
Committee Meeting

of

JOINT LEGISLATIVE COMMITTEE ON CONSTITUTIONAL REFORM AND CITIZENS PROPERTY TAX CONSTITUTIONAL CONVENTION

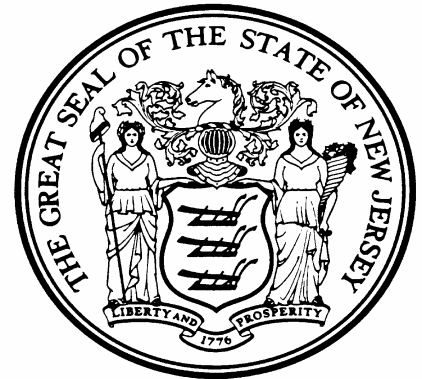
*“Testimony by Professor Robert F. Williams,
Distinguished Professor of Law, Rutgers School of Law, Camden”*

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: August 17, 2006
1:00 p.m.

MEMBERS OF JOINT COMMITTEE PRESENT:

Senator Bernard F. Kenny Jr., Co-Chair
Assemblyman John J. Burzichelli, Co-Chair
Senator Fred H. Madden Jr.
Senator Leonard Lance
Assemblyman Louis M. Manzo
Assemblyman Richard A. Merkt



ALSO PRESENT:

Catherine Z. Brennan
Philip N. Liloia
*Office of Legislative Services
Committee Aides*

Timothy P. Lydon
Linda Schwimmer
*Senate Majority
Kay Walcott-Henderson
Gina LaPlaca
Assembly Majority
Committee Aides*

John Hutchison
*Senate Republican
Mary C. Beaumont
Joseph Glover
Assembly Republican
Committee Aides*

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SENATOR BERNARD F. KENNY JR. (Co-Chair): Good afternoon, everyone. I'm Senator Bernard Kenny, and along with Assemblyman John Burzichelli -- we co-chair this Committee, which is charged with examining the effects of the New Jersey Constitution on property taxes. I want to recognize, again, my Senate colleagues, Fred Madden and Leonard Lance, who are here, and are very distinguished senators, and are contributing to the process.

I'm happy to report, thanks to the Co-Chairman's efforts, staffs are working together. Republican and Democratic staffs are constructing the agendas for these meetings and working in a bipartisan fashion.

The next meeting will be September 7, at which testimony will be taken pertaining to today's presentation. Today will be a presentation only by Professor Robert F. Williams, who is a scholar and a national expert on constitutional law pertaining to property taxes in general, and to the New Jersey Constitution in specific.

Before I turn the gavel over to my Co-Chairman, I have prepared remarks, but I think I'm just going to be very brief in letting you know what basically this meeting is about. Article VIII, Section I of the Constitution: "Property shall be assessed for taxation under general laws and by uniform rules. All property assessed and taxed locally or by the State for allotment and payment to tax in districts shall be assessed according to the same standard of value, except as otherwise permitted herein. And such real property shall be taxed at the general tax rate of the taxing district in which the property is situated for the use of such taxing district." That is the Uniform Clause of the Constitution, which basically

mandates that all property, whether it be business, commercial, or individual property tax owners, shall all be taxed in a uniform way.

Over the years, there have been a number of exceptions and exemptions to that rule. So the purpose of this hearing, as well as the September 7 hearing, is to determine the impact of the uniform rule and the exceptions and exemptions to it, and that -- how that affects the property tax burden for homeowners.

I've asked the OLS and Professor Williams to -- and the process is underway -- to quantify the amount of exceptions and exemptions that exist in New Jersey, whether it be property tax rebates to individuals, rebates and benefits to other parties, charitable organizations, churches -- those who are exempt or those who get property tax benefits through rebates or other means. I want to quantify that number, and then compute that number as a percentage against what the uniform property taxpayers are paying in the state. And then to compare that result with other states to see if New Jersey's exceptions and exemptions to the Uniform Clause are considerable, limited, or neutral, and what impact that has on the property tax -- homeowner.

We all are insisting on the status so that we can compare ourselves to other states, what other states have the uniform clause, how other states comply with it or deviate from it; and to put a quantified number on that so that we can assess the impact of the exceptions and exemptions to the Uniform Clause. So that's, in a nutshell, the purpose of the hearing.

So I would like now to turn the gavel over to my Co-Chairman, who will now conduct the meeting.

Thank you, Mr. Chairman.

ASSEMBLYMAN JOHN J. BURZICHELLI (Co-Chair):

Thank you, Mr. Chairman. Thank you, Senator.

We'll call the meeting to order. I'll ask for the roll call, please?

MR. LILOIA (OLS Committee Aide): Mr. Madden.

SENATOR MADDEN: Here.

MR. LILOIA: Mr. Lance.

SENATOR LANCE: Here.

MR. LILOIA: Mr. Manzo.

ASSEMBLYMAN MANZO: Here.

MR. LILOIA: Mr. Merkt.

ASSEMBLYMAN MERKT: Here.

MR. LILOIA: Mr. Burzichelli.

ASSEMBLYMAN BURZICHELLI: Present.

MR. LILOIA: Mr. Kenny.

SENATOR KENNY: Here.

ASSEMBLYMAN BURZICHELLI: Thank you.

I also want to recognize, joining us today in support of this Committee -- and an example of the level of attention and how serious we take this charge -- the Majority Leader of the New Jersey General Assembly, Bonnie Watson Coleman, joins us.

Thank you, Bonnie, for being with us.

And I have only a brief statement. And if I don't read it, the person who wrote it for me would feel neglected. So I feel that I'd like to read it. And we open by welcoming our fellow legislators and, of course,

members of the audience in this room, and those watching via either television cable or the Internet.

The focus of this hearing is a section of the State Constitution, as the Senator clearly defined, the Uniformity Clause. Simply defined, it stipulates the tax levy established in each municipality. It applies to individual parcels of property in a uniform manner, regardless of whether a property is used for residential or commercial purposes.

I want to state, from the outset, this is a fact-finding hearing. I think I speak for everyone on this panel in stating that nobody here has a preconceived agenda to abandon the Uniformity Clause, modify it, or maintain it as it now stands. We simply want to look at this constitutional provision for the purpose of assessing its impact on the State's overall property tax system and the citizens of the state.

I know some individuals have stated that this Committee is sending the wrong signal by examining the Uniformity Clause. Frankly, this Committee, I think, is sending the right signal. We're demonstrating from the outset, as leadership in both Houses have directed us, and as our Governor spoke very clearly when he charged this special session -- we're demonstrating there are no sacred cows in this process. We're reaffirming all aspects of the property tax system are up for consideration. And we are now proving our willingness to work during the Summer recess to do what is right by the people of the state.

As we learned at this Committee's inaugural hearing, 72 percent of the property taxes are paid by homeowners. For this reason, it makes sense that we'd start our examination of the property tax system with the Constitution's Uniformity Clause. As I stated two weeks ago,

there are no predeterminations about anything. We're going to ask tough questions where appropriate, and all constitutional issues related to taxation are going to be on the table in these coming meetings. This is intended, and will be an honest and thorough effort until we reach our conclusion and report, which we will move to our respective Houses and the standing committees.

The Senator had touched on our speaker today. I'd like to formally introduce Professor Williams. As Senator Kenny said, he is going to bring us, I think, an important foundation on this topic and this area of the Constitution. Professor Williams is Associate Director at the Center for the State Constitutional Studies at Rutgers-Camden, our State University. He has written extensively on state constitutional law and is often quoted in New Jersey media outlets. He's written a book on the New Jersey constitutional law and has co-produced a TV documentary marking the State Constitution's 50th anniversary. Professor Williams received his law degree, with honors, from the University of Florida, where he was Executive Editor of the *Law Review*. He also holds a Master's degree in law from New York University and Columbia University.

Professor Williams, a warm welcome to you, and a thank you for taking your time in this Summer's time to be with us, and to help us understand our State Constitution better so we have a better opportunity to work in that parameter and offer changes where maybe there should be changes. But a warm welcome to you, and a thank you on behalf of this Committee and the people of New Jersey. And the floor is yours.

R O B E R T F. W I L L I A M S: Well, thank you, Mr. Chairman. I appreciate that welcome. And I guess if you can be here in the Summer, I can be here in the Summer.

And I want to thank OLS for their invitation to appear today and work with the Committee. I've been looking at state constitutional law for about 30 years; teaching and writing about it for 26 years or so. And as you mentioned, we have, at Rutgers University in Camden, a center for the study of state constitutions; or sub-national constitutions, when we're in Federal countries outside the United States that have states. So I've had a chance to look at this stuff in some detail and to focus a good bit on New Jersey.

My colleague, Alan Tarr, who is the Director of our Center, couldn't be here today. He had an unscheduled medical test. It's not an emergency or anything, but it was the only time they could fit it in. So he had to let the Committee know yesterday that he couldn't be here. And he apologizes for that.

I want to talk to you a little bit about, of course, the Uniformity Clause, and about the provisions in the New Jersey Constitution on tax exemptions; and then to conclude by suggesting a number of not only policy options that could be adopted, but also drafting strategies, approaches to constructing state constitutional provisions, many of which have not really been tried very much before. So I think it's important to focus, when one thinks about this, on not only the substantive changes that might be made, but also how the drafting would take place, how the provisions would read. And I think you'll understand me a little bit more in a few minutes when I get to that.

I do want to say that I approached this the same way the Committee does. I don't have a policy axe to grind. As we used to say down south, "I don't have a dog in this fight." I am a New Jersey citizen and taxpayer. But other than that, I don't have a preconceived notion about this at all. I've interpreted my invitation here to be someone who suggests ways of looking at this matter, suggests alternatives, but doesn't presume to try to advise you as to what you should do.

The Uniformity Clause in the Constitution arose, originally, in 1875 in our state. Prior to that there was no limitation at all on the Legislature's power to tax, or power to exempt, or, importantly, power to delegate to local governments the power to tax or exempt property. So by 1875, a number of laws had been passed that really led to a lot of dissatisfaction in New Jersey. The key ones were special laws that were passed to create railroad corporations and to authorize railroad corporations to run certain lines in New Jersey, and often gave them a monopoly on those lines, and also exempted them from real estate tax. And there was a mishmash of these applicable to railroad companies, various other special interests, and what have you. There was nothing in the New Jersey Constitution at the time to keep the Legislature from doing that.

There was another very interesting law, that was very controversial back then, called the Five County Act -- and it applied to five of the largest counties in New Jersey. And it said that property owners in those counties only had to pay property tax on the equity that they had in their real estate and not on the mortgaged amount. What a deal. I mean, I would love to have that for myself right now, frankly. But it was only in five of the counties. It didn't apply to the others. So the people outside

those five counties hated it, because they had to pay tax on the entire assessed value of their real estate. And the five counties where these exemptions applied hated it because it cut into their local tax base. So these things led, interestingly, the Legislature itself to propose to the people a constitutional limitation on these kinds of distinctions in property tax.

And so we got the original Uniformity Clause in 1875, as many of you know, in a large package of amendments that year with a couple of noncontroversial provisions, like thorough and efficient education, the item veto for the governor, and various other things that are quite important to the structure of our government. So from that time on until 1947, we had a very brief Uniformity Clause that basically said all property had to be taxed at true value. But through that period, the Supreme Court recognized that it was okay for the Legislature to exempt certain properties. So there were exemptions granted, but they could no longer be granted by special law. Because also in 1875, came the ban on special laws.

So we got to 1947, the well-known 1947 Constitutional Convention, and this tax provision was among the most controversial matters before the 1947 Constitutional Convention. And it was ultimately revised a bit into the form that you heard read by the Chairman: essentially, property has to be taxed uniformly within the taxing district according to the same rate and assessed value. These clauses are very common in the states. There are a lot of variations on them, and I'm not prepared today to go through all of those. I haven't had the time to do that and maybe it's something I can suggest the staff do. But there's an excellent two-volume set of books on this. It's a little out-of-date. It's 1984, but it gives the basic structure of all 50 states.

And interestingly, Pennsylvania adopted a Uniformity Clause much like ours, the year before ours -- 1874 -- in their Constitutional Convention. And in fact, we think that a number of things came from there, even though we don't want to admit today that we copied anything from Pennsylvania. But it looks, maybe, like thorough and efficient education came from there, and some other things.

Now, what does the Uniformity Clause do? It's interesting, because it actually serves as a specifically focused, quite rigid equal protection clause just for property tax in our state. Pennsylvania, by the way, has applied it to income tax, so you can't have a graduated income tax in Pennsylvania. But it reflects a concern that the generally applicable equal protection provisions of the State Constitution were not enough, that there's a necessity for a specifically targeted equality provision aimed at taxation. So it reflects this egalitarian instinct, of essentially 1875, as a reaction to favoritism in taxation for what we would now call *special interests*. So on the surface of the Uniformity Clause, there is this expression of equal treatment of -- I think I read it, in the press today, described as fair treatment across the board for all kinds of property.

It's interesting, however, that the Uniformity Clause has a chameleon-like quality. It can change colors, if that's what chameleons do, depending on your point of view. Looked at from a different perspective, the Uniformity Clause bans the Legislature from using the property tax at all, or requiring local governments to use the property tax at all, as a policy-making tool, or as a tool of social or economic policy making, the way we've seen the Federal income tax used to encourage home ownership, or encourage investment in manufacturing equipment, or whatever. The

Federal income tax is well known as not only a revenue raising device, but also a mechanism for the government to encourage or discourage certain kinds of economic behavior. And that's to some extent true with the State income tax, as well, and maybe with other kinds of taxes. I'm not sure about excise taxes and others.

