# SUPREME COURT OF THE UNITED STATES

No. 90–1912

STEPHANIE NORDLINGER, PETITIONER *v.* KENNETH HAHN, IN HIS CAPACITY AS TAX ASSESSOR FOR LOS ANGELES COUNTY, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

[June 18, 1992]

JUSTICE STEVENS, dissenting.

During the two past decades, California property owners have enjoyed extraordinary prosperity. As the State's population has mushroomed, so has the value of its real estate. Between 1976 and 1986 alone, the total assessed value of California property subject to property taxation increased tenfold.[1] Simply put, those who invested in California real estate in the 1970s are among the most fortunate capitalists in the world.

Proposition 13 has provided these successful investors with a tremendous windfall and, in doing so, has created severe inequities in California's property tax scheme.[2] These property owners (hereinafter "the Squires") are guaranteed that, so long as they retain their property and do not improve it, their taxes will not increase more than 2% in any given

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[1]Glennon, Taxation and Equal Protection, 58 Geo. Wash. L. Rev. 261, 270, n.49 (1990). "For the same period, [property values in] Hawaii rose approximately 450%; Washington, D.C. approximately 350%; and New York approximately 125%." *Ibid.* (citing 2 U. S. Dept. of Commerce, Bureau of Census, Taxable Property Values 86–111, Table 12 (1987); 2 U. S. Dept. of Commerce, Bureau of Census, Taxable Property Values and Assessment/Sales Price Ratios 42, Table 2 (1977)).

[2]Proposition 13 was codified as Article XIIIA of the California Constitution; for convenience sake, however, I refer to it by its colloquial name.

year. As a direct result of this windfall for the Squires, later purchasers must pay far more than their fair share of property taxes.

The specific disparity that prompted petitioner to challenge the constitutionality of Proposition 13 is the fact that her annual property tax bill is almost 5 times as large as that of her neighbors who own comparable homes: While her neighbors' 1989 taxes averaged less than $400, petitioner was taxed $1,700. App. 18–20. This disparity is not unusual under Proposition 13. Indeed, some homeowners pay 17 times as much in taxes as their neighbors with comparable property. See *id.,* at 76–77. For vacant land, the disparities may be as great as 500 to 1. App. to Pet. for Cert. A7. Moreover, as Proposition 13 controls the taxation of commercial property as well as residential property, the regime greatly favors the commercial enterprises of the Squires, placing new businesses at a substantial disadvantage.

As a result of Proposition 13, the Squires, who own 44% of the owner-occupied residences, paid only 25% of the total taxes collected from homeowners in 1989. Report of Senate Commission on Property Tax Equity and Revenue to the California State Senate 33 (1991) (Commission Report). These disparities are aggravated by §2 of Proposition 13, which exempts from reappraisal a property owner's home and up to $1 million of other real property when that property is transferred to a child of the owner. This exemption can be invoked repeatedly and indefinitely, allowing the Proposition 13 windfall to be passed from generation to generation. As the California Senate Commission on Property Tax Equity and Revenue observed:

> "The inequity is clear. One young family buys a new home and is assessed at full market value. Another young family inherits its home, but pays taxes based on their parents' date of acquisition even though both homes are of identical value. Not only does this constitutional provision offend a policy of equal tax treatment for taxpayers in similar situations, it appears to favor the housing

> needs of children with homeowner-parents over children with non-homeowner-parents. With the repeal of the state's gift and inheritance tax in 1982, the rationale for this exemption is negligible." Commission Report, at 9–10.

The Commission was too generous. To my mind, the rationale for such disparity is not merely "negligible," it is nonexistent. Such a law establishes a privilege of a medieval character: Two families with equal needs and equal resources are treated differently solely because of their different heritage.

In my opinion, such disparate treatment of similarly situated taxpayers is arbitrary and unreasonable. Although the Court today recognizes these gross inequities, see *ante*, at 4, n.2, its analysis of the justification for those inequities consists largely of a restatement of the benefits that accrue to long-time property owners. That a law benefits those it benefits cannot be an adequate justification for severe inequalities such as those created by Proposition 13.

The standard by which we review equal protection challenges to state tax regimes is well-established and properly deferential. "Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Lehnhausen* v. *Lake Shore Auto Parts Co.,* 410 U. S. 356, 359 (1973). Thus, as the Court today notes, the issue in this case is "whether the

difference in treatment between newer and older owners
rationally furthers a legitimate state interest." *Ante,* at 8.[3] But deference is not abdication and "rational basis scrutiny" is still scrutiny. Thus we have, on several recent occasions, invalidated tax schemes under such a standard of review. See *e.g., Allegheny Pittsburgh Coal Co.* v. *County Comm'n of Webster County,* 488 U. S. 336 (1989); *Hooper* v. *Bernalillo County Assessor,* 472 U. S. 612, 618 (1985); *Williams* v. *Vermont,* 472 U. S. 14 (1985); *Metropolitan Life Ins. Co.* v. *Ward,* 470 U. S. 869 (1985); cf. *Zobel* v. *Williams,* 457 U. S. 55, 60–61 (1982).

