



NOTE

Proposition 13, Revisited

Evelyn Danforth*

Abstract. In 1978, Californians overwhelmingly voted to add a suite of antitax measures to their state constitution. These provisions, together known as Proposition 13, ushered in a new era for the state—one that continues to define the contours of both public finance and private property ownership nearly a half century later.

On the heels of California's first major political fight over Proposition 13 in decades, this Note seeks to reignite debate in the legal academy over the law's wisdom as a matter of policy and its compatibility with the federal scheme in which it operates. To do so, this Note makes two distinctive contributions.

First, this Note urges scholars and policymakers to look beyond Proposition 13's well-documented fiscal impact. In addition to the stranglehold it has had on the state budget, Proposition 13—and especially its subsequent companion provisions—undermines equality and socioeconomic mobility by entrenching property wealth across generations. All the while, it contributes to California's ever-worsening affordability crisis by giving local governments structural incentives to avoid building new housing.

Second, this Note considers avenues for reform. It first considers the prospect of securing change through litigation, drawing on unsuccessful challenges to Proposition 13 from the 1980s and 1990s to shape its analysis. Surprisingly, it finds that many of the most promising legal arguments leveled against Proposition 13 were never actually adjudicated on the merits. After excavating those untested challenges, this Note suggests that federal constitutional claims rooted in Proposition 13's impact on interstate mobility are the most promising terrain for future litigation—although even those claims face doctrinal hurdles. It then considers the viability of reform through the political process, drawing on the state's experience with two recent ballot initiatives limiting the measure's scope.

* Law Clerk, California Supreme Court; J.D., Stanford Law School, 2020. I am especially grateful to Michelle Wilde Anderson, who encouraged and nurtured this Note from day one. Charles Tyler, Jane Schacter, Michael McConnell, and Mark Storslee also provided valuable support and feedback. Mitchel Scott was an indispensable sounding board and cheerleader—for this Note as with all things. Finally, I wish to thank the capable and hardworking editors of the *Stanford Law Review*, especially Giuliana Carozza Cipollone, Thomas Schubert, Natalie Cernius, Olivia Glass, and Alyssa Netto. This Note reflects only my personal views and not the views of the California Supreme Court or any members thereof.

Table of Contents

Introduction513

I. Background.....515

 A. The Path to Proposition 13.....515

 B. Proposition 13’s Effect on Equality and Socioeconomic Mobility521

II. Prospects for Reform533

 A. Reform Through the Courts534

 1. Prior litigation.....534

 2. Prospects for the future.....542

 B. Reform Through the Political Process549

Conclusion.....553

Introduction

In 2003, Warren Buffett revealed in an interview with the *Wall Street Journal* that he paid the State of California just \$2,264 in property taxes that year for his multimillion-dollar beach home in the tony enclave of Laguna Beach.¹ It was a fraction of what he owed the State of Nebraska for his much more modest primary residence in Omaha.² More surprisingly, it was a fraction of the tax bill for the beach house next door, which Buffett also owned.³

The disclosure made headlines nationwide⁴—but not because Buffett, a billionaire many times over, had revealed a talent for tax evasion rivaling his legendary investment skill. Rather, his lopsided tax burdens laid bare the perverse operation of California’s property-tax regime: After Buffett purchased his first beach house for \$150,000 in 1971,⁵ the California Constitution effectively froze his property-tax bill in time. He was guaranteed this benefit despite his significant personal wealth and despite the fact that the property in question was a seldom-used second home.⁶ Moreover, if Buffett died and title transferred to his children (or their children), most of this legacy tax basis would travel with the deed to the home. In other words, the California Constitution promised one of the richest men in the world—and his heirs—a tax break on a vacation house, in perpetuity.

Warren Buffett is far from the only person to benefit from the California Constitution’s largesse. In 1978, voters passed a ballot measure known as Proposition 13, which added a slew of revenue-generation restrictions to the state constitution.⁷ Chief among them are three limits on how California can levy property taxes on both commercial and residential land: The measure caps

1. Joseph T. Hallinan, *Schwarzenegger Adviser Buffett Hints Property Tax Is Too Low*, WALL ST. J. (Aug. 15, 2003, 12:38 AM ET), <https://perma.cc/8LVN-YEAM>; Amy Dobson, *Inside Warren Buffett’s California Vacation Home*, WASH. POST (Mar. 13, 2018, 8:00 AM PDT), <https://perma.cc/X9TR-R4YH>.

2. Hallinan, *supra* note 1.

3. Tim Rutten, *Buffett and Prop. 13, the Sequel*, L.A. TIMES (Nov. 5, 2003), <https://perma.cc/ED88-CBGL>.

4. See, e.g., Michael Kinsley, *Grandfather-Clause Politics*, SLATE (Nov. 6, 2003, 11:01 AM), <https://perma.cc/8467-SHDA>.

5. Leah Ginsberg, *Billionaire CEO Warren Buffett’s California Beach House Is on Sale for \$11 Million—Take a Look Inside*, CNBC (updated May 28, 2017, 1:21 PM EDT), <https://perma.cc/Q4XV-42LM>.

6. Madeline Stone & Tanza Loudenback, *For Almost 2 Years, No One Wanted to Buy Warren Buffett’s Southern California Vacation Home, But It Finally Sold for \$7.5 Million*, BUS. INSIDER (Oct. 15, 2018, 8:06 AM), <https://perma.cc/7GS6-AVWE>.

7. See Cal. Prop. 13, Initiative Const. Amend., Tax Limitation (1978), <https://perma.cc/T6MP-MH9T> (embodied as amended in CAL. CONST. art. XIII A).

property-tax rates, requires that the State assess tax burdens by reference to a parcel's purchase price rather than its current market value, and limits any annual increases in that assessed value to 2% per year or the rate of inflation—whichever is lower—until the property changes hands.⁸ Proposition 13 also requires that virtually any other increase in statewide taxation clear the legislature by a two-thirds supermajority.⁹ Most alternative forms of new local taxation must pass by a two-thirds vote at the ballot box.¹⁰ Subsequent constitutional amendments have expanded Proposition 13's footprint by entitling property owners to transfer their legacy property-tax basis to children or grandchildren who inherit family real estate.¹¹

Although Proposition 13 is now an entrenched feature of life in California, stories like Buffett's throw questions about its wisdom into sharp relief. And in recent years, statewide fiscal crises and ever-spiraling housing costs have brought renewed urgency to those questions. Forty-three years after Californians dramatically reshaped the statewide rules of property ownership through a populist ballot initiative, that regime's propriety has vaulted back to the forefront of public debate. In the fall of 2020, Californians voted for the first time in Proposition 13's history on whether to limit the measure's scope—ultimately restricting its reach somewhat but expanding it in other ways and leaving the law's applicability to commercial property intact by a narrow margin.¹²

This Note contributes to the resurgent debate over Proposition 13 in two ways. The first is largely descriptive: By chronicling the law's anti-redistributive origin story and the distortions it has created, I argue that Proposition 13's effects on socioeconomic mobility and equality provide

8. CAL. CONST. art. XIII A, §§ 1(a), 2(a)-(b).

9. *Id.* art. XIII A, § 3(a).

10. *Id.* art. XIII A, § 4. For a brief synopsis of these constraints, see *Citizens for Fair REU Rates v. City of Redding*, 424 P.3d 268, 273-74 (Cal. 2018).

11. CAL. CONST. art. XIII A, § 2(h); see also Ronald L. Soble, *Prop. 58 Aims to Fix One Flaw in Taxation Rules Under Prop. 13*, L.A. TIMES (Oct. 11, 1986), <https://perma.cc/4VYJ-AC72> (describing Proposition 58, which allows parents to transfer their tax bases to their children); Max Vanzi, *Death and Tax Measures Hold Low Profile*, L.A. TIMES (Mar. 13, 1996), <https://perma.cc/Z6YV-WWBA> (describing Proposition 193, which extends those intergenerational benefits to transfers of property between grandparents and their grandchildren).

Note that most literature on California's property-tax regime refers to all three measures (Propositions 13, 58, and 193) collectively as "Proposition 13." While technically inaccurate, this Note adopts that shorthand throughout—except where distinguishing between Proposition 13 and these subsequent expansions becomes germane to the argument.

12. See Conor Dougherty, *California's 40-Year-Old Tax Revolt Survives a Counterattack*, N.Y. TIMES (Nov. 10, 2020), <https://perma.cc/ED2Q-3JB5>; see also *infra* notes 278-83 and accompanying text.

another reason—on top of its already well-documented effects on California’s budgetary health—to embrace reform.

The second contribution is more prescriptive: Having chronicled some of the injustices that Proposition 13 works, this Note considers how to blunt their force. To begin, this Note considers the possibility of reform through the courts. It offers the first comprehensive survey in academic literature of legal claims against Proposition 13 in a quarter century.¹³ And because several federal constitutional arguments against the law have been raised by plaintiffs but never fully resolved on their merits, this Note excavates those lost constitutional challenges and assesses their viability for future litigation. After concluding that those legal challenges face varying doctrinal hurdles, this Note closes by evaluating the feasibility of reform through the political process, drawing on lessons from two proposals that voters faced on the 2020 ballot.

I. Background

How did California arrive at this odd state of affairs? Like so many good stories, this one starts with a revolution. But it differs in one critical respect from the standard revolutionary yarn: Rather than reflecting a mass mobilization against entrenched economic interests, the tectonic political movement that gave birth to Proposition 13 appears to have been spurred in large part by existing property owners attempting to protect their financial interests from the prospect of redistribution. Today, Proposition 13 and its companion provisions largely operate in service of those same goals—advantaging existing property wealth at the expense of historically marginalized communities, younger generations, and public education.

A. The Path to Proposition 13

Heading into the late 1970s, Californians were experiencing a combination of extremely high inflation, increasing rates of homeownership, and a steady uptick in home prices.¹⁴ The state was also well into a decades-long period of significant public investment in infrastructure and government services to accommodate its swelling population.¹⁵ Taken together, these trends meant

13. Steven Lawrence outlined prior challenges to the law in 1993. See Steven T. Lawrence, Case Note, *Solving the Proposition 13 Puzzle: From Amador to Nordlinger—Judicial Challenges and Alternatives*, 24 PAC. L.J. 1769, 1785-806 (1993).

14. See Anthony Lewis, *Homeowners’ Revolt*, N.Y. TIMES (Jan. 30, 1978), <https://perma.cc/6XJ4-9BKG>; Edward Nelson, *The Great Inflation of the Seventies: What Really Happened?* 1, 4-5 (Fed. Rsrv. Bank of St. Louis, Working Paper No. 2004-001, 2004), <https://perma.cc/U79W-T9YW> (describing the 1970s as the “Great Inflation” period in the United States).

15. Lenny Goldberg, *Proposition 13: Tarnish on the Golden Dream*, in REMAKING CALIFORNIA: RECLAIMING THE PUBLIC GOOD 41, 43 (R. Jeffrey Lustig ed., 2010).

that more and more Californians faced escalating property-tax bills.¹⁶ In 1968, the average single-family homeowner in California paid \$362 in property taxes annually.¹⁷ A decade later, that figure had exploded to \$811.¹⁸ In urban areas, the trend was even more pronounced; some homeowners' property-tax bills doubled over the course of just a few years.¹⁹ Meanwhile, state legislators responded to a series of corruption scandals in county tax assessors' offices by overhauling local tax-assessment methods.²⁰ Those reforms made the process of assessing individual homeowners' tax burdens much more rigid, systematic, and centralized, in turn increasing the likelihood that homeowners would be hit with regular assessment increases from a faceless, bureaucratic back office.²¹

These changes hit Californians hard. Property taxes are an ad valorem tax, meaning that the government calculates what a taxpayer owes based on the value of an underlying physical asset.²² This structure creates the risk that—if market conditions change—a taxpayer's obligations might exceed their available cash on hand, forcing them to sell the asset to pay their tax bill. That risk is particularly acute for ad valorem taxes levied on *residential* property; if a taxpayer cannot pay up, they may have to sell their house.

Californians' discontent with their rising property-tax bills therefore coalesced into a specific public narrative: The state's runaway property taxes were pushing middle-class Californians—especially the elderly—out of their homes.²³ In April 1977, a group of angry senior citizens became the face of this story when they gathered on the steps of the Redwood City courthouse and burned their property-tax assessment notices in protest.²⁴

At the same time, the state's property-tax system was in the midst of massive structural changes. In 1971, the California Supreme Court issued the

16. *See id.* at 44.

17. Lewis, *supra* note 14.

18. *Id.*

19. George Lefcoe & Barney Allison, *The Legal Aspects of Proposition 13: The Amador Valley Case*, 53 S. CAL. L. REV. 173, 178 (1979).

20. MICHAEL STEWART FOLEY, *FRONT PORCH POLITICS: THE FORGOTTEN HEYDAY OF AMERICAN ACTIVISM IN THE 1970S AND 1980S*, at 236 (2013).

21. *See id.*

22. 71 AM. JUR. 2D *State and Local Taxation* § 18 (West 2020).

23. ARTHUR B. LAFFER, STEPHEN MOORE & PETER J. TANOUS, *THE END OF PROSPERITY: HOW HIGHER TAXES WILL DOOM THE ECONOMY—IF WE LET IT HAPPEN* 156 (2008) (“Ground zero for the resentment over soaring taxes was California, where uncapped property tax assessments were driving thousands of residents out of their homes—particularly fixed-income seniors . . .”).

24. FOLEY, *supra* note 20, at 237-38; ISAAC WILLIAM MARTIN, *THE PERMANENT TAX REVOLT: HOW THE PROPERTY TAX TRANSFORMED AMERICAN POLITICS* 50 (2008).

landmark decision *Serrano v. Priest*, holding that the state's heavy reliance on local property-tax revenue to fund public schools violated the Fourteenth Amendment's Equal Protection Clause.²⁵ Because district-level divergence in property values and appetites for taxation had caused "wide differentials" in per-pupil educational spending, California's highest court concluded that the status quo impermissibly distinguished among schoolchildren on the basis of wealth.²⁶

By rejecting hyperlocalized school funding formulas, the *Serrano* decision "sent tremors to the very foundations of public education in every state."²⁷ It also unleashed dramatic changes to school financing statewide. To give life to the state supreme court's opinion, California embarked on a significant redistributive project. Before *Serrano*, the public benefits derived from property-tax revenue remained overwhelmingly in the community from which they had been extracted.²⁸ After *Serrano*, the state legislature and the state supreme court worked in tandem to reallocate property-tax revenue from richer communities like Beverly Hills to poorer communities like nearby Baldwin Park.²⁹

But while the California Supreme Court found this redistribution normatively desirable—and, indeed, constitutionally necessary³⁰—the *Serrano* case meaningfully shifted homeowners' perception of their tax burdens. Prior to *Serrano*, most had a clear incentive to pay their fair share: It was easy to see how the money they paid in property taxes redounded to their own children's education.³¹ Moreover, keeping property-tax revenue within the community from which it had been extracted provided homeowners with tangible financial benefits; higher-quality local public schools lured families to the neighborhood, pushing up property values.³² Spreading property-tax revenue

25. 487 P.2d 1241, 1244 (Cal. 1971) (en banc).

