DID JOHN SERRANO VOTE FOR PROPOSITION 13? A REPLY TO STARK AND ZASLOFF'S "TIEBOUT AND TAX REVOLTS: DID *SERRANO* REALLY CAUSE PROPOSITION 13?"

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In several previous articles, I argued that California's famous school-finance decision, Serrano v. Priest, *which required equalized school spending, caused Proposition 13, which decimated property taxes in 1978. In an article in this* Review *in 2003, Kirk Stark and Jonathan Zasloff contested my explanation of Prop 13. My statistical evidence was a strong correlation between tax base per pupil in Los Angeles County school districts and the districts' vote swing from a defeated 1972 property tax-limitation initiative to the successful 1978 vote. In contrast, Stark and Zasloff found that school districts with larger proportions of high income and elderly voters, not those with a high tax base per pupil, accounted for the swing in votes between 1972 and 1978. In the present Article, I show that their primary results are entirely consistent with my hypothesis. I further demonstrate that Stark and Zasloff's other statistical inquiries are not germane to the causes of Prop 13. I also parry their claim that institutional problems, rather than compliance with the* Serrano *decision, undermined the legislature's response to the tax revolt. The Article concludes by suggesting that the basis for the* Serrano *litigation—tax base inequalities—has outlived its usefulness and that an educational adequacy standard ought to replace the* Serrano *standard.*

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INTRODUCTION

In 1978, California voters passed Proposition 13, a constitutional amendment that rolled back property tax assessments and cut rates on all property to a maximum of 1 percent of 1975 property values.[1] Proposition 13 allowed assessments to rise by no more than 2 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 publications[3] I have argued that Proposition 13 was caused by the *Serrano* decisions[4] and the legislative responses to them. By requiring nearly equal school expenditures per pupil statewide, *Serrano* divorced local property taxes from the amount of local school spending.[5]

1. CAL. CONST. art. XIII A, §§ 1–2.

2. *See* PETER SCHRAG, PARADISE LOST: CALIFORNIA'S EXPERIENCE, AMERICA'S FUTURE 69, 87 (1998); Fabio Silva & Jon Sonstelie, *Did* Serrano *Cause a Decline in School Spending?*, 48 NAT'L TAX J. 199 (1995).

3. Those referred to in this Article are: WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES 98–128 (2001) [hereinafter FISCHEL, HOMEVOTER HYPOTHESIS]; William A. Fischel, *Did* Serrano *Cause Proposition 13?*, 42 NAT'L TAX J. 465 (1989) [hereinafter Fischel, *Did* Serrano]; William A. Fischel, *How* Serrano *Caused Proposition 13*, 12 J.L. & POL. 607 (1996) [hereinafter Fischel, *How* Serrano].

4. Serrano v. Priest, 487 P.2d 1241 (Cal. 1971) (*Serrano I*); Serrano v. Priest, 557 P.2d 929 (Cal. 1976) (*Serrano II*). I have not encountered a more comprehensible overview of *Serrano* and Proposition 13 and their relation to one another than that by Lester Olsen, the trial judge whose opinion was adopted in whole by the appellate court in *Serrano v. Priest*, 226 Cal. Rptr. 584 (Cal. Ct. App. 1986) (*Serrano III*).

5. The requirements of *Serrano II* were not entirely clear. *Serrano I*, 487 P.2d 1241, 1247 (Cal. 1971), had endorsed, among others, the principle of "district power equalization," which had been prominently advanced by John Coons, William Clune, and Stephen Sugarman. JOHN E. COONS, WILLIAM H CLUNE, & STEPHEN D. SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION (1970). Its most controversial feature, called "recapture," requires districts with above-average tax bases to send much of their locally generated property taxes to other districts as a condition for spending more on their own students. Stephen D. Sugarman, *Principled* Serrano *Reform*, 4 HASTINGS CONST. L.Q. 511, 523 (1977). This is tantamount to merging the tax bases of all the districts. Within this system, however, variations in spending can still exist. However, Judge Jefferson's ruling, adopted without much discussion in *Serrano II,* also endorsed the concept of equal spending per pupil. *See Serrano II*, 557 P.2d at 952–53. The two criteria together can, as a practical matter, only be met by having the state government finance all school spending. *See* Lee

Prior to *Serrano*, California households could "vote with their feet"—move to another school district—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.[6] *Serrano* eliminated the Tiebout approach by which parents could get better-funded schools, so it made sense for the voters to nearly eliminate the local property tax for financing schools.

Kirk Stark and Jonathan Zasloff have critically reviewed my thesis that *Serrano* caused Proposition 13.[7] They offer statistical evidence that they contend casts doubt upon the influence of *Serrano* in causing voters to favor Prop 13 in 1978 after the electorate had rejected a similar initiative in 1972.[8] Stark and Zasloff have also reviewed the workings of the California legislature, particularly the state senate, and concluded that its inadequate response to the tax revolt was not related to AB 65, the 1977 bill that responded to *Serrano*.[9] This Article contends that their primary statistical evidence actually supports my hypothesis and that their auxiliary analyses do not contradict it.[10]

The stakes in this debate are high, albeit indirect. Prop 13 is a fiscal incubus on California. Removing it or even modifying its more extreme features would improve the workings of both state and local governments generally and would assist public schools in particular. If my proposed connection between *Serrano* and Prop 13 is correct, voters would be much more amenable to loosening Prop 13's constraints if *Serrano* were modified to allow local property taxation to reconnect with local school spending. Modification of *Serrano,* in other words, may be a necessary condition for modifying Prop 13.

The primary thrust of the present Article is that Stark and Zasloff's main statistical evidence does not actually contradict my thesis. I had argued that the swing in votes from the defeated 1972 Watson II initiative to the successful 1978 Jarvis 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 and Zasloff found that a district's household income and the proportion of its population that is elderly account for the 1972/1978

S. Friedman, *The Ambiguity of* Serrano*: Two Concepts of Wealth Neutrality*, 4 HASTINGS CONST. L.Q. 487, 503 (1977).

6. *See* Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

7. Kirk Stark & Jonathan Zasloff, *Tiebout and Tax Revolts: Did* Serrano *Really Cause Proposition 13?*, 50 UCLA L. REV. 801 (2003).

8. *Id.* at 815–41.

9. *Id.* at 842–52.

10. To save space, several of my technical findings, peripheral arguments, and additional sources have been relegated to a working paper: WILLIAM A. FISCHEL, DID JOHN SERRANO VOTE FOR PROPOSITION 13? A REPLY TO STARK AND ZASLOFF'S "TIEBOUT AND TAX REVOLTS: DID SERRANO REALLY CAUSE PROPOSITION 13? (Dartmouth College Econ. Dep't Working Paper 03–08, 2003) [hereinafter FISCHEL, WORKING PAPER], *at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=438621.

vote shift.[11] I respond that higher-income and elderly communities were precisely those most likely to change their view of the property tax once schools were no longer subject to local fiscal control. I offer additional statistical evidence showing 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 and Zasloff.

Stark and Zasloff also claimed 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.[12] 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 thwarted by the persistent pressure of the *Serrano* attorneys.

This Article concludes by 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.

11. Stark & Zasloff, *supra* note 7, at 829.
12. *Id.* at 852.

TABLE 1
PROPERTY-TAX INITIATIVE AND SCHOOL FINANCE CHRONOLOGY

November 5, 1968	"Watson I" initiative (Prop 9) to limit property taxes defeated: 32.0% yes; 68.0% no.
August 30, 1971	*Serrano I* decided (6-1) and remanded to Los Angeles Superior Court.
November 7, 1972	"Watson II" initiative (Prop 14) to limit property taxes defeated: 34.1% yes; 65.9% no.
March 21, 1973	*San Antonio v. Rodriguez* decided by U.S. Supreme Court (5-4), denying *Serrano*-style equal protection claims at the federal level.
April 10, 1974	Judge Bernard Jefferson rules for *Serrano* plaintiffs in Los Angeles Superior Court; defendants appeal.
December 30, 1976	*Serrano II* decided in favor of plaintiffs (4-3), sustaining Judge Jefferson's remedy.
September 2, 1977	AB 65, school finance bill intended to comply with *Serrano II,* passes legislature; property tax relief bill fails on same day.
December 29, 1977	"Jarvis" initiative (Prop 13) certified for the June 1978 ballot.
March 3, 1978	Governor signs "Behr Bill" (SB 1), alternative to Prop 13, tying its implementation to passage of Prop 8, constitutional amendment allowing "split roll," in which residential property could be taxed at a lower rate than other classifications.
June 6, 1978	Prop 13 passes: 64.8% yes; 35.2% no; Prop 8 (and thus SB 1) defeated: 47.0% yes; 53.0% no.

I. JOHN SERRANO, JR., MIDDLE-CLASS REVOLUTIONARY

John Serrano, Jr. was the lead plaintiff in *Serrano v. Priest.* The story of his involvement has become something of an urban legend. He has been characterized as a poor Chicano from Baldwin Park, a low-income suburb of Los Angeles, that had inadequate schools because of its modest property tax base.[13] Mr. Serrano was told by his son's principal that the best thing for him would be to move to a better district. Changing residences is what Tiebout's economic model would also recommend in this situation. Because of his poverty, however, Mr. Serrano was supposedly unable to move, and for this reason he initiated the litigation that made his name famous.

13. JAMES W. GUTHRIE, TWENTY-FIRST CENTURY EDUCATION FINANCE: EQUITY, ADEQUACY, AND THE EMERGING CHALLENGE OF LINKING RESOURCES TO PERFORMANCE (Fla. State Univ. Learning Sys. Inst., Nov. 2001), http://www.lsi.fsu.edu/project/feps/4.doc.

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 (Los Angeles USD).[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 exactly what the Tiebout model assumes they would do: They voted with their feet and moved to another school district. They went first to Whittier and then settled in 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 (Hacienda-La Puente USD).

With a tax base per pupil of $5613 in 1970–1971, the Hacienda-La Puente USD was "property poor" compared to Los Angeles USD, whose value per pupil at the time was $13,845.[19] So Serrano was indeed from a property-poor district, but by his own admission he had chosen it over a 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 moved his family out of East Los Angeles. Harold Horowitz and many others had been working to develop school finance litigation with

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14. In an e-mail correspondence on December 8, 2002, Professor Guthrie cheerfully admitted that his account was based entirely on "hearsay." E-mail from James W. Guthrie, Professor, Vanderbilt University, to William A. Fischel, Professor, Dartmouth College (Dec. 8, 2002) (on file with author). 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, § 1, at 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. *Id.*

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. Rosenzweig, *supra* note 14. 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 on an inadequate appreciation of the benefits of education by his under-schooled parents. *Id.*

16. Baldwin Park was the paradigmatic example of a poor district that was invariably contrasted to Beverly Hills in *Serrano I*, 487 P.2d 1241, 1247–48, and *Serrano II*, 557 P.2d 929, 934.

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

18. The tax base per pupil of the Los Angeles USD in 1969–70 was $13,455, 10 percent above the statewide median for unified districts. *See* JON SONSTELIE ET AL., FOR BETTER OR FOR WORSE? SCHOOL FINANCE REFORM IN CALIFORNIA 14–15 (2000). This and subsequent figures follow the official California approach to assessed value per pupil, which is intended to be one-fourth of market value.

