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DID SERRANO *REALLY CAUSE PROPOSITION 13?*

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Abstract: In this article, we examine the relationship between *Serrano v. Priest*, the landmark school finance equalization decision of the California Supreme Court, and Proposition 13, the state's famous property tax revolt. As school finance litigation continues in several states, opponents of equalization schemes have argued that *Serrano* "caused" Proposition 13. Prior to *Serrano*, the argument goes, California's local public sector resembled a "Tiebout equilibrium" in that local property taxes approximated market prices. *Serrano* destroyed that equilibrium, giving voters new reason to oppose the property tax. This theory has been offered as an explanation for why voters swung from rejecting a property tax limitation in 1972 to embracing Prop 13 only six years later. We present new statistical and historical evidence challenging the connection between *Serrano* and Prop 13. Using multiple regression analysis, we demonstrate that *Serrano* had little actual effect on Prop 13 and that the swing from 1972 to 1978 is better explained by considering alternative explanatory variables. We also present original historical research regarding *Serrano*'s effect on the legislature's ability to provide property tax relief. Our evidence casts doubt on the thesis that *Serrano* caused Prop 13 and reveals a more complicated story in which the institutional rigidities of the fiscal decisionmaking process precluded a rational response to the extraordinary housing inflation of the early 1970's.

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TABLE OF CONTENTS

I. INTRODUCTION 3

II. PROPERTY TAXES, SCHOOL FINANCE REFORM, AND TAX REVOLTS 8

A. Property Taxes & School Finance Litigation -- An Overview 9
B. Tiebout-Hamilton and the Benefit View of Property Taxation 12
C. Serrano's Effect on the Tiebout-Hamilton Local Public Sector 14

III. EMPIRICAL EVIDENCE FOR THE SERRANO -- PROP 13 CONNECTION 16

A. Fischel's Analysis of the Watson-Prop 13 Swing 16
B. Reexamining the Watson-Prop 13 Swing 22
C. Measuring the Swing between Prop 8 and Prop 13 30
D. Serrano I and the Swing from 1968 to 1972 33

IV. DID SERRANO REALLY FORECLOSE PROPERTY TAX RELIEF? 40

A. The 1977 Legislative Session 41
B. A House Divided—Historic Divisions in the Senate 45
C. Sacramento Responds: The Behr Bill and Proposition 8 47

V. CONCLUSION 51

I. INTRODUCTION

In this Article, we examine the argument that the California Supreme Court's school finance equalization decision *Serrano v. Priest* caused Proposition 13, the famous property-tax cutting initiative approved by California voters in June 1978.[1]

The most prominent advocate of the argument that *Serrano* caused Prop 13 is economist William Fischel.[2] Fischel's thesis is grounded in the Tiebout hypothesis, as subsequently extended by Bruce Hamilton. The Tiebout hypothesis holds that under certain assumptions the provision of local public goods will approximate a private market.[3] At the core of the Tiebout theory is the principle of consumer choice. Given the availability of multiple jurisdictions and costless mobility among them, resident-voters will sort themselves into the communities that most closely match their preferences.[4] Accordingly, the marginal cost of local public goods should equal the marginal benefit to those who consume those goods. Closely related to the Tiebout hypothesis is the "benefit view" of the property tax, which holds that taxes paid by individual homeowners should approximate the value of benefits they receive from local governments.[5] Working from the Tiebout framework, economist Bruce Hamilton showed that the property tax resembles a market price when local communities practice fiscal

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[1] The most prominent advocate is Dartmouth economist William A. Fischel. *See* William A. Fischel, *Did Serrano Cause Proposition 13?*, 42 NAT'L TAX J. 435 (1989); William A. Fischel, *How Serrano Caused Proposition 13,* 12 J. LAW & POL. 607 (1996); WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES (2001) (Chapter 5); William A. Fischel, *School Finance Litigation and Property Tax Revolts: How Undermining Local Control Turns Voters Away from Public Education*, Cambridge, Mass.; Lincoln Institute of Land Policy, Working Paper WP98WF1, 1998 (http://www.lincolninst.edu/workpap/wpap4); William A. Fischel, *Homevoters, Municipal Corporate Governance, and the Benefit View of the Property Tax*, 54 NAT'L TAX J. 157, 168 (2001) ("I believe that *Serrano* caused Proposition 13."). In a recent book, journalist Peter Schrag reported favorably on Fischel's account of the Serrano-Prop 13 connection. *See* PETER SCHRAG, PARADISE LOST: CALIFORNIA'S EXPERIENCE, AMERICA'S FUTURE (1998).

[2] Fischel is not alone in believing that *Serrano* played an important role in "causing" Proposition 13. *See* William Oakland, *Proposition 13--Genesis and Consequences*, 32 NATIONAL TAX JOURNAL 387 (1979). RICHARD POSNER, ECONOMIC ANALYSIS OF LAW 505 (1977) (noting that "equalization would weaken the public school system by reducing the incentive of wealthy communities to tax themselves heavily to pay for high quality public education."); Dennis Leyden, *Intergovernmental Grants and Successful Tax Limitation Referenda*, 57 PUBLIC CHOICE 141 (1988).

[3] Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956); *see* discussion *infra* at text accompanying notes XX to XX.

[4] *Id.*

[5] For an accessible overview of the benefit view of the property tax, see *See* Peter Mieszkowski & George R. Zodrow, *Taxation and the Tiebout Model: The Differential Effects of Head Taxes, Taxes on Land Rents, and Property Taxes*, 27 J. ECON. LIT. 1098, 1107-1100 (1989).

zoning.[6] In effect, the zoning power converts the local property levy into a benefit tax, as local governments are able to specify a minimum amount of tax base that newcomers must consume in order to gain access to the local government's goods and services.[7]

If the conditions required for Tiebout-type benefit taxes prevail, individuals in wealthy communities should generally favor local property taxes over other forms of public financing. Compared to the alternative of statewide ability-to-pay taxes, local property taxation permits individuals in wealthy communities to pay only for those public services that they themselves consume. Indeed, even homeowners without school-age children have reason to support the local property tax, since improved local public schools inure to their benefit in the form of increased local property values. In sum, under the Tiebout-Hamilton system, localism, capitalization and the property tax work together to give consumers what they want and to minimize the deadweight loss of public provision.

According to Fischel, the California Supreme Court's landmark decision in *Serrano v. Priest* destroyed what had been an effective Tiebout-Hamilton system of local benefit taxation.[8] At issue in *Serrano* was the state's reliance on the local property tax as the primary source of funding for public schools. As with similar litigation in almost every state, the *Serrano* plaintiffs argued that interjurisdictional disparities in property wealth resulted in unconstitutional inequalities in per pupil expenditure levels. Seven justices of the California Supreme Court agreed and ordered the state legislature to overhaul the system. The *Serrano* remedy sought to equalize per pupil expenditure levels and even went so far as to "recapture" some portion of high-spending districts' property wealth for redistribution to low-wealth jurisdictions. In effect, the *Serrano* decision required the state to convert the property tax from a price-like local benefit tax into a statewide redistributive tax.

Fischel presents two distinct arguments for why *Serrano* caused Prop 13. The first argument concerns the incentive effects of shifting from a locally-based

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[6] See Bruce Hamilton, Bruce W. Hamilton, *A Review: Is the Property Tax a Benefit Tax?*, at 85, and George R. Zodrow & Peter Mieszkowski, *The Incidence of the Property Tax: The Benefit View versus the New View*, at 109, in LOCAL PROVISION OF PUBLIC SERVICES: THE TIEBOUT MODEL AFTER TWENTY-FIVE YEARS (George R. Zodrow ed., 1983).

[7] Bruce Hamilton, *Zoning and Property Taxation in a System of Local Governments*, 12 URBAN STUDIES 205 (1975); *see also* William A. Fischel, *Property Taxation and the Tiebout Model: Evidence for the Benefit View from Zoning and Voting*, 30 J. ECON. LIT. 171, 172 (1992).

[8] 487 P.2d 1241 (Cal. 1971) (reliance on local property tax as principal means of financing public schools denies equal protection), *cert. denied,* 432 U.S. 907 (1977).

property tax to the *Serrano* regime of fiscal equalization. Whereas prior to *Serrano* local voters embraced the property tax, after the landmark ruling homeowners faced entirely different fiscal incentives. Unwilling to sit idly by as their property taxes were routed through Sacramento to low-wealth districts, voters in "wealthy" districts abandoned the property tax altogether and threw their support to the Jarvis-Gann campaign for Proposition 13. Put differently, rather than become the victims of court-imposed redistribution, voters in these wealthy districts simply chose instead to take down the whole system with them.

Fischel's second argument focuses on the practical, budgetary impact of the *Serrano* decision. As property values rose due to housing inflation in the first half of the 1970's, homeowners' property tax bills began to escalate. Not surprisingly, political pressure developed for Sacramento to respond by offering some sort of property tax relief. However, because of the expected cost of *Serrano* compliance, Fischel argues, the state legislature was effectively precluded from responding to these political pressures in any meaningful way. Thus, Fischel concludes that *Serrano* also caused Prop 13 through its impact on state budget politics. By constitutionally mandating school finance equalization, the California Supreme Court prevented the political system from satisfying the tax relief preferences of local homeowners. In Fischel's words, this "macro-level" political story supports his "micro-level" theory that the activist *Serrano* court upset the pre-existing Tiebout-Hamilton equilibrium.

Fischel's thesis has been very influential. Scholars working in many different disciplines (including law, economics and political science) have cited Fischel's account of the *Serrano*-Prop 13 connection.[9] Many of these authors seem to have

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[9] Cites to Fischel's work on *Serrano* and Prop 13 include: William Tucker, *Can Equalized Funding Between Schools Make a Difference?*, AMERICAN BANKER (June 14, 1993); Alexandra Natapoff, *The Year of Living Dangerously: State Courts Expand the Right to Education*, 92 ED. LAW REP. 755 (1994); Michele M. Hanke, *Have Money, Will Educate: Wealth Versus Equality in Minnesota School Finance System*, 19 HAMLINE L. REV. 135 (1995); Kenneth Fox, *The Suspectness of Wealth: Another Look at State Constitutional Adjudication of School Finance Inequalities*, 26 CONN. L. REV. 1139 (1994); Gideon Kanner, *Judging Impoverished Schools: State Supreme Court of '71 Wanted to Divide Wealth Equally, and Now Kids Share the Consequences*, THE DAILY NEWS OF LOS ANGELES, pN13 (March 18, 1997); G. Alan Tarr, *Models and Fashions in State Constitutionalism*, 1998 WIS. L. REV. 729 (1998); Michael E. Solomine & James L. Walker, *Federalism, Liberty and State Constitutional Law*, 23 OHIO N.U. L. REV. 1457 (1997); Michael Heise, *Equal Education Opportunity Hollow Victories, and the Demise of School Finance Equity Theory: An Empirical Perspective and Alternative Explanation*, 32 GA. L. REV. 543 (1998); Mildred Wigfall Robinson, *Financing Adequate Education Opportunity*, 14 J.L. & POL 483 (1998); Leon N. Mayer, *Durant v. State of Michigan: The Interaction of the Headlee Amendment to the Michigan Constitution and Funding for Special Education Provided by the State to Local School Districts*, 1998 DET. C. L. MICH. ST. U. L. REV. 893 (1998); Michael D. Blanchard, *The New Judicial Federalism: Deference Masquerading as Discourse and the Tyranny of the Locality in State Judicial Review of Education Finance,* 60 U.PITT.L.REV. 231 (1998); Hanif S. P. Hiriji, *Inequalities in California's Public School System: The Undermining of Serrano v. Priest and the Need for a*

accepted Fischel's thesis as the "root cause" of Prop 13. Recent articles in two leading U.S. law reviews, for example, offer express endorsement of Fischel's thesis.[10] In short, Fischel's is an important contribution to our understanding of why California voters overwhelming rejected the local property tax in 1978.

In addition to the academic following it has generated, Fischel's thesis has continuing practical significance. At the dawn of the twenty-first century, school finance reform continues as one of the most pressing legal issues faced by state and local governments. As one author recently noted, "lawsuits are pending or planned over state education funding in 45 states, so the issue will not go away anytime soon."[11] If Fischel is right that *Serrano* did in fact cause Proposition 13,

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Minimum Standards System of Public Education, 32 LOY. L.A. L. REV. 583 (1999); Rachel F. Moran, *Bilingual Education, Immigration, and the Culture of Disinvestment*, 2 J. GENDER RACE & JUST. 163 (1999); Jonathan Schwartz, *Prisoners of Proposition 13: Sales Taxes, Property Taxes, and the Fiscalization of Municipal Land Use Decisions*, 71 S. CAL. L. REV. 183 (1997); Michael Rebell, *Financing Our Future Education Improvements for the 21st Century Panel Three: Local Inequalities in School Finance – Rodriguez Revisited: An Optimist's View*, 1998 ANN. SURV. AM. L. 289 (1998); Michael Heise, *Schoolhouses, Courthouses, and Statehouses: Educational Finance, Constitutional Structure, and Separation of Powers Doctrine*, 33 LAND & WATER L. REV. 281 (1998); Paul D. Carrington, *Judicial Independence and Democratic Accountability in Highest State Courts*, 61 SUM LAW & CONTEMP. PROBS. 79 (1998); Frederick M. Hess, *Courting Backlash: The Risks of Emphasizing Input Equity Over School Performance*, 6 VA. J. SOC. POL'Y & L. 11 (1998); Amy S. Zabetakis, *Proposition 227: Death for Bilingual Education?*, 13 GEO. IMMIGR. L.J. 105 (1998); Jared Eigerman, *California Counties: Second-Rate Localities or Ready-Made Regional Governments?* 26 HASTINGS L.Q. 621 (1999); James E. Ryan, *The Influence of Race in School Finance Reform*, 98 MICH. L. REV. 432 (1999); Martha S. West, *Equitable Funding of Public Schools Under State Constitutional Law*, 2 J. GENDER RACE & JUST. 279 (1999); Bradley W. Joondeph, *The Good, the Bad, and the Ugly: An Empirical Analysis of Litigation-Prompted School Finance Reform*, 35 SANTA CLARA L. REV. 763 (1995); Terri A. Sexton, Steven M. Sheffrin & Arthur O'Sullivan, *Proposition 13: Unintended Effects and Feasible Reforms*, NAT'L TAX J, (March 30, 1999); Thomas A. Downes & David N. Figlio, *Do Tax And Expenditure Limits Provide A Free Lunch? Evidence On The Link Between Limits And Public Sector Service Quality*, NAT'L TAX J. (March 30, 1999); Therese J. McGuire, *Proposition 13 And Its Offspring: For Good Or For Evil?*, NAT'L TAX J. (March 30, 1999); Timothy Goodspeed, *The relationship between state income taxes and local property taxes: education finance in New Jersey*, NAT'L L. J. (March 30, 1999); Robert W. Wassmer, *School Finance Reform: An Empirical Test of the Economics of Public Opinion*, PUBLIC FINANCE REVIEW (July 1997); ARTHUR O'SULLIVAN, STEVEN M. SHEFFRIN & TERRI A. SEXTON, PROPERTY TAXES AND TAX REVOLTS: THE LEGACY OF PROPOSITION 13 (1995); Fabio Silva & John Sonstelie, *Did Serrano Cause a Decline in School Spending?*, NAT'L TAX J. (June 1995); Andrew Reschovsky, *Fiscal Equalization and School Finance*, NAT'L TAX J. (March 1994); William H. Oakland, *Fiscal Equalization: An Empty Box?*, NAT'L TAX J. (March 1994); Thomas A. Downes, *Evaluating the Impact of School Finance Reform on the Provision of Public Education: The California Case*, NAT;L TAX J. (December 1992); PETER SCHRAG, PARADISE LOST: CALIFORNIA'S EXPERIENCE, AMERICA'S FUTURE (1998).

[10] *See* Denise C. Morgan, *The New School Finance Litigation: Acknowledging that Race Discrimination in Public Education is More than Just a Tort* 99, 140 (2001) ("Motivated by frustration at not being able to exercise controle over their local public schools and resentment at being forced to share responsibility for the education of children outside of their local school districts, Californians withdrew their support from the state public school system.") (citing Fischel). *See also* Michael Heise & James Ryan, *The Political Economy of School Choice* YALE LAW JOURNAL 20 (forthcoming 2002) ("The voters responded [to *Serrano*] by enacting Prop 13, which capped property taxes and thereby limited the local revenue available for schools.").

[11] *See* David Brunori, *Political, Legal Crises Plague School Finance*, STATE TAX NOTES 339-340 (January 29, 2001).

then these ongoing efforts to equalize per pupil expenditures and reduce fiscal disparities among local school districts should be viewed as fundamentally misguided. Rather than advancing the interests of parents and students in low-wealth communities, equity-minded school finance reform will actually make things worse.

Fischel's linking of *Serrano* to Prop 13 has an important rhetorical dimension as well. Prop 13 is typically viewed as the beginning of the end of California's glory days. In public dialogue and policy debates, Prop 13 is often blamed for the "Mississippification" of the Golden State. Commentators have charged Prop 13 with decimating California's once vibrant public sector and dropping the state's public schools down to the bottom of nearly every measure of education quality. These sentiments are echoed in casual conversations among Californians even today. The clear implication is that no state should want to replicate California's experience. Yet this is precisely what school finance equalization will do, if *Serrano* did indeed cause Proposition 13.

All of this suggests that there is reason to take Fischel's arguments seriously. On the level of both academic theory and practical implications, his argument that *Serrano* caused Proposition 13 has continuing importance. To date, however, no one has critically examined Fischel's hypothesis.

We offer a comprehensive reexamination of the principal empirical and historical claims underpinning Fischel's thesis. Through (1) multiple regression analyses relating to the change in voter support for property tax relief before and after *Serrano*,[12] and (2) original historical research relating to the impact of the "*Serrano* mandate" on the state legislature's ability to provide property tax relief in 1977,[13] we aim for a more detailed account of the relationship, if any, between these two important events in the history of American public finance. This improved understanding should shed light on the relationship between the property tax, school finance reform and the ongoing tax limitation movement. Most importantly, it will give us a more solid empirical foundation for assessing the claim that school finance equalization is fundamentally misguided because of the risk of spurring Prop 13-type tax revolts.

