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state of new jersey

Acting Governor Richard J. Codey



PROPERTY TAX CONVENTION TASK FORCE



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1 STATE OF NEW JERSEY

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3 NEW JERSEY PROPERTY : TRANSCRIPT

4 TAX CONVENTION TASK FORCE : OF

5 ----- HEARING

6

7 Date: November 9, 2004

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9 TRANSCRIPT ORDERED BY:

10 JACK DONNELLY, State of New Jersey, Office of
the Governor, The Statehouse, PO Box 001,
11 Trenton, New Jersey 08625

12

13 PANEL PARTICIPANTS:

14 (Not introduced/identified for the record)
MICHAEL R. COLE, VICE CHAIRMAN
15 SUSAN A. COLE
ASSEMBLYMAN KEVIN O'TOOLE
16 MAYOR GARY PASSANANTE
ERNEST C. REOCK, JR., Ph.D.
17 MAYOR JO-ANNE B. SCHUBERT
CY THANNIKARY
18 CARL E. VAN HORN, Ph.D., CHAIRMAN
SENATOR RICHARD VAN WAGNER, SR.
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1 (Tape 1, Side A)

2 MR. VAN HORN: -- distinguished

3 panelists to the eighth meeting of the Property Task

4 Convention Task Force. We are going to hear from

5 three invited witnesses today.

6 First, we're going to hear from

7 Senator Bill Schluter. Senator Schluter, if you

8 could come up to the table, please. Then we're

9 going to hear from Professor Richard Briffault of

10 the Columbia Law School, and then Professor Myron

11 Orfield from the University of Minnesota Law School.

12 Professor Dick Howard was also invited

13 to testify; and, as I think I explained at the last

14 meeting, he was canceled because of the need to

15 attend to some constitutional issues in the

16 Commonwealth of Virginia. But he did submit a

17 statement, which is attached to the material in

18 front of you.

19 So let us begin. I don't think

20 Senator Schluter needs us to introduce ourselves,

21 since he has been here at just about every meeting,

22 and I think all of the meetings. We're pleased to

23 have you with us today, Senator, and look forward to

24 your remarks.

25 SENATOR SCHLUTER: Thank you, Mr.

3

1 Chairman and members of the task force. You have my
2 testimony before you, which is rather lengthy, and I
3 will not go over all of the items, but I will
4 highlight some of the points, and hope to generate
5 some discussion after that.

6 First of all, I reference a bill,
7 which you also received, S-1800, with three Xs after
8 it, which is the basic starting point; it is the
9 same as the Adler Bill, the Roberts Bill, but it's
10 got some modifications, and it's something that can
11 be referred to as you go along and as you proceed
12 with your work.

13 The first item is the matter of scope,
14 and it's spelled out in my testimony and it's
15 spelled out elsewhere, as far as the scope of the
16 convention, and you will be responsible for defining
17 what that scope should be.

18 I point out that, in the definitions
19 that you have had, it only talks about property tax;
20 about reducing property taxes, making property --
21 making taxes more fair, and so on. That should be
22 expanded, in my opinion, to include revenue because
23 there are other items of income to the state, which
24 would be included in revenue; one of which would be
25 the lottery. You have fees which are not precisely

4

1 taxes. So, as a minor point, I think that could be
2 improved upon.

3 Next is the constitutional and
4 statutory change issue. Early on in the development
5 of legislation for a convention and for reforming
6 property tax, it became very obvious that you could
7 not really do this by constitution alone, and it was
8 necessary to change statute. And I think this is a
9 very important point, it's a very strong point, and
10 I know that you will hear from Professors Williams
11 and Tarr.

12 There will be a great resistance, and
13 it will be a difficult thing to try and
14 constitutionalize the tax code, for example. This
15 should be done, in my opinion, in the statute. And,
16 as this legislation has advanced, it has gone along
17 and included the method of addressing statute, as
18 well as the constitution.

19 In that regard, next the enterprise,
20 instead of being called a "constitutional
21 convention," and this was the suggestion by Ernest
22 Reock, it really should probably be called a
23 "property tax convention," assuming it takes up
24 statute, as well, because you are reforming property
25 taxes, and it goes more than just a convention.

5

1 Item No. 4 in my testimony is a single
2 vote. And this is an important matter. In the 1947
3 convention, the proposal that was put to the people
4 was put in a single up-or-down vote, and it had
5 many, many provisions on the constitution. And this
6 is an advantage which the convention can have: They
7 can put the proposal to the public in a single vote.
8 But I don't think they should be
9 precluded from having maybe two votes if they wanted
10 to. But it is a very important distinction, and I
11 think the convention should be encouraged to use a
12 single vote; otherwise, if you put up multiple
13 votes, as you would without a convention, doing this
14 through the legislative process, the public would
15 pick the good ones, they would cherry-pick the good
16 results, and they would vote against the bad
17 results, and you would not get an overall,
18 comprehensive reform.
19 The sequencing of the tax changes is
20 important, and this refers mainly to the statutory
21 changes. You could -- the convention could
22 recommend that statutes be changed; and, as soon as
23 the people approve it, they would be subject to
24 legislative change thereafter, or you could have a
25 waiting period, during which the Legislature would

6

1 be prevented from making changes to statute. And I
2 think the convention might be properly guided in
3 that respect.
4 Owner-occupied residences. In the
5 review of property taxes across the state, I think
6 it's become very obvious that the people who are
7 hurting the most are the owner-occupied residences;
8 not so much the businesses, and not so much the
9 commercial, and not so much the second house at the
10 shore, but it's the individual residence, where
11 people are so heavily taxed that they might have to
12 move out of the state. And it might be a wise idea,
13 as in a proposed amendment on 1800, to indicate
14 legislative intent is to give the greatest relief or
15 to direct the attention of a convention at owner-
16 occupied residences.
17 The matter of revenue neutrality is
18 very important. I think the public, which has to
19 buy into this whole enterprise, very much wants to
20 understand that the convention will not be a back-
21 door approach at raising other revenues. In other
22 words, if property taxes are reduced by whatever it
23 is; fifty percent, so many billions of dollars, that
24 there -- the revenue that replaces it should not be
25 in excess of that amount. And then when you have

7

1 the spending factor come into this equation, you

2 would have to say that the property tax reduction
3 should equal the amount of alternative taxes, plus
4 any spending reduction.
5 Now the biggest issue confronting this
6 task force, in my opinion, is the issue of spending.
7 And I'm sure you're going to wrestle with this at
8 great length, and I trust in your wisdom to come to
9 a good conclusion.
10 I have attached to the testimony an
11 attachment which provides you with four options;
12 these are totally arbitrary, but four options of
13 spending, in the degree to which the convention
14 might address the spending issue. And whether you
15 use that as a guide or any other thing, I think you
16 have to be very careful in discriminating as to
17 whether you want all spending issues to be subject
18 to the convention, whether you want no subject
19 issues to be subject to the convention -- although
20 your charge as a task force is to include spending
21 issues -- or somewhere in between.
22 So it's a difficult subject. There
23 are a lot of people who will go around and say,
24 we've got to have spending on the table. And I
25 challenge any of those people to put the parameters

8

1 around the spending issue that you want, so that you
2 can study it, and you can understand it, and so it

3 won't be so broad that it would destroy the entire
4 convention process. Now -- and we will -- I'll go
5 back to spending a little later, on a couple of
6 minor points.

7 Certifying the convention's scope.

8 There are people who say that a constitutional
9 convention or any kind of convention cannot be held
10 to one subject. There is legal opinion that says
11 that, yes, it can. But as a second protection in
12 the proposed legislation or the legislation which is
13 used as a model, you can have a group review the
14 results of the convention delegates to certify that
15 it is within the scope of the convention and does
16 not exceed the scope. And the question could not
17 get -- be certified for the ballot unless that group
18 did pass judgment on it.

19 The matter of whether you take issues
20 off the table or on the table, you might want to
21 leave to the Legislature to decide. You might want
22 to give guidance to the Legislature in your report.

23 There are some of these issues that are in the
24 legislation that has come thus far:

25 The Mount Laurel affordable housing is

9

1 something that people have thought would be opened
2 up to a convention if spending is on the table.

3 There is the matter of the statewide

4 equalized school property tax, which, in the Adler
5 Bill, was removed from consideration, and Senator
6 Adler is certainly an expert on that. I think that
7 should be revisited, and my recommendation would be
8 that that not be removed -- or that not be part of
9 the exemptions in any -- any legislation that sets
10 up the convention.

11 When are delegates elected? I think
12 this is very, very important, and you've heard a lot
13 of testimony about whether they be elected at the
14 same election that the convention is authorized by a
15 vote of the people, or whether there be a separate
16 election. And there are two basic issues here:
17 The vote will be much heavier at a
18 general election, and it will be much lighter at a
19 special election.

20 And the extra cost for a special
21 election is not insignificant.

22 But you have to weigh all of the
23 different considerations. I have spelled them out
24 in my testimony, the pros and the cons.
25 Governor Florio recognized the problem

10

1 when he was here about electing delegates at a
2 general election when people can't focus in on the
3 qualifications of those delegates, and he said that
4 would be a real problem. And, in order to overcome

5 the problem, he suggested having a slate, which is
6 set up by legislative committee and the Governor,
7 unanimous consent, of delegates, which would be
8 approved by the people.

9 That could overcome that problem. But
10 I think, in my opinion, it brings in another
11 problem, which is the fact that you sort of break
12 faith with the public. The public wants a citizen-
13 type delegate convention, and I don't think they
14 want a convention run by the Legislature, even
15 though that slate of delegates might not be all
16 legislators, but I think they want a separation.
17 And I would think that that would be a shortcoming,
18 which would weigh in favor of the special election.
19 But this is something that you will have to
20 consider, and it has -- it has its pluses and
21 minuses.

22 I think, in my opinion, that the
23 special election can focus attention to it. There
24 would be a rather large turnout, not like the 1966
25 election, which was preordained. But there would be

11

1 a good enough turnout, and the media would be paying
2 great attention. And I think it would be worth the
3 extra dollars to have a purer election of delegates,
4 rather than one where there's not much
5 discrimination by the voters on who the delegates

6 are.

7 Now the schedule for ratifying the

8 convention recommendations, this is a minor point,

9 but I think it's important. If you go by the

10 present New Jersey Constitution, statutory changes

11 which are voted on by the people have a sixty-day

12 review period; constitutional changes have a ninety-

13 day review period.

14 And my recommendation is that, in the

15 legislation setting up the convention, that they

16 both be the same. You wouldn't want the convention

17 deciding what the constitutional changes are thirty

18 days ahead of what it decides and what the statutory

19 changes are. And I think, to make it uniform, it

20 would be wise to make them all at a sixty-day,

21 because that would be certainly enough time for the

22 public to digest what the convention is doing, and I

23 think that is an important detail to consider.

24 The composition of the delegate body

25 is something which you will determine and is very,

12

1 very important. Pick your number, whether it be a

2 hundred or eighty or sixty or 150; I think you have

3 good judgment on that.

4 And I think there are a couple of ways

5 to select delegates, or to have delegates qualify.

6 One would be, have them elected. And there is great

7 reason to have a considerable number of delegates
8 elected; the public will buy into that, the public
9 feels that it will be able to participate. And a
10 very obvious choice is having two per legislative
11 district; legislative districts are one person, one
12 vote, and you come up with eighty delegates.
13 But I think it's also important to
14 have appointed at-large delegates. The number of
15 ten has been put out; it could be larger. And this
16 is for very good reason. This is to ensure
17 diversity, it's to ensure representativeness. You
18 could have -- we have several legislative districts
19 which have three counties, and obviously they could
20 not have a delegate from each of those counties. So
21 you would want, I think, logic will tell you that
22 maybe an at-large delegate for any county which
23 doesn't get a regular delegate who is elected.
24 You could have groups, and you've
25 heard it from the education groups; they don't want

13

1 to be shut out from the convention, and a lot of
2 them have good reason to be included, and they
3 should be included. And if there is a lack of
4 delegates from the education community, they could
5 be supplemented with the at-large appointments.
6 So these are very important. You did
7 see testimony from a former Supreme Court Justice

8 the other day, and I would say that that pool of
9 possibilities offers a great potential for at-large
10 delegates.
11 With respect to legislators serving as
12 delegates, I think it would be foolish and
13 impractical to exclude legislators from serving as
14 delegates. I think there are a lot of legislators
15 who have good ideas and could contribute very well;
16 whether you want to limit them is something that's
17 within your purview. And you could limit them by
18 the number that could qualify in any district, say
19 no more than two. The top vote-getter -- the top
20 legislative vote-getter would be the only
21 legislature to serve from a district. Or you could
22 have legislators nominated by the party caucuses in
23 the Legislature; maybe three by each caucus in each
24 house. And I think Professors Tarr and Williams can
25 give you some good suggestions on that.

14

1 But I've seen too many issues when you
2 get into a public discussion and you don't have the
3 legislative or the political experience that bad
4 decisions can be made. I think of one, going back
5 to the Mercer County Charter Study Commission, back
6 in 1973, when the vote was there of nine members to
7 vote for a -- which is the key vote on charter
8 study, was to vote for the election of freeholders,

9 partially at-large and partially by district.

10 Well, Mercer County was a heavily

11 democratic county. And word got back to one of the

12 commissioners that the Chairman of the Democratic

13 Party says, this vote is going down, unless it's all

14 at-large. And the people on the commission said,

15 hey, he's right, let's change it. So they changed

16 it to all at-large. And you need that experience.

17 You need that practical political background in a

18 lot of events, to avoid problems.

