



35 years strong: The importance of Proposition 13 for every Californian.

Throughout the 1960's and 70's California homeowners saw their property tax rise dramatically. At first, some of the increases were more of a tolerable burden. Then it got worse. Frustration, anger and fear drove many homeowners to wonder whether or not they would even be able to keep their homes. Seniors were squeezed even though many had already paid off their mortgages. Young families, too, faced the possibility of foreclosure by the tax collector and a debilitating mark on their credit score. Property tax increases, driven by high tax rates and escalating property values, became intolerable. Pleas to the Legislature went unanswered and Proposition 13 was enacted in June of 1978.

According to recent data from Department of Finance, property owners make up the majority of Californians. This is true regardless of race, ethnicity, gender, income, political party or location. One of the beneficial effects of Proposition 13 is that it protects all these homeowners, not just low income seniors. For example, a homeowner who purchased in 2006 has already saved over \$10,000 in property tax liability as a direct result of Proposition 13. Everybody, homeowners and renters, are now able to vote on local measures including utility user tax increases as a direct result of Proposition 13. It is little wonder then that Proposition 13 remains wildly popular in California. 64% of those surveyed in recent Public Policy Institute of California (PPIC) and Field Poll studies still support it.

Many misconceptions exist about Proposition 13. For instance, Proposition 13's limitation on annual increases in assessed value has proven to be an effective revenue stabilizer that benefits local government. Because of Proposition 13, the massive collapse of California's real estate market in recent years did not translate into massive losses in local property tax revenues.

Also, the urban myth that Proposition 13 decimated California's once great education system is belied by the fact that education funding on a per student basis, adjusted for inflation, has increased 30 percent since the years just prior to Proposition 13's passage. There is broad consensus that our educational institutions in the mid-70's were well run and provided a top quality product. This strongly suggests that the failure of our schools today is not for lack of money.

Finally, California is not a low property tax state. According to the non-partisan Washington D.C. based Tax Foundation, California is 15th in combined state/local per capita property taxes even with Proposition 13!

It is in the interests of all Californians to keep property taxes reasonable and predictable. Fair taxation and efficient use of taxpayer dollars are non-partisan goals. Howard Jarvis Taxpayers Association is likewise nonpartisan. **Of our 200,000 members, 30% are Democrats and a further 20% identify with no party at all.** Our interest remains inclusive to the millions of California taxpayers, something no other political organization in this state can claim.

HJTA exists to give a voice to these taxpayers. We provide weekly columns syndicated in newspapers across California alerting taxpayers to key issues. Our Office of Legal Affairs has an astounding record of legal victories on behalf of taxpayers in the Courts of California, including trial courts and the appellate level.

Howard Jarvis Taxpayers Association also has a full time lobbyist hired to advance the defense of Proposition 13 and the rights of taxpayers, responsible fiscal policies and integrity in our electoral system of governance. As a non-partisan entity representing thousands of your constituents, we want to ensure that you also have the same conduit to reach them regarding the value and benefit of Proposition 13. To that end, we stand ready to assist both legislators and staff with any questions you might have. We want to be a resource to you, and that effort begins with this primer. Please feel free to contact our Legislative Director, David Wolfe by email (david@hjta.org) or by calling directly, 916-444-9950.

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What we Defend:

Propositions 13, 218, & 26

Proposition 13 (1978)

What did it do?

Approved at the ballot box by a two-to-one margin in 1978, Proposition 13 set the property tax rate at a uniform 1% throughout the state, and property tax increases are limited to no more than 2% a year as long as the property is not sold. Once sold, the property is reassessed at 1% of the new market value (usually the sales price) with the same 2% cap on annual tax increases. As a result, new buyers are always aware of what their taxes will be and know the maximum amount property taxes can increase each year for as long as they own the property.

Proposition 13 also requires that all state tax increases be approved by a two-thirds vote of the Legislature, and that new or increased local special and parcel taxes be approved by a two-thirds vote of the people.

What was it like before Proposition 13?

