

## How political was the court's decision on

# PROPOSITION 13?

### THE DOCTRINE OF ACQUISITION VALUE

By ED SALZMAN

Chief Justice Rose Elizabeth Bird opened her "concurring and dissenting" opinion in the landmark Proposition 13 constitutionality case with this scenario:

"John and Mary Smith live next door to Tom and Sue Jones. Their houses and lots are identical with current market values of \$80,000. The Smiths bought their home in January of 1975 when the market value was \$40,000. The Joneses bought their home in 1977 when the market value was \$60,000. In 1977, both homes were assessed at \$60,000, and both couples paid the same amount of property tax. However, under article XIII A (Proposition 13) in 1978, the Joneses will pay 150 percent of the taxes that the Smiths will pay. Should a third couple buy the Smiths' home in 1978, that couple would pay twice the taxes that the Smiths would have paid for the same home had they not sold it."

Then Bird attacked the "irrationality" of the finding by all six of her colleagues that such disparity is equitable and does not violate the equal-protection clause of the Constitution. She could have gone much further with her hypothetical cases. Look ahead to the year 2000. Under Proposition 13, those who bought houses for \$40,000 in 1975 will have tax bills based on assessments in the vicinity of \$60,000. But if inflation in the housing market continues, those same houses could well be worth \$250,000. (Actually, if home values keep rising at the rate of 10 percent a year, the price could be \$400,000 by the turn of the century.) This means that new owners at that time would be paying many times more in taxes than those with identical homes that happened to have been purchased many years earlier. The disparity could be enormous.

After the June election, lawyers examining Proposition 13 generally agreed that the most vulnerable provision in the measure was the one basing assessments on 1975 levels, with a maximum increase thereafter of two percent a year — except for those parcels changing hands. In fact, many lawyers were predicting that this provision would be found unconstitutional — despite the political tenor of the times.

No one will ever know how large a role politics played in

the state Supreme Court's decision upholding Proposition 13 on all major counts. Four of the justices, including Bird, were facing the voters at the November election. There were predictions that the court would withhold a decision until after the election to avoid any adverse impact from a decision. But the court accelerated the hearing process, and it turned out that Bird was the only one with anything to lose from the decision.

#### The dissent's effect

The Chief Justice recognized the political factor in the closing paragraph of her opinion: "This decision has not been an easy one. The issues are close and reasonable people may differ. Emotions run high on this question, but as judges we must follow the law and do what it requires . . ."

What effect did Bird's partial dissent have on the campaign on the part of conservatives to remove her from the bench via the ballot box? Bird's friends thought that her dissent on the equal-protection issue would be devastating to her chances for winning the approval of the electorate. But as it turned out, the media emphasized the unanimity of the decision and did not focus upon her partial dissent.

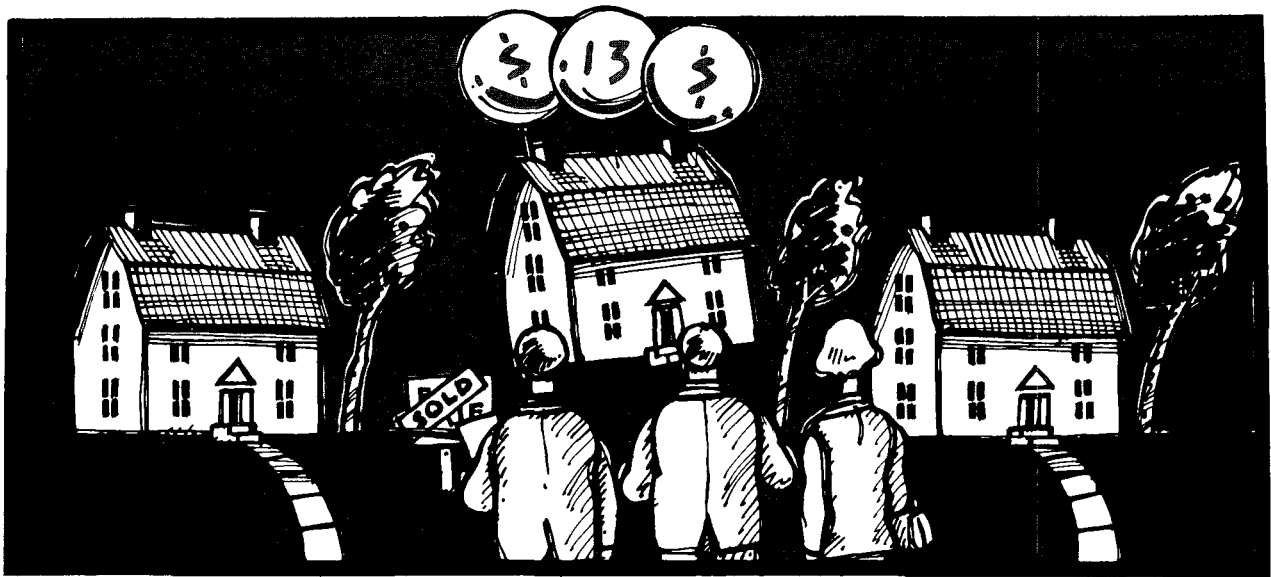
Two other Supreme Court cases — the *Caudillo* rape decision and the Los Angeles busing ruling — were much more evident in the campaign against Bird.

