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CONSTITUTIONALITY OF THE VOTING PROVISIONS IN THE SEVENTEENTH AMENDMENT TO THE WASHINGTON CONSTITUTION

The seventeenth amendment to the state constitution provides Washington with one of the most restrictive property tax systems in the nation.¹ Under its provisions the aggregate of tax levies upon real and personal property in any given taxing district may not exceed forty mills on the dollar of assessed valuation in any one year. Moreover, the forty mill limit may be exceeded only when three fifths of the electors voting authorize an excess levy. The amendment further provides that the election is not valid unless the number of persons voting constitutes not less than forty per cent of the total number of votes cast in the taxing district in the last preceding general election.²

A traditional concept equates democracy with majority rule. The seventeenth amendment rejects this notion insofar as it allows a minority of the voting public to thwart the will of the voting majority in two ways: by casting a "no" vote the minority can defeat the excess levy because of the sixty per cent requirement, by staying away from the polls the minority can defeat the measure because of the forty per cent requirement. Obviously proponents of excess levies have a more difficult task than do opponents. This is to say that the seventeenth amendment protects property owners from the threat of taxes in excess of forty mills. Whether the inequality thus created falls within the prohibition of the equal protection clause of the federal constitution³

¹For a survey of limitations in other states see League of Women Voters of Wash., *Facts and Issues: The 40%-60% Voting Requirement*, Pub. No. EL-5, (1966). See generally ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS ON LOCAL TAXING POWERS (1962) [hereinafter cited as RESTRICTIONS ON LOCAL TAXING POWERS].

²WASH. CONST. art. 7, § 2, amend. 17 (1944) provides in part:

Forty Mill Limit. Except as hereinafter provided and notwithstanding any other provisions of this constitution, the aggregate of all tax levies upon real and personal property by the state and all taxing districts now existing or hereinafter created shall not in any year exceed forty mills on the dollar at assessed valuation, which assessed valuation shall be fifty percentum of the true and fair value of such property in money.... Such aggregate limitation or any specific limitation imposed by law in conformity therewith may be exceeded only

(a) by any taxing district when specifically authorized so to do by a majority of at least three-fifths of the electors thereof voting on the proposition to levy such additional tax...either at a special election or at the regular election of such taxing district, at which election the number of persons voting on the proposition shall constitute not less than forty per centum of the total number of votes cast in such taxing district at the last preceding general election.

³U.S. CONST. amend. XIV, § 1.

is a question which has been raised but never litigated.⁴

The most dramatic growth of the equal protection clause has been in the category of cases dealing with the "basic civil rights of man."⁵ This category has been extended by the *Baker v. Carr*⁶ line of cases to protect the right to the franchise and ensure that one vote will "weigh" as much as another.⁷ The recognition of the franchise as a basic civil right of man and therefore a proper subject for the application of the equal protection clause suggests that the inequities in the "forty-sixty" voting requirements of the seventeenth amendment to the state constitution may deny equal protection to proponents of excess levies. When such discrimination exists, the test by equal protection standards is whether the inequality represents simply arbitrary and capricious action or whether, on the other hand, it pursues some legitimate policy end.⁸

⁴ See 65-66 OPS. WASH. ATT'Y GEN. No. 83 (1966). The Attorney General concluded that the 40% requirement of the seventeenth amendment does not conflict with the "one man, one vote" principle enunciated by the Supreme Court in its equal protection cases involving legislative apportionment. See note 7 *infra*.

