

# *Silicon Valley Taxpayers Association: Local Voters, State Propositions, and the Fate of Property Assessments*

Michael J. McCarthy<sup>†</sup>

Since 1978, fiscal limitations imposed by the California Constitution have curbed the ability of local governments to raise revenue.<sup>1</sup> Recently, the California Supreme Court made one of the most important of these limitations even more restrictive. In *Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority*,<sup>2</sup> the court held that a property assessment intended to fund open space land acquisition and preservation did not meet Proposition 218's procedural and substantive requirements.<sup>3</sup> By eliminating the deferential standard of review traditionally accorded to this type of agency determination, *Silicon Valley* privileges state voters over local voters and elevates fiscal limitation to the level of core California constitutional issues. Although the court based its decision on the voters' expressed intent to limit property taxes—as demonstrated in two popular voter initiatives—the decision's departure from conventional jurisprudence will permanently constrain the ability of local governments in California to fund essential programs.

In 1996, California voters passed Proposition 218 to “protect[] taxpayers by limiting the methods by which local governments exact revenue from

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<sup>†</sup> Associate, Cleary Gottlieb Steen & Hamilton LLP; J.D., University of California, Berkeley, School of Law, 2009; M.Phil., Oxford University, 2002; B.A., Fordham University, 1999. The author would like to thank Professors Michelle Anderson, Jesse Choper, and John Yoo.

1. CAL. CONST. arts. XIII A, XIII D; see also Richard Briffault, *The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 RUTGERS L.J. 907, 909 (2003) (“By giving priority to taxpayers over service recipients, [fiscal constitutional] provisions can make it more difficult for states and localities to raise funds to finance public services.”); Kirk J. Stark, *The Right to Vote on Taxes*, 96 NW. U. L. REV. 191, 192 (2001) (describing how Proposition 13, a fiscal limitation approved by California voters in 1978, “rocked the state’s system of local public finance, transforming the way cities, counties, and school districts are funded”).

2. 187 P.3d 37 (Cal. 2008).

3. *Id.* at 41; see CAL. CONST. art. XIII D.

taxpayers without their consent.”<sup>4</sup> This amendment, codified as Article XIII D of the California Constitution, allows local governments to collect revenue from property owners in only four ways: (a) an *ad valorem* property tax; (b) a special tax; (c) an assessment; or (d) a fee or charge for property-related services.<sup>5</sup> It defines an assessment as “any levy or charge upon real property by an agency for a specific benefit conferred upon the real property.”<sup>6</sup> The rationale behind assessments is that the general public should not be forced to subsidize benefits that only a few specific properties receive.<sup>7</sup> In this way, assessments differ from both *ad valorem* property taxes and special taxes, neither of which require a nexus between particular benefits and particular parcels of property.<sup>8</sup>

Proposition 218 limits the ability of local governments to impose assessments in several ways. First, it establishes strict procedural requirements, including a detailed engineer’s report, a public hearing, and majority voter approval within the proposed district.<sup>9</sup> Second, it facilitates the invalidation of assessments in court by removing the presumption of validity and shifting the burden of proof to the government agency.<sup>10</sup> Third, it requires an assessment to confer a “special benefit,” which it defines as “a particular and distinct benefit over and above general benefits” to property in the district or to the public at large.<sup>11</sup> Finally, Proposition 218 requires that an assessment be proportional to the specific benefit conferred on the property.<sup>12</sup>

The Santa Clara County Open Space Authority (hereinafter “OSA”) was created by the Santa Clara County Open Space Authority Act in 1992, before the passage of Proposition 218.<sup>13</sup> By acquiring and preserving open space land

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4. *Silicon Valley*, 187 P.3d at 49 (quoting Proposition 218’s ballot pamphlet).

5. CAL. CONST. art. XIII D, § 3. An *ad valorem* property tax is a tax that is proportionate to the assessed value of the property. Most property taxes are *ad valorem*. See 71 AM. JUR. 2D *State and Local Taxation* § 20, at 355 (1973) (“[A]n *ad valorem* tax is a tax of a fixed proportion of the value of the property with respect to which the tax is assessed, and requires the intervention of assessors or appraisers to estimate the value of such property before the amount due from each taxpayer can be determined.”); see also Investopedia *Ad Valorem Tax*, <http://www.investopedia.com/terms/a/advalorem.asp> (last visited Aug. 19, 2009). In contrast, a special tax is “a tax imposed for specific purposes, . . . which is placed into a general fund.” CAL. CONST. art. XIII C, § 1(d). The California Constitution limits *ad valorem* property taxes to 1 percent of a property’s assessed value and requires a two-third voter majority to approve a special tax. *Id.* at art. XIII A, §§ 1–4.

