



## John Serrano Did Not Vote for Proposition 13

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This article reviews the development of my thesis that the California Supreme Court's Serrano decisions, which began in 1971 and sought to disconnect district school spending with local property taxes, led to the fiscal conditions that caused California voters to embrace Proposition 13 in 1978, which radically undermined the local property tax system. I submit that my thesis is most likely true because of Proposition 13's durability and the absence of alternative explanations that account for its longstanding power over California politics. The article then circles back to John Serrano himself. I want to respectfully suggest that John's views about the role of public education and my own have more in common than might be suspected. At the very least I want to correct the impression that John supported Proposition 13, which was suggested by the title of my last full article about this topic.

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## **John Serrano Did Not Vote for Proposition 13**

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**Abstract:** This article reviews the development of my thesis that the *Serrano* decisions, which began in 1971 and sought to disconnect district school spending with local property taxes, led to the fiscal conditions that caused California voters to embrace Proposition 13 in 1978, which radically undermined the local property tax system. I submit that my thesis is most likely true because of Proposition 13's durability and the absence of alternative explanations that account for its longstanding power over California politics. The article then circles back to John Serrano himself. I want to respectfully suggest that John's views about the role of public education and my own have more in common than might be suspected. At the very least I want to correct the impression that John supported Proposition 13, which was suggested by the title of my last full article about this topic.

When Oscar Jiménez contacted me to write an article for the fiftieth anniversary of *Serrano v. Priest*, I thought he had dialed a wrong number.<sup>1</sup> Good parts of my career have been devoted to arguing for the virtues of local fiscal control of public schools. I had published numerous papers and book chapters critical of the *Serrano* doctrine and arguing that it was the major factor in causing Proposition 13, which has been an incubus on California’s public education system for four decades.<sup>2</sup> Inviting me to a *Serrano* celebration seemed a bit like inviting Captain Ahab on a Greenpeace-sponsored whale-watching expedition.

Ahab was the obsessive captain of the fictional whaling ship in Herman Melville’s classic *Moby Dick*. Ahab is at the center of the story, but he is no hero. His ungodly hunt to destroy the white whale is the cause of the demise of the crew of his ship, which is sunk by an attack from *Moby Dick*. Obsessions are unhealthful, and I would note that my last full article on the connection between *Serrano* and Proposition 13 was published in 2003. After publishing three full articles, miscellaneous commentaries, and parts of several books about it between 1989 and 2009, I concluded I had said enough.<sup>3</sup> Rather than advancing new arguments, this essay will

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<sup>1</sup> *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) (*Serrano I*); *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976) (*Serrano II*). Oscar actually contacted me by email. The *Serrano* anniversary symposium was organized by him and Larry Picus and is scheduled to appear in a special issue of the *Brigham Young University Education and Law Journal* in 2022. I have not seen the edited and Bluebooked proofs, so the present version (March 2022) may differ from the final article.

<sup>2</sup> William A. Fischel, *Did Serrano Cause Proposition 13?*, 42 NAT’L TAX J. 465 (1989) [hereinafter *Did Serrano Cause*]; William A. Fischel, *How Serrano Caused Proposition 13*, 12 J.L. & POL. 607 (1996) [hereinafter *How Serrano Caused*]; Fischel, William A. “Did John Serrano Vote for Proposition 13—A Reply to Stark and Zasloff’s Tiebout and Tax Revolts: Did *Serrano Really* Cause Proposition 13.” *UCLA L. Rev.* 51 (2003): 887 [hereinafter *Did John Serrano Vote*].

<sup>3</sup> In addition to the three main articles cited in the note above, my *Serrano*-related articles and notes are:

- “Preferences for School Finance Systems: Voters versus Judges,” (with Colin Campbell) *National Tax Journal* 49 (March 1996): 1–15;
- “*Serrano* after Twenty-Five Years: Are America’s Schools Better and Property Taxes Fairer?” in 1996 Proceedings of the Eighty-Ninth Annual Conference on Taxation. (Washington: National Tax Association, 1997), pp. 327–335;
- “School Finance Litigation and Property Tax Revolts: How Undermining Local Control Turns Voters Away from Public Education,” in William J. Fowler, Jr., editor, *Developments in School Finance, 1999–2000*, NCES 2002–316. Washington, DC: U.S. Department of Education, National Center for Education Statistics, 2002. (pp. 79–127).;

review my work on this subject in the form of a memoir (with popular-song headings that betray my vintage) about my evolving interest in the *Serrano* and Proposition 13 connection.

### §1. “I Feel the Earth Move:” *Serrano* and the Foundations of Local Public Finance

The 1971 *Serrano* decision, whose anniversary is the occasion for the suite of articles in this journal, was just the beginning of a train of legal and political jousting that continued for at least fifteen years. It still shapes California school finance, and it has influenced public education everywhere in the nation. The first decision, *Serrano I*, was largely a declaration of principles. But what principles! It declared that the system of local funding for education, which had been the fiscal foundation for public schools in California and almost every other state since the dawn of the Republic,<sup>4</sup> was Constitutionally infirm. The lower court decision that was reversed and remanded by *Serrano I* had found no Constitutional basis for the plaintiffs’ complaint of unequal funding for education among local school districts. The state supreme court supplied a basis, invoking the Equal Protection Clause of both the federal and state constitutions and declaring that education was a fundamental right, thereby elevating deviations from equality to strict scrutiny. The state supreme court in 1971 did not prescribe any particular remedy, but most of those it suggested would have substantially reduced the inequalities in spending per pupil that then existed among school districts.

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• “The Courts and Public School Finance: Judge-Made Centralization and Economic Research,” in Eric Hanushek and Finis Welch, editors, *Handbook on the Economics of Education*. Amsterdam: Elsevier, 2006. (Volume 2, pp. 1279–1325);

• “*Serrano* and Proposition 13: The Importance of Asking the Right Question,” in *After the Tax Revolt: California’s Proposition 13 Turns Thirty*, edited by Jack Citrin and Isaac W. Martin, Berkeley: Berkeley Public Policy Press, Institute of Governmental Studies, University of California, 2009 (pp. 89–100);

• “The Median Voter and School Finance Reform: How Tax-Base Sharing Undermines the Efficiency of the Property Tax,” in *The Property Tax and Local Autonomy*, edited by Michael E. Bell, David Brunori, and Joan M. Youngman. Cambridge, Mass.: Lincoln Institute for Land Policy, 2010. (pp. 33–68).

Book chapters that address the *Serrano* connection to Proposition 13 are:

• *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies*. Harvard University Press, 2001, chapters 5 and 6;

• *Making the Grade: The Economic Evolution of American School Districts*. University of Chicago Press, 2009, chapter 6.

<sup>4</sup> Fischel, *Making the Grade*: (2009), chapter 2. (cited in note \_\_ above).

On June 6, 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 one percent of 1975 property values.<sup>5</sup> Proposition 13 allowed assessments to rise by no more than two percent per year, and revaluation to current market value could occur only when property was sold or substantially renovated and upgraded. The voter initiative passed by a nearly two-to-one margin, and it cut property tax revenues statewide by more than fifty percent. Its persistence to this day is widely believed to be the reason that funding for California’s public schools has declined relative to most other states,<sup>6</sup> and it has contributed to the state’s crisis-level housing prices, generational inequality, and the general privatization of municipal services.<sup>7</sup>

In several publications I have argued that Proposition 13 was caused by the *Serrano* decisions and the legislative response to them.<sup>8</sup> By requiring nearly equal school expenditures per pupil statewide, *Serrano* divorced local property taxes from the amount of local school spending. Prior to *Serrano*, voters at the local level could see a connection between their home values and locally-financed school spending. The down-side of increased school spending was that local taxes would rise, and higher local taxes were both painful to pay and bad for home values. Prospective homebuyers would pay less for a home that had higher taxes. The up-side of increased school spending, assuming it would improve education, is that it would make homes in the district more attractive to families with school children. If the benefits emerging from more spending exceeded the costs of higher taxes, homeowners would generally favor the spending in anticipation of higher home values. Even homeowners who had no children in school could benefit from improved schools and be expected to support them.<sup>9</sup>

The second change, which is really the flip side of the first, is that prior to *Serrano*, California households could “vote with their feet”—move to another school district—to get a

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<sup>5</sup> CAL. CONST. art. XIII A, §§ 1-2

<sup>6</sup> Lawrence O. Picus, “Cadillacs or Chevrolets?: The evolution of state control over school finance in California.” *Journal of Education Finance* 17, no. 1 (1991): 33-59; Paul Rothstein, *The Demand for Education with “Power Equalizing” Aid*, 49 *J. Pub. Econ.* 135 (1992).

