State Constitutional Limitations on Regional Tax Sharing

Carl McCarthy and Anita A. Summers

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Carl McCarthy
Clerk, Chambers of Hon. Jerome Farris
Seattle, WA 98112

Phone: 206-553-2672
Fax: 206-553-1912

e-mail: carlmcc@earthlink.net

Anita A. Summers
Professor of Public Policy and
Management, and Real Estate
The Wharton School
University of Pennsylvania
Philadelphia, PA 19104-6330

Phone: 215-898-4076
Fax: 215-573-2220

e-mail: summers@wharton.upenn.edu

Brief Biographies

Carl McCarthy is a graduate of the Law School of the University of Pennsylvania (J.D. 1997). He is presently clerking for Hon. Jerome Farris, U.S. Court of Appeals, Seattle. Anita A. Summers is Professor Emeritus of Real Estate and Public Policy in the Wharton School, and Co-Director of the Wharton Urban project in the Samuel Zell and Robert Lurie Real Estate Center at Wharton at the University of Pennsylvania. This work was supported by a grant from the Pew Charitable Trusts. Mr. McCarthy did all the basic research for this paper, and wrote up his research in two draft papers while he was a law student. Professor Summers drew upon these drafts for most of the content of this paper.

Abstract

STATE CONSTITUTIONAL LIMITATIONS ON REGIONAL TAX SHARING

Regional cooperation between cities and suburbs -- in the form of tax sharing and/or service delivery -- is a much-discussed topic. There are three basic arguments for advocating regionalism: redistribution, optimal sizing, and external beneficiaries. The evidence is compelling that cities bear a significant redistributive burden, that there are unexplored economies of scale, and significant external benefits to suburbs of a healthy urban core. Yet, a full cataloging of city-suburban regionalized activities reveals that tax sharing on a general scale is very uncommon. Why?

State constitutional provisions may have enabled or restricted these efforts. This paper examines state constitutional provisions that enable or deter regional tax sharing in six states -- California, Florida, Illinois, Minnesota, New Jersey, and Pennsylvania.

We conclude that regional redistribution is always constitutionally feasible in one form or another. Structural limitations and judicial interpretation may make it very difficult -- but not impossible.

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I. INTRODUCTION

Regional cooperation between cities and suburbs--in the form of tax sharing and/or the sharing of the delivery of selected public services--is a much-discussed topic. There are three basic arguments for advocating regionalizing: (1) redistribution: our definition of social welfare should include having the benefit of economic growth anywhere within a metropolitan region shared across the whole region; (2) optimal size: there is an efficiency argument for delivering services across the size area that will be least cost--and that is likely to mean crossing local jurisdictional boundaries; (3) external benefits: suburbanites should be fully paying for the benefits they receive from their proximity with their central city.

The evidence is compelling that cities are bearing a significant redistributive burden, that there are relatively unexplored economies of scale to be realized by delivering services across jurisdictional boundaries, and that there are very significant interdependencies between suburbs and their central cities. Yet, an analysis of the city-suburban regionalized activities involving America's largest cities reveals that, while sharing functions and taxation in common, it is done only with a very limited set of specified functions (Summers, 1997).

Why is this so? The strong desire to preserve local control--to tailor the public services and tax rates to the preferences of the residents--is one factor. The desire to preserve the external benefits for which they are not paying is another. Political confrontation may have been avoided in some states by pointing to the limitations imposed by the state constitutions; but, in some states, regional cooperation may have flourished because of their constitutions' enabling characteristics. Where state constitutional limitations are very restrictive, proponents of regionalization have a particularly difficult path because

constitutional change requires a massive popular movement--in contrast to changes in law that only require a legislative majority.

This paper examines state constitutional provisions that enable or deter regional tax sharing in six states: California, Florida, Illinois, Minnesota, New Jersey, and Pennsylvania. Section II describes, in general terms, the four major types of constitutional provisions that have an effect on the ability of regions to engage in tax sharing -- that is, to engage in regional distribution. Section III describes the most common vehicles used for regionalization activities and emphasizes one of these -- regional redistribution through tax sharing. This vehicle that is then used as the structure by which the six state constitutions are gauged as to their ability to enable regional cooperation. The next six sections examine and assess the relevant provisions in six states: California in Section IV, Florida in Section V, Illinois in Section VI, Minnesota in Section VII, New Jersey in Section IX, and Pennsylvania in Section X. Section XI presents the overall conclusions. In the end, the conclusion is clear that regional redistribution is always constitutionally feasible in some form or another. Structural limitations and judicial interpretations may make it very difficult--but not impossible.

II. IMPORTANT CONSTITUTIONAL PROVISIONS RELEVANT TO REGIONAL REDISTRIBUTION

An overriding feature of the American federalist structure is that state legislatures are the loci of the distribution of governmental power in a state. Because each state is part of a larger nation, and because each state's constitutional system is a product of the same legal and political tradition, they are largely the same. For example, all have a tri-partite separation of powers scheme and all reserve plenary power to state government. The doctrine on state plenary power is accepted by the courts of all fifty states. This doctrine, sometimes called Dillon's Rule, holds that all governmental power "naturally"

rests with the elected state representatives, who then may delegate power as they choose (It was named in honor of Iowa state court Judge John F. Dillon, who first anticipated this near-universal principal of local government). Cities or voters may not simply band together to create a regional distributive scheme without a legislative enactment (or a state-constitutional override of Dillon's Rule) empowering them to do so.

Despite their apparent similarities, each state is nevertheless an independent entity, free to constitute governmental powers as its residents see fit. Each has its own history. In general, the legislative enactments were added to state constitutions during America's period of rapid industrialization, 1851-1920, as part of a constitutional local-autonomy revolution in which state voters rebelled against what they saw as overreaching intrusion by legislature into local affairs (Zimmerman, 1983). Together, they serve as a fairly cohesive set of "local autonomy provisions."