In the Proposition 13 case (*Amador Valley Joint Union High School District et al v. State Board of Equalization et al*), Bird agreed with her colleagues on a variety of points — that the measure was an amendment rather than a revision of the state constitution, that it did not violate the one-subject rule, that it did not curtail the right to travel and that there are some issues, including impairment of contracts, that are not yet ripe for decision.

In years to come, it is probably the equal-protection issue that will be the most difficult for the courts to handle. First, there is the possibility of an appeal to the United States Supreme Court. Then there is the possibility that the issue will be returned to the state court as the disparity between



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taxation of citizens becomes greater. Third, the court itself recognized that it will have to cope in the future with such questions as involuntary changes in ownership and new construction.

#### No 'iron rule'

The majority decision, written by Associate Justice Frank Richardson (a clear writer who disdains the use of footnotes), took this line of reasoning on the assessment-date issue: The federal Supreme Court has granted states wide latitude in the enforcement and interpretation of their tax laws. That latitude extends to the granting of partial or total exemptions on policy grounds. There exists no "iron rule" of equality. Proposition 13, the court explained, abolishes the traditional current-value method of taxation and substitutes an "acquisition value" approach to taxation. This approach, said Richardson, is based on the theory that the annual taxes which a property owner must pay should

bear some rational relationship to the original cost of the property, rather than relate to an "unforeseen, perhaps unduly inflated, current value."

The court majority felt that the acquisition-value system not only allows citizens to estimate future liability with some assurance but actually may be fairer than the traditional current-value system. Richardson cites the case of a taxpayer buying a \$40,000 piece of property in 1975. "His future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control," the justice wrote. Another person paying \$80,000 for a similar parcel in 1977 would be taxed on the price he was willing and able to pay for the property. Thus, Richardson concluded, Proposition 13 does not discriminate against persons purchasing property after 1975 "for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely on an acquisition value basis predicted on the owner's free and voluntary acts of purchase. This is an arguably reasonable basis for assessment."

#### Promoting disparity

Richardson also pointed out that there is nothing novel about two taxpayers paying different amounts of taxes for substantially identical properties. The sales tax, he said, can vary substantially on an item, depending on the sales price, discount and time purchased. The majority opinion devoted eight pages to the 1975 rollback provision, while Bird's "concurring and dissenting" opinion on that issue was twice as long.

Bird said the equal-protection issue "troubles me deeply . . . Property taxpayers are not treated equally, and those sections which promote this disparity must fall." Her arguments:

- Proposition 13 would create an "irrational tax world" and impose artificial distinctions upon equally situated property owners.
- The 1975 ownership provision makes it literally impossible for persons purchasing property in 1978 or thereafter to qualify for benefits granted fully to pre-1975 owners and thus transgresses the constitutional guarantee of equal protection under the law.
- The fact that the former property tax system allowed inequalities through exemptions for charitable, religious, non-profit and educational institutions does not solve the question raised here. Those exemptions benefited the general public, but no one has established any general public benefits from systematic undervaluation of some properties.

### The campaign isn't over 'til the last report is filed

If you are somehow involved in a political campaign this year, you may be surprised to learn that the election won't be over until next January 31st. That's the deadline for the filing of the last contribution-and-expense-statements with state and local officials.

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- “As the years go by, the skewed nature of the tax world created by article XIII A (Proposition 13) will become even more pronounced as each successive generation of purchasers will have their property overvalued in comparison to their neighbors’ or predecessor owner’s . . . Consider the condominium complex where each unit, though of identical fair market value, receives a different tax assessment simply because it was purchased in a different year . . . Consider the plight of the military family required by circumstances to change residence periodically . . . Consider further the plight of the family which ‘newly constructs’ their house after a natural disaster such as a fire or flood . . . What is the possible rationale for allowing natural disasters to trigger an increase in property tax obligations? . . . Consider the reassessment to current market value . . . for ‘changes in ownership’ brought about by divorce or death. Did those who voted so overwhelmingly for article XIII A’s general tax relief also intend to penalize those families who experience such family crisis?” (Bird pointed out in a footnote that the Legislature attempted to remedy the disaster problem through Proposition 8 on the November ballot.)

