Special Assessment Law under California's Proposition 218 and the One-Person, One-Vote Challenge

Derek P. Cole
University of the Pacific, McGeorge School of Law

Follow this and additional works at: https://scholarlycommons.pacific.edu/mlr

Part of the Law Commons

Recommended Citation
Available at: https://scholarlycommons.pacific.edu/mlr/vol29/iss4/5
Comments

Special Assessment Law Under California's Proposition 218 and the *One-Person, One-Vote* Challenge

Derek P. Cole*

TABLE OF CONTENTS

I. INTRODUCTION ............................................. 847

II. PROPOSITION 218 IN CONTEXT: AFTER TWENTY YEARS, THE TAX REVOLT IN CALIFORNIA IS ALIVE AND WELL ............................ 848
   A. The Continuing “Revolution” .......................... 848
   B. The Proposition 13 System and its Interpretation ............ 851

III. TRADITIONAL SPECIAL ASSESSMENT LAW .................... 852
   A. Assessments Distinguished From Taxes: A Question of Benefits .. 853
   B. Requirements for Levyhg Assessments ....................
      1. Special Benefits to Property Affected ................. 855
      2. Levy Imposed for a Public Purpose .................... 856
   C. Proceedings to Establish Special Assessments ............. 857
      1. Overview of Proceedings ............................ 858
         a. Improvement Act of 1911 .......................... 858
         b. Municipal Improvement Act of 1913 ................. 859
      2. Notice Requirements for All Special Assessments .......... 860
      3. Majority Protest Provisions .......................... 860
      4. Effect of Compliance With Due Process Requirements and Waiver ........................................... 861

IV. THE ASSESSMENT DECISIONS UNDER PROPOSITION 13: THE RISE OF “A BORN-AGAIN REVENUE RAISER” ........................ 862
   A. Article XIII A, Section 1 .............................. 862
   B. Article XIII A, Section 4 .............................. 866

V. ASSESSMENT LAW UNDER PROPOSITION 218 ........................ 866
   A. Requirements for Levying Assessments Under Proposition 218 ........................ 867

* J.D., University of the Pacific, McGeorge School of Law, to be conferred 1999; B.A., University of California, Santa Barbara, 1996.
  This paper was the recipient of the 1998 Stauffer Charitable Trust Writing Award.
1. Scope of Assessment Charges and Requirement of Proportionality ........................................ 867
2. Narrowed Definition of "Special Benefits" .................. 868
3. Elimination of State and Federally-Owned Property Exemption 869
B. Notice, Hearing and Protest Requirements ...................... 869
  1. Notice and Hearing ........................................ 869
  2. Majority Protest Provisions ................................ 870
C. Allocation of Burden in Action Contesting Validity of an Assessment ....................................... 872

VI. IS PROPOSITION 218 CONSTITUTIONAL UNDER THE "ONE-PERSON, ONE-VOTE" DOCTRINE? 872
A. The "One-Person, One-Vote" Doctrine .......................... 873
   1. The Reynolds Principle ........................................... 873
   2. The Local Government Exception ................................. 874
      a. The Avery/Hadley Line ...................................... 874
      b. The Kramer Line .............................................. 876
      c. The Lines Blurred: Salyer and Ball ........................... 878
      d. Recap: The Shifting Models of Local Government .......... 882
B. The Doctrine Applied in California: Southern California Rapid Transit District v. Bolen ............... 884
C. Are Proposition 218's Assessment Approval Requirements Constitutional? .............................. 886
   1. Does the Local Government Exception Apply? ................. 887
      a. Are Local Governments Acting Under Proposition 218 Vested with "General Governmental Powers?" ............. 887
      b. Are Property Owners Disproportionately Affected by Assessment Proceedings Conducted in Accord With Proposition 218? ........................................... 891
   2. Equal Protection Analysis Under the Appropriate Level of Scrutiny ........................................ 893

VII. CONCLUSION ......................................................... 894
I. INTRODUCTION

"Proposition 218 is the worst piece of legislation ever drafted."¹

No statement—and indeed, there have been many—can better sum up the frustration among the political establishment for the latest manifestation of California’s tax reform movement. Passed in November 1996, Proposition 218 effectively prevents local governments from levying special assessments without the consent of affected property owners. In doing this, Proposition 218 overturns a line of California cases which held that the tough tax limitation and voter approval requirements of Proposition 13² did not apply to such assessments. This has resulted in what the California State Association of Counties calls "the most revolutionary act in the history of California."³

Proposition 218 specifies that all assessments must be approved by property owners through majority protest proceedings.⁴ These proceedings allow only property owners to vote on special assessments; those who lease property have no say.⁵ In addition, each property owner receives a vote based on the amount of property he or she owns.⁶ These proceedings, gross manipulations of similar majority protest devices under the traditional law of special assessments,⁷ are the centerpiece of the initiative’s new requirements. Of these provisions, an editorial of the Los Angeles Times asks, "[a]re we back to the days of the landed gentry, or maybe the city-state kingdoms and lowly serfs?"⁸

Proposition 218 narrowly confines the assessment power of local governments by reining in the concept of special benefits.⁹ This concept, specifying that property may only be assessed for the tangible benefits that accrue to property from public improvements, is employed under Proposition 218 on a strict, proportional basis.¹⁰ In contrast to the traditional law of special assessments, the portion of any improvement which benefits the public in addition to the affected property must now be derived from some revenue source other than the assessment.¹¹

---

2. See infra notes 39-44 and accompanying text (explaining the provisions of Proposition 13).
4. See infra Part V.B.2 (explaining these proceedings).
5. See infra Part V.B.2 (describing the provisions of Proposition 218 pertaining to who may vote in assessment proceedings).
6. See infra Part V.B.2 (noting that property owners vote in proportion to their financial obligation under Proposition 218).
7. See infra Part III.C.3 (explaining majority protest proceedings under the traditional law of special assessments).
9. See infra Part VA (discussing the changes to the special benefits justification).
10. See infra notes 194-95 and accompanying text (detailing the proportional benefits requirement imposed by Proposition 218).
11. See infra 189-91 notes and accompanying text (discussing this requirement).
Proposition 218 makes other changes, including new notice requirements and a shifted burden of proof in legal actions contesting special assessment determinations. In sum, Proposition 218 radically departs from traditional special assessment law.

The purpose of this Comment is twofold. First, this Comment compares and contrasts the law of special assessments before and after Proposition 218. Second, this Comment explores the issue raised during the campaign that the assessment provisions of Proposition 218 violate the One-Person, One-Vote equal protection doctrine by limiting approval of assessments to only property owners. As background for both of these issues, this Comment seeks to place Proposition 218 in its proper legal and historical context by explaining Proposition 13, the predecessor of Proposition 218 and hallmark of the California “tax revolt” movement, and the line of cases which held that the tough provisions of Proposition 13 did not apply to special assessments.

II. PROPOSITION 218 IN CONTEXT: AFTER TWENTY YEARS, THE TAX REVOLT IN CALIFORNIA IS ALIVE AND WELL

A. The Continuing “Revolution”

Proposition 218 simply cannot be explained without first understanding its predecessor, Proposition 13. Passed by an overwhelming majority in 1978, Proposition 13 sought to strictly limit the taxing power of government. The landmark initiative took a revolutionary approach that both fundamentally changed the way government operated and radically altered the relationship between taxpayers and their government. As stated by a joint legislative budget committee report convened to review the landmark initiative ten years after its passage, “Proposition 13 was probably the single most significant change made in the way governments, at all levels, operate in California.”

When Proposition 13 appeared on the ballot, voters were particularly concerned about excessive and wasteful government spending, an unwarranted expansion in

---

12. See infra Part V.B.1, V.C (setting forth these changes).
13. See infra Part III (illustrating the traditional law of special assessments); Part V (explaining special assessment law under Proposition 218).
14. See infra Part VI (analyzing Proposition 218 under the One-Person, One-Vote Doctrine and concluding that the initiative is constitutional).
15. See infra Part II (describing Proposition 13); Part IV (explaining case law holding that Proposition 13 did not apply to special assessments).
16. JOINT LEGISLATIVE BUDGET COMMITTEE, PROPOSITION 13, TEN YEARS LATER 2 (1987) [hereinafter PROPOSITION 13, TEN YEARS LATER].
17. In the 1978 California Voter Pamphlet, the proponents of Proposition 13 made the claim that 15% of all governmental spending was wasted. SECRETARY OF STATE, JUNE, 1978 CALIFORNIA VOTERS PAMPHLET 58 [hereinafter 1978 VOTER PAMPHLET]. As examples of governmental waste, proponents cited huge pensions for governmental officials and the use of limousines by elected officials. Id. Accordingly, they argued that Proposition 13 presented the voters with a chance to "trade waste for property tax relief!" Id.
government programs and regulation,\textsuperscript{18} and shrinking real incomes consumed by inflation and progressive income taxes.\textsuperscript{19} Even more important than these factors, however, was the concern about the rapid escalation of tax burden on property owners within the state.\textsuperscript{20} In the decade-and-a-half prior to Proposition 13, tax rates in the state increased by 51\%, property taxes collected more than quadrupled, and the assessed values of property tripled.\textsuperscript{21} The effect of this upward trend on homeowners was debilitating.\textsuperscript{22} Some could no longer afford to stay in their homes.\textsuperscript{23} Senior citizens, in particular, were among those hardest hit as rising property tax burdens cut into their fixed retirement incomes.\textsuperscript{24}

These conditions, coupled with the inadequacy of the political establishment to respond with effective relief,\textsuperscript{25} laid the foundation for the property tax revolt in California.\textsuperscript{26} Under the prevailing economic conditions, the prospects for tapping into voter discontent were enormous. As a result, Proposition 13 passed by nearly a two-thirds margin.\textsuperscript{27}

In retrospect, the effects of Proposition 13 have resonated well beyond the fundamental change it enacted in California's property tax system. Today, the initiative is viewed as the dawning of a nationwide movement, one that has called into question the role of government itself. Proposition 13 ushered in a new era of anti-government sentiment which empowered citizens "to not only complain about their taxes, but to do something about them. It redefined the relationship between taxpayers and government."\textsuperscript{28}

This observation finds support in both statistics and anecdote. A Field Poll conducted one year prior to the passage of Proposition 13 found that the public believed that high taxation was the number one problem faced by the state and its communities.\textsuperscript{29} Similarly, another poll conducted during this period found that

\begin{itemize}
\item \textsuperscript{18} The ballot statements in favor of Proposition 13 argued that the initiative was needed to stop businesses from leaving the state and to make the state more attractive to new businesses. \textit{Id.} at 59.
\item \textsuperscript{19} 1 EHRMAN & FLAVIN, supra note 3, § 2:01, at 2. The ballot statement in favor of Proposition 13 argued that passage of the initiative would prevent spendthrift politicians from taxing Californians into poverty. 1978\textit{VOTER PAMPHLET,} supra note 17, at 59.
\item \textsuperscript{20} 1 EHRMAN & FLAVIN, supra note 3, § 2:01, at 2.
\item \textsuperscript{21} \textit{Id.}
\item \textsuperscript{22} \textit{Id.}
\item \textsuperscript{23} \textit{Id.}
\item \textsuperscript{24} A spokesman for the Howard Jarvis Taxpayers Association notes that "[t]o this day, we get calls from [an] 88-year-old widow who sends us $5 every year and says, 'If it wasn't for Prop. 13, I would lose my home.'" Joe Martin, \textit{Things Fall Apart}, \textit{SACRAMENTO NEWS & REV.}, Nov. 6, 1997, at 17 (copy on file with the McGeorge Law Review).
\item \textsuperscript{25} In response to Proposition 13, the state legislature put forth its own version of property tax reform with Proposition 8, which would have allowed local governments to tax residential property at lower rates than other types of property. This competing measure gained the widespread approval of the political establishment, garnering the official support of the Republican and Democratic parties, labor unions, teacher associations and many other groups. 1 EHRMAN & FLAVIN, supra note 3, § 2:02, at 4. Proposition 8 did not pass despite such wide-ranging support. \textit{Id.}
\item \textsuperscript{26} \textit{Id.} § 2:01, at 2-3.
\item \textsuperscript{27} Peter Schrag, \textit{A Dubious Proposition: 20 Years Later}, \textit{SACRAMENTO BEE}, Apr. 5, 1998, at Forum 2-3.
\item \textsuperscript{28} This is the statement of Assemblyman Bill Leonard. Martin, supra note 24, at 15.
\item \textsuperscript{29} \textit{PROPOSITION 13. TEN YEARS LATER,} supra note 16, at 2.
\end{itemize}

849
respondents, by a two-to-one margin, believed that government should be smaller and should provide fewer services. As for anecdotal knowledge, a supporter of Proposition 13 stated it best: "Ronald Reagan would not have been president, nor would the national ascendancy of conservative politics have been possible without Proposition 13." It is noteworthy that the property tax revolt preceded the so-called "Reagan Revolution" by only two years.

The passage of Proposition 218 some twenty years after the events that led up to Proposition 13 demonstrates that support for the landmark anti-tax initiative remains strong. Because California courts created "loopholes" in Proposition 13 that allowed politicians to "[c]all taxes 'assessments' and 'fees,'" Proposition 218 was drafted to provide a means of restoring the "right" to vote on taxes that had been eroded by judicial interpretation. Proposition 218 was a counter-strike against the political establishment and "activist" judges who had twisted the intent of the people by creating devices to circumvent Proposition 13's tough anti-tax restrictions. By approving Proposition 218, the voters, in effect, reaffirmed Proposition 13.