19 Protection against political and

20 special interests is something you've heard a lot

21 about, and I'm sure you're going to do a good job in

22 seeing that this is sanitized to the maximum extent

23 possible with respect to special interests, and

24 there are ways to do that, and they have been

25 suggested: No bracketing of candidates, no slogans.

15

1 The most important thing I think you

2 can do to ensure the independence and the

3 objectivity in delegate election is to have the

4 names on the ballot rotate from district to

5 district, as far as their position on the ballot.

6 And this is spelled out in the -- my testimony; it's

7 spelled out elsewhere.

8 Let me give you another example. Also

9 in 1973, in Essex County, a charter study

10 commission, a county charter study commission, was
11 being proposed. They had enough signatures on the
12 petition to get it on the ballot.
13 Twenty-nine people qualified as
14 candidates for the charter study commission. There
15 were ten -- and there were only nine to be elected.
16 There were ten who were put up by the so-called
17 "organization," and everybody knows what the
18 "organization" is in Essex County. And the County
19 Clerk picks the names out of the jury box for the
20 position. And at that time, he picked his name
21 first, and nine other of the ten in a row, out of
22 the twenty-nine. And the odds of that were one out
23 of 1.4 billion for him doing that. Now was that by
24 chance? Obviously not. And you've got to avoid
25 that situation.

16

1 So what happened was that the
2 organization could tell all their people, vote for
3 the first nine names, and all the first nine names
4 won; and they won because they wanted to go in and
5 sabotage the county charter study. And they had one
6 meeting, they voted not to study it, and that was
7 the end of the issue. So it wasn't until some years
8 later that another charter study commission
9 happened.
10 I think the -- alternating the names

11 on the ballot is a very, very important safeguard to
12 ensure objectivity and appropriate integrity.
13 The number of petition-signers. It's
14 suggested that you have a large number, maybe 500.
15 This would mean that people who have a little bit of
16 organization behind them would have a better chance
17 of qualifying, and that should be recognized. They
18 are leaders in their own right.
19 There are going to be a lot of people
20 who want to be delegates; and, if you have just
21 twenty names or even a hundred names to qualify for
22 a ballot, it's going to be awfully -- awfully
23 populated with candidates. So I think you want to
24 put the hurdle up a little, so that you get good,
25 qualified, well meaning, serious kinds of

17

1 candidates.

2 Delegate vacancies can be addressed,
3 there's a mechanism to take care of that in proposed
4 legislation.

5 Now one of the most important parts to
6 keep out special interests are the campaign finance
7 provisions, and I've outlined them. You can
8 establish limits on contributions, you can establish
9 limits from organizations. You can -- for example,
10 you could prohibit corporations from giving to
11 convention delegates. You can provide aggregate

12 limits from any giver, and so on.

13 And, most important, if you get

14 particularly wealthy people -- I don't know how many

15 Steve Forbes there are that might want to become

16 delegates to this convention, but there might be

17 some. And you could establish a system to prevent

18 excessive spending by having people agree to

19 spending limits and get certain benefits. This is

20 the only way you can have spending limits, as I'm

21 sure most of you are aware. And those are spelled

22 out.

23 But if people would agree to using no

24 more than \$2,500 of their own resources, spend no

25 more than a total of \$25,000, you would have -- for

18

1 their campaign, you would have reasonable campaigns,

2 and you would have good competition.

3 And you would reward these people by

4 giving them free mailings by the state, by free

5 television time and production of television video,

6 and a new item: Develop a website on the state, and

7 provide that website information for them, and a

8 statewide website would have a lot of stature and

9 credibility, and I think would be attractive, and I

10 think it would be a great encouragement for those

11 people to comply with spending limits.

12 Delegate compensation. I think, from

13 what I've heard, that there should be compensation,
14 should be a stipend, so that people who don't have
15 the means cannot be prevented from being delegates.
16 But I would say and respectfully suggest that
17 anybody who's in elective office, maybe even
18 appointive office, should not receive that stipend.
19 If legislators want to be delegates, they can be
20 delegates, and they wouldn't get any extra pay for
21 it, and I think that would be appropriate.
22 It's important on background materials
23 to get that started early, as soon as the people
24 authorize a convention. Henry Coleman has been very
25 helpful in spelling out the tasks that might have to

19

1 be studied, and I think they should be immediately
2 studied when a convention is authorized and paid for
3 and -- within the state, or with consultants, and
4 getting good information for the different
5 delegates.
6 The organization and operation of the
7 convention is important. My recommendation -- and
8 that's a strong one -- would be to not try to be too
9 directive in what you tell the delegates they can or
10 cannot do. You have to give them the sense that
11 they are going to be independent. And I don't think
12 you want to impose upon them what they might
13 consider their prerogative. And I think they should

14 elect their own officers, rather than have the
15 convention legislation say that somebody else
16 appoints the officers, and these are the ones you
17 have to have. You have to give, I think, the
18 convention a sense of identity, a sense of
19 independence, and that kind of spirit. And I think
20 it will go a long ways to advancing its objective.
21 The budget for the convention process
22 is something that you will figure out. And when you
23 consider the amount of money that's been spent
24 studying taxes, the amount of money that's been
25 spent on rebates and some of these other items, I

20

1 think that -- that it's money well -- well spent,
2 and I think it's a bargain that the people will get.
3 The location of the convention. I say
4 New Brunswick is a no-brainer for many obvious
5 reasons. It's been the place where we've had
6 successful conventions, and it gets it out of the
7 aura of Trenton.
8 Now the eight-hundred-pound gorilla
9 which you folks will be facing is the issue of
10 thorough and efficient, which is a spending issue.
11 And should you direct the Legislature on what it
12 should do in its legislation, should you leave it up
13 to the legislature, there are many pros and many
14 cons on this -- on this issue, and I know you're

15 going to be wrestling with them. I've spelled them

16 out:

17 Do you want to leave it up to the

18 Legislature, and have that battle fought in the

19 Legislature?

20 Do you think, if you put the -- if you

21 took thorough and efficient off the table, and let

22 it be possible -- let it be a part of the

23 convention, do you think that you would get the

24 quality of sponsorship in the Legislature that is

25 necessary to advance this?

21

1 Would such a matter being open to the

2 public inspire many delegates to run, just so that

3 they can fight thorough and efficient and fight the

4 education establishment and get an overwhelming

5 number of delegates that might be of that mind?

6 All of these things are something

7 you're going to have to figure out, and it's not --

8 it's not unreasonable, in my opinion, to take some

9 things off the table or to make some -- some

10 exceptions. On the other hand, you have people who

11 will say, it's got to be part of the mix because it

12 is -- it is spending, and you say that a convention

13 should be open to everything.

14 I have learned from Senior Lance (sic)

15 some things about the past convention; and, in 1947,

16 that convention, of course it was not open to the
17 matter of districting, and everybody says it was
18 open to everything else. And it was, in name. But
19 a deal had been struck, and the deal was struck
20 between Governor Driscoll at the time, and Senator -
21 - was it -- was it Frank Hague or was it Kenny?
22 Frank Hague.

23 They got together and Frank Hague
24 said, look, I -- I destroyed your previous effort
25 for constitution reform two years prior, and I can

22

1 do it again, but don't touch the railroad tax in
2 Hudson County. And the understanding was then that
3 they wouldn't touch the railroad tax in Hudson
4 County, and it wasn't. So those kind of things can
5 be kept off the table, and for the better good and
6 success of the overall enterprise.

7 There are other items, I've talked
8 about the manner of -- which is an addendum here.
9 Do you want -- in taking politics out of the
10 convention, do you want to have the Ds and the Rs
11 removed from the names of the delegates? And
12 there's good reason to say, oh, we won't elect
13 delegates without knowing what they are.
14 But then you might be electing
15 delegates who are more in one party than the other.
16 Because if you have their identification, you could

17 limit the number from any district to no more than
18 one from one party. So that's something that you'd
19 have to -- you'd have to weight and -- because I
20 think it's been said by the briefing paper that we
21 got from the Governor's Office that the -- it's
22 advisable to have it as nonpartisan, and you don't
23 want it to be -- how do you keep it from getting to
24 be partisan. Well, one of the ways might be to have
25 the Ds and the Rs listed, so that you could be sure

23

1 to limit the number that are -- that qualify for
2 that.
3 So these are the major issues. I
4 think I've covered a lot of them. I could get into
5 a lot more detail. And, again, the spending issue
6 is something that you're going to have to grapple
7 with. You're going to -- in my opinion, you're
8 going to have to be very, very specific in defining
9 what programs of spending are open to the
10 convention, rather than open it up to some general -
11 - broad generalities, like saying, any kind of --
12 any kind of contractual spending or any kind of
13 entitlements or anything like that.
14 So, with that, I thank you for your
15 time. I'd be happy to try and respond to any
16 questions.

17 MR. VAN HORN: Senator, thank you very

18 much.

19 Which of my colleagues would like to

20 begin the questioning? Dr. Reock.

21 DR. REOCK: Bill, you said that the

22 tax relief should be directed to owner-occupied

23 residences. What about tenants?

24 SENATOR SCHLUTER: And tenants, you're

25 right.

24

1 (Participants confer)

2 MR. VAN HORN: Mayor. Mayor Schubert.

3 MAYOR SCHUBERT: Thank you.

4 Senator, this was very, very

5 informative; this was really helpful testimony. I

6 think we all look to you, with your expertise and

7 your background, and I appreciate everything that

8 you did here. I just have a couple quick questions.

9 You had suggested under Item No. 7

10 that it be revenue-neutral; meaning, if -- that

11 there shouldn't be a back-door method of raising

12 more taxes.

13 My question, I guess, is, obviously,

14 if we're going to try to keep it revenue-neutral,

15 we'll cut the property taxes, we'll get the income

16 from another source somehow. What happens if, at

17 one point, it goes out of kilter; if we, for example

18 -- well, if the convention decides that it's a sales

19 tax that replaces it, and suddenly the sales tax
20 revenues go up greater than what we've cut on the
21 property tax end? How would you suggest we make
22 that even up again?

23 SENATOR SCHLUTER: Well, I think the
24 operative language, Mayor, in the model legislation
25 is, to the extent possible; revenue-neutral to the

25

1 extent practicable or possible. It's not possible
2 to keep it forever -- forever revenue-neutral.
3 But you -- revenue-neutral is a
4 concept which is used in the legislative process,
5 and it does work. It cannot be forever, and there
6 are ways in the spending options; and it's Option
7 No. 3 in the spending, where the convention can
8 ensure the sustainability of a -- of a property tax
9 reduction, with caps, with circuit-breakers, with
10 limits, dedication exactly --

11 MAYOR SCHUBERT: Right. I think
12 that's kind of what I was thinking --

13 SENATOR SCHLUTER: Yes.

14 MAYOR SCHUBERT: -- and hoping that
15 you were going to talk about.

16 SENATOR SCHLUTER: Well, that. And
17 there are people a lot more qualified, including
18 Senator Van Wagner, than I, to fill in on that. And
19 Henry Coleman is an absolute expert on how some of

20 these things can be used, and they should be. And

21 that -- I think the public demands that, if we

22 reduce property taxes, it just does not reduce them

23 for once, and they go right back up.

24 MAYOR SCHUBERT: Right. Okay.

25 And my other question was, when you

26

1 talk about the delegate compensation, and you say

2 that legislators or other elected officials would

3 not get compensation.

4 Now anybody who's ever been a local

5 public elected official knows, this is -- right now,

6 it's costing me money to be here. So I think that

7 would discourage probably mayors or councilpeople or

8 committee people.

9 SENATOR SCHLUTER: Other -- you could

10 -- I think you could refine that to other full time,

11 or other who make at least X number of dollars a

12 year.

13 MAYOR SCHUBERT: X number of dollars,

14 right.

15 SENATOR SCHLUTER: The point is, there

16 are people who are very well paid in their public

17 positions, who could consider this as part of their

18 job, and it would not be taking time off, and they

19 would not be deducted from it.

20 MAYOR SCHUBERT: Okay.

21 SENATOR SCHLUTER: And that would --

22 that's that.

23 MAYOR SCHUBERT: Okay. And then one

24 other question. Under the campaign finance

25 provisions, you talk about allowing some of these

27

1 extra things for people who are in compliance with

2 the regulations. Would you suggest that we -- that

3 it be set up as an encouragement, or as, this is the

4 most that you can spend; and, in return for that, we

5 give you this?

6 SENATOR SCHLUTER: Mayor, you cannot

7 do it in the latter because of Buckley v. Valleo

8 (phonetic), you cannot impose spending limits unless

9 a candidate receives a benefit, and they receive the

10 benefit in exchange for limiting their spending. So

11 that would have to -- it would have to be that way.

12 And the -- there's another provision

13 in the spending limits. You would want to have the

14 more serious candidates subject to that, like those

15 who raise, say \$4,000 in fifty-dollar increments, or

16 twenty-five-dollar increments, in order to qualify

17 for that subsidy; the subsidy being a direct mailing

18 or television or a website. And those are pretty

19 important. And, plus, the stigma that you get and -

20 - with not complying with the spending limits.

21 MAYOR SCHUBERT: So I just want to be

22 clear on that because I wasn't aware. My campaigns
23 cost very little, in comparison, but -- so what
24 you're saying is we could not limit campaign
25 spending for the delegates in any way, only give

28

1 them an encouragement if they only spend this much,
2 then they would get these other things, or --
3 SENATOR SCHLUTER: Let me -- put a
4 different way, Mayor, you cannot limit their
5 spending unless they agree to limit their spending,
6 and in exchange for benefits which they receive from
7 the state.

