Did John Serrano Vote for Proposition 13?

A Reply to Stark and Zasloff's "Tiebout and Tax Revolts: Did _Serrano_

<u>Really</u> Cause Proposition 13?"

William A. Fischel

Professor of Economics and
Patricia F. and William B. Hale '44 Professor
in Arts and Sciences
Dartmouth College
6106 Rockefeller
Hanover, NH 03755
office: (603) 646-2940
Bill.Fischel@Dartmouth.Edu
dept. fax: (603) 646-2122
www.dartmouth.edu/~wfischel/

Abstract: I argued that California's school-finance decision, Serrano v. Priest, which
required equalized school spending, caused Proposition 13, which decimated property
taxes in 1978. Kirk Stark and Jonathan Zasloff offer evidence to the contrary. They
found that cities with larger proportions of high-income and elderly voters, not those with
high tax-base per pupil, accounted for the dramatic vote swing from a defeated 1972
property-tax-limitation initiative to the successful 1978 vote. I show that their results are
entirely consistent with my hypothesis. I also parry their claims that institutional
problems, rather than _Serrano_-compliance, forestalled the legislature's response to the
tax revolt.

§1. Introduction and Summary

Proposition 13 in 1978 was a California state constitutional amendment that rolled back property tax assessments to 1975 levels and cut rates on all property to a maximum of one-percent of that value.[1] Assessments were allowed to rise by no more than two percent per year, and revaluation to current market value could occur only when property was sold. The voter initiative passed by a nearly two-to-one margin, and it cut property-tax revenues statewide by 57 percent. Its persistence to this day is widely believed to be the reason that funding for California's public schools has declined relative to other states.[2]

In several articles and two chapters in a book I have argued that Proposition 13 was not simply a tax revolt.[3] It was caused by the *Serrano* decisions and the legislative response to them.[4] By requiring nearly equal school expenditures per pupil statewide, *Serrano* divorced local property taxes from the amount of local school spending. Prior to *Serrano*, California households could "vote with their feet" to get a better-funded school. Migration of households to better districts is the method of revealing private preferences for public expenditures proposed by Charles Tiebout.[5] *Serrano* eliminated the Tiebout approach to getting better-funding for schools, so it made sense for the voters to nearly eliminate the local property tax for financing schools.

The actual remedy ordered by Judge Jefferson in 1974 and affirmed by *Serrano II* in December of 1976 did not require equal spending in all cases. Spending per pupil could

---

[1] Cal. Const., art. XIII A, § 1.

[2] Peter Schrag, Paradise Lost: California's Experience, America's Future, 69, 87 (1998); Fabio Silva and Jon C. Sonstelie, Did *Serrano* Cause a Decline in School Spending? 48 National Tax Journal 199 (1995); Bradley W. Joondeph, The Good, the Bad, and the Ugly: An Empirical Analysis of Litigation-Prompted School Finance Reform, 35 Santa Clara Law Review 763 (1995).

[3] William A. Fischel, Did *Serrano* Cause Proposition 13? 42 National Tax Journal 465 (1989); How *Serrano* Caused Proposition 13, 12 Journal of Law and Politics 607 (1996); Property Taxation and the Tiebout Model: Evidence for the Benefit View from Zoning and Voting, 30 Journal of Economic Literature 171 (1992); The Homevoter Hypothesis, chaps. 5 and 6 (2001); School Finance Litigation and Property Tax Revolts: How Undermining Local Control Turns Voters Away from Public Education, in Developments in School Finance, 1999-2000 (National Center for Education Statistics, 2002).

[4] Serrano v. Priest, 96 Cal. Rptr. 601 (1971) ("*Serrano I*"), 135 Cal. Rptr. 345 (1976) ("*Serrano II*"). Although I will cite the academic literature on *Serrano* and Prop 13 extensively in this article, I have not encountered a better overview than that written by Lester Olsen, the trial judge whose opinion was adopted in whole by the appellate court in Serrano v. Priest, 200 Cal. App. 3d 897, 226 Cal. Rptr. 584 (1986) (*Serrano III*).

[5] Charles M. Tiebout, A Pure Theory of Local Expenditures, 64 Journal of Political Economy 416 (1956). For an excellent description of further developments in the model and its application to school finance, see Stark & Zasloff, Tiebout and Tax Revolts: Did *Serrano* Really Cause Proposition 13? 50 UCLA Law Review 801, 811-814 (2003).

vary by no more than $100 unless the district could be shown to be spending more for reasons not related to its local tax-base per pupil. Since tax-base per pupil was a major determinant of spending, few districts could make that claim.[6]

Compliance with *Serrano II* was, therefore, almost always regarded as attempting to get districts within the $100 band. However, the principle that each district should be able to generate the same amount of revenue per pupil for any given tax rate —called "district power equalization,"[7] had also been invoked by the Court and remained as a further constraint on the legislature and greatly complicated its response.[8]

Inflation was driving up home values in California in the middle 1970s and shifting the burden of the property tax to homeowners. At the same time, the legislature was responding to *Serrano II,* which made it especially difficult to head off the property tax revolt. Faced with increases in a tax that was no longer related to local school spending, voters took up the first tax-limitation initiative that was handy. Its chief sponsor was a perennial political gadfly named Howard Jarvis, whose political style was hinted at in the title of his autobiography, "I'm Mad as Hell."[9]

In an article published in the UCLA Law Review in 2003, Kirk Stark and Jonathan Zasloff critically review my thesis that *Serrano* caused Proposition 13.[10] They offer statistical evidence that they contend casts doubt upon the influence of *Serrano* in causing voters to favor Prop 13 after the electorate had rejected a similar initiative in 1972. Stark & Zasloff also review the workings of the California legislature, particularly the state senate, and conclude that its inadequate response to the tax revolt was not related to AB 65, the 1977 bill that responded to *Serrano.*

---

[6] Richard F. Elmore and Milbrey W. McLaughlin, Reform and Retrenchment: The Politics of California School Finance Reform 65 (1982); W. Norton Grubb and Jack W. Osman, Causes of School-Finance Inequalities - *Serrano* and Case of California, 5 Public Finance Quarterly 373 (1977).

[7] The concept's most elaborate explication is John E. Coons, William H. Clune III, and Stephen D. Sugarman, Private Wealth and Public Education (1970). Its most controversial feature, called "recapture," requires districts with large tax bases to send much of their locally-generated property taxes to other districts in order to spend more on its own students. This is tantamount to merging the tax bases of all districts.

[8] Lee S. Friedman, The Ambiguity of Serrano: Two Concepts of Wealth Neutrality, 4 Hastings Const. L.Q. 97 (1977) (*Serrano II* "seemed more concerned with actual disparities [in spending per pupil], but it did not reject any trial court findings or conclusions related to the 'equal effort' [tax-base sharing] requirement." p. 497). Friedman points out that remedying both defects (spending disparities and tax-base inequality) could only be accomplished by full state funding (pp. 491-492). See also Lee S. Friedman and Michael Wiseman, Understanding the Equity Consequences of School Finance Reform, 48 Harvard Educational Review 193 (1978).

[9] Howard Jarvis (with Robert Pack) I'm Mad As Hell: The Exclusive Story of the Tax Revolt and its Leader (1979).

[10] Stark & Zasloff, supra note 5.

In the present article, I explain why Stark & Zasloff's statistical evidence does not actually contradict my thesis. I had contended that the swing in votes from the defeated 1972 initiative to the successful 1978 initiative was best accounted for by the conversion of voters in the "property rich" school districts from property-tax defenders to property-tax rebels. The "property rich" were the special targets of the *Serrano* decision. In contrast, Stark & Zasloff find that a district's household income and percent of the population over age 65 account for the 1972-1978 vote shift. I argue in the present article that higher-income and elderly communities are precisely those most likely to change their view of the property tax once schools were no longer subject to local fiscal control.

Higher-income communities switched to supporting Jarvis because the better public schools they formerly enjoyed were forced by *Serrano* to spend the same as those of every other community. Older people formerly tolerated local school spending if it added to the value of their homes, but *Serrano* also eliminated that connection. I offer additional statistical evidence, largely consistent with Stark & Zasloff's, that shows that communities with high concentrations of older residents were usually "property rich." This relationship, called "multicollinearity" in econometrics, reconciles my earlier statistical finding with the more sophisticated work of Stark & Zasloff.

I also show why Stark & Zasloff's statistical comparisons of the votes on Prop 13 to the votes on its 1978 legislative alternative, Prop 8, and their comparison of votes on Philip Watson's 1968 and 1972 initiatives, do not undermine my original hypothesis. Prop 8 was simply the mirror image of Prop 13 and thus provides no independent evidence about changes in voter preferences. Stark & Zasloff's further claim that voters could have anticipated *Serrano's* remedies in 1972 is undermined by evidence that even Serrano's lawyers did not know which types of districts would gain and lose under the *Serrano* doctrine.

My sharper disagreement with Stark & Zasloff pertains to their analysis of the failed legislative response to the property tax revolt. Their strongest claims are that the legislature had plenty of money to respond to the tax revolt because the legislature's 1977 *Serrano* response was not all that costly and that the state senate's internal feuding, rather than the need to respond to *Serrano,* caused it to drop the ball on property-tax reform. I respond with contemporary evidence that demonstrates that the legislature did feel compelled to respond to the *Serrano* decision with a costly, "level-up" school-finance bill. Attempts to moderate this costly bill in 1977 were forestalled by the persistent pressure of the *Serrano* attorneys. Because of the *Serrano* Court's two-pronged remedy (equality of both spending and tax-base), legislators were unable in 1978 to revisit school spending in order to head off the property tax revolt.

Even if one rejects my hypothesis[11] about causation — and I admit that such things cannot be proven with mathematical precision — one can question whether the *Serrano* approach to school-finance reform continues to be desirable. This article concludes by joining (I think[12]) Stark & Zasloff in suggesting that *Serrano's* ostensible goals would be met better by an educational-adequacy standard, such as a foundation program that guarantees a minimum level of resources per pupil but does not discourage local voters from adding to it. Until the California Supreme Court modifies *Serrano* to allow such an outcome, I believe that Prop 13's fiscal constraints will continue to starve the nation's largest public school system.

§2. John Serrano, Jr., Middle-Class Revolutionary.

John Serrano, Jr., was the lead plaintiff in Serrano v. Priest. The story of his involvement in the case has become something of an urban legend. Here is how one scholar who has contributed substantially to the school-finance literature recently described it:[13]

> In 1966, John Serrano spoke with his son's, Anthony's, middle school principal. He inquired if there was not some way in which the caliber of his schooling could be enhanced. In candor, the principal counseled Mr. Serrano to move. He explained that as long as the family resided in Baldwin Park, a small and property poor school district within Los Angeles County, its children would be unlikely to receive the quality of education they preferred.

> The Serranos, even if they knew of Tiebout, were unable to move. Their eventual recourse was to confer with UCLA law professor Harold Horowitz and become plaintiffs in one of the nation's initial and most highly visible education finance equal protection suits, Serrano v. Priest.

---

[11] I lay claim to the hypothesis that *Serrano* caused Proposition 13 not because I was the first to come up with the idea, but because I have developed it most extensively. Others who wrote it down independently were William Oakland, Proposition 13: Genesis and Consequences, 32 National Tax Journal 387, 406, n. 17 (June 1979); Robert Kuttner, Revolt of the Haves 23 (1980); and Jonathan Kozol, Savage Inequalities 220-21 (1991). None of these did more than mention the possibility that Prop 13 might have been caused by *Serrano*.

[12] I optimistically interpret Stark & Zasloff's statement as a basis for common ground: "Where a state seeks to remedy school finance inequities by effectively taxing high-end consumption of public goods, it runs the risk of deterring such consumption and derailing the socially positive instincts of parents to support public schools." Stark & Zasloff, text at n. 221.

[13] James W. Guthrie, Twenty-First Century Education Finance: Equity, Adequacy, and the Emerging Challenge of Linking Resources to Performance, Keynote address at Florida State University's College of Education Sesquicentennial Symposium, "Funding Florida's Schools: What Does the Constitution Require?" Tallahassee, FL, November 14, 2001. Available online at <www.lsi.fsu.edu/project/feps/4.doc> (visited Feb. 15, 2003).

This story is a myth.[14] John Serrano, Jr., was a college-educated social worker.[15] He had lived in East Los Angeles, an unincorporated part of Los Angeles County, not Baldwin Park.[16] His oldest son, John Anthony,[17] entered first grade in 1967 in a school that was part of the enormous and "property-rich" Los Angeles Unified School District.[18] Mr. Serrano was indeed told by John Anthony's principal that he would be well advised to enroll his bright child in a better school in a different district. The Serrano family then did what the Tiebout model assumes they would do, which is to vote with their feet and move to another school district. They moved first to Whittier and then to Hacienda Heights, where it was reported that young John was doing well at Wilson High School, which is part of the Hacienda-La Puente Unified School District.

With a tax-base per pupil of $5613 in 1970-71, Hacienda-La Puente USD was "property poor" compared to Los Angeles USD, whose value per pupil at the time was $13,845.[19] (Baldwin Park at the time had a value per pupil of $4090, which was among the lowest in the state.) So Serrano was indeed from a property-poor district, but by his

---

[14] In an e-mail correspondence on Dec. 8, 2002, Professor Guthrie cheerfully admitted that his account was based entirely on "hearsay." I use his account not to cast aspersions on Professor Guthrie but to show that the *Serrano* myth exists even among those who do scholarly work in school finance. The account that I regard as authoritative is David Rosenzweig, Serrano Happy to Be a Part of Change, L.A. Times, Dec. 31, 1976, pt. I, p. 3. The reporter interviewed Serrano, who is pictured with his attorney, John McDermott, at McDermott's office in the Western Center on Law and Poverty in Los Angeles.

[15] He had a degree from California State College at Los Angeles and was at age 39 director of social services at the East Los Angeles Regional Center for the Developmentally Disabled. He was born of working class, Mexican-American parents and noted how poor his own high school education in East Los Angeles had been, though he blamed that largely on peer pressure not to succeed as well as an inadequate appreciation of the benefits of education by his under-schooled parents. He did not explain how either of these conditions would have been changed by the *Serrano* litigation.

[16] Baldwin Park was the paradigmatic example of a poor district that was invariably paired with Beverly Hills in the *Serrano* cases, so the confusion is understandable. Even the Los Angeles Times occasionally got it wrong. Robert Fairbanks, Serrano Case Heads Back to High Court, L.A. Times, Dec. 27, 1977, p. 3, as did Philip Watson, Do We Need a Tax Limit? 25 National Tax J. 397 at 397 (1972).

[17] The older John Serrano is John, Jr., and he does not use a middle name or initial. It was he, not his son, John Anthony, who was the lead plaintiff in Serrano v. Priest.

[18] Tax-base per pupil of the Los Angeles Unified School District in 1970-71 was $13,845, which was above the median for large districts. California Public Schools, Selected Statistics, 1970-71, Table IV-11 (This and other figures follow the official California approach to assessed value per pupil, in which assessed value is intended to be one-fourth of market value.)

[19] California Public Schools, Selected Statistics, 1970-71, Table IV-11.

own admission he had chosen it over the property-rich district and was apparently satisfied with its services.

Mr. Serrano did not approach an attorney to deal with his school problem before he decamped from East Los Angeles. Harold Horowitz and many others had been working to develop school finance litigation. The Ford Foundation was a major donor to that cause, and one of the foundation's directors, James Kelly, actively participated in the plan to develop an intellectual infrastructure for school-finance litigation.[20] The attorneys recruited all the plaintiffs.[21] According to at least one source, Horowitz met Serrano at a dinner party in East Los Angeles.[22] Mr. Serrano freely admitted that his personal involvement was minimal, although he was ideologically committed to the case.[23]

John Serrano did, however, use his fame for another purpose. He was not cut from the same reformist mold as his attorneys. They regarded the *Serrano* litigation as following in the footsteps of the Civil Rights attorneys, who litigated for racial desegregation of public schools as well as all other public accommodations.[24] Mr. Serrano, however, opposed busing and campaigned against its use to desegregate schools in the Los Angeles area.[25] His name appeared as one of the three official sponsors of an initiative whose purpose was to reverse a state-court decision that required busing to desegregate Los Angeles schools. One need not conjecture that the sponsors of the initiative were eager to have his name because of its connection with

---

[20] A. James Lee and Burton A. Weisbrod, Public Interest Law Activities in Education, Public Interest Law (ed. Burton A Weisbrod) (Berkeley 1978).

[21] Elmore & McLaughlin, supra note 6, at 21-23. Elmore & McLaughlin, p. 36, quote an unnamed source to the effect that Serrano's ethnic-minority name made him the lead plaintiff.

[22] David Kirp, Judicial Policy-Making: Inequitable Public School Financing and the *Serrano* Case, in Policy and Politics in America 84, Allan Sindler, ed. 1973. Serrano continued to work in East Los Angeles after he moved his family to the suburbs.

[23] Kirp, supra note 22, at 84; Rosenzweig, supra note 14, L.A. Times, December 31, 1976 pt. I, p. 3.

[24] See, e.g., Harold W. Horowitz, Unseparate But Unequal: The Emerging Fourteenth Amendment Issue in Public School Education, 13 UCLA L. Rev. 1147 (1966). 1172

[25] Serrano's Campaign against Forced Busing, S.F. Chronicle, Dec. 2, 1977, p. 28. The initiative was successful in that it got 68.6 percent of the votes in November, 1979. See Proposition 1 (Nov. 6, 1979), Cal. Const. art. I, Section 7(a), overturning Crawford v. Bd. of Educ., 551 P.2d 28 (Cal. 1976) (en banc). As Stark & Zasloff point out at n. 185, the California Supreme Court had in *Crawford* upheld the use of busing to desegregate Los Angeles public schools. Crawford, 551 P.2d at 48. Proposition 1 foreclosed, as a matter of state law, the use of busing. *Crawford* was later reinstated by a federal court, so John Serrano's one electoral triumph was, ironically enough, overturned by the courts. Los Angeles Branch NAACP v. Los Angeles Unified School District, 750 F.2d 731 (9th Cir. 1984) (en banc).

the famous court case. He is listed on the official voter information as "John Serrano, Jr.; Plaintiff, Serrano v. Priest."

In a March 13, 1978, Los Angeles Times interview, Serrano explained his activism against busing: "As a taxpayer and parent, I'm getting sick and tired of people blaming schools for every social problem."[26] The article went on to indicate that Mr. Serrano still stood foursquare behind the litigation that had made his name famous. He echoed his lawyer's charge that the legislature's response to it, AB 65, was woefully inadequate. But the fact that Serrano drew attention to his role as a taxpayer suggests that he might have found the Jarvis initiative attractive. The "sick and tired" does seem to resonate with Howard Jarvis's populist mantra about rising property taxes: "I'm mad as hell and I'm not going to take it any more."[27]

The title of the present article enlists the name of John Serrano in the same way his attorneys did, as a synecdoche a larger problem: Why did middle-class voters — people like John Serrano, a married man with three children[28] — turn against the property tax in 1978 after having rejected several similar opportunities to do so in the previous ten years?

It would seem to be an invasion of privacy to ask Mr. Serrano how he voted on Prop 13, even if I could locate him. We do know, however, that many of Serrano's neighbors voted for it. The city of Whittier, Serrano's hometown after he left East Los Angeles, voted 72 percent for Prop 13, well above the Los Angeles County total of 67 percent and the state total of 65 percent.[29] So the demographics and what little is known about his politics favor the possibility that John Serrano did vote for Prop 13.

A second question that this article's title is intended to raise is why any of the advocates of the *Serrano* decision should have regarded Prop 13 as undesirable for their cause. Suppose in 1971 the *Serrano* plaintiffs had been offered the following deal by the governor and leaders of the legislature to settle their case. The local property tax will no longer vary by rate from one school district to another. The state government will be obliged to make up all differences in school spending per pupil that will result. In fact,

---

[26] Jeanie Esajian, Man Whose Suit Changed School Funding in New Battle, L.A. Times March 3, 1978, pt II, p.5. See also Serrano's Campaign Against Forced Busing, S.F. Chronicle, Dec. 2, 1977, p. 28, col 1. Mr. Serrano was not opposed to integration, though. His solution for segregation was aggressive integration of the housing market, including income-mixed housing developments in the suburbs.

[27] The phrase was taken from Network, a popular movie of the era.

[28] The Serranos, John and Aurora, had two sons and a daughter in public schools in Hacienda Heights. Polls showed that voters with children in public schools were no less likely than others to vote for Prop 13. David O. Sears and Jack Citrin, Tax Revolt: Something for Nothing in California 145 (1982).

[29] Hacienda Heights, to which the Serranos moved after Whittier, is an unincorporated part of Los Angeles County, and so its vote is not identified in the official statement of vote. State Assembly District 58, in which Hacienda Heights is located, favored Prop 13 by 72.2 percent. California Secretary of State, Statement of the Vote and Supplement, Primary Election, June 6, 1978 p. 197.

the state will essentially control the distribution of all property taxes. More than ninety-five percent of California's public-school children would attend school in districts whose public revenues (except for categorical grants) will not vary from one another by more than $100, an amount to be indexed to 1975 prices.[30]

No one can know for sure, but my guess is that most *Serrano* advocates would have taken such a deal. Equal spending, financed by state sources. No more local discretion about property taxes. No more Beverly Hills / Baldwin Park anomalies, at least none financed by the property tax. The skeptical among them might have asked whether the state would have some fiscal constraint on allocating its revenue, and the officers for the state say yes, but it in fact promise to support a minimum of spending on schools from the state budget, not a maximum. (This would be Prop 98, passed in 1988.[31]) One can imagine that most of the litigants would have pinched themselves to see if it was a dream.[32]

It was not a dream, of course. It is a nightmare. The hypothetical I described above is in fact the situation California found itself after Prop 13 passed. Some *Serrano*-advocates initially saw in Prop 13 a silver lining. Alan Post, the recently retired and long esteemed Legislative Analyst, pointed out that however disruptive Prop 13 was, it now compelled the legislature to use statewide funds to deal with *Serrano*.[33] With the local property tax effectively off the table, the state could far more easily comply with the *Serrano* mandate. This wasn't I-told-you-so gloating by a *Serrano* opponent. Post had in fact long been a supporter of the *Serrano* principle.[34]

Most other *Serrano* advocates, however, regarded Prop 13 as a disaster. The reason should be obvious: The state legislature and the *Serrano* litigants regarded the property tax as an essential part of AB 65, the bill that responded to *Serrano II*. AB 65 relied on property taxes for 64 percent of the funds specifically designated for *Serrano* compliance.[35] Newspaper articles in the summer of 1977 reported that property tax

---

[30] The indexation of the $100 band for inflation was permitted in Serrano v. Priest, 226 Cal. Rptr. 584 at 613 (1986) (*Serrano III*).