<sup>7</sup> See Evelyn Danforth, “Proposition 13, Revisited,” 73 *Stanford Law Review* (February 2021): 511-554 for an up-to-date critique and review of earlier studies.

<sup>8</sup> See note \_\_\_ above.

<sup>9</sup> Christian Hilber and Christopher Mayer, “Why do households without children support local public schools? Linking house price capitalization to school spending.” *Journal of Urban Economics* 65, no. 1 (2009): 74-90.

better-funded school. Migration of households to better districts is the method of revealing private preferences for public expenditures proposed by Charles Tiebout in a 1956 article that is now the touchstone of nearly all economic discussions of local public finance.<sup>10</sup> Increased immigration to localities with better schools is the mechanism that raises home values. *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.

I had actually thought of this explanation almost as soon as Proposition 13 passed on June 6, 1978. (It wasn't my first thought at the time; my wife delivered our first child four days later, so I was thinking more about Braxton-Hicks than Jarvis-Gann.<sup>11</sup>) The *Serrano* decision was widely known when I was a graduate student in economics at Princeton in 1971, and much of my research in the 1970s had to do with local government behavior and the economics of the property tax.

My doctoral dissertation posited that local governments were conscious managers of their tax base, particularly with respect to commercial and industrial property.<sup>12</sup> This was completely contrary to assumptions of the *Serrano* litigators and the court, who supposed that the composition of the local property tax base was simply a "geographical accident."<sup>13</sup> My ongoing research led me toward the view that local land use controls, including zoning and the burgeoning environmental movement, involved conscious trade-offs of industry's tax benefits and its inconveniences to local residents. A court decision that swept away the results of these decisions was likely to cause serious political consequences.

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<sup>10</sup> Charles M. Tiebout, "A pure theory of local expenditures." *Journal of political economy* 64, no. 5 (1956): 416-424.

<sup>11</sup> Howard Jarvis and Paul Gann were the best-known sponsors of Proposition 13. Braxton-Hicks contractions often occur before the onset of labor in childbirth.

<sup>12</sup> William A. Fischel, "Fiscal and Environmental Considerations in the Location of Firms in Suburban Communities: A Non-Technical Digest." In *Proceedings of the Annual Conference on Taxation Held under the Auspices of the National Tax Association-Tax Institute of America*, pp. 632-656. National Tax Association-Tax Institute of America, 1974.

<sup>13</sup> *Serrano I* at fn. 1. Contrast William A. Fischel, 2010. "Neither 'Creatures of the State' nor 'Accidents of Geography': The Creation of American Public School Districts in the Twentieth Century," 77 *University of Chicago Law Review* 177 (2010).

## §2. “California Dreaming:” On-Site Evidence

Two related constraints kept me from investigating the connection between *Serrano* and Proposition 13. The first was the suspicion that my theory was too easy. Surely someone in a better position than me was working through the details of the decision, the legislative response, and the political campaign that led to Proposition 13. The second constraint was information. Ensclosed in New Hampshire years before the internet in a college without a law library, I did not have good access at the time to information about California’s ongoing struggle to respond to *Serrano* and head off Proposition 13. The causes of Proposition 13, I assumed, would emerge from scholars in a much better position than me to do the research and test their theories against informed opinion.

But the possible connection still piqued my interest. My first opening to this was a conference on Proposition 13 held in Santa Barbara in December 1978. It was assembled by economists David Puryear, John Ross, and Perry Shapiro, and its proceedings were published as a supplement to the *National Tax Journal* in 1979.<sup>14</sup> The presentations and papers were mostly by economists and California policy experts. The overall view of the causes was general perplexity.

The economists of my persuasion, which is that local governments mostly gave their residents what they wanted, were especially puzzled. Studies had shown that California metro areas generally met the standards of the Tiebout model, which was that differences in local taxes and school expenditures between districts were reflected in (“capitalized in”) home values.<sup>15</sup> Why would the same voters overwhelmingly, in almost all regions of the state, vote to destroy the local fiscal system with an ironclad, constitutional cap on taxes and assessments?

Political scientists seemed just as perplexed. The notion that it was a “revolt of the rich” was undermined by surveys that showed that even if the top half of the income distribution was

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<sup>14</sup> Perry Shapiro, David Puryear, and John Ross. “Tax and expenditure limitation in retrospect and in prospect.” *National Tax Journal* 32, no. 2 (1979): 1-10.

<sup>15</sup> See sources cited in Fischel, *How Serrano*, supra note \_\_, at n52: “Several econometric studies confirming the Tiebout model specifically for local education used California samples prior to *Serrano*. See Gerald S. McDougal, *Local Public Goods and Residential Property Values: Some Insights and Extensions*, 29 *Nat’l Tax J.* 436 (1976) (Los Angeles area sample); Jon C. Sonstelie & Paul R. Portney, *Gross Rents and Market Values: Testing the Implications of Tiebout’s Hypothesis*, 7 *J. Urb. Econ.* 102 (1980) (Bay Area sample); Raymond M. Reinhard, *Estimating Property Tax Capitalization: A Further Comment*, 89 *J. Pol. Econ.* 1251, 1257 (1981) (discussing both the Bay Area sample and various empirical tests of the Tiebout model).”

prohibited from voting, Proposition 13 would have easily passed.<sup>16</sup> Survey researchers searching for reasons shrugged their shoulders with titles concluding that voters wanted “something for nothing.”<sup>17</sup>

The notion that a cabal of “Leviathan” politicians had conspired to overtax and overspend never addressed why voters would hobble the minnows of government—counties, cities, and school districts—and not the whale-sized state government.<sup>18</sup> Indeed, Proposition 13 seemed to send most governmental decisions away from localities and up to Sacramento. If you want to slay Leviathan, you don’t feed it with a constitutional constraint on local spending. The Leviathan theory also failed to explain why nearly every legislator who sought reelection after Proposition 13 succeeded, including most of those who had publicly opposed Proposition 13.<sup>19</sup>

Despite my dissatisfaction with conventional explanations for Proposition 13, I wrote nothing about the *Serrano* connection for almost ten years. During that decade I spent two separate academic years teaching at University of California campuses in Davis (1980-81) and Santa Barbara (1985-86). In Santa Barbara, my son—the one born just after Proposition 13—was enrolled in the second grade in the Peabody Elementary School, reputed to be one of the better of the city’s several elementary schools. By 1985, the temporary bailout of local schools for Proposition 13’s revenue losses had spent itself, and the full effects on education were in place.<sup>20</sup> My son’s second grade class had thirty students in it. The teacher had no in-class aide. My wife and other parents volunteered to help keep the school library open because the budget allowed for only a single librarian. Back in New Hampshire, even towns with mediocre elementary schools would have rebelled at a class size of thirty in early elementary years, and library volunteers are add-ons, not necessities. Why one of the richer university communities in a rich

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<sup>16</sup>See David O. Sears & Jack Citrin, *Tax Revolt: Something for Nothing in California* (1982), table 5.1.

<sup>17</sup> Sears and Citrin, cited above.

<sup>18</sup> Geoffrey Brennan and James Buchanan. “The Logic of Tax Limits: Alternative Constitutional Constraints on the Power to Tax.” *National Tax Journal* 32, no. 2 (1979): 11-22.

<sup>19</sup> Seiji Fujii, “Political Shirking - Proposition 13 vs. Proposition 8” *Japanese Journal of Political Science* 10: 213-237 August 2009 “In short, eight state legislators who sought reelection against their challengers were voted out from office in the 76 districts where the district and the incumbent had the different opinions about Proposition 13”

<sup>20</sup> Picus, *supra* note \_\_ at 45-46.



state would settle for such conditions goaded me into a more serious look at the *Serrano* decision and its consequences.

One difficulty for me was getting an accurate and coherent account of the legal and legislative events of the *Serrano* case and subsequent legislation. I had learned to read cases and other legal materials in the 1980s in pursuit of my interest in the burgeoning subdiscipline of “law and economics.” But connecting case law with legislation required more inside information than I could obtain at that pre-internet time. The Rosetta Stone for *Serrano* was provided by Judge Lester Olson, the Los Angeles County judge who wrote the trial court opinion that was adopted in *Serrano III*, which approved and closed the post-Proposition 13 response to the *Serrano* decisions.<sup>21</sup> Olson’s opinion was of such detail and coherence that the California Court of Appeals adopted it with almost no modification, and the California Supreme Court declined to review it, thereby making Olson’s opinion the final word. At about the same time, Joseph Henke, a law professor at the University of San Francisco published a parallel account from a wider perspective of the road from *Serrano* to Proposition 13.<sup>22</sup> I felt confident enough to write a paper with the somewhat tentative title, “Did *Serrano* Cause Proposition 13?” It was soon published in the *National Tax Journal* in December 1989.