The paper is divided into five parts, including this Introduction. Part II offers a detailed overview of Fischel's thesis that *Serrano* "caused" Proposition 13 and discusses how Fischel's arguments have been received by various academic

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[12] *See* Part IV.A & IV.B.
[13] *See* Part IV.C.

communities. In Part III, we present our own empirical findings concerning the supposed "swing" in voter support for property tax relief from 1972 to 1978.[14] We also suggest alternative methods of gauging *Serrano*'s effect on voter sentiment for a property tax revolt. In Part IV, we offer detailed historical evidence concerning Fischel's claim that the budgetary cost of the "*Serrano* mandate" prevented the state legislature from offering more comprehensive tax relief. [15] Finally, Part V of the article offers an overview of our arguments and discusses some of the practical policy implications of our analysis.

II. PROPERTY TAXES, SCHOOL FINANCE REFORM, AND TAX REVOLTS

In June 1978, California voters approved Proposition 13, a property tax cutting initiative placed on the ballot by anti-tax activist Howard Jarvis, by nearly a 2-to-1 margin.[16] Prop 13's victory was dramatic and decisive, so much so that social scientists have studied the measure relentlessly for over two decades since its passage.[17]

Traditional explanations for Prop 13's success have focused on the extraordinary inflation in the California housing market and the failure of state and local governments to respond to soaring tax assessments by lowering tax rates.[18] In 1989, however, economist William Fischel offered a new and provocative explanation for Prop 13's passage. In its most straightforward formulation, Fischel's argument is that *Serrano v. Priest* -- the California Supreme Court decision holding unconstitutional the state's reliance on local property taxes for public schools -- caused Proposition 13.[19] Fischel's argument is provocative not only

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[14] *See* infra Part IV.A & B.

[15] *See* infra Part IV. C.

[16] *See* STATEMENT OF THE VOTE, CALIFORNIA SECRETARY OF STATE 39 (1978) (indicating that 64.8% of voters voted in favor of Prop 13, while 35.2% voted against it). Prop 13 is now set forth in the California Constitution. *See* CALIFORNIA CONSTITUTION, ARTICLE XIIIA (Proposition 13, as amended). The literature on Proposition 13 is much too voluminous to cite here. A useful overview of the measure's principal provisions is set forth in CALIFORNIA STATE BOARD OF EQUALIZATION, CALIFORNIA PROPERTY TAX: AN OVERVIEW 3 (MAY 1999). For a recent analysis, see STEVEN M. SHEFFRIN, TERRI SEXTON & ARTHUR O'SULLIVAN, PROPERTY TAXES AND TAX REVOLTS: THE LEGACY OF PROPOSITION 13 (1995). *See also* MICHAEL A. SHIRES, JOHN ELLWOOD & MARY SPRAGUE, HAS PROPOSITION 13 DELIVERED? THE CHANGING TAX BURDEN IN CALIFORNIA (1998).

[17] The most prominent example is the classic study undertaken by David Sears and Jack Citrin. *See* DAVID SEARS & JACK CITRIN, TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA (1982). *See* The National Tax Journal recently published a series of papers on Proposition 13. *See* NAT'L TAX J. (March 1999).

[18] For a general discussion of Prop 13's background, see Kirk J. Stark, *The Right to Vote on Taxes*, 96 NORTHWESTERN L. REV. 191, 197-201(2001).

[19] *See* sources cited at *supra* note XX (Fischel 1989; Fischel 1996; Fischel 1998; Fischel 2001).

because it purports to identify a previously unknown cause of Prop 13, but also because, if correct, it shows how equity-minded school finance reform is fundamentally misguided. To begin, therefore, it will be useful to review the conceptual origins of school finance reform and the *Serrano v. Priest* litigation.

A. Property Taxes & School Finance Litigation -- An Overview

When a state relies on local property taxes as the principal source of funding for public schools, the disparities in property wealth across jurisdictions can give rise to inequities in both school tax burdens and per pupil expenditure levels. For example, imagine two schools districts, Beverly Hills and Compton, with per pupil assessed valuations of $100,000 and $50,000, respectively. Relying on *ad valorem* property taxes to finance schools in these districts might generate two types of objections. First, taxpayers in the Compton school district might contend that the system imposes an inequitable tax burden on them. While Beverly Hills can raise $7,000 per student by imposing a 7% tax, Compton must impose a tax of 14% to raise an equivalent amount of revenue.[20] An alternative objection focuses on potential inequities in public school spending. Thus, students (or their parents) might object that a 7% tax in the two communities would generate a per pupil expenditure of $7,000 in Beverly Hills, while giving Compton students only $3,500 per pupil.

For almost as long as American schools have relied on local property taxes, taxpayers in low-wealth districts and advocates of education reform have raised fairness claims of this sort.[21] Not until the mid-1960's, however, did lawyers and academics began to develop legal arguments to raise the issue in court. Disappointed with a lack of concrete educational improvements in the wake of *Brown v. Board of Education*, education reformers turned their attention to the gritty details

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[20] These claims of unfairness are not uncontroversial. At a minimum, those who argue that reliance on the local property tax is "unfair" to taxpayers in low-wealth jurisdictions must come to terms with the fact that the supposed fiscal disadvantage of residing in such a district is offset, to some extent at least, by the effect of that disadvantage on local property values. Unless property values are completely unresponsive to interjursidictional differences in tax/service packages (which seems extremely unlikely), Compton home values should reflect an appropriate discount for the city's fiscal disadvantage. Likewise, homeowners in Beverly Hills presumably paid a premium for their homes in order to gain access to the city's favorable fiscal circumstances.

[21] Legal scholars typically cite *Serrano v. Priest* as the first state court decision to side with those objecting to the inequities arising from a reliance on local property taxes. Note, however, that *Greencastle Township v. Black*, an 1854 decision of the Indiana Supreme Court, addressed the same issue and held the state's reliance on local property taxes to violate a state constitutional provision requiring a general and uniform system of common schools. For a discussion, see Kirk J. Stark, *Rethinking Statewide Taxation of Nonresidential Property for Public Schools*, 102 YALE L. J. 805 (1992).

of school millage rates, modified assessed valuations, and per pupil expenditure levels. At the core of the reformers' argument was a principle of fiscal neutrality. In its simplest formulation, this principle holds that "the quality of public education, measured most commonly by looking at dollar inputs, may not be a function of wealth, other than the wealth of the state as a whole."[22] One advantage of this approach was that it could be hitched fairly easily to an "equal protection" analysis under the Fourteenth Amendment of the U.S Constitution and corresponding provisions of state constitutions. The reformers' doctrinal strategy was clear. If education could be considered a "fundamental interest" or wealth a "suspect classification," then courts might apply the exacting standard of "strict scrutiny," which would require states to demonstrate a "compelling state interest" in order for the expenditure disparities to survive.[23]

The U.S. Supreme Court addressed precisely this issue in its 1973 decision in *San Antonio Independent School District v. Rodriguez*.[24] In a 5-4 opinion, the Court held both that education is not a fundamental interest and that classifications based on wealth are not suspect.[25] Accordingly, state reliance on local property taxes to fund public schools would only be subject to "rational basis" scrutiny.[26] As long as there was some rational basis for relying on local property taxes, the Court would not consider disparities in per pupil expenditure levels to be constitutionally problematic. Not surprisingly, few expected to succeed in arguing that the longstanding practice of financing schools with property taxes served no conceivable rational basis.

The absence of a federal remedy lead school finance litigants to direct their arguments to state courts. Most state constitutions contain an equal protection provision and state-level equal protection analysis sometimes differs from the U.S. Supreme Court's approach. Perhaps more importantly, however, most state constitutions contain education clauses with language that might be interpreted to incorporate a principle of equal educational opportunity or perhaps even fiscal neutrality. The language of these provisions varies from state to state. In some

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[22] *See* Paul A. Minorini and Stephen D. Sugarman, *School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future* 34, 37-38, in EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES (Helen F. Ladd, Rosemary Chalk, and Janet S. Hansen, eds.) (1999).

[23] For a general overview of equal protection doctrine, see JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW 568-907 (1991).

[24] 411 U.S. 1 (1973)

[25] *Id.*

[26] *Id.*

states, for example, the constitution requires the state legislature to provide a "free and appropriate" education to all children. Other state constitutions require the state legislature to establish an "efficient" system of free public education. In short, school finance plaintiffs looked to either state constitutional equal protection provisions or education clauses and began filing lawsuits in state court.

The first major state court litigation on the school finance question arose in California with *Serrano v. Priest*. *Serrano* is actually a series of decisions, ranging from 1971 to 1986,[27] but the 1971 decision is the most famous and is the one which first articulated the principle of school finance equity. There the California Supreme Court made clear its view that continued reliance on the local property tax was constitutionally problematic:

> The California public school financing system, as presented to us by plaintiffs' complaint supplemented by matters judicially noticed, since it deals intimately with education, obviously touches upon a fundamental interest. For the reasons we have explained in detail, this system conditions the full entitlement to such interest on wealth, classifies its recipients on the basis of their collective affluence and makes the quality of a child's education depend upon the resources of his school district and ultimately upon the pocketbook of his parents. We find that such financing system as presently constituted is not necessary to the attainment of any compelling state interest. Since it does not withstand the requisite "strict scrutiny," it denies to the plaintiffs and others similarly situated the equal protection of the laws. If the allegations of the complaint are sustained, the financial system must fall and the statutes comprising it must be found unconstitutional.[28]

On remand, Superior Court Judge Bernard Jefferson sustained the allegations of John Serrano's complaint.[29] In a decision issued September 3, 1974, Jefferson declared the state's reliance on local property taxes for public schools to be unconstitutional. Jefferson's decision set in motion the political process for

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[27] Serrano v. Priest, 487 P.2d 1241 (1971) (*Serrano I*); Serrano v. Priest, 557 P.2d 929 (1976) (*Serrano II*) Serrano v. Priest, 226 Cal. Rptr. 584 (Court of Appeal, 2d District 1986) (*Serrano III*).

[28] Serrano v. Priest, 5 Cal. 3d 584, 615 (1971).

[29] *See* RICHARD F. ELMORE & MILBREY WALLIN MCLAUGHLIN, REFORM AND RETRENCHMENT: THE POLITICS OF CALIFORNIA SCHOOL FINANCE REFORM 60 (1982).

fashioning a remedy, but legal developments continued, as litigators for the state government appealed the decision to the California Supreme Court. In 1976, the Court issued its opinion in *Serrano II*, affirming the trial court's decision and setting forth more specific requirements regarding permissible remedies. Ultimately the state legislature acted by enacting AB 65.

Together these events—*Serrano I*, Jefferson's ruling, *Serrano II*, and AB 65—transformed the school finance landscape in California. Whereas prior to *Serrano* school districts had exclusive access to the property wealth within their boundaries, after the decision all local property wealth was potentially subject to statewide redistribution. It is this shift in the "ownership" of local property wealth that Fischel argues spurred taxpayers in high property wealth communities to reject the property tax and throw their support to Howard Jarvis's Proposition 13.

B. Tiebout-Hamilton and the Benefit View of Property Taxation

Fischel's argument is rooted in the well-known Tiebout hypothesis, as subsequently extended by economist Bruce Hamilton.[30] Writing in 1956, Charles Tiebout set out to challenge the idea, associated with economists Paul Samuelson and Richard Musgrave, that public goods cannot be provided on an efficient basis because of the absence of any effective preference-revelation mechanism.[31] The Tiebout hypothesis posits that, under certain assumptions, *local* public goods may in fact be provided at efficient levels.[32] Unlike the central level of government, in the local setting individuals can shop among multiple jurisdictions, selecting membership in the community that most closely matches their preferences for the appropriate mix of taxes and services. Local political entrepreneurs will compete to attract mobile consumer-taxpayers, offering distinct tax-service packages to suit consumer demand. This combination of mobility and interjurisdictional competition results in a quasi-market for public goods -- consumer-taxpayers have an incentive to reveal their preferences for the type and amount of public goods by opting into the jurisdiction of his choice.

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[30] *See* Bruce W. Hamilton, *Zoning and Property Taxation in a System of Local Governments*, 12 URBAN STUDIES 205 (1975).

[31] *See* Paul A. Samuelson, *The Pure Theory of Public Expenditure,* 36 REV. ECON. STATS. 387 (1954). The Samuelsonian perspective may be understood in part as a response to theories of voluntary fiscal exchange from 19th-Century European economists (e.g., Knut Wicksell) who argued that an efficient level of public goods was possible with appropriate voting rules.

[32] Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

Bruce Hamilton's extension of the Tiebout hypothesis is also central to Fischel's argument. While faithful to Tiebout's conceptual apparatus, Hamilton introduced an important wrinkle -- the possibility that local governments might use revenue instruments other than head taxes, as Tiebout's model had assumed.[33] Hamilton noted that most modern local governments use property taxes; but the use of property taxation made the Tiebout model unstable. Unlike head taxes, the property tax is redistributive in that it fosters a transfer of wealth from high-income taxpayers to low-income taxpayers.[34] This feature of the property tax creates incentives for strategic migration, as wealthy individuals will form income-homogenous communities to avoid the redistribution inherent in the property tax. Low-income individuals have a corresponding incentive to migrate to wealthy communities in order to free-ride on the larger tax base. The result is what Hamilton termed "musical suburbs" -- the poor chasing the rich in a "never-ending quest for a tax base."[35]

Hamilton's central insight was that communities use the local zoning power to prevent outsiders from entering the jurisdiction without paying their own way. Through the specification of minimum lot sizes, exclusive single-family use requirements and other such devices, localities can effectively require new entrants to pay a market-price for whatever package of local public goods the community offers. In effect, local control over land use regulation gives existing residents the power to prevent free-riding. As Fischel once put it, the "family of eight that wants to rent part of a lot in Scarsdale and park two house trailers on it and send their kids to Scarsdale's fine schools is apt to find a few regulations in the way."[36] If fiscal zoning is effective in the manner that Hamilton and Fischel envision, the result is a system of benefit taxation in which resident-voters get what they pay for.[37] Under this "benefit view" of the property tax, there is no

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[33] *See* George R. Zodrow & Peter Mieszkowski, *Taxation and The Tiebout Model: The Differential Effects of Head Taxes, Taxes on Land Rents, and Property Taxes,* 27 J. ECON. LIT. 1098 (1989) (noting that Tiebout's model assumed head taxes).

[34] This assumes a positive relationship between income and home values. For a discussion of this point, see Kirk J. Stark, *City Welfare: Views from Theory, History and Practice*, 27 URBAN LAWYER 495, 499 n. 18 (1995).

[35] *See* Bruce W. Hamilton, *Property Taxes and the Tiebout Hypothesis: Some Empirical Evidence*, FISCAL ZONING AND LAND USE CONTROLS 15 (Edwin S. Mills & Wallace E. Oates, eds., 1975).

[36] Fischel, *Zoning and Voting*, *supra* note XX at 171.

[37] There is considerable controversy regarding how effective zoning really is in this regard. *See* Zodrow & Mieszkowski, *supra* note XX at 1113 (noting that the assumption of binding zoning constraints is the principal difference between the new view and the benefit view of the property tax).

deadweight loss; rather, individuals sort themselves into communities according to the level of taxes and services that they prefer.[38]

Fischel's contention that *Serrano* caused Proposition 13 hinges on this benefit view of the property tax.[39] As Fischel sees it, California pre-*Serrano* exhibited all the characteristics of the Tiebout-Hamilton model. Like local governments in many states, California localities relied primarily on the property tax to fund local public services. This was especially true for school districts. Like schools in most states, California school districts derived the bulk of their funds from local property tax levies. Moreover, Fischel contends that the "fiscal zoning techniques that Hamilton showed are necessary to achieve an efficient equilibrium in the Tiebout model were perfected in California…"[40] As this passage suggests, Fischel views California's system of local public finance at the dawn of the 1970's as a quintessential example of a "Tiebout-Hamilton equilibrium."

C. Serrano's Effect on the Tiebout-Hamilton Local Public Sector

In a Tiebout-Hamilton setting, property tax limitations of the sort contained in Prop 13 should have an especially adverse effect on home values in wealthy communities. However, as Fischel noted in his original article, a puzzle arises when one considers the regression results of Kenneth Rosen, who found that property values in wealthy communities actually *increased* in response to Proposition 13.[41]

Rosen studied the effect of Proposition 13 on property values in 64 local jurisdictions in the Bay Area by examining mean housing price data for the first six months of 1978 (pre-Prop 13) and 1979 (post-Prop 13). Rosen's data show "that wealthy communities gained at least as much as poor ones, even after the magnitude of the tax cut is controlled for."[42] But as Fischel explains, this result is exactly the opposite of what one would expect in the presence of a Tiebout-Hamilton equilibrium. Because the Tiebout-Hamilton system permitted wealthy communities to avoid redistribution while Prop 13 eliminated that advantage, the initiative should have disproportionately *reduced* property values in wealthy

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[38] *Id.* at 1108 (noting that, under the benefit view, "individuals sort themselves according to tastes for housing and for public services.").
[39] Fischel is a prominent advocate of the benefit view of the incidence of the property tax. The benefit view of the property tax is nicely summarized in Mieszkowski & Zodrow, *supra* note XX at 1107-1110.
[40] Fischel, *Did Serrano Cause Proposition 13?*, *supra* note XX at 469.
[41] Kenneth T. Rosen, *The Impact of Proposition 13 on House Prices in Northern California: A Test of the Interjurisdictional Capitalization Hypothesis*, 90 J. POL. ECON. 191 (1982).
[42] Fischel I, *supra* note XX at 468.

communities. The fact that property values rose as much or more in wealthy communities as a result of Proposition 13 suggests the absence of a Tiebout-Hamilton equilibrium. After all, as Fischel notes, "increased property values would emanate from a property tax limitation *only in the absence of a Tiebout system*."[43]

Fischel's explanation for the apparent paradox raised by Rosen's regressions is that *Serrano* had already destroyed the Tiebout-Hamilton system by the time Prop 13 made its way to the ballot.[44] He theorizes that the capitalization effects that one would have expected from Prop 13 (reductions in property values in relatively wealthy communities) must have actually resulted from *Serrano* and thus would not have shown up in Rosen's study.[45] On this theory, Rosen's regressions make perfect sense: "Passage of Prop 13 would then have raised property values in the wealthy communities as much or more than those elsewhere."[46] In sum, Fischel posits that *Serrano* fundamentally altered the perceptions and preferences of voters in wealthy communities. Whereas prior to *Serrano*, voters in high property wealth communities happily embraced the property tax (or at least tolerated it), after *Serrano* they rejected the property tax because local tax revenues had suddenly become subject to statewide redistribution. The result, Fischel concludes, was Proposition 13.