6. CAL. CONST. art. XIII C, § 2(b).

7. *Silicon Valley*, 187 P.3d at 45.

8. *Id.*

9. CAL. CONST. art. XIII D, § 4.

10. *Id.* at § 4(f).

11. *Id.* at § 2(i).

12. *Id.* at § 6(b)(3). For example, a local agency could levy an assessment to fund the installation of street lights. The assessment could be levied only on properties that receive a special benefit from the improvement (in most cases, the properties abutting the newly lit streets), and only in proportion to the benefit that they receive.

13. *Silicon Valley*, 187 P.3d at 42.

in Santa Clara County, OSA seeks to counteract urbanization, preserve quality of life, and encourage agricultural activities.<sup>14</sup> It is authorized to levy special assessments on all county land outside of the Midpeninsula Regional Open Space District.<sup>15</sup> In 1994, OSA levied its first assessment, which raises approximately \$4 million annually and has funded the purchase of thousands of acres of open space land.<sup>16</sup>

Six years after imposing its initial assessment, OSA determined that it needed additional funding to purchase open space land.<sup>17</sup> Because Proposition 218 had passed in the interim, OSA began a process to comply with the heightened procedural and substantive requirements. It first authorized a poll showing that 55 percent of Santa Clara County property owners would support a \$20 assessment per household for acquiring and maintaining open space land.<sup>18</sup> In 2001, OSA proposed a second assessment district that included all property within the 1994 assessment district, covering over 800 square miles and containing over one million people.<sup>19</sup> The accompanying engineer's report described the purpose of the assessment as the "[a]cquisition, installation, maintenance, and servicing" of open space land.<sup>20</sup> Although it identified areas that OSA was considering for potential acquisition, the report did not specify particular parcels to be acquired.<sup>21</sup> OSA estimated that the new assessment would generate an additional \$8 million for its budget.<sup>22</sup>

Between September and November of 2001, OSA mailed a ballot to all affected property owners, organized an informational meeting, and held a formal public hearing.<sup>23</sup> On December 13, 2001, it reported the results of the balloting.<sup>24</sup> From the 314,000 ballots it mailed out, OSA received 48,100 responses — a return rate of about 15 percent.<sup>25</sup> Of these responses, 66.8 percent voted in favor of the assessment and 33.2% voted against it.<sup>26</sup> When the responses were weighted in proportion to the amount each parcel was to be assessed, the final tally was 50.9 percent in favor and 49.1 percent opposed.<sup>27</sup> OSA then approved the results and established a new assessment district.<sup>28</sup> It later renewed the assessment for the 2003–2004 year, adding a cost-of-living

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14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 43.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 43–44.

increase of \$0.34 per parcel.<sup>29</sup>

The Silicon Valley Taxpayers Association and the other plaintiffs in this case brought suit in order to invalidate the assessment on the basis of Proposition 218. The trial court summarily dismissed the case in OSA's favor.<sup>30</sup> In a two-to-one decision, the Court of Appeal affirmed.<sup>31</sup> The majority began by noting that the standard of review applicable to assessments prior to Proposition 218 was extremely deferential.<sup>32</sup> While acknowledging that Proposition 218 shifted the burden of proof to OSA, the majority noted that the proposition left the scope of review unspecified.<sup>33</sup> Consequently, it held that courts should continue to defer to legislative findings as long as (a) Proposition 218's procedural requirements were met and (b) substantial evidence supported the agency's findings that the benefits were special.<sup>34</sup> The court reasoned that the constitutional separation of powers doctrine warranted deference, and "invalidating an assessment that received the support of a majority of the property owners would frustrate the will of those property owners."<sup>35</sup> Consequently, the court concluded that the engineer's report supported OSA's determination of special benefits and proportionality, and held that the assessment did not violate Proposition 218.<sup>36</sup>

In her dissent, Judge Bamattre-Manoukian argued that Proposition 218 specifically sought to eliminate the majority's deferential standard of review.<sup>37</sup> Because an assessment's validity was now a constitutional question, the dissent argued that courts should exercise independent judgment in determining whether Proposition 218's procedural and substantive requirements had been met. Independently reviewing the engineer's report, the dissent concluded that the findings of proportionality and special benefits were insufficient.<sup>38</sup>

In a unanimous decision echoing Judge Bamattre-Manoukian's dissent, the California Supreme Court reversed.<sup>39</sup> It overturned *Dawson* and established

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29. *Id.* at 44.