26. *Id.* at 1247, 1250.

27. Robert Reinhold, *John Serrano Jr., et al., and School Tax Equality*, N.Y. TIMES (Jan. 10, 1972), <https://perma.cc/8JP8-KF76>.

28. See William A. Fischel, *How Serrano Caused Proposition 13*, 12 J.L. & POL. 607, 615 (1996).

29. *Id.* at 610-11.

30. A little over a year after the California Supreme Court held that the Equal Protection Clause required this redistributive approach, the United States Supreme Court declined to apply a virtually identical theory nationwide. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 18 (1973) (holding that wealth is not a suspect classification for the purposes of the Equal Protection Clause). Nevertheless, the redistributive work triggered by the 1971 *Serrano* decision continued in California, after the California Supreme Court ruled in a follow-on opinion that its original holding was rooted in both the federal and state constitutions. See *Serrano v. Priest (Serrano II)*, 557 P.2d 929, 958 (Cal. 1977) (en banc).

31. See Fischel, *supra* note 28, at 620.

32. See *id.* at 620 & nn.76 & 79.

statewide diffused the benefits of these tax payments—from taxpayers’ own, identifiable children to the anonymous, unknowable masses of children across California.³³ It also weakened the link between property taxation and localized increases in property values. In other words, *Serrano* reduced homeowners’ commitment to property taxes by reducing the benefit those obligations had for their own family, their own communities, and their own bottom lines.

Against this backdrop, enter businessman Howard Jarvis—a bombastic, larger-than-life figure described by his own supporters as an “irascible old coot.”³⁴ Jarvis had spent years trying to carve out a prominent position for himself in state politics.³⁵ But this confluence of economic, social, and legal developments meant that the late 1970s were finally the septuagenarian’s moment. Springboarding off his role as chairman of the United Organization of Taxpayers, Jarvis declared himself the champion of a grassroots taxpayer revolt.³⁶ With his signature rallying cry—“I’m mad as hell, and I’m not going to take it anymore!”—he fanned the flames of antitax sentiment across the state.³⁷

To catalyze that sentiment into concrete policy change, Jarvis capitalized on California’s vibrant direct democracy.³⁸ In the summer of 1977, he began collecting signatures to place an antitax measure on the ballot for the election the following summer.³⁹ He was no stranger to the process. Jarvis had already tried, and failed, to gather enough signatures for an antitax ballot initiative four times before.⁴⁰ But the fifth time was the charm; within months, an army of volunteers had collected over a million signatures.⁴¹ At the time, it was the most signatures collected for a ballot initiative in California history.⁴²

33. *Id.* at 620-21.

34. William Safire, *Taxpayers’ Revolt*, N.Y. TIMES, Feb. 27, 1978, at A19.

35. See Robert Lindsey, *Howard Jarvis, 82, Tax Rebel, Is Dead*, N.Y. TIMES (Aug. 14, 1986), <https://perma.cc/4CSQ-5QWE>; DAVID O. SEARS & JACK CITRIN, *TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA* 26 (1982).

36. SEARS & CITRIN, *supra* note 35, at 26; DOMINIC SANDBROOK, *MAD AS HELL: THE CRISIS OF THE 1970S AND THE RISE OF THE POPULIST RIGHT* 283-84 (2011).

37. DANIEL A. SMITH, *TAX CRUSADERS AND THE POLITICS OF DIRECT DEMOCRACY* 29 (1998).

38. To amend the California Constitution, individuals need only gather enough signatures for their proposal to appear on the ballot and then persuade a simple majority of their fellow voters on election day. See David A. Carrillo, Stephen M. Duvernay, Benjamin Gevercer & Meghan Fenzel, *California Constitutional Law: Direct Democracy*, 92 S. CAL. L. REV. 557, 569 (2019).

39. Joan C. Baratz & Jay H. Moskowitz, *Proposition 13: How and Why It Happened*, 60 PHI DELTA KAPPAN 9, 9 (1978).

40. Joel Fox, *The First Shot*, NAT’L REV. (June 6, 2003, 11:00 AM), <https://perma.cc/AM6M-JCTS>.

41. FOLEY, *supra* note 20, at 238-39.

42. Baratz & Moskowitz, *supra* note 39, at 9.

Jarvis's initiative proposed imposing three interlocking limits on how California and its cities could levy property taxes.⁴³ First, it limited the rate of property taxation to 1% of assessed value.⁴⁴ Second—and more distinctively—it required that the state calculate the assessed value of any parcel by reference to its purchase price, not its current market value.⁴⁵ Finally, the initiative limited increases in annual property taxation to the lesser of 2% or the annual rate of inflation.⁴⁶ Together, these provisions were intended to protect homeowners from the potential financial calamity that their rapidly appreciating property values might otherwise threaten.⁴⁷

Before election day, the measure came to dominate California's—and, ultimately, the nation's—collective consciousness.⁴⁸ Television advertisements about Proposition 13 saturated California's airwaves.⁴⁹ Public figures from across the political spectrum predicted upheaval if the measure passed.⁵⁰

Some, however, seemingly reveled in Proposition 13's disruptive potential. Referring to the upcoming vote, actor-turned-governor-turned-right-wing-radio-host Ronald Reagan—who would ascend to the presidency just two years later—joked on his broadcast show that “[i]f you live in California you know by now that the sky is scheduled to fall on June 6.”⁵¹

43. Typically, a government levying an ad valorem tax will regularly appraise the value of the asset and reassess individual tax obligations accordingly. See 71 AM. JUR. 2D *State and Local Taxation* § 18 (West 2020). Because periodic reevaluation is a key feature of an ad valorem tax, the method and frequency of assessment can become significant fulcrum points for manipulating how the tax actually operates.

44. Pamela G. Hollie, *Proposition 13: Savings Begin in California*, N.Y. TIMES (June 27, 1978), <https://perma.cc/4VCX-BLYJ>.

45. *Id.* Homes purchased before Proposition 13 went into effect are assessed by reference to their fair market value in 1975, not their actual year of purchase. *Id.*

46. *Id.*; CAL. CONST. art. XIII A, § 2(b).

47. See Hollie, *supra* note 44 (citing the state realtors association's estimate that the median home price in California rose 18.1% between April 1977 and April 1978).

48. See Daniel A. Smith, *Howard Jarvis, Populist Entrepreneur: Reevaluating the Causes of Proposition 13*, 23 SOC. SCI. HIST. 173, 173-74 (1999).

49. *Id.* at 174.

50. See, e.g., Robert Lindsey, *California to Vote on Plan to Limit Property Taxes; Schools and Local Governments Fear Revenue Loss*, N.Y. TIMES (Jan. 5, 1978), <https://perma.cc/T7LU-APPR> (quoting Assembly Speaker Leo McCarthy's warning that the proposal would be “disastrous”); FOLEY, *supra* note 20, at 240 (discussing a bipartisan effort in the legislature to block Proposition 13 by proposing a watered-down alternative).

51. Fox, *supra* note 40. Fox considers Proposition 13 the “first shot fired in what became known as the Reagan Revolution,” the conservative movement that electrified American politics in the 1980s and twice delivered the White House to its figurehead, Ronald Reagan. *Id.*

Sure enough, the sky fell on June 6, 1978. Amidst record-breaking turnout,⁵² a near supermajority of Californians joined Jarvis's taxpayer revolt and voted for Proposition 13.⁵³ Having prevailed at the ballot box, the measure became enshrined in the California Constitution. And right out of the gate, Proposition 13 began achieving its anti-egalitarian objectives. Economist John Kenneth Galbraith has estimated that in the first year after Proposition 13 passed, two-thirds of its benefits accrued to wealthy property owners and corporations.⁵⁴ In his words, the measure amounted to a "disguised attack on the poor."⁵⁵

In the intervening decades, the tax revolt that Jarvis spearheaded has notched further successes. In 1986, voters passed Proposition 58, which entitles children to inherit their parents' legacy tax bases along with their family home.⁵⁶ As a sign of how deeply Jarvis's revolution had influenced establishment politics in California, this time it was the state legislature—not a grassroots signature drive—that placed Proposition 58 on the ballot.⁵⁷ And it passed even more readily than Proposition 13 had, earning support from a staggering 75% of voters.⁵⁸ The same year, voters also approved Proposition 60, which let homeowners over the age of fifty-five transfer their legacy tax bases

52. Baratz & Moskowitz, *supra* note 39, at 11. Many voters who turned out on election day appear to have been motivated primarily by the issue of property taxes: Approximately 15% fewer voters indicated a choice for the gubernatorial primary than on Proposition 13, which appeared on the same ballot. *See id.*

53. Smith, *supra* note 48, at 174. Note, however, that while voters supported Proposition 13 in droves, its support was strongest among the groups that stood to benefit the most from its protections. Just 42% of African American voters and 47% of renters supported the measure. Baratz & Moskowitz, *supra* note 39, at 11. And while Jarvis cloaked his movement in rhetoric about fighting for the working man, when assessed along socioeconomic lines, support for Proposition 13 was weakest among low-income voters. *Id.*

54. Twila Van Leer, *Proposition 13 Utah Initiatives Would Differ in Scope, Effect*, DESERET NEWS (Oct. 23, 1988), <https://perma.cc/NWV7-5K4R>.

55. *Galbraith Calls Tax Vote an "Attack on the Poor,"* N.Y. TIMES (June 29, 1978), <https://perma.cc/T5NM-RRJK>.

56. *See* Cal. Prop. 58, Legis. Const. Amend., Taxation: Family Transfers (1986), <https://perma.cc/AD26-L22R> (embodied as amended in CAL. CONST. art. XIII A, § 2(h)(1)); *Exclusions from Reappraisal Frequently Asked Questions (FAQs)*, CAL. ST. BD. EQUALIZATION, <https://perma.cc/UTU3-CP6N> (archived Nov. 7, 2020); *see also* Kathleen Pender, *California Tax Shelter Saves Children Big Bucks on Inherited Property*, S.F. CHRON. (updated Aug. 19, 2018, 9:54 AM), <https://perma.cc/3HZF-KZZ5>.

57. *See* Soble, *supra* note 11.

58. Liam Dillon & Ben Poston, *California Homeowners Get to Pass Low Property Taxes to Their Kids. It's Proved Highly Profitable to an Elite Group*, L.A. TIMES (Aug. 17, 2018, 4:00 AM), <https://perma.cc/5QLA-KJ7T>.

to new homes of equal or lesser value⁵⁹ (a benefit that voters later also extended to disabled homeowners⁶⁰). Ten years later, voters extended Proposition 13's footprint yet again with Proposition 193—a constitutional amendment guaranteeing that Proposition 13's legacy tax bases would travel alongside property transfers from grandparents to their grandchildren, not just from parents to children.⁶¹

The ideas that animated Proposition 13 have also spread beyond California. Within four years of the measure's passage, thirty-four states adopted some form of property-tax relief.⁶² As of 2018, nineteen states pegged property taxes to acquisition value, limiting the rate at which a property's assessed value can increase.⁶³ And virtually every state in the union has restricted its legislature's ability to set property taxes in some form or another.⁶⁴ California remains, however, the only state that entitles property heirs to also inherit their family's artificially low tax assessments.⁶⁵

B. Proposition 13's Effect on Equality and Socioeconomic Mobility

Four decades later, the anti-redistributive energies that helped fuel the campaign to enact Proposition 13 have borne fruit. The law provides a de facto tax subsidy for existing property wealth, the size of which grows each year in direct proportion to the recipient's tenure on the land.

By way of explanation, prices normally grow in rough proportion to the annual rate of inflation. As the years tick by, inflation dilutes the purchasing power of a single dollar, slowly pushing its effective value downward. In other words, your grandparents' starry-eyed reminiscences about five-cent movie tickets or one-dollar gallons of gas are more than simple nostalgia. They

59. Scott Shafer, *Proposition 5 Renews California's Debate Over Property Taxes*, KQED (Oct. 24, 2018), <https://perma.cc/8UQS-Y8NR>; see also Ronald L. Soble, *Prop. 60 Would Give Home-Buying Tax Break to Senior "Empty Nesters,"* L.A. TIMES (Oct. 16, 1986), <https://perma.cc/HTZ9-VYY5>.

60. See Cal. Prop. 110, Legis. Const. Amend., Property Tax Exemption for Severely Disabled Persons (1990), <https://perma.cc/3Y4F-Q6TB> (embodied as amended in CAL. CONST. art. XIII A, § 2(a)).

61. Cal. Prop. 193, Legis. Const. Amend., Property Appraisal: Exception—Grandparent—Grandchild Transfer (1996), <https://perma.cc/B8KU-UGXV> (embodied as amended in CAL. CONST. art. XIII A, § 2(h)(2)); *Exclusions from Reappraisal Frequently Asked Questions (FAQs)*, *supra* note 56.

62. Melissa J. Morrow, Comment, *Twenty-Five Years of Debate: Is Acquisition-Value Property Taxation Constitutional? Is It Fair? Is It Good Policy?*, 53 EMORY L.J. 587, 587 (2004).

63. LINCOLN INST. OF LAND POL'Y, STATE BY STATE PROPERTY TAX AT A GLANCE: FULL VOLUME 2020, at 4 tbl.US-2 (2020), <https://perma.cc/KS2K-F7WE>.

64. *Id.* at 3.

65. Dillon & Poston, *supra* note 58.

illustrate how the functional value of a static amount of money shrinks over time.

Because it effectively sets property-tax increases below the rate of inflation, Proposition 13 short-circuits this standard economic presumption. To extend the metaphor, Proposition 13 is the tax equivalent of guaranteeing people who bought \$2.34 movie tickets in California in 1978⁶⁶—and their children and their children’s children—legacy movie-ticket prices, forever. Meanwhile, everyone else is stuck buying today’s \$11 tickets. The result is what some have wryly dubbed a “welcome stranger” approach to taxation, where a community’s newer property owners shoulder a comparatively heavier burden to fund public services than do their established neighbors.⁶⁷

But while Proposition 13 would amount to a tax subsidy for incumbent property owners even if all things were equal, all things have not been equal in California since 1978. Over the past four decades, the value of property statewide has skyrocketed, increasing at a clip that vastly outstrips both annual rates of inflation *and* Proposition 13’s maximum permissible increases in assessed value.⁶⁸ Between 1980 and 2018, the state’s median home price increased sevenfold.⁶⁹ Today, high property values are “almost as much of the state’s identity as abundant sunshine and tech start-ups.”⁷⁰

The result is an ever-growing chasm between the taxes California collects for recently purchased property and the taxes it collects for property that has not changed ownership in some time.⁷¹ For the *average* California home, new buyers pay more than four times the property taxes they would under the legacy rates that Proposition 13 promises to incumbents.⁷² In parts of

66. See Danielle Chiriguayo, *A Peek Behind the Curtain at Movie Ticket Prices*, MARKETPLACE (Mar. 14, 2019), <https://perma.cc/6AAW-QNP9>.