8 MAYOR SCHUBERT: So if someone decided
9 they didn't want to agree, they could --

10 SENATOR SCHLUTER: They could -- they
11 could spend --

12 MAYOR SCHUBERT: -- out-spend
13 everybody else ten-to-one or a-hundred-to-one.

14 SENATOR SCHLUTER: This is -- this is
15 correct.

16 MAYOR SCHUBERT: Okay.

17 SENATOR SCHLUTER: And you have to --
18 you have to face that. I mean, if you get Steve
19 Forbes who wants to be a delegate, and he wants to
20 spend a couple million dollars, there's no way to
21 stop it. But -- but there might be resentment,
22 there's been resentment to other very big spenders

23 who might have won by a lot more if they hadn't

24 spent \$60 million or whatever, and --

25 (Laughter)

29

1 MAYOR SCHUBERT: Thank you.

2 UNIDENTIFIED: But they won.

3 MR. VAN HORN: Vice Chairman Cole.

4 MR. COLE: Bill, one follow-up on

5 delegate selection and compensation. If you allow

6 members of the Legislature to be delegates, how can

7 you then allow for compensation of delegates?

8 Wouldn't that run afoul of the constitutional -- at

9 least one, if not two, constitutional provisions on

10 occupying another position of profit, or a position

11 of profit created during the legislative term?

12 SENATOR SCHLUTER: I don't know the

13 answer to that. You're an attorney, and I would

14 defer to your -- you, if that violates equal

15 protection or whatever it might be. Maybe it does,

16 but it -- maybe you have different classes of

17 delegates. I don't know.

18 MR. COLE: I raise it. I guess we'll

19 have to maybe address it to Professor Williams. But

20 I think that's implicated. And I think whether or

21 not you can exclude them from receiving the

22 compensation implicates another provision, and

23 that's the -- whether or not that's special

24 legislation, and that Vreeland v. Byrne case

25 involving Steve Wiley (phonetic) from the '70s, the

30

1 Supreme Court case.

2 SENATOR SCHLUTER: I did not pass that

3 recommendation or that proposition by any legal

4 panel, and so I would defer to you.

5 MR. COLE: Oh, I think we'll defer to

6 Professor Williams, probably. But thank you.

7 MR. VAN HORN: Yes, Mayor Passanante.

8 MAYOR PASSANANTE: Thank you. And

9 thank you again for your testimony, I think it's

10 been certainly very informative.

11 Senator, I want to get to the point of

12 the position of whether a legislator should serve as

13 a delegate. And I recognize that their expertise is

14 invaluable to this process, and I don't mean to make

15 this a slanted comment or question. But how do we

16 prevent them from falling prey to the same pressures

17 that have prevented them from addressing this issue

18 from the get-go if they're elected as delegates?

19 They're still going to be in their offices, they're

20 still going to have to think about the position they

21 take as a delegate and what effect that may have on

22 their position as a legislator. So how do we

23 prevent that? And does it make more sense, or is

24 there a way to be able to glean their expertise as

25 appointed consultants without giving them a voice to

31

1 vote?

2 SENATOR SCHLUTER: Mayor, I -- there

3 are a whole array of ways to having legislators

4 included.

5 In the version that went through the

6 Senate Judiciary Committee, through the efforts of

7 one senator, the removal of a limit on the number of

8 legislators was put in, so that there could be two

9 legislators from each of the districts, and it could

10 be dominated by the -- by legislators.

11 And you could limit it in the number

12 of legislators, one per district; or you could, as I

13 said before, you could have the caucuses of each

14 major party, we spell out the party in New Jersey

15 law, of each legislative house, select three or four

16 who are at-large delegates. And you could limit it

17 that way.

18 Now this does not mean -- and you

19 could put in -- you could stipulate conditions. You

20 could say, legislators who are known from their

21 statesmanlike approaches, their knowledge of fiscal

22 matters, and their experience on et cetera, et

23 cetera.

24 And it seems to me that the

25 legislators would have cover because the rest of the

32

1 delegates would be the majority, and they would not
2 be calling the tune on increases of alternative
3 taxes. And it would -- it would be mitigated to a
4 great extent if you limited the number.
5 Now you could -- you would remove all
6 legislators from the delegate mix, but I think you
7 really shortchange the convention. And I know in
8 both 1947 and 1966, from what I'm told, there were
9 legislators present, and they did a good job, they
10 acted as delegates, and they worked for the good of
11 the state.

12 MR. VAN HORN: Assemblyman O'Toole.

13 ASSEMBLYMAN O'TOOLE: Senator, you
14 made a point to exclude commercial property owners.
15 And just tell me, what's your rationale behind that?

16 SENATOR SCHLUTER: I didn't -- I --

17 first of all, Assemblyman, the convention delegates,
18 based on the research that they have, should be
19 making the decisions on -- on the tax code, what is
20 excluded and what is not. But it seems to me that,
21 from what I've heard, that the crying need for
22 property tax reform is from the owner-occupied
23 residents. And this -- if a convention recognized
24 this, and they wanted to have a differential tax
25 base, they would propose a constitutional change for

33

1 that.

2 It is in recognition for what I think

3 is the biggest need for property tax reform, which

4 does not mean that the property taxes on commercial

5 or business would go up, but they would stay the

6 same, for example. There might be other

7 recommendations that the convention might make,

8 which would be regional or statewide assessing,

9 which I know a lot of people in business would

10 embrace right away.

11 But maybe I'm going too far in saying

12 that, Assemblyman, respectfully; it's up to the

13 convention to say it. But that was my sort of

14 feeling.

15 ASSEMBLYMAN O'TOOLE: My second

16 question, Senator, is with regard to the bipartisan

17 or nonpartisan nature of the convention. How is it

18 that we can assure that we're going to have an equal

19 number of democrat, republican, and independents; I

20 mean, how do we arrive at that?

21 And when you're answering that

22 question, I'm trying to understand, how are we going

23 to arrive, in terms of the delegate selection, that

24 it will, in fact, reflect the diversity of New

25 Jersey; there will be a sufficient number of women,

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1 hispanics, Asians, African-Americans. How do we get
2 to that in this election process that you talk
3 about?

4 SENATOR SCHLUTER: Well, without being
5 flip, I think that when you look at the convention
6 process and the public involvement, it does reflect
7 a leap of faith that the people do the right thing.
8 And we've heard from minority groups here from this
9 table that we want to be sure to be recognized at
10 the convention, how do we do this.

11 Well, how is it done now? And you're
12 knowledgeable about Essex County, and you know that
13 there are certain groups in Essex County that get
14 together, and they say, look, if we put too many
15 candidates from our particular group or our ethnic
16 group on the ballot, then -- then nobody is going to
17 win. So the election process will -- will distill
18 this to a great extent. And you can't be totally
19 perfect.

20 The 1947 convention had eighty-one
21 delegates and one Afro-American, and that's terribly
22 out of proportion, even at that time. But the times
23 were different then. But that one Afro-American was
24 responsible for a very strong civil rights provision
25 in our present constitution, just the presence of

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1 that person.

2 Now if you have at-large delegates,
3 and maybe it's better to have a larger pool of at-
4 large, where you can be sure that racial, gender,
5 other balances are made. It is -- it is difficult.
6 The Coalition for -- the New Jersey
7 Coalition for the Public Good put on a number of tax
8 assemblies, and we went out and we recruited
9 delegates by random. And, yes, it is a -- it is a
10 concern. But that can be done, and I think it's --
11 I think it will be done, to a great extent, as long
12 as you don't exclude people.
13 ASSEMBLYMAN O'TOOLE: Senator, my last
14 question, with regard to your comment about revenue
15 -- revenue neutrality. This is property tax task
16 force, people are worried about the skyrocketing
17 property taxes. And I don't think the average
18 resident would suggest that we just move that cost
19 to some other tax, so to speak; move the property
20 tax, reduce it by a billion, increase the sales or
21 the income or the corporate tax by a billion.
22 I think one of the options we could at
23 least look at and have the Legislature look at is
24 the prospect of actually spending less money. So
25 I'm not -- I think I'm at odds, in terms of the

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1 revenue neutrality. I think we have to leave open
2 the option of reducing the current costs of

3 government, so we can, in fact, reduce the current
4 tax that go to pay that government. Are you adverse
5 to that notion?

6 SENATOR SCHLUTER: No, I probably
7 could have been more precise in making my point.
8 The original legislation said,
9 reduction in property tax equals the same amount of
10 increase in alternative revenue sources; that's
11 revenue-neutral. Now the formula, with spending in
12 the equation, the formula can be, reduction of
13 property tax equals the alternative revenues, plus
14 the amount of savings. And that is perfectly -- if
15 you can quantify it, if you can quantify it.
16 Now, again, you get into this whole
17 spending issue, and if you say, well, we want the
18 school districts to be reduced to half their number,
19 and everybody knows that's going to be a saving.
20 But you, as a task force, and then again the
21 Legislature, has got to determine, do we mandate
22 that. Because you can't quantify that, unless you
23 mandate it.

24 So the convention, in being revenue-
25 neutral, if it says it's going to cut the health

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1 benefits for public employees by X amount, that's a
2 number that you can add to the revenue-neutral
3 formula.

4 MR. VAN HORN: Mr. Thannikary.

5 MR. THANNIKARY: Bill, thank you again

6 for this wonderful testimony, and I learned a lot

7 from you, as a matter of fact; and I want to thank

8 you on behalf of all 500,000 homeowners, which I'm

9 chairing a committee -- a coalition, for the work

10 you're doing for all of us.

11 My question is, Item No. 4, single

12 vote. By the way, I read S-1800, and I have been

13 supporting Senator Adler's bill, 263, and

14 Assemblyman -- A-1786, and I'm fairly familiar with

15 the bills. The one man -- so single up-or-down

16 ballot question.

17 Many -- a number of people came here

18 and testified that the convention should address the

19 expense side of the equation. Suppose -- my

20 question is, suppose we include an honest discussion

21 of the spending side in government, schools,

22 whatever, within the scope of the convention. Would

23 you support the idea of allowing two up-or-down

24 ballot votes; which means, one for the revenue side

25 of the -- of the issue, yes or no; and the other for

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1 the expense side of the issue; yes or no, would you

2 support that?

3 SENATOR SCHLUTER: Well, yes, I would

4 support that in letting the convention decide.

5 MR. THANNIKARY: Uh-huh.

6 SENATOR SCHLUTER: And when I -- when

7 I talked about the single vote, I did not say

8 require through the legislation that there only be a

9 single vote. I said, it should -- it might be

10 emphasized that a single vote has got many

11 advantages. But don't -- you know, there might be

12 an unusual circumstance where you might have a

13 multiple vote. But it's certainly better than

14 having ten or twelve or fifteen questions up or

15 down, and so on.

16 That would have to be looked at by

17 experts at a convention, to decide is this going to

18 accomplish this, and, you know, one if one gets

19 voted down and the other doesn't, is that going to

20 destroy the whole enterprise. And so that's a

21 question for the -- for the convention to decide.

22 But my recommendation would be not to prevent them

23 from having a second vote or a third vote, if a

24 circumstance indicated.

25 Now the second question is the

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1 composition of delegates. As you know, a number of

2 people testified against including legislators as

3 delegates, and I understand that, and I'm not

4 against including -- including legislators in the

5 convention because they have a lot of expertise and

6 they know the political, they have political savvy.

7 But my question is that, how do we --

8 how do we maintain the delegates' body, nonpartisan,

9 if we include the delegates (sic). We talked about

10 removing R and D. And if the legislators become

11 delegates, obviously, they're going to be political,

12 and they're going to -- they have political

13 affiliations. How do we maintain that neutrality of

14 the delegates' body.

15 SENATOR SCHLUTER: Well, I -- again,

16 you have to -- it's not just a leap of faith. You

17 have an oath of office that they are -- they become

18 a delegate, they are committed to working with the

19 convention, working with their fellow delegates.

20 And we've heard it from others, and I

21 think we heard it from Mr. Williams on the first day

22 that this task force started, that when you get into

23 convention, you get into a different dynamic, and

24 you get people who are participating. And they all

25 join together, and they're working for the --

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1 (End of Tape No. 1, Side A)

2 (Beginning of Tape No. 1, Side B)

3 SENATOR SCHLUTER: How do we ensure

4 that this doesn't become overly partisan in one

5 direction? And I mentioned one method of having the

6 delegates, if they're elected, if they are a member

7 of the Republican or Democrat Party, have an R or a
8 D by their name, so that you could limit the ones
9 from a district.
10 It's not the best way in the world;
11 and, as a matter of fact, my thought is that a lot
12 of voters would go in and say, I'm not going to vote
13 for anybody that has an R or a D, because they want
14 this to be truly independent. So this is up to the
15 wisdom of you, as well as the Legislature in
16 fleshing out the legislation, as well as the
17 convention, to work toward.
18 And a convention is going to have
19 strong leadership that people will fight to keep it
20 from becoming partisan. And certainly the
21 newspapers are going to be editorializing; and, if
22 they see somebody trying to go in and manipulate
23 something, they're going to --
24 MR. THANNIKARY: Would you support
25 what Governor Florio suggested, that both houses --

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1 the leadership of both houses appoint a panel of
2 legislators. Maybe they could -- like Mayor
3 Passanante said, they could serve as resource people
4 or advisors to the convention. Would that be --
5 would that eliminate the problem?
6 SENATOR SCHLUTER: Well, I think
7 there's -- I think there's nothing like being a

8 delegate to become engaged, and to take an active
9 part, and to -- I think it's -- to get one step
10 removed, that involvement changes. And the Governor
11 -- Governor Florio's was really to get around the
12 idea of, at a general election, electing people that
13 you don't know anything about. Just because they
14 appear on a ballot, and wherever they appear and
15 whatever, and get rid of that. I think that was --
16 it would solve the problem, but I think it would
17 also create another problem, which is break the
18 faith with the people that this is a truly citizen's
19 convention and an independent convention.