30. *Id.*

31. Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Auth. (SVTA), 30 Cal. Rptr. 3d 853, 874 (Ct. App. 2005).

32. See Dawson v. Town of Los Altos Hills, 547 P.2d 1377, 1382-83 (Cal. 1976). The court stated:

A special assessment finally confirmed by a local legislative body in accordance with applicable law will not be set aside by the courts unless it clearly appears on the face of the record before that body, or from facts which may be judicially noticed, that the assessment as finally confirmed is not proportional to the benefits to be bestowed on the properties to be assessed or that no benefits will accrue to such properties.

*Id.*

33. SVTA, 30 Cal. Rptr. 3d at 863.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* at 885-88 (Bamattre-Manoukian, J., dissenting).

38. *Id.* at 894.

39. Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Auth., 187

a new, nondeferential standard of review in light of Proposition 218. This new standard was based on voter intent—as derived from Proposition 218’s ballot materials—and disregarded the lower court’s reluctance to interfere with local political processes.<sup>40</sup> Because Proposition 218 was a constitutional requirement, and in light of the clear voter intent to limit the ability of local governments to extract revenue via assessments, the court construed Proposition 218 liberally to conclude that courts should use independent judgment in reviewing local agency determinations.<sup>41</sup> It reasoned that Proposition 218’s substantive requirements “are contained in constitutional provisions of dignity at least equal to the constitutional separation of powers provision.”<sup>42</sup> Furthermore, the court noted that “voter consent cannot convert an unconstitutional legislative assessment into a constitutional one.”<sup>43</sup> Ultimately, neither separation of powers nor property owner consent was deemed sufficient to permit local agencies to implement assessments that violate the judicial interpretation of Proposition 218.<sup>44</sup>

Applying this new standard of review to OSA’s engineer’s report, the court held that OSA failed to establish that each assessed property received a special benefit. In light of the plain language of Proposition 218, the court stated that a special benefit “must affect the assessed property in a way that is particular and distinct from its effect on other parcels and that real property in general and the public at large do not share.”<sup>45</sup> It found that the engineer’s report submitted by OSA failed to tie particular benefits to particular properties, but instead applied benefits broadly, generally, and directly to all property in OSA’s assessment district.<sup>46</sup> Ultimately, OSA’s inability to identify any specific open spaces for acquisition prevented it from establishing a specific benefit to “real property adjoining, or near the locality of the improvement.”<sup>47</sup>

The court also held that OSA’s assessment failed to meet Proposition 218’s proportionality requirement.<sup>48</sup> OSA had assessed \$20 on all households, based on its projected annual budget of \$8 million.<sup>49</sup> However, Proposition 218 requires assessments to fund the specific cost of the improvement from which properties derive special benefits—not merely the ongoing expense of a

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P.3d 37, 56 (Cal. 2008).

40. *Id.* at 47.

41. *Id.* at 49.

42. *Id.*

43. *Id.*

44. *Id.* at 50.

45. *Id.* at 52.

46. *Id.* at 53.

47. *Id.* at 54 (quoting *Fed. Constr. Co. v. Ensign*, 210 P. 536, 543 (Cal. Dist. Ct. App. 1922)).

48. *Id.* at 54–55; *see* CAL. CONST. art. XIII D, § 6(b)(3).

49. *Silicon Valley*, 187 P.3d at 43–44. The decision to assess \$20 per household was shaped by poll results indicating that most taxpayers would support an assessment of this amount. *Id.* at 43.

government agency.<sup>50</sup> In order to demonstrate proportionality, the court held that OSA would have to identify (a) the permanent public improvement to be financed, (b) the cost of that improvement, and (c) the specific connection between the proportionate cost assessed and the special benefit received.<sup>51</sup> Quoting Judge Bamattre-Manoukian's dissent from the Court of Appeal's majority opinion, the court noted, "an assessment calculation that works backward by starting with an amount taxpayers are likely to pay, and then determines an annual spending budget based thereon, does not comply with the law governing assessments, either before or after Proposition 218."<sup>52</sup>

