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Meghan Shiner

University of the Pacific, McGeorge School of Law

John Knobel

University of the Pacific, McGeorge School of Law

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Proposition 5:

PROPERTY TAX TRANSFER

Initiative Constitutional Amendment and Statute

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By

Meghan Shiner

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2020
B.A., Political Science, California State University Long Beach, 2017*

&

John Knobel

*J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2020
B.A., Political Science cum laude, University of Colorado Boulder, 2014*

I. EXECUTIVE SUMMARY

Proposition 5 is both a constitutional amendment and a statute that would amend Proposition 13 (1978) and change the current requirements for certain property owners who wish to transfer the tax base on their current property to any replacement property.¹

The Legislative Analyst and Director of Finance produced a summary of the estimated fiscal impact Proposition 5 would have on state and local government revenue, these findings are summarized below.²

- Annual property tax losses for cities, counties, and special districts of around \$100 million in the near term, growing over time to \$1 billion or more per year (in today's dollars).
- Annual property tax losses for schools of around \$100 million per year in the near term, growing over time to \$1 billion or more per year (in today's dollars). Increase in state costs for schools of an equivalent amount in most years.

A **YES** vote means home buyers over the age of 55, individuals suffering from severe disabilities, or victims of natural disasters can transfer their tax base, with a possible adjustment, from their prior home to their new home, no matter the new home's market value or location in the state, or the buyer's number of moves.

A **NO** vote means no changes would occur for how tax bases are transferred between properties for homebuyers aged 55 or older or individuals with severe disabilities.

II. THE CURRENT LAW

California local governments collect property taxes from property owners based on the values of their properties, which creates revenue in an amount over \$60 billion annually for local governments.³ Current property taxes are generally between 1.1% and 1.6%.⁴ This variation in property tax is because in California the property tax is composed of three types of levies: general tax levy, voter approved bond indebtedness repayment, and special district assessments. Since voter approved bond indebtedness and special district assessments can vary from local jurisdiction to local jurisdiction, the property tax also varies. The general tax levy was frozen by Proposition 13 (1978) at 1% of assessed property value.⁵ Prior to the passage of Proposition 13, the property tax in California averaged less than 3% of market value and there were no limits on increases in property taxes.⁶

¹ CAL SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 6, 2018, available at <http://voterguide.sos.ca.gov/quick-reference-guide/5.htm> ["november 2018 voter GUIDE"].

² *Id.*

³ LEGISLATIVE ANALYST'S OFFICE, Proposition 5, at 1 (September 18, 2018), available at <https://lao.ca.gov/ballot/2018/prop5-110618.pdf>

⁴ Mary Gallagher, *The Average Property Tax Rates in California* (June 20, 2018), available at <https://homeguides.sfgate.com/average-property-tax-rates-california-51758.html>

⁵ Property Tax Information, *What is Proposition 13?*, California Tax Data, (September 5, 2018), available at <https://www.californiataxdata.com/pdf/Prop13.pdf>

⁶ *Id.*; see also SENATE COMMITTEE ON GOVERNANCE AND FINANCE, COMMITTEE ANALYSIS OF SR 39 (June 6, 2017)

The bond indebtedness component refers to a repayment of state and local bonds that have been approved by the voters, usually with a favorable vote by two-thirds of the electorate.⁷ The third component refers to local districts, such as school districts and fire districts, for which voters must approve assessments in advance.⁸ Special districts were also constrained by Proposition 13 in their ability to raise some taxes, with the law requiring a two-thirds vote from the electorate to raise taxes for a special district.⁹

Current law limits transfers to eligible homeowners: someone who is over the age of 55, severely disabled, or has property that has been impacted by a natural disaster or contamination.¹⁰ Those that are eligible can transfer their property tax base to a new home as long as the market value of the new property is the same or less than the new one.¹¹ This transfer can occur once in a homeowner's lifetime and usually only within the same county, however ten counties allow out of county transfers.¹²