[31] Cal. Const. art. XIII B, 2, described generally in Lawrence Picus, Cadillacs or Chevrolets?: The Evolution of State Control over School Finance in California, 17 J. Education Finance 33, 51-56 (1991).

[32] James Kelly of the Ford Foundation, a major supporter of the litigation, said after Prop 13: "We're a hell of a lot better off than we were…. What's happened in California was undreamed of just eight years ago." Elmore & McLaughlin, supra note 6, at 211.

[33] Alan Post, Effects of Proposition 13 on the State of California, 32 *National Tax Journal* 381 (June supplement 1978).

[34] Elmore & McLaughlin, supra note 6, at 215. Lawrence Picus also notes that Prop 13 was regarded as completing the job that *Serrano* started. Picus, supra note 31, at 34. Similarly, see Robert Kuttner, supra note 11, at 103 and 105. John McDermott also pointed out that Prop 13 was consistent with *Serrano*. Elmore & McLaughlin, supra note 6, at 181.

[35] John B. Mockler and Gerald Hayward, School Finance in California: Pre-*Serrano* to the Present, 4 J. Educ. Fin. 386 (1978).

burdens under AB 65 would rise, not fall.[36] Moreover, the remaining defects that the *Serrano* litigants saw in AB 65 were that property taxes in some places (e.g., Beverly Hills) were not high enough. AB 65 had declined to implement the full force of the "recapture" principle, which made property-rich districts disgorge their "local" property taxes to support other districts.[37] The loss of more than one-half of property tax revenues meant that the level-up approach to *Serrano II* was doomed.

§3. The Large Vote Swing from Watson's 1972 Initiative to the 1978 Jarvis Initiative

Stark & Zasloff expand upon what I called a "modest statistical venture" in explaining why voters rejected the 1972 Watson II initiative[38] by a 2-1 margin, but six years later embraced the similar Jarvis-Gann initiative by almost the same margin of 2-1. Watson II was much like Jarvis in that it proposed a one and one-half percent property tax limit to be enshrined in the state constitution, though it did not have Jarvis's limit on reassessments.[39] I suspected that the implementation of *Serrano* was the major change in voters' circumstances between those periods.

To demonstrate *Serrano's* influence on the changed voting pattern, I selected 29 cities in Los Angeles County whose names corresponded to the name of a unified school district.[40] Vote summaries for initiatives are available only by city, not by school district, and school districts are only occasionally coterminous with city boundaries. Matching city name to district name reflected my hope that the votes in the city would reflect the conditions of the district.

The "swing" for each of those cities was the percentage change in "yes" votes between the 1972 Watson II vote and the 1978 Jarvis vote. For example, voters in Beverly Hills supported Watson II by 23.2 percent and Jarvis by 59 percent, so the "SWING" was 154 percent (= [59 − 23.2]/23.2). The statewide vote for Watson II vote

---

[36] Doug Shuit, Cost Factor Stalls 2 Key Bills: Tax Relief, School Aid Measure Snarled, L.A. Times, Aug. 17, 1977, p. A3

[37] Steven Sugarman, Principled Serrano Reform, 4 Hastings Const. L.Q. 511 (1977).

[38] I will often refer to the initiatives by the name of their best-known sponsor and the date. For reference, Watson I = Proposition 9 in 1968; Watson II = Proposition 14 in 1972; Jarvis = Proposition 13 in 1978; and Behr = Proposition 8 in 1978.

[39] Watson II, which was far more complicated than Jarvis's 1978 initiative, is outlined in Anthony Barkume, Criteria for Voting Judgments on a Property Tax Initiative: An Analysis of the Watson Amendment, 29 National Tax Journal 436, 449 (1976). Unlike Prop 13, it prescribed how local functions were to be financed and funded by the state. Neither Stark & Zasloff nor I maintain that Watson II was the same as Jarvis, only that they had the same goals — less local property taxation — and enshrined their constraints in the state constitution.

[40] Unified means a single district runs K-12 education for all those within its boundary rather than separate districts for elementary and for high school. Elementary and high school districts could not be used because voters in a given city could be responding to fiscal changes in different districts.

was 34.1 percent in favor, while the Jarvis vote was 64.8 percent in favor, which is a 90.0 percent swing.

I ran a simple correlation between SWING and a variable to represent the most likely "losers" from *Serrano* implementation, the percentage of funds from local sources for the school district in question in the 1977-78 school year. For example, Beverly Hills had 89 percent from local sources in 1977-78, which made it a *Serrano* "loser," while Baldwin Park had 18 percent from local sources, which made it a *Serrano* "winner." The simple correlation between these two variables was .71. If one squares that number (=.50), the appropriate statistical interpretation is that the *Serrano* variable accounts for half of the variation in the vote swing between 1972 and 1978.

I liked that statistic, but I did not pursue any further analysis in part because no one seemed interested in challenging my thesis — a condition Stark & Zasloff have now changed — and in part because the data are problematic. My theory is about voter behavior in *school districts,* not cities, but the state does not publish initiative votes by school districts. It is even rather difficult to find maps that show both school district and city boundaries so as to eyeball whether there is any correspondence between the district and the city.[41]

My approach to the lack of voting data on school districts was to select cities in Los Angeles County whose name corresponded to that of a school district. Thus data for the vote on Prop 13 in Baldwin Park, for example, corresponded to the vote in the city of Baldwin Park, while the data for reliance on local taxation (or tax-base per pupil, which is Stark & Zasloff's measure) are for the Baldwin Park Unified School District. It seemed safe to assume in these cases that all the voters in the city of Baldwin Park also paid taxes to and sent their children to Baldwin Park Unified School District.[42] In that case, all the votes would be responding (in my theory) to conditions in the same district, even if some Baldwin Park Unified School District taxpayers and school children lived in other

---

[41] The failure to report voting results by school district may account for why both contemporary and current-day analysts have overlooked the role of school finance in the success of Prop 13. Professor Smith, for example, dismisses my *Serrano* hypothesis because no polls at the time indicated voter dissatisfaction with school funding. Daniel A. Smith, Howard Jarvis, Populist Entrepreneur: Reevaluating the Causes of Proposition 13, 23 Social Science History 173 (1999). As any professor knows, however, you don't get the right answer if you don't ask the right question. Statistical analyses of opinion polls seem not to have considered that votes might vary by city or school district, which may account for why they were able to explain so little of the vote. Sears and Citrin, supra note 28, at 224. (Best regressions explaining Prop 13 have R-square of .19.) Other analysts have been led astray by the idea that Prop 13 was part of a larger, national anti-tax movement. See, e.g., Kuttner, supra note 11, at 275-306.

[42] I note, however, that the West Covina Unified School District's web site indicates that some of its students come from Baldwin Park. <http://www.cvusd.k12.ca.us/> visited Feb. 23, 2003. I do not know if this was the case in the 1970s, but I have found other instances in which students apparently living in the city with a school district name attended schools in a district of another name.

cities or in unincorporated areas. My assumption was that those excluded voters were not systematically different from those inside the city limits of Baldwin Park, so that the city vote was representative of the district vote, which is not available. That assumption turns out to be more dubious when my method of city selection is extended outside of Los Angeles County, as Stark & Zasloff did, though that is not the critical difference between us.

§4. The Median Voter Is Not a Particular Individual.

Before joining in the statistical inquiry that I started, Stark & Zasloff offer some reasons that statistical comparisons of votes by place may be less appropriate for explaining the merits of my hypothesis. One reason is that analysis of votes by city may suffer from the problem of "ecological inference." The other is that the 1978 Jarvis vote drew different voters than the 1972 Watson vote, largely because the 1972 vote was during an exciting presidential election and the 1978 vote was during a ho-hum primary election.

The ecological inference problem arises when one attempts to draw conclusions about the behavior of individuals from groups. Thus if a researcher wanted to infer my preferences about eating ice-cream in winter, looking at the ice-cream consumption of groups I might belong to could be quite misleading. Looked at as a college professor on leave in California, I might appear to eat very little of it. But looked at as a resident of New England, I would appear to consume a great deal of ice cream in winter. (Ice cream is not a seasonal dish in New England.) I have changed locations between New England and California several times, but my seasonal preferences about ice-cream are unwavering. Inferring my preferences from the geographic group I belonged to would be misleading. That is an example of the ecological inference problem.

The ecological problem does not arise in the exercise that both Stark & Zasloff and I are engaged in.[43] We are looking at the decisions of what economists call the "median voter." In the median-voter theory of political economy, the votes within a given jurisdiction depend on the economic position of a hypothetical voter who is in the middle of an economic ranking (usually by income, but sometimes by home value), not on his or her personal identity.[44] Thus my opinion of property taxes in my town depends on whether I own a home and how large the tax bill is and what services I get as a result of

---

[43] The scholar whom Stark & Zasloff cite as their source for the ecological inference problem would apparently agree with this claim. Gary King writes in chapter 1 of his book: "Contrary to the pessimistic claims in the ecological inference literature (since Robinson, 1950), aggregate data are sometimes useful even without inferences about individuals. Studies of incumbency advantage, the political effects of redistricting plans, forecasts of macro-economic conditions, and comparisons of infant mortality rates across nations are just a few of the cases where both questions and data coincide at the aggregate level." Gary King, A Solution to the Ecological Inference Problem, chap. 1 (1997). As I explain in the text above, these are exactly the types of issues Stark & Zasloff and I are examining.

[44] Randall G. Holcombe, The Median Voter Model in Public Choice Theory, 61 Public Choice 115 (1989).

the taxes. But if I were to have sold my home in 1990 and moved to California, the person who bought it would very likely have an income close to mine (the bank would make sure that it wasn't much less) and a home value and property taxes just the same as mine, and very probably a child or two who would at some time attend the local schools. As an economic matter, voting at the local level is not much affected by turnover in the housing stock or the personal identity of the owners. To put it in technical terms, the median voter is not a person; it is a vector of demographic characteristics that describe particular political jurisdictions.

Median-voter analysis also makes it appropriate to compare elections over a six-year period. The voters might have different names, but the durability of the housing stock and of public infrastructure, such as schools, makes it likely that new voters had the same interests in their community in 1978 as in 1972. In fact, as long as zoning or some other device ensures that new development will not be fiscally burdensome to pre-existing residents, it does not much matter if the community's housing stock has increased during the period.[45] The new voters in the new houses will have much the same fiscal interests as those who live in the older parts of town. For this reason I reject the alternative definition of SWING that Stark & Zasloff adopted in their appendix, which defined it as the absolute increase in votes by city between Watson II in 1972 and Jarvis in 1978, though their results do not differ much from the one they used in the main part of their article.

Stark & Zasloff's other complaint about the comparison of votes in 1972 to those in 1978 is that voter turnout might have been systematically different. The 1972 Watson initiative was voted down during a November Presidential election, albeit one in which President Nixon was declared the winner on television networks before the polls closed in California. The 1978 Jarvis initiative succeeded during a June primary election, and off-year primary elections always have lower turnouts. Stark & Zasloff claim that Republicans were more likely than Democrats to vote in that election because they had contested choices for governor, while Jerry Brown, the incumbent Democratic governor, had no serious competition. A potentially biased sample voted for the Jarvis initiative.

A biased turnout would be important if we were trying to explain why Prop 13 passed in 1978, but then in, say, November of 1980 it was repealed when a more representative group of voters responded favorably to an initiative sponsored by people who wanted to restore property taxation for schools. If the 1978 Jarvis vote was a fluke because it was unrepresentative of general public opinion, any number of politically

---

[45] The assumption that the school district can control the zoning is a weak part of my overall argument. Zoning is controlled by municipal authorities, so that congruence between municipal and school-district boundaries is important. This overlap applies to only a few cities in California — which is the source of our data problem — so that it is usually met only by approximation. Mitigating this problem is evidence that adjacent municipalities tend to imitate each other's zoning. Jan K. Brueckner, Testing for Strategic Interaction Among Local Governments: The Case of Growth Controls, 44 Journal of Urban Economics 438 (1998); Mary Jane Lenon, S. K. Chattopadhyay, and Dennis R. Heffley, Zoning and Fiscal Interdependencies, 12 Journal of Real Estate Finance and Economics 221 (1996).

savvy and well-funded interest groups could have put together an initiative at a politically opportune time to undo it.[46]

The reason they have not is because Prop 13 is popular with all voters. Indeed, the wonder of Prop 13 is its continuing popularity in the face of widespread evidence of public sector penury, especially the public schools. Yet even to suggest its undoing is politically hazardous in California. And Stark & Zasloff's assumption that voters came out to vote in June 1978 for primary candidates and only incidentally for or against Prop 13 is belied by polls of the period. Many voters turned out for the June election just to vote on Prop 13.[47] In fact, more people voted on Prop 13 than on the candidates for office in 1978. Polls after the fact showed that substantial majorities of all eligible voters, not just those who participated in the June 1978 election, favored Prop 13.[48]

§5. Stark & Zasloff Found No "*Serrano*" Effect on the Vote Swing.

Stark & Zasloff dealt with my limited Los Angeles County sample size by including in their sample all 135 cities in California in which city and unified school district had the same name. Their sample includes the 1972 Watson and 1978 Jarvis votes in 135 cities. To explain the vote swing between 1972 and 1978 (SWING), they used a somewhat different variable to represent districts likely to lose from implementation of *Serrano*. Their variable is the natural log of the equalized valuation per pupil in the district in 1978.[49] It is closely correlated with the variable that I employed, and my replication of their results using my *Serrano*-loser variable (percent of schools spending funded from local sources in 1977-78) instead of theirs did not reveal any important differences in the results.

---

[46] When Prop 98, which in 1988 earmarked about 40 percent of the state's budget for education, become too stringent a constraint on other spending, a 1990 ballot proposition (111) modified the constraints to give the legislature more flexibility. Jeffrey I. Chapman, Proposition 13: Some Unintended Consequences 16 (PPIC 1998).

[47] David B. Magleby, Direct Legislation: Voting on Ballot Propositions in the United States (1984). (Prop 13 voters were well informed, pp. 87, 131, 141, and representative of the electorate, p. 145. June 6, 1978 turnout was higher than in other primaries and only two points below general election, p. 87. There was an unusually high participation on the two fiscal initiatives; "hundreds of thousands of voters must have voted only on propositions 8 and 13" pp. 91-92.) See also Thomas Cronin, Direct Democracy (1989) (Systematic review of voter competence concludes that in Prop 13, "voters knew what they were doing: information levels were high; opponents had their say." p. 87).

[48] Sears and Citrin, supra note 28, at 120.

[49] Because I found no difference in the results by using unlogged variables, this fact is not subsequently mentioned, and the variable is called "tax-base per pupil" or "VALUE/PUPIL."

To the tax-base-per-student variable, which they designated SERRANO,[50] they added six others: percent of the city's population over age 65 in 1980 (gently designated SENIORS); median household income of the city in 1979 (INCOME); percent of Republicans voting in the June 1978 primary (GOP); the growth of assessed valuations in each city's school district between 1971 and 1977 (PROPVALUE); the percentage of government employees in 1980 (GOVEMP); and the percentage of renters in the city in 1980 (RENTERS).

They find that only household income (INCOME) and percentage over age 65 (SENIORS) are statistically significant (at the usual 5 percent level) or quantitatively important (according the standardized coefficient). The unadjusted R-square of their regression is .47, and the adjusted R-square from my replication of their regression is .44.[51]

Their variable for tax-base per pupil, SERRANO, falls on its face. It has a tiny standardized coefficient, less than one-sixth that of either INCOME or SENIORS, and it does not come close to statistical significance. The only comfort one can get from the *Serrano*-loser variable is that the variables RENTERS, PROPVALUE, and GOVEMP did even worse on all scores. Only the variable for Republicans, GOP,[52] did a little better,

---

[50] The designation of tax-base per pupil by the name SERRANO is something of a rhetorical coupe by Stark & Zasloff, in that it suggests this is the exclusive test of the theory. I will disagree with that assumption presently, but I admit that I set myself up for it by having only one statistical explanation.

[51] The R-square term should be adjusted downward when, as Stark & Zasloff do, additional variables are added. Failure to adjust gives a misleading impression of statistical significance, since adding any variable to a regression, regardless of its importance, will always raise the unadjusted R-square. Peter Kennedy, A Guide to Econometrics 60 (1985).

[52] Stark & Zasloff use GOP as an example of a changed condition because Governor Reagan and some other Republican leaders opposed Watson in 1972 but favored Jarvis in 1978. However, the state GOP convention in March of 1978 was divided on Jarvis and actually declined to take a position. Richard Bergholz, GOP Wrestling with Jarvis Plan, Los Angeles Times, March 11, 1978, Part I, p. 26. The Republican gubernatorial nominee, Evelle Younger, reluctantly endorsed Jarvis only in late April of 1978. Richard Bergholz, Younger Says He'll Vote for Jarvis Plan, L.A. Times, Apr. 28, 1978, pt. I, p. 3. See also Sears and Citrin, supra note 28, at 190: "We have uncovered no evidence that this faction [conservative Republicans] was growing much in California during the late 1970s." At any rate, the variable GOP did not have a statistically significant effect in any of Stark & Zasloff's or my regressions on the Watson to Jarvis swing.

Stark & Zasloff also invoke Zaller's model of public opinion formation to justify including GOP in their regressions. Stark & Zasloff, note 109. However, they quote Zaller that "the effectiveness of cue persuasion depends upon factors such as voter attentiveness and the degree of consensus among political elites." (quoted in Stark & Zasloff, n. 109) Surveys indicate that the voters were aware of Prop 13 and its alternative, Prop 8, so that they had no need to use partisan cues to figure out how to

with a standardized coefficient about a quarter the size of that for INCOME or for SENIORS, and it was a little closer to being statistically significant, with a p-value of .18.

Stark & Zasloff interpret the importance of INCOME and SENIORS in their regression as evidence of changed conditions between 1972 and 1978. They read INCOME as reflecting the differential impact of Jarvis's 1978 initiative over Watson's 1972 initiative on the net tax burdens of the high-income households. Watson II in 1972 offered a "balanced budget" initiative, while Jarvis in 1978 did not. Watson II sought only to shift "people related" services (schools, health, welfare) to the state, which would then raise specified statewide taxes (at rates the initiative specified) to pay for them.[53] Since statewide taxes are usually more progressive than local taxes, Stark & Zasloff argue that Watson II would be opposed by higher-income people. Jarvis, on the other hand, did not promise to keep spending constant. He was anti-government at all levels and did not want the state to offset local property tax reductions. Therefore, conclude Stark & Zasloff, higher income people would swing their votes towards Jarvis.

It is not clear, however, that Watson's 1972 plan would have been regarded as less favorable to wealthy households than Jarvis's 1978 plan. Watson's proposed taxes specifically avoided any increase in the state personal income tax. Nor was it really a balanced budget. The Legislative Analyst said on the 1972 official ballot information that Watson's initiative would leave more than a billion dollars in deficit, and the legislature might have chosen to fund welfare, health, and schools at a lower level rather than raise taxes. Thus it is not clear that higher-income people would have opposed Watson on tax burdens.

Jarvis did advertise his initiative as a net reduction in government taxes, which would seem to appeal to higher-income taxpayers. But, again, there was nothing in the initiative itself that would control the state legislature's ability to raise taxes after the initiative passed. It is true *ex post* that Prop 13 caused a net reduction in state and local spending, but it was not obvious *ex ante* to voters that this would be so. The Los Angeles Times published numerous articles and editorials about the anticipated impact of Prop 13, and, until late in the campaign, most of them assumed that Jarvis's cuts in property taxes would be made up by increases in state taxes.[54] Thus it is not obvious that the positive effect of INCOME on the vote swing was due to greater anticipated reductions in tax burdens under Jarvis than under Watson.

Stark & Zasloff's 135-city regression explains surprisingly little of the variance in SWING among districts. Its adjusted R-square was .44, while my 29-city Los Angeles

---

vote. Magleby, Direct Legislation, supra note 47, pp. 87, 131, 141, and 145; Cronin, Direct Democracy, supra note 47, at 87.

[53] Watson, supra note 16, at 397.

[54] See, e.g., Editorial, Property-Tax Initiative: No Way, L.A. Times Jan. 4, 1978, pt. II, p. 6 (Property tax cut "cannot be replaced without massive increases in the sales tax… or the personal and corporate income tax…"); [sidebar], Tax Impact, L.A. Times, March 13, 1978, pt. II, p. 1 (Impact of Behr and Jarvis on taxpayers compared under assumption that state income and sales taxes are raised to offset revenue losses.); George Skelton, Brown Expects New Taxes if Prop. 13 Wins, L.A. Times, April 25, 1978, pt. 1, p. 3.

County sample gave an R-square of .50. In regression analysis, an expanded sample (from my 29 to their 135 cities) and deployment of more explanatory variables (my one to Stark & Zasloff's seven) are supposed to raise the R-square, not lower it.[55] This suggests that there is a good deal of measurement error in their sample.

§6. Closer City-District Matches Improve the Regression.

The most serious problem with Stark & Zasloff's statistical analysis is that the overlap between city and school district outside of Los Angeles County is more imperfect. For example, the San Jose Unified School District includes only a part of the city of San Jose, whose aggressive annexations have caused its city boundaries to include numerous different school districts. The 1980 census indicates that the city of San Jose had 142,954 children enrolled in K-12 schools, but the 1977-78 ADA for the San Jose Unified School District was 38,086. Most of the children in the city of San Jose are in other districts. As a result, the votes and thus SWING for San Jose reflect conditions of an amalgam of districts.

The more common mismatch between the city count and school district count was for the city to be a much smaller fraction of the total district population. For example, the Richmond Unified School District had a 1977-78 enrollment of 32,437 children, while the city of Richmond had just half of that, 15,802. The vote from the city of Richmond, then, may be unrepresentative of the school district. The city of Richmond has a largely low-income, African-American population, while the other cities in the district are more affluent and white. Of Stark & Zasloff's 135-city sample, 51 have city-to-district enrollment ratios of less than two-thirds, and 20 have ratios less than one-half, implying that fewer than half of the district's pupils live in the city that gives it its name.