⁵ In *Skinner v. Oklahoma ex. rel. Williamson*, 316 U.S. 535, 541 (1942), the Supreme Court invalidated an Oklahoma statute providing for the sterilization of habitual criminals and declared the equal protection clause to be a defender of "the basic civil rights of man." Since its adoption in 1868 as a measure to assure equal protection to negroes, *The Slaughter-House Cases*, 83 U.S. 36 (1873), it has been extended in scope far beyond the application contemplated by its drafters and is now used to strike down many forms of discrimination, most of which involve civil rights. See note 8 *infra*. The equal protection clause is infrequently used to strike down economic discrimination, the other "category" of equal protection cases; only when the discrimination is totally arbitrary will the Court intervene to adjust the inequities. See *Morey v. Doud*, 354 U.S. 457 (1957) (invalidated statutory exemption of American Express from regulations applying to all other issuers of money orders). In a great majority of the cases, the Court will uphold state economic regulation against an equal protection challenge. See McKay, *Political Thickets and Crazy Quilts: Reapportionment and Equal Protection*, 61 MICH. L. REV. 645 (1963).
⁶ 369 U.S. 186 (1962).

⁷ See *Burns v. Richardson*, 384 U.S. 73 (1966), which declared that the equal protection clause requires that both houses of state legislatures be apportioned substantially on a population basis; the Court upheld an apportionment scheme based on the number of registered voters because it produced a distribution of legislators not substantially different from that which would have resulted from use of population as a base. In *Reynolds v. Sims*, 377 U.S. 533 (1964), the Court concluded that malapportionment in Alabama denied the right of suffrage to voters by debasement or dilution of the vote, and announced a "population base" test for apportionment schemes. In *Gray v. Sanders*, 372 U.S. 368 (1963), it was held that the "county unit system" in Georgia discriminated against people on the basis of where in the geographical unit they happened to live; the Court announced the "one man, one vote" principle. *Baker v. Carr*, *supra* note 6, was the first apportionment case, which held to be justiciable a claim that malapportionment constitutes irrational and arbitrary state action.

⁸ Deciding what policy objectives are "legitimate" is made somewhat difficult by the Supreme Court's practice of using such imprecise generalities as "invidious discrimination," *e.g.*, *Williamson v. Lee Optical, Inc.*, 348 U.S. 483, 489 (1955), or "arbitrary and capricious" action, *e.g.*, *Baker v. Carr*, 369 U.S. 186 (1962), when rejecting various state or state supported activities as violative of the equal protection clause. In part, the practice results from the fact that the construction of the

Analogous to Washington's protection of property owners was New Hampshire's practice of making the amount of taxes paid a factor in the delineation of constituencies in the upper house of the state legislature.⁹ The justification for providing the landed interests with weighted representation was protection from legislation prejudicial to their interests which might be adopted by the legislature in the absence of such protection.¹⁰ Because protection for property owners is offered as justification for the seventeenth amendment,¹¹ the following comment about the New Hampshire practice should apply equally well to that amendment:¹²

This is of course not the way of democracy. Here, perhaps even more clearly than in the case of utilizing geography as a factor, the amount of direct taxes paid should not be permitted as a partial, let alone exclusive, determinant of the proportion of representation to which a district might be entitled.

Professor McKay's opinion that protection afforded property owners by a legislative apportionment scheme does not pursue a legitimate policy objective by equal protection standards suggests that a similar argument might be used to attack the seventeenth amendment: the "forty-sixty" requirements imposed on the electorate to protect the special interests of property owners have no place in the lawmaking

clause lends itself to use as a conclusory, catchall provision to attack any discriminatory action. See McKay, *supra* note 5. Some predictability is possible, however, by examining the ways in which the equal protection clause has been applied. In general, the Court will rarely use it to intervene in matters of economic regulation. See note 5 *supra*. But in matters affecting civil rights, the Court will demand the state justify discrimination against negroes, *e.g.*, *Brown v. Board of Educ.*, 347 U.S. 483 (1954), aliens, *e.g.*, *Truax v. Raich*, 239 U.S. 33 (1915), criminals, *e.g.*, *Smith v. Bennett*, 365 U.S. 708 (1961), and *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942), or voters, *e.g.*, *Burns v. Richardson*, *supra* note 7.