Many of the provisions were instigated in response to activities of the railroad companies that often controlled state legislatures because of their enormous wealth and further profit making potential (Himmelberg, 1994; Josephson, 1962). The practice of exempting railroad property from local taxation, for example, was a major impetus for "uniformity clauses".[1] (See discussion on page 7.) The creation of private bodies that would construct railroads with public funds led, in some instances, to the "non-delegation provisions".[2] (See discussion on page 6.) In general, the local autonomy provisions were each added to limit the ability of the legislature to propagate abuses by powerful railroad and other industrial interests (Rubin, 1993)[3]. They were regarded as necessary to preserve the democratic process in the face of corruption. Yet it has been nearly a century since the railroad-legislature relationships have existed, and these constitutional provisions live on. The judicial interpretation of these provisions was settled by the 1920s, however--clearly on the side of local autonomy (Briffault, 1990), particularly big city autonomy.

This historical context of the local autonomy provisions suggests an explanation for the

somewhat arbitrary results across the country. The economic and political context in which they were formulated has changed. But each has its own history in each state. Perhaps, even more significant, are the differences among the state supreme courts as institutions. Some state supreme courts -- Minnesota and New Jersey, for example -- are generally regarded as "activist." They have consistently interpreted constitutional provisions to reflect what the justices perceive to be the relevant social and economic changes since the original framing of the constitution. This judicial interpretation is unique to each state, and is important in explaining why regionalization activities are enabled or not in each state.

Home Rule

Because state legislatures have plenary power under standard legal doctrine, cities are "creatures of the state", in the absence of a constitutional provision to the contrary. They may exercise only the powers explicitly granted them by the legislature. Constitutional "home rule" provisions generally grant to municipal corporations (usually of a certain minimum size) the authority to exercise all governmental powers over their local affairs (Zimmerman, 1983). A city granted home rule powers typically enacts a charter that effectively serves as a mini-constitution with respect to any future laws relating to the city's municipal affairs. Thirty-seven state constitutions grant at least the option of home rule powers to cities.

Home rule provisions usually do not allow the cities empowered to be impervious to interference by the state legislature. There are two types of home rule provisions. One grants *imperium in imperio* status to home rule cities; the other provides for "devolution of powers" from the state legislature. Only the municipalities with *imperio* home rule have any real autonomy from legislative fiat. The latter model, in contrast, leaves the burden of deciding what powers a home rule city should exercise up to the elected officials of the city, rather than having such powers specifically spelled out by the legislature, line-by-line -- which is what happens in the absence of home rule. A devolutionary home

rule provision delegates *all* governmental powers to each home rule city, subject to any limitation the legislature sees fit to exercise.

The home rule provisions of twenty-five states have some element of an *imperio* approach, that does potentially allow significant autonomy. The *imperio* model typically divides powers between "state" and "local" governments to produce a "state within a state," and thereby insulates local government from state interference when exercising local powers. This model would seem to grant home rule cities an imperviousness to state interference. However, "where adopted, the separate entity approach generally has not achieved its goals because courts interpreted the scope of municipal or local affairs narrowly"(Zimmerman, 1983).

This overriding doctrine of "statewide concern" has found its way into most judicial interpretations of the *imperio* provisions. Courts have typically read a loophole into the provision, that allows legislators to trump local autonomy in matters of "statewide concern." Numerous contemporary issues -- municipal bankruptcy, for example -- have been labeled as statewide concerns, where the issue has been litigated. Thus, even *imperio* home rule cities are not necessarily impervious to legislatively-imposed or authorized regionalization schemes.

Ban on Local Laws

"Special laws" are laws that pertain, by name or otherwise, to a particular person or place, instead of having general statewide application. They are banned, either outright, conditionally, or with respect to certain subjects, in forty-one state constitutions. When a special law relates to a particular geographic place, rather than to a specific subject more generally, it is known as a "local law"(Zimmerman, 1983).

The ban on the state's ability to make local laws is intended to prevent legislators from directly interfering into local affairs. Prior to the ban, legislators frequently passed laws which, by their terms,

pertained only to the residents of a particular town or group of towns. This was considered a usurpation of the powers of local elected officials. Although this ban would seem to curtail creation by legislators of local or regional activities, judicial reinterpretation has permitted some leeway -- as has been the case in the area of home rule.

In most states, where the state is banned from making local laws, laws that *classify* towns in terms of very narrow subject matter are constitutionally permitted. For example, a law "pertaining only to the residents of the City of Pittsburgh" would be an impermissible local law. However, a law "pertaining to the residents of those cities having a population between 250,000 and 500,000" would probably pass constitutional muster, even if (for example) Pittsburgh were the only city in the state to which this law applied. Bans on local lawmaking by states have been interpreted more narrowly in some states, effectively limiting some classification schemes as really being local laws in disguise. Generally, however, the legislature has the power to classify its subjects, be they persons or towns, as it sees fit, so long as the class is not irrational. This makes it possible to enable regional schemes, even in the presence of strict bans on the role of the state in local lawmaking.

Ban on "Ripper Clauses"

All states contain limitations on the delegation by the legislature of its power to make laws. Most contain restrictions on the delegation of power to certain incorporated bodies such as "special commissions" or "private corporations", or against delegations of certain kinds of powers, such as to make "internal improvements". Such delegations are said to "rip" certain powers out of the hands of duly elected local officials and place it in unaccountable private hands. Hence, the laws that delegate legislative powers are sometimes known as "ripper clauses"(Libonati, 1993).

Many of the anti-ripper clause provisions were enacted specifically to prevent state interference in local financial affairs. A famous case that triggered a reaction that led to the passage of many

constitutional restrictions across the United States was the Philadelphia City Hall case. In the 1850s, the Pennsylvania legislature created a body in Philadelphia that was neither chosen by local taxpayers nor responsible to them. It was authorized to levy any sum of money for the construction of the City Hall. The State Supreme Court held the law valid, because of the ultimate supremacy of the state legislature's power, that could be delegated as it saw fit (Perkins v. Slack, 1861). The voters of Pennsylvania subsequently amended their constitution to prevent delegation to any non-elective bodies that fall under the category of "special commissions." Other states followed suit. The California provision, for example, was copied verbatim from the Pennsylvania constitution. Because of the extreme outrage of Pennsylvanians at what they considered to be "taxation without representation" by this special commission, the Pennsylvania Supreme Court has interpreted this provision very rigorously. Pennsylvania is presently the only state whose local and regional governmental authorities (the Port Authority of Allegheny County, for example) are constitutionally denied the power to levy taxes *unless* the commissioners in the relevant jurisdiction are elected by popular vote. This is regarded as an extreme interpretation.