I had in earlier correspondence with Stark & Zasloff indicated that city-district mismatch did not seem like a problem. As long as all voters in the city were residents of the same district, their votes on Watson 1972 and Jarvis 1978 would reflect district wide conditions. But I now think that is not correct in most cases. The characteristics of voters in the city part of the district may differ systematically from those of voters in the non-city part of the district. Most of the mismatched cities are small and rural. The city voters could reside in older homes in the central, urban part of the district, while most of the rest of the district could be rural and have different incomes and age distributions. Thus it seems worth sacrificing some of the Stark & Zasloff sample's size to achieve a better match between city and district.

I found that the adjusted R-square of Stark & Zasloff's primary regression can be increased by deleting from their sample districts whose 1980 census count of school-age children was more than 132 percent or less than 65 percent of the 1977-78 district enrollments. The 132 percent maximum eliminated only 4 cities: San Jose, Riverside, Santa Ana, and West Covina. These cities are divided into several school districts. (The figure 132 percent was chosen because it is the city-district ratio of San Francisco, and I

---

[55] Kennedy, supra note 51, at 60: "Whether or not a set of extra independent variables belongs in a relationship depends on whether or not, by adding the extra regressors [independent variables], the R-Square statistic increases significantly."

am sure the city and district were coterminous.) There are actually many cities that are divided into several school districts, but in most cases none of the districts have the same name as the city. For example, the city of Lakewood is divided into six districts, but none of them bears the name "Lakewood."

The 65 percent minimum removed 49 districts. Most of these were small cities in rural areas whose population outside municipal boundaries had apparently grown but whose city-named school district still encompassed most of them. The most extreme example is that of Carmel, whose 1980 city school-age population is only 14 percent of the 1977-78 enrollment of the Carmel Valley Unified School District enrollment. The 65 percent cut-off is somewhat arbitrary, but my experiments with a cut-off of 80 percent did not yield important differences in the results that I report below. I submit that the 82 districts (listed in the appendix) remaining in my sample had city-votes on Watson II and on Jarvis that were closely representative of the district-wide vote. In other words, the median voter of the city is very likely the median voter of the district.

The results I discuss below incorporate the three crucial variables that Stark & Zasloff regard as tests of my theory. These variables are VALUE/PUPIL (the unlogged term that Stark & Zasloff label "SERRANO,") INCOME (unlogged median family income of the city in 1980), and SENIORS (percent of 1980 population over age 65). To them I have added another variable that I have since concluded was important in explaining citywide votes, BLACK (percent of 1980 city population that is black or African-American). BLACK is negative and significant and raises the adjusted R-square of the regression for all samples. This is because Jarvis was perceived as a racist, while Watson was not.[56] Race was not a factor changed by the 1976 *Serrano* decision, but the Jarvis campaign was markedly more insensitive to racial matters than either of Watson's efforts.

BLACK is negatively correlated with GOP (r=-.57 in my 82-district sample). It seems likely that the marginal significance of GOP in Stark & Zasloff's regressions is due to that effect. Stark & Zasloff's other independent variables, value growth (PROPVALUE); government employees (GOVEMP); and the percentage of renters (RENTERS) were all

---

[56] As the elected assessor of Los Angeles County, Watson was less inclined to alienate a sizable fraction of his constituency. His initiative did not propose cuts in welfare. In contrast, Jarvis was an outsider who cultivated the image of insensitivity to established political mores. His many tirades against welfare were perceived as anti-black. Derrick A. Bell, Jr., The Referendum: Democracy's Barrier to Racial Equality, 51 Wash. L. Rev. 1 at 19 n. 72 (1978). (One reason for approval of Proposition 13 was a belief that it would reduce welfare entitlements.) Margaret Kilgore, Jarvis Criticizes Affirmative Job Hiring Programs, L.A. Times, March 24, 1978, pt. I, p. __. Wilson Riles, State Superintendent of Schools, was black and was often criticized by Jarvis in thinly-veiled racist terms. Schrag, Paradise Lost, supra note 2, at 143. See also Philip J. Ethington, Segregated Diversity: Race-Ethnicity, Space, and Political Fragmentation in Los Angeles County, 1940-1994. September 13, 2000. "Proposition 13…was deeply implicated in the politics of race." p. 44. Report available at <www-rcf.usc.edu/~philipje/CENSUS_MAPS/Haynes_Reports/FINAL_REPORT_20000719g.pdf> (visited Feb. 15, 2003).

insignificant in my sample, as they were in Stark & Zasloff's. I have omitted them in the regressions I report here in order to concentrate on the variables that I believe are theoretically justifiable.

The results of the regression on my 82 district sample are given in Table 1. These appear to confirm Stark & Zasloff's results. INCOME and SENIORS are significant, but VALUE/PUPIL is not. My introduced control variable, BLACK, is highly significant in this and almost every other regression, and it will not be discussed further. The adjusted R-square of my regression is .65, considerably higher than the .44 for Stark & Zasloff's 135-district sample. This confirms that my sample adjustment gives a more precise estimate of the variations in SWING.

[Insert Table 1]

If one omits SENIORS from the regression, the coefficient of VALUE/PUPIL rises and it is statistically significant. (This regression is not shown here.) However, the R-square of this regression is .53, considerably lower than that for the regression that includes SENIORS. Another regression (also not shown here) that retains SENIORS but drops VALUE/PUPIL gets the R-square back up to .63, showing that SENIORS is the more powerful variable in explaining district variations in SWING.

A potential problem with these results is that location in specific counties may have affected the SWING variable. One difference between Watson's initiative and Jarvis's is that the former could have had differential effects by county, especially with respect to schools. Watson's plan was to equalize spending within counties (in part to respond to *Serrano I*), but it would have allowed spending levels by county to vary. Jarvis's plan was uniform for every county, so districts in different counties with otherwise similar circumstances might have responded differently to Jarvis than to Watson.

To account for this possibility, I went back to my Los Angeles County sample and tried to refine and expand it. My goal was to locate cities in which I was reasonably confident that the majority of city voters were within a single district and that the city's voters constituted a majority of voters in the district. My method was to examine the location of schools from a 1982 listing of districts and schools.[57] The city made it into my sample if at least fifty percent of the schools had an address within the same city and that the city was the largest in the district in 1970. This tedious exercise resulted in a sample of 36 cities in Los Angeles County.[58] No other county has so many unified districts and cities that can be matched this way so as to give enough degrees of

[57] Quality Education Data, School Territory Guide [for] California (Denver 1983).

[58] The 36 cities (listed in the appendix) are the 29 city-sample from Fischel, How *Serrano,* supra note 3, n. 63, plus seven others whose name did not correspond to a unified district name but which were the dominant address of schools in the district. For example, the city of San Dimas is the address for nine of the twelve schools in the Bonita district, so the votes and demographic characteristics of San Dimas were matched with VALUE/PUPIL in the Bonita USD. The one exception I made was to match the City of Palos Verdes Estates with Palos Verdes Peninsula USD, even though the city has only a third of the district's schools. The largest city in the Palos Verdes Peninsula USD in 1978 had not been incorporated in 1972.

freedom for a multiple regression. I then did the same regression as before, using SWING as the dependent variable and VALUE/PUPIL, INCOME, SENIORS, and BLACK as the independent variables.

The results shown in Table 2 are similar to those for the statewide sample of 82 districts except that the R-square for the 36 L.A. County districts is .81. The coefficient on VALUE/PUPIL is not significant here, either. Again, Stark & Zasloff's findings seem to be borne out with this more precisely measured sample. When SENIORS is dropped from the regression, however, the coefficient on VALUE/PUPIL becomes much larger and has a t-statistic in excess of 6, which is significant by any standard.

[Insert Table 2]

§7. Multicollinearity Reduces the Significance of VALUE/PUPIL.

I suspect that SENIORS and VALUE/PUPIL are collinear with one another. This will be demonstrated statistically, and then, in the following section, I will explain why SENIORS is behaviorally more influential than VALUE/PUPIL. Figure 1 graphs the observations for SENIORS and VALUE/PUPIL for the 82-district sample. The simple correlation between the two variables is .42. With the primary outlier, Emeryville, deleted from the sample, the simple correlation is .55. When the full regression on SWING is done without Emeryville, as is done in Table 3, VALUE/PUPIL becomes significant, primarily because the magnitude of its coefficient estimate more than doubled.

[Insert Table 3]

[Insert Figure 1]

Emeryville is a very small (1980 population 3714) city on the eastern end of the San Francisco Bay Bridge. Sandwiched between Berkeley and Oakland, it developed an enormous commercial tax base. Unlike the more frankly named cities of Commerce and Industry, which are also tax-havens for business,[59] Emeryville managed to establish its own school district, and so its tax-base per pupil was huge, more than fifty percent greater than Beverly Hills. Unlike Beverly Hills, though, Emeryville's residents are lower middle income, and it is racially diverse, with about twenty percent of its 1980 population being African-American. The outlier on the other side of the chart is Hemet,

---

[59] Commerce is in the Montebello Unified School District, and Industry is in the Hacienda-La Puente USD, to which the Serrano family repaired to get better public schools. I described how in the 1950s the newly incorporated City of Baldwin Park fumbled its attempt to annex the territory that became City of Industry. Fischel, Homevoter Hypothesis, supra note 3, at 224-226. I made two errors in that description: I assumed that annexation by Baldwin Park would have put Industry's area in the Baldwin Park USD. It might have, but school district boundaries are established by a state agency, not by city residents, though there is a process by which residents can petition for alterations. The more important error was my assumption that Industry's tax base would have made Baldwin Park "property rich." Given that Industry is actually in Hacienda-La Puente USD and that the district tax-base per pupil was only 37 percent higher than that of Baldwin Park USD, that assumption seems unwarranted.

which has substantial numbers of retired people who live in mobile-home parks. This made for especially high numbers for SENIORS and low numbers for VALUE/PUPIL, since mobile home values are fairly modest.

The relationship between SENIORS and VALUE/PUPIL is even stronger in the 36-district Los Angeles County sample. The scatter diagram in Figure 2 shows this clearly, and the simple correlation between the variables is a whopping 0.85. Even if the most extreme values, those for Beverly Hills, El Segundo, and Santa Monica, are removed, the simple correlation is .67.

[Insert Figure 2]

These two charts and their correlations make a strong case for a systematic relationship between the variables SENIORS and VALUE/PUPIL. These close correlations lead me to suspect that multicollinearity is a problem. If so, the reason that VALUE/PUPIL does not appear to have much influence on SWING is that SENIORS is stealing most of its effect. This is supported by the finding that VALUE/PUPIL is always significant when SENIORS is removed from any of the regressions.

Stark & Zasloff claim that multicollinearity does not seem to be a problem in their regression.[60] But in their 135-district sample, the simple correlation between SENIORS and VALUE/PUPIL (in logs) is .48. (Without logs, it is .42.) This is the highest simple correlation among their independent variables. Stark & Zasloff dismiss the possibility of multicollinearity, which this suggests, by referring to a particular econometric test. However, there is no widely-agreed-upon test for multicollinearity among econometricians except in the unlikely case that one variable is a linear transformation of another.[61] The more usual approach is to investigate whether a suspiciously high correlation is just a coincidence, such as the number of teachers and alcohol consumption, or whether there is a behavior relationship that underlies the correlation. In the following section, I will make a case for the latter. SENIORS is systematically related to VALUE/PUPIL both for accounting reasons and behavioral reasons.

§8. Why SENIORS and INCOME Reflect *Serrano's* Influence

Stark & Zasloff have tried to marry my hypothesis to a single variable, tax-base per pupil (VALUE/PUPIL). The engagement is not illogical, since it is closely related to the only variable that I had used to explain SWING. But although I said I liked it, I did not promise to abjure all others. Having been shown a larger field of possibilities, I maintain that Stark & Zasloff's results are entirely consistent with the hypothesis that *Serrano* caused Prop 13. This is because their variables SENIORS and INCOME reflect conditions that *Serrano* changed between 1972 and 1978, and they reflect them more accurately than VALUE/PUPIL. I interpret both SENIORS and INCOME as indicators for *Serrano*-losers rather than, as Stark & Zasloff interpret them, as indicators of groups who had the most to gain from tax reduction in 1978 as opposed to 1972.

Stark & Zasloff's variable for percent of city residents over age 65, SENIORS, reflects the influence of *Serrano* through two effects. One is an asset effect on older

---

[60] Stark & Zasloff, text at note 121.

[61] Kennedy, supra note 51, at 149-153.

people's home values. The other is a migration effect, in that families with children move to higher spending districts, displace older people, and reduce tax-base per pupil. Both of these effects swamp the impact of VALUE/PUPIL.

Asset effects: When schools are allowed to vary their spending according to local decisions, which was largely the case before *Serrano,* homeowners who do not have children in public school nonetheless have a personal financial reason to want to support local spending. Their home values would decline if the quality of their schools were to decline. Most homeowners own few other financial assets,[62] so they are highly attentive to events that affect the value of their homes. School quality has been shown to be consistently related to home values.[63] Buyers of homes are usually aware of school quality, and real estate sales people are not shy about pointing it out whenever it helps to sell their product. Thus as long as a childless homeowner has a unit that could house a family with school children (or could be expanded to accommodate more children), he or she will not be inclined to vote for initiatives that would harm the local schools.

This is not to say that voters without children in school will support school tax increases as enthusiastically as voters with several school-age children. If they plan to live in the community for a long time, the value of their home that derives from school quality will be less important to them than if they plan to sell it next year. But even if they stay put indefinitely, a severe decline in their home value will not be regarded happily, since they can borrow less against a devalued house and have less of a nest-egg for retirement or to leave their children.

Substantial evidence indicates that homeowners without children in school respond very differently to school taxes when schools are financed largely at the state level. Elderly populations tend to pull down school spending in states with centralized and equalized systems, such as that brought about by the *Serrano* plaintiffs, but not in states in which most financing remains local.[64] In 1972, Watson II proposed to both

---

[62] Joseph Tracy, Henry Schneider, and Sewin Chan, Are Stocks Overtaking Real Estate in Household Portfolios? 5 *Current Issues in Economics and Finance* (Federal Reserve Bank of New York) 1 (1999). (Survey in 1995 found that homeowners own few other financial assets.)

[63] Sandra E. Black, Do Better Schools Matter? Parental Valuation of Elementary Education, 114 Quarterly Journal of Economics 577 (1999); William T. Bogart and Brian A. Cromwell, How Much More Is a Good School District Worth? 50 National Tax Journal 215 (1997); Donald R. Haurin and David Brasington, School Quality and Real House Prices: Inter- and Intrametropolitan Effects, 5 Journal of Housing Economics 351 (1996).

[64] Econometric analysis of a voter survey in Michigan found that voters over age 65 were unusually supportive of local school spending. Theodore Bergstrom, Daniel Rubinfeld, and Perry Shapiro, Micro-Based Estimates of Demand Functions for Local School Expenditures, 50 Econometrica 1183 (1982). See also two separate econometric studies that used a multi-state, multi-district sample. One found that in states with centralized funding for schools (as California was after *Serrano*), elderly voters tended to oppose school spending. But in states in which spending remained

centralize and, within counties, equalize school finance and spending. Watson's 1972 property tax reductions held no special appeal for elderly voters and others without children because it would disconnect school spending from their home values. For homeowners in districts with low-performing schools, this would not be much of a loss, but for elderly homeowners in better districts, statewide financing would cause a loss in home values.

After it became obvious in 1978 that *Serrano* meant that school spending was no longer subject to local variation and control, elderly voters and other homeowners without children in schools saw less reason to preserve local property taxation in the better-performing school districts. Thus the strong positive effect of SENIORS on the vote swing from Watson II to Jarvis is perfectly consistent with my hypothesis. After *Serrano II* and AB 65, it became obvious to SENIORS in the better school districts that school spending and home values were no longer connected, so they joined their counterparts in the poorer-performing districts to support a property tax limitation.

Tiebout migration effects: Stark & Zasloff's SERRANO variable is based, as was *Serrano's* fiscal criterion, on tax-base *per pupil.* If two districts start off with equal property tax-base per pupil, two things might cause them to be different at some later time. One is to acquire substantial nonresidential tax-base, such as industrial and commercial structures. It was this possibility that the *Serrano* Court specifically regarded to be the unjustified cause of differences in tax base and local spending.[65] But another difference could be just as important: differences in the number of children per household going to public school.

A community that has more SENIORS is likely to have fewer children per household in public schools. Figure 3 plots the relationship between percent senior (over age 65) and the percentage of the population that is under age 18 for the 135 cities of Stark & Zasloff's sample. (Both variables are for the city, so the problematic match of city to school district does not matter here.) The relationship is obviously negative. The simple correlation between the two variables is minus .49. SENIORS thus is a proxy for having fewer children. A community that has more seniors will thus tend to be "property rich," since the denominator of VALUE/PUPIL is number of children enrolled in public schools. Thus just by an accounting measure, SENIORS is apt to be related to Stark & Zasloff's SERRANO variable, tax-base per pupil.

[Insert Figure 3]

largely local, elderly voters either favored or did not oppose school spending. Amy Rehder Harris, William N. Evans, and Robert M. Schwab, Education Spending in an Aging America, 81 Journal of Public Economics 449 (2001). The other found that voters at the county level tended to support schools, but not at the state level. Helen Ladd and Sheila Murray, Intergenerational Conflict Reconsidered: County Demographic Structure and the Demand for Public Education, 20 Economics of Education Review 343 (2001). Similar findings are in Christopher Mayer and Christian Hilber, Why do Households without Children Support Local Public Schools? House Price Capitalization, School Spending, and the Elderly, working paper, Real Estate Center, University of Pennsylvania, April 2002.

[65] *Serrano I*, 5 Cal. 3d 584 at 612

I maintain, moreover, that the districts that have more children per household (and thus low VALUE/PUPIL) arrived at that condition in part for a behavioral reason. Badly run school districts will repel families with children, and well run school districts will attract them. Consider again the hegira of John Serrano and his three children from the Los Angeles USD (in East Los Angeles) to the Whittier and Hacienda-La Puente school districts. His leaving East Los Angeles caused the tax-base per pupil in LAUSD to go *up* and the tax-base per pupil in Whittier (and later Hacienda Heights) to go *down.* Inadequate school systems drive people with children away, either to other districts or to private schools.[66] One effect of better schools, in other words, is that they attract families with children and thus reduce the tax-base per pupil.[67]

The influence of INCOME on SWING primarily reflects local demand for education. It is well known that higher-income families demand more educational expenditure and live in valuable homes.[68] *Serrano II* required that all districts ultimately get nearly the same expenditures per pupil, and AB 65 would have come within a few percentage points of that criterion for most of the state's population. After *Serrano II,* voters in high-income communities could not expect much advantage in terms of school spending. Independent evidence for this is that higher income voters were generally opposed (like the vast majority of other voters) to the Watson II initiative in 1972.[69] They preferred local taxation for schools as long as it actually bought them more schooling. The implementation of *Serrano* not only gave high income communities less spending than they desired, but many had to pay more in taxes for the lesser expenditures. Thus the positive effect of INCOME on the Watson-Jarvis swing reflects the fact that higher

---

[66] Katharine L. Bradbury, Karl E. Case, and Christopher Mayer, Property Tax Limits, Local Fiscal Behavior, and Property Values: Evidence from Massachusetts under Proposition 2 1/2, 80 Journal of Public Economics 287 (2001); Thomas A. Downes and David Schoeman, School Finance Reform and Private School Enrollment: Evidence from California, 43 Journal of Urban Economics 418 (1998).

[67] This will be partly offset by the increase in the value of homes in the more attractive community. Caroline M. Hoxby, All School Finance Equalizations Are Not Created Equal, 116 Q. J. Econ. 1189 (2001).

[68] The income elasticity of demand for public education expenditures across a national sample of cities in 1960 was calculated to be .55, implying that a ten percent increase in family income would raise expenditures by 5.5 percent. Alan L. Gustman and George B. Pidot, Jr., Interactions between Educational Spending and Student Enrollment, 8 Journal of Human Resources 1 (1973). Grubb and Osman, supra note 6, found that property values and income best explained variation in spending per pupil in California school districts just before *Serrano.* Harlan Hahn and Sheldon Kamieniecki, Referendum Voting: Social Status and Policy Preferences 52-54 (1987) survey of school-finance referenda show that high-income communities support both local tax and spending increases.

[69] Barkume, supra note 39, at 457. Median family income had a negative effect on proportion of the city voting for Watson II. This was not statistically significant, but it nonetheless indicates that higher-income cities were no more likely than others to favor the initiative, which was defeated by almost a 2-1 margin.

income communities changed their views on property taxation for schools, which is consistent with the *Serrano*-caused-13 hypothesis.[70]

Stark & Zasloff note that INCOME and VALUE/PUPIL are poorly correlated in their sample.[71] This is confirmed in my alternative samples, and it is true in most states for which data have been analyzed.[72] There are two behavioral reasons for it. One is the attraction that higher-income communities have to families with children. Households with children in the pre-*Serrano* era would be attracted to higher-income communities because of these districts' greater willingness to support local schools.[73] Although such attraction bids up the price of housing in those communities (thus providing a capital-gain reward for all pre-existing homeowners, regardless of whether they have children), the larger number of children pushes up the denominator of VALUE/PUPIL. If the school system is better, it also keeps more of the school-age children in public schools (as opposed to private schools), further driving up the denominator and making the successful, high-income school district look "property-poor." Conversely, a school district that drives families with children away to the other communities or to private schools will look "property rich," even though the only students remaining will be low-income students whose families cannot afford homes in better districts or private-school tuition.

Income is poorly correlated with tax base for another reason, not related to schools. High-income communities tend to have less commercial and industrial property in their tax base. The demand for neighborhood amenities is, like the demand for school expenditures, income elastic.[74] High income home buyers tend not to buy in communities that are filled with industrial uses. Low income home buyers are more willing to make the trade off between neighborhood disamenities and the fiscal benefits

---

[70] It is also consistent with Kenneth Rosen's study, which found that Prop 13 caused especially rapid housing value increases in high *income* communities. Rosen, The Impact of Proposition 13 on House Prices in Northern California: A Test of the Interjurisdictional Capitalization Hypothesis, 90 Journal of Political Economy 191 (1982). As I indicated in my 1989 article, the only way this makes any sense is that home prices in high-income communities fell behind others prior to Prop 13 as a result of *Serrano.* Fischel, Did *Serrano,* supra note 3, at 468.

[71] Stark & Zasloff, note 113.