Shortly after that first publication on *Serrano* and Proposition 13, I spent another academic year in California, this time at Berkeley’s law school, then known as Boalt Hall. The purpose of my year-long sabbatical visit was to work on the book that was eventually published as *Regulatory Takings*.<sup>23</sup> It was not about school finance, though other California court decisions were important for it. Shortly after my arrival at Boalt, I was invited to give one of the lunch-time seminars. Having no new paper on regulatory takings, I decided to talk about the recently published article on *Serrano* and Proposition 13. Jack Coons and Steve Sugarman, regular

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<sup>21</sup> *Serrano v. Priest*, 226 Cal. Rptr. 584 (Cal. Ct.Ct.App. 1986)

<sup>22</sup> Joseph T. Henke, *Financing Public Schools in California: The Aftermath of Serrano v. Priest and Proposition 13*, 21 U.S.F. L. Rev. 1 (1986). Professor Henke explained that the *Serrano* litigants felt they had to focus on property wealth rather than income differences because the US Supreme Court had rejected such arguments in other cases.

<sup>23</sup> William A. Fischel, *Regulatory Takings: Law Economics and Politics* (Harvard University Press, 1995). The *Serrano* cases did temper my enthusiasm for aggressive judicial review in other areas of the law, including land use regulation. *Id.* at 284.

faculty at Boalt and central to the *Serrano* cases, were in the audience. My talk was well received, but Jack and Steve had some questions about it, as you might imagine.

### §3. “What’s [Law] Got To Do With It?”

The critical problem with my theory was its faith in the Tiebout hypothesis and the “median voter” of local government. The Tiebout model holds that residents sort themselves into communities that best match their demands for public services.<sup>24</sup> The biggest public service is public education. The median voter model is the economists’ version of the political theory you learned in fifth grade: The majority of voters get what they want. Special interest groups take a back seat at the local level, especially when a single public service like education sets its budget and taxes independently of other municipal services.<sup>25</sup> Given these two conditions, I argued that only an exogenous force like the *Serrano* decisions could induce these same voters to pull the chair out from under the local property tax.

For economists, this theory made a fair amount of sense. Jon Sonstelie, who had originally written (with Perry Shapiro) that Proposition 13 could only have been caused by overspending bureaucrats,<sup>26</sup> came around to the idea that *Serrano* was the main culprit, and other economists

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<sup>24</sup> A referee asked, “how does the Tiebout model apply to many minoritized communities that are not as privy to how educational and tax systems work or have the agency (i.e., financial) to move as readily as their more affluent counterparts?” My answer is a side-step: The Tiebout model is descriptive of how homebuyers behave, not a prescription for how the distribution of public services ought to work. It accepts the distribution of income and wealth and the preferences (and prejudices) of voters and homebuyers as given and asks what the result is. Beyond that, almost no economist of my acquaintance would rule out efforts by state and national governments to modify the outcome of the Tiebout model to assist the poor and combat prejudice. The problem with *Serrano* was not its motives or justification; it was, in my opinion, its extreme and unyielding standards of fiscal equality, which undermined much of what voters apparently preferred about local control and the school-choice system embedded in Tiebout’s “vote with your feet” model. See generally Harold M. Hochman and Shmuel Nitzan, “Tiebout and sympathy.” *Mathematical Social Sciences* 6, no. 2 (1983): 195-214; Caroline M. Hoxby, “Does competition among public schools benefit students and taxpayers?” *American Economic Review* 90, no. 5 (2000): 1209-1238.

<sup>25</sup> Robert P. Inman, “Testing political economy’s ‘as if’ proposition: is the median income voter really decisive?” *Public Choice* 33, no. 4 (1978): 45-65; William H. Hoyt, 18 “Education and housing.” *International Handbook on the Economics of Education* (2004): 787.

<sup>26</sup> Perry Shapiro, and Jon Sonstelie, “Did Proposition 13 slay Leviathan?” *American Economic Review* 72, no. 2 (1982): 184-190.

have built of this idea.<sup>27</sup> Coons and Sugarman were not economists, though. They were law professors, and they wanted an account of just how the courts had pushed the legislature so far as to cause an epochal voter initiative. How would voters have figured out these arcane economic theories of their supposed behavior?

It would not do to just point out that lots of successful economic theories are not intuitively obvious; if they were, we wouldn't need social scientists. (No smart remarks, please.) And Coons and Sugarman, after all, were hardly naive about such matters. Their book (with William Clune), *Private Wealth and Public Education*, introduced the concept of “district power equalization,” which was central to the *Serrano II* remedy, and not a few economists thought it was a good idea.<sup>28</sup> Asking the rich districts to share their tax-bases with the poorer districts seemed like a moderate form of redistribution. And I actually shared some of their doubts about the *Serrano* and Proposition 13 story. How did voters, renowned to be “rationally ignorant” about the particulars of politics,<sup>29</sup> behave as if they had figured out a connection that was based on economic theory?

I did not set out to examine this immediately. That book about regulatory takings that sent me to Berkeley in the first place needed attention. Eventually, however, I began to piece together the progression of legislative and judicial events that were set in motion after *Serrano I* in 1971. The archives of the Los Angeles Times had impressively detailed reportage on both the *Serrano* litigation and legislative responses. The most notable aspect of the legislature's response was their willingness to go along with the overall thrust of the *Serrano* decision: more money for schools, especially for schools with high concentrations of low-income students.<sup>30</sup> In that sense, *Serrano I* did not seem to be a “countermajoritarian” decision, where the courts had to protect a “discrete and insular minority” from the will of the majority.<sup>31</sup> Duly elected state legislators from

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<sup>27</sup> Fabio Silva and Jon Sonstelie. “Did *Serrano* cause a decline in school spending?.” *National Tax Journal* (1995): 199-215; Edward L. Glaeser, “The incentive effects of property taxes on local governments.” *Public Choice* 89, no. 1-2 (1996): 93-111.

<sup>28</sup> See, e.g., Conte, Michael A. “Do wealth neutralizing matching grants neutralize the effects of wealth?.” *Review of Economics and Statistics* (1985): 508-514.

<sup>29</sup> Anthony Downs, *An Economic Theory of Democracy*. New York: Harper & Brothers, 1957; pp. 244-46, 266-71.

<sup>30</sup> Fischel, *How Serrano*, supra note \_\_\_, 609, n.11.

<sup>31</sup> *United States v. Carolene Products Co.*, 304 U.S. 144, n.4 (1938). See generally John Hart Ely, *Democracy and Distrust* (1980).

properly apportioned districts wanted to help poor people, who were often characterized as racial and ethnic minorities stuck in big-city districts.<sup>32</sup> In this sense, the *Serrano* decision looks more like a catalyst for reforms that were generally popular but that had been blocked by legislative inertia and local entrenchment.

The other aspect of the response to *Serrano* that stands out was all parties' ignorance of the characteristics of the poor districts that they wanted to help. Almost everyone thought that "property rich" communities were populated by rich people and "property poor" places were where the poor people lived. Polls that showed that Californians approved of *Serrano* cast the decision as one that took from the richest districts and giving to the poor.<sup>33</sup> Aside from seeming to be obvious, the notion that *Serrano* was a Robin Hood style decision was made palpable by the court's and the plaintiff's continuing reference to two paradigmatic opposites, Beverly Hills and Baldwin Park.<sup>34</sup> The latter was a low-income and property-poor (low taxable values per pupil) school district and city east of Los Angeles. The former was, well, Beverly Hills, and it indeed was property-rich as well as income-rich.

It turned out, however, that cherry-picking two extreme districts was quite misleading. In 1974, after *Serrano I* but before *Serrano II*, John Mockler, who was Governor Jerry Brown's Secretary of Education, and Ronald Cox did a study of all California school districts that showed conclusively that more than half of the poor children in California attended schools in districts whose value per pupil was above the state average.<sup>35</sup> This had not been evident earlier because Census data that show resident's income characteristics was not broken out by school districts, which often do not correspond to the usual Census units like cities and towns. Strict enforcement of a policy that took local funds from districts that were "property rich" (above average taxable wealth per pupil) and gave them to the "property poor" would more often penalize low-income

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<sup>32</sup> A detailed study of the California legislature just before *Serrano I* found that "more than two thirds of the legislators said they were very concerned with interdistrict inequalities." Arnold J. Meltsner et al. *Political Feasibility of Reform in School Financing: The Case of California* 90 (1973).

<sup>33</sup> Isaac Martin, "Does school finance litigation cause taxpayer revolt? *Serrano* and Proposition 13." *Law & Society Review* 40, no. 3 (2006): 525-558. Table 2.