19. *See* CALIFORNIA STATE DEPARTMENT OF EDUCATION, CALIFORNIA PUBLIC SCHOOLS: SELECTED STATISTICS, 1970–71, at 95 tbl. IV-11 (1972) (calculated as "1970–71 modified assessed valuation" divided by "1970–71 second period average daily attendance," including both elementary and high school students). Baldwin Park at the time had a value per pupil of $4090, which was among the lowest in the state. *Id.* at 94.

funds from major foundations.[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, which had been required under a court decision.[25] His name appeared as one of the three official sponsors of an initiative, the purpose of which was to reverse a state court decision that required busing to desegregate Los Angeles schools.[26] One need not speculate that the sponsors of the initiative were eager to have his endorsement because of his connection with the famous court case. He is listed on the official ballot 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."[27] The article went on to indicate that Mr. Serrano still stood behind the litigation that had made his name famous. But the fact that Serrano drew attention to his role

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20. A. James Lee & Burton A. Weisbrod, *Public Interest Law Activities in Education*, *in* PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 331 (Burton A. Weisbrod ed., 1978).

21. RICHARD F. ELMORE & MILBREY WALLIN MCLAUGHLIN, REFORM AND RETRENCHMENT: THE POLITICS OF CALIFORNIA SCHOOL FINANCE REFORM 21–23 (1982). An unnamed source claims that Serrano's ethnic minority name made him the lead plaintiff. *Id.* at 36.

22. *See* David L. Kirp, *Judicial Policy-Making: Inequitable Public School Financing and the* Serrano *Case*, *in* POLICY AND POLITICS IN AMERICA 84 (Allan Sindler ed., 1973). In a phone conversation with the author on February 25, 2003, John Serrano, Jr. said that it was Derrick Bell, not Horowitz, who broached the idea that Serrano should become a plaintiff. Serrano continued to work in East Los Angeles after he moved his family to the suburbs.

23. *See id.* at 84; Rosenzweig, *supra* note 14.

24. *See, e.g.*, Harold W. Horowitz, *Unseparate but Unequal—The Emerging Fourteenth Amendment Issue in Public School Education*, 13 UCLA L. REV. 1147, 1172 (1966).

25. *See Serrano's Campaign Against Forced Busing*, S.F. CHRON., Dec. 2, 1977, at 28.

26. The decision that Mr. Serrano helped to overturn was *Crawford v. Board of Education*, 551 P.2d 28, 48 (Cal. 1976), which upheld the use of busing to desegregate Los Angeles public schools. Proposition 1 installed a constitutional amendment that foreclosed the use of busing under state law. Stark and Zasloff use Proposition 1 (without mentioning Mr. Serrano's role) as an example of how the initiative process can reverse the effect of a court decision, Stark & Zasloff, *supra* note 7, at 846, n.185, but (as they note) *Crawford* was later reinstated by a federal court. L.A. Branch NAACP v. L.A. Unified Sch. Dist., 750 F.2d 731 (9th Cir. 1984). John Serrano's sole electoral triumph was overturned by the courts.

27. Jeanie Esajian, *Man Whose Suit Changed School Funding in New Battle*, L.A. TIMES March 3, 1978, § II at 5; *see also Serrano's Campaign Against Forced Busing*, S.F. CHRON., Dec. 2, 1977, at 28. Mr. Serrano was not opposed to integration, though. His solution for segregation was aggressive integration of the housing market, including mixed-income housing developments in the suburbs. *Id.*

as a taxpayer suggests that he might have found the Jarvis initiative attractive. The "sick and tired" language does seem to resonate with the populist mantra of Howard Jarvis, the most celebrated—and vocal—proponent of Prop 13: "I'm mad as hell and I'm not going to take it any more."[28]

The title of the present Article utilizes the name of John Serrano much like his attorneys did, as a synecdoche for a larger problem: Why did middle-class voters—people like John Serrano, a married man with three children[29]—turn against the property tax in 1978 after having rejected several similar opportunities to do so in the previous ten years?

Even if I could locate Mr. Serrano, it would seem to be an invasion of privacy to ask him how he voted on Prop 13.[30] 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.[31] So the demographics and what little is known about his politics suggest that John Serrano might have voted for Prop 13.

A second question that this Article's title is intended to raise is why any of the *Serrano* advocates might have opposed Prop 13. Some initially saw a silver lining in Prop 13. 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*.[32] 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.[33]

Most other *Serrano* advocates, however, regarded Prop 13 as a disaster.[34] The reason should be obvious: The state legislature and the

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28. HOWARD JARVIS & ROBERT PACK, I'M MAD AS HELL: THE EXCLUSIVE STORY OF THE TAX REVOLT AND ITS LEADER 4 (1979). The phrase was taken from *Network*, a popular movie of the era. *Id.*

29. 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. *See* DAVID O. SEARS & JACK CITRIN, TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA 145 (1982).

30. David Serrano, John's second son, put his father in contact with me on February 25, after they had seen an earlier draft of this Article. Both David and his father told me that John had not voted for Prop 13, and John said he had worked against its passage. David volunteered that John had signed the petition necessary to get the initiative on the ballot, which John confirmed, but he changed his mind once the details of Prop 13 became known to him.

31. 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, 197 (June 6, 1978).

32. *See* Alan Post, *Effects of Proposition 13 on the State of California*, 32 NAT'L TAX J. 381, 385 (June Supp. 1979).

33. ELMORE & MCLAUGHLIN, *supra* note 21, at 215; *see also* ROBERT KUTTNER, REVOLT OF THE HAVES 103 (1980); Lawrence O. Picus, *Cadillacs or Chevrolets? The Evolution of State Control Over School Finance in California*, 17 J. EDUC. FIN. 33, 34 (1991).

34. *See, e.g.*, Wilson Riles, *Foreword* to CAL. STATE DEP'T OF EDUC., CALIFORNIA PUBLIC SCHOOLS: SELECTED STATISTICS 1977–78, at iii, iii–iv. Riles was named as a defendant in

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] The loss of more than half of property tax revenues meant that the legislature's level-up approach to *Serrano II* was doomed.

II. THE SWING FROM WATSON'S 1972 INITIATIVE TO PROPOSITION 13 IN 1978

Stark and Zasloff expanded upon what I called a "modest statistical venture" to explain why voters rejected the 1972 Watson II initiative[36] by a two-to-one margin, but six years later embraced the similar Jarvis initiative by almost the same two-to-one margin. Watson II was much like Jarvis in that it proposed a property tax limit to be enshrined in the state constitution, though it did not have Jarvis's limit on reassessments.[37] I suspected that the implementation of *Serrano* was the major change in voters' circumstances between those elections.[38]

To demonstrate *Serrano's* influence on the changed voting pattern, I selected twenty-nine cities in Los Angeles County with names corresponding to the name of a unified school district.[39] I defined the "SWING" variable for each of those cities as 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. The statewide vote for Watson II was 34.1 percent in favor, while the Jarvis vote was 64.8 percent in favor, which is a 90 percent SWING.[40]

Serrano I, but he joined the plaintiffs in *Serrano II*. ELMORE & MCLAUGHLIN, *supra* note 21, at 60–61.

35. *See* John B. Mockler & Gerald Hayward, *School Finance in California: Pre-*Serrano *to the Present*, 3 J. EDUC. FIN. 386, 394 (1978).

36. This Article refers to the initiatives by the name of their best-known sponsor and the date. *See supra* Table 1.

37. Watson II, which was more complicated than Jarvis's 1978 initiative, is outlined in Anthony J. Barkume, *Criteria for Voting Judgments on a Property Tax Initiative: An Analysis of the Watson Amendment*, 29 NAT'L TAX J. 448, 449 (1976).

38. Stark and Zasloff point out that those who voted in 1978 were not the same as those who voted in 1972. Stark & Zasloff, *supra* note 7, at 818–20. However, median voter theory, on which such analysis rests, does not contemplate individuals, only the economic circumstances of an average member of a community. *See* Randall G. Holcombe, *The Median Voter Model in Public Choice Theory*, 61 PUB. CHOICE 115 (1989). For a more detailed discussion, see FISCHEL, WORKING PAPER, *supra* note 10, at 12–14.

39. "Unified" means that a single district runs K–12 education for all those within its boundary, rather than separate districts for elementary and for high school. I chose districts with city names, hoping that such districts would correspond with the borders of the city, for which vote totals are available. For discussion, see FISCHEL, WORKING PAPER, *supra* note 10, at 17–20.

40. The 90 percent statewide SWING is calculated as (64.8 – 34.1)/34.1. This is statistically preferable to using the differences in percentage points (in this case, 64.8 – 34.1 = 30.7) because the former method has an indefinitely large range of potential values. The latter method (difference in percentage points) is bounded by 0 and 100, which makes it

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 this variable and SWING was .71. If one squares that number (yielding .50), the appropriate statistical interpretation is that the *Serrano* variable accounts for half of the variation in the vote swing between 1972 and 1978 for the Los Angeles County sample.

III. STARK AND ZASLOFF FOUND NO "*SERRANO*" EFFECT ON THE VOTE SWING

Stark and Zasloff wanted to know if other variables besides the one I associated with *Serrano* might account for the vote swing, and they used multiple regression analysis to inform their study.[41] However, to accurately employ this technique, one needs a sample larger than the twenty-nine city-districts that I identified in Los Angeles County. Stark and Zasloff included in their sample *all* 135 cities in California in which the city and unified school district had the same name. With this larger sample, they were able to investigate the impact of several possible explanations for the vote swing in addition to the *Serrano* decision.

They chose seven independent variables the variations of which they suspected explained the variation in SWING among the 135 districts. One was the assessed valuation per pupil in the district in 1978, VALUE/PUPIL.[42] The other six variables were the percent of the city's population over age sixty-five in 1980 (gently designated SENIORS); the median household

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problematic to estimate with a linear regression. *See* PETER KENNEDY, A GUIDE TO ECONOMETRICS 192–93 (1985).

41. Stark & Zasloff, *supra* note 7, at 818–21. Regression analysis attempts to determine the closest relation between a "dependent variable" and one or more "independent variables." For example, the annual number of highway fatalities in each state might be the dependent variable, and independent variables might be miles driven, average speed, and alcohol consumed per capita in the respective states. This would be expressed as FATALITIES = a_1(MILES) + a_2(SPEED) + a_3(ALCOHOL). The estimated coefficients, a_1, a_2, and a_3, would indicate how much each factor contributed to fatalities, holding the other factors constant. The "t-statistic" of each coefficient would indicate how "significant" (statistics-speak for "reliable") the estimate was. A t-statistic in excess of 2.00 in absolute value is generally considered significant in that it implies a probability ("p-value") of less than .05 that the estimated coefficient is on the wrong side of zero. *See generally* KENNEDY, *supra* note 40.