Prior to Proposition 13's acquisition value based system, property tax was assessed under market value condition. So, not only was the property tax rate high (nearly 3%) but it was not uncommon for property tax assessments to double or even triple in a short period because residential and commercial property was not always reassessed annually. A nearby neighbor selling a property, or a change in the "highest and best use" of a property could also trigger a reassessment. The unpredictability of the increases was incredibly difficult for those on fixed incomes and really highlighted the inequity of those pre-Proposition 13 days. Howard Jarvis summed it up best when he said, "Property taxes are the only ones where someone's ability to pay is not factored into the equation." With income tax, if you make more, you pay more. If the sales tax on the car is too much, don't buy it. But with property taxes, no one knows what you can truly afford. You may be on Social Security, a single multi-millionaire, or have a young family, and yet be paying property tax you cannot afford. This makes Proposition 13's stability important, for both taxpayers and local government.

Local government dislikes Proposition 13. Should they?

Following the passage of Proposition 13, local governments faced a cumulative \$5-7 billion shortfall in lost property tax revenue. Despite any number of campaign scare tactics, Proposition 13 passed, the Legislature authorized that surplus state revenue be transferred to cities, none went bankrupt, and life went on. In the 2002-2008 housing market another boom cycle occurred.

Values were increasing by more than ten percent a year. Local government would have been swimming in tax dollars, but under Proposition 13 their revenue is capped at two percent. However, what happens in a downturn? Since the recession began, the statewide property assessment roll has increased in every year but one (2008). Practically all county rolls have experienced overall increases since 2008. Under a market system, property tax revenue would have decreased, an untenable situation for local government where property and sales taxes comprise 70% of total revenue. It is safe to say that without Proposition 13, municipal bankruptcies like the ones seen in Stockton, Vallejo, and San Bernardino would become far more frequent.

I recently purchased a house, and I'm paying much higher property taxes than my neighbor. How can that be fair?

Property taxes should be based on the actual value of the home, not on “paper profits” that rise and fall amidst the wild fluctuations of California’s real estate market. This difference disappears once a home is sold. Proposition 13’s one percent rate commences at the new market value, and the assessment value increase again begins its steady two percent annual climb. That is entirely fair because you know what your taxes will be both when you buy the home and twenty years down the line. If you think the property taxes will be too much over time, don’t buy the house. However, this still doesn’t answer the question of whether this violates the Equal Protection clause in the U.S. Constitution, something that dogged Proposition 13 since its inception. The United States Supreme Court ultimately answered this question in the case *Nordlinger v. Hahn* when they ruled 8-1 that it did not. The Court agreed that there was a standard of rationality to property taxes under Proposition 13 that allowed homeowners equal protection because they enter the process with eyes wide open to the potential tax impact over time. Neighborhood stability and the argument that existing homeowners require consistent tax rates in order to provide for their families or themselves in retirement were other reasons that the court cited.

I bought my home after 1978. Am I covered under Prop 13?

Yes. Anyone who owns a home, condominium, etc. benefits from Proposition 13’s protections. For example, if you bought in 2007, you’ve already saved nearly \$10,000 as a direct result of Prop 13. Indirectly, apartment renters also benefit from capped property taxes through more stable rent payments.

What happens if I buy a home and its value declines?

If your property's market value declines to less than its taxable value under Proposition 13, you can apply for a tax cut. Homeowners who believe their property has declined significantly in value should contact the county assessor to request a reduction. Since property values nearly doubled between 2001 and 2006, those properties purchased before 2001 are unlikely to qualify for any reduction since any new lower market value will still probably be much higher than the

assessor's valuation for tax purposes. A good rule of thumb is that if you believe your home would sell today for less than the value reflected on your tax bill, you should apply for a reduction.

When I move, can I take my Proposition 13 tax base?

Yes, if you are over 55 years old and staying within the same county. Maybe, if you are moving across county lines. Proposition 60, which was passed with HJTA leadership in 1986, allows seniors to transfer the base year value of their home when they sell that home and buy another in the same county, and meet other conditions specified in the law, including: (a) Both properties must be located in the same county and be eligible for the Homeowners' Exemption; (b) You must be at least 55 years of age; (c) The replacement dwelling must be of equal or lesser value (sales price) than the original property; and (d) The replacement dwelling must have been acquired or newly constructed within two years of the sale of the original property. **The exemption can only be used once.** You can also transfer your base-year value of your home to another dwelling outside of your county of residence, but only if you are moving to the following counties: Alameda, Los Angeles, San Diego, Santa Clara, El Dorado, Orange, San Mateo, and Ventura counties.