In the twelve years since its initial publication in 1989, Fischel's thesis has proven to be very influential in debates in both legal scholarship and the economics literature. Scholars working in the areas of local public finance and school finance reform often cite Fischel's work.[47] Indeed, for any scholar interested in these fields, not citing Fischel's work on the *Serrano*-Prop 13 connection would be a significant oversight. It has become a leading, perhaps *the* leading, explanation for the root cause of Proposition 13. As school finance reform continues throughout the country (including recent cases in New Hampshire, Vermont and Ohio), opponents of school finance reform have

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[43] *See* Fischel I, *supra* note XX at 469 (emphasis added). *See also id.* at 470 (noting that "if communities are in a Tiebout equilibrium, no one from a wealthy community would vote for Prop 13.").

[44] In fact, the initial *Serrano* decision was handed down in 1971; Fischel contends, however, that the 1976 decision in *Serrano II* was the more important moment. *Serrano I* laid out the constitutional standard under the state and federal equal protection clause.

[45] Fischel presents no evidence for these capitalization effects, noting instead that it "would have been difficult to determine because of the indefinite remedy of *Serrano I* in 1971 and short period of time between the legislature's resonse to *Serrano II* and the passage of Prop 13." Fischel I, *supra* note XX at 469.

[46] *Id.*

[47] *See* articles cited in footnote XX *supra.* Peter Schrag, an influential California journalist and author of the recent book *Paradise Lost*, seems to gives Fischel's thesisa guarded endorsement. SCHRAG, *supra* note XX at XX.

offered up Fischel's research as evidence of the perils of pursuing school finance reform.[48] In New Hampshire, for example, a document released by the organization Granite State Taxpayers illustrates the political salience of Fischel's work: *Courts Spur Tax Revolts, Not Better Schools.*[49]

III. EMPIRICAL EVIDENCE FOR THE SERRANO -- PROP 13 CONNECTION

The bulk of Fischel's analysis is purely theoretical. Recently, however, Fischel has presented independent statistical evidence in support of his claim that *Serrano* caused Proposition 13.[50] In this Part, we examine and extend this statistical investigation.

A. Fischel's Analysis of the Watson-Prop 13 Swing

At the heart of Fischel's statistical inquiry is the fact that California voters rejected the "Watson II" initiative by a 2-1 margin in November 1972, yet approved Prop 13 in 1978 by the same margin. The overwhelming rejection of Watson II less than six years prior to Prop 13's equally overwhelming passage raises an interesting question: *what caused voters to change their views so dramatically in such a short period of time?*

Fischel's emphasis on the Watson initiative calls into question traditional explanations for Prop 13, which have focused on the unresponsiveness of California's political officials to rising property tax bills. These so-called "Leviathan" theories for Prop 13 hold that politicians simply ignored voter preferences for tax relief, giving rise to a popular backlash.[51] Fischel is unpersuaded: "It is hard to believe that California officials had in less than a decade gone from

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[48] *See, e.g.*, Amity Shlaes, *Vermont Levels its Schools*, WALL STREET JOURNAL (Wednesday, April 22, 1998) (describing Fischel's thesis and explaining its relevance to school finance reform debates in Vermont). *See also* Amity Shlaes, *Educating Mary Barrosse*, POLICY REVIEW (April 1999) (adapted from Shlaes' book, THE GREEDY HAND: HOW TAXES DRIVE AMERICANS CRAZY AND WHAT TO DO ABOUT THEM) (describing Fischel's argument and concluding that "*Serrano* killed the virtuous cycle in California" … and that "[s]chool equalization so angered them that it moved Californians to pass Proposition 13.").

[49] *See* http://www.heartland.org/education/may98/revolt.htm.

[50] Fischel II, *supra* note XX.

[51] For a discussion of the "Leviathan" perspective, see BRENNAN & BUCHANAN, THE POWER TO TAX: ANALYTICAL FOUNDATIONS OF A FISCAL CONSTITUTION, *supra* note at ch. 2, pp. 13-33 (modeling government as a revenue-maximizing leviathan). *See also* Wallace Oates, *Searching for Leviathan: An Empirical Study*, 75 AM. ECON. REV. 748 (1985) (presenting and analyzing empirical data concerning Brennan/Buchanan hypothesis).

responsive public servants to minions of Leviathan."[52] What happened in the intervening years that lead to such a dramatic shift in the electorate's attitude toward the idea of a property tax revolt? Fischel's answer is, of course, *Serrano*.

To test his hypothesis, Fischel examined inter-city differences in the shift in support from 1972 to 1978 to see if those districts with the biggest shift also happened to be *Serrano*-losers. Using city-level voting data from 29 cities in Los Angeles County, he calculated the "swing" in voter approval of Watson and Prop 13.[53] Thus, if a city had an affirmative vote of 33% on Watson in 1972 and an affirmative vote of 66% on Prop 13 in 1978, it would have a swing of 100%. He then identifies for each school district corresponding to the city the portion of the school budget financed by local property taxes.[54] The intuition here seems to be that a high level of own-source property tax financing would be an indication of a wealthy district, and thus a proxy for being a "*Serrano* loser."[55] Examining these data, Fischel finds a strong simple correlation ($r = .71$) between the swing and the portion of the school budget financed with local taxes.[56] The figure below illustrates the simple correlation that Fischel has identified:

[INSERT FIGURE 1 HERE – SEE APPENDIX]

Based on these data, Fischel concludes that approximately half ($r^2 = .49$) of the variation in the swing variable is explained by the *Serrano* effect. Put differently, Fischel contends that these data show that voters in "*Serrano* loser" districts (represented by a high percentage LOCAL above) disproportionately *opposed* a

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[52] *Id.* at 467. It is worth noting that in the intervening years the country experienced the Watergate crisis, a fact which Fischel seems to believe is irrelevant to general voters attitudes regarding the trustworthiness of public officials.

[53] These data are available in the California Secretary of State's publication, STATEMENT OF THE VOTE, for the November 1972 General Election and the June 1978 Primary Election.

[54] These data are available in the California Department of Education's publication, CALIFORNIA PUBLIC SCHOOLS: SELECTED STATISTICS, 1977-78.

[55] As an example, compare the Serrano-loser Beverly Hills, with X% of school funding from local sources, with *Serrano*-winner Compton, with X% of school funding from local sources.

[56] Fischel II, *supra* note XX at XX.

property tax revolt in 1972, but disproportionately *favored* it in 1978. These data, he argues, support his thesis that *Serrano* caused Prop 13.[57]

In fairness, it should be noted that Fischel does not rely heavily on these data as support for his argument.[58] He characterizes his swing calculation as a "modest empirical venture,"[59] noting that "simple correlations are not the stuff of economic journals."[60] Nevertheless, we note that the simple correlation illustrated above is the *only* empirical evidence that Fischel has presented in support of his theory that *Serrano* caused Proposition 13; all the remaining analysis is conjecture. We believe that further empirical inquiry is necessary in order to gauge the true relationship (if any) between these two events.

In our own analysis, we begin where Fischel began -- i.e., examining the *differential* swing in voter support from Proposition 14 in 1972 to Proposition 13 in 1978. If Fischel's *Serrano*-Prop 13 theory is correct, his initial findings should be robust across alternative statistical models. Thus, the strong influence of *Serrano* on the Watson-Prop 13 swing should be apparent even when additional variables are introduced and the data set is expanded beyond the Los Angeles metropolitan area. Accordingly, we have extended his swing inquiry by expanding the data set and by controlling for various factors that might also help to explain why voters might swing disproportionately from 1972 to 1978. Before describing our additional variables, however, it will be useful to note four important points regarding our analysis.

First, we note that any empirical analysis attempting to explain the relationship between these two events is plagued by a significant problem of ecological inference.[61] The target of Fischel's inquiry, and ours, is the *individual* voter. What we all hope to explain is why individual voters may have gone from opposing a property tax limitation initiative in 1972 to supporting one in 1978. Importantly, however, available data tell us nothing about individual behavior. Because of this fundamental limitation in the data, we must rely exclusively on aggregate city-level

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[57] *Id.*

[58] In a footnote, Fischel explains that he regards the simple correlation "as only a supplement to my original argument." *See* Fischel II, *supra* note XX at 618.

[59] Fischel, *Homevoter Hypothesis*, at 96 (draft of 1/4/00).

[60] *Id.* at 97. Note, however, that Fischel does apparently believe that this particular "simple correlation" is "actually impressive." He continues, "I was really impressed that I could explain half of the variation in the swing vote for my sampe of 29 communities with but one variable." *Id.*

[61] *See* GARY KING, A SOLUTION TO THE ECOLOGICAL INFERENCE PROBLEM: RECONSTRUCTING INDIVIDUAL BEHAVIOR FROM AGGREGATE DATA (1997) (defining ecological inference as "the process of using aggregate (i.e., "ecological") data to infer discrete individual-level relationships of interest when individual-level data are not available.").

voting data for the elections that we examine.[62] Like Fischel, we are inferring individual behavior from aggregate data. Because of this problem, his results, and ours, should be interpreted with some caution.

Second, we note what we perceive to be a possible flaw in Fischel's formulation of the dependent variable – i.e., the "swing" in affirmative support for a property tax limitation from 1972 to 1978. As indicated above, Fischel calculates his swing variable by reference to the change in the percentage approval of Watson to the percentage approval of Prop 13. Thus, a district in which 33% of the voters supported Watson and 66% supported Prop 13 is said to have swung 100%. However, this calculation may be misleading because it ignores the possibility of a differential turnout in the two elections.[63] To illustrate, consider a jurisdiction in which 33% (66 out of 200) of the electorate supported the Watson Initiative in 1972, while 66% (66 out of 100) supported Prop 13 in 1978. Because of the difference in the denominators, a swing from 33% to 66% does not necessarily imply that "[a] whole lot of voters must have changed their minds in the six years."[64] As our example demonstrates, it is possible that not a single voter has changed his mind—opponents of the first initiative simply may not have voted on the second initiative.

Our research reveals that the turnout differential between November 1972 and June 1978 was significant. Whereas 82% of registered voters cast ballots in the November 1972 general election , only 69% went to the polls in the June 1978 mid-term primary. As for the larger pool of "eligible" voters, 64% voted in 1972, while only 47% voted in 1978.[65] The discrepancy between the two elections is not surprising. The November 1972 election was a general election that included a historic vote on the Presidency of the United States in the waning years of the Vietnam War. By contrast, the June 1978 election was a mid-term primary. While turnout was unusually high for this particular primary election (indeed, record-levels), it was still nowhere near the level of the November 1972 presidential election. Moreover, there is reason to think that the composition of the two

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[62] One way to minimize the problem of ecological inference would be to get data from smaller units than cities. Unfortunately, we were unable to obtain precinct-level data for the elections we are examining.

[63] In November 1972, there were 8,595,950 votes cast. By contrast, in June 1978, there were only 6,842,936. That is, approximately 25% fewer voters cast votes on Prop 13 than on the Watson II Initiative. *See* STATEMENT OF THE VOTE, CALIFORNIA SECRETARY OF STATE (1972, p. 5) (1978, p. v).

[64] Fischel, *Homevoter Hypothesis, supra* note XX at 96.

[65] These data are available on the Secretary of State's website, which is located at: http://www.ss.ca.gov/elections/sov/2000_primary/comp.pdf for historical turnout data on primary election and http://www.ss.ca.gov/elections/sov/2000_general/reg.pdf for general elections.

electorates was quite different. The June 1978 primary featured a hotly-contested race for the GOP gubernatorial nomination; meanwhile, the incumbent governor Jerry Brown had a lock on the Democratic nomination. This may have skewed the electorate to the right (and, as we will see, may help to account for why the Watson initiative failed in 1972 while Prop 13 passed in 1978).

The differences between the 1972 and 1978 elections complicate the calculation of the "swing." For Fischel's swing variable to make sense as a measure of changing voter attitudes, one must assume that those who failed to vote in the June 1978 primary would have voted the exact same say (that is, in the same percentage of yes/no votes) as those who actually did vote in the primary. To use the example above, Fischel's approach implicitly assumes that 66 of the 100 non-voters in 1978 would have voted in favor of Prop 13, leading to a total yes vote of 132 (out of 200), or 66% in 1978. While we view this assumption to be problematic,[66] we will nevertheless follow Fischel's approach in the calculation of the swing. In a statistical appendix, however, we present results using an alternative dependent variable that we believe avoids this problem.[67]

Third, recall that Fischel uses the percentage of school budgets from local revenues as a proxy for determining the degree to which a district is a *Serrano* winner or loser. While these numbers are not unrelated to a district's status under *Serrano*, the percentage of school budget from local sources may vary from jurisdiction to jurisdiction for reasons having nothing to do with how the district would fare under *Serrano*.[68] Fischel's variable is therefore an imperfect proxy for identifying which districts would lose from *Serrano* and which would gain.

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[66] If the June 1978 election had been a general presidential election, it might be appropriate to rely on this assumption. Because it was a mid-term primary, however, the voting electorate is less likely to be representative of the population as a whole. We note that there appears to be considerable division of opinion among political scientists regarding the representativeness of primary electorates. (authors to provide cites).

[67] Our alternative dependent variable is calculated based on the increase in the number of voters who voted yes on the Watson Initiative in 1972 and those who voted yes on Proposition 13 in 1978. Our variable calculates the percentage increase in the affirmative votes for the Watson initiative as compared to Proposition 13. Thus, for example, in the city of Alameda (one of the Bay Area jurisdictions in our sample), 8,809 voters voted yes on Watson II in 1972, while 13,707 voters voted yes on Prop 13 in 1978. Thus, Alameda's support for a tax limitation initiative is said to have increased by 56% (that is, (13,707 - 8,809)/8,809). *See* Appendix. Significantly, there is a strong simple correlation between Fischel's swing variable and our own (r=.707).

[68] For example, a property wealthy jurisdiction (i.e., a *Serrano* loser) may include a high number of children with disabilities and thus receive a larger amount of state or federal education assistance. Consequently, such a district might appear to derive a low percentage of its school budget from local sources, and thus appear as a *Serrano* winner under Fischel's approach, when in fact that district would be a *Serrano* loser because of its high per pupil property wealth.

Fortunately, there is a much more direct measure of *Serrano*'s effect – i.e., the per pupil assessed valuation available to the district for raising local property taxes. All of the *Serrano* opinions make clear that it is the inequality in per pupil assessed valuation that was constitutionally problematic.[69] Furthermore, AB 65, the state legislation enacted in response to the *Serrano* decisions, specifically redirected state aid to school districts based upon their relative per pupil assessed valuations.[70] Therefore, in order to estimate the precise effect of *Serrano* on the "swing" from 1972 to 1978, we use district-level data on per pupil assessed valuation rather than the percentage of school budgets derived from local taxes.[71]

Finally, we note that Fischel's database, which included 29 cities within Los Angeles County, is extremely limited and potentially unrepresentative of the state as a whole. Accordingly, we have expanded the database to include jurisdictions from across the state. There are two reasons for believing that Fischel's exclusive focus on L.A. County is inadequate. First, because *Serrano* and Prop 13 were statewide events, we are naturally interested in what happened throughout the state, rather than what happened within a single metropolitan area. Second, with respect to both property tax initiatives we are examining, there is reason to be cautious in examining data from Los Angeles alone. Philip Watson, sponsor of the November 1972 Watson II Initiative, was the tax assessor for Los Angeles County; his local prominence may have lead LA County voters to approach the 1972 initiative differently than voters in other parts of the state. Perhaps more importantly, in the weeks leading up to Prop 13 in June 1978, a potentially significant political controversy erupted, as new assessments showing dramatically increased tax bills were illegally released only days before voters went to the polls.[72] To the extent that LA County voters were influenced by this controversy, examining LA County data alone may be misleading.

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[69] Authors to provide cites.

[70] The precise terminology here is "assessed valuation per average daily attendance." For a discussion, see (cite to California school finance data, CALIFORNIA STATE DEP'T OF EDUCATION, SELECTED STATISTICS, 1977-78).

[71] More specifically, our SERRANO variable is calculated by taking natural log of the district's per pupil assessed valuation. We use the natural log because the distribution of the assessed valuation data for the districts in our data set is somewhat skewed. For a discussion of the use of logarithms in multiple regression, see EDWARD R. TUFTE, DATA ANALYSIS FOR POLITICS AND POLICY 108 (1974). We note that there is an almost perfect correlation between our variable (the natural log of the districts' per pupil assessed valuation) and Fischel's variable (the percentage of the school budget from local sources)—the correlation coefficient is .897.

[72] For more details on the controversy, see SEARS & CITRIN, *supra* note XX at XX.

In short, by examining statewide data, we minimize the likelihood that our results are the product of the local peculiarities of the Los Angeles metropolitan area (of which there are many[73]). Accordingly, we have included in our database 135 jurisdictions from across the state of California.[74] In selecting these jurisdictions, we used the same methodology that Fischel used; that is, we selected only those jurisdictions for which there was an identical match between the name of the city and the name of the unified school district.[75] As in Fischel's LA County data pool, using this approach enables us to minimize the chances of including cities that include more than one school district or school districts that service more than one city.

B. Reexamining the Watson-Prop 13 Swing

To begin where Fischel left off, we examine the relationship between the Watson II/Prop 13 "swing" and the percentage of a district's school budget financed from local sources. Recall that Fischel found a strong simple correlation ($r = .71$) between these two variables, based on a dataset of 29 jurisdictions. Replicating this analysis for our expanded dataset, we find a substantially weaker correlation ($r = .374$; $p = .000$). Put differently, simply by (i) expanding the data set to incorporate the whole state and (ii) using the more direct *Serrano* variable described above, our analysis reveals that less than 15% of the variation in the swing ($r^2 = .14$) from Watson II to Prop 13 can be explained by the *Serrano* variable.[76] The scatterplot diagram below illustrates these data:

[INSERT FIGURE 2 HERE – SEE APPENDIX]

These initial data suggest that other, non-*Serrano* factors may account for the apparent shift in support for property tax limitations between 1972 and 1978. Accordingly, in our model, we have included several additional variables that

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[73] *See* MATT MARANIAN & ANTHONY LOVETT, L.A. BIZZARO!: THE INSIDERS GUIDE TO THE OBSCURE, THE ABSURD AND THE PERVERSE IN LOS ANGELES (1997).