⁹ N.H. CONST. pt. II, art. 26 (1877) provides:

And that the state may be equally represented in the senate, the legislature shall, from time to time divide the state into twenty-four districts . . . ; and in making this division, they shall govern themselves by the proportion of direct taxes paid by the said districts

¹⁰ McKay, *supra* note 5.

¹¹ During the depression Washington responded to losses in property values and property income by tightening the property tax limits and relieving the tax pressure on property owners. The forty mill limit was first passed in 1932 as Initiative Measure No. 64. See RESTRICTIONS ON LOCAL TAXING POWERS.

¹² McKay, *supra* note 5, at 696. Apparently the Supreme Court and the voters of New Hampshire agreed with Professor McKay. In *Reynolds v. Sims*, 377 U.S. 533 (1964), the Court held population to be the only legitimate base for legislative apportionment. In the same year the voters of New Hampshire amended part two of the constitution to provide "And that the state may be equally represented in the senate, the legislature shall divide the state into single-member districts, as nearly equal as may be in population, . . ."

process¹³ of a democratic society governed by the principles of majority rule. State and federal precedent suggests, however, that the voting requirements of the amendment are constitutional.

Where state constitutions or statutes prescribe the minimum favorable votes essential to the passage of a special election proposal, they typically require such proposals to be passed by a stated percentage of "the qualified voters of the town,"¹⁴ or a "majority of the qualified electors of such city,"¹⁵ or "a majority of the legal voters within such district."¹⁶ Some courts construe such provisions as requiring approval of the majority of legal voters actually voting on the theory any other construction would be impractical and make passage at the polls too difficult.¹⁷ The more restrictive view interprets such provisions as requiring approval by the majority of the persons lawfully entitled to vote regardless of whether they vote in fact.¹⁸ Comparatively, such a construction renders a proponent's task more onerous than the forty per cent requirement of the Washington Constitution. For, achieving a forty per cent turnout of voters who voted in the last general election involves getting less people to the polls than does achieving a fifty per cent turnout of the entire voter group.

Courts which adopt the less restrictive view have been more sensitive to the negative effect the stricter interpretation is bound to have on the success of proposals at the polls. The United States Supreme Court prefers the less restrictive view because any other construction would allow an indifferent minority of qualified voters to thwart the purpose of the election by refusal to exercise the franchise.¹⁹ In *Carroll County v. Smith*,²⁰ the Court stated that unless the legislature clearly

¹³ When exercising the franchise with regard to excess levies, voters are, no doubt, functioning as lawmakers.

¹⁴ *E.g.*, Mo. Adjoined Sess. Laws 1868, § 1, at 93. See *County of Cass v. Johnston*, 95 U.S. 360 (1877).

¹⁵ *E.g.*, KAN. GEN. STAT. ANN. ch. 12, § 843 (1949). See *Clayton v. Hill City*, 111 Kan. 595, 207 Pac. 770 (1922).

¹⁶ *E.g.*, LAWS OF MAINE 1903, ch. 82, § 12, and ch. 194, § 1. See *Foy v. Gardiner Water Dist.*, 98 Me. 82, 56 Atl. 201 (1903).

¹⁷ *E.g.*, *Foy v. Gardiner Water Dist.*, *supra* note 16.

¹⁸ *Clayton v. Hill City*, 111 Kan. 595, 207 Pac. 770 (1922). In *State ex rel. Blankenship v. Gaines*, 136 Wash. 610, 241 Pac. 12 (1925), the Washington court upheld a restrictive interpretation of a statutory provision which read, "if the vote be a majority of the registered voters of said city or town . . ." The statute was interpreted as requiring a majority of all registered voters and not merely a majority of the registered voters actually voting. See *e.g.*, *Madison v. Wade*, 88 Ga. 699, 16 S.E. 21 (1892); *Hobgood v. Catahoula Parish*, 147 La. 279, 84 So. 656 (1920); *Williamson v. Aldrich*, 21 S.D. 13, 108 N.W. 1063 (1906).

¹⁹ See *Virginia Ry. v. System Fed.* 40, AFL, 300 U.S. 515 (1937).

