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Minnesota Homestead Tax Exemption--Discrimination Based on Wealth

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I. INTRODUCTION

Real property taxation has long been unpopular; until recently there has been little scholarly analysis enthusiastically endorsing the real property tax.\(^1\) Property taxes have recently come under renewed attack as the basis for financing public education.\(^2\) However, despite continued criticism, the property tax remains the primary source of tax revenue for municipalities in the United States—in 1970 it accounted for 84.9% of all local tax revenues.\(^3\)

Whereas most of the attacks have been aimed primarily at the tax itself, this note will focus on the implementation of real property taxation, with particular emphasis on the Minnesota homestead property tax exemption. Possible grounds for legal challenge will be suggested, and remedial legislation aimed at curing some of the inequities will be outlined.

The history of real property taxation in the United States has been outlined elsewhere\(^4\) and need not be detailed here. Suffice it to say that the general property tax in the United States is uniquely American,\(^5\) and that the constitutional and legislative development proceeded more or less independently in each state, with certain broad trends emerging.\(^6\) That fact, coupled with inevitable local peculiarities in administration, severely restricts the utility of broad generalization with respect to particular facets of property taxation in other states. Accordingly, this note will focus primarily on the Minnesota situation.

The homestead tax exemption in the United States—a par-

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1. The strength of the feeling is exemplified in J. JENSEN, PROPERTY TAXATION IN THE UNITED STATES 478 (1931). But see Gaffney, The Property Tax is a Progressive Tax (paper presented at 64th Annual Conference of the National Tax Association, Sept. 28, 1971).
4. See J. JENSEN, supra note 1, at 19-47.
5. Id. at 19.
6. Id. at 35-47.
tial rather than complete exemption—was a child of the depression, instituted to help abate the rash of tax forfeitures at that time. However, with few exceptions it remained after this threat to home ownership subsided. Presently, the homestead tax exemption can be found in 11 states. Although there are important variations, the laws are similar in general operation. Available only to heads of families who own and occupy the homestead property, the homestead exemption serves to reduce the tax assessment on the homestead property. The actual amount of the reduction in taxes also varies considerably, depending on the state, the value of the property, the extent of the exemption and the size of the tax levy. With this generalized background, this note will focus on the operation of the homestead tax exemption in Minnesota, and on its younger companion, homestead tax relief.

II. REAL PROPERTY TAXATION IN MINNESOTA

Any attempt to present a readily understandable outline of the mechanics of property taxation in Minnesota, with its proliferation of classes of property, is difficult in itself. However, an additional obstacle is the fact that a dual description is necessary because of 1971 legislative changes in several pertinent statutory provisions. Although most of the changes are formal rather than substantive and tend to simplify the system, it is


8. The states are Alabama, Florida, Georgia, Hawaii, Iowa, Louisiana, Minnesota, Mississippi, Oklahoma, Texas and West Virginia. Kilpatrick, supra note 7, at 114-15. Various articles discuss particular state provisions: Florida—Crosby & Miller, Our Legal Chameleon, the Florida Homestead Exemption: V, 2 U. FLA. L. REV. 346 (1949); Hunt, Taxation Under a New Constitution, 41 FLA. B.J. 388 (1967); Hawaii—Leong & Kamins, Property Taxation in the 50th State, 14 NAT'L TAX J. 59, 63 (1961); Iowa—Crosser, Iowa Tries Homestead Tax Exemption, 28 NAT'L MUN. REV. 200 (1939); Thompson, Homestead Tax Reduction, 22 IOWA L. REV. 633 (1937); Louisiana—Reynard, Louisiana Homestead Tax Exemption—An Unlitigated Constitutional Provision, 10 LA. L. REV. 405 (1950); Mississippi—Arant, Homestead Tax Exemption in Mississippi, 11 Miss. L.J. 167 (1938); Satterfield, Mississippi Provides Tax-Free Homes, 28 NAT'L MUN. REV. 365 (1939); Oklahoma—Logan, Oklahoma Tax Exemption Law, 14 TAXES 79 (1936); Melton, Homestead Tax Exemption in TAX EXEMPTION 188 (1939); Texas—Anderson, Constitutional Aspects of Revenue and Taxation in Texas, 35 Tex. L. REV. 1011, 1019-21 (1957); West Virginia—Thompson, Effects of Property Tax Limitation in West Virginia, 4 NAT'L TAX J. 129 (1951).

possible that they might lead to confusion. Therefore both the recently effected changes and the previously existing system will be described. Since all of the available tables and figures are based on the earlier system, herein designated the "old system," most of the examples given will be based on that system, with reference to the "new system" either parenthetically or by way of footnote.

A. In General

1. Constitutional and statutory provisions

Minnesota has a classified property tax. This is made possible by Article 9, Section 1 of the Minnesota Constitution, which provides for uniformity of taxes "upon the same class of subjects." The statutory provisions governing property taxation are found in Chapters 272 through 284 of the Minnesota Statutes, with pertinent classification provisions in Chapter 273.

2. Assessment—Value

In Minnesota the task of assessment is assigned to designated county officials.\(^10\) Traditionally assessment has been a three step process. First a determination of market value was made.\(^11\) The second step involved the calculation of "full and true value," or adjusted market value, by taking one third of the actual market value.\(^12\) The third step involved computation of "assessed value" by application of the appropriate percentage to the adjusted market value of the property, depending on its classification (as discussed below).

The 1971 changes, which went into effect January 2, 1972, simplify the process by eliminating step two. The "new system" makes actual market value the basis for all assessment.\(^13\) Note that under the new system the assessment figures for any property will be three times as great as under the old system. 

\(^{10}\) See generally MINN. STAT. §§ 273.04–.08 (1969) (as amended).

\(^{11}\) MINN. STAT. § 273.11 (1969) (as amended).

\(^{12}\) MINN. STAT. § 272.03(12) (1969) (repealed 1971). That provision allowed the assessor to apply a uniform percentage of market value. In practice, and by guidelines set by the Commissioner of Taxation, that percentage was 33 1/3%. MINNESOTA DEPARTMENT OF ECONOMIC DEVELOPMENT, MINNESOTA TAX GUIDE 8 (1970).

cordingly, implementation requires a corresponding two thirds reduction of the tax levy rates to maintain the equilibrium.\(^\text{14}\) 

3. Classification

Minnesota’s extensive classification of property is unique. The state has chosen to use property classification to single out such diverse types of property as parking ramps,\(^\text{15}\) petroleum refineries,\(^\text{16}\) and such diverse groups of owners as paraplegic veterans and blind homeowners.\(^\text{17}\) As a result, Minnesota has at least 16 classes of real property, each subject to a different percentage valuation for assessment purposes. The particular classification which is the concern of this note is class 3c—non-agricultural homestead.\(^\text{18}\)

B. The Homestead Tax Exemption

For property tax purposes, land qualifies as a homestead if it is occupied as the owner’s principal place of dwelling.\(^\text{19}\) Once qualified, the assessed value (under the old system) is determined as follows: 25% of the first $4,000 of adjusted market value, plus 40% of all additional adjusted market value (under the new system, 25% of the first $12,000 of market value, plus 40% of the additional value).\(^\text{20}\) For non-homestead residential property the appropriate percentage is a straight 40%.\(^\text{21}\) At this stage the mill levy is applied to determine the tax. Table 1 compares the old and new systems for determination of the mill value for a homestead dwelling with a market value of $24,000.

\(^{14}\) Minn. Laws 1971, ch. 427, § 24 requires such reduction where maximum tax rates are imposed.


\(^{18}\) Id. It is recognized, however, that much of this note’s analysis would apply with equal force to other aspects of the classification system—e.g., urban vs. rural.

\(^{19}\) See Op. Att’y Gen. Minn. no. 795 (1933) [1934 vol.]. Interestingly, for purposes of the property tax relief provision for senior citizens the homestead is defined to include rented dwellings—even in “multi-dwellings.” Minn. Stat. § 280.0601 (1969) (as amended).


\(^{21}\) Prior to the 1971 legislative changes, all property not included in the 14 other classes was placed in class 4 and assessed at 40% of adjusted value. Minn. Stat. § 273.13(9) (1969). However, the 1971 changes place residential real estate in class 3d, still assessed at 40%, and raise the class 4 assessment to 43%. Minn. Laws 1971, ch. 31, art. 22, §§ 6, 7 (Extra Session).
Table 1. Comparison of “old” and “new” systems for mill value determination for $24,000 dwelling qualifying for class 3c (urban homestead) treatment.