III. HISTORY

California's structure for transferring property taxes has continuously evolved since Proposition 13 (1978) was originally approved by voters. This initiative capped the tax base of real property at one percent (1%) of the full cash value of such property. The "full cash value" is the estimated price a property would sell for. This is determined by a county assessor's valuation of the property when purchased, newly constructed, or a change in ownership has occurred. That assessment becomes the property tax base "frozen" under Proposition 13.¹³ A 1% property tax is then levied against the property's tax base.¹⁴ Besides a sale falling outside the powers of this initiative, property taxes can only increase annually at the inflation rate (as measured by the California Consumer Price Index) or 2%, whichever is less.¹⁵

Propositions 60 (1986) and 90 (1988) amended Article XIII A, section 2 of the California Constitution to allow any person over the age of 55 to sell his or her principal place of residence and transfer its base year value to a replacement dwelling of equal or lesser value that is purchased or newly constructed within two years of the sale. These propositions are implemented by Revenue and Taxation Code section 69.5.¹⁶ Proposition 60 allowed for the transfer of a base year value within the same county, where as Proposition 90 allowed for the transfer of a base year value from one county to another county in California, as long as the county an individual is moving their property tax to has authorized such a transfer by ordinance. If the county that the homeowner is moving from does not have a proposition 90 ordinance, this does not affect the eligibility of the homeowner.

⁷ Gallagher, *supra*, note 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ LEGISLATIVE ANALYST'S OFFICE, *supra* note 3, at 2.

¹¹ *Id.*

¹² Cal. Const. art. XIII, subd. 1(a).

¹³ Cal. Proposition 5, § 2(a) (2018).

¹⁴ Cal. Proposition 5, § 2(a)(6).

¹⁵ CAL. REV. & TAX. CODE § 51.

¹⁶ CAL. REV. & TAX. CODE § 69.5 (2016).

Proposition 50 (2002)¹⁷ provided for disaster related transfer for residential and commercial property owners within the same county.¹⁸ Proposition 110 (1994)¹⁹ provided for disability-related transfers for residential properties within the same county.²⁰ Proposition 171 (1993)²¹ amended subdivision (e) of Section 2 of Article XIII A of the California Constitution and provided intercounty transfers for disaster victims if approved by Board of Supervisors of the receiving county.²² Proposition 1 (1998) amended section 2 of article XIII A of the California Constitution by adding subdivision (i) and providing contamination-related transfers for residential properties within the same county.²³

IV. PROPOSED LAW/CHANGES TO CURRENT LAW

If passed, Proposition 5 would make many changes to current requirements for transferring a property tax base. For homeowners above 55 years of age and those with severe disabilities, the initiative would remove the requirements of the replacement property being of equal or lesser value, the replacement residence being located in a specific county, and the transfer occurring only once.²⁴ Similarly it would also remove the replacement value and location requirements on transfer for property that has been contaminated or destroyed by a disaster.

Overall, schools and other local government entities (cities, counties, and special districts) may be affected by Proposition 5 through the loss of over \$100 million in annual property tax revenue in the first few years, which would grow over time to be \$1 billion per year. Proposition 5 changes the current law in various ways: homeowners can move to any county in the state, the current property tax base can be transferred to a more expensive home, if transferred to a less expensive home then the tax base is adjusted downward, and a homeowner can have unlimited intercounty transfers for a replacement residence.²⁵ Property taxes can still increase annually at the inflation rate or 2 percent, whichever is less.²⁶

¹⁷ CAL. REV. & TAX. CODE § 69; *see also* California Online Voter Guide 2002, available at <https://calvoter.org/voter/elections/archive/2002/general/propositions/50.html>

¹⁸ Letter from California State Board of Equalization to California County Assessors (March 2, 1995) (on file with the *California Initiative Review*).

¹⁹ CAL. REV. & TAX. CODE § 69.3.

²⁰ *Id.*; *see also* Memorandum from California State Association of Counties Executive Director and Legislative Representative, to CSAC Executive Committee, *CSAC Financial Participation in Opposition to Proposition 5: Property Tax Transfers* (August 2, 2018).

²¹ Letter from California State Board of Equalization, *supra* note 9.