But it turns out that you cannot do that with the property tax, because there's this rigid requirement of uniformity and of equality. Now, maybe that's a good thing. I'm not making a judgment about it. But I'm just pointing out that, depending on who looks at the Uniformity Clause, it either looks like a really good citizens-friendly equality provision on the one hand, or it looks like a ban on any kind of, one might call it, *social engineering* through the use of the tax system on the other hand. I make no judgment on that personally. But because the State Legislature has--

SENATOR KENNY: I'm sorry to interrupt on that point.

MR. WILLIAMS: No. Please, go ahead.

SENATOR KENNY: Could you give me an example of how the property tax could be used for social-economic purposes if it weren't for the Uniformity Clause?

MR. WILLIAMS: For example, it could be used to encourage home ownership. It could be used to encourage seniors to stay in--

ASSEMBLYMAN BURZICHELLI: Professor, would you make sure your light is on please? (referring to PA microphone)

MR. WILLIAMS: Sorry.

ASSEMBLYMAN BURZICHELLI: Thank you.

MR. WILLIAMS: Thanks.

It could be -- the property tax could be used as a tool of social engineering or a policy-making tool to encourage seniors -- I'm not necessarily advocating this, but the older I get the better it sounds to me (laughter) -- to encourage seniors to stay in their property even though property tax bills might be rising. One could adjust the property tax system to take account of that. I'm not sure you'd have to change the Uniformity Clause to do that, by the way. Some states have mechanisms-- I've said to some people -- thirty years ago in Florida, my parents didn't pay property tax on their house at all for the last eight years they lived there. The state reimbursed my -- I'm from Miami, believe it or not -- reimbursed the city of Miami for those taxes out of a fund that they had developed, a revolving fund. When my parents sold their house for 15 times they paid for it, they were happy to pay those taxes back, as a lien on the real estate. I think Florida has a Uniformity Clause, and that was accomplished just by statute. But if there was any question about it, this would be one example where a modification to the Uniformity Clause would permit the property tax system to be used as a policy-making tool.

You could also-- Well, we have two examples already on the books: The Farmland Assessment provision. As I think you know, the second section of the Uniformity Clause -- Article VIII, Section I, Paragraph I of the Constitution -- makes an exception for farmland, agricultural and horticultural land. That was a response to a New Jersey Supreme Court decision in 1962. The Legislature thought it would be a good idea to permit farmland to be assessed according to its value as farmland, not assessed according to its highest and best use as a housing development, for example, or a strip mall -- if they had strip malls in the 1960s. And the

Legislature enacted that statute, and it was declared unconstitutional. You can't do that. The Uniformity Clause says you can't do it, so there was an amendment proposed. And that's why we have Paragraph B in there now. That's the first example.

The second example is the provision on tax abatements for redevelopment of blighted, urban property. And I don't have the date of that off the top of my head, but that authorizes an abatement for -- I think you all are familiar with it -- an abatement of property taxes for a certain period of time for folks who will come in and redevelop blighted, urban land, real estate.

So we already have examples on the books of policy making through the property tax. There are two of them; there may be more. I don't think so. Well, certainly Veterans' exemptions and things like that are on the books, as you well know. So that's what I mean by that -- a policy choice made by the Legislature, maybe even made by the local government, that's effectuated by economic incentives or disincentives versus direct mandate, as we see most obviously in the Federal income tax.

Is that an answer?

ASSEMBLYMAN BURZICHELLI: Senator, the Professor asked was that an answer. That went long enough -- I'd almost forgot what the question was. (laughter)

SENATOR KENNY: So you're saying that the exemptions and exceptions to the Uniformity Clause that we have made, constitutional amendments over the years, are examples of using the property tax to accomplish certain governmental and social objectives?

MR. WILLIAMS: Yes.

I'm not sure if this is on, but I think I can talk loud enough.
(referring to PA microphone)

ASSEMBLYMAN BURZICHELLI: When your red light is on,
you're on. (referring to PA microphone)

And I think Senator Lance would like to ask a question.

And let me get a sense of the Committee: Are we preferring to ask questions as the testimony unfolds, or are we -- is it easier to do that, Senator -- whatever the Committee would choose to do -- or would we prefer to hear the presentation, make notes, and ask questions? I just want to make sure everyone's on a comfortable level.

First of all, let's let Senator Lance advance his question, and we'll regroup.

SENATOR LANCE: Thank you.

I was going to make a point similar to Senator Kenny's. It seems to me that we do engage in social policy regarding the taxation of real property. And we do it through various exemptions to the Uniformity Clause. And you've mentioned the two that come to mind, regarding redevelopment and farmland, and we do it by the vote of the people in amending the Constitution. And that impresses me as being eminently appropriate. And then after the people approve, if they do approve, then statutory decisions are made thereunder, and certainly that is true in both redevelopment and in farmland policy. I wouldn't suggest that we are uniform. It's just that our amendments to uniformity occur through further constitutional amendment.

Thank you.

MR. WILLIAMS: Quite right.

ASSEMBLYMAN BURZICHELLI: Thank you, Senator.

I think, unless someone else feels strongly, maybe we'll allow the Professor to complete his presentation to us, and then we'll work from the questions back.

And if I may just have a clarification on the question, I thought the question started based on the income tax, and the inability of this Legislature to use the income tax to advance social agenda; where, in our Constitution, the income tax is presently dedicated to tax relief in very clear language. But that was about six minutes ago.

MR. WILLIAMS: No, no. That's a good point. Even the income tax is constitutionally earmarked here in New Jersey.

ASSEMBLYMAN BURZICHELLI: Very clearly.

MR. WILLIAMS: Yes.

ASSEMBLYMAN BURZICHELLI: So Professor, we'll have you continue, and we'll hold our questions, unless someone feels so inclined and really feels they have to insert something or entertain a question.

MR. WILLIAMS: Well, let me say, though, I'm happy to take questions in the middle. It's fine with me. I'm just happy you're interested enough to ask questions. (laughter)

So we have this provision that limits the Legislature, pretty much, in accomplishing social policies through the property tax. It certainly -- this current scheme certainly retains the possibility of accomplishing those ends through an amendment that's voted on by the people. There's no question about that. I agree.

Now, on the exemption provision, which is Section II of Article VIII -- is Paragraph 2 of Article VIII, Section I -- is also from 1947. And it's

an interesting provision in the sense -- in terms of state constitutional drafting. It sets forth -- it makes an exception, first, to the Uniformity Clause. Correct? Because without this, you couldn't have legislatively granted exemptions, because of Paragraph 1 saying all property had to be taxed uniformly. Section II makes an exception of that, saying, "Exemption for taxation may be granted only by general law." A very big change from the old days when special laws could be utilized to grant tax exemptions. And then it grandfathered in all existing statutory exemptions until changed later by the Legislature.

So the first part of the exemption provision in the Constitution empowers the Legislature to make the policy choices about what should be exempt and who should be exempt, what kind of property should be exempt. So it's not *self-executing*, as we use the term. It's not enforceable without implementing legislation enacted by this Legislature. Okay? So the policy choices have to be made by the Legislature. Interestingly, the clause goes on, however, to end with a self-executing provision -- a provision that's not dependent on implementing legislation by this Legislature -- to say that property that's used exclusively for religious, educational, charitable, or cemetery purposes -- the Legislature can define these -- and will be exempt from taxation.

So this sets up an important -- this illustrates, I think, an important difference in the nature of State constitutional provisions. The one permits the Legislature to make the choices. Now, if you didn't have anything in the Constitution at all about tax, the Legislature would have plenary, unrestricted authority to make all the policy decisions about tax. But as of 1875, we put this limitation in so you need to release it, in

Section II, to give the Legislature the authority to make some decisions on some exemptions. I have to say, I haven't researched all those. And I don't know what all the statutorily authorized exemptions are.

But then, the drafters in '47 said, "But we, the Constitutional Convention" -- and of course, Senator Lance, ultimately the people -- "are going to make policy about religious, charitable, educational, and cemetery purposes. We are going to put that right in the Constitution. We are going to express the policy itself in the Constitution." It's enforceable without implementing legislation. There's a need for some definitions and some procedures. You need to file your exemption application by a certain date or you lose it. Those things are certainly necessary and permitted.

But the reason I call attention to this right now is that, if you decided you wanted to change any of these provisions in the Constitution -- and not just the two we're talking about, but the earmark on income tax, the earmark on casino revenues; there are a number of other earmarks that have grown up in the Constitution for transportation purposes and others. Maybe I've touched every sacred cow now. I'm not sure. (laughter) If you're going to change those, I think there are at least two big drafting choices to make. And that is, if we're going to change it, should we-- Excuse me. If we're going to propose a change in the Constitution to the voters of New Jersey, should they make the policy choice themselves or, rather, should we propose a change in the clause that would permit the Legislature to make the policy change at its discretion?

There's a tremendous difference in these two options. And I think that they're not always clearly recognized by legislators or drafters of state constitutional provisions. It's a tremendous difference, because the

first option, making the policy in the Constitution itself, what we call *self-executing*, that's it. People can go to court. They have a right to a tax exemption for religious property used exclusively for those purposes, whether you as a Legislature implement it or not.

On the other hand, if you simply reserve the authority to the Legislature to make the policy decision, you can do that or not do it. You may decide, "Well, we're not going to implement this." That's fine. Nobody can go to court and make you do it. So it's a very fundamental, structural distinction in how we govern ourselves. And I think you'd want to keep this in mind for each of these tax provisions that are in the Constitution, if you consider recommending a change in them, or if you consider proposing new provisions in the Constitution about taxation. Consider whether you want to make them self-executing, enforceable by the citizens without any further action by the Legislature, on the one hand; or to simply retain the discretion in the legislative branch to implement these or not -- it seems to me.

Now, back to the Uniformity Clause, if I may. One option would be -- and once again, I'm not advocating any of these options. I'm just trying to sort of brainstorm with you. One option would be to take it out of the Constitution. Say, "Look, we want the authority to do what we want." You would still have the special laws ban in Article IV that limits you to legislating in some way that ultimately -- because it's judicially enforceable -- it limits you to legislating in some way that ultimately a court would think was a rational classification. And that would apply even if you took the Uniformity Clause out.

But otherwise, you could classify property in various categories, like a number of states have done, either in their Constitution directly -- like Tennessee. Tennessee's provision has a list of about eight different categories of property in the Constitution itself, and it specifies the assessment ratio for those particular kinds of properties.

For example, single family residential -- I forget if it says owner-occupied, but I looked at it quickly this morning -- will be assessed at 25 percent of its value. Okay? And it goes on through industrial property, commercial property, multifamily residential -- you can imagine this list has been amended over time, since it was first put in in the 1970s. So if you eliminated the Uniformity Clause, the Legislature could set up that kind of a classification system, as long as taxpayers weren't able to convince a court that it was a special law or that it violated state equal protection. I can't imagine it would violate Federal equal protection, because the Feds stay out of state taxing systems pretty much.

I don't think anybody is seriously considering taking the Uniformity Clause out of the Constitution. Your view might change, I don't know. I take it that there are no specific proposals now. But another one would be to-- Another option would be to authorize -- to amend the Uniformity Clause to authorize the Legislature to set up a classification system, sort of like I mentioned, where within the class of residential, or industrial, or commercial property, or multifamily residential rental housing the property had to be assessed and taxed at a uniform rate within that class, but not between classes. And if the Legislature never enacted such a statute, the people would have no right to go to court, to sue, to get that

classified system. It would be a partial release of the limit in the Uniformity Clause, on your discretion.

You could even say, well, if we're going to do that, we've got to do it by a supermajority vote. You could put that in the Constitution. We might do that, but by gosh, we'd better have a three-fifths or even a two-thirds vote to do it. Once again, I'm not advocating that, but you can--

The point here really is that there are a lot more options in drafting state constitutional provisions than a lot of people realize. And what we've tried to say in our Center for State Constitutional Studies is that we ought to try to make the state constitutions work for us, the people, rather than us working for the state constitutions. If you need to change it, fine. If you need to change it in a way nobody's ever seen before, fine. Put it to the people. If they approve it, that's how we'll do things.

So I'm suggesting that you think outside the box or outside the bun, or whatever they say, a little bit on this, particularly in the area of taxation, which is pretty complicated. And it's a little different from, maybe, the right to free speech or the right to freedom of religion, which we theoretically, hopefully, aren't going to change our minds about very much. Taxation, and the economy, and government finance, this -- what's it going to be like 25 years out from now? I'm not sure. What's the global economy going to be like? I'm not sure. Where's New Jersey going to sit in the national economy? What's the stock market going to be like? Who knows. Maybe you want to try to craft -- if you're going to propose any changes in the Constitution, craft them in a way that they're a little more flexible than the standard state constitutional provision is.