<table>
<thead>
<tr>
<th>Old system</th>
<th>New system</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market value</td>
<td>$24,000</td>
</tr>
<tr>
<td>Full and true value</td>
<td>8,000</td>
</tr>
<tr>
<td>(25% x $4,000)</td>
<td>1,000</td>
</tr>
<tr>
<td>(40% x $4,000)</td>
<td>1,600</td>
</tr>
<tr>
<td>$ 2,600</td>
<td>$ 7,800</td>
</tr>
</tbody>
</table>

One mill | $2.60 | One mill | $7.80 |

C. Homestead Tax Relief—Rent Credit

At this point note should be made of the homestead tax relief provisions enacted in 1967. Under these provisions, the property taxes for a homestead are reduced by 35% of the levy (exclusive of charges attributable to reduction of principal or interest on bonded indebtedness) up to $250. Even though this serves to reduce property taxes of homeowners in a manner similar to the homestead exemption, it is mentioned separately since the taxing jurisdiction is reimbursed out of a special state fund for the revenues lost. As will be seen, the funds lost as a result of the homestead exemption are not subject to reimbursement, and the loss is made up for, at least in part, by increased levies on the other classes of property. This will be of significance in establishing direct injury to a potential class of plaintiffs.

At the same time the legislature passed the homestead tax relief provisions, it enacted legislation which allowed renters, under certain circumstances, to claim a rent credit against income taxes of up to $45. In 1971 the amount was increased to $90. The rent credit is intended to mitigate the tax burden on renters and the significance and relationship of the two relief provisions will be examined in a later section.

D. Tax Levy and Collection

The individual tax statement for any given piece of property will be comprised of levies from three prime taxing jurisdictions: the school district, the county and the city or village. Since 1967 the state has not relied on any revenues generated through

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25. Minn. Laws 1971, ch. 31, art. 8, § 6 (Extra Session).
26. See text accompanying notes 151–53 infra.
statewide property taxes. Each of the levies is determined by first dividing the total revenue required by the total assessed value of property in the particular jurisdiction to obtain the mill rate, and then by applying that rate to each piece of property. On a statewide basis, the average property tax dollar breaks down as follows: 56% to school districts, 23.7% to counties, 18.4% to cities and villages, and 1.9% to special taxing districts and townships. The various county treasurers prepare the tax statements, receive payments and distribute the revenues to the respective taxing jurisdictions.

III. THE EFFECT OF THE EXEMPTION—HOMEOWNER VS. RENTER

The purpose of this section is to point out the significance of the difference in tax burdens on homeowners and renters. Part of this discussion rests on the theory that renters bear the burden of the taxes through rents. The assumption will be discussed at length in a later section.

Table 2 gives tax burdens for dwelling units of different values. The calculations are based on the 1971 tax levy in Minneapolis, the most populous city in Minnesota. The additional burdens borne by renters are expressed as a percentage difference. The percentage differences for assessed valuation would be the same for the entire state, and the percentage differences for total tax paid (which considers both the homestead tax relief and the rent credit) would vary slightly, depending on local conditions. Of course, actual dollar differences would depend on the local tax levies. The validity of the comparison of amounts paid after subtraction of homestead tax relief credit and rent credit is subject to debate, and will be discussed in a later section.

As indicated, the calculations are based on the 1971 Minneapolis levy, which was 353.03 mills. The range of tax levies in Minnesota varied between 256.07 and 678.91, with Minneapolis rates representing about the state average.

31. At this point the concept of "dwelling unit" will be dealt with abstractly. The issue of the equivalence of, for example, an apartment in a multi-unit building and a home situated on its own lot will be dealt with infra.
Table 2. Comparative property tax burdens on homestead and non-homestead dwelling units in Minneapolis for the year 1971 (rounded to nearest dollar).a

<table>
<thead>
<tr>
<th>Value of dwelling unit</th>
<th>Homestead</th>
<th>Non-homestead</th>
<th>Additional percentage burden on non-homestead</th>
<th>Homesteadc</th>
<th>Non-homestead</th>
<th>Non-homestead with $90 rent credit</th>
<th>Additional burden on non-homestead (allowing for $90 credit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
<td>(7)</td>
<td>(8)</td>
</tr>
<tr>
<td>$9,000</td>
<td>$265</td>
<td>$424</td>
<td>60%</td>
<td>$184</td>
<td>$424</td>
<td>$334</td>
<td>81%</td>
</tr>
<tr>
<td>12,000</td>
<td>353</td>
<td>565</td>
<td>60%</td>
<td>245</td>
<td>565</td>
<td>475</td>
<td>94%</td>
</tr>
<tr>
<td>15,000</td>
<td>494</td>
<td>706</td>
<td>43%</td>
<td>343</td>
<td>706</td>
<td>616</td>
<td>80%</td>
</tr>
<tr>
<td>18,000</td>
<td>635</td>
<td>847</td>
<td>33%</td>
<td>441</td>
<td>847</td>
<td>757</td>
<td>72%</td>
</tr>
<tr>
<td>24,000</td>
<td>918</td>
<td>1130</td>
<td>23%</td>
<td>668</td>
<td>1130</td>
<td>1040</td>
<td>56%</td>
</tr>
<tr>
<td>36,000</td>
<td>1483</td>
<td>1895</td>
<td>14%</td>
<td>1233</td>
<td>1895</td>
<td>1605</td>
<td>30%</td>
</tr>
<tr>
<td>48,000</td>
<td>2048</td>
<td>2259</td>
<td>10%</td>
<td>1798</td>
<td>2259</td>
<td>2169</td>
<td>21%</td>
</tr>
</tbody>
</table>

a Based on a mill levy of 353.02.
b Before reductions for tax credits.
c Allowance made for homestead tax relief credit of 35% (exclusive of 44.45 mills attributable to bonded indebtedness payments) up to $250.
There is not a great deal of explanation or interpretation required. The figures based on assessment alone, before any reduction for additional tax credits, indicate an additional tax burden on non-homestead property of 60% up to $12,000 market value. At that point the absolute dollar difference maximizes and stabilizes (at $212 in Minneapolis in 1971), and the percentage differences decrease with increased value. The disparity in total taxes paid, even allowing the $90 reduction for rent credit, is even greater. With the values taken, the percentage disparity is greatest again at the $12,000 level, with the non-homestead dwelling paying 94% greater property taxes (absent reduction for rent credit the tax at that stratum is more than double the homestead tax). The absolute dollar difference increases up to the $24,000 dwelling, at which point it stabilizes (at $372 in Minneapolis in 1971).

It is apparent that the greatest percentage disparity exists in the lower ranges of value. Since those who fall into poverty categories occupy the lower value dwellings, the question arises as to whether it follows that the disparities in taxation constitute discrimination based on relative wealth. That issue forms the basis for much of the discussion in the next section.

IV. SUGGESTED LEGAL ATTACK

A. THE CONSTITUTIONAL REQUIREMENTS

The essential constitutional requirements which must be met are those of uniformity and equal protection. Article 9, Section 1 of the Minnesota Constitution provides, inter alia, that "[t]axes shall be uniform upon the same class of subjects . . . ." Amendment 14 to the United States Constitution prohibits denial by a state of equal protection of the law to any person within its jurisdiction.

B. STARE DECISIS—THE OBSTACLES

The chief obstacle to a successful legal challenge to the Minnesota homestead exemption is the case of Apartment Operators' Ass'n v. City of Minneapolis. In that case the plaintiff organization brought an action to enjoin the city from assessing real property for taxation purposes in accordance with the pro-

33. 191 Minn. 365, 254 N.W. 443 (1934), noted in 18 MINN. L. REV. 751 (1934).
visions of the 1933 law enacting the homestead tax exemption.\textsuperscript{34} On appeal from an order dismissing the action, the Minnesota Supreme Court unanimously affirmed on both uniformity and equal protection grounds. Pointing out that the classification was based upon use of the property, the court said that the "difference in use of the property has a fair and substantial relation to that object of the legislature [encouraging home ownership], and there is no discrimination between persons in similar circumstances; it operates equally upon all coming within the respective classes."\textsuperscript{35}

In a companion case, \textit{Logan v. Young},\textsuperscript{36} the court upheld the homestead provisions against the privileges and immunities challenge of a nonresident proprietor. Three years later, in \textit{510 Groveland Ave., Inc. v. Erickson},\textsuperscript{37} relying on \textit{Apartment Operators'}, the Minnesota Supreme Court again sustained the homestead exemption provisions against attack on uniformity grounds.