²⁰ 111 U.S. 556 (1883).

expresses a contrary intention, such language as "qualified voters" will be interpreted as referring only to those who actually vote. *Carroll*, however, definitely intimates that while the restrictive type statute is not preferred it would be upheld if the legislature's intent is unambiguous. By this standard the Court would accept the restrictive provisions of the seventeenth amendment to the Washington Constitution.

By the equal protection standards established in the apportionment cases stemming from *Baker v. Carr*, the acceptability of these provisions seems questionable. In order to strike them down, however, the Court would have to distinguish the substantial body of opinion supporting such limitations²¹ and in some way dispose of its position in *Carroll*. This could be accomplished by simply pointing out that the *Carroll* precedent dates from the pre-*Baker* era when such things as malapportionment were nonjusticiable and that outmoded historical precedent should not be allowed to retard or prevent a logical extension of the law.²² Such an argument assumes that the apportionment cases provide authority which can be used to invalidate a variety of voting restrictions not affecting apportionment. The context in which the voting requirements of the seventeenth amendment arise, however, seem to make the *Baker v. Carr* analogy a questionable one.

The federal courts have adopted a far more permissive attitude toward state schemes of taxation than toward schemes of legislative apportionment. Whereas in the apportionment area the equal protection test is clear—legislatures must be apportioned substantially on a population basis²³—there is considerably more flexibility in the equal protection test for taxation—classifications must not be simply arbitrary. Instead, they must have a reasonably conceivable purpose and a fair and substantial relation to the object of the legislation.²⁴

²¹ See note 18 *supra*.

²² Some post-*Baker v. Carr* authority exists which upholds voting restrictions which could defeat a measure approved by a majority of the voters voting. In Opinion of the Justices, 210 A.2d 683 (Me. 1965), the state supreme court approved a requirement that the number of votes cast in the election must be at least 20% of the total vote for all candidates for governor cast in the municipality at the last gubernatorial election. If the validation requirement is not satisfied the election is void. ²³ *Burns v. Richardson*, 384 U.S. 73 (1966); *Reynolds v. Sims*, 377 U.S. 533 (1964).

²⁴ See *Allied Stores v. Bowers*, 358 U.S. 522, 528 (1959), where the Court also said: "That a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction or difference in state policy." *Accord*, *McGowan v. Maryland*, 366 U.S. 420 (1961), where the Court held it was not unreasonable to permit only certain merchants within a county to sell merchandise on Sunday. The legislature could conceivably find the

Thus, the state is not acting arbitrarily when it exempts non-residents from a warehouse tax which residents have to pay where the scheme aims to encourage industries to come into the state. Without this purpose the exemption would be unconstitutional as one arbitrarily discriminating on the basis of residence.²⁵ Likewise, where exempting lessees of state owned property from a tax which lessees of federally owned property have to pay could not be justified by any significant difference between them, the exemption is unconstitutional.²⁶ In short, there is no "iron rule of equality prohibiting flexibility and variety."²⁷

The "taxation" equal protection test suggests that the restrictive provisions of the seventeenth amendment fall within the state's broad discretion. The basic aim of the seventeenth amendment is to restrict taxation of real property in any given taxing district to forty mills per year. The voting provisions anticipated situations where the limitations would prove too restrictive and additional funds would be required. To accommodate such situations election machinery was provided; but consonant with the spirit of the amendment, the provisions drawn were restrictive. In this context it appears that the voting requirements do not discriminate arbitrarily against proponents, but instead provide a safety valve should the forty mill limit prove too confining. Indeed, if the legitimacy of the voting provisions should depend upon the legitimacy of the purpose of the amendment—to relieve tax pressure from property owners—the voting provisions would survive constitutional attack.²⁸

It is submitted, however, that the constitutionality of the "forty-sixty" voting requirements should not depend upon the rationality of the particular scheme of which they are a part but, instead, should be determined independently by a separate standard. As voting provisions they fit into neither the taxation nor the apportionment equal protection area exclusively. They create an instance for the exercise of the franchise but do not affect legislative representation; they are included as part of the state's taxation scheme but only collaterally, providing relief should the forty mill limit prove too restrictive. Instead of attempting to classify the voting restrictions as either taxation or

commodities necessary for the health and recreation of the citizens and permit them to be sold only in areas where they are most likely to be put to use. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *Id.* at 426.