<sup>34</sup> *Serrano I*, 487 P.2d 1241, 1248.

<sup>35</sup> Jack McCurdy, *School Funding Ruling: A Setback for the Poor?*, L.A. TIMES, June 30, 1974, pt. I, at 3. Additional discussion and sources are in Fischel, *Did John Serrano Vote*, supra note \_\_\_, at 918.

students than reward them. Most of the *Serrano* advocates were reported to be surprised by this finding.<sup>36</sup>

This problem was especially acute because it was discovered that two of the districts that were “property rich” were Los Angeles and San Francisco.<sup>37</sup> Both had disproportionate numbers of poor children in their schools, but both had large amounts of nonresidential tax base—office buildings, stores, malls, hotels, and factories—that offset the modest homes of low-income people. Taking money away from those big-city districts and distributing them to “property poor” districts in the suburbs was not the right thing to do, and claims that the public generally approved of *Serrano* need to be evaluated in light of the widespread misperception that property rich districts were mainly populated by rich people.

As a result of this new information about the regressive nature of taking from the “property rich” and giving to the “property poor,” *Serrano* advocates had to shift to a remedy that, while taxing the “property rich” districts, still gave them more money than they would have had before. Responding to these arguments, Judge Bernard Jefferson held that the appropriate remedy was equalizing expenditures per student for every district in the state, but at the same time adhering to the power-equalization principle that any district’s property tax rate would generate the same amount of revenue as any other.<sup>38</sup> The litmus for compliance was that all districts had to be within a \$100 band of per student spending. As an incisive analysis of this remedy concluded, the only way the state could comply with this was for full state funding of local education.<sup>39</sup>

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<sup>36</sup> Id. [McCurdy article]

<sup>37</sup> See discussion and sources in Fischel, *Did John Serrano Vote*, supra note \_\_, at nn. 12 (Los Angeles) and 92 (San Francisco).

<sup>38</sup> *Serrano II*, 557 P.2d 929 (Cal. 1976); A. Alan Post, *Effects of Proposition 13 on the State of California*, 32 *National Tax Journal Supplement* 381, 384 (1979). A referee asked if district power equalization without the equal spending requirement would still have resulted in a tax revolt. The remedy does generate strong resistance. For example, Vermont’s 1998 reform used power equalization without an equal spending requirement. There was no Proposition 13-style tax revolt—Vermont does not have a statewide voter initiative—but the “property rich” districts applied enough pressure that, despite their small populations, convinced the legislature to revise the formula without entirely abandoning it. Thomas Downes, *Centralization of school finance and property values: Lessons from Vermont*. Cambridge, MA: Lincoln Institute of Land Policy, 2010.

<sup>39</sup> Lee S. Friedman, “The ambiguity of *Serrano*: Two concepts of wealth neutrality.” *Hastings Const. LQ* 4 (1977): 487.

This “level up” equalization satisfied the property-rich urban districts insofar as an equality of spending would still raise the total amount they got. And the legislature’s response to this, AB 65, did go a long way towards achieving this goal by pumping most of the state’s inflation-driven budget surplus into the schools. The trouble was that the fiscal foundation of AB 65 was still the local property tax.<sup>40</sup> Home values were being driven up by general inflation and, I have argued, the newly restrictive land use regulations of the 1970s.<sup>41</sup> This shifted the burden of taxation towards homeowners and away from business. In normal times and places, local school boards would usually reduce tax rates in response to inflated assessments.<sup>42</sup> But AB 65 removed local discretion on tax rates; the state legislature needed those higher property taxes to pay for the remedy demanded by *Serrano II*. In effect, AB 65 commandeered school district property taxes and left local boards with almost no discretion to raise or lower spending from local taxes.

This brings us back to the issue of how the voters got the message that increases in their local taxes no longer paid for better local schools. The answer came through their tax bills. They started to rise rapidly in the middle 1970s as a result of earlier *Serrano*-required legislation. At the same time, their schools were not getting better, as indicated by standardized test scores.<sup>43</sup>

It should be clear that voters knew that it was school taxes, not other taxing units, that were the source of the problem. Tax bills may be submitted as a single invoice by the county, but the taxes are broken out by which jurisdiction—county, municipality, school district, special district (water, fire, conservation)—is getting the revenue. Voters upset by their taxes could easily figure out where the source of their pain lay.<sup>44</sup> Even if their taxes were paid as part of a mortgage in an

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<sup>40</sup> John B. Mockler and Gerald Hayward, *School Finance in California: Pre-Serrano to the Present*, 3 J. EDUC. FIN. 386, 394 (1978). AB 65 was preceded by several tax reforms that attempted to comply with *Serrano*. All of them continued to rely on local property taxes; their weakness in responding to *Serrano* was that they allowed voter overrides of state-imposed caps on local spending from local sources. See Picus, *Cadillacs or Chevrolets*, supra note \_\_.

<sup>41</sup> William Fischel, “The Rise of the Homevoters: How the Growth Machine Was Subverted by OPEC and Earth Day,” in *Evidence and Innovation in Housing Law and Policy*, edited by Lee Anne Fennell and Benjamin J. Keys. Cambridge, UK: Cambridge University Press, 2017 (pp. 13-37).

<sup>42</sup> Howard S. Bloom and Helen F. Ladd. “Property tax revaluation and tax levy growth.” *Journal of Urban Economics* 11, no. 1 (1982): 73-84.

<sup>43</sup> Eric J. Brunner and Jon Sonstelie, *California’s School Finance Reform: An Experiment in Fiscal Federalism* (2006). UConn Economics Working Papers, p. 17.

<sup>44</sup> Evidence for this is discussed in Fischel, *Did John Serrano Vote*, supra note \_\_ at 909-912. Most striking was that cities that had no municipal property taxes (because of large sales tax

escrow account, a quick phone call to the bank would reveal which entity accounted for the soaring taxes that many thought would drive them from their homes. It was taxes for the schools, not the municipalities or county governments, that were skyrocketing.

Proposition 13 voters did not have to know anything about the Tiebout model or the median voter model or the *Serrano* decision or the machinations of the legislature. They knew that school taxes were going through the roof—for almost all districts, not just the “property rich”—and they knew schools were just about the same as before. Why not listen to that raspy old man, Howard Jarvis, whose ideas about tax limitations had been rejected repeatedly in the past ten years?<sup>45</sup> If someone suggested that decimating local taxes would hurt the schools, voters could rationally respond that it was now the state’s responsibility to fund schools, not their local district; just ask the state supreme court.

#### **§4. “It Don’t Mean a Thing if it Ain’t Got that Swing”**

The statistical evidence for my thesis that was original to my 1996 article was something I called the “swing.”<sup>46</sup> Proposition 13 was not the first proposal of its kind. Two other voter initiatives that would have severely limited the local property tax had made it to the ballot in 1968 and 1972. Both were proposed by the same person, Philip Watson, who was the assessor for Los Angeles County. He apparently got tired of people blaming him for high property taxes and devised a plan to alleviate their local burden by sending obligations to fund them to the state.

Watson’s initiatives were revolutionary but responsibly so, if there is such a thing.<sup>47</sup> Just like Proposition 13 in 1978, they would have imposed a cap of one percent of value on all property taxes. Unlike Jarvis-Gann, however, Watson did not roll back property assessments and limit their growth; that was less of a problem for taxpayers before housing price inflation had taken off in the 1970s. Watson also indicated how the tax cut was to be paid for, mainly by shifting service obligations, including much of school spending, to the state. In his 1972 initiative, Watson also

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revenues) and thus proportionately larger school property taxes, were more inclined to vote for Proposition 13 than others. *Id.* at 909.

<sup>45</sup> See Fischel, Did John Serrano Vote, *supra* note \_\_\_, at 915, indicating that Jarvis had failed to get four previous anti-tax initiatives on the ballot.

<sup>46</sup> See text at note \_\_\_ *infra* [Explaining “swing” calculation]

<sup>47</sup> See discussion 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, 448-49 (1976) and Fischel, How *Serrano* Caused at 616-17.

made a nod to *Serrano* compliance that shifted some funding to the county level, but it was hardly compelling insofar as the original *Serrano* decision had not actually specified a particular remedy.<sup>48</sup>

The big fact here is that both of Watson's initiatives failed by large margins, almost two to one, while six and ten years later, nearly the same set of voters favored Proposition 13 by an almost two to one margin. I characterize that shift statistically as a 90 percent "swing" in the statewide vote: From a statewide 34.1 percent approval for Watson's 1972 initiative to a 64.8 percent approval of Proposition 13 in 1978 is a 90 percent swing (= [64.8 minus 34.1] divided by 34.1).