²² *Supra* note 14.

²³ Proposition 1: Property Tax Relief for Contaminated Property, No. 99/23, (Cal. Bd. of Equalization Apr. 13, 1999), <https://www.boe.ca.gov/proptaxes/pdf/lta9923.pdf>

²⁴ cal. Sec'y of state, *Text of Proposed Law, Proposition 5*, available at <https://vig.cdn.sos.ca.gov/2018/general/pdf/topl.pdf> (on file with the *California Initiative Review*)

²⁵ CAL. SEC'Y OF STATE, *Text of Proposed Law, Proposition 5*, *supra*; *see also* Cal. Proposition 5, § 2(a)(6); *see also* LEGISLATIVE ANALYST'S OFFICE, *supra* note 1, at 3-4.

²⁶ Cal. Proposition 5, § 2(b).

Depending on if the replacement home is greater or lesser in value, the property tax bill changes as follows²⁷:

What happens under Prop 5?

Say a couple's current home has a taxable value of \$200,000 and a market value of \$600,000. If they move, the taxable value of their new home would be:

More Expensive Home: If the couple buys a new home for \$700,000, the new home's taxable value would be \$300,000 (*shown below*). Their yearly property tax bill would be \$3,300. This is more than they paid at their prior home (\$2,200), but much less than they would pay under current law (\$7,700).

$$\begin{array}{rccccccc}
 \mathbf{\$300,000} & = & \mathbf{\$200,000} & + & \mathbf{\$100,000} & & \\
 \text{[new home's taxable value]} & & \text{[prior home's taxable value]} & & \text{[\$700,000} & - & \text{\$600,000]} \\
 & & & & \text{New home's} & & \text{Prior home's} \\
 & & & & \text{Market value} & & \text{Market value}
 \end{array}$$

Less Expensive Home: if the couple buys a new home for \$450,000, the new home's taxable value would be \$150,000 (*shown below*)

$$\begin{array}{rccccccc}
 \mathbf{\$150,000} & = & \mathbf{\$200,000} & \times & \mathbf{75\%} & & \\
 \text{[new home's taxable value]} & & \text{[prior home's taxable value]} & & \text{[\$450,000} & \div & \text{\$600,000]} \\
 & & & & \text{New home's} & & \text{Prior home's} \\
 & & & & \text{Market value} & & \text{Market value}
 \end{array}$$

Proposition 5 also gives the Legislature some options in its implementation, if it is approved by the voters. The first relates to “newly constructed” property. Since new construction is appraised at its market value on its date of completion, certain additions to a home, such as the addition of solar panels, can trigger reappraisal of a property’s value and create a new property tax base. This potentially threatens the individual's property tax base that was acquired when the property was originally purchased. Therefore, current law provides four important exceptions that are continued under Proposition 5 unless the Legislature decides otherwise by passing a bill. These exceptions include the addition of solar energy systems to a residence, fire suppression systems, construction to comply with seismic safety ordinances, and construction improving disability access.²⁸

²⁷ LEGISLATIVE ANALYST’S OFFICE, *supra* note 1, at 3-4.

²⁸ CAL. REV. & TAX. CODE §§ 73, 74, 74.3, 74.6.

Finally, Proposition 5 gives the Legislature the option to amend its statutory provisions with a two-thirds vote from both the Senate and Assembly.²⁹ However, this also requires that any amendment must be consistent with the intent of the proposition. In order to determine intent, a court reviewing any amendment would first examine the language of the proposition. If intent were still ambiguous it then becomes appropriate to look outside of the language itself to documents like the official ballot pamphlet in order to determine voters' intent when passing the initiative.³⁰

V. FISCAL EFFECTS

The fiscal effects of Proposition 5 have been analyzed by the Legislative Analyst's Office [LAO] and The Berkeley Research Group [BRG]. Before getting into each, it is important to note that LAO's method is similar to BRG's because BRG is run by a former LAO director.³¹ However, the reports differ in one important aspect. The LAO uses static scoring while BRG uses dynamic scoring. Dynamic scoring includes the behavioral effects that economists anticipate would result from the changes being scored.³²

In this case, the behavioral change is that demand for housing will increase and therefore construction of new housing will increase. In contrast, static scoring does not take behavioral changes into consideration. Therefore, voters who believe Proposition 5 will result in increased construction may want to favor the BRG report over the LAO report. In contrast, voters who do not believe Proposition 5 will result in increased construction or are generally hesitant about predicting economic behavior may want to favor the LAO report over the BRG report. We note this now because while the LAO report is the official report from the state, both are educated guesses.