By liberally construing Proposition 218's requirements, *Silicon Valley* departs from traditional state jurisprudence, both in California and elsewhere, which reads fiscal limitations in state constitutions "narrowly, technically, and formalistically."<sup>53</sup> This restraint may reflect several factors. First, fiscal limitations, though historically present in state constitutions, do not touch on core constitutional questions—such as fundamental rights or government structure.<sup>54</sup> As a result, when conflicts arise between recent fiscal limits and long-standing constitutional jurisprudence, courts have attempted to protect the latter. Second, state courts have been influenced by post-New Deal federal jurisprudence, which situates economic and social issues within the realm of legislative, not judicial, determination.<sup>55</sup> Third, fiscal limitation cases are rarely accompanied by clearly discernable "victims" suffering meaningful harm.<sup>56</sup> Finally, state courts are often reluctant to overturn government programs that may have voter support or fall within commonly held expectations of appropriate government expenditure.<sup>57</sup>

In contrast, the California Supreme Court's opinion in *Silicon Valley* elevates fiscal limitations to the same level as core California constitutional issues. By recognizing these limitations as "provisions of dignity at least equal to the constitutional separation of powers provision," the court treats them as a permanent, structural feature of governance in California—not merely as one generation's tax policy that happens to be incorporated constitutionally.<sup>58</sup> Furthermore, the phrase "at least equal" implies that tax provisions may

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50. *Id.* at 54.

51. *Id.* at 55.

52. *Id.* (quoting *SVTA*, 30 Cal. Rptr. 3d 853, 896 (Ct. App. 2005)).

53. Briffault, *supra* note 1, at 910.

54. *Id.* at 939–40.

55. *Id.* at 941. Falling within this category is the California Court of Appeal's conclusion that constitutional separation of powers demands deference to legislative findings. *See SVTA*, 30 Cal. Rptr. 3d at 863.

56. Briffault, *supra* note 1, at 943.

57. *Id.* at 943–44. Note the California Court of Appeal's concern regarding frustrating the will of the property owners that supported OSA's determination, discussed earlier. *See SVTA*, 30 Cal. Rptr. 3d at 863.

58. *See Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Auth.*, 187 P.3d 37, 49 (Cal. 2008).

actually be superior to established constitutional principles that are based on—but not expressly written within—other sections of the California Constitution.

By elevating the status of tax provisions within the constitutional structure, the California Supreme Court in *Silicon Valley* appears committed to facilitating the stated intent of Proposition 218: limiting local taxation and ensuring taxpayer consent.<sup>59</sup> However, Proposition 218 can just as readily be characterized as motivated by a general hostility to taxation.<sup>60</sup> Indeed, this rationale may better explain the court's decision. If the purpose of Proposition 218 is merely to obstruct local taxes, then the court's liberal construal would most effectively achieve that goal. However, if the purpose is to promote taxpayer consent, then the court's liberal construal actually inhibits that goal for two reasons. First, invalidating a procedurally correct assessment on substantive grounds thwarts the taxpayer majority that approved the assessment. Second, local government is arguably the level of government most responsive to its constituents—and hence the least deserving of a judicially protected fiscal constraint.<sup>61</sup> In contrast to federal or state agencies, local government in California is governed by extremely rigorous transparency laws and subject to effective monitoring and political control by grassroots organizations.<sup>62</sup> Voters in Santa Clara County do not need formal fiscal limitations: if they do not approve of officials that raise taxes or impose assessments, they can simply vote the officials out of office or move to a locality with lower taxes.<sup>63</sup> In summary, the court's independent standard of review will more likely frustrate the will of voter majorities than vindicate it. And since Proposition 218 only constrains local government and not the state government, *Silicon Valley* will effectively decrease local autonomy and will shift government expenditure decisions to the comparatively opaque and nonresponsive state

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59. *See id.* (quoting Proposition 218's ballot materials). Some commentators defend constitutional fiscal limits as strengthening democratic governance by enhancing the legitimacy of property taxes and ensuring that voter interests are prioritized. *See Stark, supra* note 1, at 208–09; Sherman J. Clark, *A Populist Critique of Direct Democracy*, 112 HARV. L. REV. 434, 468 (1998). Fiscal limitations have also been lauded as protecting low-income family home-owners from sharply increasing property tax bills. *See, e.g.,* DAVID O. SEARS & JACK CITRIN, *TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA* 21–23 (1982).

60. *See* Briffault, *supra* note 1, at 954; *see also* Stark, *supra* note 1, at 206. From this perspective, procedural and substantive requirements exist primarily to increase the difficulty in enacting a tax increase. *See id.* (“Under this view, the idea of requiring voter approval for tax increases is normatively indistinguishable from a rule, say, requiring taxes to be paid in Guatemalan Quetzales, which might be valued on the theory that the hassle of currency conversion will make taxation more cumbersome and annoying.”).