20 MR. THANNIKARY: Uh-huh. I have two
21 questions for the selection of delegates.
22 One is, some people suggested that we
23 use the jury selection method, rather than a public
24 election. Would that be -- would that be an
25 appropriate way to elect delegates for a convention?

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1 That's number one.
2 Number two, the election of delegates,
3 can we -- can we -- let me ask -- ask the first
4 question.

5 SENATOR SCHLUTER: I have great faith
6 in the electoral system as a way of competing and
7 winnowing out the good and the bad. Sure, you're
8 going to get a few aberrations. But I think that

9 the political system, as long as you take the
10 excesses of money out of it and make it as fair as
11 possible, is a good way to compete for a delegate.

12 MR. THANNIKARY: Would you support the
13 idea of the election being funded by public funds,
14 rather than individual -- by private -- private
15 contributions?

16 SENATOR SCHLUTER: Well, it could be
17 funded by public funds, in addition to what was
18 recommended there as incentives to limit the
19 spending. And I think you've got one of the
20 nation's experts here in the state in Fred Herman
21 (phonetic) of the Election Enforcement Commission; I
22 don't know if you're going to hear from him, but he
23 could tell you all sorts of ways to do that.

24 MR. THANNIKARY: Senator, my last
25 question is the eight-hundred-pound gorilla. You

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1 mentioned T and E. And I heard a lot about it; and,
2 as you know, some of the people came in and
3 testified, T and E off -- is off convention --
4 convention should not discuss T and E.
5 And I read the part of the
6 constitution, what T and E is all about, and I
7 relate that to, the Abbot decision came out of T and
8 E. And I also read through several studies done,
9 performance of the Abbot districts. In fact,

10 somebody send me a testimony by a board member from
11 Newark, Newark School Board, the assembly budget
12 hearing.

13 And it seems to me that when we -- we

14 met the -- we closed the funding gap in Abbot

15 district, but we haven't closed -- closed

16 achievement gap, that's what it seems to me that.

17 So suppose the convention said, we're

18 going to leave the funding as it is for T and E, but

19 we're going to establish certain guidelines or

20 certain output measurements for the performance

21 measurements. This could be SAT scores, number of

22 kids going to college, whatever that is. Would that

23 derail the whole convention process, if you just do

24 that? Don't touch the revenue part of the budget

25 for the T and E, but we're going to set some

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1 restrictions or some guidelines on the spending side

2 of it. Would that derail the whole process?

3 SENATOR SCHLUTER: Well, I think that

4 the convention, properly elected, would have the

5 wisdom to decide whether or not they're going to

6 take that up. I think that that is treading in very

7 treacherous grounds, and I would like to associate

8 myself with the remarks of Justice Gary Stein, who

9 was here the last time, in what he said about the

10 Abbot decision, as far as a practical matter, and as

11 far as it's just starting out on it.

12 Again, you people will have testimony

13 from a lot of sources, and whether or not you take a

14 position, whether you leave that to the Legislature,

15 whether the Legislature takes the same position,

16 whether it's left to the convention is something

17 that time has to determine.

18 But it's not -- it's not unreasonable

19 to take safeguards and say that we think that, if

20 this gets into the convention, it would be so

21 explosive that it would -- it would be damaging.

22 MR. THANNIKARY: Thank you.

23 MR. VAN HORN: Senator Van Wagner.

24 SENATOR VAN WAGNER: Thank you, Mr.

25 Chairman.

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1 Bill, you've done great work on this -

2 -

3 SENATOR SCHLUTER: Thank you.

4 SENATOR VAN WAGNER: -- I just wanted

5 to congratulate you for that. And the New Jersey

6 Coalition for the Public Good, which has provided, I

7 think, invaluable information.

8 My questions are quickly on the

9 process. Based on the recommendations of the task

10 force, the first vote would be whether to hold a

11 convention, correct?

12 SENATOR SCHLUTER: Yes. Yes.

13 SENATOR VAN WAGNER: Would you suggest

14 that be in a November election?

15 SENATOR SCHLUTER: Yes, I think it has

16 to be.

17 SENATOR VAN WAGNER: Okay.

18 SENATOR SCHLUTER: And better experts

19 than I, I think, can confirm that.

20 SENATOR VAN WAGNER: Right.

21 SENATOR SCHLUTER: But we have a

22 provision in our constitution for a general election

23 referendum, and it has to be in the general

24 election.

25 SENATOR VAN WAGNER: Right.

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1 SENATOR SCHLUTER: And I think that

2 Professors Tarr and Williams would say that, in

3 order to limit it to a single subject, it has to be

4 by a general election vote as a practical matter.

5 SENATOR VAN WAGNER: Let us assume now

6 -- I'm going to make a series of assumptions. Okay?

7 SENATOR SCHLUTER: Yeah.

8 SENATOR VAN WAGNER: The

9 recommendations of the task force go to the

10 Legislature, the Legislature takes it up, agrees

11 that it should go on the ballot, goes on the ballot

12 in November 20, '05. Is that reasonable? Okay.

13 2005. Same thing.

14 (Participants confer)

15 UNIDENTIFIED: I'm agreeing with you.

16 SENATOR VAN WAGNER: Oh.

17 What would you expect -- and we've

18 heard testimony on this. We would then, after --

19 assuming it's the electorate decides that there

20 should be a convention, what would be, in your view,

21 a reasonable amount of time to conduct a public

22 information program, which I think is necessary, as

23 well as a campaign for the delegate selection?

24 SENATOR SCHLUTER: Well, for the

25 public information program, for the first vote to

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1 authorize it, the law says sixty days minimum for

2 that vote. It says ninety days minimum for the

3 second bill, which has to accompany it, which would

4 allow the convention to change statute. That's in

5 the constitution now.

6 SENATOR VAN WAGNER: Okay.

7 SENATOR SCHLUTER: That's for 2005.

8 And that certainly, in the past for bond issues and

9 other public questions, has proved sufficient for

10 citizen organizations to get started and to raise

11 money and to campaign for and against.

12 SENATOR VAN WAGNER: So then, in --

13 basically, essentially, in March of 2006, let's say,

14 we could have the election for the delegates.

15 SENATOR SCHLUTER: If that is the --

16 if that is the choice. And that's another question,

17 whether you have the election of delegates at the

18 first referendum in November of '05, at the same

19 time, or if you have it as a separate. As I said, I

20 favored the separate --

21 SENATOR VAN WAGNER: I, frankly, agree

22 with you.

23 SENATOR SCHLUTER: Yeah.

24 SENATOR VAN WAGNER: I think it's

25 confusing for people to have to decide, especially

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1 if you have dual candidacies and things of that

2 nature.

3 SENATOR SCHLUTER: Yeah.

4 SENATOR VAN WAGNER: Thank you, Mr.

5 Chairman.

6 MR. VAN HORN: Senator, I just had one

7 question for you. I'm sure you recall in one of our

8 previous hearings it was suggested that, in order to

9 try to expand the electorate for the -- if we did

10 have a special election, for the delegates, that we

11 would experiment with a mail-in ballot, as has been

12 done in Oregon, for example. Have you given any

13 thought to that approach, and whether you think that

14 would be beneficial to have a larger electorate for

15 this special election?

16 SENATOR SCHLUTER: I think that would

17 be great. As a matter of fact, it might even be --

18 and you've got legislators on this group -- it might

19 even be a very good model to experiment to -- in

20 order to expand it. You could have early election,

21 you could have computer mail-in, and things like

22 that; and you could identify the subject matter.

23 And with people from like Fred Herman,

24 but more appropriately from the Elections Division

25 and the Department -- and the Attorney General's

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1 Office, you can get a good -- I think that would be

2 a good -- a good possibility.

3 MR. VAN HORN: Well, my wife is from

4 Oregon, so she's been telling me I should consider

5 that for --

6 (Laughter)

7 MR. VAN HORN: I had to get that

8 question in.

9 Well, Senator, thank you very much.

10 SENATOR SCHLUTER: Thank you.

11 MR. VAN HORN: As we know, you've

12 given great thought and contributions to this for

13 several years, and we very much appreciate your

14 being with us today and sharing your thoughts and

15 views and careful analysis.

16 SENATOR SCHLUTER: Thank you for your

17 good questions.

18 MR. VAN HORN: Next, I'd like to call

19 Professor William Briffault to the table. And

20 Professor Briffault's testimony is in the packet in

21 front of you.

22 Professor Briffault is the Joseph P.

23 Chamberlain Professor of Legislation at Columbia Law

24 School, and also the Vice Dean and the director of

25 the university's Legislative Drafting Research Fund.

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1 Professor, thank you very much for

2 being with us today, and we look forward to your

3 remarks.

4 PROFESSOR BRIFFAULT: Thank you very

5 much.

6 (Off the record. Back on the record)

7 PROFESSOR BRIFFAULT: Yes. Yes, we

8 have one of these, as well.

9 The work that I've done really looks

10 at two questions: One are, what are the governing

11 legal requirements that would apply to the selection

12 of convention delegates, and the second explores

13 some alternative voting systems or nontraditional

14 voting systems that might be used to increase the

15 diversity of the delegates who are elected.

16 On the first point, the legal

17 requirements. One thing that is sort of surprising
18 is there are actually relatively few legal
19 requirements that apply specifically to
20 constitutional convention, possibly because we've
21 actually had relatively few state constitutional
22 conventions in this country in the last twenty-five
23 years. There was a spate of state constitutional
24 convention holding in mid-century, mid and a little
25 past mid-century. But there's actually been very

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1 little action at -- in terms of elected state
2 conventions, I think, in the last twenty, twenty-
3 five years, so there's actually relatively little
4 juris prudence on this.
5 But in terms of the basic issues of
6 the constitution, one would be the -- obviously, the
7 right to vote. There is no need to have an elected
8 convention. I suspect that most people assume that
9 many -- most, if not all, assuming most of the
10 delegates probably would be elected, but it's not
11 required that constitutional convention delegates be
12 elected.
13 And then more surprising to me is that
14 the one person, one vote requirement does not
15 specifically apply. Although I assume most people,
16 if they're having delegates elected, would probably
17 want them elected from equipopulus districts (sic).

18 The Voting Rights Act does apply. The
19 Voting Rights Act is a federal statute that requires
20 that electoral systems should not dilute minority
21 votes. The Voting Rights Act is implicated through
22 the use of multi-member or -- multi-member districts
23 or at-large elections. It's also implicated through
24 even the use of normal single-member districting
25 systems, if the district lines are manipulated in

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1 such a way as to reduce minority representation.

2 But I think the experience has been

3 that, particularly with multi-member districts or

4 at-large elections, that these raise more difficult

5 legal issues, under Voting Right Act's challenge.

6 Although it's important to reiterate, they are not

7 unlawful per se, and they are frequently upheld.

8 Nonetheless, they are -- they are more likely to

9 invite challenge.

10 The second half of the paper really

11 explores the use of alternative voting systems to

12 create more diverse convention delegations. A lot

13 of the focus on alternative voting systems in recent

14 years has really been as a result of the Voting

15 Rights Act experience, and of a recognition that you

16 can move from multi-member districts to single-

17 member districts; but, due to jury mandering, the

18 districting plans themselves may not produce that

19 much minority representation and may be inadequate,
20 and may also have counterproductive effects, in
21 terms of reducing competitiveness within districts.
22 And some people have really gone back
23 and thought, well, multi-member districts; that is,
24 electing say three members of a state legislative
25 delegation from one unit or at-large elections, the

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1 problem is not the large number of delegates from a
2 unit, it's the fact that it's a single majority
3 voting on all of the seats.
4 And so lawyers and scholars have
5 explored a number of alternative ways of maintaining
6 a larger unit with a significant number of delegates
7 from that unit, while holding down the power of the
8 majority to control all the seats, and providing
9 mechanisms for a minority to get a representative
10 share of the seats. And these mechanisms include
11 such things as limited voting, having a -- say,
12 three seats from a unit, but allowing people to only
13 vote for two. This was the system for the election
14 of at-large borough-wide representatives on the New
15 York City Council while I was growing up, so it is
16 not that unfamiliar.
17 Cumulative voting, which was the
18 system for electing the Illinois Legislature for
19 about a hundred-some-odd years, which allows people

20 -- again, if you have to elect three delegates from
21 a unit, allow the voter to cast two votes -- one
22 vote, two votes, or three votes for the preferred
23 candidate. It's a way of reflecting the voters'
24 intensity of support for a particular candidate.
25 And, finally, preferential voting,

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1 which allows voters to rank-order their preferences,
2 and gives a chance for candidates to, in effect,
3 acquire support from different groups of voters;
4 and, in the end, ultimately manage to prevail and
5 get one seat.
6 The advantages of some of these
7 systems in particular is they avoid the need of some
8 of the most intensive jury mandering. You can deal
9 with larger, less-manipulated districts, but also
10 have mechanisms for minority representation.
11 They seem like exotic systems because
12 they're not our normal way of doing things, but each
13 of them has a kind of a pedigree in the United
14 States; they have some use, and they are ways of
15 reconciling some of the benefits are larger units,
16 such as a broader -- a broader vision of
17 representation, an avoidance of fragmentation, and a
18 way of getting candidates to pitch themselves to a
19 slightly bigger constituency, while also providing
20 mechanisms for minorities, whether racial,

21 political, or whatever type of minority group within

22 that jurisdiction to find representation.