By the 1940s, delegation of certain powers to appointed administrative bodies (including the power to levy taxes) was accepted in states with non-delegation provisions. The expansion of governmental services in many states during the New Deal era would not have been possible without this judicial interpretation that permitted at least some delegation of authority to appointed regional or local bodies. In any state, the ability of the state legislature -- as defined by its constitution and judicial interpretation -- to control the tax powers of local jurisdictions is clearly a critical element of its ability to encourage or discourage regionalizing activities.

Uniformity of Taxation Requirements and Other Tax Provisions

Most state constitutions have some requirement that taxes be imposed on a uniform basis.

Uniformity is not meant to imply that all citizens pay an equal tax. It is attained when the tax *burden* is regarded as falling equally and impartially on all persons and property subject to the tax. Uniformity provisions were meant to insure that, within the bounds of a jurisdiction with the power to tax, a given tax rate applied, for example, to two residential properties with the same market value, would yield the same tax revenue.

Though uniformity provisions, if used according to the framers' original intent, would have little to do with regional redistribution of tax revenues, they do in reality, have an effect on regionalization efforts. Some states require that there be a clean geographic nexus between a taxpayer and the benefit he receives; some require that a tax can only be raised for "public purposes" (without limiting the location); and some require that the tax be levied for the "corporate purposes" of the governmental entity imposing the tax.

In general, local governments levy taxes for specific public purposes -- municipalities levy taxes for "municipal purposes", counties for "county purposes". They meet the "corporate purpose" requirement as long as the spending is for a public purpose done in the boundaries of the jurisdiction. But, there are other governmental entities, also constituted for a specific purpose, that spend earmarked revenues on the special purposes of the organization -- mosquito-abatement districts financed through taxes raised for mosquito-abatement, for example.

In a number of instances, regional redistribution efforts have run afoul of the uniformity provisions and their interpretation. In some cases taxes raised by the duly constituted body of a special service entity for provision of a particular service are being spent to provide a different function; in other cases, taxes raised by a municipal corporation, although spent on some regional public purpose, are being spent outside of the corporate jurisdiction in which they were raised. In these cases, government is not taxing for the corporate purpose, as may be required.

Uniformity provisions have received widely different interpretation from the judiciary. In some

states -- Pennsylvania, for example -- extra-territorial expenditures of taxes raised locally are invalidated by the courts. In other states -- Illinois and Minnesota are examples -- courts have expressly stated that they are going against precedent in order to uphold the transfer of tax funds collected from one jurisdiction to another.

Some state constitutions have unique provisions that are not generally found in most constitutions, but that are relevant to the ability of legislatures to interfere with local taxes -- and are, therefore, relevant to the feasibility of regionalization. Two of the six states examined in this paper illustrate these provisions. California's constitution has two: (1) a provision[4] that prohibits the legislature from imposing taxes for local purposes (Cal. Const. Art. 13, §24), and (2) Proposition 13 (Cal. Const. Art. A), which freezes assessments at the 1976-77 level until the property is sold, and limits the total and valorem rate to 1% -- thereby limiting the ability of local governments to tax property (Cal. Const. Art. 13A). Florida's constitution provides that the state may pass no special law, or "general law of local application" that causes a tax to be levied for a "county or state purpose" (Fl. Const. Art 3, §11).[5] Apparently, this provision was added to the constitution to prevent the state legislature from causing a tax to be levied in a town or region and then spent outside the jurisdiction.

The four major categories of constitutional limitations on regionalizing taxation, inevitably involving some redistribution, are very prevalent. Thirty-seven states have constitutional home rule provisions. Almost all the remaining states have legislative grants of home rule in lieu of constitutional grants. Forty-one states constitutionally prohibit local laws in some form or another. All fifty states constitutionally limit the delegation of certain powers to non-elected commissions. And all states constitutionally require uniformity of taxation in some form or another. These four constitutional provisions, different in many ways, share a number of characteristics with respect to their application to regional redistribution: (1) they are prevalent in most states' constitutions; (2) they were often a product of particular economic circumstances of the mid- to late-19th century; (3) their application to

present-day redistribution schemes by state courts appears to be likely to yield arbitrary results. Together, they pose a potential threat to the legal feasibility of regional tax sharing.

III. VEHICLES FOR REGIONALIZATION ACTIVITIES

There are a variety of vehicles through which regionalization activities generally occur: the special district, intergovernmental cooperation, and service contracts involving more than one municipality (Summers, 1997). Schemes for regionalization are typically not redistributive. They focus on regional cooperation for certain functions. Unless general tax revenues are involved, service provision is presumptively *non*-redistributive, since affected residents are paying for what they get -- usually through specific fees. This is in clear distinction to a situation in which some residents do not pay for services they receive --where there is redistribution.

Special Districts and Other Nonredistributive Regionalization Vehicles

Currently, limited regionalization is frequently achieved through the vehicle of "special districts". These are quasi-governmental agencies whose supervisory officials are often appointed, either by the elected officials of local governments, or by the state legislature. Sometimes they are appointed by the governor. The South Eastern Pennsylvania Transportation Authority is an example of such a special district in the Philadelphia metropolitan area.

Regional special districts typically build their infrastructure using debt, then pay off the debt. They pay for operations through fees charged to users of the services. The revenue is not collected to alleviate disparities, but rather to provide a service or set of services. A number of states have created districts or special authorities that tax. But they often face significant constitutional limitations on their powers. For example, Pennsylvania constitutionally prohibits special districts (called "authorities" in

Pennsylvania) from levying any taxes. This is an exceptionally stern constitutional limitation not faced by special districts in other states, In general, though, unless the elected officials of counties, municipalities, and towns within the special district agree to subsidize the services provided by the district, it must pay for its activities through service fees.