67. See, e.g., *Nordlinger v. Hahn*, 505 U.S. 1, 6 (1992) (acknowledging that “Proposition 13 has been labeled by some as a ‘welcome stranger’ system”).

68. See MAC TAYLOR, CAL. LEGIS. ANALYST’S OFF., CALIFORNIA’S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES 7 (2015), <https://perma.cc/FFY6-37JK> (explaining that California homes were priced at 30% above the national average in 1970 and 250% above the national average in 2015).

69. See Elijah Chiland, *Report: Proposition 13 Will Save LA Homeowners \$7.4B in 2018*, CURBED L.A. (Oct. 24, 2018, 9:56 AM PDT), <https://perma.cc/48NV-P3Y5>.

70. Jenny Schuetz, *[Your City] Has a Housing Crisis. The Answer Is [More/Less] [Building/Money/Regulation]*, BROOKINGS INST.: UP FRONT (May 2, 2019), <https://perma.cc/8L6U-VETZ>.

71. See *How Will Aging Baby Boomers Affect Future Property Tax Revenues?*, CAL. LEGIS. ANALYST’S OFF. (June 20, 2017), <https://perma.cc/V26C-BUU2>.

72. See Chris Kenrick, *Prop 13: The Elephant Is Finally in the Room*, PALO ALTO ONLINE (Feb. 10, 2012, 8:18 AM), <https://perma.cc/VR78-89LP>. This statistic is from 2007. *Id.* Because Proposition 13’s effects grow with time, presumably the gap has worsened in the fourteen years since.

California where land values have appreciated even more steeply over the last forty years, the disparity is often much greater. To give a particularly grotesque example, the single-family home at 439 Lincoln Avenue in Palo Alto, California, went on the market for \$11,800,000 in May 2019.⁷³ At that price, a new owner would have paid at least \$118,000 in property taxes each year.⁷⁴ The sellers, who bought the house in 1972 for a scant \$69,500,⁷⁵ pay around \$3,310 in annual property taxes at the time of writing.⁷⁶ In other words, if 439 Lincoln Avenue were to change hands at the listed price, its tax basis would become almost *thirty-six* times higher. Meanwhile, the owners would pocket well over \$11,000,000 in capital gains—reflecting a home that has appreciated nearly 170-fold over the course of their possession.

These outsized incumbent advantages benefit residential and commercial property owners alike. Because corporations can theoretically survive indefinitely, longtime California companies have been able to lock in significant, potentially unending tax benefits. In the heart of Silicon Valley, for example, IBM's commercial property holdings—which the company purchased in 1975—are assessed at just fifty cents per square foot for tax purposes.⁷⁷ On the open market, comparable commercial property can command upwards of \$650 per square foot.⁷⁸ Some estimate that oil giant Chevron saves upwards of \$100 million in annual taxes on its oil-production sites thanks to Proposition 13.⁷⁹ Perhaps most notoriously, Disneyland's sprawling complex remains taxed at its 1970s market value.⁸⁰ Moreover, the measure entitles residential landlords to indefinitely enjoy artificially low property-tax rates, even as their properties

73. See *439 Lincoln Avenue, Palo Alto, CA 94301*, TRULIA, <https://perma.cc/PR2E-ZPET> (archived Dec. 10, 2020).

74. Property taxes are initially set at roughly 1% of purchase price. See CAL. ST. BD. OF EQUALIZATION, CALIFORNIA PROPERTY TAX: AN OVERVIEW 10 (2018), <https://perma.cc/6U9W-VN7P>.

75. *439 Lincoln Ave, Palo Alto, CA 94301*, REDFIN, <https://perma.cc/3JJ3-BETL> (archived Feb. 3, 2021).

76. *Secured Property Search*, CNTY. SANTA CLARA, <https://perma.cc/J4K9-9RQC> (archived Nov. 27, 2020) (to locate, click “View the live page,” select “Simple Address Search,” enter “439 Lincoln Av Palo Alto” in the search bar, click “Submit,” and then click “View Bill”) (showing that the owners of 439 Lincoln Avenue owe only \$3,310.92 in property taxes for the 2020-2021 tax year).

77. SILICON VALLEY CMTY. FOUND. & MAKE IT FAIR COAL., POLICY BRIEF: IMPACTS ON SILICON VALLEY AND HIGH TECH INDUSTRY FROM COMMERCIAL PROPERTY TAX REFORM 2 (2018), <https://perma.cc/U4YR-VS8T>.

78. *Id.*

79. Bobbi Murray, *The \$11 Billion Question: Will Californians Raise Commercial Property Taxes?*, AM. PROSPECT (July 29, 2020), <https://perma.cc/FHP4-842A>.

80. See Scott Shafer, *Prop. 15 Would Close a Corporate Tax Loophole. Here's How It Got There in the First Place*, KQED (Oct. 5, 2020), <https://perma.cc/TRK4-WLPK>.

generate ever more income from California's notoriously expensive rental market.⁸¹

Scholars and policymakers have long bemoaned how Proposition 13's revenue constraints affect the California budget.⁸² And the law's fiscal impact has undeniably been dramatic. Immediately after Proposition 13 went into effect, local governments lost the equivalent of 22% of their budgeted expenditures.⁸³ It slashed statewide property-tax collections in half.⁸⁴ To this day, Proposition 13's impact is enormous: In 2018, it saved homeowners from paying \$30 billion in property taxes—or about 15% of California's budget.⁸⁵ Commercial and industrial property owners, in turn, were expected to save an estimated \$11.4 billion in 2019 and 2020.⁸⁶ And because Proposition 13 also structurally limits sources of revenue, its impact goes beyond dollars taken off the table. California and its cities are hemmed in by Proposition 13's "fiscal straitjacket," constrained in the public services they can offer and the ways they can respond to economic shocks.⁸⁷ Even during the state's most recent budget crisis in 2009, experts laid the blame for California's multibillion-dollar deficit squarely at the feet of structural constraints imposed by the 1978 antitax amendments.⁸⁸

81. See Nada Wasi & Michelle J. White, *Property Tax Limitations and Mobility: The Lock-in Effect of California's Proposition 13*, at 7-8 (Nat'l Bureau of Econ. Rsch., Working Paper No. 11108, 2005), <https://perma.cc/HK2W-4KJL>.

82. See, e.g., Roger L. Kemp, *California's Proposition 13: A One-Year Assessment*, 14 ST. & LOC. GOV'T REV. 44, 44 (1982).

83. Jack Citrin, *Introduction to PAUL RICHTER, CALIFORNIA AND THE AMERICAN TAX REVOLT: PROPOSITION 13 FIVE YEARS LATER* 1, 24 (Terry Schwadron ed., 1984).

84. Michael Gervais & Dontae Rayford, Note, *In Pursuit of Equity in Property Tax Allocation: Discussing the Flawed Implementation of Proposition 13*, 30 VA. TAX REV. 761, 770 (2011).

85. Chiland, *supra* note 69.

86. JENNIFER ITO, JUSTIN SCOGGINS, PAMELA STEPHENS & MANUAL PASTOR, USC DORNSIFE, RESEARCH UPDATE: STATE AND COUNTY-LEVEL ESTIMATES OF REVENUE GAINS FROM CHANGES TO CALIFORNIA'S SYSTEM OF ASSESSING COMMERCIAL REAL ESTATE 2 (2018), <https://perma.cc/99G4-3VP9>.

87. Donald Cohen, *California in Crisis*, AM. PROSPECT (Jan. 29, 2010), <https://perma.cc/AZE4-99VE>.

88. See, e.g., *id.* (calling Proposition 13 the "most important budget problem" the state faced and saying it contributed to making California "broke"); Pete Carey, *California Budget Crisis Brings Critics of Prop. 13 to the Fore*, MERCURY NEWS (updated Aug. 14, 2016, 12:34 AM), <https://perma.cc/NZ42-QZ8Q> (quoting one elected official as saying "I don't know how we can talk about reforming the California budget without reforming Prop. 13" and dismissing other solutions as "Band-Aid[s]"); Kevin O'Leary, *The Legacy of Proposition 13*, TIME (June 27, 2009), <https://perma.cc/EQY4-Q9YR> (identifying Proposition 13 as "the root of California's misery").

But rather than piling onto the existing body of literature casting Proposition 13 as an agent of fiscal famine,⁸⁹ this Note argues that it also inflicts a subtler kind of injustice. Assessing property taxes based on real estate's original purchase price effectively subsidizes California's longer-term property owners. On the very same block, one family may enjoy a tax bill tied to increasingly anachronistic valuations—while nevertheless reaping the financial reward of massive increases in its home's market value. Meanwhile, the family's newcomer neighbors shoulder a significantly higher tax burden, having paid much more to buy comparable or less valuable property. Because these subsidized incumbents are entitled to transfer their legacy tax bases to their children or grandchildren, Proposition 13's inequities persist across generational lines.

Even more troublingly, the incumbents whom Proposition 13 most rewards are far from a representative cross section of California life. To begin, the law provides no tangible assurances to renters; its direct benefits accrue exclusively to homeowners. And, on average, homeowners in California are wealthier than their tenant counterparts.⁹⁰ As a group, those whom Proposition 13 benefits are also significantly less diverse: According to the most recently available census data, the rate of homeownership among white Californians is almost *twice* as high as the rate among African Americans and about 50% higher than the rate among Latinx Californians.⁹¹ The legacy of redlining—outlawed just ten years before Proposition 13 went into effect⁹²—puts the state's imprimatur on this racialized wealth gap.⁹³

89. See, e.g., RICHTER, *supra* note 83, at 73 (outlining the “fiscal squeeze” that California faced following Proposition 13’s enactment); ARTHUR O’SULLIVAN, TERRI A. SEXTON & STEVEN M. SHEFFRIN, *PROPERTY TAXES & TAX REVOLTS: THE LEGACY OF PROPOSITION 13*, at 98 (1995) (outlining Proposition 13’s dramatic impact on local governments’ budgets and how those local governments had to “scramble[] to raise existing fees or enact new local levies . . . in an effort to offset losses”); EMILY E. STRAUS, *DEATH OF A SUBURBAN DREAM: RACE AND SCHOOLS IN COMPTON, CALIFORNIA* 149 (2014) (explaining how “Proposition 13 hit Compton,” a majority–African American suburb of Los Angeles, “hard as it starved the school district’s already skeletal budget and dismal financial base”).

90. Matt Levin, *A Rare Tenant Win and a Lingering Question: Why Don’t California’s Renters Have More Political Punch?*, CALMATTERS (updated May 30, 2019), <https://perma.cc/22WF-QW2G> (reporting that a typical California renter is Latinx and makes \$26,000 a year, while a typical California homeowner is white and makes \$38,000 a year).

91. CAL. DEP’T OF HOUS. & CMTY. DEV., *CALIFORNIA’S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES* 20 fig.1.15 (2018), <https://perma.cc/W35U-8UD3>.

92. See *On the 50th Anniversary of the Fair Housing Act, Where Are We?*, HARV. C.R.-C.L. L. REV. ONLINE (Apr. 18, 2018), <https://perma.cc/ZYN5-PMEM> (explaining how the Fair Housing Act of 1968 prohibited residential redlining).

93. See Matthew Green, *How Government Redlining Maps Pushed Segregation in California Cities*, KQED (Apr. 27, 2016), <https://perma.cc/9CGW-PJ97>. For a deeper look at how redlining exacerbated the race-based gap in property wealth, see generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT*
footnote continued on next page

Proposition 13, Revisited
73 STAN. L. REV. 511 (2021)

Property-tax records show that Proposition 13 provides the biggest subsidies for over-million-dollar homes located in high-income neighborhoods.⁹⁴ In 2015, its greatest savings accrued to residents of cities that have become synonymous with wealth and privilege: technologists' playground Palo Alto (median home value of \$2.25 million), the glitzy beach retreat Malibu (median home value of \$2.7 million), and palm-tree-lined Beverly Hills (median home value of \$2.6 million).⁹⁵ Unsurprisingly, these cities are also overwhelmingly white.⁹⁶ By contrast, the cities that benefit the *least* from Proposition 13 are poorer and more diverse. The average home values in Beaumont, Arvin, Palmdale, and Lancaster, California—the four cities in which homeowners have received the fewest tax breaks from Proposition 13—are all an order of magnitude lower than Palo Alto's.⁹⁷ And all four cities are majority nonwhite.⁹⁸ Sure enough, a recent empirical study by Carlos Avenancio-León and Troup Howard found “evidence of racial and ethnic inequality” in the relative distribution of

SEGREGATED AMERICA (2017) (discussing how federal redlining policies cemented racial inequities in the accumulation of family wealth through homeownership); and IRA KATZNELSON, *WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA* (2005) (same).

94. Ralph McLaughlin, *Prop 13: Winners and Losers from America's Legendary Taxpayer Revolt*, TRULIA (updated Nov. 30, 2016, 1:30 PM ET), <https://perma.cc/5JYX-7MHJ>.

95. *Id.*

96. *See Explore Census Data*, U.S. CENSUS BUREAU, <https://perma.cc/8JUC-DKAJ> (archived Jan. 22, 2021) (to locate data for Palo Alto, click “View the live page,” enter “Palo Alto city, California” in the search bar, click “SEARCH,” and select “ACS DEMOGRAPHIC AND HOUSING ESTIMATES” under “Tables”; to locate data for Malibu, click “View the live page,” enter “Malibu city, California” in the search bar, click “SEARCH,” and select “ACS DEMOGRAPHIC AND HOUSING ESTIMATES” under “Tables”; to locate data for Beverly Hills, click “View the live page,” enter “Beverly Hills city, California” in the search bar, click “SEARCH,” and select “ACS DEMOGRAPHIC AND HOUSING ESTIMATES” under “Tables”). Per the most recent estimates at the time of writing, Malibu is 93% white and Beverly Hills is 82% white. *Id.* Palo Alto is 57% white but a scant 2% African American and 6% Latinx. *Id.*

97. *See* McLaughlin, *supra* note 94.

98. *Explore Census Data*, *supra* note 96 (to locate data for Beaumont, click “View the live page,” enter “Beaumont city, California” in the search bar, click “SEARCH,” and select “ACS DEMOGRAPHIC AND HOUSING ESTIMATES” under “Tables”; to locate data for Arvin, click “View the live page,” enter “Arvin city, California” in the search bar, click “SEARCH,” and select “ACS DEMOGRAPHIC AND HOUSING ESTIMATES” under “Tables”; to locate data for Palmdale, click “View the live page,” enter “Palmdale city, California” in the search bar, click “SEARCH,” and select “ACS DEMOGRAPHIC AND HOUSING ESTIMATES” under “Tables”; to locate data for Lancaster, click “View the live page,” enter “Lancaster city, California” in the search bar, click “SEARCH,” and select “ACS DEMOGRAPHIC AND HOUSING ESTIMATES” under “Tables”). Per the most recent estimates at the time of writing, Beaumont is 43% Latinx and 9% African American; Arvin is 94% Latinx; Palmdale is 60% Latinx and 15% African American; Lancaster is 40% Latinx and 24% African American. *Id.*

property-tax burdens statewide.⁹⁹ In other words, Proposition 13's biggest tax breaks appear to accrue to communities that need them the least.