This was obvious even if it was regarded only as a perplexing curiosity. What I did beyond that was to examine the swings in votes by individual school districts.<sup>49</sup> The reason is that there were vast differences in the fiscal circumstances among school districts; the *Serrano* court was not wrong about that. Some districts were penalized by AB 65, the last *Serrano*-compliance bill, and others were ostensibly benefitted from it by getting more funds. (Earlier *Serrano*-inspired reform attempts had also penalized the "high wealth" districts but had not demanded the levelling remedy imposed by *Serrano II*.<sup>50</sup>) The penalized districts should have "swung" disproportionately towards Proposition 13 as compared with the 1972 Watson proposal.

The calculation of "swing" was less simple than it sounds because voting tabulations are by city, not by school district. Moreover, the Watson 1972 initiative tried to address school funding in a way that varied by county, so comparing the swings in different counties was not quite valid. The ideal study would compare districts within each county, but the only county that had enough cities that overlapped with their school districts to get a sizable sample was Los Angeles. I plotted the 1972 to 1978 swing votes for 29 cities that had the same name as their school districts (still an imperfect overlap) in Los Angeles County. I found a remarkably strong correlation ( $r=.71$ ) between the swing and measures of their property wealth per pupil.<sup>51</sup> The districts that

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<sup>48</sup> Philip Watson, Do We Need a Tax Limit? 25 NAT'L TAX J. 397 (1972), discussed in Fischel, How *Serrano* Caused at 616.

<sup>49</sup> Fischel, How *Serrano* Caused at 617-18.

<sup>50</sup> See Picus, *supra* note \_\_\_, at 39.

<sup>51</sup> *Id* at 618.



had relied most on local taxes (and thus were penalized by *Serrano*-compliance) because of their high property values were those that had the largest swings.

For example, Beverly Hills had a swing of 154 percent. It was not the highest swing in Los Angeles County, though. That honor went to El Segundo, where the swing was 251 percent. You have seen El Segundo if you took a window seat on the left side of the plane and looked out as it landed (towards the ocean) at Los Angeles International Airport (LAX). It is the city closest to the airport and has a large industrial complex, dominated by oil refineries. In the midst of this industrial haven is a residential area of middle class houses—the rich don't live among refineries or next to busy airports. The compensation for that burden had been a low property-tax rate that nonetheless generously financed their public schools. El Segundo was a “property rich” district without many income-rich residents, and their shift from opposing property tax limits in 1972 to embracing them in 1978 reflected their disappointment with the *Serrano* remedy.

When this paper (“How *Serrano* Caused”) became more widely known and, at least in some circles, accepted as a valid possibility,<sup>52</sup> Kirk Stark and Jonathan Zasloff undertook a lengthy critique of my explanation and evidence.<sup>53</sup> They did a more sophisticated statistical analysis of the “swing” of votes from 1972 and 1978 using multiple regression analysis and a larger sample of districts. I had thought of doing this earlier but could not think of what variables would be appropriate to explain the swing. Using these variables, Stark and Zasloff concluded that property wealth per student, which *Serrano* was keyed on, was not the critical variable to explain why voters shifted so much. They found that family income, the elderly population of a district, and (of lesser importance) percent registered Republicans were more statistically significant and potentially better explanations for the success of Proposition 13.<sup>54</sup>

Provoked by Stark and Zasloff's evidence, I began to think about the denominator, the “per pupil” measure instead of just the numerator, aggregate taxable property. Up to that time I simply accepted the court's and plaintiffs' view that, at least in the short run, the number of public school pupils in a district was a given. But why would San Francisco, say, have a majority of its students from poor families but still have a high tax-base per student? It wasn't just the

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<sup>52</sup> See, Glaeser, *supra* note \_\_; Silva and Sonstelie, *supra* note \_\_; Danforth, *supra* note \_\_\_\_.

<sup>53</sup> Kirk Stark and Jonathan Zasloff, Tiebout and Tax Revolts: Did *Serrano* Really Cause Proposition 13?, 50 UCLA L. REV. 801 (2003).

<sup>54</sup> Stark and Zaslov, *supra* note \_\_, at 897-98.

commercial buildings that raised the numerator (taxable property). It was the relatively small fraction of families who had any children at all who lived there. People with children avoided San Francisco's schools if they could afford to do so. They either moved to the suburbs or sent their children to private or parochial schools.<sup>55</sup> The low quality of inner-city public schools reduced the total number of potential students, thus lowering the denominator and making the San Francisco look "property rich."<sup>56</sup> Because the *Serrano* remedy focused on property and not on people, it penalized many urban school districts with problematic school systems, the very districts in need of additional state funds. And as a result of the flight by families from the central cities, the remaining population was full of older people. In statistics-speak, the variables representing older residents as well as (more obviously) higher income residents was closely correlated with property value per pupil. The apparently contrary results of Stark and Zasloff were actually consistent with what I had originally found with my simple two-variable comparisons.

This does not prove that *Serrano* caused Proposition 13. There is no standard to measure such a claim. All one can claim in matters such as this is that some stories make more sense than others. I am nonetheless increasingly confident that this story is better than other accounts. This is mainly because of the test that I first thought of when Proposition 13 first passed: Some other story will arise that will make sense of this seemingly self-destructive vote. It did not happen.

The stories that attribute Proposition 13 to one-off events such as the growing state budget surplus (which was deliberately allowed to accumulate to deal with *Serrano*<sup>57</sup>), the supposed political astuteness of Howard Jarvis,<sup>58</sup> the rise of Ronald Reagan (who did not support property tax limitation initiatives when he was governor,<sup>59</sup>) the dilly-dallying of the state legislature

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<sup>55</sup> That families with children move in significant numbers to better public schools is shown for the Boston area by Bradbury, Katharine L., Christopher J. Mayer, and Karl E. Case. "Property tax limits, local fiscal behavior, and property values: Evidence from Massachusetts under Proposition 212." *Journal of Public Economics* 80, no. 2 (2001): 287-311.

<sup>56</sup> Richard F. Elmore and Milbrey McLaughlin, *Reform and Retrenchment: The Politics of California School Finance Reform* 46-47 (1982) and discussion in Fischel, *Did John Serrano Vote* at n. 96.

<sup>57</sup> See Fischel, *How Serrano*, supra note \_\_\_, at 6281

<sup>58</sup> e.g., Daniel A. Smith, "Howard Jarvis, populist entrepreneur: Reevaluating the causes of proposition 13." *Social Science History* 23, no. 2 (1999): 173-210.

<sup>59</sup> Dick Turpin, "Reagan and Watson Clash over Prop. 14 at Realtors' Meeting." *Los Angeles Times*, October 12, 1972, E14.

(which I dispute<sup>60</sup>), or the disproportionate rise in homeowners' assessments<sup>61</sup> are based on transitory events that could have been corrected but for the demands of *Serrano*. Mine is the only story (so far) that makes sense within the framework that modern political economy has used to successfully explain other phenomenon.<sup>62</sup>

My thesis is supplemented by the remarkable endurance of Proposition 13 itself. Political figures regard it as the “third rail” of California politics, liable to electrocute the careers of anyone who dares challenge it. Even incremental reforms such as bringing commercial and industrial property back to normal taxation standards were rejected by California's voters in 2020.<sup>63</sup> Bad political ideas do get adopted by democracies sometimes. National Prohibition was imposed by Constitutional amendment in 1920 and did a lot of damage until it was reversed by another amendment in 1934. Proposition 13 has done much more damage to California than Prohibition, and it has so far lasted more than twice as long as Prohibition. Moreover, the state constitutional amendment process is considerably easier than a national amendment, as the tribulations of the national Equal Rights Amendment (for gender equity) surely demonstrate.

Californians cannot be promised a return to local fiscal control of schools under any amendment to Proposition 13 alone. That is because the *Serrano* decision still stands. A return to taxation of even nonresidential property would still, under *Serrano*, require that the revenues earmarked for education would have to be distributed by the state government, not districts in which the property was located. Only a serious modification of *Serrano*'s insistence on equal

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<sup>60</sup> Fischel, Did John Serrano Vote, *supra* note \_\_\_, at 920.

<sup>61</sup> Isaac William Martin, *The Permanent Tax Revolt: How the Property Tax Transformed American Politics*, Stanford University Press, 2008. Why the property tax, which was a steady source of local government revenue throughout the twentieth century, should have been transformative in 1978 remains unexplained. See John Joseph Wallis, “A history of the property tax in America.” in *Property taxation and local government finance* (2001): 123-47.