Intergovernmental cooperation and service contracts are in many ways similar to special districts. They are also not redistributive but are constituted to provide a specific public good across a region and are fee driven. In many states, local governments need explicitly to be constitutionally or legislatively authorized to cooperate in the provision of services or contract to buy or sell services before they may do so. Even home rule municipalities, which are granted all the power necessary for local government affairs, sometimes need constitutional or legislative empowerment in this area. These features are all vestiges of Dillon's Law.

Policy planners used to think that special districts and intergovernmental agreements would help to alleviate the inequalities in service provision across metropolitan regions. Most of these arrangements, however, have been used by small municipalities who band together to benefit from economies of scale. One interpretation of this result is that this has enabled suburbs to further disassociate themselves from their central cities.

Redistributive Regionalization

In contrast to entities like special districts, through which fee-funded services are provided on an interjurisdictional scale because of scale economics, redistributive schemes transfer revenues from the more affluent communities to the less affluent. The objective is to meet service demands on the basis of "need", rather than revenue-raising capacity. There are very few regional examples of this in the country, though redistributive schemes are common characteristics of state and federal taxation. Minneapolis, Minnesota has a Twin Cities Disparities Program, explicitly designed to reduce fiscal

disparities. Portland, Oregon has tax-shared funding across their entire metropolitan area for a number of major services, as does Indianapolis, Indiana. But the number of examples is small, and the circumstances underlying them are unique (Summers, 1997).

The most complete form of regional redistribution would be through the creation of a regional municipal government. The typical, full-fledged local government, such as that of Philadelphia, redistributes income within its borders for provision of public goods all the time. Historically, a number of municipalities have been created by annexation -- by regionalizing. New York City and Philadelphia, for example, both greatly increased their jurisdictional boundaries through the forced annexation of neighboring local governments. At the time of annexation, fast growing, but still semi-rural areas, were integrated with the central city under one municipal government.

However, constitutional limitations have been imposed in nearly all states since the heyday of annexation, including the requirement that there be approval by the voters in the jurisdiction to be annexed. The only other option for creation of a truly regional government would be via legislative fiat. A state's legislature would have to declare the local governments in a region dissolved, and replace them with one regional government. Despite the recognition of the doctrine of Dillon's Rule by every state's judiciary, constitutional limitations that limit the effect of Dillon's Rule effectively prohibit such a bold move. The prevalence of imperio home rule provisions, despite their being weakened by state courts, make it highly unlikely that a court would approve of the dissolution of a home rule city whose existence and powers are constitutionally distinct from the will of the legislature. Even the weaker kinds of home rule provisions involving devolution of powers, are still constitutional in nature. They may only be removed by constitutional amendment, not by legislative fiat.

If the creation of regional municipal government is essentially not feasible, and if special districts and intergovernmental agreements are not redistributive, then, for troubled central cities, regional tax-sharing is probably the most likely candidate to be a redistributive tool. Because property is the locus of

geographically-based wealth, it is the property tax that is the most likely fiscal source to consider. In the next six sections, the constitutional feasibility of regional cooperation, including the imposition of such a regional tax, is examined in six states. In each case, there is (1) a summary of the state constitutional requirements relevant to regional redistribution: home rule, ban on local laws, ban on "ripper clauses", and uniformity of taxation; and (2) conclusions about the feasibility of creating a regional special-district entity or, alternatively, the feasibility of having a direct, legislatively authorized scheme.

IV. CALIFORNIA: CONSTITUTIONAL FEASIBILITY OF REGIONALIZATION

California has wide-ranging types of local and regional governmental arrangements -- from Councils of Governments to municipal service districts to extremely powerful water authorities. The state has had an enormous rate of growth since 1945, with the accompanying urban sprawl. Some of the unique laws addressed that sprawl in ways that protected independence of suburban homeowners. Ease of incorporation prevented annexation into central cities. Ease of creating municipal services districts enabled the more efficient delivery of selected public services, without the need for incorporation.

Proposition 13, the famous legislation that marked a property tax revolution in California, was passed in 1977. One unintended result, that has made local governments more dependent on the state legislature, was that the revenue shortfalls that subsequently arose made them turn to the legislature for funding.

In California, judicial activism makes the concept of a state-directed effort to regionalize a property tax relatively feasible, but Proposition 13 eliminates the value of that flexibility.

Local Autonomy Provisions

Limitations on special legislation: Special legislation by the legislature is invalid if a general statute can be made applicable (Cal. Const. Art. 4, §16[b]).[6] The legislature may not create, or permit the creation of, cities by special law, but only by statewide uniform procedure (Cal. Const. Art. 11, §2[b]). *Ban on ripper clauses*: The legislature has limited ability to delegate its powers. It may not delegate to a "private person or body" the "power to interfere with county or municipal corporation[s]," or the power to levy taxes or assessment, or the power to perform municipal functions (Cal. Const. Art. 11, §11[a]). *Grant of home rule powers*: Charter cities have "home rule" power to

enforce any and all ordinances related to "municipal affairs", even if such ordinances abrogate laws of the state (Cal. Const. Art. 11, §5[a] and §7). In essence, California gives imperio home rule power on the face of the constitution. *Uniformity of taxation and related provisions*: All property shall be assessed at the same percentage of fair market value, and the same percentage shall be applied to determine the assessed value. Moreover, all property so assessed shall be taxed in proportion to its full value (Cal. Const. Art. 13, §1). There are severe limitations on local property taxation, and limitations on other forms of taxes, imposed by Proposition 13, and there is a prohibition against "taxes for local purposes" imposed directly by the legislature (Cal. Const. Art. 13, §24). These last two provisions are clearly very significant in assessing the feasibility of regionalizing the tax base in California.