Another example of this would be to put a sunset on it. If you want to change, you think it's a good idea to suggest to the people that they change the Uniformity Clause, or the Exemption Clause -- I think these suggestions apply to both clauses or any of the other ones on tax and finance. You think it's such a good idea, let's try it for a generation. Let's try it for two generations -- 20 years goes by pretty fast, 40 years a little slower, but faster than I like. And you're familiar with sunseting statutes. This would shift to the future generation the burden of readopting the constitutional clause. If it's worked well, fine. As they say in Congress, they reauthorize it. If it's not working well, the burden is on those that want to keep it. The burden is not on those that want to get rid of it, which is a heavy burden, as you know, to try to take something out of the Constitution. It's very difficult.

I'm not saying this is a great idea, but it's something that's worth thinking about. You all have done it already with the gas tax. The constitutional dedication of the -- I think it's the first 9 cents, or the second 9 cents, or something, of the gas tax was put in the Constitution for 17 years. It was going to self-destruct. Although before it self-destructed, you all proposed an amendment to make it permanent. As you know, things in the State Constitution are never permanent. But you've used the sunseting mechanism before. It's worth thinking about, particularly, like I say, in an area of taxation that is so changeable over time. A lot of people who have the votes to establish a certain policy, they don't want to sunset things, because, "Hey, we're winning today. We want to win forever."

It's true that when you look in the state constitutions, a lot of the reforms of the prior generations are the problems of today. This

Uniformity Clause -- I'm not saying it's a problem today, but it was a big reform in 1875. This was -- and I don't want to use the word -- but let's call it *progressive*. I almost said *liberal* -- but heavens no. Progressive reform -- it was a big deal. This is really cool, equality stuff.

Now, you get to a point where you say, "Well, Ms. Smith, you're getting -- you're going to have to sell your house and move out of the town you lived in for 30 years. Sorry, can't do anything about it." I think there might be some things you can do about it statutorily, as I mentioned before, but-- So maybe the reform of yesterday becomes the problem of today in state constitutions. And by the same token, drafters today have to think that maybe their good idea today might become a problem out into the future. Maybe you'd want to make it a little more flexible. Maybe not. It's just something worth thinking about.

What about the ban on special laws? It's generally applicable -- over in Article IV, the legislative article. I can't quote the section -- it came from 1875 -- it's judicially enforceable. And then we have, also, in the Exemption Clause, Paragraph 2, a ban on special laws, when it says, "All exemptions have to be given by general law." Okay?

ASSEMBLYMAN MANZO: Right there.

We often in the Legislature make laws, for example, that pertain to cities of a first class, cities of a certain class. Is that, in your estimation, a violation of what I'm hearing you--

MR. WILLIAMS: It's not. I haven't studied all the case law on that, but the argument is, those are general laws. Those are not special laws, because they're rationally related. The classification to these groupings of cities -- it wouldn't be counties, right, just cities?--

ASSEMBLYMAN MANZO: Cities.

MR. WILLIAMS: --is rational; it makes sense. But there have been cases where the Legislature has drawn-- And these are decisions made by judges. There have been cases where the boundaries that have been drawn by the Legislature -- not necessarily territorial boundaries, but coverage of certain kinds of people, or businesses, or whatever -- have been found, by the courts, not to be rational and, therefore, not to be general laws but banned special laws. It's a little hard to tell ahead of time where that line is going to be drawn.

ASSEMBLYMAN MANZO: Is it clear in the Constitution? Does it say you have to have a group? Or does it define: just one city can't, two cities can't? It's just open for interpretation, okay.

MR. WILLIAMS: It's left to the judges.

It also says local laws. There also is a provision about local laws that would apply just in one county. And there is a mechanism for the local government to petition the Legislature to ask for such a thing. But it was a real problem up until 1875. Some of you may know that the Legislature took over -- was it Jersey City? -- took over Jersey City in 1871, threw out the elected government, passed a law that applied only to Jersey City, put in an appointed commission. And as we read it 130 years later, it ran roughshod over the citizens of Jersey City. And that's what led to the clause "no local laws." Special laws is really about certain corporations, or railroads, or what have you.

The Legislature gets a lot of deference in this area. The courts are reasonably -- at least in this area -- reasonably deferential to the choices you make. Because all laws classify in some way. They apply to

environmental concerns-- They don't apply to everything -- no law applies to everything in the universe. So we generally think about challenging classifications based on equal protection arguments, as lawyers. But interestingly, in New Jersey, and in most states -- not true at the Federal level. At the Federal level, they can pass a law that deals with a specific cannery in Alaska, as they have done. You can't do that in New Jersey, nor in most states, because of these changes 125 years ago in response to, frankly, abuses that the state legislatures were engaged in.

But my point is, maybe you would want to ease up on this ban on special laws for exemptions. Or even if you were going to amend the Uniformity Clause, you might require a supermajority to classify. You might require various things. You might -- I'm not advocating this -- you might permit laws that would -- that deal with classifications or exemptions only in certain parts of the state. And I'm not sure which way I'm facing here. I'm thinking of that area out there toward the ocean. I'm not, once again, saying it's a great idea. It might not be worth-- It might be worth thinking about. You can't do it under the current Constitution. You can't have different assessment rates, and exemptions, and stuff only in one part of the state. Maybe that should be looked at. I don't know.

But the point of all of this is to suggest that you open up the range of options. Each option is going to cause concern among some taxpayers, and among some people who don't currently pay taxes. That's for sure -- you have to expect that. This is a political process. State constitutional change is political. Nobody apologizes for that.

But I thought what I could do today was to come and give you a little bit of the background where these things came from, and suggest a

range of things to be considered, including not recommending any change to the Constitution. Many of us believe a lot of reform could be made in the property tax system without changes to the Constitution.

And I now remember one point that I wanted to make. The Uniformity Clause goes only to the distribution of the tax burden. It seeks to spread the tax burden equally, except for exempt property, which is authorized. It doesn't say anything about the total tax burden. And we've never had anything in the Constitution that speaks to the total property tax burden. I guess we've had some statutes capping municipal budgets and things like that, but never anything in the Constitution. So the whole motivation behind the Uniformity Clause was egalitarian, no policy making through the property tax, and distributional only -- not a focus on total tax burden.

I took a quick look at Pennsylvania. I knew a little bit about that already. It's like New Jersey, pretty much, but they apply it to the income tax, interestingly. And there has been a big discussion going on about property tax reform in Pennsylvania. I haven't followed it line-by-line. And I don't think it's included much concern about the constitution of Pennsylvania. I'm not sure, but I think that would be easily discoverable with somebody over in Pennsylvania.

New York-- I took a very quick look. New York does not seem to have a uniformity clause. Rather, there's a whole line of cases about equal protection that have been used as a kind of stand-in for the uniformity clause. It's a very quick look, and I'd hate to be held to that, but it looked like that was the way it worked.

What did I say about Kansas? Kansas, of all things, doesn't have the uniformity clause. But it actually authorizes the legislature to make classifications. So that's one of the models I mentioned.

But that's basically what I wanted to say to you. I really hoped we could stimulate a conversation. And I hope I can help further, somehow. But to the extent those are prepared remarks, that's where I'll stop.

Thank you, Mr. Chairman.

ASSEMBLYMAN BURZICHELLI: Thank you.

I think you will field a number of questions here, momentarily.

But I want to begin by thanking you for the presentation.

I'm getting, from your comments, just a sense of where we are. First of all, I think I'd like to say -- because you live in the world of this Constitution -- it seems to me the people in 1947 did a fine job, when you consider how well it's held up through this period of time.

And if I'm not mistaken, the '47 -- the last major overhaul, prior to the '47 Constitution, was shy of a hundred years prior to that. Did I read that correctly?

MR. WILLIAMS: There was a big package of amendments in 1875. May I say, Peter Mazzei, of OLS, and I have a new book coming out about that. It has never been well-documented. But it wasn't really an overhaul. It was 28 -- or 24 changes, some of them quite important. But it was really -- 1844 was the earlier convention.

ASSEMBLYMAN BURZICHELLI: It's just a general thought -- general question before we move around. I'll have a few, then my Co-

Chairman will, then we'll pass to the other Committees so we can draw as much as we can from your visit here today.

You had made mention that you thought that maybe some of what we would like to accomplish here, or that we set out to try and accomplish, can be done through statute as opposed to constitutional changes. But yet, when you explained to us the Uniformity Clause and how it is truly rigid-- And I don't know that it's bad in the fact that it's rigid. But when you used Tennessee as an example-- I almost hear you say that, in this area, a little more flexibility may not be a bad thing, as things have changed so dramatically, as time often does change things. Am I reading that comment correctly?

MR. WILLIAMS: As long as we emphasize the word *may*, because I'm not sure. I'm actually not an expert on property tax administration at all, or the economics of it. That's why I went to law school, but -- they said there would be no math. (laughter)

It's sure worth looking at to make some adjustments. And maybe you need to make them right in the Constitution. I'm not sure. Let the people vote on each one of them, but-- It's rigid in a way, but I don't know that it's so rigid that there couldn't be some changes made by statute.

There would be some guesswork involved. For example, the Florida program that I mentioned, where you have a forgiveness in your property tax if you meet an income and age eligibility requirement -- I don't think that was ever tested in the courts against the uniformity clause.

ASSEMBLYMAN BURZICHELLI: And I guess, to an extent, this Legislature, over the years, has sort of done a little bit of Florida, with regards to some of the rebate programs that we have presently -- that are

driving back. And the standard of what the rebate is, often, is a test of income and a test of age. So we're calling it a *rebate*, as opposed to challenging it -- or engaging on the uniformity side and maybe allowing for a deduction in the property tax bill. We're doing it the other way, presently.

MR. WILLIAMS: And I don't think anybody's ever challenged that as a violation -- I could be wrong -- of uniformity.

ASSEMBLYMAN BURZICHELLI: I have no senior citizens complaining about getting a check for \$1,200 last week. They're complaining about other things, but they're not complaining about getting a check.

We are sincere in how we look at this. And, again, as a constitutional scholar, I ask you, in an area such as the Uniformity Clause, if we, in fact, collectively -- both Houses -- are to offer a question to the voters on this area -- in this area, what is your comfort level of the Legislature crafting a question absent a constitutional convention? Is it time for a constitutional convention, or do you think, in these couple areas we're working, we should -- we are correctly doing it in this first step we're taking?

MR. WILLIAMS: I might say it remains to be seen, Mr. Chairman. But I think the use of a special session like this is an excellent -- it may be the third or fourth step by now, I'm not sure -- but first step prior to a constitutional convention. You may well not need a constitutional convention at all, if you can reach some kind of consensus. And, of course, you know, if you want to put something on the ballot next year, you probably have -- you have to get a three-fifths vote in both Houses for it.

So that would be -- mean there's some consensus, some -- more than a bare majority.

If there were one, or two, or three constitutional provisions that needed to be amended, or added to, or something like that, I don't think you'd need a constitutional convention to do that. The idea of a citizens' convention is attractive, for sure. It's very expensive, it's time-consuming, and it's pretty uncertain what the convention would do -- including nothing, or including too much -- and the people vote the entire thing down. It's always a risk. It's always a risk with what you would propose.

So, to me, it's too-- If, for example, this special session results in no meaningful reform, I think people will be ready to say, "We need a constitutional convention." On the other hand, I think the citizens of New Jersey are happy to give up your Summer for you to come here, without a lot of other distractions, focus just on this stuff and see, once and for all, if you can really have at it. You're not going to have a perfect set of solutions, but some solutions that may make some sense.

You may put a couple of proposals out on the ballot. You might tie them together. I mean, you know, you don't want people to be able to go -- take one and not the other if they're interlocking. The problem is, the Constitution requires-- You can't put two amendments up for a single vote in Article whatever-it-is here. I think you know that.

But there are ways a legislative session could accomplish needed change, if you concluded that you needed to release a couple of these limits, authorize a little bit different kind of legislating somewhere, maybe tighten up on some exemptions or not. If that could be done with two, or three, or four constitutional amendments, why not suggest them as a Legislature?

It's a power that you have. It's the way we've done it, all except three times in our history, and without a need for a constitutional convention.

So I think every opportunity ought to be taken to ameliorate the need for a constitutional convention.

ASSEMBLYMAN BURZICHELLI: I'm going to-- I don't want to be dominating the time allotted for questions. But I'm getting a sense from you, as well, that you don't see a rigid structure that every hundred years, every 75 years -- this Constitution is coming up on its 60th birthday -- that there should be the convening of a constitutional citizens' convention, just to review the document from top to bottom. I don't sense, from the direction your conversation is going, that you think that should be a requirement.

MR. WILLIAMS: I don't.

Some states, by the way, have that. They have it built into their-- New York, for example -- every 20 years there is a vote of the people, "Shall we have a constitutional convention?" It was voted down in '97. But it comes up at the wrong time. It's too crude a mechanism. It was voted down in Illinois, because they didn't need a new constitution in Illinois. I think it's a matter that ought to be addressed when it needs to be addressed.

ASSEMBLYMAN BURZICHELLI: One of the things that this Committee is interested in understanding fully is, if we identify areas that we think are areas of potential solution, what barriers may exist within our constitutional parameters, as it sits presently, and then what would the language look like -- as a question would be -- to remove that barrier to achieve a goal of reform?

And I don't want my friend Arthur Maurice to fall off his chair and have a heart attack in the back. But when you talk about the Tennessee formula -- the menu -- that's of interest -- interest, certainly, for us to understand how that works and how that applies and if, in fact, our landscape would warrant such a thing. And I guess in areas -- because of the Uniformity Clause -- in municipalities such as I live, where I'm comfortably nestled between two oil refineries, we're presently not allowed to have a half-a-penny tax per barrel in what's coming throughout, because we are limited. Is that correct? We're not allowed to do that sort of special local tax, because it would not be uniform.