C. \textbf{Constitutional Standards}

1. \textit{Uniformity vs. Equal Protection: Is There a Difference?}

   The first issue that must be faced in ascertaining constitutional standards is whether there is in fact any difference between the requirements of uniformity and equal protection. Various states take different approaches to the question, but it has been considered the trend to treat uniformity and equal protection requirements as identical.\textsuperscript{38} Although there are conflicting statements in the Minnesota cases, it can be said as a general rule that Minnesota would espouse such an interpretation. In \textit{Reed v. Bjornson}, the Minnesota Supreme Court said that "equality of protection includes uniformity of application to the subject of taxation and that our uniformity clause is not more restrictive than the equal protection clause of the fourteenth amendment."\textsuperscript{39} Accordingly, this analysis will treat the

\textsuperscript{34} The original provision is found in Minn. Laws 1933, ch. 359.
\textsuperscript{35} 191 Minn. at 369, 254 N.W. at 445.
\textsuperscript{36} 191 Minn. 371, 254 N.W. 446 (1934).
\textsuperscript{37} 201 Minn. 381, 276 N.W. 287 (1937).
\textsuperscript{39} 191 Minn. 254, 261, 253 N.W. 102, 105 (1934). Cf. \textit{In re Cold Spring Granite Co.}, 271 Minn. 460, 466, 136 N.W.2d 782, 787 (1966); C. Thomas Stores Sales System, Inc. v. Spaeth, 209 Minn. 504, 514, 297 N.W. 9, 16 (1941).
uniformity and equal protection requirements as interchangeable. Where citations are given referring to one or the other, it will be presumed that application could be made to either.

2. The Requirements as Enunciated by the Courts

There is an overlap of federal and state authority in this area. The Minnesota Supreme Court has authoritatively interpreted the Minnesota uniformity provisions and set constitutional standards. Similarly, there is a large body of material pertaining to equal protection requirements as applied to taxation. This section will first delineate the specific requirements that have been established by the Minnesota Supreme Court, and then examine the broader range of equal protection material.

In Reed v. Bjornson, citing several authorities, the Minnesota Supreme Court set down the basic standards of uniformity:

The classification must not be unreasonable, arbitrary or, as is sometimes said, capricious. It must rest on some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike. . . . It must operate "equally and uniformly upon all persons in similar circumstances." 40

With respect to taxation of property, the Minnesota Supreme Court has held that the classification "must be based on differences furnishing a reasonable ground for distinction," and that a reasonable classification based on the use made of the property would be valid. 41

The application of equal protection standards to taxation presents some additional problems, having been treated as a

40. 191 Minn. at 264-65, 253 N.W. at 107, citing Magoun v. Bank, 170 U.S. 283 (1898).

departure from "orthodox" equal protection application. Rather than applying the "rational classification" approach, the United States Supreme Court has traditionally approached such tax cases on an ad hoc basis, searching for pragmatic answers in individual cases, usually with an attitude of "complete judicial deference to legislative judgment."

Although the United States Supreme Court has rarely espoused the rational classification approach, it has been forcefully argued that such approach is indeed most appropriate. In that the Minnesota Supreme Court has declared that the uniformity and equal protection requirements are identical, and has articulated the rational classification standard of analysis for uniformity cases, this standard will be viewed as a possible equal protection standard, indeed, as the "conventional" standard.

It seems appropriate, however, to consider an additional equal protection standard in this analysis. Characterized as activist in nature, the "suspect classifications" approach views certain classifications as inherently suspect, and applies a more rigorous constitutional standard in analyzing the proffered justifications. Originally applied to racial classification, this approach has gradually been expanded to classifications tending to impair the voting franchise, and to those based on wealth. It has been suggested that application of suspect classification status might ultimately be made to discrimination in prosecution, bail, sentencing and public aid. When a classification is deemed to be suspect, the standard rational classification test is transcended, and stronger, more compelling justification re-

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46. See text accompanying note 39 supra.
47. See text accompanying notes 40-41 supra.
49. See Strauder v. West Virginia, 100 U.S. 303 (1880) (exclusion of Negroes from juries by law).
quired. The suspect classification test is frequently employed in conjunction with the so-called "fundamental interest" test. These two standards and their interaction will be discussed at greater length in a subsequent section.

3. Summary

The following portion of this note will analyze the Minnesota homestead tax exemption provisions in light of the various constitutional standards described above. The uniformity and equal protection requirements will be viewed as substantially identical. The first segment of the analysis will examine whether the classification is indeed rational, and specifically whether the classification is really based on the use of the property. The second part will examine the classification from the perspective of whether it constitutes a suspect classification, and whether it impinges on "fundamental interests."

D. Rational Classification

The first objection to the Minnesota homestead tax exemption is that it is not in fact a rational classification. As indicated above, a three part standard has been enunciated by the Minnesota Supreme Court for judging the rationality of a classification: (1) the basis of the classification must be substantially related to the object of the legislation; (2) there must be a reasonable ground for distinction; and (3) it must operate equally and uniformly upon all persons in similar circumstances.

1. Relation to Object of Legislation

One must first look to the object of the legislation. The homestead tax exemption laws were passed during the depression to avert the high rate of tax forfeitures of owner-occupied homes. This was at a time when tax rates were very high relative to the depressed values of real estate, and relative to the generally experienced diminished earning power of the populace as a whole. The simple fact is that the conditions giving rise to

53. Developments in the Law, supra note 48, at 1076-1107.
54. Id. at 1120-22.
55. See notes 40-41 supra, and accompanying text.
56. This is so widely acknowledged as to be a truism. See, e.g., Kilpatrick, supra note 7; Governor's Minnesota Tax Study Committee, Report of the Governor's Minnesota Tax Study Committee 5-11, 12 (1962); Op. Att'y Gen. Minn. no. 795 (1933) [1934 vol.].
the original purpose of the laws do not exist today. In 1934, during the depression, when most of the homestead exemption laws were passed, property taxes were equivalent to 6.3% of the gross national product, and many home owners faced forfeiture from tax as well as mortgage delinquency. Those conditions no longer prevail. In recent years property taxes equalled only about 3.3% of GNP, less than the pre-depression level. Viewed in relation to its original purpose, the homestead exemption is an anachronism.

Notwithstanding the original scope of legislative purpose, the courts have extended that purpose in sustaining these exemptions. In Apartment Operators' Ass'n v. City of Minneapolis, the court said:

Such classification has a tendency to encourage the use of land for homestead purposes and is in furtherance of a sound public policy. The stability of government is promoted thereby.

Accordingly, the purpose has been extended to encompass a land use policy rather than a tax relief measure, presumably temporary in scope.

It is contended, first, that this statement of purpose does not properly characterize the original intent of the legislature in enacting the homestead tax legislation. However, even if one does accept the purpose of encouraging home ownership, any justification of the classification requires a showing of "fair and substantial relation" between the object of the legislation and the basis for the classification. It can be argued that these laws do not so relate, since they have been ineffective in accomplishing the goal of encouraging home ownership. Several authorities, including a Minnesota Tax Study Committee, have concluded that any effect in encouraging home ownership has been slight.

58. Id.
59. 191 Minn. at 369, 254 N.W. at 445.
60. However, it could be argued in response that the subsequent reenactment of the old classifications and the creation of new classifications after such a judicial statement of intent could signify a shift in legislative intent. The better conclusion would likely be that no specific intent accompanied reenactment.
61. Reed v. Bjornson, 191 Minn. 254, 264, 253 N.W. 102, 107 (1934).
62. Governor's Minnesota Tax Study Committee, supra note 56, at 5–12; Kilpatrick, supra note 7, at 120–21.
Moreover, despite the stated purpose, many of those renting, and virtually all of those in the lower income ranges simply cannot afford to buy their own homes. The Citizens League estimated in 1969 that 54% of the families in the Minneapolis-St. Paul metropolitan area could not afford to purchase even a minimally priced new home and that over 35% could not afford a used home. The result is that they are forced to continue renting and paying the discriminatory tax rates. The fact is that the purpose is limited to encouraging home ownership among those of sufficient financial means. It is not a realistic encouragement for the poor.