42. Stark & Zasloff, *supra* note 7, at 822. They designated it "SERRANO," but to avoid confusion and the presumption that this variable is the sole test of my theory, I designate it VALUE/PUPIL. They correctly argue that it is a close approximation of the variable I had used, the percent of school expenditures financed locally, described *infra* Part II. *Id*. at 820. Stark and Zasloff used the logarithm of this and other variables, but my replications indicate that results are essentially the same if one does not transform the variables, and I have not used logarithmic transformations in this Article.

income of the city in 1979 (INCOME); the 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).[43]

Stark and Zasloff found that only INCOME and SENIORS were statistically significant (at the usual 5 percent level) or quantitatively important (according the standardized coefficient) in explaining variations in SWING.[44] VALUE/PUPIL, however, 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.[45] Thus tax base per pupil in this test is both unimportant (small) and insignificant (irregular) in explaining the variations in the 1972/1978 vote swing. The variables RENTERS, PROPVALUE, and GOVEMP did even worse on all scores.[46] Only the variable for percent Republicans, GOP, did slightly better (for significance and importance).[47] The standardized coefficient was 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,[48] which, according to most statistical criteria, is only borderline significant.[49]

Stark and Zasloff interpreted the importance of the two successful variables, INCOME and SENIORS, as evidence of changed conditions between 1972 and 1978 that they claimed were not related to the *Serrano* decisions.[50] As such, they regarded them as contradicting my hypothesis, which focused on tax base per pupil as the crucial variable. It is here that we disagree. I think that both INCOME and SENIORS demonstrate the effect of the *Serrano* decision, but Stark and Zasloff interpreted the variables much differently.

They regarded INCOME and SENIORS 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 and the elderly households on fixed incomes. 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

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43. Stark & Zasloff, *supra* note 7, at 823.

44. "Significant" means only that the relationship is reliable; we are pretty sure it would happen again under similar circumstances. But reliability does not mean importance; a relationship may be reliable and predictable but nonetheless small. *See* Donald N. McCloskey, *The Loss Function Has Been Mislaid: The Rhetoric of Significance Tests*, 75 AM. ECON. REV. 201 (1985). For an explanation of why this distinction matters in the present context, see *infra* Part VIII.

45. Stark & Zasloff, *supra* note 7, at 828 tbl.1.

46. *Id.*

47. *Id.*

48. *Id.* In my regressions, the influence of GOP disappears when the percent of the city's population that is African American (BLACK) is entered as a separate variable. Howard Jarvis was perceived as a racist, while Philip Watson was not. *See* FISCHEL, WORKING PAPER, *supra* note 10, at 18.

49. Stark & Zasloff, *supra* note 7, at 828 tbl.1.

50. *Id.* at 830.

for them.[51] Because statewide taxes are usually more progressive than local taxes, Stark and Zasloff argued that Watson II would be opposed by higher-income people. Jarvis, on the other hand, did not promise to keep spending constant. He was antigovernment at all levels and did not want the state to offset local property tax reductions. Therefore, concluded Stark and Zasloff, higher-income people would be more likely to favor Jarvis because his initiative did not propose to substitute progressive taxes, and older people would swing their votes towards Jarvis because his initiative would reduce net tax burdens by more than Watson's.

It is not clear, however, that Watson's 1972 plan would have been regarded as less favorable to wealthy and older 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 and elderly people who sought to minimize their tax liabilities, as Stark and Zasloff submit, would have opposed Watson.

Jarvis did advertise his initiative as a net reduction in government taxes, which would seem to appeal to higher-income taxpayers and perhaps the fixed-income elderly. 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.[52] Thus it is not obvious that the positive effect of INCOME and SENIORS on the vote swing was due to greater anticipated reductions in tax burdens under Jarvis than under Watson.

IV. MULTICOLLINEARITY REDUCES THE SIGNIFICANCE OF VALUE/PUPIL

I have replicated Stark and Zasloff's results with other samples and specifications. In most cases I was able to improve the overall quality of the regression in that its R-squared[53] was higher. Although the quality of the regressions I did was better, one outcome remained: When SENIORS was included in the regression along with VALUE/PUPIL, the coefficient on

51. Watson did claim that his initiative would also comply with *Serrano I*. *See* Philip E. Watson, *Do We Need a Tax Limit?* 25 NAT'L TAX J. 397, 400 (1972). This was doubtful because it would only have equalized school expenditures by county, not for the whole state.

52. Editorial, *Property-Tax Initiative: No Way*, L.A. TIMES, Jan. 4, 1978, pt. II, at 6 ("[A property tax cut] cannot be replaced without massive increases in the sales tax . . . or the personal and corporate income tax . . . ."); George Skelton, *Brown Expects New Taxes if Prop. 13 Wins*, L.A. TIMES, Apr. 25, 1978, § 1, at 3.

53. A measure of all of its variables' ability to account for variation in the dependent variable.

VALUE/PUPIL and its significance level fell drastically. When SENIORS was deleted and VALUE/PUPIL was retained, VALUE/PUPIL was always significant, but the R-squared of the regression was lower. Two regressions illustrating this general finding are presented in Table 2, which uses an expanded sample of districts from Los Angeles County.[54] To summarize my numerous regressions, I could not shake Stark and Zasloff's main result, but I did establish that VALUE/PUPIL works as I had predicted when SENIORS is omitted.

TABLE 2
REGRESSION ON WATSON-TO-JARVIS SWING
FOR THE 36-DISTRICT LOS ANGELES COUNTY SAMPLE,
WITH AND WITHOUT SENIORS

With SENIORS:

Independent	*Coefficients*	*t-statistic*	*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

Dependent Variable: SWING
Adjusted R-squared: 0.805
Observations: 36

Without SENIORS:

Independent	*Coefficients*	*t-statistic*	*p-value*
Intercept	0.3905697	2.76	0.010
VALUE/PUPIL	*0.0000131*	*6.06*	*0.000*
INCOME	0.0000146	2.79	0.009
BLACK	–1.1353765	–4.35	0.000

Dependent Variable: SWING
Adjusted R-squared: 0.754
Observations: 36

54. An intracounty sample is actually more appropriate for comparing the Watson-to-Jarvis SWING because Watson II proposed to distribute its school funds by county. However, Los Angeles is the only county for which a sufficiently large sample can be assembled to do even a modest regression. The sample consisted of my twenty-nine original districts plus seven others that corresponded reasonably closely to a city's boundaries even though the district did not share the city's name. *See* FISCHEL, WORKING PAPER, *supra* note 10, at 16–20. The variable BLACK in Table 2 is the percent of the city's 1980 population that was African American. *See id.* at 61 tbl.2.

This leads me to suspect that something statisticians call "multicollinearity" affects the regression. Multicollinearity arises when two or more nominally different variables are actually closely related to one another. Its effect is to artificially lower the apparent statistical significance of one of the variables, causing it to be rejected when in fact it is important. Most multicollinearity problems are difficult to detect because variables may only be partially related to one another and then only in subtle ways. As a result, detection of multicollinearity is a judgment call. In my judgment, Stark and Zasloff erroneously rejected the importance of VALUE/PUPIL in explaining the vote swing.

One preliminary signal for the presence of multicollinearity is that the two independent variables are correlated with one another. Stark and Zasloff reported that the simple correlation between SENIORS and VALUE/PUPIL (in logs) is .48; without the logarithmic transformation, it is .42. Under either calculation, it is the highest simple correlation among their independent variables. Figure 1 graphs the observations for SENIORS and VALUE/PUPIL for their 135-district sample. It appears from this scatter diagram that SENIORS and VALUE/PUPIL are closely correlated.[55] The relationship between SENIORS and VALUE/PUPIL is even stronger in my 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 extreme values for Beverly Hills, El Segundo, and Santa Monica are removed, the simple correlation is .67.

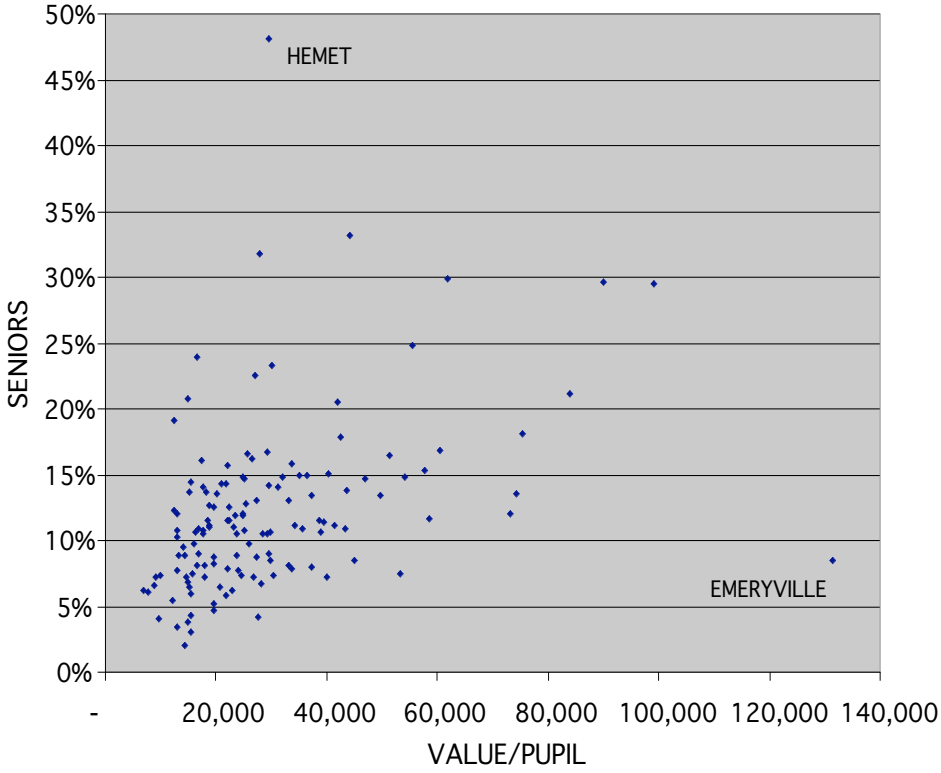
Stark and Zasloff dismissed the possibility of multicollinearity, which their .48 correlation would normally suggest, by referring to a particular econometric test.[56] However, there is no widely agreed-upon test for multicollinearity among econometricians.[57] The more usual approach is to investigate whether a suspiciously high correlation is just a coincidence, such as the number of teachers and alcohol consumption, or whether there is a behavioral relationship that underlies the correlation. The following part of this Article explains why SENIORS is systematically related to VALUE/PUPIL.

55. This is especially true if two of the outliers are deleted from the sample. Hemet is unusual in that it had a disproportionate number of elderly residents who live in low-value mobile homes. Emeryville is unusual in that it is a tiny municipal tax haven for businesses. Unlike other small tax havens such as Industry and Commerce, Emeryville managed to have its own school district. *See* FISCHEL, WORKING PAPER, *supra* note 10, at 20–21.

56. *See* Stark & Zasloff, *supra* note 7, at 830.