MR. WILLIAMS: As I understand it, that's right, and-- You mean by State statute?

ASSEMBLYMAN BURZICHELLI: Well, by the Uniformity Clause in the Constitution.

MR. WILLIAMS: I know. But you don't mean by local ordinance?

ASSEMBLYMAN BURZICHELLI: Well--

MR. WILLIAMS: You don't mean by town ordinance?

ASSEMBLYMAN BURZICHELLI: Well, certainly by being able to achieve it, whether it be, in the end, by a town ordinance. The municipality presently doesn't enjoy the authority to levy such a tax, correct?

MR. WILLIAMS: Right.

ASSEMBLYMAN BURZICHELLI: And that is the Uniformity Clause, again, that gives us that guidance and those parameters.

MR. WILLIAMS: I'm a little hesitant to-- I don't know the answer to that, I have to say. Because my understanding is that the Uniformity Clause tends to apply only to property tax. And what you're saying is not a-- I think it has a problem of being a special law -- or a local law. But I don't think -- and I apologize. I just don't have a definitive answer -- that the Uniformity Clause, here in New Jersey, applies to nonproperty tax.

ASSEMBLYMAN BURZICHELLI: And in Pennsylvania, I know, certain municipalities -- or municipalities are permitted to have a very small income tax -- local income tax. Does our Constitution prohibit us from allowing municipalities to have those sort of programs in place, or is it silent in those areas?

MR. WILLIAMS: I'd have to reread the income tax clause. I'm not sure. Does it feel like it does?

ASSEMBLYMAN BURZICHELLI: Well, the income tax clause that you reference, as I understand it, calls for any income tax to be dedicated to property tax relief. It doesn't specify or limit who can impose an income tax, I don't think. But, again, it's a quick read on my part.

MR. WILLIAMS: It's a quick read. And you have to take-- One has to take into account the role of judges in interpreting these provisions. One might be able to make an argument that, by affirmatively-- It's an interesting legal argument that works, often times, by affirmatively saying any income tax -- the clause you mentioned -- the revenue is dedicated to those functions. That, by negative implication, eliminates the possibility of any other kind of income taxes. Courts have rendered such

rulings. We've written that it's not a good idea, but they don't necessarily pay attention to what we say.

So I don't-- I'm not-- I just don't feel like I can give categorical answers to those two questions, because I'm just not sure. There's a lot of stuff I'm not sure of.

ASSEMBLYMAN BURZICHELLI: I'm going to close.

And we may, if your schedule permits, have you back at another time, because we're going to be working in a number of areas, not just the Uniformity Clause. And I just want to throw a quick one to you, because it's a curiosity point for me. And, through this morning, I haven't gotten -- haven't just gotten an answer yet. Although, I want to tell you, our Office of Legislative Services are just superb in their reach of understanding.

But under the special -- not allowing private, special, or local laws -- Number 7 says that we cannot have a private, special, or local law that provides for the management and control of free public schools. So does that mean the State can't run a school system?

MR. WILLIAMS: No, but it's been somewhat litigated. I mean, there's a very interesting line of cases that look at -- what is it, management and control? It was changed in its drafting. And I forget exactly how it was changed. But there are court cases that deal with statutes that apply only to certain school districts or localities. And the question is not just whether they only apply to certain school districts, but do they deal with management and control -- if that's what the language is -- of those school districts?

ASSEMBLYMAN BURZICHELLI: And actually, I apologize to the Committee. I'm a little off-focus on that.

MR. WILLIAMS: No, no.

ASSEMBLYMAN BURZICHELLI: That's sort of the prerogative of the Chair. We can go on for hours.

MR. WILLIAMS: It's an interesting question.

ASSEMBLYMAN BURZICHELLI: It takes you many turns.

Let's open the questions up.

And I want you to remind me, if I don't remember, before you leave us today, that I want to hold your book up and let people know the work you've done so, that way -- if this was for the Letterman Show--

MR. WILLIAMS: Thank you.

ASSEMBLYMAN BURZICHELLI: In fact, let me do it now, before I forget to do it.

But for those who are listening, either by cable or by the Internet, this distinguished professor, Dr. Robert Williams, has published *The New Jersey Constitution: A Reference Guide*. And for those who intend to follow these Committee hearings, these kinds of things -- this kind of reading is extremely helpful, because these words are not exclusive to professors and to those in the academic community. These words belong to all of us. And we intend to understand them and debate them accordingly.

I'm not sure where you get this. It's the Rutgers Press. It may only be at Rutgers University -- maybe the football game tailgate. (laughter)

MR. WILLIAMS: For a while it was in Borders and those bookstores, to my great delight.

ASSEMBLYMAN BURZICHELLI: Well, we hope there will be a renewed interest. But I recommend anyone who is paying attention to read--

Let me turn this microphone over for questions from our Co-Chair, and then we'll move around the Committee.

Mr. Chairman.

SENATOR KENNY: Thank you, Mr. Chairman.

It's my understanding -- and Governor Corzine mentioned this in his property tax speech last month, I guess it was -- that one of the things that's on the table, which the Co-Chairman was referring to, is the ability of local governments to tax, say, in other areas that would not require a constitutional issue, just require a general law, such as sales taxes and the issue that the Chairman was referring to.

The UEZ's were not the subject of constitutional law. That was general law, because it had classification of communities that were distressed. And so it wasn't special law.

One of the things I'm interested in -- not the subject of today's discussion -- is having local governments be able to share in some of the taxes that the State currently taxes exclusively.

What I didn't know until today is that the exemptions from taxation may be granted by the Legislature. And that's an exception to the uniform rule. And it's a huge exception. Now, they mention they may not be repealed except for religious, educational, charitable, or cemetery purposes. I suppose -- not that I'm suggesting this. I suppose we could amend the Constitution to amend that -- those automatic exemptions.

MR. WILLIAMS: You'd have to.

SENATOR KENNY: You'd have to.

But speaking informally with OLS, who is sitting next to me-- He tells me there are hundreds of exemptions in the State of New Jersey, as exceptions to the uniform rule -- what people don't pay, or entities don't pay, property taxes at all -- hundreds of them. And it's odd to me that we have this uniform rule, and yet the Legislature can, by general law, exempt entities completely from property taxes. And that's why I get back to my original opening statement.

The issue here to me is, I want to quantify. We have to go to the Constitution to get the home state -- Homestead rebate. We have to go to the Constitution to get the Homestead rebate, but we don't have to go to the Constitution to give 100 percent exemption on property taxes -- which seems an extraordinary loophole to the uniform rule.

Do you have any thoughts on that?

MR. WILLIAMS: I think you have your finger on something that's very important. I believe that it's hundreds of exemptions. I haven't looked at them--

ASSEMBLYMAN BURZICHELLI: Professor, is your light on, so everybody-- (referring to PA microphone)

ASSEMBLYMAN MERKT: Thousands.

MR. WILLIAMS: My red light won't go on, somehow. Am I blocked out?

SENATOR KENNY: I'm sorry. I think mine was on?

MR. WILLIAMS: It's all right.

Yes, I believe it's hundreds of exemptions. I haven't looked at them all. But it's consistent. It's a loophole, I agree. It's consistent with

the pre-1947 circumstance, where you had just the Uniformity Clause -- after the 1875 Uniformity Clause, and nothing at all about exemptions. But the courts upheld exemption statutes. So you had the Uniformity Clause, but the Legislature could grant exemptions.

Interestingly, as you point out, that was carried through in the 1947 Convention. It was very controversial, a lot of debates. There's a lot of material out there on what they considered, and what they were concerned about. But then there was-- It looked-- It's a compromise, where the religious, charitable, educational, and cemetery exemptions were constitutionalized -- made self-executing. The other ones were grandfathered in until changed by the Legislature. They could be repealed. But new exemptions could be passed. It's well worth a careful look and would not require any change in the Constitution. It's just-- It will draw people out of the woodwork. (laughter)

SENATOR KENNY: I'm just going to conclude by looking forward to the research being done -- and I understand it's being done -- to categorize all of the nonuniform forms of property tax benefits, if you will -- or exemptions -- and to somehow compare that as a piece of the property tax burden carried by homeowners. I think that's a very important bit of statistical information that we're going to require.

I thank you very much. And I learned a lot by your presentation today.

Thank you, sir.

ASSEMBLYMAN BURZICHELLI: Thank you, Chairman.

That was a very good point--

SENATOR KENNY: Thank you.

ASSEMBLYMAN BURZICHELLI: --with regard to how that reads on the general law.

We'll move left to right. I think what we're going to find, as we move through here, the one thing that is uniform is that homeowners pay taxes. And everything after that has been moved around pretty good.

We'll start with the distinguished Senator Leonard Lance.

Leonard, if you care to.

SENATOR LANCE: Yes. Thank you, Mr. Chairman.

Thank you for that wonderful presentation, Professor.

If Chairman Burzichelli hadn't held up your book, I was going to hold up your book.

MR. WILLIAMS: Thank you.

SENATOR LANCE: It's a wonderful photograph of the delegates to the 1947 Constitutional Convention on the cover. And it disturbs me that the tie my father is wearing is very similar to the tie I am wearing today. (laughter) And I had thought it was a recent purchase by him as a birthday present to me. (laughter)

SENATOR KENNY: Leonard, where is he?

SENATOR LANCE: He's seated right here in the front row in the middle. I will point out the tie to you later, Senator. (laughter)

A couple of points: I believe you stated in your testimony that if we were to posit constitutional amendments, it would require a three-fifths vote. However, couldn't we, Professor, pass such an amendment in December by simple majority, and then do so again in February by simple majority?

MR. WILLIAMS: Through two different sessions, yes.

SENATOR LANCE: And since these amendments couldn't possibly reach the ballot until 2007, because we've gone beyond the date for getting them on the ballot 12 weeks from now, we could do this cleverly in December, and then again in February by simple majority. And that would reach the people next November.

MR. WILLIAMS: It would be with the end of the session and the beginning of the next session.

SENATOR LANCE: Yes.

MR. WILLIAMS: Very interesting. You're a step ahead of me.

SENATOR LANCE: I think that may become relevant as these Committees reach their conclusion in November, or early December, number one.

MR. WILLIAMS: Absolutely.

SENATOR LANCE: Number two: I would like, through the Chairs -- and I believe the Chairs already know this -- to have an exhaustive analysis by OLS, across the nation, of classification of real estate and uniformity clauses across the nation -- in some sort of consistent fashion -- so that we know precisely what other states do. And I do not believe that's the responsibility of Professor Williams. I think that's the responsibility of OLS. And I make that request.

Professor, I have seen statistics in the newspapers recently that 72 percent of property tax is paid by residential taxpayers, and 28 by business, commercial, and industrial properties. I have also seen a figure of 60 percent by residential taxpayers, and 40 percent by business, commercial, and industrial taxpayers. Do you have any figures in that

regard? And if you do not, Professor, might you direct us where we could find that?

MR. WILLIAMS: I'm sorry, I do not. I've seen those same numbers.

I'm wondering if the Bloustein School at Rutgers -- Jim Hughes -- would have that.

SENATOR LANCE: I'm deeply interested in that, because I've seen various figures, number one. Number two, I think we need to know, as the Legislature -- as members of the Legislature -- where the facts really lie there.

MR. WILLIAMS: That's a pretty big difference between those two numbers.

SENATOR LANCE: It certainly is. And is there a trend? Is it different from 10 years ago, or 15 years ago, or 20 years ago, or indeed 59 years ago, in 1947? Because if there is a significant difference from what occurred at the time the framers were writing the Constitution, then I think that is relevant.

So, through the Chairs, I asked if we could possibly get that information.

Now, is it not true, Professor, that when we speak of the same standard of value, we're really talking about the same standard of value for property taxation purposes within a jurisdiction? And that means within a municipality. And, certainly, that does not apply across the board to the state, in its entirety.

MR. WILLIAMS: Certainly not. That's right: within the taxing district.

SENATOR LANCE: And this seems to me to be an essential point. Some states, perhaps -- and I think Kentucky is among them -- have a uniform rate for school purposes in the entire state. So I don't think we should confuse the public in New Jersey when we talk about the same standard of value. We only mean residential property, commercial property, industrial property, and business property within a single municipality.

MR. WILLIAMS: There is that equalization process that goes on that -- for county tax purposes. But that's not a Uniformity Clause issue.

SENATOR LANCE: That raises another issue that I was going to discuss with you. It is local assessors who assess real estate in New Jersey. And while there is the hope that there will be uniform assessment across the state, surely that is not the case. And, indeed, that is not necessarily required by the Constitution. Is that accurate, Professor?

MR. WILLIAMS: It is, because when the Clause was changed in 1947, from the old requirement that property be assessed at true value to the new language -- the 1947 language of the same standard of value -- it did permit that.

But let me just say that I think it's true that New Jersey has among the most progressive, taxpayer-friendly remedies in the United States to challenge that kind of unequal assessment. And this originated with the Supreme Court in the '50s.

SENATOR LANCE: The *Switzer* (phonetic spelling) case.