Just three Terms ago, this Court unanimously invalidated Webster County, West Virginia's assessment scheme under rational-basis scrutiny. Webster County employed a *de facto* Proposition 13 assessment system: The County assessed recently purchased property on the basis of its purchase price but made only occasional adjustments (averaging 3–4% per year) to the assessments of other properties. Just as in this case, "[t]his approach systematically produced dramatic differences in valuation between . . . recently transferred property and otherwise comparable surrounding land." *Allegheny Pittsburgh,* 488 U. S., at 341.

The "`[i]ntentional systematic undervaluation,'" *id.,* at 345, found constitutionally infirm in *Allegheny Pittsburgh* has been codified in California by

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[3]As the Court notes, *ante,* at 8, petitioner contends that Proposition 13 infringes on the constitutional right to travel and that, accordingly, a more searching standard of review is appropriate. There is no need to address that issue because the gross disparities created by Proposition 13 do not pass even the most deferential standard of review. Cf. *Hooper* v. *Bernalillo County Assessor,* 472 U. S. 612, 618 (1985); *Zobel* v. *Williams,* 457 U. S. 55, 60–61 (1982).

Proposition 13. That the discrimination in *Allegheny Pittsburgh* was *de facto* and the discrimination in this case *de jure* makes little difference. "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, *whether occasioned by express terms of a statute or by its improper execution through duly constituted agents*." *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 352–353 (1918) (emphasis added). If anything, the inequality created by Proposition 13 is constitutionally more problematic because it is the product of a state-wide policy rather than the result of an individual assessor's mal-administration.

Nor can *Allegheny Pittsburgh* be distinguished because West Virginia law established a market-value assessment regime. Webster County's scheme was constitutionally invalid not because it was a departure from *state law,* but because it involved the relative "`systematic undervaluation . . . [of] property *in the same class*'" (as that class was defined by state law). *Allegheny Pittsburgh,* 488 U. S., at 345 (emphasis added). Our decisions have established that the Equal Protection Clause is offended as much by the arbitrary delineation of classes of property (as in this case) as by the arbitrary treatment of properties within the same class (as in *Allegheny Pittsburgh).* See *Brown-Forman Co.* v. *Kentucky,* 217 U. S. 563, 573 (1910); *Cumberland Coal Co.* v. *Board of Revision*, 284 U. S. 23, 28–30 (1931). Thus, if our unanimous holding in *Allegheny Pittsburgh* was sound —and I remain convinced that it was—it follows inexorably that Proposition 13, like Webster County's assessment scheme, violates the Equal Protection Clause. Indeed, in my opinion, state-wide discrimination is far more invidious than a local aberration that creates a tax dis-
parity.

The States, of course, have broad power to classify property in their taxing schemes and if the "classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law." *Brown-Forman Co.* v. *Kentucky,* 217 U. S., at 573. As we stated in *Allegheny Pittsburgh,* a "State may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable." 488 U. S., at 344.

Consistent with this standard, the Court has long upheld tax classes based on the taxpayer's ability to pay, see, *e.g., Fox* v. *Standard Oil Co. of New Jersey,* 294 U. S. 87, 101 (1935); the nature (tangible or intangible) of the property, see, *e.g., Klein* v. *Jefferson County Board of Tax Supervisors,* 282 U. S. 19, 23–24 (1930); the use of the property, see, *e.g., Clark* v. *Kansas City,* 176 U. S. 114 (1900); and the status (corporate or individual) of the property owner, see, *e.g., Lehnhausen* v. *Lake Shore Auto Parts Co.,* 410 U. S. 356 (1973). Proposition 13 employs none of these familiar classifications. Instead it classifies property based on its nominal purchase price: All property purchased for the same price is taxed the same amount (leaving aside the 2% annual adjustment). That this scheme can be named (an "acquisition value" system) does not render it any less arbitrary or unreasonable. Under Proposition 13, a majestic estate purchased for $150,000 in 1975 (and now worth more than $2 million) is placed in the same tax class as a humble cottage purchased today for $150,000. The only feature those two properties have in common is that somewhere, sometime a sale contract for each was executed that contained the price "$150,000." Particularly in an environment of phenomenal real property appreciation, to classify property based on its purchase price is "palpably arbitrary." *Allied Stores of Ohio, Inc.* v. *Bowers,* 358

U. S. 522, 530 (1959).

Under contemporary equal protection doctrine, the test of whether a classification is arbitrary is "whether the difference in treatment between [earlier and later purchasers] rationally furthers a legitimate state interest." *Ante,* at 8. The adjectives and adverbs in this standard are more important than the nouns and verbs.