<sup>62</sup> An example of durability is the original test of the Tiebout model by the late Wallace Oates in 1969. The effects of property taxes and local public spending on property values: An empirical study of tax capitalization and the Tiebout hypothesis. *Journal of political economy*, 77(6), pp.957-971 (1969). The study has been replicated scores of times and has survived updated data, venues, and econometric techniques. Oates was my thesis advisor at Princeton, and his modest demeanor, openness to alternative views, and dedication to factual inquiry were life-long guideposts to my career, though I have tried to avoid his wordy titles for articles.

<sup>63</sup> Conor Dougherty, California's 40-Year-Old Tax Revolt Survives a Counterattack, *New York Times*, Nov. 12, 2020, Section B, Page 3.

spending and property tax-sharing would, I believe, incline the voters to accept any modification of Proposition 13.

### **§5. “I Can’t Get No Satisfaction:” The Legend of John Serrano**

In my last full-length paper on *Serrano*, the title led with the question, “Did John Serrano Vote for Proposition 13?” This was meant not to answer the question. It was a lead-in to debunk the common view that the plaintiff in the case was a poor Chicano who couldn’t get a decent education for his son and so turned to the law to vindicate his right to an education.<sup>64</sup> Here’s the true story.<sup>65</sup>

Near the beginning of the school year in 1967, John Serrano, Jr., had a talk with the principal of his son’s elementary school in East Los Angeles. John was a social worker in East LA. He had a bachelor’s degree from Cal State Los Angeles and a Masters of Social Work from the University of Southern California.<sup>66</sup> His young son, John Anthony Serrano, was a bright student, and the older John (he was the “Jr.” and sported no middle name) was concerned that his son was not getting an education that would develop his talents. The principal of the school, one of many in the Los Angeles Unified School District, gave a candid but kindly answer. John Anthony would be better off in another school, apparently admitting that the present school did not have the wherewithal to deal with especially bright students.

John Jr. considered his options and decided to move out of East Los Angeles. He and his family first moved to Whittier and then to Hacienda Heights, both independent school districts east of Los Angeles. John Anthony did well in school and excelled in sports, especially track and field events. I coincidentally found his image in a book by a friend, Frank Zarnowski, about

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<sup>64</sup> James W. Guthrie, “Twenty-first century education finance: Equity, adequacy, and the emerging challenge of linking resources to performance.” *Money, Politics, and Law: Intersections and Conflicts in the Provision of Educational Opportunity*; 2004 Yearbook of the American Education Finance Association (2004), p. 3. As I noted in *Did John Serrano Vote*, at 892, n 14, Professor Guthrie cheerfully admitted that his account was based on “hearsay.”

<sup>65</sup> The account below is based on David Rosenzweig, *Serrano Happy to Be a Part of Change*, L.A. Times, Dec. 31, 1976, pt. I, p. 3, and my interview with John Serrano summarized in the text below. Additional details and family pictures are in John Kay Adams, “Education for the Poor? A Legal Leap Forward in California? Opportunity, January-February 1972, published by the Office of Economic Opportunity. pp. 2-8.

<sup>66</sup> John’s degrees were earned over several years after he realized that his lack of education led to dead end jobs. *Id.*

outstanding decathlon athletes.<sup>67</sup> John is pictured doing the pole vault while he was a student at the University of California at Santa Barbara. (His younger brother, David, also attended UCSB.) He also could vault well in the corporate world. John Anthony is now a director at Deutsche Bank in Fountain Valley, California, according to the obituary of his father in the Los Angeles Times in 2006<sup>68</sup> and John Anthony's current LinkedIn page (which does not contain his middle name).

How should we think about this apparent success story? The view that I took was that the Serranos were lucky to have options to deal with what could have been a bad situation. The early grades of education are now regarded as crucial for success years later according to recent studies<sup>69</sup> and to the intuition of parents ever since age-graded schooling was invented. The Serranos voted with their feet to avoid what their original school's principal anticipated as a poor fit for John Anthony. In this view, it is a good thing that there were options such as Whittier and Hacienda Heights. Economists who specialize in local government behavior would call this a success story.

The districts to which the Serranos moved were not rich districts as measured by the taxable-wealth standard adopted in the *Serrano* litigation. Their property tax-bases per pupil were both less than half that of Los Angeles Unified, in which East Los Angeles was located.<sup>70</sup> But back in those days (pre-*Serrano*), being "property poor" was not an absolute barrier to better funded schools. Local school boards and the voters who elected them could vote for higher spending to fine-tune their schools, even if it meant higher tax bills. (As noted above, this is affordable because better schools increase taxable property values.) And the housing market back then was sufficiently robust that a middle-class family like the Serranos could find accommodations outside of East Los Angeles. John Jr. continued his work as a social worker in East Los Angeles, an unincorporated community in Los Angeles County. He eventually became "chief of social

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<sup>67</sup> Frank Zarnowski, *The Decathlon: A Colorful History of Track and Field's Most Challenging Event* (Champaign IL, Leisure Press, 1989).

<sup>68</sup> Valerie Nelson, John Serrano Jr., 69; his lawsuit changed the way state's schools are funded, *Los Angeles Times*, Dec. 6, 2006.

<sup>69</sup> Raj Chetty, John N. Friedman, Nathaniel Hilger, Emmanuel Saez, Diane Whitmore Schanzenbach, and Danny Yagan. "How does your kindergarten classroom affect your earnings? Evidence from Project STAR." *Quarterly Journal of Economics* 126, no. 4 (2011): 1593-1660.

<sup>70</sup> Fischel, *Did John Serrano Vote*, supra note \_\_, at 892 citing California State Department of Education, *California Public Schools: Selected Statistics, 1970-71*, at 95 table. IV-11 (1972).

services for the East Los Angeles Regional Center in Alhambra, a state-funded corporation that serves the mentally retarded.”<sup>71</sup>

John’s meeting the school-finance lawyers happened well after the Serranos moved out of East Los Angeles. It was apparently the product of serendipity, not desperation. According to David Kirp, Mr. Serrano happened to meet Harold Horowitz at a dinner party and told him the story of the principal well after he had voted with his feet.<sup>72</sup> Horowitz was looking for a plaintiff for the litigation challenging the constitutionality of California’s system of financing public education. In a later interview, Mr. Serrano clearly indicated that it was the lawyers’ idea to file suit; he was only a figurehead, but proud enough to have served that role. There were other plaintiffs, all recruited by the lawyers, and one source indicated that it was Mr. Serrano’s Hispanic name that made him the lead plaintiff.<sup>73</sup>

In my 2004 article, I went on to point out a further irony. I will quote myself:

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. 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. 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. 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

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<sup>71</sup> Valerie Nelson, *supra* note \_\_\_, at 69.

<sup>72</sup> 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).

<sup>73</sup> Richard F. Elmore and Milbrey Wallin McLaughlin, *Reform and Retrenchment: The Politics of California School Finance Reform* 36 (1982).

every social problem." The article went on to indicate that Mr. Serrano still stood behind the litigation that had made his name famous.<sup>74</sup>

In this view, John's decision to lend his name to the litigation that resulted in the demise of the system he benefitted from seems feckless or at least ironic. That was the implication of my use of this story in my last full-blown article on this topic, *Did John Serrano Vote for Proposition 13?* I used John in the same way that his lawyers used him, as a convenient symbol for their pre-arranged agenda.

But there is an alternative view which would focus on the inadequacies of John Anthony's original elementary school. Its principal admitted that the school could not provide a satisfactory education for the likes of the young Serrano. The Serrano family gave no indication that they were otherwise unsatisfied with life in East Los Angeles. Making them change communities just to get a decent public education would seem to be an unreasonable burden, not least because other families in the Serrano's situation might not have the wherewithal to move away. And moving away has other costs. John Jr.'s commute to East LA changed, one presumes to a longer and more tiresome distance, and the friends that young John Anthony and others in the family had made in their East LA neighborhood were abandoned or at least made more distant. The new districts were at least for a time terra incognita, not something eagerly sought by young children, however well they may have adjusted later on.

I want to rehabilitate Mr. Serrano's reputation that may have suffered from my previous paper. An earlier version of "Did John Serrano Vote for Proposition 13" apparently made its way to David Serrano (John Anthony's younger brother), who was then (and apparently still is) an executive for a construction company in the Los Angeles area. He contacted me and gave me the phone number of his father. I called him on February 25, 2004. I had the wit to write a summary in my daily log of my notes I made during the call, which is reproduced below. I have not edited or omitted a word (or corrected ungrammatical expressions). I apologize to the Serrano family for any embarrassment this may cause, but I think it is important to record this. The material in parentheses and brackets was included in my original notes; I did not add them here.