MR. WILLIAMS: Switzer. Very--

And when the Legislature reacted with Chapter something-or-other -- I forget what it is -- that gives the taxpayer the right to access to the information about comparative assessments, and all sorts of stuff you can't get in a -- at least as of 15 or 20 years ago, when I looked at it once, taxpayers couldn't get this stuff. But, yes, I-- And, of course, assessment itself is a value judgement.

SENATOR LANCE: And that is done in New Jersey, locally. And in some other states, I presume, it is done at the state level, where there is a single assessment agency. And that does not occur here in New Jersey, for sure.

MR. WILLIAMS: For sure. I don't know about the other states.

SENATOR LANCE: You have suggested that perhaps the Legislature, statutorily -- if there were an amendment to the Constitution -- could, in its wisdom, change the standard of value for certain classifications of real property. A concern of mine would be that that would lessen predictability, if this could be done simply by statute, if the Constitution were to be amended to permit it by statute. And would it not lead to less predictability if the Legislature could change a standard of value merely by statute?

MR. WILLIAMS: Yes.

SENATOR LANCE: And finally, Professor, the changes in the 1870s did not occur, did they, at the Constitutional Convention? They occurred, rather, through the Legislature, with the suggestions then going to the people.

MR. WILLIAMS: That's right.

SENATOR LANCE: And as I understand from my reading of history, there were quite a few -- between 20 and 30 -- Mr. Mazzei might know -- and some passed, but not all passed.

MR. WILLIAMS: All of them passed.

SENATOR LANCE: All of them passed?

MR. WILLIAMS: Yes.

SENATOR LANCE: But were they-- They were not tie-barred, were they?

MR. WILLIAMS: No, they were not.

SENATOR LANCE: Thank you, Professor.

Thank you.

MR. WILLIAMS: There were some recommended to the Legislature that they did not propose to the people.

SENATOR LANCE: Some recommended that the Legislature did not -- didn't propose to the people. There was a commission that recommended to the Legislature. Not all of the recommendations of the commission went to the people. And then they were not tie-barred.

MR. WILLIAMS: That's right.

Peter is here.

The Commission--

Is it okay?

The Commission did not recommend the Uniformity Clause, if I remember.

P E T E R J. M A Z Z E I: That's right.

MR. WILLIAMS: It was-- It arose in the legislative consideration.

The Commission met in 1873, passed on a bunch of recommendations, and the Legislature had to consider them twice.

SENATOR LANCE: Yes.

MR. WILLIAMS: And the Uniformity Clause sprang from the Legislature itself, a self-imposed limitation.

SENATOR LANCE: And I believe there was a great debate in 1947 regarding the continuation or expansion of the Uniformity Clause. And the framers determined, vigorously, that there ought to be the Uniformity Clause continuation. Is that accurate?

MR. WILLIAMS: Absolutely.

SENATOR LANCE: Thank you, Mr. Chairman.

ASSEMBLYMAN BURZICHELLI: Senator, thank you very much.

We're going to bounce to the other House.

Assemblyman Merkt -- you're up, Dick.

ASSEMBLYMAN MERKT: Thank you, Mr. Chairman.

And Professor Williams, thank you very much for your presentation this afternoon. I had the pleasure of speaking with you yesterday by telephone. And we were kind of wandering all over the constitutional field. But I thought it was very informative. And I certainly appreciated your time and your friendly willingness to discuss the issues.

MR. WILLIAMS: Thank you.

ASSEMBLYMAN MERKT: Thank you.

Professor, one of the comments that you made -- and, actually, I didn't intend to question you on this, but your subject matter of discussing the exemption clause kind of got my attention.

Doesn't the current exemption clause protect churches, colleges, hospitals, cemeteries, and other nonprofits from possible property taxation being imposed by the Legislature?

MR. WILLIAMS: Yes, that policy is in the Constitution, and it's self-executing.

ASSEMBLYMAN MERKT: Okay. So that was granted by-- That protection was granted by the people.

MR. WILLIAMS: Absolutely.

ASSEMBLYMAN MERKT: And I guess the question I have for you is, do you think it would really be advisable to divest the people of the power to protect charities from potential property taxation by the Legislature?

MR. WILLIAMS: Oh, I don't personally think that would be a good idea. But I don't-- I understood my invitation wasn't to tell you what I thought personally. But I'm happy to answer the question. I don't think it would be a good idea. I also don't think it would pass. So who cares if it's a good idea or not? (laughter)

ASSEMBLYMAN MERKT: Well, frankly, I'm one of those throwbacks who often looks at the Constitution and says, when you have a power that's reserved to the people in the Constitution, that's usually a good thing rather than a bad thing.

Anyway, let me go back on to your book for a moment. By any chance, would you have brought an extra seven copies of this? (laughter)

MR. WILLIAMS: I brought eight, and I handed them over. And that's all I had. That's all that would fit in my bag.

ASSEMBLYMAN MERKT: I was just hoping, perhaps, we might have enough to forward some copies over to the Supreme Court.
(laughter)

MR. WILLIAMS: Oh, they have it.

ASSEMBLYMAN MERKT: Professor, if the Uniformity Clause did not exist in Article VIII of the State Constitution, what would limit the property tax that could be charged to a particular property owner?

MR. WILLIAMS: The first limitation would be the equal protection doctrine that the New Jersey Supreme Court has read into Article I, Paragraph 1 -- which never mentions equality, by the way.
(laughter) And it's a kind of a standard, rational classification doctrine of judicial review of legislative choices; relatively deferential, despite what you said about the court. It's reasonably deferential to the Legislature. So you'd have-- So, in other words, if there was a certain assessment or different tax rate on my property, and the identical property down the street, or across town, or whatever was either assessed differently or had a different rate applied to it, I would probably have an equal protection challenge. So it would be a comparative analysis -- relational analysis.

I suppose if there was a tax that was imposed that was so extreme that it was -- could be said to be confiscatory, you could make a due process argument under Article I, Paragraph 1, which protects the right to acquire and possess property in fairly clear terms.

There would be a different circumstance if the example I gave you before -- the equal protection situation -- was-- It would have to be pretty egregious, but it might get the attention of the United States Supreme Court, or a Federal judge, under the Federal Equal Protection

Clause. That's usually a complete loser for state tax cases. But there is a case about -- it's probably 15 or 20 years old now. It seems like only yesterday. There, the U.S. Supreme Court did strike down a Pennsylvania practice, where they intentionally overassessed commercial and industrial property, and intentionally underassessed residential property, even though they have the uniformity clause. And most people thought, "Gee, that's just a violation of the state constitution." But it was so egregious that the U.S. Supreme Court said, "That's an intentional equal protection violation," even though it was only economic regulation.

If you were somehow taxed under the scenario you portray-- If you were taxed differently according to a law that -- not local government practice, but a law enacted by the Legislature -- that could be said to be special in nature, or even local in nature -- only applying in one county or municipality -- you would have those clauses that we mentioned before that stop those things.

But basically, without the Uniformity Clause, you wouldn't have this -- what I described in the beginning as a specially focused equality guarantee, specifically for taxation. You'd have to rely on the more general guarantees of due -- enjoyment of property without it being taken without due process, equal treatment, and that sort of thing. And you'd lose most of those cases, would be my prediction. Whereas, now, you could win them with the Uniformity Clause and with the excellent remedies that the Legislature has provided.

ASSEMBLYMAN MERKT: So would I be correct in summarizing your comments to be that, absent a Uniformity Clause, there would be some limitations, but they may not be terribly effective?

MR. WILLIAMS: Not a lot of teeth.

ASSEMBLYMAN MERKT: Another point on the same issue: Do you think there's any logical stopping point for nonuniform property taxation once you throw out the Uniformity Clause? Is there any particular point where you'd say, "Oh, that's enough," or, "That differential is adequate"? There's no rule, is there?

MR. WILLIAMS: The only rule would be a rational classification. And that would be a judicially enforced rule. There's also-- So I think you're right.

There's also, sort of, convention or practice across the country, when you see what-- There are these various groupings of these uniformity clauses. When I looked at this yesterday in the leading book on the topic, I think it had 12 different categories of these things. But if you start to get out there, and start to say, "Well, here's one classification. It's Mrs. Jones' house that's over there in the shadow of a casino in Atlantic City" -- that's a classification that's not going to fly.

If you come back, away from-- That's an absurd example, of course. But if you come back, away, and start to think about classifications that don't make a lot of sense-- I mean, this idea of residential, commercial, industrial doesn't make sense to everybody, I know, in the room. But it could be seen as a logical set of classifications. And that's the typical sort of classification for those states that have it.

I'm trying to think of a less absurd example. Historic property -- that sort of generates a feeling of -- that makes some sense. But there wouldn't be-- You're right. There wouldn't be a rule in place that would stop this, one might call it, *creeping* classification.

ASSEMBLYMAN MERKT: You've really anticipated my next question, which is, could nonuniform property taxation lead to discriminatory tax treatment of, say, business properties?

MR. WILLIAMS: Oh, certainly.

You know, there are two different definitions for *discriminatory*. One is making choices, and the other one is sort of a mean-spirited sort of thing. But all legislation discriminates, in the sense that it classifies. But there's no question that that's what a classified property tax system aims at: usually to tax, I would say, *owner-occupied, single-family* residential at the lowest rate. I bet you, when you see your study, that will be what it shows. But that's almost always the lowest rate.

The rationale for that, by the way, is that's the only taxpayer that can't pass the property tax through to anybody else. Not that it's always economically possible to do that -- to raise rents or raise prices. I'm not saying that. But the owner-occupied, single-family residence has no possibility of doing that. Except, I guess, when my children buy their first house, I'll probably pay the property taxes. But that's the rationale. It's discrimination, certainly.

ASSEMBLYMAN MERKT: You mentioned, also, during your comments that at least one of our neighboring states -- one that actually shares probably a more common border with us than any other -- Pennsylvania -- does have a uniformity clause in its property taxation, and actually in its income taxation, as well.

If neighboring states have uniformity clauses that protect certain groups of property owners, and New Jersey abandons a uniformity

clause, could, for example, higher business taxes lead to having an exodus of businesses and jobs from New Jersey? I mean, we're a small state.

MR. WILLIAMS: It could. I mean, as you know, there are a lot of factors that go into that business location decision -- many, many factors. And one of them is taxation. So I think that's something that the Committee would have to consider in either proposing a self-executing provision like Tennessee -- that actually makes the classifications in the constitution -- or in authorizing the Legislature to make classifications, even by supermajority vote. It would have to be carefully looked at.

ASSEMBLYMAN MERKT: We didn't discuss this yesterday, but I'm going to throw it out to you anyway.

MR. WILLIAMS: It's okay.

ASSEMBLYMAN MERKT: On a personal note, you noted that you're a New Jersey resident. And I'm curious, have you been experiencing increases in your property taxes over the past several years? If so, do you have any idea how much?

MR. WILLIAMS: I don't know, believe it or not. I live in a quite -- what I would call -- *upper-crust* suburb, Haddonfield, New Jersey, where we pay a lot of property tax. And we get a tremendous product for it. I have a mortgage, so it's in my mortgage payment. I think our property taxes actually went down a couple of years ago, a little bit. But I've had two kids in public school. They got-- So it's just personal. I mean, I love the township. I'll pay a thousand dollars a month. My wife's a successful lawyer. I'm not the problem. (laughter) I'm not the problem that you hear from your constituents. We're-- You know, they know who I am. I had a sewer backup on Thanksgiving morning. They were out there. "Mr.

Williams --” they don’t call me Professor, but -- “what can we do for you?” I mean, we have a tremendous local government there. And we pay for it.

ASSEMBLYMAN MERKT: Professor, if your property taxes have indeed decreased, then I submit that you are probably the anomaly.

MR. WILLIAMS: No, I know.

ASSEMBLYMAN MERKT: Because OLS has informed me that the average increase over the past five years has actually been around 33 percent.

MR. WILLIAMS: Ours went back up.

ASSEMBLYMAN MERKT: The question I have for you, as a follow-up to that, would be: What kind of magnitude, in terms of percentage, do you think the people of New Jersey would regard as significant property tax reform? I’m trying to get this idea from our various witnesses, so that we have some idea of what the target should be.

MR. WILLIAMS: What an interesting question. In other words, in terms of a percentage, what they would think merited a good grade for the legislative special session?

ASSEMBLYMAN MERKT: Bingo. (laughter)

MR. WILLIAMS: Wow, that’s a really interesting question. It’s just a guess. And, of course-- And I know you’d like a specific answer. Would they not also take into account if their other taxes went up or not? They might not. Some taxpayers might not. But, gosh, I don’t know, 20 percent, 25 percent. Would that get their attention? Something like that. I don’t know if 10 percent would.

ASSEMBLYMAN MERKT: I appreciate--

MR. WILLIAMS: On the one hand, any reduction would -- even a hold rather than an increase -- would probably strike people as pretty good. But I don't know if 10 would get their attention. Fifteen or 20 would really-- I'm not sure. It's a good question.

And there are certain people that -- once again, my own personal view. To the extent there seems to be a crisis in property tax in New Jersey, my own guess is the crisis is focused on fixed-income, single-family, residential folks; small-business owners. And, of course, I'm not in big business, so I don't really know the numbers. But the stories that you hear about people being taxed out of their homes, and small businesses being taxed out of business are, maybe, solvable without changing the whole State system.