23 Now I think I'll stop there. I --

24 that's really all I had focused on. I know I'm --

25 I'm happy to talk about other delegate selection

55

1 issues. I've done some work on this in connection

2 with the New York State Constitutional Convention

3 that did not happen in the 1990s, and so I'd be

4 happy to talk about that, as well.

5 MR. VAN HORN: Yes, Senator Van

6 Wagner.

7 SENATOR VAN WAGNER: I'm interested in

8 how you achieve a balance.

9 PROFESSOR BRIFFAULT: Uh-huh.

10 SENATOR VAN WAGNER: Whether it's

11 racially, economically, ethnically, whatever. If

12 that's necessary.

13 In your own experience, academically

14 or otherwise, what would be your opinion of a --

15 let's say some type of judicial or legislative or

16 citizens committee that was empowered to look at the

17 election after the fact and the selection of

18 delegates? And based on a provision --

19 PROFESSOR BRIFFAULT: Uh-huh.

20 SENATOR VAN WAGNER: -- you know,

21 based on a recommendation that we might include,

22 allow them to make some adjustments in the makeup of

23 the -- those who are elected. Do you think that, in

24 any way, blemishes the process or --

25 PROFESSOR BRIFFAULT: Well, it has a

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1 strength and a weakness. And the strength would be

2 that, just as you suggested, takes -- any electoral

3 system is imperfect, and particularly if you're

4 using existing lines. There -- it may not -- there

5 are some interests -- a districting system is really

6 good at representing geographically defined

7 interests by definition.

8 SENATOR VAN WAGNER: Right.

9 PROFESSOR BRIFFAULT: It basically

10 says that this particular area has its

11 representative.

12 SENATOR VAN WAGNER: Right.

13 PROFESSOR BRIFFAULT: And it's very

14 good at representing other interests which are --

15 correlate with geography. If there is a particular

16 ethnic group that's highly concentrated in one city,

17 or one suburb, that group has a better shot at

18 getting representation.

19 It's less good at representing people

20 who are not geographically concentrated. And it's

21 quite possible a minority that is not geographically

22 concentrated, however you want, left-handed people,

23 I mean if that were -- if that were a politically
24 salient group, which I suspect it's not, if that
25 were politically important, the odds are the system

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1 wouldn't provide good representation -- wouldn't
2 necessarily provide good representation for that.
3 So you could have a blue-ribbon panel
4 basically told that, to the extent that there are
5 deficiencies in the elected group -- and you have to
6 pretty much specify, I think, what categories you're
7 talking about up front -- it might be a good way to
8 make up. And there are all sorts of appointed
9 commissions, appointed bodies which are appointed
10 with those criteria in mind. The downside is it
11 looks like you're trying to undo the results of the
12 election.

13 SENATOR VAN WAGNER: Well, that was my
14 concern, yeah.

15 PROFESSOR BRIFFAULT: Yeah. And I'm
16 not sure I've ever seen something that works the way
17 you're describing. I've seen conventions or charter
18 commissions that are all appointed, or redistricting
19 commissions that are appointed with the idea that
20 they be representative of gender, ethnicity, party;
21 and I've seen bodies that are elected -- I'm not
22 sure -- and I've seen bodies that are elected with
23 some appointed. I'm not sure I've seen bodies where

24 the appointed group is official intended to make up

25 for, after the fact, the shortfalls in the elected

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1 group, although it could very well be that's the way

2 it works out.

3 SENATOR VAN WAGNER: There's some

4 correlation in the selection process we go through

5 for convention delegates, in the Democratic Party,

6 at least, there is some --

7 PROFESSOR BRIFFAULT: Yeah, within the

8 party is a --

9 SENATOR VAN WAGNER: Within the

10 parties, there are.

11 PROFESSOR BRIFFAULT: That might be

12 different.

13 SENATOR VAN WAGNER: I didn't know

14 whether that works at large, in your view. Perhaps

15 not.

16 PROFESSOR BRIFFAULT: Yeah.

17 SENATOR VAN WAGNER: Perhaps that's a

18 slippery slope, if you will.

19 PROFESSOR BRIFFAULT: Yeah.

20 SENATOR VAN WAGNER: Thank you, Mr.

21 Chairman.

22 MR. VAN HORN: Other questions for

23 Professor Briffault?

24 I have one. You talk about the

25 alternative methods of elections. And I wonder,

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1 what's your opinion about the period of time and the

2 process necessary to educate voters about, you know,

3 voting in a different way that they're accustomed

4 to, if we were to try one of those methods; any of

5 them, it doesn't matter.

6 PROFESSOR BRIFFAULT: Yeah.

7 MR. VAN HORN: I mean, it's all a

8 different way of -- atypical for their experience.

9 PROFESSOR BRIFFAULT: It does require

10 some education, but it can be done. I mean, San

11 Francisco just did this for the first time; San

12 Francisco adopted something called "instant runoff

13 voting," and it was mandated a couple of years ago,

14 and they just ran the election. And I understand,

15 of course, there was a problem with the computers,

16 but it's not clear that was due to the use of

17 instant runoff voting, but it may have been a

18 computer problem. I think there was a period of

19 voter education that went on in this year leading up

20 to it.

21 Some of these are more complicated

22 than others. Some of them are not complicated, but

23 are just, let's say counter-intuitive, such as

24 cumulative voting. I mean, the cumulative voting,

25 you can run on the same machinery; it's a pretty

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1 straightforward thing, it's just -- you know, you

2 get to flick three levers under the same person, or

3 punch in three times.

4 Voters have to be told that that is

5 legal and not illegal, but there are instances --

6 there are studies of how this has been done in a

7 number of small southern communities that adopted

8 cumulative voting as a result of settlements of

9 Voting Rights Act cases, and it appears to have gone

10 out without incident.

11 So you're right, it would probably

12 require a bit more voter education up front. But

13 cumulative voting and limited voting are pretty

14 easy. And my guess is, if we're talking about -- it

15 sounds like we're talking about no more than two or

16 three delegates elected per legislative district,

17 which probably limits the relevance of preferential

18 voting. So we're talking probably limited voting or

19 cumulative voting.

20 Limited voting is incredibly easy, and

21 it just basically says, there are three people up,

22 vote for two; there are three seats, you can only

23 vote for two or one, I mean, whatever it would be.

24 That -- I don't think that requires much special

25 education at all.

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1 Cumulative voting is, people should be
2 -- they have the option. They can cast all their
3 votes, they can cast three separate votes for three
4 separate people; or, if they feel very intensely
5 about one person, they can cast all their votes for
6 that person. It would require some education, but
7 it happens; it's a system that's been in place.

8 MR. VAN HORN: What is the history, if
9 you're familiar with it, obviously, of delegates
10 selected during general elections, versus special
11 elections, in the history of delegate selection --

12 PROFESSOR BRIFFAULT: I'm not that
13 familiar with it. I'm trying to remember what --
14 the last big convention I'm familiar with was -- is
15 the New York one, and I think they were, but I --

16 MR. VAN HORN: Which, the general, or
17 at a special election?

18 PROFESSOR BRIFFAULT: It was in a
19 general.

20 MR. VAN HORN: In a general.

21 PROFESSOR BRIFFAULT: But I'd have to
22 check that, because I know the convention was in
23 '67, so I'm assuming they were elected in '66, which
24 was the general election in New York. But I --
25 that's the only one that I really spent time on.

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1 MR. VAN HORN: Do you have any views
2 about the advisability of those different approaches
3 --
4 PROFESSOR BRIFFAULT: Well --
5 MR. VAN HORN: -- electing delegates
6 at a general election, versus a special election.
7 PROFESSOR BRIFFAULT: As with all of
8 them, it's the tradeoff. You get more voters at the
9 general election, you get a lot more voters at the
10 general elections, and especially if it's -- it's a
11 state election on state issues, this is a -- this is
12 a central state issue.
13 On the other hand, I guess there's the
14 danger that the candidates for this specific office
15 will get lost when everything else is on the ballot.
16 But you always get higher -- greater voter turnout
17 when they're more -- when it's a central -- when
18 it's a general election; particularly, the general
19 election, or if it's -- and you always get less
20 voter turnout if it's, not only a special election,
21 but one at an usual time; for example, not on
22 primary day.
23 I mean, one -- one time to hold a
24 special election would be on the primary. But if
25 you have a -- if it's a fall primary, that probably

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1 doesn't do much good, given the time table you're

2 thinking of. But that's at least a time when people
3 are thinking about going to vote, but it's actually
4 harder, I think, to get people to vote at an unusual
5 time, unless there's an enormous amount of, you
6 know, media attention. I mean, the California
7 recall was something unprecedented, where there was
8 very high turnout in a special October election.
9 But that doesn't happen, normally.

10 MR. VAN HORN: Yes, Mayor.

11 MAYOR PASSANANTE: Professor, you've
12 outlined a number of different options, as far as
13 the process for voting, and you started to go in
14 that direction --

15 PROFESSOR BRIFFAULT: Right.

16 MAYOR PASSANANTE: -- in elaborating
17 on those.

18 But my question is: Given the task
19 that we have at hand and what we're trying to
20 accomplish, do you have a specific recommendation as
21 to one of these options fitting our needs the best,
22 and why?

23 PROFESSOR BRIFFAULT: Okay. Maybe not
24 quite a specific recommendation, but a couple of
25 things. One is probably -- though I've outlined

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1 three, the more I realize the likely size of the
2 convention; particularly, if you're likely to be

3 using preexisting districts, probably only limited
4 voting or cumulative voting makes sense.
5 The papers that I've read are
6 suggesting that you're thinking of two per district.
7 My guess is if your thoughts -- one question is, how
8 big do you want this convention to be. And I
9 understand the notion that it not be so big that it
10 be unwieldy, and it not be so big that the delegates
11 can't work together. On the other hand, you need a
12 certain size to get a level of representativeness.
13 So my sense is that you couldn't --
14 it's hard to use one of these mechanisms
15 meaningfully with probably fewer than three
16 delegates per unit. So thinking of forty -- forty
17 districts times three would be one twenty, and then
18 I know you're talking about super-delegates and
19 others. So I suspect that pushes it up to a
20 convention of 130 or 135; and the papers I've seen,
21 it looked more like a hundred. So that's one thing
22 to think about, is just how big you're thinking of.
23 I don't think there's a huge
24 difference between limited voting and cumulative
25 voting, in terms of the ability to provide

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1 minorities; whether they're party minorities, ethnic
2 minorities, or others, within a district. I think
3 both work in a similar way.

4 People, on the one hand, find it funny
5 to be told, there's three seats, but they can't vote
6 for all of them; people also find it funny to be
7 told, there's three seats, you can take your three
8 votes and put them in one seat, but I think either
9 would work, to the extent that there's a concern
10 about having more diversity from the individual
11 legislative units.
12 I don't disagree with the idea of
13 using existing -- I don't know enough to know about
14 whether the wisdom of using existing legislative
15 units. I guess the value is they already exist as
16 constituencies. And it was just recently approved
17 by your -- the apportionment commission, so they
18 passed one person, one vote and other muster a
19 couple of years back, so it's nice to have already
20 validated district lines. And so you've got it, so
21 it's probably worth using.
22 So, in some sense, what I -- you might
23 want to think about is a slightly larger convention
24 than the one you're dealing -- than the one that I
25 think you've been talking about, and what I've been

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1 listening to in the back, which might have
2 ramifications for the elected officials or non-
3 elected officials in it. The role of the elected
4 officials might become smaller if there were more

5 people in it, assuming that there are elected
6 officials there, other -- I guess we're talking
7 about legislators, I guess, as opposed to elected
8 officials, more generally, which I guess connects to
9 another debate, which is:
10 To what extent is this convention, in
11 effect, the Legislature meeting all over again out
12 of the normal setting to strike a compromise, versus
13 something which is going to be more of a -- you
14 know, a gathering of the public, or people -- or the
15 people's representatives, which might or might not
16 include the legislators.

17 (Participants confer)

18 MR. VAN HORN: Thank you very much for
19 your testimony --

20 PROFESSOR BRIFFAULT: Okay.

21 MR. VAN HORN: -- and for spending
22 time with us today.

23 Next we'll hear from Professor Myron
24 Orfield. Professor Orfield is a professor at the
25 University of Minnesota Law School, and he's also a

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1 senior fellow at the Brookings Institution; and,
2 according to his bio, a former legislator, as well.
3 Is that right?

4 PROFESSOR ORFIELD: Yes.

5 MR. VAN HORN: Welcome. I look

6 forward to your remarks.

7 PROFESSOR ORFIELD: Thank you very

8 much, Mr. Chairman. And I'm delighted to be here.

9 It's nice to be invited to opine when you've left

10 the legislator on --

11 (Participants confer)

12 PROFESSOR ORFIELD: Oh, sorry. Sorry.

13 Thank you.

14 Again, I say, thank you for being

15 here. It's a great privilege to be consulted on

16 this very important task. It's very important for

17 me to be here with people that are struggling with

18 these difficult issues.

19 I'm going to talk today about the

20 property tax, and particularly the scope of the

21 convention and the issues that I -- that I would

22 advise be considered in the convention. And I think

23 the -- a lot of the work has been done, in terms of

24 the preparatory and legal work and the papers that

25 I've seen.

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1 I want to talk about the systemic

2 nature of the property tax issue and the fact that

3 it crosses many -- many types of issues. Property

4 tax is not only enormously distressful for

5 homeowners, in terms of their ability to pay that

6 property tax, but it also contributes to fierce

7 internecine competition between municipal units that
8 are often spending public monies, competing with
9 each other for ratables inside of a single
10 metropolitan region; fighting for malls and
11 commercial/industrial facilities, competing for
12 high-valued homes.