²⁵ *Allied Stores v. Bowers*, *supra* note 24.

²⁶ *Phillips Chem. Co. v. Dumas Independent School Dist.*, 361 U.S. 376 (1960).

²⁷ *Allied Stores v. Bowers*, 358 U.S. 522, 526 (1959).

²⁸ See note 24 *supra*.

apportionment, it would be more efficacious to evaluate them in terms of general equal protection doctrine.

An inquiry into the constitutionality of the greater-than-majority voting requirements would expose the nature and effect of the inequities created and would force consideration of possible justifications for them. To be constitutional the voting requirements must be rational rather than arbitrary. The earlier discussion demonstrated that "rationality" is an illusive concept construed both strictly, as in the apportionment cases, and liberally, as in the taxation context. What would constitute irrational and therefore unconstitutional requirements in the greater-than-majority voting context is best illustrated by a hypothetical situation: a majority of state legislators attempt to perpetuate control by passing a law requiring legislative candidates to poll ninety per cent of the vote to unseat incumbents. Such an attempt to establish minority control would doubtless be countered with a strong equal protection argument, despite dicta that legislatures may increase the percentage of votes required by state constitutions to approve election measures.²⁹ Indeed, these same legislators may attempt to ensure re-election by enacting a law requiring that to validate the election forty per cent of those voting in the last general election must vote and sixty per cent of those voting must favor the candidate challenging the incumbent. This seems to be an arrangement as equally indefensible as the ninety per cent requirement.

In the context of this hypothetical election, the "forty-sixty" requirements are impossible to justify. Whether the requirements are less offensive in the case of the seventeenth amendment simply because the latter concerns excess levies rather than legislative elections is the crucial question. Certainly the argument can be made that if it is invidious discrimination to protect special interests when delineating legislative districts,³⁰ it is no less invidious to "weigh" votes³¹ because

²⁹ *E.g.*, *Robb v. Tacoma*, 175 Wash. 580, 28 P.2d 327 (1933). The "election measures" involved in this case and others in accord do not affect legislative representation but, instead, concern such matters as approval of bonded indebtedness, *Bauch v. City of Cabol*, 165 Mo. App. 486, 148 S.W. 1003 (1912), and authorization of municipalities to finance industrial aid projects, *Opinion of the Justices*, 210 A.2d 683 (Me. 1965).

³⁰ The reference here is to the pre-1964 New Hampshire scheme of legislative apportionment. *Burns v. Richardson*, 384 U.S. 73 (1966), and *Reynolds v. Sims*, 377 U.S. 533 (1964), holding that apportionment must be based substantially on population, indicate that the Supreme Court would share Professor McKay's view of the discarded New Hampshire scheme. See McKay, *supra* note 5.

³¹ The "forty-sixty" voting requirements do not "weigh" votes in the same sense as malapportioned legislative districts, by arbitrarily providing one man with greater representation in government than another; but they do distort the election

the subject of the election is a tax levy rather than a legislative candidate. The practical result may be the same in either case.

The apportionment cases would seem to support the conclusion that protection for particular interests should not be built into the lawmaking process to make that process work easier for one group than for another. Those cases require that both houses of state legislatures be devoid of weighted representation for special interests before they may legitimately conduct the business of government.³² By analogy, if legislators may not constitutionally function as lawmakers when the legislative machinery is weighted to protect special interests, it seems equally unconstitutional to allow electors to function as lawmakers when the election machinery is so weighted. That the "forty-sixty" voting requirements exist as part of a scheme which pursues a legitimate objective by other tests, as protection for property owners may satisfy the taxation equal protection test, is irrelevant. In this particular inquiry the only matter of concern is the process by which it is decided to follow one course rather than another and whether, within this process, there ought to be limitations upon the democratic principle of majority rule.