A. Legislative Analyst's Office Report

The LAO works with the Department of Finance to produce an estimate of the fiscal effect the proposed initiatives would have on state and local governments, as well as a relevant background information and a summary of each measure's provisions.³³ When discussing the effects Proposition 5 would have on the real estate market, the LAO Report states that the number of homes bought and sold each year would change.³⁴ Proposition 5 would likely encourage more older homeowners to sell their current homes and purchase new ones, since the measure reduces the property taxes older homeowners face when purchasing new homes.³⁵ The prices of the homes will also be impacted by the additional buyers in the market, however the change in the prices is unclear.³⁶

²⁹ Cal. Proposition 5, § 5.

³⁰ *Kennedy Wholesale, Inc. v. State Bd. of Equalization*, 53 Cal. 3d 245 (1991).

³¹ Tom Campbell, William G. Hamm, Holly Dethero, *Berkeley Research Group Report on Proposition 5* (June 19, 2018) at 24 (on file with the *California Initiative Review*).

³² Joint Committee on Taxation, *Frequently Asked Questions*, available at <https://www.jct.gov/other-questions.html>

³³ LEGISLATIVE ANALYST'S OFFICE, *About our Office*, available at <https://lao.ca.gov/About>

³⁴ LEGISLATIVE ANALYST'S OFFICE, *supra* note 1, at 3.

³⁵ *Id.*

³⁶ *Id.*

The largest fiscal effects discussed in the LAO Report are the effects likely to be felt by local governments. This would consist of a reduction in property tax revenues for local governments: diminished property taxes would cause a loss of a few hundred million within the first few years and local government organizations, like cities, counties, and special districts, would lose roughly \$100 million each annually.³⁷ The decrease in property taxes would affect schools because schools receive significant portions of property taxes as part of their funding formula. California's public schools receive funding from three sources: the state (57%), property taxes and other local sources (29%), and the federal government (14%).³⁸ Proposition 98 was passed in 1988 and amended the California Constitution to establish minimum mandate funding for education that now constitutes 70% of K-12 funding and 2/3 of community college funding.³⁹ In years where property taxes fall, the state is obligated to backfill the property tax loss to schools with increased General Fund support.⁴⁰

With respect to Proposition 5, state spending for schools could increase by an amount roughly equal to school property tax losses.⁴¹ The LAO Report estimates that the losses suffered by the school districts would be offset by increased state funding, which could increase to roughly \$100 million initially, growing to \$1 billion in the future.⁴² Because home sales would also increase, the property transfer taxes collected by cities and counties would also increase, likely in the tens of millions of dollars per year.⁴³ Counties would subsequently be required to make changes in their processes, staffing, and information technology that would likely result in one-time costs of millions of dollars, as well as smaller continuing cost increases.⁴⁴

B. Berkeley Research Group Financial Report

BRG produced a report funded by the California Association of Realtors [CAR]. The BRG report estimated the likely fiscal effect Proposition 5 will have on property tax revenue for local governments under three conditions. The first assumes the initiative results in no new construction and no increase in the price of existing senior friendly housing. This scenario would cause a maximum first year reduction in property tax revenue of around \$120 million. The second assumes the initiative causes the price of senior friendly housing to rise by 5.7%, but does not lead to an increase in new construction. This scenario would result in a maximum first year reduction in property tax revenues of about \$73 million. The last scenario assumes the initiative creates a demand for senior-friendly housing that results in new construction, which would lead to a minimum first year increase in property tax revenues of \$159 million.