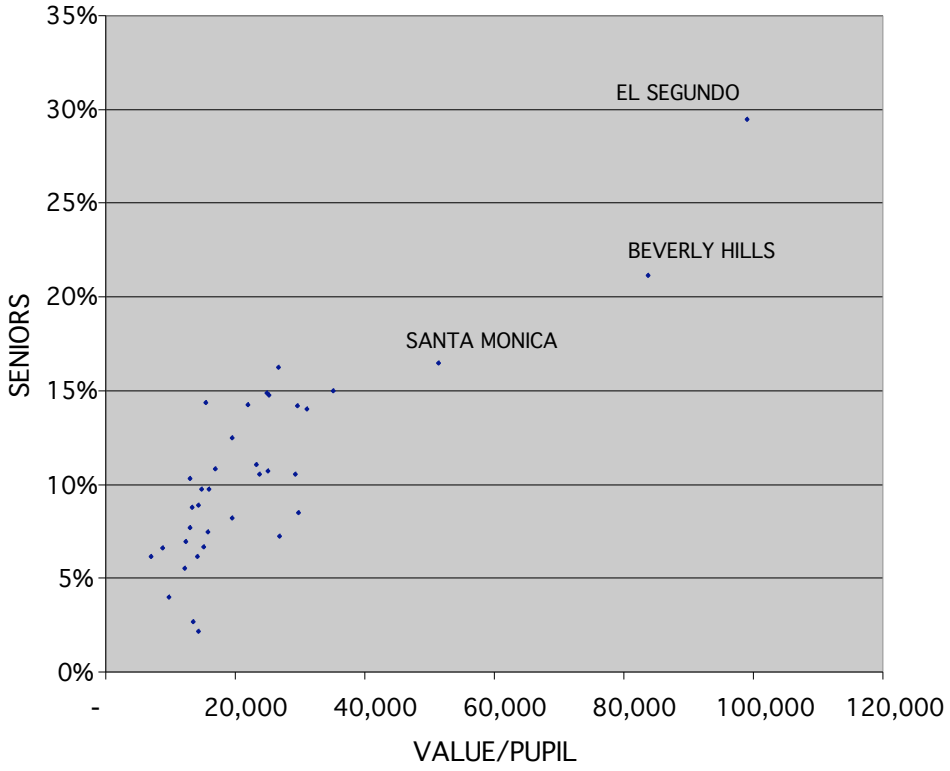
57. *See* KENNEDY, *supra* note 40, at 149–53.

FIGURE 1
SENIORS & VALUE/PUPIL



Scatter diagram of SENIORS (percent of 1980 population over age 65 in city) and VALUE/PUPIL (school district tax-base per pupil in 1977–1978) for Stark and Zasloff's 135-district sample.

FIGURE 2
SENIORS & VALUE/PUPIL
LOS ANGELES COUNTY



Scatter diagram of SENIORS (percent of 1980 population over age sixty-five in city) and VALUE/PUPIL (school district tax-base per pupil in 1977–1978) for the 36-district Los Angeles County sample.

V. WHY THE VARIABLE SENIORS REFLECTS *SERRANO'S* INFLUENCE

Stark and Zasloff's variable for percent of city residents over age sixty-five, SENIORS, reflects the influence of *Serrano* through two effects. One is an asset effect on older people's home values. The other is a migration effect; when families with children move to higher-spending districts and displace older people, this reduces the tax base per pupil. Both of these effects swamp the impact of VALUE/PUPIL.

A. Asset Effects

When school districts 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 motivation 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, so they are highly attentive to events that affect the value of their homes.[58] Public school quality has been shown to be consistently related to home values.[59] Buyers of homes are usually aware of local public school quality, and sellers are not shy about pointing it out whenever it helps increase the sale price. Thus as long as a childless homeowner has a unit that could house a family with school children (or could be expanded to accommodate children), he or she should not be inclined to vote for initiatives that would harm the local schools.[60]

In 1972, Watson II proposed to both centralize and 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.[61] For homeowners in districts with poorly 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.

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58. *See* FISCHEL, HOMEVOTER HYPOTHESIS, *supra* note 3, at 74–76.

59. *See* Sandra E. Black, *Do Better Schools Matter? Parental Valuation of Elementary Education*, 114 Q.J. ECON. 577 (1999); William T. Bogart & Brian A. Cromwell, *How Much More Is a Good School District Worth?*, 50 NAT'L TAX J. 215 (1997).

60. Substantial econometric evidence indicates that elderly voters support local schools when they are financed locally, but less so when they are financed by the state government. Amy Rehder Harris et al., *Education Spending in an Aging America*, 81 J. PUB. ECON. 449, 468–69 (2001); Helen F. Ladd & Sheila E. Murray, *Intergenerational Conflict Reconsidered: County Demographic Structure and the Demand for Public Education*, 20 ECON. EDUC. REV. 343, 350 (2001); CHRISTIAN A.L. HILBER & CHRISTOPHER J. MAYER, WHY DO HOUSEHOLDS WITHOUT CHILDREN SUPPORT LOCAL PUBLIC SCHOOLS? LINKING HOUSE PRICE CAPITALIZATION TO SCHOOL SPENDING (Fed. Reserve Bank of Phila., Working Paper No. 02-10, June 2002), http://www.phil.frb.org/files/wps/2002/wp02-10.pdf.

61. As I argue in Part X *infra*, few voters in 1972 had any grasp of the future implications of *Serrano I,* which was decided in 1971.

By 1978, the situation had changed greatly because of *Serrano II*. After AB 65 was passed, it became obvious to SENIORS in the better school districts that school spending and home values were no longer connected by their support for local property taxes. As a result, they joined their counterparts in the poorer-performing districts to support a property tax limitation. In other words, a vote for a tax limitation in 1978 no longer carried the penalty for childless voters that their home values would go down.

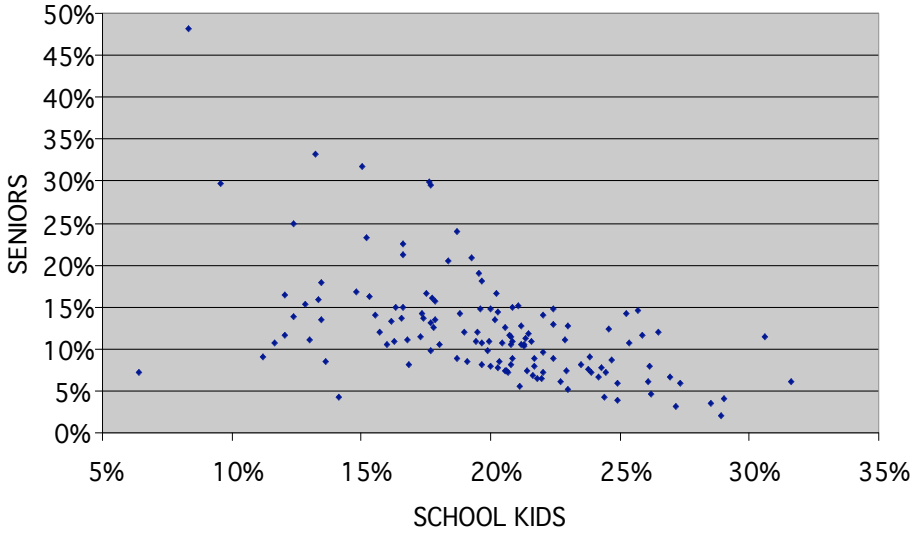
B. Tiebout Migration Effects

The key variable that Stark and Zasloff used to test my theory, VALUE/PUPIL, is based (as was *Serrano's* fiscal criterion) on the tax base *per pupil*. If two districts started off with equal property tax base per pupil, two things might have caused them to diverge. One is to acquire a 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.[62] But another factor could be just as important: differences in the number of children per household attending 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 sixty-five) and the percentage of the population that is enrolled in K–12 school in 1980 for the 135 cities of Stark and Zasloff's sample. The relationship is obviously negative. The simple correlation between the two variables is minus .49. A community that has more SENIORS will thus tend to be "property rich," since the denominator of VALUE/PUPIL is the number of children enrolled in public schools. Thus, just by an accounting measure, SENIORS is apt to be related to the tax base per pupil.

62. *Serrano I*, 487 P.2d 1241, 1261 (Cal. 1971).

FIGURE 3
SENIORS & SCHOOL KIDS



Scatter diagram of SENIORS (percent of 1980 city population over age 65) and SCHOOL KIDS (percent of population within the city enrolled in K–12 schools) for Stark and Zasloff's 135-city sample.

I maintain, moreover, that the districts with more children per household (and thus low VALUE/PUPIL) arrived at that condition in part for a behavioral reason: Badly run school districts repel families with children, and well run school districts attract them. Consider again the hegira of John and Aurora Serrano and their three children from the Los Angeles USD (in East Los Angeles) to the Whittier and Hacienda-La Puente school districts. Their leaving East Los Angeles caused the tax base per pupil in Los Angeles USD 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.[63] One effect of better schools is that they attract families with children and thus reduce the tax base per pupil.[64]

63. *See* Katharine L. Bradbury et al., *Property Tax Limits, Local Fiscal Behavior, and Property Values: Evidence From Massachusetts Under Proposition 2_*, 80 J. PUB. ECON. 287, 288 (2001); Thomas A. Downes & David Schoeman, *School Finance Reform and Private School Enrollment: Evidence From California*, 43 J. URB. ECON. 418, 440–41 (1998).

64. This will be partly offset by the increase in the value of homes in the more attractive community. *See* Caroline M. Hoxby, *All School Finance Equalizations Are Not Created Equal*, 116 Q.J. ECON. 1189, 1200–01 (2001).

VI. WHY INCOME INFLUENCED THE VOTE SWING

Stark and Zasloff found that household income was also important in explaining the Watson-to-Jarvis swing. I submit that the influence of INCOME on SWING primarily reflects local demand for education. It is well known that higher-income families demand more educational expenditure.[65] *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 to the Watson II initiative in 1972.[66] 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 also had to pay higher taxes for the lesser expenditures. Thus the positive effect of INCOME on the Watson-Jarvis swing reflects the fact that higher-income communities changed their views on property taxation for schools, which is consistent with the *Serrano*-caused-13 hypothesis.[67]

Stark and Zasloff noted that INCOME and VALUE/PUPIL are poorly correlated in their sample.[68] This is confirmed in my alternative samples, and it is true in most states for which data have been analyzed.[69] 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

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65. The income elasticity of demand for public education expenditures across a national sample of cities in 1962 was calculated to be .55, implying that a 10 percent increase in family income would raise expenditures by 5.5 percent. Alan L. Gustman & George B. Pidot, Jr., *Interactions Between Educational Spending and Student Enrollment*, 8 J. HUM. RESOURCES 3, 14 (1973); *see also* HARLAN HAHN & SHELDON KAMIENIECKI, REFERENDUM VOTING: SOCIAL STATUS AND POLICY PREFERENCES 52–54 (1987) (noting that high-income voters support school spending).

66. *See* Barkume, *supra* note 37, at 457. Median family income had a negative effect on proportion of the city voting for Watson II. *Id*. 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.

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

68. Stark & Zasloff, *supra* note 7, at 826 n.113.

69. *See* FISCHEL, HOMEVOTER HYPOTHESIS, *supra* note 3, 133–35; David K. Cohen, *School Finance and Social Policy:* Serrano *and Its Progeny*, *in* SCHOOL FINANCE IN TRANSITION: THE COURTS AND EDUCATIONAL REFORM 288 (John Pincus ed., 1974).

of these districts' greater willingness to support local schools.[70] Although such attraction bids up the price of housing in those communities (thus providing a capital gain for all preexisting homeowners, regardless of whether they have children), the larger number of children pushes up the denominator of VALUE/PUPIL.

A better local school system also keeps more of the school-age children in public schools, as opposed to private schools.[71] This local success further drives up the denominator of VALUE/PUPIL and makes the successful, high-income school district look comparatively "property poor." Conversely, a badly run school district that drives families with children away will look comparatively "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.

* * *

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

VII. PROPOSITION 13 WAS NOT JUST A TAX REVOLT

Stark and 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.[72] In Stark and Zasloff's view, voters were most concerned about the total amount of taxes, not *Serrano*-induced changes in school taxes and expenditure rules. Thus, municipal property tax inflation in the 1970s should count for as much as school property tax inflation, and Stark and Zasloff regard the 1978 Behr Bill as an attempt to deal with the "non-school property tax."[73] In Part III, I questioned whether Jarvis in 1978 actually offered a better tax break for the rich than Watson did 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 and Zasloff claimed, or whether it was *Serrano*-induced changes in school finance that disturbed them most.