Such limitations are objectionable in varying degrees depending, in part, upon their function. There is a strong argument, for example, in defense of restricting the ease with which the federal constitution may be altered, for it defines the scope of the government's jurisdiction. Because it constitutes the foundation of the federal system and enumerates things no government can do, there are, written in, obstacles to the changing of the document. "There are things not even a majority may require government to do because they are outside the jurisdiction of any government."³³

Other limitations, however, are more offensive, as in the case of the hypothetical election where the restrictions served to perpetuate control by incumbents. The important characteristic in that situation may

process by selecting out those individuals predisposed to vote against excess levies and providing them with a decided advantage. This is "weighing" votes in a somewhat different sense.

³²In *Forston v. Morris*, 87 Sup. Ct. 446 (1966), the Supreme Court held that electing a governor is a legitimate function of a state legislature if the state constitution so provides, as does the Georgia Constitution, GA. CONST. art. 5, § 1. It also allowed the malapportioned Georgia legislature to perform this function but the approval was qualified: "In *Toombs v. Forston*, 384 U.S. 210, affirming 241 F. Supp. 65, we held that with certain exceptions not here material, the Georgia Assembly could continue to function until May 1, 1968. Consequently the Georgia Assembly is not disqualified to elect a Governor as required by Art. V of the state's constitution."

³³COMMAGER, MAJORITY RULE AND MINORITY RIGHTS 8 (1950).

be that the limitation undermines the spirit of representative government and is, therefore, a fundamental deviation from our form of democracy. Less dramatic examples, such as the "forty-sixty" voting requirements, are equally anti-democratic but more readily accepted. This may be due in part to a philosophical acceptance of other anti-democratic limitations, such as judicial review, and a belief that some checks on majority rule are necessary.³⁴

The argument against the constitutionality of Washington's seventeenth amendment must confront this question of political philosophy. It is not enough to demonstrate that a practice is anti-democratic, for many institutions in our federal system were born from fear of a "tyranny of the majority" and created to restrict majority rule.³⁵ All such practices and institutions are not ipso facto unconstitutional. Some, however, are more vulnerable than others because they are demonstrably arbitrary, the apportionment cases providing the best and most recent examples. Discrimination in the case of Washington's seventeenth amendment seems no less arbitrary than that which prompted the apportionment decisions, but it is certainly less vital. The argument remains, however, that when voters cast their ballots they ought to have an equal voice in the outcome of the matters before them and ought not be categorized beforehand according to their disposition to vote on one side or the other.

While the voting provisions of the state's seventeenth amendment appear vulnerable to an equal protection argument,³⁶ as a practical

³⁴ To protect against the "tyranny" of government the framers of the Constitution provided for the "checks and balances of the federal system, of the tripartite division of powers, of the bicameral legislatures, of frequent elections and of impeachment ... [A]top all this there developed... the practice of judicial review." COMMAGER, *op cit. supra* note 33, at 6.

The fundamental question of the extent to which the will of the majority ought to be restricted is a question of political philosophy and the basic consideration is the confidence one has in the ability of the majority to function fairly without such restrictions. For conflicting views see DE TOQUEVILLE, *DEMOCRACY IN AMERICA* (1840), and *THE WRITINGS OF THOMAS JEFFERSON* (1925). Stated differently, to what extent and when should the minority be provided with safeguards in addition to those incorporated in the federal system? Any limitation is, of course, anti-democratic and ought to be avoided in the absence of demonstrable need for it. One aspect of the question in Washington, then, is whether the restrictive provisions of the seventeenth amendment are philosophically defensible. Those who share a fear of the "tyranny of the majority," *THE FEDERALIST* No. 51 (Madison), ought to be prepared to present a case for the necessity of the limitations. Consideration should be given to whether there are adequate safeguards without the voting restrictions. Judicial review, for example, may provide sufficient protection to make additional measures unnecessary.