Those inequities are especially pronounced for property owners who benefit from Propositions 58 and 193—the ballot initiatives that guarantee Proposition 13's legacy tax rates will travel with inherited property. According to a recent investigation, 63% of homes in Los Angeles County whose owners inherited their parents' or grandparents' legacy tax bases were used as either vacation houses or income-producing rental properties.¹⁰⁰ In some cities, that figure is closer to 80%.¹⁰¹ Moreover, the individual beneficiaries of Propositions 58 and 193 are often well known for being well heeled—ranging from Academy Award-winner Jeff Bridges to the heirs to the United Airlines fortune.¹⁰²

If these perverse effects were not enough, Proposition 13 also erects a number of barriers to those seeking to buy a home for the first time, thus constraining the ranks of Californians who might benefit from the law in the future. Unsurprisingly, these consequences mean that the rate of homeownership among Californians has shrunk since Proposition 13 became law¹⁰³ and now trails the national average by double digits.¹⁰⁴ The decline is especially pronounced among younger generations¹⁰⁵ and for African American and Latinx households.¹⁰⁶

99. CARLOS AVENANCIO-LEÓN & TROUP HOWARD, *THE ASSESSMENT GAP: RACIAL INEQUALITIES IN PROPERTY TAXATION* 16 (2020), <https://perma.cc/ZA72-VL7Y>. Avenancio-León and Howard set out to explore whether standard ad valorem tax assessment practices place a disproportionate property-tax burden on communities of color. *Id.* at 2. Their analysis found that homeowners of color in California shoulder a higher property-tax burden than their white peers. *Id.* at 16, 77 tbl.A1. However, the authors hypothesized that Proposition 13 played a sufficiently distortionary effect in achieving this result that California should be removed from their otherwise national dataset. *Id.* at 16. Indeed, they labeled Proposition 13 a policy that “mechanically generates inequality.” *Id.* at 34.

100. Dillon & Poston, *supra* note 58.

101. *Id.*

102. *See id.*

103. MAC TAYLOR, CAL. LEGIS. ANALYST'S OFF., *COMMON CLAIMS ABOUT PROPOSITION 13*, at 44 fig.26 (2016), <https://perma.cc/P65Z-6PAM>.

104. PUB. POL'Y INST. OF CAL., *CALIFORNIA'S FUTURE: HOUSING 3* (2018), <https://perma.cc/6B6W-MAZQ>.

105. Brian Uhler, *Generational Differences in Homeownership and Housing Costs*, CAL. LEGIS. ANALYST'S OFF. (Aug. 17, 2015), <https://perma.cc/4Q4Y-49DJ>.

106. Joel Kotkin, *The Hollowing-out of the California Dream*, CITY J. (July 26, 2018), <https://perma.cc/D6FK-EN7H> (explaining that “African-American and Hispanic homeownership rates [in California] have dropped considerably more than those of Asians and whites—four times the rate in the rest of the country”).

This is in part because California's cities have responded to Proposition 13's fiscal restrictions by adopting land-use strategies designed to maximize municipal revenue potential—a set of responses dubbed the “fiscalization” of local land use.¹⁰⁷ Most saliently, by limiting the revenue that can be collected through traditional property taxes, Proposition 13 encourages cities to chase forms of land use that instead generate sales-tax revenue. With an eye toward strengthening their fiscal position, local governments routinely court lucrative land uses like automobile dealerships and commercial shopping centers.¹⁰⁸ Often, they do so explicitly at the expense of permitting new residential development.¹⁰⁹ But local governments have further reason to disfavor new housing development. New homes mean new residents, who in turn require expensive public infrastructure and services—further straining already-strapped municipal budgets.¹¹⁰ Moreover, development fees on new construction are one of the few forms of municipal revenue exempt from Proposition 13's otherwise stringent restrictions.¹¹¹ California cities therefore often lard new construction projects with these fees¹¹²—pushing up the cost of building housing even where local governments *do* deign to permit it. In short, Proposition 13 encourages a patchwork of local policies that operate to constrain the construction of new housing.

Meanwhile, because Proposition 13's benefits grow the longer that a family holds onto its home, the law has significantly reduced annual property turnover—from 16% of homes changing hands annually statewide in 1977 and

107. Jonathan Schwartz, Note, *Prisoners of Proposition 13: Sales Taxes, Property Taxes, and the Fiscalization of Municipal Land Use Decisions*, 71 S. CAL. L. REV. 183, 183-84, 198-99 (1997) (quoting Dan Walters, *Change Looms on Sales Tax*, SACRAMENTO BEE, Aug. 27, 1995, at A3).

108. See *id.* at 198-201 (chronicling the perverse ways California's cities have adapted to Proposition 13).

109. *Id.* at 203; see, e.g., Evelyn Danforth, Note, *Limiting Local Control to Save California's Soul*, 29 STAN. L. & POL'Y REV. ONLINE 1, 8 (2019) (detailing the struggle of Brisbane, California, to prioritize badly needed housing at the expense of tax-generating office space while it drew plans for a prime, undeveloped parcel of land at the mouth of Silicon Valley).

110. See CAL. BUDGET PROJECT, PROPOSITION 13: ITS IMPACT ON CALIFORNIA AND IMPLICATIONS 10 (1997), <https://perma.cc/EM2V-QDV9> (explaining that “[t]he need for revenues” has “led many local jurisdictions to conclude that providing services to many types of new development cost [more] than they generated in tax revenues,” meaning that new housing is now “seen as a drain on local coffers”).

111. HALEY RAETZ, DAVID GARCIA, NATHANIEL DECKER, ELIZABETH KNEEBONE, CAROLINA REID & CAROL GALANTE, TERNER CTR. FOR HOUS. INNOVATION, RESIDENTIAL IMPACT FEES IN CALIFORNIA: CURRENT PRACTICES AND POLICY CONSIDERATIONS TO IMPROVE IMPLEMENTATION OF FEES GOVERNED BY THE MITIGATION FEE ACT 14-17 (2019), <https://perma.cc/9AYQ-8KU3> (characterizing Proposition 13 as the underlying problem behind cities' overreliance on construction fees for revenue).

112. *Id.*

1978 to just 5% in 2014 and 2015.¹¹³ Unsurprisingly, turnover in California meaningfully lags behind the nationwide average.¹¹⁴ Although California's Legislative Analyst's Office has suggested that some of this dramatic decline is attributable to the state's aging population and skyrocketing property values, studies nevertheless confirm that Proposition 13 is a meaningful driver: The law's biggest beneficiaries are more likely to remain in place.¹¹⁵ Meanwhile, roughly one in every ten property transfers in California annually is an interfamily inheritance subject to the generational-tax-basis protections of Propositions 58 and 193; in some counties, the figure is closer to one in five.¹¹⁶ In effect, Proposition 13 and its companion provisions make whatever housing stock already exists less available for new buyers to purchase.¹¹⁷ And it is virtually a truism that limiting available housing inventory will push property values further up. Proposition 13's spillover effects have, in short, exacerbated the high price of housing across California.

To be sure, factors other than Proposition 13 have contributed to putting homeownership increasingly out of reach for Californians. Until recently, the state has been in an extended economic boom: Over the past decade, one in every seven jobs created nationwide has been in California.¹¹⁸ In particular, the dizzying rise of the technology industry has washed the Bay Area with wealth. San Francisco now has the most billionaires per capita of any city worldwide.¹¹⁹ But despite this economic boom, income inequality has worsened.¹²⁰ California's highest earners have seen incomes rise by 40% since 1980, as middle-class incomes remain virtually stagnant.¹²¹ Incomes in the

113. TAYLOR, *supra* note 103, at 11-12.

114. MAC TAYLOR, CAL. LEGIS. ANALYST'S OFF., THE PROPERTY TAX INHERITANCE EXCLUSION 8 fig.7 (2017), <https://perma.cc/Z8M3-6W67>.

115. *Id.* at 7-8; TAYLOR, *supra* note 103, at 11-12.

116. TAYLOR, *supra* note 114, at 3-4.

117. Homeowners who are over the age of fifty-five, who are disabled, or who live in an area recently affected by a natural disaster can—under certain circumstances—transfer their legacy tax basis to purchase a new home. See CAL. CONST. art. XIII A, § 2.1; CAL. REV. & TAX. CODE § 69.5 (West 2020).

118. Jill Cowan, *Takeaways from Gavin Newsom's State of the State*, N.Y. TIMES (Feb. 20, 2020), <https://perma.cc/Q3JR-EQ4D>.

119. Amy Graff, *San Francisco Has Highest Density of Billionaires of Any City in the World, Says New Report*, S.F. CHRON. (updated May 13, 2019, 8:35 AM), <https://perma.cc/AYV8-3MBG>.

120. Matt Levin, *California's Rich-Poor Gap: The Reality May Surprise You*, CALMATTERS (Aug. 11, 2016), <https://perma.cc/3U7C-ZBZN> (explaining that income inequality has worsened statewide since 2007, mostly driven by “the already very poor getting even poorer”).

121. SARAH BOHN & CAROLINE DANIELSON, PUB. POL'Y INST. OF CAL., INCOME INEQUALITY AND THE SAFETY NET IN CALIFORNIA 4 (2016), <https://perma.cc/JFD4-795Q>.

lowest tranche have actually *decreased* in relative terms.¹²² Meanwhile, fragmented and highly powerful local governments dilute the state’s ability to enact coordinated, muscular interventions that might address the stratospheric cost of housing.¹²³

Nevertheless, politicians and policy experts agree that, at its core, California’s affordability crisis stems from the state’s persistent underproduction of new housing.¹²⁴ Even while the state’s population has ticked upward, bolstering demand,¹²⁵ construction has not kept up. As a Republican state senator recently told the *New York Times*, “[t]he only thing that folks agree on” when it comes to the statewide housing crisis “is that we need [more] housing.”¹²⁶ And by giving local governments structural incentives to restrict new residential construction, Proposition 13 has erected a sturdy barrier to tackling that central defect in the state’s housing market.

These inequities among the individual homeowners whom Proposition 13 favors do not even tell the full story of the law’s lopsided beneficence. Instead of primarily helping homeowners, savings from Proposition 13 appear tilted toward commercial property owners like corporations and landlords. Shortly before Proposition 13 went into effect, the relative shares of taxes that both Los Angeles County and Santa Clara County received from commercial and residential properties were roughly equal.¹²⁷ By 2009, however, commercial property’s contributions had shriveled—to just 30% of property tax revenue in Los Angeles County and 35% in Santa Clara County.¹²⁸ And these savings do not

122. *Id.* at 4-5.

123. See James P. Sutton, *The California Housing Crisis and the Problem with Local Control*, NAT’L REV. (June 19, 2019, 6:30 AM), <https://perma.cc/TU9B-PU3C> (explaining that California is “only a quarter of the way” to achieving housing-production targets set by the state legislature, in part due to local-government intransigence—especially in California’s suburbs).

124. See, e.g., Gavin Newsom, Governor, Cal., State of the State Address (Feb. 19, 2020), <https://perma.cc/5YR5-A8PT> (acknowledging that “the only sustainable way” out of the state’s housing and homelessness crisis is to “massively increase housing production”); CECILE MURRAY & JENNY SCHUETZ, TERNER CTR. FOR HOUS. INNOVATION, IS CALIFORNIA’S APARTMENT MARKET BROKEN? THE RELATIONSHIP BETWEEN ZONING, RENTS, AND MULTIFAMILY DEVELOPMENT 12-13 (2019), <https://perma.cc/RXK9-ZU8E> (concluding that more housing production—spurred by local zoning reform and financial incentives—would alleviate the high cost of housing statewide).

125. Andrew Khouri, *Housing Construction Is on the Rise in California, but It’s Still Not Enough*, L.A. TIMES (May 1, 2017, 4:25 PM), <https://perma.cc/6F9J-NGTN>; see also Noah Buhayar & Christopher Cannon, *How California Became America’s Housing Market Nightmare*, BLOOMBERG (Nov. 6, 2019), <https://perma.cc/5PRK-6ACJ>.

126. Conor Dougherty, *California, Mired in a Housing Crisis, Rejects an Effort to Ease It*, N.Y. TIMES (Jan. 30, 2020), <https://perma.cc/QK6X-LWCU>.

127. Murray, *supra* note 79; see also Dougherty, *supra* note 12.

128. Murray, *supra* note 79.

primarily benefit small businesses and mom-and-pop landlords. According to a recent study from the University of Southern California, nearly 80% of statewide revenue loss from commercial land comes from the 6% of properties valued at \$5 million or greater.¹²⁹ As then-Los Angeles Mayor Antonio Villaraigosa explained in 2011, “Prop 13 was never intended to be a corporate tax giveaway, but that is what it has become.”¹³⁰

To summarize: Rather than manipulating tax policy to clear out the underbrush of historic inequities, Proposition 13 cements them, privileging the already privileged. In the words of former President Richard Nixon, it is a “striking bonanza for the haves.”¹³¹

These disparities would be alarming on their own terms. But property taxes are not some random financial penalty—payments made into the void, relevant only for how they shape the household-level economics of California’s unlucky recent arrivals. Since colonial times, property taxes have been the fiscal engine powering our system of public education.¹³² To this day, property taxes remain the primary source of funding for American public schools.¹³³ California has largely trailed the national average in per-pupil educational spending since Proposition 13 strangled that revenue stream.¹³⁴

Education, in turn, has long been understood as the cornerstone of democratic engagement and socioeconomic mobility.¹³⁵ Statistics and studies

129. JENNIFER ITO, JUSTIN SCOGGINS & MANUEL PASTOR, USC DORNSIFE, GETTING REAL ABOUT REFORM II: ESTIMATING REVENUE GAINS FROM CHANGES TO CALIFORNIA’S SYSTEM OF ASSESSING COMMERCIAL REAL ESTATE 6, 9 fig.2 (2020), <https://perma.cc/EYD2-2KRZ>.

130. Ben Smith, *Villaraigosa Presses Revenues, Questions Prop. 13*, POLITICO: BEN SMITH BLOG (Aug. 16, 2011, 2:26 PM EDT), <https://perma.cc/GB8H-MQ57>.

131. SANDBROOK, *supra* note 36, at 285.

132. Billy D. Walker, *The Local Property Tax for Public Schools: Some Historical Perspectives*, 9 J. EDUC. FIN. 265, 265 (1984).