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70. A study of seventy-nine U.S. central cities in 1962 found that the percentage of the population enrolled in public schools is responsive (an elasticity of .48) to spending per pupil. Gustman & Pidot, *supra* note 65, at 16.

71. *See* Downes & Schoeman, *supra* note 63, at 40–41.

72. Stark & Zasloff, *supra* note 7, at 829.

73. *Id.* at 851.

If Stark and Zasloff were 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 thirty-one cities in California in 1980 that had no property taxes to fund municipal services.[74] 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 larger fraction of their property tax burden.

If municipal property taxes had been a source of voter discontent, one would expect that voters in these cities would be *less* inclined to vote for Prop 13, because they had no municipal property taxes at all. Yet twenty-six of the thirty-one cities gave Proposition 13 a larger majority than the state as a whole. As a population-weighted group, the residents of the thirty-one no-municipal-property-tax cities voted 74 percent for Prop 13, compared with 65 percent for the state as a whole.[75] The reason for their greater support for Prop 13 cannot have been municipal extravagance in property taxation, because these cities had none. Instead, their greater support for Prop 13 is evidence that municipal (as opposed to school) taxes were *not* the source of voters' discontent.

Another indicator that school taxes were the locus of taxpayer discontent comes from the vote on Proposition 8, the legislature's alternative to Prop 13 that appeared on the same ballot in June of 1978.[76] Prop 8 proposed a constitutional amendment that would allow the legislature to adopt a "split roll" for property taxation, in which residential property could be taxed at a lower rate than other property. In combination with the Behr Bill (SB 1), 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.

The Behr Bill was subject 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 and Zasloff believed 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

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74. FISCHEL, HOMEVOTER HYPOTHESIS, *supra* note 3, at 116. The thirty-one cities are listed in: CAL. STATE ASSEMBLY, REVENUE AND TAXATION COMM. AND LOCAL GOVERNMENT COMMITTEE STAFFS, NO-PROPERTY-TAX CITIES AFTER PROPOSITION 13, Joint Committee Interim Hearing Briefing Book (November 6, 1980). *See also* FISCHEL, WORKING PAPER, *supra* note 10, at 27.

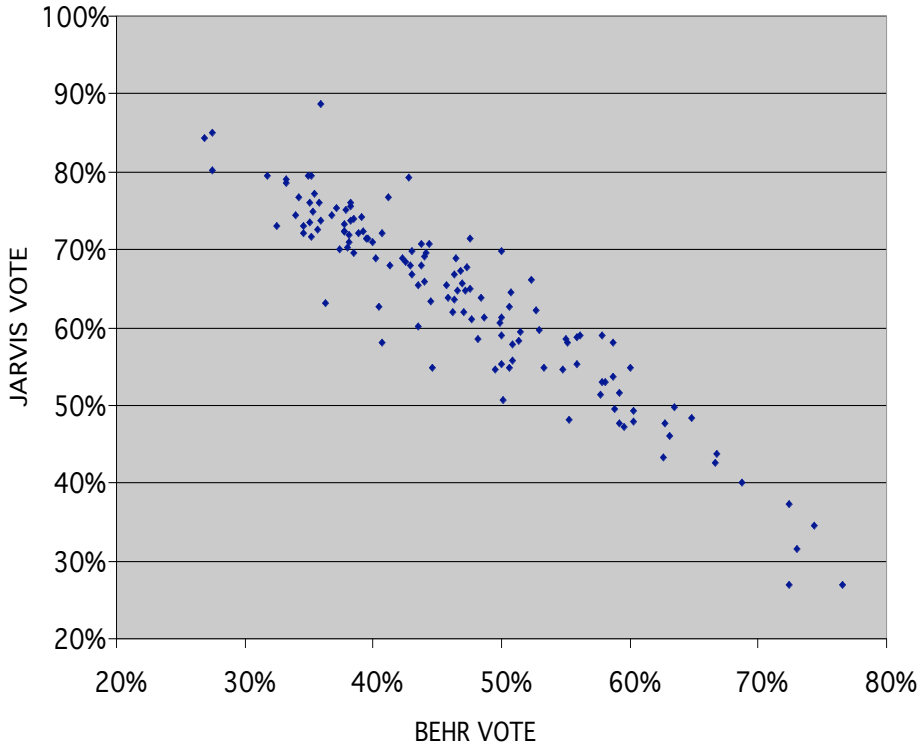
75. The 1972/1978 Watson-Jarvis SWING for the population-weighted group was 92 percent, slightly above the 90 percent SWING for the state as a whole.

76. I will discuss Stark and Zasloff's analysis of Prop 8's passage and their treatment of what they regard as the Prop 8 to Prop 13 "swing" *infra* Part VIII.

by almost everyone who voted on June 6, 1978, and polls indicated that voters were quite familiar with both initiatives.[77] It thus seems unlikely that voter confusion produced what would seem to be an irrational act under Stark and Zasloff's theory of Prop 13.

What no previous commentator has noticed is that the citywide votes on Prop 8 were almost exactly the inverse of the vote on Prop 13. The simple correlation for Stark and Zasloff's 135 cities between yes on 13 and yes on 8 is huge: minus .94.[78] The graph in Figure 4 shows the nearly perfect negative relationship between Prop 8 and Prop 13. Yes-on-Prop 13 cities were almost uniformly opposed to Prop 8.

FIGURE 4
BEHR & JARVIS



Scatter diagram of percent of city votes for Behr (Prop 8) and for Jarvis (Prop 13) for Stark and Zasloff's 135-city sample.

77. *See* DAVID B. MAGLEBY, DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES 91–93 (1984).

78. Minus 1.00 is the lower limit of a correlation coefficient.

Prop 8 thus presents two related puzzles for Stark and Zasloff's it's-just-the-taxes explanation for the swing from Watson II 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 and Zasloff saw Jarvis in 1978 as simply offering more of a tax cut for the rich and the elderly than Watson did in 1972. 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, which seems more consistent with my explanation.

There could be other explanations, though, for the inverse relation between Prop 8 and Prop 13. Howard Jarvis urged voters to reject Prop 8,[79] and visceral opponents of taxation might have complied. Sophisticated anti-tax voters might have been worried that if Prop 8 passed, the courts might have been emboldened to overrule Prop 13 on equal protection grounds because of its bizarre assessment rules.[80] So the Prop 8 voting pattern does not unambiguously favor my *Serrano*-caused-Prop 13 story over Stark and Zasloff's voters-just-wanted-lower-taxes story.

Nonetheless, the uniformity of the inverse relation between Jarvis and Behr in Figure 4 is striking. Suppose only 20 percent of all anti-tax voters were calm (not influenced by Jarvis's rhetoric) but naïve (not worried about later court proceedings). Under Stark and Zasloff's interpretation, they would have sought to maximize the possibility of a tax cut by voting for both Prop 8 and Prop 13. If such voters were randomly distributed, Prop 8 should have done better, even if it lost, in cities where Prop 13 did best. Exactly the opposite is true, suggesting that Prop 13 voters were most upset by school property taxes, not just all property taxes.

VIII. THE "SWING" FROM PROPOSITION 8 TO PROPOSITION 13

A second statistical test that Stark and 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 (Prop 8) and for Jarvis (Prop 13). If the tax base per pupil is a good indicator of those communities that would be upset by *Serrano*, then, Stark and Zasloff

79. *See* DANIEL A. SMITH, TAX CRUSADERS AND THE POLITICS OF DIRECT DEMOCRACY 74–75 (1998).

80. Governor Jerry Brown encouraged this belief. *See* Tom Goff, *Brown Assails Jarvis Plan as 'Mirage,'* L.A. TIMES, Mar. 11, 1978, pt. I, at 20. The California Supreme Court had struck down an initiative in 1966 (Proposition 14, adopted in 1964) that amended the California Constitution to permit private landlords to discriminate in leasing. Mulkey v. Reitman, 413 P.2d 825, 836 (Cal. 1966), *aff'd* 387 U.S. 369 (1967).

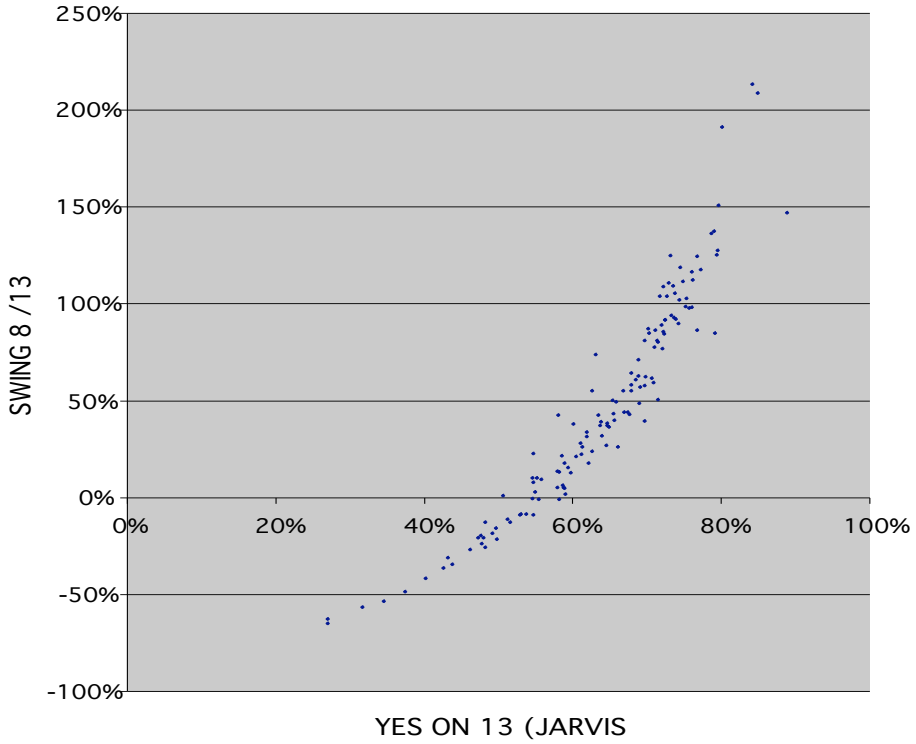
proposed, the variable for VALUE/PUPIL should enter positively and significantly into a regression on this particular swing.

Using the same variables as in their previous regression,[81] Stark and Zasloff found that the tax base per pupil had no significant effect on this SWING and that its sign was negative—the opposite of what they say my theory would predict.[82] The only statistically significant variables were percent renters (negative, because Prop 13 gave them no tax breaks while Prop 8 did), government employees (negative, for obvious reasons), and Republican voters (positive).[83]

As the previous part of this Article indicated, 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 a reduplication of Prop 13 itself. This is illustrated in Figure 5, a scatter diagram of the Behr-Jarvis swing against Prop 13 votes by city in Stark and 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 and Zasloff have simply run a regression on the vote for Prop 13 itself, not any meaningful swing among alternative policies.

81. This is discussed *supra* Part III.
82. Stark & Zasloff, *supra* note 7, at 833.
83. *Id.*

FIGURE 5
SWING (8/13) & 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), for Stark and Zasloff's 135-city sample.

