Nuisance case grows into constitutional fight

By Florence Hamlish Levinsohn

NEXT WEEK THE WASHINGTON STATE Supreme Court is scheduled to hear oral arguments in what has been dubbed "The Freeway Hall Case." It will review what five years ago appeared to be a nuisance case, but has evolved into a First Amendment test case that will be argued before the court by civil liberties attorney Leonard Boudin.

The Freeway Hall Case began in 1984 in Seattle when Richard Snedigar, a former member of the tiny 100-member Freedom Socialist Party, sued FSP leaders for the return of a $22,500 donation made five years earlier for the purchase of a new party headquarters. As an enthusiastic member of the FSP, which is headquartered in Seattle, Snedigar took a second mortgage on his house to help finance the headquarters purchase after the party had received an eviction notice. His roomers, also party members, agreed to increase their rent payments to help pay off the mortgage. But Snedigar's enthusiasm for socialist revolution waned and he left the party in 1980, apparently with no animus. Meanwhile, the party managed to get several extensions on its lease as it searched for several years for a suitable headquarters. Snedigar's money sat in the bank awaiting the purchase of the new building.

Change of heart: Suddenly, Snedigar declared that the FSP had defrauded him and sued for the return of his money, plus interest and penalties. He started complaining to the FSP about being "bilked" shortly after the successful outcome of a suit against the city by one FSP founder, Clara Fraser, in which she won a $135,000 judgment to compensate for her discriminatory firing in 1975. Fraser is one of nine defendants in the case. Snedigar's lawyers requested that she open her financial records in an unsubtle attempt to have her repay him from her award money. Snedigar charged FSP leaders with fraud, undue influence, breach of contract, unjust enrichment, abuse of trust and violation of the charitable solicitation laws.

What had originally appeared to be a nuisance case that Snedigar couldn't win because he admitted that he had freely contributed the money, shortly turned into a full-blown First Amendment case. In May 1985, allegedly to determine the merits of the case, Judge Arthur Piehler ruled that the FSP turn over to the court all its membership and supporter lists, eight years of meeting minutes and organization financial information.

Thus arose a cause célèbre. The FSP refused, on constitutional grounds, and in September of that year won a reversal of the order by the Appeals Court with the help of the National Lawyers Guild and the American Civil Liberties Union.

Then, the next month, still another judge, to get around the Appeals Court decision, ordered the FSP to turn over its records to Snedigar or to a judge for *in camera* review. The FSP went back to the Appeals Court and also to the State Supreme Court. This time more than 50 organizations signed an amicus brief. Review was nevertheless denied and, in May 1987, the judge, now the fourth on the case in two years, found the defendants in default after they refused to cooperate with the order, and summarily awarded Snedigar a $44,000 judgment without a trial.

There was a surreal air in the proceedings. Questioning the basis on which Judge Warren Chan signed the ruling for a judgment, the defense attorney asked, "Was fraud and misrepresentation one of the bases on which you ruled?" The judge replied, "It may have been, but you see, it's for the appellate court to see the facts and determine, regardless of whatever the reason the trial court uses. If for any other reason, the judgment may stand, the rule on appeal is that it will stand ... so this court doesn't have to specify every ground." He complained several times about the case's "mountain of paper." But, having signed the judgment, Judge Chan withheld filing it until the Appeals Court decided whether it would review the constitutional issues.

Immediately, the FSP went back to the Appeals Court. Fraser submitted an affidavit that outlined, based on her nearly 50 years in the socialist movement, what the disclosures of party information could mean to those involved and to the health of the party, recalling "excruciating betrayals by long-time associates who, under pressure, informed to ... investigative committees that ran rampant from the late '40s into the '60s."

In February 1989 the Appeals Court found that the default judgment was too harsh and needed to be reconsidered, but upheld the order to disclose the party's lists and minutes. The FSP then went to the State Supreme Court. Seventy organizations and individuals—including the American Federation of State, County and Municipal Employees, the National Association for the Advancement of Colored People, the National Organization of Women and the National Emergency Civil Liberties Committee—signed an amicus brief prepared by the National Lawyers Guild.