To garner the support of voters, supporters of Proposition 218 kept their message simple. They counseled voters to ask themselves whether they "SHOULD HAVE THE RIGHT TO VOTE ON TAXES? If you answered 'yes,' VOTE YES ON PROPOSITION 218." Consistent with this message, the initiative itself was even dubbed the "Right to Vote on Taxes Initiative." This message, despite its obvious political appeal, showed little regard for the real issue at hand. Proposition 218 was never as simple as it seemed. By approving the initiative, voters reversed nearly 100 years of separate legal treatment between taxes and assessments in California. They showed little, if any, appreciation for the longstanding statutory and common law authority that treated the two schemes separately. As one official

30. Id. at 3.
31. These, again, are the words of Assemblyman Bill Leonard. Martin, supra note 24, at 15.
32. SECRETARY OF STATE, NOVEMBER, 1996 VOTER PAMPHLET 76 [hereinafter 1996 VOTER PAMPHLET].
33. See id. (arguing that "[a]fter Proposition 13 was passed, politicians created a loophole in the law that allows them to raise taxes without voter approval by calling taxes 'assessments' and 'fees'.")
34. Id. at 77. The supporters of Proposition ended their ballot statements with the following admonition: "FOR THE RIGHT TO VOTE ON TAXES, VOTE YES ON PROPOSITION 218!" Supporters also tapped into populist distrust of political officials to bring home their point. As they stated, "[u]nder Proposition 218, officials must convince taxpayers that tax increases are justified. Politicians and special interest groups don't like this idea." Id. Accordingly, they asserted "Proposition 218 allows you and your neighbors—not politicians—to decide how high your taxes will be." Id. at 76.
35. These differences will be fully discussed in Part III. For now, a statement made by the California Supreme Court in 1915 will suffice: "[A] special assessment is not, in the constitutional sense, a tax at all. It is a 'compulsory charge placed by the state upon real property within a predetermined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein . . . ."' Spring St. v. City of Los Angeles, 170 Cal. 24, 29-30, 148 P. 217, 219 (1915).
36. See infra Part III.A (explaining the justification for treating taxes and assessments differently).
said, "I would be willing to wager that 99.9% of the voters of the state of California did not read Prop. 218 and had no idea what they were voting on." 37

In sum, the passage of Proposition 218 some twenty years after Proposition 13 indicates that the tax revolt is still alive and well in California. Since Proposition 13, numerous political trends have come and gone, both in California and the nation. Yet, with Proposition 218, voters reaffirmed the "tax revolt" and reversed the restrictive judicial interpretation of Proposition 13.38

B. The Proposition 13 System and its Interpretation

Proposition 13, which enacted Article XIII A of the California Constitution, places a 1% limit on any ad valorem39 tax imposed on the full cash value of real property within the state.40 For the purposes of determining tax burden, property value is assessed either at 1975 rates or, if property has been newly built, sold or transferred since the effective date of Article XIII A, to the year the property was built, last sold or last transferred.41 Thereafter, increases in property taxes may factor only for inflation, not to exceed more than 2% in any year.42

Two provisions of Proposition 13 are of particular importance to understanding the impetus for Proposition 218. Foremost, Section 1 purports to specify that local governments may impose special assessments if approved by two-thirds of local voters.43 Section 4 provides that local governments may impose property taxes that exceed the 1% cap only by obtaining two-thirds voter approval.44

Like many of the initiatives presented to California voters, the actual language of Proposition 13 is riddled with vagueness and inconsistency. Because of its imprecise drafting, the landmark initiative required numerous judicial clarifications over the years. Despite withstandng constitutional attacks,45 virtually all of

38. See infra Part IV (discussing the case law interpreting Proposition 13).
39. See BLACK'S LAW DICTIONARY 51 (6th ed. 1990) (defining "ad valorem tax" as "a tax imposed on the value of property").
40. CAL. CONST. art. XIII A, § 1(a).
41. See id. § 2(a) (providing that the "full cash value" for tax valuation purposes is determined by the stated full valuation of the property on the 1975-76 tax bill or, thereafter, at the appraised value when last purchased, newly constructed, or when a change of ownership has occurred).
42. Id. § 2(b).
43. Id. § 1(b).
44. Id. § 4.
45. Months after its passage, Proposition 13 survived its first major constitutional attack in Antador Valley Joint Union High School District v. State Board of Education, 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978). The court upheld the constitutionality of the initiative on a number of grounds, including holding that equal protection of the law was not denied. Id. at 237, 583 P.2d at 1294-95, 149 Cal. Rptr. at 252-53. In another case, even the fact that a commercial store owner paid a ratio of 2.5 to 1 in property taxes compared to other competitors did not mean that equal protection was denied. R.H. Macy & Co. v. Contra Costa County, 226 Cal. App. 3d 352, 367, 276 Cal. Rptr. 530, 533 (1990). The United States Supreme Court has also upheld Proposition 13 on equal protection grounds. Nordlinger v. Hahn, 505 U.S. 1, 12-13 (1992).
Proposition 13’s significant provisions have been watered-down to some significant extent. 46

Under the rulings that spawned the enactment of Proposition 218, California courts have held that the inclusion of the two-thirds vote requirement to enact “special assessments” under Section 1 of Article XIII A was “surplusage,” thus making the 1% cap on ad valorem property taxes inapplicable to such assessments. 47 Likewise, courts have held that an assessment is not the same as a tax for purposes of Section 4’s two-thirds voter approval requirement. 48

The line of cases encompassing these holdings will be discussed in depth in Part IV. Before this discussion, however, it is important to have an understanding of the traditional law of special assessments. This is provided in Part III. With this understanding, the reader will be better able to comprehend the reasoning employed by California courts in holding that special assessments are not subject to the strict demands of Proposition 13.

III. TRADITIONAL SPECIAL ASSESSMENT LAW

Special assessments are levies imposed by local governments on property to finance public improvements that confer special benefits to the property assessed. Local governments have used assessments to provide a wide range of public improvements, including street lighting, sidewalks, parks, flood control, off-street parking and many others.51 These improvements are funded by bonds and financed through the assessments, which operate as liens against the properties assessed.52

The use of assessments to finance local improvement projects is by no means a recent development. Assessments first appeared in thirteenth century England and were used to finance repairs to sea walls.53 In 1691, assessments crossed the Atlantic and were used in New York City to pave streets and to build a drainage

47. See infra Part IVA (explaining the judicial construction of Section 1 of Article XIII A).
48. See infra Part IV.B (discussing the case law holding that Section 4 of Article XIII A is inapplicable to assessments).
49. See infra Part III.B.2 (discussing the requirement that assessments be levied for a public purpose).
50. See infra Part III.B.1 (explaining the special benefits requirement).
51. For instance, the Municipal Improvement Act of 1911 provides a wealth of projects which may be funded by assessments. These include, inter alia, the construction of sidewalks, sewers, lighting, and bomb shelters; the provision of facilities and appurtenances for flood and fire protection, and gas and water supply; the grading of streets, the planting of ornamental vegetation, the construction and development of transportation facilities, and geological hazard mitigation. Cal. Sts. & High. Code §§ 5101, 5101.5, 5105 (West 1969 & Supp. 1998).
52. The most commonly used assessment scheme, the Municipal Improvement Act of 1913, is often used in conjunction with the Improvement Bond Act of 1915. Samuel A. Sperry, 1 Land Use Forum 174, 174 (1992). See Cal. Sts. & High. Code §§ 8500-8887 (West 1969 & Supp. 1998) (setting forth the Improvement Bond Act of 1915); see also, e.g., id. §§ 5972, 10402.5 (West 1969) (stating that the assessment shall attach as a lien against the property assessed, as provided in § 3115).
In California, statutory authority for special assessments dates back to the turn of this century. Even today, when numerous assessment statutes appear on the books, the two most widely used statutory schemes are still quite old. These statutes—the Improvement Act of 1911\(^{56}\) and the Municipal Improvement Act of 1913\(^{57}\)—will serve as models for this explanation of traditional special assessment law.\(^{58}\)

### A. Assessments Distinguished From Taxes: A Question of Benefits

In the most basic, non-legal sense, assessments are no different than taxes. Both are compulsory charges collected by government to finance government services.\(^{59}\) Likewise, both are charged on the basis of property ownership and appear on the property tax statement.\(^{60}\) Despite these similarities, however, assessments and taxes are quite different as a legal matter.

The key distinction between taxes and assessments is the concept of benefits.\(^{61}\) Taxes are governmental levies imposed on the general population to finance generally provided services that provide benefits for the entire population.\(^{62}\) Generally provided services refer to such things as education or public assistance. From these services, everyone within the population equally benefits (at least in theory).\(^{63}\) Assessments, on the other hand, are imposed on the basis of special

---

54. Id.
55. Id. at 13.
58. The 1911 and 1913 Acts are explained here because they were the most commonly-used assessment schemes before Proposition 218 and because they are sufficiently descriptive of the key features and procedures that comprise the law of special assessments. It should be noted, however, that assessment schemes are scattered throughout the California Codes and are quite diverse. See generally, e.g., CAL. GOV'T CODE § 26230 (West 1988) (granting the power to impose an assessment lien against property owners who do not comply with local agencies by removing overhead power lines and preparing property to accept underground lines); id. § 39573 (West 1988) (allowing the levy of special assessments for abatement of weeds and garbage); id. § 53978 (West 1997) (setting forth the power to levy assessments for fire suppression and police protection purposes); id. § 65917.5(d) (West 1997) (providing for special assessments on developers in situations pertaining to child care facility set asides); CAL. HEALTH & SAFETY CODE § 32240 (West 1969) (stating that assessments may be levied for hospital purposes); CAL. STS. & HIGH. CODE § 36000 (West 1969 & Supp. 1998) (allowing the levy of assessments for parking and business improvement purposes).
59. See infra notes 112, 123 and accompanying text (noting that assessments operate as a lien on the property assessed).
60. See infra Part III.B.1 (describing the requirement that special benefits be levied on a basis of providing special benefits to property).
61. See infra Part III.B.1 (explaining the concept of benefits).
62. General property taxes, unlike assessments, are derived from the general treasury and are not linked to particular expenditures. Stephen Diamond, The Death and Transfiguration of Benefit Taxation: Special Assessments in Nineteenth-Century America, 12 J. LEGAL. STUD. 201, 201 (1983).
63. Of course, this does not mean that everyone uses these services. Not every taxpayer has children in school and most people do not require public assistance. In theory, however, everyone is capable of using and benefiting from such services.
benefits that accrue to certain, identifiable properties. The government provides a service—street lighting is a good example—which primarily or exclusively benefits certain properties (those on the street with the new lights) and not others (those within the territory of the government without new lights). In this respect, those properties that enjoy the services are said to be specially benefited. The rationale underlying special assessments is that only specially benefited properties should be required to pay the cost of an improvement or service that benefits them; it would be inequitable for the general public to bear these costs.

This logic is deeply embedded in historic case law dealing with assessments. As the California Supreme Court stated in 1915, "[A] special assessment is not, in the constitutional sense, a tax at all. It is a 'compulsory charge placed by the state upon real property within a predetermined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein . . . ." Likewise, the United States Supreme Court noted in 1898,

[W]hile a general levy of taxes rests upon the ground that the citizen may be required to make contribution in that mode in return for the general benefits of government, special assessments are . . . made upon the assumption that "a portion of the community is to be specially and peculiarly benefited, in the enhancement of the value of property peculiarly situated as regards a contemplated expenditure of public funds . . . . The justice of demanding the special contribution is supposed to be evident in the fact that persons who are to make it . . . suffer no pecuniary loss thereby; their property being increased in value by the expenditure to an amount at least equal to the sum they are required to pay."

As will be discussed in Part IV, this reasoning underlies the court decisions which held that the tough anti-tax provisions of Proposition 13 did not apply to special assessments.

64. See infra Part III.B.1 (explaining the requirement of special benefits to assessed property). Another difference between taxes and assessments is the fact that taxes are imposed based upon pre-existing jurisdictional borders (i.e., the county or city limits) whereas special assessments are imposed upon whichever properties within the jurisdiction of the assessing authority are benefited. Diamond, supra note 62, at 201.


B. Requirements for Levying Assessments

1. Special Benefits to Property Affected

The central authority for levying special assessments is the existence of special benefits to the property assessed above and beyond any benefits that accrue to the general population. Thus, in *Federal Construction Co. v. Ensign*, the court declared that "[s]pecial benefits to the property to be assessed, that is, benefits received by it in addition to those received by the public at large, is the equitable and just foundation upon which local assessments rest." As the California Supreme Court reasoned in *Spring Street Co. v. City of Los Angeles*, the levy of a special assessment in the absence of special benefits constitutes a "special tax upon a minority of the property owners, which tax is for the benefit of the public and which tax is special, unequal and ununiform." For this reason, assessments that do not confer special benefits are unconstitutional.

When challenged in court, the scope of judicial review over the determination of special benefits is quite narrow. In the absence of fraud, gross injustice or demonstrable mistake, a court will not invalidate an assessment unless the assessment on its face plainly appears to be disproportionate to the benefits conferred. Under this standard, courts usually defer to the determinations of legislative bodies. Courts have held that legislative bodies are not required in all instances to assess property for the exact amount of benefit the property will receive. Instead, it is sufficient that they impose an assessment that relates to the cost of the improvement spread among all property included in the assessment in some non-discriminatory manner. Moreover, courts have held that the assessing authority need not include all property benefited by an assessment within the boundaries of

---

70. Id. at 209, 210 P. at 540.
71. 170 Cal. 24, 148 P. 217 (1915).
72. Id. at 30, 148 P. at 219.
73. Id.
76. Nev-Cal Elec. Sec. Co. v. Imperial Irr. Dist., 85 F.2d 886, 902 (9th Cir. 1936); White v. County of San Diego, 26 Cal. 3d 897, 904, 608 P.2d 728, 731-32, 163 Cal. Rptr. 640, 644 (1980). See Hanson, 74 Cal. App. at 590, 241 P. at 574 (noting that the absence of benefits is not a proper judicial question unless the facts relied upon by the assessing authority are unsupported by evidence); Swall, 42 Cal. App. at 764, 184 P. at 408 (stating that the courts may interfere only "[i]f the conditions shown by the record . . . are so unreasonable as to outrage the common sense of fairness and justice").
77. White, 26 Cal. 3d at 905, 608 P. 2d at 732, 163 Cal. Rptr. at 644; City of Baldwin Park v. Stoskus, 8 Cal. 3d 563, 568-69, 503 P.2d 1333, 1336, 105 Cal. Rptr. 325, 328 (1972).
78. Stoskus, 8 Cal. 3d. at 568, 503 P.2d at 1336, 105 Cal. Rptr. at 328.
the assessment. Likewise, the size of the assessment itself has little bearing in the determination of special benefits. As the court declared in Ensign, "there can be no sound reason why the magnitude of the project or the extensiveness of the area to be assessed should have any decisive bearing on the question" of the validity of the assessment.

There are no definitive standards for determining what constitutes a special benefit. The only benchmark furnished by the courts is to look at the enhancement of a property's market value in relation to its potential use. For example, the court in Auburn Lumber Co. v. City of Auburn refused to invalidate an assessment merely because a business would not receive benefit from the creation of a parking district. The court noted that the land held by the company would receive economic benefits from the district in the future if the land were further developed or put to expanded commercial use. In this respect, the land itself, as opposed to its occupant, received a palpable benefit sufficient to support a finding of special benefits. In short, this and similar cases stand for the proposition that special benefits are measured not by the present use of property, but by the property's potential use. Beyond these cases, however, there has been little further guidance in defining what qualifies as a special benefit.

2. Levy Imposed for a Public Purpose

While case law makes clear that assessments may not be levied for purposes of conferring purely general benefits, courts never have invalidated assessments simply because they provide general benefits to the public in addition to the requisite special benefits. This is because assessments are public improvements which, by their nature, necessarily must "have a dual aspect—an aspect of general benefit to the public as well as one of peculiar local benefit to the lot owners." For this reason, there is a requirement that assessments be levied for a public purpose in

79. Stokes v. Watkinson, 53 Cal. App. 764, 770-71, 201 P. 134, 136 (1921); Hunt v. Manning, 24 Cal. App. 44, 48-49, 140 P. 39, 41-42 (1914). See Hunt, 24 Cal. App. at 48-49, 140 P. at 41-42 (explaining that there is a presumption that the members of the assessing authority properly considered and determined that all property within a district would receive benefits from the assessment).
83. Id. at 737-38, 66 Cal. Rptr. at 61-62.
84. Id. at 738, 66 Cal. Rptr. at 62.
85. Id.
86. See 51 CAL. JUR. 3D Public Improvements § 24 (1979) ("An assessment is not void merely because the land is not benefited by the improvement owing to its present particular use. The benefit is presumed to inure not to the present use, but to the property itself.").
88. Id.
addition to providing special benefits. Any improvement that confers only private benefits is therefore invalid.

Were it not for the public purpose requirement, the Spring Street court reasoned, “it would be justifiable to order any owner of any vacant lot to build thereon and to build a prescribed structure, since under the theory of benefits it could successfully be urged that the enhanced value of the land covers the cost of the structure compulsorily imposed upon it.” Thus, without the requirement, a local government could impose assessments at will, arguing that the enhancement to property value confers special benefits to the land.

Because assessments are, by nature, beneficial to the public, property owners are responsible for paying the general public benefits in addition to the special benefits to their land. This feature of traditional special assessment law is important. As will be discussed in Part V, the drafters of Proposition 218 sought to end this practice, because in their view, it allowed local governments to impose what were, in effect, parcel taxes. This was especially true, they believed, since case law had created a “loophole” in which local governments could use assessments to replace revenue lost through the tough anti-tax limits of Proposition 13.