³⁵ See text accompanying note 34 *supra*.

³⁶ Assuming, arguendo, that the seventeenth amendment, including its voting provisions, is constitutional, it would not be made more desirable by its legitimacy. In addition to the imposition of minority control, other inequities are created.

matter it may be imprudent to wait for the judiciary to strike them down. Because in this state the voting restrictions combine with inequitable assessment practices and other inefficiencies created as by-products of the property tax system,³⁷ the most inspired remedy would be major constitutional reform.

COMMUNITY ANTENNA TELEVISION— A COPYRIGHT INFRINGER

Plaintiff licensed its copyrighted motion pictures to a television broadcasting station. Defendant, a Community Antenna Television¹ (CATV) System, received the station's broadcast, amplified the signal,

Because the 40% validation requirement is based on the last preceding general election, *i.e.* the last general election in the district, absurd disparities result. See *Seattle School Dist. No. 1 v. Odell*, 54 Wn. 2d 728, 344 P.2d 715 (1959) and see 59-60 WASH. OPS. ATT'Y. GEN. NO. 133 (1960). In Seattle, for example, the 1965 excess levy required 106,000 votes for validation because the last general election happened to be the 1964 presidential election; the 1966 excess levy required only 40,500 votes for validation because only 101,000 votes were cast in the last (1965) general election. See WASHINGTON EDUCATION ASSOCIATION, *RESEARCH IN EDUCATION* Vol. 9, No. 3 (1966). Such indefensible disparity results from the totally arbitrary nature of this aspect of the system.

Additional inequities result from the county assessors' disregard of the constitutional mandate to assess at fifty per cent of true value of the property. See WASH. CONST. art. 7, §2, amend. 17 (1944). Not one assessor in the state satisfies the constitutional requirement, see WASHINGTON STATE TAX COMMISSION, *COUNTY RATIO EQUALIZATION STUDY: 1966 ASSESSMENT* (1966), and since *Clark v. Seiber*, 48 Wn. 2d 783, 296 P.2d 680 (1956), where the state supreme court invalidated an effort by the legislature to give the state board of equalization the power to bring valuations closer to the fifty per cent requirement, the matter has remained completely under the control of individual assessors, who demonstrate no willingness to change. Subsequent efforts by the state to bring assessment practices into conformity with the constitutional requirement have been merely persuasive and not very effectual, see Harsh, *The Washington Tax System—How It Grew*, 39 WASH. L. REV. 944 (1965), with the result, *inter alia*, that property of residents in one taxing district is assessed at a different rate than property of residents in other taxing districts. See Comment, 66 UTAH L. REV. 491 (1966), for a discussion of assessment practices strikingly similar to those in Washington and for a discussion of recommended changes. See also Tiedman, *Fractional Assessments—Do Our Courts Sanction Inequality?*, 16 HASTINGS L.J. 573 (1965), for a discussion of the inequities created by fractional assessment. A harmful side effect of the assessment practices in Washington has been the frequent need to resort to the excess levy as a source of revenue for the individual taxing districts. See WASHINGTON EDUCATION ASSOCIATION, *RESEARCH IN EDUCATION* Vol. 9, No. 3 (1966) for an indication of the scope of the reliance throughout the state on the excess levy as a source of revenue.

³⁷ See text accompanying note 36 *supra*.

¹ Community Antenna Television (CATV) systems are a communications advancement which allows television reception in fringe areas where reception would be virtually impossible without a CATV system. CATV systems are a burgeoning industry. In January 1965 there were 1,600 systems in the United States and the number has been increasing at a rate of approximately forty systems per month. *Hearings Before the Subcommittee No. 3 of the Committee on the Judiciary*, 89th Cong., 1st Sess., ser. 8, pt. 1, at 35 (1966).