[74] For a listing of the jurisdictions in our database, see *Appendix* I.

[75] *See also* Anthony J. Barkume, *Empirical Studies on Voting Behavior on Fiscal Reference* 117-18 (1974) (following similar approach in analysis of Watson II initiative).

[76] In addition, we note that the relationship between *Serrano* and the "swing" is even weaker if we calculate the swing based on the percentage increase in the number of yes votes from 1972 to 1978. Calculated in this manner, there is an r of .206, which translates into an r^2 of .042, suggesting that less than 5% of the variation in the swing in the YES votes can be explained by the SERRANO variable.

might also account for a differential swing from Watson II to Prop 13. In order to gauge the discrete effect of *Serrano*, we have included six additional variables that we believe to be relevant.

1. GOP: A general indicator of Republican strength in the jurisdiction, as measured by the percentage of total votes cast for GOP candidates in the June 1978 gubernatorial primary.[77]
2. PROPVALUE: A measure of the percentage increase in the aggregate assessed valuation of property in our sample jurisdictions from 1971-72 to 1977-78, as indicated by the Department of Education.
3. INCOME: The jurisdiction's median household income as indicated by the 1980 census (based on 1979 data).
4. SENIORS: The percentage of the district's population age 65 and over as indicated by the 1980 census (based on 1979 data).
5. GOVEMP: The percentage of the district's employed population that was employed by state or local government agencies as indicated by the 1980 census (based on 1979 data).
6. RENTERS: The percentage of the district's population that lived in rental housing as indicated by the 1980 census (which is calculated based on 1979 data).

The intuition behind including these additional variables may be explained as follows:

GOP. First, we hypothesize that Republican strength within a community might be a relevant factor in determining the magnitude of any swing in support for a property tax limit from 1972 to 1978. In November 1972, California's Republican Governor Ronald Reagan (as well as the Republican establishment in general) *opposed* the Watson II property tax initiative.[78] In June 1978, however, most Republicans, including the two principal Republican gubernatorial candidates on the ballot, Evelle Younger and Ed Davis, *supported* Proposition 13, as did former Governor Reagan and several academic experts, such as Nobel laureate economist Milton Friedman.[79] By contrast, Democratic Party leaders opposed

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[77] This variable represents a percentage for each jurisdiction, the numerator of which is the total number of votes cast for Republican gubernatorial candidates in the June 1978 primary election and the denominator of which is the total number of votes cast for all gubernatorial candidates at the same election.

[78] Cite.

[79] Cite.

both Watson II in 1972 and Prop 13 in 1978. Thus, while Democratic voters faced the *same* partisan cues in 1972 and 1978, Republican voters received very *different* partisan cues for the two initiatives. To the extent that individual voting behavior is influenced by partisan cues,[80] therefore, there is reason to believe that GOP affiliation might independently account for a shift in voting behavior from 1972 to 1978.[81]

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[80] In hypothesizing the importance of partisan cues in voter decision-making, we rely in part on the work of UCLA political scientist John Zaller. *See* JOHN R. ZALLER, THE NATURE AND ORIGINS OF MASS OPINION (1992). Zaller does not advance the simplistic view that voters look to partisan political figures and vote accordingly. Rather, he argues that the effectiveness of cue persuasion depends upon factors such as voter attentiveness and the degree of consensus among political elites. In one especially relevant passage, Zaller notes:

> "When, despite their divergent predispositions, all relevant specialists agree on a policy, any source whom journalists consult will say roughly the same thing, with the result that society will have "elite consensus" and a "mainstream norm" that will be most strongly supported by the most politically attentive members of society. But when predispositions induce relevant specialists to disagree, journalists will publicize the disagreement, often in starkly ideological terms that invoke images of good and evil. Politicians and publicists, who maintain lines of communications to like-minded specialists, will also disagree. The result will be a polarization of the general public along lines that mirror the elite ideological conflict, with the most attentive members of the public most ideologically polarized."

ZALLER, *supra* at 327. In our view, the 1972 election represents an example of the first situation that Zaller describes (elite consensus on the need to reject the tax limitation initiative), while the 1978 election illustrates the second (dissensus and ideological polarization).

[81] One possible argument concerning our inclusion of a GOP variable deserves brief mention. One might argue that the shifting partisan cues that we have identified are themselves a reflection of underlying GOP discontent with the *Serrano* decision. In 1972, the argument would go, the implications of *Serrano* hadn't really set in yet; so GOP leaders like Reagan would fight against any effort to limit the local property tax. In 1978, however, after the *Serrano* legislation had become law, popular GOP sentiment would favor a property tax limit because *Serrano* had eliminated the Tiebout-Hamilton system. In other words, the argument might be made that the GOP leadership's about-face merely reflects an underlying shift in popular attitudes toward the property tax and that it was in fact *Serrano* that had fundamentally reshaped these attitudes.

It is impossible to prove or disprove this argument. A balanced assessment of the evidence, however, suggests that the argument is misplaced. Two points are important here. First, during the decade or so leading up to Prop 13, tectonic shifts were underway in the ideological outlook of the Republican Party, as the party leadership became more and more conservative. Political forces with much broader significance than *Serrano* (e.g., Watergate, Vietnam, chaning demographics) were driving this shift to the right within the GOP. Importantly, growing conservatism within the GOP predated *Serrano* by several years, making it highly unlikely that a state court school finance decision was the root cause. Second, the GOP's move to the right was by no means limited to California. Rather, it represented a *national* trend. Thus, it seems highly implausible that the *Serrano* decision is the core reason why the GOP leadership would have opposed the Watson Initiative and supported Prop 13. The more plausible explanation, in our view, is that the GOP leadership became more conservative for reasons having little or nothing to do with *Serrano*.

An additional problem with the counter-argument, in our view, is that if it is true, then our GOP variable should correlate very closely with the SERRANO variable. After all, if it were indeed true that *Serrano* was driving the party's changing view on the idea of a statewide property tax limit, wouldn't one expect GOP districts to be disproportionately hurt by the *Serrano* decision? And in one sense, this would not be unsurprising: while hardly necessarily true, we should not be surprised to learn that heavily Republican districts were also property-wealthy jurisdictions that would stand to lose under any post-

PROPVALUE. Our second additional variable is the increase in property values over the relevant time period. We hypothesize that the *differential* increase in property values across jurisdictions might account for the differential swing from Watson II to Prop 13. We begin with the proposition that housing prices did not increase the same in every jurisdiction. While some jurisdictions experienced large increases, others experienced relatively small increases. Using data from the California Department of Education for the school years 1971-72 and 1977-78, we calculated the percentage increase in each jurisdiction's assessed valuation leading up to Proposition 13. If our hypothesis is correct, then we would expect the swing from Watson II to Prop 13 to be greater in those jurisdictions that experienced the largest increases in assessed valuation during this period.

INCOME. Our third variable is the district's median household income. The intuition for including this variable is straightforward. Fischel's analysis assumes that Watson II and Prop 13 were essentially identical. However, the two initiatives differed in several respects. One difference in particular is critical for our purposes. The Watson II initiative in 1972 did not reduce the overall tax burden; it only shifted the distribution of taxes among different income groups. Moreover, the net effect of the shift depended upon an individual's income level (which in turn depended upon certain assumptions regarding which taxes would be used as replacement funds). While low-income homeowners were likely to benefit from a net reduction in taxes, a net increase in taxes was expected for high-income homeowners. According to one estimate published shortly before the Watson initiative was defeated, homeowners with income in excess of $15,000 (just over $63,000 in 2001 dollars) should have expected their share of the combined state-local tax burden to *increase* anywhere from 19% to 26%, depending upon which taxes would be increased following the initiative's adoption.[82]

Serrano school finance regime. Yet looking at the raw correlations reveals a different story. The correlation coefficient between the two variables (GOP & SERRANO) is a very weak .155.

Accordingly, in our view there are compelling reasons to believe that GOP might *independently* account for the shift in support for a property tax revolt. This hypothesis is especially plausible when comparing the two elections in 1972 and 1978. In the former year, the GOP was an "establishment" force for standard political reasons: it held the governorship with a very popular incumbent, and that year, Richard Nixon won re-election in one of the biggest landslides in US history. By 1978, however, Reagan was a former politician, Nixon was in disgrace, and Democrats ruled all three branches of the California statehouse (with large majorities in the legislature). To be a Republican in 1978 was to be anti-incumbent and anti-establishment. Thus, the partisan cues operating during these years diverged sharply, and possessed high political salience: put another way, if partisan cues ever matter, then they matter most strongly in contrasting the November 1972 and June 1978 elections.

[82] *See* BETSY LEVIN ET AL, PAYING FOR PUBLIC SCHOOLS: ISSUES OF SCHOOL FINANCE IN CALIFORNIA (THE URBAN INSTITUTE 1972) (cited in Barkume study on Watson Initiative).

The same study indicated that the overall tax burden of homeowners with lower incomes would *decrease* anywhere from 11% to 13%, again depending upon how the state legislature would respond to the adoption of the Watson Initiative.

By contrast, Proposition 13 shifted the tax burden in exactly the opposite direction. Because such a substantial property tax cut would yield a sharp decrease in government services, the burden would be placed on those who relied on such services, i.e. low-income and working-class voters. High-income voters, on the other hand, could realize a substantial property tax windfall while remaining relatively insulated for government service cutbacks. This "Revolt of the Haves" has been suggested in the political science and journalistic literature but never empirically tested as a matter of the Watson II-Jarvis swing.[83]

Based on these differences between the two initiatives, we hypothesize that high-income individuals would have reason to oppose the Watson Initiative, which promised to increase their overall tax burden, and support Proposition 13, which promised only to reduce taxes and not increase any taxes. Our variable is a measure of the district's median household income as indicated in the 1980 census (measured in 1979).[84]

SENIORS. Our fourth variable is the percentage of the population age 65 and over as indicated in the 1980 census.[85] What we are specifically interested in examining here is the possibility that older individuals would be more likely to swing from opposing Watson II to supporting Prop 13. There are two possible reasons to expect that this might be the case.

First, because persons age 65 and over are likely to consume a smaller share of public services (most notably, education) than younger individuals, it is reasonable to assume that they would prefer a reduction in government spending,

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[83] *See* ROBERT KUTNER, REVOLT OF THE HAVES (1982).

[84] More specifically, our INCOME variable is calculated by taking natural log of the district's median household income. We use the natural log because the distribution of the median household income for the districts in our data set is skewed. For a discussion of the use of logarithms in multiple regression, see TUFTE, *supra* note XX at 108. Our decision to include this variable might be considered problematic if it could be shown that those districts with high median household income were also the districts with the highest per pupil assessed valuation—our SERRANO variable. However, the data reveal that this is most decidedly not the case. In fact, there is almost *no* relationship between these two variables; the correlation coefficient for the two variables is .049.

[85] We calculated our SENIORS variable by taking difference of the natural logs of each district's (i) number of persons age 65 and over, and (ii) total persons. This is equivalent to logging (persons 65 and over / total persons). Again, we use the natural log because the distribution of the unlogged variable is skewed. *See* TUFTE, *supra* note XX at 108.

rather than a mere shifting from one type of tax to another. Because the Watson Initiative merely shifted the tax burden from some taxes to others, while Prop 13 promised to reduce the overall tax burden, we might expect more support among the elderly for Prop 13.

Second, because a larger portion of elderly individuals live on fixed retirement income than others, one might expect the rising property tax bills of the early to mid-1970's to hit the elderly the hardest. Put differently, while those earning wage income could expect wage increases to help cover increased property tax bills, anyone living on fixed income would find more and more of their income eaten up by the tax collector's share. As housing inflation translated into higher tax bills, therefore, the elderly would be more receptive to the idea of a property tax limitation in 1978 than in 1972. For these two reasons, we hypothesize that elderly individuals would swing disproportionately from the Watson Initiative to Prop 13.[86]

Our final two variables—GOVEMP and RENTERS—are ones that we believe would be *negatively* correlated with the swing from Watson II to Prop 13. That is, for the two variables described below, we believe that individuals in these categories would be more likely to support Watson II than Prop 13, leading to a "reverse swing."

GOVEMP. We hypothesize that government employees would be more likely to oppose Proposition 13 than Watson II. Again, because Prop 13 promised to cut taxes while Watson II merely effectuated a shift in the type of taxes, Prop 13 was more threatening to state and local government paychecks than was Watson II. Accordingly, we would expect state and local government employees to "swing," but in the opposite direction—i.e., toward greater opposition to the Jarvis-Gann initiative in 1978 than the Watson initiative in 1972.

RENTERS. Finally, we hypothesize that renters would be more likely to oppose Proposition 13 than Watson II. Renters were not direct beneficiaries of either the Watson initiative or Prop 13. However, appearing on the ballot in June

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[86] One might initially question our inclusion of a SENIORS variable for explaining the change from November 1972 to June 1978 based on the observation that over that five-and-a-half year period the people living within our sample jurisdictions will be that much older. What we hope to capture by including this variable, however, is the relative "agedness" of a jurisdiction's population. While the demographic composition of a community can change over time, there is no reason to believe that the communities in our sample experienced dramatic *differential* shifts in age composition over this particular time period. We therefore believe that the 1979 census figures for age offer a fair approximation of the relative agedness of our sample cities.

1978, alongside Prop 13, was an initiative sponsored by the state legislature which would have made possible the enactment of the so-called "Behr bill." Among other things, the Behr bill included provisions for a renters tax credit.

Our preliminary results suggest that the significance of the SERRANO variable is substantially weakened, though not entirely eliminated, by expanding the data set to include jurisdictions from the entire state and by including the additional variables described above. Table 1 below presents the results of our regression analysis. In Model 1, we regressed the "swing" from Watson II to Prop 13 against the seven variables. In Model 2, we performed the same regression but eliminated one extreme outlier (the city of El Segundo in LA County) from the analysis. As will explained further below, the only two variables that have a strong and statistically significant influence on the dependent variable are INCOME and SENIORS.

TABLE 1: OLS REGRESSION RESULTS
Dependent Variable: "Swing" from Watson II to Prop 13

	Unstandardized Coefficients		Standardized Coefficients		
r^2 = .474	B	Std. Error	Beta	t	p-value
(Constant)	-7.211	1.336		-5.398	.000
SERRANO	5.264E-02	.066	.073	.799	.426
INCOME	.837	.163	.562	5.124	.000
SENIORS	.386	.091	.489	4.253	.000
PROPVALUE	4.372E-02	.073	.045	.601	.549
RENTERS	9.668E-02	.241	.030	.401	.689
GOVEMP	.333	.474	.051	.702	.484
GOP	.378	.281	.125	1.345	.181

Several aspects of the results reported above are striking. First, and most importantly, we note that the SERRANO variable appears to have almost no influence on the dependent variable, SWING. SERRANO's negligible effect on SWING can be seen most directly in the standardized coefficient of .073, which indicates that a one standard deviation increase in the SERRANO variable would translate into a .073 standard deviation increase in the SWING variable.[87]

[87] Standardized coefficients are the beta coefficients from the regression model when the variables are standardized. This is done for each variable by subtracting the mean (calculated using the original units) from each datum and dividing the result by the standard deviation. As a result, all variables will have a

Additionally, the p-value of .426 indicates that there is nearly a 43% likelihood that the statistical relationship between SERRANO and SWING is simply due to chance.[88] Thus, it would appear that SERRANO's influence on the SWING variable (the core element of Fischel's empirical inquiry) is statistically insignificant, once we control for the additional variables listed above.

Second, we draw attention to the strong and statistically significant influence of INCOME and SENIORS on the swing variable. The strongest and most significant variable is INCOME, with a standardized coefficient of .562. Again, this statistic indicates that for every one standard deviation increase in INCOME, the model predicts a .562 standard deviation increase in the "swing" from Watson II to Prop 13. Similarly, for every one standard deviation increase in SENIORS, the model predicts a .489 standard deviation increase in the SWING variable. Importantly, the strong influence of these two variables on the swing is statistically significant at a 99% confidence level. Put differently, we can be almost 100% certain that the coefficients for these two variables are not attributable simply to chance. As for the intuitive explanation, these results are consistent with the hypothesis that jurisdictions with a large percentage of older, higher-income individuals were most likely to swing from Watson II in 1972 to Prop 13 in 1978. That is, older and wealthier (in terms of income) districts were more likely to oppose Watson II and yet support Prop 13 in 1978.

A third feature of the results that deserves mention is the influence of our GOP variable on the SWING. As the reader will recall, we posited that jurisdictions with a high percentage of GOP voters would swing more strongly from Watson to Prop 13 because of the mixed cues delivered by Republican party elites as compared to Democratic leaders.[89] The results reported above are consistent with the our theory regarding the influence of party affiliation on the swing, but at a less significant level than we would have predicted. As the standardized coefficient indicates, the model predicts a .125 standard deviation increase in the SWING for every one standard deviation increase in the GOP variable, with a p-

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mean of 0 and a standard deviation of 1. The use of standardized coeffients enables comparison of the relative predictive power of variables. For a discussion, see A.H. STUDENMUND, USING ECONOMETRICS: A PRACTICAL GUIDE 172 n.8 (4th edition; 2001).

88 A p-value of .426 is generally not regarded as "statistically significant" when interpreting regression coefficients. Researchers typically consider a variable to be statistically significant only if the "null hypothesis" (i.e., that the independent variable has zero influence on the dependent variable) can be rejected with 95% or greater confidence. Thus, a p-value of .05 or lower is generally interpreted as indicating a "statistically significant" relationship between the two variables.

89 *See supra* text at notes XX to XX.

value of .181. One interpretation of these results is that economic factors exert a more powerful influence on voting behavior than party affiliation.