13 It creates a spiral of inefficient
14 competition within a single regional economy, where
15 local units of government hurt each other, and are
16 unable to focus on the larger issues of global and
17 international competition. It creates growing
18 disparities between communities. And New Jersey, in
19 my work, has more distressed suburban communities
20 than any other part of the country.

21 It also contributes to urban sprawl,
22 the movement outward on land, in terms of
23 development. And it seems to me that the
24 convention, considering all of these issues, should
25 think about how this property tax; the fundamental

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1 way that local governments are supported, interact
2 both with land use patterns, and also with growing
3 inequality and the notion of competition. These all
4 things should be considered.

5 Property taxes, in my experience,
6 working around the country on these, they often lead
7 to systemic equitable resolutions in legislatures

8 that deal with all these issues, or they lead to
9 draconian tax limitations, which often frustrate the
10 local units of government, starve them for revenues,
11 reproduce the inequalities in the existing system,
12 make them more rigid and inflexible.
13 I would advise this commission to
14 think more about what is going on in Michigan and
15 Minnesota, where I'm from, Wisconsin, Massachusetts,
16 the dramatic number of states that have dealt with
17 the questions of inter-local equity in a systemic,
18 broad way; rather than the western states, which
19 have created tax limitations, which have fixed in
20 place inequality, increased the severity of
21 competition for land use, increased the notion of
22 fiscal zoning, and driven the cost of housing out of
23 sight.
24 So I think that you have -- of course,
25 when taxes become as burdensome and as extreme as

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1 they are in New Jersey for the property taxes, you
2 have the possibility of following what I would view
3 as a productive course, which are the courses of
4 states that have thought about these issues
5 systemically and legislatively, and you also have
6 the course of moving toward draconian limitations,
7 which can accelerate all the problems that you are
8 facing, in terms of land use, fiscal inequality, and

9 competition.

10 I'm going to talk about the scope of -

11 - I'm going to outline initially the scope of what I

12 think that the convention should consider, in terms

13 of these issues. Then I'm going to go show some

14 demographic patterns of the State of New Jersey to

15 show how some of these issues play out in some of

16 the metropolitan areas, and then I'll stand for

17 questions.

18 I think the convention should commit

19 itself to reducing the reliance on the local

20 property tax, or other locally authorized

21 replacement taxes. I think that one of the things,

22 the convention should not replace the property tax

23 with other locally authorized replacement taxes.

24 And this is important for two reasons:

25 Many states that have moved from one

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1 tax to another, there is the possibility of creating

2 marginally more equity and stability and less --

3 less severe injury. But the basic systemic issues

4 of competition and fiscal zoning and warfare between

5 municipalities will only be moved from one playing

6 field.

7 When California moved from a local

8 property tax to a local sales tax, people stopped

9 competing for high-value homes and office parks and

10 began competing for auto-malls and shopping centers.

11 And I think that that's one of the things that you

12 should think very clearly about. You shouldn't just

13 replace the reliance on the property tax with other

14 locally authorized replacement taxes, such as fees.

15 And I think one of the other issues

16 that you should think about, too, in the course of

17 all these things, is the power and strength of the

18 development community, in terms of influencing these

19 things. If this convention becomes something where

20 the result of this is to shift off the property

21 taxes toward fees that just affect new development,

22 you will have a fierce foe in the -- in your

23 deliberations that you need not have, in my opinion;

24 that you need not run into conflict with this.

25 The convention should reduce and

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1 ultimately attempt to eliminate the wasteful,

2 unproductive competition between municipalities in a

3 single economic region for office parks, expensive

4 homes, and create a tax system that encourages joint

5 economic development. It creates a tax system that

6 supports local municipalities and school districts

7 and counties working together toward broadening the

8 entire pie.

9 When you have a good and functional

10 tax system, everyone wins when business and

11 development comes into a region. When you have a
12 counterproductive tax system, one or two
13 municipalities win, and the other municipalities
14 fight or attempt to steal what's going on in those
15 particular places. So you should create a tax
16 system that reduces wasteful competition between
17 municipalities in a single region, and that
18 encourages municipalities to work together toward
19 broader economic competition.

20 The tax system that you propose must
21 support the aims and goals of the state land use
22 plan, and the state conservation and development
23 plan. It shouldn't work against a productive,
24 sustainable land use system. It shouldn't -- you
25 shouldn't create a system that's trying to support

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1 developing open space and protecting agricultural
2 lands, and then support a tax system that runs right
3 into the teeth, and encourages the development of
4 those same lands. So you should decide, if there
5 are open spaces in areas that you wish to protect as
6 a state, you should develop a tax system that is
7 coherent with that, one that doesn't work against
8 that.

9 You should -- if -- to the extent that
10 the tax system creates incentives, it should create
11 incentives to redevelop existing, fully developed

12 communities, rather than developing green fields and
13 open spaces. So, to the extent that the tax system
14 creates any sort of bias, it should -- there are
15 powerful biases in the status quo toward developing
16 open spaces and farmland in development areas. It
17 should redevelop existing places that are mature
18 communities, that have gone through the cycle of
19 development, whether they have difficult industrial
20 issues, whether they are first-string or fully
21 developed suburbs. To the extent it creates bias,
22 it should create a bias toward using existing
23 infrastructure, existing services, existing
24 communities. It should create biases, to the extent
25 it creates any biases, toward redeveloping existing

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1 areas.

2 It should reward, to the extent that
3 there are any rewards in this system that you should
4 decide, it should reward systems that have done good
5 job, in terms of providing affordable housing, and
6 that are opening up their doors and complying with
7 those goals. That's not a stick, but a carrot. To
8 the extent that there are any systemic incentives in
9 place, it should reward those communities that have
10 done good, not only to provide housing for the
11 elderly, but for all New Jerseyans.
12 It should -- it should reward or think

13 about how land use plans support or -- the state's
14 efforts to reduce congestion, and should think about
15 what kinds of land use plans work on those types of
16 issues. It should recognize that all of these
17 options work together.
18 I also think that you should make sure
19 that, when you are thinking about setting up a
20 convention, you should take into account the very
21 severe growing inequalities that have occurred in
22 California, in Oregon and many -- California and
23 Colorado, and many of the places that have adopted
24 tax limitations.
25 So those are the basic principles.

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1 I'm going to return to them in a minute. I'm going
2 to show some slides about demographic patterns in
3 New Jersey, in the metropolitan area, talk about how
4 these inequalities are working, and then stand for
5 questions.
6 You should maybe show the first slide.
7 Key findings. This is a report that I
8 did with the New Jersey Coalition for Regional
9 Equity, and this was a report last year
10 commissioned, supported by the Ford Foundation and a
11 variety of local foundations, working with hundreds
12 of churches throughout the metropolitan area of New
13 Jersey, and it gives you some basic demographic

14 findings.

15 The suburbs of New Jersey -- and New

16 Jersey is a profoundly metropolitan state -- are

17 very diverse. There are -- about eighteen percent

18 of the population live in what I'd call "distressed

19 suburbs," which have a lower-than-average tax base,

20 increasingly -- increasing social and economic need;

21 declining revenue, as they face development.

22 Another group live in at-risk

23 developing suburbs, another sixteen percent. These

24 are places that are growing, with significant

25 poverty, lower-than-average fiscal capacity, losing

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1 fiscal capacity as they grow.

2 Constrained communities are places

3 that are constrained by state development plans,

4 have a struggling tax base that are constrained by

5 the various land use patterns.

6 Bedroom developing are places that

7 have a reasonably average tax base, but are

8 overwhelmed with children. And one of the patterns

9 that you'll see, in terms of this -- these series of

10 slides, is that, as many of your older suburbs lose

11 school-aged children, they are moving very strongly

12 to the edge, and you have very, very high ratios of

13 school children to tax base at the very edge

14 households of the region in New Jersey.

15 New Jersey has the unique ability to
16 have both extraordinarily distressed older suburbs
17 and very distressed fiscally developing suburbs. As
18 the huge transfer of children decide the older
19 suburbs are not any longer for viable education,
20 they move into the bedroom developing suburbs and
21 overwhelm local fiscal capacity bases; and, when
22 these places are overwhelmed, they struggle with
23 very high tax rates and comparatively low spending
24 on a per-pupil basis.

25 Affluent suburbs, very high fiscal

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1 capacity, many times the regional average. Often
2 hubs of congestion, loss of open space, but beehives
3 of activity. These are the places that are very
4 strongly above-average fiscal capacity, growing very
5 powerfully away from the region, in terms of fiscal
6 capacity and ability to produce revenue.

7 All types of suburbs are hurt by the
8 lack of regional cooperation, and it goes without
9 saying that the central cities of New Jersey are.
10 All types of places can benefit from regional
11 reform, and it's possible. And I've got a number of
12 options that I can talk to you about that other
13 states have undertaken.

14 Next slide.

15 Schools in our studies are powerful

16 indicators of a community's health and a predictor
17 for the future. We looked at the elementary school
18 population of all the elementary schools of New
19 Jersey and looked at what's going on in each
20 community.

21 When a school's places -- when a
22 place's schools begin to grow power, in more cases
23 than not the community will follow. Middle-class
24 families of all -- of all races are choosing to live
25 in the least-poor school districts that they can

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1 afford to live in.

2 Show the next slide.

3 You see, this is a map of Northern New
4 Jersey. You can see this map is reproduced in the
5 report. These elementary schools are -- each of
6 those dots represents an elementary school. The
7 very -- the red ones are the highest poverty
8 elementary school, the orange ones are the secondary
9 level of poverty, light blue are below average. You
10 can see that in Northern New Jersey, that many of
11 the communities surrounding the New York
12 Metropolitan Area, many of the counties have
13 comparatively high poverty in their school district.
14 Take a look at the next slide.
15 This is a map that shows the change.
16 And there's enormous transformation going on in the

17 elementary schools of dozens and dozens of older
18 elementary suburbs in New Jersey, as they are going
19 through many of the same patterns that the City of
20 New Jersey (sic) did decades again. The same kinds
21 of transformations, in terms of poverty and social
22 issues, in terms of racial transformation and re-
23 segregation are occurring in many layers of older
24 suburbs of New Jersey, moving out of the central
25 city cores.

79

1 These patters are strongly -- they're
2 also strongly correlated with the fiscal capacity of
3 these communities. You can see the powerful change
4 in terms of poverty in dozens and dozens of school
5 districts surrounding the central cities.
6 Take a look at the next slide.
7 This is a map that shows race, and
8 race and poverty are powerfully intertwined, in
9 terms of -- in terms of cities in suburban areas.
10 If you are black and poor in the United States, or
11 latino and poor in the United States, three-quarters
12 of black and latino poor children go to
13 overwhelmingly poor schools; three-quarters of white
14 poor children in the United States go to
15 overwhelmingly middle-class schools. And these
16 patterns, because of the way that the housing market
17 works, and because of the way the tax system works,

18 are reinforced in New Jersey. This is the
19 percentage of black and latino elementary schools
20 students per school district.
21 Take a look at the next slide.
22 And you can see, again, the pattern of
23 social and racial transformation. In the older
24 suburban communities of New Jersey, it is precisely
25 the same thing that happened in the central cities

80

1 generations ago, with the same kinds of likely
2 outcomes, in terms of fiscal and economic results.
3 The powerful fiscal incentives that
4 encourage large single-family home zoning and
5 commercial and industrial development are the same
6 issues that tend to concentrate poverty in dozens
7 and dozens of older, inner-ring suburbs.
8 Next slide.

9 You can see this is the Camden
10 Metropolitan Area, and we can skip through these if
11 you want to. The patterns are similar in each one.
12 Why don't we move to the next slide,
13 showing the change. You can see the -- next slide.
14 You can see in the White Horse Pike in
15 the Camden Area huge and dramatic transformation, in
16 terms of elementary schools; a change that is much
17 faster than occurred in Camden a generation ago,
18 moving out on the pikes into -- into the Camden

19 Metropolitan Area. Very severe social and economic
20 changes.
21 Next slide.
22 You can see that race and class mirror
23 themselves in these same imagines.
24 Take a look at the next slide. Let's
25 move on.

81

1 This is all covered -- we're going to
2 get to fiscal capacity, which is the meat of this
3 proposal. And this is all covered in detail, and I
4 can certainly provide you the rest of the data.
5 Tax base comparisons indicate how high
6 the tax rates must be to support a given level of
7 services. Current and prospective residents and
8 businesses want value for their tax dollar. A low
9 local tax base, combined with high needs, pushes
10 rates up and/or services down. Local units compete.
11 If you have a high rate and a low tax base, you're
12 going to provide comparatively high taxes and
13 comparatively low services. If you have a very
14 large tax base and a low rate, you're going to be
15 able to provide comparatively low rate and wonderful
16 services.
17 And those inequalities throughout the
18 country, I wrote a book about this in 2002, American
19 Metro Politics, published by the Brookings

20 Institution. And those inequalities in highly
21 fragmented regions in the United States are
22 perpetuating themselves; they don't level out. They
23 grow more unequal, and they're growing more unequal
24 -- they are growing unequal at a faster rate than
25 personal income is.

82

1 Next slide.

2 This is Northern New Jersey, and you
3 can see this is the property tax base per household
4 of the municipalities. The red and the orange are
5 below average, the light blue and the dark blue are
6 above average; this is property tax base per capita,
7 by municipality.

8 And you can see that many of the
9 places that are experiencing increasing poverty are
10 doing so with a small base of values. It means that
11 they face their growing challenges with
12 comparatively high tax rates and/or comparatively
13 low services.