Feasibility of Regional Redistribution Via the Property Tax

Creation of a regional special-district entity: In California, judicial activism has essentially eliminated the ban on ripper clauses. Appointed officials have substantial power to tax. A recent decision (Howard Jarvis Taxpayers' Association v. Fresno Metropolitan Projects Authority, 1995) might, however, signal a return to stricter limitations -- appointive bodies that tax might have to get local (even voter) approval. The constraints are several: (1) a regional entity may not be funded by a direct tax -- only by contributions from local governments; (2) such funds may be distributed to local governments for *any* purpose -- statewide or local; (3) at least half the officials of the special district must be appointed by elected officials of local governments; and (4) Proposition 13's assessment freeze makes a special district model unusable as a means of sharing growth in local property values.

Direct legislatively authorized scheme: Judicial activism has reduced the power of home rule units in California, so they pose no real threat to a regionalization scheme. The funding for such a scheme may only receive contributions from local governments in the region -- direct taxation of property is not allowed. Expenditures in localities may only be made for "statewide purposes", not for

general support. (County governments and special districts in the region can, however, receive money for general support.) Proposition 13, however, makes a directly authorized scheme also unusable as a means of sharing growth in local property values.

V: FLORIDA: CONSTITUTIONAL FEASIBILITY OF REGIONALIZATION

Florida, unlike the other five cases studied, never had a period of heavy industrialization in the nineteenth century. This probably explains why non-delegation provisions are weak (appointed special districts are explicitly authorized to levy taxes, for example), and why home rule was not implemented until 1970. The extremely rapid growth in Florida since 1960 led, very quickly, to the creation of a number of special districts to engage in regional conservation and planning, in order to cope with the effects of suburban sprawl on the environment and the economy.

There are powerful county-wide redistributive schemes in Florida now. Regionalization is clearly encouraged, provided that it occurs within county boundaries.

Local Autonomy Provisions

Limitations on special legislation: Special laws that pertain to "duties of officers… of municipality of chartered counties, special districts or local governmental units" are not prohibited (Fl. Const. Art. 3, §11). *Ban on ripper clauses*: There is none. In fact, with respect to the appointed commissions of special districts, Florida explicitly permits special district commissioners to levy taxes. "Special districts may be authorized by law to levy ad valorem taxes, and may be authorized by general law to levy other taxes"(Fl. Const. Art. 7, §9). *Grant of home rule powers*: All municipalities "may exercise any power for municipal purposes except as otherwise provided by law"(Fl. Const. Art. 8,

§2). In other words, though the home rule grant applies to any town that incorporates, the grant is purely devolutionary. *Uniformity of taxation and related provisions*: "Ad valorem taxation shall be at a uniform rate within each taxing unit"(Fl. Const. Art. 7, §2). However, "[s]tate funds may be appropriated to the several counties, school districts, municipalities or special districts upon such conditions as may be provided by general law"(Fl. Const. Art. 7, §8).

Feasibility of Regional Redistribution Via the Property Tax

Creation of a regional special-district entity: In Florida, a regional special-district entity may be implemented by special law. Unlike California, a direct property tax is constitutionally sound. A regionwide tax, levied by a special district, must be for "local purpose"(Fl. Const. Art. 7, §59[a]). Poverty costs probably would meet this requirement. The imposition of a progressive tax is permissible only if some home rule power is abrogated, which the state legislature can do with a simple majority. (Without the abrogation of the home rule power, the uniformity of taxation requirement would be breached.)

Direct legislatively authorized scheme: Protection from locally applied taxation has been a concern of the Florida Supreme Court. The constitutional ban against "local" taxation by the legislature has been interpreted, by an active judiciary, to allow for mandatory contributions from *county* governments. Contributions to a direct legislatively authorized fund may be made from the counties of a metropolitan region, but not from its municipalities. Targeted redistribution from the richest suburbs in a metro area would not be permitted--the county would be the smallest unit. And it is the largest constitutionally feasible unit--anything larger is barred by the corporate purposes doctrine that bars distribution of county tax revenue to governments outside the county. There is also an internal restriction--county tax revenue collected from the incorporated areas of the county may not be spent to

provide services exclusively to the nonincorporated areas of the county.

VI. ILLINOIS: CONSTITUTIONAL FEASIBILITY OF REGIONALIZATION

Illinois was settled by people from New England and the Northeast who came to its northern counties, and by Southerners who came to its southern counties. A legacy of that history is that county residents in Illinois have the option of dividing the county into townships that may later be incorporated, or leaving the county as the smallest unit of government. (A number of counties in the southern part of the state still exercise the latter option.) A further legacy is that, of the six states examined in this paper, Illinois is the most accepting of overlapping local governments. An individual property owner in Illinois may be governed by a county, a township, an incorporated town, and a number of special districts--library, community college, parks--each of which is not coterminous with the other.

Consistent with this fragmentation pattern, Illinois did not follow Dillon's Rule in matters of taxation until the 1968 constitutional revision. Until then, the constitutional interpretation was that the state legislature had no "natural" powers of taxation. It only had those given to it by explicit constitutional provision. When the legislature attempts to levy or authorize a tax, vestiges of the pre-1968 interpretation are apparent.

Local Autonomy Provisions

Limitations on special legislation: The General Assembly can pass no special or local law when a general law can be made applicable (Ill. Const. Art. 4, §9). And the sovereign power of the state cannot be conferred upon a private person or group (Rudman v. Rini, 1976).[7] *Ban on ripper clauses*: There is a strong ban in Illinois. The plenary power of the General Assembly to raise revenue through taxation cannot be "surrendered, suspended, or contracted away"(Ill. Const. Art. 9, §1).

Grant of home rule powers: Home rule municipalities, counties, and townships may exercise almost any power pertaining to their government that is not denied to them by the General Assembly. There are limitations, however. Cities may only tax income with permission of the General Assembly, and they may not issue very long term debt. Conversely, the General Assembly may never deny local governments the power to make special assessments, or levy special taxes for specific improvements. It may only deny them other taxing powers by a three fifths majority vote (Ill. Const. Art. 7, §6).