A *legitimate* state interest must encompass the interests of members of the disadvantaged class and the community at large as well as the direct interests of the members of the favored class. It must have a purpose or goal independent of the direct effect of the legislation and one "`that we may reasonably presume to have motivated an impartial legislature.'" *Cleburne* v. *Cleburne Living Center, Inc.,* 473 U. S. 432, 452, n.4 (1985) (STEVENS, J., concurring) (quoting *United States Railroad Retirement Board* v. *Fritz,* 449 U. S. 166, 180–181 (1980) (STEVENS, J., concurring in judgment)). That a classification must find justification outside itself saves judicial review of such classifications from becoming an exercise in tautological reasoning.

> "A State cannot deflect an equal protection challenge by observing that in light of the statutory classification all those within the burdened class are similarly situated. The classification must reflect pre-existing differences; it cannot create new ones that are supported by only their own bootstraps. `The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes.' *Rinaldi* v. *Yeager*, 384 U. S. 305, 308 (1966)." *Williams* v. *Vermont*, 472 U. S. 14, 27 (1985).

If the goal of the discriminatory classification is not independent from the policy itself, "each choice [of classification] will import its own goal, each goal will

count as acceptable, and the requirement of a `rational' choice-goal relation will be satisfied by the very making of the choice." Ely, Legislative and Administrative Motivation in Constitutional Law, 79 Yale L. J. 1205, 1247 (1970).

A classification *rationally* furthers a state interest when there is some fit between the disparate treatment and the legislative purpose. As noted above, in the review of tax statutes we have allowed such fit to be generous and approximate, recognizing that "rational distinctions may be made with substantially less than mathematical exactitude." *New Orleans* v. *Dukes,* 427 U. S. 297, 303 (1976). Nonetheless, in some cases the underinclusiveness or the overinclusiveness of a classification will be so severe that it cannot be said that the legislative distinction "rationally furthers" the posited state interest.[4] See, *e.g.*, *Jimenez* v. *Weinberger*, 417 U. S. 628, 636–638 (1974).

The Court's cursory analysis of Proposition 13 pays little attention to either of these aspects of the controlling standard of review. The first state interest identified by the Court is California's "interest in local neighborhood preservation, continuity, and stability." *Ante,* at 9 (citing *Euclid* v. *Ambler Realty Co.,* 272 U. S. 365 (1926)). It is beyond question that "inhibit[ing the] displacement of lower income families by the forces of gentrification," *ante,* at 9–10,

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[4]"Herod, ordering the death of all male children born on a particular day because one of them would some day bring about his downfall, employed such a[n overinclusive] classification[, as did t]he wartime treatment of American citizens of Japanese ancestry [which imposed] burdens upon a large class of individuals because some of them were believed to be disloyal." Tussman & tenBroek, The Equal Protection of the Laws, 37 Calif. L. Rev. 341, 351 (1949).

is a legitimate state interest; the central issue is whether the disparate treatment of earlier and later purchasers *rationally furthers* this goal. Here the Court offers not an analysis, but only a conclusion: "By permitting older owners to pay progressively less in taxes than new owners of comparable property, [Proposition 13] rationally furthers this interest." *Ante,* at 10.

I disagree. In my opinion, Proposition 13 sweeps too broadly and operates too indiscriminately to "rationally further" the State's interest in neighborhood preservation. No doubt there are some early purchasers living on fixed or limited incomes who could not afford to pay higher taxes and still maintain their homes. California has enacted special legislation to respond to their plight.[5] Those concerns cannot provide an adequate justification for Proposition 13. A state-wide, across-the-board tax windfall for *all* property owners and their descendants is no more a "rational" means for protecting this small subgroup than a blanket tax exemption for all taxpayers named Smith would be a rational means to protect a particular taxpayer named Smith who demonstrated difficulty paying her tax bill.

Even within densely populated Los Angeles County, residential property comprises less than half of the

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[5]As pointed out in the Commission Report, California has addressed this specific problem with specific legislation. The State has established two programs: "*Senior Citizens Property Tax Assistance*. Provides refunds of up to ninety-six percent of property taxes to low income homeowners over age 62.

. . . . .