BRG focused on first-year effects of this initiative because according to its analysis the first-year effects will disappear over time, as seniors leave their dwellings due to death,

³⁷ *Id.*

³⁸ Public Policy Institute of California, Financing California's Public Schools, available at <http://www.ppic.org/publication/financing-californias-public-schools/>

³⁹ LEGISLATIVE ANALYSTS'S OFFICE, *Proposition 98 Primer*, (February 2005), available at https://lao.ca.gov/2005/prop_98_primer/prop_98_primer_020805.htm

⁴⁰ *Id.*

⁴¹ LEGISLATIVE ANALYST'S OFFICE, *supra* note 1, at 5.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ LEGISLATIVE ANALYST'S OFFICE, *supra* note 1, at 6.

disability, out-of-state moves, marriages, or moving in with a loved one, and are unable to take their assessed value with them. This does seem to ignore the fact that more individuals within the state will qualify for property tax transfers each year as the aforementioned group loses their ability to transfer the tax. The BRG report does not attempt to estimate multi-year effects due to the lack available data; however, the report does state if the first-year effects are positive then multi-year effects will likely be positive as well. This assumption is also used if the first-year effects are negative. If first-year effects are positive as well as negative, they will largely offset each other, making the multi-year effects largely unimportant.

VI. DRAFTING ISSUES

Overall, Proposition 5 is drafted in a clear, concise, and professional manner, which reflects the resources on the proponents' side. That said, the Proposition still vests administrative and adjudicative authority in the Board of Equalization [BOE].⁴⁵ This could potentially be an issue because after the initiative was officially submitted and placed on the ballot, the BOE's powers were significantly reduced by AB102.⁴⁶ This legislation stripped the BOE of all powers outside core responsibilities granted to it under the California Constitution and created two tax agencies that would take over many of the responsibilities previously handled by the BOE. Because an initiative cannot be amended after the public review period for it has concluded, that language could not be changed following the passage of AB102.⁴⁷ While the BOE still has authority over its Constitutional Duties, which includes handling property taxes, the reorganization triggered by AB102 has already created a backlog of work at the BOE.⁴⁸ Adding a major change to the property tax structure in California through Proposition 5 could create further administrative issues for an agency already struggling to keep up with its current workload. However, proponents were confident this reorganization would not create any major constitutional issues because property taxes are still clearly within the Board of Equalization's powers.

VII. CONSTITUTIONAL ANALYSIS

A. Single Subject Challenge

The California Constitution requires that an initiative measure embrace only one subject; otherwise, it may not be submitted to the voters.⁴⁹ The courts have interpreted this to mean that the various provisions of an initiative measure must be reasonably related to a common theme or purpose.⁵⁰ Here, it is likely Proposition 5 meets that standard; thus, any challenge to it on a single-subject basis would likely fail. Proposition 5 discusses property taxes, within the general framework of Proposition 13 that has come about since it was originally passed by the voters. This is different from *Senate of State of Cal. v. Jones* because in that case, the single subject rule

⁴⁵ Cal. Proposition 5, § 3 (f)(1).

⁴⁶ ASSEMBLY FLOOR ANALYSIS, ANALYSIS OF AB 102 (June 15, 2017).

⁴⁷ CAL. ELEC. CODE § 9002(b) (2003).

⁴⁸ Caitlin Chen, *California's new tax court dogged by backlog, bias claims*, The Sacramento Bee (Sept. 17, 2018), <https://www.sacbee.com/news/politics-government/the-state-worker/article218302540.html>

⁴⁹ Cal. Const. Art. IV § 9.