Unifomity of taxation and related provisions: There are clear uniform provisions. Property tax must be uniform (Ill. Const. Art. 9, §5[a]). For non-property taxes, subjects and objects taxed must be taxed uniformly (Ill. Const. Art. 9, §2). Special districts only have powers granted by law, but they may not be granted the power to make improvements by special assessments (Ill. Const. Art. 7, §8).

Feasibility of Regional Redistribution Via the Property Tax

Creation of a regional special-district entity: In Illinois, this requires implementation by general law. But, very narrow classification schemes have been allowed that effectively permit taxation of just a single metropolitan region. The creation of a special district is further made easier by allowing all officials of the district to be appointed, although half must be appointed by elected officials of municipalities within the district. (This constraint does not apply to townships or counties.) The other half may be appointed by the state. It is likely that a direct tax on increases in property wealth by the district could be structured to pass constitutional muster in such a way that it would not violate the uniformity clause.

Direct legislatively authorized scheme: The very direct language of the constitution would appear to prohibit directly imposed redistribution on the grounds that it violates the requirements of uniformity and the restriction on state power in municipal corporations. But judicial interpretation has narrowed the doctrines of corporate purposes and uniformity of taxation. There now appears to be

constitutional feasibility to a directly imposed redistribution. The redistribution would have to be implemented by general law, though very narrow classification schemes, in effect, permit taxation of a single metropolitan region. The tax may be either directly imposed on all properties in the region, or be in the form of a mandatory contribution from each of the jurisdictions in the region.

VII. MINNESOTA: CONSTITUTIONAL FEASIBILITY OF REGIONALIZATION

In Minnesota, the existence of "twin" cities of equal size competing for resources led to early efforts to cooperate. This unique history led to a unique regional mindset. There is extensive regionalization in the Twin Cities metropolitan area (Luce, 1997) and there are many other regional schemes in the state. Minneapolis has a Metropolitan Council delivering many services on a regional basis from a set of regional taxes. Airports, emergency and environmental services, housing, parks, recreation, transportation and wastewater treatment are included. There is a formal regional tax under the Twin Cities Disparities Program (Summers, 1997). In upholding these efforts, the Minnesota Supreme Court consciously refused to apply past precedent that was based on "outdated" notions of local autonomy. Essentially, the court took a consciously progressive approach that overturned precedent. Unique geography, a liberal constituency, and--probably, not entirely independent--an activist judiciary, have combined to make Minneapolis the most developed example of regional cooperation and redistribution in the country.

Local Autonomy Provisions

Limitations on special legislation: The legislature may make no special laws when a general law can be made applicable (Minn. Const. Art. 12, §1). *Ban on ripper clauses*: The legislature may not delegate its lawmaking power, but it can delegate the authority to act within the guidelines it

establishes (Minn. Const. Art. 3, §1). *Grant of home rule powers*: Cities with home rule charters exercise all powers with respect to local affairs, subject to limitation by general law (Minn. Const. Art. 12, §3). *Uniformity of taxation and related provisions*: All taxes must be collected for a "public purpose" and must be uniform on the same class of subjects (Minn. Const. Art. 10, §1).

The local autonomy provisions in the Minnesota constitution are as restrictive as in many other states. It is the legislative and judicial interpretation that has translated these provisions into ones that enable regionalized redistribution and other forms of regional cooperation.

Feasibility of Regional Redistribution Via the Property Tax

Creation of a regional special-district entity: In Minnesota, judicial progressivism has resulted in a set of interpretations that has made it relatively easy to create a regional special-district entity. Local government approval is not required. Officials who administer a regional district may be state appointed. Taxation may be organized as a direct tax on individuals or as a mandatory contribution from the local governments in the special-district. And the taxes may be imposed on incremental increases in the value of individual property.

Direct legislatively authorized scheme: In contrast to Illinois and New Jersey, for example, the state can, legislatively, impose a regional property tax that would have redistributive characteristics. It may be implemented by special law. It may be organized as a direct tax on individuals or as a mandatory contribution by the relevant local governments. It may be imposed on incremental increases in the value of individual properties. And it has been interpreted not to be a violation of Minnesota's home rule laws.

VIII. NEW JERSEY: CONSTITUTIONAL FEASIBILITY OF REGIONALIZATION

In one way, the New Jersey constitution is supportive of redistributive schemes. It is the only state, among the six states reviewed in this paper, that does not constitutionally provide for home rule. Led by the judiciary's interpretation of basic rights under the constitution, New Jersey has implemented a number of significant redistributive schemes -- its state educational financing and the Meadowlands Regional Improvement District are examples. In other ways, the constitution is very restrictive with respect to regionalizing. In some recent decisions, these restrictions have come to the fore. The control of local governments has been interpreted more stringently--which may mean that redistributive schemes across a region (as opposed to across the state) may be significantly limited in the future.

Local Autonomy Provisions

Limitations on special legislation: There are severe limits on special legislation. The legislature may not, by special law, "appoint local officers or commissions to regulate *municipal* affairs (N.J. Const. Art. 4, §7, ¶9[12])." It may not, by special law, "regulate the internal affairs on municipalities and counties (N.J. Const. Art. 4, §7, ¶9[13])", and it may not pay any special law "relating to taxation or exemption therefrom (N.J. Const. Art. 4, §7, ¶9[6] and Art. 8, §1, ¶1)." The constitutional position is that if a law is meant to be general, it "shall not embrace any provision of a special or local character (N.J. Const. Art. 4, §7, ¶7)." *Ban on ripper clauses*: The power to tax in general terms may not be delegated to appointed officials. It can only be delegated under specific, explicitly stated guidelines (Ridgefield Park Bd. of Education, 1978). *Grant of home rule powers*: There is no constitutional grant of home rule powers. Cities have been given their powers by the Faulkner Act (Faulkner Act, 1950), which has provided for a legislative form of home rule. *Unifomity of taxation and related provisions*: Taxation must be uniform across a "taxing district" (N.J. Const. Art. 8, §1, ¶1[a]).