2. Reasonable Ground for Distinction

To be valid, a classification "must be based on differences furnishing a reasonable ground for distinction," and one particular reasonable classification would be a distinction "predicated upon the use made of the property." It is a contention of this note that the classification involved in the homestead exemption is not based on the use made of the property, nor on the nature of the property, but rather on the fact of ownership of the property.

The early classifications of property in Minnesota were indeed based on the use made of the property or on the nature of the property. Prior to the 1933 classifications there were three general classes of real property: real estate in which iron ore was known to exist, unplatted real estate, and all other real estate. However, with the passage of the 1933 law, and continuing to the present time, it can be shown that Minnesota in effect has shifted to a dual system which has both classes of property and classes of owners or occupants. It seems apparent that classes such as property containing iron ore deposits, timber land and parking ramps are based on the nature of the property or the use to which it is being put. However, it seems equally apparent that classes such as homesteads owned by

63. The Citizens League is a highly respected "independent, non-partisan educational organization" in the Minneapolis-St. Paul metropolitan area.
64. CITIZENS LEAGUE, ADEQUATE HOUSING IS NOW EVERYONE'S PROBLEM 1-2 (May 5, 1969).
65. Apartment Operators' Ass'n v. City of Minneapolis, 191 Minn. 365, 367, 368, 254 N.W. 443, 444 (1934).
67. See MINN. STAT. § 273.13(2), (8a), (14) (1969) (as amended).
paraplegic veterans, or blind or disabled citizens, or homesteads generally are based on the nature of ownership.\textsuperscript{68}

That precise issue was considered by the Illinois Supreme Court in the recent case of \textit{Lake Shore Auto Parts Co. v. Korzen}.\textsuperscript{69} In that case the court ruled that a newly enacted state constitutional provision prohibiting the taxation of personal property "as to individuals"\textsuperscript{70} violated the equal protection requirements of the Fourteenth Amendment. As interpreted by the court, the provision would have exempted the property of individuals doing business, but not the property of corporations. The court stated:

The new article classifies personal property for the purpose of imposing a property tax by valuation, upon a basis that does not depend upon any of the characteristics of the property that is taxed, or upon the use to which it is put, but solely upon the ownership of the property . . . . [A] State may not, under the guise of classification, arbitrarily discriminate against one and in favor of another similarly situated.\textsuperscript{71}

Clearly a homestead is used as a residence, no more or no less than are apartment buildings, duplexes, or rented houses. Any attempted justification of the homestead exemption cannot, therefore, be premised on use, but rather must be premised on the basis of ownership or occupancy. Whether or not there are "reasonable grounds for distinction" between owner-occupants and nonowner-occupants must necessarily be considered with the third rational classification standard.

3. \textit{Uniform Operation on Similarly Circumstanced Persons}

It is required that a tax classification operate "equally and uniformly upon all persons in similar circumstances."\textsuperscript{72} Accordingly, to justify the homestead exemption on this ground it must be shown that owner-occupants and nonowner-occupants either are not similarly circumstanced, or are in fact treated uniformly.

In discussing the first aspect of this question it is useful to develop the proposition that the nonowner-occupants of residences (renters) do in fact pay the property taxes on their residences through their rental payments—in other words, that the

\textsuperscript{68} \textit{See Minn. Stat.} § 273.13 (7) (1969) (as amended).
\textsuperscript{69} 273 N.E.2d 592 (Ill. 1971), \textit{noted in} 66 NW. U.L. Rev. 888 (1972).
\textsuperscript{70} ILL. CONST. art. IX-A, § 1 (1970 amendment to Constitution of 1870).
\textsuperscript{71} 273 N.E.2d at 598.
\textsuperscript{72} \textit{See text accompanying notes} 40–41 \textit{supra}. 
tax operates on them. Although this seems to be a plausible, common sense conclusion, there has been a great deal written on the subject, and there is considerable disagreement.\textsuperscript{73} It is beyond the scope of this note to undertake an adequate analysis of tax incidence. Nevertheless, a few rather conclusory points may be made. First, such leading experts in property taxation as Professor Netzer have accepted the practical validity of the assumption that residential property taxes are borne by the occupants.\textsuperscript{74} Second, whether or not the entire tax burden falls on the tenant, all writers seem willing to accept the proposition that part (usually most) of the tax burden does so.\textsuperscript{75} It would be well to ask whether, under either assumption, there is any justification (rational basis) for discriminatory treatment.

Thus it seems that owner-occupants and nonowner-occupants are in fact similarly circumstanced. It remains to be determined whether or not they are treated uniformly. The degree of the discrimination is best illustrated by a simplified example, as in the situation where there are two identical homes, each with a market value of $12,000 situated side by side in Minneapolis. The only difference is that home \textit{A} is occupied by its owner, and home \textit{B} is occupied by a renter. The tax on the owner of home \textit{A} for the year 1971 would have been $245.\textsuperscript{76} The


\textsuperscript{74} Netzer, supra note 57 at 45-46. Discussions of the homestead tax exemption itself have acknowledged this point. Consider the following:

In the case of urban property, where the building value is usually so much greater than the site value, the largest part of the tax bill will undoubtedly be paid by the tenant. . . . It is, however, a definite mistake to assume that the tenant does not pay a property tax. In fact, if justice and equality are to be maintained as between homestead owners and tenants, the very nature of the circumstances require [sic] that if one is to be granted exemption the other should be given the same consideration. This particularly applies to urban properties where the dominant values take the form of improvements.

\textsuperscript{75} See the authorities cited in note 73 supra.

\textsuperscript{76} See Table 2 and text accompanying notes 11-25 supra for explanation of the calculations.
tax on the occupant of home B, levied through the rent payments, would have been $565 (or $475 if reduced by the $90 rent credit).\textsuperscript{77} Placed in the simplest context, the renter is in effect being charged a higher tax rate for the municipal services he receives—schools, sewers, police and fire protection, etc. In the recent case of \textit{Amidon v. Kane},\textsuperscript{78} the Pennsylvania Supreme Court took particular note of the discriminatory effect on renters in holding the Pennsylvania ungraded income tax to be unconstitutional on uniformity grounds. The court noted that the practical effect of the tax was to tax the income of renters at a higher rate than home owners.\textsuperscript{79} Pennsylvania has been long noted for its strict interpretation of its uniformity clause,\textsuperscript{80} and it is not suggested that the Minnesota Supreme Court would take the Minnesota uniformity clause so far. However, where the state sets its tax rates so that a renter must pay a higher rate of tax (94\% higher in the example above), the same rationale should be applicable. A further consideration is that, in the example, the reduced rate charged to the owner of house A is made up for in part by increased rates charged on house B and other non-exempt property,\textsuperscript{81} with the result that those paying taxes on non-exempt property are in fact subsidizing those occupying homestead exempt property. In \textit{Lake Shore Auto Parts} the Illinois Supreme Court stated:

It cannot rationally be said that the prohibition promotes any policy other than a desire to free one set of property owners from the burden of a tax imposed upon another set . . . . For the purpose of a tax by valuation upon the ownership of real or personal property, the identity of the owner is a neutral consideration . . . .\textsuperscript{82}

Where there is a greater ability to pay—as in the case of progressive income taxation—justification may be found for taxation at different rates. That and other related issues will be discussed in a later section.

In sum, the Minnesota homestead tax exemption fails all the tests of the rational classification standard: (1) the original

\textsuperscript{77} Id.
\textsuperscript{78} 279 A.2d 53 (Pa. 1971).
\textsuperscript{79} Id. at 61-63.
\textsuperscript{81} The significance of the distinction between the homestead exemption and the homestead tax relief provisions is important in this context. It is discussed in the text accompanying notes 151-53 infra.
\textsuperscript{82} 273 N.E.2d at 599.
object of the legislation is obsolete; (2) the basis of the classification is not substantially related to the purpose of encouraging home ownership; (3) a substantial number of those feeling the brunt of the discrimination are effectively foreclosed from enjoying the benefits of the classification; (4) the classification is not based on use, but rather on ownership or occupancy; and (5) by causing renters to be taxed at higher rates than home owners, the homestead exemption does not operate equally and uniformly upon all persons similarly circumstanced.