C. Proceedings to Establish Special Assessments

Under the 1911 and 1913 Acts, an agency must follow specific procedures before it may levy special assessments on property. These procedures are designed to ensure that property will not be assessed until basic due process requirements are met. Generally, these requirements include the provision of notice to owners of a property proposed to be assessed, a hearing on the issue of the assessment, and an opportunity to protest the proposed assessment. Compliance with these requirements can often make assessment proceedings quite lengthy, especially if an agency chooses to use the 1911 Act. The 1913 Act, with its expedited format, has proven to be the statute most commonly used by agencies. Nevertheless, the procedures it details still require expending significant time and effort.

89. Id. (stating that “the improvement [financed by the assessment] must be a public one; that is, it must be one which confers a general benefit upon the public at large”).
90. Id.
91. Spring St., 170 Cal. at 30, 148 P. at 219.
92. See infra Part V.A.1 (discussing these changes in Proposition 218).
93. See supra note 32 and accompanying text (discussing the argument that case law interpreting Proposition 13 created a loophole allowing local governments to use assessments like taxes).
94. See infra Part III.C.2 (setting forth the notice requirements).
95. See infra Part III.C.2 (discussing the hearing requirements under the 1911 and 1913 Acts).
96. See infra Part III.C.3 (describing protest requirements).
97. Sperry, supra note 52, at 174.
1. Overview of Proceedings

a. Improvement Act of 1911

Proceedings to construct improvements under the 1911 Act begin when detailed plans and specifications for the improvements to be constructed are filed.\(^9\) Once these are filed, the legislative body\(^9\) seeking to impose the assessment must pass a resolution of intention embodying its desire to do so.\(^10\) Thereafter, notice of the resolution is given and a hearing is set for the taking of objections.\(^10\) Before the agency holds a hearing, it first must hold at least one public meeting in which interested parties may give testimony regarding the proposed assessment.\(^10\) Only after the meeting has been held may the hearing take place.\(^10\) Prior to the start of the hearing, any person owning property included in the proposed assessment may object in writing to the imposition of the assessment.\(^10\) If owners representing more than a majority of land covered by the proposed assessment object, the legislative body must cease the proceedings.\(^10\) Otherwise, the legislative body acquires jurisdiction to order that the work be done.\(^10\)

After the work is finished, an assessment is made to cover the cost of the work and any incidental expenses.\(^10\) The assessment is then filed with the clerk and notice again is given allowing interested parties to make appeals relating to the work done or to the correctness of the assessment.\(^10\) An agency must publish notice not less than 15 days before the new hearing and must also give notice by posting and by mail.\(^10\) At the conclusion of the hearing, the legislative body must decide

---

98. CAL. STS. & HIGH. CODE § 5130 (West 1969).
99. See id. § 5006 (West 1969) (stating that "[l]egislative body" when used with reference to a county means the board of supervisors, and when used with reference to a city means the body which by law constitutes the legislative department of the government of the city").
100. Id. § 5131 (West 1969). The resolution of intention must state the type of work that will be done, the location where the work will be done, and must refer to appropriate plans, drawings or the like. Id. § 5132 (West Supp. 1998). The resolution must also state the date and time of the public hearing to be held on the issue of the improvement. Id.
101. Id.; see infra Part III.C.2 (explaining in more detail the particular notice provisions).
102. CAL. GOV'T CODE § 54954.6(a)(1) (West 1997 & Supp. 1998); see id. (providing that local officials must allow public testimony at the meeting and that the meeting must be held in addition to the required hearing on the issue of the assessment).
103. Id. § 54954.6(a)(2) (West 1997).
106. Id. § 5225 (West 1969).
107. Id. § 5360 (West 1969); see supra notes 77-78 and accompanying text (noting the case law which holds that the cost of the assessment need only be spread among owners residing within the assessment district in some non-discriminatory manner).
109. Id. §§ 5362, 5363 (West 1969).
on all appeals. Its determinations then become final and conclusive. The assessment is confirmed and attaches as a lien against all property included.

b. Municipal Improvement Act of 1913

Like the 1911 Act, the 1913 Act requires that the legislative body adopt a resolution of intention stating its desire to levy an assessment to finance a public improvement. The 1913 Act differs from the 1911 Act in that it provides that after the resolution of intention is passed, the legislative body must refer the matter of the improvement to a department, commission, or officer. The department, commission, or officer is responsible for drafting a report pertaining to the improvement. Upon completion, the report is filed with the clerk and presented to the legislative body. After passing upon the report, the legislative body must give notice and an opportunity to be heard to all interested persons. As under the 1911 Act, the agency must hold at least one public meeting regarding the proposed assessment before it may hold the hearing. Thereafter, at the hearing, any interested person may object to the proposed improvement. Written objection by owners representing a majority of the land to be assessed effectively ends the proceedings. On the other hand, if sufficient protests are not raised, the legislative body may order that the work be done. The assessment then attaches as a lien against all property included.

110. Id. § 5376 (West 1969).
111. Id. § 5368 (West 1969).
112. Id. §§ 5369, 5372 (West 1969).
113. See id. § 10004 (West 1969) (defining “legislative body” as “any body which by law is the legislative department of government of the city, or municipality”).
114. Id. § 10200 (West 1969 & Supp. 1998); see id. (stating that the resolution of intention must describe the improvement, specify the boundaries of the assessment district, and that the assessment will be issued by bonds).
115. Id. § 10203 (West 1969).
116. Id.; see id. § 10204 (West 1969 & Supp. 1998) (providing that the report shall contain plans and specifications of the proposed improvement, a general description of works or appliances already installed, an estimate of the cost of the improvement, the costs attributable to each parcel of property covered by the assessment, and a diagram describing the proposed assessment); infra Part III.C.2 (describing in more detail the particular notice requirements).
120. CAL. STS. & HIGH. CODE § 10310 (West Supp. 1998).
121. Id. § 10311 (West Supp. 1998).
122. Id. § 10312 (West Supp. 1998).
123. Id. § 10402.5 (West Supp. 1998).
2. Notice Requirements for All Special Assessments

Generally, property owners must be given joint notice of both the meeting and the hearing on the issue of the proposed assessment by mail. The contents of the joint notice must include an estimate of the amount of the assessment per parcel, a general description of the purpose for the assessment, the address where owners may mail written protests against the assessment, a statement that a majority protest will cause the assessment to be abandoned, the phone numbers and addresses where owners may receive additional information about the assessment, and the date, time and location of the public meeting and hearing.

Local agencies do not have to provide notice by mail where the proposed assessment will be levied exclusively for operation or maintenance expenses imposed throughout the entire territory of the local agencies or where the operation or maintenance assessments would be levied on 50,000 parcels of property or more. In such cases, notice by publication is sufficient. Likewise, certain park assessments do not require mailed notice and may be noticed through publication only. Because of these exceptions, the drafters of Proposition 218 felt that the notice requirements under traditional special assessment law were too liberalized, to the detriment of taxpayers. For this reason, the assessment procedures specified by Proposition 218 no longer allow for any exceptions to the requirement that mailed notice be given to property owners as do the notice provisions described here.


An essential feature of many assessment proceedings is the opportunity to protest a proposed assessment. The embodiment of this feature—the majority protest provision—effectively allows property owners to stop legislative bodies from imposing assessments. Generally speaking, majority protests rarely succeed. Nevertheless, these provisions are given particular attention here since they now

---

124. See CAL. GOV'T CODE § 54954.6(a)(1) (West 1997 & Supp. 1998) (providing that an agency shall give notice of the public meeting to be held on the issue of an assessment at the same time and in the same document as the notice for the required public hearing); id. § 54954.6(a)(2) (West 1997 & Supp. 1998) (declaring that the agency shall give such notice 45 days prior to the hearing); id. § 54954.6(c)(1) (West 1997 & Supp. 1998) (stating that the public meeting must take place no earlier than ten days after the joint meeting). Though only the procedures of the 1911 and 1913 Acts are explained here, it must be noted that these provisions apply to all special assessments, not simply those covered under the 1911 and 1913 Acts.
125. Id. § 54954.6(c)(2)(A)-(F) (West 1997).
126. Id. § 54954.6(c)(3) (West 1997).
127. Id.
128. Id. § 54954.6(c)(4) (West 1997).
130. See infra Part V.B.1 (explaining the new notice provisions under Proposition 218).
131. See infra notes 132-35 and accompanying text (describing the majority protest provisions).
serve as the basis for approval of assessments under Proposition 218. As will be shown in Part V, the Proposition 218 provisions, though couched in terms of majority protest, are quite different from the majority protest provisions under traditional assessment law.

Both the 1911 and 1913 Acts allow owners of property proposed to be included in the assessments to object in writing to the imposition of the assessment. If owners representing a majority of the included land object to the assessment, there is a majority protest. Under both Acts, the legislative body retains the power to overrule a majority protest by a four-fifths vote. In the absence of a successful override, however, the legislative body is prevented from imposing the assessment and may not initiate any further assessment proceedings for one year.

4. Effect of Compliance With Due Process Requirements and Waiver

The protest and notice provisions included in all special assessment schemes, including the 1911 and 1913 Acts, are necessary so that local governments can satisfy basic requirements of due process. Under these constitutional requirements, all persons must be duly notified of the proposed assessment and must have an opportunity to protest an assessment in order for the assessment to be valid. Once these requirements have been met, a legislative body is required to do nothing more.

In addition to these requirements, both Acts specify that those who fail to appear and protest waive their right to later challenge the assessment. In this respect, the failure to appear and protest is deemed as an acceptance of the legislative body's imposition of assessment. A court will set aside a waiver only upon a showing of fraud, a lack of authority to impose an assessment, or an abuse of discretion by the legislative body.

132. CAL. STS. & HIGH. CODE § 5220 (West 1969); id. § 10310 (West Supp. 1998).
133. Id. § 5222 (West 1969); id. § 10311 (West Supp. 1998).
134. Id. § 5222 (West 1969); id. § 10311 (West Supp. 1998).
135. Id. § 5222 (West 1969); id. § 10311 (West Supp. 1998).
137. Coleman, 41 Cal. App. at 206, 182 P. at 475-76.
138. CAL. STS. & HIGH. CODE § 5366 (West 1969); id. § 10310.2 (West Supp. 1998).
139. Id.
IV. THE ASSESSMENT DECISIONS UNDER PROPOSITION 13: THE RISE OF "A BORN-AGAIN REVENUE RAISER"

A series of California appellate court decisions handed down a few years after the passage of Proposition 13 limited the scope of the new anti-tax initiative. Despite the language of Article XIII A, Section 1, which ostensibly requires that special assessments be approved by two-thirds vote, these courts held that neither Section 1 nor the tax limitation provisions of Section 4 applied to special assessments.141

Cash-strapped local governments cheered these decisions. Fresh from victory, they quickly tapped into special assessments as a means of circumventing Proposition 13’s tough tax limitation provisions. For them, special assessments became a “born-again revenue raiser” almost overnight. But supporters of Proposition 218 feel these decisions “allowed [politicians] to create a loophole in the law that allows them to raise taxes without voter approval by calling taxes ‘assessments’ and ‘fees.’”142 They claimed that special districts had increased assessments over 2400% and cities had raised benefit assessments by 976% since these decisions were handed down.143 For precisely this reason, supporters argued that Proposition 218 was necessary to “stop politicians’ end-runs around Proposition 13.”144

A. Article XIII A, Section 1

Section 1(a) of Article XIII A limits the maximum amount of any ad valorem tax on real property to 1% of its full cash value.145 Section 1(b) states that the limitation in Section 1(a) does not apply to any ad valorem tax or special assessment approved by two-thirds of local voters.146 Taken together, these provisions created a significant question of interpretation for California courts. In effect,

141. Section 1 states,
(a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value on such property. The one percent (1%) tax to be collected . . . according to law to the districts within the counties.
(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on (1) any indebtedness approved by the voters prior to July 1, 1978, or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds vote cast by the voters voting on the proposition.

CAL. CONST. art. XIII A, § 1 (emphasis added). Section 4 provides,
Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

Id. § 4.
142. 1996 VOTER PAMPHLET, supra note 32, at 76.
143. Id.
144. Id. at 77.
145. CAL. CONST. art. XIII A, § 1(a).
146. Id. § 1(b).
Section 1(b) makes two exceptions (taxes and special assessments that meet voter approval requirements) to a general rule which emphasizes only one subject (taxes subject to a 1% cap). In two principal cases, County of Fresno v. Malmstrom and Solvang Municipal Improvement District v. Board of Supervisors, courts faced with this "incongruity" turned to accepted rules of statutory construction and the stated purposes for Proposition 13 to hold that this Section did not apply to special assessments.

In Malmstrom, the court upheld an assessment on property owners for street and roadway improvements challenged as a violation of the 1% cap on ad valorem taxes contained in Article XIII A. In arriving at this holding, the court relied on three arguments. First, the court was convinced that the purpose for Proposition 13 was strictly to control the unchecked growth in ad valorem property taxes that had become particularly acute in the mid to late 1970's. Second, a construction of
Section 1 that included special assessments in the 1% cap on ad valorem taxes "would result in an illogical conclusion." Such a construction would:

[P]lace local government entities in a rather precarious situation by forcing them into a Hobson's choice of spending general tax funds either for expenditures to benefit the public at large or for projects to benefit certain individual property owners by funding improvements such as the construction of streets, sidewalks, gutters and sewers.

This result would not be fair because it would take general funds paid by all taxpayers and would use such funds to "pay for ... special benefits to a few property owners." Finally, the court felt that nothing in the ballot statements accompanying Proposition 13 stated that the initiative was intended to limit the ability of local governments to improve certain areas within their jurisdiction through special assessments. Instead, the ballot arguments suggested only that Proposition 13 was aimed at general government taxation and spending.

In Solvang Municipal Improvement District, the court endorsed the Malmstrom rationale by declaring the inclusion of special assessments in Section 1(b) to be "surplusage." Informing the court's analysis was a key distinction between taxes and assessments. According to the court:

An ad valorem tax on real property describes a general tax levy which applies a given rate to the assessed valuation of all taxable property within a particular taxing district . . . .

In contrast, a special assessment . . . is a charge imposed on particular real property for a local public improvement of direct benefit to that property. . . .