Another threat: Meanwhile, the U.S. Supreme Court recently decided to let stand a lower court ruling that found for a woman who had sued for the return of the millions of dollars she had contributed to the Bible Speaks Church in Lenox, Mass. She charged that she had been unduly influenced. Snedigar is also claiming undue influence in his suit against the FSP, though he did admit in testimony that he gave the money freely at the time. The FSP is claiming that he volunteered the money, but that might not wash with the new precedent established by the U.S. Supreme Court.

The issue of undue influence is not the one before the Washington Supreme Court at this time. That case involves only the First Amendment issues of disclosure. But when the full case comes to trial, Snedigar's attorney might well use the precedent of the Bible

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Speaks case. The implications of this case extend not only to churches but to all voluntary organizations that rely on contributions. The decision favoring the church member in Lenox effectively destroyed a 1,400-member church. Rev. George Robertson, administrator of Greater Grace Church World Outreach in Baltimore, was quoted in the October 6 issue of the *Chicago Tribune* as saying, "Virtually anywhere in this country now, the door is open to anyone who gives money to any church, or any cause ... even the Boy Scouts ... to say they were unduly influenced and demand their money back." □

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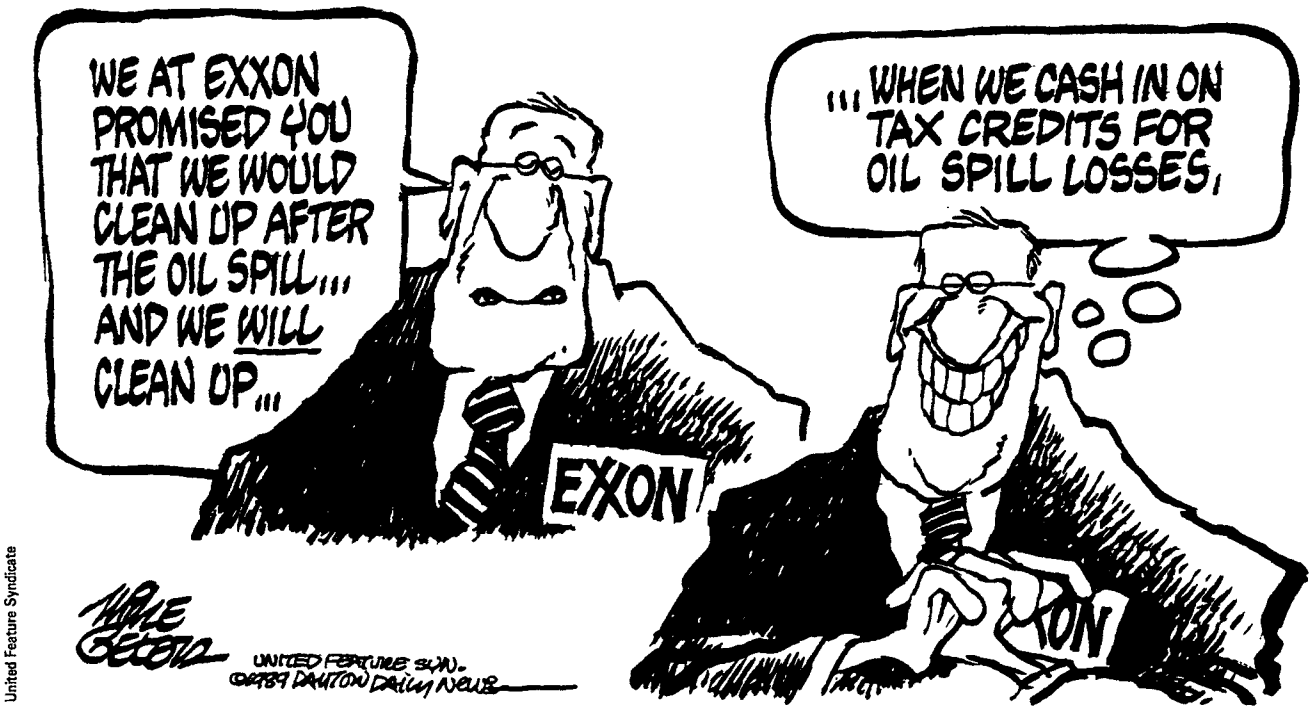
Legislators wrestle with liability for big oil spills