[72] Fischel, Homevoter Hypothesis, supra note 3, 133-135; David K. Cohen, School Finance and Social Policy: *Serrano* and Its Progeny, in School Finance in Transition: The Courts and Educational Reform 288 (Ballinger, 1974).

[73] Gustman and Pidot, supra note 68, at 16 conclude that the percent of the population enrolled in public schools is quite responsive (an elasticity of .48) to spending per pupil. Their sample was 79 U.S. central cities in 1962, and their estimate took account of simultaneous nature of spending per pupil and enrollment. Id at 12.

[74] Matthew E. Kahn and John G. Matsuska Demand for Environmental Goods: Evidence from Voting Patterns on California Initiatives, 40 Journal of Law and Economics, 137 (1997); Robert Deacon, and Perry Shapiro, Private Preference for Collective Goods Revealed through Voting on Referenda, 65 American Economic Review 943 (1975).

of having nonresidential neighbors pay part of their taxes.[75] Reinforcing this are zoning laws, which tend to be more stringent in higher-income communities than in poorer places. A shopping center developer in pre-*Serrano* days could more easily persuade a low-income community that the tax-base and perhaps employment benefits offset the inconveniences of greater traffic and noise.

Of course, some high income communities may have locations that sequester commercial development away from homes, so they can have the best of both worlds, a large tax base to pay for schools and a pleasant environment for good homes. But such fortunate locations are not common, so the statistical correlation between income and tax-base per pupil is usually rather poor.

A related explanation for the poor correlation between income and tax-base per pupil is the formation of school districts themselves. At least since 1964 and possibly earlier, one criterion for the formation of a unified district in California is that it have sufficient tax base.[76] It is possible that both local and state actors in the school-district formation process deliberately draw boundaries of districts so as to include substantial commercial and industrial tax base in districts with low-value, low-income housing. This actually presents a somewhat disconcerting possibility for school-finance reformers. If school districts are formed with tax-base adequacy in mind, it can hardly be said that they are a "geographical accident."[77]

To recapitulate the arguments in this lengthy section, the reason INCOME and SENIORS are significant in Stark & Zasloff's regression is that they reflect the operation of the Tiebout model more accurately than tax-base per pupil. SENIORS is especially strong in displacing the impact of VALUE/PUPIL in the Watson to Jarvis SWING, because *Serrano* alienated childless voters from local school quality and because cities with more older residents had higher tax-base per pupil for the simple reason that they had fewer young people with children. INCOME has positive effects because demand for education is income elastic. VALUE/PUPIL, Stark & Zasloff's SERRANO variable, works poorly in multiple regression analysis primarily because it is swamped by the behavioral and statistical effects of INCOME and SENIORS.

---

[75] Vicki Been and Francis Gupta, Coming to the Nuisance or Going to the Barrios? A Longitudinal Analysis of Environmental Justice Claims, 24 Ecology Law Quarterly 1 (1997); William A. Fischel, Determinants of Voting on Environmental Quality: A Study of a New Hampshire Pulp Mill Referendum, 6 J. Environmental Economics and Management 107 (1979).

[76] California School Services Division, California State Board of Education, School District Organization Handbook, Chapter 2: History of School District Organization, p. 7 (Sacramento, 1998) <www.cde.ca.gov/fiscal/dist_org/pdf/02-his.pdf> visited Feb. 18, 2003. The 1964 policy was promoted by Jesse Unruh just for this reason. Elmore & McLaughlin, supra note 6, at 75-76.

[77] *Serrano I*, 5 Cal. 3d 584 at 590. This should be disconcerting for econometricians, too, since it implies that their observations are not random variables.

§9. Prop 13 Was Not Just a Tax Revolt

Stark & Zasloff's interpretation of the significant effect on SWING of both INCOME and SENIORS holds that these groups had most to gain from a tax reduction in 1978 relative to 1972. In Stark & Zasloff's view, voters were most concerned about the total amount of taxes, not changed school taxes and expenditure rules. Thus for Stark & Zasloff, municipal property tax inflation in the 1970s should count for as much as school property tax inflation, and they regard the Behr bill as an attempt to deal with the "non-school property tax."[78] I had in section 5 questioned whether Jarvis in 1978 actually offered a better tax break for the rich than Watson had in 1972. Here I will put aside that argument and address the question of whether voters were interested solely in their total tax bill, as Stark & Zasloff claim, or whether it was *Serrano*-induced changes in school-finance that disturbed them most.

If Stark & Zasloff are correct about the influence of taxes, cities with larger increases in municipal taxes should have favored Prop 13. I had indicated in previous work that there were 31 cities in California in 1980 that had no property taxes to fund municipal services.[79] They relied entirely on other revenue sources, primarily the portion of state sales taxes that was reimbursed to the locality at which the sale was generated. Residents of these cities, however, did pay property taxes to their school district and to the county and special districts. Thus school taxes must have been a much larger fraction of their property tax burden.

If municipal property taxes had been the source of voter discontent, one would expect that voters in these cities would be *less* inclined to vote for Prop 13, since they had no municipal property taxes at all. Yet 26 of the 31 cities gave Proposition 13 a larger majority than the state as a whole. As a population-weighted group, the residents of the 31 no-municipal-property tax cities voted 74 percent for Proposition 13, compared with the 65 percent for the state as a whole. (The 1972 to 1978 Watson-Jarvis SWING for the population-weighted group was 92 percent, slightly above the 90 percent SWING for the state as a whole.) The reason for their greater support for Prop 13 can not have been municipal extravagance in property taxation, since these cities had none. Their greater support for Proposition 13 is evidence that municipal (as opposed to school) spending was not the problem.[80]

---

[78] Stark & Zasloff, text at note 214.

[79] Fischel, Homevoter Hypothesis, supra note 3, at 116. The 31 cities are listed in the appendix to the present article. Stark & Zasloff did not address this in their article. The cities are listed in California State Assembly, Revenue and Taxation Committee and Local Government Committee Staffs, No-Property-Tax Cities After Proposition 13 (Rolling Hills Estates: Joint Committee Interim Hearing Briefing Book, November 6, 1980).

[80] California municipalities at the time depended on property taxes for only 15 percent of revenue. Id. at 14. Most of the cities without property taxes lacked expenditures for fire protection and library services, which were provided by a special district, so the actual difference in tax burdens for their residents was less than it might seem. Id. at 14. Nonetheless, since most other cities spent their property taxes on

A more direct confirmation of the innocence of municipal property taxes — as opposed to school finance — can be seen from another subsample of Stark & Zasloff's 135 cities. The 1972 and 1977 U.S. Census of Governments offer a partial insight into what was happening to both school districts and cities. The Census of Governments provides property tax data for cities with a population of at least 10,000 and for school districts with at least 5000 pupils.[81] There were 53 cities from my sample of 82 districts for which I could obtain both municipal property taxes and school district taxes.[82]

As the scatter diagram of this relationship in Figure 4 shows, there is almost no relationship between municipal property tax growth and SWING (percent change in proportion of voters favoring Watson to proportion favoring Jarvis). The simple correlation between SWING and the 1972-1977 growth in taxes was small but actually negative: minus .11, which suggests that cities with higher municipal property tax growth actually swung somewhat less towards Jarvis than those with lower tax growth. Table 4 shows the results of a multiple regression on SWING of the reliable variables BLACK, INCOME, and SENIORS and variables for the growth of municipal taxes (MUNICIPAL) and school district taxes (SCHOOL). The coefficients on the latter two are insignificant by a wide margin. (A regression on a sample that removed the five cities whose municipal property taxes had risen by more than 120 percent in the period had the same results.)

[Insert Figure 4]

[Insert Table 4]

The Census of Government's data indicate that municipal property taxes were actually rising almost twice as fast as school-district property taxes during the 1972-77 period, though in 1977 school taxes were still in aggregate twice that of municipal taxes. This would seem to make municipal taxes stronger candidates for taxpayer anxiety than school taxes. It should be recalled, however, that my hypothesis is not so much about the overall increase in school taxes as about their divorce from local school spending. During this period, many high-spending school boards wanted to raise their school taxes but were prevented from doing so.[83] The "revenue limits" imposed by SB 90, the original response to *Serrano I* in 1971, did retard some school tax increases. But retarding an increase for voters who otherwise wanted to increase taxes will make them unhappy with the system. Hence the lack of a significant sign on SCHOOL, the growth

---

services besides fire protection and libraries, residents of the 31 no-property-tax cities had much less reason to vote for Prop 13 if municipal property taxes were an important cause of Prop 13.

[81] U.S. Census of Government 1977, Volume 4, Number 4, Table 22.

[82] The 53 cities are listed in the appendix of the present article. One city that was otherwise eligible, Paramount, was dropped because its 1972 data on municipal finance were unreasonably low, making its tax growth to 1977 far too high.

[83] Jack W. Osman and John M. Gemello, Revenue/Expenditure Limits and Override Elections: The Experience of California School Districts, Stanford Institute for Research on Educational Finance and Governance, Project Report No. 81-A9, June 1981.

of school taxes between 1972 and 1977 in Table 4, is fully consistent with my hypothesis.

Another indicator that school taxes rather than other property taxes were the focus of taxpayer discontent comes from Prop 8, the legislature's alternative to Prop 13 that appeared on the same ballot in June of 1978.[84] In combination with the Behr bill, Prop 8 offered to reduce all property taxes except those for schools, so its reductions were only about half of what Jarvis had promised. It also distributed benefits to renters, whom Jarvis had neglected.

More relevant to my point here is that the Behr bill was subjected to an interesting condition: If both Prop 8 and Prop 13 passed, Prop 13 would prevail and the Behr bill would be moot *even if Prop 8 got more votes than Prop 13.* Thus a strongly anti-tax voter — the type that Stark & Zasloff believe accounted for Prop 13's success — would vote for both Prop 13 and Prop 8. A mildly anti-tax voter would vote only for Prop 8. A voter satisfied with the status quo, or one who might have favored a different but not yet available way of limiting taxes, would vote against both Prop 13 and Prop 8.

Prop 13 passed with 64.8 percent of the vote, but Prop 8 failed, getting only 47.0 percent of the votes cast. Both Prop 8 and Prop 13 were voted on by almost everyone who voted on June 6, 1978, so Prop 8's failure cannot be attributed to people who took no notice of Prop 13 or vice-versa. And polls indicated that voters were quite familiar with both Prop 13 and Prop 8,[85] so it seems unlikely that voter confusion produced what would seem to be an irrational act under Stark & Zasloff's theory of Prop 13.

What no previous commentator has noticed, as far as I know, is that the citywide votes on Prop 8 were almost exactly the inverse of the vote on Prop 13. The simple correlation for Stark & Zasloff's 135 cities between yes on 13 and yes on 8 is huge: minus .94. (Minus 1.00 is the lower limit of a correlation coefficient.) The graph in Figure 5 ("Behr versus Jarvis") shows that the nearly perfect negative relationship between Prop 8 and Prop 13.

[Insert Figure 5]

Prop 8 thus presents two related puzzles for Stark & Zasloff's it's-just-the-taxes explanation for the swing from Watson to Jarvis. Why did voters "irrationally" reject Prop 8, given that they wanted a tax cut, and why were the cities most in favor of Prop 13 also most against Prop 8? Stark & Zasloff see Jarvis in 1978 as simply offering more of a tax cut for the rich and the elderly than Watson did in 1972. That is their interpretation of INCOME and SENIORS in their regression results for the Watson II to Jarvis SWING. If that were true, however, Prop 8 should have passed in the state as a whole, and Prop 8 should have passed by *even greater* margins in cities that gave Jarvis the largest majorities. Instead, exactly the opposite was true.

The failure of Prop 8 has a number of plausible explanations. Voters could have just been listening to Howard Jarvis, who strenuously opposed Prop 8 and urged his

---

[84] I will discuss Stark & Zasloff's analysis of Prop 8's passage and their treatment of what they regard as the Prop 8 to Prop 13 "swing" in section 8.

[85] David B. Magleby, Direct Legislation, supra note 47, at 91-92.

supporters to reject it.[86] Opponents of Prop 13 likewise urged their supporters to vote for Prop 8 and against 13. There were few public figures who said, "maximize your chances of a tax cut by voting for both Prop 8 and Prop 13." It is also possible that voters knew that the polls overwhelmingly favored Prop 13 before they actually voted on June 6, and those who did favor Prop 13 may have used their vote against Prop 8 just to express their dissatisfaction with the legislature's alternative.

Another possibility for Prop 8's failure is that tax-minimizing voters rationally hesitated to vote for Prop 8 because, if it had passed, the California Supreme Court might have felt emboldened to strike down Prop 13 on equal protection grounds.[87] Such a judicial decision would have been extremely controversial and perhaps led to voter reaction against the Justices, who do face the voters' approval periodically. A strong showing by the more moderate tax-cut initiative, Prop 8, might have emboldened the Court to strike down Prop 13. In order to foreclose this possibility, a true anti-tax voter might take the risk of getting no tax relief (if both Prop 8 and Prop 13 failed) in order to increase the probability of getting maximum tax relief.

Because there are multiple explanations for the inverse relation between Prop 8 and Prop 13, I cannot say it clearly favors the *Serrano*-caused-Prop 13 story over Stark & Zasloff's voters-just-wanted-lower-taxes story. Nonetheless, the uniformity of the inverse relation in Figure 5 is striking. Even if most voters were expressing their fealty to Jarvis or their dislike of legislators (or their distrust of the courts), Prop 8 should still have attracted some fraction of voters who, as Stark & Zasloff would have it, just wanted to reduce property taxes, period.

Suppose only 20 percent of all anti-tax voters sought to maximize the possibility of a tax cut by voting for both Prop 8 and Prop 13. Such voters would be more heavily concentrated in cities that voted by large margins for Prop 13. Thus even if tax-minimizers were a small minority, Prop 8 should have done better in cities where Prop 13 did best, if Stark & Zasloff's explanation is valid. Exactly the opposite is true, suggesting to me that Prop 13 voters were rationally aiming at school property taxes, not just all property taxes.

---

[86] Daniel Smith, Tax Crusaders and the Politics of Direct Democracy 74-75 (1998). It is not clear why Jarvis opposed Prop 8. Had it prevailed, he still could have claimed paternity for the largest tax cut in California history, since it was clear that Prop 8 would not have been offered without his initiative.

[87] Governor Jerry Brown encouraged this belief in speaking against Prop 13. Tom Goff, Brown Assails Jarvis Plan as 'Mirage,' L.A. Times, March 11, 1978, pt. I, p. 20. The California Court had in 1966 struck down an initiative (Proposition 14, adopted in 1964) that amended the California constitution to permit private landlords to discriminate in leasing. Reitman v. Mulkey, 64 Cal. 2d 529, affirmed 387 U.S. 369, 373 (1967). In a test of Prop 13's constitutionality, Chief Justice Bird (in dissent) regarded the reassessment provisions of Proposition 13 as denying equal protection. Amador Valley v. State Board of Equalization, 22 Cal. 3d 208 at 260-65 (1978).

§10. The "Swing" from Prop 8 to Prop 13.

A second statistical test that Stark & Zasloff invoked examined the swing from Prop 8 to Prop 13. Prop 8, which would have enabled the Behr Bill, would have given voters a large property tax cut for most local taxes except for schools. If one thinks of Prop 8 as Prop 13 without reductions in school taxes, then a seemingly logical test of my theory that *Serrano* caused Prop 13 would be to examine the swing by community between Prop 8 and Prop 13. Those communities that were really unhappy about *Serrano*-driven school tax reform would tend to vote against Behr and for Jarvis. If tax-base per pupil is a good indicator of those communities that would be upset by *Serrano*, then, Stark & Zasloff proposed, the variable for tax-base per pupil should enter positively and significantly into a regression on this particular swing.

Using the same variables as in their previous regression (discussed above in section 5), they found that tax-base per pupil (SERRANO) had no significant effect, and its sign was negative, the opposite of what they say my theory would predict. The only statistically significant variables were renters (negative, since Prop 13 gave them no tax breaks while Prop 8 did), GOVEMP (negative, for obvious reasons), and GOP (positive). The overall R-square of Stark & Zasloff's regression was .36, meaning it explained 36 percent of the swing.

As I explained in the previous section, the most striking thing about Prop 8 is that it is a negative mirror of Prop 13. Hence it follows that the supposed swing from Prop 8 to Prop 13 is merely an inverse reduplication of Prop 13 itself. This is illustrated in Figure 6, a scatter diagram of the Behr-Jarvis swing against Prop 13 votes by city in Stark & Zasloff's sample of 135 cities. There's no swing to measure, and it don't mean a thing if it ain't got that swing. Stark & Zasloff have simply run a regression on the vote for Prop 13 itself, not any meaningful swing among alternative policies.[88]

[Insert Figure 6]

But what's wrong with a regression trying to explain Prop 13 all by itself? The answer is that statistical analysis in this case does not answer the question that we are interested in. The question is not whether we can see whether homeowners favored Prop 13 more than renters (they did); not whether Republicans favored it more than Democrats (they did); not whether government workers opposed it more than private sector workers (they did).

The important question is why nearly everyone voted for Prop 13. Yes, wealthier people were "significantly" more inclined to vote for Prop 13 than the poor. But if the votes of the wealthiest half of voters had not been counted at all, Prop 13 would still

---

[88] Stark & Zasloff are more successful in this than Magleby, Direct Legislation, supra note 47, at 216, whose regression on the Prop 13 vote using a sample of 1744 respondents to the Field Poll yielded an R-square of only .20. A similarly modest R-square was found by Sears and Citrin, supra note 28, at 224. Magleby, like Stark & Zasloff, found that income, politics, and age also account for some of the variation. It is possible that Stark & Zasloff's higher R-square is due to their sampling of votes by city rather than by individuals.

have passed, if the California Poll data, shown in Table 5 , are to be believed. Indeed, if only the poorest quartile of voters (those with household income below $10,000 at the time) had been counted, Prop 13 would still have passed with a 52 percent majority. Only if one makes the error of attributing political significance to statistical significance can Prop 13 be characterized as a "Revolt of the Rich,"[89] or in Robert Kuttner's less alliterative phrase, the Revolt of the Haves. The same is true for other "significant" variables. Republicans and independents could have been disfranchised and Prop 13 still would have passed. A majority of renters surveyed soon after the vote said they voted for Prop 13.[90]

[Insert Table 5]

A majority of public employees, Stark & Zasloff's strongest variable in accounting for Prop 13, did in fact oppose Prop 13 as a group, according to surveys. What's more interesting is that it wasn't by much, given Prop 13's adverse effect on public sector employment. One poll asked respondents in November of 1978 to recall how they voted on Prop 13 the previous June. Of the public employees polled, 45 percent said they had voted for Prop 13. Of respondents who were not public employees but who had one in the family, 63 percent voted for Prop 13, almost the same as the general population.[91]

What is more politically significant — that is, important — is that California voters had in the decade previous to Prop 13 overwhelmingly rejected several propositions that sought to diminish reliance on property taxation for school finance and shift the obligation to the state. The two Watson initiatives (1972 and 1968) both failed by nearly 2-1 margins. A more modest initiative in 1970 would have required the state to fund at least half of K-12 education. This proposition, sponsored by the California Teachers Association, lost by an even larger margin than Watson's initiatives.[92] Equally telling is that Howard Jarvis had been trying to get similar initiatives on the ballot four times during the 1970s, most recently in 1976-77.[93] All of his efforts failed for lack of sufficient signatures. Jarvis was not even a serious player before 1977.

Something had happened to change the whole fiscal landscape in that period. The only vote swing that can assess fiscal changes was that between the 1972 (or 1968) Watson and 1978 Jarvis initiatives.

§11. Did *Serrano I* Cause a Swing from Watson I to Watson II?

---

[89] Prop 13's acquisition-value assessment (informally called "welcome stranger") turned out to be most beneficial to low-income homeowners, mainly because they move less often. Arthur O'Sullivan, Terri A. Sexton, and Steven M. Sheffrin, Property Taxes and Tax Revolts: The Legacy of Proposition 13 138 (1995)

[90] Sears and Citrin, supra note 28, at 120. The two polls they report found that 55 percent or 58 percent of renters recalled voting for Prop 13.

[91] Sears and Citrin, supra note 28, at 153.

[92] John Allswang, The Initiative and Referendum in California, 1898-1998 103 (2000).

[93] Kuttner, supra note 11, at 56. (four time failure). See also David Doerr, California's Tax Machine 139 (2000), describing two other initiatives that failed to qualify in 1976-77.

A third "swing" that Stark & Zasloff examine is that between Watson I in 1968 and Watson II in 1972. Philip Watson tried twice to limit the property tax and send responsibility for funding schools and other "people services" to the state. The second initiative was on the ballot of November 1972, 14 months after *Serrano I* was decided. Stark & Zasloff hypothesize that the *Serrano I* decision and the abundant public debate it generated should have, if Fischel is right, caused at least some prospective *Serrano* losers to embrace Watson II after they had rejected Watson I four years earlier.

Stark & Zasloff mention newspaper articles and editorials, President Nixon's proposed (but never adopted) national-financing plan for schools, and the pronouncements of numerous scholars to indicate that voters should have known what was coming as a result of *Serrano I.* They acknowledge that *Serrano II,* which in 1976 confirmed the equal-spending, equal-tax remedy ordered by Judge Jefferson in 1974, was four years in the future, but they argue that such an outcome should have been seen as inevitable by voters in 1972. Stark & Zasloff find, however, that there is not the least bit of correlation between cities' 1968-to-1972 swing on Watson and their SERRANO variable, tax-base per pupil.

In proposing that voters would foresee the consequences of *Serrano II* before it was decided, Stark & Zasloff are suggesting the political equivalent of the economic theory of rational expectations. That theory proposes that economic actors can forecast what kinds of economic policies are going to be adopted and act before the policies are even put into effect. And I must confess that I've invoked the idea to explain why it is so difficult to determine the effects of *Serrano*-like decisions in other states.[94] After *Serrano,* legislatures in other states may have anticipated the possibility that their judges would rule against them and adjusted their school finance policies accordingly. This could have forestalled court rulings in states that did have reforms, so that even states where plaintiffs lost would have had litigation-induced reforms.[95] So I cannot dismiss the possibility that *Serrano I* could have influenced Watson II.

One problem with Stark & Zasloff's exercise is that there was almost no swing to be explained. Watson I in 1968 got 32.0 percent of the statewide vote, and Watson II in 1972 got 34.1 percent. The swing to be explained is 6.5 percent. In contrast, the statewide swing from Watson II to Jarvis in 1978 was 90 percent.