14 Take a look at the next slide.

15 You can take a look, this is the
16 erosion of fiscal capacity by municipality in New
17 Jersey between 1993 and '99. And you can see that
18 dozens and dozens of older suburban communities are
19 losing their ability to provide services, as they
20 face greater challenges. They face more poor

21 children, they face a more diverse socioeconomic and
22 racial mix. They face old infrastructure, they face
23 the replacement, they face brown fields and
24 redevelopment issues. And as they face these
25 growing challenges, they do so every year with less

83

1 ability to provide services; they do so every year
2 with less ability to provide revenue.
3 That leads to a spiral. As places
4 grow in social and economic needs with high tax
5 rates, their tax rates go up to chase declining
6 levels of services. Businesses and individuals that
7 have broad residential choices choose against those
8 places. And it's not because they're bad people;
9 it's because the system gives them very good choices
10 to leave and to move beyond. And it's a system that
11 grinds down very hard on the existing communities.
12 In America, central cities have a
13 variable outcome. There are central cities like San
14 Francisco and Seattle and Boston that have
15 gentrified greatly and pushed the poor outside of
16 their borders into the older inner suburbs. There
17 are cities like Detroit and Milwaukee and some of
18 the cities in New Jersey that have become very poor
19 and segregated, without the fiscal ability to
20 provide services. Nowhere in the United States has
21 the older suburban ring been able to gentry and

22 redevelop in the same way that central cities are.

23 Post World War II housing, sheetrock

24 construction, and lack of central planning and

25 amenities and culture and centrality has prevented

84

1 many of the older suburbs from having that kind of

2 spontaneous redevelopment. Oftentimes, these older

3 suburban places in the country are where poverty

4 settles most profoundly and most deeply.

5 Take a look at the next slide.

6 This is the Camden Metropolitan Area,

7 and you can see the fiscal inequality in the Camden

8 Metropolitan Area.

9 Take a look at the next picture.

10 And you can see the erosion in many of

11 the older communities in their ability to provide

12 revenue as the resources move further out and put

13 pressure on new developing communities to develop

14 commercial/industrial to deal with their residential

15 value.

16 Take a look at the next slide.

17 This is a typeology (sic). I think it

18 talks about eighteen percent of the population

19 living in distressed communities that are dealing

20 with very high poverty in their school districts,

21 rapidly increasing poverty, small base of values,

22 losing capacity.

23 At-risk suburbs, places that have
24 significantly above-average poverty that is growing,
25 low fiscal capacity, losing capacity as they're

85

1 facing growth.

2 Constrained suburbs, five percent of
3 the population. State planning and environmental
4 requirements are constraining their development.
5 They have fiscal stress and issues.
6 Bedroom developing suburbs, twenty
7 percent of the population. Not too stressed, in
8 terms of municipal issues; overwhelmingly stressed
9 in terms of school issues and the ability to provide
10 revenue for schools.

11 Affluent suburbs and resorts, ten
12 percent of the population. Very high fiscal
13 capacity, growing very rapidly. These places, to
14 the extent they have problems, are congested-related
15 and inability to provide transportation and goods.
16 And large central cities. I haven't
17 dwelled on the large central cities of New Jersey,
18 but they certainly have their share of troubles and
19 low fiscal capacity, in terms of dealing with tax
20 reform.

21 Final slide.

22 These are -- it shows the community
23 typeology that are created by this report, shows the

24 various types of communities that are listed in the

25 various parts of New Jersey. And you can take a

86

1 look at this. It classifies all the communities,

2 based on their fiscal characteristics, their degree

3 of social and economic need, the speed with which

4 they're growing, the strains on their school

5 district, and a variety of other issues.

6 Final -- next slide.

7 Resources versus need. As resources -

8 -

9 (End of Tape No. 1, Side B)

10 (Beginning of Tape No. 2, Side A)

11 PROFESSOR ORFIELD: -- by the status

12 quo. Low tax base and high, increasing social

13 stress in the older places, insufficient or aging

14 infrastructure, insufficient spending on schools;

15 the at-risk of the bedroom developing growth-related

16 costs, schools struggling with roads and creating a

17 duplicative infrastructure; affluent, growth-related

18 costs, congestion, long commutes, and loss of green

19 space.

20 Next slide.

21 Fiscal reform. And I talked about

22 this. And it should reduce the dependence on local

23 property taxes, reduce inequalities in tax rates and

24 services, reduce the competition for tax base within

25 a single region, encourage joint economic and

87

1 development efforts, and compliment regional land

2 use planning.

3 These, I think, are the broad themes

4 that I wanted to address, in terms of -- in terms of

5 what the convention ought to deal with, in terms of

6 its substance and the issues that it ought to take

7 up. I would hope that you can avoid a tax

8 limitation effort that will create rigid tax

9 limitations and reproduce inequalities and other

10 forms of taxes.

11 I would hope that you move towards

12 something that recognizes the regional nature of the

13 economy, the regional nature of development that is

14 supportive of your land use planning; and that, to

15 the extent you create incentives in this system at

16 all, it should create incentives to renew the

17 existing communities and rebuilding them, and try to

18 reduce the incentives to build in open spaces and

19 farmland.

20 I have a whole variety of further

21 simulations. You bring an old legislator to talk to

22 a hearing, and they will talk until you drop. So

23 I've got other simulations, if you'd like to see

24 other kinds of formulas and how they've worked. And

25 if the committee would like me to do that, I can go

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1 through that; or I'd be happy to stand for

2 questions. And I understand your time is precious,

3 and that you all have competing obligations.

4 MR. VAN HORN: Why don't we have

5 questions at this point.

6 PROFESSOR ORFIELD: Sure.

7 MR. VAN HORN: Yes. Who would like to

8 start? Dr. Reock.

9 DR. REOCK: Thank you, Professor. If

10 we did -- if we took actions to reduce the -- to

11 reduce the inequalities, your second thought, and

12 reduce the competition, and encourage joint economic

13 development efforts and compliment regional land use

14 planning, are there any criteria that would then

15 tell us whether property taxes are too high in New

16 Jersey or not?

17 PROFESSOR ORFIELD: I think you have -

18 - there's a -- there are a variety of ways of

19 deciding whether property taxes are too high; one of

20 the most powerful ones is an election. And when

21 people understand, you know, what the variances are

22 -- I think one of the things that happens in a place

23 like New Jersey is so many people are dealing with

24 so many levels of stress that, not only are the

25 property taxes extraordinarily high, but they're

89

1 extraordinarily high in an unusual number of places.

2 You have a huge percentage of the

3 population that lives in older suburbs that are

4 dealing with rapidly changing development patterns,

5 and their taxes go up every year or stay stable to

6 chase a declining level of services. That creates

7 outrage, in and of itself; and those things, those

8 kinds of conditions often lead to property tax

9 revolts.

10 You have an enormous number of

11 children that are developing in low fiscal capacity

12 suburbs, and they have very high property taxes to

13 support schools that are not very well funded

14 because of the duplication of infrastructure, so

15 that's an issue.

16 I think, if you had a system that was

17 a more equitable tax system, that created a more

18 sustainable tax system, the vast majority of people

19 would see immediately, even under a tax-neutral

20 proposal, a more reasonable tax burden in relation

21 to the services that are provided.

22 I think the second -- the other kinds

23 of limitations are, if you take a look at the states

24 that have enacted these comprehensive reforms:

25 Michigan, Minnesota, Wisconsin, Massachusetts;

90

1 dozens of states have a much more progressive
2 educational formula. In fact, all but about six
3 states have done more to equalize the burden in
4 taxes.
5 I think that they have issues with
6 property taxes, but they are not -- they are not the
7 same as they are in New Jersey or Connecticut or
8 Ohio or Pennsylvania, where the states have not done
9 those. The property taxes stand out as enormously
10 high. I think those are -- I think those are
11 measures. I think, when you're dealing with a real
12 system that recognizes the regional nature of an
13 economy and of development, I think property taxes
14 become more reasonable for the vast majority of
15 people.
16 Minnesota, where I'm from, we have
17 commercial and industrial property tax sharing; we
18 have shared for twenty-five years forty percent of
19 the growth of commercial and industrial property
20 taxes region-wide. That reduces our disparities
21 from twelve-to-one to four-to-one, and that has made
22 property taxes affordable for most of the older
23 suburbs, the central cities, and the bedroom
24 developing suburbs. That, in and of itself, has had
25 a huge impact on -- in terms of --

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1 DR. REOCK: But I still have the

2 problem that, if we got rid of the inequalities --

3 PROFESSOR ORFIELD: yeah.

4 DR. REOCK: -- how do we judge whether

5 property taxes are still too high in New Jersey?

6 PROFESSOR ORFIELD: Well, I think that

7 you look at the nation, you look at the surrounding

8 states, you look at what --

9 DR. REOCK: In other words, you feel

10 that there -- there is a rational basis for saying

11 that, our dependence on property taxes, which is

12 high compared to other states --

13 PROFESSOR ORFIELD: Uh-huh.

14 DR. REOCK: -- is too high.

15 PROFESSOR ORFIELD: Yes.

16 DR. REOCK: Is that merely because we

17 are different, because we use property taxes more

18 than other states?

19 PROFESSOR ORFIELD: That's the --

20 DR. REOCK: And if so, why?

21 PROFESSOR ORFIELD: That's the basis

22 of a lot of what I'm saying, is that you use --

23 you're much more dependent on the property taxes

24 than virtually all other states.

25 DR. REOCK: But how do we judge

92

1 whether that's good or bad?

2 PROFESSOR ORFIELD: Well, one of the

3 ways, I think the criterion that I've talked about

4 and the writings that I've done is the tremendous

5 inequality --

6 DR. REOCK: Inequality, yes. But I'm

7 positing the idea that, if we got rid of the

8 inequalities, would we still have too high a

9 property tax?

10 PROFESSOR ORFIELD: On a revenue-

11 neutral basis, I think if you got rid of most -- if

12 you got rid of the inequalities the way that

13 Michigan or Minnesota or Wisconsin or Massachusetts

14 have, about seventy-percent of the people would have

15 lower property taxes. That's -- and they would

16 probably be, for seventy-five percent of the people,

17 much more reasonable.

18 DR. REOCK: Okay. Thank you.

19 MR. VAN HORN: Senator Van Wagner.

20 SENATOR VAN WAGNER: In your pursuit -

21 - in your pursuit of equality in these states, you

22 seem to point to tax-sharing as having been a --

23 having had a salutary effect.

24 We have tax-sharing in only one area

25 of the State of New Jersey you might be familiar

93

1 with, and that's in the so-called "Meadowlands

2 District."

3 PROFESSOR ORFIELD: Uh-huh.

4 SENATOR VAN WAGNER: And that tax-

5 sharing, I believe, if I'm not correct, extends only

6 to the sales tax that's generated in that district.

7 If anybody has any other information to that extent

8 --

9 (Participants confer)

10 SENATOR VAN WAGNER: Is the property

11 tax included in that?

12 (Participants confer)

13 SENATOR VAN WAGNER: That is a very

14 small confluence of communities, and it came about

15 in kind of a strange way.

16 But in your opinion, is it -- what in

17 this state, which is rather small, has a huge number

18 of municipalities and school districts, would be

19 more effective as a way of achieving both property

20 tax equality and a degree of relief, regional

21 assessment or tax-sharing or both, or a combination

22 thereof?

23 PROFESSOR ORFIELD: Well, I'm a -- I

24 have -- there are lots of ways to skin this cat.

25 But I think one of the things that I would advise

94

1 you to in my capacity as an advisor is to try think

2 as systemically and as broadly as you can, in terms

3 of dealing with all of these issues.

4 Now looking at an issue like regional

5 tax-sharing, regional property tax sharing
6 simultaneously affects cities, counties, school
7 districts, special districts all at the same time,
8 so it's systemic. It affects the local units of
9 government that have land use planning powers,
10 directly dealing with the issues of competitions.
11 And oftentimes you have -- you will
12 move toward school equity, which is appropriate and
13 important, but it doesn't affect the local units of
14 government that have land use planning powers, which
15 are creating a lot of the problems because of fiscal
16 zoning, because of the natural tendencies.
17 So if you are dealing with a thing
18 like property tax sharing, you know, it allows you
19 to think about a lot of the kinds of issues that
20 we're talking about and deal with equity with
21 cities, counties, and school districts and special
22 districts simultaneously. It also allows you to
23 think about an approach that could be revenue-
24 neutral.

25 For example, let me explain to you how

95

1 property tax sharing was enacted in the twin cities
2 in 1971. It was enacted by a republican legislature
3 with a democratic governor, and it was brought to
4 the fore by low fiscal capacity suburbs. And in
5 nineteen -- supported by the central cities, but it

6 was championed by low fiscal capacity suburbs.

7 In 1971, the Legislature supported a

8 notion where we would capture forty percent of the

9 growth of commercial/industrial property tax, so

10 every locality would keep the majority of the

11 locally grown property tax, the locally grown

12 commercial tax. The forty percent would be

13 distributed to communities, based on their capacity,

14 based on their tax capacity.

15 Now that was revenue-neutral, in the

16 sense that no tax rates were raised that year.

17 There was no new tax rate, there was no new hike in

18 any kind of tax, but the region did capture the

19 growth. The growth was insignificant in the first

20 year. In the tenth year, it was a quarter of all

21 the tax base in the region. And it captured forty

22 percent of the growth, it reduced inequalities from

23 twelve-to-one to four-to one, it reduced the

24 competition among local units of government for

25 malls.