61. *See* Briffault, *supra* note 1, at 950.

62. *Id.*

63. *Id.* Localities have an interest in maintaining low taxes because they compete with one another for increasingly mobile taxpayers. *Id.* Proponents of fiscal limitations argue that local representatives can be voted out of office only with great difficulty. *See* Brief for Aaron Katz as Amici Curiae Supporting Appellants, *Silicon Valley Taxpayers Ass'n, Inc. v. Santa Clara County Open Space Auth.*, 187 P.3d 37 (Cal. 2008) (No. S136468) 5–6. However, the fact that elections rarely turn on local taxation may indicate that the issue is simply not important in local elections.

level.<sup>64</sup>

Theories of judicial restraint also argue that the California Supreme Court should adopt the deferential standard proposed by the Court of Appeal. To begin with, local agencies and populations—not courts—have the knowledge and geographic familiarity necessary to best evaluate a proposed assessment.<sup>65</sup> Yet *Silicon Valley* gives no deference to these groups. Instead, it attempts to assess special benefits and proportionality independently. As a result, this decision shifts power over assessments from local agencies to state courts.<sup>66</sup> Unlike the Court of Appeal's deferential standard, which obviated the need for a thorough analysis when substantial evidence supported the agency's finding, the California Supreme Court's independent review places courts in the position of being the perennial referees of continually reoccurring tax disputes.

Judicial restraint is further warranted in light of the unique political interplay between two sets of voters that occurs in Proposition 218 cases. Assuming that an assessment's procedural requirements are met, *Silicon Valley* creates an inherent conflict between the statewide supporters of Proposition 218 and the local supporters of the assessment. The latter group is more closely and directly affected by the proposed assessment; as with OSA, supporters of the assessment may actually represent a larger proportion of voters than that which enacted Proposition 218. Because it effectively ignores agency determinations that are subject to extensive public notification and discussion procedures, *Silicon Valley* discourages assessment opponents from participating in the ordinary democratic process. Rather than challenging an assessment during the public hearing and balloting stages, opponents can simply wait until an assessment is approved and attack it in court.<sup>67</sup> In contrast, a deferential standard of review would encourage wider and more extensive participation in the democratic process that culminates in an assessment.

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64. Proposition 218 only constrains "local government," defined as "any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity." CAL. CONST. art. XIII D § 2(a); CAL. CONST. art. XIII C § 1(b). On the shift in balance to state revenue collection and expenditure, see Mark Skidmore, *Tax and Expenditure Limitations and the Fiscal Relationships Between State and Local Governments*, 99 PUB. CHOICE 77, 95–99 (1999); Alvin D. Sokolow, *The Changing Property Tax and State-Local Relations*, 28 PUBLIUS J. FED. 165 (1998).

65. See Combined Answer of Respondent Santa Clara County Open Space Authority to All Amicus Briefs Supporting Appellants at 10–11, *Silicon Valley*, 187 P.3d 37 (No. S136468).

66. See MICHAEL G. COLANTUONO, CURRENT DEVELOPMENTS UNDER PROPOSITION 218: SILICON VALLEY, ASSESSMENTS, UTILITY FEES, AND MORE 23 (Sept. 25, 2008), [http://www.cllaw.us/papers/prop218\\_update-sept2008.pdf](http://www.cllaw.us/papers/prop218_update-sept2008.pdf).

67. See *id.* at 21 (observing that no evidence was presented that contradicted the engineer's report at any of the public meetings in which OSA's proposed assessment was discussed).

Federal notions of judicial restraint provide a useful analogy.<sup>68</sup> In federal constitutional law, “economic or tax legislation . . . normally pass constitutional muster, since ‘the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.’”<sup>69</sup> One theory of judicial restraint argues that courts should not interfere with democratic process unless it is necessary to protect either the constitutional scheme or inadequately represented individual rights.<sup>70</sup> In the context of Proposition 218, however, there is no inadequately represented minority; assessment opponents have a full opportunity to vote, attend public meetings, and otherwise express and organize themselves. Although the California Supreme Court is correct that courts “may not lightly disregard or blink at . . . a clear constitutional mandate,” courts are not constitutionally compelled to treat every quasi-legislative determination as a nullity.<sup>71</sup> When Proposition 218’s procedural requirements are met and substantial facts support the engineer’s report, both judicial economy and judicial restraint encourage courts to leave these disputes for the democratic process to resolve.