The small size of the 1968-to-1972 swing does not rule out the possibility that expectation of *Serrano's* impact would influence the votes of individual cities. Places with a high percentage of law professors, for example, might have been able to forecast where this litigation was going and revise their votes accordingly.

---

[94] Fischel, Homevoter Hypothesis, supra note 3, at 131-132 (2001).

[95] This may explain why econometric work that treats state-court decisions as if they were random events comes up with conclusions that are at odds with the experience of individual states. See, e.g., Sheila Murray, William Evans, and Robert Schwab, Education-Finance Reform and the Distribution of Education Resources, 88 American Economic Review 789 (1998), discussed in Fischel, Homevoter Hypothesis, supra note 3, at 131-133.

But even attentive California law professors would have had difficulty forecasting whether *Serrano* would ever take effect. San Antonio v. Rodriguez, the *Serrano*-style case that made it to the U.S. Supreme Court, had been argued in October of 1972, a month before the Watson II vote, but was not decided until March 21, 1973. *Rodriguez* was a major disappointment for the *Serrano* advocates (Coons had filed an amicus brief on behalf of *Serrano*), but the worst of their fears was not realized. The fear was that the *Rodriguez* loss would foreclose the use of equal protection arguments at the state level.[96] *Rodriguez* did worry the *Serrano* lawyers for that reason.[97] However, the U.S. Supreme Court gave the green light to state-level litigation on either state equal protection grounds or on state education clause grounds. Apparently picking up on this cue, the California Supreme Court in its 1976 *Serrano II* opinion emphasized (as *Serrano I* had not) its independent state grounds.

No lawyer could have known on November 7, 1972, when Watson II was on the ballot, that the outcome of *Rodriguez* in March of 1973 would allow *Serrano* to stand.[98] Even some state courts after *Rodriguez* regarded it as foreclosing the use of equal protection in state cases.[99] Justice William Brennan actually made a point of advertising the idea that *Rodriguez* (from which he dissented) permitted independent state interpretation, an enterprise that would seem to be a waste of Brennan's time if this was a foregone conclusion.[100]

---

[96] *Serrano I* in 1971 rested heavily on a Fourteenth Amendment equal protection analysis, which the California Court took to be "substantially the equivalent" of California's provisions. *Serrano I,* supra note 4, n11.

[97] Elmore & McLaughlin, supra note 6, at 60.

[98] Stark & Zasloff at note 158 make a small concession on this point. "Admittedly, the precise language of *Serrano I* is hazy on the issue. See Serrano v. Priest I, 487 P.2d 1241, 1244 (Cal. 1971)." Page 1244 contains the opening line of Justice Sullivan's opinion, and it reads: "We are called upon to determine whether the California public school financing system, with its substantial dependence on local property taxes and resultant wide disparities in school revenue, violates the equal protection clause of the Fourteenth Amendment." There is no discussion anywhere in the opinion of whether, if the system does not violate the Fourteenth Amendment, it might nonetheless violate parallel California constitutional provisions.

[99] For example, Maine's highest court specifically delayed a decision in a school finance case to see how *Rodriguez* would turn out. When the *Rodriguez* plaintiffs lost, the Maine court dismissed the case. Norton Grubb, The First Round of Legislative Reforms in the Post-*Serrano* World, 38 Law and Contemporary Problems 459 (1974). For a general discussion that shows the uncertainty about whether *Rodriguez* forestalled state remedies, see Bill Swinford, Shedding the Doctrinal Security Blanket: How State Supreme Courts Interpret their State Constitutions in the Shadow of *Rodriguez,* 67 Temple L. Rev. 981 (1994).

[100]William J. Brennan, State Constitutions and the Protection of Individual Rights, 90 Harvard Law Review 489 (1977). Former Connecticut Chief Justice Ellen Peters gratefully acknowledged Brennan's influence on her and other state-court justices, specifically mentioning the school-finance decisions of her court. Ellen A. Peters,

It could be argued, though, that California voters were influenced by *Serrano I* precisely because they weren't law professors who worried about *Rodriguez.* As Stark & Zasloff correctly point out, popular media were full of stories about the end of the advantages that local property-tax financing confers on rich districts. But who lived in rich districts? Most people would assume that "wealthy" districts could not be those in which the majority of public school children came from low-income and minority families.

This was evident in the behavior of San Francisco's elected officials. The children who attend its public schools were disproportionately (compared to the state average) from poor families. San Francisco's state senate and assembly representatives joined the plaintiffs in *Serrano* I at the request of Jack Coons in the expectation that a plaintiff victory would be in the district's interest.[101] San Francisco's intervention was credited for the Court's acceptance of the idea that *Serrano* would lead to policies that would make urban districts better off.[102] But in reality, the San Francisco Unified School District is "property rich" both because of its large commercial and industrial property tax base and the relatively small fraction of its population with children in public schools.[103]

More striking is that San Francisco's apparent confusion was shared by the plaintiff's lawyers and their expert. They did not realize that property-poor and income-poor were a long way from being the same thing. In 1974, Ronald Cox and John Mockler calculated the winners and losers from tax-base equalization and found that the majority of (51.6 percent) of poor children actually live in school districts with above-average property wealth. The percentages are even higher for AFDC recipients (61 percent) and blacks (70 percent). A Los Angeles Times reporter gave the news to several of those involved in the litigation, and their responses indicate that most of them were unaware of the facts.[104]

Getting Away from the Federal Paradigm: Separation of Powers in State Courts, 81 Minnesota Law Review 1543 (1997).

[101] Elmore & McLaughlin, supra note 6, at 46-47. Coons said in an interview with Elmore & McLaughlin in 1980 that he had warned the legislators that *Serrano* might not necessarily help the city's schools, but he conceded, "It is true, though, that a lot of people didn't understand the stakes[.]" A contemporary news article suggests this was true. S.F. Joins in Rich School Legal Action, S.F. Chronicle, Jan. 5, 1971, p. 1. The city's officials cast themselves as representatives of a poor district, contrasting their fiscal situation to that of affluent Hillsborough.

[102] Kirp, supra note 22, p.101.

[103] William Greider, Behind the School Financing Battle, S.F. Chronicle March 22, 1973, p. 7. (The Urban Coalition, which initially helped in preparing *Serrano I*, backed off when they found that many of their cities were "property-rich" even though their residents had lower income than their suburbs.)

[104] Jack McCurdy, School Funding Ruling: A Setback for the Poor?, L.A. Times, June 30, 1974, pt. I, p. 3. See also Elmore & McLaughlin, supra note 6, at 86-87. Mockler told me in a phone conversation that he no longer knew where the data for his study were. However, the study was replicated and confirmed years later by Jon Sonstelie, Eric Brunner, and Kenneth Ardon, For Better or for Worse? School Finance Reform in California (Public Policy Institute of California 2000). An Urban Institute study

John McDermott, lead counsel for *Serrano II*, responded, "Of course we assumed that more poor people than rich people lived in low-wealth districts." A few paragraphs later he appears so flustered by the news as to mix doubt with hubris: "I'm not sure what I wrought." Charles Benson, a leader in the economics of school finance and a *Serrano* proponent, told the reporter, "I suppose that when the figures were put out comparing Baldwin Park and Beverly Hills, the implication was set that this was a rich people versus poor people thing."[105] Harold Horowitz, a UCLA law professor who established the equal protection basis for the litigation, "conceded that the complaint carried [now quoting Horowitz] 'the assumption that low income kids live in low wealth districts for the most part.'"

Only Berkeley law professor Steven Sugarman (of those interviewed) implied that he knew all along that helping the poor would be a two stage process: "Sugarman said it is folly to believe that the problems of school financing could be solved without facing up to the destruction of the old system.[106] 'What we really wanted to do was make the system rational' he said. 'Then we can try to target additional moneys for specific needs (of poor children).'"

With all this confusion on the part of the experts in 1974, it seems unlikely that voters in many places in 1972 could have figured out what was going to happen as a result of *Serrano I.* It is also worth recalling that *Serrano* was the first twentieth-century case in which a court had indicated that a whole system of school finance might be unconstitutional.[107] Even with the broad hints in *Serrano I* about what an appropriate

---

also found that California's central cities in 1968 had higher tax-base per pupil than their suburbs. Betsy Levin et al., Paying for Public Schools: Issues of School Finance in California 15 (1972).

[105] Benson later admitted at a Congressional hearing shortly before his death, "You must be very careful when you wish for things because you may just get what you wish for. We worked hard for equity in California. We got it. Now we don't like it." quoted in G. Alan Hickrod et al., The Effect of Constitutional Litigation on Educational Finance: A Further Analysis (National Center for Education Statistics, 1995).

[106] McCurdy, L.A. Times, June 30, 1974, p. 26. Sugarman's method of saving school-finance after the system had been destroyed was a voucher plan for poor students that he and John Coons devised. Coons and Sugarman, Education by Choice: The Case for Family Control (1978). They tried but failed to get sufficient signatures to get a voucher initiative on the ballot in 1979. James S. Catterall, The Politics of Education Vouchers, PhD dissertation, School of Education, Stanford University, 1982. Voucher initiatives that did get on the ballot in 1993 and 2000 — which lacked the anti-poverty features of Coons and Sugarman's — failed by more than 2-1 margins. Terry M. Moe, Schools, Vouchers, and the American Public (2001). For an explanation of these votes that explains the role of local control, see Fischel, An Economic Case Against Vouchers: Why Local Public Schools Are a Local Public Good, Dartmouth College Economics Department working paper 02-01, Oct. 2002.

[107] Professor Stark located a nineteenth-century case, Greencastle Township v. Black, 5 Ind. 564 (1854), that was remarkably similar to *Serrano*. Kirk J. Stark, Rethinking Statewide Taxation of Nonresidential Property for Public Schools, 102 Yale

remedy might be, it is an enormous stretch to assume that voters had any serious grasp of what was going to happen. *Serrano* cannot explain the vote swing from 1968 to 1972 because no one could explain to the voters what *Serrano* actually meant.

L.J. 805, 805–12 (1992). Stark & Zasloff at note 31 mention this precedent but not its outcome. The Indiana legislature ignored the court's decision, and the state supreme court later acknowledged that there was nothing it could do. A similar attempt by the New Jersey Legislature to defy its supreme court's remedy in 1976 resulted in the court closing the schools and the legislature's prompt acquiescence to the court's order to adopt an income tax to finance education. Joshua Lichtenstein, Note: Abbott v. Burke: Reaffirming New Jersey's Constitutional Commitment to Equal Educational Opportunity, 20 Hofstra L. Rev. 429, 446-447 (1991). Fear of sabotaging the state's bond rating deterred New Hampshire legislators from a similarly defiant response to its supreme court's school finance decision, Claremont v. Governor, 703 A.2d 1353 (N.H. 1997). Dale Vincent, Bond Agencies Watch School Fund Crisis Closely, Manchester Union Leader, October 27, 1998, p. A1.

§12. Did *Serrano* Constrain the Legislature's Response to the Tax Revolt?

My 1996 article presented documentary evidence (mostly from the Los Angeles Times) that showed that the legislature and Governor Brown were well aware of the taxpayer revolt in 1977 and tried to do something about it.[108] They also knew that they had to do something to deal with *Serrano II*, which came down days before the 1977 legislative session resumed. Although there was a substantial state budget surplus, the legislature allocated so much of the state's budget for *Serrano* compliance (AB 65) that they adjourned in 1977 without doing anything to alleviate property tax burdens.

When Jarvis's Proposition 13 became a credible threat in early 1978, the legislature took some of the unexpectedly large surplus and developed an alternative, the Behr Bill (SB-1). The 1977 legislature had had the foresight to put a constitutional referendum on the ballot for 1978 that would allow the legislature to authorize a split-role tax. This appeared on the June 6, 1978 ballot as Proposition 8. SB-1 offered a substantial tax reduction that built on the split-role idea. (I will refer to the combination of Proposition 8 and SB-1 as "Behr" when comparing it to Prop 13, which I continue to refer to as "Jarvis.") The Behr response, however, omitted any relief from rising school taxes. I inferred that this omission was necessary in order to preserve AB 65, which depended on property taxes for 64 percent of its equalization revenue. Because it could not match Jarvis on the tax that mattered most, Behr was soundly beaten by Jarvis.[109]

Some background facts about fiscal and economic trends of the 1970s and California's situation may help to put the issue in perspective.[110]

Declining enrollments: Public school enrollments in California and in the rest of the nation were declining throughout the 1970s.[111] The peak of the baby boom occurred in the late 1950s, and total fertility fell from 3.69 in the 1955-59 period to a low of 1.72 in 1976. It has since recovered and hovered about 2.1 (long run replacement), but it has never approached the levels seen in the 1950s. Thus after 1965, the number of first graders began to decline for more than a decade both in California and the U.S. as a whole. In most of the rest of the U.S., this caused local property taxes for schools to

---

[108] Fischel, How *Serrano*, supra note 3, at 627-632.

[109] Fischel, How *Serrano,* supra note 3, at 632-635.

[110] Stark & Zasloff at note 82 chide me for not mentioning Watergate as a source of voters' diminished confidence in government. National scandals should have little effect on local politics because people have reason to view local government differently than national politics. Fischel, Homevoter Hypothesis, supra note 3, at 52-54. Declining school quality or increasing local taxes reduce the value of one's home regardless of whether the party in power nationally is Democrat or Republican, honest or crooked. Of course, national events such as inflation did affect local conditions, as I point out in the text following this note.

[111] California K-12 public school enrollment fell from 4,598,000 in 1970 to 4,048,000 in 1980, a decline (12 percent) that was greater than the 9 percent decline for the nation as a whole. U.S. Bureau of the Census, Statistical Abstract of the United States 1981, p. 147, table 240.

level off or actually decline in real terms.[112] Although California grew more rapidly than most other states in the 1970s because of immigration, the 1970s were the slowest-growing decade for the state in the twentieth century.

Home value inflation: The American economy, California not excepted, was in a severe recession from 1974 to 1975. The recovery from this recession after 1975 was characterized by unusually high rates of inflation. An owner-occupied home is an attractive asset to own during inflation. Because imputed rent (what you would pay to rent your home if someone else owned it) and capital gains from housing are not, in most cases, subject to federal and state income taxes, housing values tend to rise faster than the prices of other goods.[113]

Other forms of ownership of real property do not have this advantage, so the value of owner-occupied homes rose faster than the rest of the tax base. California tax assessors, like those of other states, had to increase assessments on homes more than on commercial and industrial properties.[114] With homes bearing a larger fraction of property taxes (even if rates had been dropping), the tax-price faced by homeowners went up.[115] Even without any changes in the school finance system, schools began to look "more expensive" to the average homeowner.

Bracket creep and tax surplus: Another effect of inflation is "bracket creep." In a progressive tax system, higher nominal incomes cause taxpayers to be pushed into a higher tax bracket. This annoys the taxpayers, especially if their real incomes are not rising, but it pleases the state, which gets more aggregate tax collections. Thus California, along with other states that relied on a progressive income tax system, began to amass a budget surplus without actually changing the tax laws.[116] While Governor Reagan had reduced taxes to deal with the surplus, Governor Jerry Brown

---

[112] Total nominal property taxes in the United States were $16.4 billion in 1960 and $34.1 billion in 1970, while CPI inflation between those dates was 31 percent. Total nominal property taxes doubled again to 68.5 in 1980, but the CPI increased by 112 percent, implying that total, inflation-adjusted property tax collections had gone down. U.S. Bureau of the Census, Statistical Abstract of 1981, pp. 276 (table 468) and 467 (table 799).

[113] For an explanation of this principle, see Mills and Hamilton, Urban Economics 180-187 (1984). California's land-use policies caused housing prices to rise especially rapidly during the 1970s. Fischel, Regulatory Takings, chapter 7 (1995); Robert C. Ellickson, Preface: The Effect of Growth Controls on Housing Prices on the San Francisco Peninsula, 4 *Stanford Environmental Law Annual* 3 (1982).

[114] Some observers (not Stark & Zasloff) regard California's uniform assessment rules, which emerged from a 1960s San Francisco scandal, as a special source of this problem. Kuttner, supra note 11, at 31-36. Uniform assessment, however, had been practiced in all other jurisdictions in California and in most other places, so it cannot be regarded as a particular cause of Prop 13. Diane B. Paul, The Politics of the Property Tax 101 (1975); Fischel, How *Serrano,* supra note 3, at note 120.

[115] Oakland, supra note 11, at 391.

[116] Kuttner, supra note 11, at 53-55.

saw the surplus as, among other things, a means of responding to *Serrano* without increasing tax rates.[117]

The inflation of the 1970s was higher than in any previous peacetime period of the twentieth century. Forecasters and policy makers in the 1970s had little experience with inflation's effect on tax revenues. This was one reason that California's budget surplus was consistently underestimated by state officials.[118] It also explains why early responses to *Serrano* (SB 90 and its amendments) had to be tinkered with several times. State aid to districts was based on local property values, with disproportionate amounts of funds to go to the low-wealth districts. But inflation pushed property values up so rapidly that even property-poor districts began to look property-rich, and aggregate state aid was below what was planned.[119] Tax experts finally caught on to this problem and fixed it in AB 65, the *Serrano* response bill that was to take effect in July 1978. Thus at least some of the state's growing surplus can be attributed to school finance responses to *Serrano*,[120] but most experts believe that inflation-driven bracket-creep was responsible for most of the surplus.[121]

High California tax burden: In the middle 1970s, California's state and local tax payments were growing faster than that of the rest of the country. Stated as the percent of total personal income paid to state and local taxes, California averaged two percentage points higher than the rest of the United States (the other 49 states, not the federal government) from fiscal years 1963 through 1974.[122]

This differential rose steadily after 1974, from 2.59 in FY 1975 to 3.85 in 1978. It would have risen to 4.04 in fiscal year 1978-79 (the first year that AB 65 was to take effect) but for Prop 13, which brought the differential between California and the other forty-nine states down to 0.71, the lowest in more than two decades. Jerry Brown's insistence that state taxes could not be raised to respond to *Serrano* did not come from the dark side of the moon. There was solid evidence that Californians did have a proportionately higher tax burden than residents of most other states.[123]

---

[117] Jerry Gillam, Brown Unveils Plan to Revise School Financing, L.A. Times, Jan. 5, 1977, pt. I, p. 1. George Skelton, Wants $1 Billion as Hedge on Tax Hike, Brown Says, L.A. Times, May 24, 1977, pt. I, p. 3.

[118] Doerr, supra note 93, at 168. See also Ron Javers, A Dispute on State Surplus, L.A. Times, March 3, 1978 , p. __: "I don't want to sound defensive," said Allenby [program budget manager for Roy Bell, Gov. Brown's finance director], "But we've never had the kind of inflation we've had beginning in 1973. We didn't really anticipate the effect it would have on our revenues."

[119] Elmore & McLaughlin, supra note 6, at 103.

[120] Elmore & McLaughlin, supra note 6, at 114

[121] Schrag, Paradise Lost, supra note 2, at 143; John Balsar, State Surplus Keeps Growing, S.F. Chronicle, July 13, 1978, p. 1.

[122] Oakland, supra note 11, at 390.

[123] Brown insisted that any *Serrano* response and property tax reform not raise rates. Doug Shuit, Cost Factor Stalls 2 Key Bills: Tax Relief, School Aid Measure

§13. How Costly Was the *Serrano*-Response?

Stark & Zasloff argue that the cost of AB 65 was not so large as to forestall property tax relief in 1977. Alan Post, the legislative analyst, is quoted twice in their article, but Stark & Zasloff do not attempt to explain what I regard as the smokiest of the smoking guns, Post's numerous statements in the summer of 1977 that the legislature simply did not have enough money to fund both AB 65 and property tax relief.[124] The Los Angeles Times editorial board agreed with Post's assessment.[125]

Stark & Zasloff may have chosen not address this because they apparently believe Post was using the wrong numbers to characterize AB 65. They state without qualification that the five-year cost (it was almost always put in that time frame) of AB 65 was $2.9 billion.[126] Their source for this number is AB 65 Legislative History Bill File, California State Archives, Sacramento. However, nearly every published source, including books and contemporary newspapers, puts the five-year cost of AB at $4.3 billion, give or take three hundred million.[127] This forty-eight-percent difference between Stark & Zasloff's number and mine would seem to be important, given that the cost of property-tax-relief bills that failed to pass in September 1977 were around the $4.5 billion dollar magnitude. The conflict between the property tax relief bill and *Serrano*-response is much less if one compares $4.5 billion to $2.9 billion instead of $4.3 billion.

The divergence arises because Stark & Zasloff's source divides AB 65 into components that are specifically related to *Serrano II* compliance and those that are not. Components that furthered compliance were those that either promoted expenditure-equalization or tax-rate equalization among districts. Components that were not were mostly categorical aid directed to larger urban districts, especially Los Angeles Unified

---

Snarled, L.A. Times, Aug. 17, 1977, at A3. (Quoting Brown advisor, Gray Davis, in opposition to any general tax increase.)

[124] Robert Fairbanks, Work to Resume on Property Tax Relief, L.A. Times, Aug. 1, 1977, pt. 1, p. 3; Robert Fairbanks, State Budget: First Shoe Falls, L.A. Times, July 2, 1977, p. 1 (Bell and Post tell assembly Democrats that *Serrano* compliance and property tax relief require state tax increase.); Larry Liebert, Crucial Conference on State Spending, S.F. Chronicle, July 29, 1977, p. 17.

[125] Editorial, For Key Bills Proper Priorities, L.A. Times, August 18, 1977 § 2, at 6: "Even with a budget surplus of almost $3 billion, the state cannot afford both bills...." The editorial supported the school-finance bill, AB 65, but opposed the "hodge-podge" property-tax reform. See also Editorial, The Billion Dollar Gap, L.A. Times, August 30, 1977, pt. II, p. 6, opposing property-tax relief bill because of its cost and its method of rebating taxes based on income.

[126] Stark & Zasloff at n. 179.

[127] Kuttner, supra note 11, at 102; Doerr, supra note 93, at 137 (2000): "…more than $4 billion over a five-year period…"; Elmore & McLaughlin, supra note 6, at 162: "…a price tag for five years in excess of $4.5 billion…"; Donald W. Crowley, Implementing *Serrano*: A Study in Judicial Impact, 4 Law and Policy Quarterly 299 at 315 (1982): in August 1977, "legislative leaders and the governor agreed to trim the bill to $4.3 billion over a 5-year period…"

and San Francisco Unified. Most large districts would have suffered large tax increases or large reductions in school spending as a result of rigorous *Serrano* compliance. Since these expenditures did not, strictly speaking, further "*Serrano* compliance," Stark & Zasloff apparently chose not to count them when comparing AB 65's costs to the cost of property tax relief.