⁵⁰ *Senate of the State of Cal. v. Jones*, 21 Cal. 4th 1142, 1157 (1999).

was violated when the initiative covered transferring reapportionment to the State Supreme Court and the compensation of state legislators and other officials, two distinct subjects.⁵¹

B. Age Specification

Both the current and proposed laws specify eligible homeowners as individuals age 55 and above, however this raises equal protection concerns for homeowners who are outside of that age range. Today's workforce is full of people who both live and work longer, so retirement ages have increased as well. Many of Proposition 5 opponents believe that 55 is no longer an appropriate age for this law. Both the California Constitution and United State Constitution hold that a person may not be deprived of equal protection of the laws.⁵² Proposition 5 limiting these tax transfer benefits to homeowners age 55 and over creates a disproportionate effect on a large group of other homeowners. It could be argued that the age specification does not provide equal protection under the law because it is preventing a large demographic of homeowners from being provided an equal opportunity to this tax transfer benefit with no rational reason for allowing a 55 year old homeowner the benefits that are not offered to a 54 year old homeowner.⁵³

A Rational Basis Test is used when analyzing potential equal protection infringement.⁵⁴ This test uses a low level of scrutiny to determine whether a state action rationally relates to a legitimate state interest or purpose; if it does not, then the state action unconstitutionally violates the equal protection rights of a class of people. It is important to note that discrimination per se will not result in a constitutional violation, but instead violations arise when discrimination is invidious in nature.⁵⁵ As long as a system of taxation is supported by a rational basis and is not clearly arbitrary, it will be upheld even if there is no precise uniformity of taxation.⁵⁶ In *Nordlinger v. Lynch*, a taxpayer challenged the constitutionality of Proposition 13 with regards to the disparate tax burdens it created on owners of similarly situated properties.⁵⁷ The court held that Proposition 13 was constitutional and passed the rational basis test because it “protects taxpayers from being assessed on the appreciated but unrealized value of their real property.”⁵⁸ California could rationally believe “that taxes should be based on the original cost of property and unrealized paper gains in value should not be taxed” and therefore Proposition 13 passed the rational basis test.⁵⁹

Applying this test to Proposition 5, it is important to determine if the state's action of setting the age for eligible homeowners at 55 is rationally related to a legitimate state interest. It is likely that keeping the age at 55 has a rational reasoning. Setting the age at 55 not only mirrors the age used in Proposition 13, but also can be argued to be the appropriate age for public servant

⁵¹ *Id.* at 1167.

⁵² Cal. Const. art. I § 7; *see also* U.S. Const. amend. XIV, § 1.

⁵³ *see* LEGISLATIVE ANALYST'S OFFICE, *Generational Differences in Homeownership and Housing Costs*, at 1 (September 18, 2018), available at <https://lao.ca.gov/LAOEconTax/article/detail/120>

⁵⁴ *Membreno v. City of Hialeah*, 188 So. 3d 13, 21 (2016).

⁵⁵ William C. Peper, *Proposition 13 Under an Updated Equal Protection Analysis: Unlucky at Last?*, 42 Wash. U. J. Urb. & Contemp. L. 433, 435 fn 11 (1992).

⁵⁶ *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equal*, 22 Cal. 3d 208, 234 (1990).

⁵⁷ *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259 (1990).

⁵⁸ *Id.* at 1282.

⁵⁹ *Id.* at 1279.

retirement, such as firefighters, teachers, and police officers. A further analysis of the rational basis test could be done, however we would need more information about the policy decisions behind setting the age at 55. Based on the two previously discussed policy considerations alone, it would seem that Proposition 5 passes the Rational Basis test.

VIII. PUBLIC POLICY CONSIDERATIONS

A. Proponents

The main supporters for Proposition 5 are CAR and the National Association of Realtors. As of August 1, 2018, \$7,204,875.08 has been raised in support of Proposition 5. The Yes On 5 Committee (sponsored by the California Association of Realtors and donations from the National Association of Realtors and California Association of Realtors Issues Mobilization PAC) has contributed \$4,204,825.08.⁶⁰ The proponent's arguments in support for this initiative are six-fold:

1. *Seniors cannot afford to move*

A report by the California Department of Housing and Community Development highlighted seniors (defined as over 65) have an average income of \$21,300 and many lived in homes that were larger than their needs required.⁶¹ As noted above, Propositions 60 and 90 allow any person over the age of 55 to sell his or her principal place of residence and transfer its base year value to a replacement dwelling. Since there are some options available to seniors currently, the additional benefits under Proposition 5 would be aimed to make moving more affordable. That would mean the barriers for seniors are what the law proposes to change; unlimited transfers, transfers to a different county, and being able to purchase a home with greater value while still maintaining the benefits of a low tax base.