02/25/04 wed: talked with John Serrano, Jr.: he was active in speaking about case, but not in court (except depositions) or planning; he did not vote for Prop 13 and did speak against it as a social worker and because of its effect on schools; only lawyer in regular contact was

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<sup>74</sup> Fischel, *Did John Serrano Vote*, supra note \_\_\_, at 893-94 (footnotes omitted).

McDermott; I told him that David S had said he signed petition, which J confirmed, but said he had not paid attention to its content; mentioned that his mother was in danger of losing her house in Pasadena because property taxes were getting so high; daughter still lives with him; grandchild goes to school in West Covina instead of Hacienda b/c cultural fit in HH not right: over half are wealthy Chinese; noted own house taxes low b/c prop 13, but wife wants to move, JS thinks taxes would go up [told about portable assessment]; confirmed that he opposed busing; “sham” reform because of long bus rides for kids out of community; his kids OK, David somewhat jealous to attention to John, who was introverted but excellent athlete, decathlon at UCSB (after 2.5 years at UCSD [or state?], coach was Sam Adams, David also UCSB; said his MSW from USC; dinner party at home of Armando Morales, UCLA psychiatry, active in police brutality control; Derrick Bell, not Horowitz, brought up the idea of Serrano joining litigation as plaintiff after telling the principal story; Bell’s asst at Western Center Poverty Law was Chuck Jones; said principal of school, Kirk Collum (?) advised in confidence; bought into lionization of his role because “we need figureheads”

The intelligence I got from this call came well after “Did John Serrano Vote for Proposition 13?” was edited for publication in the UCLA Law Review, and working papers with that title had been widely distributed. As a result, I did not change the title, which also had the appeal of emphasizing the ironic contrast between Mr. Serrano and his lawyers. I did make note of our conversation in a footnote (n. 30, p. 894), but few readers would have noticed it. So that is why the present article is titled with the declarative, “John Serrano Did Not Vote for Proposition 13.”

Rereading these notes, I suspect that I had underestimated John, and I think he may have underestimated himself, as well. John was well connected. The home at which he had dinner was that of a well-known psychiatrist, Armando Morales, who was also active in promoting community mental health and combatting police misconduct. He was an important figure, and his guests, Derrick Bell (and perhaps also David Horowitz) were already notable activists. John wasn’t just tagging along for the ride. He volunteered the story of the principal; it wasn’t a side note in his life. Something must have troubled him about the need to abandon a community, East Los Angeles, about which he deeply cared in order to get a competent education for his children.

It seems possible, then, that John’s commitment to community was what caused him to become a public foe of busing. He was a named sponsor of Proposition 1, whose intended effect was to halt the ongoing busing of students from neighborhood schools to achieve racial balance throughout the giant Los Angeles Unified School District. LAUSD includes all of the city and several adjoining communities and unincorporated areas of the county, including East Los



Angeles. It should be noted, however, that Mr. Serrano's decision to move out of East Los Angeles was in 1967, well before any busing plan had been ordered. He was not among the thousands of families, including some of my extended-family members, who either moved to the suburbs or enrolled their children in private schools as a result of busing's implementation.<sup>75</sup>

The busing order in Los Angeles came from a ruling by the California Supreme Court, not, as in many other places, from the federal courts. Los Angeles had not engaged in intentional segregation of students by race in the past. Federal courts held that racial segregation of schools did not require busing if it was the product of supposedly "race neutral" public policies, including zoning. But the California courts took a broader view and regarded the "de facto" segregation that caused neighborhood schools to be segregated required a remedy. Proposition 1, which was adopted overwhelmingly in 1979, required the California courts to hold to the federal standard and thus unravel busing in Los Angeles.<sup>76</sup>

As mentioned above, John Serrano was a named sponsor the Proposition 1. In this case, he was not a figurehead. He actively opposed busing and spoke against it. I quoted his defense of his position for ironic effect, contrasting his position with what I am still pretty sure was position of the *Serrano* legal team, who saw school finance litigation as a logical extension of the same Civil Rights litigation that had begun with *Brown v. Board of Education*.<sup>77</sup> My smug implication was that the lawyers' symbolic choice had turned out to be a loose cannon in their broader legal fight.

## **§6. "Bridge Over Troubled Water:" Busing and Social Capital**

Here is why I think John Serrano was principled in his fight against busing. As I mentioned above, I spent an academic year in Berkeley in 1991-92. My wife and I had to find a place to live and a school for our son, who was entering the eighth grade. I called around to acquaintances in Berkeley who had school-age children and found that none of them had sent their children to public middle school (or most any other public school) in Berkeley. An acquaintance from

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<sup>75</sup> Sarah Terry, Los Angeles school desegregation: the 18-year-long 'ride' is over, CS Monitor, April 10, 1981.

<sup>76</sup> The final judicial statement upholding Proposition 1 and its complex judicial history is described in *Crawford v. Los Angeles Board of Educ.*, 458 U.S. 527 (1982).

<sup>77</sup> Henke, *Financing Public Schools in California: The Aftermath of Serrano v. Priest and Proposition 13*, 21 U.S.F. L. Rev. 1 (1986) at 5.

Vermont Law School had visited Berkeley earlier and sent his child to middle school there. He said it went okay but added that it helps to have a tough kid.

I had no interest in finding out how tough my kid was, so I looked for private middle schools. As if by magic, we learned of one that had started recently in a decommissioned public elementary school that was a couple of blocks from the home we rented near the Berkeley campus. I interviewed the principal and founder and enrolled our son in the grandly named East Bay Junior Preparatory School. Class size was almost tutorial, and after a first-day meltdown, Josh quickly adapted to his new school and found himself elected to a position in student government. It looked like a great start for our third year-long sojourn in California.

After a month or so, though, we noticed that something was different about our stay in Berkeley as opposed to our year-long visit in Santa Barbara six years earlier. We were not getting to know many other people in Berkeley. My university connection was fine—I could walk to the law school—but our community social capital was meager. The reason was that the other students at East Bay Prep were drawn from a wide range of communities and distant neighborhoods. Only two of his classmates lived nearby. Josh’s public school had overcrowded classrooms in Santa Barbara, but we got to know many of the parents of his classmates. Those acquaintances formed a matrix of connections with the rest of the community, people we still keep in touch with.

That matrix was attenuated in Berkeley. Josh’s school was in a way like a magnet school with voluntary busing. These have special programs to attract students from outside the community in an effort to reduce school segregation. Another characterization could be that it was like a voucher school, where parents could choose to send their kids regardless of what neighborhoods they lived in. The “voucher” in my case was enough personal income to forego free public education for a year, but that same condition also freed his classmates’ parents to live in Oakland and Richmond, neither of which had well-regarded schools, as well as Berkeley. But being footloose also meant that, like us, the parents lost much of the network of local school-related friends and acquaintances that a system of neighborhood public education provides.

Years later I built on our Berkeley school experience to write an article titled “Why Voters Veto Vouchers.”<sup>78</sup> The main idea was that vouchers undermine community-specific social capital by sending children in the community to different schools. For Darwinian reasons, parents want to know who their kids are associating with and what their parents are like. As a result, school children are an important pathway to forming adult social capital. This network of adult acquaintance lasts longer than their children’s years on school, and the network facilitates citizen involvement neighborhood and municipal projects and initiatives.

Localized social capital is one reason, I hypothesized, that voucher initiatives are received so tepidly by the public. After *Serrano* and Proposition 13, one would think that school vouchers, in which the state gives money to parents with school-age children and lets them choose which school they want to attend, would have been more attractive. Jack Coons and Steve Sugarman, two of the law professors behind the *Serrano* litigation, in fact promoted a pro-poor voucher initiative in its aftermath.<sup>79</sup> Vouchers were all part of their plan to reform the system, allowing poor and minority inner-city children to choose private or public schools outside of the neighborhoods they could not for economic reasons move out of. But their initiative could not raise enough signatures to get on the ballot, and subsequent statewide voucher initiatives, which were less sensitive to the needs of the poor, were all defeated in California and in most other states.<sup>80</sup>

The public’s appreciation of the social-capital benefits of local schools may also explain why the number and boundaries of California’s school districts have remained so steady, as they have in most other states.<sup>81</sup> This is in a sense surprising to scholars who, in the Tiebout tradition, regarded school district boundaries as protecting the locality from fiscal erosion by the poor. The high-spending districts taxed themselves to keep their schools strong, and they did not want to merge with low-spending or property-poor districts in order to maintain their fiscal advantages.

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<sup>78</sup> William A. Fischel, “Why voters veto vouchers: Public schools and community-specific social capital.” *Economics of Governance* 7, no. 2 (2006): 109-132.