96

1 About sixty-five to seventy-five

2 percent of the people lived in municipalities that

3 were -- that got net benefits from that. About

4 twenty-five to thirty-five percent were contributors

5 to the larger group; they were high fiscal capacity,

6 rapidly growing places.

7 In return, they also had the ability
8 to sustain a metropolitan land use plan. Part of
9 the systemic approach in the Minnesota Legislature
10 was to say to constrained communities and
11 communities that were dealing with growth issues,
12 that we will help schools, we will help municipal
13 financing to support these land use planning
14 efforts.
15 So it was a revenue-neutral approach
16 that, over a decade, created great equality, reduced
17 the competition for tax base and sustained and
18 supports the land use planning system. So in that
19 sense, it has a lot to argue for it.
20 But there's other ways to do it.
21 Michigan's general revenue sharing system is
22 significant and important. Massachusetts has a very
23 significant general revenue sharing system. There
24 are -- there are school aid systems throughout the
25 country that you can embark both on the equality

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1 that's mandated by equal protection under the Abbot
2 decision, and enhance the state's contribution to
3 school aid at the same time. There are a whole
4 variety of things.
5 There's a laboratory of democracy
6 here, and there's many places, and almost everybody
7 has done more than you have, in terms of dealing

8 with these inequalities; almost everybody in the
9 United States has done more than you have.
10 SENATOR VAN WAGNER: Did they do that;
11 and, at the same time, maintain a power equalized
12 formula, in terms of determining property tax
13 distribution?
14 PROFESSOR ORFIELD: Power equalization
15 is a common tool of education finance. Tax-sharing
16 doesn't involve power equalization. Tax-sharing
17 involves -- it's a strange -- it's a -- as you have
18 it in the Meadowlands and we have it in the twin
19 cities, it's a thing where you -- you're sharing the
20 tax base. And, in a sense, it approximates what
21 power equalization does.
22 What happens is it's a transaction
23 where, when the county -- in our region, we have
24 seven counties, 189 municipalities, and forty-nine
25 school districts that participate in tax-sharing, a

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1 population of slightly less than 3 million people;
2 189 municipalities, seven counties, forty-nine
3 school districts. And every year, each county
4 appoints an auditor; what we call the "Fiscal
5 Disparities Board," and they certify equalized
6 assessed values, and they distribute tax base, based
7 on the formula. And the formula doesn't have any
8 discretion; it equalizes, it moves to reduce the

9 inequalities and effective net tax capacity.

10 So what it means is, the City of

11 Cherry Hill, or a city like that, would suddenly

12 find itself with maybe a new mall on its tax books

13 or a new commercial/industrial facility in that

14 sense, and they'd have more assessed value to tax

15 against. And they would be able to reduce their tax

16 rates and/or improve their services accordingly.

17 Now the systemic studies in twenty-

18 five years of tax-sharing have shown that the

19 largest effects of tax-sharing has been to compress

20 tax rates. The second largest effect is equality.

21 So it's an interesting -- it's a thing that you can

22 think about and look at.

23 Our tax rates are almost equal between

24 our central cities and our developing suburban

25 corridor. And the twin cities, I can say, in

99

1 economic development, it's a very cold place, it's

2 very far away from the center of economic activity.

3 We've gone, in the last decade, from the fourteenth

4 highest median income to the fourth, and we have

5 attracted and recruited jobs and economic

6 development in all the highest sectors in the

7 economy, one of the most educated workforces and one

8 of the most dynamically growing economies. So --

9 SENATOR VAN WAGNER: How is income

10 weighted in your formula?

11 PROFESSOR ORFIELD: Income is weighted

12 by -- in fiscal -- there's many ways to distribute

13 funds. In tax-sharing, we distribute it on the

14 basis of effective net tax capacity, so the

15 equalized tax capacity per household by

16 municipality. So we look at -- we get the -- we

17 look at -- we have a system that we use, it's called

18 "tax capacity," which takes a metropolitan average

19 rate and applies it against the total equalized

20 value. And a metropolitan average rate applies

21 against the total equalized value gives you an

22 effective regional net tax capacity.

23 In the tax-sharing formula, its goal

24 is to equalize, its goal is to use those revenues to

25 equalize effective net tax capacity. And it ranges

100

1 from about sixty-five to seventy-five percent of the

2 people live in municipalities that gain effective

3 net tax capacity; almost all the older suburbs,

4 bedroom suburbs, central cities gain effective net

5 tax capacity.

6 Minneapolis has moved, in the course

7 of twenty years, from being a recipient to a

8 contributor. Minneapolis has the highest share of

9 commercial and industrial office space in the

10 country, and the older suburbs are much stronger,

11 comparatively, than older places. It has a tendency
12 to reinforce the existing knowns and allow them to
13 compete, with good tax rates and high services, if
14 you believe in that kind of competition.

15 SENATOR VAN WAGNER: See, the probably
16 only thing worse than having a former legislator --

17 PROFESSOR ORFIELD: Yeah.

18 SENATOR VAN WAGNER: -- testify on
19 issues like this, is to have a former legislator
20 asking that former legislator a lot of questions.

21 PROFESSOR ORFIELD: That's fine.

22 That's what I'm here --

23 SENATOR VAN WAGNER: So I'll stop with
24 that.

25 PROFESSOR ORFIELD: That's what I'm

101

1 here for. This is what I like to -- this is why I

2 like to be at places like this.

3 MR. VAN HORN: Other -- next

4 questioner? I just -- oh, yes. Dr. Cole.

5 DR. COLE: You've given us a lot of

6 reasons why we have some serious work to do. I

7 wonder if you have thought at all about the process

8 issues that are most immediately before us; that is,

9 the nature of the constitutional convention,

10 delegates, how the issues might be framed, and

11 perhaps what you would think some of the most

12 important principles are for going about such work

13 effectively.

14 PROFESSOR ORFIELD: I think that

15 framing the issues in terms of reducing the property

16 tax and/or -- let me just -- I wrote this out on the

17 -- reducing reliance on the local property tax or

18 other locally authorized replacement taxes. I think

19 that's got to be a way to frame it. Because you

20 don't want to just shift this from one form of

21 inequality to another, and you don't want to do what

22 California has done or many of the western states,

23 by just making this a war for sale tax, rather than

24 a war for property tax.

25 And you don't want to get -- you don't

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1 want to quarrel with the development community

2 unnecessarily on this. If they view this as just a

3 movement toward a fee-based system that's going to

4 penalize newcomers, that's a bad systemic decision

5 to make, to create a fee-based system that penalizes

6 newcomers to communities. It's also one that you'll

7 create such a formidable opponent that you'll have a

8 hard time moving forward.

9 I think that you should concentrate on

10 publicizing and talking about reducing the wasteful

11 competition between municipalities within a single

12 economic region. I think everyone has the notion

13 that a mall has gone up in one place, and gone down
14 in another place; and that everyone has a notice of
15 outrage about those kinds of issues.
16 Systemic property tax relief is a very
17 important way to talk about this. The property
18 taxes are very high in New Jersey compared to what
19 they are -- two or three times what they are in a
20 place like Minnesota or Wisconsin or Michigan or one
21 of the states that has done that. And they have had
22 very effective campaigns about doing that.
23 I think that really framing the notion
24 of creating incentives to redevelop existing
25 communities, and not just the central cities, but he

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1 range of fully developed suburban communities, I
2 think that's of critical value to people, to
3 redevelop the places that they grew up in, to create
4 -- if you're going to tilt the playing field at all,
5 it should be tilted toward -- toward reusing very
6 costly expenditures and infrastructure and schools.
7 That's a concept that has had some
8 salience in many states of the union, redeveloping.
9 Michigan just passed a law, Fix it First, bipartisan
10 legislative effort to rehabilitate existing
11 infrastructure before new. Maryland has a number of
12 discussions about those. Those, I think, are good
13 concepts.

14 You shouldn't undo the rights that
15 have been granted to people that have been
16 disadvantaged in New Jersey. You should make sure
17 that the rights that are -- that have been granted
18 in New Jersey shouldn't be undone. They can be
19 supplemented or the school aids could be supported,
20 and tax-sharing can do that, but you shouldn't undo
21 the rights that have been recognized in New Jersey.
22 Although they are imperfect, in terms of their
23 execution, they recognize very stark inequalities.
24 I think that the notion that competing
25 in the global economy is important, and also making

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1 sure that, if this goes along, that you want to
2 avoid what happened in California and Colorado and
3 many of these places. And you might want to examine
4 those things.
5 So I think one of the things that's
6 very important to realize is that the majority of
7 people that live in suburban communities will be
8 fiscally better off almost at once if you embark on
9 any system of reform; and that everybody will be
10 better off, and that the region will be better off;
11 and that, if you want to protect your open spaces
12 and farmland, you have to do these things.
13 So that's a long answer. But I think
14 that concentrating on property tax relief and not

15 replacing it by another local tax, I think that is
16 critically important, and I think that resonates
17 with people.
18 Reducing taxes, reducing warfare
19 between local units of government, while respecting
20 their sovereignty.
21 And supporting land use. You can't --
22 you can't have a land use plan that says, protect
23 the environment, and then have a tax system that
24 says, destroy the environment. And that's what
25 you've done for a long time. And you've got to

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1 decide whether you really want to do that, whether
2 you want a tax system that works against your land
3 use planning system or one that works for it.
4 And, also, maybe a few carrots for
5 affordable housing. You know, places that are doing
6 a job, maybe doing a good job or doing that, maybe
7 they ought to see some benefit. That's a big -- it
8 deals with congestion, it deals with, you know, lots
9 of the systemic inequalities that the region is
10 facing. A carrot, rather than a stick.
11 DR. COLE: I just want to say one
12 thing to my fellow task force members. I spent five
13 years in Minneapolis/St. Paul as President of
14 Metropolitan State University, and I need to say
15 that, when Myron Orfield speaks, Minnesota listens.

16 MR. VAN HORN: So does New Jersey,

17 this afternoon.

18 PROFESSOR ORFIELD: Can I make --

19 MR. VAN HORN: Absolutely, you're

20 welcome.

21 PROFESSOR ORFIELD: I just wanted to

22 say that a lot of this research that I have done has

23 been supported, working with the New Jersey Regional

24 Equity Coalition, and a lot of the efforts have made

25 possible -- this report -- there's a broad

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1 grassroots, a number of communities and interest

2 groups that are committed to this, and I know

3 they've testified before. And they represent a

4 potential, very strong, multi-racial, multi-

5 religious, multi-suburban/urban constituency.

6 MR. VAN HORN: Thank you, Professor

7 Orfield --

8 PROFESSOR ORFIELD: Thank you.

9 MR. VAN HORN: -- for coming to the

10 east coast.

11 PROFESSOR ORFIELD: Thank you for

12 having me.

13 MR. VAN HORN: Or maybe you came up

14 from Washington, I don't know where. But we thank

15 you very much.

16 PROFESSOR ORFIELD: Thank you.

17 MR. VAN HORN: Next -- our next

18 meeting is Friday afternoon at two o'clock in this

19 room, and at that point we will hear from Professor

20 Elmer Cornwell of Brown University, who's a renown

21 constitutional scholar and author of a number of

22 works on state constitutional conventions over the

23 last forty-some years.

24 We'll also hear from former State

25 Treasurer Richard Leone, who was intending to be

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1 with us at our earlier panel on treasurers, but

2 could not make it; and Justice Alan Handler.

3 And also at that meeting on Friday,

4 I'm going to propose a methodology, if you will, for

5 our deliberations, and so we'll be discussing that.

6 We have handed out a list of -- ask

7 you to hold seven dates, beginning on Tuesday, two

8 weeks from today, Tuesday, November 23rd, and

9 running through Friday, December 17th. If, for some

10 reason, you didn't get those dates, please let the

11 staff know that; we'll give them back out to you,

12 but --

13 DR. COLE: Excuse me. Are those

14 different from the dates you e-mailed or --

15 MR. VAN HORN: No, no. They're the

16 same dates. The only dates, Dr. Cole, that we --

17 the only date that we removed was the 11/19 meeting

18 because of, several members found it inconvenient to
19 get from Atlantic City up here for a meeting, and
20 they have a League of Municipalities --
21 DR. COLE: (Inaudible - not recorded.)
22 MR. VAN HORN: Yes, it's the same
23 dates. I'm just reminding people to read their e-
24 mails, is another way to put it.
25 But at any rate, those seven time

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1 frames, if you will, are -- obviously the majority
2 of you, there may be one or two exceptions here or
3 there, can make the majority of those meetings.
4 And, obviously, it's very important that we all try
5 to be there for those discussions. And there will
6 be work going on in between the meetings, of course.
7 But we're really getting to the point where we need
8 to start making decisions.
9 So, again, I thank you for coming
10 today, and we'll see you Friday here at two o'clock.
11 And -- yes, Senator.
12 (Senator Van Wagner not identified for the record)
13 SENATOR VAN WAGNER: I want to
14 congratulate you on starting on time, and finishing
15 on time.
16 MR. VAN HORN: Thank you, sir. Do I
17 not do that normally?
18 (Laughter)

19 (Participants confer)

20 MR. VAN HORN: Thank you.

21 (Participants confer)

22 (Proceedings adjourned)

23

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1 C E R T I F I C A T I O N

2

3 I, Coleen Rand, do hereby certify that

4 the foregoing transcript of proceedings by the New

5 Jersey Property Tax Relief Task Force, recorded on

6 audiotape on November 9, 2004, is a true and

7 accurate non-compressed transcript of the

8 proceedings to the best of my knowledge and ability.

9

10

11

12 Coleen Rand AD/T 419

13 For Guy J. Renzi & Associates

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