Although *Silicon Valley* does not prohibit assessments for open space land programs, this may be the practical result of its liberal construction of Proposition 218. While agencies such as OSA can target specific areas for acquisition, they cannot expect a particular parcel of property to remain available while Proposition 218’s procedural requirements are being met.<sup>72</sup> Specifying individual parcels would also require agencies to make “premature and substantial expenditures of public funds” in identifying, assessing, and evaluating property in advance of an engineer’s report or assessment balloting.<sup>73</sup> Restricting special benefits to apply only to immediately surrounding property is also unlikely to raise sufficient funds to finance open space land

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68. Of course, state constitutions differ from the U.S. Constitution in several significant ways. In contrast to fiscal limitations that are common in state constitutions, the U.S. Constitution has few constraints on taxation. *See* U.S. CONST. art. I, § 8, cls. 1, 4. Hence, “taxpayer protection” is arguably an important feature of state constitutional law that is not present in federal constitutional law. *See* Briffault, *supra* note 1, at 909.

69. *Lawrence v. Texas*, 539 U.S. 558, 579–80 (2003) (quoting *City of Cleburne, Tex. v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985)). *Lawrence* and *Cleburne* focus on the Equal Protection Clause, not state constitutional fiscal limits.

70. JESSE H. CHOPER, JUDICIAL REVIEW AND THE NATIONAL POLITICAL PROCESS: A FUNCTIONAL RECONSIDERATION OF THE ROLE OF THE SUPREME COURT (1980). *See also* Jesse H. Choper, *The Political Question Doctrine: Suggested Criteria*, 54 DUKE L.J. 1457, 1462–63 (2005).

71. *Silicon Valley Taxpayers Ass’n, Inc. v. Santa Clara County Open Space Auth.*, 187 P.3d 37, 49 (Cal. 2008) (quoting *State Pers. Bd. v. Dep’t of Pers. Admin.*, 123 P.3d 169, 175–76 (Cal. 2005)).

72. As an indication of the time frame necessary for the acquisition of open space land by a government agency, consider that OSA’s engineer’s report established a five-year plan for the acquisition of specific types of property. *See* Respondent’s Response to Amicus Curiae Brief of Pacific Legal Foundation at 5, *Silicon Valley Taxpayers Ass’n, Inc. v. Santa Clara County Open Space Auth.*, 30 Cal. Rptr. 3d 853 (Ct. App. 2005) (No. H026759).

73. *Id.*

acquisition—especially since land owners and speculators would receive advanced notice of the intended purchase.<sup>74</sup>

In fact, it appears that very few local programs—from open space acquisition to flood abatement—will overcome the independent review set forth in *Silicon Valley*. If diffuse benefits like open space land provide special benefits only to adjoining or nearby property, as implied in the court's opinion, then these benefits cannot be determined without first identifying the particular improvement to be acquired.<sup>75</sup> However, many assessments, such as those for mosquito suppression, are responsive to developing circumstances, and therefore cannot be predicted with particularity. Likewise, fire suppression and flood control districts require the flexibility to be able to respond to changing circumstances. Even assessments for public transportation or civic improvements raise questions of measuring specific benefit and proportionality not fully answered in this case.

As a result, *Silicon Valley* will likely impede a wide range of essential local government programs that provide broad and diffuse benefits to large areas. As the Court of Appeal's decision demonstrates, however, this result is not a constitutional imperative. Judicial restraint, particularly in the form of the lower appellate court's deferential standard of review, would preserve traditional notions of California constitutional structure, protect local autonomy against state government encroachment, and strengthen the democratic process from which assessments arise. It would also help fulfill the stated objective of Proposition 218: ensuring taxpayer consent of local taxation.

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74. If agencies like OSA can no longer use assessments, then the last remaining vehicle for raising revenue is the special tax, which requires two-thirds voter approval. *See* CAL. CONST. art. XIII D, § 6(b)(3). Although OSA's assessment received 66.8 percent of unweighted votes, achieving supermajoritarian support is difficult. Notably, Proposition 218 did not receive more than 60 percent voter approval. *See* BILL JONES, CALIFORNIA SECRETARY OF STATE, STATEMENT OF VOTE 1996 43 (1996), [http://www.sos.ca.gov/elections/sov/1996\\_general/sov\\_nov96.pdf](http://www.sos.ca.gov/elections/sov/1996_general/sov_nov96.pdf).

75. *Silicon Valley*, 187 P.3d at 53.