegate more tax authority to localities."[164]

IX. ALTERNATIVES TO PROPERTY TAXES AT THE LOCAL LEVEL.

One alternative to property taxes that is used by some local governments already are sales taxes. However, because sales taxes are considered regressive as low-income households consume a

161. H.B. 563, 2021 Leg., Reg. Sess. (Fla. 2021).
162. Hayashi & Kleiman, *supra* note 54.
163. *Id.*
164. *Id.*

higher proportion of their income than high-income households, it would encounter many of the same issues as property taxes.[165]

Income taxes are another alternative for local governments used widely in some states, but prohibited in others.[166] Raising the income tax would likely be progressive, as income taxes tend to collect a higher percentage of the income of higher-income individuals.[167] Where local income taxes exist, they are typically collected by state taxation agencies. Local income taxes exist in seventeen (17) states (as of 2019), but generally comprise a small amount of local revenue.[168] Rates are set by a mix of municipal, county, and special taxing districts like school boards.[169] However, even in states that have local income taxes, not all governments take advantage of this revenue source.[170] In the states that already have this system of local income taxation, it would be easy enough from a logistical standpoint to increasingly rely on these income taxes as a source of revenue. However, in states that do not have this existing tax infrastructure, it would be starting from scratch.

An alternative to having local governments set their own income tax rates would be for the federal and state governments to directly fund local governments/special taxing districts, and then raise that revenue through their existing income tax infrastructure. This model would be a massive shift on how local governments are funded and operated and would interfere with the Tiebout Model and the ability to "vote with your feet." Specifically, it would likely inhibit affluent communities from doing things like funding their public school districts more than less affluent communities. However, in some states, inequalities in areas like school funding are already limited. In *Van Dusartz v. Hatfield*, a federal court in Minnesota held that children in public schools had the right, under the Equal Protection Clause of the Fourteenth Amendment, for the level of spending for their education to be unaffected by the taxable wealth of their school district, or their

165. Hayashi, *supra* note 53, at 19.

166. Local income taxes are generally collected by state taxation agencies. Some cities set it separately, and some states have widespread local income taxation with each county having its own rate. Other states, like Florida, have a state constitutional prohibition on income taxes. *See* Jared Walczak, *Local Income Taxes in 2019*, TAX FOUND. (July 30, 2019), https://taxfoundation.org/local-income-taxes-2019/.

167. Hayashi, *supra* note 53, at 17.

168. Walczak, *supra* note 166.

169. *Id.*

170. *Id.*

parents.[171] Surprisingly, this case has not been widely replicated.[172] However, for those who believe the role of government is to build a more equitable society, this might be a strong path forward.

A non-tax alternative to property taxes would be to permit local governments to finance short-term deficits.[173] Such a move would enable governments to maintain services at a sufficient level during economic downturns. This would be important if local governments switched from property taxes to less stable forms of taxation. However, those more hawkish towards debt would likely cringe at the idea of encouraging the government to take on more of it.

X. CONCLUSION

While there is not a consensus among economists that property taxes are regressive, there are a number of red flags that indicate that property taxes are not the most progressive tax, and that they have many issues that could in fact make them regressive and discriminatory. Unfortunately, many local governments don't have an immediate source of revenue besides property taxes due to legal and practical obstacles. If local governments want to look towards fairer, more progressive forms of taxation, they may want to consider solutions such as Hayashi and Kleiman's "progressive property tax" or relying more upon income taxes. Unfortunately, solutions such as increased sales taxes or higher fines and fees do not address the issue of regressivity. Addressing these issues with property taxes could lead to a more equitable and fairer tax system for all.

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171. Van Dusartz v. Hatfield, 334 F. Supp. 870, 877 (D. Minn. 1971).

172. *See* Battle v. Cherry, 339 F. Supp. 186, 194 (N.D. Ga. 1972); Baker v. Strode, 348 F. Supp. 1257 (W.D. Ky. 1971). While these courts did not adopt the holding in Van Dusartz, they also did not dismiss the findings of that court and no criticism of the Van Dusartz decision has been made by any circuit court of appeals or the U.S. Supreme Court.

173. Hayashi, *supra* note 53, at 15.