133. BETTY COX, SPENCER C. WEILER & LUKE M. CORNELIUS, THE COSTS OF EDUCATION: REVENUE AND SPENDING IN PUBLIC, PRIVATE AND CHARTER SCHOOLS 34 (2013). A caveat: In California, property taxes currently account for just over one-fifth of statewide educational outlays. PATRICK MURPHY & JENNIFER PALUCH, PUB. POL’Y INST. OF CAL., FINANCING CALIFORNIA’S PUBLIC SCHOOLS (2018), <https://perma.cc/AFM8-JX8U>. But this is a *consequence* of Proposition 13—not a fact that softens the law’s blow. See Goldberg, *supra* note 15, at 48 (explaining that “[p]rior to Proposition 13, the property tax accounted for 65 percent of school finance” in California).

134. Daniel J. Willis, John Fensterwald, Yuxuan Xie, Matt Levin & John Osborn D’Agostino, *States in Motion: Visualizing How Education Funding Has Changed Over Time*, EDSOURCE (updated Nov. 14, 2018), <https://perma.cc/56AR-D97R>; see also MURPHY & PALUCH, *supra* note 133 (demonstrating that although California has supplemented the property-tax revenue it lost due to Proposition 13 to some extent, it has never fully closed the gap when it comes to education funding).

135. See Walker, *supra* note 132, at 267, 271. For example, the precursor to American public education—seventeenth-century Puritan schooling—met sustained resistance from the
footnote continued on next page

proving this point are legion,¹³⁶ but arguably nothing encapsulates education's distinctive role in American life better than the Supreme Court's declaration in *Brown v. Board of Education*: It is "perhaps the most important function of state and local governments . . . required in the performance of our most basic public responsibilities."¹³⁷

At bottom, then, Proposition 13 subsidizes existing property wealth in perpetuity at the expense of funding the very tool—education—that has the greatest potential to subvert entrenched socioeconomic hierarchies. California's property-tax regime has turned the world's fifth-largest economy¹³⁸ into what one expert recently dubbed a "feudal" state, where the longtime wealthy pass down their "manor[s]" within their families.¹³⁹ Meanwhile, each subsequent generation contributes less and less in real terms to funding public education. In parallel, that same tax regime makes it even harder for outsiders to find a foothold in the state's astronomically expensive property market.¹⁴⁰

When voters first wrote these policies into the California Constitution, it may have been difficult to fully appreciate the long-term mark they would leave on statewide land ownership and wealth accumulation. But the steady march of time, coupled with the state's turbocharged housing price increases, has laid their consequences bare. In the decades since Proposition 13 became law, its effects on equality and socioeconomic mobility have metastasized. The addition of Propositions 58 and 193 have worsened those impacts by layering on intergenerational benefits.

In the years before Proposition 13, the so-called "California dream" promised a "democratic" version of the "dolce vita," luring new arrivals to join the state's fast-growing and readily attainable middle class.¹⁴¹ Wallace Stegner described California as "like the rest of America . . . only more so"—an "innovative, ahistorical" society where "nothing is formed" and "where the

English aristocracy for being "dangerous to the monarchy and the social hierarchy of the country." *Id.* at 267.

136. See Rachel Milstein Sondheimer & Donald P. Green, *Using Experiments to Estimate the Effects of Education on Voter Turnout*, 54 AM. J. POL. SCI. 174, 174 (2010) ("The relationship between education and voter turnout ranks among the most extensively documented correlations in American survey research.").

137. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

138. Thomas Fuller, *The Pleasure and Pain of Being California, the World's 5th-Largest Economy*, N.Y. TIMES (May 7, 2018), <https://perma.cc/6UWP-QSG9>.

139. See David Wagner & Aaron Mendelson, KPCC, *Where Do People Get Money to Buy California Homes These Days? Often, from Mom and Dad*, CALMATTERS (July 31, 2018), <https://perma.cc/GC6V-L6PN>.

140. See *supra* notes 67-76 and accompanying text.

141. Benjamin Schwarz, *California Dreamers*, ATLANTIC (July/Aug. 2009), <https://perma.cc/L4K6-GPYZ>.

future will be made.”¹⁴² No more. Proposition 13 and its progeny have given property-owning Californians a constitutional mandate to cement their grip on dynastic landholdings, while capping their contributions to public goods and services. And along the way, these provisions have encouraged policies that make the American dream of homeownership—let alone the mythologized lifestyle of the California dream—more difficult to achieve for younger generations and historically marginalized communities. In the words of one liberal activist, under Proposition 13, “[o]ur economy has grown into an hourglass economy.”¹⁴³

II. Prospects for Change

These long-term consequences suggest that Proposition 13 is overdue for reform. To help inform that process, this Part considers possible mechanisms for such change. First, it assesses the prospect of securing change through litigation. It then turns to the viability of achieving modifications through the political process. Based on those discussions, this Part concludes with some optimism about the possibility of reform through either channel. Prior, unsuccessful litigation against Proposition 13 has left a number of claims against the law untested. And a recent ballot initiative to limit the law’s applicability to commercial property suggests that public sentiment toward Proposition 13 is very much in flux.

Before diving in, however, it bears acknowledging that not *all* aspects of Proposition 13 may deserve outright nullification. If this entire portion of the state constitution were wiped from the books entirely, Californians would be stuck once more with the problem that ostensibly motivated Proposition 13’s passage in the first place: the prospect of residents, and particularly seniors on a fixed income, being taxed out of their own homes as property valuations rise faster than their ability to pay. This Note recognizes the serious financial distress and personal upheaval that this scenario would pose to many. But although abruptly yanking Proposition 13 away in its entirety would have consequences that deserve thoughtful consideration and nuanced legislative intervention, surely this facet of the law alone does not justify the myriad spillover effects fleshed out above. There must be a way to provide vulnerable homeowners with some degree of stability and predictability without ossifying the state’s social order for generations.¹⁴⁴

142. Wallace Stegner, *California: The Experimental Society*, SATURDAY REV., Sept. 23, 1967, at 28.

143. Alan Greenblatt, *As Prop. 13 Turns 40, Californians Rethink Its Future*, GOVERNING (Mar. 2018), <https://perma.cc/6FXU-JMZJ> (quoting PICO California codirector Joseph Tomás McKellar).

144. For example, the benefits of Proposition 13 could be means tested. Alternatively, the state could collect property taxes retroactively, once a homeowner has realized the

footnote continued on next page

A. Reform Through the Courts

The first efforts to chip away at Proposition 13 moved swiftly through the courts. Almost immediately after Californians voted the measure into law, a constellation of local-government entities challenged the measure in state court.¹⁴⁵ Since that initial volley of claims, the United States Supreme Court has twice granted review of challenges to the law brought on federal constitutional grounds.¹⁴⁶ Proposition 13 survived each of those challenges intact.

To consider the viability of litigation challenging Proposition 13 anew, a recapitulation of the three previous, unsuccessful efforts to do so is first in order. Close analysis of these cases produces a surprising conclusion. Despite Proposition 13's high profile and the significant legal challenges it faced shortly after its enactment, many of the underlying legal theories have yet to be conclusively litigated on the merits. Each of these untested claims faces doctrinal hurdles, but to varying degrees.

1. Prior litigation

Surely aware that Proposition 13 would strip away nearly a fifth of their local tax revenue, local governments challenged the measure almost immediately after it passed. In a slew of rapid-fire filings, cities, counties, and school boards sought declaratory judgments against the measure based on four distinct legal theories. First, they alleged it ran afoul of state procedural requirements for altering the constitution.¹⁴⁷ They also raised three federal constitutional claims, arguing that Proposition 13 impinged on cities' rights under the Contract Clause,¹⁴⁸ violated the fundamental right to travel,¹⁴⁹ and was at odds with the Equal Protection Clause.¹⁵⁰ After consolidating the plaintiffs' claims, the California Supreme Court declared in *Amador Valley Joint*

home equity gains attendant to increases in property taxation. And, of course, the threat of taxing Californians out of their homes has little purchase in the context of secondary vacation properties, commercial real estate, or multigenerational transfers.

145. William C. Peper, Recent Development, *Proposition 13 Under an Updated Equal Protection Analysis: Unlucky at Last?*, 42 WASH. U. J. URB. & CONTEMP. L. 433, 441 & nn.51 & 54 (1992).

146. See *Nordlinger v. Hahn*, 505 U.S. 1, 4 (1992); *R. H. Macy & Co. v. Contra Costa County*, 226 Cal. App. 3d 352 (Ct. App. 1990), cert. granted mem., 500 U.S. 951, and cert. dismissed mem., 501 U.S. 1245 (1991); Petition for a Writ of Certiorari in *R. H. Macy*, 500 U.S. 951 (No. 90-1603), 1991 WL 11177145.

147. See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 583 P.2d 1281, 1284 (Cal. 1978) (en banc).

148. See *id.* at 1295 (citing U.S. CONST. art. I, § 10, cl. 1).

149. See *id.*

150. See *id.* at 1292 (citing U.S. CONST. amend. XIV, § 1).

Union High School District v. State Board of Equalization that the case fell under its original jurisdiction—allowing the court to bypass lower-court review and review the claims on an expedited timeline.¹⁵¹ A mere three months after Proposition 13 became law, the California Supreme Court nearly unanimously rejected a host of legal arguments against it.¹⁵²

Surprisingly, the court disagreed with the plaintiffs’ argument that the Equal Protection Clause prohibited giving property owners preferential tax treatment on the basis of their incumbent status.¹⁵³ Just seven years earlier, the same court had ruled in *Serrano* that California’s hyperlocal approach to public-education funding violated the same constitutional clause by impermissibly differentiating among schoolchildren on the basis of wealth.¹⁵⁴ But this time around, the California Supreme Court took a much narrower view of what the Equal Protection Clause prohibits.¹⁵⁵ By the majority’s reasoning, Proposition 13’s line drawing on the basis of property ownership—though seemingly itself a wealth-based characteristic—was not a traditionally disfavored classification subject to heightened judicial scrutiny.¹⁵⁶ So long as the measure’s incumbency-based distinctions were not “palpably arbitrary,” the Equal Protection Clause had nothing to say.¹⁵⁷ Thus, because the court believed that incumbency was an “arguably reasonable basis” for assessing property taxes, it declined to identify an equal-protection violation.¹⁵⁸

But perhaps even more strikingly, the court conceded that choosing to exercise its discretionary jurisdiction to reach this conclusion was “arguably . . . premature.”¹⁵⁹ Because Proposition 13 had not yet gone into effect—much less seen its subsidy for incumbents grow through the years—the court

151. *See id.* at 1283; Lawrence, *supra* note 13, at 1785 & n.118.

152. *See Amador Valley*, 583 P.2d at 1302. A lone member of the court, Chief Justice Rose Bird, dissented in part. *See id.* at 1302-08 (Bird, C.J., concurring and dissenting).

153. *Id.* at 1292-94 (majority opinion); *see also* Peper, *supra* note 145, at 441.

154. *See Serrano v. Priest (Serrano II)*, 557 P.2d 929, 958 (Cal. 1977) (en banc) (discussing *Serrano v. Priest (Serrano I)*, 487 P.2d 1241 (Cal. 1971) (en banc)).

155. Concededly, the court’s personnel had changed significantly in the seven years since *Serrano I*. Five justices left the bench in the period between 1971 and 1978, leaving just two members of the original *Serrano I* court (Justices Mosk and Tobriner) still serving. *Past & Present Justices*, CAL. CTS., <https://perma.cc/HJ54-94RN> (archived Nov. 8, 2020). Compare *Amador Valley*, 583 P.2d at 1283, 1302, with *Serrano I*, 487 P.2d at 1244, 1266. Of the seven justices who decided *Amador Valley*, three were in their first year of service. *See Past & Present Justices, supra*.

156. *See Amador Valley*, 583 P.2d at 1293.

157. *Id.*

158. *Id.*

159. *Id.* at 1292.

acknowledged that the plaintiffs' equal-protection claim was still too "abstract" to be meaningfully adjudicated.¹⁶⁰ Nevertheless, the court adjudicated it.

The state supreme court spilled much less ink on the plaintiffs' next federal constitutional claim—that Proposition 13 infringed on the constitutional right to interstate travel. In two curt paragraphs, the court announced that because levying property taxes based on acquisition value was "intended to benefit *all* property owners, past and future, resident and nonresident," it did not infringe that right.¹⁶¹ By the court's logic, fastening a hard cap on annual property-tax increases merely "permitt[ed] the taxpayer to make more careful and accurate predictions of future tax liability."¹⁶² The court did not acknowledge that Proposition 13's benefits would flow more heavily to longtime California landowners. Nor did it recognize that by creating such a subsidy, Proposition 13 forces newcomers to shoulder a much greater tax burden to fund public services enjoyed by all Californians. Moreover, the court elided an obvious antecedent problem: How did these plaintiffs—all California governmental entities—even have standing to claim that the law violated their right to interstate travel?¹⁶³

While the opinion dedicated more space to the plaintiffs' Contract Clause claim, it ultimately dismissed the argument on justiciability grounds. Because the challenge was "premature," the court announced that it would await a case in which the law had "demonstrably impaired" contract rights.¹⁶⁴ To this day, the California Supreme Court has not revisited the argument.

The plaintiffs declined to appeal the *Amador Valley* decision to the United States Supreme Court.¹⁶⁵ So Proposition 13 survived its first legal challenge—with the state's highest court giving remarkably short shrift to the federal constitutional claims leveled against the measure. The California Supreme Court's perfunctory treatment of the federal constitutional claims in *Amador Valley* did not put them fully to rest. But it did signal that California's courts were unlikely to provide challengers to Proposition 13 refuge from the will of California's voters.¹⁶⁶

160. *Id.*

161. *Id.* at 1295.

162. *Id.*

163. And yet the court was not altogether blind to standing problems within the case. Analyzing the plaintiffs' Contract Clause argument, the opinion explicitly questioned their standing to bring the claim. *Id.* at 1297-98.

164. *Id.* at 1298.