E. SUSPECT CLASSIFICATIONS/FUNDAMENTAL INTERESTS

1. Introduction

The generally accepted statement of the suspect classification/fundamental interest test is found in the dissent of Justice Harlan in Shapiro v. Thompson:

[S]tatutory classifications which either are based upon certain "suspect" criteria or affect "fundamental rights" will be held to deny equal protection unless justified by a "compelling" governmental interest.83

It is noteworthy that there are really two tests. The development of the suspect classifications approach from its early emphasis on race to discriminations relating to voting and to wealth has already been briefly outlined.84 Similar development has been witnessed with respect to the fundamental interest approach. Included to date among those interests deemed fundamental are voting, procreation, procedural rights in criminal prosecutions, education and travel.85

It has been suggested that the interaction of the two tests can be best illustrated by visualizing two gradients.86 The first would contain suspect classifications, arranged with the most invidious (presumably race) at the top. The second gradient would contain various constitutionally protected interests, arranged in order of importance.87 Any given issue would be decided by determination of its position on either or both scales.

84. See text accompanying notes 48-53 supra.
86. Developments in the Law, supra note 48, at 1120-21.
87. Id.
The following sections will attempt first to ascertain the location of wealth classifications on the suspect classifications gradient, and then to examine the homestead tax exemption to determine if it is based on wealth how "fundamental" the interests involved are.

2. Wealth as a Suspect Classification

It is not necessary to undertake an extensive analysis of the issue of wealth as a suspect classification. Current literature has creatively and thoroughly discussed the question, and a thumbnail sketch of the development in the area will suffice. It has been explicitly stated, if by way of dictum, that "a careful examination . . . is especially warranted where lines are drawn on the basis of wealth or race . . . ." The first cases, however, where the wealth classifications doctrine entered into the realm of equal protection came in the criminal area. In *Griffin v. Illinois* the United States Supreme Court dealt with the problem of providing free transcripts of trial records for indigent criminal defendants desiring to appeal their convictions. A sharply divided Court held that denial of appeal for failure to purchase the transcript was a denial of due process or equal protection. The next significant step in the area of criminal procedure came in *Douglas v. California*, in which it was held that equal protection required appointment of counsel for indigents for their one appeal guaranteed by California law. In 1966 the concept of wealth as a suspect classification was extended into the poll tax area in *Harper v. Virginia Board of Elections*, in which the Court struck down Virginia's $1.50 poll tax. Justice Douglas' opinion stated that "[l]ines drawn on the basis of wealth or property, like those of race, are traditionally disfavored," and that the fee requirement caused an "in-

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88. See Coons, Clune & Sugarman, supra note 52, at 348, 358-71; Michelman, Foreward: On Protecting the Poor Through the Fourteenth Amendment, 83 Harv. L. Rev. 7, 19-33 (1969); Developments in the Law, supra note 48, at 1124; Note, Discrimination Against the Poor and the Fourteenth Amendment, 81 Harv. L. Rev. 435 (1967).
91. Justice Black's opinion for four members of the Court seemed to be based on both due process and equal protection considerations. Justice Frankfurter's opinion was grounded solely on equal protection. Id. at 20.
vidious" discrimination.\textsuperscript{94} In 1969, in \textit{Shapiro v. Thompson},\textsuperscript{95} the Court found the one year residency requirement for receipt of welfare benefits to be an invidious discrimination, and thus a denial of equal protection. Although the decision was grounded principally on fundamental interest analysis, specific continued reference was made to the fact that the discrimination affected only indigents.

It should be noted that there have been recent cases in which the Supreme Court has declined to apply the wealth criterion. In \textit{Dandridge v. Williams}\textsuperscript{96} the Court upheld Maryland's "standard of need," used to compute AFDC benefits, which related the maximum grant to the size of the family. Finding the classification free from any "invidious discrimination," the Court applied the rational basis test and upheld the classification. In \textit{James v. Valtierra}\textsuperscript{97} the five justice majority, per Justice Black, reversed the decision of a three-judge court, holding that a California constitutional provision requiring community approval by way of referendum for low-rent housing projects was valid. The majority opinion considered only the racial issue. The three dissenters, per Justice Marshall, felt that there was discrimination based on wealth and that the provision should be struck down on that ground.\textsuperscript{98} In \textit{Boddie v. Connecticut},\textsuperscript{99} decided the same term, the Court held refusal by a state to allow indigents access to its courts for the purpose of seeking a divorce to be a denial of due process. In separate concurring opinions, Justices Douglas and Brennan stated that they felt that it was a case of invidious discrimination based on wealth as a suspect classification, and that the decision should have been based on equal protection rather than due process grounds.\textsuperscript{100}

The most recent applications of the theory of wealth as a suspect classification have been in the area of public school finance. In \textit{Serrano v. Priest},\textsuperscript{101} the California Supreme Court held that California's public school financing scheme, which relied heavily on local property taxes, which in turn depended largely on the relative wealth of the various districts, invidiously discriminated against the poor in violation of the equal

\textsuperscript{94} \textit{Id.} at 668.
\textsuperscript{95} 394 U.S. 618 (1969).
\textsuperscript{96} 397 U.S. 471 (1970).
\textsuperscript{97} 402 U.S. 137 (1971).
\textsuperscript{98} \textit{Id.} at 143 (dissenting opinion).
\textsuperscript{100} \textit{Id.} at 383, 386 (concurring opinions).
\textsuperscript{101} 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).
protection requirements of the Fourteenth Amendment. While the first cause of action was brought in the name of public school students in Los Angeles County on behalf of a class consisting of all public school pupils in California, the second cause of action was brought by the parents as taxpayers, alleging that "they are required to pay taxes at a higher rate than taxpayers in many other districts in order to secure for their children the same or lesser educational opportunities." The court held that the parent taxpayers had clearly stated a cause of action since the county tax officials could be enjoined from carrying out the provisions of the law if the law was unconstitutional.

To date there have been at least five decisions in other states following the general lines of Serrano, with numerous actions of a like nature pending. Since the Serrano decision the United States Supreme Court has not addressed itself to the issue, but an appeal has been filed from the decision of a three-judge federal court in the Texas case of Rodriguez v. San Antonio Independent School District. It is likely that a decision in this area will resolve some of the uncertainty as to the status of wealth classifications.

3. The Homestead Tax Exemption—Invidious Discrimination and Fundamental Interests

(a.) Invidious Discrimination

Traditionally, part of the objection to the real property tax itself has been its inherently regressive features. Analysis of the relative burdens borne by home owners with various levels of income shows that the "tax effort" required to produce a given amount of tax revenue through property taxes is much greater for those with lower incomes than for those with higher incomes (who incidentally tend to own more valuable property). Indeed, recognition of this problem was inherent in the recent decision by the California Supreme Court in Serrano.
In holding that California's system of public school financing, which is based largely on the property tax, violated equal protection requirements, the court recognized that the collective effort of a poor district (as compared with the individual effort of a poor taxpayer) to provide adequate education was much greater than that required of a rich district.  

While the real property tax seems to favor the wealthy by placing a lesser proportionate burden on them, the homestead tax exemption requires that non-homeowner taxpayers (i.e., renters) pay a higher rate of tax because of the classification. The result is that non-homeowner taxpayers not only bear a greater burden as a result of the regressive features of the property tax, but that they must pay an absolutely higher rate of taxes. This section of the note will examine the suspect classification doctrine and apply the constitutional criteria, as developed by the courts, to the Minnesota homestead tax exemption.

(1) The Premises

There are two premises upon which the invidious discrimination analysis rests, as applied to the Minnesota homestead tax exemption. The first is that the renters are in effect the ones who pay the taxes on the dwellings in which they reside. This contention has already been developed under the head of "rational classifications," and no further development will be undertaken at this point.

The second premise used to substantiate the claim that the homestead tax exemption constitutes an invidious discrimination based on wealth is that absence of home ownership is an incident of poverty. In the past, when most wealth was held in the form of real property, it might have been more appropriate to state the proposition that home ownership was an incident of wealth. Today, however, when much wealth is in the form of intangible property, and when many wealthy persons live in apartments, the validity of the assertion would be more subject to challenge. Support for the notion that absence of home ownership is an incident of poverty is abundant in the literature.