United Feature Syndicate

By James M. Haddad

IN MAY OF 1989, SHORTLY AFTER THE *EXXON VALDEZ* spill, the Bush administration announced its first official response to the disaster, not emergency cleanup funds but a legislative proposal to protect Exxon from future lawsuits for pollution liability. The administration proposed capping liability at $78 million and establishing a cleanup superfund of $500 million that "dramatically enhances our ability to compensate victims of major oil spills and to restore our fragile environment," said Transportation Secretary Samuel K. Skinner. But does it really? An important legislative fight with wide-ranging ramifications for the future of the industry has developed in response. Both sides claim to be the environmental proponents.

Late this month the House of Representatives is scheduled to vote on a bill (HR 1465) designed to establish a federal standard for assigning pollution liability and providing a fund of $1.3 billion for quicker, surer payment for claimants. But it would also limit a polluter's liability to only $95 million, while pre-empting a state's right to sue for full damages arising from a spill. Critics say the cleanup fund is not enough, pointing out that Exxon has already paid $2 billion. They also believe the liability cap is too low, because

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a big spill on either coast could cause damages far in excess of the $95 million limit. In addition, they say the provisions that would pre-empt states that hold spillers liable are too lenient. The House bill is based on the administration proposal, which, in turn, was based on earlier bills that never passed.

The Senate, on the other hand, unanimously passed companion legislation in August (S 686) that is similar in most respects, except it would not pre-empt state laws that allow for unlimited liability.

A group of representatives led by Gerry Studs (D-MA) and George Miller (D-CA) will present amendments to HR 1465 in an attempt to eliminate the state pre-emptions and otherwise firm up the bill. The stakes are high, and whatever the vote's outcome, the issue of pre-emption promises to persist. Curiously, the battle has not been widely reported except in insurance and industry trade publications.

The bill came out of the House Merchant Marine and Fisheries Committee chaired by Walter B. Jones (D-SC). Various House committees have proposed this type of bill for each of the past 14 years, but each time objections to pre-emption of the state laws blocked the bill's passage. But after the *Valdez* spill, the committee beefed up and expedited their bill and re-proposed it.

Tough bill: The bill would establish a $1.3 billion-per-incident oil industry-financed fund to pay for cleanups and to compensate those affected by a spill. The fund would respond immediately to federal and state cleanup costs and pay for damages where

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the source of a spill is unknown, or if claims exceed an innocent spiller's liability as established in the bill. This would ensure that funds are immediately available, sidestepping the damaged party's need to prove negligence before obtaining cleanup funds.

It would also establish a uniform liability law to replace the current state and federal patchwork. For tankers, liability would be $1,000 per gross ton to a maximum of $95 million. However, in cases of gross negligence, the spiller would be responsible for all cleanup and damages, while in the event of "acts of God" or similar perils the spiller would not have to pay. In addition, the bill would provide for the implementation of international protocols regarding the liability of seagoing tankers, once these treaties are ratified by the Senate. To comply with these treaties, liability would have to be capped and conflicting state laws pre-empted.

The bill also calls for investigations and research into preparedness and tanker safety, task forces to fight spills, firmer licensing and enforcement and so on. It is a tough bill that goes a long way in providing for funds for accidents caused by both U.S. and foreign parties. And to their credit, Jones and the committee presciently raised serious concerns about emergency preparedness, vessel suitability and the liability question just weeks before the *Valdez* ran aground.

Jones' committee and the administration argue in favor of pre-emption because without it the protocols for international recovery of damages cannot be implemented. Therefore, they believe their bill is more environmentally sound. Curiously, this is one instance where the administration is content to let international protocols dictate domestic policy rather than the other way around.

But environmentalists say the bill is not enough, largely because of the liability cap that they believe lets spillers off the hook. It certainly is conceivable that a spill could cause damages in excess of $95 million. *Valdez* probably did. Tankers carrying 11 million gallons or more regularly ply the waters of New York and Long Beach, Calif. (although none the size of *Valdez*, which only lost one-fifth its cargo). According to the Washington, D.C.-based Oceanic Institute, the area covered by the *Valdez* spill is equivalent to the Atlantic coastline from New Hampshire to North Carolina.