165. See Philip Hager, *Prop. 13 Foes to Go to High Court*, L.A. TIMES (Mar. 3, 1991), <https://perma.cc/R559-XXV4>.

166. Some scholars have hypothesized that the California Supreme Court's opinion was motivated—in part or in whole—by political calculations. See, e.g., Lefcoe & Allison, *supra* note 19, at 174 & n.4. Proposition 13 passed overwhelmingly in June, the court
footnote continued on next page

The question of Proposition 13's constitutional status lay dormant for the next decade. Then, in 1989, it roared back to life when the United States Supreme Court issued a decision in an otherwise relatively obscure tax case, *Allegheny Pittsburgh Coal Co. v. County Commission*.¹⁶⁷ The petitioner, a West Virginia coal company, brought an equal-protection challenge claiming that the county tax assessor's practice of evaluating property taxes based on each parcel owner's original purchase price violated the West Virginia Constitution's guarantee that "taxation shall be equal and uniform throughout the State, and all property . . . taxed in proportion to its value."¹⁶⁸

Writing for a unanimous court, Chief Justice Rehnquist teed up the issue by explaining that "neighboring comparable property which has not been recently sold" had been "assessed at only a minor fraction" of the petitioners' own tax burden.¹⁶⁹ "[O]f course," the Court conceded, the states "have broad powers to impose and collect taxes," including "divid[ing] different kinds of property into classes and assign[ing] to each class a different tax burden so long as those divisions and burdens are . . . neither capricious nor arbitrary, and rest[] upon some reasonable consideration."¹⁷⁰ But because the challenged assessment practices lacked any footing in West Virginia law, the Court held they flunked even that permissive, rational-basis standard of review—and thereby violated the Equal Protection Clause.¹⁷¹

The case's clear parallels to Proposition 13 did not escape the Justices. In a footnote, the Court acknowledged that the California Constitution required taxing property based on its acquisition value, not its current market value—almost perfectly mirroring the equal-protection violation it had just identified.¹⁷² Nevertheless, it reserved judgment on whether the existence of a formal law like Proposition 13 might justify what had been a mere "aberrational enforcement policy" in Webster County, West Virginia.¹⁷³

was called on to assess its legal validity in September, and six weeks later four of the justices were up for reelection. *Id.* Perhaps tellingly, Chief Justice Rose Bird, the lone dissenter in *Amador Valley*, barely kept her seat that November—achieving reelection by what was, at the time, the narrowest margin in California history. *Id.* at 174 n.4. Bird continued to face recall attempts in the years following *Amador Valley*. Kenneth P. Miller, *The California Supreme Court and the Popular Will*, 19 CHAPMAN L. REV. 151, 181 (2016). In 1986, voters finally removed Bird from office altogether. *Id.* at 182.

167. 488 U.S. 336 (1989).

168. *Id.* at 338, 342 (quoting W. VA. CONST. art. X, § 1).

169. *Id.* at 342.

170. *Id.* at 344 (quoting *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 573 (1910)).

171. *Id.* at 345-46.

172. *Id.* at 344 n.4.

173. *Id.*

The legal world took note. Was the Court signaling its willingness to evaluate state tax-assessment schemes under a more muscular constitutional rubric? Was it inviting a new legal challenge to Proposition 13, this time in federal court?

Meanwhile, the California Supreme Court's prediction that the constitutional theories against Proposition 13 would become less abstract once the law took root bore out. In 1986, department store giant Macy's went private in a multibillion-dollar leveraged buyout.¹⁷⁴ California tax officials determined that the change was significant enough that the resulting corporate entity qualified as a new owner for the purposes of Proposition 13, resetting the assessable basis of Macy's properties.¹⁷⁵ Suddenly, Macy's lost the legacy tax rates it had enjoyed on virtually all of its sixty-one department-store properties across California.¹⁷⁶ The annual property-tax bill for its department store in Concord, California, for example, more than doubled.¹⁷⁷ The company's main competitors, J.C. Penney's and Sears, remained locked in legacy tax rates despite having virtually identical stores in the same mall.¹⁷⁸

Seeking to undo its new tax burdens, Macy's filed suit in state court.¹⁷⁹ But rather than simply challenging whether the corporate restructuring should have triggered a reassessment, the *Allegheny Pittsburgh* decision appears to have emboldened the company to set its sights higher—attacking Proposition 13's very premise.

In its filings, Macy's argued that Proposition 13 was constitutionally infirm under three distinct theories. First, it presented a more nuanced version of the *Amador Valley* plaintiffs' equal-protection claim. While Macy's evidently conceded that rationality review might govern its challenge, it nevertheless argued that, as applied to commercial properties like department stores, assigning property owners differentiated tax rates based on their tenure on the

174. Stuart Silverstein, *Business Does an About-Face on Property Tax*, L.A. TIMES (June 8, 1991), <https://perma.cc/E2HG-8Q3S>.

175. See Petition for a Writ of Certiorari, *supra* note 146, at 3. In the years since, corporations have become much savvier about structuring reorganizations, transfers, and other transactions to avoid triggering Proposition 13's change-in-ownership provision. See Joe Eskenazi, *Prop. 13: The Building-Sized Loopholes Corporations Exploit*, S.F. WKLY. (Jan. 4, 2012, 4:00 AM), <https://perma.cc/Y6AQ-QEZG> (describing the "line between cunning and devious" that corporations routinely walk to avoid triggering a tax reassessment).

176. Silverstein, *supra* note 174.

177. Oswald Johnston & Kevin Roderick, *Supreme Court to Rule on Prop. 13 Challenge: Millions Could Face Higher Bills If U.S. Justices Find State's Unequal Property Valuation Unconstitutional*, L.A. TIMES (June 4, 1991), <https://perma.cc/YW9A-BVRX>.

178. Petition for a Writ of Certiorari, *supra* note 146, at 3.

179. *Id.* at 3-4.

land flunked even that lenient standard.¹⁸⁰ Second, Macy's retread the *Amador Valley* plaintiffs' argument that Proposition 13 impeded on the constitutional right to interstate travel.¹⁸¹ Finally, Macy's advanced an argument the *Amador Valley* plaintiffs had not: By giving a "competitive edge to established property owners," Proposition 13 burdened the free flow of interstate commerce in violation of the Commerce Clause.¹⁸²

After some discovery,¹⁸³ a state trial court and intermediate appellate court both held that the California Supreme Court's decision in *Amador Valley* foreclosed all three of the department store's constitutional arguments.¹⁸⁴ The California Supreme Court declined to disturb the lower courts' rulings.¹⁸⁵ Macy's then turned to the United States Supreme Court, filing a petition for a writ of certiorari.¹⁸⁶ In its brief, Macy's played up the law's impact on interstate mobility—asking the Court to end a tax scheme that was "inherently discriminatory against newcomers."¹⁸⁷ The Supreme Court granted the petition.¹⁸⁸

But the company's decision to challenge California's property-tax regime had triggered significant public backlash as litigation progressed.¹⁸⁹ With the news that the Supreme Court would review the case, customers began cutting up their Macy's credit cards in protest.¹⁹⁰ Buckling to the mounting criticism, Macy's abandoned its appeal just four days after the Court granted certiorari.¹⁹¹ In a statement, the company explained it had realized that if it won at the Supreme Court, it would likely also invalidate the law as to

180. *Id.* at 12.

181. *Id.* at 22.

182. *Id.* at 9.

183. At the trial-court level, the parties agreed to commission a detailed study of how Proposition 13's incumbent advantage actually affected property-tax rates in Contra Costa County. *Id.* at 4. After just a decade under Proposition 13, the study found, newly purchased properties were taxed "on average" at "three times the level of comparable properties that had not experienced a change in ownership since 1975." *Id.* Moreover, it projected that if property-value increases continued apace, "average disparities will likely be 9:1 by 1999, with about 20% of the properties [countywide] experiencing disparities greater than 25:1." *Id.*

184. *R. H. Macy & Co. v. Contra Costa County*, 226 Cal. App. 3d 352, 359, 367, 369 (Ct. App. 1990), *cert. granted mem.*, 500 U.S. 951, and *cert. dismissed mem.*, 501 U.S. 1245 (1991).

185. Petition for a Writ of Certiorari, *supra* note 146, at 6-7.

186. *Id.* at 1.

187. *Id.* at 8.

188. *R. H. Macy*, 500 U.S. 951.

189. Silverstein, *supra* note 174.

190. Don J. DeBenedictis, *Calif. Tax Challenge Withdrawn: Consumer Complaints May Have Spurred Macy's to Drop Supreme Court Case*, ABA J., Sept. 1991, at 35, 35.

191. *Id.*

residential properties—potentially raising taxes on millions of homeowners.¹⁹² Notably, the decision by Macy’s to abandon the case meant that no court ever evaluated its Commerce Clause argument in detail.¹⁹³

Attorneys for Macy’s, however, were not the only ones who read *Allegheny Pittsburgh* as an invitation to challenge Proposition 13 in federal court. In 1988, an attorney named Stephanie Nordlinger purchased a small bungalow in the Los Angeles neighborhood of Baldwin Hills.¹⁹⁴ Nordlinger quickly discovered that—thanks to Proposition 13—her neighbors paid dramatically less in property taxes even though they owned homes virtually identical to hers.¹⁹⁵

She filed suit in state court, claiming that *Allegheny Pittsburgh* had implicitly overruled the California Supreme Court’s decision in *Amador Valley*.¹⁹⁶ Nordlinger also emphasized that *Amador Valley* had “merely involved a facial challenge” brought shortly after Proposition 13 became law, and thus presented “no evidence” of the “dramatic disparities created by Proposition 13’s welcome stranger tax assessment method.”¹⁹⁷ Lower state courts were “unpersuaded” by the arguments.¹⁹⁸ And as it had done in *R. H. Macy & Co.*, the California Supreme Court declined to review the decision.¹⁹⁹ Nordlinger filed a petition for a writ of certiorari and—four months after Macy’s had abandoned its own appeal—the Supreme Court granted review.²⁰⁰

Nordlinger advanced two arguments. First, she claimed that, in light of *Allegheny Pittsburgh*, Proposition 13 violated the Equal Protection Clause even under mere rationality review.²⁰¹ She also resurrected, in part, the emphasis

192. *Id.*

193. The California appeals court concluded that although *Amador Valley* had not expressly confronted the plaintiffs’ Commerce Clause argument, it was, “in essence, only a restatement” of their right-to-travel argument—which *Amador Valley* had “soundly rejected.” *R. H. Macy & Co. v. Contra Costa County*, 226 Cal. App. 3d 352, 369-70 (Ct. App. 1990), *cert. granted mem.*, 500 U.S. 951, and *cert. dismissed mem.*, 501 U.S. 1245 (1991). But the two arguments actually draw from very different constitutional provisions: the Due Process Clause of the Fourteenth Amendment, U.S. CONST. amend. XIV, § 1, and the Commerce Clause, *id.* art. 1, § 8, cl. 3.

194. *Nordlinger v. Hahn*, 505 U.S. 1, 6 (1992); Morris Newman, *California’s “Tax Revolt” Faces Challenge*, N.Y. TIMES (July 7, 1991), <https://perma.cc/64VP-P49W>.

195. *Nordlinger*, 505 U.S. at 7-8.

196. *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259, 1264-65 (Ct. App. 1990), *aff’d sub nom. Nordlinger v. Hahn*, 505 U.S. 1 (1992).

197. *Id.* at 1268.

198. *Id.* at 1274.

199. *Johnston & Roderick*, *supra* note 177.

200. *See Nordlinger v. Hahn*, 502 U.S. 807 (1991) (mem.) (granting the petition for a writ of certiorari).

201. *See* Petitioner’s Brief on the Merits at 16-17, 30, *Nordlinger*, 505 U.S. 1 (No. 90-1912), 1991 WL 530842.

that Macy's had placed on interstate mobility, arguing that the law infringed on the constitutional right to travel and therefore should be subject to more exacting judicial scrutiny.²⁰²

At oral argument, the Justices voiced skepticism about Nordlinger's equal-protection argument. In Justice Scalia's view, for example, surely there was some "rational relationship" between Proposition 13 and its stated goal of "assur[ing] that people would not be taxed out of their homes."²⁰³ Any imprecision in securing that goal was of little moment; even if the law was "rough and ready" and "not perfect," it struck Justice Scalia as "close enough for government work."²⁰⁴ Nordlinger's interstate travel claim, meanwhile, received scant attention.

Ultimately, seven Justices soundly rejected Nordlinger's equal-protection claim.²⁰⁵ Writing for the majority, Justice Blackmun articulated "at least two" rational bases for Proposition 13's incumbent benefits.²⁰⁶ First, relying on the Court's decision in *Village of Euclid v. Ambler Realty Co.*,²⁰⁷ he identified a "legitimate interest in local neighborhood preservation, continuity, and stability."²⁰⁸ Second, he reasoned that states could rightfully adopt policies that reflect property owners' "reliance interest" in their property taxes remaining relatively stable from the time of purchase.²⁰⁹ The Court distinguished *Allegheny Pittsburgh* on the grounds that the discredited tax-assessment methodology in that case was an ad hoc approach unsupported by any official justification.²¹⁰ In fact, it had been done in open defiance of the West Virginia Constitution rather than in accordance with it.²¹¹

The Court did not reach Nordlinger's claim that Proposition 13 infringed on the constitutional right to travel, noting that she had not alleged in the briefings that Proposition 13 had personally "impeded [her] from traveling or from settling in California."²¹² Nor could she have: As the Court observed, "prior to purchasing her home, petitioner lived in an apartment in Los

202. See *id.* at 39-40.

203. See Transcript of Oral Argument at 13, *Nordlinger*, 505 U.S. 1 (No. 90-1912), 1992 WL 687833; Robert Reinhold, *Tax Battle in California Reaches Supreme Court*, N.Y. TIMES (Mar. 1, 1992), <https://perma.cc/S24U-NSD7>.

204. Transcript of Oral Argument, *supra* note 203, at 14; Reinhold, *supra* note 203.

205. *Nordlinger*, 505 U.S. at 3, 10-17.

206. *Id.* at 12.

207. 272 U.S. 365 (1926).

208. *Nordlinger*, 505 U.S. at 12.

209. *Id.* at 12-13.

210. *Id.* at 14-15.

211. *Id.* at 15.

212. *Id.* at 10-11.

Angeles.”²¹³ Thus, by holding that Nordlinger lacked standing to bring a right-to-travel claim, the Court declined to evaluate the argument on its merits.²¹⁴

Nordlinger persuaded a lone Justice. In dissent, Justice Stevens lamented that Proposition 13 had guaranteed California’s lucky “property owners (hereinafter Squires)” a “tremendous windfall.”²¹⁵ He described the benefits Proposition 13 established as “privilege of a medieval character,” where “[t]wo families with equal needs and equal resources are treated differently solely because of their different heritage.”²¹⁶ Even applying rationality review, Justice Stevens found justification for the law to be “nonexistent.”²¹⁷ His colleagues’ rationales for the law were merely “restatement[s] of the benefits that accrue to long-time property owners.”²¹⁸ But “[t]hat a law benefits those it benefits cannot be an adequate justification for [such] severe inequalities.”²¹⁹ Because Proposition 13 lacked any “purpose or goal independent of the direct effect of the legislation,” Justice Stevens concluded that it furthered no “legitimate state interest.”²²⁰ But even Justice Stevens appeared to agree with his colleagues that Nordlinger lacked standing to challenge Proposition 13 on right-to-travel grounds. His acerbic dissent made no mention of her second, alternative theory of the case. And despite Justice Stevens’s protestations, Proposition 13 lived on.

2. Prospects for the future

How should the failed legal challenges to Proposition 13 inform those who might embark on similar efforts today? Perhaps the most striking takeaway from these three cases is how few of the constitutional arguments against Proposition 13 and its companion provisions were ever fully aired and adjudicated. Four distinct claims remain unscarred by adverse precedent. First, neither the California Supreme Court nor the United States Supreme Court has passed on whether Proposition 13 violates the Contract Clause. Second, because Macy’s abandoned its case, no court has ever considered whether the equal-protection reasoning advanced in both *Amador Valley* and *Nordlinger* extends to commercial property. Third, no plaintiff has challenged the law’s subsequent

213. *Id.*

214. *Id.* at 11.