110. Id. at 599-600, 487 P.2d at 1251-52, 96 Cal. Rptr. at 611-12.
111. Compare the figures in Table 2 supra.
112. See text accompanying notes 73-75 supra.
113. Or, stated otherwise, poor people cannot afford to buy homes.
Examination of the situation currently existing in the Minneapolis-St. Paul metropolitan area reinforces the conclusion. It has been estimated by the Citizens League that 54% of the families in the metropolitan area cannot afford to buy even a minimally priced new home, and that 35% cannot afford a used one. That, coupled with the estimates that over half of those families either cannot afford (or are paying more than they can "afford" by HUD standards) even the "average" one-bedroom apartment, lends strong support to the common sense conclusion that absence of home ownership is an incident of poverty.

Further support for this contention can be found in the 1970 census figures. According to those figures, of nearly 150,000 households in Minneapolis in 1970, about 45% lived in owner-occupied units. However, of those households with incomes under the poverty level, only about 24% lived in owner-occupied units. It is noteworthy that of those persons with poverty incomes, about 25% were over 65 years of age. It is likely that they account for many, if not most, of the owner-occupied units in that category. It is probable, therefore, that if one excludes retired persons from the analysis, it will be found that the home ownership percentages for those households with poverty level incomes would be small indeed.

(2) The Effect of the Homestead Tax Exemption

The effects of the homestead tax exemption have already been discussed. To recapitulate briefly, in the example of identical $12,000 homes, one occupied by the owner and the other by a renter, the renter was required to pay property tax at a rate 94% higher than the home owner. Because of the home-

114. See, e.g., NETZER, supra note 57, at 40, 54; HATFIELD REPORT, supra note 57, at 7-10.
116. AD HOC COMMITTEE FOR A WORKABLE HOUSING POLICY, A CRITICISM OF MINNEAPOLIS' 1969 WORKABLE PROGRAM AND HOUSING, URBAN RENEWAL, AND CODE ENFORCEMENT POLICIES WHICH IT REPRESENTS 6-7 (June 18, 1970) [hereinafter cited as Ad Hoc Report].
117. UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, 1970 CENSUS OF POPULATION, GENERAL SOCIAL AND ECONOMIC CHARACTERISTICS, MINNESOTA at p. 25-310, Table 90 (1971) [hereinafter cited as GENERAL SOCIAL AND ECONOMIC CHARACTERISTICS].
118. Id.
119. Id.
120. See Table 2 and text accompanying notes 31-32 and 76-77 supra.
stead exemption the renter is charged at a higher rate than home owners for identical municipal services. Yet, as illustrated above, renters have proportionately less ability to pay. Moreover, it is ironic that in many cases families cannot afford to buy even minimally priced housing, yet are forced to pay even higher property taxes on rental units that are either substandard or which rent for more than they can afford. Moreover, it has been shown that those in non-exempt property are required to subsidize those in homestead property. When considered in light of the foregoing discussion, it is apparent that the poor are forced to subsidize the rich.

(b.) Fundamental Interests

Although the keystone of this discussion has been the invidious discrimination based on wealth, it is appropriate to engage in a brief discussion of the interests involved.

(1) Education

Ever since the historic decision in Brown v. Board of Education commentators have ranked education among those interests deemed fundamental. Indeed, this assumption has been a vital part of the recent school financing decisions. In Minnesota, renters are required to pay taxes at a higher rate for identical educational services (and the payments are indeed significant—56% of every property tax dollar goes to finance education). In Serrano the parents as taxpayers alleged that they were “required to pay taxes at a higher rate than taxpayers in many other districts in order to secure for their children the same or lesser educational opportunities.” The only difference in Minnesota is that renter taxpayers must pay taxes at a higher rate than their neighbors who own their own homes.

121. Figures cited in Ad Hoc Report, supra note 116, at 7 indicate that 94.7% of Minneapolis' substandard units are occupied by low and moderate income people—not a surprising statistic.

122. See text accompanying notes 81-82 supra. Also, see text accompanying notes 151-53 infra for a discussion of the distinction between the homestead exemption and the homestead tax relief provisions.


125. MINNESOTA DEPARTMENT OF ECONOMIC DEVELOPMENT, MINNESOTA TAX GUIDE 6 (1970).

126. 5 Cal. 3d at 618, 487 P.2d at 1265, 96 Cal. Rptr. at 625.
(2) Municipal Services

In recent years there has been an increasing awareness of a fundamental interest in equal municipal services. The Serrano opinion dealt strictly with the educational rights involved, being careful to express no views on the applicability of the suspect classification rationale to other tax-supported public services. The court did, however, take note of the Fifth Circuit decision in Hawkins v. Town of Shaw, which held that discrimination on the basis of race by a municipality in providing municipal services was a denial of equal protection. Plaintiffs in that case had originally alleged discrimination on the basis of wealth as well but dropped that claim on appeal. The court noted, however, that classification based on wealth is suspect, just as is classification based on race.

As with educational services, Minnesota renters are not necessarily provided with inferior services, but they must pay more money for the same services. In Minnesota the issue is wealth more than race, but in fact it is frequently difficult to separate the two. 1970 census figures show that about 68% of the white households in Minnesota live in owner occupied units, whereas only about 38% of the black households enjoy the same benefit. Stated otherwise, 62% of the black households in Minnesota are taxed at the higher rate because they do not qualify for the homestead exemption. The race factor is inexorably tied in with the poverty factor: the same figures show that 23% of all black households in Minnesota have incomes below the poverty level, and of these, 78% live in rented units.

(3) Housing

The other side of the fundamental interest coin in Minnesota is the interest in housing. While renters are being required to pay a higher rate of tax for their municipal services, their hous-


128. 5 Cal. 3d at 614, 487 P.2d at 1282, 96 Cal. Rptr. at 622.

129. 437 F.2d 1286 (5th Cir. 1971).

130. Id. at 1287 n.1.

131. General Social and Economic Characteristics, supra note 117, at p. 25-249, Table 58.

132. Id.
ing costs are being pushed up by the differential taxation. Accordingly, it can be asserted that the classification affects their fundamental interest in adequate housing.

This assertion flies in the face of one of the justifications frequently offered for differential taxation, viz., that cost advantages inherent in apartment living make rental costs lower by their very nature. However, it seems as if this justification is based on circular reasoning. There is abundant support for the contention that the discriminatory tax system has resulted in a situation in which relatively high rents are charged for units of relatively low quality (and value). The value of the "average" house in Minneapolis is $19,632.133 The 1971 property tax on a dwelling of that value, if rented, would be about $925, or roughly $77 per month. Based on statistics which show that property taxes comprise about 28% of the average monthly rent bill in Minneapolis,134 a dwelling with that "average" value could be expected to cost about $275 per month to rent—an amount beyond the financial means of the "average" renter. Those statistics, juxtaposed with the estimate that 54% of the Minneapolis-St. Paul metropolitan area residents cannot afford even a minimally priced new house, and 35% cannot afford an old one,135 lead to the unavoidable conclusion that the only choice for lower income families is to accept low quality, low value rental housing. There is nothing inherently less expensive about rental over ownership.

It is expected that such a conclusion would be strengthened by examination of data relating to the percentage of income for property tax payments for various income groups. However there does not appear to be any data giving that information for Minnesota. The Hatfield Report did present the following data on the relationship between income and property tax for married persons in Minnesota who own and occupy their own homes:136

133. General Social and Economic Characteristics, supra note 117, at 25-310, Table 90. The census data are compiled in Metropolitan Council, Twin Cities Metropolitan Area Municipal Housing Profile 17 (1971).


135. See text accompanying note 64 supra.

136. Hatfield Report, supra note 57, at III-36. Appendix A contains the detailed statistics for all counties and selected cities and villages. Those data place Minneapolis above the state average, but it is expected that the percentage differentials would carry over for Minneapolis renters as well.
If one takes the generally accepted standard of 25% as being the proportion of monthly income which a family can “afford” to devote to housing, it is possible to arrive at some comparable figures for renters. Using such a standard, a family with $6,000 income can “afford” $125 per month rent (whether they could find a suitable rental dwelling for that price, especially with children, is questionable). Using .28 to determine the property tax paid, such a family would pay $420 in property tax ($125 x .28 x 12), or 7% of income, as compared with 3.21% in the Hatfield Report statistics. Although such data are not available for renters, it is expected that the pattern would hold up throughout the range of incomes.