We draw attention to another important feature of the data above: the absence of any significant multicollinearity among the several independent variables that we have specified. One of the most important requirements of multiple regression analysis is that the independent variables not be highly correlated with one another. Thus, for example, a study that seeks to identify factors accounting for voter participation that includes both income and education may produce skewed results because of the high correlation between those two variables.[90] There are several ways to diagnose multicollinearity, the most common of which is to examine the "tolerance" statistics generated by most statistical software programs.[91] As a general rule, multicollinearity is not considered to be problematic unless tolerance values (which are calculated for each of the independent variables in the model) drop below .10.[92] Notably, the tolerance statistics in our model do not indicate that there is a problem of multincollinearity with the model.

C. Measuring the Swing between Prop 8 and Prop 13

On the whole, our swing model suggests that the cause for any voter "shift" between 1972 and 1978 lies not in school finance reform, but in a combination of the "revolt of the haves" (not defined in terms of property wealth, but rather income) and the problem, well recognized at the time of Prop 13's passage, of seniors getting priced out of their homes by soaring tax bills. Still, while focusing on the "swing" from Watson II to Prop 13 offers an interesting opportunity to consider voter behavior pre- and post-*Serrano*, our results above suggest that it may be an appropriate device for gauging the effect of *Serrano* on the passage of Prop 13. What the strong influence of INCOME and SENIORS above ultimately may reveal, is that voters were actually voting on two very different initiatives in 1972 and 1978. Thus, the weak role of *Serrano* is not necessarily a rejection of his thesis; rather, our analysis simply reveals the examining the

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[90] More precisely, because of the high correlation between the two independent variables, it may appear that one of the variables has little or no effect on the dependent variable while the other variable has a very strong effect. For a discussion, see GREENE, ECONOMETRIC ANALYSIS (2001).

[91] Cite to SPSS materials. Another common statistic used to diagnose multicollinearity is the "variance inflation factor" or VIF. As a general rule of thumb, multicollinearity XXXX.

[92] Cite to GREENE, ECONOMETRIC ANALYSIS (2001).

determinants of the Watson-Prop 13 swing may not be the best vehicle for testing his hypothesis.

Fortunately, there is an alternative "swing" that may actually speak more directly to the question of whether voters in *Serrano*-loser districts were more likely to support Proposition 13. Appearing on the ballot at the same time as Prop 13 was Proposition 8, the "establishment" alternative to Prop 13. Prop 8 would have cut residential property taxes significantly, but not nearly as dramatically as the Jarvis-Gann measure. Had Prop 8 passed, it would have created a "split-roll" system of property taxation under which commercial/industrial property is taxed at a different (usually higher) tax rate or assessment ratio than residential property.

Proposition 8 bears great relevance for Fischel's thesis because it would not have affected *school* property taxes, thus maintaining the system established by AB 65—the legislature's response to *Serrano*.[93] That is, if Prop 8 had passed and Prop 13 failed, *Serrano*-loser districts would continue to experience high (and potential increasing) school property tax bills, while also receiving a smaller share of state aid (because of *Serrano*) and potentially even forfeiting a portion of their locally-raised property taxes (because of AB 65's "recapture" provisions). Thus, if Fischel's thesis is correct, we would expect voters in *Serrano*-loser districts to be especially eager to see Proposition 8 fail and Proposition 13 pass. If, however, voters simply wanted tax relief, then they would vote "yes" on both measures to make sure that they received something.[94] Thus, according to Fischel's theory, there should be a strong correlation between the percentage of school budgets coming from local taxes (Fischel's *Serrano*-loser proxy) and the "swing" between Prop 8 and Prop 13.

To test this hypothesis, we calculated a "swing" (similar to Fischel's calculation for Watson II to Prop 13) for the disparity in a city's affirmative votes for Proposition 8 and Proposition 13. Our analysis suggests that the *Serrano* variable had essentially zero effect on the swing between Proposition 8 and Proposition 13. The scatterplot below is a clear rejection of Fischel's thesis:

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[93] *See* Fischel II, *supra* note --, at 633.

[94] SB 1 was extremely clear in providing that it would take effect only if Proposition 13 failed to pass; indeed, the bill stated that Proposition 13 would take effect even if Proposition 8 received more votes. Thus, assuming voter rationality, there was no reason to vote against 8 and for 13 if the goal was simply to provide tax relief. If as Fischel suggests, however, the goal was to prevent as much money as possible from flowing to other districts, then the proper response would be to vote for Jarvis and against Behr. The Prop 8/Prop 13 swing, therefore, in our view forms an excellent natural quasi-experiment in testing voter preferences.

[INSERT FIGURE 6 HERE]

Of course, as we explained above, simply examining the relationship between two variables can be misleading. While this correlation shows that SERRANO cannot explain why voters in some districts disproportionately favored Prop 13 over Prop 8, it does not (and cannot) reveal what types of jurisdictions did in fact follow this voting pattern. To pursue this question further, we regressed our Prop 8/Prop 13 swing variable against the same independent variables that we used above: SERRANO, INCOME, SENIORS, PROPVALUE, RENTERS, GOVEMP, and GOP. Consistent with our preliminary finding regarding the lack of a relationship between SERRANO and the 8/13 SWING, the regression results below show that *Serrano* had a statistically insignificant influence on the swing. Indeed, the only variables with any explanatory value are RENTERS, GOVEMP, and GOP.

TABLE 2: OLS REGRESSION RESULTS
Dependent Variable: Swing from Prop 8 (1978) to Prop 13 (1978)

	Unstandardized Coefficients		Standardized Coefficients		
$r^2 = .362$	B	Std. Error	Beta	t	p-value
(Constant)	362	2.095		.173	.863
SERRANO	-.120	.103	-.118	-1.165	.246
INCOME	.148	.256	.070	.578	.565
SENIORS	1.650E-02	.142	.015	.116	.908
PROPVALUE	.172	.114	.124	1.511	.133
RENTERS	-.729	.378	-.159	-1.928	.056
GOVEMP	-3.086	.744	-.330	-4.148	.000
GOP	1.261	.441	.292	2.858	.005

These data reveal the partisan nature of the support for Proposition 13: the only statistically significant variables in explaining the swing from Prop 8 to Prop 13 are party affiliation, government employment, and renter status. In other words, those districts that most strongly favored Prop 13 over Prop 8 were heavily Republican with few renters and state/local government employees. And importantly, these districts were not *Serrano*-losers. In fact, as we look at which cities fall into this category, we can see that many of them are not the "property-wealthy" communities that stood to lose under *Serrano*, but rather working-class

cities like Downey, Torrance, and Simi Valley.[95] The fact that these communities swung disproportionately from Prop 8 to Prop 13 reveals a populist, anti-government instinct, not a reaction to *Serrano*.[96]

We believe that the Prop 8/Prop 13 swing represents a better measure of Fischel's thesis than does his own swing correlation between Watson II and Proposition 13. Voters who went to the polls in November 1972 (when Watson II was on the ballot) and those who voted in June 1978 (when Proposition 13 was on the ballot) were very different groups of people. This was not only because of the six-year time differential between the two elections, but also the elections' differential political salience: Watson II was on the ballot during a general presidential election, whereas Proposition 13 appeared during a primary midterm election. It may be, then, that to a great extent there was no "swing" at all, in the sense that voters changed their minds about the necessity of tax relief between 1972 and 1978: it may be that different groups of voters showed up to the polls at different times. This isn't literally true, of course: the overall shift between Proposition 14 and Proposition 13 was very large, and the entire voting population of California was not replaced between 1972 and 1978. It does, however, present important problems when making inferences or claims about changes in voter preferences. No such problem is presented in comparing Proposition 8 and Proposition 13, because the same electorate voted on both measures.[97] In our view, then, it forms a superior test to the Prop 14/Prop 13 swing measurement. But it also suggests that voters' response to Proposition 13 was not driven by *Serrano*.

D. Serrano I and the Swing from 1968 to 1972

Finally, there is yet another "natural experiment" that may speak to Fischel's thesis. It is important to note that what Fischel refers to as "*Serrano*" was actually the second in a series of school-finance equalization decisions: five and half years

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[95] Similarly, many of the biggest *Serrano* losers with large amounts of per pupil property wealth—such as Beverly Hills, Santa Moncia, and San Francisco—were on the opposite end of the Prop 8/Prop 13 swing than what Fischel's theory would predict. The reason, of course, is that these are heavily Democratic cities. In other words, party affiliation appears to be a much better predictor of how a voter would vote on Props 8 and 13 than the fiscal circumstances of the school district in which he/she lived.

[96] Many of these jurisdictions would later become strongholds for Ronald Reagan in the 1980 and 1984 presidential elections.

[97] There is an issue, of course, concerning voter "drop-off" in voting on ballot initiatives. As initiative theorists have noted, there is a tendency for voters to vote on ballot items that appear early on the ballot and not to vote on items that come later. *See* DAVID MAGLEBY BOOK. However, voter drop-off does not appear to have been an issue with respect to Propositions 8 and 13 in June 1978.

earlier, the California Supreme Court established the general principle of school finance equalization in the original *Serrano* case.[98] *Serrano I* did not impose the strict, $100-band remedy later established by *Serrano II*: indeed, it did not impose any remedy at all. But it *did* hold that reliance on local property taxes to finance schools was unconstitutional, and it did so on the basis of equal protection. "In a democratic society," the *Serrano I* court proclaimed, "free public schools shall make available to all children equally the abundant gifts of learning."[99]

Serrano I poses a potential problem for Fischel's first thesis. Fischel argues that voters swung from opposing to favoring property tax limitation in the wake of *Serrano II*. But why would they not have done the same in response to *Serrano I*? Watson II (Proposition 14) appeared on the ballot in November 1972, approximately 14 months after the Court had decided *Serrano I*. Unless homeowners are completely myopic, therefore, they should have favored the very first property tax limitation that they could get their hands on – which would be Watson II in 1972.

Fischel appears to believe that *Serrano I* was not a significant factor in influencing voter perceptions of the property tax. He notes that *"Serrano I* had held only that a lower court's dismissal of the plaintiff's suit was not constitutionally justified,"[100] and that the initial opinion "only established grounds for the suit; the equal spending remedy of *Serrano II* did not arrive until December 1976."[101] Fischel appears to view *Serrano I* as merely a procedural decision, one that could not possibly have any substantive effect on voter perceptions regarding the future of the local property tax. On this view, voters had no inkling that the *Serrano* litigation would remove local control over school finance decisions: put another way, we should not expect voters to respond to a unanticipated contingency.

In our view, this is moving too fast. *Serrano I* not only contained language signaling quite clearly the direction in which the court was moving, but also spurred a major national movement toward school finance equalization--and talk of abolishing the local property tax. Re-examining the decision itself and the politics it engendered reveals that *Serrano* and its effects were very much a part of public political dialogue by the time of the November 1972 election.

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[98] Serrano v. Priest, 96 Cal.Rptr. 601 (1971) (*"Serrano I"*).
[99] Serrano I, 96 Cal.Rptr. at 626.
[100] Fischel II, *supra* note XX, at 611.
[101] *See* Fischel II, *supra* note --, at 617.

The California Supreme Court's decision stated quite clearly its antipathy toward financing schools with a "substantial dependence on local property taxes," noting that such a "scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors."[102] From the outset, then, the Court declared war on the precise mechanism at the heart of the Tiebout-Hamilton local public sector -- the local property tax.

Local school district competition, the touchstone of the Tiebout system, was explicitly rejected, "[D]iscrimination on the basis of district wealth," it held, "is . . . invalid. The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private commercial and industrial establishment. Surely, this is to rely on the most irrelevant of factors as the basis of educational financing."[103]

In case there was any doubt as to the intellectual grounding of the Court's theory, the opinion made it quite clear. It peppered the opinion with references to the scholarly works written by the *Serrano* plaintiffs' lawyers, all of whom advocated a complex "district power equalization" remedy that, while different from the eventual remedy in *Serrano II*, also would have dismantled the Tiebout-Hamilton system. When discussing whether education is a "fundamental right" for constitutional purposes, the Court drew a direct analogy between education and voting--the latter being the quintessential right that must be distributed with absolute equality between citizens.[104] It thus powerfully suggested that equalized spending in some fashion would be constitutionally required. The voting analogy led the Court seemingly to reject local fiscal control altogether. Citing cases where drawing electoral districts had (in the Court's estimation) diluted the efficacy of people's votes, it reasoned: "If a voter's address may not determine the weight to which his ballot is entitled, surely it should not determine the quality of his child's education."[105]

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[102] Serrano I, 96 Cal.Rptr. at 604.
[103] Serrano I, 96 Cal.Rptr. at 612-13.
[104] *See* Serrano I, 96 Cal.Rptr. at 607-08. The Court also analogized its decision with that of the United States Supreme Court in Reynolds v. Sims, 377 U.S. 533 (1964), which established the principle of "one-person, one-vote" in electoral redistricting.
[105] Serrano I, 96 Cal.Rptr. at 622.

The Court used much of its rhetorical flourishes to castigate locally-based financing systems. "Such fiscal freewill is a cruel illusion for the poor school districts,"[106] it argued, and specifically rejected the Tieboutian notion that local financing allowed different districts the choice to determine the appropriate mix of taxes and services they wished to provide:

> In summary, so long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellent which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option.[107]

In short, then, while *Serrano I* was by design imprecise on what the Court would require in terms of a remedy, it was absolutely clear on what it would forbid: reliance on local property taxes and the corresponding expenditure disparities engendered by that system. The California school financing system violated the Constitution because it "classifies its recipients on the basis of their collective affluence and makes the quality of a child's education depend upon the resources of his school district."[108] Any voter committed to such a system should have reacted with alarm at the Court's judgment.

Serrano I set off a political and policy firestorm throughout the nation. The *New York Times* noted that "the sensitive and complex issue of equity . . . has been vigorously joined in the courts, the legislatures, and the public arena since [the decision]"[109] and observed that the name of lead plaintiff John Serrano "has become familiar to thousands of educators, legal scholars, judges, Government officials, tax experts and legislators all over the country."[110] The potential impact of *Serrano I* was not lost on those from wealthier districts: "there is a growing fear among some," the report continued, "that the cherished American concept of local school control will be lost and that fiscal equalization will reduce all schools to a level of common mediocrity."[111] It reported that even under John Coons'

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[106] Serrano I, 96 Cal.Rptr. at 620.
[107] Serrano I, 96 Cal.Rptr. at 620.
[108] Serrano I, 96 Cal.Rptr. at 623.
[109] M.A. Farber, *Budget Crises Spur Reappraisal of Basic Goals,* N.Y. TIMES, Jan. 10, 1972, § E, at 1.
[110] Robert Reinhold, *John Serrano Jr., et al., and School Tax Equality,* N.Y. TIMES, Jan. 10, 1972, § E, at 1.
[111] Id.

"district power-equalization" remedy, Beverly Hills "would have to tax itself to the tune of $27 million to get the $9 million it raises now. Such is the unease that Beverly Hills has joined with 50 other districts" to devise an alternative.[112]

Developments in desegregation law only exacerbated voters' perceptions of inevitable egalitarianism. In January 1972, a federal court in Virginia ordered the consolidation of urban and suburban school districts--essentially preventing "white flight" and further dismantling locally-based finance by dismantling locally-based districts altogether.[113] Courts battered school districts throughout the 15 months between *Serrano I* and the 1972 general election. School districts across the country found equalization decisions cascading down on them, as tribunals in Texas, Minnesota, Kansas, and New Jersey all overturned those states' school finance systems. Some of these decisions rested solely upon federal grounds; others solely upon state constitutions. But regardless of the doctrinal sources, the decisions made local school finance seem more and more like a quaint anachronism.

President Nixon then gave the issue the ultimate exposure: a large portion of his 1972 State of the Union address was devoted to the problems of local school finance. Nixon, who was said to have been "deeply impressed" by *Serrano I*, proposed a form of a national value added tax to fund local schools, arguing that the traditional system was out of date and unable to provide the sums necessary to support requisite spending levels and what many then believed was a federal constitutional requirement for equalization. In so doing, the President was following "the rapidly emerging consensus that the major burden of paying for public education should be shouldered not by local communities but by the states."[114]

In California, meanwhile, policymakers began to gear up for the implications of *Serrano I*. Governor Ronald Reagan had been pushing for years for property tax relief, only to be blocked by Democrats in the state legislature, particularly Assembly Speaker Bob Moretti. Finally, in mid-May 1972, Reagan and Moretti announced a compromise tax relief package that also purported to deal with the school finance issue. The Reagan-Moretti compromise substantially increased school spending and also significantly augmented state aid to low-wealth districts:

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[112] Id.
[113] *See* Ben A. Franklin, *Rights Lawyers Hail Richmond Decision,* N.Y. TIMES, Jan. 13, 1972, § 4, at 32; Tom Wicker, *In the Nation: Cataclysm in Richmond,* N.Y. TIMES, Jan. 13, 1972, § A, at 41.
[114] *The Price of School Reform,* N.Y.TIMES, Mar. 12, 1972, § 4, at 10 (editorial).

it guaranteed a base spending level at $687 per student, compared with $355 beforehand. It also permitted wealthier districts to add on to their per pupil amounts: Beverly Hills could still continue to spend $2,065 per pupil, and individual districts could raise their spending even higher through local referenda. Thus, while the Reagan-Moretti compromise promised vast new benefits for students from poor districts, it did not come anywhere close toward establishing equal per-pupil spending.

And that, said virtually every school finance expert and disinterested observer, meant that the compromise did not comply with *Serrano I*. Less than 24 hours after the compromise was announced, state legislative analyst A. Alan Post expressed skepticism about the plan's constitutionality. So did the *Serrano I* plaintiffs' lawyers and most observers in the state house, even if they couldn't speak on the record: the *Los Angeles Times* reported one legislative staffer as saying, "It just doesn't meet Serrano. Anyone that knows anything about educational finance can see that."[115] The newspaper's editorial board agreed, although it supported the compromise on the grounds that it was better than nothing.[116] And even though the United States Supreme Court agreed in June 1972 to hear *Rodriguez* during its upcoming term,[117] that provided cold comfort to supporters of local school finance because *Serrano I* rested upon independent state constitutional grounds.[118] By October, the *Los Angeles Times* matter-of-factly referred to "the Serrano decision requiring equalization of public school support."[119]

Senate Democrats, who killed the compromise package out of jealousy about Moretti's leadership, used *Serrano I* as their excuse.[120] Finally, after the Republi-

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[115] The quote and Post's and Coons' views are from Jack McCurdy, *Reagan's School Aid Plan May Face Snag: District Spending Would Remain Unequal Contrary to Court Mandate, Experts Say,* L.A. TIMES, May 19, 1972, § 1, at 3.