For example, this Florida mechanism that my parents took advantage of-- To the extent one could do that by statute, or maybe a different version of rebates, you might be able to solve part of the problem without any kind of huge structural change. So if a guy like me doesn't get any tax reduction, I'm not-- I know it sounds crazy, but I'm not upset about that.

ASSEMBLYMAN MERKT: Well, with the Chair's permission, I would like to ask you one other question, since we don't often get constitutional experts who come before us.

MR. WILLIAMS: I'm happy to--

ASSEMBLYMAN MERKT: This is something that does relate to property tax, and I just want to throw it out to you. As I think you're aware, State authorized debt has more than doubled in the last five years, and is now over \$32 billion. Do you think that this surge in State debt may

be related to the debt financing schemes that get around voter approval requirement, of Article VIII, for new State debt? Do you think that's how it's happening?

MR. WILLIAMS: I do. I do think so. And it's happening in almost every state in the country. Almost every state has a debt limit clause like we have in Article VIII. And almost every state evades it, most of the time. And the courts are facilitating this by not reading the debt limit provisions strictly, as they were intended. And it's also a product of what I call *scrappy* lawyers, who have invented all of these mechanisms to circumvent the debt limits and to be able to argue in court that these are not general obligation -- State debts. And the lawyers and the courts, and of course the Legislature -- the Legislature is the one that originally, in each of these states, originally proposes this kind of borrowing -- are in this kind of -- I don't want to overstate it -- but unholy triumvirate to conspire, literally, to avoid what the people said: "Quit borrowing money, unless you ask our approval." And the schemes just get more and more amazing. And the lawyers' fees just go up, and up, and up to figure out these sorts of schemes.

I don't know what the next question is, but maybe there's a need for an amendment there.

ASSEMBLYMAN MERKT: Well, it's a final question coming out of this.

MR. WILLIAMS: Sorry.

ASSEMBLYMAN MERKT: In as much as State debt service is now 8 percent of the State budget, and takes--

MR. WILLIAMS: It's what percent?

ASSEMBLYMAN MERKT: Eight percent.

MR. WILLIAMS: Eight.

ASSEMBLYMAN MERKT: And takes moneys that might otherwise be available for a better use. Property tax relief, in my view, would be a better use. Do you think this is an area where the State Constitution could use some tightening up?

MR. WILLIAMS: I do, yes. There are certain areas, of course, where borrowing makes sense. You know, the Turnpike, college dorms certainly -- which are going to be used over a long period of time; that have a long, useful life; they generate revenue. And the cost should be shared by a generation or two of users, like with the Turnpike, and what have you.

The problem is, with projects that don't have a revenue source, that don't generate revenue to pay off the debt, it's you all who have to commit its principle-- Debt service, I take it, includes interest and principle?

ASSEMBLYMAN MERKT: Yes.

MR. WILLIAMS: So you have no instream of income coming in from tolls, or rents, or stadium ticket sales, or anything like-- You know this, I know. And you therefore are stuck, as a legislative body, paying both the principle and the interest. Some of the things are fine. They're a good idea. But maybe you ought to -- have to try to convince the voters that they're a good idea.

ASSEMBLYMAN MERKT: Professor, thank you so much for your testimony and for your answers to my questions.

Mr. Chairman, thank you for your forbearance.

ASSEMBLYMAN BURZICHELLI: Thank you, Dick.

And I'm noticing that Senator Lance is smiling, because he's had the most recent experience in front of the Supreme Court, in the discussion of debt and debt obligations, and had some success with clarification.

SENATOR LANCE: It's the only time in State history where the Court has agreed that there should be a limitation. Is that not accurate, Professor?

MR. WILLIAMS: That's right.

SENATOR LANCE: And some know, I want it chiseled on my tombstone. (laughter)

ASSEMBLYMAN BURZICHELLI: Well, we would hope that that occurrence would not be for a very long time.

SENATOR LANCE: In the distant future. (laughter)

ASSEMBLYMAN BURZICHELLI: Or at least not until we can get a vote out of this Committee.

SENATOR KENNY: They're working on it now.

SENATOR LANCE: The vote out of the Committee, Senator?

ASSEMBLYMAN MERKT: It will be on your desk.

ASSEMBLYMAN BURZICHELLI: This can be a tough group.

As we move, Senator Madden will be next.

But the topic -- and we're sort of trying to stay focused on the Uniformity Clause discussion. But having you here is an advantage for us, Professor. And we mean that not to be patronizing.

MR. WILLIAMS: Thank you.

ASSEMBLYMAN BURZICHELLI: But it's helpful.

And the Assemblyman's comments about how we accumulate debt in the State could take up an entire session to itself. Because as society has changed and State government's role has changed, just as in any business, there's a time to borrow, there's a time to pay back, and-- Although I don't know that we're going to take that up. If we don't rule anything out, then we may not be looking at how we are permitted -- we may ask the people should there be a different mechanism to accumulate State debt when certain circumstances happen to be in place. Of course, the Federal government can run deficits, but they have the advantage of printing the money. So, for them, it's not a big issue. You put another shift on at the mint, there's more money. But we're, unfortunately, limited. We're not authorizing State scrip, presently. Or maybe we should consider doing that.

SENATOR LANCE: God no.

ASSEMBLYMAN BURZICHELLI: That being said, we'll move over to Senator Madden, who will pick up that.

Senator Lance, your picture could be on one of the bills.
(laughter)

Senator Madden.

SENATOR MADDEN: Thank you, Chairman.

Good afternoon, Professor. It's been very, very informative and quite educational. And I look forward to reading your book from cover to cover.

You had made some comments in your last questions regarding the equal protection clause, under the Supreme Court. My experiences with that generally had to do in the world of crime: people's rights and

protections. And to hear you speak about it regarding taxation was rather interesting.

You used the word -- that there would have to be *intent* on government to cause harm to the individual. And it almost seems like it was a very low percentage shot that you would win in trying to prove that. If we were to remove the Uniformity Clause, the people -- the only safety net they would have in potential abuses on the assessment of their ground would be, really, just simply this equal protection clause. Is that what I heard you say?

MR. WILLIAMS: That, and if there was an attempt to distinguish between tax burdens by using a special or local law. That would be vulnerable -- that would be quite vulnerable. But that's true.

But I do want to make one clarification. The intent requirement is a requirement of the Federal constitutional equal protection clause, in the XIV Amendment. The New Jersey Supreme Court has not required an intent element in equal protection cases under the State Constitution. It's an academic point, but it's one way the United States Supreme Court defers to the states -- "We're not going to interfere with what states do, because people think it's unequal, unless they can show it's intentional." It's not that easy to show. The Pennsylvania case you could show, because everybody knew they were doing it -- in this unequal assessment.

In New Jersey's equal protection, it's got a little bit more teeth in it, but it's not very powerful. It's not going to be very powerful if there is any rational reason the Legislature would distinguish between tax burdens.

SENATOR MADDEN: Without a Uniformity Clause, would it be possible for a local governing body to assess, within its municipality, different tax structures, just geographically, within that town -- trying to socially engineer the makeup of their town?

MR. WILLIAMS: Not without authority from the Legislature. There would have to be-- Because the taxing authority of local government is delegated from the Legislature. We don't have constitutional home rule in New Jersey. It's a surprise to a lot of people. But the local governments don't have inherent power that they get from the Constitution. The only power they have comes from this Legislature. So if the Legislature authorized them to do that, they could do it.

SENATOR MADDEN: As we're rowing along, it's my understanding from the testimony that the Uniformity Clause essentially guaranteed that if a house of a certain size, and dimensions, and whatnot in a town was located on the east side, that same town, on the west side, should be taxed pretty much equally. And without the Uniformity Clause, it's my belief that the town on one side could be paying X number of dollars, and a town -- or a house on one side be X number, and a house on the other side of town could be paying much higher taxes and have no protection -- if we remove the Uniformity Clause. Would that be a proper statement?

MR. WILLIAMS: I'm just suggesting that that couldn't happen if the Legislature didn't permit it to happen. With no Uniformity Clause at all, the local government taxation scheme would be governed by State statutory law.

SENATOR MADDEN: So if we remove the Uniformity Clause, to protect the people, we would need a statute that would limit -- or at least control that somehow.

MR. WILLIAMS: You'd have to protect the people yourself.

SENATOR MADDEN: Okay. Thank you.

My next question is regarding the Uniformity Clause. Does that limit us from charging different tax rates to individuals who own, say, investment properties in New Jersey, who live out of state; and they don't live in their residence in New Jersey, but they use it simply either as a Summer home, or for weekly rentals, and investments, and things like that? I mean, they have a home that they're paying property taxes on equal to or less than the full-time resident here. Does the Uniformity Clause prevent us from charging a different tax rate to those individuals?

MR. WILLIAMS: I think it does. The Uniformity Clause is aimed at taxation of property, not the owners.

SENATOR MADDEN: Okay. My next question, if you will stay with me, Professor--

MR. WILLIAMS: Sure.

SENATOR MADDEN: Thank you for your time.

MR. WILLIAMS: Sure.

SENATOR MADDEN: When we talk about the Uniformity Clause, and paying for property taxes, is the State limited on how it collects that money? And I'll try to give you an example. We have a rebate system in the State of New Jersey, whereby people are paying an awful lot of money upfront over the year, and then they're given a check back -- as you heard previous statements from the Committee -- in upwards of \$1,200.

One could argue that we're making those individuals pay upwards of, on average, \$100 to the State for no other reason than to have that money returned to them. And if the State would not collect that money up front, they maybe could use that to buy another prescription or two, or just put it into their living expenses.

That all being said, could the State require, say, an individual who does not get rebates, just make them pay the full boat; but only those that get rebates the option to opt out of paying the rebate money up front?

MR. WILLIAMS: To save the money at the beginning.

SENATOR MADDEN: In other words, we would be-- Or let's take it better. I believe you even brought up the class of individuals who are on fixed incomes with rising property taxes. And you are correct, at least from my district, those are the individuals which I hear the most horrific problems and stories from. And let's cut to the chase. That's why we're sitting here in the summertime, to address that particular dilemma.

That being said, there are -- there's an awful lot that's on the table. And one of the points, that was pointed out about a year-and-a-half ago in the Legislature, was the fact that the individuals who are on fixed incomes, making an income level with a certain threshold that they qualify for every State assistance program-- We could not exempt them from paying their money up front and getting their income -- and getting their rebate check. If I'm saying-- I hope I'm saying this clear enough.

In other words, why should we take somebody that we know is in such dire financial need and require them to pay, on average, \$6,000 -- or \$5,700 a year in property taxes, and then give them \$1,200 back? The position was because the Constitution does not permit us to do that for a

specific class of people, based on income. And it was interesting that the same law that was written to protect these individuals -- and uniformity, and protections, and courts, and all -- is the same document that is preventing us from advancing an initiative to protect them.

But now, that all being said-- That was my belief walking into this room. Maybe about 45 minutes ago, Senator Kenny had made a statement regarding his knowledge now, having gone through today's hearing-- Is it possible that we could write a statute that would permit those individuals to be exempt? And maybe we had some incorrect information about exempting them without -- where we thought we had to change the Constitution?

MR. WILLIAMS: I don't think you could write a--

SENATOR MADDEN: Yes.

MR. WILLIAMS: I don't think you could write a statute to do exactly what you're saying, which would be to say that they never have to pay the money. Once again, they said there would be no math. Instead of \$5,700, they pay \$4,500 -- that's close enough -- to the local government. The local government would have a beef, in a way, there. "Wait a second. Where's our \$1,200?"

The Florida statutory mechanism that I mentioned starts out with a pot of money.

SENATOR MADDEN: Not in terms--

If I may, Professor. Not in terms of the policy versus policy; just from the legality sense. The way the current Constitution is written, does that preclude us from writing a statute that would permit people to opt out of the rebate program today?

MR. WILLIAMS: I think it does.

SENATOR MADDEN: It does.

MR. WILLIAMS: I think it does.

SENATOR MADDEN: Okay.

MR. WILLIAMS: And as you know, with government, a lot of times you have to do indirectly what you can't do directly. But the salvation might be if the local government got the \$1,200, a hundred dollars -- however it was paid, quarterly or whatever -- got the money, and it ran up a lien against the house, or the residence -- the piece of real estate, whatever it is -- we're talking about houses -- and that was collectible when the person either died -- you'd have an age requirement -- either died or sold. Then it was recouped, paid back into the revolving fund. But you have to have something in the pump first to make this work.

SENATOR MADDEN: I understand. Thank you.

MR. WILLIAMS: Yes.

SENATOR MADDEN: Professor, do you know roughly how many states have a uniformity clause in the constitution?

MR. WILLIAMS: I don't. I would-- I just have-- There's a book that has all 50 in them, and I just didn't get through it. But it's a lot of them. Let me put it this way, it's very common. Maybe all 50 states have something about this in the constitutions. And I just don't know the number. It's very common to have a uniformity clause.

SENATOR MADDEN: Okay. My follow-up question to that was going to be, do you know how many of those have exemption clauses or some exemptions to them? Would it be--

MR. WILLIAMS: I bet every one does.

SENATOR MADDEN: Would it be more generic, pretty much -- there's probably some exemptions to every uniformity clause.

MR. WILLIAMS: I think there has to be.

SENATOR MADDEN: Okay.

MR. WILLIAMS: I don't think any state taxes churches, for example.

SENATOR MADDEN: Well, thank you for staying with us so far and taking the questions. You've been very thorough and articulate. And I appreciate your responses. Thank you, Professor.