Proposition 218 (1996)

The “Right to Vote on Taxes Act”

What was Proposition 218?

Intended as a follow-up measure to Proposition 13, Proposition 218 was approved by voters on the November 1996 ballot. It requires that a ballot be mailed to property owners for all assessments and property related fees with the exception of water, sewer, and garbage rate increases. Street lighting assessments, storm water and urban runoff management assessments, and open space assessment districts are all examples of where a ballot is required to be mailed to impacted homeowners. Ballots are weighted by the size of the property. If approved by majority vote, the assessment will appear on your property tax bill. For water, sewer, and garbage rate increases, a notice is sent out to impacted property owners 30 days before a hearing to approve the rate increase. Residents can then “protest” it by either sending in their protest in writing to the District office, or by showing up at the hearing.

Why was Proposition 218 needed?

In the aftermath of Proposition 13, municipalities were on the lookout for new sources of revenue. They hit upon assessment districts, which had been historically used to fund capital improvements that directly benefited property. Even for legitimate property related assessments like street lights, the money was often being used for the municipalities’ General Fund. Howard Jarvis long believed that any property tax revenue, including fees and assessments, should provide a direct benefit to the homeowner. Prior to the passage of Proposition 218, for instance, cities were attempting to pass assessments for police services. Police and fire services are a general benefit that should be paid for via taxes on all residents, not just assessments against homeowners.

Can I reduce any tax, assessment, fee or charge?

Yes. Proposition 218 gives any taxpayer the ability to use the initiative process to reduce or repeal any tax, assessment, fee or charge. By collecting the signatures of 5% of the number of people in the local district who voted in the last election for governor, you can put any locally imposed levy to a vote.

Proposition 26 (2010)

What is a fee? What is a tax?

What was Proposition 26?

Proposition 26 was approved by voters in November of 2010 and served to provide clarity over what was a tax and what was a fee. It redefined the word ‘tax’ found in Article 13A Section 3 of the Constitution to read: “any change in state statute that results in any taxpayer paying a higher tax...requires a two-thirds vote of the Legislature.” Five new exemptions were also created in order to determine what a legitimate fee is. These read as follows:

A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.

A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of providing the service or product to the payor.

A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

A charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.

A fine, penalty, or other monetary charge imposed by the judicial branch of government or the State, as a result of a violation of law.

Why was Proposition 26 necessary?

Proposition 26 was needed to close a loophole created following the California Supreme Court’s decision in *Sinclair Paint v. Board of Equalization*. The cause of the problem was a legislative bill that imposed a fee on producers of lead-based paint in order to offset the cost of providing children’s mental health services. Sinclair took the tax collecting agency (BOE) to court on the grounds that this was not an appropriate regulatory fee because there was no harm to mitigate that was directly caused by the fee-payers activities. Sinclair, a paint company, argued that they no longer had lead in their paint, and in any event, there was no direct nexus between lead-based paint and children’s mental health. The Supreme Court decided against Sinclair, indicating that the fee was valid if a company had lead in their paint in the past, present, or future. This led to a

broad expansion of the definition of “nexus” and what qualified as a fee. A broader discussion of this topic will be held later in the primer under the section “Tax-Like fees.”

What if taxpayers believe the fees are excessive?

Under Proposition 26, the burden is on the state/local government to determine that the fee is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the payor bear a reasonable benefit from the governmental activity.

Threats to Taxpayers

Split Roll

What is “split roll?”

Split roll is shorthand for splitting the property tax roll. Currently, both residential and commercial properties are taxed under Proposition 13’s one percent cap. A split roll would separate commercial from residential and tax them at a higher rate, perhaps 1.3% or market value. As it amends Proposition 13, this plan requires a two-thirds vote in the Legislature, followed by a statewide vote of the people since it alters the Constitution.