2. *Severely disabled individuals are trapped in inadequate homes*

Supporters of Proposition 5 argue that many individuals with severe disabilities and seniors still live in homes that are no longer safe or practical for their physical capabilities, however their options for buying more suitable homes are often limited because of the significant property tax increases they would face when trying to move.⁶² Proponents argue that Proposition 5 would limit the potential tax penalties seniors could face when trying to purchase a new home in a different county.⁶³

⁶⁰ CAL. SEC'Y OF STATE, *Campaign Finance Activity: Propositions & Ballot Measures*, <http://cal-access.sos.ca.gov/Campaign/Measures/> (last visited Oct. 8, 2018).

⁶¹ California Housing Future: Challenges and Opportunities (February 2018), available at http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_MainDoc_2_15_Final.pdf

⁶² Yes on Proposition 5, available at <https://voteyesonprop5.com>

⁶³ *Id.*

3. *Disaster victims are penalized*

Proponents argue that disaster victims are penalized because they can face large property tax increases if they choose to move outside the county that faced disaster.⁶⁴ This is especially relevant for California fire victims throughout the last few years. Proposition 5 supporters contend that the initiative would allow a homeowner who lost her or his home to a disaster to move anywhere in the state without facing a tax penalty.⁶⁵

4. *There will be property tax transfer parity*

As noted above, currently the only way to transfer a property tax from one county to the other is if county board of supervisors has passed an ordinance allowing it.⁶⁶ This has resulted in 11 of 58 counties in California allowing property tax transfer between counties.⁶⁷ Proposition 5 will allow homeowners to transfer between all 58 counties.

5. *Will increase economic activity*

The Yes on Prop 5 coalition cites economic research that shows how Proposition 5 could increase property sales, increase economic activity, and provide new tax revenues for state and local governments.⁶⁸ These increases would be seen because property sales result in real estate transaction costs like transfer fees, escrow costs, closing costs, and additional household costs.

6. *Opens up housing*

Proponents argue that Proposition 5 will help alleviate California's current housing shortage.⁶⁹ This rests on an assumption that individuals over 55 using the property tax transfer will create a demand for more senior-friendly housing. This increase in construction will not only result in more senior-friendly housing being built, but will also put more homes up for sale that young families can move into.

B. Opponents

Opponents to Proposition 5 have three main arguments against this initiative: it does not help the current housing crisis, it does not help low-income seniors, and it significantly reduces property tax revenue relied on by local governments. Those that oppose because of the property

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Cal. Const. art. XIII subd. 1(a).

⁶⁷ Mercury News and East Bay Times Editorial Boards, Editorial: *Prop. 5 worsens already-broken state property tax system* (September 10, 2018), available at <https://www.mercurynews.com/2018/09/08/editorial-prop-5-worsens-already-broken-state-property-tax-system/> (Alameda, El Dorado, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Ventura and Tuolumne)

⁶⁸ *Id.*

⁶⁹ Jonathan Woetzel, *Closing California's Housing Gap*, McKinsey Global Institute, <https://www.mckinsey.com/featured-insights/urbanization/closing-californias-housing-gap> (last visited September 18, 2018)

tax revenue reductions are concerned with the negative impact Proposition 5 will have on schools, counties, cities, and special districts. Property tax revenue comprises 20% of the revenue in county budgets. These taxes are used by counties to pay for employee salaries, benefits, elections, and other county programs.⁷⁰ Schools would also feel the effect of Proposition 5, especially schools in basic aid districts (also known as “excise tax” districts) that are funded entirely through local property tax revenues. If this initiative passes, those schools will be at a loss because they don’t receive any state general funding when their property tax funding falls short.⁷¹ This subsequently causes even further effects on counties because if schools are underfunded, the state will take funding from the counties and reallocate it to schools or other state needs.⁷²