Since assessed property is said to have a special benefit conferred upon it, an assessment provides the means for recouping the cost of the public improvement made on that particular property. On the other hand, taxation involves proceeds which benefit all property owners within a taxing district. Accordingly, the rationale for treating assessments and taxes differently is the notion that "[t]he general public should not be required to pay for special benefits for the few, and the few specially

154. Id. at 981, 156 Cal. Rptr. at 782.
155. Id.
156. Id. (citation omitted).
157. Id.
158. Id.
160. Id. at 552, 169 Cal. Rptr. at 395; see supra Part III.A (examining this rationale more thoroughly).
161. Id. at 553, 169 Cal. Rptr. at 396.
162. Id. at 552, 169 Cal. Rptr. at 395.
benefited should not be subsidized by the general public."\textsuperscript{163} Based on this distinction, nothing in the history of Proposition 13 could be shown to suggest that the initiative was aimed at controlling special assessments.\textsuperscript{164} Instead, Proposition 13 was meant to address only "general governmental spending and general real property taxes levied to finance such spending."\textsuperscript{165} For this reason, the court declared the inclusion of special assessments to be "an aberration that inadvertently crept into Section 1."\textsuperscript{166}

Subsequent cases refined the holdings in these two important cases and provided additional insight into their rationale. In \textit{American River Flood Control District v. Sayre},\textsuperscript{167} the court made clear that the rationales of \textit{Malmstrom} and \textit{Solvang Municipal Improvement District} applied not just to fixed special assessments, but also to assessments collected on an ad valorem basis.\textsuperscript{168} The scheme in \textit{American River Flood Control District} involved an assessment levied much like a tax.\textsuperscript{169} The assessment was set at a rate and collected on the county tax roll.\textsuperscript{170} Upon receipt, the county was responsible for transferring to the district the amount of the tax roll corresponding to the sum of all revenue derived from imposing the assessment rate on all property within the district.\textsuperscript{171} After the passage of Proposition 13, a conflict between the county and flood control district arose when the county, based on its own interpretation of Section 1, refused to transfer revenue derived from the assessment that exceeded the 1% cap on ad valorem property taxes.\textsuperscript{172} The court rejected the county’s claim that the assessment in question was really an ad valorem tax for the purposes of Section 1 and held that the district was entitled to continue collecting the assessment on an ad valorem basis.\textsuperscript{173}

In \textit{City Council of San Jose v. South},\textsuperscript{174} the court rejected the argument that distinguishing special assessments from special taxes promotes "the wholesale avoidance of the purpose of [Proposition 13]" by noting that democratic safeguards usually exist under assessment schemes to adequately protect property owners from the anti-taxation concerns informing Proposition 13.\textsuperscript{175} Such schemes typically require hearings and provide property owners the opportunity to conduct a majority protest that can effectively kill a proposed assessment.\textsuperscript{176} That these safeguards were

\begin{itemize}
  \item \textsuperscript{163} \textit{Id.}
  \item \textsuperscript{164} \textit{Id.} at 556, 169 Cal. Rptr. at 398.
  \item \textsuperscript{165} \textit{Id.}
  \item \textsuperscript{166} \textit{Id.}
  \item \textsuperscript{167} 136 Cal. App. 3d 347, 186 Cal. Rptr. 202 (1982).
  \item \textsuperscript{168} \textit{American River Flood Control Dist. v. Sayre}, 136 Cal. App. 3d 347, 358, 186 Cal. Rptr. 202, 208 (1982).
  \item \textsuperscript{169} \textit{Id.} at 350-51, 186 Cal. Rptr. at 204.
  \item \textsuperscript{170} \textit{Id.} at 351, 186 Cal. Rptr. at 204.
  \item \textsuperscript{171} \textit{Id.}
  \item \textsuperscript{172} \textit{Id.}
  \item \textsuperscript{173} \textit{Id.} at 358-59, 186 Cal. Rptr. at 208.
  \item \textsuperscript{174} 146 Cal. App. 3d 320, 194 Cal. Rptr. 110 (1983).
  \item \textsuperscript{175} \textit{South}, 146 Cal. App. 3d at 330-31, 194 Cal. Rptr. at 117.
  \item \textsuperscript{176} \textit{Id.}
\end{itemize}
adequate measures of protection was especially true in light of the limited nature of the assessment involved in that case. 177

B. Article XIII A, Section 4

Like Article XIII A, Section 1, courts have construed Section 4 to be inapplicable to special assessments. 178 In Malmstrom, the court reached this conclusion for largely the same reason the Solvang Municipal Improvement District court later held Section 1 inapplicable. The court reasoned that:

Taxes are raised for the general revenue of the governmental entity to pay for a variety of public services. A “special tax” is a tax collected and earmarked for a special purpose, rather than being deposited in a general fund. A special assessment is charged to real property to pay benefits that property has received from a local improvement and, strictly speaking, is not a tax at all. 179

The court in South built on this rationale by further noting that unlike the requirements for taxes, assessment schemes require due process, including notice and an opportunity to be heard. 180 Thus, to have construed Section 4 to apply to special assessments would have rendered that provision unconstitutional. 181 For this reason, the elective requirements mandated by Article XIII A did not apply to special assessments. 182

V. ASSESSMENT LAW UNDER PROPOSITION 218

Proposition 218 enacts Articles XIII C and XIII D to the California Constitution. Article XIII C deals with property taxation while Article XIII D limits the ability of local governments to impose assessments and fees. 183 Because of the focus

---

177. Id. at 330, 194 Cal. Rptr at 117.
178. See supra note 141 (setting forth the text of Section 4).
179. Malmstrom, 94 Cal. App. 3d at 983, 156 Cal. Rptr. at 782-83. The court also noted that applying Section 4 to special assessments might cause the type of problems Proposition 13 was designed to prevent. Id. at 985, 156 Cal. Rptr. at 784. As required under Article XIII A, Section 4, it might be difficult to determine who is a “qualified elector” in statutory assessment schemes where the property to be improved is owned entirely by one person or where some of the properties may be owned by non-residents. Id. Thus, “[t]hese situations, and many others, could pose complex problems of defining the ‘qualified electors’ of the district . . . and provide more layers of governmental red tape and expense,” which are exactly the type of things Proposition 13 sought to eliminate. Id.
180. South, 146 Cal. App. 3d at 332, 194 Cal. Rptr. at 118.
181. Id.
182. Id.
183. The taxation provisions seek to clarify that Proposition 62, an initiative which itself sought to clarify Proposition 13, applies to chartered cities.
of this Comment, only those provisions of Article XIII D dealing with assessments are discussed.\textsuperscript{184}

In July 1997, the California Legislature passed implementation legislation clarifying certain provisions of Proposition 218 and resolving many of the inconsistencies it created with existing law. SB 919,\textsuperscript{185} embodying these changes, was supported on a consensus basis by a group convened by the Legislative Analyst’s Office and consisting of representatives from a diverse array of groups and parties affected by the initiative.\textsuperscript{186}

\section*{A. Requirements for Levying Assessments Under Proposition 218}

\subsection*{1. Scope of Assessment Charges and Requirement of Proportionality}

As discussed in Part III, the use of assessments to finance local improvements was based on two justifications: that assessments provide special benefits to the property assessed and that they are levied for a public purpose.\textsuperscript{187} These requirements remain intact after Proposition 218.\textsuperscript{188} However, Proposition 218 departs from prior law by requiring that any incidental benefits that accrue to the public in addition to the special benefits conferred on the improved property must be financed through some source other than the assessment, for example, by taxation.\textsuperscript{189}

In contrast, prior law allowed property owners to be assessed both for the special benefit to their property and for any incidental public benefits.\textsuperscript{190} The likely effect of these changes is that under Proposition 218, certain service-based assessments, such as those for police, library, ambulance or business improvement, may no longer be feasibly financed through assessments since additional revenues will be required to cover the costs of the incidental general benefits to the public.\textsuperscript{191}

\begin{itemize}
\item \textsuperscript{184} More specifically, the provisions of Article XIII D which are discussed are found primarily in Section 4, which contains all of the procedures and requirements that must be met in order to levy special assessments.
\item \textsuperscript{185} See 1997 Cal. Legis. Serv. Ch. 38, sec. 1-10, at 257-64 (enacting SB 919).
\item \textsuperscript{186} SENATE LOCAL GOVERNMENT COMMITTEE, COMMITTEE ANALYSIS OF SB 919, at 1-2 (Apr. 16, 1997).
\item \textsuperscript{187} See supra Part III.B (explaining these requirements in depth).
\item \textsuperscript{188} The text of Proposition 218 defines an “assessment” as “any levy or charge upon real property by an agency for a special benefit conferred upon the real property.” CAL. CONST. art. XIII D, § 2(b). Absent from this definition is any mention that an assessment be levied for a public purpose. For this reason, SB 919 clarifies that the term “assessment” means any charge or levy “that is based upon the special benefit conferred upon the real property by a public improvement or service.” CAL. GOV’T CODE § 53750(b) (West Supp. 1998) (emphasis added). From this definition, the traditional requirements are therefore preserved.
\item \textsuperscript{189} CAL. CONST. art. XIII D, § 4(a). The text of this provision states, “[n]o assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel.” Id. All assessments must be supported by a detailed engineer’s report. Id. § 4(b).
\item \textsuperscript{190} See supra Part III.B.2 (discussing the public purpose requirement which allowed agencies to assess property for both special and general benefits).
\item \textsuperscript{191} ELIZABETH G. HILL, UNDERSTANDING PROPOSITION 218, at 24 (1996). Service-based assessments are those that benefit people, as opposed to properties. Id. at 33. Other services that may no longer be financed through assessments include libraries, mosquito abatement and recreation programs. Id.
\end{itemize}
Another significant change from prior law is the degree of precision a legislative body must use when setting the amount of the assessment. Prior to Proposition 218, there was no requirement that assessments be levied for the exact amount of benefits each property would receive. Instead, it was sufficient that an assessment was imposed in some manner that related to the cost of the improvement and that it was spread among all owners in some non-discriminatory manner. Proposition 218 opts for a more precise allocation by requiring that the amount of the assessment imposed on each property be proportional to the capital cost of the improvement. It states in plain terms that "[n]o assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred."

Taken together, these requirements strictly confine the assessment power of local governments. The reason for their inclusion stems from the "loophole" created by the assessment cases, which is explained in Part IV. After these decisions, the drafters of Proposition 218 contended that local governments used assessments to impose what were, in effect, parcel taxes. Accordingly, the drafters felt that the new requirements were necessary "to permit assessments to be used, once again, as a legitimate financing mechanism for capital improvements and services that provides particular benefits to property and not just a means to impose flat rate parcel taxes."

2. Narrowed Definition of "Special Benefits"

Proposition 218 marches in step with traditional assessment law in defining "special benefit" as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large." However, it narrows the traditional definition by further providing that

192. See supra notes 77-78 and accompanying text (discussing cases in which the courts held that the amount assessed need not be proportional to the special benefits conferred upon the property by the assessment).
193. See supra notes 77-78 and accompanying text (discussing a court's decision to this effect). According to a recent report, the city of Moorpark was considering canceling an assessment rebate for low-income and senior citizen homeowners because it would conflict with these proportionality requirements. Gloria Gonzales, Moorpark May Cancel Tax Rebate; City No Longer To Pay Certain Homeowners, L.A. DAILY NEWS, Jan. 21, 1998, at T03. In order to finance the rebate, the lost assessment revenue from low income or senior property would have to be subsidized by the other owners covered by the assessment. In this respect, the assessment would exceed the proportional special benefits received by those who have to pay the subsidies. Id.
194. CAL. CONST. art. XIII D. § 4(a). The text of this provision states, "[t]he proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost . . . of the property related service being provided." Id.; see id. § 2(c) (defining "capital cost" as "the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency").
195. Id. § 4(a).
197. Id.
198. CAL. CONST. art. XIII D. § 2(i).
"[g]eneral enhancement of property value does not constitute 'special benefit.'"\textsuperscript{199} The inclusion of this language strikes at cases like \textit{Auburn Lumber}, which held that an increase in the value of property in relation to its potential use provided sufficient benefits to justify an assessment.\textsuperscript{200} As the drafters of the initiative contend "the availability of any public service could provide additional value [to property]."\textsuperscript{201}

3. 	extit{Elimination of State and Federally-Owned Property Exemption}

In recent years, special assessment statutes have provided that state and federally-owned property were exempt from the levy of assessments.\textsuperscript{202} Under Proposition 218, this exemption has been eliminated.\textsuperscript{203} So long as public property benefits from an assessment, the government must pay its appropriate share.

B. 	extit{Notice, Hearing and Protest Requirements}

Like traditional assessment law, Proposition 218 requires that certain notice, hearing, and protest requirements be met. These requirements supersede \textit{all} additional notice, hearing and protest statutes, including the Brown Act.\textsuperscript{204} Chapter 38 provides that once these new requirements are met and an assessment is subsequently approved by local property owners, the body does not need to follow the procedures again until the assessment is proposed to be increased.\textsuperscript{205}

1. 	extit{Notice and Hearing}

Proposition 218 requires that property owners be given written notice by mail of a proposed assessment.\textsuperscript{206} No less than 45 days after notice is given, the legislative body seeking to impose the assessment must then hold a hearing on the issue of the proposed assessment.\textsuperscript{207} Notice must include the total amount of the assessment chargeable to the district, the amount chargeable to the owner, the duration

\textsuperscript{199.} Id.
\textsuperscript{200.} \textit{See supra} notes 82-86 and accompanying text (discussing \textit{Auburn Lumber}, which held that enhanced property value was a sufficient basis to support a finding of special benefits).
\textsuperscript{201.} \textit{HOWARD JARVIS TAXPAYERS ASSOCIATION, STATEMENT OF DRAFTERS INTENT 9} (1997) (copy on file with the \textit{McGeorge Law Review}).
\textsuperscript{202.} Id. at 10.
\textsuperscript{203.} \textit{See CAL. CONST.} art. XIII D, § 4(a) (providing that parcels owned or used by any agency, the State of California or the United States are not exempt from assessment unless such publicly owned properties can show by clear and convincing evidence that they receive no special benefit from the assessment).
\textsuperscript{204.} \textit{See CAL. GOV'T CODE} § 54954.6(h) (West Supp. 1998) (providing that the Brown Act does not apply to any assessment proceeding conducted in conformance with Proposition 218). \textit{See generally id.} §§ 54950-54962 (West 1997) (setting forth the "Ralph M. Brown Act" in its entirety).
\textsuperscript{205.} \textit{CAL. GOV'T CODE} § 53753.5(g) (West Supp. 1998).
\textsuperscript{206.} \textit{CAL. CONST.} art. XIII D, § 4(c).
\textsuperscript{207.} \textit{Id.} § 4(e).
of the payments, the reason for the assessment, the date, time and location of the public hearing on the issue of the assessment, a summary of procedures for completing an attached ballot, and a statement that a majority protest will defeat the proposed assessment.\textsuperscript{208} In addition to notice, property owners must be furnished with a ballot on which they may indicate their approval or disapproval of the proposed assessment.\textsuperscript{209}

At the hearing, the agency must consider all protests or objections to the proposed assessment.\textsuperscript{210} Though notice of the proposed assessment is only given to property owners, any interested person may present written or oral testimony at the hearing.\textsuperscript{211}


Traditional special assessment statutes provided that a majority protest existed when owners representing more than half of the property to be covered in a proposed assessment filed written protest against the levy of the assessment.\textsuperscript{212} Under Proposition 218, however, defeating a proposed assessment now requires only that the owners opposing the assessment represent more property area than those in favor of the levy.\textsuperscript{213}

An illustration explains the difference between Proposition 218 and the old assessment schemes. Assume a local agency seeks to impose an assessment on an area covering 100 properties, each property being the same size.\textsuperscript{214} Under
traditional special assessment law, owners representing at least 51 properties would have to file written protest against the assessment to effect a majority protest. Under Proposition 218, however, it is possible for two owners to reject an assessment if only one votes in favor. This is because Proposition 218 requires only a majority of the property that votes to approve an assessment, not a majority of the total property to be covered by the assessment. Under Proposition 218, it is even conceivable that only one owner could reject the assessment if no other property owners vote. The result of this change is that unlike traditional special assessment schemes in which majority protests were rarely invoked, Proposition 218 now makes the majority protest the basis for the approval of all new assessments.

Under the new system, each property owner receives a vote in proportion to his or her respective financial obligation arising from the proposed assessment. Property owners are responsible for mailing or delivering the ballot to the local body seeking to impose the assessment. All ballots must be submitted to the

business owners, and so forth. The purpose of this over-simplified hypothetical is to show the large disparity between Proposition 218 in relation to the heavy burden property owners had to meet under prior law.