Another type of split roll that can be accomplished via statute is an alteration of the change of ownership definition, which can lead to properties being reassessed faster. An example of this is this year’s AB 188 (Ammiano) which said that the definition is met if 100% of the ownership interest in a legal entity has changed ownership.

Who is opposed to a split roll, and why?

HJTA is opposed to a split roll because we believe that property taxes between commercial and residential properties should remain uniform, just as it was before Proposition 13. We are also concerned that a removal of the one percent cap on commercial properties will create a “slippery slope” and lead to increased attacks against homeowners. We are joined in opposition by a number of different business groups including the National Federation of Independent Business (NFIB). Proponents argue that a split roll would only target corporations that don’t pay their fair share of property taxes. However, a split roll impacts all businesses. According to a recent study by the group Californians Against Higher Property Taxes, 450,000 lost jobs would result from a split roll that moved commercial property taxes up to market rates.

Many county assessors have also historically opposed a split roll due to implementation concerns. Especially in larger counties like Los Angeles, how can the reassessment be done fairly? Reassessing properties every year is simply not possible. The longer it takes the less revenue that will be realized. If a property tax cap is totally eliminated for commercial properties and commercial tax rates revert to a market valuation system, the specter of “highest and best use” also comes into the picture. For instance, if an assessor believes a small business property in a strip mall is not being used to its full potential, he/she has the ability to assess the property at a higher amount, creating a very arbitrary property tax dynamic. Of course, this is not an issue currently under Proposition 13.

Don’t homeowners have a greater tax burden than the business community?

It is easy to target businesses for increased property taxes on the assumption that residential property owners pay more. However, this is not accurate. According to the Board of

Equalization, the assessed value on non-homeowner property subject to Proposition 13 has grown an average of 8.5 percent per year, while homeowners' property tax has grown an average of 8.3 percent. In other words, the Proposition 13 property taxes paid by non-homeowners have outpaced homeowners' property tax burden.

Parcel Taxes

What are parcel taxes?

Under Proposition 13, parcel taxes require a two-thirds vote of the people to be approved and are only assessed against homeowners and businesses, yet are approved by all the individuals in a municipality or district. They are commonly used by school districts as a way to gain additional revenue. Unlike school bonds, parcel taxes do not need to be used solely for school facility building and maintenance.

What is the threat?

Currently, there are two constitutional amendments in the Legislature to lower parcel tax approval down to 55% for both school districts (SCA 3, Leno) and library services (SCA 7, Wolk). HJTA opposes these bills for numerous reasons:

- **They water down Proposition 13:** Either of these bills represents a direct assault on Proposition 13 as they make it easier to approve “below the line” taxes on your property tax bill that are not factored into Proposition 13’s one percent cap. According to the Tax Foundation California is already 14th in combined state-local property tax revenue precisely because of the bonds and parcel taxes that have already been approved.
- **Parcel taxes are very regressive:** Whether you own a bungalow, three bedroom house, or million dollar mansion, you pay the same amount.
- **Only property owners pay parcel taxes:** Others, including renters, can freely vote on parcel taxes without having to bear any of the consequences.
- **Parcel taxes pass at the two-thirds level already:** In 2012, nearly half of the school district parcel taxes placed on the ballot were approved.

Is the two-thirds vote undemocratic?

Of course not! Dating back to the founding of this nation, the two-thirds vote was always intended to protect the minority interest against a power hungry majority. Since 1879, California’s constitution has historically protected property taxpayers against arbitrary tax hikes by requiring two-thirds voter approval. For 134 years California’s property and homeowners, a minority of voters, have been protected by the two-thirds vote from taxes and long-term bond payments imposed upon them by a majority of voters who do not own property and are not subject to property taxes.

The two-thirds vote is also no barrier to growth or economic opportunity. It has not only protected taxpayers but also allowed for California to finance construction of its schools during some of its most dramatic era of growth. The two-thirds vote requirement did not hinder California's phenomenal growth over the last century while the state dealt with challenges ranging from two economic recessions to two world wars.

To reiterate, the two-thirds vote is constitutionally sound. Advocates for higher taxes may argue that the two-thirds vote is anti-democratic; but it provides greater assurance that a majority of homeowners who will pay the tax or bond have approved the tax. Both the California and U.S. Supreme Courts have upheld this principle repeatedly, including with Proposition 13.