[116] *See 'Incomprehensible, Almost Unbelievable,'* L.A. TIMES, Jul. 28, 1972, § 2, at 6 (masthead editorial) ("Admittedly the Reagan-Moretti plan falls short of solving the Serrano problem, but it is a first step. . .).

[117] Ronald J. Ostrow, *High Court to Rule on Property Taxes to Support Schools,* L.A. TIMES, Jun. 8, 1972, § 1, at 1.

[118] Admittedly, the precise language of *Serrano I* is hazy on the issue. *See* Serrano I, 96 Cal.Rptr. at pin cite. But in the wake of *Rodriguez,* virtually every observer recognized that the decision on federal constitutional law would not impact events within California. See, e.g., A Letdown on School Finance, L.A. Times, Mar. 22, 1973, § 2, at 6 (editorial)("[The California Supreme Court, in its decision in the Serrano case, relied not only on the equal protection clause of the U.S. Constitution but on the equal protectioin provisions of the California Constitution. There appears good reason to assume, therefore, that the decision in Washington . . . will not quash the Serrano proceedings that have now been returned to the Superior Court for further determination.).

[119] *Take-It-or-Leave-It Tax Plan,* L.A. TIMES, Oct. 16, 1972, § 2, at 6 (editorial).

[120] *See, e.g.,* Tom Goff, *Defeat of Bill: A Last Hurrah for 'Old Guard'?,* L.A. TIMES, Jul. 28, 1972, § 1, at 1, 28 (quoting Senator Stephen P. Teale: "He said it not only failed to answer the Supreme Court's demands but 'went in the opposite direction.'").

cans gained control of the upper chamber in December 1972, Reagan got his cherished tax cut from the Legislature in the form of SB 90, which included similar school finance provisions as the original Reagan-Moretti compromise. But no one was fooled. Republican state controller Houston Flournoy announced that he was "very certain" that SB 90 did not comply with *Serrano I*.[121] And Post recalled that

> At the time SB 90 was moving through the legislature, I pointed out that although the bill would provide a massive increase in state support for schools, and would narrow the differences between rich and poor districts, it would *not* meet the fiscal neutrality principle of *Serrano* as established by the Supreme Court.[122]

By Election Day 1972, then, the rational California voter would have every reason to believe that local property tax-driven school finance was in its final days. *Serrano I* had condemned it, and virtually no one with any knowledge of school finance thought that the modest Moretti-Reagan compromise would pass muster with the California Supreme Court. Moreover, the rational voter would have heard of the controversy: school finance questions and *Serrano I* reverberated throughout the country and maintained their political salience. *Serrano I* did not establish a specific remedy; it did not dictate the particulars of California's future system of school finance; it did not write concrete legislation or establish specific budgets. But by 1972, the handwriting was quite clearly on the wall: reliance on the local property tax as the primary source of public school funding would no longer be constitutionally permitted.

Serrano I's impact gives us an opportunity to test Fischel's first hypothesis. As noted above, Fischel tested the "swing" between support for the 1972 Watson initiative and Proposition 13. The impact and meaning of *Serrano I* undermines the usefulness of the swing statistic. But Watson's 1972 ballot measure was actually his second attempt at limiting property taxes statewide: he attempted to do the same thing in 1968, with the same results.

Watson's record of futility, however, allows us to test the Fischel hypothesis in a different way, by measuring the swing between Watson I (1968) and Watson II (1972). If Fischel's theory is right, *Serrano I* should have had the predicted

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[121] *See* Tom Goff, *Tax-School Reform Called Error-Laden,* L.A. TIMES, Mar. 8, 1973, § 1, at 3.

[122] *Quoted in* RICHARD F. ELMORE & MILBRY WALLIN MCLAUGHLIN, REFORM AND RETRENCHMENT: THE POLITICS OF CALIFORNIA SCHOOL FINANCE REFORM 107 (1982) (emphasis in original). Post's statement dates from 1974, so it is highly unlikely that he was confusing the two *Serrano* decisions.

effect on the "swing" from Watson I to Watson II. In fact, however, there is virtually no statistical relationship (r=.084) between the swing from Watson I to Watson II and the per pupil assessed valuation for each district in 1971.. Figure 5 below a scatterplot diagram of these two variables:

[INSERT Figure 5: WATSWING and SERRANO HERE]

The Watson I-Watson II swing--or lack thereof--undermines the principal argument against using the measure in the first place, i.e. that *Serrano I* did not signal to voters that local school finance was dead as strongly as did *Serrano II*. Assuming that this is true (and we believe it to be significantly overstated), it still would not account for the complete lack of any correlation between SERRANO and the Watson swing. Put another way, we can assume for the sake of argument that *Serrano I* would not have the impact that *Serrano II* would have. But surely it would have had some influence, given the strong national discussion toward equalization, and the consensus opinion that *Serrano I* would eventually lead to the breakdown of local school financing. If Fischel's thesis is correct, it should not yield the same correlation strength as *Serrano II*--but it should yield something. It does not.

IV. DID SERRANO REALLY FORECLOSE PROPERTY TAX RELIEF?

In a later article and a recent book, Fischel expands on and reasserts his *Serrano* thesis.[123] *Serrano* "caused" Proposition 13 in another way, he submits. As is well known, California enjoyed a large budget surplus in the years leading up to Proposition 13.[124] Fischel argues that this surplus *could have* been used to provide property tax relief, but was not so used because legislators understood that the *Serrano* mandate had a prior claim to this money.[125] Thus, *Serrano* not only had the "micro" effects described above, it also had a "macro" effect of forestalling legislative action on the important matter of giving local homeowners property tax relief that they apparently were demanding. In this Part, we examine this alternative theory for the relationship between *Serrano* and Prop 13.

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[123] Fischel II, *supra* note XX at XX; *see also* FISCHEL, THE HOMEVOTER HYPOTHESIS.
[124] Id.
[125] Id.

Fischel frames the question clearly: if California had such a huge surplus, then "[w]hy didn't the state legislature do something about the related problems of (a) excessive property tax burdens on homeowners, [and] (b) rapid increase in overall state and local tax collections"? After all, he notes, "you don't have to have a Ph.D. in finance to figure out that you take the current and anticipated surplus and use it to reduce homeowner taxes."[126] He then provides a simple and rhetorically compelling answer: *Serrano* prevented the Legislature from enacting the obvious tax cut. Lawmakers had to spend so much money on *Serrano* compliance that they had nothing left over for beleaguered taxpayers. Faced with what they perceived was an arrogant and unresponsive state government, Fischel contends, voters took matters into their own hands and enacted Proposition 13 in June 1978.

This picture is powerful and intuitively plausible. Looking more carefully at developments in 1977 and 1978, however, reveals a much murkier picture, one that once again demonstrates the primacy of political leadership and--importantly--the power of institutional structures to constrain choices.

A. The 1977 Legislative Session

Understanding what happened in Sacramento during the 1977 session requires remembering one fundamental point: *the Legislature achieved broad consensus on the size and necessity of a property tax cut, and in one form, "passed" such a cut before adjourning in mid-September.* That cut never became law not because of *Serrano*, but because of politics and institutional pressures unrelated to school finance.

To be sure, from the very beginning, key lawmakers understood that at some point, *Serrano* compliance and tax relief created budgetary tensions.[127] Budgetary pressure, however, hardly makes stalemate inevitable. Legislators excel at ameliorating multiple constituencies, and by September 1977, the state Assembly had cleared both a schools bill (AB 65) and a tax relief passage (AB 999). Governor Brown indicated that he would sign both, if they reached his desk. In contrast to Fischel's suggestion, lawmakers devoted substantially more to tax relief

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[126] Fischel II, *supra* note --, at 627.

[127] *See, e.g.,* Doug Shut, *Cost Factor Stalls 2 Key Bills; Tax Relief, School Aid Measure Snarled,* L.A. TIMES, Aug. 17, 1977, A3.

than to school finance equalization. The tax package costed out at $5.5 billion over five years—nearly twice as much as the $2.9 billion allocated for *Serrano*.[128]

But the state Senate blocked the tax relief measure, for reasons having less to do with the bill's overall size than with the way it distributed benefits, and perhaps even more importantly California's unique procedural rules for enacting fiscal measures. In January 1977, Governor Brown introduced his property tax relief package, which contained a radically new concept known as the "circuit breaker." The circuit breaker provided for distributing property tax relief on the basis of income, rather than on the amount of property tax paid. Instead of simply reducing tax rates, the circuit breaker provided relief through a complex formula of rebates: homeowners would pay the old rates, and then receive relief checks designed to reduce their overall tax bill but based upon income.

Senate Republicans denounced the circuit breaker as the "calculated and premeditated plunder of the middle class"[129] because it essentially entailed middle-class homeowners having to pay for lower-income people's tax relief. Even several progressive Democrats lambasted the idea. "Can you imagine me," asked Senator Ruben Ayala of San Bernardino, "going back home and saying (to middle-income homeowners) the reason we didn't do better for you is because we took care of the winos? Can you imagine that?"[130] Predicating property tax relief based upon income demanded a complex administrative scheme difficult to understand and virtually impossible to explain. Senator Walter Stiern of Bakersfield, a moderate Democrat whose opposition doomed the bill, complained that "I'm going to have to go out to [my district] next week and make a speech on this and I really shudder. . . I'm going to have to talk to those people about 'circuit-breakers,' 'split-level tax concepts,' 'XYZ funds,' 'marginal threshold rates' . . . 'marginal threshold rates'?" The *Los Angeles Times* objected (somewhat incoherently) to the circuit breaker, saying that it wasn't tax relief at all, but rather a new way of putting "five million Californian families . . . on the state payroll by sending them tax-relief checks from Sacramento . . . That is not local tax reform. That is a new kind of handout."[131]

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[128] The budgetary estimates for the tax relief bill are taken from George Skelton and Robert Fairbanks, *Property Tax Relief Bill Killed in State Senate*, L.A. TIMES, Sept. 16, 1977, A1; those for *Serrano* compliance are taken from AB 65 Legislative History bill file, California State Archives, Sacramento.

[129] Robert Fairbanks, *Property Tax Relief Bill Dies; School Aid OK'd,* L.A. TIMES, Sept. 3, 1977, A1, A30 (quoting Sen William Campbell (R-Whittier)).

[130] George Skelton, *Senate Goof Blamed for Tax Relief Bill Tieup*, L.A. TIMES, Sept. 13, 1977, A1.

[131] *A Death Deserved* (editorial), L.A. TIMES, Aug. 7, 1977, B6.

Even with the sharp political opposition, Senate leaders rounded up a majority of votes for the package.[132] This total fell short, however, of 2/3--a state constitutional requirement for fiscal bills that makes California unique among the 50 states.[133] In the context of tax relief, therefore, it was not *Serrano* but rather California's unique and atypical procedural rules that determined the outcome.

Fischel, we believe, would counter that the circuit breaker distributional issue obscured the more fundamental problem, viz. that there was not enough relief money to go around because of *Serrano*. While plausible, we believe that a balanced reading of the evidence dictates the opposite conclusion.

First, as noted above, the Legislature devoted more money to tax relief than to *Serrano* by a nearly two-to-one margin. Education advocates saw this and did not like it. "They're trying to kick the stuffing out of us," complained Senator Albert Rodda of Sacramento, a prominent liberal Democrat.[134] But kick they did. Put another way, legislators were trying to achieve a tax cut package as the first priority: if anything, there was less money for *Serrano* compliance due to tax relief pressures, not vice-versa.

Legislators were not particularly concerned that their work would fail to meet constitutional muster even though by their own lights it failed to satisfy *Serrano*'s exacting standard. As enacted, the legislation equalized the per-pupil spending for only 81% of California's schoolchildren; 90% of pupils were equalized within $200--double the *Serrano* mandate.

Politicians from Governor Brown on down took this failure in stride. When the governor introduced his school bill during the spring of 1977, he frankly acknowledged that it would only achieve "substantial compliance." Throughout the summer, legislators haggled over the size of the education reform bill, but those advocating for a bigger package never used the argument that AB 65 would leave the state vulnerable in court. And they refrained from using this argument for a very good reason: lawmakers knew that if the Court struck down the new package, the Legislature could place a referendum on the ballot in June 1978 to approve any funding formula they came up with. Such a solution was mooted in September 1977 in the face of threats from the *Serrano* plaintiffs' attorneys,[135] and

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[132] George Skelton and Robert Fairbanks, *Property Tax Relief Bill Killed in State Senate*, L.A. TIMES, Sept. 16, 1977, A1.

[133] *See* CAL. CONST. Art. IV § 12(d) (as amended 1974).

[134] Doug Shut, *Cost Factor Stalls 2 Key Bills; Tax Relief, School Aid Measure Snarled,* L.A. TIMES, Aug. 17, 1977, A3.

[135] *See, e.g.,* Larry Liebert, *Legislature Approves Huge School Aid Bill,* S.F. CHRONICLE, Sept. 3, 1977, page 1:

may explain the Supreme Court's decision to refuse to hear their challenge to AB 65 in December of that year--a challenge that Fischel says was "[t]o many people's surprise" but for which he fails to provide any evidence.[136]

The Legislature's relatively blasé attitude to *Serrano* also helps to answer to a critical question arising from Fischel's framework: if *Serrano* put lawmakers in such a straitjacket, why didn't they simply place a referendum on the ballot to overturn it? Unlike federal constitutional adjudication, which for all practical purposes finishes a question, California decisions and statutes have been overturned with some degree of regularity.[137] The most plausible answer is that lawmakers did not introduce a referendum overturning *Serrano* because they did not want to. They attempted to accommodate the impulses of the Supreme Court because at the most basic level, they agreed with those impulses. They thus fashioned a package of school reforms designed to bring sharply greater equity to school finance, but simply stopped when the fiscal issues became too difficult politically. The final legislative analysis of AB 65 made no pretense that it satisfied *Serrano*; instead, pulling back even from Governor Brown's goals, it blandly stated that the measure achieved "reasonable compliance".[138] The image of a Legislature constrained by an imperious Court dissolves upon close inspection; instead, what emerges is a dialogue between court and legislature, the latter agreeing to the

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> Legislative leaders said they will support a constitutional amendment on next year's ballot that would require the court to accept the measure as meeting the Serrano decision.
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> The new campaign, kept secret until yesterday's floor debate, was announced by the Legislature's top spokesmen on education, Senator Albert Rodda (D-Sacramento) and Assemblyman Leroy Greene (D-Sacramento). A spokesman for the governor said Brown also 'favors the idea' but would have to review the specific text of the measure.
>
> 'Let the voters decide,' Rodda told reporters. He argued that going farther to narrow gaps in school district wealth would be politically untenable, too costly to taxpayers and 'will not help educational quality.'

[136] *See* Fischel II, *supra* note --, at 632.

[137] *See, e.g.,* Proposition 1 (Nov. 6, 1979), *overturning* Crawford v. Board of Education of the City of Los Angeles, 130 Cal. Rptr. 724 (Cal. 1976) (en banc). In *Crawford,* the California Supreme Court upheld the use of busing to desegregate Los Angeles public schools. Proposition 1 foreclosed, as a matter of state law, the use of busing. *Crawford* was reinstated as part of a desegregation plan based upon federal law. *See also* Proposition 14 (Nov. 2, 1964), *repealing* Rumford Fair Housing Act (AB 1240) and *overturning* Swann v. Burkett, 26 Cal.Rptr. 286 (Cal.App. 1962).

[138] California Department of Finance, Enrolled Bill Report for AB 65 (Greene), September 2, 1977, California State Archives, Sacramento.

former's demands--but only up to a point, and confident that it will triumph if challenged.[139]

Even in the chaotic 1977 session, the Legislature achieved broad consensus concerning the nature and size of the school reform bill: it passed the state Senate by the overwhelming vote of 32-6, and carried unanimously in the Assembly. AB 65 even garnered a majority of Republican senators--all of whom voted against the tax relief bill with the circuit breaker.

In sum, then, the Legislature broadly agreed how much money should be available for school reform, and how much for tax relief, and they seemed unconcerned about the court looking over their shoulder. Legislators disagreed sharply, however, about where the relief should go: a sizable faction insisted that income redistribution be part of any tax relief proposal and was prepared to kill any bill without a circuit-breaker. "I guess we tried to do too much--to carry too much water," shrugged Senator Jerry Smith, Governor's Brown chief ally in the upper house.[140] The argument was over distribution, not size, and this dispute, combined with the 2/3 rule, doomed tax relief in 1977.[141]

B. A House Divided—Historic Divisions in the Senate

Even then, the Senate might have enacted a bill had it not been for its internal politics. The upper house careened through 1977, divided and disorganized. Senator George Zenovich of Fresno mounted a year-long challenge to the leadership of Senate President Pro Tempore James Mills of San Diego (who was seen as a weak leader in any event[142]). During the spring, Zenovich attempted to evict Mills from the leadership, and came within three votes of doing so; by the middle of autumn, Mills stripped Zenovich of his committee chairmanship.[143] From the beginning, then, Senate Democrats were divided and unable to come to

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[139] *See also* RICHARD F. ELMORE & MILBREY WALLIN MCLAUGHLIN, REFORM AND RETRENCHMENT: THE POLITICS OF CALIFORNIA SCHOOL FINANCE REFORM 155-56 (1982) (noting disdain of state legislators and staff for Serrano plaintiffs' lawyers).

[140] *Quoted in* John Balzar, *Why Tax Relief Bill Went Down The Drain*, S.F. CHRONICLE, September 3, 1977, § 1, at 1, 5.

[141] *See* Michael Seiler, *Persistence Paying Off for Peter Behr*, L.A. TIMES, Feb. 20, 1978, A1, A7 (quoting Behr): "[T]he fact is there were two factions in the Senate on the Democratic side, each of which felt very strongly their way. One group felt property tax reform was an opportunity for social reform, for helping poor people. The other point of view was in favor of the middle-income taxpayer…."

[142] *See* JOHN JACOBS, A RAGE FOR JUSTICE: THE PASSION AND POLITICS OF PHILIP BURTON 412 (1995) (noting Senate Democrats' removal of Mills in December 1980 for being too much of an "old school gentleman and member of the club".).