215. Compare CAL. CONST. art. XIII D, § 4(e) (providing that "a majority protest exists if . . . ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment") (emphasis added), with CAL. STS. & HIGH. CODE § 5222 (West 1969) (stating that if a "protest is made by the owners of more than one-half of the area of property to be assessed . . . no further proceedings shall be taken" for a specified time) (emphasis added).

216. In fact, this has already happened. One commercial property owner cast the only vote in a street lighting assessment election held recently in Los Angeles. A factory owner, he voted against an assessment that would have cost him only $156 a year. Ted Rohrlich, L.A. Faces Dilemma Over Street Lights, L.A. TIMES, Aug. 26, 1997, at A1. This article also reports that five similar elections— involving as few as four owners—had resulted in the defeat of proposed assessments. Id. The various defeats posed an interesting question to the Los Angeles City Council: should it simply shut out the lights when owners vote against assessments or should it tap into revenues from other taxpayers to subsidize the property owners? Id. Using other revenues to finance street lights when owners refuse to pay assessments raises basic issues of fairness. On the other hand, turning off street lights poses safety concerns, as another city council faced with the same debate concluded. Id.

217. In the ballot statements accompanying Proposition 218, supporters of the initiative responded to criticisms that these provisions deprive non-owners of the right to vote by stating that "[c]urrent law already allows property owners . . . to act on property assessments based on the assessment amount they pay. This is NOT created by Proposition 218." 1996 VOTER PAMPHLET, supra note 32, at 77. Though this statement contains some semblance of truth, it is misleading. Property owners certainly had the right to stop the levy of an assessment through a majority protest under traditional special assessment law. But the burdens of securing protests from owners representing more than half of the property proposed to be assessed were quite onerous and for this reason, quite rare. See supra Part III.C.3 (explaining the difficulties with traditional majority protest schemes). The result of these tough requirements was that the question of whether to impose the assessment was usually left to the legislative body. In contrast, Proposition 218 confers an automatic "right" to vote exclusively on property owners. Whether the assessment is approved is a question entirely out of the hands of the legislative body proposing the assessment. Because of these differences, the attempt by supporters of Proposition 218 to couch the initiative in terms of then-existing law was disingenuous. Any similarities between Proposition 218 and traditional majority protest provisions amount to nothing more than window-dressing.

218. CAL. CONST. art. XIII D, § 4(e). Although opponents of Proposition 218 hypothesized that this would allow situations where oil companies owning property would have far more voting power than average homeowners, this provision does not vary from prior law. See, e.g., CAL. STS. & HIGH. CODE § 5222 (West 1996 & Supp. 1998) (providing that an assessment may not be imposed if owners representing more than half of the property to be assessed object to the assessment).

219. CAL. GOV'T CODE § 53753(c) (West Supp. 1998).
agency prior to the conclusion of the hearing.\textsuperscript{220} Thereafter, the agency must tabulate the results to determine if a majority protest exists.\textsuperscript{221} Neither Proposition 218 nor Chapter 38 specifies that a majority protest prevents an agency from proposing the assessment again for a certain period of time, (for example, one year), as do both the 1911 and 1913 Improvement Acts.\textsuperscript{222}

C. Allocation of Burden in Action Contesting Validity of an Assessment

Proposition 218 requires legislative bodies to prove the validity of an assessment challenged in court.\textsuperscript{223} This is another significant departure from traditional special assessment law. Under traditional special assessment law, courts deferred to legislative bodies in regard to assessment determinations, thereby placing the burden for challenging an assessment on the property owner.\textsuperscript{224} The result of this change is that it will be far easier for taxpayers to challenge assessments on the ground that they do not confer the requisite special benefits or are levied on a basis that exceeds the proportional special benefits to the property assessed.

VI. Is Proposition 218 Constitutional Under the "One-Person, One-Vote" Doctrine?

The Equal Protection Clause of the Fourteenth Amendment provides, "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."\textsuperscript{225} In the heyday of the Warren Court, the One-Person, One-Vote Doctrine was created on the basis of this constitutional provision. The doctrine essentially covers two things—the \textit{dilution} of one person’s vote vis-a-vis that of another, and the \textit{denial} of a person’s vote by a scheme which selectively distributes the franchise. As originally founded, the doctrine requires that laws which dilute or deny the voting rights of certain individuals be subject to rigorous judicial scrutiny.\textsuperscript{226} The government’s interest in diluting or selectively enfranchising persons must be \textit{compelling} and \textit{narrowly tailored} to serve such an interest.\textsuperscript{227}

\begin{flushright}
\textsuperscript{220} Id. \\
\textsuperscript{221} Id. \textsection 53753(e)(f) (West Supp. 1998). Chapter 38 clarifies that the agency may use technological methods such as punch-cards or bar-coding to tabulate the ballot. Id. SB 919 also provides that when more than one person submits a ballot with respect to one parcel, the agency must weight that parcel’s vote according to the financial interest of each person. Id. The agency must weigh each person’s vote according to record ownership interests or, if the record does not reflect the ownership interests, according to satisfactory documentation provided by the record owners. Id. \\
\textsuperscript{222} See supra note 135 and accompanying text (describing these provisions under the 1911 and 1913 acts). \\
\textsuperscript{223} CAL. CONST. art. XIII D. \textsection 4(f). \\
\textsuperscript{224} See supra Part III.B.1 (discussing the deferential approach given to legislative determinations by courts). \\
\textsuperscript{225} U.S. CONST. amend. XIV, \textsection 1. \\
\textsuperscript{226} See infra Part VI.A.1-2.b (explaining the demanding requirements of the One-Person, One-Vote Doctrine). \\
\textsuperscript{227} See infra Part VI.A.1-2.b (explaining these requirements). 
\end{flushright}
The early One-Person, One-Vote cases involved vote dilution. The seminal case, *Reynolds v. Simms*, 228 concerned vast disparities in the apportionment of a state legislature.229 Subsequent cases extended the scope of this doctrine to cover the apportionment of local governments.230 In *Kramer v. Union Free School District*, 231 the One-Person, One-Vote principle enunciated in *Reynolds* was further extended to cover the denial of the franchise. Shortly thereafter, the Supreme Court handed down a series of decisions invalidating statutes which gave only property owners the right to vote in elections held to approve bonds.232 The scope of the doctrine at this time appeared to be quite sweeping.

However, in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*233 and *Ball v. James*, 234 the Court announced a significant exception to the One-Person, One-Vote doctrine. Under the holdings of these cases, voting schemes that involve special, limited governmental units whose activities disproportionately affect certain groups of individuals more than others are not subject to the strict demands of the One-Person, One-Vote Doctrine.235 More deferential review is accorded to such schemes.

**A. The “One-Person, One-Vote” Doctrine**

1. *The Reynolds Principle*

In the landmark case of *Reynolds v. Simms*, the Court applied the One-Person, One-Vote standard to invalidate the apportionment of the Alabama State Legislature. Using 1960 census figures, roughly 25% of Alabama’s population resided in districts electing a majority of the members of both houses of the legislature.237 In the most extreme cases, population variance ratios between districts were 41-to-1 in the Senate and 16-to-1 in the House.238 The Court struck down this apportionment scheme because it unconstitutionally diluted the votes of those who resided in the larger districts at the expense of those who lived in vastly smaller districts.239

---

229. *See infra* notes 237-39 and accompanying text (discussing the facts of this case).
230. *See infra* Part VI.A.2.a (explaining the Supreme Court’s decisions in *Avery v. Midland County and Hadley v. Junior College District*).
232. *See infra* Part VI.A.2.b (analyzing the Supreme Court’s bond decisions, *Cipriano v. Houma and City of Phoenix v. Kolodziejski*).
235. *See infra* Part VI.A.2.c (explaining the elements of this exception to the One-Person, One-Vote Doctrine).
238. *Id.*
239. *Id.* at 568.
In reaching this decision, the Court construed the right to vote as fundamental—"a bedrock of our political system." For this reason, it believed that "any restrictions on that right strike at the heart of representative government." In sweeping language, the Court condemned the practice of weighing one person's vote more than another's. "To the extent that a citizen's right to vote is debased," it declared, "he is that much less a citizen." The Court announced a standard which requires that there be "substantial equality of population among various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state." Despite the vigorous tone of the opinion, Reynolds left many issues unresolved. Most notable in the context of special assessment law is whether the Reynolds principle applied to local governments.

2. The Local Government Exception

a. The Avery/Hadley Line

The Court first extended the Reynolds principle to local governments in Avery v. Midland County. In Avery, a resident of Midland County challenged the selection of a County Commissioners Court, which, like the Alabama scheme in Reynolds, was apportioned among grossly disproportionate districts. Noting that local governments were a "major aspect of our system," the Court refused to distinguish between state and local governments for purposes of applying the Reynolds principle. Among the powers of the Commissioners Court were the abilities to set

240. Id. at 562. Reynolds is full of similar pronouncements. See, e.g., id. at 555 (declaring that "the right to vote freely for the candidate of one's choice is the essence of a democratic society"); id. at 561-62 (stating that "the right to suffrage is a fundamental matter in a free and democratic society"); id. at 562 (arguing that "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights").

241. Id. at 555.

242. Id. at 566. The Court emphatically stated, [w]e are told that the matter of apportioning representation in a state legislature is a complex and many-faceted one. We are advised that States can rationally consider factors other than population in apportioning legislative representation. We are admonished not to restrict the power of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection: our oath and our office require no less of us.

Id. (emphasis added).

243. Id. at 567.

244. Id. at 579.


246. Under 1963 estimates, the population of the four districts represented by the Commissioners Court were 67,906, 852, 414, and 828. The entire city of Midland, Texas, representing 95% of the county's population, was included in one district. Avery v. Midland County, 390 U.S. 474, 476 (1968).

247. Id. at 481. The Court explained, [w]hile state legislatures exercise extensive power over their constituents and over the various units of local government, the States universally leave much policy and decisionmaking to their governmental
tax rates, equalize assessments, and issue bonds. The Commissioners Court was responsible for preparing budgets and possessed wide discretion in determining what types of projects it would fund. In sum, the Commissioners Court exercised a host of general governmental powers that "include[d] the authority to make a substantial number of decisions that affect all citizens, whether they reside inside or outside the city limits." Because of the significance of these powers, the Court extended the Reynolds principle to all local governments "having general governmental powers over the entire geographic area served by the body."

In Hadley v. Junior College District, the Court affirmed its holding in Avery by applying the Reynolds principle to a less demanding set of facts. In Hadley, the Court invalidated a Missouri statute that allowed a member district representing 60% of the total school population to elect only half of the members of the district board of trustees. The district was empowered to administer the general operations of a junior college. It could hire and fire instructors, make contracts, acquire property for district use, and levy taxes or issue bonds accordingly. Acknowledging that these powers were not as broad as those in Avery, the Court nonetheless believed that the "powers [were] general enough and [had] sufficient impact throughout the district to justify the conclusion that . . . Avery should [apply]."

Subdivisions. Legislators enact many laws but do not attempt to reach those countless matters of local concern necessarily left wholly or partly to those who govern at the local level. Id. For this reason, the Court could see "little difference . . . between the exercise of state power through legislatures and its exercise by elected officials in the cities, towns, and counties" for purposes of the Equal Protection Clause. Id.

248. Id. at 483.
249. Id.
250. Id. at 484.
251. Id. at 485. The Court was careful to point out that "[t]he Constitution does not require that a uniform straitjacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local problems." Id. at 485. Neither the Constitution nor the Court are "roadblocks in the path of innovation, experiment, and development among units of local government." Id. This language would eventually come to characterize the local government exception to the Reynolds principle. That is, where the strict mandates of Reynolds are excused, a case is said to be one in which the Constitution does not stand as a "roadblock in the path of innovation." Southern Cal. Rapid Transit Dist. v. Bolen, 1 Cal. 4th 654, 664, 822 P.2d 875, 880, 3 Cal. Rptr. 2d 843, 848 (1992).
254. Id. at 53.
255. Id.
256. Id. at 54. According to the Court, the critical factor in determining whether the One-Person, One-Vote Doctrine should apply is whether a political position is an elected one. As the Court explained, "[w]hile there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process. It should be remembered that in cases like this one we are asked by voters to insure that they are given equal treatment, and from their perspective the harm from unequal treatment is the same in any election, regardless of the officials selected.

Id. at 55. Applying this rationale, the Court could discern no difference between the harm caused to one whose vote for a school board member was impaired and one whose vote for state legislator was impaired. Id.
b. The Kramer Line

In *Kramer v. Union Free School District*, the Supreme Court created another line in the One-Person, One-Vote Doctrine. While *Avery* and *Hadley* involved vote dilution, the Court issued a series of vote-denial decisions beginning with *Kramer*.

In *Kramer*, the Court invalidated a statute which restricted the right to vote in New York school district elections to those who owned or leased taxable property within a district and to parents of children attending schools within a district. Because the Court reasoned that "[a]ny unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government," it applied strict scrutiny as the appropriate standard of review. Accordingly, it had to determine whether the exclusion of certain individuals from voting in school board elections was necessary to promote a compelling state interest. Assuming, but not concluding, that the state had a compelling interest to limit the right to vote in school district elections to certain "primarily interested" individuals, the Court invalidated the statute in question because it was not properly tailored to achieve the state's interest. The act was both underinclusive and overinclusive. It "[permitted]
inclusion of many persons who have, at best, a remote and indirect interest in school affairs and, on the other hand, [excluded] others who have a distinct and direct interest in the school meeting decisions."\textsuperscript{264} For this reason, the statute was not "sufficiently tailored" to achieve the goal of enfranchising only those "primarily interested" in the election.\textsuperscript{265}

On the same day \textit{Kramer} was decided, the Court in \textit{Cipriano v. City of Houma}\textsuperscript{266} struck down a statute that gave only "property taxpayers" the right to vote in revenue bond elections.\textsuperscript{267} Applying strict scrutiny, the Court assumed, as in \textit{Kramer}, that the statute served a compelling interest but held that it was not sufficiently drawn to further that interest.\textsuperscript{268} Because revenue bonds were at issue—which, in this case, were to be financed through utility rates applicable to all those who used the service, regardless of whether they owned property—the state could not show that property owners were any more interested in the elections than those who did not own property.\textsuperscript{269} Consequently, the line drawn by the statute between those who did and did not own property could not "meet the 'exacting standard of precision [the Court] require[s] of statutes which selectively distribute the franchise.'"\textsuperscript{270}

One year later, the Court extended its protection of the right to vote to general obligation bond elections in \textit{City of Phoenix v. Kolodziejski}.\textsuperscript{271} As in \textit{Kramer} and \textit{Cipriano}, the Court struck down the statute on the ground that the line drawn between property owners and non-property owners was not sufficiently tailored to serve the state's interest.\textsuperscript{272} The Court gave three reasons for its decision. First, the Court believed that all residents of Phoenix, not just those who owned property, had an interest in the public facilities that would be funded by the bonds.\textsuperscript{273} Second, though Arizona law provided that general obligation bonds be serviced through property taxes (which, of course, would be paid only by those owning property), other revenues were legally available to finance the bonds.\textsuperscript{274} In fact, close to half of the value of the bonds involved in the case were to be financed through other local taxes which would be paid by property owners and non-property owners alike.\textsuperscript{275} Finally, even if the bonds were financed through property taxes alone,

\textsuperscript{264} Id. at 632 n.15. The act was therefore underinclusive with respect to the appellant and overinclusive with respect to the hypothetical uninterested, non-tax paying renter.
\textsuperscript{265} Id. at 632.
\textsuperscript{266} Id. at 633.
\textsuperscript{267} 395 U.S. 701 (1969).
\textsuperscript{269} Id. at 705-06.
\textsuperscript{270} Id at 705. The Court also noted that any profits derived from the utility would be paid into the city's general fund and used to finance services that would otherwise have to be supported by taxes. \textit{Id.}
\textsuperscript{271} Id. at 706 (quoting \textit{Kramer v. Union Free Sch. Dist.}, 395 U.S. 621, 632 (1969)).
\textsuperscript{273} Id. at 209.
\textsuperscript{274} Id.
\textsuperscript{275} Id. at 209-10.
renters would ultimately share in the burden as the cost of taxation would be passed-through to them.\textsuperscript{276}

c. The Lines Blurred: Salyer and Ball

Though the Avery/Hadley and Kramer lines differ in that the former involved vote-dilution and the latter vote-denial, both dealt with local governmental units exercising general powers. Avery dealt with a court of county commissioners, Hadley and Kramer involved school districts, and the bonds in Cipriano and Kolodziejski were issued by cities. In Salyer Land Co. v. Tulare Lake Basin Water Storage District\textsuperscript{277} and Ball v. James,\textsuperscript{278} the Court was finally confronted with the issue of whether it should apply the principles enunciated in these cases to elections involving special purpose units of government exercising limited powers.\textsuperscript{279} Since Avery, the first case to extend the Reynolds principle to local governments, the Court declined to address this issue. Thus, in Avery it declared,

Were the Commissioners Court a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents, we would have to confront the question whether such a body may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions. That question, however, is not presented by this case . . . .\textsuperscript{280}

Similar pronouncements can be found in Hadley, Kramer, and Cipriano.\textsuperscript{281}

In Salyer, the Court upheld a California statute which allowed only landowners to elect boards of directors for local water districts.\textsuperscript{282} The statute allowed the districts to undertake improvement projects, financed by special assessments, for the "acquisition, appropriation, diversion, storage, conservation and distribution of

\textsuperscript{276} Id. at 210-11. As the Court noted, "[s]ince most city residents not owning their own homes are lessees of dwelling units, virtually all residents share the burden of property taxes imposed and used to service general obligation bonds." Id. Likewise, property taxes imposed on commercial property would be treated as a cost of doing business and passed on to the consumer. Id. at 211.

