

Prop. 13 Decision Fails To Rule Out Future Court Battles

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The questions left by any appellate court decision are not only what does it mean for now but what does it mean for the future.

Friday's decision by the State Supreme Court upholding the constitutionality of Proposition 13 leaves the last few months in California intact. The tax cuts mandated by the constitutional amendment enacted by Proposition 13 will remain. That seems to take care of the present and the future.

However, because Proposition 13 carries with it legal and political complexities, the future is not entirely clear.

Justice Frank K. Richardson, writing for the court's majority, acknowledged that the amendment still has a future in the state courts.

Parts of it are imprecise and ambiguous, he admitted, but "we do not conclude that it is so vague as to be unenforceable. Rather, in the usual manner, the various uncertainties and ambiguities may be clarified or resolved" by administrative procedures, the legislature or the courts.

The political future, of course, is not mentioned in the majority opinion. But the ruling is expected to have an

effect on voters this November when they are asked to confirm Richardson and three of his colleagues on the high court.

Indeed, the most beleaguered of the four — Chief Justice Rose Elizabeth Bird — seemed to allude to the case's political implications in her concurring and dissenting opinion.

"This is a case of close issues on

Analysis

which reasonable people may differ," she wrote. "Emotions run high, but as judges we must follow the law and do what it requires."

Then, quoting a 19th century justice of the U.S. Supreme Court, she said judges "have nothing to do, but to pronounce the law as we find it; and having done this, our justification must be left to the impartial judgment of our country."

In this case, as with most cases decided by the California Supreme Court, all seven justices pronounced the law the same way — with one skillfully argued exception advanced by Ms. Bird.

They all focused, for example, on the most obvious purpose and effect of the measure — property tax relief.

Viewing the amendment from that perspective, the court was able to decide that it did not revise the state constitution and did not deal with more than one subject.

What the court did not deal with here is the fact that Proposition 13 radically alters the way government in California earns its money. That problem, quite properly, is left to the other branches of government.

The court also deals with the possibility that Proposition 13 could cause a loss of local control but finds no evidence of it. That conclusion seems to ignore the strings that the state attached to the bail-out money turned over to cities, counties, and special districts recently.

All seven justices also agreed that the title and summary describing the proposition to voters complied with the law.

"Though technically imprecise," the court said, the title and summary "substantially complied with the law, and we doubt that any significant number of petition signers or voters were misled."

On this question the court noted that "the initiative measure was extensively publicized and debated," suggesting that extensive public airing,

along with a corrected summary, cured earlier imprecisions.

Oddly enough, extensive publicity in a setting where the court expects all considerations to be confined to what is officially available in the courtroom could be fatal.

The justices could not agree about

The ruling ignores state strings attached to bail-out money

the impact of the amendment's rollback provisions. Those provisions direct assessors to set property values at their full cash value as of the 1975-76 tax bill. From that point forward, property values may not increase by more than 2 percent.

However, the measure does provide for appraising property above the 1975-76 figure if it changes hands or is built after the base year. In those cases the assessment is fixed as of the time of sale or construction and then is increased by no more than 2 percent until the property again changes hands.

Six of the justices felt this approach was legitimate and did not violate the equal protection clause.

"So long as a system of taxation is supported by a rational basis, and is not palpably arbitrary, it will be upheld despite the absence of a precise, scientific uniformity of taxation," Richardson wrote for the majority.

He noted that the amendment switches California from the current valuation system of assessing property to an acquisition value system.

Under this analysis all property owners are treated the same because no matter when they get the property their taxes are based on its acquisition price. The majority found this

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

They went on to note that "the fact that two taxpayers may pay different taxes on substantially identical property is not wholly novel to our general taxation scheme. For example, the computation of sales tax on two identical items may vary substantially, depending upon the exact sales price and the availability of a discount."

Chief Justice Bird took an entirely different tack, saying the amendment "creates an irrational tax world where people living in homes of identical value pay different property taxes."

The Bird position divides property taxpayers into two classes — pre- and post-1975 purchasers — and divides

It appears the justices' political fortunes are fairing well

the taxing scheme into an acquisition value system and a 1975 market value system. Thus, she wrote, the amendment imposes "artificial distinctions upon equally situated property owners."

No one has shown that this scheme benefits the general public, she argued, and therefore it should be struck down as a violation of the federal constitution's equal protection guarantees.

She cited a U.S. Supreme Court case in which tax rates on property were the same but "the assessed values themselves do not accurately reflect the market values of property."

This has the effect... of taxing identically situated property owners at different percentages of the true value of their property."

In another part of her opinion, Ms. Bird points out that reassessments also will occur when there is an involuntary change in ownership.

When the family home is inherited, a spouse acquires property after a divorce, a military family moves or someone rebuilds after property is destroyed in a natural disaster, there will be a reassessment.

"There is no rationality to the jump in valuation that accompanies these occurrences," she said. And, as if in response, the majority noted that it would resolve "the proper application of article XIII A to involuntary changes in ownership or new construction" at some later date.

The sizeable majority supporting this decision leaves the counties and

The case could still go to the US Supreme Court

school district that filed the suit little hope of changing the court's mind by asking for a rehearing.

It does not eliminate the possibility of going to the U.S. Supreme Court on the federal constitutional questions raised by the case. One of those, of course, involves the equal protection issue. Another is a due process argument that the court seems to have ignored, although it was raised by the school districts.

For now, at least, the constitutional amendment enacted by Proposition 13 is alive and well in California. It also would appear that the political fortunes of the four justices — Richardson, Bird, Wiley Manuel and Frank Newman — who go before voters this November — also are faring well.

Richardson wrote a sound opinion supporting a popular change in the state's system of property taxation.

Voters will be hard-pressed to complain about it.

If they complain at all, it would appear that Ms. Bird, because of her partial dissent, will be their target. And that seems unlikely because her position does not impinge directly on the thing voters wanted most — less taxes.

It simply argues that everybody ought to be treated the same. That ought to be acceptable to most people — at least in the area of property taxes.

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