Feasibility of Regional Redistribution Via the Property Tax

Creation of a regional special-district entity: In New Jersey, a regional entity must be created by general law. However, any rational classification scheme is allowed--as long as the region is found to be unique in some way that warrants the classification. For example, the Meadowlands Regional Development Act, passed by general law to permit the creation of regional development agencies in areas of "meadowland" near large cities, was upheld as "general" (as opposed to "special"), despite the fact that it clearly could apply to only one region near New York City. The New Jersey Supreme Court agreed with the claim that the meadowlands are unique, and "if the meadowlands are unique, then so, by definition are the municipalities which contain them (Meadowlands Redevelopment Agency, 1970)." Thus, a class of general law could be created that applied only to towns in this area.

The officials of the district must be appointed by local governments, according to judicial interpretations of the constitution. A new regional entity must face suburban political approval. Only officials appointed by locally elected officials may receive the power to tax. Delegation of power to district commissioners, who are appointed by the *municipalities* affected would be permissible. Appointment by township and other incorporated local bodies is not necessary; appointment by the elected officials of municipalities is.

Because of strong requirements of uniform taxation within a special district, differential taxation within the district does not appear to be possible. For example, levying a higher tax rate on high-property value suburban areas and spending the revenues across the whole district -- or in the low property value area -- does not appear to be possible. Increases in the value of an *individual* property may not, therefore, be taxed. But, increases in the overall property wealth of a *county* could be taxed. The courts do not regard this latter tax as a violation of the uniformity requirement if contributions are from county governments, that are regarded as taxing districts. Everyone in the county would be taxed

at an equal rate (Town of Secausus, 1993).

Direct legislatively authorized scheme: This, too, would have to be implemented by general law. Judicial classification is permitted, and judicial interpretation of this rule allows any classification scheme, as long as it is based on some unique feature of the region. The New Jersey constitution lacks any provision directly related to the delegation of legislative power. Only the most egregiously undemocratic delegation has been struck down (Midland Township, 1910).

The State may not, however, impose a direct tax on a region (Robinson, 1973). A directly imposed regional scheme must, therefore, get its contributions from local governments. The "corporate purposes" doctrine prohibits the redistribution of revenue raised on taxing district from being spent in another district. But judicial interpretation limited that rule to the redistribution of *municipal* tax revenues--contributions may be required from counties, which may also impose nonuniform burdens (Town of Secausus, 1993). In New Jersey, the fact that counties are not taxing districts allows funds to be collected from counties and redistributed elsewhere.

IX. PENNSYLVANIA: CONSTITUTIONAL FEASIBILITY OF REGIONALIZATION

Of the six states studies in this paper, Pennsylvania has the most restrictive constitutional provisions with respect to regionalization activity. It is the only state, out of the 50 states in the United States, whose authorities *never* tax unless their officials are directly elected by the popular vote. It was the first state to add a non-delegation clause to its constitution, and was the first state whose Supreme Court found a public purpose requirement in local taxation. Judicial conservatism added to the constitutional restrictions on regional redistribution. The Supreme Court of Pennsylvania, for example, has read imperio elements in to the straightforward home rule provisions. Its interpretation of the "ripper

clause" has been more limiting than any other state. And the court consistently holds that appointed officials of special district may not be granted the power to tax--even if they are appointed by local elected officials. Only *directly elected* officials may tax in Pennsylvania.

Despite these limitations, the constitutional revision of 1968 added significant elements for the feasibility of regional redistribution in Pennsylvania. Creative use of the new "area-wide government" provision--in combination with tax abatements for the affected towns--led to the successful implementation of the Allegheny Regional Assets District. A geographically limited area, within which redistribution can occur, is now feasible.

Local Autonomy Provisions

Limitations on special legislation: The General Assembly may pass no special law "regulation the affairs of counties, cities, townships, wards, boroughs, or school districts (Pa. Const. Art. 3, §32)." The general rule is that the General Assembly is to provide for local governments through general law. However, the legislature can regulate local geographic areas through classification schemes. Classification schemes may be very particularized even if a single city constitutes a class. Population-based classification is always valid under the Pennsylvania constitution, unless completely arbitrary and unrelated to any unique characteristics of an area (Pa. Const., Art. 3, §20). Such classification is not regarded as a violation of the special laws prohibition (Pa. Const., Art. 9, §1). *Ban on ripper clauses*: The constitution is clear that the General Assembly shall not delegate to any "special commission, private corporation or association" any power to interfere with certain municipal functions, levy taxes of any sort, or perform any municipal functions whatsoever (Pa. Const. Art. 3, §31). *Grant of home rule powers*: Any municipality that has "home rule" may perform any function that is not denied by the General Assembly (Pa. Const. Art. 9, §2), although the courts have protected some strictly local

functions from the control of the General Assembly (School District of Philadelphia, 1938)."[8] Subsequent decisions (Lenox, 1953) read in an imperio requirement -- legislative acts that impinge on the local government powers of home rule cities are limited to "matters of statewide concern."

A requirement to contribute taxes to an area out of the locality might impinge on home rule powers to the extent local taxing is considered a matter of "local concern." However, the decision that upheld the constitutionality of the 1990 Distressed Municipalities Act recognized that the relief of urban fiscal problems is a matter of "statewide concern (Local 22 Pa. Firefighters' Union, 1992)."[9] Because the contributed portion of the tax base would be distributed for relief of urban fiscal problems, it is not done for local concern, and so does not impinge upon home rule power. It seems that the legislature is permitted to limit taxation by home rule units.

Uniformity of taxation and related provisions: The uniformity provision is a stern one. "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws (Pa. Const. Art. 8, §1)." The Supreme Court has made it constitutionally impossible to classify property taxation. It is regarded as an "exclusive" class of property--no class-based distinctions may be made (Appeal of York & Foster, 1956).

Feasibility of Regional Redistribution via the Property Tax

Creation of a regional special-district entity: A regional entity must be created by general law, but permissive classification rules mean that the legislature faces no geographic limitation when doing so. The entity's officials must be elected if they are to be given the power to tax or to demand contributions. This, of course, is a serious limitation on feasibility. The Allegheny Regional Asset District provides a precedent for another path. If local elected officials are willing to contract to financially support an appointed, non-taxing regional entity, then the regional structure may be run by appointed

officials. The Allegheny scheme has not been challenged in the courts. The willingness of the local elected officials to engage in such an arrangement was, of course, related to the willingness of the State Legislature to provide tax abatement to the relevant localities.