Another concern opponents have with regards to Proposition 5 is the age specification for those eligible for the transfer. Proposition 60 was originally passed in the late 1980s, when 55 was an appropriate age for retirement. However, in today’s workforce, California recognizes a higher age minimum for retirement and workers in their mid-50s are often at the highest earning stage of their careers.⁷³

C. Political Considerations

Proponents are keeping their options open by using a “multi-track” approach to achieve their political goals.⁷⁴ The first “track” consists of supporting and passing Proposition 5.⁷⁵ The second “track” is a legislative alternative, SCA 24. This new piece of legislation would put an initiative similar to Proposition 5 on the 2020 ballot.⁷⁶ However, this legislation did not pass before the end of the 2018 legislative session. That said, once a bill is drafted and a sponsor is found, it is often easier to introduce a similar version of that bill in the next legislative session. The last “track” is another 2020 ballot measure, supported by the CAR, which the Attorney General has issued a ballot title and summary for. By creating multiple avenues to achieve their policy goals, CAR is not only increasing their chances of achieving their policy goals, but also signaling to opponents this is a fight they have the will and funding to continue.

The second two tracks include two important changes. First, both would “split roll” property taxes, which changes property tax benefits under Proposition 13 for commercial real estate by preventing commercial real estate from selling in shares or split between a number of sellers and buyers in order to avoid property tax reassessment.⁷⁷ Second, the newer versions

⁷⁰ Interview with Dorothy Johnson, California State Association of Counties (August 17, 2018) (notes on file with the *California Initiative Review*).

⁷¹ *Id.*

⁷² *Id.*

⁷³ Emily Brandon, *The Social Security Retirement Age Increases in 2018* (Feb. 12, 2018), available at <https://money.usnews.com/money/retirement/social-security/articles/2018-02-12/the-social-security-retirement-age-increases-in-2018>

⁷⁴ Interview with Christopher Carlisle, California Association of Realtors (September 10, 2018) (notes on file with the *California Initiative Review*).

⁷⁵ *Id.*

⁷⁶ S. Res. 24, 115th Cong. (2017-18), available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SCA24

⁷⁷ Matt Levin, *Californians Still Really Like Prop. 13-Except for the Big Parts They Don’t Like* (September 5, 2018), available at <https://calmatters.org/articles/california-proposition-13-approval-rating/>

would limit the number of intergenerational transfers that allow property taxes to be passed from generation to generation with no descendant limit.⁷⁸ A split roll of property taxes has been supported by a majority of California voters for decades, while investigations into intergenerational transfers by the Los Angeles Times recently caused a backlash against the law. Taken together, this signals CAR's strategy is to boost the popularity of their policy goals before they would come before voters in 2020.

IX. CONCLUSION

Proposition 5 would amend Proposition 13 by changing current requirements for transferring tax bases on current property to new replacement properties.⁷⁹ The fiscal impacts Proposition 5 can have on California are annual property tax losses for cities, counties, and special districts of around \$100 million in the near term, growing over time to \$1 billion or more per year and annual property tax losses for schools of around \$100 million per year in the near term, growing over time to \$1 billion or more per year.

Voting yes on Proposition 5 will allow homebuyers age 55 or older, individuals with severe disabilities, or victims of natural disasters to transfer their tax bases with a possible adjustment, no matter the new home's market value, location in the state, or the buyer's number of moves. Voting no on Proposition 5 would make no changes to current the structure of tax bases transferred between properties for homebuyers aged 55 or older, those who suffer severe disabilities, and those who have been the victims of natural disasters.

⁷⁸ Liam Dillon, *California Homeowners Get to Pass Low Property Taxes to Their Kids. It's Proved Highly Profitable to an Elite Group* (August 17, 2018), available at <http://www.latimes.com/politics/la-pol-ca-california-property-taxes-elites-201808-htmlstory.html#>

⁷⁹ CAL SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 6, 2018, available at <http://voterguide.sos.ca.gov/quick-reference-guide/5.htm> ["NOVEMBER 2018 VOTER Guide"] (on file with the *California Initiative Review*).