"*Senior Citizens Property Tax Postponement*. Allows senior citizens with incomes under $20,000 to postpone all or part of the taxes on their homes until an ownership change occurs." Commission Report 23.

market value of the property tax roll. App. 45. It cannot be said that the legitimate state interest in preserving neighborhood character is "rationally furthered" by tax benefits for owners of commercial, industrial, vacant, and other nonresidential properties.[6] It is just short of absurd to conclude that the legitimate state interest in protecting a relatively small number of economically vulnerable families is "rationally furthered" by a tax windfall for all 9,787,887 property owners[7] in California.

The Court's conclusion is unsound not only because of the lack of numerical fit between the posited state interest and Proposition 13's inequities but also because of the lack of logical fit between ends and means. Although the State may have a valid interest in preserving some neighborhoods,[8] Proposition 13

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[6]The Court's rationale for upholding Proposition 13 does not even arguably apply to vacant property. That, as the Court recognizes, Proposition 13 discourages changes of ownership means that the law creates an impediment to the transfer and development of such property no matter now socially desirable its improvement might be. It is equally plain that the competitive advantage enjoyed by the Squires who own commercial property is wholly unjustified. There is no rational state interest in providing those entrepreneurs with a special privilege that tends to discourage otherwise desirable transfers of income-producing property. In a free economy, the entry of new competitors should be encouraged, not arbitrarily hampered by unfavorable tax treatment.

[7]Brief for California Assessors' Association as *Amicus Curiae* 2.

[8]The ambiguous character of this interest is illustrated by the options faced by a married couple that owns a three- or four-bedroom home that suited their family needs while their children lived at home. After the children have moved out, increased taxes and

not only "inhibit[s the] displacement" of settled families, it also inhibits the transfer of unimproved land, abandoned buildings, and substandard uses. Thus, contrary to the Court's suggestion, Proposition 13 is not like a zoning system. A zoning system functions by recognizing different uses of property and treating those different uses differently. See *Euclid* v. *Ambler Realty Co.,* 272 U. S., at 388–390. Proposition 13 treats all property alike, giving *all* owners tax breaks, and discouraging the transfer or improvement of *all* property—the developed and the dilapidated, the neighborly and the nuisance.

In short, although I agree with the Court that "neighborhood preservation" is a legitimate state interest, I cannot agree that a tax windfall for all persons who purchased property before 1978 *rationally* furthers that interest. To my mind, Proposition 13 is too blunt a tool to accomplish such a specialized goal. The severe inequalities created by Proposition 13 cannot be justified by such an interest.[9]

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maintenance expenses would—absent Proposition 13—tend to motivate the sale of the home to a younger family needing a home of that size, or perhaps the rental of a room or two to generate the income necessary to pay taxes. Proposition 13, however, subsidizes the wasteful retention of unused housing capacity, making the sale of the home unwise and the rental of the extra space unnecessary.

[9]Respondent contends that the inequities created by Proposition 13 are justified by the State's interest in protecting property owners from taxation on unrealized appreciation. The California Supreme Court relied on a similar state interest. See *Amador Valley Joint Union High School Dist.* v. *State Bd. of Equalization*, 22 Cal.3d 208, 236–238, 583 P. 2d 1281, 1309–1311 (1978). This argument is closely related to the Court's reasoning concerning "neighborhood

The second state interest identified by the Court is the "reliance interests" of the earlier purchasers. Here I find the Court's reasoning difficult to follow. Although the protection of reasonable reliance interests is a legitimate governmental purpose, see *Heckler* v. *Mathews,* 465 U. S. 728, 746 (1984), this case does not implicate such interests. A reliance interest is created when an individual justifiably acts under the assumption that an existing legal condition will persist; thus reliance interests are most often implicated when the government provides some benefit and then acts to eliminate the benefit. See, *e.g., New Orleans* v. *Dukes,* 427 U. S. 297 (1976). In this case, those who purchased property before Proposition 13 was enacted received no assurances that assessments would only increase at a limited rate; indeed, to the contrary, many purchased property in the hope that property values (and assessments) would appreciate substantially and quickly. It cannot be said, therefore, that the earlier purchasers of property somehow have a reliance interest in limited tax increases.

Perhaps what the Court means is that post-Proposition 13 purchasers have less reliance interests than pre-Proposition 13 purchasers. The Court reasons that the State may tax earlier and later purchasers differently because

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preservation"; respondent claims the State has an interest in preventing the situation in which "skyrocketing real estate prices . . . driv[e] property taxes beyond some taxpayers' ability to pay." Brief for Respondent 19. As demonstrated above, whatever the connection between acquisition price and "ability to pay," a blanket tax windfall for all early purchasers of property (and their descendants) is simply too overinclusive to "rationally further" the State's posited interest in protecting vulnerable taxpayers.