MR. WILLIAMS: My pleasure.

SENATOR MADDEN: Chairman, thank you for your time.

ASSEMBLYMAN BURZICHELLI: Thank you, Senator.

And you may get the Chairman's award for this Committee hearing, for staying on topic of the Uniformity Clause from beginning to end of your process of questions. And I think it reflects on your State Police credentials and discipline that made you so successful.

Thank you.

Next up, and the last person to bring the first round of questions -- and then there may be a few follow-ups -- or certainly ask Committee members if they'd like to conclude with general statements -- will be Assemblyman Lou Manzo.

Lou.

ASSEMBLYMAN MANZO: Thank you, Mr. Chairman.

And, Professor, thank you very much for-- I feel like I'm in my college days again. I'm learning a lot here.

Before I get into my questions, a lot of the Committee members asked about the clarification on the percentage of taxpayers -- property taxpayers -- citizens paying taxes versus business. But I want OLS, if they could, to clarify within that group of taxpayers that we consider citizenry -- if they could break down the percentage within that group that get the exemptions -- such as the rebate program, the Senior Tax Freeze, the veterans' tax cut -- and then those that are enjoying the exemptions given by tax abatements, also. I think that's an important number, within that number, to have for the Committee.

And by the way, Professor, just so you know, the average school tax in Haddonfield -- I can give you the school tax portion -- last year was about \$5,800.

MR. WILLIAMS: That's sort of the average for all taxes across the--

ASSEMBLYMAN MANZO: You're right in the state average.

MR. WILLIAMS: Worth every penny.

ASSEMBLYMAN MANZO: Let me get into an area-- You talked about uniformity. And I just want to understand, how does uniformity speak to assessment?

MR. WILLIAMS: It prohibits variable assessment ratios. I mean, it's-- So, in other words, in my neighborhood-- And, you know, all of us are underassessed.

ASSEMBLYMAN MANZO: Yes.

MR. WILLIAMS: So we all think we're getting away with something.

ASSEMBLYMAN MANZO: Right.

MR. WILLIAMS: It's very interesting. It's just that the guy down the street is getting away more than I am.

ASSEMBLYMAN MANZO: This is where I'm going. But go ahead.

MR. WILLIAMS: Okay. Well, sorry.

So if we're all underassessed the same amount, that's okay, because it's uniform. And then if the rate -- the rate, obviously -- has to be the same tax rate per thousand, or whatever it is. But these remedies I was talking about -- that were developed in the 1950s by the Supreme Court of New Jersey, and then implemented by statute, I think, in the 1970s -- go to this point: assessment equality.

And so until then, you couldn't get the information. You didn't know. You thought, "Well, heck. My house is worth \$100,000. I'm assessed at \$80,000. What a great deal." The guy down the street is assessed at \$60,000, and you couldn't tell that. Now, if you push on it a little bit, you can get all that information. And that's because the Uniformity Clause won't permit that kind of discrimination, if you could prove it.

ASSEMBLYMAN MANZO: Well, the fact that I believe now-- Let me give you an example of the city I live in, Jersey City. The vacant property in the city is assessed at maybe 25 to 30 percent of its true value, while a regular home would be assessed maybe closer to 70 percent. So my point is, Jersey City couldn't just go out now and redo -- do a spot reassessment of all its vacant property to bring it up to true value. But my question is, by looking at the Uniformity Clause-- We might not need to change where we're getting tax revenues from or say go to businesses. We

might need to just make sure, within the Uniformity Clause, we're at the right assessment level, because that could fix the structure.

For example, if Jersey City was allowed just to bring the vacant property up to the average assessment of a home, they wouldn't have a tax problem in the town for the remaining 20 years.

MR. WILLIAMS: It's interesting. I think I remember a Supreme Court in New Jersey that said you can't tax vacant property at a different rate.

ASSEMBLYMAN MANZO: Not a different rate.

MR. WILLIAMS: At a different valuation, I'm sorry.

What Jersey City is doing might already violate the Uniformity Clause. I'm not sure.

ASSEMBLYMAN MANZO: By not bringing it up to a true assessment?

MR. WILLIAMS: Doesn't have to be true value anymore. It's okay to underassess, as long as you do it equally.

ASSEMBLYMAN MANZO: But it's because it's not equally, then that's--

MR. WILLIAMS: There's an argument there. I have-- One of the things I did not do was to prepare all the court cases on this. They're a little bit mishmashy, if I may say that.

ASSEMBLYMAN MANZO: Would that allow for a spot assessment, then, to correct that problem?

MR. WILLIAMS: If it's to--

ASSEMBLYMAN MANZO: Just to get it up to regular average.

MR. WILLIAMS: If it's to make it equal. If that's what it is, it wouldn't be a spot assessment.

ASSEMBLYMAN MANZO: And that would be constitutional?

MR. WILLIAMS: I think so, but I don't want to give an off-the-cuff legal opinion.

But the problem with spot assessment is if you raise some groups and not--

ASSEMBLYMAN MANZO: Above.

MR. WILLIAMS: --above -- everybody else, that's -- as I understand it.

ASSEMBLYMAN MANZO: On the-- With all the exemptions that we made to the Uniformity Clause over the years -- abatements, these exemptions -- how valid is it in today's world? I mean, have we exempted it to the point it's not a useful law anymore, and it needs to be either dismantled, or reevaluated, or strengthened?

MR. WILLIAMS: I was going to say actually, after what Senator Kenny said, that maybe we don't really have a Uniformity Clause in this state. We say we do, but maybe we don't.

And until we see the numbers, and the data, I don't know how to answer. But my guess is -- if I may guess about it -- the numbers are going to show a lot of property that's exempt, but nowhere near the amount that's paying tax. So I think we probably have a, frankly, sort of Uniformity Clause in the state. It would be very interesting to see what the numbers show -- the two different kinds: the numbers from the constitutionally exempt -- religious, charitable, education, and cemetery,

versus the legislatively exempt -- several hundred categories; I don't know what they are. Then we would know.

ASSEMBLYMAN MANZO: The point I'm getting to -- and I think you've hit on it here -- is that, by the fact of our exemptions, we have, in fact, pushed a higher tax burden on others, which now makes an *ununiform*, if you will, tax system. And the example I want to cite, for example, is in the instance of tax abatements -- property tax abatements. For example, when a municipality does it, and it exempts certain units in a blighted area from future county or school taxes. But what happens, if it's used perpetually -- or perpetually as an incentive to get that, it eventually puts the tax burden, for the school and for the county tax, onto the other property taxes in the area, and disproportionately affects the neighboring communities in the county, of the same municipality, which now have to, because of equalization of ratio values, pay a higher county tax to support the tax abatement municipality A has given out.

My question is: Is that constitutional, under the Uniformity Clause?

MR. WILLIAMS: I think it is, because of the exception that's made later on in Article VIII that specifically authorizes that form of tax abatement for blighted areas. And you wonder-- I can't remember the year that that was -- it wasn't from 1947 -- I think it was '56, or something. You wonder if those considerations were in front of the drafters of that amendment. I hadn't thought of that myself, frankly -- the fancy-pants people call it *externalities* -- that you make somebody outside your district pay for your stuff. I hadn't even thought of that. But it's too bad, I think you'd say, constitutionally, because the Constitution permits local

governments to do that if the property is blighted and it meets these requirements. But it's a very interesting observation.

ASSEMBLYMAN MANZO: The reason I point that out is, I think that there is a cause for us on this panel, in going forward, to have -- and I think it had to be -- there should be State oversight on tax abatements. And here's my-- For that -- for the very purpose here. And for an example, there was an Anderson study done by the DCA, in 2001, on the city of Jersey City and the tax abatement policies which they enacted. They've enacted maybe 300 -- close to 300 tax abatements on what was formally a blighted waterfront, which is now a thriving waterfront. And they articulate it here that, for example, the city could have done better in assessing what was a fair market value for what it would -- the development would impact every year on the rest of the residents, and getting more up front in what infrastructure was needed to maintain the development.

And the reason I'm bringing this up is the fact that the city gave the tax abatement. DCA, on the other hand, gives the city municipal aid. And if the city isn't justifying the better use of its tax abatement policy, and making sure that the recovering revenues from each year from those developments are, in fact, audited and on time -- which they aren't in this case -- that the city -- the State is continuing to fund, endlessly.

MR. WILLIAMS: Why should the city worry about it if they get the money anyway?

ASSEMBLYMAN MANZO: Yes. So my point is, I think there is leverage, at least with the Uniformity Clause and tax abatements, for the DCA to have some oversight. And we should consider, as a Committee, that maybe that be one of the changes: that the State needs to have a say in

making sure audits are complete, and how, in fact, abatements are given out throughout the state when we give exemptions like this. It's just not a free hand in that.

MR. WILLIAMS: Very interesting possibility.

ASSEMBLYMAN MANZO: And I believe -- to your note -- there has been, in fact-- I think a couple of towns within Hudson County did bring that issue to court and prevailed on the fact that the policy was-- And that, again -- why it cries out, I think, for State oversight in that.

The other thing I would ask you on-- Under the-- You talked about equal protection of the law and the Uniformity Clause. But let me throw this out -- the fact that the Constitution speaks to the State providing a thorough and efficient education for its primary and secondary school residents, and the fact that we rely mainly on property taxes to do that, as a state. Is there an argument to be made, under equal protection of the law, that doing that through property taxes is a violation? Because when you do it through property taxes, you're putting the burden more on a lower- or middle-income family than you are on a higher-income individual. And there's a disproportionate requirement for funding of education -- thorough and efficient -- demanded by the State. But it's done in violation of the equal protection of the law.

MR. WILLIAMS: It's a very powerful argument. And it was presented to the New Jersey Court in the original *Robinson v. Cahill* decision. Most people think it's the Abbott litigation, and that's the current incarnation of this litigation. But it started in the early 1970s, in the case called *Robinson v. Cahill*. And there are about six or seven of those that went to the New Jersey Supreme Court.

And it's very interesting, because-- I think this is your question. The argument-- There were two arguments made. One was, this is a violation of equal protection. The students in the property-rich districts get a lot more. You don't have to tax very heavily, and you generate a lot of money. They get a lot of money spent on them. In the poor districts, you can tax the daylight out of the property, and it doesn't generate very much money. And, by the way, you often have more children there. That's a violation of equal protection, equal treatment. That was one argument.

The other argument, though, was -- this is not thorough and efficient; this was a different legal argument. We often do two, three, five legal arguments in one case, as you know. And the New Jersey Supreme Court, in the original *Robinson v. Cahill* case in, I think, 1973, said, "We are going to base our decision-- I mean, you are going to win. The plaintiffs are going to win, but not on equality." And it's turned out, over the years, that depending on how you look at that case -- I know there are varying opinions here about all that litigation.

But California, the same year, in the *Serrano* litigation, based its decision on equality. So you-- But it was constitutional, in California all these years, to have equal spending, even if it isn't very much, as long as it's equal. And after Proposition 13, it turned out not to be very much.

That won't fly in New Jersey, because New Jersey did not-- Like it or not, New Jersey's Supreme Court chose not an equality-comparative relational test -- how do you stack up against everybody else -- but rather a substantive-- What is a thorough and efficient education? What will do to produce citizens in a Democratic society who can participate in the economy of the state? And then, of course, it went a little

bit further and said, “Gee, what would be thorough and efficient? How about the highest spending--” As the litigation went on, it turned out to be the -- “That must be it. They’re the highest spending district in the state.”

I’m way oversimplifying 2,000 pages of judicial decisions over 25 years. But the point is, the equality-comparative legal argument never has been the New Jersey law. It’s been what’s adequate. And a lot of other states have followed that, recently; as well as other states that have said, “You lose. Get out of court.”

ASSEMBLYMAN MANZO: I happen to believe that that decision, and what’s happened ever since that decision, is why we’re all sitting here today discussing property taxes. Because it’s basically-- If you look at the tax bill in New Jersey, 55 percent of the problem is being driven by school taxes. And that’s the issue. You’ve hit on it.

Don’t you think that when the State said that it was our responsibility -- the State’s responsibility -- for the thorough and efficient education, they were also thinking in terms of a revenue stream for that, other than the property tax? Otherwise, how could they?

MR. WILLIAMS: It’s interesting. That was also in the first case. The claim was made, you can’t. Because this is a mandate in the Constitution to the State Legislature that -- this mechanism of using local property tax to pay for education, which is set up through the statutes that the Legislature has passed over the years. It’s unconstitutional; you can’t do that. The State has to do it. And the Supreme Court said, “No. As long as the State makes sure that property taxes are used for education, and supervises that, and makes sure that it’s an adequate education, and makes up the difference out of State money, it’s okay they utilize the mechanism

of local property tax.” But the plaintiffs in that first case took on the whole thing. I mean, they said, “You cannot use property tax.” And the Supreme Court didn’t buy that, and said, “Look, the State can use whatever mix it wants of financing mechanisms.” A little bit of -- nowadays, even a little bit more Federal funds -- or maybe it’s less, I’m not sure -- little -- 5 percent Federal funds. I forget the mix of State and local property tax. But that’s okay. And so that Supreme Court allowed that in the face of an argument that that was not permissible, because the thorough and efficient clause tells the Legislature to make sure that there is-- I’m not sure. Is that what you were asking? I may be answering the question I wanted.