- The fact that a purchaser now pays more for a home than someone did in 1975 “may tell us nothing more than that inflation has been rampant and property values on the rise. In fact, higher mortgage payments that new homeowners pay as compared to earlier purchasers forewarns us against any cavalier assumption that later purchasers are able to bear heavier taxes.”

- What about the owner of property that has decreased in value since 1975? Proposition 13 would allow an assessment reduction only if there is a downward trend in the consumer price index.

#### The open issues


Thus far, Bird and her colleagues have dealt with Proposition 13 only in terms of broad concepts. In the years to come, the Supreme Court will have to deal with a plethora of

specific cases involving individuals and organizations who feel they have been damaged unfairly by the initiative and its implementation. The court left a variety of issues open for later decision. Richardson wrote: “We caution that, save only as to the specific constitutional issues resolved, our summary description and interpretation of the article and of the implementing legislation and regulations, do not preclude subsequent challenges to the specific meaning or validity of those enactments.” Among the questions left for future cases:

How does the 1975 rollback provision apply to involuntary changes in ownership, such as by death or divorce, and to new construction? Does Proposition 13 impair various contractual obligations incurred by local government? What about the retirement of redevelopment bonds sold by 121 cities and three counties and which now might be in danger of default?

As the years progress, however, the major issue facing the court will be how to cope with the inevitable disparities the 1975 rollback provision will create. If the Proposition 13 system remains in operation for a few decades and there is continued inflation in the cost of housing, the difference in taxation among those with identical properties could be several hundred percent.

The 6-1 decision by the high court on the equal-protection issue probably makes it more likely than ever that there will be another major tax-reform proposal placed into law within the next few years. There will be continued pressure, for example, for the proposal sponsored this year by Assembly Speaker Leo T. McCarthy to abolish the property tax on owner-occupied homes.

There is also the possibility, remote as it may seem at present, that once the Supreme Court starts handling the specific rather than general issue in Proposition 13 that some justices might come around to the Bird point of view. At the very least, the political atmosphere should be markedly different at that time. 

## Debunking the Brown Myth

By MARTIN SALDITCH

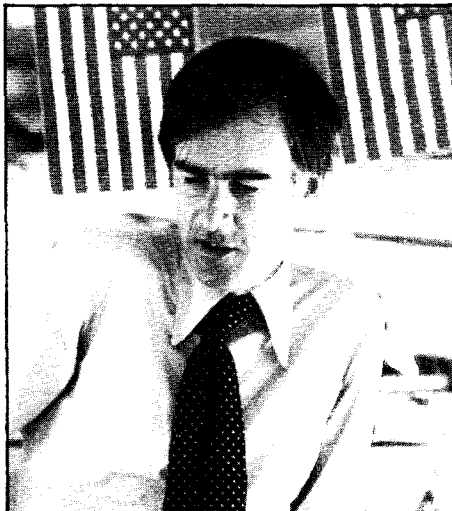
Among the political myths attributed to Jerry Brown, even by such usually careful publications as the *California Journal*, is that he “bested Jimmy Carter in five out of five presidential primaries” in 1976.

That is an inaccurate oversimplification which makes Brown appear much more of a “political wizard” than the record indicates. First of all, there were six primaries in which Brown campaigned against Carter. For some reason, pundits forget Oregon, where Senator Frank Church won with 34 percent of the vote; followed by Carter, 27 percent; and Brown, 25 percent by write-in.

There were only three primaries in which the names of both Brown and Carter were printed on the ballot — Maryland, California and Nevada. Brown won all three, but the latter two were on or near his “home turf” and not seriously contested by Carter.

As to the other two primaries (New Jersey and Rhode Island) in which

Brown was involved, the California governor campaigned for *uncommitted* slates against Carter. The uncommitted slates led Carter delegates in both states, but that doesn’t mean they necessarily preferred Brown as an al-



ternative. In fact, Brown was quoted by the *Los Angeles Times* (June 3rd, 1976) as conceding that the uncommitted slate in New Jersey was overwhelmingly for Hubert Humphrey, and that he was backing it merely as a stop-Carter move. Rhode Island, by the way, was no great victory even for the uncommitted forces there. They won nine delegates; Carter, seven; and Church, six.

So the only head-to-head presidential primary race which Brown won against Carter on “neutral ground” was in Maryland, 49 percent for Brown to 37 percent for Carter.

In summary, Brown gets credit for three primary victories over Carter, partial credit for two uncommitted slate victories, and one defeat. That’s a far cry from this “five out of five” myth.

*Martin Salditch is the Washington correspondent for the Riverside Press-Enterprise.*