This is legerdemain. It assumes that the "*Serrano* compliance" component of AB 65 could have been separated politically as well as in an accounting statement. Every contemporary account indicates that the legislative leaders thought they were spending about $4.3 billion to comply with *Serrano*, not $2.9 billion.[128] This view was shared by contemporary scholars:

> "The total 5-year cost of the compromise bill was estimated to be as high as $5.2 billion; when added to the predicted costs of the property tax relief bill also under consideration it appeared that the state would not have sufficient revenue unless taxes were raised—a possibility that Governor Brown did not wish to consider. Supported by predictions that the costs of the 2 bills would exhaust the available surplus by the second year, Brown sought to have both bills cut…. Legislative leaders and the governor agreed to trim the bill to $4.3 billion over a 5-year period…"[129]

This compromise broke down on the Senate floor, however, and only the school bill, AB 65, was passed into law.[130] Even if legislators were wrong about the total cost of AB 65, it is clear that they thought there was a trade-off between property tax relief and *Serrano* compliance.

I maintain, moreover, that the legislators were right. *Serrano II* put them in a double bind. This was because the *Serrano II* court, as most people read it, required both tax-base sharing and equal spending per pupil.[131] That implied equalization of district tax rates, for the same level of spending. The trouble is that this would have required enormous tax increases or huge reductions in school spending for property-rich districts. These *Serrano*-loser districts weren't just affluent Beverly Hills and Hillsborough. They included the unified school districts of Los Angeles, San Francisco, and Oakland. To have taken either path (local tax increases or cuts in district spending)

---

[128] This is true even of articles cited (nn. 169 and 208) in Stark & Zasloff's article: Doug Shuit, Cost Factor Stalls 2 Key Bills: Tax Relief, School Aid Measure Snarled, L.A. Times, Aug. 17, 1977, at A3: "Getting the most attention Tuesday was the proposed $4.6 billion, court-ordered school aid bill." Robert Fairbanks, School Aid Bill Called 'Fraud on Taxpayers,' L.A. Times, Sept. 7, 1977, § I, at 18: "(The bill will cost the state $4.3 billion between now and 1982.)"

[129] Crowley, supra note 127, at 315 (1982) See also Patricia R. Brown and Richard F. Elmore, Analyzing the Impact of School Finance Reform 22 (Seattle 1982). AB 65 "precluded any serious property tax relief."

[130] Robert Fairbanks, Property Tax Relief Bill Killed by Senate, L.A. Times Sept. 3, 1977, p. 1. The tax relief bill could muster only 16 of 40 Senate votes, not even a simple majority and well below the 27 to obtain the necessary 2/3 majority needed to pass.

[131] Friedman and Wiseman, supra note 8; Friedman, supra note 8,.

would have been unconscionable in the eyes of most Democrats. The supporters of *Serrano* in the legislature thought they were helping poor kids, and, as it turned out, the majority of poor kids went to school in districts that were technically "property rich."

In order to avoid this unhappy outcome, the legislature had to increase average expenditures and use categorical grants to offset the higher taxes in the large urban districts that were home to the poor but nonetheless property-rich.[132] This level-up strategy was the objective of what I would call the Horowitz faction of the *Serrano* litigation group.[133] They saw *Serrano* as primarily about inequalities in educational resources, which, in the absence of other conditions, would imply an equal-spending requirement.

The Coons faction insisted that *Serrano* was only about tax-base equalization, not spending equalization. Judge Jefferson's equal-spending requirement (within a hundred-dollar band) pleased the Los Angeles faction, but it did not moot the Berkeley faction's demand for tax-base sharing, which had been endorsed by the Supreme Court in *Serrano I.* The legislature's "level up" strategy was the only way to accommodate both demands without decimating the budgets of the state's largest school districts. Thus the entire $4.3 billion price-tag of AB 65 should logically be regarded as responding to *Serrano II.* To count as the cost of AB 65 only the $2.9 billion that went for technical *Serrano* compliance, as Stark & Zasloff insist, is like counting the cost of a gall bladder operation without the cost of anesthesia.

§14. *Serrano* and the Legislature: Dialogue or Ukase?

Aside from deploying a low figure for the cost of AB 65, Stark & Zasloff suggest that the 1977 Legislature was not paying much attention to the particulars of the court's *Serrano* decision. From my newspaper readings, I had seen a legislature that was sympathetic to *Serrano* ideals but was being pushed too far in a single direction by an uncompromising court order.[134] Stark & Zasloff paint a far more harmonious picture: "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 former's demands — but only up to a point, and confident that it will triumph if challenged."[135]

---

[132] Elmore & McLaughlin, supra note 6, pp.135 and 155, indicate that the "level-up" strategy was the only politically feasible approach. See also Charles S. Benson, Final Report of the [California] Senate Select Committee on School District Finance (Sacramento 1972).

[133] Distinctions between Horowitz and Coons are described in Elmore & McLaughlin, supra note 6, at 26-32. The seminal Horowitz work was Unseparate But Unequal: The Emerging Fourteenth Amendment Issue in Public School Education, 13 UCLA L. Rev. 1147 (1966), which focused on compensatory spending for the poor. Coons, Clune, and Sugarman however, were more concerned with taxpayer equity. John E. Coons, William H. Clune III, and Stephen D. Sugarman, A First Appraisal of *Serrano*, 2 Yale Review of Law and Social Action 111 (1971-72).

[134] Fischel, *How Serrano,* supra note 3, at 628-34.

[135] Stark & Zasloff at note 187.

Their note ending this sentence cites Elmore and McLaughlin for the "disdain" (Stark & Zasloff's term, not Elmore and McLaughlin's) that legislators had for the *Serrano* lawyers.[136] Even if "disdain" were conducive to "dialogue," these two pages and many others in Elmore and McLaughlin document the irritation of the legislators and their staff with the *Serrano* lawyers, especially their spokesman, John McDermott. And if the legislature was not really bothered by the *Serrano* court, it seems difficult to explain why it resisted the court's order to pay the plaintiffs' attorneys fees "long and defiantly," as Professor Carrington put it.[137]

Because this issue is an important source of difference between Stark & Zasloff and myself, I offer textual evidence from the source Stark & Zasloff cite, Elmore and McLaughlin. (I had not discovered this work until after my 1996 article was published.) Elmore and McLaughlin wrote an entire book about *Serrano*, AB 65, and Prop 13. The authors worked for the RAND Corporation at the time,[138] and the study was funded by the Ford Foundation, which had also supported many of the studies that were the basis for *Serrano.* The advantage Elmore and McLaughlin had over my newspaper research in that they began their study in 1978 and were situated in California. They were able to interview contemporary actors on both sides of the legal and political battleground that led up to AB 65 and, unexpectedly to them, Prop 13. Their perspective is studiously even-handed, though they sometimes reveal a general sympathy with the goals of the *Serrano* litigation.

Elmore and McLaughlin tell a story of a legislature eager to accomplish some form of school finance reform but frustrated by particular demands of the *Serrano* court and its lawyers. In their preface, Elmore & McLaughlin indicate that "the most important feature of the case" was the "barely concealed mutual distrust, with the lawyers accusing the political actors of not being sufficiently responsive to the court's mandate and the political actors accusing the lawyers of not being sufficiently sensitive to the complexities of legislative reform" (p. x). Elmore & McLaughlin point out that the *Serrano* litigation was not pushed by individuals or school boards; John Serrano was just a stand-in for "the ambitions of reform-minded lawyers" (p. 22).

It was not as if these ambitions had no support within the elected branches of state government. *Serrano* was welcomed by liberal elements of the legislature and of the Brown administration. *Serrano* "gave pro-reform legislators an additional source of leverage over their colleagues" (p. 70.) Most legislative and gubernatorial staff leaders, at least those mentioned in the book, were also pro-*Serrano*. The *Serrano I* court "sanctioned reformers' goals and legitimized their entry into the heretofore unreceptive arena of legislative politics" (p. 78).

---

[136] Elmore & McLaughlin, supra note 6, at 155-156

[137] Paul Carrington, Judicial Independence and Democratic Accountability in Highest State Courts, 61 Law and Contemporary Problems 79, 85 (1998).

[138] Ms. McLaughlin is now at Professor of Education and Public Policy at Stanford, and Mr. Elmore, who was with the University of Washington's School of Public Affairs at the time, is currently Professor of Educational Leadership at the Graduate School of Education at Harvard.

Much of this leverage was wielded by Serrano's attorney, John McDermott, who appointed himself "watchdog" of the legislature (p. 69). McDermott invariably derided legislative compromises such as "substantial compliance" with *Serrano* (p. 155). In defending his role as naysayer, McDermott wrote to Elmore & McLaughlin that "separation of powers" kept the court and him from expressing support for any particular policy (p. 72), but Elmore & McLaughlin rebuke this, saying "it [separation of powers] cannot be used to disown the political motivation behind such public law litigation as *Serrano*" (p. 72).

After AB 65 had passed, McDermott denounced it as a "fraud on the taxpayer" and, somewhat more calmly, "as good for education but not a *Serrano* compliance measure" (p. 166). Elmore & McLaughlin demur. The compromises with the *Serrano* doctrine that AB 65 embodied were for legislators "political necessities. To the reform lawyers, they were distractions from the court's mandate" (p. 167).[139]

In describing the process of crafting AB 65, Elmore & McLaughlin again point out the gulf between lawyers and legislators; their views "never seemed to converge" (pp. 156-157). Even after Prop 13 passed and hope for a "level-up" approach to spending equalization waned, *Serrano* was a powerful constraint on legislative action. After the first-year bailout bill, which McDermott magnanimously agreed not to challenge in court (p. 186), longer-term proposals were all tested in light of *Serrano* (pp. 201-205). The bill finally adopted, AB 8, ran on principles governed by AB 65 (p. 207), not because it had any particular political constituency anymore (p. 214), but because it met *Serrano* most expediently (pp. 211-215). Looking back, Elmore & McLaughlin point out that "*Serrano* hawks and doves" all credit the court for "leveraging" reform (p. 230). They conclude that *Serrano* was "indispensable as an action-forcing device" (p. 230).

Other contemporary sources indicate that the legislature felt itself driven by *Serrano II*. A San Francisco Chronicle article (unsigned) of January 9, 1977, ten days after *Serrano II* was announced, included interviews with John McDermott, *Serrano*'s lawyer and (separately) with Albert Rodda.[140] "'The court gave its total affirmation in favor of the plaintiff,' rejoiced McDermott. 'Now the Legislature has no reason to dilly-dally any longer.'" The columnist (not McDermott) continued:

> Legislators did not take such a joyous view of the decision. They had prepared to return to Sacramento determined to bring relief to the state increasingly angry property owners, who complained of heavy taxes. Now estimates of the cost of implementing the *Serrano* decision ranged from $2 billion to $7 billion. "We're in deep trouble, sighed Senator Albert Rodda (Dem.-Sacramento), chairman of the Senate Finance Committee and the man on whose shoulders would fall much of the burden of finding a solution to the problem.

---

[139] Legislative staff members also regarded AB 65 as insufficient to respond to *Serrano*, but they consoled themselves with the possibility that the Court would subsequently require 100 percent recapture from wealthy districts. Elmore & McLaughlin, supra note 6, at 166.

[140] School Tax Change Order, S.F. Chronicle, Jan. 9, 1977, p. 5.

"Let's be practical. You can't do it all within the existing state surplus (money)," Rodda concluded.

When the Chair of the Senate Finance Committee sighs and says "we're in deep trouble," it suggests something other than what Stark & Zasloff call a "blasé attitude" toward the plaintiff.[141] Likewise a news article on April 8, 1977, in the Los Angeles Times declared: "The decision has caused resentment in the Legislature, not because many lawmakers like the current financial system but because many believe that political realities prevent radical change."[142]

The strongest evidence that Stark & Zasloff offer for the notion that the 1977 legislature was marching to its own drummer is their threat to put the question of school finance to a referendum. Stark & Zasloff cite a September 3, 1977, article from the *San Francisco Chronicle*:

> "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. The new campaign, kept secret until yesterday's floor debate, was announced by the Legislature's top spokesmen on education, Senator Albert Rodda (Dem-Sacramento) and Assemblyman Leroy Greene (Dem-Sacramento). A spokesman for the governor said that Brown also "favors the idea" but would have to review the specific text of such as 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."[143]

This was probably a bluff, and it was most likely directed at John McDermott, not the Court. By all accounts, McDermott was unusually aggressive in his dealings with the Legislature. A show of solidarity might have caused him to back off his promise to return to court and seek an injunction against AB 65.

If it was a bluff, it did not work. Days after the September 3 news conference about the constitutional amendment, McDermott again excoriated AB 65, again calling it a "fraud on the taxpayers" and promised to have the court overturn it.[144] McDermott did indeed bring the case back to the Supreme Court for expedited review, which the Court

---

[141] Stark & Zasloff, text at note 185.

[142] Robert Fairbanks, Brown Plan Tailored to Hard Reality, L.A. Times, April 8, 1977, p. 3.

[143] Larry Liebert, Legislature Approves Huge School Aid Bill, S.F. Chronicle, Sept. 3, 1977, at 1. I had not seen this article before, and the Los Angeles Times, which generally had better coverage of the legislature, did not report the incident.

[144] McDermott "predicted that the court would ultimately declare that the measure does not go far enough (toward *Serrano* compliance) and that taxpayers then will be asked for more money to do the job that, he maintained, the Legislature should have done this year." Fairbanks, supra note 128. How delaying a tax increase defrauds taxpayers was not explained.

did not grant, though it did not offer any approval of AB 65, either.[145] If the legislature had been serious about a constitutional amendment, there would have been at least some subsequent news about its being put on the ballot after McDermott had announced he was going back to court. Elmore & McLaughlin make no mention of the incident, even though their entire book is focused on the tension between the judiciary and the legislature. Their disregard of what would have been a quick resolution of the tensions they saw as central suggests that it was an unimportant feint in a long-term struggle.

It is easy to see why legislative leaders would be loathe to make a serious challenge to the *Serrano* decision. *Serrano* rested on the equal protection clause, and it cited long passages from Brown v. Board of Education.[146] Opponents of the proposed amendment could have painted the legislature's referendum as the equivalent of reversing *Brown* and eviscerating the equal protection clause.[147] The legislature was dominated by 1970s Democrats, and the prospect of such rhetoric would have deterred them from bringing it up again. McDermott surely knew this was the case, and it was easy to call their bluff by going back to court.

---

[145] Gene Blake, High Court Declines to Hear Serrano Decision Plea, L.A. Times, Jan. 20, 1978, Pt. I, p. 33.

[146] *Serrano I*, 5 Cal. 3d 584 at 606.

[147] Yoking *Serrano* to *Brown* is also one reason that California and other states with *Serrano*-style decisions have not undertaken constitutional amendments to void the decisions. Fischel, Homevoter Hypothesis, supra note 3, at 103-108.

§15. The "Dysfunctional" Senate Did Not Stall 1977 Tax Relief Bills

Stark & Zasloff make much of the dysfunction of the state senate and the two-thirds majority that finance bills had to obtain from both the Assembly and the Senate for passage as reasons for the failure to pass property-tax relief in 1977. This would be more plausible if there was an even split in the political parties or if the governor were of a different party than the legislature. After the 1974 elections, though, Democrats had just over two-thirds (55 of 80) of the seats in the Assembly, and their 25 of 40 Senate seats left them just two votes shy of a two-thirds majority in the upper house.[148] Nor had the two-thirds rule prevented California from adopting some of the nation's most ambitious and expensive social programs in the 1960s under the senior Governor Brown.[149] And it is perhaps relevant to note that juries of twelve strangers regularly make decisions under the most strenuous of supermajority rules, that of unanimity.

In their effort to picture the legislature as the source of the problem, Stark & Zasloff neglect that contemporary observers regarded the California legislature as something of a paradigm of efficiency. Elmore & McLaughlin do not overlook its complexities and the problems of the two-thirds rule, but they conclude that "By any reckoning, the California legislature was well equipped to confront a major school finance reform."[150] This was because of generous staffing, experienced aides, and the expertise of the Office of the Legislative Analyst.

I had previously indicated that property tax relief had failed in 1977 because the budget surplus had largely been used for *Serrano* compliance. That's what contemporary reports indicated. But the proposed tax relief also took a strange form. It was highly redistributional, aiming most of its relief at lower-income owners and renters. Instead of rate reductions, it proposed that the state send rebate checks to lower-income taxpayers. Even the Los Angeles Times editorial board had no use for such a program: "That is not tax reform. That is a new kind of handout."[151]

And the 1977 tax-relief bill had an unusual feature that was to reappear with the Behr bill in 1978. It called for a "split roll" assessment system in which homeowners would be taxed at a lower rate than others. This would mitigate the disproportionate increase in home assessments caused by inflation. The split roll would reduce the tax burden for homeowners by shifting it to nonresidential property. This would require a constitutional amendment, which was in fact put on the ballot for the following year as

---

[148] Elmore & McLaughlin, supra note 6, at 114-115. Democratic margins were even higher in 1978: 26-14 in the Senate and 57-23 in the House. 22 Book of the States, 1978-79, p. 13.

[149] Schrag, Paradise Lost, supra note 2, at 34-36.

[150] Elmore & McLaughlin, supra note 6, at 142.

[151] Editorial, A Death Deserved, L.A. Times, Sept. 9, 1977, pt. II, p. 6.

Proposition 8.[152] But the August 1977 bill had an interesting exception: The split roll would not apply to school taxes.[153]

This feature can only be explained by the legislature's need to comply with *Serrano*. AB 65 would have been completely undermined if property taxes for schools were reduced substantially. AB 65's fiscal structure required continuing reliance on property taxes.[154] It gave tax relief to some places (the "property-poor"), but it required continuing and eventually increasing property taxes from the high-tax-base districts. As the latter had been squeezed by the *Serrano I*-inspired "revenue limits"[155] of SB 90 and successive legislation, they were most likely those most upset with rising taxes. Moreover, even if alternative revenue could have been found to fund AB 65, directing property tax relief to property-rich districts would have flouted the *Serrano* criteria, which in any event would be met only to a rough approximation.

§16. The 1978 Behr Bill Left School Taxes Alone.

To a large extent, the causes of the 1977 legislature's failure to pass property tax relief are not especially important for my story. The legislature had a second chance to do it in 1978. After Jarvis's initiative had been certified with an alarming number of signatures, the legislature decided to take the movement seriously. Now the "historic divisions" of the Senate, the two-thirds rule, and internecine power plays were apparently of no consequence. The Behr bill (SB 1) was rammed through both houses

---

[152] John Balsar, State Senate Dumps Tax Relief Measure, S.F. Chronicle, Sept. 3, 1977, p. 1.

[153] Tom Goff, Property Tax Relief Wins Basic Approval, L.A. Times, Aug. 16, 1977, at 1. The plan provided for income-sensitive rebates for homeowners. "It would live or die, if finally written into law, on acceptance by the voters next year of a proposed constitutional amendment, still pending in the legislature, to permit different levels of tax assessment on residential and income-producing property. This so called 'split roll' feature, however, would not apply, under terms of Monday's agreement, to the levying of school taxes—the largest single portion of most persons' property tax bill."

[154] Evidence of this is that Prop 13 undermined AB 65 primarily because AB 65 relied on property taxation. Judge Olsen's careful history of school finance makes this clear: "The passage of Proposition 13 . . . resulted in an immediate shortfall of $2.8 billion in local funds, and required a totally new method of school finance heavily skewed toward state funding. It nullified the structure for reform set out in Assembly Bill No. 65, which relied primarily on provisions for redistribution of local property taxes from high to low revenue districts." *Serrano III,* 226 Cal. Rptr. 584 at 592 (Ellipses in original indicating deletions by the Court of Appeals of Judge Olson's opinion, which the Court of Appeals endorsed.)

[155] Revenue limits were invented by legislative staffers specifically in response to *Serrano I.* Elmore & McLaughlin, supra note 6, at 94. They permitted high-wealth districts to increase their budgets by a smaller percentage than low-wealth districts in the expectation that inflation and time would cause convergence in spending per pupil.

with almost no opposition.[156] It surely helped that the state's budget surplus had been revised upward again, so a legislatively-sponsored property tax cut was more affordable. Governor Jerry Brown signed the bill on March 3, 1978.

The Behr bill was not stillborn, and it was hyperbolic of me to have referred to it as "anemic."[157] It was, as Stark & Zasloff correctly point out, the largest tax cut the legislature had ever passed, and it showed early signs of persuading the public. Polls in March showed that it cut support for Prop 13. Even in early May, 1978, Behr and Jarvis were fairly close in the polls, and the number of undecided voters was large enough to push the election either way.[158]

The Behr bill's major problem, I think, was that its split-roll provision excluded property taxes meant for schools, and so school taxes, which are half of property taxes in most places, would continue to rise "disproportionately" for most homeowners. This is how I had read the one Los Angeles Times article that described it in detail.[159]

---

[156] The bill had originally been financed by a new tax on the profits of home sales, but that proposal had met with fierce opposition from the real estate industry and was quickly scrapped, thus requiring that its financing come from the ever-increasing budget surplus. Dick Turpin, California's Realtors Call Legislative 'Red Alert,' L.A. Times, Feb. 26, 1978, pt. __, p. 1; George Skelton and Jerry Gillam, Legislature Passes Property Tax Relief, L.A. Times, March 3, 1978, p. 1.

[157] Fischel, *How Serrano,* supra note 3, at 633.

[158] The Field poll found that support for Prop 13 had declined between February and early April. L.A. Times, Apr. 12, 1977, p. 3. In mid-May of 1978, polls found that Prop 13 was favored by 42 percent and opposed by 39 percent, with 19 percent undecided. Kuttner, supra note 11, at 74.

[159] Robert Fairbanks, Jarvis, Behr Measures Pit Owners Against Renters: Both Intended to Slow Tax Rise, L.A. Times, Apr. 23, 1978, 2, at 1. "But the bill exempts public school districts from its limits, and they are the form of local government that collects and spends about half the property taxes levied in the state — roughly $5 billion a year. True, public school property taxes are controlled by other sections of state law. But other sections are not as restrictive at the Behr bill, allowing significant tax and spending increases." Later in the same article: "The amendment [Prop 8] would permit all local governments, including schools, to use the split roll. However, because of the Behr bill's school exclusion, about half of the homeowner's tax bill will continue to rise disproportionately."