> "an existing owner rationally may be thought to have vested expectations in his property or home that are more deserving of protection than the anticipatory expectations of a new owner at the point of purchase. A new owner has full information about the scope of future tax liability before acquiring the property, and if he thinks the future tax burden is too demanding, he can decide not to complete the purchase at all. By contrast, the existing owner, already saddled with his purchase, does not have the option of deciding not to buy his home if taxes become prohibitively high." *Ante*, at 10.[10]

This simply restates the effects of Proposition 13. A pre-Proposition 13 owner has "vested expectations" in reduced taxes *only* because Proposition 13 gave her such expectations; a later purchaser has no such expectations because Proposition 13 does not provide her such expectations. But the same can be said of any arbitrary protection for an existing class of taxpayers. Consider a law that establishes that homes with even street numbers would be taxed at twice the rate of homes with odd street numbers. It is certainly true that the even-numbered homeowners could not decide to "unpurchase" their homes and that those considering buying an even-numbered home would know that it came with an extra tax burden, but certainly that would not justify the arbitrary imposition of disparate tax burdens based on house numbers. So it is in this case. Proposition 13 provides a benefit for earlier purchasers and imposes a burden on later purchasers. To say that the later purchasers know what they are getting into

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[10]The Court's sympathetic reference to "existing owner[s] already saddled" with their property should not obscure the fact that these early purchasers have already seen their property increase in value more than tenfold.

does not answer the critical question: Is it reasonable and constitutional to tax early purchasers less than late purchasers when at the time of taxation their properties are comparable? This question the Court does not answer.

Distilled to its essence, the Court seems to be saying that earlier purchasers can benefit under Proposition 13 because earlier purchasers benefit under Proposition 13. If, however, a law creates a disparity, the State's interest preserving that disparity cannot be a *"legitimate* state interest" justifying that inequity. As noted above, a statute's disparate treatment must be justified by a purpose *distinct* from the very effects created by that statute. Thus, I disagree with the Court that the severe inequities wrought by Proposition 13 can be justified by what the Court calls the "reliance interests" of those who benefit from that scheme.[11]

In my opinion, it is irrational to treat similarly situated persons differently on the basis of the date they joined the class of property owners. Until today, I would have thought this proposition far from controversial. In *Zobel* v. *Williams*, 457 U. S. 55 (1982), we ruled that Alaska's program of distributing

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[11]Respondent, drawing on the analysis of the California Supreme Court, contends that the inequities created by Proposition 13 are also justified by the State's interest in "permitting the taxpayer to make more careful and accurate predictions of future tax liability." *Amador Valley*, 22 Cal.3d, at 239, 583 P.2d, at 1312. This analysis suffers from the same infirmity as the Court's "reliance" analysis. I agree that Proposition 13 permits greater predictability of tax liability; the relevant question, however, is whether the inequities between earlier and later purchasers created by Proposition 13 can be justified by something other than the benefit to the early purchasers. I do not believe that they can.

cash dividends on the basis of the recipient's years of residency in the State violated the Equal Protection Clause. The Court wrote:

> "If the states can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years of residence—-or even limiting access of finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile? *Could states impose different taxes based on length of residence?* Alaska's reasoning could open the door to state apportionment of other rights, benefits, and services according to length of residency. It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible." *Id.,* at 64 (emphasis added) (footnotes omitted).

Similarly, the Court invalidated on equal protection grounds New Mexico's policy of providing a permanent tax exemption for Vietnam veterans who had been state residents before May 8, 1976, but not to more recent arrivals. *Hooper* v. *Bernalillo County Assessor*, 472 U. S. 612 (1985). The Court expressly rejected the State's claim that it had a legitimate interest in providing special rewards to veterans who lived in the State before 1976 and concluded that "[n]either the Equal Protection Clause, nor this Court's precedents, permit the State to prefer established resident veterans over newcomers in the retroactive apportionment of an economic benefit." *Id.*, at 623.

As these decisions demonstrate, the selective provision of benefits based on the timing of one's membership in a class (whether that class be the class of residents or the class of property owners) is rarely a "legitimate state interest." Similarly situated neighbors have an equal right to share in the benefits

of local government. It would obviously be unconstitutional to provide one with more or better fire or police protection than the other; it is just as plainly unconstitutional to require one to pay five times as much in property taxes as the other for the same government services. In my opinion, the severe inequalities created by Proposition 13 are arbitrary and unreasonable and do not rationally further a legitimate state interest.

Accordingly, I respectfully dissent.