According to a September 14 letter to Congress signed by 100 environmental groups, the House proposals "favor oil company and shipping interests" by limiting liability and undermining states' ability to protect their citizens and property. Seventeen states currently hold polluters fully liable without limits.

Either way, both houses of Congress are expected to pass some type of comprehensive oil-spill bill. No one knows if the administration will veto a bill lacking pre-emption. If a law is enacted without pre-emption, then something will have to be done to deal with foreign polluters. The effects of the issues being debated will be far-ranging, but public debate is sparse.

The insurance industry has not absented itself. It is lobbying for the cap. By fixing liability, insurers can provide capacity to insure the risks. (No insurer will accept unlimited liability.) They note that a similar limit, $7.5 billion, was approved in 1988 for pollution liability arising from nuclear reactors (the Price-Anderson Act). Environmentalists counter that this is simply an argument against the nuclear cap. If industry can obtain full insurance for its potential liabilities, then this translates into a fixed cost in premium each year, ultimately passed on to the consumer. In other words, the risk and cost of a catastrophe are transferred to the public.

This raises other social questions that Congress has not even begun to address. By grossly underestimating pollution's potential costs, is the price of energy kept artificially low? For example, should the potential social costs be factored into the price of a kilowatt? Solar and other clean-energy proponents argue that we currently are ignoring the costs of oil and nuclear power. Sooner or later, they say, Americans will have to pay up for pollution.

What, after all, is the cost of oil and nuclear energy each year in terms of lung cancer, leukemia, skin cancer, dead fish and so on? If oil liability limits are capped, we may never find out—until it is too late. □

James M. Haddad is a New York-based freelance writer.

Can Democrat win race without vow to veto tax?

By Paul Bass

NEW HAVEN, CONN.

HE'S NOT NECESSARILY FOR IT. HE'S NOT necessarily against it. If it works, he's for it. If it doesn't work, he's against it. Bruce Morrison was trying to answer a question, a question reporters kept rephrasing: Do you support a state income tax in Connecticut? Reporters wanted a simple answer. Morrison wanted space for a complicated answer to what he considers a complicated issue.

Morrison, a four-term Democratic U.S. representative, had called a press conference to announce he'd formed a committee to explore a run for governor. The questions confirmed recent poll findings that Connecticut's voters are fed up with the state's inequitable, unpredictable tax system. Along with drugs, the income tax promises to be the top issue Morrison faces when he formally launches his uphill, year-long campaign within the next few weeks.

In a state with the country's highest per capita income and three of its poorest cities, the income tax question is a loaded one. Everybody wants to reform a system reliant on a regressive 8 percent sales tax. Yet conventional wisdom holds that voters statewide aren't ready to embrace a progressive income tax that, unlike the sales tax, draws proportionately more of its revenue from the wealthy than from the poor. So all successful statewide candidates have flatly opposed the idea.

Given Morrison's liberal reputation in Congress, reporters were waiting to see how he'd tackle the income tax issue. He wouldn't flatly rule it out, nor would he simply embrace it. He wasn't dodging the question, he insisted, but was trying to redefine debate on the major issue in Connecticut politics—at the same time that he seeks to redefine state politics itself. In that sense, Morrison's delicate dancing on the tax issue mirrors his unconventional, longshot approach to running for governor against a powerful 10-year incumbent from his own party. His campaign promises to test the proposition that one can advance a progressive agenda through a campaign aiming for middle-of-the-road voters, a strategy Democrats have been looking for nationally in order to reclaim the White House.

Return to the outside: The race represents Morrison's return to the outsider, grass-roots politics that led *In These Times* to begin tracking his career in 1982. That year, Morrison, then a legal-aid lawyer without electoral experience, was one of several Democrats ushered into Congress by two forces: the Reagan recession and a coalition of labor, peace and black activists. That coalition helped Morrison come from behind in the Democratic primary to defeat a candidate backed by the party machine, then beat a Republican incumbent in the general election.

Since then, like many members of the "Permanent Congress," Morrison has become entrenched, a fund-raising powerhouse. He's developed a paunch from the endless rubber-chicken dinners required in working the district. Gray has crept into his mustache.