[143] Robert Fairbanks, *Mills Challenger Stripped of Post*, L.A. TIMES, Sept. 17, 1977, at A18.

a consensus on internal matters: agreement on issues as complex as education funding and tax relief were even harder.

The upper house's chaos was hardly surprising: since 1965, when the body was reorganized in the wake of the one-person/one-vote decisions, the Senate blocked property tax relief legislation no fewer than eight times. Even when famously progressive Assembly Speaker Jesse Unruh and famously conservative Governor Ronald Reagan agreed on a package, they were frustrated again and again by a famously stubborn Senate.[144]

As with the two-thirds budgetary rule, the problem derived from internal structure. In the Assembly during the 1960's, Unruh forged a Speakership with enormous powers, many of which continue today: the Speaker appoints all members of all committees, and can dismiss any chairman at his pleasure.[145] Unruh leveraged this formal power by centralizing political fundraising in the Speaker's office, and made members of his party dependent upon him for campaign contributions.[146] The Speakership became tantamount to an elected monarchy: Willie Brown, who held the office from 1980 to 1995, declared that "the Speaker in California is the closest thing you will ever know in the world to the Ayatollah," and few doubted him.[147]

Not so in the Senate. The Senate leader is the President Pro Tempore, but he derives his power through chairing the five-member Senate Rules Committee. The entire committee has the equivalent authority of the Speaker, and long-standing Senate tradition has established that the minority party gets two out the five seats. The President Pro Tempore, then, wields less power over recalcitrant legislators than does his counterpart in the lower house; in the Senate, consensus and collective leadership is part of the everyday governing style. Not surprisingly, while the Assembly has produced a series of flamboyant, powerful Speakers--e.g.,

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[144] As examples of tax reductions bills passing the Assembly and failing in the Senate, see, e.g.: AB 2270 (1965) (Unruh-Petris Tax Reduction Act); AB 1590 (1968); AB 149 (1968); AB 95 (1968); AB 1962 (1968); AB 1000 (1970); AB 1001 (1970); AB 1000 (1972) (Moretti-Reagan compromise). *See also* DAVID R. DOERR, CALIFORNIA'S TAX MACHINE: A HISTORY OF TAXING AND SPENDING IN THE GOLDEN STATE 109 (2000) (describing the Senate as the "graveyard for property tax relief proposals."). We plan in further research to develop more detailed accounts of these bills' failure to pass the Senate.

[145] *See* California State Assembly Standing Rule 26, "Duties of the Speaker."

[146] For a good although overly critical description of Unruh's development and wielding of the Speakership's powers, see LOU CANNON, RONNIE AND JESSE: A POLITICAL ODYSSEY 106-29 (1969), and especially at 128-29.

[147] *Quoted in* JAMES RICHARDSON, WILLIE BROWN: A BIOGRAPHY 284 (1996).

Unruh, Robert Moretti, Willie Brown, Bob Hertzberg--Senate leaders have had to act more quietly, behind the scenes, with less authority.[148]

Never was this more the case than in the 1977 session. Mills' two Democratic colleagues on the Rules Committee were Jerry Smith of Sacramento and Nicholas Petris of Oakland, each of whom authored competing tax relief proposals. No Democratic Senator wanted to offend either man, so when conference committees formed in June, the Senate had reported out *both* proposals, making the task of hammering out a package much more difficult. It was virtually impossible for the central players to identify the important priorities for individual Senators--each of whose power was magnified enormously by the 2/3 rule. "The state Senate flunked a basic civics lesson this legislative session and that probably is why the thorny issue of property tax relief still is unresolved," the *Los Angeles Times* reported. "This is the view of a growing number of legislators who have played key roles in the property tax drama."[149] In the end, all was chaos: "I don't know what the hell happened," said Petris.[150]

Overall, what happened in and to the 1977 California Senate session resembles something of a perfect storm: weak leadership *plus* a diffuse internal governance structure *plus* a leadership challenge *plus* procedural rules inhibiting action *plus* competing budgetary pressures. In this respect, it is little wonder that the ship ran aground.

C. Sacramento Responds: The Behr Bill and Proposition 8

By February 1978, however, even the Senate could not forestall tax relief. That month, the Legislature passed the largest property tax reduction bill in California history—SB 1, sometimes known as the "Behr bill" after its author, liberal Marin County Republican Peter Behr. SB 1's passage obviously poses problems for Fischel's thesis: it is hard to argue that Serrano foreclosed legislative

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[148] *Cf.* KENNETH N. WALTZ, THEORY OF INTERNATIONAL POLITICS 81-88 (1979) Waltz persuasively argues that the widely differing leadership styles between U.S. Presidents and British Prime Ministers derives not from alleged disparities in "national character" but rather from the requirements and authority of their respective offices. The President is head of a unitary executive--akin to the Speaker within his or her domain--and thus able (and expected) to take strong, aggressive leadership. The Prime Minister, on the other hand, heads a collective executive--the Cabinet--similar in important ways to the Senate Rules Committee. He or she is thus more conciliatory and less prone to bold, unitary policy initiatives. For applications of how structural features of political institutions can induce differing patterns of behavior, see Jonathan Zasloff, *The Tyranny of Madison*, 44 U.C.L.A. L. REV. 795, 810-831 (1997).

[149] George Skelton, *Senate Goof Blamed for Tax Relief Bill Tieup*, L.A. TIMES, Sept. 13, 1977, A1.

[150] *Id.*

action when the legislature acted more decisively than any time in its history on tax cuts.

The Behr bill established a 30% across-the-board property tax cut. It did so by using the state surplus to buy out localities' share of Medicaid and welfare costs, mandating the localities use the revenue for property tax relief. It also doubled the tax credit for renters. But it never became law. In order to take effect, it required "split roll", i.e. differential tax rates for residential property from commercial and industrial property. Moving to a split roll meant amending the California constitution, and that, in turn, meant another, competing proposition to the Jarvis initiative—Proposition 8. As noted above, voters rejected Proposition 8 in favor of Proposition 13.

Traditional accounts argue that this choice derived from voters' perceptions that Proposition 8 was the establishment measure designed to forestall "real" tax relief, viz. Proposition 13. Fischel rejects this, contending instead that voters rationally decided that they would get a bigger tax cut from Jarvis.

Why was SB 1 unable to compete with Proposition 13 in terms of tax relief? Fischel contends that its "anemic" response derived from its "need to maintain the integrity of AB 65". He does not, however, provide any concrete numbers supporting this account.[151] Instead, given the "sketchy" published information available concerning SB 1, Fischel infers that left school rates untouched because "AB 65 required increased school spending over a period of years" and thus "the state could not afford to forego inflation driven local property taxes from homeowners."[152] In other words, because AB 65 required recapture of local property tax revenues from high-wealth districts, SB 1 could not put limits on those revenues.

While conceptually intriguing, we believe that in the end this argument is unsatisfying. First, AB 65's recapture provisions were quite minimal: $230 million over five years out of a total of $2.9 billion.[153] This is crucial: *the recapture that allegedly broke the Tiebout equilibrium never was enacted and never took place.* Indeed, this is why Serrano plaintiffs' lawyers accused AB 65 of misleading the public.[154] SB 1,

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[151] Given the sources that Fischel had at his disposal, this was perhaps unavoidable. Published sources' accounts of SB 1 are neither comprehensive nor complete. We were able to get more information by examining the unpublished legislative history of SB 1, located at the California State Archives.

[152] Fischel II, *supra* note --, at 633.

[153] *See* Enrolled Bill Report, AB 65 (Greene), in AB 65 legislative history file, California State Archives, Sacramento.

[154] *See* Robert Fairbanks, *School Aid Bill Called 'Fraud on Taxpayers,'* L.A. TIMES, Sept. 7, 1977, § 1, at 3.

then, was not forced to satisfy AB 65's need for local property taxes revenue because it never had that need in the first place.

There is a simpler reason why the Behr bill did not enact revenue controls on local school districts: such controls had already been in place for more than four years. SB 90, the 1972 tax reduction measure that included some minimal school finance equalization provisions, placed caps on the total revenue that school districts could collect. Indeed, these limits were more stringent for high-wealth districts: SB 90's framers believed that differential inflation adjustments for high-wealth and low-wealth districts (the "squeeze factor") would slowly move districts' spending together. This modified leveling-up strategy, it was hoped, would yield greater equity without damaging programs in high-expenditure districts.[155] These revenue limits had real bite: school districts in the mid-70's were slammed between rocketing inflation and the SB 90 revenue limits. Several districts lost state school aid as rising property values made them look property-wealthy, a phenomenon known as "slippage." AB 65 eliminated slippage by placing a floor on state aid to districts and by changing the formula used to determine the state share of local school spending.[156]

In other words, the one portion of the property tax bill least in need of caps was the portion for schools: revenue limits restrained the growth of local school property taxes, and AB 65 corrected the slippage problem. The problem, then, was the non-school property tax, for which SB 90 had capped rates but not overall revenue: when appraised values shot through the roof, maintaining rates hardly helped. Not surprisingly the Behr bill focused on that portion of the tax bill.[157]

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[155] *See* ELMORE & MCLAUGHLIN, *supra* note --, at 94.

[156] "Comparative Summary of AB 65 (Greene) and SB 525 (Rodda), Aug. 29, 1977, in Enrolled Bill Report for AB 65 (Greene), Sept. 15, 1977, AB 65 Legislative History file, California State Archives, Sacramento.

[157] In our view, Fischel misreads an admittedly cryptic article from the *Los Angeles Times* purporting to explain the Behr bill. The article does indeed say, as Fischel notes, that "[t]he Behr bill does not affect schools" and that "because of the Behr bill's school exclusion, about half of the homeowner's tax bill will continue to rise disproportionately." Robert Fairbanks, *Jarvis Behr Measures Pit Owners Against Renters: Both Intended to Slow Tax Rise,* L.A. TIMES, Apr,. 23, 1978, § 2, at 1, 3. The *Times'* use of "disproportionately," however, does not indicate (as Fischel suggests) that the school portion of local property taxes w would remain "fully taxable". Fischel II, *supra* note --, at 633. Given SB 90's revenue limitations on school taxes, this assertion is simply wrong. Rather, the point of the article was that because residential property values were rising faster than non-residential values, residential values were assuming a greater proportion of of the school property tax burden. The Behr bill's non-school revenue caps held this proportion constant. Thus, although the school property taxes for homeowners would rise "disproportionately", because they were not covered by the Behr bill, this did *not* mean that they were fully taxable and did *not* mean that they were not subject to revenue limitations.

So why, then, *was* SB 1 unable to match Proposition 13? And what, if anything, was *Serrano*'s role? In order to answer these questions, we need to know: 1) how much would Behr have had to offer to compete with Jarvis?; and 2) would the money allocated for *Serrano* compliance have matched--or come close to matching--this gap?

On the broadest, most aggregate level, the answers are easy: to compete with Jarvis overall, SB 1 needed far more than the paltry $2.9 billion over five years that *Serrano* compliance received. The state Assembly Revenue and Tax Committee estimated that Proposition 13 would cause a reduction in local property tax revenues of $7 billion dollars in fiscal 1978-1979 ***alone***, making the supposed largesse of AB 65 seem like pocket change.[158] By contrast, SB 1, according to the Assembly Ways and Means Committee, promised reductions of roughly $8 billion over five years--$1.4 billion in year one. But such a broad aggregate comparison is unfair. Proposition 13 carried a higher price tag than SB 1 because it slashed rates for commercial property, industrial property and income-producing residential property as well as single-family homes.

Instead, it makes sense to compare the overall benefits Proposition 13 promised at the time to homeowners over five years with those promised by SB 1. A precise number is difficult to pin down with precision because no five-year estimates were made for Proposition 13. If we extrapolate Proposition 13's year one revenue loss to the same degree as SB 1's, however, we arrive at a figure of approximately $40 billion.[159] We should then multiply the $40 billion by 40%--the estimates of the proportion of Proposition 13's tax relief that would go to single-family homes[160] and slightly less than the percentage of California tax revenue received from single-family homes.[161] This leaves us with $16 billion; in other words, the Behr bill would have had to *double* in size for it to measure up to Jarvis.

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[158] Assembly Revenue and Taxation Committee staff report, February 1978, in SB 1 legislative history file, California State Archives, Sacramento. Newspapers were routinely referring to this figure in covering Proposition 13. *See, e.g.*, Jerry Carroll, *The Men Behind the Big Tax Revolt: Howard Jarvis,* S.F. CHRONICLE, Feb. 2, 1978, page 10 (Of Proposition 13, "[i]t's generally conceded that barring some sort of miracle, next year government in California is going to be denied $7 billion to $8 billion in revenue.").

[159] This simply entails multiplying by a factor of 5.71--the ratio of $1.4 billion to $8 billion forecast for SB 1.

[160] Tom Redburn, *Jarvis, Behr Measure Pit Owners Against Renters: U.S. Biggest Winner Either Way,* L.A. TIMES, Apr. 23, 1978, at B1, B3 (providing 40% estimate).

[161] Fischel himself uses a 41% figure, citing a study by William Oakland. *See* Fischel II, *supra* note --, at 626. Thus, our using the 40% figure is conservative: when dealing with large numbers, even 1% can make a difference. For example, in this case, 1% of Proposition 13's overall benefits yields $400 million--significantly more than the $230 million that AB 65 devoted to recapture and that Fischel says caused a taxpayer revolt.

Would getting rid of *Serrano* have made up the difference? The arithmetic suggests otherwise. If every penny devoted to *Serrano* compliance had gone to tax relief instead, the Legislature still would have been a whopping $5.1 billion short--nearly twice the *Serrano* price tag and very close to the entire package passed in the Assembly in September 1977.

In sum, our research indicates that the Legislature failed to compete with Proposition 13 not because school finance equalization was standing in the way, but because (unlike Howard Jarvis) legislators did not want to bankrupt local government. This may have been wise. It may have been foolish. It may have relied upon inaccurate revenue estimates from overworked Finance Department staff.[162] But it seems to have had little to do with *Serrano*.

V. CONCLUSION

As we have emphasized throughout our analysis, Fischel's theory that *Serrano* caused Proposition 13 has understandable appeal. He has presented an intuitively plausible theoretical account for why California voters reacted so positively to the Jarvis anti-tax campaign in the summer of 1978. Moreover, his theory has ongoing practical significance for states that continue to struggle with *Serrano*-type litigation. The implication of his theory, if true, is that school finance reform is wildly counterproductive—unless advocates of equalization are prepared to take responsibility for Prop 13-like calamities, they should rethink their efforts to promote greater equity in the distribution of public education dollars.

Our objective in this article has been to shift the *Serrano*-Prop 13 debate from theoretical speculation to an actual examination of the facts. We have tried to offer a balanced assessment of the evidence regarding the relationship between these two important events in the history of American public finance. Our analysis has shown, we believe, that there is little empirical foundation for Fischel's claim that *Serrano* caused Proposition 13. To summarize, we highlight four specific aspects of our analysis.

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[162] The state Department of Finance was notorious for faulty revenue estimates throughout the 60's and 70's. *See* DOERR, *supra* note --, at 168. State Treasurer Jesse Unruh, who had dominated the Assembly as Speaker in the 1960's, shrewdly suspected that in fact the state budget surplus could handle both measures because the surplus was in fact much larger than the Finance Department was projecting. *See* Kenneth Reich, *Unruh Says Budget Surpplus Figure Is Off: Estimates State May Actually Have More Than $4 Billion Extra,* L.A. TIMES, August 5, 1977, at A30. Unruh's suspicion was borne out the next spring, shortly before the June 1978 election, when the traditional "May Revise" revealed that the state surplus was actually three times what had been projected, a surplus that Unruh termed "obscene" and severely undercut the credibility of those predicting doomsday scenarios if Proposition 13 passed.

First, regarding Fischel's claim that *Serrano*-loser districts swung disproportionately from Watson II in 1972 to Proposition 13 in 1978, our data suggest that this is simply not the case. While Fischel is clearly correct in identifying a simple correlation between the swing and his *Serrano* variable for the LA County data set he initially examined, there is always danger in reading too much into statistical analysis where the sample size is small and additional explanatory variables are not controlled for. Our analysis, which includes a statewide data set and several possible variables which might account for the swing, shows that *Serrano* had essentially zero effect on the swing from Watson II to Prop 13.

Second, our analysis of the swing between Prop 13 and Prop 8, the establishment alternative on the ballot at the same time, casts further doubt on Fischel's theory. If *Serrano* did indeed cause voters to turn their backs on the property tax and throw their support to the Jarvis campaign, then *Serrano* loser districts should have been especially eager to see Prop 8 fail, since that initiative would have preserved the effect that AB 65 would have on school property taxes. However, there is no statistical relationship between the Prop 13/Prop 8 "swing" and the winner/loser status of school districts under *Serrano*. Again, this suggests that other factors—in this case party affiliation and the short-term financial interests of state/local government employees and renters—account for the swing between these two measures.

Third, our analysis of the swing between Watson I (1968) and Watson II (1972), which we offer as an alternative test of Fischel's hypothesis since *Serrano I* was decided in 1971, again shows that *Serrano*-loser districts did not swing disproportionately from opposing a tax limitation pre-*Serrano I* and supporting it after the decision. If Fischel's theory had real-world explanatory value, one would expect at least some relationship between the 1968/1972 swing and the *Serrano* variable. Our analysis demonstrates that there was no such relationship.

Finally, regarding Fischel's argument that the costly "*Serrano* mandate" foreclosed property tax relief in the years leading up to Prop 13, our historical analysis reveals a substantially more complicated political story in which *Serrano* played a relatively minor role. Needless to say, neither we nor Fischel can *prove* what role *Serrano*'s expected cost had on the political prospects of property tax relief in the years leading up to Prop 13. We find it especially telling, however, that legislative proposals for property tax relief had always faltered in Sacramento from the mid-1960's onward. In the face of this evidence, it is simply unpersuasive to argue that

Serrano was the root cause of the 1977 legislature's (supposed) failure to provide tax relief.