The constitutional status of housing as a fundamental interest is uncertain. In James v. Valtierra, the Supreme Court declined to specifically denominate the interest in adequate housing as being fundamental. The Court took a similar approach in the recent case of Lindsey v. Normet when it refused to sanction a constitutional right to withhold rent, while simultaneously striking down the requirement that bond be posted by the tenant in an amount equal to twice the amount of the rent on the ground that it discriminated against the poor.

(c.) No Compelling State Interest

Along with the search for invidious discriminations and fundamental interests, courts have generally looked for “compelling state interests.” This section will discuss various potential state interests offered in support of the homestead tax exemp-

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137. AD HOC REPORT, supra note 116 at 6–7; CITIZENS LEAGUE, ADEQUATE HOUSING IS NOW EVERYONE’S PROBLEM 1 (May 5, 1969).
138. See note 134 supra and accompanying text.
141. Id. at 4191.
tion to discover whether they are “compelling” or even “ra-
tional.”

(1) Ability to Pay

One of the classic arguments used to support any tax is ability to pay.\textsuperscript{142} In light of the foregoing materials, there is little to be said in support of the contention that the burdens of the homestead exemption fall on those who have the greater ability to pay. It is true that business property absorbs part of the burden, and it is arguable that there is a greater ability to pay inherent in business operations. But it has been shown that as between home owners and renters, all rightly classed as residents, the burden falls on the renters, the group with proportionately less ability to pay.

(2) Benefit

Where one class of individuals derives more governmental benefit a higher tax rate may be justified.\textsuperscript{143} Under the prevailing circumstances it seems clear that renters are paying substantially higher taxes for precisely the same benefits received as those qualifying for homestead exemptions. As indicated above, in \textit{Hawkins v. Town of Shaw}, it was held that it was a denial of equal protection for a municipality to provide inferior municipal services to a sector of its population which constituted a racial minority.\textsuperscript{144} The court intimated that the same “suspect classification” treatment would apply if the discrimination were based on wealth. Similarly, it is indefensible to charge a higher rate of taxes for the same municipal services, based entirely on property ownership.

(3) Purpose—Encourage Home Ownership

This particular aspect of state interest has been discussed in an earlier section,\textsuperscript{145} and a brief recapitulation will suffice. In response to the contention that one of the valid state interests is encouragement of home ownership, two points can be made. First, any effect that the homestead tax exemption has had in

\begin{itemize}
\item \textsuperscript{143} \textit{Id.}
\item \textsuperscript{144} 437 F.2d 1286 (5th Cir. 1971).
\item \textsuperscript{145} See text accompanying notes 61-64 supra.
\end{itemize}
increasing the growth of home ownership has been insignificant. Second, because of the economic realities of poverty, substantial segments of the population cannot realistically hope to purchase homes. For them, the state interest is not a genuine encouragement. They are effectively foreclosed from the benefits of the exemption.

F. Can the Homestead Tax Exemption be Justified?—Arguments in Favor

In addition to those arguments discussed under "state interests" (ability to pay, benefit and purpose), it is anticipated that other justifications might be offered in support of the homestead exemption.

1. Relative Effect

The relative effect argument introduces certain complexities into the analysis. It can be argued that the difference between the tax that is presently levied on, for example, a large apartment building and the tax that would be levied if the building qualified for the homestead tax exemption is minimal. For example, it can be shown that the 1971 property tax on a $120,000 home (or other building qualifying for the exemption) in Minneapolis would have been $5,186. The tax on a 10 unit, $120,000 apartment building in Minneapolis would have been about $5,648—only $462, or 9% more. Accordingly, the argument would go, the tax savings would have been only $46 per unit, not really a significant amount.

However, it is unrealistic to compare the 10 unit building with a $120,000 home rather than with dwellings with similar per unit costs. The 10 unit building is an aggregation of ten $12,000 units and should be so treated. Each unit would have paid a tax of $565 (or $475, allowing for rent credit of $90), which is, taking the second amount, $230, or 94% greater than a $12,000 dwelling unit qualifying for the homestead tax exemption.

Such a contention is consistent with, if not required by, the previously stated requirement that the classification operate "equally and uniformly upon all persons in similar circumstances."146 One example of similarly circumstance persons can be found in condominium or cooperative apartments. Min-

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146. See notes 40-41 supra and accompanying text.
Minnesota has a statute providing for homestead exemption treatment of these apartments. Likewise, the homestead definition used in Minnesota’s property tax relief provisions for senior citizens specifically includes rented dwellings in multiple-unit buildings. To meet the requirement of uniform operation of the law, each unit in a multiple dwelling building should be compared with other dwelling units having similar per unit values.

2. Mitigating Features

It can be shown that there are provisions tending to mitigate the adverse effects on renters. The Minnesota legislature passed rent credit legislation in 1967 which allows renters, under certain circumstances, a direct tax credit of up to $45; in 1971 the maximum amount was increased to $90. While the credit does benefit the renter, it does not compare in scope with the simultaneously-passed homestead tax relief credit in the amount of 35% of the property tax (already calculated at a lower rate), up to $250. So, while the credit did provide some relief for the renter, the gap in actual taxes paid widened as soon as the credit passed. In short, the credit does nothing to mitigate the degree of the discrimination.

3. Injury

There are some difficult conceptual problems in this area as well. The first relates to the issue of whether actual injury has been shown. In support of the tax it could be argued that if a party challenged the exemption the only effect would be for another to lose the benefit, rather than for him to gain some part of it. In other words, it would be argued that an equal protection claim cannot be made merely on the ground of benefit accruing to another. The reply is that those “not benefiting” from the exemption are indeed being injured by it. The rational.

150. Minn. Laws 1971, ch. 31, art. 8, § 6 (Extra Session).
151. While not standard constitutional doctrine, such an approach has been advanced. The problem is discussed in Coons, Clune & Sugarman, Educational Opportunity: A Workable Constitutional Test for State Financial Structures, 57 Calif. L. Rev. 305, 408 & n.279 (1969).
ale is that the homestead tax exemption weakens the tax base, and the reduced assessments must be compensated for by a higher tax rate on nonexempt property. Nonexempt taxpayers are indeed being injured in that they are in fact paying the taxes that the exempt taxpayers are being relieved of. It is recognized that if the tax base for a given taxing jurisdiction were comprised almost exclusively of homestead property, or almost exclusively of non-homestead property, that the aggregate disparity of burdens would not be too severe. In Minneapolis, however, it is expected that the aggregate impact would be significant. Although figures indicating total market value of homestead property relative to non-homestead are not presently available, there is a rough numerical equality of owner-occupied and rental dwelling units in Minneapolis. Although the precise additional burden borne by occupants of rented structures is difficult to ascertain, it seems clear that it is significant.

The argument does have some validity with respect to the homeowners tax credit provisions. By these provisions the property tax on a homestead is further reduced by 35%, up to $250. However, in this case lost revenues are replaced by state funds derived from the sales tax rather than directly by higher levies on nonexempt taxpayers. While it may be contended that it is still unfair to give the wealthy an additional bonus of up to $250 (i.e., a lower rate of taxes), it is true that the lower rate is not directly funded by those not owning property. Additionally, there is a further mitigating factor: the rent credit. By virtue of the rent credit renters do receive a direct “bonus,” although not nearly so great as property owners. Before 1971, when the credit was limited to $45, it represented little more than the amount of tax savings realized by the homeowner by virtue of the state income tax deduction allowed for the property taxes he had paid. However, the 1971 increase to $90 does give the rent credit greater value; but is is still significantly less than the homeowners property tax credit of up to $250.

In summary, the homestead tax exemption definitely is detrimental to those not qualifying for the exemption, since those qualifying are allowed to pay a lower rate of taxes at the direct expense of those not qualifying. Although the inequality is ac-

152. General Housing Characteristics, supra note 117, at p. 25-15, Table 8. The census information is compiled in Metropolitan Council, Twin Cities Metropolitan Area Municipal Housing Profile 17 (1971).

153. See text accompanying notes 22-23 supra.
centuated by the homestead tax relief provision (even balanced against the rent credit), the detriment is not as direct and does not present quite as appealing a case for unconstitutionality on the grounds of equal protection.