Stark & Zasloff question that reading,[160] but I have since obtained the text of the bill, and it confirms my original understanding of it. It is important to keep in mind that the constitutional amendment proposed by Prop 8 did not mandate a split roll system. It only authorized the legislature to adopt it. Behr's SB 1 adopted the split roll for all property taxes except schools.[161] The portion of homeowners' property taxes that went for schools was not to be lowered at all by the Behr bill. Given that school taxes were the largest single component of the property-tax, it is little wonder that homeowners would not be satisfied with the Behr bill.

Why didn't the Behr bill subject school taxes to the same restraints as other property taxes? Stark & Zasloff's answer to this question is that the legislature already had imposed limits on school spending through "revenue limits."[162] Revenue limits were put in place by SB 90 in 1972 and first applied in 1973-74 to respond to *Serrano I*, before the property tax revolt even started. They had obviously failed to control taxes to the voters' satisfaction.

---

[160] Stark & Zasloff at note 214. They appear to misunderstand what I actually said. Stark & Zasloff say, "The Times' use of "disproportionately," however, does not indicate (as Fischel seems to suggest) that the school portion of local property taxes would remain 'fully taxable.'" Id. It makes no sense, however, to say that taxes are taxable. What I said was "For school purposes, homeowners' *property* remained fully taxable." (How Serrano at 633, emphasis added). As the following note explains, my statement is supported both by the news article and the text of the bill itself. It also seems consistent with Stark & Zasloff's understanding of Prop 8, which elsewhere in their article (text at n. 123) they use as an example of a tax cut that did not give any property tax relief from rising school taxes.

[161] Section 1 of SB-1 would amend the Government Code: "The county assessor in each county … shall, upon request of the governing body of such jurisdiction, *excluding a school district,* furnish not later than May 15 of each year an estimate of…" [Emphasis added.] This is followed by two subparagraphs, the first relating to assessment of owner-occupied dwellings and the second to all other property. These separate estimates are necessary to implement the split-roll system to be permitted by Proposition 8. Thus it is clear from the outset that property taxes for schools are not to be part of the split roll system.

The other mention of schools comes at the end of Section 8 of the Behr bill: "The maximum property tax rates for local agencies shall be those established pursuant to the provisions of this article … and shall exclude the following from the determination thereof: … and (3) *any property tax rate levied on behalf of a county superintendent of schools.*" [emphasis added]

The specific exclusion of schools from the split-roll reassessment process makes it clear that property tax revenues needed to fuel AB 65 were not to be affected by the Behr bill, though it does not obviously cross-reference AB 65. Equally convincing is the exclusion of school property taxes, which are collected by the county superintendent, from the new ceilings imposed by the Behr bill.

[162] Stark & Zasloff, text at note 209.

The term "revenue limit" is actually misleading. It seems to imply no more than a cap on a school district's ability to raise revenue. Revenue limits did restrain tax increases in high tax-base districts, but this was hardly satisfactory to voters in those locales, who typically wanted to spend more. But that same cap was also part of the state's obligation to provide funds so that most districts could achieve the level of spending in order to comply (approximately) with *Serrano II.*[163] Revenue limits were as much state obligations as they were local constraints.

I had claimed that because "the state could not afford to forego inflation- driven local property taxes from homeowners" to fund AB 65,[164] the Behr bill could not touch school taxes without revisiting *Serrano*. The Behr bill did not reduce or reallocate school property taxes because AB 65 needed those revenues to be viable and meet its revenue-limit obligations. Stark & Zasloff paraphrase this as, "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."[165]

Here, Stark & Zasloff are putting words in my mouth. My phrase, "to forego inflation driven local property taxes from homeowners," did not assume that recapture was the primary or even necessary way by which AB 65 would obtain property taxes. Most of the property taxes that were allocated for AB 65 simply came from a state-mandated tax rate, a mandate that followed from *Serrano*, even if it did not entirely fulfill the tax-equity side of it.[166] This was made clear by an article on AB 65 by John Mockler and Gerald Hayward, who had participated in the drafting of the law.[167] They pointed out that AB 65 was founded on property taxation. The minimum rate that all districts had to adopt — there was no local choice in this — was 3.87 per $100. Since property was required to be assessed at 1/4 of market value, the "real" property tax rate was almost one percent (.9675 percent, to be exact). This was expected to generate an amount that would cover 64 percent of the *Serrano*-compliance cost of AB 65.[168]

The general property-tax rate of AB 65 amounted to a substantial increase in taxes for property-rich districts. Even if the rate did not increase over time, continued inflation of home values, which for school purposes remained fully taxable (that is, not taxed at the lower split-rate provided for by the Behr bill), would cause homeowners' property

---

[163] Mockler and Hayward, supra note 35, at 394-96.

[164] Fischel, *How Serrano,* supra note 3, at 633.

[165] Stark & Zasloff, text at note 206.

[166] I am not referring here to the relatively minor (in terms of total dollars) minimum tax rate established by AB 65 to get funds from the very wealthiest districts, which had been able to achieve foundation levels at less than the foundation tax rate. What I refer to are the property taxes required of all districts to implement AB 65. For almost all districts, the school property tax rate was now dictated by the state. California State Department of Education, California Schools Beyond Serrano: A Report on Assembly Bill 65 of 1977, at 16-17 (1979).

[167] Mockler and Hayward, supra note 35.

[168] Id. at 394.

taxes to continue to rise. Recapture was an entirely different part of AB 65, and, at least in its early years (which were aborted by Prop 13), they would have been small.

Stark & Zasloff's attempt to tie my analysis to the magnitude of recapture is entirely misplaced. I did not claim that recapture "broke the Tiebout equilibrium."[169] One does not need recapture to seriously disturb the Tiebout equilibrium. By far the most important agent of destruction was *Serrano*'s insistence on equal expenditure per pupil, a command that was substantially complied with in AB 65. Once equal spending is established, voters do not need more reason to jettison the property tax, which, taken outside of the pay-for-what-you-get context, is a rather obnoxious tax to pay.

Of course there were other differences between Behr and Jarvis besides Behr's exclusion of school taxes. The most important were that Prop 13 both rolled back assessments and gave a stronger assurance that they would not inflate by limiting subsequent revaluations to no more than two percent per year as long as the owner held on to the property. Jarvis also put the constraints in the constitution, not in the hands of present and future legislatures. But Jarvis's initiative had two huge drawbacks. Commercial and industrial property, which statewide paid about half of all property taxes, got the same tax reduction that homeowners did. The other was that Jarvis guaranteed nothing to renters. If it was just a matter of calculating dollars to go to voters, the Behr bill should not have done so badly compared to Prop 13. That is why the Behr bill's exclusion of school taxes seems so critical. Without it, it is hard to see why voters wouldn't have treated Behr's alternative more respectfully.

Behr's SB 1 was constrained by *Serrano* in another way, besides the aggregate amount of taxes involved. *Serrano* made distribution of the tax reductions important. Suppose that the Behr bill did reduce property tax revenues that were earmarked for schools by AB 65 and replaced them with another statewide tax, say by raising income taxes. This would have violated the *Serrano* principle of equalization of property tax bases, since more tax relief would have gone to "property-rich" districts than others.[170] It would have widened the disparities in tax-base per pupil that were still permitted in AB 65 and of which John McDermott had so vigorously complained in his attempt have the California Supreme Court review the law without a trial. He lost that appeal, but the Court had simply adopted a wait and see approach and directed him to the trial court.[171] Had the legislature in the meantime marched in the opposite direction on the property tax, McDermott's odds of succeeding in having AB 65 overturned would have been greatly improved.

§17. The Not-So-Infallible Pope.

---

[169] Stark & Zasloff, text at note 207.

[170] This may account for the peculiar form of property tax relief that had almost passed in September of 1977. Its major feature was rebates to individual homeowners based on their income, not on their property ownership. This form of property-tax reduction might have been more defensible against a *Serrano* challenge, since it would not obviously affect local tax rates.

[171] Blake, supra note 145.

Much of the commentary on Prop 13 dwells on how the anti-Jarvis forces collapsed in May of 1978, less than four weeks before the June 6 election.[172] The premier event was the earlier-than-usual (but not illegal) release of homeowner assessments by the Los Angeles County assessor, Alexander Pope. In order to manage its workload, the LA County assessor's office reassessed only one-third of the county's taxable parcels each year. Early in 1978, people working in the assessor's office privately informed some outsiders that the increases were very large, and soon Pope's office began to get inquiries from anxious homeowners. Rather than give out only selective information or stonewall them completely, he decided to mail all the new assessments a month earlier than usual. He said he did so because he did not want to be accused of hiding the bad news until after the June 6 election.[173]

The increased assessments touched off a firestorm of protest from homeowners, since there was no assurance tax rates would be reduced proportionately. The Los Angeles County Council first ordered the assessments rescinded, but then changed their minds because other taxpayers — the two-thirds who had not been reassessed that year — complained that they would be stuck with higher tax bills. Governor Brown issued conflicting statements, and the whole political establishment that had campaigned against Jarvis began looking foolish. The Jarvis forces took full advantage and sailed into the June election with ever-increasing evidence that they would win big.

I am puzzled by the idea that Pope's action was decisive. For one thing, it was truthful, and it was consistent with what most professionals at the time knew to be so: Property values, especially single-family homes, were inflating rapidly.[174] Mr. Pope could not lie about it even if he wanted to. Assessors in several San Francisco Bay counties had released assessments even earlier.

Suppose, however, Mr. Pope had simply refused to respond to the inquiries about the assessments, saying (truthfully) that it was his office's practice to release them at a later time in the year. Then newspapers would begin to report the evidence, either leaked from employees in the assessor's office or easily inferred by any number of real-estate professionals. Pope would have had to balk at inquiries by news media as well as the public.

This sounds like the makings of a scandal that would have been at least as bad for the anti-Jarvis forces as the truth about home values. Not only would it be pointed out that assessments were rising rapidly, but the public would be treated to more evidence that government officials were out of sympathy with their growing property tax burdens. To blame Prop 13 on Pope's release of assessments is simply blaming the bearer of evil tidings for the news that he brings. The bad news was that it would take much more than the half-hearted split role proposed by the Behr bill to control property taxes.

---

[172] Kuttner, supra note 11, at 74-77; Sears and Citrin, supra note 28, at 28-31.

[173] Alexander H. Pope, The Assessor's Perspective, 53 *Southern California Law Review* 155 (1979). Pope had opposed Prop 13. Bruce Keppel, Pope Supports Behr Tax Relief Plan as 'Superior,' L.A. Times, April 12, 1978, p. 3.

[174] Leo Grebler and Frank G. Mittelbach, The Inflation of House Prices: Its Extent, Causes, and Consequences 11 (1979).

§18. Conclusion: Why *Serrano* Should Be Modified.

I am grateful to Kirk Stark and Jonathan Zasloff for subjecting my argument that *Serrano* caused Proposition 13 to exacting scrutiny. This is not the usual obligatory nod in polite academic circles, after which the author demonstrates that he's not at all grateful to have his pet theory challenged. The reason for my gratitude is that a controversial idea that is not challenged by serious scholars is not taken seriously.[175]

Stark & Zasloff are among the best-qualified scholars to undertake this reexamination. They understand and nicely articulate the economic model of local government on which my theory is based; they are familiar with the scholarship on school finance litigation and voter initiatives; they have a well-informed command of modern statistics (which happily keeps them from such statistical barbarities as the *Serrano* plaintiffs dwelt upon); and they are ensconced as professors in a law school located in Los Angeles County, from which both *Serrano* and Proposition 13 can trace their origins. If anyone should be able to upend my theory, it is them. I believe that they have failed in this task.

This failure increases my confidence that without *Serrano*, Proposition 13 would not have passed. What's compelling about my explanation for Prop 13 is not its appeal to statistical evidence, which I nonetheless think does support it. It is that no other story works as well. To beat my story you cannot just show that it has some gaps. You have to tell a better story, and Stark & Zasloff have not. The nearest they come to any positive account of Prop 13 is to repeat the old line about the revolt of the rich and the elderly and maybe the GOP. That story is palpably wrong. If polls are to be believed, the votes of the rich and the elderly and the Republicans could have been discarded in turn, and Prop 13 would still have passed handily.

What makes the debate about Prop 13's cause worthwhile is that it may explain why it persists into the present century. A Field Poll in 1998 found that when asked if they would vote for Prop 13 today, 53 said yes, 30 percent said no, and 17 percent were undecided.[176] (I should own up to a bad prediction on my part: I wrote in a 1990 book review that Prop 13 would "not outlast the century" because of its bizarrely unfair assessment practices.[177]) If we can understand the underlying cause of Prop 13, we might be able to discover how it could be modified in ways acceptable to a majority of California voters.

---

[175] Stark & Zasloff, n. 19, kindly point out the influence my hypothesis has had in some academic circles, but I have found that it does not go over well in political circles. The right wing does not like it because it prefers to see Prop 13 as a general revolt against taxes rather than a response to a specific event. The left dislikes the idea that one of its favorite ideas, school-finance equalization, could have had such disastrous consequences.

[176] Annals of the Taxpayer Rebellion, Washington Times, June 27, 1998.

[177] Fischel, Review of Property Taxes and House Values: The Theory and Estimation of Intrajurisdictional Property Tax Capitalization by John Yinger et al., 9 Journal of Policy Analysis and Management 282 (1990).

Misapprehension of Prop 13 as a general tax revolt rather than a response to *Serrano* may have led state and national politicians to misread public sentiment about taxes. If I am correct about the *Serrano*-Prop13 connection, there was no reason to believe that voters had actually become disenchanted with the level of taxes and spending in other areas of California's public sector or in other states or at the national level. A few scholars and commentators at the time did suggest that Prop 13 was unique to California circumstances[178] or pointed out that anti-tax sentiment in both California and elsewhere was the same before and after Prop 13.[179]

Most commentators, however, took Prop 13 as the starting gun for a major shift in voter preferences.[180] In doing so, they may have steered political leaders in the wrong direction, causing governments to reduce taxes and spending by more than the voters wanted. Now, I doubt this did much long-term harm, since elections would soon produce leaders who would happily spend and tax more. But it may have done longer-term damage to local governments. If Prop 13 is viewed simply as a property tax revolt rather than a revolt against the disconnect between local taxes and local spending that resulted from *Serrano*, political leaders may get the wrong message and adopt tax systems that are inferior to property taxes to accomplish their goals.

I propose a reform of *Serrano* that would loosen the bonds of Prop 13. If it works, it would increase money available to the genuinely poor and disadvantaged, it would probably increase average spending on education, and it would reduce opposition to reforms of Prop 13. The way to do this is to drop the Coons-Clune-Sugarman justification for court intervention. It insisted on property tax-base equalization. The focus on property tax base unnecessarily conflicts with assisting the poor and disadvantaged, since many of them live in districts that have large amounts of tax base.

Coons and company realized this. Their only reason for advancing it was that they thought it would be the only argument that the federal courts would accept.[181] It turns out that the federal courts did not accept this argument or any other. The Coons tax-base approach then was turned to the state courts, where it became the basis for *Serrano*. However, as the *Serrano* idea has spread to other states, state courts have

---

[178] Frank Levy, On Understanding Proposition 13, 56 Public Interest 66 (1979).

[179] Paul Peretz, There Was No Tax Revolt! 11 Politics and Society 231 (1982). See also David D. Schmidt, Citizen Lawmakers (1989) (p.139: "Most of the measures patterned after Proposition 13 failed.")

[180] E.g., Kuttner, supra note 11, at 201-222; Sears and Citrin, supra note 28, at 267-275; Schrag, Paradise Lost, supra note 2, at 259-283.

[181] Joseph T. Henke, Financing Public Schools in California: The Aftermath of Serrano v. Priest and Proposition 13, 21 University of San Francisco Law Review 1 (1986); Elmore & McLaughlin, supra note 6, at 50; Kirp, supra note 22, at 99-100. Jack Coons, however, became convinced that tax-base sharing is a compelling goal by itself. Elmore & McLaughlin, at 44, n. 32.

found for plaintiffs on grounds other than tax-base inequality.[182] From what scholars can tell, it does not matter much what the state constitution says.[183]

Courts have found reason to intervene in school finance on any number of grounds. Given that, there is no longer any reason for any court to apply the Coons formula.[184] Plaintiffs can go back to what the reformers originally wanted, a focus on the truly disadvantaged.[185] Beverly Hills and San Francisco do not have to give up any of their local taxes for Baldwin Park to get more state aid. All that is needed is a finding that Baldwin Park's state aid and local resources are inadequate to provide for its education. Courts can thus order that more money be sent to Baldwin Park or even San Francisco and Los Angeles, even thought they are nominally "property rich." This extra money would come from the true wealth of the state, its income-tax base. Income taxes tap flows from all forms of wealth, including labor, land, and capital. Thus even the Coons ideal of a commonwealth of tax base (misidentified as being property tax base) can be invoked to provide for a minimum adequacy standard.

It is also worth noting that the Coons property-tax-base fairness principle is thoroughly discredited among economists, a point with which Stark & Zasloff generally seem to agree.[186] The reason that property tax differences among communities are not unfair is because homebuyers take the differences into account when they purchase a home there. Thus households who buy homes in low-tax Commerce have to pay more

---

[182] Peter D. Enrich, Leaving Equality Behind: New Directions in School Finance Reform, 48 Vanderbilt Law Review 101 (1995); Anna Lukemeyer, Courts as Policymakers: School Finance Reform Litigation (2003).

[183] Molly McUsic, The Use of Education Clauses in School Finance Litigation, 28 Harvard Journal on Legislation 307 (1991); Julie K. Underwood, School Finance Litigation: Legal Theories, Judicial Activism, and Social Neglect, 20 J. Education Finance 143 (1994).

[184] At least one of the authors of the Coons, Clune, and Sugarman approach, supra note 7, apparently agrees that it is no longer necessary. Paul A. Minorini and Stephen D. Sugarman, School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future, in Equity and Adequacy in Education Finance, (1999) at 64: "… the adequacy banner is a successful reemergence of the early, then unsuccessful, educational 'needs' theories of the legal aid lawyers. This suggests that the relative caution exhibited by the Coons team and other early legal theorists may have been unwarranted."

[185] This would comport with the "minimum equal protection" advocated by Frank Michelman, Forward: On Protecting the Poor Through the Fourteenth Amendment, 83 Harvard Law Review 7 (1969). A minimum adequacy standard has been embraced by New York school-finance litigators. Michael Rebell, *Rodriguez* Revisited: An Optimist's View, 1998 Ann. Surv. Am. L. 289, and the New York Court of Appeals recently ruled in their favor in Campaign for Fiscal Equity v. State of New York, 2003 N.Y. LEXIS 1678. The New York Court focussed on the concentration of disadvantaged children in New York City and pushed aside the fact that the City's tax base is actually richer than average.

[186] Stark & Zasloff, note 30.

than they would for an otherwise identical house in high-tax Garden Grove. The Commerce family has paid for its privilege in advance or, more likely, with a higher monthly mortgage payment. The Garden Grove family does pay higher taxes, but its lower monthly mortgage payments makes those higher taxes affordable.[187] As long as buyers know about tax differences and respond to them, as scores of economic studies have demonstrated they do, the Coons fiscal-equity argument is flat out wrong.

I will close with an insightful observation by Stark & Zasloff. In explaining why the legislature did not respond to critics of AB 65 with a referendum, Stark & Zasloff wrote: "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 California Supreme Court because, at the most basic level, they agreed with those impulses."[188]

As Melstner et al[189] clearly demonstrated, the legislature had an equalitarian outlook on school funding before *Serrano I*. The problem of *Serrano* was not that the goals were different; the problem was that the Court selected the wrong criterion, the property tax base, with which to attack inequalities, and it fashioned a solution that allowed so little compromise with voter preferences. The legislators, unlike the judges, had to meet the voters, who care about local control as well as equality.

Having been liberated by the court from the voters, most legislators were doubtlessly doing what they would have liked to do. Some legislators grumbled about AB 65's cost, and legislative leaders were put off by the Serrano lawyers' take-no-prisoners tactics, but the great majority were pleased with the outcome, given that they'd been given a free pass on the school finance issue. The free pass was the source of the problem, not its solution. It put the legislators at odds with the voters, to whom they are otherwise reasonably well attuned.[190]

---

[187] This was first pointed out by Bruce W. Hamilton, Capitalization of Intrajurisdictional Differences in Local Tax Prices, 66 American Economic Review 743 (1976). For a recent confirmation of tax capitalization, see Oded Palmon and Barton A. Smith, New Evidence on Property Tax Capitalization, 106 Journal of Political Economy 1099 (1998). When I explain this idea, I almost always get a response like, "but people in Garden Grove may also be poorer than those in Commerce." Exactly, I say, and poverty is what we should be concerned about. (In fact, though, Commerce's residents had lower average incomes than those of Garden Grove.) But that was not what the Coons standard held. Even after it became generally known that a majority of the poor and blacks lived in high tax-base districts, Coons and the *Serrano II* court stuck doggedly to the idea that tax equity requires equalization of tax bases. Elmore & McLaughlin, supra note 6, at 58.

[188] Stark & Zasloff, text at note 185

[189] Arnold J. Meltsner, Gregory W. Kast, John F. Kramer, and Robert T. Nakamura, Political Feasibility of Reform in School Financing: The Case of California (1973).

[190] This might have been less true in the 1960s, prior to the application of the one-person, one-vote principle to both houses of the legislature. Silver v. Brown, 63 Cal. 2d 270 (1965). But the 1977 legislature was apportioned according to population, and Los

Serrano is now part of California's political culture and, to a large extent, the political culture of the nation as a whole. For this *Serrano*'s intellectual and legal parents can take a good deal of credit. There is no point in simply reversing *Serrano* or discarding its key concerns with the education of the poor. All I have tried to point out is that *Serrano II's* uncompromising remedy, the $100 band, which follows from *Serrano's* insistence on property-tax-base sharing, is not congenial to its ideals. It may be time for the California court to admit it made a mistake and revisit *Serrano* so that its remedy can match its ideals.

Angeles County, which formerly was limited to one seat in the 40-member state senate, by 1977 had (or shared with an adjacent county) sixteen senators. Robert B. McKay, Reapportionment: The Law and Politics of Equal Representation (1965); California Secretary of State, Statement of the Vote and Supplement, Primary Election, June 6, 1978, at 196-197.