<sup>79</sup> John E. Coons and Stephen D. Sugarman. *Education by choice: The case for family control*. Univ of California Press, 1978. A post-mortem of their attempt is Ron Matus, *How the left almost pulled off a school choice revolution*, May 31, 2019 by RedefinED <

<https://www.educationviews.org/how-the-left-almost-pulled-off-a-school-choice-revolution/>>

<sup>80</sup> Terry Moe, *Schools, Vouchers, and the American Public*. Washington: Brookings, 2001 at 359.

<sup>81</sup> Fischel, *Making the Grade*, supra note \_\_\_, chapter 5.

After *Serrano II* and Proposition 13, such calculations were moot. The size and wealth of the district was irrelevant; there was no longer any locally determined taxation that could be directed only to a district's own students. Inefficiently small districts could merge with others to take advantage of the economies of scale in administration, and inefficiently large districts could be broken into smaller units so their unwieldy bureaucracies could be streamlined.

That did not happen, either. School districts in California have not changed much from the approximately 1000 that they numbered in 1970.<sup>82</sup> Their borders are at least as secure now as before *Serrano* and Proposition 13. Indeed, housing prices continue to shift up or down at school district borders despite nearly equal spending per pupil.<sup>83</sup> This suggests that a more powerful force than fiscal advantage was maintaining school districts as separate entities. Two related possibilities for this steadiness are the increase in zoning restrictions since *Serrano*<sup>84</sup> and the continuing importance of local schools as sources of community-specific social capital.

It is possible that the latter, social capital, was the principled source of John Serrano's objection to Los Angeles busing program. He mentioned in our phone conversation the long bus rides for the children, which is certainly a loss for them in terms of study and recreation time. But consider also the parents of the children subject to removal from their local schools. They had much less opportunity to get to know the parents of the kids' new classmates in a remote neighborhood. The parental social capital generated by participation in school and after-school activities is dissipated in much the same way that a voucher program would dissipate it.

Of course, vouchers allow students to select their own schools, while busing generally is compulsory. But the effect of both programs on home neighborhoods is nearly the same: The neighborhood kids that you knew in their pre-busing or pre-voucher days go off to different schools. Their parents follow them and get to know other parents, but those other parents most

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<sup>82</sup> California Department of Education, *School District Organization Handbook*, Chapter 2 History of School District Organization in California September 2016 at 11 (merger of districts slowed after 1970).

<sup>83</sup> Eric Brunner, Jon Sonstelie, and Mark Thayer, "Capitalization and the voucher: an analysis of precinct returns from California's Proposition 174." *Journal of Urban Economics* 50, no. 3 (2001): 517-536.

<sup>84</sup> Jacob Krimmel, *Reclaiming Local Control: School Finance Reforms and Housing Supply Restrictions*. University of Pennsylvania Working paper, 2021.

likely do not live in the same neighborhood. The likelihood that those relationships will be helpful in solving a neighborhood problem is much lower as a result.

One could imagine that John and Aurora Serrano felt some sense of loss when they moved out of East Los Angeles. John's job as a social worker remained focused on that area. He surely felt some kinship with the largely Hispanic population, many of them first-generation immigrants from Mexico like himself. And he was not unmindful of the problem of racial segregation. In an interview about his support for the anti-busing Proposition, he argued that desegregation was better dealt with by housing policies.<sup>85</sup> Requiring communities to accept a variety of housing types would allow for neighborhood schools and truly integrate families into the network of neighborhood connections that such schools generate. In this respect, his policy preference was prophetic. Zoning has since been identified as the primary cause of the increasing isolation of the poor in urban areas, especially in California.<sup>86</sup> It is possible that the energies of school finance reformers would be better spent in reforming land-use regulations.

### **§7. “God Only Knows:” The Future of *Serrano* and Proposition 13**

I had originally proposed to Oscar Jiménez the title, “Could *Serrano* Not Have Caused Proposition 13?” The idea was to consider the many successive school-finance lawsuits that were inspired by *Serrano* and see whether they had resulted in a voter inspired tax revolt. But it soon occurred to me that I had already considered this possibility. In my chapter on this topic in the Homevoter Hypothesis,<sup>87</sup> I asked whether *Serrano* was a “natural experiment” of the type that economists are always looking for to test theories.<sup>88</sup> We cannot arrange (for good reason) controlled experiments, telling one group to forgo a reform while the other goes ahead.

The reason we like natural experiments, as opposed to observational studies, is that we have some assurance that the actors involved did not foresee the results and thus steer the outcome to

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<sup>85</sup> Serrano's Campaign Against Forced Busing, S.F. CHRON., Dec. 2, 1977, at 28.

<sup>86</sup> Anthony Downs, *New visions for metropolitan America*. Brookings: 1994; Robert C. Ellickson, “The Zoning Strait-Jacket: The Freezing of American Neighborhoods of Single-Family Houses.” Available at SSRN 3507803 (2020); Douglas S. Massey, Jonathan Rothwell, and Thurston Domina. “The changing bases of segregation in the United States.” *The Annals of the American Academy of Political and Social Science* 626, no. 1 (2009): 74-90.

<sup>87</sup> Fischel, *The Homevoter Hypothesis* (Harvard 2001) chapter 5

<sup>88</sup> Mark R. Rosenzweig, , and Kenneth I. Wolpin. 2000. “Natural “Natural Experiments” in Economics.” *Journal of Economic Literature*, 38 (4): 827-874. Studies of adult outcomes of identical twins separated a birth are an example of natural experiments.

a different result than was predicted. Predictions by astronomers that a comet will strike Mars are not complicated by the possibility that Mars will duck out of the way. Predictions that we would run out of oil by 2000, a popular theme in the 1970s, were complicated by the possibility that oil consumers and producers would respond in such a way as to not make it happen. And of course, it did not; the post-2000 worry is that the world will not run out of oil and other greenhouse-gas sources.

It is well known that the success of *Serrano* inspired litigation in other state courts.<sup>89</sup> But we need to keep in mind that the potential defendants in these cases (usually an agency of the state government) realized that after *Serrano* the reformers had a much better chance of succeeding than before. They began to adopt reforms and defensive strategies that would forestall litigation or soften its blow when the plaintiffs actually succeeded. In turn, the reform plaintiffs began to alter their strategy to get more of what they wanted in court. Rather than rely on equality of spending, expecting that it would always raise spending of all districts, they sought to augment previous programs of state funding and move funds towards needy districts.<sup>90</sup> Bargaining between parties changed in the shadow of *Serrano*'s success.

It is possible also that Proposition 13 has also cast a shadow on the enthusiasms of school finance litigation. I may have to accept some of the credit (or blame) for this.<sup>91</sup> I deliberately set out in "How *Serrano* Caused Proposition 13" to use the story as a warning against following it too much.<sup>92</sup> I noted that the US Supreme Court had, by the narrowest possible margin (5-4)

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<sup>89</sup> William A. Fischel, "The Courts and Public School Finance: Judge-Made Centralization and Economic Research," in Eric Hanushek and Finis Welch, editors, *Handbook on the Economics of Education*. Amsterdam: Elsevier, 2006. (Volume 2, pp. 1279–1325)

<sup>90</sup> For an overview of other states' responses, see W. Norton Grubb, *The money myth: School resources, outcomes, and equity*. New York, NY: Russell Sage Foundation, 2009 p. 258.

<sup>91</sup> "It is no exaggeration to say that the Fischel hypothesis is among the most influential interpretations of the property tax revolt." Isaac Martin, "Does school finance litigation cause taxpayer revolt? *Serrano* and Proposition 13." *Law & Society Review* 40, no. 3 (2006): 525-558 at 527. Martin nonetheless rejects the theory using data different from both Stark and Zasloff, *supra* note \_\_, and myself, *Did John Serrano Vote*, *supra* note \_\_. For my explanation for why Martin's approach is unconvincing, see William A. Fischel, "*Serrano* and Proposition 13: The importance of asking the right question." *State Tax Notes* 49, no. 8 (2008): 535-541. I nonetheless appreciate the extensive criticisms of both Martin and Stark and Zasloff for sharpening my own understanding and for confirming that the topic is worth the attention of serious scholars.

<sup>92</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973); Fischel, *How Serrano Caused* at 607.

declined to apply the *Serrano* standard to schools nationwide, and I used the Proposition 13 theory as a reason to stick to that abstention. (There are no doubt more pressing reasons for them to have abstained, not least the practical difficulties of enforcing a national standard among fifty states with 15,000 school districts.) A vigorous argument to the contrary, arguing for a national right to education standard, was written by then-law professor Goodwin Liu,<sup>93</sup> who is currently a member of the California Supreme Court. It seems unlikely that that court will revise *Serrano* anytime soon.

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<sup>93</sup> Goodwin Liu. 2006. Education, Equality, and National Citizenship. 116 Yale Law Journal 330.