\textsuperscript{277} 410 U.S. 719 (1973).
\textsuperscript{278} 451 U.S. 355 (1981).
\textsuperscript{279} Salyer, 410 U.S. at 720.
\textsuperscript{280} Avery, 390 U.S. at 483-84.
\textsuperscript{281} See Hadley, 397 U.S. at 56 (stating that, "[i]t is of course possible that there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with Reynolds . . . might not be required . . . .") (emphasis added); Kramer, 395 U.S. at 621 ("We need express no opinion as to whether the State in some circumstances might limit the exercise of the franchise those to 'primarily interested' or 'primarily affected.'"); Cipriano, 395 U.S. at 704 n.5 ("[W]e find it unnecessary to decide whether a state might, in some circumstances, limit the franchise to those 'primarily interested.'").

\textsuperscript{282} Salyer, 410 U.S. at 725.
water.” The district giving rise to the litigation of this case covered 193,000 acres of heavily cultivated farm land and was comprised of a minuscule population. Nearly 85% of the land was farmed by four corporations. One of these, the J.G. Boswell Company, owned so much land that it could elect a majority of the board of directors by itself. As a result, no board elections had been held for many years prior to the commencement of litigation in this case. In 1969, heavy flooding left the land of one of the appellants 15 ½ feet under water. This happened after the district’s board of directors tabled a motion which would have put machinery into operation to divert flood water into a nearby lake. The board—dominated by the J.G. Boswell Company—did this because it did not want to interfere with the harvesting of some of J.G. Boswell’s crops.

Despite the rather harsh consequences of the board’s action to the appellant, the Salyer Court declared that the water district was the type of limited-purpose district whose activity disproportionately affected landowners as first envisioned in Avery. The Court believed the purpose of the district was limited because it provided no “general public services such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed by a municipal body.” The Court also believed that district elections disproportionately affected landowners because they were the only ones responsible for paying the assessments and because assessments, by nature, operate as a lien on their property. “In short,” the Court argued, “there [was] no way that the economic burdens of district operations [could] fall on residents qua residents.” For these reasons, the Court refused to extend the Reynolds principle to cover the water district elections.

In reaching this decision, the Court felt it was acting in line with what the Avery Court contemplated in its pronouncement that there might be occasions in which the Reynolds principle did not apply. But instead of applying strict scrutiny as the appropriate standard of review, the Court, without explanation,
chose to adopt the rational basis test.\textsuperscript{297} After concluding that the state had a sufficient interest in this case to limit the right to vote to landowners, the Court, per Justice Rehnquist, proceeded to assess the equal protection claim by determining only whether the denial of voting rights for those not owning property was \textit{wholly irrelevant} to the achievement of the state's objectives.\textsuperscript{298}

The Court thus signaled a shift from its previous decisions. When the \textit{Kramer} and \textit{Cipriano} courts discussed the situation that \textit{Avery} first contemplated, they did so in the context of applying strict scrutiny as the appropriate standard of review.\textsuperscript{299} As the Court explained in \textit{Kramer}, "if a challenged state statute grants the right to vote to some bona fide residents . . . and denies the franchise to others, the Court must determine whether the exclusions are \textit{necessary} to promote a \textit{compelling state interest}."\textsuperscript{300} By holding that the classifications in \textit{Kramer} and \textit{Cipriano} were not properly drawn, the Court held that they were not necessary to achieve their goal, which the Court merely assumed constituted a compelling interest. It follows, therefore, that if the Court would have been presented with a district that fit the characteristics of the situation it envisioned, it would have required that the state put forth a compelling interest to justify the classification. But this was apparently not the case in \textit{Salyer}. Though the \textit{Salyer} Court was not explicit about what level of interest the state had—compelling or otherwise—when it concluded that the state could limit the right to vote to property owners, its phrasing of the issue as to whether the means chosen by the state were "wholly irrelevant" to achieving its objectives means that it adopted the less demanding rational basis test.\textsuperscript{301} However, the Court gave absolutely no reason why it departed from precedent and adopted this less demanding test.

Applying this relaxed standard, the Court had little trouble upholding the California statute. The Court rejected the argument that the statute was invalid because farmers would pass the costs of the assessments on to residents within the district.\textsuperscript{302} "Constitutional adjudication cannot rest on any such 'house that Jack built' foundation," it declared.\textsuperscript{303} Only three years earlier in \textit{Kolodziejski}, however, the Court relied on such a "pass-through" rationale to invalidate a law which denied non-property owners the right to vote in general obligation bond elections.\textsuperscript{304} In addition, the Court reasoned that because assessments operated as liens against

\textsuperscript{297} See \textit{id.} at 730 (stating that appellants were entitled to have their equal protection claim assessed to determine whether the denial of the franchise to those who did not own property was "'wholly irrelevant'" to the state's objectives).

\textsuperscript{298} Id. at 731.

\textsuperscript{299} See \textit{Kramer}, 395 U.S. at 626 (declaring that the statute in question required "close and exacting examination"); \textit{Cipriano}, 395 U.S. at 704 (requiring the statute challenged in that case to be "necessary to promote a compelling state interest").

\textsuperscript{300} \textit{Kramer}, 395 U.S. at 627 (emphasis added).

\textsuperscript{301} See supra note 260 (explaining the rational basis test).

\textsuperscript{302} \textit{Salyer}, 410 U.S. at 731-32.

\textsuperscript{303} Id.

\textsuperscript{304} See supra note 276 and accompanying text (discussing this rationale in the \textit{Kolodziejski} opinion).
property, a state could rationally conclude that only property owners should be enfranchised.\textsuperscript{305}

In \textit{Ball v. James},\textsuperscript{306} the Court extended the \textit{Salyer} holding to encompass a much broader set of facts. \textit{Ball} concerned an Arizona water district serving nearly half the population of the state.\textsuperscript{307} Only landowners could elect the directors of the district.\textsuperscript{308} Unlike the district in \textit{Salyer}, which supplied water exclusively to farmland, 40\% of the water provided by the district in \textit{Ball} went to urban areas or was put to non-agricultural uses.\textsuperscript{309} Moreover, most of its capital and operating expenses were paid by revenues generated from the selling of electric power.\textsuperscript{310} Thus, whereas the property owners in \textit{Salyer} were exclusively burdened by special assessments, property owners and non-property owners alike were responsible for financing the function of the district in \textit{Ball}.

Applying the rational basis test as the standard of review, the Court concluded that these dissimilarities did not amount to a "constitutional difference."\textsuperscript{311} It gave three justifications for its reasoning. First, no matter how large the operations of the district may have appeared, it did not have the power to levy taxes, pass laws governing the conduct of citizens, or administer "such normal functions of government as the maintenance of streets, the operation of schools, or sanitation, health, or welfare services."\textsuperscript{312} Second, the Court considered the water districts permitted by the Arizona statute to be "essentially business enterprises, created by and chiefly benefiting a specific group of landowners."\textsuperscript{313} Thus, the "nominal public character" of the districts was not enough to "transform it into the type of governmental body for which the Fourteenth Amendment demands a one-person, one-vote system of election."\textsuperscript{314} Finally, the sheer size of the districts' operations was not itself a valid reason to apply the One-Person, One-Vote Doctrine.\textsuperscript{315} Building on the second

\footnotesize

\textsuperscript{305. \textit{Salyer}, 410 U.S. at 731. On the same day \textit{Salyer} was decided, the Court issued a brief per curiam opinion upholding a Wyoming law allowing the creation of watershed improvement districts. District projects were financed through special assessments. As in \textit{Salyer}, the fact that the assessments operated as liens on the assessed property was sufficient to support a finding that the law disproportionately affected those owning property within the districts. \textit{Associated Enter., Inc. v. Toltec Watershed Imp. Dist.}, 410 U.S. 743, 744 (1973).

In dicta, the Court made some interesting statements in response to a dissenting opinion filed by Justice Douglas. Justice Douglas argued that the challenged law gave wealthy landowners the sole authority to make certain important land management decisions. The Court responded by noting that the challenged law had been passed by a state legislature in which all electors, regardless of their status as property owners, had a chance to participate in the political process. Likewise, because the districts could only be formed upon a sufficient finding by a county board of supervisors, non-property owners retained political representation through such popularly elected supervisors. \textit{Id.} at 744-45.


\textsuperscript{307. \textit{Id.} at 365.

\textsuperscript{308. \textit{Id.} at 357.

\textsuperscript{309. \textit{Id.} at 365.

\textsuperscript{310. \textit{Id.} at 365-66.

\textsuperscript{311. \textit{Id.} at 366.

\textsuperscript{312. \textit{Id.}

\textsuperscript{313. \textit{Id.} at 368.

\textsuperscript{314. \textit{Id.}

\textsuperscript{315. \textit{Id.} at 370.
point, the Court stated, "no matter how great the number of nonvoting residents buying electricity from the District, the relationship between them and the District's power operations is essentially that between consumers and a business enterprise from which they buy."316

Ball represents a quantum leap in the local government exception as initially conceived in Salyer. The Court's conclusion that the district activity involved in Ball disproportionately affected property owners was quite dubious.317 Nevertheless, this Court's holding demonstrates the fact that it has shifted away from the sweeping pronouncements it once issued in cases like Kramer. To the extent that any of the early One-Person, One-Vote cases suggest that any selective distribution of the franchise is constitutionally impermissible, Ball suggests otherwise.

d. Recap: The Shifting Models of Local Government

Professor Briffault asserts that the Supreme Court's decisions in Salyer and Ball reflect its adoption of a proprietary model of local government in cases involving the distribution of voting rights for certain special purpose districts.318 According to his characterization, "[t]he proprietary model underscores the continuing power of the idea . . . that those who have the primary financial stake in local operations ought to have a controlling voice in governance decisions."319 This contrasts with the democratic model, at work in the court's Kramer, Cipriano and Kolodziejski cases, which holds that all distributions of the franchise must serve compelling governmental needs and be strictly drawn to achieve such needs. The problem with this bifurcated approach, Briffault argues, is that the factors which separate the two models are analytically unsound and often difficult to apply.320

Under the test announced in Salyer and Ball, the local government exception applies to special-purpose units of government whose activities disproportionately affect certain individuals more than others.321 According to Briffault, the special-purpose government criterion is arbitrary.322 The distinctions the Court has made between which powers are general and which are limited, for instance between the storage and distribution of water (limited purpose) and "sanitation, health or

316. Id.
317. See Laurence Tribe, American Constitutional Law § 13-4, at 1068 n.19 (2d ed. 1988) (stating that "[t]he Court's conclusion that the district's activities disproportionately affected landowners seems doubtful").
319. Id. at 360.
320. See infra notes 322-25 and accompanying text (discussing Professor Briffault's criticisms of the Salyer/Ball tests).
321. See supra Part VI.A.2.e (discussing this test in the context of its origin in the Salyer and Ball cases).
322. Briffault, supra note 318, at 370.
welfare services" (general purpose), are quite tenuous. Likewise, Briffault believes that the disproportionate impact criterion is a product of circular reasoning. Whether the Court believes that a disproportionate impact exists depends on whether the Court is willing to base its analysis on the notion that the costs of taxes, bonds or assessments levied on property are passed through to lessees and consumers. When the Court has used the democratic model, it has accepted this notion. When the Court has applied the proprietary model, on the other hand, it has ignored this notion. The problem with this approach is that the notion of pass-through economics is something that should drive the analysis, not something that is applied or rejected based upon which model the Court adopts. In this respect, the disproportionate impact criterion is entirely tautological.

This distinction between the proprietary and democratic models of local government is aptly demonstrated by the California Supreme Court's decision in Southern California Rapid Transit District v. Bolen, discussed below.

323. Id. at 375. Briffault notes that there are over 3,000 local governments that address water management functions. Id. at 374. "How can governmental activity so widespread not be a normal function of government?" he argues. Id. In sum, Briffault's view is that this criterion is based not on any genuine theory distinguishing general and special governmental functions, rather, it is based on a "laundry list" of things the court has construed to be general. Id. at 373.

Briffault also criticizes the distinction that has arisen in this regard between taxes and assessments. He notes that some courts have come to see the assessment/taxation distinction as critical—with the power of taxation connoting general governmental powers and the power to levy assessments connoting the existence of a special purpose governmental unit. Id. at 373. But both powers are coercive and are effected through compulsory charges without the consent of the payor, he argues. Id. Moreover, both have historically been used to finance the construction and maintenance of public improvements and infrastructure. Id. at 373-74. For these reasons, he believes that "assessments are as governmental as taxation." Id. at 374. But compare Part III.A, for a discussion of the legal differences between taxes and assessments and Part IV, explaining the logic of California courts which held that assessments and taxes were distinct for purposes of the constitutional restrictions imposed by Proposition 13.

324. Briffault, supra note 318, at 370.
325. See id. at 371 (stating that, [i]he local democracy cases utilize an expansive definition of economic impact and assume that those who initially pay local government taxes or assessments will pass those costs on to others so that the incidence of local financing is diffused throughout the community . . . . Few, if any, can maintain that they are so disproportionately affected by local action as to justify a representative scheme that benefits them.