Appendix: City-Districts in Statistical Samples.

Following are the 82 city-districts for regressions in Tables 1 and 3 and scatter points in Figure 1, discussed in section 6. Those in *italics* constitute the 53 city-districts for the regression in Table 4 and scatter points in Figure 4, discussed in section 9: *Alameda,* Albany, *Antioch, Arcadia, Baldwin Park,* Banning, Bellflower, Benicia, *Berkeley, Beverly Hills, Burbank,* Calistoga, Carlsbad, Carpinteria, *Chino, Claremont,* Cloverdale, Colusa, *Compton,* Coronado, *Culver City, Davis,* Dixon, *Downey,* Duarte, El Segundo, Emeryville, Fillmore, *Fontana, Fremont, Fresno, Gilroy, Glendale, Glendora, Hayward, Inglewood,* Ione, Laguna Beach, *Livermore, Long Beach, Los Angeles,* Los Banos, *Lynwood,* Martinez, *Milpitas, Monrovia, Napa,* Needles, *Newark, Novato, Oakland, Oceanside,* Pacific Grove, *Palo Alto,* Paramount, *Pasadena,* Piedmont, *Pittsburg, Pomona, Redlands, Rialto, Sacramento, San Bernardino, San Diego, San Francisco,* San Jacinto, *San Leandro,* San Marino, Santa Clara, *Santa Monica, Simi Valley,* South Pasadena, *South San Francisco, Stockton,* Temple City, *Torrance, Vacaville, Vallejo, Visalia,* Williams, *Woodland, Yuba City.*

The 36 city-districts in the Los Angeles County sample used in the regression in Table 2 and the scatter points in Figure 2, discussed in sections 6 and 7, are the 29 from my original sample (Fischel, How Serrano, note 63) plus the seven city-districts in italics: Arcadia, Azusa, Baldwin Park, Bellflower, Beverly Hills, Burbank, *Cerritos (ABC USD)*, Claremont, Compton, *Covina (Covina Valley USD)*, Culver City, Downey, Duarte, El Segundo, Glendale, Glendora, Inglewood, Long Beach, Los Angeles (by far the largest), Lynwood, Monrovia, Montebello, *Norwalk (Norwalk-LaMirada USD), Palos Verdes Estates (Palos Verdes Peninsula USD)*, Paramount, Pasadena, *Pico Rivera (El Rancho USD)*, Pomona, *San Dimas* (Bonita USD), San Marino, Santa Monica, South Pasadena, Temple City, Torrance, *Walnut (Walnut Valley USD)*, and West Covina.

The 135 city-district sample used in Figures 3, 5, and 6, discussed in sections 8, 9, and 10, is listed in Stark & Zasloff, Tiebout and Tax Revolts, Appendix I.

The 31 no-property-tax cities in 1980, discussed in section 9, are Pleasant Hill, Lafayette, Cerritos, Artesia, Cudahy, Norwalk, Lawndale, Bellflower, Lomita, Rolling Hills Estates, Rosemead, Temple City, Carson, Commerce, Palmdale, La Mirada, Paramount, Pico Rivera, La Puente, South El Monte, Yorba Linda, Victorville, Colma, Foster City, Simi Valley, Thousand Oaks, and Camarillo.

Table 1: Regression on Watson-to-Jarvis SWING for the 82-district statewide sample.

Dependent Variable: SWING

R-square	0.674		
Adjusted R-square	0.657		
Observations	82		
Independent Variables:	*Coefficients*	*t Stat*	*P-value*
Intercept	-0.16694582	-1.20	0.232
INCOME	0.00003978	7.63	0.000
VALUE/PUPIL	0.00000188	1.41	0.162
SENIORS	3.13140624	5.45	0.000
BLACK	-0.87567595	-4.02	0.000

Table 2: Regression on Watson-to-Jarvis SWING for the 36-district Los Angeles County
sample.

Dependent Variable: SWING

R-square	0.828		
Adjusted R-square	0.805		
Observations	36		
Independent variables:	*Coefficients*	*t Stat*	*P-value*
Intercept	0.0683269	0.42	0.680
VALUE/PUPIL	0.0000034	0.93	0.359
SENIORS	3.9557288	3.06	0.005
INCOME	0.0000191	3.92	0.000
BLACK	-0.9258957	-3.83	0.001

Table 3: Regression on Watson-to-Jarvis SWING without Emeryville in the statewide sample

Dependent Variable: SWING

R-square	0.684		
Adjusted R-square	0.667		
Observations	81 (Omits Emeryville)		
Independent Variables:	*Coefficients*	*t Stat*	*P-value*
Intercept	-0.1558034	-1.14	0.256
INCOME	0.0000385	7.47	0.000
BLACK	-0.8005707	-3.69	0.000
SENIORS	2.6724360	4.40	0.000
VALUE/PUPIL	0.0000041	2.40	0.019

Table 4: Regression on Watson-to-Jarvis SWING for 53-district sample from Census of Governments, showing that municipal tax growth does not account for SWING.

Dependent Variable: SWING

R-square	0.740		
Adjusted R-square	0.712		
Observations	53		
Independent Variables:	*Coefficients*	*t Stat*	*P-value*
Intercept	-0.4684917	-2.32	0.025
MUNICIPAL	-0.0387905	-0.72	0.476
INCOME	0.0000508	6.60	0.000
BLACK	-0.6017853	-2.73	0.009
SENIORS	4.3322254	5.90	0.000
SCHOOL	0.0890556	0.87	0.389

Table 5: Household Income and Votes for Prop 13

| INCOME LEVEL:	FAVORED PROP 13:
less than $10,000	52 percent
$11,000 to $20,000	59 percent
$21,000 to $30,000	67 percent
more than $30,000	69 percent
(Source: Sears and Citrin, Tax Revolt, p. 98 [Table 5.1] (1985)	

Figure 1: SENIORS versus VALUE/PUPIL

Scatter diagram of SENIORS (city percent of 1980 population over age 65 in city) and VALUE/PUPIL (school district tax-base per pupil in 1977-78) for the 82-district sample.
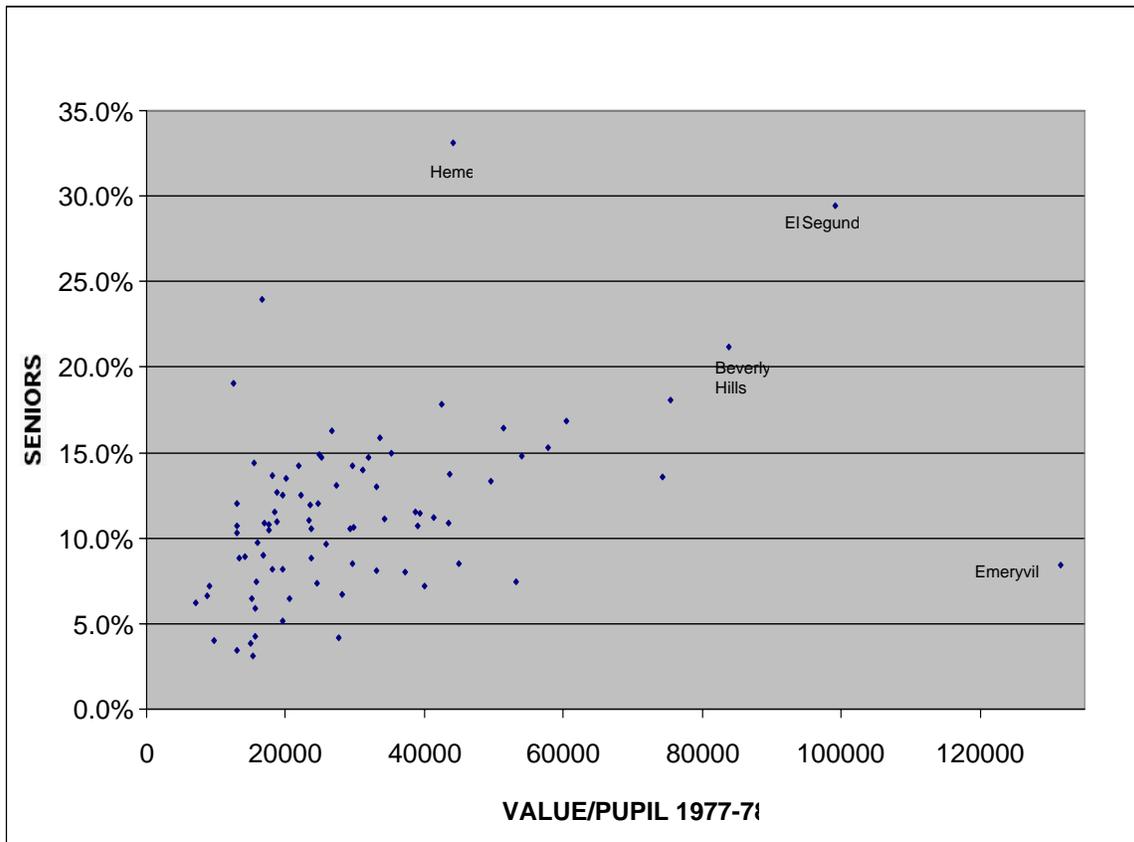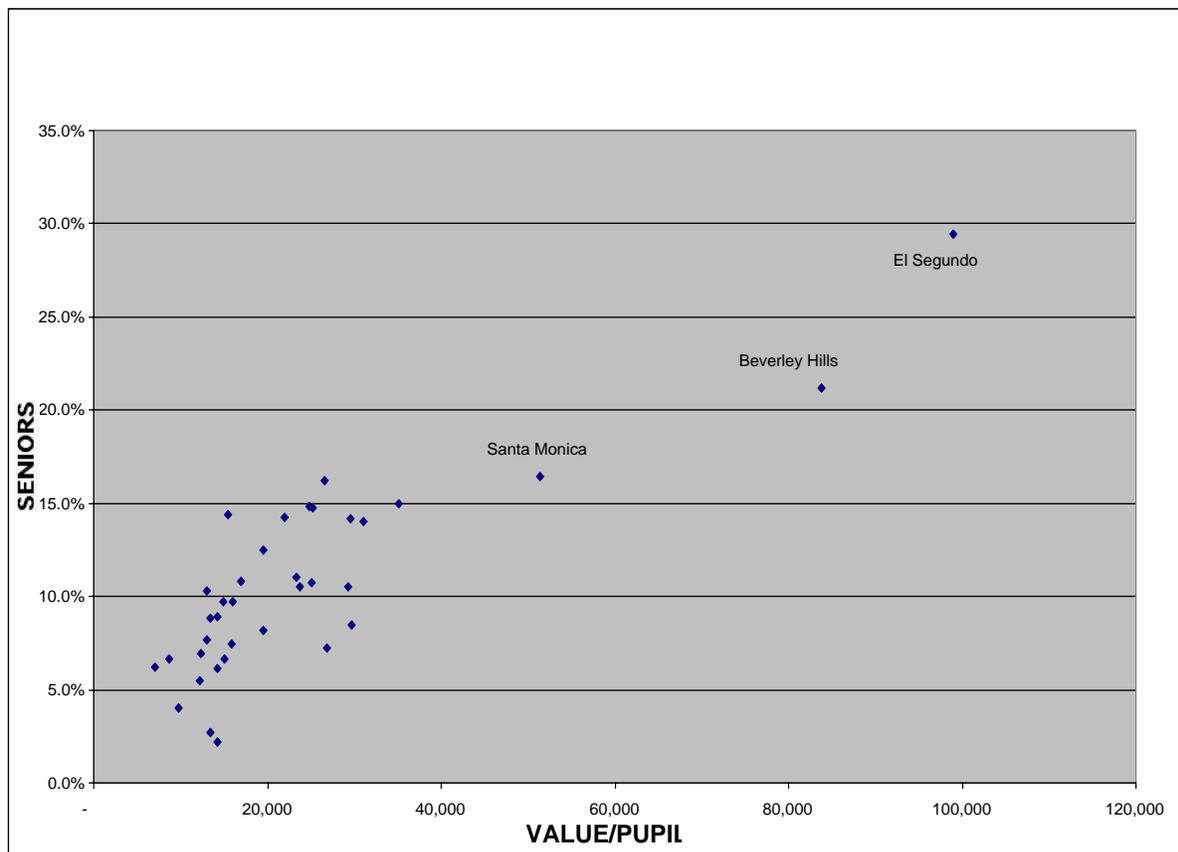
Figure 2: SENIORS versus VALUE/PUPIL, L.A. County

Scatter diagram of SENIORS (city percent of 1980 population over age 65 in city) and VALUE/PUPIL (school district tax-base per pupil in 1977-78) for the 36-district Los Angeles County sample.

Figure 3: SENIORS versus Children

Scatter diagram of SENIORS (1980 city population over age 65) and percent of children under 18 within the city for Stark & Zasloff's 135-city sample.
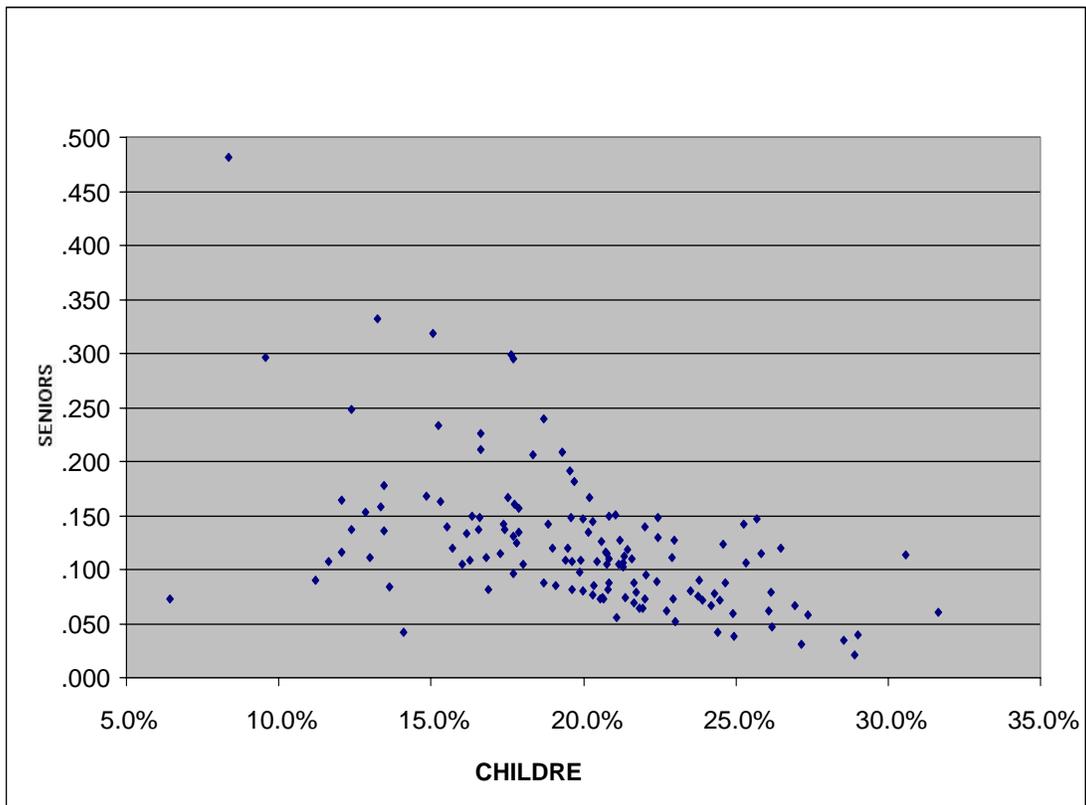
Figure 4: MUNICIPAL versus SWING

Scatter diagram for MUNICIPAL (percent change in municipal property taxes from 1972 to 1977) and SWING (percent change in support for property tax initiative from 1972 to 1978) for 53-city Census of Governments sample.
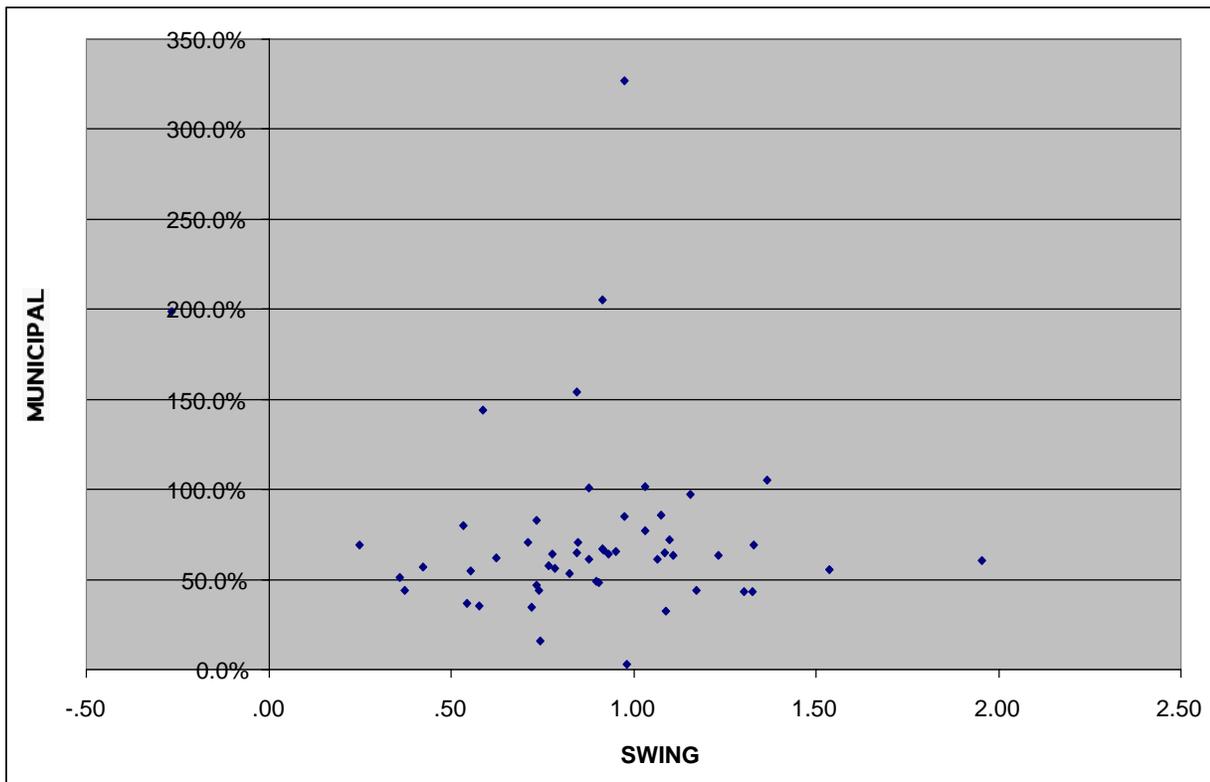
Figure 5: Behr versus Jarvis

Scatter diagram of percent of city votes for Behr (Prop 8) and for Jarvis (Prop 13) for 135-city sample
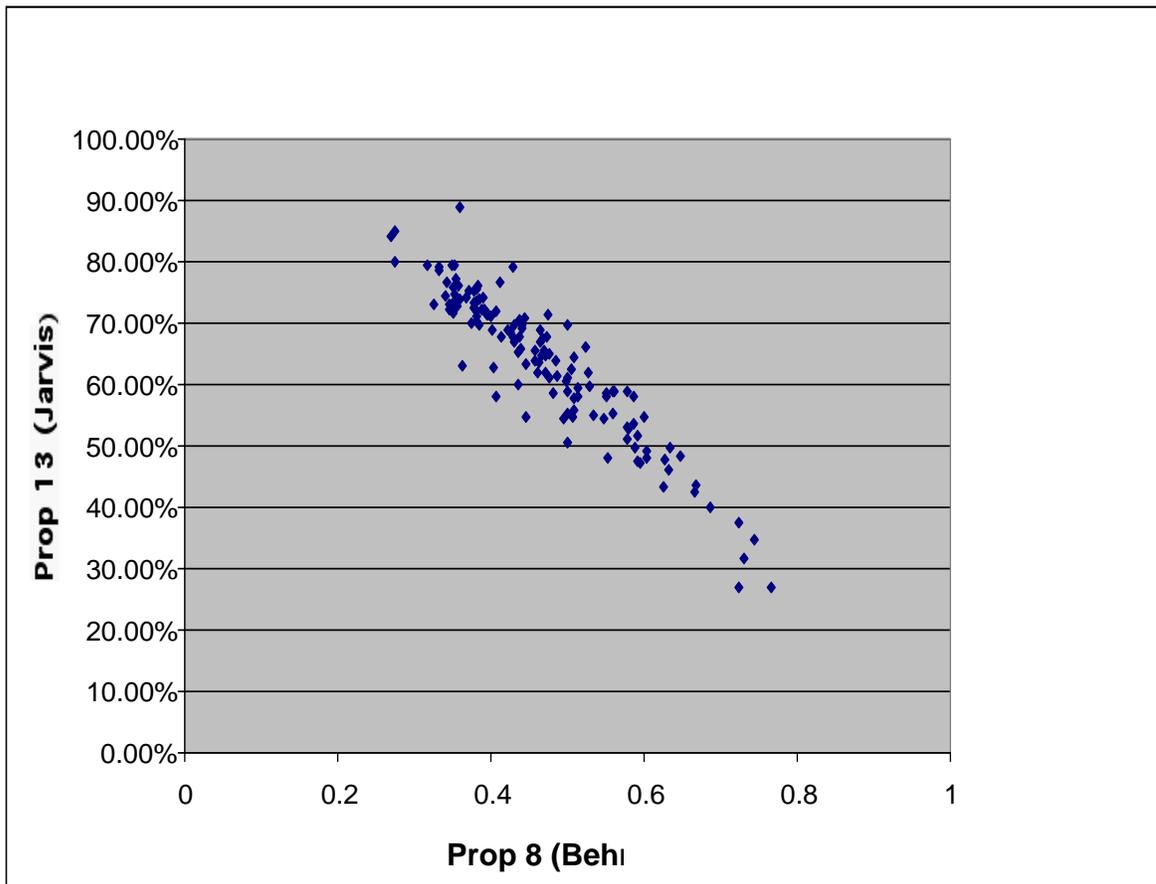
Figure 6: SWING(8-13) versus Jarvis

Scatter diagram of the Behr-Jarvis SWING (percentage change in city votes favoring Prop 8 to those favoring Prop 13) and Jarvis (percentage of city voter for Prop 13), 135-city sample.