Do parcel taxes need to be uniform?

This interesting question was recently addressed in the case *Borikas v. Alameda Unified School District*, now pending on appeal before the California Supreme Court. District voters had approved a residential parcel tax of \$120 and a commercial tax cap of 15 cents/square foot, up to a cap of \$9500. The appellate court ruled this violated Government Code section 50079 regarding uniformity of parcel tax rates, and threw out the rate increase against commercial property owners. This puts those seeking a diminished threshold for education parcel taxes in a bit of a bind. If they put a parcel tax just on commercial property, municipalities won't receive the revenue they require. If they place it just on residential property, the strain against taxpayers will be immense. AB 59 (Bonta) has been introduced to attempt to resolve this issue by abrogating the holding in the *Borikas* case. HJTA is opposed to this bill on the grounds that we believe the Legislature should not seek to advocate for legislation that directly impacts a pending lawsuit. Changing the law is one thing, but retroactively undoing uniformity by statute is quite another.

“Tax-like” fees

What are “tax-like” fees?

Tax-like fees are ones that Legislative Counsel have agreed can be approved by a majority vote of the Legislature. Prior to 2010, to be a true fee, there needed to be either a benefit provided to the fee payer or to mitigate a harm caused by the fee-payers activities. As described in the section on Proposition 26, the case *Sinclair Paint v. Board of Equalization* blew the proverbial lid off of the tax vs. fee debate. Suddenly it became common-place for the Legislature to give counties the ability to authorize numerous fees including: marriage license fees to fund domestic violence prevention and vehicle license fee increases to fund vehicle theft prevention programs, both tax increases in the eyes of HJTA.

This loophole needed to be closed and was closed with Proposition 26 (2010). While the bills authorized above are still approved annually by the Legislature, if counties are to implement them, they must first receive approval from two-thirds of county residents as is the standard under Proposition 13 for any special tax. Simply put, unless every vehicle owner also had his car stolen, there’s no direct benefit to the fee-payer, and because there is no license or permit being issued it is not a true regulatory fee.

Fees and taxes since 2010

Since the passage of Proposition 26 in 2010, a number of fee increase and tax credit bills have now appropriately been keyed as two-thirds votes. Chief among these was SB 1455 (Kehoe, 2012) which increased and extended a number of automobile related fees first imposed by the majority vote bill AB 118 (Nunez, 2007) to fund a “hydrogen highway” across California. Under Proposition 26, the same fees in SB 1455 required a higher threshold because there was no direct nexus to the fee-payer. SB 1455 was defeated in the Legislature last year; however, the exact same bills (AB 8 and SB 11) have been reintroduced in 2013.

The fire tax is another bill that falls under the parameters of Proposition 26. Approved by the Legislature as AB X1 29 in June of 2011, this majority vote bill placed a \$150 fee on rural property owners under the guise of providing fire protection. However, instead of providing a direct benefit to homeowners as required under Proposition 26, legislators instead diverted \$50 million from CalFIRE’s budget into the General Fund and now expect rural homeowners to make up the difference. HJTA believes this is a tax under Proposition 13/26 and should have required a two-thirds vote of the Legislature, which it did not receive. HJTA has filed a lawsuit challenging the fire tax’s constitutionality, and we believe the case will be heard sometime in 2013. We will also oppose any effort by the Legislature to approve these provisions by a two-thirds vote, which would effectively nullify our lawsuit.

The Initiative Process

The initiative process is one of the best tools available to California residents to impact the democratic process under which we live. Approved in 1911 as a “check” against wealthy robber barons and railroad interests, the initiative today still inspires a populist themed “Robin Hood” message of individual empowerment against government. Is it a totally foolproof and perfect process? No. Moneyed special interests still have too much control over the process and it is easy to mislead and confuse voters with 30 second sound bite ads. In spite of that, over 60% of likely voters still want the ability to vote on issues important to them, according to a recent Public Policy Institute of California study.