The proprietary model's method of assessing impact, as exemplified in Salyer and, especially, Ball is to consider only those who bear the economic burdens of the local government's actions, not those whose sole interests is in its services.) (emphasis added)

326. See supra Part VI.A.2.b (discussing the Kramer line of cases in which these things were factored in to the analysis).
327. See supra Part VI.A.2.c (explaining the rationale of the Salyer and Ball cases).
329. Professor Briffault believes Bolen "nicely illustrates the difficulty of determining whether a particular local election falls within the democratic or the proprietary paradigm." Briffault, supra note 315, at 377.
B. The Doctrine Applied in California: Southern California Rapid Transit District v. Bolen

In 1992, the California Supreme Court applied the One-Person, One-Vote framework in a case involving special assessments levied to finance a rapid transportation system in Los Angeles. In Southern California Rapid Transit District v. Bolen, the court upheld a statutory scheme that limited the right to vote on assessments proposed by a specially created regional transportation agency to those who would be subject to the assessments. This agency, the Southern California Rapid Transportation District ("SCRTD"), served as the "lead agency for the construction, financing, and operation of a comprehensive mass rapid transit system in the southern California area . . . "). SCRTD was permitted to create special assessment districts to finance the various projects it undertook. The litigation of this case concerned two assessment districts created in Los Angeles. Both districts were to be used to collect assessments only from commercial property owners benefited by the projects. Thus, under the statute, residential homeowners as well as those who lived in, but did not own, property within the district would have been prohibited from voting in any referendum called to approve the district assessments.

The threshold issue for the court was which standard of review to apply to the challenged assessment scheme. In a footnote, the court addressed this issue by "reject[ing] at the outset the proposition that the principle of Reynolds . . . is triggered simply because a limited class of those otherwise qualified to vote is enfranchised by the voting scheme in issue." Characterizing the language in early One-Person, One-Vote decisions like Kramer as "sweeping," the court went on to note that some of the United States Supreme Court's "later cases [i.e., Salyer and Ball] have undermined that proposition to such an extent that it fairly can be

332. Id. at 659, 822 P.2d at 877, 3 Cal. Rptr. at 845 (quoting CAL. PUB. UTIL. CODE § 33001(a) (West Supp. 1998)).
333. Id. at 660, 822 P.2d at 877, 3 Cal. Rptr. at 845. See CAL. PUB. UTIL. CODE § 33001 (West Supp. 1998) (providing that the SCRTD may create benefit assessment districts for the purposes of levying special transportation assessments). See also id. § 33000 (West Supp. 1998) (declaring that "it is necessary and in the best interest of the citizens of the state to authorize the [SCRTD] to levy special benefit assessments for needed public rail rapid transit facilities and services on the property which benefits from those facilities and services").
334. Bolen, 1 Cal. 4th at 662, 822 P.2d at 878, 3 Cal. Rptr. 2d at 846.
335. Id. at 660, 822 P.2d at 877, 3 Cal. Rptr. 2d at 845.
336. See CAL. PUB. UTIL. CODE § 33002.1-33002.2 (West Supp. 1998) (stating that the SCRTD board need not hold an election among voters unless a petition is submitted by owners representing at least 25% of the assessed value of the real property within the assessment district); id. § 33302.3 (West Supp. 1998) (defining "voter," for purposes of these election requirements, as "an owner of real property which is assessed or proposed to be assessed under this chapter and which is in the boundaries of the benefit district").
337. Bolen, 1 Cal. 4th at 665 n.4, 822 P.2d at 880 n.4, 3 Cal. Rptr. 2d at 848 n.4.
doubted to be the rule." With this view of the High Court's One-Person, One-Vote jurisprudence in mind, the court then proceeded to apply the Salyer and Ball framework to determine whether the Reynolds principle applied, requiring strict scrutiny, or whether the local government exception applied, requiring only rational basis review. Because the assessments in question were to be levied by a "special purpose unit of government" whose activity "primarily affected" only those eligible to vote, the court concluded that the assessment election schemes in question qualified for rational basis review under the local government exception.

The court had little difficulty finding that the special purpose unit of government criterion was satisfied despite the rather broad powers of the SCRTD. This is because the court chose the assessment districts, not the SCRTD, as the governmental unit implicated by the One-Person, One-Vote Doctrine. Having construed the issue this way, it was easy to argue that the assessment districts were not the type of body "invested with . . . powers remotely similar to the 'general governmental powers' to which the principle of Reynolds . . . presumptively applies." The districts lacked any indicia of governmental powers because "they [were] little more than formalistic, geographically defined perimeters whose raison d'etre [was] to serve as the conceptual medium for the recognition of economic benefits conferred and the imposition of a corresponding fiscal burden."

Justice Kennard, dissenting, characterized this reasoning as "fundamentally erroneous" and "senseless." She noted that the SCRTD was not the only responsible for imposing and collecting the special assessments, but also for conducting any referendum called on the issue of the approval of the assessments. The assessment district, on the other hand, "[had] no governing body, no employees, and no powers or responsibilities [and was] not a public entity." Since, in her view, the SCRTD was the body properly implicated by the doctrine, strict scrutiny should have applied. Citing Salyer, Kennard noted that the Supreme Court has construed the provision of transportation as a general governmental power requiring adherence to the Reynolds principle.

Notwithstanding this objection, the court next concluded that those not enfranchised by the voting scheme in issue were not sufficiently as interested in the issue here are not invested with and do not exercise powers remotely similar to the 'general governmental powers' to which the principle of Reynolds . . . presumptively applies.

338. Id.
339. Id. at 665, 822 P.2d at 880, 3 Cal. Rptr. 2d at 848.
340. Id. at 675, 822 P.2d at 887-88, 3 Cal. Rptr. 2d at 855-56.
341. See id. at 669, 822 P.2d at 883, 3 Cal. Rptr. 2d at 851 (declaring: "[M]anifestly, the benefit districts at issue here are not invested with and do not exercise powers remotely similar to the 'general governmental powers' to which the principle of Reynolds . . . presumptively applies.").
342. Id. at 670, 822 P.2d at 884, 3 Cal. Rptr. 2d at 852.
343. Id. at 669, 822 P.2d at 883, 3 Cal. Rptr. 2d at 850.
344. Id.
345. Id. at 685, 822 P.2d at 894, 3 Cal. Rptr. 2d at 862 (Kennard, J., dissenting).
346. Id.
347. Id.
348. Id.
349. Id. at 684, 822 P.2d at 894, 3 Cal. Rptr. 2d at 862 (citing Salyer, 410 U.S. at 728-29).
come of assessment referendums as those permitted to vote.\textsuperscript{350} To support this conclusion, the court argued that non-property owners could no more claim to have been affected by the voting scheme than could anyone else living in metropolitan Los Angeles who would use the public transportation system provided.\textsuperscript{351} Moreover, unlike the bonds involved in \textit{Cipriano} and \textit{Kolodziejski}, the economic burdens of the transportation assessments would fall exclusively and directly on those commercial owners enfranchised by the voting scheme.\textsuperscript{352} No costs would be shifted to non-property owners or residential property owners.\textsuperscript{353}

Once the \textit{Salyer/Ball} criteria were satisfied, the court upheld the statute on rational basis grounds. The court believed,

\begin{quote}
[t]he Legislature reasonably could have permitted the exclusion of [non-owners and residential property owners] on the obvious ground that limiting voting to those who will directly bear the cost of the assessments is demonstrably fairer or more equitable than including those whose affirmative vote carries no personal financial consequences or risk.\textsuperscript{354}
\end{quote}

In sum, with its emphasis on the assessment districts and not the government imposing them, \textit{Bolen} is indicative of a transformation in the local government exception to the One-Person, One-Vote Doctrine. As Professor Briffault notes,

\begin{quote}
\textit{Bolen} underscores the significance of \textit{Ball} in extending the proprietary model from the sparsely populated, exclusively agricultural setting of \textit{Salyer}, where there may be no general purpose local government with powers adequate to the task, to metropolitan areas where the service or facility in question could be provided by a democratically elected government.\textsuperscript{355}
\end{quote}

\section*{C. Are Proposition 218's Assessment Approval Requirements Constitutional?}

Proposition 218 provides, "[b]ecause only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed . . . to have been deprived of the right to vote for any assessment."\textsuperscript{356} It is obvious from the inclusion of this language that the drafters of Proposition 218

\textsuperscript{350} \textit{Id.} at 673, 822 P.2d at 886, 3 Cal. Rptr. 2d at 854.
\textsuperscript{351} \textit{Id.}
\textsuperscript{352} \textit{Id.}
\textsuperscript{353} \textit{See id.} at 674, 822 P.2d at 887, 3 Cal. Rptr. 2d at 855 (rejecting the argument that lessees would receive pass-through economic treatment from the assessments levied on property owners as appropriate to the analysis by noting that consumers would also receive such pass-through treatment in the price of the goods and services they pay for).
\textsuperscript{354} \textit{Id.} at 676, 822 P.2d at 888, 3 Cal. Rptr. 2d at 856.
\textsuperscript{355} Briffault, \textit{supra} note 318, at 380.
\textsuperscript{356} \textsc{Cal. Const.} art. XIII D, § 4(g).
foresaw a possible One-Person, One-Vote challenge to the initiative. For this reason, they included a savings clause which requires that assessments shall be approved by a two-thirds vote of the local electorate in addition to being approved by property owners if the assessment approval provisions of Proposition 218 are held unconstitutional.

Applying the teaching of the cases discussed above, and in particular, the California Supreme Court’s decision in *Bolen*, two questions must be asked to determine what level of equal protection scrutiny would apply to the assessment provisions contained in Proposition 218. First, are local governments acting under Proposition 218 vested with only limited governmental powers? Second, are property owners disproportionately affected by assessment proceedings conducted in accord with Proposition 218? If neither question can be answered in the affirmative, we must apply strict scrutiny. If both can be answered in the affirmative, we must determine only if there is a rational basis for Proposition 218. An understanding of which standard will apply is crucial because a court which only has to apply the rational basis test will inevitably have little trouble upholding the new assessment approval provisions.

When put through this analysis, it is hard to escape the conclusion that a court can easily answer both questions in the affirmative and uphold Proposition 218 on rational basis grounds. This is primarily because of the *Bolen* court’s emphasis on construing the assessment districts as the governmental bodies implicated by the One-Person, One-Vote Doctrine and Proposition 218’s restrictive definitional and proportionality requirements pertaining to special benefits.

1. **Does the Local Government Exception Apply?**

   a. **Are Local Governments Acting Under Proposition 218 Vested with “General Governmental Powers?”**

   Under Proposition 218, “local government” is defined to mean “any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.” Essentially, and by design, this

---

357. See, e.g., Ken Ellingwood, *Local Fee Races Discard The Idea of 1 Person, 1 Vote Elections: A Complicated Provision of Proposition 218 Limits Assessment District Balloting to Property Owners*, L.A. TIMES, June 16, 1997, at A1 (noting that the Los Angeles City Council voted to challenge Proposition 218 on the grounds that it denies renters of the right to vote on assessments); *id.* at Al (stating that the city council did not likely have the requisite standing to sue).

358. *CAL. CONST.* art. XIII D, § 4(g).

359. See *supra* note 260 (explaining the deferential rational basis test).

360. *CAL. CONST.* art. XIII C, § 1(b). Though the portion of Proposition 218 dealing with assessments, Article XIII D, uses the term “agency” in lieu of “local government,” Section 2(a) of that Article provides, “[a]gency means any local government as defined in subdivision (b) of Section 1 of Article XIII C.” *id.* art. XIII D, § 2(a). For this reason, “local government” is used throughout this Part instead of “agency.”
definition includes every governmental entity in California short of the state itself. For this reason, the new assessment procedures apply equally to every type of local government in the State—no matter what the size or purpose—from the smallest park and recreation district all the way up to the Los Angeles County Board of Supervisors.

Under this criterion of the One-Person, One-Vote analysis, concern lies with whether the powers possessed by local governments are general, or special and limited in purpose. At first blush, Proposition 218 would appear to apply to both types of governments. Because of its exhaustive definition of “local government,” one would assume, quite logically, that the hypothetical park and recreation district mentioned above would qualify as one which possesses limited powers, and the Los Angeles County Board of Supervisors would qualify as a governmental body which possesses broad, general powers. This distinction is critical because under Salyer and Ball, only limited, special purpose governments are exempt from adherence to the One-Person, One-Vote requirement. Viewed in this manner, Proposition 218 appears to be unconstitutional because it requires the board of supervisors, a governmental body vested with general powers, to conduct assessment proceedings without giving non-property owners a right to vote.

But as the California Supreme Court’s decision in Bolen teaches us, we are to look to the special assessment districts for purposes of applying the One-Person, One-Vote Doctrine, not at the governmental bodies which create the districts. Professor Briffault notes that this line of reasoning raises an interesting dilemma:

A referendum on whether to impose an assessment on property to fund public improvements conducted by a general purpose government must be open to all eligible voters . . . . But if the state authorizes the general purpose government to create a special assessment district to assess landowners for the benefits they will receive from the public improvements that will be funded by the assessment, then as Bolen indicates, the assessment district may be treated as a proprietary government. [Kolodziejski] may be avoided by the creation of a local entity whose sole

---

362. The first prong of the Salyer/Ball formulation is to determine whether a local government is one which possesses general powers. See supra Part VI.A.2.c (explaining the derivation of this prong of the test in the Salyer and Ball cases).
363. See supra Part VI.A.2.c (explaining Salyer and Ball).
364. Of course, the fact that Proposition 218 implicates governmental bodies exercising general powers is not enough, standing alone, to invalidate the initiative. It is still entitled to equal protection review under the strict scrutiny test. But as the decisions in Kramer, Cipriano, and Kolodziejski make clear, once the Court applies strict scrutiny, it is very doubtful that it will uphold laws which selectively distribute the franchise. See supra Part VI.A.2.b (explaining this line of cases).
365. See supra notes 341-44 and accompanying text (explaining this reasoning of the Bolen opinion).
Thus, the appropriate question for determining whether this criterion of the doctrine is satisfied is whether Proposition 218 requires the creation of districts through which assessments are collected. If it does, then no matter which unit of local government acts in accord with its provisions, no matter its size or the degree of powers vested in it, the district will qualify under the local government exception for rational basis review. If it does not, and a set of facts can be shown whereby an assessment is levied by a local government exercising general governmental powers, we may proceed with strict scrutiny review if the voting scheme in question does not meet the next prong in the analysis—the “disproportionate effect” criterion. While the language of Proposition 218 lacks clarity on this issue, it appears to require that all local governments seeking to impose assessments do so by creating assessment districts.

This requirement is not spelled out in Proposition 218 as it is in other special assessment schemes. For example, the Improvement Act of 1911 provides that “[t]he legislative body shall make the expense of such work [that will be the subject of the assessment] chargeable upon a district, which the legislative body shall . . . declare to be the district benefited by the work, and to be assessed and to pay the cost and expense thereof.” Similarly, the statute upheld by the Bolen court states that “[w]henever the [SCRTD] board finds that property . . . will receive special benefit . . . the board may . . . provide for notice and hearing of its intention to establish . . . special benefit districts and to levy a special benefit assessment on real property therein.” In these statutes, the formation of a district is a condition precedent to the levy of assessments. In contrast, no such explicit statement is contained in the text of Proposition 218.

Despite the absence of an explicit requirement that a district be created, the word “district” appears throughout Section 4 of Article XIII D, which sets forth all of the procedures and requirements pertaining to assessments. Subdivision (c) provides that notice of the proposed assessment must contain information regarding the “total amount [of the assessment] chargeable to the entire district.” Subdivision (d) then requires that notice mailed to “parcels within the district” include a ballot with appropriate information. Subdivision (g) purports to address the One-Person, One-Vote issue by stating that “electors residing in the district who do not own property within the district shall not be deemed” to be deprived of their rights.