ASSEMBLYMAN MANZO: Yes, I was getting to the point -- is how the Legislature came up with thorough and efficient; and how the Supreme Court, later on, determined that -- even though logic, I think, would assume that when you said thorough and efficient, and State’s responsibility, you would use a State resource to fund it -- and how the Court would turn around and say, “You know what? You’re going to have to do a majority of that through a local or a property tax.

MR. WILLIAMS: I don’t think the Court said you have to do that. The Court said it’s okay if that’s what the Legislature wants to do.

ASSEMBLYMAN MANZO: But did they make an assumption that that’s what the Legislature wanted to do?

MR. WILLIAMS: It was in the statutes. It’s been the mechanism since we had that -- we had a statewide property tax, and all the local districts cheated on their assessments. (laughter) It was 2 percent. No problem. Everybody had the low-- Everybody tried -- it was a race to the bottom. This was in the 1870s, or something -- a race to the bottom to

have the lowest assessments. So you pay the least amount. I mean, what are you going to do?

ASSEMBLYMAN MANZO: Professor, in your estimation-- You're a constitutional expert, I guess you have the gravity of the situation that these special committees are grappling with the property tax problem in New Jersey. How much do you see this as a problem with the Uniformity Clause, or as a problem that can be resolved by switching to another revenue source -- such as the income tax and the sales tax -- to funding education, rather than property taxes?

MR. WILLIAMS: I'm not sure, I have to say. I'm sorry to answer that way, but I'm really not a public finance guy or whatever. But I could say a couple of things. I was never asked a question I couldn't think of something to say.

ASSEMBLYMAN MANZO: Thank you.

MR. WILLIAMS: Part of it is a political assessment that I don't need to tell you about. It would be one thing for a bunch of academics to get around and say, "Hey, there's no problem. The income tax is more progressive than the property tax, which is sort of regressive, but it's not as regressive in New Jersey as some other states because we exempt food and clothing, blah, blah, blah." And, "Hey, just shift it over to the income tax." Well, I don't need to tell you, that's not the way you have to assess it. You've got a lot of very important and valid political considerations to take into account. So that's the distinction there.

Once again, I think if the real crying problem is owner-occupied, single-family residences; maybe senior citizen owner-occupied, single-family residences -- I don't know if you have to hyphenate the whole

thing, but -- that's a certain problem; and small business maybe would be included. You might have some remedies for that statutorily without changing anything in the Constitution. That's what I used to think, two years ago. The more I started to look at this when there were the calls for the Constitutional Convention -- originally Senator Schluter, others-- Then there was the task force that the Legislature created. I used to say, kind of in a blasé way, "Well, this isn't really a constitutional problem." The more I've looked at it, it might be. If these numbers are true-- If either of the numbers, Senator Lance, are true -- if it's 60 percent of the property tax burden is on residential, or 72, whichever one -- that might be enough to make you wonder about whether that's right. And if you can't change it, if you can't ameliorate the problem -- I don't need it personally; I'd love to have it. But if you can't ameliorate the problem for seniors on fixed incomes, who are getting taxed out of their houses, and small business owners -- if you can't do that by statute, maybe you do have to make some constitutional changes. But I would sure think about subconstitutional remedies before I got into changing the Constitution.

It's hard to change it back. You get some unanticipated consequences, is one of the problems, when you're changing the Constitution. You could predict some of the consequences, which are usually good, but the unanticipated consequences are usually bad and nobody saw them coming. So I would -- you may need to do it, but I'd think long and hard about it. I'd examine a lot of statutory options first.

ASSEMBLYMAN MANZO: Finally, summing up, the Uniformity Clause, in treating businesses and cloistered residences the same, I assume was driven, as I read it, from initially a case involving the

unfairness of exemptions to railroad property, because railroads ran through different communities in the state? It was absurd to have the taxes--

MR. WILLIAMS: And that mortgage business.

ASSEMBLYMAN MANZO: And that's how it came about. So in today's New Jersey business climate, which is -- in the Seneca and Hughes report, issued by Rutgers, where we're literally taxing businesses out of state -- I think it would be something to note, for this Committee, that I think in tampering with uniformity and throwing a burden on business at this time -- might not be the road we want to travel at this time. I think when we make these comparisons, which we want to see -- and that's all these other states, what their percentages of -- another consideration we have to make is what their status was compared to New Jersey's. We're at a very poor business climate time, and I don't want to see us, simply because another state moved in the direction, us moving in that direction without considering the conditions that we have here in New Jersey.

MR. WILLIAMS: A scalpel rather than an axe might be--

ASSEMBLYMAN MANZO: Exactly. That's the point.

Thank you very much for your time.

Thank you, Mr. Chairman.

MR. WILLIAMS: Thanks.

ASSEMBLYMAN BURZICHELLI: Thank you, Assemblyman.

And before we work towards closing, I'll ask any other members if they have comments. I know my Co-Chair, Senator Kenny, is going to have a word.

But I want to say to you, Professor, your caution about unexpected consequences is something we live quite often with in

lawmaking. And we haven't quite got all that right yet either. So we thank you for that guidance.

Let me call on Chairman Kenny. Senator, you wanted to make--

SENATOR KENNY: Yes.

ASSEMBLYMAN BURZICHELLI: --closing remarks. And then we'll work to a close.

SENATOR KENNY: Right.

Just to follow up on Assemblyman Manzo's comment about the business community and the Uniformity Clause. I have a similar concern, for the same reasons, with the income tax having a negative effect on the business climate and income earners. So I share that.

On the senior citizens, we have a senior freeze. The late Assemblyman Augustine was the champion of it. And just for point of view of how he got around the Uniformity Clause on that issue is, we-- It's not an easy program to qualify for. You have to live in New Jersey 10 years, and you have to live in the house that you're getting the freeze on for three years, and then you have to meet certain age and income requirements. And then what you will get, ultimately, is you pay your property taxes, and then you get a reimbursement. Then we did not have to go the Constitution. We did that legislatively. So it wasn't a rebate, it was a reimbursement, and maybe we can expand that and be more aggressive.

On the Senator's point about part exemptions on the property taxes -- instead of paying 5,200, you pay your 4,000.

SENATOR MADDEN: Yes, sir.

SENATOR KENNY: And the Constitution doesn't permit partial exemptions. It permits exemptions. So that would be a partial exemption. So-- Which isn't to say we couldn't allow partial exemptions, but it's not in the Constitution. So right now, we can't allow for partial exemptions. They're not permitted. It has to be exempt or not. So I just wanted to bring up those two points.

And something that I think Senator Lance was getting to, and Assemblyman Manzo -- this whole idea of local assessment. I just wonder to what extent that bears on the issue of uniformity as a constitutional issue. That's a question that I would like OLS to look at. Local assessments, every town has its own assessor. Some assessors have more than two towns -- or more than one town. But to what extent does local assessment affect the issue of uniformity? I don't know the answer to that, but that's a question that I would like the Committee to look at.

And finally, just to -- the word *exemptions* are being used at times, as I've learned, differently than they should be used. You start with the Uniformity Clause, which we all know now what that means. And then you have exemptions. And you have two types of exemptions. There are four exemptions in the Constitution, which Assemblyman Merkt was referring to -- religion, education, charitable, cemetery, not-for-profits. They're in the Constitution. And when I was referring to those before, I wasn't referring to remove them from the Constitution. I was trying to make a distinction between those exemptions that are in the Constitution and the exemptions that the Legislature has the right to do. And I'm told that there may be a thousand or more of them. So you have the Uniformity Clause, then you have the exemptions -- constitutional exemptions and

legislative exemptions. And then you have the constitutional amendments that allow for different property tax treatment, such as abatements, rebates, senior citizens, and veterans. Those are not exemptions. They are constitutional amendments. So that's how I break it down.

Now, what I want to know is, I want to know the cost of the constitutional exemptions -- religion, charity, etc. I want to know the cost of those in New Jersey compared to other states, per capita. I want to know the cost of the thousand-plus legislative exemptions that we have given and what they are. And I want to know the cost of the 10 constitutional amendments that we have that provide different property tax treatments to the different entities, individuals, and otherwise. By asking this, I'm not suggesting anything -- that any of these aren't worthy. But unless we know the cost of these items, we don't know what the impact of the Uniformity Clause is. So I think it's very important that we find out the cost of the constitutional exemptions, the legislative exemptions, and the constitutional amendments, and find out what this all means.

To look at the issue of local assessments-- And I know that years ago, the Senator from this district rose the issue of countywide assessments; and he lost his election by trying to go countywide assessments. It was one of the major issues that hit him. So obviously, that's a political issue -- going countywide -- because so many municipalities within a county are so very different.

So I've learned a lot today in framing it in my mind. And I thank you for your time with us. And I hope you will accept the Chairman's invitation and my invitation if we would request you to come back at another time.

Thank you very much.

MR. WILLIAMS: That would be terrific. And let me say that I learned a lot, too. That's my measure for these things. I learned a good deal about this as well. So-- It's good stuff.

Thanks.

SENATOR KENNY: Thank you.

ASSEMBLYMAN BURZICHELLI: Professor, stay with us. We're going to go around and offer an opportunity for our distinguished panel members if they care to close with comments.

Senator Lance, did I notice anything? (no response)

I'll go to Assemblyman Merkt. Did you care to add a comment? We ask -- brevity would be a true sign of--

ASSEMBLYMAN MERKT: Thank you, Mr. Chairman.

Brevity is always the sole of wit, as they say.

I, too, would like to join with the other members who have talked about what a fascinating and really edifying discussion this has been today. And I'm very appreciative of Chairman Kenny's requesting that information regarding the cost. I think that's an excellent idea. You can't know about things -- you can't manage things that you can't measure. So I think that's a wonderful suggestion.

And thanks once again to the Professor for his time, his testimony, and his expertise. I think we're going to be hearing from you again.

As we learned today, the Uniformity Clause has been serving the State for 131 years. And because of those unanticipated consequences -- that term has popped up a number of times today -- it seems to me that

we must think long and hard before asking the people to tinker with it. I fear, personally, that we may be opening Pandora's Box here, not knowing what evils we potentially could unleash if we eliminate the Uniformity Clause.

It's been said that the power to tax is also the power to destroy. And accordingly, I think we ought to be extremely cautious about unleashing unequal property taxation in the State of New Jersey.

And finally, Mr. Chairman, I think it needs to be noted that, as Professor Williams testified, changing the Uniformity Clause would not in any way change the cumulative amount of property tax burden that the people of New Jersey share. It would just shift it around from one group to another. And in that sense, I think it may not be the solution we're all looking for.

Mr. Chairman, I thank you very much.

ASSEMBLYMAN BURZICHELLI: Thank you, Assemblyman.

Senator Madden, care to add anything?

SENATOR MADDEN: Mr. Chairman, I'm fine.

ASSEMBLYMAN BURZICHELLI: Thank you, Senator.

Assemblyman Manzo?

ASSEMBLYMAN MANZO: Yes. Again--

ASSEMBLYMAN BURZICHELLI: Brevity, if we may.

ASSEMBLYMAN MANZO: --thank you, Professor Williams.

I sort of share some of the insight offered by Assemblyman Merkt in saying that I'm not overly convinced that the Uniformity Clause is at the root of our tax problem. I think one of our jobs is to also maintain focus. And I think, again, the fact that 55 percent of our property tax

problem derives from schools, we've really got to get to what is driving that problem.

I again want to urge the Committee Chairmen to get someone before the Committee who can basically give us the parameters of income taxpayers in the state, and the history of that over the course of the last few years, to see who's driving that base of income and where we're losing people and where we're not. All right?

That's it. Thank you.

ASSEMBLYMAN BURZICHELLI: Thank you, Assemblyman.

Professor, I'll add to the chorus here, to say to you, thank you very much. I understand you're going to be traveling, so this Committee wishes you safe travels and enjoyable travels. And when you return, hopefully you would be available to us. Because as is often said, this Constitution is a living, breathing document. And for us to visit it occasionally is not a bad thing. We should be very familiar with this important member of this legislative family, which is this Constitution.

And the one thing I said at the top of our program today, and I say it as we conclude -- the one thing that seems to be uniform is property taxpayers, residential taxpayers seem to pay the tax bill. Not that others aren't paying, but the one thing that's been constant is that the tax bill has continued to grow over the years -- and for a lot a reasons that are good public purpose reasons. But we've obviously reached a point that we have to revisit it and see if we can't make this burden of taxation more equal in its approach, so people can function and do well.

So to those who are listening, to those in this audience, thank you for being here. This Committee's work will resume again, Senator, September 7?

SENATOR KENNY: Yes, sir.

ASSEMBLYMAN BURZICHELLI: Where we will take general testimony on the Uniformity Clause issue from interested parties that have been invited -- municipalities, business and industry. So we'll join their input into your comments and direction today.

You have been very informative, extremely helpful to us. I think you have made some suggestions that this Committee will carry with it as it goes forward. I hope you will follow us with interest, because I believe there will be constitutional questions, that finish from this Summer special session, that we're going to ask all New Jersey to engage in.

So that being said, the Chair moves for a motion to adjourn.

ASSEMBLYMAN MANZO: So moved.

ASSEMBLYMAN MERKT: Second.

ASSEMBLYMAN BURZICHELLI: The Committee stands adjourned.

Thank you all for participating.

(MEETING CONCLUDED)