In the last two elections, he had only token opposition; he scared away most serious Republican contenders with his lock on PAC money and broad-based local support. It took Morrison only two years to bring most local developers and businesspeople, including conservative ones, to his side. Though they disagreed with his views on national and international issues, they found him "a good listener" who fought hard for grants to his district, including federal Urban Development Action Grants that put dollars in some of their pockets. He stayed out of most local political fights in order to main-

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tain good relations with the machine. (He even refused to back liberal former Rep. Toby Moffett's gubernatorial bid four years ago—a campaign similar to Morrison's current one.)

By making a national name for himself as an unrepentent left Democrat on issues like contra aid, the nuclear freeze, the Grenada invasion, affordable housing and the HUD scandal, Morrison retained the loyal support of his original base. Now, for the first time since 1982, he needs that base again, because he can't count on the big guns.

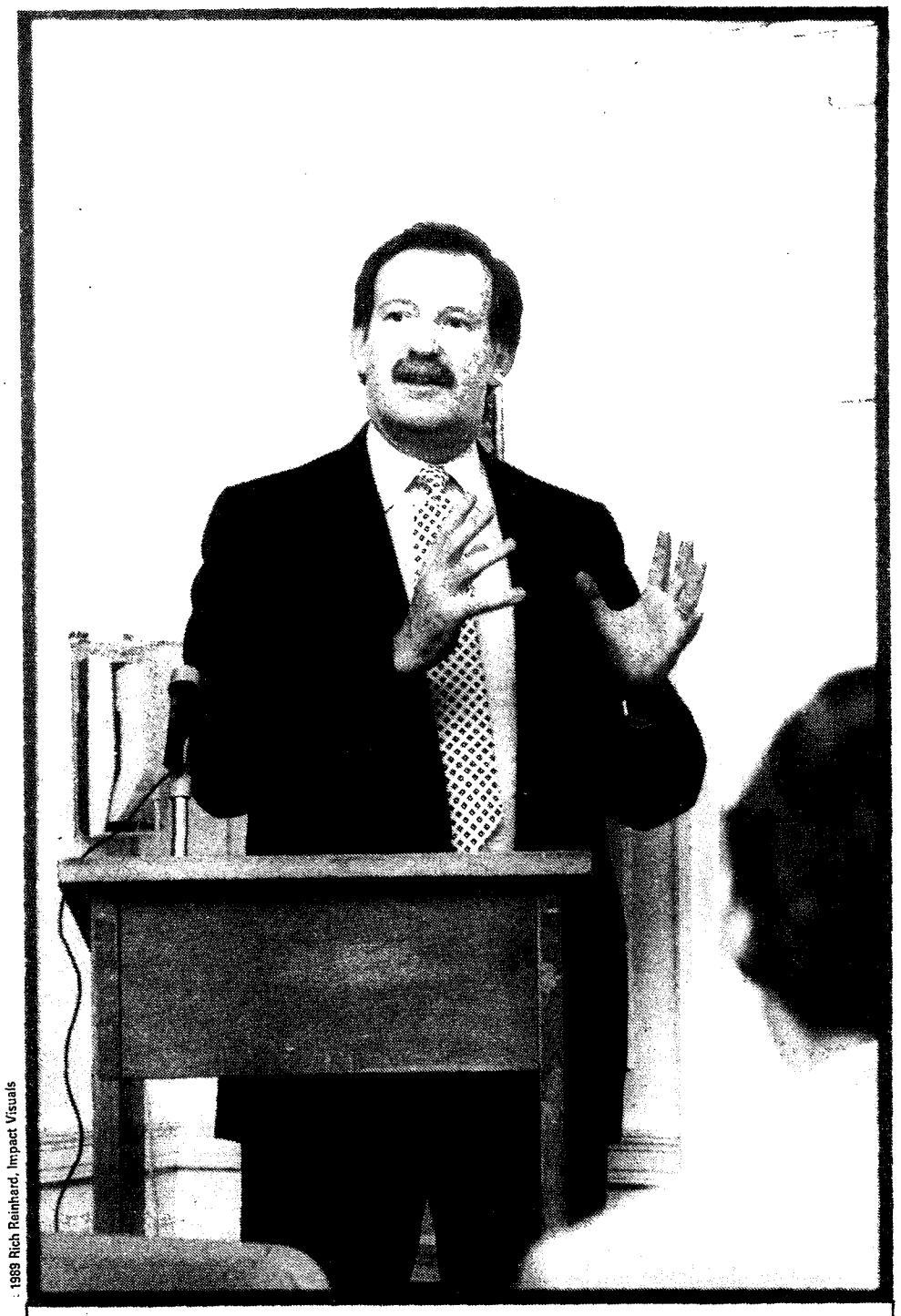
His conservative Democratic Party opponent, incumbent Gov. Bill O'Neill, is unpopular because of high taxes and a general neglect of social problems. But he has built up an awesome patronage and fund-raising machine during his 10 years in office. He crushed Moffett's bid four years ago by leaning heavily on local politicians to deny Moffett enough delegates at a state party convention to qualify for a primary. O'Neill has already begun, a year away from the 1990 primary, to press Connecticut politicians for early endorsements. Local officials fear cutbacks in state aid and contractors fear losing state business if they don't back O'Neill.