4. Questions for the Legislature—Remedy

Another objection might be termed the “political question argument.” That is, this is a problem uniquely legislative in nature and the solutions should be sought there, not in the courts.154 The simple fact is that the legislature is highly unlikely to do away with such preferential tax treatment of its own volition. One reason is the substantial percentage of homeowners in Minnesota—it would be politically unattractive to do away with a tax exemption benefiting a significant portion of the population.155 Another factor is that renters simply are not aware of the degree of disparity of treatment. They have a notion that good rental housing is expensive, but they simply do not know how much in taxes is tucked away into the monthly rent bill. As a result, they do not represent a strong political force working for change. In short, the system is well entrenched with little real hope of change without judicial action.156

Another very real concern voiced regarding the desirability of judicial action in traditionally legislative areas centers on available remedies. The question arises: What can a court do to remedy the injustice? It appears that by far the most desirable alternative is “remand to the legislature.” Just as in cases of school desegregation,157 legislative reapportionment158 and school financing,159 there is no need to invalidate past actions taken under the existing scheme or to immediately implement a constitutionally adequate scheme. The existing system


155. Statistics indicate that 71.5% of Minnesota dwelling units are owner-occupied. GENERAL HOUSING CHARACTERISTICS, supra note 117, at p. 25-8, Table 2.

156. The truth of the proposition was recognized even when homestead exemptions were quite new, in Melton's statement that “there is not the slightest chance that the exemption will be repealed.” Melton, Homestead Tax Exemption in Tax Exemption 188, 200-01 (1939).


should be allowed to remain in effect until the legislature is given an opportunity to act. Although legislative inaction under such circumstances does not seem a likely probability, a judicially imposed remedy for an invalid tax classification would certainly seem to be much more easily formulated than in, for example, legislative reapportionment cases. An order enjoining classification of homesteads under the law would have the virtue of equalizing the tax burden rapidly.

5. Analogy to Federal Income Tax

Another argument might point out some of the similar inequities in treatment under the federal income tax laws. It can be shown, for example, that the interest and tax deductions allowed homeowners under the federal laws constitute preferential treatment, whereas renters are not given any special deductions. It might be argued that the express discrimination in the property tax structure by way of the homestead exemption is therefore justified. There are several responses to this argument. First, the existence of the standard deduction diminishes the effect of the discrimination in the federal tax, particularly at the lower levels of income. Second, in theory at least, the federal income tax is “progressive,” whereas the Minnesota homestead tax exemption has been demonstrated to be regressive to the extent of charging absolutely higher rates to renters on the basis of non-ownership of property. Third, the homestead exemption gives a “multiplier effect” to the features of the federal deductions. Whereas the federal deductions already allow homeowners to reduce their property taxes by a certain percentage (or, stated otherwise, reduce their income taxes by a percentage of their property taxes), the homestead exemption exacerbates the situation by increasing the burden on the renter—who already derives no benefit from the federal deductions.

V. PROPOSED LEGISLATIVE REFORM

There are several reasons why ultimate resolution of the homestead exemption problem by the legislature would be the most desirable alternative. First, there are difficult policy questions involved: e.g., whether the other classes of property should continue to enjoy preferential (or suffer discriminatory) treatment; whether the state should bear some of the redistributed burdens; how it can be required that tax savings be passed on to occupants of rental dwellings. Another important aspect is
the difficulty involved in fashioning a satisfactory remedy. As suggested, the alternative of "remanding to the legislature" would be a logical choice to minimize the remedy problems.

The range of legislative alternatives is, of course, wide. One obvious alternative would be to simply eliminate the classes of property and tax it all similarly, while at the same time eliminating the associated tax credits. A less sweeping proposal would call for a sharp reduction of the number of classes of property. The Hatfield Report recommends establishment of two classes of property. Class I would include residential, seasonal-recreational residential, and agricultural real estate; Class II would include business, commercial, and industrial real property and business personal property. All property would be valued at 100% of its market value, and then, for tax computation purposes, Class I property would be reduced to 50%. However, that recommendation would place any apartment complex with more than three units into the business category. In light of the foregoing discussion, it is apparent that this aspect of the proposal must be rejected—it is imperative that any residential property be viewed as an aggregate of individual dwelling units. Accordingly, all residential units would properly fall within the scope of Class I if the Hatfield Report recommendations, as modified, were to be adopted.

The Hatfield Report does, however, present some alternative relief provisions for rented housing. It suggests first that the Minnesota tax laws be revised to allow renters to deduct the portion of their rent which represents property taxes. It suggests also that the rent credit be abolished and replaced with a rent credit aimed at relief for low income taxpayers. Although such a plan does seem to address itself to the most serious aspect of the problem, it preserves the inequality of treatment by maintaining the different tax rates.

The alternative which would probably cause the least disruption would be to accord all dwelling units, whether renter or owner-occupied, the present homestead treatment. As previously pointed out, this would not be a drastic departure from

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161. Id. at II-105.
162. Id. at II-104.
163. Id. at II-107.
164. Id. at VII-9 to 12.
165. Id.
existing doctrine. The legislative scheme presently according senior citizens tax relief does extend its definition of homestead to include rented dwelling units. However, this would seem to be the least desirable method of eliminating the inequality of treatment, since it would preserve the unwieldy structure of multiple classifications, while simultaneously shifting additional burdens to non-exempt property.

Another possibility is the suggestion made by the Citizens League that assessed valuation be expanded to take into account valuation per capita, income per dwelling, the number of occupants per dwelling and income level of the occupants. Although such a practice would undoubtedly introduce additional complexities into the system, it would have the virtue of at least being more equitable. Additionally, elimination of the complexities of the current system would probably result in an overall simplification, even with a new system of assessed valuation.

Whatever method of implementing reform is chosen, it would seem desirable that certain legislation should accompany the equalization enactments. First, as part of the residential tax rate equalization legislation, there should be a provision requiring that the savings from the resultant roll-back in taxes on rental dwelling units be passed on to the tenants. Second, it would seem desirable as a policy matter to impose a limit on the property tax level and make up for the possible revenue lost by additional state taxes to be paid to the property taxing jurisdictions. This would have the dual virtue of softening the impact on those presently enjoying benefits while simultaneously equalizing the burdens.

The recommendations contained in this section are suggestive, not dispositive. However, they do illustrate potential solutions to a problem of discrimination that cannot go unsolved.

166. See text accompanying notes 147-48 supra.
169. It is recognized that this might be initially inequitable to the apartment owner (or more probably the duplex or fourplex owner) who has absorbed some of the tax increases over time. However, it seems certain that the net effect would be favorable, especially in that it would prevent windfall profits for apartment owners in areas where supply and demand factors could not be relied upon to immediately push down rents. Moreover, the necessary marginal adjustments could be made over a period of time.
170. This recommendation is advanced in the Hatfield Report, supra note 57, at pp. VIII-1 to 9.
VI. CONCLUSION

The foregoing analysis of the Minnesota homestead tax exemption and the homestead property tax relief provisions has shown that there is a wide disparity in property taxation in Minnesota. Non-homestead property is taxed at rates significantly higher than those in effect for homestead property—particularly in the range of lower values. As a result, those who must rent are forced to pay a significantly higher property tax—nearly double in many cases—through their rents. The problem is not new, and it has been recognized in other analyses that the greatest impact is on those who fall into the lower income brackets.171

The legal aspects of the problem have been approached from both the more traditional rational classification approach and the activist suspect classifications/fundamental interest approach. In the rational classification area, despite old precedents upholding the homestead tax exemption, there is ample authority for a reconsideration of the issues. The homestead tax exemption is vulnerable to challenge using each of the three standards enunciated by the Minnesota Supreme Court for judging the rationality of a classification: (1) substantial relation to the object of the legislation; (2) reasonable ground for distinction; and (3) uniform operation upon similarly circumstanced persons.

Additionally, it has been shown that the homestead tax exemption does indeed constitute a discriminatory classification based on wealth. Since the exemption constitutes an invidious discrimination, since it impinges on the fundamental interests of education, municipal services and housing, and since there is no compelling state interest to justify it, it should be declared to be a violation of the uniformity and equal protection provisions of the Minnesota and United States Constitutions.

171. See MINNESOTA TAX STUDY COMMISSION, MINNESOTA'S TAX STRUCTURE 22 (1954); DEVELOPMENT RESEARCH ASSOCIATES, MINNESOTA TAX STUDY 40 (1971).