In summary, we believe our evidence shows that *Serrano* did not cause Proposition 13. Importantly, this finding does not render Fischel's theory meaningless. In pursuing school finance reform, state and local policymakers should be attentive to the potentially adverse incentive affects of shifting from a system of local property taxes to a more centralized, state-managed tax financing scheme. We share the concerns expressed by economists working in this area, most notably Harvard economist Caroline Hoxby, that "All School Finance Equalizations Are Not Created Equal."[163] Where a state seeks to remedy school finance inequities by effectively taxing high-end consumption of public consumption, it runs the risk of deterring such consumption and derailing the socially positive instincts of parents to support public schools. Yet while these concerns may be valid, they do not by themselves, of course, prove that *Serrano* caused Prop 13. As we have tried to demonstrate, the politics of tax revolts and school finance reform defy such simplistic interpretations. Only with a richer understanding of the complexity underlying these events will lasting, effective reform be possible.

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163 *See* Caroline Hoxby, *All School Finance Equalizations Are Not Created Equal*, 116 QUARTERLY JOURNAL OF ECONOMICS 1189-1231 (2001).

FIGURE 1 – Scatterplot Fischel's Two Variables: SWING & LOCAL

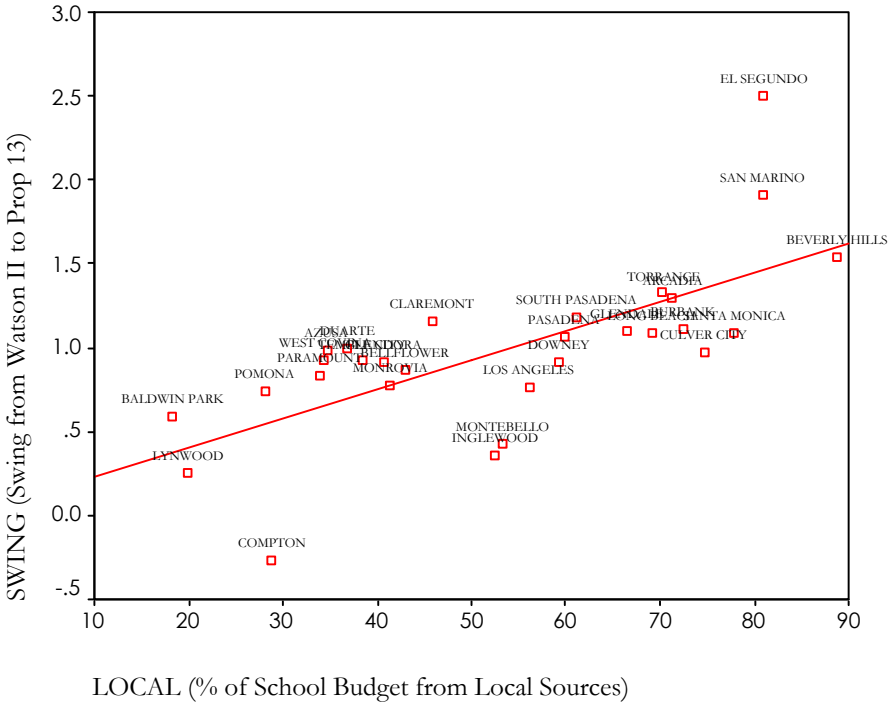


FIGURE 2 – Scatterplot of SWING & SERRANO with Statewide Data

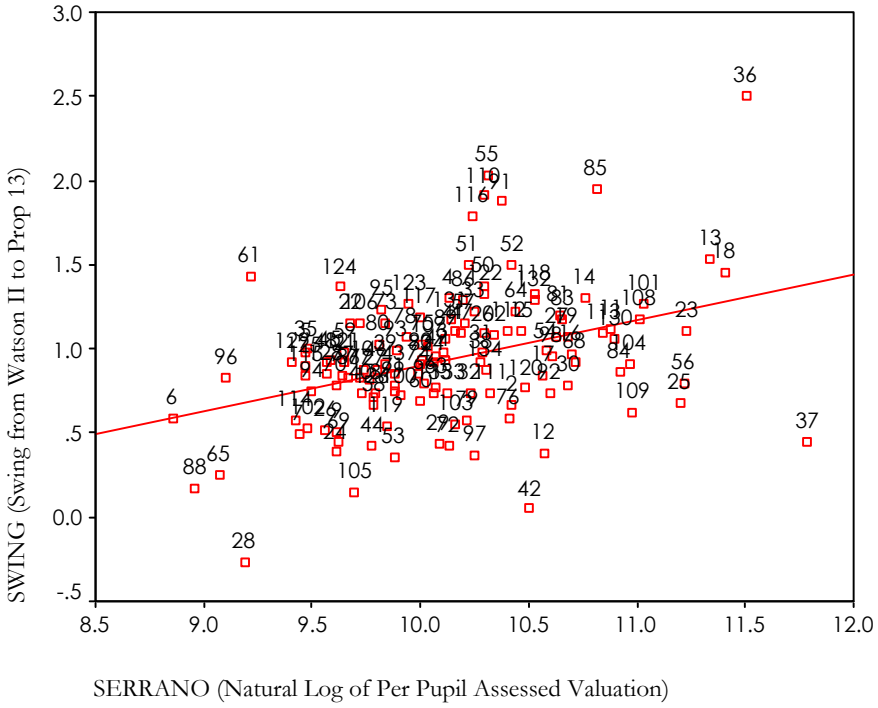


FIGURE 3 – Scatterplot of SERRANO & INCOME

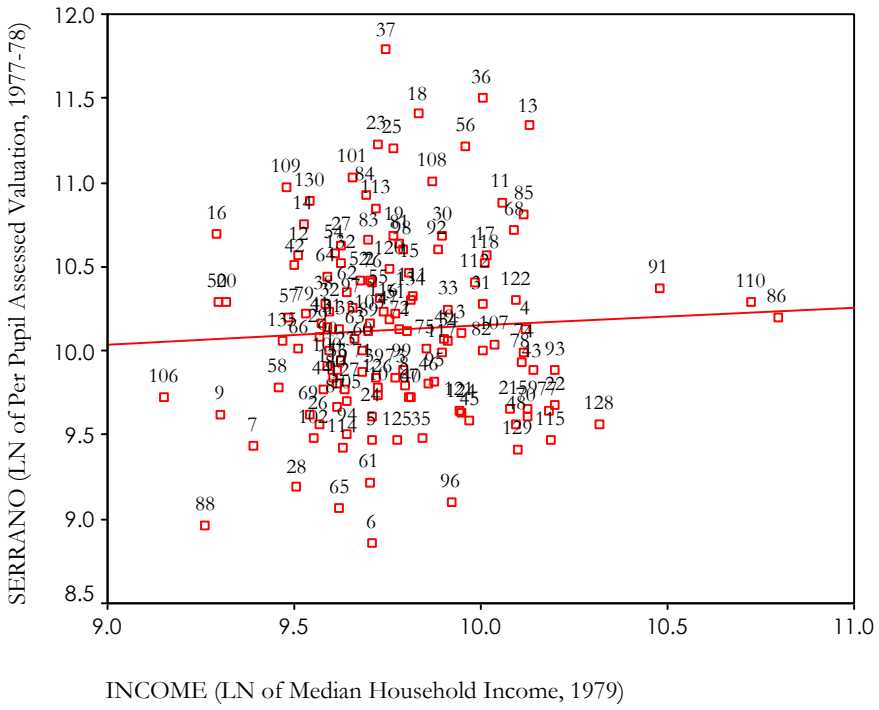


FIGURE 3 – Scatterplot of SWING & INCOME

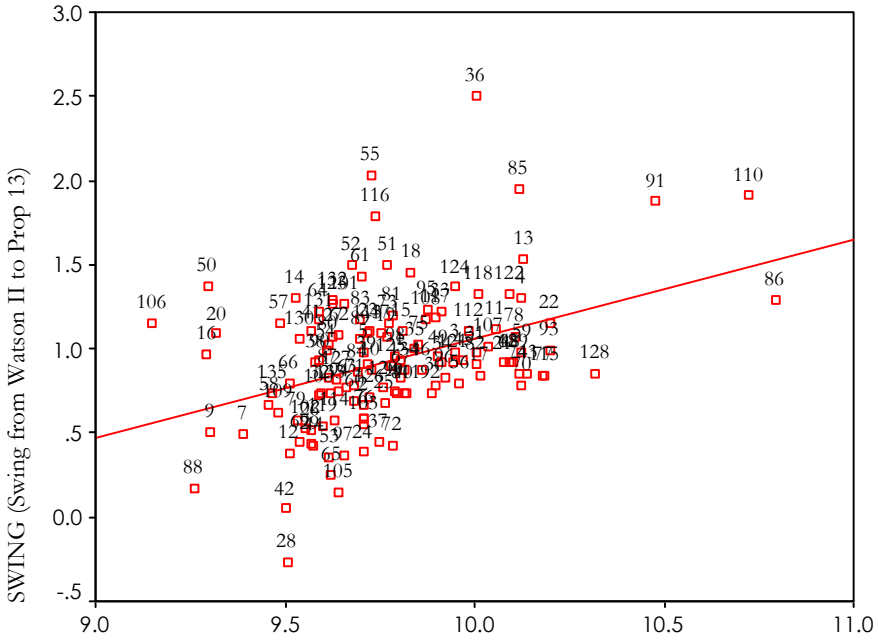


FIGURE 4 – Scatterplot of SWING & SENIORS

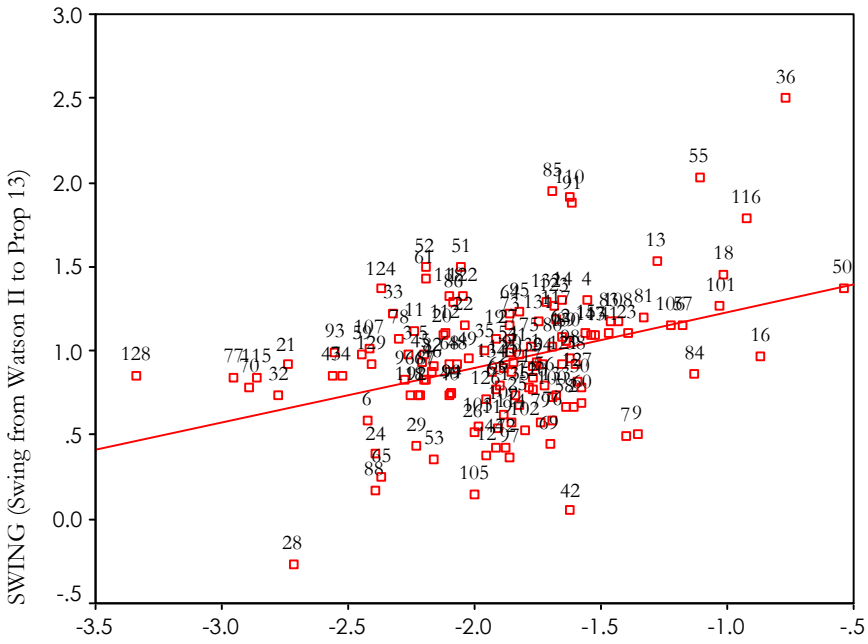


FIGURE 5 – Scatterplot of Prop 8/Prop 13 "Swing" & SERRANO (1977-78)

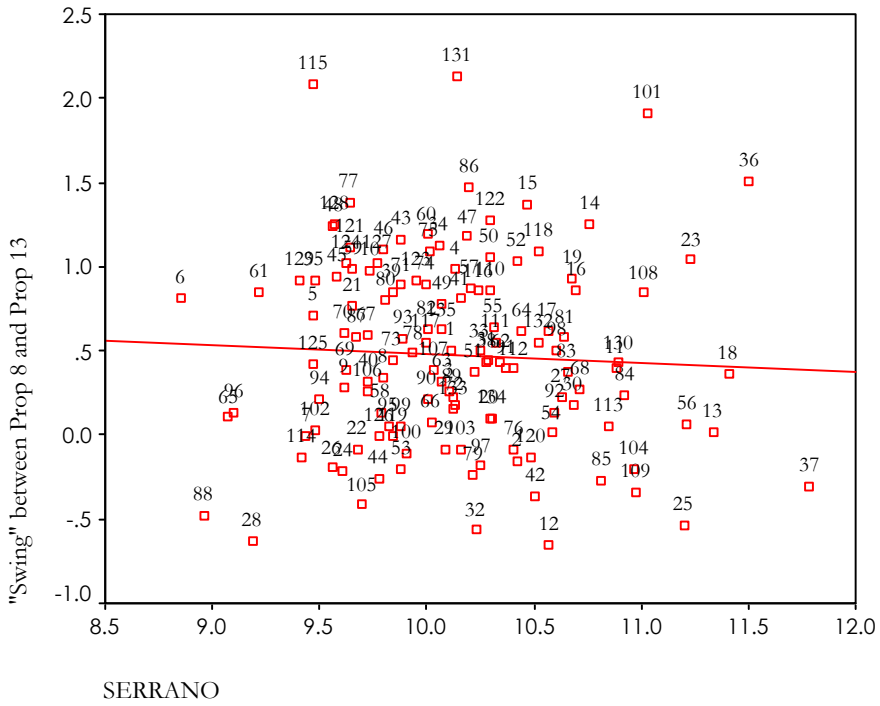
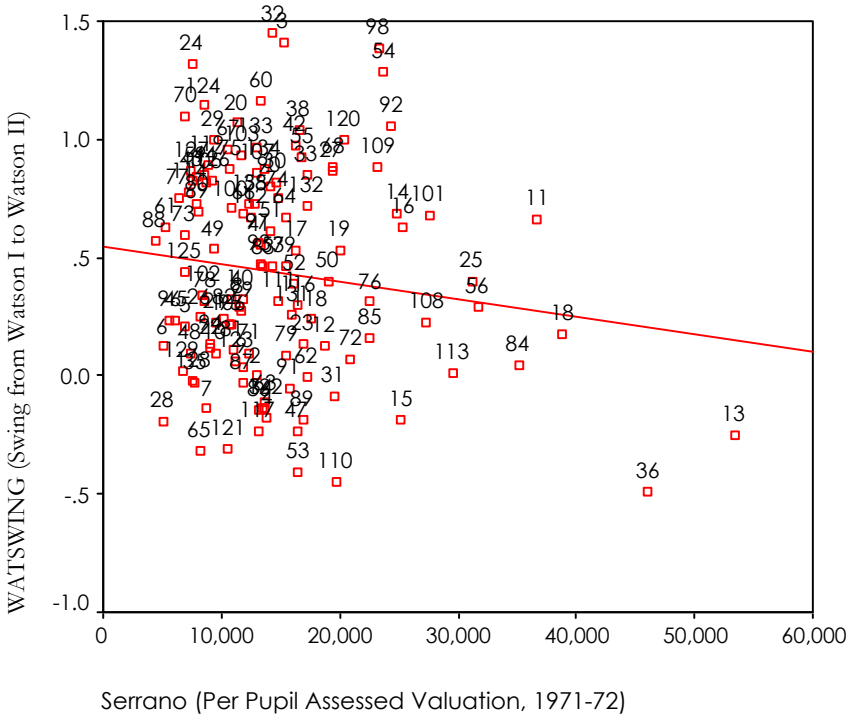


FIGURE 6 – Scatterplot of WATSWING (1968 to 72) & SERRANO (1971)



APPENDIX I: DATA SET

City (Census Place Name)

1. ALAMEDA
2. ALBANY
3. ANTIOCH
4. ARCADIA
5. AZUSA
6. BALDWIN PARK
7. BANNING
8. BARSTOW
9. BEAUMONT
10. BELLFLOWER
11. BENICIA
12. BERKELEY
13. BEVERLY HILLS
14. BIGGS
15. BURBANK
16. CALISTOGA
17. CARLSBAD
18. CARMEL
19. CARPINTERIA
20. CHICO
21. CHINO
22. CLAREMONT
23. CLOVERDALE
24. CLOVIS
25. COALINGA
26. COLTON
27. COLUSA
28. COMPTON
29. CORCORAN
30. CORONADO
31. CULVER CITY
32. DAVIS
33. DIXON

34. DOWNEY
35. DUARTE
36. EL SEGUNDO
37. EMERYVILLE
38. ESCALON
39. FILLMORE
40. FONTANA
41. FORT BRAGG
42. FOWLER
43. FREMONT
44. FRESNO
45. GARDEN GROVE
46. GILROY
47. GLENDALE
48. GLENDORA
49. HAYWARD
50. HEMET
51. HOLTVILLE
52. IMPERIAL
53. INGLEWOOD
54. IONE
55. JACKSON
56. LAGUNA BEACH
57. LAKEPORT
58. LINDSAY
59. LIVERMORE
60. LODI
61. LOMPOC
62. LONG BEACH
63. LOS ANGELES
64. LOS BANOS
65. LYNWOOD
66. MADERA
67. MANTECA
68. MARTINEZ
69. MARYSVILLE
70. MILPITAS

71. MONROVIA
72. MONTEBELLO
73. MONTEREY
74. MORGAN HILL
75. NAPA
76. NEEDLES
77. NEWARK
78. NOVATO
79. OAKLAND
80. OCEANSIDE
81. OJAI
82. ORANGE
83. PACIFIC GROVE
84. PALM SPRINGS
85. PALO ALTO
86. PALOS VERDES
87. PARAMOUNT
88. PARLIER
89. PASADENA
90. PATTERSON
91. PIEDMONT
92. PITTSBURG
93. PLACENTIA
94. POMONA
95. REDLANDS
96. RIALTO
97. RICHMOND
98. RIPON
99. RIVERSIDE
100. SACRAMENTO
101. ST. HELENA
102. SAN BERNARDINO
103. SAN DIEGO
104. SAN FRANCISCO
105. SANGER
106. SAN JACINTO
107. SAN JOSE

108. SAN LEANDRO
109. SAN LUIS OBISPO
110. SAN MARINO
111. SANTA ANA
112. SANTA CLARA
113. SANTA MONICA
114. SELMA
115. SIMI VALLEY
116. SONOMA
117. SOUTH PASADENA
118. SOUTH SAN FRANCISCO
119. STOCKTON
120. TEHACHAPI
121. TEMPLE CITY
122. TORRANCE
123. UKIAH
124. VACAVILLE
125. VALLEJO
126. VISALIA
127. VISTA
128. WALNUT
129. WEST COVINA
130. WILLIAMS
131. WILLITS
132. WILLOWS
133. WINTERS
134. WOODLAND
135. YUBA CITY