Even if O'Neill decides not to run again, he can hand his campaign chest to his Democratic heir apparent, popular middle-of-the-road U.S. Rep. Barbara Kennelly. Even if Morrison wins the primary, he faces a tough Republican opponent in conservative U.S. Rep. John Rowland.

So Morrison is banking on his reputation, his grass-roots base and changing times in Connecticut. For instance, he bucked the party machine recently to support a black candidate in New Haven's mayoral primary; there, as in several other Connecticut cities last month, anti-machine candidates won ringing victories that have thrown a once-invincible party organization into virtual disarray. At a raucous victory celebration, the mayoral candidate's backers chanted "Bruce, Bruce, Bruce," marking his gubernatorial campaign as their next crusade. And Morrison is banking on his ability to buck that great static political force that *Newsweek* dubs "the CW," or conventional wisdom.

Tale of two states: The conventional wisdom holds that you can't win a statewide election without promising, as O'Neill has, to veto an income tax. Connecticut's General Assembly passed an income tax close to 20 years ago, then was forced by the public outcry to repeal it before it even went into effect.

Even income tax opponents acknowledge that times may be changing. A few corporate leaders have begun speaking out in favor of an income tax, belying the argument that instituting one would discourage companies from moving here; especially in the cities, businesspeople believe declining schools and sky-high housing prices have become the chief obstacles. During this last legislative session the middle-of-the-road speaker of the house, Democratic State Rep. Richard Balducci, called the eventual passage of an income tax inevitable. In a closed-door caucus, 46 of 88 state House Democrats said they'd support an income tax bill, even though their governor had vowed to veto it. Given Republican opposition, that wasn't enough to pass a bill, but it represented a major step forward. Part of that advance can be explained by the emergence of LEAP, the Legislative Electoral Action Program, a left-leaning coalition of citizen-action and social-change groups that helped elect 35 of its 42 endorsed candidates to the legislature this session.



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Bruce Morrison: banking on his grass-roots base as he bucks conventional wisdom.

Morrison's run for governor in Connecticut attempts to advance a progressive agenda by aiming for middle-of-the-road voters, a strategy Democrats have been looking for on a national level in order to reclaim the White House.

And the newspaper that led the campaign to repeal the income tax 20 years ago, the *New Haven Register*, earlier this year launched a crusade for an income tax. The paper noted that homelessness, public education, AIDS and infant mortality crises have spun out of control in Hartford, the country's fourth-poorest city, and New Haven, the seventh-poorest. Meanwhile, amid federal budget cutbacks, the state government, dominated by some of the country's wealthiest suburbs, has left the cities to rely on exorbitant property taxes to address their social problems; employers and middle-class families have fled the cities partly because of those taxes. The state government itself, in order to balance its books and avoid the income tax issue, increased the sales tax last session, expanded its state lottery program and added a hodgepodge of other taxes that disproportionately affect the poor and middle class.

Despite these signs of growing support, even proponents of a progressive income tax, such as LEAP-endorsed Democratic State Rep. Miles Rapoport, acknowledge that the climate probably hasn't changed enough to enable a politician to win the entire state

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