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 essential question. The question is not whether we can see if homeowners favored Prop 13 more than renters (they did); not whether Republicans favored it more than Democrats (they did); and not whether government workers opposed it more than private sector workers (they did).[84]

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 have passed, if the California Poll data, shown in Table 3, 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 erroneously attributes political significance to statistical significance can

84. SEARS & CITRIN, *supra* note 29, at 117–25.

Prop 13 be characterized as a "revolt of the rich," or in Robert Kuttner's less alliterative title, *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.[85]

TABLE 3
HOUSEHOLD INCOME AND VOTES FOR PROPOSITION 13[86]

Income Level:	*Favored Prop 13:*
less than $10,000	52%
$11,000 to $20,000	59%
$21,000 to $30,000	67%
more than $30,000	69%

What is politically *important*—rather than just statistically significant—is that in the decade before Prop 13, California voters had overwhelmingly rejected several propositions that sought to diminish reliance on property taxation for school finance and to shift the obligation to the state. The two Watson initiatives (1972 and 1968) both failed by nearly two-to-one 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.[87] Equally telling is that Howard Jarvis tried to get similar initiatives on the ballot four times during the 1970s, most recently in 1976–1977.[88] All of his efforts failed for lack of sufficient signatures. Something had happened to change the whole fiscal landscape by 1978. Only the Watson-to-Jarvis vote swing can be used to assess the impact of fiscal changes in the 1970s.

IX. WHY *SERRANO I* DID NOT INFLUENCE THE VOTE ON WATSON II

A third "swing" that Stark and Zasloff examine is that between Watson I in 1968 and Watson II in 1972. Philip Watson twice tried to limit property taxes and to send responsibility for funding schools and other "people services" to the state. The second initiative was on the ballot of November 1972, fourteen months after *Serrano I* was decided. Stark and Zasloff hypothesize that the *Serrano I* decision and the abundant public debate it generated

85. *Id.* at 120.

86. SEARS & CITRIN, *supra* note 29, at 98 tbl. 5.1.

87. *See* JOHN M. ALLSWANG, THE INITIATIVE AND REFERENDUM IN CALIFORNIA, 1898–1998, at 103 (2000).

88. KUTTNER, *supra* note 33, at 56. After failing in 1972, Jarvis backed the 1972 Watson initiative without improving its success. *See* SCHRAG, *supra* note 2, at 132; *see also* DAVID R. DOERR, CALIFORNIA'S TAX MACHINE: A HISTORY OF TAXING AND SPENDING IN THE GOLDEN STATE 139 (2000) (describing two other property tax initiatives that failed to qualify in 1976–1977).

should have, if my thesis were correct, caused at least some prospective *Serrano* losers to embrace Watson II after they had rejected Watson I four years earlier.[89]

To indicate that voters should have known what was coming as a result of *Serrano I*, Stark and Zasloff mentioned newspaper articles and editorials, President Nixon's proposed (but never adopted) national financing plan for schools, and the pronouncements of numerous scholars.[90] They acknowledged that *Serrano II* (which in December of 1976 confirmed the equal-spending, equal-tax remedy ordered by Judge Bernard Jefferson in 1974) was four years in the future, but they argued that voters should have seen such an outcome as inevitable in November of 1972.[91] Stark and Zasloff found, however, that there is not the least bit of correlation between cities' 1968/1972 swing on Watson and the tax base per pupil.[92]

One problem with Stark and Zasloff's exercise is that there was almost no swing to be explained. In 1968, Watson I got 32.0 percent of the statewide vote, and in 1972, Watson II got 34.1 percent. The swing to be explained is 6.5 percent.[93] In contrast, the statewide swing from Watson II to Jarvis in 1978 was 90 percent. The small size of the 1968/1972 swing does not rule out the possibility that the 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.

But even attentive California law professors would have had difficulty forecasting whether *Serrano* would ever take effect. *San Antonio v. Rodriguez*,[94] 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. The *Serrano* lawyers feared that the *Rodriguez* loss would foreclose the use of equal protection arguments at the state level.[95] 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.[96]

No one 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.[97] Even some state courts after *Rodriguez* regarded it

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89. Stark & Zasloff, *supra* note 7, at 834–35.

90. *Id.* at 836–37.

91. *Id.* at 839.

92. *Id.* at 841.

93. As explained *supra* note 40, SWING would be calculated as (34.1 – 32.0)/32.0 = 6.5 percent.

94. 411 U.S. 1 (1973).

95. *See* ELMORE & MCLAUGHLIN, *supra* note 21, at 60. *Serrano I* in 1971 rested heavily on a Fourteenth Amendment equal protection analysis, which the California Supreme Court took to be "substantially the equivalent" of California's provisions. *Serrano I*, 487 P.2d 1241, 1249 (1971).

96. *Rodriguez*, 411 U.S. at 40.

97. Stark and Zasloff make a small concession here: "Admittedly, the precise language of *Serrano I* is hazy on the issue." Stark & Zasloff, *supra* note 7, at 839, n.158 (citing *Serrano I*, 487 P.2d 1241, 1244 (Cal. 1971)). Hazy like a tule fog. I could not locate discussion anywhere in the opinion of whether, if the system does not violate the Fourteenth Amendment, it might nonetheless still violate parallel California constitutional provisions.

as foreclosing the use of equal protection in state cases.[98] 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 were a foregone conclusion.[99]

It could be argued, though, that in 1972 California voters were influenced by *Serrano I* precisely because they weren't law professors who worried about *Rodriguez*. As Stark and Zasloff correctly point out, popular media were full of stories about the end of the advantages that local property tax financing conferred 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 attending its public schools were disproportionately from poor families compared to the state average. 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.[100] 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.[101] 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.[102]

More striking is that San Francisco's apparent confusion was shared by the *Serrano* legal team. They did not realize that property poor and income poor were far from being the same thing. In 1974, Ronald Cox and John Mockler calculated the winners and losers from tax base equalization and

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98. 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. *See generally* W. Norton Grubb, *The First Round of Legislative Reforms in the Post-*Serrano *World*, 38 LAW & CONTEMP. PROBS. 459 (1974); Bill Swinford, *Shedding the Doctrinal Security Blanket: How State Supreme Courts Interpret Their State Constitutions in the Shadow of* Rodriguez, 67 TEMP. L. REV. 981 (1994).

99. *See* William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977). Former Connecticut Chief Justice Ellen Peters acknowledged Brennan's influence on her and other state court justices, specifically mentioning the school finance decisions of her court. *See* Ellen A. Peters, *Getting Away From the Federal Paradigm: Separation of Powers in State Courts*, 81 MINN. L. REV. 1543, 1544 n.4., 1545 n.8, 1559 (1997).

100. *See* ELMORE & MCLAUGHLIN, *supra* note 21, at 46–47. In an interview with Elmore and McLaughlin in 1980, Coons said 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 . . . ." *Id.* at 47. A contemporary news article suggests this was true. *See S.F. Joins in Rich School Legal Action*, S.F. CHRON., Jan. 5, 1971, at 1 (reporting that city officials cast themselves as representatives of a poor district, contrasting their fiscal situation to that of affluent Hillsborough).

101. *See* Kirp, *supra* note 22, at 101.

102. *See* ELMORE & MCLAUGHLIN, *supra* note 21, at 46–47. San Francisco's assessed value per pupil in 1969–70 was $27,829, more than twice the median for unified districts in the state. SONSTELIE ET AL., *supra* note 18, at 14–15.

found that the majority of poor children (51.6 percent) actually lived in school districts with above-average property wealth. The percentages were even higher for federal welfare (AFDC) recipients (61 percent) and African Americans (70 percent). A *Los Angeles Times* reporter gave the news to several of those involved in the litigation, and their responses indicated that most of them were unaware of the facts.[103]

John McDermott, lead counsel for *Serrano II*, responded: "Of course we assumed that more poor people than rich people lived in low-wealth districts."[104] 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."[106]

Of those interviewed, only Boalt Hall law professor Steven Sugarman 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. "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)."[107]

With all this confusion among 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.[108] Even with the broad

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103. Jack McCurdy, *School Funding Ruling: A Setback for the Poor?*, L.A. TIMES, June 30, 1974, pt. I, at 3; *see also* ELMORE & MCLAUGHLIN, *supra* note 21, at 86–87. Cox and Mockler's study was replicated and confirmed years later. SONSTELIE ET AL., *supra* note 18, at 28.

104. McCurdy, *supra* note 103.

105. *Id.*

106. *Id.* at I26.

107. *Id.* Sugarman's method of reconstructing school finance was a voucher plan that he and John Coons devised. *See* JOHN E. COONS & STEPHEN D. 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. *See* James S. Catterall, The Politics of Education Vouchers, 46–51 (1982) (unpublished Ph.D. dissertation, Stanford University) (on file with the School of Education, Stanford University).

108. Professor Stark located a nineteenth century case, *Greencastle Township v. Black*, 5 Ind. 557 (1854), that was remarkably similar to *Serrano*. *See* Kirk J. Stark, *Rethinking Statewide Taxation of Nonresidential Property for Public Schools*, 102 YALE L.J. 805, 805–12 (1992). Stark and Zasloff mention this precedent, Stark & Zasloff, *supra* note 7, at 809 n.31, but not its denouement, which is described by Emma Lou Thornbrough, *see* EMMA LOU THORNBROUGH, INDIANA IN THE CIVIL WAR ERA 467–75 (1965). Following *Greencastle* were responses that seem somewhat parallel to those in California following *Serrano II* and Prop 13. The Indiana legislature

hints in *Serrano I* about what an appropriate 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 in 1972 could explain to the voters what *Serrano* actually meant.

X. 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.[109] They also knew that they had to do something to deal with *Serrano II*, which came down days before the 1977 legislative session resumed in January. Although there was a substantial state budget surplus, the legislature allocated so much of the state's budget to *Serrano* compliance (AB 65) that they adjourned in 1977 without doing anything to alleviate property tax burdens.

Stark and Zasloff offered a different interpretation. They argued that the cost of AB 65 was not large enough to forestall property tax relief in 1977.[110] Alan Post, the Legislative Analyst, was quoted twice in their article, but Stark and Zasloff did not attempt to explain what I see as the "smokingest" 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.[111] The *Los Angeles Times* editorial board agreed with Post's assessment.[112]

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declined to increase state taxes and spending to replace the now-unconstitutional local funds. Thornbrough explains:

> As a result, cities and towns drastically curtailed their educational efforts or abandoned them entirely. In some places public school buildings were rented to groups who operated them as private schools. In others, there were efforts to keep the schools open by soliciting voluntary contributions to supplement the funds contributed by the state, but these were largely unsuccessful. Many teachers were dismissed, and there was a general exodus of trained superintendents and principals to other states.

THORNBROUGH, *supra*, at 473–74. Schools gradually revived after 1860 as some towns and cities used local taxes for public schools without the benefit of an enabling law. *Id*. at 474. After the legislature failed to pass a constitutional amendment in 1863 to overrule *Greencastle,* the legislature in 1867 "simply adopted a law which re-enacted features of the laws previously invalidated." *Id*. at 475. Most schools reopened and public education expanded. A challenge finally reached the state supreme court in *Robinson v. Schenk*, 1 N.E. 698 (Ind. 1885). The *Robinson* court reversed *Greencastle* and similar cases, conceding that the legislature had largely ignored them and that the schools had prospered as a result of local support. *Robinson*, 1 N.E. at 699–700. *Robinson* was discussed by Stark, *supra* note 108, at 811–12.