215. *Id.* at 28-29 (Stevens, J., dissenting). Justice Stevens illustrated this by observing that “the Squires . . . own 44% of the owner-occupied residences” in California but “paid only 25% of the total taxes collected from homeowners in 1989.” *Id.* at 29.

216. *Id.* at 30.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.* at 34.

expansions to protect intergenerational property-tax bases. Finally, no out-of-state plaintiff has challenged Proposition 13 in a court of last resort. Thus, arguments about its impact on interstate mobility—whether under the Commerce Clause or the fundamental right to travel—have been completely untested.²²¹ In other words, even though Proposition 13 is over forty years old and has worked dramatic changes on California, several avenues for litigation against it remain open.

That said, each of these untested claims faces headwinds, some stiffer than others. The Supreme Court’s narrow approach to the Contract Clause means a renewed challenge under its terms is unlikely to hold much promise. Because the Contract Clause “does not operate to obliterate the police power of the States,”²²² the post-*Lochner* Court has articulated a stringent test for identifying violations: A state law is permissible unless it “operate[s] as a substantial impairment of a contractual relationship” that is not “necessary to meet an important general social problem.”²²³

But Proposition 13’s connection with any invalidated contracts is indirect at best. Although it constrains *how* cities might raise revenue, it does not impose a wholesale bar to doing so. And the nexus between Proposition 13’s strictures and potentially unfulfillable municipal debt loads has grown even more attenuated in the four decades since it became law; when cities take on additional obligations, they are now on notice about the revenue constraints they will face in attempting to honor them. Thus, even though California’s unfunded municipal liabilities have ballooned²²⁴—raising credible questions about its cities’ abilities to honor those contracts—ascribing constitutionally significant blame to Proposition 13 seems unlikely.

Nor would an equal-protection claim rooted in Proposition 13’s impact on commercial property appear more likely to succeed than Stephanie Nordlinger’s ill-fated claim about its impact on residential property. Even though commercial property owners’ interests are arguably orthogonal to the concerns about homeowner displacement that triggered Howard Jarvis’s movement, Proposition 13 would almost indisputably trigger mere rationality

221. Notwithstanding the California Supreme Court’s offhand disposal of the in-state *Amador Valley* plaintiffs’ right-to-travel argument.

222. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 241 (1978).

223. *Id.* at 244, 247.

224. Marc Joffe & Edward Ring, *California’s State and Local Liabilities Total \$1.5 Trillion*, CAL. POL’Y CTR. (Jan. 3, 2019), <https://perma.cc/XQ96-TQ7J> (estimating California’s unfunded pension liabilities at \$846 billion, compared to the governor’s official estimate of \$316 billion).

review.²²⁵ And overinclusive regulations are the textbook example of the kind of state action that can survive that more lenient form of judicial scrutiny.²²⁶

The law's intergenerational features, at least, pose questions about equal-protection doctrine that are somewhat more uncharted. But here, too, existing case law seems to foreclose a successful challenge. After all, who is the protected class against which California's hereditary approach to property taxation discriminates? The most obvious formulation would be non-property-owning families. But cases like *San Antonio Independent School District v. Rodriguez* seem to stand for the proposition that disparate government treatment on the basis of wealth is not subject to some heightened judicial scrutiny under the U.S. Constitution.²²⁷ Moreover, even if the Equal Protection Clause provided some theoretical foothold, it is hard to imagine which plaintiffs might have standing to specifically challenge the intergenerational transfer of a third party's property-tax basis. A parent of a child at an underfunded public school, for example, might attempt to bring suit on the theory that they are contributing more money to the school in property taxes than is a parent at the same school who inherited their family home. But cases like *Allen v. Wright* suggest the standing analysis is especially demanding for structural-change litigation rooted in such an attenuated theory of injury and redressability.²²⁸

That leaves Proposition 13's impact on interstate mobility—an impact that maps thematically, if not with complete doctrinal precision, onto the concerns about socioeconomic mobility that this Note has already drawn out.

As a threshold matter, Proposition 13's chokehold on socioeconomic mobility in California surely has the ancillary effect of hampering mobility from *outside* California. As hard as it may be for California families to navigate

225. After all, the Court has already applied rationality review against Proposition 13 once before. See *Nordlinger*, 505 U.S. at 11 (“The appropriate standard of review is whether the difference in treatment between newer and older owners rationally furthers a legitimate state interest.”).

226. See, e.g., *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 490-91 (1955) (holding that an overinclusive regulation did not violate the Equal Protection Clause); DANIEL A. FARBER, WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY & JANE S. SCHACTER, *CASES AND MATERIALS ON CONSTITUTIONAL LAW: THEMES FOR THE CONSTITUTION'S THIRD CENTURY* 550-51 (5th ed. 2013) (using the unsuccessful challenge to an overinclusive regulation in *Lee Optical* to illustrate the Court's modern-day “defer[ence] to legislative goals” and “willingness] to uphold social and economic regulations based upon any conceivable basis” it can come up with).

227. See 411 U.S. 1, 24 (1973) (explaining that, “at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages”). The California Constitution does subject wealth-based classifications to greater judicial scrutiny. See *Serrano v. Priest (Serrano II)*, 557 P.2d 929, 951 (Cal. 1977) (en banc). But it would be odd, to say the least, for a California court to hold that a provision of the state constitution is itself unconstitutional.

228. See 468 U.S. 737, 756-61 (1984).

life in the state given the law's chilling effects on housing production and property turnover,²²⁹ those consequences loom even larger for out-of-staters who might otherwise elect to move here.

Indeed, despite California's heady economy over the past decade,²³⁰ net immigration has been anemic. For the last decade, arrivals from out of state have consistently lagged behind the rate at which Californians are leaving.²³¹ In 2018, the pace of departures ticked up to a nine-year high.²³² And high property prices appear to be to blame: Demographer and census expert Dowell Myers has explained that data suggest that "[t]he cost of living, especially housing, is what stops the whole world from moving to California."²³³ This effect is perhaps even more tangible in the context of out-of-state businesses. All else being equal, an upstart computer company in Salt Lake City would face stiff barriers to compete in rival IBM's backyard—California—given that IBM is guaranteed a significant tax subsidy just by virtue of having been in the state for a long time.

Of course, property prices are not the sole reason prospective immigrants might decline to enter California. Nor is Proposition 13 the sole reason for those high prices.²³⁴ But a statutory burden on interstate mobility need not be the exclusive impediment to out-of-state travel to be constitutionally suspect.²³⁵ And, at its core, Proposition 13 means that arrivals from out of state will never attain tax parity with the law's incumbent beneficiaries.

Two arguments flow from Proposition 13's exclusionary effects on non-Californians: one challenge rooted in the Commerce Clause and another rooted in the constitutional right to travel. Because both Stephanie Nordlinger and the *Amador Valley* plaintiffs were based in California, neither the United States

229. See Jill Cowan & Robert Gebeloff, *As Rents Outrun Pay, California Families Live on a Knife's Edge*, N.Y. TIMES (Nov. 21, 2019), <https://perma.cc/5UCA-6KLA>.

230. See *id.* (summarizing California's recent track record of job creation).

231. Jonathan Lansner, *California Outmigration Jumps 38% as Departures Rise for 7th Straight Year*, ORANGE CNTY. REG. (updated Nov. 4, 2019, 7:53 AM), <https://perma.cc/ZTL7-M5WV>; see also Kristin Kerns & L. Sagan Locklear, *Three New Census Bureau Products Show Domestic Migration at Regional, State, and County Levels*, U.S. CENSUS BUREAU (Apr. 29, 2019), <https://perma.cc/AX6R-HQS9> (showing that roughly 661,000 Californians left the state in 2017 while just 523,000 entered it).

232. Lansner, *supra* note 231.

233. Margot Roosevelt, *Who Moves to California? The Wealthier and Better Educated, Mostly*, L.A. TIMES (Dec. 21, 2018, 6:00 AM), <https://perma.cc/HP6K-CFSQ>.

234. See *supra* notes 118-26 and accompanying text (explaining how fragmented local policies, income inequality, and economic growth have also contributed to high housing prices in California).

235. See, e.g., *Saenz v. Roe*, 526 U.S. 489, 504 (1999) (dismissing as "beside the point" the argument that a challenged California law burdened the right to travel only "incidentally").

Supreme Court nor the California Supreme Court have meaningfully grappled with these arguments. But as Proposition 13's effect on mobility has become ever more pronounced, these arguments' salience has only grown.

To begin, there is a long tradition of federal judicial intervention under the Commerce Clause to strike down state laws that discriminate against outsiders.²³⁶ As the Supreme Court has explained, the Framers had a "special concern" with "the maintenance of a national economic union."²³⁷ Thus, their "purpose" in structuring federal power was to "preven[t] a State from retreating into economic isolation."²³⁸ Accordingly, case law tracing back to the Marshall Court suggests that the Commerce Clause contains an implicit structural limitation on states' powers to impede the free flow of commerce across the several states.²³⁹ Federal courts apply this so-called "Dormant" Commerce Clause power to invalidate "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors."²⁴⁰

The doctrine turns on rooting out state laws with "differential treatment of in-state and out-of-state economic interests."²⁴¹ To do so, it requires identifying whether a law appears to discriminate against out-of-staters on its own terms or whether it treats out-of-staters and in-state residents alike.²⁴² A state law is "virtually per se invalid" if it gives "differential treatment" to "in-state and out-of-state economic interests."²⁴³ If the law merely has "effects upon interstate commerce [that] are only incidental," courts will then apply the flexible test set out in *Pike v. Bruce Church, Inc.*²⁴⁴ Under *Pike's* balancing

236. See, e.g., *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449, 2457, 2460 (2019) (striking down a discriminatory state liquor-sales law while explaining that the Commerce Clause's "restrict[ion]s" on "state protectionism" are "deeply rooted in our case law"); *Comptroller of the Treasury v. Wynne*, 135 S. Ct. 1787, 1792 (2015) (holding that Maryland's state income-taxation scheme mimicked "a state tariff, the quintessential evil targeted by the dormant Commerce Clause"); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 208-09 (1824) (concluding that an early argument advocating for the dormant Commerce Clause had "great force").

237. *Healy v. Beer Inst.*, 491 U.S. 324, 335-36 (1989).

238. *Fulton Corp. v. Faulkner*, 516 U.S. 325, 330 (1996) (alteration in original) (quoting *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179-80 (1995)).

239. *Dep't of Revenue v. Davis*, 553 U.S. 328, 337-40 (2008) (tracing the history of the Dormant Commerce Clause and describing its modern-day operation); see also *Gibbons*, 22 U.S. (9 Wheat.) at 209-10.

240. *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273-74 (1988).

241. *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338 (2007) (plurality opinion) (quoting *Or. Waste Sys., Inc. v. Dep't of Env't Quality*, 511 U.S. 93, 99 (1994)).

242. See *id.* at 345.

243. *Or. Waste Sys.*, 511 U.S. at 99.

244. 397 U.S. 137, 142 (1970).

inquiry, facially nondiscriminatory statutes will survive “unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits.”²⁴⁵

There also exists a long line of precedents establishing a constitutional right to interstate travel.²⁴⁶ Both the “nature of our Federal Union” and “constitutional concepts of personal liberty . . . require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.”²⁴⁷ Impediments to interstate travel—including travel to settle in another state—are thus subject to heightened judicial review under the Equal Protection Clause. Absent a “*compelling* governmental interest,” the Constitution therefore prohibits classifications that might disadvantage newcomers from making a home in another state.²⁴⁸

Applying these principles in *Zobel v. Williams*, the Supreme Court invalidated Alaska’s formula for determining compensation under its oil-dividend program—which had ratcheted up annual cash payments disbursed to its residents in direct proportion with “each year of [their] residency” in Alaska, “beginning with the date of [the program’s] enactment.”²⁴⁹ In the Court’s words, “favoring established residents over new residents” was a “constitutionally unacceptable” basis for the policy.²⁵⁰ Likewise, in *Saenz v. Roe*, the Supreme Court invalidated durational residency requirements for California’s welfare program.²⁵¹ While the *Saenz* Court suggested there may be a legitimate “substantial reason” for “discrimination against citizens of other States,”²⁵² it cautioned that precedent has not “identified any acceptable reason

245. *United Haulers*, 550 U.S. at 346 (opinion of Roberts, C.J.) (alteration in original) (quoting *Pike*, 397 U.S. at 142).

246. *See, e.g.*, *United States v. Guest*, 383 U.S. 745, 757 (1966) (“The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union.”); *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 48-49 (1867) (“For all the great purposes for which the Federal government was formed we are one people, with one common country. We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own States.” (quoting *Smith v. Turner* (Passenger Cases), 48 U.S. (7 How.) 283, 492 (1849) (Taney, C.J., dissenting))).

247. *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969).

248. *Id.* at 634.

249. 457 U.S. 55, 56-57, 63 (1982). After oil was discovered in Alaska, the state decided to funnel proceeds from the resulting wealth directly to its citizens, setting up annual “dividend” payments to individual residents. *Id.* at 56-57.

250. *Id.* at 65 (quoting *Vlandis v. Kline*, 412 U.S. 441, 450 (1973)).

251. 526 U.S. 489, 492-93, 507 (1999).

252. *Id.* at 502 (quoting *Toomer v. Witsell*, 334 U.S. 385, 396 (1948)).

for qualifying the protection afforded by the Clause for ‘the “citizen of State A who ventures into State B” to settle there and establish a home.’”²⁵³ Where a state law violates the would-be beneficiary’s “right to be treated equally in her new State of residence,” it enshrines an impermissibly discriminatory classification.²⁵⁴

Taken together, these two doctrines construct clear constitutional scaffolding to ward off state laws that trench on interstate mobility. And rhetoric in existing case law certainly seems to support the conclusion that Proposition 13 erects such an impermissible barrier to ensuring that non-Californians can attain equal treatment. As Justice O’Connor wrote in *Zobel*, states cannot tell their citizens “Your status depends upon the date on which you established residence here” or “Those of you who migrated to the State cannot share its bounty on the same basis as those who were here before you.”²⁵⁵ Where a state “impos[es] a relative burden on those who migrated” after a certain point, the law imposing that “continuous disability” demands searching judicial scrutiny.²⁵⁶

Nevertheless, the standard frameworks for identifying an unconstitutional restraint on interstate travel—whether under the Dormant Commerce Clause or the fundamental right to travel—strain when they are applied to Proposition 13’s differentiated rates of taxation based on incumbency. The *Slaughter-House Cases* announce the principle that any “citizen of the United States can, of his own volition, become a citizen of any State of the Union by a bona fide residence therein.”²⁵⁷ Accordingly, as Justice O’Connor’s *Zobel* concurrence explains, in “most cases,” “the terms ‘citizen’ and ‘resident’ are ‘essentially interchangeable.’”²⁵⁸ Put differently, residency is typically the coin of the realm for defining state citizenship.