Throughout history we often find that the Legislature, in their attempts to compromise, don't go far enough to provide the relief that taxpayers crave. The classic example, of course, was the 1978 battle between Proposition 13 and the legislative proposal of Proposition 8. Without the initiative process and a way to collect signatures to qualify a constitutional amendment, property owners today still may not have the property tax relief they have enjoyed for 35 years under Proposition 13. The initiative process remains the only way that millions of California residents, and major limited government principles, can be fairly heard in the halls of Sacramento. Maintaining it remains HJTA's highest priority.

Main Assaults

ACA 6/SCA 4: As introduced in 2011, these two constitutional amendments stated that any proposition presented to voters via signature gathering that had a cost of over \$5 million, as defined by both Department of Finance and the Legislative Analyst's Office, needed to be offset by either tax increases or spending cuts, or it would fail to qualify for the ballot. This would make it nearly impossible for a Proposition 13 style tax cut, or even popular public safety measures like Three Strikes, to qualify for the ballot without including a tax increase. It also increases the likelihood of political officials influencing the initiative process. Do we really want legislatively and gubernatorial appointed individuals determining what makes it onto the ballot? This is especially true considering that the right to initiative referendum and recall process is intended to empower citizens over government.

ACA 19: (Allen, 2011): ACA 19 imposed an indirect initiative whereby, after a measure has qualified for the ballot, the Legislature would be able to propose non-binding changes to it. Opponents could then decide to accept or reject the amendments. HJTA broadly opposes any constitutional amendment that would give the Legislature more influence in the “people's process.” It is highly unlikely that any revisions to an HJTA sponsored tax reduction or spending cap measure by the Legislature would be either a) productive or b) adopted by the Association. We fail to see what point that serves, especially when legislators can already voice their opinions on ballot measures at a statutorily required legislative hearing before the election. That said, an option where ballot measure proponents (at their sole discretion) could decide to go straight to

the ballot or to the Legislature for the indirect process after signature qualification might prove to be the best compromise to this dilemma. We expect both of these bills to be introduced again in 2013-14.

Legislators often mention that the initiative process “ties their hands” making it more difficult to budget. Does it?

This common objection is known as the Ballot Box Budgeting argument. The theory is that measures such as Three Strikes, Proposition 36 (drug treatment) and Proposition 98 (education) have tied up about 80% of the General Fund budget, making the state ungovernable. But the truth is that a 2010 study by UC Davis professor John Matsusaka showed that at most, 33% of the budget is tied up in initiative spending. Remove Prop 98 and the number drops to four percent. (http://www-bcf.usc.edu/~matsusak/Papers/Matsusaka_BOS_2010.pdf) In addition many of these measures, like Proposition 98, can be suspended. Legislators may not want to do it, but it can be done.

What other measures have HJTA opposed previously?

Other statutory measures that HJTA has opposed that inhibit the initiative process are:

- Same day voter registration
- Forcing petition signature gatherers to wear a badge
- Increasing the signature thresholds to qualify statutory and constitutional amendments
- Increasing the cost to propose an initiative

About the Howard Jarvis Taxpayers Association

Our Mission

The Howard Jarvis Taxpayers Association is dedicated to the protection of Proposition 13 and the advancement of taxpayers' rights, including the right to limited taxation, the right to vote on tax increases and the right of economical, equitable and efficient use of taxpayer dollars.

Through education and awareness, we strive to empower you, the taxpayer, to take control of your rights and influence the momentum of ballots and initiatives supportive of your rights.

Our beginnings

After years of work by tax revolt leaders Howard and Estelle Jarvis, [Proposition 13](#) was overwhelmingly approved by voters on June 6, 1978. But Howard and Estelle knew that taxpayers' gains would be temporary without a permanent citizen's organization to protect Proposition 13 and to continue the movement against higher taxes. To meet this need, they founded the Howard Jarvis Taxpayers Association (originally called the California Tax Reduction Movement).

Although Howard Jarvis passed away in 1986 and his wife Estelle passed away in 2006, the Howard Jarvis Taxpayers Association continues their important work.

And with the constant pressure from government for higher taxes, the Howard Jarvis Taxpayers Association's role as the legal and political watchdog over Proposition 13 is more important than ever.

Authors of this Primer:

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