109. *See* Fischel, *How* Serrano, *supra* note 3, at 627–32.

110. Stark & Zasloff, *supra* note 7, at 843.

111. *See* Robert Fairbanks, *State Budget: First Shoe Falls*, L.A. TIMES, July 2, 1977, pt. II, at 1; Robert Fairbanks, *Work to Resume on Property Tax Relief*, L.A. TIMES, Aug. 1, 1977, pt. I, at 3; Larry Liebert, *Crucial Conference on State Spending*, S.F. CHRON., July 29, 1977, at 17.

112. *See* Editorial, *For Key Bills, Proper Priorities*, L.A. TIMES, Aug. 18, 1977, pt. II, at 6 ("Even with a budget surplus of almost $3 billion, the state cannot afford both bills . . . ."). The

Stark and Zasloff might have chosen not to address this because they apparently believed Post was using the wrong numbers to characterize AB 65. They stated without qualification that the five-year cost (it was almost always put in that time frame) of AB 65 was $2.9 billion.[113] Their source for this number is AB 65's Legislative History Bill File.[114] However, nearly every published source, including books and contemporary newspapers, puts the five-year cost of AB 65 at $4.3 billion, give or take $300 million.[115] This 48 percent difference between Stark and 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 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 and 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 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. Because these expenditures did not, strictly speaking, further "*Serrano* compliance," Stark and Zasloff 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.[116] 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.[117] That implied equalization of district tax rates, for the same level of spending.

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editorial supported the school finance bill, AB 65, but opposed the "hodge-podge" property tax reform. *Id.*; *see also* Editorial, *The Billion-Dollar Gap*, L.A. TIMES, Aug. 30, 1977, pt. II, at 6.

113. Stark & Zasloff, *supra* note 7, at 843.

114. *Id.* at 843 n.171. This file can be found in the California State Archives, Sacramento.

115. *See* DOERR, *supra* note 88, at 137 (estimating the cost as "more than $4 billion over a five-year period"); ELMORE & MCLAUGHLIN, *supra* note 21, at 162 (reporting "a price tag for five years in excess of $4.5 billion"); KUTTNER, *supra* note 33, at 102; Donald W. Crowley, *Implementing* Serrano*: A Study in Judicial Impact*, 4 LAW & POL'Y Q. 299, 315 (1982) ("[L]egislative leaders and the governor agreed to trim the bill to $4.3 billion over a 5-year period . . . .").

116. This is true even of articles cited by Stark & Zasloff, *supra* note 7, at 843 n.169, 850 n.208. *See* Robert Fairbanks, *School Aid Bill Called 'Fraud on Taxpayers,'* L.A. TIMES, Sept. 7, 1977, pt. I, at 18 ("The bill will cost the state $4.3 billion between now and 1982."); Doug Shuit, *Cost Factor Stalls 2 Key Bills: Tax Relief, School Aid Measure Snarled*, L.A. TIMES, Aug. 17, 1977, pt. I, at 3 ("Getting the most attention Tuesday was the proposed $4.6 billion, court-ordered school aid bill").

117. *See* Friedman, *supra* note 5, at 495.

The trouble was that strict equalization would have required either 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) would have been unconscionable in the eyes of most Democrats. *Serrano*'s supporters in the legislature thought they were helping poor kids, and, as it turned out, the majority of poor kids attended school in districts that were technically "property rich."

In order to avoid an outcome that was inconsistent with liberal legislators' desire to help poor people, 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.[118] The legislature's "level-up" strategy was the only way to accommodate both demands (tax base sharing and spending equity) 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 and Zasloff did, is like counting the cost of a gall bladder operation without the cost of anesthesia.

XI. *SERRANO* AND THE LEGISLATURE: DIALOGUE OR UKASE?

Aside from deploying a low figure for the cost of AB 65, Stark and Zasloff suggested that the 1977 legislature was not paying much attention to the particulars of the court's *Serrano* decision. From my newspaper readings, I saw a legislature that was sympathetic to *Serrano* ideals but was being pushed too far in a single direction by an uncompromising court order.[119] Stark and Zasloff painted 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."[120]

Their note ending this sentence cites Elmore and McLaughlin for the "disdain" (Stark and Zasloff's term, not Elmore and McLaughlin's) that legislators had for the *Serrano* lawyers.[121] 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

118. *See* ELMORE & MCLAUGHLIN, *supra* note 21, at 135, 155 (indicating that the "level-up" strategy was the only politically feasible approach); *see also* CHARLES S. BENSON, FINAL REPORT TO THE SENATE SELECT COMMITTEE ON SCHOOL DISTRICT FINANCE (1972).

119. *See* Fischel, *How* Serrano, *supra* note 3, at 627–34.

120. Stark & Zasloff, *supra* note 7, at 846.

121. ELMORE & MCLAUGHLIN, *supra* note 21, at 155–56.

it resisted the court's order to pay the plaintiffs' attorneys' fees "long and defiantly," as Paul Carrington put it.[122]

The source Stark and Zasloff cite, Elmore and McLaughlin, is an entire book about *Serrano*, AB 65, and Prop 13. The study was funded by the Ford Foundation, which had also supported many of the studies that were the basis for *Serrano*. Elmore and McLaughlin began their research in 1978 and 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.

Elmore and McLaughlin tell a story of a legislature eager to accomplish some form of school finance reform but frustrated by the uncompromising demands of the *Serrano* court and its lawyers. In their preface, Elmore and McLaughlin state: "Running through our interviews is a 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."[123] In describing the process of crafting AB 65, Elmore and McLaughlin again point out the gulf between lawyers and legislators; their views "never seemed to converge."[124] Looking back, Elmore and McLaughlin point out that "*Serrano* hawks and doves" all credit the court for "leveraging" reform.[125]

Other contemporary sources indicate that the legislature was driven by *Serrano II* rather than its own agenda. A *San Francisco Chronicle* article published ten days after *Serrano II* was announced, included interviews with John McDermott, *Serrano*'s lawyer and (separately) with Senator Albert Rodda.[126] "'The court gave its total affirmation in favor of the plaintiff,' rejoiced McDermott. 'Now the Legislature has no reason to dilly-dally any longer.'"[127] 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's 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. "Let's be practical. You can't do it all within the existing state surplus (money)," Rodda concluded.[128]

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122. Paul Carrington, *Judicial Independence and Democratic Accountability in Highest State Courts*, 61 LAW & CONTEMP. PROBS. 79, 84 (1998).

123. ELMORE & MCLAUGHLIN, *supra* note 21, at x.

124. *Id.* at 156–57.

125. *Id.* at 230. For additional textual analysis, see FISCHEL, WORKING PAPER, *supra* note 10, at 43–44.

126. *School Tax Change Order*, S.F. CHRON., Jan. 9, 1977, at 5.

127. *Id.*

128. *Id.*

When the Chair of the Senate Finance Committee sighs and says "we're in deep trouble,"[129] it suggests something other than what Stark and Zasloff called a "blasé attitude" toward the plaintiff.[130]

The primary evidence that Stark and Zasloff offered for the notion that the 1977 legislature was marching to the beat of its own drummer is the legislature's threat to put the question of school finance to a referendum. Stark and Zasloff cited a September 3, 1977, article from the *San Francisco Chronicle* about a news conference in which Senator Rodda and Assemblyman Leroy Greene announced that they would "support a constitutional amendment on next year's ballot that would require the court to accept the measure [AB 65] as meeting the *Serrano* decision."[131] Obviously upset that his legislation would be subjected to another round of *Serrano* review, Rodda declared, "Let the voters decide."[132]

This was probably a bluff, and it was most likely directed at John McDermott, not the court; McDermott was aggressive and abrasive in his dealings with the legislature.[133] 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.[134] McDermott did indeed bring the case back to the supreme court for expedited review, which the court did not grant, though it did not offer any approval of AB 65, either.[135] If the legislature had been serious about a constitutional amendment, there would have been some subsequent news about its being put on the ballot after McDermott had announced he was going back to court. Elmore and 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*.[136]

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129. *Id.*

130. Stark & Zasloff, *supra* note 7, at 845.

131. Larry Liebert, *Legislature Approves Huge School Aid Bill*, S.F. CHRON., 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.

132. *Id.*

133. ELMORE & MCLAUGHLIN, *supra* note 21, at 68, 155–156, 164, 181, 211.

134. 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 116.

135. Gene Blake, *High Court Declines to Hear Serrano Decision Plea*, L.A. TIMES, Jan. 20, 1978, pt. I, at 33.

136. *See Serrano I*, 487 P.2d 1241, 1256, 1258–59 (Cal. 1971) (citing Brown v. Bd. of Educ., 347 U.S. 483 (1954)).

Opponents of the proposed amendment could have painted the legislature's referendum as the equivalent of reversing *Brown* and eviscerating the Equal Protection Clause.[137] 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.

XII. WHY DID THE 1978 BEHR BILL OMIT RELIEF FROM SCHOOL TAXES?

Stark and Zasloff made much of the dysfunction of the state senate and the two-thirds majority that finance bills had to obtain in both the assembly and the senate in order to win passage as reasons for the failure to pass property tax relief in 1977.[138] While I disagree with Stark and Zasloff regarding what the actual problem was about, 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 pass tax relief in 1978.

After Jarvis's initiative had been certified with an alarmingly large number of signatures in December 1977,[139] the legislature decided to take the movement seriously. Now what Stark and Zasloff called the "[h]istoric [d]ivisions in the Senate,"[140] the two-thirds rule, and internecine power plays were of no consequence. The Behr Bill (SB 1) passed with a 32 to 6 vote in the Senate and was viewed by most legislators as an attractive alternative to the Jarvis initiative.[141] 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, as Stark and Zasloff correctly point out, the largest tax cut the legislature had ever passed, and it showed early signs of persuading the public.[142] Polls showed that it cut support for Prop 13 by early April.[143] 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.[144]

The Behr Bill's major problem was that its split-roll provision (which allowed residential property to be taxed at a lower rate) excluded property taxes

137. The yoking of *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 103–08.

138. *See* Stark & Zasloff, *supra* note 7, at 847–50.

139. *Jarvis Initiative to Curb Property Taxes Qualifies*, L.A. TIMES, Dec. 30, 1977, pt. II, at 1. The petitions had more than twice the number of signatures necessary to qualify. *Id.*

140. Stark & Zasloff, *supra* note 7, at 847.

141. DOERR, *supra* note 88, at 143. 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."

142. Stark & Zasloff, *supra* note 7, at 849.

143. The Field Poll found that support for Prop 13 had declined between February and early April. Mervin D. Field, *Prop. 13 Margin of Support Dips in Survey*, L.A. TIMES, Apr. 12, 1978, pt. I, at 3.