367. See infra notes 370-73 and accompanying text (explaining the use of the word “district” in the procedural requirement section of Proposition 218 and its definition).
370. CAL. CONST. art. XIII D, § 4(c) (emphasis added).
371. Id. § 4(d) (emphasis added).
under One-Person, One-Vote standard. Finally, subdivision (a) states that "[p]arceIs within a district" owned by the state or federal government shall not be exempt from an assessment. Thus, while there is no explicit statutory provision which requires that a district be formed as a condition precedent to the levy of an assessment, such a requirement can be safely implied based on the use of the word "district" in the five places above.

This conclusion is bolstered by the fact that the drafters of Proposition 218 actually took care to define the term "district." By its definition, "district" means "an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service." As discussed in Part V, special benefits to the assessed property are the essential justification upon which assessments may be imposed under Proposition 218. Therefore, the word "district," as used in Proposition 218, serves as the geographical medium which defines the area of properties whose special benefit justifies the imposition of the assessment.

In sum, despite a lack of clarity in drafting, this definition and the use of the term throughout the procedural requirements contained in Section 4 indicate that Proposition 218 requires the formation of a district as a condition precedent to the levy of an assessment. In accord with Bolen, this assures that any challenge to the assessment provisions of Proposition 218 will be analyzed not under Reynolds, but under the local government exception as defined by Salyer and Ball. The reason for this, as the Bolen court asserted, is because "assessment districts lack virtually any of the incidents of government . . ." and are "little more than formalistic . . .

372. Id. § 4(g) (emphasis added).
373. Id. § 4(a) (emphasis added).
374. Id. § 2(d).
375. See supra Part V.A (discussing the centrality of the requirement of special benefits to assessed property under Proposition 218).
376. At the very least, the language of Section 4(e) and the definition of "district" would seem to authorize the formation of a district before an assessment is levied, even though it may not require that one be created. If this were the case, there might be a valid One-Person, One-Vote challenge if a local government exercising general governmental powers levied an assessment without first creating a district. That is, since the existence of districts appeared to be the dispositive issue in Bolen, and since, in this hypothetical scenario there is no district, we would assume that the Reynolds principle applies. After all, the Bolen court did suggest that the SCRTD was the type of governmental body that exercised general powers. See Southern Cal. Rapid Transit Dist. v. Bolen, 1 Cal. 4th 654, 670, 822 P.2d 875, 884, 3 Cal. Rptr. 2d 843, 852 (1992) (noting that "[t]he transit district itself, of course, is invested with and exercises substantial governmental powers."). But it instead chose to draw the line based on the assessment districts it had levied.

This scenario should underscore the artificiality of the line drawn by the Bolen court between the assessment districts and the governing bodies which create them. If we could find a scenario like the one envisioned above, then at least if the courts stick to precedent (which the jump from Kramer to Salyer and then Ball indicates has not been done in this area of law) we have a valid One-Person, One-Vote claim. On the other hand, if the local government first created a district before levying an assessment, we do not have a valid One-Person, One-Vote claim. This distinction is really nothing more than form over substance.

Whether the One-Person, One-Vote Doctrine is implicated by Proposition 218 should not turn on whether the assessment is first levied by a district. The essential factor should be that Proposition 218 creates a "one-size-fits-all" standard for every local government in California. Instead, applying the Bolen rationale, we have to treat a small park district the same as we would treat the Los Angeles County Board of Supervisors.
perimeters whose *raison d'etre* is to serve as the conceptual medium for the recognition of economic benefits conferred." For this reason, they are not the type of governmental units implicated by the strict demands of the *Kramer*, *Cipriano*, and *Kolodziejski* line of cases.

**b. Are Property Owners Disproportionately Affected by Assessment Proceedings Conducted in Accord With Proposition 218?**

The next criterion of the *Salyer/Ball* formulation requires the determination of whether Proposition 218 empowers only those individuals disproportionately affected by special assessments to vote on the assessments. A plausible argument stands to be made that those leasing property who are not responsible for property taxes are interested in elections conducted under Proposition 218 because of pass-through taxation. But it should be remembered that Professor Briffault has characterized this criterion of the *Salyer/Ball* test as tautological. A pass-through argument would not drive the analysis, he argues, rather its relevancy would either be accepted or rejected based on the court's preference. The same is true for any other interests we would put forth in defense of the right of non-property owners to vote. Because of the circular nature of this criterion, the real analysis under the One-Person, One-Vote Doctrine lies not here, but under the governmental powers criterion. *Salyer*, *Ball* and *Bolen* make clear that once a court has concluded that a government is one which is limited in purpose, it will almost inevitably find that the activities of such governments disproportionately affect property owners vis-a-vis non-property owners. In this regard, analysis under this criterion really collapses into the analysis of the first criterion. If a court does not believe a government is one which exercises general powers, it is unlikely to be persuaded that non-property owners are sufficiently interested in the outcome of elections. Conversely, if a court finds that a government is one which does exercise general powers, it will likely accept the argument that non-property owners are sufficiently interested in the outcome of elections as in *Kramer*, *Cipriano* and *Kolodziejski*.

Assuming, therefore, that a court would conclude that Proposition 218 implicates governments exercising general governmental powers, the argument against Proposition 218 under this criterion of the analysis is far less persuasive than that made against the scheme upheld in *Bolen*. This is because Proposition 218 significantly narrows the scope of improvements which local governments may now finance through special assessments. Under the new requirements, only special benefits to property are assessable and special benefits are calculated on a strict

---

377. *Bolen*, 1 Cal. 4th at 669, 822 P.2d at 883, 3 Cal. Rptr. 2d at 851.
378. See supra notes 322-25 and accompanying text (discussing Professor Briffault's labeling of the "primarily interested" criterion as circular).
379. See supra notes 322-25 and accompanying text (explaining Professor Briffault's argument in this regard).

891
1998 / Special Assessment Law Under California's Proposition 218

basis of proportionality.\textsuperscript{380} No such requirements existed at the time the court upheld the scheme in \textit{Bolen}.\textsuperscript{381}

As discussed in Parts III and V, the power of local agencies to levy assessments was not so strictly confined before Proposition 218.\textsuperscript{382} Local governments could assess property for general as well as special benefits.\textsuperscript{383} In contrast, the Legislative Analyst's Office notes that the new special benefit requirements under Proposition 218 "will mean that programs that benefit people, rather than specific properties—such as libraries, mosquito abatement, recreation programs, police protection, and some business improvement programs—must be financed by general or special taxes or by other nonassessment revenues."\textsuperscript{384} These new requirements prevent local agencies from imposing what the drafters of Proposition 218 believe have become parcel taxes.\textsuperscript{385} Bolstered by court decisions holding that Proposition 13's tax limitation and voter approval requirements did not apply to assessments, they assert that local governments turned to assessments not just for the purpose of recovering the cost of the special benefits to the property assessed, but for financing general public benefits as well. Using the terminology of the Legislative Analyst's Office, this meant that prior law allowed local governments to assess property for "programs that benefit[ed] people, rather than specific properties."\textsuperscript{386}

Proposition 218 puts an end to this. Whereas before, the public may have been able to claim an interest in the type of improvements that local governments could finance through assessments, the restrictive definition of special benefits and the strict requirement of proportionality under Proposition 218 have likely cut off any equivalent public interest under the new assessment requirements.\textsuperscript{387} In \textit{Bolen}, the court had little trouble concluding that the property owners enfranchised by the transportation assessment scheme there were decidedly more interested than those not enfranchised.\textsuperscript{388} But the scheme upheld by the \textit{Bolen} court did not have special benefit requirements as restrictive as those under Proposition 218. That is, the SCRTD scheme did not contain the same narrow definition of special benefits and strict requirement of proportionality as does Proposition 218. This means that under

\textsuperscript{380} See supra notes 194-95 and accompanying text (explaining this requirement of Proposition 218).
\textsuperscript{381} CAL. CONST. art. XIII D, § 4(a).
\textsuperscript{382} See supra Part III.B.1 (noting that there is no strict requirement of proportionality under traditional special assessment law); Part V.A.1 (explaining the ways in which Proposition 218 narrows the traditional definition of special benefits).
\textsuperscript{383} See HILL, supra note 191, at 24-25 (noting that Proposition 218 represents a major shift from prior assessment law, "when local governments could recoup from assessments the costs of providing both general and special benefits").
\textsuperscript{384} Id. at 33.
\textsuperscript{385} See supra note 129 and accompanying text (discussing the argument by the drafters of Proposition 218 that assessment law prior to Proposition 13 allowed local governments to impose parcel taxes).
\textsuperscript{386} HILL, supra note 191, at 33 (emphasis added).
\textsuperscript{387} See CAL. CONST. art. XIII D, § 4(a) (providing that only special benefits to assessed property are assessable and requiring that assessments be proportionally levied to the amount of benefit received by each property).
\textsuperscript{388} See Bolon, 1 Cal. 4th at 674-75, 822 P.2d at 887, 3 Cal. Rptr. 2d at 855 (noting that the court believed "that recognition of the indirect and secondary effect on [those not enfranchised under the SCRTD scheme] smacks too much of 'house that Jack built' casuistry to support constitutional determinations").
Proposition 218, the threshold between the interests of the public and the interests of those owning property has widened since *Bolen*. Thus, it follows that if the California Supreme Court easily concluded that this criterion of the *Salyer/Ball* formulation was met in *Bolen*, it would have even less trouble concluding that this criterion would be met in a challenge to Proposition 218.

In sum, neither this criterion nor the general governmental powers criterion require that Proposition 218 adhere to the strict demands of the One-Person, One-Vote Doctrine. Instead, the exception to the doctrine as defined by *Salyer* and *Ball* would apply to any challenge made against the new assessment approval provisions.

2. **Equal Protection Analysis Under the Appropriate Level of Scrutiny**

Because the *Salyer/Ball* analysis leads to the conclusion that the local government exception to the One-Person, One-Vote Doctrine would apply, any challenge to Proposition 218's assessment approval provisions would have to proceed under the rational basis test. Under this relaxed standard of review, a court would be concerned only with whether the new assessment voting requirements are not "wholly irrelevant" to the objectives Proposition 218 seeks to further. Under this analysis,

[the question whether the voting classification meets that constitutional standard is one that we examine in the abstract; it is not whether we would authorize the same exclusions were we the Legislature, but whether 'any state of facts reasonably may be conceived to justify' a voting scheme limiting the franchise to owners of record of . . . real property located within the benefit districts.]

The purpose of Proposition 218 was to stop "politicians' end-runs around Proposition 13." Dubbed the "Right to Vote on Taxes Act," its drafters sought to reverse the principal decisions of *County of Fresno v. Malmstrom* and *Solvang Municipal Improvement District v. Board of Supervisors*, which, in their opinion, created "loopholes" in California's landmark tax-revolt initiative. Prior to Proposition 218, majority protest procedures under traditional special assessment law were difficult to invoke. Local governments could therefore impose assessments to circumvent the tax limitation and voter approval requirements of

389. See *supra* note 260 (explaining the rational basis test in contrast to the strict scrutiny test).
390. *Bolen*, 1 Cal. 4th at 675, 822 P.2d at 888, 3 Cal. Rptr. 2d at 856.
391. *Id.* at 675-76, 822 P.2d at 888, 3 Cal. Rptr. 2d at 856.
396. See *supra* Part III.C.3 (explaining traditional majority protest provisions).
Proposition 13 with little notice or objection. In contrast, the right to vote under Proposition 218 is automatic. All proposed assessments must first be sent to property owners for approval or disapproval. In this regard, the ability to use special assessments as a loophole to Proposition 13 has been eliminated. The voting requirement of Proposition 218 is thus rationally related to ensuring that the principle of Proposition 13 is not ignored.

Still, it must be shown that enfranchising only property owners furthers the interest of eliminating the assessment loophole to Proposition 13. This can be done by noting that Proposition 218's narrow definition of special benefits and strict requirement of proportionality dovetail nicely with the requirement that only property owners be allowed to vote on assessments. Taken together, these provisions stand for the proposition that, because nothing more than the precise special benefit to property may be assessed, no one other than those who benefit may vote. Put another way, there is no reason to enfranchise non-property owners since, by definition, they receive no benefits from an assessment. While this argument may be disputed, "in the abstract," at least, it is reasonable. That is all that is required under rational basis review.

VII. CONCLUSION

Proposition 218 is a radical departure from traditional special assessment law. Yet, in a state where voters continue to adhere to notions of a tax "revolt" it is an understandable departure. This is because special assessments became a unique breed after the passage of Proposition 13. While their longstanding legal distinction from taxation could still be invoked, they had, in reality, become a mechanism for circumventing the anti-taxation provisions of Proposition 13. While California courts could plausibly argue that assessments and taxes were different as a legal matter, no public officials could make the same argument while keeping a straight face. Viewed in this respect, Proposition 218 is merely an extension of Proposition 13. It is based on the premise that if politicians cannot be trusted with property taxes, they should not be trusted with special assessments. Either device, unchecked, allows local governments to impose (the perceived) wasteful and excessive charges upon property owners.

397. Ellingwood, supra note 357. at A1. Joel Fox, President of the Howard Jarvis Taxpayers Association states, "[a]ssessment districts were so arcane [under prior law], taxpayers never knew they existed." Id.
398. See CAL. CONST. art. XIII D. § 4(d) (requiring that a ballot be provided to all property owners within a district to be assessed); id. § 4(e) (providing that an agency "shall consider all protests" to a proposed assessment); id. (stating that a majority protest exists if the weighted ballots against a proposed assessment exceed those in favor).
399. Id. § 4(d).
400. See id. § 4(a) (providing that only special benefits to assessed property are assessable and requiring assessments to be levied in proportion to the special benefits to property); id. § 4(g) (declaring that "because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed . . . to have been deprived of the right to vote for any assessment.").

894
The only way to properly attack Proposition 218 is to address the very roots of the initiative. This, of course, means attacking Proposition 13. With the passage of Proposition 218 coming some twenty years after the passage of Proposition 13, however, it is hard these days to even question the hallmark anti-tax initiative. As a member of the Howard Jarvis Taxpayers Association has put it, "no politician in his right mind takes on Prop. 13 directly." Thus, so long as Californians believe it is wise to impose shackles on the taxing power of government, restrictions on the assessment power are not only understandable, but maybe even defensible.

As to the issue Proposition 218 raises regarding the right to vote, the Bolen opinion makes clear that instead of real analysis, the California Supreme Court will determine voting rights based on the artificial distinction between assessment districts and the governments which impose them. Justice Kennard's criticism of the Bolen majority in this regard is quite on point. It is difficult to rationalize the fact that large governments can avoid the strict requirements of the One-Person, One-Vote Doctrine by simply creating assessment districts. This ability is entirely contrary to the initial underpinnings of the doctrine, as set forth by the opinions in Hadley, Avery and Kramer, all of which were particularly skeptical of attempts to dilute or selectively distribute the franchise. Unfortunately, the Bolen rationale, when applied in the context of Proposition 218, will only make things worse. Proposition 218 adopts a one-size-fits-all approach by making its provisions applicable to every local government in the state. If, as this Comment suggests, the initiative requires the formation of assessment districts before assessments may be levied, then neither the size nor nature of local governments will ever be relevant to the analysis. That is, county boards of supervisors as well as the tiniest park district alike will be insulated from attack when voting rights are at issue. One must question the wisdom of this anomalous result.

401. Martin, supra note 24, at 15.
402. See supra Part VI.B (discussing the rationale employed in the Bolen opinion).
403. See supra notes 345-49 and accompanying text (explaining this criticism).
404. See supra Part VI.A.2.a-b (analyzing these cases).
405. See supra note 360 and accompanying text (setting forth the definition of "local government" under Proposition 218).