That approach makes it challenging to argue that Proposition 13’s chief beneficiaries can even be properly characterized as California citizens enjoying benefits denied to noncitizens. By definition, of course, they must be in-state *property* owners. But the law contains no provisions stipulating that the beneficiary of locked-in tax rates must reside in California full-time or even part-time. Nor does the law provide preferential treatment for *all* California citizens; its benefits accrue to California property owners, and primarily to long-term property owners at that. Thus, because Proposition 13’s terms do not neatly

253. *Id.* (quoting *Zobel*, 457 U.S. at 74 (O’Connor, J., concurring in the judgment)).

254. *Saenz*, 526 U.S. at 504-06.

255. *Zobel*, 457 U.S. at 74-75 (O’Connor, J., concurring in the judgment).

256. *Id.* at 75-76.

257. 83 U.S. (16 Wall.) 36, 80 (1872).

258. *Zobel*, 457 U.S. at 73 n.3 (O’Connor, J., concurring in the judgment) (quoting *Hicklin v. Orbeck*, 437 U.S. 518, 524 n.8 (1978)).

cleave between residents and nonresidents, both the Dormant Commerce Clause and the fundamental right to travel's prevailing analytical frameworks make for an uncomfortable fit.

In short, doctrines rooted in interstate mobility form the basis for the most promising legal claims against Proposition 13 and its companion provisions. They provide the best hook for addressing the law's outsized benefits for large corporate entities and generational wealth. But even this approach would require some degree of doctrinal refashioning.

B. Reform Through the Political Process

If existing federal constitutional law doctrines pose some hurdles for reform through litigation, can the democratic process provide a fix instead? For many years, attempting to modify Proposition 13's reach through political channels would have been folly. Proposition 13 was known as the "third rail" of California politics.²⁵⁹ "You touch it, you die."²⁶⁰

Warren Buffett—whose personal benefits from Proposition 13 so ably illustrate the law's perversities—also provides a vivid example of this longstanding political dynamic. Buffett had disclosed his Laguna Beach vacation home's low property-tax burden in order to contextualize a searing public critique of Proposition 13.²⁶¹ He delivered that criticism shortly after joining Arnold Schwarzenegger's Republican gubernatorial campaign as an economic policy adviser, and the campaign was quick to emphatically disavow Buffett's remarks.²⁶² Schwarzenegger's chief Democratic rival, then-Governor Gray Davis, also piled on, saying he "could not disagree more" and was "very proud" of Proposition 13's continued effects.²⁶³ As Buffett learned the hard way, in California, Proposition 13 amounted to a bipartisan article of faith.

But Californians' faith may be wavering. To be sure, Proposition 13 still commands overwhelming support in public opinion polling, at least when Californians are asked about it in the abstract.²⁶⁴ Nevertheless, against the backdrop of a deep statewide housing crisis, there has been heightened public awareness of the law's pernicious spillover effects on the residential real estate

259. Jack Citrin, *Proposition 13 and the Transformation of California Government*, 1 CAL. J. POL. & POL'Y 1, 1 (2009).

260. Clyde Haberman, *The California Ballot Measure That Inspired a Tax Revolt*, N.Y. TIMES (Oct. 16, 2016), <https://perma.cc/CF7L-6Q5J>.

261. Mark Simon, *Buffett's Prop. 13 Comments Cause Stir*, SFGATE (updated Jan. 17, 2012, 10:17 PM), <https://perma.cc/WG45-P5E5>.

262. *Id.*

263. *Id.*

264. See Matt Levin, *Californians Still Really Like Prop. 13—Except for the Big Parts They Don't Like*, CALMATTERS (Sept. 5, 2018), <https://perma.cc/BEB6-2ZA6>.

market.²⁶⁵ As widening income inequality becomes a defining issue on the American left,²⁶⁶ progressive groups have put Proposition 13 and its companion provisions squarely in their crosshairs.²⁶⁷ And, in 2018, voters even decisively rejected a ballot initiative that would have expanded Proposition 13's footprint by letting individuals over fifty-five, individuals who were disabled, and homeowners in areas that had suffered a recent natural disaster transfer a portion of their Proposition 13-protected tax basis to a more expensive home anywhere in the state.²⁶⁸

But it remains unclear when Californians might have the appetite to make wholesale alterations to the state's property-tax regime. In 2020, voters had a chance to do so by enacting Proposition 15, a so-called "split roll" initiative that would have rescinded tax protections for larger-scale commercial properties while leaving protections intact for residential property.²⁶⁹ With municipal finances reeling from the COVID-19 pandemic, Proposition 15 promised to inject upwards of \$8 billion annually into school districts and local governments.²⁷⁰ The measure enjoyed significant grassroots support, landing on the ballot after activists and labor groups gathered signatures from 1.7 million backers.²⁷¹

Rather than shying away from efforts to remove a core provision of Proposition 13, prominent politicians lined up to touch the so-called third rail. Among others, left-wing standard-bearer and Vermont Senator Bernie Sanders urged Californians to support Proposition 15 as a way to "prioritize the needs of working families and small businesses";²⁷² Sacramento Mayor Darrell

265. See, e.g., Matt Levin, *Too Few Homes: Is Proposition 13 to Blame for California's Housing Shortage?*, KQED (Oct. 24, 2018), <https://perma.cc/Z8UG-6Q2B>.

266. See, e.g., Vanessa Williamson, *Alexandria Ocasio-Cortez's 70 Percent Tax on the Rich Isn't About Revenue, It's About Decreasing Inequality*, NBC NEWS: THINK (Jan. 26, 2019), <https://perma.cc/T9KP-AVLK>.

267. See, e.g., Harold Meyerson, *Undoing Prop 13*, AM. PROSPECT (Oct. 30, 2020), <https://perma.cc/V8AU-9CJR>.

268. Elijah Chiland, *Proposition 5: Voters Won't Expand Property Tax Savings for Older Homeowners*, CURBED L.A. (Nov. 7, 2018, 10:35 AM PST), <https://perma.cc/ZJ7D-GD9W>. Proposition 60, a voter initiative expanding Proposition 13, has long entitled homeowners in the first two of those groups to transfer their protected tax bases within their county of residence to new properties of equal or lesser value. See *supra* note 59 and accompanying text.

269. Dougherty, *supra* note 12.

270. See *Proposition 15*, CAL. LEGIS. ANALYST'S OFF. (Nov. 3, 2020), <https://perma.cc/67WY-5GBC>.

271. Carla Marinucci, *"Split Roll" Backers to Submit 1.7 Million Signatures for the November Ballot*, POLITICO (Apr. 2, 2020, 8:31 AM EDT), <https://perma.cc/GQ4Q-8MZ2>.

272. Bernie Sanders, *Our Issues Are on the Ballot*, MEDIUM (Oct. 16, 2020), <https://perma.cc/TF7Y-B42T>.

Steinberg said the measure would help California “recover” from the pandemic’s lopsided economic harms by “closing corporate property tax loopholes”;²⁷³ and even the Democratic presidential ticket, Joe Biden and Kamala Harris (then a Senator from California), threw its support behind the measure.²⁷⁴ Perhaps most surprisingly, California Governor Gavin Newsom endorsed the initiative as well, calling it a “fair” and “long-overdue reform.”²⁷⁵ Newsom’s position represented a sharp break from that of his predecessor, former Governor Jerry Brown. Despite opposing Proposition 13 when it first became law, Brown transitioned to describing it as a “sacred doctrine that should never be questioned.”²⁷⁶

Those endorsements, however, did not bear fruit on Election Day. By a narrow margin (48 to 52%), voters rejected Proposition 15. The first political effort to significantly restrict Proposition 13’s reach in four decades fell just short of success.²⁷⁷

But on the very same ballot, Californians did approve a different, more nuanced set of reforms to the state’s property-tax regime: Proposition 19. Unlike grassroots darling Proposition 15, this measure was placed on the ballot by a two-thirds supermajority of both chambers of the California legislature.²⁷⁸ But, like Proposition 15, the popular vote was close—albeit with a narrow majority in support.²⁷⁹

In part, this successful initiative was simply a redo of the failed 2018 effort to expand the conditions under which certain homeowners could transfer their Proposition 13—guaranteed legacy tax bases to new, more expensive homes.²⁸⁰

273. Matt Kristoffersen, *Steinberg Endorses “Split-Roll” Initiative to Raise Property Tax on California Businesses*, SACRAMENTO BEE (July 15, 2020, 3:34 PM), <https://perma.cc/D4QX-6KYV>.

274. Scott Shafer, Katrina Schwartz & Olivia Allen-Price, *Proposition 15—And Commercial Property Taxes—Explained*, KQED (Oct. 2, 2020), <https://perma.cc/4Q58-BPNG>.

275. Mackenzie Mays, *Newsom Endorses “Split-Roll” Measure—But Says He Will Reject Income Tax Hike Bills*, POLITICO (Sept. 11, 2020, 8:19 PM EDT), <https://perma.cc/X67D-J57R>.

276. Steven Malanga, *California’s Property-Tax Holy War*, CITY J. (Summer 2020), <https://perma.cc/3TDX-49CN>.

277. *See California General Election, Tuesday, November 3, 2020: State Ballot Measures—Statewide Results*, CAL. SEC’Y ST., <https://perma.cc/Z22W-FCU5> (archived Dec. 18, 2020); *see also* John Fensterwald, *Defeat of Prop. 15 to Raise Commercial Property Taxes Denies Schools More Revenue*, EDSOURCE (Nov. 11, 2020), <https://perma.cc/84KX-YVXN>.

278. Elliot Spagat, *Prop. 19: Voters Extend Prop. 13 Property Tax Breaks for Older Owners*, ORANGE CNTY. REG. (updated Nov. 12, 2020, 12:34 PM), <https://perma.cc/6BWC-Q5FG>.

279. *See California General Election—Tuesday, November 3, 2020, supra* note 277; *see also* Spagat, *supra* note 278.

280. *See* Kathleen Pender, *Prop. 19 Passes, but Questions About California Property Tax Measure Remain*, S.F. CHRON. (updated Nov. 12, 2020, 8:19 PM), <https://perma.cc/8BJW-PV2F>; *see also* *Proposition 19*, CAL. LEGIS. ANALYST’S OFF. (Nov. 3, 2020), <https://perma.cc/WQA4-TUWP>.

By some estimates, that expansion will result in \$1 billion in lost tax revenue each year.²⁸¹ But while Proposition 19 expanded property-tax protections for some targeted groups, it also eliminated a major component of what had made the state's intergenerational transfer system so objectionable: the ability to pass down any residential property's legacy tax basis alongside the home itself, regardless of that property's value or whether it would actually be used as a primary residence.²⁸² Rather than letting property heirs automatically inherit their parents' or grandparents' tax benefits, Proposition 19 generally limits any inherited property-tax benefit to up to \$1 million of the home's current market value—and even then only if the new owners use the home as their primary residence.²⁸³ Moving forward, property owners like Jeff Bridges²⁸⁴ are free to let whatever homes they may have inherited from their parents sit vacant while they appreciate in value, to rent them out for extra income, or to just enjoy them for intermittent vacation use. But if they do, they need to pay property taxes based on the home's market value. In short, Proposition 19 expanded property-tax protections for more vulnerable groups while narrowing them for property owners with a less obvious need for tax stability.

It is premature to draw definitive lessons from voters' mixed response to the two property-tax adjustments placed before them on the 2020 ballot. The margin for each measure was too narrow, and the conditions surrounding the 2020 election were too unusual, to credibly make sweeping pronouncements about how Californians do or do not want Proposition 13 and its companion measures to change. Nevertheless, it seems safe to conclude that there is a sizeable, if not overwhelming, appetite among regular voters and high-profile political figures alike to move toward a more tailored, commonsense approach to administering the property tax statewide. Although Howard Jarvis's original rallying cry that Californians might be taxed out of their homes without protection surely still has purchase in the state's white-hot real estate market, California now seems to be inching toward a tax structure that reflects those core concerns without sweeping so far as to guarantee indefinite preferential treatment for Warren Buffett's vacation home, Chevron's oil refineries, or Disneyland.

That said, it bears observing that the inherent limitations faced by Propositions 15 and 19 would constrain similar efforts moving forward. Incremental measures intended to chip away at Proposition 13's excesses are

281. See *Proposition 5*, CAL. LEGIS. ANALYST'S OFF. (Nov. 6, 2018), <https://perma.cc/PY4Q-SPTF> (analyzing costs for the substantially similar changes proposed in the unsuccessful Proposition 5).

282. Pender, *supra* note 280.

283. *Id.*

284. See *supra* notes 100-02 and accompanying text.

surely better suited for refined, deliberative action—the kind of policymaking usually best done through the legislature rather than an up-or-down popular referendum. But Howard Jarvis’s genius in enacting Proposition 13 through a ballot initiative is that it can be significantly changed only through that same blunt-force instrument. Given the limited tools at reformers’ disposal, it is yet to be seen whether arriving at a more equitable approach to property taxation through the political process will be possible.

Conclusion

In its petition to the United States Supreme Court, Macy’s predicted that, absent intervention, Proposition 13 would result in a “massive, systematic, multi-billion-dollar redistribution of wealth from some owners of California property to others, growing continuously more severe, based on no discernible principle of justice.”²⁸⁵ Those fears have come to pass. The fiefdoms that Justice Stevens lamented in his *Nordlinger* dissent have only grown more entrenched. And Proposition 13’s companion provisions guarantee that these inequities can largely persist indefinitely, as homeowners transfer their wealth from generation to generation while contributing vanishingly less toward the public good with each passing year. Moreover, while the California budget has—to a large extent—made up the gap created by Proposition 13’s constraints on revenue collection,²⁸⁶ the COVID-19 pandemic has posed a fresh test of the state’s fiscal resilience in the face of the significant revenue constraints that the measure imposes.

Although this Note concludes that reforming Proposition 13 and its companion provisions will be difficult, it nevertheless closes with some optimism about the prospects for change through either litigation or the political process. And whatever the pathway for effectuating that change may be, meaningful reform is vitally important: As the nation grapples with how to dismantle the entrenched castes and gross inequality that have come to define twenty-first-century American life, it is high time for the Golden State to have a serious reckoning with how its approach to property taxation is contributing to this second Gilded Age.

285. Petition for a Writ of Certiorari, *supra* note 146, at 8.

286. MAC TAYLOR, CAL. LEGIS. ANALYST’S OFF., THE 2019-20 BUDGET: CALIFORNIA’S FISCAL OUTLOOK 1 (2018), <https://perma.cc/7ZYC-7DQ3> (“It is difficult to overstate how good the [state] budget’s condition is today.”); *see also* Colin H. McCubbins & Mathew D. McCubbins, *Proposition 13 and the California Fiscal Shell Game*, 2 CAL. J. POL. & POL’Y 1, 1-2 (2010) (explaining how the state has adapted to Proposition 13 through a patchwork of often-convoluted fiscal measures—which the authors argue ultimately subvert government transparency and democratic accountability).