144. In mid-May of 1978, polls found that Prop 13 was favored by 42 percent and opposed by 39 percent, with 19 percent undecided. *See* KUTTNER, *supra* note 33, at 74.

meant for schools. As a result, 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.[145]

Stark and Zasloff questioned that reading,[146] but I have since obtained the text of the bill, and it confirms my original understanding of it.[147] It is important to keep in mind that the constitutional amendment Prop 8 proposed did not mandate a split-roll system. It only authorized the legislature to adopt one. Under this authorization, Behr's SB 1 proposed the split-roll for all property taxes *except schools*. 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? I had claimed that because "the state could not afford to forego inflation driven local property taxes from homeowners" to fund AB 65,[148] the Behr Bill could not touch school taxes without an unpleasant revisit to *Serrano*. The Behr Bill did not reduce or reallocate school property taxes because AB 65 needed those revenues to be viable. Stark and Zasloff paraphrased 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."[149]

Here, Stark and Zasloff put 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

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145. *See* Robert Fairbanks, *Jarvis, Behr Measures Pit Owners Against Renters: Both Intended to Slow Tax Rise*, L.A. TIMES, Apr. 23, 1978, pt. II, at 1 ("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.").

146. *See* Stark & Zasloff, *supra* note 7, at 851 n.214. They appear to misunderstand what I actually said. Stark and 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 "[f]or school purposes, homeowners' *property* remained fully taxable." Fischel, *How* Serrano, *supra* note 3, at 633 (emphasis added). My statement is supported both by the news article and the text of the bill itself. It also seems consistent with Stark and Zasloff's understanding of the Behr Bill, which elsewhere in their article they use as an example of a tax cut that did not give any property tax relief from rising school taxes. Stark & Zasloff, *supra* note 7, at 831.

147. *See* S.B. No. 1, Ch. 24, filed March 3, 1978, at 2, 4. For details, see FISCHEL, WORKING PAPER, *supra* note 10, at 48–52.

148. Fischel, *How* Serrano, *supra* note 3, at 633.

149. Stark & Zasloff, *supra* note 7, at 850. Recapture was a special feature of AB 65 that required property-rich districts to send a portion of their locally raised property taxes to the state for redistribution to other districts as a condition for spending more locally. *See generally* COONS, CLUNE & SUGARMAN, *supra* note 5. Recapture is effectively a tax on the spending of property-rich districts. AB 65 did not subject all spending to recapture, only that which exceeded a previous level. This was only a modest part of AB 65's revenues in the first year, but it was scheduled to rise considerably in later years. AB 65's recapture feature was criticized as inadequate in Sugarman, *supra* note 5, at 523.

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.[150] Stark and Zasloff's attempt to tie my analysis to the magnitude of recapture is thus entirely misplaced. I did not claim that recapture "broke the Tiebout equilibrium."[151] 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 2 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, received 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.[152]

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

150. For almost all districts of any size, the school property tax rate was now dictated by the state. *See* CALIFORNIA STATE DEPARTMENT OF EDUCATION, CALIFORNIA SCHOOLS BEYOND *SERRANO*: A REPORT ON ASSEMBLY BILL 65 OF 1977, at 16–17 (1979). This was made clear in an article on AB 65 by John Mockler and Gerald Hayward, Mockler & Hayward, *supra* note 35, at 386, who had participated in the drafting of the law. They pointed out that AB 65 was founded on property taxation. *Id.* at 399. The minimum rate that all districts had to adopt, not "recapture," was expected to generate an amount that would cover 64 percent of the *Serrano*-compliance cost of AB 65. *Id.* at 394.

151. Stark & Zasloff, *supra* note 7, at 850 (emphasis omitted).

152. Several observers (though not Stark and Zasloff) attributed Prop 13's surge in May 1977 to the Los Angeles County Assessor, who prematurely (but not illegally) revealed how rapidly assessments and hence property-tax bills were rising. *See* KUTTNER, *supra* note 33, at 74–77; SCHRAG, *supra* note 2, at 149–50. Regardless of whether the assessor could have or should have suppressed accurate information, blaming the bearer of unpleasant but truthful tidings is not a useful way to explain social phenomena. For further discussion, see FISCHEL, WORKING PAPER, *supra* note 10, at 17–20.

challenged. The reason for my gratitude is that a controversial idea that is not challenged by serious scholars is not taken seriously.[153]

Stark and 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 comparing two unrepresentative extremes like Baldwin Park and Beverly Hills); 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 account works as well. To beat my story you have to tell a better story, and Stark and Zasloff have not done so. The nearest they come to any positive account of Prop 13 is to repeat the old line about the revolt of the rich and then add 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 percent said yes, 30 percent said no, and 17 percent were undecided.[154] 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.

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*-Prop 13 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

153. Stark and Zasloff graciously point out the influence my hypothesis has had in some academic circles, Stark & Zasloff, *supra* note 7, at 805–06, 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.

154. *See* Steven Hayward, *Annals of the Taxpayer Rebellion*, WASH. TIMES, June 27, 1998, at C3. The furor caused by Warren Buffet's criticism of Prop 13 during the 2003 recall campaign suggests that support for it has not diminished. *See* Mark Barabak & Kenneth Reich, *Buffet's Property-Tax Remarks Stir Debate*, L.A. TIMES, Aug. 16, 2003, at A1.

to California circumstances[155] or pointed out that anti-tax sentiment in both California and elsewhere was the same before and after Prop 13.[156]

Most commentators, however, took Prop 13 as the starting gun for a major shift in voter preferences.[157] In doing so, they may have steered political leaders in the wrong direction. If Prop 13 is viewed simply as a property tax revolt rather than a revolt against the disconnect between local taxes and local school 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 induce California voters to loosen the chains of Prop 13. The way to do this is to drop the Coons-Clune-Sugarman justification for court intervention.[158] It insisted on equal revenues (per student) for equal tax rates, which is tantamount to equalization of the property tax base. The focus on the property tax base unnecessarily conflicts with assisting the poor and disadvantaged, because many of them live in districts that have large amounts of the tax base per pupil.

Coons, Clune, and Sugarman were aware of this. Their main reason for advancing tax base equalization was that they thought it would be the only argument that the federal courts would accept.[159] 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 found for plaintiffs on grounds other than tax base inequality.[160]

From what scholars can tell, it does not matter much what the state constitution says about education or property taxes.[161] Courts have found reason to intervene in school finance on a number of grounds. Given that, there is no longer any reason for any court to apply the Coons formula.[162]

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155. *See* Frank Levy, *On Understanding Proposition 13*, PUB. INT., Summer 1979, at 66, 88–89.

156. *See* Paul Peretz, *There Was No Tax Revolt!*, 11 POL. & SOC'Y 231 (1982); *see also* DAVID D. SCHMIDT, CITIZEN LAWMAKERS: THE BALLOT INITIATIVE REVOLUTION 139 (1989) ("Most of the measures patterned after Proposition 13 failed.").

157. *E.g.*, KUTTNER, *supra* note 33, at 201–22; SEARS & CITRIN, *supra* note 29, at 267–69; SCHRAG, *supra* note 2, at 259–83.

158. *See* COONS, CLUNE & SUGARMAN, *supra* note 5.

159. ELMORE & MCLAUGHLIN, *supra* note 21, at 50; *see* Joseph T. Henke, *Financing Public Schools in California: The Aftermath of* Serrano v. Priest *and Proposition 13*, 21 U.S.F. L. REV. 1, 9 (1986); Kirp, *supra* note 22, at 99–100.

160. *See* ANNA LUKEMEYER, COURTS AS POLICYMAKERS: SCHOOL FINANCE REFORM LITIGATION (2003); Peter Enrich, *Leaving Equality Behind: New Directions in School Finance Reform*, 48 VAND. L. REV. 101, 185–94 (1995).

161. *See* PETER SCHRAG, FINAL TEST: THE BATTLE FOR ADEQUACY IN AMERICA'S SCHOOLS (2003); Molly McUsic, *The Use of Education Clauses in School Finance Reform Litigation*, 28 HARV. J. ON LEGIS. 307, 312–14 (1991); Julie K. Underwood, *School Finance Litigation: Legal Theories, Judicial Activism, and Social Neglect*, 20 J. EDUC. FIN. 143, 157–58 (1994).

162. At least one of the authors of the Coons, Clune, and Sugarman approach apparently agrees that it is no longer necessary: "[T]he 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

Plaintiffs can go back to what the reformers originally wanted: a focus on the truly disadvantaged.[163] 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 an appropriate education.

Courts can thus order that more money be sent to Baldwin Park or even to San Francisco and to Los Angeles, even though the latter two 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 sources of wealth, including labor, land, and capital. Thus even the Coons ideal of a commonwealth of tax base (misidentified as being a 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 and Zasloff generally seem to agree.[164] The reason that property tax differences among communities are not unfair is that home buyers take the differences into account when they purchase property. Thus, families who buy homes in low-tax districts have to pay more than they would for an otherwise identical house in a high-tax district. The family in the low-tax district has paid for its privilege in advance or, more likely, with a higher monthly mortgage payment. The family in the high-tax district does pay higher taxes, but its lower monthly mortgage payments makes those higher taxes affordable.[165] As long as buyers know about tax differences and respond to them, as scores of economic studies have demonstrated they do,[166] the Coons fiscal equity argument is flat-out wrong.

I will close with an insightful observation by Stark and Zasloff. In explaining why the legislature did not respond to critics of AB 65 with a referendum, Stark and 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."[167]

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unwarranted." Paul A. Minorini & Stephen D. Sugarman, *School Finance Litigation in the Name of Educational Equity: Its Evolution, Impact, and Future*, *in* EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES 64 (Helen F. Ladd et al. eds., 1999).

163. This would comport with the "minimum equal protection" advocated by Frank Michelman, *Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7 (1969). A minimum adequacy standard has recently been embraced in *Campaign for Fiscal Equity Inc. v. State*, 801 N.E.2d 326, 347 (N.Y. 2003). The New York court focused on the concentration of disadvantaged children in New York City and pushed aside the fact that the city's tax base per pupil is actually richer than the state average.

164. Stark & Zasloff, *supra* note 7, at 808 n.30.

165. This was first pointed out by Bruce W. Hamilton, *Capitalization of Intrajurisdictional Differences in Local Tax Prices*, 66 AM. ECON. REV. 743, 745 (1976).

166. For a recent confirmation of tax capitalization and review of other studies, see Oded Palmon & Barton A. Smith, *New Evidence on Property Tax Capitalization*, 106 J. POL. ECON. 1099 (1998).

167. Stark & Zasloff, *supra* note 7, at 846.

As Melstner and his colleagues clearly demonstrated, the legislature had an egalitarian outlook on school funding before *Serrano I*.[168] The problem of *Serrano* was not that the court's goals were different from those of the legislature. 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 little compromise with voter preferences. The legislators, unlike the judges, had to meet the voters, who care about local control as well as equality.[169]

Having been liberated by the court from the concerns of 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 majority was pleased with the outcome,[170] given that they had been handed a free pass on the school finance issue. But the free pass was the *source* of the problem, not its solution. It put the legislators at odds with the voters, to whom they were otherwise reasonably well attuned.

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, equalization of expenditures, which follows from *Serrano*'s insistence on property tax base sharing, is not congenial to its ideals. It may be time for the California Supreme Court to admit it made a mistake and revisit *Serrano* so that its remedy can match its ideals.

168. ARNOLD J. MELTSNER ET AL., POLITICAL FEASIBILITY OF REFORM IN SCHOOL FINANCING: THE CASE OF CALIFORNIA 69–70 (1973).

169. Colin D. Campbell & William A. Fischel, *Preferences for School Finance Systems: Voters Versus Judges*, 49 NAT'L TAX J. 1, 13 (1996).

170. Mockler & Hayward, *supra* note 35, at 400.