A tax on the incremental growth of individual properties would violate the uniformity requirements. Such a districtwide tax is necessary to capture the tax revenues from the more affluent suburbs for redistribution. But, a required contribution from each municipality could capture that revenue, and would not violate the uniformity provisions--even if different municipalities make different contributions. The only requirement is that, within each municipality, taxpayers must bear the cost of this contribution equally.

Direct legislatively authorized scheme: Such a scheme must be created by general law, but permissive classification means the legislature faces no geographic limitation on where it creates the region. Home rule provisions are not violated, since there has been judicial expansion to the notion that revitalization of municipalities is regarded as a matter of "statewide concern" (Appeal of York & Foster, 1956). The significant limits on delegation are not triggered as they are if a new entity is created, since under this scheme, no regional entity to which power is given would ever be created. The absence of a corporate purposes doctrine in Pennsylvania means that mandatory contributions are constitutionally permissible--even if the funds are distributed to other local governments.

In sum, despite what appears to be very inhibiting features of the Pennsylvania Constitution, the General Assembly could--if it could convince the richer communities to contribute to the poorer ones (with tax abatements, for example)--set up a regional mandatory contribution scheme.

X. CONCLUSIONS

The basic conclusion of this study of six states is that policy makers should not presumptively shy away from regional redistribution proposals for fear of violating state constitutional law. In all six cases, the constitutional provisions are not close to absolute in their limiting effects.

State legislatures are the loci of the distribution of government power to cities--cities are "creatures of the state." What powers cities have to require their nearby communities, whose residents want access to the unique features of large cities, to share in the costs of the special burdens of concentrated poverty are derived from their state legislatures and how their state courts interpret their constitution.

Home rule provisions, though they give much autonomy to cities, do not leave them impervious to interference by the legislature--it is the courts and legislature that will define what is "statewide" concern. Bans on special local laws are not absolute. Each state defines certain classes of towns that the state can control. And each state defines the delegation of power to certain incorporated bodies such as special commissions. Finally, uniformity of taxation provisions have received widely different interpretation from the state judiciary across the country.

All these state provisions come to play when regionalization activities are generated. It is important to note that, in general, regionalization schemes are typically not redistributive. They center on efficient sharing of public services. Policy planners used to think that special districts and intergovernmental agreements would help to alleviate inequalities of service provision. But, most have been used by small municipalities to benefit from economies of scale. There are very few examples of redistributively motivated revenue transfers across a region in the United States.

Six states were examined in detail. In California, judicial activism makes the concept of a state-directed effort to regionalize a property tax relatively feasible--but Proposition 13 eliminates the value of that flexibility by imposing an assessment freeze that makes a special district unusable as a vehicle for

sharing property value increases. In Florida, there are powerful country-wide redistributive schemes. Regionalization is very much encouraged by the state laws, within the constraint that it occurs within county boundaries. In Illinois, there now appears to be constitutional feasibility to a direct tax on property in a special district. Unique geography, a liberal constituency and an activist judiciary have combined to make Minneapolis, Minnesota, the most developed example of regional cooperation and redistribution in the country. Because New Jersey does not constitutionally provide for home rule, it is supportive of redistributive schemes. But, recently, the control of local governments has been interpreted more stringently--which may mean that redistributive schemes across a region may be significantly limited in the future. Of the six states, Pennsylvania has the most restrictive constitutional provisions with respect to regionalization, but, if the General Assembly could convince a rich group of communities to contribute to poorer ones in a geographic area, it could set up a regional mandatory contribution scheme -- something analogous to the intergovernmental cooperative arrangements in the Allegheny Regional Assets District.

In the end, regional redistribution is always constitutionally feasible in some form or another. Structural limitations and judicial interpretation may make it difficult--but not impossible.

Footnotes

1. See New Jersey State League of Municipalities v. Kimmelman, 105 N.J. 422, 427, 522 A.2d 430, 432 (1988) which describes the backlash against classifying railroad property as exempt from taxation.

2. See Erickson v. King, 218 Minn. 98, 102, 15 N.W.2d 201, 203 (1944)("A reading of the debates in the constitutional convention or conventions which framed our constitution leads us to believe that the evil sought to be prevented by [the non-delegation article] was that of the state's financing railroads…").

3. Rubin argues that the "public purpose" doctrine for the expenditure of tax revenue, at least, was *not* a result of "a rapacious private sector in cahoots with unsavory politicians", but rather fiscal conservatism of the courts generally.

4. The provision reads in full: "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."

5. It reads in relevant part: "(a) There shall be no special law or general law of local application pertaining to:… (2) assessment or collection of taxes for state or county purposes…."

6. The provision reads in full: "A local or special statute is invalid in any case if a general statute can be made applicable." A law is "special" when not founded on natural or intrinsic distinctions reasonably justifying difference in treatment. See Lalande v. Lowery, 26 Cal. 2d 224, 157 P.2d 639 (Cal. 1945).

7. Rudman v. Rini interpreted Ill. Const. Art. 2 §2. This provision was intended to supercede a case that held that the judicial and executive branches of state government held only those powers granted to them by the constitution. See Magnuson v. Casserella, 812 F.Supp. 824 (N.D. Ill. 1994).

8. The court held that unelected governmental officials, such as the appointed commissioners of a school district, may never have the power to levy taxes delegated to them.

9. Local 22, Pennsylvania Firefighters' Union v. Commonwealth, 531 Pa. at 339, 613 A.2d at 525 upholds the imposition of the plan in face of home rule opposition, since, "because cities of the first class consume a substantial proportion of the products of Pennsylvania's farms, factories, manufacturing plants and service enterprises, economic difficulties confronting cities of the first class detrimentally affect the economy of the Commonwealth as a whole and become a matter of Statewide concern.

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